

**STATUTORY TECHNIQUES FOR ENVIRONMENTAL CONTROL IN NIGERIA: CRIMINAL SANCTIONS AND MINISTERIAL ORDERS\***

**Abstract**

*It is often said that practicing the environment ensures that all forms of development will last or be sustainable. There is no gainsaying the fact that the environment is the life support system of mankind. Unfortunately, mankind seems to have taken the liberty of the biblical dominion over the earth to plunder the earth and its resources thereby jeopardizing its own very existence and sustainable development. As noted by the World Commission on Environment and Development (the Brundtland Commission) Report 1987, sustainable development is a development that meets the needs of the present without compromising the ability of the future generations to meet their own needs. This paper therefore examined the various statutory techniques for environmental control in Nigeria in the form of prescribed criminal sanctions and ministerial orders. It found that such statutory interventions are necessary for a sound protection of the environment. It equally found however, that the sanctions provided are inadequate to achieve the desired result. It therefore recommended that the sanction regime be seriously reviewed to achieve a more effective protection of the environment.*

**Keywords:** Environmental Control, Statutory Techniques, Criminal Sanctions, Ministerial Orders, Nigeria

**1. Introduction**

According to Plato, 'If anyone intentionally spoils the water of another ... let him not only pay damages, but purify the stream or cistern which contains the water...'<sup>1</sup> The essence of this classical Platonic injunction, which is the need to protect the environment, continues to resonate even in today's world. Thus, it is widely accepted that the issue of environmental protection and the need to establish the practice of environmental friendly programmes in national development consciousness are matters of paramount importance.<sup>2</sup> The essence of a good environment can never be over-emphasized.<sup>3</sup> The interdependency of man with or within the ecosystem is fundamental to human existence.<sup>4</sup> Biblically, it can be perceived that God ensured that a good environment was created for mankind even before the creation of mankind.<sup>5</sup> Without this, man might possibly not have been created. The environment constitutes a basic necessity which was put in a good condition for mankind to explore, maintain and use for sustenance.<sup>6</sup> While environmental consciousness in the developed world has witnessed, over the past two decades, generally effective mechanisms for pollution abatement, the situation in many third world nations is at best tepid. In Nigeria, the problem of environmental pollution has increasingly attained crisis proportions and in some sectors, possibly ranks amongst the worst in the world.<sup>7</sup> It is common to have things done excessively where there are no rules and regulations. Environmental laws are put in place to mitigate the threatening environmental problems which emanate from human activities in the quest for economic growth and development. The need for environmental control arises from the fact that it brings improved health and better living conditions.<sup>8</sup> Legal checks and balances are imposed on mankind's present activities, to prevent the upcoming generations from suffering for present generation's reckless and damaging environmental activities.<sup>9</sup> In Nigeria, the government

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<sup>1</sup>B Jowett (Trans), *The Dialogues of Plato: The Laws* (Vol. 4, Book 8, 4<sup>th</sup> ed, Oxford: Clarendon Press, 1953) section 485(e), available at <<http://www.legalserviceindia.com/article/154-Interpretation-of-Polluter-Pays-Principle.html>> Last accessed on 1<sup>st</sup> October, 2015.

<sup>2</sup>AU Egbu, 'Constraints to Effective Pollution Control and Management in Nigeria', *Environmentalist*, March 2000, Volume 20, Issue 1, 13 – 17, 13.

<sup>3</sup>H Ijaiya and OT Joseph, 'Rethinking Environmental Law Enforcement in Nigeria', (2014)5 *Beijing Law Review*, 306-321, 306.

<sup>4</sup>MT Okorodudu-Fubara, *Law of Environmental Protection* (Ibadan: Caltop Publications Nigeria Limited, 1998), cited in *ibid*, p. 307.

<sup>5</sup> See Genesis 1 verse 24, the Holy Bible.

<sup>6</sup> H Ijaiya and OT Joseph, *op. cit*.

<sup>7</sup> AU Egbu, *op. cit*.

<sup>8</sup>JA Adelagan, 'The History of Environmental Policy of Water Sources in Nigeria (1960-2004): The Way Forward', <<http://www.userpage.fu-berlin.de/flu/akumeu-ibc2004/download>> Last accessed on 1<sup>st</sup> October, 2015.

<sup>9</sup> H Ijaiya and OT Joseph, *op. cit*.

has put in place relevant legislation and established relevant agencies for environmental protection.<sup>10</sup> The country has also ratified a number of international instruments dealing with the conservation of the environment and allied matters.<sup>11</sup> Most of these statutory instruments establish various environmental control techniques such as criminal sanctions, ministerial orders, prior authorization/permit requirements, and fiscal incentives, all aimed at securing compliance with the protection of the environment. These techniques are analyzed in this paper as against the backdrop of the need to achieve a more effective statutory regulation of the environment.

## 2. Criminal Sanctions

As is the case with all law enforcement actions, the major objective of punishing perpetrators of environmental crimes is not merely the imposition of punishment for punishment's sake. Rather, it is to express community rejection of the conduct and send a message of 'deterrence' that discourages similar misconduct in the future.<sup>12</sup> In establishing such criminal regimes, most legislations prescribe either the imposition of fine or a term of imprisonment or both fine and imprisonment as the attendant penalty concomitant to conviction.

### Harmful Wastes (Special Criminal Provisions) Act 1988

The Harmful Wastes (Special Criminal Provisions, etc) Act which was enacted by the then Military government of General Ibrahim Babangida as Decree No. 42 of 25<sup>th</sup> November 1988 was necessitated by the illegal dumping of toxic wastes in the port town of Koko in Delta State, Nigeria. The Act defines what constitutes harmful wastes to mean any injurious, poisonous or toxic substance which is capable of subjecting anybody to the risk of death. The Act prohibits the carrying, depositing and dumping of harmful wastes on any land or territorial waters of Nigeria. It creates offences relating to the purchase, sale, importation, transportation, deposit, and storage of harmful wastes.<sup>13</sup> The offence is deemed to have been committed by any person who does any of the prohibited acts, omits to do any act, aids, counsels or procures any person to do the prohibited act.<sup>14</sup> Any person found guilty of the crime shall on conviction be sentenced to imprisonment for life, and in addition, whatsoever thing used in committing the offence, including land on which the harmful wastes was deposited or dumped shall be forfeited to and vested in the Federal Government.<sup>15</sup> The offences also apply to bodies corporate. In that wise, where a crime has been committed by a body corporate, all that needs to be proved is that the crime was committed with the consent or connivance of or is attributable to any neglect on the part of (a) a director, manager, secretary, or any other similar officers of the body corporate or (b) any other person purporting to act in the capacity of a director, manager, secretary or other similar officer.<sup>16</sup> One peculiar feature of this Act is that there are no immunities to the offence created under the Act.<sup>17</sup> This legislation is particularly important in view of the indiscriminate ways in which certain industrial wastes are dumped or discharged into the rivers, streams and other water areas especially by battery manufacturing industries, textile factories, photograph processing industries and petro-chemical industries that use dangerous chemicals in production or have some dangerous chemicals as waste products.<sup>18</sup>

<sup>10</sup>AU Egbu, *op. cit.* Examples include the 1999 Constitution of the Federal Republic of Nigeria, Cap. C23 *Laws of the Federation of Nigeria* 2004 (as amended 2011); National Environmental Standards and Regulations Enforcement Agency Act of 2007; Environmental Impact Assessment Act, Cap. E12, *Laws of the Federation of Nigeria* 2004; Land Use Act, Cap. L5, *Laws of the Federation of Nigeria* 2004; Harmful Waste (Special Criminal Provisions) Act, Cap. H1, *Laws of the Federation of Nigeria* 2004; Endangered Species Act, Cap. E9, *Laws of the Federation of Nigeria* 2004; Sea Fisheries Act, Cap. S4, *Laws of the Federation of Nigeria* 2004; Exclusive Economic Zone Act, Cap. E11, *Laws of the Federation of Nigeria* 2004; Oil Pipelines Act, Cap. O7, *Laws of the Federation of Nigeria* 2004; Petroleum Act, Cap. P10, *Laws of the Federation of Nigeria* 2004; Territorial Waters Act, Cap. T5, *Laws of the Federation of Nigeria* 2004; Nuclear Safety and Radiation Protection Act, Cap. N142, *Laws of the Federation of Nigeria* 2004; Quarantine Act, Cap. Q2, *Laws of the Federation of Nigeria* 2004; Factories Act, Cap. F1, *Laws of the Federation of Nigeria* 2004; Water Resources Act, Cap. W2, *Laws of the Federation of Nigeria*, 2004; National Oil Spill Detection and Response Agency (NOSDRA) Act No. 15 of 2006; National Park Act, Cap. N65, *Laws of the Federation of Nigeria* 2004; and the Niger-Delta Development Commission (NDDC) Act, Cap. N68, *Laws of the Federation of Nigeria* 2004.

<sup>11</sup>Examples include the 1968 African Convention on Conservation of Nature and Natural Resources (Algiers Convention); 1954 International Convention for the Prevention of Pollution of the Sea by Oil (OILPOL Convention, amended 1962 and 1969); 1969 International Convention relating to Intervention on the High Seas in cases of Oil Pollution Damage; and the 1972 Declaration of the United Nations Conference on the Human Environment (Stockholm Conference Declaration).

<sup>12</sup> D Shelton and A Kiss, *Judicial Handbook on Environmental Law* (Stevenage: Earth Print, 2005), p. 56.

<sup>13</sup> Harmful Wastes (Special Criminal Provisions, etc) Act, s. 1.

<sup>14</sup> *Ibid.*, s. 2.

<sup>15</sup> *Ibid.*, s. 6.

<sup>16</sup> *Ibid.*, s. 7.

<sup>17</sup> *Ibid.*, s. 9.

<sup>18</sup>EU Onyeabor, 'Industrial Activities and Environmental Law in Nigeria', Being a paper presented at a one-day seminar organized by Anambra State Environmental Protection Agency (ANSEPA), held at Onitsha on the 22<sup>nd</sup> day of February, 2000, and cited in UD Ikoni, 'The Application of the Precautionary Principle in the Proof of Environmental Offences Under the Nigerian Law: Challenges and Prospects', <<https://www.academ>

### **National Environmental Standards and Regulations Enforcement Agency (NESREA) Act 2007**

Criminal prosecutions for environmental offences may also be undertaken in Nigeria for the violation of any of the following offences established by the National Environmental Standards and Regulations Enforcement Agency (NESREA) Act of 2007:

- (1) *Violation of any regulation for air quality and atmosphere protection:* This is provided for in section 20(1) of the NESREA Act, 2007. Under this section, the Agency may make regulations setting specifications and standards to protect and enhance the quality of Nigeria's air resources, so as to promote the public health or welfare and the natural development and productive capacity of the nation's human, animal, marine or plant life including, in particular, minimum essential air quality standards. Prosecution for violation of section 20(1) of the NESREA Act, 2007 may be undertaken against individual or corporate violator. Thus, a person who violates the regulations made pursuant to the above provision commits an offence and shall on conviction, be liable to a fine not exceeding ₦200,000 or to imprisonment for a term not exceeding one year or to both such fine and imprisonment and an additional fine of ₦20,000 for every day the offence subsists.<sup>19</sup> Where the offence is committed by a body corporate, it shall on conviction be liable to a fine not exceeding ₦2,000,000 and an additional fine of ₦50,000 for every day the offence subsists.<sup>20</sup>
- (2) *Violation relating to regulations for the protection of ozone:* Under section 21(1) of the Act, the Agency shall in collaboration with other relevant agencies undertake to study data and recognize developments in force in other countries, regarding the cumulative effects of all substances, practices, processes and activities which may affect the stratosphere. In collaboration with other agencies it shall embark on programmes for the control of any substance, practice, process or activity which may reasonably be anticipated to affect the stratosphere, especially ozone in the stratosphere, when such effects may reasonably be anticipated to endanger public health or welfare.<sup>21</sup> Breach of any regulation made pursuant to the above provision shall constitute an offence.<sup>22</sup> Arguably, the Act anticipated that only corporate bodies can commit this offence when it provided that where an offence under this section is committed by a body corporate, it shall on conviction, be liable to a fine not exceeding ₦2,000,000 and an additional fine of ₦50,000 for every day the offence subsists.<sup>23</sup>
- (3) *Offences in connection with noise pollution:* Under section 22(1) of the Act, the agency shall, in consultation with appropriate authorities: (a) identify major noise sources, noise criteria and noise control technology; and (b) make regulations on noise, emission, control, abatement, as may be necessary to preserve and maintain public health and welfare. In addition, the Agency shall enforce compliance with existing regulations and recommend programmes to control noise originating from industrial, commercial, domestic, sports, recreational, transportation or other similar activities.<sup>24</sup> A person who violates the Regulations made under this section commits an offence and shall on conviction be liable to a fine not exceeding ₦50,000 or to imprisonment for a term not exceeding one year or to both such fine and imprisonment and an additional fine of ₦5,000 for every day the offence subsists.<sup>25</sup> Where an offence is committed by a body corporate, it shall on conviction be liable to a fine not exceeding ₦500,000 and an additional fine of ₦10,000 for every day the offence subsists.<sup>26</sup>
- (4) *Violation of regulations for quality standards of water:* This is provided for in section 23 of the Act which states that the Agency shall in collaboration with other relevant agencies make regulations for the purpose of protecting public health or welfare and enhancing the quality of water.<sup>27</sup> In drawing up proposals for such regulations and standards, the Agency shall take into consideration the use and value of public water supplies, propagation of marine and wildlife, recreational purposes, agricultural, industrial and other legitimate use.<sup>28</sup> A person who violates the provisions of the regulations so made commits an offence and shall on conviction, be liable to a fine not exceeding ₦50,000 or to imprisonment for a term not exceeding one year or to both such fine and imprisonment and an additional fine of ₦5,000

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<sup>19</sup> National Environmental Standards and Regulations Enforcement Agency Act of 2007, s. 20(3).

<sup>20</sup> *Ibid.*, s. 20(4).

<sup>21</sup> *Ibid.*, s. 21(2).

<sup>22</sup> *Ibid.*, s. 21(3).

<sup>23</sup> *Ibid.*, s. 21(4).

<sup>24</sup> *Ibid.*, s. 22(2).

<sup>25</sup> *Ibid.*, s. 22(3).

<sup>26</sup> *Ibid.*, s. 22(4).

<sup>27</sup> *Ibid.*, s. 23(1).

<sup>28</sup> *Ibid.*, s. 23(2).

for every day the offence subsists.<sup>29</sup> Where an offence so committed is by a body corporate, it shall on conviction, be liable to a fine not exceeding ₦500,000 and an additional fine of ₦10,000 for every day the offence subsists.<sup>30</sup>

- (5) *Offences relating to effluent limitations:* Section 23(1) of the Act is to the effect that the Agency shall establish effluent limitations for new point sources which shall require application of the best control technology currently available and implementation of the best management practices. In addition, the Agency shall review effluent limitations for existing point sources which shall require the application of the best management practices, under circumstances as determined by the Agency, and shall include schedules of compliance for installation and operation of the best practicable control technology as determined by the Agency.<sup>31</sup> To this end, the Agency may make regulations on effluent limitations on existing and new point sources, for the protection of human, animal, marine and plant life.<sup>32</sup> A person who violates the provisions of the regulations so made commits an offence and shall on conviction, be liable to a fine not exceeding ₦200,000 or to imprisonment for a term not exceeding 2 years or to both such fine and imprisonment and an additional fine of ₦5,000 for every day the offence subsists.<sup>33</sup> Where such offence is committed by a body corporate, it shall on conviction, be liable to a fine, not exceeding ₦1,000,000 and an additional fine of ₦50,000 for every day the offence subsists.
- (6) *Offences in connection with violation of environmental sanitation regulations:* This is provided in section 25 of the Act. Under this provision, the Agency is empowered to make regulations for the purpose of protecting public health and promotion of sound environmental sanitation.<sup>34</sup> A person who violates the provisions of the regulations so made shall be guilty of an offence and punished under the penalties imposed in the regulations so made.<sup>35</sup>
- (7) *Violation of regulations relating to the protection of land resources and watershed quality:* This is provided for in section 26(1) of the Act which states that the Agency may make regulations, guidelines and standards for the protection and enhancement of the quality of land resources, natural watershed, coastal ozone, dams and reservoirs including prevention of flood and erosion. In drawing proposals for such regulations, guidelines or standards, the Agency shall take into consideration the Zoning Acts, Municipal Development Guidelines and Building Codes to prevent sitting of essential facilities on flood plain.<sup>36</sup> A person who violates the provisions of the regulations so made commits an offence and shall on conviction, be liable to a fine not exceeding ₦200,000 or to imprisonment for a term not exceeding one year or to both such fine and imprisonment and an additional fine of ₦10,000 for every day the offence subsists.<sup>37</sup> Where such offence is committed by a body corporate, it shall on conviction, be liable to a fine not exceeding ₦1,000,000 and an additional fine of ₦50,000 for every day the offence subsists.
- (8) *Offence relating to discharge of hazardous substances into the environment:* This offence is created under section 27 of the Act. Section 27(1) prohibits the discharge in such harmful quantities of any hazardous substance into air or upon the land and the waters of Nigeria or at the adjoining shorelines except where such discharge is permitted or authorized under any law in force in Nigeria. A person who violates this provision commits an offence and is liable on conviction to a fine not exceeding ₦1,000,000 or to imprisonment for a term not exceeding 5 years.<sup>38</sup> Where such offence is committed by a body corporate, it shall on conviction be liable to a fine not exceeding ₦1,000,000 and an additional fine of ₦50,000 for every day the offence subsists.<sup>39</sup> In addition, where the offence is committed by a body corporate, every person who at the time the offence was committed was in charge of the body corporate shall be deemed to be guilty of such offence and shall be liable to be proceeded against and punished accordingly provided that he can prove that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.<sup>40</sup>

It is pertinent to note that many states of the federation have also enacted their own laws and established their own agencies pertaining to environmental protection with the resultant problems of overlapping functions between NESREA and the state agencies.

<sup>29</sup> *Ibid.*, s. 23(3).

<sup>30</sup> *Ibid.*, s. 23(4).

<sup>31</sup> *Ibid.*, s. 24(2).

<sup>32</sup> *Ibid.*, s. 24(3).

<sup>33</sup> *Ibid.*, s. 24(4).

<sup>34</sup> *Ibid.*, s. 25(1).

<sup>35</sup> *Ibid.*, s. 25(2).

<sup>36</sup> *Ibid.*, s. 26(2).

<sup>37</sup> *Ibid.*, s. 26(3).

<sup>38</sup> *Ibid.*, s. 27(2).

<sup>39</sup> *Ibid.*, s. 27(3).

<sup>40</sup> *Ibid.*, s. 27(4).

### **Oil in Navigable Waters Act 1968**

The Oil in Navigable Waters Act<sup>41</sup> makes it an offence for oil to be discharged from a Nigerian ship into a part of the sea which is a prohibited sea area, or for any mixture containing not less than 100 parts of such oil to be discharged from such a ship into such a part of the sea.<sup>42</sup> It is an offence for any oil or mixture containing oil to be discharged into certain designated waters from any vessel, or from any place on land, or from any apparatus used for transferring oil from or to any vessel.<sup>43</sup> For the purpose of preventing or reducing discharges of oil and mixtures containing oil into the sea, the Minister may make certain regulations, and if, in the case of any ship, the provisions of any such regulations are contravened, the owner or master of the ship is guilty of an offence.<sup>44</sup> A person guilty of any of these offences under the Oil in Navigable Waters Act shall, on conviction, be liable to a fine; provided that such an offence shall not be punishable on summary conviction by a court having jurisdiction inferior to that of a High Court by a fine exceeding ₦2,000.<sup>45</sup>

Certain defences are statutorily provided in relation to the above-stated offences. These include:

- (a) proof that the oil or mixture was discharged for the purpose of securing the safety of any vessel, or of preventing damage to any vessel or cargo or of saving life;<sup>46</sup>
- (b) proof that the oil or mixture escaped in consequence of damage to the vessel, and that as soon as practicable after the damage occurred all reasonable steps were taken for preventing, or (if it could not be prevented) for stopping or reducing, the escape of oil or mixture;<sup>47</sup>
- (c) proof that the oil or mixture escaped by reason of leakage; that the leakage was not due to any want of reasonable care, and that as soon as practicable after the escape was discovered all reasonable steps were taken for stopping or reducing it;<sup>48</sup>
- (d) proof that the escape of the oil or mixture from the land or apparatus was not due to any want of reasonable care, and that as soon as practicable after the escape was discovered all reasonable steps were taken for stopping or reducing it;<sup>49</sup>
- (e) proof that the discharge from the land was caused by the act of a person who was in that place without the permission (express or implied) of the occupier;<sup>50</sup>
- (f) proof that the oil or mixture discharged from the land was contained in an effluent produced by operations for the refining of oil; that it was not reasonably practicable to dispose of the effluent otherwise than by discharging it into such waters; and that all reasonably practicable steps had been taken for eliminating oil from the effluent;<sup>51</sup>
- (g) proof that the discharge occurred in exercise of the powers conferred by sections 273 and 275 of the Merchant Shipping Act,<sup>52</sup> or the exercise by a harbor authority of the power to dispose of sunk, stranded or abandoned vessels for the purpose of preventing an obstruction or danger to navigation provided they took all reasonable steps in the circumstances for preventing, stopping or reducing the discharge.<sup>53</sup>

### **Criminal Code**

Criminal sanctions for breach of environmental standards are contained in Chapter 23 of the Criminal Code.<sup>54</sup> Thus, section 245 thereof provides that any person who corrupts or fouls the water of any spring, stream, well,

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<sup>41</sup> Oil in Navigable Waters Act, Cap. O6 *Laws of the Federation of Nigeria* 2004.

<sup>42</sup> *Ibid*, s. 1(1). The prohibited oils are: (a) crude oil, fuel and lubricating oil; and (b) to heavy diesel oil, and any other description of oil as may be prescribed by order made by the Minister regards being had to the provisions of any subsequent Convention relating to the prevention of pollution of the sea by oil, or having regard to the persistent character of oil of that description and the likelihood that it would cause pollution if discharged from a ship into a prohibited sea area. See *ibid*, s. 1(2).

<sup>43</sup> *Ibid*, s. 3(1). The designated waters are: (a) the whole of the sea within the seaward limits of the territorial waters of Nigeria; and (b) all other waters (including inland waters) which are within those limits and are navigable by sea-going ships. See *ibid*, s. 3(2).

<sup>44</sup> *Ibid*, s. 5.

<sup>45</sup> *Ibid*, s. 6.

<sup>46</sup> *Ibid*, s. 4(1). However, this defence does not apply if the court is satisfied that the discharge of the oil or mixture was not necessary for the purpose alleged in the defence or was not a reasonable step to take in the circumstances.

<sup>47</sup> *Ibid*, s. 4(2)(a).

<sup>48</sup> *Ibid*, s. 4(2)(b).

<sup>49</sup> *Ibid*, s. 4(3).

<sup>50</sup> *Ibid*, s. 4(4).

<sup>51</sup> *Ibid*, s. 5(5). However, the defence shall not apply where the surface of the waters into which the mixture was discharged or land adjacent to those waters was fouled by oil, unless the court is satisfied that the fouling was not caused, or contributed to by oil contained in any effluent discharged at or before that time from that place.

<sup>52</sup> Cap. M11 *Laws of the Federation of Nigeria* 2004.

<sup>53</sup> Oil in Navigable Waters Act, s. 4(6).

<sup>54</sup> Cap. C38, *Laws of the Federation of Nigeria* 2004.

tank, reservoir, or place, so as to render it less fit for the purpose for which it is ordinarily used, is guilty of a misdemeanour, and is liable to imprisonment for six months. Also, it is a misdemeanor punishable with six months' imprisonment for any person, without the consent of the President or the Governor, to bury or attempt to bury any corpse in any house, building, premises, yard, garden, compound, or within a hundred yards of any dwelling-house, or in any open space situated within a township.<sup>55</sup> It is also a misdemeanour punishable with six months' imprisonment for any person to vitiate the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood, or passing along the public way, or for any person to do any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, whether human or animal.<sup>56</sup> Section 248 equally states that any person who sells or has in his possession for the purposes of sale any matches made with white (yellow) phosphorus; or, who uses white (yellow) phosphorus in the manufacture of matches; is guilty of an offence and liable to a fine of twenty naira, and any matches in respect of which the offence shall have been committed shall be forfeited.

### **Petroleum Industry Act No. 6 of 2021**

The Act established the Nigerian Upstream Petroleum Regulatory Commission (NUPRC)<sup>57</sup> and particularly charged it with the objective of promoting healthy, safe, efficient and effective conduct of upstream petroleum operations in an environmentally acceptable and sustainable manner.<sup>58</sup> Towards achieving this objective, the NUPRC is given the statutory function to establish, monitor, regulate and enforce health, safety and environmental measures and standards relating to upstream petroleum operations, including the elimination of natural gas flaring and venting.<sup>59</sup> Pursuant to the above mandate, the NUPRC has powers to inquire, inspect, examine or investigate any business or activity relating to upstream petroleum operations,<sup>60</sup> and any entity person or agent, representative, partner, director, officer or employee of an entity or person under investigation by NUPRC shall grant access to officers of the NUPRC with regard to any place, wellsite, plant, facility, upstream machinery, equipment, appliances or things that may be relevant to the investigation and provide on request, any book, account, record, document, voucher, information and explanation relating to their upstream petroleum operations as the officers of NUPRC may require.<sup>61</sup> Failure to comply with the above provision amounts to an offence punishable on conviction with a minimum fine of ₦5,000,000 or five years imprisonment, and in the case of a continuous offence, to an additional minimum fine of ₦ 100,000 for each day during which the offence continues.<sup>62</sup>

Section 29(1) of the Act established the established the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA), which is particularly charged with the objective of promoting healthy, safe, efficient and effective conduct of midstream and downstream petroleum operations in an environmentally acceptable and sustainable manner.<sup>63</sup> Towards achieving this objective, the NMDPRA has the general function of regulating midstream and downstream petroleum operations in Nigeria and more specifically, to establish, monitor, regulate and enforce technical, health, environmental and safety measures relating to midstream and downstream petroleum operations.<sup>64</sup> Pursuant to the above mandate, the NMDPRA has powers to inquire, inspect, examine or investigate any business or activity relating to midstream and downstream petroleum operations,<sup>65</sup> and any entity person or agent, representative, partner, director, officer or employee of an entity or person under investigation by NMDPRA shall grant access to officers of the NMDPRA with regard to any place, wellsite, plant, facility, upstream machinery, equipment, appliances or things that may be relevant to the investigation and provide on request, any book, account, record, document, voucher, information and explanation relating to their midstream and downstream petroleum operations as the officers of NMDPRA may require.<sup>66</sup> Failure to comply with the above provision amounts to an offence punishable on conviction with a minimum fine of ₦5,000,000 or five years imprisonment, and in the case of a continuous offence, to an additional minimum fine of ₦ 100,000 for each day during which the offence continues.<sup>67</sup> The Act prohibits holders of a licence or lease granted under the Act or marginal field operators from flaring or venting natural gas, except in the case of an emergency, or pursuant to an exemption granted by the NUPRC, or as an acceptable safety practice under established regulations. Any breach

<sup>55</sup> *Ibid*, s. 246.

<sup>56</sup> *Ibid*, s. 247.

<sup>57</sup> Petroleum Industry Act, s. 4.

<sup>58</sup> *Ibid*, s. 6(d).

<sup>59</sup> *Ibid*, s. 7.

<sup>60</sup> *Ibid*, s. 26(1).

<sup>61</sup> *Ibid*, s. 26(2).

<sup>62</sup> *Ibid*, s. 26(3).

<sup>63</sup> *Ibid*, s. 31(c).

<sup>64</sup> *Ibid*, s. 32.

<sup>65</sup> *Ibid*, s. 49(1).

<sup>66</sup> *Ibid*, s. 49(2).

<sup>67</sup> *Ibid*, s. 49(3).

of this provision is an offence punishable by a fine as prescribed by the NUPRC in regulations made under the Act.<sup>68</sup> A licensee under the Act is also required, prior to the commencement of petroleum production, to install metering equipment conforming to specifications prescribed in any regulations made by NUPRC or NMDPRA on every facility from which natural gas may be flared or vented. A breach of this provision is an offence punishable by a fine as the NUPRC or NMDPRA may prescribe in the regulations.<sup>69</sup> Any person who engages in any midstream or downstream petroleum operations without a relevant licence or permit issued under the Act commits an offence and is liable to imprisonment for a term of one year or to a fine prescribed by regulation, in the case of an activity requiring a licence; or six months or to a fine prescribed by regulation, in the case of an activity requiring a permit.<sup>70</sup>

### **Environmental Impact Assessment Act 1992**

The Act mandates any person or body intending to undertake any project likely to affect the environment to consider at an early state, the impact of such project on the environment.<sup>71</sup> Put differently, where the extent, nature or location of a proposed project or activity is such that it is likely to significantly affect the environment, environmental impact assessment is required in accordance with the dictates of the Act.<sup>72</sup> Before execution, the proponent of the proposed project must apply in writing to NESREA.<sup>73</sup> Upon application, NESREA determines whether or not the proposed activity is likely to have adverse impact on the environment and whether or not such impacts can be mitigated, in which case it prescribes measures to prevent or mitigate the effects.<sup>74</sup> The Act placed 19 activities on the mandatory study list.<sup>75</sup> The said list is contained in the Schedule to the Act. Before any project connected to any of the items included on the mandatory list is executed, an environmental impact assessment must be undertaken by the proponent of such project. Similarly, section 15 of the Act creates an exclusion list. Projects falling within this list are excluded from the requirements of an environmental impact assessment. This includes projects specified by the President as being likely to have minimal environmental effects; projects undertaken during national emergencies as a temporary measure; and projects considered by NESREA to be in the interest of public health or safety. A prohibition may be issued by the President or by NESREA under section 53 of the Act to prevent the commencement or continuation of projects that violate the Act or that are likely to cause serious adverse environmental effects. NESREA has powers to make an application to a court of competent jurisdiction for an order of injunction to restrain any person who has or is likely to contravene a prohibition under the Act from carrying out an activity which will adversely affect the environment.<sup>76</sup> Any person who contravenes the provisions of the Act is guilty of an offence and liable on conviction in the case of an individual to ₦100,000 fine or to five years imprisonment and in the case of a firm or corporation to a fine of not less than ₦50,000 and not more than ₦1,000,000.<sup>77</sup>

### **Criminal Justice (Miscellaneous Provisions) Act**

Another very important provision is found in sections 2 and 3 of the Criminal Justice (Miscellaneous Provisions) Act<sup>78</sup> which makes it an offence for a person to tamper with or in any way damage or destroy any electricity lines or oil pipelines. The punishment for this offence two times the value of the facility affected or ₦2,000 fine (whichever is higher) or a period of ten years imprisonment, or both such fine and imprisonment.

### **3. Ministerial Orders**

This refers to the statutory power of the Minister or other officers or agencies involved in environmental control to make orders or regulations relating to specific matters of environmental importance. The Nigerian *corpus juris* on environmental protection is replete with several of such statutory specifications. Thus, section 4 of the Associated Gas Reinjection Act provides that where any person commits the offence of flaring gas without the permission of the Minister, then, in addition to the punishment of forfeiture of all the concessions granted the

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<sup>68</sup>*Ibid*, s. 104(1). The NUPRC or NMDPRA has powers to grant an exemption from the gas flaring prohibition. See *ibid*, s. 107. The Act further provides that any money received from such gas flaring penalties by the NUPRC shall be for the purpose of environmental remediation and relief of the host communities of the settlers on which the penalties are levied. See *ibid*, s. 104(4). The penalties to be paid for gas flaring are as prescribed under the Flare Gas (Prevention of Waste and Pollution) Regulations. See *ibid*, s. 105(1).

<sup>69</sup> *Ibid*, s. 106.

<sup>70</sup> *Ibid*, ss. 125 & 174.

<sup>71</sup> Environmental Impact Assessment Act, s. 2(1).

<sup>72</sup> *Ibid*, s. 2(2).

<sup>73</sup> *Ibid*, s. 2(4); National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007, ss. 35 & 36.

<sup>74</sup> Environmental Impact Assessment Act, s. 21.

<sup>75</sup> *Ibid*, ss. 12 – 14 & 23. See also the Schedule to the Act.

<sup>76</sup> *Ibid*, s. 54.

<sup>77</sup> *Ibid*, s. 62.

<sup>78</sup> Cap. C39, *Laws of the Federation of Nigeria* 2004.

offender in the particular field or fields in relation to which the offence was committed, the Minister may also order the withholding of all or part of any entitlements of such an offender towards the cost of completion or implementation of a desirable re-injection scheme, or the repair or restoration of any reservoir in the field in accordance with good oil-field practice. Section 5 thereof also empowers the Minister to make regulations prescribing for anything required to be prescribed for the purposes of that Act. Section 1(2) of the Oil in Navigable Waters Act empowers the Minister to make orders prescribing the description of oils which when discharged from a Nigerian ship into a prohibited sea area will amount to an offence under that Act. Section 1(3) empowers the Minister to make regulations exempting absolutely or conditionally, any class of ships or description of oils or mixtures thereof from the said offence. By section 2(3), the Minister, for purposes of protecting the coast and territorial waters of Nigeria from pollution by oil, may by order designate any area of the sea outside the territorial waters of Nigeria and outside the areas specified in the Schedule to the Act as a prohibited sea area.

By section 2(4), the Minister, for the purpose of giving effect to any variation of the prohibited zones referred to in the Convention of 1954 to 1962, in accordance with the provisions of that Convention or of any subsequent Convention, may by order vary any of the areas specified in the Schedule to the Act or declare that any area specified in that Schedule shall cease to be included therein. By section 2(5), the Minister, for the purpose of giving effect to any subsequent Convention, may by order designate as a prohibited sea area, any area of the sea outside the territorial waters of Nigeria, which, apart from the order, is not a prohibited sea area. Similarly, the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act of 2007,<sup>79</sup> apart from repealing the Federal Environmental Protection Agency Act,<sup>80</sup> saved all Regulations and instruments made under the repealed FEPA Act and thus, they continue to be in force as if they were made under the NESREA Act.<sup>81</sup> In sections 20 – 26, 28, and 34(c), the NESREA Act provides for the powers of both the Agency and the Minister to make Regulations for matters connected with environmental protection as stipulated in those provisions. The Petroleum Industry Act also contains elaborate provisions on ministerial orders relevant to environmental protection. The Act empowers the Minister of Petroleum, acting on the recommendation of the NUPRC, to grant and also revoke petroleum prospecting licences and petroleum mining leases, pursuant to the provisions of the Act and regulations made thereunder,<sup>82</sup> including provisions on environmental protection. It further empowered the Minister, acting on the recommendation of the NUPRC or NMDPRA to direct in writing the suspension of petroleum operations in any area until arrangements to prevent danger to life or property have been made to his satisfaction or where in his opinion, a contravention of the Act or any regulation made under the Act has occurred or is likely to occur.<sup>83</sup> In view of the statutory objective of the NUPRC to promote healthy, safe, efficient and effective conduct of upstream petroleum operations in an environmentally acceptable and sustainable manner,<sup>84</sup> the Act confers it with the statutory function to establish, monitor, regulate and enforce health, safety and environmental measures and standards relating to upstream petroleum operations, including the elimination of natural gas flaring and venting,<sup>85</sup> and to enforce all regulations, policies, guidelines or enactments with respect to upstream petroleum operations.<sup>86</sup>

Similarly, the NMDPRA is empowered to generally make regulations, including regulations on environmental protection in relation to midstream and downstream petroleum operations in Nigeria, and implement and enforce compliance with laws, regulations and policies relating to midstream and downstream petroleum operations in Nigeria.<sup>87</sup> This power extends to all aspects of midstream and downstream petroleum operations, including but not limited to the processing, refining, transmission, distribution, supply, sale and storage of petroleum and petroleum products, including regulations on licenses and permits for such operations and the health, safety and environmental standards to be fulfilled as a condition for such licences and permits.<sup>88</sup> The Act empowers NUPRC and NMDPRA to make demand orders on entities engaged in upstream and midstream petroleum operations to submit an environmental management plan within a specified period of time for approval,<sup>89</sup> and to also impose

<sup>79</sup> NESREA Act, 2007.

<sup>80</sup> Cap. F10, *Laws of the Federation of Nigeria* 2004.

<sup>81</sup> NESREA Act, s. 35.

<sup>82</sup> Petroleum Industry Act, s. 3(1)(g) & (l).

<sup>83</sup> *Ibid*, s. 3(k).

<sup>84</sup> *Ibid*, s. 6(d).

<sup>85</sup> *Ibid*, s. 7.

<sup>86</sup> *Ibid*, s. 10. The NUPRC is even empowered by s. 10 of the Act to seal up or close any premises, including any facility or plant engaged in upstream petroleum operations, where there has been a contravention of this Act or any regulations made under this Act. Similar powers are also conferred on the NUPRC under s. 26(5) & 217(7) of the Act.

<sup>87</sup> *Ibid*, s. 32.

<sup>88</sup> *Ibid*, ss. 33, 111(2), 112, 113 & 174. Such a licence or permit may be revoked under section 120 of the Act where the holder breaches any condition in the licence or permit, or any relevant law or regulation applicable to the licence or permit.

<sup>89</sup> *Ibid*, s. 102.



mandatory contributions to an environmental remediation fund as a condition for the grant of a licence or permit or the approval of an environmental management plan, which fund is to be applied towards the rehabilitation or management of negative environmental impacts with respect to the licence or lease in the event that the holder of the licence or lease fails or is unable to undertake the rehabilitation or management of any negative impact on the environment.<sup>90</sup> The Act further empowers the NUPRC to make regulations on the form for natural gas flare elimination and monetisation plans to be submitted by a licensee or lessee producing natural gas within 12 months of the effective date of the licence or lease.<sup>91</sup> The Act also confers powers on NUPRC and NMDPRA to issue a contravention notice whenever it appears that the holder of a lease, licence or permit is contravening, has contravened or is likely to contravene any of the conditions of the lease, licence or permit,<sup>92</sup> and in the event that the situation persists, is further empowered to issue an enforcement order to secure compliance.<sup>93</sup> Failure to comply with such enforcement order shall entitle the NUPRC and NMDPRA to revoke or recommend to the Minister to revoke the license, lease or permit, or the imposition of any other penalty prescribed under the relevant regulations.<sup>94</sup>

#### **4. Conclusion and Recommendations**

Environmental protection is an urgent and compelling current global imperative, more so in Nigeria which is bedevilled by multifarious issues of environmental concern. Legal prescription and sanctions has become a veritable tool for environmental conservation and articulating eco-protection strategies. Amongst the various statutory techniques, criminal sanctions and ministerial orders feature in most, if not all, of the environmental legislations in Nigeria. Criminal sanctions are aimed at securing compliance with environmental norms and deterring potential offenders from procuring a breach of same. Ministerial orders enable the ministers and agencies of government to enact specific instruments in specific areas of environmental regulation considering the fact that they are in a better position than the legislative bodies to appreciate the special concerns of such areas and how best to address them. However, the problem remains that some of the sanctions stipulated for most environmental crimes are laughable, especially the fines. In most cases, it is more economically viable for the offender to breach the law and pay the fine than to comply with the law. Also, the statutory defences to the environmental crimes make a nonsense of the criminal provisions in their entirety. Obvious examples abound in the Oil in Navigable Waters Act and the Harmful Waste (Special Criminal Provisions) Act. Further, the powers to make ministerial orders in a society like Nigeria is more often than not, made a subject of abuse. It is suggested that a critical review of the criminal provisions in the various environmental legislations in Nigeria be carried out so as to position the laws towards a more effective protection of the environment which is a common heritage of mankind. Those charged with making ministerial orders should deploy such powers towards effective management cum conservation of the environment.

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<sup>90</sup> *Ibid.*, s. 103.

<sup>91</sup> *Ibid.*, s. 108.

<sup>92</sup> *Ibid.*, s. 217(1).

<sup>93</sup> *Ibid.*, s. 217(3).

<sup>94</sup> *Ibid.*, s. 217(5).