

ENFORCEMENT OF ENVIRONMENTAL LAWS IN NIGERIA*

Abstract

In Nigeria the problem of enforcement of environmental laws has been of crisis proportions, ranging from corruption/porous borders/collusive practices; lack of adequate funding; lack of qualified technical staff; joint ventures/government interest; wording of the existing laws; lack of infrastructure/poor access to places of offences; poor incentives/welfare for government officers; non-stringent/obsolete penalty; poverty; globalization resulting to the ineffectiveness of the laws. Although there exists a plethora of laws protecting the environment from damage in Nigeria, the enforcement mechanisms of these environmental laws have remained ineffective as regulatory authorities in Nigeria have over time been inclined to exhibit indolence in the performance of their functions. The laws are not enforced in an effective manner because they exist only in books. However, a number of positive results have been achieved in use of the different mechanisms to enforce these existing laws such mechanisms include fines, conviction, restitution, remediation, forfeiture and imprisonment. This paper focuses on and appraises some of the enforcement mechanisms of environmental laws in Nigeria to resolve the issues of environmental degradation and the efficacy of these mechanisms. This paper further examines the different established enforcement agencies for environmental standards, regulations, rules, laws, policies and guidelines. These agencies have responsibilities for the protection and development of the environment. This paper suggests ways to enhance regulatory institutions.

Keywords: Enforcement, Mechanisms, Environmental Laws, Nigeria

1. Introduction

Although, there exists a plethora of laws protecting the environment from damage in Nigeria, the enforcement mechanisms of these environmental laws have remained ineffective as regulatory authorities in Nigeria have over time been inclined to exhibit indolence in the performance of their functions. The laws are not enforced in an effective manner because they exist only in books. In Nigeria, violations of environmental laws are generally civil offences, resulting in monetary penalties and, perhaps, civil sanctions such as injunction. Some environmental laws also provide for criminal penalties for egregious violations. Environmental agencies often include separate enforcement officers, with duties including monitoring permitted activities, performing compliance inspections, issuing citations and prosecuting wrongdoings (civilly or criminally, depending on the violation). Enforcement has been defined as the application of a set of legal tools both formal and informal, designed to impose legal sanctions or penalties to ensure that a defined set of requirements is complied with¹. Compliance is the ultimate goal of enforcement programme.² While Environmental enforcement is the set of actions that Government or others take to achieve compliance within the regulated community and to correct or halt situations that endanger the environment or public health, compliance on the other hand is the full implementation of environmental requirements³. Furthermore, enforcement means to force people or something to obey the law or make effective or make something by force.⁴

2. The Concept of Enforcement in Environmental Law

A well designed environmental laws and regulations, will include implementation and enforcement systems, advancing a green economy by improving the health and safety of the people and communities, conserving natural resources and ecosystem services, promoting sustainability in the larger community, expanding markets for environmental goods and services, creating sustainable jobs, driving technology innovation, and levelling the playing field for investment by reducing costs⁵. Environmental laws and policies must therefore be designed with compliance and enforceability in mind. For the regulated community to comply, it must be aware of the rules, be willing to comply, and be able to comply. Enforcing environmental laws, to environmental lawyers or environmental laws enforcement officers means securing compliance with the laid down rules and regulations

*By **Irene Airen AIGBE, BA (Hons), MBA, LLB (Hons), LLM, BL**, Lecturer, Department of Business Law, Faculty of Law, University of Benin, Benin City. Phone no: 08023271876, 07055744758. irene.aigbe@uniben.edu. and

***E. O. ENAKIRERU, PhD**, Lecturer, Delta State Polytechnic, Otefe- Oghara. E-mail: ericomo61@yahoo.com, 08050617977, 07062041722.

¹ L. Atsegbua, 'A Critical Appraisal of Environmental Legislation in Edo State' Vol. 3 *U.B.L.J.*, p1 (1996/99):19.

²Ibid 19.

³International Network for Environmental Compliance and Enforcement (INECE), '*Principles of Environmental Enforcement*' 1992, accessed February 28, 2014 @<http://www.inece.org/enforcementprinciples.html>.

⁴*Oxford Advanced Learner's Dictionary*, 4th ed. s.v. 'Enforcement'.

⁵M. Tony and K. Rob, '8th International Conference on Environmental Compliance and Enforcement,' (5-11 April 2008 Cape Town South Africa), accessed April 20, 2014. <http://www.inece.org>.

through persuasion and advice and not through apprehension and subsequent punishment of offenders.⁶ Environmental law is not an end in itself but a means to an end. It is a known fact that environmental laws agencies officers are not members of an industrial police force but are teachers and servants of the local community.⁷ Wasserman has made the distinction that compliance is a state in which environmental requirements are met and maintained, while enforcement is the use of legal tools to assist and compel compliance with environmental requirements.⁸ Many scholars share this opinion. Firstly, Hornby defined enforcement as a means to force people or something to obey the law or make something effective, or make something happen by force; whereas compliance is to force action in accordance with a request or demand.⁹

3. The Status of Enforcement of Environmental Laws in Nigeria

The role of legislation in inducing responsible attitudes and good behaviours towards the environment cannot be overlooked. Legislation serves as an effective instrument for environmental protection, planning against pollution, prevention and control. But Nigeria environmental laws can favourably compare with standards and regulations obtainable in the advanced western world.¹⁰ Protection of the environment and good environmental management can only be attained by compliance with environmental laws. The best tool for achieving environmental compliance is effective and consistent civil and criminal enforcement of the law. It is the lack of enforcement of these environmental laws in Nigeria that has been seen by many environmental experts as one major reason why the Nigeria environment has continually faced massive degradation. The need for an effective environmental enforcement programme is imperative. Its political, social and economic implication cannot be undermined. While Government has responded to these environmental problems through the creation of Agencies such as the National Environmental Standards and Regulations Enforcement Agency (NESREA) which by its creation effectively repealed the Nigeria flagship law on the environment, the Federal Environmental Protection Agency i.e. FEPA, in 2007. There have been little impacts, if any of these agencies' activities on the lives of the people directly affected by the negative externalities of oil production. While many have supported the light environmental enforcement culture in the country with special reference to the impacts of oil production, their reasons so far given have fallen short in explaining the 'sacred cow status' enjoyed by oil multinational corporations in light of the destruction of the country especially the Niger Delta ecosystem. Environmental policy in Nigeria has always been recognized and it is provided for in the Nations Constitution which empowers the states to protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria¹¹. Nigeria has also adopted either by ratification, acceptance, approval or accession various international treaties on environmental protection one of which is the International Convention for the prevention of pollution of the sea by Oil 1954, as amended in 1962 and has since be enacted into law and referred to as the Oil in Navigable Waters Act.¹² The problem that therefore provoked the rationale of this work was to seek out the best plausible reason and critically assess the challenges and problems affecting environmental enforcement in Nigeria in spite of the prevalence of various environmental regulations and standards in the country with special focus on the activities of pollutants in all sectors of the country. This work found out what approximately seems to be the best explanation on why environmental enforcement is so weak in addressing the myriads of environmental problems in Nigeria. Various mechanisms and practices used to maintain public security and public safety in Nigeria are discussed below.

4. Mechanisms of Enforcement of Environmental Laws in Nigeria

Fines

A Fine is a certain amount of money exacted as a penalty. It is also a way to charge someone an amount of money as a punishment for not obeying a rule or law.¹³ Fine is one of the enforcement mechanisms of environmental laws. Most of the environmental laws have the penal sections ranging from fines to imprisonment for example, Section

⁶S. Bell, and S. Bell, *Environmental Law: The Law and Policy Relating to the protection of Environment* (London: Blackstone Press Ltd, 1991), 2.

⁷B. Hutter, *The Reasonable Arm of the law? The Law Enforcement Procedures of Environmental Health Officers* (Oxford: Clarendon Press 1988), 95.

⁸C. Wasserman, 'Principles of Environmental Laws Enforcement and Beyond Building Institutional Capacity' Paper presented at the International Conference on Environmental Enforcement at Oaxaca, Mexico, April 1994, see extracts in *The Guardian* Monday, May 16, 1994, 15 and 25.

⁹A. S. Hornby, *Oxford Advance Learner's Dictionary of Current English*, (Oxford: Oxford University Press, 1993), 336 and 398.

¹⁰O. I Natufe, 'The problematic of sustainable development and corporate social responsibility: policy implication for the Niger Delta.' Being a Paper Presented on the Second Annual Conference and General Meeting of the Rockaway River Country Club. (Denville: New Jersey, U.S.A., 2001)

¹¹s. 20 Constitution of the Federal Republic of Nigeria, 1999 as amended.

¹²1968, cap. 06 LFN, 2004.

¹³*Cambridge Advanced Learner's Dictionary & Thesaurus* (c) Cambridge University Press.s.v. 'Fine'

12 of Environmental Pollution Control Law of Lagos State makes it an offence to cause or permit a discharge of raw untreated human waste into any public drain, water course or onto any land or water. This offence is punishable with a fine not exceeding N100, 000 (One Hundred Thousand Naira) and in the case of a company, a fine not exceeding N500, 000 under the Mineral Oils (Safety) Regulations 26 of 1963, a manager who fails to comply with its provisions, shall be liable on summary conviction to a fine of N100, 000 or imprisonment not exceeding 6 months or to both such fine and imprisonment. Regulation 4 makes it an offence punishable with N100, 000 fines or 6 months' imprisonment or to both fine and imprisonment for any licensee or lessee who fails to comply with the provisions of Regulation 3. Default in the observance of these regulations on the part of any employee upon summary conviction attracts a fine not exceeding N100, 000 or imprisonment for 6 months or to both fine and imprisonment.¹⁴ For any other contravention of these Regulations for which no penalty is provided, a fine of N100, 000 or imprisonment for 6 months or both fine and imprisonment is prescribed under Reg. 47(1). Under the National Oil Spill Detection and Response Act (NOSDRA), an oil spiller is to report an oil spill to the Agency in writing within twenty four hours, in default of which he is to pay a penalty sum of ₦500, 000.00 for each day of failure to report the occurrence.¹⁵ In addition failure to clean up the area that has been affected by oil pollution, to all practical extent including remediation attracts a fine of N1, 000,000.00.¹⁶ The Environmental Impact Assessment (EIA) Act 1992,¹⁷ provides that any person who fails to comply with the provisions of the Act shall be guilty of an offence under the Act and on conviction as in the case of an individual be liable to ₦100, 000 fine or to five years imprisonment and or in the case of a firm or corporation to a fine of not less than ₦500, 000 and not more than ₦1, 000,000. The 1,000,000 Naira penalty provided for under this law is still not enough to deter offenders considering the health implications posed by such violations and hence the subsistence of poor environmental degradation in Nigeria.

Imprisonment

Imprisonment is one of the Enforcement mechanisms of Environmental laws in Nigeria. Most of the environmental laws have the penal sections ranging from fines to imprisonment and the maximum sanction for imprisonment is life imprisonment for dealing in toxic or hazardous waste.¹⁸ Furthermore, a person is liable on conviction to imprisonment for a term not exceeding six months and a fine of N50, 000 ¹⁹for any person who contravenes the provisions of subsection (1) of Section 24 of the NOSDRA Act.

Restitution

This is an act of returning something to the original owner or the person entitled to have it.²⁰ It is also a Reparation made by giving an equivalent or compensation for loss, damage, or injury caused; indemnification. The restoration of property or rights previously taken away, conveyed, or surrendered. Restore to the former or original state or position. It is also the return to an original physical condition, especially after elastic deformation.²¹

Remediation

This is the act or process of correcting a fault or deficiency, the act or process of remedying.²² Section 19 (1) of National Environmental (Soil Erosion and Flood Control) Regulations, 2011 provides that '... offender shall be responsible for the remediation of the damage to the environment and any affected properties therein'.²³ The Nuclear Safety and Radiation Protection Act 1995,²⁴ controls and regulates the use of radioactive substances. It stipulates that the operator of a facility who is responsible for an incident resulting in radioactive contamination of the environment shall be liable on conviction for the restoration of the environment or for the cost of such activities as are necessary for the restoration of the environment to its original state. Section 6(3) of the National Oil Spill Detection and Response Agency Act 2006, provides punishment of one million naira for those environmental polluters who refuse to remediate and clean up the impacted site.

¹⁴Reg. 41 of the Mineral OIL

¹⁵s. 6 (2) NOSDRA.

¹⁶ s. 6 (3) NOSDRA.

¹⁷cap. E12 LFN, 2004

¹⁸S. 1-6 of the Harmful Waste ACT, 1988.

¹⁹ S. 24(2) NOSDRA, See also ss.20 (3), 21(3), 22(3), 23(3), 24(4), 26(3), 27(2), 31 of NESREA.

²⁰A *Law Dictionary* ed. John Bouvier, Adapted to the Constitution and Laws of the United States, 1856), s.v 'Restitution' <http://legal-dictionary.com/Restitution>>restitution.

²¹*Black's Law Dictionary*, 9th ed. s.v 'Restitution'

²²*Encyclopaedia Britannica*, 11th ed., s.v 'remediation'.

²³S.19(1)-(3) National Environmental (Soil Erosion and Flood Control) Regulations, 2011. see also s. 52(1)(c) National Environmental (Base Metals, Iron and Steel Manufacturing/Recycling Industry Sector) Regulations, 2011, s. 52(1)(c) National Environmental (Domestic and Industrial Plastic, Rubber and Foam Sector) Regulations, 2011 and s. 20(3) National Environmental (Coastal and Marine Area Protection) Regulations, 2011.

²⁴1995 cap. N 142, LFN, 2004

Forfeiture

Forfeiture means losing or surrendering something as a penalty for a mistake made or a failure to act. It is also a fault or failure to perform etc. sacrifice, forfeit human action, human activity, deed, and an act, - something that people do or cause to happen. For instance, sections 1-5 of the Harmful Waste (Special Criminal Provisions) Act provide that notwithstanding the provisions of the customs, Excise Tariff. etc (Consolidation) Act, or any other enactment, or law, all activities relating to the purchase, sale, importation, deposit, storage of harmful waste are hereby prohibited and declared unlawful. However, any person found guilty of a crime under these sections shall on conviction be sentenced to imprisonment for life and in addition, any carrier, including aircraft, vehicle, container and any other thing whatsoever used in the transportation or importation of the harmful waste, and any land on which the harmful waste was deposited or dumped, shall be forfeited to the Federal Military Government without any further assurance other than this Act. In addition, section 10 (d) of the Act provides that any Police officer can seize any item or substance which he has reason to believe has been used in the commission of a crime. The Associated Gas Re-Injection Act 1979²⁵ provides that any oil company that violates the provision under section 3 (1) of the Act shall forfeit the concessions granted in the particular field where the offence is committed.²⁶

5. Legal Framework and Regulations in Nigeria

Early legislations were not environmental-oriented, and the Federal Government of Nigeria did not have any legislations or legal instruments, either general or specific, on the petroleum sector for much of the first half of the century. According to Ogbodo²⁷ the Federal Government of Nigeria responded to most environmental problems on an ad hoc basis following the discovery of toxic waste dumped in Koko, at remote part of southern Nigeria, in June 1988. The Nigerian government reacted to the sustained media attention and public outcry to handle the situation and subsequently, many approaches have been developed for the protection and management of environmental impacts and human health risks associated with oil and natural gas exploration and production operations in the Niger Delta.²⁸ Over past years, the Federal government of Nigeria has promulgated laws and regulations that petroleum resources exploration and production, on both onshore and offshore oilfields, could be controlled by systems of legislations which aim at minimizing the associated environmental impacts of human health risks. According to Ite et al²⁹, some of the most important and essential related environmental laws and principal regulations governing the environment in Nigeria are critically discussed hereunder.

The Nigerian Constitution

The Constitution of the Federal Republic of Nigeria (CFRN) contains the fundamental principles that comprehensively describe the organizational framework of the state (supreme law), the limitations on the exercise of state authority and also defines the relationship among different kinds of laws that have binding force on the authorities and persons throughout the country.³⁰ The Nigeria environmental objectives are enshrined in Chapter 2 of the 1999 operative Constitution of the Federal Republic of Nigeria and section 20 implicates the 'right' to a healthy environment. Pursuant to Section 20 of Chapter 2 of the 1999 Constitution of the Federal Republic of Nigeria, the state has obligation to protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria.³¹ However, this afore-stated provision has one serious defect with regards to the very broad wording of the section and relevant provision falls under Chapter 2 of the 1999 Nigeria Constitution, which is non-justiciable and as such, the provision lacks judicial enforcement in Nigeria. According to Fagbohun,³² the provision under the Nigerian environmental objectives attempts to justify a possible agreement between two extreme positions formulated by a system that is not ready to initiate any serious environmental change the thrust of which may affect its economic direction and long-term developmental goals. Although Section 20 of Chapter 2 of the 1999 Nigerian Constitution has resulted in a legal mirage, the Federal Government of Nigeria has promulgated various laws and regulations to protect the Nigerian environment. In accordance with Section 4(5) of the 1999 Constitution, the State components are permitted to enact laws under the concurrent and residual

²⁵cap. A 25 LFN, 2004

²⁶s. 4 (2), Ibid

²⁷S. G., Ogbodo, 'Environmental protection in Nigeria: Two decades after the Koko incident,' *Annual Survey of International and Comparative Law*, 15 (1). (2009) 1-18,

²⁸A. E Ite, and others. 'Petroleum Exploration and Production: Past and Present Environmental issues in the Nigeria's Niger Delta,' *American Journal of Environmental Protection*, 1 (4). (2013) 78-90.

²⁹A. E. Ite., 'Gas Flaring and Venting Associated with Petroleum Exploration and Production in the Nigeria's Niger Delta,' *American Journal of Environmental Protection*, 1(4).(2013)

³⁰Over the past decades, Nigeria has had nine Constitutions viz the Clifford Constitution of 1922, the Richards Constitution of 1946, the Macpherson Constitution of 1951, the Littleton Constitution of 1954, the Independence Constitution of 1960, the Republican Constitution of 1963, the 1979 Constitution,³⁰the 1989 Constitution, and the extant 1999 Constitution as amended

³¹Federal Republic of Nigeria, Constitution of the Federal Republic of Nigeria, 1999, Lagos, Nigeria: Federal Government Press, 1999.

³²O. Fagbohun, 'Reappraising the Nigerian Constitution for Environmental Management' *Ambrose Alli University Journal*, 1(1). (2002) 24-47

legislative lists, subject to Federal government Law made by the National Assembly.³³ The 1999 constitution of the Federal Republic Nigeria lacked a specific provision on the environmental protection and Nigeria operates a dualist system wherein other regional or international environmental laws cannot be enforced unless incorporated into through domestic legislation or ratification by National Assembly³⁴. In line with Agenda 21 of the United Nations,³⁵ Nigeria in its policy on the Environment has identified establishment, strengthened legal, institutional and regulatory framework as part of its holistic strategy for implementation of sustainable development.

National Environmental Protection (Effluent Limitation) Regulations and the National Environmental Protection (Pollution Abatement in Industries and Facilities Generating Waste) Regulations

These regulations were made pursuant to the Federal Environmental Protection Agency; the Act itself has been repealed³⁶. However, the regulations made pursuant to the Act have not been repealed. The regulations relevant to the petroleum industry are the national environmental protection (effluent limitation) regulations³⁷ and the national environment protection (pollution abatement in industries and facilities generating wastes) regulations.³⁸ The former allows an oil and grease content in brine and other production wastes of 10mg/litre for discharge into inland waters an infraction of this provision attracts a fine of #20,000.00 or two years imprisonment or both if the offence is committed by a corporation, the fine is #500,00.00³⁹. The national environment protection (pollution abatement in industries and facilities generating waste) regulations provides for an outright ban on the discharge of oil into specified water source. Regulation 15(2) provides that 'no oil in any form shall be discharged into public drains, rivers, lakes, seas or underground injection without a permit issued by FEPA or any organization designated by it. The regulations place restriction on the discharge of effluents with constituent beyond specified limits and provides for contingency planning by all industries and facilities against accidental release of pollutants.⁴⁰ It is submitted that in view of the danger which oil poses to human, property and the environment there should be an outright ban on the discharge of oil into inland waters. Many states in the Niger Delta region have enacted environmental protections laws.⁴¹ Section 44 of the Rivers State Environmental Protection Law of 1994⁴² stipulated that: (1) Except where the owner or operator of a vessels or an onshore or offshore facilities can prove that a waste or spillage was caused solely by a natural disaster or an act of war or by sabotage, such owner or operator of any vessels or onshore facility from which the waste discharged emanates in contravention of this law, shall in addition to the penalty specified in this law be liable for:

- I. any cost incurred by the state or local government are agents in the abatement or removal of the abatement or removal of the discharged;
- II. any cost incurred by the state or local government in replacing any damaged facility or in restoring the ecology.
- III. costs of third parties in the form of reparation, restoration, restitution or compensation as may be determined by the agency from time to time;
- IV. (2) the owner or operator referred to in subsection (1) of this section shall, upon the occurrence of the discharge:
 - 1) promptly take steps to mitigate any damage caused by the discharge;
 - 2) give immediate notice to the agency of the occurrence of the discharger;
 - 3) promptly commence clean-up operation by using the most effective and efficient methods at his disposal; and
 - 4) Promptly comply with such directions as the agency may give.

The 'Agency' referred to in this law is the river state environmental protection agency. Claimants under this law have a good chance of success since it creates a strict liability regime.⁴³ Etikerentse has argued that the federal government has no legislative competence to legislate on the environment.⁴⁴ He asserts that environment is not

³⁴ Ibid

³⁵ United Nations, Agenda 21: Programme of action for sustainable development; Rio Declaration on Environment and Development; Statement of Forest Principles: the final text of agreements negotiated by governments at the United Nations Conference on Environment and Development (UNCED), 3-14 June 1992, Rio de Janeiro, Brazil, Bonn, Germany: United Nations 1993

³⁶ Section 36 of the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007

³⁷ Statutory instrument (S.I) No. 8 of 1991

³⁸ Schedule 3 S.I. No. 9 of 1991

³⁹ Regulations 5

⁴⁰ Regulations 7 and 9

⁴¹ The state includes Akwa Ibom, Bayelsa, Delta and Rivers.

⁴² Rivers state environmental protection agency law (No. 12) of 1994

⁴³ Section 48 of the Bayelsa state environmental and development planning authority law of 1998 contains similar provisions as section 44 of the rivers state environmental protection law.

⁴⁴ Etikerentse, Op. cit. 152-153

included either in the executive list or in the concurrent legislative list as a subject or an item. He, therefore, submits that the subjects of 'environment' are residual matters in respect of which under the federal system of governance, only states (as against the central or federal legislature) can make laws. It is submitted with the greatest respect that the submission of the learned author overlooks the provision of section 4(4) (b) of the constitution of the federal republic of Nigeria, 1999, which provides that the national assembly, has the power to legislate on any matter with respect to which it is empowered to make law in accordance with the provision of the constitution. The Constitution⁴⁵ states that the state shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria. The combined provision of items 60 under the executive legislative list and section 4(2) of the constitution provide that the national assembly has power to make laws for the peace, order and good government of the federation or any part thereof. It, therefore, follows that national assembly has the power to legislate on the environment. It is further submitted that the power of the national assembly is not residual under the constitution but concurrent with the powers of state house of assembly. This submission is based on the Supreme Court decision in the independent corrupt practices and other related offences commission (ICPC) case of *Attorney-General of Ondo State vs. Attorney-General of the Federation*⁴⁶ wherein Uwais (CJN) held that:

Since the subject of promoting and enforcing the observance comes under item 68 of the exclusive legislative list it seems to me that the provision of items 68 of the executive legislative list come into play. Therefore, it is incidental or supplementary for the national assembly to enact the law that will enable the ICPC to enforce the observance of the fundamental objectives and directive principle of state policy. The enactment of the act which contains provisions in respects of both the establishment and regulation of ICPC and the authority for the ICPC to enforce the observance of the provision of section 15 of subsection (5) of the constitution is very reflective on the provisions of the law. To hold otherwise is to render the provision of the item 60 (9) idle and leave the ICPC with no authority whatsoever. This cannot have been the intendment of the constitution.

National Environmental Standard and Regulation Enforcement Agency

The national environmental standards and regulations enforcement agency was enacted in July 2009.⁴⁷ The agency has the responsibility for the protection and development of the environment, biodiversity conservation and sustainable development of Nigeria natural resources in general and environmental technology, including co-ordination and liaison with relevance stakeholders within and outside Nigeria no matters of enforcement of environmental standards, regulation, rules laws, policies and guidelines. However, said to note that the function of the agency does not extend to the petroleum industry. Indeed, the act specifically excluded the oil and gas sector from the purview of its operation even though it supports to legislate on the environment. Section 7(9) of the Act provide that the agency shall enforce compliance with regulations on the importation, exportation, production, distribution, storage, sale, use, handling disposal of hazardous chemical and waste other than in the oil and gas sector. The activities of the oil and gas companies in the Niger Delta which impact negatively on the environment cannot be divorced from the environment the activities of oil and gas companies are inextricably tied to the environment. The Act has in effect restricted environmental standards for hazardous chemicals from applying to the oil and gas sector⁴⁸ and thus given the oil companies a carte blanche to pollute the Niger Delta environment.

National Oil Spill Detection and Response Agency (Establishment) Act

The National Oil Spills Detections and Response Agency⁴⁹ was established in 2006.⁵⁰ The agency is charged with the responsibility for preparedness, detection and response to all oil spillage In Nigeria. Section 6 of the act provides that the agency shall be responsible for surveillance and ensure compliance with all existing environmental legislation and the detection of the oil spills in the petroleum sector, revive report of oil spillage and co-ordinate oil spills response activities throughout Nigeria; co-ordinate the implementation of the national oil spills contingency plan for Nigeria the removal of hazardous substance as may be issued by the federal government and perform such other function as may be required to achieve the aims and objective of the agency or any plan as may be formulated by the federal government pursuant to the Act. Failure to report an oil spill to the agency within twenty-four hours after the occurrence of spill constitute an offence and the penalty is five hundred thousand naira (#500,000.00) for each day of failure to report the occurrence.⁵¹ An oil spiller is expected

⁴⁵ Section 20

⁴⁶ 2002 FWLR (pt. 111) p1972; 2070

⁴⁷ Section 1(1) of the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2009

⁴⁸ A. Mudiaga-Odje. 'Niger Delta region and the principle of self-determination' being topic of paper delivered on the University of Benin Law Student Association on Wednesday 8th October 2008 at the University of Benin.

⁴⁹ Ibid

⁵⁰ The National Oil Spill Detection and Response Agency Establishment) Act 2006, section 1

⁵¹ Op. cit. section 6 (2)

to clean up and carry out remedial measures on the impacted site. Hence it is if failure to clean up the impacted site all practical extent including remediation shall attract a further fine of one million naira (#1,000,000.00)⁵². The act has placed lofty objectives and function on the agency which the agency in the Niger Delta, the response of the agency to these spillages have been poor. This is not surprising; the agency lacks the wherewithal and necessary man power to perform the various function placed upon it by the Act the provision of the act are commendable but the implementation of the provisions like most laws regulating the petroleum industry with respect to the collaboration with the United Nations Development Programme (UNDP) put up advertisement requesting for exports and consultants to produce regulations for oil spills and oil water management and guidelines for oil spills recovery, clean up, remediation and damage assessment.⁵³ The Act⁵⁴ provides for offences and penalties where a polluter fails to report oil spill within 24hours, and for failure to clean up the polluted site⁵⁵. This statutory regulation makes adequate regulation on waste emanating from oil production and exploration and its potential consequences to the environment. This statutory regulation makes adequate regulations on waste emanating from oil production and exploration and its potential consequences to the environment.⁵⁶ With regards to some of the legislation discussed above the provisions relating to the enforcement organs under the various laws show significant overlap of functions between the different organs set up by the different laws for the same type of offence.⁵⁷ For example Special Tribunal (Miscellaneous Offences) Act, Criminal Justice (Miscellaneous provisions) Act and Petroleum Production and Distribution (Anti-sabotage) Act, the punishment prescribed by the three Acts are separate and distinct from each other, it depends on which of the laws the accused is charged. There is therefore no uniformity in terms of punishment in respect of the offence of sabotage or oil theft.⁵⁸

Associated Gas Re-Injection Act⁵⁹

Under section 3⁶⁰ of the associated gas re-injection act, no company was to flare gas after January 1, 1984 and the penalty prescribed was the forfeiture of all concessions granted in respect of the field⁶¹. However, the act empowers the minister of petroleum resources to issue a certificate to oil company when he is 'satisfied' that the utilization of re-injection of the produced gas is not appropriate or feasible in a particular field of fields and to impose a penalty for gas spills and flared. It is submitted that the continued flaring of gas constitutes a danger to the fauna and flora of the Niger Delta as well as the health of the inhabitant of the area.⁶² The fine realized from defaulting oil companies is paid to the federal government coffers instead of those who are directly affected adversely. It is further submitted that this law needs to be amended so that the money realized is channel towards the development of the affected areas⁶³. This suggestion has become imperative since the federal government seems not to be serious with the several deadlines given to the oil companies to stop flaring gas. The deadline which was shifted to 2008 has been postponed indefinitely. The Associated Gas Re-Injection Act⁶⁴ deals with the gas flaring activities of oil and gas Companies in Nigeria. The following sections are relevant to pollution prevention: -

Environmental Impact Assessment Act⁶⁵

The Environment Impact Assessment Acts makes it mandatory for an environment impact assessment (EIA) study of a project to be prepared at the early stage of the project before the project is undertaken.⁶⁶ The requirement of the act for an environmental impact assessment is a structured process for gathering information about the potential impacts on the environment of a proposed project and using the information, decide whether such project should proceed either as proposed or with modification or otherwise.⁶⁷ The environmental impact assessment was required to be administered by FEPA. Where in the opinion of FEPA the project is likely to cause significant adverse environmental effects that may not be immitigable, the agency shall not permit such project to be carried out but where the effects of such projects are immitigable then the proponents of such projects are expected to

⁵² Op. cit. section 6 (3)

⁵³ B. A. Ajakaiye, 'issues and response to oil spill management being a paper presented a workshop organized bu Niger Delta Re-orientation project I Warri on the 3rd August 2009.

⁵⁴ Cap I57, LFN, 2004

⁵⁵ Section 5 and 6

⁵⁶ *Ibid*

⁵⁷ *Ibid*

⁵⁸ *Ibid*

⁵⁹ Cap. A25 LFN 2004

⁶⁰ Section 3 (1) prohibits, without lawful permission, any oil and gas company from flaring gas in Nigeria.

⁶¹ Op. Cit. section 4

⁶² Section 4 stipulates the penalty for breach of permit conditions.

⁶³ Folarin, S., 'Niger Delta environment, Ogoni Crisis and state' *CENEOD* Vol. 7 no. 1 24 (2007) 32-33

⁶⁴ *Ibid*

⁶⁵ Cap E12, LFN, 2004

⁶⁶ Op. Cit. Section 2

⁶⁷ R. T. Okonkwo, *The Law of Environmental Liability* (Lagos: AEDE 2003) 2

comply with all measures stipulated by the agency to mitigate the effects.⁶⁸ It is worthy of note that FEPA shall allow the public to participate at any significant stage of a project and assures the public of information on project requiring assessment.⁶⁹ However the right to comment does not carry with it the competence or standing to seek a judicial review of a decision of the agency on an environmental impact assessment. To this extent the law is not helpful to activists who seek to protect the fragile ecosystem of the Niger Delta.⁷⁰ The federal ministry of environment now performs this function that was hitherto performed by FEPA.

Criminal Code

Section 45 of the Criminal Code Act⁷¹ imposes a jail term of six months for any persons who corrupt, fouls the water of any spring, stream, well, tank or place to render it less fit for the purpose for which it is ordinarily used. Similarly, section 247 states any persons who ‘vitiates’ the atmosphere in any place so as to make it noxious to health of persons or who does 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 is guilty of an offence punishable with six months’ imprisonment. These provisions are applicable to oil pollution of water as other forms of environmental degradation, but the penalty of imprisonment is inappropriate for corporate offenders.

Harmful Waste (Special Criminal Provisions) Act

The Harmful Waste (Special) Criminal Provision Act⁷² was enacted in quick response to the importation by an Italian national of a consignment of toxic waste into the port of Koko, Delta State, in 1988. Under section 129(1) of the Act, where any damage has been caused by any harmful waste which has been deposited or dumped on any land, territorial waters, contiguous zone, exclusive economic zone of Nigeria, or its inland water any person who deposited, dumped or imported the harmful waste or caused the harmful waste to be so deposited dumped or imported shall be liable for the damage except where the damage- (i) Was due wholly to the fault of the person who suffered it, or (ii) Was suffered by a person who voluntarily accepted the risk thereof. The act defines damage ‘as the death of or injury to any person including any diseases and any impairment of physical or mental condition. The relevance of this legislation is that should any harmful waste be generated in the process of offshore petroleum operations and should damage result there from, a tortfeasor is liable to compensate his victim.

Oil in Navigable Waters Act

The Oil in Navigable Waters Act⁷³ is concerned with the discharge of oil from ships. The following sections are significant provisions of the Act which expressly prohibits the discharge of oil from a Nigerian ship into territorial waters or shorelines. The Act makes it an offence for a ship mater, occupier of land, or operator of apparatus for transferring oil to discharge oil into Nigerian Waters. It also requires the installation of anti-pollution equipment in ships, such violation makes the offender punishable for such discharge with a fine of ₦2, 000 (Two thousand naira).⁷⁴ The provision of the Act requires the records of occasions of oil discharge.⁷⁵ The Oil in Navigable Waters Act is concerned with the discharge of oil from ships. The following sections are significant: -

⁶⁸ Cap E 12 L.F.N 2004 section 3

⁶⁹ Op. cit. sections, 7,8,9,22(5), 25, 39 and 57

⁷⁰ *Oronto Douglas v. Shell Petroleum Development Company of Nigeria Ltd & Ors.* (Unreported, suit No, FHC/L/SC/573/93, ruling of federal high court Lagos, delivered on February 17, 1997.

⁷¹ The Criminal Code C38 L.F.N. 2004 contains provisions for the prevention of public health hazards and for environmental protection. Hence this code deals with offences ranging from water fouling, to the use of noxious substances. The Criminal Code section 245 of the Criminal Code, makes fouling of water an offence. It punishes any person who fouls any spring streams, well, tank, reservoir or place, so as to render it less fit for the purpose for which it is ordinarily used such a person is guilty of a misdemeanor and is liable to six months imprisonment. Again, any person committing noxious acts which affects public health may also be punished under section 247 of the criminal code. This provision may be particularly appropriate for the punishment of oil theft and sabotage in Nigeria. With regards to some of the legislation discussed above the provisions relating to the enforcement organs under the various laws show significant overlap of functions between the different organs set up by the different laws for the same type of offence. For example, Special Tribunal (Miscellaneous Offences) Act, Criminal Justice (Miscellaneous provisions) Act and Petroleum Production and Distribution (Anti-sabotage) Act, the punishment prescribed by the three Acts are separate and distinct from each other, it depends on which of the laws the accused is charged. There is therefore no uniformity in terms of punishment in respect of the offence of sabotage or oil theft.

⁷² Cap H1, LFN 2004

⁷³ Cap 06, LFN, 2004

⁷⁴ Section 6

⁷⁵ The criminal regime includes the oil in navigable waters act, the criminal code and the harmful waste (special criminal provision) act. In general, the oil in navigable waters act relates to the prevention of pollution of waters by marine vessels. It is an offence under the act for a Nigerian ship to discharge oil into part of the sea designated as ‘prohibited sea area’. An infraction of this provision attracts a fine for the owner or master of the ship not exceeding ₦2, 000 on summary trial. Prohibited sea areas are listed in a schedule contained in the act and essentially cover all sea areas within fifty miles from land and outside the territorial waters of Nigeria. It is an offence under section 3 of the act to discharge oil from any vessels from any place on land, from any apparatus used for transferring oil from or to a vessel into the ‘whole of the sea within the seaward limits of the

- I. Section 1 (1) prohibits the discharge of oil from a Nigerian ship into territorial waters or shorelines.
- II. Section 3 makes it an offence for a ship master, occupier of land, or operator of apparatus for transferring oil to discharge oil into Nigerian Waters. It also requires the installation of anti-pollution equipment in ships.
- III. Section 6 makes punishable such discharge with a fine of N2, 000 (Two thousand naira).
- IV. Section 7 requires the records of occasions of oil discharge.

The Oil in Navigable Waters Act, 2004, through more specific and comprehensive, still has some loopholes. For instance, offences created under the Act are of such complex nature that they cannot be handled effectively by the courts which are often overcrowded with pending cases. Magistrate court jurisdiction over offences under the Act ought to be curtailed. This is because the enforcement of penalties can only be done by a High court. In practical terms therefore, where an offender is unable to pay a fine imposed on him, the prosecution will have to commence separate proceedings for enforcement at a High Court with its entire attendant rigors and difficulties. Moreover, the nature of cargo, the saving of which justifies discharge of damaging pollutants into water is not specified. Furthermore, the defense of accident, which exculpates a polluter if he can prove that the pollutant escaped accidentally as a result of damage to his vessel or leakage there from, and that all urgent and reasonable steps were taken to contain the discharge and reduce its impact on the environment can be easily pleaded by an offender even if it happens as a result of gross negligence on his part. Another problem associated with the Act is that the defenses allows, and the imprecise nature of the punishment prescribed under the Act make it very clear that it would be practically difficult; if not possible to secure the conviction of any person under the Act. Again section 6 of the Act provides that any charge relating to contravention of the Act can only be initiated with the consent of the Attorney general of the federation.

Petroleum Production and Distribution (Anti-Sabotage)

The Act provides as follows⁷⁶:

Any person who does any of the following things that is to say:

- I. Willfully does anything with intent to obstruct or prevent the production or distribution of petroleum products in any part of Nigeria, or
- II. Willfully does anything with intent to obstruct or prevent the procurement of petroleum product for distribution in any part of Nigeria, or
- III. Shall, if by doing that thing to any significant extent, causes or contributes to any interruption in the production of petroleum products in any part of Nigeria, be guilty of the offence of sabotage under this Act⁷⁷ The Act specifies the penalty for the offence of sabotage and the punishment is death sentence or imprisonment for twenty-one years.

Under the relevant statutory provisions, the enforcement machinery is distinct, and the procedures kept quite separate. Another serious problem which would arise in respect of the enforcement of the provisions relating to sabotage and vandalism is the problem associated with the issue of jurisdiction. Under the Act the power to try offenders is given to a military tribunal which may be constituted for any part of Nigeria by the president for trial of persons under the Act.

6. Review of Mechanisms of Enforcement

Taking into cognizance the imperativeness of protecting the environment against the criminal activities of environmental offenders, Nigeria has over the years formulated and enacted statutory laws, polices and regulations aimed at protecting the environment. These laws are not comprehensive enough and have been rendered obsolete

territorial waters of Nigeria' and other waters within close limits including inland waters which are 'navigable by sea-going ship'. The act contains so many defence that it may be difficult to secure a conviction under it. It is a complete defence to establish that the discharge from vessels occurred for the purpose of securing the safety of any vessels; for the purpose of life; as a consequence of damage to the vessels or by reason of leakage if the leakage was not due to any want of reasonable care. Other defence includes sabotage; absence of negligence and showing that oil was contained in an effluent product from a refinery. Another severe limitation to the effectiveness of the act is the stipulation contained in section 12 that no action is brought under the act except with the consent of the attorney general of the federation. The scope of the act is highly restricted. The act seems to have been deliberately drafted in such way as to provide a way for the refineries in Nigeria to escape the liability they ordinarily ought to bear. The act seems not to have provided a remedy for the victim of the adverse effect of oil exploitation. The various escape provisions are such that render the provision of the act meaningless. The act which was enacted in order to give effect to the international convention for the prevention of pollution of the sea has a major lacuna; its provision apply only to Nigeria ships excluding foreign ships. This is a major loophole as foreign- owned ships could also be responsible for oil spillage in the country territorial waters. The Amaco Cadiz ship was spilled oil into the French coast of ushuan on the 16th March 1978 was technically owned by a Liberian company but was owned by Amaco international oil company in Chicago, U.S.A.

⁷⁶ CAP P12, LFN 2004.

⁷⁷ Ibid

as a result of the failure of the concerned authorities to update the laws to bring them in line with changing realities.⁷⁸ Consequently most of these offences are criminalized with the appropriate penal sanctions and fines imposed. The criminalization of environmental infractions is to identify offenders, prosecute, convict and ultimately send them to jail as a deterrent.⁷⁹ This is generally achieved by various environmental law enforcement Agencies. In Nigeria, regulatory agencies are given the primary responsibility of responding to environmental illegalities and crimes. They generally do not operate vigorously and penalties imposed are not severe. Sadly, despite the plethora of legislations crafted to combat environmental crimes, the mechanism available for enforcing these crimes are ineffectual, largely due to nonchalance on the part of government and also deliberate impediments by way of cumbersome bureaucracy imposed by enforcement agencies in collusion with environmental offenders and mostly multinational corporations. Criminal prosecution of environmental offenders occurs rarely or infrequently due to lapses in the criminal justice system empowered to preside over such cases. Furthermore, these crimes are most often than not, perceived as victimless and low on the priority list, thus they fail to prompt the required response from Government or enforcement community.⁸⁰ In trying to ensure compliance with its environmental standards, government usually employs inspection, negotiations and legal action or the threat of legal actions. For government to achieve the objective of sustainable development, it is appropriate that environmental laws should be made. However, there is a natural tendency for people to think that enacting a law automatically leads to the rectifications of the problem to which it is addressed.⁸¹ But this is not the case. Regulation must have to be enforced as it is natural for blind pursuit of profit to override environmental responsibility. In such situations therefore, a well calculated enforcement programme should involve some clearly specified set of steps. These steps are:

- A. A statement of which polluters are subject to regulation,
- B. Specification of the units of compliance and what performance is to be Measured
- C. Specification on how performance is to be measured using what particular technologies and procedures and
- D. Description of requirement for self-monitoring and record keeping.
- E. Statement of what performance will constitute violation and what these violations will entail in terms of penalties.⁸²

Another aspect where environmental laws can be made more effective is if they provide the authorities necessary for their own enforcement. Inadequate authorities can severely hamper compliance. The credibility of an enforcement programme will be eroded if violators can successfully challenge the authority of a programme to take enforcement actions.⁸³ As such, authorities or agencies tasked with environmental duties, should be empowered to inspect regulated facilities and gain access to their records and equipment to determine if they are in compliance, require that the regulated community monitor its own compliance, keep records of its compliance activities and status and also report this information periodically to the enforcement programme and make the information available for inspection. It is also expected that authorities should be empowered to take legal action against non-complying facilities.

Thirdly, there is also the need for an institutional framework, one that will specify in clearer terms who and who is responsible for which function. The absence of such an institutional framework will make it difficult to establish who is responsible for ensuring compliance. In fact, this may lead to duplication of duties as was the case between FEPA and DPR.⁸⁴ Understanding environmental enforcement entails a proper knowledge of two major approaches used over the years in effecting compliance. There is the traditional regulatory or command and control approach and the market based/economic incentive approach.⁸⁵ The first one refers to a situation where government prescribes the desired change through requirements, then promotes and enforces compliance with these requirements. Such requirements may be imposed through laws, regulations and permits. This can include:

⁷⁸ Ikenga K.E.Oraegbunam; MVC Ozioko & Chukwubiokem J. Azoro, 'Remedies for Breach of Environmental Standards in Nigeria', *International Journal of Innovative Legal & Political Studies*, 7(2):13-21, April-June, 2019

⁷⁹V. O. Aigbokhaevbo, 'Combating Environmental Crimes in Nigeria: A Daunting Uncertainty,' *NIALS Journal of Environmental Law*.No.1 (2011)

⁸⁰Ibid.

⁸¹ Field and Field, *Environmental Economics: An introduction*. 28

⁸² Ibid

⁸³International Network for Environmental Compliance and Enforcement (INECE), '*Principles of Environmental Enforcement*' 1992, accessed February 28 ,2014 @<http://www.Inece.org/enforcementprinciples.html>.

⁸⁴Y. Omorogbe, *Oil and Gas Law in Nigeria* (Ikeja: Malthouse Press Limited, 2001)

⁸⁵M. Iyoha, 'The Environmental Effect of Oil Industry Activities on the Nigeria Economy – a theoretical analysis,' (2002). In *The petroleum industry, the economy and The Niger Delta environment*, edited by Orubu C.O, Dept of Economic Delta State University, Abraka.

technology requirements, work practices or best management practices, test and/or monitoring reporting and/or record keeping, bans on certain products or practices. However, the loophole inherent in this method stems from erroneous policy ignorance and incomplete information on the part of the government.⁸⁶ The second is the market based approach which uses market force to achieve desired behavior changes. These approaches can be independent of or build upon and supplement command and control approaches, for example it is widely believed that introducing market forces into a command and control approach can encourage greater pollution prevention and more economical solution to problems. Market-based/economic incentive approaches include: fee systems, which allow for tax emissions, effluents and other environmental releases, tradable permits, which allow companies to trade permit emission rights with other companies, offset approaches which allows a facility to propose various approaches to meeting an environmental goal and actions. Monitoring and sanctioning are two major steps that can be employed to enhance enforcement and compliance. Monitoring, refers to measuring the performance of polluters in comparison to whatever requirements are set out in the relevant law while sanctioning refers to the task of bringing to justice those whom monitoring has shown to be in violation of the law.⁸⁷ The likelihood that those caught violating the law will be sanctioned will likely reduces the rate of non-compliance.

7. Conclusion and Recommendations

In conclusion, Enforcement Mechanisms of Environmental Laws used by the Nigerian Government is to deter polluters from further polluting the environment. This is in a bid to protect the Nigerian Environment from the various forms of pollution as advocated in Section 20 of the Constitution of the Federal Republic of Nigeria 1999. ‘...The State shall protect and improve the environment and safeguard the water, air forest and wild life of Nigeria,’⁸⁸ although the provisions of this section are non justiciable. It is believed that the presence of environmental laws and the strength of its enforceability if subjected to the conditions above will go a long way in ensuring compliance. This is however not the case in Niger Delta region where the exploration of oil and gas has impacted negatively on the environment and economic activities in the region. While there exist to a large measure agencies and institutional framework in ensuring compliance, the rate of non-compliance with environmental laws remain disturbingly high. In fact, the increased rate at which the environment is continually degraded has called to question the various regulations that have been made by the Nigerian Government to ensure a cleaner and safer environment. Environmental impact and its consequential defaced of the Nigeria environment have placed a major challenge on the environmental integrity of the Niger Delta communities and the Nigeria socio-economic and political well-being. In view of the above, this article recommends as follows:

- A. Therefore, the works recommended proactive measures and effective environmental legislative and institutional framework in order to improve on petroleum industry regulations. Nigeria go unpunished as operators quickly avail themselves of the avalanche of available defenses. Canada has a detailed and substantial legal framework for the control of oil and gas pollution. It is an environment friendly developed economy and does not permit the exploration and exploitation of oil and gas resources at the expense of the natural environment and biodiversity
- B. There is a dire need to review various national laws and the 1999 Constitution of the Federal Republic of Nigeria as they affect hydrocarbon pollution, in order to provide effective framework for regulation, sustainable environmental objectives and environmental enforcement as applicable in the constitutional law of Angola which confers on the citizens the right to live in a healthy non-polluted environment
- C. That Oil Industry should be made to pay or its licence be withdraw for any form of hydrocarbon pollution on the environment whether at the upstream or downstream level of its operational activities.
- D. A total overhauling of the entire cooperate structure of the Nigeria National Petroleum Corporation (NNPC) as this will refocused a goal-oriented output.
- E. That Environmental offences which concern the breach of environmental laws and regulations should be made a strict liability offence as practicable in the United Kingdom.

⁸⁶Ibid.

⁸⁷ Field and Field, *Environmental Economics: An introduction*, 35.

⁸⁸Section 20, Chapter 2 of Fundamental Objectives and Directive Principles of State Policies.