APPRAISING THE LEGAL FRAMEWORK FOR ENHANCING PUBLIC ACCESS TO ENVIRONMENTAL JUSTICE IN NIGERIA*

Abstract
Environmental justice refers to the situation where citizens of a country have access to the legal mechanisms to obtain effective remedies for the violation of their environmental rights. This is the situation that obtains almost everywhere in the global village for the reason that the right to a safe and healthy environment has become a fundamental right that must be protected if mankind must remain on the surface of the earth. For this right to inure in citizens of a country there must be in existence, adequate legal framework in the form of laws including statutes and judicial decisions on the basis of which claims can be made in respect thereof. It is not certain that the existing laws in Nigeria provide this comfort to victims of environmental infractions. It is for this reason that this paper examines the adequacy of the legal framework for enhancing public access to environmental justice in Nigeria. The findings made showed that the legal framework for enhancing access to environmental justice in Nigeria is not adequate and this does not augur well for victims of environmental infractions in Nigeria. The paper then recommended amendment of the existing laws or the enactment of a new law to remedy the situation.

Keywords: Legal Framework, Environmental Infractions, Access to Environmental Justice.

1. Introduction

Environmental justice means that citizens of a country have access to the legal and administrative mechanisms to ensure that they have a safe and healthy environment by being able to obtain effective remedies for the violation of their environmental rights. For this to be the case, there must be in existence, a set of laws containing the rights to do so. This is so because in the absence of any such laws, there will be no basis upon which to enforce such environmental infractions. Where this is the case, the citizens will be left with no remedy and they can only fold their alms and live in the polluted environment they find themselves. The effect of this on the quality of human life is better not imagined. Therefore, for human life to continue on the surface of the earth including Nigeria, efforts must be made to ensure that there are laws enabling that to be possible. Environmental protection requires the enactment of laws and establishment of institutions for monitoring and supervising activities carried out by operators in the environment as well as to enforce environmental standards. In this regard, Nigeria has enacted a number of laws which, if adequately implemented, will assist in the protection of the environment and holding polluters to account.[1] This paper examines the existing legal framework in Nigeria including the Constitution and other laws made in that regard with a view to determining their adequacy in enhancing public access to environmental justice and makes recommendations geared towards providing a safe and healthy environment for the citizens. This paper discusses the laws on access to justice for environmental breaches in Nigeria.

2. The Legal Framework

Constitution of the Federal Republic of Nigeria 1999

The Constitution of the Federal Republic of Nigeria[2] is the supreme law in Nigeria. The 1999 Constitution did not expressly provide the duty to protect the environment as an absolute responsibility of the Nigerian State. Nor is the right to a clean, safe and healthy environment recognized under the said constitution. The closest reference to the word 'environment' in the Constitution is in Chapter Two which is christened 'Fundamental Objectives and Directive Principles of State Policy'. Section 20 thereof declares the environmental objectives of the Nigerian State as follows: '[T]he State shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of

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[1] BE Edemadide, 'Corporate Social Responsibility of Oil and Gas Companies and Indigenous Peoples' Right to Healthy Environment in Nigeria' (Ph.D Dissertation, Nnamdi Azikiwe University, Awka 2019) 225-264; QK Anyanwu, 'An Appraisalof the Legal and Institutional Framework for the Control of Air Pollution in Nigeria' (LLM Dissertation, Rivers State University, Port Harcourt 2019) 44-94.

[2] 1999 (as Amended) [1999 Constitution].

Nigeria'. The provision did not confer any right on any person as far as the protection of the environment and conservation of the natural resources of the country is concerned but even if it did, the provisions contained in Chapter Two of the Constitutin are not justiceable. That is to say, that they are not enforceable by the courts. Section 6(6)(c) of the Constitution provides to the effect that: the judicial powers vested in accordance with the foregoing provisions of this section-

> Shall not except as otherwise provided by this Constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to hether any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in chapter II of the Constitution.

The import of this is that environmental objectives and indeed all other objectives and directive principles of State policy enumerated in chapter II are not enforceable at law in Nigeria.[3] At best, they remain as mere aspirations which government could endeavour to attain. Courts in Nigeria have had cause to pronounce on the status of chapter II provisions of the 1999 Constitution and similar provisions in the previous Constitution. In *Okogie* v *Attorney-General of Lagos State,*[4] the plaintiff as trustee of the Roman Catholic Schools challenged the decision of the Lagos State government to abolish private primary schools in the State. Plaintiff premised his action on the ground that government's policy violated the right to expression guaranteed in the 1979 Constitution, among other grounds. However, it was the defendant's contention that government's policy was lawful as the operation of private schools run contrary to the State's obligation to provide 'equal and adequate educational opportunities' under Section 18(1) of the 1979 Constitution. It was held that while the phrase 'equal and adequate educational opportunities' did not necessarily restrict the right of private institutions or other persons to provide similar or different educational facilities at their own expense, taste and preferences; that the Directive Principles must have to conform to and run subsidiary to the fundamental human rights provisions. This position was also re-echoed in *Jakande* v *Governor of Lagos State*[5] See also Attorney General of Ondo State v Attorney General of the Federation where the court stated that fundamental objectives and directive principles of State policy are not justiciable except as otherwise provided by the Constitution. Similarly, in *Uzokwu* v *Ezeonu II,*[6]the Supreme Court made a very useful statement of the law when it observed.

> As to the non-justiciability of the Fundamental Objectives and Directive Principles of State Policy, section 6(6)(c)… says so. While they remain mere declarations, they cannot be enforced by legal process but would be seen as a failure of duty and responsibility of state organs if they acted in clear disregard of them… the Directive principles can be made justiciable by legislation.

Thus, the provisions of Chapter II can be made justiciable only where appropriate laws are made to give life to any of the fundamental objectives and directive principles. In this regard, the 1999 Constitution vests upon the National Assembly the exclusive legislative power to make laws for the establishment and regulation of authorities for the Federation or any part thereof 'to promote and enforce the observance of the Fundamental Objectives and Directive Principles contained in the Constitution.'[7] In *The House of Representatives* v *SPDC,*[8] the Court of Appeal held that the 1999 Constitution did not vest any general legislative power to make laws with respect to the environment on any legislative organ, but rather, a mere power to establish and regulate authorities to promote and enforce the observance of the Fundamental Objectives and Directive Principles, whether for the entire Federation or any part thereof.

With respect to environmental rights, the 1999 Constitution did not recognize the right of Nigerians to a clean, safe and healthy environment. This means that no human rights enforcement action can be founded on activities that cause harm to the environment or affect the health and well-being of

[3]OVC Ikpeze, 'Non-Justiciability of Chapter II of the Nigerian Constitution as an Impediment to Economic Rights and Development' [2015] (5) (18) *Developing Country Studies* 48.
[4] (1981) 1 NCLR 218.
[5](1981) 1 NCLR 152, (2002) 9 NWLR (Pt 772) 222.
[6](1991) 6 NWLR (Pt 200) 781.
[7]1999 Constitution, item 60, Part 1 of the Second Schedule to the Constitution.
[8]Appeal No: CA/A/36/08 (Judgment delivered on 15 April 2010).

Nigerians particularly with regard to the activities of Multinational oil Companies. Attempts to enforce environmental right as a component of the right to life have not been completely successful.[9] Courts in other jurisdictions have adopted a progressive and expansive approach to the interpretation of third generation rights, especially the right to a healthy environment clustered under fundamental principles of state policy in their Constitutions. For instance, Section 48A of the Constitution of India is worded in similar fashion as Section 20 of Nigeria's 1999 Constitution. It declares that 'the state shall endeavour to improve and protect the environment and to safeguard the forest and wildlife of the country,[10] including forests, lakes and wild life and to have compassion on living creatures'.[11] Indian courts have interpreted this provision in conjunction with the fundamental right to life and consistently held that the right to life will be illusory if the environment on which life itself depends is polluted in such a way that life can no longer be sustained. *M C Mehta v Union of India AIR, RLEK v State of Uttar Pradesh, Vellore Citizens' Welfare Forum v Union of India, Narmada Bachao Andolan v Union of India* [12] In other words, Indian courts have held that the full enjoyment of the right to life protected as a fundamental right is wholly dependent on the enjoyment of a pollution-free and poison-free environment. Thus, the right to a clean, safe and healthy environment is implied in the right to life. In this regard, the provision of the Constitution is inadequate and Nigerian courts need to borrow a leaf from Indian courts in order to make effective the provision of the Constitution.

African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act 1981

The African Charter on Human and Peoples' Right (Ratification and Enforcement) Act[13] was enacted to give effect to the African Charter on Human and Peoples' Right adopted in 1981 by the defunct Organisation of African Unity (OAU) now African Union (AU) to promote human rights in Africa. The ACHPR Ratification Act contains only two sections. Section 1 adopts the ACHPR wholesale and includes it as a Schedule to the ACHPR Ratification Act. Section 1 also ratifies the human rights encapsulated in the ACHPR and makes their provisions enforceable throughout Nigeria. In the context of environmental justice, the ACHPR provides that all peoples shall have the right to a general, satisfactory environment favourable to their situation.[14] Going by this provision, the right to a clean, safe and healthy environment is a human right recognised under Nigerian law. However, there is no binding and enforceable provision in the 1999 Constitution on the right to a general satisfactory development. The 1999 Constitution only provides for the environmental objectives of the Nigerian State. It provides that, 'The State shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria'.[15] While this provision would, by itself, evince an intention on the part of Nigeria to protect its environment and accord Nigerians the enforceable rights relating to any environmental infringement, Section 6(6)(c) of the Constitution stipulates that no court of law in Nigeria shall have power to inquire into whether any of the provisions of Chapter II of the Constitution has or has not been complied with. There have been heated debates as to the implications of Section 6(6)(c) of the 1999 Constitution on Section 20 of the same Constitution especially in view of Article 1 of the ACHPR Ratification Act. While some authors are of the view that the ouster clause in Section 6(6)(c) has effectively rendered environmental rights non-justiciable in Nigeria,[16] others contend that environmental rights are recognisable and enforceable in Nigeria by virtue of Article 24

[9](Unreported) Suit No. PHC/CS/B/153/2005 (Judgment of the Federal High Court Benin Division delivered on 14 November 2005); (2005) AHRLR 151 (NGHC 2005); (Unreported) Okpara v SPDC, Suit No. FHC/PH/CS/518/2005.

[10]Constitution of India 1948 (as Amended by the 52nd Amendment of 1985), art 48A.

[11]Ibid, art 51A.

[12]1988 SC 1037; AIR 1985 SC 652; AIR 1996 SC 2716; AIR 2000 SC 3753.

[13]1981, Cap A9, Laws of the Federation of Nigeria [LFN] 2004.

[14]Ibid, art 24.

[15]1999 Constitution, s 20.

[16]EM Akpambang, 'Promoting the Right to a Healthy Environment through Constitutionalism in Nigeria' (2016) (4) (3) International Journal of Environment and Pollution Research 40-61; T Okonkwo, 'Environmental Constitutionalism in Nigeria: Are We There Yet? (2015) (13) The Nigerian Judicial Review 175-216; KU Udungeri and Others, 'Evaluation of the Statutory Regime of Corporate Environmental Liability in the Oil and Gas Sector in Nigeria' (2018) (2) (9) American Journal of Humanities and Social Sciences Research 29-45; EO Ekhator, 'Improving Access to Environmental Justice under the African Charter on Human and Peoples' Rights: The Role of NGOs in Nigeria' (2014) (22) (1) African Journal of International and Comparative Law 63-79.

of the ACHPR Ratification Act.[17] According to the latter view, the ACHPR is an international treaty and as such Nigeria lacks the legislative competence to enact a domestic legislation (in this case, the 1999 Constitution) which will have the potency to defeat Nigeria's obligation under a treaty.[18] Authors belonging to this latter school of thought also argue that Section 6(6)(c) of the Constitution did not expressly include the application of the ACHPR Ratification Act in the provisions caught up in the web of non-justiciability. In their view, the Fundamental Rights (Enforcement Procedure) Rules[19] made pursuant to the power of the Chief Justice of Nigeria under Section 46(2) of the 1999 Constitution provides for the enforcement of human rights both under Chapter IV of the 1999 Constitution and under the ACHPR Ratification Act.[20] This means that under the Rules, both the fundamental rights in Chapter IV which exclude environmental rights and the fundamental rights in the ACHPR Ratification Act which include environmental rights are both justiciable and enforceable. This now turns on the argument regarding conflict between the 1999 Constitution and the rules made thereunder on the one hand, and the superiority between the 1999 Constitution and the ACHPR Ratification Act on the other. The question of superiority or status of the 1999 Constitution *vis-a-vis* the ACHPR Ratification Act has been settled by the Supreme Court of Nigeria in a plethora of cases. In *Abacha* v *Fawehinmi*,[21] the Supreme Court, per Ogundare JSC, while delivering the lead judgment, held as follows:

> No doubt Cap 10 is a statute with international flavour… . Where there is a conflict between it and another statute; its provisions will prevail over those of that other statute for the reason that it is presumed that the legislature does not intend to breach an international obligation…. . The Charter possesses 'a greater vigour and strength' than any other domestic statute. But that is not to say that the Charter is superior to the Constitution…. Nor can its international flavour prevent the National Assembly…. from removing it from our body of municipal laws by simply repealing Cap. 10 …. [22]

It is submitted that as the position of the law stands by this judgment at present, the 1999 Constitution is superior to and overrides the provisions of the ACHPR Ratification Act. This is not a healthy situation. To leave the right of the people to environmental justice in such state that it cannot be enforced is one of the inadequacies of the legal framework for enhancing public access to environmental justice and needs to be addressed.

National Environmental Standards and Regulations Enforcement Agency Act[23] (NESREA)

The NESREA Act is the principal law regulating environmental protection in Nigeria. It is a federal Agency and an Institution for clean and safe environment in Nigeria. The Act establishes the National Environmental Standards Regulations Enforcement Agency (NESREA) as the co-ordinating federal agency and charged it with the responsibility of protection and development of the environment, biodiversity conservation, as well as the sustainable development of Nigeria's natural resources in general, and environmental technology in particular. NESREA is also empowered to co-ordinate and liaise with relevant stakeholders within and outside Nigeria in relation to matters of environmental standards, regulations, rules, laws, policies and guidelines.[24]

Furthermore, NESREA is given specific mandates to do the following: enforce compliance with laws, guidelines, policies and standards on environmental matters;[25] co-ordinate and liaise with relevant

[17]EP Amechi, 'Litigating Right to Healthy Environment in Nigeria: An Examination of the Impacts of the Fundamental Rights (Enforcement Procedure) Rules 2009, in Ensuring Access to Justice for Victims of Environmental Degradation (2010) (6) (3) Law, Environment and Development Journal 320-334; F O Ekpa,'Enforcing Environmental Rights in Nigeria through the Fundamental Rights (Enforcement Procedure) Rules 2009' (2015) (7) Kogi State University Law Journal 102-121; M Ajiya and H Y Bappah, 'Issues and Challenges of Environmental Rights: The Nigerian Experience' (20) (3) (5) American International Journal of Social Science 143-152.
[18]E P Amechi, Ibid.
[19]FREPR 2009.
[20]Preamble to the FREPR 2009, para 3(a)(b), Or 1(2) and Or 2(1).
[21](2000) 6 NWLR (Pt 660) 228.
[22]Ibid.
[23] No.25 of 2007 [NESREA Act 2007].
[24]Ibid, ss 1(1) and 2.
[25]ACHPR 1981, s 7(a).

stakeholders both within and without Nigeria on issues of environmental standards, regulations and enforcement;[26] enforce compliance with the provisions of international agreements, protocols, conventions and treaties on the environment, including climate change, biodiversity conservation, desertification, forestry, oil and gas, chemicals, hazardous wastes, ozone depletion, marine and wild life, pollution, sanitation and such other environmental agreements as may come into force from time to time;[27] and to enforce compliance with policies, standards, legislations and guidelines on water quality, environmental health and sanitation, including pollution abatement.[28]

Other mandates of NESREA include to: enforce through compliance monitoring, the environmental regulations and standards on noise, air, land, seas, oceans and other water bodies other than the oil and gas sector;[29] enforce environment control measures through registration, licensing and permitting systems other than in the oil and gas sector;[30] and to conduct environmental audit and to establish a data bank on regulatory and enforcement mechanisms of environmental standards other than in the oil and gas sector[31] among other functions. To carry out the foregoing mandates effectively, NESREA is given power to, inter alia, prohibit procedures and use of equipment or technology that undermines environmental quality;[32] conduct field follow-up of compliance with set standards and take procedures prescribed by law against any violator;[33] and to conduct public investigations on pollution and the degradation of natural resources, other than investigations on oil spillage.[34] NESREA is further empowered to submit for the approval of the Minister of Environment, proposals for the evolution and review of existing guidelines, regulations and standards on environment other than in the oil and gas sector, with respect to specific aspects of environmental quality.[35] In 2018, the NESREA Act 2007 (the principal Act) was amended basically to review the conditions of appointment of some members of the Governing Council of NESREA. The major amendment in this NESREA Amendment Act relevant to the present paper concerns the functions of NESREA as regulator and enforcer of environmental matters in Nigeria.

Under the NESREA Act 2007, it is stated that the following four functions of NESREA shall not apply to the oil and gas industry: the enforcement of compliance with regulations on the importation, exportation, production, distribution, storage, sale, use, handling and disposal of hazardous chemicals and wastes;[36] the enforcement of the environmental regulations and standards on noise, air, land, seas, oceans and other water bodies;[37] the enforcement of environment control measures through registration, licensing and permitting systems;[38] and the conduct of environmental audit and establishment of data bank on regulatory and enforcement mechanisms of environmental standards.[39]

Section 3 of the NESREA Amendment Act deletes the phrase 'oil and gas' from Section 7(1)(g), (h), (j) and (k) of the Principal Act to make it clear that the functions of NESREA stipulated in those paragraphs are not applicable to the oil and gas industry.[40] The implication of this is that NESREA does not have power to regulate environmental issues affecting the oil and gas sector which touch on Section 7(1)(g), (h), (j) and (k) of the Principal Act. It should be noted that Section 3 of the NESREA Amendment Act did not do any new thing. It only solidifies the provisions of Section 7(1)(g)(h)(k) and (g) of the NESREA Act 2007 which had clearly excluded the oil and gas sector from the jurisdictional compass of NESREA as regulator and enforcer of national environmental standards. Herein lies the inadequacy of this law with regard to enhancing public access to environmental justice.

[26]Ibid, s 7(b).
[27]Ibid, s 7(c).
[28]Ibid, s 7(d)
[29]Ibid, s 7(h).
[30] s 7(j).
[31]Ibid, s 7(k).
[32]Ibid, s 8(d).
[33]Ibid, s 8(e)
[34]Ibid, s 8(g).
[35]Ibid, s 8 k(i)-(xiv).
[36] s 7(1)(g).
[37]Ibid, s 7(1)(h).
[38]Ibid, s 7(1)(j).
[39]Ibid, s 7(1)(k).
[40]s 3.

If the principal law regulating environmental protection in Nigeria is stripped of the power to control the oil and gas sector which is the major source of environmental infraction, then one can safely say that the law did not intend the real protection of the environment *ab initio.* This calls for a rethink of the intendment of the law in this regard.

National Oil Spill Detection and Response Agency (Establishment) Act 2006

This National Oil Spill Detection and Response Agency Act[41]establishes the National Oil Spill Detection and Response Agency (NOSDRA) as the Agency responsible for the co-ordination and implementation of the National Oil Spill Contingency Plan for Nigeria.[42] Specifically, the Agency is required, amongst others, to:

(a) Establish a viable national operational organization that ensures a safe, timely, effective and appropriate response to major or disastrous pollution;[43]
(b) Identify high-risk areas as well as priority areas for protection and clean up;[44]
(c) Establish the mechanism to monitor and assist and where expedient, direct the response, including the capability to mobilize the necessary resources to save lives, protect threatened environment and clean up to the best practical extent of the impacted site;[45]
(d) Maximize the effective use of the available facilities and resources of corporate bodies, their international connections and oil spill co-operatives, that is clean Nigeria Associates (CAN) in implementing appropriate spill response;[46]
(e) Ensure funding and appropriate and sufficient pre-positioned pollution combating equipment and materials, as well as functional communication network system required for effective response to major oil pollution;[47]
(f) Provide a programme of activities, training and drill exercises to ensure readiness to oil pollution preparedness and response and the management of operational personnel;[48]
(g) In order to realize the lofty objectives stated above, the Agency is empowered to undertake surveillance and ensure compliance with all existing environmental legislation and the detection of oil spills in the petroleum sector;[49] to receive reports of oil spill spillages and co-ordinate oil spill response activities throughout Nigeria;[50] to co-ordinate the implementation of the National Contingency Plan (NCP) as may be formulated from time to time by the Federal Government, among other functions.[51]

The NOSDRA Act lays down the procedure for reporting of oil spill and requires that the oil spiller report an oil spill to NOSDRA in writing within 24 hours after the occurrence of an oil spill.[52] Where an oil spiller defaults in making the report within the period aforesaid, it shall be liable to pay a penalty of N500, 000.00 for each day of default.[53] Another salient provision of the Act is the obligation to clean up an impacted site to all practical extent, including remediation which is imposed on an oil spiller. Failure to clean up the impacted site by the oil spiller attracts a penalty of N1 million.[54] An oil spiller is deemed to have given the report of spill referred to in Section 6(2) where the notice is delivered at the nearest zonal office of the Agency.[55]

From the foregoing discussion, it seems clear that NOSDRA was established to address the issue of oil spill which is associated with every stage of oil production, from the exploratory stage to the marketing stage. The Agency was designed to respond swiftly to oil spill occurrences which could

[41] No.15 of 2006 [NOSDRA Act 2006].
[42]Ibid, s 5.
[43]Ibid, 5(a).
[44]Ibid, s 5(b).
[45]Ibid, s 5(c).
[46]Ibid, s 5(d).
[47]s 5(c).
[48]Ibid, s 5(f).
[49]Ibid, s 6(1)(a).
[50]Ibid, s 6(1)(b).
[51]s 6(1)(c).
[52]Ibid, s 6(2).
[53]Ibid.
[54]Ibid, s 6(3).
[55]Ibid, s 6(4).

threaten the nation, considering its impact on the fragile ecosystem of the country, particularly the Niger Delta where oil and gas are produced. Judging from the functions and powers of NOSDRA, effective performance of its mandates can go a long way in addressing environmental pollution in the oil industry. The limitations of the Act include the fact that the Act does not empower NOSDRA to enforce preventive measures. In other words, the act is more reactionary than preventative as it focuses on the capability to respond to a spill after it has occurred. Thus, its process begins with the notification of a spill incident by the polluter to the Agency. The penalty of N500, 000.00 for each day of default in reporting oil spill appears not deterrent enough as the Multinational Oil Companies operating in the Niger Delta can easily afford to pay the penalty instead of reporting and incurring huge remediation costs. In addition, the penalty for failure to clean up is the payment by the polluter, of the sum of N1 million which is very paltry for the Multinational Oil Companies that rake in billions of dollars in profits annually. It is therefore fair to assume that with this watery penalty, all that the Multinational Oil Companies will do is to pay N1 million which is paid to the Agency to boost government revenue and not to the indigenous peoples directly who are exposed to the hazards associated with oil spill. This is not good enough if the intention is to enhance public access to environmental justice as it is not adequate. It is therefore submitted that rather than the imposition of fines, the revocation of the operating licence of a polluter for failure to clean up an impacted site would serve as sufficient deterrence and accords with global best practices in the oil and gas industry. It is further submitted that Section 6(2) of the NOSDRA Act encourages indirectly the pollution of the Niger Delta environment and ought to be amended.

Environmental Impact Assessment Act 1992

The Environmental Impact Assessment Act[56] adopts a preventative and precautionary approach to environmental protection by requiring a mandatory Environmental Impact Study (EIS) of all proposed projects which portend the likelihood of inflicting damage on human health and the environment before such projects are approved for execution. The objectives of an Environmental Impact Assessment are stated to be:

(a) to establish before a decision is taken by any person, authority, corporate body or unincorporated, including the Federal government, State government or Local Government intending to undertake or authorize the undertaking of any activity that may likely or to a significant extent affect the environment or have environmental effects on those activities shall first be taken into consideration;[57]

(b) to promote the implementation of appropriate policy in all federal lands (howsoever acquired), States and Local Government Areas consistent with all laws and decision making processes through which the goal and objective in paragraph (a) above may be realized;[58] and

(c) to encourage the development of procedures for information exchange, notification and consultation between organs and persons when proposed activities are likely to have significant environmental effects on boundary or inter-State or on the environment of bordering towns and villages.[59]

From the above objectives, it is clear that the Act seeks to hold both the government and private sector to a high degree of environmental consciousness and accountability by insisting that every project which has the effect or likelihood of impacting the human environment adversely should not be approved for execution unless the proponent carries out an Environmental Impact Study to determine the likely impacts of such project on the environment as well as the remedial measures.

The EIA Act prohibits the public or private sector of the nation's economy from undertaking any project or authorising projects or activities without prior consideration of their environmental impacts, at an early stage.[60] Where from the extent, nature or location of a proposed project or activity, there is a likelihood of a significant effect on the environment; an EIA must first be carried out before its

[56] 1992, Cap E12, LFN 2004 [EIA Act 2004].
[57] Ibid, s 1(a).
[58] Ibid, s 1(b).
[59] s 1(c).
[60] Ibid, s 2(1).

approval and eventual execution.[61] The EIA Act requires a proponent of any project to apply in writing to NESREA to undertake an EIA study. The EIA shall, among other things, include: (a) a description of the proposed activities;[62] (b) a description of the potential affected environment including specific information necessary to identify and assess the environmental effects of the proposed activities;[63] (c) a description of the practical activities, as appropriate;[64] (d) an assessment of the likely or potential environmental impacts of the proposed activity and the alternatives, including the direct or indirect cumulative, short-term and long-term effects;[65] (e) an identification and description of measures available to mitigate adverse environmental impacts of proposed activity and assessment of those measures;[66] (f) an indication of gaps in knowledge and uncertainty which may be encountered in computing the required information;[67] (g) an indication of whether the environment of any other State, Local Government Area or areas outside Nigeria is likely to be affected by the proposed activity or its alternatives;[68] and (h) a brief and non-technical summary of the information required under paragraphs (a)-(g) above.[69]

The NESREA is required to afford a wide spectrum of stakeholders the opportunity to make comments on the EIA of the activity before reaching a decision whether to approve the proposed project or not.[70] The relevant stakeholders include government agencies, members of the public, experts in any discipline relevant to the area of study, as well as interest groups.[71] Indigenous communities are not expressly mentioned but it can safely be assumed that they fall under the category of 'interest groups'. However, it is not clear what weight their comments will command as they are not involved in the decision process. The decision to approve the implementation of the proposed project rests squarely with NESREA. What is worrisome still is that there is no opportunity to challenge the decision of the Agency where affected communities are not satisfied with the process. This is even more so as the Federal Government in which the approving Agency, NESREA, is domiciled, holds a major stake in all oil and gas exploration and production projects undertaken by Multinational Oil Companies in the Niger Delta. This creates a situation of conflict of interest which could affect the transparency of the process and this makes this law inadequate.

In *Douglas* v *SPDC,*[72] the plaintiff sought, inter alia, a declaration that SPDC could not lawfully commission, carry out or operate their Liquefied Natural Gas (LNG) projects without first complying with the EIA Act. The court struck out the action on the ground that the plaintiff lacked the *locus standi* to maintain the suit. By this decision, it appears the court has placed the final decision on whether or not to approve an EIA report in the NESREA.

The EIA Act represents an important improvement on the efforts of the Nigerian State to protect the environment from pollution and destruction of the major components of the ecosystem. This is aimed at ensuring that in our quest for development, the interest of the environment and the future generation of Nigerians is protected. The major weakness of the Act is that it does not recognize the right of the affected communities to seek redress in the event that they are aggrieved by the decision of the Agency. In other words, apart from the mere right to comment on the EIA report, host communities of proposed projects have no participatory right in the EIA process. Again, the Act dispenses with the need for EIA where in the opinion of the Agency, the project is in the list of projects which the President of Nigeria is of the opinion that the environmental effects of the project is likely to be minimal; where the project is to be carried out during national emergency for which temporary measures have been taken by the

[61] Ibid, s 2(2).
[62] Ibid, s 4(a).
[63] Ibid, s 4(b).
[64] Ibid, s 4(c).
[65] Ibid, s 4(d).
[66] Ibid, s 4(e).
[67] Ibid, s 4(f).
[68] Ibid, s 4(g).
[69] Ibid, s 4(h).
[70] Ibid, s 7.
[71] Ibid.
[72] (1995) 6 NWLR (pt 350) 258.

Government; and where the Agency is of the opinion that the proposed project is to be carried out in response to the need for public health or safety.[73]

It is not clear what parameter the President of Nigeria will adopt in coming to the conclusion that a proposed project will have a minimal impact on the environment. The same applies to projects to be carried out by the Federal, State and Local Government authorities where it is stated that such projects to be executed in the exercise of powers or functions conferred on each tier of government may dispense with EIA study.[74] It is submitted that these discretions should be removed or qualified and appropriate guidelines prescribed for the exercise of such discretions for the greater protection of the environment.

There are several other laws governing Nigeria's oil and gas industry which is the major source of environmental infractions in Nigeria. In those other laws as well as those discussed in this paper, there are a number of loopholes which make them difficult to actually safeguard the environment for the well being of the people. There are several reasons for this. In the first place, some of the laws are not environmentally friendly and permit the spilling of oil and flaring of gases into the environment. In the second place, where they contain penalties, the penalties are not reflective of the gravity of the act of environmental pollution and its impact on the lives, health and ecosystem of the people[75] and in the third place, there are duplications of monitoring, regulation and enforcement mechanisms and efforts which result in chaotic performance and absence of co-ordination on the part of the regulatory authorities.[76] Finally, enforcement and monitoring mechanisms are weak and inefficient and needs to be strengthened by an amendment or the enactment of a more adequate and effective legislation. This is so especially as some of these oil and gas laws have been in existence in Nigeria since 1958 when commercial oil production began in the country and have remained largely unaltered till date, going several decades behind global developments and international best practices in the oil and gas industry.[77]

3. Conclusion

This paper has discussed the adequacy of the legal framework for enhancing public access to environmental justice in Nigeria by examining the various laws enacted for the preservation of the environment especially in the oil and gas industry. The conclusion that is made is that there are provisions in the laws discussed for the protection and preservation of the environment but in most cases, these provisions are not adequate for the purpose either on grounds of excluding environmental rights as a right that can be enforced or on account of the ineffectiveness of the penalties provided in the case of violations of the citizens' environmental rights. Apart from not meeting the criteria of best practices, it does not afford the citizens any remedy for infractions denying them of the right to live and enjoy a safe and healthy environment. In view of the foregoing, the paper recommends the amendment of the relevant laws or the enactment of a new law to take care of the lapses identified as the way forward in using the framework of the law in enhancing public access to environmental justice in Nigeria.

[73]s 15(1)(a)-(c).
[74]Ibid, s 15(2)(a)-(b).
[75]A Ibrahim, 'Assessment of the Legal and Institutional Framework for the Prevention of Environmental Degradation by Oil and Gas Companies in Nigeria (Ph.D Dissertation, Ahmadu Bello University, Zaria, Kaduna 2014) 17.
[76]United Nations Environment Programme, Environmental Assessment of Ogoniland (UNEP, Nairobi 2011) 12. <https://www.postconflict.unep.ch/publications/OEA/UNEP_OAE_ES.pdf> accessed 14 February 2020.
[77]Ibid.