CONSTRAINTS TO IMPLEMENTATION AND ENFORCEMENT OF ENVIRONMENTAL LAWS: NIGERIA PERSPECTIVES*

Abstract

The bane of Nigeria legislation is lack of enforcement. The administrative agencies charged with enforcing the relevant environmental laws in Nigeria are unwilling to do so because of two possible reasons: financial inducement from the multinational oil companies operating in the country to leave and this could spell doom for the Nigerian economy which depends on oil for survival. Environmental regulatory laws provide loopholes for offenders and the penalties prescribed by most of the regulations are inadequate. The effect of this is that it militates against the application of the laws. Violators choose to contravene the laws and the sanctions enshrined in those laws are not stringent enough, as a result, the misuse of environmental resources persists. The paper concludes and recommend that the Nigeria government should put in more effort in enforcing these numerous environmental laws by making funds available for enforcement, closing its eyes against corruption, managing polluted environments with the various taxes paid, embarking on campaign and environmental awareness programs, providing more securities at our country borders. Government should direct it policies towards the building of functioning waste recycling companies to reduce the release of toxic and hazard waste in our environment.

Keywords: Environmental Laws, Implementation, Enforcement, Constraints, Nigeria

1. Introduction

The Nigeria government has an excellent record of being a signatory to almost all the environmental protection treaties and a good record of either acceding to or ratifying many of them. However, Nigeria has had a very poor record of compliance with the customary international treaty obligation requiring member states to `take appropriate legal (legislative) measures at the national level' to implement the policies and objectives of the international treaties. In accordance with Section 12 (1) of 1999 Constitution of the Federal Republic of Nigeria,[1] `No treaty between the Federation and any other country shall have the force of law except to the extent that such treaty has been enacted into law by the National Assembly'. Under the supremacy of laws principle under section 1 (1) and (3) of the 1999 Nigeria Constitution, constitutional provisions shall supersede any contradiction occasioned by a treaty with the provisions of the Nigerian Constitution. Furthermore[2], the constitutional provision under section 12 of the 1999 Nigeria Constitution conditions the applicability of any treaty in the country to the ratification of the National Assembly and further imposes another legal hurdle to enforcement of any treaty. It is worthy to note that without compliance with Section 12 (1) of the 1999 Nigerian Constitution, the advantages and benefits accruing from these international treaties relating to the environment cannot be fully realized at the national or individual level through the national legal process[3]. Therefore, it is important to show that the constitutional provision simply means that international treaties will not have the force of law in the Nigerian national courts, but subject to the provision that the issue in question has not attained the status of customary international law forming part of the Nigerian customary laws which the courts are bound to give judicial recognition. Most of the international treaties regulating toxic waste management are applicable in Nigeria by virtue of the consent and ratification of such treaties by the National Assembly and such treaties include, but are not limited to, the Basel Convention on the Control of Trans-boundary Movement of Hazardous Matter and their Disposal; the Bamako Convention on the Trans-shipment of Waste in Africa; the Vienna Convention on the Protection of the Ozone Layer; Stockholm Convention on Persistent Organic Pollutants, and the Montreal Protocol on Substances that deplete the Ozone Layer.

Despite some of the important benefits associated with these international environmental laws, there are several barriers and/or constraints inhibiting Nigeria and other African countries' ability to effectively implement these `International Environmental Treaties'. According to Jone[4], various problems associated

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[1] Ibid
[2] Aniefiok E. Ite, Usenobong F. et al, *'Petroleum Industry in Nigeria*'25
[3] Okorodudu-Fubara, M. T., *Law of Environmental Protection: Materials and Text*, (Ibadan, Nigeria: Caltop Publication Ltd, 1998) 51.
[4] Jones, K. R., 'Multilateral Environmental Agreements in Africa: Efforts and Problems in Implementation,' *International Environmental Agreements*, 3 (2), (2003) 97-135

with poor implementation of International Environmental Treaties reflect the political, cultural and economic realities in each country and there are several issues transcending national boundaries. Some of the barriers and/or constraints to implementation of these International Environmental Treaties are as follows:

A. Poor `Common but Differentiated Responsibilities' and poor participation in government policy making.
B. Lack of coordination and/or synthesis in implementation and structures for inter-ministerial consultation and cooperation.
C. Poor prioritization of the environmental issues and lack of advance development of effective environmental law and policies prior to negotiations.
D. Poor integration of environmental management system into existing national legislations and policy.
E. Poor economic growth limited financial resources and inadequate technological expertise.
F. Lack of specialists in environmental law and limited inter-disciplinary professionals with the scientific and/or traditional knowledge.
G. Excess bureaucracy in government, high level of corruption and poor environmental governance.
H. Fragmented national institutional structures and lack of regional body to oversee implementation of existing legislations.
I. Poor representation of developing countries during multilateral negotiations and development.
J. Weak enforcement of existing national and international environmental legislations.
K. Lack of responsibility for environmental damage (corporate and social responsibility)

2. Environmental Claims and Sanctions

Emphysema and other respiratory and lung disease may be contracted as a result of living close to exploration and refining sites. But the tort of private nuisance and the rule in *Ryland's vs. Fletcher* protect only propriety interest in land to the exclusion of persons. Thus where a plaintiff injury resulting from the defendant nuisance action or rule in *Ryland's vs. Fletcher* consist of personal injuries his action will not succeed under those heads of tort.[5] Indeed, it has been asserted by a learned author[6] that there are so many defences and exceptions of liability under the *Ryland's vs. Fletcher* principles that it is doubtful whether there is much left of the national of strict liability as originally contemplated in 1866". The law of torts should not be a static body of rules but by dynamic. A person who derives very huge profit from dealing with a potentially dangerous commodity like oil should be made to bear fully any damage which ensues thereof. There is therefore need for the Nigerian judiciary to attempt a restatement of the rule of common law.[7]

In general Nigerian courts have not been of such assistance to victims of oil exploration activities. It is hardly possible to succeed in environmental claims without scientific evidence. It is hardly possible to succeed in environmental damage that is indeed poor to procure scientific evidence. In *Ogiale& 2 ors vs. Shell Petroleum Development Company of Nigeria ltd,* [8]the plaintiff, victims of environmental degradation managed to call one expert who give evidence that when spillage occurs the negative impact on the soil could last for long as thirty years. The defence did not just call one expert in different fields connected with the claim and all of whom where reputable professors from reputable universities. The defendant experts even though they admitted trace of crude oil in the soil of the plaintiff claim that as at the time of their study it did not negatively affect the soil. They claimed that gas flaring is from of blessing in disguise as harmful insects that would have destroyed crops are attracted by the illumination of the flares. They also claimed that the crude spilled into the soil may with time enrich the fertility of the soil. There was no scientific evidence from the plaintiff to debunk the evidence called by the defendant. The trial judge dismissed the plaintiff's case and rejected the expert evidence called by both parties. On appeal by the plaintiff the court of appeal dismissed the plaintiff but upheld the cross of the defendant based on the expert evidence tendered by the defendant witness which the trial judge rejected. The fact disclosed in the instant case by professor Odu (D.W.4.) are that professor Esuruoso studied the plant pathology and insect life while Dr. Obighesan studied the plant pathology and crop production… their conclusion was that the operation of the defendant company has not affected plant growth and soil fertility in the area. It was not shown that the entire study was not in a related field. It was also not shown to D.W.4 was incapable of answering questions about the contents of

[5] Uzodike, E.N.U., 'Torts Laws in the Oil Industry' in essay in honour of Judge Elias, (Omotolaed) (1987) p 240
[6] Fleming Laws of Torts, (5th ed., 1975) p329
[7]Ogbigwe, A.E., 'Compensation and Liability for Oil Pollution in Nigeria – Need for a Positive Approach (1985) 3 J.P.P.L. p21
[8] (1997) 1 NWLR (pt. 180) p148

the report relating to the area of the report containing the aspect of the studies carried out by the two members of the team who did not testify at the trial[9].

In *Siesmograh Service vs. Onokpasa*[10] the supreme court set aside the judgment of the trial court which in favor of the plaintiff, holding that the contention of each party is of a technical nature and must necessarily be proved by experts specially qualified in the particular field of science which in this case comprised of the knowledge and practice of seismography and civil engineering in case where the victims were able to establish their cases neither the cost awarded nor the compensation or damage have been encouraging for instance, in *Mon vs. shell B.P petroleum development company of Nigeria limited*[11]the court found that the spillage from the defendant pipelines caused substantial damage to the plaintiff fish pond but awarded only N200.00 as damages for the plaintiff losses. In *Nweke v Nigeria Agip oil*[12] the court merely awarded the exact amount initially offered by the defendant but rejected earlier by the plaintiff. This attitude of the Nigerian courts is in sharp contrast to that of their American counterpart. In one of the several cases against Exxon Valdez, the trial court awarded $5 billion as punitive damage in favor of the plaintiff which included Alaskan fishermen and property owners.[13]

There is need for the Nigerian courts to award punitive damages or heavy compensation in deserving cases. The award of appropriate punitive damages may ginger the oil operators to adopt high standards in their operations. Aside from insufficient damages awarded to claimants of adverse effect of oil exploration and exploitation, the Nigerian courts have never deemed it fit to grant injunctive remedies. In juxtaposing the harms, the court has always put the need for continues oil operation, and consequently the pecuniary benefits to the operating companies and the country above the need of the individuals and communities that suffer from the ravages of oil exploration and production. In *AllarIron vs. Shell B.P Petroleum Development Company of Nigeria limited.*[14]Where the plaintiff brought an action against continuing pollution of his land,[15] Fish pond and creek, the court refused to make an order of injunction on the grounds that “mineral oil is the main source of this country revenue” and that a grant of injunction would render nugatory the oil exploration license granted the defendant company, with judgment like this the multinational oil companies will ever pay lip service to the laws governing oil pollution and environmental protection in Nigeria. American courts do though seldom, grant injunctions in deserving cases. *Amoco Production Co. vs Village of Gambell, Alaska,*[16] the U.S. Supreme Court observed thus:

> Environmental injury, by its nature can seldom be adequately remedied by money damages and is often permanent or at least of long duration that is irreparable. If such injury is sufficiently likely, therefore, the balance of Harm will usually favor the issuance of an injunction.

If the Nigerian judiciary gives this are of the law some serious consideration the multinational oil companies (who adopt high standards in their countries of origin) would be more serious in the application of standard international methods in their operations in Nigeria.[17]

There are different approaches to environmental regulations. The most noticeable are the command and control approach and the economic approach. The command and control approach emphasize the setting of standards for compliance and is cost oblivious. The economic approach stresses the need for command and control approach. The economic approach places emphasis on cost and price mechanism. The American oil pollution act and the clean water act of 1948 amended in 1772 are good examples of command and control legislation. The economic approach calls for cost benefit analysis before regulations are formulated and it says that environmental measures are to be adopted only if the benefits to be derived from such measures outweigh their cost. The associated gas flaring re-injection act under which oil companies can flare gas on the payment of a penalty fee is a legislation that has adopted the economic approach. The companies are allowed to flare gas payment of a penalty of N10 per 1000 cubic feet of gas flared. It is submitted that this

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[9] Ibid at p165
[10] (1972) ALL N.L.R, 343-349
[11] (1970-72) R.S.L.R. 71
[12] (1976) pl, the Supreme Court reduced an award of ₦300,000.00 made by trial court to a ridiculous sum of ₦27,000.00s
[13] *In re Exxon Valdez.D.C.,* Alaska no, A89-009C-CJ; judgment delivered in September 16, 1994 cited by Ekpu, op. at p10.
[14] Ibid
[15] Judgment of the Warri in High Court (unreported) November 26, 1978 suit no. W/89/71480 U.S. 531 at 541.
[16] ibid Ogbigwe
[17]Osuno, B. A., ‘Impact of Oil Industry on the Environment’ on the Proceedings of Environmental Awareness Seminar for National Policy Makers, (1982) 51

paltry amount of N10 per 1000 cubic feet has been deliberately fixed so that oil companies can easily pay the penalty. If the penalty for gas flaring were high, it would certainly act as an incentive to stop gas flaring. Oil companies in Nigeria have continued to flare gas because it is a lot cheaper than embarking on purchase of equipment needed for installation of the re-injection of gas. It appears that the DPR is afraid of imposing higher penalty because of fear that the imposition of a higher penalty would reduce the pace of petroleum development in Nigeria. It is high time that Nigeria adopted the command and control approaches adopted by the United States and ignores the concern about the possibility of reducing the pace of the growth of the petroleum industry.[18] There is the need to take into consideration the plight of the many communities in the Niger Delta who have a right to clean environment and a right to life. The importance of petroleum to the Nigeria economy cannot be over emphasized but investment and economic prosperity should not be attained at the expense of the people of the Niger Delta.[19]The people of the Niger delta have been making sacrifice for over five decades now, the time has come for the Nigerian government to make some sacrifice to the people of the Niger Delta by fixing and adhering to a specific date for all oil companies to stop gas flaring and engaging in re-injection schemes.

Enforcing environmental laws and regulations is an important ingredient in protecting the environment and reducing environmental crimes. The criminalization of certain categories of environmental infractions is to ensure strict compliance and responsibility to environmental protection. But there is so much sluggishness on the part of Government and the enforcement authorities for sanctions for environmental pollution to be enforced and implemented in Nigeria. In Nigeria, however, there exist a plethora of laws and regulations specifying criminal penalties for a broad range and increased number of acts harmful to the environment. How effective have these laws been? Currently, a myriad of factors acts as impediments to the effective implementation and enforcement of environmental legislations aimed at regulating and curbing environmental infractions.

3. Challenges and Problems of Enforcing Environmental Infractions

Inept Regulatory and Enforcement Agencies

In Nigeria regulatory agencies are given the primary responsibility of responding to environmental illegalities and infractions. These agencies do not generally operate vigorously, and penalties imposed are mostly administrative and not severe. They use coercive powers, conciliatory and persuasive strategies to ensure compliance with regulatory laws an unorthodox method of doing things. They also lack specialist knowledge of organised environmental investigators and their methods of crime detestations and preservation of the crime scenes. Nigerian enforcement agencies are ill-equipped,[20] inexperienced and untrained in the modern techniques to be able to make useful impact on the avoidance of environmental infractions.

Judicial Limitations

When environmental crimes are prosecuted, judicial inexperience in dealing with such issues poses a challenge to the enforcement of the regulatory environmental laws. Some of the consequences of environmental infraction which is the gravamen of the accused person's culpability are technical in nature and difficult to grasp. There is the challenge of undue delay in the prosecution of cases involving environmental infractions. No wonder most victims of these crimes prefer to be compensated than engage in protracted and cumbersome legal battles whose technicalities are beyond their comprehension. The role of the judiciary is not only to interpret laws but to do justice timeously, because it is said that justice delayed is justice denied. Many environmental matters flood the court and they delayed while victims of this pollution suffer the detriments. Secondly the jurisdiction to handle environmental matters is conferred on the Federal Courts. The Federal High Court is not found in all states. This restricts accessibility to justice and enforcement of laws. Thirdly, the locus standi principles of law that requires a plaintiff to prove direct and special damages from the acts of the defendants have left environmental pollution issues unattended since some victims of this pollution are poor and can't enforce their rights, well to do citizens who want to help out is restrained by this principle of law. Fourthly, there is unavailability of accessible mechanism to determine the amount of loss suffered as a result of the pollution and tendered in evidence about granting of compensation.

[18] Ibid

[19] The Federal Government is reported to owe the NDDC about N200 billion – News Watch August 13, 2007, 11.

Quest for Wealth

This has been identified as a major cause of crude oil theft. In Nigeria, where citizen's worship and celebrate money, everybody wants to make it at all cost. Thus, to make it by hook or crook syndrome has become a driving force to Nigerians who indulge in the heinous act of stealing crude. Speaking at the 13th Nigeria oil and gas conference, Managing Director of Exxon Mobil, Mark Ward pointed out that widespread poverty amongst host communities has remained a major factor to the increasing level of crude oil theft because the host communities feel left out.[21]Corruption has bedeviled the nation since independence and has also contributed immensely to crude oil theft. This is because the lucrative illicit trade has been going on for years under the watchful eyes of past Government administration and nothing was done to put an end to the illegal business. The security agencies that are meant to protect and prevent criminals from carrying out their notorious activity often aid the thieves that fail to compromise with the security agents are arrested but released by their highly placed sponsor without condition.[22] Furthermore; Nigeria's weak legal framework has also encouraged crude oil theft. This is because the law is so weak that it gives oil thieves leverage and escape route when arrested due to legal technicalities and procedural flaws. For instance, in the history of crude oil theft and subsequent arrested and arraignment in court, no oil thieve has been successfully found guilty and sentenced. Instead, the crude oil thieves are arrested charged to court and are freed by the judiciary.[23] The widespread unemployment in the country has also contributed in no small way to crude oil theft. It is worthy to note that some of the oil thieves are former employees of oil companies that have been laid off for various reasons why others are the unemployed artisans and graduates that could not find job, but only finds a solution by becoming agent and "boy" to the powerful oil thieves. The effect of incessant crude oil theft in Nigeria has dented the image of the country in the foreign domain. The lucrative illicit trade has further placed the country high among corrupt countries in the World. It is sad to note that crude oil theft has drastically affected the daily crude production from about 2.7mbpd to 2.4mbpd. For instance, Shell Petroleum Development Company alone is losing about 60,000bpd in the Nembe Creek Trunk line that runs from Nembe in Bayelsa through Niger Delta region to Bonny Island in Rivers State[24]. Also, crude oil theft has negatively affected Nigeria's internal revenue and foreign reserve, that is, excess crude account (ECA). Recently, the country recorded revenue shortfall due to the constant attack on the pipelines which is regarded as the economic arteries and livewires of the nation's economy.

According to the Minister of petroleum, Allison Madueke, about $12bn was lost to oil thieves and $5bn was spent in the last one year on pipeline repairs caused by oil thieve adding that such huge amount would have been used to address the issues of infrastructural development challenges affecting the growth of the economy. Thus, the menace had degenerated into a national crisis that could have adverse effects on effective and full implementation of the budget. According to environmental experts, crude oil theft has caused oil spillage especially the Niger Delta region. Sadly, the spillage is ravaging our environment and has become one of the greatest threats to the country's ecosystem. In the Niger Delta region where crude oil theft is prevalent, oil spillage has reduced the evergreen mangrove forest to mere grasses while fish and other aquatic animals in the water are at the verge of extinction.[25] According to Shell Petroleum Development Company (SPDC), more than 75% of all oil spill incidents over 70% of oil spilled from SPDC facilities in the Niger Delta between 2006 and 2010 were caused by crude theft and illegal refining which has resulted in consistent pollution of farm lands and rivers. Statistics show that crude oil spills caused by oil thieves in the country is alarming while the impact on the environment is disheartening adding that pollution from oil spill is ravaging the environment.[26] Crude oil theft leads to declaration of force majeure which prevents the E & P companies from meeting their contractual agreement. For instance, Shell's Nigeria Joint Venture (SPDC JV), declared force majeure on Bonny and Forcados terminals. This is because of the production deferment caused by a burning vessel involved in crude oil theft from 28-inch Bomu-Bonny Trunk line. Base on this development, over 150,000 barrels of oil per day were deferred.[27] Also, Exxon Mobil declared force majeure in the wake

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[21] http://en.wikipedia.org/wiki/environmental_issues_in_Nigeria accessed 5/28/2016

[22]http://hdr.undp.org/en/reports/nationalreports/africa/nigeria/name,3368,en.html). UNDP, 2006. P 76. Retrieved 19 March 2016

[23]Bronwen M, *The price of Oil* (http://wwwohrw.org/reports/1999/nigeria/) Human Rights Watch. 1999. Retrieved March 9, 2020.

[24]Bogumil T, Oil-induced Displacement and Resettlement: Social problem and Human Rights Issues, http://wwwoconflictrecovery.org/bin/Bogumil_Terminski-Oil Induced_Displacement_and_Resettlement_Social_Problem_and_Right_Issues.pdf. 'n.d.'

[25]Shell and the N15bn Oil Spill Judgment Debt' (http://www.independentngonline.com/DailyIndependent (Lagos). 2010-07-19. Retrieved 27 March 2017.

[26] MollesJr, M.C.: *Ecology Concepts and Applications* 3rd Edition, (McGraw-Hill Companies Inc., 2005.) 93-94.

of the leakage and fire outbreak at Trans-Niger pipeline which lead to deferment of revenue and other benefits. Thus, the war against crude oil theft is no longer a war against the poor people of Niger Delta but a war against the "big fishes" and powerful Nigerians with political connections which requires multidimensional approach. However, for Nigeria to actualize its development objectives and its vision among OPEC countries, crude oil theft should be tackled head-on by increasing public enlightenment on the consequences of the illicit trade.[28] According to the Executive Managing Director, SPDC, Mutiu Sunmonu, Government should seek means of making access to oil pipelines extremely difficult to oil thieves adding that SPDC, has recently resorted to burying its pipelines at 13.5ft into the ground as a means of making it hard for vandals to access. Persistent crude oil theft, no doubt, is a slap on the Federal Government and the security agencies. The menace is totally unacceptable to Nigerians and it therefore behold on the Government to seriously trace the value chain of the thieves and tackle the nefarious activity that cost Government huge amount of money and environmental pollution. After all, some countries parading themselves as oil producing countries today cannot boast of 80,000bpd while Nigeria is filtering away over 150,000bpd

Conflicts of Statutory Regulations

Section 20 of the 1999 constitution provides that state shell protects and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria. Regrettably, this provision is under the non-justiciable section by Section 6(6) (c) of the constitution. However, the African charter on Human and People's Right which is now part of Nigerian law by virtue of the African Charter (Ratification and Enforcement) Act[29] provided for an Environmental Right in Article 24 of the Charter that assures a general satisfactory environment for all people for their development. And again, the environmental right provided by the charter is weakened by the provision of Section 6 (6) (c) of same constitution. Any other law, such as the Africa Charter, which makes environmental protection by the state a justiciable right, would be contrary to the constitution and section 1(3) of the constitution will be invoked against such law.[30]In the case of *Abacha vs. Fawehimi*[31]Supreme Court held that the constitution is superior to any international convention of law including African charter and local statutes. This non-justiciability provision is a clog in the wheels of enforcement of environmental right and discouraging environmental pollution. Section 7 of the NESREA Act mandates the Agency to enforce compliance with the provisions of International agreements; protocols, conventions and treaties on the environment… and such other agreement as may from time to time come into force. Nigeria has ratified several international agreements on the protecting the environment. S. 12(1) of the constitution of the Federal Republic of Nigeria provides that "No treaty between the federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly. With this impediment international treaties will barely have the force of law in Nigeria.

Access to Court

Jurisdiction is the bed-rock of any trial, criminal or civil. A judgment given by a court without the requisite jurisdiction is a nullity. Jurisdiction is the authority which a court has to decide matters litigate before it, or to take cognizance o matters presented in a formal way for its decision.[32] According to Bairaman FJ, a court is competent when:

A. It is properly constituted as regard the number and qualification of the members of the bench and no member is disqualified for one reason or the other.
B. The subject matter of the case is within its jurisdiction and there is no feature in the case which prevent the court from exercising its jurisdiction; and
C. The case before the court in initiated by due process of the law and upon fulfillment of any condition precedent to the exercise of jurisdiction.[33]

Any defect in competence is fatal, for the proceedings are a nullity however well conducted and decided, the defect is extrinsic to the adjudication. In *Shell Petroleum Development Company of Nigeria Limited vs. Isaiah,* the Supreme Court of Nigeria set aside the judgment of the High Court of River State and the Court

[28] Nwilo, P C., and Olusegun T. B: *impacts and Management of Oil Spill Pollution along the Nigerian Coastal Areas* (http://www.fig.net/pub/figpub/pub36/chapters/chapter_8.pdf) International Federation of Surveyors, 2007.Retrieved March 20, 2016.
[29] Vol. CAP A9 LFN, 2004
[30] Omoka, C. A., 'Legal framework for environmental right in Nigeria'. 72
[31] (2000) 6 NWLR (pt. 660), 228
[32] *Shell Petroleum Development Co. v Isaiah* (2001) 11 NWLR, (pt. 723) l68 at 170-180
[33] *Madukolu v Nkemdilim* (1962) ALL NLR 589

of Appeal on the ground that the High Court of Rivers State does not have the jurisdiction to hear and determine the case.
Section 251(1) of the Constitution of the Federal Republic of Nigeria, 1999 provides that the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters connected with or pertaining to mines, and mineral, including oilfield, oil mining, geological survey and natural gas. Apart from the constitution, the Federal High Court (amendment) Act No. 60 of 1991 also confers jurisdiction on the Federal High Court in this respect.

In times past, there have been conflicting decision by both the high court and the court of appeal alike on the exclusiveness of the Federal High Court to entertain matters related to or arising from mines and mineral (including oilfields, mining, geological survey and natural gas)[34] until same was resolved by the supreme court in 2001 in the celebrated case of *Isaiah vs. Shell Petroleum Development Company of Nigeria Limited*[35]. Wherein the court as per the lead judgment of Mohammed JSC held as follows:

> On what qualifies as "pertaining to mining operations" to vest Exclusive jurisdiction on federal high court installation of Pipeline, producing, treating and transmitting of crude oil to the Storage tanks are part of petroleum mining operations. Therefore, if an incident happens during the transmission of petroleum to The storage tanks it can be explained as having arisen from to The connected with or pertaining to mines, mineral, including oil fields and oil mining. In case the subject matter of claim which is oil spillage, falls within the exclusive jurisdiction of the Federal High Court as provided under section 230 (1)(9) of the Constitution (suspension and modification) decree No. 107 of 1993.

Before the promulgation of decree No. 60 of 1991 and 107 of 1993[36] which vested exclusive jurisdiction in oil and related matters on the Federal High Court, The State High Court by virtue of section 236 of the constitution of the Federal Republic 1979 had jurisdiction to entertain environmental claims, thus, every legislations must have a purpose back with sanction and enforceable against any environmental infraction.[37] The pertinent question is why divest the State High Court of jurisdiction in matters relating to or connected with the petroleum industry? It must be realized that those directly adversely affected by the impact of petroleum operations are the poor indigent rural dwellers. The State High Court is closer to the people adversely affected by petroleum operations than the Federal High Court which are located far away from the people. The Federal High Court in Delta State is situated in Asaba; a long distance away from the oil producing areas of delta state. The Federal High Court situate in Benin city which is equally a long distance from the creeks in Delta State where the oil companies drill oil, is by comparison, closer to the oil producing area of delta state. Further, at almost the same time exclusive jurisdiction was conferred on the Federal High Court in environmental claims the filling fee in the Federal High Court was jerked up.

A claim of N50, 000,000(fifty million naira) for distance, attracts a filling fee of N50, 000.009fiftythousand naira).[38] It is submitted that conferring exclusive jurisdiction on the Federal High Court and at the same time increasing filling fees is a subtle way of denying the poor indigent claimants of environmental claims access to justice. It is difficult for the people for the oil bearing communities who can hardly feed well to embark on litigation to redress any injustice they may suffer in the course of petroleum operations. Little wonder, therefore, that the people have to resort to self-help to vent their grievances. To disprove insinuations that the federal government of Nigeria is not deliberately denying the people of the Niger Delta access to justice there is the need to bring justice nearer to the door steps of the people at an affordable cost. To this end, it is suggested that government should grant special dispensation in filling fees in environmental claims.[39] It is also suggested that the 1999 constitution be amended to grant jurisdiction in mines and mineral including oil fields, mining geological surveys and natural gas to state high courts.

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[34] (2001) 11 NWLR, (pt. 723) pl68 at 170-180

[35] In shell v Isaiah (1997) 6 NWLR (pt. 508) p236 the court of appeal, port Harcourt division, held a claim for compensation arising from oil spillage not to be within the exclusive jurisdiction of the federal high court, however the same division of court of appeal overruled the high court assuming jurisdiction to hear and determine a claim arising out of oil pollution in *Barry v Eric* (1998) 8 NWLR (pt 562) p 404 and *Shell v Maxom* (2001) p NWLR (pt. 719) 168

[36] Ibid

[37] Nwasu, L.E. 'Compensation Environmental Damage in Oil and Gas Operations' being the next of a paper presented at the annual general conference of the Nigerian Barr Association, held at the port Harcourt, rivers state, 28th February 2006, 30.

[38] Akpomudje, A., 'Environmental Claims Resulting from Oil Exploration and Exploitation in Nigeria' being a paper presented at the Nigerian bar association annual conference held at Enugu on 27th August, 2003

[39] Ibid

Statutory Loopholes

Environmental regulatory laws provide loopholes for offenders and the penalties prescribed by most of the regulations are inadequate. The effect of this is that it militates against the application of the laws. Violators choose to contravene the laws and the sanctions enshrined in those laws are not stringent enough, as a result, the misuse of environmental resources persists. Again, the example of this abounds in the Oil in Navigable Waters Act as shown below sections 1 and 3 provide the following defences:

A. That oil or mixture of oil was discharged for purpose of securing the safety of any vessel, or of preventing damage to any vessel or cargo or of saving life.[40]
B. That the oil or mixture escaped in consequence of damage to vessel, and that as soon as practicable after the damage occurred all reasonable steps were taken to prevent or (if it could not be prevented) for stopping or reducing, the escape of oil or mixture.[41]
C. That the oil or mixture escaped by reason of leakage, that the leakage was not due to any want of reasonable care, and that as soon as practicable after the escape was discovered all reasonable steps were taken for stopping or reducing it.[42]
D. That the escape of oil or mixture from a place on land or from apparatus used for transferring oil from or to a vessel was not due to any want of reasonable care and that as soon as practicable after the escape was discovered all reasonable steps were taken for stopping or reducing it.[43]
E. Regarding discharge or escape from a place on land that:
F. The discharge was caused by the act of a person who was in that place without the permission (express or implied) of occupier;[44]
G. The oil was contained in an effluent produced by operation for the refining of oil;
H. That it was not reasonably practicable to dispose of the effluent the otherwise than by discharging it into waters of Nigeria.

All reasonably practicable steps had been taken for eliminating oil from the effluent.[45] A discharge of oil will not constitute an offence where it is in exercise of any power conferred by statute, [46]which relate to the removal of wrecks by the receiver of wreck) unless it is shown that the person or authority failed to take such steps (if any) as were reasonable in the circumstances for preventing, stopping or reducing the discharge.[47] The above show that the above rules are not stringent enough to deter offenders. Therefore, the government should endeavour to put more or better safeguard in place for the rules not to be flouted.

Administrative and Judicial Bottlenecks

The attitude of Nigeria judges to environmental litigation also operates as a challenge to enforcement of environmental laws in Nigeria. For example, in *Shell Petroleum Development Co. Ltd vs. Tiebo,*[48] the plaintiff claimed N 64m, general damages from the defendant for oil spillage into river Nun for which plaintiffs get their drinking water and also fish and for the desecration of their shrine land among other allegations. Even though the community was able to prove the damages alleged by calling experienced and knowledgeable expert witnesses, the court awarded a paltry sum of N6m to the community. In *Mon and Anor vs. Shell B.P Development Co*. the judge admitted that the plaintiffs' fishpond had been damaged by the activities of the defendants but said:[49]here is no evidence what it cost them to dig the pond. They must have spent some money or at least some considerable effort on getting this work done; but if they cannot be bothered to tell me how much this work is worth, then they must be satisfied with my attempt to assess it fairly…. I will therefore assess the damage at a figure which consider fair and if the plaintiffs consider it inadequate, they have nobody to blame but themselves. He awarded £200.00 damages; an amount grossly inadequate in the light of proof of damage made by plaintiffs.

[40]S. 4(1)
[41]S. 4(2)(a)
[42]S. 4(2)(b)
[43]S. 4(3)
[44]S. 4(4)
[45]S. 4(5)(a), (b) and (c)
[46] See sections 368 and 382 of the Merchant Shipping Act
[47]S. 4(6), it must be noted that these special defences are not cast in marble. Just as shown in the last and sixth defence, they are all rebuttable that is to say, for instance with regard to the first special defence if the Court is satisfied that the discharge was not for any of the reasons or purpose stated therein the defence will collapse and that accused will be convicted.
[48](1995) 5 NWLR (Pt 398), 561
[49](1970)1 R.S.L.R, 711

Non-Stringent/Inadequate Penalties

It is apparent that the fines stipulated by our laws do not mean anything to environmental offenders especially to the Multinational companies like an oil company or one of these big cosmetics companies whose profit in any year may run into trillions of dollars. These fines are ridiculously too low to serve as an effective deterrent or punishment for polluters and would-be polluters. More so, it has been pointed out that the imprecise nature of punishment prescribed under some of the laws indicates that it would be impractical, if not impossible to secure the conviction of any person under the laws.[50] Moreover, once the violator has paid the relevant fine, this exculpates the offender from further liability such as cleaning up in case of an oil spill. The responsibility for the clean-up is left in the hands of the government and the local victims' communities. These set of people are bereft of the necessary expertise and equipment for such cleaning up operations. This situation contrasts sharply with what obtains in the United States of America where violators are not only made to pay heavy fines but to bear the cost of cleaning up of polluted areas. For instance, the clean-up of the Santa Barbara Oil blow-out of 1969 cost Union Oil S10 Million. In the 1989 Exxon Valdex Spill where S5 billion was awarded punitive damage against the defendants.[51]

4. Conclusion and Recommendations

It is true that globalization is the major cause of our suffering, it is also correct to say that we suffer more than the gains of globalization. We have varieties of laws protecting our environment, these laws are sufficient to sustain us in a friendly environment. Therefore, we must continue to strive by abiding and promoting these environmental laws, implementing equally enforcing those laws. We owe a duty to ourselves, our children both born and unborn to keep the environment safe, by doing everything our capacity to minimize pollution, and saving the flora and fauna in our environmental. Above all we owe God our maker the duty to sustain our lives in a pollution free environment in appreciation of what he has given us. The following measures may be of help:

1. Environmental regulatory laws in Nigeria should be reviewed to provide for stiffer sanctions that would effectively deter intending environmental polluters.
2. There should be a collection of environmental data on activities threatening the environment and also data on environmental pollution within the country so that the government will know when its laws are efficient and when they are not enough and to also enable government analyze the extent of harm done to the environment.
3. Since environmental pollution is a very serious issue of concern and affects both young and old, courses should be introduced in primary, secondary school and the various universities in Nigeria as a compulsory subject with the aim of enlightening pupils about environment, its pollution and effects.
4. Our government should put in more effort in enforcing these numerous environmental laws by making funds available for enforcement, closing its eyes against corruption, managing polluted environments with the various taxes paid, embarking on campaign and environmental awareness programs, providing more securities at our country borders.
5. Government should direct it policies towards build functioning waste recycling companies to reduce the release of toxic and hazard waste in our environment.
6. The government should set up a fund, funded by it and industries whose activities endanger the environment, with the sole purpose of compensating victims of environmental pollution.
7. The court should wake up from their slumber and tackle environmental cases with undue delay or undue regards to technicalities.
8. The government should set up environmental court to enable easy access and quick dispensation of environmental matters on its merits.
9. Courts should be ready to award deserving compensation to victims of environmental pollution.

[50] Ehighalua, I. D. *Environmental Protection Law* (Warri: New Pages Law Publishing Co., 2007, 41.

[51] Alfred, O.O 'Criminal Liability for Oil Pollution Damage in Nigeria' *UNIBEN Law Journal,* (2009) 179