

**EXAMINATION OF THE FACTORS MILITATING AGAINST ENFORCEMENT OF ENVIRONMENTAL LAWS IN NIGERIA\***

**Abstract**

*The evolution of environmental laws in Nigeria began as a result of the need to combat the increasing menace and incidents of environmental issues. These challenges range from corrupt practices, lack of expertise and qualified officers, unwillingness of environmental protection officers to prosecute environmental crimes perpetrators, lack of modern knowledge and idea by judges and lawyers, government interference, statutory loopholes and judicial limitations, infrastructural deficiencies, administrative and judicial bottlenecks, non-stringent/inadequate penalties, lack of awareness of environmental rights, inept regulatory and enforcement agencies. Today the Nigerian Environment remains more threatened than ever before from the effects of environmental problems. The article critically examines and evaluates the factors militating against enforcement of environmental laws. Therefore, the emphasis over environmental degradation in Nigeria is gradually shifting from the absence of adequate regulations with criminal sanctions on the environmental infractions of these laws to the enforcement of the plethora of laws. The challenges in enforcing these laws are enormous as the agencies vested with the power to enforce the laws witness some challenges such as inadequacy of trained staff and equipment and even in some cases apathy to go after offenders. The aim of this article is therefore to examine these challenges/systemic constraints to the enforcement of environmental regulations in Nigeria in order to address how the implementation and enforcement of these laws are carried out, the constraints and the challenges of enforcing the legislative sanctions.*

**Keywords:** Environmental Laws, Enforcement, Factors Militating Against, Nigeria

**1. Introduction**

The evolution of environmental laws in Nigeria began as a result of the need to combat the increasing menace and incidents of environmental pollution/crimes in Nigeria and to criminalise the acts of environmental degradation which have been on the rise since the 1970s. Some jurists have succinctly captured the first most prominent idea behind the evolution of environment laws in Nigeria since 1988<sup>1</sup>. In Nigeria criminal sanction of environmental infractions dates back to 1916 when the Criminal Code Act<sup>2</sup> was enacted which criminalised environmental activities that pollute public health. Due to the rapid increase in industrialisation coupled with the oil boom saga in the 70s, environmental pollution rose to an alarming proportion. Therefore, it became necessary to enact laws that will regulate the activities that pollute the environment. The enacted laws create environmental offences and impose both civil and criminal sanctions offences on polluter/offenders. Most of these regulations contain criminal offences ranging from an option of fine of N100 to N2, 000,000 and /or imprisonment ranging from 6 months imprisonment to life imprisonment<sup>3</sup>. In spite of this plethora of laws covering almost every part of the environment securing compliance both for punishment and fines has become a major problem/challenge. This is very sad because environmental protection without effective compliance will have no significant impact in saving the environment. Also, the mere existence of laws seeking to protect the environment does not automatically translate into environmental protection. For the law to actually protect the environment, it must be one that enjoys enforcement in the courts through the instrument of litigation. If there is no such mechanism in place then the law not minding how comprehensive and well couched is nothing but a paper tiger.<sup>4</sup> Enforcement of environmental laws is the means by which environmental laws are brought to live; not only to bark but also to bite offenders since the laws had been invested with teeth. In advanced societies where environment enjoys more protection, this means has been attended not merely by enacting environmental laws but by enforcement of such laws through court litigation.

**2. Challenges and Problems of Enforcement of Environmental Laws in Nigeria**

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

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<sup>1</sup>Atsegbua Lawrence, Akpotaire Vincent and Dimowo Folarin. 2nd ed, *Environmental Law in Nigeria: Theory and Practice*. Benin City: Ambik Press, 2010.

<sup>2</sup>Section 245-248 of the Criminal Code Act, Cap C38, Laws of the Federation of Nigeria, 2004.

<sup>3</sup>Environmental Impact Assessment (EIA) Act 1992cap. E12 LFN, 2004, see also s. 6 (2) NOSDRA, s. 6 (3) NOSDRA.

<sup>4</sup> A.K Usman, *Environmental protection Law and practice* (Ibadan: Abba press Ltd, 2011), 220

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. To proffer solution to this present situation, it is safe to examine some of the challenges and problems of enforcing environmental infractions. The following are some of the factors.

### **Corrupt Practices**

Corruption has been the bane of the Nigerian society<sup>5</sup>. In Nigeria, corruption is the norm while the absence of corruption is the exception. Corruption in Nigeria is more of a social problem than a legal one and it will be very doubtful if any a reflection of the social values of the society<sup>6</sup> Nigeria is currently competing with few other nations for the position of the most corrupt nation in the world, following the Transparency International annual ranking released in 2007.<sup>7</sup> Corruption has eaten deep into every spheres of her national life and it shows in the prevalent state of pollution activities going unchecked and the non-enforcement of criminal sanctions as a result of the high level of corruption among politicians, regulatory agencies, enforcement authorities and the general citizenry in Nigeria. Therefore, Corruption affects the implementation of environmental laws and regulations in Nigeria. The level of corruption ranges from official to non-official. Official corruption involves bribing the agencies' officials by Industries in violation of the regulations to enable them keep a close eye to their polluting activities. On an official level, forgery of permits and licenses at known forgery centres or even from unauthorized staff of the Agency also affect the efficiency of the permit systems as the officials may not readily be able to catch up with violators who use fake permits.

### **Lack of Expertise and Qualified Officers**

The officers in charge of the management of the agencies to take care of the Nigerian environment are not experts and if qualified might not have enough knowledge about the environment.<sup>8</sup> This is a major problem because when research and technological equipment are left in the hands of unqualified officers' results will never be achieved.

### **Unwillingness of Environmental Protection Officers to Prosecute Environmental Crimes Perpetrators**

Nigeria has no statistical data of prosecution and conviction of environmental crime cases, unlike US when during the 1992 fiscal year, the Ministry of Justice completed the prosecution of 64 environmental cases resulting in the conviction of 99 Defendants out of whom 44 received a jail sentences.<sup>9</sup> Nigerian should take a cue from the management and enforcement activities of the American agencies and Government policy.

### **Lack of Modern Knowledge and Idea by Judges and Lawyers**

One problem with enforcing environmental regulations is with the development of environmental jurisprudence. The question is how lawyers and judges will become aware of the modern research technology in the area of water quality protection. Below are the words of Judge Bazelon when he said and admitted of his jurisdiction thus:

Scientific and Technological development in this country has out striped the common law and thrust our courts into a new role scientific question touching lives and health and are increasingly dealt with through Government...when I came on the bench 31 years ago, a judge revising the regulation on Labour Law or Securities Law could be expected to have some understanding in such subject<sup>10</sup>

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<sup>5</sup>A. O. Ewere, *NEITI and Good Governance in the Nigerian Oil Industry*, (Benin: Ambik Press, 2011), 53.

<sup>6</sup>N. E. Inegbedion, 'Corruption and Anti-Corruption Legislations in Nigeria: A Critique', *University of Benin Law Journal* 2004, 7(1) UBLJ.139-164 at 144.

<sup>7</sup>Transparency International's Corruption Perceptions 'Corruption is threatening economic growth for all' [www.Transparency.Org/cpi2014/results](http://www.Transparency.Org/cpi2014/results) accessed 3 July, 2015.

<sup>8</sup> D. Folarin, 'Enforcement of Environmental Law in Nigeria' *Nigerian Contemporary Law Journal* UNIBEN Vol. 2 No. 1 May 2005 p115

<sup>9</sup> D. Folarin, 'Enforcement of Environmental Law in Nigeria' P 122

<sup>10</sup> Ibid p 124

These fields lie within the general experience of most lawyers. Today a court reviewing regulatory actions in the arcane of science and technology can have little real knowledge of the substantive question.<sup>11</sup> With this statement coming from a foreign judge, what will happen to a judge in a developing country like Nigeria?

### **Lack of Funds**

Funding of projects is a major problem for enforcement of laws in Nigeria. Enforcement of laws is capital intensive, for example, procuring facilities such as vehicles, helicopters, speed boats which are required to address environmental infraction and apprehension of offenders as some of these crimes are committed at night and occur mostly in the hinterlands. Hence without adequate funding and equipment for enforcement one cannot go far in the enforcement programme. Therefore, looking at the responsibilities conferred on the NESREA under the Act and its regulations, the Agency requires a lot of funds to effectively carry out its responsibilities. Where these agencies and environmentalist are incapacitated by finances, it affects the implementation of laws. The tests to be carried out, the necessary awareness drive as well as the routine checks and searches on industries require aggressive funding. These are likely to create some lapses in the effective implementation of the relevant laws and the discharge of and utilization of the Agency's enforcement power.

### **Government Interference**

The involvement of government in pollution activities in Nigeria especially in the oil and gas sector has contributed immensely to the challenges encountered by enforcement officers especially where government concerns and interests are involved. It is worthy to note the neglect or unwillingness of the defunct FEPA to enforce the existing environmental regulations in Nigeria where government concern was involved<sup>12</sup>. Despite the several reported cases of oil spills there has been no known case of enforcement of statutes against NNPC, which is in joint venture with major oil companies in Nigeria by the defunct FEPA. It will also be difficult for NNPC which holds at least 60% shares in the joint Venture with other oil companies to enforce the laws against itself when it breaches any of the provisions of the law, or allow any agency to enforce any criminal sanctions or regulations against it.<sup>13</sup> There has been no single known case of enforcement of the statute against NNPC to enforce sanction of the law against itself when it breaches any of the provisions of the law or allow any agency to so do<sup>14</sup> even now.

### **Loopholes in Relevant Statutes**

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 examples of this abound in the Oil in Navigable Waters Act as shown below sections 1 and 3 provide the following defences:

1. 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.<sup>15</sup>
2. 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,<sup>16</sup>
3. That the oil or mixture escaped by reason of leakage, that the leakage was not due to any want of reasonable care, and that as soon as practicable after the escape was discovered all reasonable steps were taken for stopping or reducing it.<sup>17</sup>
4. 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.<sup>18</sup>
5. With regard to discharge or escape from a place on land that:
  - a. The discharge was caused by the act of a person who was in that place without the permission (express or implied) of occupier;<sup>19</sup>

<sup>11</sup>O. Yomi, 'Some Public Law Considerations in Environmental Protection' ed. Omotola p.148

<sup>12</sup> Human Rights Watch, *The Price of Oil*, 111-114.

<sup>13</sup>L. Atsegbua, et al, *Environmental Law in Nigeria: Theory and Practice*, 226-227

<sup>14</sup> A. Olowole, 'A Legal Perspective on water Resource and Environmental Developmental policy in Nigeria' UI 1989 p 6

<sup>15</sup>S. 4(1)

<sup>16</sup>S. 4(2)(a)

<sup>17</sup>S. 4(2)(b)

<sup>18</sup>S. 4(3)

<sup>19</sup>S. 4(4)

- b. The oil was contained in an effluent produced by operation for the refining of oil;
- c. That it was not reasonably practicable to dispose of the effluent the otherwise than by discharging it into waters of Nigeria;
- d. All reasonable practicable steps had been taken for eliminating oil from the effluent.<sup>20</sup>
6. A discharge will not constitute an offence where it is in exercise of any power conferred by statute (e.g. sections 368 & 382 of the Merchant shipping Act-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.<sup>21</sup> 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.

### **Infrastructural Deficiencies**

The different Agencies for the enforcement of environmental laws in addition to a large work force require standard equipment and infrastructure for effective discharge of its duties. Environmental know-how or information on environmental issues is vital to effectively achieve the goals of environmental protection and enforcement of environmental infraction's sanctions. In Nigeria the access to useful environmental information technology for detecting environmental pollution activities and the adequate infrastructures does not exist for the enforcement authorities to effectively carry out their duties. The federal government and the multinational oil companies that could provide useful environmental information, up to date technology and infrastructures to make the job of enforcing sanctions on environmental infractions easier in Nigeria are not willing or eager to provide same.<sup>22</sup> For Law enforcement Agencies to function effectively they must establish laboratories for conducting prescribed tests and examinations efficiently.

### **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 v. Tiebo*,<sup>23</sup> 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. Despite the fact that 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 & Anor v. Shell B.P Development Co.* the judge admitted that the plaintiffs' fish pond had been damaged by the activities of the defendants but said:<sup>24</sup>

There 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.

### **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.<sup>25</sup> 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

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<sup>20</sup>S. 4(5)(a), (b) and (c)

<sup>21</sup>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.

<sup>22</sup>L. Atsegbua, et al. *Environmental Law in Nigeria*: 250.

<sup>23</sup>(1995) 5 NWLR (Pt 398), 561.

<sup>24</sup>(1970)1 R.S.L.R, 711

<sup>25</sup>I. D. Ehighalua, *Environmental Protection Law* (Warri: New Pages Law Publishing Co., 2007), 41.

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 \$10 Million. In the 1989 Exxon Valdez Spill where \$5 billion was awarded punitive damage against the defendants.<sup>26</sup>

### **Lack of Awareness of Environmental Rights**

To enjoy a clean and healthy Nigerian environment, there is an urgent need for dissemination of information, education and enlightenment of environmental issues to the public. Although, ignorance of the law is not an excuse, implementation will be more effectively achieved if the people are sensitized about the existing laws as at today. Majority of Nigerians are not educated<sup>27</sup>, which in turn affects their understanding and perception of projects. The absence of enlightenment is the cause of the lackadaisical attitude of most Nigerians towards the environment and environmental concerns. The government should do more to educate and sensitize the citizenry on the deleterious effect of environmental damage. The general citizenry of Nigeria is ignorant of the extant laws on environment and the harmful effects of negative activities on the Nigerian environment<sup>28</sup>.

### **Poverty**

Poverty which is the bane of environmental protection in developing countries poses challenge. The state usually bears the cost of prosecuting environmental infractions. Due to competing interest for scant financial resources<sup>29</sup>, the capacity for prosecuting environmental crimes is highly eroded in Nigeria.<sup>30</sup> The World Commission in Environment and Development states in 'Our Common Future' otherwise known as the Brundtland Report, 'poverty pollutes the environment, creating environmental stress in a different way. In order to survive, those who are poor and hungry will not mind destroying their immediate environment to survive.'<sup>31</sup>

### **Globalisation**

Globalisation and the general trend towards liberation have encouraged the growth of transnational corporations and have rendered the enforcement of regulatory laws more problematic.<sup>32</sup> Environmental crimes are one of the resultant effects of globalisation. The same political and economic changes and technological advancement that support easy international travel, communication and business transactions fuels and facilitates criminals' ability to commit environmental crime including those that transcend borders. These corporations are the main vehicles for large scale environmental degradation particularly where there are mainly unaccountable for their actions and exhibit total disregard for enforcement regimes<sup>33</sup>.

### **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, inexperienced and untrained in the modern techniques to be able to make useful impact on the avoidance of environmental infractions<sup>34</sup>.

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<sup>26</sup> O.O Alfred, 'Criminal Liability for Oil pollution damage in Nigeria' UNIBEN Law Journal, p179

<sup>27</sup>M. C Ekenyengerenzi 'Majority of Nigerians Are Intellectually Retarded' <http://www.thenigerianvoice.com/news/179756/1/majority-of-nigerians-are-intellectually-retarded.html> accessed 3 July, 2021

<sup>28</sup>This lack of awareness of the danger of toxic wastes for example made chief Nana to accept the toxic wastes deposited in his compound by dubious Italians in 1998.

<sup>29</sup>V. Aigbokhaevbo, 'Combating Environmental Crime in Nigeria: A Daunting Uncertainty.' P 227

<sup>30</sup>V. Aigbokhaevbo, 'Combating Environmental Crime in Nigeria: A Daunting Uncertainty.' *NIALS Journal of Environmental Law*. No.1 (2011)

<sup>31</sup>T. Edith, Akin Aina, Ademola T,Salau, 'The Challenges for Sustainable Development' Trans. National Environmental Study Action Team (NEST:1992) P.16-19

<sup>32</sup>Ibid.

<sup>34</sup>'An analysis of the legal and administrative challenges to combating deforestation and desertification in Nigeria'[http://www.academia.edu/3454853/AN\\_ANALYSIS\\_OF\\_THE\\_LEGAL\\_AND\\_ADMINISTRATIVE\\_CHALLENGES\\_TO\\_COMBATING\\_DEFORESTATION\\_AND\\_DESERTIFICATION\\_IN\\_NIGERIA](http://www.academia.edu/3454853/AN_ANALYSIS_OF_THE_LEGAL_AND_ADMINISTRATIVE_CHALLENGES_TO_COMBATING_DEFORESTATION_AND_DESERTIFICATION_IN_NIGERIA) accessed 3 July, 2021

### **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.<sup>35</sup> 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.

### **3. Efficacy of the Regulatory Framework in the Enforcement of Environmental Infraction in Nigeria**

The role of legislation in inducing responsible attitude and behaviours towards the environment cannot be overlooked. Legislation and regulatory initiatives serve as effective instruments for environmental protection, planning and the prevention and control of environmental crimes. These laudable plans and policies are generally achieved by various environmental law enforcement agencies. 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 Ogbodo<sup>36</sup> 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 environmental hazards related infractions engendering human health.

### **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.<sup>37</sup> 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.<sup>38</sup> 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,<sup>39</sup> 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 legislative lists, subject to Federal government Law made by the National Assembly.<sup>40</sup> 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 Assembly<sup>41</sup>. In line with Agenda 21 of the United Nations,<sup>42</sup> Nigeria in its policy on the Environment has identified establishment,

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<sup>35</sup> V. Aigbokhaevbo, 'Combating Environmental Crime in Nigeria

<sup>36</sup> S.G Ogbodo., 'Environmental protection in Nigeria: Two decades after the Koko incident,' *Annual Survey of International and Comparative Law*, 15 (1). (2009) 1-18,

<sup>37</sup> Over the past decades, Nigeria has had nine Constitutions viz the Clifford Constitution of 1914, 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,<sup>37</sup> the 1989 Constitution, and the extant 1999 Constitution as amended

<sup>38</sup> Federal Republic of Nigeria, Constitution of the Federal Republic of Nigeria, 1999, Lagos, Nigeria: Federal Government Press, 1999.

<sup>39</sup> O. Fagbohun,, 'Reappraising The Nigerian Constitution for Environmental Management' *Ambrose Alli University Law Journal*, 1(1). (2002) 24-47

<sup>41</sup> Ibid

<sup>42</sup> 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

strengthened legal, institutional and regulatory framework as part of its holistic strategy for implementation of sustainable development.

### **The Environmental Impact Assessment Act<sup>43</sup>**

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.<sup>44</sup> 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.<sup>45</sup> 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 comply with all measures stipulated by the agency to mitigate the effects.<sup>46</sup> 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.<sup>47</sup> 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.<sup>48</sup> The federal ministry of environment now performs this function that was hitherto performed by FEPA.

### **The Criminal Code**

Section 45 of the Criminal Code Act<sup>49</sup>; 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.

### **The Harmful Waste (Special Criminal Provisions) Act**

The Harmful Waste (Special) Criminal Provision Act<sup>50</sup> 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 1291) 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.

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Conference on Environment and Development (UNCED), 3-14 June 1992, Rio de Janeiro, Brazil, Bonn, Germany: United Nations 1993

<sup>43</sup> Cap E12, LFN, 2004

<sup>44</sup> Op. Cit. Section 2

<sup>45</sup> Okonkwo, R.T., the Law of Environmental Liability (Lagos: AEDE 2003) 2

<sup>46</sup> Cap E 12 L.F.N 2004 section 3

<sup>47</sup> Op. cit. sections, 7,8,9,22(5), 25, 39 and 57

<sup>48</sup>Oronto Douglas vs. 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.

<sup>49</sup>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.

<sup>50</sup> Cap H1, LFN 2004

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

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

The fact that Nigeria has a sufficient number of laws to protect its environment from environmental infractions is not in doubt. What seems to be in doubt is whether Nigeria has been able to effectively protect the environment through due enforcement of the existing laws and policies. The purpose of this work was to address the different enforcement challenges faced in Nigeria and also to examine the efficacy of mechanisms for the enforcement of environmental laws in Nigeria; such as fine, imprisonment, restitution, remediation, forfeiture. This work found out that different factors were responsible for the ineffective enforcement of environmental laws in Nigeria, including corrupt practices, funding, government interference, statutory loopholes, infrastructural deficiencies, and administrative and judicial bottlenecks, non-stringent/obsolete penalties, lack of awareness of environmental rights etc. It is true that the menace of environmental infraction in Nigeria requires the collective responsibility and effort of all. However, the effective enforcement of the environmental regulatory laws in Nigeria can be achieved to a large extent by effective and purpose driven enforcement of the regulatory agencies couple with their trained officers. From the recommendations given, effective and purpose driven enforcement is achievable in Nigeria. Government must ensure that regulators are well trained and fully equipped to fight this menace. Also there is a collective responsibility on all Nigerians to adopt vigilance and activism in ensuring that environmental crimes are reported and followed.

Having examined the various environmental laws and their constraints on the proper enforcement of environmental regulations in Nigeria, the following recommendations are made to enhance the enforcement of these laws so that the purpose for which they are enacted is fulfilled.

1. Awareness should be intensified, particularly, in the rural areas, on the need to protect our environment and respect the right of others to a clean environment. Making people aware of the problem is the first step, because greater public awareness can make a positive difference. Steps should be made towards raising literacy levels and increase awareness of the people on the importance of a safe environment. To this end, the activities of NGOs like the Nigeria Conservation Foundation (NCF) in spreading environmental awareness must be encouraged and supported.
2. Government should realize that corruption is the main impetus aiding the perpetration of these environmental crimes. Therefore, collusive and corrupt officials facilitating these activities should be sanctioned and penalized.
3. Nigerians should be trained to gain expertise in environmental science and technology, environmental safety and management in order to minimize reliance on foreign technical expertise and also to handle and checkmate environmental pollution. Such skill should avail environmental law enforcement officers. On the job training should be carried out regularly within environmental agencies.
4. Setting up poverty alleviation programs. Naturally the typical Nigerian wants to preserve for his future generation but there is the tendency for greed to make him abusively exploit his environment. In the light of this fact, the starting point for the government is to create an environment that allows man access to the basic necessities of life. Such as food, shelter and clothing at very little cost. Access to and proximity to good infrastructural facilities and basic amenities are extremely important. This is the only way that man can be encouraged to care for his environment.
5. Stringent penalties should be imposed upon offenders and they should be made to pay commensurate fines for their violations. Environmental regulatory laws in Nigeria should be reviewed to provide for stiffer sanctions that would effectively deter intending environmental polluters.
6. Appropriate Funding, over the years, Nigeria has been faced with deficiencies of availability of data, where available and poor quality of such data which could be ascribed to poor funding of government agencies in Nigeria in charge of environmental laws and management. In order to reverse this trend, the government of Nigeria should engage in proper funding of these agencies, to enable these agencies review their mandate and discharge their responsibilities appropriately