

## APPRAISAL OF LAWS RELATING TO ENVIRONMENTAL DEGRADATION IN NIGERIA

### Abstract

*The human environment is interestingly multifaceted with an unimaginably large biotic and abiotic system. Actors of this ecosystem are sometimes biologically interdependent. Aquatic animals on their own cannot exist without natural water bodies, such biological relationship becomes imperative for the continuous survival of the resources of aquatic habitats and benefit of man, as water is a key component of human life and photosynthetic circle. The environment also constitutes vast minerals or attributes exploitable by man, amongst a host of them is petrochemical resources which in a way is the focus of this paper, especially the dangers it poses on the environment during exploration. There has been a crackdown on the seamless process of the ecosystem impacted by petrochemical, caused by oil spill, gas flaring leading to pollution. This has consequently affected sustenance of human life. This paper decries the stark feebleness of legislative machineries in curbing the negative effect of environmental degradation in Nigeria. Sadly, after carefully examining existing literature on this subject, there was an urgent need to call for the reformation of Nigeria's eco-jurisprudence as extant laws are ineffective with meager fines, inadequate sanctions, unreasonable exemptions on gas flaring, and dearth in citizen's suit among others. In addressing the shortcomings found in the laws, the study employed doctrinal method of literature review, and generated data through local statutes, case laws, policy documents, internet sourced materials, textbooks, journal articles, seminar papers, and Newspapers. The work aims to put our eco-jurisprudence on a pedestal to effectively remediate environmental scourge and restore policies geared towards environmental sustainability and promote an eco-friendly space in Nigeria. It is firmly recommended that in other to achieve international best standards and make our laws weaved as that of counterpart nations across Africa and the world, the Nigerian constitution particularly Section 20 be amended to explicitly guarantee the right to a clean environment and Chapter IV to allow for citizens suit against erring multinational companies or complicit government agencies, adequate punishment for environmental offences and diversification of the Nigerian economy to reduce over-dependence on crude oil exportation.*

**Key words:** environment, exploration, degradation, protection, sustainable development.

### 1.0 Introduction

The exploration of oil and gas by multinational corporations (MNC's) has culminated in series of human right violations and environmental degradation across the globe.<sup>1</sup> MNC's in concert with host governments are often involved in the human rights violations and environmental injustice, the situation is most often much more deplorable and prevalent in developing States, where economic interest is given priority over human rights, peace and sustainable development.<sup>2</sup> Most often 'the worst victims of environmental harm tend to be those with the least political clout, such as members of racial and ethnic minorities, the poor,

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<sup>1</sup> R Sykes, 'Oil and Gas Industry Efforts on Behalf of Human Rights and Sustainable Development' <[www.spe.org/twa/print/archives/2008/2008v4n2/twa2008\\_v4n2\\_Pillars.pdf](http://www.spe.org/twa/print/archives/2008/2008v4n2/twa2008_v4n2_Pillars.pdf)> 'accessed 30th July 2025'.

<sup>2</sup> O Oluduro, *Oil Exploitation and Human Rights Violations in Nigeria's Oil Producing Communities* (Intersentia 2014) 2

or those who are geographically isolated from locus of political power within their country.<sup>3</sup> In Nigeria, the indigenous people of Niger Delta are the victims of the exploration activities of the oil MNC's, their sustainable lifestyle has been considered improbable to sustain as their ancestral land and natural resources have been severely devastated. Multinational corporation is 'a national company in two or more countries operating in association with one controlling exploration of oil and gas by multinational corporations (MNC's) have culminated in series of the other or in part'.<sup>4</sup> Oil MNC's have evolved to become too powerful that some states especially developing ones find it challenging to regulate their activities.

The Niger Delta region (NDR) is located at the top of the Gulf of Guinea on the west coast of Africa<sup>5</sup> and situated in the South-South geopolitical zone in Nigeria.<sup>6</sup> The region occupies 7.5 percent of Nigeria's total land mass with an area of 75, 000 Square km. The region is made up of nine oil-producing states. The NDR is house to over 900 producing oil wells and other petroleum exploration facilities and over 800 oil producing communities'.<sup>7</sup>

The ecology of the NDR can be broadly categorised into tropical rainforest and mangrove forest.<sup>8</sup> The region is regarded as the 'largest mangrove forests in Africa and the third largest in the world and as the richest part of Nigeria in terms of petroleum resources and diverse natural ecosystems supportive of numerous species of terrestrial and aquatic fauna'.<sup>9</sup>

The NDR is made up of five linguistic and cultural groups, namely: Ijaw, Edo, Yoruba, Igbo and Cross River with each having a handful of sub-groups.<sup>10</sup> The Ijaws which have the longest 'settlement history' have been described to be the most complex and largest group in the region. The group is found in 6 states out of the 9 in the region.<sup>11</sup>

Nigeria's economy is anchored on its rich oil region 'the Niger Delta.' It is regarded as the largest oil producer in Africa and the fifth largest in the Organization of Petroleum Exporting Countries (OPEC).<sup>12</sup> Oil has evolved to become the main stay of the country's economy after years of political instability, the petroleum or oil sector accounts for 95 percent of foreign exchange earnings, 20 percent of the GDP and over 60 percent of budgetary revenues.<sup>13</sup> Petroleum and its products 'make up' over 90 percent of export commodities.<sup>14</sup>

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<sup>3</sup> C Dommen, 'Claiming Environmental Rights: Some Possibilities Offered by the United Nations Human Rights Mechanisms' (1998) 11 GIELR 1.

<sup>4</sup> T Doanaldson, *The Ethics of International Business* (Oxford University Press 1989) 30.

<sup>5</sup> H Doust, *Petroleum Geology of the Niger Delta* (Geological Society London Special Publications 1990) 365.

<sup>6</sup> A E Ite et al, 'Petroleum Exploration and Production: Past and Present Environmental Issues in the Nigeria's Niger Delta' (2013) 4 AJEP 80.

<sup>7</sup> L C Osuji and C M Onojake, 'Tracr heavy Metals Associated with Crude Oil: A Case of Ebocha-8 Oil-Spill Polluted Site in Niger Delta, Nigeria' (2004) 1 CB 1708-1711.

<sup>8</sup> C N Ugochukwu and J Ertel, 'Negative Imoacts of Oil Exploration On Biodiversity Management in the Niger Delta Areas of Nigeria' (2008) 26 IAPA 139-147.

<sup>9</sup> A A Ainoko, *Nigerian Environmental Regulations and Environmental Degradation in Nigeria Delta* International Journal of Research and Scientific Innovation (7) (1) (2020) Pg 158

<sup>10</sup> *Ibid*

<sup>11</sup> *Ibid*

<sup>12</sup> S B Owaduge, *The Politics of Oil Production Among the Federal Government, Oil Producing Companies and Oil Producing Communities of the Niger Delta Area of Nigeria*, available at <[www.greatestcities.com/users/owadage](http://www.greatestcities.com/users/owadage)> 'accessed June 30, 2025.'

<sup>13</sup> *Ibid*

<sup>14</sup> *Ibid*

‘The Nigeria oil industry is dominated by six joint-venture operations managed’ by multinational corporations; Shell, Mobil, Chevron-Texaco, AGIP and Elf-Aquitaine.<sup>15</sup> The Nigerian Constitution vests ownership of all oil in the federal government of Nigeria.<sup>16</sup> Thus, the MNC’s above are in partnership with the Nigeria federation’s Nigeria National Petroleum Company (NNPC).<sup>17</sup>

Despite the immense revenue generated by the oil and gas exploration in the NDR by the Nigerian government, the people of the indigenous communities of the oil rich NDR have been subjected to environmental degradation and human right abuses. The reason for this anomaly is the fact that the process of exploring and harnessing the natural resources in the NDR by the oil MNC’s is done without due consideration to the environment and its inhabitants.<sup>18</sup> It has been submitted that the Nigerian oil industry is known for its poor environmental practices and the culminating environmental degradation.<sup>19</sup> The major devastating environmental practices are oil spill and gas flaring.

‘Gas flaring is the practice of burning natural gas, a byproduct of oil extraction.’<sup>20</sup> Oil MNC’s in Nigeria flare gas as it saves them the cost of re-injecting it into the subsoil or collecting it for consumption.<sup>21</sup> It has been asserted that this gas flares has been on 24 hours and for over 40 years in some places in the NDR. A report funded by the International Union for the Conservation of Nature and Natural Resources (IUCN) and produced by Environmental Rights Action on the Niger Delta suggest that Nigeria flares over 70 percent of its gas, this alarmingly exceeds any other country’s allowable flaring limits.<sup>22</sup> In the year 2000, over 90 percent of gas was flared in Ogoni land, a part of the Niger Delta, in sharp contrast to the 0.4 percent flared in the United States.

Oil spill is another major environmental problem in the NDR, this pollutes water and devastate animals and plants. Extensive spills are recorded at least three times monthly, over 4000 oil spills were recorded between 1976 and 1996. Pipelines used for transporting crude oil and refined petroleum products run for over 7200 kilometres across Nigeria, and usually pass through residential homes and valued arable lands. Most of the pipes are old, rusty and worn-out. Oil leakages from poorly maintained pipelines and blow-outs of poorly maintained wells further compound the crude oil pollution. Regardless of the fact that Shell carry out oil exploration in twenty-eight countries between 1982 and 1992, 40 percent of its overall oil spills occurred in the Niger Delta.<sup>23</sup> A World Bank study revealed that hydrocarbon pollution in Ogoni land water was more than sixty times US limits. Project Underground in a similar vein asserted that hydrocarbon pollution in a water source in the NDR was over 350 times ‘the limit of the European Community.’<sup>24</sup>

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<sup>15</sup>*Ibid*

<sup>16</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended) Sec 44 (3)

<sup>17</sup>*Ibid*

<sup>18</sup> C I Okpara, ‘Right to a Clean and Healthy Environment: The Panacea to the Niger Delta Struggle’ (2012) 5 JPL 4.

<sup>19</sup> A L Shinsato, ‘Increasing the Accountability of Transnational Corporations for Environmental Harms: The Petroleum Industry in Nigeria’ (2005) 4 NUJIHR 192.

<sup>20</sup>*Ibid*

<sup>21</sup>*Ibid*

<sup>22</sup> N Ashton-Jones, S Arnott and O Douglas, *The Human Ecosystems of the Niger Delta* (Environmental Rights Action 1998) 158.

<sup>23</sup> S Crayford, ‘The Ogoni Uprising: Oil, Human Rights and a Democratic Alternative in Nigeria’ (1996) 43 AT 183

<sup>24</sup>*Ibid*

Environmental degradation in the NDR have led to loss of land, health problems, destruction of the regions ecosystem, air pollution as well as pollution of water resources. It has made it seemingly impossible for the indigenous people of the oil rich region to sustain their subsistence lifestyle which is predominantly fishing and farming.<sup>25</sup>

Oil is the anchor of the Nigerian economy, nonetheless, pollution and environmental degradation resulting from exploration of oil and gas in the oil rich Niger Delta region (NDR) have occasioned untold hardship on the region and its inhabitants.<sup>26</sup> The role of legal mechanisms to balance right to healthy environment and economic development becomes fundamental.<sup>27</sup> In Nigeria, certain laws exist aimed at regulating the exploration of oil and gas, these laws provide remedies for individuals whose rights may be violated as a result of environmental pollution.<sup>28</sup>

This article critically examines Nigerian environmental laws and how effective they are in regulating the activities of oil multinational companies (MNC's) in the NDR, and protecting the environment and the people of the region.

## 2.0 Conceptual Clarification

### 2.1 Environment

The word 'Environment' like every other is a multifarious and intricate, thus enjoys range of definitions. Yet the term environment defies a universally acceptable definition. Various authors, scholars, jurists, even statutes have given their own definitions on the concept. For the purpose of this research, a number of definitions will be examined.

Generally, the term is derived from the French word 'environ' which means to 'encircle' or to 'encompass' or 'surround'<sup>29</sup>. Thus, from inference environment could be described as everything around a living thing that encompasses or surrounds such living thing or organism. It also implies our surrounding, especially material and spiritual influences which affect the growth, development and existence of a living being<sup>30</sup>. The above suggests that the word 'Environment' is not an abstract thing, but it represents the living space, the quality of life of the organisms within the living space, and the health of beings, including the unborn<sup>31</sup>. Accordingly, Iparikh, in his article 'man and environment', viewed the concept as a very complex and comprehensive phenomenon which consists of the climate, geography, geology and all the natural resources that nature has bestowed upon us.<sup>32</sup> This suggests that the environment is basically a complex relationship between the ecosystem and its inhabitants. It

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<sup>25</sup> K S A Ebeku, Oil and the Niger Delta People in International Law: Resource Rights, Environmental and Equity Issues (Rudiger Koppe 2006) Pg 145

<sup>26</sup> A Ikein, The Impact of Oil on a Developing Country: The Case of Nigeria (Evans Brothers Nigeria Limited 1991) 180

<sup>27</sup> O Oluduro, Oil Exploitation and Human Rights Violations in Nigeria's Oil Producing Communities (Intersentia 2014) 133

<sup>28</sup> A Bello, 'Environmental Rights in Nigeria: Issues, Problems and Prospects' (2006) 4 IULJ 60-95

<sup>29</sup> Ikpeze, Criminalisation of Environmental Degradation in Nigeria: A Comparative Analysis (2) (2018) AJLHR Pg 127

<sup>30</sup> New Webster Dictionary of English Language, Lexicon publications inc. Guild group, New York, 1993

<sup>31</sup> An advisory opinion offered by ICJ in Legality of the Threat or Use of nuclear weapon, I.C.J Reports 1996, Pg 241-242, para. 29

<sup>32</sup> Iparikh, Man and Environment. sourced from [http://www.studymode.com/essays/Man-An-Environment - 1296202.html](http://www.studymode.com/essays/Man-An-Environment-1296202.html). Accessed 30th June 2025

is the product of ecological system in which human beings and other living and non-living organisms co-exist. This brings to light the inter-dependent relationship between man and the environment. Similarly, Article 24 of the African Charter on Human and People's Rights defines the concept as the totality of physical, economic, cultural, aesthetic and social circumstances and factors which surrounds and affect the desirability of value of property and which also affects the quality of people's lives.<sup>33</sup> The charter does not only view the environment as those circumstances or things that surround the organism alone, but also goes beyond that and project how the foregoing factors can affect the quality of life of the organism in the environment. Following suit, the 1999 Constitution of the Federal Republic of Nigeria, describes the environment as (a) The water (b) Forest and wildlife (c) All layers of the atmosphere (d) All organic and in-organic matter and living organisms, and (e) The interacting nature system that includes the component referred to in paragraphs (a) –(d)<sup>34</sup>. Bruntland Commission defined environment as where we all live<sup>35</sup>. Although this definition was given in the context of environment and development, its weakness lies in its anthropocentric nature. It focuses on man and ignores the intrinsic value of the environment.

In Nigeria, the concept of environment is defined in a number of statutes. For example, NESREA Act 2007 states that the environment includes water, air, land and all plants and human beings or animals living therein and the relationships which exist among these or any of them<sup>36</sup>. According to this definition, "environment" is composite in nature, involving three inter-related media: air, water and land.

Similarly, section 61 of the Environmental Impact Assessment Act, states that environment means the component of the earth, and includes:

- (a) Land, water and air, including all layers of the atmosphere;
- (b) All organic and inorganic matter and living organisms; and
- (c) The interacting natural systems that include components referred to in paragraph(a) and (b)<sup>37</sup>.

Environment also refers to the components of the Earth and includes: land, water and air, including all layers of the atmosphere; all organic and inorganic matter and living organism; the social, economic, recreational, cultural, spiritual, aesthetic conditions and factors that influence the life of human and communities; and a part or combination of these things referred to above and the interrelationships between two or more of them<sup>38</sup>.

According to the Black's Law Dictionary, Environment is defined as the physical condition of a particular place where a living person or thing exists.<sup>39</sup> The environment is a result of how people perceive and interact with their surroundings and is constantly altered by how people use and interact with it.<sup>40</sup> Man is both a creature and a moulder of his environment, according

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<sup>33</sup> Article 24 of the African Charter on Human and People's Right.

<sup>34</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended) sec 20

<sup>35</sup> The 1972 UN Conference on Human Environment which produced the how famous set of environmental protection principles - the "Stockholm Declaration" represents the first formal sign of increasing international concern for environmental protection on a global scale 48/Rev. 1, New York, 1972, Pg 2

<sup>36</sup> National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, Section 37

<sup>37</sup> Environmental Impact Assessment Act, Cap E12, Laws of Federation of Nigeria, 2004.

<sup>38</sup> M S Aibor and J O Olorunba, A Technical Handbook of Environmental Health in the 21st Century (Akure: His Mercy Publishers, 2006) p 357

<sup>39</sup> B A Garner, Black's Law Dictionary, (10th end, West Publishing Co., New York, U.S.A., 2014) Pg 651

<sup>40</sup> O G Amokaye, 'Human Rights and Environmental Protection: The Necessary Connection', (2007) UNILAG Journal of Human Rights Law, 1(1) Pg 93.

to the United Nations Stockholm Conference on Human Development, which provides him with bodily nourishment and opportunities for intellectual, moral, social, and spiritual growth<sup>41</sup>.

The researcher sees environment as the totality of all the living and non-living organisms upon which human beings depend for sustenance. This inter-dependent or co-dependent relationship, as it were, between the environment and human beings has led to the ultimate call throughout the universe for environmental protection. This is because humanity's quest for sustenance has over the years destroyed the environment beyond recognition; the ripple effects are obviously grievous.

According to the Black's Law Dictionary, Degradation is defined as wearing down of something, as by erosion<sup>42</sup>.

## **2.2 Theories of Environmental Protection**

There are also some theories on environmental protection which have been characterized as: Anthropocentric Theory and Ecocentric Theory.

### **2.2.1 Anthropocentric Theory**

The foundation of the above theory or belief has been argued by many as having arisen from the book of Genesis 1:28 of the Holy Bible (King James Version, 2001) which states thus: 'And God blessed them, and said unto them, be fruitful and multiply and replenish the earth, and subdue it and have dominion over the fish of the sea, and over the fowls of the air, and over every living thing that moveth upon the earth'. According to this school of thought, the environment and all that is within it was made by the creator and indeed exists for human beings use and therefore it must be exploited to its fullest. The anthropocentric philosophy embodies three distinct elements namely: Resource exploitation; Maximum capacity utilization; and No responsibilities.<sup>43</sup> The three principles of resource exploitation states: that the available natural resources should be exploited to the fullest for benefit and advantage of humanity. It went further to posit that there could be no economic growth and development if sovereign nations are not allowed to exploit natural resources in their territorial enclaves. The second principle implies that all natural resources should be maximally used, and only when there is maximum utilization can a nation achieve economic independence and development. The last principle argues for the utilization of natural resources for the sake of the present generation only, and not to bear the responsibility of the future generations goes against the position of the World Commission on Environment and Development (WCED) report of 1987, the Brundtland report which defined sustainable development as 'the development that meets the needs of the present without compromising the ability of the future generations to meet their own needs'<sup>44</sup>.

### **2.2.2 Ecocentric Theory**

The ecocentrists are in complete opposite of the total domineering influence of human beings on the environment. They rather suggest that humanity and the environment are partners in a

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<sup>41</sup> The Preamble, Paragraph 1, Report of the United Nations Conference on Human Development and Environment, Stockholm, 1972, A/CONF. 48/Rev. 1, New York, 1972, 2

<sup>42</sup> B A Garner, Black's Law Dictionary, (10th end, West Publishing Co., New York, U.S.A., 2014) 516

<sup>43</sup> P.A.K Adewusi, The Environment: Law and Management in Nigeria, (Lagos: Hybrid Consult Publishers Ltd, 2011), 18-20

<sup>44</sup> N Ikepeze, Criminalisation of Environmental Degradation in Nigeria: A Comparative Analysis AJLHR (2) (2018) Pg 130

symbiotic relationship. Accordingly, it is believed that protecting and safeguarding of the environment is not just a pledging concern; but an unconditional genetic mandate without which human beings would fail to authenticate his existence. In support of this position, the Rio Declaration also emphasized the ontological (the science that deals with the principles of pure beings) concern of human beings to protect the environment and states that; ‘Human beings are at the Centre of concerns for sustainable development; they are entitled to a healthy and productive life in harmony with nature.’<sup>45</sup> This is only possible through combined efforts on the part of man to protect and fight for the sustenance of the environment.

The damaging effects of human activities can be evidenced in the following cases. In the case of *God’s Power Nweke v Nigerian (AGIP) Oil Co. Ltd*<sup>46</sup>, there was pollution on the farmland of the plaintiff including his ‘juju’ shrine, caused during the defendant’s exploration for crude oil. Pollution could also be caused by the seeping of sewage from enclosure, introduction of chemicals into the water, dumping of waste, oil spillage among others capable of destroying the aquatic lives and contaminating of drinking water sources as observed in *S.P.D.C. v Otoko & Ors*<sup>47</sup>, where oil spillage from coastal trunk pipeline resulted in the contamination of two wells owned by Andoni community in Rivers State rendering the water undrinkable.

### **3.0 Sources of Environmental Degradation**

There are many sources of environmental degradation by oil and gas companies in Nigeria. These sources may be broadly divided into two: Upstream sources and Downstream sources. The upstream sources are exploration, prospecting, pipe laying, drilling and production. The Downstream sources are transportation, refining processing and marketing. This work will first examine the Upstream sources before examining Downstream sources.

#### **3.1 Sources of Environmental Degradation in Upstream Sector**

As earlier stated, Upstream sources of environmental degradation by Oil and Gas in Nigeria include, exploration, drilling and production. These shall be treated in chronological order.

##### **3.1.1 Exploration**

Exploration is the process of searching for oil in Nigeria be it in the water, or in the ground. When oil is discovered in the course of exploration, environmental degradation will take place as a result of oil spillage.<sup>48</sup>

Oil spill is the release of petroleum hydrocarbon into the environment. Oil spills are caused by pipeline and flow-line leakages; blow out from well heads due to poor maintenance, damage and spills from flow stations. Oil spills affects large area of land and water ways which result in the pollution of crops, marine life and the sources of water for domestic consumption. Mangrove forests are affected by oil spills because the soils soak up the oil like sponges. When oil spill occurs, it spreads into farm lands and water bodies. The toxic crude seeps into the grounds and is taken up by the roots of plants. It was discovered through our empirical research that oil spill does take place, and when it occurs, it spills onto farm lands and rivers. It was also revealed through the empirical research that the spill is very frequent

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<sup>45</sup> 18 Principle 1 of the UNCED, 1992

<sup>46</sup> 19(1976) Vol. 9-10 SC 101

<sup>47</sup> 20 [1990] 6 N.W.L.R. (pt. 159) 693

<sup>48</sup>A Ibrahim, 'Assessment of the Legal and Institutional Framework for the Prevention of Environmental Degradation in Nigeria' (PhD Dissertation Submitted to the Faculty of Law, Ahmadu Bello University, Zaria, 2014) Pg 1

and is often cleaned up by polluters but not immediately.<sup>49</sup> It was further discovered that the oil spill usually renders water from rivers, streams, etc useless. In other words, affected people can hardly use the water after the spill for any other purpose.

### **3.1.2 Drilling**

Drilling of oil is the search by petroleum geologists and geophysicists for hydrocarbon deposits beneath the earth's surface. In the course of drilling, spilling of oil takes place hence the environment is been polluted. Oil is normally spilled onto the environment. When blowout occurs much oil is spilled onto the environment. A blowout is the uncontrolled release of crude oil and or natural gas from an oil well after pressure control system has failed. Blowout is usually associated with drilling accidents.

Drilling accident is of two major categories. One of which involves intense and prolonged hydrocarbon gushing. This happens when the pressure in the drilling zone is so high that usual technological methods of well muffling will not be of any help. The second type is the one that occurs regularly and it includes regular, routine episodes of hydrocarbon spills. This type of accident can be controlled effectively. In fact, it can be brought under control within several hours. Accident of this type does not attract any special attention. It is only their ecological hazard and associated environmental risk that is rather considered.<sup>50</sup>

### **3.1.3 Leakages of Oil Pipelines**

Pipeline is the major means of transportation of oil. In the cause of the transportation of oil, thousands of barrels of oil do split into the environment. Spillage of oil through pipelines may be as a result of lack of regular maintenance of the pipelines. It is a known fact that some of the pipelines have been in use for decades without replacement. For example in Idoho, about 40,000 barrels of oil spilled into the environment through the offshore pipeline. In addition to lack of replacement, the pipes are also narrow to carry oil from well heads to flow stations. This gives opportunities for leakages. In other words, the sizes of the pipes are quite small so that the quantity of oil that passes through them is far beyond its capacity. Hence the pipes usually have a short life span.<sup>51</sup>

In onshore area, most pipelines and flow-lines are laid above ground. Pipelines which have an estimate life span of about fifteen years are old and vulnerable to corrosion. Many of the pipelines are as old as twenty to twenty-five years. Even Shell Petroleum and Development Company admit that most of the facilities were constructed between the 1960s and early 1980s at the prevailing standards. Shell Petroleum and Development Company (SPDC) would not build them that way today. Shell operates the Bonny Terminals in Rivers State, which has been in operation for forty years without a maintenance overhaul, its original lifespan was supposed to be twenty-five years.<sup>52</sup>

## **3.2 Sources of Environmental Degradation in Downstream Sector**

### **3.2.1 Accident in the Course of Oil Transportation**

Accident is one of the media through which oil is spilt into the environment. Accident is a source of environmental pollution at all stages of oil and gas production. The most typical cause of accidents includes equipment failure, personnel mistakes and extreme natural

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<sup>49</sup>*Ibid*

<sup>50</sup>*Ibid*

<sup>51</sup>*Ibid*

<sup>52</sup>*Ibid*

impacts. Accidents also occur in the cause of transportation of petroleum product. Oil extracted on the continental shelf is transported by tanker to the onshore terminals. When accident occurs it leads to large oil spill. As stated above, many volumes of oil is usually spilled on the environment.<sup>53</sup>

### **3.2.2 Routine Tank Cleaning**

Routine tank cleaning is also one of the channels through which environment is degraded by oil and gas companies in Nigeria. From time to time oil storage tank is subjected to cleaning as part of maintenance. In the course of cleaning the oil tank, the oil that is left in the tank is usually spilt onto the environment thereby degrading the environment. The oil that is being washed from the tank is also spilt on the environment. Therefore the practice of routine tank cleaning is also a source of environmental degradation by oil companies in Nigeria.

### **3.2.3 Sabotage**

Another major cause of oil spillage through the pipelines is sabotage. Sabotage is performed through bunkering whereby saboteurs attempt to tap the pipeline and in the process of extraction, it either damages or destroys the pipeline.

### **3.2.4 Gas Flaring**

Gas flaring is a means of disposing of waste gases through the use of combustion. This is usually done through an elevated vertical chimney called a gas flare. The waste gases are subjected to this process either because the gases are waste, or it is difficult to store and transport them. Non-waste gases are burnt off to protect the processing equipment when unexpected high pressure develops with them. Nigeria flares more natural gas associated with oil extraction than any other country on the planet. It is estimated that about 70% of Nigerian natural gas is wasted through flaring.

Although the practice of flaring gas is universally agreed to be economically, and environmentally harmful, the reason for such practice is to maximize production of crude oil. The associated gas accompanying it is often burned off. This is so because it is costly to separate commercially viable associated gas from the oil. Therefore gas found with oil is often burned off, in order to increase crude production.<sup>54</sup>

## **3.3 Effect of Oil and Gas on the Environment**

The harmful effects of oil spill on the environment are many. For example, oil spill kills plants, it destroys vegetation. Nigeria consists of extensive mangrove forests such as brackish swamp forests, rainforests among others. The large coverage of mangrove forests is estimated to cover approximately 5,000 to 8,580 km<sup>2</sup> of land.

Mangrove trees are, very important to the various organisms that live within the environment. It serves as a source of livelihood to the people. For instance, when oil spill occur close to and within the drainage basin, the hydrologic force of both the river and the river tides force spilled petroleum to move up into areas of vegetation. The effects of petroleum spills on mangroves, acidify the soils, halt cellular respiration, and starve roots of vital oxygen.<sup>55</sup>

Birds and animals are also not left out of the impact of environmental degradation arising from oil spill. Oil penetrates into the structure of the plumage of birds and animals. It reduces

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<sup>53</sup>*Ibid*

<sup>54</sup>*Ibid*

<sup>55</sup>*Ibid*

its insulating ability; thereby making the birds more vulnerable to temperature fluctuations and much less buoyant in the water. Oil also impairs or disables birds flight abilities to forage and escape from predators. As the birds attempt to preen, they ingest oil that covers their feathers, this causes kidney damage, altered liver malfunction and digestive tract irritation of marine mammals. For example, heavily furred animals, such as sea otters and fur seals, are more severely affected by oil spill because, these species rely on their thick hair coat to maintain warmth and buoyancy. The fur traps a thin layer of air adjacent to the animal's skin, and this air layer prevents the skin of the animal from coming into contact with the cold ocean water. When it is exposed to oil, the alignment of the hair is altered. The air layer is destroyed and mammals rapidly become hypothermic. For marine mammals without heavy hair coats like other species such as; seals, sea lions, dolphins, whales etc, the problems associated with hypothermia are less of a concern because their thick blubber protects them from the cold, with the exception of juveniles that have not yet developed this protective layer. These species also suffer from the problems associated with fume inhalation, dermal exposure, and ingestion.<sup>56</sup>

Oil spill also has negative impact on the fish. In fact, fish in an oil spill environment may ingest large amount of oil through their gills. Fish that had been exposed to oil spill may also suffer from changes in heart and respiratory rate, enlarged livers, growth, fin erosion and varieties of effects at biochemical and cellular levels. If this does not kill the fish directly, it may affect the reproductive capacity of the fish negatively or worst still, it may even deform it or it may deform and kill them.

Finally, when oil spill into water, it basically pollutes the water, contaminating it. It also affects water bodies like lakes, rivers, oceans and ground waters. When oil spill gets into water, it pollutes the water. When the water is polluted it affects plants and other organisms living in these water bodies. In most cases the effect, of the oil spill is damaging not only to individual and other species but also to the natural biological communities. When water is polluted as a result of oil spill, it does not support human use, such as drinking, washing, fishing etc. In other words, polluted water cannot be used for drinking, washing of cloths, cars, plates etc. Neither can it be used for fishing. Most villages located close to oil installations are commonly seen on the water that is being used for drinking and washing. Some sample of water used for drinking and washing by villagers close to an oil installation was said to have been taken and analyzed in United States of America. It was revealed that the water had 18ppm of hydrocarbons in it. The quantity of the hydrocarbon discovered in this water is 360 times the level of it allowed in drinking water in the European Union (EU), where there is proper implementation and enforcement of environmental policy regulations.

#### **4.0 Examining Environmental Laws and Policies in Relation to Environmental Degradation in Nigeria**

Prior to 1988, there was lack of environmental protection consciousness in Nigeria. The priority then was economic development and encouragement of industrialization. Most legal frameworks in existence then on environmental pollution were defective and inchoate. The discovery of dumped toxic waste in Koko village in present day Delta State, from Italy by some ships marked the beginning of new era in the development of environmental law in Nigeria.

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<sup>56</sup>*Ibid*

#### 4.1 The Constitution of the Federal Republic of Nigeria and the Environment

The Constitution of the Federal Republic of Nigeria of 1999 (as amended) makes protection of the environment a state objective.<sup>57</sup> Precisely section 20 provides as follows: ‘The state shall protect and improve the environment and safeguard the water, air, land, forest and wild life in Nigeria.’<sup>58</sup>

The essence of this constitutional provision is to ensure a healthy and viable environment for Nigerians.<sup>59</sup> The protection of the environment is indispensable for the actualization of human rights because human rights can only be enjoyed in healthy and conducive environment, free from pollution and degradation.<sup>60</sup> However, as commendable as the above provision is in protecting the Nigerian citizens, especially the people of Niger Delta from all forms of environmental pollution and degradation, it is rendered totally impotent by the provision of section 6 (6)(c) of the Nigerian Constitution, which provides as follows:

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 judicial decision is in conformity with the fundamental objectives and directive principles of state policy set out in chapter II of this constitution.

Section 20 is contained in chapter II of the Nigerian constitution, which contains Fundamental Objectives and Directive Principles of State Policy. The provision of section 6 (6)(c) has been interpreted as ousting the power of the courts to adjudicate on issues pertaining to enforcement of section 20 of the Constitution.<sup>61</sup> The Court in the case of *Okogie(Trustees of Roman Catholic Schools) and Others v Attorney General of Lagos State*<sup>62</sup>, held that the provisions of section 6 (6)(c) makes it clear that no court has jurisdiction to pronounce as to whether any organ of government has acted or is acting in conformity with the Fundamental Objectives and Directive Principles of State Policy.

It has been argued that the fear of multiple suits against the Federal government of Nigeria is the rationale behind section 6 (6)(c). This argument has been criticised to be untenable as it serves as an obstacle to the protection of the rights of the citizens to a healthy environment and exposes the people to human rights abuses. This article recommends that the right to healthy and viable environment be made enforceable under the Nigerian Constitution, also the wordings should be amended to provide for clear State responsibility to ensure the enforcement and protection of such right.

#### 4.2 Oil Pipeline Act

The Oil Pipelines Act was enacted in October 1966 to regulate the granting of licences for the establishment and maintenance of oil pipelines<sup>63</sup>. Some provisions of the Act seek to prevent the pollution of lands and waters by oil pipelines. Under the Act, the holder of a permit to survey land for the purpose of laying an oil pipe line is required to take all reasonable steps to

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<sup>57</sup> A B Abdulkadir, ‘The Right to a Healthful Environment in Nigeria: A Review of Alternative Pathways to Environmental Justice in Nigeria’ (2014) 3 ABUJSDLP 122

<sup>58</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended) Sec 20

<sup>59</sup> G Ogbodo, ‘Environmental Protection in Nigeria: Two Decades After Koko Incident’ (2010) 15 ASICL 1-18.

<sup>60</sup> A B Abdulkadir and A O Sambo, ‘Human Rights and Environmental Protection: The Nigerian Constitution Examined’ (2009) JFDHL 61-73

<sup>61</sup> M A Olong, ‘Human Rights, the Environment and Sustainable Development: Nigerian Women’s Experiences’ (2012) 5 JPL 100-108

<sup>62</sup> (1981) 2 NCLR 337

<sup>63</sup> Preamble to the Act

avoid unnecessary damage to any land entered in pursuance of the permit. However, the consequence of any breakage or leakage from the pipeline or an ancillary installation<sup>64</sup> will be borne by the person.

This provision however implies that a person affected by oil pollution from an oil pipeline will be entitled to compensation except where the pollution is caused by his own default or by the malicious act of a third party such as sabotage. Thus, the provision creates defence for the holder of an oil pipeline licence in the event of an action for compensation under section 11(5) (d) of the Act.

The negative effect of this provision has been clearly illustrated in several cases. For example, in *Atubin v Shell Petroleum Development Company (SPDC)*<sup>65</sup> the plaintiff claimed damages for the escape of crude oil from the defendants' pipelines. The court dismissed the claim of the plaintiff on the ground that the oil spill was due to the act of vandals who damaged the pipeline and that the defendants could not be held liable for the acts of third parties not directly under their control. Also in *SPDC v Amachree*<sup>66</sup>, the plaintiff claimed N10 million as damages for an oil spill from the appellant's oil pipelines which had damaged the plaintiff's property. The Court of Appeal held that the appellant could not be held liable since there was a clear evidence of sabotage on an oil installation. Apparently, the purpose of section 11(5)(d) is to exempt the holder of an oil pipeline license from liability where an oil spill is cause as a result of the sabotage of oil installations. This is intended to prevent criminally minded individuals from benefitting from their own act. For example, it is possible for criminal actors to vandalize pipelines and claim compensation or damages. However, studies have revealed that most oils pills in the oil producing area sand other parts of the country are caused by the use of faulty and obsolete equipment. In this regard, the National Council on the Environment has noted thus:

Most cases of oil spills across the country are results of old and faulty pipelines that were laid more than three decades ago. They have become obsolete resulting most of the time into rupture and equipment failure. Some of these pipelines are on the surface making theme as targets of vandalization.<sup>67</sup>

Another factor that is worth mentioning is that when oil spills occur due to the rupture of, persons within the affected area are often more interested in collecting and selling the petroleum products being pumped through the ruptured pipelines<sup>68</sup>, due to their poor socio-economic situation. So when persons who have been affected by such oil spills institute actions for damages and compensation, it becomes difficult to prove that the pipe lines were not deliberately vandalized by them or a third party. In the light of this, it is suggested that the use of old oil pipelines should be criminalized under the Oil Pipelines Act. Additionally, the holder of an oil pipeline licence should be held strictly liable for any spill resulting from the rupture of a faulty or old pipe line. Furthermore, where a licensee raises the defence that an

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<sup>64</sup> Oil Pipeline Act, Sec 11

<sup>65</sup> Unreported suit no UAC/48/73 of November 1973 cited in Ehighelua at 184

<sup>66</sup> (2001) JELR 54860 (CA)

<sup>67</sup> S Akinwumi, Oil companies to replace old pipeline Act before (Oct-Dec,2004) Following this Observation, the national council on the environment issued adirective that all pipelines between 20 to 25 years should be replaced (38)(2)(2012) Commonwealth Law Bulletin 321-346

<sup>68</sup> G Campbell, 'The killing fields: Oil Ravages the Niger Delta' Times Magazine (Delta, June 2001)

oil spill was caused by the malicious act of a third party under section 11(5)(d) of the Act, the onus of proof should lie on licensee.

### **4.3 Oil in Navigable Waters Act**

The Oil in Navigable Waters Act was enacted in 1968 to implement the International Convention for the Prevention of Pollution of the Sea by Oil and also to make provisions for the prevention of oil pollution in the navigable waters of Nigeria<sup>69</sup>. The Act prohibits the discharge of oils such as crude oil, fuel, lubricating oil and heavy diesel oil into prohibited areas. Section 3 of the Act also prohibits the discharge.<sup>70</sup>

Where a person is guilty of discharging oil into Nigerian waters or into prohibited area, such a person will be liable on conviction to a fine exceeding N2000 (US\$12.5)<sup>71</sup>. Also where the owner or master of a vessel fails to report the discharge of oil in to the waters of a Nigerian harbor, he will be liable to a fine exceeding N400 (US\$2.5) on conviction<sup>72</sup>. It is apparent, that the fines stipulated for offences under the Act are ridiculous and too low to serve as an effective deterrent or punishment. It has also been pointed out that the imprecise nature of punishments prescribed under the Act indicates that it would be practically difficult, if not impossible, to secure the conviction of any person under the Act.

### **4.4 Associated Gas Re-Injection Act**

The Associated Gas Re-Injection Act was enacted in September 1979 to regulate gas flaring in Nigeria. The Act set 1 January 1984 as the deadline for the cessation of gas flaring in Nigeria. Under the Act, every company producing oil and gas in Nigeria is to submit preliminary programs and detailed plans for the implementation of gas re-injection and utilization.<sup>73</sup> Section 3(1) of the Act prohibits the flaring of gases produced in association with oil without the permission of the Minister of Petroleum<sup>74</sup>. However, under section 3(2) of the Act, the Minister of Petroleum has discretion to grant gas flaring permits where he is satisfied that either the utilisation or re-injection of gas is inappropriate or not feasible in any particular field<sup>75</sup>. This is subject to certain conditions or the payment of certain levies. Where an oil company violates the provisions of section 3(1), it shall forfeit the concessions granted in the particular field where the offence was committed<sup>76</sup>. Additionally, the Minister may withhold any entitlements of an offending company towards the cost of completion or implementation of a desirable gas reinjection scheme<sup>77</sup>.

### **4.5 Associated Gas Re-Injection (Continued Flaring of Gas) Regulations**

Apparently as a result of the failure of oil companies to stop gas flaring by 1984, as was originally intended by the Associated Gas Re-Injection Act, the Minister of Petroleum exercised the regulatory powers under sections 3 and 5 of the Act and established the Associated Gas Re-Injection (Continued Flaring of Gas) Regulations. The Associated Gas Re-Injection (Continued Flaring of Gas) Regulations stipulate conditions for the continued flaring of gas in Nigeria. It prescribes a fine of N10.00 (ten naira) (US\$0.0625) for every cubic feet of gas flared. This penalty apparently monetised gas flaring at a very cheap rate,

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<sup>69</sup> Preamble to the Act

<sup>70</sup> Oil in Navigable Waters Act, Sec 3(3)

<sup>71</sup> Oil in Navigable Waters Act, Sec 6

<sup>72</sup> Oil in Navigable Waters Act, Sec 10

<sup>73</sup> Preamble to the Act

<sup>74</sup> Associated Gas Re-Injection Act Sec 3(1)

<sup>75</sup> Associated Gas Re-Injection Act, sec 3(2)

<sup>76</sup> Associated Gas Re-Injection Act, sec 4(1)

<sup>77</sup> Associated Gas Re-Injection Act, sec 4(2)

thus making it more economically viable for oil companies to flare gases rather than harness or conserve them through utilization or re-injection schemes. This state of affairs has been responsible for the high rate of gas flaring in Nigeria. Nigeria is infamously reputed to be one of the highest<sup>78</sup>.

It is obvious that this state of affairs exists because the penalties under the Associated Gas Re-Injection (Continued Flaring of Gas) Regulations are not punitive enough to deter effectively gas flaring. Additionally, the Nigerian Government has been nonchalant towards compelling oil companies to end gas flaring. At various times, the government has set deadlines for the cessation of gas flaring without making any concrete effort to enforce them. For example, the government once set a deadline for the cessation of gas flaring in 2004, but under pressure from oil companies it extended said deadline to 31 December 2008<sup>79</sup>. There are currently no concrete indications that gas flaring will soon cease in Nigeria.

Recently, gas flaring and its implications on fundamental human rights, as well the legality of the Associated Gas Re-Injection Act, were the basis for action in *Jonah Gbemre v Shell Petroleum Development Company (SPDC) & Ors*. In that case, the applicant representing himself and other members and residents of Iwherekhan Community in Delta State brought an application in a Federal High Court asking the court to declare that the continued flaring of gas by these respondents constituted a violation of their fundamental human rights to life and dignity under sections 33(1) and 34(1) of the 1999 Constitution of the Federal Republic of Nigeria, and Articles 4, 16 and 24 of the African Charter on Human and Peoples Rights. The applicants claimed that gas flaring in their community was responsible for severe air pollution, water pollution, low crop yields, acid rain, global warming and several health disorders such as asthma and other life-threatening respiratory disorders, and that these amounted to a violation of their rights to life, dignity and a healthy environment. The court held that the actions of the respondents in continuing to flare gas in the applicants' community amounted to a gross violation of their fundamental rights to life (including a healthy environment) and dignity of human person as enshrined under the Constitution. The court went further to declare that the provisions of sections 3(2)(a) & (b) of the Associated Gas Re-Injection Act and section 1 of the Associated Gas Re-Injection (Continued Flaring of Gas) Regulations, which permitted gas flaring in Nigeria, were inconsistent with the applicants' fundamental rights to life and dignity as provided in the Constitution and that the sections were therefore unconstitutional and null and void by virtue of section 1(3) of the Constitution. However, although the decision of the court in *Jonah Gbemre v Shell Petroleum Development Company* represents a landmark attempt to regulate gas flaring in the country, it is still yet to be enforced by the Nigerian Government.

#### 4.6 Harmful Waste (Special Criminal Provisions) Act

The Harmful Waste (Special Criminal Provisions) Act was enacted in November 1988. The Act prohibits the transportation and dumping of harmful waste on any land or waters of Nigeria without lawful authority<sup>80</sup>. It also creates criminal liabilities where any person transports, imports or trades in any harmful waste without lawful authority<sup>81</sup>. In this regard,

<sup>78</sup> Obagbinoko, 'Gas Flaring in Nigeria: Human Rights, Environmental and Economic Monstrosity' (2005) <<http://www.climatelaw.org/cases/country/nigeria/cases/documents/nigeria/report/gasflaring.in.Nigeria.html>> last accessed 30 June 2025

<sup>79</sup> Environmental Rights Action and Friends of the Earth Nigeria, 'Fact Sheet: Harm-ful Gas Flaring in Nigeria' (June 2025) <<http://www.eraction.org>> last accessed 30 June 2025

<sup>80</sup> Harmful Waste (Special Criminal Provisions Act), sec 1(2)(a)

<sup>81</sup> Harmful Waste (Special Criminal Provisions Act), sec 1(2) (b) (c) (d)

an offender will be liable to life imprisonment. An offender under the Act is also liable to forfeit any carriers used in the transportation of the harmful waste and any land on which the waste was deposited or dumped to the federal government of Nigeria<sup>82</sup>. The Act also creates civil liability for offences. In this regard, section 12(1) of the Act provides that:

Where any damage has been caused by any harmful waste which has been deposited or dumped on any land, or territorial waters or contiguous zone or exclusive economic zone of Nigeria or its inland water ways, any person who deposited, dumped or imported the harmful waste shall be liable for the damage except where the damage was:

- (a) Due to the fault of the person who suffered it or;
- (b) Was suffered by a person who voluntarily accepted the risk thereof<sup>83</sup>.

It has been submitted that above section section 12(1)(b) of the Act should be expunged considering the fact that a person voluntarily accepting harmful waste may be ignorant of the exact nature of the consignment and also taking into consideration the poor social economic solution in Nigeria<sup>84</sup>. However, while it is agreed that a person who is voluntarily accepting harmful waste may not know the exact nature of the consignment and the associated risk due to illiteracy or lack of awareness; yet these reasons are not sufficient to expurgate the provisions of section 12(1)(b). It could be helpful if the determination of liability on the basis of illiteracy or lack of awareness is left to the courts. Although the Harmful Waste Act makes a radical departure from pre-1988 pollution abatement laws with the introduction of sanctions such as life imprisonment without the option of fine, the forfeiture clause and civil liability, the Act has not been effectively enforced by regulatory authorities<sup>85</sup>.

#### **4.7 National Oil Spill Detection and Response Agency (Establishment) Act**

The Act establishes the National Oil Spill Detection and Response Agency (NOSDRA) as an agency under the Federal Ministry of Environment, Housing and Urban Development. The Agency serves as the institutional framework for implementing the National Oil Spill Contingency Plan and ensuring a timely and effective response to all oil pollution incidents in Nigeria<sup>86</sup>. Under the NOSDRA Act, an oil spiller who fails to make a written report of a spill to the Agency within 24 hours of its occurrence will be liable to a fine of N500,000(US\$3125) for each day he fails to report the spill. Also the failure to cleanup an area that has been affected by oil pollution attracts a fine of one million naira (N1,000,000)(US\$6250)<sup>87</sup>.

#### **4.8 The National Environmental Standards and Regulations Enforcement Agency (Establishment) Act**

Initially, the overall responsibility for environmental protection and management in Nigeria was vested in an agency known as the Federal Environmental Protection Agency (FEPA). In 1999, the federal government of Nigeria merged FEPA and other relevant departments in various ministries to form the Federal Ministry of Environment. However, there was no enabling law on enforcement issues.

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<sup>82</sup> Harmful Waste (Special Criminal Provisions Act), sec 6

<sup>83</sup> Harmful Waste (Special Criminal Provisions Act), sec 12(1)(b)

<sup>84</sup> GU Ojo, Environmental laws of Nigeria: A Critical Review (Environmental Rights and Action and friends of the Earth Nigeria, Benin 2023) 31

<sup>85</sup> E Uzodimma, Constraints to effective pollution Control and management in Nigeria (38) (2) (2012) Commonwealth Law Bulletin 321-346

<sup>86</sup> U J Orji, An Appraisal of the Legal Framework for the Control of Environmental Pollution in Nigeria (38) (2) (2012) Common Wealth Law Bulletin Pg 337

<sup>87</sup> National Oil Spill Detection and Response Agency (Establishment) Act, Sec 6 (2) (3)

This situation created a vacuum in the effective enforcement of environmental laws and regulations in the country. To address this vacuum, the National Environmental Standards and Regulations Enforcement Agency (NESREA) Act was enacted. The NESREA Act repealed the FEPA Act and established NESREA as an agency of the Federal Ministry of Environment, Housing and Urban Development. The Agency is responsible for enforcing compliance with environmental laws and regulations in Nigeria<sup>88</sup>. However, its powers do not extend to the oil and gas sector<sup>89</sup>. The Act creates provisions for the setting of air quality standards and atmospheric protection<sup>90</sup>. An individual that violates any regulations made to protect and enhance the quality of Nigeria's air resources will be liable to a fine not exceeding N200,000 (US\$1250) or to imprisonment for a term not exceeding one year or to both such fine and imprisonment. The offender will also be subject to an additional fine of N20,000 (US\$165) for every day the offence subsists<sup>91</sup>. Where the offence is committed by a body corporate, it shall be liable on conviction to fine not exceeding N2,000,000 (US\$12,500) and an additional fine of N50,000 (US\$312.5) for every day the offence subsists<sup>92</sup>.

The responsibility for recommending and enforcing compliance with regulations and programmes to control noise pollution also lies with NESREA<sup>93</sup>. Where an individual violates a regulation made by the Agency on noise control, the individual will be liable on conviction to a fine not exceeding N50,000 (US\$312.5) or to imprisonment for a term not exceeding one year or to both fine and imprisonment. An individual offender shall also be liable to an additional fine of N5000 (US\$31.25) for every day the offence subsists.<sup>136</sup> Where the offender is a corporate body, it shall be liable on conviction to a fine not exceeding N500,000 (US\$3125). Such corporate body will also be liable to an additional fine of N10,000 (US\$62.5) for every day the offence subsists<sup>94</sup>.

The Act also provides for the powers of the Agency to make regulations to enhance water quality standards for the purpose of protecting public health and welfare<sup>95</sup>. An individual who violates the water quality standards set by the Agency shall be liable to a fine not exceeding N50,000 (US\$312.5) or to imprisonment for a term not exceeding one year or to both such fine and imprisonment. Additionally, the individual will be liable to a fine of N5000 (US\$31.25) for every day the offence subsists<sup>96</sup>. Where the offence is committed by a corporate body, it shall be liable on conviction to a fine not exceeding N50,000 and an additional fine of N10,000 (US\$62.5) for every day the offence subsists<sup>97</sup>.

NESREA is empowered to make regulations on effluent limitations. In this regard, section 24(3) of the Act provides that: 'notwithstanding the existing regulations in force, other than in the oil and gas sector, the Agency may make regulations on effluent limitations, on existing and new point sources, for the protection of human, animal, marine and plant life'. An individual who violates regulations on effluent limitation will be liable on conviction to a

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<sup>88</sup> National Environmental Standard and Regulations Enforcement Agency (Establishment) Act, sec 2 & 3

<sup>89</sup> National Environmental Standard and Regulations Enforcement Agency (Establishment) Act, sec 7 & 24(3)

<sup>90</sup> National Environmental Standard and Regulations Enforcement Agency (Establishment) Act, sec 20(1)

<sup>91</sup> National Environmental Standard and Regulations Enforcement Agency (Establishment) Act, sec 20(3)

<sup>92</sup> National Environmental Standard and Regulations Enforcement Agency (Establishment) Act, sec 20(4)

<sup>93</sup> National Environmental Standard and Regulations Enforcement Agency (Establishment) Act, sec 22(2)

<sup>94</sup> National Environmental Standard and Regulations Enforcement Agency (Establishment) Act, sec 22(4)

<sup>95</sup> National Environmental Standard and Regulations Enforcement Agency (Establishment) Act, sec 23(1)

<sup>96</sup> National Environmental Standard and Regulations Enforcement Agency (Establishment) Act, sec 23(3)

<sup>97</sup> National Environmental Standard and Regulations Enforcement Agency (Establishment) Act, sec 23(4)

fine not exceeding N200,000(US\$1250) or to imprisonment for a term not exceeding two years or to both fine and imprisonment. There will also be an additional fine of N5000 (US\$31.25) for every day the offence subsists<sup>98</sup>. Where the offender is a corporate body, it shall on conviction be liable to a fine not exceeding N1,000,000 (US\$6250) and an additional fine of N50,000 (US\$312.5) for every day the offence subsists<sup>99</sup>.

The NESREA Act further provides for the powers of the Agency to make regulations for environmental sanitation<sup>100</sup>, and the protection of the quality of land resources as well as natural water shed quality<sup>101</sup>. The Act also prohibits the discharge of hazardous substances into the air or upon the land and waters of Nigeria or at the adjoining shorelines except where such discharge is permitted or authorised under any law in force in Nigeria<sup>102</sup>. An individual who violates this prohibition will be liable to an offence punishable on conviction by a fine not exceeding N1,000,000 (US\$6250) or to imprisonment for a term not exceeding five years<sup>103</sup>. Where the offender is a corporate body, it shall be liable to a fine not exceeding N1,000,000 (US\$6250) and an additional fine of N50,000(US\$312.5) for every day the offence subsists<sup>104</sup>. Additionally, the directors and officers of a corporate body who were responsible for its management at the time the offence was committed shall be liable for prosecution. However, conviction will be determinate on the success of the prosecution to prove that an offence was committed with the knowledge of the management of the corporate body, or that the management did not exercise due diligence to prevent the commission of the offence.

Compared to other pollution abatement laws, the NESREA Act creates more stringent sanctions for environmental pollution; however, many sections of the Act appear to be inelegantly drafted. The Act fails to create provisions for citizen suits or public interest litigation. This hinders effective public participation in environmental protection. Furthermore, the enforcement of most criminal provisions of the Act depends on the establishment of legal regulations on several aspects of the environmental protection. As such, a person cannot be effectively prosecuted for an offence if it is not shown that he violated a regulation made pursuant to the Act. Where the required regulation does not exist, such a person will not be deemed to have committed an offence<sup>105</sup>. This apparently creates a problem, as most of the regulations that ought to be made in accordance with the NESREA Act are not yet in existence.

### **5.0 Challenges to Effective Environmental Laws Enforcement in Nigeria**

Many reasons have been advanced for the lack of an effective environmental enforcement programme. One of the reasons often cited is the overarching corruption of public officials charged with enforcing these laws. Corruption is a major problem in Nigeria and has pervaded almost all sectors of the economy. Even considering whom enforcement agents have to deal with oil companies, it becomes even easier to see how these official can be easily co-opted and bribed. Also the diversion of ecological funds to other use possibly of lesser

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<sup>98</sup> National Environmental Standard and Regulations Enforcement Agency (Establishment) Act, sec 24(4)

<sup>99</sup> National Environmental Standard and Regulations Enforcement Agency (Establishment) Act, sec 24(5)

<sup>100</sup> National Environmental Standard and Regulations Enforcement Agency (Establishment) Act, sec 25(1)

<sup>101</sup> National Environmental Standard and Regulations Enforcement Agency (Establishment) Act, sec 26(1)

<sup>102</sup> National Environmental Standard and Regulations Enforcement Agency (Establishment) Act, sec 27(1)

<sup>103</sup> National Environmental Standard and Regulations Enforcement Agency (Establishment) Act, sec 27(2)

<sup>104</sup> National Environmental Standard and Regulations Enforcement Agency (Establishment) Act, sec 27(3)

<sup>105</sup> Constitution of the Federal Republic of Nigeria 1999(as amended) Sec 36(12)

significance has also been seen as a big problem to environmental enforcement in the country. There is also the issue of inadequate personnels.

True, these factors highlighted above could alone or in combination act as serious impediments to enforcing environmental regulations. It however offers little explanation on why the Nigerian Federal Government seems reluctant in imposing stringent penalties on activities that caused serious environmental damage in the country, as the case of gas flaring has shown, considering the several shifting of zero-tolerance stance on gas flaring. The Nigerian leadership is even ready to subject the economic livelihood and health of its citizens over the continued flaring of gas. Though gas flaring has been declared illegal in Nigeria since 1984, and various courts of jurisdiction has ruled against its practice, it continues unabated. Today the country is ranked second after Russia with the highest percentage of gas flared globally.

Therefore, to understand why the Nigerian government seem reluctant to enforce its environmental laws to the later, it becomes necessary to look at the nature of its economy because as our analysis will show it is the nature of the Nigerian economy which has tilted it towards the production of a single commodity that has had the greatest impact in weakening the political will of Nigerian independent leaders and has effectively made it rely on rent from oil companies for its survival.

The Challenges of enforcement of legal framework against environmental degradation by oil and gas industry in Nigeria are clustered here in no particular seriatim.

### **5.1 Economic Interest of the Nigerian State**

1. Nigeria is basically a mono economy which solely depends on crude oil as a major source of revenue. This has not always been the case because before the discovery of oil in 1956 in Oloibiri, a town in Bayelsa state, and its dominance in the 1970s, agriculture accounted for over 65 percent of Nigeria revenue. The discovery of oil did not only displace interest on other sectors of the economy but also effectively ensure that oil became the mainstay of the Nigerian economy. As at 2008, the dominance of the oil sector has been well established, accounting for over 82 percent of government revenue from a meager contribution of 26.1 percent in 1970 and during same period the oil and gas industry account for 99 percent of total export in 2008, a marked departure from 1960 where its contribution was a meager<sup>106</sup>.

Thus, the contribution of crude oil and gas to government revenue not only underlines the centrality of revenue from the industry to financial viability of the Nigerian state, it also shows the importance of oil rents in national politics<sup>107</sup>. It should however be stated here that the groundwork for most African State becoming a mono-product economy was laid by the colonial masters<sup>108</sup>. Colonialism encourages the production of a particular good to the detriment of others. Every subjugated economy was forced to produce the goods or commodities the colonizers were interested in and in some cases to embark on a commodity that hitherto they were alien to. The power of the colonial state was absolute and arbitrary, compelling the colonies to produce the commodities they needed. This was the case with Ghana, Kenya and Nigeria. The integration of African economy into the world capitalist system further entrenched the imposed production patterns. Thus efforts to reduce the

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<sup>106</sup> Z O Edo, The Challenges of Effective Environmental Enforcement and Compliance in the Niger Delta Region of Nigeria *Journal of Sustainable development in Africa* (14) (6) (2012) Pg 263

<sup>107</sup> O Mbachu, *The Nigerian petroleum Bill: An Appraisal* (Abraka: Delta State University Press, 2012)

<sup>108</sup> C Ake, *Democracy and Development in Africa* (Ibadan; Spectrum Books, 1996)

disarticulation caused by these patterns, had at best a marginal effect<sup>109</sup>. The post colonial economy continues to produce for the benefit of western capital and not for the benefit of the people. This meant that such dependent and fragile economy as the case of Nigeria has shown will continue to produce commodities that are in tandem with the demands of the advance capitalist nation. It is no wonder therefore that the global demand for oil and the availability of it in Nigeria has regulated other productive sectors like solid minerals, manufacturing and agriculture to the back seat<sup>110</sup>. This certainly will not have been so if political independence has not meant merely a change of state manager and the creation of fortuitous elites, who like their erstwhile colonial masters see the state as the quickest means for the appropriation of wealth<sup>111</sup>. The primary driver ensuring the continued economic reliance on western capital and technology is the multinational corporations. In Nigeria, the oil multinational corporations have been very decisive since they are in the sector that the Nigerian government depends on. How then has the dependence on oil affected environmental enforcement in Nigeria

For an industry that has been providing more than 90 percent of Nigeria total export earnings and more than 82 percent of recurrent revenue, with little or nothing coming from most of the other sectors like the manufacturing and agricultural sectors it becomes easy to understand how such an economy can have a decisive effect on environmental enforcement in the Niger Delta region. In fact, it is worth noting: The almighty power of the multinational oil corporations in partnership with the government of Nigeria continues to pursue profit at the expense of the inhabitants' lives and property, environmental decay, and dislocation of indigenous economy<sup>112</sup>.

Under such an unholy alliance and over dependence on these oil companies, it becomes difficult to regulate the activities of the oil companies. It has been argued that even the various commissions that have been set up to addresses critical issues in the Niger Delta was actually programmed to fail<sup>113</sup>. For instance, the creation of FEPA in 1988 was necessary to repair an already embarrassed and damaged image (the dumping of toxic waste in Koko was extremely embarrassing to the Nigerian government because it happened at a time when Nigeria was taken a leading role in toxic waste dumping in her sub-region). Since the oil industry accounts for government spending, enforcing environmental regulations that could hamper productions will be extremely devastating for a government who need such revenue to boost up its legitimacy<sup>114</sup>. This has also explained why the oil companies "cheap blackmail" often works to their favour. The "non-feasibility logic" often employed in the case of gas flaring has made the federal government continue to shift grounds at the expense of the health of the people.

## 5.2 Dearth of political will and ineptitude of the political class in Nigeria

In the words of the Acting Executive Director of UNEP, Joyce Msuya, 'political will is now critical to making sure our laws work for the planet'. The economic and social challenges to enforcement of environmental legislation and policies clearly show the role politics plays. It

<sup>109</sup>*Ibid*

<sup>110</sup>*Ibid*

<sup>111</sup> W D. Graf, *African Elites Theory and Nigeria Elites Consolidation: A political Economy Analysis* (London: Zed press, 1983)

<sup>112</sup> A Ikein, *The Impact of Oil on a Developing Country – The Case of Nigeria* (Ibadan: Evans Brothers Publisher, 1990)

<sup>113</sup>*Ibid*

<sup>114</sup>*Ibid*

is not in doubt that there is lack of political will to ensure compliance with pollution control measures in Nigeria, especially in the oil industry. No action betrays this notion more than the case of gas flaring in the Niger-Delta region. In spite of the fact that the flaring of gas has been prohibited since 1984, it is a constant practice even today<sup>115</sup>. While policies aimed at stopping gas flaring have been in existence since 1979, the Nigerian people have seen dates banning the practice extended several times. At least it is on record that deadline dates for stopping gas flaring have been extended at least 7 times. 1984, 2004, 2016, and 2020 are notable dates in this regard<sup>116</sup>. Presently, Nigeria is working towards ending gas flaring by the year 2030<sup>117</sup>. In a fieldwork conducted by Zephaniah O. Edo, Laz Etemike and Victor E. Clark at Okpai, Ndokwa East, in Delta State, a participant during a focus group discussion explained the frustration of Government's incoherent deadlines on the people of the region in these exact words:

Deadline for gas flaring has been shifted several times that it has become more of a slogan for electioneering. Nobody here believes the government any longer as we now know they are more interested in the money they get from the oil companies than how this fire is affecting our health and crops. Produce from our farms has been seriously affected and this affects us economically because principally we are farmers. The government continues to turn a blind eye to our plight and the oil companies have bought some powerful persons in the community and the rest of us cannot do anything<sup>118</sup>.

Another area where successive administrations in Nigeria have shown lack of political will in the enforcement of legislative frameworks for the protection of the environment is the non-implementation of section 8(f) of the NESREA Act 2007 which empowers NESREA to, subject to the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), and in collaboration with relevant judicial authorities establish mobile courts to expeditiously dispense cases of violation of environmental regulations. Although the Agency is empowered to establish environmental courts to expeditiously dispense cases of violation of environmental regulations, none has been established due to lack of political will to do so.

### **5.3 Inadequate Funding of Environmental Agencies**

The institutions in-charge of the environmental protection are entitled to establish and maintain a fund into which shall be paid and credited the take-off grant from the Federal Government; annual subvention from the Federal Government and five percent of the ecological fund to serve as superfund for the management of major oil spill disasters annually. 0.5 percent operations funds of oil companies for the enforcement of environmental legislation in the petroleum sector and such counter-part funding as may be provided, from time to time by a State or Local Government including loans and grants-in-aid from national, bilateral and multilateral agencies; rents, fees and other internally generated revenues from services provided by the Agencies; and all other sums accruing to the Agencies from time to time<sup>119</sup>.

<sup>115</sup> Shell Annual Report made in 1996

<sup>116</sup> Y Akinpelu, Analysis of 77% of Oil Spills in Nigeria Occurred in only three States Premium times, May 15, 2021

<sup>117</sup> G O Aigbe et al, 'Gas Flaring in Nigeria: A Multi-Level Governance and Policy Coherence' Journal of Anthropocene Science (2) (2023) Pg 31 – 47

<sup>118</sup> Z O Edo et al, Exploring Barriers to Environmental Law Enforcement and Compliance in Nigeria Niger Delta Region Journal of Danubian Studies and Research (12) (1) (2022) Pg 241

<sup>119</sup> National Oil Spill Detection and Response Agency Act, sec 11

The Agencies may also, from time to time, apply the proceeds of the funds to the cost of administration of the Agencies; to the paying of the emoluments, allowances and benefits of members of the Governing Board and for reimbursing members of the Governing Board or of any committee set up by the Governing Board; to the payment of the salaries, fees or other remuneration or allowances, gratuities and pensions, and other benefits payable to the officers and other employees, gratuities of the Agencies, so, however that no payment of any kind under this paragraph (except such as may be expressly authorized by the Agencies) shall be made to any person who is in receipt of emoluments from the Federal or a State Government; for the development and maintenance of any property vested in or owned by the Agencies; and for and in connection with all or any of its functions under the NOSDRA Act<sup>120</sup>.

The Agencies shall, not later than 30th September in each year, submit through the Minister to the President an estimate of its expenditure and income for the next succeeding year. The Agencies shall keep proper accounts in respect of each year and proper records in relation to those accounts and shall cause its accounts to be audited within six months after the end of each year by auditors appointed from the list and in accordance with the guidelines supplied by the Auditor-General for the Federation<sup>121</sup>.

#### **5.4 Lack of Modern Technology and New Approach to Combat Environmental Degradation**

Technological impact that determines the efficiency and nature of emission reduction has not been emphasized. The apparent physical and human capital makes technological goal by the agencies responsible for the protection of the environment difficult. Technology is always advancing and improving. Many new technologies are naturally more energy efficient and less polluting than the ones they replace. Sometimes, this is because they were designed with environmental improvement in mind. Usually, however, it is simply the result of using newer and better materials and components. Therefore, pollution-preventing technologies can be found in every area of a product's life cycle. Life cycle analysis (LCA) is needed to determine if a particular technology really pollutes less than its alternatives.

Life cycle analysis is the examination of the environmental impacts of a product, from its origins as raw material through processing and production to use and final disposal. This can be a complex process. For example, fluorescent light bulbs may seem to be less polluting than incandescent light bulbs because they use much less energy. However, they actually use polluting chemicals such as mercury that are not found in incandescent light bulbs. So they use less energy, but more toxic chemicals. The choice of indicators for P2 performance and LCA, such as toxicity or energy efficiency, is important for evaluation<sup>122</sup>.

Some technologies are important for helping other technologies reduce pollution. For example, process controls such as meters and sensors can make many production processes more efficient and less polluting by providing improved control, which reduces waste and defects. Centrifuges can reduce the number of solids in wastewaters, thereby reducing water pollution. Catalytic converters on engine exhaust systems can reduce air pollution. There are many such examples of technologies that help other technologies to be cleaner. This is

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<sup>120</sup> National Oil Spill Detection and Response Agency Act, sec 12

<sup>121</sup> National Oil Spill Detection and Response Agency Act, sec 13

<sup>122</sup> S K Bariyira et al, Legal issues and Challenges in Effective Enforcement and Implementation of Laws Addressing Environmental Pollution in Nigeria Journal of Environment & Natural Resources Law (11) (1) (2023) Pg 145

important in situations where there is a large investment in an existing technology already installed that cannot be easily or economically replaced with new and cleaner technology.

Some technologies are designed specifically for protecting the environment while also improving business performance. For example, recycling technologies can help recover valuable materials from wastes, cutting manufacturing costs, while also preventing pollution. Examples include gene-engineered plants that do not need protection using chemical insecticides and fuel cells for generating electricity. However, it is surprisingly challenging to identify such technologies. Most technologies that stop pollution were usually created to simply reduce costs and save on materials. Technologies designed to prevent pollution usually rely on cost efficiency, rather than pollution prevention, as their main selling point<sup>123</sup>. However, for the Agencies in charge the environmental protection to address a wide spectrum of environmental protection issues using geosynthetic technologies, must provides dependable geosynthetic composite solutions for environmental soil stabilization, earth retention, and soil erosion control projects utilizing geotextiles, geogrids, geotubes, earth anchors, walls and slopes, turf reinforcement, revegetation, containment and geomembrane liners, and more.

To this end, the Agencies must acquire new process technologies via acquisition, licensing, in-house Research and Development, collaboration with universities, research institutes and other like-minded corporations in accordance with section 31 of NOSDRA Act which provides that in the exercise of its functions under this Act, the Agency may demand by requisition from any person or organization, any available equipment, facilities or personnel which may assist in a speedy and effective cleaning and rescue operation during an oil spill disaster.<sup>124</sup>

### **5.5 The Rigidity of the Non-Justiciability Clause of Chapter II of 1999 Constitution**

The Constitution of the Federal Republic of Nigeria, 1999 (as amended) is described as the grund -norm and the fundamental law of the land and its provisions take precedence over any law, regulations, or polices enacted either by the National Assembly or state House of Assembly. The 1999 Constitution recognizes the importance and need to preserve and better the environment and safeguard the air, land, water, forest and wild life of Nigeria<sup>125</sup>. The responsibility to protect, preserve, and improve the environment as imposed on the government by the constitution is however limited by the same constitution to the extent that the said duties are not justiciable.<sup>126</sup>

A term is said to be non-justiciable where the Court is unable to hear such a matter even where real interest and rights are being violated.<sup>127</sup> While the duty of government to protect, preserve and safeguard the environment as provided for under chapter 2 of the Constitution, 1999 falls within the fundamental objectives and Directive Principles of the government<sup>128</sup> Section 6 (6) (c) of the Constitution oust the inherent powers and sanctions of a court in

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<sup>123</sup>*Ibid*

<sup>124</sup> National Oil Spill Detection and Response Agency Act, sec 31

<sup>125</sup> Constitution of the Federal Republic of Nigeria, 1999 (as amended), sec 20

<sup>126</sup> Constitution of the Federal Republic of Nigeria, 1999 (as amended), sec 6(6)(c)

<sup>127</sup> V C Ikpeze, "Non-Justiciability of Chapter II of the Nigerian Constitution as an Impediment to Economic Rights and Development", 2025 <http://www.iorsjournals.org> accessed 12th July, 2025

<sup>128</sup> O Olaiya, "Interrogating the Non-Justiciability of Constitutional Directive Principles and Public Policy Failure in Nigeria", 2025 <https://www.ccsenet.org/>, accessed on the 12th July, 2025

Nigeria to address any violations on the constitutional duties and responsibilities confer on government to safeguard and preserve the environment.

In interpreting the provision of Chapter two of the 1979 Constitution which is similar in wordings with Chapter two of the 1999 Constitution, the Court of Appeal in *Archbishop Olubunmi Okogie & Ors V Attorney General of Lagos state and Ors*<sup>129</sup> affirms thus:

The Fundamental Objectives identify the ultimate objectives of the nation and the Directive Principles lay down the policies which are expected to be pursued in the efforts of the nation to realize the national ideals. While section 13 of the constitution makes it a duty and responsibility of the judiciary among other organs of government, to conform to and apply the provisions of chapter II, Section 6 (6) (c) of the same constitution ensures no court has jurisdiction to pronounce any decision as to whether any organ of government has acted or is acting in conformity with the fundamental objectives and Directive Principles of State Policy. It is clear, therefore, that section 13 has not made chapter II of the constitution justiciable.

Also, the Supreme Court in the case of *Ondo State v Attorney General of the Federation*<sup>130</sup> affirming the non-justiciability of the provision of Chapter two of the Constitution held that:

The practice of gas flaring is unconstitutional as it violates the guaranteed fundamental rights of life and dignity of human persons provided in the Constitution of the Federal Republic of Nigeria and the African Charter on Human and Peoples Rights.

Due to the crucial role of safe environment to human existence, it is the writer's opinion that issues relating to protection, promotion and Conservation of the environment should be removed from the fundamental objective and principles of the government and be made justiciable as this will make the government answerable and liable for its neglect, inactive or active role in polluting the environment especially in its oil and gas exploration and exploitation in the Niger Delta regions of Nigeria.

Interestingly, notwithstanding the non-justiciability of the provisions of the Chapter, the African Commission of Human and Peoples' Rights has on a number of occasions adjudicated over provisions of Chapter two particularly on socio-economic rights by coming under the African Charter which has been domesticated in Nigeria. In *NNPC v Shell Petroleum Development Corporation*, the Ogoni people through the Social and Economic Rights Centre (SERAC) instituted an action against the government of Nigeria over the deposition of toxic waste in the waterways by oil consortium thereby destroying their right to clean environment by contaminating the water, air and soil which in turn has grossly affected their health. The African Commission found in favour of the Ogoni people for violating Articles 2, 4, 14, 16, 18(1), 21 and 24 of the African Charter.<sup>131</sup>

The Commission recommended the protection of the Ogoni people by the Nigerian government and also the provision of adequate compensation to the Ogoni people. While the enforceability of this pronouncement is in doubt, the case served as a leeway on the enforceability of the provisions of Chapter two of the Nigerian Constitution. Section 20 of the 1999 constitution gives citizens a right to a clean and improved environment. However, the

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<sup>129</sup> (1981) 2 NCLR 337 350

<sup>130</sup> (2002) 9 NWLR (pt 772)

<sup>131</sup> Social and Economic Rights Action Centre (SERAC) and the Centre for Economic and Social Rights v Nigeria, Communication No 155 of 1996 decided on the 30th ordinary session, Oct 2001.

citizens of Nigeria cannot boast of a clean environment. The fact that such a beautiful right has been encompassed in the web of non-justiciability is intriguing to citizens and society in general. This implies that the right is not enforceable as citizens cannot go to court to enforce this as a fundamental right they are entitled to.

### **5.6 Inadequate Penalties or Punishments for Violators of Environmental Laws**

The penalties or punishments prescribed by the laws for offenders or violators of environmental laws are in most cases, low and inadequate and thus, not deterrent enough to compel compliance with environmental laws. For example, sections 1, 3 and 5 of the ONWA prohibit discharge of oil into the waters of Nigeria and mandates ships to install anti-pollution equipment for the purpose of preventing water pollution<sup>132</sup>. If the above provisions are violated, the violator (ship owner or master) will be liable and guilty of an offence and will pay a fine of N2,000 for such violation<sup>133</sup>. The present writer regards the punishment of a fine of N2,000 too small and grossly inadequate to serve the purpose of this law as it is not likely going to serve as an effective tool for deterrence to polluters of the environment, especially, the oil and gas companies operating in the Niger Delta region.

Similarly, there is no provision in the NOSDRA Act that specifically imposes fines for an oil spill incident; only failure to report an incident and to clean up and remediate the impacted (polluted) site within two weeks of the occurrence of the spill is punishable<sup>134</sup>. This provision is particularly concerning, as an oil spiller who would have assumed an obligation to report an oil spill incident may prefer to pay the fine of two million naira rather than engage in the clean-up process. This situation then removes deterrence and fosters an environment where the law is observed more in its breach than in compliance. Besides, the violators are usually multinational companies that are extremely rich and can afford to pay the fine with ease.

### **5.7 Exemptions in Environmental Laws that Impedes Enforcement of its Provisions**

There are exceptions in some environmental laws that impede the enforcement of their provisions by environmental enforcement agencies. For example, under the EIA Act, an impact assessment is not required for a proposed project where the President of Nigeria or the Federal Environmental Protection Council is of the view that the environmental impacts of the project may likely be minimal, the project is to be undertaken during national emergency period for which the government has taken temporary steps; and the Federal Ministry of Environment is of the view that such a project is in the interest of public health or safety<sup>135</sup>.

These exceptions are mostly responsible for non-compliance with the provisions of the EIA Act<sup>136</sup>. The last exception that allows non-compliance with the environmental impact assessment requirement appears to counteract the entire objective of the EIA Act. This is because the only way to determine whether a project is safe or healthy for the public is by assessing its potential impacts on the environment<sup>137</sup>.

Also, the PIA which prohibits the flaring or venting of natural gas and imposed penalties on violators, equally allows the flaring or venting of natural gas for a specified period under

<sup>132</sup> Oil Navigable Waters Act, sec 1, 3 & 5

<sup>133</sup> Oil Navigable Waters Act, sec 6

<sup>134</sup> National Oil Spill Detection and Response Agency Act, sec 6(2) (3)

<sup>135</sup> Environmental Impact Assessment Act, sec 15 (1) (a-c)

<sup>136</sup> C C Ekeolisa and E Oshionebo, *Regulating Transnational Corporations in Domestic and International Regimes: An African Case Study* (University of Toronto Press 2009) Pg 59

<sup>137</sup> *Ibid*

certain conditions, such as where it is required for facility start-up; or (b) for strategic operational reasons, including testing<sup>138</sup>. These exceptions in the PIA which allows gas flaring may defeat the original intention of the PIA to put a stop to gas flaring in Nigeria.

### **5.8 Infrequent Legislative Reformation**

Strengthening the control of environmental pollution in Nigeria will entail a review of most pollution abatement laws in order to enhance the powers of regulatory institutions to institute action directly against offenders. Pollution abatement laws will also have to be in accord with the ‘polluter pays principle’. In this regard, it is suggested that most of the numerous defences contained in Nigerian pollution abatement laws should be reviewed to favour strict liability for environmental pollution in most cases. This approach, which has already been applied in most jurisdictions, will greatly discourage wanton environmental pollution as it will prevent polluters from escaping civil or criminal liability on flimsy and technical grounds. Additionally, penalties that trivialise environmental pollution should be reviewed and made punitive to deter effectively environmental pollution<sup>139</sup>. The issue of court jurisdiction, which presently inflicts hardship on litigants seeking relief for oil pollution damage, should be revisited by way of legislative review so as to enable state high courts to adjudicate environmental matters relating to oil, gas and mining. This will enhance easy access to justice as well the speedy disposal of such matters<sup>140</sup>.

In order to ensure adequate public participation in the enforcement of pollution abatement laws there is a need for the establishment of a constitutional right to a clean environment. The establishment of an explicit constitutional right to a clean environment will enable citizens to validly have recourse to a court of law where such right is threatened as a result of environmental pollution. Additionally, pollution abatement laws will have to be reviewed to accommodate citizen suits. Through this mechanism, citizens will directly enforce environmental laws against violators. There is also a need for the accommodation of public interest litigation in pollution abatement laws. This mechanism will ensure the protection and participation of persons who are financially constrained to pursue their environmental rights or enforce pollution abatement laws and also erase the stringent legal requirements usually encountered in instituting representative actions in environmental protection matters. Enhancing public participation in this regard will also entail further legislative responses towards ensuring timely access to information relating to environmental and developmental activities<sup>141</sup>.

### **6.0 Conclusion**

This work has examined Nigeria’s pollution abatement laws and some of the factors hindering the effective control of environmental pollution in Nigeria. It has shown to a great extent that the existing pollution abatement laws are weak and ineffective. It has also shown that there is an apparent link between environmental pollution, poor health conditions and insecurity in some parts of Nigeria. The question then is ‘can our environment be free from pollution?’ While this work does not suggest that our environment can be entirely free from pollution, environmental pollution can be minimised to harmless levels through effective regulation. The achievement of this state of affairs in the final analysis will entail a strong political commitment and intensive efforts by the Nigerian Government to tackle

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<sup>138</sup> Petroleum Industry Act, sec 107 (a) (b)

<sup>139</sup> U J Orji, An Appraisal of the Legal Framework for the Control of Environmental Pollution in Nigeria Commonwealth Law Bulletin (38) (2) (2012) Pg 344

<sup>140</sup> *Ibid*

<sup>141</sup> *Ibid*

environmental pollution as a national emergency through the promotion of sustainable development. In this regard, institutions responsible for pollution control should be adequately strengthened in terms of facilities, human capacity and funding to ensure optimum performance. The judiciary will also have to adopt activist approaches to pollution control. Finally, given the inadequacies of most Nigerian pollution abatement laws, there is a need for a comprehensive review of these laws to ensure adequate penal sanctions, adequate public participation, proper regulatory co-ordination and collective responsibility in pollution control.

### **6.1 Recommendations**

There is no perfect piece of legislation anywhere in the world. Laws are man-made, and consequently cannot be flawless. This is true of the legislative instruments on control of environmental pollution in Nigeria. They are not without some weaknesses as herein identified. However, it is the researcher's humble opinion that environmental pollution still rears its ugly head in Nigeria, not because there are no laws to prevent, or at least, control it to the barest minimum. Rather, the problem lies largely in the implementation and enforcement of pollution-control legislation. The situation would have been different if the agencies clothed with statutory powers to enforce rules and regulations on environmental pollution had been living up to expectations by ensuring effective enforcement. It is hoped that if the Nigerian Government and indeed, every relevant stakeholder in the field of environmentalism adhere to the recommendations made in this work, challenges to effective enforcement of environmental legislation in Nigeria will fizzle out. The present writer in the course of the work was inclined to make recommendations viz;

1. The government at various levels should purge the institutions responsible for the implementation and enforcement of the environmental laws of corruption. Corruption is one of the major challenges to the safety of our environment. Often times, the fund approved by the federal government for the improvement of the environment ends up in the pocket of a few individuals. This in the end impacts negatively our environment.
2. Nigerian laws should be amended such as to confer on individuals the power to sue for any violation of their environmental rights as against the current legal regime that confers this power on the state only.
3. The provision of Section 6(6) C of the 1999 Constitution of Nigeria should be amended in order to make justiciable the provisions of Chapter II of the Constitution. The provisions of Chapter Two of the Constitution constitute rights under international laws to which Nigeria is a signatory and some of which have been domesticated by virtue of Section 12 of the same constitution. The failure of the government of Nigeria to make justiciable Chapter Two of the constitution is a deliberate exhibition of its unwillingness to promote economic rights and development and to be held accountable for such failure which in turn worsens the environmental challenges of the country.
4. Government should strike a balance between economic development and environmental protection.
5. Demonstration of Adequate Political Will: Political leaders and state actors should demonstrate commendable political will to implement the provisions of environmental statutes. This may be in form of setting in motion every machinery needed for full implementation and enforcement of environmental legislation. For instance, section 8(f) of the NESREA Act 2007 empowers NESREA to, subject to the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), and in collaboration with relevant judicial authorities establish mobile courts to expeditiously dispense cases of violation of environmental regulations. Government should

implement this provision by setting up environmental mobile courts that would assist NESREA in realizing its statutory mandate.

6. **Diversification of Nigerian Economy:** Presently, oil is the mainstay of Nigerian economy. Available records show that most of the environmental degradations are caused by the activities of oil companies, especially in the Niger-Delta region. More often than not, enforcement agencies are usually reluctant to enforce environmental regulations against the multinational oil companies due to their belief that stringent enforcement could affect the Government's source of revenue. However, if the economy is diversified in such a manner that Government would not have to depend solely on oil as its only viable source of revenue, agencies saddled with the responsibility of enforcing environmental regulations in the oil and gas sector will be audacious in carrying out their functions no matter whose ox is gored.
7. **Adequate Funding of Enforcement Agencies:** Recently, the Director-General of NESREA, Jauro while appealing for improved funding of the Agency lamented that paucity of fund is robbing the Agency the opportunity of giving the nation the optimum service. If NESREA and indeed, other enforcement agencies are adequately funded, they will not have to depend for funds on the organizations whose activities they are supposed to supervise. Besides, adequate funding will enable them procure materials necessary to ensure effective monitoring and enforcement of environmental standards.
8. **Intensification of Fight against Corruption:** Some officers of the enforcement agencies have imbibed corruption as a way of life. There should be an enhanced remuneration package for the staff of the enforcement agencies. This will reduce their vulnerability to bribery and corruption.
9. **The regulatory agencies and institutions for the enforcement and implementation of laws addressing environmental pollution in Nigeria need to be technologically equipped to detect what constitutes chemical substances or toxic wastes under the Harmful Waste (Special Criminal Provisions) Act 1988 before the entire into Nigeria. This will aid forensic examination and data and waste management technologies in Nigeria.**
10. **Just as is obtainable in USA, pollution in the oil and gas sector should be made a strict liability offence in Nigeria so that it will be easier for victims of oil pollution to recover damages and compel clean-up.**