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SENTENCING IN ENVIRONMENTAL OFFENCES IN NIGERIA: AN OVERVIEW

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Abstract

Environmental deterioration has, over the years, produced unpleasant results with effects on health and economic development on earth. These health and economic ills are brought to the fore by pollution, inappropriate waste disposal, deforestation and wildlife extinction, most of which constitute criminal acts or omissions. In the wake of this, criminalizing environmental harm has become the mainstay of environmental legislation in Nigeria and even with the environmental laws and policies targeted at solving the problems, the situation in the country appears to be increasingly added-to, thanks to the weakness of the punitive measures and the sterility of the enforcement agencies in the country. This research paper, therefore, scrutinizes some of the environmental laws criminalizing these offences, the adequacy of the penalties prescribed therein, the conviction and subsequent sentencing of the perpetrator of this environmental harm. Some of these laws include the Harmful Waste (Special Criminal Provision) Act, Environmental Impacts Assessment Act, Criminal Code Act, Climate Change Act, Petroleum Act and others. The research paper adopted the doctrinal legal research methodology which enabled the researcher to review the primary and secondary sources of legal research. The primary sources of information used include statutes and case laws. The secondary sources of information used are books, journal articles and internet sources. This paper found inter alia that the punitive measures prescribed by these laws are inadequate to deter the perpetrators and the entire public from further committing theses offences. This research paper recommended inter alia a reform of all the laws in order to prescribe more adequate fines and prison terms for environmental offences.

Keywords: Environmental, Environmental Protection, Environmental Law, Sentencing of Environmental Offenders.

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1. Introduction

The trend of events in the environmental sector shows that activities which are harmful to the environment, and are carried out consciously and inadvertently by man, grow daily, with socio-economic and technological advancements has come an array of environmental menace, and it is humans and the species of flora and fauna that are at the receiving end of this environmental hazards. Man is gradually destroying the very means by which life is sustained and it is in a bid to curb these excesses that environmental harm has been criminalized over the years, irrespective of the differences in opinion as to which environmental issues should be criminalized.[2]

Given the above, the Nigerian legislature, charged with the constitutional responsibility of enacting laws, brought into existence myriads of statutes with the goal of maintaining environmental integrity and preserving lives. Most of the laws boast of an abundance of criminal provisions with a plumage of minimal sanctions.[3] The Federal and state agencies like the National Environmental Standards and Regulation Enforcement Agency (NESREA), National Oil Spill Detection and Response Agency (NOSDRA), the National Biosafety Management Agency (NBMA), along with the Nigeria Police have been established and empowered to see to the enforcement of these laws and regulate the activities of individuals and companies from carrying out activities that have a calamitous effect on man and the environment.

With these plethoras of laws and regulatory bodies provided for under most of the extant laws, the question that begs to be answered hinges on why there is a rising disobedience and disregard of the laws and consequent incessant deleterious offences committed against the environment on a daily basis.

[2] Okpa Ujong Bassey Et Al 'Adequacy Of The Enforcement Of Green Crimes; A Stinging Satire Of The Nigerian Case' [2020], *Journal ofLaw, Crime And Justice*, 39

[3] ibid

2. CONCEPTUAL FRAMEWORK

Environment

The term "Environment" does not have a generally accepted definition hence, has been defined by different authors and researchers due to its ambiguity, vastness and all-inclusiveness of the surroundings. The Black's Law Dictionary defines it as the totality of physical, economic, cultural, aesthetic, and, social circumstances and factors which surround and affect the desirability and value of property and which also affect the quality of peoples' lives.[4] The Constitution of the Federal Republic of Nigeria defines environment to include; the water, forest and wildlife, all layers of the atmosphere, all organic and inorganic matter and living organisms, and the interacting nature system.[5] The National Environmental Standard Regulation Enforcement Agency (NESREA) Act 2007 defines environment to include water, air, land and all plants and human beings or animals living therein and the inter-relationships which exist among these or any of them.[6]

This research paper aligns itself with the definition of the Nigerian constitution which defines environment to include water, forest and wildlife, all layers of the atmosphere (firmament), all organic and inorganic matter and living organisms (flora and fauna), and the interacting nature system.

Environmental Law

Environmental law like every other areas of law does not have a generally accepted definition and thus, has been subjected to different meaning by different authors and Jurist. Black's Law Dictionary defined it as the field of law dealing with the maintenance and protection of environment, including preventive measures such as the requirement of the environmental impact statement as well as measures to assign liability and provide cleanup for incident that harm the environment. Also, Encyclopedia Britannica[7] defined Environmental Law as the principles, policies, directives and regulations enacted and enforced by local, national or international entities to regulate human treatment of the nonhuman world. The law therefore, seeks to protect human environment by setting out some rules and regulations necessary to curb harmful human activities to the environment. Environmental Law can however be defined as a body of law that is concerned with protecting the natural resources of land, air and water.

Environmental Protection

Environmental protection is the practice of preserving and managing the natural environment by individuals, organizations and governments. Its objectives are to conserve natural resources and the existing natural environment and, where possible, to repair damage and reverse trends. Due to the pressures of overconsumption, population growth and technology, the biophysical environment is being degraded, sometimes permanently. This has been recognized, and governments have begun placing restraints on activities that cause environmental degradation. Since the 1960s, environmental movements have created more awareness of the various environmental problems.

The chief beneficiary of environmental law is mankind since the law is designed to improve mankind's living conditions.[8] Generally speaking, mankind benefits because environmental protection aims to saving mankind from itself. Unless legal checks and balances are imposed on mankind's present activities, future generations may unduly suffer for present generation's reckless environmentally damaging activity.

[4] B. A. Garner, *Black's Law Dictionary* (10th edn, Thomson Reuters 2014) 651.
[5] CFRN 1999 (as amended), s 20
[6] NESREA Act Cap N64 LFN 2007, s 37
[7] https://www.britannica.com/topic/environmental-law
[8] M Ikharaile, 'A Constitutional Imperative on the Environment: A Programme of Action for Nigeria" 150

3. MEANING AND NATURE OF ENVIRONMENTAL OFFENCE/CRIME

Environmental offence/crime encompasses a broad list of illicit activities including illegal hunting and trade in wildlife (poaching), smuggling of Ozone Depleting Substances (ODS), illicit trade of hazardous waste, illegal, unregulated and unreported fishing, illegal logging and trade in timber.[9] It also includes prohibited pollution of water and air and the production of noise beyond the acceptable decibel.[10] Popularly known as environmental offence/crimes or 'green-collar crimes'[11] due to the fact that they are largely committed in the course of employment or business, green crimes are acts done in violation of those duties which an individual owes to the community in relation to the environment, the breach of which the law has provided that the offender shall make satisfaction to the public. Ekpo and Udoaka describe the phrase to be an act or omission which is harmful to the environment and which breaches an international or national environmental law which stipulates criminal sanctions.[12] Basically, they are illegal acts which directly harm the environment and are liable for prosecution.[13]
Environmental offence/crime in Nigeria may be generally categorized into the groups of serious specific offences and regulatory offences. Serious specific offences are mostly made in direct response to an offensive activity. An example is the establishment of the Harmful Waste (Special Criminal Provisions, etc.) Act in 1988 in response to the 1988 Koko incident in the then Bendel State. In section 1(2)(a)-(b) of the Act, it is an offence for anybody to, without lawful authority, carry, deposit, dump or cause to be carried, deposited or dumped or is in possession for the purpose of carrying, depositing or dumping any harmful waste on any land or in any territorial waters or contiguous zone or Exclusive Economic Zone of Nigeria or its inland waterways and for anyone to transport or cause to be transported or is in the possession for the purpose of transporting any harmful waste. Regulatory offences on the other flip embody preventive prohibitions, the scope of which covers the large number of cases in which criminal sanctions is imposed on persons who fail to comply with the administrative provisions of legislation like the National Environmental Standards and Regulations Enforcement Agency (NESREA) Act of 2007 or the Environmental Impact Assessment (EIA) Act of 1992.

4. Legal Framework Criminalizing Environmental Offences in Nigeria

Before delving directly into listing and expatiating on some of the statutory framework however, it is necessary to note two things. The first is that while some of the laws are framework legislation and incidental legislation, a whole lot of others are sectorial. While framework legislation are laws which are enacted in Nigeria with the overall environmental protection in mind[14] and sectorial legislation concerned with laws that are enacted for the protection of a sector of the environment,[15] incidental legislation do not have environmental protection in mind and as such only a minuscule of their provision are relevant to environmental protection. Secondly, penalties in the various legislation only lie upon conviction by a competent court of law. Below is inter alia the list of some know environmental laws criminalizing these offences:

National Environmental Standards and Regulations Enforcement Agency (NESREA) Act 2007

Established in 2007, the NESREA Act not only repealed the Federal Environmental Protection Agency (FEPA) Act[16], it also replaced it as the main environmental regulation statute in the country. The Act, which was signed into law by Late President Umaru Musa Yar"Adua, is an embodiment of laws and regulations focused on protection and sustainable development of the environment and its natural resources.[17] The Act creates NESREA as the regulatory body of the provisions of the Act and

[9] ibid
[10] Mokutima E. Ekpo and Edem E. Uduoka, 'Environmental Protection Laws in Nigeria: A Critique' [2016] *Calabar Law Journal* (17), 154
[11] K. E. Eman and G. Mekso, C. B. Fields, „Crimes Against the Environment; Green Criminology and Research Challenges in Slovania" [2009] *Journal of Criminal Justice and Security* (4) at 52
[12] (*n1*) 157
[13] ibid
[14] Edwin O. Ezike, „Liabilities for Environmental Pollution Damage in Nigeria" [2010] *The Journal of Private & Property Law* (28), 65.
[15] *(n13)* 73
[16] By S. 36 of the NESREA Act, the FEPA Act is repealed.
[17] Murtala Ganiyu Murgan, '*An Appraisal of the Laws on Protection of Environment in Nigeria'* (Evan Prints 2015), 3 at 9

embodies regulatory provisions on water, air, noise, hazardous waste land and forest. These provisions are provided for between sections 20 and 27 of the Act.

By Section 20 of the Act, a person who violates the quality of Nigeria's air resources commits an offence and shall be liable to a fine not exceeding N200,000 or to imprisonment for a term not exceeding one year or to both such fine and imprisonment and an additional fine of N20,000 for every day the offence subsists[18]; and when committed by a body corporate, the body corporate shall be liable to a fine not exceeding N2,000,000 and N50,000 for every day the offence subsists[19]. Section 23 criminalizes the violation of the provisions of the water regulations under the Act to the tune of a fine not exceeding N50,000 or to imprisonment for a term not exceeding one year or to both and an additional fine of N5,000 for every day such violation continues; and if violated by a body corporate shall be liable to a fine not exceeding N500,000 and an additional fine of N10,000 for every day the offence subsists. Under Section 24, any person who violates the effluent limitations regulations made by NESREA commits an offence will be liable to a fine not exceeding N200,000 or to imprisonment for a term not exceeding 2 years or to both such fine and imprisonment and an additional fine of N5,000 for every day the offence subsists[20]; where it is violated by a body corporate, it shall be liable to a fine, not exceeding N1,000,000 and an additional fine of N50,000 for every day the offence subsists[21]. The penalties provided for in the Act are maximum penalties and therefore cannot be exceeded even though a minimum penalty can be given since the penalties are not mandatory either.

Harmful Waste (Special Criminal Provisions) Act CAP 165 LFN 2004

By Section 1(2) of the Act, it is a crime for any person who, without lawful authority, carries, deposits, dumps or causes to be carried, deposited or dumped, or is in possession for the purpose of carrying, depositing or dumping, any harmful waste on any land or in any territorial waters or contiguous zone or Exclusive Economic Zone of Nigeria or its inland waterways; or transports or causes to be transported or is in possession for the purpose of transporting any harmful waste; or imports or causes to be imported or negotiates for the purpose of importing an harmful waste; or sells, offers for sale, buys or otherwise deals in any harmful waste. This section is the omnibus definition section of the Act.

The Act also makes for categories of offenders under the Act. By Section 2, a principal offender may be the person who actually did the act or makes the omission, did or omits to do any act for the purpose of enabling or aiding another person to commit the crime, aided another person in committing the crime, or who counseled or procures any other person to commit the crime[22] of which he will be liable to the same punishment as if he had himself carried out the act or omission[23]. Corporate bodies who violate the provisions of the Act will be liable to be proceeded against and punished accordingly[24]. Any person who is found guilty of committing or attempting to commit a crime under this Act is to be sentenced, on conviction, to imprisonment for life[25]. By Section 9, diplomatic immunity is not a defense to the crime committed under the Act, a crime of which the Federal High Court has exclusive jurisdiction[26]. It must be stated here that the exclusion of the defense of diplomatic immunity is commendable even though the exclusion of such a defense is not as important as putting to work what is already on paper.

Nigerian Maritime Administration and Safety Agency (NIMASA) Act 2007.

This Act came into effect in 2007 to, among other goals, protect the maritime environment, to promote maritime safety and security and establish NIMASA as the regulation and enforcement agency of the provisions of the Act. The Minister of transport is charged with the responsibility of

[18]S. 20 (3) of the NESREA Act
[19] S. 20 (4) of the NESREA Act
[20]S. 24 (3) and (4) of the NESREA Act
[21] S. 24 (5) of the NESREA Act
[22] S. 2(1) of Harmful Waste (Special Criminal Provisions) Act
[23] 33 S. 2(2) of Harmful Waste (Special Criminal Provisions) Act
[24] S. 7 of Harmful Waste (Special Criminal Provisions) Act
[25] Ss. 6 and 8 of Harmful Waste (Special Criminal Provisions) Act
[26] S. 13 of Harmful Waste (Special Criminal Provisions) Act

making regulations as it relates to the Act. Conviction for contravention of the provisions of the Act as it relates to the dumping of ship and shore generated waste in Nigerian waters and the removal of wrecks which constitute navigation risks and which is a threat to the marine environment[27] can be summarily or on indictment.

A more general punitive provision is fashioned in Part thirteen of the Act. This Part houses section 58 which amidst of another provision makes any person who fails to comply with any provision of this Act or of any regulation made under the Act liable on conviction, to a fine not exceeding N1,000,000 (one million naira) or to imprisonment for a term not exceeding twelve months, or to both such fine and imprisonment, and to a further fine not above N200,000 (two hundred thousand naira) for every day the offence continues.

Oil in Navigable Waters Act CAP 337 LFN2004

This 1968 Act was made to implement the terms of the International Convention for the Prevention of Pollution of the Sea by Oil of 1962. Sections 1 to 3 of the Act prohibit the discharge of oil into the waters of Nigeria by ships, vessels or any equipment used for transferring oil. According to Section 20 of the Act, "oil" means oil of any description, and includes spirit produced from oil of any description, and also includes coal tar, and any power conferred by any provision of this Act to prescribe descriptions of oil for purposes of that provision shall be construed accordingly. This could be construed to mean crude oil, fuel and lubricating oil and heavy diesel oil, and a person who contravenes these provisions will, upon conviction, be liable to a fine not in excess of N2,000.

By section 7, failure to keep records warrants a fine not exceeding N1,000, while keeping of misleading records calls for a fine not exceeding N1,000 or imprisonment for a term not exceeding 6 months, or to both such fine and imprisonment. The liability imposed here is on summary conviction. It is submitted here that the penalties under this Act are epileptically inadequate and lack the capacity to compel obedience. The fact that the Act has since not been amended with focus on the penalties is a surprise given the dependence of the country on oil and the inevitable discharge of oil into her waters.

Endangered Species (Protection, Conservation and Regulation of Trade) Act 1985

This Act, enacted in 1985, provides for the conservation and management of Nigeria's wildlife and the protection of some of her endangered species in danger of extinction as a result of over-exploitation. The effect of section 1(1) of the Act is that the hunting or capture of or trade in animal species which are threatened with extinction are absolutely prohibited. These species are listed in the First Schedule of the Act and include, among others, chimpanzees, gorillas, lion, leopard, cheetah, dolphins, whales, crocodile, parrots, falcons. Schedule 2 of the Act lists these animals to include all monkeys except those listed in schedule 1, hippopotamus, ostrich, vulture etc. The prohibition is not limited to those animals which are not necessarily threatened in the present with extinction but may become threatened if not controlled.

Penalties for violation of this Act are contained in Section 5. For animals in the 1st schedule, there is a fine of N1,000 for first offenders and one-year imprisonment for second and subsequent offenders. For animals in the 2nd schedule, there is a fine of N500 for first offenders and 6 months imprisonment for second and subsequent offenders. Given the penalties provided, the question here becomes "who cannot pay N1,000 or N500 without blinking?

National Biosafety Management Agency Act

The Act was enacted in 2015 to regulate the handling and containment of infectious microorganisms and hazardous biological materials. The Act establishes the National Biosafety Management Agency (NBMA) as the Agency to ensure the effective management of all components of Nigeria's Biosafety[28]Section 35 of the Act is of the effect that any person, institution or body who imports, exports or releases for commercial purpose any genetically modified organisms without a prior permit of the Agency or contravenes the conditions of the grant of an approval or permit under the Act

[27] S. 44 (1) of the NIMASA Act
[28] S. 1(a) of the NBMA Act

commits an offence liable to a fine of not less than N2,500,000 or imprisonment for a term of not less than 5 years or both such fine and imprisonment (for an individual), or to a fine of not less than N5,000,000 (for a corporate body or company). In addition to the liability of the company, the company's directors or officers will each be liable to a fine of not less than N2,500,000 or committed to prison for a term of not less than 5 years or serve both fine and prison term. It also is an offence under the Act to submit or supply false information in respect of any activity relating to genetically modified organism with prescribed punishment.[29]

Nuclear Safety and Radiation Protection Act

Enacted in 1995, the Act in its first section establishes the Nigerian Nuclear Regulatory Authority responsible for nuclear safety and radiological protection regulation in Nigeria. By Section 45 of the Act, contravention of any of the provisions is an offence and liable on conviction to a fine of not less than N100,000 or more than N3,000,000 or to imprisonment between two years and ten years or to both such fine and imprisonment. It is also an offence under the Act for an offence to have been committed with the consent or connivance of any person.

Environmental Impact Assessment Act 1992 Cap E12 LFN 2004

Environmental Impact Assessment (EIA) Act 1992[30] regulate the rules relating to the principle of Environmental Impact Assessment, which is defined as the examination, analysis and assessment of planned activities with a view to ensuring environmentally sound and sustainable development.[31] According to Amokaye, it is a process of identifying, predicting and evaluating the forcible possible impacts of both beneficial and adverse alternatives and mitigating measures with a view also to eliminating or minimizing negative impact and optimizing positive impacts.[32]

This makes it compulsory for development projects with potential environmental effects to undergo an environmental impact assessment before commencement. It prohibits the commencement of projects which may significantly affect the environment without first considering the environmental effects where a project may likely result in unjustifiable, immitigable, and significant adverse effects on the environment, the project shall not be permitted.[33]

The National Oil Spill Detection and Response Agency (NOSDRA) Act 2006

This is one of the major laws in Nigeria that was established to prevent oil pollution or oil spills in the country. The objective of this law is to put in place machinery for the co-ordination and implementation of the National Oil Spill Contingency Plan for Nigeria to ensure safe, timely, effective and appropriate response to major or disastrous oil pollution. The Act commenced with the Establishment of the National Oil Spill Detection and Response Agency (NOSDRA). Section 5(f)-(j) of the Act emphasizes the need for international collaborations, drill exercises, researches and interactions with a view to ensuring adequate preparedness for oil spillages in high risk areas.

Section 6(2) of the Act empowers the agency to sanction any spiller who fails to report an oil spill to the Agency in writing within the stipulated period. Default in this regard attracts a fine of Five hundred thousand Naira (N500, 000) for each day of failure to report. A further fine of One Million Naira (N1,000,000.00) provided for as sanction for failure of a spiller to clean up the impacted site to all practical extent including the remediation.[34] It is apt to note that these provisions in Section 6 of the Act are the only section that provides for penalty. However, the Regulations made provisions for several specific penalties for failure to meet up with certain standards. The provision of Section 6(2) of the Act was the crux of the suit in *NOSDRA v. Chevron Nigeria Limited***.**[35]

[29] See s. 36 of the NBMA Act
[30] Cap E12 LFN 2004
[31] Decision 14/25 of the Governing Council of United Nations Environment Programme (UNEP) of 17 June 1997
[32] O Amokaye, *Environmental Law and Practice in Nigeria* (University of Lagos Press 2004) 540
[33]EIA Act (n 5) s 2
[34] NOSDRA Act Cap N15 LFN 2006, s 6(3).
[35] (Unreported) Suit No. :FHC/AK/CS/13/2013

Criminal Code Act 1990, Cap C38 LFN 2004

By virtue of Section 247 of the Criminal Code Act,[36] it is an offence to pollute the atmosphere in such a way as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood. Any person found guilty shall on conviction be liable to the criminal penalties imposed by the act. Similarly, under Section 245 of the CCA, any person who corrupts or fouls the water of any spring, stream, well, tank, reservoir, or place, so as to render it less fit for the purpose for which it is ordinarily used, is guilty of a misdemeanor, and is liable to imprisonment for six months.

Petroleum Industry Act 2021

In 2021, the Nigerian Government signed into law the Petroleum Industry Act (PIA) as a comprehensive legislative enactment that is targeted at resolving the extant issues, including environmental matters in the petroleum industry. Environmental protection is an integral part of developing host communities and achieving sustainable development in the petroleum industry. Thus, the PIA cannot be construed in isolation from environmental concern. Section 202 of the PIA, a product distribution license shall be deemed to be granted subject to the duty of the holder to conduct its licensed activities safely and reliably in compliance with any law in force and prescribed environmental, health and safety regulations issued under the PIA or any other Act of the National Assembly.[37] Furthermore, as a way of protecting the environment from hazardous operation in the petroleum industry, the PIA mandates a licensee or lessee who engages in upstream and midstream petroleum operations to submit an environmental management plan in respect of projects which require environmental impact assessment to the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) or the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA).[38]

Petroleum Act 1969

This 1969 enactment provides for the exploration of petroleum from the territorial waters and the continental shelf of Nigeria, and to vest the ownership of and all on-shore and off-shore revenue from petroleum resources derivable there from in the Federal Government and for all other matters incidental thereto. The Act grants oil exploration licenses, oil prospecting licenses and oil mining licenses. Importation, storage, selling, distribution of petroleum products and operation of licenses are made subject to holding of licenses. The Petroleum Regulations in Section 13 provides that no petroleum shall be discharged or allowed to escape into the water. Petroleum is also not to be allowed to escape into any inlet or drain communicating with a sewer. Contravention of this Regulation attracts a fine of N50,000 or imprisonment for no more than 6 months or both. Where the offender is a licensee, the license may also be cancelled.

Police Act 2020

The Police Act 2020 is one of the enabling law for policing and prevention of crimes in Nigeria. This Act establishes the Nigerian Police Force and charged it with the responsibility of investigating, arresting, detaining and prosecuting persons who are alleged to have committed an offence. In relation to offences arising from the Criminal Code Act and related offences under other laws, the Police Act 2020 vests jurisdiction on the Nigerian Police Force to arrest and prosecute offenders. Therefore, by virtue of this Act, where for example, sections 245 and 247 of the CCA are violated concerning pollution of the air and water, the police have the power and authority to arrest the offenders. However, it should be noted that by virtue of Section 32(2) of the Act, the police is prohibited from arresting anyone based on a civil wrong or breach of contract.

5. SENTENCING IN ENVIRONMENTAL OFFENCES IN NIGERIA

A sentence means a punishment given to a person convicted of a crime. A sentence is ordered by the Judge or Magistrate, based on the verdict of the Judge or Magistrate within the possible punishments

[36] Cap C38 LFN 2004
[37] Climate Change Act 2021, ss.202(c).
[38] Petroleum Idustry Act 2021, ss.102(1).

set by State Law (or Federal Law in convictions for a Federal crime).[39]
His Lordship Justice Douglas[40] , defined sentence thus:

> The term "sentence" or "judgment" in legal parlance may be said to denote the action of a Court of criminal jurisdiction formally declaring to an accused the legal consequences of the guilt to which he has confessed or of which he has been convicted. Generally, therefore, a sentence is the punishment inflicted upon a convict at the end of the criminal trial.

The true measure of the effectiveness of prosecutions for violation of environmental legislation is not fast in laying charges or obtaining convictions but in the result of the conviction. The ultimate goals are to stop the offending behaviour to clean up, mitigate or repair any damage that has been done to the environment and to protect a recurrence of the offence. In addition having, the effect of specific deterrence, the prosecution should also deter others from engaging in similar behaviour. Sentencing can play an important role in achieving these objectives and even more so in influencing the perception of the public about whether the prosecution has fulfilled these purposes[41].

6. PENALTIES FOR ENVIRONMENTAL OFFENCES IN NIGERIA

We shall consider the different types of sentences which are provided for in the enabling statute for environmental protection and in our Nigerian Courts. Some of the sentences includes but not limited to; 1. fines 2. Restitutions 3. Imprisonment

RESTITUTION

The term restitution in the criminal justice system means payment by an offender to the victim for the harm caused by the offender's wrongful acts. Courts in Nigeria and in some instances, have the authority to order convicted offenders to pay restitution to victims as part of their sentences. Restitution which is the most commonly used form of sentencing by Nigerian courts in environmental cases is not expressly provided for in the enabling laws highlighted above, there are notable provisions of the Law that make Restitution a form of sentencing. Some of them are; and section 342 of the Administration of Criminal Justice Act 2015 gives the Court the option to impose probation and other non-custodial sentences instead of imprisonment.

Restitution has to be contrasted with the law of compensation, which is the law of loss-based recovery. When a Court orders restitution it orders the Defendant to give up his/her gains to the Complainant or Victim for his or her loss. An example is the most recent sum of N45.9 Billion awarded to the indigenous people of Ogoni in the case of *SPDC Nig. Ltd & Ors V. Agbara*[42]which for decades has been in court for the pollution and oil spill which ravaged hundreds of acres of the land of the Ogoni people in Rivers Sates as a Result of Oil Exploration activities in those areas.

FINE

This is the payment of money as a punishment. Some offences are expressly declared to be punishable by fine. Fine have various meanings like a sum of money, which, by judgment of a competent jurisdiction, is required to be paid for the punishment of an offence. Hon. Justice Olatunde H. Oshodi explains it to be a pecuniary punishment imposed by Court, upon a person convicted of crime or *misdemeanor*[43]. By Section 422 of the Administration of Criminal Justice Act 2015 gives the Court the option to sentence a Defendant to pay fine instead of imprisonment. The amount of a fine can be determined case by case, but it is often announced in advance and mostly provided by Law as in the NOSDRA, NESREA, EIA and various enabling statutes criminalizing environmental offences highlighted above.
The purposes of imposing a criminal fine are to punish the offender, help compensate the State for the offence, and deter any future criminal acts. It is our humble opinion that fines do not act as deterrence

[39] Hon. Justice Olatunde H. Oshodi, Sentencing: Practice and Procedure under the Administration of Criminal Justice Act and Criminal Justice Laws delivered in a judges' conference.
[40] His Lordship Justice Douglas, in his paper titled Administration of Criminal Justice: Sentencing Policy presented at Conference of All Nigerian Judges, 1988
[41] John Swaigen & Gail Bunt, Sentencing in Environmental Cases: Protection of Life Series, Law Reform Commission of Canada, 1985.
[42] http://lawpavilionpersonal.com/ipad/books/46445.pdf
[43] ibid

since the amount of fines provided for in the environmental protection laws are grossly inadequate. See recommendation for further discussions.

IMPRISONMENT

This is a very common type of sentence which is served in a government prison until the expiration of the term of imprisonment. The Prisons Act[44], defines sentence of imprisonment as 'any sentence involving confinement in a prison (whether or not it is combined with labour of any kind) and includes a sentence given by way of commutation as well as an original sentence passed by a court'. The Minister of Internal Affairs may, by order in the Federal Gazette, declare any building or place in Nigeria to be a prison and by the same or a subsequent order specify the area for which the prison is established[45]. Imprisonment may be with or without hard labour and when the court is silent on this, it is deemed to be one with hard labour[46].

This is one of the most common form of punishments prescribed by various environmental protection laws regrettably, this is the least used. There are no records of convicted and imprisoned perpetuators in Nigeria. Nigerians and the regulatory agencies almost always opt for payment of fines and civil cases wherein the individual and corporate perpetuators of environmental harm are ordered to pay compensation which are themselves inadequate for the gravity of offences they commit .Furthermore, the term of imprisonment prescribed by the Nigerian legislations are grossly inadequate for the offences perpetuated. Also, most Nigerian laws do not make provisions for the imprisonment of corporate perpetuators by lifting the veil of incorporation to nab the alter egos of the corporations who sanction the harmful activities.

7. OBJECTIVES OF SETENCING OF ENVIRONMENTALOFFENDERS

Both the common law and now sentencing procedure statutes enunciate the purposes for which a court may impose a sentence on an offender. These purposes of sentencing include:

(a) Retribution
(c) Deterrence
(d) Protection of the community
(e) Rehabilitation
(f) Restoration and reparation

RETRIBUTION

Retribution is a theory of punishment that when an offender breaks the law, justice requires that they suffer in return, and that the response to a crime should be proportional to the offence. It is the fact that the individual has committed a wrongful act that justifies punishment, and that the punishment should be proportional to the wrong committed. Its underlying premise has been summarized as follows:

- *All* those convicted of a wrongdoing or crime deserve punishment;
- *only* those convicted of a wrongdoing or crime deserve punishment;
- the severity of the punishment should *not be lessthan* the gravity of the crime;
- the severity of the punishment should *not be greaterthan* the gravity of the crime[47]

Satisfaction of the retributive desires of the society is an important feature of the sentencing process. Retribution recognises that is morally right and just that those who commit wrongs should be punished.[48] The society views crime as immoral and punishment for crime as morally right. The sentence of the court is an expression of the society's disapproval of the criminal conduct and of those who perpetrate it[49].

[44] Prisons Act, Laws of the Federation of f Nigeria,2004
[45] section 2(1) Prisons Act.
[46] Criminal Procedure Act section 377
[47] https://www.unodc.org/e4j/en/crime-prevention-criminal-justice/module-7/key-issues/2--justifying-punishment-in-the-community.html
[48] J Rawls, "Two Concepts of Rules" (1955) 64(1) The Philosophical Review 3 at 4-5; H L A Hart, Punishment and Responsibility, Clarendon Press, Oxford, 1968, p 231.
[49] The Hon. Justice Brian J Preston, Chief Judge Land and Environment Court of NSW; Principled Sentencing for Environmental Offences presented at 4th International IUCN Academy of Environmental Law Colloquium

Environmental offences are crimes; they are not mere administrative breaches[50]. The community views pollution and other environmental offences as extremely serious. Criminal provisions express the community's moral condemnation of environmental harm, hence, Punishment is necessary to remove that unjust enrichment from the offender and so secure a just equilibrium on behalf of those who were willing to be law abiding. It is the removal of this extra advantage from offenders, rather than the satisfaction of the sense of grievance of their victims, which is the chief rational support of this retributive justification of punishment.[51]

DETERRENCE

General deterrence is concerned with preventing members of the public from committing the kind of offence committed by the offender being sentenced. Generally, deterrence has a consequential or utilitarian rationale, it has been explained in terms of an economic theory of criminal behaviour that a person will commit a crime if the expected net benefit of doing so exceeds the expected net benefit of behaving lawfully. In calculating the expected net benefit of offending, account must be taken not only of the likely punishment but also of the probability of being detected. Deterrence operates on the basis that the severity of the likely punishment multiplied by the probability of detection and punishment should be greater than the benefit to the offender of offending. The effectiveness of deterrence will be mediated by the offender's perception of the likely severity of sentence, probability of detection and punishment, and benefit to the offender of offending[52]

Deterrence is one of the several rationales of punishment that has a preventative aim. We have found that the amount of fines and prison terms prescribed by environmental legislations are incapable of deterring offenders and the general from further committing such environmental crimes. An example of such law is **Endangered Species (Protection, Conservation and Regulation of Trade) Act which provides for** a fine of N1,000 for first offenders and one-year imprisonment for second and subsequent offenders. For animals in the 2nd schedule, there is a fine of N500 for first offenders and 6 months imprisonment for second and subsequent offenders. Given the penalties provided, the question here becomes "who cannot pay N1,000 or N500 without blinking?"

PROTECTION OF THE COMMUNITY

Protection of the community is the second purpose of sentencing with a preventative aim. Protection of the community, public and society are used in several different ways. It is sometimes used to describe those principles that put society's needs ahead of concern to the well-being of the offender. Protection of the community has been recognised and courts have been conscientious to remind offenders that despite the absence of the violence and moral turpitude often associated with crime, environmental offences are serious because of the danger they pose to the public and should not be trivialised[53].

The Canadian court recognised this principle in the case of *R. v. Krey*[54]. In the said case Mr. Krey came to the Northwest Territories for the sole purpose of taking eggs from the nest of gyrfalcon, an endangered species and sold same for the sum of $80,000 each. In applying this principle in the said case, Bourassa J. concluded that the community of Northwest Territories and the world is the victim

[50] R v United Keno Mines Ltd (1980) 1 YR 299; 10 CELR 43 at [9]; R v Anglian Water Services Ltd [2004] 1 Cr App R (S) 62, [2004] JPL 458 at [12], [14]; Environment Protection Authority v Waste Recycling and Processing Corporation [2006] NSWLEC 419 (10 July 2006) at [226]. See further discussion below on the objective gravity of the offence

[51] P C Weiler, 'The Reform of Punishment" in Law Reform Commission of Canada, Studies on Sentencing, Information Canada, Ottawa, 1974, p 173. See also J M P Weiler, "Why do we punish? The case for retributive justice" (1978) 12 U Brit Colum L Rev 295 at 314-315; B Fisse, "Reconstructing Corporate Criminal Law: Deterrence, Retribution, Fault and Sanctions" (1982-1983) 56 S Cal L Rev 1141 at 1169, 1171 and 1180

[52] See G S Becker, "Crime and Punishment: An Economic Approach", (1968) 67 Journal of Political Economy 169; A Heyes, "Implementing Environmental Regulation: Enforcement and Compliance", (2000) 17(2) Journal of Regulatory Economics 107; A Ogus and C Abbot, "Sanctions for Pollution: Do we have the Right Regime" (2002) 14(3) Journal of Environmental Law 283 at 289-290

[53] John Swaigen & Gail Bunt. Op cit.

[54] (1982) 12 CELR 105

of his crime as the accused person was contributing to the further decline of an already endangered species. The defendant was accordingly sentenced to four months in prison with a fine of $3,000.

REHABILITATION

Rehabilitation is the third of the sentencing purposes that has a preventative aim. Prevention of crime is achieved by the reform and rehabilitation of the offender. By changing an offender's personality, outlook, habits or opportunities, the offender is made less inclined to commit crimes.[55]One would wonder how rehabilitation will work in environmental offences where most perpetuators are corporate organization. Rehabilitation can actually apply both to individuals as well as corporations. The mechanisms to bring about corporate rehabilitation might include inter alia;

a. Consent decrees negotiated with regulatory agencies;
b. Probation orders placing the corporation under the supervision of an auditor, environmental expert, or other authority who would ensure that an order to restructure compliance systems was carried out.[56]
c. Carry out a specified environmental audit of activities carried on by the offender
d. Attend, or cause employees or contractors of the offender to attend, a training or other course specified by the court
e. Establish, for employees or contractors of the offender, a training course of a kind specified by the court.

This objective also entails the resuscitation of the ecological status of the environment prior to the activity occasioning the breach. Thus, in the case of *Shell Petroleum Development Company Limited v Farah*[57]where the defendant who had undertaken to rehabilitate the land following the environmental degradation occasioned by her activities later abandoned same, the court held that the defendant was under a duty to do so and awarded N4.6 million in favour of the plaintiff. In a majority of environmental cases, very little or no attention is paid to the issue of rehabilitation of the environment.

RESTORATION

Restoration does not mean monetary recompense but rather connotes that the party in breach of environmental standards should be responsible for the cost of cleaning the affected area and reinstating same to the *status quo* as much as practicable. This remedy is in tandem with the 'polluter pays principle' which simply requires that the cost of remedying the affected area and other consequential costs should be borne by the person in connection with whose activities the breach occurred.[58]A sentencing court, in order to achieve restoration and reparation, may make a variety of sentencing orders against an offender, including:

a. For the payment of compensation to any person who has suffered loss or damage to property by reason of the commission of the offence
b. For the payment of costs and expenses of a regulatory authority incurred in investigation of the offence
c. For the carrying out of a specified project for the restoration or enhancement of the environment in a public place or for the public benefit
d. For the payment of a specified amount to an environmental trust or a specified environmental organisation for the purpose of a specified project for the restoration or enhancement of the environment or for general environmental purposes.

8. CHALLENGES MITIGATING SENTENCING OF ENVIRONMENTALOFFENDERS IN NIGERIA

From our research we found that certain factors mitigate sentencing of environmental offenders in Nigeria, these factors arguably are;

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[55] A von Hirsch, "Rehabilitation", in A von Hirsch and A Ashworth (eds), Principled Sentencing: Readings on Theory and Policy, 2nd ed, Hart Publishing, Oxford, 1998, p 1

[56]J Braithwaite and G Geis, "On Theory and Action for Corporate Crime Control" (1982) 28 Crime & Delinquency 292 at 310-311. See also B Fisse and J Braithwaite, "The Allocation of Responsibility for Corporate Crime: Individualism, Collectivism and Accountability" (1986-1988) 11 Syd L Rev 468 at 500501

[57] [1995]3 NWLR (pt. 382) 148.

[58]BY Ibrahim, 'The Framework of Environmental Law in Nigeria: A Critical Analysis', (2006) 1(2) ABU JPCL, p. 224; OG Amokaye, op. cit, p. 10; RO Ugbe, 'The Polluter Pays Principle: An analysis', (2002 – 2003) Vol. vi – vii The Calabar Law Journal, p. 155.

i. Lack of Enforcement of the Environmental Protection Laws: Despite the numerous laws enacted for the protection of almost every aspect and component of the Nigeria environment, there is a gross lack of enforcement. It is almost as if these laws do not exist against these environmental offences. Nigeria needs to be deliberate about the enforcement of its environmental protection laws.

ii. **Laxity of the Enforcements Agencies to Bring Criminal Actions against the Offenders**: This is a very serious mitigating factor against sentencing of environmental offenders, as law enforcement agencies and the regulatory bodies for whatever reasons often do not bring criminal actions against the individual or corporate perpetuators which could serve as deterrence to them and others. The most common cases are civil cases where the corporations would be made to pay fines levied against them which gives them the audacity to continue their harmful activities.

iii. **Corruption**: This is one of the most mitigating factors against bring to book, environmental offenders. The community, the regulatory bodies and law enforcement agencies who are charged with prosecuting theses offenders often put their pockets above the overall safety and welfare of the society.

iv. **Attitude of the Victims/Communities:** The victims and affected communities who are supposed to report some of these activities often always let the offenders go scot-free upon payment or promise of stipends.

v. **Inadequacy of the Punitive Measures Prescribed in the Laws**: The inadequacy of the punitive measures prescribed by these environmental protection laws cannot be over emphasized. It is just ridiculous that a law in the present age would prescribes N1,000 as fine and 6 months imprisonments for and offence capable of causing permanent or long-lasting damage to the environment. The laws need to be reformed to prescribe more severe punishments for depending on the gravity of the offence. A law that prescribes N1,000, N2,500 N5,000 fines and some months imprisonment is not capable of being respected or deterring anyone from further committing an offence against the environment.

vi. **Judicial Attitude to Environmental Protection:** It is through the outcome of some previous matters that the attitude of the judiciary towards environmental protection in Nigeria can be gauged. Without much ado, some of the cases discussed below show that there is no consensus on the attitude of the judiciary in environmental cases. In *PPMC v NOSDRA*,[59]after refusing to pay a fine levied against it by NOSDRA for refusal to report and clean up an oil spill pursuant to section 6 (2) and (3) of the NOSDRA Act, the PPMC filed a suit at the Federal High Court challenging the authority of NOSDRA to unilaterally levy fines in violation of its laws. The court held, among other things, that PPMC was in violation of section 6 (2) and (3) of the NOSDRA Act and NOSDRA rightfully levied the fine to that effect. However, in the case of *NOSDRA v Mobil Producing Nigeria Unlimited (ExxonMobil)*,[60] the Federal High Court stripped NOSDRA of its power to unilaterally impose fines for contravention of its law. On appeal, the Court of Appeal affirmed the stripping of NOSDRA's power and authority to impose fines for contravention of the offences provision of the enabling act.[61] The court held that the power to punish or impose fines must be preceded by a trial in which the rules of fair hearing must be observed. It was further held that a fine is a criminal sanction ordered by a court from a person who has been found guilty of violating the law and can be ordered as an option to imprisonment for major crimes or as a complement to other punishments specified for such crimes.[62] This decision was made while there was a subsisting Court of Appeal decision in *Moses Ediru v Federal Road Safety Commission and 2 Others*.[63], affirming that regulatory bodies can impose penalties against offenders who contravene the provisions of its laws. Since the two decisions were reached by the same Court of Appeal, by law, the later decision in time remains the law until it is upturned at the Supreme Court or the Court of Appeal overrules itself. In this instance the 2018 decision in *NOSDRA v Mobil Producing Nigeria Unlimited (ExxonMobil)* is the later in time and the

[59] Suit No. FHC/ASB/18/105/10 (Unreported)
[60] (2018) Law Pavilion Electronic Law Report-44210 (LPELR (CA)
[61] S 6 (2) and (3) NOSDRA Act; NOSDRA v Mobil Producing Nigeria Unlimited (ExxonMobil) (2018) Law Pavilion Electronic Law Report-44210 (LPELR (CA) in paragraph C of page 9 of the judgement.
[62] Abdullahi v Kano State (2015) LPELR-25928 (CA) per Abba Aji, JCA
[63] (2014) 4 NWLR (part 1502) 209.

position of the law.However, in the case of *Shell Nigeria Exploration and Production Company Limited (Shell) v National Oil Spill Detection and Response Agency (NOSDRA)*[64] before a Federal High Court, the Court departed from the decision of the Court of appeal in NOSDRA v Mobil Producing Nigeria Unlimited (ExxonMobil) and held that NOSDRA can in fact impose sanctions without recourse to the Court. It is argued that this is an anomaly as the Federal High Court is a court of lower jurisdiction than the Court of Appeal and ought to follow the latest decision of the Court of Appeal on this subject. It is further argued that this position sends the wrong signal to both the regulatory bodies and the petroleum sector operators about the ability of a regulatory body to enforce compliance in line with its enabling laws without recourse to the courts. In the case of *Oronto Douglas v SPDC Limited & Ors*[65]which was essentially to ensure compliance with the provision of the Environmental Impact Assessment Act (EIA), the law suit was dismissed because the court held that there was no cause of action as the plaintiff did not allege a specific legal right violated by the defendants and did not have "sufficient interest" in the subject matter. Sufficient interest is interest which is peculiar to the plaintiff as opposed to an interest which the plaintiff shares in common with other members of the public. The court took this stand even though it had been settled that a plaintiff can be accorded the standing to bring an action if he can show that his civil rights and obligations have been or are in danger of being violated or adversely affected by the act complained of.

From the antecedents of the courts as elicited above, It evident that the trial judge did not consider the fact that the substance of the suit was of common and general interest to the citizens of Nigeria[66] and indeed the flora and fauna (like the Canadian case of *Mr. Krey)* and the human right to a clean and safe environment as enshrined in the African Charter on Human and Peoples' Rights[67] before arriving at its decisions.

However, the case of *Jonah Gbemre v Shell Petroleum Development Company Ltd*[68] however shows a different picture of where the judiciary exhibited firmness in defence of the environment. The case provided the opportunity to correct regulatory irregularities in some environmental and petroleum sector laws but failed to act proactively to ensure that the order of court was enforced, thereby losing the opportunity it hitherto created for a review in the law.[69] In that case, the action was brought by Jonah Gbemre in a representative capacity on behalf of himself and the Iwherekan Community in Delta State, Nigeria, seeking an order to secure the enforcement of their fundamental rights to life and dignity of the human person pursuant to Sections 33 (1) and 34 (1) of the 1999 Nigerian Constitution and Articles, 4, 16 and 24 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act.[70] Other reliefs sought by the applicants include a declaration that the continued gas flaring by the respondents violated the rights mentioned above. A declaration that failure to conduct an EIA in the community regarding the effect of the gas flaring activities violated provisions of the EIA Act consequently violating their right to life and dignity of the human person. An order declaring section 3 (2) (a) and (b) of the Associated Gas Re-injection Act unconstitutional and void. An order of perpetual injunction restraining the respondents from further flaring of gas in the community. The court made the following orders among others: First that the continuous flaring of gas in the applicants' community impacted negatively on the right to life of the applicants and ordered that the respondents stopped the flaring of gas in that community. Second, that the Attorney General should commence proceedings to regularize the inconsistent provisions of the Associated Gas Re-injection Act to bring it to conformity with the 1999 Constitution regarding the right to life and dignity of the human person. While this judgement was hailed as a significant judgement in the sense that it sought

[64] G. Ukwuoma, "Nigeria: Litigation Update - June 2018: Do Administrative Agencies Lack Powers to Impose Fines and Penalties without Recourse to the Courts? Matters Arising: Shell Petroleum Exploration and Production Company Ltd (SHELL) v National Oil Spill Detection and Response Agency (NOSDRA)" (2020) <https://www.advocaat-law.com/assets/resources/341e36a14b167a82e12df3ff9e6c4e3b.pdf> accessed 10 July 2020.

[65] 1998) LPELR-CA/L/143/97 Law Pavilion Electronic Law Report – Court of Appeal.

[66] T. Okonkwo, "Environmental Constitutionalism in Nigeria: Are We There Yet?" (2015) 13 The Nigerian Juridical Review 175, 206

[67] African Charter for Human and Peoples' Right, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982)

[68] Jonah Gbemre v Shell Petroleum Development Company Ltd [2005] 6 African Human Rights Law Report 152.

[69] B. Faturoti, G. Agbaitoro and O. Onya, "Environmental Protection in the Nigerian Oil and Gas Industry and Jonah Gbemre v. Shell PDC Nigeria Limited: Let the Plunder Continue?" (2019) 27(2) African Journal of International and Contemporary Law 225.

[70] Cap A9 Laws of the Federation of Nigeria 2004; African Charter on Human and Peoples' Rights (Banjul Charter) 27 June 1981

to protect the human and natural environment and it out rightly declared gas flaring illegal, the order of court was eventually not implemented for some reasons, giving the respondents room to ignore the court order and continue flaring gas. In *Gbemre's* case, the Federal High Court recognized that environmental degradation could give rise to a violation of human rights as envisaged under the African Charter on Human and Peoples Rights. Therefore, Articles 4, 16 and 24 of the African Charter on Human and Peoples Rights can be relied on to enforce environmental rights instead of relying on Section 20 of the Constitution of the Federal Republic of Nigeria, which is non-justiciable by virtue of s 6 (6) (c) of the same Constitution.

9. SENTENCING IN ENVIRONMENTAL OFFENCES IN INDIA: A LESSON FOR NIGERIA

India and Nigeria are both Common Law jurisdictions that have a similar legal system. Thus, their constitutional protection of the environment is stated as a fundamental objective and directive principle of state policy, which is generally non-justiciable and their environmental protection laws quite similar provisions. However, the Indian courts seem to be more proactive about environmental protection, protection of the general welfare of the Indian people and punishment of environmental offenders.

The case of *M.C Mehta v. Union of India (Shriram Industries Case).*[71]Also known as the Shriram gas leak case, is a prominent judgment in the environmental case laws in India, this was a gas leak of food chemicals in the capital of the country, in New Delhi, in this case the court observed that company in under absolute liability, to pay the compensation to the victims of the gas leak, this was the first case in India, in which the concept of absolute liability was introduced, this was also the first case in India in which the accused was penalized, and was asked to pay for the damage caused, and pay compensation to the victims of the gas leak. The Indian courts are worthy of Nigeria's emulation.

10. CONCLUSION

Notwithstanding the numerous legislations criminalizing the harmful activities perpetuated against the Nigeria environment, these deleterious activities both by individuals and corporations are on a constant rise. It is part of our finding that these laws are enacted for enactment sake and are not adequately enforced, all organs of Government of Nigeria Nigerians would have to be deliberate about environmental protection in order to truly salvage the deteriorating state of the Nigeria environment. For instance, the Legislature could reform all the laws on environmental pollution to tackle the present and future offences, the executive arm of the Government can make adequate provision for the protection of the people's right and the Judiciary can be more proactive about environmental protection by filling the lacuna in the various obsolete laws.

11. RECOMMENDATIONS

1) **LEGAL REFORM:** We recommend a total legal reform of our environmental protection laws in order to;

a. Prescribe more severe fines and prison terms to match the gravity/effects of the activities perpetuated against the environment.
b. Make provisions for the lifting the veil of incorporation to nab the alter egos of the corporations who sanctioned the commission of the deleterious activities against the environment. We applaud the **NESREA ACT**[72] which has prescribed the lifting of veil of incorporation to catch the directors and officers of the corporations and we recommend that other laws should be reformed to reflect this.
c. To prescribe maximum penalty (death sentence) for more serious environmental offences which are capable of taking lives of unsuspecting individuals. It is most ridiculous that laws like the **National Biosafety Management Agency Act & Nuclear Safety and Radiation Protection Act** which touch on protection of the lives of Nigerians would prescribe N2,500 and 5 years imprisonment for its violation. These laws should be reformed to prescribe death penalty for

[71] 1987 SCR (1) 819, AIR 1987 965
[72] Section 27 (4)

offenders where their activities cause death of innocent Nigerians, the severity of the punishment would serve as a deterrence to ward off intending offenders.

d. To prescribe deportation of expatriates who are caught and convicted of committing environmental offences.
e. To make the environmental offences strict liability. Strict liability means that regardless of intent or fault (*mens rea* or *actus reus*), if someone commits an act (or omission) that is strictly prohibited by law then they must be held to account. Strict liability laws thus punish people regardless of their state of mind. Nigeria should thus emulate India, whose courts have held environmental offences as strict liability offences. *M.C Mehta v. Union of India (Shriram Industries Case) 1987*

2) **JUDICIAL PRO ACTIVISM:** Like the India court in the case of *M.C Mehta v. Union of India (Shriram Industries Case) 1987*, the Nigerian judiciary should be more proactive in filling the lacunae of the various environmental protection laws.

3) **CRIMINAL ACTIONS RATHER THAN CIVIL ACTION:** We recommend that the regulatory bodies, law enforcement agencies and courts should bring more criminal actions against perpetrators of environmental offences and see them convicted instead of resorting always to payment of compensation and fines which are themselves inadequate.

4) **PROSECUTORY POWERS TO REGULATORY BODIES:** Nigeria should emulate the UK and grant environmental protection regulatory bodies, the power to prosecute offences to curb corruption associated with police and for faster dispensation of justice.

5) **CERTAIN FACTORS TO BE CONSIDERED BEFORE SENTENCING:** We recommend that the courts and the regulatory bodies should consider certain factors before determining what punishment is appropriate for environmental offenders. These factors are;

a. The gravity of the offence and effect of the harm on the environment.
b. The appropriate measures taken to prevent the environmental harm.
c. How much profit was made from the activities leading to the environmental harm and
d. Remorse of the offenders which is visible from the measures taken by the offender to clean up or restitute to the affected environment/community. *NOSDRA v. Chevron Nigeria Limited*.[73]

6) Nigerians, law enforcement agencies and the judiciary should put aside corruption and see environmental protection as a duty and social responsibility of all and not just the duty of the government. We need all hands-on deck in order to bring these perpetuators to book.

[73] (Unreported) Suit No.:FHC/AK/CS/13/2013