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ENFORCEMENT OF REGULATORY STANDARDS FOR ENVIRONMENTAL PROTECTION IN NIGERIA: A LEGAL REVIEW

By

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Abstract

The Nigerian environment is experiencing great distress at the moment. The paper investigated the challenges of enforcement of regulatory standards for the protection of the environment in Nigeria. It adopted the doctrinal methodology of research and gathered materials for analysis from both primary and secondary sources. The major finding of the paper was that there are laws that have been enacted to offer protection to the different components of the environment – water, land, air, wildlife, flora and fauna as well as the wider ecosystem, which if adequately implemented can significantly halt the environmental pollution taking place in various sectors of the Nigerian economy. The paper concluded that the absence of express recognition of the right of Nigerians to a clean, safe and healthy environment is one of the challenges militating against the implementation of environmental standards in Nigeria. The paper recommended a holistic approach to the implementation of extant laws that protect the environment across different sectors of the economy and this included the need to review the extant laws to create room for the recognition of the right of Nigerians to a healthy environment, the enhancement of the operational capabilities of the regulatory agencies and the mustering of political will to strictly protect the environment.

KEYWORDS: Challenges, Enforcement, Regulatory Standards, Environmental Protection, Nigeria

1. Introduction

The Nigerian environment is experiencing great distress at the moment. Crude oil spillages and gas flares from oil and gas production are regular occurrences in most part of the Niger Delta region. Bush burning and deforestation are causing environmental harms daily in such proportion that there are threats of depletion of the ozone layer. Open grazing of livestock and other human activities are causing massive loss of vegetation cover with erosion as the resultant effect. Desertification, flooding, rise in temperature, loss of biodiversity and destruction of marine living resources, to mention just a few, are environmental challenges confronting Nigeria. The activities of Multinational oil companies (MNOCs) operating in the oil and gas industry in Nigeria portend grave pollution and environmental risks to human life, health and rights within the region and this has been the case for the over fifty years SPDC and other MNOCs have been operating in the Niger Delta communities.[1] Oil spills, waste dumping and gas flaring are endemic in the Niger Delta. Amnesty International reports that every year, hundreds of oil spills occur. The National Oil Spill Detection and Response Agency (NOSDRA), has registered 2,000 spill sites and it has been claimed that the figure may be far higher.[2]

Apart from damage to the ecosystem, environmental pollution also has deleterious impacts on human health. For instance, persistent gas flares and oil spills ensure that the air the people breathe reeks of oil, gas and other pollutants, resulting in breathing problems, skin lesions and other health problems such as

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1 B R Konne, 'Inadequate Monitoring and Enforcement in the Nigerian Oil Industry: The Case of Shell and Ogoniland' [2014](47) *Cornell International Law Journal* 181, 182-185

2 Amnesty International, 'Nigeria: Petroleum, Pollution and Poverty in the Niger Delta'<https://www.es.amnesty.org/uploads/media/REPORT_Petroleum_Pollution_and_Poverty_in_the_Niger_Delta.pdf> accessed 27 September 2023

asthma, lung disease, heart attack, miscarriage and skin disease.[3] Flaring of gas in the Niger Delta has been a normal occurrence since oil production began in the region.[4] A study has shown that more gas is flared in the Niger Delta than anywhere else in the world.[5] In fact, data from two flow stations Kolo Creek and Obanna, show that on the average, approximately 800,000m^3/day of gas is flared.[6] Emissions from combustion of associated gas have been held to contain toxins such as benzene, nitrogen oxide, dioxins, hydrogen sulphide, xylene and toluene.[7]

Despite these negative impacts of pollution on both the ecosystem and human health, it does not yet appear that the government and policy makers are taking proactive measures to save Nigerians from the environmental catastrophes that are waiting to explode in the country. This is despite the fact that environmental protection laws are numerous and new ones are passed with some form of regularity. Why are these laws and the institutions established and saddled with responsibilities for environmental protection not doing enough to protect the environment from further degradation? Scholarly investigations in the field of environmental law in Nigeria do not seem to have given adequate attention to the factors undermining government's regulatory efforts towards protection of the Nigerian environment.

The present paper intends to explore the reasons the environmental problems of Nigeria continue to linger despite what would seem to be an avalanche of laws and regulations that offer varying degrees of protection for the environment. The paper is divided into five parts, beginning with Part I which is the introduction. Part II of the paper addresses conceptual examination of 'environment' and 'protection'. Part III undertakes a review of some of the key laws that protect the environment in Nigeria; while Part IV explores the challenges of environmental protection in Nigeria. The paper terminates in Part V with the conclusion and recommendations.

2. Concept of Environmental Protection

The Black's Law Dictionary did not define 'environment' but views environmental law as the field of law dealing with the maintenance and protection of the environment, including preventive measures to assign liability and provide clean-up for environmental pollution.[8]Oyeniyi[9]opines that environment is all the external factors which affect an organism. Thus, the term consists of circumstances, people, things and events around an organism that influence the way the organism lives, operates or acts.[10] Offiong defines environment as the physical and social conditions where people live.[11]Ikpeze cautioned about the confinement of the term 'environment to only the immediate habitable surrounding of human occupation and movements.[12]According to Rau and Wooten, environment extends to the entire aggregate of physical, social, cultural, economic and aesthetic factors which affect individuals and communities and ultimately determine their form, character, relationship and survival.[13] According to

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3 J Adekola and others, 'Health Risks from Environmental Degradation in the Niger Delta, Nigeria' [2017](35)(2) *Environment and Planning C: Politics and Space* 334, 340.

4 *Ibid*, 339.

5 Friends of the Earth International, Clashes with Corporate Giants: 22 Campaigns for Biodiversity and Community (Friends of the Earth International, Amsterdam 2004).

6 M Ishisone, 'Gas Flaring in the Niger Delta: The Potential Benefits of its Reduction on the Local Economy and Environment' <https://www.nature.berkeley.edu/classes/esM6/projects/2004final/Ishisone.pdf>accessed 15 September 2023.

7 A K Edafienene, 'Media Exposure, Policy Agenda Setting and Risk Communication in Sub-saharan Africa: A Case Study of Nigeria's Niger Delta Region' (PhD Thesis, University of Glamorgan 2012) 24.

8 B A Garner (ed), *Black's Law Dictionary* (8th edn, USA: West 2004) 575

9 B AOyeniyi, 'Waste Management in Contemporary Nigeria: The Abuja Example' [2011] (2) (2.2) *International Journal of Politics and Good Governance* 1, 5.

10 *Ibid*.

11 O J Offiong, 'The Dilemma of Implementing Effective Environmental Policies in Nigeria [2011] (9) (1) *JORIND* 420.

12 N Ikpeze, 'Safe Disposal of Municipal Wastes in Nigeria: Perspectives on a Rights Based Approach' [2014] (1) *AfeBabalola University Journal of Sustainable Development* 72.

13 J G Rau and D Wooten (eds), *Environmental Impact Analysis Handbook* (McGraw-Hill 1980) 12.

Omaka,[14] environment is the place of abode for human, plant and animal. From the foregoing, it can be concluded that environment is the sum total of all factors that influence how an organism lives and survives. It is the place where man, animals and plants live. Environmental protection, on the other hand, could be said to the act of putting in place policies, laws and regulations and their enforcement in order to protect the environment from activities that threaten its purity and health. Thus, environmental protection could also mean all efforts directed at the maintenance and protection of the environment from degrading and unwholesome human activities. It includes the prevention of pollution and this is achieved mainly through laws and policies.

3. Regulatory Standards for Environmental Protection in Nigeria

There are laws that have been enacted to offer protection to the different components of the environment – water, land, air, wildlife, flora and fauna as well as the wider ecosystem. This section explores a few of the most important legislation on environmental protection in Nigeria.

3.1.1 Constitution of the Federal Republic of Nigeria 1999 (as Amended)

Environmental protection is not expressed as an absolute responsibility of the government in the Constitution of the Federal Republic of Nigeria 1999.[15] Nor is the right to a clean, safe and healthy environment recognized under the CFRN 1999. The closest reference to the word 'environment' in the Constitution is in chapter two which is christened "Fundamental Objectives and Directive Principles of State Policy'. Section 20 declares the environmental objectives of the Nigerian State as "the protection and improvement of the environment as well as safeguarding the water, air, land, forest and wildlife of Nigeria". The provision did not confer any right on any person as far as the protection of the environment and conservation of the natural resources of the country is concerned. Section 20 of the CFRN 1999 is contained in chapter two of the same Constitution. Section 6(6)(c) of the Constitution provides to the effect that the judicial powers vested in accordance with the provisions of the CFRN 1999 shall not except as otherwise provided by the Constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in chapter II of the Constitution.

The import of Section 6(6)(c) is that environmental objectives and indeed all other objectives and directive principles of State policy enumerated in Chapter II are not enforceable at law in Nigeria.[16]At best, they remain as mere aspirations which government should endeavour to attain. Courts in Nigeria have had cause to pronounce on the status of Chapter II provisions of the CFRN 1999, including its predecessor in a plethora of cases. In *Okogie* v *Attorney-General of Lagos State,*[17] It was held that the Directive Principles was not ordinarily justiciable. This position was also reiterated in *Jakande* v *Governor of Lagos State*[18]*and* in *Uzokwu* v *Ezeonu II,*[19]where the court stated that fundamental objectives and directive principles of State policy are not justiciable except as otherwise provided by the Constitution. Similarly, the Supreme Court made a very useful statement of the law when it observed. Thus, the provisions of Chapter II can be made justiciable where appropriate laws are made to give life to it. In this connection, the CFRN 1999 vests upon the National Assembly the exclusive legislative power to make laws for the establishment and regulation of authorities for the Federation or any part thereof "to promote and enforce the observance of the Fundamental Objectives and Directive Principles contained in the Constitution."[20]

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[14] A Omaka, *Municipal and International Environmental Law* (Lions Unique Concepts 2012) 1; M Sunkin and Others, *Source Book on Environmental Law* (2nded, Cavendish Publishing Limited 2002) 5; L Atsegbua and Others, *Environmental Law in Nigeria: Theory and Practice* (New ed, Embik Press 2009) 139.

[15](As Amended) (CFRN 1999)

[16]OV C Ikpeze, 'Non-Justiciability of Chapter II of the Nigerian Constitution as an Impediment to Economic Rights and Development' (2015) (5)(18) *Developing Country Studies* 48.

[17](1981) 1 NCLR 218.

[18](1981) 1 NCLR 152; *Attorney General of Ondo State* v *Attorney General of the Federation* (2002) 9 NWLR (Pt772).

[19](1991) 6 NWLR (Pt 200) 781.

[20]1999 Constitution, item 60, Part 1 of the Second Schedule to the Constitution.

3.1.2 Climate Change Act, 2021

The Climate Change Act[21] is the principal legislation in so far as the control of air pollution through the implementation of climate change resilient and adaptation measures in Nigeria are concerned. It was signed into law by the President Muhammad Buhari on the 18th day of November 2021 and represents Nigeria's commitment to the Paris Climate Agreement of 2015, the Kyoto Protocol to the United Nations Framework Convention on Climate Change 1997,[22] the United Nations Framework Convention on Climate Change[23] and a host of others instruments that are geared towards lowering global greenhouse gases (GHG) emissions.

The CCA provides for an all-inclusive and comprehensive regulatory and legal framework for achieving the long-term climate change goals in Nigeria, which encompasses a net-zero carbon emission target, adequate climate financing, environmental and economic sustainability and other actions into the national development plans of Nigeria. It applies to institutions and agencies of government as well as private and public entities[24] and compulsorily mandates them to adhere to all governmental regulations on climate change[25]. The CCA sets the years 2050-2070 as the target period to achieve net zero carbon emissions in Nigeria. To achieve this aim, the CCA prioritises climate change adaptation, finance, national climate resilience and focuses on other climate change combating policies[26]

The CCA also establishes the National Climate Change Council (NCCC) as a body corporate saddled with the responsibility of implementing Nigeria's climate change action plan[27]. According to the Act, the NCCC is to pursue certain objectives, which amongst others, include the mobilisation of finance for climate change adaptation, overseeing the country's carbon tax regime,[28] implementation of the country's climate change plan. In furtherance of the objectives of the NCCC, the CCA also establishes a Secretariat domiciled in the Federal Ministry of Environment to be headed by a Director-General, which shall aid the NCCC in the performance of its duties.[29]

The CCA saddles the Federal Ministry of Environment with the responsibility of setting up the country's carbon budget and budgetary period[30] to keep average increase in global temperature within 2 degree celsius and pursue efforts to limit the temperature increase to 1.5 degree celsius above the pre-industrial levels.[31] The budget which is usually have a five-year circle is to be put in place with the overall aim of ensuring that Nigeria achieves its net-zero carbon emission target between 2050-2070. Each budget circle is to be submitted to the Federal Executive Council for approval before implementation[32].

The CCA also aims at the mobilisation of finance, and other resources necessary to ensure that climate change policy and actions are integrated with other related policies and set a target for the year 2050-2070 for the attainment of net zero emission. The CCA also focuses on identifying risks and vulnerabilities and ensures that private and public entities abide by climate change strategies, targets, and the National Action Plan. The CCA is applicable to both private and public entities and cover every sector, regardless of the type of business. This implies that both mankind and businesses are affected by the impact of climate change and that it is the responsibility of everyone to preserve nature and the

[21] CCA 2021

[22](Kyoto Protocol) 1997. It was adopted in Kyoto, Japan on 11 December 1997 and entered into force on 16 February 2005.

[23]UNFCCC 1992. The UNFCCC was adopted in New York, United States of America [USA] on 9 May 1992 and entered into force on 21 March 1994.

[24]CCA 2021, s 1(1)

[25]*Ibid* s. 2

[26]*Ibid* s.1 (a-i)

[27]*Ibid*, s. 3(1)

[28]*Ibid*, s.4 (b)

[29] *Ibid*, s. 7(1)

[30]*Ibid*, s. 19(1), (b)(i)

[31] *ibid*, s. 19(1)(a)

[32]*Ibid*, s. 19(2)

ecosystem. While the CCA encourages every organisation to implement climate change action, the enforcement of implementation will be focused more on private entities.[33]

3.1.3 Petroleum Industry Act, 2021

The principal statute regulating oil and gas production in Nigeria is the Petroleum Industry Act[34] which was enacted and signed into law in 2021. Although the PIA is revolutionary and repeals some of the previous laws regulating the oil and gas industry, it nevertheless preserves the Petroleum Act[35] which was enacted as far back as 1969.[36] Apart from the provisions of the PIA which impose on the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) the obligation to "promote healthy, safe, efficient and effective conduct of upstream petroleum operations in an environmentally acceptable and sustainable manner"[37]and the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA) to "promote healthy, safe, efficient and effective conduct of midstream and downstream petroleum operations in an environmentally acceptable and sustainable manner,"[38]the Act did not appear to prohibit or specify the bar for gas flares or oil spillages.

Although the Associated Gas Re-injection Act[39]which permits oil and gas companies to flare gases directly into the environment if written permission to flare same is obtained from the Minister of Petroleum Resources has been repealed pursuant to Section 310(1)(a) of the PIA, the Associated Gas Re-injection (Continued Flaring of Gas) Regulations[40]made pursuant to the AGRA continues to be preserved by the PIA.[41] All the Minister of Petroleum Resources was required to do under the AGRA was to issue a certificate of permission to an oil and gas company permitting it to flare gases into the environment. Such certificate of permission was required to state the amount the polluter will pay for every 28.317 standard cubic metres of gas flared.[42]

The AGRA Regulations stipulate factors that are to guide the Minister in his decision whether to grant the exemption certificate to flare associated gas. In view of the continued retention of the AGRA Regulations in the PIA, it is difficult to assume that the era of open authorisation of gas flaring in Nigeria is gone. This is despite the fact that the retention of the AGRA Regulations, like other existing regulations, is subject to its not being inconsistent with the PIA. But since the PIA did not expressly prohibit gas flaring, the argument that Nigeria's petroleum legal framework still endorses direct flaring of gases into the environment appears to have a firm foundation in the PIA.

In fact, the PIA provides that the NUPRC or the NMDPRA may grant a permit to a licensee or lessee to allow the flaring of or venting of natural gas for a specific period where the flaring or venting of such natural gases is required facility start-up; or where it is required for strategic reasons, including testing.[43]

From the foregoing, it is clear that the regulatory regime in Nigeria's oil and gas industry is too lax and probably made so with the hope of attracting more foreign direct investments into the country without regard for the health and environment of the indigenous communities on whose lands the oil and gas companies operate.

3.1.4 National Environmental Standards and Regulations Enforcement Agency Act, 2007

Environmental objective is one of the fundamental objectives and direct principles of State policy and by virtue of Part 1 of the Second Schedule to the 1999 Constitution, the legislative competence to enact

[33] CCA 2021, s 19(2)
[34]No. of 2021 (PIA 2021).
[35]Cap P10, LFN 2004 (PA 2004)
[36]PIA 2021, s 311(9)(a)
[37]*Ibid*, s 6(d)
[38]*Ibid*, s 31(c)
[39]Cap. A19 LFN 2004.
[40]Regulation No. 43 of 1984 (AGRA Regulations)
[41]PIA 2021, s 311(1)
[42] PIA 2021, s 311(1)
[43]*Ibid*, s 107

laws for the establishment and regulation of authorities whether for the Federation of Nigeria or any part of it, for the purpose of promoting and enforcing the observance of environmental protection resides exclusively with the National Assembly.[44] Pursuant to this mandate, the National Assembly enacted the National Environmental Standards and Regulations Enforcement Agency Act.[45]

Thus, the NESREA Act is the principal statute on environmental protection in Nigeria. The Act establishes the National Environmental Standards Regulations Enforcement Agency (NESREA) as the co-ordinating federal agency and charged it with the responsibility of protection and development of the environment; biodiversity conservation, as well as the sustainable development of Nigeria's natural resources, in general, and environmental technology, in particular. NESREA is also empowered to co-ordinate and liaise with relevant stakeholders within and outside Nigeria in relation to matters of environmental standards, regulations, rules, laws, policies and guidelines.[46]

Section 34 of the NESREA Act empowers the Minister of Environment to make regulations for the effective enforcement of environmental standards, regulations, rules, laws, policies and guidelines for the protection of the environment and the conservation of the natural resources of the country.

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

This National Oil Spill Detection and Response Agency Act[47] establishes the National Oil Spill Detection and Response Agency (NOSDRA) as the Agency responsible for the co-ordination and implementation of the National Oil Spill Contingency Plan for Nigeria.[48] Specifically, the Agency is required to: Establish a viable national operational organization that ensures a safe, timely, effective and appropriate response to major or disastrous pollution;[49]Identify high-risk areas as well as priority areas for protection and clean up;[50]Establish the mechanism to monitor and assist and where expedient direct the response, including the capability to mobilize the necessary resources to save lives, protect threatened environment and clean up to the best practical extent of the impacted site;[51]Maximize the effective use of the available facilities and resources of corporate bodies, their international connections and oil spill co-operatives, that is clean Nigeria Associates [CNA] in implementing appropriate spill response;[52]Ensure funding and appropriate and sufficient pre-positioned pollution combating equipment and materials, as well as functional communication network system required for effective response to major oil pollution;[53]Provide a programme of activities, training and drill exercises to ensure readiness to oil pollution preparedness and response and the management of operational personnel;[54] Co-operate and provide advisory services, technical support and equipment for purposes of responding to major oil pollution incident in the West African sub-region upon request by any neighbouring country, particularly where a part of the Nigerian territory may be threatened;[55] Provide support for research and development in the local development of methods, materials and equipment for oil spill detection and response;[56]

The NOSDRA Act lays down the procedure for reporting of oil spill and requires that the oil spiller report an oil spill to NOSDRA in writing within 24 hours after the occurrence of an oil spill.[57] Where

[44]Item 60, Part 1 of Second Schedule to the 1999 Constitution.
[45] No.25 of 2007 (NESREA Act 2007).
[46]NESREA Act 2007, ss 1(1) and 2.
[47]No.15 of 2006 [NOSDRA Act]
[48]NOSDRA Act 2006, s 5.
[49]*Ibid*, 5(a).
[50]*Ibid*, s 5(b).
[51]*Ibid*, s 5(c).
[52]*Ibid*, s 5(d).
[53]NOSDRA Act 2006, s 5(c).
[54]*Ibid*, s 5(f).
[55]*Ibid*, s 5(g).
[56]*Ibid*, s 5(h).
[57]*Ibid*, s 6(2).

an oil spiller defaults in making the report within the period aforesaid, it shall be liable to pay a penalty of N500, 000.00 for each day of default.[58] Another salient provision of the Act is the obligation to clean up an impacted site to all practical extent, including remediation which is imposed on an oil spiller. Failure to clean up the impacted site by the oil spiller attracts a penalty of N1 million.[59] An oil spiller is deemed to have given the report of spill referred to in Section 6(2) where the notice is delivered at the nearest zonal office of the Agency.[60]

3.1.6 Environmental Impact Assessment Act, 1992

The Environmental Impact Assessment Act[61] adopts a preventative and precautionary approach to environmental protection by requiring a mandatory Environmental Impact Study (EIS) of all proposed projects which portend the likelihood of inflicting damage on human health and the environment before such projects are approved for execution. The objectives of an EIA are stated to be: to establish before a decision is taken by any person, authority, corporate body or unincorporated, including the Federal government, State government or Local Government intending to undertake or authorize the undertaking of any activity that may likely or to a significant extent affect the environment or have environmental effects on those activities shall first be taken into consideration;[62] to promote the implementation of appropriate policy in all federal lands (howsoever acquired), States and Local Government Areas consistent with all laws and decision making processes through which the goal and objective in paragraph (a) above may be realised;[63] and to encourage the development of procedures for information exchange, notification and consultation between organs and persons when proposed activities are likely to have significant environmental effects on boundary or inter-State or on the environment of bordering towns and villages.[64]

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

The EIA Act prohibits the public or private sector of the nation's economy from undertaking any project or authorize projects or activities without prior consideration of their environmental impacts, at an early stage.[65] Where from the extent, nature or location of a proposed project or activity, there is a likelihood of a significant effect on the environment, an EIA must first be carried out before its approval and eventual execution.[66]The Schedule to the Act contains mandatory study activities. These are activities or projects in respect of which an EIA study must be conducted before such projects are to be approved for implementation.

3.1.7 Oil and Navigable Waters Act, 2004

This Oil in Navigable Waters Act[67] was specifically enacted to domesticate the International Convention for the Prevention of Pollution of the Sea by Oil.[68] ONWA addresses exclusively industrial wastes generated through air pollution. Under the Act, it is an offence for any owner or master of a ship to discharge crude oil, fuel and lubricating oil or heavy duty oil from a Nigerian ship into a prohibited sea

[58]*Ibid*.
[59]*Ibid*, s 6(3).
[60]*Ibid*, s 6(4).
[61]Cap E12, Laws of the Federation of Nigeria 2004 [EIA Act]
[62] EIA Act 2004, s 1(a).
[63]*Ibid*, s 1(b).
[64]*Ibid*, s 1(c).
[65]*Ibid*, s 2(1).
[66]*Ibid*, s 2(2).
[67]Cap 06, LFN 2004 [ONWA]
[68] [London Convention] 1954. It was adopted in London, England on 12 May 1954.

area.[69] Similarly, the discharge of oil into any of the prohibited sea areas through the transfer of oil from any apparatus either to or from land by a master or owner of vessel or an occupier of land on which a vessel is kept is an offence under the Act.[70] The Act defines the phrase 'prohibited sea areas' to include the whole of the sea within the seaward limits of the territorial waters of Nigeria and all other waters (including inland waters) which are within those limits and are navigable by sea going ships.[71]

4. Challenges of Environmental Protection in Nigeria

The discussion in the immediately preceding section has shown clearly that there are sufficient laws that can be used to enforce environmental protection in Nigeria, even if there is still scope for improvement in the laws. However, as have been shown, the laws appear not to have been implemented. This section explores why there is the seeming lack of environmental protection in Nigeria.

4.1 Absence of Constitutional Recognition and Enforcement of the Rights to a Healthy Environment

One serious gap in Nigerian law which makes it easy for Nigerians to exhibit carelessness towards protecting the environment of their host communities is their awareness that beyond suing under the tort of negligence and the rule in *Rylands v Fletcher*[72] for compensation, there is no positive recognition of environmental rights under the 1999 Constitution. This contrasts heavily with the position in other African countries as well as countries in Europe, Asia and the Americas. In Kenya, for example, the Constitution[73] expressly recognizes the right of the people of Kenya to a clean, safe and healthy environment. Section 69 of the Constitution imposes on the State the duty to ensure sustainable exploitation, utilization, management and conservation of the environment and natural resources and ensure the equitable sharing of the accruing benefits;[74] work to achieve and maintain a tree cover of at least ten percent of the land area of Kenya;[75] protect and enhance intellectual property in, and indigenous knowledge of biodiversity on the genetic resources of the communities;[76] encourage public participation in the management, protection and conservation of the environment;[77] protect genetic resources and biological diversity;[78] establish systems of environmental impact assessment, environmental audit and monitoring of the environment;[79] eliminate processes and activities that are likely to endanger the environment;[80] and utilise the environment and natural resources for the benefit of the people of Kenya.[81]

From the provisions above, it can be seen clearly that the Constitution of Kenya takes the environment and health of the people seriously by imposing on the State the obligation to ensure that the exploitation, utilization, management and conservation of the environment and the natural resources of the country are done in a sustainable manner. It also requires the State to take active measures to preserve the tree cover of at least ten percent of the country's land area. This is apparently to conserve timber for lumbering industries, to prevent erosion and leaching through the loss of tree cover and to arrest the adverse effect of erosion and global warming. The Constitution further mandates the State – the government and institutions of Kenya, to conserve biological diversity and genetic resources, to establish a system of environmental impact assessment, environmental audit and monitoring. The State is under a duty to eliminate processes and activities that are likely to endanger the environment.

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[69] ONWA 2004, s 1(1) and (2).
[70] *Ibid*, s 3(1).
[71] *Ibid*, s 3(2).
[72] Supra (n 59).
[73] The Constitution of Kenya, 2010.
[74] *Ibid*, art 69(1)(a).
[75] Constitution of Kenya 2010, art 69(1)(b).
[76] *Ibid*, art 69(1)(c).
[77] *Ibid*, art 69(1)(d).
[78] *Ibid*, art 69(e).
[79] *Ibid*,art 69(1)(f).
[80] *Ibid*, art 69(1)(g).
[81] *Ibid*, art 69(1)(h).

Under Article 69(2), every person in Kenya bears the responsibility to cooperate with State organs and other persons to protect and conserve the environment and ensure ecologically sustainable development and use of natural resources. To ensure that these provisions are not mere paper tigers with bare rights without enforcement, Article 70(1) gives the right of access to the court for redress to any person who alleges that any of his environmental rights have been infringed upon. This means that such person need not wait until the harm to the environment or his health has been completed. A person who alleges that his right to clean and healthy environment has been denied, violated, infringed or merely threatened can approach the court for redness, and whatever redress obtained is complementary to other common law remedies for trespass, negligence, nuisance or the rule in *Rylands v Fletcher*[82] to which the applicant is also entitled.

Clause (2) of Article 70 provides for the orders or directions the court may make where an application under clause (1) is made. It says the court may make an order: to prevent, stop or discontinue any act or omission that is harmful to the environment;[83] to compel any public officer to take measures to prevent or discontinue any act or omission that is harmful to the environment;[84] or to provide compensation for any victim of a violation of the right to a clean and healthy environment.[85] As regards the quantum of interest an applicant must show to have *locus standi* to make the application under clause (2) of Article 70, the Constitution provides authoritatively that such applicant need not demonstrate that he has incurred any loss or suffered any damage.[86]Furthermore, Article 42 of the Constitution recognizes and guarantees the right to a clean and healthy environment as a fundamental right and requires the State to take appropriate legislative and other actions to give effect to such rights.

The right to a clean, safe and healthy environment is also recognized, guaranteed and protected under the South African Constitution.[87] Under the Constitution, environmental rights are recognised and enforced as fundamental rights. Section 24 provides as follows:

Everyone has the rights:

(a) To an environment that is not harmful to their health or wellbeing; and
(b) To have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that:-
    (i) prevent pollution and ecological degradation;
    (ii) promote conservation; and
    (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

The foregoing demonstrates the seriousness with which South Africa handles environmental rights and values the lives and health of her citizens. Section 38 provides for the right of access to the court for seeking of redress in the event of the violation of any of the rights enumerated in the Bill of Rights, including the right to a clean and healthy environment. Apart from that, the Constitution expanded the range of persons who can approach the court to enforce environmental rights. Thus, anyone acting in his own interest; anyone acting on behalf of another person who cannot act in their own name; anyone acting as a member of, or in the interest of a group or class of persons; anyone acting in the public interest; and an association acting in the interest of its members,[88] can approach the courts to seek redress for the violation of environmental rights.

[82]Rylands v Fletcher (1866) L.R. 1 Exch 265
[83] The Constitution of Kenya 2010, art 70(2)(a).
[84]*Ibid*, art 70(2)(b).
[85]*Ibid*, art 70(2)(c).
[86]*Ibid*, art 70(3).
[87] Constitution of the Republic of South Africa No. 103 of 1996 [1996 Constitution].
[88] Constitution of South Africa 1996, s 38(a)-(e).

At present, about 130 countries of the world have provisions in their constitutions which recognize and protect the right to a clean, safe and healthy environment. Of this figure, about 60 of these constitutions recognize environmental rights as a fundamental right while the rest include it in their constitutions only as fundamental objectives and directive principles of State.[89] Nigeria falls into the category of States which do not recognize environmental rights. Despite the country's over five decades of dependence on oil and gas production with its disastrous effect on the environment, Nigeria still continues to regard environmental protection as a mere directive principle of State policy which is unenforceable.

Section 20 of the 1999 Constitution declares that "the State shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria". As observed earlier, this is merely a declaration of intention to protect the environment of the State which does not give rise to any enforceable right. In any case, Section 6(6)(c) of the 1999 Constitution lays to rest any confusion surrounding the enforceability of environmental rights in Nigeria when it declares that the judicial powers of the courts in the country shall not be exercised in relation to the question as to whether any provisions of chapter two[90] has been observed. In other words, Section 6(6)(c) bars the courts in Nigeria from entertaining any claim or cause of action founded on the provisions of chapter two. Therefore, the conclusion to be drawn from the foregoing analysis is that Nigeria is yet to give legal recognition to the right of her people to enjoy a clean and healthy environment as is the case in other countries. This explains why MNOCs operating in Nigeria's oil and gas sector engage in coordinated pollution on the Nigerian environment without serious repercussions.

4.2 Reluctance of the Courts to Develop Environmental Rights Jurisprudence through Purposive Interpretation of the Fundamental Right to Life

In countries where the right to a clean, safe and healthy environment has not been recognized and enforced as a fundamental right, the courts have risen to close the gap by interpreting the actionable and enforceable fundamental rights provisions relating to life and dignity of the human as requiring the wholesomeness of the environment for their optimum enjoyment and realization.

For instance, Articles 48 and 51(g) of the Indian Constitution which create the environmental obligation of the Indian State as a mere statement of principle, is interpreted together with Article 21 of the same Constitution which is the provision on right to life. According to Article 21, "no person shall be deprived of his life and personal liberty except according to procedure established by law". In the Indian case of *Gaur v State of Haryana*,[91] the court held that:

> Article 21 protects the right to life as a fundamental right. Enjoyment of life and its attainment including the right to live with human dignity encompasses within its ambit, the protection and preservation of environment, ecological balance, free from pollution of air and water sanitation without which life cannot be enjoyed. Any contrary acts or actions would cause environmental pollution. Environmental, ecological, air, water pollution, etc should be regarded as amounting to violation of Article 21.

Similarly, in *Zia v WAPDA*,[92] the Supreme Court of Pakistan established an inextricable link between the right to life and the enjoyment of a clean and healthy environment when it held thus:

> Any action taken which may create hazards of life will encroach upon the rights of a citizen to enjoy life according to law. In the present case this is the

[89]B A Oloworaran, 'The Right to a Clean and Healthy Environment and the Fundamental Rights Provisions of the Constitution of the Federal Republic of Nigeria 1999 [2009] (1) (2) *Petroleum, Natural Resources and Environmental Law Journal* 53, 60.

[90]Chapter II of the 1999 Constitution deals with the Fundamental Objectives and Directive Principles of State Policy. Protection of the Environment is one of the objectives of the Nigerian State.

[91] (1995) 2 AIR 577 SC.

[92] PLD, 1994 SC 693.

> complaint the petitioners have made. In our view the word "life" constitutionally is so wide that the danger and encroachment complained of would impinge fundamental rights of a citizen.

Bangladeshi courts have also developed and embraced the jurisprudence of distilling environmental rights from the right to life. Thus, in *Farooque v Bangladesh,*[93] the court held that:

> Articles 31 and 32 of our constitution protect the right to life as a fundamental right. It encompasses within its ambit, the protection and preservation of the environment, ecological balance free from pollution of air and water, sanitation without which life can hardly be enjoyed. Any act or omission contrary thereto will be violative of the said right to life.

In the above case, the petitioner challenged an experimental structural protect of the huge Flood Action Plan in Bangladesh. The petitioner alleged that the FAP project was an anti-environment and people-unfriendly project since it will adversely affect and injure more than a million people by way of displacement, causing damage to soil and destruction of the natural habitat of fishes, flora and fauna. The court held that the project, if implemented, would violate the people's right to life and to a clean and healthy environment.

Furthermore, the argument that enforcement of environmental rights in India would lead to massive unemployment in the country was rejected by the Supreme Court of India. In *M C Mehta v Union of India,*[94] a number of tanneries operating in India discharged effluents into the Ganges River, leading to massive pollution. The government authorities failed to take appropriate steps. The petitioner asked the court to restrain the industries from discharging the effluents into the river. It was contended for the respondents that restraining the industries from discharging the effluents would lead to closure of the tanneries which in turn would occasion unemployment and loss of revenue. The Supreme Court ordered the tanneries to close down unless the trade effluents were subjected to a pre-treatment process by setting up primary treatment plants approved by the State Pollution Board. The court noted that "closure of tanneries may bring unemployment [and] loss of revenue, but life, health and ecology have greater importance to the people".

The same approach has been adopted in the Philippines. The Supreme Court has interpreted Sections 15 and 16 of Article II of the Philippine Constitution[95] which includes the right to health and ecology under the Declaration of Principles and States Policies, as implying the right to life. In *Minors Oposa v Secretary of the Department of Environmental and Natural Resources,*[96] the plaintiffs who consist of a group of 43 children represented by their parents sought to have the logging licences approved for certain companies revoked because of the massive rate of deforestation resulting from extensive logging. The plaintiffs alleged that the logging was causing irreparable injury to present and future generations and violated their right to a healthy environment. They alleged that of the 16 million hectares of rain forest that existed 25 years ago, only 1.2 million were left. The plaintiffs asked the court to revoke all existing timber licences already granted to logging companies while at the same time praying that no new timber licences should be granted. The plaintiffs anchored their claims on Sections 15 and 16 of Article II of the Declaration of Principles and State Policies under the Philippine Constitution which provide the right to health and ecology. The lower court rejected this claim as raising a political question but on appeal the Supreme Court made the following useful statement of the law:

> While the right to a balanced and healthful ecology is to be found under the Declaration of Principles and State policies and not under the Bill of Rights, it does not follow that it is less important than any of the civil and political rights

[93] (1997) 49 Dhaka Law Reports 1 [per Chewdhury J].
[94] 1988 AIR 1115; 1988 SCR (2) 530.
[95] Constitution of Philippine 1987.
[96] 33 ILM 173 (1994).

> enumerated in the latter …As a matter of fact, these basic rights need not even be written in the constitution for they are assumed to exist from the inception of humankind.

Furthermore, the Supreme Court held that the civil, political, economic and social rights encapsulated in the Constitution are indivisible and interdependent upon the existence of one another. In other words, the court acknowledged that the right to health and ecology is found in the part of the Constitution declared as mere declaration of principles and state policies which are ordinarily not justiciable. This part is different from the chapter on Bill of Rights which contains the civil and political rights – such as the right to life and right to dignity of the human person, which are enforceable rights. The point the Supreme Court established in this decision is that the enforceable fundamental rights provisions cannot exist or be realized without the realisation of the economic and social rights. On this point, the Supreme Court held:

> The right to a balanced and healthful ecology carries with it the correlative duty to refrain from impairing the environment… The said right implies, among other things, the judicious management and conservation of the country's forests".

The court therefore ordered all the licences already granted by the executive arm of government to be rescinded and also restrained the further grant of logging licences. Accordingly, the court held that the State has an obligation to protect the right to a healthy environment of the complainants/plaintiffs. Clearly, the foregoing discussion reveals that the nexus between a clean, safe and healthy environment and the right to life has been acknowledged across jurisdictions. Even at the International Court of Justice [ICJ], the link has been acknowledged. In *Gabcikovo-Nagymaros*, the ICJ stated:[97]

> The protection of the environment is likewise, a vital part of contemporary human rights doctrine, for it is sine qua non for numerous human rights such as the right to health and the right to life itself… as undermine all the human rights spoken of in the Universal Declaration and other human rights instruments.

Oloworaran has asserted that the interpretation of negative rights in national constitutions as impliedly including the right to a clean and healthy environment is now the global trend, particularly in countries where the right to environment is not positively recognized.[98] This is the *modus operandi* in South Asian countries.[99]

In Nigeria, Section 20 of chapter two of the1999 Constitution declares that the Nigerian State "shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria". This provision is in chapter two of the Constitution. This chapter is titled "Fundamental Objectives and Directive Principle of State Policy" which Section 6(6)(c) expressly says is non-justiciable. Furthermore, Section 33 of the Constitution recognizes and protects the right of every citizen of Nigeria to his life. Section 34 provides that "[E]very individual is entitled to respect for the dignity of his person and accordingly - (a) no person shall be subject to torture or to inhuman or degrading treatment". It can be seen that the foregoing provisions of the 1999 Constitution are similar to those in the Indian, Pakistani, Bangladeshi and Philippine constitutions examined wherein the courts have enforced the right to a clean and healthy environment as necessary pre-condition for the enjoyment of the rights to life and dignity of human person.

However, this global momentum has not been sustained and replicated in Nigeria by the Nigerian courts. *Gbemre v SPDC*[100] appears to be the only known Nigerian case where this global approach was adopted, albeit at the inferior court level. It is uncertain what the decision of the appellate courts will be when the

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[97] Separate opinion of Judge Wecramantry 91-92 <https://www.icjcij.org/docket/files/92/7383.pdf> accessed 12 September 2023.

[98] B A Oloworaran (n89) 62.

[99] *Ibid.*

[100] Suit No. FHC/CS/B/153/2005 [Unreported decision of the Federal High Court, Benin delivered on 14 November 2005..

opportunity presents itself for interpretation of Sections 20 and 33 of the 1999 Constitution. In all other cases, the attempt to smuggle the right to a clean and healthy environment into the right to life provision has not succeeded.[101]

4.3 Poorly Developed and Lax Oil and Gas Regulatory Regime

It will amount to stating the obvious to say that Nigeria's regulatory regime in the oil and gas industry is archaic, retrogressive, anti-people and constitutes gross violation of the rights of Nigerians to a clean, safe and healthy environment. For instance, before now, the principal statute regulating oil and gas production in Nigeria was the Petroleum Act[102] which was enacted as far back as 1969. Apart from a few provisions of the Act which empower the Minister of Petroleum Resources to make regulations relating to the prevention of pollution,[103] the Act did not appear to prohibit or specify the bar for gas flares or oil spillages. In fact, the Associated Gas Re-injection Act[104] permits MNOCs to flare gases directly into the environment if written permission to flare is obtained from the Minister of Petroleum Resources.[105]

Unfortunately, the PIA which replaced the PA has entrenched the culture of permit indiscriminate flaring of gases, rather than abolish it. The PIA empowers the NUPRC and the NMDPRA to grant a permit to a licensee or lessee to allow the flaring of or venting of natural gas for a specific period where the flaring or venting of such natural gases is required facility start-up; or where it is required for strategic reasons, including testing.[106]From the foregoing, it is clear that the regulatory regime in Nigeria's oil and gas industry is too lax and probably made so with the hope of attracting more foreign direct investments into the country without regard for the health and environment of the indigenous communities on whose lands the MNOCs operate.

4.4 Non-Domestication of Relevant Environmental Protection Treaties

Nigeria has made it a duty to attend all international conferences on the environment and further boasts an impressive record in the number of treaties signed and/or ratified. However, when it comes to domesticating these treaties to make them enforceable in the country, the story becomes different. Most environmental protection-focused treaties like the United Nations Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol and the Montreal Protocol on Substances that Deplete the Ozone Layer [Montreal Protocol], among a host of others particularly related to the reduction of atmospheric pollution have not been domesticated. The CCA which was enacted into law in 2021 did not directly domesticate these treaties. The same applies to other treaties focused on the prevention of pollution to the marine environment. Each of these treaties requires appropriate legislative and other policy measures to become enforceable within a national jurisdiction.

The CFRN 1999 adopts a dualist approach to the application of international law to the territory of Nigeria. Section 12(1) requires that every treaty entered into between Nigeria and another country to be enacted into law before it will become binding on her. This absence of domestication of key environmental protection treaties is responsible for the continued violation of the rights of indigenous peoples to a clean and healthy environment.

4.5 Weak and Non-Deterrent Penal Sanctions for Environmental Recklessness

Nigeria's oil and gas regulatory regime is littered with a lot of non-deterrent penal statutes which give MNOCs the leeway to continue to pollute the environment. For instance, under the NESREA Act, NESREA is given the power to make regulations, guidelines and standards for the protection and

[101] *Okpara* v *SPDC* Suit No. FHC/CS/518/2005 [Unreported]. Judgment of the Federal High Court, Port Harcourt delivered on 29 September 2006.
[102] [PA] Cap. P10, LFN 2004.
[103] *Ibid*, s 9(1)(b)(i)-(iii).
[104] [AGRA] Cap. A19 LFN 2004.
[105] *Ibid*, s 3(2)(b).
[106] *Ibid*, s 107

enhancement of the quality of land resources, natural watershed, coastal zone, dams and reservoirs, prevention of flood and erosion.[107] The Agency is also empowered to make regulations setting out specifications and standards for the protection and enhancement of the quality of Nigeria's air resources.[108] Violation of any of the several regulations made attracts a paltry fine of N200, 000 for individuals and N2, 000, 000 for corporate bodies.[109]

Violation of the regulations for the protection and enhancement of the quality of land resources, natural watershed, coastal dams and reservoirs, including prevention of flood and erosion attracts a fine of not more than N200, 000 or imprisonment term of not more than one year or to both such fine and imprisonment;[110] and where the offence is committed by a corporate body, the applicable fine is not more than N1, 000, 000.[111] The penalty for the discharge of hazardous waste or harmful substance into the air, upon land, and into the waters of Nigeria where such act is prohibited is a fine of not more than N1, 000,000 for both individuals and corporate violators or imprisonment not exceeding 5 years for individuals alone.[112] Similarly, the Agency is empowered to make regulations for the purpose of regulating water quality. The penalty for the breach of these regulations is a fine not exceeding N50,000 or imprisonment for a term not exceeding one year or both such fine and imprisonment, for an individual offender and a fine of not more than N500,000 for a corporate offender.[113]

Under the NOSDRA Act,[114] the penalty for non-reporting of the occurrence of a spill incident by a polluter to the Agency is N500, 000 for each day of default,[115] while the failure on the part of the polluter to clean-up a spill occurring from its facility is a paltry sum of N1 million.[116] In addition, under the Oil in Navigable Waters Act[117] prescribes a fine of not more than N2, 000 as penalty for any person or body corporate to discharge crude oil, fuel and lubricating oil or heavy duty oil from a Nigerian ship into a prohibited sea area; or the discharge of oil from any apparatus to or from land by a master or owner of vessel or an occupier of land on which a vessel is kept.[118]

The list is in-exhaustive. A careful look at these penal provisions in Nigeria's environmental protection statutes betrays any genuine intention to protect the nation's environment, especially the fragile ecosystem of the indigenous peoples of the Niger Delta region. The penalties are generally ridiculously low and could easily be paid by polluters. In fact, most of the penalties are driven more by the concern to raise funds for the Federal Government than the need to protect the people's environment. Otherwise, how else can one explain the provision under the NOSDRA Act which prescribes a penalty of N1 million for a polluter who fails to clean up an impacted site. A more potent sanction ought to have included the revocation of operatorship licence and/or approvals granted to the polluter to operate in the activity giving rise to the pollution. This ought to be in addition to monetary claims/compensation payable in favour of indigenous peoples affected by the pollution and criminal proceedings against the directing minds of the polluter should it fail to clean up and restore the environment to its pristine and pre-pollution state.

4.6 Lack of Political Will to Enforce Environmental Standards

The Federal Government of Nigeria is both a partner in the oil industry and doubles as the enforcer of environmental laws and standards in the oil and gas industry. Specifically, the Federal Government

[107] NESREA Act 2007, s 26(1).
[108] NESREA Act 2007, s 20(1).
[109] *Ibid*, ss 20(3).
[110] *Ibid*, s 26(3).
[111] *Ibid*, s 26(4).
[112] *Ibid*, s 27(2).
[113] *Ibid*, s 23(3) and (4).
[114] [NOSDRA Act] No. 15 of 2006.
[115] *Ibid*, s 6(2).
[116] *Ibid*, s 6(3).
[117] [ONWA] Cap 06, LFN 2004.
[118] *Ibid*, s 6.

holds a 55 per cent stake of every joint venture with SPDC.[119] This makes it the majority shareholder in the oil and gas business in the country. This has made it difficult for the Nigerian State to take decisive actions towards ending or preventing pollution to the environment of the indigenous peoples. In addition, instead of mustering the political will to prohibit the flaring of natural gases so that the air quality of the environment of indigenous peoples would be restored, the Federal Government in a somersault turned gas flaring activities into a revenue-spinning policy. For instance, the PIA empowers the NUPRC and the NMDPRA to grant a permit to a licensee or lessee to allow the flaring of or venting of natural gas for a specific period where the flaring or venting of such natural gases is required facility start-up; or where it is required for strategic reasons, including testing.[120]To date, gas flaring is still legal in Nigeria. Abdul-Gafaru reports that in 2000 alone, 95 percent of associated gas was flared in Ogoni land, compared to a mere 0.4 percent flared in the entire United States.[121]

It does appear that this lack of political will is caused by the desperation of the Nigerian Government to attract foreign investors to invest in the development of oil and gas in Nigeria. Nigeria operates a mono-economy in which revenue from oil and gas operations constitutes more than 90 percent of the country's foreign exchange and over 80 percent of her total earning. Being a majority shareholder and at the same time a regulator of the industry also presents a situation of conflict of interest. It is submitted that the health and environment of the indigenous peoples ought to override every other narrow and parochial considerations which render it difficult for the government to muster the needed political will to enforce environmental standards.

5. Conclusion and Recommendations

This paper has carried out an assessment of the extent to which the government of Nigeria has been able to integrate environmental responsibility into the operations of companies and individuals. The conclusion drawn by the paper is that there are laws that have been enacted to offer protection to the different components of the environment – water, land, air, wildlife, flora and fauna as well as the wider ecosystem.[122]These include the CFRN 1999, ACHPR Ratification and Enforcement Act, CCA, PIA, NESREA Act, NOSDRA Act, EIA Act, ONWA and a host of other sector-specific laws and regulations made under them. If adequately implemented, the paper argues that the extant laws and regulations can sufficiently halt the environmental pollution taking place in various sectors of the Nigerian economy.

However, it has been observed by the paper that these laws are either not enforced or properly enforced. A number of reasons for the failure of implementation of environmental standards in Nigeria were identified by the paper and extensively discussed. For instance, there is no express recognition of the right of Nigerians to a clean, safe and healthy environment whether in the CFRN 1999 or in any other legislation.[123] In fact, the PIA expressly permits oil and gas companies to continue to flare or vent natural gases in host communities in total disregard to the impact of such practice on the environment and health of the people, and in violation of their right to a generally satisfactory environment favourable to their development.[124]

The regulatory agencies created to monitor and enforce environmental standards in Nigeria, such as the NESREA and NOSDRA do not have the necessary capacity to monitor compliance with the laws and regulations. It has been claimed that most oil spill cases are voluntarily reported by the MNOCs

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[119] B R Konne, 'Inadequate Monitoring and Enforcement in the Nigerian Oil Industry: The Case of Shell on and Ogoniland' [2014] (47) 195 Cornell International Law Journal 181, 186.

[120] *Ibid*, s 107

[121] A Abdul-Gafaru, 'Are Multinational Corporations Compatible with Sustainable Development? The Experience of Developing Countries', 16 <https://www.scheller.gatech.edu/centers-initiatives/aciber/projects/workingpaper/2007/001-07-08.pdf> accessed 19 September 2023.

[122] U Uduok, and E B Akpan, Gas Flaring in Nigeria: Problems and Prospects' [2017](5)(1) *Global Journal of Politics and Law Research* 16-28.

[123] B A Oloworaran, 'The Right to a Clean and Healthy Environment and the Fundamental Human Rights Provisions of the Constitution of the Federal Republic of Nigeria, 1999 [2009](1)(2) *Petroleum, Natural Resources and Environmental Law Journal* 53, 60.

[124] African Charter on Human and Peoples' Rights 1981, art 24.

involved.[125] In other words, the MNOCs are the perpetrators and at the same time the agency that determines the volume and cause of spill – whether sabotage or equipment failure/negligence.[126] This has led to a situation where MNOCs claim that 70 percent of oil spill incidents in the Niger Delta are caused by sabotage.[127] They usually come to this conclusion through their own private assessment since in the majority of cases NOSDRA and NESREA appear clearly to have abdicated their responsibilities.[128]

Other findings of the paper are that some of the treaties that obligate Nigeria to protect various components of the environment have not been domesticated; there is an apparent lack of political will on the part of the government to implement the extant environmental standards; and that the penalties prescribed as sanctions for violations of environmental standards appear rather derisory and non-deterrent, indicating the lack of seriousness in tackling environmental issues. While it is admitted that there is the need to review some of Nigeria's environmental laws and regulations, this paper argues that the Nigerian environment can still be protected to a significant extent on the current state of the law. The paper recommends a holistic approach to the implementation of all extant laws and regulations that have been put in place to protect the environment across different sectors of the economy. The enforcement capabilities of the environmental protection agencies such as the NESREA, NOSDRA, NUPRC, NMDPRA, law enforcement agencies and the courts should be enhanced by way of capacity building of the personnel of the agencies, adequate funding and staffing, provision of adequate and up-to-date equipment, facilities and offices. In addition, Nigeria should as a matter of urgency domesticate the environmental protection treaties which it has ratified but has not adequately implemented. Finally, there should be a review of some of the laws in Nigeria, especially the CFRN 1999 to make provision for the express guarantee of the right of every person to enjoy a clean and healthy environment. It is hoped that if these recommendations are taken seriously and implemented religiously, most of Nigeria's environmental problems would be a thing of the past.

[125]A R Temitope and A A Adedeji, 'Public Participation: An Imperative to the Sustainable Development of the Nigerian Oil Industry' <https://www.bhu.ac.in/lawfaculty/blj2006.../5_RT%20AKO_Public_Participation_1_[1].doc> accessed 17 September 2023.

[126]M Ajiya and Y B Habibu, 'Issues and Challenges on Environmental Rights: The Nigerian Experience' [2014](3)(5) *American International Journal of Social Science* 143, 147.

[127] Amnesty International, *Nigeria: Petroleum, Pollution and Poverty in the Niger Delta* (Amnesty International Publications 2009) 15.

[128]B R Konne (n 1) 195.