SEVENTEEN

BARRIERS TO THE ENFORCEMENT OF ENVIRONMENTAL PROTECTION IN NIGERIA AND POSSIBLE REMEDIES

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Abstract

Environment, being an existential right a man has, we cannot therefore, over emphasize the worthiness of promoting its preservation and the implication as well as the benefits of putting efforts for its protection. Civil obligation actually arises from the duty of care everyone owes his neighbour like it is stated in the rule in Ryland v. Fetcher and others. Based on this fact, this paper therefore took a quick look at the principles for safeguarding the environment especially in Nigeria. This research focused particularly on the various barriers that has hampered the enforceability of environmental protection here in Nigeria and by so doing, this paper pointed some factors as: non-justiciability clause, implementation of treaties, jurisdictional issues arising from environmental litigation, inadequate remedy, lifespan of litigation in Nigeria, Cost of litigation, inadequate punishment, inadequate funding and corruption amongst other factors. It is believed that a better environmental protection regime is possible in Nigeria which are: stricter penalties for environmental crimes, repeal and amendment of obsolete laws, creation of environmental courts, mitigate the obstacles of locus standi, proper training for enforcement personnel, effective environmental monitoring, adequate funding of relevant regulatory agencies and bodies, environmental law protection awareness. It is believed that a better environmental protection regime is possible in Nigeria and this article seeks to bring us as nearly as possible to that point.

1.1 Introduction

Man cannot be divorced from his environment. Global concerns about the environmental impact of human practices cannot be overstated. These concerns culminated into some controversial environmental ethical theories that birthed the enactment of several environmental rules and regulations to help curb human excesses and balance interests as people relate to the environment.

Section 37 NESREA[1] Act has defined Environment to comprise of the following: …air, land, water including all humans, animals or plants that lives there and the relationship they share amongst themselves or any other elements which are released into the county's waters. In *Attorney General of Lagos State v. Attorney General of the Federation and Ors*[2] The Supreme Court defined Environment as connoting the ecological surroundings, for example, water, air, land and air, in which humans, plants and animals' dwell and thrive.

Nigeria today, just as every other clime, is suffering her own portion of challenges to the environment which includes: oil spillage, deforestation, climate changes and all sorts of mining activities, all of which can result in loss of lives or livelihood, diseases, and violation of human rights, which has caused some serious uncertainties for the present generations and for posterity[3]. In a bid to tackling environmental degradation and other worldwide environmental concerns, In Nigeria today, there are many international treaties ratified by the National Assembly as well as Local laws, all aimed at bringing Nigeria to international best practice in dealing with the Environment. However, the allowance of these laws in the

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[1] s. 37 National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007 (hereinafter will be referred to as NESREA Act).

[2] (2003) 6 SC (Pt. 1) 24; (2003) FWLR (Pt 168) 909 at 946.

[3] H. Ijaiya, and O.T. Joseph, 'Rethinking Environmental Law enforcement in Nigeria', (2014) Vol.5, *Beijing Law Review*, pp.306,307.

Nigeria have experienced inadequacies, such as delay in the concluding environmental cases the courts with heavy caseloads touching different *locus standi*[4]. All these factors and more affects the judicial enforcements of these environmental rights as well as obligations to the detriment of affected persons

In this article, we shall begin by critically analyzing the concept of environmental protection in Nigeria while paying careful attention to the barriers that have affected the enforcement of cases on environmental violations all in a bid to establishing its current standpoint and finding a workable way out where loop holes are detected.

1.2 Conceptual Framework

In the course of this research, here are a few concepts that will be recurring very frequently and for the purposes of this research, there meaning shall be as follows:

1.2.1 Environment

Eagle,[5] in his works stated that the idea of Environment manifests Profound ambiguity that cannot be explained away by a single definition. However, it literally connotes the combination of conditions affecting organisms, the atmosphere including non-living things.

Oruonye and Ahmed[6] in their own views, saw the environment as:

> The combination of external physical conditions such as Air, water, soil and plants that affects and influence the growth, development and survival of living organism.

Generally, Environment is a wide expression which includes all elements, whether physical or non-physical, including living things and non-living things. It includes interrelating sets of elements.[7]

1.2.2 Environmental Pollution

Environmental Pollution has equally gained a good number of scholarly definitions. One of the first definitions of environmental pollution was provided by the World Health Organization and accordingly, that:

> When the environment is altered in composition or condition either directly or indirectly as a result of the activities of man so that it becomes less suitable for some or all of the uses for which it would be suitable for natural use.[8]

Worthy of note is the fact that these definitions share in common the fact that environmental pollution involves the alteration of the natural environment by man or unforeseen natural occurrence at the detriment of the inhabitants thereof.

1.2.3 Environmental Protection

Environmental protection for the purposes of this research refers to any act that is geared towards the maintenance of or restoration of the quality of the ecosystem such as the prevention of unwanted changes to the ecosystems and their constituent parts

1.2.4 Environmental Damage

The Harmful Waste Act[9]defines damage to include:

> The death of or injury to any person including any disease and any impairment of physical or mental condition. This is in addition to physical damage to property.

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[4] M. U. Ukponu, 'Environmental Law and Access to Justice in Nigeria: A Case for a Specialized National Environment and Planning Tribunal (NEPT)', Vol. 1 (1) *NAU Law Review*, p.20.

[5] S. J. Eagle, 'The Common Law and the Environment', (2008) Vol.58,(4), *Case Western Reserve Law Review*, 587, available at https://scholarlycomons.law.case.edu/caselrev/vol58/iss3/4 (accessed on 11th July, 2022 at 9:50am).

[6] E. D. Oruonye and Y. M. Ahmed, 'The Role of Enforcement in Environmental Protection in Nigeria', Vol.2, *World Journals of Advanced Research*, p.200.

[7] V. Johnson, 'What is Environmental Education', Michael Atchia (edn) *Environmental Education in the African School Curriculum* (African Curriculum Organization 1992) 104.

[8] V. E. Kalu and N. F. Stewart, 'Nigeria's Niger Delta Crises and Resolution of Oil and Gas Related Disputes: Need for a Paradigm Shift' (2007) Vol. 25, *JENRL* pp.244, 253.

[9] s.12(2) Harmful Waste Act Cap H1, LFN 2004.

The dumping or depositing of harmful wastes and substance, is capable of causing damage to both person and property, the proof of which gives right to an action under nuisance in civil liability.
By the above definition, environmental damage refers to more than just damage to the physical elements alone but also to none physical elements that are found in the natural space for the survival and flourishing of all animate and inanimate objects.

1.2.5 Enforcement

However, The Black's Law Dictionary defines Enforcement to mean *"The act or process of compelling compliance with a law…"*
Enforcement, according to the United Nations Environmental Programme (UNEP) in 2014,[10]

> can be seen to be a series of acts by the government or a body takes to accomplish the application of the criteria and due compliance within a regulated community.

Accordingly, enforcement will simply connote actions that is taken by a government, through any institution or body that is empowered by law to guard against violations of environmental laws to constrain the masses to obey the law or other regulations, as the case may be.

1.3 Legal Framework

1.3.1 Constitution of the Federal Republic of Nigeria, CAP C23 LFN 2004 (as amended)

One of the Fundamental objectives and Directive principles of states policy, provides this that the State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria[7]. The constitution, being the grund-norm of the country, makes emphasis that it is the responsibility of the state to safeguard the environment and improve the quality of water, air, land, forest and wildlife for the good of its citizens. It is however noteworthy that the same constitution, makes this section non-justiciable in the court of law.[11]

1.3.2 Criminal Code Act, CAP C8 LFN 2004

This Act is Nigeria's major law on crimes. It prescribes punishment for various proscribed activities or omissions constituting a crime in Nigeria.[12] It sets out punishments for its violation. Section 244 to 247 of this Act[13] deals with environmental issues including fouling and debasing the waterways, springs or streams making them unsafe for their ordinary purposes; vitiating the air as to make it poisonous to the life and health of persons and also spreading the infection of any disease dangerous to life of humans and animals. Section 349 to 350[14] also prohibits the shipping of dangerous goods that are destructive in nature.

1.3.3 National Environmental Standards and Regulatory Enforcement Agency (NESRAE) Act, CAP N164 LFN 2004

The Agency came into force in 2007, this Act repealed the Federal Environmental Protection Agency (FEPA) Act[15] and also substituted it as the major statute regulating environmental protection in Nigeria. The Act embodies laws and rules which is focused on protection of the environment and all of its natural resources as well as ensure sustainable development[16]. The Act created a regulatory agency (NESREA).[17]

The Act also provides criminal sanctions to persons who violates its provisions and also provides for compensation for victims of environmental violations. Example, Section 20 of the Act, provides that:

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[10] E. D. Oruonye and Y. M. Ahmed, 'The role of enforcement in environmental Protection in Nigeria', *World Journal of Advanced Research and Reviews*, available at: https://doi.org/10.30574/wjjarr.2020.7.1.0237 (accessed on the 5th October, 2022 by 3:30pm).
[11] s. 6(6)(c) Constitution of the Federal Republic of Nigeria 1999 (as amended).
[12] S. O. Damilola, '*Principles of Nigerian Environmental Law',* (Friesens Printing Corporation, 2015), 20
[13] Criminal Code Act, 1916, Cap C38 FN 2004.
[14] *Ibid.*
[15] s. 36 of the NESREA Act, the FEPA Act is repealed.
[16] M. G. Murgan, *An Appraisal of the Laws on Protection of Environment in Nigeria,* (Evan Prints, 2015), 9.
[17] s. 1 NESREA 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].

1.3.4 Harmful Waste (Special Criminal Provisions) Act Cap H1, LFN 2004

This Act penalizes the act of dumping or causing to be dumped, without any due authorization, harmful waste substances on the environment or in the territorial waters or inland waterways of the country.[20]Corporate bodies found in violation of the provisions of this Act, they too will be liable to be prosecuted accordingly and duly fined[21]. Punishment for the violation of the provisions of this Act is life imprisonment.[22]

Noteworthy is the fact that diplomatic immunity does not stand as a defence to offences committed under this Act.[23] Crime committed under this Act is one for which the Federal High Court has exclusive jurisdiction[24].

1.3.5 National Biosafety Management Agency Act, 2015

The Act came into force to control the management and control of infectious microorganisms and hazardous biological materials. The Act instituted the National Biosafety Management Agency (NBMA) as the Agency empowered by law to ensure the effective control of all parts of Nigeria's Biosafety[25]. The Act further penalizes the bringing into the country or releasing into the environment, either for experimental or commercial purposes any genetically modified organism without the authorization of the Agency. And the contravention of this will cause the offender to be liable to imprisonment or a fine as the case may be.[26]

1.4 Barriers to the Enforcement of Cases on Environmental Violations in Nigeria

There are a number of barriers that have influenced the judicial enforcement of environmental issues in Nigeria ranging from constitutional barriers to jurisdictional challenges and insufficient remedies warded to victims of environmental violations (pollution). The following are the barriers examined in this research:

1.4.1 Non-Justiciability Clause

The Constitution of the Federal Republic of Nigeria, 1999 (as amended) is described as the grund-norm and the fundamental law of the land and its provisions take precedence over any law, regulations, or polices enacted either by the National Assembly or state House of Assembly.[27] The 1999 Constitution (as amended) recognizes the importance and need to preserve and better the environment and safeguard the air, land, water, forest and wild life of Nigeria[28]. The responsibility to protect, preserve, and improve the environment as imposed on the government by the constitution is however limited the same constitution to the extent that the said duties are not justiciable[29].

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[18] s. 20 (3) NESREA Act.
[19] s. 20 (4) of the NESREA Act.
[20] s. 1 (2) of Harmful Waste (Special Criminal Provisions) Act.
[21] s. 7 of Harmful Waste (Special Criminal Provisions) Act.
[22] s. 6 and s. 8 of Harmful Waste (Special Criminal Provisions) Act.
[23] s. 9 of Harmful Waste (Special Criminal Provisions) Act.
[24] s. 13 of Harmful Waste (Special Criminal Provisions) Act.
[25] s. 1(a) of the NBMA Act.
[26] s. 35 of the NBMA Act.
[27] *Marwa&Ors v. Nyako&Ors* (2012) LPELR-7837(SC) Per ADEKEYE, J.S.C (Pp. 169-170, paras. B-F).
[28] s.20 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
[29] s.6(6)(c), C.F.R.N, 1999 (as amended).

A term is said to be non-justiciable where the Court is unable to hear such a matter even where real interest and rights are being violated.[30] While the duty of government to protect, preserve and safeguard the environment as provided for under chapter 2 of the Constitution, 1999 (as amended) falls within the fundamental objectives and Directive Principles of the government[31] Section 6 (6)(c) of the Constitution oust the inherent powers and sanctions of a court in Nigeria to address any violations on the constitutional duties and responsibilities confer on government to safeguard and preserve the environment.

However, scholars have of recent advocated the fact that environmental rights should be kept at par with fundamental human rights. In *Jonah Gbemre v. Shell Petroleum Development Company of Nigeria Ltd. and Ors,*[32]the court held that

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

Due to the crucial role of safe environment to human existence, it is the writer's opinion that issues relating to protection, promotion and Conservation of the environment should be removed from the fundamental objective and principles of the government and be made justiciable as this will make the government answerable and liable for its neglect, inactive or active role in polluting the environment especially in its oil and gas exploration and exploitation in the Niger Delta regions of Nigeria. Also, the Government can be held liable in its inaction to curb the issue of desertification ravaging the northeastern part of Nigeria and erosion endangering the lives and livelihood of some part of eastern Nigeria.

1.4.2 Implementation of Treaties

According to the Vienna Convention on the Law of Treaties:

> A treaty is an international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.[33]

Treaty can also be called Convention, Charter, Protocol, Covenant etc. The fundamental principle of treaties is that they are obligatory on the parties to them and ought to be executed accordingly.[34] Consent of state is a vital factor in treaty formation. Treaties are in this sense agreements between independent states and if states do not give their consent the treaty will not be binding on them.

However, no treaty to which Nigeria is a signatory becomes law unless is it domesticated by the National Assembly[35]. Therefore, it has no such legal force as to make its provisions justiciable in our Courts.[36]

1.4.3 Jurisdictional Issues Arising in Environmental Law Litigation.

Jurisdiction is the power a court has to adjudicate upon a matter before her[37] In initiating environmental law related suit, the following jurisdictional issues may vitiate the suit:

a. Locus Standi

It is trite that in any lawsuit instituted in a representative capacity, there must be approval from the person or group of persons who are to be represented and the person(s) representing them should have

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[30] V. C. Ikpeze ,*"Non-Justiciability of Chapter II of the Nigerian Constitution as an Impediment to Economic Rights and Development"*, 2015 http://www.iorsjournals.org accessed 20th, July, 2021.

[31] O. Olaiya, **"***Interrogating the Non-Justiciability of Constitutional Directive Principles and Public Policy Failure in Nigeria***"**, 2008https://www.ccsenet.org/, accessed on the 20th July, 2021.

[32] (2005) AHRLR 151.

[33] Art 2 Vienna Convention on the Law of Treaties, 1969.

[34] M.N. Shaw, *"International Law",* (Cambridge University, Press, 6th ed., 2008), p.903.

[35] s. 2, Constitution of the Federal Republic of Nigeria, 1999 (as amended).

[36]*Abacha &ors v. Fawehinmi* (2000) LPELR-14(SC), Per Ogundare, J.S.C Pp. 11-13.

[37]*FBN Ltd v. Abraham* (2008) LPELR-1281(SC) Per Aderemi, J.S.C p. 15.

like interest in the cause of action[38]. The term *locus standi* denotes the legal capacity to institute an action in a Court of law. It is a condition upon which a suit can be heard in its merit[39]. *Locus standi* is a condition precedent a claimant must satisfy before the jurisdiction of a court can be successfully invoke.

Despite the laudable objective of the rule of *locus standi*, the doctrine has been a thorn in environmental litigation in Nigeria. For instance, in the case of *Oronto Douglas v Shell Petroleum Development Company and 5 ors,*[40]the plaintiff brought an action under the Environmental Impact Assessment Act.[41] He claimed that the Act requires that in certain specified projects[42] that may have significant environmental impact that an environmental impact assessment be carried out by a proponent before the commencement of that project. He contended that the provisions of the Act had not been complied with by the defendants in respect of the Nigerian Liquified Natural Gas Project at Bonny. The defendants filed a preliminary objection contending that the plaintiff lacks *locus standi* in the matter and therefore cannot institute the action. Furthermore, in cases on public nuisance, the court's undue reliance on *locus standi* had had a toll on a number of environmental cases. The general rule for public nuisance is that the Attorney General stands as the rightful plaintiff when it comes to prosecution of a public right[43]

Another area where *locus standi* has compounded environmental litigation is in the use of tort of trespass to pursue environmental claims. Trespass to land arises from an unlawful intrusion or interloping with the possession of the plaintiff's land.[44] The slightest direct physical interference with land in possession of another person is actionable, for example, walking on another man's land.[45] In *Onasanya v. Emmanuel*,[46]Omolulu Thomas J. held that trespass is committed when without lawful justification; a defendant directly places or projects any material object upon such land. For action in trespass to arise from the placing of an object on the plaintiffs' land, such placing must be direct otherwise the action will lie only in nuisance in which case damage must be established to ground liability.

However, for the plaintiff to be entitled to sue he must be in possession.[47] But the possession which entitles the plaintiff to sue must be actual and effective possessions in order to maintain an action against anyone except the true owner or one who can trace his title to the true owner.[48]

i. Statute of Limitation

The rule of Statute of Limitation requires a litigant to institute his action over a right that accrues to him within the time stipulated by law. Where a litigant instituted his action after or outside the time prescribed by Statute of Limitation or Limitation Law upon becoming aware of the wrongdoing being committed against him, his right of action becomes terminated or extinguished. Consequently, the jurisdiction of the court cannot properly be invoked. Hence, a Plaintiff who might otherwise have had a cause of action loses the right to enforce it by judicial process because the period of the time lay down by the limitation law for instituting such an action has elapsed[49]. However, is important to note that limitation law does not apply to criminal matters.

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[38] R. A. Mmadu, 'Judicial Attitude to Environmental Litigations and Access to Environmental Justice in Nigeria: lessons from Kiobel', (2013) Vol. 2, *Afe Babalola University: Journal of Sustainable Development Law and Policy*, pp. 149-170.

[39] *Chief GafaruArowolo V. Chief Sunday E. Olowookere& Anor.* (2011) 18 NWLR (Pt. 1278) 280 at 300 G - H 301 A – B, Per Adekeye JSC.

[40] (1981) 1 NCLR 290.

[41] Cap E.12 LFN, 2004.

[42] s. 13 and Schedule of Environmental Impact Assessment Act.

[43] E. Onyeabor, 'Expanding the Scope of Locus Stand in Environmental Litigation', (2010) Vol.7(1),*UNIZIK Law Journal*, 10.

[44] *Anyabunsi v. Ugwunze* (1995) 6 NWLR (pt 401) 26.

[45] *Ashby v. White* (1703) 87 ER 810; *Dabira v. Adelaja* (1973) II CCHCJ p.100.

[46] (1973) 4 CCHCJ 1477 at 1481.

[47] *Oya v. Ikaile* (1995) 7 NWLR (pt 406) p.155; *Lamidi v. Oyedele* (1994) 6 NWLR (pt. 348) 25.

[48] *Nwosu v Otumola* (1974) I ALL NLR (pt 1). 153.

[49] M. C. Ogbonnah and C. Wigwe, *"Statute of Limitation vis-avis Compulsory Acquisition in Nigeria"*, journal of property law and contemporary issues, 2018, https://www.researchgate.net/publication/331547059 accessed on the 28th July, 2021.

ii. Pre-Action Notice

Legally, a pre-action notice is some form legal notification or information the law requires that a party must give before commencement of any legal action against such a person. It is usually provided for in legislations establishing certain statutory bodies. Pre-action notice is a procedural requirement that also have effect on jurisdiction. It actually gives notice to the beneficiary to either amend or correct the alleged act alleged or prepare for litigation. They are not part of initiating processes but pre-litigation procedures provided for by law. Where it is applicable, it is a precondition which must be fulfilled[50]. The effect of failure to serve a pre-action notice gives such a Defendant the right to insist on such notice first served before the aggrieved can come to Court. The non-service of a pre-action notice puts the Court's jurisdiction on hold and renders the suit incompetent.[51] For instance, to bring an action in court against the Nigerian National Petroleum Corporation (NNPC) there must be a pre-action notice at least one month before the commencement of the matter.[52]

1.4.4 Inadequate Remedy

Inadequate remedy is a barrier in judicial enforcement of environmental violations. The major remedies that are granted in environmental litigations are basically compensation, damages and/or injunctions. And in most cases, these remedies cannot fully assuage the plaintiffs to the extent of the damage suffered.

1.4.5 Lifespan of Litigation in Nigeria.

Notwithstanding the crucial role of litigation in contemporary society, it is saddled with challenges such as the duration of cases, legal technicalities and even cost of prosecution. Cases in Nigeria suffer long term lifespan, some lasting up to 20 years and more. This is very worrisome and leaves both the Claimant and Defendant short changed.

So many factors contribute to the long duration of cases in Nigeria, such as under-staffed judiciary workers, poor conditions of service, corruption, unscrupulous attitude of lawyers etc, chief among them is interlocutory applications.

1.4.6 Cost of Litigation

Generally, litigation is expensive and environmental litigation is more expensive. This is because; environmental litigation requires expert evidence and environmental assessment. Sometimes, persons who are direct victims of environmental violations are living below poverty line whose basic concern is rather to make three square meals than pursuing redress to violation of their rights. Again, the call for a special and separate system of environmental enforcement in Nigeria is immediate.

1.5 Other Challenges to Effective Environmental Protection Measures

Other identified challenges that have posed a serious barrier in the effective environmental protection measures are as outlined below:

a) Inadequate punishments for environmental crimes to serve as deterrence from environmental violations
b) Inadequate funding of requisite institutions that are saddled by law to ensure compliance with environmental laws
c) Corruption.[53] This has become a great ill that has eaten deep into the fabrics of the society.
d) General lack of modern technology for policy implementation. As the society advances in technological evolution, the need to develop a more effective ways to tackling the environmental need of the society has become pertinent. However, this has still remained a challenge in Nigeria.

[50] *SLB Consortium Ltd. VS. NNPC* (2011) 5 SCM 187.
[51] *Niger Care Development Company v. Adamawa State Water Board* (2008) LPELR-1997 (SC).
[52] s.12(2) Nigerian National Petroleum Corporation Act, LFN 2004.
[53] M. T. Ladan, *'Law, Cases and Policies on Energy, Mineral Resources, Climate Change, Environment, Water, Maritime and Human Rights in Nigeria'*, (Ahmadu Bello University Press, Zaria, 2009). 10.

e) Lack of adequate constitutional provision to compel environmental protection by government and masses alike[54]
f) Insufficient experts in areas of environmental protection and law
g) Lack of enforcement powers for some institutions/agencies.[55]
h) General poor information management in Nigeria[56]

1.6 Possible Remedies

In line with the findings in this research, here are possible remedies that when employed will be for a safer and a more robust environmentally friendly regime:

1.6.1 Stricter Penalties for Environmental Crimes

The Courts should be made to encourage exemplary damages and issue stricter punitive measures on environmental violators to serve as deterrence signal to polluters thus ensuring a safe and friendly environment for all.

1.6.2 Constant Review Extant Laws in Order to Meet Any Emerging Environmental Rights

The society is dynamic and there is evolution of rights that have in the past not been considered as so. It is pertinent that the legislators take a cue into what is obtainable in other climes and the rising environmental needs in our own clime to ensure that they make adequate provisions for all environmental matters including any emerging rights as the need arises.

1.6.3 Creation of Environmental Courts

There is need for special courts and procedural Rules on environmental litigation. Environmental disputes are technical in nature which a person who is untrained may not handle effectively. Here in most jurisdiction in the Nigerian Courts, a judge is expected to handle every matter even when it is obvious that he is professionally deficient in the area. For efficient adjudication of breach of environmental standards in Nigeria, there is need for creation of environmental courts to be presided over by seasoned professionals with requisite knowledge and experience in environmental law matters. Several bottlenecks impede environmental litigation in Nigeria. These include frivolous adjournments, interlocutory appeal procedure, etc. This will also speed up environmental litigation as the court will be focused solely on environmental matters.

1.6.4 The Obstacle of *Locus Standi*

It is recommended that the common law principle of locus standing should be abolished in environmental matters litigation, just like the case of actions for enforcement of fundamental rights.[57] With respect to criminal proceedings for breach of environmental standards, South African law allows same to be instituted by any person acting in the interest of the public or in the interest of the environment.[58] There is a need to review the Nigerian law to bring it at par with the laudable statutory provisions in other foreign jurisdictions, like in the case of India[59].

1.6.5 Proper Training for Enforcement Personnel

The importance of training of relevant personnel and judicial officers who are empowered by the law to enforce environmental protection cannot be over emphasized. This training is to afford them an

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[54] J. C. Nwafor, '*Environmental Impact Assessment for Sustainable Development: The Nigerian Perspective*' (1st ed.). (EDPCA Publishers 2006) 10.
[55] H. Ijaiya and O. T. Joseph, '*Rethinking Environmental Enforcement in Nigeria*,' (2014), Vol.5, *Beijing Law Review*, Dec., available at: https://www.scirp.org/journal/PaperInformation.aspx?PaperID=52770 (accessed on the 28th September, 2022 by 12:30pm).
[56] J. C. Nwafor, *'Environmental Impact Assessment for Sustainable Development: The Nigerian Perspective'* (1st ed.). (EDPCA Publishers 2006) 10.
[57] Paragraph 4(e) of the Preamble, Order I Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules 2009.
[58] Section 33(1) & (2) of the National Environmental Management Act.
[59] Section 19 of the Environment (Protection) Act No. 29 of 1986.

opportunity of acquainting themselves with the modern best practices of environmental protection as it is obtainable globally. It is also meant to keep them up to date in the emerging areas of environmental rights and how best to go about the protection of same in our own clime considering the peculiarity of the Nigerian environment.

1.6.6 Effective Environmental Monitoring

Effective environmental monitoring entails inspection, observation and documenting of information concerning the environment in order to prevent it from being damaged by the activities of man particularly those that has to do with high-level technological gadgets, in order to plan for imminent abuse of its resources and to control the horrible results of environmental negligence.[60]
Instruments for Environmental monitoring should be made available to relevant institution to allow for an effective implementation of the task of monitoring. This will improve the gathering and analysis of relevant data and for due enforcement of policies where any threat is found within a given Local Government Area or State.

1.6.7 Allocation of adequate Funds Especially to Relevant Regulatory Agencies and the Third Tire of Government

Allocation of adequate funds should be to all relevant regulatory agencies and all levels of government to enhance the promotion and protection of the environment. As earlier stated, these agencies are currently poorly funded and also under staffed thereby making environmental protection in Nigeria a more cumbersome task than it ought to be.

1.6.8 Environmental Law and Protection Awareness

With the presence of modern technology and other improved methods of information dissemination, more awareness should be made to every nook and cranny of Nigeria. The national Orientation Agency as well as other relevant bodies should ensure that through these available media, people are well informed of the dangerous effect of mismanaging the environment, by way of action(s) or omission(s), which will in turn affect the inhabitants and that everyone should also join force to mitigate these problems. These orientation and awareness should be organized at the grass root level for effective monitoring and implementation of environmental protection.

1.7 Conclusion

This paper reveals that a major factor affecting environmental development in Nigeria is her approach to the enforcement of environmental rights. And the approach of Nigeria in tackling environmental matters is influenced majorly by her cultural and political origins as well as the nature of her environment. Most of the environmental problems facing Nigeria are due to hard natural and climatic conditions while others are as a result of the political instability. Thus, the role of environmental law in the attempt to tackling these hitches remain negligible, environmental law also provides a structure whereby the results of these environmental glitches may be lessened. Flowing from this position, Nigeria needs to make serious and deliberate efforts towards policies that, when implemented, will bring about a safe environment for all.

A cursory look through the discussions above shows that the environmental laws and enforcement bodies as created by law is yet to fully resolve the issues of environmental damage in the country. This is either because the provisions of laws have become outdated and not measurable to the environmental degradation in Nigeria. Nigerian legal system presently considers and tackles environmental damage by means of extant provisions in our laws which are all subject to the Constitution.[61] However, the courts apply the general rules of civil liability whenever they decide cases concerning compensation for damage, regardless of the fact that the damage is caused by pollution or other sources. The rules of civil

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[60] A. Ogidiolu & F. T. Balogun, 'Techniques of Environmental Monitoring and Management: In Jimoh & Ifabiyi (Eds.)', *Contemporary Issues in Environmental Studies*,(Haytee Press & Publishing Co. Ltd), P. 79.

[61] s.1 (1) Constitution of the Federal Republic of Nigeria 1999 (as amended).

liability do not take care of the numerous environmental damage cases. It is however, imperative to lead a legal system to deal with the concern of compensation and restoration in environmental damage cases.

Despite all the legal provisions on environmental crimes in Nigeria, it is obvious that offenders, most of the time, do not assume criminal liability that is proportional to the offence and most of the time get away with payment of meager fines. Identifying environmental crimes and giving it the due legal force by way of codification, will foster environmental regulation and protection in the country.[62] It has been argued that since payment of fines are about the only extent to which corporate bodies can be penalized, achieving a total deterrence may still be a huge challenge as liability of corporate bodies in form of fines may only end up becoming a part of the cost of doing their business.[63]

The rationale of the environmental laws is to reduce, prevent, remedy and punish actions that threaten or damage the environment and those that live in it and it is obvious that the laws in place have not prevented the damage of the environment. To this regard, environmental legislations in Nigeria should be reviewed especially in the areas of fines as prescribed punishments for offences, also, experts in environmental field and personnel should be properly trained before they can be part of the Enforcement agencies.

[62]M.T. Okorodudu-Fubara, '*Statutory Piercing of the Corporate Veil Under Environmental Protection Law,'* (1998) Vol.2, Modern Practice Journal of Finance & Investment Law, 1998, p.1.

[63] D. St John and others, 'Environmental Crimes' (2020) Vol.57(3), *American Criminal Law Review*, 657, 666.