ASSESSMENT OF THE LEGAL AND INSTITUTIONAL FRAMEWORK FOR THE PREVENTION OF ENVIRONMENTAL DEGRADATION BY OIL AND GAS COMPANIES IN NIGERIA

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NIGERIA

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FACULTY OF LAW,
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DECLARATION

I declare that the work in the dissertation entitled “Assessment of t he legal and *Institutional* Framework for the prevention of Environmental Degradation by Oil and Gas Companies in Nigeria has been written by me under the supervision of Dr. A.K. Usman, Professor Ibrahim Yusuf Basir, and Professor Yusuf Aboki.

The information derived from the literature has been duly acknowledged in the text and a list of references provided. No part of this dissertation was previously presented for another degree or diploma at any University

Abdulkarim IBRAHIM _____ _____
Signature Date

CERTIFICATION

This dissertation entitled Assessment of the Legal and Institutional Framework for the prevention of Environment Degradation by Oil and Gas Companies in Nigeria; by Abdulkarim IBRAHIM meets the regulations governing the award of the degree of Doctor of Philosophy of Ahmadu Bello University Zaria and is approved for its contribution to knowledge and literary presentation

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DEDICATION

This work is dedicated to my beloved mentor Professor Yusuf Aboki whose contribution to my life cannot be quantified in any measure.

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ABBREVIATIONS

CNA	Clean Nigeria Associates
DPR	Department of Petroleum Resource
EGASPIN	Environmental Guidelines and Standard for the Petroleum Industry in Nigeria
ERA	Environmental Rights Action
FEPA	Federal Environmental Protection Agency
LPG	Liquefied Petroleum Gas
MPR	Ministry of Petroleum Resources
MPN	Mobile Producing Nigeria
MEND	Movement for the Emancipation of the Niger Delta
NESREA	National Environmental Standard and Regulations Enforcement Agency
NOSCP	National Oil Spill Contingency Plan
NOSDRA	National Oil Spill Detection and Response Agency
NDDC	Niger Delta Development Commission
NADC	Nigerian Agip Oil Company
NNOC	Nigerian National Oil Corporation
NNPC	Nigerian Petroleum Corporation
NGOs	None Governmental Organizations
OPRC	Oil Pollution Pre-paredness, Response and Co-operation
OPTS	Oil Products Trade Section of Lagos Chambers of Commerce.
PPMC	Pipelines and Products Marketing Company
PPMC	Products Marketing Company
R&D	Research and Development
SPDC	Shell Petroleum Development Company
UNEDP	United Nation Environmental Development Programme

ABSTRACT

Legal frame work for the prevention of environmental degradation by oil and gas companies in Nigeria is partly Customary Law, partly Statutory Law, and partly Common Law. The Statutory legal regime for the prevention of environmental degradation in Nigeria is largely influenced by international legal norms for the prevention of environmental degradation by oil and gas companies. The legal frame work for the prevention of environmental degradation by oil and gas companies to a large extent produced institutional frame work prevention of environmental degradation by oil and gas companies. The Institutional frame work thus produced together with other institutions not produced by the legal frame work for the prevention of environmental degradation by oil and gas companies together enforce the legal frame work. Arising from the legislative response, there are catalogue of laws which seek to protect the environment from degradation by oil companies but unfortunately the laws are ineffective, in addition to the ineffectiveness of the laws, the laws are also not adequately implemented and enforced by the appropriate authority. It is also worrisome to note also that the laws are scattered in different legislation and other legal sources. This makes it difficult to get appropriate law to address a particular challenge. It is also sad to note that the environmental agencies lack specialized dedicated and courageous enforcement officers in enforcing the environmental laws. In addressing the short comings noted above, the study employed doctrinal and empirical approach applying both methods, the existing laws were carefully analyzed, institutions were visited and questionnaires were administered on host communities. Consequently, the study observed that, the laws and regulation that seek to prevent environmental degradation are generally weak, inadequate, short of administrative and enforcement machinery. The study also observed that there are too many institutions that regulate the affairs of the oil companies in Nigeria and these make their functions to overlap. The study further observed that the nature of the laws are scattered in different legislation and other legal sources. The study similarly revealed that the people of the Niger delta of Nigeria actually suffer from the operation of oil and gas companies. Consequently, the study made recommendations for the amendment of the policy and legal frame work, recommendation for the fusion of institutional frame work so as to have institution that enforces environmental law, employment of specialized, dedicated and courageous environmental law enforcement officers and establishment of environmental courts and more cooperation between host communities and oil operators.

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CHAPTER ONE

GENERAL INTRODUCTION

1.1 Historical Background

Environmental degradation by oil dates back to 1956 when Shell Development Company (SPDC) then, discovered oil in Oloibiri Ogba Kingdom in Rivers state. Exploitation of oil finds in other parts of Niger delta brought with it environmental degradation at a scale hitherto unknown, this called for legislation to regulate the exploitation of oil by companies in the area. Earlier legislative response in this area was directed at oil pollution arising from oil prospecting and explorative activities in the country. The response did not arrest nor reduce environmental degradation. Therefore there was a need for more direct and rapid legislative response. The direct legislative response began with the promulgation of the **Petroleum Act**[1].

The main thrust of the Petroleum Act, is that it provides a frame work for the exploration, production and refining. Subsidiary legislation passed pursuant to the Petroleum Act to deal with oil and gas exploration, production and refining include; **Nigeria National Petroleum Coporation Act**[2]**, Oil in Navigable Water Act**[3]**, Associated Gas Re-Injection Act**[4]**, Oil Pipeline Act**[5]**, Oil and Gas Export Free Zone Regulation**[6]**, Hydro Carbon Oil Act**[7]**, and The West Africa Gas Pipeline Project Act**[8]**, National Oil Spill Response Agency Act**[9]**,(NOSDRA)** etc. All these

[1] Cap. P10, L.F.N. 2004
[2] Cap. N123 L.F.N. 2004
[3] 1969 No.51 (Now Cap.P10 Laws of the Federation of Nigeria, 2004) The Act repealed the Minerals Oils Act Cap 226 Laws of the Federation of Nigeria, 1990 which was an earlier legislation.
[4] 1979, No.99 (Now Cap. A25 L.F.N, 2004
[5] Cap. 07 L.F.N,2005
[6] Of 2003
[7] Cap.H5 L.F.N,2004
[8] No.11,2005

laws aim at regulation of oil and gas exploration, production and refining activities. Outside these statutory provisions, there are Customary Laws and Common Law provisions that may not be directly on oil and gas environmental degradation by oil and gas. Various communities have customary provisions that are against environmental pollution by noxious substances. Oil and gas being noxious substances if spilled into the environment such spillage will contravene such customary legal provisions and as such they may be used to redress the environmental pollution. The Common Rule in **Rylands v. Fletcher**[10] which imposes strict liability on any one who allows a dangerous substance to escape from his premises to damage the property of another may be extended to cover of oil and gas and therefore form part of the legal framework for the prevention of environmental degradation by oil and gas.

The above legal framework for the prevention of environmental degradation by oil and gas particularly its statutory aspect has generated an institutional framework for the prevention of oil and gas environmental degradation. These institutions include; the Nigeria National Petroleum Corporation (NNPC), Department of Petroleum Resource (DPR), National Oil Spill Detection and Response Agency, (NOSDRA), Niger Delta Development Commission (NDDC), Niger Delta Ministry, and National Environmental Standard and Regulations Enforcement Agency (NESREA), Ministry of environment.

[9] 2006
[10] (1886) L.R. 1Exch.265

1.2. Literature Review

The area of this research is largely an emerging field. Consequently not much intellectual activity in the form of text books and journal publication has taken place on the subject matter of the research. Among the few publications that exist on the area of the research are as follows: *Nigerian Law on Oil Pollution*[11], this book gives a critical analysis of Nigerian laws on oil pollution. However, the authors did not avert their minds to institutions such as Department of Petroleum Resources (DRP), Niger Delta Development Commission (NDDC), National Environmental Standards and Regulations Enforcement Agency (NESREA)[12], National Oil Spill Detection and Response Agency (NOSDRA)[13]. These institutional frame works are the key enforcers of the laws relating to oil pollution in Nigeria. Further still, there are laws in this area, to prevent environmental degradation such as **Nation Oil Spill Detection and Response Agency Act**[14] and **National Environmental Standards and Regulations Enforcement Agency Act**[15], which were not discussed in that work

In the work of Chika O. and Ugo Chukwu P.C.[16], *an article titled Environmental Degradation: An Assessment of the Legal Control of Oil Pollution in the Niger-Delta States.* The authors were very unmindful of the current laws such as NESREA[17] and NOSDRA[18] and therefore did not examine these laws. This work critically examines these two laws in addition to other laws to show the effectiveness

[11] *Ebirim O, and Ndukile Charles N. Spectrum Books limited Ibadan, 2008.*
[12] *National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007*
[13] ibid
[14] *2006*
[15] *2007*
[16] Chika O. in Issues and Responses in Contemporary Law and Practice (ed.) Chika O. and Ugochukwu P.C Hudso-Jude Nigeria No.24 Royce Owerri,2009
[17] Op.cit. p.25
[18] Op.cit

or otherwise of the laws to prevent environmental degradation by oil and gas companies in Nigeria.

Another literature on this subject matter is a text book written by Margret Fubara T.O.[19] The book extensively discussed environmental issues generally and extended its discussion to Federal Environmental Protection Agency (FEPA)[20] now defunct. This was an Institution for enforcement of environmental laws and policies. FEPA has been abolished and replaced by National Environmental Standards and Regulations Enforcement Agency[21] (NESREA). Curently NESREA, still oversees the enforcement of laws on the environment in general and to some extent, oil and gas pollution. Issues and observations raised by the author had shifted a bit because of the enactment of NESREA. This work examines the contradiction raised by NESREA in relation to oil and gas companies especially in sections 7 and 8 of the Act[22].

Professor Ladan M.T.'s work[23] examines extensively inter alia environmental litigation. However, he did not narrow it down to environmental litigations on environmental degradation by oil and gas companies in Nigeria as it is done by this work. This work specifically, examined the challenges in seeking judicial remedy of oil pollution by oil and gas companies in Nigeria.

Another book co-authored by Lawrence A., Vincent A.,[24] gave a detailed discussion on environmental law. The book attempted to examine various types of environmental pollution. But unfortunately did not dwell on oil environmental

[19] Law of Environmental Protection: Materials and Text Caltop Publications (Nigeria) Limited,1998
[20] Op.cit
[21] Op.cit
[22] Op.cit p.25
[23] *Biodiversity, Environmental Litigation Human Rights and Access to Environmental Justice. Faith Printers and Publishers Zaria, Nigeria(2007).*
[24] *Environmental Law in Nigeria: Theory and practice, Ababa Press Ltd. Surulere, Lagos, 2003.*

pollution. The book however gave a detail examination of institutions that enforce environmental laws, but did not examine NESREA, DPR, NDDC and NOSDRA as it is done in this work. The book Nigerian Petroleum Laws[25] is relevant to this research, x-rayed the relevant laws in the Nigerian petroleum industry. The book however, is founded on old laws for the prevention of environmental degradation by oil and gas and reflects little of the current laws on the subject, an omission this work addressed.

Nigerian Petroleum Law and Practice[26], is another book that is closely related to the subject of this work. The book discussed the Nigerian petroleum law and practice and institutions that enforce the petroleum laws. The book however did not take into account, recently created institutions and laws, because as at the time the book was written, these new laws and agencies were not in existence. This work takes into cognizance the new laws and agencies that are relevant to this research.

Oluwole Akanle[27], in his book examined laws for the prevention of environmental degradation in Nigeria. However most of the book is that most of the laws referred to in the work have either been amended or repealed and replaced by other laws. This work examines both the old and the current laws for prevention of environmental degradation by oil and gas companies.

Olarewaju Fagbohun in his book[28] extensively discussed environmental pollution and the remedies available to victims of oil pollution. The learned author however narrowed his discussion in his work basically to environmental restoration.

[25] *Etikerentse, Macmillian Publishers Ltd. London 1985.*
[26] *Martin Olisa M. Fountain Books Limited, Lagos, Nigeria, 1987*
[27] *Pollution Control Regulation in the Nigerian Oil Industry Nigerian Institute of Advanced Legal Studies, Lagos Nigeria 1991.*
[28] The Law of Oil Pollution and Environmental Restoration: A Comparative Review, Odade Publishers, Yaba, Lagos, Nigeria, 2010)

This work goes beyond environmental restoration to environmental rehabilitation principles in the event of oil and gas environmental damage.

A recent book written by Adamu Kyuka Usman,[29] discussed to a large extends environmental protection law generally. However the book did not narrow its discussion to areas of oil and gas as it is done in this work. The book also examined an important environmental legislation, i.e., **National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007**. However, the author did not avert his mind to the **National Oil Spill and Detection Agency (Establishment) Act**[30] which deals exclusively on protection and prevention of environmental degradation by oil companies in Nigeria.

Another book[31] authored by M. T. Ladan examined extensively current trends in environmental law. It reviewed the **NESREA ACT**[32] and Regulations of 2007. It was done in a very unique way. The book also discussed the institutions that enforce environmental protection laws. The book however did not discussed the Ministry of Niger Delta, Niger Delta Development Commission, Earth Watch as this research work attempted. This research in its bid to discuss the legal regime on prevention of environmental pollution, examined the laws from the angle of preventive, precautionary, remedial and polluter pays principle of environmental protection.

These works mentioned above, certainly serve as source of reference for the purposes of elaboration, expansion and assistance in analyzing the statutory provisions

[29] Environmental Protection Law and Practice, Ababa Press Ltd. Ibadan, Nigeria. 2012.
[30] Opcit
[31] Trend in Environmental Law and Access to Justice in Nigeria, Lambert Academic Publish, Germany, 2012
[32] Opcit

of the laws that relates to this works. The books also go a long way to enrich the work with decided cases relevant to the work.

There are a lot of articles written by learned scholars in the area of this work. While some articles are on the legal frame work the first arm of this research while others are on the second arm of the research i.e on the institutions that implement and enforce the laws in the area of this research.

Adewale O. (Mrs.)[33] in her work carefully discussed an important Federal Government Agency, i.e., FEPA (now defunct) that is charged with the full responsibility of protecting the environment from being degradated. Because FEPA is defunct this article provides little material for this work. Lawrence Atsegbua in his article[34] examined Federal Environmental Protection Agency[35] (FEPA), **Petroleum Act**[36] and **Petroleum (Drilling and Production) Regulation**[37], dwelling little on environmental degradation by oil and gas companies the subject of this research. Chukwucheta Emejuru T. in his article[38], focused on the need for Multinational Corporation in Nigeria to comply with municipal and international environmental standards, same thing also done by this research. However the research is more comprehensive in its discussion of environmental degradation by oil and gas companies in Nigeria. Akaakar, F.O, in her article[39] discussed the laws that seek to

[33] *An Overview Of State Environmental Laws in Ajomo M.A.,and Adewale O. (eds.) Environmental Law and Sustainable Development in Nigeria. Nigerian Institute of Advanced Legal Studies, Lagos. 1994.*
[34]. *Oil pollution and the Protection of the Environment in Nigeria; What Hope for an Economic Analysis? Justice a Journal of Contemporary Problems Vol.3 1992.*
[35] *Cap.131 laws of the federation of Nigeria, 1990*
[36] *Cap. 550 laws of the federation of Nigeria, 1990*
[37] Of 1969
[38] Oil Multi-national Corporation in Nigeria: Compliance with Municipal and International Environmental Standard: Property and Contemporary Journal, The official of the Department of Private Law University of Ado-Ekiti Vol.6 2009
[39] Natural Gas Development in Nigeria, Rivers State University Journal of Public Law Vol.1, 2003.

regulate gas flaring in Nigeria. The author examined **Petroleum Act**[40]. The **Associated Gas Re-Injection (Continued Flaring of Gas) Regulation and Associated Gas Re-Injection (Amendment) Act**. Unlike the article under reference, this work discussed the laws from perspectives of preventive, and polluter pays principles etc.

1.2.1 Additional Literature Review

Section 8 of the repealed **Mineral Oils Act** allowed all regulation to be made pursuant thereto in respect of the exploration of mineral oils. Very importantly, the **Petroleum Act**[41] did not address the environmental problem caused by petroleum exploration activities. In fact, most of the regulations are concerned with the safety of the personnel working in the oil wells and safety precautions to be observed in the course of oil exploration activities. In line with this, there was in place an institutional structure for the implementation of the provisions of the **Petroleum Act**[42]. This of course led to the establishment of the Ministry of Petroleum Resources, with the Department of Petroleum Resources charged with the power to enforce the regulation.

The **Petroleum Regulation** made pursuant to **section 9 (I) of the Act** relates to the grant and operation of leases and licenses. The aspect of the regulation that seeks to protect the environment is the conversation of petroleum resources and prevention of pollution of water courses and the atmosphere. It should be noted that this regulation, like the previous regulation, was not targeted at environmental protection, but an incidental regulation on the protection of the environment.

[40] Op.cit
[41] *Opcit.p.68*
[42] Op.cit

Essentially, the Act and regulation created offences and imposed penalties for non – compliance, which include short term imprisonment and payment of meager amount of fines. The punishment is too inadequate for deterrence purposes.

Oil in Navigable Waters Act[43] is another legislation that was passed after the discovery of oil to address environmental problem in this country. The Act, unlike the **Petroleum Act**[44], has direct impact on environmental protection by prohibiting the discharge of oil into the sea and navigable waters. The Act under review prohibits the discharge of certain oils into prohibited sea areas and territorial waters of Nigeria. It imposes obligation on ship owners to install anti – pollution equipment. It prescribes penalties for violations[45]. Under the Act, it is an offence punishable by imprisonment to dump oil into the Nigerian territorial waters. The power to enforce the provisions of the Act is vested in the Minister of Transport. It is very sad to note that despite the importance of this Act, the penalty for its breach is very ridiculous and grossly inadequate in spite of the environmental impacts of oil pollution and cost of remediation.

Associated Gas Re – Injection Act[46] and the regulations made pursuant to the Act represent a very vital legislative concern to address the menace of atmospheric pollution through gas flaring in Nigeria. The Act was meant to compel companies producing oil and gas in Nigeria to submit preliminary programmes for gas re-injection and detailed plans for implementation of gas re-injection[47]. **Section 3 of the Act** specifically prohibits flaring of gas produced in association with oil production

[43] *Cap. 06 Laws of the Federation of Nigeria, 2004*
[44] Op. cit.
[45] *See sections 1,3,5 and 6 of the Act.*
[46] *Cap. A 25 L.F.N. 2004.*
[47] *See long title to the associated Gas Re – injection Act.*

after 1st January 1984, without a written permission of the minister. Penalties prescribed under the Act in respect of offences created by section 3 include forfeiture of concessions and withholding of all or part of any entitlements of any offending person by the minister in charge of petroleum resources. This Act no doubt is very important in controlling the effect of gas flaring on the atmosphere it is however, sad to note that it did not succeed in stopping gas flaring after 1st January 1984. A company that intends to continue flaring gas after the prescribed dates applied and was so licensed to continue flaring gas. It is also sad to note that this is a major short coming of this Act. It means that oil companies could apply and be granted licenses to flare gas.

Oil and Gas Pipeline Regulations was made in 1995 pursuant to the **Oil Pipeline Act**[48] as a response to environmental degradation protection guidelines.
The section was not specific as to how the environment shall be protected, but rather declared that the operator shall assure the Department of Petroleum Resources that adequate contingency plans have been made for protecting the environment when pipeline crosses or passes within 100 metres of a water course. This regulation also prescribes offences and penalties for violators, which include criminal prosecution, fines and imprisonments. Like other laws, this also suffers the same fate of inadequate punishment. Because the violators are multi- national companies, they can afford to pay the token amount prescribed for as fine. This is also a major setback.

The Oil and Gas Export Free Zone Regulation[49] was made pursuant to **section 25 of the Oil and Gas Export Free Zone Act**[50.] It made an attempt to protect

[48] *Cap 07 Laws of the Federation Nigeria, 2004*
[49] *Of 2003*

the environment by providing that the authority will comply with the environmental law. This is more or less a declaratory provision as there is no punishment provision for violators. This is not enough to prevent environmental degradation.

In response to the environmental protection after the discovery of oil, **Hydrocarbon Oil Refineries Act**[51] was passed into law to prohibit refining of any hydrocarbon oils, save in a licensed refinery. This was done to protect the environment from pollution by those who may contemplate refining oil outside the refinery. Punishment was provided ranging from payment of fine to imprisonment for five years. This is grossly inadequate to deter further environmental degradation.

Environmental Impact Assessment Act[52] is one of the legislation that was passed in the post oil discovery period in Nigeria. The Act was passed into law in December, 1992. Its objectives were to restrict public and private projects carried out without proper assessment of the impact of such projects on the environment. The Act stipulates that environmental impact assessment shall be undertaken by any organization which proposes to carry out activities which are likely to have significant effect on the environment. These effects could be physical, biological, economical and social. The Act came on board after the discovery of oil in Nigeria. The Act made the oil and gas companies in Nigeria to be audited and reorganized for safer production and services. The Act with all intends and purposes were enacted to protect the environment if complied with. It is meant to check, prevent, and remedy any likely environmental degradation. It is a very good legal frame work for the prevention of environmental degradation in Nigeria.

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[50] *Cap 05 Laws of the Federation Nigeria, 2004*
[51] *Cap H5 L.F.N. 2004.*
[52] *Cap E12 L.F.N 2004*

West Africa Gas Pipeline Project Act[53] was enacted in 2005 as an attempt to protect degradation of environment by gas companies. The Act in its effort to protect the environment makes gas company liable for any environmental damage.

National Environmental Standard and Regulations Enforcement Agency (NESREA) was established by the Federal Government of Nigeria as a parastatal of the Federal Ministry of Environment, Housing and Urban Development. NESREA has a responsibility for the protection and development of the environment, biodiversity, conservation and sustainable development of Nigerian's natural resources as well as environmental technology[54].

The NESREA was established as a body corporate with perpetual succession and a common seal which can sue and be sued in its corporate name[55]. The Agency is authorized to enforce compliance with laws, guide lines, policies and standards of environmental matters, including coordination and liaising with relevant stakeholders within and outside Nigeria, on matters of enforcement of environmental standards regulation, rules, laws, and policies.[56] The agency is also to enforce compliance with the provisions of international agreements, protocols, conventions and treaties on the environment including climate change, biodiversity, conservation, desertification, forestry, oil and gas, chemicals, hazardous wastes, ozone depletion, marine and wide life, pollution, sanitation and such other environmental agreements as may from time to time come into force.[57]

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[53] *No. 11 2005*
[54] http://www.nesrea.org 3/7/2010
[55] *Section 1 (2) NESREA ACT No.20 .L.F.N., 2007*
[56] *Section 2, Ibid.*
[57] *Section 7 (c) NESREA ACT No.20 .L.F.N., 2007.*

The agency is empowered also to prohibit processes and use of equipment or technology that undermines environmental quality and to also conduct field follow -up of compliance with set standards and take procedures prescribed by law against any violator. The agency is also empowered subject to the provision of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and in collaboration with relevant judicial authorities establishes mobile courts to expeditiously dispense cases of violation of environmental regulation.[58] Despite the fact that the Agency is empowered by the Act, it is not living up to it expectations. With the existence of NESREA, there are still numerous cases of environmental degradation. For example, there are cases of water pollution, air pollution, soil pollution, noise pollution, etc. The personnel of the agency are not willing to discharge their duties and obligation. The agency is not doing well at all.

The Department of Petroleum Resources (DPR) is a Department in the Ministry of Petroleum that started way back in the early 1950s as a hydrocarbon section of the Ministry of Lagos Affairs. It is the first statutory agency set up to supervise and regulate the petroleum industry in the country. In 1971 a new body called Nigerian National Oil Corporation (NNOC) was created to engage in commercial activities in the petroleum industry, while the department (DPR) continues to perform the statutory supervision and control duties in the oil industry.

The Department (DPR) was in 1975, converted into the Ministry of Petroleum Resources (MPR) through the proclamation of **Decree 33 of 1977**. MOPR and NNOC were merged to form the Nigerian National Petroleum Corporation (NNPC).

[58] *Ibid Section 8(d-f)*

In 1985, a new Ministry of Petroleum Resources (MPR) was again created, while the Petroleum Inspectorate remained in the corporation and retained its regulatory functions.[59]

The Department of Petroleum Resources is vested with the necessary powers to *inter alia*, enforce safety and environmental regulations and ensuring that those operations conform to the national and international industry and standard[60]. It is sad to note that the DPR is not sufficiently discharging its obligations as specified by the law that established it. There are still cases of oil spill, none implementation, and none compliance with the guide lines issued by the department (EGASPIN). The officers of the department are not willing to fully enforce the provisions of the guidelines hence cases of none compliance resulting to environmental degradation by oil and gas companies in Nigeria are on the increase. The officers are more interested in cases of upstream than those of downstream. On the general note, the Department of Petroleum Resources is not living up to their expectation.

The Niger Delta Development Commission (NDDC) is another Federal Government Agency established by Nigerian President Olusegun Obasenjo in the year 2000 with the sole mandate of developing the oil – rich Niger Delta Region of Southern Nigeria[61]. In September 2008, President Umaru Yar'adua announced the formation of a Niger Delta Ministry with the Niger Delta Development Commission to be a parastatal under the ministry[62]. The genesis of the NDDC is largely a response to the demands of the population of the Niger Delta a populous area inhabited by a

[59] *http://dprnigeria.comlaboutus.html 3/7/2010*
[60] Ibid
[61] Ibid
[62] *Juliana Teniuo (11 September, 2008). "Yar' Adu creates ministry of Niger Delta". This day. Http://allafrica.com/stories/2008/09110015.html. retrieved 2009 - 1276.*

diversity of minority ethnic groups. During the 1990s these ethnic groups, most notably, the Ijaw and the Ogoni established an organization to confront the Nigerian Government and multi-national oil companies such as Shell. Their grievances are anchored on the extensive environmental degradation and pollution from oil activities that have operated in the region since the late 1950s. According to them; the environmental remediation measures are limited and negligible. The region is highly underdeveloped and is ranked poor even by Nigeria's low standards quality of life.

The NDDC operates under the mandate of improving social and environmental conditions in the south – south region. The Commission, like others referred to above, is not living up to expectation in terms of discharging its responsibilities. The commission is characterized by greed and corruption. It is more into who gets what than discharging its responsibilities. Because of high level of corruption, there are many cases of abandon projects which will ordinarily touch thousands of lives. Projects that will lead to prevention of environmental degradation are not completed. In summary, the commission is not living up to the expectation of the public.

The Niger Delta ministry was created by Yar'Adu's administration on 10th September 2008. The Ministry is headed by a minister. The existing Niger Delta Development Commission (NDDC) became a parastatal under the ministry. The ministry is to coordinate efforts to take the challenges of infrastructural development, environmental protection and youth employment in the Niger Delta[63].

[63] *"why we created Niger Delta Ministry, By Yar' Adu". This day 12 September 2008. htpp://allafrica.com/stories/20080912002.htm . retrieved 2009 – 12 – 26*

National Oil Spill Detection and Response Agency (NOSDRA) was established by an Act[64], as a Federal Government Parastatal under the Federal Ministry of Environment, Housing and Urban Development. This is an Institution that is responsible for implementing the National Oil Spill Contingency Plan (NOSCP). The Institution is responsible for surveying and ensuring compliance with all existing environmental legislation and the detection of oil spills in the petroleum sector[65]. The Agency also receives reports of oil spillages, and co-ordinate oil spill response activities throughout Nigeria. It is also charged with the responsibility of co-ordinating the implementation of the NOSCP as may be formulated from time to time, by the Federal Government of Nigeria. The Institution is also empowered to impose penalties where an oil spiller defaults to report to the Agency within 24 hours after the occurrence of the spill. Failure to report shall attract a penalty in the sum of Five Hundred Thousand Naira (N500,000) for each day of failure to report the occurrence, while the failure to clean up the impacted site, shall attract a further fine of One million Naira (1,000,000.).[66] This is a good penal provision. The Agency need to do more so as to effectively discharges its responsibilities. There are oil spill incidents that are not detected for a long period of time which eventually leads to environmental degradation, if the agency discharges their duties as it is expected of them, environmental degradation by oil companies would be a thing of the past or it would be reduced to barest level.

[64]. NOSDRA ACT No.15, 2006
[65]. Section 6(1a) NOSDRA Act,2006.
[66] .Section 6(1b-e and 2, and 3) Ibid.

In the course of this literature review, it was clear that some gaps exsist. This work sets to address the gaps that have been discovered by addressing those areas in which the gaps exsist.

1.3 Statement of the Problem

Arising from the literature review in 1.2 above are the following problems which this dissertation seek to address.

1.3.1 Ineffective Legislation in Arresting Environmental Degradation.

There are collections of laws which seek to protect the environment from degradation by oil and gas companies. But due to the fact that the laws are ineffective, they are not seen to be living to the yarning of the people. Hence, the environment still suffers degradation in the hands of oil and gas companies. For example, the **Oil in Navigable Water Act**[67], aspires to protect the sea waters from oil pollution. In a bid to this, it provides measures such as oil discharge records and oil transfer records as checks. It imposes punishment for violator yet, and these measures proved to be ineffective as oil is being discharged into sea water, resulting to degradation of the sea environment.

Another legislation which aims at protecting the environment is the **Hydrocarbon Oil Refineries Act**[68]. The Act out rightly prohibits refining of any hydrocarbon oil except in licensed refinery.

This law is not been heeded to, hence hydrocarbon oil is been refined outside refineries as against the spirits of the Act. This law also prove to be ineffective in arresting environmental degradation by oil Companies in Nigeria. In addition to the

[67] Op. cit
[68] Op. cit

above mentioned laws, others include, **Minerals Oil Safety Regulation Act[69], Nigerian Oil Pipeline Act[70], Associated Re – Injection Act[71], Environmental Impact Assessment Act[72], Harmful Waste (Special Criminal Provisions) Act[73], Mining Act[74], and West African Gas Pipeline Project Act[75].** These laws were enacted with the sole aim of protecting the environment from degradation by oil companies. Despite the existence of these laws, environmental degradation by oil companies is still the order of the day. This may not be far from the fact that the laws are in effective. In addition, to the foregoing, there are many regulations that also seek to protect the environment from degradation. They include the **Petroleum (Drilling and Production) Regulation[76], the Petroleum (Refining) Regulation**[77] etc. Despite the presence of these laws and regulations environmental, degradation by oil and gas companies in Nigeria still persist. The problem is: these identified laws and regulations are grossly ineffective to arrest environmental, degradation by oil companies in Nigeria.

1.3.2 Inadequate Implementation and Enforcement of the Laws by the Institutions.

Closely related to the first identified problem above, is the problem of inadequate implementation and enforcement of laws that are meant to protect the environment from degradation by oil and gas companies in Nigeria. The laws are very

[69] *Op. cit*
[70] *Cap.p10 LFN, 2004*
[71] *Cap.m10LFN, 2004*
[72] *Cap.A25 LFN, 2004*
[73] *Cap.E10 LFN, 2004*
[74] *Cap Hi LFN, 2004*
[75] *Cap. M12 LFN, 2004*
[76] *No.11 2005*
[77] *Of 2001*

adequate. In fact, there are not less than 20 laws which seek to protect the environment from degradation, but the wherewithal to enforce these laws are not available.[78] Thus, agencies such as NESREA, and NOSDRA have failed woefully to enforce the laws that are meant to protect the environment. There are adequate punishment provided by the law for any offender .In fact, punishment for any offender is as high as One Million Naira (N1, 000, 000.00), yet the environment is still being polluted by oil and gas companies. If the enforcement agencies perform their duties as expected of them, environmental degradation by oil companies, would have been eradicated, or drastically reduced to a bearable level. The problem is not far from the fact that the agencies are not bold enough to enforce the law as they ought to. In other words, NOSDRA, NESREA NDDC, lack courageous leaders and technical knowhow to enforce the laws that protect the environment from being polluted by oil and gas companies in Nigeria.

1.3.3 Dispel Nature of the Legal Regime of Environmental Degradation by Oil and Gas Companies in Nigeria.

Another problem which this research has identified is the dispel nature of the legal regime of environmental degradation by oil and gas companies in Nigeria. The laws and the regulations in this aspect of environmental law are scattered in different legislation and other legal sources. Most of these laws are limited in scope. They are repetitions here and there, and they also conflict with one another. For example, there are over twenty laws and regulations dealing on environmental protection by oil and gas companies in Nigeria. These laws and regulations, in one way or the other attempt

[78] See p. 13 of this work

to protect the environment from degradation by oil and gas companies in Nigeria. In their bid to protect the environment, they overlap, conflict, and are limited in scope especially in terms of penalties. The punishment does not go beyond fines.

1.3.4 Lack of Specialized, Dedicated and Courageous Enforcement Officers

It is very clear that there are significant laws and regulations accompanied by penalties. It is, however, sad to note that there are no specialized, dedicated and courageous officers to enforce these laws on the violators. For example on the 13th January, 2010[79] NOSDRA ordered Pipelines and Products Marketing Company (PPMC) to pay a sum of N 1 million as a fine for failure to respond quickly to an oil spill incident which occurred in Ugbodede community in Okere, Warri, Delta State. It is very unfortunate that PPMC failed, refused and or neglected to comply with the order. If the agency has courageous enforcement officers they would not take no for an answer.

1.3.5 Procedural Obstacles in Environmental Litigation against Oil and Gas Companies in Environmental Degradation Matters

When an aggrieved party wants to access the court to seek redress as a result of environmental degradation caused by oil and gas companies, they are usually faced with some difficulties. Some of these difficulties include issue such as, pre-action notice, jurisdiction, limitations of time, proof of environmental harm and standard of proof. As regards proof of environmental harm,the rule implies that an individual or group of persons instituting an action must show that there is harm to the environment this may be difficult because when there is an oil spill harm to the

[79] *Onyebuchi Ezigbo "NOSDRA Sanctions PPMC Over Warn Oil Spill" in: This Day News papers, page. 2, Wednesday, January 13, 2010.*

environment does not manifest immediately. If a litigation rush to court immediately after an oil spill, he will find it difficult to proof any harm to the environment. Here lies a problem.

A pre – action notice is a notice that an aggrieved party or an intending plaintiff is expected to formally serve on the other party before the commencement of his action[80]. A plaintiff who wants to seek for an injunction against a defendant will be precluded because of the requirement of pre – action notice. Here lies yet another problem.

Jurisdiction is yet another problem which occurs in procedural issues in environmental litigation for environmental degradation by oil and gas company. It is only the Federal High Courts that has original jurisdiction to entertain matters of this nature. If an action is instituted in a State High Court, even if the plaintiff has good cause, he will not be heard because of lack of jurisdiction. This was the position in ***Shell Petroleum Development Co. (Nig) Ltd. v Maxon***[81]. In this case, the respondents filed an action in the Rivers State High Court against the appellant claiming compensation for damages and loss of income for oil spillage from the appellant's oil pipeline at Buguma Rivers State. They admitted the spill but claimed nonetheless that a timely containment measures was put in place to limit the extent of the consequent pollution and damage.

Upon being served with the writ of summons and the statement of claims, the appellant filed a statement of defence wherein it gave a notice of preliminary objection to the suit on the ground, inter alia, that, having regard to certain statutory

[80] *Ibid p.615*
[81] (2001)9 N.W.L.R (pt.719) 541 at 554

and constitutional provisions specified, the High Court lacked the jurisdiction to entertain it. Arguments on both sides centered on the provisions of section 1(i) (e) of the **Admiralty Jurisdiction Decree No.59 of 1991, section 7 of the Federal High Court Act as amended by Decree No.60 of 1991 and section 230 of the 1979 Constitution as amended by Decree 107 of 1993**. While it was the appellant's contention that the respondents' action involved a cause or matter which, by those statutory and constitutional provisions, were within the exclusive original jurisdiction of the Federal High Court, the respondents maintained that it did not.

The appellant urged the court to follow the decision of the Court of Appeal in ***Barry v. Eric***[70] where it was held that the seismic activities of oil prospecting defendant caused the migration of bees in the plaintiff's bee farm, could only be entertained by the Federal High Court. The respondents urged the court instead to follow the earlier decision of the Court of Appeal in ***Shell Petroleum Development Co. Ltd v Isaiah***[82]. Where it was held that the Federal High Court had no jurisdiction to entertain the case, which arose from claim of pollution caused to the plaintiff's land by oil spillage.

After taking arguments from counsel to the parties, the trial court overruled the preliminary objection and held that it was competent to hear the case. Being dissatisfied with the ruling, the appellant appealed to the Court of Appeal.

Section 230(1) (o) of the 1979 Constitution as amended by the Constitution (Suspension and Modification) Decree No. 107 of 1993 (now section 251(1) (n) of the

[70.] (1998) 8 NWLR(pt.562) 404
[82] (1997) 6 NWLR (pt.508) 236

1999 Constitution) which the Court of Appeal considered in determining the appeal, states as follows:-

> *230(1) Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly or a Decree, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters arising from mines and minerals (including oil fields, mining, geological surveys and natural gas)*

The court in allowing the appeal held inter alia pollution caused by oil spillage comes within the exclusive jurisdiction of the Federal High Court. In ***Shell Petroleum Development Co. v H.B. Fishermen***[83], the respondent sued the appellant in the High Court of Rivers State, claiming the sum of N162,800,000.00 One hundred sixty two million, eight hundred thousand naira being and representing special and general damages suffered by the respondent as a result of crude oil spillage from the appellant's crude oil well and or other oil installation which extensively polluted the respondent's fish ponds, fishing nets and the creeks and rivers wherein the respondent carried on its large scale commercial and modern fishing and fish farming.

During the course of trial the appellant objected to the jurisdiction of the trial court on the ground that the **Constitution (Suspension and Modification) Decree No. 107 of 1993 amended section 230(1) of the 1979 Constitution** and vested exclusive jurisdiction in civil causes and matters arising from mines and minerals (including oil fields, oil mining, geological surveys and natural gas) in the Federal High Court. The State High Court ruled that it had jurisdiction. The parties gave

[83](2002)4 N.W.L.R (pt.758) 505

evidence and the trial court in its judgment found the appellant liable and award to the respondent a total sum N21,995,000.00 special and general damages.

Being dissatisfied with the judgment of the trial court, the appellant appealed against it to the Court of Appeal. The respondent was also not satisfied with the question of damages awarded and it therefore cross-appealed.

In determining the appeal, the Court of Appeal considered the following enactments:

Section230 (1) (o) of the Constitution of the Federal Republic of Nigeria, 1979 (as amended) (now **Section 251(1) (n) of 1999 Constitution)**, the relevant provisions of Section 7 of the Federal High Court Act as amended by **Federal High Court (Amendment) Decree No.60 of 1991**, and held that the State High Court has no jurisdiction to hear and determine any civil cause or matter arising from or pertaining to oil spillage or pollution. Here lies a problem that need to be addressed and solution proffered in the cause of the study.

1.3.6 Corruption

Nigeria is a country with good records of bribery and corruption. In fact, in many institutions and places, laws are hardly implemented or enforced due to activities of some people who claim to be above the law. Thus in the oil and gas industry, people and institutions involved are well to do people or institution. There is likelihood that none application of these laws may be as results of corruption and bribery that is very rampant in Nigeria.

Based on the above statement, the violators i.e. the operators of the oil and gas companies perhaps have bought over the officials of the institutions such as NESERA,

NOS DRA, PDR, NDDC, and PPMC, thereby unable to effectively discharge their duties as they ought to have. This may not be unconnected with the reason why PPMC refused to pay a fine of N1million as ordered by NOSDRA for failure to respond quickly to an oil spill incident which occurred in Okere, Warri, in Delta State[84]. If the officials have not been perhaps bribed, they would have discharged their duties diligently.

1.3.7 Lack of Expertise and Equipment.

The institutions lack both expertise and sophisticated equipment to meet the modern challenges of oil spill. NOSDRA is an agency that is established to survey, ensure compliance with environmental legislation, and to detect oil spill[85]. The institution fell short of this expectation because of lack of experts to handle the few equipment to detect oil spill, to worsen the situation, the Agency is ill equipped to effectively detect oil spill. This is a problem.

1.4 Objectives of the Research

The objective of this research is to find solutions to the problems of research raised by the statement of the problem with a view to proffering solutions to them.

Accordingly, this work seeks to deal with the Assessment of the Legal and Institutional Framework for the Prevention of Environmental Degradation by Oil and Gas Companies in Nigeria. To archive this, this research will critically analyze the laws and the functions the Institutions which seek to protect the environment from degradation by oil and gas companies to see where, how and why they fell short of the expectations.

[84] Op.cit.
[85] Op.cit.

In addition, the work also examines environmental litigation in environmental degradation by oil and gas companies in Nigeria. In doing justice to this area, the research examines critically those procedural issues that are involved in environmental litigation such as pre-action notice, locus standi, jurisdiction, etc. which will be fully discussed with sole aim of finding solution to them in the areas of their challenges to litigants.

1.5 Scope of the Research.

Geographically, the study covers the whole of Nigeria for the purpose of uncovering how effective or ineffective the laws and the institutions have been in the prevention of environmental degradation by oil and gas companies in Nigeria.

However, emphasis was focused on states in the Niger Delta. This is because empirical research was carried out in some of these States. In addition, the study is primarily located within the confines of the Nigerian laws and institutions.

Similarly, the study examined the laws, regulations, and policies that are geared towards environmental protection and prevention of environmental degradation by oil and gas companies in Nigeria. Hand in hand with the foregoing, the study also critically discusses the various institutions that are charged with responsibilities of implementing these laws so that the aims of the research are achieved.

Finally, the study relied principally on local laws (statutory and case laws).

1.6 Research Methodology

The research methodology employed in the conduct of this work is doctrinal and empirical approaches. The doctrinal research methodology is a library oriented research by which primary research materials such as statutes, and law reports will be resorted to in the course of this research. Also, secondary materials such as textbooks and law journals containing articles related to the field of research, seminar papers, manuscripts, and news papers. Employing this method, an in–depth analysis of these materials will be made. Empirical research methodology is a field research that requires field work such as visiting places covered by the research, carrying out experiments that demonstrate or prove facts, thesis, hypothesis and theories postulated by the research. In the course of this research, questionnaires were conducted on some target groups.

1.7 Justification

The justification for embarking upon this research is primarily based on the importance of environment. It is a means of substance for human life, Animals, and plants. It provides lively hood for human, Animals, plants and its inhabitants generally. Environment would be of little or no comfort, if it is left in its natural form. To drive comfort from the environment, labour has to be mixed with the environment. It is as a result of the mixture of labour with the environment that we have houses, roads, Airports, Seaports, chairs, tables, beds, cars.

The environment contains precious properties for the comfort of man, such as gold, tin, water, oil. For man to drive maximum benefit of these

precious properties, the environment will suffer one form of injury or the other such as drilling, digging, boring, etc.

Oil being one of the most precious property, is the major source of revenue for the country. Its exploration, exploitations, refining, transportation, has brought about huge damage to the environment, and its inhabitants. It brought about degradation, such as Air pollution, Water pollution, Soil pollution, Acid rain, Coastal and marine environment also suffer similar degradation. There were cry out from individuals, communities, none Governmental organizations (NGOS) and likewise international communities. In response to this, Laws, Regulations, were made and Institution established to prevent the degradation. Some of these Laws and Regulations includes: Oil in Navigable Water Act[86], Associated Gas Re-Injection Act[87], Oil Pipe Line Act[88], Oil and Gas Export Free Zone Regulation[89], Hydro Carbon Oil Act[90], The West Africa Gas Pipe Line Project[91], National Oil Spill Detection and Response Agency, (NOSDRA), Department of Petroleum Resource (DPR), Niger Delta Development Commission (NDDC), Niger Delta Ministry, and National Environmental Standard and Regulations Enforcement Agency (NESREA).

[86]. 1969 No.51 (Now Cap.P10 Laws of the Federationof Nigeria,2004) The Act repealed the Minerals Oils Act Cap 226 Laws of the Federation of Nigeria, 1990 which was an earlier legislation.
[87]. 1979, No.99 (Now Cap. A25 L.F.N, 2004
[88]Cap. 07 L.F.N,2005 .
[89] .Of 2003
[90] .Cap.H5 L.F.N,2004
[91] .No.11,2005

Despite the existence of these Laws and Institutions, environmental degradation by Oil and Gas companies continues on a very large scale. What would have gone wrong? It is based on these facts that this research was carried out.

This research is also justified by the fact that previous writers in one way or the other, did not discuss some laws and institutions such as NESREA, NOSDRA and the Fundamental Rights (Enforcement Procedure) Rules[92], because they were not in existence at the time of publication of this work.

This research is further justified by its relevance to law students; law lecturers, practicing lawyers, judges, non-governmental organizations in the field of environmental protection and oil producing communities. It will be a reference material to institutions such as NDDC, NNPC, PPMC, NOSDRA, DPR & NESREA, which are engaged in the enforcement and prevention of environmental degradation in Nigeria.

1.8 Organizational Layout

This dissertation is divided into seven chapters. Chapter one is the introductory chapter. It deals with introductory matters such as introduction, literature review, and statement of the problem, objective of the work, scope of the work, research methodology, justification and finally organizational layout.

Chapter two examiness the sources and effect of degradation by oil and gas companies in Nigeria. In doing justice to this chapter, issues such as historical exploration of oil in Nigeria were examined, under introduction to the chapter, oil spillage, were discussed. Under it, subheading such as leakages of pipelines, pipeline

[92] 2009

vandalization, routine tank cleaning, and accident will also come under focus. Other, germane issues for consideration under this heading will include Gas flaring, oil drilling, effect of oil and gas on environmental degradation, under it, issues such as terrestrial effect, vegetation, animals, man, land, birds will be discussed. The chapter will also discuss the effect of oil and gas on marine environment, marine mammals, fish, water, effect on air, climatic and respiratory effect, will be discussed in chapter two.

Chapter three deals with the legal regime for prevention of environmental pollution by oil and gas companies in Nigeria. Under this chapter, this work examined the laws which aim at protecting the environment from being degraded by oil and gas companies. Laws such as Oil in Navigable Waters Act, the Associated Gas Re – Injection Act, Mineral Oil Safety Regulations Act, Nigeria Oil Pipelines Act, West African Gas Pipeline Act, Harmful Waste (Special Criminal Provisions) Act, the Petroleum (Drilling and Production) Regulation, were considered. Other laws which were discussed include the Petroleum (Refining) Regulation, Hydrocarbon Oil Refineries Act, Environmental Impact Assessment Act, NESREA Act, and NOSDRA Act. International convention for prevention of pollution of the Sea by Oil, and other relevant Conventions and protocols. These laws were examined from the following dimensions: preventive principle, permit system, precautionary principle, remedial principle, damages, compensation, and polluter pays principles, penal regime, and environmental rehabilitation principles.

Chapter four examined the institutional frame work for the prevention of environmental degradation by oil and gas companies in Nigeria. Under this chapter, institutions such as Department of Petroleum Resources (DPR)[93], Niger Delta Development Commission (NDDC),[94] Ministry of Niger Delta,[95] National Environmental Standard Regulation and Enforcement Agency (NESREA),[96] National Oil Spill Detection and Response Agency (NOSDRA),[97] None Governmental Organisations (NGOs),[98] United Nation Environmental Development Programme (UNEDP),[99] Earth Watch, Friends of the Earth, and The Attorney General Office.

Chapter five discussed enforcement mechanism of the legal frame work for the prevention of environmental degradation by oil and gas companies in Nigeria. In doing justice to this chapter, issues such as arbitration, litigation, pre-action notice, limitation of time, locus standi, were considered. Others will included, burden and standard of proof, environmental rights, court with jurisdiction in environmental litigation were discussed.

Chapter six examined the presentation and analysis of the data that were gathered during the field work arm of this research. In treating this chapter, it examined in two sections. Section "A" examined issues such as distribution of respondents on the basis of sex, distribution of respondents on the basis of marital status and distribution of respondents on the bases of state of origin, amongst others. Others include distribution of respondents on the bases of religion, age, educational

[93] Op.cit
[94] Op.cit
[95] Op.cit
[96] Op.cit
[97] Op.cit
[98] Op.cit
[99] Op.cit

qualification, while section “B” examined other issues such as, impact of oil and gas spill on the respondents’ environment.

Chapter seven is the concluding chapter. It provides the findings of the study conclusion and recommendations.

CHAPTER TWO

NATURE, SOURCES AND EFFECT OF ENVIRONMENTAL DEGRADATION BY OIL AND GAS COMPANIES IN NIGERIA

2.1 Introduction:

Exploration, prospecting and marketing of petroleum products have been with Nigeria for quite a long time now. There is no gain saying that the effect of these activities have brought about social, political and economic benefits to the nation. The other side of the coin is the adverse effect which petroleum exploration, prospecting and marketing have on both man and the environment. Without hesitation, it can be said correctly that it degrades and pollutes the environment. In this context, pollution occurs as a result of use of petroleum product either in its crude or refined state. Oil pollution may occur from an act of deliberate dumping or discharge of oil from ship when it is in jeopardy. It may also occur as a result of accidental spills in the course of transportation, pipeline leakage loading and or leakage at the drilling rigs. Whenever any of these situations arises, the result of such act may include destruction of marine life, destruction of wild life habitat, bird and destruction of the recreational value of beach areas[1]. The negative consequences may also result in the contamination of drinking water and in some cases it may cause fire out break there by destroying property and lives. Apart from these hazards, the damage

[1] Oluwole Akande, *Pollution Control Regulation in Nigeria Oil Industry*, Nigerian Institute Of Advanced Legal Studies, Lagos 1991. P. 15

that may result from petroleum operations, also include health hazards to man[2]. Between the periods of 1976- 1980 and above, over 56million gallons of oil spilled into the Nigerian environment[3]. It should be noted that this figures represents only reported cases of spillages arising out of oil prospecting and drilling. When account of unreported cases of discharges from vessels either at sea or during bunkering operations, spillages occurring in the process of transportation, and marketing of petroleum products[4] and the dumping of used oils like lubricants, grease etc are taken into consideration, the above figure would be a tip of an ice Berge.

2.2 Clarification of terms

2.2.1 Environmental degradation

Environmental degradation is the deterioration of the environment through depletion of the resources such as air, water, and soil. It is the destruction of the ecosystems and the extinction of the wildlife. It occurs as a result of socio-economic, technological and institutional activites[5].

2.2.2 Prevention of Environmental degradation

Prevention of environmental degration is the legal, policies and institutional guidelines or measures put in place to prevent degradation of environment by oil and gas companies in Nigeria.

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[2]Olusi Peter, "*Human Health Hazards Associated With Petroleum Related Pollution"* in the Proceedings Of the 1981 International Seminar On the Petroleum Industry and the Nigerian Environment. P.195

[3] Awobajo, *An Analysis of Oil Spill incidents in Nigeria:1976-80: In the proceedings of the 1981* in the International Seminar on the Petroleum Industry and The Nigeria Environment, held in at Lagos, June, 1981

[4] Oyibo Agboola, "Pollution Control in Petroleum Products Marketing Operation in Nigeria" a paper presented at the 1983 International Seminar on the Petroleum Industry and the Nigeria Environment. Held at Port-Harcourt, November,1983.

[5] www.greenliving.lovetoknow.com.04/07/2014 at 10:38 am

2.2.3 Oil and Gas Companies in Nigeria

Oil and Gas Companies in Nigeria are companies that are under the Companies and Allied Matters Act[6] and other statory bodies that carry on the business of exploring, exploiting, producting, marketing, and transportion of oil and gas in Nigeria.

2.3 Sources of Environmental Degradation by Oil and Gas

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

2.1.1 Upstream Sources of Environmental Degradation by Oil and Gas companies in Nigeria.

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

2.1.1.1 Exploration

Exploration is the Process of searching for oil in Nigeria be it in the water, or in the ground. When oil is discovered in the course of exploration, environmental degration will take place as a result of oil spillage.

[6] Cap. C20 Laws of the Federation of Nigeria, 2004

Oil spill is the release of petroleum hydrocarbon into the environment. Oil spills are caused by pipeline and flow-line leakages; blow out from well heads due to poor maintenance, damage and spills from flow stations[7]. Oil spills affects large area of land and water ways which result in the pollution of crops, marine life and the sources of water for domestic consumption. Mangrove forests are affected by oil spills because the soils soak up the oil like sponges[8].

When oil spill occurs, it spreads into farm lands and water bodies. The toxic crude seeps into the grounds and is taken up by the roots of plants.[9] It was discovered through our empirical research that oil spill does take place, and when it occurs, it spills onto farm lands and rivers. It was also revealed through the empirical research that the spill is very frequent and is often cleaned up by polluters but not immediately. It was further discovered that the oil spill usually renders water from rivers, streams, etc useless. In other words, affected people can hardly use the water after the spill for any other purpose. It gets contaminated. It was also revealed in the course of this research that after the spill, farmlands cannot be used for farming immediately. Farmers have to wait for a long time before they can use the land for farming again.

Oil spillage can be categorized into four, namely: minor, medium, major and disaster[10]. The minor spill takes place when oil discharge is less than 25 barrels in inland waters or less than 250 barrels on the land, offshore or coastal waters that does

[7] Chika O., Environmental degradation: An Assessment of the Legal Control of Oil Pollution in the Niger-Delta States of Nigeria. In issues and responses in Contemporary Law and Practice (ed) Chika Ugochukwu P.C. Hudso-Jude Nigeria No. 24 Royce Warri, 2009 p.46.
[8] Ibid p. 47
[9] Ibid
[10] Fatai. O, Egberongbe E. et al; Oil Spill Disaster monitoring along Nigeria coastline available at www.fig.net/pub/accrpapers/e516-06-egberongbe last visited July, 2010.

not pose a threat to the public health or welfare[11]. In the case of the medium spill, the spill must be 250 barrels or less in the inland water or 250 to 2,500 barrels on land, offshore and coastal water. Major spill takes place when the discharge of oil to the inland waters is in excess of 250 barrels on land, offshore or coastal waters. The disaster spill refers to any uncontrolled blow out from well, pipeline rupture or storage tank failure which poses an imminent threat to the public health or welfare[12]. Oil spill which occurred at the Gulf of Mexico in 2010 and the very recent one in Nigeria by Shell Nigeria Exploration and Production Company (SNEPCO) are very good examples of major spill. It was reported that SNEPCO was hit by worst oil leak in the decade[13]. It lost over 40,000 barrels of crude oil at its Boga field due to leakage on facility[14].

Oil spill incidents have occurred in various parts and at different times along Nigeria coast. As far back in1978, some major spills were recorded. For for example, in the coastal area, there was the GOCON's Escravos spills in 1978, where about 300,000 barrels of crude oil was reported to have spilled[15], The Shell Petroleum Development Company (SPDC) terminal failure in 1978 also resulted to the spill of about 580,000 barrels of crude oil[16]. In 1980 Texaco Funiwa-5 blow out caused about 400,000 barrels of oil spill to the environment. Other oil spill incidents are those of the Abudu pipe line in 1982 where about 18,818 barrels was spilled. Furthermore, Jesse GFive incidents which claimed about a thousand lives and the Idoho Oil Spill of January 1998 resulted into about 40,000 barrels of oil being spilled on the

[11] www.fig.net/pub/accra/papers/As16-06-egberongbe-etal pdf/30/06/2010.
[12] Ibid
[13] This Day News Paper Publication 22/12/2011
[14] Ibid
[15] Op cit
[16] Op cit

environment[17]. The most publicized of all oil spills in Nigeria occurred on January 17th, 1980 when a total of 37 million liters of crude oil got spilled into the environment[18]. This spill occurred as a result of a blow out at Funiwa-5 offshore station[19]. Nigeria's largest spill was an offshore well blowout in January 1980, when an estimated 200,000 barrels of crude oil spilled into the Atlantic Ocean from an oil industry facility and that damaged 340 hectares of mangrove[20].

According to the Department of Petroleum Resources (DPR), the period between 1976 and 1996 (20 years) a total of 4,647 incidents of oil spill resulted in the spill of approximately 2,369,470 barrels of oil into the environment.[21] A total of 549,060 barrels of oil representing 23.17% of the total oil spilt into the environment was recorded.[22] The heaviest recorded spill so far occurred in 1979 and 1980 with a net volume of 694,117.13 barrels and 600,511.02 barrels respectively[23]. Available records for the period of 1976 to 1996 shows that approximately 6%, 25% and 69% respectively of total spilled in Niger-Delta area were in land, swamp and offshore environments. Also, between 1997 and 2001, Nigeria recorded a total number of 2,097 oil spill incidents[24]. Our empirical research corroborated the foregoing discussion[25].

2.1.1.2 Drilling

Drilling for oil is the search by petroleum geologists and geophysicists for hydrocarbon deposits beneath the earth's surface. In the course of drilling, spilling of

[17] Op cit foot note No.9
[18] Op cit
[19] Op cit foot note No.8
[20] Op cit
[21] Ibid
[22] Op cit
[23] Op cit
[24] Op cit
[25] See Table 6.8 on p.226 Chapter 6 of this work

oil takes place hence the environment is been polluted. Oil is normally spilled onto the environment.

When blowout occurs much oil is spilled onto the environment. A blowout is the uncontrolled release of crude oil and or natural gas from an oil well after pressure control system has failed[26]. Blowout is usually associated with drilling accidents.

Drilling accident is of two major categories. One of which involves intense and prolonged hydrocarbon gushing. This happens when the pressure in the drilling zone is so high that usual technological methods of well muffling will not be of any help[27]. The second type is the one that occurs regularly it includes regular, routine episodes of hydrocarbon spills. This type of accident can be controlled effectively. In fact, it can be brought under control within several hours. Accident of this type does not attract any special attention. It is only their ecological hazard and associated environmental risk that is rather considered[28].

2.1.1.3 Leakages of Oil Pipelines

Pipeline is the major means of transportation of oil. In the cause of the transportation of oil, thousands of barrels of oil do split into the environment. Spillage of oil through pipelines may be as a result of lack of regular maintenance of the pipelines. It is a known fact that some of the pipelines have been in use for decades without replacement. This researcher was well informed by a very senior officer in the Department of Petroleum Resources that most of the pipelines have not been changed, since they were first installed[29]. He said the pipes were long overdue for replacement,

[26] As contained in Petroleun (Drilling and Production) Regulation
[27] http://www.offshore_environment.com/accidents.html19/01/2012.
[28] Ibid
[29] The pipes were installed in the late 60s and early 70s

but because of lack of maintenance culture, they were not attended to[30]. This usually results to leakages and hence oil is been spilt through the pipelines. For example in Idoho, about 40,000 barrels of oil spilled into the environment through the offshore pipeline[31]. In addition to lack of replacement, the pipes are also narrow to carry oil from well heads to flow stations. This gives opportunities for leakages. In other words, the sizes of the pipes are quite small so that the quantity of oil that passes through them is far beyond its capacity. Hence the pipes usually have a short life span.

In onshore area, most pipelines and flow-lines are laid above ground. Pipelines which have an estimate life span of about fifteen years are old and vulnerable to corrosion. Many of the pipelines are as old as twenty to twenty-five years[32]. Even Shell Petroleum and Development Company admit that "most of the facilities were constructed between the 1960s and early 1980s at the prevailing standards. Shell Petroleum and Development Company (SPDC) would not build them that way today[33]. Shell operates the Bonny Terminals in Rivers State, which has been in operation for forty years without a maintenance overhaul, its original lifespan was supposed to be twenty-five years[34].

2.1.1.4 Oil pipelines vandalization

Vandalization of oil pipelines is a source of environmental degradation by oil and gas companies in Nigeria. Vandalization of pipelines is caused by saboteurs. Sabotage is a willful attempt to disrupt or interrupt the production and distribution of

[30] That the life span of pipe is thirty (30) years.
[31] Op cit
[32] The price of oil: Corporate Responsibility and Human Rights Violations in Nigeria's oil producing communities. In Human Rights Watch, 1999 P.26
[33] Shell International Petroleum Company Developments in Nigeria, London, March 1995 retrieved from "http://en.wikipedia.or/wikipetroleum-industry-in-Nigeria",18 June,2010 at 21:10.
[34] Ibid

oil. It is an act of vandalism on oil installations by third parties[35]. When an oil pipeline is vandalized, the aftermath of it is oil spill which thereafter pollutes environment. Saboteurs vandalize pipelines for selfish reasons. Some may be to claim compensation, when opportunity for such arises, or to showcase their grievance for the environmental degradation arising from petroleum activities[36]. Our empirical research in chapter 6 supports the foregoing. In the course of the research it was revealed that some of the pipelines were damaged by the youth either in an attempt to steal oil or to voice their grievance on the operators for polluting their environment. Of recent, pipeline vandalization is a lucrative business for vandals. They employ sophisticated machines to siphon oil through vandalized pipes. About 11 Nigerian youths and some Indians were paraded on the Nigerian Television Authority (NTA) for vandalizing pipelines in an attempt to steal crude oil. [37]

2.2. Downstream

2.2.1 Accident in the Course of Oil Transportation

Accident is one of the media through which oil is spilt onto the environment. Accident is a source of environmental pollution at all stages of oil and gas production[38]. The most typical cause of accidents includes equipment failure, personnel mistakes and extreme natural impacts.

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

[35] Ikoni .U.O. An introduction to Nigerian Environmental Law, Malt house, Lagos, 2010 P.25
[36] Ibid
[37] Nigerian Television Authority International on 14/01/2013 9'o clock Network News
[38] Oil and gas accident during the offshore exploration and production http://www.offshore-environment.com/accidents.html 19/01/2012 5pm.

is usually spilled on the environment. For example between 1989 and 1990, about 114,000 and 45,000 tons of oil were officially reported to have been spilt on the environment in Nigeria[39]. It is also reported that the total volume of oil pollution caused by marine oil transportation was 500,000 tons a year[40] through accident.

In some cases, tanker accidents occurred right in the zone of the oil field development. For example, one of such incident happened in the Shetland basin some years ago[41]. A tanker called ESSO Bernica was involved in an accident about 1,100 tons of heavy oil fuel was reported to have spilled into the coastal zone causing serious damage to nature and the local population[42].

Very dangerous situation can emerge in case of gas tanker accident. Gas tanker accidents, although less probable than the accidents with oil tankers, it can cause flame less explosions. This happens as a result of rapid evaporation of the liquefied gas on the sea surface and formation of pieces of ice and gas clouds followed by combustion and explosions.

Insurer's statistics show that 80% of oil tanker accidents occur as a result of human errors such as badly handled maneuvers, neglected maintenance, insufficient checking of system, lack of communication between crew members, fatigue, or an inadequate response to a minor incident causing it to escalate into a major accident[43].

Spilling of oil through accident could be very devastating. It pollutes the environment.

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[39] Ibid
[40] Ibid
[41] Ibid
[42] Ibid
[43] Causes of accidents http://www.black-tides.com/uk/source /oil_tanker_accident/causes-accident.php 19/01/2012 4:40pm

2.2.2 Routine Tank Cleaning

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

2.2.3 Sabotage

Another major cause of oil spillage through the pipelines is sabotage. Sabotage is performed through bunkering whereby saboteurs attempt to tap the pipeline and in the process of extraction, it either damages or destroys the pipeline. The foregoing discussions also confirm our empirical research that many of the oil spill in the Niger-Delta area from pipeline leakages which occurred as a result of bunkering. Many of our respondents said that most of the leakages are due to bunkering of the pipelines by the youths and partly due to corrosion of the pipes. They said the pipes are very old that many of them grew up to see the pipes as they are. In other words the pipes are older than many of our respondents.

2.3 Production

2.3.1 Gas Flaring

Gas flaring is a means of disposing of waste gases through the use of combustion[44].This is usually done through an elevated vertical chimney called a gas flare. The waste gases are subjected to this process either because the gases are waste, or it is difficult to store and transport them. Non-waste gases are burnt off to protect the processing equipment when unexpected high pressure develops with them[45].

Nigeria flares more natural gas associated with oil extraction than any other country on the planet. It is estimated that about 70% of Nigerian natural gas is wasted through flaring[46].

Although the practice of flaring gas is universally agreed to be economically, and environmentally harmful, the reason for such practice is to maximize production of crude oil. The associated gas accompanying it is often burned off. This is so because it is costly to separate commercially viable associated gas from the oil. Therefore gas found with oil is often burned off, in order to increase crude production[47].

Gas flaring can have potentially harmful effects on the wealth and livelihood of the communities in their vicinity, as they release a variety of poisonous chemicals into the environment. Ashes from flaring of gas when they settle on zink, it corrodes it. When they settle on clothes that are spread out it stains them. The smoke from gas flaring has devastating effect on the health of people living around the place.

[44] Chijoke Evoh, Gas flares, oil companies and politics in Nigeria retrieved from the Guardian on-line-http://ngrguardinannews.com last visit July, 2010
[45] Venkata Rao, Ahmed Abad, what is gas flaring and why is it done? Retrieved from http://articles.timesonfindia.indiatimes.com/2010-05-16/open-space/2829554-1-greenhouse-gases-rigs waste last visited on January, 2012.
[46] Media Briefing: Gas flaring, in Nigeria, friends of the Earth 2004.
[47] Oil for Nothing: Multinational Corporations, Environment Destruction, Death and Impunity in the Niger-Delta Essential Action retrieved from http://en.wikipedia.org/wiki/enviroment_issues_in_the Niger-Delta May 10, 2007.

2.4 Effect of Oil and Gas on the Environment.

2.4.1 Terrestrial Effect

When oil is spilled on the environment through any of the medium discussed above, or gas is flared into the environment, it will cause negative terrestrial effect. For example, it will affect the vegetation, the animals, human, soil, birds, and marine environment. It will also affect the air, and climatic condition of the environment.

2.4.1.1 Vegetation

The harmful effects of oil spill on the environment are many. For example, oil spill kills plants, it destroys vegetation. Niger –Delta area consists of extensive mangrove forests such as brackish swamp forests, rainforests among others. The large coverage of mangrove forests is estimated to cover approximately 5,000 to 8,580 km^2 of land.[48]

Mangroves trees are, very important to the indigenous people of Niger-Delta as well as to the various organisms that live within the environment .It serves as a source of livelihood to the people. For instance, when oil spill occur close to and within the drainage basin, the hydrologic force of both the river and the river tides force spilled petroleum to move up into areas of vegetation[49]. The effects of petroleum spills on

[48] Ibid
[49] Ibid.

mangroves, acidify the soils, halt cellular respiration, and starve roots of vital oxygen[50].

The loss of mangrove forest is not only degrading life for plants and animals, but for humans as well. These systems are highly valued by the indigenous people living in the affected areas. Mangrove forests have been a major source of wood for the people living within the environment. The mangrove trees also provide essential habitat for rare and endangered species like the manatee and hippopotamus[51].

The effect of gas flaring on the vegetation is almost the same as that of oil spill. Flares from gas cover the land and communities in the area with soot, and it also damage vegetation in the area directly surrounding the flare due to the tremendous heat it produces[52]. Our empirical research collaborates this. See chapter 6. The researcher was informed by respondents that crops rarely grow within the area where gas flaring took place. They also stated that the long run effect of the black ashes that falls on the crops prevent them from growing. The crops get dry off and eventually die.

2.4.1.2 Birds and Animals

Birds and animals are also not left out of the impact of environmental degradation arising from oil spill. Oil penetrates into the structure of the plumage of birds and animals. It reduces its insulating ability; thereby making the birds more

[50] Janice Limson: Indigenous plants to the rescue Environmental remediation in Nigerian oil regions science in Africa. Retrieved from http://en.wikipedia.org/wiki/environmental_issues_in_the Niger-Delta May 10, 2007.
[51] Oil and Nigeria-planet.com, 2006 retrieved May 21, 2007.
[52] Ibid

vulnerable to temperature fluctuations and much less buoyant in the water[53]. Oil also impairs or disables birds' flight abilities to forage and escape from predators.

As the birds attempt to preen, they ingest oil that covers their feathers, this causes kidney damage, altered liver malfunction and digestive tract irritation[54].These reactions limits foraging ability quickly thereby causes dehydration and metabolic imbalances. Furthermore, the hormonal balance alteration including changes in luteinizing protein can also result in some birds exposed to petroleum[55].

Most birds affected by an oil spill die unless there is human intervention[56]. Some studies have shown that, even after cleaning, less than 1% of oil soaked birds survive[57].

Animal also suffer as a result of oil spill like the birds. They get poisoned by the oil. Oil can also kill animal by making them blind, and defenseless. Our empirical research also confirmed the foregoing see chapter six; most of our respondents said they lost some of their goats, chicken, dogs and other domestic animals as a result of oil spill within their environment. This actually explains the devastating effect of oil spill on birds and animals. The effect is so glaring and it also affects the economic well being of the people.

2.4.2 Effect of Oil Spill on Marine Environment

When oil spills into water, it makes it very harmful. Because of the harmful nature of water due to the spill, it kills the flora and fauna resident therein. Oil is the most common pollutant in the oceans. More than 3 million metric tons of oil

[53] Oil spill retrieved from http://www.unescap oil-spill. 19/01/2012.
[54] http://esdenvironment/mced/oil-spill. Retrieved January 19, 2012.
[55] Ibid
[56] Untold seabird mortality due to marine oil pollution. Elements online Environmental magazine http://en.vanguardorg.oil-spill. retrieved January 19, 2012.
[57] Ibid

contaminates the sea every year[58]. Majority of oil pollution in the oceans comes from land[59]. When oil spills into water, it damages the inhabitants of coastal communities and marine lives[60]. It also affects marine mammals and fisheries in the water. Our empirical research see chapter six revealed that the foregoing discussion, to a very large extent, is correct and nothing has been done to bring positive changes. Our correspondents informed us that when oil spill into water, it kills fish and other related creatures in the water.

2.4.2.1 Impact of Oil Spill on Marine Mammals

Oil in or on the water is extremely dangerous to wild life. For instance, when animal gets into an area affected by oil, it will try to preen or clean itself and in that process ingest some toxic petroleum product. This will cause severe damage to internal organs. Ingesting oil will greatly disrupt the reproductive process of the animals. Animals that survive oil spills may suffer a long term effects of breeding problems and result in deformation of off spring[61].

There are different effects of the oil spill on different classes of marine mammals. For example, heavily furred animals, such as sea otters and fur seals, are more severely affected by oil spill because, these species rely on their thick hair coat to maintain warmth and buoyancy[62]. The fur traps a thin layer of air adjacent to the animal's skin, and this air layer prevents the skin of the animal from coming into contact with the cold ocean water. When it is exposed to oil, the alignment of the hair

[58] http://environmentengineering.blogspQt.com/2008/04/oil-spill-and-its-adverse-effects-on.html. Retrieved on February 1, 2012.
[59] Ibid
[60] SUSU .A. Abdowe .N. etal, oil spills in the marine Environment, CJC press (Nigeria) Limited Lagos, 1997.
[61] Oil spill response and marine mammals. Retrieved at http://www.marinemammalcentre.org/what-we-do/rescue/oil-spill-response.html February 1st 2012.
[62] Ibid

is altered. The air layer is destroyed and mammals rapidly become hypothermic[63]. For marine mammals without heavy hair coats like other species such as; seals, sea lions, dolphins, whales etc, the problems associated with hypothermia are less of a concern because their thick blubber protects them from the cold, with the exception of juveniles that have not yet developed this protective layer[64]. These species also suffer from the problems associated with fume inhalation, dermal exposure, and ingestion.

The long-term effect of oil spill on marine mammals is that the spills affect the marine mammals by interfering with their ability to breed, reproduce, grow, or perform other vital functions[65]. Toxins in oil, can also cause cancer and other illnesses to the marine mammals in the long terms[66]. It is very clear from the foregoing that when oil spills into water, it has bad effect on the marine mammals as revealed from the foregoing. Therefore, there is a need to see that all necessary measures are put in place to ensure that oil is not spilled onto the environment because of the devastating effects on the inhabitants.

2.4.2.2 Impact of Oil Spill on Fish

Oil spill also has negative impact on the fish. In fact fish in an oil spill environment may ingest large amount of oil through their gills. Fish that had been exposed to oil spill may also suffer from changes in heart and respiratory rate, enlarged livers, reduced growth, fin erosion and varieties of effects at biochemical and cellular levels[67]. If this effect does not kill the fish directly, it may affect the

[63] Ibid
[64] Ibid
[65] How do oil spills affect marine life. Retrieved from http://www.wisegeck.com/how_do_oil_spills_affect_marine_life.htm 1/02/2012.
[66] Ibid
[67] Ibid

reproductive capacity of the fish negatively or worst still, it may even deform it or it may deform and kill them[68].

The impact of oil spill on fish affects human being. The long run effect is that the fishing industry suffers badly. This is because the fish are often covered with oil during oil spill and they often swallow oil that is on the water. This makes the fish poisonous and bad for human consumption. In addition, large numbers of fish also die as a result of oil spill. This however decreases the quantity of fish that could have possibly been caught[69]. Our empirical research confirms this see chapter six. It was revealed that fishermen lost large number of fish as a result of oil spill. Some of our respondents who are mostly fisherman confirmed this. They are of the view that their economic activities had grossly been affected oil spill. They also said that a lot of fish usually die whenever they experience oil spill.

2.4.2.3 Impact of Oil Spill on Water

When oil spill into water, it basically pollutes the water and contaminating it. It also affects water bodies like lakes, rivers, oceans and ground waters[70].When oil spill gets into water, it pollutes the water. When the water is polluted it affects plants and other organisms living in these water bodies. In most cases the effect, of the oil spill is damaging not only to individual and other species but also to the natural biological communities[71]. When water is polluted as a result of oil spill, it does not support human use, such as drinking, washing, fishing etc. In other words, polluted water cannot be used for drinking, washing of cloths, cars, plates etc. Neither can it be used

[68] Effect of oil pollution on marine wildlife. Retrieved from file://mnt/sdcard/download/wildlife.htm.webarchivexml 2/02/2012.
[69] http://environmentengineering.biogspot.com/2008/04/oil-spill-and-its-adverse-effects-on.html/ 2/02/2012.
[70] http://enoil spill on nigerian water-pollution. retrieved on the 6/02/2012
[71] Ibid

for fishing. Most villages located close to oil installations are commonly seen on the water that is being used for drinking and washing. Some sample of water used for drinking and washing by villagers close to an oil installation was said to have been taken and analyzed in United States of America. It was revealed that the water had 18ppm of hydrocarbons in it. The quantity of the hydrocarbon discovered in this water is 360 times the level of it allowed in drinking water in the European Union (EU), where there is proper implementation and enforcement of environmental policy regulations[72].

The fact of oil floating on top of drinking and washing water in oil producing area, had not really changed for good. This is confirmed by our empirical research see chapter six, most of our correspondents attested to the fact that their drinking and washing water does from time to time contain oily or colour substance. That when water is fetched from river and kept for some time its colour usually changes. This is a serious problem which deserves urgent attention, before the inhabitants of oil producing areas are wiped out.[73]

2.4.3 Effect Gas on Air, Climate and Respiration

The effect of gas on environment is more pronounced in the area of gas flaring. Gas flaring has a negative impact on air, climate and respiration. It has harmful effect on the health and livelihood of the communities close to gas flaring. Different kinds of poisonous chemicals, such as nitrogen dioxides, sulphur dioxide, volatile organic

[72] Peter C.N. Olusegun T.B. Impact and management of oil spill pollution along the Nigerian coastal areas at www.Fig.net/pub/figpub/pub36/chapter-8-pdf pn 30/01/2012/ 12:39pm.
[73] Ibid

compounds like benzene, toluene, hydrogen sulfide and carcinogens[74]. Human being exposed to such substance can suffer from a variety of respiratory problems, for example, it can aggravate asthma, and it can also cause difficulties in breathing and pains as well as chronic bronchitis[75]. It is also causes serious coughing.

The effect of gas flaring on the climate is that it causes climate change. It heats up the atmosphere which results to global warming as a result of large amounts of methane it releases into the atmosphere. The methane is accompanied by other major green house gas, carbon dioxide[76].

The effect of gas flaring on air is that it pollutes the air. It makes the environment very unfriendly. This is confirmed by our empirical research see chapter six. Most of our respondents reliably informed us that they face a lot of difficulties because of the flaring of gas. They said that the smell of the associated gas can be perceived hundreds of meters away. They also said that gas flaring also affects their drinking water, it stunts their crop growth, and it also affects their roof. It makes their roof brownish and it leaks within a short period of time. It is also their response that acid rain from gas flaring corrodes their homes and their local structures. That flaring of gas also affects the growth of their vegetation because no vegetation can grow in the area directly surrounding the flare due to the intensive heat produced by the fume. Our respondents also informed us that communities close to gas flaring are often deprived of comfort of night's natural darkness. That nights, are always bright because of the light from the flaring of gas.

[74] Gas flaring in Nigeria. A human right, environmental and Economic monstrosity. http://en.nigeria gas flarin.org./petroleum industry in Nigeria 1st June, 2010 at 21.10.
[75] Ibid
[76] ibid

It is observed from the foregoing, that environmental degradation arising from oil and gas affects the entire life of human being. For example, the effect of oil spill pollutes water, kills fish, it affects vegetation, it affects animals, marine mammals, and it also affects respiratory system. The effect of oil and gas on the environment is so serious and devastating that it deserves urgent attention.

CHAPTER THREE

LEGAL PRINCIPLES ON PREVENTION OF ENVIRONMENTAL DEGRADATION BY OIL AND GAS COMPANIES IN NIGERIA

3.1 Introduction

The oil and gas industry plays an important economic role in Nigeria. The exploitation of oil and gas as a source for revenue generation for Nigeria has however, left in its trail, a catalogue of environmental problems. The devastating effect of the attendant environmental degradation resulting from oil and gas activities has become communal, national and global concerns. Several incidences of oil spills have become common features of oil and gas exploitation in Nigeria. Thus the major problem with oil and gas exploitation and production in Nigeria is the inability of the government and their regulatory agencies such as National Oil Spill Detection and Response Agency (NOSDRA), National Environmental Standards and Regulations, Enforcement Agency (NESREA) Department of Petroleum Resources (DPR), Niger Delta Development Commission (NDDC) etc. to control and prevent pollution and other associated environmental problems arising from oil operations. For example oil spills; blowout, gas flaring etc. have resulted to loss of lives and property. They have affected human health and the environment.[1] These negative activities of the operation of the oil companies have drawn local,

[1] David Osigbemhe I. Environmental Regulation of the Oil and Gas Industry in Nigeria lessons from Alberta's Experience, unpublished thesis submitted to the faculty of graduate studies and Research Faculty of Law Education, Alberta, 1998.

national and international attention and have led to calls for environmental regulation of oil and gas operations so as to control, reduce or prevent environmental degradation arising from oil activities in Nigeria.

Most countries have enacted laws and regulations to control or prevent environmental degradation by oil and gas companies. However, the persisting question is how effective have the laws and regulations been employed in the control of environmental degradation arising from oil and gas operations?

Some countries such as Canada, USA, Venezuela, Swaziland, Saudi Arabia etc. have made tremendous progress in controlling or reducing environmental degradation[2] and other related environmental problems caused by the industry, while in Nigeria environmental degradation is on the increase.[3]

This chapter attempts to examine environmental regulations, laws and institutions that seek to prevent environmental degradation by oil and gas companies in Nigeria. To achieve this, the chapter critically discusses the various legislative approaches of existing environmental, oil and gas laws in Nigeria in order to determining the inefficiency or otherwise of the regulatory agencies in Nigeria. This will be discussed from the perspectives of preventive, permit, remedial, polluter pays, compensation, rehabilitation, etc. principles

[2] Op.cit
[3] Ibid

3.2 Nature, Scope and Application of "Preventive Principles in Environmental Law" Nigeria

It is worth to note that much environmental legislation is drafted in response to catastrophes, for example Harmful Waste (Special Criminal Provision) Act[4], was enacted after the Koko saga[5]. Preventing environmental harm is chaper, easier, and less environmentally dangerous than reacting to environmental harm that already has taken place. The preventive principle is fundamental notion behind laws regulating the generation, transportation, treatment, storage, and disposal of Hazardous waste arising from the activities of oil and gas companies in Nigeria.

Priventive principle forms a prudent complement to the polluter-pays principle by requiring the adoption of measures intended to prevent damages from arising the activities of oil and gas companies in Nigeria.

3.3 Types of Legal Principles for the Prevention of Environmental Degradation by oil and Gas companies in Nigeria

There are different types of legal principles for the prevention of environmental degradation by oil and gas companies in Nigeria. These include the preventive principles, precautionary principles and Remedial principles. These principles will be discussed in this work in the order they are mentioned here.

[4] Cap. H1 Laws of the Federation of Nigeria,2004

[5] When 38 tons assorted toxic wastes were dumped in the then Koko port of the former Bendel State (Now Delta state),1983

3.2 Preventive Principle for the Prevention of Environmental Degradation by oil and Gas companies in Nigeria

Preventive principle is a legislative measure employed to prevent the operators of oil companies from polluting the environment as a result of their activities. This method simply encourages the operators to follow or to implement the laid down rules or procedures so as not to pollute the environment. In other words, this method encourages oil operators to comply with the regulation. There are many regulations in the oil and gas industry that seek to protect the environment which contains preventive principle approach in their desire to achieve the set objective. For example there is;

(I) Oil in Navigable Waters Act.[6]

The Act was made to implement the terms of the international convention for the Prevention of Pollution of the Sea by Oil. The Act provides in section 1(1) that:

> *If any oil to which this section applies is discharged from a Nigerian ship into a part of the sea which, in relation to that ship, is a prohibited sea area, or if any mixture containing not less 100 parts of Oil to which this section applies is discharged from such a ship into such a part of the sea, the owner or master of the ship shall, subject to the provisions of this Act, be guilty of an offence under this section.*

This provision in its bid to protect water from oil pollution seeks to discourage oil operators from discharging oil from their ships into the sea. The section simply stated that "the owner or master of the ship…shall be guilty of an offence".

In line with the principle of preventive approach the Act provided in section 5(1)[7] that

[6] Cap.O7 Laws of the Federation of Nigeria, 2004
[7] Ibid

> *"For the purpose of preventing or reducing discharges of oil and mixtures containing oil into the sea, the minister may make regulations requiring Nigerian ships to be fitted with such equipment and to comply with such other requirements, as may be prescribed".*

This section is a clear attempt to prevent pollution of the sea in the course of transporting oil or oil related product by ship. By this approach, ship masters are prevented from discharging oil from their ships into the sea, if they do so is breach under section 1 of the Oil in Navigable Water Act.

Section 7 of the Act[8] appears to be another preventive measure adopted by the Act to ensure that the sea is not polluted by ship in the course of conveying oil from one destination to another. The section empowers the harbor authority to provide facilities to enable vessels using the harbor to discharge or deposit oil residues in the facilities instead of discharging it into the water.

Compliance with this provision will no doubt prevent pollution of water by vessel. This will make the environment to be clean, safe and healthy for the inhabitants of the environment. The preventive principle approach adopted by the Act is commendable.[9]

(II) Oil in Navigable Waters Regulations

This Regulation also contains preventive principle. It provides that oil-water separator should be fitted into every Nigerian ship (other than a tanker) so as to prevent pollution by oil[10]. This provision, the Regulation has taken a very good preventive measure to ensure that oil is not spilled into water by any Nigerian ship.

[8] Oil in Navigable Waters Act, Cap. 07, Laws of the Federation of Nigeria, 2004
[9] Made pursuant to sections 5 and 8 of the oil in Navigable waters Act, Cap 07 Laws of the Federation of Nigeria, 2004
[10] Regulation No.8

This is a direct effort to prevent water pollution by the Regulation. It is however sad to note that there is no penalty for a violator of this Regulation. What this means is that the provisions of this Regulation is a toothless bulldog. That is, it can only bark, but it cannot bite. Any ship owner or ship master can navigate the water ways without fitting an oily-water separator. Consequently, if there is oil spillage, the violator will not be liable under the regulation.

The regulation is not meant in any way to protect the environment, but rather for the safety of the ship and the workers. The totality of the regulation does not provide for punishment in the event of violation of any of the provisions.

It can be rightly stated that the water environment is exposed to danger of pollution or degradation by oil transporters because there is no provision in the regulation to protect the environment. It therefore means that a ship owner or ship master can freely pollute water environment without fear of punishment. This is a serious problem.

(III) Petroleum (Drilling and Production) Regulation[11]

This Regulation contains preventive provision to ensure that oil operators do not pollute the environment for example; Regulation 25 of the Petroleum (Drilling and Production) Regulation II obliges a holder of an oil exploration and or oil prospecting licences to:

> *Adopt all practicable precautions including the provision of up-to-date equipment approved by the Chief Petroleum Engineer (Department of Petroleum Research) to prevent the pollution of inland waters, rivers, water courses, the territorial water of Nigeria or the high seas by oil mild or other fluid or substances which might contaminate the water, banks*

[11] Cap. P 10 :Laws of the Federation of Nigeria, 2004

> *or shore line or which might cause harm or destruction to fresh water or marine life, and where any such pollution occurs or has occurred will take prompt steps to control and, if possible, end it.*

Oil operators are implored or encouraged to prevent oil pollution and "if possible end" any pollution that might occur during oil exploration and production. This is a preventive measure to avoid pollution of environment by oil operators in the course of drilling.

Under Regulation 36 oil operators are enjoined to carry out their operations in a proper and workman-like manner and to take reasonable steps to among others:[12]

> *Control the flow and to prevent the escape or avoid waste of petroleum discovered in or obtained from the relevant area, prevent damage to adjoining petroleum bearing strata, prevent the escape of petroleum into any water, well, spring, stream river, lake, reservoir, estuaing or harbor, and cause as little damage as possible to the surface of the relevant area and to the trees, crops, buildings, structures and other property thereon*

All oil operators are obliged to ensure the drainage of all waste oil, brine and sludge or refuse from storage vessels, boreholes and wells into proper receptacles are constructed in compliance with safety regulations.

Regulation 44 also contains preventive principle to prevent environmental pollution by oil operators. It provides that:

> *"The Director of Petroleum Resources may give such directions as may in his opinion be necessary from time to time to ensure the proper exploitation of petroleum and to encourage good conservation practices in any licensed or leased lands, and the*

[12] Ibid

licensee or lessee shall comply with any such directions which affect him".

(IV) The Petroleum Act[13]

The petroleum Act also contains preventive principle. Section 9[14] provides that: *"the minister may make regulations --- for the prevention of pollution of water courses and the atmosphere…"*

This law merely rests discretionary powers on the minister to make regulations which he may not exercise at all. There is no concerted effort by the minister to exercise these discretionary powers to make regulations calculated to prevent pollution or environmental degradation. The regulation that was made in the exercise of this power could be described as a half-hearted admonition to operators to operate in such ways as to prevent pollution[15].

Petroleum Regulation[16] in its attempts to prevent environmental degradation or pollution by oil operators provides in regulation 13 that in the process of loading or unloading a ship at any harbor *"no petroleum shall be discharged or allowed to escape into the water of the port"* in addition to this, regulation 37[17] made provision for the prevention of leakage of underground petroleum storage tanks to be subjected to periodic inspections of such tanks.

Regulation 67 also contains preventive principles in the sense that it prohibits escape of petroleum into any inlet or drainage communicating with sews. The preventive measures adopted by the regulation did not in any way prevent

[13] Cap. P10 Laws Federation of Nigeria, 2004
[14] Sub sec. (1b) (iv) Ibid
[15] Olumole A. pollution control Regulation in the Nigerian Oil Industry. Nigerian institute of Advanced legal studies, 1991 p.20
[16] Made pursuant to section 5 of the Petroleum Act Cap. P10, Laws of the Federation of Nigeria, 2004
[17] Section(5)(i)& (iii) of the petroleum Act cap. P10, LFN, 2004

environmental degradation by oil operators. The reason for this may not be far from the fact that the regulation is too vague, and lack policy direction. In addition, the regulation is short of administrative and enforcement machinery. The regulation stipulates that an operator shall do this or do that. But whether this or that is done or not there are no effective means of knowing. This explains why over 50% of total oil spills are attributable to equipment failure[18].

Another major weakness of the regulation is in the area of enforcement. There is no provision to either inducing the adoption of preventive measures by oil operators or to deter them from operating in a manner they would not pollute the environment. Oil operators were at liberty to carry out their operation in the manner that are profitable to them with little or no regards to the provisions of the regulation as to the safety of the environment.

(V) Petroleum Refining Regulation[19]

This Regulation also contains preventive principles. For example, Regulation 43[20] stipulates that the manager of a refinery shall adopt all practicable precautions including the provision of up-to-date equipment as may be specified from time to time by the director to prevent the pollution of the environment by the petroleum or petroleum products. The regulation provides further that incase of actual pollution occurring the manager should take steps to control it and if possible end it. Regulation 38[21] finally provides that "Any unprogrammed spillage, of crude products or

[18] Awobajo "An analysis of oil spill incident in Nigeria 1976-1980" in the petroleum industry and Nigerian environment: Proceedings of 1981 International seminar (1983) especially at Pp.59 862.
[19] Cap. P10, LFN. 2004
[20] Sub (3) Ibid
[21] Subsections (1) Ibid

chemical inside the refinery shall immediately be notified to the inspector". It provided further that:

> *Such notice shall be followed within seven days after the spillage have occurred by a written report describing the cause and nature of the spillage, the amount of spillage and the method of estimating it, the amount of spillage recovered, precautionary measures taken since the spillage to prevent any hazard that may arise there from, and precautionary measures taken to prevent such spillage in the future*[22].

Despite this preventive measures adopted by the regulations, the environment are still subjected pollution as a result of oil spill.

Here lies a serious problem.

The regulation in its effort to prevent environmental pollution through preventive principle made it very clear that:

> *"The manager shall adopt all practical precautions including the provision of up-to-date-equipment as may be specified by the Director from time to time to prevent the pollution of the environment by petroleum; and where such pollutions occurs, the manager shall take prompt steps to control and if possible end it"*[23].

Petroleum Refining Regulation, made effort through preventive principle approach to protect the environment from degradation. In this manner it is strive to protect the environment yet environmental degradation is still on the high side. What could be the problem?

[22] Subsection (2) Ibid
[23] Regulation 27 op.cit

(VI) Crude Oil (Transportation and Shipment) Regulations[24]

Transportation is one of the sources through which environmental degradation takes place in the course of transporting petroleum product. It may spill on to the environment. It is in the light of this that Crude Oil (Transportation and Shipment) Regulations[25] prohibited the loading of crude oil into ballast tank other than those designated for such purposes. The wordings of the regulation are as follows;

> *"No loading shall be made into a ballast tank or any other tank, container or receptacle of a ship or tanker other than those designated, dedicated and designed for the storage and transportation of crude oil"*[26].

This regulation also strives to protect the environment from pollution through preventive principle. It is an obvious fact that when oil is spilled on to the environment it pollutes it by rendering it unproductive, valueless and useless. It is sad to note that a lot of crude oil got spilled on the environment in the course of transportation. This occurred because of non compliance with the provision of the regulation and also non- enforcement of the same regulation. As long as the provisions of the regulations are not complied with nor enforced, the problem of environmental degradation will persist.

(VII) Associated Gas Re-injection Act[27]

Gas flaring is one of the major sources of environmental degradation in Nigeria. Pollution occurs during the process of burning of un-utilized gasses during crude oil refining. In order to prevent environmental pollution in the course of refining

[24] Regulation 43 cap.P10, LFN. 2004
[25] Regulation 43 cap.P10, LFN. 2004
[26] Regulation 4 Ibid
[27] See Association Gas Re-injection Act Cap. A25 Laws of the Federation of Nigeria. 2004

crude oil, Associated Gas Re-injection Act[28] in section 3, made provision for preventive measures that no company should flare gas after the first day of the 1st day of January 1984 without the permission in written of the minister charged with the responsibilities of matters relating to petroleum. This measure is not encouraging because it does not make a complete preventive measure to protect the environment from degradation in the hands of oil operators. If the minister decides to give permission for the flaring, it means that the environment will continue to suffer degradation.

(VIII) West African pipeline project Act[29]

West African pipeline project Act[30] also contains preventive measures aim at protecting the environment from pollution.

The Act made a deliberate effort to prevent environmental damage as a result of the activities of company. In line with this, the Act in section 32 provides that:

> *"The company, its affiliates, share holders, or the project contractors shall be liable for any environmental damage that occur by reason of any project activities"*

From the wordings of this section, it means that the Act holds the company liable for any environmental damage caused by the company. Because of the fear of incurring liability as a result of environmental damage the provision will indirectly act as a measure of preventing or protect the environment from being damaged. The Act is not specific as to the protection of the environment but it rather assigned liability for environmental damage to the company.

[28] See Association Gas Re-injection Act Cap. A25 Laws of the Federation of Nigeria. 2004
[29] No 11 Laws of Federation of Nigeria, 2005
[30] No 11 Laws of Federation of Nigeria, 2005

Apart from the foregoing, the Act did not provide for a direct measure to prevent environmental damage. This is a serious setback on the part of the Act. In other words it has exhibited lack of seriousness for the protection of the environment by the Act.

(IX) Common law

Common law also contains preventive measure for the protection of the environment. In fact, the area of common law that is more relevant for environmental protection is in the area of tort of negligence and nuisance[31]. Negligence under tort seeks to protect the environment through preventive measures by the operation of the neighbourhood principle. Under this principle every owner of land or other property owes a duty of care to all his neighbors in the use of his land or property. He is to take reasonable care to avoid act of omissions that he can reasonably foresee would be likely to injure those of his neighbours or their property.[32] His neighbours are not just the adjoining land owners but even far away land owners and indeed all other persons, however distant that his activities or usage of his land or property could in the manner recognized by law.[33] This neighbourhood principle was established in the land mark case of Donoghue v. Stephenson[34] by Lord Akin where he described neighbors as;

> *Persons who are so closely and directly affected by my act that I ought reasonably to have them in my contemplation as being so affected when I am directing my mind to the acts or omissions which are called in questions.*[35]

[31] Adamu Kyuka Usman: An Assessment of Environmental Protection Laws in Nigeria, Ph.D Thesis (Unpublished) Faculty of Law Ahmadu Bello University, Zaria. (2000) page 3
[32] Andrew I.O. Environmental Protection under the Common Law: Modern Practice Journal of Finance & Investment law vol. 3, Learned Publishment Ltd, Lagos (1999)
[33] Winfield and Jolowicz on Torts 15th edition, London, Sweet and Maxwell, (1998) p. 90
[34] (1932) AC. 562,
[35] Ibid

In that case, the appellant who was a shop assistant sought to recover damages from the respondent, who was a manufacturer of aerated waters for injuries she suffered as a result of consuming part of the contents of a bottle ginger-bear which was purchased for the appellant by a friend in a café at Paisley, which was occupied by one Minchella. That the bottle was made of dark opaque glass and that the appellant had no reason to suspect that it contained anything but pure ginger-bear; The said Minchella poured some of the ginger-bear out into a tumbler and that her friend was proceeding to pour the remainder of the content of the bottle into the tumbler when a snail which was in a state of decomposition floated out of the bottle that as a result of nauseating sight of the snail in such circumstances and in consequence of the impurity in the ginger-bear which she had already consumed, the appellant suffers from shock and severe gastro-enteritis. The appellant further averred that the ginger bear was manufactured by the respondent to be sold as a drink to the public (including the appellant); that it was bottled by the respondent and labeled by him with a label bearing his name. The bottles were thereafter sealed with a metal cap by the respondent. She further averred that it was the duty of the respondent to provide a system of working his business which would not allow snails to get into his ginger-bear. It was also his duty to provide an efficient system of infestion of the bottles before the ginger-bear was filled into them and that he had failed in both these duties and has so caused the accident. The court held that the respondent owed a duty to the appellant to take care that the ginger-bear which he manufactured, bottled, labeled and sealed (the condition under which the ginger-bear was put upon the market being such that it was impossible for the consumers to examine the contents of the bottle). The

condition under which the appellant was invited to buy contained nothing which would cause her injury.

Because of the principle of duty of care under the common law, an oil company will be careful not to negligently allow oil to escape on to a neighbor or another person's land or property.

(X) Environmental Guidelines and Standard for the Petroleum Industry in Nigeria (EGASPIN)[36]

This guideline made provisions for the preventive principle in tackling environmental pollution. Part 3, section 3.41 provides inter alia that oily wastes shall not be discharged directly or indirectly unto:

(i) Any inland waters (fresh, brackish, tidal or non-tidal or reservoir)

(ii) Swamp, coastal or offshore waters etc.

While section 3.4.2 advances further to prohibit the disposal of oily waters or sludges on land, public drains, and water bodies used for human consumption.

The provision of the above mentioned sections strive to outlaw discharge of petroleum substances into water environment so as not to pollute the environment. The discharge of such substance no doubt will render water valueless. The provision serves as a check against such pollution. The law in this regard is so clear that it prevents environmental pollution by oil companies, but the enforcement is always a problem. Because of lack of proper implementation of the laws are not being heeded to. That is why there are cases of discharge of oil into water. The empirical research arm of this study confirms this position.

[36] Issued by the department of Petroleum Resources Lagos 1991, Revised edition 2002

Part IV sections 3.4.1 and 3.4.2 contained similar provision of preventive measures to be adhered to by operators so as not to pollute the environment in the course of petroleum production.

Section 3.5.3 expressly prohibits the disposal of oily sludges, produced sand and solid wastes in the environment.

The central theme of the forgoing provisions is that the operators of the oil companies should take preventive measures to ensure that the environment is not polluted in the course of their operation.

(XI) Environmental Standard and Regulations Enforcement Agency Act (NESREA)[37].

A Legal framework that contains many preventive principles that seeks to protect the environment from degradation which appears to be outside the scope of this work, is the National Environmental Standard and Regulations Enforcement Agency Act (NESREA)[38]. The Act specifically in sections 7 and 8 excludes environmental protection arising from oil and gas, for example subsection (j) provides that "the Agency shall enforce environmental control measures --- other than in the oil and gas sector".

It is very clear from the foregoing that the NESREA Act clearly exempted its self from providing protection to the environment against pollution arising from oil and gas companies in Nigeria. This legislative attitude is commendable in the sense that it limits its scope of operation so as to be very effective in its operation. The Act seems to avoid a situation of bitting more than it can chew. It is however intresting to

[37] 2007
[38] 2007

note that section 8 (k),(i),(n) and (s) of the Act expressly execludes the Agency from entertaining issues pertaing oil and gas sector.

3.2.1 Permit System

This is a legislative method adopted to allow an act to be done within the ambit of the law. There are laws that permit an act to be done in a particular manner. Some of these laws will be examined under this sub-heading.

(I) Oil in Navigable Water Act[39]

Oil in Navigable Water Act[40] provides for permit system in section 3(3)[41]. It permits the discharge of dangerous petroleum into designated water area of the habour. The section provide;

> *The habour authority may appoint a place within the jurisdiction where the ballast water of vessels in which a cargo of dangarous petroleum has been carried may be discharged into the water of the habour, as such time and subject to such conditions, as the authority may determine, and where a place is so appointed, the discharge of ballast water from such a vessle shall not constitute an offence under this section; if the ballast water is discharged at that place and at a time and in accordance with the condition so determined and the ballast water contains no oil other than dangerous petroleum.*

The provision allowes oil to be discharged into water under certain circumstances provided in section 4[42] that the discharge of oil in water should be for the purpose of securing the safety of any vessel or preventing damage to any vessel or cargo or of saving life.

[39] Op.cit foot note No 5
[40] Op.cit foot note No 5
[41] Ibid
[42] Ibid

This system adopted by the Act admits human erra and actions beyond human bieng. It is also a means to control water pollution. It provides for limitation for which human erra could be accommodated.

(II) Regulation 3 of Oil in Navigable Waters Regulations.[43]

Regulation 3 of Oil in Navigable Waters Regulations also provides forpermit system in line with the Act, the regulation provides that;

> "*the master of every Nigerian ship (not being a tanker) of eighty tons gross tonnage or over which uses fuel oil shall maintain such record as relates to…. any occasion on which oil or mixture containing oil is dischargerd from his ship for the purpose of securing the safety of any vessel or of preventing damage to any vessel or cargo,…"*

The Act and the regulation both contain permit measure which allows the operators to some certain extent and circumstances to pollute the environment. It should be noted that strickly speaking, the measure is not for the protection of the environment only but rather for the safety of the ship, vessel and the human life.

Regulation 41 of petroleum (Drilling and Production) Regulations[44]

This Regulation made provision for the permit system. Under this regulation a licensee or lessee of an oil operator is allowed to drain oil waste on the environment at a designated place. The regulation provides as follows;

> *The licensee or lessee shall drain all waste oil brine and sludge or refuse from all storage vessels; boreholes and wells into proper receptacles constructed in compliance with safety regulations made under the Act or any other applicable regulations and shall dispose there of in a manner approved by the Director of Petrolium Resources or as provided by any other applicable regulations.*

[43] Op.cit
[44] Made under the petroleum Act Cap. P. 10 L.F.N 2004

When the waste oil is disposed it will certainly pollute the environment. The regulation, how ever allows it to be carried out in accordance with the provision of the regulation. This guided and regulated way of disposing oil waste will surely have less impact on the environment.

(III) Petroleum Refining Regulations[45]

Petroleum Refining Regulations also contain permit measures by allowing an oil licensee or lessee to dispose of residues, sludges, ruts from tanks which may have contained leaded petroleum Products in accordance with good refining practices in a designated and approved area.

As noted earlier in the previous discussion, disposal of oil waste from tank is a source of environmental degradation by oil and gas companies. This regulation has acknowledged the fact that residues or waste generated from the tank and spilled on the environment is a source of environmetal pollution and degradation. Although the regulation allows the disposal of such residue, however it is cautioned that it must be done in conformity with the conditions provided by the regulation. The wordings of the regulation is as follows;

> *"Residues, sludges, rusts, and similar matters from tanks which may have contained leaded petroleum products shall be disposed off according to good refining practices and only to such places as have been approved by the Director".*

[45] Ibid

The wordings of the regulation is very clear, it allows disposal of residues, sludges, rusts, etc, but in approved manner and place. If oil operators acts other wise, it would be wrong.

(IV) Associated Gas Re-injection Act[46]

Associated Gas Re-injection Act also contains permit system. The Act in section 3(2) gives the Minister of Petroleum Resources the discretion to permit an oil company engaged in the production of oil and gas to continue to flare gas where the company is unable to end gas flaring. In this respect, the Act provides as follow:

> *Where the Minister is satisfied after 1st January 1984 that utilization or re-injection of the produced gas is not appropriate or feasible in a particular field or fields, he may issue a certificate in that respect to a company engaged in the production of oil or gas-*
>
> *a. Specifying such terms and conditions, as he may at his discretion choose to impose, for the continued flaring of gas in the particular field or fields; or*
>
> *b. Permitting the company to continue to flare gas in the particular field or fiels if the company pays such sum as the Minister may from time to time prescribe for every 28:317 standard cubic metre (Scm) of gas flare---*

Gas flaring is one of the major sources of environmental degradation in Nigeria. Pollution occurs during the process of burning of untilized gases during crude oil refining. The danger of gas flaring is that it leads to green house gases, global warming and ozone layer depletion. Green house gases plays an important role in that it keeps the earth warm by trapping incoming solar radiation because of human activities like gas flaring coal burning results to huge amount of carbon-dioxide into the air, so also the destruction of forests allows carbon stored in tress to escape into

[46] Cap. A 25. Op.cit

the atmosphere.[47] The danger associated with these activities are that they make green house gas blanket to be destroyed and the surface of the earth unbearably and uncontrollably warmer and hotter. This enventually lead to global warming[48]. The release of carbondioxide released into the atmosphere as a result of gas flaring would cause global temperature to rise to a dangerous level and more heat would be trapped on the earth's surface.[49]

Considering the danger of gas flaring, yet the Act still permit the operators to flare gas. This is a bad practice to the health of the inhabitatants and the safety of the environment is completely comprised.

(V) Associated Gas Re-Injection (Continued Flaring of Gas) Regulations.[50]

The regulation contains conditions under which oil producing companies would be permitted to flare gas. Under Regulation 1, one of the conditions under which a company would be allowed to flare gas is that 75 percent of the produced gas is effectively utilized or conserved, or that the produced gas contains more than 15 percent impurities or that the on going utilization programme is interupted by equipment failure. Another condition is that the volume of gas produced per day is small compared to the distance to the nearest gas line or possible utilization point and that the minister in appropriate cases deemed fit, to order the production of oil from a field that does not satisfied any of the conditions specified in the regulation[51]. The regulation under reference butressed the permit system adopted by the Act. It

[47] Andrew A.B., Gas production and environmental pollution in Nigeria, property and contemporary Law Journal Rivers State University of Science and Technology, 2002/2003 p.127
[48] Ibid. p. 131
[49] Ibid p.131
[50] This regulation was made pursuant to sections 3 and 5 of the Associated Gas Re-Injection Act, cap. A 25 L.F.N 2004
[51] Op.cit at ref. 1(d)-(e)

emphasises the conditions under which oil companies would be allowed or permitted to continue to flare gas at the detriment of the environment. In fact, the regulation encourages environmental pollution by permitting oil operators to continue to flare gas. It may be right to observe that the message that the Act and the Regulations seek to convey is the economic impact of gas flaring and not environmental concern.

(VI) Environmental Impact Assessment Act[52]

This Act basically enacted on the basis of permit system. The Act was passed into law to restrict public and private projects to be carried or executed after proper secreening, so as to ascertain its environmental impact, after which permission to carry on with the project would be given or denied. It is in line with this that the Act provides in section 21 that:

> *1. After completion of a screening report in respect of a project the Agency shall take one of the following courses of action, that is-*
> *(a) where, in the opinion of the Agency*
> *(i) the project is not likely to cause significant adverse environmental effects, or*
> *(ii) any such effect can be mitigated,*
> *The Agency may exercise any power or perform any duty or function that would permit the project to be carried out and shall ensure that any mitigation measures that the agency considers appropriate are implemented*
> *(b) Where, in the opionion of the Agency*
> *(i) the project is likely to cause significant adverse environmental effects that may not be mitigable, or*
> *(ii) Public concerns respecting the environmental effects of the project warrant it,*
> *The Agency shall refer the project to the council for a referral to a mediation or a*

[52] Cap E 12 laws of the Federation of Nigeria, 2004.

review panel in accordance with section 35 of this Act;[53] *or*

(c) Where, in the opinion of the Agency, the project is likely to cause significant adverse environmental effects that cannot be mitigated, the Agency shall not exercise any power or perform any duty or function conferred on it under any encatment that would permit the project to be carried out in whole or in part…

From the foregoing, it is very clear that for any project to be successfully executed, the Agency acting under the Act must have given the permission for such project. It will therefore boil down to mean that, if the provisions of the Act were fully complied with, the issue of environmental degredation caused by oil and gas companies would not arise in the first place. This is because assessment would have shown that there would be a likelihood of environmental degredation.

It may be stress further that oil and gas project, is among the projects which a mandatory study or screen must be done before permission to execute the project can be done. It is inline with this, that the Act listed mandatory study activities to include oil and gas field development.[54]

(VII) National Environmental Standards and Regulations Enforcement Agency Act, (NESREA)[55]

This Act is the most recent legislation on environmental protection and development in Nigeria. It is however sad to note that the Act contradicted itself in two instances. In the first place, the Act extended its environmental protection and

[53] Section 35 provides that "where a project is referred to a review panel, the council shall, in consultation with the Agency-

(a) Appoint as members of the panel including the chairman thereof, persons who, in the opinion of the council, possess the required knowledge or experience; and
(b) Fix the terms of reference of the Panel."

[54] See section 12 of the Act. Op.cit

[55] Federal Republic of Nigeria Official Gazette vol. 94, 2007

development function to include that of oil and gas[56]. Sadly enough, within the same breath, it devested itself the power to afford environmental protection in areas of oil and gas[57]. It is very clear from the foregoing that the NESREA Act clearly exempted its self from afording protection to the environment from pollution arising from the oil and gas sector. The permit principle provided therein are of no relecance to oil and gas and therefore irrelevant to this work. Sections 3.5 and 3.6.3 and also 3.6.4.1 of Environmental Guide Lines and Standards for the Petroleum Industry in Nigeria (EGASPIN) also contain permit principles. For example Section.3.5 provides that at the discretion of the Director of Petroleum Resources, and/or the operator, any production operations, which is likely to cause significant and advise environmental effects and impacts, shall be subjected to the preparation of environmental evaluating report. While Section 3.6.3 provides that "Disposal of oily waste water shall be permitted in Inland/Nearshore areas, if treated to meet the limitations…" and Section 3.6.4.1 also provided that "the produced sand, oily sludges/solid wastes shall be disposed of by methods that shall not endanger human life and living organism and cause significant pollution to ground and surface waters…"

3.2.3 Remedial principle

This is an approach adopted by the legislation in providing remedy for victims of environmental degradation. It may be in different forms such as compensation, damages, injunction, cleanup etc.

[56] Section 7(c) of the NESREA Act Ibid
[57] Section 7(c) and 8 (k) (1) and (n) Ibid

3.2.3.1 Compensation

(I) Oil Pipelines Act.[58]

Compensation is a remedial approach employed by Oil Pipeline Act to compensate victims of environmental damage, pollution or degradation in the coursed of exploration, exploitation, or refining by oil companies. This principle appears to be adopted by the Oil Pipelines Act. It is in line with the foregoing that section 6 of the Act[59], provides *interalia*;

> *(3) the holder of a permit to survey acting under the authority of section 5 of this Act shall take all reasonable steps to aviod unnecessary damage to any land entered upon and any buildings, crops or profitable trees thereon, and shall make compensatin to the owners or occupiers for any damage done under such authority and not made good.*
>
> *(4) In the event of dispute as to the amount of compensation to be paid or as to whether or to whom any compensation shall be paid, the provisions of Part iv of this Act shall apply.*

While section 5[60] provides that:

> *(1) A permit to survey shall entitle the holder subject to the provisions of sections 6 of the Act, to enter together with his officers, agents, workmen, or other savants and with any necessary equipment or vehicles, on any land upon the rout specified in the permit or reasonably close to such route for the following purposes: -*
>
> *(a) to survey and take level of the land;*
>
> *(b) to dig and bone into the soil and sub-soil;*
>
> *(c) to cut and remove such trees and other vegetation as may be for the purposes specified in this subsection; and*

[58] Cap. 07 laws of the Federation of Nigeria, 2004
[59] Subsections 3 &4 Ibid
[60] Ibid subsection (1) (a)-(d)

(d) to do all other acts necessary to acertain the suitability of the land for the establishment of an oil pipeline or ancillary installations..."

In addition to the foregoing, Section 19 of the Act specifically provided for the court that has jurisdiction over compensation. The section provides as follow:

(1) If there be any dispute as to whether any compensation is payable under any provision of this Act or if so as to the amount there of, or as to the person to whom such compensation should be paid, such dispute shall be determined by the magistrate exercising civil jurisdiction in the area concern if such magistrate has in respect of any other civil matter monetary jurisdiction of at least as much as th amount of the compensation claimed, and if there be no such magistrate, by the High court exercising jurisdiction in the area concerned and not withstanding the position of any other Act or Law, in respect of the decision of the magistrate in accordance with this section, there shall be an appeal to the High court of the State and in respect of the decision of the high court of the state under this section, whether original or appellate, there shall be an appeal to the Court of Appeal…

Section 20 of the Act under reference provided for the basis of assessment of compensation are as follows:

(1) If a claim is made under subsection (3) of section 6 of this Act, the court shall award such compensation as it considers just in respect of any damage done to any buildings, crops, or profitable trees by the holder of the permit in the exercise of his rights there under and in addition may award such sum in respect of disturbance (if any) as it may consider just.

(2) If a claim is made under subsection (5) of section 11 of this Act, the court shall award such compensation as it consider just, having regard to-

(a) any damage done to any building, crops, or profitable trees by the holder of the licence in

the exercise of the rights conferred by the licence; and

(b) any disturbance caused by the holder in the exercise of such rights, and

(c) any damage suferred by any person by reason of any neglect on the part of the holder or his agents, servants, or work men to protect, maintain or repair any work structure or thing executed under the licence; and

(d) any damage suferred by any person (other than as stated in such subsection (5) of this section) as a consequence of any breakage of or leakage from the pipeline or an ancillary installation; and

(e) loss (if any) in value of the land or interests in land by the reason of the exercise of the rights as aforesaid,

And also having regard to any compensation already awarded in accordance with subsection (1) of this section.

(1) In determining the loss in valve of the land or interest in land of a claimant, the court shall assess the value of the land or the interests injuriously affected at the date immediately before the grant of the licence and shall assess the residual value to the claimant of the same land or interests consequent upon and at the date of the grant of the licence and shall determine the loss suffered by the claimant as the difference between the value so found, if such value is a lesser sum.

(4) No compensation shall be awarded in respect of unoccupied land as defined in the Land Use Acts, except to the extent and in the circumstances specified in that Act.

(5) In determining compensation in accordance with the provision of this section the court shall apply the positions of the Land Use Act so far as they are applicable and not in conflict with anything in this Act as if the land or interest concerned were land or interest acquired by the president for the public purpose.

(6) If the total sum awarded by the court in accordance with this section exceeds an amount already offered to the claimant by the holder of

the licence the court many order such holder to pay the costs of the proceedings; and if the sum so awarded does not exceed the amount offered by such holder, the court shall either order the claimant to pay the cost of the proceedings or order each side to bear its own costs.

(7) Compensation (if any) awarded by the court in accordance with this section shall be a sum of money payable forth-with or shall consist of periodical instalments or partly one and partly the other…

The above provisions emphasised the importance of compensation. It shows clearly the need for the victims of environmental pollution, damage, or degradation in the course of oil exploration, or exploitation to be compensated. In this instance, fixing of oil pipelines comes within the purview of exploitation of the oil. In the course of this, the environemt is likely to suffer one form of degradation or the other.

The Act went further in section 21 to clearly provide for compensation where local community's interest is affected. It provides as follows:

> *"Where the interests injuriously affected are those of the local community the court may order the compensation to be paid to any chief, headman or member of that community on behalf of such community or that it be paid in accordance with the scheme of distribution approved by the court or that it be paid into a fund to be administered by the person approved by the court on trust for application to the genral,social or educational benefit and advancement of that community or any section thereof".*

The Act made provision for compensation of victim that may suffer environmental damage arising from the activities of oil exploration and exploitation. This gives a kind of assurance that any person who is displaced will be compensated.

The provision advances further to provide in subsection 4 of section 6[61] for a way out in the case of dispute as to the amount paid as compensation or to whom compensation should be paid to. This is also an assurance to any person or community where oil may be discovered that they will certainly be entitled to compensation. This provision is highly commendable. In the sense that no body will be allowed to sufer without compensation as a result of oil activities.

(II) The Petroleum Act[62]

This Act also contain compensation principle as a means of settling any person or community for the disturbance of surface or other rights caused by a holder of an oil exploration licence, oil prospecting license or oil mining lease.[63] This provision like the one provided by the Oil Pipeline Act, also ensures that any vicitim of environmental damage as a result of oil exploration or prospecting shall be compensated. This provision will encourage any person or community on whose land oil is discover to wilingly surrender to the holder of the licence for the purpose of exploring the resources therein. This is becase they will be compensated for the disturbance and also for any environmental damage that may be occussioned. This provision is also commandable because of the compensation that the owener will enjoy. The said section provides that:

> *"The holder of an oil exploration licence, oil prospecting licence or oil mining lease shall in addition to any liability for compensation to which he may be subject to under any other provision of this Act, be liable to pay fair and adequate compensation for the disturbance of surface or other rights to any*

[61] Ibid
[62] Cap. P. 10 Laws of Federation of Nigeria, 2004
[63] Section 37 First Schedule S. 2(3) Ibid

person who owns or is in lawful occupation of the licensed or leased land.

(III) National Oil Spill Detection and Response Agency Act (NOSDRA)[64]

This Act also contains compensation provisions as a remedation for victims of environmental degradation or pollution by oil and gas companies in Nigeria. For example section 19(d) of the Act[65], provides that the Agency shall:

"Advise the Federal and State Government on possible effects on the health of the people and ensure that appropriate remedial action is taken for the restoration and compensation of the environment;"

This section graphically captured the idea of compensation for the environment as a result of oil spill which goes a long way to pollute the environment. It is very sad to note that the Act is very silent as to how the compensation should be done. It only provides "---and compensation of the environment". How will the environment be compensated? The Act is very silent over the issue. This is a count against the Act.

3.2.3.2 Damages

Damages is remedial principle provided by common law. These are mostly pronounced in areas of negligence and nuisance. If a person in the use of his land negligently caused damage to another person's land, damages would be awarded against him under common law. Likewise if a person employs his premises or anything in the premises to the detriment of the general public or to the environment such as polluting the environment by spilling oil, or by making noise, smoke, dirt, or if unbearable heat, or noise smell is being emitted from another person's land thereby

[64] National Oil spill Detection and Response Agency Establishment Act 2006
[65] National Oil spill Detection and Response Agency Act, 2006

inconveiencing his neighbours an action in nuisance will succeed against him.[66] This was the situation in the case of Abiola v Ijoma.[67] In that case, the plaintiff and the defendant occupied adjoining premises in a residential area in Surulere. The defendant kept poultry at the back of his house as a pastime. In 1969 the defendant purchased four hundred day old chicks which he kept in pens erected against the boundary wall which was about five fect from the plaintiff's house. The plaintiff claimed that excessive noise made by the chickens in the early hours of the morning disturbed his sleep, and that nauseating smells from the pens interfered with his comfort. He sought damages and injuction to restrain the alleged nuisance. Accordingly, the plaintiff was awarded damages and injuction restraining further acts of nuisance by the defedant.

The above cited examples are cases of private nuisance in which an individual can sue. However the fact is that, such nuisance as would normally pose very serious dangers to the enviroment or destroy it, are normally so wide spread that they become public nuisance and no longer private nuisance. For example, if there is oil spill which completely destroys a man's farmland along with other farm lands or a gaseous emission killing all the animals on his land as well as on other people's lands or the entire fish in a village's stream is killed. It is public not private nuisance. So also, if there is an unbearable noise generated by say 'A' on his land which traverses the entire neighbourhood. Or he produces trerrible smoke or heat as to suffocate life in the entire neighbourhood.[68] This would amount to nuisance and such a person will be liable for damages. For a party to benefit from the remedy of damages as provided by the common law, amongst other requirements, is that the party must disclose a

[66] Winfield and Jolowicze on Torts 15th edition, London, sweet and Maxwell, 1998 p. 90
[67] (1970) 2 ALL NLR 268
[68] Op cit

sensible material damage to environment. It means that a party with minimal damage to his environment cannot succeed in an action for nuisance. For example, if a dark and nauseating smoke engulfs a man and his household and it inflicts cough and other related diseases on them but did not cause any harm on the environment or the building, it means that he will not succeed in an action for damages even if the smoke thoroughly blackens the leaves of his trees, the wall, the flowers, as long as the house is not affected to reduce its value. It will be counted as a minimal injury. It also means that if a person spreads his cloth within an environment where flaring of gas takes place, if the cloth is blacken as a result of ashes or black smoke from the flaring, such a person will not succeed in his claim for damages.

The remedy of damages under the common law for victims of environmental pollution is a very good one its short comings are the requirements as discussed above.

3.2.3.3 Injunctions

Injunction is also a remedial principles for victims of environmental popullation or environmental degradation. This remedy is an equitable intervention because damages as a common law remedy fell short to adequately address environmental wrong. Equity therefore invented injunction where damages as a remedy is not sufficient to take care of the environmental degradation. Injunctions are always granted to holt or to prevent an emminet threat to the environment or an ongoing environmental degradation.

This principle is also provided for in section 52(1)[69] of EIA that:

[69] Environmental Impact Assessment Act Cap. E12 L.F.N 2004

1. Where, on the application of the Agency, it appears to a court of competent jurisdiction that a prohibition made under section 51 of this Act in respect of a project has been, is about to be or is likely to be contravened, the court may issue an injunction ordering any person named in the application to refrain from doing any act or thing that would commit the proponent to ensure that the project or any part thereof is carried out---
2. At least 48 hours before an injunction is ussued under sub-section (1) of this Act, the Agency is satisfied that the serious adverse environmental effects referred to in that subsection has been mitigated.

It is very clear from the foregoing that the remedy of injunction as provided for under the section is meant for environmental protection. It is a good provision, calculated at protecting the environment. Under the forgoing provision a person can approach the courts to seek for injunction to restrain a defendant from causing environmental harm or degradation.

The granting of an injuction is a discretionary remedy that can either prohibit or restrict a defendant from carrying on an environmentally damaging activity.[70] Normally, either the activity complained of has to be continuing at the date of claim or there has to be a threat that the activity will continue. It should be noted that even where the activity has ceased at the time of trial, an injunction can still be sought, if it existed when the claim was brought.[71]

[70] Ladan M.T op cit p. 42
[71] Ibid

Although injuctions are discretionary, however the general principle in the torts i.e. nuisance and trespass where continuing damage is likely, the claimants can expect to obtain an inmjuctioin unless the activity complained of is not of sufficient gravity or duration to justify stopping the defendant's actions.[72] This was the position in the English case of *Kennaway v. Thompson.*[73] The plaintiff complained about noise from power boat racing. The court of Appeal granted an injunction to restrain the times the boats raced and the noise they made notwithstanding the public interest in the sport.

This decision shows that in environmental litigation, injuction can be granted to restrain environmental pollution without the defendant having the opportunity of buying off the rights of those affected by paying an award of damages.

There are situations where it is possible to obtain an injunction before the occurrence of the event causing injury or damage. Such anticipatory injuctions do not require proof of environmental damage at all. However, there must be sufficient proof of imminent damage and it must be shown that if the activity were to continue the damage caused would be significant enough to make it hard to rectify.

3.2.3.4 Clean up

Clean up is a remedial method adopted by National Oil Spill Detection and Response Agency Act[74] to ensure that any oil operator who spills oil or petroleum product on the environment, should clean up the environment. Infact Section 5(c) of the NOSORA Act[75] specifically stated that the Agency

> *"shall establish the mechanism to monitor and assist or where expedient direct the response, including the*

[72] Ibid
[73] (1981) QB 88
[74] No. 15, 2006
[75] Ibid

> *capability to mobilize the necessary resources to save lives, protect threatened environment and clean up to the best practical extent of the impacted site…"*

The Act provides further in section 6(3) that;

> *"failure to clean up the impacted site to all practical extent including the remediation, shall attract a further fine of one million naira".*

Section 9(1)(j) of the Act still emphasised the responsibility of the Agency to "monitor the clean up operations to ensure full rehabilitation of the affected areas".

Clean-up of an impacted site is a very good remedy for victims of environmental popullation. If there is an oil spill, and the spill is not clean-up at all, or it is not cleaned up within a reasonable time, it will seriously damage the environment beyond imagination. It may even render the environment useless. It collaborated with our emperical research carried by this researcher. It was revealed that most of the impacted sites that were not cleaned up or cleaned-up within a reasonable time usually render the site or the environment useless.

3.2.4 Polluter Pays Principles

The polluter pays principle is an innovation by which environmental polluter is made to bear the cost of putting the environment in an acceptable state. The principle is aimed at ensuring that the cost of environmental damage caused by polluting activities are borne in full by the person responsible for such pollutions[76].

[76] Ogba U. Ndukire, Elements of Nigerian Environmental Laws. University of Calabar Press, 2000, p.30

This principle imposes on the polluter the responsibility of compensating the victims of pollution, while at the same time the polluter bears the cost of controlling the pollution.[77]

Generally, the polluter pays principle as a means of prevention of environmental pollution in the oil and gas industries adopts two approaches to ensure that the cost of protecting the environment is borne by the polluter. In its first approach, it subjects the polluter to a duty to implement certain measures that will prevent environmental pollution from taking place in the first place. This method is adopted by Oil in Navigable Waters Act.[78] This is provided for in section 5 of the Act that certain equipment shall be fixed in the ship so as to prevent oil pollution. The section provides thus:

> *"For the purpose of preventing or reducing dischages of oil and mixtures containing oil into the sea, the minister may make regulations requiring Nigerian ships to be fitted with such equipment, and to comply with such other requirements, as may be prescribed".*

It is inline with the above provision that Reg. 2 of the Oil in Navigable Waters Regulations provides that:

> *(1) Every Nigerian ship (other than a tanker) of eighty tons gross tonnage or over which uses her bunker fuel tanks for the carraige of ballost water shall be fitted with an Oily-Water Separator in accordance with the provisions of this regulation.*
> *(2) Every Separator fitted in accordance with the provisions of this regulations shall be connected to a pump capable of delivering the mixture to it at such a rate that the capacity for*

[77] Adebayo W.A. Basic Principles of Environmental law and Development, petoa Educational publishers, Ekiti, 2007, p.16
[78] Op cit

which the Separator is designed, measured in tons per hours is not exceeded.

The cost of fitting the separator is to be borne by the polluter hence he has paid for the cost of preventing the pollution.

Another provision that adopted the polluter pays principle is Reg. 5 of the same Act[79] which provides amongst other that:

"Any oil accidently spilt on deck or on the quary, pier or jefty shall be immediately cleaned up and disposed of into the large tank or bunkers or ashore".

The polluter here again will bear the cost of cleaning up the accidently spilt oil. It has clearly shown that polluter is liable for the pollution of the environment.

In addition to the foregoing, Oil Pipelines Act[80] makes it mandatory that polluters shall be responsible for the protection of the environment. The wordings of the Act are as follows. "the pipelines which crosses or passes within 100 metres of a water course, the operator shall ensure the department that adequate contingency plans have been made for protecting the environment."[81] It is also very clear from the wording of the section that the polluter must bear the cost of protecting the environment from pollution.

Petrolieum (Drilling and Production) Regulations[82] on its part made it very clear that the licensee, who are usually the environmental polluters shall take all necessary and practicable measures to ensure prevention of environmental pollution. The wordings of regulation 25 does not need any interpretation nor explanation. It provides as follows:

[79] Oil in Navigable Waters Act Cap. 06, L.F.N. 2004
[80] Cap. 07 L.F.N, 2004
[81] Section 8 of the Act Ibid.
[82] Made pursuant to S.9 of the Petroleum Act Cap. P.10 LFN, 2004

> *The licensee or lessee shall adopt all practicable precautions, including the provision of up-to-date equipment approved by the director of petroleum resources, to prevent the pollution of inland waters, rivers, water courses, the territorial waters of Nigeria or the high seas by oil, mud or other fluids or substances which might contaminate the water, tanks or shoreline or which might cause harm or destruction to fresh water or marine life, and where any such pollution occurs or as occurred, shall take prompt steps to control and if possible end it.*

Waste oil is also a source of environmental population when oil is spilled on the environment, it pollutes the environment. In this respect Regulation 41[83] makes it a must for the licensee or lessee to bear the cost of draining of all waste oil brine and sludge or refuse from all storage vessels, boreholes and wells into proper receptacles. By this provision the polluter is made to pay for the cost of clearing, the pollution it caused.

Regulation 27[84] is also an apostle of polluter pays principle. The regulation *inter alia* provides that the disposal of residues sludge, roots and similar matter from tanks which may have contained leaded petroleum products shall be disposed of according to good refining practices and the cost of such disposal shall be borne by the operators.

Polluter pays principle is also embraced by the Regulation 43[85] that the disposal of refinery effluent shall be borne by the polluter. It provides that:

> *"The manager shall ensure that drainage and disposal of refinery effluent and drainage water shall conform to good refining practices…"*

[83] Ibid
[84] Petroleum Refining Regulations made pursuant to section 9 of the petroleum Act Cap. P. 10 L.F.N, 2004
[85] Ibid

Regulation 43(3)[86] made it very clear that the manager is to bear the cause of taking precautionary measure to ensure prevention of environmental pollution by petroleum or petroleum products and where such pollution occurs the manager shall take prompt steps to control and if possible, end it. Polluter pays principle is a very good measure adopted by the statutes to make environmental polluters bear the cost of clearing or preventing the pollution, it goes a long way to control and to a large extend, prevent environmental damage, pollution or degradation by oil and gas companies in Nigeria.

The National Oil Spill Detection and Response Agency Act[87] also embrace the polluter pays principle in section 19(1)(j) that:

> *"The Agency shall monitor the clean-up operation to ensure full rehabilitation of the affected areas".*

The wordings of the Act are very clear, in the sense that an oil spiller shall bear the cause of cleaning up oil spill. In other words the Agency is to monitor and ensure that an oil spiller cleans up the spill. The spiller will obviously bear the cost of cleaning up the oil spill; this is a polluter pays principle in action. It is a commendable principle. It makes oil operators to be very wary of the way and manner they handle oil in the course of drilling, exploration and transportation, otherwise, they will bear the cost of clearing the environment if oil is spilled on the environment.

3.2.5 Penal Regime

Penal regime is the mother of all regimes. It is the limb of the law that compels people to obey the law. The wordings of the penal regime are sign post to a would be violator signifying the consequences of his or her non-compliance with the provisions

[86] Ibid
[87] Federal Republic of Nigeria Official Gazette No. 72 vol. 93, 2006

of the law. It is in line with this that there are various penal provisions in the laws that seek to prevent environmental degradation by oil and gas companies in Nigeria.

Oil in Navigable Waters Act[88] perfectly integrated this principle in section 6. It provides that penalties for offences under sections 1,3 and 5 that:

> *"A person guilty of an offence under sections 1,3, or 5 of this Act shall, on conviction by a High Court or a Superior Court or on summary conviction by any Court of inferior jurisdiction, be liable to a fine: provided that an offence shall not by virtue of this section be punishable on summary conviction by a court having jurisdiction inferior to that of a High Court by a fine exceeding N2000".*

Sections 1, 3 and 5 under reference prohibit discharge of crude oil, fuel, lubricating oil and diesel oil into prohibited sea areas. It among others also prohibits discharge of oil into the waters of Nigeria. It finally mandated ships to fix in equipment so as to prevent oil pollution. If the above provisions are not complied with or are violated, the violator will pay a fine of N2, 000.00 for such violation. This researcher regards the punishment of a fine of N2, 000.00 too small. It will not deter others from committing similar offences. Beside, the violators are usually multinational companies that are extremely rich. They can afford to pay the fine with ease. The amount is grossly inadequate to serve the purpose of this law.

Section 7(5)(a)(b) seeks to punish any Ship Master who failed or refused to keep proper and accurate records of oil that is discharged into water. The punishment ranges from N1000 to six months imprisonment upon conviction for default. This is to deter offenders from committing such offences. But surprisingly, this does not in any

[88] Op.cit footnote No. 61

way deter or prevent the commission of such offences. Hence the environment is still subject to pollution as a result of oil spill.

Very similar to the foregoing, Section 7 makes it a duty to report discharges of oil into waters of habours. It prescribes a fine of N400 for any person guilty of violating this provision. It therefore means that any person that is convicted for failure to report discharge of oil into waters of harbours is to pay a sum of N4, 00.00 only as a fine. This is really ridiculous. This will in no way hinder anybody from committing such an offence. Although the essence of the fine is to ensure that the offender gives something as a punishment for committing such an act. But when the amount is too small, it becomes a laughing matter as in this case.

Oil Pipeline Regulations[89] made pursuant to section 33 of the Oil Pipelines Act adopted the penal regime in Regulation 26 to punish any person who contravenes any of the provisions of the regulation which seeks to protect the environment from degradation by oil and gas companies in Nigeria. It therefore prescribes a term of six months or payment of N50, 000.00 or both for any person who pollutes environment upon conviction by a court of competent jurisdiction. Sub (2), of Regulation 26 also seek to punish corporate body in the same sum and term of imprisonment. This provision is commendable in the sense that the amount involve is very reasonable and also the term of imprisonment is very fair.

Regulation 13 of the Petroleum Regulation[90] prohibits discharge of petroleum into water environment. The penal regime adopted by the regulation to punish any

[89] Ibid
[90] Made pursuant to S. 9 of the petroleum Act, 2004 LFN

offender under this regulation is contained in Regulation 106 which provides for six months imprisonment term of N50, 000.00 or both. It provides in clear terms that:

> *"Any person who commits a breach of any of the provisions of these regulations; shall be guilty of an offence and be liable on summary conviction to a fine not exceeding N50, 000.00 or to imprisonment for a term not exceeding six months or to both, and when the offender is the holder of a licence granted under these regulations his licence may be cancelled by the Director General."*

This provision will obviously deter people from committing offences against the environment. The punishment is very reasonable enough to deter any other offenders from violating the provisions of the regulations especially if his licence can be cancel by the Director.

Regulations 43 and 45 of the Petroleum Refining Regulations[91] adopted the penal regime approach to punish environmental offenders especially oil refining operators who fail to properly dispose of refinery effluent and drainage disposal. The regulations prescribe N100.00 and six months imprisonment upon conviction for any person who violates the provisions of the regulations. This is too ridicules, this amount is too insignificant to deter environmental pollution.

Gas flaring is one of the major sources of environmental population in Nigeria. Pollution occurs during the process of burning of undiluted gases during crude oil refining. The danger of gas flaring is that it leads to green house gases, global warning and ozone layer depletion. It is because of the danger posed by gas flaring to the environment that the Associated Gas Re-Injection Act[92] in its section 3 provides that flaring of gas was to cease after 1 January, 1984. To ensure compliance with this

[91] Ibid
[92] Cap. A2 LFN, 2004

provision, section 4 adopted the penal regime by providing for penalty for any company which violates the provisions of section 3. Such an offender will forfeit the concessions granted to him. This is to ensure that no body commits such an offence. However this is not the case as flaring is still being carried on at various fields. Very unfortunate that presently flaring has not ceased. That is to say that flaring is still being carried on by oil and gas companies in Nigeria.

Another Act that incorporated the principle of penal regime is the Harmful Waste (Special Criminal Provisions, etc) Act[93]. This Act was the first enactment directed at protecting the environment. It came on board after the Koko Saga.[94] The provisions of the Act can be applied to oil pollution which falls within the definition of "toxic" in the Act. The Act in section 6 provides penalties for any person found guilty of violating the provisions of sections 1 to 5 of the Act. Sections 1-5 talks about crimes against the environment. It is because of the importance of leaving in an environment that is not polluted or polluted that the Act provided for stiff penalties for any person that violates the law. In the light of this, Section 6 provides that:

> *Any person found guilty of a crime under sections 1 to 5 of this Act shall on conviction be sentenced to imprisonment for life and in addition*
> *(a) any carrier, including aircraft, vehicle, container and any other thing whatsoever used in the transportation or importation of the harmful waste; and*
> *(b) any land on which the harmful waste was deposited or dumped, shall be forfeited…*

Section 7 provides punishment for environmental crime committed by corporate body. It provides that

[93] Cap HI Laws of the Federation of Nigeria, 2004
[94] See Footnote No.5 p.55 chapter 3 of this work

where a crime under this Act has been committed by a body Corporate and it is proved that it was committed with the consent or connivance of or is attributable to any neglect on the part of-

(a) A director, manager, secretary or other similar officer of the body Corporate; or

(b) *Any other person purporting to act in the capacity of a director, manager, secretary or other similar officer, he as well as the body corporate shall be guilty of the crime and shall be liable to be proceeded against and punished accordingly.*

The summary of both sections 6 and 7 of the Act is that anyone found contravening the provisions of the Act[95] will on conviction be sentenced to imprisonment for life, forfeit to the Federal Government of Nigeria any carrier used in the transportation or importation of the harmful waste deposited or dumped by corporate bodies, including any director, manager, secretary or any other similar officer of such corporate bodies, will be held liable, if found guilty of contravening the provisions of the Act.

The penal regime of the Act also extends its long arms to diplomats. In fact it unveiled the immunity protection accorded to diplomats. Section 9 of the Act specifically de-robed diplomats of this protection. It provides that

"The immunity from prosecution conferred on certain persons by or under the diplomatic immunities and privileges Act shall not extended to any crime committed under this Act by any of those persons".

This demonstrates government seriousness on the protection of the environment. It boil down to mean that any diplomat that conspires with anybody or

[95] Harmful Waste (Special Criminal Provision) Act Cap. H1 Laws of the Federation of Nigeria 2004

corporate body to dump or import into the country (Nigeria) any toxic substance such a diplomat will not be spared from prosecution.

Although the Act talks of crimes, however, no reference is made to environment. The protection accorded the environment from pollution is by way of inference. In other words, for proper understanding of the protection of environment by the Act, reference to the interpretation of section 15 of the Act, is imperative "harmful waste" according to section 15 of the Act means anything injurious, poisonous, toxic or noxious substance. The activities of oil and gas companies will certainly come within the ambit of this provision. It therefore means that any oil company that pollutes the environment will be caught by the provisions of the Act. In summary, if the provision of the Act is religiously complied with, the environment will be safe, healthy and clean particularly for the residence of oil producing areas because environmental degradation by Oil Companies will be at its minimal.

Hydrocarbon Oil Refineries Act[96] also adopted penal regime to punish environmental offenders. This Act was enacted to prohibit refining of any hydrocarbon oils save in the licensed refinery. To keep in line with the objective of this Act, it provides for punishment for any person who contravenes the provisions of the Act. It pegs the sum of unspecified amount of money and maximum of five (5) years imprisonment or both for any offender that is convicted for polluting the environment.[97]

The Act though did not make direct reference to the environment; however when environment is viewed from a wider perspective, premises can be said to be

[96] Cap. HS Laws of the Federal of Nigeria 2004.
[97] Ibid at S.7 (1)

environment. Be it as it may, the Act did not seek to protect the environment or premises where hydrocarbon is being refined. It rather seeks to regulate the safety of the operation and the equipment.

The penal regime is calculated at protecting the equipment and the operation of the refining. The Act would have addressed the protection of the environment rather than going on voyage. It would have *inter-alia* prohibit spillage of hydrocarbon oil on the environment which would lead to clean environment.

Environmental Impact Assessment Act[98] also contains penal regime to deter environmental degradation. The Act was passed to restrict public and private projects carried out without proper assessment of the impact of such projects on the environment. It is an offence for any person who fails to comply with the provisions of this Act. When a person violates the provisions of the Act, the person will be guilty, and liable on conviction in the case of an individual to N10, 000.00 fine or to five years imprisonment. In the case of a firm or corporation to a fine of not less than N50,000 and not more than N1,000,000.00

The penalty provided by the Act is a very good attempt to protect the environment. It means that if the provisions of the Environmental Impact Assessment Act were fully complied with, environmental degradation by oil and gas company in Nigeria would not have arisen in the first place because assessment would have shown that there would be a very likelihood of environmental degradation. In ***Oronto Douglas v. Shell Petroleum Development Co. Ltd***[99], the respondents were engaged in a project for the production of liquefied natural gas. For the project to take place off,

[98] Cap. E 12 Laws of the Federation of Nigeria, 2004
[99] (1999) 2 NWLR (pt. 59) 466

they were required to do preliminary studies on the impact of the project on the environment as well as comply with the provisions of the Environmental Impact Assessment Act.

The appellant, an activist in the protection of the environment as he claimed, a native of the Niger Delta where there are large deposit of oil and gas, was not satisfied that the respondents had satisfactorily adhered to the provisions of the Act, and hence filed an action against the respondents at the Federal High Court.

The appellant simultaneously filed a writ of summons together with an originating summons claiming in the former, an injunction to restrain the respondents from carrying on with the project until a proper environmental impact assessment had been conducted strictly in accordance with the terms of the said Act.

The 1st – 4th respondents filed a notice of preliminary objection contenting that the appellants lacked the *locus standi* to maintain the action. The trial court up held the respondent's preliminary objection and struck out the appellant's claim on the ground that he lacked *locus standi*. On appeal to the Court of Appeal it was held that the appellant had established an overwhelming case of sufficient interest and therefore has the locus to sue. The Court of Appeal clearly stated per Mustapher, J.C.A.(as he then was) that "…standing to sue in Nigeria today is based on the doctrine of sufficient interest and no longer the narrow principle of pure personal interest" In ***Jonah Gbenre v. Shell Ltd & ors***.[100] the learned judge granted leave to the applicant to institute these proceedings in a representative capacity for himself and for each and every member of the Iweherekan Community in Delta State of Nigeria, and to apply for an order enforcing or securing the enforcement of their fundamental human rights

[100] (2005) Suit No. FHC/B/CS/53/05

and human dignity as provided by sections 33 (1) and 34(1) of the 1999 Constitution of Nigeria, and reinforced by Articles 4, 16 and 24 of the African Charter on Human and Peoples' Right[101] Cap. A9 Vol.1, LFN, 2004. The Court held that these constitutionally guaranteed rights inevitably include the rights to clean, poison and pollution- free healthy environment. The judge further declared that the actions of the respondents (Shell and NNPC) in continuing to flare gas in the course of their oil exploration and production activities, in the Appellant's Community are a violation of their fundamental rights. Furthermore, the judge ruled that the failure of the company to carry out An Environmental Impact Assessment in the said community concerning the effects of their gas flaring activities is a clear violation of the Environmental Impact Assessment Act and has contributed to further violation of the said environmental rights. The judge's order restrained the respondents from further gas flaring and to take immediate steps to stop the further flaring of gas in the community. It is in light of this that the Act in its wisdom provided in section 21 that:

> "(i) *After completion of a screening report in respect of a project, the Agency shall take one of the following courses of action, that is:*
> *(a) Where in the opinion of the agency*
> *(i) The project is not likely to cause significant adverse environmental effects. or*
> *(ii) Any such effect can be mitigated.*
> *The Agency may exercise any power or perform any duty or function that would permit the project to be carried out and shall ensure that any mitigation measures that the agency considers appropriate are implemented…."*

[101] Cap. A9 Vol.1 LFN,2004

It should be stressed at this point that environmental degradation caused by oil companies in Nigeria is can be reduced if appropriate measures are taken. This may be done as noted earlier by cleaning up the affected areas in the case of oil spill or by stopping flaring of gas in cases of gas flaring and provision of adequate compensation to the affected residents.

Common law also seeks to protect the environment in the area of law of torts particularly negligence and nuisance. It embraces the principle of penal regime through the award of damages as punishment for environmental polluters. This is done via the agency of courts. The courts normally pronounce the polluter guilty of the Act of polluting the environment and makes the polluter liable to pay damages to the victims of the pollution. Damages is the penal regime adopted by the common law to punish those guilty of environmental pollution so as to deter polluters from further pollution. The case of *Abiola v. Ijoma*[102] is a very good example. In that case, the plaintiff and the defendant occupied adjoining premises in a residential area in Surulere. The defendant kept poultry at the back of his house as a pastime. In 1969 the defendant purchased four hundred day-old chicks which he kept in the pen erected against the boundary wall which was about five feet from the plaintiff's house. The plaintiff claimed that excessive noise made by the morning disturbed his sleep and that nauseating smells from the pens interfered with his comfort. He sought damages and an injunction to restrain the alleged nuisance. Accordingly, the plaintiff was awarded damages and an injunction restraining further acts of nuisance by the defendant.

[102] (1970) 2 All NLR. 268

The above cited case is a clear example of award of damage as a penal regime adopted by common law as a media of punishment for environmental polluters.

The National Environmental Standard and Regulations Enforcement Agency Act[103] also contains punitive penal provisions to punish offenders of environmental polluters. Section 31 of the Act prescribes a fine of not less than N200,000.00 for an individual and N2,000,000.00 for body corporate on conviction for obstructing an officer of the agency. The section provides further a fine of N2000.00 for individual and N200,000.00 for body corporate on conviction for every day the offence subsist.

It is quiet unfortunate that the Act is not applicable to environmental pollution arising from the activities of oil and gas companies in Nigeria. In fact the Act specifically in subsection 7 (j) (k) of Section 8, and also section 8(k)(l) and (n) excludes environmental protection from environmental degradation arising from the activities of oil and gas companies in Nigeria. For example subsection (j) provides that;

> *"the Agency shall enforce environmental control measure through registration, licensing and permitting systems other than in oil and gas sector".*

Section 8(1) provides *inter alia*

> *"---developmental monitoring net works, compile and synthesize environmental data from all sectors other than in the oil and gas sector at national and international levels."*

It is very clear from the foregoing that the NESREA Act clearly exempted it's self from affording protection and punishing environmental offenders arising from the oil and gas sector.

[103] National Environmental Standard and regulations enforcement Agency (Establishment) Act, 2007

National Oil Spill Detection and Response Agency Act[104] contains penal provisions to punish those who pollute the environment arising from the operation of oil industry in Nigeria. In fact Section 6 (2) specifically provides that;

> *An oil spiller is by this Act to report an oil spill to the Agency in writing not later than 24 hours after the occurrence of an oil spill in default of which the failure to report shall attract a penalty in the sum of five hundred thousand naira (N500,000.00) for each day of failure to report the occurrence".*

The Act stated further in subsection (3) of section 6 that failure to clean up the impacted site to all practical extent including the remediation, shall attract a further fine of one million naira (N1,000,000.00)

This penal provision is very commendable in that the amount fixed as punishment is very good. It is not an amount that the polluter can decide to pay and continue with the pollution. It may deter the would be polluter to some extent.

The Act appears to be the first legislation that truly seeks to protect the environment against oil pollution without considering any other type of pollution other than oil pollution. It actually took the bull by the horn in addressing environmental pollution by oil company.

3.2.6 Environmental Rehabilitation Principles

Environmental rehabilitation principle is a principle that ensures that environment that suffers the fate of pollution, damage or degradation is restored after undergoing some measures. It is in line with this principle that the Second Schedule to section 19(1),(2) and 7(j)(ii) of the National Oil Spill and Detection Agency Act[105]

[104] National Oil Spill Detection and Response Agency (Establishment) Act, No.15 2006.
[105] Ibid

provided in section 1(e) that the Agency shall recommend rehabilitation and restoration methods for the recovery of impacted areas.

The said schedule also provides further that the Agency shall monitor the recovery rates of impacted areas and document for future use and most acceptable methods of clean-up in each ecotype. This is also in line with the rehabilitation principle in the sense that when the impacted sites or areas are clean up, the areas becomes habitable.[106] Hand in hand with the foregoing discussion, the Agency is equally mandated to monitor the effectiveness of cleaned up exercises and advise on least-damaging techniques for quick recovery of impacted areas.[107] This goes without saying that recovered impacted site becomes a habitable place hence the application of rehabilitation principle.

It is also in line with rehabilitation principle that the Act[108] in section 2 of the second schedule provides that the Federal Ministry of Works shall construct temporary or semi-permanent structures and shelters for the resettlement of victims of the oil spill. This section seeks to make available rehabilitation for the victims of oil spill.

Section 6 also embrace this principle of rehabilitation by using the Federal Ministry of Water Resources and Federal Ministry of Agriculture and Rural Development to provide agricultural implements and other inputs to resettle fishermen who may have been put out of business by pollution of fishing water by oil spill.

[106] Section 1(d) Ibid
[107] Section 1(c) Ibid
[108] Op.cit foot note No. 85

It is also in line with the foregoing discussion, that the Act in section 12[109] provides that the Agency shall in conjunction with other Agencies, Non-Governmental Organizations, Industrial Groups, Academic and others offer services in conducting scientific researches alongside government to evolve and devise sustainable clean up strategies and rehabilitation technique. This provision is in line with the principle of rehabilitation. It seeks to provide rehabilitates the environment for victims of environmental pollution in Nigeria.

[109] Ibid

CHAPTER FOUR

INSTITUTIONAL FRAME WORK FOR THE PREVENTION OF ENVIRONMENTAL DEGRADATION BY OIL AND GAS COMPANIES IN NIGERIA

4.1 Introduction

Environmental laws are made for the protection of the environment. The laws without implimentation are of little or no use at all. Laws become law when they are being enforced to achieve the purpose for which they are being made. It therefore means that the mere existence of legal instruments on the environment cannot ensure the protection of the environment. The instrument is enforced by the authority concerned. This is so because the enforcement of the law is very vital especially with respect to the environment. It is an obvious fact that the environment after pollution cannot be reinstated to its former condition once it is damaged[110]. Further still, the environment has no legal voice of its own hence it cannot counter the voice of other entities that have an interest in depleting environmental resources.

In the light of the foregoing, this chapter seeks to critically examine the institutions that are saddled with the responsibilities of enforcing the legal frame work that seek to protect the environment from being polluted by oil and gas companies in Nigeria.

4.2 Clarification of Terms

4.2.1 Legal based Institutional framework for the prevention of environmental degradation by oil and gas companies in Nigeria

[110] Table 6.15 p.229 of chapter 6 of this work

These are Institutions are statutorily created. Examples of these Institutions include; Department of Petroleum Resources (DPR), National Oil Spill and Response Agency (NOSDRA), National Environmental Standard and Regulation Agency (NESREA), Ministry of Niger Delta, Niger Delta Development Commission (NDDC) Federal Ministry of Environment, Attorney General either of the State or of the Federation.

4.2.2 Suplimentary Institutions for the prevention of environmental degradation by oil and gas companies in Nigeria.

These are the institutions that are not created by laws. Examples of such institution is Non Governmental Organisations (NGOs)

4.3 Department of Petroleum Resources (DPR)

The present day department of petroleum resources started as a Hydrocarbon section of the ministry of Lagos Affairs in the early fifties[111] it is the first statutory agency set up to supervise and regulate the petroleum industry in Nigeria with time, the section was up graded to a petroleum division within the then Ministry of Mines and Power. In 1970, the division became the Department of Petroleum Resources (DPR). In 1971, a new body, called Nigerian Oil Corporation (NNOC) was created to engage in commercial activities in the petroleum industry with the Department continue to perform the supervision and control duties in the oil industry[112].

In 1975, the Department of Petroleum Resources was constituted into the Ministry of Petroleum Resources (MPR) after energy matter was excised and transferred to another arm of Government. Through the Proclamation of Decree 33 of

[111] http:www.dprnigeria.com/about-us-html accesssed on 30/05/2011 22:39:41.
[112] Ibid

1977, MPR and NNOC were merged to form the Nigerian Petroleum Corporation (NNPC). The Decree also created the Petroleum Inspectorate as an integral part of the Corporation and granted it a semi-autonomous status, with its head reporting to the Minister of Petroleum Resources, who also doubled as Chairman of NNPC[113].

IN 1985, a new Minister of Petroleum Resources (MPR) was again created, while the Petroleum Inspectorate remained in the corporation and retained its regulatory functions. On the 23rd March, 1988[114] with the commercialization of NNPC, the petroleum inspectorate was excised from the Corporation due to the non-commercial nature of its functions, and merged with the new MPR to form its technical arm.

The Department has continued to oversee all the activities of companies licensed to engage in any petroleum activity in the country, with the objectivity of ensuring that national goals and aspirations are not thwarted, and that all oil companies carry out their operations according to International oil industry standards and practices. The Department keeps records and other data of the oil industry's operations and informs government about all and occurrences in the petroleum industry[115].

4.2.1 Establishment of Department of Petroleum Resources (DPR)

The Department of Petroleum Resource popularly known as (DPR) was established under part II of the Nigerian National Petroleum Act[116] under the name of

[113] Ibid
[114] http:www.dprnigeria.com/about-us-html accesssed on 30/05/2011 22:39:41.
[115] Op. cit
[116] Cap N123, LFN 2004

Petroleum Inspectorate[117]. The Act in section 10 specifically stated that "there shall be established apartment to be known as the petroleum inspectorate which shall, subject to the other provisions of this part, be an integral part of the Corporation".

Section 10(2)(a)and (b) of the Act clearly spelt out the functions of the Department of Petroleum amongst others to include:

(a). Issuing permits and licenses for all activities connected with petroleum exploration and distribution there of and

(b). Acting as the agency for the enforcement of the provisions of the said Acts and any relevant regulations made there under by the minister.

(c). Carrying out such other functions as the minister may direct from time to time.

Other functions of the department of petroleum resources also includes:

(i). Supervising all petroleum industry being carried out under licenses and leases in the country in order to ensure compliance with the applicable laws and regulations in line with good oil producing practices.

(ii). Enforcing safety and environmental regulations and ensuring that those operations conform to national and international industry practices and standards.

(iii). Keeping and updating records on petroleum industry operations, particularly on matters relating to petroleum reserves, production and exports of crude oil, gas and considerate, licenses and leases as well as rendering regular reports on them to government.

[117] section 10, cap N123, LFN 2004

(iv). Advising government and relevant agencies on technical matters and policies which may have impact on the administration and control of petroleum.

(v). Processing all applications for licenses so as to ensure compliance with laid-dawn guidelines before making recommendations to the honourable minister of petroleum resources.

(vi). Ensuring timely and adequate payments of all rents and laities as at due.

(vii). Monitors government indigenization policy to ensure that local content philosophy is achievable[118].

4.2.2 The Director of the Department of Petroleum Resources

The director who is the Chief executive of the department is appointed by the minister of petroleum resources. In fact section 11(1) of the Act[119], specifically provided for this as follows "there shall be appointed by the minister with the approval of the national council of ministers, a person to be the chief executive of the inspectorate to be known by such designation as the minister may determine".

Subsection (2) proceeded to provide that "there shall be appointed by the Corporation such other employees to assist the chief executive officer in the efficient discharge of the functions conferred on him under or pursuant to this Act".

The Act is silent in respect of the qualification of the Director of the Department. However, in practice the department is usually headed by an engineer assisted by six deputy directors in charge of various divisions.

[118] http//www.dprnigeria.com/dpr-roles html
[119] NNPC Act Cap. N123 L.F.N 2004

The staff of the Department are also present at all the crude oil terminals nationwide for the monitoring and supervision of crude oil exports. The Department also maintains its presence at the various, depots and jetties.

The field offices are each supervised by an operation controller who coordinates the day to day operations of the offices[120].

4.3 Prevention of Environmental Degradation by Department of Petroleum Resources (DPR)

The petroleum industry has a complex combination of interdependent operations it ranges from exploration, exploitation, production to transportation and marketing of finished products to consumers. At each stage of these operations, gaseous liquid and solid waste materials are produced and discharged into the environment. These discharged wastes can adversely affect the air, water, and soil if not properly discharged and controlled.

The Department in its to bid protect the environment from pollution by oil operators issued Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN)[121]. This guideline emerged as a result of one of the DPR statutory functions to ensure that the petroleum industry operators do not pollute the environment in the course of their operations. For the Department to effectively carry out these regulatory activities it has been developing Environmental Guidelines and Standards since 1981[122]. The guidelines cover the control of the pollutants from the various petroleum exploration, production and processing operations. It also covers

[120] http://www.dprnigeria.com/management.htmlretrieved on Tuesday the 14th June, 2011 13:46:45
[121] Issued by DPR Lagos, 2002
[122] Juril Aminu, Fordward for environmental Guideline and standards for the petroleum industry in Nigeria (EGASPIN), Lagos 2007.

environmental control of various petroleum activities in Nigeria, including, terminal operations, hydrocarbon processing plants, oil and gas, transportation and marketing.

In the area of exploration and development operations Part II of the guidelines provides for environmental management. It makes it mandatory for an operator to obtain environmental permit from the Department before Seismic and Drilling Operations can commence in Nigeria[123]. This will go long way to prevent environmental degradation. Section 3.1.1 of part II set a limitation for effluent exploration so as to control the quality and quantity of industrial effluents associated with oil drilling. The DPR tried to ensure that the discharge of the effluent do not cause any hazard to human health and living organisms (Fauna and Flora) and do not impair the quality to use adjacent surface waters, land and ground water[124]. The guideline in section 5[125], provided for spill prevention and counter measures plan. It states that drilling operations shall have comprehensive spill prevention and counter measures plans, approved by the Director of Petroleum Resources.

The Department also tried to ensure clean and healthy environment by providing for clean-up of oil spill this is provided for in section 5.1.2.1 of the same part as follows "clean-up efforts all inland and near shore spillages of crude oil, products and chemicals, shall be subjected to clean-up certification as provided in the oil/chemical spill contamination clean-up certification forms. To ensure compliance, the Department provided for sanctions in section 7 of the guidelines, as provided for in section 4 of the enforcement powers and sanctions that "(a)All avoidable spillages,

[123] Section 23 part II EGASPIN, 2002
[124] Ibid
[125] Ibid

when they occur shall attract a royalty not less than ₦500,000 to be deducted at source and additional fine of ₦100,000 for every day the offence subsists;

(a). The spiller (operator or owner of vessel) shall pay adequate compensation to those affected and;

(b). The spiller shall restore/remediate the polluted environment to an acceptable level as shall be directed by the Director of Petroleum Resources".

It finally provided that "When the effluent quality of discharge is exceeded by twenty (20) percent of the allowed daily/monthly average concentration per parameter a fine of N5,000.00 for every $50m^3$ of water discharged is imposed. In addition upon conviction an imprisonment for a term not exceeding 2 years shall apply for a first offender[126]. Section 4.7.1 provides that "any person body corporate or operator of a vessel or facility who persistently violates the provisions of these guidelines and standards shall have his lease, license and/ or permit revoked.

From the foregoing it is very clear that the DPR is very serious in the bid to protect the environment from being polluted from exploration of oil by the operator's oil company. The measures taken by DPR will go a long way to checkmate oil operators and reduce the likelihood of environmental degradation.

In area of production operations, the same measures as discussed above, is embarked upon by DPR so as to ensure that the environment is not degraded in the course of production of oil by the operators. For example spill control measure and clean-up is equally put in place, so also the issue of compensation to those affected by the spillage. Another serious challenge that is addressed by the guideline is the issue of gas flaring. Infact the guideline prohibited gas flaring, but however, allows it under

[126] Section 4(6) (2) 8 (3) Ibid.

certain conditions. The guideline provides interalia; "gas flaring is prohibited. However, should the licensee/operator be constrained to flare gas, the following conditions shall be met;

(i). An appropriate waiver and a permit to flare the gas shall be issued by the Director of Petroleum Resources.

(ii). The flared gas shall attract appropriate fine for every standard cubic meter flared in accordance with existing laws…

(iii). Pre-treated 'clean' gas shall be burnt and the flare shall be luminous and bright. i.e. show complete smokeless combustion at operating gas flow rate. The relative density of emitted smoke shall not exceed to 40% of smoke density and 60% of light transmission through smoke-observed over a period of one(1) hour.

(iv). The allowable heat radiation of 60m from the base of the flare.

The DPR has put in place spill prevention measure so as to check and control oil spillage during production operation. It is in this regard that the Department provided for a joint spillage investigation team comprising of operator, community and DPR so that the team can monitor and report any spillage for prompt action.

To ensure compliance, the Department made provision for sanctions ranging from payment of fine, imprisonment and revocation of license or permit[127] for want of compliance.

The Department seeks to protect the environment in terminal operations. Thus crude oil produced is stored, dehydrated fiscalised and piped or exported to and/or from tank farms terminals. These activities requires installations of major facilities-

[127] Op. Cit

storage tanks, pumping equipment, dehydration equipment, water treatment equipment, loading system etc which must be operated efficiently and according to accepted standards. The major consequence of inflector malfunctioning of the operations is the discharge of oil and oily wastes thereby polluting land, water ways, marine and offshore environments. It is for the intention of controlling this and other forms of associated environmental pollution that these criteria for standards and of guidelines are made[128].

To prevent environmental damages during hydrocarbon processing operations, such as petroleum refining, the Department has provided measures for it. Petroleum refining, is a process that consist of a complex combination which concerned with separation of crude molecular constituents molecular cracking, molecular rebuilding and solvent finishing[129]. In the course of Petroleum refining, a complex array of gaseous, liquid and solid effluents are discharged. The discharges must however, be carried out of under controlled conditions to avoid environmental damages.

The Department of Petroleum Resources also tried to secure a clean and healthy environment during hydrocarbon processing operation. This is process whereby Liquefied Petroleum Gas (LPG) is obtained from petroleum refining and extraction of natural gas. Natural gas primarily consists of methane and other hydrocarbon which exist in the gaseous state. It may be produced in association with crude oil or in it own right (non-associated). The LPG and natural gas must both be treated before they are used as efficient fuel sources. During these processes an array gaseous liquid and solid wastes are emitted or discharged. The discharges of these

[128] Op. cit
[129] Op. cit

wastes must be controlled if environmental degradation resulting from the process must be minimized[130]. It is in line with this that the DPR under the guideline prohibited the disposal of NG LNG and LPG wastes into unsecured land, public drain and sewer.[131] The guideline provided conditions for which an operator may be allowed to dispose or discharge waste, be it waters or solid:

i. That the quality and quantity of the discharge shall not cause hazards to human health.

ii. That it shall not cause harm to living organism (fauna and flora) and

iii. That it shall not impair the quality to use the adjacent land and water[132].

The guideline also seeks to control the emissions of gaseous contaminant from the NG, LNG, LPG, and GC&P plants which comprise of particulate matter/dust, hydrocarbons carbonmonoxide, nitrogen and sulphur oxides, mercury, some organic etc. The guideline prohibits the emission of such substances directly into the atmosphere. On the other hand, it provided for conditions under which an emission of the substance would be allowed to be discharged.

(i). That the total quality or rate of the discharge or the total quantity to be discharged, or a meaningful combination of these, render the discharge acceptable;

(ii). That the net benefit from consideration of ecological social and economic factors, of allowing the exemption to discharge outweighs that of refusing it.

[130] Environmental guidelines and standards for petroleum industry in Nigeria (EGASPN) Issued by DPR. Lagos 2002 p. 105.
[131] Ibid at page 110.
[132] Ibid

The Department also made it a condition that an operator whose NG/LNG/LPG/GC&P operations have been observed to cause significant and adverse environmental effects and impacts, shall be required to prepare a post impact environmental evaluation report this is done in a bid to protect the environment from degradation by the operators. By this action, the report will show the impact of the operation on the environment whether negative or positive. This will enable the Department to take any necessary actions against the operators.

To ensure compliance, the guidelines stipulated penalty for an operator who violates the guideline to include payment of adequate compensation to those affected, and also the spiller shall restore or remediate the polluted environment to an acceptable level as shall be directed by the Director of Petroleum Resources.

The environment also stands the risk of being polluted in the course of hydrocarbon processing operation by an operator. Thus finished petroleum products such as petrol engine oil, diesel engine oil, hydraulic oil etc are necessities in the present day automobile transportation industries. However the processes of manufacturing them are not devoid of environmental pollution which the Department seeks to control and manage. It is in line with this, that the guideline prohibited the disposal of petroleum refining wastes on unsecured land, public drain and sewers.

Oil and Gas transportation also poses risk of degradation to the environment. Transportation of hydrocarbons by pipelines, barges, ships, road tankers, rail wagon etc. do cause pollution problem to the environment. Cases of oil spillages and pollution caused by damaged pipelines, leaking barges, ships and accidental road tankers are very common. The Department deems it necessary to put in place

measures to control the practices that cause this type of environmental pollution, so as to reduce its impact on human health, other living organisms and properties. Under the guideline, it shall be mandatory for licencee or leasee to prepare an Environmental Impact Assessment report for crude oil and gas delivery line, flow line and pipeline in excess of a total of 20 kilometers in North. The guideline made inspection of pipe lines compulsory. That all pipelines and flow lines for crude and petroleum products including gas shall be patrolled and inspected, once in every month or otherwise as approved by the Department of Petroleum Rsesources[133].

The guideline also provided for measure to prevent oil spill. It provide that, pipeline licencee, operators of barges, ship, FPOs, road tankers and rail wagons shall have spill prevention and counter measures plan for crude oil and petroleum products including gas as approved by the Director of Petroleum Resources[134]. In addition to the foregoing, the guide lines provided for clean up in the event the environment is polluted by oil spill. That the environment shall be cleaned up, and report to the Department in the case of oil spillage. The sanction provision is of uniform application i.e. payment of fine payment of compensation, clean up and revocation of license or permit as the case may be.

In areas of marketing operations such as depots operation, DPP has taken measures to ensure that the environment is kept free from pollution arising from spillage as a result of storage failure usually petroleum products are stored in bulk in strategic depots all over the country. The depots are linked with a network of pipelines. The facilities provided for storing large volumes of liquids and gases are

[133] Ibid at p. 132
[134] Ibid at p. 136

classified either as closed-storage vessels or open-storage vessel. Close-storage vessels are storage facilities that are enclosed, they include fixed roof tanks, pressure tanks floating roof tanks and conservation tanks, while open storage vessels are opened storage facilities and then include open tanks, reservoirs pits and pounds in Nigeria, the storage vessels are of the closed type and some have capacities in excess of 150,000 barrels. If the tankers are tempered with and leakage occurs as a result of the tempering, the environment is exposed to be polluted. To avoid such an act, the guideline in part Vii, A 4.2.1 provided that the depot shall be fenced round preferably with masonry wall made of concrete to a height not less than two and half metres, in order to prevent access to unauthorized persons to avoid fire from getting to the depot, the guide line made it a most for the depot operators to provide for fire break around the wall. The bound wall, approximately one metre high and having a trapezoidal cross-section to be built around bulk storage tanks in order to control any oil spillage[135]. Another pollution control measure provided by the guide line is the provision part of VII section 4.7. That the final disposal of waste shall be such that it does not constitute a pollution threat to inland waters, rivers and ground water to the satisfaction of the Director of Petroleum Resources. This provision will no doubt if complied with will protect the environment against pollution. If petroleum waste is discharged onto land water, rivers or ground water will no doubt pollute the environment the section therefore seeks to protect the environment. Section 4.1.5.1 of the same part[136], also provided that depot operator shall have crude oil products spill prevention and counter measures plan, approved by the Director of Petroleum

[135] See Part VII, A. 4.2.2. of the Guideline
[136] Part VII of the Guide

Resources. SectionA.4.1.5.1 of the guideline provided for reporting and clean-up of any oil spillage. This is also calculated at protecting the environment if there is oil spillage, and there is prompt report and immediate clean-up of the impact of the spillage will be grossly reduced. It is sad to note that there is no sanction provided for under this part of the guide line. Invariably, it means that if a depot operator violates any of the provisions of the guide under part VII^{A} no punishment will be meant on the violator. This is very unfortunate.

In retail outlets operation the environment stand the risk of being polluted through the activities of the operators. Retail outlets are the major facilities for dispensing petroleum products to the consumers. These outlets can be seen along every high way, major roads and streets throughout towns and villages of Nigeria and at jetties and public water side[137]. A retail outlet may have a mechanic workshop e.g. service bay. The petroleum products are usually dispensed from underground storage tanks through the use of pumps and dispensers. These underground service tanks and mechanic workshop are the major sources of pollution which need to be contained and controlled.

To ensure healthy and safe environment at retail outlets, the Department of Petroleum Resources directed that the outlets shall institute planned and integrated environmental management practices, aimed at ensuring that unforeseen, identified and unidentified environmental issues are contained and brought to an acceptable minimum[138].

[137] Ibid
[138] Ibid at S. 54.1

Section 42[139] spelt out pollution control measures. It provides that "underground tanks should be buried not less than seventy centimeters below the ground level"[140]. Another measure undertaken by the Department to ensure environmental safety at the outlet, is corrosion control measure the guideline provided *interalia* that the underground tanks should be tested for leakage[141], and that the underground tank should be subjected to both pressure test and leak detection every five years[142]. The guideline also made provision for spill prevention and counter measures plan by providing that all retail outlets shall have petroleum products chemicals spill prevention and counter measures plan as approved by the Department of Petroleum Resources[143]. The likely violators are to pay fine of ₦500,000 and additional fine of ₦100,000 per day for as long as the violation persists[144]. In addition, the spiller shall pay adequate compensation to those affected by the spill and that the spiller shall restore the polluted environment to an acceptable level as shall be directed by the Director of Petroleum Resources[145].

From the totality of the foregoing discussion, it is very clear that the Department of Petroleum Resources really mean business in terms of environmental protection. The Department really placed measures on ground to see that the operators in the course of exploring, exploiting, refining, transporting or marketing should ensure that environmental safety is not compromised at all. This is a commendable

[139] of the guideline
[140] Section 4.2.1 of the guideline
[141] Ibid at S. 4.2.1.1
[142] Ibid at 5.4.2.1.2
[143] Ibid S. 4.6.1
[144] Ibid at S. 4.6.2
[145] Ibid at S. 4.6.2 (c)

effort on the part of Department of Petroleum Resources. This may account for less environmental pollution at the outlet level in Nigeria.

4.4 National Oil Spill Detection and Response Agency (NOSDRA)

Environmental laws are made for the protection of the environment. The laws would be meaningless if they are not implemented, in other words it would be as good as not having the laws in existence at all. It is because of this obvious fact that National Oil Spill Detection and Response Agency was established by the Federal Government to oversee the implementation and enforcement of the environmental law that seeks to protect the environment from degradation by the operators of oil companies in Nigeria.

4.4.2 Establishment of the National Oil Spill Detection and Response Agency

Section 1(1) of the National Oil Spill Detection and Response Agency (NOSDRA) Act[146] provided for the establishment of the Agency. It provided that "There is established an Agency to be known as the National Oil Spill Detection and Response Agency (in this Act referred to as "Agency"). NOSDRA is a parastatal under the Federal Ministry of Environment, Housing and Urban Development established by an Act of the National Assembly on the 18th day of October, 2006 as a body Corporate with perpetual succession and a seal, which may sue and be sued in its corporate name[147]. NOSDRA is vested with the responsibility to co-ordinate the implementation of the National Oil Spill contingency plan (NOSCP) for Nigeria in accordance with the international convention on Oil Pollution Pre-paredness,

[146] National spill Detection and Response Agency Act, 2006
[147] Section 1(2) (a&b) of the NOSDORA Act No 72 2006

Response and Co-operation (OPRC) 1990, to which Nigeria is a signatory[148]. NOSDRA is also mandated to play the lead role in ensuring timely, effective and appropriate response to oil spills, as well as ensuring clean-up and remediation of all impacted sites to all best practical extent. NOSDRA shall also identify high risk priority areas in the oil-producing environment for protection as well as ensuring compliance of oil industry operators with all existing environmental legislations in the petroleum sector[149].

4.4.3 Composition of the National Oil Spill Detection and Response Agency.

Sections 2 (1) of the Act[150] established the governing board of the Agency. It provides that "There is established for the Agency a Governing Board to be known as the National Oil Spill Response Governing Board (in this Act referred to as "The Governing Board") which shall be responsible for the formulation of policy for the Agency and act in Governing Board capacity to the Agency in the exercise of any of the functions conferred on the Agency and the Director General by this Act".

Subsection (2)[151] provides for composition of the board thus "the Governing Board shall consist of:

(a). A Chairman
(b). One representative each of the following Federal Ministries not below the rank of Director:
(i). Environment.
(ii). Defence
(iii). Petroleum Resources
(iv). Transport
(v). Aviation (Department of Meteorology)
(vi). Communications
(vii). Housing and Urban Development

[148] http://earthwatchmagazine.comgeneratedon12april,2010,08:23
[149] Ibid
[150] NOSDORA Act No. 72, 2006
[151] Ibid

(viii). The Nigerian Police
(ix). Oil Products Trade Section of Lagos Chambers of Commerce (OPTS).
(x). Agriculture and Rural Development
(xi). Water Resources and
(xii). Institute of Oceanography and Marine Research

From the above, the board members are thirteen (13) in number drawn from the various sectors, a careful study of the membership shows seriousness for the concern of the environment. The members appear to be stake holders of environmental concern however some representative is not really necessary for example, what is the representative of Defence on the board? Their presence is not of any significant. The present of the representative of police is enough because it is the police that do the enforcement of the law. The decision of the board can be enforced with the assistance of the Nigerian police. The nation is not at war therefore there is no need for the representative of the defence on the board. Recent happening in the oil industry suggest that a representative of Civil Defence Corps should be on the board. The Act establishing the corps i.e. Civil Defence Act[152] empowers them to fight pipeline vandalism. So their presence on the board is very necessary.

The Director – General of the Agency is by virtue of the provision of subsection (3) a Member and Secretary of the Governing board. This provision is quite commendable because, the Director General of the Agency who sees to the day to day running of the Agency will actually know the challenges of the Agency he will be in a very good position to advise the Governing Board as to how best to formulate policies to meet the challenges confronting the Agency in the discharge of its functions and duties.

[152] 2003 No. 2

The appointment of the Chairman and other members of the Governing Board is to be done by the President of the Federal Republic of Nigeria on the recommendation of the Minister of Environment[153]. In other word it is the person that the minister thinks that can handle the job that he will recommend to the President for the purpose of being appointed as members of the Governing Board. This would have been a very good method of getting the right members on the board. But the problem of politics may not allow for the best hands to be appointed. Rather may be used as a way of compensation. At long run it does not produce the best result. In other words, the essence of establishing the Agency will not be achieved at all because of the composition of the Governing Board who may not really know the essence of establishing the Agency. Their presence on the Board is to satisfy their personal interest and not really for the success of the Agency.

Section 3 of the Act[154] provided for the tenure of the office of the Chairman and Members of the Governing Board. It provides that "The Chairman and Members of the Governing Board shall each hold office for a period of four (4) years in the first instance and may be re-appointed for a further term of four years and no more". Subsection (2) of section 3 speaks of resignation of membership. It provides that "a member of the Governing Board may resign his membership by notice in writing addressed to the president through the Minister and that member shall on the date of the receipt of the notice by the president, cease to be a member". Section 4 of the Act discussed cessation of membership; Section 4 (1) provides the answer in the following terms. "A member of the Governing Board may at any time be removed by the

[153] See section 2(4) of the Act
[154] NOSDRA Act, 2006

president for inability to discharge the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misconduct or if the president is satisfied that it is not in the interest of the Agency or the interest of the Public that the member should continue in office". Subsection (2) provides for the filling of a vacant seat. It provides that "where a vacancy occurs in the membership of the Governing Board, it shall be filled by the appointment of a successor to hold office for the remainder of the tenure of office of his predecessor, so however that the successor shall represent the said interest as his predecessor and be appointed by the president on the recommendation of the minister".

The foregoing provision is very clear, that the President has the power to appoint and remove re-any member of the Government Board.

4.4.4 Objectives of the Agency

The Agency was established with a desire to achieve some objectives. The objectives of the Agency are provided for in Section 5(a) to (n) of the Act. The Act[155] provides that the objectives of the Agency shall be to co-ordinate and implement the National Oil Spill Contingency Plan for Nigeria (in this Act referred to as "the plan") as follows:

> *(a). Establish a viable National Operational Organization that ensures a safe, timely, effective and appropriate response to major or disastrous oil pollution;*
> *(b). Identify high risk areas as well as priority areas for protection and clean-up;*
> *(c). Establish the mechanism to monitor and assist or where expedient direct the response, including the capacity to mobilize the necessary resources to save lives, protect threatened*

[155] Section 5

environment, and clean-up to the best practical extent of the impacted site;

(d). 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;

(e). Ensure funding and appropriate and sufficient 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;

(f). Provide a programme of activation training and drill exercises to ensure readiness to oil pollution preparedness and response and the management and operational personnel;

(g). 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;

(h). Provide support for research and development (R&D) in the local development of methods materials and equipment for oil spill detection and response;

(i). Co-operate with the International Maritime organization and other national, regional and international organizations in the promotion and exchange of results of research and development programme relating to the enhancement of the state-of-the art of the oil pollution preparedness and response including technologies, techniques for surveillance, containment, recovery, disposal and clean-up to the best practical extent;

(j). Establish agreement with neighbouring countries regarding the rapid movement of equipment, personnel and supplies into and out of the countries for emergency oil spill response activities;

(k). Determine and preposition vital combat equipment at most strategic areas for rapid response;

(l). Establish procedures by which the Nigerian Customs Services and the Nigerian Immigration Services shall ensure rapid importation of extra support response equipment and personnel;

(m). Develop and implement an appropriate audit system for the entire plan, and

(n). Carry out such other activities as are necessary or expedient for the full discharge of its functions and the execution of the plan under the Act.

Having carefully seen the objectives of the Agency, the question that would readily come to mind, would be is the Agency achieving the objectives for which it is established? One of the main objectives of the Agency is to establish a viable national operational organization that ensures a safe, timely, effective and appropriate response to all oil pollution in Nigeria.

It is very doubtful if the Agency has been very timely and effective in their response to oil spill in fact the Agency response to oil spill has been very slow. The agency does not response appropriately to oil spill because of the late response, if they eventually respond at all, that result in negative impact on the environment as discussed in chapter two (2) of this work. The environment has been degraded as a result of oil spill, which have been left unclean[156].

Another main objective of the Agency is to identify high-risk as well as priority areas for protection and clean up. The question is how far has the Agency achieved this objective? The answer is not far- fetched. The Agency has not done much in this area. If the Agency has done well in this area, the issue of oil spill would have been

[156] See tables 6.9,6.12,6.18, and 6.19, of chapter 6 of this work

minimized to a very low level. But this is not the case hence there are rampant cases of oil spill which result to environmental degradation[157].

To establish the mechanism to monitor and assist or where expedient direct the response, including the capacity to mobilize the necessary resources to save lives, protect threatened environment and clean up to the best practical extent of the impacted site, is also another main objective of the Agency. This objective is yet to be addressed by the Agency because the equipment is yet to arrive into the country[158]. If the equipments are yet to arrive in the country it presupposes that the Agency has a long way to go to strive to achieve this objective because without the equipment there is nothing that can be done about it. It also mean that the risk to lives and the threaten environment will have to continue in the way it has been.

In summary, the reasearcher is of the view that the Agency has not been able to achieve the set objectives it is the writer's hope that the Agency is aware of this fact and therefore need to sit up and tighten its belt so that it can achieve the set objectives.

4.4.5 Functions of the Agency

The functions of the NOSDRA are specifically spelt out in section 6 of the enabling Act. The section provides as follows:

Section 6(1) the Agency shall;

> *(a). Be responsible for surveillance and ensure compliance with all existing environmental legislation and the detection of oil spills in the petroleum sector;*
> *(b). Receive reports of oil spillages and co-ordinate oil spill response activities throughout Nigeria;*

[157] See table
[158] NTA Network News, Interview with the DG of the Agency on the 08/07/2011

(c). Co-ordinate the implementation of the plan as may be formulated from time to time, by the Federal Government;

(d). Perform such other functions as may be required to achieve the aims and objectives of the Agency under this Act or any plan as may be formulated by the Federal Government Pursuant to this Act.

The functions of the Agency as set out in the enabling law are quite clear and direct to the point. But my worry is that of ensuring compliance with all other existing environmental legislation. I wonder if it will be possible to perform this function. As stated in the problem of this research *interalia*, the problem of scattered environmental legislation. The environmental legislation are so scattered that it will be difficult for NOSDORA to effectively study them and ensure their implementation. This will be a serious challenge to NOSDERA in the discharge of its functions.

A part from this, with the right personnel and manpower it would not be difficult for NOSDORA to effectively carry out its functions as contained in the Act.

In addition to the foregoing section 7(a-g) provides for the Agency special functions as follows:

the Agency shall;

(a). Ensure the co-ordination and implementation of the plan within Nigeria including within 200 nautical miles from the baseline for which the breath of the territorial waters of Nigeria is measured;

(b). Undertake surveillance, reporting, alerting and other response activities as they relate to oil spillages;

(c). Encourage regional co-operation among Member State of West African sub-region and in the Gulf of Guinea for combating oil spillage and pollution in our contiguous waters;

(d). Strengthen the national capacity and regional action to prevent, control, combat and mitigate marine pollution;

(e). Promote technical co-operation between Nigeria and member states of the West Africa-sub-region;

(f). Facilitate;

(i). The arrival and utilization in and departure from Nigeria of ships, aircrafts and other modes of transport engaged in responding to oil pollution incidents or transporting personnel, cargo, materials and equipment required to deal with such an incident, and;

(ii). the expeditious movement into, through and out of Nigeria of personnel, cargoes, materials and equipment;

(g).(i). The National Control and Response Centre shall for the purposes of Tier 3 oil spill response undertake such functions as specified under section 20 of this Act, and;

(ii). The Director-General shall have the power to co-operate all the Government Ministries and Agencies mentioned under the second schedule to this Act, in the management of a tier 3 or a major tier 2 oil spill.

The special functions of NOSDORA as stated above no doubt tends to over burden the Agency with functions that it will not carry out effectively, this second limp of the Agency functions seems to deal more with International Communities than at the National level. The question here is how far have the Agency discharged it functions at the domestic level left alone at the international level. The writer hope that the Agency is not biting more than it can chew.

Despite the above observations, NOSDRA has been up and doing to see that it justified what it has been taking from Government just as the old saying goes "to whom much is given much is expected". This may not be completely so in NOSDRA's case but it has it tried. For example NOSDRA and other regulatory

agencies carried out a post impact assessment on the recent oil spill on one of Mobile Producing Nigeria (MPN) off shore pipelines in Ibeno, Akwa Ibom state[159] NOSDRA has also identified the Nigerian Agip Oil Company (NADC) and Shell Petroleum Development Company (SPDC) as the worst Oil spilling companies in Nigeria[160].

Also not too long ago[161], NOSDRA ordered pipelines and products marketing company (PPMC) to pay ₦1million fine over failure to respond quickly to an oil spill incident[162]. The incident pollute the environment in Upgbodede Community, Okere-Warri, Delta State. PPMC, a subsidiary of the Nigerian Petroleum Corporation (NNPC), was also directed to immediately "contain, recover and cleanup the impacted sites"[163]. Consequent to this, failure of the company to clean-up the sites within a reasonable time, which is a contravention of Section 6 (3) of the NOSDRA Act, the Agency penalized it with a fine of One Million Naira to be paid within 14 days. From the foregoing NOSDRA cannot be completely described as a toothless bull dog.

4.4.6 Appointment of Director General and other Staff of the Agency

The Director General of NOSDRA is the person that is responsible for the day to day running of the Agency. His appointment is made by the president on the recommendation of the Minister of environment[164]. His is the Chief Executive and accounting Officer of the Agency he is also saddled with the responsibility of the execution of the policy of the Agency[165]. Section8(3) of the Act peg the minimum years of experience of a person to be appointed as a Director General of the Agency to

[159] http//akmaibomprofessional.com/news/0000064/12/2010
[160] http://thenationonlineeng.net/web2/articles/21/649/1/Agip-shellare-Nigeria-worst-oils4/12/201
[161] 13/January,2010
[162] http://allafrica.com/stories/20/001130627.html4/12/2010
[163] Ibid
[164] See S.8(1) of NOSDRA Act. Op. cit.
[165] Ibid

be 10 years cognate experience on environmental matters. Interestingly subsection (4) of Section 8 of the same Act stipulate 4 years as tenure of Director General and that he may be reappointed for a further term of 4 years and no more.

The provision of section 8 no doubt is very clear as regards the appointment, experience and tenure of the office of the Director General of the Agency. The researcher's concern is on recommendation of the minister for the appointment of both the Chairman of the Governing Board and the Director General of the Agency and other members.

Invariably, it means that the minister has a saying on who will be the Chairman and others Members of the Governing Board and also on who is to be appointed the Director General. The implication is that the board is under the control and supervision of the Minister. Both the Board Members and the Director General would not want to offend the Minister, therefore whatever the minister wants will have to be done for him as a mark of loyalty to him. This may hinders the Agency to fully attain the objectives of the Agency because some issues may be compromised.

4.5 Ministry of Niger Delta Affairs

This Ministry was created by late president Musa Umaru Yar'Adua on 10th September, 2008[166]. The late president created the Ministry of Niger Delta Affairs to serve as the Primary Vehicle for the delivery of his administration's agenda for the rapid socio-economic development of the region.[167] The ministry was created to

[166] http://www.nigeriacompass.comlindx.php?option.com.9/15/2011
[167] http.//allafrica.com/stories/200809/20002.html.3/7/2010

coordinate government's efforts to tackle the challenges of infrastructural development, environment protection and youth enforcement in the region.[168]

The Ministry has a minister in charge of development of Niger Delta area and a minister of state in charge of youth empowerment.[169] The existing Niger Delta Development Commission (NDDC) was to become a parastatal under the ministry.[170]

The Movement for the Emancipation of the Niger Delta (MEND) cautioned the Government over the creation of the ministry saying that the ministry could be used as an avenue for corruption and political favoritism.[171] They feared that the ministry will not be the panacea for the problems at hand, it therefore advise the people of the region not to allow the over five decades of neglect to push them into embracing what would not be useful at the end of the day.

The militant group said its position stemmed from many moribund ministries which are in existence but did not improve the fortunes of the Niger Delta. MEND opined further that the creation of Niger Delta Ministry is not the coming of the much awaited messiah. Nigeria has in existence, ministries over 40 years old which have not positively impacted on the people. It said that "some example of moribund ministries include Energy; with its epileptic power supply, Health, with hospitals that have turned to dispensing Clinics such that even the president prefers to be treated in Saudi Arabia or Germany, Works and Transport; responsible for the untimely deaths and a maiming of road users due to poorly maintained roads and bridges in spite of availability of funds Education; with elite losing confidence that their children study

[168] Ibid.
[169] Ibid.
[170] Juliana Taiwo "Yar'Adua creates Ministry of Niger Delta. This Day. http:a//allafrica.com/stories/200809110015.html. retrieved 2007/12/26
[171] Ibid.

in foreign tertiary Institutions, special duties; with a minister that has been made redundant that he spends his time in office watching television. The list is endless[172]

It is very clear from the foregoing that the Niger Delta people did not really welcome the creation of the Ministry of Niger Delta. It is asserted that the Ministry was created at a national concern as a measure of placating the restive youths of the area. That it serve a political purpose of peace at that time but has now become a counterproductive measure.[173] The existences of the two bodies, invariable result in overlap in the discharge of their responsibilities. It is in the light of this, that many Nigerians argued that the creation of the Ministry of Niger Delta Affairs is superfluous, given the fact that the NDDC is sufficiently empowered by law to address the issues in the region.[174] It is also in view of this that the former Minister of the Federal Capital Territory Mallam Nasir El-Ruffai said "The creation of the Niger Delta Ministry is a political gesture and unnecessary bureaucracy that will fail to solve the problems facing the troubled region."[175]

The allegation of non-performance and duplication of ministry seems to carry the order of the day. The region has not change for good since the creation of the ministry. The Ministry has not made any concrete effort to tackle environmental protection. Oil spill and gas flaring which are the major mediums of environmental degradation is still on the increase.

[172] Op cit.
[173] http://www.nigeriancompass.compass.com/index.php?option.com.k2&view=itemsed=2169:effecti...9/15/2011
[174] Ibid.
[175] Nigeriamastermeb.com/com/blog/index.php/20111/09/08.nigeria-Niger-deltaministryvsnddc.

4.6 The Niger Delta Development Commission (NDDC).

The Niger Delta Development Commission is a Federal Government Agency established by President Olusegun Obasanjo in the year 2000.[176] With the establishment of Niger Delta Ministry, NDDC became a parastatal under the Ministry of the Niger Delta.

NDDC was established under Section 1 of the enabling Act.[177] "There is hereby established a body to be known as the Niger – Delta, Development Commission (in this Act referred to as "the Commission') in other word Section 1 of the Act gave birth to the Commission without S.1 there would be no commission at all. Sub section (2) (a) of the Act provides that the NDDC shall be a Body Corporate with perpetual succession and a common seal, while (2) (b) provides that the Commission may sue and be sued in its Corporate name. In other words the commission can bring a legal action against anybody, organization etc in the law court and also anybody, organization etc can also bring an action against the commission.

Subsection (3) of the Act[178] provides for the head office of the commission. It provides that "the commission shall have its head office in Port Harcourt Rivers State and shall establish an office in each member state of the commission." The member states of the commission are (i) Abia State, (ii) Akwa Ibom State (iii) Bayelsa State (iv) Cross River State (v) Delta State (vi) Edo State, (vii) Imo State (viii) Ondo State and (ix) Rivers State.[179]

[176] Ibid
[177] Niger Delta Development commission establishment Act, Cap. N86, 2004.
[178] Ibid.
[179] Ibid section 2(1) (b)

4.6.1 Establishment of the Governing Board of the Commission.

For effective management and supervision of the commission, the Act in Section 2(1) established the Governing Board of the Commission. It provides that "There is hereby established for the commission a Governing Board (in this Act referred to as "the Board') Sub-Section (1) (a-h) of the same Act provides for the members of the Governing Board as follows:

(a) a chairman
(b) a person who shall be an indigene of an oil producing area to represent each member state.
(c) three persons to represent non-oil mineral producing states provided that such membership should be drawn from the remaining geopolitical zones which are not represented in the Commission;
(d) One representative of oil producing companies in the Niger-Delta nominated by the oil producing companies.
(e) One person to represent Federal Ministry of finance
(f) One person to represent Federal Ministry of Environment.
(g) the Managing director of the Commission and
(h) two Executive Directors.

The members of the Governing Board are many in number. The feasible problem is that most of them will be struggling for contract to be awarded to their private company. It means that a lot of contract will suffer as a result of improper supervision. When the researcher visited the headquarters of the Commission,[180] it was discovered that most of the contracts were awarded to the board members, and that most of the contract were not properly executed and mostly not within the time limit. Awarding of contract were compromised, professionalism was also compromised. The Board Members were highly favoured in the award of the contract.

[180] On the 19th July, 2011.

As many members of the Board, so are numbers of the contractors. Section 8 of the Act[181] empowered the Board to:

> *(a) Manage and supervise affairs of the Commission*
> *(b) Make rules and regulations for carrying out the functions of the commission.*
> *(c) Enter and inspect premises, projects and such places as may be necessary for the purposes of carrying out its functions under the Act:*
> *(d) Pay the staff of the commission such remuneration and allowances as appropriate,*
> *(e) Enter into such contracts as may be necessary and expedient for the efficient performance, of the functions of the commission.*

The Board is empowered by section 8 of the Act[182] to ensure that the purpose of establishing the commission is achieved. It is sad to note that the Board is more interested in the award of contracts than ensuring that the core objectives of the commission i.e. tacking ecological problems which arise from the exploration of oil minerals in the Niger Delta area, is achieved.

4.6.2 Functions and Powers of the Commission

For the Commission to effectively achieve the objectives for which it was established, section 7 of the enabling Act[183], provides the Commission with sufficient functions and powers. In other words the Commission is armed and directed by the Act. It is in line with this that section 7 provides as follows:

> *(1) The Commission shall;*
> *(a) Formulate policies and guidelines for the development of the Niger-Delta area.*
> *(b) conceive, plan and implement, in accordance with set rules and regulations, projects and programmes*

[181] Op cit.
[182] Ibid.
[183] Ibid.

for the sustainable development of the Niger-Delta area in the field of transportation, including roads, jetties, and waterways, health, education, employment, industrialization, agriculture and fisheries, housing and urban development, water supply, electricity and telecommunications.

(c) cause the Niger-Delta area to be surveyed in order to ascertain measures which are necessary to promote its physical and socio-economic development;

(d) Prepare Master plans and schemes designed to promote the physical development of the Niger-Delta area and the estimates of the costs of implementing such master plans and schemes;

(e) Implement all the measures approved for the development of the Niger-Delta area by the Federal Government and the Member States of the Commission.

(f) Identify factors inhibiting the development and implementation of policies to ensure sound and efficient management of the resources of the Niger-Delta area;

(g) Assess and report on any project being funded or carried out in the Niger-Delta area by oil and gas producing companies and any other company including non-governmental organsations and ensure that funds released for such projects are properly utilized.

(h) Tackle ecological and environmental problems that arise from the exploration of oil mineral in the Niger-Delta area and advise the Federal Government and the Member States on the prevention and control of oil spillages, gas flaring and environmental pollution

(i) Execute such other works and perform such other functions which, in the opinion of the Commission, are required

> *for the sustainable development of Niger Delta area and its people.*
> *Subsection (2) provides that in exercising its functions and powers, the Commission shall have regard to the varied and specific contributions of each member State of the Commission to the total national production of oil and gas.*

Subsection (3) provides that the Commission shall be subject to the direction, control or supervision in the performance of its functions by the president.

The functions and powers of the Commission as contained in the Act are very clear and unequivocal. The Commission is not over burdened in the discharge of its functions.

The researcher's worry is that of subsection (3) of the section which provides that "the Commission shall be subject to the direction, control or supervision in the performance of its functions under this Act by the president."

This sub-section may be a stumbling block for the smooth discharge of the Commission's functions. It presupposes that the Commission would have to take directives from the president coupled with the President's tight schedule the Commission would have to wait for the directive from the president which may take a very long time for final directive from the president. This provision may be a cork in the wheel of progress of the Commission. It will seriously slow the down work of the commission.

Section 8 of the Act empowered the Board of the Commission to:

> *(a) Manage and supervise affairs of the Commission*
> *(b) Make rules and regulations for carrying out the functions of the Commission.*

(c) Enter and inspect premises, projects and such places as may be necessary for the purposes of carrying out its functions under the Act:
(d) Pay the staff of the commission such remuneration and allowances as appropriate,
(e) Enter into such contracts as may be necessary and expedient for the efficient performance, of the functions of the commission.

The power of the Board conflicts with that of the power confirmed on the president by subsections (3) of the Act. The Board is also empowered to supervise just like the president is also empowered to supervise the activities of the Commission. This is duplication of functions. The core issue which is the environmental degradation is not addressed.

Section 12 of the Act provides for the appointment of the Managing Director of the Commission. It provides that:

"There shall be for the Commission, a Managing Director, and two Executive Directors who shall be indigenes of oil producing areas."

The section provides further that the Managing Direction shall be such a person with such qualification and experience as are appropriate for a person required to perform the functions of those offices under the Act.[184] The Act does not really fixed the qualification of the Managing Director based on education or years of service. The Act is not specific, it therefore means that a person within the opinion of the president deems to have the appropriate qualification and experience to discharge the functions of the managing director of the Commission can be appointed as the Managing Director of the Commission.

[184] Section 12(1) of the Act.

The Act provides that the Managing Director of the Commission shall be the Chief Executive and the Accounting Officer the commission.[185] The tenure of the Managing Director has been fixed by the Act[186] is four (4) years first termed renewable for another four (4) years and thereafter no more. The appointment of the Managing Director is to be made by the president and confirmed by the Senate in consultation with the House of Representatives[187]

Subject to the general direction of the Board, the Managing Director shall be responsible:-

(a) for the day-to-day administration of the Commission.

(b) for keeping the books and proper records of the proceedings of the Board; and

(c) for

(i) the administration of the secretariat of the Board; and

(ii) the general direction and control of all other employees of the Commission[188]

The Act has clearly spelt out the functions, powers and duties of the Board and that of the Managing Director. But unfortunately in practice the Chairman of the Commission and the Managing Director of the Commission tend to struggle for power as to the performance of their duties. For instance, the Commission's Chairman has an office within the premises of the Commission, thus giving the impression, rightly or wrongly that he is an Executive Chairman that must be involved in the day to day

[185] S.12(1)(a)
[186] S.12(1)(b)
[187] S.12(1)(c)
[188] S.12(2)(a-c) of the Act.

running of the Commission. This allegedly includes summoning of staff members for meeting etc.[189]

This action will definitely affect the Commission it is because of this conflict of functions, that tends to defeat the essence of establishing the Commission that the Government recently dissolved the Board of the commission[190]

4.7 Natinonal Environmental Standards Regulation Enforcement Agency

4.7.1 Establishment

National Environmental Standards Regulation Enforcement Agency (NESREA) was established by Section 1(1) of the National Environmental Standards Regulation Enforcement Agency Act[191] as a body corporate with perpetual succession and a common seal. The Agency has power to sue and be sued in its corporate name. The Agency has the responsibility of the protection and development of the environment, biodiversity conservation and sustainable development of Nigeria's natural resources in general. It also has the responsibility of evolving environmental technology, including coordination and liaison with relevant stakeholders within and outside Nigeria on maters of enforcement of environmental standards, regulations, rules, laws, polices and guidelines[192].

4.7.2 Functions and Powers of the Agency

The Agency is saddled with the following function for effective discharge of their statutory duties. They include the responbility to;

a) enforce compliance with laws, guidelines, policies and standards on

[189] http:ilen.Niger-delta-Development-commission 21/08/2011
[190] This day newspaper 14/09/2011
[191] National Assembly Act No. 92, 2007
[192] See Section 2 of the NESREA Act 2007

environmental matters;

b) coordinate and liaise with stakeholders, within and outside Nigeria, on matters of environmental standards, regulations and enforcement;

c) enforce compliance with the provisions of international agreements, protocols, conventions and treaties on the environment, including climate change, biodiversity, conservation, desertification, forestry, oil and gas, chemicals, hazardous wasters, ozone depletion, marine and wild life, pollution, sanitation and such other environmental agreements as may from time to time come into force;

d) enforce compliance with policies, standards, legislation and guidelines on water quality, environmental health and sanitation, including pollution abatement;

e) enforce compliance with guidelines and legislations on sustainable management of the ecosystem, biodiversity conservation and the development of Nigeria's natural resources;

f) enforce compliance with any legislation on sound chemical management, safe use of pesticides and disposal of spent packages thereof;

g) enforce compliance with regulations on the importation, exportation, production, distribution, storage, sale, use, handling and disposal of hazardous chemicals and waste other than in the oil and gas sector;

(h) enforce through compliance monitoring, the environmental regulations and standardson noise, air, land, seas, oceans, and other water bodies other than in the oil and gas sector;

(i) ensure that environmental projects funded by donor organizations and external support agencies adhered ton regulations in environmental safety and protection;

(j) enforce environment control measures through registration, licensing and permittingsystem other than in the oil and gas sector;

(k) conduct environmental audit and establish data bank on regulatory and enforcementmechanisms of environmental standards other than in the oil and gas sector;

(l) create public awareness and provide environmental education on sustainableenvironmental management, promote private sector compliance with environmentalregulations other than in the oil and gas sector and publish general scientific or otherdata resulting from the performance of its functions;

(m) carry out such activities as are necessary or expedient for the performance of itsfunctions[193].

4.7.3 Powers of the Agency

In accordance with the provisions of section 8 of the NESREA Act, the Agency shall have power to,

(a) purchase or take on lease any interest in land, building or property;

(b) build, equip and maintain the offices and premises for the performance of its functions under this Act;

(c) lease out any office or premises held by it, which is no longer required;

[193] See S.7

(d) prohibit processes and use of equipment or technology that undermine environmental quality;

(e) conduct field follow-up compliance with set standards and take procedures prescribed by law against any violator;

(f) subject to the provisions of the Constitution of the Federal Republic of Nigeria, 1999, and in collaboration with relevant judicial authorities, establish mobile courts to expeditiously dispense cases of violation of environmental regulations;

(g) conduct public investigations on pollution and the degradation of natural resources, except investigations on oil spillage;

(h) open and operate ordinary and domiciliary accounts for the Agency in recognizedbanking institutions in Nigeria:

(i) borrow by overdraft or otherwise, with the approval of the Minister, such sums as itmay require for the performance of its functions under this Act;

(j) accept gifts of land, money or other property, upon such terms and conditions, ifany, as may be specified by the person or organisation making the gift, as long assuch conditions are consistent with the functions of theAgency;

(k) submit for the approval of the Minister, proposals for the evolution and review ofexisting guidelines, regulations and standards on environment other than in the oil andgas sector including;

(i) atmospheric protection.

(ii) air quality,

(iii) ozone depleting substances,

(iv) noise control,

(v) effluent limitations,

(vi) water quality,

(vii) waste management and environmental sanitation,

(viii) erosion and flood control,

(ix) coastal zone management,

(x) dams and reservoirs,

(xi) watershed

(xii) deforestation and bush burning,

(xiii) other forms of pollution and sanitation, and

(xiv) control of hazardous substances and removal control methods .

(l) develop environmental monitoring networks, compile and synthesise environmental data from all sections other than in the oil and gas sector at international levels;

(m) undertake, coordinate, utilise and promote the expansion of research experimentssurveys and studies by public or private agencies,institutions and organisationsconcerning causes, effects extent, prevention, reduction and elimination of pollution and such other matters related to environmental protection and natural resources conservation other than in the oil and gas sector as the Agency may, from time to time, determine;

(n) enter into agreement and contracts with public or private organisations and individuals to develop, utilise, coordinate and share environmental monitoring programmes, research effects, and basic data on chemical, physical and biological effects of various activities on the environment and other environmental related activities other than in the oil and gas sector;

(o) in collaboration with other relevant agencies and with the approval of the Minister establish programmes for setting standards and regulations for the prevention, reduction and elimination of pollution and other forms of environmental degradation in the nation's air, land oceans, seas and other water bodies and for restoration and enhancement of the nation's environment and natural resources;

(p) collect and make available, through publications and other appropriate means and in co-operation with public or private organisations, basic scientific data and other information pertaining to environmental standards;

(q) charge fees for tests, investigations and other services performed by the Agency;

(r) develop and promote such processes, methods devices and materials as may be useful or incidental in carrying out the purposes and provisions of this Act: and

(s) do such other things, other than in the oil and gas sector, as are necessary for the efficien performance of the functions of the Agency.

4.7.3 Enforcement Powers

To ensure compliance with the provisions of the Act and to enable the Agency perform its functions diligently, some enforcement powers were made available to her and her officials. These powers are contained in Part VII of the Act. For example, the Act gives any authorised officer[194] power, where the officer believes reasonably that an offence has been committed to:

(a) enter and search with a warrant issued by a court, any premises including land, vehicle, tent., vessel, floating craft, except Maritime Tankers, Barges or Floating Production, Storages, Offload (FPSO) and oil and gas facilities or any inland water and other structure for analysis at all time, for the purpose of conducting, inspection,searching and taking sample for analysis which he reasonably believes, carries out activities, or stores goods which contravene environmental standards or legislation.

b) examine any article found while conducting the above search, which appear to him to be an article to which the Act or the regulations made under apply or anything which he reasonably believes is capable of being used to the detriment of the environment,

c) take a sample or specimen of any article to which the Act or the regulation apply or which he has power to examine under paragraph (b) above;

d) open and examine, any container or package which he reasonably

[194]Section 30(1) requires the officer to exercise his powers here at any reasonable time and on production of his certificate of designation if so required by the person against whom enforcement is required.

believes may contain any thing to which the Act or its regulations apply or which may help in his investigations.

(e) examine any book, document or other record, which he reasonably believes may contain any information relevant to the enforcement of this Act or the regulation and make copies thereof or extracts therefrom.

(f) seize and detain for such time as may be necessary for the purpose of the Act, any article by means of or in relation to which he reasonably believes any provision of this Act or the regulations has been contravened; and.

(g) obtain an order of a court to suspend activities, seal and close down premise including land vehicle, tent, vessel, floating craft or any inland water and other structure whatsoever.

A written receipt shall be given for any article or thing seized in the course of exercise of enforcement powers, and the reason for such seizure shall be stated on such receipt. Any article seized under the Act shall be kept or stored in such a place as the officer of the Agency may direct and shall be returned to the owner or the person from whom it was seized if the article upon analysis or examination is found to conform with the requirements of the Act or regulations made under it.

An article other than in the oil and gas sector, seized by an office of the Agency in pursuant of the provisions of NESREA Act or the regulations made under it, may be submitted to an analyst for analysis or examination and the analyst upon making such analysis or examination shall issue a certificate or report in the prescribed form, setting forth the result of such analysis or examination and the officer of the Agency

shall ondemand, deliver a copy of such certificate or report to the owner of the article[195] if the article is to be the subject of a proceeding under the Act[196] or regulations. In summary therefore, an officer of the Agency has power, among other things, to:

1. enter and search land, building, vessel, vehicle, floating craft, Inland water or other structure whatsoever, and search same.
2. perform tests and take samples of any substances relating to offences which are found on the land, structure, automobile or vessel
3. cause to be arrested any person who he has reason to believe has committed such offence
4. seize any item or substance he has reason to believe was used to commit an offence. In this case, issue receipts for any item seized
5. require to be produced for examination copies of licence, permit, certificate or other document required under the Act, or enabling the person thereof.

While in such lawful purpose, any person who wilfully obstructs an officer of the Agency or fails to comply with his lawful enquiry, is guilty of an offence, which or conviction shall be liable to a fine not exceeding ₦200,000.00 or a term not exceeding 1 year or both, and an ₦20, 000.00 additional each, day the offence subsists[197]. However, such an authorised officer (while not in uniform shall on

[195]The expression "article" to which this Act or regulations made under it apply are:
a) Liquid, soil, vegetation,
b) Biological and chemical samples
c) Particulate filters, air quality gauges: and
d) Such other article or sample as may be determined by the Agency.

[196]S.30(4)

[197] S.31

demand declare his office, and produce his identity for inspection.

4.8 Non Governmental Organizations (NGOs)

This is another Institution that plays great role in the protection of the environment. It strives to ensure that the environment is not polluted nor degraded in any form especially by the oil and gas industries in Nigeria. It is the mouth piece of the common man who suffer most in the hands of the operators of oil and gas industries.

NGO in its broadest sense refers to organizations (i) not based on government; and (ii) not created to earn profit.[198]

The terminology of an NGO varies itself from places to place. For example it the United States of America it is called "Private Voluntary Organizations" where is most African countries calls it called "Voluntary Development Organizations"[199] However in Nigeria it is called Non Governmental Organizations (NGOs).

The World Bank defined NGO to include many groups and institutions that are entirely or largely independent of government and that have primarily humanitarian or cooperative rather than commercial objectives. They are private agencies in industrialized countries that support international development; indigenous groups organized regionally or nationally; and member-groups in villages. NGOs include charitable and religious associations that mobilize private funds for development distribute food and family planning services funds Community Associations.[200] NGOs plays very important role in protection of the environment and the general well being of the citizen. It play vital role in development and operation of infrastructure,

[198] Mhtm/:file://c: The Role of Non Governmental Organizations (NGOS) in development- Nigeria 26/2/2012
[199] Ibid
[200] Ibid

supporting innovation demonstration and pilot projects. It also facilitates communication. NGOs can facilitate communication between the people and the government. They are also in a very good position to share information amongst organization that do similar work.[201] Some of the NGOS that deals directly with environmental protection are Friends of the Earth, Earth Watch, and Environmental Rights Action (ERA)

4.7.1 Friend of the Earth.

Friend of the Earth was founded in 1969 in the United States of America by David Brower. It became an international network in 1971.[202] This organization has its secretariat in Amsterdam, it's executive committee called EXCOM runs the administration of the organization.[203]

Friend of the Earth considers environmental issues in their social, political and human rights contexts. Their campaigns for environmental protection stretch beyond the issues of conservation movement, it seeks to address the economic and development aspects of sustainability.

Friends of the Earth acts independently of political party, religious bodies or other influences they are opened democratic and non-discriminatory in their bid to seek for healthy, clean and degradation free environment.

The current campaign priorities of Friends of the Earth are:

(a) Economic justice and resisting neoliberalism

(b) Forests and biodiversity

(c) Food sovereignty

[201] Ibid
[202] http://en.wikipedia.org/wiki/friends_ofthe_Earth2/26/2012
[203] Ibid

(d) Climate justice and energy.[204]

The campaign priorities are set at the bi-annual general meeting of friends of the Earth international.

In addition to the priorities campaign areas friends of the Earth International have a number of other campaign areas they include:

(a) Dissatisfaction

(b) Antarctica

(c) Water

(d) Maritime

(e) Mining and extractive industries and

(f) Nuclear power amongst others.[205]

The three main themes of the Friends of the Earth campaign are

(i) Protecting human and environmental rights

(ii) Protecting the planet's disappearing biodiversity and

(iii) The repayment of ecological debt owned by rich countries to those they have exploited.[206]

Friends of the Earth also played prominent role during the British petroleum (BP) oil spill at the Gulf of Mexico. They condemn the act of the BP and called upon them to clean up the spill.

4.7.2 Earth watch

Earth Watch is an international non-profit organization established for the purpose of protecting threatened species, fragile habitats and conducting researches on

[204] http://www.about friends of the earth-international 2/26/2012
[205] Ibid
[206] Ibid

the impact of climate change. Earth watch was established in 1971 and it has over 93,000 volunteers who have contributed more than 11 million hours of their time to frontline environmental research all over the world.[207] Earth Watch is also described as an International Environmental Charity which is committed to conserving the diversity and integrity of life on earth to meet the needs of current and future generations.[208] Its mission is to engage people worldwide in scientific field research and education in order to promote the understanding and action necessary for a sustainable environment.[209]

Earth Watch has trained thousands of teachers, scientists and students, changing attitudes and behaviours in the corporate world; and working with close to 100,000 people members of the public to directly support conservation research all over the world.[210] Earth Watch enjoyed other organizations and individual to urge Shell BP to clean up the oil spill along the Gulf Coast of Mexico.

Earth Watch is also working to restore and manage mangrove plantations and explore the capacity of different mangrove species to store carbon, which could help militate the effect of climate change. Through extensive dialogue with oil companies, the Spanish Navy, the European Union and Fishermen, scientist from the International Marine Time Organization to divert shipping lanes off the Southern Coast of Spain. This agreement has safe guarded crucial paragraphing grounds for common and bottlenose dolphins.[211]

4.7.3 Environmental Rights Action/Friends of the Earth, Nigeria.

[207] http://www.earthwatch.org/aboutus/2/26/2012
[208] Ibid
[209] Ibid
[210] Ibid
[211] http://www.earthmatch.org/about us/what we do/ 2/26/2012

This Organization was founded in 1993, the Organization is dedicated to the defense in human ecosystem in terms of human rights, and to the promotion of environmentally responsible government, community and individual practices in Nigeria through the empowerment of local people.

Environmental Rights Action/Friends of the Earth Nigeria acts as a peaceful pressure group campaign for change in the policy of governmental, nongovernmental and commercial organizations where such policies are likely to act against environmental human rights.[212]

The mission of this organization is to protect the environment and democratize development. The Organization has been crying out against the environmental degradation in the Niger Delta area of Nigeria. They have called on the National Government, the State Government and the oil companies operating in the Niger Delta to keep the environment pollution free and to clean up the oil spilled on the environment. They also called on these bodies to compensate the inhabitants for the lost of their crops, farm land, rivers, etc. so as to make lives worthy of living.

4.8 The Attorney General Office

The Office of the Attorney General is constitutionally provided for.[213] He is the Chief Law Officer of the Federation or of the State as the case may be. Section 174(1) of the Constitution spell out the powers of the Attorney General of the Federation from the wordings of the provisions of the section, the Attorney General is given a wide range of powers with regards to public prosecutions. The Federal Attorney General can institute and undertake criminal proceedings or take over and continue or

[212] Ibid
[213] S. 150(1) CFRN 1999

discontinue same before any court in Nigeria other than a court marshal in respect of any federal offence. Similar provisions are contained in section 211(1) of the Constitution regarding powers of the State Attorney General with respect to State offences. The Constitution made it possible for Attorney General to exercise his powers either personally or through any officer of his department.[214]

Attorney General plays a great role in the protection of the environment. He tries to ensure that environmental law offenders are accordingly prosecuted. He gives his consents to any victim of environmental hazard to seek legal redress in the court of Law.

Before Adediran's case[215], it was practically impossible for an individual to bring an action against a defendant who violates his environmental right without obtaining the consents of the Attorney General or without joining him as a party. However with the judgment of *Adediran and another v. Interland transport limited*[216] it is now possible to bring a legal action to seek for a redress against environmental wrong without seeking the consents of the Attorney general or joining him as a party in the court. The appellant in that case brought an action for nuisance due to noise, vibration dust and obstruction of the road in Ire – Akari' Housing Estate, Isolo Lagos. The Supreme Court held that in the light of section 6(6) (6) of the 1979 Constitution of the Federal Republic of Nigeria, a private person can commence an action on public nuisance without the consents of the Attorney General or without joining him as a party.

[214] S. 150(2) CFRN 1999
[215](1992) N.W.L.R. (part 214)p: 155
[216] Supra

The Attorney General no doubt played a great role in the protection of the environment. He can only on his own institute an action to restrain or to undo a harm to the environment.

CHAPTER FIVE

ENFORCEMENT OF THE LEGAL FRAMEWORK FOR THE PREVENTION OF ENVIRONMENTAL DEGRADATION BY OIL AND GAS COMPANIES IN NIGERIA.

5.1 Introduction

Some activities of man on the environment cause degradation or pollution. These activities need to be checked so as to prevent the degradation or pollution of the environment. This measure can be employed through effective enforcement of environmental protection Laws[1].

The enforcement of environment laws went to sleep after colonial era especially because of the oil boom and the importance which Nigerians and Nigeria attached to the oil industry.[2] It is quiet unfortunate that Nigerians neglected the effect of oil pollution on their environment especially pollution through oil spillage and gas flaring.

Nigerian environmental policies have of recent advanced from the mere control and management of environmental health hazards to need for the prevention of environmental pollution through legal policies and enforcement medium.[3]

Enforcement of Environmental Law is the application of a set of legal tools both formal and informal designed to impose legal sanctions or penalties to ensure that a defined set of requirement is complied with.[4] In this chapter effort would be

[1] Lawrence A. Vincent A et al, environmental law in Nigeria., theory and practice, Ababa Press Ltd, 2003 P. 149.
[2] Ibid.
[3] Ibid
[4] Ibid

exerted to examine enforcement medium of environmental laws against environmental degradation by oil and gas companies in Nigeria, through arbitration and litigation.

5.2 Enforcement Media

Arbitration and litigation are some of the medium that are used for the enforcement of the legal framework for the prevention of environmental degradation by oil and gas companies in Nigeria. Some of these medium are used by the institution for the prevention of environmental degradation by and gas companies while others are used by the aggrieved individuals.

5.2.1 Arbitration

Arbitration is the process of resolving disputes between people or groups by referring them to a third party either agreed on by them or provided by law, who makes a judgement.[5] While Oxford advanced learners' dictionary[6] defined arbitration as the official process of settling an argument or a disagreement by somebody who is not involved.

Parties to a dispute may voluntarily submit their disputes to a third party mutually agreed or chosen by them. The third party who acts like a judge in a case is called arbitrator he hears the disputing issues from both sides and he decides who wins and who losses. The decision of the arbitrator which is known as an award is usually binding on the parties and no appeal is allowed unless it could be proved that the arbitrator did not adhere to the principles of natural justice.[7]

[5] Ibid at page 152
[6] New 7th edition, Oxford University Press, 2006.
[7] Fru Francis Cho, alternative Dispute Resolution and the Legal Profession in Nigeria: Issues, problems and prospects, Ph.D thesis submitted to the Postgraduate School, A.B.U. Zaria (Unpublished) 2006 P. 42.

Arbitration is particularly apt where the disputants are bound to have continuing relationship for example husband and wife, landlord and tenant, oil companies and the host communities etc. This medium if judiciously handled may be quick, cheaper and less acrimonious than litigation[8].

Arbitration is a very effective mechanism which if properly utilized, would go a long way to address environmental degradation problems by oil and gas companies in Nigeria.

In contentious environmental pollution or degradation disputes, parties to such disputes may mutually agree to refer the dispute to the arbitral panel for resolution[9]. For example under the Lagos State High Court Civil Procedures Rules, a pre-trial judge may by mutual consent of the parties refer any dispute for arbitration.

There are three types of arbitration namely (i) voluntary arbitration, (ii) arbitration by order of court, and (iii) statutory or compulsory arbitration. In the case of voluntary arbitration the parties agree to refer their present and future disputes to a tribunal of their choice instead of a law court. Whereas in the case of arbitration by order of court, which is the fall out of the first, the court is empowered to refer any matter pending before it to arbitration[10]. While in the third case, the arbitration is usually imposed by statute for instance the settlement of Trade Disputes is usually referred to the Industrial Panel (LAP) under the Trade Disputes Act[11].

Arbitrations is a powerful mechanism in settling dispute arising between oil producing companies, the host communities and the government in other to address

[8] Ibid .
[9] See the High Court of Lagos State Civil Procedure Rules 2003
[10] See order 17 of the High Court of the Federal Capital Territory. Abuja (Civil Procedure Rules) 2004
[11]. Cap T8 Laws of the Federation of Nigeria, 2004

environmental problems arising from the activities of the oil companies. Laws in the petroleum industries encourage arbitration in addressing environmental challenges for example the Petroleum Act[12] Oil in Navigable Waters Act[13] Oil Pipelines Act[14] amongst others have provisions for arbitration. It is in this respect that Section 11 of the Petroleum Act provides;

(1) That where by any provision of this Act or any regulations made there under, a question or dispute is to be settled by arbitration, the question or dispute shall be settled in accordance with the law relating to arbitration in the appropriate State and that provision of that law.

(2) In this section, "the appropriate State" means the State agreed by all parties to a question or dispute to be appropriate in the circumstances or if there is no such agreement, the Federal Capital Territory Abuja.

It is also on this note that section 17 (5) of the Oil Pipelines Act provides that "every licence shall be deemed to include a provision that any question or dispute arising between the President or the Minister and the holder of the licence regarding the licence or any matter connected there with shall if it cannot be resolved by agreement be referred to arbitration" A close reading of the foregoing Acts cover areas of environmental degradation dispute arising from the activities of the oil companies and the host communities. Both the oil companies and the host communities find comfort in resolving their dispute through arbitration than through litigation which is time consuming and very expensive. The case of Chief Dr. William

[12] Cap. P. 10 L.F.N 2004
[13] Cap. 06 L.F.N 2004
[14] Cap 07 L.F.N 2004

Kemmer ors v. Nigerian Agip Oil Company Ltd[15] is a clear example of how arbitration can serve as a means of enforcement mechanism in environmental matter. In that case, a lease agreement dated February 21, 1971 made with Tenneco Oil Company of Nigeria (which later assigned the lease to AGIP) the Twon Brass community in the present Brass Local government area of Bayelsa State agreed to lease the land comprising 990.08 acres to the oil company for a rent of per acre per annum for a period of 50 years. Apart from the above arbitration clause set out, there was also a forfeiture clause. For the community, the amount of N10.00 per acre per annum for 990.08 acres mass" not fair and adequate compensation" for the loss of surface and user rights of the land for 50years. They called on the company to review the rates and pay them compensation due. The company did not cooperate. The community went to the Federal High Court, Port Harcourt with a view to invoking the arbitration clause. The matter was referred to a sole arbitrator in terms of the arbitration clause.

Based on the terms of the arbitration clause, the sole arbitrator made his award based on documentary evidence by the agreement of the parties.

It is very clear from this case that there is no doubt arbitration is a very effective mechanism that can be used by the disputing parties to settle environmental degradation dispute by oil and gas companies in Nigeria.

As effective as arbitration mechanism may appear to be however has its own shortcoming as well. Some of notable problems associated with arbitration are problems of enforcement of the award and setting aside of the award[16]. For example where an arbitral award is made and the party against who it was made is willing to

[15] (Un-reported) Suit No. FHC/PH/CP/27/99 of March 51, 2000
[16] Op.cit footnote no. 11 at P. 45

perform his obligation under the award there will be no problem. If however the party against whom the award was made failed to co-operate will obviously result to a problem. This would force the victorious part, to seek the court's assistance for the enforcement of the award. The other party on the other hand may attempt to impinge the award on grounds of misconduct of the arbitrator or that the award was improperly procured. This is likely to provoke protracted litigation[17]. Similarly, the party who loses in the arbitration may apply to court to set aside the award. It is logically clear that where a party objects to an award or the court sets aside an award a protracted litigation will ensues the time and money which would have been saved through arbitration will be lost to litigation[18].

5.2 Litigation

Litigation is one of the medium through which environmental laws which seeks to prevent environmental degradation by oil and gas companies in Nigeria is enforced. It is a means by which environmental laws are brought to live, empowered with force with which to attach environmental offenders[19]. Environmental litigation is inter woven with scientific and legal procedural and substantive details which the parties i.e. the lawyers, witnesses and the courts themselves must understand in other to achieve an effective judicial determination of environmental law cases[20]. In other words for litigation to achieve its aim as an enforcement medium of environmental protection and prevention law stake holders must understand the complex nature of environmental litigation ranging from the science, legal, procedural and the

[17] Opcit
[18] Opcit
[19] Usman A. K. Environmental protection law and practice, Ababa press Ltd, Ibadan, 2012 P. 211
[20] Amokaye G. O Environmental Law and Practice in Nigeria University of Lagos Press, 2004 P. 582

substantive nature of environmental protection laws. Questions such as how should the complex nature of environmental litigation affect the scale of justice? The answer is not far fetch in the sense that in the process of adjudicating environmental disputes courts would obviously be confronted with vexed issues of jurisdiction, locus stand of the litigants, pre-action notice, burden and standard of proof, limitation of time, proof of damages etc. Efficient and judicious adjudication of these issues is bound to affect the quality and timing of justice that is likely to be obtained by the disputing parties. It is very important to state at this point that the success or otherwise of environment litigation equally depends on the knowledge, skill and advocacy of the lawyers handling the matter and also the quantity of evidence produce to persuade the court to tilt the outcome of the case one way or the other[21].

5.2.1 Pre-Action Notice

A pre-action notice is a notice that an aggrieved party or intending plaintiff is expected to formally serve on the other party before the commencement of his legal action[22] issue of pre-action notice is deem necessary when government agencies are involve in an intended litigation. It is a fact that most statutes provides for pre-action notice when government agencies are to be dragged to court either as defendant or co-defendant in a matter. This is because of the immunity against frivolous and vexations litigation enjoyed by government agencies. In this instance Fagbohun noted that pre-action notice is a check against the excesses and abuse to which the age-long rules of judicial review of administrative action can be prone[23]. The notice is said to afford the prospective defendant an opportunity to meet the plaintiff and negotiate any possible

[21] Ibid at page 164
[22] Op.cit foot note No. 20 at p. 615
[23] Op.cit foot note no. 24 at page 615

out of court settlement. It provides for alternative dispute resolution process by which straight forward cases can be settled without recourse to the formality of the ordinary courts with its attendant litigious procedures, the need to implement a new social policy for the speedy, cheap and decentralized determination of a very large number of individual cases. Furthermore, pre-action notice also avoids the danger of imposing too many additional burdens on public authorities[24].

The Court of Appeal has maintained a rigid position in many of the cases it had adjudicated that a pre-action notice is Constitutional and does not in any way restrict the right of an individual to access the court. In NNPC v. Farwehinmi[25] the issue before the Court of Appeal for determination is whether the provision of 12 (2) of the Nigerian Petroleum Corporation Act requiring issuance of pre-action notice before institution of action is unconstitutional.

In that case the respondent sued the appellant and the 2nd to 6th respondents claiming as follows:-

1. An account of all export earnings realized by Nigeria from the sale of crude oil during the Gulf crisis particularly between August and 31st December, 1990 and of the manner in which the defendants applied and or expended the said export earnings.
2. An inquiry as to how the export earning realized by Nigeria from the sale of crude oil during the Gulf crisis particularly between August and 31st December 1990 were disbursed.

[24] Ibid
[25]. (1998) 7 N.W.L.R. 598 at 612.

3. All further proper accounts, inquiries and directions as the court may deem fit to make in the circumstances.

After service of the write of summons on the appellant, the appellants counsel filed a motion seeking to strike out the name of the appellant from the suit on the ground that no pre-action notice was issued.

The trial court after hearing argument on the motion dismissed same on the ground that Section 12 (2) of the Nigerian National Petroleum Corporation Act which prescribe for pre-action notice is unconstitutional in that it conflicts with the provisions of Sections 6 (6) and 33 (1) of the 1999 constitutional and Article 3 of the African charter on Human and People's Rights.

The appellant being dissatisfied with the decision of the trial Court appealed to the Court of Appeal. In the determination of the appeal the Court of Appeal considered the provisions of Sections 6 (6) (b), 33 (1) and 39 of the 1999 Constitution, Article 3 of the African Charter on Human and People's Right Ratification and Enforcement Act cap. 10 Laws of the Federation of Nigeria, 1990 and Section 12 (2) of the Nigerian National Petroleum Corporation Act, Cap 320 Laws of Federation of Nigeria, 1990 and allowed the appeal. From the decision of this case, it is very clear that once a statute provide for pre-action notice to be served on any agency of government before a matter can be instituted against it, it is a sin quone that, such a notice must be issued otherwise the court will be seized of power to exercise jurisdiction over the matter.

In the instance case the matter was dismissed because pre-action notice was not served on the 1st appellant as prescribed by section 12 (2) of the NNPC Act.

It therefore means that issuance of pre-action notice is very fundamental in an action against government agencies.

Further still, the issue of pre-action notice was graphically captured in the recent case of *Mobil Producing Nigeria Unlimited v. Lagos State Environmental Protection Agency and 3 ors*[26]**.** In that case the issues for determination were:

I. Whether the Federal High Court lacked the jurisdiction to entertain the suit merely because the appellant did not state in the affidavit filed along with the originating summons that it had served the 2nd respondent with the requisite pre-action notice.

II. Whether the other respondents other than the 2nd respondent had a standing to raise the question of non-compliance with Section 29 (2) of the Federal Environmental Protection Agency Act.

III. Whether even if the action as incompetent against the 2nd respondent on the ground of non-compliance with the agency Act, the consequence was to strike out the entire suite.

The facts of the case are that by an originating summons issued in the Federal High Court on 22nd December, 1999 Mobil Producing Nigeria unlimited, the appellant, commenced the proceedings from which this appeal arose against (1) Lagos State Environmental Protection Agency, (2) Federal Environmental Protection Agency, (3) Ministry of Environment; (4) various respondents whose names were set out in a schedule to the originating summons and were described as the 4th set of respondents. The reliefs sought in the originating summons among others were as follows:

[26] (2002) 18 N.W.L.R. part 798

1. A declaration that the 2nd and/or 3rd defendants are by virtue of the Schedule II, part I item 29 of the Constitution of the Federal Republic of Nigeria 1999 and section 20, 21, 23 and 24 of the FEPA Act of 1988, the authorities with exclusive power to determine the liability of the plaintiff with regard to any and all alleged damage arising out of the spill into interstate and/or territorial waters of Nigeria, including the costs of any government body, restoration, restitution, compensation and/or damages.
2. A declaration that the findings and conclusion contained into the reports approved and/or endorsed by the 2nd and 3rd defendants are conclusive as to the nature and/or of the environmental and/or other impact of the spill programe the Supreme Court after carefully analyzing the case allowed the appeal. And on the issue of pre-action notice where service of pre-action notice is require and failure to do so, that a suit commenced in default of service of a pre-action notice is in competent against the party who ought to have been served with the pre-action notice provided such party challenges the competence of the suit.

The Supreme Court in the same case stressed on the nature and importance of pre-action notice that service of a pre-action notice on the party intended to be sued pursuant to a statue is at best, a procedure requirement and not an issue of substantive law on which the rights of the plaintiff depend. It is not an integral part of the process of initiating proceedings. A party who has served a pre-action notice is not obliged to

commence proceedings at all or, barring any limitation period, to commence one within any time after the time prescribed for pre-action notices.

On nature and purpose of pre-action notice, the Supreme Court stated that a pre-action notice which is for the benefit of the person or agency on whom or on which it should be served is not to be equated with processes that are an integral part of the proceedings-initiating process. Rather, its purpose is to enable that person or agency to decide what to do in the matter, to negotiate or reach a compromise or have another hard look at the matter in relation to the issues and decide whether the matter in relation to the issue and decide whether it is more expedient to submit to jurisdiction and have a pronouncement on the point in controversy.

From the cases above it is very clear that pre-action notice is a fundamental requirement to be served on the agency of the government whenever they are to be sued in law court.

Although it may appear to be time wasting, especially in a situation where an aggrieved party has to seek the assistance of the court to restrain a defaulting defendant through an equitable relief of injunction. In such situation, pre-action notice will defeat the very essence of the relief which the aggrieve party may want to seek re-dress against in the law court. It will be a case of medicine after death. On the whole, pre-action notice has a very good advantage in the sense that it may afford the party an opportunity to settle the grievances before going to the court. It will save time and money litigants could have spent on litigation.

5.2.2 Limitation of Time

Environmental law cases in past[27] are usually affected by the Statutes of Limitation. An aggrieved party who intends to file a law suit must institute such an action in the law court within the time limit prescribed by the relevant statutes. For example when a plaintiff intends to file an action founded on tort, such an action shall not be brought after the expiration of six years from the date on which the cause of action accrued under the limitation law.[28]

A plaintiff who succeeds in establishing damage may therefore be caught with the technical question of timing of action. This is usually done by the defence counsel raising an objection that the action is statute barred under the relevant limitation law to defeat the claim of the plaintiff and remove the right of action, right of enforcement, the right of relief and leave the plaintiff with a bare and empty cause of action which he cannot enforce[29] this of course will take away the last hope of the common man.

A cause of Action is said to be Statute barred when no proceedings can be brought in respect of it for the reason that the period laid down by the law for it to bring action has lapsed[30]. This was emphasized in the case of *Texaco Panama Inc. v. Shell Petroleum Development Company*[31]. In this case the Court of Appeal stated that a cause of action is said to be statute barred when no proceedings can be brought in respect of it for the reason that the period laid down by the law for its being brought has lapsed in the instant case, the court went further to state that the factual setting of the suit makes it clear that the suit was instituted well outside the twelve month period

[27] Before the amendment of Fundamental Rights (Enforcement Procedure) Rules 2009
[28] Cap. 118 laws of Lagos State 1994
[29] Amokoye G.O op.cit. p.677
[30] Ogundare E.O., Procedural Issues in environmental cases, being a paper delivered at the workshop organized by the National judicial institute in collaboration with the United Nations Environment programme held at Abuja on 28th-30th March, 2006.
[31] (2000) 4 NWCR (pt.653) 480

provided for in section 110(1) of the Port Act Cap 361, Law of the Federation of Nigeria 1990.

In the instant case, the appellant sued the respondent at the Federal High Court of Lagos claiming the sum of US $15,780,780,442.88 being special and general damages suffered by the appellant when vessel "Star Tulsa" was berthing at the Shell Terminal at bonny camp to load a consignment of crude oil when a terminal mooring wire belonging to the respondent which was allegedly negligently been left in the berthing area, fowled the appellant's vessel propeller. As a result of the incident, the vessel "Star Tulsa" had to be towed to a repair Yard in Europe for necessary repairs. The appellant alleged that it suffered very great loses by way of repairs, towage, loss of use disbursement amount expended. The said accident to the vessel was allegedly caused by the negligence of thee respondent by not providing a proper and safe berthing area for the said vessel.

Pleadings were filed and exchanged by the parties. The respondent filed an application for the dismissal of the appellant's claim on the ground that by virtue of Sections 3,7 (2), 8 and 9 of the Oil Terminal Duties Act and in particular Section 110(1) and (2) of the Ports Act, the claims of the appellant are not maintainable in law and that they are statute-barred.

After taking arguments from both Counsel the trial court held that since the facts relating to issue of period of limitation was not disputed the Status of the respondent was not disputed, the date of occurrence of the incident leading to the filing of the action was not disputed nor the time the action was filed is not contested, it was clear that the respondent being in control of the Oil Terminal had the same legal

immunity as the Ports Authority and the appellants action was statute – barred and it accordingly dismissed it.

The appellant was dissatisfied with the ruling, it therefore appealed to the Court of Appeal. The Court of Appeal unanimously dismissed the appeal.

The case clearly show a statute-barred situation and the appropriate thing is to dismiss the case as been done by the Court of Appeal.

Amokaye forcefully advanced two reasons as a justification for the operation of the statute of limitation. Namely that there is increased difficulty of gathering relevant and accurate evidence as time elapses between the events that leads to the cause of action. While the second reason is based on public policy; that there should be an end to litigation.[32]

This should be not be a justification for limitation period in Oil pollution cases. This tends to punish the victims of environmental pollution, it will shut down their chances of seeking redress for remedy for the pollution of the environment.

Section 20(2) of the National Oil Spill Detection and Response Agency (Establishment) Act[33], provides for the period within which an action can be maintained against NOSDRA. The subsection provide as follows:

Notwithstanding anything contained in any other enactment, no suit against a member of the Governing Board or the Director-General or any other officer or employee of the Agency or the centre for any act done in pursuance or execution of this Act or any other enactment or law, or of any alleged neglect or default in the

[32] Amokaye G.O. Op.Cit. p.677
[33] 2006

execution of this Act or any other enactment or law, duty or authority shall lie or be instituted in any court unless commenced;

a. Within three months next after the act, neglect or default complained of or
b. In the case of continuating damage or injury within six months next after the casing thereof.

From the foregoing it is therefore very clear that any intended plaintiff who intends to institute an action against NOSDRA or to join it as a party in a suit must do so within the limitation period otherwise the action becomes statute barred.

In determining whether an action is statute barred or not, two factors are considered. The first is whether there is cause of action while the second is, when does the cause of action arose?

A cause of action is every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court[34]. It is the entire set of circumstances giving rise to an enforceable claim.[35]

A cause of action in environmental litigation arise when an injury is caused to a person or property by any harmful waters or hazardous substance which has been deposited or dumped on any land or territorial waters or contiguous zone or exclusive economic zone of Nigeria or its inland waters[36]. In cases of degradation by oil companies it will include the oil spill into the environment which cause injury or harm to the environment and the lives on it.

[34] Ogundare E.O. op.cit p.19
[35] Ibid
[36] Omaka C.A. "Limitation of Action and pre-Action Notice under section 29 (1) of FEPA Act" in environmental and planning law Review Vol. No. 1 October/December, 2004 p.125 at 126.

It is very instructive to note that in determining whether a cause of action has accrued and whether time has started to count in other to determine the limitation law, the judicial attitude is to look at the writ of summons and the statement of claim alleging when the defendant's wrong against which the plaintiff complaints was committed to determine this, the court usually compares the date of the alleged commission of the wrong with the date on which the writ of summons was filed[37]. The time is said to begin to run once the cause of action accrues[38].

It is also interesting to note that a cause of action does not arise until the plaintiff who is not guilty of negligence has actual knowledge of the damage. *In Shell Petroleum Development Co. Ltd. v. Farrah*[39] in that case pollution activities occurred in 1970 and rehabilitation process was concluded in 1973/74. The plaintiff/respondent had actual knowledge of the state of the land in 1988 when the same was handed over to him. He discovered that proper rehabilitation did not take place and brought the action for damages.

The defendant/appellant contended that the action was statute-barred as time started to reckon from 1974. The Court of Appeal held that the case was not time barred as the cause of action arose when the land was handed over to the plaintiff/respondent.

It very clear from the judgment of the Court of Appeal that the timing for the purpose of determining whether a matter is statute barred begin to count as at the time the plaintiff becomes aware of the damage to his environment. Most of the cases involving contamination of land and pollution of underground waters actually takes

[37] Amokaye G.O. op.cit at p.678
[38] Egbe v. Adefarasin (1987) 1 N.W.L.R. (pt. 47)
[39] (1995) 3 NWLR (pt. 382) 148

time for harm to occur or having occurred, to be detected. The reckoning of time which starts with the accrual of the cause of action does not stop even when the parties in dispute begin negotiation for the purpose of settling the dispute in *Eboige v. NNPC*[40]

The appellant as plaintiff at the High Court of the defunct Bendel State Abudu Judicial Division instituted an action in a representative capacity for himself and on behalf of six other members of his family against the respondent as defendant. The action was commenced by a writ of summons dated 13th June, 1985. The appellant in his statement of claim stated that on or about the 18th of July, 1979, the respondent by its agents or servants in the course of laying pipes destroyed the greater part of his farms which contained many economic trees, cash and food crops. The appellant further stated that of all the persons affected by the distinction, only himself and one Sunday Eboigbe are literate. He averred that he left home some time in 1979 for Northern Nigeria and returned in July 1983 and that on his return home he learnt from his illiterate relations how the respondent during its operation destroyed greater parts of their farms.

On 20th July, 1983, the appellant first wrote a letter to the respondent informing it of the damage done to the family farms. Correspondences were exchanged by both parties until the last letter written by the respondent on 1st February, 1984 informing the appellant that his claim for compensation was not convincing. Consequently the appellant wrote another letter to the respondent to which the respondent replied and regarded the matter closed. When the appellant wrote another letter the respondent wrote a letter dated 16th April, 1984 and stated therein that the case has been referred

[40] (1994) 5 NWLR (pt. 347) 649.

to its legal department and that they would be duly informed of any development in due course.

It was when the appellant did not hear from the respondent that he filed this action in June 1984 i.e. 14 months after the respondent had denied liability.

After filing its statement of defence, the respondent filed an application to strike out the action on the ground that the action is statute barred under Section 11 (1) and (21) of the Nigerian National Petroleum Corporation Act 1977 and section 4(1) (a) of the Limitation Law of Bendel State, 1976. The learned trial Judge in a reserved ruling dismissed the respondent's application. Dissatisfied with the ruling, the respondent appealed to the Court of Appeal. The Court of Appeal allowed the appeal and held that the action of the plaintiff/appellant herein was statute – barred. The appellant being dissatisfied with the judgment appealed to the Supreme Court.

The Supreme Court in determining the appeal considered Section 12(1) and (2) of the NNPC Act, Cap 310 Laws of the Federation, 1990 and Section 4(1) (a) Limitation Law, Cap 89, Laws of Bendel State 1976 and unanimously dismissed the appeal. The Supreme Court inter-alia that although the law does not prohibit parties to a dispute from engaging in negotiation for the purpose of settling the dispute, generally such a negotiation by parties does not prevent or stop the period of limitation stipulated by a statute from running. The law is that when in respect of a cause of action, the period of limitation begins to run, it is not broken and it does not cease to run merely because the parties engaged in negotiation. The best cause for a person to whom a right of action has accrued is to institute an action against the other party so as to protect his interest or right in case the negotiation does not result in a

settlement or in an admission of liability, the law will not allow the time devoted to negotiation to be excluded from the period which should be taken into consideration for the determination of the question whether a claim has become statute – barred.

The facts and the ruling of the case under reference is very instructive in the sense that victims of environmental pollution should act on time in other to pursue their environmental right. This will make environmental polluters know that legal action can be taken against them if they pollute the environment without taking necessary measure to prevent or remedy such a wrong.

In environmental litigation, limitation could be potentially important and difficult given the long time – scale, which can be involved harm, occurs or before harm, having occurred is detected.

In situation where degradation affects land or it contaminates land, it may be hard and it may also take longer period for the ecosystem to get back to its original nature and in some extreme situation, complete restoration may be impossible. In case involving contamination of ground water or gas migration over time unto the plaintiff's property or where pollution is of continuing nature, it can be said that fresh cause of action continue to accrue whenever the plaintiff become aware of the pollution.[41] So also in cases of personal injuries, the symptoms of the ailment may not easily manifest itself.[42] It should be stressed once again at this point that statutory corporations operating in areas where their activities are very likely to cause environmental pollution or degradation are usually protected by statutory provisions which have reduced the period of limitation of actions. For example Section 12 of the

[41] Damfebo Dervi K op.cit p. 18
[42] Op.cit

Nigerian National Petroleum Corporation Act[43] puts the limitation period at twelve months. By this provision it therefore means that, any claim filed outside the period of twelve months becomes statute – barred. It is however interesting to note that the Court of Appeal in *NNPC v. Sele*[44] held that the above provision does not bar an action. Where breach is a continuing one and the consequences of the action are continuing. In that case the respondents, in a representative capacity, sued the appellants at the High Court of Delta State, Effurun, claiming the sum of N20,000.000.00 (Twenty Million Naira) as fair and adequate compensation for the losses they sustained as a result of the oil spillage from the appellants' delivery oil pipeline lying and situate along the Ogbe-udu creek and swamp land in Okpe Local Government Area of Delta State.

The respondents alleged that on or about 20/12/1990, crude oil spilled from the appellants burst wells 2 and 4 Aburese location delivery line escaping unto the respondents adjoining lands and waters extensively polluting an area of about 480 hectares, killing fishes, destroying fishing traps, ravaged economic trees, and crops and fishing ponds. Local gin distilleries from Raphia palm products in the swamp and farm land adjoining the creek plant were also affected. The respondents also alleged that the respondents also suffered considerable inconveniences and disturbances as regards their use of the creek water for domestic purposes, washing and bathing and that the respondents' community was thrown into mass unemployment leaving their youths idle. The respondents claimed that the spillage and consequent damages were caused by the negligence of the appellants and that they were of a continuance nature.

[43] Cap. N 123 LFN 2004
[44] (2004) 5 NWLR (pt 866) 379

The appellants denied the respondents' averments and put them to the strictest proof. The appellants averred that if there was any oil spillage it was not from Abure – 2 and Abure – 4 Oil well heads as alleged by the respondents that if there was any oil spillage the affected areas specified in the statement of claim were not under communal ownership; and that if there was any spillage as alleged, they took reasonably prompt steps to clean up and rehabilitate the soil and aquatic life in the affected areas.

The writ of summons and the statements of claim were issued on 6/9/93 following an expert order granting leave to the respondents to sue in a representative capacity and also for leave to issue and serve the writ outside jurisdiction.

After filing its statement of defence, the appellants filed a motion praying inter alia for an order dismissing the respondents' action for being statue barred under Section 12(1) of the Nigeria National Petroleum Corporation Act, Cap.320 Laws of the Federation of Nigeria, 1990. The trial court upon hearing the application dismissed same and in its ruling held that there was nothing before the court to show that the damage caused by the spillage had ceased.

At the trial, the respondents led evidence to show that the spillage and damage or injury persisted up to the time the matter was in court. The appellants did not offer any evidence to support their statement of defence.

At the conclusion of trial, the trial court entered judgement in favour of the respondents. The court awarded the sum of N15,329, 350 as special damages and N3,000,000.00 as general damages.

Dissatisfied, the appellant appealed to the Court of Appeal. The Court of Appeal suo motu raised the issue of the effect of failure of the respondents to give the appellants pre-action notice as required by Section 12(2) of the Nigeria National Petroleum Corporation Act which fact was not pleaded by the appellants in their statement of defence, and invited counsel to the parties to address it thereon.

In determining the appeal, the Court of Appeal considered the provision of Section 12(1) of the Nigeria National Petroleum Corporation Act which states thus:

> *12(1) Notwithstanding anything in any other enactment, no suit against the Corporation, a member of the Board or any employee of the Corporation for any act done in pursuance or execution of any enactment or law, or of any public duties or authority, or in respect of any alleged neglect or default in the execution of such enactment or law, duties or authorities, shall lie or be instituted in any court unless it is commenced within twelve months next after the act, neglect or default complained of or, in the case of a continuance of damages or injury, within twelve months next after the ceasing thereof.*

The case was accordingly dismissed.

The foregoing was the postion of the law. However, under the New Fundamental Human Rights Enforcement Procedure Rules 2009[45] by virtue of Order III Rule 1 limitation of time has been abolished. This means an agrrived party can bring an action to address environmental wrong at time without fear of being caught by limation of time.It therefore means that limitation of time is no longer an obstacle in environmental litigation.

5.2.3 Locus Standi

[45]Yerima Timothy F, From Obstacle to Miracle: The New Fundamental Rights Enforcement Procedure Rules of Nigeria, Prospect For Human Rights Advocates. University of Ado-Ekiti Law Journal, Volume 3,2009, p.271

Locus standi is a common law requirement that a case can only be brought by a person with a legitimate interest in it. In the case of oil pollution, the right person to institute a court action strictly speaking ought to be the person harmed by the pollution. This common law requirement is informed by the common position against champerty and maintenance by which a person without serious interest in a case cannot maintain a court action. Although originally at law, locus standing has become statutory position entitling only persons empowered by statute to institute proceedings in court when the statute is breached.

In the area of environmental pollution in general and oil pollution in particular, locus standing in the past[46] constituted serious problems to instituting cases to address environmental pollution by oil. Therefore, in order to be heard in the law court, litigants must have locus standi which more often than not is always a difficult task for litigants in environmental litigation[47]. In the light of the foregoing, locus standi will be examined in relation to; Attorney General, aggrieved persons, Non-Governmental Organizations (NGOs), Public spirited individuals, and Environmental Agencies.

5.2.3.1 The Attorney General

The Attorney general of the Federation or of the State is the chief Law officer. At the same time Minister of Justice in the Federal Ministry of Justice or a Commissioner of Justice in the State Ministry of Justice[48]. He is appointed by the President of the Federal Republic of Nigeria or The Governor of the State subject to

[46] Opcit
[47] Ladan M.T. Trends in Environmental Law, and Access to Justice in Nigeria. Lambert Academic publishing, Germany,2012 p.32
[48] See Sections 150 and 195 of the Constitution of the Federal Republic of Nigeria. 1999

the confirmation of the State House of Assembly.[49] He is the person vested by statute with locus standi to bring criminal proceedings for environmental harm[50]. For example in oil pollution cases, it is the Attorney General that has the locus standi to institute an action in the law court to punish environmental polluters. This is based on the fact that virtually all environmental statutes in Nigeria are penal in character[51] their breach therefore constitutes a criminal offence that vest the Attorney General with locus standi to initiate criminal proceeding against the offender.[52] Therefore, it is the Attorney General that is generally empowered to represent the public in an action in the law court to punish environmental polluters.[53] The Attorney General has the discretion to either bring the action himself or to grant leave to the affected party to bring the action before the law court.[54]

It is interesting to note that the aspect of environmental pollution, in which the Attorney General has locus standi, is in the area of public nuisance. A public nuisance arises in oil pollution cases where there is unlawful discharge of oil pollutants on the public land or water which in turn cause inconvenience and damage to the public in the enjoyment of their rights[55].In this instance, an individual cannot on his own bring an action in the law court to address environmental pollution that affects the general public. This is clearly demonstrated in the Nigerian case of *Amos v. Shell B.P. Development Co. Nig. Ltd.*[56] In this case, the plaintiff in his representative capacity

[49] See Sections 147 (2) and 192(2) Ibid
[50] Usman A.K. Environmental Protection Law and Practice, Ababa Press Ltd, Ibadan 2012, p.211
[51] Violet Aigbokhaevbo: Combating Environmental Crimes in Nigeria: A Daunting Uncertainty, NIALS Journal of Environmental Law, Nigerian Institute of Advanced Legal Studies, Lagos, 2011. P.203
[52] Usman A.K. Op. cit.P217
[53] Ikoni D.U. An Introduction to Nigerian Environmental Law, Malthouse Law Books, Lagos,2010 P.230
[54] Ibid p.152
[55] See Esso Petroleum v. South Port Corporation (1954) 2QB 182
[56] (1974)4 E.C.S.L.R 486

claimed that the defendant made a large earth dam across their creek, during their mining operation which resulted in the flooding the upstream and the drying the downstream of the creek. It also hampered the movement of canoes and negatively affected economic and agricultural activities within the area. The trial judge ruled that the blocking of the stream was a public nuisance because the creek was a public water way and a representative action could not be maintained because the interest of, and the losses suffered by the victims were separate in character and not communal. Therefore it is the Attorney General that has the locus standing to bring an action against the operators.

Also in Hickey v. Electrical Reduction Co.[57] In that case the defendant company discharged wastes from its phosphorous plant in placentia Bay, poisoning the fish in the adjacent waters. The fishers suffered loss of their livelihood and sued for damages in public nuisance. The defendant objected to the fishers' suit on the ground that they had no right to sue because the harm was suffered in common by "all the majesty's subjects". The court upheld the objection of the defendant and dismissed the action. The court's decision was based on the fact that all Canadians have equal right to fish in the water of Placentia Bay and the plaintiffs could not convince the court that they had suffered damages greater than those of their surrounding neighbours. The court further stated that the only option left open to the plaintiffs was to petition the Attorney General to bring an action himself or allow them to proceed in a relator action.

From the forgoing, it is very clear that public environmental wrongs, such as oil pollution, are addressed in the law court by the Attorney General himself on behalf

[57] Reported in Okonkwo, T.R. The Law of Environmental Liability (Lagos,AEDE,2003) p.138

of the general public this is because an individual is likely to lack locus standi to complain in a court of law. This mean that a lot of oil pollution cases will go un-address because in most cases the Attorney General will not institute an action in the law court since most of the oil pollutants are multinational oil companies in which the government has great interest. The Attorney General being part and parcel of the government will be reluctant to institute an action against the pollutants. This is a serious disadvantage in environmental pollution cases. For example, if the environment is polluted and an individual decides to bring an action in law court against the polluters, the case will not see the day light because the individual will lack the locus standi to institute an action in the law court. Here lies a great problem.

This perhaps explains the reason why there is great increase in oil pollution in Nigeria without a remedy. The Attorney General in most cases is not willing to prosecute environmental offenders rather he is a stumbling stone in successful environmental litigation. The Attorney General should hands up environmental litigation be it a public or private nuisance case. An individual whose right is infringed in environmental pollution irrespective of the degree of injury suffered by the individual, the individual should be allowed to seek redress in the law court against the oil pollutants. This will no doubt save the environmental degradation from oil and gas companies.

5.2.3.2 Aggrieved Individuals

An aggrieved individual whose environment is harmed or polluted as a result of oil spill can maintain an action in the law court against the oil polluter to seek for

remedy[58].The general trend is that in order to have standing to sue, the plaintiff must show "sufficient interest", that is "an interest which is peculiar to the plaintiff and not an interest which he share in common with general member of the public".[59] In *Shell Petroleum Development Company Nig. Ltd v. Chief Otoko and others*[60] the respondents who were plaintiffs at the Bori High Court in Rivers State claim the sum of N499,855.00 as compensation payable to the defendants (appellants herein) for injurious affection to and deprivation of use of the Andoni Rivers and Creeks as a result of the spillage of crude oil. The action was brought in a representative capacity. The Court of Appeal held that: (a) It is essential that the person who sue are to be represented and the person(s) representing them should have the same interest in the cause of matter; (b) Given common interest and a common grievance a representative suit would be in order if in addition to the relief sought it is in its nature beneficial to all whom the plaintiff proposes to represent. The court rejected the purported representative action.

To avoid the problem of locus standi as discussed above in oil pollution cases, an aggrieved person will do well to bring his action under a private nuisance for environmental harm. Private nuisance is unlawful interference with a man's use of his property, or with his health, comfort or convenience. In other words, it is a wrongful act or omission causing either material injury to property or sensible personal discomfort.[61] The fundamental question that an aggrieved person has to answer affirmatively here is what his relationship with the damaged environmental medium is

[58] For example damages, cleanup, Injunction etc
[59] Ladan M.T., Law, Cases and Policies on Energy, Mineral Resources, Environment etc in Nigeria, ABU Press, Zaria,2010.
[60] (1990)6 NWLR (pt.157) 693 as reported in Ladan M.T Op. cit.
[61] Ikoni D.U. Op. cit. P.153

i.e. whether he is the owner and, then the exact nature and quantum of his loss. Once these questions are resolved in his favour, he becomes automatically and unquestionably vested with locus standi.[62] In *Adediran and Anor. v Interland Transport Ltd,*[63] the appellants as resident of the Ire-Akari Housing Estate, Isolo, inter alia brought an action for nuisance due to noise, vibration, dust, and obstruction of the roads in the estate. The Supreme Court dealt with the common law restrictions on the right of a private person to sue on a public nuisance. The Court held that in the light of section 6(6) (b) of the 1999 Constitution, a private person can commence an action on public nuisance without the consent of the Attorney General or without joining him as a party. Also in *Oronto Douglas v. Shell Petroleum Development Co. Ltd*[64] The respondents were engaged in a project for the production of liquefied natural gas. For the project to take place off, they were required to do preliminary studies on the impact of the project on the environment as well as comply with the provisions of the Environmental Impact Assessment Act.

The appellant, an activist in the protection of the environment and he claims, a native of the Niger Delta where there are large deposit of oil and gas, was not satisfied that the respondents had satisfactorily adhered to the provisions of the Act, and hence filed an action against the respondents at the Federal High Court.

The appellant simultaneously filed a writ of summons together with an originating summons claiming in the former, an injunction to restrain the respondents from carrying on with the project until a proper environmental impact assessment had been conducted strictly in accordance with the terms of the said Act.

[62]Usman A.K. Op. cit. P213
[63] (1991) 9 NWLR (pt.214) 155 as reported in Ladan M.T Op. cit.
[64] (1999)2NWLR (pt.59) 466

The 1st – 4th respondents filed a notice of preliminary objection contenting that the appellants lacked the locus standi to maintain the action. The trial court up held the respondent's preliminary objection and struck out the appellant's claim on the ground that he lacked locus standi. On appeal to the Court of Appeal it was held that the appellant had established an overwhelming case of sufficient interest and therefore has the locus to sue. The Court of Appeal clearly stated per Musdapher, J.C.A.(as he then was) that "…standing to sue in Nigeria today is based on the doctrine of sufficient interest and no longer the narrow principle of pure personal interest"

Similarly, in Umudge v. Shell Petroleum[65] the plaintiff complained that the defendant in the course of its operations accumulated oil wastes, which escaped into his land and destroyed his crops and farmlands. The plaintiff was held to have locus standi.

Similarly, in *Victor Elem and Anor vs. Shell B.P*[66] in that case, the plaintiff sued the defendant company for the escape of oil from its location causing damage to the plaintiffs' property. The escape which resulted in the pollution made it impossible for the plaintiffs to farm. The plaintiffs also alleged that due to the defendant's petroleum operations, their water channel got blocked. This caused flooding on one side while the other side was almost dry. The judge invoked the principle of res ipsa loquitur and awarded damages to the plaintiffs on the ground that they have locus to maintain an action in negligence.

In all these cases discussed above, the decisive factors that vest an aggrieved individual with locus standi to sue is the fact that his legal interest has been violated in

[65] (1975)11 S.C. 115
[66](Unreported) Suit No. PHC/101/76

one way or the other. It is clear from the number of cases above that aggrieved individuals had in one way or the other suffered personal injury to their property and therefore have the locus to sue and are willing and capable of seeking remedy in law court to address environmental harm.

It is in line with this that the writer strongly commends the abolition of locus standi in environmental litigation under the New Fundamental Human Rights Enforcement Procedure Rules 2009.[67] This mean that an individual or group of individuals, Non Governmental Organizations (NGOs) can institute action in law courts to address environmental harm without the fear of locus standi. This is in line with the decision of Justice C.V Nwokorie of the High Court Benin City in *Jonah Gbemre v. Shell PDC Ltd and Ors*[68] where the learned judge granted leave to the applicant to institute these proceedings in a representative capacity for himself and for each and every member of the Iweherekan Community in Delta State of Nigeria, and to apply for an order enforcing or securing the enforcement of their fundamental human rights and human dignity as provided by sections 33 (1) and 34(1) of the 1999 Constitution of Nigeria, and reinforced by Articles 4, 16 and 24 of the African Charter on Human and Peoples' Right Cap. A9 Vol.1, LFN, 2004. The Court held that these constitutionally guaranteed rights inevitably include the rights to clean, poison and pollution- free healthy environment. The Judge further declared that the actions of the respondents (Shell and NNPC) in continuing to flare gas in the course of their oil exploration and production activities, in the Appellant's Community are a violation of their fundamental rights. Furthermore, the Judge ruled that the failure of the company

[67]Yerima Timothy F, From Obstacle to Miracle: The New Fundamental Rights Enforcement Procedure Rules of Nigeria, Prospect For Human Rights Advocates. University of Ado-Ekiti Law Journal, Volume 3,2009, p.271
[68] (2005) Suit No. FHC/B/CS/53/05 as reported in Ladan M.T. opcit p.57

to carry out an environmental Impact Assessment in the said community concerning the effects of their gas flaring activities is a clear violation of the E.I.A Act and has contributed to further violation of the said environmental rights. The judge's order restrained the respondents from further gas flaring and to take immediate steps to stop the further flaring of gas in the community. That the Attorney General should ensure the speedy amendment, after due consultation with the Federal Executive Council, the Associated Gas Re-injection Act to be in line with Cap.4 of the Constitution on Fundamental Human Rights.

5.2.3.3 Non-Governmental Organisations (NGOs) and Public Spirited Individuals.

Non-Governmental Organizations are legally constituted organizations registered under the law of the country which they operate.[69] They operate independently from any form of government. The term NGO originated from the United Nations, and normally refers to organizations that are not part of a government and are not conventional for the profit business.[70] The activities of NGOs cut across all spare of life ranging from human right, to environmental issues. Within the ambit of their activities, they fight for the safety and the protection of the environment within their jurisdiction.

In Nigeria, there are many types of NGOs. However, in area of environmental protection, NGOs in Nigeria are very few. The few existing NGOs in Nigeria in the area of environmental protection include, Shelter Rights Initiative (SRI), Nigerian Environmental Society (NES), Nigerian Environmental Study and Action Team

[69] In Nigeria, NGOs are registered under the Companies and Allied Matters Act, Cap. C20, LFN,2004
[70] Willets, Peter "What is a Non-Governmental Organisation" UNESCO Encyclopedia of Life Support Systems. City University London. Retrieved 18 march, 2013

(NEST). [71] The role of NGOs in environmental protection in Nigeria does not seem to go beyond the shores of campaigning against environmental abuses in Nigeria compared to their counterpart in other jurisdictions. What could be the problem? The answer may not be far from the issue of locus standi. The real question here is that does an NGO have locus standi in environmental litigation in Nigeria? In other words, if there is oil pollution which results to environmental harm can NGO whose legal interest has not been affected institute an action in the law court against the polluter in the name of protecting the environment in Nigeria? The answer is no. This may be the reason why there is lack of environmental litigation in Nigeria by NGOs and public spirited individuals, in contrast with what is obtainable in other jurisdictions.

In other jurisdictions like the United States of America, United Kingdom, Philippine, South Africa, to mention but a few, environmental protection by NGOs in these countries are very proactive in environmental litigation because they are vested with locus standi to institute legal action in the law court in the protection of the environment. The case of Association for the Protection of the Adirondack v MacDonald[72] is a very good example of a successful environmental litigation by a Non-Governmental Organization.

In that case, that appellant, an NGO, sued the respondent objecting to the construction of an Olympic field near Lake Placid, which will lead to the felling of about 2,500 trees. It was held that the appellants had locus standi to sue.

[71]Usman A.K. Op. cit. P218
[72] (1930) 253 N.Y.334 170 N.E 902

In Sierra Club v Hardin District[73] the Plaintiffs sued seeking injunction against the felling of certain timbers in the area of Alaska. It was held that they had locus to sue.

However the decision in Sierra Club v Morton[74] appears to be little different. In that case, a valley of great natural beauty nestled in California in the US was to be turned into a national park by Walt Disney Enterprise Inc. The bid was approved by the US Forest Service's entrusted with the maintenance and administration of national forests. Walt Disney earmarked 35 million dollars for the construction of the park. The club sued Walt Disney seeking a declaratory judgment that the proposed plan contravened Federal laws on conservation of forests and games refuges. They also sought for an injunction against the construction of the national park claiming a special interest in the conservation and sound maintenance of the forests of the country now at risk of destruction by the park proposal.

It alleged that the park if built will destroy or otherwise adversely affect the scenery, natural and historic objects and the wild life of the park and would impair the enjoyment of the park by future generations.

The District Court of the Northern California granted the preliminary injunction sought and rejected the respondents' objection to Sierra Club's locus to sue. The respondents appealed to the Court of Appeal which reversed the decision holding that Sierra Club has not shown more direct interest to constitute standing in the legal sense sufficient to challenge the exercise of responsibilities on behalf of all the citizens.

[73] District Court of Alaska, 1971, 325 as reported in Usman A.K. Op. cit. p220
[74] (1972) 405 US 1361 as was reported in Usman A.K. Op. cit. P218

On further appeal, the Supreme Court affirmed the decision of the Court of Appeal and held that Sierra Club has no locus standi to sue on behalf of the community. However, Justice Brennan and justice Blackmun of the same court held a dissenting decision by holding that Sierra Club as an organization with well recognized attributes and purpose in the area of environmental protection has locus to sue. The learned justice of Supreme Court stated further that fear need not be entertained that vesting NGOs like Sierra Club with locus standi will open a Pandora's box in environmental litigation because the courts will exercise appropriate restrains just as they have exercised them in the past.

Judges in other jurisdiction are very courageous to allow NGOs and public spirited individuals to assume locus standi even where their legal interest is not affected to prosecute environmental harm case in the interest of the public.

Nigerian judges are not willing to take the bull by the horn. They refused to follow their counterpart in other part of the world. The reason may not be farfetched from the fact that they may be incapacitated by the our constitutional provision which merely provided that "the State shall protect and improve the environment and safe guard the water, air, land, forest and wild life of Nigeria,"[75] in other words, there is no well defined constitutional right of individual to a clean, safe environment but rather a mere environmental objectives which are enforceable in the law court. Whereas some constitutions in other jurisdiction[76] make environmental protection an enforceable right, this has encouraged judicial activism. For example sections 15 and 16 of the Philippines' Constitution, gives the Filipinos the right to a balanced and healthful

[75] S. 20 of the 1999 Constitution of the Federal Republic of Nigeria
[76] Philippines' Constitution

ecology in harmony with nature" as a fundamental human right.[77] It is base on this provision that gives the Philippines Supreme Court the power to vests locus standi on certain minors to sue for themselves, others generation, and generations yet unborn in the celebrated case of Minors Oposa v. Secretary of the Department of Environment and Natural Resources.[78] In that case the plaintiffs who were minors sued the defendant seeking an injunction restraining the Philippines Government from continuing licensing the felling of timber on the basis that deforestation from timber logging was causing environmental damage. They asserted that they represent their generation as well as generations yet unborn. The Supreme Court of Philippines held that the plaintiffs have the locus to sue. The court stated further that;

> *We find no difficulty in ruling that they can sue for themselves, for others of their generation and for the succeeding generations can only be based on the concept of inter-generational responsibility in so far as the right to a balanced and healthful ecology is concerned. Such a right …Considers the rhythm and harmony of nature. Nature means the created world in its entirety such rhythm and harmony indispensably include judicious disposition, utilization, management, renewal and conservation of the country's forest, mineral, land, waters, fisheries, wild life, offshore areas and other natural resources to the end that their exploration, development and utilization be equitably accessible to the present as well as future generations. Needless to say every generation has a responsibility to the next to preserve that rhythm and harmony for the full enjoyment of a balanced and healthful ecology. Put a little differently, the minors' assertion of their right to a sound environment constitutes at the same time, the performance of their obligation to ensure the protection of that right for the generations to come.*[79]

[77] Usman A. K; Op. cit. P. 215
[78] 33 LL.M (1994) 173 Supreme Court of the Philippines as reported in Usman A.K. Op. cit.
[79] Ibid at P. 216

Environmental litigation by Public spirited individual in India is also commendable. A typical example of this is the case of Mehta v. Union of India Air.[80] The Supreme Court of India in this case upheld the right of a citizen to litigate issues relating to pollution of the Ganges River. The Court held inter alia that " on the facts and in the circumstances of the case, we are of the view that the petitioner is entitled to move this court to enforce the statutory provision which imposes duties on municipal authorities and the boards constituted under the water Act"

Nigerian judges faced with similar cases discussed above, should adopt a liberal construction of locus standi so as to encourage environmental litigation by both NGOs, and public spirited individual who are desirous of protecting the environment. A liberal construction of locus standi is no doubt an effective weapon for environmental protection. The case of Sierra Club v Morton[81] is clear example as discussed above. It will be recalled in that case that the majority of the U.S. Supreme Court held that the appellant lack locus standi to sue the respondents, but Justice Brennan and justice Blackmun of the same court held a dissenting decision by holding that Sierra Club as an organization with well recognised attributes and purpose in the area of environmental protection has locus to sue. This is a clear case of judicial activism which Nigeria judges should adopt to give life to environmental litigation by both NGOs and public Spirited Individual in Nigeria.

Nigerian judges who are desirous of judicial activism, should not be discourage by the wordings of S.20[82] which provide for environmental policy merely provides that "the State shall protect and improve the environment and safeguard the water, air,

[80] (1998)S.C. 115
[81] Supra
[82] 1999 Constitution of the Federal Republic of Nigeria

land, forest and wild life of Nigeria," because this provision does not have the teeth to bite like that of her Philippines' counterpart which makes environmental right as a fundamental human right.[83] Such a judge should disregard the said provision of section 20 and treat every environmental harm issue as a fundamental human right and do away with the issue of locus standi. This will pave way for environmental litigation by both NGOs, and Public Spirited Individuals in Nigeria like other countries.

5.2.3.4 Environmental Agencies.

Environmental agencies are the institutions that are saddled with the responsibilities of enforcing environmental protection laws in relation to their area of operation. For example there several are environmental agencies in Nigeria, some of which are; National Environmental Standards and Regulations Enforcement Agency (NESREA), National Oil Spill Detection and Response Agency (NOSDRA), Department of Petroleum Resources (DPR).etc

Most of the laws which established the environmental agencies stated above also cloth them with locus standi to sue for breach of statutory provision. For instance, Section 32(3) of the NESREA Act[84] vests the agency with the power to conduct criminal proceedings in respect of offences under the Act.[85]

It is however interesting to note, that virtually all environmental statutes in Nigeria are penal in character their breach constitutes a criminal offence that vests the Attorney General with locus standi to initiate criminal proceedings against the offender.[86] Although most of these laws do not mention the Attorney General as the

[83] See sections 15 and 16 of the Philippines' Constitution
[84] Establishment Act, 2007
[85] Usman A.K. Op. cit. P217
[86] Simpson & Fagbohun; Environmental Law and Policy, Leo Print Nig. Ltd. Lagos, 1998 p.150

person vested with locus standi to sue, such statues create offences have the implication of vesting the Attorney General who has the statutory power of prosecuting offences on behalf of the States with locus standi to sue for breach of statutory provisions.[87]

Environmental agencies in Nigeria need to take proactive actions towards environmental polluters with a view of protecting the environment. They have to employ the legislative powers vested in them to institute legal action against environmental polluters in Nigeria. National Environmental Standards and Regulations Enforcement Agency (NESREA), that would have been in a better position to fight environmental harm particularly in the area of oil pollution, has been excluded the agency from exercising its functions in area of oil and gas.[88] NESREA, as an organization is established purposely to enforce and implement environmental protection laws in Nigeria. It has the man power, the technology, and the experience personnel to protect the environment in all aspect. It inherited its structures from the then Federal Environmental Protection Agency[89] (FEPA) that been in the business of environmental protection over 20 years. This is very unfortunate it has no business in the area of oil and gas activities. National Oil Spill Detection and Response Agency (NOSDRA), that has total control over oil spill in Nigeria, do not have the power under the Act[90] to prosecute oil pollution offenders. This is a very serious lacuna in the in the law which dearly need to be addressed. It is just a toothless bull dog that can only bite but cannot bark.

[87] Ibid p.150
[88] See Sections 7 and 8 of the National Environmental Standard and Regulations Enforcement Agency (Establishment) Act, No.92, 2007
[89] It was abolished by Section 36 of the NESREA Act. Ibid.
[90] Op cit foot note no.41

The new Rules[91] have liberalized this procedural requirement. Presently, it is no longer a requirement that a person bringing an action for environmental wrong must show that they are 'persons aggrieved' i.e. persons whose legal rights are infringed or threaten by the State's act, neglect or default in the execution of any environmental law, duties or authority[92]. This is due to the fact that the new Rules expressly mandate the court to proactively pursue enhanced access to justice for all classes of litigants, especially the poor, the illiterate, the uninformed, the vulnerable, the incarcerated, and the unrepresented[93]. This is very commendable because, the poor are not only adversely affected in instances of environmental degradation, but also lack financial wherewithal to offset the cost involved in prosecuting law suits against those responsible for the degradation or threatened degradation.

In a bid to achieve the objective of the new Rules, NGOs, and other representing the less privileged persons and granted access to court and most importantly, the court are required to encourage and welcome public interest litigations in the human rights field and no human rights case may be dismissed or struck out for want of *locus standi*[94]. Furthermore, the new Rules expanded the classes of persons that can bring action in instances of human rights violation. These include any one acting in his own interest, any one acting on behalf of other person, or acting as a member of, or in the interest of a group or class of person any one acting in the public interest, and association acting in

[91] Op.cit
[92] See the cases of Oronto Douglas v. Shell Development Co. ltd (supra), Adediran and anor v. Interland transport ltd (supra) etc
[93] Emeka Polycarp Amechi, (2010) Litigating to Healthy Environment in Nigeria: An examination of the Impact of the Fundamental Rights (Enforcement Procedure) Rules 2009, in Ensuring Access to Justice for Victims of Environmental Degradation. Law Environmental and Development Journal, Unoiversity of London p.320
[9494] See Order 1 Rule 3 (f) of the new Rules

the interest of its members or other individuals or group[95]. Hence by virtue of these provisions, NGOs, and other public spirited individuals can now validly bring action to enforce the fundamental rights of persons affected or threatened either by environmental degradation or by any act, neglect or default of the Nigerian Government in the execution of any environmental law, duties or authority.

However despite the fact the coast has been cleared for NGOs, Public Spirited individuals, etc can sue for and on behalf of an aggrieved individual, the challenge of fund is a militating factor against this smooth operation of the new Rules. Most of the NGOs are funded through foreign aid, donation etc and their activities depends largely on availability of fund. If NGOs or Public Spirited individuals does not have fund, it will be difficult to prosecute any environmental related matter in the court on a charity bases by them.

Secondly, some of the NGOs or Public Spirited individuals may compromise their stand if offered big money by an oil company to drop a case instituted against them. This is because most of the NGOs, are multi-nationals they have a lot of money they therefore afford to big money to ensure that a law suit against them does not see the day light.

Furthermore, some of the NGOs or Public Spirited individuals may lack skilled personnel and equipment to handle environmental pollution or degradation cases. Some time times to successfully proof environmental harm may require scientific expert and sophisticated equipments which many NGOs may lack.

[95] See Order 1Rule 2 of the new Rules

Accessibility to polluted areas by NGOs, and Public Spirited individuals may also hamper smooth operation of the provisions of the new Rules as it relates environmental litigation on the behalf of an aggrieved individuals or even community. Finally jurisdiction to entertain environmental pollution cases lies between the Federal High Court and the State High Court. When a matter involves the Federal Government or any of its agencies it is only the Federal High Court that has the jurisdiction to entertain the matter. The problem that this will pose is that Federal High Courts are not evenly located across Nigeria some state capital does not have Federal High Court, even when there is, they are always located at the state capital far away from rural area where environmental pollution usually takes place.

5.2.4 Proof of Environmental Harm

Environmental harm is the introduction of contaminants into the environment that causes adverse change to it. Oil related harm, is the spillage of oil on the environment which cause harm to the environment.

When harm is caused to the environment, it does not manifest immediately in most cases. Environmental harm takes some time before it manifest, for example, when oil is spilled on the environment the damage to, say the soil may appear clearly immediately, but the consequences of the damage may not be immediate or the actual damage to the environment may take years to manifest[96]. Thus an act causing environmental harm may be committed today, but the actual harm to the environment may not manifest immediately. It may even take a year or more to manifest[97]. A litigant under this situation may face difficulty in proving his case. For example if a

[96] Usman A.K Op. Cit
[97] Ibid p.228

litigant rush to court immediately when an act of environmental pollution is committed, he may be faced with the difficulty of proving any harm because the harm may not show immediately after the commission of the act. If however the litigant delays in commencing his action in the court of law after the commission of the act, to wait for the harm to manifest, he will be faced with the problem of proving proximity of causation to be entitled to damages against the defendant. In addition to the difficulty of not having immediate manifestation of the harm, is the difficulty of scientific proof of the harm such as testing of the soil, the quantum of the damage, requirement of technical expert etc. This is not only time consuming but also capital intensive. This will no doubt put the plaintiff in a very tight corner. This was the situation in *George Thorsfall and Ors v. Shell B.P Development Company*[98].The plaintiff in that case brought an action against the defendant for damage caused to his building by the defendant in the course of petroleum operations many years before the action. The plaintiff claimed the sum of N100, 000 as damages. The court in refusing to grant damages to the plaintiff held that the cause of action accrues at the time of the act because it was at that time that the damage was caused even though its consequences may not be apparent then until later.

It is clear from this case that a victim of environmental pollution may obviously find it very hard to succeed in his claim if the effect of the hazard does not manifest immediately. If on the other hand, he has to wait for the harm to manifest he may however be caught by limitation period[99]. Limitation period is the period within

[98] (1974) 2.R.S.L.R 126

[99] See for example section 18 of Limitation Law of Kaduna State Cap. 89, 1991 and section 32 Limitation Law of Lagos State Cap.118, 1994 which prescribe a limitation period of 5 and 6 six years on action founded on tort respectively.

which a legal action may be maintained against the defendant, if a legal action is not maintained within the stipulated period, for example 5 or 6 years as the case may be such an action becomes statute barred. This was specifically emphasized in the case of *Texaco Panama Inc. v. Shell Petroleum Development Company*[100]. In this case the Court of Appeal stated that a cause of action is said to be statute barred when no proceedings cannot be brought in respect of it for the reason that the period laid down by the law for its being brought has lapsed. In the instant case, the court went further to state that the factual setting of the suit makes it clear that the suit was instituted well outside the twelve months period provided for in section 110(1) of the Port Act[101].

If an aggrieved party wants to either join a statutory body as a party or bring an action against a statutory body directly, he may still be caught up by statute of limitation. For example, if an aggrieved person want to sue NNPC, he must institute the action within 12 months after the act or 12 months after the ceasing of the act[102] or if the aggrieved party decides to move the court to mandate NOSDRA to ensure that an oil spill is cleaned up by an oil company, he must maintain the action within six (6) months otherwise it will become statute barred[103].

The difficulty a litigant may likely face is that of manifestation of harm to the environment that he intends to institute an action in respect of. Thus in cases of oil pollution the likely damage to the environment, may not be visible immediately until after some years. For example in *Seismograph Services Ltd v. Onokpasa*[104]**,** the respondent in that case, brought an action against the appellant on the ground that his

[100](2000) 4 NWLR (pt.653) 480
[101] Cap.361 Law of the Federation of Nigeria 1990.
[102] See section 12 of the NNPC Act, Cap. N123 Laws of the Federation of Nigeria, 2004
[103] See section 20(a) and (b) of the National Oil Spill Detection and Response Agency (establishment) Act, No.72 2006
[104] (1972) 4.SC.123

school building developed cracks following the appellants rock blasting activities near the school. The cracks became visible only after some years following the cessation of the appellant seismic activities. On these facts, the court held that the respondent had failed to link the cracks on his building with the appellant's activities regard being had to the effluxion of time between the blasting activities of the appellant and the appearance of cracks on the respondent's building.

This case is a clear example of what a litigant will face in proving harm to the environment. In other word the problem of linking the act of oil spill and the actual damage that will appear or manifest after some years. The means of proof in this regard, should be scientific; for example, testing of soil before and after the spill, using advance technology to ascertain the likely period that harm might manifest when oil spill occur. Empirical research will also assist in ascertaining the likely period environmental harm will manifest after an oil spill. Unless this is determined, the issue of proof of environmental will always remain a challenge to litigants.

5.2.5 Burden and Standard of Proof in Environmental Litigation.

For a litigant to succeed in any litigation, it will largely depends on the evidence advanced before the court without it success will not be guaranteed be it criminal prosecution or civil suit. Importantly, the handling of burden of proof may be a crucial factor in determining the outcome of environmental litigations. To properly address the issue of burden of proof two key aspect of evidence must be taken into account namely on whom does the burden of proof lie? What quantity and quality of

evidence is required from a party whose environmental right has been infringed most prove?

The burden and standard of proof various from cases to cases.

5.2.5.1 Burden of proof in Criminal Cases

In criminal prosecutions the burden of proof is on the prosecutor who must prove his case beyond reasonable doubt.[105] If the prosecution however succeeds in proving his case beyond reasonable doubt, and the accused raises statutory defences such as existence of permit or licence, lack of knowledge and exercise of due diligence to prevent the crime, then the accused must prove the statutory defences relied upon on the balance of probabilities[106]. This principle also applies to environmental offences[107]

In environmental litigation, the standard of proof required is usually less than that expected in ordinary criminal case for example when words such as "knowingly" "willfully" "purposely" and "intentionally" are used in environmental statute, their interpretation requires lesser forms of mens rea such as "recklessly" "unlawfully" "causing" and negligently" they are usually accorded less standard of proof. For example the provision of Section 27 of the NESREA Act is silent on the mens rea requirement to secure conviction of the offender who discharges hazardous substances into the air, land and waters in the territory of Nigeria. So also, Section 1 (2) of the Harmful Waste (Special Criminal Provisions) Act[108] was silent on the requisite mens rea rather the words "without lawful authority" and "cause" were used to describe the

[105] See Section 137 of the evidence Act Cap E14 LFN, 2004
[106] See Section 138 of the Evidence Act. Ibid.
[107] M.T Ladan Op. cit P. 63
[108] Cap H. LFN, 2004

prohibited acts of importation, purchase, sale, deposit and storage of harmful waste into the territory of the country. Interestingly, these Criminal Provisions, their interpretation has not really been called into question largely due to lack of prosecution by the regulatory agency[109]. It is however clear from the wordings of the Section 1(1) and 7 of Harmful Waste (Special Criminal Provisions E.t.c.) Act and Section 242(b) of the Criminal Code Act that the burden of proof is on the prosecution[110]

In construction of environmental statutes, there are two domineering theories. The classical theory and public welfare theory; the classical theory perceives of environmental statutes like any other statute e.g. Criminal Code, Penal Code etc. It therefore requires the judges that are faced with the interpretation of environmental statutes to strictly interpret the provisions just like any other Criminal Statutes. By this approach, the higher standard of proof that is ordinary expected in traditional criminal offences from the prosecution must be established before an offender is declared guilty.[111] The public welfare theory is the other school of thought. This school takes environmental legislation as a special legislation that is calculated at protecting the welfare of the people in this regard, the school displaced the presumption of mens rea in favour of strict liability. By adopting this method, the school encourages judges to embrace a liberal interpretation of the panel provisions of environmental legislations

By requiring a lesser standard of proof from the prosecutions but imposing a higher standard on the accused for polluting or degrading the environment. It therefore

[109] Amokaye g. O. Op cit p. 636
[110] M.T Ladan Opcit Page 63
[111] Ibid

means that the courts may construe the knowledge or intent requirement broadly in order to advance the public welfare goal.[112]

This liberal interpretation is very likely to gain more ground than the classic theory because of its liberal nature in fact this is so in many jurisdiction especially where environmental issues are regarded as earth threaten and worthy of judicial and legislative protection. In the United States of America for example the Courts in considering the "knowing" mens rea requirement for most environmental offences have rejected arguments that it must be prove that a defendant knew that a particular statutes or a permit requirement was being violated in order to obtain a criminal conviction.[113] In the jurisdiction under reference, the evidentiary requirements inferring knowledge in environmental crimes are not stringent and the government generally has to show only that pollution or some other violation of the statute occurred and that the person in question was in a position to know of the violation.[114] The case of *United States v. Boldt*[115] clearly shows the foregoing discussion. In that case the court held that the evidence of the defendant is sufficient to sustain conviction in that the manager at manufacturing plant, ordered a subordinate to dump copper waste water into city server system and could have avoided discharge by shutting down the plant. Also in *United States v. Frezzo Bros*[116] the court allowed the jury to infer knowledge of discharge from circumstantial evidence indicating existence of no other feasible explanation for pollution except willful discharge. Finally in the case of

[112] Ibid P. 637
[113] Ibid
[114] Ibid
[115] 929F.2d 35, 39(1st Cir.1991)
[116] 60 F 2nd 1123, 1129 (3rd cir. 1979)

United States v. Hamel[117] the court inferred knowledge in establishing evidence to show that actions of gasoline dispenser owner at the time the dispenser discharged gasoline from pier onto frozen lake was willfully done and therefore the owner was liable for conviction.

It is interesting to note that the knowledge of a violation of any environmental statute may be inferred on the basis of circumstantial evidence but the defendant must however have knowledge of the violation for each element of the offence. This was the situation in the American case of *United States v. Weitzenhoff*[118] in that case, a manager and an assistant of a Community Services Sewage treatment Plant were convicted of violating the Clean Water Act S. 319 (1) (2). Weitsenhoff managed an east Honolulu plant which was designed to treat about 4 million gallons of residential waste water each day by removing the solids and other harmful pollutants from the sewage so that the resulting effluent could be safely discharged into the ocean. The plant generated waste activated sludge that the defendant usually had removed to another treatment plan. At one point improvements were made to the plant and the hauling was discontinued. Therefore, waste-activated sludge began to build up the plant. The defendants instructed employees to dispose of it on a regular basis by pumping it from the large tanks directly into the ocean. The waste-activated sludge by passed the plants efficient sample so that the samples taken and reported to Hawali's department of Health and the Epa did not reflect its discharge. The discharge from April 1988 to June 1989 amounted to 436,000 pounds of pollutant solids being discharged into the ocean and violated the plant's 30-day average effluent limit under

[117] 5515 F 2d. 107(6th Cir.1977)
[118] IF. 3d 1523 (9th Cir. 1993)

the permit for most of the months during which they occurred. The managers were found guilty of six out of thirty-one charges of violating the CWA. Weitzenhoff, was sentenced to twenty one months of imprisonment, filed an appeal in contesting the analyzed congressional intent and the legislative history of the CWA to determine what constituted "knowingly" the court stated.

> Because they speak in terms of 'causing' a violation, the congressional explanations of the new penalty provisions strongly suggest that criminal sanctions are to be imposed on an individual who knowingly engages in conduct that results in a permit violation, regardless of whether the polluter is recognizant of the requirements or even the existence of the permit.

The court further stated that the Clean Water Act (CWA) is a public welfare stated and therefore the "knowingly" component did not refer to the legal violation but to the act itself. According to the court, The criminal provisions of the CWA are clearly designed to protect the public at large from the potentially dive consequences of water pollution, and as such fall within the category of public welfare legislation. Subsequently, the court held that the government did not have to prove that the defendants knew that their acts violated the permit or the CWA. The court further held that the discharge were not permissible by because they were not for essential maintenance to assure efficient operation"

Also in Alphacell v. Woodland,[119] the phrase "cause" used in the control of pollution Act (UK) was interpreted by the English Court to lay down an offence of strict liability. In this case, settling tanks at a paper factory over flowed into the river Irwell The biochemical oxygen demand (BOD) of the discharge was well above the

[119] (1972) AC 824

level permitted in the consent. Though the lower court did not find that the firm had been negligent, the House of Lords held that there was no need to prove negligence or fault to establish the offence under Section 85 of the Control of Pollution Act (COPA), 1974. Alphacell was guilty of the general offence of causing pollution simply by carrying on the activity which caused the pollution. As long as their activity was itself intentional all that need to be shown was a causal link between it and the discharge "causing" would, therefore, require the involvement of the suspect in an operation or chain of operations to which the environmental pollution is attributable.

Hand in hand with the foregoing cases is the case of *Empress Car Company Ltd v. Environmental Agency*[120]. In this case a company was storing diesel in a tank on its premises, the overflow protection system of which had been disconnected. Hooligans opened the unlocked tap on the tank allowing the diesel to enter a drum which overflowed into the ground and polluted a nearby water body. The Environmental Agency brought a criminal prosecution under the U.K. Water Resources Act, 1991, S.85 (1) whereby it is an offence to cause or knowingly permit pollution matter enter controlled waters. The House of Lords uphold the conviction of the company on the grou nd that if a company is involve in acts such as maintaining tanks, it may be guilty of causing water pollution in the event of an escape of polluting matter. A third party act, such as vandalism or a natural event, did not serve the causal link between the defendant's act and the pollution unless by an extra ordinary act. According to the Court, section 85 imposes liability under separate heads; the first limb simply for doing something which causes the pollution and the second for knowingly failing to prevent the pollution. The motion of causing is present in both

[120] (1998) 1 All E.R. 481

limbs; under the first limb, what the defendant did must have caused the pollution and under the second limb his omission must have caused it. The distinction in section 85 between acts and omission is entirely due to the fact that parliament has added the requirement of knowledge when the cause of the pollution is an omission. Liability under the first limbs, without proof of knowledge, therefore requires that the defendant must have done something.

5.2.5.2 Proof in a Civil Case

The burden of proof in a civil case is on the preponderance of evidence or the balance of probabilities except the statutory burden of proof laid down in the Evidence Act, and under the Common Laws.[121]

A party seeking the judgment of the Court in civil environmental litigation which is usually based on Common Law principles the burden of proof is on him and this will be discharge by him based on preponderance of evidence except where he out rightly admit same[122] when this happens, it is not necessary for the defendant to disprove anything.[123] the plaintiff must show that the polluter's wrong doing caused him actual damage and that such damage is not in law too remote a consequence of the defendant's wrong doing,[124] in essence he must establish the causation between the harm and the defendant's conduct as was clearly demonstrated in *Adedirian v. Interland passport Ltd*[125] in that case the plaintiff respondents took representative action on behalf of all members of Ire-akari House Estate Association for Isolo damages and in junction. The members complained of nuisance caused by the

[121] M.T. Ladan Op cit P. 75
[122] S. 137 Cap. E14 L.F.N.
[123] Amokaye G. O. Op. cit P. 641
[124] Ibid
[125] (1991) 9 N.W.L.R (Pt 214) 155

defendant/appellant to them by the defendant by way of many of violent and disturbing noises, unbearable volume of dust; bringing in undesirable element into the estate; damage to roads, telephone poles, and water pipes, making big pot holes on the roads and depositing refused around and engine oil in gutters. After hearing the trial judge found for the plaintiff respondents and awarded ₦20, 000 for private nuisance; and also granted the injunction sought. On appeal to the Court of Appeal, the judgment of the trial court was upturned.

From the facts of the above case it is very clearly that the defendant's wrong doing caused the actual damage. It was the activities of the heavy vehicle brought into the Estate by the defendant that resulted to the act complained of by the plaintiff.

In private nuisance action, for example, the plaintiff needs to establish interference with the reasonable enjoyment of his land and that he suffered damages as a result of the defendant's action.[126] In many oil pollution cases, many plaintiffs have succeeded in proving nuisance by adducing evidence to establish damage to their rivers, creeks, ponds and crops. This was what happened in the case of *Shell Petroleum Development Company Co. Ltd v. Isaiah*[127]

Amos v Shell BP (Nig.) Ltd[128] in this case the plaintiff claimed damages from the defendant (amongst others) for public nuisance they alleged that the defendant made a large earth-dam across their creek during oil mining operations. They also alleged that this resulted in the flooding of the upstream, while the downstream was dry. Consequently the plaintiffs were put at a disadvantage with respect to the use of water way for navigating barges, river crafts, canoes, and disruption of commercial

[126] Adediran v. Interland transport Ltd supra
[127] (1997) 6 NWLR (pt.2) 235
[128] (1977) 6SC. P. 109

activities, use of water for drinking and other commercial purposes. The trial court and the Supreme Court both found that, the conduct of the defendant amounted to public nuisance. However, there was no evidence from the plaintiffs showing that, they suffered damages, over and above those suffered by the general public. The action was therefore dismissed on ground of failure to prove peculiar damages suffered by the plaintiffs.

In an action for negligence in civil environmental litigation, the plaintiff must adduce sufficient evidence to establish the existence of breach of duty and existence of causation in fact and in law. It should be noted that negligence actions will require the establishment of fault and duty of care at the time of the plaintiff's exposure to pollution. The establishment of fault on the part of the defendant in environmental claims is a very high burden of proof to establish fault, it will be necessary to prove at which date the available scientific information identified an agent as likely to cause damage and at which date the defendant company knew or should have known, that the process caused harmful or allegedly harmful contaminated emission.[129] This state of knowledge and available information is also very important for the purpose of determining foresee ability without which duty of care can arise in cases of this nature. It is in this regard that the Privy Council held in the case of In *Yeun Kun Yeu v. A. G. Hong Kong*[130] that a close and direct relationship between the parties had to be established for negligence and all the surrounding circumstances would need to be considered, including contemplation of harm to others by failing to take reasonable care. It is also in line with the foregoing that a claim against a chemical company for

[129] Amokaye G.O Op. Cit. at P. 641
[130] (1988) AC 177

example for an escape of noxious chemicals to succeed, it will be necessary not only to establish the fault of a particular emitter but also to test the standard of care of a reasonable operator of the plant at the relevant time. Thus in *Chinda & Ors v. Shell B. P. Development Company of Nigeria*[131] the plaintiff sued the defendant company for the heat, noise, and vibration resulting from the negligent management and control of the flare set used during gas flaring operations, the judge held that the plaintiff could not prove any negligence on the part of the defendant in the management and control of the flare set since the plaintiff had used the best technology available at the time and in accordance with the reasonable industry's practice. The court held further that it is not a good defence for a defendant to merely assert that the act complained about was caused by the sabotage act of a third party. The allegation must be strictly proved.

This was also the case in *Shell Petroleum Development Co. (Nig) Ltd v. Adamue*[132] In this case the respondents/plaintiffs instituted actions in negligence and under the strict liability rule in *Rylands v. Fletcher*[133] claiming compensation for oil spillage that damaged the land, crops and water of the respondents, the appellant/defendant asserted without serious evidence to show that the spillage was caused by hostile acts of some people. The court rejected such claim and held that the dependant having failed to prove criminal allegation had failed to discharge the Onus Placed on it under these rules and was therefore liable for the spillage.

Causation is also an essential element in many environmental related cases. It must be legally and factually possible. Therefore a plaintiff in environmental law suit

[131] Amokaye G.O op.cit at P. 642
[132] (2003)11 N.W.L.R. (pt832) P.533
[133] supra

must prove that the injury sustained and which he is complaining of was caused by the action of the defendant and is not remote.

Issues involved in proof in environmental litigant works seriously against enforcement of environmental rights in the law court. A plaintiff who clearly sustains one form of injury or the other may not succeed in his claim simply because of wants in any of the issues of proof in establishing his case in environmental matter. Adediran's case is a shining example, where the plaintiff's environmental right was clearly violated but could not succeed in his claim on the ground that the injury complain was a public nuisance, hence, it is the attorney general that can bring the action. This usually work hardship against the victims of environmental pollution

5.3 Environmental Right

Environmental right encompasses many rights such as rights to clean, safe, and healthy environment. When environment is degraded it touches on so many human rights issues such as right to life, right to privacy and right to self-determination[134] etc. violation of environment right is inflicted by multinational companies engaged in oil exploitation, and other natural resources in Nigeria. The level of environmental abuse which boarder on human right arising from oil production in Nigeria was graphically summarize by the Human right Watch Report in 1999[135] as follows:

> *Oil production has had damaging effects on the environment of the oil producing region, though the extent of the damage is subject to dispute … despite decades of oil production; there is surprisingly little good quality independent scientific data on the overall or long term effects of hydrocarbon pollution on the Delta, yet oil-led development has clearly seriously damaged the environment and the livelihood of many of those living in*

[134] Amokaye G.O op.cit at P. 588
[135] Human Rights Watch the price of oil, (New York Human Watch, 1999)

> *the oil Producing communities. The oil companies operating in Nigeria maintain that their activities are conducted to the highest environmental standards; but Nigerian environmental laws, in most respects comparable to their international equivalents, are poorly enforced*

The Report noted further that;

> *occasional large oil spills pollute water, kill aquatic animals and damage agricultural crops. It also has serious effects on the communities and families affected, especially on dry land or in fresh water swamp zones where spills are contained in a small area. The long-term effect of these major pollution incidents, regular small spills, and effluent deliberately discharged to the environment is largely unevaluated. Poorly designed cause ways and canals used by the oil industry affect the hydrology of the seasonally flooded fresh water swamp and the brackish water of the massive forest, again killing off crops, destroying fishing grounds, and damaging drinking water supplies. Compensation for such damage is inadequate and in the absence of a properly functioning court system, there are no effective resources to an independent arbiter to determine the value of the damaged property. The oil companies also alleged that many spills are caused by sabotage, and in accordance with Nigerian law they pay no compensation in such cases; but the determination of sabotage has occurred is largely left in their own lands, increasing the chances of injustice. At the community level, the companies are faced with increasing protest directed at oil company activities and the lack of development in the delta; these have included incidents of hostage taking closures of filing stations, sabotage, and intimidation of staff. The Niger Delta has for some years been the site of major confrontation between the people who live there and the Nigerian government security forces, resulting in extra-judicial executions, arbitrary detentions, and draconian restrictions on the rights to freedom of expression, association and assembly. These violations of civil and political rights have been committed principally in response to protest on the activities of the multinational companies that produce Nigeria's oil.*[136]

[136] Ibid

The foregoing report has graphically highlighted the happenings in the Niger Delta area. The empirical arm of this research also revealed the same situation. The oil operators and the governmental agencies saddled with the responsibility of check mating the activities of the oil companies operating in the Niger Delta have not lived up to their expectation hence there are regular oil spill in large quantity resulting in environmental degradation.

When examining the issue of human right and environmental abuses, one of the disturbing aspects of public environmental litigation is the non existence of a constitutionally granted "environmental right under Nigerian law to address our environmental challenges. The supposed environmental right as contained in the 1999 Nigerian Constitution falls under Chapter II which is Fundamental Objectives and Directive Principles of the State Policy it merely directs the state to "protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria".[137] Similarly the Constitution guarantees the right of every person to life[138] when these provisions are literally considered, it suggest that any person whose environment is degraded can trigger an action to protect the degraded, environment, if the government refuses, neglect or failed to enforce any environmental legislation. This is not obtainable in the real life situation basically on two grounds.

First enforcement of fundamental human rights pursuant to special procedure made under the 1979 Constitution does not admit of any right not enshrined in Chapter IV of the 1999 Constitution. Second, the ability of Nigerian citizens to invoke the provisions of section 20 of the Constitution has been whittled down by the

[137] section 20 of the 1999 Constitution of the Federal Republic of Nigeria
[138] Section 33 (1)

provision of section 6(6) (c) of the Constitution which clearly excludes judicial powers to decide on "issue or question as to whether any act or omission by an authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of the State Policy (FODPSP) set out in Chapter II of the Constitution." Third, judicial attitude towards the interpretation of Chapter II of the Constitution has been construed as non-justiciable rights which cannot be elevated to the status of substantive rights except through legislative intervention[139]

In *Okogie v. Lagos State Government,*[140] the plaintiff brought an action challenging a circular issued by the Lagos State Government purporting to abolish private schools in the state on the ground that the circular infringed on the constitutional rights to receive and impart education guaranteed under section 36 of the 1979 Constitution. The defendant argued that the implementation of the circular was in conformity with the provisions of FODPSP on education matter as contained in section 18 of the 1979 constitution. That the provision requires the state to direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels to the citizen. The issue before the court was how to reconcile the constitutional provision in section 36 that guarantees right to disseminate and impart education with that of Fundamental Objectives Provisions on education. The Court of Appeal, however decided that the directive principles of state policy in chapter II of the 1979 constitution in non-justiciable and must conform to and run subsidiary to the

[139] Amwkaye G.O. Op cit p. 593
[140] (1981)2 NCLR 337

fundamental rights. The court held, in effect, that an individual could not rely on FODSPSP to assert any legal right.

It is interesting to note that the decision in Okogie's case[141] was to a very large extent influenced by an earlier Indian case of *State of Madras v. Obampakam*[142] It is also interesting to note that, the Indian courts appeared to have made a turn-around; despite their initial hesitation, they have set a new standard in the area of environmental litigation when the gravity of environmental hazards became increasingly perceptible, despite the fact that Indian's economy is still a developing one, the Indian courts felt the need for strict enforcement of environmental legislation so as to protect the environment and preserve environmental rights of the Indian citizens. In line with the foregoing, the Indian Supreme court disregarded the traditional concepts of locus standi by invoking the powers under Articles 32[143] and 48[144] of the Indian constitution to entertain a new genre of litigation and allow private attorneys to institute actions to protect the fundamental rights of the people. The court, supporting the crusade against environmental degradation, proceeded on the premise that a clean and wholesome environment is a prerequisite to enjoying the right to life enshrined in the Indian constitution as a fundamental right of all persons.[145] The decision in Rural litigation and Entitlement Kendra v. State of U.P.,[146] really reflects the foregoing discussion. In that case, the petitioner, the Indian Council for

[141] Supra
[142] (1951) SCR 252
[143] Article 32 empowers the Supreme Court to enforce the rights conferred under the constitution and to issue directions or orders or writs including writs in the nature of *habeas corpus, madamus, prohibition, quo warrantor* and *certiorari* for the enforcements of any rights conferred under the constitution.
[144] Article 48 provides: "The state Stall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country's
[145] Amokey O. G. Op. cit.
[146] (1966) A. I.R. SC 1057.

Environmental Legal Action brought an action to stop and remedy the pollution caused by several chemical industrial plants in Bichri Village, Udaipur District, Rajasthan. The respondent operated heavy industry plants without permits producing Chemicals such as Oleum, Single super phosphate and highly toxic "H" acid 'which polluted the water and soil of the village and its environs. The Supreme Court, in Public interest litigation instituted by the Kendra People, ordered a major part of the quarrying activities to be closed down. Also in a few subsequent public interest litigation cases, the court recognized the right to environment and invoked the power under Article 32 of the constitution to issue appropriate orders and directions. In *M. C. Mehta v. Union of India*[147] the petitioner, a legal practitioner, filed a writ at the Supreme Court for the prevention of nuisance cause by the pollution of the river Ganga by the discharge of effluents by tanneries and chemical industries on the banks of the river, at Kampur. The Supreme Court ordered its office to serve notice of the suit on all industries concerned and, after hearing both sides, ordered those tanneries not having pretreatment plants approved by the Pollution Control Board to stop their discharge of trade effluents.

Based on the foregoing discussion and analysis, it is very clear that the decision in Okogie's case should no longer be a good law, particularly as it relates to environmental protection and sustainable use of our natural resources. Our courts should follow the courageous attitude of Indian judges and call a spade a spade when it comes to environmental issues. Although it is not in dispute that the Nigerian Law readily recognizes environmental right, but the question of enforcement of such right will ultimately depend on the judicial application of locus standi rule as discussed

[147] (1987) AIR 1086

earlier in this work in other to accommodate or restrict the broad spectrum of environmental litigants that are likely to come before it.[148]

5.4 Courts with Jurisdiction in Environmental Litigation

Jurisdiction means the authority which a court has to decide matters that are brought before it, or to take cognizance of matters presented to it in a formal way for its decision.[149] Jurisdiction goes to the root of an action and it is so sacrosanct, as the courts must first determine whether it has jurisdiction to entertain such suit or not, because any decision given by a court lacking jurisdiction is a nullity.[150] The issue of jurisdiction is indeed a crucial question of competence of the court.[151] Without which any decision given by a court is a total nullity.

The jurisdiction to determine cases of environmental matters in Nigeria can be divided into two, to with; those matters founded in tort or in equity or action to secure administrative remedies against the official or any agency of State Government, and those involving Federal Agency or matters exclusively reserved for the Federal High Court. In the first set of matter, the jurisdiction of the State High Court is unlimited except as may be ousted by any other law.[152] While matters involving Federal agency or those exclusively reserved for it, the Federal High Court exercise exclusive jurisdiction. Private action against Federal Ministry of Environment to secure compliance with the provisions of NOSDRA Act[153] in cases of inaction or oil pollution claims, and cases connected with Mines and Minerals including (oil field, oil mining, geological surveys and natural gas) can only be initiated at the Federal High

[148] Amokey O.G. Op. cit. P. 601.
[149] Ladejobi V. Odulota Holdings Ltd (2002) NWLR (Pt. 753) P. 121 at 135.
[150] Madukolu v. Nkemdilim (1962) All N.L.R. 581.
[151] C.G.G. v. Ogu (2005) 5 MJSC1
[152] Section 272 C.F.R.N. 1999 and Shell Petroleum Dev. Co. Ltd v. Anor & Ors. (2000) 23 WRN 111
[153] Opcit

Court by virtue of Sections 251 (1) (n)[154] of the Constitution of the Federal Republic of Nigeria, 1999. This being the case, if such an action are wrongly commenced at the State High Court, your guess would be as good as mine, that such an action would be met with a preliminary objection of the opposing counsel challenging the competency of the court to hear and determine the matter. This is the position of the Court of Appeal in *Shell Petroleum Development Co. (Nig) Ltd v. Maxon*[155] in which the Court of Appeal upheld the objection of the defendant to the jurisdiction of the State High Court to try a matter that border on Mines and Minerals on the ground of the provisions of Decree 107 of 1993 (now section 251 (1) (n) of the 1999 constitution).

It should be noted that before the Supreme Court's decision in *Shell Petroleum Dev. Co. (Nig.) Ltd v. Isaiah*, the exclusive Jurisdiction of the Federal High Court in Matters involving pollution arising from Mines and Minerals exploration was in controversy.[156]

But the court held that oil spillage from an Oil Pipeline is a thing associated with, related to, arising from, ancillary to mines and minerals, including oil fields, oil mining, geological surveys and natural gas and therefore within the exclusive jurisdiction of the Federal High Court by Virtue of Section 251(1) (n) of the 1999 Constitution. The foregoing decision was also upheld by the Supreme court in the more recent case of *C.G.G. v. Ogu.*[157] It would be correct to observe that with this decision and the decision in the earlier Case of Isaiah,[158] the Supreme Court has laid to

[154] Of the Constitution of the Federal Republic of Nigeria,1999
[155] (2001)9 NWLR (Pt.719)P.541 at 554.
[156] In Shell Petroleum Dev. Co. of (Nig) Ltd. V. Isaiah (1997) 6 N.W.L.R. (Pt. 508) 236, the court of Appeal held that the State High Court has Jurisdiction to determine cases involving pollution arising from the mining and exploration of mines and minerals.
[157] (2009) MJSC 1
[158] Supra.

rest the controversy on the exclusive jurisdiction of the Federal High Court in matters involving mines and mineral. This researcher is of the view that in determining whether the Federal High Court has exclusive jurisdiction, on an environmental matter, recourse must be had to the statement of claim to ascertain the nature of the transaction, the capacity in which the action is based and the subject matter of the claim more so that the torts of negligence and nuisance are within the jurisdiction of the State High Courts.

CHAPTER SIX

DATA PRESENTATION AND ANALYSIS

6.1 Introduction

This Chapter deals with the presentation and analysis of data which was collected collection through questionnaires. The information gathered are presented in tabular forms and the result are discussed one after the other. In all, three hundred (300) questionnaires were used for the study and distributed to persons in four states. The states are Bayelsa, Rivers, Delta and Akwa-Ibom. Out of 300 persons, two hundred and forty six were returned while fifty four questionnaires were not returned. It is based on this background that this data analysis was done.

Most of the respondents are in the rural areas, they are mostly farmers and fishermen. They are affected as a result of environmental degration by oil and gas companies in Nigeria.The above mentioned states were choosen because most of the oil exploration, exploitation, transportation, and production takes place in these states hence their environment is prone to degradation than any other state in Nigeria.

6.2 Data Presentation and Analysis

Questionnaires background and information

Table 6:1: Distribution to Respondents on the basis of sex:

Sex	**Nos. of Respondents**	
Male Female	193 53	
Total	**246**	

The above table shows that 193 respondents are males, while 53 respondents are females. This shows that majority of the respondents are males. Although the

questionnaires were distributed at random but our analysis shows that more males were given higher number of questionnaires.

Table 6.2: Distribution of respondents on the basis of marital status

Marital Status	**Nos. of Respondents**	
Single	182	
Married	64	
Total	**246**	

The above table shows that 182 respondents are singles while 64 respondents are married. This shows that majority of the respondents are single.

Table 6.3: Distribution of Respondents on the Basis of State of Origin.

What is your state of origin?	**Nos. of Respondents**	
Rivers State	88	
Bayelsa State	53	
Delta State	66	
Akwa-Ibom State	39	
Total	**246**	

The above table shows that 88 respondents are from Rivers State, 53 respondents are from Bayelsa State, 66 respondents are from Delta State while 39 respondents are from Akwa-Ibom State. This shows that majority of the respondents are from Rivers State.

Table 6.5: Distribution of Respondents on the Basis of Age

What is your Age?	**Nos. of Respondents**	
20-30 yrs	Nil	
30-40 yrs	32	
40-50 yrs	123	
50- and above	91	
Total	**246**	

The above table shows that 32 respondents are between the ages of 21-30 years, 123 respondents are between the ages of 31-40 years and 91 respondents are

between the ages 41and 50. This shows that the majority of the respondents are between the ages of 31-40 years.This is to find out which age bracket of the respondents.

Table 6.6: Distribution of Respondents on the Basis of Educational Qualification

LastEducational Qualification	Nos. of Respondents	Percentage (%)
Non formal education	24	9.8
Primary education	59	24
Secondary School	25	10
Tertiary	124	50
Other Specify	16	6.2
Total	**246**	**100%**

The above table shows that 9.8% respondents did not attend any school, 24% respondents attended primary education, 50% respondents attended secondary school, and 10% respondents attended tertiary education while 6.2% respondents attended other Schools. This shows that majority of the respondents attended secondary education.This question is disgned to find out the educational back ground of the respondent. The aim of this data is to show that higher the educational level the more the respondent appreciate the need for safe environment.

SECTION "B" The impact of oil spill and gas flaring on Environment

Table 6.7: Has oil ever spilled on your surrounding environment?

Variables	Nos. of Respondents	Percentage (%)
Yes	243	98.8
No	3	1.2
Total	**246**	**100**

From the above, this table shows that 98.8% of the respondents responded yes while 1.2% of the respondents responded No. This indicates that majority of the respondents had oil spilled on their environment.

Table 6.8: If your answer in 8 above is yes, how many times?

Variables	Nos. of Respondents	Percentage (%)
One	4	1.7
Twice	9	3.7
Three Times	11	4.5
More than three time	222	90.1
Total	**246**	**100%**

From the above table 1.7% of the respondents responded that oil had spilled on their environment once, 3.7% of the respondents responded twice, 4.5% of the respondents responded that oil had spilled on their environment three times while 90.2% of the respondents responded more than three times. This shows that majority of the respondents' had experience more than three times of oil Spilled in their environment.

Table 6:9: Where did the oil spill affects?

Variables	Nos. of Respondents	Percentage (%)
Your house	22	8.9
Your river	33	13.4
Your farm land	164	66.6
Your school	15	6.2
Market Area?	12	4.9
Total	**246**	**100%**

The above table shows that 8.9% of the respondents responded that the oil spill affected their houses, 13.4% of the respondents responded that it effect the river, 66.6% of the respondents went for farmland and 6.2% of the respondents went for

School while 4.9% percent of the respondents went for market area. This shows that majority of the respondent's experiences oil spill on their farmland.

Table 6.10: What happened to the oil spill?

Variables	Nos. of Respondents	Percentage (%)
It was cleaned up	213	86.6
It was not cleaned up	33	13.4
Total	**246**	**100**

The above table shows that 86.6% of the respondents said that the oil spill was cleaned up while 13.4% of the respondents said it was not cleaned up. This shows that the oil spilled was cleaned up by the majority of the respondents which is 30%.

Table 6:11: Who cleaned up the oil spill?

Variables	Nos. of Respondents	Percentage (%)
Community, village or individual	7	2.8
Government Agency	4	1.7
Oil company	235	95.5
None governmental Organization (N.G.O)	Nil	Nil
Total	**246**	**100%**

The above table shows that 2.8% of the respondents said the community, village or individual, 1.7% of the respondents said governmental Agency and 95.5% of the respondents went for Oil Company while none said None Governmental Organization (NGO). This indicate that majority of the respondents said the oil spill was cleaned up by the Oil Companies.

Table 6.12: How long did it take before the oil was cleaned up?

Variable	Nos. of Respondents	Percentage (%)
Immediately when the spill occurred	9	3.7
After one week	Nil	Nil
After one month	237	96.3
Total	**246**	**100%**

From the above table, it was revealed that 3.7% of the respondents said the Oil Spill was clean up immediately after it occurred and 96.3% of the respondents said that it was after one month before it was cleaned up while none of the respondents go for after one week. This indicate that majority of the respondents said that the Oil spill was cleaned up after one month of it occurred.

Table 6.13: As a result of this spillage what happened to fish, Reptiles, crops, animals, human beings, pets, drinking water etc.

Specify your answer	Nos. of Respondents	Percentage (%)
Contaminated	83	33.7
Affected	163	66.3
Total	**246**	**100%**

The above table shows that 33.7% of the respondents said that their drinking water got contaminated while 66.3% of the respondents said that their animal, fish, reptiles die as a result of oil spill. This indicates that the majority of the respondents are of the view that as a result of oil spillage fish, reptiles, crops, animals, human beings pets and drinking water are affected.

Table 6.14: After the clean up, did the farmers returned to their farm?

Variables	Nos. of Respondents	Percentage (%)
Yes they did	61	24.8
No they did not	Nil	0%
It can be used after a long time	185	75.2
Total	**246**	**100%**

The above table shows that 24.8% of the respondents responded yes that the farmers returned to their farm land, 75.2 % said that the land can be used after a long time and while 0% said that the farmers did not return to their farmland. From the above it shows that the farmers returned to their farm land after the cleanup.

Table 6.15: What is the productive capacity of the farm after the clean up?

Variables	Nos. of Respondents	Percentage (%)
Very low	234	95.1
Average	12	4.9
Very High	Nil	Nil
Total	**246**	**100%**

From the above table it is obvious that 95.1% of the respondents said that the productive capacity of the farm after the clean-up is very low, 4.9% of the respondents said average, while none responded very high. This indicates that majority of the respondents are of the view that the productive capacity of the farms after clean up is very low.

Table 6.16: What was the source of the Oil Spill?

Variables	Nos. of Respondents	Percentage (%)
From oil exploration	15	6.1
Fault with the storage facility	231	93.9
Loading	Nil	Nil
Transportation	Nil	Nil
Total	**246**	**100%**

From the above table, it shows that 6.1% of the respondents said that the sources of the oil spills were from oil exploration, 93.9% of the respondents said that the source of the spill fault arising from the storage facility. This indicates that the majority of the respondents responded that the sources of the oil spill were due to faults with the storage facility.

Table 6.17: Do you know the cause of the oil spill?

Variables	Nos. of Respondents	Percentage (%)
Leakage	224	91.1
Collision	Nil	Nil
Old equipment	16	6.5
Others	6	2.4
Total	**246**	**100%**

From the above table, it is shown that 91.1% of the respondents said the cause of oil spill is as a result of leakages of oil pipe. None of the respondents said it was collision, 6.5% of the respondents responded old equipments. While 2.4% of the respondents responded that it was due to the oil bunkering activities. This indicates that majority of the respondents responded that the cause of oil spill was due to the leakage of the oil pipes lines.

Table 6.18: Has any government official visited your place after the spill?

Variables	Nos. of Respondents	Percentage (%)
Yes	225	91.5
No	21	8.5
Total	**246**	**100%**

The above table shows that 91.5% of the respondents responded 'yes' while 8.5% of the respondents responded 'no' this indicate that majority of the respondents responded 'yes'. That government official visited their place after the oil spill.

Table 6.19: Has anything being done to prevent further spill?

Variables	Nos. of Respondents	Percentage (%)
Yes	222	90.2
No	21	8.5
I don't know	3	1.3
Total	**246**	**100%**

From the above table it is shown that 90.2% of the respondents said yes, while 8.5% of the respondents said they don't know. This indicates that the majority of the respondents responded yes that something has been done to prevent further spill.

Table 6.20: if your answer is yes what have they done to prevent further spill?

Specify your answer	Nos. of Respondents	Percentage (%)
Replacement of pipes was done	178	72.3
Nothing has been done	68	27.6
Total	**246**	**100%**

The above table shows that 72.3% of the respondents responded that the pipes were replaced while 27.6% of the respondents said that nothing has been done. This indicate that majority of the respondents said replacement of pipes was done to prevent further spill.

Table 6.21: Have you ever received any compensation for a spill?

Variables	Nos. of Respondents	Percentage (%)
Yes	214	87
No	32	13
Total	**246**	**100%**

From the above table it shows that 87% of the respondents responded 'yes' while 13% of the respondents responded no. This shows that majority of the respondents responded yes that they have received compensation for the spill,while minority of the respondents said they had ever receive any compensation for the spill.

Table 6.22: If your answer is yes how many times?

Variables	Nos. of Respondents	Percentage (%)
Every time there is Oil spill	206	85
Only once	6	2
Others	34	13
Total	**246**	**100%**

From the above table it is shown that 85% of the respondents responded that they receive compensation, every time there is oil spill and 2% of the respondents responded only once while 13% of the respondents responded for others. This indicates that the majority of the respondents responded for every time there is oil spill, they received compensation.

Table 6.23: What would you want the oil spiller to do for you?

Variable	Nos. of Respondents	Percentage (%)
To give money	2	0.8
To clean the environment	Nil	Nil
To give Money and clean the environment	244	98.2
Others	Nil	Nil
Total	**246**	**100%**

The above table shows that 0.8% of the respondents said they want the oil spiller to give them money, none of the respondent wants the oil spiller to clean the environment only and 98.2% the respondents wants to be given money and clean the environment while no respondents give any specification apart from money and cleaning of environment. This indicates that majority of the respondents want money and to have the environment cleaned up.

Table 6.24 what do you want the government to do for you?

Variables	Nos. of Respondents	Percentage (%)
To tell the oil spiller to stop Spilling oil	2	0.8
To come to your assistance	244	98.2
Other ways specify	Nil	Nil
Total	**246**	**100%**

The above table shows that 0.8% of the respondents want the government to ask the oil companies to stop spilling on their environment, 98.2% of the respondents

responded that government should come to their assistance while no respondent said otherwise. This indicates that majority of the respondent said that government should come to their assistance.

Section "C" GAS FLARING

Table 6.25: Do you know what is called gas flaring?

Variables	Nos. of Respondents	Percentage (%)
Yes	233	94.7
No	13	5.3
Total	**246**	**100%**

From the above table, it shows that 94.7% of the respondents respon ded yes, while 5.3% of the respondents responded No. This indicates that majority of the respondents responded Yes that they know what is called gas flaring.

Table 6.26: If your answer is yes where does gas flaring take place?

Variables	Nos. of Respondents	Percentage (%)
Not too far from my place	223	94.7
Very far from my place	13	5.3
Total	**246**	**100%**

From the above table it shows that 94.7 % of the respondents responded not too far from their places, while 5.3% of the respondents responded for very far from my place. This indicates that majority of the respondents responded that gas flaring took place not too far from their place.

Table 6:27: If your answer in 26 above is (a) i.e. Not too far from your place what is the name of your place?

Name of your place	Nos. of the Respondents	Percentage (%)
Eleme	19	8.2
Urorobo	22	9.4
Koko	15	6.4
Bomu	17	7.3
Biara	18	7.7
Bodo city	19	8.2
Warri	17	7.3
Olomary	15	6.4
Brass	23	9.9
Ayaogbogbo	14	6
Nembe	15	6.4
Omuku	19	8.2
K. Dere	20	8.5
Total	**233**	**100%**

The above table shows that 8.2% of the respondents are from Eleme, 9.4% of the respondent are from Urhoroboh, 6.4% of the respondents are from Koko, 7.3% of the respondents are from Bomu, 7.7% of the respondents are from Biara, 8.2% of the respondents are from Bodo City 7.3% of the respondents are from Warri, 6.4% of the respondents are form Olomary, 9.9% of the respondents are from Brass, 6% of the respondents are from Ayaogbogbo, 6.4% of the respondents are from Nembe, 8.2% of the respondents are from Omoku, while 8.5% of the respondents are from K. Dere. This shows that majority of the respondents are from Brass.

Table 6.28: What did you experience as a result of the flare?

Variables	Nos. of Respondents	Percentage (%)
Brightness of night	233	94.7
Experience nothing	Nil	Nil
Specify other	13	5.3
Total	**246**	**100%**

From the above table, it shows that 94.7% of the respondents responded they used to experience brightness in the night, none of the respondents experience nothing, while 5.3% of the respondents responded did not specific. This show that majority of the respondents said that they experienced brightness in the night.

Table 6:29 where do you dry your cloth that your wash?

Variables	**Nos. of Respondents**	**Percentage (%)**
Outside the house	239	97.1
Inside the house	7	2.9
Total	**246**	**100%**

The above table shows that 97.1% of the respondents said they spread their cloth outside the house, while 2.9% of the respondents spread their cloths inside the house. This shows that majority of the respondents dried their cloths outside the house.

Table 6.30: Do you notice anything when you dry your cloths outside over night?

Variables	**Nos. of Respondents**	**Percentage (%)**
Yes	246	100
No	Nil	Nil
Total	**246**	**100%**

From the above table it shows that 100% of the respondents said yes they noticed something while none said no. This indicates that all the respondents notice something when they dry their cloth outside.

Table 6.31: If your answer in 30 above is yes, what do you notice?

Variables	**Nos. of Respondents**	**Percentage (%)**
The cloths were stained with black dust	246	100
Nothing happens to the cloth	Nil	Nil
Total	**246**	**100%**

From the above table, it shows that 100% of the respondents responded that their cloths were stained with black dust. While no respondent said nothing happened to the cloths. This shows that all the respondents said that their cloths were stained with black dust when spread out side.

Table 6.32: What colour was your zink when you roofed your house?

Variables	**Nos. of Respondents**	**Percentage (%)**
Silver (white)	246	100
Brown	Nil	Nil
None of the above	Nil	Nil
Total	**246**	**100%**

The above table shows that 100% of the respondents responded for silver (white) while non-responded for both brown and non of the above. This indicates that all the respondents zink were white when they roofed their houses.

Table 6.33: What colour is it now?

Variables	**Nos. of Respondents**	**Percentage (%)**
Brown	191	77.6
White	Nil	Nil
Black	38	15.4
None of the above	17	6.9
Total	**246**	**100%**

The above table shows that 77.6% of the respondents said their roof is brown, None of the respondent said the colour of their roof is white 15.4% of the respondents said that their roof are black, while 6.9% of the respondents responded said none of the above. This indicates that majority of the respondents responded that their roof are brown.

CHAPTER SEVEN

CONCLUSION

7.1 Summary

This Chapter is the concluding limb of this work. It is intended to provide a general over view of the work. This will be done with a view to analyzing the findings of this research, drawing conclusions from the observations made in the course of the research and finally stating the main recommendations of the work.

This work is an attempt to assess the Legal and Institutional Frame Works for the Prevention of Environmental Degradation by Oil and Gas Companies in Nigeria through an examination of the main environmental institutions and legal provisions.

In doing justice to this work seven chapters are dedicated to the work.

This research, discussed the problems of infective legislation in arresting environmental degradation, inadequate implementation and enforcement of environmental laws, corruption, lack of expertise and modern equipment in tackling environmental degradation challenges by oil companies. Some of the issues that were addressed were done with a view to determining how these challenges can be overcome so as to have a secured and un polluted environment.

The work also dwelled intensively and extensively on the sources of environmental degradation by oil and gas companies in Nigeria to achieve this, issues like oil spillage, leakages of pipelines, pipe line vandalization, gas flaring and oil drilling were examined with the sole aim of determining how such problems can be addressed. The work also discussed the effect of oil and gas on environmental degradation in tackling this angle of the research, the effect of oil spill on the

vegetation, animals, human beings, birds and also such effect on marine environment, effect on air were carefully x-rayed with a view to determining the extent of damage oil spill has on the environment which was graphically captured in the empirical arm of this research.

One of the central, themes of this work is the institutional frame work for the prevention of environmental degradation by oil companies. This was achieved via a full discussion of the various institutions that have direct bearing with the research. Hence institutions such as Department of Petroleum Resources (DPR), Niger Delta Development Commission (NDDC) Ministry of Niger Delta, National Environmental Standard Regulation and Enforcement Agency (NESREA), National Oil Spill Detection and Response Agency (NOSDRA) Just to mention, but few were discussed in detail.

The second leg of the theme of this work is the legal regime on prevention of environmental pollution by oil and gas companies in Nigeria. In addressing this topic an examination of laws that aim to prevent, or permit environmental pollution were discussed. Others include polluter pays principles, precautionary principle, remedial principle, environmental rehabilitation, principles, and other subject matters that are germane to the topic.

The analysis of the empirical research of this work was also done with a view to showing the extent of environmental damage caused by oil and gas companies operating in Niger Delta.

The work finally discussed the enforcement medium of the legal frame work for prevention of environmental degradation.

7.2 FINDINGS

In the course of this work it was discovered as follow:

7.2.1 Lack of Clarity of some Laws

There are a lot of ambiguities and gaps in the laws that seek to prevent environmental degradation by oil and gas companies in Nigeria. This is so obvious in the approach adopted by this work. In the laws, there are preventive principle, permit system precautionary principles, remedial principle, compensation; polluter pays principles, and penal regime employed by the draft man to address environmental challenges that are posed by the operators of Oil Companies. These provisions either contradict themselves or provide inadequate punishment. For example section 1(1) of oil in Navigable Waters Act[1] seeks to prevent water environment from pollution but the law failed to provide for any punishment expressly in the event of failure to comply with the Act. The section simply stated that "the owner or master of the ship… shall be guilty of an offence" the wording of this section is rather persuasive. This is really sad. Again, the regulation[2] made pursuant to Oil in Navigable Waters Act, provided that Oil-Water separators should be fitted into every Nigerian Ship (other than a tanker) so as to prevent pollution by oil but there is no penalty for a violator of this regulation. This really demonstrates the un-seriousness of the law to achieve its objectives. Any law without punishment is like a toothless bull dog. It can only bark but it cannot bite.

[1] Cap O6 LFN, 2004
[2] Regulation No. 5

7.2.2 Despel Nature of Legal Framework

It is equally observed in the course of this study that the nature of the legal regime as it relate to this study are scattered in different legislation and other legal sources. There are over twenty (20) legislation that regulate the oil industry this makes it quiet difficult for anyone to easily get the law whenever the need arise.

It also part of the observation that there are also too many institutions that regulate the affairs of the oil companies in Nigeria. This makes their functions to over lapse and hence they are unwilling to discharge their functions effectively. For example, some of the function of the Department of Petroleum Resources (DPR) covers environmental protection against the activities of oil companies, the National Oil Spill and Response detection Agency (NOSDRA) some of its functions also covers on environmental protection against oil and gas companies there is yet another one i.e. Niger Delta Development commission whose function also covers environmental protection, Ministry of Environment which also work to see that the oil companies operating in Nigeria does not degradation the environment.

7.2.3 Inadequate Enforcement of the Legal Frame Work for the Prevention of Environmental Degradation.

The legal frame work which seek to protect the environment against degradation by oil and gas companies in Nigeria are not adequately implemented or enforcement by the institutions saddled with the responsibilities of enforcing same there are sufficient laws to address the environmental challenges posed by the oil and gas companies in Nigeria, but the institution which are to implement and enforced these laws are deligent in the discharge of their duties.

7.2.4 Lack of Service of Equipments and Wear and Tear.

The study also revealed that operators of the oil companies lack regular maintainence culture. Some of the pipe lines have outlived their life span, without been changed as it is obtainable in other jurisdiction. The operators also lack modern equipment to detect oil spill within a short period of time when oil spill occurs.

7.2.5 Niger-Delta People Are Victims of Environmental Degradation.

The study similarly revealed that the people of the Niger Delta area of Nigeria actually suffer from the operation of oil and gas companies. Their environment is subjected to pollution and degradation they suffer, i.e. on medical ground on economic ground, on social and political ground.

7.2.6 Procedure for Court Action is Cumbersome.

Consequently, the study observed that there are serious procedural obstacles against an individual who wants to approach the court to seek redress against pollution of his environment. Some of this obstacle includes; pre-action notice, proof of environmental harm, burden and standard of proof, jurisdiction etc. these issues makes it difficult and sometimes discourages an aggrieved party from going to court to seek redress.

7.2.7 Enforcement Medium are Weak.

The study observed that the laws and regulation that seeks to prevent environmental degradation are generally weak, short of administrative and enforcement machinery. Most of the regulations stipulates that an operator shall do this or do that, but whether this or that is done or not, there are no effective means of knowing.

The conclusions that can be drawn from these findings are: There are weak and ineffective legal and institutional frame works to prevent environmental degradation by oil and gas companies in Nigeria. For example, the 1999 Constitution of Nigeria does not define expressly environmental right as fundamental human rights. Similarly, there are many of barriers that hinders an aggrieved party from seeking redress in the court of law when he suffer environmental wrong. For instance, there are issues such as locus-standi, pre-action Notice, limitation of time, proof of environmental harm, standard of proof, jurisdiction etc.

7.2.8 Bribery and Corruption Hampered Effective Enforcement of Laws.

Hand in hand with the foregoing, it is observed in the course of this research that corruption is belived to have eaten deep into the fabric of the institution that is suppose to enforce the laws against the violators. Therefore is believed that the officials are unable to effectively discharge their duties as they ought to have.

7.3 Recommendations

Based on the foregoing discussion, and the statement of problems noted in chapter one which this work seeks to address, this work will be concluded by proffering some recommendations. This will be in addition to those already stated in the body of this work. If they are adopted, it will result to a pollution free environment. Before we state the recommendations, it is very necessary to preface it with the following remark. Research of this kind should not be kept within the university community alone, but rather it should be made available to the appropriate authorities concerned e.g. NOSDRA, DPR, NDDC, Ministry of Niger Delta and Federal Ministry of Environment. In the light of this, effort shall be made to dispatch

copies of this research to relevant authorities so that the recommendations contained therein could be given adequate consideration.

7.3.1 Policy and Legal Reforms

In the course of this study we have shown that there are a lot of gaps in the existing legal frame work to prevent any environmental protection against degradation by operators of oil companies in Nigeria. Therefore, there is an urgent need to put in place the necessary machineries to amend the existing laws so as to have new laws that will really protect the environment against degradation by operators of oil companies in Nigeria. Most of these laws have out lived their usefulness. For example Oil in Navigable Waters Act[3], Hydrocarbon Oil Refines Act[4], Oil Pipeline Act[5], Associated Gas Re-injection Act[6], Mining Act[7], West Africa Gas Pipe Line Act[8], to mention but a few. These are very old legislation. They are not longer in tune with the reality. They cannot withstand the modern equipment employed by oil companies which degrade the environment. The fines prescribed by the laws are too small to serve as deterrent. They are so small that oil companies can easily pay and continue with the violation.

Another law which deserves urgent amendment is the Associate Gas Re-Injection Act[9] which gives an oil company an option to pay a fine and continue with flaring of gas. The law should be amended to prohibit in total gas flaring in Nigeria. It is time to put an end to flaring of gas in Nigeria.

[3] Op. cit
[4] Op. cit
[5] Op. cit
[6] Op. cit
[7] Op. cit
[8] Op. cit
[9] Op. cit

Another area of the legal frame work that also deserves urgent amendment is section 20 of the 1999 Constitution of the Federal Republic of Nigeria[10] which provides: "The State shall protect and improve the environment and safeguard the water air and land, forest and wild life of Nigeria."

This, section should be removed from chapter II of the Constitution to chapter IV so as to make it justiciable. This will accord with the principle of interdependence and interrelatedness of all the rights. By upgrading this section to the status of fundamental rights, individuals will be able to easily move our courts to compel government to respect, protect and fulfill the provision of this section. It is our sincere hope that the window of opportunity as in the current effort of reviewing the 1999 Constitution of Nigeria by the National Assembly would be used to effect these amendments.

7.3.2 Fusion of the Institutional framework

There are many institutions in the country that handle environmental matter, such as administration, co-ordination, formulation of policies enforcement and many other related issues.The duties and functions of these institutions over-lapse in many ways, and in many respects. For example, Department of Petroleum Resources,(DPR), National Oil Spill Detection and Response Agency (NOSDRA), National Environmental Standard and Regulations Enforcement Agency, (NESEA), Niger Delta Development Commission Ministry of Niger Delta, all have functions that are either directly or indirectly related to the protection of the environment against degradation by oil companies in Nigeria. When many hands perform a function that can be conveniently perform by one, efficiency and uniformity will not be there. It is

[10] Cap C23 L.F.N, 2004

in the light of this, that we strongly recommend that some of these institutions be emerged together to form few bodies so that there will be more efficiency, dedication, expertise and seriousness of the job. This will give birth to courageous officers, expertise that see will the successful implementation and enforcement of our environmental protection laws.

7.3.3 The Need for More Cooperation between Host Communities and Oil Operators.

In the course of this work, it has been revealed that the act of sabotage is one of the major cases of oil spill. The hosted communities in most cases express their annoyance through destruction of facilities such as oil pipe lines or act of saboteur. It is because of communication gap between the host communities and oil operators that result to some of the hostilities. We therefore recommend that there is the need for the oil operators to increase their level of interaction with the host communities. The oil operators should improve their presence in the host communities. They should provide more infrastructural facilities more schools, good roads, pipe borne water etc. Oil operators should increase the number of their employees from the host communities and reserve some position of board members for the host communities. This will go a long way to bring unity and understanding between the host communities and the oil operators. This will eliminate oil pipe line vandalisation, oil spill through the pipes and greatly reduce environmental degradation.

7.3.4 Removal of Procedural Obstacles in Environmental Litigation

The study among others revealed that there are many procedural inhibitions against an aggrieved party who wants to access the court to seek redress for

environmental wrong caused by oil and gas companies in Nigeria. Some of these difficulties include pre-action notice, and proof of environmental harm, jurisdiction and high standard of proof. A plaintiff with a good case against an oil operator may be discouraged from approaching the court because of these procedural difficulties. For example parties who has actually suffered environmental damage through the activities of oil polluters and who cannot show some pecuniary interest, will be denied access to seek redress in the court of law even if they suffered in fact, physically. Likewise, a plaintiff who wants to seek for an injunction against a defendant whose activities seriously caused harm or about to cause an ambient harm will be precluded because of the requirement of pre-action notice. This is so because the principle of pre-action notice requires that when an agency of government is to be made a party to an action, a pre-action notice is to be served on the party before commencement of the action. If an agency of government is a necessary party this will of course work against the plaintiff who is seeking for an injunction.

So also is the issue of jurisdiction. It is only the Federal High Courts that has the jurisdiction to entertain environmental matters of this nature. In the light of these huddles we strongly recommend issues of procedural obstacles in environmental litigation be removed so that an aggrieved party can have access to court to seek redress without fear of any of these issues.

7.3.5 Employment of Specialized Dedicated and Courageous Environmental Law Enforcement Officers.

It was discovered in the course of this research that there are numerous laws and regulations, accompanied by punishments. It is however worrisome to note that

these laws and regulations were not properly implemented because of the kind of enforcement officers the institutions employed. The enforcement officers are not specialized in the area of environment laws in order to enable them know when the laws or regulation have been breached. Nor are the officers dedicated or courageous enough to see that the laws are fully implemented and enforced. For example, the Department of Petroleum Resources (DPR) has environmental guidelines[11] comprising of parts I-IX about 337 pages.If this properly implemented and enforced environmental pollution and degradation will be at a minimal level, It is sad to note that most of the staff know little or nothing about the guidelines. The officers are also not courageous enough in the discharge of their duties. For instance on the 13th January 2010[12] NOSDRA ordered Pipe Lines and Product Marketing Company (PPMC) to pay a sum of N1 million as a fine for failure to respond quickly to oil spill incident which occurred in Ugbodede community in Okere, Warri, and Delta State. It was reported[13] that PPMC failed, refused and or neglected to comply with the order. If the agency has courageous and dedicated enforcement officers, they would not take no for an answer. It is in the light of these that we strongly recommend that the institution should employ specialized, dedicated and courageous enforcement officers so that environmental protection laws and regulations could be implemented and enforced to the letter.

[11] Environmental Guidelines and standards for the petroleum industry in Nigeria (EGASPIN) 2002
[12] Onyebuchi Ezigbo "Nosdra Sanctions PPMC over Marri, Spill in" This Day News papers, page. 2 Wednesday, January 13, 2010.
[13] Ibid

7.3.6 Stiff Penalties for Corrupt Officers and Violaters

Hand in hand with recommendation 7.3.5 above, this work also recommends that there should be very stiff penalties for corrupt officers of the institutions charged with the responsibilities of achieving the aims and objectives for the establishment of the institutions. That is to implement and enforce the laws and regulation of environmental protection. The study revealed that officers were perhaps bought over by the operators of the oil and gas companies in Nigeria. This may perhaps explain why PPMC refused to pay a fine of N1 million as ordered by NOSDRA for failure to respond quickly to an oil spill incident, which at occurred Okere Warri in Delta State.[14] This may also not be unconnected with series of oil spills that are unattended to which resulted environmental degradation. The empirical research arm of this study shows that it takes a long time before any respond to oil spill is attended to. We therefore recommend that there should be a very stiff penalty for corrupt officers that are charged with the responsibility of detecting oil spills, implementation and enforcement of any provisions of environmental protection laws. This will discourage bribe taking and produce effective implementation and enforcement of environmental protection laws in Nigeria.

7.3.7 Establishment of "Environmental Courts"

The study also discovered that issue of jurisdiction in environmental litigation is a stumbling stone in addressing environmental challenges in Nigeria. Some aspect of environmental issues can be addressed in the State High Court while some can only be heard at the Federal High Court. These issues do pose a lot of challenges to litigants who wants to seek redress in the court of law to address environmental wrong

[14] Ibid

to shop for the court with jurisdiction to entertain the matter. In some cases, the matter to must have been commenced in one court e.g. State High Court, and later to be discovered that the court lacks jurisdiction to hear the matter. It is on this note that we recommend that special courts should be established to handle environmental matters in Nigeria. This will also go a long way to produce judges with specialized training in environmental laws. This will bring about quick dispensation of justice in environmental matter because environmental matters will be handled with speedy trail. This will greatly reduce environmental degradation.

In conclusion, we intend to send copies of this research to some relevant bodies so that the findings and recommendations contained herein could be given due consideration.

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Appendix A

Department of Private Law,
Faculty of Law,
Ahmadu Bello University, Zaria.

Dear Respondent,

RESEARCH ON EXAMINATION OF THE LEGAL AND INSTITUTIONAL FRAMEWORK FOR THE PREVENTION OF ENVIRONMENTAL DEGRADATION BY OIL AND GAS COMPANY IN NIGERIA

I am a postgraduate student of the Faculty of Law, Ahmadu Bello University, Zaria and this research is in partial fulfillment of requirement for the award of a Doctoral Degree in Law.

The purpose of these questionnaires includes:

(a) To enable this researcher to ascertain whether or not there is oil spill in your locality;

(b) The source of the oil spill;

(c) The impact of the oil spill on environment;

(d) The impact of oil spill on health;

(e) The response of the appropriate authority to the oil spill.

I would sincerely want to assure you that information supplied in this questionnaire will be treated with utmost confidentiality and will only be used for research purpose. I appeal to you to be candid and accurate in your responses. Kindly answer all the questions as uncompleted questionnaires will create problem in the analysis of same.

To ensure confidentiality, do not sign or write your name in any part of the questionnaire.

Thank you immensely for your cooperation.

Yours faithfully,

Ibrahim Abdulkarim Esq.

SECTION "A" BIO DATA

1. Indicate your Sex

   a. Male [ ]

   b. Female [ ]

2. What is your marital status?

   a. Single [ ]

   b. Married [ ]

   c. Divorced/Separated [ ]

   d. Widow/Widower [ ]

3. What is your state of origin? ……

4. Indicate you age bracket

   a. 20 – 30yrs [ ]

   b. 30 – 40yrs [ ]

   c. 40 – 50yrs [ ]

   d. 50 – and above [ ]

5. Last Educational Qualification

   a. No formal education [ ]

   b. Primary Education [ ]

   c. Secondary School [ ]

   d. Tertiary [ ]

   e. Other specify……..

Section "B" The Impact of Oil Spill and gas flaring on your environment

6. Has oil ever spilled on your surrounding environment?

   a. Yes [ ]

   b. No [ ]

7. If your answer in 7 above is yes, how many times?

   a. Once [ ]

   b. Twice [ ]

   c. Three times [ ]

d. More than three times [ ]

8. Where did the spill affect?

a. Your house? [ ]

b. Your river? [ ]

c. Your farmland? [ ]

d. Your school? [ ]

e. Market area? [ ]

9. What happened to the oil spill?

a. It was cleaned up [ ]

b. It was not cleaned up [ ]

10. If your answer in 10 above is 'a', who cleaned up the oil spill?

a. Community, Village, or Individuals [ ]

b. Government Agency [ ]

c. Oil Company [ ]

d. None Governmental Organization (NGO) [ ]

11. If your answer in 11 above is not 'a' i.e. the spill was not cleaned up by individual, community, or village how long did it take to clean up the spill?

a. Immediately when the spill occurred [ ]

b. After one week [ ]

c. After one month [ ]

12. As a result of this spillage what happened to fish, reptiles, crops, animals, human beings pets, drinking water etc.?

Specify your answer……..

13. After the clean up, did the farmers returned to their farms?

a. Yes they did [ ]

b. No the did not [ ]

c. It can be use after a long time [ ]

14. What is the productive capacity of the farms after the clean up?

a. Very high [ ]

b. Average [ ]

c. Very low [ ]

15. What was the source of the oil spill?

a. From oil exploration [ ]

b. fault with the storage facility [ ]

c. loading [ ]

d. Transportation

16. Do you know the cause of the oil spill?

a. Leakage [ ]

b. Collision [ ]

c. Old equipment [ ]

e. Specify others ……

17. Has any Government Official visited your place after the spill?

a. Yes [ ]

b. No [ ]

18. Has anything being done to prevent further spill?

a. Yes [ ]

b. No [ ]

c. I don't know [ ]

19. If your answer is yes what have they done to prevent further spill?

Specify your answer.……

20. Have you ever receive any compensation for a spill?

a. Yes [ ] b. No [ ]

21. If your answer is yes, how many times?

a. Every time there is oil spill [ ]

b. Only Once [ ]

c. Others specify……

22. What would you want the spiller of the oil to do for you?

a. To give me money [ ]

b. To clean the environment [ ]

c. Money and clean the environment [ ]

d. Others specify……..

23. What do you want the government to do for you?

a. To tell the oil spiller to stop spilling oil [ ]

b. To come to your assistance [ ]

c. Others specify……

Section "C" GAS FLARING

24. Do you know what is called gas flaring?

a. Yes [ ]

b. No [ ]

25. If you answer is yes where?

a. Not too far from my place [ ] (Name of your place……..)

b. Very far from my place [ ]

26. What did you experience as a result of the flare?

a. Brighting night [ ]

b. I experience nothing [ ]

c. Specify other ……

27. Where did you dry your cloths that you washed?

a. Outside the house [ ]

b. Inside the house [ ]

28. Did you notice anything when you dryed your cloths outside or over night?

a. Yes [ ]

b. No [ ]

c. I don't notice anything at all [ ]

29. If your answer in 39 above is yes, what did you notice?

a. The cloth becomes stained with black dust [ ]

b. Nothing happen to the cloths [ ]

30. What colour was your zink when you roofed your house?

a. Sliver (White) [ ]

b. Brown [ ]

c. Non of the above [ ]

31. What colour is it now?

a. Brown [ ]

b. White [ ]

c. Black [ ]

d. Non of the above [ ]

Thank you very much