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Appraising the Challenges to Effective Enforcement of Legislation on Control of Environmental Pollution in Nigeria

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Abstract

It is one thing to make law, and another thing to ensure its enforcement. The existence of legal norms on any particular subject matter is not a guarantee that they will cure or eradicate the social mischief which they are meant to address unless there is effective enforcement of their provisions. Enforcement of environmental legislation 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. Unfortunately, in spite of the legislative and institutional frameworks put in place to tackle environmental degradation in Nigeria, the menace of pollution has continued in diverse dimensions. This paper adopted doctrinal research methodology and sought to identify basic challenges facing effective enforcement of legislation on control of pollution in Nigeria. The paper found that apart from inadequate funding and corruption of some officers of the agencies charged with the responsibility of enforcing environmental legislation on control of pollution in Nigeria, there had been lack of political will of successive administrations in ensuring effective enforcement of environmental regulations. The paper also found that the nature of Nigerian economy, poor judicial attitude and strict application of the principle of locus standi were part of the challenges facing effective enforcement of legislation on control of pollution in Nigeria. The paper therefore, recommended adequate funding of the enforcement agencies, reorientation of enforcement officers, strong political will, and judicial activism to address the challenges bedeviling effective enforcement of environmental legislation in Nigeria.

Key Words: Environment, Pollution, Legislation, Enforcement, Control

1. Introduction

Pollution is anything that makes the earth dirty and unhealthy.[1] It is majorly caused by man's developmental activities. Man's inordinate desire to produce goods and services to meet his insatiable needs has made human environment vulnerable to various forms of degradations,

thereby making environmental pollution a daily occurrence.[2] This, of course, is not without negative effects on man's physical, economic and social life.[3]

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[1] MT Okorodudu, *Law of Environmental Protection,* (2nd edn, Caltop Publications Nig. Ltd, 1994) p. 26.

[2] M EItyavyar and T T Thomas, 'Environmental Pollution in Nigeria: The Need for Awareness Creation for Sustainable Development' in *Journal of Research in Forestry, Wildlife and Environment. Volume 4 No.2, p. 1*. Available on<www.academia.edu>accessed 12 February 2024.

[3] Although the effect of environmental pollution is not within the scope of this paper, it is imperative to note that pollution of all kinds can have negative effects on the environment and wildlife, and often impacts human health and well-being. Water pollution may lead to the outbreak of diseases like typhoid fever, dysentery, cholera, and gastrointestinal discomforts and infectious hepatitis can result. It reduces aquatic life by reducing the reproduction of fishes and by killing them as well. Economically, commercial fishing cannot take place in polluted water, and the cost of controlling pollution is enormous. Air pollution is majorly implicated in circulatory and respiratory diseases, eye and nose and throat problem. Many asthmatic cases become more traumatic in areas with air pollution. Land which is contaminated with toxic chemicals can lead to many health problems like cancer, defects in the human respiratory system, etc. as these toxic chemicals can enter the human body through the consumption

From the time Nigeria woke up from its environmental inactivity, successive administrations in the country have taken some steps to address the issue of environmental pollution through legislation, including but not limited to Harmful Waste (Special Criminal Provisions) Act[4], Environmental Impact Assessment Act[5], National Environmental Standards and Regulations Enforcement Agency (NESREA) Act 2007, National Oil Spill Detection and Response Agency (NOSDRA) Act, Nigerian Maritime Administration and Safety Agency (NIMASA) Act, the National Biosafety Management Agency (NBMA) Act, Associated Gas Re-injection Act[6], Oil in Navigable Waters Act[7], Sea Fisheries Act[8], Territorial Waters Act[9], Nuclear Safety and Radiation Protection Act[10] and the Petroleum Industries Act 2021. Most of these enactments aimed at tackling environmental pollution established agencies saddled with the enforcement of the laws and regulations on pollution control. For example, the National Environmental Standards Regulation Enforcement Agency (NESREA) was established in 2007 under Section 1(1) of the National Environmental Standards Regulation Enforcement Agency Act 2007 with the responsibility of enforcing environmental standards, regulations, rules, laws, policies and guidelines in Nigeria. The National Oil Spill Detection and Response Agency (NOSDRA) was established under the *NOSDRA Act* 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.[11]

It is a statement of fact that the existence of legal norms on any particular subject matter is not a guarantee that they will cure or eradicate the social mischief against which they were made unless there is effective enforcement of their provisions. This explains the reason behind the establishment of enforcement agencies saddled with the responsibility of enforcing compliance with statutory enactments in Nigeria. This position is visibly true of environmental legislation which established institutions charged with the duty of enforcing compliance with environmental laws and regulations. These enforcement agencies usually encounter some challenges in the discharge of their statutory mandate. This, perhaps, explains the reason why in spite of the legislative and institutional frameworks put in place to tackle environmental degradation in Nigeria, the menace of pollution has assumed a monumental dimension, especially in the Niger-Delta region. Deposition of solid or liquid waste materials on the land or underground in a manner that can contaminate the soil and groundwater, threaten public health and cause unsightly conditions and nuisance has continued unabated.[12] Improper sewage treatment, oil spills, dumping of solid wastes in water bodies, disposing untreated industrial sewage into water bodies, human and animal wastes, oil leaks, agricultural runoff containing fertilizers and chemicals have not ceased. Industrial activities of people in construction industries, recording studios, air and sea ports, transportation firms, in towns and major Nigerian cities like, Lagos, Aba, Port Harcourt, Kano, Benin, Ibadan, Onitsha etc have not just caused noise pollution, but have worsened the bad

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fruits and vegetables grown on the polluted land. A polluted land will definitely lose its fertility. It will no longer be conducive for plants and animals that use it as their natural habitat.

[4] Cap. H1, Laws of the Federation of Nigeria 2004.
[5] Cap. E12, Laws of the Federation of Nigeria 2004.
[6] Cap. A25, Laws of the Federation of Nigeria 2004. This was repealed by the Petroleum Industry Act 2021.
[7] Cap. O6, Laws of the Federation of Nigeria 2004.
[8] Cap. S4, Laws of the Federation of Nigeria 2004.
[9] Cap. T5, Laws of the Federation of Nigeria 2004.
[10] Cap. N142, Laws of the Federation of Nigeria 2004.
[11] NOSDRA Act 2006, Section 1.
[12] Ityavyar and Thomas, (n2).

case of the already polluted environment in the affected areas. Similarly the proliferation of religious houses and places of worship with amplified loud speakers produce unpleasant noise especially when they are shouting at their loudest voices to the discomfort of every resident within 2km radius.[13]

In this paper, it is intended to discuss economic, social, judicial, political and institutional challenges to effective enforcement and compliance with environmental pollution control legislation in Nigeria. The journey, however, begins with an attempt at definition of concepts of environment and environmental pollution.

2. Environment

The concept of environment is as old as the concept of the nature itself. It is a composite term referring to conditions in which organisms consisting of air, water, food, sunlight etc., thrive and become living sources of life for all the living and non-living beings including plant life.[14] The term also includes atmospheric temperature, wind and its velocity. Literally, the word "environment" means surrounding and everything that can affect an organism during its life time. It is a term used to describe the sum total of all surrounding of a living organism, including natural forces and other living organisms. Bruntland Commission[15] defined environment as "where we all live". Although this definition was given in the context of environment and development, its weakness lies in its anthropocentric nature. It focuses on man and ignores the intrinsic value of the environment.

In Nigeria, the concept of environment is defined in a number of statutes. For example, NESREA Act 2007 states that the environment includes water, air, land and all plants and human beings or animals living therein and the relationships which exist among these or any of them.[16] According to this definition, "environment" is composite in nature, involving three inter-related media: air, water and land.

Similarly, section 61 of the Environmental Impact Assessment Act[17] states that environment means the component of the earth, and includes:

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

For the purpose of this paper, we shall adopt the definition given by Bruntland Commission. Environment is, indeed, where we all live.

3. Pollution

Like the concept of 'environment', there are several definitions of 'environmental pollution' advanced by scholars, intergovernmental/international bodies, statutory and treaty provisions. According to Holdgate, environmental pollution is defined as the introduction by man into the

[13] A Nyakuma, 'Noise: When is it a Pollutant?' in *New Era-Weekly Newspaper, 16 – 24th November 2012* Pp. 5.
[14] UW Nwosu, *Environmental Law: The Nigerian Situation, (*2nd Edition. Calabar: Swiftcom Computers, 2006) 14.
[15] The 1972 UN Conference on Human Environment which produced the how famous set of environmental protection principles - the "*Stockholm Declaration*" represents the first formal sign of increasing international concern for environmental protection on a global scale.
[16] Section 37.
[17] Cap E12, Laws of Federation of Nigeria, 2004.

environment of substances or energy liable to cause hazards to human health, harm to living resources and ecological system, damage to structure or amenity or interference with legitimate uses of the environment.[18] It is a man-made or man-aided alteration of chemical, physical, or biological gravity of the environment to the extent that is detrimental to the environment beyond acceptable limits.[19]

Under the NESREA Act 2007, pollution is defined as 'man-made or man-aided alteration of chemical, physical or biological quality of the environment beyond acceptable capacity'.[20]

Environmental pollution has also been defined as 'the contamination of the physical and biological components of the earth's atmosphere system to such an extent that normal environmental processes are adversely affected'.[21] It is the introduction of contaminants into the environment that causes adverse change.[22] The United States' President's Science Advisory Committee defined environmental pollution thus:

> *Environmental pollution is the unfavourable alteration of our surroundings, wholly or largely as a by-product of man's actions, through direct or indirect effects of changes in energy patterns, radiation levels, chemical and physical constitution and abundances of organisms. These changes may affect man directly or through his supplies of water and of agricultural and other biological products, physical objects or possessions, or his opportunities for recreation and appreciation of nature.*[23]

A more elaborate definition of 'pollution' is found in the Council of European Union Directive Concerning Integrated Pollution Prevention and Control 1996 where it is defined as:

> *The direct or indirect introduction as a result of human activity, of substances, vibrations, heat or noise into the air, water or land which may be harmful to health or the quality of the environment, result in damage to materials, property, or impair or interfere with amenities and other legitimate uses of the environment.*

It is important to observe that the above definitions of pollution have one thing in common. They all emphasize the alteration of the natural environment as a result of man's activities. However, this does not mean that natural events cannot alter the environment. Indeed, this happens sometimes, but the greatest source of environmental pollution remains man's activities. Even where natural events contaminate the environment, experience has shown that man's activities precipitate or aggravate their occurrence.

4. Enforcement of Environmental Laws

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.[24] Enforcing environmental standards and regulations is one of the

[18] MW Holdgate, 'Perspective of Environmental Pollution', <www.amazon.com> accessed 26 June 2023
[19] CA Omaka, *Nigerian Conservation Law and International Environmental Treaties,* (2nd edn,. Princeton & Associates Co. Ltd, 2018) 33.
[20] S 37.
[21] Environmental Management, 2017. <www.sourcedirect.com> accessed on 26 June 2023.
[22] Ibid.
[23] KSA Ebeku, *Oil and the Niger Delta People in International Law* (Kopper Publishers, 2006) 126.
[24] LA Atsegbua, *et al*, *Environmental Law in Nigeria: Theory and Practice*, (Ababa Press Ltd, 2003) 149.

surest ways governments can use to checkmate the negative impacts of unsustainable developmental activities on the environment and on the lives of citizens. Without an effective environmental enforcement culture, one that is capable of ensuring compliance by big corporations, it is not unexpected that the quality of the environment will be drastically reduced.[25]

The environmental regulations made under the relevant Acts under consideration provide impressive array of enforcement mechanisms. They include: permit, licence, certificate, inspection, search, seizure, arrest, sealing, notice of violation, notice of revocation of permit, revocation order, recourse to courts for civil penalties for violation, injunctive relief to require compliance, and criminal sanctions for violations. A brief elucidation of these enforcement mechanisms is given below.

4.1 Inspection and Searches

The main purpose of inspection is to ensure that the laws applicable to individuals, industries and companies are obeyed. This is one of the most important enforcement methodologies because it helps the appropriate authority know who has violated environmental regulations in order to take appropriate actions against such person. Under the Harmful Wastes (Criminal Provisions) Act, any police officer may, without warrant, enter and search any land, building or carrier, including aircraft, vehicle, container or any other thing whatsoever which he has reason to believe is related to the commission of a crime under the Act.[26]

The power to search is always employed where there is suspected violation of the law. For example, under *NESREA Act*, where an authorized officer has a reasonable ground to believe that an offence has been committed contrary to the Act or any regulations made there under, he may without a warrant enter and search any land, building, vehicle, tent, vessel, floating craft or any inland water or other structure whatsoever, in which he has reason to believe that an offence against the Act or any regulations made there under has been committed.[27]

4.2 Sealing and Seizure

This methodology involves sealing up any area or site which has been, will be or is being used directly or indirectly for the purpose of depositing or dumping any harmful wastes. Also, the authorized law enforcement agent under the relevant statutes[28] is empowered to seize any item or substance which he has any reason to believe has been used in the commission of a crime under the particular law. However, seizure could be in the public interest in order to forestall further pollution by putting the offending "item or substance" out of circulation. Section 30(1) (f) of the NESREAAct2007 provides that an officer of the Agency may, in the course of his duty, at any reasonable time and on production of his certificate of designation if so required, seize and detain for such time as may be necessary for the purpose of this Act, any articles by means of or in relation to which he reasonably believes any provision of this Act or the regulations has been contravened. The Agency also has powers to suspend activities, seal and close down premises

[25] ZO Edo, 'The Challenges of Effective Environmental Enforcement and Compliance in the Niger Delta Region of Nigeria' in *Journal of Sustainable Development in Africa (*Volume 14, No.6, 2012). <www.nigerianjournalsonline.com> Accessed on 28/11/2023.
[26] S 10.
[27] NESREA Act 2007, s 30.
[28] Example Section 35 of the Ebonyi State Environmental Protection Law.

including land, vehicle, tent, vessel, floating craft or any inland water and other structure whatsoever.[29]

4.3 Arrest

This is the most common of all the enforcement measures. Although none of the principal enforcement agencies (apart from the Police) is expressly empowered to arrest any individual who contravenes any environmental regulation, it is not incorrect to postulate that power of arrest is necessarily implied in all the provisions of the environmental regulations that criminalize one act or the other. For instance, section 27(2) of the NESREAAct2007 provides that any person who discharges harmful quantities of any hazardous substance into the air or upon the land and the waters of Nigeria or at the adjoining shorelines commits an offence. When and where there is a commission of offence, the power to arrest the offender is necessarily implied. However, under Ebonyi State Environmental Protection Agency Law, power of arrest is expressly provided in section 35 which empowers an authorized government agent to arrest any person who he has a reason to believe has committed an offence under the law. However, such arrest must follow due process.

4.4 Permit, Licence and Certificate

These serve as the most effective measures of enforcement of environmental regulations. Environmental statutes and regulations provide for issuing permits, licence and certificates upon application and satisfaction of laid down conditions prior to the issue. These permits, licences and certificates are used by the government as monitoring devices to regulate the activities which are potential sources of environmental pollution. Therefore the issuance carries with it an understanding that the holder of the permit, licence or certificate will forfeit such upon the breach of the regulations, statute or any of the laid down conditions specified on such permit, licence or certificate. For example, under the National Environmental (Mining and Processing of Coal, Ores and Industrial Minerals) Regulations, 2009 made pursuant to Section 34 of the NESREAAct; it is provided that no facility shall cause to be discharged, any effluent into the natural water system and land without a permit from the Agency.[30]

The procedures for permit, licence and certificate are contained in the National Environmental (Permitting and Licensing System) Regulations 2009, which is made pursuant to section 34 of the NESREAAct2007. An application for a permit shall contain all the information specified in the appropriate form relating to the specific permit being applied for.[31] After due consideration of the application, the Agency may grant or refuse the issuance of permit.[32] Where an application is approved, the Agency shall inform the applicant of such approval and conditions for the permit.[33] If the Agency refuses the grant of a permit, it shall notify the applicant in writing stating the reason for the decision.[34]

[29]NESREA Act 2007, Section 30(1)(g).
[30] Regulation 12.
[31] Regulation 3.
[32] Regulation 7.
[33] Regulation 9.
[34] Regulation 10.

4.5 Criminal Prosecution

This is a viable method of enforcing environmental regulations. Section 32(3) of the NESREAAct2007 states that, subject to the provisions of Section 174 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), which relates to the power of the Attorney-General of the Federation to institute, continue or discontinue criminal proceedings against any person in a court of law, any officer of the Agency may, with the consent of the Attorney-General of the Federation, conduct criminal proceedings in respect of offences under the Act or regulations made under the Act.

Violators of environmental laws and regulations are charged to court and if found guilty, convicted and sentenced accordingly. For instance, under Section 22 of NESREAAct2007, anyone who commits the offence of noise pollution shall on conviction be liable to a fine not exceeding N50,000 or to imprisonment for a term not exceeding one year or to both. Section 1(2) of the Harmful Wastes (Special Criminal Provision) Act makes it clear that any person who engages in any of the prohibited activities (without lawful authority) shall be guilty of a crime under the Act and the offender shall on conviction be sentenced to imprisonment for life. Section 62 of the Environmental Impact Assessment Act provides that any person who fails to comply with the provisions of the Act shall be guilty of an offence under the Act and on conviction in the case of an individual to #100,000 fine or to five years imprisonment and in the case of a firm or corporation to a fine of not less than #50,000 and not more than #1,000,000.

4.6 Civil Penalties

This involves the payment of damages or costs as a result of the violation of any of the environmental protection laws in Nigeria. Under the Harmful Waste (Criminal Provisions) Act, where any damage has been caused by any harmful waste which has been deposited or dumped on any land or territorial waters or contiguous zone or Exclusive Economic Zone of Nigeria or its inland waterways, any person who deposited, dumped or imported the harmful waste or caused the harmful waste to be so deposited, dumped or imported shall be liable for the damage.[35]

Under *NESREA Act 2007*, an owner or operator of any vessel or onshore or offshore facility responsible for the discharge of hazardous substance contrary to Section 20 will, in addition to the criminal penalty prescribed in that section be liable for: (1) the cost of removal of the hazardous substance as well as any cost incurred by the Government or its agencies in the restoration or replacement of natural resources damaged or destroyed as a result of the discharge; and (2) costs of third parties in the form of reparation, restoration, restitution or compensation as may be determined by NESREA from time to time.

5. Challenges to Effective Enforcement

There are identifiable challenges to effective enforcement of environmental legislation on pollution control in Nigeria. These challenges may be categorized under the following subheadings: economic challenges, social challenges, political challenges, judicial and institutional challenges.

5.1 Economic Challenges

Nigerian economy is basically a mono-product one which solely depends on crude oil as a major source of revenue. Prior to the discovery of oil in 1956 in Oloibiri, a town in Bayelsa State,

[35] S 12(1). This provision is admissible of two exceptions: where the damage was due wholly to the-fault of the person who suffered it; or was suffered by a person who voluntarily accepted the risk thereof.

agriculture accounted for over 80 percent of Nigeria revenue.[36] The discovery of oil did not only displace interest in other sectors of the economy but also effectively ensure that oil became the mainstay of the Nigerian economy.[37] Under such over dependence on oil as the main source of revenue, it becomes difficult to regulate the activities of the oil companies which account for over 60% of the environmental pollution in Nigeria, especially in the Niger Delta region. In spite of the fact the exploration of oil is a major cause of environmental degradation in the Niger Delta, there is no way policies on the environment would be enforced on an industry that is responsible for over 90 percent of the country's foreign exchange earnings, and one which also accounts for 80 percent of government revenues.[38] Let us take the example of gas flaring. Since 1984, gas flaring has been declared illegal in Nigeria.[39] The devastating effect of gas flaring on both the physical, biological and human environment is so enormous that in all societies, it is generally considered unethical to flare gas.[40] The list of the implications or consequences of gas flaring is enormous. Gas flaring is seen as an immediate cause of acid rain, and the Niger Delta people have been complaining of acid rain, which has damaged their crops and physical things.[41] Gas flaring also has serious implication on the health of the people. According to Akoroda[42], some peculiar diseases the inhabitants of the Niger Delta have tended to suffer from can be traced to the incessant flaring of gas. Sagay strongly believes that gas flaring causes tremendous heat, which in turn causes increasing hardship and discomfort.[43] It contributes immensely to global warming. This is because it releases huge quantities of carbon dioxide into the atmosphere. According to recent statistics, an estimated 2 billion standard feet of gas is flared in Nigeria per day, which is enough to provide electricity for the whole of Africa.[44] This translates to 19 percent of the gas flared globally making Nigeria to have the notorious record of the country with highest percentage of gas flared, though recent placement puts Nigeria second after Russia.[45] Even Shell Producing and Development Company, the greatest culprit in this regard has reluctantly admitted that "flaring wastes valuable resources and is environmentally damaging".[46] Considering the health, economic, and environmental implication of gas flaring, Nigerian Government proposed the year 2003 for the application of zero gas flaring policy in Nigeria. This policy was however challenged and attacked jointly by oil companies on the ground that it was technically infeasible. Following the pressure from oil multinationals, the

[36] ROF Ola and DA Tonwe, *Local Administration and Local Government in Nigeria* (Trust Publishers, 2003)

[37] Ibid. It should however be stated here that the groundwork for most African State becoming a mono-product economy was laid by the colonial masters. Colonialism encourages the production of a particular good to the detriment of others. Every subjugated economy was forced to produce the goods or commodities the colonizers were interested in and in some cases to embark on a commodity that hitherto they were alien to. C Ake, *Democracy and development in Africa* (Spectrum Books, 1996).

[38] F Onwuazombe, 'Human Rights Abuse and Violations in Nigeria: a Case Study of the Oil Producing Communities in the Niger Delta Region' in *Annual Survey of International & Comparative Law*, 2017, p. 115.

[39] Edo, note 2, p.12

[40] KSA Ebeku, *Oil and the Niger Delta People in International Law* (Kopper Publishers, 2006) 146.

[41] Ibid.

[42] M Akorado, 'Remediation Response in the Niger Delta: a Paper Presented to mark the 1s t Anniversary of Jesse Fire Disaster' in *Nigeria Institute of International Affairs, 2000*

[43] I Sagay, 'The Extraction Industry in the Niger – Delta and the Environment", a Lecture delivered at the ANPEZ Centre for Environment and Development, Nov. 15, 2001. Port Harcourt.

[44] CO Orubu, 'Gas flaring and Associated Carbon Dioxide Emissions in the Niger Delta: the Need for a Pragmatic Approach to Flare Reduction Policies", in A S Akpotor *et al* (ed), *Sustainable Environmental Peace and Security in the Niger Delta* (Delta State University Press, 2012) 135.

[45] Ibid.

[46] Ebeku, (n 2).

Federal Government extended the date to 2007, December 31st. Again, the infeasibility of the policy necessitated another shifting of the date to the end of 2008 and this has been the trend ever since. Why the compromise? A plausible explanation has to do with the economic base of the government, which is weak. It pays the government (not the people) to compromise than strictly seeing its policy through. Applying strictly sound environmental policy will mean great loss or reduction in government revenue or spending. Therefore the political will to effect decisions or policy is extremely constrained or limited due to the weak economic base of our national economy and of course our political leaders.[47]

Another aspect of the economic challenges to effective enforcement of pollution-control legislation in Nigeria is the issue of funding. To meet their obligations and be able to perform their functions effectively, the regulatory agencies saddled with the responsibility of enforcing environmental standards must be financially viable. Section 13(1) of the NESREAAct2007 provides for the funds of NESREA when it states that the Agency shall establish a Fund from which shall be defrayed all expenditure incurred by the Agency for the purposes of this Act. A perusal of section 13(2) of the Act which itemizes the sources of the Agency's funds ranging from grants, annual subventions, budgetary allocations etc, will obviously give one an impression that the Agency is adequately funded. Unfortunately, this is far from the truth. Recently, the Director-General of NESREA, Jauro while appealing for improved funding of the Agency lamented that 'paucity of fund is robbing the Agency the opportunity of given [sic] the nation the optimum service'.[48] According to Jauro, the allocation of #370 million to the Agency in the 2022 budget was a far cry from what is required to perform optimally. He lamented that the #370 million, which was for capital expenditure, did not even take into consideration the huge overhead expenses that is required to run a big agency that has offices in 34 States and a big headquarters with two referral laboratories and six zonal offices. Thus, inadequate funding of enforcement agencies is definitely a very big challenge to effective enforcement of legislation on control of environmental pollution in Nigeria.

5.2 Social Challenges

Every piece of environmental legislation is primarily intended to necessarily regulate or expressly prohibit human activities which are detrimental to the environment. Consequently, its enforcement is, to large extent influenced by human conducts and dispositions. For instance, due to poor level of literacy in Nigeria, many people do not know about the existence of certain environmental rules and regulations contained in the environmental legislation, and will consequently continue to carry on activities which grossly violate them. Any attempt to enforce compliance with such legislation is usually met with stiff resistance. The reason for this is not farfetched. It is always difficult to enforce a piece of legislation when the people whose activities are targeted are not aware of its provisions.

Furthermore, crisis and social restiveness can constitute an impediment to enforcement of environmental legislation. When and where there is civil unrest, the environmental legislation enforcement agents will have an understandable difficulty to enter such territory. For instance, many parts of Nigeria are presently facing security challenges arising from activities of terrorists, bandits, kidnappers, unknown gunmen etc. In a place where such nefarious activities are severe,

[47] KSA Ebeku, 'Legal Remedies for Victims of Environmental Pollution in Nigeria' in *Nigerian Law and Practice Journal, Vol. 2, November 1998* p.59

[48] <www.thisdaylive.com>2021/12/27. accessed 25 February 2024.

it will be extremely difficult to talk about enforcement of any legislation on control of pollution. A good example is the case of Niger-Delta region where activities of militia groups had in the past, impeded clean up exercise during oil spillage.[49]

5.3 Political Challenges

In the words of the Acting Executive Director of UNEP, Joyce Msuya, 'political will is now critical to making sure our laws work for the planet'. The economic and social challenges to enforcement of environmental legislation and policies clearly show the role politics plays. It is not in doubt that there is lack of political will to ensure compliance with pollution control measures in Nigeria, especially in the oil industry. No action betrays this notion more than the case of gas flaring in the Niger-Delta region. In spite of the fact that the flaring of gas has been prohibited since 1984, it is a constant practice even today.[50] While policies aimed at stopping gas flaring have been in existence since 1979, the Nigerian people have seen dates banning the practice extended several times. At least it is on record that deadline dates for stopping gas flaring have been extended at least 7 times. 1984, 2004, 2016, and 2020 are notable dates in this regard.[51] Presently, Nigeria is working towards ending gas flaring by the year 2030.[52] In a fieldwork conducted by Zephaniah O. Edo, Laz Etemike and Victor E. Clark at Okpai, Ndokwa East, in Delta State, a participant during a focus group discussion explained the frustration of Government's incoherent deadlines on the people of the region in these exact words:

> *Deadline for gas flaring has been shifted several times that it has become more of a slogan for electioneering. Nobody here believes the government any longer as we now know they are more interested in the money they get from the oil companies than how this fire is affecting our health and crops. Produce from our farms has been seriously affected and this affects us economically because principally we are farmers. The government continues to turn a blind eye to our plight and the oil companies have bought some powerful persons in the community and the rest of us cannot do anything.*[53]

Another area where successive administrations in Nigeria have shown lack of political will in the enforcement of legislative frameworks for the protection of the environment is the non-implementation of section 8(f) of the NESREAAct2007 which empowers NESREA to, subject to the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), and in collaboration with relevant judicial authorities establish mobile courts to expeditiously dispense cases of violation of environmental regulations. Although the Agency is empowered to establish environmental courts to expeditiously dispense cases of violation of environmental regulations, none has been established due to lack of political will to do so.

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[49] Edo, note 2, p.14

[50] Ibid.

[51] Y Akinpelu, 'Analysis: 77% of oil spills in Nigeria Occurred in Only Three States' in Premium times, May 15, 2021. <*https://www.premiumtimesng.com/news/headlines/461635-analysis77-of-oil-spills-in-nigeria-occurred-in-only-three-states.html.*>

[52] GO Aigbe *et al*, 'Gas Flaring in Nigeria: A Multi-level Governance and Policy Coherence' in *Anthropocene Science (2023) 2*, 31 – 47. Available on *https//doi.org/10.1007/s44177-023-00045-5 A*ccessed on 02/03/2024

[53] ZO Edo *et al*, 'Exploring Barriers to Environmental Law Enforcement and Compliance in Nigeria Niger Delta Region' in *Journal of Danubian Studies and Research, Vol.12, No1/2022*, p. 241.

5.4 Institutional Challenges

The supposed inability of FEPA to enforce environmental laws and compliance in the country was a major reason for the creation of the National Environmental Standards and Regulations Enforcement Agency (NESREA) in 2007. The NESREA Act repealed the Federal Environmental Protection Agency Act and became the primary law on environmental protection.[54] However, if history is anything to go by, the creation of NERSEA may be an "old wine in a new bottle". This necessarily prompts the question: why are the agencies charged with enforcing environmental laws unable to do so especially in relation to oil companies' activities?

One of the basic problems plaguing enforcement of environmental legislation by the institution saddled with such responsibility is lack of tools, and adequate manpower that is needed to carry out proper enforcement programme. Inadequate staff, outdated equipment and lack of professionalism are some of the obstacles that have resulted in low enforcement of compliance with pollution-control legislation in Nigeria. Section 10(4) and (5) of the *NESREA Act 2007* provide that the Agency (NESREA) shall have zonal offices in the six (6) geopolitical zones of the country, and may create such other departments, units or offices in any part of the Federation as may be required for the proper performance of the functions of the Agency. Compulsorily having one zonal office in each of the six geopolitical zones in the country and discretionally establishing units or offices in any part of Nigeria is commendable, but cannot guarantee adequate number of staff and manpower required to prosecute the statutory mandates of the Agency. Taking into consideration the Nigerian landmass and the enormous tasks with which the Agency is saddled, it is our humble opinion that adequate awareness and enforcement of environmental legislation would have been more effective if the Act had compelled the establishment of NESREA offices in all the local government areas of Nigeria.

Corruption is another roadblock in the enforcement of environmental legislation and policies aimed at controlling pollution in Nigeria. It is not overstatement to say that, more often than not, officers of the institutions or agencies charged with the responsibility of enforcing environmental standards are plagued with the "virus" of corruption. Writing on the subject of corruption in the Nigeria public sector, Osadede[55] observed that one of the greatest threats to socio-economic and political development of any nation is corruption which has eaten deep into our private and public sectors. This explains the reason why some officers of institutions clothed with powers of legislative enforcement may prefer to collect money from violators of environmental legislation in order to turn blind eyes to their primary duties. Responding to a question during a focus group discussion in a fieldwork conducted by Zephaniah O. Edo and others at Okpai, Ndokwa East, in Delta State, a participant had this to say:

> *The basic problem that is working against the enforcement of environmental laws is corruption and if Nigeria environmental laws must be effective, the government must seek out ways to deal with it. How do you enforce laws properly against an industry that pays you more money in one day that you cannot get in 10 years of service? That is why even in these regulatory agencies, you see much infighting among themselves to be assigned to field work as that will give them access to oil*

[54] NESREA Act 2007, Section 36.

[55] K Osadede *et al*, 'Corruption in the Nigeria Public Sector: An Impediment to Good Governance and Sustainable Development' in *Review of Public Administration and Management Vol. 4, No. 8, December 2015*. Available on <http://www.arabianjbmr.com/RPAM_index.php>accessed on 05 February 2024.

> *companies. Just imagine a company giving you 10 million naira to look the other way, what will you do especially when you are poorly paid?*[56]

It is also often the case that agents of government are called and told to tread carefully by politicians when they try to enforce the law. This is certainly not a new trend as such scenario was well captured decades ago by Adegoke Adegoroye, a former Director of the defunct Federal Environmental Protection Agency. He observed that one of the challenges that plague enforcement regime in Africa and Nigeria in particular is the existence of powerful groups and individuals who, with access to seats of authority hinder efforts to enforce the law.[57] This is a typical tactic still used today by big corporations who have what it takes, to 'muscle' their way through. They not only ensure that they have access to Abuja but as Adegoroye's observation shows, they also influence the media to do their biddings.[58]

5.5 Judicial Challenges

Pollution of environment in Nigeria may result to both civil and criminal liabilities. As such, environmental litigation can take many forms, including civil actions based on tort, contract or property law, criminal prosecutions, public interest litigation, enforcement of fundamental human rights or complex issues which may arise when cases involve transboundary environmental harms.[59] At common law, an action for an environmental pollution may be based on either negligence, nuisance or under the rule laid down in *Rylands v. Fletcher*.[60] Each of these common law actions which can be used to curb environmental pollution and promote conservation has some essential requirements which, the plaintiff has the onus of establishing. Apart from the problems that an award of damages is dependent on certain technicalities and that such damages may not even be sufficient to redress the harm, the major problem with case law is that it depends on a willing plaintiff. Where the litigation costs are too high or because of litigation apathy, or lack of means, these torts go unchecked.[61] Besides these seemingly negligible problems that negatively affect the enforcement of environmental rights in Nigeria, issues bordering on *locus standi,* and indifferent judicial attitude have been identified as major impediments to the enforcement of environment legislation in Nigeria.

5.5.1 *Locus Standi*

The trend of case law, especially in Nigeria is that in order to have standing to sue, the plaintiff must exhibit 'sufficient interest', that is 'an interest which is peculiar to the plaintiff and not an interest which he shares in common with general members of the public.[62] Thus, a plaintiff who sues for damages arising from an environmental abuse must show that he suffered damages.

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[56] Edo, (n 2), p. 245.
[57] Ibid.
[58] Ibid.
[59] Rufus Akpofurere Mmadu, 'Judicial Attitude to Environmental Litigation and Access to Environmental Justice in Nigeria: Lessons from Kiobel' in *Afe Babalola University: Journal of Sustainable Development Law and Policy Vol. 2 Iss. 1 (2013)*, p. 150
[60] 3 H. & C. 774, 159 Eng Rep 737 (Ex. 1865).
[61] Ajomo and Adewale, *Environmental Law and Sustainable Development in Nigeria,* (Nigerian Institute of Advanced Legal Studies, 1994) p. 11
[62] *Olawoyin v A.G., Northern Nigeria* (1961) 1 SCNLR 5; *Owodunmi v Reg. Trustees, C.C.C.*(2000) 10 NWLR (Pt. 675) 315; *Gamioba v Esezi* (1961) 2 SCNLR 237; *A.G., Eastern Nigeria v A.-G., Federation* (1964) All NLR 224; *Odeneye v Efunnuga* (1990) 7 NWLR (Pt. 164) 618; *Thomas v Olufosoye* (1986) 1 NWLR (Pt. 18) 669. *Momahv. Olotu* (1970) 1 All NLR 117; *Maradesa v Mil. Gov., Oyo State* (1986) 3 NWLR (Pt. 27) 125; *Olawoyin v A.G., Northern Nigeria* (1961) 2 SCNLR 5; *Adesanya v President, F.R.N*. (1981)2 NCLR 358; *Oloriode v Oyebi* (1984)

As noted earlier, violations of environmental legislation may give rise to criminal prosecution or civil liability. The issue of *locus standi* usually arises in civil litigations, where individuals or group of individuals (including non-governmental organizations) sue to enforce their environmental rights. They may, due to inability to show a direct interest other than that of their special environmental consciousness and common interest in the environment with other citizens be faced with a barrier of standing to sue. This was what happened in *Shell Petroleum Development Company Nig. Ltd v Chief Otoko and Others* [63] where the court rejected representative action on the ground that the plaintiffs failed to show common interest and grievance in the cause of the matter.

In *Adediran and Anor v Interland Transport Ltd*[64], the Supreme Court adopted a liberal approach to *locusstandi*. The appellants as residents of the Ire-Akari Housing Estate, Isolo, *inter alia* brought an action for nuisance due to noise, vibrations, 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 (as amended), a private person can commence an action on public nuisance without the consent of the Attorney-General, or without joining him as a party.

Recently, the Supreme seems to have removed the roadblock which the doctrine of *locus standi* had before now mounted on the capacity of non-governmental organizations to maintain actions in respect of public nuisance injurious to human lives, public health and environment. In *Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation*[65], the appellant sued the respondent at the Federal High Court, Lagos claiming reinstatement, restoration and remediation of the impaired and/or contaminated environment in Acha autonomous community of Isukwuato Local Government Area of Abia State of Nigeria, particularly the Ineh and Aku streams which environment was contaminated by the oil spill caused by the respondent's negligence;

In the statement of claim, the appellant was described as a Non-Governmental Organization (NGO) registered in accordance with Part C of the Companies and Allied Maters Act (CAMA) which carries on, inter alia, the function of ensuring reinstatement, restoration and remediation of environments impaired by oil spillage/pollution/particularly the environment that belongs to no-one in particular. The appellant pleaded that over twenty-five years before the institution of the suit, the respondent constructed and laid oil pipelines beneath, around and beside Ineh and Aku streams/river in Acha autonomous community in Isukwuato Local Government Area of Abia State. However, the pipelines had outlived their usefulness partly due to use and partly due to the salinity of the sea water under which they were laid. On 13th May 2003, the appellant noticed a strange oily substance (crude hydrocarbon oil) circulating and drifting on top of the streams and within a few days, the substance increased to the point where it overflowed from the streams and surged into the adjoining lands, estuaries, creeks and mangroves. The appellant sent a delegate to investigate it. It was discovered that the respondent's oil pipeline, which had corroded due to lack of maintenance, had ruptured, fractured and spewed its entire contents of persistent hydrocarbon mineral oil into the surrounding streams and river of Ineh and Aku. The appellant averred that the respondent was negligent in both the causation and containment of the spillage;

1 SCNLR 390 and *Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation* (2019) 5 NWLR (Pt. 1665) 518.

[63] (1990)6 NWLR(pt. 159) 693

[64] 1 (1991) 9 NWLR (pt. 214) 155.

[65] Supra.

that the spillage had harmful effect on living resources, marine life, human health and other usages of the streams.

In its statement of defence, the respondent denied the allegation of negligence and pleaded that any damage to the pipelines and the spillage and subsequent contamination of the streams/rivers were caused by acts of sabotage or interference by unscrupulous persons within the affected community. The respondent filed an application requesting the trial court to set down for hearing the point of law raised in its statement of defence, which challenged the *locus standi* of the appellant to institute the action.

After hearing the application, the trial court in its ruling determined the point of law in the respondent's favour by holding that the appellant lacked the *locus standi* to sue and it struck out the suit. The appellant was dissatisfied with the ruling and it appealed to the Court of Appeal. The Court of Appeal dismissed the appeal and affirmed the ruling of the trial court. Still dissatisfied, the appellant appealed to the Supreme Court.

Unanimously allowing the appeal, the Supreme Court held that *locus standi* should be broadly determined with due regard to the corporate interest being sought to be protected. According to the court, ready access to the court is one of the attributes of civilized legal system, and it is dangerous to limit the opportunity for one to canvass one's case by rigid adherence to the ubiquitous principle inherent in *locus standi* which is whether a person has the standing in a case. The court noted that the society is becoming highly dynamic and certain stands of yester years may no longer stand in the present state of social and political development. Speaking through Eko JSC, the Apex Court reiterated the current legal position on the issue of *locus standi* on environmental matters when it held thus:

> *The concept of locus standi is a common law doctrine developed and created by the English courts and was developed in the context of private litigation, without regard to public interest litigation. However, with the greater public awareness of the effects of environmental degradation and the advent of non-governmental organisations or not-for-profit organisations, and other public-spirited individuals, seeking redress for damage affecting the public at large, the English courts and the courts in other commonwealth countries, which have similar legal systems as Nigeria, as well as the United States of America, have begun to adopt a more liberal approach to the issue of locus standi in public interest litigation. Where there is a dearth of precedents in Nigerian jurisprudence on a particular issue, it is permissible to look to other climes where similar issues have arisen for guidance. The concept of locus standi is not static and continues to evolve as the needs of society demand. The court, while considering the issue of sufficient interest in relation to locus standi, is to bear in mind the changing landscape of public interest litigation, especially as it concerns matters related to the environment. However, the mere fact that a non-governmental organization has interest in environmental protection will not be sufficient, without more, to confer locus standi on it. It must still satisfy the court as to the legitimacy of its interest in the subject matter of the litigation. In the instant case, it was shown that some of the members of the appellant were directly affected by the oil spillage and it was averred that the oil polluting the streams and rivers is very toxic and dangerous to human health in that it can cause skin diseases, lung damage, cancer, damage to reproductive system, etc., factors that can affect generation yet*

> *unborn. It was also evident from the reliefs sought that the appellant did not seek any personal benefit from the litigation. The reliefs merely sought the enforcement of existing legislation in the interest of all those affected and likely to be affected by the environmental degradation caused by the oil spillage from the respondent's pipelines. By the suit, the appellant sought the enforcement of the respondent's obligations under the relevant legislation on behalf of the affected communities, including some of its members. Thus, the appellant showed sufficient interest in the subject matter of the suit to clothe it with the necessary standing to sue.*[66]

5.5.2 Judicial Attitude

Environmental pollution prompts either criminal or civil liabilities. While it is the duty of the relevant agencies to prosecute persons who commit environmental offences[67], a victim of environmental pollution can seek redress by filing a civil action in court of competent jurisdiction.[68] Unfortunately, the quests to attain redress for environmental problems have not been the most straightforward endeavor in Nigeria.[69] The courts, before now placed overriding economic benefits of the nation over and above environmental pollution.[70] In *Allar Irou v. Shell-BP Development Company (Nig) Ltd*[71], national economic interest was a major reason why the court denied a successful plaintiff injunctive relief. The plaintiff had sued the Shell-BP for damages suffered as a result of oil spillage. The court found for the plaintiff on the ground that the oil installations from which the oil spill occurred was under the management of the defendant which could not explain what caused the spill. However, the court refused to make an order for injunction to forestall such occurrences in the future. Advancing reasons for refusing the injunctive relief, the court stated that 'granting the order of injunction as prayed would amount to asking the defendant to stop operations in the area… and it is needless to say that mineral oil is the main source of Nigeria's revenue'.[72]

Apart from slavish adherence to the doctrine of *locus standi* by Nigerian courts which has been a stumbling block in the path of justice in environmental litigations in Nigeria, inflexible insistence and application of strict proof is another challenging judicial attitude discernible in environmental matters. In *Seismogragh Service v Ogbeni*[73], the plaintiff claimed compensation for environmental damage resulting from the defendant's oil exploratory exercise of exploding oil testing chemicals around the region of the plaintiff's building which wrongfully caused or permitted excessive noise and vibrations which damaged the plaintiff's building. The Supreme

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[66] Per EKO, JSCat page 601, paras. C-F

[67] Unfortunately. there has been paucity of public litigations in the form of prosecutions. See S O Idehen, 'Examination of legal Regimes and Institutional Frameworks for oil Pollution Management in Nigeria: How Effective?' (2013) 1 (1) BIU Law Series, 114-140

[68] RA Mmadu, 'Judicial Attitude to Environmental Litigation and Access to Environmental Justice in Nigeria: Lessons from Kiobel' (*2013) 1 (2) Afe Babalola University Journal of Sustainable Development Law and Policy* 149-170.

[69] Ibid.

[70] SG Ogbodo, The Role of the Nigerian Judiciary in the Environmental Protection against Oil Pollution: Is It Active Enough? Available on <www.nigerianlawguru.com>accessed on 02 February 2024.

[71] Suit No. W/89/71 (Unreported).

[72] In *Chinda v Shell-BP* (1974) RSLR 1), the plaintiffs complained of adverse effects of gas flare on their buildings, crops and other plants. Consequently, he asked the court to restrain Shell-BP from operating a flare stack within five miles of the plaintiffs' village. The court refused an order of injunction and described the relief sought as an absurd and needlessly wide demand.

[73] [1976] 4 SC 86.

Court set aside the judgment of the trial court which was in favour of the plaintiff. In the words of the Supreme Court:

> *We are unable to agree with the learned trial judge that the evidence of an expert is not absolutely necessary to prove damage alleged to be caused by vibrations radiating from seismic operations taking place within a reasonable distance from the property damaged. These are phenomena beyond the knowledge of the unscientific and untrained in seismology and civil engineering.*

6. Conclusion and Recommendations

It has been said that there is no perfect piece of legislation anywhere in the world.[74] Laws are man-made, and consequently cannot be flawless. This is true of the legislative instruments on control of environmental pollution in Nigeria. They are not without some weaknesses as herein identified. However, it is our humble opinion that environmental pollution still rears its ugly head in Nigeria, not because there are no laws to prevent, or at least, control it to the barest minimum. Rather, the problem lies largely in the implementation and enforcement of pollution-control legislation. The situation would have been different if the agencies clothed with statutory powers to enforce rules and regulations on environmental pollution had been living up to expectations by ensuring effective enforcement. It is hoped that if the Nigerian Government and indeed, every relevant stakeholder in the field of environmentalism adhere to the recommendations made in this paper, challenges to effective enforcement of environmental legislation in Nigeria will fizzle out.

In the light of the challenges facing effective enforcement of legislation on environmental pollution in Nigeria identified above, the writers humbly make the following recommendations:

1. Adequate Funding of Enforcement Agencies

Recently, the Director-General of NESREA, Jauro while appealing for improved funding of the Agency lamented that paucity of fund is robbing the Agency the opportunity of giving the nation the optimum service. If NESREA and indeed, other enforcement agencies are adequately funded, they will not have to depend for funds on the organizations whose activities they are supposed to supervise. Besides, adequate funding will enable them procure materials necessary to ensure effective monitoring and enforcement of environmental standards.

2. Diversification of Nigerian Economy

Presently, oil is the mainstay of Nigerian economy. Available records show that most of the environmental degradations are caused by the activities of oil companies, especially in the Niger-Delta region. More often than not, enforcement agencies are usually reluctant to enforce environmental regulations against the multinational oil companies due to their belief that stringent enforcement could affect the Government's source of revenue. However, if the economy is diversified in such a manner that Government would not have to depend solely on oil as its only viable source of revenue, agencies saddled with the responsibility of enforcing environmental regulations in the oil and gas sector will be audacious in carrying out their functions no matter whose ox is gored.

[74] MDA Freeman, *Lloyd's Introduction to Jurisprudence* (London: Sweet & Maxwell, 2001) 11.

3. **Adequate Sensitization of the Populace**

It may not be incorrect to say that many people are not aware of the existence of most environmental legislation. Moreover, people who know about environmental statutes may not be familiar with their provisions and the mischief they are meant to cure. It is against this backdrop that adequate orientation of the members of the public is important. Sensitizing people on the intent and purpose of the law, which, more often than not, is to secure the good of greater number makes its implementation and enforcement seamlessly effective?

4. **Tackling Security Challenges**

No society thrives in the midst of insecurity. Addressing security challenges which have assumed uncanny dimension in the recent past is a sure way of ensuring adequate enforcement of environmental legislation in Nigeria. In that case, officers of the institutions charged with the onus of enforcing regulations on environment will not be afraid to enter or visit any part of the country for the purposes of conducting searches or inspections as specified under the law.

5. **Demonstration of Adequate Political Will**

Political leaders and state actors should demonstrate commendable political will to implement the provisions of environmental statutes. This may be in form of setting in motion every machinery needed for full implementation and enforcement of environmental legislation. For instance, section 8(f) of the NESREA Act 2007 empowers NESREA to, subject to the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), and in collaboration with relevant judicial authorities establish mobile courts to expeditiously dispense cases of violation of environmental regulations. Government should implement this provision by setting up environmental mobile courts that would assist NESREA in realizing its statutory mandate.

6. **Intensification of Fight against Corruption**

Some officers of the enforcement agencies have imbibed corruption as a way of life. This is why they could prefer taking "kickbacks" to doing the right thing. Their interest, often times, is in making their money to the detriment of the environment. If the fight against every form of corrupt practice is intensified, staff of enforcement agencies will sit up to their statutory duties.

On the other hand, there should be an enhanced remuneration package for the staff of the enforcement agencies. This will reduce their vulnerability to bribery and corruption.

7. **Judicial Activism**

Our courts should explore the path of judicial activism in environmental matters, especially on the issues of *locus standi* and award of damages for violations of environmental regulations. Courts should desist from, and indeed reject the narrow interpretation and application of *locusstandi*. In this regard, we commend the audacity of the Supreme Court in *Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation*[75]where it liberally expanded the scope of capacity of non-governmental agencies and public-spirited individuals to sue in matters relating to public nuisance. The writers further advocate imposition of punishment and/or award of damages that is commensurate to the degree of harm done to the environment. This will definitely deter offenders and other intending violators of environmental regulations.

[75] Supra.

8. Amendment of Some Provisions of the NESREA Act 2007

Provisions of the NESREA Act relating to punishment in the event of breach may constitute a sort of discouragement to their enforcement. Officers of the Agency may consider it a fruitless adventure to dissipate energy and resources in prosecuting an offender under the Act when they know that such an offender will be made to pay a paltry sum of money or go to prison for an insignificant period of time if convicted. For instance, person who violates the Regulations made pursuant to section 22(1) of the NESREA Act 2007 commits an offence and shall on conviction be liable to a fine not exceeding N50, 000 or to imprisonment for a term not exceeding one year or to both such fine and imprisonment and an additional fine of N5, 000 for every day the offence subsists.[76] Where the offence is committed by a body corporate, it shall on conviction be liable to a fine not exceeding N500, 000 and an additional fine of N10, 000 for every day the offence subsists.[77] It may be recalled that the essence of imposing punishment on offenders is to deter them and other would-be offenders from further committing the crime for which they have been processed. Apparently, section 22(3) and (4) and other similar provisions prescribing punishments under the NESREA Act 2007 cannot achieve this fundamental objective. We therefore, recommend an upward review of the punishments (whether in form of fine or a term of imprisonment) under the Act.

The writers also recommend an amendment of section 32(3) of the Act which provides thus:

> *Subject to the provisions of section 174 of the Constitution of the Federal Republic of Nigeria 1999, (which relates to the power of the Attorney-General of the Federation to institute, continue or discontinue criminal proceedings against any person in a court of law), any officer of the Agency may, with the consent of the Attorney- General of the Federation, conduct criminal proceedings in respect of offences under this Act or regulations made under this Act.*

Stating that *any officer* of the Agency may, with the consent of the Attorney-General of the Federation conduct criminal proceedings in respect of offences under the Act or regulations made there under leaves much to be desired. It means that any officer of the Agency, whether or not he has any form of training is qualified to prosecute any person who commits any offence under the Act. The writers humbly recommend that section 32(3) of the Act be amended to confer powers to conduct criminal proceedings in respect of offences under the Act on law officers employed in the legal department of the Agency. The writers further recommend that the powers of the Agency to conduct criminal proceedings in respect of offences under the Act should not be made subject to the consent of the Attorney-General of the Federation. The writers predicate their recommendation on the ground that securing the consent of the Attorney-General of the Federation may involve bureaucratic process, and this may ultimately occasion delay in the prosecution of offences under the Act. Besides, where the Attorney-General withholds his consent due to one interest or another, it means that the offender will not be prosecuted. Apparently, this could not have been the intendment of the legislators.

[76] NESREA Act 2007, Section 22(3).
[77] Ibid, Section 22(4).