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The Legal Challenges and Effect Concerning the Environmental Security in Nigeria: A Lesson from International Perspective

Paul Atagamen Aidonojie*

Oluwaseye Oluwayomi Ikubanni**

Adefisayo Ifeoluwa Oyedeji***

Alade Adeniyi Oyebade****

Abstract

The need for the rights to a safe, clean and healthy environment is very sacrosanct for the survival of all humans and the preservation of climate earth. It has been observed that the global environment has been under serious and significant threat, caused by depletion and pollution of the environment. Although, there has been a legal intervention from the international community and most nations in curtailing the activities of man from incessant pollution of the environment. However, it suffices to opine that why the international community and most jurisdiction or nations have deemed it fit to legally recognize the need to ensure a safe, healthy and clean environment, but Nigeria is yet to adequately gives proper legal attention concerning a safe, secure and healthy environment. This is concerning the fact that the rights to a healthy and secured environment are made a sham by section 6(6)(c) and section 12 of the 1999 Constitution. Furthermore, judicial activism in the enforcement of a healthy and clean environment has always or most often been decided in favour of multi-national oil companies who control a major aspect of Nigeria's economy. Given this, the study adopt a doctrinal analysis concerning the recognition of a safe and healthy environment, legal challenges and effect of governance concerning environmental security in Nigeria, and a lesson from India.

Keywords: Environment, Legal Challenges, Environmental Security, Nigeria, India

Introduction

The concern for a safe environment was considered very important in the pre-colonial era[1], this is concerning the fact that the indigenous peoples had adopted some methods aimed at

*Paul Atagamen Aidonojie Department of Public and International Law, Edo University Iyamho, Nigeria https://orcid.org/0000-0001-6144-2580aidonojie.paul@edouniversity.edu.ng+234(0)7030294932

**Oluwaseye Oluwayomi Ikubanni Department of Jurisprudence and Public Law, Joseph Ayo Babalola University, Ikeji-Arakeji, Osun State, Nigeria. E-mail: ooikubanni@jabu.edu.ng +234(0)8107295253

***Adefisayo Ifeoluwa Oyedeji Faculty of Law Federal University, Oye-Ekiti adefisayo.oyedeji@fuoye.edu.ng +234(0)7060883995

****Alade Adeniyi Oyebade Department of Jurisprudence and Public Law, Joseph Ayo Babalola University, Ikeji-Arakeji, Osun State, Nigeria. E-mail: aaoyebade@jabu.edu.ng +234(0)7036324824

[1]Robinson, J.O., 2013. Environmental Education and Sustainable Development in Nigeria: Breaking the Missing Link. International Journal of Education and Research, 1(5), 1-16; Saka, L., Salihu, H.A., Ali, A.A., 2007. Environmental Degradation, Rising Poverty and Conflicts: Towards an Explanation of the Niger Delta Crisis. Journal of Sustainable Development in Africa, 9(4), 2-21.

environmental protection and sustainable development; some of these practices are crop rotation, bush fallow and rotational system[2]. However, the safety and the quest for a healthy environment within the global community became a central concern of man since the 1960s when Rachel Carson published her famous book *Silent Spring*[3], her write-up exposes some of the imminent hazardous danger posed by the pesticide DDT and pollution of the environment emanating from the activities of mega oil companies. However, to safeguard and protect the environment from an environmental threat from pollution and deterioration by the activities of man[4], several international treaties, convention, agreement, and the protocol was adopted by the global community[5]. Some of these treaties and conventions include the Stockholm Declaration on the Human Environment 1972, Rio Declaration 1992, Montreal Protocol on substances that Deplete the ozone layer (Montreal Protocol) 1987, the Basel Convention on the Control of Transboundary movement of hazardous waste and their disposal, The Bamako Convention, Montreal Biosafety protocol 2000 and Paris Climate Conference Agreements to Replace the First Kyoto Protocol (COP21) 2015. To ensure the effective compliance of the above treaties, the various providers in the above treaties required signatory states to enact or domesticate similar local laws that are related to the treaties[6].

However, it's apt to state that why most nations (such as India) had seen the need in enacting or reviewing their local environmental laws to conform to current environmental reality, Nigerian is yet to review her laws that will provide for adequate security of the environment[7] and commit the government to ensure a clean and safe environment as envisaged by *section 20 of the Nigeria Constitution*. This is given the fact that irrespective of the fact that Nigeria is a signatory to most international environmental treaties and convention, but by *section 12 of the Nigeria Constitution* those international treaties and convention signed by the Nigeria government will have no effect,

[2]Emetumah F.C. (2017). Modern Perspectives on Environmentalism: Ecocentrism and Technocentrism in the Nigerian Context. Asian Res. J. Arts Soc. Sci2(4): 1-9; Emetumah F.C., and Duru P.N. (2015). Implementing sustainable development through efficient reuse of brown fields. Int. J. Multi Res. Dev 2(9): 637-641.

[3]Rachel Carson (1962) "The Story of Silent Spring" available at http://www.nrdc.org/health/pesticides/hcarson.aspi accessed on 19/01/2021

[4]Hisashi O. (2006). International Environmental Law and the International Court of Justice. Inaugural Lecture at the Fellowship Programme on International and Comparative Environmental Law IustumAequumSalutare II. 3(4): 5–32; Smith S.V.R. (2011). International Environmental Law. Advocate for International Development, Lawyers Eradicating Poverty Legal guide 4.

[5]Ijaiya H. (2013). The Legal Framework for solid Waste Disposal and Management in Kwara State, Nigeria. J. Environ. Proct04(11):1240-1244. DOI: 10.4236/jep.2013.411143; Ite A. Ibok U. Ite M. and Petters S. (2013). Petroleum Exploration and Production: Past and Present Environmental Issues in the Nigeria's Niger Delta. Am. J. Environ. Proct1-21.

Jonathan Krueger, "The Basel Convention and the International Trade in HazardousWastes" at pg 4, available at www.fni.no/ybiced/01-04-krueger.pdf i accessed 22/01/2016

[6]Ladan, M.T. (2012). Review of NESREA Act 2007 and Regulations 2009-2011: A New Dawn in Environmental Compliance and Enforcement in Nigeria", 8/1 Law, Environment and Development Journal 8(1): 116-35; Liu S.F. (1991). The Koko Incident: Developing International Norms for the Transboundary Movement of Hazardous Wastes. J. Nat. Res. Environ. Legacy 121-138.

[7]Olowoporoku, O.A., 2017. A recipe for disaster: An assessment of environmental sanitation situation in Nigeria. MAYFEB Journal of Environmental Science, 1, 1-5; Orimoloye, E.O., Amadi, C.O.A., Amadi, A.N., Azuamah, Y.C., Nwoke, E.A., Zacchaeus, U., Dozie, I.N.S., 2015. Assessment of water sanitation and hygiene practices in Ibadan, Nigeria. International Journal of Research (IJR), 2(2), 94-100.

except it has been rectified by the National Assembly or domesticated into Nigeria local law[8]. Furthermore, it also suffices to state that a suit against the Nigerian government to ensure that there is a safe and healthy environment cannot be contested in the Nigeria Court[9]. This is concerning the fact that by *section 6(6)(C) of the Nigeria Constitution*, the Nigerian Judiciary cannot entertain any matter contain in chapter 2 of the Nigerian Constitution.

It is in this regard that this study tends to examine the governance and legal quest for a healthy and safe environment as recognised by the international community and in Nigeria and the need to take a leap from India.

International recognition of the Right to clean, healthy and Secured Environment

At the global level, the governance and development of an environmental legal framework for the safety and protection of the environment can be traced to before 1900[10]. Although, the environmental legal framework in existence were few multilateral or bilateral agreements regulating international environmental issues such as; unrestrained national sovereignty over natural resources, utilisations of boundary waters, navigation, and fishing rights along shared waterways[11]. There was no serious attention concerning the safety and protection of the environment from hazardous substances, pollution, and ecological issues.

However, in the 1930s and 1940s, the need to ensure effective security and safety of the environment was lauded and triggered by the *Trail Smelter* arbitration case (1938) that involves Canada and United States[12]. The decision given by the Tribunal in 1938 concerning a claim for damages caused by trans-border air pollution, established the landmark classical principle of international environmental law that regulates the relationship between states concerning environmental issues. According to the decision of the tribunal, it stated thus;

> *"No State has the right to use or permit the use of its territory in such a manner as to cause injury or pollution … in or to the territory of another*

However, during and after the Second World War, the international community became very tense concerning the issue of nuclear damage caused by nuclear weapons and marine pollution from oil[13]. Thus, countries have to enter into agreements regulating international liability for

[8]Aidonojie P. A., Anani O. A., Agbale O. P., Olomukoro J. O., Adetunji O. C., 2020. Environmental Law in Nigeria: A Review on its Antecedence, Application, Judicial Unfairness and Prospects. Archive of Science & Technology 1(2) 212 – 221; Mach K.J., Mastrandrea M.D., Freeman P.T., and Field C.B. (2017). Unleashing expert judgment in assessment. Glob. Environ. Change 44: 1–14;

[9]Sambe L.N., Adeofun C.O., Dachung G., 2018. The Economic and Ecological Effects of Deforestation on the Nigerian Environment. Asian Journal of Advanced Research and Reports, 1(2), 1-25.

[10]Stanley H.O., Orakwuemma C.S., Onumajuru B.O., Opukeme A.S., and Onaghise L.O. (2018). Assessment of solid waste disposal in Yenagoa, Bayelsa State, Nigeria. Asian J. Adv. Res. Rep 1(4): 1-14

[11]Lallas, P. 2001. The Stockholm Convention on Persistent Organic Pollutants. The American Journal of International Law, 95(3), 692-708. doi:10.2307/2668517

[12]Ola C.S. (1984). Town and country planning and Environmental Laws in Nigeria, 2nd ed (Ibadan: University Press) 165.

[13]MilindKandlikar, Gurumurthy Ramachandran, (2000). "2000: India: The Causes and Consequences of Particulate Air Pollution in Urban India: A Synthesis of the Science", Annual Review of Energy and the Environment, 25,629–684

nuclear damage and required measures to prevent oil pollution at sea[14]. Furthermore, in 1962, it was Rachel Carson's (1962) book entitled the *Silent Spring,* that exposes the use of the hazardous pesticide DDT and the technological project that was not sustainable and environmentally friendly. To curtail this environmental anomaly, the global community taught it wise for the need to ensure effective environmental governance and legal framework to ensure the safety and security of the environment to sustain the continued existence of humanity on climate earth[15]. In this regard, several environmental conventions and treaties relating to interventions in case of oil pollution casualties, to civil liability for oil pollution damage, and to oil pollution control, the control of hazardous substances or chemical that causes depletion of the ozone layer and climate change[16]. Some of these environmental treaties and convention includes; The Stockholm convention on Persistence Organic Pollutants, the Rio Declaration on Environment and Development Framework Convention on Climate Change (UNFCCC) and United Nations Convention to Combat Desertification, the Basel Convention on the Control of Trans-Boundary of Hazardous Waste and their Disposal, the Bamako Convention, the Kyoto Protocol. The Kyoto protocol extends the 1992 United Nations Framework Convention on Climate Change (UNFCCC) that commits State Parties to reduce greenhouse gas emissions. The Kyoto protocol was a result of the drastic release of greenhouse gasses concentration in the atmosphere thereby causing global warming which was a major problem that affects the environment and threatening the existence of man. Furthermore, the Paris Climate Conference Agreements to Replace the First Kyoto Protocol (COP21) was adopted in 2015. The Paris Agreement (French: L'accord de Paris), is an agreement within the framework of the United Nations Framework Convention on Climate Change (UNFCCC) governing carbon dioxide reduction measures to be taken in 2020[17]. Furthermore, it must be noted that most of these environmental treaties and conventions are upshot from the United Nations which is in charge of governance within the global community. The essence of the above environmental treaties, conventions, and protocols, is to ensure the effective safety and security of the environment for the continued existence and survival of humanity.

However, the need for the protection of the existence of mankind through ensuring a healthy environment has not only been given international and regional statutory recognition but has been loudly pronounced by the international court in some cases. In the case of *Gabalkovonagymaros Project* case, Weeremantry stated thus;

> *"The protection of the environment is a vital part of contemporary human rights doctrine, for it is a sine qua non for numerous human rights such as the right to health and the rights to life itself. It is scarcely necessary to elaborate on this, as damage to the environment can impair and undermined all the human rights spoken of in the universal declaration and other human rights instrument"*

[14]Ladychenko V., Melnychuk O. &Kanaryk Y. J., (2019). International Mechanism of the Environmental Information Access and Cooperation Framework for Climate Change Protection. European Journal of Sustainable Development 8(4), 131-141

[15]Thanh W., Yawei W., Chunyang L., Yaqi C., &Guibin J., (2009). Perspectives on the Inclusion of Perfluorooctane Sulfonate into the Stockholm Convention on Persistent Organic Pollutants.Environmental Science & Technology, 43(14), 5171-5175 DOI: 10.1021/es900464a

[16]Riget, F., Vorkamp, K., Bossi, R., Sonne, C., Letcher, R.J., Dietz, R., (2016). Twenty years of monitoring of persistent organic pollutants in Greenland biota. A review. Environ. Pollut. 217, 114–123

[17]Falkner R., (2016). The Paris Agreement and the new Logic of International Climate Politics. International Affairs , 92(5), 1107-1125

However, notable of these environmental cases was the *Netherland case* that took place in 2008 were four Nigeria farmers and with friends of the earth in the Netherlands filed three separate lawsuits, each one addressing the impact oil spillages in the three villages Oruma, Goi, and Ilot Ada Udo, they further ask the court to order shell to disclose a certain internal document that has the history of various spill in the community to enable them to assess the quantum of damages to be awarded. On 30th January the Dutch Court issued a decision ordering shell to pay compensation to the farmers, but dismiss the order for disclosure of the internal document against the shell. In December 2015, a Dutch appeal court reversed its dismissal and ruled that shell must grant the claimants access to certain internal company documents which is essential to the case.

Given the above, it suffices to opine that at the international level, the protection and safety of the environment are of paramount concern, given the international environmental treaties, conventions, and judicial decisions that recognize and provide for environmental safety and security.

Nigeria Legal Framework concerning the Right to healthy and Secured Environment

Irrespective of the fact that the right to a clean and a healthy climate contained in chapter 2 of the Nigeria Constitution are further recognized by most international human right instruments, it is noteworthy that by section 12 (1) of the Nigeria Constitution these international instruments cannot be enforceable except such international instruments have been domesticated by the National Assembly[18]. This position of the law was further confirmed in the case of *Abacha V. Fawehinmi*[19]where Ogundare JSC held that before an international treaty becomes binding and enforceable in Nigeria, such treaty must be enacted into law by the National Assembly. Also, in the case of *Mhwun V. Minister of Health & Productivity &Ors*[20], the court held that the provisions of an international treaty could not be invoked and enforce by the Nigeria court unless it has been domesticated by an Act of National Assembly.

Furthermore, it is also relevant to note that, a clean environment and a healthy climate are a core aspect of environmental law in Nigeria[21] and by section 20 of the Nigeria Constitution; the Nigeria government is required to protect and ensure an improved climatic environment, in safeguarding the land, water, air and forest[22]. These responsibility places on the Nigeria government to ensure a well protected climate are contained in chapter 2 of the Nigeria

[18]Mmadu, R. (2013). Judicial Attitude to Environmental Litigation and Access to Environmental Justice in Nigeria: Lessons from Kiobel. Afe Babalola University: Journal of Sustainable Development Law and Policy, 2(1), pp. 1-18

[19] (2000) 6 NWLR (PT. 660) P. 228 at 228

[20] (2005) 17 NWLR PT. 953, P. 120

[21]Chukwuemeka C.E. (2018). Deficient Legislation Sanctioning Oil Spill in Nigeria: A Need for a Review of the Regulatory Component of Petroleum Laws in Nigeria and the Petroleum Industries Bill. International Journal of Environment and Sustainability, 7(1): 30-44.

[22]Akamabe, U. B. and Kpae, G. (2017). A critique on Nigeria national policy on environment: Reasons for policy review. IIARD International Journal of Geography and Environmental Management, 3(3), 22-36; Atsegbua L., Akpotaire V., Dimowo F., "Environmental Law in Nigeria, Theory, and Practicals", 2nded (Lagos Ambik press, 2004) p. 280-298.

Constitution and they are not enforceable[23](when the Nigeria government fails to enforce their responsibility), given the provision of section 6(6) (c) of the Nigeria Constitution, which provide that the Nigeria judiciary shall not have the power to entertain any matter contain in chapter 2 of the Nigeria Constitution**.** This provision of section 6(6) (c) makes a mesmerizing of section 20 of the Nigeria constitution that places the responsibility of ensuring a healthy and clean climatic environment for food innovation technology. However, chapter 2 of the Nigeria Constitution which contains section 20 that provides for a healthy climate is not totally a blanket responsibility that cannot be enforced against the Nigerian government[24], there are lily ways provided for or to be circumvented to ensure the Nigeria Government enforce their responsibility in ensuring a clean and healthy climate for food innovation technology. One of such ways is by the combined effect of section 4(2) and Item 60(a) of the exclusive legislative list of the Nigeria Constitution, which provides that where the National Assembly has enact law concerning any item contained in chapter, such matter becomes enforceable. This position of the law has been further re-emphasized in the case of *the Federal Republic of Nigeria V. Anache & 3 Ors. (2004) SC,* the Supreme Court held that when item 60(a) is read together with section 4(2) of the Constitution, chapter 2 of the constitution (which contains the right to a clean and healthy climate by section 20) becomes justiciable. This is given the fact that item 60(a) extends the power of the National Assembly to enact laws on matters that relate to or contain in chapter 2.

Given the above, it is in this regard that several legislations that relate to ensuring a clean and healthy climate was enacted by the Nigeria government, some of these legislations are;

The Harmful Waste (Special Criminal Provisions) Act

The Harmful Waste (Special Criminal Provisions) Act, 1988, was enacted as a result of the dumping of hazardous and toxic waste at Koko port in southern Nigeria. The Harmful Waste Act strictly prohibits the dumping of waste in Nigeria and further makes it a criminal offense if anyone should violate the law by dumping waste in any part of Nigeria. *Section 6* of the Harmful Waste Act provides for the penalty when anyone is found guilty. One relevant provision of this Act is *section 9,* given the fact that it provides as follows;

> *The immunity from prosecution conferred on certain persons by or under the Diplomatic Immunities and Privileges Act shall not extend to any crime committed under this Act by any of those persons.*

However, irrespective of the strict prohibition of dumping of waste and removing any immunity covering any individual who violates the act, it is difficult to find anyone or a multi-national oil company (most especially in the Niger-Delta Region) that has been convicted for the dumping of hazardous substances in Nigeria environment.

[23]Abdulkadir B. A. (2014). The right to a healthful environment in Nigeria: A review of alternative pathways to environmental justice in Nigeria. AfeBabalola University Journal of Sustainable Develop law & Policy, Vol. 3:1, p1-13

[24]Musa, A. and Bappah, H. (2014). Issues and Challenges on Environmental Rights: The Nigerian Experience. American International Journal of Social Science, 3(5), pp 14

Environmental Impact Assessment Act

Another relevant environmental law that is very vital in ensuring a safe and secured environment is the *Environmental Impact Assessment Act, Cap E12 Laws of the Federation of Nigeria 2004*. This Act ensures that every major development project or industrial activities, that may have a significant negative impact or pollute the environment and threaten the existence of man, are audited and reorganize for safer production or use[25]. By section 1(a) of the Act, it commits individual, corporate and unincorporated bodies to ascertain what the impact or effect such development may pose to the environment and how best to cope with such industrial activities. Although, *sections 2 (1) and (2) of the Environmental Impact Assessment Act* provide for an outright restriction to both public and private to embark on a project without considering the environmental effect it will cause. However, in most Nigeria urban and rural areas there are still many industrial activities going without complying with the provision of the Environmental Impact Assessment Act. This is concerning the fact that most petrol station and industrial activities are sited within a residential environment without effectively complying with the Act and the government is not concern about the imminent danger posed by the activities of these industrialists.

National Environmental Standards and Regulations Enforcement Agency (Establishment) Act

It also suffices to state that there are other very recent and potent enactments of environmental laws in Nigeria that are meant to guarantee the safety and healthy environment for the survival of man, such as the *National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007* (herein called the NESREA Act). The NESREA Act was enacted to replace the Federal Environmental Protection Act that has some flaws of poor enforcement and regulation of environmental issues. *Section 1 of the NESREA Act* established an agency called the National Environmental Standards and Regulations Enforcement Agency as a major administrative body to oversee the enforcement and compliance of environmental laws and policies in Nigeria. Furthermore, by *section 7 of the NESREA Act*, the agency is saddled with the power, functions, and responsibility of ensuring effective enforcement and compliance with international treaties, conventions, agreements, and protocols concerning environmental issues. Also, the agency is committed to ensuring the protection and development of the environment, biodiversity conservation, and suitable development in Nigeria's natural resources in general. This concerning the fact that the major mission and vision of the agency is to ensure a collective responsibility in building an environmentally conscious society for the achievement of sustainable development in Nigeria and a cleaner and secured environment. In other to achieve their functions and responsibilities, the agency is saddled with the power to establish mobile courts to expeditiously dispense cases of environmental infringements.

However, sadly as it may seem, the agency since its establishment are busy chasing street polluters, living the major polluters such as industrialists and multi-national oil companies untouched, even when their activities constitute a threat to the environment and humanity.

[25]Ariyoosu D. A., (2014). An Examination of Legal Regulation and Environmental Impacts of Telecommunications Installations in Nigeria. Journal of Law, Policy and Globalization, 30, 34-65; Adenle, A.A., Azadi, H., Arbiol, J., 2015. Global Assessment of Technological Innovation for Climate Change Adaptation and Mitigation in Developing World. Journal of Environmental Management, 161, 261–275; Ogunniran, B.I., 2018. Ozone Layer Depletion and Climate Change in Nigeria – Problems and Prospects: A Review. Glob. J. Res. Rev., 5(1:2).

Gas Flaring (Prohibition and Punishment) Act 2010

The *Gas Flaring (Prohibition and Punishment) Act* was enacted to curtail and end the flaring of gas by the multi-national and foreign oil industry or company. Gas flaring has become one of the major causes of pollution within the Niger-Delta region[26]. However, *Gas Flaring (Prohibition and Punishment) Act* came into existence as a result of the case of *Jonah Gbemre v. Shell Petroleum Development Company Nigeria Ltd, Nigeria National Petroleum Corporation and Attorney General of the Federation*[27], where Justice C.V. Nwokorie declared section 3(2) of the Associated Gas Re-injection Act and section 1 of the Associated Gas RE-Injection (Continued Flaring of Gas) Regulations to be unconstitutional and ordered the Attorney General to collaborate with the Federal Executive Council (FEC), to review the law in line with the present-day practice, rules and regulations governing oil and gas activities. The Federal High Court also ordered the oil companies to stop gas flaring in Niger Delta as it violates guaranteed constitutional rights to life and dignity.

The decision of the court informed the enactment of *the Gas Flaring (Prohibition and Punishment) Act 2010*. Given this, section 1 of the Gas Flaring (Prohibition and Punishment) Act strictly prohibits the flaring of gas in Nigeria after on the 31st of December 2010 by anyone or company and places strict punishment.

However, it suffices to state that despite the strict prohibition of flaring of Gas in Nigeria, the flaring of gas is still ongoing within the Niger-Delta region by multi-national oil companies without adequate measure to remedy the damage done to the environment[28].

Given the above, it suffices to opine that beautiful as the above environmental law may seem to have relevant provision concerning a clean, healthy and safe environment, however, since the existence of these laws must multi-national oil company are yet to be convicted for polluting the environment. Furthermore, the government seems to be more concerned with generating revenue rather than ensuring that the exploration and exploitation of the resources from climate earth are done sustainably. In this regard, the above environmental laws are merely enforced as an administrative measure to moderate probable natural disasters rather than strictly committing the Nigerian government and multinational oil company in ensuring their activities does not cause or lead to environmental disaster.

An Analysis concerning the Enforcement of Rights to healthy Environment in Nigeria

Although by *section 6(6)(c) of the Nigeria Constitution* provide that the judicial power shall not extend to any issue contained in *chapter II of the Nigeria Constitution*[29]. However, a further perusal of *section 6(6)(c) of the Nigeria Constitution* reveals that chapter II of the Nigeria Constitution can be enforceable as prescribed by the Constitution[30]. In this regard, *Item 60(a) of*

[26]Osofsky, H.M., Burns, W.C.G., (2009). Adjudicating Climate Change: State, National, and International Approaches. Cambridge University Press.

[27] Unreported suit no: FHC/B/CS/53/05

[28]Chuks-Ezike, C. (2018). Environmental crime liability of the Nigerian government in its oil pollution menace. Environ. Risk Ass. Remed2(2): 1-7.

[29]Gbadegesin O.A., and Akintola S.O. (2020). A Legal Approach to Winning the 'Wash' War in Nigeria. *Eur. J. Environ. Pub. Health* 4(2):1.

[30]Geetanjoy S., (2008). Implications of Indian Supreme Court's Innovations for Environmental Jurisprudence, *Law, Environment and Development Journal,* 4(1),1–19

the exclusive legislative list to the Nigeria Constitution extend the power of the National Assembly to enact laws in matters or item contain in *Chapter II of the Nigerian Constitution*, in the case of Federal Republic of *Nigeria V. Anache & 3 Ors. (2004) SC*, the Supreme Court held that when item 60(a) is read together with section 4(2) of the Constitution, chapter 2 of the constitution becomes justiciable. This is given the fact that item 60(a) extends the power of the National Assembly to enact laws on matters that relate to or contain in chapter II of the Nigerian Constitution.

However, irrespective of the above, it suffices to state that most environmental cases instituted before courts in Nigeria are most often tied to negligence in tort law[31] or fundamental rights contain in *chapter 4 of the Nigerian Constitution*[32]. In earlier environmental cases that came before the Nigerian court, the Nigerian Judiciary was reluctant in ensuring effective enforcement of a healthy environment as a result of income generated from most of these multinational companies. in *Chinda V. Shell B.P* The plaintiff complained of the adverse impact of gas flares on their building, crops, and other plants, they brought an action asking the court to restrain shell-BP from operating a flare stack within 5 miles of the plaintiffs' village. The judge refused to order an injunction on the ground that the relief sought was absurd and a wide demand.

SPDC Nig Ltd V. Ambah[33]**,** provides a good example of the attitude of Nigerian judges to oil-related environmental damages. The plaintiff claimed for himself and on behalf of his family special and general damages suffered by the plaintiff and members of his family when the defendant negligently destroyed their fish ponds, creeks, lakes. It was evident that the alleged damages actually occurred and was able to particularized special damages suffered to the tone of #30,000 and they further claimed general damages of #300,000 though not proof. The High Court and Court of Appeal awarded #300,000 to the respondents for the damage of their fish ponds, fish lakes, fish channels, and creeks destroyed at the rate of #27,000 per annual. On appeal, the Supreme Court allowed the appeal and reduces the amount to #27,000 only, claimed by the respondent. However, the Supreme Court was of the view that the sum claimed by the respondent as compensation in their further amended statement of claim is #27,000, have not been contested by the appellant their appeal. The Supreme Court further stated that the sum of #297,000 awarded as special damage to the respondent by the court of appeal cannot be allowed to stand as it is a claim for the destruction of property which cannot be ascertained, the measure of damage will be the value of the property at the time of the destruction.

However, apart from the reluctant attitude of the Nigerian Court to recognize the need to guarantee environmental safety and security, there are instances legal technicalities are often used by most lawyers to frustrate most environmental cases and most judges are more inclined to sacrificing justice based on technicalities. In *SPDC V. Chief Otoko and Others*[34]**,** the suit was instituted in a representative capacity, the plaintiff claims the sum of #499,855.00 as damage caused in depriving their community of the use of Andoni River and creeks as a result of the negligent act of crude oil spillage by the defendant. The Nigerian court held that it is vital and very important that the persons who are to be represented and the person(s) representing the plaintiff should have the same interest in the cause of matter; given common interest and a

[31] Ibid
[32] Constitution of the Federal Republic of Nigeria
[33] (1999) 2 S.C 129
[34] (1990) 6 NWLR 693

common grievance. The court further stated that a representative suit would be in order if in addition to the relief sought it is in the interest and nature beneficial to all, whom the plaintiffs propose to represent. The court rejected and dismisses the suit based on this ground. Also in *Eboigbe V. NNPC*[35]**,** the supreme court disallowed the appellant case on the ground that the appellant and members of his family at the time the alleged crops were damaged on the family land in February 1979 they were aware of the accrual of their cause of action but refuse to enforce their right till 13th of June 1985, which is a period exceeding twelve months as stipulated in the NNPC Act, as the specific period to institute the suit against the corporation for their negligent actions.

However, it is not in all environmental cases that the Nigerian courts have always failed to recognise the need to sanctions polluters to ensure environmental safety and security given their industrial activities (Gbadegesin & Akintola, 2020). There are certain instances, which the court had to grant civil liability for damages caused by oil pollution from the industrial activities of a multi-national oil company. In *SPDC V. Councilor Farah & 7 Others*[36], the decision, in this case, is groundbreaking and a breakthrough in Nigeria environmental security and safety, this is concerning the fact that the doubt individuals use to have about the judicial approach to environmental litigation seems to be laid to rest. The appellant in this case scoured a stream that flows through the land of the respondents without their thereby causing loss of sand and gravel; the respondents' fishing equipment was also destroyed in the process, leading to the respondents' inability to carry out fishing activities. The respondent brought an action for such negligent damage in the sum of #60,000. The trial judge having given judgment in favour of the respondent awarded #45,840, and on appeal, the court of appeal upheld the trial court judgment

However, on appeal to the Supreme Court, Onalaja, J.C.A stated thus;

> *"The judgment of my learned brother is a guide and appraisal of the law about oil spillage or blow-out in Nigeria as at now. It will serve as a beacon of light of oil mineral producing areas of Nigeria as to the certainty of the legal rights of the citizens in claims for compensation arising from oil spillage or blow-out".*

Also, in *SHELL V. Isaiah*[37]**,** the plaintiff claim 22 million naira for permanent damage and loss caused to the plaintiff by reason of extensive oil spillage and pollution into the plaintiffs land and surrounding farmland while the defendant was effecting repairs on their damage oil pipeline. At the trial, an expert commissioned by the respondents to value their loss arising from the spillage testified, and his report tendered without objection, and the expert was cross-examined by the defendant who did not call any expert. The trial judge in a reserved judgment awarded the plaintiff #22 million being the full amount claimed by them. On appeal, the Supreme Court affirmed the trial court judgment on the ground that the plaintiff's expert evidence was not controverter and the defendant did not call any expert evidence.

Concerning the above judicial analysis, it reflects a lackadaisical and inconsistent approach of the Nigeria court in ensuring effective governance and administration of environmental safety and security through the court system.

[35] (1994) 5 NWLR (PT 347) 649
[36] (1995) 3 NWLR 148
[37] (2001) 5 S.C. (Pt 11) 1

Conclusion/Recommendation

The need for a clean, healthy, and safe environment is a global issue which most nations of the world had seen the need to effectively given due attention. This is concerning the fact that for there to be a continuing existence of man and climate earth, there must be effective legal governance and policing in curtailing the excess release of substances that often cause pollution, depletion, and deterioration of climate health. Although in this study, it has been clearly stated that within the global environment there has been an effective legal framework to regulate how a man should sustainably relate with the environment without compromising the need to ensure a clean, healthy, and safe environment. Furthermore, countries that subscribe to most of these international treaties, conventions, and protocols are required to domesticate and enact laws that will ensure an adequate provision for a safe and clean environment. From the study, it was also identified that India via its legal framework and judicial activism has effectively complied in ensuring that the government, individual, and multi-national oil companies are environmentally friendly in all aspects of their activities that may cause harm or pose threat to the environment.

However, the study also observes the fact that although section 20 of the Nigeria Constitution provide for the government to ensure a clean and secured environment and Nigeria also a signatory to most international environment treaties, convention, and protocol, the Nigeria legal framework concerning a clean, healthy and secured environment makes it impossible for effective environmental governance. This is given the fact that by section 6(6)(c) of the Nigeria Constitution, the power of the Nigerian judiciary to enquire concerning whether the Nigerian government has been able to implement section 20 of the Nigeria Constitution has been truncated. Furthermore, the international environmental treaties, conventions, and protocol Nigeria is a signatory to do not have the force of law if they are not domesticated.

It was also observed in this study that, the Nigeria judiciary who ought to have salvage the situation and abnormalities inherent in Nigeria environmental legal framework are often caught in the web of legal technicalities and therefore allowing most multi-national oil companies who are the major polluters of the Nigeria environment go untouched and deterred for their continuous act of endangering the environment.

Given, the legal abnormalities inherent in Nigeria environmental legal framework and poor judicial activism concerning environmental issues as examined in this study, it is hereby recommended that the Nigeria government need to amend the Nigeria Constitution to recognize the rights to a clean and secured environment as a fundamental right that can be independently enforced in the court of law in Nigeria. Also, amend section 12 of the Nigeria Constitution to allow for the enforcement and implementation of international environmental treaties or domesticate relevant international environmental treaties and conventions to give it an adequate legal backing for due implementation. Furthermore, it is also recommended that the Nigerian judiciary should step up and condemn any act of technicalities in frustrating any environmental cases that comes up for determination.