

An Appraisal of the Mechanisms of Enforcement of Environmental Laws in Nigeria

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Abstract

In Nigeria the problem of enforcement of environmental laws has been enormous, ranging from corruption - porous borders, collusive practices; lack of adequate funding; lack of qualified technical staff; joint ventures/government interest; wording of the existing laws; lack of infrastructure, poor access to places of offences; poor incentives and welfare for government officers; non stringent and obsolete penalty; poverty; coupled with globalization resulting to the ineffectiveness of the laws. Although there are numerous laws protecting the environment from damage in Nigeria, the enforcement mechanisms of these environmental laws have remained ineffective as regulatory authorities in Nigeria have over time been inclined to exhibit indolence in the performance of their functions. The laws are not enforced in an effective manner because they exist only in books. However, a number of positive results have been achieved in use of the different mechanisms to enforce these existing laws such mechanisms include fines, conviction, restitution, remediation, forfeiture and imprisonment. This paper focuses on and appraises some of the enforcement mechanisms of environmental laws in Nigeria to resolve the issues of environmental degradation and the efficacy of these mechanisms. This paper further examines the different enforcement agencies established for environmental standards, regulations, rules, laws, policies and guidelines. These agencies have responsibilities for the protection and development of the environment. This paper suggests ways to enhance regulatory institutions.

Introduction

Although, a plethora of laws protecting the environment from damage exists in Nigeria, the enforcement mechanisms of these environmental laws have remained ineffective as regulatory

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authorities in Nigeria have over time been inclined to exhibit indolence in the performance of their functions. The laws are not enforced in an effective manner because they exist only in books. In Nigeria, violations of environmental laws are generally civil offences, resulting in monetary penalties and, perhaps, civil sanctions such as injunctions. Some environmental laws also provide for criminal penalties for egregious violations. Environmental agencies often include separate enforcement officers, with duties including monitoring permitted activities, performing compliance inspections, issuing citations and prosecuting wrongdoings (civilly or criminally, depending on the violation).

Enforcement has been defined as 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 with¹. Compliance is the ultimate goal of enforcement programme.² While environmental enforcement is the set of actions that Government or others use to achieve compliance within the regulated community for correcting or halting actions or omissions that endanger the environment or public health, compliance on the other hand is the full implementation of environmental requirements³. Furthermore, enforcement means to force people or something to obey the law or make effective or make something by force.⁴

The Concept of Enforcement in Environmental Law

Well-designed environmental laws and regulations, will include implementation and enforcement systems, advancing a green economy by improving the health and safety of the people and communities, conserving natural resources and ecosystem services, promoting sustainability, expanding markets for environmental goods and services, creating sustainable jobs, driving technology innovation, and creating a level the playing field for investment by

¹ L. Atsegbua. "A Critical Appraisal of Environmental Legislation in Edo State" Vol. 3 U.B.L.J. p. 1 (1996/99):19.

² Ibid 19.

³ International Network for Environmental Compliance and Enforcement (INECE), "*Principles of Environmental Enforcement*"1992, accessed February 28, 2014 @<http://www.Inece.org/enforcementprinciples.html>.

⁴ *Oxford Advanced Learner's Dictionary*, 4th ed. s.v. 'Enforcement'.

reducing costs⁵. Environmental laws and policies must therefore be designed with compliance and enforceability in mind. For the regulated community to comply, it must be aware of the rules, be willing to comply, and be able to comply.

Enforcing environmental laws, to environmental lawyers or environmental laws enforcement officers means securing compliance with the laid down rules and regulations through persuasion and advice and not through apprehension and subsequent punishment of offenders.⁶ Environmental law is not an end in itself but a means to an end. It is a fact that environmental laws agencies officials are not members of an industrial police force but are teachers and servants of the local community.⁷

Wasserman has made the distinction that compliance is a state in which environmental requirements are met and maintained, while enforcement is the use of legal tools to assist and compel compliance with environmental requirements.⁸ Other scholars have shared this opinion. For example, Hornby defined enforcement as a means to force people or something to obey the law or make something effective, or make something happen by force; whereas compliance is to force action in accordance with a request or demand.⁹

The Status of Enforcement of Environmental Laws in Nigeria

The role of legislation in inducing responsible attitudes and good behaviours towards the environment cannot be overlooked. Legislation serves as an effective instrument for environmental protection, planning against pollution, prevention and control. Nigeria's environmental laws can favourably be compared with standards and regulations obtainable in the advance western

⁵ M. Tony and K. Rob, "8th International Conference on Environmental Compliance and Enforcement," (5-11 April 2008 Cape Town South Africa), accessed April 20, 2014. <http://www.inece.org>.

⁶ S. Bell, and S. Bell, *Environmental Law: The Law and Policy Relating to the protection of Environment* (London: Blackstone Press Ltd, 1991), 2.

⁷ B. Hutter, *The Reasonable Arm of the law? The Law Enforcement Procedures of Environmental Health Officers* (Oxford: Clarendon Press 1988), 95.

⁸ C. Wasserman, "Principles of Environmental Laws Enforcement and Beyond Building Institutional Capacity" Paper presented at the International Conference on Environmental Enforcement at Oaxaca, Mexico, April 1994, see extracts in *The Guardian* Monday, May 16, 1994, 15 and 25.

⁹ A.S. Hornby, *Oxford Advance Learner's Dictionary of Current English*, (Oxford: Oxford University Press, 1993), 336 and 398.

world.¹⁰ Protection of the environment and good environmental management can only be attained by compliance with environmental laws. The best tool for achieving environmental compliance is effective and consistent civil and criminal enforcement of the law.

It is the lack of enforcement of these environmental laws in Nigeria that has been seen by many environmental experts as one major reason why the environment in Nigeria has continually faced massive degradation. The need for an effective environmental enforcement programme is imperative. Its political, social and economic implication cannot be undermined. While government has responded to these environmental problems through the creation of agencies such as the National Environmental Standards and Regulations Enforcement Agency (NESREA) which by its creation effectively repealed the Nigeria flagship law on the environment, the Federal Environmental Protection Agency (FEPA), in 2007. There have been little impacts, if any of the activities of the agencies on the lives of the people directly affected by the negative externalities of oil production. While many have supported the light environmental enforcement culture in the country with special reference to the impacts of oil production, their reasons so far given have fallen short in explaining the “sacred cow status” enjoyed by oil multinational corporations in light of the destruction of the country especially the Niger Delta ecosystem. Environmental policy in Nigeria has always been recognized and it is provided for in the Nations Constitution which empowers the states to protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria¹¹. Nigeria has also adopted either by ratification, acceptance, approval of or accession to, various international treaties on environmental protection such as the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, as amended in 1962 which has since been enacted into law and referred to as the Oil in Navigable Waters Act.¹² The problem that therefore provoked the rationale of this work was to seek out the reason and

¹⁰ O.I. Natufe, “The problematic of sustainable development and corporate social responsibility: policy implication for the Niger Delta.” Being a Paper Presented on the Second Annual Conference and General Meeting of the Rockaway River Country Club. (Denville: New Jersey, U.S.A., 2001)

¹¹ s. 20 Constitution of the Federal Republic of Nigeria, 1999 as amended.

¹² 1968, cap. 06 LFN, 2004.

critically assess the challenges and problems affecting environmental enforcement in Nigeria in spite of the proliferation of environmental regulations and standards in the country with special focus on the activities of pollutants in all sectors of the country. This work found out what approximately seems to be the best explanation on why environmental enforcement is so weak in addressing the myriads of environmental problems in Nigeria. Various mechanisms and practices used to maintain public security and public safety in Nigeria are discussed below.

Fines

A Fine is a certain amount of money exacted as a penalty. It is also a way to charge someone an amount of money as a punishment for not obeying a rule or law.¹³ Fine is one of the enforcement mechanisms of environmental laws. Most of the environmental laws have the penal sections ranging from fines to imprisonment. For example, Section 12 of Environmental Pollution Control Law, of Lagos State makes it an offence to cause or permit a discharge of raw untreated human waste into any public drain, water course or onto any land or water. This offence is punishable with a fine not exceeding ₦100,000 (One Hundred Thousand Naira) and in the case of a company, a fine not exceeding ₦500,000 under the Mineral Oils (Safety) Regulations 26 of 1963, a manager who fails to comply with its provisions, shall be liable on summary conviction to a fine of ₦100,000 or imprisonment not exceeding 6 months or to both such fine and imprisonment. Regulation 4 makes it an offence punishable with ₦100,000 fines or 6 months' imprisonment or to both fine and imprisonment for any licensee or lessee who fails to comply with the provisions of Regulation 3. Default in the observance of these regulations on the part of any employee upon summary conviction attracts a fine not exceeding ₦100,000 or imprisonment for 6 months or to both fine and imprisonment.¹⁴ For any other contravention of these Regulations for which no penalty is provided, a fine of ₦100,000 or imprisonment for 6 months or both fine and imprisonment is prescribed under Reg. 47(1). Under the National Oil Spill Detection and Response Act (NOSDRA). An oil spiller is to report an oil spill to the Agency in writing within twenty four hours, in default of which he is to pay a penalty sum of ₦500,000.00 for

¹³ *Cambridge Advanced Learner's Dictionary & Thesaurus* (c) Cambridge University Press. s.v. 'Fine'

¹⁴ Reg. 41 of the Mineral OIL

each day of failure to report the occurrence.¹⁵ In addition failure to clean up the area that has been affected by oil pollution, to all practical extent including remediation attracts a fine of ₦1,000,000.00.¹⁶ The Environmental Impact Assessment (EIA) Act 1992,¹⁷ 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 as in the case of an individual be liable to ₦100,000 fine or to five years imprisonment and or in the case of a firm or corporation to a fine of not less than ₦500,000 and not more than ₦1,000,000. The ₦1,000,000 naira penalty provided for under this law is still not enough to deter offenders considering the health implications posed by such violations and hence the subsistence of poor environmental degradation in Nigeria.

Imprisonment

Imprisonment is one of the Enforcement mechanisms of Environmental laws in Nigeria. Most of the environmental laws have the penal sections ranging from fines to imprisonment and the maximum sanction for imprisonment is life imprisonment for dealing in toxic or hazardous waste.¹⁸ Furthermore, a person is liable on conviction to imprisonment for a term not exceeding six months and a fine of ₦50,000¹⁹ for any person who contravenes the provisions of subsection (1) of Section 24 of the NOSDRA Act.

Restitution

This is an act of returning something to the original owner or the person entitled to have it.²⁰ It is also a Reparation made by giving an equivalent or compensation for loss, damage, or injury caused; indemnification. The restoration of property or rights previously taken away, conveyed, or surrendered. Restore to the former or

¹⁵ s. 6 (2) NOSDRA.

¹⁶ s. 6 (3) NOSDRA.

¹⁷ cap. E12 LFN, 2004

¹⁸ S. 1-6 of the Harmful Waste ACT, 1988.

¹⁹ S. 24(2) NOSDRA, See also ss.20 (3), 21(3), 22(3), 23(3), 24(4), 26(3), 27(2), 31 of NESREA.

²⁰A *Law Dictionary* ed. John Bouvier, Adapted to the Constitution and Laws of the United States, 1856), s.v “Restitution” <http://legal-dictionary.com/Restitution>”>restitution.

original state or position. It is also the return to an original physical condition, especially after elastic deformation.²¹

Remediation

This is the act or process of correcting a fault or deficiency, the act or process of remedying.²² Section 19 (1) of National Environmental (Soil Erosion and Flood Control) Regulations, 2011 provides that "... offender shall be responsible for the remediation of the damage to the environment and any affected properties therein".²³ The Nuclear Safety and Radiation Protection Act 1995,²⁴ controls and regulates the use of radioactive substances. It stipulates that the operator of a facility who is responsible for an incident resulting in radioactive contamination of the environment shall be liable to conviction for the restoration of the environment or for the cost of such activities as are necessary for the restoration of the environment to its original state. Section 6(3) of the National Oil Spill Detection and Response Agency Act 2006, provides punishment of one million naira for those environmental polluters who refuse to remediate and clean up the impacted site.

Forfeiture

Forfeiture means losing or surrendering something as a penalty for a mistake made or a failure to act. It is also a fault or failure to perform sacrifice, forfeit human action, human activity, deed, and an act, - something that people do or cause to happen. For instance sections 1-5 of the Harmful Waste (Special Criminal Provisions) Act provide that notwithstanding the provisions of the customs, Excise Tariff. e.t.c. (Consolidation) Act, or any other enactment, or law, all activities relating to the purchase, sale, importation, deposit and storage of harmful waste are hereby prohibited and declared unlawful. However, any person found guilty of a crime under these sections shall on conviction be sentenced to

²¹ *Black's Law Dictionary*, 9th ed. s.v 'Restitution'

²² *Encyclopaedia Britannica*, 11th ed., s.v "remediation".

²³ S.19(1)-(3) National Environmental (Soil Erosion and Flood Control) Regulations, 2011. See also s. 52(1)(c) National Environmental (Base Metals, Iron and Steel Manufacturing/Recycling Industry Sector) Regulations, 2011, s. 52(1)(c) National Environmental (Domestic and Industrial Plastic, Rubber and Foam Sector) Regulations, 2011 and s. 20(3) National Environmental (Coastal and Marine Area Protection) Regulations, 2011.

²⁴ 1995 cap. N 142, LFN, 2004

imprisonment for life and in addition, any carrier, including aircraft, vehicle, container and any other thing whatsoever used in the transportation or importation of the harmful waste, and any land on which the harmful waste was deposited or dumped, shall be forfeited to the Federal Military Government without any further assurance other than this Act. In addition, section 10 (d) of the Act provides that any Police officer can seize any item or substance which he has reason to believe has been used in the commission of a crime. The Associated Gas Re-injection Act 1979²⁵ provides that any oil company that violates the provision under section 3 (1) of the Act shall forfeit the concessions granted in the particular field where the offence is committed.²⁶

Enforcement Agencies/Authorities

The Federal Government established different enforcement agencies for environmental standards, regulations, rules, laws, policies and guidelines. They have responsibilities for the protection and development of the environment. These Agencies include:

National Environmental Standards and Regulation

Enforcement Agency

This Agency was established under section 1 of the NESREA Act, 2004 as a body corporate, with a perpetual succession and with a common seal. This body can also sue and be sued in its corporate name.²⁷ It is an agency for the enforcement of environmental standard, regulations, rules, laws, policies and guidelines.²⁸ The agency is further charged with responsibility for the protection and development of the environment, biodiversity conservation and sustainable development of Nigeria's natural resources in general and environmental technology, including coordination and liaison with the relevant stakeholders within and outside Nigeria on matters of enforcement of environmental standards, regulations, rules, laws, policies and guidelines.²⁹ Part II of NESREA Act,

²⁵ cap. A 25 LFN, 2004

²⁶ s. 4 (2), Ibid.

²⁷ S. 2, of NESREA Act, 2007.

²⁸ Ibid.

²⁹ S.2 (2) NESREA Act, 2007.

contains the functions and powers of the agency and council. Section 7 of the Act provides that the Agency shall:

- (a) Enforce compliance with laws, guidelines, policies and standards on environmental matters;
- (b) Coordinate and liaise with stakeholders, within and outside Nigeria, on matters of environmental standards regulations and enforcement;
- (c) Enforce compliance with the provisions of international agreements, protocols, conventions and treaties on the environment including climate change, biodiversity conservation, desertification, forestry, oil and gas, chemicals, hazardous wastes, ozone depletion, marine and wild life, pollution, sanitation and such other environmental agreements as may from time to time come into force;
- (d) Enforce compliance with policies, standards, legislation and guidelines on water quality, environmental health and sanitation, including pollution abatement,
- (e) Enforce compliance with guidelines and legislations on sustainable management of the ecosystem; biodiversity conservation and the development of Nigeria's natural resources;
- (f) Enforce compliance with any legislation on sound chemical management, safe use of pesticides and disposal of spent packages thereof;
- (g) Enforce compliance with regulations on the importation, exportation, production, distribution, storages sale, use, handling and disposal of hazardous chemicals and waste other than in the oil and gas sector;
- (h) Enforce through compliance monitoring, the environmental regulations and standards on noise, air, land, seas, oceans and other water bodies other than in the oil and gas sector;
- (i) Ensure that environmental projects funded by donor organizations and external support agencies adhered to regulations in environmental safety and protection;
- (j) Enforce environmental control measure through registration, licencing and permitting systems other than in the oil and gas sector;

- (k) Conduct environmental audit and establish data bank on regulatory and enforcement mechanisms of environmental standards other than in the oil and gas sector;
- (l) Create public awareness and provide environmental education on;
- (m) Sustainable environmental management, promote private sector compliance with environmental regulations other than in the oil and gas sector and publish general scientific or other data resulting from the performance of its function;
- (n) Carry out such activities as are necessary or expedient for the performance of its function.

Section 8 enumerates the powers of the Agency. Some of the pertinent ones have been highlighted earlier under part II dealing with the Establishment of the Agency. In the same vein, it is worthy of note that the chief enforcer under the Act is an “officer” of the Agency.³⁰ A reasonable interpretation, in the light of the usage of “authorized authorities or officer” in other sections of the Act is that in addition to the Agency official, any Police officer not below the rank of Inspector of Police or any Custom officer can enforce the Act.³¹ Such officer, with a Court warrant, can enter and search any premises he reasonably believes is used to contravene environmental standards or legislation.³² In conducting the search, the officer is authorized to examine any article,³³ take a sample or specimen of any article,³⁴ open and examine any container or package,³⁵ examine any book, document or other record.³⁶ The officer may also seize and detain any article,³⁷ and can obtain a court order to suspend activities, seal and close down premises including land, vehicle, tent, vessel, floating craft or any inland water.³⁸ The obstruction of an officer of the Agency in the

³⁰ S. 30 (1).

³¹ S. 37

³² See Part VII and s. 30 (1) (a)

³³ S. 30 (1) (b)

³⁴ S. 30 (1) (c)

³⁵ S. 30 (1) (d)

³⁶ S. 30 (1) (e)

³⁷ S. 30 (1) (f)

³⁸ S. 30 (1) (g)

performance of his duties under the Act carries a stiff penalty.³⁹ If the obstruction is caused by an individual, upon conviction he is sentenced to a minimum fine of ₦200,000 or to a maximum imprisonment of one year or to both fine and imprisonment, and an additional fine of ₦20,000 for each day the offence continues.⁴⁰ If the obstructor is a corporate body, it shall, upon conviction, be liable for a fine of ₦2,000,000, an additional fine of ₦200,000 for each day the offence subsist.⁴¹

Under section 8 the Agency shall have power to:

- (a) purchase or take on lease any interest in land, building or property;
- (b) build, equip and maintain the offices and premises for the performance of its functions under this Act;
- (c) lease out any office or premises held by it which is no longer required;
- (d) prohibit processes and use of equipment or technology that undermine environmental quality;
- (e) conduct field follow-up compliance with set standards and take procedures prescribed by law against any violator;
- (f) establish mobile courts to expeditiously dispense cases of violation of environmental regulations in collaboration with relevant judicial authorities, subject to the provisions of the constitution;
- (g) conduct public investigations on pollution and the degradation of natural resources, except investigations on oil spillage;
- (h) open and operate ordinary and domiciliary accounts for the Agency in recognized banking institutions in Nigeria;
- (i) borrow by overdraft or otherwise, with the approval of the minister, such sums as it may require for the performance of its function under the Act;
- (j) accept gifts of land, money or other property, upon such terms and conditions, if any as may be specified by the person or organization making the gift, as long as such conditions are consistent with the functions of the Agency;

³⁹ S. 31.

⁴⁰ Ibid.

⁴¹ Ibid.

- (k) submit for the approval of the Minister, proposals for the evolution and review of existing guidelines, regulations and standards on environment other than in the oil and gas sector including:
- (i) air quality;
 - (ii) ozone depleting substances;
 - (iii) noise control;
 - (iv) effluent limitations;
 - (v) water quality;
 - (vi) waste management and environmental sanitation;
 - (vii) erosion and flood control;
 - (viii) coastal zone management;
 - (ix) dams and reservoirs;
 - (x) watershed;
 - (xi) deforestation and bush burning;
 - (xii) other forms of pollution and sanitation and;
 - (xiii) control of hazardous substances and removal control methods;
 - (xiv) develop environmental monitoring networks, compile and synthesize environmental data from all sectors other than in the oil and gas sector at national and international levels;
 - (xv) undertake, coordinate, utilize and promote the expansion of research experiments, surveys and studies by public or private agencies, institutions and organizations concerning causes, effects, extent, prevention, reduction and elimination of pollution and such other than in the oil and gas sector as the Agency may from time to time determine;
 - (xvi) enter into agreement and contracts with public or private organization and individuals to develop, utilize, coordinate and share environmental monitoring programmes, research effects, and basic data on chemical, physical and biological effects of various activities on the environment and other environmental related activities other than in the oil and gas sector;

- (xvii) in collaboration with other relevant agencies and with the approval of the Minister, establish programmes for setting standards and regulations for the prevention, reduction and elimination of pollution and other forms of environmental degradation in the nation's air, land, oceans, seas and other water bodies and for restoration and enhancement of the nation's environment and natural resources;
- (xviii) collect and make available, through publications and other appropriate means and in co-operation with public or private organizations, basic scientific data and other information pertaining to environmental standards;
- (xix) charge fees for tests, investigations and other services performed by the Agency;
- (xx) develop and promote such processes, methods, devices and materials as may be useful or incidental in carrying out the purposes and provisions of this Act; and
- (xxi) do such other things other than in the oil and gas sector as are necessary for the efficient performance of the functions of the Agency.

National Oil Spill Detection and Response Agency⁴²

This Agency was created by the NOSDRA Act. This Agency is responsible for the maintenance and conservation of the environment in matters relating to the oil sector. The Act provides for certain objectives of the Agency⁴³ ranging from development in oil spill contingency plan, identifying high risk of oil spill areas, detection of spill, clean up, implementation of appropriate oil spill, responsible reporting on both land and offshore. It also provides for offences and penalties where a polluter fails to report oil spill within 24 hours and for failure to clean up polluted site. The Agency is in collaboration with certain federal ministries, institutes and Agencies.⁴⁴ The Agency is responsible for surveillance and ensures compliance with all existing environmental legislations

⁴² cap. N157 LFN, 2010.

⁴³ S. 5 Ibid.

⁴⁴ See second schedule to the Act and ss. 19 (1), (2) & 7 (g) (ii).

and the detection of oil spills in the petroleum sector.⁴⁵ It receives reports of oil spillages and co-ordinate oil spill response activities throughout Nigeria.⁴⁶ Co-ordinate the implements plans as may be formulated, from time to time, by the Federal Government;⁴⁷ co-ordinates the implementation of the plan for the removal of hazardous substances as may be issued by the federal government,⁴⁸ performs such other functions as may be required to achieve, the aims and objectives of the Agency under this Act or any plan as may be formulated by the federal Government pursuant to this Act.⁴⁹ Under take surveillance, reporting, alerting and other response activities as they relate to oil spillages.⁵⁰

The Nigerian Police

The Nigerian Police Force was established in 1930, following the amalgamation of the two separate protectorate forces in Northern and Southern Nigeria. At inception, the force was saddled with various police duties and extra-police functions. Section 4 of the Police Act regularized the functions of the Nigerian Police Force as:

- (a) Prevention and detection of crime.
- (b) Apprehension of offenders.
- (c) Preservation of law and order.
- (d) Protection of life and property.
- (e) Enforcement of all laws and regulations with which they are charged.
- (f) Military duties within or outside Nigeria as may be required of them.

In order to discharge its numerous functions, the Nigerian police is accorded with wide powers by law. For example, Nigeria police has powers to:

- take measures to prevent crime

⁴⁵ S. 6(1) (a)

⁴⁶ S. 6(1) (b)

⁴⁷ S. 6(1) (c)

⁴⁸ S. 6(1) (d)

⁴⁹ S. 6(1) (e)

⁵⁰ SS. 7(1) (b)

- investigate crime
- prosecute suspects
- search properties and persons in order to prevent crimes, detect or investigate crimes, apprehend offenders, and collect evidence for prosecution.
- grant bail to suspects pending investigation or arraignment in court
- serve criminal summons
- regulate processions and assemblies

The Nigerian Police exists primarily to promote harmony and security of life and property in society. Environmental infraction is endemic in all human associations with the environment and if it is not regulated it may escalate and threaten society. It must nonetheless be recognized that human activities in the environment is a vehicle of change and development.

The philosophical rationale for the existence of the police which are crime prevention and maintenance of order is the need to promote institutional mechanism for the enforcement of laws and norms that are designed to regulate conflicts and enhance the total well-being of members of the society. Police should function to regulate the manner and limits of expression of conflict. The list of functions that police are expected to carry are many and varies from countries to countries. In Nigeria, the need and the functions of the police forces cannot be overemphasized. The general public wants the police force to be upright and impartial in discharging their duties and their statutory functions. The police force is trusted with the responsibility of preserving lives and property and police are expected in the society to maintain general social order and security. The constitution really empowered them to intervene in every aspect of crime situation. So the functions of the police in crime management are inexhaustible and limitless.

The Nigeria Custom Service

Under the NESREA Act, Nigerian Custom Officers may be used to enforce environmental laws considering that under section 8 of the Act, the chief enforcer under the Act is an “officer” of the Agency.⁵¹ Thus, a reasonable interpretation of this provision in the

⁵¹ S. 30 (1)

light of the usage of “authorized authorities or officer” in other sections of the Act is that in addition to the Agency official, any Police officer not below the rank of Inspector of Police or any Custom officer can enforce the Act.⁵² Such officer, with a Court warrant, can enter and search any premises he reasonably believes is used to contravene environmental standards or legislation.⁵³ In conducting the search, the officer is authorized to examine any article,⁵⁴ take a sample or specimen of any article,⁵⁵ open and examine any container or package,⁵⁶ examine any book, document or other record.⁵⁷ The officer may also seize and detain any article,⁵⁸ and can obtain a court order to suspend activities, seal and close down premises including land, vehicle, tent, vessel, floating craft or any inland water.⁵⁹ Apart from these Agencies, there are others federal government enactments dealing with the enforcement, compelling, prescription of environmental offences and penalties. However due to some factors militating against these Agencies functions, their works are not effective.

Federal Ministry of Environment

This is another agency of the government that helps to ensure compliance by operators in environmental law enforcement activities with the relevant legal instrument put in place to ensure environmental health and safety of people and the environment generally. This ministry is responsible for conducting environmental impact assessments (EIAs) relating to public and private projects, including oil and gas projects. The FME is responsible for the initiation and development of policies for the environment in general. In conjunction with the (DPR) Director of Petroleum Resources it is also responsible for the regulation and administration of environmental standards and regulation of the oil and gas industry. Along with the DPR, it is responsible for conducting any necessary environmental impact assessment (EIA) and issuing

⁵² S. 37

⁵³ Part VII and s.30 (1) (a)

⁵⁴ S. 30 (1) (b)

⁵⁵ S. 30 (1) (c)

⁵⁶ S. 30 (1) (d)

⁵⁷ S. 30 (1) (e)

⁵⁸ S. 30 (1) (f)

⁵⁹ S. 30 (1) (g)

necessary approvals for projects that are subject to EIA. Authorizations and approvals in respect of environmental, health and safety compliance are therefore required to be obtained from the DPR and the Federal Ministry of Environment (FME) pursuant to detailed guidelines issued by these agencies. Operators are required to prepare detailed Environmental Impact Assessment (EIA) reports for approval by the DPR.

States Enforcement Authorities

In order for the country to have a proper enforcement of our various laws, which is geared towards achieving sustainable development in environmental issues/infractions within the shortest possible time, the government has been able to enact about 35 Federal statutes concerning the issue of national environmental protection⁶⁰. It has also ratified about 15 international agreements on the same issues⁶¹. All the 36 States including the Federal Capital Territory Abuja, has two main laws dealing with the issue of environmental protection⁶². They also have their state's edicts and their states enforcement protection agencies. These laws are enforced by their environmental sanitation Task forces, waste management Boards, state environmental protection Agencies (SEPA's), etc.⁶³

Review of Mechanisms of Enforcement

Taking into cognizance the imperativeness of protecting the environment against the criminal activities of environmental

⁶⁰ L. Atsegbua, et al., *Environmental Law in Nigeria*: 221.

⁶¹ Some of these agreements includes The Stockholm Declarations 1972, The Basel Convention on the Control of Trans-Boundary Movements of Hazardous Wastes and their disposal, The Kyoto Protocol to the United Nations Framework Convention on Climate Change, The African Charter on Human and Peoples Rights 1981 and The Bamako Convention on the Ban on the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa

⁶² The various States Environmental Protection Laws includes, Edo State environmental and waste management Law, Delta State Waste Management Law, Ekiti State Waste Management Law, Abuja Environmental Protection Board (Solid Waste Control/Environmental Monitoring) Regulations 2005, Lagos State Environmental Protection Agency Law, Kaduna State Environmental Protection Agency Law, Bayelsa State Environmental Sanitation Agency Law and Anambra State Environmental Protection Agency Law etc.

⁶³ L. Atsegbua et al., *Environmental Law in Nigeria*: 221.

offenders, Nigeria has over the years formulated and enacted statutory laws, polices and regulations aimed at protecting the environment. These laws are not comprehensive enough and have been rendered obsolete as a result of the failure of the concerned authorities to update the laws to bring them in line with changing realities. Consequently most of these offences are criminalized with the appropriate penal sanctions and fines imposed.

The criminalization of environmental infractions is to identify offenders, prosecute, convict and ultimately send them to jail as a deterrent.⁶⁴ This is generally achieved by various environmental law enforcement Agencies. In Nigeria, regulatory agencies are given the primary responsibility of responding to environmental illegalities and crimes. They generally do not operate vigorously and penalties imposed are not severe. Sadly, despite the plethora of legislations crafted to combat environmental crimes, the mechanism available for enforcing these crimes are ineffectual, largely due to nonchalance on the part of government and also deliberate impediments by way of cumbersome bureaucracy imposed by enforcement agencies in collusion with environmental offenders and mostly multinational corporations. Criminal prosecution of environmental offenders occur rarely or infrequently due to lapses in the criminal justice system empowered to preside over such cases. Furthermore, these crimes are most often than not, perceived as victimless and low on the priority list, thus they fail to prompt the required response from Government or enforcement community.⁶⁵ In trying to ensure compliance with its environmental standards, government usually employs inspection, negotiations and legal action or the threat of legal actions. For government to achieve the objective of sustainable development, it is appropriate that environmental laws be made. However, there is a natural tendency for people to think that enacting a law automatically leads to the rectifications of the problem to which it is addressed.⁶⁶ But this is not the case. Regulation must have to be enforced as it is natural for blind pursuit of profit to override environmental responsibility. In such situations therefore, a well

⁶⁴ V.O. Aigbokhaevbo, "Combating Environmental Crimes in Nigeria: A Daunting Uncertainty." *NIALS Journal of Environmental Law*. No.1 (2011)

⁶⁵ Ibid.

⁶⁶ Field and Field, *Environmental Economics: An introduction*. 28

calculated enforcement programme should involve some clearly specified set of steps. These steps are:

- (i) A statement of which polluters are subject to regulation,
- (ii) Specification of the units of compliance and what performance is to be measured
- (iii) Specification on how performance is to be measured using what particular technologies and procedures and
- (iv) Description of requirement for self-monitoring and record keeping.
- (v) Statement of what performance will constitute violation and what these violations will entail in terms of penalties.⁶⁷

Another aspect where environmental laws can be made more effective is if they provide the authorities necessary for their own enforcement. Inadequate authorities can severely hamper compliance. The credibility of an enforcement programme will be eroded if violators can successfully challenge the authority of a programme to take enforcement actions.⁶⁸ As such, authorities or agencies tasked with environmental duties, should be empowered to inspect regulated facilities and gain access to their records and equipment to determine if they are in compliance, require that the regulated community monitor its own compliance, keep records of its compliance activities and status and also report this information periodically to the enforcement programme and make the information available for inspection. It is also expected that authorities should be empowered to take legal action against non-complying facilities.

Thirdly, there is also the need for an institutional framework, one that will specify in clearer terms who and who is responsible for which function. The absence of such an institutional framework will make it difficult to establish who is responsible for ensuring compliance. In fact this may lead to duplication of duties as was the case between FEPA and DPR.⁶⁹ Understanding environmental

⁶⁷ Ibid.

⁶⁸ International Network for Environmental Compliance and Enforcement (INECE), "*Principles of Environmental Enforcement*" 1992, accessed February 28, 2014 @ <http://www.inece.org/enforcementprinciples.html>.

⁶⁹ Y. Omorogbe, *Oil and Gas Law in Nigeria* (Ikeja: Malthouse Press limited, 2001)

enforcement entails a proper knowledge of two major approaches used over the years in effecting compliance. There is the traditional regulatory or command and control approach and the market based/economic incentive approach.⁷⁰ The first one refers to a situation where government prescribes the desired change through requirements, then promotes and enforces compliance with these requirements. Such requirements may be imposed through laws, regulations and permits. This can include technology requirements, work practices or best management practices, test and/or monitoring reporting and/or record keeping, bans on certain products or practices. However, the loophole inherent in this method stems from erroneous policy ignorance and incomplete information on the part of the government.⁷¹ The second is the market based approach which uses market force to achieve desired behavioural changes. These approaches can be independent of or build upon and supplement command and control approaches, for example it is widely believed that introducing market forces into a command and control approach can encourage greater pollution prevention and more economical solution to problems. Market-based/economic incentive approaches include fee systems, which allow for tax emissions, effluents and other environmental releases, tradable permits, which allow companies to trade permit emission rights with other companies, offset approaches which allow a facility to propose various approaches to meeting an environmental goal and actions. Monitoring and sanctioning are two major steps that can be employed to enhance enforcement and compliance. Monitoring, refers to measuring the performance of polluters in comparison to whatever requirements are set out in the relevant law while sanctioning refers to the task of bringing to justice those whom monitoring has shown to be in violation of the law.⁷² The likelihood that those caught violating the law will be sanctioned will likely reduce the rate of non-compliance.

⁷⁰ M. Iyoha, "The Environmental Effect of Oil Industry Activities on the Nigeria Economy – a theoretical analysis" (2002). In *The petroleum industry, the economy and The Niger Delta environment*, edited by Orubu, C.O., Dept of Economic Delta State University, Abraka.

⁷¹ Ibid.

⁷² Field and Field, *Environmental Economics: An introduction*, 35.

Conclusion

Enforcement Mechanisms of Environmental Laws used by the Nigerian Government is to deter polluters from further polluting the environment. This is in a bid to protect the Nigerian Environment from the various forms of pollution as advocated in Section 20 of the Constitution of the Federal Republic of Nigeria 1999. "...The State shall protect and improve the environment and safeguard the water, air forest and wild life of Nigeria,"⁷³ although the provisions of this section is non-justiciable. it is believed that the presence of environmental laws and the strength of its enforceability if subjected to the conditions above will go a long way in ensuring compliance. This is however not the case in Niger Delta region where the exploration of oil and gas has impacted negatively on the environment and economic activities in the region. While there exist to a large measure agencies and institutional framework in ensuring compliance, the rate of non-compliance with environmental laws remain disturbingly high. In fact the increased rate at which the environment is continually degraded has called to question the various regulations that have been made by the Nigerian Government to ensure a cleaner and safer environment.

⁷³ Section 20, Chapter 2 of Fundamental Objectives and Directive Principles of State Policies.