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An Analysis Of Challenges To Environmental Protection In Nigeria

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Abstract

There is no denying the fact that the successfulness of environmental protection depends on the legal and institutional frameworks put in place to regulate activities likely to affect the quality of environment. No amount or quantity of environmental legislations can effectively protect the environment without the support of institutional frameworks. Therefore, challenges to environmental protection could either be from gaps in the legal frameworks or the institutional frameworks. Many have written on the legal and institutional frameworks on environmental protection in Nigeria and numerous suggestions have been made to improve the system. However, the uniqueness of this paper is that it exclusively explores challenges to the implementation of both legal and institutional frameworks on environmental protection in Nigeria. Hence, discussions on the meaning and some concepts relating to environment are not within the focus of this paper. To achieve this, the paper adopts a content analysis method to analyse issues in contention. On this note, suitable suggestions are made in order to ensure adequate protection of environment in Nigeria.

1. Introduction

Governmental involvement is vital if measures to protect the environment are to be successful. This is the stage at which the law have imperative roles to play. Technological or scientific strategies that are systematically and methodically developed cannot successfully protect the environment without the aid of legal system to augment them.¹ The purpose of preserving and maintaining the purity of the environment can be attained only if the law can be mobilized to partner with science and technology.² This support the fact that environmental issues are now perceived as a universal issues from which a nation can no longer consider itself isolated.³ Nigeria had no unique and noticeable clear ambitions for the nation's environment until the acceptance of the need for National Policy on the Environment in 1989.⁴ Towards the late 1980s, the government began to advance and cultivate national strategies to address environmental issues in Nigeria.⁵ This episode symbolized a landmark in environmental protection for Nigeria because it heralded the emergence of a clear political will to establish a national agenda for environmental management.⁶ This was induced by the involvement and attendance of Nigeria in the United

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¹See Wilson Harlan, 'Environmental Democracy and the Green State,' (2006) 38(2)*Polity*, 276-94.

²Young and Oran 'Regime Effectiveness: Taking Stock,' in *The Effectiveness of International Environmental Regimes: Causal Connections and Behavioral Mechanisms*. Edited by Oran Young. (Cambridge, Massachusetts: The MIT Press, 1999) 249-279.

³Ibid.

⁴Margaret Fubara, *Law of Environmental Protection*(Caltop Publication Limited, Nigeria, 1998) 56; Brigadier Mamman Kotangora, *Theenvironment* (Federal Ministry of Works and Housing, Nigeria, 1988) 2.

⁵Adeola O. Adeyemo, *Assessing Environmental Protection and Management System in West Africa: A Case Study of Nigeria*' (MSc thesis, Southern Illinois University Carbondale, United States, 2008) 18-52.

⁶Ibid.

Nations Conference on Human Environment held in 1972 Stockholm, Sweden.⁷ The Conference increased the awareness among governments to be more positive and practical in their approach to addressing the issues concerning the environment.⁸ This in fact represents a driven factor to the establishment of Federal Environmental Protection Agency (FEPA) in 1988⁹ and the subsequent adoption of National Policy on environment and enactment of series environmental legislations for Nigeria. The establishment of FEPA marked the genesis of institutional framework on the protection of environment. This was born out of the acknowledgement of the fact that a formidable institution is fundamental in the regulation, management, and control of activities likely to diminish the quality of environment. Ever since then, there has been series of changes as an attempt to solidify the legal and institutional frameworks on the protection of environment in Nigeria. Hence, this paper exclusively examines factors or challenges affecting the efficacy of the legal and institutional frameworks on environmental protection in Nigeria. On this note, this paper is divided into three major parts. This introduction which set the tone of the paper is the first part. The second part examines the challenges to environmental protection in Nigeria. The third part is the conclusion where notable recommendations are made.

2. Challenges

A. Inadequate Statutory Power of Enforcement in the Institutional Frameworks

Adequate power of enforcement in the regulatory body is fundamental to the implementation of environmental laws and regulations. Nigeria to some extent have large array of environmental laws and regulations for the protection of environment. However, the number of such laws and regulations is not essentially the index for measuring their effectiveness. For many years, the oil industry in the Niger Delta of Nigeria has functioned with tiny or no operational regulation or monitoring.¹⁰ This has not been due to lack of laws or statutes but that of implementation.¹¹ Nigeria law forbids pollution of land and water; mandate oil industry to ensure and abide by good oil field practice.¹² For example, section 6(3) of the Oil Pipelines Act mandate the holder of a license to exercise caution by their operation to ensure that unnecessary damage is not done to any land, buildings, crops or profitable trees entered upon.¹³ The Petroleum (Drilling and Production) Regulations also mandate the licensees or lessees to take all viable and feasible safety measures to prevent the pollution of inland waters, rivers, watercourses, the territorial water of Nigeria or the high seas by oil, mud or other fluid or substances which may likely contaminate the water or cause damage to fresh water or marine life.¹⁴ Also, the essence of Environmental Impact Assessment Act¹⁵ is that, prior to the execution of any project by private or public corporation, the consent of the appropriate authority must be sought and obtained. A report must be prepared

⁷ See Declaration of the UN Conference on the Human Environment held in Stockholm (1972) LM C.A/Conf.48/14 at 2

⁸ *id.*

⁹ Now defunct. FEPA Act was repealed and replaced by the National Environmental Standards Regulation Enforcement Agency Act (NESREA) on the 31st of July 2007. See Omaka Amari *Municipal and National Environmental Law* (Lagos: LUC publishers, 2012), chapter 13, pp.188.

¹⁰ Amnesty International, *Nigeria: Petroleum, Pollution, and Poverty in the Niger Delta* (Amnesty International Publication, United Kingdom, 2009) 40

¹¹ *id.*

¹² *id.*

¹³ The Oil Pipelines Act, Cap. O 7, Laws of Federation of Nigeria, 2004

¹⁴ Petroleum Drilling Regulations, 1969

¹⁵ Environmental Impact Assessment Act, Cap. E 12 Law of Federation of Nigeria, 2004

with a vivid description of the desired project spelling out the possible impact of the project on the environment and measures put in place to prevent or mitigate the potential problem that may arise from the project. The report must be approved by the federal ministry of environment.¹⁶ Equally worthy of mention is the Associated Gas Re-Injection Act¹⁷ which compelled every company in oil and gas sectors to submit initial report for gas re-injection methods.¹⁸ The intentment of the Act is the complete cessation of gas flaring. Others laws such as Petroleum Act,¹⁹ Oil in Navigable Water Act,²⁰ Water Resources Act,²¹ Sea Fisheries Act,²² Inland Fisheries Act,²³ and the Nigerian Mining and Mineral Act,²⁴ contains minimum provisions to ensure a healthy environment. The question however is on the implementation of these laws. The response to this question rests on the enforcement power of the institutional frameworks.

The issue of enforcement is fundamental in the regulation and control of activities that threatens the environment and survival of the people. Thus, enforcement empowers the appropriate authority to take punitive measures against the offender for failure to comply with set down rules, regulations and legislations on the protection of environment. In view of this, the focus of discussion here will be centred on National Environmental Standard Regulation (Establishment) Agency (NESREA) and National Oil Spillage Detection Response Agency (NOSDREA). NESREA has the express mandate to enforce all environmental laws in Nigeria.²⁵ In the case of NOSDREA, the agency has the mandate to ensure compliance with environmental legislations but such power is limited to cases of oil spillage and does not extend to other environmental challenges. The question however is on the adequacy or otherwise of the power of enforcement of these two institutions in the protection of environment.

The term enforcement means the process of ensuring compliance with rules, regulations and enabling statutes. There are different means of enforcing compliance with environmental legislations. It may be through monitoring, supervising, inspection, investigation, warning, prosecution and sanctions. Therefore, whatever means adopted, it is expected to encourage general deterrence. Starting with NOSDREA, the agency is empowered to take certain measures for ensuring compliance with environmental legislations. For clarity and ease of presentation of argument, it is essential to reproduce the provisions of section 19 of NOSDREA Act. It provides thus:

(1) The Agency shall-

- (a) in the event of a major or disastrous oil spill, in collaboration with other Agencies co-opt, undertake and supervise, all those provisions as set out in the Act;
- (b) assess the extent of damage to the ecology by matching conditions following the spill against what existed before;

¹⁶Ibid.

¹⁷ Associated Gas Re-Injection Act, Cap. A25 Laws of federation of Nigeria, 2004.

¹⁸Ibid, section 3.

¹⁹ Cap. P 10 Laws of Federation of Nigeria, 2004

²⁰ Cap. O 6 Laws of Federation of Nigeria, 2004

²¹ Cap. W 2 Laws of Federation of Nigeria, 2004

²² Cap. S 4 Laws of Federation of Nigeria, 2004

²³ Cap. I 10 Laws of Federation of Nigeria, 2004

²⁴ Cap. N 120 Laws of Federation of Nigeria, 2004

²⁵ See section 7 of the NESERA Act 2007

- (c) undertake a post-spill impact assessment to determine the extent and intensity of damage and long-term effects;
- (d) advise the Federal and State Governments on possible effects on the health of the people and ensure that appropriate remedial action is taken for the restoration and compensation of the environment;
- (e) assist in mediating between affected communities and the oil spiller;
- (f) monitor the response effort during an emergency, with a view to ensuring full compliance with existing legislation on such matters;
- (g) assess any damage caused by an oil spillage;
- (h) expeditiously process and grant approval for any request made to it by an oil spiller for the use of approved dispersant or the application of any other technology considered vital in ameliorating the effect of an oil spill;
- (i) advise and guide the response efforts as to ensure the protection of highly sensitive areas, habitats and the salvation of endangered or threatened wild life'; and
- (j) monitor the clean-up operations to ensure full rehabilitation of the affected areas.

A vivid look at the above section shows that NOSDRA is conferred with various tools to ensure compliance with environmental safety in the event of oil spillage by oil and gas industries in the Niger Delta. For instance, the word 'assess' in paragraph (b) and (g) signifies an act of inspecting the extent of damage in order to determine the appropriate mechanism to remediate the environment. In addition, the expression 'undertake' in paragraph (c) refers to an act of investigating the post-impact assessment to determine the long-term effects of the impacted areas. Furthermore, 'monitoring' as used in paragraph (f) above is an effective means of ensuring compliance with environmental regulations. The essence of monitoring is to empower the Agency to supervise adequate cleanup of the impacted area. In spite of the above provisions, the question arising is, where the spiller or polluter refuses to comply with the directives of the Agency to clean up the impacted environment, what sanctions could NOSDRA impose to ensure adequate compliance and how adequate are these sanctions. To answer this question, it is pertinent to reproduce and examine the provision of section 6(3) of the Act that provides thus:

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

The above provision shows that NOSDRA could only impose fine as sanction in the event that the spiller refuses to clean up the impacted environment. This amount is equivalent to \$8000 (dollars). Apart from this provision, there is no other enabling provision that empowers NOSDRA to do more than that. Therefore, the enforcement power of NOSDREA to ensure compliance with environmental legislation is grossly inadequate because the agency could not do more than imposing a fine. It is thus submitted that the Act of this nature ought to incorporate other punitive measures such as suspension, closing down of operation to ensure compliance and scare erring polluter. This is because the amount payable as fine is too small compare to the damage which the law intend to avert.

With regard to NESREA, the agency has power to take different measures to enforce environmental legislations. The reason is that upon the investigation of a report of pollution, NESREA may apply to the court for an order to suspend or close down operation of any premises

of industries violating environmental standard and regulations.²⁶ This provision would have gone a long way to protect environment and guide against activities likely to impact on the quality of the environment. However, due to what some refers to as a deliberate constraint in the power of the agency, the enforcement in this regard was render nugatory.²⁷ This is because the Act which established NESREA has expressly excluded the agency from interfering in any matters that has to do with oil and gas activities.²⁸ As a result of this, the NESREA power of enforcement became weak. This is because the oil and industries are the major culprits in the pollution of environment. On this note, it is submitted that the exclusion of the power of NESREA from enforcing compliance with environmental safety in the oil and gas activities has prevented the agency from regulating activities impacting on the quality of the environment.

Therefore, there is the need to revisit and review the institutional frameworks to empower these institutions with the necessary weapons to take adequate punitive measures against polluters. The starting point is to remove all barriers hindering the effective performance and adequate enforcement of environmental legislations in Nigeria.

B. Issue of Institutional Autonomous

The implementation of environmental legislations depends on the level of autonomous possessed by the institutions.²⁹ This means that the agencies concerned must be independent and be given the freedom to carry out its responsibility without external interference.³⁰ The Federal Government of Nigeria is a partner in some of the activities it regulates such as the oil industry. Although it is not unusual for a government to be a running mate in a business it regulates, however, unless an institution independent of the government is in place, the law may likely remain ineffective.³¹ On this note, the Government of Nigeria has been criticized for its failure to guarantee autonomous regulation of the oil industries in relation to the protection of environment.³² For instance, one of the primary agencies in the regulation of the activities of oil and gas industries is the Department of Petroleum Resources (DPR). The DPR however is just a mere department under the Ministry of Petroleum being run by a Minister, a sole appointee of the President. Thus, the operations of the DPR are subject to the total control of the Minister who may be used by the government to restrict the power DPR in favour of the oil companies. The reason is that the Government of Nigeria holds substantial equity shares in Shell, the biggest oil company in the Niger Delta and thus is not willing to tolerate any step that is likely to affect its economic interest in the company.³³ Commenting on the effect of placing the DPR under the control of Ministry of Petroleum, the World Bank said, 'this situation has resulted in the government inadequately regulating oil pollution and as such, being party to much of the oil-

²⁶See section 30 of the NESREA Act 2007

²⁷See Amnesty International, *Nigeria: Petroleum, Pollution and Poverty in the Niger Delta*, (Amnesty International Publication, 2009) 42-44

²⁸See section 7 (h) and 30(4) of the NESREA Act

²⁹Amnesty International, *op cit*, pp. 42-44.

³⁰*Ibid.*

³¹*Ibid.*, P. 43.

³²See UNDP, *Niger Delta Human Development Report*, UNDP, 2006, 153-155. See also Amnesty International, *Nigeria: Petroleum, Pollution, and Poverty in the Niger Delta* Amnesty International Publication, United Kingdom, 2009, 43.

³³Statistics have shown that Nigerian Government holds more than 40% shares in Shell Petroleum Development Company of Nigeria. See Nigeria Bureau of Statistics, *Report of Nigeria Living Survey*, 2003.

related environmental problems of the Niger Delta. Similarly, Professor Sam Agalino, when interviewed on this said³⁴:

The failure to have independent regulatory agency is due to the fact that the Federal Government is holding the oil industries as sacrosanct because of the fact that it is the major foreign exchange earners of the country and the government would not broke any unnecessary burdensomeness in the activities of oil industries. We are not taken the issue of protection of environment serious because the government is playing politics with it. The relevant revelations in the activities of oil industries have shown that the DPR itself is not competent to monitor the activities of oil industries. It shows that we have something to hide because the only way the Federal Government can enforce standard is when the Federal Government remove itself from the sole call joint ventures agreement. The only thing the government can do is by engaging a private sector and let the oil industries be privately driven. This will make environmental regulatory bodies autonomous.

The above views are used to support the argument that DPR is not autonomous in the regulation of oil industries as it relates to the protection of environment.

Also, worthy of mentioning is the National Oil Spillage Detection Response Agency (NOSDRA). Unlike the DPR, a statute spells out its functions and creates it as a full-blown agency. However, similar to the DPR, NOSDRA activities are subject to the directives of the Minister of Environment. This thus connotes that the agency only has a partial autonomy, which could be counteractive to exercising its full powers to ensure environmental protection. For instance, the NOSDRA Act mandates the agency to comply with the directives and regulation issues by the Minister of Environment.³⁵ Thus, the placement of NOSDRA under the directives of the Ministry would affect the independency of the Agency in the execution of its functions. Therefore, it is suggested that NOSDRA Act should be amended towards giving the agency its full autonomy. This suggestion is premised on the fact that in terms of hierarchical structures in Nigeria, Ministry and Agencies are of equal status and as such, one is not superior to the other. Granting NOSDRA full autonomy will remove the latter from the administrative grips of the executive arm of the government and enable it to functions effectively, which will be a positive step towards protecting the environment. The above analysis depicts that the Government of Nigeria is yet to guarantee autonomy of regulatory Agencies responsible for the regulation of activities likely to affect the quality of environment.

C. Special Defences Available to the Violators under the Laws

Oil industries are provided with a number of special defences in environmental related cases and this indeed further water down and weaken the effectiveness of pollution control in Nigeria. For example, Special defences are provided under the Oil in Navigable Waters Act. According to the Act, a person charged with committing the offences under Act,³⁶ would escape liability if he can establishes that the discharge operation was undertaken as a reasonable step to save life or to prevent damage or destruction to any vessels or cargo.³⁷ He can also escape liability if he can

³⁴ Interview with Prof. Sam Agalino in Ilorin, Kwara State, Nigeria on the 5th of May 2012 in the course of the writer's PhD programme.

³⁵ See section 25 of the NOSDRA Act, 2006

³⁶ Oil in Navigable Waters Act, Cap. O 6 Laws of Federation of Nigeria, 2004

³⁷ Ibid, section 4

Act for failure to report the discharge of oil into water only attracts a fine of not exceeding 400 Naira approximately 3 USD.⁴⁸ Under the Oil Pipelines Act,⁴⁹ any person who operates, construct or maintain oil pipeline without a license is liable to a fine not exceeding 1000 Naira (approximately 5 USD).⁵⁰ The sum prescribed under the National Environmental Standards and Regulation Enforcement Agency Act (NESREA)⁵¹ for offences created under the law ranges from 200,000 Naira⁵² to 2,000,000 Naira⁵³ (approximately 20,000 USD) against the violators.⁵⁴ However, the law does not apply to oil and gas sector.⁵⁵ Also, under the Environmental Impact Assessment Act, the penalty for breaching the provisions of the Act is too small to prevent offenders, mostly corporate bodies. Section 62 of the Act which deals with offence and penalty stipulates N100,000 fine (approximately 700 USD) or five years imprisonment for an individual offender, and a minimum of N1m for corporate offenders (approximately 6000 USD). Obviously, one Million Naira is too little an amount to ensure that oil companies comply with the requirements of law and prevent pollution of the environment. The Amnesty International commenting on the punishment imposes under the Nigerian Law said⁵⁷:

Appropriate punishment of both state and non-state actors who abuse human rights is an important part of a government's obligation under international law. Impunity for past acts can and does fuel violations and abuses of human rights. Relatively light penalties undermine both environmental protection and human rights in the Niger Delta. By failing to deal adequately with corporate actions that harm human rights and the environment, the government of Nigeria has compounded the problem. A culture of impunity has been reinforced for oil companies in the Niger Delta because of a lack of any adequate sanctions for bad practice that damages human rights.

The above statement of Amnesty International is used to support the argument that the penalties imposed under the Nigerian laws are grossly inadequate to ensure adequate regulation and control of petroleum activities in the Niger Delta. The amount imposed under the Nigerian laws are not comparable to what is imposed under some foreign laws like the Egyptian Hydrocarbon Prospection, Exploration, and Exploitation Law that imposes a fine of 1,780 000, 601 Euros on oil exploration companies for failure to comply with conditions for oil exploration, which include prevention of pollution.⁵⁸ In the case of second conviction, the law prescribed a fine of 8, 543 000, 7 Euros on any company that is found guilty.⁵⁹ In addition to the prescription of fine under the Egyptian law, the appropriate authority may even revoke the authorization given to the holder of a license to explore oil or suspends its operation indefinitely.⁶⁰

⁴⁸ Ibid, section 7, 9 and 10

⁴⁹ Oil Pipelines Act, Cap. O 7 Laws of Federation of Nigeria, 2004.

⁵⁰ Ibid, section 7(5)

⁵¹ National Environmental Standards Regulation Enforcement Agency Act, 2007.

⁵² Ibid, section 20(3).

⁵³ Ibid, section 20(4)

⁵⁴ Ibid, sections 21, 22, 23, 24, 26 and 27.

⁵⁵ Ibid, section 7.

⁵⁷ See Amnesty International, *Nigeria: Petroleum, Pollution and Poverty in the Niger Delta* (Amnesty International, 2009) 52.

⁵⁸ See the Egyptian Hydrocarbons Prospection, Exploration and Exploitation Law 2007.

⁵⁹ Ibid, Section 22

⁶⁰ See section 23 of the Egyptian Hydrocarbons Prospection, Exploration and Exploitation Law 2007

It has been argued that the amount of fines imposed need to be reviewed in view of economic reality in order to ensure adequate regulation and control of oil and gas activities.⁶¹ For instance, crude oil accounts for 75% of Nigeria GDP and 95% of Nigeria foreign earning.⁶² In 2010, evidence shows that Nigeria realized a total sum of \$59 billion (dollars) from crude oil.⁶³ In addition, evidence has shown that Shell Nigeria Limited, which is the major oil explorer in Nigeria, recorded the sum of 6.1 billion USD as profits from crude oil in 2010 at an average of 500 Million USD per month.⁶⁴ Thus, the prescription of 5000 USD or 20,000 USD as fine is insignificant linked to the profit made by the company. This amount is very ridiculous compare to the level of damage done to the environment.⁶⁵ On this note, it is suggested that the amount payable as fine be increased because corporations tend to abide by the laws where the punitive measures or stipulated fine is on the high side. In fact, Environmental Rights Action, a non-governmental organisation in an independent research conducted found that 96% out of over Ten Million adults interviewed in the Niger Delta are in support of the need to increase prescribed penalties against oil industries in order to control pollution and prevent further violation of human rights arising from the activities of these companies.⁶⁶

E. Issue of Compensation

There are two major environmental legislations which require the oil industries to pay compensation to the affected parties in case of pollution. These laws are the Oil Pipelines Act⁶⁷ and the Petroleum (Drilling and Production) Regulation.⁶⁸ The issues however are: to whom is compensation payable? And how much is to be paid as compensation and for what? The answers to these questions rest in these two laws that made provision for payment of compensation.

As to whom the compensation is to be paid, the Oil Pipelines Act provides that compensation be paid to the occupier or the owner of the land⁶⁹ while the Petroleum (Drilling and Production) Regulation provides that the compensation be paid to the owner of the land.⁷⁰ With regards to the Oil Pipelines Act, the expression 'occupier or the owner' means that either of the two can claim compensation.⁷¹ Thus, where there is dispute as to whom compensation is to be paid between the owner and the occupier, the Act provides that such dispute be referred to the High Court for determination.⁷² On this note, it need be stated that in some situation, the owner may not necessarily be the occupier. The occupier is the person who is in actual possession of the

⁶¹ Amnesty International, *Nigeria: Petroleum, Pollution, and Poverty in the Niger Delta* (Amnesty International Publication, United Kingdom, 2009) 42-45

⁶² Nigeria Bureau of Statistics, 'Nigeria Oil Revenue Rose' Business Day News Paper, 15th April 2011.

⁶³ Ibid

⁶⁴ Ibid

⁶⁵ See chapter three of this thesis on how environmental problems affects the enjoyment of basic human rights in the Niger Delta.

⁶⁶ Environmental Rights Action, 'Factors Affecting Effective Implementation of Environmental Legislations in Nigeria' paper delivered at Nigerian Seminar on Improving Environmental Enforcement in Nigeria, 2012.

⁶⁷ Oil Pipelines Act, Cap. O7 Laws of Federation of Nigeria 2004

⁶⁸ Petroleum (Drilling and Production) Regulation 1969

⁶⁹ See the provision of section 6(3) of the Oil Pipelines Act, Cap. O7 Laws of Federation of Nigeria 2004

⁷⁰ See paragraph 21 of the Petroleum (Drilling and Production) Regulation 1969

⁷¹ See the provision of section 6(3) of the Oil Pipelines Act, Cap. O7 Laws of Federation of Nigeria 2004

⁷² See the provision of section 6(4) and 19 of the Oil Pipelines Act, Cap. O7 Laws of Federation of Nigeria 2004

land or making use of the land at the time of the damage.⁷³ For instance, the owner of a land may give it out either in rent or for free for cultivation by another person. In such a situation, the owner and the occupier are not the same. Also, situation may arise where the owner is the occupier. The Oil Pipelines Act is commendable only to the extent of its recognition of the need to pay compensation in case of damage to the land. However, the Act appears not have adequately addressed the issue of diverse interests likely to be affected in the process of oil exploration. The reason is that both the owner and occupier may be affected by any damage to the land and on this note, it is submitted that both should be entitled to compensation. That is, the occupier should be entitled to compensation for damage done to the planted crops or trees on the land while the owner should be entitled to compensation for damage done to the quality of the land. The reason for the latter is that pollution of land in some areas such as the Niger Delta has rendered lands unproductive for years, which is the major source of income to the owner.⁷⁴ Similarly, where the owner is also the occupier, it is submitted that the owner should be able to claim in both capacities. That is, a claim for damage to the planted crop if any and a claim to the damage done to the quality of the land.

With regards to the Petroleum (Drilling and Production) Regulations, only the owner can claim compensation without the need for court intervention.⁷⁵ On this note, it is submitted that the regulations appears to be grossly inadequate in this respect. This is because as earlier argued above, where the owner is different from the occupier, then the interest of the occupier may not be protected and as such compensation is not payable to him.

The second question is to what amount to be paid as compensation and for what? In this regard, the Oil Pipelines Act provides that such amount is subject to the agreement of parties and where agreement could not be reached, the dispute is to be referred to the High Court for determination.⁷⁶ To this extent, it is submitted that the Act has adequately prescribed a better forum to decide the amount payable as compensation. However, the main issue here is for what is the court expected to decide or access the amount to be paid as compensation? In the regards, the Act provides that compensation shall only be paid in respect of any 'damages done to buildings, crops or profitable trees.'⁷⁷ This means that compensation is only payable to immediate loss or loss in properties on the land at the time of the damage. On this note, it is submitted that this assessment is inadequate because it does not consider long-term effects. The reason for this submission is that pollution of lands in the Niger Delta has long-term effects on the people who rely on it for means of livelihood and as a means of fulfilling their basic human rights.⁷⁸ On this note, the World Bank said:⁷⁹

The compensation rates do not include long-term, non-market goods, or off-site effects. For example, only crops from a single year are considered for compensation. Similarly, long-term ecological changes including vegetation

⁷³The Act does define the word occupier. However, section 51 of the Land Use Act, an occupier is defined to mean the person using or occupying land lawfully.

⁷⁴See table 3, 5 and 6 in chapter three of this thesis.

⁷⁵See paragraph 21 of the Petroleum (Drilling and Production) Regulation 1969

⁷⁶See the provision of section 6(3) of the Oil Pipelines Act, Cap. O7 Laws of Federation of Nigeria 2004

⁷⁷Ibid.

⁷⁸See full discussion of this in chapter three of this thesis.

⁷⁹World Bank, *Defining an Environmental Development Strategy for the Niger Delta*, Vol. II, Industry and Energy Operations Division West Central Africa Development, 1995, 76

changes from dredging and mangrove destruction are not covered. The program also neglects to include indirect economic impacts, like the disruption of breeding grounds for marine fish.

In addition, while the Oil Pipelines Act requires the parties to submit their dispute to the court for determination as to amount to be paid as compensation, the Petroleum (Drilling and Production) Regulation only requires the polluter to pay to the owner a fair and adequate compensation for damages done to the land.⁸⁰ In fact, there is no any provision which gives the owner the right to challenge amount paid either before the court or any authority.⁸¹ On this note, it is submitted that this provision is very inadequate. The reason is that it has only conferred absolute discretion on the polluter to decide what is fair and adequate. For this reason, the owner is put at disadvantage because he is left with no option than to accept any amount offered by the polluter.

On a whole and in fairness, it is submitted that the laws have tried to some extent to protect the interest of the owner or occupier to receive compensation in case of damage to the land in the process of oil exploration or production. However, the laws should be amended to ensure adequate protection of diverse interest that may be affected as a result of any damage done to the land by oil industries during their operation. Also, an aggrieved party should be given the power to challenge what is payable as compensation in the law court.

F. Lack of Legal Rights in the Existing Environmental Laws

The existing environmental laws in Nigeria do not give legal rights to the people to challenge any action likely to affect the environment. The implication of this is that, it is very difficult for the citizens to approach the court under the existing laws to seek compliance with the provisions of such law. This is so because the laws have not created any legal rights capable of being enforced. Therefore, aggrieved citizens are left with no option than to pursue their claim under the tort law remedies which is not a subject of discussion in this paper. This shows that Nigeria has a lot to learn from other jurisdictions with regard to the protection of the environment in the interest of both the present and future generation. In South Africa for example, the National Environmental Management Act (NEMA)⁸² which is the principal legislation on environment grants any person the legal rights to approach the courts for appropriate relief with respect to any breach or threatened breach of environmental laws. Section 32 of the National Environmental Management Act (NEMA)⁸³ states in this respect that:

- (1) Any person or group of persons may seek appropriate relief in respect of any breach or threatened breach of any provision of this Act, including a principle contained in Chapter 1, or of any provision of a specific environmental management Act, or of any other statutory provision concerned with the protection of the environment or the use of natural resources;
 - (a) In that person's or group of person's own interest;
 - (b) In the interest of, or on behalf of, a person who is, for practical reasons, unable to institute such proceedings;

⁸⁰ See paragraph 21 of the Petroleum (Drilling and Production) Regulation 1969

⁸¹ Ibid.

⁸² National Environmental Management Act 107 of 1998 (NEMA)

⁸³ Ibid.

- (c) In the interest of or on behalf of a group or class of persons whose interests are affected;
- (d) In the public interest; and
- (e) In the interest of protecting the environment.

This provision shows that it would consequently be achievable in terms of section 32(1) (e) to literally act on behalf of or for the environment; not only on behalf of oneself or other persons but for the protection of environment itself. NEMA's provision, therefore, seems to follow a more eco-centric as opposed to a strictly anthropocentric approach to the enforcement of environmental interests. In the case of *Tergniet and Toekoms Action Group v Outeniqua-Krassoopale (Pty) Ltd*⁸⁴, the court upheld the right and validity of the action brought by the applicant to seek compliance with the provisions of Atmospheric Pollution Prevention Act⁸⁵ the Land Use and Planning Ordinance,⁸⁶ pursuant to section 32 of NEMA. Therefore, the absence of similar provision in the principal environmental legislation in Nigeria serves as a barrier in seeking environmental justice and compliance with environmental statute. This illustrates that people cannot under the existing laws on environment in Nigeria seek appropriate redress on activities threatening the quality of the environment.

G. Inadequate Funding of Regulatory Agencies and Man Power

Environmental regulatory institutions in some developing countries such as Nigeria usually lack sufficient funding and technical expertise. Although the inadequacy of funding is a general phenomenon; however, it is desirable that the agencies should be adequately funded to ensure their effective performance in the protection of environment. For instance, NESREA, NOSDREA and the NNDC are financially dependent on the grant and allocation from the Federal Government to be able to execute their objectives. In addition, the finance of the Department of Petroleum Resources is dependent on the allocation from the Federal Ministry of Petroleum Resources. This is because the Department has no direct allocation from the Federal Government since it is a department in the Federal Ministry of Petroleum Resources. Thus, for this reason, there is no specific statistic as to the amount allocated to the Department by the Federal Ministry of Petroleum Resources.⁸⁷ However, the UNDP through its interaction with the Staffs and Head of the Department found that 'even though the Department appears to have more clout with the industry, its effectiveness has been hampered by inadequate personnel, funding, equipment and logistics support.'⁸⁸ Similarly, the Federal Ministry of Environment complains of inadequate funds from the Federal Government as one of the major challenges inhibiting the effectiveness of the Ministry in the protection of environment when it says that 'the magnitude of desertification problems in Nigeria requires funds that are in excess of what is currently allocated by the government. This has meant that the finances allocated so far have not been able to have any

⁸⁴ Case 10083/2008 (C) 23 January 2009 (unreported)

⁸⁵ Atmospheric Pollution Prevention Act 45 of 1965

⁸⁶ Land Use and Planning Ordinance 15 of 1985

⁸⁷ See the UNDP, *Niger Delta Human Development Report*, (UNDP, 2006) 91-92.

⁸⁸ *Ibid*.

significance impact in combating desertification and other environmental issues.⁸⁹ The Amnesty International had this to say on the capacity of the agency to function adequately:⁹⁰

Amnesty International examined the capacity of both the DPR and the state and federal ministry of environment to enforce environmental laws and standards, and address pollution, which would help to protect people's human rights. They were all found to be seriously constrained by lack of capacity and resources. This seems inexcusable given the hundreds of billions of dollars in oil revenues that have been collected by the Nigeria government.

Apart from the challenge of funding, inadequate man-power and equipment also account for the low level of performance in the discharge of the duties and responsibilities of the agencies. The view of the UNDP and Amnesty International above expressly encompass the inadequacy of man-power and equipment. The Agency does not have the technology to access the level of oil spill on the environment and to engage in remediation measure.⁹¹ They lacks the personnel, they lacks the commitment. This is because whatever they need from the oil industries is supplied to them by these multinationals. They do not have any aircraft to visit offshore and they do not have up to date laboratories.⁹²

Thus, owing to the limited budgetary resources at the disposal of these institutions, they are incapable to remit adequate numbers of trained and experienced human resources to execute their functions of implementing, managing and administering the environmental regulations and laws. This results in a pitiable circumstance where the officials of the regulatory agencies have had to depend on oil companies (the violators) to take them to the location of oil spills in order to carry out their duties.

3. Conclusion

This paper revealed that the problem of environmental protection in Nigeria is not that the laws and institutions are not just there; instead, they have not been that effective in the performance of their duties. The ineffectiveness are increasingly due to the challenges inhibiting the performance of the institutions. These challenges are indeed surmountable and it only requires a political will on the part of the government. It is true that these institutions must have recorded some achievement since their inception but much of their powers are excluded from oil and gas activities that account for not less than 70% of Nigeria pollution. It is however imperative in view of realities on ground and with a view to better the Nigerian environment that the laws creating these institutions be revisited and reviewed upward to ensure adequate and proper protection of environment. It is also suggested that the prescribed penalty for pollution of the environment be made stiffer because polluter tends to follow the law where the punishment prescribed is high.

⁸⁹ See the Federal Ministry of Environment, *National Action Programme to Combat Desertification*, (Federal Ministry of Environment, 2011) 26.

⁹⁰ Amnesty International, *Nigeria: Petroleum, Pollution and Poverty in the Niger Delta* (Amnesty International Publication, United Kingdom, 2009) 44.

⁹¹ *Ibid*, pp.43-44

⁹² *Ibid*.