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Enforcement of environmental laws in the oil and gas industry: *quo vadis* Nigeria?

AKERELE, O.N.

2024

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2024

ENFORCEMENT OF ENVIRONMENTAL LAWS IN THE OIL AND GAS INDUSTRY: QUO VADIS NIGERIA?

A thesis submitted in partial fulfilment of the requirements of the Robert Gordon University for the degree of Doctor of Philosophy

Okwanuzor Nwaamaka Akerele

Contents

Declaration

I, **Okwanuzor Nwaamaka Akerele** hereby declare that the work on which this thesis is based on is my original work (except where acknowledgement indicate otherwise) and that neither the whole work, nor any part of it has been, is being, or is to be submitted for another degree in this or any other university. I authorize the University to reproduce for the purpose of research either the whole or any portion of the contents in any manner whatsoever.

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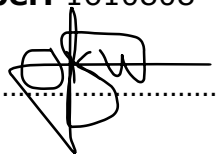
Signature ……  ……

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May God continue to bless and protect you all.

Table of Abbreviations

- ADEC - Alaska Department of Environmental Conservation
- BAT-Best Available Technology
- BCM – Billion Cubic Meters
- DOE- Department of Environment
- DPR- Department of Petroleum Resources
- ECTs - Environmental Courts and Tribunals
- EMP -Environmental Management Plan
- EPA – Environmental Protection Agency
- ERF- Environmental Remediation Fund
- EU -European Union
- FEPA -Federal Environmental Protection Agency
- FHC -Federal High Court
- FME - Federal Ministry of Environment
- GEOCCE -Gbaramatu – Egbema and Ogulagha Coastal Communities Front
- HCDTF -Host Community Development Trust Fund
- JOAs- Joint Operating Agreements
- MNCs -Multinational Corporations
- NDC- National Determined Contribution
- NESREA- National Environmental Standard and Regulatory Enforcement Agency
- NOGI-Nigerian Oil and Gas Industry
- NOSDRA-National Oil Spill Detection Response Agency
- OGA- Oil and Gas Authority
- PEL- Petroleum Exploration License
- PIA -Petroleum Industry Act
- PML - Petroleum Mining License
- PPL- Petroleum Prospecting License
- PPP-Polluter Pay Principle
- PSC- Production Sharing Contract
- SC-Service Contracts
- SDGs- Sustainable Development Goals

- SEPA – Scottish Environmental Protection Agency

Table of Statutes

- African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act 1983.
- Associated Gas Re-Injection Act 1979.
- Associated Gas Re-injection (Continued Flaring of Gas) Regulations 1985.
- Constitution of the Federal Republic of Nigeria 1999 (as amended).
- Criminal Code Act 1916, Laws of the Federation of Nigeria 1990
- Economic and Financial Crimes Commission (Establishment) Act 2004.
- Environmental Impact Assessment Act (EIA) Act 1992.
- Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN) 2002. (Repealed)
- Environmental Quality Act 1972
- Federal Environmental Protection Agency Act 1988-repealed.
- Flare Gas (Prevention of Waste and Pollution) Regulations of 2018.
- Harmful Waste (Special Criminal Provisions, Etc.) Act 1988.
- Hydrocarbon Oil Refineries Act (HORA) 1965.
- Independent Corrupt Practices Act 2000.
- Minerals Oil Safety Regulation 1963
- National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007.
- National Oil Spill Detection and Response Agency (Establishment) Act 2006.
- Nigeria Extractive Industries Transparency Initiative (NEITI) Act 2007
- Oil and Gas Pipelines Regulations 1995.
- Oil in Navigable Waters Act 1968.
- Oil Pipelines Act 1956.
- Oil Pollution Act 1990.
- Petroleum Act 1969.
- Petroleum Drilling and Production Regulations 1969.
- Petroleum Industry Act 2021
- Petroleum Production and Distribution (Anti Sabotage) Act 1975.
- Petroleum Refining Regulations 1974.

- Petroleum Regulations 1967.
- Regulatory Reform (Scotland) Act 2014

Table of Cases

- Abraham Adesanya v. President of the Federal Republic of Nigeria & Anor. (1981) All NLR 1.
- Bello v AG, Oyo State [1986] 5 NWLR (part 45) 828
- Cahill v. Sutton [1972] IR 269 at 277
- Centre for Oil Pollution v. Nigeria National Petroleum Corporation (2013) LPELR-20075 (CA).
- Francis vs Ibitoye (1936), 13 Nigerian Law Report 11
- Fawehinmi v. Akilu 1987) NWLR (Pt 67) 797
- Fawehinmi v. President, Federal Republic of Nigeria (2007) 14 NWLR (Pt 1054) 275.
- Gbemre v. Shell Petroleum Development Company Nigeria Limited and Others (2005) AHRLR 151
- Hon. George U. Timinimi and Anor vs Attorney- General of the Federation and the National Assembly Unreported. Suit No FHC/ABJ/CS/9/2022
- Lord Goff Cambridge Water Co. v Eastern Counties Leather Plc (1994) All. E.R. 53
- Malaysian Vermicelli Manufacturers (Melaka) Sdn. Bhd. v. Pendakwa Raya (2001) 3 AMR 3368.
- NOSDRA v ExxonMobil (2018) LPELR-44210 (Nigerian Court of Appeal, Lagos Division)
- Okoni v Nigerian Agip Oil Co. (Nigeria) Ltd (2009) CA/PH/131 (Nigerian Court of Appeal, Port hacourt Division).
- Okpabi & Ors v Royal Dutch Shell Plc & Anor [2021] UKSC 3.
- Okogie (Trustees of Roman Catholic Schools) and Anor vs Attorney- General, Lagos State (1981) 2 NCLR 337
- Oronto Douglas v. Shell Pet. Dev. Co. Nig. Ltd Suit No.CA/L/143/97.
- Shell Petroleum Development Company v Abel Isaiah (2001) 5 S.C (Pt. 11)

- Stephens Co. v. Mid-Kansas Oil and gas Co. (1923) 113 Tax. 160, 254 S.W. 290.
- Pendakwa Raya v. Abdul Haq Abdul Razak (2018) MLJU 1640
- Texas Co. v. Daugherty (1915) 107 TEX. 226, 176 S.W. 717.
- Turner v. Cross, 83 Texas 218
- Vedanta v. Lungowe [2019] UKSC 20.

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Abstract

The importance of law in promoting environmentally responsible attitudes and actions cannot be overstated. Legislation is an effective tool for environmental protection, pollution planning, pollution prevention, and pollution control. Nigerian environmental laws can be compared favorably to standards and regulations available in developed countries. However, these laws are not effectively enforced because they exist only on paper. Oil companies in Nigeria and locals who vandalize pipelines brazenly violate various environmental laws and rely on loopholes in the enforcement framework to avoid responsibility for the sub-standard practices they choose to adopt. It is worthy of thought if Nigeria's environmental laws were created with compliance and enforceability in mind. The absence of enforcement of environmental regulations in Nigeria is the most significant reason in the country's persistent environmental degradation.

Environmental protection and good environmental management are only achievable through effective and consistent enforcement of environmental laws. Thus, an effective environmental enforcement regime is an absolute necessity. Its political, social, and economic significance cannot be downplayed. While the Nigerian government has responded to environmental issues by creating agencies such as the National Environmental Standards and Regulations Enforcement Agency (NESREA), National Oil Spill Detection and Response Agency (NOSDRA), the efforts of these agencies have had minimal effects, if any, on the lives of the people directly affected by the negative externalities of oil and production most notably in the Niger-Delta Region of Nigeria.

Environmental policy has long been recognized in Nigeria, and it is enshrined in the nation's constitution, which authorizes governments to conserve and develop the environment and maintain Nigeria's water, air, land, forests, and wildlife. Nigeria has also ratified, accepted, approved, or acceded to several international environmental protection treaties, including the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, as revised in 1962, and subsequently implemented the oil in Navigable Waters Act. Despite the prevalence of numerous environmental regulations and standards in Nigeria, and with a

particular focus on the activities of polluters in all sectors of the country, environmental enforcement remains a challenge. The aim of this research is to seek out the most plausible explanation and critically evaluate the challenges and problems affecting environmental enforcement in Nigeria, with a particular emphasis on the activities of the oil and gas industry of the country. The research closes with recommendations for an effective enforcement in the oil and gas industry.

CHAPTER ONE: RESEARCH PRELIMINARIES

1.1 General Introduction

Countries worldwide are developing and implementing laws and policies to regulate activities and interactions that harm the environment, endanger public health, threaten biodiversity, devalue ecosystem goods and services, and deplete natural resources.[1] In *Lord Goff, Cambridge Water Co. v Eastern Counties Leather Plc*,[2] the House of Lords held that the protection and preservation of the environment is now perceived as being crucial to the future of humanity. To preserve human health, restrict greenhouse gas emissions, conserve biodiversity and animals, and manage natural resources, some countries have established strong environmental agencies, negotiated multilateral agreements, and launched new programs at the local, national, and international levels, and carrying out effective enforcement of their environmental laws.[3] These accomplishments are noteworthy for these countries which have done or are doing this effectively.

In the heart of West Africa lies Nigeria, whose environmental assessments evidence a track record of continuous biodiversity loss, natural resource depletion, climate change, the global proliferation of garbage, poverty, and ill health. Aside from bad actors and criminal elements, vague environmental laws, poor environmental management, and the lack of effective enforcement of Nigeria's environmental laws take center stage.[4] To achieve a green economy, poverty eradication, and sustainable development goals, robust national environmental enforcement systems for environmental and energy laws are critical components of an effective governance approach.[5] Environmental laws that include effective implementation and enforcement systems help to achieve sustainable development goals by improving worker and community health and safety, conserving natural resources and ecosystem services, promoting sustainability in the business community, expanding

[1] K J Markowitz and J J Gerardu, 'The Importance of the Judiciary in Environmental Compliance and Enforcement' (2012) 29 Pace Environmental Law Review 538.
[2] (1994) All. E.R. 53
[3] ibid n 1
[4] R O Adeoluwa, 'Appraisal of the Operationalization of National Environmental Regulations in Nigeria under the National Environmental Standards and Regulations Enforcement Agency', (2018) 9 Nnamdi Azikiwe U. J. Int'l L. & Juris. 199
[5] ibid n 4

markets for environmental goods and services, creating sustainable jobs, driving technology innovation, and levelling the playing field for investment.[6]

Sustainable development depends upon good governance; good governance depends upon the rule of law, and the rule of law depends upon effective compliance and enforcement.

Fig 1. The Environmental Compliance and Enforcement Pyramid [7]

Pursuant to Principle 4 of the Rio Declaration, for the achievement of sustainable development, environmental protection is an integral part of a nation's development process. It cannot be considered in isolation from it.[8] The task is meeting the energy demands while minimizing adverse environmental impacts by complying with good practices.[9] The environment is a critical element of human existence, and man is unarguably blessed with it to exploit it to his advantage, but at the same time to cherish it.[10]

[6] R O Adeoluwa, 'Appraisal of the Operationalization of National Environmental Regulations in Nigeria under the National Environmental Standards and Regulations Enforcement Agency' (2018) 9 Nnamdi Azikiwe U. J. Int'l L. & Juris. 199
[7] ibid n 6
[8] Rio Declaration on Environment and Development 1992< https://www.jus.uio.no/lm/environmental.development.rio.declaration.1992/portrait.a4.pdf > accessed 8 March 2020
[9] ibid n 8
[10] ibid n 6

The environment is " the complex of physical, chemical, and biotic factors (such as climate, soil, and living things) that act upon an organism or an ecological community and ultimately determine its form and survival."[11] An in-depth definition of the environment will be given in later parts of this research in Chapter 5. Oil is one significant fruit of the environment. It can be referred to as the "Liquid Gold". It has been saluted as an essential part of our modern world.[12] In Yergin's narrative, every phase of our socio-economic evolution has been impacted by petroleum's modern and mesmerizing alchemy.[13]

Undoubtedly, oil and gas are the backbone of the Nigerian economy.[14] Nigeria's credentials as a major player in the global oil economy are challenged by several paradoxes that undermine the advantages of its hydrocarbon endowments. These paradoxes include a serial incapacity to manage oil wealth, widespread elite predation and looting of the economy, extreme poverty, insecurity, dependence on imported refined petroleum products to meet national needs, and, most importantly, the vast environmental degradation inherent in the Niger Delta region.[15] These have been labelled collectively as the resource curse.[16]

1.2 Background of the Research

On paper, the energy industry in Nigeria is governed by a robust set of regulations covering offshore and onshore oil exploration. Although these laws are not discussed in detail in this thesis, there will be references to key legal instruments that relate specifically to offshore and onshore operations in Nigeria's oil and gas industry. It should be noted that for the research, both indigenous and international oil and gas operators are referred to as the oil and gas industry in Nigeria.[17]

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[11] Merriam-Webster Dictionary< https://www.merriam-webster.com/dictionary/environment.> accessed 17 February 2020

[12] D Yergin, The Prize: The Epic Quest for Oil Money and Power (New York: Simon & Schuster, 2008)928.

[13] ibid n 12

[14] International Monetary Fund< https://www.imf.org/en/Countries/NGA >accessed 8 March 2020

[15] C Nwapi, C Ezeigbo, and O Oke 'Developments in Beneficial Ownership Disclosure in the Extractive Industries in Nigeria" (2021) 8(1) The Extractive Industries and Society pp 443-456.

[16] M Watts. "Resource Curse? Governmentality, Oil and Power in the Niger Delta, Nigeria" (2004) 9 (1) Geopolitics 50–80.

[17] List of oil and gas operators can be found here < Rig Disposition Report 5th to 11th May 2023.xlsx (nuprc.gov.ng) > accessed 14 July 2023

Given the devastating impacts of the activities of oil and gas industries in Nigeria, there is a dire need to expand the argument beyond enacting new environmental laws in Nigeria. The research argues that the current environmental laws in Nigeria can ensure a healthy and sustainable environment while growth and amendment of these laws occurs. The researcher submits that the continuous environmental degradation in Nigeria caused by the activities of the oil and gas industry is not due to the absence of environmental laws but the lack of enforcement. It is often said that the Nigerian environmental situation has defied all solutions.[18] This study opines to the contrary and contends that an effective and efficient framework for enforcing environmental laws in the oil and gas industry is a viable solution that has not been optimally engaged in Nigeria.

The environmental agencies tasked with enforcing environmental laws do not efficiently carry out this responsibility, thus opening the door for environmental pollution to continue unabated from the activities of the oil and gas industry. For effective and efficient enforcement of laws, an autonomous and well-equipped agency or agencies with adequate funding and human and technical resources must be tasked with ensuring this. It is important to note that environmental protection cannot be realised without effective environmental enforcement of environmental laws and regulations at both national and local levels.[19]

Furthermore, the Judiciary is poised in the vanguard of change. It must be open, hands-on, accountable, independent, and transparent in ensuring that rules are enforced consistently, efficiently, and fairly to all, including those who govern. The Judiciary provides coercion for enforcing their judgments while incentivizing compliance. This has not been the case in Nigeria, as the courts have continually fallen short of these vital elements to guarantee compliance and enforcement of environmental laws in the oil and gas industry. [20]

[18] ibid n 15
[19] L Fang, K W. Hipel and D M Kilgour, 1994 'Enforcement of Environmental Laws and Regulations: A Literature Review' In: Keith W. Hipel and Liping Fang, Stochastic and Statistical Methods in Hydrology and Environmental Engineering. Water Science and Technology Library, vol 10/2. Springer, Dordrecht, Page 3
[20] ibid n 19

From the critical analysis of the literature review undertaken by the researcher, poor or no enforcement of environmental laws in the oil and gas industry has been the norm. It is against this background that this study is aimed at investigating the challenges inherent with the environmental enforcement in the oil and gas industry *vis a vis* the role of the Judiciary, in a bid to make a case for reforms through recommendations based on the study's findings and consider if they would be helpful to ensure that Nigeria achieves sustainable development.

1.3 Research Questions

The study is driven by seeking answers to these critical questions:

1. *Is the enforcement regime of environmental laws in the Nigerian Oil and gas Industry effective? If no,*
2. *What are practical solutions to make the regime effective?*

1.4 Research Aims

It is proposed that these fundamental questions can be answered in a structured manner by delivering these key research aims:

1. To show the environmental degradation inherent in the activities of the oil and gas industry in Nigeria with specific reference to the Niger Delta region
2. To examine the issues with the enforcement of environmental laws in the oil and gas industry in Nigeria
3. To examine the practice and principles of an effective enforcement regime.
4. To propose practical solutions to the ineffective enforcement of environmental laws in the Nigeria Oil and gas Industry

1.5 Research Objectives

The above aims will be achieved by critically evaluating the following:

1. The extent of environmental pollution caused by Nigeria's oil and gas industry activities.
2. The challenges of the enforcement agencies tasked with enforcing environmental laws in the oil and gas industry.

1.6 Scope of Research

In terms of focus, the issues raised in this research cover the activities of the oil and gas industry offshore and onshore in Nigeria. Since the research focuses on

enforcement and argues that the existing laws are good enough for effective enforcement, the research does not examine environmental laws in detail except for The Petroleum Industry Act 2021 (PIA 2021). This is because the PIA 2021 is Nigeria's most current environmental law, passed during this research. Notwithstanding, references will be made to other environmental laws that the researcher judges as appropriate. The research will not examine the environmental guidelines of the Department of Petroleum Resources because, pursuant to the PIA 2021, the DPR was made defunct. A brief mention of it will, however, be made in the literature review. The comparative element of the research is focused on specifics of the enforcement regime of the Scottish Environmental Protection Agency (SEPA), the Environmental Protection Agency (EPA) in the United States, and the 2022 increment of penalties for environmental offences in Malaysia. The modus operandi of the EPA and SEPA, Malaysia's bold step to increase penalties is highly relevant to the argument and focus of the research. While the researcher is aware that there are state enforcement agencies in the United States, these are not examined in this research.

1.7 Significance and Contribution to Knowledge

This research addresses a crucial issue in the realm of environmental protection in the Nigerian oil and gas Industry. The research questions are essential to enforcing environmental laws in the Nigerian oil and gas industry. The economic significance of oil and gas in Nigeria also makes the research area vital. In a world where the evidence of climate change is extensive, Nigeria has an opportunity, via effective enforcement of environmental law, to contribute positively to prevent and mitigate climate change. This research avers that new laws should emerge directly from effectively applying the old laws. It is erroneous to enact new laws without effectively enforcing the old laws. Effective enforcement brings to light the pitfalls of an existing law, which the passage of new laws can then rectify.

This research contributes to the existing knowledge on the challenges of enforcement of environmental laws in the Nigerian oil and gas industry by critically addressing their causes, as detailed in Chapter 6 of this research. This understanding helps in identifying the areas that need improvement and developing strategies to overcome these challenges. Additionally, the research examines the reforms addressing

enforcement in the Petroleum Industry Act 2021, thus giving a current and relevant literature on environmental enforcement issues in Nigeria.

By conducting comprehensive literature reviews, and the analysis of relevant laws and enforcement agencies, the research identified and elaborated on specific issues that hinder effective enforcement. Thus, creating a deeper understanding of the challenges and barriers faced in enforcing environmental laws within the Nigerian oil and gas industry. The research proposes innovative approaches and strategies to enhance the enforcement of environmental laws in the oil and gas sector. Through an in-depth analysis of best practices from the Unites States, Scotland and Malaysia, and an assessment of their feasibility in the Nigerian context, the researcher has developed a set of recommendations that can be utilized by regulatory bodies and industry players.

These recommendations and strategies are practical, context-specific and responsive to the unique challenges faced in Nigeria's oil and gas sector. It also contributes to theoretical advancements by integrating relevant theories and concepts into the understanding of enforcement in the Nigerian oil and gas industry. The practical implications of the research are significant, as they have the potential to improve environmental outcomes, protect ecosystems, and safeguard the health and livelihoods of local communities impacted by the oil and gas operations in Nigeria.

By synthesizing existing theories such as command and control enforcement technique, cost benefit analysis, agency enforcement, the conflicted triangle regulatory compliance, institutional theory, and environmental governance amongst others, the research enriches the theoretical frameworks that guides the enforcement of environmental laws. This contributes to a weightier understanding of the factors influencing enforcement outcomes and helps in developing more effective strategies for regulatory agencies and policymakers. Additionally, the research highlights the practical implications of strengthening enforcement of environmental laws in the Nigerian oil and gas industry. These findings provide valuable insights for policymakers, regulatory bodies, and industry stakeholders to enhance their efforts towards sustainable development and environmental protection.

In summary, the research makes a significant contribution to knowledge by advancing the understanding of enforcement of environmental laws in the oil and gas industry in Nigeria. Through the identification of challenges, proposal of innovative approaches, integration of theoretical concepts, and emphasis on practical implications, the research strives to improve the enforcement mechanisms and promote sustainability in this critical industry. Furthermore, this research contributes to the broader academic discourse on environmental governance, regulatory compliance, and sustainable development. Its findings and theoretical advancements can serve as a foundation for future studies and further research in similar contexts or other industries facing comparable challenges which extends beyond academia.

The researcher hopes that this research will serve as an eye opener and potentially a guide to Nigerian policymakers in addressing environmental pollution caused by the oil and gas industry via efficient and effective enforcement of environmental laws in the oil and gas industry. In pragmatic terms, the researcher also hopes that recommendations resulting from this critical analysis might result in the separation of NESREA from the Federal Ministry of Environment, as well as the likely elimination of overlapping functions currently present in environmental enforcement agencies overseeing the activities of the oil and gas industry in Nigeria.

1.8 Research Methodology

The methodology is a significant component of any research.[21] This is because the methodology section provides the structure and underpinnings of the research.[22] Primarily, when undertaking legal research, communicating the methodology to be utilised clarifies the writer's academic perspective, which assists the reader in understanding the arguments of the research and how the research relates to previous scholarly work.[23] Per Jaap Hage, methodology is the study of the proper standards for scientific arguments, and a method is a set of standards through which the relevance of arguments can be evaluated.[24] Collis and Hussey define methodology

[21] K Hammarberg, M Kirkman and S D Lacey, 'Qualitative Research Methods: When to use them and How to Judge them' (2016) 31 Human Reproduction498.
[22] C Morris and C Murphy, Getting A PhD in Law (Hart 2011) 29.
[23] ibid n 22
[24] J Hage in M V Hoecke, M Adams and D Heirbaut, The Method, and Culture of Comparative Law (Hart 2015) 38.

as the overall approach to the entire research study process.[25] It consists of an explanation of the methods used to collect the data and an argument of why the results obtained are meaningful.[26] Quantitative, qualitative, and mixed methods are often used in academic discourse. Creswell[27] defined quantitative and qualitative approaches as follows: a quantitative approach refers to a research methodology that involves the utilization of cause-and-effect reasoning, reduction to specific variables, formulation of hypotheses and questions, measurement and observation, and the testing of theories through strategies such as experiments and surveys. This approach involves the collection of data using predetermined instruments that yield statistical information.[28] On the other hand, a qualitative approach is characterized by the researcher's reliance on knowledge claims that are primarily based on the diverse interpretations of individual experiences. These interpretations are influenced by social and historical factors. The aim of a qualitative approach is often to develop theories or identify patterns or perspectives that are participatory in nature. These perspectives can be political, issue-oriented, collaborative, change-oriented, or a combination thereof.[29]

Hassan defined Mixed Methods as "an approach to research that combines quantitative and qualitative research methods in a single study or research project. It is a methodological approach that involves collecting and analyzing both numerical (quantitative) and narrative (qualitative) data to gain a more comprehensive understanding of a research problem".[30]

For this study, the researcher will employ the qualitative method of research. In this approach, the researcher will rely on the collection and interpretation of extensive narrative data to understand the events under scrutiny, i.e., challenges to enforcement and compliance with environmental laws in Nigeria's oil and gas

[25] J Collis and R Hussey, Business Research: A Practical Guide for Undergraduate and Postgraduate Students (3rd edn, Palgrave Macmillan 2009).
[26]N. K. Mark Saunders, P Lewis and A Thornhill, Research Methods for Business Students (6th edn, Financial Times Prentice Hall 2012).
[27] J W Creswell, Research Design (Sage Publications 2008) 17
[28] ibid n 27
[29] ibid n 27
[30] M Hassan 'Mixed Methods Research – Types & Analysis' (2022) Research Methods < Mixed Methods Research - Types & Analysis - Research Method > accessed 4 July 2023

industry. This method is best suited for this research because it sets out to describe, understand, and explain the facts and subsequently find answers to the research question. Per Denzin and Lincoln, qualitative research is a field of inquiry that cuts across disciplines, fields, and subject matter.[31] Furthermore, the qualitative research method involves exploring and describing social processes through nuance, complexity, and detail. Thus, the qualitative research method is appropriate for examining the relevant sources of law and the weight attached to these laws. These will enable the researcher to arrive at solid, realistic conclusions and recommendations for the research aims.

The primary data for this study shall be gathered from desk-based materials ranging from legal statutes, written texts (both textbooks and hard copy articles), and electronic journals and articles. In carrying out the legal analysis, this research shall cover primary sources by delving in-depth into the legislative instruments governing the Nigerian oil industry and environmental protection. Also, to be examined will be news reports and articles. In addition to the preceding, the Petroleum Industry Act (PIA 2021) will be evaluated as it relates to enforcement.

1.8.1 Case Study Methodology

Nigeria is the subject of this research, and this can be simply referred to as a case study. The case study method is the most widely used in academia for researchers interested in qualitative research.[32] According to Yin, case studies are preferred when "how" or "why" questions are being posed and the investigator has little control over the events.[33] The case study method is particularly beneficial when a thorough understanding of a topic, event, or phenomena of interest in its natural real-world setting is required.[34] One of the most prevalent and significant applications of case studies is to produce, improve, question, or challenge existing theoretical frameworks. In law, this value is augmented by the societal interest in comprehending the processes, relationships, and paths leading to certain legal

[31] Norman K Denzin and Yvonna S Lincoln, The landscape of Qualitative Research (Sage 2013) 5
[32] S Baskarada, "Qualitative case study guidelines". (2014) 19 The Qualitative Report, 1–25.
[33] R. K Yin, Case study research and applications: Design and methods (2018 Sage Publications,6th ed)
[34] S Crowe et al. "BMC Medical Research Methodology" (2011) < 1471-2288-11-100.pdf (springer.com) Again be consistent in the citation of authors' names > accessed 18 November 2022

conclusions. The in-depth examination of a particular phenomenon (e.g., country, time, context, or process) allows one to discern a complete (or more complete) set of elements that may explain a specific legal outcome/event/process.[35]

1.8.2 The Comparative Element and Legal Transplant of the Research

The research in Chapter 7 will draw good practices of enforcement of environmental laws from selected jurisdictions: Scotland: The Scottish Environmental Protection Agency (SEPA), United States of America: The Environmental Protection Agency (EPA), and Malaysia:The 2022 increment in penalties for environmental offences. These jurisdictions were chosen because of the similarity in terms of their oil and gas operations.[36] Concurring with Watson and Kahn-Freund, a comparative study is a vital tool to correct the flaws of a defective regime.[37] This aligns with the primary objectives of this research. Watson defined comparative law study as "an academic discipline in its own right," regarding a study of the relationship, above all, the historical relationship, between legal systems or between rules of more than one system".[38] Correspondingly, Rainer affirmed that comparative law is a sub-discipline of jurisprudence that studies diverse occurrences in the world's different legal systems and comparatively examines and analyses them.[39]

A comparative study in law would involve analyzing the similarities and differences between the various legal systems of the world.[40] Recommendations derived from a comparative analysis of a developed nation can influence the policy decisions of developing nations like Nigeria if correctly applied.[41] According to Zweigert and Kotz, functioning is the essential methodological premise underlying all comparative legal research.[42] The relevance of comparative analysis is based on the fact that most legal

[35] ibid n 32
[36] M P Joy and S D Dimitroff, 'Oil and Gas Regulation in The United States: Overview' [2016] Thomas Reuters < https://content.next.westlaw.com/practical-law/document/I466099551c9011e38578f7ccc38dcbee/Oil-and-gas-regulation-in-the-United-States-overview?transitionType=Default&contextData=%28sc.Default%29&firstPage=true&bhcp=1&viewType=FullText#co_anchor_a731482 > accessed 20 November 2022
[37] O Kahn-Freund, 'On Uses and Misuses of Comparative Law' (1974) 37 the Modern Law Review 1-2
[38] A Watson, Legal Transplants (2nd edn, University of Georgia Press 1993) p.9.
[39] M J. Rainer, Introduction to Comparative Law (Wien Mainz 2010) p.2.
[40] K Zweigert and H Kötz, Introduction to Comparative Law (3rd edn, Tony Weir translated, Oxford University Press, Oxford 1998) p.2.
[41] M M Siems, 'Legal Originality' (2008) 28 Oxford Journal of Legal Studies 147-165.
[42] ibid n 36

systems in various nations face or have faced the same difficulties.[43] Kiefel argues that comparative research facilitates the standardization of particular areas of law or the identification of deficient components of a piece of legislation. Therefore, legal transplants from one system to another are required. [44] To do a legal transplant, the jurisdiction borrowing a law or legal system from another must first be sure that its legal system can accommodate the borrowed laws or systems.[45] Legrand described the legal transplant as transferring laws from one jurisdiction to another. [46]

Watson argues that countries with deficient legal systems benefit from transplants since they aid legal growth by addressing the system's weaknesses.[47] Furthermore, he argued that the borrowing state did not have to be concerned with the legal and political framework of the donor state. However, such information would enhance the efficiency of the transplant procedure.[48] Kahn-Freund criticized this opinion about the simplicity of doing a legal transplant and argued that it would be highly challenging to transplant the legal norms of one country to another without a thorough understanding of the socio-political and economic background in which the laws were formulated. [49] The author emphasized that a country wanting to adopt foreign legal principles should consider the context of enactment and application in the foreign legal system. In contrast to Watson, Kahn-Freund attempted to connect law and society so that one cannot exist without the other, laying the groundwork for a legal transplant.

Moreover, both researchers intended to provide the optimal strategy for approaching the legal transplant procedure. This research agrees with both authors on the point that if the regime of a borrowing nation has considerably inadequate laws, the deficient system can be remedied by adopting the legal systems of a regime that is

[43] ibid n 36
[44] S Kiefel, 'English, European and Australian Law: Convergence or Divergence'(2005) 79 Australian LJ 220, 227
[45] J Basten, 'International Influence on Domestic Law: Neither Jingoistic Exceptionalism nor Blind Servility' in Justin Gleeson and Ruth Higgins (eds.), Constituting Law: Legal Argument and Social Values (Federation Press 2011) 202.
[46] P Legrand, 'The Impossibilities of Legal Transplants' (1997) 4 Maastricht Journal of European Comparative Law 111.
[47] ibid n 36 pg. 21
[48] ibid n 36
[49] ibid n 35

more developed in sure regards. This is contingent on convincing the borrowing regime that the system being borrowed is worthy of borrowing. Consequently, the study disagrees that a legal transplant should be performed without considering the adaptation of the transplanted element to the borrowing nation.

Despite the divergence between the legal systems of the transferring nations, Watson's theory puts significant weight on the legal transplant's benefits. On the other hand, Kahn argues that while legal transplant is necessary for the growth of the legal system in a nation, it would be unreasonable to assume the transplantation of a whole system or rule to be simply applicable in the borrowing country. The author instead proposed that it is preferable to modify components of the borrowed regime to address the inadequacies revealed in the borrowing regime.[50] The researcher agrees with Kahn on this point because it is unreasonable and impracticable to expect a complete legal transplant to be accepted and workable in Nigeria. In light of this, the research has opted to examine selected features of the jurisdictions it seeks to compare, providing guidelines for addressing certain flaws in the Nigerian legal enforcement regime.

Cohn also supports this when she argues that the most efficient method for a successful legal transplant is the adaptation of certain aspects of the borrowed regime that would provide solutions for the identified flaws in the defective regime. [51] Although Scotland operates a hybrid legal system that uses civil and common law, it can be comparable to Nigeria, which operates solely on common law. The United States and Malaysia also operate the common law; hence their legal systems are comparable to Nigeria. The United States has started just like Nigeria and has a good record of effective enforcement (better than what is obtainable in Nigeria currently). This provides a historical context for the legal systems of the comparative jurisdictions. The researcher submits that the resemblance between the legal systems of Scotland, the United States, and Malaysia to the Nigerian system would allow for a sound and logical comparison. These jurisdictions have utilised effective

[50] ibid n 35
[51] M Cohn, 'The Evolution of Unreasonableness and Proportionality Review of the Administration in the United Kingdom' (2010) 58 American Journal of Comparative Law 629.

enforcement measures to manage their oil and gas industry's environmental commitment.[52]

Therefore, this research argues that incorporating features of enforcement mechanisms in Scotland will inspire a correction of the Nigerian enforcement flaws examined in this research. Although there are several limitations, such as the governance arrangement, where Scotland has a first minister and still answers to Westminster, Nigeria, on the other hand, has a President. Next is the allocation of funds to Scotland from Westminster to manage most of the affairs in the country; Nigeria does not operate an allocation system at the executive level. The President prepares a yearly budget and presents it to the legislature for reading and approval. Notwithstanding, these differences do not outweigh other vital aspects for comparison of these jurisdictions.

1.9 Literature Review

Literature is academic research published and distributed via books, academic journals, practitioner journals, websites, and other sources. It is a shortened term for published information about a particular topic.[53] A literature review is a complete description of the published concepts, issues, techniques, and research findings on a subject or topic. However, it is not a simple compilation of all the reviewer has read.[54] Literature reviews can be conducted as an independent research approach. In this respect, the purpose of the literature review is not only to pave the way for empirical research but to synthesize what is known about a specific topic or issue in a manner that has not been published.[55]

Therefore, the purpose of the literature review is to:[56]

- Consolidate understanding.
- Compile information from numerous sources.
- Map the terrain of the available evidence regarding a particular subject.

[52] M Watson, 'The Enforcement of Environmental Law: Civil or Criminal' (2005) 17 ELM Journal 3.
[53] R Kiteley and C Stogdon Literature Reviews in Social Work (SAGE Books 2015) Pg 2
[54] ibid n 51
[55] ibid n 34
[56] ibid n 34

- Emphasise the most substantial literature released to date.

In this research, the literature review seeks to consolidate understanding and map the terrain of the available evidence regarding the challenges of enforcement of environmental laws in Nigeria's oil and gas industry. Pursuant to this, the literature review has been divided into themes by way of subheadings for a nuanced understanding of the questions sought to be answered by the research. These themes will be further expatiated in Chapter 7 of this research.

Several authors have proffered their views on the challenges to the enforcement and compliance of environmental laws in Nigeria's oil and gas industry. As stated by Adeoluwa, while the national environmental regulations in Nigeria are reasonable, they are neither adequately publicised nor enforced on the Nigerian landscape.[57] This study aligns with the argument above and adds that there is sufficient room for improving these environmental laws. The weakness of these laws can only be accurately identified when the laws are enforced and complied with.

1.9.1 Multiplicity of Enforcement Agencies

One of the issues attributed to the challenges of enforcement in the oil and gas industry, as argued by Adeoluwa, includes fragmented environmental policies and a lack of effective collaboration among the affected stakeholders in Nigeria.[58] Ite and Idemudia appraised the roles and practices of environmental enforcement agencies and the impacts of existing legislation. They submitted that they have failed to make a significant impact in managing environmental issues[59]. Olawaniyi aligned himself with the argument above when he concluded that the existing collaborative measures to tackle environmental issues have not been successful because of the uncoordinated roles and practices of the participating stakeholders.[60] Consequently, enforcement agencies that implement the policies often find themselves in regulatory

[57] ibid n 4
[58] ibid n 4
[59] U. Idemudia and U.E Ite, "Corporate–community relations in Nigeria's oil industry: challenges and imperatives" (2006) 13(4) Corporate Social Responsibility and environmental management 194-206.
[60] O.O Oluwaniyi "Oil and youth militancy in Nigeria's Niger Delta region". (2010) 45(3) Journal of Asian and African Studies, 309-325.

competition because of overlapping, vague roles and responsibilities. [61]

In assessing the impact of the multiplicity of enforcement agencies in Nigeria, Mbanefo posed these questions "Is it likely that the solution to the problem of ineffectiveness of the law enforcement agencies in Nigeria lies in creating more agencies? Can one say that the country has not attained a satisfactory level of security and orderliness because it has yet to have the right number of law-enforcement agencies? Or are the existing agencies likely to perform better if they are strengthened towards achieving the desired objectives?"[62] The research will attempt to proffer answers to these questions in Chapter 7.

1.9.2 Political Interference and The Lack of Political Will for Enforcement

Political interference has hampered the implementation of environmental laws in the oil and gas industry in Nigeria. Enforcement agencies have bowed to pressure and failed to deliver, resulting in inadequate regulatory regimes that have put people's lives and property at risk and portrayed the petroleum industry as callous, reckless, and profit-driven.[63] Per Svara, political interference and impartial administration cannot co-exist.[64] According to Eghosa, one plausible explanation for the lax regulatory regime in the oil and gas sector is the relationship between the government as both a regulator and a player in the oil and gas industry.[65] According to Bukola et al., this combination of both economic and environmental regulatory functions in a single authority could lead to possible conflicts of interest, which could compromise the independence and objectivity of the regulator and subsequently result in violations of environmental laws.[66] Without an independent environmentally focused enforcement agency, economic development and profit maximisation would

[61] U.M Ogbonnaya, "Environmental Law and Underdevelopment in the Niger Delta Region of Nigeria". (2011) 5(5) African Research Review, .68-82.
[62] O Mbanefo, The Multiplicity of Law Enforcement Agencies and the State of Law and Order in Nigeria: A Case of too many Cooks? (2019) 3(4) International Journal of Academic Accounting, Finance & Management Research Pg.1-9
[63] ibid n 62
[64] J H Savara "Introduction: Politicians and Administrators in the Political Process—A Review of Themes and Issues in the Literature" (2006) 29 International Journal of Public Administration Pg 953-976
[65] E O Ekhator," Public Regulation of the Oil and gas Industry in Nigeria: An Evaluation" (2016) 21 Ann. Survey Int'l & Comp. L. 43.
[66] B Faturoti et al "Environmental Protection in The Nigerian Oil and gas Industry and Jonah Gbemre V. Shell PDC Nigeria Limited: Let the Plunder Continue?" (2019) 27.2 African Journal of International and Comparative Law Edinburgh University Press, 225–245

accelerate to the detriment of environmental protection.[67] Article 20 of the 2013 EU Offshore Safety Directive noted that such conflict of interest could be resolved by a clear separation between regulatory function and the associated decision relating to safety and environment and regulatory function relating to the economic development of natural resources.[68] The lack of political will by the regulatory agencies to enforce the laws and regulations in the oil and gas sector is another major factor in the poor enforcement of environmental laws in the oil and gas industry. This has made IOCs more daring in their pollution activities, as demonstrated by their non-adherence to the laws.

One probable reason for the above finding is the dependent relationship between the government and IOCs in Nigeria, as argued by Eghosa. The author argues that Nigeria lacks the technological know-how to exploit its vast oil reserves. Nigeria [69] This dependent relationship, it has been argued, has led to the capture of the regulatory agencies and the Nigerian state by the IOCs. Regulatory capture is especially evident in the analysis of the gas flaring activities in Nigeria and the attendant disregard of some oil and gas laws by the IOCs.[70] Thus, the fear is that if the Nigerian state overly regulates the oil industry, investors and potential investors might refuse to invest in the Nigerian economy. If the IOCs divest, this will lead to a loss of jobs in the oil and gas sector and a reduction in the foreign export earnings of the Nigerian government.

On the other hand, this research holds that if proper and effective enforcement of and compliance with environmental laws in the oil and gas industry, IOCs or foreign direct investment will be attracted to Nigeria. It will portray the country as a place where laws are respected. The IOCs will have prior knowledge of the laws and the penalty for offenders. In essence, the ineffective and inept regulatory regime in Nigeria's oil and gas industry might be a disincentive to foreign direct investment and a cause for further environmental degradation.[71] Per Jeong and Weiner,[72] country-

[67] ibid n 66
[68]Directive 2013/30/EU of the European Parliament on Safety of Offshore Oil and gas Operations.
[69] ibid n 65
[70] ibid n 65
[71] ibid n 65
[72] J Y Weiner et al 'Who bribes? Evidence from the United Nations' oil-for-food program (2012) 33 Journal for Strategic management 1363–1383.

level determinants are essential in controlling a firm's intention to engage in unethical practices. The authors argued that firms are likelier to engage in unethical practices in countries with poor legal enforcement and regulations.

Elenwo and Akankali have argued that even though the polluter pays principle largely operates in the oil and gas industry as an environmental policy/strategy, it is not practicable.[73] A major reason for this flaw is that the Nigerian oil and gas sector takes the legal form of a joint venture between the Nigerian government and the core investing corporate entity. It is, therefore, often challenging for the government interest, represented mainly by the NNPC, to channel parts of its share of the oil revenue to ensure compliance with environmental standards and guidelines of the industry. In this regard, of paramount importance is the issue of exclusively Nigerian government-owned and operated facilities such as petroleum refineries, tank farms, oil bunkering jetties, and pipelines which, taken together, have constituted a significant source of oil pollution.[74]

Section 54(3) of the PIA formally declares that NNPC shall cease to exist as an entity. The section provides that "NNPC Limited and any of its subsidiaries shall conduct their affairs on a commercial basis profitably and efficiently without recourse to Government funds and NNPC Limited shall operate as a Companies and Allied Matters Act entity, declare dividends to its shareholders and retain 20% of profits as retained earnings to grow its business."[75] This section reflects the intent to establish a national oil firm that adheres to solid commercial and corporate governance norms. Section 61(1) requires the board of NNPC Limited to discharge its responsibilities per the highest standards, practices, and principles of corporate governance, and section 63 requires Board decisions to be guided by technical and commercial considerations based on sound industry practices. The PIA also imposes several transparency requirements on all operators, including NNPC Limited, which should serve as a safeguard to ensure that NNPC Limited is held accountable for its conduct.[76]

[73] E I Elenwo, J A Akankali," Environmental Policies and Strategies in Nigeria Oil and gas Industry: Gains, Challenges and Prospects" (2014) 5 Natural Resources 884-896
[74] ibid n 73
[75] The Petroleum Industry Act 2021, Section 54(3)
[76] The Petroleum Industry Act 2021,Section 61

In addition, NNPC Limited is intended to be a financially autonomous entity capable of securing external investment. The PIA stipulates that NNPC Limited's initial capitalisation (which the government will pay for in cash as a subscription for shares) must be less than necessary to perform its commercial activities and assume the liabilities inherited from NNPC. NNPC would no longer have access to public funds, except for equity contributions resulting from increases in NNPC Limited's share capital. Additionally, the PIA requires NNPC Limited to maintain 20% of its profits as retained earnings for corporate expansion.[77]

Despite these commendable regulations, which aim to address the issue, it is argued by this research that section 59 of the P1A 2021, which provides the power for the Minister of petroleum resources to appoint members of the NNPC limited board allows for political meddling and influence. The former President of the Federal Republic of Nigeria doubled up as the Minister of Petroleum Resources. It is not known whether his successor will tow that path. It is argued by this research that the mere existence of such a route where the President can function in the two most powerful positions in a country amount to economic hijacking and hinders transparency. The effect would not end political interference in the oil and gas industry, even with the PIA. Nevertheless, effective enforcement will ultimately determine whether the commercialisation of NNPC will resolve the issue of political interference, which will eventually aid the effective enforcement of environmental laws in the oil and gas industry. Jamison and Castaneda noted the importance of recognizing ab initio that political involvement in regulation may be either proper or improper.[78]

The fundamental standpoint of this research is that enforcement agencies without independence to exist and carry out their functions without involvement from the government in power are ineffective. As the authors stated, "Proper political involvement includes engagements that give regulators important information on the

[77] ibid n 75

[78] M Jamison and A Castaneda, ”Addressing Improper Political Interference – How can persons performing regulatory functions or developing regulatory instruments protect their work from improper political interference while, at the same time, maintaining accountability to the political wishes of the population?” < http://regulationbodyofknowledge.org/faq/low-income-fragile-and-low-capacity-countries/how-can-persons-performing-regulatory-functions-or-developing-regulatory-instruments-protect-their-work-from-improper-political-interference-while-at-the-same-time-maintaining-accountability-to-the/ >Accessed 6 June 2019

impacts of regulatory decisions, hold regulators accountable for their decisions under the law, provide politicians with information that they may use for making policy decisions and informing constituents, and follow accepted procedures with sufficient transparency to ensure that the public is confident that regulation is legitimately implementing established laws and policies without stakeholder bias."[79] As this is not the case in Nigeria, it is trite to refer to political involvement in enforcing and complying with environmental laws in the oil and gas industry as improper.

1.9.3 The Judiciary

Dakolias and Thachuk argued that courts should generally be regarded as unbiased and fair institutions under a robust governance system.[80] The Judiciary is an arm of government established under section 6 of the 1999 Constitution of the Federal Republic of Nigeria. It is saddled with the responsibility of ensuring that the rights of the citizens are protected, a reasonable interpretation of the law, upholding the rule of law, and acting as the body responsible for ensuring that justice is done, and the verdict is given without fear or favour. In this manner, the legal system is designed to be non-political, as shown by its emblem of a blindfolded justice holding scales. Indeed, only such a judicial system can defend human rights and enforce the rule of law.[81] Creating and enforcing rules that are universally applicable to everyone, including public and private persons, is what societies seek to do. While the organisation of courts may vary from country to country, this is the basic premise upon which societies seek to construct their judicial systems.[82] To protect this legal system, judicial independence is essential.

Per Dakolias and Thachuk, judicial independence is the strongest institutional support for the rule of law.[83] Courts are meant to be apolitical, free to render judgments unencumbered by political forces. In other words, courts that are utilised by political regimes to further party or even private goals cannot be considered legitimate institutions of good governance. Judicial independence in Nigeria is a very farfetched

[79] ibid n 77
[80] M Dakolias and K Thachuk, 'Attacking Corruption in the Judiciary: Critical Process in Judicial Reform' (2000) 18 Wis Int'l LJ 35
[81] ibid n 80
[82] ibid n 80
[83] ibid n 80

concept. This is because the executive arm of government appoints judicial officers, and confirmation of the appointment to the Judiciary is by the legislation pursuant to the Nigerian 1999 Constitution (As amended).[84] Politicians in the position to appoint judicial officers would appoint their loyalists and, in most cases, overlook their faults whenever they commit any offence or embezzle public funds. Thus, in Nigeria, a judge is just another politician.

Per Laura Neuman[85], timeliness, affordability, and accessibility are the fundamental requirements for an effective enforcement model. For most Nigerian citizens affected by the negative impacts of the oil and gas industry, the courts are neither accessible nor affordable and do not possess a firm enforcement grip to ensure compliance with their decisions. For litigation to be successful under the Judiciary, the information requester must employ an attorney or advocate and pay numerous court costs. In most countries, court diaries are overburdened, and it may take months or years before a matter is heard and even longer to get a written judgment.[86] This is the case in Nigeria's Judiciary, thus making enforcing environmental laws in the courts wishful thinking. In *Jonah Gbemre v Shell PDC Ltd and Ors*[87], even though the court ordered the IOCs to stop gas flaring, gas is still being flared until the present in Nigeria. As elaborated by Bukola et al., the landmark judgment, in this case, was never enforced due to a seeming lack of understanding of the root causes of the crisis in the region, coupled with the desire for economic development at the expense of a safe and healthy environment. [88]

This study, therefore, strongly aligns with Usman's contention that the mere existence of a law seeking to protect the environment does not automatically translate into environmental protection.[89] Some laws are honoured more in the breach than in compliance. For a law seeking to protect the environment to be

[84] The 1999 Constitution of the federal republic of Nigeria (as amended), Section 231, 238 250 and 256(1)
[85] L. Neuman, 2009, 'Enforcement Models: Content and Context', Access to Information Working Paper, Communication for Governance and Accountability Program (Comm GAP), World Bank, Washington, D.C
[86] ibid n 84
[87] Suit No. FHC/B/CS/53/05. (Unreported).
[88] ibid n 49
[89] ibid n 49

effective, it must enjoy enforcement in the law courts through the instrumentality of litigation. If there is no such mechanism, the law, however comprehensive and well-written, is nothing but a paper tiger.[90]

The issues enunciated above also raise the question of the effectiveness of the courts in ensuring that their judgments are enforced and adhered to. As articulated by Mmadu, the Nigerian Judiciary must play a more hands-on role in delivering environmental justice to the public.[91] Although the courts and, by extension, the Judiciary is created by the Constitution, the Constitution cannot by itself provide all the answers to the diverse issues of enforcement of environmental laws in the oil and gas industry, hence the importance of interpretation and the ability of the judges to discover the spirit of the Constitution. In Fawehinmi vs Akilu[92], the court stressed the role of the Judiciary when it held thus: *"Law does not exist in Vacua. The Constitution exists for Nigerians who are not just experimenting with democracy. A Constitution is not an academic document meant for abstract consideration.*

Therefore, for Nigeria to turn the tide on environmental degradation, the Nigerian judicial system will need to be independent in interpreting the law and demonstrating keen judicial involvement and evaluation whenever issues of environmental misuse are brought before them.[93]

1.9.4 Inadequate Sanctions

Ladan has argued that Section 234 of the Criminal Code in Nigeria can be used to protect the Nigerian environment from the incidence of gas flaring if adequately complied with and effectively enforced.[94] Section 234(f) of the Code states that "any person who causes inconvenience or damage to the public is guilty of a

[90] ibid n 84
[91] R A Mmadu, "Judicial Attitude to Environmental Litigation and Access to Environmental Justice in Nigeria: Lessons from Kiobel" (2013) 2 (1) Afe Babalola University: Journal of Sustainable Development Law and Policy 149-170
[92] 4 Nigerian Weekly Law Report (Pt 67) Pg.797 at 848
[93] ibid n 74
[94] M Ladan, "Access to Environmental Justice in Oil Pollution and Gas Flaring Cases as Human Right Issue in Nigeria, Paper Presented at A Training Workshop for Federal Minis try of Justice Lawyers Organized by the Institute for Oil and gas Law in Abuja Nigeria 34 (Nov. 28- 30, 2011), http://papers.ssrn.com/sol3/papers.cfm?abstract-id=2336093 .

misdemeanour and liable for imprisonment for two years".[95] However, based on this provision, the question at this juncture is: can oil companies, or their officials be held liable for gas flaring in the Niger Delta? The answer is unclear because oil companies can easily evade responsibility since the sub-section is worded ambiguously.[96]It is the submission of the research that if the court were to exercise its interpretative function effectively, answers would emerge. Furthermore, terms such as 'oil companies' or 'gas flaring' are not expressly mentioned in Section 234, its sub-sections, or other relevant sections of the Code. Another difficulty inherent in the Criminal Code as a potential medium for environmental protection in Nigeria is that the penalty of imprisonment cannot be applied against IOCs.[97]

The applicable penalty for violating the Code, which is imprisonment for six months or one year, is not a strong deterrent against gas flaring, given the nature of the effect of gas flaring on the environment.[98] The author argued that, due to the weighty reliance on oil revenue for the country's economy, enforcing severe sanctions on oil operations may be put on ice to forestall adverse economic impacts.[99] Tullock argued that increasing the regularity or gravity of punishment for an offence certainly reduces the likelihood of the offence being committed.[100] Karpoff and Becker have suggested that offenders should be imposed a minimal optimal penalty.[101] The optimum penalty means that the punishment for a crime should equal the whole social cost. To properly establish general deterrence, the penalty/punishment imposed for the offence must be at least proportional to the impact of the environmental degradation caused. Punishment should be severe enough to deprive the polluter of the benefits of the degradation.

In evaluating the severity of the existing sanctions, it is essential to recall that most of Nigeria's existing oil and gas companies are subsidiaries of international

[95] Criminal Code Act 1916, Laws of the Federation of Nigeria 1990, Section 234 (f)
[96] ibid n 52
[97] ibid n 52
[98] Section 234 of the Nigerian Criminal Code
[99] https://guardian.ng/business-services/shell-declares-20-1b-profit/ >accessed 17 November 2021
[100] G Tullock, 'Does Punishment Deter Crime?'(1974) 36 Public Interest Journal 109.
[101] J M Karpoff and J R Lott, 'The Reputational Penalty Firms Bear from Committing Criminal Fraud' (1993) 36 the Journal of Law and Economics 757; G S. Becker, 'Crime and Punishment: An Economic Approach' (1968) 76 Journal of Political Economy 169.

companies. Due to their global profitability, it is argued that they will be prosperous. In Nigeria, the exploitation of oil and gas resources yields massive revenues. For example, in 2021, SPDC reported around $ 20.1 billion from its operations in Nigeria alone.[102] In 2022, the net profit surged to a record $ 42.3 billion.[103]Seplat Energy reported $951.8 million in 2022.[104] Consequently, seeking to dissuade these companies with disproportionate or weak fines would be impractical.

Pursuant to Section 7 of the Oil in Navigable Waters Act[105], "It shall be a defence to establish that the oil or mixture was discharged to ensure the safety of any vessel or cargo or to save a life, or that the oil or mixture escaped owing to vessel damage or accidental spill. This defence is also accessible to a landowner or a person in charge of a piece of equipment from which oil or an oily combination is claimed to have escaped. It is also a defence to demonstrate that the oil was contained in waste produced by oil refining operations or that it was not reasonably possible to dispose of the waste by any means other than dumping it into waterways. Akanle avers that offenders should not have access to these defences because they will always be acquitted.[106] It is nearly impossible to prosecute under these statutes when all these defences have been raised. This renders enforcement of environmental laws in the oil and gas industry difficult.

1.9.5 Corruption

Corruption is a severe concern and a significant problem plaguing Nigeria's oil and gas industry. Nigeria's successive governments have waged a futile battle against corruption for decades.[107] Corruption and bad governance significantly affect

[102] The Guardian Nigeria 'Shell declares $20.1b profit' < https://guardian.ng/business-services/shell-declares-20-1b-profit/ >accessed 5 July 2023
[103] The Guardian Nigeria 'Shell logs record 2022 profit on soaring energy prices' < https://guardian.ng/business-services/shell-logs-record-2022-profit-on-soaring-energy-prices/ >accessed 5 July 2023
[104] Seplat Energy, 'Audited results for the year ended 31 December 2022'< https://www.seplatenergy.com/media/5b3hi3v1/seplat-energy-full-year-2022-results-release-280223.pdf >accessed 4 July 2023
[105] Laws of the Federation of Nigeria 2004.
[106] O Akanle, 'Pollution Control Regulation in the Nigerian Oil Industry', (1999) Nigerian Current Law Review 347.
[107] O J Olujobi, 'Legal Framework for Combating Corruption in Nigeria - The Upstream Petroleum Sector in Perspective' (2017) 8 J Advanced Res L & Econ 956

environmental law enforcement in the oil and gas industry.[108] Per Moller, Nigeria's oil and gas industry has built up a bad reputation nationally and internationally, mainly through corruption charges by government officials and oil companies.[109] These charges mainly include bribing government officials for engineering, procurement, and construction (EPC) contracts and corrupt payments for preferential treatment during customs.[110] Baughn et al. argued that the chances of engaging in corruption are likely greater in countries where corruption is tolerated.[111] Atanda argues that corruption has eaten deep into the fabric of the Nigerian nation to the extent that both the government and the IOCs choose profit over environmental protection.[112] The 2021 global corruption perception index ranks Nigeria as the 154th corrupt country out of 180 countries it monitors.[113]

Rothstein argues that people's experience of corrupt governments undermines the trust in government that would have been needed, and, as a result, countries with high levels of corruption have been unable to stem the growth of inequality or deal with the strains it has generated.[114] Such countries find themselves trapped because the policies that could remedy the high levels of social inequality cannot be implemented because of the low levels of trust. This is the case in Nigeria and the oil and gas industry, where low levels of trust have hampered the effective enforcement of environmental laws.

To curb corruption, especially in resource-rich countries like Nigeria, EITI was launched in 2002. The principal objective of EITI is to increase transparency and raise public awareness of Government revenue and company payments in the extractive industry.[115] Subsequently, the Nigerian government voluntarily signed up for the

[108] ibid n 85
[109] L Moller, The governance of oil and gas operations in hostile but attractive regions: West Africa. (2010) 4 International Energy Law Review, pp. 110-122
[110] ibid n 108
[111] ibid n 108
[112] I A Atanda et al, ''A Nation Bewildered and a State in Comatose': Corruption and Socio-Economic Development in Nigeria' (2021) Rev Universitara Sociologie 295
[113] Transparency International "Corruption Perception Index "(2021) < 2021 Corruption Perceptions Index - Explore the… - Transparency.org > accessed 24 November 2022
[114] B Rothstein, The Quality of Government: Corruption, Social Trust and Inequality in International Perspective, (2011, University of Chicago Press,)285
[115] K Gupta "Are oil and gas firms more likely to engage in unethical practices than other firms? "(2017) 100 Energy Policy 101-112

Extractive Industries Transparency Initiative (EITI)[116] in May 2003 and established the Nigeria Extractive Industries Transparency Initiative (NEITI) and its implementing act[117]. However, the historical symbiotic relationship between oil and corruption in Nigeria still exists.[118] The oil and gas industry is devoid of any form of transparency to the detriment of a healthy environment. Corrigan argues that "transparency opens the channels of communication and allows scrutiny over revenues gathered from resources as well as how the resources are generated and extracted." [119] This makes it more difficult for public officials to siphon resource revenues through "corruption and patronage." The government would thereby be compelled to invest state resources in pro-development policies," thereby increasing its level of effectiveness, which is equivalent to accountability. The author further avers that transparency improves coordination among government departments by letting one department know what other departments are doing. This leads to a better understanding of government policies and strategic direction by different government departments, which will, in turn, lead to good governance.

Contrary to Corrigan, Kolstad and Wiig argue that transparency may increase corruption.[120] Bac supports these arguments and argues that while transparency makes it easier to detect corrupt officials, it can also enable the would-be bribe-giver to identify the power brokers to bribe.[121] This means that transparency can, in effect, be a two-edged sword: helping bribery detection and also, as an unintended consequence, helping the would-be briber to ascertain who best to bribe and thus to bribe more strategically, efficiently, and effectively. After reviewing the literature, Haufler concludes that "recent analyses demonstrate that information disclosure programs have variable effects, and more information is not always a positive thing",

[116]The Extractive Industries Transparency Initiative (EITI) is a global standard for the good governance of oil, gas and mineral resources. It seeks to address the key governance issues in the extractive sectors.
[117]The Nigeria Extractive Industries Transparency Initiative (NEITI) Act 2007.The law enforces the implementation of the Initiative in Nigeria's oil and gas and mining industry.
[118] P A Donwa et al," Corruption in the Nigerian Oil and gas Industry and Implication for Economic Growth "(2015)14 International Journal of African and Asian Studies, 38-39
[119] C C Corrigan, "Breaking the Resource Curse: Transparency in the Natural Resource Sector and the Extractive Industries Transparency Initiative" (2014) 40 Resources Policy 19.
[120] I Kolstad and A Wiig, 'Is Transparency the Key to Reducing Corruption in Resource-Rich Countries?' (2009), 37 World Development 521.
[121]M Bac, 'Corruption, Connections and Transparency: Does a Better Screen Imply a Better Scene?' (2001), 107 Public Choice 88.

calling transparency a "Swiss Army Knife of Policy"' due to the variety of outcomes possible with transparency.[122] This research agrees with Corrigan that Nigeria's oil and gas industry needs better transparency. This would aid effective enforcement as the agencies are adequately armed with the information they need to act against polluters. The current trend is that these agencies rely on the information received from the IOCs. The researcher disagrees with Bac, Kolstad, and Wiig and avers that transparency is the bedrock of any good government. The author's argument that transparency leads to more corruption is flawed. Two wrongs cannot make a right. Transparency is vital, especially in a country like Nigeria where cabals exist in government and technocrats sweep the street. The long history of environmental degradation in the Niger Delta can be attributed to the lack of transparency in the government concerning the activities of the oil and gas industry.

Per Islam, countries with more information flows have, on average, better governance.[123] This, however, is contingent upon the timeliness of the information disclosure and the breadth of its distribution, i.e., the public's access to such information.[124] The success of transparency also depends on what Lindstedt and Naurin call the "publicity" and "accountability" requirements.[125] The publicity criteria stipulate that for transparency to be effective in decreasing corruption, the information exposed by transparency initiatives "must have a reasonable possibility of reaching and being received by the public." Unfortunately, this criterion cannot be satisfied meaningfully in Nigeria if the oil and gas sector inquiry reports are not made public or only after being approved in a closed-door session where no enforcement agency can scrutinise them. The accountability criteria stipulate that the public must have "some disciplinary mechanism" to modify the conduct of corrupt public officials using published information.[126] This necessitates that the transparency measures include methods that enhance the public's ability to utilise the provided information.

[122] V Haufler, 'Disclosure as Governance: The Extractive Industries Transparency Initiative and Resource Management in the Developing World' (2010) 10 (3) Global Environmental Politics, 55.
[123] R Islam, 'Does more Transparency Go Along with Better Governance? (2006),18 (2) Economics and Politics, 124.
[124] ibid n 122
[125] C Lindstedt and D Naurin,' Transparency is Not Enough: Making Transparency Effective in Reducing Corruption', (2010), 31 International Political Science Review 302.
[126] ibid n 122

Again, Nigeria cannot pass the criteria due to the issue of locus standi examined in Chapter 7 of this research. It is averred by this research that despite the Independent Corrupt Practices and Other Related Offences Act[127] , which prohibits corrupt conduct in both the private and governmental sectors, including accepting gratification, providing, or allowing gratification through an agent, dishonest acquisition of property, deceptive receipt of property, intentional obstruction of an inquiry, and bribery of public authorities, corruption in the oil and gas sector continues unabated.

Eager has an interesting view on punishing offenders of corruption. Per Eager, it is superficially attractive to attempt to deter government corruption by raising the punishment for the wrongdoing.[128] The author argues that, unfortunately, there is ambiguous evidence that the possibility of jail deters white-collar crimes such as corruption.[129] This shows that efforts to intimidate government employees into compliance by highlighting the severity of possible punishments or even how others have been punished are ineffective. Eager argues that punishing a specific individual may temporarily incapacitate him and dissuade others, but as a rule, the fear of punishment is an ineffective approach for influencing behaviour.[130]

Diezani Alison Madueke was the former Minister of Petroleum in Nigeria (2007 – 2008), Minister of Petroleum Resources (2010 -2015), and the first-female OPEC President in 2014. She is alleged to have stolen 20 billion dollars of oil revenue.**[131]** Alison-Madueke was arrested by the UK National Crime Agency as part of a top bribery and money laundering investigation in 2015.[132] She has since remained in the UK pending an investigation of the alleged crimes. Alison is entangled in a web of money laundering, awarding oil contracts and licenses to non-existent companies.[133]

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[127] Laws of the Federation of Nigeria (LFN) 2004.
[128] J M. Lager, 'Overcoming Cultures of Compliance to Reduce Corruption and Achieve Ethics in Government' (2009) 41 McGeorge L Rev 63
[129] ibid n 127
[130] ibid n 127
[131] Sahara Reporters "How Nigeria's Ex-Minister Of Petroleum Madueke Laundered Looted Money, Her Accomplices Revealed" https://saharareporters.com/2015/10/05/how-nigeria%E2%80%99s-ex-minister-petroleum-madueke-laundered-looted-money-her-accomplices >accessed 25th November 2022
[132] ibid n 130
[133] ibid n 130

Buell argued that an individual's assessment of the likelihood of being caught Acts as a more significant deterrence than the severity of the punishment.[134] Therefore, rigorous monitoring and internal controls that greatly enhance the belief of potential violators that they will be discovered are more likely to minimise unethical behaviour than imposing severe but costly punishments. This research agrees with Eager and avers that the synonym of "rigorous monitoring and internal controls" is effective enforcement of laws. Evidence has shown in the Nigeria oil and gas industry that prison time does deter corruption. It is the fear of being caught; corrupt officials go to an imaginable extent to hide their corruption. The monies stolen by the embattled former Minister of Petroleum, Diezani Alison Madueke, exemplifies this fact.

Zimmerman argues that another common approach to reducing corruption is to reduce the authority and discretion a government official has over matters, assuming that reducing what an official can do will also reduce what the official can do corruptly.[135] This research agrees with Zimmerman. Chapter 4 of the research expatiates Zimmerman's position by arguing that the PIA 2021 has, unfortunately, invested enormous authority in the Minister of Petroleum, who can double up as the country's President simultaneously. It is argued by the research that although the PIA 2021 has vested enforcement of environmental laws in the commission and authority, respectively, it has vested these powers in the wrong agencies. The Latin maxim *Nemo judex in causa sua,* which means *you cannot be a judge in your case,* is applicable here. Should the Minister of Petroleum, a signatory and major stakeholder in oil revenue, be the same person who enforces environmental laws? The research answers negatively and therefore refer to this union as "The Unholy Matrimony."

Nwosu argues that despite the broad powers of the defunct Department of Petroleum Resources (DPR) as enshrined in the Petroleum Act 1969 (now repealed) and its supplementary regulations, environmental degradation still occurred without this

[134] S W. Buell, "The Upside of Overbreadth" (2008).83 N.Y.U. L. REV. 1491-1493
[135] J Zimmerman, 'The Effect of Bureaucratization on Corruption, Deviant, and Unethical Behavior in Organizations', (2001)13 J. Managerial Issues 119

agency invoking enforcement actions.[136] Ladan avers that the DPR soft-pedalled its enforcement machinery in the face of gratification received or anticipated.[137] Society, government, and industry may build significant conflicts within natural resource-rich nations. Disclosure of financial records can promote the restoration of confidence. Transparency in the extractive sector will provide the foundation for fiscal responsibility. Significant poverty reduction will result from the improved allocation of monies generated by oil, gas, and mineral exploitation to economically and socially valuable and sustainable initiatives.[138] This will result in enhanced political and social stability. From the outside, investors will see a cleaner and more trustworthy environment to invest their money.

Per Eigen, the impression of corruption has a detrimental impact on direct foreign investment, but indicators of increased transparency have a beneficial impact. EITI may play a significant role in establishing a resource-rich nation's dedication to transparent wealth management, encouraging investors to perceive the country as less hazardous. Although openness is only one part of the package of actions required to create an appealing site for investors, it may have a favourable impact on the due diligence operations of organisations.[139]

1.9.6 Funding Issues.

Hakeem and Joseph tilted their arguments to funding the enforcement agencies to carry out their responsibilities effectively. They argued that environmental enforcement agencies must be financially viable to meet their obligations and perform their functions effectively.[140] The authors argued that environmental enforcement agencies in Nigeria lack the requisite human and technological resources to undertake environmental management due to inadequate funding, which gravely affects

[136] E O Nwosu, "Petroleum Legislation and Enforcement of Environmental Laws and Standards in Nigeria," Nigerian Juridical Review Vol. 7 (1998-1999)., p. 15.
[137] M T Ladan, "Enforcement and Compliance Monitoring of Environmental Law and Regulatory Good Practices in Nigeria" (2016) Research Working Paper Series No. 15 Department Of Public Law, Faculty Of Law, Ahmadu Bello University, Zaria, Kaduna State, Nigeria < Http://Mtladan.Blogspot.Com/ > Accessed 14th May 2019
[138] ibid n 127
[139] P Eigen, 'Fighting Corruption in a Global Economy: Transparency Initiatives in the Oil and Gas Industry' (2007) 29 Houston J Int'l L 327
[140] H Ijaiya, O T Joseph," Rethinking Environmental law Enforcement in Nigeria" (2014) 5 Beijing Law Review, 306-321

effective environmental law enforcement and compliance.[141] When Nigeria's revenue from IOCs is considered, it becomes even more alarming why these agencies have funding issues. In 2021, $986 million in corporate taxes and royalties from oil and gas operators was paid to the Federal Government of Nigeria (SPDC $424 million and SNEPCo $562 million), compared with $900 million in 2020.[142] The question is, where does the money go? Pursuant to section 234 of The PIA 2021, Shell has earmarked $ 56.13 million for host communities in 2023 as its statutory contribution to Host Communities Development Trusts (HCDTs).Furthermore, the 2022 Nigerian budget allocated 52 million (Nigerian Naira) to the Ministry of Environment, whilst ministries like Sports and Youth Development were allocated 193 million (Nigerian Naira).[143] Nigeria is not known as a sports hub compared to countries like the United Kingdom and Spain. Thus, to have such enormous amounts allocated for sports does not give confidence in a government's seriousness about the environment.

Funding issues also result in the lack of modern technology. At present, officers monitoring the environment do not have effective modern equipment such as infrared cameras, Magnetic soap, autonomous robots, ultra-absorbent sponges to clean up oil spills, and fluorometric sensors to detect oil spills and enhance monitoring of environmental problems.[144] Hence, there is no exact data covering oil spillages in the country. This, therefore, calls to question the accuracy of the government's Environmental Impact Assessment (EIA) before a license is awarded to oil and gas operators. Per Liang, in the environmental governance regime, the fundamental mission of administrative agencies charged with implementing environmental regulations is to ensure that "national efforts to reduce environmental risk are based on the best available scientific information".[145] Ladan also opines that the lack of

[141] ibid pg. 311
[142] Shell Briefing notes 2021 < https://www.shell.com.ng/media/nigeria-reports-and-publications-briefing-notes/_jcr_content/par/toptasks.stream/1653314607835/69fc020fd40d0764f3d455c7cf3e3b89855f9512/shell-nigeria-briefing-notes-2021-updated.pdf > accessed 17th November 2022
[143] ibid
[144] S Part et al 'Oil Spill Detection Using Fluorometric Sensors: Laboratory Validation and Implementation to a Ferry Box and a Moored Smart Buoy' (2021) Frontiers in Marine Science https://www.frontiersin.org/articles/10.3389/fmars.2021.778136/full accessed 5 July 2023
[145] J Liang "Regulatory Effectiveness and Social Equity in Environmental Governance: Assessing Goal Conflict, Trade-Off, and Synergy." (2018) 48 (7) American review of public administration 761–776.

funding discussed above may have resulted in the removal of enforcement powers of the apex environmental enforcement agency (NESREA) in the oil and gas sector.

On the other hand, Eghosa opines that removing the oil and gas sector from the regulatory scope of NESREA is to avoid a conflict of interest between NESREA and NOSDRA.[146] In line with Ladan, vesting the powers of environmental enforcement in the oil and gas sector in the defunct DPR was tantamount to making the polluter police itself. [147] This is repeated within the PIA 2021 by investing enforcement powers on the commission and authority.[148]

As McKean (1980) points out, high enforcement costs and imperfect compliance make regulations less effective than desired. Thus, monitoring and enforcement concerns "should influence choices about how to regulate, and in some instances, whether to regulate at all.[149] Gunningham argues that for environmental legislation to 'work,' it must be well designed and efficiently and effectively enforced.[150] Strategies must be developed as to how inspectors should go about intervening in regulated organisations' affairs to ensure compliance and enforcement. Furthermore, failing to enforce implies that the agency and the public cannot get an accurate history of noncompliance and an accurate picture of the facility and its operator in future permit or enforcement actions. Citizens have a right to anticipate that environmental laws will be strictly enforced, and that the government will do so fairly and equitably.[151]

1.10 Summary of Research Chapters

The thesis structure tells a story that unfolds sequentially through every Chapter and ends with the conclusion and practical utility of the research. A closer look at the title of this research would reveal these areas:

[146] E O Ekhator," Environmental protection in the oil and gas industry in Nigeria: The Roles of Governmental Agencies" (2013) 196 International Energy Law Review 4.
[147] ibid n 144
[148] Part 3 and Part 4 of The Petroleum Industry Act 2021
[149] M A Cohen, 'Monitoring and Enforcement of Environmental Policy' (August 1998). Available at SSRN: https://ssrn.com/abstract=120108 or http://dx.doi.org/10.2139/ssrn.120108 date of the researcher's access please
[150] N Gunningham, 'Compliance, Enforcement, and Regulatory Excellence' (2017). RegNet Research Paper No. 124, Available at SSRN: https://ssrn.com/abstract=2929568 or http://dx.doi.org/10.2139/ssrn.2929568 >accessed 5 July 2023
[151] ibid n 100

1) The Oil and Gas Industry in Nigeria
2) Enforcement of environmental Laws in 1 above
3) The issues inherent with two above.

This research is structured to discuss these areas in eight thematic chapters.

Chapter One: Research Preliminaries

This Chapter introduces the background of the research and proceeds to ask two questions that it seeks to answer via its aims and objectives. The methodology and method of the research are critically discussed. Chapter 1 gives the plan of the research and how the execution of this plan would be carried out.

Chapter Two: Meet Nigeria: The Giant of Africa?

This Chapter examines the country Nigeria and the oil and gas industry in detail. This is necessary for the reader to understand the significance of the industry to this research.

Chapter Three: Environmental Pollution in Nigeria: Causes and Effects

This chapter shows the environmental degradation inherent in the activities of the oil and gas industry in Nigeria with specific reference to the Niger Delta region. Environmental pollution in two forms, oil spills and gas flaring, are critically examined here. The menace of pipeline vandalization by the locals is also examined to create a balance in the argument. The discussion about environmental degradation is critical to this research. The Chapter closes by examining the nexus between enforcing environmental laws and sustainable development, climate change, and the Paris Agreement in Nigeria.

Chapter Four: The Legal Regime of Environmental Protection in Nigeria and Comparative Jurisdictions

The chapter examines the legal framework for environmental protection in the oil and gas sector in Nigeria. The enforcement agencies tasked with the responsibilities of enforcing environmental laws in the Nigeria oil and gas industry are also examined in this chapter.

Chapter Five: The Environmental Enforcement Regime of The Comparative Jurisdictions

This Chapter examines the enforcement regimes of environmental laws in the United States of America and Scotland. The enforcement agencies and the *modus operandi* of these countries are examined in this chapter. This chapter also examines the increased penalties for environmental offences in Malysia.

Chapter Six: Enforcement of Environmental Laws: Principles and Practice

This Chapter examines the principles and practices of effective enforcement of environmental laws and agency enforcement. The Onion ring of enforcement of environmental laws is introduced and critically analyzed as it pertains to the peculiar situation of Nigeria. The techniques and prerequisites for effective enforcement are also examined in this Chapter. Furthermore, this Chapter assesses the role of courts in enhancing the effective enforcement of environmental laws.

Chapter Seven : Quo Vadis Nigeria ?

Chapter 7 answers the question "Quo Vadis Nigeria?". Quo Vadis is a Latin phrase that means "Where are you marching?". It is also commonly translated as "Where are you going?" or, poetically, "Whither goest thou? In this Chapter, the researcher asks where Nigeria is going with enforcing environmental laws in the oil and gas industry. This question is vital because the findings of this research revealed several crucial issues that have hindered the effective enforcement of environmental laws in this industry. The Chapter answers the first research question: Is the enforcement regime of environmental laws in the Nigerian Oil and gas Industry effective?

Chapter Eight: Conclusions and Practical Utility

This Chapter answers the second question of this research: What are practical solutions to make the regime effective? Chapter Seven draws sound principles and practices from Chapter 6 and the selected jurisdictions examined in Chapter 5. The Chapter recommends practical ways for Nigeria to steer towards an effective enforcement regime for environmental laws in the oil and gas industry.

CHAPTER TWO: MEET NIGERIA: THE GIANT OF AFRICA?

2.1 Introduction

This chapter introduces the country, Nigeria, the advent of oil in Nigeria, its significance to the economy, and the oil and gas industry. It further examines oil and gas ownership in Nigeria and its impact on enforcing environmental laws in Nigeria. Essentially, the chapter serves as an opening statement to the research questions sought to be answered by the researcher. In this regard, it is pertinent to comprehensively understand the background of oil in Nigeria and why this research chooses this natural resource to examine in this thesis. Thus, enabling the reader's understanding of the importance of enforcement of environmental laws in the Nigerian oil and gas industry.

> *Nigeria is a country with an abundance of oil and gas.[152] Oil is one essential fruit from the environment. It has been saluted as a critical part of our modern world.[153] Per Yergin, our evolution has been altered by the modern and mesmerising alchemy of petroleum.[154] Oil is a complex, naturally occurring liquid mixture containing mainly hydrocarbons but also containing some compounds of oxygen, nitrogen, and sulphur. It is often referred to as "black gold." Like oil, gas, also known as "Natural Gas", is a fossil energy source formed deep beneath the earth's surface.[155] Natural gas contains many different compounds. The most significant component of natural gas is methane, a compound with one carbon atom and four hydrogen atoms (CH4). Gas can be found in the same reservoir as oil, and because it is lighter than oil, gas is located on top of oil during the drilling process.[156] Besides oil and gas, Nigeria's other natural resources include natural gas, tin, iron ore, coal, limestone, niobium, lead, zinc and arable land.[157]*

The importance has necessitated an industry to be created to manage all matters relating to this vital natural resource. This is expected. One of the aims of this

[152] EIA, 'Nigeria' (2023) < https://www.eia.gov/international/analysis/country/NGA >accessed 8 July 2023
[153] D Yergin, The Prize: The Epic Quest for Oil Money and Power (New York: Simon & Schuster, 1991)788.
[154] ibid n 155
[155] EIA "Natural Gas Explained" < https://www.eia.gov/energyexplained/natural-gas/ >accessed 13 October 2021
[156] ibid n 158
[157] Organization of the Petroleum Exporting Countries ' Nigeria fActs and Figures' (2022) < https://www.opec.org/opec_web/en/about_us/167.htm >accessed 7 July 2023

research, as aforementioned in Chapter 1(5), is to show the environmental degradation inherent in the activities of the Nigerian oil and gas Industry. To do this, it is pertinent to examine this industry critically. What does the Nigerian Oil and gas Industry entail? What is the relationship between environmental degradation and this industry? Furthermore, this research focusing on enforcing environmental laws in the oil and gas industry consolidates the need for an in-depth understanding of this industry. This would aid understanding of Chapters 4 and 6, where the legal regime of the industry and the challenges of enforcement agencies would be discussed, respectively.

The chapter examines the oil and gas industry as two separate entities to give a very informed description of these industries. Although the industry is usually jointly called the 'oil and gas industry', they have differences that the research deems essential to point out. This chapter proceeds to discuss the streams of the oil and gas industry. This is crucial because the PIA 2021 made regulatory changes based on these streams. Since every operator in the industry needs a license and contract to work in this industry, 3.5 and 3.6 analyse these aspects. The chapter closes by showing the inherent pollution to Nigeria's environment from the activities of this industry, which has impacted health and well-being and is in contravention of the principles of sustainable development described by the Brundtland report. It should be noted that the research refers to both indigenous and international oil and gas operators as the "Nigerian Oil and Gas Industry".

2.2 Nigeria

Nigeria is a country in West Africa covering an area of around 924,000 square kilometres.[158] It is commonly referred to as the giant of Africa due to the abundance of oil, gas and population: the largest national population in Africa.[159] This appellation is one that the black nation has worn with pride. The nickname began in the 21st century and has gained much more popularity.[160] The United Nations project that the

[158] About Nigeria > https://nigeria.gov.ng/about-nigeria/ >accessed 7 December 2022
[159] E. Ihaza "Nigeria — The Giant of Africa? The Controversial Joke That Needs to Stop" (2020) https://eloghosaihaza.medium.com/independence-day-nigeria-dropped-the-giant-of-africa-title-on-nigeria-independence-day-21ae23b8e2e0 >accessed 26th August 2021
[160] ibid n 161

overall population of Nigeria will reach about 401.31 million by the end of the year 2050.[161] By 2100, if current figures continue, the people of Nigeria will be over 728 million.[162] With those numbers, Nigeria will become the third most populated country in the world.[163] A significant population is considered a source of labour, strength/force/advantage, and an existing and potentially vast market. Theoretically, it can be a hub of economic and environmental advancement.

Unfortunately, Nigeria's population seems to be one of her woes. Population growth must correspond with economic growth and development. When this is not the case, citizens' lives are affected negatively. Thus, the description "Giant of Africa" has resulted in controversies due to the economic decline, environmental degradation, and corruption, to mention but a few, that have continuously plagued the country. Mabry calls the country "Africa's ailing giant". Per Ihaza, the term "Giant of Africa" is a controversial joke that needs to stop.[164] Nigeria is also rich in culture and heritage and has managed to preserve these cultures over the years.[165] Nigeria has 36 states and its federal capital territory, Abuja.[166] In Nigeria, Hydrocarbon is currently extracted from 323 developed fields onshore and offshore terrains. These fields, which contain Crude Oil, Condensates or Natural Gas reservoirs, are connected to 265 production processing stations, after which the stabilized oil and gas are exported via 31 export terminals.[167]

2.3 Oil and Gas in Nigeria: The Beginning

The search for oil in Nigeria began in 1908, when a German Company, Nigerian Bitumen Corporation, explored oil in Araromi and Okitipupa.[168] These areas are now known as the present Ondo State in western Nigeria.[169] Despite the fourteen wells

[161] World Population Review< https://worldpopulationreview.com/countries/nigeria-population > accessed 7 July 2023
[162] ibid n 161
[163] ibid n 161
[164] ibid n 161
[165] ibid n 160
[166] ibid n 160
[167] Nigerian Upstream Petroleum Regulatory Commission 'National Liquid Hydrocarbon Production Report' (2023) < https://www.nuprc.gov.ng/oil-production-status-report/ > accessed 7 July 2023
[168] C.Udosen Et Al "Fifty Years of Oil Exploration In Nigeria: The Paradox Of Plenty" (2009) 8(2) Global Journal Of Social Sciences. Pg. 37-38
[169] ibid n 168

drilled, the Germans were unsuccessful in their exploration mission in Nigeria.[170] The emergence of First World War 1 further hindered its activities. [171] In 1937 and 1938, Shell D'Arcy Petroleum Development Company received an oil exploration license (OEL) covering 357,000 square miles. Like the Germans, Shell was unsuccessful. The Second World War also hampered the exploration activities of the company.[172] It has not been recorded that a Local Nigerian oil company had tried to explore oil at this juncture, mainly because the country's entrepreneurs were not technically or financially sophisticated enough to explore on their own. With two unsuccessful attempts, the discovery of oil in Nigeria seemed like a lost cause. A prominent geographer, Dudley Stamp, uttered his doubt by asserting that Africa had no oil.[173]

Oil was finally discovered in Nigeria in 1956 at Oloibiri in the Niger Delta region of the country after half a century of Exploration.[174] The discovery was made by Shell-BP, the sole concessionaire at the time. Nigeria joined the ranks of oil producers in 1958 when its first oil field came on stream, producing 5,100 bpd.[175] In 1970, the end of the Biafran War coincided with the rise in the world oil price, and Nigeria could reap instant riches from its oil production.[176] Nigeria joined the Organization of Petroleum Exporting Countries (OPEC) in 1971. It established the Nigerian National Petroleum Company (NNPC) in 1977, a state-owned and controlled company that is a major player in the upstream and downstream sectors.[177] Following the discovery of crude oil by Shell D'Arcy Petroleum, pioneer oil and gas production began in 1958 from the company's oil field in Oloibiri in the area now

[170] ibid n 169
[171] O. Olopade; 'Nigeria Liquified Natural Gas - A Goldmine Of The Future" (2003) 4 OGEL < https://www.ogel.org/article.asp?key=595 >accessed 7 July 2023
[172] ibid n 173
[173] D Stamp "Africa: A Study in Tropical Development." (1953) 47 American Political Science Review 904
[174]ibid n 173
[175] L Momah ' A Brief History of Nigeria's Oil and Gas' (2023) < https://armstrongtoolsng.com/blogs/a-brief-history-of-nigeria-s-oil-and-gas#:~:text=Nigeria%20joined%20the%20ranks%20of,extended%20to%20other%20foreign%20companies. >accessed 7 July 2023
[176] ibid n 175
[177] Isochukwu "Brief History of Oil and gas in Nigeria" (2021) < https://isochukwu.com/2018/07/09/brief-history-of-oil-and-gas-in-nigeria /> accessed 28 October 2021.

known collectively as the Niger Delta.[178] By the late sixties and early seventies, Nigeria had attained a production level of over 2 million barrels of crude oil daily.[179] Current development strategies aim to increase production to 4 million barrels per day by 2030.[180]

2.4 The Relevance of Oil and Gas to The Nigerian Economy

It is elementary that a country with such an abundance of oil and gas described above would rely heavily on it for the economic progress of the country. This is the case in Nigeria. Whilst oil is not the only natural resource in Nigeria, it is the mother of them all. Nigeria is one of the world-leading hydrocarbon exporters, with a daily average crude oil production of approximately 1.2 million barrels per day (BPD) recorded in May 2023.[181] Nigeria held an estimated 206.5 trillion cubic feet (Tcf) of proven natural gas reserves at the beginning of 2023.[182] The earnings from crude oil as of March 2023 reached 1.8 trillion Naira.[183] Figures for April, June and July have not been recorded when writing this research. Before the COVID-19 pandemic, Nigeria's oil sector contributed roughly 9% of the country's gross domestic product (GDP).[184] Between October and December 2020, the oil industry contributed 5.9 per cent of total real GDP, a fall of around three percentage points from the preceding quarter.[185] In the third quarter of 2021, the oil sector contributed 7.5 per cent to the country's GDP.[186] However, a decreased demand due to the impact of the COVID-19 epidemic

[178] ibid n 169
[179] ibid n 178
[180] A E Akinlo "How Important is Oil in Nigeria's Economic Growth? (2012) 5(4) Journal of Sustainable Development. Pg. 165
[181] Nigerian Upstream Petroleum Regulatory Commission ' Crude Oil and Condensate Production 2023' (2023) < https://www.nuprc.gov.ng/wp-content/uploads/2023/06/JAN-TO-DEC-PRODUCTION-004.pdf >accessed 7 July 2023
[182] EIA ' Nigeria' (2023) < https://www.eia.gov/international/content/analysis/countries_long/Nigeria/ >accessed 7 July 2023
[183] C Okafor 'Nigeria's oil sector increased its revenue for March despite challenges' (2023) Business Insider Africa < https://africa.businessinsider.com/local/markets/nigerias-oil-sector-increased-its-revenue-for-march-despite-challenges/8t3xfwr#:~:text=Nigeria%27s%20crude%20oil%20export%20revenues,meet%20its%20OPEC%20output%20quotas. >accessed 7 July 2023
[184] S Nawaz, 'Making History: Coronavirus and Negative Oil Prices' (2020) Global Risk Insights <https://globalriskinsights.com/2020/05/making-history-coronavirus-and-negative-oil-prices/> accessed 16 May 2021
[185] ibid n 186
[186] D D Sasu, "Nigeria: Contribution Oil Sector to GDP 2018-2021" (StatistaNovember 29, 2022) < https://www.statista.com/statistics/1165865/contribution-of-oil-sector-to-gdp-in-nigeria/ > accessed 19 December 2022

saw a general reduction in oil output and exports.[187]

The enormous earnings from oil in Nigeria, without a doubt, have generated net wealth and, therefore, the possibility for higher consumption and investment. Nevertheless, the considerable profits have strained macroeconomic stability and rendered the economy extremely dependent on oil.[188] Since the discovery and production of oil in Nigeria in 1956-1958, the industry has played a significant and leading role in the Nigerian economy.[189] Per Awoyemi, Nigeria is an "oil economy".[190] Although there have been attempts by the government to diversify the economy, Nigerians, per Yergin, remain the "Unchanged Hydrocarbon Man".[191]

2.5 Definition of Ownership

It is critical that a clear definition of the term "owner" is proffered to thoroughly understand the concept of ownership. In *Turner v Cross,*[192] the term "owner" is defined as *"He who has dominion of a thing, real or personal, corporeal or incorporeal, which he has a right to do with as he pleases, even to spoil or destroy it as far as the law permits, unless he is prevented by some agreement or covenant which restrains his right,". When* the word owner is used alone, it connotes absolute ownership.

Therefore, "Ownership" can be described as "The lawful right that a legal system provides to the owner of a property, real or personal, corporeal or incorporeal, to enable them to exert the greatest degree of formal control over a limited resource".[193] This term comes from the civil law concept of *dominium*, which refers to the highest right in the property to "use and dispose of a thing in an absolute way," as mentioned in early Roman literature.[194] The idea of dominium is defined as the "ultimate right,

[187] ibid n 186
[188] N E Ojukwu-Ogba, 'Legislating Development in Nigeria's Oil Producing Region: the NDDC Act Seven Years On' (2009) 17 African Journal of International and Comparative Law 136; International Monetary Fund, 'Nigeria' (2015) IMF Country Report No 15/84 28-30 <https://www.imf.org/external/pubs/ft/scr/2015/cr1584.pdf> accessed 04/12/2019.
[189] O Okoi, 'The Paradox Of Nigeria's Oil Dependency' (Africa Portal, 2019) <https://www.africaportal.org/features/paradox-nigerias-oil-dependency/> accessed 28 October 2021.
[190] O Awoyemi, The Impact of Oil Pollution on the Environment of the Oil Producing Communities of Nigeria: A Critical Analysis of the Statutory and Regulatory Provisions in Nigeria (MO Awoyemi & Co Publisher 2014) 3.
[191] ibid n 2
[192] Turner v. Cross, 83 Texas 218
[193] J H Laycraft and Ivan L Head, 'Theories of Ownership of Oil and Gas' (1953) 31 Can B Rev 382
[194] ibid n 193

that which has no justification."[195] Conversely, the concept of ownership, as defined by civil law, has been acknowledged in common law to some extent. Per Blackstone, ownership may be defined as "one individual's exclusive and dictatorial dominium over a thing."[196] However, unlike the common law right of possession, it is rarely an absolute right. Per Mattei, nations have always been cautious to stress the scope of the owner's capabilities, constantly utilising the concept of reasonableness to limit him or her to the benefit of his or her neighbours. It's no wonder that This describes ownership and property as a set of rights and responsibilities a person has over something.[197]

McCarty argued that the central puzzle of ownership is the traditional and commonsense view that ownership is a relation between a person and a thing. In contrast, the modern and sophisticated argument is that ownership is a bundle of rights. These views coexist without difficulty when the item owned is a concrete material object.[198] Per Bergström, however, defining the terms "Ownership" and "property" may be difficult as the meaning of these terms varies from one instance to another. The author gave a vivid example to support his argument.[199] If X buys a car, he owns it and has exclusive rights to prevent others from using it. However, if X buys a piece of land, he may not have the sole right to stop others from using the land in specific ways. Can it then be said that X owns the Land?

From the above submissions, it is trite to say that ownership is a complex juristic concept. Using the examples of Bergström, this research avers that the inevitable fact about "ownership" is that there is an indefinite relationship both in duration and disposition between a person and the object that forms the subject matter of the ownership.[200] It is inconsequential how the owners use it so long as he has an interest that outlasts the interests of others when the object is presented. The research aligns with the definition of Wigwe. Per Wigwe, ownership is a bundle of rights and privileges

[195] ibid n 188
[196] ibid n 182
[197] L. T McCarty "Ownership: A Case Study in the Representation of Legal Concepts' (2014) Artificial Intelligence and Law pg.2
[198] ibid n 197
[199]J C. Bergstrom et al An Economic Approach to Natural Resource and Environmental Policy (4th edition Edward Elgar Publishing 2016)
[200] ibid n 199

exclusive in character and indefinite in point of time.[201] The Learned Justice Niki Tobi JSC (as he then was) in the case of *Attorney General of Lagos State v. Attorney General of the Federation & Anor* [202] reiterated Wigwe's concept of exclusivity.

The learned justice held that.

> *"Land title is the highest form of land ownership in our tenure system. Ownership is a complete and total right over a property. The owner of the property is not subject to the right of another person as long as he remains the allodial owner. Nobody can say anything so far as the property inheres in him. This is because the property begins with him and ends with him."*

Some authors like Smith [203] have criticized the position of the learned justice. Per Smith, the position of the learned Justice would face difficulty in being an acceptable concept of ownership rights in the 21st century.

2.6 Who owns oil in Nigeria?

The question of who owns oil and gas in Nigeria is inarguably a very heated and emotional debate in the Nigerian oil and gas industry. It is also the basis of conflicts in the oil-producing states and regions of the country.[204] With the federal government, state government and the people claiming ownership of oil and gas in Nigeria thus creating an arena for fiercely contested battles, it is imperative for this research to investigate this topic. The Politics of oil initially had to do with land but has now become an issue of who owns oil from the land. The researcher will examine the ownership of oil and gas under the lens of the Federal Government, the state government, and the People. The people here refer to the inhabitants of the oil-producing communities commonly known as host communities. It is the argument of the research that the conflict plays a key role in the enforcement of environmental law in the Nigerian oil and gas industry. With the three entities clamoring for the ownership and control of these resources mainly due to the benefit of oil and gas

[201] ibid n 199
[202] (2003) 12 NWLR (833)1
[203] I.O Smith. 'Power to make planning laws in a federation: The Nigerian Experience' (2004) 24 JPP L P.15
[204] P Oladimeji, 'Ownership of Oil and Gas in Nigeria' (2019) < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3636423 > accessed 7 July 2023

sales, enforcement of environmental laws has been neglected despite the environmental degradation arising from pollution of oil and gas activities in the Niger Delta region. Environmental degradation is examined in chapter three of this research. Pursuant to this , this research refers to these contests as "The Conflicted Triangle". This is illustrated in the diagram below.

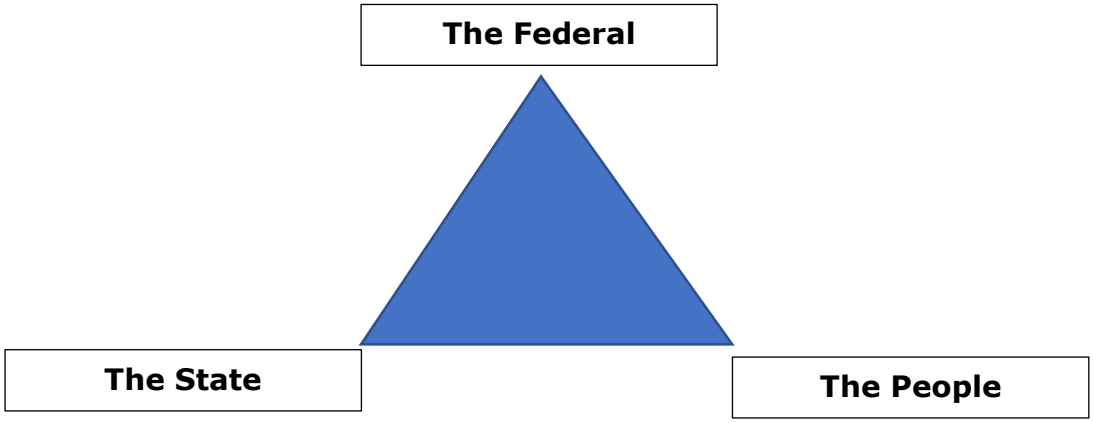

Fig 2: The Conflicted Triangle[205]

Nigeria is a federal republic divided into three levels of government: federal, state, and local. However, the country operates a federal system of government. [206] Nigeria's version of federalism has been the subject of several criticisms, with the consensus being that the system is tilted in favour of the central or federal government. Generally, federalism connotes the existence of two levels of government, each constitutionally or jurisdictionally empowered to make decisions independent of each other within the legislative sphere assigned to it.[207]

A federal government is a system of governance in which sovereignty is shared between the federal and state governments.[208] In this system of government, the central and regional administrations are coordinated because neither level of government is legally subservient to the other.[209] It has been argued that in this system of governance, each level of authority should be restricted to its domain and

[205] Figure by the researcher, Okwanuzor Akerele
[206] Section 1 of the 1999 Constitution of the Federal Republic of Nigeria (as Amended)
[207] K.C. Wheare, Federal Government, (4th Edition, London Oxford University Press 1967).
[208] ibid n 207
[209] ibid n 207

be independent of the others within that sphere.[210] As a result, this political structure might be compared to a Unitary Authority, in which the constituent entities are legally subject to the central government. Whether Nigeria operates true federalism has occupied the pages of books, articles and journals, with authors attempting to analyze the issue and answer itching ears.

Eremie argues that Nigeria displays all the fundamental features of federalism, which is evolving, and evolution is what federal systems are known for. The author argues further that federalism is not a state but a process, a never-ending process that oscillates between Unitarianism and loose confederation.[211] Babalola disagrees with Eremie and argues that "Nigeria is a federation operating a federal constitution, but in practice, the country works as a unitary state, a fallout of the centralizing tendencies that have come to characterize the governmental system.[212] However, there seems to be a consensus, especially in the southern part of the country, that the operation of federalism in Nigeria does not conform to the fundamental principles of federalism,"[213] Wheare avers that "a country may have a federal constitution but in practice may work that constitution in such a way that its government is not federal'.[214]

Per Erk, 'the presence of a federation should not blind us to the absence of federalism'. In other words, there may be a federation without federalism.[215] Nwaeze lends his voice to the debate when he submits that the best way to define Nigeria's federal structure is unitary, imbalanced, and unsustainable. He argues that the centre (the Federal government) has disproportionate authority compared to the other two levels of government (state and local); thus, true federalism in Nigeria is farfetched.[216] Per Eliagwu, Nigeria's federal system has been over-centralised to the

[210] ibid n 209
[211] V T Eremie 'How True is Nigeria's Federalism: A Theoretical Perspective '(2014) 3(4) Public Policy and Administration Research pg. 82
[212] D Babalola ' Nigeria: A federation in search of Federalism' (2017) 50 Shades of Federalism < http://50shadesoffederalism.com/case-studies/nigeria-federation-search-federalism/ >accessed 11 December 2022
[213] ibid n 212
[214] K Wheare, Federal Government, (4th ed,London: Oxford University Press 1963) 20
[215] J Erk, 'Austria: A Federation without Federalism', (2004), 34 (1,) Publius, The Journal of Federalism, 1-20.
[216] N C Nwaeze 'True' Federalism in a well-structured Nigeria: The Panacea to her Economic Development Challenges' (2017) 6(2) Greener Journal of Economics and Accountancy 1-19

extent that it reflects more of a unitary arrangement than a federal one.[217] Very interesting is the submission of Ogbe et al., who argues that "the Federal structure of Nigeria is believed to be "a bad marriage that all dislike but dare not leave, and that there are possibilities that could disrupt the precarious equilibrium in Abuja"[218] Dent avers that in its structural and political context, Nigeria's federalism may be likened to a biological cell capable of dividing and reproducing itself.[219]

According to the author, Nigeria "has continued to witness continuous splitting of units. In 1954, it began as a federation of three regions, but by 1964, it became four with the creation of the mid-western region from the then-western region. By 1967, the federal structure became subdivided into 12 states, while by 1976, it was further split into 19 states. By 1989, it became a federation of 21 states, increasing to 30 by 1991 and by 1996, it had subdivided to become a federation of 36 states. In addition, creating more states has always accompanied the creation of additional Local Governments areas. Thus, from 301 in 1976, the country currently boasts about 774 Local Government Area Councils. The above description implies that Nigeria's federal structure is predicated on a three-tier administrative structure – the federal, state and local governments.[220]

While it is not a misnomer to have, in a federation, more than two tiers of government to cope with the extent of diversities, the continued structural division, however, have not produced a satisfactory outcome for the component units."[221]It is argued that the struggle for access to national resources lies at the heart of the Nigerian agitations for true federalism. Oil and gas profit and distribution have affected the operation of Nigeria's federal system, thus denying the country the opportunity to achieve true federalism. Each ethnic group or geopolitical region in Nigeria's history of income allocation has sought to maximise its share of national resources.[222]

One reason for the discordant revenue allocation system is Nigeria's state

[217] J I Elaigwu, The Politics of Federalism in Nigeria Jos, (Nigeria: Ayaotu Publishers, 2005,)
[218] O Ogbe et al The Need for Reform of Fiscal Federalism in Nigeria, Benue State, (2011) 1(1) National Journal of Human Resource Development
[219] M Dent, Ethnicity and Territorial Politics in Nigeria (New York: Longman. 1995)Pp 128 – 153
[220] ibid n 219
[221] ibid n 219
[222] ibid n 219

governments lack viable revenue streams.[223] This has resulted in an economic gap that creates unequal development among the states and has triggered dangerous rivalries between the central government and the thirty-six state governments over revenue from the country's oil and other natural resources.[224] It is submitted by the research that to avoid the system's over-centralisation, the country's fiscal federalism should focus on income creation rather than revenue distribution since this will ensure the state's economic viability. This can be done by decentralising financial resources, thus allowing states to have more control over their resources and be less reliant on the centre (federal government). This would reduce conflicts that arise from the profit and distribution of oil and gas. Conflict emanating from ownership of oil and gas in Nigeria is one primary source of local sabotage of oil pipelines which pollutes the environment. Local sabotage, as will be discussed in chapter three, has a ripple effect on the enforcement of environmental laws in the oil and gas industry in Nigeria.[225]

2.6.1 The Federal Government

Ownership of Natural Resources often lies with the state and considering that their development is important for the economies of the countries concerned, the state plays a major role as a regulator or an operator.[226] Nigerian practices the domain/state ownership theory as discussed above. The 1999 Constitution of the Federal Republic of Nigeria, as amended herein and referred to as the '1999 Constitution', declares the nation as a Federation.[227] The section provides thus:

> *"Nigeria is one indivisible and indissoluble sovereign state to be known by the name of the Federal Republic of Nigeria. Nigeria shall be a Federation of States and a Federal Capital Territory."*

[223] L Aladeitan, 'Ownership and Control of Oil, Gas, and Mineral Resources in Nigeria: Between Legality and Legitimacy' (2013)38 Thurgood Marshall Law Review 159
[224] C Akujuru 'True Federalism and Sustainable Development in Nigeria (A Discourse on National Question and/or National Maladies)' (2015) < http://dx.doi.org/10.2139/ssrn.2601963 >accessed 22 December 2022
[225] D Babalola, 'Nigeria: A Federation in Search of Federalism'. 50 Shades of Federalism (2017) < http://50shadesoffederalism.com/case-studies/nigeria-federation-search-federalism/ > accessed 8 July 2023
[226]P D. Cameron, International Energy Law: The Pursuit of Stability. (Oxford University Press, Oxford 2010)
[227]Sec 2(1) and (2) of the 1999 Constitution of the Federal Republic of Nigeria as amended.

The researcher aligns with the Constitution and refers to Nigeria as a federation, hereinafter referred to as the "Federal government". By virtue of the Nigerian Constitution,[228] all minerals, mineral oils and natural gas are owned by the federal government. The section provides thus:

> *'Notwithstanding the foregoing provisions of this section, the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the exclusive Economic Zone of Nigeria shall vest in the government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly.'*[229]

Furthermore, the federal government's list or schedule of exclusive authorities, as defined by the Constitution, includes all topics connected to regulating and controlling the oil and gas industry. The topics covered include export duties, mines and minerals (including oil fields, oil mining, geographical surveys, and natural gas), corporate entities' formation and regulation, taxation of profits, capital gains, and incomes.[230] The PIA 2021 followed suit when it provided thus: 'The property and ownership of petroleum within Nigeria and its territorial waters, vesting of petroleum continental shelf and exclusive economic zone are vested in the Government of the Federation of Nigeria.' [231]

Nigeria was a British colony when it was discovered. Thus, the country coined her laws after her colonial masters. Nigeria, therefore, inherited a colonial legacy where ownership of mineral resources was vested in the Crown of England.[232] Nigeria inherited this concept of state ownership of minerals at independence in 1960, which became entrenched in the 1963 Republican Constitution. Consequently, Nigeria gained independence, and the new sovereign nation adopted and institutionalized this vestige of colonial experience in the laws of the land. Per Ajomo, this has greatly

[228] Section 44(3) (1) of the 1999 Constitution of the Federal Republic of Nigeria as amended.
[229] ibid
[230] Part 1, Second Schedule of the 1999 constitution of the Federal Republic of Nigeria (As Amended).
[231] Section 1 of the Petroleum Industry Act 2021
[232] Udokenam at al, "Land Ownership in Nigeria: Historical Development, Current Issues and Future Expectations" (2014) 4(21) Journal of Environment and Earth Science, pg.183-184

impacted the country's legal system and concept of property rights.[233]

2.6.2 The State Government

Nigeria, by virtue of its Federation, has 36 states provided for in Section 2(2) and Section 3(1) of the 1999 constitution.[234] Section 1 of the Land Use Act vests all land comprised in the territory of each state in the Federation of Nigeria in the Governor of that state, and such land shall be held in trust and administered for the use and common benefit of all Nigerians per the provisions of the Act.[235] The Act regulates land ownership, alienation, acquisition, administration and management within the Federal Republic of Nigeria. Therefore, if the land belongs to the state, does the oil found in the ground not also belong to the state? This is the argument of the state governments concerning ownership. The state's view on ownership lies within the fact that oil is found on Land. Pursuant to the Latin maxim, "*Quic quid plantatur solo solo cedit" means 'He who has the land, owns everything on the land*".[236] Thus, the state should own all oil therein since oil is found on Land or in, under or upon the territorial waters and the Exclusive Economic Zone (EEZ). The issue with the argument is that a legislative provision such as the Land Use Act cannot override the constitutional provision of the Country.

The importance of Nigeria's land ownership and tenure system and its impact on natural resource ownership renders any discussion of natural resource ownership incomplete without an understanding of the country's land ownership and tenure system. Before implementing the Land Use Act, Nigeria's land ownership and tenure system had evolved through three separate stages: pre-colonial, colonial, and post-colonial, resulting in a dual system of land ownership in the country prior to the Land Use Act's implementation.[237] The communal system of land ownership pre-Land Use

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[233] M. A. Ajomo, 'Ownership of Mineral Oils and the Land Use Act' (1982). Nigerian Current Law Rev. Pg.335

[234] Part 1, Second Schedule of the 1999 constitution of the Federal Republic of Nigeria (As Amended).

[235] Section 1 of the Land Use Act 1978

[236] Francis vs Ibitoye (1936) 13 Nigerian Law Report 11

[237] The Nigerian Maritime Zones Act, 2021. Nigeria's Exclusive Economic Zone (EEZ) is an area extending from the external limits of the territorial waters of Nigeria up to two hundred nautical miles from the baselines from which the breadth of the territorial waters of Nigeria is measured. Nigeria's EEZ act is fraught with inconsistencies with UNCLOS. The bill for an act to Repeal the Exclusive Economic Zone Act E7 Laws of the Federal Republic of Nigeria (LFN) 2010 And the Territorial Waters Act Cap. T5 LFN 2010 and to enact The Maritime Zones Act was passed on the 16th of November 2021

Act held sway in the Southern States, which included the former Western Region, Eastern Region, Midwestern Region, and Lagos, and it was from this system that private land ownership evolved through grants, sales, and partition.[238]

The Land Use Act was particularly enshrined in the 1979 Constitution and preserved in the 1999 Constitution, as modified, making repeal difficult and time-consuming. By removing communities' and individuals' ownership rights to property and converting their interests into occupancy rights solely, the Land Use Act gave the country a whole new dimension regarding land ownership.[239] As a result, land ownership and tenure in Nigeria is qualified, with the state governors holding absolute titles. However, even though the title to the Governor's land in the state has been transferred when an individual buys a piece of land, he cannot exercise rights over lands owned by the federal government and its agencies.[240] This comprises mineral-bearing areas as well as property used for related reasons. As a result, none of the Federation's constituent states have direct control over resource exploration and extraction.

However, the argument above has been overruled by the Supreme Court in the case of *Attorney-General of the Federation v. Attorney-General of Abia State & 35 ors*[241] where following the protests by the states within the Federation of Nigeria in respect of what has become known as 'resource control', the Federal Government of Nigeria in 2001 filed a suit at the Supreme Court against the 36 states of the Federation in which it sought an interpretation of the 'seaward boundary' of the coastal states within the Federation to calculate the amount of revenue accruing to the Federation.

In another move, the eight (8) coastal states of Delta, Akwa-Ibom, Cross-River, Ondo, Rivers, Lagos, Bayelsa and Ogun further contended that their territories extend to the continental shelf and exclusive economic zone and are, therefore, entitled to not less than 13 per cent of the onshore and offshore natural resources in their lands and territorial waters.[242] The Federal Government maintained that the natural

[238] ibid n 237
[239] ibid n 237
[240] Section. 49, Land Use Act, Cap L5 L.F.N. 2004.
[241] (2003) 4 Nigerian Weekly Law Report (PT.809) 124
[242] ibid n 237

resources located within the continental shelf of Nigeria are not derivable from the state of the Federation. The Supreme Court affirmed the Federal Government's ownership and control of all natural resources within its territory and confirmed that the coastal states have no title to offshore resources.[243] This landmark ruling is to the effect that conditions have been excluded from all matters about the ownership of oil and gas in Nigeria.

The fight for states to own the resources embedded within them persists, with many calling for the total restructuring of Nigeria. Per Omorogbe and Oniemola, there is a clear shift from individual ownership of mineral rights to state ownership or control of natural or mineral resources across many nations.[244] This was especially true in emerging countries where IOCs are viewed as agents of doom and uneven economic development partners. This concept was common in the 1970s and early 1980s, and it may have been inspired by the notion that developing nations desired a change in international law through the New Economic Order.[245] Ekhator, however, criticised the position advocated by Omorogbe and Oniemola because ownership and control of natural resources under the resolution on permanent sovereignty over natural resources is a provision that guarantees a nation's right to exclusive control over its natural resources against another state and not one that addresses intra-national ownership and control interests.[246]

2.6.3 The People

The third angle of the conflicted triangle is 'The People". The people here are referred to as the host communities. A host community can be defined in many ways. This phrase can take on various forms depending on the project's technology, location, and occasionally the benefits provided. Others prefer not to use the phrase, while others describe it as communities of interest, or the kind of benefits offered. "A host community can be referred to as a group of people who share a common identity, such as geographical location, class, and ethnic background. They may also share a

[243] ibid n 236
[244] Y Omorogbe and P Oniemola, Property Rights in Oil and Gas Under Domanial Regimes, In Property and The Law In Energy And Natural Resources (A. McHarg ed., OUP 2010);
[245] ibid n 244
[246] E O Ekhator, "Public Regulation of the Oil and Gas Industry in Nigeria: An Evaluation," (2016) 21 (6) Annual Survey of International & Comparative Law, 43-91

special interest, such as a concern about destroying native flora and fauna".[247]

In Nigeria, the term 'host communities' was reserved for communities where actual exploitation of oil and gas was carried out. They were the communities on the frontline of resource exploitation, as far as oil and gas were concerned.[248] However, the PIA has introduced a new definition of host communities which refers to any community in or through which an oil and gas facility is located or passes through, and the scenario has changed.[249] For the purposes f this research, Host communities will be referred to as communities, where oil and gas are abundant and actual exploitation of this is carried out.

The argument here is that private individuals own or should own the resources on their land. Even though the land is vested in the state, as stated above, the state government leases these lands to private individuals once they possess their certificate of occupancy. Thus, if Mr A buys land with oil, he should be allowed to exercise complete ownership of the oil. He should extract it and sell it to earn the fruits of the oil. It is his land, and he owns it. The argument for local communities or indigenous peoples to own and control mineral resources, as in the United States, postulates, among other things, the right to development, economic self-determination, permanent sovereignty over mineral or natural resources, and the rights of local communities or people to benefit from mineral resources.[250] This has led to the agitation of the people clamouring for the ownership and control of oil and gas resources in their communities, thus giving them a spot in the conflicted triangle.

Different communities have enacted declarations and laws to justify and legitimise the struggle for ownership and control, mainly due to the federal government's mismanagement of the revenues that are derived from oil and gas. The Ijaw youths claim in their Kaiama Declaration that all land and natural resources, including mineral resources within an Ijaw territory, belong to the Ijaw communities and are

[247] Tourism Notes 'Host Community' < Host Community - Definitions and Benefits (tourismnotes.com) > accessed 7 July 2023
[248] M Daminabo , 'PIB: Host Communities Vs Resource-Bearing Communities' (2021) < PIB: Host communities vs resource-bearing communities - Daily Trust > accessed 7 July 2023
[249] ibid n 248
[250] ibid n 248

the basis of their survival. As a result, they have ceased to recognise all decrees that rob their peoples/communities of the right to ownership and control of their lives and resources"[251] Similarly, the Ogoni Bill of Rights, presented to the Federal Government of Nigeria in 1990, states that successive Federal administrators have trampled on every minority right enshrined in the Nigerian Constitution to the detriment of the Ogoni people and has transferred Ogoni's wealth exclusively to other parts of the Republic.[252] Furthermore, successive Federal administrators have trampled every minority right enshrined in the Nigerian Constitution.[253]

Additionally, the general and representative Assembly of the Oron Indigenous Ethnic Linguistic Nationality advocated, based on the declaration, that every area should control its resources 100 percent, from which it would contribute funding for operating the federal government.[254] Duruigbo, while examining the argument for and against public or private ownership, averred that "In private ownership, oil and gas are essentially treated as any other commodity found on land. The landowner decides what to do with the resource and reaps any attendant benefits, subject to compliance with applicable public regulations on such issues as environmental protection and taxation".[255] He noted further that commentators, who took a traditional economic perspective, favour private ownership of minerals because private ownership promotes the highest and most efficient land use. Notwithstanding this view, Duruigbo quickly identified and emphasised a substantial weakness of private ownership, which more or less does not consider the externalities of resource development, such as environmental degradation and its attendant implication on society as a whole.[256]

Comparing the ownership structures of the United States, Canada, and the United

[251] Kaiama Declaration 1998 < http://www.unitedijaw.com/kaiama.htm accessed 13 October 2021
[252] African Society and Conflict "Text of the Ogoni Bill of Rights' < https://developingworldpolitics.com/2013/06/19/text-of-the-ogoni-bill-of-rights/ >accessed 20 July 2023
[253] Ogoni Bill of Rights 1991 < http://www.mosop.org/2015/10/10/ogoni-bill-of-rights/ > accessed 13 October 2021
[254] S Ikpobari. "The Ogoni Bill of Rights (OBR): Extent of actualization 25 years later? (2015)." The Extractive Industries and Society. 2.
[255] E Duruigbo, The Global Energy Challenge and Nigeria's Emergence as A Major Gas Power: Promise, Peril or Paradox Of Plenty? (2009). 21 Geo. Int'l Envtl. L. Rev. 395, 442
[256] ibid n 255

Kingdom, only the United Kingdom, which operates under a unitary system of government, solely vests mineral resources in the Crown or central government. The United States and Canada, which use a federal form of government like Nigeria, acknowledge the ownership rights of autonomous entities, whether they are termed states or provinces.[257] Additionally, private property rights are recognised and safeguarded under these federal institutions. For example, in the province of Alberta, approximately 10% of Alberta's oil and gas rights are privately owned, 81% are owned by the provincial government and the remaining portions are owned federally. Suppose federalism is a compromise solution in a multinational state between two types of self-determination (one provided by a national government that guarantees security for all in the nation-state and another of component groups to retain their identities). In that case, the demand of the Niger Delta people for ownership and control of the resources found within their territory is a legitimate claim that should be given legal backing.

2.6.3.(1) Nigerian Derivation Principle

When allocating money across Nigeria's 36 states, several factors are considered. These factors are listed in Section 162(2) of the Constitution as state population, internal revenue, land mass, population density, internally produced revenue or income, state equality, and land mass. As a result, the Nigerian Constitution specifies the method for distributing oil income. This is known as the derivation principle.[258] The derivation is a feature of fiscal federalism that guarantees that each level of government contributes to the national coffers and receives a fair share of money in return.[259] Derivation may be defined as compensation for a loss of income or other economic activity caused by using land owned by any government or community unit to develop national resources.[260] Derivation also refers to the agreements for rent payments in lieu of using and exploiting a land's mineral resources.[261] However, in Nigeria, the distribution of wealth, particularly oil revenue, has been a cause of

[257] ibid n 256
[258] A Utuama, The Niger Delta Crisis, in Fresh Dimensions on The Niger Delta Crisis of Nigeria (Victor Ojakorotu ed., JAPSS Press 2009).
[259] ibid n 258
[260] ibid n 258
[261] ibid n 258

political and economic strife. [262]

In Nigeria, revenues are allocated or distributed among the several states according to a legally approved formula. The Nigerian government is required by law to keep a special account known as the "federation account."[263] The federal government must deposit all of its income into the federation account except those revenues classified as Federal Government independent revenue. The Federation Account funds are transferred to the Federal, State, and Local Governments.

The Niger Delta (oil-producing states) have claimed that the derivation principle has made their region worse in Nigeria.[264] This has not always been the case for the people. However, the inherent misuse of the proceeds of oil and gas and the lack of enforcement of environmental laws in that region over time by the Federal government birthed this argument by the people. Characterised by poverty and environmental degradation, the derivation principle is not popular amongst the communities who, in turn, have taken matters into their own hands by sabotaging oil pipelines and engaging in illegal oil refining, popularly termed in the area as "Oil bunkering".[265]

The Nigeria Extractive Industries Transparency Initiative (NEITI) conducted a study on the nature and character of the Nigerian Extractive Industries, confirming people's perception.[266] The communities in the Niger Delta, according to the study's results, have never completely embraced the rules that vest ownership in the federal government. Community leaders have aired their opinions to this effect. Per the leaders, these laws are unjust laws put in place by the majority ethnic groups to intimidate, oppress, and dominate them.[267]

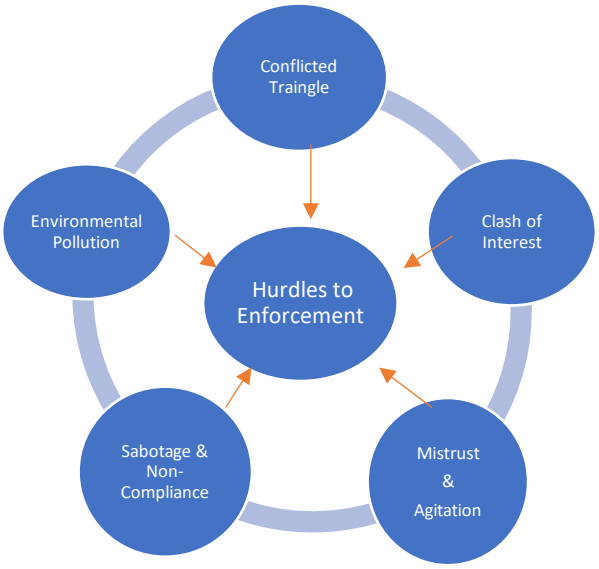
The people are against the provisions of the law that vest control of the resources in the federal government and claim ownership superior to the federal government. It

[262] E Osa Ekhator, 'Public Regulation of the Oil and gas Industry in Nigeria: An Evaluation' (2016) 21 Ann Surv Int'l & Comp L 43
[263] Section 162(1) of the 1999 Constitution
[264] ibid n 263
[265] ibid n 263
[266] NEITI ' Oil and Gas at a Glance' (2023) < https://www.neiti.gov.ng/audits/oil-and-gas > accessed 8 July 2023
[267] ibid n 266

is argued that the governance of oil income, based on the federal government's ownership paradigm of Nigeria's oil and gas resources, denies host communities a fair and equitable share of the resources. On the other hand, it could also be argued that the accumulated money (derivation) is a form of compensation for the oil-producing communities in the Niger Delta for the externalities associated with oil production (for example, in terms of pollution and other negative consequences accruing from the activities of international oil companies. However, the money due to the community for their development is siphoned by corrupt political elites of the communities for their gain.[268] If this is the case, should the federal government still be solely accused of mismanaging the proceeds of oil and gas resources that are for the growth and development of these communities, which will, in turn, positively impact the enforcement of environmental laws in the oil and gas industry? Based on its findings, the research argues that corruption is present in all three tiers of government in Nigeria: the communities and the oil and gas industry. Corruption is examined in depth in chapter seven of this research.

2.7 The Ripple Effect of the Conflicted Triangle on Enforcement

The Conflicted triangle has a ripple effect on the enforcement of environmental laws. The formula is simple.



[268] See the case of Alison Madueke in chapter one of the research, section 1.10.5 Pg 36

Fig 3: Ripple Effect of The Conflicted Triangle [269]

The figure above explains a situation where the conflicted triangle creates a clash of interest between all three angles: The Federal government, The state government and The People discussed above. This clash creates a disagreement between oil-producing states and non-oil-producing states, with the former calling for more allocation of national funds to aid the provision of basic amenities for the people and development for the state whilst the latter vehemently calls for equal distribution of national funds citing other factors like population.[270] It is, therefore, not a pointless argument that the people feel "cheated and exploited" by an arrangement that sees the wealth beneath their feet hauled away, leaving them with a polluted and destroyed environment without any visible benefit to improve their standard of living. The people then mistrust both the federal and state government have their interest in the centre and begin to feel ignored. This agitation of the people results in anger and resentment, thus creating a situation of "removing your nose to spite your face". The result of this rebellious and agitated disposition gave birth to militant groups like the Niger Delta Avengers.[271]

2.8 The Nigerian Oil and Gas Industry

The Nigerian oil and gas industry (NOGI) is divided into two sectors, onshore and offshore, and into three streams: upstream, midstream, and downstream, with several companies and regulators involved at each stage. Refinery capacity in Nigeria is expected to increase by 400% in 2024 as new refineries such as Dangote Refinery recently started operation in May 2023 and in addition to the rehabilitation of the Port Harcourt refinery.[272] The Nigerian government is projecting an end to the importation of petroleum products into the country by the first quarter of 2024.[273] The federal government purposefully acquired a 20% ownership position in the

[269] Figure by the researcher, Okwanuzor Akerele
[270] K Ebeku, Oil and The Niger Delta, People in International Law – Resource Rights, Environmental and Equity Issue (Rudiger Koppe, 2006) 4
[271] 'The Niger Delta Avengers: Nigeria's Newest Militants' (BBC News, 2016) < https://www.bbc.co.uk/news/world-africa-36414036 > accessed 28 October 2021.
[272] Oil Review Africa, Nigeria to spearhead Africa refinery capacity additions by 2024' (2020) < https://www.oilreviewafrica.com/downstream/downstream/nigeria-to-spearhead-africa-refinery-capacity-additions-by-2024 >accessed 8th July 2023
[273] Vanguard ' Fuel importation to end by 2024' Vanguard News (Nigeria, 9 January 2023)< https://www.vanguardngr.com/2023/01/fuel-importation-to-end-by-2024-fg/ >accessed 8 July 2023

Dangote Refinery, a 30% ownership participation in many refineries, including the 10,000 bpd(Barrels per day) Duport Modular Refinery in Edo state and the 5000 bpd Walter Smith Modular Refineries in Ibigwe, Imo state to guarantee local supply of the products produced by the private refineries.[274]

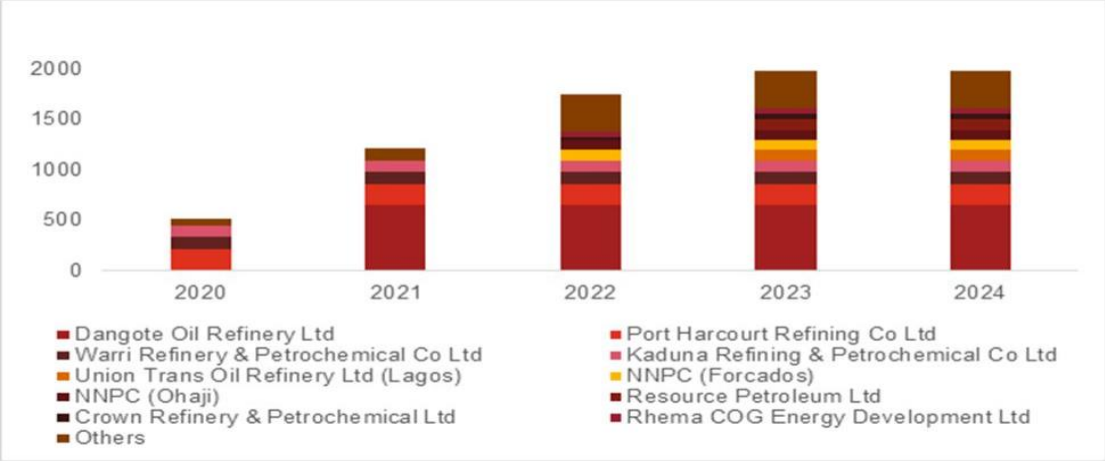


Fig 4: Production by Refineries in Nigeria[275]

2.9 Streams of The Nigerian Oil and Gas Industry

Streams of the oil and gas industry refer to the placement of an oil or gas company in the supply chain of oil and gas production. The oil and gas business is often split into three categories: upstream, downstream, and midstream. Because they mix the operations of two or three categories, some Oil and gas companies are termed "integrated."[276] The Nigerian Oil and gas industry is divided into these streams with different Oil and gas companies, both international and local, at the different streams. The PIA 2021, in its overhaul of the Oil and gas Industry, focused on the streams of NOGI.

2.9.1 Upstream

Upstream Oil and gas operations refer to the Exploration and production of oil and gas from Oil wells, whether onshore or offshore. Identifying deposits, drilling wells,

[274] ibid n 273
[275] ibid n 273
[276] Leslie Kramer "Upstream vs. Downstream Oil & Gas Operations: What's the Difference?" (2021) https://www.investopedia.com/ask/answers/060215/what-difference-between-upstream-and-downstream-oil-and-gas-operations.asp > accessed 8 July 2023

and recovering raw materials from underground are all part of upstream oil and gas production and operations. This stream also includes services like rig operations, feasibility studies and machinery rental. Exploration refers to geologic surveys and any other data collection needed to pinpoint specific regions where oil and gas are likely to be discovered. The procedures required in drilling and transporting oil and natural gas resources to the surface, referred to as 'production,' are also included in the phrase 'upstream.'[277] In Nigeria, companies such as Shell, Total and Chevron are in the upstream sector. The PIA 2021 new regime is intended to encourage investment in the upstream business since the conditions appear to resolve and simplify regulatory and fiscal concerns that have affected the industry in the past.[278]

2.9.2 Midstream

The midstream section of the oil and natural gas industry refers to everything needed to transport and store crude oil and natural gas before they're refined and processed into fuels and essential components for a lengthy range of everyday products. Pipelines and all the infrastructure required to transport these resources over great distances, such as pumping stations, tank trucks, rail tank cars, and transcontinental tankers, are all part of the midstream industry.[279] The PIA establishes clear differences between the activities of the midstream and downstream petroleum industries. The creation and construction of refineries and facilities for the manufacture of lubricants and petrochemicals are included in the midstream industry. Construction of facilities for transporting and storing petroleum liquids is also included in this sector. The PIA 2021 informs applicants on the kind of activities permitted in the sector, subject to acquiring the necessary licenses or permits.[280]

Sections 183-202 and 204 of the PIA 2021 detail the licenses an operator will need to participate in the various divisions of the petroleum industry's midstream sector.[281] These licenses are conditional on the application being approved and payments being paid. These activities include crude oil refining, bulk storage, transportation pipeline,

[277] ibid n 276
[278] The Petroleum Industry Act 2021 < http://www.petroleumindustrybill.com/wp-content/uploads/2021/09/Official-Gazette-of-the-Petroleum-Industry-Act-2021.pdf > accessed 8th July
[279] ibid n 276
[280] ibid n 134
[281] The Petroleum Industry Act 2021, Sections 183-202 and 204

transportation network operations, wholesale petroleum liquids supply, petroleum product distribution, and operation of petrochemical manufacturing plants.[282] The Minister of Petroleum must authorise the crude oil refinery licence. Licence holders should have the infrastructure for transporting and storing petroleum liquids. The stakeholders of the stream are guided on the kind of activities permitted in the sector, pending the acquisition of the necessary licenses or permits. Regarding the term of the licence, a rule is likely to be released that specifies the length of each licence and the criteria for renewing it.[283]

2.9.3 Downstream

This sector involves all activities in converting crude oil produced into useable forms at the refineries, such as Petroleum Methylated Spirit (PMS) Fuel, kerosene, and diesel and transporting such refined products to the final user or secondary industries. Examples include transporting, refining, liquefaction of natural gas, distributing and marketing refined petroleum products, gas and derivatives.[284] Unsuitable product pricing, irregular gas supply, pipeline infrastructure deficits, instability, bridging product supply, and other issues affect the downstream industry. The government controls the industry through its agencies, which have a monopoly on distributing refined petroleum products. Due to the regulatory environment, some industrial companies have also found it difficult to prosper or attract large investments. The regulatory and competitive environment of the sector is likely to alter dramatically due to the PIA's passage.[285]

In May 2023, the government eliminated the fuel subsidy that had made the nation's petrol one of the cheapest in the world but had led to significant fuel waste. In 2021, government expenditure on fuel subsidies represented approximately 2% of GDP and a third of oil revenues. The price of fuel effectively doubled when the subsidy was eliminated. The Petroleum Industry Act, enacted in 2021, is anticipated to help deregulate the downstream sector and encourage more investment in hydrocarbon production. The government also seeks to promote natural gas as a transitional fuel,

[282] ibid n 281
[283] ibid n 281
[284] ibid n 277
[285] ibid n 277

which could increase liquid natural gas (LNG) production.[286]

2.10 Licenses in The Nigerian Oil and Gas Industry

It is a legal requirement that before the commencement of the Exploration of oil, the Oil and gas companies, whether indigenous or International, must secure a license to explore, followed by a contract signed by the two parties; the Nigerian government and the oil company.[287] A license is issued by the relevant issuing body to operate and invest in the upstream sector.[288] Under the Companies and Allied Matters Act, it is granted only to a company incorporated and validly existing in Nigeria.[289] Upstream operations are operated under three classes of licenses which are granted by the Commission *to wit:*

2.10.1 Petroleum Exploration License (PEL)

A PEL is granted to qualified applicants to carry out petroleum exploration operations on a non-exclusive basis.[290]The license is valid for three years and may be renewable for an additional three years, subject to the fulfilment of prescribed conditions. It, however, does not include any right to win, extract, work, store, carry away, transport, export or otherwise treat petroleum discovered in or under the license area.[291] PEL only covers an area that includes petroleum prospecting licences or mining leases, provided that the holders of such licences or leases shall have no obligation to purchase the results of any survey conducted under the petroleum exploration licence. [292] PEL is granted in respect of frontier acreages which may include a provision permitting the licensee to select, based on the result of his exploration work and be granted one or more petroleum prospecting licences before the termination of the licence containing the fiscal provisions stipulated in Chapter 4 of the PIA.[293] Exploration activities conducted pursuant to a PEL are monitored and

[286] Research and Markets 'Nigeria Petroleum Industry Report 2023: Key Information on New Projects, Investments, Corporate Actions and Developments'(2023) < Nigeria Petroleum Industry Report 2023: Key Information on (globenewswire.com) > accessed 14 July 2023
[287] The Petroleum Industry Act 2021, Section 70
[288] ibid n 287
[289] The Petroleum Industry Act 2021, Section 70(2)
[290] ibid, Section 71 (2)
[291] The Petroleum Industry Act 2021, Section 71(3)
[292] The Petroleum Industry Act 2021, section 71(4)
[293] ibid, section 71(5)

administered by the Commission per regulations made under the PIA.[294]

2.10.2 Petroleum Prospecting License (PPL)

A PPL gives exclusive right to drill exploration and appraisal wells and non-exclusive right to conduct petroleum exploration operations within the area provided for in the licence.[295] The license also gives the holder a right to carry away and dispose of crude oil or natural gas won or extracted during the drilling of exploration or appraisal wells as a result of production tests, subject to the fulfilment of obligations imposed.[296] A PPL licensee is not granted an extension except as prescribed under sections 78 (4), (9) and 79 (6) of the PIA. [297]The Minister of Petroleum is responsible for granting a Petroleum Prospecting Licence to a qualified applicant recommended by the Commission. The Minister is then stopped from granting that same license to any other person. If the Minister does not grant the licence, the Minister shall inform the Commission in writing of the decision's rationale.[298] A petroleum prospecting license for onshore and shallow water acreages is for not more than six years, comprising an initial exploration period of three years and an optional extension period of three years. For deep offshore and frontier acreages, the license duration is not more than ten years, comprising an initial exploration period of five years and an optional extension period of five years.[299]

2.10.3 Petroleum Mining License (PML)

A PML is granted for each commercial discovery of crude oil or natural gas or both to the licensee of a petroleum prospecting license who has satisfied the conditions imposed on the license or the licensee by the PIA and received approval for the applicable field development plan from the Commission. [300] Pursuant to sections 70 (2) and 74 of the PIA, a PML is granted where a prospective lease area contains a petroleum field with suspended wells or continuing commercial production, where the corresponding petroleum mining lease has been revoked or has expired. [301] The

[294] ibid, section 71(8)
[295] ibid, section 72(1)(a)
[296] ibid section 72(1)(b)
[297] ibid, section 72(2)
[298] ibid, section 72(5)
[299] ibid n 294
[300] The Petroleum Industry Act 2021,Section 81
[301] The Petroleum Industry Act 2021,Section 81(2)

license may include an appraisal phase, and the development and production of the field may include a work program requirement to enhance ongoing productions.[302]

Without well-regulated award procedures, the allocation of licenses for Exploration and production might represent possible opportunities for corruption, affecting the enforcement of environmental laws. The 2021 PIA gives the Minister of Petroleum full authority over the allocation of licenses for oil Exploration, prospecting, and mining. There are, therefore, no legally mandated processes or oversight mechanisms for allocating blocks. Due to the high capital influx in the oil and gas industry, there is bound to be malpractices in awarding contracts within and outside the industry. The question that arises on the issue of licenses is whether these licenses contain any clauses on the responsibility of the licensee to adhere to environmental laws governing the oil and gas industry, or in the cases where the licensees go contrary to the laws, whether the licensee can be held liable to pay for defaulting?

Section 96 of the PIA provides that upon receipt of the written recommendation of the Commission for revocation; the Minister may revoke a petroleum prospecting license or petroleum mining lease where the applicable licensee or lessees fails to conduct petroleum operations in accordance with good international petroleum industry practices, the provisions of this Act and any other relevant legislation.[303]It is argued that environmental protection falls under the above section regarding *"fails to conduct petroleum operations in accordance with good international petroleum industry practices*".

2.11 Conclusion

Oil and gas ownership and control is a powerful political symbol in any country. Vesting the ownership and control of oil and gas resources on the federal government is a necessary and smart move and ordinarily should not be a bone of contention. In Nigeria's case, the subject of which government or authority should receive income or royalties from oil and gas resources was a point of contention in the crises that led to the Nigeria Civil War of 1967, prompting the federal government to claim that right

[302] ibid n 301
[303] The Petroleum Industry Act 2021, Section 96(1)

exclusively.[304] It could be argued that since oil significantly impacts people's lives due to the economic benefits it provides, exclusive federal control allows standard and uniform regulations to be enacted in the oil industry for national interests.[305] Furthermore, as a federal subject under the Constitution, the federal government is the only body capable of successfully pursuing, in partnership with international oil firms. This policy will not negatively influence Nigeria's foreign exchange situation.[306]

This would continue to be the case so long as state governments do not have autonomy over the resources in their states. Oil and gas deposits on land in Nigeria are "part of the national heritage,". In contrast, according to various international conventions, maritime areas are subject to the nation's sovereignty, implying that, regardless of where the resources are found, they must be centrally controlled. [307] The federal government can compel international corporations active in the business to give the necessary information.[308] Furthermore, private ownership of oil will create great wealth for a few private persons, who may not use their fortunes for productive purposes in line with national interests but instead will exacerbate the country's class divisions. As a result, in contrast to private ownership, federal government ownership and management of petroleum resources will strengthen national unity. [309]

On the flip side of the coin and in what might be called a critical evaluation of the support for state totalitarian ownership, it is argued contrarily that, ab initio, the federal government's exclusive ownership and control of oil resources in Nigeria has generated deep anger, resentment, and a sense of majority oppression among minority oil producers, rather than encouraging unity. [310] Furthermore, the country has seen rebellions, revolts, and protests due to exclusive ownership and control of mineral resources under the federal government, resulting in what can be described

[304] E Osa Ekhator, 'Public Regulation of the Oil and gas Industry in Nigeria: An Evaluation' (2016) 21 Ann Surv Int'l & Comp L 43
[305] L Aladeitan, 'Ownership and Control of Oil, Gas, and Mineral Resources in Nigeria: Between Legality and Legitimacy' (2013) 38 T Marshall L Rev 159
[306] ibid n 305
[307] ibid n 306
[308] ibid n 307
[309] ibid n 308
[310] E Osa Ekhator, 'Public Regulation of the Oil and gas Industry in Nigeria: An Evaluation' (2016) 21 Ann Surv Int'l & Comp L 43

as a dictatorial ownership and control policy without any accountability.[311] Ajomo argued that there are some merits for the ownership and control of oil and gas resources vested in the federal government. If private ownership becomes the *modus operandi* in Nigeria, there is the risk of oil for a few individuals who would then exploit it.[312]

However, a critical and close investigation of Nigeria's situation has revealed that federal ownership and control have not prevented the formation of extremely affluent individuals who have amassed this wealth from oil wells that they privately own despite oil and gas resources belonging to the federal government. Sagay is in support of this view and states thus: "*Regarding the danger of private ownership of oil creating enormous wealth for a few people who would then misuse these funds, the question may be asked: Has central ownership and control prevented the emergence of a class of enormously wealthy individuals in Nigeria? Have the proceeds of oil been prudently and patriotically put to use?*"[313]Pursuant to Sagay's view, can it be argued that oil profits have been sensibly and patriotically used for the country's benefit? Is the federal government's vesting of ownership and control of oil and gas resources truly fit for purpose? [314]Based on these questions, which cannot be answered in the affirmative, it is submitted by the research that, while not irrational, the arguments advanced by Ajomo above are not legitimate grounds for federal ownership in the Nigerian experience, especially in the light of quantum mismanagement of funds by the federal government.

This research agrees with the recommendation of Ekhator that if the federal government of Nigeria chooses to retain control over oil and gas, ownership should be qualified by legal ownership and beneficiary status. The former may be transferred to the federal government, whilst the latter will be transferred to the oil Producing Areas. This proposal grants the federal government a legal title and the oil-producing

[311] ibid n 310
[312] M. A. Ajomo, 'Ownership of Mineral Oils and the Land Use Act' (1982) Nigerian Current Law Rev. Pg.335
[313] I Sagay, Ownership and Control Of Nigerian Petroleum Resources: A Legal Angle, In Nigerian Petroleum Business Handbook (V.E. Erhonsele ed., Advent Communications Ltd. 1997) 180
[314] ibid n 313

states and communities an equitable interest based primarily on trust between the federal government and the host communities, which allows shared control and obligations. As the legal owner, the federal government will continue formulating rules, laws, and regulations controlling industry activities. It will negotiate contracts with foreign oil firms and oversee their operations.

On the other hand, as equitable owners and beneficiaries, oil-producing communities will have a voice in the sector's management. They will receive their fair part of the revenue generated from oil and gas. As earlier mentioned in this chapter, the PIA 2021 has now provided for a 3% annual allocation to host communities from the operating expenditure of oil and gas operators; whether this would quell the agitations of the Niger Delta people all comes down to the effective enforcement of this law and the judgments of the courts if these cases are brought before them. The oil and gas industry plays a key role in the political economy of Nigeria. This makes the industry the primary interest of every government in Nigeria, a unique country with overwhelming power vested in the central government, and this is the reason many are calling for restructuring. If the ownership and control of oil and gas are vested in the state governments, it would decentralise the centre and make the states which are the host of the oil-producing communities, much more accountable for the growth and development of the states. This, in turn, would reduce the agitation inherent within the communities. It could be argued that this may create wealth disparity between oil producing and other states thus leading to possible conflicts between them. However, the option of decentralizing the centre in Nigeria has not been tried thus there cannot be a conclusive answer. It would be an area open for further research.

CHAPTER THREE: ENVIRONMENTAL POLLUTION IN NIGERIA: RESPONSES, CAUSES AND EFFECT

3.1 Introduction

Pursuant to the United Nations, pollution is defined as "the indirect or direct alteration of the biological, thermal, physical, or radioactive properties of any medium in such a way as to create a hazard or potential hazard to human health or the health, safety or welfare of any living species "[315] The Organization for Economic Co-operation and Development (OECD) defines pollution as "the introduction by man, directly or indirectly, of substances or energy into the environment resulting in deleterious effects of such a nature as to endanger human health harm living resources and ecosystems, and impair or interfere with amenities and other legitimate uses of the environment".[316] Per The Nigerian National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 'pollution' is defined as 'the man-made or man-aided alteration of the chemical, physical or biological quality of the environment beyond acceptable limits'.[317]

Per Calan and Thomas, the natural cause of pollution comes from pollen, dust particles from volcanic disturbance, gases from decaying animals and plants, and even salt spray from the oceans.[318] In 1972, the United Nations Conference on the Human Environment was convened in Stockholm due to global concern for a clean environment. The conference drew international attention to environmental degradation by committing to intensify efforts on the issue. One of the conference's accomplishments was the declaration of 26 environmental principles.[319]

Recognizing the inextricable connection between human existence and the

[315] United Nations Environmental Programme, 'Pollution' < https://leap.unep.org/knowledge/glossary/pollution >accessed 12 July 2023
[316] The Organization for Economic Co-operation and Development 'Recommendation of the Council on Principles concerning Trans frontier Pollution' (2023) < OECD Legal Instruments >accessed 12 July 2023
[317] The National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007, Section 37
[318] SJ Callan and J M Thomas, Environmental Economics and Management Theory, Policy and Applications.(5' Edition South-Western Cengage Learning, 2015) 54
[319] United Nations 'United Nations Conference on the Human Environment, 5-16 June 1972, Stockholm < United Nations Conference on the Human Environment, Stockholm 1972 | United Nations > accessed 12 July 2023

environment, the 1999 Constitution of the Federal Republic of Nigeria assigned the federal government the duty of protecting, enhancing and preserving Nigeria's water, air, land, forest, and wildlife.[320] This requires combating pollution, which undermines the environment's capacity to sustain life. Ironically, the majority of environmental pollution in Nigeria is anthropogenic or caused by human activities, with the oil and gas industry as the country's highest source of environmental pollution.

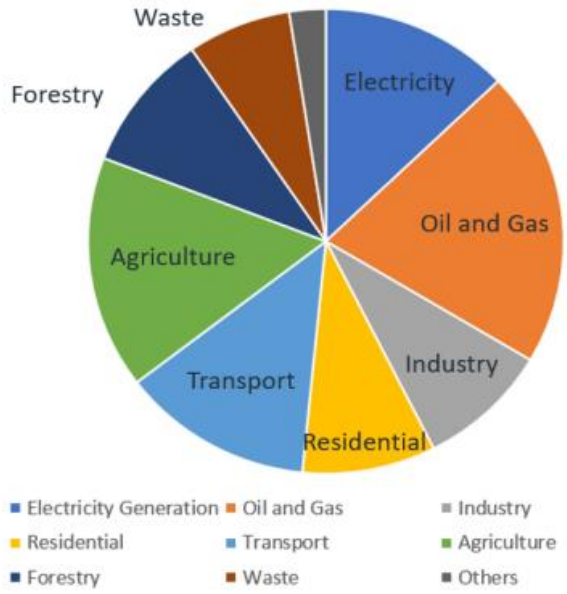


Fig 5: Major Green House Gas Emitting Sources in the Economy of Nigeria[321]

The major publicity of environmental pollution in Nigeria dates back to 1988 in Koko, a small village five kilometers from the coast of the former Bendel State of Nigeria.[322] Sunday Oyemire Nana, a farmer in Koko, was approached by Gian Franco Raffaelli, an Italian businessman who had resided in Nigeria for some 20 years, to dump about 3880 tons of toxic and hazardous waste on behalf of an Italian company.[323] The Italian ship was discovered in May 1988. It was made up principally of

[320] The 1999 Constitution of the Federal Republic of Nigeria as amended(2011), Section 20 < http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm > accessed 12 July 2023
[321] 2050 Long-Term Vision for Nigeria (LTV-2050) |< http://climatechange.gov.ng/wp-content/uploads/2022/01/Nigeria_LTS1.pdf >accessed 14July 2023
[322] J O Ihonvbere 'The State and environmental degradation in Nigeria. A study of the 1988 toxic waste dump in Koko' (1994) 23 (3) Journal of Environmental Systems 207-227
[323] ibid n 322

polychlorobiphenyls (PCBS). The hostile media reaction that accompanied the discovery propelled the Federal Government of Nigeria to reassess the country's general state of environmental regulations.[324] Environmental regulations are examined in chapter four of this research.

In Chapter 2.4, the research examined the relevance of oil and gas to the Nigerian economy. It was averred in that section that Nigeria has profited immensely from its oil and gas resources. [325] However, severe environmental degradation is the price Nigerians have had to pay for this profit. Majorly, environmental pollution in Nigeria emerges in two forms: Oil spills and Gas flaring emanating from the activities of the oil and gas industry examined in chapter two. Most recently, joining the list is local sabotage of oil and gas pipelines. These topics will be discussed in this chapter. The examination of environmental degradation is core to this research. It is trite to say it forms the justification for the entire research. This chapter opens with the Niger Delta region and closes with Nigeria's commitment to the Paris Agreement.

3.2 The Niger-Delta Region of Nigeria: The Source but Cursed

The Niger Delta (N.D.) region of Nigeria is richly endowed with both renewable and non-renewable natural resources.[326] Pursuant to this, the region is home to the extensive exploration and production of oil and gas resources aforementioned in Chapter 2.4. The ND is located at the apex of the Gulf of Guinea on the west coast of Africa.[327] It comprises nine oil–producing states (Abia, Akwa Ibom, Bayelsa, Cross River, Delta, Edo, Ondo, Imo and Rivers) containing over 800 oil–producing communities.[328] About 37 million inhabitants live in this region, occupying a land space of approximately 75,000 km2 (thus constituting 7.5% of Nigeria's land

[324] H Ijaiya & O.T. Joseph, 'Rethinking Environmental Law Enforcement in Nigeria' (2014) 5 Beijing L Rev 306
[325] See Page 41 of the Research
[326] J Effiong, 'Oil and Gas Industry in Nigeria: The Paradox of the Black Gold' (2010) 18 Environment and Social Justice: An International Perspective 329-330.
[327] H Doust, 'Petroleum Geology of the Niger Delta' (1990) 50 Geological Society, London, Special Publications 365.
[328] L Osuji and C Onojake, 'Trace Heavy Metals Associated with Crude Oil: A Case Study of Ebocha-8 Oil Spill-Polluted Site in Niger Delta, Nigeria' (2004) 1 Chemistry & Biodiversity 1708; P Oviasuyi, 'The Dilemma of Niger-Delta Region as Oil Producing States of Nigeria' [2010] Journal of Peace, Conflict and Development 2019.< https://www.bradford.ac.uk/courses/pg/peace-conflict-and-development/ > accessed 17 December 2022

mass).[329] Per Curtis, a large portion of the world's oil and gas reserves are in tertiary terrigenous fill on passive continental margins, and the most significant hydrocarbon deposits of this type could be found in the U.S. Gulf of Mexico, Canadian Beaufort-Mackenzie Delta and Nigeria's Niger Delta.[330]

Paradoxically, the Niger Delta remains one of the poorest regions due mainly to the ecologically unfriendly exploitation of oil and gas that expropriate the indigenous peoples of the Niger Delta of their rights to these natural resources.[331] The ecological devastation occasioned by the activities of the oil and gas industry has rendered farming and fishing, the main occupation of the Niger-Deltans, inoperable.[332] The people of the Niger Delta are deprived of their share of the wealth on which the entire nation depends and only benefit from compensations paid for the environmental degradation done by the activities of the oil and gas industry.[333]

They have little or no say concerning energy and resource development in their region. Two factors make the issue of host communities' participation in decision-making and benefit-sharing regarding the outcome of energy and resources increasingly crucial.[334] Firstly, the reality is that, for the majority of resource-rich nations in the Global South, resource development has been more of a burden than a blessing, especially for host communities like the Niger Delta. [335] The second factor is the emergence of the "not in my backyard" (NIMBY) mentality and hostility to the development of natural resources and energy on the territory of host communities.[336] The objection of the Torry Community in Aberdeen (Scotland) to the site of the energy

[329] A E Ite et al 'Petroleum Exploration and Production: Past and Present Environmental Issues in the Nigeria's Niger Delta' (2013) 1 American Journal of Environmental Protection 80.
[330] D M Curtis, 'Comparative Tertiary Petroleum Geology of the Gulf Coast, Niger, and Beaufort-Mackenzie Delta Areas' (1986) 21 Geological Journal 225.
[331] C N C Ugochukwu and J Ertel, 'Negative Impacts of Oil Exploration on Biodiversity Management in the Niger Delta Area of Nigeria' (2008) 26(2) Impact Assessment and Project Appraisal 139.
[332] ibid n 331
[333] ibid n 331
[334] M Osa Igiehon and M Rita Fawole-Masini, 'Problematising the Persistence of Resource Curse: Propounding New Third Explanation of 'Existentially Fragile States Disorder'(2020) Oil and Minerals for Good Global Forum Working Paper 3-4 <https://oilandminerals.com/wp-content/uploads/2020/07/Research-Paper-Final-22July2020.pdf> accessed 15/12/2021.
[335] ibid n 334
[336] J Jenden, et al, 'Not in My Back Yard Syndrome' (2018) Energy Education <https://energyeducation.ca/encyclopedia/Not_in_my_back_yard_syndrome> accessed 10/11/2021.

transition zone (onshore wind farm) near St Fittick's Park is a recent illustration.[337]

Countries endowed with natural resources like oil and gas have several potentials but also encounter significant obstacles. Exploring the resources depletes the environment while simultaneously generating revenue that, when managed correctly, delivers socio-economic prosperity to current and future generations. However, if the revenue is mishandled, resource development can result in economic stagnation, social and civil unrest, enduring environmental damage, and political instability. The resultant effect is that natural resource becomes a curse.[338] This has strengthened the adage that a country's abundant energy and natural resources may act as either an accelerator or a brake on its overall economic progress.[339]

Research in political economics has causally connected the natural resource curse phenomena to a country's over-reliance on a resource sector to power its economy and a lack of effective institutions, as opposed to merely an abundance of energy/natural resource endowment.[340] Scholars in this category argue that increases in the likelihood that a resource-rich country will experience poor economic, political, and social developmental outcomes, such as poverty, low levels of democracy, and civil conflict, are not necessarily a result of the abundant natural resource endowment, but rather a result of a lack of institutional capacity to manage the resource wealth and excessive economic dependence of such a country on its natural resource sector (particularly oil in the case of Nigeria).[341] This distinguishes resource abundance from resource reliance. The former is the "net present value of

[337] L Riddoch, 'In Torry the 'Just Transition' to Renewable Energy is Far from Just' Herald Scotland (Aberdeen 09 August 2021) <https://www.heraldscotland.com/politics/19499179.lesley-riddoch-torry-just-transition-renewable- energy-far-just/> accessed 11 November 2022.
[338] J Cust and D Manley, 'The Natural Resource Charter Second Edition' (2014) Natural Resource Governance Institute 4 < http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.468.8759&rep=rep1&type=pdf > accessed 10 December 2022
[339] S M Patrick, 'Why Natural Resources Are a Curse on Developing Countries and How to Fix it' (2012) the Atlantic < https://pdfs.semanticscholar.org/e5c3/bfd21912e8547be2041381e90a0d0582d4b9.pdf?_ga=2.83459284.35317925. 1578003851-1454040132.1568971138> accessed 10 December 2022
][340] N Ding and C Field, 'Natural Resource Abundance and Economic Growths' (2005) 81(4) Land Economics 496-503; S Shao and L Yang, 'Natural Resource Dependence, Human Capital Accumulation, and Economic Growth: A Combined Explanation for the Resource Curse and the Resource Blessing' (2014) 74 Energy Policy 632- 633.
[341] ibid n 340

natural capital," while the latter is the "export value of resources as a proportion of gross domestic product" (GDP).[342] This distinction is crucial because arguments that a country's reliance on natural resource exports slows its predicted growth pace are separate from claims that its substantial mineral reserves or production of those reserves are connected with stagnated economic growth.[343] According to Auty, it is considered resource-dependent when a country earns at least 8% of its GDP and 40% of its export revenues from an energy/natural resource sector.[344]

Davis and Tilton argued that nations with abundant natural resources, such as diamonds, gold, silver, tin, oil, gas, or iron ore, are fortunate because these resources are assets and comprise a portion of the country's natural pool of capital.[345] Per Gylfason, the presence of energy and natural resources is a gift since they stimulate economic growth.[346] Scholars like Wright, Fernihough and O'Rourke have emphasized that throughout the 18th and 19th centuries, Britain, France, Belgium, Germany, and the United States of America, industrialized and achieved economic development based primarily on natural resource wealth.[347] For example, Britain's enormous coal reserves were crucial to her industrialization and economic prosperity.[348] Pollard affirmed this when he averred that the map of the British Industrial Revolution is essentially the map of the coalfields" and Britain's good fortune in being well-endowed with coal has been observed.[349]

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[342] F Van Der Ploeg and S Poelhekke, 'Volatility and the Natural Resource Curse' (2009) 61(4) Oxford Economic Papers 738-739.
[343] J Philippe and C Stijns, 'Natural Resource Abundance and Economic Growth Revisited' (2005) 30 Resources Policy 111
[344] R M Auty, Sustaining Development in Mineral Economies: The Resource Curse Thesis (Routledge 1993) 4.
[345] G A Davis and J E Tilton, 'Should Developing Countries Renounce Mining? A Perspective on the Debate' (2002) 5 < https://www.researchgate.net/publication/228584093_Should_developing_countries_renounce_mining_A_perspective_on_the_debate > Accessed 10 December 2022
[346] T Gylfason, et al, 'A Mixed Blessing: Natural Resources and Economic Growth' (1997) Centre for Economic Policy Research Discussion Paper No 1668 1-5 < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=49193 > accessed 10 December 2022
[347] G Wright, 'the Origin of American Industrial Success, 1878-1949' (1990) 80(4) American Economic Review 635; Alan Fernihough and Kevin Hjortshøj O'Rourke, 'Coal and the European Industrial Revolution' (2014) University of Oxford Discussion Papers in Economic and Social History No 124 1-4 < https://www.economics.ox.ac.uk/materials/papers/13183/Coal%20-%20O%27Rourke%20124.pdf > accessed 11 December 2022
[348] E A Wrigley, Energy and the English Industrial Revolution (Cambridge University Press 2010) 23.
[349] S Pollard, Peaceful Conquest: The Industrialization of Europe 1760–1970 (Oxford University Press 1981) 4

However, post-World War II research in development economics have contradicted the common understanding that an abundance of natural resources is a gift that leads to economic growth. There is a growing corpus of empirical evidence demonstrating a negative relationship between abundant natural resource endowment and economic development in many resource-rich nations of the world.[350] Two distinct factors lend credence to these empirical findings. The first depends only on case studies of resource-exporting countries, whereas the second employs cross-country growth regression.[351] Sachs and Warner's comparative regression research of the economic performance of various resource-rich and resource-deficient nations popularized the second factor.[352] The author's discovery of a counterintuitive link between plentiful natural resources and economic growth is the foundation of the natural resource curse thesis or paradox of plenty.[353] Communities that host resources and exploitation activities are more susceptible to the curse's symptoms and impacts, such as the Niger Delta.[354] This causes host communities to oppose energy/natural resource exploitation on their land and frequently revokes a Social License to Operate (SLO) if granted under the assumption that resource exploitation would improve the standard of living of the host communities' inhabitants.[355]

However, it is essential to note that many resource-rich nations like Nigeria experience stunted economic growth, not necessarily due to abundant natural resources or reliance on natural resource exports but because they have failed to develop their natural resources within the appropriate fiscal and regulatory frameworks.[356] Economic development is contingent on several trajectories that interact with natural resource wealth.[357] Human capital, political institutions, commodity price volatility, demographics, and other factors decide whether a natural

[350] ibid n 349
[351] A Černý and R K Filer, 'Natural Resources: Are They Really a Curse?' (2007) Centre for Economic Research and Graduate Education Working Paper Series 321 1 < https://www.cerge-ei.cz/pdf/wp/Wp321.pdf > accessed 11 December 2022
[352] R M Auty, 'Rent Cycling Theory, the Resource Curse, and Development Policy' (2007) 5(4) OGEL 1.
[353] T Lynn Karl, 'Ensuring Fairness: The Case for Transparent Fiscal Social Contract' in Macartan Humphreys, et al edns, Escaping the Resource Curse (Columbia University Press 2007) 258–293.
[354] B L Parlee, 'Avoiding the Resource Curse: Indigenous Communities and Canada's Oil Sands' (2015) 74 World Development 425.
[355] ibid n 354
[356] ibid n 354
[357] ibid n 354

resource's abundance (or exploitation) will be a curse or a blessing.[358] For example, Barro considers human capital a crucial component of the link between natural resource development and economic growth.[359] He argues that a country's lack of it will diminish economic growth and perpetuate the resource curse.[360] North argues that the quality of institutions that manage the natural resource extraction and governance of the wealth created are essential variables that "determine which resource-rich nations will prosper economically and which will not."[361] Thus, countries with poor governance institutions are likely to have sluggish economic development relative to their resource base, as weak institutions "lead to inequality, intermittent tyranny, and the absence of any limits to prevent elites and politicians from looting the country.[362]

Kandil agrees with North and describes the curse of natural resources from the perspective of state institutions or institutional quality failure.[363] The research agrees with Barro and North and further submits that these weak enforcement institutions in the Nigerian oil and gas industry has led to severe environmental damage, thus making oil a curse instead of a blessing. Institutions or institutional quality is a multifaceted term comprised of formal regulations and informal limitations.[364] Per North, it is the 'rules of the game in a society or, more formally, the humanly devised constraints that shape human interaction."[365] The World Bank, on the other hand, asserts that institutional quality is an interaction between the political, economic, and social elements of governance that can be quantified using six main institutional

[358] B Christopher, et al, 'Winners and Losers in the Commodity Lottery: The Impact of Terms of Trade Growth and Volatility in the Periphery 1870-1939' (2007) 82(1) Journal of Development Economics 156-179.
[359] R J Barro, 'Economic Growth in a Cross-Section of Countries' (1991) 106(2) the Quarterly Journal of Economics 407-443.
[360] ibid n 360
[361] D C North, 'Economic Performance Through Time' (1994) 84(3) the American Economic Review 359-368
[362] J A Frankel, 'The Natural Resource Curse: A Survey' (2010) National Bureau of Economic Research Working Paper No 15836 1-38 < http://www.nber.org/papers/w15836 > accessed 10 December 2022
[363] M Kandil, 'Determinants of Institutional Quality and Their Impact on Economic Growth in the MENA Region' (2009) 8(2) International Journal of Development 134-167.
[364] A Nifo and G Vecchione, 'Measuring Institutional Quality in Italy' (2015) XXIX (1-2) Rivista Economica del Mezzogiorno 160.
[365] ibid n 233

quality indexes (IQI).[366] These are voice and accountability, political stability and absence of violence/terrorism, government effectiveness, regulatory quality, rule of law and control of corruption.[367]

It, therefore, can be argued that there is a consensus that institutional quality is a significant driver of the relationship between natural resource exploitation and economic growth.[368] Thus, interaction in nations with poor institutional quality leads to lagging economic progress and political favouritism, while for countries with high institutional quality, it results in sustainable economic growth.[369] This inspired Acemoglu and Robinson's assertion that institutions, generally understood, are the fundamental driver of economic growth and development variations among nations.[370] Furthermore, Mehlum et al. argue that natural resources put institutional systems to the test, such that the resource curse only manifests in countries with weak institutions.[371] The research agrees with the authors' arguments and opines that the quality of the government institutions, such as enforcement institutions, is crucial in determining whether the resource curse will be evident in a country. One central area of the resource curse is the environmental damage in a country arising from exploiting the natural resource. In Nigeria's case, it is oil and gas. Thus, to avert this curse, the quality of enforcement in the oil and gas industry is paramount. Countries like Canada, Norway, and the United States have also been blessed with natural resources. Still, they have effectively provided other forms of capital, including institutional money, which has allowed these countries to manage their wealth in a manner that has had long-term positive effects.

There may, however, be a ray of hope for the host communities in the Niger Delta to

[366] World Bank 'Worldwide Governance Indicators' < https://info.worldbank.org/governance/wgi/Home/Documents#doc-intro >accessed 11 December 2022
[367] ibid n 235
[368] J Lehne, et al, 'What Determines the Quality of Economic Institutions? Cross-Country Evidence' (2014) European Bank Working Paper No 171 1.
[369] K A Chaudhry, The Price of Wealth: Economies and Institutions in the Middle East (Cornell University Press 1997) 16-17; Rasha Hashim Osman, et al, 'The Role of Institutions in Economic Development: Evidence From 27 Sub-Saharan African Countries' (2012) 39(1/2) Journal of Social Economics 142-160.
[370] D Acemoglu and J A Robinson, Why Nations Fail: the Origins of Power, Prosperity and Poverty (Crown Publishers 2012) 1-500.
[371] H Mehlum, et al, 'Institutions and the Resource Curse' (2006) 116 the Economic Journal 4.

avert the resource curse in their environment pursuant to the Host Community Development Trust Fund(HCDTF) created by section 235 of the PIA 2021.[372] The HCDTF whose purpose will be to, among others, foster sustainable prosperity, provide direct social and economic benefits from petroleum to host communities, and enhance peaceful and harmonious co-existence between licensees or lessees and host communities.[373] Specifically, the law stipulates that existing host community projects must be transferred to the HCDTF, and each settlor (or oil license holder) must make an annual contribution equal to 3 percent of its operating expenditure for the relevant operations from the previous year. The management committee of the Trust must include one member of the host community. In addition, the Act stipulates a penalty for failure to comply with host community obligations, including revocation of license.[374]

The Act also protects petroleum operations and activities in host communities by providing that where there is any vandalism, sabotage or civil unrest which causes damage to any petroleum or designated facilities or disrupts petroleum activities in a host community, such community will forfeit its entitlement to the extent of the cause to repair the damage or the damage that occurred as a result of such disruption.[375] This is a laudable project and emphasizes the need for effective enforcement of the law. If this law is enforced effectively, it will ensure that the monies are utilized for the benefit of the Niger Delta.

3.3 Oil Spills in The Niger Delta Region of Nigeria

Oil spills in Nigeria mainly occur onshore in the Niger Delta.[376] However, there have been recent records of oil spills offshore.[377] This research refers to spills on both shores. A vivid reference to environmental pollution in the Niger Delta is the Ogoni

[372] The Petroleum Industry Act 2021, Section 235
[373] K Nwuke ' Nigeria's Petroleum Industry Act: Addressing old Problems, creating new ones' (2021) < https://www.brookings.edu/blog/africa-in-focus/2021/11/24/nigerias-petroleum-industry-act-addressing-old-problems-creating-new-ones/ >accessed 22 December 2022
[374] The Petroleum Industry Act 2021,Section 238
[375] The Petroleum Industry Act 2021,Section 257
[376] E Oriakhi, 'Exploitation of Petroleum Resources and the Challenges of Development of the Niger Delta Region of Nigeria' (2021) 112 Journal of Law, Policy and Globalization 170
[377] Montgabay ' Latest Nigeria oil spill highlights 'wretched' state of the industry' (2022) < https://news.mongabay.com/2022/02/latest-nigeria-oil-spill-highlights-wretched-state-of-the-industry/ > accessed 13 July 2023

oil pollution chronicles described by the United Nations Environmental Program (UNEP) report.[378] A summary of the findings of UNEP's field observations and scientific investigations revealed the widespread oil pollution in Ogoni land.[379] The information disclosed that pollution caused by more than 50 years of oil operations in the region has penetrated further and more profoundly than many may have believed. This evaluation is unprecedented. Over 14 months, the UNEP team examined more than 200 sites, surveyed 122 kilometres of pipeline rights-of-way, evaluated more than 5,000 medical records, and engaged more than 23,000 individuals in local community meetings.[380]

If contaminated drinking water, land, creeks, and vital ecosystems such as mangroves are to be brought back to full, productive health, the environmental restoration of Ogoniland may prove to be the world's most extensive and protracted oil clean-up effort ever undertaken.[381] The main findings of the report were alarming in terms of both human health and environmental protection.[382] This report has not deterred pollution in the region to date. On 11 June 2023, an oil spill from the Trans-Niger Pipeline operated by Shell Petroleum Development Company of Nigeria Limited was reported in communities of the Eleme area of Ogoni land.[383] Per the Dumnamene of the Youths and Environmental Advocacy Centre, the Spill lasted for over a week. It bursts into the Okulu River, which adjoins other rivers and empties into the Atlantic Ocean.[384]The Spill has reportedly affected several communities and displaced more than 300 fishermen.[385]

The clean-up of Ogoni land necessitated the inauguration of the Hydrocarbon

[378] United Nations Environment Programme (UNEP) (2011) Environmental Assessment of Ogoni land. First Published in 2011 by UNEP. <https://wedocs.unep.org/handle/20.500.11822/7947;jsessionid=30507EF2CA01ACD2DE40B9FDA5D71561 > accessed 12 July 2023
[379] ibid n 378
[380] ibid n 378
[381]ibid n 378
[382] ibid n 378
[383] T Adebayo 'Oil spill from Shell pipeline fouls farms and a river in a long-polluted part of Nigeria ' (abc News, 26 June 2023) < https://abcnews.go.com/International/wireStory/oil-spill-shell-pipeline-fouls-farms-river-long-100374598 >accessed 13 July 2023
[384] ibid n 383
[385] ibid n 383

Pollution Remediation Project (HYPREP) in 2016.[386] HYPREP is an initiative of the Nigerian Ministry of Environment. The project aims to remediate the environment and restore people's livelihood.[387] In 2020, the Independent Civil Society Monitoring of the Ogoni Land Clean-up project was launched by Stakeholder Democracy Network (SDN) and the Centre for Environment, Human Rights and Development (CEHRD), with the support of the Netherlands Ministry of Foreign Affairs.[388] The monitoring will span the years 2020 to 2024.[389] The 2021 report on the monitoring of clean-up sites identified weaknesses in the backfilling processes used by contractors once a site has been cleaned and the absence of sampling at bio cell locations (where contaminated soil is treated), which raises the risk of sites being certified as complete when they remain contaminated. Furthermore, the health-related activities described in the original UNEP assessment are yet to commence.[390] The report's July- December 2021 edition revealed no significant change to the issues raised in the January- June report. Numerous delays and difficulties have plagued the clean-up.[391] Concerns have been expressed regarding the project's transparency and accountability, procurement procedures, and the quality of the proposed and implemented remediation techniques.[392] At the time of writing this research, these findings have not been updated.

[386] The Hydrocarbon Pollution Remediation Project (HYPREP)< Hyprep – Hydrocarbon Pollution Remediation Project >accessed 12 July 2023
[387] ibid n 386
[388] Stake holder Democracy 'Independent Monitoring of the Ogoni land Clean-up: Biannual Progress Report January-June 2021< https://www.stakeholderdemocracy.org/wp-content/uploads/2021/10/Ogoni-clean-up-biannual-report-Jan-Jun-2021.-Report.-2021.pdf >accessed 13 July 2023
[389] ibid n 388
[390] ibid n 388
[391] Stake holder Democracy 'Independent Monitoring of the Ogoni land Clean-up: Biannual Progress Report July-December 2021< Ogoni-clean-up-biannual-report-July-Dec-2021.Report.-2021.pdf (stakeholderdemocracy.org) >accessed 13 July 2023
[392] ibid n 391

Fig 6: Oil spill site in Eleme Area of Ogoni land, Nigeria, 16 June 2023.[393]

Overview of the incident site on 36'' Rumuekpe Nkpoku Pipeline at Omuoda Aluu. Picture was taken during Joint Investigation of 14th April 2023.

Fig 7: Oil Spill Site in Rumuekpe Nkpoku, Rivers State. Nigeria[394]

The fact that 12 years after the Ogoni report, oil spills are still reported in Nigeria justifies the currency and relevance of the questions sought to be answered in this

[393] ibid n 392
[394] SPDC 'Oil Spill Data 2023' < Oil Spill Response Pictures (windows.net) > accessed 14 July 2023

research. It is trite to argue that there is no turning off the tap. The inhabitants of Ogoni land live and will continue to live with this contamination daily.[395] The research argues that oil spillage affects the environment deleteriously and violates the human right to a clean and safe environment. Oil spills in the Niger Delta have resulted in the excruciating poverty of the people.[396] Unfortunately, recent data from Shell Petroleum Development Company (SPDC) and the National Oil Spill Detection and Response Agency (NOSDRA) has shown that local sabotage is now the region's highest cause of oil spills.[397] It has become a case of "cutting off the nose to spite the face".

3.4 Gas Flaring

Gas flaring is a contentious environmental issue because it contributes considerably to greenhouse gas (GHG) emissions and can be seen as a waste of valuable energy resources from an economic standpoint.[398] The average quantity of Associated Natural Gas (ANG) flared in Nigeria is sufficient to meet the country's energy requirements and those of many neighbouring African nations.[399] According to satellite-based estimations, global gas flaring decreased by 3% from 144 billion cubic meters (BCM) in 2021 to 139 BCM in 2022.[400] From 2021 to 2022, oil production increased by 5%, from 77 million barrels per day (BBL/D) to 80 million bbl/d[401] This notable decoupling of gas flaring and oil production led to a decrease in the global average flaring intensity, the quantity of gas flared per barrel of oil produced, from 5.1 cubic meters per barrel of oil produced (m 3 /bbl) in 2021 to 4.7 m 3 /bbl in 2022.[402] Nigeria contributed the most to the global reduction by decreasing its flare volumes by 1,3 billion cubic meters in 2022, a decrease of 20% from 2021 levels.[403]

[395]E C Okonkwo, Environmental Justice and Oil Pollution Laws: Comparing Enforcement in the United States and Nigeria (Routledge, 13 Feb 2020) Pg 1-274
[396] ibid n 19
[397] Shell ' 2023 Oil Spill Incident Data' < January – December 2023 | Shell Nigeria>accessed 12 July 2023, NOSDRA Oil Spill Monitor < Nigerian Oil Spill Monitor >accessed 12 July 2023
[398] M O Edino et al 'Perceptions and attitudes towards gas flaring in the Niger Delta, Nigeria' (2009) 30 The Environmentalist,67-75
[399] ibid n 398
[400] World Bank 'Global Gas Flaring Tracker Report March 2023' < https://thedocs.worldbank.org/en/doc/5d5c5c8b0f451b472e858ceb97624a18-0400072023/original/2023-Global-Gas-Flaring-Tracker-Report.pdf >accessed 14 July 2023
[401] ibid n 400
[402] ibid n 400
[403] ibid n 400

However, this was primarily due to a 14% decline in oil production during the same period due to COVID-19.[404]

As part of the oil extraction process, gas is burned off or "flared."[405] Since the 1950s, Nigeria has been flaring gas, discharging carbon dioxide and other gases into the atmosphere.[406] Despite efforts to reduce it, gas flaring remains a source of environmental and health concerns in the Niger Delta. When crude oil is extracted from onshore and offshore oil wells, it carries unprocessed natural gas to the surface. The unwanted product is burned if it cannot be used at the source or transported elsewhere. Flaring gas releases hazardous pollutants like nitrogen, carbon, sulphur oxides, particulate matter, hydrocarbons, debris, photochemical oxidants, and hydrogen sulphide.[407] These pollutants are linked to numerous adverse health effects, including cancer, neurological, reproductive, and developmental. Also reported are deformities in children, lung damage, and skin disorders.[408]

Per the world bank, Nigeria is amongst the top nine countries in the world responsible for the vast majority of gas faring.[409] Other countries include Russia, Iraq, Iran, Algeria, Venezuela, the United States, Mexico, and Libya.[410] These countries are responsible for nearly three-quarters of flare volumes and less than half of global oil production.[411] This wasted gas could displace more polluting energy sources, improve energy access in some of the world's impoverished nations, and provide many countries with much-needed energy security. If utilized for productive purposes, the quantity of gas flared in 2022 could produce as much electricity as Sub-Saharan Africa generates annually.[412]

[404] ibid n 403
[405] NOSDRA 'About Gas Flaring' < Nigerian Gas Flare Tracker> accessed 12 July 2023
[406] ibid n 405
[407] ibid n 405
[408] ibid n 405
[409] The World Bank 'Global Gas Flaring Tracker Report' (2023) <2023 Global Gas Flaring Tracker Report (worldbank.org) > accessed 14 July 2023
[410] ibid n 409
[411] ibid n 409
[412] ibid n 409

Fig 8: Gas Flaring Site in Port Harcourt, Nigeria [413]

Fig 9: Cassava left out to dry close to a flare site in Otu -Jeremi, Delta State.[414]

The above pictures do not in any way showcase the gas flaring sites in Nigeria. Fig 4 shows Cassava left out to dry. Cassava is grown and processed in Nigeria, which

[413] T Brown 'Gas flares could help resolve Europe's energy crisis – instead it's fueling a health emergency ' (2023) < https://www.telegraph.co.uk/global-health/climate-and-people/gas-flares-nigeria-oil-africa-pollution-health-crisis/ > accessed 13 July 2023
[414] ibid n 413

produces several Nigerian delicacies like 'Garri', 'Fufu', and 'Tapioca'.[415] The inhabitants who live close to these sites inhale the black fumes and toxins they produce.[416] The question that comes to mind is, "Are there laws and penalties for gas flaring in Nigeria?' The research answers in the affirmative but reiterates that enforcement is poor. Gas flaring penalties are examined below.

3.5 Pipeline Vandalization in Nigeria -A race to the bottom?

In chapter 2.8 of this research, it was argued by the author that the anger, frustration, and deplorable state of the Niger Delta region had prompted inhabitants of this area to take the law into their own hands.[417] They have chosen to do this via pipeline vandalization, popularly referred to as local sabotage. Pipeline vandalism refers to the willful or deliberate Act of damaging petroleum pipelines to steal crude oil and associated petroleum products.

The importance of oil pipelines in an economy like Nigeria, which relies on crude oil, cannot be overstated. Pipelines, wellheads, tank farms, flow stations, and export terminals are among the oil facilities and structures targeted for sabotage.[418] The Nigerian National Petroleum Corporation (NNPC), Nigeria's state-owned national oil company, reported a breach to 43 pipeline locations across the country in what was akin to the Niger Delta area in 2020.[419] Although the NNPC claimed a decrease in damaged pipeline points in January 2021, another report provided by the NNPC in February 2021 indicated that the country had lost over 200,000 barrels per day due to pipeline vandalization.[420]

Furthermore, the Shell Petroleum Development Company (SPDC), Nigeria's biggest IOC, reported 15 breaches of wellhead cages in over 1706 attempts, leaving little question about the hazards of petroleum pipeline vandalism.[421] In the ten years between 2006 and 2016, there were around 16,083 occurrences of pipeline

[415] K E Ognakossan et al Cassava: production and processing (2016) < Cassava-production and processing (1).pdf >accessed 13 July 2023
[416] ibid n 415
[417] See Chapter 2.8 of the Research
[418] E O. Okumagba, 'Critical Analysis of Laws and Policies for The Prevention of Petroleum Pipeline Vandalization in Nigeria' (2021) 23 (4) Environmental Law Review. Pg. 306-307
[419] ibid n 418
[420] ibid
[421] ibid

vandalism, resulting in a loss of 174.57 billion (or nearly $484 million).[422] By the end of the first quarter of 2021, petroleum pipeline vandalism resulted in a loss of over $4.5 billion and the death of people in the affected region.[423] Furthermore, petroleum pipeline vandalism and crude oil theft have hampered the influx of foreign direct investment. SPDC and other IOCs are already discussing with the Nigerian government to divest from the country's onshore assets.[424]

The Oil spill data 2023 from SPDC and NODRA clearly indicates that the trend is not slowing down.[425] When sabotage of oil pipelines, bunkering and oil theft become potentially lucrative businesses, there is no adherence to environmental laws. Environmental pollution becomes the order of the day. Hence, it is vehemently argued by the researcher that strict enforcement of environmental laws offers a valuable solution.

[422] ibid
[423] ibid
[424] ibid
[425] SPDC ' 2023 Oil Spill Incident Data' < 2023 Oil Spill Incident Data | Shell Nigeria >accessed 14 July 2023, NOSDRA Oil Spill Monitor < Nigerian Oil Spill Monitor> accessed 14 July 2023

Overview of the incident site on 14" Okordia - Rumuekpe pipeline at Ikata. Picture was taken during Joint Investigation of 14th June 2023.

Spill point : 130mm straight cut (similar to hack saw cut) at 1 to 2 O'clock position on 14" Okordia - Rumuekpe pipeline at Ikata. Picture was taken during Joint Investigation of 14th June 2023.

Fig 10: Pipeline Vandalization site at Okordia-Rumuekpe, Rivers State. Nigeria.[426]

The above picture shows the hole dug by the crude oil thieves and oil leaking out of

[426] SPDC 'Oil Spill Data 2023' < Oil Spill Response Pictures (windows.net) > accessed 14 July 2023

the cut straight into the ground.[427] This picture is both nerve-wracking and pitiable.

Before the enactment of the PIA, although not statutorily required to do so, oil and gas companies addressed the development of host communities through the instrumentality of Global Memorandum of Understanding (GMOU), Offshore Memorandum of Understanding (OMOU) and other means of collaboration with host communities. The GMOUs and OMOUs were typically entered into between the oil and gas company, the host communities (represented by appointed representatives) and the relevant state government.[428] By the GMOUs and OMOUs, the companies, among other things, will undertake to either provide or fund certain developmental activities and projects for the benefit of the host communities. Further, the governing bodies under the GMOUs and OMOUs are responsible for reviewing the developmental projects, ensuring peaceful co-existence between the host communities and the oil and gas companies, and assisting with conflict resolution.[429]

Notwithstanding this existing practice of entering GMOUs, the government still saw the vast gap created due to the lack of a legislative framework which imposes host community development obligations so that it is not just seen as a corporate social responsibility initiative of the oil & gas companies but rather a legal obligation that must be complied with, hence the elaborate provisions on host community development contained in Chapter 3 of the PIA.[430]

Chapter 3 of the PIA 2021 introduced the Petroleum Host Community Development (PHCD), which has the main objectives to wit: to foster sustainable prosperity within host communities, provide direct social and economic benefits and enhance harmonious co-existence between the host communities and petroleum operators within the community (Settlors).**[431]** Section 240 of the Act went further to make provision for the host communities' development trust fund and how it will be funded.

[427] The researcher chose this picture due to the currency of the incident. Other photos of pipeline vandalization sites can be accessed here, SPDC ' 2023 Oil Spill Incident Data' < 2023 Oil Spill Incident Data | Shell Nigeria >accessed 14 July 2023, NOSDRA Oil Spill Monitor < Nigerian Oil Spill Monitor> accessed 14 July 2023
[428] E O. Okumagba, 'Critical Analysis of Laws and Policies for The Prevention of Petroleum Pipeline Vandalization in Nigeria' (2021) 23 (4) Environmental Law Review. Pg. 306-307
[429] ibid n 453
[430] The Petroleum Industry Act 2021, Chapter 3
[431] ibid n 455

Each settlor will contribute 3% of its actual operating expenditure in the upstream petroleum operations in the preceding calendar year. It may also be funded by donations, gifts, grants or honoraria and interests accruing to the Trust's Reserve Fund. The fund is tax-exempt, and contributions by the settlors are tax-deductible.

The Act protects petroleum operations and activities in host communities by providing that where there is any vandalism, sabotage or civil unrest which causes damage to any petroleum or designated facilities or disrupts petroleum activities in a host community, such community will forfeit its entitlement to the extent of the cause to repair the damage or the damage that occurred because of such disruption.[432] This is a step in the right direction, and with effective enforcement of this provision, vandalism is believed to be minimal. On the other hand, this could be debatable because if the fund from the Trust is not substantial than what the saboteurs get from vandalism and illegal refining, then it is assumed that they would happily continue in their ways and forfeit the funds.

A mere forfeiture of trust funds, if indeed this fund is paid, is not enough to deter the menace of sabotage in Nigeria. The drafters of the PIA should have considered adding imprisonment or hefty fines, or a combination of both for the community leaders and the saboteurs who are found guilty. However, if the fact that the community leaders collaborate with the government on sabotage is considered, then this may just be wishful thinking. Furthermore, this research opines that there is no actual benefit for effective enforcement with this fund. At its best, the fund becomes functional when environmental pollution occurs to address the needs of the host communities. What happens to endure that the pollution does not appear in the first place? As much as the fund is a welcome development, it may seem to duplicate what the NDDC was created for in 2000, as discussed in Chapter 4 of this research.

It could be argued that the fund is a means of enforcement by providing "that where there is any vandalism, sabotage or any civil unrest which causes damage to any petroleum or designated facilities or disrupts petroleum activities in a host community, such community will forfeit its entitlement to the extent of the cause to

[432] The Petroleum Industry Act 2021, Section 257(2)

repair the damage or the damage that occurred as a result of such disruption". This argument would have been agreeable to this research if the enforcement agencies tasked with discovering the causes of the oil spill could do so. As aforementioned, their capability has been questioned in section 6.5 of this research.

Thus, where they cannot find the causes of the Spill or bring the perpetrators to book, it is another free reign for vandalization. Furthermore, in the past couple of years, the data from SPDC and NOSDRA reveals that sabotage and pipeline vandalism are the significant causes of oil spills. Assuming but not conceding that this is the case means that no host community will be paid for environmental damages in their communities. Considering the extent of corruption already addressed in this research, the funds may not see the light of day. Moreover, since indigenous oil and gas companies now own most onshore oil wells, it is uncertain whether this contribution will be made. More is left to see if the PIA addressed old problems or created news. The answer lies in effective enforcement would tell.

3.6 The Nexus of Environmental Law Enforcement and Sustainable Development.

The Sustainable Development Goals (SDGs), sometimes referred to as the Global Goals, were officially embraced by the United Nations in 2015. They serve as a comprehensive and inclusive appeal to address poverty eradication, environmental preservation, and the promotion of peace and prosperity for all individuals by the year 2030.[433] The seventeen Sustainable Development Goals (SDGs) exhibit integration by acknowledging the interdependence across several domains of activity, understanding that efforts in one sphere can have repercussions in others. Moreover, these goals emphasize the necessity of achieving development that encompasses social, economic, and environmental sustainability in a harmonious manner.[434]

The overarching aim of environmental enforcement is to achieve environmental protection. Environmental protection aims to maintain and recover, when necessary,

[433] United Nations Development Programme 'What are the Sustainable Development Goals?' (2023) < https://www.undp.org/sustainable-development-goals >accessed 26 July 2023
[434] ibid n 433

a healthy natural environment that will yield sustainable development.[435] Sustainable development embraces environmental, social and economic objectives to deliver long-term equitable growth which benefits current and future generations.[436] Thus, the environment and development are inextricably related concerns. The environment cannot be safeguarded if the costs of environmental devastation are ignored by economic expansion. These issues cannot be addressed independently by fragmented institutions and policies. They are interconnected in a system of intricate causes and effects.[437] Sustainable development necessitates a healthy environment, which oil and gas development may circumvent if effective and dynamic environmental rules and regulations are not enforced. This, simply put, is the nexus. The right to a clean environment has been transferred to enforcement agencies, who, in turn, do little or nothing to ensure this clean environment through effective enforcement.

With its financial and economic benefits, the commercial exploitation of oil and gas in Nigeria provides an excellent opportunity for the country to re-establish the paradigm of contemporary development. It allows for employment creation, technology transfer, and capacity development in areas like conversion technology, environmentally friendly recycling technology, and highly advanced conservation management procedures, all of which are hallmarks of the business in which Nigeria currently lacks or has little experience.[438] Human well-being depends on a healthy environment, and actions that could tilt the balance in favour of a healthy environment have piqued interest in recent years.[439]

The Brundtland Report of 1987 recognized and affirmed the importance of integrating sound environmental practices with development on a global scale.[440] The 1992 UNED

[435] National Audit Office 'A Short Guide To Environmental Protection And Sustainable Development' (Nao.org.uk, 2015)< https://www.nao.org.uk/wp-content/uploads/2015/09/A-Short-Guide-to-Environmental-protection-and-sustainable-development.pdf > accessed 30 May 2022.
[436] ibid n 435
[437] United Nations 'Sustainable Development' < https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf > accessed 30 May 2022.
[438] A. Akinsulore, 'Evolving a Legal Framework for Sustainable Development and Utilization of Nigeria's Bitumen Resources' (2018) Nigerian Current Law Review, 194-224.
[439] A O Akinsulore and O M Akinsulore, 'Sustainable Development and the Exploitation of Bitumen in Nigeria: Assessing the Environmental Laws Fault lines' (2021) 12 Beijing Law Review 113
[440] ibid n 439

Earth Summit [441], the Rio Declaration[442], and Agenda 21 provided momentum to national governments to include environmental factors in multi-level decision-making.[443] The drive for development through natural resource exploitation must be matched with proactive measures that reduce the impact of oil and gas activities on the environment and, as a result, human survival capability.[444] The Brundtland report makes it a point to promote sustainable development as a holistic plan considering both the environment and development. Importantly, as Gro Brundtland has stated, it is also necessary to include developing nations in the sustainable development agenda and ensure that the dialogue does not exclude their developmental concerns.[445] Brundtland believes that implementing the sustainable development agenda entails protecting countries' economies and environments, defending justice, upholding human rights, and committing to social solidarity.[446]

Pursuant to the Nigerian constitution, the government is mandated by law to provide a healthy environment for its citizens. The Irony is that the citizens cannot enforce their rights in court.[447] *In Okogie (Trustees of Roman Catholic Schools) and other v Attorney-General Lagos State,* the court held that chapter II of the constitution is not justiciable.[448] This means that no Nigerian citizen can go to court to enforce their rights regarding a violation or threatened violation of such provision. However, in what could be referred to as a twist of fate, the court, in the case of *Jonah Gbemre v. Shell Petroleum Development Company of Nigeria Limited, [449]* was able to read into the right to life, the right to be free from pollution or activities that pose a risk to life. It was a groundbreaking ruling demonstrating the Nigerian judiciary's willingness to interpret the constitutional right to life expansively to encompass the

[441] Held in Rio de Janeiro Brazil 3-14 June 1992.
[442] Rio Declaration on Environment and Development was the documentary outcome of the Rio Earth Summit in 1992.
[443] M. F Tetlow, & M Hanusch 'Strategic Environmental Assessment: The State of the Art. (2012)30 Impact Assessment and Project Appraisal,15-24.
[444] ibid n 435
[445] ibid n 435
[446] ibid n 435
[447] The 1999 Constitution of the Federal Republic of Nigeria (as amended), Section 20
[448] (1981)2 NCLR 337
[449] (2005) Suit No. FHC/B/CS/53/05. (Unreported).

right to a healthy/clean environment.[450]

The court ruled that Shell's continuing to flare gas as part of its oil exploration and production activities in the applicant's village violates their constitutional and African Charter-guaranteed right to life (including a healthy environment) and dignity of the human person. In addition, the court ordered Shell Nigeria and the Nigerian National Petroleum Corporation (NNPC) to cease flaring gas in the applicant's community immediately and restrain future gas flaring. This case became a precedent-setting case in Nigeria to declare that gas flaring is illegal, unconstitutional, and a violation of the fundamental human right to life.

It illustrated how gas flaring and other environmental issues can interfere with enjoying the absolute right to life.[451] This case's significance to Nigerians is that it first illustrates how environmental degradation, such as gas flaring, can infringe the Constitutionally guaranteed fundamental rights. Secondly, it demonstrates that environmental issues could be brought under human rights. Thirdly, the case displayed how the right to life has been broadened or construed in a broader context to incorporate the right to enjoy a healthy environment.[452] Consequently, if the argument that environmental contamination undermines the enjoyment of fundamental human rights is plausible, there is probably nothing inconsistent with incorporating environmental issues under the canopy of human rights.[453] However, the judgment of this landmark case was not enforced. Gas is still flared despite the dangers it posits to the environment. The question remains, 'Quo Vadis Nigeria?'

For sustainable development to occur in Nigeria, enforcement of environmental laws cannot be a stranger and take the back seat. Therefore, the provisions of Nigeria's existing legal, regulatory and enforcement framework for environmental protection must ensure strict monitoring of oil and gas exploitation activities consistent with the principles of sustainable development. Where there is effective enforcement of

[450] A Bolaji Abdulkadir, 'The Right to A Healthful Environment in Nigeria: A Review Of Alternative Pathways To Environmental Justice In Nigeria' (2014) 3 Afe Babalola University: Journal Of Sustainable Development Law And Policy. Pg 118-131
[451] ibid n 450
[452] ibid n 370
[453] ibid n 370

environmental law, it offers a necessary foundation for the three pillars of sustainable development: economic, social, and environmental.[454]

3.7 Nigeria, Climate Change and The Law

The climate is changing in Nigeria, as it is in many other regions of the world. Specifically, the country is growing warmer. All facets of Nigeria's development are susceptible to climate-related stressors. Its natural composition (including land, forests, landscapes, water, and fisheries) and physical capital (including cities, infrastructure, and other types of created money) are very vulnerable to the effects of climate change, as is its human capital.[455] Nigeria's economy and other development areas are equally susceptible to climate change. The ability of natural capital, the primary source of income and livelihoods for most Nigerians (including food, fodder, timber, and the control of water cycles), to provide its vast array of products and services, some of which are essential, is compromised by climate change.[456]

The oil and gas industry contributes up to 14% of the nation's GDP and 95% of its foreign exchange profits.[457] Additionally, it accounts for 65% of the government budget. Gas flaring, fugitive methane emissions, on-site fuel usage (upstream and midstream), and on-site fuel consumption from refineries are the primary sources of GHG emissions in this industry. About 80% of emissions in the sector are contributed to the environment via venting and flaring together. By 2020, the goal was to reduce flare to less than 10%; by 2030, it should be eliminated. By 2030, flaring may be eliminated, saving over 64 million tonnes of CO2 annually and having significant development advantages. This goal is attainable if the correct policies and tactics are implemented. Indications for achieving the goal may be found in the Nigerian Gas Flare Commercialization Programme (NGFCP) (2016)[458], Nigerian Gas Policy

[454] A Kreilhuber and A Kariuki, 'Environmental Rule of Law in the Context of Sustainable Development' (2020) 32 Geo Envtl L Rev 591

[455] Federal Ministry of Environment and The Department of Climate Change "National Climate Change Policy of Nigeria 2021-2030 < https://climatechange.gov.ng/wp-content/uploads/2021/08/NCCP_NIGERIA_REVISED_2-JUNE-2021.pdf >Accessed 21st July 2022

[456] ibid n 455

[457] ibid n 455

[458] Nigerian Gas Flare Commercialization Programme < https://ngfcp.nuprc.gov.ng/ >accessed 14 July 2023

(2017)[459], and Flare Gas (Prevention of Waste and Pollution) Regulation (2018).[460]

Current data on global gas flaring suggests that gas flaring happens in most oil- and gas-producing nations, including Nigeria, which faces numerous difficulties directly linked to climate change and necessitate severe greenhouse gas (GHG) emission reductions by 2050.[461] In November 2021, the 26th United Nations Climate Change Conference of the Parties (COP26) was held in Glasgow, Scotland. The government and parties with a stake in attaining the aims of the Paris Agreement considered the most important steps required to achieve those objectives.[462] The meeting adopted the Glasgow Climate Pact, in which the participating nations pledged to submit either new or amended Nationally Determined Contributions (NDC) emission targets covering approximately 80 percent of the world's emissions.[463] On 20 November, the 27th Conference of the Parties to the United Nations Framework Convention on Climate Change (COP27), which took place in the Egyptian coastal city of Sharm el-Sheikh, concluded with a historic decision to establish and operationalize a loss and damage fund.[464] COP 28 will take place from 30 November until 12 December 2023.[465] It would be interesting to see Nigeria's commitment to this conference.

Extreme weather occurrences such as floods, storm surges, and heat waves affect cities, highways, drainage systems, power plants, and ports, among other infrastructure types. In addition, climate change threatens the nation's capacity to develop and preserve its human capital, notably in health and education. Rising temperatures and frequent floods are predicted to increase the population's vulnerability to water- and vector-borne illnesses. Children may also be prevented from attending school due to flooding. The combination of frequent natural catastrophes, a significant population, inadequate infrastructure, and limited

[459] Nigerian Gas Policy (2017)< Microsoft Word - National_Gas_Policy-FEC-Jun_2017 .docx (petroleumindustrybill.com) > accessed 14 July 2023
[460] Flare Gas (Prevention of Waste and Pollution) Regulation (2018)<https://www.nuprc.gov.ng/wp-content/uploads/2020/06/Flare-Gas-Prevention-of-Waste-Pollution-Regulations-2018.pdf >accessed 14 July 2023
[461] ibid n 378
[462] UN Conference of Parties, (COP26), 1-12 November 2021, Glasgow https://ukcop26.org/
[463] ibid n 462
[464] UN Conference of Parties, (COP27) < COP27: Delivering for people and the planet | United Nations>accessed 14 July 2023
[465] United Nations Climate Change < UN Climate Change Conference - United Arab Emirates Nov/Dec 2023 | UNFCCC>accessed 14 July 2023

resilience to economic shocks makes Nigeria susceptible to climate hazards. Moreover, the prevalence of poverty and the reliance of poor people on agriculture and natural resources make them more vulnerable to climate change.[466]

The German Watch Organization's 2019 Climate Risk Index ranked Nigeria as a high-risk area and identified the nation as one of the most susceptible nations in the world. Nigeria's annual and seasonal temperature trends imply a significant increase. Since the 1980s, the linear warming from 1951-2005 increased by 1.01°C (0.52 to 1.5°C). The linear warming for the same time for 30-year averages on a decadal slice found temperature increases averaging 0.2°C every decade.[467]

The mean annual variability and rainfall trend over Nigeria over the past few decades indicate the existence of several inter-annual fluctuations responsible for dry and wet years or extreme climate events such as droughts and floods in numerous sections of the country and at different times. 2019 was a record-breaking year for severe weather, with widespread record-breaking floods around the nation. The unprecedented rainfall also poses a hazard to farmers and their harvest. More worrying is the growing awareness that the country would be exposed to constant variations in precipitation and temperature conditions, especially by the end of the century.[468] A recent analysis of anticipated future climatic trends for the country, as captured in the Third National Communication, indicates that the minimum temperature increases for 2050 and 2070 could range between 1.48°C and 1.78°C, and the maximum temperature increase could range between +3.08°C and +3.48°C, relative to the base year of 1990. Over most of the country's ecological zones, an increase in the number of rainy days and days with extreme rainfall events that may cause flooding is predicted, except for the northeast Sahel zone, where scenario analysis indicates a decrease in excessive rainfall and flooding events.[469]Climate change is a complicated environmental issue due to its long-term unpredictability,

[466] Federal Ministry of Environment and The Department of Climate Change "National Climate Change Policy of Nigeria 2021-2030 < https://climatechange.gov.ng/wp-content/uploads/2021/08/NCCP_NIGERIA_REVISED_2-JUNE-2021.pdf >Accessed 21st July 2022
[467] ibid n 466
[468] ibid n 466
[469] Federal Ministry of Environment and The Department of Climate Change "National Climate Change Policy of Nigeria 2021-2030 <https://climatechange.gov.ng/wp-content/uploads/2021/08/NCCP_NIGERIA_REVISED_2-JUNE-2021.pdf >accessed 21 July 2022

scales of occurrence, uneven consequences and vulnerabilities, and equity and justice within global power asymmetries. As an example, the effects of climate change are already forcing people back into poverty and impeding economic growth.[470]

The Government of Nigeria intends to strengthen its management of climate-related development challenges through appropriate policy and institutional arrangements that will not only integrate climate change into its development priorities but also promote the implementation of climate change adaptation and mitigation measures.[471] Climate change is possibly humanity's greatest challenge. Complex and dynamic, it necessitates multidimensional and cross-sectoral mitigation and adaptation measures within a dynamic policy framework to be effectively addressed. The Nigerian government acknowledges this and appears committed to addressing any potential danger to its national sustainable development.[472] Nigeria intends to promote sustainable development through national programs that increase the country's climate change preparedness, adaptation, and mitigation policies for all segments of society, particularly the most vulnerable.[473]

3.8. The Paris Agreement and Nigeria.

Implementing the 2015 Paris Agreement, which Nigeria ratified in March 2017, is a crucial component of Nigeria's effective response to the threat of climate change. This agreement is a significant step in advancing the transition to a low-carbon economy. Consequently, this agreement on Climate Change aims to establish a new holistic framework to lead the nation's response to the development challenge posed by climate change. As a framework document, it outlines sectoral and cross-sectoral strategic policy statements and actions for managing climate change in the nation's pursuit of climate-resilient sustainable development.[474] Nigeria's March 2017 ratification of the Paris Agreement from 2015 represented a significant milestone in the country's response to climate change concerns. This agreement is vital in advancing the transition to a low-carbon economy. Pursuant to the Paris Agreement,

[470] ibid n 469
[471] ibid n 469
[472] ibid n 469
[473] ibid n 469
[474] Paris Agreement 2015 < https://unfccc.int/sites/default/files/english_paris_agreement.pdf > accessed 26 July 2022

states must prepare and provide implementation mechanisms and publish their Nationally Determined Contribution (NDC) targets for reducing carbon emissions.[475] This mandatory requirement complies with Sustainable Development Goal (SDG) 13 of the United Nations Development Programme, as it addresses climate change via positive action to minimise its effects and build climate resilience.[476] Parties to the UNFCCC are now required to unpack, clarify and track the essential tasks and activities outlined in their respective NDCs to provide a well-defined pathway to reducing global GHG emissions by 2030.[477]

Nigeria's NDC outlines the country's climate change priorities for the post2020 period and includes targets and concrete strategies for addressing the causes of climate change and responding to its effects. It serves as Nigeria's central pillar of its development policy, thereby integrating it with the existing national development agenda and the SDGs. Nigeria is now implementing its NDC as a catalyst for a comprehensive national climate action offering several opportunities to advance sustainable development.[478] The NDC implementation plan promotes a climate-resilient sustainable society while fostering low-carbon, high-growth economic development. The NDC represents an integrated and comprehensive strategic approach towards promoting a low carbon high growth climate-resilient path for national sustainable development.

3.9 Conclusion

The legislative and regulatory analyses revealed that efforts to end gas venting in the Niger Delta since the 1960s have been, at best, superficial. These efforts have been characterized by feeble penalties, convenient loopholes, and the granting of broad discretion to the Minister of Petroleum, arguably resulting in the potential for continued gas flaring in the Niger Delta. These topics will be examined further in chapter six of this research. Economic gains, not concerns about climate change, appear to be the primary factor. The 2018 Flare Gas Regulations, which seek to eliminate gas flaring eventually, have not yet been tested in court. Suppose the

[475] Paris Agreement 2015 < https://unfccc.int/sites/default/files/english_paris_agreement.pdf > accessed 26 July 2022
[476] ibid n 475
[477] ibid n 475
[478] ibid n 475

effectiveness of the Regulations is determined by the current and consistent rate of gas flaring in the Niger Delta. In that case, it can be concluded that the Regulations have been largely ineffective at preventing gas flaring. The judicial posture of Nigerian courts still appears to prioritize the government's economic interests over climate change concerns. Nonetheless, the recent Supreme Court decision in *COPW v. NNPC*[479] demonstrates a potential but welcome shift in the jurisprudence of the Nigerian judiciary concerning cases that have significant implications for climate change and the cessation of gas flares in Nigeria.

Nigeria may have finally signed and ratified the international instruments that demonstrate, albeit hypothetically, that it is serious about combating climate change: the UNFCCC, the Paris Agreement, the Intended Nationally Determined Contribution, and the Glasgow Climate Pact. On the home front, the situation is quite different. The non-domestication of the Paris Agreement into its body of laws, the absence of a legal framework expressly on climate change, and the legislative and regulatory history of the country's efforts to phase out gas flaring render these international obligations laughable. Nigeria has committed unequivocally, as part of its new climate change commitments under COP26 and 27, to eliminate GHG emissions (i.e., gas flare) by 2060.[480] It may seem like yet another example of relocating the goalposts. As earlier mentioned, COP28 is underway, and precedent has shown that Nigeria will also make climate change commitments. This research vehemently submits that Nigeria must take the enforcement of environmental laws much more seriously to realize these international commitments on combating and mitigating climate change if it is to fulfil its new obligations realistically and effectively.

[479] Paris Agreement 2015 < https://unfccc.int/sites/default/files/english_paris_agreement.pdf > accessed 26 July 2022
[480] ibid n 479

CHAPTER FOUR: THE LEGAL REGIME FOR ENFORCEMENT OF ENVIRONMENTAL LAWS IN THE NIGERIAN OIL AND GAS INDUSTRY AND COMPARATIVE JURISDICTIONS.

4.1 Introduction

The legal regime here refers to the environmental laws, environmental regulators and enforcement agencies tasked with the responsibility for environmental protection in Nigeria. This research submits that these three form a tri-fold relationship for environmental protection to occur. This chapter examines selected environmental laws and agencies regulating Nigeria's oil and gas industry. This examination will answer the first question of this research to wit: *Is the enforcement regime of environmental laws in the Nigerian Oil and gas Industry effective? If No,*

During the writing of this research, the PIA 2021 was passed into law on the 16th of August 2021. With its passage came the repeal of some environmental laws and agencies that governed Nigeria's oil and gas industry.[481] These laws will not be discussed in this research. The Department of Petroleum Resources was also replaced by the Nigerian Upstream Regulatory Commission (the "Commission") and the Midstream and Downstream Regulatory Authority (the "Authority"). These new agencies will be examined in this chapter.

4.2 General Overview of Environmental Laws of the Nigerian Oil and Gas Industry

The research will examine some of the existing environmental laws governing the oil and gas industry. It should be noted that the laws discussed in this research are not exhaustive of the environmental laws in Nigeria's oil and gas industry. The laws

[481] The PIA 2021 repealed the following laws:

- Associated Gas Reinjection Act, 1979 CAP A25 Laws of the Federation (LFN)2004, and its amendments.
- Hydrocarbon Oil Refineries Act No. 17 of 1965, CAP H5 LFN2004.
- Motor Spirits (Returns) Act, CAP M20 LFN2004.
- Nigerian National Petroleum Corporation Act No. 94 of 1993, CAP N124 LFN2004.
- Nigerian National Petroleum Corporation Act (NNPC) 1977 No, 33 CAP N123LFN as amended.
- Petroleum Products Pricing Regulatory Agency Act 2003.
- Petroleum Equalization Fund (Management Board etc.) Act No. 9 of 1975, CAPP11 LFN 2004.
- Petroleum Equalization Fund Act,1975.
- Petroleum Profit Tax Act Cap P13 LFN 2004, (PPTA); and
- Deep Offshore and Inland Basin Production Sharing Contract Act (DOIBPSCA), 1993 CAP D3, LFN 2004

discussed herein are laws the researcher has deemed necessary for the research.

4.2.1 The 1999 Constitution of the Federal Republic of Nigeria (As Amended)

As the national legal order, the constitution recognizes the importance of improving and protecting the environment and makes provisions for it. Section 20 of the Constitution mandates the state (through its government) to "protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria."[482] This provision implies a requirement for adequate regulation by the government. In effect, the condition holds the government accountable (through its established state agencies) for enforcing environmental standards in the regime.

The main aim of section 20 is to ensure a healthy environment for Nigerian citizens. Despite the constitution's laudable provision of section 20, the question is whether an individual or aggrieved person has a right or the *locus* to approach the court to enforce the provision of section 20. In answering this question, it is pertinent to examine the provision of section 6(6)(c) of the Constitution, reproduced below:

> *"The judicial powers vested in accordance with the foregoing provisions of this section shall not, except as otherwise provided by this constitution, extend to any issue or question as to whether any act or omission by any judicial decision is in conformity with the fundamental objectives and directive principles of state policy set out in chapter II of this constitution" [483]*

This provision of section 6(6)(c) can be interpreted as denying the court the power to adjudicate on any issue related to the enforceability of the provision of section 20 constitution. This is because section 20 also falls under the provisions of Fundamental Objectives and Directive Principles of State Policy set out in chapter two of the Constitution, which are generally not enforceable.[484] In the case of *Okogie (Trustees of Roman Catholic Schools) and other v Attorney-General, Lagos State*[485] , the Court of Appeal, while considering the constitutional status of chapter two of the

[482] The 1999 Constitution of the Federal Republic of Nigeria (As Amended), Section 20
[483] The 1999 Constitution of the Federal Republic of Nigeria (As Amended), Section 6(6)c
[484] ibid n 483
[485] [1981] 2 NCLR 337.

constitution, held thus:

"While section 13 of the Constitution makes it a duty and responsibility of the judiciary, among other organs of government, to conform to and apply the provisions of Chapter II, section 6 (6) (c) of the same Constitution makes it clear that no court has jurisdiction to pronounce on any decision as to whether any organ of government has acted or is acting in conformity with the Fundamental Objectives and Directive Principles of State Policy. It is clear, therefore, that Section 13 has not made Chapter II of the Constitution justiciable. I am of the opinion that the obligation of the judiciary to observe the provisions of Chapter II is limited to interpreting the general provisions of the Constitution or any other statute in such a way that the provisions of the Chapter are observed, but this is subject to the express provisions of the Constitution."

The court's interpretation in the above-cited case adumbrates the argument that no court has jurisdiction to pronounce or entertain any question regarding the enforceability of the provision of section 20 and other matters stipulated in chapter two of the constitution. Abdulkadir argued that the non-justiciability provision is undemocratic and open to abuse, and the non-justiciability of the provision implies that ''the quality of the social objectives is destroyed, and the provisions under chapter II for these objectives are reduced to worthless platitudes.[486]

4.2.2 The Petroleum Industry Act 2021

The Petroleum Industry Act 2021 (hereinafter referred to as 'PIA 2021') is undoubtedly the latest addition to the fleet of environmental laws in Nigeria's oil and gas industry. However, the research argues that it has not done enough justice to issues pertaining to the enforcement of environmental laws. Again, it may be argued that the PIA 2021 just came on board. However, the research disagrees with this argument and submits that the time and resources taken to enact the PIA 2021 provided sufficient time for the act to include much more robust provisions for enforcement, particularly with the current environmental degradation in the Niger

[486] A B Abdulkadir, "The Right to A Healthful Environment In Nigeria: A Review Of Alternative Pathways To Environmental Justice In Nigeria' (2014) 3(1) Afe Babalola University: Journal Of Sustainable Development Law And Policy Pg 118-122

Delta.

The PIA 2021 comprises 5 five chapters that cover the following issues:

- Chapter 1 – Governance and Institutions: deals with the creation of efficient and effective institutions and entities with clear and separate roles for the industry, such as the Nigerian Upstream Petroleum Regulatory Commission (the "Commission") for upstream matters, the Nigerian Midstream and Downstream Petroleum Regulatory Authority (the "Authority") to regulate midstream and downstream operations and the Nigerian National Petroleum Company Limited - a limited liability company – a commercial entity to succeed the current Nigerian National Petroleum Corporation. Chapter 1 also sets out the powers of the Minister of Petroleum Resources (the "Minister"), which are significantly reduced vis-à-vis the regulatory framework pursuant to the Petroleum Act that confers significant powers on the office of the Minister.[487]
- Chapter 2 – Administration: focuses on transparent and efficient administration/ management of the industry's upstream, midstream and downstream sectors. While the Commission will regulate the upstream sector, the midstream and downstream sectors are within the regulatory ambit of the Authority.[488]
- Chapter 3 – Host Community Development: deals with providing social and economic benefits to host communities. The aim is to support the development of host communities.[489]
- Chapter 4 – Petroleum Industry Fiscal Framework: aimed at encouraging investment in the industry, balancing rewards with risks and enhancing revenues to the FGN. Chapter 4 of the PIA completely overhauls the existing fiscal regime.[490]

[487] Petroleum Industry Act, 2021, Chapter 1
[488] Petroleum Industry Act, 2021,Chapter 2
[489] Petroleum Industry Act, 2021,Chapter 3
[490] Petroleum Industry Act, 2021,Chapter 4

- Chapter 5 – Miscellaneous Provisions: contains provisions dealing with legal proceedings, amendments, repeals, savings, transfer of assets & liabilities, transfer of employees & condition of service and interpretations.[491]

Pursuant to the newly enacted PIA 2021, most of the laws governing the oil and gas industry are now embodied in this single act. Thus, this act has been regarded as a game-changer for the entire industry. Whether this is true remains to be seen and will be determined by the effective enforcement of the PIA 2021 and jurisprudence arising from this. The PIA 2021 replaces the former Petroleum Act. It provides legal, governance, regulatory and fiscal framework for the Nigerian oil and gas industry, which includes international and indigenous oil and gas companies. Undoubtedly, the PIA 2021 has made some considerable changes to the petroleum sector in Nigeria.

The Petroleum Act of 1969 (now repealed)mandated that petroleum activities be carried out in conformity with excellent oil field practice, or the Minister of Petroleum Resources would revoke the operating licence.[492] The PIA 2021 has retained this clause and provided that the Minister may revoke a petroleum prospecting licence or petroleum mining lease if the relevant licensee or lessee fails to conduct oil and gas operations per good international petroleum industry practises or if he disregards environmental obligations stipulated by the applicable law, licence, or lease.[493] Per Ele, while this clause is a good one, the precedent in Nigeria shows that the sector has never been eager to withdraw a licence or lease due to the strategic value of oil to the Nigerian economy.[494]

The phrase "good oil field practice" is used interchangeably with the phrase "good international petroleum industry practices" in PIA 2021.[495]The Mineral Oils (Safety) Regulations (1962), amended in 1997, considered the requirement satisfied if the petroleum operation complies with any internationally recognised and accepted system or codes, such as the American Petroleum Institute (API) codes or the codes

[491] Petroleum Industry Act, 2021,Chapter 5
[492] Petroleum Act 1969, Section 8 (g), Section 25(1)(a)(iii) of the First Schedule to the Petroleum Act 1969
[493] Petroleum Industry Act 2021, Section 96(1)a
[494] M Ele, 'Oil Spills in the Niger Delta - Does the Petroleum Industry Act 2021 Offer Guidance for Solving the Problem?' (2022) 13 Journal of Sustainable Development Law & Policy 130
[495] ibid n 56

of the Energy Institute, London. [496]These organisations provide globally recognised rules of acceptable oil field practice, although the codes primarily define requirements for oilfield equipment and have little to do with environmental regulations.[497]

However, "good oil field practice" needs to be redefined and interpreted to embody the idea of environmental protection and sustainability, considering the significant environmental pollution associated with oil exploration and production and their effects on human health, the ecosystem, and climate change. It's encouraging to see that this gap has been bridged with the new PIA 2021.[498] Under the Act, the term 'good international petroleum industry practices' means:

> Those uses and practices that are, at the time in question, generally accepted in the global petroleum industry as being good, safe, economical, environmentally sound, and efficient in petroleum operations and should reflect standards of service and technology that are either state-of-the-art or otherwise appropriate to the operations in question and should be applied using standards in all matters that are no less rigorous than those in use by petroleum companies in global operations.[499]

It could be argued that this definition incorporates the notion of environmentally responsible practices in Nigeria's oil and gas industry. Ele argues that the definition further specifies that petroleum operation technology and services approved in Nigeria must be' state-of-the-art' and 'no less stringent than those utilised by petroleum businesses for global operations.'[500] This establishes Best Available Technology (BAT) as the required standard for petroleum services and operations in Nigeria, making the Nigerian standard equal to the BAT standard utilised in Alaska, USA. [501]

[496] Mineral Oils (safety) Regulations 1962, Section 7
[497] M. A. G Bunter, World-wide Standards of Good Oilfield Practice... the Impact of the Blow-out, Deaths and Spills at the BP Macondo Well, the MC 252/1 01, US Gulf of Mexico` (2013) 11(2) OGEL 3.
[498] ibid n 497
[499] Petroleum Industry Act 2021, Section 318
[500] ibid n 557
[501] 18 AAC 75, Article 4. Oil Discharge Prevention and Contingency Plans

Pursuant to statute 46.04.030(e) of the Alaska statute, oil discharge prevention and contingency plans required for specific types of facilities or operations must include a contingency plan for the discharge of oil, "must provide for the applicant's use of the best available technology at the time the contingency plan was submitted or reviewed.[502] The Alaska Department of Environmental Conservation (ADEC) must identify the preventative and response technologies that are subject to a determination of the best available technology.[503] The department may determine that any technology fulfilling the response planning criteria in subsection (k) or a preventative performance criterion established under section 46.04.070 is the best technology available. The department may compile results and keep a list of the available technologies deemed to be the best. "Per 18 AAC 75.425(e), the department must make a BAT determination on specific plan components at each review or renewal of a contingency plan to comply with this requirement (4).[504] Pursuant to the above, it could be argued that the PIA 2021 indeed has the environment's best interest at heart. Little wonder it is hailed as a game changer for Nigeria's oil and gas industry. However, what changes the game is the effective enforcement of these provisions; otherwise, the PIA would follow in the footsteps of its predecessors.

A significant introduction of the PIA 2021 is the creation of the Host Community Development Trust Fund (HCDTF).[505] Its objective is to foster sustainable prosperity, provide direct social and economic advantages from petroleum to host communities, and promote peaceful and harmonious cohabitation between licensees or lessees and host communities.[506] Specifically, the legislation mandates that current host community initiatives must be transferred to the HCDTF and that each settlor (or oil licence holder) must make an annual contribution equivalent to three percent of its operational expenses for the relevant operations from the preceding year. The trust's management committee must include at least one host community member. In

[502] The Great State of Alaska 'Best Available Technology' < https://dec.alaska.gov/spar/ppr/contingency-plans/bat/ >accessed 9th February 2023
[503] ibid n 502
[504]ibid < https://dec.alaska.gov/spar/ppr/contingency-plans/bat/>accessed 9th February 2023
[505] Petroleum Industry Act 2021, Section 234
[506] ibid n 505

addition, the statute provides that failing to comply with host community requirements may result in licence revocation.

The three percent contribution has caused unrest within host communities that initially requested ten percent. Host communities have argued that they are unsure the contribution would be made because indigenous oil firms now own most onshore oil wells, thus increasing the risk of non-compliance with the contributions. Furthermore, it is argued that the PIA 2021 also presents an equality issue between National Oil Companies (NOCs) and International Oil Companies (IOCs).[507] IOCs like Shell have majorly stopped onshore exploration and production of oil and gas in favour of focusing on deep offshore. Due to the considerable involvement of the IOCs in deep offshore operations, deep-offshore petroleum operations are exempt from hydrocarbon tax (HT).[508] Thus, IOCs are "technically" immune from the 3 percent payment to the HCDTF if they divest themselves of onshore production. These rules give oil multinationals a financial edge, making it challenging for local businesses to compete and develop. The act could be changed to mandate contributions to the HCDTF from all oil firms doing business in Nigeria as a potential remedy.

Notably, the PIA 2021 puts on host communities the obligation and responsibility to protect oil and gas assets. Section 257 of the PIA 2021 provides that "Where in any year, an act of vandalism, sabotage or other civil unrest occurs that causes damage to petroleum and designated facilities or disrupts production activities within the host communities, the community shall forfeit its entitlement to the extent of the cost of repairs of the damage that resulted from the activity with respect to the provisions of this Act within that financial year, provided the interruption is not caused by technical or natural cause."[509]

Host communities have argued that this clause could cause constitutional and legal issues for the PIA 2021 because it punishes host communities collectively for

[507] O Maiye et al 'Nigeria: Petroleum Industry Act 2021: Opportunities For Key Industry Players' < https://www.mondaq.com/nigeria/oil-gas--electricity/1104754/petroleum-industry-act-2021-opportunities-for-key-industry-players >accessed 10th February 2023
[508] Petroleum Industry Act 2021, Section 260
[509] Petroleum Industry Act 2021, Section 257

vandalism they may not have done.[510] This research criticises this because justice is not a one-way traffic. The above provision of the PIA 2021 is indeed an applaudable one. Thus, the research submits that effective enforcement of this provision will ensure that communities that encourage and give safe havens to oil pipeline saboteurs will be deprived of developmental funds needed to improve their communities. The Federal High Court supports this view in the case of *Hon. George U. Timinimi et al. vs Attorney-General of the Federation and the National Assembly*.[511] The plaintiffs sued for themselves and on behalf of the entire Gbaramatu – Egbema and Ogulagha Coastal Communities Front (GEOCCE) members of Delta State. The plaintiffs, by an Originating Summons of January 6, 2022, approached the court seeking three reliefs:

> (1) A declaration that section 257(2) & (3) of the PIA are under section 36 (1) & (2) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) thus section 257 of the PIA is unconstitutional, null and void and of no effect whatsoever.[512]
>
> (2) An order striking down the section for being inconsistent with Section 36 (1) and (2) of the 1999 Constitution.[513]
>
> (3) An order of perpetual injunction restraining the Federal Government, its ministries, agencies or subsidiaries and joint venture partners in the oil and gas industry from applying Section 257(2) & (3) of the PIA in the calculation of the Host Communities Development Trust Fund established under Section 240 (2) of the PIA.[514]

In a judgment delivered on June 27, 2020, Justice Taiwo held: "The right of the plaintiffs to challenge any act under section 257(2) and (3) has not been extinguished. The Act has not taken away the plaintiffs' rights to approach the court if it thinks that the decision to deduct any percentage from what is due to the host

[510] ibid n 509
[511] Unreported. Suit No FHC/ABJ/CS/9/2022
[512] ibid n 511
[513] ibid n 511
[514] ibid n 511

community has not been well thought out. The provisions of Section 257(2) and (3) are obvious and unambiguous."[515] The court held further that while it agrees with the submissions of the learned counsel for the plaintiffs that sections 307 and 308 of the PIA deal with suits against regulatory agencies created via sections 4 and 29 of the PIA, section 257(2)(3) being sought to be struck down has not taken away the constitutional rights of the plaintiffs or any host communities from seeking redress from the court.[516]

The section of the PIA 2021 is within the legislative powers of the 2nd defendant to make laws for the peace, order and good government of the Federation or any part thereof pursuant to the constitution. The court added that the PIA 2021 brings sanity into the operation of the oil sector to develop the host communities and ensure a conducive atmosphere for all stakeholders in the oil industry. Thus, there is no inconsistency in sections 257 (2) and (3) of the PIA and sections 36(1) and (2) of the Constitution of the Federal Republic of Nigeria. The case was accordingly dismissed. This research applauds the court's judgment because it gives life to section 257 of the PIA and ensures that host communities are much more responsible for oil and gas installations in their communities. However, it could be argued that it has added another layer of financial responsibility on the part of the operators, which further creates more compliance obligations.

Whilst the PIA puts in place measures to safeguard investments, facilities, and operations of settlors in host communities, as well as prevents exploitation of host communities and degradation of their environment, it is argued by the research that the PIA has not done enough justice to ensure enforcement of environmental laws in the oil and gas industry. One major ambit of this argument is granting enforcement powers to the industry's regulators. This was the same arrangement prior to the PIA. The DPR was the regulator and enforcer at the same. This dual responsibility defiled the Latin maxim *Nemo judex in sua causa* (or nemo judex in sua causa). *Nemo judex in sua causa* is a natural justice concept stipulating that no one has the right to decide

[515] ibid n 511
[516] ibid, section 257, the Petroleum Industry Act 2021

a case in which they have an interest or are involved.[517] This was the fate of the DPR regarding ensuring enforcement with the oil and gas operators. They had a stake and thus could not be seen to do justice. The PIA has done the same thing with the two new regulatory bodies it created to replace the DPR, thus creating a risk of regulatory capture. On the face of it, it may appear to be harmless. However, the antecedents of Nigeria prove that this move is stale and does not yield effective enforcement of environmental laws in the oil and gas industry.

4.2.3 Environmental Impact Assessment Act (EIA) 1992

The EIA sets out the general principles, procedures, and methods to enable the prior consideration of environmental impact assessment on specific public or private projects.[518] The objectives of the Act pursuant to section 1 of the Act are as follows:

> *(a) To establish, before a decision is taken by any person, authority, corporate body or unincorporated body, including the Government of the Federation, State or local government intending to undertake or authorize the undertaking of any activity, those matters that may likely or to a significant extent affect the environment or have an environmental effect on those activities and which shall first be taken into account.*
>
> *(b) To promote the implementation of appropriate policy in all Federal Lands (however acquired) States and local government areas, consistent with all laws and decision-making processes through which the goal and objective in paragraph (a) of this section may be realized.*
>
> *(c) To encourage the development of procedures for information exchange, notification and consultation between organs and persons when proposed activities are likely to have significant environmental effects on boundary or trans-State or on the environment of bordering town and villages.*[519]

Section 2 of the EIA prohibits the public or private sector of the economy from embarking on or authorizing projects or activities without prior consideration, at an early stage, of their environmental effects. [520] Where the extent, nature or location

[517] ibid n 516
[518] Environmental Impact Assessment Act (EIA) 1992, Schedule 1
[519] Environmental Impact Assessment Act (EIA) 1992, Section 1
[520] ibid ,Section 2(1)

of a proposed project or activity is such that it is likely to affect the environment significantly, its environmental impact assessment will be undertaken per the provisions of the EIA. [521] The relevant significant environmental issues will be identified and studied before commencing or embarking on any project or activity convened by the provisions of the Act. The EIA can be argued imbibed the precautionary principle because it intends to avoid environmental harm when enforced.

According to Section 5 of the Act, the review of assessments would be prioritized based on the environmental significance of each development.[522] The Federal Ministry of Environment (FME) must evaluate the information supplied in the EIA process and the final report presented after the assessment to determine whether the project may proceed.[523] Before the report was made, section 7 of the Act allowed government agencies, public members, experts in any relevant discipline and interested groups to comment on the activity's environmental impact assessment. This is also in accordance with the Aarhus convention. The FME may authorize or prohibit the development of a project if it is found to have a significant harmful effect on the environment, or it may refuse to provide permits to an organization that has not filed an EIA report.[524] This authorization will be provided as an impact assessment certificate (IAC) per Section 41 of the Act.

In addition to preparing an impact assessment report, Section 3 (1) of the Act mandates that operators create an Environmental Management Plan (EMP) that describes how they will mitigate any potential adverse environmental consequences resulting from their activities. In other words, the EMP is a precautionary measure mandated under the Act. The EMP would enable the regulator to evaluate the performance of the operator-designed pollution control measures. Under Section 60 of the Act, anyone found guilty of breaching the environmental standard of undertaking and making a report on EIA before commencing operations is strictly liable. This offence is punishable by a fine not exceeding N100,000 (£175.96) or

[521] ibid, Section 2(2)
[522] ibid, Section 5
[523] ibid, Section 6
[524] ibid, Section 21

imprisonment for five years. Similarly, a corporation found guilty is strictly liable to a fine of not more than N1,000,000 (£1759.61).[525]

4.2.4 Petroleum Production and Distribution (Anti Sabotage) Act 1975

This act criminalizes the activities of crude oil theft and pipeline vandalization with even stiffer penalties to discourage the Acts. It provides that:

> Any person who does any of the following things, that is to say-
>
> a) wilfully does anything with intent to obstruct or prevent the production or distribution of petroleum products in any part of Nigeria; or
> b) wilfully does anything with intent to obstruct or prevent the procurement of petroleum products for distribution in any part of Nigeria; or
> c) wilfully does anything in respect of any vehicle or any public highway with intent to obstruct or prevent the use of that vehicle or that public highway for the distribution of petroleum products,
>
> shall, if by doing that thing he, to any significant extent, causes or contributes to any interruption in the production or distribution of petroleum products in any part of Nigeria, be guilty of the offence of sabotage under this Act.[526]

In furtherance of the above, where any person also aids, incites, counsels, or procures any other person to commit the offence above shall be guilty of sabotage[527] and punishable by the death penalty or imprisonment not exceeding 21 years.[528] The logical question that can be deduced is why in the face of section 1 of the Anti-Sabotage Act, crude oil theft and pipeline vandalization persist in the magnitude it does.[529] Okumagba posed a question in his article to wit "*Also, considering the quantum of damage done to petroleum pipelines over the years as it relates to the environment and the economy, why has the government not deemed it expedient to create a special court to try the culprits of petroleum pipeline vandalization?* [530] Section 3 of the act vests exclusive jurisdiction to the Federal High Court of Nigeria

[525] Pounds equivalent is subject to exchange rates of currencies.
[526] Petroleum Production and Distribution (Anti Sabotage) Act 1975, Section 1,
[527] ibid, Section 1(2)
[528] ibid, Section 2
[529] Refer to 3.8.5 of Chapter three of this research for data on pipeline sabotage.
[530] E O. Okumagba 'Critical analysis of laws and policies for the prevention of petroleum pipeline vandalization in Nigeria' (2021) 23(4) Environmental Law Review Pg 301-366

to try any offence committed under the Act. This research argues that the right question should be, "How many cases of sabotage have been to trial in these courts? There are currently no reported cases brought under the Anti-Sabotage Act.[531] This demonstrates the current enforcement regime that needs to change in Nigeria's oil and gas industry.

4.2.5 Oil in Navigable Waters Act 1968

This act was enacted to implement the terms of the International Convention for the Prevention of Pollution of the Sea by Oil from 1954 to 1962 and to make provisions for such prevention in the navigable waters of Nigeria. This is *in pari materia* with the provisions of section 12(1) of the 1999 Constitution of Nigeria as Amended.

Section 1 and 1(2) of the Act provide thus"

> *If any oil to which this section applies is discharged from a Nigerian ship into a part of the sea which, in relation to that ship, is a prohibited sea area, or if any mixture containing not less than 100 parts of oil to which this section applies is discharged from such a ship into such a part of the sea, the owner or master of the ship shall, subject to the provisions of this Act, be guilty of an offence under this section. (2) This section applies- (a) to crude oil, fuel and lubricating oil; and (b) to heavy diesel oil" and shall also apply to any other description of oil which may be prescribed under this subsection by order made by the Minister, having regard to the provisions of any subsequent Convention in so far as it relates to the prevention of pollution of the sea by oil, or having regard to the persistent character of oil of that description and the likelihood that it would cause pollution if discharged from a ship into a prohibited sea area.* [532]

Section 3 of the Act prohibits the discharge of oil or oily mixtures into Nigerian waters.[533] Section 5 of the act also mandates the Minister of Petroleum Resources to

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[531] -D E. Omukoro, Environmental regulations in Nigeria and liability for oil pollution damage: musings from Norway and the US (Alaska)` (2017) 8 IELR 324-330, 324

[532] Section 1, Oil in Navigable Waters Act 1968. Available at < https://www.placng.org/lawsofnigeria/laws/O6.pdf >accessed 26 January 2023

[533] Pursuant to Section 3(2) (b) of the Oil in Navigable Waters Act, Nigerian waters include: "all other waters (including inland waters) which are within those limits and are navigable by sea-going ships."

make regulations requiring Nigerian ships to be fitted with safety equipment, and to comply with such other requirements, as may be prescribed to prevent or reduce discharges of oil and mixtures containing oil into the sea.[534] Furthermore, "a person guilty of an offence under section I, 3 or 5 of this Act shall, on conviction by a High Court or a superior court or on summary conviction by any court of inferior jurisdiction, be liable to a fine: provided that an offence shall not under this section be punishable on summary conviction by a court having jurisdiction inferior to that of a High Court by a fine exceeding N2,000."[535]

Section 4 of the Act specifies available defence to prosecution. It is a defence if the defendant can demonstrate that the oil release was intended to save lives or prevent the destruction of the vessel or cargo. Section 4 (2)(a) emphasized that it is a valid defence for a polluter to demonstrate that the pollutant escaped accidentally because of vessel damage or leaking. All reasonable measures were also made to limit the discharge and mitigate its environmental impact.[536] Ajayi et al. have argued that one major setback to effectively enforcing environmental laws in Nigeria's oil and gas industry is the meagre fines for pollution offences.**[537]** Tullock,**[538]** Karpoff and Becker**[539]** have also argued in the same direction. The environmental problems generated by releasing oil into Nigeria's navigable waters cannot be resolved with N2,000 (£3.50)**[540]** This punishment is insufficient to dissuade operators in the oil and gas industry from releasing oil into Nigerian navigable waterways and causing coastal contamination.

4.2.6 Mineral Oils (Safety) Regulations (Laws of Nigeria(LN) 45 of 1963).

Under the repealed Mineral Oils Act, these regulations prescribe rules for the safe

[534] Section 5, Oil in Navigable Waters Act 1968. Available at, https://www.placng.org/lawsofnigeria/laws/O6.pdf accessed 26 January 2023
[535] Section 6, Oil in Navigable Waters Act 1968. Available at < https://www.placng.org/lawsofnigeria/laws/O6.pdf >accessed 26 January 2023
[536] Oil in Navigable Waters Act 1968, Section< https://www.placng.org/lawsofnigeria/laws/O6.pdf >accessed 26 January 2023
[537] O G Ajayi et al 'Towards the Mitigation and Possible Amelioration Of Coastal Pollution In Nigeria – A Review Of A Legal Act (Oil In Navigable Waters Act [Cap 337] Lfn 1990 [1968 No. 34.])' 2014 4(1) International journal of advanced scientific and technical research Pg 591-604
[538] ibid n 94
[539] ibid n 95
[540]The pound equivalent was derived from the OANDA currency converter < https://www.oanda.com/currency-converter/en/?from=NGN&to=GBP&amount=2000 > accessed 26 January 2023

drilling, production, storage and handling of mineral oils by holders of leases or licenses. The Regulation defines offences and prescribes the penalties for such offences. Regulation 7 provides that:

> *Where no specific provision is made by these Regulations in respect thereof, all drilling, production and other operations necessary for the production and subsequent handling of crude oil and natural gas shall conform with good oilfield practice which for these Regulations shall be considered to be adequately covered by the appropriate current Institute of Petroleum Safety Codes, the American Petroleum Institute Codes or the American Society of Mechanical Engineers Codes.*[541]

The American Petroleum Institute (API) and American Society of Mechanical Engineers (ASME) formulated the Integrity Management (IM) standards for High Consequence Areas (HCAs).[542] The requirements for HCAs align with the USA's Pipeline Integrity Management in High Consequence Areas standards.[543] Additionally, the API created ISO 29001 in 2003 as an EMS certification standard for stakeholders in the US oil and gas sector, giving a massive opportunity for standardization and development.[544] The Alaskan legislature also created the Best Available Technology (BAT) standard for oil pollution prevention and response.[545] Together, these industry standards provide the "good oil field practice" for operators that serve as global norms for managing pipelines.[546]All HCAs must be protected by the IM (including highly populated areas, navigable waterways, and environments adversely affected by oil spills).[547] These guidelines require oil and gas companies to evaluate their pipes (found in all HCAs) to maintain the integrity of the pipelines.[548]

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[541] Regulation 7, Mineral Oils (Safety) Regulations (L.N. 45 of 1963).
[542] Division of Spill Prevention and Response, 'Best Available Technology' (Dec.alaska.gov, 2023) < https://dec.alaska.gov/spar/ppr/contingency-plans/bat >accessed 26th January 2023
[543] Division of Spill Prevention and Response 49 CFR 195.425
[544] Lloyd's Register, 'Quality Standard for The Oil and Gas Industry: ISO 29001 Oil and Gas Certification' (Lloyd's Register, 2023) https://www.lrqa.com/en-gb/iso-29001/ >accessed 26 January 2023.
[545] ibid n 508
[546] R Steiner, 'Double Standard - Friends of the Earth International' (Spill' (Milieu Defensie: Report on Behalf of Friends of the Earth 2010) p.10.
[547] B Konne, 'Inadequate Monitoring and Enforcement in the Nigerian Oil Industry: The Case of Shell and Ogoniland' (2014) 47 Cornell International Law Journal 193.
[548] ibid n 508

It could be argued that Article 4(4) of the 1974 Paris Convention, which mandates the development of programmes to foresee, avoid, or limit environmental harm, is represented in Regulation 7 of the Mineral Oil (Safety) Regulations as an example of best practice of the Precautionary Principle. The Precautionary Principle was founded on the necessity of avoiding adverse impacts on the environment caused by various human activities. Although this principle has been expressed in multiple ways in environmental declarations and treaties, the formulation of Principle 15 of the 1992 Rio Earth Summit is likely the most well-known. It provides thus:

> *To protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of complete scientific certainty shall not be used to postpone cost-effective measures to prevent environmental degradation.*[549]

Furthermore, regulation 4 of the Mineral Oils (Safety) Regulations provides that:

> *Any licensee or lessee who fails to comply with the provisions of this Part of these Regulations shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding one hundred naira or to imprisonment not exceeding six months or to both such fine and imprisonment.* [550]

Regulation 5 also makes it a duty of every manager to ensure that the provisions of the regulations are fully complied with.[551]

Despite the provisions of this law, on the 3rd of February 2022, an oil production vessel exploded off the coast of Nigeria, killing seven of 10 crew members on board, three survivors were rescued, and four bodies had been recovered by February 16th, 2022.[552] The Trinity Spirit was a floating production, storage, and offloading vessel (FPSO). It was anchored in shallow waters at the Ukpokiti oil terminal on the western

[549] United Nations Global Impact 'The Ten Principles of UN Global Compact' < https://unglobalcompact.org/what-is-gc/mission/principles/principle-7#:~:text=Introducing%20the%20precautionary%20approach%2C%20Principle,measures%20to%20prevent%20environmental%20degradation >accessed 17 July 2023
[550] Mineral Oils (Safety) Regulations (L.N. 45 of 1963), Regulation 4
[551] ibid, Regulation 5
[552] Mongabay 'Latest Nigeria oil spill highlights 'wretched' state of the industry ' (2022) < https://news.mongabay.com/2022/02/latest-nigeria-oil-spill-highlights-wretched-state-of-the-industry/ >accessed 26 January 2023

edge of the Niger Delta.[553] It was owned by Nigeria's Shebah Exploration and Production Company Limited (SEPCOL) and was capable of storing up to 2 million barrels of oil. The vessel is, however, believed to have had between 50,000 and 60,000 barrels of crude on board at the time of the explosion.[554] The government's National Oil Spill Detection and Response Agency (NOSDRA) initially claimed no oil was spilt but modified its claims that it would not spread to the shore. Nnimmo Bassey, from Health of Mother Foundation, which tracks oil spills in Nigeria, said the vessel, which has been in operation for more than 30 years, had outlived its lifespan of 20 years, should have been decommissioned and was not supposed to carry any crude.[555] Although offshore oil spills are not in the same frequency as onshore oil spills, the explosion could have been avoided if the Mineral Oils (Safety) Regulations had been enforced against the vessel.

4.3 Enforcement Agencies for the Nigerian Oil and Gas Industry

The governance arrangement of the Nigerian oil and gas industry (NOGI) has witnessed several decades of restructuring in line with the complex nature of the country and rapidly developing technology. This has spanned the era of colonization (1861-1960), to the era of independence (1960-1966), then military takeover (1966-1999)[556], and back to democratic rule (1999-till date). The nature of the industry has made it the centre of attention for any government in Nigeria. Prior to June 1988, Nigeria's responses to most environmental issues were sporadic. Although the Nigerian Criminal Code contained some provisions relating to environmental offences, such as the contamination of water sources, the interment of bodies within 100 yards of residential houses, and the sale, possession, or manufacture of matches containing white phosphorus, the code lacked any specific national legislation addressing the hazardous waste-related pollution that was constantly increasing.[557]

The research has streamlined the enforcement agencies it examines to focus on the environmental enforcement agencies related to Nigeria's oil and gas industry. It

[553] ibid n 518
[554] ibid n 518
[555] ibid n 518
[556] S G.Ogbodo, 'Environmental Protection in Nigeria: Two Decades after the Koko Incident' (2009) 15 Ann Surv Int'l & Comp L 1
[557] ibid n 556

should be noted that the Federal Environmental Protection Agency and the Department of Petroleum Resources, key enforcement agencies in the industry, are now defunct. Thus, the research does not examine these agencies in detail. Mention and references to these agencies are made where the research deems necessary.

4.3.1 National Oil Spill Detection and Response Agency (NOSDRA)

NOSDRA was established by an Act of the parliament, Act No. 15 of October 18, 2006.[558] NOSDRA is an agency under the Federal Ministry of Environment to coordinate the implementation of the National Oil Spill Contingency Plan (NOSCP), which also incorporates the National Oil Spill Contingency System (NOSCS) for Nigeria, in compliance with the International Convention on Oil Pollution Preparedness, Response and Cooperation (OPRC 1990), to which the country is a signatory.[559] NOSCS is a harmonization of all relevant regulations, organizations, personnel, procedures, facilities, equipment, and logistical support to respond to a spill, reduce the negative impact and manage all related issues.[560] NOSCP describes and validates the complete national preparedness and response system for oil spills, including public and private resources for responding to emergencies brought on by oil spills. In 2018, a modification was made to the NOSDRA Act; however, in 2019, the President did not consent to the amendment. The fact that a few parts of the amendment would weaken the authority of the Ministry of Petroleum Resources was the primary factor in the decision to withhold consent to the amendment.

Section 5 of the NOSDRA Act mandates the agency to meet the following objectives under the NOSCP: (a) ensuring a safe, prompt, effective and suitable response to significant oil pollution; (b) identifying high-risk and priority areas for protection and clean up; (c) establishing an appropriate means of monitoring, assisting, and directing the response of oil and gas companies towards protecting a polluted environment by ensuring the clean-up of the affected site to the best practical extent;(d) co-operating with the International Maritime Organization (IMO) and other national, regional and international organizations in the promotion of the exchange of scientific results and research relating to oil pollution preparedness and response

[558] National Oil Spill Detection and Response Agency (Establishment) Act 2006
[559] NOSDRA < NOSDRA - National Oil Spill Detection and Response Agency > accessed 28 July 2022
[560] ibid n 559

"including technologies, techniques for surveillance, containment, recovery, disposal and clean up to the best practical extent." [561]

The agency must investigate oil spills and their remediation process and ensure that oil spill defaulters comply with all existing environmental legislation regarding oil spills, detection, and clean-up.[562] The NOSDRA Act requires the agency to monitor and regulate tiers one and two oil spills.[563] Tier one oil spill is an operational spill that is less than or equal to 7 tonnes (50 bbls).[564] While tier 2 spills are more significant than 7 tonnes (50 bbls) but less than 700 tonnes (5000 bbls).' [565] Section 5 of the NOSDRA Act provides that when there are tiers one and two oil spills, NOSDRA is to ensure a safe, timely and effective, and appropriate response' to reduce the spill's environmental impact.[566]

The Act mandates that in the case of a tier three oil leak, NOSDRA and several other government departments must work together to formulate a response and mitigate the adverse effects of oil spills on the environment. The Act did not include a definition for level 3 spills. On the other hand, a tier 3 leak is expected to be bigger than 700 tonnes (5000 bbls). It is important to remember that NOSDRA, as an agency, is required under section 5 of the NOSDRA Act to respond to an oil spill promptly and efficiently. Aside from the provisions of Section 5 of the NOSDRA Act, which authorise the agency to take action in the event of an oil leak. The Act goes even further to provide the agency with another role that it was previously lacking. Per Section 1 (1), the agency is responsible for preparing for and detecting oil spills.[567]

Section 1(1) is further strengthened by section 6(1) (a), which states that "the Agency shall be responsible for surveillance and ensure compliance with all existing environmental legislation in the petroleum sector," including laws relating to the prevention, detection, and general management of oil spills (emphasis added).

[561] Section 5, National Oil Spill Detection and Response Agency (Establishment) Act 2006
[562] ibid n 561
[563] ibid n 561
[564] ibid n 561
[565] ibid n 561
[566] ibid n 561
[567] Section 1(1), National Oil Spill Detection and Response Agency (Establishment) Act 2006

Section 1(1) is further strengthened by section 6(1) (a). Section 1(1) is further strengthened by section 6(1) (a).

When reading section 19 (b), it is evident that the Agency must conduct inspections of oil and gas facilities "to ensure full compliance with existing environmental legislation on oil pollution." This provision is quite detailed. This indicates that NOSDRA is also required to conduct detection and prevention functions by examining oil facilities to stop oil spills that harm the environment. This responsibility for spill prevention aligns with the mission of NOSDRA, which stands for the National Oil Spill Detection and Response Agency (NOSDRA).

This indicates that NOSDRA is needed to conduct surveillance efforts to prevent an oil spill from occurring. Suppose prevention is unsuccessful, and an oil leak does take place. In that case, NOSDRA must respond promptly and effectively to mitigate the damage and repercussions of crude oil pollution on the environment. In this respect, the primary duties of NOSDRA may be summed up as preventing oil spills and the reaction to oil spills. The following two functions will be evaluated in this section.

Section 17 of the Oil Spill Recovery, Clean-up, Remediation and Damage Assessment Regulations 2011 requires NOSDRA to issue certification for such remediation upon properly monitoring and evaluating the completion of the process. This replaced the pre-existing provision requiring such certificates to be issued by the repealed Department of Petroleum Resources under the Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN) 2002.[568] Comparing this provision to Section 5 of the EGASPIN 2002, it could be argued that it was a joint approach by the DPR and NOSDRA in coordinating the clean-up process. While the DPR was required to approve the process and technique utilized, NOSDRA was required to coordinate and supervise the actual implementation of the process. Section 6(2) finds a person who fails to report an oil spill to the agency in writing not later than 24 hours after the occurrence of the oil spill strictly liable for an offence and imposes a penalty of not more than N500,000 ((£879.80)[569] for each day the

[568] EGASPIN has been repealed by virtue of the provisions of the PIA 2021
[569] Pound equivalent derived from OANDA currency converter < https://www.oanda.com/currency-converter/en/?from=NGN&to=GBP&amount=1000000 >accessed 1 February 2023

offence exists. Similarly, Section 6(3) stipulates an additional penalty of not more than N1,000,000 (£1759.61)[570] for an offender who fails to clean up the impacted site to all practical extent.

4.3.1.1 NOSDRA Responses to Oil Spill Incidents

NOSDRA enacted the Oil Spill Recovery, Clean-up, Remediation, and Damage Assessment Regulation 2011, to address oil disasters in Nigeria.[571] Regulation 5 of the Oil Spill Recovery, Clean-up, Remediation, and Damage Assessment Regulation 2011 is one of the most essential provisions. Regulation 5 mandates an immediate Joint Investigation Visit (JIV) to the site during an oil spill.[572] The JIV is a fact-finding mission comprised of energy companies, a representative of the affected community, and NOSDRA representatives. The JIV is tasked with determining the origin of the oil discharge, its total volume, the area it has affected, and its environmental impact.[573] The JIV is crucial because oil breaches and pipelines are often not shut off until "during or after the JIV."[574] Per Amnesty International, it is standard practice in Nigeria not to begin clean-up until JIV is completed.[575] Not only does the JIV report determine whether the spiller will compensate communities affected by an oil leak, but it also identifies which communities will be compensated.[576]

Regulation 5 of the Oil Spill Recovery, Clean-up, Remediation, and Damage Assessment requires oil companies to provide vessels to transport NOSDRA personnel to the affected site.[577] Regulation 5 requires a joint investigation team comprised of the proprietor or operator of the spiller facility to investigate the cause and event of the spill. In other words, the law obligated oil and gas companies to provide vessels

[570] ibid n 569
[571] The Oil Spill Recovery, Clean-up, Remediation and Damage Assessment Regulation, 2011
[572]Regulation 5 of the Oil Spill Recovery, Clean-up, Remediation and Damage Assessment Regulation, 2011
[573]A Rim-Rukeh, 'Oil spill management in Nigeria: SWOT analysis of the joint investigation visit (JIV) process'. 2015 6(03), Journal of Environmental Protection, p.259 at 262
[574] Amnesty International, 'Negligence in The Niger Delta Decoding Shell and Eni's Poor Record on Oil Spills', (2018)20 available < https://www.amnesty.org/download/Documents/AFR4479702018ENGLISH.PDF > accessed 20 November 2021
[575] ibid n 574
[576] ibid n 574
[577] The Oil Spill Recovery, Clean-up, Remediation, and Damage Assessment 2011, Regulation 5

for the joint inspection of crude oil accident sites. This section contradicts section 5 of the NOSDRA Act, which mandates NOSDRA's response to pollution in a safe, expeditious, and effective. Contrary to NOSDRA's mandate to detect and respond to oil leak incidents, relying on energy companies to provide vessels is inconsistent with NOSDRA's powers. It is contradictory and may delay its performance despite its mandate to respond rapidly to oil leak calamities. For instance, the United Nations Environment Programme (UNEP) report on Ogoni revealed NOSDRA's tardiness in addressing oil pollution issues in Nigeria. The UNEP report verified that oil companies organise and direct the investigation of oil accident sites. The research submits that this arrangement hampers effective enforcement of environmental law and creates opportunities for corruption and bribery.

4.3.2 National Environmental Standard and Regulatory Enforcement Agency (NESREA)

In 1999, the government combined the Federal Environmental Protection Agency(FEPA) and other relevant departments in different ministries to form the Federal Ministry of Environment. Still, this action was taken without a proper enabling law on enforcement-related matters, which left a gap in Nigeria's ability to enforce environmental laws, standards, and regulations effectively.[578] NESREA was established as a parastatal of the Federal Ministry of Environment to close the gap.[579] The NESREA Establishment Act 2007 repealed the Federal Environmental Protection Agency Act Cap F 10 LFN 2004. The National Assembly passed the Bill for an Act establishing NESREA, signed into law, and published in the Federal Republic of Nigeria Official Gazette No. 92. Vol. 94 of 31st July 2007.[580] This act is known as the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007 Act No. 25. NESREA has 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, relevant stakeholders within and outside Nigeria on matters of enforcement of environmental standards, regulations, rules, laws, policies, and

[578] NESREA < NESREA Official Website | About Us > Accessed 26th July 2022
[579] NESREA < NESREA Official Website | About Us > Accessed 26th July 2022
[580] ibid n 579

guidelines".[581] The NESREA Act grants the agency the authority to develop procedures for ensuring environmental awareness and compliance in Nigeria. This is accomplished through effective enforcement mechanisms championed by NESREA and its sister agencies.[582] The Act contains a multitude of enforcement measures which NESREA can employ, and these include the issuance of permits, licenses, and certificates of environmental compliance, as well as inspections, searches, seizures, arrests, sealing, notice of violation, a notice of revocation of the permit, revocation order, recourse to courts for civil penalties for infringement, injunctive relief to require compliance, criminal sanctions for violations.[583]

Section 8 (f) of the NESREA Act empowers the agency to "subject to the provisions of the Constitution of the Federal Republic of Nigeria, 1999, and in collaboration with relevant judicial authorities establish mobile courts to dispense cases of violation of environmental regulations expeditiously." Section 8(g) of the act empowers the agency to conduct public investigations on pollution and the degradation of natural resources, except investigations on oil spillage. This section further upholds section 7 (g) (h) (j) (k) (l), (m) of the NESREA Act, which excludes the oil and gas sector from the agency's scope of enforcement. Eghosa argues that removing the oil and gas industry from NESREA prevents a conflict of interest between NESREA and NOSDRA.[584]

This research argues that there is some merit in Eghosa's argument because section 6 of the NOSDRA act empowers NOSDRA to investigate oil spills and their remediation process and ensure that oil spill defaulters comply with all existing environmental legislation regarding oil spills, its detection and clean-up.**[585]** Thus, investing NESREA with that same function would amount to duplicity of powers, resulting in a conflict. This is true. However, NOSDRA's overall task is clear and equivocal. The agency is

[581] National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007, Section 7(b)
[582] National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007, Section 7(c)
[583] National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007, Section 8
[584] E O Ekhator 'Environmental protection in the oil and gas industry in Nigeria: the roles of governmental agencies'(2013) 196 International Energy Law Review Pg 4
[585] National Oil Spill Detection and Response Agency. (Establishment) Act 2006, Section 6

responsible for preparedness, detection, and response to all oil spillages in Nigeria.[586] Section 5 of the NOSDRA Act further provides that the agency's objectives shall be to coordinate and implement the National Oil Spill Contingency Plan for Nigeria**.** It is not responsible for the enforcement of environmental laws. NESREA, by virtue of section 2 of the NESREA Act which provides thus:

> *"The Agency, shall, subject to the provisions of this Act, have 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 relevant stakeholders within and outside Nigeria on matters of enforcement of environmental standards, regulations, rules, laws, policies and guidelines".*[587]

It is clear from both Acts that NOSDRA is a responsive agency. At the same time, NESREA is intended to be both preventive and responsive regarding enforcing environmental laws, except in the oil and gas industry. In other words, NOSDRA powers come to life after a spill has occurred. Thus, it could be argued that before a spill occurs, the oil and gas industry has no enforcement agency to prevent spills in the first place. It is submitted by this research that excluding NESREA from enforcing environmental laws in the oil and gas industry is arguably a questionable move. This argument will be further examined in Chapter 6 of this research.

4.3.3 Environmental Assessment Department

The Environmental Assessment Department (EAD) is one of the technical departments established by the Federal Ministry of Environment in 1999. It is charged with ensuring that all development initiatives comply with applicable environmental laws and regulations to ensure environmental sustainability.[588] The above functions of the oil and gas division of the EAD reemphasize the argument put forward by this. What exactly is the purpose of this department if it cannot ensure that the oil and gas industry is regulated? The supervisory function of EAD above is on the activities of NOSDRA. NOSDRA is an agency vested with enforcement powers over the oil and

[586] National Oil Spill Detection and Response Agency. (Establishment) Act2006, Section 1
[587] Section 2 of the NESREA Act
[588] Environmental Assessment Department, 'Public home' (| Federal Ministry of Environment | EAD, 2022) < https://ead.gov.ng/publichome/ > accessed 3 August 2022.

gas industry. So, when EAD says, "We supervise NOSDRA", what does supervision entail? Is this as a watchdog to create checks and balances, or just another department to create employment for the privileged few? In the opinion of this research, NOSDRA does not need an agency created to supervise its activities because NOSDRA is already a parastatal under the Federal Ministry of Environment and has supervisory functions over all parastatals, as discussed below.

4.4 The Federal Ministry of Environment

The Federal Ministry of Environment is responsible for ensuring environmental protection, the conservation of natural resources, and sustainable development. Since its inception, the Ministry has significantly impacted Nigerians' environmental consciousness and the interface with global environmental best practices. It has concentrated on implementing innovative strategies that emphasize using environmental re-engineering as a veritable tool for job creation, poverty eradication, ensuring food security, promoting sustainable economic development, and improving the standard of living of the Nigerian populace in general.[589]

4.5 Regulators of the Nigeria Oil and Gas Industry

With the introduction of the PIA 2021, the governance regime of the oil and gas industry in Nigeria changed. The new legislation significantly improved the industry's regulatory efficiency and economic attractiveness. The PIA 2021 overhauled this system by separating the state's regulatory, commercial and policy functions in the oil and gas industry by vesting these in separate entities, thereby updating Nigerian government practice to align with global best practices in Scotland and the United States. The PIA created two regulatory bodies:

- The Nigerian Upstream Regulatory Commission (The Commission) to regulate upstream activities;[590] and
- The Nigerian Midstream and Downstream Petroleum Regulatory Authority (The Authority) regulates midstream and downstream activities.[591]

[589] The Federal Ministry of Environment ' Mandate' < Mandate – Federal Ministry of Environment > accessed 12 July 2023
[590] Petroleum Industry Act 2021, Section 4
[591] Petroleum Industry Act 2021, Section 29

These regulators are designed to be highly independent of the Minister of petroleum resources. They have extensive regulatory functions and powers, including regulating and prescribing fees and fines**.**[592] Thus these three, The Commission, The Authority and The Minister, together form the governance organ of the Nigerian Oil and gas Industry.[593]

4.5.1 The Minister of Petroleum (The Minister)

The Petroleum Act of 1969 (now repealed) gave the minister in charge of petroleum matters broad discretionary powers, including the authority to grant petroleum exploration and production of licenses, the authority to revoke such licenses, and the authority to acquire the interest of any party in a petroleum joint operating venture. The minister had apex authority over the petroleum industry regarding supervision and control.[594] The PIA 2021 attempts to minimize these powers. Still, it leaves the minister with some discretionary authority and some influence over the statutory entities formed by the PIA 2021 with tasks that would have effectively curtailed the minister's powers and provided openness and accountability.[595]

The Minister retains overall supervision and supervisory authority over all aspects of the petroleum sector under Section 3 of the PIA. [596] The Minister is tasked with formulating, monitoring, and implementing the federal government's petroleum policy.[597] The Minister's supervisory powers over the industry are ensured by the Nigerian Upstream Regulatory Commission and the Nigerian Midstream and Downstream Petroleum Regulatory Authority reporting to him. However, there have been significant departures from the Petroleum Act. The minister's wide-ranging powers to shape the fiscal regime in the upstream oil and gas sector by prescribing royalties through regulations have also been removed. Royalties are now enacted

[592] Petroleum Industry Act 2021, Section 4 and 29
[593] KPMG "Petroleum Industry Bill, A Game Changer" (2021) https://assets.kpmg/content/dam/kpmg/ng/pdf/tax/petroleum-industry-bill-(pib)-2021-a-game-changer.pdf >accessed 26th July 2022
[594] Petroleum Act 1969, Section 2 < https://resourcegovernance.org/sites/default/files/documents/nigeria-pertoleum-act.pdf > accessed 3 August 2022
[595] Petroleum Industry Act 2021, Section 3
[596] Petroleum Industry Act 2021, Section 3 (b)
[597] Petroleum Industry Act 2021, Section 3 (a)

and may be changed only by primary legislation.[598] The Minister's formerly unrestricted, exclusive discretion and ability to award or cancel oil licences has been reduced. The minister can only grant prospecting licences and petroleum mining leases upon the commission's recommendation. [599]

The critical question is whether the minister would be bound by the commission's recommendations on licence awards because the President has the power to remove any member of the Commission.[600] Furthermore, The PIA 2021 empowers the President of Nigeria to appoint the board of directors of the Commission and the Authority, subject to the confirmation of the National Assembly.[601] On the face of this, it essentially allows the Commission and the Authority to be independent of the minister in managing their affairs, which is expected to improve public governance and fair judgment. However, where the President of Nigeria and the minister are the same person (as in the case of Former President Muhammadu Buhari), it is argued by this research that the benefit of independence of both regulatory agencies may no longer exist.

Despite the PIA's radical reforms, it appears that the Minister will continue to have a considerable impact on the oil and gas sector.[602] Though it seems that the PIA seeks to whittle down the powers wielded by the minister under the Petroleum Act 1969 with the establishment of the commission and the authority, the minister still has extensive capabilities, even with the establishment of the commission and the authority. The PIA 2021 requires the commission and the authority to comply with general policy directives given by the minister.[603] It could therefore be argued that from the PIA, the commission and the authority are not autonomous organizations. Chapter six of this research delves deeper into this argument and shows the impact of these on enforcement.

[598] Petroleum Industry Act 2021, Section 306, and Part 3 of Schedule 7
[599] Petroleum Industry Act 2021, Section 3 (g)
[600] Petroleum Industry Act 2021, Sections 11(3) and 34(3)
[601]Petroleum Industry Act 2021, Section 34 (3)
[602] ibid n 626
[603] ibid n 621

4.5.2 The Nigerian Upstream Regulatory Commission (The Commission)

The Commission is established under Section 4 of the PIA to have the main regulatory authority and control over the technical and commercial operations of the upstream sector.[604] The research will focus on the technical and regulatory functions of the commission. The Commission regulates all technical operations in the upstream sector, which will enforce, manage, and execute all relevant laws, regulations, national and international policies, standards, and practises.[605] The commission implements the regulations, procedures, or recommendations formerly managed by the Department of Petroleum Resources (DPR) in relation to upstream petroleum activities under section 10 (a) (ii). The commission ensures compliance with all applicable laws and regulations governing upstream petroleum operations and strict implementation of environmental policies, rules and regulations for upstream petroleum operations.[606] The Commission's technical, regulatory functions include (a) enforcing, administering, and implementing laws, regulations and policies relating to upstream petroleum operations;(b) ensuring compliance with applicable national and international petroleum industry policies, standards, and practices for upstream petroleum operations.[607]

Section 7(bb) also gives the commission the authority to carry out any other duties required to implement the act's provisions.[608] These clauses clearly outline the commission's expanded authority. Examples of technical activities include seismic operations, drilling operations, and upstream infrastructure design, building, and operation.[609] The PIA gives the commission authority to monitor upstream commercial activities such as evaluating and approving commercial elements of field development plans, supervising expenses and cost management in upstream petroleum operations, and carrying out ministerial cutback directives. [610] It's fair to assume that the Commission will take over some of the commercial regulatory

[604] Petroleum Industry Act 2021, Section 4
[605] Petroleum Industry Act 2021, Section 10
[606] Petroleum Industry Act 2021, Section 6 (a) and (b)
[607] Petroleum Industry Act 2021, Section 7 (a), (b), (i) and (j)
[608] Petroleum Industry Act 2021, Section 7(bb)
[609] Petroleum Industry Act 2021, Section 4 (o)
[610] Petroleum Industry Act 2021, Section 4

functions previously handled by the NNPC's National Petroleum Investment Management Services (NAPIMS).[611] Section 9 further specifies the Commission's obligations, strongly emphasising promoting operations in border basins. The PIA recommends a Frontier Exploration Fund, consisting of 30% of NNPC Limited's share of profit oil and gas from its production sharing contracts, profit sharing contracts, and risk service contracts, to guarantee that the intended promotion activities over frontier basins are carried out. Any basin with no previous exploration activity has been discovered, undeveloped, or designated by the Commission as a Frontier basin qualifies. This would cover frontier basins like Dahomey, Bida, Anambra, Benue, Sokoto, and Chad, which are currently not producing.[612]

The ambition to expand exploration in frontier basins is admirable since it will secure the industry's long-term viability by increasing accessible reserves. However, caution must be used to ensure that present reserves are utilised and that promotion operations across frontier basins be carried out in regions that are possibly commercially viable rather than wasting energy.[613] Any government entity whose action will influence the upstream industry is required under the PIA to communicate with the Commission before taking such activity and to follow any recommendations made by the Commission.[614] This particular feature is excellent since it should assist in reducing disruption caused by government entities that appear to be at odds with one another when the overarching issue should be the petroleum industry's survival and expansion.

4.5.3 The Nigerian Midstream and Downstream Petroleum Regulatory Authority (The Authority)

Pursuant to the scrapping of three oil regulatory agencies: The Midstream and Downstream Divisions of the DPR, the Petroleum Products Pricing Regulatory Agency (PPPRA) and the Petroleum Equalization Fund (PEF), section 29 of the PIA created 'The Authority', which is responsible for technical and commercial control of

[611] KPMG "Petroleum Industry Bill, A Game Changer" (2021) https://assets.kpmg/content/dam/kpmg/ng/pdf/tax/petroleum-industry-bill-(pib)-2021-a-game-changer.pdf >accessed 26 July 2022
[612] ibid n 611
[613] ibid n 611
[614] ibid n 611

midstream and downstream petroleum operations in the petroleum sector. Its responsibilities include petroleum liquids activities, domestic natural gas operations, and natural gas export operations.[615] It also includes determining the proper tariff technique for natural gas processing, natural gas transportation and transmission, crude oil transportation, bulk storage of crude oil, and monitoring service quality. [616] As part of its regulatory supervision responsibilities, the authority has the remit to enact rules concerning the processing, refining, transmission, distribution, supply, sale and storage of petroleum and petroleum products and other midstream and downstream petroleum operations.[617] The Authority is tasked to ensure compliance with applicable laws and regulations governing midstream and downstream petroleum operations. It strictly implements environmental policies, laws, and regulations for midstream and downstream petroleum operations.[618]

4.5.4 The Federal High Court of Nigeria

Nigeria has a federal system of government and a constitutionally governed court system. Section 251 of the 1999 constitution of the federal republic of Nigeria provides the Federal High Court (FHC) with the exclusive jurisdiction to hear and decide environmental matters. The justification for this is that oil and gas exploration is within the sole jurisdiction of the Federal government of Nigeria. Thus, only a federal court may decide any disputes pertaining to that exploration in *Shell Pet. Dev. Co. v. H. B. Fishermen* [619] *,* the court of appeal held that by virtue of the combined reading of Sections 251 (1) (n) of the 1999 Constitution and 7 (5) of the Federal High Court Act, the FHC has and exercises jurisdiction to the exclusion of any other court in civil causes and matters arising from mines and minerals (including oil fields, oil mining, geological surveys, and natural gas). Subsequently, any power conferred on a state High Court, or any other court shall not extend to any matter or proceedings in respect of which jurisdiction is conferred on the FHC. The claims of the respondent were dismissed for lack of jurisdiction. Several authors have called for environmental courts in Nigeria to tackle the challenges faced by litigants who approach the FHC for

[615] Petroleum Industry Act 2021, Section 32 (b)
[616] Petroleum Industry Act 2021, Section 32(c)
[617] Petroleum Industry Act 2021, Section 33(a)
[618] Petroleum Industry Act 2021, Section 32(jj)
[619] (2002) 4 NWLR (Pt. 758) 505 at 518-519

environmental justice.

4.6 Conclusion

It is clear from the above that the enforcement done in the oil and gas industry in the United States and Nigeria is a huge distinction. It could be argued that the EPA's success can be attributed to the year of birth,1970. Thus, the agency existed before Nigeria's NESREA and NOSDRA. This research opposes this argument and avers that the age of an enforcement agency does not determine its effectiveness. The mechanisms and resources put in place for its success matter most. Kambari argues that the lack of coordination between enforcement agencies in Nigeria has led to ineffective land contamination policy and poor enforcement, more generally.[620] The EPA is a model agency that has shown a track record of effective enforcement of environmental laws in the oil and gas industry of the United States.

The commission and the Authority can enforce environmental laws in the oil and gas industry within the scope of their regulatory functions, just like their predecessor, the DPR. It seems that the PIA 2021 has separated the powers the DPR formerly had into two agencies with the same enforcement powers of environmental law in different streams. This is concerning as the issue of conflict of interests and duplication of powers (two key issues that impact the effective enforcement of environmental laws) persists. Whether or not this move by the PIA would yield a better result than the current status quo of enforcement of laws in the Oil and gas industry will take some time to ascertain. This, however, does not negate the thrust of this research, which is that the factors that will be addressed in chapter six are crucial for enforcing environmental laws to be effective. Nigeria has environmental laws fit for enforcement as they are currently. This is not to look the other way that some laws need amendment. However, the research argues that amendments should be considered when the law sought to be amended has been adequately and effectively enforced. Despite its shortcomings, the PIA has the potential to change Nigeria's oil and gas industry positively. Whether the PIA will fulfil these expectations, only time backed up with effective enforcement will tell!

[620] S Kambari et al 'Management of petroleum hydrocarbon contaminated sites in Nigeria: Current challenges and future direction' (2017)64 Land Use Policy 133-144

CHAPTER FIVE: THE ENVIRONMENTAL ENFORCEMENT REGIME OF THE COMPARATIVE JURISDICTIONS

As aforementioned in chapter 1.8 of the research [621], the research compares Nigeria's environmental enforcement regime to enforcement agencies in countries it judges are on the right path. These countries are the United States of America: The Environmental Protection Agency (EPA), Scotland: Scottish environmental protection agency (SEPA), Malaysia: The 2022 increment in penalties for environmental offences. In the opinion of this research, the EPA and SEPA effectively enforce environmental laws, particularly as it relates to the oil and gas industry. The increment of penalties in Malaysia is applaudable. Hence, the research uses these countries as reference points for comparison. Per Husa, a legal system can be improved by borrowing laws and legal institutions from another country. The issue is that the transplantation of foreign laws or legal institutions does not occur in a legal culture vacuum. Borrowing in the form of wholesale absorption manifests evident transplanting difficulties.[622] One significant difficulty is that the rule of law is multi-faceted and can be conceived in various ways.[623] To avoid this difficulty, the research adopts a model of selective borrowing of the enforcement legal systems in these countries.

5.1 United States of America (USA)

The US oil and gas industry is regulated through statutes and rules promulgated by the federal and individual state governments.[624]These regulations depend on whether the oil and gas surface location is owned by the federal government, state government or private individuals and whether the location is onshore or offshore. Like Nigeria, the oil and gas industry in the USA is regulated by several agencies. The Department of Interior (DOI) plays a central role in how the United States stewards its public lands, increases environmental protections, pursues environmental justice, and honors our nation-to-nation relationship with Tribes.[625] The Bureau of Land Management (BLM) oversees oil production, exploration, and development on

[621] See Chapter 1.9 of the research.
defiles[622] J Husa 'Developing Legal System, Legal Transplants, and Path Dependence: Reflections on the Rule of Law' (2018) 6(2) The Chinese Journal of Comparative Law 129-150
[623] ibid n 622
[624] Federal Energy Regulatory Commission 'Overview' https://www.ferc.gov/what-ferc >accessed 7 February 2023
[625]Department of Interior 'About Interior' https://www.doi.gov/about >accessed 7 February 2023

federally owned onshore lands.[626] The Bureau of Safety and Ocean Energy Management (BOEM)[627] and the Bureau of Safety Environmental Enforcement (BSEE) oversee activities for offshore oil production.[628] The Federal Energy Regulatory Commission (FERC) regulates interstate pipeline regulation.[629] The Environmental Protection Agency (EPA) handles safety, health, and environmental matters.[630]

Each state has its agencies that regulate the development, exploration, and production of oil and gas activities and environmental, health, and safety issues arising from oil and gas operations. [631] These state agencies issue drilling permits and control pipeline transportation within state boundaries. Examples of these state agencies include the: Railroad Commission of Texas [632], California Department of Conservation Division of Oil, Gas and Geothermal Resources [633], and the Pennsylvania Department of Environmental Protection's Office of Oil and Gas Management[634]. This is a sharp distinction from what is obtainable in Nigeria. Although Nigeria has states like the USA, state governments do not regulate oil and gas industry activities.[635] The research will focus on the EPA, the lead federal enforcement agency for the oil and gas industry, just like Nigeria's NESREA. It should be noted that whilst the EPA is the US main enforcement agency, it works closely with the BSEE, BOEM and the BLM.

5.1.1 Environmental Protection Agency (EPA)

The EPA is the lead federal response agency for oil spills in inland waters. One of the EPA's top priorities is to prevent, prepare for, and respond to oil spills in and around

[626] Bureau of Land Management 'Oil and Gas' < https://www.blm.gov/programs/energy-and-minerals/oil-and-gas accessed 7th February 2023
[627]Bureau of Safety and Ocean Energy Management 'About BOEM' <https://www.boem.gov/about-boem >accessed 7 February 2023
[628]Bureau of Safety Environmental Enforcement 'What we do" < https://www.bsee.gov/ >accessed 7 February 2023
[629] ibid n 628
[630] EPA, 'Basic Information on Enforcement | US EPA' (EPA, 2022) < https://www.epa.gov/enforcement/basic-information-enforcement >accessed 5 February 2023
[631] Federal Energy Regulatory Commission 'Overview' < https://www.ferc.gov/what-ferc >accessed 7 February 2023
[632] The Railroad Commission of Texas < https://www.rrc.texas.gov >accessed 19 July 2023
[633] Department of Conservation Division of Oil, Gas and Geothermal Resources <https://www.conservation.ca.gov/dog > accessed 19 July 2023
[634] Department of Environmental Protection < https://www.dep.pa.gov/Business/Energy/OilandGasPrograms/OilandGasMgmt/pages/default.aspx > accessed 19 July 2023
[635] Refer to chapter two of the research on the conflicted triangle.

the United States inland waters.[636] To preserve human health and the environment, the EPA enforces environmental laws and, where necessary, takes civil or criminal enforcement action. The EPA works to implement laws, including the Clean Air Act of 1963, the Clean Water Act (CWA) of 1972, and the Safe Drinking Water Act of 1974. The EPA is also responsible for monitoring pollution levels, creating regulations for managing dangerous substances and detecting and preventing environmental crimes. The EPA conducts investigations and seeks legal action against offenders as part of its strategic plan when infractions occur.

Through compliance monitoring, the EPA typically discover facilities that violate regulations.[637] The EPA employs stringent enforcement methods to ensure that people and businesses comply with environmental requirements. They respond to environmental law violations using the following methods:[638] an informal notification to the violator of its non-compliance and request that it comes into compliance without any further formal action. A formal administrative enforcement action in which the EPA issues an administrative order to compel compliance and, in many instances, imposes a monetary penalty for past infractions. A formal civil/judicial enforcement in which the EPA, through the US Department of Justice, can initiate a civil lawsuit in the federal courts against a violator. Penalties of up to US$37,500 per violation (per day) and injunctive relief may be imposed on offenders and criminal enforcement in which a criminal lawsuit may be initiated for egregious conduct. The violator may be imprisoned.[639]

The EPA's primary enforcement authorities are outlined in section 309 of the CWA, which authorizes the agency to issue an order requiring a "person" to comply with specified CWA sections (including section 301, the prohibition against unpermitted discharges, or requirements of permits under section 402 or 404).[640] EPA is also authorized under section 309(d) of the CWA to issue penalty orders to any "person" who violates specified sections of the CWA or who violates any permit condition or

[636] EPA, 'Basic Information on Enforcement | US EPA' (EPA, 2022) < https://www.epa.gov/enforcement/basic-information-enforcement >accessed 5 February 2023
[637]ibid n 636
[638] ibid n 636
[639] ibid n 636
[640] The Clean Water Act, Section 309

limitation implementing any such sections or violates section 309(a) order.[641]
However, what complicates EPA's enforcement authorities against federal facilities is that the definition of a "person" does not apply to the United States under section 502(5). As a result, the Supreme Court in *Department of Energy v. Ohio*[642] held that the CWA did not authorize the imposition of section 309(d) civil "punitive" penalties (penalties for past behaviour as opposed to "coercive" penalties, which look to the future), against the United States pursuant to the citizen suit provision found in section 505(a).
Subsequently, this is a result of no clear waiver of sovereign immunity.[643] Pursuant to the Supreme Court decision above, EPA does not assess "punitive" penalties against federal facilities.[644] However, there are some exceptions. For example, while the United States is not defined as a "person" under Section 502(5), private contractors working at federal facilities are persons. The EPA may use the full range of CWA enforcement tools against private contractors if they, for example, discharge pollutants into the waters of the United States or violate the terms of a permit.[645] In addition, the third circuit court of appeals held in *Commonwealth of Pennsylvania .v. U.S. Postal Service*[646] that the United States postal service was not immune from suits for CWA claims, including penalties. [647]

The EPA published its FY 2022 – 2026 EPA Strategic Plan, which is built on four foundational principles: *to Follow Science, Follow the Law, Be Transparent, and Advance Justice and Equity in* 2022.[648] These principles form the basis of the Agency's culture and aim to guide its operations and decision-making now and into the future. The Strategic Plan establishes the roadmap to achieve the agency's environmental priorities over the next three years and instils scientific integrity in decision-making,

[641] ibid n 639
[642] 503 U.S. 607 (1992),
[643]EPA 'Clean Water Act (CWA) and Federal Facilities' < https://www.epa.gov/enforcement/clean-water-act-cwa-and-federal-facilities#EPA%20Enforcement > accessed 5th February 2023
[644] ibid n 639
[645] ibid n 639
[646] 13 F.3d 62 (3d Cir. 1993),
[647] EPA 'Clean Water Act (CWA) and Federal Facilities' < https://www.epa.gov/enforcement/clean-water-act-cwa-and-federal-facilities#EPA%20Enforcement > accessed 5th February 2023
[648] EPA 'FY 2022-2026 EPA Strategic Plan' < https://www.epa.gov/system/files/documents/2022-03/fy-2022-2026-epa-strategic-plan-overview.pdf >accessed 8th February 2023

tackles the climate crisis, and embeds environmental justice across the agency programs.[649] The Strategic Plan provides a new framework of strategic goals, objectives, cross-agency strategies, long-term performance goals, and agency priority goals that tether resource investments and actions to the outcomes that will better protect human health and the environment for all people living in the United States.[650] The agency places a high priority on collaborating with states to create strategies that effectively make use of developments in monitoring and information technology to expand the accessibility of knowledge on environmental conditions in underserved communities.[651] The Office of Enforcement and Compliance Assurance (OECA) committed to EPA's Strategic Plan to increase the percentage of annual on-site inspections in communities with potential EJ concerns from 30% to 55% by FY 2026.[652]

The CWA's Section 309 specifies the basic enforcement powers of the EPA. Under CWA 309(a), EPA can issue an order directing a "person" to abide by the provisions of certain CWA sections (such as section 301, which prohibits unpermitted discharges, or the conditions of permits under section 402 or 404). In accordance with Section 309(d), EPA may additionally impose fines on any "person" who transgresses a particular provision of the CWA, a permit condition or restriction that implements that provision, or a Section 309(a) order.[653]

However, the fact that the United States is exempt from the definition of a "person" under section 502(5) complicates EPA's enforcement powers against Federal facilities. Therefore, the Supreme Court ruled in Department of Energy v. Ohio, 503 U.S. 607 (1992), that the citizen suit provision found in section 505(a) did not permit the imposition of section 309(d) civil "punitive" penalties (penalties for past behaviour as opposed to "coercive" penalties which look to the future) against the United States.

[649] ibid n 648
[650] ibid n 648
[651] ibid n 648
[652]EPA 'Enforcement and Compliance Annual Results for Fiscal Year 2022' < https://www.epa.gov/enforcement/enforcement-and-compliance-annual-results-fiscal-year-2022 >accessed 5 February 2023
[653] ibid n 652

This follows from the lack of an apparent surrender of sovereign immunity. [654]

Given the Supreme Court's ruling, the EPA does not routinely impose "punitive" fines on Federal facilities. There are a few exceptions, though. EPA may use the entire arsenal of CWA enforcement tools against private contractors if they, for instance, discharge pollutants into US waters or violate the terms of a permit, even though the US is not defined as a "person" under Section 502(5). The United States Postal Service was also not immune from lawsuits for CWA claims, including penalties, according to the Third Circuit Court of Appeals' ruling in *Commonwealth of Pennsylvania, Dep't of Envt'l Res. v. U.S. Postal Service*.[655]

Additionally, Section 313 mandates compliance with the CWA by federal agencies, so even without penalties, EPA may still take enforcement action against them. EPA can sign a Federal Facility Compliance Agreement or issue a notice of non-compliance (NON). A timeframe for achieving compliance, terms regarding citizen suits regarding the enforceability of the settlement, and dispute resolution are examples of provisions in a typical compliance agreement.[656] For cleanup and removal of an oil or hazardous substance discharge into navigable waters, adjacent shorelines, or other locations, see CWA 311. The President is required by Section 311(c)(1)(A) to ensure the effective and immediate removal of a discharge by, for example, directing all Federal, State, and private actions to remove a discharge or mitigate or prevent a substantial threat of a discharge (delegated to EPA for discharges in the inland zone, as defined in the NCP).[657]

5.1.2 Enforcement Track Record of the EPA

The EPA has an outstanding record of effective environmental enforcement. The research argues it is the reason for the minimal instances of oil spills and environmental degradation in the United States, a position Nigeria should aspire to obtain. The EPA was among the members of a joint task force [658] and is globally

[654] ibid n 653
[655] 13 F.3d 62 (3d Cir. 1993)
[656] The Clean Water Act, Section 313
[657] The Clean Water Act, Section 311
[658] The task force includes prosecutors from the Criminal Division and the Environment and Natural Resources Division of the Department of Justice; the U.S. Attorney's Office for the Eastern District of

credited for its effective and strict enforcement of the CWA in what could be referred to as "the largest environmental disaster and response effort in US History".[659] On April 20, 2010, the oil drilling rig Deepwater Horizon, operating in the Macondo Prospect in the Gulf of Mexico, exploded and sank, resulting in the death of 11 workers on the Deepwater Horizon and the largest spill of oil in the history of marine oil drilling operations.[660] Four million barrels of oil flowed from the damaged Macondo well over 87 days before it was finally capped on July 15, 2010.[661] On December 15, 2010, the United States, through the EPA, filed a complaint in District Court against BP Exploration & Production and several other defendants alleged to be responsible for the spill.[662]

Anadarko LP, who owned 25% interest and was a non-operator, was found liable to the United States for civil penalties under the Clean Water Act and fined $159.5 million, which is approximately £140,852,057.50 and N88,938,914,816.40 Nigerian Naira. Transocean, the operator of the Macondo, sufficiently pleaded guilty to environmental crime and entered a civil settlement to resolve the penalty claims from the incident. The settlement saw the oil giant fined $1 billion in civil penalties and $400 million in criminal fines.[663] Under the civil settlement, the Transocean defendants also must implement court-enforceable measures to improve the

Louisiana, as well as other U.S. Attorneys' Offices; and investigating agents from: the FBI; Environmental Protection Agency, Criminal Investigative Division; Environmental Protection Agency, Office of Inspector General; Department of Interior, Office of Inspector General; National Oceanic and Atmospheric Administration, Office of Law Enforcement; U.S. Coast Guard; U.S. Fish and Wildlife Service; and the Louisiana Department of Environmental Quality < https://www.epa.gov/enforcement/deepwater-horizon-bp-gulf-mexico-oil-spill >accessed 7 February 2023

[659] EPA 'Ecological Impacts of the Deepwater Horizon Oil Spill (Bogota, Columbia)' < Ecological Impacts of the Deepwater Horizon Oil Spill (Bogota, Columbia) | Science Inventory | US EPA >accessed 4 February 2023

[660] EPA 'Deepwater Horizon – BP Gulf of Mexico Oil Spill'https://www.epa.gov/enforcement/deepwater-horizon-bp-gulf-mexico-oil-spill >accessed 5 February 2023

[661] ibid n 660

[662] Other Defendants Includes Anadarko Exploration & Production LP, Anadarko Petroleum Corporation, MOEX Offshore LLC, Triton Asset Leasing GMBH, Transocean Holdings LLC, Transocean Offshore Deepwater Drilling Inc., Transocean Deepwater Inc., QBE Underwriting Ltd., Lloyd's Syndicate

[663] US Department of Justice 'Transocean Agrees to Plead Guilty to Environmental Crime and Enter Civil Settlement to Resolve U.S. Clean Water Act Penalty Claims from Deepwater Horizon Incident ' < Transocean Agrees to Plead Guilty to Environmental Crime and Enter Civil Settlement to Resolve U.S. Clean Water Act Penalty Claims from Deepwater Horizon Incident | OPA | Department of Justice >accessed 6th February 2023

operational safety and emergency response capabilities at all their drilling rigs working in the waters of the United States.[664] Judge Jane Triche Milazzo, during the sentencing proceeding, noted that the fines and five-year probationary period provide just punishment and adequate deterrence. The research vehemently agrees with the learned justice and avers that the punishment indeed sent a powerful message to the oil and gas operators in the United States.[665] The US has not recorded any other major disaster like the Macondo incident. Such hefty fines are required in Nigeria's oil and gas industry.

Ten years after the Macondo oil spill, the EPA continues to enforce environmental laws in the oil and gas industry. Two women, Jessica Reznick and Ruby Montoya, who had been involved in the Indigenous-led struggle to stop the pipeline, which attracted thousands of people to opposition camps in North Dakota and Iowa in the USA, were indicted on nine federal charges each in September 2019, including charges for damaging an energy facility, use of fire in the commission of a felony, and malicious use of fire.[666] In July 2017, the women claimed credit for a series of Acts of sabotage, including burning pipeline construction equipment at a Buena Vista County worksite in November 2016 and using oxyacetylene cutting torches or gasoline-soaked rags to damage other pipeline sites around the state between March and May 2017. Judge Rebecca Goodgame Ebinger held that a terrorism sentencing enhancement applied because Reznicek tried to stop the flow of oil, retaliated for decisions by state and federal governments to approve the project and wanted to prevent the government from supporting future projects like the Dakota Access Pipeline.[667] Reznicek was sentenced to eight years in prison in June 2021, and the circuit court of Appeals upheld her sentence.[668] In September 2022, Montoya was sentenced to six years in

[664] ibid n 663
[665] ibid n 663
[666] P Joens 'Iowa climate activist sentenced to eight years in federal prison for Dakota Access pipeline sabotage ' (2021) Des Moines Register < https://eu.desmoinesregister.com/story/news/crime-and-courts/2021/06/30/iowa-activist-jessica-reznicek-sentenced-dakota-access-pipeline-sabotage-catholic-workers/7808907002/ >accessed 26 January 2023
[667] ibid n 690
[668] W Morris ' Appeals court upholds 8-year sentence of Des Moines activist in Dakota Access Pipeline sabotage ' < https://eu.desmoinesregister.com/story/news/crime-and-courts/2022/06/06/dakota-access-pipeline-dapl-protestor-sentence-jessica-reznicek/7535555001/ > accessed 26 January 2023

federal prison. A terrorism enhancement like Reznicek's lengthened her sentence. [669]

These sentences demonstrate that any crime of domestic terrorism will be aggressively investigated and prosecuted by enforcement agencies in the USA. The seriousness of the defendant's actions that occurred multiple times at different locations, resulting in over $3 million in restitution, warranted the significant prison sentence imposed by the Court and should deter others who think of engaging in such criminal acts. The research argues that this should be the attitude of the Nigerian government to sabotage, whether indigenously motivated or not. Sabotage should be seen as domestic terrorism, and the punishment stipulated in section 2 of the Petroleum Production and Distribution (Anti Sabotage) Act 1975 should be effectively enforced. At least one punished offender is required to serve as a deterrent to others.

In May 2020, the EPA prosecuted Harcros Chemicals, Inc. and MGP Ingredients, Inc. for releasing a cloud of toxic chlorine gas in the district of Kansas in 2016. Both companies pleaded guilty to negligently violating the Clean Air Act and were found criminally liable. The court fined them $1 million for violating the Clean Air Act.[670] On April 22, 2020, the EPA, the Department of Justice (DOJ) and the state of Colorado agreed to a settlement to resolve allegations that Kauffman violated the Clean Air Act and state law by emitting volatile organic compounds (VOCs) from its condensate storage tanks and associated vapour control systems. Under the terms of the settlement, Kauffman will implement pollution control measures resulting in a reduction of VOC emissions of over 400 tons per year. Additionally, the company will complete three mitigation projects that will provide additional VOC emission reductions of approximately 131 tons per year and pay a civil penalty of $1 million, split between the state of Colorado and the United States.[671]

[669] J Shipley 'The long legal saga of DAPL arsonist Ruby Montoya is coming to an end' (2022) < https://grist.org/protest/ruby-montoya-dakota-access-pipeline/ >accessed 26 January 2023
[670] Details of the case available < https://www.epa.gov/newsreleases/harcros-chemicals-inc-kansas-city-kansas-pay-civil-penalty-and-pay-project-reduce accessed 7 February 2023
[671] EPA 'K.P. Kauffman Company Settlement' https://www.epa.gov/enforcement/kp-kauffman-company-settlement#:~:text=The%20United%20States%20and%20the,the%20Denver%20ozone%20nonattainment%20area >accessed 8 February 2023

On December 6, 2021, the District of North Dakota sentenced the pipeline company Summit Midstream Partners LLC to pay a $15 million criminal fine and complete three years of probation for discharging 29 million gallons of oil-contaminated "produced water," a by-product of hydraulic fracturing in 2014. EPA's Criminal Investigation Division conducted the criminal investigation. Summit Midstream Partners LLC was charged with violating the Clean Water Act by intentionally neglecting to notify federal authorities of a spill and negligently causing the discharge into U.S. waterways. The company pleaded guilty to these allegations. Over 700,000 gallons were released, damaging the groundwater and soil around Blacktail Creek and other adjacent areas. The federal penalties were paid to the Oil Spill Liability Trust Fund, intended to react to and clean up oil spills in the future. To settle civil violations of the Clean Water Act and North Dakota water pollution management legislation, Summit Midstream Partners LLC and a connected business, Meadowlark Midstream Company LLC, were subject to a $20 million civil penalty and criminal punishment.[672]

A similar fund called the Environmental Remediation Fund (ERF) has been introduced by section 103 of Nigeria's PIA 2021, as aforementioned in chapter three of the research. The fund's primary purpose is to provide a source of funding for the rehabilitation or management of adverse environmental impacts from petroleum operations, which shall include upstream petroleum operations and petroleum operations that meet the condition of section 8(g) of the PIA, 2021.[673] Whether the fund would have enough funds for this laudable project would depend on how the PIA is enforced in Nigeria's oil and gas industry. It is clear that Nigeria's enforcement agencies have not been able to achieve the enforcement fits that the EPA has. In 2020 and 2021, Nigeria's National Oil Spill Detection and Response Agency (NOSDRA) recorded 822 combined oil spills, totaling 28,003 barrels spewed into the environment. However, there have been no prosecutions for these spills. The agency attributes the spills to oil sabotage. It is argued by this research that whether

[672] Details of the case available < https://www.justice.gov/opa/pr/pipeline-company-sentenced-largest-ever-inland-oil-spill >accessed 7 February 2023
[673] NUPRC 'Upstream Environmental Remediation Fund Regulation' < https://www.nuprc.gov.ng/wp-content/uploads/2022/08/Upstream-Petroleum-Environmental-Remediation-Fund-regulation.pdf >accessed 6 February 2023

sabotage or operational spills, offenders should be brought to book.

Gunningham argues that the EPA is the typical agency utilizing the 'Rule Strategy'[674]. The 'Rule Strategy' is predicated primarily on enforcing laws to accomplish environmental protection criteria.[675] The EPA enacted the Spill Prevention, Control, and Countermeasure (SPCC)[676] and Facility Response Plan (FRP) rules to facilitate the successful execution of enforcement.[677] The SPCC was published in 1973 under the authority of section 311 of the clean water act 1972 and sets forth requirements for the prevention of, preparedness for, and response to oil discharges at specific non-transportation-related facilities.[678] This regulation aims to prevent oil from reaching navigable waters and adjoining shorelines and contain discharges of oil.[679] The regulation requires that all regulated facilities (including federal facilities as specified in 40 CFR 112.1(c) have a thoroughly prepared and implemented SPCC Plan.[680] An SPCC Plan is a detailed, facility-specific, written description of how a facility's operations comply with the prevention guidelines in the Oil Pollution Prevention regulation.[681] These guidelines include secondary containment, facility drainage, dikes or barriers, sump and collection systems, retention ponds, curbing, Tank Corrosion Protection Systems (TCPS), and liquid devices.[682] A registered professional engineer must certify each SPCC Plan unless the owner/operator can, and chooses to, self-certify the plan.[683]

Unlike oil spill contingency plans that typically address spill clean-up measures after a spill, SPCC plans to ensure that facilities put containment and other

[674] N Gunningham, 'Enforcing Environmental Regulation' (2011) 23 Journal of Environmental Law 175.
[675] ibid n 698
[676] EPA 'Overview of the Spill Prevention, Control, and Countermeasure (SPCC) Regulation'<https://www.epa.gov/oil-spills-prevention-and-preparedness-regulations/overview-spill-prevention-control-and >accessed 5 February 2023
[677] ibid n 700
[678] ibid n 700
[679] EPA 'Oil Spills Prevention and Preparedness Regulations' <https://www.epa.gov/oil-spills-prevention-and-preparedness-regulations >accessed 5 February 2023
[680] ibid n 703
[681] EPA 'Overview of the Spill Prevention, Control, and Countermeasure (SPCC) Regulation' < https://www.govinfo.gov/content/pkg/CFR-2019-title40-vol24/pdf/CFR-2019-title40-vol24-part112.pdf >accessed 5 February 2023
[682] ibid n 705
[683] ibid n 705

countermeasures to prevent oil spills from reaching navigable waters.[684] Under the regulation, facilities must detail and implement spill prevention and control measures in their SPCC Plans.[685] A spill contingency plan is required as part of the SPCC Plan if a facility cannot provide secondary containment. In December 2008, the SPCC was amended.[686] The amendments removed the provisions excluding farms and oil production facilities from the loading/unloading rack requirements, exempted produced water containers at an oil production facility and provided alternative qualified facilities eligibility criteria for an oil production facility. These amendments came into force in 2010.[687]

Furthermore, section 313 of the CWA requires federal agencies to comply with the CWA. Therefore, the EPA can enforce environmental laws against federal agencies for violations, even if penalties are not an option.[688] The EPA focuses its enforcement and compliance assurance resources on the most significant environmental violations by developing and implementing national programme priorities known as National Enforcement and Compliance Initiatives (NECIs).[689] The NECIs are in addition to the EPA's core enforcement work, including protecting clean and safe water, reducing air pollution, and protecting safe and healthy land.[690] EPA began incorporating environmental justice and evaluating opportunities to address climate change in implementing the NECIs in 2021.[691]

It should be noted that the enforcement/settlement reports aforementioned do not in any length or form constitute an adequate list of the enforcement record of the EPA.

[684] EPA 'Overview of the Spill Prevention, Control, and Countermeasure (SPCC) Regulation' < https://www.govinfo.gov/content/pkg/CFR-2019-title40-vol24/pdf/CFR-2019-title40-vol24-part112.pdf >accessed 5 February 2023
[685] ibid n 708
[686] EPA '2009 SPCC Amendments'< https://www.epa.gov/oil-spills-prevention-and-preparedness-regulations/2009-spcc-amendments >accessed 5th February 2023
[687] ibid n 708
[688] Clean Water Act, Section 313
[689] EPA 'National Enforcement and Compliance Initiatives'<National Enforcement and Compliance Initiatives | US EPA >accessed 5 February 2023
[690] ibid n 713
[691] ibid n 705

5.1.3 Funding the EPA

The Congress of the United States funds the EPA. Unlike what is obtainable in Nigeria's NESREA and NOSDRA, the EPA is funded separately. The agency has its budget and utilizes it to ensure effective enforcement of environmental laws. The proposed Fiscal Year 2023 budget for the EPA is $11.881 billion to support the agency's mission of protecting human health and the environment.[692] This budget is a $2.644 billion increase above the FY 2022 budget of $9,559 billion.[693]

To address issues with environmental justice, climate change, per- and poly-fluoroalkyl substances (PFAS), and coal combustion residue rule compliance, the EPA allocated $213.2 million in FY 2023 for civil enforcement efforts. This money will also be used to develop and implement a comprehensive civil enforcement plan. [694] Environmental justice issues are considered when developing projects under the EPA's Compliance Monitoring Program, which allocates $147.9 million for enforcement and compliance assurance operations.[695] By ensuring that the nation's environmental laws are followed, EPA's Civil Enforcement Program aims to protect human health and the environment. In collaboration with the Department of Justice (DOJ), EPA's FY 2023 Budget supports the creation of a Specialized Criminal Enforcement Initiative (SCEI) that addresses environmental justice issues alongside other National Compliance Initiatives.[696] To increase EPA's capability for criminal enforcement and hold illegal polluters accountable, particularly in vulnerable communities, the FY 2023 budget includes $69.5 million.[697] It is an open secret that environmental criminality frequently affects overburdened and underserved communities, as is obtainable in the Niger Delta of Nigeria.

5.2 Scotland

The Scotland Act 2016 devolved onshore oil and gas licensing powers to Scotland.[698] All other oil and gas legislation is reserved to the UK Government. The Scottish

[692] EPA 'FY 2023 Budget' < FY 2023 Budget | US EPA >accessed 7 February 2023
[693] ibid n 692
[694] ibid n 692
[695] ibid n 692
[696] ibid n 692
[697] ibid n 692
[698] Scotland Act 2016, Section 48

onshore area is the area of Scotland that is within the baselines established by any Order in Council under section 1(1)(b) of the Territorial Sea Act 1987 (extension of territorial sea).[699] Most oil and gas activity in Scottish waters occurs 'offshore' – beyond 12 nautical miles from the coastline.[700] Oil and gas extraction alone was worth an estimated £8.8 billion in GVA to Scotland's economy in 2019, representing 5% of total Scottish GDP.[701]

The UK Government is responsible for the fiscal regime and regulation of the oil and gas industry. It is also responsible for the health and safety of the offshore oil and gas industry operating on the UK Continental Shelf, which the independent regulator, the Health and Safety Executive, oversees. The North Sea Transition Authority (NSTA) is the offshore oil and gas sector's independent regulator.[702] Its role is to regulate, influence and promote the offshore oil and gas industry to maximize the economic recovery of the UK's oil and gas resources. The NSTA governs the licensing of exploration and development of the UK's offshore oil and gas resources, gas storage and unloading activities.[703] NSTA aims to hold the oil and gas industry to account for halving upstream emissions by 2030.[704] The Petroleum Act 1998 confers all rights to the UK's petroleum resources to the Crown. Still, the NSTA can grant licenses that confer exclusive rights to search and bore for and get petroleum over a limited offshore area for a limited time.[705]

5.2.1 Scottish Environmental Protection Agency (SEPA)

The Scottish Environment Protection Agency (SEPA) is Scotland's principal environmental regulator, protecting and improving Scotland's environment.[706] The agency was established under the Environment Act 1995 as a corporate body in

[699] Scotland Act 2016, Section 47 (3)
[700] Scottish Government 'Oil and Gas' (2023) < Oil and gas - gov.scot (www.gov.scot) >accessed 5th February 2023
[701] ibid n 724
[702]North Sea Transition Authority 'Our Mission Statement' (2023) https://www.nstauthority.co.uk/about-us/our-mission-statement/ >accessed 5 February 2023
[703] ibid n 726
[704] ibid n < North Sea Transition Authority (NSTA): What we do - About us (nstauthority.co.uk) > accessed 5 February 2023
[705] ibid n 726
[706] SEPA' Our Role' (2023) < https://www.sepa.org.uk/about-us/our-role/ > accessed 5th February 2023

1996.[707] SEPA does not carry out its functions on behalf of the Crown.[708] Unlike Nigeria's NESREA, SEPA is a non-departmental public body of the Scottish Government but accountable to Scottish Ministers and the Scottish Parliament.[709] Chapter 2 of the Regulatory Reform (Scotland) Act 2014 (The Act) sets SEPA's role to protect the environment and human health. Scotland's natural resources and services are used sustainably and contribute to sustainable economic growth.[710] The constitution of SEPA is set out in Section 6 of the Act. The Act provides SEPA with three enforcement measures for relevant offences to wit: Fixed monetary penalties,[711] Variable monetary penalties[712] and Enforcement undertakings.[713] The Environmental Regulation (Enforcement Measures) (Scotland) Order 2015 gives SEPA the power to impose financial penalties, accept voluntary undertakings, and set the framework and procedure for their use. In determining whether SEPA uses either of these enforcement actions, recourse is made to the Lord Advocate's Guidelines under the Act.[714] The Lord Advocate may issue, and from time to time revise, guidance to SEPA on exercising its functions relating to enforcement measures. SEPA must comply with such guidance or revised guidance in exercising those functions.[715]

SEPA provides two core functions: environmental regulation and flood risk management[716]. The focus will be placed on the environmental function of SEPA for this research. SEPA has regulatory powers and duties under many varied pieces of environmental legislation.[717] Unlike NESREA, SEPA enforcement powers cover the oil

[707] SEPA Framework Document < https://www.sepa.org.uk/media/593782/sepa-framework-document-2021.pdf >accessed 5 February 2023
[708] ibid n 707
[709] Regulatory Reform (Scotland) Act 2014, Chapter 2
[710] ibid n 709
[711] Regulatory Reform (Scotland) Act 2014, Section 20-22
[712] Regulatory Reform (Scotland) Act 2014, Section 23-25
[713] Regulatory Reform (Scotland) Act 2014, Section 27
[714] Regulatory Reform (Scotland) Act 2014, Section 31
[715] Regulatory Reform (Scotland) Act 2014, Section 31(1) and (2)
[716] ibid n 715
[717] Some of these legislations includes but not limited to the:

- Regulatory Reform (Scotland) Act 2014,
- Duty of care obligations;
- Pollution Prevention and Control (Scotland) Regulations 2012;
- Waste management licensing;
- Radioactive Substances Act 1993 (RSA 93);
- Water Environment (Controlled Activities) (Scotland) Regulations 2011;

and gas industry. SEPA seeks to help the businesses in the sectors it regulates to reduce water use, carbon-based energy use, materials use and all forms of waste and pollution and to move beyond compliance with the standards set through that legislation. For those businesses not yet meeting those standards, it seeks to drive them into full compliance with environmental legislation using a combination of traditional regulatory tools and other approaches.[718] SEPA is the regulator of the Scottish Landfill Communities Fund (SLCF), a tax credit scheme linked to the Scottish Landfill Tax. It also regulates all of Scotland's water abstractions and the safety of Scotland's reservoirs.[719]

The Scottish Ministers are ultimately accountable to the Scottish Parliament for the activities of SEPA and its use of resources.[720] They are not, however, responsible for the day-to-day operational matters of SEPA. Their responsibilities include: • agreeing SEPA's strategic aims and objectives and key targets as part of the corporate planning process; • agreeing the budget and the associated grant in aid requirement to be paid to SEPA, and securing the necessary Parliamentary approval; • approving amendments to existing charging schemes or any introduction of a new charging scheme; • carrying out responsibilities specified in the Environment Act 1995 such as appointments to SEPA's Board, approving the terms and conditions of Board members, and approving appointment of the Chief Executive; • other matters such as approving SEPA's Chief Executive and staff pay remit in line with Scottish government's pay policy and laying the accounts (together with the annual report) before the Scottish Parliament.[721]

Per the act, the Scottish ministers may give SEPA directions with which it must comply, including directions to enable international commitments to be met. The Scottish ministers have powers to call-in applications, determine appeals and set

- The Ship Recycling Facilities Regulations 2015;
- The Control of Mercury Regulations 2017;

[718] ibid n 717
[719] SEPA Framework Document < https://www.sepa.org.uk/media/593782/sepa-framework-document-2021.pdf >accessed 5 February 2023
[720] Regulatory Reform (Scotland) Act 2014, Chapter 2
[721] ibid n 720

charges concerning SEPA's regulatory and other functions, where such powers have been devolved to the Scottish Ministers under the Scotland Act 1998.[722]

5.2.2 SEPA'S Fit and Proper Person Test

According to the Environmental Authorizations Regulations(Scotland)2018, SEPA decides who controls the regulated activity and whether those in control (either an individual or a company) are a 'fit and proper person' to hold or continue an environmental authorization. Prior to approving an application for a registration or permit, SEPA must be satisfied that the applicant is: a) the person who will have control over the regulated activity; and b) a fit and proper person to have such control. Similarly, the individual who is or will be in control of the activity must submit a notification.[723] The 'in control' criterion is the same for all authorizations. The correct individual must be listed on the approval.[724]

The 'fit and proper person' test is administered in a manner that reflects the individual risks associated with each activity. The purpose is the same for all regulated activities, but the assessment criteria are applied differently for each application. When information indicates that a particular applicant may require a more in-depth evaluation, SEPA applies a different assessment criterion. This reflects that the fitness and propriety test assesses not only the potential environmental risk posed by the activity but also the potential environmental risk posed by the applicant and their attitude towards compliance.[725]

A person with authorization is accountable for overall compliance with authorization conditions and preventing environmental damage caused by a regulated activity. They are also responsible for the conduct of anyone conducting all or part of the regulated activity on their behalf. They must ensure that they, as well as their employees and contractors, comply with the terms of their authorization.[726] SEPA takes enforcement action against those directly responsible for non-compliance or

[722] ibid n 721
[723] SEPA 'Guidance On Who Can Hold An Authorization: 'In Control And 'Fit And Proper Person Tests' < https://www.sepa.org.uk/media/372007/guidance_on_who_can_hold_an_authorisation.pdf >Accessed 30 May 2023
[724] ibid n 723
[725] ibid n 723
[726] ibid n 723

harm. If this is not the authorized person, enforcement action is taken against the official person in addition to or instead of the person directly responsible. For the authorized individual to fulfil their responsibilities, they must have control over the regulated activity. This means they must have the authority and capability to assure compliance with the authorization conditions. Before granting or transferring permission, SEPA verifies that the correct applicant has made the request. The application is denied if the applicant is not in charge. The research argues that SEPA's fit and proper person test is a good practice that Nigeria can adopt before granting licenses to oil and gas industry operators. This would ensure that a background check is carried out on all applicants seeking to operate in the international or indigenous oil and gas industry. The effect of this is that it would lessen the task of enforcement officers, thereby making enforcement of environmental laws effective.

5.2.3 Funding SEPA

However, just like NESREA, it is funded by the Scottish government and receives about £37 million a year in funding.[727] In the accounting period of 2021/2022, the Scottish government allocated SEPA £33.0m cash grant for operating costs and £6.2m for capital investment.[728] The fees from charging schemes and other income were estimated to be £44.2m in the same year.[729]

5.3 Increased Penalties for Environmental Pollution in Malaysia

Like Nigeria, Malaysia is one of the largest crude oil producers in the Asia-Pacific region, producing an estimated 573,000 barrels per day in 2021.[730] As of the commencement of 2020, the country held approximately 3.6 billion barrels of proven oil reserves, ranking it second in South East Asia after Vietnam and fourth in the Asia-Pacific region.[731] Most of Malaysia's oil originates from offshore fields, particularly off the coasts of Terengganu (peninsula), Sabah, and Sarawak. PETRONAS has exclusive rights to hydrocarbon production and exploration in

[727] SEPA "Annual Reports and Accounts' < https://www.sepa.org.uk/media/594115/annual-report-and-accounts-2020-2021.pdf > accessed 5th February 2023
[728] ibid n 727
[729] ibid n 727
[730] BP Statistical Review of World Energy 2022 < https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/energy-economics/statistical-review/bp-stats-review-2022-full-report.pdf > accessed 20 July 2023
[731] Oil & Gas Laws and Regulations Malaysia 2023 < https://iclg.com/practice-areas/oil-and-gas-laws-and-regulations/malaysia > accessed 20 July 2023

Malaysia.[732] By 2024, Petronas expects domestic oil and gas production to peak at approximately two million barrels of oil equivalent per day (boepd). About 60-70 percent of its output is and will continue to be natural gas.[733]

Malaysia also faces severe environmental degradation and has had a long oil spills history. Between 2009-2017, there were 149 cases of oil spills in Malaysian territorial waters.[734] In May 2023, the coastal area of Kampung Melayu Nongsa in Batam, Riau Islands, was recently contaminated by oil spills that authorities said were from a tanker that caught fire in Malaysian waters.[735] Malaysia is recorded as a developing nation.[736] One striking thing about Malaysia which justified the choice of this country in this research, is that Malaysia is taking logical steps to curb environmental pollution by effectively enforcing its environmental laws and increasing penalties for environmental offences because the country realizes that environmental harm is tantamount to terrorism which must not be handled lightly, even as a developing nation. [737] This, therefore, creates a good balance of comparators in this research because the United States of America and Scotland are developed Nations.

In the 2021 case of *Lim Kiat Aik v Public Prosecutor*[738]*,* the High Court's tenacity in treating environmental offences with due severity was seen through the Court's unwillingness and refusal to grant bail to an offender. In this case, the court treated environmental pollution in any form as a security threat, likened to "an act of terrorism'. The court's stance in this case is highly commendable. In the opinion of this research, environmental pollution must be seen as a matter of life and death.

[732] ibid n 731
[733] ibid n 731
[734] H Reduan, "New Law Being Prepared to Deal with New Environmental Complexity," (The Straits Times, November 9, 2017) < https://www.nst.com.my/news/nation/2017/11/301179/new-law-being-prepared-deal-new-environmental-complexity-doe > accessed 20 July 2023
[735] The Jakarta Post 'Oil Spill hit Batam Coast' (2023) < https://www.thejakartapost.com/indonesia/2023/05/04/oil-spills-hit-batam-coast.html >accessed 20 July 2023
[736] World Data Info 'List of Developing Countries' (2022) < https://www.worlddata.info/developing-countries.php > accessed 25 July 2023
[737] O H Onyi-Ogelle and C Nwibe, 'Comparative Analysis of Production Sharing Contract in the Nigerian and Malaysian Oil and Gas Industry' (2020) 2 IJOCLLEP 88
[738] (2021) 9 MLJ 633.

Not doing so is tantamount to crimes against humanity.

The primary legislation governing Malaysia's environmental policies is the Environmental Quality Act 1974 which seeks to prevent environmental pollution and enforce action against those who act contrary to Act. The Environmental Quality Act 1974 came into force in 1975. It was aimed to prevent and control pollution and to create a system that punishes those who cause harm to the environment. Amongst other functions of the Malaysian Department of Environment (DOE), enforcing the Environmental Quality Act 1974 is the department's primary responsibility.[739] To ensure continuous enforcement, the Department of Environment formulates and compiles strategies and directives for enforcement actions and compliance targets for stationary source facilities and mobile sources, with sensitivity, continually. Enhance enforcement operations by providing trained personnel, explicit laws and procedures, and complete, up-to-date equipment and logistical support.[740] The DOE has enforcement powers over Malaysia's oil and gas industry pursuant to the Environmental Quality Act 1974.[741]

In 2022, a bill was passed in the Malaysian parliament to amend the 1974 Act.[742] The 2022 amendment to increased penalties for environmental pollution almost one hundred-fold in 28 sections of the Act.[743] The research will focus on the sections that relates to the oil and gas industry and the argument of this research.

- Section 22(3) of the Environmental Quality Act 1974 was amended to replace the maximum punishment of RM100,000 to a fine between RM10,000 and RM1,000,000.[744] The imprisonment term remained five years.[745]
- Section 27(3) was amended to replace the maximum fine of RM500,000 with a fine between RM100,000 and RM10,000,000 for violations of discharging or spilling any oil or mélange containing oil into Malaysian waters, a significantly

[739] Department of Environment 'Enforcement' < https://www.doe.gov.my/en/enforcement-management/ > accessed 20 July 2023
[740] ibid n 739
[741] ibid n 739
[742] Environmental Quality (Amendment) Act 2022 < https://www.cljlaw.com/files/bills/pdf/2022/MY_FS_BIL_2022_38.pdf > accessed 19 July 2023
[743] ibid n 742
[744] ibid n 742
[745] ibid n 742

higher maximum fine than the current RM500,000.[746] The imprisonment term remained five years.[747]

- The penalties in section 29(2) for the discharge of waste in Malaysian waters was amended from RM500,000 to a fine of not less than RM50,000 and not more than RM10.0 million, a significantly higher maximum fine than the previous RM500,000. The maximum term of imprisonment remains unchanged at five years.[748]

Per Marimuthu et al, the increase in penalties demonstrates the intention of the Malaysian legislature to criminalize environmental damage and it represents the fulfilment of Malaysia's growing international obligations.[749] The Courts in Malaysia also impose severe punishments on environmental offenders. In *Malaysian Vermicelli Manufacturers (Melaka) Sdn. Bhd. v. Pendakwa Raya*[750]*,* the appellant was charged with violating Regulation 8(1)(b) of the Environmental Quality (Sewage and Industrial Effluents) Regulations 1979, which carries a maximum penalty of RM 100,000 (approximately A$ 34,602.5).[751] The trial judge fined the appellant RM 75,000 (equivalent to A$ 25,951) or one year in prison if the fine was not paid. The appellant argued that the sentence was excessive in comparison to the sentencing trends for other crimes.

The Supreme Court denied the appeal. The fine was 75% of the maximum amount of fine authorized by law. In this instance, the sentence imposed is considered harsh in comparison to the standard sentencing practices of Malaysian courts. The propensity of the courts to impose severe penalties demonstrates the court's recognition of the detrimental effects of environmental damage. The Court in *Pendakwa Raya v. Abdul Haq Abdul Razak*[752] delivered a similar judgement. The implementation of heightened sanctions and the courts' stringent stance in

[746]ibid n 745
[747] ibid n 745
[748] ibid n 745
[749] S B Marimuthu & A A Zakariah, 'The Sufficiency of Malaysia's Environmental Laws for the Protection of the Tasik Chini UNESCO Biosphere Reserve' (2020) 21 Australia Journal of Asian Law 25
[750] [2001] 3 AMR 3368.
[751] ibid n 749
[752] (2018) MLJU 1640

acknowledging environmental harm demonstrate encouraging advancements in environmental protection in Malaysia which Nigeria can follow.

A significant point to highlight about the amendment of the Environmental Quality Act is Section 33(2). Section 33 (1) provides: "Where several persons are licensed under the Act to emit, discharge or deposit environmentally hazardous substances, pollutants or wastes into the same segment or element of the environment and it appears to the Director General that each of these persons is complying with the conditions of his licence, but nevertheless the collective effect of the aggregate of such wastes is likely to cause a worsening of the of the condition in that segment or element of the environment such as to affect the health, welfare or safety of human beings, or threaten the existence of any animals, birds, wildlife, fish or other aquatic life, the Director General may serve a notice on each of these licensees under section 33(1) of the Act, requiring each of them to abate such emission, discharge or deposit in the manner and within the period specified in the notice."[753] Section 33(2) provides that:

> "Any person who contravenes the notice issued under subsection (1) commits an offence and shall, on conviction, be liable to a fine not less than fifty thousand ringgit and not exceeding one million ringgit or to imprisonment for a term not exceeding five years or to both, and shall also be liable to a further fine not exceeding one thousand ringgit for every day during which the offence continues after service on him of the notice specified in subsection (1) "[754]

5.4 Conclusion

The above amendment is very significant because the Environmental Quality Act has set and increased penalties for those individuals or corporations who are licensed to emit, discharge deposit environmentally hazardous substances, pollutants or wastes into the same segment or element of the environment. The act recognized the impact of these licenses and has curbed them with these increased penalties. Nigeria's PIA

[753] Environmental Quality Act as amended, Section 33(1), See also Skrine ' Enhanced penalties for contravention of the Environmental Quality Act 1974 ' (2022)< https://www.skrine.com/insights/alerts/october-2022/enhanced-penalties-for-contravention-of-the-enviro > accessed 25 July 2023

[754] Environmental Quality Act as amended, Section 33(2)

2021 has provided exemptions to licensees to flare gas but has not provided any deterrence like Section 33(2) of the Environmental Quality Act to monitor or curb the gas flares. This lacuna must be filled. In chapter five of this research, the techniques of enforcement were examined. With the increased penalty of Malaysia, it may seem that Malaysia has chosen the command-and-control technique of enforcement. In the opinion of this research, this is an applaudable approach. Developing countries like Malaysia and Nigeria should employ much more stringent techniques to sufficiently deter environmental offenders.

CHAPTER SIX: ENFORCEMENT OF ENVIRONMENTAL LAWS: PRINCIPLES AND PRACTICE

6.1 Introduction

Enforcement is one term that appears throughout the length and breadth of this research. It suffices to say it forms the bedrock of this research. Thus, it is imperative to understand the entirety of the term. Wherever there are rules, laws, or standards to regulate the behaviour of independent decision-makers, enforcement issues occur.[755] The goal of environmental law is to govern environmental risks within an appropriate and effective management framework. However, the sheer existence of laws is rarely enough to ensure their enforcement. Thus, illegal use, storage, and disposal of hazardous or waste items has resulted in significant environmental damage in Nigeria.

Enforcement of these laws is now obviously a concern, and most environmental laws should include some type of enforcement provision to ensure that the required degree of environmental protection is met.[756] To provide an in-depth analysis of the research's first question and meet its 3rd aim[757], this chapter examines the principles and practice of enforcement. It would start with the onion ring of environmental laws. As already established in this research, the focus is not on environmental laws, but the researcher is aware that what it seeks to be enforced are laws. Therefore, it is good practice to start with the principles of environmental laws as elaborated below. The chapter continues by examining the enforcement concept and prerequisites for effective enforcement. Finally, it closes by assessing the role of courts in ensuring the effective enforcement of environmental laws.

6.2 The Onion Ring of Environmental Law

Environmental laws control human behaviours and their interaction with the environment. Environmental law enforcement results from various stressors impacting the enforcers and those who must comply. This research agrees with the argument of Waite that environmental law can be compared to the rings of a cut

[755] A Waite, 'A New Garden of Eden - Stimuli to Enforcement and Compliance in Environmental Law' (2007) 24 Pace Environmental Law Review 343
[756] ibid n 755
[757] See Chapter 1.6 and 1.7 of the Research

onion.[758] Per Waite, the rings, starting in the centre and working outwards, represent:

A. *"Environmental imperatives coming from natural rules that must be followed to avoid negative environmental consequences.*
B. *Environmental principles based on environmental imperatives, such as the polluter pays principle.*
C. *The substantive legal rules.*
D. *The rules govern access to justice and the enforcement authorities' responsibilities and powers.*
E. *The actual behaviour of environmental "actors," such as legislators, judges, enforcement authorities, economic producers and those in their supply chain, and citizens affected by other people's environmental depredations or who have the desire and commitment to participate in the enforcement process."*

6.2.1 Analysis of the Onion Ring

The onion ring can be analyzed thus: Environmental imperatives (A) affect all other layers of the onion, influencing the creation of environmental principles (B), substantive environmental legislation (C), enforcement duties and powers, and access to justice (D), as well as environmental actors' behaviour (E). The nature and extent of environmental imperatives and the quality of the underlying knowledge are crucial to the creation of the entire environmental law machinery (layers B-E).[759] The 'onion rings' interact in complicated ways that significantly impact how the law is implemented in practice, including compliance by industrial operators and individuals, as well as the extent to which enforcement authorities can enforce the law.[760] Waite argues that if one of the multipliers B to E, is too high or too low, one or more of the other multipliers must be reduced or increased to compensate. Otherwise, environmental law has either an excessive or insufficient impact.[761] The latter impact is currently obtainable in Nigeria, where the multipliers B-E are too low, thus affecting the enforcement of environmental laws in the country.

[758] ibid n 757
[759] A Waite, 'A New Garden of Eden - Stimuli to Enforcement and Compliance in Environmental Law' (2007) 24 Pace Environmental Law Review 343
[760] ibid n 759
[761] ibid n 759

Environmental imperatives are becoming more widely known due to education and the media, a trend bolstered by recognition of the developing body of substantive environmental law.[762] Waite argues that the distinguishing aspect of environmental law is that it is founded on our current understanding of the workings of natural law.[763] In recent years, humans have developed a more comprehensive understanding of the environment, resulting in international agreements designed to protect the global environment rather than just the local one. Per the UN, "at the core of the 2020-2030 decade is the need for action to tackle growing poverty, empower women and girls, and address the climate emergency."[764] Robinson argues that people are likely to feel a moral need to follow the law, or in some situations, to encourage its enforcement, as environmental law becomes more sophisticated because of improved and expanding awareness of environmental imperatives.[765] Environmental principles, which, despite being frequently misinterpreted and conflated with substantive requirements of environmental law, provide certain rallying calls that encourage compliance.[766]

Environmental principles directly impact the formulation of substantive environmental legislation, as well as enforcement and access to justice regulations and environmental actors' behaviour.[767] It is submitted by this research that every environmental law, in one way or the other, has embedded these principles. The procedural enforcement regulations and how they are applied, enforced, and challenged in practice are influenced by substantive environmental law. Finally, procedural rules, such as rights of access to environmental information and access

[762] A Waite, 'A New Garden of Eden - Stimuli to Enforcement and Compliance in Environmental Law' (2007) 24 Pace Environmental Law Review 343
[763] ibid n 762
[764] United Nations 'The sustainable Development Agenda' (2023) < The Sustainable Development Agenda - United Nations Sustainable Development accessed 9 March 2023
[765] N. A. Robinson, Paper Delivered at the Global Judges' Symposium on Sustainable Development and the Role of Law: Environmental Law: The Bedrock for Sustainability, (Aug. 20, 2002).
[766] See, e.g., The United Nations Framework Convention on Climate Change, 1992< conveng.pdf (unfccc.int) > Accessed 4th April 2022, The Kyoto Protocol to the United Nations Framework Convention on Climate Change, 1997 < kpeng.pdf (unfccc.int) > Accessed 4th April 2022, The Paris Agreement 2015 , Adoption Of The Paris Agreement - Paris Agreement Text English (UNFCCC.INT) > Accessed 4th April 2022
[767] A Waite, 'A New Garden of Eden - Stimuli to Enforcement and Compliance in Environmental Law' (2007) 24 Pace Environmental Law Review 343

to justice, will influence how persons who work within the environmental law framework behave.[768] This aligns with the Aarhus convention discussed in chapter two of the research.

There is some "rippling in" at the outer layer since environmental actors' behaviour and the administrative and judicial infrastructure that supports it can be shown to alter the inner levels of substantive environmental legislation and procedural enforcement procedures. An effective administrative and judicial system should allow substantive and procedural norms to work in practice to identify and address flaws. Waite argues that when judges endeavour to interpret and improve the law to achieve justice and satisfy environmental imperatives, it exposes flaws and refines the law in the crucible of litigation.[769] Waite's argument is in tandem with this research. The judiciary plays a vital role in changing environmental responsibility. They are in the vanguard of the change and perhaps can be argued as a last resort for the common man who wants a clean environment. Hence this research assesses their role in enhancing enforcement in section 6.8 of this chapter.The substantive environmental law may also influence the behaviour of environmental actors, including compliance and enforcement. If the legislation is ambiguous or there are too many challenging hurdles to overcome before reaching the courts, the authorities may be reluctant to enforce it.[770]

6.3 Conceptualizing Enforcement

Enforcement has been studied across disciplines. Over the years, economists, legal practitioners, criminologists, and criminal justice attorneys have examined the relationship between enforcement and compliance.[771] The term "enforce" broadly means 'to ensure that a law, rule or duty is obeyed or fulfilled'.[772] It can also mean to 'compel compliance with (a law, rule or obligation)'.[773] Posner has, however,

[768] ibid n 793
[769] ibid n 793
[770]ibid n 768
[771] G Stigler, 'The Optimum Enforcement of Law' in G S Becker and WM Lands (eds), Essays in the Economics of Crime and Punishment edited by (National Bureau of Economic Research New York, Columbia University Press 1974); I Ehrlich, 'The Deterrent Effect of Criminal Law Enforcement' (1972) 1(2) the Journal of Legal Studies 259-276.
[772] C Soanes & S Hawker, Compact Oxford English Dictionary for University and College Students (OUP 2006).
[773] J Pearsall, The Concise Oxford English Dictionary (10th edn, OUP 1999).

described enforcement of the law as the 'process by which violations are investigated and a legal sanction applied to the violator'.[774] Although Posner's definition somewhat connotes the meaning of enforcement, Panther criticized this definition and argued that Posner's use of the term "legal sanctions" makes the definition limiting and thin. Per Panther, although sanctions represent an integral part of enforcement, these sanctions need not be legal. Violators of laws can still be punished with non-legal or informal sanctions. Non-legal sanctions are seen to flow from informal social norms, which are systematized, using a game theoretic perspective.[775] Armour listed some of these non-legal or informal sanctions to include 'reputational sanctions', name and shame', 'truthful negative gossip', or shunning the offender.[776] Ellickson argued that these non-legal rules (social norms) and non-legal sanctions would play prominent roles in Nigeria's environmental disaster.[777] The researcher disagrees with the entirety of this argument because the political landscape of Nigeria has grown beyond the negative impact of name and shame. For a country where corruption thrives almost unabated, naming and shaming give the perpetrator fame and a walk on the red carpet. Enforcement generally involves two essential elements; the first is the investigative element, which involves examining and getting informed about a violation or breach.[778] The second element, a sanction, connotes imposing a penalty on the violator. Hence, these two elements ought to be present in any enforcement activity.[779]

6.4 The Aim of Enforcement

Per Stigler, enforcement aims to ensure compliance with rules of prescribed

[774] R A Posner, Economic Analysis of Law (9th Edition Wolters Kluwer 2014) 859.
[775] S. Panther, "Non-Legal Sanctions" (1999) Institute of Economics, AWM, Universitat Hamburg:< https://reference.findlaw.com/lawandeconomics/0780-non-legal-sanctions.pdf? > accessed 13th August 2021. Pg. 999-1000
[776] J Armour 'Enforcement Strategies in UK Corporate Governance: A Roadmap and Empirical Assessment' in J Armour & J Payne, Rationality in Company Law: Essays in Honor of DD Prentice (Hart Publishing 2009) 74.
[777] R C Ellickson, Order without Law: How Neighbors Settle Disputes (Harvard University Press 1991)
[778] A O Ajibike "Understanding And Evaluating The Enforcement Of Corporate Law In Nigeria: The Case For Enhanced Public Civil Enforcement., Durham theses, Durham University" (2017) Available at Durham E-Theses Online: http://etheses.dur.ac.uk/12287/1/OLUDARA_AWOLALU_FINAL_PHD_THESIS.pdf ?accessed 13/08/2021
[779] ibid<http://etheses.dur.ac.uk/12287/1/OLUDARA_AWOLALU_FINAL_PHD_THESIS.pdf ?accessed 13/08/2021

behaviour.[780] The author avers that 'all prescriptions of behaviour for individuals require enforcement'.[781] This meaning aptly describes the whole essence of enforcement. While there may be different reasons for enforcement, enforcement's central goal and intended result is to secure compliance. [782]

Reiff, in categorizing the goals of enforcement, further opines that the purposes of enforcement may depend on whether the right has not been violated (pre-violation stage), whether it has been violated but not yet enforced (post-violation stage) or whether it has been violated and enforced (post enforcement stage).[783] In the pre-violation stage, enforcement aims to enable social interaction and improve social cooperation. Enforcement at this stage is needed for social cooperation as in the absence of it; no one will be willing to accept a promise to perform from another or be willing to cooperate.[784] Promises are effectual only where the person promised knows it will be fulfilled. Therefore, enforcement enables individuals to honestly commit themselves to act in certain ways to prevent potential violations.[785] It compels parties to cooperate at the risk of punishment for failure. Enforcement is needed at the post-violation and post-enforcement stages to avoid conflict resulting in an unending cycle of violation and retaliation.[786] Hence, it helps to contain conflict to prevent it from degenerating into a crisis.[787] Reiff's classification of enforcement goals into different stages provides clarity and enables understanding of the various stages through which enforcement may move.[788] However, what Reiff refers to as different goals of enforcement may be more properly described as the purpose of enforcement at different stages of violation rather than the goals of enforcement. At the pre-violation stage, enforcement enables people to cooperate with and fulfil their promises to each other at the risk of punishment.[789] This ensures compliance with

[780] G.J. Stigler "The Optimum Enforcement of Laws" (1970) 78(3) Journal of Political Economy pp.526-536
[781] ibid n 806
[782] J Gibbs, Crime, Punishment and Deterrence (Elsevier 1975) 5-9.
[783] M Reiff, Punishment, Compensation and Law: A Theory of Enforceability (Cambridge University Press 2005) 45.
[784] ibid n 809
[785] M Reiff, Punishment, Compensation and Law: A Theory of Enforceability (Cambridge University Press 2005) 45.
[786] ibid
[787] ibid
[788]ibid
[789] ibid

stipulated standards of behaviours and agreements made to others.[790]

At the post-violation and post-enforcement stage, enforcement enables the offended party to comply with the rules of society by refraining from unlawful retaliation. When the offended party knows the breach will be redressed, he is less likely to seek retaliation.[791] He is also more likely to accept the result of enforcement due to the threat of sanction for unlawful retaliation. Therefore, enforcement at the different stages ensures compliance both by the offending and the offended party. It can therefore be said that at the heart of enforcement is the need to ensure compliance with certain rules, standards, or expectations, representing the goal of enforcement.

6.5 Compliance as a Mode of Enforcement

To achieve compliance, there is a general requirement to use available instruments to ensure that individuals engaged in regulated activities know the nature and scope of their duties and willingly comply. In practice, however, compliance is frequently achieved by various enforcement procedures, including warning letters, enforcement notifications, restriction notices, conditional warnings, confiscation, and criminal prosecutions.[792] Penalty notices, improvement notices, enforceable commitments, fines, punitive actions, and incapacitation are also available.[793] Poor enforcement is not the only bone to be removed from the Nigerian oil and gas industry;non-compliance with the environmental laws regulating the industry is inherent amongst the operators and the host communities. This research argues that enforcement affects compliance. The two-go hand in hand. When enforcement is present and strict, there is compliance.

Defining compliance can be viewed from the perspective of those being regulated or the regulatory agency. Compliance is never 100% due to the uncertainty and resource implications connected with detection and proof, regardless of whether

[790] ibid
[791] A O Ajibike "Understanding And Evaluating The Enforcement Of Corporate Law In Nigeria: The Case For Enhanced Public Civil Enforcement., Durham theses, Durham University" (Ph.D Thesis, Durham University 2017) < http://etheses.dur.ac.uk/12287/1/OLUDARA_AWOLALU_FINAL_PHD_THESIS.pdf ?accessed 13/08/2021
[792]T Amodu, 'The Determinants of Compliance with Laws and Regulations' (Hse.gov.uk, 2022) < https://www.hse.gov.uk/research/rrhtm/rr638.htm > accessed 13 April 2022.
[793] N Gunningham and P Grabosky, Smart Regulation: Designing Environmental Policy (Oxford University Press 1998).

proceedings are brought.[794] In the context of regulation, it becomes even more difficult to comprehend the plethora of elements that contribute to the increased compliance of those controlled. "Compliance" is a phrase used to describe the effectiveness of regulatory systems. It encompasses a variety of concepts, and the term is synonymous with strict adherence to the legal rule.[795] Compliance includes tolerance and process management concepts to identify efficient and effective control mechanisms.[796] One recurring subject in the compliance literature distinguishes between regulatory enforcement techniques, particularly punitive or coercive approaches, and more cooperative enforcement strategies.[797]

Cost-effective compliance and enforcement tactics that establish attainable goals via efficient and fair regulation will likely improve compliance behaviour.[798] Compliance methods can be better understood in the broader and regulatory environments in which those subject to regulation conduct business. These considerations include, but are not limited to:

- The regulations' design and source
- The regulatory agency's structure and regulatory mandate
- Its staff's enforcement activities
- Business motivations for compliance (including the sanctions imposed and firms' perceptions of the legitimacy of the regulations)
- The structure of the firms regulated (including the economic climate, industry size and structure, whether the interests of business converge with those of the regulatory agency, and the role of third-party actors).

Firms respond differently to similar regulatory demands, and some, according to simple economic theories, will implement compliance procedures that go considerably beyond what is required by law.[799] Compliance has been seen as an exercise in the efficient allocation of resources such that regulators concentrate resources effectively and target appropriately the worst offenders whilst simultaneously encouraging

[794] ibid n 819
[795] ibid
[796] ibid
[797] ibid
[798] K Hawkins, Environment and Enforcement (Oxford University Press 1984).
[799] ibid n 824

offenders to internalize the benefits of being 'good'.[800] It has been said that rules and standards tell people and companies how to behave, and public agencies and their employees control and react if people do not comply. The purpose is to ensure that people and companies behave in the way that has been politically defined as preferable. The goal throughout this process is Compliance with the law without spending too many resources enforcing it—in other words, efficiency.[801]

6.6 Enforcement Actions

Hawkins categorized the attitude of companies who break the law to aid in an in-depth understanding of which enforcement method should be applied. The four categories based on their social responsibility include: [802]

1. Socially responsible: Those who will comply as a matter of principle.
2. Unfortunate: Those who find it difficult to comply owing to economic, physical, or technical inability.
3. Careless: Those who find it difficult to adapt to new rules.
4. Malicious: Those who would deliberately not comply.

Kagan and Scholz recognized three types of companies:[803]

1. Amoral calculators
2. Political citizens
3. Those who are organizationally inept.

According to Hans de Bruijn et al., the divide between well-intentioned and ill-intentioned actors is common in all the above classifications. The well-intentioned breach the law to further their interests, while others disobey it due to a lack of information or resources, carelessness, or bad luck.[804] Enforcement actions are broadly civil and criminal actions.[805]

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[800] ibid n 799
[801] ibid n 799
[802] ibid n 899
[803] R Kagan and J Scholz, 'The "Criminology of the Corporation" and Regulatory Enforcement Strategies', in K Hawkins and J M Thomas (eds), Enforcing Regulation (New York: Kluwer Nijhoff Publishing 1984).
[804] H D Bruijn, E T Heuvelhof, and M Koopmans, Law Enforcement: The Game between Inspectors and Inspectees (London: Universal Publishers 2007).
[805] E C Okonkwo, Environmental Justice and Oil Pollution Laws: Comparing Enforcement in the United States and Nigeria. (Routledge, New-York 2020) Pg.117

6.6.1 Civic Enforcement Action

Civil actions are primarily used to avoid harm and promote environmental restoration through preventative works, clean-ups, and compensation for damages. Civil actions are divided into two categories: civil administrative and civil judicial.[806] Civil administrative enforcement actions are non-judicial enforcement proceedings which include notices of violation and warning letters as well as administrative orders instructing an individual, a company, or another body to take steps to comply with the laws.[807] Administrative settlements, monetary assessments, license suspension, and even permission revocation are all enforcement options here. The regulator may attach civil financial penalties to offenders' wealth/annual turnover, degree of guilt, or the magnitude of environmental harm caused by their act or omission.[808] Per Ogus and Abbot, the most serious kind of physical punishment is license revocation, which is intended to preserve the environment rather than punish; nonetheless, it is a more effective economic deterrent than a criminal conviction and a small fine.[809]

Civil actions do not consider whether the violator was aware of the law or regulation violated, whereas criminal violations require a level of intent. An example of a knowing violation is the illegal discharge of contaminants into a river. They are determined by the preponderance of the evidence, which includes whether or not the evidence presented is convincing and more likely to be true than not. For the EPA's civil litigation in the United States of America, defendants may be found guilty either through a trial or a settlement with the EPA. If a civil defendant is found liable or agrees to a settlement, they may be required to pay a fine or correct the violation.[810]

6.6.2 Criminal Enforcement Action

Criminal enforcement action is used when major infractions are done intentionally or knowingly and when essential regulations are broken, especially when civil/administrative procedures have failed to deter properly.[811] It might be used

[806] ibid pg. 118
[807] E C Okonkwo, Environmental Justice and Oil Pollution Laws: Comparing Enforcement in the United States and Nigeria. (Routledge, New-York 2020) Pg.117
[808] ibid n 807
[809] A Ogus and C Abbot, 'Sanctions for Pollution: Do We Have the Right Regime?' (2002) 14(3) Journal of Environmental Law 283.
[810] EPA 'Basic Information on Enforcement' < https://www.epa.gov/enforcement/basic-information-enforcement > accessed 22 March 2023
[811] ibid n 836

against the firm, corporate officials, or both. It can result in penalties or jail, depending on the company's facilities, previous compliance history, income, non-compliance benefits, and enforcement costs. Due to the rigours and expenditures, this is usually the last alternative for law enforcement authorities. It is levied on companies that fail to manage their risks properly. The EPA reserves criminal actions for the most egregious violations, i.e. those that are intentional or committed knowingly. Fines or imprisonment may result from a court conviction.[812]

The Court in the *Exxon Valdez* case held that corporate criminal culpability for contamination caused by a flawed corporate culture should lie with the business that fostered and profited from the accident.[813] The research agrees with the court's ruling and avers that this should be replicated in the Nigerian oil and gas industry, where oil companies pollute and profit through their activities. Although criminal sanctions are undoubtedly the most efficient means of implementing environmental legislation, civil fines are used in certain other countries.[814]

The researcher aligns with Faure and Svatikova that criminal enforcement action is preferable when there is social harm or when the offender benefits greatly, with a low possibility of detection, and when criminal law can provide extra stigma and an educational function.[815] Following this, it may be an excellent strategy to implore criminal prosecutions to make polluters from Nigeria's oil and gas industry. In some countries like the United States of America and Canada[816], an order for restitution may be issued in addition to criminal sanctions. A New York case in which a father and son were jailed for conspiring to violate the Clean Air Act (CAA), the Toxic Substances Control Act of 1976, the Clean Air Act's Hazardous Air Pollutant Regulations, and the Racketeer Influenced and Corrupt Organization Act, is an

[812] ibid n 836
[813] US Court of Appeals, Ninth Circuit (23 May 2007). See also the Australian Criminal Code Act 1995 (Cth) ss 12.2, 12.3(2)(c).
[814] M A Rabie et al., 'Implementation of Environmental Law', in RF Fuggle and MA Rabie, Environmental Law in South Africa (Juta and Co 1993) 128; see also Directive 2008/99/EC of the European Parliament (Criminal Law Directive) [2008] OJ L328/28.
[815] M G Faure and K Svatikova, 'Criminal or Administrative Law to Protect the Environment? Evidence from Western Europe' (2012) 24(2) Journal of Environmental Law 253. See also, Michael Watson, 'The Enforcement of Environmental Law: Civil or Criminal Penalties?' (2005) 17(1)3 Environmental Law and Management 1067.
[816] The Environmental Protection Act of Canada, Section 190 (1)

excellent example. The court ordered them to forfeit funds and pay restitution to the victims. [817] Other examples have been cited in chapter 5 of the research.

It is argued that this may lessen environmental injustice since compensation will put victims in a position like what they would have been in if the incident had not occurred, and forfeited funds may be used to enhance the victims' lives. Heine supports criminal accountability for marine pollution and civil sanctions focused on victim compensation.[818] A jail term is the main distinction between civil and criminal punishments, and firms do not face incarceration unless procedures for corporate officer liability are in place, such as lifting the veil of incorporation.[819] Restitution and compensation are one of the sanctions for oil and gas pollution in Nigeria; however, corruption in the form of embezzlement by community leaders would not allow the victims to see the funds; thus, they continue to live in a polluted environment with coffee made of oil.

Criminal enforcement aims to dispel companies' misconceptions that paying civil penalties is just a license to pollute or a business expense that can be passed on to consumers. There's also the possibility of a company's reputation being tarnished because of the prosecution and completing legislative requirements for obtaining licenses. Cohen concluded in his study that implementing criminal punishment is typically more expensive for both the regulator and the regulated than using civil and administrative sanctions based on the cost–benefit analysis.[820] He cited several empirical studies that indicated that when an adverse environmental consequence, such as an oil spill or criminal prosecution, was announced, the stock value of publicly

[817] Father and Son Sentenced to Longest US Jail Terms for Environmental Crimes <'https://archive.epa.gov/epapages/newsroom_archive/newsreleases/324c5937dc68015a85256f7e0076a213.html (EPA News Release) Accessed 1st June 2022

[818] G Heine, 'Marine Oil Pollution: Prevention and Protection by Criminal Law – International Perspectives, Corporate and/or Individual Criminal Liability', in MG Faure and J Hu (eds), Prevention and Compensation of Marine Pollution Damage (New York: Kluwer Law International 2006) 41

[819] R Esworthy, 'Federal Pollution Control Laws: How Are They Enforced?' (2014) Congressional Research.

[820] M A Cohen, 'Criminal Law as an Instrument of Environmental Policy: Theory and Empirics', in A Heyes (ed.), The Law and Economics of the Environment (Aldershot: Edward Elgar 2001) 198, 200. See also MA Cohen, 'Oil Pollution Prevention and Enforcement Measures and their Effectiveness: A Survey of Empirical Research from the US', in MG Faure and J Hu (eds), Prevention and Compensation of Marine Pollution Damage (New York: Kluwer Law International 2006) 37.

listed companies plummeted.[821] Cohen argued that stock price impacts are roughly comparable to government-imposed penalties, clean-up expenses, and private settlements, citing the Karpoff and Lott study.[822]

These enforcement tools and activities serve many reasons. They might be used to bring offenders back into compliance, apply fines, take away the economic advantage of noncompliance, enforce particular measures, repair environmental damage, or address internal corporate management issues.[823] When taking enforcement actions, the seriousness of the offence, history, willingness to comply, consequences of noncompliance, likely effectiveness of various enforcement options, public interest, views of relevant persons, and sufficiency of evidence to support the action are all considered.[824]Several enforcement actions might improve compliance, and their increased usage in the enforcement of oil and gas legislation in Nigeria could reduce environmental injustice. The researcher is aware of Nigeria's sociopolitical, sociocultural, and socioeconomic issues, notwithstanding Nigeria is part of a global community. Nevertheless, enforcement actions used in America can be effective in Nigeria if strictly employed.

6.6.3 Cost-Benefit Analysis of Enforcement

It is important to examine the cost implications of enforcement. Money, amongst other factors, is important in ensuring effective enforcement in any regime. The cost-effectiveness of an enforcement action or regime is a vital criterion for determining its effectiveness. It is simply not enough for an enforcement regime to serve an enforcement purpose; it must also be cost-effective. In this context, cost-effectiveness means that the benefits of obtaining the enforcement action outweigh the costs.[825] Costs and benefits can be interpreted in two ways. The first is the overall

[821] ibid n 846
[822] J Karpoff, J Lott, and G Rankine, 'Environmental Violations, Legal Penalties, and Reputation Costs', John M. Olin Law and Economics Working Paper No. 71, second series (University of Chicago Law School 1998).
[823] OECD, Ensuring Environmental Compliance Trends and Good Practices: Trends and Good Practices (OECD Publishing, 19 May 2009) 74.
[824] ibid n 849
[825] A O Ajibike "Understanding And Evaluating The Enforcement Of Corporate Law In Nigeria: The Case For Enhanced Public Civil Enforcement.(PH.D Thesis, Durham University 2017)< http://etheses.dur.ac.uk/12287/1/OLUDARA_AWOLALU_FINAL_PHD_THESIS.pdf? > accessed 10 March 2023

cost and benefit of the enforcement regime to society. The second consideration is the cost and benefit of each enforcement action to the company against whose directors the action is brought. It is also worth noting that the costs and benefits of enforcement are not solely monetary; intangible costs and benefits, such as lesser records of pollution, may be considered. A key consideration in determining whether an enforcement action or regime is effective should be the costs and benefits of that enforcement system. It is argued by the research that when the costs of obtaining an enforcement action exceed the benefits, the enforcement action could be deemed ineffective. Since time immemorial, several perspectives have been on the cost-benefit analysis (CBA) of enforcement actions. This argument is relevant to this research because effective enforcement requires certain technological resources that would be expensive. The CBA would be analysed for NOSDRA and NESREA to carry out effective enforcement, which this research proposes.

CBA supporters like Driesen typically argue that using cost-benefit criteria will result in more "efficient" or "cost-effective" environmental decisions. [826] This research agrees with Driesen and further avers that the CBA will help to simplify an overly complicated regulatory process, avoid wasteful spending, prevent job destruction, and protect competitiveness. However, critics have questioned the appropriateness and practicability of CBA because it requires comparing two seemingly incomparable things, environmental and health effects on one hand and pollution control costs on the other.[827] They argue that because environmental and public health benefits are difficult to quantify, enforcement agencies may undervalue them in a CBA process that requires quantification.[828] Kaplow and Shavell argue that "Soft" variables habitually get lost in the equation.[829] The government cannot and should not place a monetary value on human life, animal life, health, or aesthetic concerns.[830] CBA tends to undervalue the benefits of strict environmental protection to future generations.[831]

[826] D M. Driesen, 'The Societal Cost of Environmental Regulation: Beyond Administrative Cost-Benefit Analysis' (1997) 24 Ecology LQ 545
[827] D Kennedy, 'Cost-Benefit Analysis of Entitlement Problems: A Critique' (1981) 33 Stan. L. Rev 387
[828] ibid n 853
[829] L Kaplow & S Shavell, Property Rules Versus Liability Rules: An Economic Analysis, (1996) 109 Har law w review 715, 725
[830] ibid n 855
[831] ibid n 855

Benefit data simply does not exist and cannot be obtained at a reasonable cost to assess benefits properly.[832] CBA does not account for equity. For example, decisions to balance costs and benefits may expose those living near polluting facilities, often minorities, to highly high pollution burdens.[833]

Although the above criticism of CBA recognizes some of the force of the practical issues of CBA, it is submitted by the research that the criticism is not conclusive. CBA focuses on the right question, presumably how to maximize allocative efficiency. As a result, the legal literature has tended to depict the CBA debate as one between advocates of "ideal" versus "real" efficiency.[834] One similarity can be drawn from the two sides of the argument that is: Both opponents and supporters of CBA appear to believe that CBA advances a coherent, comprehensive, and important economic ideal and see the main issue as a practical difficulty in properly valuing costs and benefits to society and various groups.

6.7 Techniques of Enforcement

Regulatory enforcement usually categorizes enforcement styles into two techniques. These are the penalizing or deterrent method, popularly hereinafter referred to as the command-and-control technique and the managerial/accommodating, persuasive or compliance technique (hereinafter referred to as the accommodative and compliance technique) [835] The debate over these two enforcement techniques has dominated environmental law enforcement strategies. The management and enforcement techniques are the topics of most discussions; however, some researchers believe the two approaches produce significant counter-expectations.[836] These two techniques will be examined below.

6.7.1 Command and Control Technique

This technique is like that of a traditional police officer. It incorporates enforcement agencies and can also be referred to as a 'sanctioning,' 'deterrence,' or 'prosecution'

[832] ibid n 855
[833] ibid n 855
[834] ibid n 855
[835] Richardson, G. M. et al, Policing Pollution: A study of Regulation and Enforcement. (Clarendon Press, Oxford 1983.)
[836] R Axelrod and R.O Keohane, 'Achieving Cooperation under Anarchy: Strategies and Institutions' (1985) 38 World Politics 226, See also G.W Downs, D.M Rocke, and P.N. Barsoom, 'Is the Good News about Compliance Good News about Cooperation?' (1996) 50 International Organization 379, 382.

method. Its goal is to prohibit actions and, if that fails, to find and prosecute offenders for their wrongdoing.[837] Prosecution is widely recognized as a key tool for ensuring compliance under this technique. The penal nature of deterrence or sanctioning models emphasizes the need for prosecutions.[838] Monitoring, inspection, and other enforcement measures are used to ensure compliance. These activities are also the responsibility of the regulatory agencies. Nigeria has several environmental agencies discussed in chapter four of this research. Regulatory monitoring refers to assessing operator behaviour by employing procedures that do not require the consent of any operator. It is generally classified into three types:

- Initial compliance monitoring,
- Continuing compliance monitoring, and
- Ambient quality monitoring.

Typically, monitoring is carried on at a distance and does not require access to an operator's facilities. Monitoring can also be done by the operator (self-monitoring) or by third parties (citizen monitoring). Inspection refers to procedures carried out on-site by an inspector with appropriate legal status.[839] African countries, like Nigeria, have traditionally used CAC rules and regulations to respond to environmental issues from the oil and gas industry.[840] Proponents of CAC have argued that it is an effective solution to curb environmental issues for various reasons. Per Ntongho, CAC sends a strong message to investors and operators about the consequences of breaching environmental laws and presents itself as an excellent approach for enforcing acceptable standards and preventing operations that do not meet them.[841] In a setting where disputes and corruption have placed doubt on the investment climate, CAC can be utilized to demonstrate the government's strong position in taking proactive steps to address unethical behaviour by outlawing it completely.[842]

Due to the involvement of multiple regulatory bodies, CAC tends to promote

[837] B. M. Hutter, The reasonable arm of the law? the law enforcement procedures of environmental health officers. (Clarendon Press, Oxford 1988) Pg.7
[838] ibid n 863
[839] ibid n 863
[840] ibid n 863
[841] G. M. Richardson, et al, Policing Pollution: A study of Regulation and Enforcement. (Clarendon Press, Oxford 1983.)
[842] ibid n 867

uniformity and certainty in the law and prevent fragmentation and difficulties in identifying and locating the law, thus improving corporate governance rule coordination and monitoring.[843] Additionally, statutory regulation appears to be the ideal way to promote the African "Ubuntu" ethos of cooperation, consensus, and consultation and to balance profits and welfare by safeguarding the interests of other stakeholders like employees and suppliers.[844] Where monopolistic tendencies are high, companies are powerful, and pressure organizations are weak, CAC would not only prevent shareholder abuse but also be the most effective regulatory tool for ensuring consumer protection and environmental efficiency. The underlying character of CAC is strict and expressly established ground rules for executing oil—and gas activities.[845] Per Becker[846] and Stigler,[847] firms comply with regulations that require them to take costly steps if they believe that legal non-compliance would be found and punished harshly. This viewpoint has been presented to indicate that a CAC-focused approach with harsh sanctions is essential and that any less punishing approach will fail; thus, compliance with the regulations would become economically rational if violations were severely punished.[848]

6.7.1.1 The Limits of Command and Control

Notwithstanding the advantages of CAC, it has been criticized for being unsuccessful in controlling the oil and gas activities in Nigeria for the most part. The ineffectiveness of CAC in Nigeria can be traced to several factors, including regulatory agencies' incapacity and inefficiency, insufficient funding, corruption, a lack of political will to enforce laws and regulations against oil and gas companies, and regulatory agencies lack of independence.[849]

CAC has been criticized for inhibiting creativity and innovation when discovering new

[843] ibid n 867
[844] ibid n 867
[845] ibid n 867
[846] G S. Becker, 'Crime and Punishment: An Economic Approach' (1968) 76 Journal of Political Economy. Pg. 169-217
[847] J G Stigler, 'The Optimum Enforcement of Laws' (1970) 78 Journal of Political Economy. Pg.526-536
[848] F Pearce, and S Tombs, "Hazards, law and class: contextualizing the regulation of corporate crime." (1997) 6 Social and Legal Studies 79-107.
[849] E Oshionebo, 'Citizen Enforcement of Environmental Regulation in Africa's Extractive Industries' (2017) 17 Asper Rev Int'l Bus & Trade L 35

and better solutions to environmental issues. Such approaches also assume that environmental consequences are unavoidable and that regulatory agencies are limited to mitigating the effects rather than preventing environmental occurrences from occurring in the first place.[850] Per Zagata, enforcers and remediators of the environment are essentially a reflection of the environmental protection framework failing.[851] In some circumstances, the harm has already been done. Resources have already been depleted.[852] Zagata argues that there is a dire need to refocus efforts on avoiding environmental problems in the first place by developing, lobbying, and supporting economic incentives that encourage regulated parties to follow environmental regulations and avoid negative consequences, i.e., to participate in active pollution control programmes.[853] People who are regulated would only follow the rules if it were in their rational self-interest to do so. As a result, businesses are seen as amoral calculators who consider compliance with laws as having no moral or civic component.[854]

6.7.1.2 Deterrence Theory

The Deterrence Theory has frequently emphasized the importance of enforcement, especially in criminal justice. Although this theory is commonly applied to criminal behaviour and criminal justice [855], this research applies the deterrence theory to justify the need for enforcement in Nigeria's oil and gas industry. In general, deterrence entails refraining from an act or omission out of fear of punishment. Formally, it is defined as "the omission of an act in response to the perceived risk and fear of punishment for contrary behaviour."[856] Per Paternoster, deterrence may be either general or specific; it is specific when it deters previous violators who have already been punished from committing other violations, and it is general when it

[850] M. D. Zagata, 'Command and Control versus Economic Incentives in Environmental Protection' (1996) 2 Alb L Envtl Outlook 10
[851] ibid n 876
[852] ibid n 876
[853] ibid n 876
[854] T Amodu "The determinants of compliance with laws and regulations with special reference to health and safety A literature review" (2008) Prepared by the London School of Economics and Political Science for the Health and Safety Executive 2008 < https://www.hse.gov.uk/research/rrpdf/rr638.pdf >Accessed 1st June 2022
[855] ibid n 880
[856] ibid n 880

seeks to deter individuals who have not yet violated from doing so.[857] The concept of deterrence has been evident throughout history. Per Ball, many ancient torturous punishments were intended to serve as a warning and deterrent to others.[858]

Deterrence theory can be traced back to the early works of two philosophers: Cesare Beccaria and Jeremy Bentham. The 1764 essay "on crimes and Punishment" by Cesare Beccaria served as the foundation for the deterrence theory.[859] Beccaria argued that all humans have a self-interest in perpetrating crimes and that crimes could be deterred by applying certain, proportionate, and rapid punishments.[860] The author further argued that for a punishment to be effective, the disadvantage posed by the punishment must outweigh the potential benefit of committing the offence.

Similarly, Bentham identified the principle of utility, stating, "Nature has placed humanity under the rule of two sovereign masters, pain and enjoyment."[861]Utility is the difference between the benefits and costs of one's actions; consequently, an individual will typically choose the action with the higher utility. Bentham's original deterrence model was based on the premise that compliance with the law depends on increasing the severity of punishment to the point where the pleasures typically associated with violating the law are eliminated.[862] Gary Becker ignited modern-day interest in the Deterrence theory.[863] Becker's work on the deterrence theory was influenced by a personal experience in which he violated a parking rule based on a mental calculation of the cost and benefit of illicit parking.[864] Becker asserts that all else being equal, the greater the likelihood of a person's conviction or punishment

[857] R Paternoster, 'How much do we Really Know about Criminal Deterrence?' (2010) 100(3) Journal of Criminal Law and Criminology 765, 766.
[858] J.C Ball, 'The Deterrence Concept in Criminology and Law' (1955) 46 Journal of Criminal Law, Criminology and Police Science 347.
[859] C Beccaria, On Crimes and Punishment (Jane Grigson tr, Marsilio publishers 1996) 50.
[860] ibid n 885
[861] J Bentham, 'An Introduction to the Principles of Morals and Legislation in the works of Jeremy Bentham published under the superintendence of his executor, John Bowring (Edinburgh volume 1) < https://competitionandappropriation.econ.ucla.edu/wp-content/uploads/sites/95/2020/12/BenthamPrincipalsMoralsLegislation.pdf >accessed 19th February 2023
[862] ibid n 887
[863]G.S Becker, Crime and Punishment: An Economic Approach (National Bureau of Economic Research, New York 1974) < https://www.nber.org/system/files/chapters/c3625/c3625.pdf >accessed 19th February 2023
[864] ibid n 889

for crimes, the fewer crimes he commits.[865] This decline may be substantial or insignificant, but it is still a decline. This strategy is founded on economists' evaluation of choice. Therefore, it is presumed that "a person commits an offence if the anticipated utility to him exceeds the utility he could obtain by using his time and other resources for other activities."[866] An increase in the likelihood of conviction and severity of punishment diminishes the expected utility of an offence, thereby reducing the number of crimes committed.[867]

This research agrees with the submission of the authors above. Chapter four of this research revealed that one recurrent factor that flaws environmental laws covering Nigeria's oil and gas sector is the mediocre fines imposed as punishment. When the deterrence theory is applied, it could be argued that Nigeria's punishment regime for oil and gas pollution does not deter environmental irresponsibly either in the form of operation oil spills or saboteurs. Even when it does, as mentioned in chapter four [868], the laws are not enforced; thus, deterrence is not achieved. On the other hand, EPA's punishment for environmental crimes levied on oil and gas operators that violated the laws met the test of the deterrence theory. It earned America the position it is regarding the environment.[869]

Williams and Hawkins argued that the "psychological" process an individual undergoes before perpetrating an offence is a crucial component of the deterrence theory.[870] Shavell agrees with the authors on this.[871] Scholz also argues that "amoral" individuals must conclude that it is in their best interests to comply with the law rather than violate it.[872] Punishments and sanctions for violations are fundamental to the theory of deterrence.

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[865] ibid n 889
[866] M Polinsky and S Shavell, 'The Economic Theory of Public Enforcement of Law' (2000) 38(1) Journal of Economic Literature 45, 47.
[867] B.R Cheffins, Company Law: Theory, Structure and Operation (OUP 1997) 199.
[868] See section 4.2.3 of the research which proscribes the death penalty for saboteurs pursuant to The Petroleum Production and Distribution (Anti Sabotage) Act 1975
[869] See section 4.7.2 of the research.
[870] K.R Williams and R Hawkins, 'Perpetual Research on General Deterrence: A Critical Review' (1986) 20(4) Law and Society Review 545, 547.
[871] S Shavell, Economic Analysis of Law (Foundation Press 2004) 97
[872] J Scholz, 'Deterrence, Cooperation and the Ecology of Regulatory Enforcement' (1984) Law and Society Review 179.

From the submissions of the authors above, this research draws out three factors that determine the deterrent effect of punishments to wit:

1) The Certainty of the Punishment: It is argued that the greater the probability that a punishment will be imposed, the greater its deterrent effect.
2) The Speed of the Punishment: This is also called the swiftness (velocity) of punishment. In the minds of perpetrators, there is a stronger connection between criminal Acts and their costs when punishment is promptly administered.
3) The severity of the punishment: Punishment should be sufficiently severe and proportional to the offence to be effective.

These three factors must be present in any enforcement regime for enforcement to be effective and sufficient to deter offenders from offending. Where these are not present, it is argued by this research that enforcement becomes an advertisement.

Notwithstanding the strong case for the deterrence theory, as stated above, the theory has been criticized by authors who argue that it is a complex phenomenon and depends on a wider range of other factors. Robinson and Darley critiqued the theory and argued that for the deterrence theory to work, "the potential offender must be aware of the law, he must be able to calculate that the cost of violation is greater than the benefit, and he must be willing to let this calculation influence his conduct at the time of the offence"[873] While this perspective may be accepted for typical criminal offenders or those who are motivated by substances such as narcotics or alcohol or are influenced by passion (crimes of passion), it seems to be less applicable to the types of individuals who, on average, tend to be rational. At the risk of oversimplification, oil and gas operators are, on average, relatively educated and knowledgeable individuals. Moreover, their training and experience frequently require them to make rational and well-reasoned daily business decisions. Therefore, they are competent and well-versed in making rational decisions based on cost-benefit analysis. The oil and gas industry is not kindergarten singing poems. Besides environmental laws, for instance, the EPA's website is very encompassing, with all

[873] P.H Robinson and J.M Darley, 'The Role of Deterrence in the Formulation of Criminal Law Rules: At Its Worst when doing its Best' (2002-2003) 91 Georgetown Law Journal 949, 953.

the information required for successful oil and gas operations.

Toby further criticized the deterrence theory and based his arguments on the fact that members of a society do not comply with rules and standards out of fear of punishment.[874] Instead, they comply because they have internalized certain social norms and values. Therefore, compliance with the law is not motivated by fear of potential punishments but by internalized norms. Toby argues that punishments are excessive because the process of "socialization" prevents most deviant behaviour.[875] People who have embraced and internalized the moral standards of society would not commit crimes. Only the "unsocialized" will be deterred by a straightforward calculation of the punishment and enjoyment of committing a crime.[876] Toby's argument is founded on the premise that societal norms and values play a more significant role in ensuring compliance. Similarly, Tyler contends that social values of right and wrong influence people and will only observe the law if they perceive it as moral and legitimate.[877]

Toby and Tyler's argument is not out of context because some people do not break the law because of internalized norms and values. However, this is not applicable in the oil and gas industries, where IOCs are mostly accused of double standards in their environmental responsibility towards a host country. NOCs choose profit over protection, as in the case of Nigeria. While individual values and societal standards are essential in defining our behaviours and condemning wrongdoing, those values and norms are still affected by the penalties associated with actions deemed wrong by society.[878] The "internalization of norms" reasoning overlooks the reality that societal condemnation of specific behaviours is strengthened by enforcement.[879]

6.7.2 The Accommodative and Compliance Technique

The Accommodative and Compliance Technique (ACT) offers a 'cooperative, problem-solving approach' based on capacity-building, rule interpretation, and transparency

[874] J Toby, 'Is Punishment Necessary?' (1964) 55 Journal of Criminal Law, Criminology & Police Science 332,333.
[875] ibid n 900
[876] ibid n 900
[877] T.R Tyler, Why People Obey the Law (Princeton University Press 2006).
[878] ibid n 903
[879] ibid n 878

to encourage compliance.[880] The ACT refers to persuasion, negotiation, and management to achieve compliance. It concentrates on the root reasons for non-compliance and addresses them constructively via awareness, education, capacity-building, rule interpretation, and transparency.[881] ACT is primarily concerned with preventing harm rather than punishing for it, maintaining good relationships, avoiding unfair punishment, and assisting in avoiding legal errors.[882]

Per Kelman, ACT is like most conciliatory methods.[883] This technique, it is argued, may be preferred for various theoretical and practical reasons. The first is to work with companies that are willing to comply voluntarily.[884] The second scenario is one in which many regulated parties adhere to reasonable criteria.[885]The third situation is one in which there is a high level of agreement and, presumably, compliance.[886] Another rationale is cost-effectiveness since proponents emphasize the high expense of CAC. [887]ACT has been criticized as it downplays the relevance of individual costs and benefits.[888] It can also lead to regulatory capture and under-enforcement of the laws. Regulatory capture happens when a regulatory body created to safeguard the public from abuse gets captured by the companies it is supposed to regulate.[889]

It is the submission of this research that the effectiveness and efficiency of command-and-control instruments versus market-based instruments is highly context specific. The stringency of enforcement varies according to the political environment of the regulatory regime. A country's particular regulatory environment and state capacity, as well as the features of given environmental problems, play an important role in

[880]A.Chayes and A.H. Chayes, The New Sovereignty: Compliance with International Regulatory Agreements (Oxford University Press 1996) 3.
[881] ibid n 880
[882] ibid n 880
[883] S Kelman, 'Enforcement of National Safety and Health Regulations: A Comparison of Swedish and American Practices', in K. Hawkins and JM Thomas (eds), Enforcing Regulation (New York: Kluwer Nijhoff Publishing 1984)
[884] JT Scholz, 'Cooperation, Deterrence, and the Ecology of Regulatory Enforcement' (1984) 18 Law and Society Review 179.
[885] B. Hutter, 'Regulating Employers and Employees: Health and Safety in the Workplace' (1993) 20 Journal of Law and Society 452.
[886] ibid n 911
[887] R Smyth and M Soderberg, 'Public Interest versus Regulatory Capture in the Swedish Electricity Market' (2010) 38 Journal of Regulatory Economics 292.
[888] ibid n 887
[889] ibid n 887

ascertaining the "right" set of environmental management policy instruments.

Notwithstanding, the seemingly good benefits of ACT, in the case of Nigeria, the research does not support the total elimination of the CAC in Nigeria's oil and gas industry. The researcher submits that CAC must be utilised now to move Nigeria away from the current trend of lackadaisical attitude regarding compliance with environmental laws. On the other hand, the research opines that a 50/50 approach can be employed when sufficient data shows that oil and gas operators comply with the laws. Suffice it to say a blended approach where both techniques are employed depending on the compliance track record of the oil and gas operator.

6.8 Prerequisites for Effective Enforcement

Whether CAC or ACT, it should be clear that the most important aspect of enforcement consists of securing compliance with environmental standards. In this subheading, the research outlines some important prerequisites for guaranteeing efficient and effective enforcement of environmental legislation. The list is not exhaustive but has proved effective in developed countries like the USA.

6.8.1 The Principle of Enforceable Legislation

The effectiveness of any enforcement technique depends certainly upon the quality of the legislation it is designed to enforce. The starting point for any enforcement policy should therefore be to guarantee the quality of the environmental legislation itself. [890]This means the legislation must be clear, straightforward, precise, and made known to the concerned persons or organisations.[891] Per Lubaale, "Courts do not operate in a vacuum. In adjudicating matters, including environmental ones, their point of reference is the law, which may be written or unwritten. Thus, courts may refer to legislation and common law. Aside from legislation and common law, courts may also have recourse to constitutional provisions on environmental matters. Therefore, the enabling laws of a country on matters pertaining to the environment constitute entry points for the effective performance of the judiciary in the

[890] ibid n 889
[891] M G Faure `Enforcement Issues for Environmental Legislation in Developing Countries ` Working Paper No 19 March 1995 <

furtherance of environmental conservation".[892]Faure avers that for enforcement of environmental law to be effective, the law should avoid attempts to prohibit, in very general terms, all environmental pollution. The author argues that such a broad scope may be useful in civil actions but prove difficult in criminal actions.[893]

Legislation that would be effectively enforced should not be unnecessarily complex and should be made known to the person(s) the law affects. Faure argues that it is wishful fiction to assume that every oil and gas industry operator would know the law. This research disagrees to an extent and avers that if the environmental laws are inscribed boldly and clearly in the contract w, whether production sharing contract or joint venture agreements, as mentioned in chapter 3 of the research, the oil operator would be fully aware of the environmental law. Thus, where there is an offence of pollution, it is easier to carry out criminal action against the operator. This dispels Faure argument of wishful fiction. Taking it further is to add these laws or emission standards in the license awarded to the oil and gas operator. This is the most effective way to give direct and precise information on what is lawful and not regarding pollution.

Nevertheless, the basis of Faure argument is Information. The public and relevant stakeholders must be aware of the contents of the law. The research agrees with Faure on this. However, applying this principle to the Nigerian context, especially the menace of sabotage by local communities who feel aggrieved, could it be argued that the local saboteurs and oil and gas operators do not know the law or do they just brazenly disregard the law because they know that the long arm of the law is not so long after all to get to them?

The last point under this subheading is the agencies tasked with enforcement. These agencies must be equipped with both human and technological resources. Retrieving pollution data is a costly exercise, and there is a saying that to catch a criminal, you must be more intelligent than him. Thus, to get the data on pollution, enforcement

[892] E C Lubaale, 'Judicial Enforcement of Environmental Human Rights in Africa.' (2020) Human Rights and the Environment under African Union Law. Pg. 155 -185
[893] M G Faure 'Enforcement Issues for Environmental Legislation in Developing Countries ' Working Paper No 19 March 1995

agencies must have the necessary funds. The EPA is funded heavily, as Chapter 4 of this research mentions. Hence, the agency can effectively enforce America's environmental laws. Nigeria does not pass this test. NOSDRA reported that it could not visit a pollution site due to inadequate machinery and logistics. More of this line of argument will be proffered in chapter six of this research.

6.8.2 Judicial Review

The second prerequisite for effective enforcement is an independent judiciary. It is of utmost importance that an independent judiciary can enforce environmental laws. The key word here is "Independent". The task of the judiciary when it comes to enforcement of environmental laws per Faure is to enforce; (1) "Environmental legislation enacted by the legislators and (2) the permits/licenses issued by administrative agencies. [894] It is not the judiciary's job to solve the conflict of interest that arises between environmental protection and the commercial interest of the oil and gas industry. In theory, these conflicts of interest have been balanced by the legislature enacted to protect the environment and the licence awarded by the administrative agency. In principle, the judiciary's only role is to enforce these. An independent judiciary should respect and enforce the decisions of the legislature and the administrative authorities.

6.8.3 Public Participation

Public Participation is essential to the effective implementation of environmental laws.[895] Per Alam, public participation can play an essential role in environmental enforcement by assuring the right to information, participation, and effective justice.[896] Public participation is defined as "any action taken by an interested public (individual or group) to influence a decision, plan or policy beyond that of voting in elections"[897] In line with public participation in environmental decision-making, Nigeria can consider joining the Aarhus convention.

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[894] ibid n 919
[895] S Alam 'Public Participation in the Enforcement of Environmental Laws: Issues and challenges in the light of the legal and regulatory framework with special reference to EIAs in Malaysia' (2014) 3(1) Bangladesh Research Foundation Journal Pg 85 -101
[896] ibid n 921
[897] S L. Graham. "Public Participation in Policy Making: The State-of-the-Art in Canada." (1984) 15(2) Geo forum 253-259

6.9 Agency Enforcement: A Holistic Approach

Effective enforcement is an essential element of effective regulation, which has been acknowledged in the law review literature for decades. Yet most of the literature focuses on one aspect or another of the enforcement challenge. For instance, the theory underlying optimal levels of enforcement as well as the relative merits of deterrence-based versus cooperation-based approaches and the use of citizen petitions have received considerable attention. To fill this literature gap, it is therefore vital to have an "inside out perspective" of an agency enforcement of laws. [898] This is particularly essential to the arguments of these research because the research focuses on agency enforcement of environmental laws in the Nigerian oil and gas industry and uses enforcement agencies in other countries (as discussed in Chapter five) to draw sound and logical recommendations for the Nigerian enforcement agencies in chapter eight.

Law enforcement is the fundamental executive authority of an agency. Agencies ensure that individuals and organizations adhere to the law, whether it be a statute or a regulation. A typical enabling statute gives an agency comprehensive discretion to establish enforcement policies, prioritize its cases, and select potential targets. Despite the importance of enforcement to agency practice, discretionary enforcement receives relatively little attention.[899]

When agencies are first established, there are important decisions regarding institutional design that need to be considered. Will the commission consist of multiple members, or will it be led by a single individual? How will the organization acquire its operational budget? Does the agency possess the authority to enact enforceable regulations? The enumeration of crucial determinations to be made is extensive. When making decisions, policymakers must prioritize their major aims for the agency. This is one area; the research avers is lacking in the Nigerian environmental enforcement regime. Per Kagan, if the primary objective is to safeguard the agency from being influenced by external parties that it is responsible

[898] D L. Markell & R L. Glicksman, 'A Holistic Look at Agency Enforcement' (2014) 93 North Carolina Law Review 1

[899] R E. Barkow, 'Overseeing Agency Enforcement' (2016) 84 George Washington Law Review 1129

for regulating, this may indicate a certain range of design options.[900] If the primary objective is to mitigate excessive government intervention in private transactions, it may lead to divergent choices.[901]

What are the primary design considerations when the focus is on the use of enforcement discretion? In this context, it is imperative to inquire about the primary hazards that the agency faces, as the specific nature of these risks will influence the design of agency enforcement. Considering the influence of interest groups and political forces, it is necessary to examine whether the prevailing risk leans towards overenforcement or underenforcement. Moreover, in the absence of discernible biases in risk assessment, alternative design mechanisms can be employed to regulate the exercise of enforcement discretion.[902] These mechanisms serve the purpose of preventing the incorrect targeting of specific actors or groups based on inappropriate criteria.[903]

The research submits that the situation in Nigeria is underenforcement. Per Barkow, Underenforcement pertains to the apprehension that the regulatory body exhibits hesitancy in pursuing regulated organizations.[904] Per Bagley and Revesz, this issue is expected to be of primary concern in situations where there is an imbalance of political power and the entities being regulated possess stronger resources and organizational capabilities to challenge the efforts of regulatory agencies and seek assistance from political authorities.[905]

This issue can be understood as a modified version of the concept of agency capture, which refers to the phenomenon where regulatory agencies may not exert the level of diligence they should in overseeing regulated companies due to the disproportionate political influence these entities possess.[906] Due to the shared origin

[900] R A. Kagan, Editor's Introduction: Understanding Regulatory Enforcement, (1989)11 Law & Policy 89-93
[901] ibid n 926
[902] ibid n 926
[903] ibid n 926
[904] ibid n 925
[905] N Bagley & R L. Revesz, "Centralized Oversight of the Regulatory State" (2006)106 Columbia Law Review 1260-1287
[906] D Carpenter & D A Moss Preventing Regulatory Capture: Special Interest Influence and How To Limit It (2014, Eds) 13

of the problems, numerous solutions can be used regardless of whether the concern pertains to the generation of inadequate substantive regulations or the potential underenforcement of any established rules.[907] One potential solution to address the issue at hand is to provide the agency with an autonomous funding mechanism. This approach can mitigate instances where the agency may be inclined to compromise the stringency of rules or enforcement actions due to potential budgetary repercussions resulting from pressures exerted by political authorities overseeing its operations.[908] In a similar vein, the implementation of a need for the President to choose individuals possessing specific qualifications, rather than solely prioritizing partisan affiliations, can serve as a potential means to mitigate political pressures. This is because appointees would possess a substantial foundation of knowledge upon which they can evaluate political arguments. In cases where the agency is tasked with enforcing rules pertaining to drug manufacturers, it could be advantageous to mandate that the agency's leader possess medical and scientific proficiency. This requirement would enhance the likelihood of comprehensive consideration of objective elements in the decision-making process related to enforcement.[909]The extent of the agency's obligations is an additional aspect of agency design that can effectively address concerns related to capture and underenforcement. When designers are assigned their tasks, it is crucial for them to ensure that the agency is not burdened with the pursuit of contradictory objectives, since this can compromise the agency's ability to make effective policy decisions and enforce them. [910]

In addition to the overarching characteristics that beyond the scope of enforcement and impact the entirety of the agency's obligations, there exist additional design elements that explicitly target the possibility of inadequate enforcement. When an agency is founded, a fundamental question arises regarding whether it will possess sole jurisdiction to enforce the laws it administers, or if other entities will also be involved in sharing this obligation. One potential concern in the allocation of resources

[907]R E. Barkow `Insulating Agencies: Avoiding Capture Through Institutional Design "(2010)89 Texas Law Review. 26-64
[908] ibid n 933
[909] ibid n 926
[910] J E. Gersen, Designing Agencies, In Research Handbook on Public Choice And Public Law (2010, Daniel A. Farber & Joseph O'Connell eds.,) 333, 352

by agencies is the possibility of underenforcement. To address this concern, a possible solution is to establish a statutory framework that grants many agencies the authority to enforce regulations. The presence of many agencies can be understood as an increased law enforcement presence, aimed at ensuring compliance with an agency's regulations or the stipulations of a statute.[911]

Due to the potential divergence in priorities and political influences among these agencies, there is an increased probability that at least one of them will possess the appropriate motivations to advance, given that neither agency possesses the authority to veto the activities of the other. Indeed, the presence of duplication can indicate a potential lack of vigilance on the part of an agency, particularly when it bears exclusive responsibility for the enforcement of a given legislation.50 However, this issue can be effectively tackled by assigning primary responsibility to a specific agency and implementing a system of metrics that incentivize the agencies to take appropriate actions.[912]

Another strategy to strengthen enforcement measures is the delegation of enforcement responsibilities to state-level entities, commonly the state's attorney general.[913] Similar to the enforcement model employed by numerous federal agencies, the inclusion of state enforcers in bringing legal cases serves as a mechanism to counteract underenforcement. This is achieved by augmenting the available resources for enforcement and introducing an additional actor that may possess distinct political motivations.[914]There exist several instances across various domains of substantive law wherein state enforcers have assumed the responsibility of addressing voids in enforcement left by federal agencies. This, therefore, represents an additional design decision that might be employed to mitigate concerns related to underenforcement.[915]

Conclusively, design considerations pertaining to enforcement encompass more than

[911] ibid n 936
[912] R E. Barkow 'Insulating Agencies: Avoiding Capture Through Institutional Design "(2010)89 Texas Law Review. 26-64
[913] ibid n 938
[914] ibid n 938
[915] ibid n 938

just determining the appropriate number of entities to be assigned with the task. In situations when it is not feasible to have many agencies responsible for enforcement due to political or coordination considerations, there are strategies available to structure the responsibilities within a single agency in a manner that can either increase or decrease the likelihood of excessive or insufficient enforcement.

6.10 Access to Justice

It is averred by the research that the ability to seek redress when rights have been violated is the completeness of justice. Thus, seeking remedy is a crucial component of protecting and sustaining rights, in this instance: environmental rights. Access to justice is essential for the appearance of justice, and the courts play a crucial role in ensuring this. Per Mulkey, while the statutory availability of adequate enforcement mechanisms is a necessary starting point, the capacity will exercise these by the Aarhus convention. The convention provides for access to justice which laws are essential; the courts offer the ultimate recourse.[916] There is a relationship between Environmental Law and Human rights traceable to the 1972 Stockholm Declaration adopted at the United Nations Conference on the Human Environment. The declaration provides thus: *'Man has the fundamental right to freedom, equality and adequate conditions of life in an environment of a quality that permits a life of dignity and healthy beings, and he bears a solemn responsibility to protect and improve the environment for present and future generations'*[917] Simply put, man has a right to environmental justice. Environmental justice also refers to the public's right to review by a court or another independent body to ensure that public authorities respect the right to access information, public participation, and environmental law in general.[918]

Access to justice is a crucial instrument in any legal system, and the courts play a significant role in ensuring that environmental justice is delivered. The US Environmental Protection Agency defines it as *'the fair treatment and meaningful*

[916] M Mulkey, 'Judges and Other Lawmakers: Critical Contributions to Environmental Law Enforcement', (2004) 4 (1) Sustainable Development Law and Policy 2-16.
[917] Stockholm Declaration 1972 < https://wedocs.unep.org/bitstream/handle/20.500.11822/29567/ELGP1StockD.pdf accessed 5th February 2023
[918] European Commission 'The Aarhus Convention and the EU' < https://environment.ec.europa.eu/law-and-governance/aarhus_en >accessed 5th February 2023

involvement of all people regardless of race, colour, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.' [919]Per McDonald, *'Environmental justice is about social transformation directed towards meeting basic human needs and enhancing our quality of life-economic quality, healthcare, housing, human rights, environmental protection and democracy ... the environmental justice approach seeks to challenge the abuse of power which results in poor people having to suffer the effects of environmental damage caused by the greed of others."*[920]

Lord Woolf outlined several fundamental principles of a system with adequate access to justice in his 1996 final report on access to justice.[921] According to the report, the justice system should be just in its outcomes, fair in its treatment of litigants, offer appropriate procedures at a reasonable cost, and handle cases promptly.[922] In addition, a justice system should be understandable and responsive to the requirements of those who utilize it, provide as much certainty as the nature of the case permits, and be effective, adequately resourced, and organized.[923] There is no single definition of access to justice; however, whichever definition is adopted must include equity, access to remedies, cost-effective and efficient conflict resolution, and non-discrimination.

For a court to succeed in its environmental litigation role, it needs to have status and authority.[924] There are factors limiting access to justice. Per Rhodes, the problems include cost/inadequate funding, locus standi, delay, and non-expert judicial officers.[925] The court must usually be recognized by governments, stakeholders and the broader community as the appropriate and legitimate forum for resolving

[919] Unites States Environmental Protection Agency 'Environmental Justice' (2023) < https://www.epa.gov/environmentaljustice > accessed 5th February 2023
[920] D A. McDonald, Environmental Justice in South Africa (Ohio University Press 2002) 1-12,
[921] The UK government, Lord Woolf's 1996 Final Report on Access to Justice (UK Government Publications 1996) < https://webarchive.nationalarchives.gov.uk/ukgwa/20060213223540/http://www.dca.gov.uk/civil/final/contents.htm >accessed 21 July 2023
[922] ibid n 947
[923] ibid n 947
[924] B J. Preston, 'Characteristics of Successful Environmental Court and Tribunals' (2014) 26 J Envtl L 365
[925] D Rhodes ' Whatever Happened to Access to Justice' (2009) 42 Loyola of Los Angeles Law Review 869-911

environmental disputes.[926] It must be viewed as entirely accepted by industry groups and NGOs focusing on environmental protection. Such expertise maintains public trust and confidence in the Environmental Courts and Tribunals (ECT) as the forum for resolving environmental disputes. The ability of an ECT to develop environmental jurisprudence is, in turn, dependent upon it being presented with opportunities to do so.

Delay is another problem with access to justice. Lord Denning (as he then was) held in *Allen v. Sir Alfred McAlpine & Sons Ltd* [927] that "Delay of justice is a Denial of justice". Delay of cases in court is a *sine qua non* in the Nigerian justice system.[928] Per Morka," On average in Nigeria, any case filed in the High Court will take 5-10 years to get a verdict. The courts are congested, are not computerized, and the facilities are lean. Daily, a judge has 60-70 cases -so you can imagine how much time we get before them! It's a terribly slow process, so we are not usually in a hurry to go to the courts."[929] In *John Eboigbe v NNPC* [930], the statute of limitation in the NNPC Act of 1977 affected the case. The case of NOSDRA vs PPMC, instituted in a court in 2011, was decided in 2012. The Pipelines and Product Marketing Company Limited, PPMC, is a Nigerian National Petroleum Corporation, NNPC subsidiary. The case is centred around an oil spill from the defendant's oil vessel, which capsized along the PPMC jetty at Ijala and discharged its content (LPFO) into the Warri River that, polluted several coastal communities, including Ugbodede, affecting their economic lifeline negatively.[931]

In the Nigerian context, the Federal High Court (FHC) has jurisdiction to adjudicate environmental matters. However, a notable flaw with the court is that the judges are not environmentally literate. The President of Nigeria appoints judges of the FHC who

[926] ibid n 951
[927] (1968) 2 QB 229, 245
[928] E C Okonkwo, 'Assessing the Role of the Courts in Enhancing Access to Environmental Justice in Oil Pollution Matters in Nigeria' (2020) 28 African Journal of International and Comparative Law 195 -218
[929] F. Morka, 'Social Justice and Litigation Strategies', in Malcolm Langford, Litigating Economic, Social and Cultural Rights: Achievements, Challenges and Strategies (Centre on Housing Rights and Evictions Report 2003)
[930] (1994) 5 NWLR (Pt 347) 649.
[931] E Arubi ' NOSDRA drags PPMC to court over oil spill' (Vanguard, February 8 2011) < https://www.vanguardngr.com/2011/02/nosdra-drags-ppmc-to-court-over-oil-spill/ >accessed 21 July 2023

must have been qualified as legal practitioners for at least ten years. Appointments are on the recommendation of the National Judicial Council. There are no criteria to have had any form of environmental training or education to be appointed in this court. Per Preston, the status and authority of successful Environmental Courts and Tribunals (ECT) are often enhanced through the presence of environmentally literate judges, who may be trained to be so literate, and who can contribute to developing environmental jurisprudence.

Furthermore, the court must avoid confusing judgments and interpretations of cases to ensure effective enforcement of environmental laws. Occasionally, Nigerian courts have upheld the common law rule of strict liability. In *Umudje v. Shel*l,[932] the Supreme Court inferred negligence from the fActs, waived the need for proof, and applied the rule in *Rylands v. Fletcher*[933] to hold the defendant strictly liable. In *SPDC v. Chief Otoko and Others* [934], the plaintiffs sued the defendant for negligence resulting from oil discharges that caused injuries. The Court of Appeal affirmed the trial court's application of the rule in Rylands v. Fletcher in favour of the plaintiff. However, in *SPDC v. Tiebo VII and Others,*[935] in which the plaintiffs sued for negligence and strict liability for an oil spill, the Supreme Court held that anyone claiming special damages must establish he suffered the special damages claimed. The trial court awarded N5 million in general damages and N1 million in expenses. SPDC was successful in its claim for the reversal of special damages but not of general damages and costs. In *Amos v. SPDC Ltd,* [936]the court ruled that the plaintiff must demonstrate special damages by personal injury, property or monetary loss in addition to that suffered by the general public in actions for public nuisance. In *SPDC v. Ambah,*[937] the Supreme Court reduced the damages awarded by lower courts from N297,000 (£627) to N27,000 (approximately £57), the property's value.

Pursuant to these cases above, the research avers that the individuals and institutions in charge of ensuring compliance with environmental regulations and efficiently

[932] (1975) 9-11 SC 155.
[933] (1866) LR Ex 265.
[934] (1990) 6 WLR (Pt. 159) 693.
[935] (2005) 4 NWLR (Pt. 445) 657.
[936] (1974) 4 ECSLR 48, (1977) SC 109.
[937] (1999) 3 NWLR pt. 593 p.12

enforcing them are critical to reducing the gap between policy aims and environmental protection. Judges, attorneys general, and prosecutors require clear and enforceable laws, specialized training, trustworthy information, public confidence, and political will to apply legal principles to situations that are complex and frequently entangled with the competing interests of various stakeholders. Through the interpretation, enhancement, and enforcement of environmental law, a judiciary well informed of the rapidly expanding boundaries of environmental law and sustainable development would play a critical role in guaranteeing the public interest in a healthy and secure environment. They will be sensitive to their role and responsibilities in promoting the rule of law regarding the environment. On the other hand, individual judges may find it challenging to keep up with the complicated and fast-changing environmental concerns. Most environmental damages entail sophisticated science, and notably, those caused by climate change do not correspond to jurisdictional lines, further complicating the job of judicial agencies. This necessitates judicial entities to cooperate and interact in ways that judges may be unfamiliar with.[938] It's also critical for giving the direction and innovation required for long-term development, which, as previously said, stems from successful compliance and enforcement.[939] There are several concrete ways that the judiciary can contribute to achieving a sustainable future, including: balancing environmental and developmental considerations in judicial decision-making, providing impetus for the incorporation of contemporary developments in the field of environmental law for promoting sustainable development, including access to justice, right to information, and public participation; and promoting the implementation of global and regional environmental agreements. The judiciary must play a key role in improving environmental regulatory compliance and enforcement.[940] Chapter 6.10 of the research further examines the issues of the judiciary in Nigeria regarding the enforcement of environmental laws.

6.11 Conclusion

Enforcement should not just be a tick in the box. It should be embedded in the life

[938] ibid n 954
[939] ibid n 954
[940] ibid n 954

and culture of any government whose resolve is to be serious about environmental issues. This is important as the world battles the apparent impacts of climate change. The task of safeguarding the environment is monumental, and if care is not taken, the laudable goals of a sustainable environment may never be realized. Our government, particularly the legislature and the judiciary, must demonstrate a clear commitment for the ideal to become a reality. Otherwise, violators will continue to commit the offence despite the review's increased penalties and prison terms. The penalties imposed on offenders should be proportional to their environmental violations. Numerous factors, such as the violation's environmental and financial impact and the clean-up cost, should determine the amount.

The courts should invoke the principle of equity when addressing access to justice for litigants, particularly in light of the technicalities of the oil and gas industry, which make it difficult for victims who lack training and resources to challenge oil companies. A review of the cases presented here highlighted the difficulties environmental justice litigants face in proving damages in a technical industry such as oil and gas, resulting in the failure of many cases. Per Okonkwo, the burden of proof should rest with the oil and gas operators, as they possess the technical expertise, whereas impoverished litigants may be unable to afford expert witnesses.[941]

In addition, courts should utilize their inherent authority to improve access to environmental justice. The courts will accomplish this by providing adequate remedies and interpreting the laws and rules, particularly the standing rules, expert witnesses, and injunctions. With the strengthening of the judiciary, the courts can also lift the veil of incorporation, imprison directors or controlling minds who encourage environmental degradation through actions or inactions, award compensatory damages, award alternative sentences in addition to fines and imprisonment, direct the offender to publish the conviction fActs or perform community service, and award compensatory damages. In addition, enhanced court roles will improve the delivery of justice where necessary by increasing monetary

[941] E C Okonkwo, 'Assessing the Role of the Courts in Enhancing Access to Environmental Justice in Oil Pollution Matters in Nigeria' (2020) 28 African Journal of International and Comparative Law 195 -218

penalties and compensation that take into account the cost of environmental rehabilitation, cost recovery, market value, upward revision for increased scientific appreciation of environmental harm, or inflation, rather than relying on the penalties in laws enacted more than four decades ago. Furthermore, an environmentally conscious and progressive judiciary could issue orders requiring governments to develop and implement environmental education programs to inform potential environmental victims on best safeguarding their rights. It is necessary to train justices to increase court access in environmental matters. Because the court should be a site of redress, it is also recommended that the judiciary recognize that it can provide justice by interpreting the laws in a way that provides justice. Finally, Nigeria can adopt, sign, and implement the Aarhus Convention to assist the court in interpreting certain rules, including standing rules, one of the main obstacles identified in this work.

CHAPTER SEVEN: QUO VADIS NIGERIA?

7.1 Introduction

The first question of this research is, *"Is the enforcement regime of environmental laws in the Nigerian Oil and gas Industry effective?* This chapter aims to answer this question by investigating the findings revealed by this research. The themes discussed in the literature review in Chapter one of this research forms the basis of this chapter. The literature review revealed several challenges of enforcement of environmental laws in Nigeria's oil and gas industry which would be expanded and critically examined in this chapter. It should be noted that the findings discussed in this research are not exhaustive of the issues and challenges of enforcement in Nigeria's oil and gas industry. Some of these ideas may be addressed with the introduction of the PIA 2021. However, when writing this research, these issues persist in the industry. This chapter expounds on the issues highlighted in the literature review in chapter one. Furthermore, this chapter is personalized to the issues facing the Nigerian oil and gas industry.

7.2 The Dilemma of Locus Standi

The research will start with the issue of locus standi for many reasons, but particularly because the law is trite that where is a legal wrong, there should be a legal remedy;

this is encapsulated in the Latin maxim *Ubi jus ibi remedium.* However, the law contemplates that only a wronged person can institute an action in court to remedy such a wrong. Hence, for the court to be clothed with the required jurisdiction to entertain a suit, the plaintiff/claimant/applicant must have the required locus standi in the subject of the suit. In *Bello v AG, Oyo State* [942], the court described Locus standi as the requisite sufficient interest in the subject of litigation. The rationale for this requirement is to chase busy-bodies or meddlesome interlopers from the corridors of the courts.

Preston argues that the difficulty facing those with environmental concerns is that, in distinguishing between busybodies and those with a genuine concern in the matter, the law has traditionally recognized only a certain range of interests, most notably property rights, as creating a sufficient connection to justify the courts' intervention. Not only is there no recognition for specific 'environmental rights', but there are also limitations in the extent to which any individual can take legal action to generally protect interests shared with the public. In Nigeria, the Nigerian Supreme Court formulated the test for locus standi in *Abraham Adesanya v. President of the Federal Republic of Nigeria & Anor.*[943] This case is recognized as the *"locus classicus"* on locus standi. Importantly, the test is applicable in every situation, regardless of the grounds for action or the requested remedy. However, there has been some progress in doing away with the test in human rights cases.[944] The court held that in that situation, a claimant will only be given standing if he or she can demonstrate that the Act complained of has violated or jeopardised his or her civil rights and obligations. This choice was made in accordance with how section 6(6) of the Federal Republic of Nigeria Constitution of 1979 was interpreted.[945] According to the court's interpretation of that section, the court's judicial power can only be exercised in cases, actions, and proceedings to resolve any dispute about the civil rights and obligations of the person exercising such jurisdiction. The court, therefore,

[942] [1986] 5 NWLR (part 45) 828.

[943] (1981) All NLR 1.
[944] D E Omukoro, 'Ensuring Environmental Accountability in Nigeria through the Liberalization of the Locus Standi Rule: Lessons from Some Selected Jurisdictions' (2019) 27 Afr J Int'l & Comp L 476
[945] ibid n 970

established a connection between standing and the authority of the courts to make decisions.[946]

In *Oronto Douglas v. Shell Pet. Dev. Co. Nig. Ltd*[947] , the plaintiff, instituted an action at the Federal High Court challenging the defendant's failure to do preliminary studies on the impact of their project on the environment as required by the Environmental Impact Assessment Act. The court dismissed his action for want of requisite locus standi as he could not establish that his interest was directly affected by the defendant's non-conformity with the provisions of the Act. Consequently, the pollution continues unabated. It is argued that Locus standi deprives private individuals of enforcing environmental laws.

Decisions followed the Supreme Court's ruling in Adesanya supra in several cases. Locus Standi is now an issue of constitutional obligation to be applied in all instances due to the interpretation of section 6(6) of the Constitution in the Adesanya case. The idea of standing, it has been argued, also confines the judiciary to its limited role in the system of separated powers in a way that helps ensure that cases filed in court involve the type of well-defined, adversarial contests that the courts are institutionally competent to resolve. This serves as a "gatekeeper" against the busybody.[948]

Despite the rule's recent relaxation in some jurisdictions, the Nigerian Supreme Court, after dallying with the idea in *Fawehinmi v. Akilu* [949], has returned to the rule's rigorous application in line with the Adesanya case. However, the rule's stringent implementation in environmental litigation has had some negative effects. As aforementioned in the paragraphs above, the extreme poverty in areas like the Niger Delta, where oil pollution is at its peak, makes it difficult for individual claimants in oil-related environmental litigation to find the expertise they need to win in court.[950]

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[946] ibid n 970
[947] Suit No.CA/L/143/97.
[948] Cahill v. Sutton [1972] IR 269 at 277; O. Fagbohun, Mournful Remedies, Endless Conflicts and Inconsistencies in Nigeria's Quest for Environmental Governance: Rethinking the Legal Possibilities for Sustainability,4th Inaugural Lecture of the Nigeria Institute of Advance Legal Studies (NIALS Press, 2012), 667.
[949] 1987) NWLR (Pt 67) 797.
[950] M. A. 0. Aluko, 'Sustainable Development, Environmental Degradation and the Entrenchment of Poverty in the Niger Delta of Nigeria', (2004) 15 (1) Journal of Human Ecology 65

Perhaps more crucially, the environment does not have a voice of its own to act when endangered or degraded in situations when individuals seeking redress cannot meet the standing requirement. It is consequently impossible to overstate the need for some representatives in the shape of civic-minded individuals, or non-governmental organizations (NGOs) separate from regulatory bodies.[951]

To ensure environmental protection or accountability, it is unlikely that any Nigerian court will provide locus standi to an environmental activist or an environmental NGO. In the case of *Centre for Oil Pollution v. Nigeria National Petroleum Corporation,*[952] the appellant, an NGO, sued the respondent on behalf of the Acha Community in Abia State and the public for an oil spill caused by the defendants' pipeline. The appellant relied on a scientific report and opinion to demonstrate the spill's disastrous effects even after the defendants had stopped it. Claiming the appellant as a formal body had not been injured or damaged because of the purported spill, the case was dismissed. It is unlikely that people or the community could get together on their own to amass the funds necessary to obtain the knowledge or expert testimony that may be necessary to successfully sue the defendant. This becomes even more crucial when you consider that the courts might not be inclined to rule in favour of a claimant with claims related to the oil spill without scientific evidence.

Although the Supreme Court of Nigeria's position on the matter is summarized above, it is nevertheless important to consider standing considering recent lawsuits involving oil and other environmental issues. In *Fawehinmi v. President, the Federal Republic of Nigeria,*[953] the Court of Appeal held that even though the provisions of section 6(6)(b) of the 1999 Constitution are inextricably linked to the term locus standi, an individual taxpayer will have some concerns if his or her tax money is being misused.

The court determined that these individuals are judged to have a significant interest in seeking to uphold the law to guarantee that their tax money is used wisely. The inability of regulatory bodies to properly enforce current regulations is a problem in the domain of environmental litigation involving oil. When the issue of locus standi is

[951] ibid n 976
[952] (2013) LPELR-20075 (CA).
[953] (2007) 14 NWLR (Pt 1054) 275.

added to this, the soup becomes sour. In this regard, Justice Aboki, who provided the lead judgement in the Fawehinmi case, is especially instructive. To enforce and defend the Constitution and other laws, he believes the locus standi concept needs to be expanded.[954] Pursuant to the learned Justice, the standing rule's relaxation may very well serve as the catalyst required to enable civic-minded citizens to force the government to act if regulatory agencies fail to take appropriate action against environmental polluters. Where no one can satisfy the locus standi criteria for oil pollution, it will be equivalent to waiting for the federal government to sue itself, given the fact that the state-owned NNPC has a massive role in the environmental destruction through its oil and gas activities.

Despite this, there have been some, albeit insufficient, legislative efforts aimed at expanding the existing regulation on environmental problems. The National Environmental (Mining and Processing of Coal, Ores, and Industrial Minerals) Regulations were responsible for this.[955] The Regulations grant any individual or group of individuals the ability to file a legal claim to stop, prohibit, or regulate a violation of their rights. However, this regulation does not have universal applicability because it only applies to elements of the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007 (NESREA Act). The Constitution provides that citizens of Nigeria have a right to a clean and healthy environment; thus, it is argued by this research that the issue of locus standi is depriving them of that right. Where the enforcement agencies saddled with the responsibility of bringing cases of oil pollution fail to do so, and the affected citizens do not have locus standi, it is hard to see why enforcement issues will not persist in the oil and gas industry.

For this reason, environmental injustice victims seek alternative means to uphold their basic right to life, which implicitly includes the right to a healthy environment. In the case of Gbemre, the Federal High Court acknowledged that environmental deterioration may constitute an infringement of human rights under the African Charter on Human and Peoples Rights. Therefore, Articles 4, 16, and 24 of the African

[954] ibid n 979
[955] SI No.31 of 2009.

Charter on Human and Peoples' Rights can be used to enforce environmental rights rather than relying on section 20 of the Constitution of the Federal Republic of Nigeria, which is non-justiciable pursuant to section 6 (6) (c) of the same Constitution. In Gbemre *v. Shell* [956], a private citizen, suing on behalf of his local community, alleged that Shell violated his constitutional right to life by engaging in continuous gas flaring activities, which, in turn, adversely impacted the quality of the environment. The court held that the right to life guaranteed under the Nigerian Constitution includes the right to a clean and pollution-free environment and that Shell acted in breach of the Constitution by polluting the environment through its gas-flaring activities. [957] Though the Nigerian Constitution does not expressly recognize environmental rights, the court drew an immutable link between the right to life and the quality of the environment by broadly interpreting section 33(1) of the Constitution. The court expanded the scope of the right to life to include a right to a clean environment, thus setting a new environmental standard in Nigeria.[958] It should be noted that the Gbemre case did not have an issue with locus standi because Gbemre filed the suit as a breach of his fundamental human right under the Fundamental Human Rights (Enforcement Procedure) Rules of 1979.

The research argues that locus standi regarding the enforcement of environmental laws creates social and natural injustice. Hence, genuine victims of environmental pollution do not trust the Nigerian legal system leading them to seek redress outside the shores of Nigeria. Per Popoola, moving the battlefield yields positive results.[959] With the Supreme Court judgement in *Okpabi & Ors v Royal Dutch Shell Plc & Anor*[960], the research aligns with Popoola. In the Okpabi case, over 42,000 individuals from the Bille and Ogale communities in the Rivers State of Nigeria filed seeking compensation for extensive environmental damage, including severe groundwater contamination, allegedly caused by oil spills from pipelines operated by Shell

[956] (2005) AHRLR 151
[957] E Oshionebo, 'Citizen Enforcement of Environmental Regulation in Africa's Extractive Industries' (2017) 17 Asper Rev Int'l Bus & Trade L 35
[958] ibid n 983
[959] E.O. Popoola, "Moving the Battlefields: Foreign Jurisdictions and Environmental Justice in Nigeria' < https://kujenga-amani.ssrc.org/2017/11/22/moving-the-battlefields-foreign-jurisdictions-and-environmental-justice-in-nigeria/ >accessed 24 March 2023
[960] [2021] UKSC 3.

Petroleum Development Company ("SPDC") of Nigeria Limited, a Nigerian subsidiary.

SPDC operates the pipeline as part of a joint venture with several other entities, the Nigerian government being the pipeline's predominant owner. The claimants alleged that the UK-domiciled parent company, Royal Dutch Shell ("RDS"), breached a common law duty of care owed to them because it "exercised significant control over material aspects of SPDC's operations" and/or it assumed responsibility for SPDC's operations, including by "promulgating and imposing mandatory health, safety and environmental policies, standards and manuals" that failed to protect the claimants. The Claimants persuaded the Supreme Court that a triable issue existed regarding whether RDS owed them such a duty of care. Thus, the Supreme Court largely adhered to the same approach and guidance it had provided in its landmark ruling on the same issue two years prior in *Vedanta v. Lungowe [2019] UKSC 20.*

7.3. The Exclusion of the Oil and Gas Industry from NESREA

NESREA has produced thirty-three rules in the exercise of the authorities placed on it by law, which encompasses a wide range of environmental and natural resource issues, but none for the oil and gas industry.[961] The oil and gas industry is excluded from the NESREA Act's area of operation and regulation. This research argues that this is a fundamental flaw.[962] Except for public inquiry, evaluation of regulation and standards, and guidance linked to the oil industry, the agency's powers cannot be expanded to enforce laws in the oil and gas industry.[963] Instead, the oil and gas division of the Federal Ministry of Environment exercises the remit on these matters. It is difficult to understand why the oil and gas sector has been kept from NESREA's oversight and why the ministry could not be confined to policymaking issues rather than operational regulation and management. It could not be that it would be unwieldy for purposes of enforcement. The slant of the policy initiatives in the National Policy on Environment demonstrates the lopsided commitment to development and economic activities in the past, and the clear impression to be gained is that a lot of hard work was anticipated and designed into the Policy to

[961] NESREA "About us" < https://www.nesrea.gov.ng/about-us/ > accessed 22 March 2023
[962] O Oyebode, 'Impact of Environmental Laws and Regulations on Nigerian Environment' (2018) 7 World Journal of Research and Review (WJRR) 13.
[963] O Ajai "The balancing of interests in environmental law in Nigeria" (2012)15 NEW Nigeria Pg. 388

gradually redress the imbalance.[964]

The exclusion of the oil and gas sector from NESREA's environmental coverage can be viewed as a "monumental" impediment to the agency's work, such that its institutional capacity to conduct public investigations into pollution and natural resource degradation cannot be described as robust and comprehensive.[965] Furthermore, NESREA cannot enforce hazardous waste regulations in the oil and gas industry. The agency lacks the powers to monitor, license, investigate, survey, study, or audit the industry. It also cannot encourage compliance or push for changes in environmental regulations in the oil and gas industry.[966] Vesting enforcement powers in NESREA would have provided some much-needed checks and balances on the powers of the regulatory authorities. Ladan argues that NESREA still has the potential to extend its powers of enforcement to the petroleum industry by virtue of the provision mandating it to enforce international environmental agreements in collaboration with other agencies. [967] However, that is problematic because the NESREA Act's fraught with ambiguity leads to confusion. One of the prerequisites for enforceable legislation, as argued in Chapter 5 of this research, is that legislation that would be enforced should be clear and free from ambiguity. Below are some examples of the ambiguity in the NESREA Act that hampers Ladan's argument

- Section 7a of the NESREA Act provides: *(a) enforce compliance with laws, guidelines, policies, and standards on environmental matters.*
- Section 7c provides thus: *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*

[964] ibid n 989
[965] R. A Mmadu, Judicial Attitude to Environmental Litigation and Access to Environmental Justice in Nigeria: Lessons from Kiobel. Afe Babalola University- (2013) 2, Journal of Sustainable Development Law and Policy, 149-170.
[966] L Stevens, 'Illusion of Sustainable Development: How Nigeria's Environmental Laws are Failing the Niger Delta'. (2011) 36 Vermont Law Review, 387-407.
[967]M T Ladan, 'Review of NESREA Act 2007 and Regulations 2009-2011: A New Dawn in Environmental Compliance and Enforcement in Nigeria' (2012) 8 Law Env't & Dev J 116

depletion, marine and wildlife, pollution, sanitation, and such other environmental agreements as may from time to time come into force.

- Section 7g and h provide thus: (*g) enforce compliance with regulations on the importation, exportation, production, distribution, storage, sale, use, handling and disposal of hazardous chemicals and waste other than in the oil and gas sector.*
- *(h) enforce through compliance monitoring, the environmental regulations and standards on noise, air, land, seas, oceans, and other water bodies other than in the oil and gas sector.*

The insertion of 'oil and gas' in the list of international environmental treaties to be enforced by NESREA under section 7(c) conflicts with the sections of the Act that explicitly exclude oil and gas from NESREA's scope. Section 7(h) authorizes NESREA to "enforce environmental laws and standards on pollution, air, land, seas, oceans, and other aquatic bodies other than in the oil and gas industry through compliance tracking". 7(h) is supported by 7(g), which requires NESREA to ensure conformance with laws governing the importation, exportation, production, transportation, storing, selling, use, handling, and disposal of hazardous chemicals and refuse in industries other than the oil and gas industry. Including the phrase "oil and gas" in Section 7(c) is in conflict with the other section of the Act, which expressly precludes NESREA from exercising its enforcement powers in the oil and gas industry. Since the Nigerian government intends to exclude NESREA from the oil and gas industry, the term 'oil and gas' should therefore be removed to put section 7 (c) in line with the rest of the Act, especially sections 7(g, h, j, k, and l).

On the other hand, assuming that the oil and gas industry was under NESREA, would the current enforcement situation be better in the oil and gas industry? The research argues in the negative. This is because the Agency lacks the human and technological resources to carry out the enforcement responsibilities that the NESREA Act covers. With the reforms made by the PIA 2021 examined in 4.4, it can be argued that NESREA and the oil and gas industry will remain two parallel lines. NOSDRA, on the other hand, which seemingly has some powers, is toothless. It is, therefore, trite to argue that there is no enforcement agency in Nigeria’s oil and gas industry. The dire

need to tackle the environmental issues raised in Chapter 3 of this research cannot be overemphasized.

The NESREA Act was amended in November 2018 to review the legal sanctions stipulated by establishing and enforcing administrative penalties, permitting premises searches without a warrant, and including the Federal Ministry of Health in the makeup of the Agency's Governing Council.[968] Implicitly, the amendment now allows the agency to set and apply administrative fines. This will significantly strengthen the enforcement measures of the agency. The NESREA Act was admittedly in need of review. However, it is contended that the amendment that was carried out still did not give NESREA the power to enforce environmental laws affecting the oil and gas industry. There is no record of any enforcement actions carried out by the newly enacted 'commission' and 'authority' examined in Chapter 4.4, which now have enforcement powers over the oil and gas industry by virtue of the PIA 2021. However, it could be argued this is because they are new agencies. Thus, this would be a fertile area for future research.

7.4 The Enforcement Grip of NOSDRA

NOSDRA, as mentioned in Chapter 4, is vested with powers to assure safe, prompt, effective, and appropriate response to significant or disastrous oil spills in Nigeria. However, this "enforcement grip" is called to question. This study believes that NOSDRA cannot be regarded as an enforcement agency in the real sense because it was set up to implement a plan that has no force of law. An examination of case laws would further bolster this submission.

In *PPMC v. NOSDRA* [969], after refusing to pay a fine issued against it by NOSDRA for failing to disclose and clean up an oil spill in accordance with sections 6 (2) and (3) of the NOSDRA Act, the PPMC challenged NOSDRA's jurisdiction to unilaterally levy fines in contravention of its statutes. The court determined, among other things, that PPMC violated sections 6 (2) and (3) of the NOSDRA Act, and NOSDRA imposed the fine accordingly. However, in *NOSDRA v. Mobil* Producing Nigeria Unlimited

[968] National Environmental Standards Regulatory and Enforcement Agency (Establishment) Amendment Act 2018.
[969] Suit No. FHC/ASB/18/105/10 (Unreported).

(ExxonMobil),[970] the Federal High Court revoked NOSDRA's authority to unilaterally issue fines for violations of its statute. The dispute between the parties arose because of oil spillage from ExxonMobil's facility. ExxonMobil alleged at the trial Court that the spillage was accidental, and upon becoming aware of the spillage, it immediately shut down the affected tanks, activated its Emergency Response Procedure and carried out a clean-up, remediation, and assessment exercise on the impacted site in accordance with the stipulated standards of the NOSDRA Act and its regulations. ExxonMobil further alleged that NOSDRA rated the Emergency Response Procedure it implemented as satisfactory. NOSDRA, however, subsequently instituted the action against ExxonMobil, claiming the sum of N10,000,000 (ten million Naira) as the penalty for an alleged infringement of the NOSDRA Act and its regulations. In its judgment, the trial Court held that NOSDRA's imposition of the penalty was ultra vires (outside) its powers. NOSDRA was dissatisfied with the decision and appealed to the Court of Appeal. In dismissing the appeal, the Court of Appeal considered whether, having regard to Section 6(2) and (3) of the NOSDRA Act, the judge was right in holding that the imposition of a penalty on ExxonMobil by NOSDRA was ultra vires its powers. Since the Court of Appeal rendered both judgements, the later decision remains the law until it is overturned by the Supreme Court or the Court of Appeal itself overrules itself.[971]

The 2018 ruling in *NOSDRA v. Mobil Producing Nigeria Unlimited (ExxonMobil)* is the most recent and represents the current state of the law. Contrastingly, in *Shell Nigeria Exploration and Production Company Limited (Shell) v National Oil Spill Detection and Response Agency (NOSDRA)* [972] before a Federal High Court, the Court departed from the decision of the Court of appeal in *NOSDRA v Mobil Producing Nigeria Unlimited (ExxonMobil)* above and held that NOSDRA could impose sanctions without resorting to the Court. It is argued that this is confusing because the Federal High Court is a court of lower jurisdiction than the Court of Appeal and should adopt

[970] (2018) Law Pavilion Electronic Law Report-44210 (LPELR (CA)

[971] C T. Brown & N S. Okogbule, 'Redressing Harmful Environmental Practices in the Nigerian Petroleum Industry through the Criminal Justice Approach' (2020) 11 J Sustainable Dev L & Pol'y 18

[972] FHC/L/CS/576/2016

the Court of Appeal's most recent ruling on this matter.

This research argues that the divergent interpretation of NOSDRA's enforcement grip further sends the wrong message to both regulatory bodies and petroleum sector operators regarding NOSDRA'S authority to enforce environmental laws in accordance with its enabling laws. This seeming uncertainty surrounding when a body, in the exercise of its regulatory powers, can impose financial penalties could be settled if there is a provision in the establishing law that expressly designates such bodies as the authority to impose or collect any fine stipulated in the law or subsidiary legislation. Nonetheless, where no such provision exists, the implication, as decided in the NOSDRA case, will be for criminal proceedings to be brought against the defaulter with the expectation that the fine or penalty will be imposed once guilt is established. It will be incongruous to conclude that a literal application of the NOSDRA case would mean that even though the NOSDRA Act prescribes a fine for a failure to report an oil spill, a person who fails to report an oil spill can escape this liability simply because the Act did not expressly designate a particular authority to collect the fine or to ensure the payment of the fine. There is a dire need for NOSDRA to be granted more constitutional authority. Per Umaru, NOSDRA can only bark but not bite under the existing setup.[973]

Pursuant to section 6 of the NOSDRA Act, it is apparent that the agency's function borders generally on surveillance and coordination of response to oil spillages and clean-up. From this provision, it could be deduced that NOSDRA's function kicks off when there is an oil spill. The question that comes to mind is, "Who is responsible for enforcement prior to the oil spill"? Who makes sure the spill, either in the form of sabotage or operational faults, does not happen in the first place"? These complications of NOSDRA impact the agency's ability to bite.

Nwanolue et al argue that NOSDRA's inability to perform above par can be attributed to regulatory capture.[974] The Regulatory Capture Theory proposed by George Stigler

[973] Oil Spill Intelligence Report < World_News_Briefs.pdf > accessed 8th February 2023
[974] B.O.G Nwanolue, 'Niger Delta Conflict and Dilemma of Environmental Policy Enforcement in Nigeria: A Critique of NOSDRA' (2022)13(3) International Journal of Academic Research 55-59

in the 1970s was employed as a paradigm for research.[975] Richard Posner, Joel Hellman, Daniel Kaufmann, and Johan de Hertog are amongst other proponents of this theory.[976] Per Stigler, the regulatory capture theory explains who will acquire the advantages or burdens of regulation, what shapes regulation will take, and how regulation will affect the allocation of resources. Stigler argues that even though the public is affected by regulations that are anticipated to be strictly implemented by regulators, regulated sectors retain a strong and immediate interest in influencing regulators[977] Thus, regulated sectors dedicate large funds to swaying regulators at all levels of government in opposition to the interests of people with very limited financial resources.[978]

In effect, the regulatory bodies are captured by the sectors they are tasked with governing and are consequently controlled by these industries. In this context, the theory contends that government chooses to advance the commercial or political concerns of special interest groups or large industries that dominate any given sector they are tasked with regulating by placing them far ahead of the public's interests, resulting in a net loss for society. Regulatory capture theory, therefore, predicts that the favoured policy outcomes of special interest groups will be pushed and enacted to the disadvantage of those of the public. Consequently, regulatory capture theory essentially predicts the protection of unlawful, unethical, immoral, or anti-public interest practices that government authorities are tasked with regulating.

Per McMachon, at the initial stage of capture, the regulator permits the regulated to violate the law, ethics, good practice, moral principle, or public interest that it is accountable for defending. At a second level, the regulator aids the monitored in evading post-act regulatory repercussions. At the highest degree of development, capture is so total that the regulator may aid the regulated in defeating the regulatory system in advance.[979] As a result, Ezeibe contends that regulation has shifted from

[975] G. Stigler 'The Theory of Economic Regulation' (1971) 2(1) The Bell Journal of Economics and Management Science 3-21.
[976] ibid n 1001
[977] ibid n 1001
[978] ibid n 1001
[979] G. McMahon, Regulatory Capture: Causes and Effects
< http://whistleblowersqld.com.au/wp-content/uploads/2017/06/17.-McMahon-on-CAPTURE-2002.pdf >accessed 22 March 2023

serving the public interest to becoming a means for interest groups to advance their private interests by bribing government agencies with gifts.[980]

7.5 Inadequate Resource Allocation for Enforcement

Per the Organization for Economic Co-operation and Development (OECD), environmental enforcement agencies are under greater pressure to engage in additional activities to ensure greater compliance with environmental laws and regulations as a result of a greater emphasis on environmental policy implementation.[981] However, these pressures have not always been accompanied by adequate resource allocation.[982] Enforcement agencies must maintain or improve their performance with the same or fewer resources. Still, when budget cuts are severe, the credibility, coherence, effectiveness, and impartiality of environmental enforcement actions are undermined.

This is the case with Nigeria's environmental enforcement agencies. In Nigeria, environmental agencies' lack of personnel and resources to perform their jobs has hindered their capacity to enforce environmental laws.[983] When there is an oil spill, either through operational causes or sabotage, enforcement agencies do not have the tools to establish who caused the pollution. Sections 24 and 47 of the PIA 2021 provide for the commission and authority funds, respectively. A similar provision of both sections is that the Nigerian government will fund both bodies by way of money appropriated by the National Assembly for the Commission and authority[984] and by fees charged by the authority for services rendered to licensees, lessees, permit holders and other authorizations issued by the Commission and authority.[985]

Furthermore, Section 13 of the NESREA Act 2007 and Section 11 of the NOSDRA 2006 Act provide that the agencies "shall establish a fund from which shall be

[980] C. Ezeibe ABC of Political Economy: A Beginners Guide to Understanding the State and Economy. (Enugu: University of Nigeria Press Ltd. 2015) 3
[981] OECD'Funding Environmental Compliance Assurance Lessons Learned from International Experience' (2005) < https://www.oecd.org/environment/outreach/35139072.pdf > accessed 6th April 2023
[982] ibid n 1007
[983] A Olaniyan, The Law and Multi-Agency Response to Oil Spill Incidents in Nigeria (Interspill, 2015) p.9
[984] Section 24 (1) (a) and Section 47 (1) (a), Petroleum Industry Act 2021
[985] Petroleum Industry Act 2021, Section 24 (1) (b) and Section 47 (1) (b),

defrayed all expenditure incurred by the agency for the purposes of the Act". [986] The fund will be "paid and credited by adequate takeoff grant from the Federal Government";[987]"annual subventions and budgetary allocations from the Federal Government";[988] "loans and grants in aid from national, bilateral and multilateral agencies";[989] "counterpart funding as may be provided from time to time";[990] "all sums accruing to the agencies by way of rents, fees and other internally generated revenues from services rendered by the agencies",**[991]** and "all sums accruing to the agency by way of gifts, endowments, bequeaths or other voluntary contributions by persons and organizations"[992]

From the provisions above, it can be established that the Nigerian government funds the enforcement agencies. So, the issue is not whether they are funded or not; it is whether they are adequately funded for effective enforcement. In Chapter 1 of this research, it was submitted that the 2022 Nigerian Budget allocated the sum of N52,115,699,725 to the Ministry of Environment, whilst ministries like Sports and youth development were allocated the sum of N193,315,083,317.**[993]** In the 2023 Budget, the Federal Ministry of Youth & Sports Development was allocated the sum of N187,194,692,966 whilst the Federal Ministry of Environment, which houses environmental enforcement agencies, was allocated the sum of N26,417,087,566 **[994]** This amount is significantly lower than it was in the 2022 Budget.

Per Ijaiya and Joseph, the enforcement of laws requires significant financial resources for effective operations.[995] Materials needed include but are not limited to vehicles, helicopters, and speedboats to address environmental violations and apprehend offenders, especially those who reside in the swampy areas of the Niger Delta, where pipeline vandalization is often committed at night. Oil pollution is hazardous and

[986] NESREA Act 2007, Section 13,
[987] NESREA Act 2007, Section 13 (2)(a)
[988] NESREA Act 2007, Section 13 (2)(b)
[989] NESREA Act 2007, Section 13 (2)(c)
[990] NESREA Act 2007, Section 13 (2)(d)
[991] NESREA Act 2007, Section 13 (2)(e)
[992] NESREA Act 2007, Section 13 (2)(f)
[993] ibid n Chapter 1.10.6
[994] Budget office of the Federation 'Appropriation Bill 2023 ' < 2023_BILL.pdf > accessed 20/04/2023
[995] H Ijaiya and O T Joseph, 'Rethinking Environmental Law Enforcement in Nigeria' (2014) 5 Beijing Law Review 306, 315.

destructive and can swiftly spread over several hundred kilometres and cover coastlines with a thin layer of oil.[996] Detecting and monitoring such pollution is an expensive and time-consuming endeavour.[997] Systematic monitoring of the environment is essential for reducing the environmental effects of hydrocarbon pollution in a practical manner. This operation enables the precise estimation of oil-spread areas and rapid response and recovery. Surveillance systems, which include ships and aircraft fitted with instruments like Synthetic Aperture Radar (SAR) systems, are costly.[998]

A look at the responsibilities conferred on NOSDRA under the Act establishes that the agency requires adequate funds to effectively carry out these responsibilities. When these agencies are financially unable to function, it has a negative impact on the enforcement of laws. This obvious lack of adequate funding results in the agency's inability to discover oil spills proactively and must instead depend on complaints from oil corporations or civil society organizations.[999] Research of NOSDRA's involvement in oil leak investigations by Amnesty International and CEHRD verified that the agency is incapable of conducting thorough and independent investigations. The primary issue is that the agency lacks the capacity and competence to properly oversee the hundreds of oil leaks that occur annually across the vast and inaccessible Niger Delta.[1000]

On the other hand, the US EPA periodically conducts inspections which may be either announced or unannounced, to ensure compliance with environmental regulations and take necessary actions where there is non-compliance.[1001] Facilities inspected are randomly chosen or: based on risk factors such as proximity to drinking water

[996] H Jafarzadeh et al 'Oil spill detection from Synthetic Aperture Radar Earth observations: a meta-analysis and comprehensive review' (2021) 7(58) Gi Science & Remote Sensing 1022-1051
[997] A Raeisi, G. Akbarizadeh, and A. Mahmoudi. "Combined Method of an Efficient Cuckoo Search Algorithm and Nonnegative Matrix Factorization of Different Zernike Moment Features for Discrimination between Oil Spills and Lookalikes in SAR Images." (2018) 11 IEEE Journal of Selected Topics in Applied Earth Observations and Remote Sensing 4193–4205.
[998] ibid n 959
[999] B.O.G Nwanolue, 'Niger Delta Conflict and Dilemma of Environmental Policy Enforcement in Nigeria: A Critique of NOSDRA' (2022) 13(3) International Journal of Academic Research 55-59
[1000] EPA 'Oil Spills and Prevention'< Clean Water Act (CWA) Compliance Monitoring | US EPA > accessed 30 April 2023
[1001] ibid n 1026

intakes or environmentally sensitive areas, the age of facility infrastructure (tanks, piping, etc.)as a follow-up to an oil spill, or based on citizen complaints or tips.[1002] During inspections, EPA inspectors generally request and review the Spill Prevention Control and Countermeasures (SPCC) Plan, interview facility personnel and conduct a walk-through inspection of the facility to ensure the facility is implementing its SPCC Plan, if applicable, and/or conduct a government-initiated unannounced exercise at FRP facilities to ensure implementation of the Plan.**[1003]**

According to UNEP, due to NOSDRA's lack of financing, "the agency has no preemptive capability for oil-spill monitoring and must depend on complaints from oil corporations or civil society regarding the occurrence of an oil leak." It also has very limited capability to respond to incidents, including the inability to dispatch personnel to a spill site once an incident has been notified. Due to a lack of vehicles and inaccessibility to the boats and helicopters required to reach many spill sites, the agency is entirely dependent on the data provided by the oil and gas companies. Such a setup is fundamentally flawed."[1004] Therefore, the agency cannot conduct robust, periodic site visits like the EPA.

The second leg of this argument relates to human resources and the training of enforcement officers. The nature of the oil and gas industry dictates that enforcement officers should be thoroughly trained in oil pollution issues to curb and respond effectively to them, as in the case of NOSDRA. The EPA has robust oil spill research where the agency researchers and its collaborators are devising tools and methods to assess and remediate oil and fuel spill contamination.[1005] The employees of the EPA undergo an environmental response program, amongst several others, to equip them for environmental protection.[1006] In addition, the EPA is investigating the ecological and human health effects of released hydrocarbons and fuels, as well as cleanup agents such as dispersants, surface washing agents, and solidifiers.[1007] The

[1002] ibid n 1026
[1003] EPA 'Oil Spills and Prevention'< https://www.epa.gov/compliance/clean-water-act-cwa-compliance-monitoring#oil > accessed 30 April 2023
[1004] ibid n 1029
[1005] EPA 'Oil Spill Research' < Oil Spill Research | US EPA> accessed 20 April 2023
[1006] EPA < Document Display | NEPIS | US EPA > accessed 20 April 2023
[1007] ibid n 1032

research includes:

- "Experiments to characterize the behaviour, fate, and effects of various oils and products used to mitigate and clean up spills."
- "Determining the toxicity of oil types to different aquatic species."
- "Investigations into the effectiveness and potential impacts of oil spill dispersants, including their toxicity, physical and chemical characterization, and biodegradation properties."
- "Testing emergency response and clean up protocols."
- "Developing innovative techniques to guide response and clean-up activities, such as the use of computational toxicology to assess the potential environmental and health impacts of dispersants; satellites to guide response and clean-up operations; developing innovative techniques using satellites and underwater sensors to detect oil when it cannot be seen".[1008]

The Scottish Environmental Protection Agency (SEPA) is not left out of training and research. Like their American counterpart, "the agency runs an annual internal research and development (R&D) Programme which funds several projects focused on resolving their priority issues and training their employees. SEPA occasionally awards small-scale (generally less than £20,000) grants for research and development.[1009] Their research is categorized into three sections:[1010]

- **Understanding people and the environment**: this enables SEPA to understand the changing needs of society, changes in government priorities, the relationship between the environment and human health, and how to influence and inform human behaviour to keep the environment protected.
- **Tools, techniques, and technologies** enable SEPA to develop the capacity to detect, assess and monitor new environmental threats identified by regulatory, planning, problem-solving, emerging issues and horizon scanning processes.

[1008] ibid n 1032
[1009] SEPA' Our Research' < Our research | Scottish Environment Protection Agency (SEPA)> accessed 20/04/2023
[1010] ibid n 1035

- **Data information and knowledge** provide the information needed to lead risk-based action to protect and improve the environment, safeguard communities, and improve well-being.

Therefore, this research argues that employees of several enforcement agencies in Nigeria must be adequately trained and engage in research to equip them for enforcement. Section 5 (f) and (h) of the NSODRA Act recognize the need for staff training and the acquisition of necessary instruments. This section encourages NOSDRA to provide its personnel with an oil leak response training Programme and drill exercise.[1011] Section 5 (h) implores the Agency to fund research to enhance oil disaster response methods.[1012] These provisions are essential to the future implementation of NOSDRA's functions. A former Director General of NOSDRA, Sir Peter Idabor, admitted that NOSDRA lacks equipment and trained personnel to perform its functions. Per Idabor:

"NOSDRA, set up in 2006, has not been able to catch up with its counterparts in other countries of the world in best practices because of inadequate funds, manpower, equipment, and weak legal framework, among others. —People are saying that NOSDRA depends on oil operators to carry out its regulation duties. They say we enter their helicopters and boats and use other equipment belonging to operators to inspect or monitor spills, but what can we do? We don't have the tools to work. We are lucky we have not faced a large-scale spill after the Bonga spill. We are getting warnings that some facilities around Cotonou could erupt. If they erupt, what do we do? We need good offices, equipment, and personnel require training and retraining,"[1013]

The oil and gas industry is capital-intensive; thus, any enforcement that will be done in the industry would have to be provided for, financially and technologically, to successfully address the environmental impacts of the industry. Physical removal of oil from shorelines, and especially beaches, is time-consuming and requires much

[1011] Section 5 (f) and (h) of the NSODRA Act
[1012] Section 5 (h), NOSDRA Act
[1013] E Yafugborhi, Nigeria lags in response to oil spill —NOSDRA. (Vanguard Newspaper ,April 18 2018) < https://www.vanguardngr.com/2018/04/nigeria-lags-behind-response-oil-spill-nosdra/#:~:text=PORT%20HAR%2DCOURT%E2%80%94%20National%20Oil,keep%20the%20operating%20environment%20safe. > accessed 20 July 2023

equipment and many personnel.[1014] Adequate funding strengthens enforcement operations with trained personnel, clear laws, procedures, and complete and up-to-date equipment and logistical support. Therefore, This research submits that any enforcement program that is not adequately funded will ultimately fail.

7.6 The Tale of Corruption

Fagbadebo defined corruption "as the totality of the actions and activities of an individual or group of individuals within a political society that constitutes an injury to the collective interest or impedes service delivery, constitutionally intended for the public".[1015] The Council of Europe (COE) defines corruption as "requesting, offering, giving or accepting, directly or indirectly, a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty or behaviour required of the recipient of the bribe, the undue advantage or the prospect thereof"[1016] It can be argued that corruption is universal. Misuse of authority and office is not confined to any region of the international system. [1017] However, its effects are widespread in post-colonial African republics like Nigeria.

Corruption has eaten so deeply into the nation's fabric that it would be trite to argue that it is now the bane of Nigerian society.[1018] This research agrees with the submission of Omo that corruption is the norm while the absence of corruption in Nigeria is the exception.[1019] Corruption has enabled offenders to avoid environmental laws in the oil and gas industry and has rendered law enforcement a significantly less reliable instrument for minimizing and mitigating environmental impacts.[1020] This difficulty is exacerbated by the fact that environmental crimes are a low priority for law enforcement agencies in Nigeria (which is now a fact in this research), especially

[1014] EPA <Understanding Oil Spills and Oil Spill Response< OSPguide99 (epa.gov)>accessed 20 April 2023
[1015] O Fagbadebo, 'Corruption and the Challenge of Accountability in the Post-Colonial African States: A Discourse' (2019) 8 (1) Journal of African Union Studies 9, 14.
[1016] Civil Law Convention on Corruption, 1999, Article 2
[1017] ibid n 1042
[1018] A.O. Ewere, NEITI and Good Governance in the Nigerian Oil Industry, (Benin: Ambik Press, 2011), 53.
[1019] E E Omo & A Etuvoata, 'Examination of the Factors Militating against Enforcement of Environmental Laws in Nigeria' (2021) 2 LASJURE 79
[1020] D A Williams " Understanding the effects of corruption on law enforcement and environmental crime' (2019)< https://c402277.ssl.cf1.rackcdn.com/publications/1282/files/original/Introductory-Overview_Understanding-the-effects-of-corruption-on-law-enforcement-and-environmental-crime.pdf?1575672055 > accessed 20 November 2022

when they are under-resourced and confront various other challenges to the rule of law. Without a doubt, corruption reduces growth, impedes trade, and increases poverty.[1021]

Corruption is prohibited in Nigeria by Section 19 (a) (11) of the Independent Corrupt Practices Act 2000, which provides thus: *"any public officer who uses his office or position to gratify or confer any corrupt or unfair advantage upon himself or any relation or associate of the public officer or any other public officer shall be guilty of an offence and shall on conviction be liable to imprisonment for five years without the option of fine."* Despite this provision, corruption remains prevalent in Nigeria.

In his speech marking Transparency International's tenth anniversary in Berlin, Former President Obasanjo declared the government's desire to introduce EITI in Nigeria. Three requirements, he stated, would be at the core of this process: (1) companies would be required to disclose everything they pay to the government; (2) government institutions would be required to disclose everything they receive from companies; and (3) an independent auditor would be appointed to ensure the two sets of figures agree and produce a report that would be made public.[1022]

Pursuant to this, the Nigeria Extractive Industries Transparency Initiative (NEITI) was formed in 2007. "The Nigeria Extractive Industries Transparency Initiative (NEITI) is the national chapter of the global Extractive Industries Transparency Initiative (EITI) mandated by law (The NEITI Act 2007) to promote transparency and accountability in the management of Nigeria's oil, gas and mining revenues".[1023] Notwithstanding the creation of NEITI, corruption in the oil and gas industry can be referred to as an epidemic that has spanned several decades with no vaccination in sight. The Corruption Perception Index (CPI) scores Nigeria 24/100 in 2023.[1024]

It is essential to recognize the multifaceted nature of the corruption afflicting the

[1021] ibid n 1046
[1022] Petroleum Africa ' Nigeria's Obasanjo embraces EITI ' (2005) < Nigeria: Why Nigeria Embraces EITI, By President Obasanjo - allAfrica.com > accessed 20 July 2023
[1023] The NEITI Act 2007
[1024] Transparency International ' Nigeria' (2023) <2022 Corruption Perceptions Index: Explore the… - Transparency.org > accessed 25th April 2023

Nigerian oil and gas industry.[1025] Corruption appears in the mismanagement of revenues accruing to the federal government of Nigeria, mismanagement of the 13% derivation share of oil revenue accruing to the oil-producing states in Nigeria[1026], corruption in the transactions with both International and indigenous oil and gas operators,[1027] and corruption that impacts effective enforcement involving regulatory agencies in furtherance of their role.[1028] Corruption in the petroleum industry did not begin as a complex conspiracy to undermine environmental regulations. Corruption in the petroleum sector grew as a result of elaborate schemes to divert proceeds from petroleum sector operations to private pockets, which remained unchecked, and alternative uses other than what was originally intended, as well as the inability of regulatory agencies to fulfil their statutory obligation to promote environmental regulation.[1029] Per Adomako, a historical symbiotic relationship exists between oil and corruption in Nigeria.[1030]

Corruption in Nigeria's oil and gas sector can be categorized into four levels:[1031]

- Policy Corruption: This involves corrupt influence on the design of sector policies, as well as the enactment of sector laws and taxes in a manner intended to provide political or personal gains at the public expense.
- Administrative Corruption: This is the abuse of the administrative office to extract illegal benefits in exchange for approval covering a wide range of commercial and operational activities.
- Commercial Corruption: Under this heading are the broad areas of procurement abuse, including tender rigging, kickbacks, and cost inflation.
- Grand Corruption: Direct theft of massive amounts of money through the diversion of production, products, or revenues are cases of grand corruption.

[1025] J O Ighalo, W P Enang and Q A Nwabueze, 'Re-evaluating the Problems of Gas Flaring in the Nigerian Petroleum Industry' (2020) 147 World Scientific News 76, 78.
[1026] E Oshionebo, 'Mismanagement of Nigeria's Oil Revenues: 'Is the Nigeria Sovereign Investment Authority the Panacea' (2017) 10 Journal of World Energy Law and Business 329, 329.
[1027] T M Ebiede, 'Conflict Drivers: Environmental Degradation and Corruption in the Niger Delta Region' (2011) 1(1) African Conflict and Peacebuilding Review 139, 145.
[1028] O Fagbadebo, 'Corruption and the Challenge of Accountability in the Post-Colonial African States: A Discourse' (2019) 8 (1) Journal of African Union Studies 9, 14.
[1029] ibid n 1054
[1030] ibid n 1054
[1031] ibid n 1054

Furthermore, five areas that stand out as possible loci of corruption in the Nigerian oil and gas industry are the awarding of licenses; the awarding of contracts; bottlenecks and inefficiencies; the role of bunkering; the exportation of crude and imported refined products.[1032] Corruption, therefore, is inevitable in countries with abundant natural resources. The nature of the industry, as outlined by Gilles, leaves the industry especially vulnerable to the possibility of bribery.

The importance, scope, complexity, duration, and proximity to public authorities make it nearly hard to eliminate the possibility of bribery.[1033] It should go without saying that winning projects of considerable value to a company is worthwhile. The findings of corruption investigations in the extractive industries demonstrate that businesses will make great efforts to acquire and secure contracts. Making payments that are bribes falls under this category.[1034] Even though they may be concealed by third-party consultancy fees or disguised by offset agreements, these payments guarantee that a powerful decision-maker will grant the contract.

In contrast to many other businesses where the nature of the company may be more transactional, the scope, complexity, and duration of projects in oil and gas industries significantly increase the possibility for these instances of bribery risk to arise.[1035] These elements also cause businesses to interact with an unusually high volume of third parties. It may be simple to overlook a third party that is being used to facilitate corrupt payments in such circumstances.[1036]

Whilst enforcement agencies are riddled with a lack of funds to effectively carry out their enforcement responsibilities, these funds make their way into the private bank accounts of Nigerian politicians. The research will discuss three cases of corruption in the Nigerian oil and gas industry to support the submission above. The Halliburton bribery scandal case of 1994, the ENI and Shell Bribery case of 2011 and the corruption cases of Former petroleum ministers in Nigeria. It should be noted that

[1032] ibid n 1054
[1033] D Jones' Drilling into the Top Compliance Risks for Oil, Gas & Extractives Industry Professionals' < Drilling into the Top Compliance Risks for Oil, Gas & Extractives Industry Professionals (dowjones.com) > accessed 25 April 2023
[1034] ibid n 1054
[1035] ibid
[1036] ibid n 1059

these cases are not exhaustive of corruption cases in Nigeria's oil and gas industry.

The Halliburton scheme involved the alleged payment of over $180 million to senior Nigerian officials, including alleged former chiefs of state, by Halliburton officials to secure a construction contract for a liquefied natural gas facility on Bonny Island in the Niger Delta. The EPC contracts to build liquefied natural gas (LNG) facilities on Bonny Island, Nigeria, were valued at more than $6 billion.[1037]Halliburton and its former subsidiary, Kellogg Brown & Root (KBR), pled guilty in the United States and agreed to pay a $579 million fine, the largest corruption settlement ever paid by a US company in high-level bribery cases involving payments from multinationals to secure contracts in Nigeria and other countries. In Nigeria, however, senior government officials who allegedly accepted bribes exceeding $180 million have not yet been charged in court.[1038]

The Eni and Shell Bribery scandal of 2011 involved the purchase of an offshore oil block in Nigeria for US$1.3bn in 2011. The prosecution alleged that a significant portion of the $1.3 billion payment was given as a bribe to Nigerian politicians rather than the Nigerian government.[1039]Emails between Shell executives, which Global Witness published, indicated that Shell was aware the funds would go to Nigerian politicians. Along with the two oil and gas companies, prominent members of the organisations were also accused, including Claudio Descalzi, the CEO of Eni, and Malcolm Brinded, a former official with Shell. Per the case of the prosecution, the companies made the payment through a Nigerian middleman named Dan Etete, the former Nigerian Minister of Petroleum (1995–1998).[1040] Dan Etete created Malabu in 1998 under a fictitious name in order to secure the lucrative oil block OPL 245 for himself, for which he paid only $2 million of the $20 million legally required by the state.[1041] In March 2017, Shell and Eni were the targets of corruption charges

[1037] DOJ' Kellogg Brown & Root LLC Pleads Guilty to Foreign Bribery Charges and Agrees to Pay $402 Million Criminal Fine' https://www.justice.gov/opa/pr/kellogg-brown-root-llc-pleads-guilty-foreign-bribery-charges-and-agrees-pay-402-million >accessed 13 April 2023
[1038] ibid n 1063
[1039] C Cornu et al 'Eni and Shell go on trial over Nigeria kickback scandal'(2018)< https://www.proquest.com/docview/2010225835?pq-origsite=primo >accessed 25 April 2023
[1040] ibid n 1065
[1041] Sahara Reporters ' How Ex-Nigerian Petroleum Minister, Dan Etete, Laundered Millions Of Dollars' < https://saharareporters.com/2013/06/16/how-ex-nigerian-petroleum-minister-dan-etete-laundered-millions-dollars > accessed 25 April 2023

brought by Nigeria's anti-graft agency, the Economic and Financial Crime Commission (EFCC). Eleven defendants, including Etete, were charged with "official corruption" in relation to the transaction.[1042] Sahara reporters have alleged that the EFCC inquiry died as soon as the Presidency became aware of the investigation. Dan Etete and all those Nigerian officials involved in this case were never brought to Justice for their corruption crimes in Nigeria. Justice was served in France, where Dan Etete was convicted of aggravated money laundering.[1043]

The curtain on corruption cannot be drawn without the mention of another former Minister of Petroleum Resources, who the research introduces in Chapter One. Diezani Alison Madueke was also the first female President of the Organization of the Petroleum Exporting Countries (OPEC). She was arrested and bailed in London in October 2015 as part of a British police investigation into corruption.[1044] Among other allegations of corruption, the former Minister has been accused of fraudulent ownership of N47.2 billion and $487.5 million, as well as N23,446,300,000 and $5 million (approximately N1.5 billion) in various Nigerian banks and $40 million worth of jewellery.[1045] The EFCC also accuses her of owning several properties in Nigeria, the UK and the USA.[1046] The EFCC has filed 14 charges involving embezzlement and concealment totalling $153 million against her.[1047] Some of her Nigerian residences have been searched and have yielded gold jewellery and wristwatches worth millions of dollars.[1048] Diezani Alison Madueke, who was believed to be domiciled in the United Kingdom in January 2022, was issued an arrest warrant by a Federal High Court in

[1042] ibid n 1067
[1043] ibid n 1067
[1044] J Egbas 'How Diezani escaped Nigeria and became Commissioner in Dominica' (2020)< https://www.pulse.ng/news/local/how-diezani-escaped-nigeria-and-became-commissioner-in-dominica/bbm3rzv >accessed 30 April 2023
[1045] EFCC 'Court Orders Final Forfeiture Of Diezani's Abuja Homes, Cars' (2022) < Economic and Financial Crimes Commission - Court Orders Final Forfeiture of Diezani's Abuja Homes, Cars (efcc.gov.ng) > accessed 30 April 2023 see also <Economic and Financial Crimes Commission - Court Orders Final Forfeiture of Diezani's Lekki Land To FG (efcc.gov.ng) > accessed 30 April 2023
[1046] ibid n 1071
[1047] ibid n 1071
[1048] EFCC 'Court Affirms Forfeiture Of Diezani's $40m Jewelry To FG'(2022) <Economic and Financial Crimes Commission - A'Court Affirms Forfeiture of Diezani's $40m Jewelry to FG (efcc.gov.ng)>accessed 30 April 2023

Abuja. However, multiple attempts by the EFCC to invoke an extradition treaty with the United Kingdom and bring her back to Nigeria for trial have failed.[1049]

The Niger Delta Development Commission (NDDC), created for the development of the Niger Delta, is also embattled in the web of corruption allegations. In 2020, the Senate investigated the Interim Management Committee (IMC) of the NDDC regarding large-scale fraud, extra-budgetary expenditure, abuse of procurement laws and mismanagement of the Commission.[1050] The investigation revealed that the IMC mismanaged N81.5 billion on fictitious contracts, frivolities such as taking care of themselves and preventing COVID-19, and in breach of extant financial and public procurement laws.[1051] Some of these funds were slated for the payment of tuition fees of scholarship students whom the Commission had sent overseas for postgraduate programs.[1052] In April 2022, the court of appeal upheld the appeal of the EFCC and dismissed the ruling of a Federal High Court in Lagos in the case involving a former Executive Director, Projects, Niger Delta Development Commission, NNDC, Tuoyo Omatsuli, over an alleged case of money laundering to the tune of Three Billion, Six Hundred and Forty-five Million Naira (N 3, 645, 000,000).[1053] There is no record of any prosecution done against members of the IMC for these financial crimes.[1054]

Williams averred that corruption undermines the ability of law enforcement and judicial systems to enforce laws related to environmental protection and resource

[1049] EFCC 'Court Issues Fresh Arrest Warrant Against Diezani' (2022) < https://www.efcc.gov.ng/efcc/news-and-information/news-release/7641-court-issues-fresh-arrest-warrant-against-diezani >accessed 30 April 2023
[1050] D Nwikinaka, 'The NDDC Regime Of Corruption' (2020) < https://lawcarenigeria.com/the-nddc-regime-of-corruption/#:~:text=After%20nine%20months%20of%20the%20IMC%20in%20office%2C,estate%2C%20as%20the%20National%20Assembly%20investigations%20have%20exposed. >accessed 30 April 2023
[1051] ibid n 1076
[1052] ibid n 1076
[1053] EFCC 'N3.6BN Fraud: Appeal Court Upholds EFCC Appeal, Dismisses Discharge Of Ex-NDDC Boss, Tuoyo Omatsuli (2022) Economic and Financial Crimes Commission - N3.6bn Fraud: Appeal Court Upholds EFCC Appeal, Dismisses Discharge Of Ex-NDDC Boss, Tuoyo Omatsuli > accessed 30 April 2023
[1054] ibid n 1079

use.[1055] Per Williams, Law enforcement measures to curb environmental crime may have unintended or unexpected results due to the prevalence and impact of corruption. This notion is illustrated by two typical ways that corruption can jeopardise law enforcement: (1) Selective or biased ground-level enforcement: which involves directing enforcement toward less powerful actors and lower-level crimes, and (2) Interfering in the suppression of illegal activities: which involves enforcement actors such as prosecutors and judges, as well as law enforcement officers being the subject of political interference or motivated by corrupt interests.

This research argues that the PIA has not done Justice with regard to corruption. The PIA still gives the Minister of Petroleum full authority over the allocation of licenses for oil exploration, prospecting, and mining.[1056] There are, therefore, no legally mandated processes or oversight mechanisms for the allocation of blocks. Due to the high capital influx in the oil and gas industry, there is bound to be malpractices in the contract award within and outside the industry. Thus, it gives room for another Alison and Dan Etete to emerge.

Furthermore, the provisions of the PIA 2021,[1057]the NOSDRA Act 2006[1058] and the NESREA Act 2007[1059] permitting these agencies to accept gifts can be exploited and used as a means of corruption. Section 15 of the NOSDRA Act provides that the agency may accept gifts of land, money or other property on such terms and conditions, if any, as may be specified by the person or organization making the gift. The agency shall accept the gifts if the conditions attached by the person or organization making the gist are not inconsistent with the agency's functions. The PIA and the NESREA Act provide that the Commission and NESREA can accept gifts to fund the responsibilities. The research is aware that accepting gifts is a recurrent phenomenon in most global enforcement agencies.

[1055] D A Williams " Understanding the effects of corruption on law enforcement and environmental crime' (2019)< https://c402277.ssl.cf1.rackcdn.com/publications/1282/files/original/Introductory-Overview_Understanding-the-effects-of-corruption-on-law-enforcement-and-environmental-crime.pdf?1575672055 > accessed 20 November 2022
[1056] Section 3, Petroleum Industry Act 2021
[1057] Section 24 (F), Petroleum Industry Act 2021
[1058] Section 15,NOSDRA Act 2006
[1059] Section 13 (f), NESREA Act 2007

Gifts, bequests, and donations received by SEPA are considered income. They should be accounted for in the agreed resource DEL and capital DEL budgets, which should be updated as needed in consultation with the SG. However, SEPA should be able to demonstrate that expenditures funded by endowments, etc., are in addition to those typically supported by grants in aid (i.e., Scottish Government core funding) or other sources of income. Before accepting such gifts, etc., SEPA must determine whether there are any associated costs or potential conflicts of interest. SEPA shall maintain a written record of such gifts, their estimated value, and how they were used.**[1060]**

Pursuant to the EPA policy on accepting gifts, employees of the EPA are not generally permitted to accept anything of value, including entertainment and meals, from anyone who is seeking to obtain EPA contracts or assistance agreements, anyone who is attempting to influence official actions of the EPA, has an interest in the duties of the EPA and conducts operations regulated by the EPA.[1061] There are few exceptions: in cases of modest entertainment organized by technical or professional organizations or attendance at public ceremonies in connection with official duties, gifts from family or personal relationships, purchases at advantageous rates offered to government employees as a class, loans from financial institutions, unsolicited advertising worth less than $10 in US retail, incidental transportation, reasonable travel expenses in connection with job interviews while on annual leave, official travel expenses, unsolicited gifts from foreign government less than $165, any larger gift must be turned over the EPA. The code of federal regulations also mandates the EPA to keep a list of the gifts received. [1062] Where an employee is advised "that a gift of more than minimal value is to be tendered to him or her, they must request the written advice of the Directorate of Administration regarding the appropriateness of accepting or refusing the gift. A request for approval shall be submitted to the Directorate of Administration in writing, stating the nature of the gift and the reasons

[1060] SEPA Framework Document < SEPA Framework Document accessed 25 April 2023 Pg. 17
[1061] EPA 'Ethics in a Nutshell : Ethical Conduct for EPA Employees-in Brief' < https://nepis.epa.gov/Exe/ZyPDF.cgi/940003DR.PDF?Dockey=940003DR.PDF >accessed 25 April 2023
[1062] ibid n 1025, See also Section 1050.202-204 , Code of Federal Regulation <https://www.ecfr.gov/current/title-10/chapter-X/part-1050/subpart-B/section-1050.204 >accessed 25 April 2023

for which it is being tendered".[1063]

These provisions of SEPA and EPA are clearly different from the provision of NOSDRA. Thus, they create some form of checks and balances in these agencies. Thus, the research submits that this approach would reduce the prevalent corruption in these enforcement agencies that come in through gifts. A similar provision can be adopted in the Nigeria legislation mentioned above.

7.7 The Multiplicity of Enforcement Agencies

Per Mbanefo, efficient law enforcement depends on the quality and outlook of the institutions and personnel saddled with this responsibility.[1064] Several enforcement agencies in Nigeria were created for law enforcement in the oil and gas industry, as examined in Chapter 4 of this research. The introduction of the PIA 2021 has topped the number.

Prior to the PIA 2021, the Department of Petroleum Resources (DPR) monitored operations at oil and gas sites and supervised all oil and gas operations being carried out under licenses and leases in the Country, amongst other functions. They were regarded as the regulators of the industry. Their second function was to implement all environmental laws in the oil and gas industry, ensuring operators complied with all environmental laws in Nigeria. To do this effectively, the agency created the Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN).[1065] EGASPIN outlined environmental and safety standards that must be complied with by oil operators in Nigeria to prevent, minimize and control pollution from the various aspects of petroleum operations[1066] Thus; the DPR was both a regulator and an enforcement agency. Whilst the DPR oversaw EGASPIN and issued

[1063] Section 1050.204, Code of Federal Regulations https://www.ecfr.gov/current/title-10/chapter-X/part-1050/subpart-B/section-1050.204 > accessed 25 April 2023
[1064] O Mbanefo, The Multiplicity of Law Enforcement Agencies and the State of Law and Order in Nigeria: A Case of too many Cooks? (2019) 3(4) International Journal of Academic Accounting, Finance & Management Research Pg.1-9
[1065] D S Olawuyi and Z Tubodenyefa ,' Review of the Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN) (2018) MFP04-014 < https://www.researchgate.net/profile/Tubodenyefa-Zibima/publication/335857996_Review_of_the_Environmental_Guidelines_and_Standards_for_the_Petroleum_Industry_in_Nigeria/links/5d80ae9e458515fca16e3d2f/Review-of-the-Environmental-Guidelines-and-Standards-for-the-Petroleum-Industry-in-Nigeria.pdf > accessed 28 April 2023
[1066] ibid n 1091

licenses for oil and gas activities, NOSDRA was in the picture as an enforcement agency enforcing the law under their Act. The resultant effect was a complex web of unclear and inconsistent understanding of how EGASPIN interActs with the NOSDRA Act.[1067] The EGASPIN stipulated that the Director of Petroleum Resources be notified of any spills.[1068] NOSDRA also has a similar reporting requirement that compels operators to notify NOSDRA of any oil spills. This resulted in regulatory overlap and duplication.

NOSDRA is the government agency charged by law with coordinating national responses to oil spills.[1069] The Act also assigns NOSDRA the responsibility of coordinating and carrying out Nigeria's National Oil Spill Contingency Plan.[1070] The provisions herein make NOSDRA the designated agency for handling oil spill responses. However, the Director of Petroleum Resources must be notified of any oil spills in accordance with the EGASPIN.[1071] As a result, the preceding EGASPIN clause directly opposed subsection 6 (1) (b) of the NOSDRA Establishment Act. These competing rules left room for "double reporting," which was a waste of time and went against the spirit of a coordinated multi-agency response to oil spill situations, making it more difficult to act swiftly and effectively.

The PIA did not rectify this situation. Section 72 of the Upstream Petroleum Environmental Regulations 2022 states that "all spills of crude oil, chemical, oil products shall be reported to the Commission within 24 hours, per the Oil Spillage and Notification Reporting format prescribed by the Commission.[1072] A Joint Spill Investigation team, comprising of the Licensee or Operator or lessee, Community, any third party responsible for the spill where known, the Commission and other relevant stakeholders shall be initiated by the operator of the affected facility within 24 hours of spill notification to conduct a Joint Investigation Visit to the spill site as

[1067] NOSDRA Establishment Act 2006,Section 6 (1) (b)
[1068] The 2018 EGASPIN, Section 5.6.2 and 5.6.3
[1069] NOSDRA Establishment Act 2006,Section 6 (1) (b)
[1070] ibid section 6 (1) (c) and Section 7 (a).
[1071] Para 5.1.1, "Spill Prevention and Counter Measures Plan". GASPIN 2002,
[1072] Section 72 , The Upstream Petroleum Environmental Regulations 2022 < Upstream-Petroleum-Environmental-Regulations.pdf (nuprc.gov.ng) > accessed 30 April 2023

soon as practicable.[1073] It, therefore, could be argued that the issue of double reporting, which plagued EGASPIN as discussed above, continues in the PIA. It may seem as though the PIA did not recognize the NOSDRA Act. A scenario of confusion is bound to arise within the oil and gas industry. If operator A notifies oil spills to NOSDRA and doesn't report to the Commission and operator B reports to the Commission without notifying NOSDRA, does this amount to a breach of the law? The research avers that the answer to this question would depend on the jurisprudence arising from this in the court of law through enforcement of any of these provisions.

Furthermore, pursuant to section 7 of the PIA, the Commission can enforce, administer and implement laws, regulations and policies relating to upstream petroleum operations. Consequently, it could be argued that since the NOSDRA act is a law relating to upstream petroleum operations, the Commission can enforce the Act.

The research submits that the investiture of enforcement powers in the Nigerian Upstream Regulatory Commission (The Commission) and the Nigerian Midstream and Downstream Petroleum Regulatory Authority (The Authority) amounts to multiplicity and would impact the effective and transparent enforcement of environmental laws. The research further argues that regulators should regulate the industry, and enforcers should be in the business of enforcement. The PIA appears to have vested both functions in the Commission and authority. This results in a lack of checks and balances in oil and gas operations. Although it could be argued that the PIA 2021 has just been recently implemented, antecedents of the DPR proved that investing enforcement powers on the regulators amounts to the duplicity of responsibilities with no positive results. Despite the fact that the DPR was invested with enforcement powers, there is no record that the department exercised that power to its close allies (oil and gas companies) who violated environmental laws in Nigeria.

The Environmental Assessment Department (EAD) is one of the technical departments established in the Federal Ministry of Environment at the inception of the ministry in 1999 and is charged with the responsibility of ensuring that all

[1073] Section 73 , The Upstream Petroleum Environmental Regulations 2022 < Upstream-Petroleum-Environmental-Regulations.pdf (nuprc.gov.ng) > accessed 30 April 2023

developmental projects are carried out in compliance with relevant environmental laws and regulations to ensure environmental sustainability.[1074] The EAD has four divisions: Oil and Gas Division,[1075] Environmental Impact Assessment Division,[1076] Environmental Standards And Monitoring (ES&M) Division[1077] and the Mining Environmental Assessment Division [1078] For purposes of the research, the oil and gas division and the EIA Division will be the focus.

The oil and gas division, amongst other functions, implements the federal government's gas flaring policy, gas gathering processing and utilization projects.**[1079]** As mentioned, the Commission has the power to enforce all environmental regulations and policies. Besides enforcing the gas flare policy, the oil and gas division supervises the activities of NOSDRA. It is not stated what the supervision entails. The research calls this supervisory function to question, considering that the EAD and NOSDRA are parastatals under the federal ministry of Environment.

The Department Of Pollution Control And Environmental Health is mandated to provide a cleaner and healthier environment that is adequate for good health and sustainable development and well-being of the citizens of Nigeria.[1080] Their mission is to assist in formulating policies that prevent pollution and manage pollution incidences by promoting the adoption and application of the best available technologies and best environmental practices to minimize impacts or risks to health and the environment.[1081] The department formulates, implements and reviews policies on pollution control, waste management, environmental health and

[1074] Environmental Assessment Department, 'Public home' (| Federal Ministry of Environment | EAD, 2022) < https://ead.gov.ng/publichome/ > accessed 3 August 2022.
[1075] Oil and Gas Division < OIL AND GAS DIVISION | | Federal Ministry of Environment | EAD >accessed 30 April 2023
[1076] Environmental Impact Assessment Division < https://ead.gov.ng/environmental-impact-assessment-division/ >accessed 30 April 2023
[1077] Environmental Standards And Monitoring (ES&M) Division < https://ead.gov.ng/environmental-standards-monitoring-2/ >accessed 30 April 2023
[1078] Environmental Assessment Department ` Mining Environmental Assessment' <https://ead.gov.ng/mining-environmental-assessment/ >accessed 30 April 2023
[1079] ibid n 1104
[1080] The Department Of Pollution Control And Environmental Health < https://environment.gov.ng/department-of-pollution-control-and-environmental-health/ >accessed 30 April 2023
[1081] ibid n 1106

sanitation.[1082] They monitor compliance with environmental pollution control guidelines and standards.[1083] Additionally, the department Implements International Conventions and Protocols. The department is the focal point for the following Multilateral Environmental Agreements:[1084]

- Vienna Convention for the Protection of the Ozone Layer and its Montreal Protocol on Substances that Deplete the Ozone Layer 1985,
- Basel Convention on Trans-boundary Movement of Hazardous Waste and other Wastes and Their Disposal 1989
    - Rotterdam Convention on Prior Informed Consent (PIC), Procedure on certain Hazardous Chemicals and Pesticides in International Trade 1998
    - Bamako Convention on Trans-boundary Movement of Hazardous Wastes and Their Disposal in Africa Region 1998
    - Stockholm Convention on Persistent Organic Pollutants 2001
    - Minamata Convention on Mercury 2013

A close examination of the functions of this department reveals a duplicate of the Commission's and NOSDRA's functions relating to the implementation of international conventions to protect the environment and pollution control policies. Mbanefo argued that "perhaps, the major factor driving the multiplicity of law enforcement agencies is the consideration of creating employment opportunities".[1085] This argument in itself is not illogical, considering the high rate of unemployment in Nigeria. However, creating a workforce for a sector, in this case, enforcement of environmental laws in the oil and gas industry, without evidence of productivity for the environment, is, in the opinion of this research, a race backwards. Every organization should have Key Performance Indexes (KPI) and how they are measured. Key Performance Indicators (KPIs) are the most important measurable indicators of progress towards a desired outcome. KPIs serve as a focal point for strategic and operational development, provide an analytical basis for decision-making, and assist in focusing attention on what is most important. Setting goals (the desirable level of performance) and monitoring progress towards those goals are

[1082] ibid n 1106
[1083] ibid n 1106
[1084] ibid n 1106
[1085] ibid n 1090

components of KPI-based management.[1086] Managing KPIs frequently entails working to improve performance with leading indicators, which predict future success and ultimately drive the desired outcomes indicated by lagging measures. Measurement is an essential management tool because it enables an organization to determine if its work has an impact, demonstrate its value, manage resources, and concentrate improvement efforts.[1087] Thus, there is a need to reconsider these enforcement agencies to ascertain their value to environmental enforcement of laws in Nigeria.

The research argues that this multiplicity approach has and would not yield positive results for effective enforcement of environmental law in Nigeria. Per Adoyin and Agwanwo, "the different law enforcement agencies lack inter-agency cooperation and collaboration. The image they throw up to the members of the public is that of unnecessary rivalry and competition for relevance".**[1088]** Consolidating the enforcement agencies into a single enforcement agency, such as SEPA and the EPA, and even Nigeria's own anti-graft agency (Economic and Financial Crime Commission) allows Nigeria to have a formidable and efficient enforcement agency for the oil and gas industry. This is one answer to the question *Quo Vadis Nigeria?*

7.8 Gas Flaring Exceptions in the PIA 2021

Gas flaring has been one major source of environmental pollution despite being prohibited by the now-repealed Associated Gas Reinjection Act of 1979. The Act contained exceptions to when the gas can be flared. In Section 3(2), operators may only flare with the issuance of a certificate by the Minister of Petroleum and Natural Resources.[1089] The possible conditions for issuing a certificate for continued gas flaring were.

- That more than 75 per cent of the produced gas is effectively utilized or conserved.

[1086] KPI.ORG 'What is a Key Performance Indicator (KPI)? ' < https://www.kpi.org/KPI-Basics/ > accessed 20 July 2023
[1087] ibid n 1112
[1088]O Adoyin and D.E Agwanwo 'Police inter agency collaboration and the provision of security in Nigeria. In D.E. Agwanwo (Ed.) A Political economy of policing in Nigeria (2015 Vol. 2, Makurdi: Aboki Publishers)103-120
[1089] Associated Gas Reinjection Act of 1979 (Repealed), Section 3(2)

- The produced gas contains more than fifteen per cent impurities, such as N2, H2S, CO2, etc., which render the gas unsuitable for industrial purposes.
- When gas utilization equipment suffers a failure, so long as the failure are not too frequent and do not extend beyond three months.
- That the ratio of the volume of gas produced per day to the distance of the field from the nearest gas line or possible utilization point is less than 50,000 SCF/KM, so long as gas is not venting at a level above 3,500 SCF /bbl, and it is not technically advisable to re-inject the gas in that field; or
- Another condition set by the Minister.

From 1984 till date, gas flaring has become normal in the Niger Delta. This is the reason many Nigerians saw the PIA 2021 as a beacon of hope. Even though the PIA makes gas flaring illegal, it includes several loopholes that ensure the same gas flare regime remains unchecked. The Act specifies circumstances in which gas flaring is permissible. These are in the case of an emergency, exemption or as an acceptable safety practice.[1090] Defaulters commit an offence and are liable to a fine.[1091] The Act provides that the authority or Commission may award a Licensee or Lessee permission to allow natural gas flaring or venting for a specified time *to wit* :(a) where necessary for facility startup; or (b) for operational, strategic purposes, including testing.[1092]

This research argues that these exemptions are steps backwards in the Nigeria environmental management plan, which the PIA 2021 sought to achieve. The Act does not explain what constitutes an emergency or what it means by acceptable safety practice. "Strategic, operational reasons" are beyond testing. In addition, no period is specified for flaring in the event of facility startup or for strategic operational reasons. Knowing the corruption terrain of Nigeria, these measures might easily become a pass for unbridled and permanent environmental and health damage to communities (as has been done previously), thereby impacting effective enforcement.

In addition, the Act specifies that monies received from gas flaring penalties by the

[1090] Section 104, Petroleum Industry Act 2021
[1091] ibid n 1116
[1092] Section 107, Petroleum Industry Act 2021

Commission shall be transferred to the Midstream Gas Infrastructure fund for investment in Midstream Gas Infrastructure within the Host Communities of the Settler against whom the penalties are imposed.[1093] It suggests the use of gas flare fines in higher-yielding projects without any specific regard for the communities impacted by gas flaring, let alone efforts to mitigate such impacts. Evidently, the Act views gas flaring as a waste of economic resources that should be compensated for and not as an abuse that negatively impacts the climate, the health of populations, and their means of subsistence. This takes the Country back to the beginning of environmental pollution

Since the 1970s, the Nigerian government has established multiple deadlines for the termination of gas flaring. In 2008, the Country created the Nigeria Gas Masterplan 2008 to end gas flaring in the same year through improved domestic gas consumption.[1094] To strengthen the strategy for the elimination of gas flares, the Government of Nigeria introduced the Nigerian Gas Flare Commercialization Program (NGFCP) in 2016.[1095] The program was redesigned in 2022. The NGFCP 2022 reaffirms the core objective to eliminate gas flaring through technically and commercially sustainable gas utilization projects developed by competent third–party investors who will be invited to participate in a competitive and transparent bid process.[1096] The NGFCP 2022 will offer flare gas for sale by the Federal Government of Nigeria through a transparent and competitive bidding process. A structure has been devised to provide project bankability for the Flare Gas Buyers, which is essential to the success of the Programme.[1097]

The previous target for the elimination of gas flaring was 2020, which was subsequently pushed back to 2025 and is now being abandoned in favour of a 2030 goal.[1098] As the deadlines to cease gas flaring approach, it is customary to extend them. The PIA does not provide a timetable for the cessation of flare-ups, giving the

[1093] ibid n 1118
[1094] Nigeria Gas Masterplan 2008 < Current Development in the Nig. Oil and Gas (pppra.gov.ng) > accessed 30 April 2023
[1095] About NGFCP < https://ngfcp.nuprc.gov.ng/about-ngfcp/ >accessed 30 April 2023
[1096] ibid n 1121
[1097] About NGFCP < About NGFCP - NGFCP (nuprc.gov.ng) >accessed 30 April 2023
[1098] ibid n 1123

appearance that the practice will continue indefinitely, to the detriment of host communities that continue to suffer from its harmful effects. The Act does not appear to consider Nigeria's Nationally Determined Contributions regarding climate change (NDCs). These exceptions will hamper effective enforcement. Chapter 3.8 of the research addressed the objectives of the Paris Agreement and the National Determined Contribution.

A licensee, lessee or marginal field operator that flares or vents natural gas, except in the case of an emergency, pursuant to an exemption granted by the Commission, or as an acceptable safety practice under established regulations, commits an offence and is liable to a fine as prescribed by the Commission.[1099] The fine is paid in the same manner and subject to the same procedure for paying royalties to the government by companies engaged in oil production.[1100] The fine is not eligible for cost recovery and is not tax deductible. Money received from gas flaring penalties by the Commission is for environmental remediation and relief of the host communities of the settlors on which the fines are levied. A licensee or lessee shall pay the penalty prescribed pursuant to the Flare Gas (Prevention of Waste and Pollution) Regulations 2018.[1101] The Commission can take free-of-charge natural gas for flaring at the flare stack. Before the commencement of petroleum production, a licensee must install metering equipment conforming to the specifications prescribed on every facility from which natural gas may be flared or vented, as the regulators may stipulate in a regulation. Failure to adhere makes a licensee an offender liable to a fine.[1102] The regulators may permit a licensee or lessee to allow natural gas flaring or venting for a specific period required for facility start-up or strategic, operational reasons, including testing.[1103] Notwithstanding, a licensee producing natural gas will, within 12 months of the effective date, submit a natural gas flare elimination and monetisation plan to the Commission, which shall be prepared per regulations made

[1099] The Petroleum Industry Act 2021, Section 104
[1100] ibid n 395
[1101] The Flare Gas (Prevention of Waste and Pollution) Regulations 2018, Section 5, <https://www.nuprc.gov.ng/wp-content/uploads/2020/06/Flare-Gas-Prevention-of-Waste-Pollution-Regulations-2018.pdf >accessed 13 July 2023, See also The Petroluem Indsutry Act, Section 105 < file:///C:/Users/s02oo2/AppData/Local/Temp/Temp1_PETROLEUM-INDUSTRY-ACT-2021.zip/PETROLEUM%20INDUSTRY%20ACT%202021.pdf > accessed 14 July 2023
[1102] ibid n 421, Section 106
[1103] ibid n 421, Section 107

by the Commission.[1104]

The above shows that the PIA 2021 has mandated some environmental considerations within the license. The licensees are responsible for meeting all the environmental protection conditions stipulated in the license. This is a step in the right direction, but whether the effort would yield results is vested in the realm of enforcement of these laws because, as earlier mentioned, regulations are only as good as their enforcement. Considering that the PIA 2021 is not the first regulation prohibiting gas flaring or citing environmental protection within a license, it would be a substantial error to overlook the enforcement of environmental laws in the oil and gas industry, especially when the magnitude of environmental pollution in Nigeria is considered.

The big question arising from these contracts is the environmental protection clauses and how a polluter would pay for environmental offences. This question goes to the root of the enforcement of environmental laws. Contracts for oil and gas activities encompass various concerns, from fiscal conditions to dispute resolution. Environmental control of the upstream oil and gas sector in developing nations and transition economies has generally centred on domestic law, various international agreements[1105] and, more recently, voluntary industry efforts. Tienharra argues that less attention has been paid to the environmental implications of contracts signed between foreign oil firms and petroleum-producing countries, which frequently play considerable, if not dominating, role in creating the regulatory system governing oil and gas activities.[1106] Per Gao,[1107] environmental concerns were not adequately addressed in the oil and gas contracts he analyzed. His finding presents two factual and normative issues,

(1) Have recent oil and gas contracts paid more attention to environmental concerns?

[1104] ibid n 421, section 108
[1105] For example, The Paris Agreement
[1106] K Tienhaara, 'Environmental Aspects of Host Government Contracts In The Upstream Oil and gasSector' (2010) 8(3) Oil, Gas and Energy Law Intelligence. Pg. 1-25
[1107] Z Gao, Environmental Regulation of Oil and gas (Wolters Kluwer Law International 1998).

(2) Should contractual parties address environmental concerns in more detail, and if yes, in what areas and by what sorts of provisions?[1108]

As with other investor-state agreements, oil and gas contracts are often not revealed to the public. This creates a significant challenge for any researcher attempting to find environmental clauses in these contracts. Numerous nations provide publicly accessible model agreements. It should be emphasized, however, that model agreements may be significantly revised or omitted entirely during the negotiation of genuine contracts. Thus, there is substantial room for improvement in the environmental protection of oil and gas contracts. When the agreement addresses these in detail, enforcing environmental laws in the oil and gas industry becomes easier.

Even though the PIA 2021 makes gas flaring illegal, it includes several loopholes that ensure the same gas flare regime remains unchecked. The Act specifies circumstances in which gas flaring is permissible. These include:[1109]

(a) in the event of an emergency,
(b) in accordance with a Commission-granted exemption, and
(c) as an acceptable safety practice under established regulations.

It further provides that the Authority or Commission may award a Licensee or Lessee permission to allow natural gas flaring or venting for a specified time *to wit* :(a) where necessary for facility start-up;[1110] or (b) for operational, strategic purposes, including testing.[1111]

This research argues that these exemptions are a step backward in Nigeria's environmental management plan, which the PIA 2021 sought to achieve. The Act does not explain what constitutes an emergency or what it means by acceptable safety practice. "Strategic, operational reasons" are beyond testing. In addition, no period is specified for flaring in the event of facility start-up or for strategic operational reasons. Oil and gas operators who do not have the environment at heart

[1108] ibid n 429
[1109] The Petroleum Industry Act 2021, Section 104
[1110] ibid n 431, Section 107
[1111] ibid n 432

could take advantage of these exemptions. Thus, substantial environmental and health damage to communities (as has been done previously) will continue. In addition, the Act specifies that monies received from gas flaring penalties by the Commission shall be transferred to the Midstream Gas Infrastructure fund for investment in Midstream Gas Infrastructure within the Host Communities of the Settler against whom the penalties are imposed.**[1112]** It suggests using gas flare fines in higher-yielding projects without specific regard for the communities impacted by gas flaring, let alone efforts to mitigate such impacts. The Act views gas flaring as a waste of economic resources that should be compensated for and not as an abuse that negatively impacts the climate, the health of populations, and their means of subsistence. In the opinion of this research, this takes Nigeria steps backwards, and it becomes difficult to reconcile these exemptions with Nigeria's climate change goals reaffirmed in COP27.[1113]

It is vital to emphasize that gas flaring has been outlawed in Nigeria since 1984.[1114] Notwithstanding, oil and gas operators continued to treat compliance as a matter of convenience and not of necessity.[1115] This attitude has persisted despite numerous federal policies, regulations, and legal frameworks on gas discharge management.[1116] In 2005, a Federal High Court in Benin City, Nigeria, upheld the illegality of the practice and determined that gas flaring violated the fundamental right to life and human dignity.[1117] Since the 1970s, the Nigerian government has established multiple deadlines for terminating gas flaring. The previous target for the elimination of flares was 2020, which was subsequently pushed back to 2025 and is now in favour of the Paris Agreement's 20% 2030 goal. As the deadlines to cease gas flaring approach, it is customary to extend them. The PIA 2021 does not provide a timetable for the cessation of flare-ups, giving the appearance that the practice will continue

[1112] The Petroleum Industry Act, Section 104(4)
[1113] United Nations 'COP27 Delivering for people and the planet' <COP27: Delivering for people and the planet | United Nations > accessed 14 July 2023
[1114] The Associated Gas Re-Injection Act 1979, Section 3 < https://faolex.fao.org/docs/pdf/nig150976.pdf >accessed 14 July 2023
[1115] G O Aigbe 'Gas Flaring in Nigeria: A Multi-level Governance and Policy Coherence Analysis' (2023) 2 Anthropocene Science, 31–47
[1116] Chapter 4 examines environmental regulations. ibid n 435
[1117] Gbemre v Shell Petroleum Development Company Nigeria Limited and Others (2005) AHRLR 151 (NgHC 2005)

indefinitely, to the detriment of host communities that suffer from its harmful effects. The Act does not appear to consider Nigeria's Nationally Determined Contributions regarding climate change (NDCs).

Nigeria has subsequently introduced the 2050 Long-Term Vision (LTV).[1118] The vision states that: "By 2050, Nigeria will be a country of low-carbon, climate-resilient, high growth circular economy that reduces its current level of emissions by 50%, moving towards having net-zero emissions across all sectors of its development in a gender-responsive manner"[1119] This vision is applaudable. However, Nigeria must walk in the path of effectively enforcing environmental laws to fulfil this vision.

7.9 Insufficient Penalties for Environmental Pollution

Per Amodu, enforcement may fail to improve compliance because it does not sufficiently deter.**[1120]** The National Oil Spill and Detection Agency (NOSDRA) Act, 2006, provides that oil companies are expected to visit and assess leakage sites and report to the National Oil Spill and Detection Agency within 24 hours or be fined N500,000 for each day of default.[1121] The failure to clean up the impacted site shall also attract a fine of One Million Naira

The research argues that this fine is easily affordable by oil and gas operators who make huge profits. In 2021, Shell declared approximately $3,9 billion as total revenues from its operations in Nigeria and $1,437,120,707 Profit before tax.[1122] Nigeria's own National oil company, oil asset NNPC Limited, declared a tax profit of N674 billion ($ 1.5 billion) for 2021.[1123] SEPLAT Energy declared a revenue of $733.2m for 2021 and a profit of $ 340.5 million.[1124] The 2022 annual report of SEPLAT has not been published at the time of writing this chapter. Companies producing more than 10,000bpd are liable to a fine of $2 per 1000 Standard SCF of

[1118] 2050 Long-Term Vision for Nigeria (LTV-2050) |< http://climatechange.gov.ng/wp-content/uploads/2022/01/Nigeria_LTS1.pdf >accessed 14July 2023
[1119] ibid n 440
[1120] ibid n 1119
[1121] NOSDRA Act 2006 ,Section 6(2) <NOSDRA-ACT.pdf>accessed 28 April 2023
[1122] Shell 'Tax Contribution 2021-Nigeria' < https://reports.shell.com/tax-contribution-report/2021/our-tax-data/africa/nigeria.html >accessed 30 April 2023
[1123]N A Uko and S Isuwa 'NNPC Declares N674bn Profit For 2021' < https://leadership.ng/nnpc-declares-n674bn-profit-for-2021/ >accessed 30 April 2023
[1124] SEPLAT Financial Report 2021 <ng-seplat-2021-ar-00.pdf - Google Drive >accessed 30 April 2023

gas flared, while those producing less than 10,000 bpd are liable to a fine of $0.5 per 1000scf of gas flared.[1125] The oil and gas companies mentioned above are not exhaustive of Nigeria's complete list of oil and gas operators. A close examination of the fines for company flaring gas is little when compared to the revenues and profits they declare. The fact that Nigeria is amongst the top nine countries with the highest gas flare in the world for the year 2022 [1126] is a serious reason why gas flaring penalties should be increased.

Furthermore, section 5 of the Flare Gas (Prevention of Waste and Pollution) Regulations 2018 provides that "any person who, acting on behalf of a producer, supplies inaccurate or incomplete Flare Gas Data to the Department of Petroleum Resources or any other duly empowered lawful authority, commits an offence and is liable upon conviction to a fine of N50,000 or an imprisonment of a term of not more than six months or to both such fine and imprisonment".[1127] The Commission, by virtue of the powers of the PIA 2021, seeks to amend the above regulation, replacing it with The Gas Flaring, Venting & Methane Emissions (Prevention Of Waste And Pollution) Regulations, 2022.[1128] Section 5 of the Gas Flaring, Venting & Methane Emissions (Prevention Of Waste And Pollution) Regulations, 2022 provides that "where the Producer fails to supply or supplies inaccurate or incomplete Gas Data to the Commission, commits an offence and is liable upon conviction of the following Fines: (1) 10,000 US Dollars or Naira equivalent on the first day it fails to provide accurate or complete Gas Data; and (2) 500 US Dollars or Naira equivalent for each day in which the failure continues". [1129] Although this regulation is still listed as a draft on the Commission's website, it is argued by this research that both penalties for gas flaring are insufficient to deter oil and gas operators from flaring gas.

[1125] O Akintayo 'FG imposes N22bn fine on oil firms over gas flaring '(2023) < https://punchng.com/fg-imposes-n22bn-fine-on-oil-firms-over-gas-flaring/?utm_source=auto-read-also&utm_medium=web >accessed 30 April 2023

[1126] The World Bank 'Global Gas Flaring Data' (2022) < Global Gas Flaring Data (worldbank.org) >accessed 30 April 2023

[1127] Section 5, Flare Gas (Prevention of Waste and Pollution)Regulations 2018 < https://www.nuprc.gov.ng/wp-content/uploads/2020/06/Flare-Gas-Prevention-of-Waste-Pollution-Regulations-2018.pdf >accessed 30 April 2023

[1128] Gas Flaring, Venting & Methane Emissions (Prevention Of Waste And Pollution) Regulations, 2022 < https://www.nuprc.gov.ng/wp-content/uploads/2022/12/Gas-Flaring-and-Venting-Prevention-of-waste-and-Pollutions-Regulations.pdf >accessed 30 April 2023

[1129] ibid n 1081

In comparison, the Environmental Quality Act of Malaysia 1984 provides that any person who contravenes the restrictions on pollution of the soil[1130] , restrictions on pollution of the atmosphere [1131], restrictions on pollution of inland waters [1132] "shall be guilty of an offence and shall be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a period not exceeding five years or to both and to a further fine not exceeding one thousand ringgit a day for every day that the offence is continued after a notice by the Director General requiring him to cease the Act specified therein has been served upon him".[1133] One hundred thousand ringgit is approximately $21,983.[1134] Section 27 (2) provides that any person who contravenes the prohibition of discharge of oil into Malaysian waters shall be guilty of an offence and shall be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a period not exceeding five years or to both.[1135] Five hundred thousand ringgit is approximately $109,918.[1136]

Data obtained from the National Oil Spill Detection and Response Agency (NOSDRA) revealed that oil companies continue to discharge gas instead of utilising it, resulting in penalties of N260 billion naira ($602.4 million) in the last 15 months.(i.e. April 2022- July 2023).[1137] The amount was calculated by multiplying each month's average official exchange rate by the monthly penalties payable in dollars as presented in the gas discharge tracker.[1138] Oil and gas analysts attribute the increase in gas flaring to the Federal Government's low penalties, a lack of infrastructure investment, and the lack of enforcement of environmental laws in the industry.[1139]Per Okereke, Gas flaring penalties in Nigeria are among the lowest in the world. However, they are not paid in full due to inadequate monitoring by the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) and inadequate enforcement and

[1130] Environmental Quality Act of Malaysia 1984, Section 24 (3)
[1131] Environmental Quality Act of Malaysia 1984, Section 22 (3)
[1132] Environmental Quality Act of Malaysia 1984, Section 25 (3)
[1133] ibid n 1137 Section 25(3)
[1134] OANDA currency converter < https://www.oanda.com/currency-converter/en/?from=MYR&to=USD&amount=100000 > accessed 20 July 2023
[1135] Environmental Quality Act of Malaysia 1984, Section 27 (2)
[1136] ibid n 1135
[1137] A Ibrahim and C Ndigwe 'Gas flaring penalties hit N260 billion in 15 months' (Business Day, 18 April 2023) < https://businessday.ng/energy/article/gas-flaring-penalties-hit-n260-billion-in-15-months/ >accessed 27 July 2023
[1138] ibid n 1137
[1139] ibid n 1137

measurement tools in the country.[1140]

The cost-benefit analysis of enforcement discussed in Chapter 5 (5.6.3) of this research is instructive in this regard. Per Heyes, the basic approach to modelling compliance with environmental regulation is a variant of a more general model of Becker 1968.[1141] The Becker model stipulates that fines for law-breaking are treated as any other cost of doing business.[1142] The fine will be paid if it is lower than the cost of obeying the law. It is simply business.

7.10 The Blunt Knife of the Judiciary

Despite the obvious importance of the judiciary in enforcing environmental laws, the judiciary in Nigeria holds a blunt knife which means giving judgements but not making sure that these judgements are executed.

In *Jonah Gbemre v. Shell Petroleum Construction Company of Nigeria Ltd*[1143] (hereinafter referred to as Gbemre's case), the plaintiffs sought to establish a momentum that would address environmental protection's marginalization or outright disregard through the development of a solid regulatory framework. In contrast to other environmental degradation cases, the reliefs sought in *Gbemre v. SPDC* did not centre on monetary compensation, making the decision notable. Instead, the concept of proving the legal right to a healthy environment was the main goal. Additionally, the judgement aimed to completely prohibit gas flaring in the Jwherekan Community. By declaring the practice to be incompatible with the rights protected by sections 33(1) and 34(1) of the Constitution of the Federal Republic of Nigeria 1999 as well as Articles 4, 16, and 24 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, it also aimed to bring about a reform of the laws governing gas flaring in Nigeria.[1144]

[1140] ibid n 1139
[1141] A Heyes 'Implementing Environmental Regulation: Enforcement and Compliance' < enforcement.dvi (oecd.org)>accessed 30 April 2023
[1142] ibid n 1140
[1143] Unreported Suit No. FHC/CS/B/153/2005 delivered on 14 November 2005. <http://www.climatelaw.org/cases/case-documents/nigeria/ni-shell-nov05-decision.pdf accessed 25 April 2023
[1144] The African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Articles 4, 16, and 24 of

The fact that the Gbemre case was brought as a fundamental human rights application under the Fundamental Human Rights (Enforcement Procedure) Rules of 1979 may be the basis for this discrepancy in the redress sought. Given that it was the first-time environmental protection had been defined in terms of human rights, the Gbemre judgement was unquestionably a turning point in the history of environmental protection.[1145]The judgement placed greater emphasis on the environment than on the potential loss of investment and income for the host community, making it the first judicial body in Nigeria to declare gas flaring illegal. This is in contrast with the other instances that the courts had heard before the Gbemre case, which had been resolved as tort claims under the common law.[1146] This case is the judiciary's first and most forceful intervention to curtail the excesses of oil multinational corporations and order the passage of a law mandating environmentally friendly practices in the oil and gas industry.[1147]Despite this, has the Gbemre decision aroused false hopes?

Per Faturoti et al., the Nigerian federal government, unfortunately, transformed Gbemre's case into a hollow victory by failing to implement the court's ruling. While the court may have the authority to declare any law passed by the legislative branch unconstitutional, this authority does not include lawmaking.[1148]Several circumstances have impeded the implementation of the Gbemre judgement. The applicant filed a motion for contempt of court against the respondent after the first and second respondents failed to comply with the order requiring them to halt gas flaring in the community. On April 10, 2006, the Federal High Court of Nigeria granted a conditional stay of execution of the order to cease gas venting. The ruling stipulated three conditions. Relevant was the order requiring both Shell Petroleum Development Company of Nigeria (SPDC) and Nigeria National Petroleum Corporation (NNPC) to submit a detailed plan to achieve zero gas venting by April 30, 2007. Both parties

[1145] R. A. Mmadu, 'Judicial Attitude to Environmental Litigation and Access to Environmental Justice in Nigeria: Lessons from Kiobel', (2013) 2 Afe Babalola University Journal of Sustainable Development Law and Policy pp. 14943.
[1146] See the case of R. Mon and B. Igara v. Shell BP Petroleum Company of Nigeria (174) 2 RSLR
[1147] B Faturoti, G Agbaitoro & O Onya, 'Environmental Protection in the Nigerian Oil and Gas Industry and Jonah Gbemre v. Shell PDC Nigeria Limited: Let the Plunder Continue?' (2019) 27 African J Int'l & Comp L 225
[1148] ibid n 1147

disregarded this edict, and no action was taken against these companies.[1149]

The abrupt transfer of the judge to another judicial division and the mysterious disappearance of the case file further complicated the situation. Subsequently, SPDC was granted an additional stay of execution without any known conditions. [1150]After more than ten years since the Gbemre decision, neither the executive nor the legislative branches of government have taken any action to implement its spirit, so it could be argued that the so-called landmark case has faded into obscurity. This was a case where the judiciary could have shown its sharp edges. Regrettably, due to a perceived lack of understanding of the core causes of the region's crisis and a drive for economic expansion at the expense of a safe and healthy environment, the landmark judgement of this case was never implemented.[1151]The enforcement of this decision would have been useful and significant in proving the government's seriousness in making genuine attempts to address both environmental deterioration and, by extension, the repeated militant operations in the Niger Delta.

According to Faure, it is of the highest significance that an impartial judge may implement environmental legislation. In general, the judiciary is responsible for enforcing (1) environmental legislation enacted by the legislature and (2) permits issued by administrative agencies. In most cases involving environmental pollution, there is a conflict of interest between environmental protection and the industry's commercial interests. This disagreement should not fall under the purview of the courts. Theoretically, these interests have already been balanced by the legislature, which has chosen in favour of environmental protection by passing environmental protection legislation. The administrative body has employed the same balancing act in imposing permission conditions. Given clear and specific legislation, the judiciary's responsibility is limited to its enforcement. This enforcement function for the judiciary is crucial, as repeated efforts to balance these interests when a matter is brought before a court should be avoided. An independent judiciary should respect and

[1149] ibid n 1148
[1150] Amnesty International, Nigeria: Petroleum, Pollution and Poverty in the Niger Delta (Amnesty International Publications, 2009), p.77.
[1151] ibid n 1150

implement the decisions of the legislative and administrative authorities.

7.11 Conclusion

From the above analysis, the research answers the first question: "***Is the enforcement regime of environmental laws in the Nigerian Oil and gas Industry effective***?" in the negative. The enforcement regime of environmental laws in the Nigerian oil and gas industry is not effective and needs to be overhauled. Until enforcement is effective in this industry, the question *"Quo Vadis Nigeria?"* will be a reoccurring one, with academics, scholars and even citizens of Nigeria seeking an answer.

The Nigerian petroleum industry's lengthy history of poor environmental practices falls short of various national and international environmental standards, highlighting the pressing need for action toward more effective environmental regulation and protection. While environmental and petroleum-related regulations exist in Nigeria, several loopholes make enforcement challenging, as mentioned above. Recent literature advocates for a more collaborative approach to environmental regulation; however, this does not negate the need for a more effective enforcement system, as history has shown that some violators can be obstinate, particularly when they are large companies.[1152] Environmental legislation lacking the coherence required to institute an airtight case against an offending party should be reviewed urgently to create a more sustainable environment and improve environmental protection and regulation because environmental problems in all areas now threaten humanity's survival.[1153]Taking the preemptive action of criminalizing environmental damage in Nigeria will reduce the likelihood of Nigeria being regarded as part of the global environmental issue when the international community finally awakens to the reality of the demands of this crime. This is especially true given that Nigeria is Africa's biggest supplier and exporter of crude energy. Furthermore, waiting for the international community to provide a solution without considering Nigeria's social, political, and economic growth pace may not be the best option, as the one-size-fits-

[1152] C. Chuks-Ezike, "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" (2018) 7(1) International Journal of Environment and Sustainability 30, 40.
[1153] R. White, Crimes Against Nature: Environmental Criminology and Ecological Justice (1st edn, Routledge 2013) 328

all method has never worked in such cases.[1154]

Per Shimshack, environmental laws are largely nonbinding guidance without monitoring and enforcement.[1155] Although economists and philosophers have thought seriously about the broader public enforcement of law since at least the eighteenth century, environmental monitoring and enforcement remain both understudied and controversial. The consequences of ignoring monitoring and enforcement issues can be disastrous for environmental quality and social welfare.[1156] If a regulatory agency imposes a new stricter regulation but non-enforcement is rampant, the ultimate result may be more pollution– not less pollution. Alternatively, ignoring monitoring and enforcement costs might lead the government to implement a policy that is ultimately costlier (once monitoring and enforcement costs are considered) than one currently in existence.

The issues addressed in this chapter have answered the question Quo Vadis Nigeria? The Country cannot be going anywhere productive or positive with these issues. Therefore, tackling the issues raised in this research will greatly improve the enforcement of environmental laws in Nigeria's oil and gas industry. It will also demonstrate the Nigerian government's good intentions in addressing the systematic environmental devastation that has previously persisted in the Country's petroleum sector activities. As a result, the Nigerian government will be able to contribute more to reaching the United Nations Sustainable Development Goals by 2030 through other petroleum industry companies.[1157]

[1154] N. Gunningham, "Enforcing Environmental Regulations" (2011) 23(2) Journal of Environmental Law 169
[1155] J Shimshack, The Economics of Environmental Monitoring and Enforcement' (2014) 6(1) Annual Review of Resource Economics PP. 339-360
[1156] ibid n 1155
[1157] C T. Brown & N S. Okogbule, 'Redressing Harmful Environmental Practices in the Nigerian Petroleum Industry through the Criminal Justice Approach' (2020) 11 J Sustainable Dev L & Pol'y 18

CHAPTER EIGHT: CONCLUSIONS AND PRACTICAL UTILITY

8.1 Introduction

This research commenced in Chapter 1 with four key aims, which are enumerated below:

1. *To show the environmental degradation inherent in the activities of the oil and gas industry in Nigeria with specific reference to the Niger Delta region*
2. *To examine the practice and principles of an effective enforcement regime.*
3. *To examine the issues with the enforcement of environmental laws in the oil and gas industry.*
4. *To propose practical solutions to the ineffective enforcement of environmental laws in the Nigeria Oil and gas Industry*

Chapters 1 to 3 addressed the first aim, chapters 4-7 addressed the second and third aims, while this chapter will address the fourth and final aim. The first question of this research was answered in the negative. Therefore, this chapter proffers answers to the second question of the research to wit: '*What are practical solutions to make the regime effective?*

To avoid unbridled optimism, the recommendations proffered by this research are practical in the researcher's opinion. This research hopes these recommendations can be guidelines for the Nigerian government to remedy the challenges critically analyzed in Chapter 7 above. The fact that the PIA 2021 recently came on board gives Nigeria a new opportunity to get enforcement right in the oil and gas industry. The research makes a clarion call to the Nigerian government to take environmental protection seriously. Climate change is lurking, and effective enforcement of environmental laws in the oil and gas industry is a significant opportunity to fulfil the targets of Nigeria's Nationally Determined Contribution to the Paris Agreement, as discussed in chapter three of this research.[1158] The Nigerian government reaffirmed this commitment at COP26 held in Glasgow, Scotland in 2021.[1159] Based on the findings and critical analysis carried out by this research, below are the proffered

[1158] See Chapter 3 of the Research.
[1159] Climate Home News 'Nigeria commits to annual carbon budgets to reach net zero under climate law' (2021) < https://www.climatechangenews.com/2021/11/22/nigeria-commits-annual-carbon-budgets-reach-net-zero-climate-law/ > accessed 25 July 2023

recommendations:

8.2 Creation of a Single and Independent Environmental Enforcement Agency

It is argued by this research that a single environmental enforcement agency like SEPA and the EPA would be a suitable solution to the issues discussed in Chapter 6.[1160] The benefits of this approach are multi-dimensional and are, in the opinion of this research, a major solution to curb ineffective environmental enforcement. A single enforcement body could contribute to better coordination of enforcement actions and intelligence sharing, thereby enhancing enforcement actions in general. For effective enforcement, the proper institutions must be put in place. A strong, recognizable single and independent enforcement agency, will enhance the user experience, making it simpler for individuals to file complaints and addressing cases that are presently handled by multiple entities. It would also ensure an improved assistance for oil and gas operators to comply with the rules, including coordinated guidance and communications campaigns, and a more comprehensible and proportionate enforcement strategy. The justification for this recommendation is discussed below.

8.2.1 Elimination of Multiple Enforcement Agencies

As discussed in Chapter 6(7), the multiplicity of enforcement agencies does not appear to be in the best interests of effective enforcement. Thus, the research recommends that these several enforcement agencies be consolidated and operate as one. Within this sole organization, specialized departments can be created which will focus on different areas. For example, departments focusing on oil spill investigations, Legal departments etc.

Assuming but not conceding, the new enforcement agency formed could be called the "Nigeria Environmental Protection Agency" (NEPA). Like the EPA, this new agency will be solely responsible for enforcing Nigeria's environmental laws in all sectors, including laws of the oil and gas industry. This would eliminate the problem of the exclusion of NESREA from the oil and gas industry[1161] and double reporting of oil spills

[1160] Specifically, 7.3,7.4,7.7
[1161] See Chapter 7(3) of the Research.

and waste of funds.

8.2.2 Stronger Enforcement Grip

Another benefit of a single environmental enforcement agency is that it strengthens the enforcement grip of the agency. Agencies like NOSDRA, which currently do not have any biting force, would be defunct. The new agency could effectively crack down on unscrupulous environmental offenders. Enforcement actions can be via civil or criminal actions. The research draws inspiration for this recommendation from the Economic and Financial Crime Commission (EFCC) in Nigeria. Although the EFCC is not an environmental enforcement agency, its strategic arrangement and constitution can be adapted to environmental enforcement. The research has highlighted this agency to show that creating a single enforcement agency is not alien in Nigeria, and it works concerning enforcement.

The EFCC is Nigeria's anti-graft agency, constituted on December 12, 2002, by an Act of the National Assembly during the administration of President Olusegun Obasanjo.[1162] The Commission's operations began on April 13, 2003, following the appointment and confirmation by the Senate of the first Executive Chairman, Mallam Nuhu Ribadu, and other administrative officers.[1163] The establishment of the Commission was, in part, a response to pressure from the Financial Action Task Force (FATF) on Money Laundering, also known as Grouped Action financière (GAFI) in French.[1164] GAFI is an intergovernmental organization that was established in 1989 at the initiative of the G7 (Group of Seven), an intergovernmental political forum comprised of Canada, France, Germany, Italy, Japan, the United Kingdom, and the United States of America, to devise policies to combat money laundering.[1165] FATF has identified Nigeria as one of the 23 non-cooperative countries in the global struggle against money laundering. Due to identified deficiencies in the 2002 Establishment Act, the National Assembly repealed it and enacted the 2004 Establishment Act, which President Obasanjo signed into law on June 4, 2004.[1166]

[1162] EFCC "About us" < https://www.efcc.gov.ng/efcc/about-us-new/history-of-efcc >accessed 22 May 2023
[1163] ibid n 1162
[1164] ibid n 1162
[1165] ibid n 1162
[1166] ibid n 1162

The agency is known to crack down on economic and financial crimes such as money laundering and internet fraud, also known as 'Yahoo, yahoo' in Nigeria. It sees innocent victims scammed of their money, amounting to millions of dollars.[1167] In 2022, the agency successfully secured 1223 convictions with offences ranging from impersonation, fraud and obtaining by false pretenses.[1168] Most notably, the EFCC is blind to positions. Elite members of society who have been found wanting to have been convicted for their crimes. The EFCC has its lawyers, investigative team and is funded by the Nigerian government. Yet, they have an impact that is felt strongly in the world of economic and financial crimes. The EFCC has proven that Nigeria can be effective with enforcement of its laws. Many Nigerians now say, "The fear of the EFCC is the beginning of wisdom" [1169]

This research submits that economic crimes in Nigeria are at par with the environmental crimes inherent in the Niger Delta, as examined in Chapter 3 of this research. Therefore, if the EFCC can be created to address economic crimes in the magnitude that it does, an environmental enforcement agency with a similar arrangement is essential for Nigeria's sustainable development.

In the international landscape, the EPA and SEPA, as already discussed in Chapter 5 of this research, serve as another blueprint for creating a single environmental enforcement agency. To reiterate, these agencies are for environmental enforcement and cover all industries in their respective countries. Working with other stakeholders, these agencies have an impeccable track record of environmental protection. Therefore, if created in Nigeria, the new agency would work with the Ministry of Environment, the police and the oil and gas regulators in Nigeria to ensure an effective enforcement regime. This research recommends that the command-and-control technique of enforcement discussed in Chapter 6 be vehemently applied further to strengthen the enforcement grip of the new agency. Creating a new agency

[1167] EFCC "About us" < https://www.efcc.gov.ng/efcc/about-us-new/history-of-efcc >accessed 22 May 2023
[1168] EFCC '2022 Convictions' < https://www.efcc.gov.ng/efcc/images/pdfs/3785_Convictions_recorded_in_2022.pdf >accessed 22nd May 2023
[1169] H Nwana "Nigeria: The Fear of EFCC, Beginning of Wisdom" (Vanguard, 12 October 2023) < https://allafrica.com/stories/200610120251.html >accessed 29 July 2023, See also Premium Times " Twenty cheers to the EFCC, By Williams Oseghale" (Premium Times Nigeria, April 13, 2023)

will also eliminate bureaucratic bottlenecks and shorten the line of command for environmental enforcement in the oil and gas industry. This would subsequently strengthen the enforcement grip of the agency.

8.2.3 Independence

Furthermore, creating a single environmental enforcement agency would ensure independence. The EPA and SEPA, already discussed in this research, are both independent agencies, and, as has been argued by this research, their independence to carry out their enforcement responsibilities, contributes to the successes of these agencies about environmental matters. Instead of being a ministry parastatal as obtainable in Nigeria, these agencies exist, to varying degrees, independently of extant legislative and executive institutions as examined in Chapter 4 of this research. A similar arrangement is also obtainable in the EFCC. Although the EFCC is an enforcement agency, it is independent of the Ministry of Justice. This can be replicated in the realm of environmental matters in Nigeria. As mentioned in chapter 4.5 of this research, the PIA's investment of enforcement powers in the Commission and Authority [1170] shows the government's intention to retain control over matters relating to environmental pollution in the oil and gas industry. This is a major hindrance to the independence needed for effective enforcement of environmental laws in Nigeria's oil and gas industry.

The independence of an enforcement agency cannot be overemphasized. With the new agency recommended by this research, the agency must possess a strong and independent management structure free from political and bureaucratic interference to foster transparency and eliminate conflict of interest. Enforcement of laws should not be the business of politicians. Therefore, this research avers that for the future of Nigeria's environment, environmental enforcement be entrusted to an independent agency with sufficient resources and authority. The proposed new enforcement agency should be constituted by statute and have a representative council with the autonomous secretariat and executive personnel. If Nigeria seeks to restore public confidence in monitoring and controlling pollution, enforcement agencies must be independent. It must make decisions independently. It must be financially self-

[1170] See Chapter 4.5 of the Research

sufficient and refrain from complaining that it cannot afford to carry out environmental enforcement responsibilities. The scientific integrity of the body must be above reproach. This research, therefore, submits that if there is any doubt about the scientific integrity or independence of the body, the creation of any enforcement agency amounts to a waste of time.

8.2.4 Improved Funding for Environmental Enforcement

In Chapter 7.5[1171], the issue of funding was examined as a major challenge for enforcement agencies in the oil and gas sector. The budgets of the EPA and SEPA were also discussed, and it was seen that these agencies are heavily funded for enforcing environmental laws in their respective countries. Therefore, this study recommends that enforcement agencies in Nigeria should be funded adequately. An enforcement agency that would work must be adequately funded. This can be seen with the financial budgets of the EPA and SEPA. As discussed in 6(5)[1172], amongst the issues raised by NOSDRA officials was the lack of vehicles to visit spill sites. Thus, they have had to rely on the spill data from oil and gas companies. This is not standard practice. Oil spill sites are mostly in swampy and remote areas located in the creeks of the Niger-Delta. Specialized vehicles, tug boats, helicopters and advanced technological equipments are required for investigations. These cost a lot of money.

The profits from the oil and gas industry discussed in Chapter 2(5)[1173] of the research indicate that the Nigerian government can afford higher budgets for environmental enforcement agencies. This research argues that if a new agency is created as recommended in 8(2) above, it would also improve the funding statistics of enforcement. This line of argument is based on the funds allocated for agencies that exist on their own in the 2023 Appropriation Bill[1174]. The research relies on the figures of two independent agencies and the Federal Ministry of Environment.

[1171] See Chapter 7.5 of the research.
[1172] ibid n 1171
[1173] See Chapter 2.5 of the research.
[1174] Budget Office of the Federation 'Appropriation Bill 2023' < https://www.budgetoffice.gov.ng/index.php/resources/internal-resources/budget-documents/2023-budget >accessed 30 May 2023

Agencies	Funds Allocated (Naira)
• Independent Corrupt Practices and Related Offences Commission (ICPC) • Economic and Financial Crimes Commission (EFCC) • Federal Ministry of Environment	13,631,755,133 49,901,071,521 26,417,087,566

Table 1 :2023 Budget amounts of Agencies in Nigeria.[1175]

The table above shows that the amount allocated to the EFCC alone is almost double the amount allocated to the Federal Ministry of Environment, which houses the enforcement agencies discussed in Chapter 4 of this research. The ICPC is also heavily funded. This shows that if environmental enforcement agencies gain independence from the Ministry of Environment, they will be allocated funds to carry out enforcement activities. Although the ICPC and the EFCC are enforcement agencies, they are not part of the Ministry of Justice. Therefore, to improve the funding statistics of enforcement, this research calls for a single and independent enforcement agency like SEPA and the EPA. Improved funding will also enhance the training of employees who engage in enforcement. Enforcement staff must be adequately trained for their task, as seen with the EPA and SEPA staff. The oil and gas industry contributes enormously to Nigeria's economy therefore more funds should be allocated to environmental enforcement.

It is averred by this research that for enforcement to be effective, the funds available to enforcement agencies must match the industry where the enforcement is sought to be carried out. In the just concluded COP27 held in Egypt, Nigeria's environmental Minister, Mohammed Abdullahi, requested that the G7 countries include Nigeria in a climate partnership list for the co-creation of a just energy transition partnership (JETP), as the country seeks financing to reach its net-zero emissions by 2060 goal.[1176]

According to the Minister, Nigeria required "significant resources" to implement its

[1175] ibid n 1174
[1176] Argus 'Cop 27: Nigeria seeks G7 support for energy transition' (2022) < https://www.argusmedia.com/en/news/2391310-cop-27-nigeria-seeks-g7-support-for-energy-transition > accessed 25 July 2023

energy transition plan (ETP) unveiled in 2021 in order to meet its emission reduction goals.[1177] The plan aims to reduce greenhouse gas (GHG) emissions from the power, cooking, oil and gas, transportation, and industrial sectors, which account for 65 percent of the nation's total GHG emissions. Subsequently, Nigeria would need an additional $410bn, or roughly $10bn in annual spending, to achieve its 2060 net-zero emissions goal, funds that it hopes to secure at the Cop 27 summit.[1178] If Nigeria realizes this fund from the G7 Nations as requested, it would be commendable. However, the challenge is whether these funds will be used for the purpose it was gotten and not siphoned by corrupt officials as the case of funds meant for the enforcement of environmental laws.

Conclusively, establishing a single and independent enforcement agency would aid in resolving the enforcement credibility issues discussed in the length and breadth of this research, particularly in Chapter 7, in various ways. It would enable uniform enforcement. It would establish a set of transparent and dependable standards. It would ensure that sufficient resources are allocated to address environmental concerns. In short, it would be a more credible and cost-effective approach to environmental issues. Nevertheless, whether the new enforcement agency recommended in 8(2) above is created or not, environmental enforcement agencies must be adequately funded to effectively enforce environmental laws in Nigeria.

8.3 The Judiciary in the Vanguard of Change

As argued in chapter 7(10)[1179] of this research, the judiciary plays a crucial role in environmental protection. Per Soyapi, judges are uniquely capable of protecting ecosystems (including human and non-human health) through developing, interpreting, and enforcing environmental law principles."[1180] The judiciary's ability to rule on environmental and sustainable development issues must be strengthened. This research recommends that courts should have the authority to make decisions based on sustainability concepts like the precautionary principle and to uphold environmental rights when there is scientific ambiguity. The legal system provides

[1177] ibid n 1176
[1178] ibid n 1176
[1179] See Chapter 7.10 of the Research.
[1180] C B Soyapi, 'A Multijurisdictional Assessment of the Judiciary's Role in Advancing Environmental Protection in Africa' (2020) 12 Hague Journal on the Rule of Law Pg 307–332

justice for all citizens. The courts should play an increasing role in determining environmental matters. The research aligns with the submission of Soyapi that in recent years, the connection between environmental rights, environmental protection, and the courts has become more apparent, with courts and judges being described as the ultimate vanguard of broad environmental rights and environmental rights being described as game-changing legal instruments over which judges have substantial authority.[1181] It is unacceptable that environmental litigants have to wait for as long as 2-3 years to get their matters heard in court. This needs to be urgently addressed.

There is a knowledge gap regarding the identification of the specific tasks and roles that courts must perform in advancing environmental rights, as well as their overall net contribution to advancing the type of interests that environmental rights seek to promote in Nigeria.[1182] Because courts must frequently strike a balance between contending environmental protection and development interests, however, as institutions that typically have the constitutional authority to decide and adjudicate diverse legal disputes, courts can hold government and private actors accountable and serve as the ultimate arbiters of rights and wrong regarding violations of the law.[1183] Importantly, courts are responsible for upholding constitutional values in cases that appear before them.[1184]

Markowitz avers that "Sustainable development depends upon good governance; good governance depends upon the rule of law; and the rule of law depends upon effective compliance and enforcement".[1185] The individuals and institutions responsible for ensuring compliance with environmental laws and effectively enforcing them are crucial to bridging the gap between policy goals and environmental protection.[1186] Judges, attorneys-general, and prosecutors require clear and enforceable laws, specialized training, trustworthy information, public

[1181] ibid n 1180
[1182] ibid n 1180
[1183] J R May and E Daly 'Judicial handbook on environmental constitutionalism' (2017) UNEP, Nairobi < Judicial andbook on Environmental Constitutionalism (unep.org) > accessed 1 June 2023
[1184] ibid n 1183
[1185] K J. Markowitz & Jo J. A. Gerardu, 'The Importance of the Judiciary in Environmental Compliance and Enforcement'(2012) 29 Pace Envtl L Rev 538
[1186] ibid n 1185

confidence, and political will to apply legal rules to situations that are complex and frequently entangled with the competing interests of various stakeholders.[1187] Success requires multidisciplinary approaches to developing the capacity of parliamentarians, regulators, prosecutors, and, most importantly, judges.[1188] National environmental compliance and enforcement systems for environmental and energy laws are essential components of an effective governance strategy for achieving a green economy, poverty eradication, and sustainable development goals. Well-designed environmental laws and regulations, which include implementation and enforcement systems, promote sustainable development by improving the health and safety of the workforce and communities, conserving natural resources and ecosystem services, promoting sustainability in the business community, expanding markets for environmental goods and services, creating sustainable jobs, and driving technological innovation.

One of the primary factors contributing to the ineffective implementation, development, and enforcement of environmental law in Nigeria, as examined in Chapter 6(10),[1189] is a judicial deficiency in environmental law-related knowledge, relevant skills, and information. Judges, prosecutors, legislators, and all others who play a crucial role at the national level in the process of implementing, developing, and enforcing environmental law must have their capacities bolstered. Therefore, the research recommends the creation of "green courts", i.e., environmental courts and tribunals specializing in adjudicating environmental disputes. These kinds of courts enable governments to address environmental and socioeconomic issues requiring a high level of specialized knowledge.[1190] Qualifications for serving in an environmental court or tribunal typically include education in environmental science and other technical disciplines.[1191]

Environmental Courts and Tribunals (ECTs) exist to prosecute environmental offences and civil cases. They must frequently balance environmental and economic concerns.

[1187] ibid n 1186
[1188] ibid n 1186
[1189] See Chapter 7(10) of the research.
[1190] B J Preston, 'Characteristics of Successful Environmental Courts and Tribunals' (2014) 26 Journal of Environmental Law 365, 387
[1191] ibid n 1190

Per Preston, 'Environmental Courts and Tribunals (ECTs) can address the pressing, pervasive, and pernicious environmental problems confronting society (such as climate change and biodiversity loss)'[1192] much more effectively than regular courts. This research aligns with Preston that ECTs are in a superior position than an ordinary court or tribunal to devise innovative remedies and comprehensive solutions to environmental issues.[1193] Amirante argues that environmental judges have become essential actors in implementing a voluminous body of environmental law that faces the risk of going unapplied.[1194]

While it could be argued that this may constitute judicial activism, ECTs, far from being substitutes for legislative powers, provide environmental legislation with authority through judicial enforcement and interpretation.[1195] With the creation of ECTs in Nigeria, issues with locus standi will be eliminated because the court will be vested with the jurisdiction to hear all environmental claims from concerned citizens who have legitimate grievances against the activities of the oil and gas industry and any other industry whose activities affect the environment. The approach will ensure faster delivery of judgment on environmental law cases. Like enforcement agencies, the judiciary must be blind to the position and the name or brand of oil and gas companies when delivering their judgments. Ensuring that judgments are enforced would serve as a deterrence to oil and gas offenders. Gbemre's case was a landmark case but was defeated amid a win because the court's judgment was not enforced. As discussed in Chapter 6(10), Nigerian citizens now seek justice in international courts.

To reemphasize the judiciary in the vanguard of change, the research cites the *obiter dictum* of the court in Dow v. Attorney-General[1196]*:*

> *'It [the constitution] cannot be allowed to be a lifeless museum piece; … the courts must continue to breathe life into it from time to time as the occasion may arise….*

[1192] ibid n 1191
[1193] ibid n 1191
[1194] D Amirante, 'Environmental Courts in Comparative Perspective: Preliminary Reflections on the National Green Tribunal of India' (2012) 29 Pace Environmental Law Review 441, 442
[1195] ibid n 1199
[1196] (1992) 103 I.L.R. at 173.

I conceive that the primary duty of the judges is to make the Constitution grow and develop in order to meet the just demands and aspirations of an ever-developing society which is part of the wider and larger human society governed by some acceptable concepts of human dignity[1197]*.*

Environmental issues are human rights issues, in the opinion of this research. Thus, the courts in Nigeria must be seen to render justice even if heaven falls.

8.4 The Application of a Fit and Proper Person Test

In chapter 5 [1198], SEPA's fit and proper person test was examined. As aforementioned, the test is carried out before granting an application for environmental authorization. The recommendation of this research is that the Minister of petroleum resources, who is mandated by the PIA 2021 to grant licenses for oil and gas activities, should adopt the fit and proper person test before granting these licenses. Although if the recommendation in Chapter 7(2) is implanted, the test should be carried out by the agency as opposed to the Minister. This would create transparency in the process of the test. A thorough investigation should be conducted to determine whether the applicant is fit and proper. SEPA utilizes several criteria when deciding if a person is fit and proper.[1199] The criteria allow for a range of information to be considered. These criteria are:

- Compliance history,
- Criminal convictions,
- Technical competence,
- Financial provision,
- Other relevant criteria.

These criteria are not considered in isolation from each other or in a 'tick-box' fashion. Nigeria can adopt these criteria to build an overall picture of the person alongside the fit and proper outcomes to achieve and make an informed and reasoned judgement

[1197] ibid n 1196
[1198] See Chapter 5 of the Research
[1199] SEPA 'Guidance On Who Can Hold An Authorization: 'In Control And 'Fit And Proper Person Tests' < https://www.sepa.org.uk/media/372007/guidance_on_who_can_hold_an_authorisation.pdf >accessed 30 May 2023

on whether the applicant or authorized person is fit and proper. In addition, the authorized person should be investigated at any moment whether they continue to meet the requirements of fitness and propriety. If an authorized person is no longer fit and proper, the operator's licence should either be revoked, additional requirements imposed, or enforcement action should be taken without fear or prejudice.

Caution, however, must be applied here. This is because, unlike what is obtainable in SEPA, the PIA 2021 invests the power to grant and revoke licenses on the Minister of petroleum resources, who can simultaneously be the President of Nigeria. The research in chapter four has argued that this move of the Nigerian government should be re-evaluated considering transparency and conflict of interest. It is yet to be seen if the new President, Bola Ahmed Tinubu, would function in these two capacities like his predecessor, the former President Muhammadu Buhari. As the time of writing and submitting this research, President Tinubu has not made any announcement regarding this. For the fit and proper person test to be effective, it must be done by a team of non-interested parties. This is to ensure transparency and eliminate conflict of interest. The fit and proper person test can also be a yardstick to determine the enforcement techniques employed by the enforcement agency against an offender.

8.5 A Review of Penalties for Environmental Offences.

As discussed in chapter six of this research, the penalties for environmental offences are insufficient to deter. The research, therefore, recommends an overhaul of the penalty regime to ensure that the price of violating environmental laws in the oil and gas industry is significantly higher than the price of compliance. This would balance up the cost-benefit analysis examined in chapter six. [1200] Furthermore, the operators would have no option but to comply with environmental laws since they would be paying more if they did not. Nigeria can follow in the footsteps of Malaysia. As aforementioned in chapter four, the Environmental Quality (Amendment) Bill 2022 was passed by the Dewan Rakyat (House of Representatives) of the Malaysian Parliament on 5 October 2022. The Bill continued its legislative journey for approval of the Dewan Negara (Senate) of the Malaysian Parliament and assent of the Yang

[1200] See chapter 7 of the Research.

di-Pertuan Agong (The Monarch of Malaysia) before becoming law. The law amended 28 sections of the Environmental Quality Act 1974 mainly to enhance the penalties for offences under the Act. Just like Malaysia, if Nigeria raises the penalties for environmental offences, it will hopefully become a stronger deterrence against the flouting of environmental laws and compel oil and gas operators to raise their level of compliance. Chapter six of this research examined the importance of penalties that can deter potential offenders.

8.6 The Need for an Unwavering Commitment of the Nigerian Government to Environmental Enforcement Matters.

The research argues that the commitment of the Nigerian government is vital for effectively enforcing environmental laws. If the government is not committed to reducing the environmental pollution discussed in chapter three of this research, all the recommendations will amount to wishful thinking. Thus, it is expedient that the government Acts in the best interest of the environment and tackles issues like corruption, amongst other issues that have been discussed in this research. It is insufficient to demonstrate a commitment to environmental matters simply by signing and ratifying international treaties and arguments. The Nigerian government must exercise the commitment shown by the United States of America, Scotland and Malaysia governments. Malaysia, just like Nigeria, is a developing nation but has shown incredible commitment to tackling environmental challenges emanating from the activities of the oil and gas industry; from ensuring strict adherence to the Environmental Impact Act and increasing penalties for environmental pollution, Malaysia is on a landslide with enforcement of environmental laws due to the unwavering commitment of the government.

Political will is critical to ensuring Nigerian environmental laws work for the planet. The role of government in protecting the environment stretches far beyond designing effective environmental policies since an overall ineffective and corrupt government appears to undermine public support for critical environmental policymaking.[1201] A high-quality government is characterized by impartial, fair, efficient, and incorrupt

[1201] J Kulin and I J Sev€a 'The Role of Government in Protecting the Environment: Quality of Government and the Translation of Normative Views about Government Responsibility into Spending Preferences' (2019) 49 International Journal of Sociology, Pg 110–129

institutions that exercise government authority with the interest of the citizens at heart. [1202] Regarding the issues of the conflicted triangle examined in Chapter two of this research, the researcher believes that if the Nigerian government addresses corruption and funds are invested into the Niger-Delta, the anger felt by the people will be minimal. Thus, positively impacting enforcement of laws in the oil and gas industry. Corruption should no longer be associated with the country, Nigeria. For enforcement agencies to be successful as examined in Chapter 6, the Nigerian government must cease to interfere with matters of enforcement of environmental laws in the oil and gas industry. Agency enforcement must be independent and free from politicians.

Finally, the lack of patriotism for the entity called Nigeria needs to change for environmental enforcement to be impacted positively. Charles Jefferson said "Patriotism is a thing of the heart. A man is a patriot if his heart beats true to his country". Patriotism is key to all the issues raised and recommendations proffered in this research. Environmental issues must be taken seriously in Nigeria. As Secretary-General of the United Nations, António Guterres pointed out "the climate emergency is a race we are losing, but it is a race we can win". [1203] The global impact of climate change is pervasive and affects every region on Earth. Nigeria is not in a country in space. The escalation of temperatures is contributing to the deterioration of the environment, the occurrence of natural catastrophes, the intensification of weather extremes, the insecurity of food and water resources, the disruption of economic activities, the emergence of conflicts, and the potential for terrorism. The phenomenon of increasing sea levels, melting Arctic ice, coral reef degradation, ocean acidification, and forest wildfires are among the pressing environmental concerns now observed. It is evident that maintaining the status quo with enforcement of environmental laws in the oil and gas industry operations is insufficient. Considering the escalating and irreversible implications of climate change, Nigeria must make decisive and concerted efforts towards enforcement of its environmental laws. A

[1202] B Rothstein, The Quality of Government: Corruption, Social Trust, and Inequality in International Perspective. (2011, Chicago, IL: The University of Chicago Press) 1
[1203] United Nations' The Climate Crisis – A Race We Can Win' < https://www.un.org/en/un75/climate-crisis-race-we-can-win >accessed 25 July 2023

country desirous of and striving for rapid economic progress must achieve its goals without making concessions that would negatively impact the environment. Effective enforcement of environmental laws must never be considered as part of any concessions. The researcher, therefore, avers:

Arise, O compatriots, Our environment's call obey,

To defend its sustainability,

With determination and effective enforcement of environmental laws![1204]

[1204] Rephrased from the Nigerian National Anthem < https://nigeria-can.org.au/nigerian-national-anthem/ >accessed 25 July 2023

BIBLIOGRAPHY

Articles

- Abbas G and Lin C.Y., 'Oil and Gas Service Contracts Around the World: A Review' (2014) 3 Energy Strategy Reviews. Pg.63-71
- Abdulkadir A. B, "The Right to A Healthful Environment in Nigeria: A Review of Alternative Pathways to Environmental Justice in Nigeria' (2014) 3(1) Afe Babalola University: Journal of Sustainable Development Law and Policy Pg 118-122
- Abdulkadir A.B., 'The Right to A Healthful Environment in Nigeria: A Review of Alternative Pathways to Environmental Justice in Nigeria' (2014) 3 Afe Babalola University: Journal of Sustainable Development Law and Policy. (Pg 118-131
- Adebayo T 'Oil spill from Shell pipeline fouls farms and a river in a long-polluted part of Nigeria ' (ABC News, 26 June 2023) < https://abcnews.go.com/International/wireStory/oil-spill-shell-pipeline-fouls-farms-river-long-100374598 >accessed 13 July 2023
- Adedoyin O A & Ogechukwu M.A., 'Sustainable Development and the Exploitation of Bitumen in Nigeria: Assessing the Environmental Laws Faultlines' (2021) 12 Beijing Law Review 113
- Adeoluwa R O, Appraisal of the Operationalization of National Environmental Regulations in Nigeria under the National Environmental Standards and Regulations Enforcement Agency, (2018) 9 Nnamdi Azikiwe U. J. Int'l L. & Juris. 199
- Ajayi, O. G. et al 'Towards the Mitigation and Possible Amelioration of Coastal Pollution in Nigeria – A Review of a Legal Act (Oil in Navigable Waters Act [Cap 337] Laws of the Federation of Nigeria 1990 [1968 No. 34.])' 2014 4(1) International journal of advanced scientific and technical research Pg 591-604
- Ajomo, M. A. 'Ownership of Mineral Oils and the Land Use Act' (1982) Nigerian Current Law Rev. Pg.335
- Akanle O, 'Pollution Control Regulation in the Nigerian Oil Industry', (1999) Nigerian Current Law Review 347.

- Akinlo, A. E. "How Important is Oil in Nigeria's Economic Growth? (2012) 5(4) Journal of Sustainable Development. Pg. 165
- Akinsulore, A. 'Evolving a Legal Framework for Sustainable Development and Utilization of Nigeria's Bitumen Resources'. (2018) Nigerian Current Law Review, 194-224.
- Akujuru, C. 'True Federalism and Sustainable Development in Nigeria (A Discourse on National Question and/or National Maladies)' (2015) < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2601963>accessed 22 December 2022
- Aladeitan, L. 'Ownership and Control of Oil, Gas, and Mineral Resources in Nigeria: Between Legality and Legitimacy' (2013)38 Thurgood Marshall Law Review 159
- Aluko, M. A. O. 'Sustainable Development, Environmental Degradation and the Entrenchment of Poverty in the Niger Delta of Nigeria', (2004) 15 (1) Journal of Human Ecology 65
- Arnold K. & Angela K, 'Environmental Rule of Law in the Context of Sustainable Development' (2020) 32 Geo Envtl L Rev 591
- Atanda I A. et al, ''A Nation Bewildered and a State in Comatose': Corruption and Socio-Economic Development in Nigeria' (2021) Rev Universitara Sociologie 295
- Atere T, 'Oil and gas Exploration and Production Contracts in Nigeria: Creating A Balance Between National Oil Companies and Private International Partners' (2018) 16 (1) Oil, Gas and Energy Law Intelligence. Pg.1-12
- Auty, R. M. 'Rent Cycling Theory, the Resource Curse, and Development Policy' (2007) 5(4) OGEL 1.
- Axelrod, R. and Keohane, R.O, 'Achieving Cooperation under Anarchy: Strategies and Institutions' (1985) 38 World Politics 226,

- Babalola, D. ' Nigeria: A federation in search of Federalism' (2017) 50 Shades of Federalism < http://50shadesoffederalism.com/case-studies/nigeria-federation-search-federalism/ >accessed 11 December 2022

- Baldwin, R. "The New Punitive Regulation" (2004) 67(3) Modern Law Review 351-383.
- Barro R. J., 'Economic Growth in a Cross-Section of Countries' (1991) 106(2) the Quarterly Journal of Economics 407-443.
- Baskarada, S. "Qualitative case study guidelines". (2014) 19 The Qualitative Report, 1–25.
- BBC News 'Niger Delta Avengers: Nigeria's Newest Militants' (2016) < https://www.bbc.co.uk/news/world-africa-36414036 > accessed 28 October 2021.
- Becker G S., 'Crime and Punishment: An Economic Approach' (1968) 76 Journal of Political Economy 169.
- Becker, G. S. 'Crime and Punishment: An Economic Approach' (1968) 76 Journal of Political Economy. Pg. 169-217
- Biose H, 'Gas Production and Utilisation in Nigeria: A Long-Term Perspective (2019) 6(5) International Journal of Engineering Technologies and Management Research 59.
- Brown C T. & Okogbule N S., 'Redressing Harmful Environmental Practices
- in the Nigerian Petroleum Industry through the Criminal Justice Approach' (2020) 11 Journal of Sustainable Development Law & Policy 18
- Buell S W., "The Upside of Overbreadth" (2008)83 N.Y.U. L. REV. 1491-1493

- Černý A. and Filer, R. K. 'Natural Resources: Are They Really a Curse?' (2007) Centre for Economic Research and Graduate Education Working Paper Series 321 1 < https://www.cerge-ei.cz/pdf/wp/Wp321.pdf > accessed 11 December 2022
- Christopher, B. et al, 'Winners and Losers in the Commodity Lottery: The Impact of Terms of Trade Growth and Volatility in the Periphery 1870-1939' (2007) 82(1) Journal of Development Economics 156-179.
- Chuks-Ezike, C. "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" (2018) 7(1) International Journal of Environment and Sustainability 30, 40.

- Cleverline T. B & Okogbule N S., 'Redressing Harmful Environmental Practices in the Nigerian Petroleum Industry through the Criminal Justice Approach' (2020) 11 Journal Sustainable Development Law & Policy 18
- Cohen M. A, 'Oil Pollution Prevention and Enforcement Measures and their Effectiveness: A Survey of Empirical Research from the US', in Faure M G and Hu J, *Prevention and Compensation of Marine Pollution Damage* (New York: Kluwer Law International 2006) 37.
- Cohen, M A., Monitoring and Enforcement of Environmental Policy (August 1998). Available at SSRN: https://ssrn.com/abstract=120108 or http://dx.doi.org/10.2139/ssrn.120108 >accessed 10 December 2022
- Cohen, M. A, 'Criminal Law as an Instrument of Environmental Policy: Theory and Empirics', in Heyes A, *The Law and Economics of the Environment* (Aldershot: Edward Elgar 2001) 198, 200.
- Cohn M, 'The Evolution of Unreasonableness and Proportionality Review of the Administration in the United Kingdom' (2010) 58 American Journal of Comparative Law 629.
- Corrigan C C., "Breaking the Resource Curse: Transparency in the Natural Resource Sector and the Extractive Industries Transparency Initiative" (2014) 40 Resources Policy 19.
- Crowe S et al. "BMC Medical Research Methodology" (2011) < 1471-2288-11-100.pdf (springer.com) > accessed 18 November 2022
- Curtis, D. M. 'Comparative Tertiary Petroleum Geology of the Gulf Coast, Niger, and Beaufort-Mackenzie Delta Areas' (1986) 21 Geological Journal 225.
- Cust, J. and Manley, D 'The Natural Resource Charter Second Edition' (2014) Natural Resource Governance Institute 4 < http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.468.8759&rep=rep1&type=pdf > accessed 10 December 2022

- Dakolias M & Thachuk K, 'Attacking Corruption in the Judiciary: Critical Process in Judicial Reform' (2000) 18 Wis Int'l LJ 35
- Davis, G. and Tilton, J. E. 'Should Developing Countries Renounce Mining? A Perspective on the Debate' (2002) 5

< https://www.researchgate.net/publication/228584093_Should_developing_countries_renounce_mining_A_perspective_on_the_debate > accessed 10 December 2022

- Deloitte "Petroleum Industry Act: Nigeria's New Oil and Gas Regulatory Framework" (2021)< https://www2.deloitte.com/content/dam/Deloitte/ng/Documents/energy-resources/Petroleum%20Industry%20Act_Nigerias%20New%20Oil%20and%20Gas%20Regulatory%20Framework.pdf >accessed 6 February 2023
- Ding, N. and Field, C. 'Natural Resource Abundance and Economic Growths' (2005) 81(4) Land Economics 496-503.
- Donwa, P.A. et al," Corruption in the Nigerian Oil and gas Industry and Implication for Economic Growth "(2015)14 International Journal of African and Asian Studies, 38-39
- Doust, H. 'Petroleum Geology of the Niger Delta' (1990) 50 Geological Society, London, Special Publications 365.
- Downs, G W, Rocke D.M, and Barsoom P.N., 'Is the Good News about Compliance Good News about Cooperation?' (1996) 50 International Organization 379, 382.
- Duruigbo, E. The Global Energy Challenge and Nigeria's Emergence as A Major Gas Power: Promise, Peril or Paradox of Plenty? (2009). 21 Geo. Int'l Envtl. L. Rev. 395, 442

- Ebiede T M, 'Conflict Drivers: Environmental Degradation and Corruption in the Niger Delta Region' (2011) 1(1) African Conflict and Peacebuilding Review 139, 145.
- Egbas J 'How Diezani escaped Nigeria and became Commissioner in Dominica' (2020)< https://www.pulse.ng/news/local/how-diezani-escaped-nigeria-and-became-commissioner-in-dominica/bbm3rzv >accessed 30 April 2023
- Effiong, J. 'Oil and Gas Industry in Nigeria: The Paradox of the Black Gold' (2010) 18 Environment and Social Justice: An International Perspective 329-330.

- Eigen P, 'Fighting Corruption in a Global Economy: Transparency Initiatives in the Oil and Gas Industry' (2007) 29 Hous J Int'l L 327
- Ekhator, E. O, 'Environmental protection in the oil and gas industry in Nigeria: the roles of governmental agencies' (2013) 196 International Energy Law Review Pg 4
- Ekhator, E. O. "Public Regulation of the Oil and Gas Industry in Nigeria: An Evaluation," (2016) 21 (6) Annual Survey of International & Comparative Law, 43-91
- Elenwo E I, Akankali J A," Environmental Policies and Strategies in Nigeria Oil and Gas Industry: Gains, Challenges and Prospects" (2014) 5 Natural Resources 884-896
- Eremie, V T 'How True is Nigeria's Federalism: A Theoretical Perspective '(2014) 3(4) Public Policy and Administration Research pg. 82
- Erk, J. 'Austria: A Federation without Federalism', (2004), 34 (1,) Publius, The Journal of Federalism, 1-20.
- Esworthy R, 'Federal Pollution Control Laws: How Are They Enforced?' (2014) Congressional Research.

- Fagbadebo O, 'Corruption and the Challenge of Accountability in the Post-Colonial African States: A Discourse' (2019) 8 (1) Journal of African Union Studies 9, 14.
- Fang L, Hipel K W. and Kilgour D M, 'Enforcement of Environmental Laws and Regulations: A Literature Review' In: Keith W. Hipel and Liping Fang, Stochastic and Statistical Methods in Hydrology and Environmental Engineering. Water Science and Technology Library, (1994) 10(2) Springer, Dordrecht, 3
- Faturoti, B et al "Environmental Protection in The Nigerian Oil and gas Industry and Jonah Gbemre V. Shell PDC Nigeria Limited: Let the Plunder Continue?" (2019) 27(2) African Journal of International and Comparative Law Edinburgh University Press, 225–245

- Faure, M.G and Svatikova, K. 'Criminal or Administrative Law to Protect the Environment? Evidence from Western Europe' (2012) 24(2) Journal of Environmental Law 253.

- Gunningham, N. 'Enforcing Environmental Regulation' (2011) 23 Journal of Environmental Law 175.
- Hammarberg K, et al 'Qualitative Research Methods: When to Use them and How to Judge them' (2016) 31 Human Reproduction 498.
- Heine, G. 'Marine Oil Pollution: Prevention and Protection by Criminal Law – International Perspectives, Corporate and/or Individual Criminal Liability', in Faure M G and Hu J, *Prevention and Compensation of Marine Pollution Damage* (New York: Kluwer Law International 2006)41
- Hutter, B.M 'Regulating Employers and Employees: Health and Safety in the Workplace' (1993) 20 Journal of Law and Society 452.

- Ibrahim A and Ndigwe C 'Gas flaring penalties hit N260 billion in 15 months' (Business Day, 18 April 2023) < https://businessday.ng/energy/article/gas-flaring-penalties-hit-n260-billion-in-15-months/ >accessed 27 July 2023
- Idemudia, U. and Ite, U.E "Corporate–community relations in Nigeria's oil industry: challenges and imperatives" (2006) 13(4) Corporate Social Responsibility and environmental management 194-206.
- Ighalo J O, Enang W P and Nwabueze Q A, 'Re-evaluating the Problems of Gas Flaring in the Nigerian Petroleum Industry' (2020) 147 World Scientific News 76, 78.
- Ihaza, E. "Nigeria — The Giant of Africa? The Controversial Joke That Needs to Stop" (2020)
- Ijaiya H & Joseph O.T., 'Rethinking Environmental Law Enforcement in Nigeria' (2014) 5 Beijing L Rev 306
- Ikpobari, S. "The Ogoni Bill of Rights (OBR): Extent of actualization 25 years later? (2015) The Extractive Industries and Society. 2.

- International Monetary Fund, 'Nigeria' (2015) IMF Country Report No 15/84 28-30 <https://www.imf.org/external/pubs/ft/scr/2015/cr1584.pdf> accessed 4 December 2019.
- Isochukwu, "Brief History of Oil and gas in Nigeria" (2021) < https://isochukwu.com/2018/07/09/brief-history-of-oil-and-gas-in-nigeria > accessed 28 October 2021.
- Ite, A. E. et al 'Petroleum Exploration and Production: Past and Present Environmental Issues in the Nigeria's Niger Delta' (2013) 1 American Journal of Environmental Protection 80.
- Jeong, Y., Weiner, R.J., Who bribes? Evidence from the United Nations' oil-for-food program. (2012) Strateg. Manag. J. 33, 1363–1383.
- Joens P, 'Iowa climate activist sentenced to eight years in federal prison for Dakota Access pipeline sabotage '(2021) Des Moines Register < https://eu.desmoinesregister.com/story/news/crime-and-courts/2021/06/30/iowa-activist-jessica-reznicek-sentenced-dakota-access-pipeline-sabotage-catholic-workers/7808907002/ >accessed 26 January 2022
- Kagan, R A. 'Understanding Regulatory Enforcement,' (1989) 11 Law & Policy Pg.89–119.
- Kagan, R. and Scholz, J. 'The "Criminology of the Corporation" and Regulatory Enforcement Strategies', in Hawkins K and Thomas J M, *Enforcing Regulation* (New York: Kluwer Nijhoff Publishing 1984).
- Kahn-Freund O, 'On Uses and Misuses of Comparative Law' (1974) 37 The Modern Law Review 1-2,
- Karl, T. Lynn 'Ensuring Fairness: The Case for Transparent Fiscal Social Contract' in Macartan H, et al, *Escaping the Resource Curse* (Columbia University Press 2007) 258–293.
- Karpoff J M and Lott J R, 'The Reputational Penalty Firms Bear from Committing Criminal Fraud' (1993) 36 the Journal of Law and Economics 757.
- Karpoff, J., Lott, J. and Rankine, G. 'Environmental Violations, Legal Penalties, and Reputation Costs', John M. Olin Law and Economics Working Paper No. 71, second series (University of Chicago Law School 1998).

- Kartick G "Are oil and gas firms more likely to engage in unethical practices than other firms? "(2017) 100 Energy Policy 101-112
- Kelman, S. 'Enforcement of National Safety and Health Regulations: A Comparison of Swedish and American Practices', in Hawkins K. and Thomas J M, *Enforcing Regulation* (New York: Kluwer Nijhoff Publishing 1984)
- Kiefel S, 'English, European and Australian Law: Convergence or Divergence'(2005) 79 Australian LJ 220, 227.
- Kolstad I and Wiig A, 'Is Transparency the Key to Reducing Corruption in Resource-Rich Countries?' (2009), 37 World Development 521.
- Konne B., 'Inadequate Monitoring and Enforcement in the Nigerian Oil Industry: The Case of Shell and Ogoniland' (2014) 47 Cornell International Law Journal 193.
- KPMG "Petroleum Industry Bill, A Game Changer" (2021) https://assets.kpmg/content/dam/kpmg/ng/pdf/tax/petroleum-industry-bill-(pib)-2021-a-game-changer.pdf >accessed 26 July 2022
- Kramer L "Upstream vs. Downstream Oil & Gas Operations: What's the Difference?" (2021) https://www.investopedia.com/ask/answers/060215/what-difference-between-upstream-and-downstream-oil-and-gas-operations.asp > accessed 13 October 2021
- Kulin J and Sev€a I J 'The Role of Government in Protecting the Environment: Quality of Government and the Translation of Normative Views about Government Responsibility into Spending Preferences' (2019) 49 International Journal of Sociology, Pg 110–129

- Lager J M., 'Overcoming Cultures of Compliance to Reduce Corruption and Achieve Ethics in Government' (2009) 41 McGeorge L Rev 63
- Laycraft, J H and Head, I L. 'Theories of Ownership of Oil and Gas' (1953) 31 Can B Rev 382
- Legrand P, 'The Impossibilities of Legal Transplants' (1997) 4 Maastricht Journal of European Comparative Law 111.

- Liang J "Regulatory Effectiveness and Social Equity in Environmental Governance: Assessing Goal Conflict, Trade-Off, and Synergy." (2018) 48 (7) American review of public administration 761–776.
- Lindstedt, C and Naurin, D' Transparency is Not Enough: Making Transparency Effective in Reducing Corruption', (2010), 31 International Political Science Review 302.
- Lloyd's Register, 'Quality Standard for The Oil and Gas Industry: ISO 29001 Oil and Gas Certification' (2023) https://www.lrqa.com/en-gb/iso-29001 / >accessed 26 January 2023.
- MacIntyre J. M., 'The Development of Oil and Gas Ownership Theory in Canada' (1969) 4 University of British Columbia Law Review 245
- Magda K, 'Determinants of Institutional Quality and Their Impact on Economic Growth in the MENA Region' (2009) 8(2) International Journal of Development 134-167.
- Maiye, O et al 'Nigeria: Petroleum Industry Act 2021: Opportunities for Key Industry Players' < https://www.mondaq.com/nigeria/oil-gas--electricity/1104754/petroleum-industry-act-2021-opportunities-for-key-industry-players >accessed 10 February 2023
- Markowitz K J and Gerardu J J, 'The Importance of the Judiciary in Environmental Compliance and Enforcement' (2012) 29 Pace Environmental Law Review 538.
- Marimuthu S B & Zakariah A A, 'The Sufficiency of Malaysia's Environmental Laws for the Protection of the Tasik Chini UNESCO Biosphere Reserve' (2020) 21 Australia Journal of Asian Law 25
- Mbanefo O, "The Multiplicity of Law Enforcement Agencies and the State of Law and Order in Nigeria: A Case of too many Cooks?" (2019) 3(4) International Journal of Academic Accounting, Finance & Management Research Pg.1-9
- McCarty, L. T. "Ownership: A Case Study in the Representation of Legal Concepts' (2014) Artificial Intelligence and Law pg.2
- Mehlum, H. et al, 'Institutions and the Resource Curse' (2006) 116 the Economic Journal 4.

- Mehmet B, 'Corruption, Connections and Transparency: Does a Better Screen Imply a Better Scene?' (2001), 107 Public Choice 88.
- Michael J. R, Introduction to Comparative Law (Wien Mainz 2010) p.2.
- Michael, P J and Dimitroff S D, 'Oil and Gas Regulation in The United States: Overview' [2016] Thomas Reuters < https://content.next.westlaw.com/practical-law/document/I466099551c9011e38578f7ccc38dcbee/Oil-and-gas-regulation-in-the-United-Statesoverview?transitionType=Default&contextData=%28sc.Default%29&firstPage=true&bhcp=1&viewType=FullText#co_anchor_a731482 > accessed 20 November 2022
- Mmadu R A, "Judicial Attitude to Environmental Litigation and Access to Environmental Justice in Nigeria: Lessons from Kiobel" (2013) 2 (1) Afe Babalola University: Journal of Sustainable Development Law and Policy 149-170
- Mmadu, R. A. Judicial Attitude to Environmental Litigation and Access to Environmental Justice in Nigeria: Lessons from Kiobel. Afe Babalola University- (2013) 2, Journal of Sustainable Development Law and Policy, 149-170.
- Moller, L. The governance of oil and gas operations in hostile but attractive regions: West Africa. (2010) 4 International Energy Law Review, pp. 110-122
- Mongabay 'Latest Nigeria oil spill highlights 'wretched' state of the industry ' (2022) < https://news.mongabay.com/2022/02/latest-nigeria-oil-spill-highlights-wretched-state-of-the-industry/ >accessed 26 January 2023
- Morris W ' Appeals court upholds 8-year sentence of Des Moines activist in Dakota Access Pipeline sabotage ' < https://eu.desmoinesregister.com/story/news/crime-and courts/2022/06/06/dakota-access-pipeline-dapl-protestor-sentence-jessica-reznicek/7535555001/ > accessed 26 January 2023
- Mulkey, M. 'Judges and Other Lawmakers: Critical Contributions to Environmental Law Enforcement', (2004) 4 (1) Sustainable Development Law and Policy 2-16.

- National Petroleum Investment Management Services "Gas Operations" (2021) < https://napims.nnpcgroup.com/our-services/Pages/Gas-Operations.aspx >accessed October 2021
- Nawaz, S. 'Making History: Coronavirus and Negative Oil Prices' (2020) Global Risk Insights <https://globalriskinsights.com/2020/05/making-history-coronavirus-and-negative-oil-prices/> accessed 16 May 2021
- Nifo, A. and Vecchione, G. 'Measuring Institutional Quality in Italy' (2015) XXIX(1-2) Rivista Economica del Mezzogiorno 160.
- Nigeria Natural Gas< https://www.worldometers.info/gas/nigeria-natural-gas/#gas-reserves > accessed 13 October 2021
- Nimi P, 'Africa's Most Populous City Is Battling Floods and Rising Seas. It May Soon Be Unliveable, Experts Warn' (CNN, 2022) < https://edition.cnn.com/2021/08/01/africa/lagos-sinking-floods-climate-change-intl-cmd/index.html > accessed 26 July 2022.
- NNPC 'Joint Operating Agreement' (Nnpcgroup.com, 2021) < https://www.nnpcgroup.com/NNPC-Business/Upstream-Ventures/Pages/Joint-Operating-Agreement.aspx > accessed 1 November 2021.
- North, D. C. 'Economic Performance Through Time' (1994) 84(3) the American Economic Review 359-368
- NUPRC 'Upstream Environmental Remediation Fund Regulation' < https://www.nuprc.gov.ng/wp-content/uploads/2022/08/Upstream-Petroleum-Environmental-Remediation-Fund-regulation.pdf >accessed 6 February 2023
- Nwaeze, N. C. 'True' Federalism in a well-structured Nigeria: The Panacea to her Economic Development Challenges' (2017) 6(2) Greener Journal of Economics and Accountancy 1-19
- Nwana H "Nigeria: The Fear of EFCC, Beginning of Wisdom" (Vanguard, 12 October 2023) < https://allafrica.com/stories/200610120251.html >accessed 29 July 2023
- Nwapi C, Ezeigbo C, Oke O. Developments in Beneficial Ownership Disclosure in the Extractive Industries in Nigeria. (2021) 8(1) The Extractive Industries and Society pg. 443-456.

- Nwosu, E. O. "Petroleum Legislation and Enforcement of Environmental Laws and Standards in Nigeria," (1999)7 Nigerian Juridical Review p. 15.
- Nwuke, K. ' Nigeria's Petroleum Industry Act: Addressing old Problems, creating new ones' (2021) < https://www.brookings.edu/blog/africa-in-focus/2021/11/24/nigerias-petroleum-industry-act-addressing-old-problems-creating-new-ones/ >accessed 22 December 2022
- Ogbe, O. et al "The Need for Reform of Fiscal Federalism in Nigeria, Benue State," (2011) 1(1) National Journal of Human Resource Development
- Ogbodo, S G. 'Environmental Protection in Nigeria: Two Decades after the Koko
- Ogbonnaya, U.M. "Environmental Law and Underdevelopment in the Niger Delta Region of Nigeria". (2011) 5(5) African Research Review, .68-82.
- Ogus, A and Abbot, C. 'Sanctions for Pollution: Do We Have the Right Regime?' (2002) 14(3) Journal of Environmental Law 283.
- Oil Spill Intelligence Report <World_News_Briefs.pdf > accessed 8 February 2023
- Ojukwu-Ogba, N. E., 'Legislating Development in Nigeria's Oil Producing Region: The NDDC Act Seven Years On' (2009) 17 African Journal of International and Comparative Law 136.
- Okoi, O. 'The Paradox of Nigeria's Oil Dependency' (Africa Portal, 2019) <https://www.africaportal.org/features/paradox-nigerias-oil-dependency/> accessed 28 October 2021.
- Okumagba, E. O, 'Critical analysis of laws and policies for the prevention of petroleum pipeline vandalization in Nigeria' (2021), 23(4) Environmental Law Review Pg 301-366
- Oladimeji P, 'Ownership of Oil and gas in Nigeria '(2019) < http://dx.doi.org/10.2139/ssrn.3636423 >accessed 21 June 2022
- Olawale A "The balancing of interests in environmental law in Nigeria" (2012)15 NEW Nigeria Pg. 388
- Olopade, O. "Nigeria Liquified Natural Gas - A Goldmine of The Future"

- Olujobi O J, 'Legal Framework for Combating Corruption in Nigeria – The Upstream Petroleum Sector in Perspective' (2017) 8 J Advanced Res L & Econ 956
- Oluwaniyi O.O. "Oil and youth militancy in Nigeria's Niger Delta region". (2010) 45(3) Journal of Asian and African Studies, 309-325.
- Omo E E & Etuvoata, A 'Examination of the Factors Militating against Enforcement of Environmental Laws in Nigeria' (2021) 2 LASJURE 79
- Omukoro, D. E, Environmental regulations in Nigeria and liability for oil pollution damage: musings from Norway and the US (Alaska) (2017) 8 IELR 324-330,324
- Onyi-Ogelle O H and Nwibe,C 'Comparative Analysis of Production Sharing
- Contract in the Nigerian and Malaysian Oil and Gas Industry' (2020) 2 IJOCLLEP 88
- Oshionebo, E 'Citizen Enforcement of Environmental Regulation in Africa's Extractive Industries' (2017) 17 Asper Rev Int'l Bus & Trade L 35
- Oshionebo, E 'Mismanagement of Nigeria's Oil Revenues: 'Is the Nigeria Sovereign Investment Authority the Panacea' (2017) 10 Journal of World Energy Law and Business 329, 329.
- Osman R H, et al, 'The Role of Institutions in Economic Development: Evidence From 27 Sub-Saharan African Countries' (2012) 39(1/2) Journal of Social Economics 142-160.
- Osuji, L. and Onojake, C. 'Trace Heavy Metals Associated with Crude Oil: A Case Study of Ebocha-8 Oil Spill-Polluted Site in Niger Delta, Nigeria' (2004) 1 Chemistry & Biodiversity 1708.
- Oriakhi E, 'Exploitation of Petroleum Resources and the Challenges of Development of the Niger Delta Region of Nigeria' (2021) 112 Journal of Law, Policy and Globalization 170
- Oviasuyi, P. 'The Dilemma of Niger-Delta Region as Oil Producing States of Nigeria' [2010] Journal of Peace, Conflict and Development 2019. < https://www.bradford.ac.uk/courses/pg/peace-conflict-and-development/ > accessed 17 December 2022

- Panther, S. "Non-Legal Sanctions" (1999) Institute of Economics, AWM, Universitat Hamburg:< https://reference.findlaw.com/lawandeconomics/0780-non-legal-sanctions.pdf? > accessed 13 August 2021. Pg. 999-1000
- Parlee, B L. 'Avoiding the Resource Curse: Indigenous Communities and Canada's Oil Sands' (2015) 74 World Development 425.
- Patrick, S. M. 'Why Natural Resources Are a Curse on Developing Countries and How to Fix it' (2012) <https://pdfs.semanticscholar.org/e5c3/bfd21912e8547be2041381e90a0d0582d4b9.pdf?_ga=2.83459284.35317925. 1578003851-1454040132.1568971138 > accessed 10 December 2022
- Pearce, F. and Tombs, S. "Hazards, law and class: contextualizing the regulation of corporate crime." (1997) 6 Social and Legal Studies 79-107.
- Preston, B J. 'Characteristics of Successful Environmental Court and Tribunals' (2014) 26 Journal of Environmental Law 365
- Premium Times " Twenty cheers to the EFCC, By Williams Oseghale" (Premium Times Nigeria, April 13, 2023)
- Preston, B J 'Characteristics of Successful Environmental Courts and Tribunals' (2014) 26 Journal of Environmental Law 365, 387

- Rabie, M. A et al., 'Implementation of Environmental Law', in Fuggle R F and Rabie M A, *Environmental Law in South Africa* (Juta and Co 1993) 128
- Radon J, 'The ABC's Of Petroleum Contracts: License-Concession Agreements, Joint Ventures, And Production-Sharing Agreements' (2011) < https://www.gmec-ee.com/wp-content/uploads/2013/08/The-ABCs-of-Petroleum-Contracts....pdf > accessed 30 October 2021.
- Reiss, A., J., Selecting strategies of social control over organizational life.
- Resolution law firm 'Joint Ventures in The Nigeria Oil and Industry' (2021) < https://www.resolutionlawng.com/joint-venture-in-the-nigeria-oil-and-gas-industry/ > accessed 1 November 2021.
- Reduan H, "New Law Being Prepared to Deal with New

- Environmental Complexity," (The Straits Times, November 9, 2017) < https://www.nst.com.my/news/nation/2017/11/301179/new-law-being-prepared-deal-new-environmental-complexity-doe >accessed 25 July 2023
- Riddoch, L. 'In Torry the 'Just Transition' to Renewable Energy is Far from Just' Herald Scotland (2021) < https://www.heraldscotland.com/politics/19499179.lesley-riddoch-torry-just-transition-renewable- energy-far-just/ > accessed 11 November 2022.
- Roumeen I, 'Does more Transparency Go Along with Better Governance? (2006),18 (2) Economics and Politics, 124.
- Rothstein B, *The Quality of Government: Corruption, Social Trust, and Inequality in International Perspective*. (2011, Chicago, IL: The University of Chicago Press) 1

- Sahara Reporters "How Nigeria's Ex-Minister Of Petroleum Madueke Laundered Looted Money, Her Accomplices Revealed" https://saharareporters.com/2015/10/05/how-nigeria%E2%80%99s-ex-minister-petroleum-madueke-laundered-looted-money-her-accomplices >accessed 25th November 2022
- Sasu, D. D. "Nigeria: Contribution Oil Sector to GDP 2018-2021" (2022) < https://www.statista.com/statistics/1165865/contribution-of-oil-sector-to-gdp-in-nigeria/ > accessed 19 December 2022
- Savara J H "Introduction: Politicians and Administrators in the Political Process—A Review of Themes and Issues in the Literature" (2006) 29 International Journal of Public Administration Pg 953-976
- Scholz, J. "Enforcement Policy and Corporate Misconduct: The Changing Perspective of Deterrence Theory," Law and Contemporary Problems (1997) 60(3) 253–68.
- Scholz, J.T. 'Cooperation, Deterrence, and the Ecology of Regulatory Enforcement' (1984) 18 Law and Society Review 179.
- Shao S and Yang L, 'Natural Resource Dependence, Human Capital Accumulation, and Economic Growth: A Combined Explanation for the Resource Curse and the Resource Blessing' (2014) 74 Energy Policy 632- 633.

- Shipley J 'The long legal saga of DAPL arsonist Ruby Montoya is coming to an end' (2022) < https://grist.org/protest/ruby-montoya-dakota-access-pipeline/ >accessed 26 January 2023
- Siems, M M 'Legal Originality' (2008) 28 Oxford Journal of Legal Studies 147-165.
- Simon, H., 'Theories of Bounded Rationality' in: McGuire C. and Radner R. Editors, Decision and Organization, North Holland, Amsterdam 1972, pp. 161-76.
- Smith, I.O. 'Power to make planning laws in a federation: The Nigerian Experience' (2004) 24 JPP L P.15
- Smyth, R. and Soderberg, M. 'Public Interest versus Regulatory Capture in the Swedish Electricity Market' (2010) 38 Journal of Regulatory Economics 292.
- SPDC 'Oil Spill Data' (2022) < Oil Spill Incident Data | Shell Nigeria > accessed 4 August 2022
- Soyapi C B, 'A Multijurisdictional Assessment of the Judiciary's Role in Advancing Environmental Protection in Africa' (2020) 12 Hague Journal on the Rule of Law Pg 307–332
- Stamp, D. "Africa: A Study in Tropical Development." (1953) 47 American Political Science Review 904
- Stigler, J George 'The Optimum Enforcement of Laws' (1970) 78 Journal of Political Economy. Pg.526-536
- Stijns, J. Philippe C. 'Natural Resource Abundance and Economic Growth Revisited' (2005) 30 Resources Policy 111
- Sustainable Development and the Role of Law: Environmental Law: The Bedrock for Sustainability, (Aug. 20, 2002) Sustainabledevelopment.un.org, 1987) < https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf > accessed 30 May 2022.

- Tetlow, M. F.& Hanusch M. Strategic Environmental Assessment: The State of the Art. (2012)30 Impact Assessment and Project Appraisal,15-24.

- The Great State of Alaska 'Best Available Technology' < https://dec.alaska.gov/spar/ppr/contingency-plans/bat/ >accessed 9 February 2023
- Tienhaara K, 'Environmental Aspects of Host Government Contracts in The Upstream Oil and gas Sector' (2010) 8(3) Oil, Gas and Energy Law Intelligence. Pg. 1-25
- Transparency International "Corruption Perception Index "(2021) < 2021 Corruption Perceptions Index - Explore the… - Transparency.org > accessed 24 November 2022
- Tullock G, 'Does Punishment Deter Crime?'(1974) 36 Public Interest Journal 109.

- Udokenam et al, "Land Ownership in Nigeria: Historical Development, Current Issues and Future Expectations" (2014) 4(21) Journal of Environment and Earth Science, pg.183-184
- Udosen, C. et al "Fifty Years of Oil Exploration in Nigeria: The Paradox of Plenty" (2009) 8(2) Global Journal of Social Sciences. Pg. 37-38
- Ugochukwu, C. N. C. and Ertel, J. 'Negative Impacts of Oil Exploration on Biodiversity Management in the Niger Delta Area of Nigeria' (2008) 26(2) Impact Assessment and Project Appraisal 139.
- Umar, M.B. "Legal Issues in the Management of Nigeria's Production Sharing Contracts from a Study of the Nigerian National Petroleum Corporation's (National Petroleum Management Services') Perspective" (2005)1 Oil, Gas, Energy and Law Intelligence
- Unites States Environmental Protection Agency 'Environmental Justice' (2023) < https://www.epa.gov/environmentaljustice > accessed 5 February 2023
- US Department of Justice 'Transocean Agrees to Plead Guilty to Environmental Crime and Enter Civil Settlement to Resolve U.S. Clean Water Act Penalty Claims from Deepwater Horizon Incident < Transocean Agrees to Plead Guilty to Environmental Crime and Enter Civil Settlement to Resolve U.S. Clean Water Act Penalty Claims from Deepwater Horizon Incident | OPA | Department of Justice >accessed 6 February 2023

- US EIA, 'Country Analysis Brief: Nigeria' (2016) EIA 1-3 < https://www.eia.gov/beta/international/analysis_includes/countries_long/Nigeria/nigeria.pdf> accessed 4 November 2019;
- Van der Ploeg, F. and Poel hekke, S. 'Volatility and the Natural Resource Curse' (2009) 61(4) Oxford Economic Papers 738-739.
- Virginia H, 'Disclosure as Governance: The Extractive Industries Transparency Initiative and Resource Management in the Developing World' (2010) 10 (3) Global Environmental Politics, 55.
- Waite, A. 'A New Garden of Eden - Stimuli to Enforcement and Compliance in Environmental Law' (2007) 24 Pace Environmental Law Review 343
- Watson M, 'The Enforcement of Environmental Law: Civil or Criminal Penalties?' (2005) 17(1)3 Environmental Law and Management 1067.
- Watson M, 'The Enforcement of Environmental Law: Civil or Criminal' (2005) 17 ELM Journal 3.
- Watts M "Resource Curse? Governmentality, Oil and Power in the Niger Delta, Nigeria." 2004. 9 (1) Geopolitics 50–80.
- Will W, 'Oil Corruption, and the Department of Justice: FCPA Enforcement and the Energy Industry' (2014) 10 Texas Journal of Oil Gas & Energy Law 181
- Williams D A " Understanding the effects of corruption on law enforcement and environmental crime'(2019)< https://c402277.ssl.cf1.rackcdn.com/publications/1282/files/original/Introductory-Overview_Understanding-the-effects-of-corruption-on-law-enforcement-and-environmental-crime.pdf?1575672055 > accessed 20 November 2022
- World Bank 'Worldwide Governance Indicators' < https://info.worldbank.org/governance/wgi/Home/Documents#doc-intro >accessed 11 December 2022
- World Population Review< https://worldpopulationreview.com/countries/nigeria-population > accessed 26 July 2023
- Wright G, 'The Origin of American Industrial Success, 1878-1949' (1990) 80(4) American Economic Review 635.

- Yafugborhi E, Nigeria lags in response to oil spill —NOSDRA. (Vanguard Newspaper ,April 18 2018)< https://www.vanguardngr.com/2018/04/nigeria-lags-behind-response-oil-spill-nosdra/# > accessed 20 July 2023
- Zhiguo Gao, Environmental Regulation of Oil and gas (Wolters Kluwer Law International 1998).
- Zimmerman J, 'The Effect of Bureaucratization on Corruption, Deviant, and Unethical Behavior in Organizations', (2001)13 J. Managerial Issues 119

Books

- Acemoglu, D. and Robinson, J. A. *Why Nations Fail: The Origins of Power, Prosperity and Poverty* (Crown Publishers 2012) 1-500.
- Armour, J *Enforcement Strategies in UK Corporate Governance: A Roadmap and Empirical Assessment' in Armour J & Payne J, Rationality in Company Law*: Essays in Honour of DD Prentice (Hart Publishing 2009) 74.
- Agwanwo D.E. *A Political economy of policing in Nigeria* (2015 Vol. 2, Makurdi: Aboki Publishers)103-120
- Auty, R. M. *Sustaining Development in Mineral Economies: The Resource Curse Thesis* (Routledge 1993) 4.
- Basten J, 'International Influence on Domestic Law: Neither Jingoistic Exceptionalism nor Blind Servility' in Justin Gleeson and Ruth Higgins (eds.), Constituting Law: Legal Argument and Social Values (Federation Press 2011) 202.
- Bergstrom, J. C. et al *An Economic Approach to Natural Resource and Environmental Policy,* (2016 4th edition Edward Elgar Publishing)
- Bruijn, H D et al, *Law Enforcement: The Game between Inspectors and Inspectees* (London: Universal Publishers 2007).
- Cameron, P. D. *International Energy Law: The Pursuit of Stability.* (Oxford University Press, Oxford 2010) 60
- Chaudhry K A, The Price of Wealth: Economies and Institutions in the Middle East (Cornell University Press 1997) 16-17
- Chayes, A.H *The New Sovereignty: Compliance with International Regulatory Agreements* (Oxford University Press 1996) 3.

- Collis J and Hussey R, Business Research: *A Practical Guide for Undergraduate and Postgraduate Students* (3rd edn, Palgrave Macmillan 2009).
- Creswell J W, *Research Design* (Sage Publications 2008) 17
- Dent, M. '*Ethnicity and Territorial Politics in Nigeria'* (New York: Longman. 1995)Pp 128 – 153
- Ebeku, K. '*Oil and The Niger Delta, People in International Law – Resource Rights, Environmental and Equity Issue* (Rudiger Koppe, 2006) 4
- Elaigwu, J. I. *The Politics of Federalism in Nigeria Jos*, (Nigeria: Ayaotu Publishers, 2005,)
- Ellickson, R. C. *Order without Law: How Neighbours Settle Disputes* (Harvard University Press 1991)
- Ewere A.O., *NEITI and Good Governance in the Nigerian Oil Industry,* (Benin: Ambik Press, 2011), 53.
- Faure M G and J Hu, *Prevention and Compensation of Marine Pollution Damage* (New York: Kluwer Law International 2006) 37.
- Guirauden D., *Legal, Fiscal and contractual framework, oil and gas exploration and production; reserves, costs and contracts*, (3rd edition, 2004) Pg.170.
- Gunningham, N. and Grabosky, P. *Smart Regulation: Designing Environmental Policy* (Oxford University Press 1998).
- Hage J et al *The Method, and Culture of Comparative Law* (Hart, 2015) 38.
- Hawkins K and Thomas J M, *Enforcing Regulation* (New York: Kluwer Nijhoff Publishing 1984).
- Hawkins, K *Environment and Enforcement* (Oxford University Press 1984).
- Hawkins, K. *Law as last resort: prosecution decision-making in a regulatory agency.* (Oxford University Press, Oxford 2002.) Pg 41
- Heyes A, *The Law and Economics of the Environment* (Aldershot: Edward Elgar 2001) 198, 200.
- Hutter, B. M. *The reasonable arm of the law? the law enforcement procedures of environmental health officers*. (Clarendon Press, Oxford 1988) Pg.7
- Kiteley R and Stogdon C *Literature Reviews in Social Work* (SAGE Books 2015) Pg 2

- Macartan H, et al *Escaping the Resource Curse* (Columbia University Press 2007) 258–293.
- McDonald, D. A. *Environmental Justice in South Africa* (Ohio University Press 2002) 1-12,
- Morris C and Cian M, *Getting A PhD in Law* (Hart 2011) 29.
- Norman K D and Lincoln Y S, *The landscape of Qualitative Research* (Sage 2013) 5
- OECD, *Ensuring Environmental Compliance Trends and Good Practices: Trends and Good Practices* (OECD Publishing, 2009) 74.
- Okonkwo, E C *Environmental Justice and Oil Pollution Laws: Comparing Enforcement in the United States and Nigeria* (Routledge, 13 Feb 2020) Pg.1-274
- Olubunmi A, *The Impact of Oil Pollution on the Environment of the Oil Producing Communities of Nigeria: A Critical Analysis of the Statutory and Regulatory Provisions in Nigeria* (MO Awoyemi & Co Publisher 2014) 3.
- Omorogbe, Y. *Oil and gas Law in Nigeria* (Malthouse Press 2003).
- Omorogbe, Y. and Oniemola, P. *Property Rights in Oil and Gas Under Domanial Regimes, In Property and The Law in Energy and Natural Resources* (A. McHarg ed., OUP 2010)
- Pearsall, J. *The Concise Oxford English Dictionary* (10th edn, OUP 1999).
- Pollard, S. *Peaceful Conquest: The Industrialization of Europe 1760–1970* (Oxford University Press 1981) 4
- Posner, R. A*, Economic Analysis of Law* (9th Edition Wolters Kluwer 2014) 859.
- Reiff, M. *Punishment, Compensation and Law: A Theory of Enforceability* (Cambridge University Press 2005) 45
- Richardson, G. M. et al, *Policing Pollution: A study of Regulation and Enforcement.* (Clarendon Press, Oxford 1983.)
- Sagay, I. *Ownership and Control of Nigerian Petroleum Resources: A Legal Angle, In Nigerian Petroleum Business Handbook* (V.E. Erhonsele ed., Advent Communications Ltd. 1997) 180
- Saunders M, Philip Lewis, N. K, and Thornhill A, *Research Methods for Business Students* (6th edn, Financial Times Prentice Hall 2012).

- Soanes, C. & Hawker, S. *Compact Oxford English Dictionary for University and College Students* (OUP 2006).
- Utuama, A. *The Niger Delta Crisis, in Fresh Dimensions on The Niger Delta Crisis of Nigeria* (Victor Ojakorotu ed., JAPSS Press 2009).
- Watson A, *Legal Transplants* (2nd Edition, University of Georgia Press 1993) p.9.
- Watson A, *Legal Transplants* (2nd edn, University of Georgia Press 1993) p.9.
- White R, *Crimes Against Nature: Environmental Criminology and Ecological*
- *Justice* (1st edn, Routledge 2013) 328, 9
- Wheare, K. *Federal Government*, (4th ed, London: Oxford University Press 1963) 20
- Wrigley, E. A. *'Energy and the English Industrial Revolution'* (Cambridge University Press 2010) 23.
- Yergin, D. *The Prize: The Epic Quest for Oil Money and Power* (New York: Simon & Schuster, 1991)788.
- Yin, R. K. *Case study research and applications: Design and methods* (2018 ,6th ed. Thousand Oaks, CA: Sage Publications) 1
- Zweigert K and Kötz H, *Introduction to Comparative Law* (3rd edn, Tony Weir translated, Oxford University Press, Oxford 1998) p.2.

Papers

- Ajibike, A. O. "Understanding And Evaluating the Enforcement of Corporate Law in Nigeria: The Case For Enhanced Public Civil Enforcement" (PhD Thesis, Durham University 2017) < http://etheses.dur.ac.uk/12287/1/OLUDARA_AWOLALU_FINAL_PHD_THESIS.pdf? > accessed 13 August 2021
- Amodu, T "The determinants of compliance with laws and regulations with special reference to health and safety A literature review" (2008) Prepared by the London School of Economics and Political Science for the Health and Safety Executive 2008 < https://www.hse.gov.uk/research/rrpdf/rr638.pdf >accessed 10 February. 2023
- Černý A. and Filer, R. K. 'Natural Resources: Are They Really a Curse?' (2007) Centre for Economic Research and Graduate Education Working Paper Series

321 1 < https://www.cerge-ei.cz/pdf/wp/Wp321.pdf > accessed 11 December 2022

- Fagbohun, O. Mournful Remedies, Endless Conflicts and Inconsistencies in Nigeria's Quest for Environmental Governance: Rethinking the Legal Possibilities for Sustainability,4th Inaugural Lecture of the Nigeria Institute of Advance Legal Studies
- Fernihough A and O'Rourke K H, 'Coal and the European Industrial Revolution' (2014) University of Oxford Discussion Papers in Economic and Social History No 124 1-4 < https://www.economics.ox.ac.uk/materials/papers/13183/Coal%20-%20O%27Rourke%20124.pdf > accessed 11 December 2022
- Frankel, J. A. 'The Natural Resource Curse: A Survey' (2010) National Bureau of Economic Research Working Paper No 15836 1-38 < http://www.nber.org/papers/w15836 > accessed 10 December 2022
- Gylfason, T. et al, 'A Mixed Blessing: Natural Resources and Economic Growth' (1997) Centre for Economic Policy Research Discussion Paper No 1668 1-5 < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=49193 > accessed 10 December 2022
- Igiehon, M. O and Fawole-Masini, M. R 'Problematising the Persistence of Resource Curse: Propounding New Third Explanation of 'Existentially Fragile States Disorder'' (2020) Oil and Minerals for Good Global Forum Working Paper 3-4 < https://oilandminerals.com/wp-content/uploads/2020/07/Research-Paper-Final-22July2020.pdf> accessed 15/12/2021.
- Jamison M and Castaneda A," Addressing Improper Political Interference – How can persons performing regulatory functions or developing regulatory instruments protect their work from improper political interference while, at the same time, maintaining accountability to the political wishes of the population?" < http://regulationbodyofknowledge.org/faq/low-income-fragile-and-low-capacity-countries/how-can-persons-performing-regulatory-functions-or-developing-regulatory-instruments-protect-their-work-from-improper-

political-interference-while-at-the-same-time-maintaining-accountability-to-the/ >accessed 6 June 2019

- Jenden, J. et al, 'Not in My Back Yard Syndrome' (2018) Energy Education <https://energyeducation.ca/encyclopedia/Not_in_my_back_yard_syndrome > accessed 10 November 2021.
- Ladan M T, "Access to Environmental Justice in Oil Pollution and Gas Flaring Cases as Human Right Issue in Nigeria, Paper Presented at A Training Workshop for Federal Minis try of Justice Lawyers Organized by the Institute for Oil and gas Law in Abuja Nigeria 34 (Nov. 28- 30, 2011),< http://papers.ssrn.com/sol3/papers.cfm?abstract-id=2336093 > accessed 25 July 2023.
- Ladan M T, "Enforcement and Compliance Monitoring of Environmental Law and Regulatory Good Practices in Nigeria" (2016) Research Working Paper Series No. 15 Department of Public Law, Faculty of Law, Ahmadu Bello University, Zaria, Kaduna State, Nigeria < Http://Mtladan.Blogspot.Com/ > accessed 14 May 2019
- Lehne, J. et al, 'What Determines the Quality of Economic Institutions? Cross-Country Evidence' (2014) European Bank Working Paper No 171 1.
- Neuman, L. 2009, 'Enforcement Models: Content and Context', Access to Information Working Paper, Communication for Governance and Accountability Program (CommGAP), World Bank, Washington, D.C
- Olin J M 'Law and Economics' Working Paper No. 71, Second series (University of Chicago Law School 1998).
- Shell Briefing notes 2021 < https://www.shell.com.ng/media/nigeria-reports-and-publications-briefing notes/_jcr_content/par/toptasks.stream/1653314607835/69fc020fd40d0764f3d455c7cf3e3b89855f9512/shell-nigeria-briefing-notes-2021-updated.pdf > accessed 17 November 2022
- Steiner R., 'Double Standard - Friends of the Earth International' (Spill' (Milieu Defensie: Report on Behalf of Friends of the Earth 2010) p.10.

Websites

- Bureau of Land Management 'Oil and Gas' < https://www.blm.gov/programs/energy-and-minerals/oil-and-gas accessed 7th February 2023
- Bureau of Safety and Ocean Energy Management 'About BOEM' <https://www.boem.gov/about-boem >accessed 7 February 2023
- Bureau of Safety Environmental Enforcement 'What we do" < https://www.bsee.gov/ >accessed 7 February 2023
- Department of Conservation Division of Oil, Gas and Geothermal Resources <https://www.conservation.ca.gov/dog > accessed 19 July 2023
- Department of Environmental Protection < https://www.dep.pa.gov/Business/Energy/OilandGasPrograms/OilandGasMgmt/pages/default.aspx > accessed 19 July 2023
- Department of Interior 'About Interior' https://www.doi.gov/about >accessed 7 February 2023
- Environmental Assessment Department, 'Public home' (| *Federal Ministry of Environment* | *EAD*, 2022) < https://ead.gov.ng/publichome/ > accessed 3 August 2022.
- EPA 'Enforcement and Compliance Annual Results for Fiscal Year 2022' < https://www.epa.gov/enforcement/enforcement-and-compliance-annual-results-fiscal-year-2022 >accessed 5 February 2023
- EPA, 'Basic Information on Enforcement | US EPA' (EPA, 2022) < https://www.epa.gov/enforcement/basic-information-enforcement >accessed 5 February 2023
- Federal Energy Regulatory Commission 'Overview' < https://www.ferc.gov/what-ferc >accessed 7 February 2023
- Federal Energy Regulatory Commission 'Overview' https://www.ferc.gov/what-ferc >accessed 7 February 2023
- NESREA < NESREA Official Website | About Us > Accessed 26 July 2022
- NOSDRA < NOSDRA - National Oil Spill Detection and Response Agency > accessed 28 July 2022
- NUPRC 'Upstream Environmental Remediation Fund Regulation' < https://www.nuprc.gov.ng/wp-content/uploads/2022/08/Upstream-

Petroleum-Environmental-Remediation-Fund-regulation.pdf >accessed 6 February 2023

- SEPA' Our Role' (2023) < https://www.sepa.org.uk/about-us/our-role/ > accessed 5 February 2023
- The Federal Ministry of Environment ' Mandate' < Mandate – Federal Ministry of Environment > accessed 12 July 2023
- The Railroad Commission of Texas < https://www.rrc.texas.gov >accessed 19 July 2023

Others

- Directive 2008/99/EC of the European Parliament (Criminal Law Directive) [2008] OJ L328/28.
- Kaiama Declaration 1998 < http://www.unitedijaw.com/kaiama.htm accessed 13 October 2022
- Kyoto Protocol to the United Nations Framework Convention on Climate Change, 1997 < kpeng.pdf (unfccc.int) > accessed 4 April 2022,
- Ogoni Bill of Rights 1991 < http://www.mosop.org/2015/10/10/ogoni-bill-of-rights/ > accessed 13 October 2021
- Paris Agreement 2015 < https://unfccc.int/sites/default/files/english_paris_agreement.pdf > accessed 26 July 2022
- Rio Declaration on Environment and Development 1992< https://www.jus.uio.no/lm/environmental.development.rio.declaration.1992/portrait.a4.pdf > accessed 8 March 2020
- Stockholm Declaration 1972 < https://wedocs.unep.org/bitstream/handle/20.500.11822/29567/ELGP1StockD.pdf < accessed 5 February 2023
- UN Climate Change Conference, (COP26), 1-12 November 2021, Glasgow https://ukcop26.org/ >accessed 25 July 2023
- United Nations Environment Programme (UNEP) (2011) Environmental Assessment of Ogoniland. First Published in 2011 by UNEP.
- United Nations Framework Convention on Climate Change,1992< conveng.pdf (unfccc.int) > accessed 4 April 2022,

- U.S. Energy Information Administration (U.S. EIA), Nigeria Country Analysis Brief, October 16, 2012