

# An appraisal of the mechanisms for the enforcement of environmental laws in Nigeria.

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# **An Appraisal of the Mechanisms for the Enforcement of Environmental Laws in Nigeria**

**By**

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## **Abstract**

This work attempts to critically evaluate the enforcement of environmental laws in Nigeria. The essence of good enforcement of environmental laws cannot be over emphasized. As a result, a lot of laws, regulations and policies have been put in place to ensure adequate protection of the environment from degradation. These laws provide enforcement mechanisms and penalties for defaulters. A major problem with these provisions is lack of enforcement which made them almost unknown or unheard of especially in the rural communities where these laws are abused with reckless impunity. The discourse also examines the enforcement of environmental laws in other climes in comparison with the current realities in Nigeria. Finally, it suggests a review of the legal framework for the enforcement of environmental laws as well as sentencing guidelines in Nigeria.

**Keywords: Enforcement, laws, environment, Nigeria, protection, compliance.**

## **Introduction**

There are basic legal principles that govern the enforcement of environmental laws and the individual rights to a satisfactory environment. These principles are universal and not exclusive to any particular nation or state. However, the mode of their enforcement and the agencies involved may vary from country to country. For instance, in the New York State, USA, the Department of Environmental Conservation (DEC) enforces environmental laws through a number of means, which include traditional police-type law enforcement, as well as administrative and civil actions.

In Nigeria today, the environmental policies have moved from the mere control and enforcement of the environmental laws by the federal government and its agencies to include the individuals and the Non-Governmental Organizations (NGOs) such as Amnesty International. In the states, the state environmental protection agencies are principally responsible for environmental protection and enforcement.<sup>1</sup> These agencies utilize various methods of enforcement to ensure compliance to environmental legislations.

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<sup>1</sup>Omaka CA, "The Jurisprudence of Polluter Pays Principle and Environmental Criminal Enforcement in Nigeria" in *Philosophical Legacy on Issues in Nigerian Public Law*, a publication of the Department of Public Law & Jurisprudence, Usmanu Danfodiyo University, Sokoto, 2008, p.36

Compliance is vital in the protection of peoples' rights and health, and involves different aspects of a country's legal and policy framework.

Other mechanisms such as the judicial enforcement and the Fundamental Rights Enforcement Procedure Rules are also significant in the enforcement and protection of environmental rights in Nigeria. However, the general view is that the enforcement of these laws is more of a myth than a reality in Nigeria.<sup>2</sup> There has been a growing sense of dissatisfaction with the enforcement of environmental statutes. While their provisions on environmental crimes are adequate, these statutes are not necessarily being used as much as they might be, and it has been so for a number of years. It is on this background that this paper seeks to examine the enforcement mechanisms in Nigeria especially the administrative and individual enforcements, and the challenges faced by the enforcement agents in enforcing these laws. The paper concludes with a call for possible reforms in the enforcement of environmental laws in Nigeria.

### **Meaning of Enforcement**

Enforcement means the use of legislations, governmental policies and agencies to compel obedience to the law. It is action taken by the government against offenders to compel compliance with the law and in default, the government entity can impose sanctions. As regards the environment, it is government's action taken to promote compliance with environmental laws. This is because simply having the environmental laws in place is not enough to address the challenges of environmental degradation. To this end, the law is implemented to achieve the desired goal and the defaulters punished accordingly. Therefore, it is a governmental response to people who fail to obey the law,<sup>3</sup> and may involve the supervision, prevention, detection, investigation or prosecution of, the incarceration of any person for any violation of law. Atsegbua L.*et al* added that "government enforcement mechanisms usually include inspections, negotiations and recourse to the courts."<sup>4</sup>In his words, the concept is defined as "the application of a set of legal tools, both formal and informal, designed to impose legal sanctions or penalties to ensure that a defined set of requirement is complied with".<sup>5</sup>The concept of enforcement in the context of environmental law means compelling obedience to environmental standards<sup>6</sup> and ensuring that those who have achieved compliance

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<sup>2</sup> Nwufu Cecilia Chinwe, "Legal Framework for the Regulation of Waste in Nigeria" in *African Research Review*, Vol. 4, No. 2 April 2010, p. 498.

<sup>3</sup> EPA Environmental Criminal Enforcement: A Law Enforcement Officer's Guide (1990) USEPA Publications LE p.1

<sup>4</sup>Atsegbua L. & Dimowo F, "Institutional Monitoring, Enforcement, & the Nigerian Environmental Impact Assessment (EIA) Act: Constraints & Compliance" in Ogungbe M.O.(ed.) *Nigerian Law: Contemporary Issues*, a publication of the College of Law, IU Okada in honour of Chief (Dr.) Gabriel O. Igbinedion, 2003, p.169.

<sup>5</sup>Ibid, p.214

<sup>6</sup>Ilegbune T.O, "Environmental Law & Enforcement" in Simpson & Fagbohun (eds.), *Environmental Law & Policy*, Faculty of Law, Lagos State University, 1988, p.2 cited in Atsegbua L. *et al* (supra).

are able to maintain it. The effective enforcement of environmental laws is essential in the fight against environmental degradation especially today that man's consciousness of the need to safeguard the environment has heightened tremendously. Therefore, the ultimate goal of any programme for the enforcement of environmental laws is to compel compliance with these environmental legislations already put in place. Without compliance, the purpose of these legislations can hardly be fulfilled and the pollution it meant to curtail will continue unabated.<sup>7</sup>

Enforcement minimizes risk and it is the collective responsibility of all of us, individuals, groups, security operatives, Non-governmental Organizations (NGOs), and administrative agencies locally and internationally. Significant effort is a cardinal requirement for effective enforcement of environmental laws. This is generally achieved by various environmental law enforcement bodies both at the local, regional and international levels. The enforcement can also be categorized into criminal enforcement, administrative enforcement as well as civil liabilities and remedies.<sup>8</sup> Also, the involvement of the three organs and tiers of government in the enforcement of environmental laws is imperative considering that environmental protection is one of the fundamental objectives of the government of Nigeria. For instance, it is the legislative instruments implemented by the governments that determine many of the strategies utilized by the police in protecting the environment.<sup>9</sup> Again, the welfare and security of the people in Nigeria stand as the primary purpose of the government.<sup>10</sup>

### **Compliance**

Compliance is the obedience to the decisions of constituted authorities, governmental policies and sets of laws and regulations. The Oxford Advanced Learner's Dictionary of Current English defined the term as "the practice of obeying rules and requests made by people in authority".<sup>11</sup> It is "the ultimate goal of any enforcement programme".<sup>12</sup> Environmental compliance guarantees the protection of the public health and property, including renewal natural resources, climate stability, clean air, fresh water, good soil and increase in agricultural production.<sup>13</sup> Compliance creates public value when it promotes the rule of law and good governance, ensures fairness and strengthens the credibility of environmental requirements. The rule of law is essential to good governance and sustainable development. When individuals fail to comply with the

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<sup>7</sup>Omaka CA (supra) p.41

<sup>8</sup>Olatoye KA, "Science, Technology & Health Problems: Updating Environmental Legislative Efforts in Nigeria" in *Usmanu Danfodiyo University Law Journal*, 2009, p.252.

<sup>9</sup> See Environmental Crime from Wikipedia, the free encyclopedia available at [http://en.wikipedia.org/wiki/environmental\\_crime](http://en.wikipedia.org/wiki/environmental_crime) (last accessed 11 January, 2015).

<sup>10</sup> Section 14(2)(b) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

<sup>11</sup>6<sup>th</sup> edition.

<sup>12</sup> Ibibia L Worika, *The Effectiveness of Statutory Remedies in Environmental Regulation & Protection in Nigeria*, a public lecture delivered at the 2<sup>nd</sup> Annual A.G. Karibi Whyte, Portharcourt, 2004, p.30

<sup>13</sup> The Principles of Environmental Compliance & Enforcement handbook, available at [http://inece.org/principles/02\\_overview\\_Sept09.pdf](http://inece.org/principles/02_overview_Sept09.pdf) (last accessed 30 March 2015)

demands of the environment, they not only cause damage to the environment and public health but also draw back developmental process, thereby eroding the norms and values that constitute healthy societies.<sup>14</sup> In most countries of the world, governments have developed a number of appropriate policies and programmes to encourage and compel the behavioral changes needed to achieve compliance. The policies may vary from country to country but they generally involve compliance assistance, compliance incentives, compliance monitoring and enforcement. Environmental enforcement and compliance come in form of the governmental programme for environmental management. This first starts with recognition of the environmental problem besieging a community and the government's determination to get it solved. The community should also recognize such problem and be ready to embrace any programme or strategy of the government. The government thereafter establishes compliance and enforcement programmes to ensure that the regulated community adheres to these programmes. Successful strategies will both encourage and compel behavioral changes within the community for effective compliance.<sup>15</sup>

Compliance monitoring is one of the strategies adopted to ensure that environmental laws or policies in place are complied with by the community, individuals and entities like corporate bodies. It may take the form of on-site visits by inspectors, public reporting of violations and intermittent evaluation of information submitted by the regulated industries in form of self-monitoring, including governmental visual inspection and investigations. With this, the agency responsible can easily ascertain who is obeying the law and who is not.<sup>16</sup> This will include an evaluation of the existing technologies and standards to ascertain whether they are up to date and conform with what are used in other jurisdictions to avoid double standard that may be inimical to the environment. Compliance monitoring schedule specifies the number of sampling which should be reported at a given interval.<sup>17</sup>

Compliance initiative is another strategy that facilitates compliance to environmental laws and policies. This may involve benefits or rewards to entities with impressive performance for the purpose of motivation. It is a source of encouragement to do more.

Incentives may take the form of waiving penalties for companies that voluntarily discover and disclose their violations. They provide benefits or rewards for organizations that satisfy the compliance objectives or which on their own have adopted strategies to avert future violations of environmental regulations. Non legal approach to this form of enforcement compliance may come by way of charges and taxes which create an incentive for defaulters to curb those activities inimical to the environment such as gas emissions, waste generation and excessive use of natural resources. Taxes have indirect and discouraging impact on the

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<sup>14</sup>Ibid.

<sup>15</sup>Ibid.

<sup>16</sup>Ibid.

<sup>17</sup>Okorodudu Fubara M.T. *Law of Environmental Protection, Materials & Text*, Caltop, Ibadan, 1998, p.650

companies because the more you produce the more you pay and contribute to the revenue with which the environment is managed. Charges, on the other hand, are imposed on the companies that discharge effluents and determined by the volume of discharges. They are paid to the environmental protection agencies involved for the services rendered and it is only the firms or corporations that receive such services that are bound to pay the charges.<sup>18</sup>

What of educational incentives? Compliance assistance may come in form of promotional activities or improving human knowledge by explaining how to comply with legal and regulatory requirements. Ogbodo G.O and Agu H. noted that;

Another strategy for securing compliance with environmental requirements includes motivating the community and creating public awareness through education and incentives....Access to environmental information and public participation in environmental decisions constitute another impetus in securing environmental compliance and smooth enforcement of environmental laws.<sup>19</sup>

The agencies responsible make vigorous efforts to educate both the offender and the community so that the law will be known and obeyed.<sup>20</sup> People perish for lack of knowledge. Therefore, the importance of creating public awareness through education and provision of information is unquantifiable in environmental protection. This provides an opportunity for public participation in environmental management. The right of free access to information and to participate in decision-making regarding the environment has, in some countries, been recognized as fundamental rights of citizens.<sup>21</sup>

### **Types of Enforcement**

As we earlier pointed out, the enforcement can be done through a lot of means which may be criminal, administrative as well as civil actions.

### **Criminal Enforcement**

Environmental degradation today has been conceived as a conduct which exposes the society to a serious harm and so deserves stiffer penalties. To this end, the international community is of the view that such serious offences, especially deliberate environmental abuse, non compliance, concealment or falsification of information or records should be treated as criminal offences.<sup>22</sup> The aftereffect of this global consensus

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<sup>18</sup> Emmanuel Onyeabor, "Adopting Non-Legal Approaches to Environmental Protection Compliance" in Theodore Okonkwo (ed.) *Environmental & Planning Law Review*, vol. 2 No.1, Jan-March 2005, pp.886-87.

<sup>19</sup> Ogbodo G.S & Agu H.U, "Issues & Challenges in Enforcement of Environmental Laws & Standards in Nigeria" in *Journal of Contemporary Law, Faculty of Law, University of Nigeria*, vol.2, 2013-June 2014,p.81

<sup>20</sup> See the New South Wales case of *State Pollution Control Commission v. Quality River Sand Pty Ltd*, unreported, Land & Environment Court, 28 June, 1989.

<sup>21</sup> See for eg. Articles 21 & 23 of the 1992 Constitution of Ghana.

<sup>22</sup> Devaney E.E, *The Evolution of Environmental Crimes Enforcement at the United States Environmental Protection Agency*, a paper presented at the 3<sup>rd</sup> International Conference on Environment,p.457, cited in Akeem Olajide Bello,

is that the criminal sanctions approach to the enforcement of environmental law has been adopted by many countries of the world such as USA, Canada, Australia, including EU member states and Africa. Today, one of the means through which environmental laws can be enforced in Nigeria is by criminal sanctions. The consequences of a criminal violation are more severe than those for civil violations. Some of the environmental statutes in Nigeria and beyond have declared some acts that degrade the environment or affect public health as unlawful and punishable with imprisonment, fine or both.<sup>23</sup> Criminal penalties may also take the form of federal, state, or local fines imposed by the judge at the sentencing. In addition to such penalties, the transgressor may be ordered to pay restitution to those affected by the violation. The ultimate objective of the criminal enforcement is to punish those responsible for the violation of environmental statutes which pose substantial risks to human health, property and the environment. The criminal provisions of the environmental statutes enable the agency responsible to pursue criminal investigations and to refer for prosecution these defaulters. Criminal liabilities for these offences are prescribed by these statutes. The NESREA Act, for instance, made provisions for criminal offences and the applicable punishments. Section 28 provides, among others, that “it shall be an offence if a facility fails to comply with or contravene a condition of a permit. Subsection 1(a) added that;

Any person who violates any of the provisions of regulation 28...commits an offence and shall on conviction in the case of an individual, be liable to a fine not exceeding N100,000 or imprisonment for a term not exceeding two years or both such fine and imprisonment and an additional fine of N5,000 for everyday the offence subsists.<sup>24</sup>

Just as the Criminal Code and the Penal Code apply to the Southern and Northern parts of the country respectively, section 32(4) of the NESREA Act 2007 also provides that the provisions of the Criminal Procedure Act and the Criminal Procedure Code shall so apply in respect of such matter to the same extent as they apply to the trial offences generally.<sup>25</sup> As far back as 1916 when the Criminal Code was promulgated, offences affecting public health in Nigeria have been criminalized under sections 243-248 of the Code with their respective penalties, though there is no specific mention of environment in those provisions.<sup>26</sup> A major problem with these provisions is lack of enforcement which made them almost unknown or unheard of especially in the rural communities where the provisions are abused with reckless impunity. The writer is

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“Invigorating Enforcement of Corporate Environmental Crimes in Nigeria” in *The Journal of Private & Property Law*, University of Lagos, vol.24 Jan.2004 p.79

<sup>23</sup>Ibibia L.Worika (supra) p.5

<sup>24</sup> See also section 29(1) of the Act.

<sup>25</sup> These statutes have been repealed by the Administration of Criminal Justice Act, 2015.

<sup>26</sup> See Vincent Akpotaire, “Public Health & Environmental Law: A Nigerian Perspective” in *Igbinedion University Law Journal*, vol.2 September 2004, p.183.

unaware of any reported case of prosecution or judicial decision under these provisions since 1916. The regulatory agencies have been inclined to exhibit indolence in the discharge of their duties.

Criminal actions can also be instituted against defaulters under the Harmful Wastes (Special Criminal Provisions) Act and Environmental Impact Assessment Act, among others. Section 1(1) of the Harmful Wastes (Special Criminal Provisions) Act<sup>27</sup> prohibits all activities relating to the purchase, sale, importation, transit, transportation, deposit, storage of harmful wastes without lawful authority. By section 6 of the same Act, any person found guilty of the aforementioned offences shall on conviction be sentenced to life imprisonment, forfeiture of the vessel and the land by which the harmful waste is dumped except where the damage resulted from the fault of the victim or where he has voluntarily accepted the risk thereof. There is no protection for diplomats as required under section 1 of the Diplomatic Immunities and Privileges Act.<sup>28</sup> Oil pollutants which are common in the Niger Delta region can come within the definition of hazardous wastes due to their injurious, poisonous, toxic or noxious nature<sup>29</sup> so that the victims of such pollution can invoke the provisions of the Act against oil polluters.

Where the liability results from oil pollution damage, any fine imposed may be paid to the victim or any person who incurred expenses in clean-up exercise, and once it is so done, it exculpates the transgressor from any further responsibility of cleaning up the polluted area rather the responsibility lies in the hands of the government and the victims.<sup>30</sup>

No doubt, most of the polluters in Nigeria are corporate entities like the multinational oil companies of which criminal sanctions are inappropriate in regulating their activities. First, the fines prescribed by our statutes are ridiculous and so incapable of deterring transgressors. Y. Osibanjo maintained that such fines may bear no scientific or logical relationship to the actual damage caused by the offence.<sup>31</sup> This will encourage the corporate polluter to continue with its activities and rather choose to pay fines instead. Duncan Chappell and Jennifer Norberry are of the view that;

The corporate polluter may simply take the payment of fine as part of its cost of doing business and simply pass it on to consumers in the form of high prices for its products and services. It is also noteworthy that high financial penalties may result in plant closures ... unemployment and injuries to creditors and shareholders.<sup>32</sup>

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<sup>27</sup> Cap H1 LFN 2004

<sup>28</sup> Section 9 of the Act. See also Niki Tobi, "Judicial Enforcement of Environmental Laws in Nigeria" in *Environmental and Planning Law Review*, Vol.2 No. 1, January-March 2005, p.92.

<sup>29</sup> See section 15 of the Harmful Wastes (Special Criminal Provisions) Act.

<sup>30</sup> Ibidapo-Obe A, "Criminal Liability for Damage Caused by Oil Pollution" in Omotola JA (ed.) *Environmental Laws, Including Compensation*, 1990, p. 233.

<sup>31</sup> Osibanjo Y, "Some Public Law Considerations in Environmental Protection" in Omotola JA (ed.) *Environmental Laws in Nigeria, Including Compensation*, 1990, p.145.

<sup>32</sup> Duncan Chappell & Jennifer Norberry, "Deterring Polluters: The Search for Effective Strategies" in *University of New South Wales Law Journal*, 1990, p.104



Again, many scholars are of the view that imprisonment as a punishment for environmental damage is not desirable because the victims do not benefit therefrom. What assuages their plight is compensation in form of cash or kind.<sup>33</sup>It is also difficult to subject corporate bodies to any form of imprisonment in Nigeria because a company is just an abstraction resting only on the intendment of the law. Worse still, the regulatory agencies in Nigeria are either reluctant or inefficient in the discharge of their duties.

Other scholars are of different view regarding corporations and criminal sanctions. B. Fisse, for instance, maintained that criminal sanctions can, by their very nature, play a pivotal role in deterring corporate polluters. For them, the stigma of criminal conviction and punishment has a deterrent effect because it affects corporate prestige which is one of the motivating forces in corporate behavior.<sup>34</sup>Some environmental statutes in these countries also prescribe fines and/or imprisonment as penalties for companies in breach of these statutes.<sup>35</sup>In the United States, for instance, both corporations and their executives have paid heavy fines for criminal violations while the company managers have gone to prisons. This is attributable to the fact that the EPA's<sup>36</sup>National Enforcement Investigation Centre has positioned regulatory agencies at their regional offices which are strategic and enhances the discharge of their duties.<sup>37</sup>

The notorious Santa Barbara oil spill in 1969 in Southern California, USA, is also instructive. The agency responsible, the California Coastal Commission rose up to the situation and within five years of the spill (1969-1974), the matter was settled. The clean-up of the spill caused the Union Oil, the company responsible for the spill, an estimated \$10m.<sup>38</sup>This is outside the over \$20.5m paid by the company as damages following the class action lawsuits filed by the governmental entities and private individuals.<sup>39</sup>Oil spill cases in Nigeria last for decades in the courts and the fines prescribed by the statutes are ridiculous. For instance, the case of *Shell Pet. Dev Co. v. Ambah*<sup>40</sup>lasted for nineteen years in the courts, and two-thirds of the victims had died before the final determination of the matter. The victims that lived to see the end of the case were paid a paltry sum of twenty seven thousand naira only.

### **Private Criminal Prosecution for Environmental Damage**

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<sup>33</sup>Ibidapo-Obe A, "Criminal Liability for Damage Caused by Oil Pollution" in Omotala JA (ed.) (supra), p.245.

<sup>34</sup>Fisse B, "Reconstructing Corporate Criminal Law: Deterrence, Retribution, Fault & Sanctions" in *Southern California Law Review*, 1983, p.1147.

<sup>35</sup> See for eg. the Environmental Offences & Penalties Act 1989 of the New South Wales, section 10 of the NSW Act.

<sup>36</sup> Environmental Protection Act, 1990

<sup>37</sup>Omaka CA (supra) p.48

<sup>38</sup>A. Ibidapo-Obe A. (supra) p.245

<sup>39</sup> City of Santa Barbara received \$4m for the damage inflicted by the spill, owners of hotel, beachfront homes were paid \$6.5m, \$1.3 was paid to the commercial fishing interest, while \$9.5m went for the cities, the state, the country of Santa Barbara. See Tompkins A. Walker, "Santa Barbara, Past & Present" in *Santa Barbara, California Tecolote Books*, 1975, p.80.

<sup>40</sup>(1999)3 NWLR pt.593 SC.

A private prosecution is one commenced by a private individual or entity who is not acting on behalf of the Attorney General or the police rather his power originated from the Constitution which guarantees individuals the right to bring private prosecutions. Ordinarily, it is only the Attorney General or the Police that has the power to institute criminal proceedings.<sup>41</sup> In the US, public prosecutors conduct almost all criminal prosecutions. In *Linda RS v. Richard D*,<sup>42</sup> the US Supreme Court denied the rights of criminal prosecution in federal courts by persons not federal government employees. This decision served as a precedent in *Leeke v. Timmerman*<sup>43</sup> eight years after where the same Court quashed the right of private prosecution in a federal court. However, a federal court can appoint a private attorney to prosecute some criminal offences if the executive refuses to do so. Some states within the US allow private prosecutors to prosecute cases not involving serious crimes while others permit the use of private attorneys only to assist the states in their prosecutions.<sup>44</sup>

In Nigeria today, sections 174 (1)(b) and 211 (1)(b) of the Constitution implicitly recognize the power of private persons to institute private proceedings.<sup>45</sup> These sections provide that “the Attorney General shall have power to take over and continue any such criminal proceedings that may have been instituted by any other authority or person.” Sections 59(1) of the Criminal Procedure Act and 143(d) of the Criminal Procedure Code also recognize the power of private persons to institute criminal proceedings against any person suspected to have committed an offence where the Attorney General refuses to prosecute. The Supreme Court of Nigeria rightly noted in the case of *Gani Fawehinmi v. Akilu and anor*<sup>46</sup> that the appellant, as a citizen of Nigeria, has the *locus standi* to initiate criminal proceedings against the respondents.<sup>47</sup> Such proceedings do not affect any civil actions that may be taken simultaneously or thereafter as any conviction would be admissible as evidence in a civil action for damages or injunction related to the same case.<sup>48</sup> The practice of using private attorneys to prosecute criminal offences originated from the common law of England. Towards the end of the nineteenth century, English criminal procedure relied mainly on a system of private prosecution even for serious offences.<sup>49</sup> In the words of Morris Ploscowe;

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<sup>41</sup> Sections 174(1)(a) & 211 (1)(a) of the CFRN, 1999.

<sup>42</sup> (1973) 410 U.S. 614

<sup>43</sup> (1981) 452 U.S. 83

<sup>44</sup> *Young v. US ex. rel Vuitton et Fils S.A* (1987) 481 US 787

<sup>45</sup> See Victor Nnamdi Opara, “Police Right of Audience in Nigerian Courts: *Olusemo v. The Commissioner of Police* Revisited” in *Nigerian Law & Practice Journal*, vol. 4 No.2 October, 2000, p.96.

<sup>46</sup> (1987) 11-12 SCNJ 151.

<sup>47</sup> See *A.G. Anambra State v. Nwobodo* (1992) 7 NWLR pt. 256 at 711. See also the *Nigerian Law School Course Handbook on Criminal Procedure*, Bar Part 11 Course 2001/2002 session, p.21.

<sup>48</sup> Linda F. Duncan, *Enforcing Environmental Law; A Guide to Private Prosecution* (Edmonton: Environmental Law Centre (Alberta) Society, 1990, p.23.

<sup>49</sup> Morris Ploscowe, “The Development of Present-Day Criminal Procedures in Europe & America” in *Harvard Law Review*, 433 (1935) 48, p. 437.

The Germanic procedure of Charlemagne and the Anglo-Saxon procedure of nearly the same period still looked upon the redress of most crimes as a private matter.... Since crime was in general treated as a private injury, there was no distinction between civil and criminal proceedings.... The English criminal procedure developed its traditional accusatory characteristics largely because it relied upon a system of private prosecution....<sup>50</sup>

There have been consistent questions as to whether environmental offence can constitute a crime in the same sense as murder or stealing, or whether it is exclusively a civil wrong. It is undoubtedly both.<sup>51</sup> Outside the provisions of some of our environmental statutes that are criminal in nature such as the Harmful Wastes (Special Criminal Provisions) Act,<sup>52</sup> NESREA Act,<sup>53</sup> EIA Act,<sup>54</sup> among others, the Criminal Code which is purely a criminal statute has specifically made it a crime to commit certain actions that threaten the environment and human health.<sup>55</sup> These provisions have, no doubt, expiated all doubts as to whether the rules of private criminal prosecution will apply to environmental cases in Nigeria. Niki Tobi noted that;

It is trite law that in a criminal case, the burden of proof is on the prosecution, as the accused is presumed innocent until he is found guilty by the court. This principle of law also applies to environmental offences.<sup>56</sup>

Bowen O.A. added that “an individual can seek enforcement of criminal provisions on environmental law within the recognized legal limits of general right to private prosecution of crimes.”<sup>57</sup> He stated this in view of section 275(1) of the Criminal Procedure Act which made provisions for the modes of commencement of criminal trials which include, among others, information filed by a private prosecutor in conformity with the provisions of the Act.

### **Administrative Enforcement**

Administrative enforcement is one of the important environmental law enforcement mechanisms. It refers to non-judicial enforcement actions adopted by the regulatory agencies to compel compliance to environmental laws. The agencies can issue administrative order to compel compliance, and in many cases can impose a monetary penalty for infractions, and in other cases, it can impose injunctive sanctions such as shutting down facilities for transgressions. In some other cases, amicable settlement can be achieved

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<sup>50</sup> Ibid, p.469.

<sup>51</sup> Linda F. Duncan (supra) p.23.

<sup>52</sup> Cap.HI LFN 2004. All the offences in this Act are criminal in nature.

<sup>53</sup> See sections 20(4), 21(4), 22(3) & (4), 23(3) & (4), 24, 25, 26 & 27.

<sup>54</sup> See for eg.section 62.

<sup>55</sup> See sections 243- 248 of the Criminal Code, Cap C38 LFN 2004..

<sup>56</sup> Niki Tobi (supra) p.96.

<sup>57</sup> Bowen O.A, “The Role of Private Citizens in the Enforcement of Environmental Laws” in Omotola JA (supra) p. 165.

through the process of negotiation.<sup>58</sup>Chris Curie *et al*<sup>59</sup> noted that administrative enforcement is quite different from criminal and civil judicial enforcements which involve a court system that is independent of the environmental enforcement agency. For them, the administrative enforcement does not involve such an independent court system, although all administrative enforcement systems provide access to the judicial system at some point in the process. It is one of the most expeditious ways of dealing with the violation of environmental regulations because, by this means, they are resolved quickly and less expensively than cases in the courts. Most agencies themselves report, from investigations and workshops, that the administrative processes are faster, cheaper and more efficient than the judicial options.<sup>60</sup>This is an unquantifiable benefit of the administrative enforcement mechanism because environmental issues are very sensitive and delicate, and a good number of them concern survival of species and properties that may be permanently destroyed by the effluxion of time.<sup>61</sup>

Administrative enforcement has been acknowledged worldwide today as a strong enforcement tool, only that there is a remarkable variety in the powers and procedures adopted by these various administrative agencies. In Holland, for instance, administrative enforcement is not conducted independently of the judicial process, rather it is a special administrative judicial branch outside the civil and criminal court system.<sup>62</sup>In the United States, most violations are subject to administrative enforcement actions. EPA is the administrative agency authorized by the Congress to protect the environment and human health by making and enforcing its own regulations in conformity with the laws of the United States. Its administrative actions are handled under EPA's internal administrative litigation system presided over by its administrative law judges. Any violator dissatisfied with the decisions of these judges may appeal to the EPA's administrator, appointed by the US President to the EPA's activities and is responsible to the President, while the decisions of the EPA's administrator can be appealed to US courts.<sup>63</sup>EPA's enforcement programmes also work hand in hand with the Department of Justice for the States and tribal governments in order to take legal actions in both federal and state courts. EPA and the States use a variety of written penalty policies to determine what penalty it should seek in settling a case, and most of its enforcement cases are settled before trial or hearing. EPA today employs different strategies to achieve its objectives.

In Nigeria, administrative enforcement has also been used by the administrative agencies in the achievement of their objectives. An example of such revolves around the case of Continental Iron and Steel Co.(CISCO)

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<sup>58</sup> Chris Curie *et al*, *Summary of Workshop: Administrative Enforcement Mechanisms: Getting Authority & Making It Work*, available at <http://www.google.com.ng/search/hl=en-NG& Source=> (last accessed 16 April, 2015).

<sup>59</sup> Ibid.

<sup>60</sup> Ibid

<sup>61</sup> Joseph Nwazi, "A Call for Speedy Trial of Environmental Cases In Nigeria" in *Journal of Public Law and Constitutional Practice*, University of Jos, vol.3 No.1 March, 2010, p.228.

<sup>62</sup> Chris Curie (*supra*).

<sup>63</sup> Omaka CA (*supra*) p.50

Nig. Ltd. in which CISCO's factory in Ogba, Ikeja Lagos failed to install the waste treatment facility recommended by FEPA, then the flagship agency for environmental protection, even after five years moratorium and despite warnings and several visits by FEPA. The factory was consequently closed which compelled it to commence pollution abatement activities and within three months, it attained 40% level of compliance from its zero level after about three decades of the company's establishment.<sup>64</sup>

Today, the FEPA Act has been repealed and replaced by NESREA Act 2007 and so all the responsibilities of FEPA have been transferred to NESREA. The main function of the Agency under the Act is to enforce compliance with environmental laws and regulations.<sup>65</sup> By section 8(d), the Agency is empowered to prohibit processes and use of equipment or technology that undermines environmental quality. The Agency also has the responsibility to conduct field follow-up compliance with set standards and to punish offenders in conformity with the provisions of the Act.<sup>66</sup> The Agency has therefore, from time to time, issued regulations which mandate the industries concerned to install anti-pollution equipment and other strategies that will help protect the environment and people's lives and properties.<sup>67</sup> To enhance the Agency's discharge of its functions, the Act as well empowers it to enter and search premises,<sup>68</sup> to examine and to seize and detain any article being used in contravention of the provisions of the Act.<sup>69</sup> It is also empowered, with an order of the Court, to seal and close down premises including land, vehicle, tent, vessel, floating craft on any inland water and other structure whatsoever.<sup>70</sup> The requirement of a Court order would, no doubt, guard against abuse of such powers by the Agency especially in view of the constitutional right to privacy of citizens of Nigeria.<sup>71</sup> Though obtaining such order may cause delay but it is considered imperative.

Atsegbua L. is of the view that administrative enforcement is expedient and more effective considering the adverse impact of the closure on its fortunes and publicity.<sup>72</sup> Closing down a company for non-compliance with the law has a lasting stigma and so leaves those companies with no choice than to comply. Again, court processes that consume time and money are eschewed. The only impediment to the smooth discharge of the functions of those administrative agencies is lack of fund and other incentives. The agencies require adequate funds for the effective discharge of their duties. K.A.Olatoye noted that other incentives given to

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<sup>64</sup>Olatope KA, "Science, Technology & Health Problems: Updating Environmental Problems in Nigeria" in *Usmanu Danfodiyo University Law Journal*, vol. 7, 2009, p. 253.

<sup>65</sup> Section 7 (a)-(n) of the Act.

<sup>66</sup>Section 8(e) of the Act.

<sup>67</sup> Joseph Nwazi, "Assessing the Problems of Climate Change: Using Law as an Instrument of Control in Nigeria" in *Journal of Public & Private Law*, Nnamdi Azikiwe University, Awka, August 2011, vol. 4 p.270.

<sup>68</sup> Section 30(1)(a)

<sup>69</sup> Section 30(1)(b)

<sup>70</sup> Section 30(1)(g)

<sup>71</sup>Section 37 of the CFRN, 1999.

<sup>72</sup>Atsegbua L. *et al* (supra) p.218.

these agencies in the form of funds and tools of operation are vital to the effective discharge of their duties. It is also unfortunate that in some cases when provision has been made for such funds, it is misappropriated or embezzled by the authorities responsible for the disbursement, and never serves the purpose for which it is meant for. This incapacitates the agencies.

### **Civil Enforcement**

This refers to enforcement actions commenced by private individuals, groups or corporate bodies to protect interests unique to them. This mainly comes in the form of civil rather than criminal actions instituted in the law courts. In the context of environmental law, it entails a person instituting civil actions in competent court of law in respect of environmental matters inimical to his interest. This he can do by the normal procedure of filing a writ of summons.<sup>73</sup> Civil actions are extolled due to a wide range of available remedies such as injunctions, damages, fines and a less onerous burden of proof, making it less complex and less expensive.<sup>74</sup> An aggrieved person may institute civil action under the rule in *Rylands v. Fletcher*,<sup>75</sup> negligence, trespass or nuisance to seek compensation arising from the action of the perpetrator. The rule in *Rylands v. Fletcher* is a common law rule of strict liability which has been useful to plaintiffs in oil pollution cases in Nigeria. It was propounded by Blackburn J. that a non-natural user of land who brings unto his land anything likely to do mischief if it escapes should keep it at his peril. Where it escapes and causes damage, the defendant is liable for the consequence of its escape. The “fault principle” is de-emphasized once it is unnecessary to establish the fault or negligence on the part of the defendant provided the use is “non-natural” and the material is dangerous or mischievous.<sup>76</sup> L. Atsegbua *et al* maintained that the scope of this rule is not limited to inherently dangerous materials like explosives, gas, petrol and chemical, rather it extends to innocuous materials which can only become hazardous when they accumulate in large quantities such as water, sewage, etc.<sup>77</sup> The cases of *Shell Pet. Dev. Co. Nig. Ltd. v. Chief Otoko & ors*,<sup>78</sup> *Shell Pet Dev. Co. Nig. Ltd. v. Anaro*,<sup>79</sup> *Oto Kiti Nig. Ltd. v. Peter James Ltd*.<sup>80</sup> were all decided in conformity with the rule in *Rylands v. Fletcher*. In *Shell Pet. Dev. Co. Nig. Ltd. v. Anaro*, for instance, the appellant’s crude oil escaped into the respondent’s land and destroyed his farmland, crops and rivers. The Courts entered judgment for the respondent applying the rule in *Rylands v. Fletcher*.

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<sup>73</sup> Niki Tobi, “Judicial Enforcement of Environmental Laws in Nigeria” in Theodore Okonkwo (ed.) *supra*, p.94.

<sup>74</sup> Duncan Chappell & Jennifer Norberry (*supra*) p.113

<sup>75</sup> 1866 LR 1 Ex.265

<sup>76</sup> See Ayodele O. Akinsola, “Civil Liability for Oil Pollution under Nigerian Law” *NIALS Journal of Law & Public Policy*, p.297.

<sup>77</sup> Atsegbua L. *et al* (*supra*) p.218

<sup>78</sup> (1990)6 WLR pt. 159 p. 693

<sup>79</sup> (2001) FWLR pt.50 p.1817

<sup>80</sup> (2005) 12 WRN 160

Another cause of action available to a party in civil action is nuisance which is an unjustifiable interference with the plaintiff's enjoyment of land. Nuisance may be public or private, and may come in the form of noise, odour, vibration, dust, sewage, noxious or offensive fumes, water, smokes, gas flaring, emission of gases, obstruction of road, oil spillage, etc. Private nuisance is a civil wrong while public nuisance is a crime. Before now, if it were a public nuisance, the individual lacked the standing to sue, rather it was only the Attorney General of the Federation or of the State as the case may be that had the power to institute actions on behalf of the public. A private individual could only sue with the prior consent of the Attorney General and with the proof that he had suffered damage over and above that suffered by the public.<sup>81</sup>

Today, this position has been varied as section 6(6)(b) of the 1979 and 1999 Constitutions of the Federal Republic of Nigeria vested in every individual an unrestricted access to the Courts for the determination of his civil rights and obligations. Therefore, any rule requiring an individual to obtain the consent of the Attorney General as a pre-condition for instituting action in public nuisance is inconsistent with this constitutional provision and so void to the extent of such inconsistency.<sup>82</sup>In *Adediran & anor v. Interland Transport Ltd*,<sup>83</sup>the appellants as residents of the Ire-Akari Housing Estate, Isolo, brought an action for nuisance due to noise, vibration, dust and obstruction of the roads in the estate. Obstruction of road is a public nuisance under the Criminal Code.<sup>84</sup>The Supreme Court held that in the light of section 6(6)(b) of the 1979 Constitution, a private person can commence action on public nuisance without the consent of the Attorney General and without joining him as a party.<sup>85</sup>The Court noted that;

The high constitutional policy involved in section 6(6)(b) is the removal of the obstacles erected by the common law requirements against individuals bringing actions before the court against the government and its institutions, and the pre-conditions of the requirement of the consent of the Attorney General.<sup>86</sup>

One peculiar impediment against the use of nuisance as a remedy is the strict requirement for the proof of special damages. Many litigants have lost their ordinarily genuine claims in nuisance because of their inability to establish special damages, and as held in *Shell Pet. Dev. Co. Nig.Ltd. v. Tiebo VII*,<sup>87</sup>it is wrong for a Judge to award general damages in place of a claim for special damages which was not established.

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<sup>81</sup>*Amos & ors v. Shell Pet. Dev. Co. Nig. Ltd.* (1977)6 SC. P.9.

<sup>82</sup>Atsegbua L. *et al* (supra) p.70.

<sup>83</sup>(1986)2 NWLR pt. 20 p.78.

<sup>84</sup>Section 234.

<sup>85</sup>Ibibia L. Worika (supra) p.22.

<sup>86</sup>Karibi-Whyte JSC , p.101

<sup>87</sup>(2005)4 FWLR pt. 283, 674.

Therefore, it is wrong for any court to treat a claim which failed under special damages as successful under general damages.<sup>88</sup>

Another frequently invoked cause of action in environmental context is negligence. To succeed in action for negligence, the plaintiff must prove that the defendant owes him a duty of care, he was in breach of the duty and as a result, the plaintiff has suffered a damage for which the defendant is liable in law.<sup>89</sup>In *Shell Pet. Dev. Co. Ltd. v. Maxon*,<sup>90</sup>the real complaint of the plaintiff (now respondents) against the oil company is that the latter was in breach of its duty of care to maintain its installations so as to prevent any spillage with its consequent pollution and the resultant damage to their property. The Court granted them the damages they sought for. One major setback of this remedy is that it is bedeviled with the problems of proof. The onus is on the plaintiff to establish that the defendant is negligent and that the negligence is the proximate cause of the damage to the plaintiff. Where the plaintiff fails to discharge this burden, he loses his case. Another setback with this remedy is the requirement of experts in some cases to establish not only damage but its link with the defendant's activities. These experts are expensive and poor litigants have lost their claims due to their inability to procure their services.<sup>91</sup>

Trespass is another cause of action available to victims of environmental damage in Nigeria. Trespass in environmental context is confined to trespass to land which is an unjustifiable interference with somebody's possession of land. It is a violation of a possessory right and so action can be maintained by one in mere possession or with a right of possession.<sup>92</sup>Trespass is actionable per se meaning that the plaintiff must not prove actual damage before he can succeed in an action for trespass. His duty is to establish that his right has been unjustifiably interfered with. In *Onasanya v. Emmanuel*,<sup>93</sup>the Court held that the mere throwing of water and refuse on to the plaintiff's land amounted to trespass to land which will entitle the plaintiff to damages.<sup>94</sup>

A victim of environmental degradation can also seek for injunction which is a court order forbidding the defendant from doing or continuing to do a wrongful act.<sup>95</sup>The remedy of injunction is a formidable tool in the enforcement of environmental rights. It is an extraordinary remedy reserved for special circumstances in which the temporary preservation of the status quo is necessary. This is more so where a plaintiff's legal right has not only been invaded but there is also a continuance or a threat of continuance of such invasion.

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<sup>88</sup> See also Joseph Nwazi, "A Critique of the Court's Insistence on the Operation of the Regular Standard of Proof in Oil Related Litigations between Two Unequal Parties" in *Ikeja Bar Review*, NBA Lagos, vol. 2 part 1 Sept.2007, p.97.

<sup>89</sup>Kodilinye & Aluko, *The Nigerian Law of Torts*, Spectrum, Ibadan, 2003,p.54.

<sup>90</sup>(2001) FWLR pt. 47 p.1033.

<sup>91</sup>*Seismograph Services Ltd. v. Ogbeni*, (1976)4 SC 85

<sup>92</sup>*Akinwale v. Iliasu* (2005) All FWLR pt.289, p.1294 (A).

<sup>93</sup>(1973)4 CCHCJ 1477.

<sup>94</sup>Kodilinye & Aluko (supra) p186.

<sup>95</sup>Ibid, p.1



An injunction requiring somebody to discharge a positive responsibility, such as to clean up an oil spill, is a mandatory injunction while the one restraining a conduct is a prohibitory injunction.<sup>96</sup> Injunctive relief is an equitable remedy, that is, a remedy that originated in the English Courts of Equity. It is not a matter of right but the discretion of the Court to determine when to grant it or not. In certain circumstances, the injunction restraining a wrongful act can co-exist with an award of damages.

Injunctive remedy is not considered appropriate in oil pollution claims in Nigeria due to economic considerations. The writer is not aware of any successful injunction granted to victims of oil pollution in Nigeria to halt the operations of these companies considered as the major source of revenue to the federal government. What the Courts do is to award damages in lieu of injunctions.<sup>97</sup> Such damages *in lieu* of injunction therefore compels the victims to swap their property for money. Some of these properties are unquantifiable in terms of money, but the victims have no option. M.T.Ladan explained the situation in Nigeria thus;

Economic benefits are prioritized over environmental protection. National accounts and economic policies do not properly recognize environmental costs....Environmental legislation needs to be reformed and better enforced.<sup>98</sup>

### **Citizens Enforcement of Environmental Rights**

Ordinarily, it is the responsibility of the government to enforce environmental laws, but in many countries of the world today, citizens have become part of the enforcement process. This is mainly due to the fact that the government, through its agencies, is not living up to expectations in its enforcement responsibilities.

As observed by Casey L. *et al*;

Citizens...often suspect government agencies of not purely fulfilling their enforcement responsibilities. Citizens may view government employees as overly susceptible to the business interests they regulate. Or, they may attribute government inaction to bureaucratic inertia. Either way, agency enforcers often are seen as overlooking or impeding environmental protection goals.<sup>99</sup>

It has also been stressed that the state or community has no right of its own that may conflict with the individual right. Rather, it is the individual rights of other citizens that can be “counterpoised to the individual right of a fellow

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<sup>96</sup> Dobbs Dan, *Law of Remedies: Damages, Equity & Restitution* (2<sup>nd</sup> ed.) 1993, p.224

<sup>97</sup> Finine Fekumo F, “Civil Liability for Damage Caused by Oil Pollution” in Omotola JA (ed.) (supra) p.281.

<sup>98</sup> Ladan MT, “Review of NESREA Act & Regulations 2009-2011: A New Dawn in Environmental Compliance & Enforcement in Nigeria” in *Environment & Development Journal*, 2012, p.116, available at <http://www.lead-journal.org/content/12116.pdf> (last accessed 30 May 2015).

<sup>99</sup> Casey Lefkowitz, *et al*, *The Evolving Role of Citizens in Environmental Enforcement*, available at [http://www.inece.org/4th vol1/futrell.pdf](http://www.inece.org/4th%20vol1/futrell.pdf) (last accessed 19 May 2015)

citizen”.<sup>100</sup>Just like a democracy, a government of the people by the people and for the people, the environment is for the people and the enforcement of its laws by whichever means is for the welfare of the people. Therefore citizen’s involvement in the enforcement process is a logical step for democratic political systems that have allowed citizens to play a vital role in environmental matters.<sup>101</sup>If citizens are denied a role in enforcement, or if they are not educated about and encouraged to assume a role, even the most sophisticated system of environmental protection laws may exist only on papers.<sup>102</sup>

Another idea stressed is that the citizens know their environment more closely than the government and its agencies. Those that make up the government is insignificant part of the population. In the Niger Delta region of Nigeria, for instance, the people know the creeks than the government and its agencies. As the direct victims of environmental pollution, they know where and how it affects them than those in authority. Their day to day activities and experience give them access to patent information about environmental matters than the government that maintains a relative distance from the people and the environment, especially considering that most environmental issues are contained in the exclusive legislative lists in the second schedule part 1 of the Constitution, that is, reserved only for the federal government that sits in the Federal Capital Territory, Abuja.<sup>103</sup>

Another challenge inherent in the exclusive enforcement by the government and its agencies is the discretionary powers of state obligations. They are not bound to initiate enforcement procedures even when provided with sufficient evidence of violation of environmental statutes. The US Supreme Court affirmed this position in the case of *Dubois v. Thomas*<sup>104</sup>where it held that the Director of EPA does not have a duty to investigate violations of the Clean Water Act when shown evidence of violation. In some countries today, environmental statutes confer powers on the citizens to enforce the law when the government or its agencies are reluctant to do so. In Mexico, for instance, the Federal Ecology Law and the respective state laws confer power on any person to file complaint with the appropriate government agency in respect of activities that degrade the environment. Once it is done, the agency carries out investigation and treat the complaint accordingly.<sup>105</sup>This is one of the popular means of involving the citizens in the enforcement of environmental laws in Mexico and is sustained till date. In the US, all federal

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<sup>100</sup>Orwin & Pangle, “The Philosophical Foundation of Human Rights” in Plattner (ed.) *Human Rights in Our Time* (1984)1 at p.2.

<sup>101</sup>Fohr M. & Roller G, *Participation & Litigation Rights of Environmental Association in Europe*, (1991) p.247.

<sup>102</sup>*Ibid.*

<sup>103</sup> See for eg. 2<sup>nd</sup> Schedule Part 1, item 39- mines & minerals, including oil fields, oil mining, geological surveys & natural gas.

<sup>104</sup>820 F. 2d 943, 948 (1987).

<sup>105</sup>Article 203 of the Ecology Law of Mexico. The General Law of Ecological Balance & Environmental Protection is divided into titles. Title V creates policies & law aimed at promoting public participation & guaranteeing the right to environmental information.

environmental statutes except very few<sup>106</sup> contain citizen suit provisions.<sup>107</sup> In all these provisions, the US Congress intended the citizen suits as necessary alternatives in situations where the government or its agencies shirk their enforcement responsibilities.<sup>108</sup> In the words of Will Reisinger *et al*;

While congress intended federal and state agencies to hold primary enforcement responsibilities, legislators also included provisions allowing private citizens to enforce the laws when the government was unwilling or unable to do so.<sup>109</sup>

The citizens serve as watchdogs and inspectors of the environment, and also prosecutors of violators of environmental statutes. Through this means, the citizens assist the government in carrying out its own environmental monitoring activities. In Argentina, for instance, the water quality legislation allows private parties who have filed any complaint about a facility to participate in any inspection of the said facility during any investigation.<sup>110</sup> Under the Estonia's Nature Protection Act, citizens can deputize as public inspectors to monitor compliance with laws, regulations and permits concerning hunting, fishing and forestry. The central theme in the two notable international conferences on environmental enforcement in Budapest, Hungary (1992) and in Oaxaca, Mexico (1994) was on the citizens' role in the enforcement of environmental laws, including the mapped out strategies especially in the US and the Western Europe to enhance their full participation. In the Nepal case of *Prakash Mani Sharma & ors v. Girija Prasad Koirala & ors*,<sup>111</sup> the Supreme Court of Nepal noted that "every individual is entitled to show concern for public property and public rights".

Citizen enforcement may take different forms. For instance, it may involve private individuals instituting actions against others who violated their environmental rights. This is purely civil. In Hungary, for instance, the Civil Code allows individuals to institute civil suits against other individuals for violating an obligation not to disturb others without just cause, especially neighbours. This is not exclusive to environmental problems but the victims of environmental degradation have been the major beneficiaries as they have successfully invoked the provisions in their litigations.

The citizens may as well institute actions in the courts to compel the agencies to perform their specific statutory duties in conformity with some environmental statutes. Section 304(b) of the Clean Air Act provides that "any person may commence a civil suit action on his own behalf against an administrator where the administrator failed to perform his duty under the Act which duty is not discretionary". The US Environmental statutes also confer

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<sup>106</sup> Such as Federal Insecticide, Fungicide & Rodenticide Act (FIFRA).

<sup>107</sup> Examples include Toxic Substances Control Act, 15, 2006, Marine Protection, Research & Sanctuaries Act 33, 1972, Safe Drinking Water Act, 42, 2006, Noise Pollution Act, 42, 1972, Energy Policy & Conservation Act, 42, 2006, etc.

<sup>108</sup> Will Reisinger, *et al*, Environmental Enforcement & the Limits of Cooperative Federalism: Will Courts Allow Citizen Suits to Pick Up the Slack?" in *Duke & Environmental Law & Policy Forum*, vol.20 No.1 2010. p.52

<sup>109</sup> Ibid.

<sup>110</sup> See also the US Surface Mining Control & Reclamation Act, 1977 which contains an equivalent provision. See also Roberts E. & Dobbins J, *The Role of the Citizens in Environmental enforcement*, p.187.

<sup>111</sup> 312 NLR (1997) SC Nepal

powers on individuals to commence suits against the US or against a state agency to the extent permitted by the Eleventh Amendment.<sup>112</sup> Where the citizen suit is successful, the effect is for the Court to mandate such agencies to perform their functions.<sup>113</sup>

Citizen enforcement suits are designed to protect the public interest and not exclusively the interest of the particular citizen involved. In other words, the suits are filed in the public interest and the citizens must base their claims on damage to the society, not solely to themselves. By this, the environmental laws and rights are upheld. In India, for instance, citizens are granted unrestricted access to institute public interest law suits to defend their human and societal rights. In the Indian case of *Subash Kumar v. State of Bihar*,<sup>114</sup> the Supreme Court of India stated that public interest litigation envisages legal proceedings for vindication or enforcement of fundamental rights of a group of persons or community which are not able to enforce same due to incapacity, poverty or ignorance. Such litigation cannot be employed to satisfy a personal grudge or enmity but geared towards social and economic justice, and other matters affecting society in the court of law.

One of the mechanisms to facilitate citizen litigation is non-restriction of his right to sue for damages in a separate action of the same subject matter. This is so vital because the plaintiff cannot recover damages in public interest litigation. With the non-restriction of his rights, he can sue not only to enforce the statute for public interest but also to claim damages in torts as regards lawyers' charges, court fees, and expert witnesses where necessary.

In Nigeria, it seems this enforcement mechanism is non-existent in the legal system going by the fact that no environmental statute contains an express provision for citizen enforcement of environmental laws/rights as it is in other jurisdictions. NESREA Act 2007 which is a leading environmental statute in Nigeria confers a broad enforcement powers on the Agency (NESREA) for the purposes of enforcing the Act.<sup>115</sup> Section 31 of the Act specifically provides for the after-effect of obstructing an officer in the course of discharging his duties under the Act. It attracts a fine of not less than N200,000 and additional N20,000 each day the offence persists for an individual or to imprisonment of not more than one year, or both fine and imprisonment, but for a corporation, it is a fine of N2m and additional N200,000 for everyday the offence continues. This provision falls within the exclusive powers of the Agency to enforce. What of situations where the Agency exhibits indolence in the discharge of its duties which has affected public interest? Can anyone take the responsibility to institute action against either the Agency for such indolence or others for failure to comply with such regulations? The only provision of the statute where citizen enforcement can be inferred is section 32(1) of the NESREA Act of 2007

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<sup>112</sup> Will Reisinger, *et al* (supra) p.54

<sup>113</sup> See *Environmental Defence Fund v. Thomas*, 870 F.2d 892 (2d Cir. 1989). See also Roberts E. & Dobbins J. (supra).

<sup>114</sup> AIR 1991 SC 420 Kn.

<sup>115</sup> See the enforcement powers under Chapter 6 (section 30) which include to enter premises & search, to open & examine articles, books or documents, seize & detain articles, to suspend activities, seal & close down premises, etc.

which provides that “a suit shall not be commenced against the Agency before the expiration of a period of one month, after written notice of intention to commence the suit shall have been served on the agency by the intending plaintiff or his agent and the notice shall clearly state the;

- (a) Cause of action,
- (b) Particulars of claim,
- (c) Name and place of abode of the intending plaintiff, and
- (d) Relief which he claims.”

The position is similar in the National Oil Spill Detection and Response Agency (NOSDRA) Act which uses the same expressions as “cause of action,” “the particulars of claim,” “the name and place of abode of the intending plaintiff” and “the relief which he claims”<sup>116</sup>as indicative of the statutory recognition of the citizens involvement in the enforcement of the provisions of these statutes. Outside these inferences, other grounds upon which citizens suits in Nigeria can be based include the relevant provisions of the 1999 CFRN (as amended) and the Criminal Procedure Act.<sup>117</sup>Even the National Policy on Environment 1989 geared towards sustainable development of the environment in Nigeria recognizes the important roles which the citizens, groups, and communities play in the formulation and enforcement of environmental policies in Nigeria, only that their participation has been undermined by the hostile activities of both the government and the multinational companies. The Fundamental Rights (Enforcement Procedure) Rules, 2009, already discussed, provides that “the Court shall encourage and welcome public interest litigation, though in human rights field,<sup>118</sup>and the applicant may include anyone acting in the public interest. “Public interest” under the interpretation section “includes the interest of Nigerian society or any segment of it in promoting human rights and advancing human rights law.”<sup>119</sup>These provisions can be invoked in the enforcement of environmental rights in Nigeria, and so creates a participatory space for citizens, groups and communities’ involvement in the process.

## **Conclusion**

The crux of this work is a consideration of the legal regime of the enforcement of environmental laws in Nigeria. We considered it imperative to evaluate the various modes of this enforcement which include criminal enforcement, compliance, citizen’s enforcement, administrative enforcement and the legal regime regulating such enforcements. The essay discovered that the enforcement of these laws is a responsibility of all of us, both the government and the governed and not exclusive preserve of one person or body of

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<sup>116</sup> Section 20(3) of the NOSDRA Act, 2006

<sup>117</sup> See section 174(1) of the CFRN 1999 & section 59(1) of the CPA.

<sup>118</sup> Order 3(e) to the Preamble.

<sup>119</sup> See Order 1, Application & Interpretation

persons.<sup>120</sup> That is why the means of enforcement is diverse and requires significant efforts. However, there should be a clear commitment on the part of the government that wields the state power. It is its sole responsibility to punish defaulters and ensure compliance to the laws. Secondly, the inherent inadequacies of some of our environmental laws need to be urgently amended to make it more effective by way of higher punishment and payment of reasonable damages that would serve as a deterrent to would be offenders.

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<sup>120</sup> Hakeem Ijaiya & Oyibe Tochukwu Joseph, "Rethinking Environmental Law Enforcement in Nigeria" in *Beijing Law Review*, Jan. 2014, p. 318.