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Corporate Investment in Developing Countries and State's Responsibility in Sustainable Management of Natural Resources

Eni E. Alobo[1], Adoga J. Adams[2], Kevin U. Udungeri[3]

[1] Faculty of Law, University of Calabar - Nigeria Visiting Scholar, Faculty of Law, University of Port Harcourt, Nigeria
[2] Faculty of Law, University of Calabar
[3] Faculty of Law, University of Calabar, Nigeria, P.M.B. 1115, Calabar. Tel: +234-(0)803-682-2222. Email: aloboenie@yahoo.com

Abstract
Environmental squalor has continued to create hostile challenges for health and economic development in Nigeria. Some of these glitches include deforestation, pollution, global warming, etc. Despite environmental laws and policies targeted at eradicating these problems, the situation in Nigeria seems deteriorating due to the fact that these laws are not meritoriously enforced. In this article, we have critically evaluated some of the notable laws and regulations governing the oil and gas sector designed to protect the environment against harmful activities. The consequence that flowed from this evaluation is the realisation that despite the efforts of the government in establishing laws and regulations to protect the environment, there have been very little positive results in the area of effective implementation and enforcement of these laws. This we discovered was attributable to the lack of political will on the part of the government and the serious challenge of regulating Multi-National Corporations due to their economic strength and their transnational nature. Again, our appraisal clearly established that although there are laws regulating the oil industry of Nigeria, some of these laws are very old and of no consequence, while others do not have direct control over corporate operations and Multi-National Corporations. This has created regulation and implementation gap and the attendant negative consequences on the Nigerian environment. In this connection, we have elicited and recommended practical solutions to these problems to enable government to strikes the delicate balance between the need to encourage corporate investment and the necessity to protect the environment from the resulting hazards.

Keywords: Corporate Investment, Environmental Laws, Multi-National Corporations, Natural Resources

1. Introduction

The end of the Second World War saw the colonial powers losing grip of their former colonies with the emergence of independent States (Nico, 1997). The post-colonial States began agitating for autonomy over the management of their natural resources to foster socio-economic development of their territories (Orla and Pereira 2013). This agitation gained prominence at the international plane and culminated in a series of United Nations General Assembly (UNGA) resolutions on sovereign rights of the people over their natural resources. For instance, UNGA Res 626(VII) (December 21, 1952) entitled Right to Exploit Natural Wealth and Resources; UNGA Res 1515 (XV), (15 December 1960) recommending respect for the sovereignty of every State to dispose

of its wealth and natural resources; UNGA Res 1803 (XVII), (December 1962) declaration on 'Permanent Sovereignty over Natural Resources'.

Emphasis on the rights of States to control their natural resources was further incorporated into the two Human Rights Conventions of 1966; Common Article 1(2) of the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights; the 1978 Vienna Convention on the Succession of States, Article 13 and regional instrument of the African Charter on Human and Peoples' Right (adopted 27 June1981, entered into force 21 October 1986) (1982), Article 21.

These instruments became the legal basis upon which developing States with rich natural resources began to renegotiate investments and concession agreements with foreign investors who hitherto had direct and unregulated access to the economic sectors of these States.

National economic policies of some developing States were tailored towards indigenous control through nationalisation of foreign assets and corporate investments. An eloquent example was the nationalisation of the Anglo-Iranian Oil Company by Iran in 1951. The policy of expropriating and transferring of foreign investments to indigenous people led to tension between developing countries and the foreign investors whose investments were expropriated without adequate compensation (Fiona, 1991). The tension and harsh confrontations between investors and host States resulted in the United Nations General Assembly Resolution 2158 of 1966, to serve as operational guidelines for corporate investment by streamlining the rights of the host States to their natural resources and the rights of foreign investors to secure their investments in line with the national laws of the host States. This became necessary as most developing States lacked the huge capital and technology required to exploit their natural resources for economic development optimally. It was a demonstration of effort by the UN to promote the economic development of post-colonial States, through mutual cooperation, transfer of technology and manpower development of the host States.

2. Corporate Investment and States Obligations in Environmental Protection

Efforts at ensuring corporate investment and smooth corporate relations between the host States and foreign investors led to the signing of various multilateral treaties which led to the establishment of international trade bodies like the World Trade Organisation (WTO) and bilateral investments treaties (BITs) (Menno and Saman). Further effort to strengthen corporate investment with the clearly defined responsibility of the host States and the investors necessitated the United Nations General Assembly adopting and passing the Charter of the Economic Rights and Duties of States in 1974 through GA A/Res/29/3281 (XXIX) (12 December 1974).

This resolution was as a result of the UN Conference on Trade and Development of 18th May 1972, which stressed the need to establish generally accepted norms to govern international economic relations between States. These efforts facilitated the development of transboundary trade and ushered in global trade with increasing role of private investors in the exploitation of natural resources (Jona, 2004). MNCs began investing huge capitals in most resource-rich States and gradually began to dominate the economies of developing States (Elena and Jonah, 2011).

The quest for rapid economic growth by developing States coupled with the desire of MNCs to make profit and returns on their investments resulted in over-exploitation of the natural resources leading to environmental pollution and destruction of ecosystems (Rhuks, 2009). The need to minimise the adverse effect of the exploitation of trans-boundary resources and to protect the common environment led to series of international instruments and agreements creating obligations and commitments on States to ensure sustainability in the use of the natural resources. This initiative was predicated on the global nature and transboundary effects of environmental pollution, like the issue of climate change which could possibly affect both the developing and developed nations.

Notable efforts in addressing environmental issues at the international level began with the theoretical framework laid by the 1972 Stockholm Declaration, which was propelled by the need to protect and preserve the human environment through the sustainable use of natural resources. The Stockholm conference established framework principles on environmental rights and sustainability and made some recommendations which birthed the United Nations Environment Programme (UNEP), as an agency of the United Nations that sets global environmental agenda promotes sustainable development programmes and devise means of implementing environmental policies (John and Deborah, 2012). Further development culminated in the Brundtland Report of 1987, which addressed critical issues affecting the human environment and the depletion of natural resources.

The necessity to integrate environmental considerations as an essential component of economic development gained more prominence at the United Nations Conference on Economic Development which later expanded to include the management of the atmosphere through the instrumentality of the United Nations Framework Convention on Climate Change (UNFCCC), and later created obligations and commitments by the Kyoto Protocol. A more practical effort at establishing procedural environmental rights with the binding obligation on States is the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision Making and Access to Justice on Environmental Matters.

In recent times, the issue of sustainable management of natural resources has been on the front burner of major world summits, with the establishment of international law instruments, norms, and principles creating binding obligations on States. For instance, the 2002 World Summit on Sustainable Development (WSSD) and the 2012 Earth Summit. One of the foremost international law principles on the sustainable management of natural resources is the ‘no harm principle' which enjoins States to enact effective environmental legislation, set environmental standards and objectives within their domestic jurisdictions to ensure that the pursuit of economic development is not prejudicial to environmental needs. The ‘no harm principle' as set out by the Rio Declaration has become widely acknowledged as a principle of customary international law and reflects in major instruments creating obligations on States in the exploitation and management of natural resources (John, 2002). Principle 15 of the Rio Principles provide for necessary precautionary measures by States to avoid environmental damage, while principle 16 provides for the Polluter Pays Principle (PPP) which shall be analysed in the Nigerian context.

3. Environmental Protection under Regional Instruments

The European Union (EU) has always served as a good example of a regional organisation which has shown greater interest in the protection of the environment with stronger environmental policies which bind its members. The EU has adopted a number of Directives aimed at protecting the environment and creating obligations and liability on member States. Some good examples are: the EC Directive 2004/35 on environmental liability in relation to environmental damage which member States are under obligation to transpose into their national laws; Council Directive 92/43/EEC on the conservation of natural habitats and wild fauna and flora which establishes a coherent European ecological network, and conservation of wild birds, and Directive 92/43/EEC which places obligation on Member States to contribute proportionately through designation of special protection area hosting natural habitats and of wild fauna and flora.

The EU Liability Directive reinforces the polluter pays principle to ensure that the Member States shall ensure that the operator of an occupational activity shall take precautionary steps and measures necessary to minimise environmental damage. Where such contemplated damage has already occurred, the person whether public or private shall take immediate remedial steps to abate and repair such damage (Lammers, 2007). The European framework appears to be very comprehensive in creating obligations and ensuring mechanisms for the realisation of its environmental policies within the EU.

As it relates to Nigeria, the African Charter on Human and Peoples’ Rights is the most comprehensive regional instrument on human rights, with provisions for environmental rights. Article 24 of the Charter provides for

'rights of all people to the satisfactory general environment favourable to development.' It creates obligations on the Member States to recognise the rights of citizens as contained in the Charter and to 'undertake to adopt legislative and other measures to give effect to them.' The Charter establishes a nexus between economic development and the obligation to protect the environment (Emeka, 2009). Article 24 of the Charter creates the legal basis for the rights of individuals, groups and civil society to demand account and seek redress for harmful damage of the environment through the instrumentality of the African Commission both at the national courts and regional courts, even when such rights are not expressed in the national laws of the States.

While the African Charter serves as a good example of a regional instrument with express environmental rights, the European Convention on Human Rights ECHR in contrast lacks such express provision. Despite this lapse, the European Court of Human Rights has always inferred the existence of an environmental right from the interpretation of other express provisions in the ECHR, e.g., right to respect for private and family life (Article 8 ECHR). The essence of this analysis is to stress that environmental right has become firmly established both in international law and regional instruments, whether express or inferred. This has created a corresponding obligation on the State to ensure the protection of this right.

4. Environmental Protection under National Laws (Case Study of Nigeria)

Section 44 (3) of the Constitution of Nigeria is unambiguous and expressly vests in the federal government 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 Exclusive Economic Zone of Nigeria.*

This right of control and ownership creates the concept of public trust between the people of Nigeria and the government, establishing the duty to protect. However, the obligation of the government towards environmental protection and the right accruable to its citizens is a non-justiciable right which does not immediately confer a realisable right to seek redress. The jurisdiction of courts is limited in matters contained under chapter two of the constitution of Nigeria, which has always created a leeway for the government to evade responsibility from matters relating to economic and cultural rights, within which the right to satisfactory environment falls. Interestingly, with the ratification of the African Charter on Human and Peoples' Rights, there has been established a legal basis for the obligation of government to protect the environment under the domestic or national law of Nigeria (Amos and Anthony, 2012).

The essence of this narrative is to establish the fact that even with the abundance of legislative frameworks and laws for the protection of the environment from the available international, regional and national instruments discussed above; issue of environmental pollution has continued to persist in most developing countries like Nigeria due to the struggle for foreign direct investment. Most foreign investments between developing States and MNCs are regulated by BITs which tend to focus more on the protection of the investor and granting free access to raw materials of the host State with little attention paid to environmental regulation. The focus on economic development has often relegated the need for environmental protection in favour of MNCs as most developing States relax the enforcement of both international and national laws to encourage foreign investors.

4.2 Corporate Investment in the Oil and Gas Sector of Nigeria.

Corporate investment in the oil and gas sector of Nigeria dates back to the colonial era (Steyn, 2003). During this period, oil exploration and exploitation of resources was almost the exclusive right of British companies and companies permitted by the British, under the Oil Ordinance No. 17, 1914 (Yinka, 1987). By this provision, Shell D'Arcy Company, which was jointly owned by Shell and British Petroleum (B.P), became the foremost multinational oil company that was granted exclusive concessionary right to explore oil in Nigeria, as early as 1937 (Bronwen, 1999). Oil exploration yielded tangible results in 1956, following the discovery of crude oil in commercial quantity at Oloibiri in the Bayelsa State of Nigeria.

Shell maintained its dominance in the Nigerian oil and gas sector till the late 1950s when the concessionary right was reviewed downward to create room for other multinational oil companies like Mobil, Agip, and Chevron/Texaco which were subsequently granted rights to explore and produce oil. With the attainment of independence in 1960, the government of Nigeria began to show greater interest in the management and control of the oil and gas sector with increased profit (Scott, 1970). With reasonable apprehension of the bad experience of colonisation and the exploitation of natural resources (Tunde,1995), Nigeria began to legislate strict economic policies to restrict foreign investors in favour of indigenous enterprises, while nationalising and expropriating some foreign investments and assets, and increasing its equity stake in the oil industry (Sarah, 1994).

Foreign investment in the oil and gas sector is done through a joint venture with a State-owned company; Nigerian National Petroleum Corporation (NNPC). However, the promotion of local enterprise and the restriction of corporate investments by MNCs did not yield the much anticipated economic development due to the lack of technology and the huge capital required to invest in the oil and gas sector of Nigeria (Olufemi, 2008). This necessitated the review of national economic policies to open up the economy to foreign investment. The Desire for accelerated economic development led to the enactment of new laws and the repeal of other legislation which hitherto restricted foreign investments (Akpotaire, 2005). The Enterprise Promotion Act of 1989 was introduced to repeal the indigenisation policy to usher in foreign investment and deregulation of the economy, while other laws were subsequently introduced with the focus on privatisation and commercialisation of the economy to facilitate foreign investments; Public Enterprises (Privatisation and Commercialisation) Act 1990.

The Nigerian Investment Promotion Commission Act subsequently repealed other national legislation which restricted foreign investments and made provision for 100 percent investment in every sector of the economy except the oil and gas which is regulated through a joint venture with the NNPC. This facilitated the inflow of MNCs and foreign investments in Nigeria. The rationale for this renewed desire for corporate investment through national legislation was as a result of the bad experience of colonial exploitation which necessitated balancing the quest for accelerated economic growth while the control of the sensitive sectors of the economy which contributed immensely to the national wealth of the country.

4.3 Oil Exploitation by MNCs in Nigeria

The oil and gas sector of Nigeria is the most sensitive economic sector and yields a greater percentage of the country's foreign exchange (Fayax et al., 2012). Nigeria's economy is to a large extent dependent on the proceeds from oil export, which accounts for more than 40 percent of the gross domestic product (GDP). In 2000, almost 98 percent of Nigeria's export earnings were from the oil and gas sector, reflecting the impact of corporate investment in this sector (Gbadebo, 2007). The three major multinational oil companies operating in the oil and gas sector of Nigeria are Shell, Exxon Mobil and Chevron/Texaco which are all foreign oil companies. Shell has the highest stake, accounting for more than 40 percent of the total oil production in Nigeria. Oil production is largely undertaken by MNCs with parent companies in either Europe or America, with their subsidiaries incorporated in Nigeria, under the Companies and Allied Matters Act.

This dominance of MNCs is because domestic companies' lack the required capital and technology needed to invest and control the oil industry fully. However, MNCs operating in most developing countries like Nigeria have played their roles as catalysts of development, assisting the host communities where they operate in the development of infrastructure, the building of schools, healthcare facilities, and other social amenities. In Nigeria, MNCs complement government's efforts by taking over some aspects of the traditional responsibilities of the government in the provision of social welfare, the creation of job, sponsoring of developmental projects, partnering with international agencies like the United Nations Development Programme (UNDP) to assist communities where they operate.

Nonetheless, while appreciating the positive roles of MNCs in Nigeria, it is important to juxtapose this with the negative impacts of MNCs in their operations. This is because as corporations generate wealth for the country and try to meet up with the varying socioeconomic demands from by the society, they also have the desire to increase their profits margin. This conversely influences their mode of operations, leading to reckless exploitation of the environment, corrupt practices and complicity in human rights abuses (Ratner, 2001). Activities of MNCs caused environmental damaged ranging from an oil spill, gas flaring to noise pollution.

Consequently resulting in an increase in transnational litigations and strained relationship between MNCs and the indigenous people, as demonstrated in the case of *Wiwa v. Shell.* Sadly, the overwhelming influence of MNCs in Nigeria like other developing States makes it quite difficult to implement some environmental policies like the 'polluter fully pays principle,' which might directly affect their operations, coupled with the complex nature of MNCs which makes regulation quite challenging (Dine, 2002). MNCs operate in more than one country and carry on business across different countries with different laws and legal systems, which create a trans-boundary personality and complex structure that makes it lack definite control by single national law or international law (Jargers, 2005). The available legislation in Nigeria is more of general provision and does not directly regulate MNCs but rather regulates corporate operations in the oil and gas sector, which unwittingly creates a leeway for MNCs to evade the strict grasp of the law.

4.4 Legislative Frameworks for Corporate Operations in the Nigerian Oil Industry.

As expressed *supra,* Nigeria like most other developing nations of the world has been party to many treaties and international conventions which have laid obligations on the Member States to establish appropriate legislative frameworks for the protection of the environment and the prevention of pollution within their territories. Examples of some of these environmental instruments ratified by Nigeria are International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971; International Convention on Civil Liability for Oil Pollution Damage, 1981; African Convention on the Conservation of Nature and Natural Resources, 1968. Over the years, Nigeria has put in place a good number of laws and regulations that regulate oil activities and environmental issues (Nwilo and Badejo, 2005). Some of the laws regulating the oil sector of Nigeria are:

4.4.1 *Oil Pipelines Act (1956)*

This Act 'governs the grant of licenses for the establishment and maintenance of pipelines', it is important to this research to the extent that it deals more on the issue of compensation arising from the tortious act of the holder of the license and also express provision on the jurisdiction of court on issues of compensation where individuals or native community interest are affected (Friday, 2009). Even with the express provision of this Act, very few cases of compensation either by individuals or native communities have been successful before the Nigerian courts. This is due to several reasons like lack of political will by the State, weak institutions, national jurisdiction and the cost of prosecuting.

4.4.2 *Oil in Navigable Waters Act (1964).*

This serves as the instrument for the transposition of the International Convention for the Prevention of Pollution of the Sea by Oil of 1945 by virtue of which its provisions become part of the national laws on the protection of the environment. The Act deals specifically with navigable water prohibits the discharge of any form of oil into prohibited areas of the sea within Nigeria territorial waters and prescribes appropriate punishment for default.

4.4.3 *Petroleum (Drilling and Production) Regulations, (1969).*

This was made under the Petroleum Act which is the principal framework for oil operations in Nigeria. This Act deals directly with oil drilling and production activities within Nigeria requiring all operators who are licensed to undertake such exploitation activities to 'adopt practicable precautions to prevent pollution of inland waters, river courses, the territorial waters of Nigeria or the high seas by oil or other fluids or substances.' Regulations 17, 19 and 22 deal with issues relating to rights of the indigenous people to their ancestral lands and objects of

veneration. This legislation made more of a general provision for responsible operations without any strict liability for non-compliance.

4.4.4 *Environmental Impact Assessment Act, (1992)*

This Act is key to the issue of environmental considerations especially in areas of large projects; it aims at ensuring that potential environmental impacts are foreseen and necessary measures adopted to cushion such effects. The EIA 'has been adopted by many countries of the world as environmental management and planning tools' (Fatona, Adetayo, and Adeola, 2015). Environmental Impact Assessment is mandatory for development projects likely to have an adverse impact on the environment before the commencement of such project. The relevant authorities are required to satisfy themselves of the compliance of the operator with the EIA requirement before issuing permit or license to such body. The challenge of effectively utilising and applying the EIA in Nigeria stems from the lack of scientific and technical expertise (Van, 1995).

4.4.5 *National Oil Spill Detection and Response Agency Act -NOSDRA (2006)*

This is principal legislation on environmental protection in the oil and gas sector of Nigeria (Ken, 2011). It provides for the establishment of the National Oil Spill Detection and Response Agency and for Related Matters. The objectives of the Agency by section 5 of the Act is to coordinate and implement the National Oil Spill Contingency Plan for Nigeria, identify high-risk areas as well as priority areas for protection and clean up. It is against this background that the question as to the efficacy of this agency can be addressed considering the perennial issues of oil spills in the Niger Delta especially the recent Ogoni clean up the issue which is predicated on the UNEP report (Edwin, 1998).

4.4.6 *National Environmental Standards and Regulations Enforcement Agency Act 2007*

The Act established NESREA in 2007 as Nigeria's principal environmental watchdog, under the Federal Ministry of Environment, Housing and Urban Development (Ladan, 2012). NESREA is an enforcement agency with the primary function of implementing, environmental standards, regulations, laws, policies. Regrettably, s. 8(g) of the Act limits its power to other sectors of the environment exclusive of the oil and gas sector. Ironically, NESREA has the mandate to ensure compliance with provisions of international agreements, protocols, conventions, and treaties on the environment to which Nigeria is a party to. It creates a reasonable apprehension on possible mischief intentionally created to relax some forms of strict regulation of the oil and gas sector so as not to jeopardise government's interest in the sector.

5. Challenges to the Prevention of Environmental Pollution in Niger Delta

Considering the persistence and the rise in oil pollution and environmental degradation in the Niger Delta, one would wonder if the problem is the lack of effective laws and regulations or the lack of enforcement mechanisms. From the available list of laws, regulations, and legislation of which some have been listed, it becomes reasonable to conclude that the problem is not in the availability of the laws. In terms of the necessary institutional frameworks, a good number of agencies have been established for the purpose of environmental protection in the oil and gas sector. Some of these agencies are *The Nigerian National Petroleum Corporation* (NNPC), a state-owned petroleum company which undertakes joint venture agreement with other multinational Oil Companies; National Environmental Standards and Regulation Enforcement Agency (NESREA); National Oil Spill Detection and Response Agency (NOSDRA) Federal Ministry of Environment, etc. A case in point is the requirement of Environmental Impact Assessment before the grant of permission for certain large projects.

Sadly, the enforcing agency which is the National Environmental Standards and Regulations Enforcement Agency, established in 2007, under the NESREA Act, has been helpless in cases where big multinational oil companies fail to comply with this requirement. In the case of *Oronto Douglas v. Shell Petroleum Development Company Ltd. & Others; Suit No: CA/L/143/97, 1998.* the cause of action as canvassed by the plaintiff/appellant arose from the failure of the defendant to fulfil the requirement of EIA before engaging in a project for the

production of liquefied natural gas. One would ask why a private citizen would take over a matter which was supposed to be handled by the government.

According to UNEP's report on Ogoniland, the National Oil Spill Detection and Response Agency (NOSDRA) 'lacks qualified technical experts and resources,' it further stressed that the agency' has no proactive capacity for oil-spill detection.' The idea of voluntary regulation of CSR of Multinational Oil Companies in the Niger Delta also hinders the full implementation of some environmental policies because some corporations present admirable scorecards of social responsibility and environmentally friendly measures in carrying out their business operations, while in the real sense they are operating below standards.

Apart from the issue of lack of funds and technical expertise, corruption has also played a very crucial role in undermining the effort of government in environmental protection through the various agencies. A good example is the Oil Minerals Producing Areas Development Commission which was established in 1992. This agency was bedevilled by corruption and fraud which was responsible for its short lifespan and subsequent replacement with the Niger Delta Development Commission (NDDC) in 2000 (Akpandem, 1998).

Another militating factor is the lack of political will as evident in the weak and unrealistic attitude of the government towards the implementation of the law (Nigeria Associated Gas Re-Injection Act, 1979, section.3.) against gas flaring in Nigeria from 1974 till 2012. Each successive government continued to extend the deadline with empty threats of invoking sanctions without enforcement of the penalty on gas flaring. This ultimately calls for a change of approach which has been advocated in this research.

6. The Principle of Corporate Liability and Polluter Pays in Nigeria.

The polluter-pays principle (PPP) is a significant principle of international environmental laws and policies (Ling, 2015). It requires polluters to bear the liability for the prevention and cleanup costs for the adverse environmental consequences resulting from their activities or actions (Gaines, 1991). This principle acts as a mechanism for reinforcing the no harm rule under the Rio Declaration to promote sustainable use of natural resources with environmental considerations, and at the same time prevent, obstacles to international trade and investment.

In Nigeria, National Policy on Environment provides that in solving environmental problems, solutions directed towards; abatement, remediation, and restoration of the environment must be founded on the PPP and other environmental principles. However, as interesting as this principle may sound in ensuring corporate liability and accountability in environmental management, recent events indicate only a theoretical value of this principle and nothing more pretentious.

This position is founded on the failure of Shell to act on the Amnesty and UNEP report on Ogoni, which clearly identified Shell as the polluter. Rather than hold Shell responsible for the pollution in line, the Federal government of Nigeria took over the clean-up while appealing to Shell and other stakeholders for assistance (Vidal, 2011). However, a critical consideration of the nature of oil exploration licencing in Nigeria shows a joint venture transaction between Nigeria through the NNPC, and the multinational oil companies which in essence creates a complex relationship and shared responsibility between the two actors- Nigerian government and the multinational companies, with government seeking to maximise its returns (Gabriel, 2006). By virtue of this joint venture arrangement, the Federal government becomes as much as liable as the multinational oil companies for the purpose of attaching responsibility, either directly as a party to the transaction or vicariously. If this is so established, then who has the right to determine the polluter in such circumstance?

Another critical area of concern is in determining the level of liability or valuation of environmental damage. This is because it is almost practically impossible to put a cost on the environment, as there is no index for measuring the depth of damage caused (Nick, 2002). By virtue of this technical lapse, there is difficulty in

ascertaining the appropriate degree of compensation. It becomes disturbing to acknowledge that issues of inadequacy of the available sanctions for harmful conducts which are detrimental to the environment are yet another challenge facing the PPP. For instance, the Petroleum Refining Regulation Act of 1974 provides for a fine of 100 naira or six months imprisonment, as a penalty for failure to conform to standards of procedure in refinery practices. This penalty is not only grossly insufficient but ridiculous as it has no meaning because as much as MNCs cannot serve the prison term, the fine of 100 nairas is very insignificant. This law is more than 40 years old and obviously needs to be updated in line with modern reality and value of money.

The most severe penalty under the various environmental legislation is the revocation of licence or cancellation of lease of the polluter which is rarely resorted to even in the face of the flagrant violation of environmental regulations. The case of *Douglas v. Shell; Unreported Suit No. FHC/L/CS/573/96* readily comes to mind when commenting on the reluctance of the Nigerian government to enforce its own environmental policies against erring MNCs. This reaffirms the assertion that lack of political willpower has been a major setback in the implementation of environmental regulations in Nigeria. The available laws and regulations are only obvious in their various statute books without impactful translation.

7. Concluding remarks and recommendations

What has become apparent from our discussion above is the fact that despite the enactment of numerous laws designed and constructed to prevent and control environmental degradation in Nigeria, there still exists a huge lacuna between commitment extracted by these laws and enforcement. Most of these laws have not included concrete suggestions as to how successful enforcement might be appraised and achieved.

Most of the legal instruments examined above have established a number of institutions enabling them with authority and obligating them to administer the specific legislation. However, failure to pay satisfactory consideration to inspection and monitoring, and failure to put in place procedures for engaging the regulated Multi-National Corporations and deterring violations, give rise to a culture of impunity and weaken the effectiveness of environmental laws.

The preeminent environmental criterions in the world will be ineffectual if they are not observed with or efficiently enforced. Obedience and implementation guarantee good environmental governance and respect for the rule of law. They similarly regulate the compatibility of environmental standards with practical realities and provide an index for measuring whether the standards should be sustained, modified or annulled. Ultimately, good governance is a requirement for attaining the paradigm shift necessary for Nigeria to establish and maintain a sustainable development path in the enforcement of environmental laws and preservation of the environment. The following recommendations are therefore inevitable if Nigeria must get around this problem.

1. The consciousness of Nigerians should be invoked about the hazards and the consequences of pollution of the environment. This will require vigorous, consistent and regular enlightenment by Government.
2. This enlightenment should be focused on acceptable standards of environmental behaviour, operation, and compliance and should be made accessible to the general public.
3. The Government should try as much as possible to equip its enforcement agencies on how to ensure the effective enforcement of the environmental laws in existence. Providing training manuals for enforcement officers is a good practice which helps to avoid arbitrariness.
4. All project programmes predicted to have a significant negative impact on the environment will require an effective environmental monitoring programme.
5. The world is changing at a fast rate as technology advances, and successful enforcement requires that administrators keep up to the speed of appropriate technological tools and equipment to enable enforcement officials to discharge their duties effectively.
6. Sufficient funds should be allocated to enforcement agencies by the Government at all levels to enhance the execution of projects geared towards the improvement of the environment. Funding gap and limitation is a cog in the wheel of monitoring and enforcement activities in Nigeria.

7. The Nigerian legal system appears to be too weak in the interpretation and enforcement of environmental laws. The system seems to be overwhelmed by the influence of Multi-National Corporations. There is the need to establish strong judicial and administrative procedures for legal redress and remedy of actions affecting environment and development that may be unlawful or infringe on rights under the law.
8. Similarly, special environmental courts presided over by courageous judges should be established to entertain environmental matters for speedy and better enforcement of environmental laws in the country. This would ensure quick response to the needs of the environment, popularize environmental laws and aid enforcement of those laws.
9. All agencies saddled with the unnerving task of enforcing environmental laws in Nigeria lack autonomy to develop and implement its compliance and enforcement program free from political intervention or external pressure related to economic development or other government or private sector priorities. In this connection, we recommend that such agencies should be granted legal, operational autonomy and independence to ensure effective service delivery.
10. Public involvement is central to the enforcement of environmental law. Many countries have implemented the principle of the Rio Declaration, and more recently some have implemented the Aarhus Convention by enacting legislation that provides for public participation. This is why the federal environmental and civil rights statutes should be amended to ensure citizen access to the courts for environmental violations.

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