

CRIMINALIZATION OF ABUSIVE UTILIZATION OF ENVIRONMENTAL RESOURCES IN NIGERIA: ENFORCEMENT CHALLENGES

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Abstract

The thematic discussion guide calls us to examine developing trends and challenges regarding issues of the criminalization of environmental crimes to assist in developing possible responses/programs and initiatives to deal effectively with emerging forms of crime that have a significant impact on the environment. In view of the menace of environmental pollution in Nigeria today, this paper examines the present legal regime on the criminalization of environmental crimes, explains the nature of environmental crime and presents a comparative view of the concept of criminalization of environmental abuses and attendant enforcement regime. In addition, this paper assesses the effectiveness of the present legal regime on the criminalization of environmental crimes, particularly, as they affect the criminalization of abusive utilization of environmental resources, with specific reference to the enforcement challenges. The paper made corresponding recommendations as to the feasibility, workability and applicability of the concept of criminalization in Nigeria today.

1.0. Introduction

The term “environment” has been given different definitions. Black's Law Dictionary defines it as: “the totality of physical, economic, cultural, aesthetic, and social circumstances and factors which surround and affect the desirability and value of property and which also affect the quality of peoples' lives.”¹ In other words, environment may be broadly understood to mean our surroundings. It can be divided into non-living and living components. The environment provides resources which support life on the earth and which also help in the growth of a

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¹Black's Law Dictionary, 7th Edition

relationship of interchange between living organisms and the environment in which they live. It is important to realize that humans enjoy a unique position in nature due to their exceptional ability to influence and mold the environment.² Unfortunately, man's indiscriminate use of her environment has resulted in monumental degradation which has continued to generate unpleasant challenges for health and economic development in Nigeria. Like many developing countries, Nigeria has struggled to maintain a balance between its economic development and the sustainability of its environmental resources. The slow emergence of legal structures for protecting environmental resources indicates the national preoccupation with economic advancement, and has led to the sad neglect of the environment.³

Until recently, the general position has been that environmental degradation, particularly pollution, is historically part and parcel of the economic and industrial prosperity of the western world. Truly, this was in fact a manifest confusion of concepts because development should include qualitative improvement rather than simple cumulative sectoral growth.⁴ Seeing the reckless and degrading environmental activities of humanity today, it is argued that there is need to impose effective legal checks and balances in the activities of mankind so as to protect the future generation.⁵

The thrust of our work is to briefly examine the abusive utilization of environmental resources in Nigeria, to examine and ascertain the extent, the effect and effectiveness of the present legal regime, in terms of the criminalization of such offenses and the enforcement of the regulations. To appreciate the foregoing, and to crystalize the peculiar challenges of the Nigeria State, we shall attempt a brief comparative analysis against the background of other jurisdictions which have achieved successes in this regard. It is to these challenges we shall attempt to proffer recommendations accordingly.

2.0. Environmental Resources in Nigeria: Abusive Utilization

²Wilson K. Korir, *Environmental Crime Management in Kenya*, (Project work) (Nairobi: Institute Of Diplomacy and International Studies- University of Nairobi, 2014), 25.

³Adebola Ogunba, "An Appraisal of The Evolution of Environmental Legislation in Nigeria" , [2016] 673 *Vermont Law Review*40 at 674.

⁴Korir, *Environmental Crime Management in Kenya*,41.

⁵S. Gozie Ogbodo, "Environmental Protection in Nigeria: Two Decades After the Koko Incident," *Annual Survey of International & Comparative Law* 15(1), Article 2 (2009) available at <http://digitalcommons.law.ggu.edu/annlsurvey/vol15/iss1/2> accessed on August 8, 2018.

Environmental resources are those organic and inorganic natural materials which are of great value to man, animals and plants.⁶ The basic environmental resources are water, land and air (the atmosphere and the stratosphere), as well as all other resources contained in them. In water for example, we have the aquatic life and mineral resources like potash and petroleum. On the land we have minerals, vegetation resources and the animals living therein. And for those in the atmosphere, we have the solar energy, wind, gases, rain water, etc. The phrase “abusive use or utilization” could mean a wrong use, an improper use or a misuse of a resource. As touching abusive usage of environmental resources, it may be fitted to use the phrase – “a non-sustainable utilization of the resources.” It will also mean an unplanned exploitation of the resources.

In the course of man’s quest for economic growth and development, he tends to use the environmental resources at his disposal and such use could be abusive thereby leading to environmental degradation.⁷ This indiscriminate use of environmental resources has not only resulted in serious degradation of the environment but has continued to have adverse effects on the health of the people as well as the economic development in Nigeria.⁸ Abusive environmental resources utilization include illegal trade in sandalwood, illegal logging, illegal exploitation of the world’s wild flora and fauna, including bio prospecting and bio piracy; forest excisions, forest encroachment, illegal grazing, illegal forest fires, growing of bhang, and illegal charcoal making, illegal trade in wildlife and their products; poaching, and illegal grazing. In the tourism sector, it includes blockage of access to natural resources for local communities, aesthetic pollution, off road driving, destruction of marine, lacustrine and river ecosystems, and wastes pollution. In the water sector, it includes diversion of water bodies, water pollution, and reclamation of wetlands and illegal development of riparian areas, illegal trade in ornamental fish, illegal fishing methods, illegal fish farming, illegal trawling and illegal fishing by foreign

⁶See <https://passnownow.com/classwork-exercise-and-series-geography-ss-2-environmental-resources/> accessed on August 8, 2018.

⁷C.T.Emejuru and M.O. Izzi, “Environmental Justice and Sustainable Development in Nigeria,” [2015] 1 *Donnish Journal of Biodiversity and Conservation* 1.

⁸S. G. Ogbodo, *Handbook on the National Environmental Statndard and Regulations Enforcement agency Act(NESREA) 2007* (Lagos: Law Research & Development Forum Limited, 2010), 2.

fisher folk.⁹ It may take the form of gas flaring, oil spillage, building on waterways, indiscriminate waste disposal and sewage, noise from loud music among others.¹⁰

The abusive utilization of these resources causes a great disequilibrium in the ecosystem, resulting in various human and ecological hazards. These problems can be controlled or prevented or even modified and improved upon so that they do not in turn affect human lives and properties. It is therefore not in doubt that environmental laws are put in place to mitigate or prevent these threatening environmental problems.

3.0. The Concept of Criminalization of Abusive Environmental Resources Utilization

Environmental crimes can be broadly defined as illegal acts that directly harm the environment. According to the European Commission, environmental crime covers acts that breach environmental legislation and cause significant harm or risk to the environment and human health.¹¹ While the definition of environmental crime is not universally agreed, it is often understood as a collective term to describe illegal activities harming the environment and aimed at benefitting individuals or groups or companies from the exploitation of, damage to, trade in or theft of natural resources, including serious crimes and transnational organized crime. Many emerging definitions for environmental crime have actually constrained the term by limiting it to crimes associated with breaches of environmental legislation only to result in easement of prosecution and punishment, since environmental crime is typically only seen as referring to infractions (fines) or misdemeanors (fines or shorter term imprisonment), rather than felonies.¹²

Environmental crime is economic crime where the exchange of goods is consensual, so there are rarely victims to complain of offences. This means that the state bears the burden of enforcement. No individual definition of environmental crime has been dominating or generally accepted and the discussion about the naming (the proper term) of the branch of criminology that covers the field of the environmental crime is still very much alive. Environmental crime is highly lucrative, it can be as profitable as illegal drug trafficking, but the sanctions are much

⁹Korir, *Environmental Crime Management in Kenya*, 19.

¹⁰Emejuru and Izz, "Environmental Justice and Sustainable Development in Nigeria," 1.

¹¹Axel Luttenberger and Lidija R. Luttenberger, "Challenges in Regulating Environmental Crimes" *7th International Maritime Science Conference* on 20th - 21st April, 2017, Solin, Croatia, 213-220.

¹²*Ibid.*

lower which make this activity extremely attractive for organized crime. Unlike any other known crime, environmental crimes are aggravated through their additional cost and impact on the environment and cost to future generations. It also deprives governments of much-needed revenues and undermines legal businesses. Furthermore, environmental crime is an act which is committed with the intention of damaging or causing damage to the ecological and biological systems of the earth. For example, the extraction, processing and transportation of oil are among the most damaging causes of environmental pollution and human health impacts.¹³ Since the inception of oil exploration in Nigeria in 1958, it is estimated that between nine million and thirteen million barrels of oil have been spilled due to poorly maintained pipelines and drilling equipment, corrosion of pipelines, pipeline vandalization and spills in the course of production and transportation. These oil spills have led to the contamination of surface and ground water and aquatic animals with hydrocarbons and carcinogens with grave health implications for consumers.

Similarly, flaring of gaseous by-products from crude oil exploration has led to the emission of poisonous gases like nitrogen dioxide, Sulphur dioxide, and other carcinogens with adverse health implications.¹⁴ According to Owugah, “the oil which brought so much wealth to the nation and to those in power brought much power, disease, death, loss of livelihood to the people of the oil bearing areas.”¹⁵ Dangerous and sometimes criminal mining practices have had tragic environmentally related results in Nigeria. More than 400 children died in Northern Nigeria from lead poisoning in Zamfara resulting from illegal mining activity. Symptoms exhibited due to lead ingestion ranged from abdominal pain, lethargy, constipation and headaches, to seizures, comas, and death.¹⁶ A special feature of environmental crime reflects two real victims: people and environment. Pečar warns, that from the victim’s viewpoint, environmental criminality is very similar to economic and other business criminality, where there are many victims with a lot of damage, which, when divided by thousands, do not represent a sizeable sacrifice for each

¹³Violet Aigbokhaevbo and Nkoli Aniekwu, “Environmental Abuses in Nigeria: Implications for Reproductive Health,” *Annual Survey of International and Comparative Law* 19(1), Article 11 (2013): 233 at 236.

¹⁴*Ibid.*

¹⁵*Ibid.*, 237.

¹⁶*Ibid.*

individual. All this makes the problem of defining the term of environmental crime and green criminology even bigger.¹⁷

Environmental crime affects all of society. It can have detrimental consequences on the economies and security of a country. For individuals, local communities and indigenous people, it may impact public health, livelihoods, and lower property values, as well as impacting on non-human species, nature itself, as well as future generations. It may cause many different types of harms or damages. Victims can suffer from various types of harm, including: direct or indirect; point source or diffuse; individual or cumulative; local, trans-boundary or global; and short term or long term harm. The effects of a single offence may not appear significant but the cumulative environmental consequences of repeated violations over time can be considerable. The perpetrators might be individuals, collective groups, corporations, governments and organized criminal groups. Take for instance, illegal logging. This unlawful conduct contributes to the process of deforestation and forest degradation, depriving forest communities and indigenous peoples of vital livelihoods, causing ecological problems like flooding, and is a major contributor to climate change, as up to one fifth of greenhouse gas emission stem from deforestation. In addition, it threatens biodiversity, undermines sustainable forest management, development and good governance and can be linked to armed conflict.¹⁸ The prevalence of abusive environmental practices in Nigeria and the impunity with which they are perpetuated has generated increased concern globally and among the populace.¹⁹

4.0. Legal Regime on the Utilization of Environmental Resources in Nigeria

The era of environmental dormancy is over. All over the globe, governments and various bodies have generated a greater awareness as to the need to protect the environment. The Nigerian government, like other governments, has put strict legislation in place to deal with the environmental pollution problem. A study of the trajectory of Nigeria's environmental legislation reveals a growth pattern that an author classified into four distinct stages. The first stage is the Colonial Period (1900–1956). This stage is known for its dearth of environmental legislation, except for brief provisions in public health legislation and in torts and nuisance law. The second

¹⁷Korir, *Environmental Crime Management in Kenya*, 45.

¹⁸*Ibid.*

¹⁹Aigbokhaevbo and Aniekwu, "Environmental Abuses in Nigeria", 233.

stage is the Petroleum Focused Environmental Legislation Period (1957–early-1970s). This stage followed the discovery of crude oil, the commercialization of that discovery, and sector-specific legislation that reflected a national preoccupation. The third stage is the Rudimentary and Perfunctory Legislation Period (1970s– pre-1988 crisis). The final stage is the Contemporary Period (post-1988– present). This stage has seen the start of serious legislation and is characterized by increased environmental awareness and sophistication. The regulatory scheme is by no means perfect, and much work has yet to be done, but it is a step in the right direction.²⁰ The role of legislation in inducing responsible attitudes and behaviors towards the environment cannot be overlooked. Legislation serves as an effective instrument for environmental protection, planning, pollution, prevention and control. The following provides a summary of Nigerian legislation of the environment:

1. The Constitution of the Federal Republic of Nigeria, 1999, (CFRN) as amended: As the *grundnorm* recognizes the importance of improving and protecting the environment and makes provision for it. Relevant section is *section 20* which makes it an objective of the Nigerian State to improve and protect the air, land, water, forest and wildlife of Nigeria. As heartwarming as this constitutional provision may appear, it is seen as having serious defects owing to the broad nature of the wordings and the fact that it is contained in chapter II of the Constitution, which is non-justiciable; making it lack judicial enforcement.

2. The Environmental Impact Assessment (EIA) Act of 1992: It is a major federal environmental legislation in Nigeria, and has been described as “a new dawn in environmental compliance and enforcement” because of its efforts to address and safeguard all aspects of the environment.²¹ Section 2 of the Act provides that the public or private sector of the economy shall not undertake or embark on or authorize projects or activities without prior consideration of the effect on the environment.

3. Harmful Waste (Special Criminal Provisions, Etc.) Act, 1988: It makes illegal and unlawful the dumping of harmful waste in the air, land or waters of Nigeria. It prohibits and criminalizes unauthorized transportation, depositing or dumping of harmful waste on any land,

²⁰Ogunba, “An Appraisal of The Evolution of Environmental Legislation in Nigeria”, 4.

²¹See the Environmental Policy and its Enforcement in Nigeria – available at www.elri-ng.org/content/Environmental accessed on August 8, 2018.

territorial waters, contiguous zone, Exclusive Economic Zone, or inland water ways of Nigeria. One can say that this was a direct response to the Koko saga. The offense was stretched to cover accomplices of various kinds, as reflected in section 2 of the Act which deals with parties to the crime, as well as section 3 which deals with crimes committed in prosecution of common purpose. Accessories to the fact as stated in section 5 and counselors towards the crime, provided in section 4 were not left off the hook.²² Section 6 of the Act deals with the penalty, which was simply given as life imprisonment. The seriousness of this Act is that those who are guilty of making attempt to commit this crime, howbeit, not successful will also be guilty of life imprisonment, as we can see in section 8. Generally, the provisions left no one in doubt about the desire or the theoretical readiness of the government to police environmental resources towards achieving a sustainable development. It is also worth mentioning that the Act also made provisions for civil liability in section 12.

4. National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007: This act established the National Environmental Standards and Regulations Enforcement Agency (NESREA), which is entrusted responsibility for the protection and development of the environment, biodiversity conservation and sustainable development of Nigeria's natural resources, environmental technology, including coordination and liaison with relevant stake holders within and outside Nigeria on matters of enforcement of environmental standards, regulations, rules, laws, policies and guidelines.²³ The agency is empowered to enforce through compliance monitoring environmental regulations and standards on noise, air, land, seas, oceans, and other water bodies, with the exception of standards in the oil and gas sector. The Agency is also instructed to conduct public investigations on pollution and the degradation of natural resources, again with an oil and gas exception for investigations concerning oil spillage. To promote and to enhance public health and welfare, including the natural development and productive capacity of the nation's human, animal, marine or plant life, the Agency's goals include "(a) minimum essential air quality standards for human, animal, marine or plant health; (and) (b) the control of concentration of substances in the air which

²²Harmful Waste (Special Criminal Provisions, Etc.) Act, Cap H1, LFN 2004.

²³See National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007 (NESREA Act) Cap. (25)

separately or in combination are likely to result in damage or deterioration of property or of human, animal, marine or plant health.²⁴

Violators of this provision of the Act are to pay a fine not exceeding ₦200,000 or a term of imprisonment not exceeding one year, or fine and imprisonment, and an additional sum ₦20,000 for every day the offense subsists.²⁵ Where the offence is committed by a corporate entity, on conviction, the corporation is liable to pay a fine not exceeding ₦2,000,000 and an additional fine of ₦50,000 for every day the offence subsists.²⁶ The discharge of designated “harmful quantities of any hazardous substance into the air or upon the land and the waters of Nigeria or at the adjoining shorelines” is another environmental harm prohibited by the Act, “except where such discharge is authorized by any law in force in Nigeria”. Contravention of this discharge regulation is penalized with a fine not exceeding ₦1,000,000 or imprisonment for a term not exceeding five years where the contravener is an individual, and for a corporate entity, a fine not exceeding ₦1,000,000 and an additional fine of ₦50,000 for everyday the offense persists.²⁷

The Agency is also empowered to, in collaboration with appropriate authorities, make regulations on noise and emissions control as may be necessary to protect and maintain public health and welfare.²⁸ The Agency is also mandated to make regulations to enhance water quality for the purpose of protecting public health and welfare. The minister for Environment is empowered to make regulations for the purpose of implementing the Act and to prescribe any specific removal method or financial responsibility for owners or operators or resets or facilities onshore or offshore. Unfortunately, in addition to other difficulties, the challenge of role conflicts between NESREA and other agencies like the Standards Organization of Nigeria (SON) and the Nigerian Communication Commission (NCC) hampers efficiency, as most of their officials are preoccupied with power and supremacy and sometimes issue conflicting directives

²⁴*NESREA Act*, s. 20(1).

²⁵*NESREA Act*, s. 20(3).

²⁶*NESREA Act*, s. 20(4).

²⁷*NESREA Act*, s. 27 (2-3).

²⁸Aigbokhaevbo and Aniekwu, “Environmental Abuses in Nigeria”, 241.

to environmental violators.²⁹ In the exercise of his powers, the minister has promulgated numerous regulations. Some of these regulations are:³⁰

- a. National Environmental (Ozone Layer Protection) Regulations 2009³¹
- b. National Environmental (Soil Erosion and Flood Control) Regulations, 2011:³²
- c. National Environmental (Surface and Ground Water Quality Control) Regulations, 2011³³
- d. National Environmental (Domestic and Industrial Plastic, Rubber and Foam Sector) Regulations 2011³⁴
- e. National Environmental (Base Metals, Iron and Steel Manufacturing/Recycling Industry Sector) Regulations, 2011³⁵
- f. National Environmental (Sanitation and Waste Control) Regulations, 2011³⁶

These regulations are clear indications of criminalization of abusive utilization of environmental resources. Truly, a cursory look at some of these extant regulations, and in particular, the sections dealing with sanctions we will observe that a host of these abusive usages of environmental resources have been criminalized.

5.0. Enforcement and Other Implementation Challenges

Irrespective of the numerous environmental laws enacted to protect the environment, environmental degradation has continued unabated. Oil spillage and gas flaring activities are still commonplace in Nigeria, especially in the oil-rich Niger Delta. Gas flaring has also continued unabated irrespective of the Nigerian government's directive to end flaring by 2010. The Idoho oil spill of 1997 spilled 40,000 barrels of crude oil into the environment; it travelled all the way

²⁹Ibid.

³⁰Ibid.

³¹See generally National Environmental (Ozone Layer Protection) Regulations, 2009, Official Gazette, No.64, Vol. 96.

³²See generally National Environmental (Soil Erosion and Flood Control) Regulations, 2011, Official Gazette, No.39, Vol. 98.

³³See generally National Environmental (Surface and Groundwater Quality Control) Regulations, 2011, Official Gazette, No.49, Vol. 98.

³⁴See generally National Environmental (Domestic and Industrial Plastic, Rubber and Foam Sector) Regulations 2011, Official Gazette, No.44, Vol. 98.

³⁵See generally National Environmental (Base Metals, Iron and Steel Manufacturing/Recycling Industries Sector) Regulations, 2011, Official Gazette, No.41, Vol. 98.

³⁶Aigbokhaevbo and Aniekwu, "Environmental Abuses in Nigeria", 245.

from AkwaIbom state to Lagos state dispersing oil through the coastal states, up to the Lagos coast. According to the Department of Petroleum Resources, between 1997 and 2001, Nigeria recorded a total number of 2,097 oil spill incidents amounting to 1,947,600 barrels of crude oil. Thousands of barrels of oil have been split into the environment through our oil pipelines and tanks in the country. Enforcement of environmental regulations is still poor as industries continue to discharge untreated waste water into the environment. Heaps of refuse are always a constant sight to behold in Nigerian streets and markets.³⁷ Most recently, in December 2011, the SPDC's Bonga offshore platform spilled about 40, 000 barrels of crude oil into Nigerian waters. On January 16 2012, a gas explosion occurred at the Finuwa oil field owned by Chevron Nigeria Limited. The Nigerian government was shockingly silent about these two incidents. Listed below are some of the problems mitigating against effective environmental protection in Nigeria.³⁸

1. Low Commitment to Implementation and Enforcement: The numerous existing environmental regulations which have been in place for many years are never effectively implemented. It should be noted that the number of such laws and regulations should not necessarily be the yardstick for measuring their effectiveness because in the absence of the much required will to enforce such laws, they become useless. Legislation is really not the critical factor in environmental improvement due to the fact that it does not guarantee that the intent of the legislator will be implemented. The major practical problem results from the difficulty to set up an efficient control and enforcement mechanism to apply the legal provisions. Enforcement requires adequate monitoring equipment, staff and funding.³⁹ It is doubtful if presently these facilities exist for the monitoring of the environment. As the findings have shown, the government and the industry in Nigeria are more concerned about revenue and profits from oil than addressing the problems caused by exploration and production on the environment.

2. Supremacy Struggle between Regulatory Agencies and the Ambiguities of the Statutory Provisions: This constraint militating against effective environmental regulation further compound environmental protection objectives in Nigeria. Establishing an effective enforcement programme in Nigeria requires a firm commitment on the part of government and a

³⁷Ibid.

³⁸Ibid .

³⁹Ibid.

stable and vibrant leadership in the environmental enforcement agencies. The mandate for enforcement must be clear and the roles of line agencies distinct to avoid inter-agency conflicts that could be capitalized upon by powerful target groups to frustrate enforcement programmes.

To be relevant, the regulators (administrators) should be better supported. Staff should be highly motivated with adequate equipment and capacity building programs vigorously pursued. The administrators should invest more in staff motivation, capacity building and the provision of conducive work environments together with the necessary facilities. The government in this regard should make funds available to the environmental regulators. Otherwise, they become exposed to monetary inducements leaving compliance in the hands of the proponent. It is advocated that a certain percentage of the revenue from crude oil should be ploughed back into environmental management. For effective compliance monitoring and enforcement, stiffer sanctions and penalties should be prescribed and strictly adhered to. This way, environmental requirements will be met and maintained. It is recommended that Nigeria should make efforts to tow the lines of the West, especially the USA in environmental concerns, and it is hoped that all these efforts will lead to a better place for mankind and other life forms in the environment.⁴⁰

6.0. Comparative Analysis of Criminalization of Abusive Usage of Environmental Resources

In recent years, with greater understanding of the need to protect the environment and a better appreciation of what the environment can and cannot sustain, regulation, and in some cases, criminalization of harm to the environment is becoming more accepted. Environmental crime has been identified as one of the most profitable and fastest growing areas of international criminal activity, with increasing involvement of organized criminal networks. At the 12th United Nations Congress on Crime Prevention and Criminal Justice, the international community acknowledged the challenges posed by emerging forms of crime that have significant impact on the environment and called on member States to study this issue and share best practices.⁴¹ The literature shows in the early days of environmental legislation, violations carried largely

⁴⁰Ibid.

⁴¹Korir, *Environmental Crime Management in Kenya*, 23.

insignificant civil fines and penalties. And it has been reported that a major source of failure of environmental protection legislation was the civil character of enforcement actions.

There has been a dramatic proliferation of the use of the criminal sanction in the environmental arena in many other jurisdictions outside Nigeria. Between 1985 and 1989, for instance, the average number of criminal cases that the United States Environmental Protection Agency managed increased from about 60 to almost 85 yearly. Before 1989, only a dozen or so environmental law cases per year were referred to the Department of Justice for criminal action; after 1985, that number averaged 25 to 50.⁴² From these figures, one might conclude that there is a strong empirical, or at least theoretical, argument for aggressively using the criminal law to achieve environmental protection. The nature of environmental violations also argues for couching environmental violations as a serious form of white-collar crime.

Under the Canadian Environmental Protection Act of 1988, the federal government can impose criminal penalties ranging from fines of \$200,000 and up to six months in jail to \$1 million and three to five years imprisonment. Similarly, the German government revised its environmental law in 1981 so that forms of water pollution, "hazardous modifications of the natural quality of the air," and violations of precautionary standards now may be criminally punished. From 1980 to 1989 the German government increased its number of criminal cases in the environmental area from 5150 to 9805. Sweden, Austria, and Spain also utilize the criminal law as an active strategy in their pursuit of environmental quality. In contrast, the United Kingdom almost never employs the criminal law for environmental objectives, and the French generally do not make use of the approach in this area. The Italians rarely use criminal sanctions, although they are provided for by law for noise pollution and under a general provision addressing protection of persons and things. African nations have also adopted the criminal sanction in their environmental law. The Economic Community of West African States agreed in 1988 to enact criminal sanctions for facilitating hazardous waste import into their countries. Later, the Ivory Coast passed a law that "imposes prison terms of up to twenty years and fines of up to \$1.6 million for individuals who import toxic or nuclear waste into the country. In 1987, the Organization of African Unity adopted a resolution stating that it "is a crime against Africa and the African people" for other

⁴²Hakeem Ijaiya and O. T. Joseph, "Rethinking Environmental Law Enforcement in Nigeria" [2014] 5 *Beijing Law Review* 306-321 <<http://www.scirp.org/journal/bir>> accessed on August, 14, 2018.

countries to illegally dump wastes in Africa. At the international level, the United Nations has had meetings on the issue of criminalizing environmental law, and there have even been calls for the creation of a world criminal court.⁴³ The use of criminal law is believed to effectively communicate the nature of the evil associated with environmental wrongdoing. Finally; there is the argument that the use of criminal sanctions satisfies the emotional need of the population to punish, to get revenge.⁴⁴

In contrast, the United Kingdom almost never employs the criminal law for environmental objectives, and the French generally do not make use of the approach in this area. The Italians rarely use criminal sanctions, although they are provided for by law for noise pollution and under a general provision addressing protection of persons and things. Those who propose greater use of the criminal law as a pollution control and environmental protection strategy generally employ two sets of arguments: those based on the presumed efficacy of the sanctions and those based on moral considerations. The most common argument for use of the criminal sanction is that it deters violations in ways that are superior to other approaches. Unlike the civil sanction and other strategies that exist, the government sends a message in the use of criminal sanctions that those in decision-making positions are believed to hear clearly. Peter Beeson, formerly with the United States Department of Justice, insisted that prosecution is more effective for crime in the suites than it is for other crimes: "Deterrence works best on people who have not had contact with criminal justice and for whom prosecution or even investigation will have severe personal consequences."

7.0. Corporate Criminal Responsibility

Corporate officials have been characterized as a "social group that is exquisitely sensitive to status deprivations and censure. For good or ill, the accusation and trial may be awful punishment for the corporate defendant. While widely assumed, the deterrence rationale is also extremely controversial. The publicity value is considerable. That a corporate executive has

⁴³Ibid.

⁴⁴Ibid.

actually served time for an environmental violation is a communication that citizens and the press treat seriously.⁴⁵

Certain sanctions associated with the criminal law can have systemic effects. For example, disqualification of a corporate officer can prevent future violations, change the defendant's attitude toward crime, increase the relative authority of law abiding personnel, and send a message through the firm that company loyalty is not a higher obligation than compliance with law. Other arguments for use of the criminal sanction are moral. Imposition of imprisonment on the *alter ego* of companies may reduce the class bias in the control of illegal activity since the more affluent now often avoid the effects of alternative forms of sanction by simply paying insignificant fines or by passing on the costs to the consumer, a transaction impossible if the punishment is imprisonment. When the powerful fail to meet their greater responsibilities to society, they deserve serious sanctioning. In any event, some conclude that even if not effective, society must address egregious antisocial behavior with the criminal law.

8.0. Enforcement Challenges in Criminalizing Environmental Crimes in Nigeria

According to Atsegbua, enforcement is “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. Compliance is, therefore, the ultimate goal of any enforcement program.”⁴⁶ This definition accurately captures the essence of any enforcement program, i.e.; to ensure compliance with the applicable laws. The development of detailed, often ambitious laws designed to protect the environment over the past 30 years has been a striking phenomenon of our age. Laws in the statute book may provide some comfort, but without effective implementation and enforcement they are meaningless. The legislators often pay more attention to passing new laws than considering the equally issues of implementation, and what happens after the law has come into force.⁴⁷

⁴⁵Ibid.

⁴⁶ Quoted in Ogbodo, “Environmental Protection in Nigeria”

⁴⁷ Science for Environment Policy, *Environmental Compliance Assurance and Combating Environmental Crime*, Thematic Issue 56 (Bristol: European Commission DG Environmental by the Science Communication Unit, UWE, 2016), 1-35

Considering the peculiarities of the Nigeria state, the likely enforcement challenges will include the following:

1. Multiplicity of the law which makes effective implementation cumbersome;
2. Constitutional deficiency: This is the genesis of the environmental problems in Nigeria in view of section 20, under chapter 2 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended);
3. Inability of prosecutors and other responsible officers to handle the discretionary powers associated with implementation and enforcement *bonafide*;
4. Lack of experts in the field of environment law;
5. Difficulty in gathering evidence which have the tendency of frustrating prosecution;
6. The huge cost associated with prosecution of environmental crimes;
7. Lack of necessary infrastructure and a well-structured institution of government;
8. Absence of political will and commitment;
9. The challenge of illiteracy and lack of understanding;⁴⁸
10. Corruption

9.0 Recommendations

Following the enforcement challenges seen above, the following will be our recommendations.

1. There should be a single document dealing with all forms of environmental offences;
2. As criminal law came to be viewed as an ultimate solution the Chapter II provision of the Constitution on environment protection should be interpreted by the courts as justiciable. Success in this case depends on whether Nigerian courts will follow the current trends in India, Ghana and South Africa, where their courts have applied their interpretative jurisdictions to inject justiciable life into their Fundamental Objectives and Directive Principles. Justice C. C. Nweze of the Supreme Court of Nigeria has indicated a glimmer of hope that the Nigerian courts may be inclined to follow this progressive judicial path;
3. There should a proper codification of environmental crimes in a manner that will minimize the enormous discretion left with prosecutors as seen in other jurisdiction;

⁴⁸ See Korir, *Environmental Crime Management in Kenya*, 76

4. The government should engage environmental lawyers and environmental scientist more in the dealing with environmental issues. Also, the government should embark on workshops, seminars and other trainings to cater for the knowledge gap;
5. The services of reputable scientist should be elicited by government in the examining environmental pollution and other forms of abuses. This should be complemented with a high level of technological equipment;
6. Government should as a matter of commitment provide substantial amount under a specific heading in the National budget to combat the menaces of the environment;
7. Special courts and related facilities should be blunt, solely for the enforcement of the legal regime in this direction;
8. The government should show their willingness and readiness to protect the environment;
9. Campaign and other forms of sensitization should be done to elevate the stakeholders, including the regulators and the populace;
10. The fight against corruption which has become endemic in the Nigeria state should be addressed more vigorously by the government and the people. The relevant agencies and the judiciary should be overhauled to combat this monster without any political sentiments.

10.0. Conclusion

The use of criminal sanctions in promoting environmental protection is increasingly advocated worldwide. The reasons given are straightforward. Businesses will most readily respond to criminal sanctions. Criminal penalties, particularly imprisonment, reflect complaints that the justice system is biased against the common offender and favors those who commit white-collar crime. Proper enforcement of criminal penalties can be dramatic and vivid and may prove useful deterrents. While the sheer number of points against criminalizing environmental law overwhelms the opposite side, even a small number of highly successful prosecutions could change the calculus in time. Obviously, no one method is best to address the range of behaviors that degrade the quality of life and abuse to our resources. If the criminalization of environmental offences can be pursued vigorously it will be an effective and dissuasive way to achieve the aims and objectives of environmental law.