RETHINK OF THE IMPLEMENTATION OF ENVIRONMENTAL JUSTICE IN NIGERIA*

Abstract

It is a known fact that Nigeria as a country formerly under the common law legal systems due to colonization, environmental, liability and enforcement have progress beyond actions under tort to now human rights actions gearing towards environmental justice enhancement. In between this progress, there have been enacted and amended statutes by the Nigerian legislatures stipulating environment liability and enforcement to achieve a healthy and sustainable environmental protection and environmental justice implementation as well. This paper attempted to appraise the provisions of the understudied legislations to show they contribute in engendering environmental protections through the promotion and institutionalization of environmental justice regime in Nigeria to their provisions. In doing justice to the discussion, the study revealed that the contending issues and the impediments to the successful implementation of environmental justice is the status of environmental rights as not directly being a fundamental right under the constitutions. The paper concluded and recommended that there is an urgent need for constitutional amended removing environmental right as in fundamental objectives and directive principles of state policy under chapter II of the constitution and adding it to be part of chapter fundamental human rights to entrench better environmental justice implementation.

Keywords: Environment, Environmental Justice, Implementation, Nigeria

1. Introduction

Environmental laws are put in place to mitigate or prevent environmental problems which result mainly from anthropogenic activities in the quest for economic growth and development to engender environmental protection and sustainability.[1] The rules and regulations for environmental protection against pollution, depletion of natural resources are all gears towards ensuring sustainable environmental development and implementation of environmental justice.[2] In Nigeria there is constitutional provision for the enforcement of environmental rights. The 1999 Constitution (as amended) recognized environmental right in Section 20 (being the first time of such constitutional recognition). Although, environmental rights so provided fall among the fundamental objectives and directives principles of state policy which ordinarily are unenforceable by virtue of section 6 (6) © of the same Constitution. However, there are positive indications that there is a progressive environmental justice implementation in Nigeria. This paper seeks to examine the implementation of environmental justice in Nigeria, how the legal institution and existing understudied legislations have instituted the implementation of environmental protection principles to better ensure environmental justice regime. Environmental justice simply means the fair treatment and meaningful involvement of all people regardless of race, color, natural origin or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies The concept of environmental justice by its nature centres on environmental rights, environmental protection and the implementation, planning and governance of environmental laws and policies. In Nigeria, the issue of environmental abuses calling for environmental justice are majorly felt at the Niger-Delta region as a result of oil explorations and the attendant negative pollution effects as result of oil spillage, gas flaring etc. Environmental laws are put in place to mitigate or prevent

***Sylvester Chijioke Odoh Ph.D.,** Department of International Law and Jurisprudence, Faculty of Law Ebonyi State University, Email: barryvester78@gmail.comTel. Tel. No.: 234 8036014983.

[1]Emphasis Mine.

[2]MT Ladan, Trend in Environmental Law and Access to Justice in Nigeria https://www.dodax.com>law-books-sourced on 28/08/2021.

environmental problems which results from anthropogenic activities in the quest for economic growth and development. The rules and regulations for environmental protection against pollution, depletion of natural resources are all gears towards ensuring sustainable environmental development and environmental justice.

2. Environment

The term Environment means so many things to so many people and its definition thereto is viewed within the concept under which it is being defined. It is on this note that we state that there is a wide variety on the meaning of the word environment depending on whom the definer is and the use to which it is being put to. It has been stated that approaches to the definitions of the concept do vary.[3] The New Webster's Dictionary[4] states that environment is our surroundings especially the material and spiritual influences which affect the growth, development and existence of living being. It is defined as the natural conditions example land, air, and water in which people, animals and plants live.[5]

Black's Law Dictionary[6] defines the word environment as the totality of physical, economic, cultural, aesthetic and social circumstances and factors which surround and affect the desirability and value of existence and also the quality of people's action. In the view of an architect, the word Environment is seen largely as a structure and to a sociologist, it is of various varieties ranging from social environment, work environment, school environment, leisure environment etc. while to a Geographer, it is seen from a universalistic perspective in the context of the Cosmos as comprising the physical and natural environment.[7] In the eyes of an Economist, environment is defined from the perspective of wealth Creation but to a lawyer, it remains a place where we live and develop that requires legal protection.[8] It is unarguably obvious that there is no consensus on the meaning of environment, however, this work, for the sake of emphasis, shall restrict the definition of the word Environment to legal and Scientific Contexts.

In the now abrogated Federal Environment protection Agency Act (FEPA), Environment was defined to include water, air, land and all plant and human being or animals living therein and their inter-relationship which exist among them or any of them.[9] The word Environment means the component of the earth which includes land, water, air including all layers of the atmosphere, all organic and in organic matters and living organic and the inter-relationship between them[10] Section 1(1)9[11] refers to it as consisting of all or any of the following, the air, water and land. It remains the natural conditions example, land, air and water in which people, animals and plants live.[12]
In the Words of Philippe Sands, the concept environment is a system within which living organisms interact with the physical elements which encompass the features and products of the natural world

[3]TO Ilegbune, (unpublished Lecture Notes on Environmental Law) Faculty of Law University of Nigeria Enugu Campus, (2005).
[4] The New Webster's Dictionary of the English Language, International Edition (New York: Lexicon International Publishers).
[5]The Oxford Advanced Learner's Dictionary (5th Ed.), Hornby Albert Sidney.
[6] Black's Law Dictionary (7th Ed.) Bryan A. Garner 1999 West Group.
[7]T.O. Ilegbune (Unpublished Lecture Note) *op. cit.*
[8]*Ibid.*
[9] FEPA, Act, Cap F38 LFN 2004 (Now abolished) Section 38.
[10]Section 61, Environment Impact Assessment Act, Cap E5 LFN 2010.
[11]United Kingdom Environmental Protection Act, 1990.
[12]F. Monkhouse and J. Small, A Dictionary of the Natural Environment (London Edward Arnold Pub. 1978).

and those of human civilization.[13] It has been said to be a global concept which encompasses both natural and man-made resources available at any given period for the satisfaction of human needs, these needs are economic, social, political and aesthetics.[14]

Omaka defines environment as a place of human, plant and animal existence and where we live and develop that includes the air, land, water vegetation, our surrounding and the entire ecosystem.[15] The erudite scholar further elucidated on the definition of environment as an intricate web thus:

> In our natural habitat, a lot of creatures and crops of diverse flavour surround us: the oil palm, the coca trees, Melina trees, iroko, guava, oranges and beautiful grape trees. There is also the olive, the pomegranate, trellised and trellised date palms, from the fruit of the palm and the vine, we get wholesome drink and food. The spider carefully knit their network of webs on trees. The bees meticulously build its cell on hills and on trees so all so the weaverbird and other creatures. Our huts, tents and houses give us shelter, while the moon and stars smile at us in the night. All these and every other that surround man form what is called the "Environment" in its natural state.[16]

In the celebrated case of *Attorney General of Lagos State v. Attorney General of the Federation of Nigeria & 35 Ors.*,[17] the Supreme Court adopted, with approval, the meaning of environment which defines it as the totality of physical, economic, cultural, aesthetic and social circumstances and factors, which surround and affect the quality of people's lives; the surrounding, conditions, influences or forces which influence or modify. This definition is what *Arene* adopted in his own treatise.[18]

Rau and Wooten,[19] in their expanded definition of environment, define it as the whole complex of physical, social, cultural, economic, aesthetic factors which affect individuals and communities and ultimately determine their form, Character, relationship and survival. These two scholars went further to categorize the dimension of the environment in to four as follows:

(a) The physical environment (natural and constructed), which includes land, climate, vegetation, wildlife, the surrounding land uses and the critical character of an area, imposture/public services, air, noise and water pollutions.
(b) The social environment, which includes community facilities, services and the character of community facilities and services and the character of communities.
(c) The aesthetic environment–science areas, Vistas, views including architectural character of buildings.
(d) The economic environment which includes employment, land ownership pattern and land values.

[13]P Sand, *Principles of International Environmental Law 1, Framework Standards, Implementation* (London: Manchester University Press, 1995).
[14]According to United Nations Environmental Programme (Unep.org sourced on 13/11/2017).
[15]CA Omaka, *The Nigerian Conservation Law*, (Lagos: Lion Louis Publishers, 2004).
[16]*Ibid*.
[17] (2003) FWLR Part 165,909 at 946, (2003) LPELR SC 353/2001.
[18]E Arene Assessment of Policies for a Healthier Environment. Kuru November 1991.
[19]J.G Rau and DC Wooten (ed) Environmental Impact Analysis Handbook McGraw Hill Publishers (1980).

In the provisions of Principle 2 of the Stockholm Declaration[20] Environment is defined as the air, water, land, flora and fauna and especially representative samples of natural ecosystem. However, in the words of Uchegbu[21] in his bid to graphically encapsulate the correlation between environment and development, he said that the ecosystem (otherwise known as the environment) is an intricate web of relationship fashioned by nature to maintain a stable equilibrium by recycling its resources. He gave an example of such relationship thus; minerals are taken up into the biomass and on dead and decay they return to the soil. In the English Protection Act[22] it is defined as consisting of all, or any of the [media] the air, water and land and the medium of air within buildings and the air within other natural or man-made structures above or below ground.
Environment is also defined to include,

(a) ecosystems and their constituent parts;
(b) all natural and physical resources;
(c) The society, economic, aesthetic and cultural conditions which affect the environment or which are affected by changes to the environment.[23]

The legal approach to the environment is to separate regulations into broad categories. Salter made a suggestion of the three groups under a heading of natural environment, which media is inclusive. A second category is the man-made environment including the cultural heritage and a third category concerns human environment, including regulations on food content, product, Safety issues, leisure and economic health (consumer protection, eco-labelling and so forth).[24] In response to the two quotes by Wendell Berry environment is defined in the broader context as the sum total of all conditions and influences which affect the development and life of all organization on earth.[25] Martin in his version of maintaining that environmental is our common inheritance stated and I quote: -

> It really boils down to this: that all life is interrelated. We are all caught in an inescapable network of mutuality, tied into a single garment of destiny. Water ever affects one destiny, affects all indirectly.[26]

From the foregoing definitions, it goes without saying that environment remain the natural condition in which man lives, which composes of land, air and water as stated earlier. This includes man, plants and animals and the complex relationship existing between them, otherwise known as the ecosystem.

3. Environmental Justice

Environmental justice is widely used in academia to show methods or ways local people use to tackle any identified environmental challenges which occur within their domain. The concepts is formulated in the United States of America (USA) in the 1980s, it refers to the fair treatment and meaningful involvement of all people regardless of race, colour, national origin, or income with

[20]Declaration of the United Nation Conference on the Human Environment. Stockholm, 5th-16th June, 1972. Stockholm in Sweden.
[21]A Uchegbu, "The Legal Regulations on Environmental Protection and Enforcement in Nigeria", *Journal of Private and Property Law*, Vol. 8 & 9 October (1987) & April (1988).
[22]English Protection Act, 1990, Section 1(2).
[23]The New Zealand Environment Act of 1986 as cited in International Bar Association (IBA), Environmental Liability, Chairman P. Thomas, 1991, by R. J. Somerville, Environmental Audit: Insurance; Indemnities and Proposals for Reform in New Zealand Environment Law.
[24] J. R. Salter, European Environmental Law International (Environmental Law and Policy Series 1994) (loose leaf).
[25] W. Berry, The Gift of the Good Land (1981)- www.epa.gov>history sourced on 21/12/2019.
[26] M. Luther King Jr (1929-1968), Christmas Eve Sermon 1967, Quotations about Environment epa.gov/history sourced on 12/12/2019

respect to the development, implementation and enforcement of environmental laws.[27] Consequently, environmental justice therefore means that environmental injustice is wherever there is inequality or unfairness in the distribution of environmental burdens where there is exclusion from their process which determine how that distribution will be affected or where disproportionate distribution is not balanced by sufficient reparation which extends to potential injustice between develop and developing states and between present and future generations.[28] Principally from an American democracy that combines civil rights with environmental protection which demands that those who have historically been excluded from environmental decision making, traditional minority, low income and tribal communities have the same access to environmental decision makers, decision-making processes, and the ability to make reasoned contributions to decision making process as any other individuals.[29] Environmental Justice concept arose from the fact that some communities or human groups are disproportionately subjected to higher level of environmental risk than the other segments of society.[30]

The term environmental justice had two distinct uses; the first and more common usage describes it as a social movement, that focuses on the fair distribution of environmental benefits and burdens, while on the other hand it is an interdisciplinary body of social science literature that included theories of the environment and justice, environmental laws and their implementations, environmental policy and planning and governance for ecology.[31] This last use is the crux of this research.

According to United States Environmental Protection Agency (USEPA),[32] environmental justice is the fair treatment and meaningful involvement of all people regardless of race, colour, national origin, or income with respect to the development, implementation and enforcement of environmental laws regulations and policies. The quest of achieving environmental justice advocates that such goals can be achieved when everyone enjoys; the same degree of protection from environmental and health hazard; and when everyone enjoys process to have a healthy environment in which to live, learn and work.[33]

Environmental justice is therefore, the practical implementation of the sustainable (environmental) development being that sustainable development is the development which meets the need of the present without compromising the ability of future generations to meet their own.[34]

[27]B Lewis, "Human Rights and Environmental Wrongs: Achieving Environmental Justice through Human Rights Law", *International Journal for Crime and Justice Queens Land University of Technology,* Briosbane. www.crimejusticejournal.com/jc2012(1)65-73 sourced on 1/1/2018.
[28]R Brass, *Op. Cit.*
[29]Environmental Justice Organization, Liabilities and Trade (ejolt); Mapping Environmental Justice. www.ejolt.org2013/02/e sourced on 1/1/2018.
[30]M G Tyler, Environmental Science: Working with the Earth (pacific Grove California (2003) 9th ed, Brooks/Cole P.GS/SBNO. 554-42039-7
[31]USEPA, 1970, created for the protection of human health and environment
[32]www.epa.gov/environmentaljustice sourced on 7/11/2017.
[33]https://sustainabledevelopment.un.org sourced on 2/2/2018.
[34]The principles were affirmed and adopted by Delegates to first National people of colour environmental leadership summit held on October 24-27, 1991 in Washington DC and the principles have served as a defining document for the growing grassroots movement for environmental justice www.ejnet.org sourced on 3/2/2018.

4. Implementation of Environmental Justice in Nigeria

4.1. Environmental Justice through Compensation for Pollution in Nigeria Court and Foreign Courts

In the Nigeria legal system, the judiciary interprets the law, thus the judiciary breathes life into the law to ensure compliance. The judiciary in carrying out its Constitution and in exercise of its powers under the Constitution reconciles public interests with private interests and at times private interests and organizational interests.[35] Lord Denning captured this reality thus:

> In theory the judges do not make law, they merely expound it. But as no one knows what the law is until the judges expound it, it follows that they make it.[36]

From the foregoing, it is elementary that the judiciary is the last hope of the oppressed, however, it should be noted that for the judiciary to be effective and efficient in the discharge of its role, two factors are inevitably in consideration viz-a-vis:
(i.) The nature of the political climate in existence at the locality, and
(ii.) The level of economic development of the locality in question.[37]
In the protection of the environment, there are cases the courts have played its role which we shall discuss under two major dispensations as follows:

(i.) The past judicial attitude and
(ii.) The present judicial inclinations

(i) The past judicial attitude: This period covers judiciary roles prior to the 1980s, simply referred to as the environmental awareness era.[38] This period the attitude of the courts in environmental matters was in more of passivism than activism and in some cases appeared paternalistic, as aptly illustrated in the case of *Allar Irov v Shell B. P.*,[39] where the judge refused to grant an injunction in favour of the Plaintiff whose land and fishpond had been polluted by the Defendant's operations. Here the refusal was on social and economic reasons as the judge stated that if such injunction is granted, it could stop the Defendant's trade and render many unemployed and even affected the country's revenue since oil was the nub of Nigeria's income generation.

In other instances, during the era, the courts tried to consider environmental pollution problems raised but the approach mainly was from the common law tortuous liability principles with all the attendant problems which made the court lean more on court rules, procedures and technicalities rather than being courts of justice. A typical example is the case of *Siesmograph Services Ltd. v. Benedict Onokpasa*[40] where legal issues involve the case of negligence which needs the proof of carelessness on the side of the Plaintiff. The issue before the court was whether the shooting operations carried out by the appellant/Defendant company prospecting for oil caused extensive damages to some buildings belonging to the Respondent/Plaintiff. The burden was on the Respondent/Plaintiff to establish that the Appellant/Defendant was negligent which the

[35]Section 6 (6) (b) of 1999 Constitution (as amended) see also chapter vii of the same Constitution.
[36]S E Chianu, the Horse and Ass Yorked: Legal Principles to aid the weak in a world of unequal (Inaugural Lectures Series 91, Benin City, University of Benin 2007) 3.
[37]E Onyeabo, Institutional Framework for Environmental Protection: The Judiciary it's Roles and Weaknesses. (Unpublished Lecture Memograph Faculty of Law, University of Nigeria Enugu Campus 2004) 1.
[38]E Onyeabo *Ibid*, P.2.
[39] Unreported judgment of Warri High Court, Suit No: W/89/91 0r 26/11/73
[40](1974) 6 S.C. 119, See also *Godspower Nweke v. Nig. Agip Oil Co. Ltd.* (1976) 9 & 10 SC

Respondent/Plaintiff failed to established the court considered the expert witnesses (three in number) called by the Respondent (who were not skilled in the relevant field) and matched their opinions with the three experts called by the Appellant. This case was dismissed as the Plaintiff failed to discharge the evidential burden.

In the case of *Amos &Anor v. Shell Pet. Dev. Co. Ltd.*[41] where the Plaintiff sued the Defendant in nuisance for constructing a dam across their creek as a result of which their farms were flooded and damaged. It was held *inter alia*, that since the creek was a public waterway, its blocking was a public nuisance, the Plaintiff cannot succeed unless there was proof that they had suffered special damages peculiar to themselves. The rationale for the court decision is obviously devoid of justice being that it stemmed from strict adherence to technicalities. Furthermore, in some cases where the court appeared to be environmentally aware, in the course of dispensing justice, they appeared less inclined to punishing polluters believing that mere compensation for damages may be enough and the polluters seeing that polluting and paying paltry sums for damages will be more economical than indulging in mechanisms for environmental protection. For instance, in the case of *R. Mon &Anor v. Shell B. P*,[42] a paltry sum of 200 was awarded by the court to the Plaintiffs.

(ii.) The present judicial inclinations: This period covers the past 1980s era tagged environmental awareness as the world witnessed series of enlightenment as to the devastating effect of environmental degradation on both human lives and the entire ecosystem. In Nigeria, this period marks the starting point for the promulgation of direct environmental protection laws, more especially after the Koko port dumping incidents[43] and the Nigerian judiciary started moving away from the formal traditional approach of the protection of the social and economic interests rather than environmental protection as a number of landmark cases were decided by the courts and their rulings were more environmental friendly, although their efforts in environmental protection were not rapid but this era has brought about the paradigm shift to environmental consciousness. Some of the bottlenecks militating against citizens' rights in environmental litigation were given a fair push in the right direction.

In the area of public nuisance, the issue of a private person commencing an action without the consent of the Attorney General (A.G) of the Federation or not showing that he was affected over and above every other person was whittled down as was decided in the case of *Adedirah & Anor v. Interland Transport Ltd*.,[44] where the Supreme Court held that under Section 6 (6) (b) of the 1999 Constitution, a private person can commence an action on public nuisance without the consent of the Attorney General of the Federation or without joining him as a party as such restriction imposed at law on the right of action in public nuisance is inconsistent without the Constitution and is of no effect in Nigeria. Also, in the issue of compensation and the pursuit of environmental right, the Court of Appeal made a headway in the case of *Counsellor FB. Farral v. Shell Pet. Dev. Ltd.*,[45] where damages were not only awarded to the Plaintiff, the court went further to order and compelled the Defendant to rehabilitate the polluted land. In terms of adequacy of compensation, the court was alive to their responsibilities (unlike their past inclination) where large sums of money were awarded

[41](1977) 6. S.C. 109.
[42](1970-1972) 1 RSLR.71.
[43]The Koko Port Dumping Saga brought the Promulgation of Harmful Wastes (Special Criminal Provisions) Act 1988, and Federal Environmental Protection Agency Act 1988 respectively.
[44](1991) 9 NWLR (pt. 244) p. 155.
[45](1995) 3 NWLR (pt. 382) at 148.

as compensation for damages to pollution victims.[46] However, what would have appeared as a welcome attitude of the courts to environmental matters was somehow short lived with the promulgation of *Decree 107 of 1993***,** which gave exclusive jurisdiction to Federal High Court on civil environmental matters,[47] thus quietly removing people's access to court on environmental matters been that Federal High Court were sparsely located and far from litigants. For example, in the case of *George Ihenkar & Ors. v SPDC & Anor.*,[48] where the case was struck out for want of jurisdiction under Decree 107 of 1993, in its ruling the court stated that it lacked the jurisdiction to entertain the matter as the jurisdiction on the matter lied exclusively with the Federal High Court.

However, in the case of *SPDC v. Abel Isaiah & Ors.*,[49] which involved oil spillage with its attendant damages. On appeal, the Court of Appeal Port Harcourt Division ruled the lower State High Court has jurisdiction and that the Section 230 (i) of Decree 107 does not affect the jurisdiction of State High Court to adjudicate on oil spillage matters. Unfortunately, this proactive judgment of the Court of Appeal was set aside by the Supreme Court.[50] It is unfortunate that despite the protest against the provision of Decree 107 with its manifest negative and anti-environmental protection regime, the provision of the Decree is retained in Section 251 (1) of 1999 Constitution.

From the foregoing, it is a common knowledge that the court is the last hope of a common man in the ordinary parlance but this in practice is never the case as there are inherent obstacles the courts in Nigeria are faced which militate the effective and efficient implementation of environmental justice regime as distilling above.

Notably among the obstacles are:

1. Issue of jurisdiction/access to court: Section 251 (1) of the 1999 Constitution gives exclusive jurisdiction to the Federal High Court on environmental matters. Thus, where a litigant institutes an action on any environmental issues or matters connected thereto in a State High Court, any decision arising there to will be a nullity and upturned on appeal.[51] The effect of the provision of the mentioned Section 251 (1) of the Constitution is that where any right is violated arising from environmental pollution problems, the victim can only seek redress at the Federal High Court being that there is still paucity of Federal High Court, at most one in each state of the Federation. The result is that access to justice is indirectly denied the victim in redressing environmental rights violations.

2. Locus Standi: *Locus standi* concerns the capacity of a person to institute legal proceedings in a court of law or other competition tribunal. It follows that such litigant must have an interest, which is sufficiently affected by the action and not merely claims that he fails within the class of persons for whose general interest that statute was passed. He must unequivocally show that he has some personal interest that has been, or is most likely or certain to be affected by the action complained of or right violated.[52]

[46]See the following cases; *Chief Joel Anare & Ors v. SPDC* (1997) 1 NWLR (pt. 480) p. 148, *SPDCv. Otoko* (1990) 6 NWLR (pt. 159) p. 693, *SPDC v. HRH Tiebo VII* (1996) 4 NWLR (pt. 445) p. 71.
[47]Section 230 (i) Paragraphs L & O.
[48]Suit No: A/713/92 (unreported) delivered by Aba High Court in 1995.
[49](1997) 6 NWLR (pt. 508) p. 236.
[50]See *Abel Isaiah &Ors v. SPDC* (2001) 6 NSCQR at 542. See also *Impidi Barry &Ors. V. O. A. Eric &Ors*.(1998) 8 NWLR (pt. 562) p. 404.
[51]See *Abel Isaiah Ibid.*
[52]M Adekunle Owoade, *Locus Standi*, Criminal Law and Rights of a Private Prosecutor in Nigeria, "*Fawehinmi v. Atiku and Togun Revisited* (Nigeria Judicial Review vol. 4. 1989-1000) 111

In the case of *Oronto Douglas v. Shell and 5 Ors*,[53] where the Plaintiff brought the action against the Defendants for non-compliance with the provisions of the Environmental Impact Assessment Act regarding certain projects that may have significant environmental impact. The court held that the Plaintiff had no *locus standi* to institute the action since he had shown no *prima facie* evidence that his right was affected or any direct injury caused to him or that he suffered any injury more than the generality of the people and therefore the matter was dismissed.

However, the issue of *locus standi* seems to have been whittled down by the decision of the Supreme Court in the case of *Centre for Oil Pollution Watch v. NNPC*[54] thereby giving more hope to the litigants in oil pollution. In this case the plaintiff, Non-Governmental Organization (NGO) known as Centre for Oil Pollution commenced an action at the Federal High Court, Lagos against the defendant (NNPC) over an alleged oil spillage in Acha Community of Isukwuato Local Government Area of Abia State. The plaintiff claimed that it's environment, making life miserable for inhabitants, as an entity registered under *Part C of CAMA.* The plaintiff therefore claimed restatement, restoration and remediation of the impaired and/or contaminated environment; portable water supply as a substitute for the contaminated streams; and provision of medical facilities for the evaluation and treatment of affected victims of the oil spillage. The defendant filed a defence raising a preliminary point of law challenging *the locus standi* of the plaintiff to commence the action and prayed court to strike out the suit. The trial court ruled in the favour of the defendant and subsequently struck out the suit. The Court of Appeal dismissed the appeal and the plaintiff went to Supreme Court. At the Supreme Court, the appellant counsel along with the *amici curiae* (friends of the court) maintained that the appellant has the right to sue having shown and demonstrated the required interest to that effect. They further argued that the NGO registered in accordance with Part C of CAMA, carries the function of ensuring reinstatement, restoration and remediation of environments impaired by oil spillage/pollution particularly the unowned environment or the environment that belong to no one in particular, and this include but not limited to rivers, seas, sea birds ecosystem and aquatic lives. They further urge the court to expand the concept of *locus standi* arguing that any person with genuine and public-spirited intention should be permitted to approach the court with respect to public interest matters such as the instant case which the defendants were negligent in both causation and continuation of the oil spillage in that they failed to carry out periodic inspections, failed to maintain proper surveillance and ought to have known the impact on the environment in an event of oil spillage. The defence counsel with the *amici curiae* sought to persuade the court that the appellant was a mere busybody or troublemaker (with an abstract corporate soul), usurping the rights of the affected citizens to complain. The court in ruling in favour of the appellant, stated that the interest of the plaintiffs is clear and unambiguous and therefore not prompted by ill motive or mischief. The court further held that the plaintiff cannot, in anyway, be described as a busy body or interloper. The court also agreed that the office of the Attorney-General of the Federation traditionally aligns with the pursuit of public interest however the concept of *locus standi* in that regard has grown beyond narrow approach and now encompasses public-spirited individuals and *NGOs*. In allowing the appeal, the Supreme Court rightly observed and unanimously concluded that the appellant has the right to institute the action (thereby expanding the scope of *locus standi* on environment matters) and maintaining that there is nothing in the Constitution that says the Attorney-General is the only proper person reserved with the right/power to enforce the performance of a public or institute public interest litigation such as the instant case. Finally, the court ordered that this matter be remitted to the Chief Judge for assignment to another trial judge for re-trial. This decision of the Supreme Court is a step in the right direction as it is a landmark decision in our legal system by relaxing the concept

[53]Suit No: FHC/2SC573/93, Ruling of the Federal High Court Port-Harcourt delivered on 17/2/1997.
[54](2019) 5 NWLR (pt. 1666) 518.

of *locus standi* and expanding issue/nature of the Attorney-General. It is environmental right friendly decision.

3. Other notable issues are undue attachment to technicalities by the court, issues of expert opinion and undue delay in the administration of justice.
In Nigeria ordinarily, the court ought to be the hope of the common man against environmental pollution but from our observation in the ongoing discussions shows that the court are yet to live up to that responsibility. It shows that there is lack of activism on the part of the judges regarding environmental pollution matters before them as the murder environmental justice on the altar of economic gains, favouring the polluters who are majorly the multi-national oil companies because oil is the main sources of Nigeria revenue base. A typical example of how transnational oil companies escaped from the arm of the law by using the cumbersome legal system that is time wasting to frustrate litigants. In Nigeria the delay in getting judgment in the courts discourages the prospecting litigants to institute any environmental action in court. In the case of *Ekeremor Zion v Shell Pet. Dev. Nig. Ltd.*,[55] the lower court after more than three decades of legal battles granted compensation of about ₦30million (US$200,000) for oil spills that destroyed local farm lands.

There is a structural difficulty in redressing environmental justice in Nigeria.[56] The Environmental Rights Action/Friends of the Earth Nigeria (ERA/FOEN) and its allies including rural poor communities adopted several strategies to bring the oil companies to account for their environmental pollutions through the courts within and outside Nigeria which shows that much resources and energy are dissipated with minimal results as national laws and court systems are by no means independent and also are not respected by the transnational oil companies. For instance, in the case of J*onah Gbemre (for himself and as representing Iwherekan Community) v SPDC & 2 Ors*.,[57] which an action by the Iwherekan Community, Niger Delta Region against Shell Company operating in the community for the environmental pollution caused as a result of its gas flaring. It was held by the High Court Benin Division in 2003 that gas flaring was illegal and a fundamental violation of human rights and ordered that it should be stopped forthwith with an injunction order restraining shell or its agents from further flaring gas in the Applicant's said community and it was also declared by the court that the constitutionally guaranteed fundamental rights to life and dignity of human person provided in *Sections 33 (1) and 34 (1)* of the 1999 Constitution and reinforced by *Articles 4, 16 and 24* of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act cap A9/LFN 2004, inevitably includes the right to clean, poison free, pollution free and healthy environment. It is quite unfortunate that despite this landmark judgment till date neither the oil company nor the government have complied with the subsisting court ruling as gas flaring continues unabated. Shell's response to the court ruling was to apply legal stalling in order to evade justice and continued the flaring of gas hiding under the cloak of appeal. Also, the efforts by the Legal Resources Department of ERA/FOEN to ascertain the veracity of Shell's claim of appeal were not fruitful as the court registry could not locate the case file. These instances above are damaging testimonies that erode the confidence in the Nigeria Court and frustrating environmental justice.

Furthermore, to seek environmental justice, efforts have been made to institute court cases working with communities within and outside Nigeria. Communities in the Niger Delta and environmental NGO's have taken the battle to courts outside Nigeria. Cases have been filed at the African

[55] (1995) 5 NWLR (pt. 347) p. 649, where a case which involved issue of oil spillage which started in 1970, until date, the victims of the oil spill had not been fully compensate.
[56]GU Ojo and N Tukunbor, Access to Environmental Justice in Nigeria: The Case for a Global Environmental Court of Justice, https://www.foei.org.2016/10PDF. sourced on 3/09/2021.
[57]Suit No: FHC/CS/53/05 (Federal High Court Benin Division Judgment 2005).

Commission on Human and Peoples' Rights and the Economic Community of West African States (ECOWAS) court of justice and judgments given upholding the rights of the affected communities to a healthy environment.[58] It is however interesting that just as moving the battlefield has its positive sides, there are challenges as well. Where for example, Nigeria has ratified a human rights treaty but failed domesticate it, the foreign courts may lack jurisdiction to entertain cases based on treaty. However, a regional court such as the ECOWAS court will have jurisdiction as it is empowered to apply international instruments relating to human rights ratified by the state party to the case.

Some regional court stipulates that a prospecting litigant wishing to invoke the jurisdiction of the court must show he has exhausted local remedies.[59] Furthermore, it is not in all cases that the regional courts will have jurisdiction. For example, regional courts may lack jurisdiction over Multi-National Oil Companies (MNOCs) where such companies are non-parties to the treaties of the courts. In *SERAP v. Nigeria*,[60] the court declined jurisdiction over the oil companies on the grounds that the six oil companies were not parties to the ECOWAS treaty and the case proceeded against the Nigerian Government. Resorting to foreign courts also raises legal issues on enforcement of such judgments as victims of pollution damage and local activists who have interest to embark on such exercise to sue in foreign courts have to overcome the high costs of litigation and jurisdictional challenges which can be done by networking and patterning with established environmental and human rights groups to provide funding and necessary legal services.

Nigerians have recorded success in some cases initiated in foreign courts, in *Saro Wiwa v Royal Dutc*h,[61] which set precedent in Nigerian Plaintiffs successfully suing a Multi-National Company in a foreign court, Royal Dutch Petroleum (Shell) Co was indicted for human rights abuses against Ogoni People. Also, in *Akpan and Verening Milieudefensie v Royal Dutch Shell Plc and Shell Petroleum Development Company of Nigeria (SPDC) Ltd.*,[62] the District Court of the Hague found SPDC, the Nigerian subsidiary of Royal Dutch Shell Plc, liable for the environmental damage caused by series of oil spills that occurred between 2006 and 2007. The Dutch court upheld its jurisdiction not only over the Dutch Parent Company but also over claims arising from the conduct of Shell in Nigeria. The successes recorded in these cases show that there is still hope for environmental pollution victims as the assertion of jurisdiction by British and Dutch courts over damages that occurred in Nigeria, but involving subsidiaries of British and Dutch Multinationals shows that multinationals can and should be held liable in their home jurisdictions for damage caused by, or related to, the operations of their foreign subsidiaries. Although, it is doubtful if foreign courts will be able to entertain all the environmental lawsuits arising from the activities of Multi-National Oil Companies and also give the needed environmental justice in Nigeria taking into consideration the expensive nature of invoking approaching foreign courts. Thus, the urgent need justice sector reform bringing in innovations to enhance and enable citizens have a say in what happens in their environment, and global capital restrained from trampling on the rights of vulnerable groups.

[58]See the following cases, Socio-Economic Rights and Accountability Project (SERAP) v. Nigeria (ECW/CCJ/APP/08/09), Socio-Economic Rights Action Centre (SERAC) &Anor v. Nigeria (2001) AHRLR 60 (ACHPR 2001) Communication 155/96.

[59]See Article 56 African Charter on Human and Peoples' Right.

[60]*SERAP v. Nigeria* supra.

[61](2002) WL319887 (S.D.N.Y. 2002).

[62]District Court of theHague (2013) ECLI.NL.RBDHA. 2013. bY9854Rechtbank Den Haag 30/01/2013, C/09/337050/HAZA 0911580.

4.2. Environmental Justice through the Sovereign Wealth Fund

A Sovereign Wealth Fund is simply a state-owned investment fund comprised of money generated by the government, often derived from country's surplus reserve.[63]
It is a proof of money set aside by a government to benefit its economics and citizens with the primary functions to stabilize the country's economy through diversification and to generate wealth for future generations. The funding for a Sovereign Wealth Fund can come from a variety of sources such as surplus reserves from state-owned natural resources revenue, trade surplus, bank reserves that may accumulate from budgeting money from privatization and governmental transfer payments.

The Nigerian Sovereign Investment Authority (NSIA) Act,[64] was enacted to receive, manage and invest in a diversified portfolio of medium and long term revenue for the three tiers of government, preparing for the eventual depletion of hydrocarbon resources for the development of critical infrastructure in the country. The fund in the act came to be in replacement of the Excess Crude Account (ECA) giving it control over country's excess petroleum revenues, which fund will be used to stabilize against economic instability, develop the country's infrastructure and savings for future generations as well as protecting Nigeria's economy from external shocks.[65] Initially, the forum of Nigerian States Governors did not appreciate the essence of the sovereign wealth funds when it was introduced. The 36 states governors went to court seeking an order declaring the creation of the fund illegal and unconstitutional, but it was later resolved out of court.[66] The Nigeria Sovereign Investment Authority is the Nigerian establishment which manages the Nigeria Sovereign Wealth Fund, with the initial fund allocation of US$1billion in seed capital as the Act commenced operations in October, 2012.[67]

4.2.1. Overview of Nigeria sovereign wealth fund

Historically, given the socio-economic antecedent of Nigeria as a country which had been spending recklessly it's fortune from oil revenue with little or no interest in investment in other sectors of the economy was confronted with the reality that oil revenue is not indefinite as a result of possibility of a sudden decline in the international oil markets.[68] Thus, the country was faced with the options of remaining in the vicious cycle of spending the reserves on wasteful consumptions or paying off its external and domestic debts or manage the reserves on the Central Bank balance sheet with a long-term perspective or lastly set up a Sovereign Wealth Funds.

After much hesitation and deliberations among the political actors, the resigned government to the option of setting up the Nigeria Sovereign Wealth Funds with the objects of building a saving base for the Nigeria people, enhancing the development of the country, infrastructure and providing stabilization support in times of economic stress.[69] The initial take off fund of the Nigeria Sovereign Investment Authority was the naira equivalent of the sum of US$1billion with the Federal, State, Federal Capital Territory, Local governments and Area Councils of the Federal s shareholders making contributions to the funds based on their respective shares of the revenue allocation in line

[63]https://www.investopedia.com>terms. Sourced on 10/09/2021.
[64]Nigeria Sovereign Investment Authority (NSIA) Act, 2011.
[65]www.ngr.com.can.ampproject.org sourced on 10/09/2021.
[66]*A.G Abia State & 35 Ors v. A.G Federation* (2011) 28 SC.
[67]https://en.m.wikipedia.org-sourced on 10/9/2021.
[68]Riches Flow into Nigeria, but are lost after Arrival (The New York Times at https://www.nytimes.com sourced on 10/09/2021.
[69]See Section 1 and 2 of the Nigerian Sovereign Investment Authority Act (NSIA, Act).

with the approved formular.[70] This take off capital seems to be inadequate given the enormous oil revenue available to the country at that time and more so, comparing the capital with the startup capital of other African countries with similar Sovereign Wealth Fund. For instance, Angola the largest crude oil producer in Africa after Nigeria created a $5billion SWF, Botswana $7billion and Libya $65billion.[71] Moreso, given the fact that a vast amount of revenue in the Excess Crude Account have been previously sent on wasteful consumption or largely unaccounted for, the contributors (various tiers of government), should have utilized that opportunity to come more or a huge amount to the funds.[72]

Furthermore, the Nigeria Sovereign Investment Authority Act (NSIA, Act) has three (3) investment funds, namely; the future generation fund (this is to enable the future generations of Nigeria to benefit from the country's finite oil reserves), the Nigeria infrastructure fund (this is a fund for investment on an infrastructure projects in Nigeria that meets up Nigeria Sovereign Investment Authority's Act targeted financial returns and contribute to the development of essential infrastructure in the country) and the Stabilization Wealth Fund will help increase the credibility of the Nigeria's Micro-economic framework and act as a buffer against short term macroeconomic instability.[73] It can be observed on a critical evaluation of the investment policies of the three (3) funds above that the Nigeria Sovereign Wealth Funds can be said to be a combination of three categories of Sovereign Wealth Fund Models vis-a-viz, fiscal savings fund, fiscal stabilization fund and development fund.[74] However, the inclusion of infrastructure fund seems unjustifiable and capable of a diversionary or overlapping effect being that there is always an annual budgetary allocation by the Federal, State and even the Local Governments for infrastructural development. This situation raises a serious concern as to what arrangement the infrastructure fund used or deployed to avoid potential overlap of it with other government Ministries-Departments-Agencies (MDAs) that are saddled with similar functions. It is in our suggestion that the infrastructure fund should be practiced giving much attention to environmental restoration/justice development. More so as the Sovereign Wealth Funds is mainly generated from oil revenue.

In our research, the most basic questions of "where is Nigeria Sovereign Wealth Funds coming" and "where is it going" reveal that the bulk of the money or fund is from oil revenue. Oil exploration activities where the said revenue is coming from has been the chief perpetrator of the climate crisis both by contributing to fossil fuel production and in relation to oil spill that have harmed the land, livelihood, food security and lead to internal strife.[75] The rapidly increasing effects of climate change are felt in Nigeria's agriculture, biodiversity, water sources, socio-economic activities and human security, including non-indigenous communities.[76] The bulk of the money as fund with the Sovereign Wealth Investment Authority is mainly from the reserve oil as the enactment of Sovereign Wealth Fund subsumed the defunct crude oil account. Also, on the second question of where the Sovereign Wealth Fund is going, from our discussion, the fund is a pool of money set aside by the government to stabilize against economic instability, develop the country's infrastructure and savings for the

[70]See Section 29 of Nigeria Sovereign Investment Authority Act (NSIA, Act) and also Section 30 that allows for subsequent funding

[71]https://www.bloomberg.com/news/2013-11-11/angola-names-deloitte-to-audit-5-billionsovereign-wealth-fund.htm-sourced on 10/9/2021.

[72]As at 2011, the Nigeria excess amount stood at $4billion @ https://www/investopedia.comzerms-sourced on 11/9/2021.

[73]See https://nsia.com.ng/about-nsia/policy-statements-sourced on 11/09/2021

[74]SD Udaibir *et al*, Setting up a Sovereign Wealth Fund: Some Policy and Operational Considerations (IMF Working Paper) at p.5 https://www.google.com/urlisa=srct-sourced on 11/09/2021.

[75]D Dunne, The Carbon Brief Profile: Nigeria (21st August, 2020) @ carbonbrief.org-sourced 15/09/2021.

[76]H Ituma (PDF Open Document 2019) @opendocs.ids.ac.uk- sourced on 15/9/2021.

future. A literal, interpretation of the application of the fund will leave one with no impression than the fact that it is socio-economic delivery without express environmental justice target.

In relation to the infrastructural fund in the Nigeria Sovereign Wealth Funds, the aim is to invest in the infrastructural projects in Nigeria that meets Nigeria Sovereign Investment Authority's targeted financial returns and contribute to the development of essential infrastructure which the potential areas for investment include transportation, energy and power, water resources, agriculture etc.[77] The main aim is for the fund to be used in stimulating growth and diversification of the Nigeria economy, attracting foreign investment and creation of job opportunities for citizens without more, as it is more of profit oriented without direct environmental justice consideration.[78] It is on this note, we posit, that there is no adequate provisions for the Sovereign Wealth Fund to ensure environmental justice in Nigeria. It is therefore suggested that the infrastructure fund should be solely applied for the building of infrastructure that combat and address climate change and also environmental justice friendly such as waste recycling plant, large scale tree planting etc.

4.3. Environmental Justice through the Derivation Fund

A Derivative Fund is a financial structured product related to a fund, normally using the underlying fund to determine the payoff, which may be a private equity fund, mutual fund or hedge fund.[79] The Derivation Fund in Nigeria is a special fund derived from oil revenue and specifically set out for the oil producing states to compensate them for the environmental degradation and pollution they are suffering as a result of the oil exploration in their land. The Derivation Fund is paid to the states monthly to assist their oil producing communities in tackling environmental pollution and degradation, provision of basic amenities like healthcare, potable water and paved roads, and economic empowerment of the community people.[80] According to the Nigeria Extractive Industries Transparency Initiative (NEITI) Derivation Fund is a financial incentive enshrined in the Constitution for oil producing communities, based on their production input, to serve as benefits and encourage the community to create an enabling environmental for more production of crude oil and gas.[81] Also, it is provided under the Nigeria 1999 Constitution,[82] that the fund is for the exclusive use of oil/gas producing communities as compensation for loss of fishing rights and productive farmland as a result of oil and gas exploration and production activities. Presently, eight (8) states are privileged to be enjoying this fund, and they are Abia, Akwa Ibom, Bayelsa, Delta, Edo, Imo, Ondo and Rivers.

Historically, the derivative principle has evolved thus; during the colonial era, the authorities acknowledged the need to recognize the derivative principle in revenue allocations as the following revenue allocation recommendations were made and adopted between 149 and 1964.

[77]See the Nigeria Infrastructure Fund @ https://nsia.com.ng/nigeria-infrastructure-fund sourced on 15/09/2021.

[78]See TE Ologunorisa and OV Ologunorisa, The Challenge of Climate Change in Africa: A case study of Nigeria (Department of Meterocology and Climate Science, Federal University of Technology Akure, Ondo Nig); Email: teologunorisa@futa.edu.ng; Ologunorisa 1966@ gmail.com, Department of Geoscience, University of Missouri, Kansas City, Missouri USA.

[79]See https://en.m.wikipedia.org.wiki- sourced on 18/9/2021.

[80]A Adebowale, ANALYSIS: How State Governments Cheat Oil Producing Communities in use of 13% Derivation Fund https://www.Premiuntimesng.com.new- sourced on 20/19/2021.

[81]*Ibid.*

[82]Section 162 (2) of the 1999 Constitution (as Amended).

(i) In 1946, the Phillipson Commission recommended 50 percent to be retained by the region of origin, 35 percent to be shared among the regions including the region of origin while the central government had 15 percent.
(ii) Hicks-Phillipson Commission in 1951 recommended same formular as that of Phillipson.
(iii) Hicks recommended 100 percent to the host region in 1953.
(iv) Ralsman in 1958 recommended 50 percent region of origin, 30 percent regions and 20 percent central government.
(v) In 1964, the Binn Commission in opposition to the argument of the regions maintained that the factors to be considered revolves around the overall environmental devastation and health hazard caused by petroleum exploration and exploitation activities to the host region rather than population and land mass, recommended 50 percent to the region of origin. This formular remain in force till 1970.
(a) In 1970, the General Yakubu Gowon led military administration distorted the arrangement by appropriating the entire offshore revenue to the Federal Government and further reduced the 50% derivation to 30%. Gowon's excuse was that the funds were required to prosecute the civil war and keep Nigeria one. [83]
(b) In 1977, Obasanjo/YarAdua administration reduced the derivation to 25% through the recommendation of late Prof. Aboyade led Technical Committee on Revenue Allocation.
(c) Shagari (1981) and Buhari (1984) reduced it to 5 percent and 1.5 percent respectively.
(d) It was the military administration of General Babangida that raised the derivation fund from 1.5 percent to 3 percent where Buhari pegged it and further instituted an independent Oil Mineral Producing Area Development Commission (OMPADEC) which was not housed in the presidency to oversee the disbursement and utilization of the funds to the concerned states.
(e) Finally, from all these chequered histories the derivation principle itself in the 1999 Constitution (as amended) in Section 162 (2) with at least 13 percent of the oil revenue excluding revenue from offshore oil revenue generation. This 13 percent derivation fund as provided under the Constitution is paid to the concerned host communities through their state governments monthly to assist their oil producing communities in tackling environmental pollution and degradation, provision of basic amenities like healthcare, portable water and paved roads and economic empowerment of community people.

4.3.1. Derivation fund and environmental justice implementation in Nigeria

The Niger-Delta region of Nigeria has since the 1960's been associated with restiveness and agitations which assumed violent dimensions from the 1990s when different militant groups in the region launched sustained attacks on oil and gas installations and facilities within the region thereby crippling the Nigerian economy which depends heavily or mainly on oil and gas.[84]

The main reason for the agitation is the clamour for justice by the oppressed and marginalized ethnic minorities of the Niger-Delta who argue that although the Nigerian government is sustained by the revenue derived from oil and gas explored and exploited in the region there is no commensurate benefits as they remain the poorest ethnic group in Nigeria. It is to assuage the feelings of disenchantment in the minds of the people of the Niger-Delta over their believes that they are not benefiting anything from the stupendous oil wealth generated from the region that derivative principles evolved as part of the Nigeria Government efforts to address the inequities and injustices inherent in the revenue allocation system whereby oil revenue collected by the Federal Government

[83] *Gowon* did the distortions through Decree 13 of 1970.
[84]Conflict in the Niger-Delta @ en.m.wikipedia.org sourced on 20/9/2021.

is redistributed to the other tiers of government. Initially, derivation principle was not designed or the Niger-Delta, but is association with the region came from the total dependent of the Nigerian economy on oil and gas since 1970s.[85] The ethnic groups of the Niger-Delta have had serious grievances against the Nigeria state since the discovery of oil in the region. Amongst the grievances are; "that the region is not getting enough from the oil revenue been generated on their despite the severe environmental pollution and degradation they exclusively suffered as a result of the oil exploration activities,[86] and also the fact that they are among the ethnic minorities in Nigeria under the subjugation and marginalization of the ethnic majorities who use the oil wealth from the region to develop other regions, thereby leaving the Niger-Delta region to grapple with perennial lack of basic infrastructure and amenities which are taken for granted in other parts of the country.[87] Moreso, the fact that over five decades of oil exploration and exploitation has left the Niger-Delta in its trail of severe environmental degradation, despoliation of the ecosystem and destruction of the peasant economy of the region built on fishing and farming thereby exposing the people to severe health hazard, economic hardship and social dislocation.[88]

The quest for environmental justice in its distributive stance is what brought about the 13% derivation fund, to the mineral producing areas in Nigeria. It is worthy of note that although the 13% derivation fund is ordinarily not adequate to cater for the environmental justice quest of the people, it is a welcomed development. However, the question has been why not much positive developments, despite the fact that the oil producing states are receiving derivation fund monthly and the impact is not felt in many of the oil producing communities as the intervention activities and physical developments in these communities do not reflect the derivation fund received by their states.[89] It is observed that the fund is paid to the concerned communities through their respective state government which has subjected the fund to the same fate of mismanagement of local governments fund by the state government. What the states have done is that they have used the 13 percent derivation in form of surplus for all sorts of purposes, none of the states gives up to 60 percent of the fund to the oil producing communities.[90] Furthermore, most of the oil-producing areas developments commissions formed or constituted by their various state governments are not transparent with their finances and appointments into them are treated as political compensation as there is constitutional lacuna on the use of the fund. The Constitution did not state how the fund should be deployed or used thereby giving the states governments the leverage and power to determine the use of the fund.[91] Finally, for the derivation fund to achieve its laudable principles of environmental justice delivery there must be a well-structured scheme constitutionally provided for on how the fund should be managed directly to the oil producing communities devoid of state government's control by appointing directly technical committee for the implementation by the federal government.

[85]A Adebowale Supra.

[86]E. E. Osaghae, The Ogoni Uprising, Oil Politics, Minority Agitation and the Future of the Nigerian State (African Affairs 325, 1995) 94.

[87]*M. Watts*, Resources Curse? Govern mentality, Oil and Power in the Niger-Delta Nigeria (9 Geopolitics, 2004, 50, 51); Ijaw National Congress (INC), The Ijaws, the Niger-Delta and the Nigeria State (University of Port Harcourt Press, 2006) 13.

[88]Ijaw National Congress (INC) 18-22, CO Ikporukpo, Petroleum Fiscal Federation and Environmental Justice in Nigeria (2004) 8 *Space and Polity* 321, 325-330.

[89]A Adebowale *Op.Cit.*

[90]See Ita Enang, "Governors Misappropriate 13% Derivation Fund; @www.vanguardngr.com- sourced on 20/9/2021.

[91]See *Ken Henshaw*, The Challenges of Benefit Transfer to Oil Producing Communities in Niger-Delta @ https://medium.com>thechallenges- sourced on 20/9/2021.

4.4. Environmental Justice through Special Development Work in the Niger-Delta (Niger Delta Development Commission and Ministry of Niger-Delta Affairs)

Successive governments in Nigeria have made efforts to assuage the feelings of the Niger-Delta Region against the environmental injustices they have been meted due to oil exploration activities in the region since 1956.[92] In other to express concern over the deplorable situation of the region, the then President Obasanjo regime in the year 2000, created the Niger-Delta Development Commission through the Niger-Delta Development Commission Act.[93] The Act is concerned with using allocation fund to tackle ecological problems arising from the exploration of oil minerals in the Niger-Delta. It empowers the Commission to plan and to implement projects for the sustainable development of the Niger-Delta Region in the field of transportation, health, agriculture, fisheries, urban and housing development etc.[94] The Commission under the established act has a duty to liaise with oil and gas companies and advice stakeholders on the control of oil spillage, gas flaring and other related forms of environmental pollution. Niger-Delta Development Commission is a Federal Government agency receives its fund direct from the federal allocations, this fund is different from the derivation fund and is meant to correct the neglect and degradation on the environment and the psyche of the Niger-Delta region[95] (for Environmental Justice Scheme).[96] One of the core mandates of the Commission is to train and educate the youths of the oil rich Niger-Delta region to curb hostilities and militancy, while developing key infrastructure to promote diversification and productivity.[97] The three major sources of fund to the commission are 15% equivalent of the statutory allocation of the 9 states member states from the federal allocation, 3% of the budget of oil and gas companies and from the Joint Venture Equity, and also 50% of the Ecological Funds allocated to the member states.[98]

However, in furtherance of efforts to assuage the hostilities situation in the Niger-Delta Region, the Federal Government in 2008 under Late President Musa YarAdua created a new ministry of Niger-Delta Affairs, to promote and co-ordinate policies for the development, peace and security of the Niger-Delta Region.[99] It is to serve as the primary vehicle for the execution of government's plans and programmes for rapid socio-economic development of the Region. Also, the ministry is expected to formulate and execute plans, programmes and other initiatives as well as co-ordinate the activities of Agencies, Commissions, Communities, Donors and other relevant stakeholders involved in the development of the Niger-Delta Region.[100]

The two laudable efforts[101] of the Nigeria government are commendable as they are made in the direction of remediation of the environmental injustice of the region and as well achieve environmental justice. But the efforts have led to no significant improvements on the ground to justify the huge allocation already given. In particular, the money allocated to both the commission and the ministry is fraught with mismanagement and misappropriations; there appear to be virtually,

[92]1956, the year Oil was discovered in Nigeria in Commercial Quantity in Oloibir, Niger-Delta (present day Delta State) and 1958 saw the first oil field production of 5,100 bpd.
[93]NDDC, Act Cap N68 LFN 2009 (the Act repealed and replaced the OMPADEC, Act 1998).
[94]Section 7 (i) (b)NDDC, Act.
[95]Z Adangor, The Principle of Derivation and the Search for Distributive Justice in the Niger-Delta Region of Nigeria.
[96]The Journey so Far. (Rivers State University of Science and Technology (PDF) https://www.researchgate.net>33/16- sourced on 20/9/2021.
[97]Emphasis mine. See Niger-Delta Development Commission at www.en.m.wikipedia.org- sourced on 20/9/2021.
[98]See https://documentsi.worldbank.org.PDF- sourced on 20/9/2021.
[99]The Ministry was created on 10th September, 2008.
[100]See https://en.m.wikipedia.org.>wiki- sourced on 20/9/2021, it is of note that NDDC is now a parastatal under the ministry of Niger-Delta Affairs.
[101]The Creation of both Niger-Delta Commission and the Ministry Niger-Delta Affairs.

no control or proper audit over spending by state and local authorities, despite the federal government's creation of an Independent Corrupt Practices Commission (ICPC) with the mandate to investigate such wrongdoings.[102] Also, the constitutional lacuna in regarding how the fund allocated should be deployed in the operations of the Niger-Delta Commission constitutes a terrible barrier to the effective and efficient implementation of the mandate of the commission.[103] It is a constitutional gap for there not to be a clear stated guideline on how the allocated fund to both the ministry and commission should be spent or even creation of the platform upon which the fund should be disbursed. The current situation of allocating the fund through the state government encourages corruption as the member state governments are at liberty to spend the fund in whatever manner or form, they like.

4.5. Environmental Justice through Community Development Fund in the Petroleum Industry Act (PIA)

The much-awaited Petroleum Industry Act was passed into law by the National Assembly after about two decades it was initiated, and afterward assented to by the President.[104] It is a law providing legal, governance, regulatory and fiscal framework for the Nigeria Petroleum Industry,[105] which has five (5) chapters with 319 Sections in its provisions. There are twenty (20) top changes the law introduces as categories in its five (5) chapters to the petroleum industry in Nigeria viz-a-vis Governance and Institutions, Administration, Host Communities Development, Fiscal Framework, and Miscellaneous Provisions.[106] Among the highlights provision of the new law as stated above is the diminutive percentage of the operating expenditure of upstream companies to be fed into the host communities' development which has been pegged at 3%. The law has in its chapter three (3),[107] the main objective to foster sustainable prosperity within host communities provide direct social and economic benefits and enhance harmonious co-existence.[108] Any oil company granted an oil prospecting licence or mining lease or an operating company on behalf of joint venture partners (settler) is required to contribute 3%-5% (upstream companies) and 2% (other companies) of its actual operating expenditure in the immediately preceding calendar year to the host community's development trust fund. This is in addition to the existing contribution of 3% to the NDDC. The fund is tax exempt and any contributions by a settler is tax deductible. Also, the board of trustees and executive members of the management committee of the trust fund may include persons of high integrity and professional standing who may not necessarily come from any of the host communities and any available funds are to be allocated 75% for capital projects, 20% as reserve and 5% for administrative expenses. However, a community will forfeit the cost of repairs in the event of vandalism, sabotage and other civil unrest causing damage to petroleum facilities or disruption of production activities.[109] This is not a welcome development as the act of the sabotage, vandalism and civil unrest may be sponsored by the oil company to frustrate the payment in the community.

[102]See FG to prosecute officials over mismanagement, theft of NDDC funds @ www.vanguardngr.com (of 3rd September, 2021), forensic Audit Uncovers Colossal Mismanagement of N6trillion NDDC (3rd September, 2021) all sourced on 20/9/2021

[103]See A Adebowale, ANALYSIS: How State Governments Cheat Oil producing Communities, supra

[104]It was passed into law on the 1st day of July, 2021 and assented to by the President on the 16th August, 2021 to become the Petroleum Industry Act, 2021.

[105]See the Preamble to the PIA 2021.

[106]The Petroleum Industry Bill (PIB): Top 20 Charges you should know:-www.pwc.com/ng- sourced on 15/8/2021.

[107]Chapter three is tagged "Host Communities Development and has 24 Sections in it (Section 234-257), it introduces the objectives contemplated in introducing this segment of the Act, methods and Procedures necessary for the Implementation of the aims of the Act and how to bring the benefits envisaged to the Host Communities etc.

[108]Section 234 (i) (a-d).

[109]Sections 244-258.

However, since the passage and signing the PIA into law, it has generated a lot of mix reactions especially as regards the pegging of the 3% diminutive to the host, which is widely believed to be too little.

According to Joseph Obele, Chairman of Rivers State Chapter of the independent Petroleum Marketers Association of Nigeria the 3% allocation is indeed unfair to the host communities and it is not good news and that it is not a welcomed development. To lay support in showing disapproval to the allocation, Chief Edwin Clark, the Chairman of the Pan Niger-Delta Forum stated that the law does not reflect the long clamour by the people of the region for equity, fairness and justice.[110] On the contrary, the Independent Petroleum Marketers Association of Nigeria through its National Public Relation Officer, Yakubu Sule'man, said the passage of the bill has come to ease Nigerians of the pains associated with oil industry activities and is a step in the positive direction.[111] These mix reactions, alongside the unpleasant history, that the Niger-Delta region has experienced raises the issues of environmental injustice. The obvious environmental pollution and its serious concern for environmental protection raises serious concern for environmental justice to the people of Niger-Delta, although it appears that it was considered during the deliberations preceding the passage of the bill. A 3% allocation of development fund to the host communities is too meagre and uncalled for as it will not ensure environmental justice.

Moreso, it seems the concern in making the law, is for economic gain not actually for environmental protection being that a huge amount of (30%) is devoted to oil exploration which is even so disheartening that the set out 30% is for oil exploration in the northern part of the country which raises insincerity and *mala fide* in the whole exercise. Notwithstanding, this negative impression formed regarding the 3% issue, the new law is a welcomed development as it will add vigour to the quest for environmental justice in Nigeria more especially the Niger-Delta region being that the new law has other provisions geared towards that. While the law has been assented to, there no gain-saying that there cannot be follow up regulations, rules or directives from the Department of Petroleum Resources on environmental justice concerns that will adequately address the concerns of the region. Also, being that the law has already been assented to; it is left on those dissatisfied with it especially as regards the 3% saga to sponsor an amendment bill to amend the sections concerned as we hope the dust raised because of the said 3% development fund allocation to the host community will not rupture the managed restiveness in the region. In all, the Petroleum Industry Act is a proactive step to engender environmental justice through the creation of the community development fund although it is meagre in nature as the 3% allocation is not sufficient.

5. Conclusion

By and large, environmental rights enforcement regime in Nigeria is really evolving with tremendous efforts already made with numerous legislation and other frameworks in sustaining the wellbeing and sanity of the environment. But as we all know; the problem is not the letters of the law but with implementation of the law. The inclusion of the right to healthy environment as a fundamental human right in Chapter 1V of the constitution is very progressive, timely and inconformity with international best practice and we sincerely hope that it will solidly enhance the effective and efficient protection as well as the preservation of the Nigeria environment thereby fostering environmental justice implementation.

[110]C. Adebayo, PIB and Environmental Justice in Host Communities- www.ics.cdn.ampproject.org- sourced on 10/08/2021.

[111]See www.https://dailytrust.com.pibpassage- sourced on 10/8/2021.

6. **Recommendations**

To further enhance the protection of Nigeria environment and entrench better environmental justice, the institutional and legal regime for the implementation of environmental rights must be strengthened in the concrete and more practical sense by constitutional amendment to include right to healthy environment as part of the fundamental human rights in its chapter IV as against the current chapter II it is, thereby making it a direct enforceable right. For instance, the constitution under section 33 (chapter IV) of the constitution provides that every person is entitled to right to life and no one shall be deprived of his life except in accordance with the law. Here, even though right to life has constitutional backing, it cannot be fully enjoyed without the protection of the right to clean air, safe drinking water and pollution free environment (i.e. right to healthy environment) making it imperative for right to healthy environment to enjoy a direct and more concrete constitutional protection. In addition, the law Reform Commission and Federal Ministry of Justice in conjunction with the States, Non-Governmental Organizations, interested groups and companies should initiate and hold town hall meetings, to develop an integrated, coordinated and more comprehensive plan into legislation removing rivalries bureaucratic bottlenecks and areas of overlapping, duplications and conflicts or confusion. Also, the office of the Minister of Environment should be professionalized. It should not be seen as a way to compensate political allies or as a political patronage. The Minister should be an expert with sound background in environmental protection and management and by extension, his expertise should include knowledge in industries, this will enable the minister be in position to block all the loopholes which industries exploit to pollute the environment and even shortchange the country economically.

Furthermore, it is suggesting the revisiting of the Petroleum Industry Act 2021 to amend some of its controversial provisions. The passage of Petroleum Industry Act into law undoubtedly brings sanity to the Petroleum Industry in the area of environmental justice as oil companies in Nigeria will now be compelled to abide by world environmental standards in the carrying out of their business, although there is need to address the controversial areas of the law regarding the host community fund. The 3% allocated which is too meagre need to be increased to at least 10% taken into consideration the enormity of environmental degradation suffered by the communities. The law is going to discourage gas flaring, and make oil companies to become very responsive when oil spills occur to clean-up the spillage and restore the Pipes. So, it is advised that the National Assembly should amend the law and include that gas flaring fine should directly be given to the host community not to the government as the host community bears the burden.