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Environmental Law in Nigeria: A Review on its Antecedence, Application, Judicial Unfairness and Prospects

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ABSTRACT

Environmental pollution is a serious trend of natural and artificial catastrophe(s) that might cause ill health or eventual death depending on the degree of seriousness. Human activities are the major cause of environmental degradation such as reverse desertification, ozone layer depletion, global warming, volcanic eruption, earthquake, acid rain, oil spillages, and climate change. Artificial catastrophes can result in the transfer of pollutants generated from human activities that can be a negative reverse ecological pointer which can be detrimental to its own species. This review was able to ascertain various laws regulating human's role in the ecosystem and the sustainable conservation of lives in various environmental facets. Several international, national, and local laws, acts, and treaties will be highlighted and discussed. The lacuna of environmental laws in Nigeria was highlighted and discussed. Several future directions and recommendations will be proffered for future justification which will result in positive sustainability impacts on the monitoring and implementation of the judicial interpretation as well as the management of the rights to life and properties in the environment.

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1.0 Introduction

One of the major or key aspects of the MDGs (Millennium development goals) and the SDGs (sustainable development goals), emphasized the safe protection of the three aspects of the environment; land, water, and air (Emetumah, 2017). Pollution of these three entities will cause an imbalance in the ecosystem thereby hindering life in them (Chukwuemeka, 2018).

Global communities are facing greater environmental threats such as natural pollution, earthquake, volcanic eruption, and manmade activities such as climate change ((Ite *et al.* 2013; Ijaiya and Joseph, 2014). The consequence of global warming, atmospheric pollution, acid rain, ozone layer depletion, induced seismicity, and reverse desertification also share a portion of the global threats (Robinson, 2013). However, artificial catastrophes can result in the transfer of pollutants generated from human activities that can be a negative reverse ecological pointer which can be detrimental to its own species (Cullet, 2016). Human activities and natural occurrences have increased the background concentration of pollutants which have in turn affect the daily activities and life patterns of biota (Sambe *et al.* 2018).

It is a known fact that to ensure the existence, safety, security, and healthy living in the environment for humanity (Emetumah, 2017), a safe and protected environment is required, devoid of all negative influences therein (Orimoloye *et al.* 2015). According to Maslow, the law of motivation, "man is continually a demanding animal". Its satisfaction or quest for survival is not communally exclusive. Hence, he continues to upset the ecosystem to satisfy his wants. Nigeria, which is the most densely inhabited country in Sub-Saharan Africa also shares in this pot of global environmental problems that require domestic and foreign attention (Akamabe and Kpae, 2017). Several laws have been enacted to cater to the following; 1. the problems and challenges posed by sudden influence, and long-term impact on the environment (Ladan, 2012). And 2. the problems faced with the preservation, conservation of the environment, fauna diversity, and promotion of sustainable development (Smith, 2011).

Nonetheless, despite that the Nigerian government was giving enormous legal attention to solving environmental challenges, concerning the formulation of a regulatory framework in catering for the environment, there still exist some decadences and lacunae in the Nigerian laws that may affect the effective enforcement of a healthy environment devoid from pollution (Robinson, 2013; Emetumah, 2017).

In light of this fissure of the Nigerian environmental laws, the authors intend to review and access the National Development of Environmental law, its decadency, implications, and prospects.

2.0 International Agreements, Treaties, and Convention Regulating Environmental Pollution

The international laws governing the environment roots back to 1950 (Peter, 2018). As of 1900, there were just a few bilateral or multilateral treaties regulating international environmental issues. Although these international agreements focused on specific issues such as uncontrolled state control over natural resources, boundary waters, navigation, and fishing rights along shared waterways (Hisashi, 2016). No attention was given to pollution and ecological issues (Oladele, Adegbenro, and Adewole, 2011). By the 1930-the 1940s, different federation-states started to give recognition to the significance of preserving intrinsic resources and exchanged numerous treaties to guard the environment. The London treaty on the Protection of Vegetation and Animals 1933, and the Washington agreement on the Conservation of Wildlife and Nature 1940, centered on the Western Hemisphere, as well as further agreements focused on birds and fisheries.

However, the improvements in the international law were further elicited by the "Trail Smelter" adjudication established in the year 1935 by a mutual agreement flanked by the two countries; the USA and Canada. This milestone achievement in 1938 was centered on the issues of violation of some clauses of the international law that stated 'no country or state have the permission or right to inflict injury to another' (Trail Smelter case, 1965), the issues of pollution via trans-border, claim, and compensation for damages.

The international community was more inclined with the issues of ocean contamination from crude oil and nuclear damage in the years the 1950s and 1960s (Wole, 2009). Consequently, countries have to enter into

agreements regulating international legal responsibility for crude oil pollution in the ocean and damages from atomic wastes (Stanley *et al.* 2018).

In recent times, there have been tremendous slides within the international community in ensuring that there are effective environmental pollution treaties and conventions in ensuring there is sustainable conservation of the environment. It is about these that there had been a significant increase in modern environmental treaties and convention such as; the Brundtland Report of 1987, the RIO Conference, the Kyoto Protocol 2005, Paris Climate Conference Agreements to Replace the First Kyoto Protocol (COP21) 2015, the Basel Resolution on the Regulator of Transboundary Movement of Precarious Waste and their Discarding 1989, Bamako Resolution (Günther, 1992; Eguh, 1997), the Africa Charter on Human and People's Rights. Remarkably, Nigeria is a co-signer to most of these universal treaties and conventions. However, under section twelve of the Constitution of Nigeria, 2011, if these laws are not domesticated it has little or no effect when intended to be implemented or enforced.

2.1 Development of laws about the environment in Nigeria

Nigeria's government over the years had enacted local laws prohibiting environmental pollution which were domesticated from the international environmental law (Liu, 1991). However, one can easily date back the need to ensure a safe environment in Nigeria with a trace to the pre-colonial era, as the indigenous peoples had adopted some methods aimed at environmentally sustainable development and protection (Atsegbua *et al.* 2004). Some of these practices were bush fallow and crop rotational system (Ikhide, 2007). From 1960 through 1988, the only environmental laws in existence only catered for local and state problems relating to sanitation.

However, there were several legislations at the local council and state levels, which made provisions that cater to environmental problems. But they were mainly legal and administrative measures to ensure protective actions connecting to environmental cleanliness and problems on community health, caveats, and emergency actions to moderate probable harm in circumstance of natural tragedy and legal framework in Nigerian Law recompensing due respect to world-wide crusade (Ola, 1984).

Furthermore, the oil boom and the attendant effects of industrialization that caused environmental problems led to the promulgation of several environmental laws in Nigeria (Musa and Bappah, 2014) such as; Factories Act, the crude oil in Maneuverable Waters Act, 1968, the regulation of the movement of oil on water 1968, the Act pertains petroleum production and drilling 1969 as well as the amended version 1973, the regulation of petroleum refining 1974 Act and the 1956 oil pipeline Act.

However, in recent times, there had been little improvement in laws relating to the environment in Nigeria (Mmadu, 2013). This is as a result of the fact that there was overheating pressure on the environmental cause of industrial and domestic waste generation (Mach *et al.* 2017), the ecological problem arising from oil spills before crude oil boom Figure 1 and after the Figure 2, the reduction of the natural forest and wildlife, the release of industrial waste into the water; seeing water as a receptor tank, air and the earth; automobile emissions, and noise pollution (Saka *et al.* 2007).

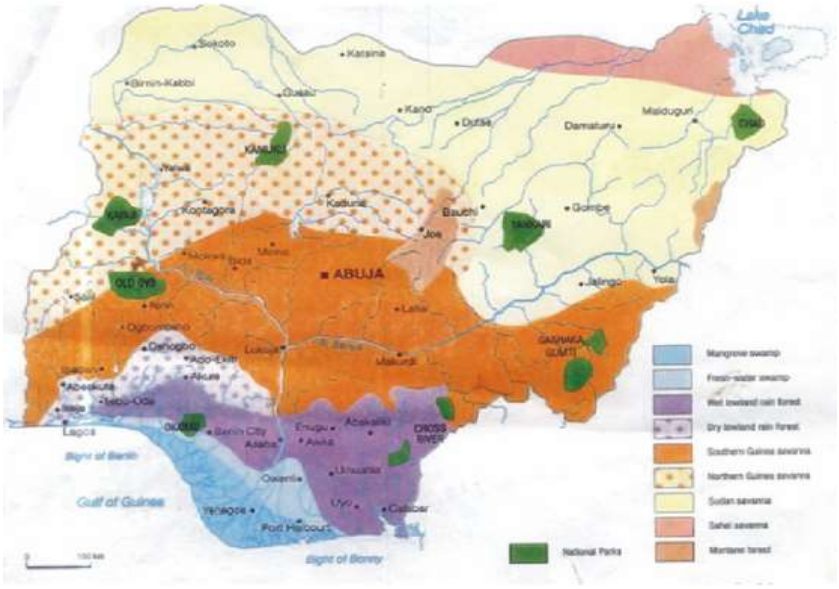

Figure 1: Map of Nigeria showing various zones of green vegetation before crude oil boom

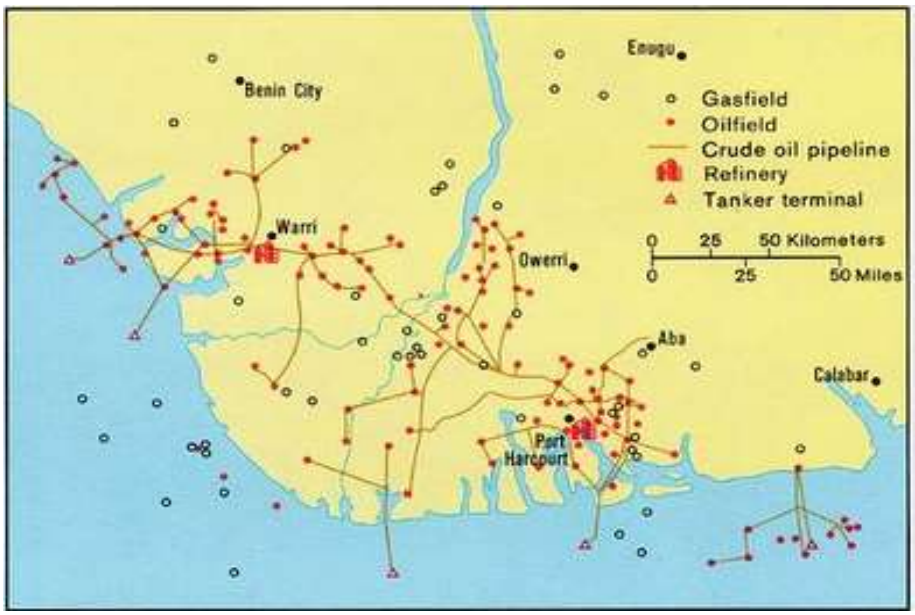

Figure 2: Map of some states and city in the Niger-Delta and South East Nigeria showing the

These laws were not in place between the years 1960 to 1988 (Gbadegesin and Akintola, 2020). Therefore, it is imperative to note that, Nigeria's environmental laws came into enforcement after the 1988 public environmental outcry of the Koko port incidences that made the government swing into action. It might be worth it that this has been inflicted by wealthy nations (Italy) dumping toxic waste to poor third world countries (Chuks-Ezike, 2018). This is purely the exploitation of the wealthy on the poor who a) lacked education on the impacts of toxic storage, b) corrupt/incapable port law enforcement and c) greed on probably both sides. However, this coined the terms of toxic colonialism and environmental racism (as created by Greenpeace), Some of these laws considered are:

The 1998 Act of harmful waste was enacted by section 1(1) of the Act. The provision places a strict prohibition of dumping of waste in Nigeria and further makes it a criminal offense if anyone should violate the law by dumping waste in any part of Nigeria. Section 6 of the Harmful Waste Act provides for the penalty when anyone is found guilty. Besides, one important provision of this Act is section 9, which provides that the immunity from prosecution conferred on certain persons by or under the diplomatic

privileges and immunities act. It removes any immunity covering any individual who violates the act. In this regard, anyone that is covered by immunity, but violates the act can easily be prosecuted.

Again, the Environmental Impact Assessment (hereafter the EIA Act) Act, 1992, compels every major development project, which is possible to influence the ecosystem. Furthermore, a project that can easily pollute the environment will be audited and reorganize for a safer production and to ascertain what the impact will be and how best to cope with them (Atsegbua *et al.* 2004). Section 1(a) of the Environmental Impact Assessment Act, provides for the aims and objective of the act, while section 2 (1) and (2) of the EIA Act provides for an outright restriction into both public and private to embark on a project without considering the environmental effect it will cause.

The NESREA (National Environmental Standards and Regulations Enforcement Agency) (Establishment) Act, 2007 (hereafter the NESREA Act) defines the enforcement and regulation of standards in Nigeria consequent to the toxic wastes discarded in Koko in the Delta State of Nigeria in 1987 (Ariyoosu, 2014), inform the Nigerian government of the need to legally safeguard their environment from polluters. It is in this regard to the FEPA (Federal Environmental Protection Agency) Act 1988 on environmental protection was promulgated. However, this law was unable to provide for an operative implementation of environmental regulations, standards, and laws in the country (Abdulkadir, 2014). To attend this void existing in the FEPA Act, the NESREA Act was formed as an accessory agency of the Nation's Ministry of Urban Development, Housing and Environment. Moreover, by the power of section 36 of the NESREA Act, the FEPA Act was repealed. Section 1 of the NESREA Act created an agency known as NESREA, responsible for the implementation of guidelines, policies, laws, rules, regulations, and environmental standards. Section 7 of the NESREA Act, specifies the function and power of the agency. One of its powers is to ensure there is compliance with the law, impose acquiescence with the establishment of the international treaty, procedure, convention, and truces on the environment. Secondly, to take up duty for the protection and development of the milieu, animals, and plant preservation and suitable growth in Nigeria's natural resources overall.

The Gas Flaring (Prohibition and Punishment) Act 2010 focused on the drastic development of industrialization in Nigeria. The issue of gas flaring has become a serious problem that affects the individual (Atsegbua *et al.* 2004) over and above the ecological system of our environment. To curb the situation, the government of Nigerian has thought it wise to enact legislation to curb the excessive gas flaring by a multinational oil company as the case adjudicated by Justice C.V. Nwokorie (Atsegbua *et al.*,2004) by section 3(2) of the act. The FEC (Federal Executive Council), to bring the rule in line with the extant day regulations, laws and practices control over the gas and oil activities through the Nigeria High Court of Justice to stop oil corporations flaring gas in the Niger Delta regions. That is a desecration against their essential civil rights to dignity and life. This outcome of the government's action supported by-laws from the courts, led to the enactment of the Gas Flaring (Prohibition and Punishment) Act 2010. It strictly outlaws the flaring of gas in Nigeria after the 31st of December 2010 and places strict punishment which was backed by Section 1 of the Act. The section provides in all ramifications, discouragement in the burning of gas in Nigeria. The legislation shows that Nigeria is actually concerned about the need for a safe environment and thereby ensuring sustainable development.

2.2 Environmental Laws in selected Nigerian states

Apart from the above stated federal laws, which deal with environmental protection, the thirty-six states of Nigeria have two main legislation dealing with environmental protection (Ladan, 2012). These legislations are the Environmental Edict (such as the Edo State Environmental Sanitation Proclamation 1994, Lagos State Environmental Sanitation Pronouncement 1998) and State Environmental Protection Agencies. These laws are geared toward controlling and prohibiting pollution and achieving sustainable development.

2.2.1 Lagos and Edo State Environmental Edict

For example, section 3 of the Edo State Environmental Edict requires landlords or occupiers of the tenement to keep the tenement and its surroundings together with the adjoining and connecting drains, gutters, or channels free from weeds, grasses, filth, rubbish, refuse, or any other waste matter. Section1(f) of the Lagos

State Environmental Edict provides that, as from the initiation of this edict, every owner, tenant, and occupier of any building shall not dump yard, sweeping, hedge, cutting, grass, leaves, earth stones, brick or business waste with household refuse.

To ensure the enforcement of these laws, and environmental sanitation taskforce and mobile court were created by the Edo and Lagos State Environmental Sanitation Edict, enabling the punishment of any offenses against the environmental laws. However, besides, most states in the federation practice every last Saturday of the month an environmental day, where citizens are expected to come out and join in the massive cleaning of their environment from 8 am-12 pm specifically.

2.2.2 The Environmental Protection Agency Law of Kwara State

The Kwara State Environmental Protection Agency Law, KWS No. 4 (Laws of Kwara State of Nigeria) Law was enacted in 1992, which stipulated the control and regulation of wastes in the state, herein known as the Kwara State Environmental Protection Agency and KWEPA (Kwara Waste and Environmental Protection Agency) established by Section 3 of the law and it was enacted through the directives given by FEPA, that all local and state level of the federation, should establish environmental protection commission committee in response to the environmental situation in their respective state (Ijaiya, 2013).

KWEPA is charged with an enormous responsibility, some of which are; promoting a healthy and safe environment for the individuals of Kwara State, to ensure sustainable development, carry out research, and educate the people on the various types of waste disposal method that is within the acceptable standard. To achieve its aims sections 3(2) and 12 of the KWEPA law established a governing committee to formulate policy programs to improve and protect the environment. To provide support to all local government matters related to environmental issues, to coordinate the activities of all other agencies, to regulate and rule on solid waste collection as well as their disposal, and to make policies regarding the safety of the environment. The law made it an offense to indiscriminately dispose of waste in the environment and further created a local government committee on environmental protection under 53 and 24. For the local government level, the tenacity of maintaining a good environment in their domain is strictly on the Magistrate Special Environmental court within the authority. This court is a saddle with the responsibility to try an offender who commits an offense under section 34-36, 38-40, or 43-50, if convicted, shall be legally responsible for a maximum fine of N5,000 or incarceration for 6 months. If it is body corporate that commits the nuisance, the penalty shall be N 50,000 (far higher than the current minimum wage of a Nigerian civil servant of N 30, 000).

However, in 2004 a new environmental sanitation law was enacted to certify the hygienic state in public and residential places in Kwara state. This law prohibits the haphazard discarding of wastes along the highway gorges, channels, roads, empty lands except chosen refuse to discard sites as permitted by Kwara State Environmental Protection Agency, and further impose a fine ranging between N 500 to N 10,000 upon conviction of an offender, which in essence is too meager (Olowoporoku, 2017).

2.3 Judicial interpretations and unfairness in some Nigeria Environmental Pollution Laws

From the above, it is evident that the pollution of the environment in Nigeria had been given legal consideration. However beautiful as it may seem, these laws have little or no effect as a result of some challenges such as constitutional issues as it relates to the Nigerian constitution, the lack of implementation, enforceability, and judicial attitude as it relates to the right to a fit environment in section 20. However, though, environmental right is not justifiable in Nigeria as provided in section 6(6)(c) of the 1999 constitution of Nigeria, that those right contains in chapter 2 of the constitution are not justifiable. Nevertheless, section 12 of the Nigerian constitution also affords that international agreements, conventions, and protocols approved into our local law by the national assembly must be applied as law in Nigeria.

Based on the aforementioned law, it is evident that the constitution of Nigeria, which is regarded as the Grundnorm (fundamental norm), places a restriction in the enforcement of environmental rights and made it a Herculean task or procedure for international environmental treaties and convention to have relevance or full force.

It is commonplace to note that entree to environmental fairness in Nigeria is also a challenge within the Nigerian legal system, this is concerning the fact that before 1990, the court in Nigeria had little or no reserved judgments in favor of the victim of environmental pollution, in Chinda V. Shell B.P (1974) 2 R.S.L.R 1, the plaintiff complained of the adverse impact of gas flares on their building, crops and other plants, they brought an action asking the court to confine Shell-BP from functioning a flare stack within five miles of the petitioners' community.

In a considered judgment, the court rejected to instruct an injunction on the ground that the liberation required was absurd and a wide demand. Furthermore, in Allan Irou V. SHELL B.P Suit No. W/89/91 Warri HC/26/91, the case was that the plaintiff complained of their farmland, fishponds, and creeks that were polluted by the defendant's activities in oil exploration in their community. The court declined to allow a command in favor of the petitioner whose land, fishponds, and creeks had been contaminated by the activities of the respondent. The court was of the view that nothing should be done to disturb the operation of trade (i.e. mining operation) which is the key basis of Nigeria's proceeds. On plea, the Supreme Court set aside the verdict of the probate court and dismiss the respondent's suit.

There are also certain instances where the entree to environmental justice is also frustrated with technicalities and loopholes found within the Nigeria legal system, such technicalities are; defendant to environment suit often raised the defense that under section 6(6)(c) of the Nigerian Constitution the right to an environment is not enforceable, this defense was raised by the defendant in the case of SPDC V. Jonah Gbemere (2005) AHRLR the plaintiff's counsel to obtain justice for the victims who had been severely affected by gas flaring, had to connect the right to clean and healthy environment to right to life and protection against inhuman treatment as contained in chapter 2 of the Nigerian constitution.

Also, the case of SPDC NIG LTD V. Ambah (1999) 2 S.C 129, provides another example of the insolence of Nigeria's judges to oil-linked environmental damages. The litigant demanded himself and on behalf of his household general and special compensations grieved by the complainant and associates of his family when the offender destroyed their lakes, creeks, and fishponds. The evidence clearly shows that the unproven costs actually happened and were able to particularized special damages suffered to the tune of N30,000 and they further claimed general damages of N 300,000 though not proof. Both the trial and court of appeal awarded N 300,000 to the respondents for the damage of their fishponds, fish lakes, fish channels, and creeks destroyed at the rate of N27,000 per annum. On appeal, the Supreme Court allowed the appeal and reduce the amount of N 27,000 only, claimed by the respondent.

The Supreme Court thought that the total amount claimed by the respondent as compensation for the permanent destruction of items listed in the still further corrected statement of claim is N 27,000, these have not been contested by the appellant in this appeal. The sum of N297,000 awarded special damage to the respondent by the court of appeal cannot be allowed to stand as it is claimed for the destruction of property which cannot be ascertained. The degree of damage will be the value of the property at the time of the destruction.

The defendant relied in most instances on the defense of limitation of action or that the action is statute-barred. In Eboigbe V. NNPC(1994) 5 NWLR (PT 347) 649, the Supreme Court dismisses the plaintiff case on the basis that the complainant and it is household as at the time the alleged crops were damaged on their land in the second month of the year 1979, they were cognizant of the accumulation of their right, but neglected it until 13th of June 1985. A period far over the twelve months stipulated in the NNPC Act within which to bring an action against the company for any wrongful act against them.

The defense of locus standi is also often raised by the defendant, a jurisdiction that party seeking justice had to bring their action in a representative capacity when it is a class action, in SPDC V. Chief Otoko and others (1990) 6 NWLR 693. The lawsuit was brought in a representative capacity, claiming the sum of N499,855.00 as compensation, payable for deprivation of use of the Andoni River and creeks as a result of the crude oil spill. The court held that it is important that the individuals who are to appear in person (s) or have a representative, should have a similar interest in the cause of a grievance and matter. A typical complaint would be in order if, in addition to the reprieve required, it is in the beneficial nature and interest to all, whom the plaintiff suggests representing. The court disallowed the action founded on this ground.

In recent times, specifically in the late 80's and early '90s, there have international outcries of the dilapidated environmental condition as an outcome of contamination of the environment by most multinational companies. Nigerian judges had taken a new dimension in assuring that justice is attainable when seeking justice in environmental pollution. The decision in SPDC V. Councillor Farah and 7 others (1995) 3 NWLR 148 seemed to be groundbreaking because the skeptical prosecution or plaintiffs in the environmental case do have about the judicial approach to environmental litigation seems to be laid to rest. In this case, the appellant dredged a stream flowing over the land of the respondents without the consent of the latter thereby causing loss of sand and gravel; it also caused the destruction of fishing equipment that made them unable to fish. The respondent sued for damages in the sum of N 60, 000. The learned trial judge has given judgment in favor of the respondent awarded N45,840, and on a petition, the court of petition sustained the investigational court judgment. However, on appeal to the Supreme Court, the damages granted was set aside and reduced to N35,000.

Although most environmental activists seek justice for environmental pollution, victims had to link their respective environmental issues to tort law or fundamental human rights as found in chapter four of the Nigerian constitution. In Shell V. Isaiah (2001) 5 S.C. (Pt 11) 1 the plaintiff in an action against the defendant's activities which is a threat to their fundamental human right to life and damage to their property, claims 22 million Naira for perpetual damage and loss caused to the plaintiff because of extensive oil spillage and pollution into the plaintiff's land and surrounding farmland while the defendant was affecting repairs on their damage oil pipeline.

At the probationary, an expert specially made by the respondents to cost their damage rising from the spilling testified. His report tendered without objection and the expert was cross-examined by the defendant who did not call any experts. The probationary judge in a set-aside judgment bestowed the plaintiff N22M being the full sum demanded by them. On appeal, the Supreme Court confirmed the trial court judgment on the ground that the plaintiff's expert evidence was not controverted and the defendant did not call any expert evidence.

In the case of SPDC V. Jonah Gbemere (2005) AHRLR 151, the federal high court in applying the right to clean environment free from pollution that may cause a health hazard to the community in juxtaposition to the right to life and human treatment, gave judgment to the claimant by ordering the defendant from flaring gas in the plaintiff community.

2.4 Recommendations and future directions

In this regard, the above analysis presupposes that the prospect of Nigeria's environmental laws hinging more on judicial intervention in interpreting and applying the relevant environmental laws. Whether or not justice can be produced in any given case depends on the impartiality of the judge himself and his philosophy of the laws he is administering (whether they are just or harsh and oppressive) and on the extent of the discretion the laws allow him. Because of this, justice according to the law should therefore be the burden on judges in any given case, thereby ignoring technicality, formalities, and procedural defect that is unfounded within the Nigerian environmental laws. Focusing on technicalities and irrelevant defense against the protection and sustainability of the environmental condition of planet earth can lead to a degree of strictness and inconsistent with the fundamental aims of sustainable conservation and fortification of the environment. On this note, the Nigerian Government (The Executive, Legislature, and Judiciary) should realize the fact that in the final analysis, the end of law is justice for the protection of our environment. They should therefore endeavor to review the constitution, for environmental rights to be enforceable. Furthermore, the government must ensure that there are no strict formalities or technicalities in accessing or enforcing environmental rights in Nigeria. The spirit of justice does not reside in informalities or words, nor is the victory of management of justice found ineffective selection between drawbacks of procedures.

2.5 Conclusion

Environmental pollution is a global problem that has affected the health of humans and their environment. Environmental pollution in Nigeria was basically sourced from the oil industries. However, to check these levels of pollution into the environment, certain stringent measures like environment Agreements, Treaties,

Convention, Rule, and Acts were put in place to check the activities of humans. However, incidences of pollution recorded in the Niger-Delta region of Nigeria were linked to crude oil activities which have not been addressed properly. Several issues on litigations were however downplayed by the powers that be in the Judicial sector. Nonetheless, the application and judicial interpretation of these environmental circles of norms where been mis-adjudge also.

In light of this, this study focused on the antecedence, application, and judicial unfairness of environmental law in Nigeria. Several international agreements, treaties, and conventions regulating environmental pollution were discussed. Recent advances in in-laws about the environment were highlighted. Several environmental laws in selected Nigerian states were outlined and the judicial interpretations and unfairness of pollution laws in Nigeria and future direction were evaluated and proffered.

However, being an oil-producing nation and most cases were from oil pollution, attention should be tilted to other areas like agriculture, pharmaceutical, textile, motor, and other related industries that generate pollutants into the environment, to ascertain their level of compliance to environmental pollution laws and possible impact on humans and the environment.

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