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Remedies For Breach Of Environmental Standards In Nigeria

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ABSTRACT
This study examined the civil and criminal remedies available to victims of breach of environmental standards in Nigeria. Using a doctrinal method, it suggests how best the environmental legal regime in Nigeria can be improved upon to enable a victim secure adequate and comprehensive remedy at the event of breach.
Keywords: Environmental standards, Breach, remedies

INTRODUCTION

1. Criminal Remedies

The common feature of various environmental statutes in Nigeria is that they have been laced with penal provisions to regulate activities that will cause environmental pollution, including bio and hydro energy activities. Criminal remedies provided by the different statutes for breach of environmental standards are essentially in form of fine, imprisonment and forfeiture.[1]

Fines

This is a common provision in most, if not all environmental statutes in Nigeria. It is the most common punishment for breach of environmental standards. Where a fine is imposed, this exculpates the offender from further liability.[2] Sadly, the fine imposed by most statutes is ridiculously small and not likely to serve as deterrent to breach of environmental standards considering the fact that the consequences of such breach may be far reaching to both human health and the environment.[3] For example, the Environmental Impact Assessment Act provides for a fine of ₦100,000 in the case of an individual and a fine of not less than ₦50,000 and not more than ₦1,000,000 in the case of a firm or corporation,[4] while the Electric

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[1] AP Isa, 'Legal Remedies for Victims of Environmental Pollution in Nigeria', <http://kubanni.abu.edu.ng:8080/jspui/bitstream/123456789/6188/1/LEGAL%20REMEDIES%20FOR%20VICTIMS%20OF%20ENVIRONMENTAL%20POLLUTION%20IN%20NIGERIA.pdf> Last accessed on 10th August 2017.
[2] *Ibid.*
[3] *Ibid.*
[4] Environmental Impact Assessment Act, s. 62.

Power Sector Reform Act provides for a fine not exceeding ₦100,000 for a first offender[5] and a fine not exceeding ₦500,000 for subsequent convictions.[6]

Clearly, bio and hydro energy activities are capital intensive in nature involving corporations with vast resources at their disposal while the risks such activities pose to the environment when embarked on without compliance with environmental standards are enormous. It is suggested that the imposition of heavier fines for such breaches will have a greater deterrent effect. The basic principle that should underlay the imposition of such heavy fines is the need to rehabilitate the environment.

Imprisonment

Virtually all statutes on environmental protection in Nigeria provide for a term of imprisonment arising from the doing of certain prohibited act as prescribed by the statute. For example, section 6 of the Harmful Waste (Special Criminal Provisions, etc) Act prescribes life imprisonment for any person convicted for indiscriminate dumping of toxic waste in Nigeria. Similarly, section 20(3) of the National Environmental Standard Regulations Enforcement Agency (Establishment) Act provides for a term of one year imprisonment or both fine and imprisonment for breach of its provisions, while section 247 of the Criminal Code provides for a term of six months imprisonment. Arguably, the purpose of imposition of a term of imprisonment for breach of environmental standards is mainly as a deterrent to the offender and other members of the society that are likely to follow suit.[7] Within the context of this study, the major problem with imprisonment as a sanction for breach of environmental standards is that only a human person can be imprisoned and since bio and hydro energy activities are usually undertaken by corporations, it is difficult, if not impossible to impose this sanction when a breach occurs.

Forfeiture

This penal sanction is prescribed by some environmental statutes. It is usually imposed more on corporate entities in lieu of any other form of penalty such as fine or term of imprisonment.[8] An example of forfeiture provisions is contained in section 6(a) and (b) of the Harmful Waste (Special Criminal Provisions, etc) Act which provides that any carrier, including aircraft, vehicle, container and any other thing whatsoever used in the transportation or importation of the harmful waste, as well as any land on which the harmful waste was deposited or dumped, shall be forfeited to and vested in the Federal Government without any further assurance other than this Act. Forfeiture as a penalty may result in the cessation of the bio or hydro energy venture in the course of which the breach of environmental standard occurred. In view of the importance of the output from such ventures primarily to the power sector and the country's economy at large, it is submitted that this sanction should be applied with caution and only in cases where same proves to be the only reasonable means of preventing further breach.

2. Civil Remedies

There are various types of civil remedies that can avail victims of breach of environmental standards in Nigeria, including those breaches occasioned by bio and hydro activities. Such civil remedies include compensation, damages, injunction, restoration and rehabilitation. Victims of breaches of environmental standards may claim these varieties of civil remedies to mitigate the harm suffered by them.[9]

Compensation

Generally, compensation means recompense for loss suffered by an aggrieved person.[10] It ensures that the injured victim is not worse off after the injury complained of. Thus, where in the course of bio or hydro

[5] Electric Power Sector Reform Act, s. 94(1)(a).
[6] *Ibid*, s. 94(1)(b).
[7] AP Isa, *op. cit.*
[8] *Ibid.*
[9] *Ibid.*
[10] OG Amokaye, *Environmental Law and Practice in Nigeria* (Akoka: University of Lagos Press, 2004) p. 661.

energy activities a person's property is destroyed, a fair market value ought to be paid to the person for the loss or deprivation of his property.[11] Some environmental statutes provide for this remedy. For example, the Environmental Impact Assessment Act recognizes the payment of compensation as a means of mitigating the adverse environmental effects of projects on affected individuals.[12]

Compensation in environmental matters is not restricted to personal or proprietary damages. It could be in form of restitution; that is, restoring the victim to the *status quo ante*, in so far as it is possible to so do through payment of monetary payment.[13] The payment is also not automatic. Thus, a person who claims compensation must first establish some degree of damage either to his person on property as compensation is determined by extent of damage. However, the degree of proof of damage required under a claim for compensation is not as high as that required for a claim under the common law principles of nuisance or negligence. It is sufficient if it can be shown that some damage has occurred.[14]

It is important to emphasize that a claim for compensation under statute must be carefully drafted since failure to do so may result in the courts treating the claim as one for damages under the common law of nuisance or negligence thus subjecting the victim to the great burden of proof required under those common law principles.[15] For example, in the case of *Mothercat (Overseas) Nigeria Limited v Chikale Ughaleje*, the claim which was for compensation under statute was eventually decided as an action for damages for negligence. In that case, the Court of Appeal per Uche Omo, JCA (as he then was) observed *inter alia*:

> The claim as framed is for liquidated sum representing compensation and/or damages. Ex facie therefore it should be regarded either as a claim for compensation simplicita (sic) or as damages for injury done to fish pond/track on land. To decide which it really is or tilts more towards, in view of the learned trial judge founded in tort. Here again I think he is right. Even if the respondent were formerly pursuing a claim for compensation, the claim can be founded on tort and evidence led leaves the issue in no doubt.

The quantum of compensation which may be claimed by victims is not fixed and the courts have a wide discretion to exercise in this regard.[16] It is submitted that the courts should award something substantial to serve as deterrent to further breaches.[17]

Damages

Damages are compensatory remedies provided by the statutes and under the common law. They are awarded in form of monetary payment to a person who complains of the violation of his legally protected right by the defendant.[18] The remedy of damages cannot be overemphasized. This is because breaches of environmental standards often have adverse effect on the health and properties of the victims.[19]

Damages have been described as mother of all action in environmental litigation. Whether an action is commenced on negligence or nuisance or both, the final relief sought by the plaintiff is usually

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[11] *Ibid.*

[12] Environmental Impact Assessment Act, ss. 22, 37, 40, 41 & 63.

[13] AP Isa, *op. cit.*

[14] *Mothercat (Overseas) Nigeria Limited v Chikale Ughaleje* (Unreported) Judgment in Appeal No. CA/B/175/97 delivered on 19th June, 1990 by the Court of Appeal, Benin Division. Also see FJ Fekumo, 'The Problem of Jurisdiction in Compensation for Environmental Pollution and Degradation in Nigeria: A fundamental Rights Enforcement Alternative', Being a Paper presented at the Nigerian Bar Association 2004 Annual Delegates Conference held on 25th August, 2004 at La meridian Hotel Abuja, p. 15.

[15] FJ Fekumo, *Oil Pollution and Problems of Compensation in Nigeria* (Port Harcourt: F. & F Publishers, 2001) pp. 1 – 2.

[16] *R Mon & Another v Shell BP* (1970-72) 1 RSLR 71.

[17] O Adewale, 'Judicial Attitude to Environmental Hazards in the Nigerian Petroleum Industry', (1985) 4(9) *University of Ibadan Law Review*, p. 29.

[18] OG Amokaye, *op. cit*, p. 654.

[19] AP Isa, *op. cit.*

damages.[20] Damages are awarded on the principle of *restitutio in integrum* such that the plaintiff is restored, as far as money can do it, to the same position he would have been had the breach not occurred.[21] The remedy of damages is therefore awarded for the purpose of restoration and rehabilitation and to reduce the consequence of the harm that has been inflicted on the victims or any other loss or injury which they have suffered. For the remedy of damages to avail a victim, the fault element on the part of the defendant is paramount.

There are various statutory regimes that provide for remedy of damages for victims of breach of environmental standards, including those arising from bio and hydro energy activities. For example, section 12 of the Harmful Wastes (Special Criminal Provisions, etc.) Act provides for civil liability for damages for injury such as death of or injury to any person (including any diseases and any impairment of physical or mental condition) caused by a breach of the provisions of the Act except where same was wholly due to the fault of the victim or where the victim voluntarily accepted such risk.

A victim who suffers injury by reason of the adverse environmental effects of bio and hydro energy activities may be awarded damages on proof of loss or damage to his buildings, farmlands, fishing ponds, etc,[22] or even for emotional distress.[23] Where there is a claim for total destruction of property, the measure of damages will be the value of the property as at the time of destruction.[24]

There are various types of damages. These include exemplary or punitive damages, nominal damages, aggravated damages and contemptuous damages.[25] However, the context of this study focuses only on special and general damages because they are the major reliefs sought in majority of claims for environmental harm.

Special Damages

This specie of damages is one which the law does not presume and which must be specifically pleaded and proved.[26] They are those items of loss which are capable of precise calculation such as medical expenses, loss of property and means of livelihood amongst others.[27] It must be noted that the requirement to specifically plead and prove each item of special damage claimed does not mean that the law requires an extra-ordinary measure of evidence to establish entitlement to special damages.[28] It does not also mean that an award of special damages cannot be made unless such damages are established beyond reasonable doubt as is the position in criminal cases.[29] All that is required is that the person making the claim should establish his entitlement to same by credible evidence of such character as would satisfy the court that he is indeed entitled to such an award. This requirement is satisfied, under the general law of evidence, by proof on the balance of probabilities or by preponderance or weight of evidence as is ordinarily applicable in civil cases.[30] Once such a claim for special damages is specifically pleaded and proved in evidence, the court has no discretion to exercise but must award the specific sum which was claimed and proved.[31]

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[20]N Tobi, 'Judicial Enforcement of Environmental Laws in Nigeria' in MT Ladan (ed), *Law, Human Rights and the Administration of Justice in Nigeria* (Zaria: ABU Press Ltd, 2001) p. 272.

[21] *Benin Electricity Distribution Co. v Esealuka* (2013)31 WRN 116 CA.

[22] *Shell Petroleum Development Company Limited v Farah* [1995]3 NWLR (pt. 382) 148.

[23]In the case of *Elf Nigeria Limited v Opere Sillo* [1994]6 NWLR (pt. 350) 258, it was held that the plaintiffs were entitled to damages arising from injury to family feelings of dignity and pride due to the annihilation of their river goddess and the consequent discontinuance of the traditional rites associated with the satisfactory performance of the goddess.

[24] *Shell Petroleum Development Company Nigeria Limited v Ambah* [1999]3 NWLR (pt. 593) 1.

[25] G Kodilinye & O Aluko, *The Nigerian Law of Torts* (Lagos: Spectrum Books, 1996) p. 258.

[26] *Ratcliffe v Evans* (1892)2 QB 524.

[27] *Dumez Nigeria Limited v Ogobi* (1992)1 All NLR 343.

[28] AP Isa, *op. cit.*

[29] *Ibid.*

[30] *Shell Petroleum Development Company (Nigeria) Limited v Tiebo VII (supra).*

[31]*MTN Nigeria Communications Ltd v ACFS Ltd* [2016]1 NWLR (pt. 1493) 339; S Azubuike, 'Special Damages Must be Strictly Proved; It is not Enough that the Evidence was Unchallenged', https://stephenlegal.com.ng/2017/01/special-damages-must-be-strictly-proved-it-is-not-enough-that-the-evidence-was-unchallenged.html> Last accessed on 11th August, 2017.

General Damages

These are damages which the law implies in every breach and in every violation of a legal right. It is loss which flows naturally from the defendant's act. Its quantum need not to be pleaded or proved as it is generally presumed by law as resulting from the defendant's tortuous conduct.[32] The merit of a claim for general damages is that there is no strict requirement of proof as in special damages and there exists a discretion on the judge, which must be exercised judicially and judiciously, to make an estimation based on all material facts and circumstances of the case.[33] The fact that the estimation and award of general damages lies at the discretion of the court, and the absence of any standard guidelines for the exercise of such discretion sometimes result in the award of a paltry sum as damages and this has occurred in some cases of breach of environmental standards. For example, in the case of *Shell Petroleum Development Company Limited v Ambah*[34] which was an environmental litigation commenced in 1976, the Apex Court passed judgment and awarded the sum of ₦27,000 as damages. Another environmental litigation where a ridiculous sum was awarded as damages is the case of *R Mons & Anor v Shell BP*[35] where the sum of ₦200 was awarded. We submit that in the estimation and award of damages in environmental cases, value should be attached to the purchasing power of the naira and there should be a standard guideline for assessment of damages arising from breaches of environmental standards.

Injunction

This is a discretionary remedy granted by the court temporarily or permanently restraining an act or omission causing or capable of causing environmental hazard.[36] The grant of this remedy either prohibits the activity complained on in its entirety or restricts a defendant from carrying on with same in a particular manner.[37] Normally, either the activity complained of has to be continuing at the date of claim or there has to be a threat that the activities will commence or continue.[38] It is however, observed that seeking an injunctive remedy imposes several difficult burden on the litigants as it is an extraordinary remedy which the courts grant sparingly and at their discretion, and would only be granted when it is just and convenient.[39] Thus, in the case of *Allar Iron v Shell B.P. Development Company (Nig.) Ltd*,[40] the injunctive remedy sought by the plaintiff was denied on the economic consideration that the order would cause stoppage of trade or throwing out large number of people from work.

A victim seeking the remedy of injunction must first establish a right recognized and enforceable either at law or in equity.[41] He must also demonstrate that he will suffer irreparable injury and that no other adequate remedy is available.[42] The grant of an injunction will depend on the nature of harm to be prevented. Thus, where bio and hydro energy activities result in a degradation of the environment, for example, contamination of an aquifer or flooding of surrounding farmlands, etc, an injunction restraining the continuation of that action may be the appropriate remedy. This was the situation in case of *Pride of Derby & Derbyshire Angling Association Limited v. British Celanese Limited*[43] where an injunction was

[32] OG Amokaye, *op. cit.*
[33] AP Isa, *op. cit.*
[34] *Supra.*
[35] *Supra.*
[36] FO Emiri & G Demduomo (eds) *Law and Petroleum Industry in Nigeria: Current Challenges: Essays in Honour of Justice Kate Abiri* (Port Harcourt: Malthouse, 2009) p. 1. Also see MT Ladan, *Materials and Cases on Environmental Law and Policy* (Zaria: ECONET Publishing Co. Ltd, 2004) p. 387.
[37] *Ibid*
[38] OG Amokaye, *op. cit*, pp. 658 – 659.
[39] *Kotoye v CBN* [1989]1 NWLR (pt. 98) 419; *Obeya Memorial Hospital v AG - Federation* [1987]3 NWLR (pt. 60) 325; *Akapo v Habeeb* [1992]6 NWLR (pt. 247) 260.
[40] (Unreported) judgment in Suit No. W/89/71 delivered in 1973 by the High Court of Bendel State, Warri Judicial Division.
[41] *Babatunde v Olatunji* [1994]4 NWLR (pt. 339) 490; *Ochudo v Oseni* [1998]13 NWLR (pt. 580) 103; *Abubakar v AG - Federation* [2007]3 NWLR (pt. 1022) 627.
[42] *NBM Bank Limited v Oasis Group Limited* [2005]3 NWLR (pt. 912) 320; *CBN v SAP (Nigeria) Limited* [2005]3 NWLR (pt. 911) 152.
[43] (1955) Ch 149.

granted against the defendant for industrial effluents, untreated wastes and thermal wastes discharged in the water course. But in the American case of *Boomer v Atlantic Cement Company*,[44] the court refused to grant an injunction against nuisance but rather opted to award permanent damages. The court reasoned that the loss being suffered was obviously small as compared with the cost of removal of the nuisance and to grant injunction would be to close down the plants. It is submitted that this reasoning can be applied by Nigerian courts in cases relating to environmental degradation.

Restoration and Rehabilitation

This remedy entails the resuscitation of the ecological status of the environment prior to the activity occasioning the breach.[45] Thus, in the case of *Shell Petroleum Development Company Limited v Farah*[46] where the defendant who had undertaken to rehabilitate the land following the environmental degradation occasioned by her activities later abandoned same, the court held that the defendant was under a duty to do so and awarded ₦4.6 million in favour of the plaintiff. In a majority of environmental cases, very little or no attention is paid to the issue of rehabilitation of the environment.[47] Restoration does not mean monetary recompense but rather connotes that the party in breach of environmental standards should be responsible for the cost of cleaning the affected area and reinstating same to the *status quo* as much as practicable. This remedy is in tandem with the 'polluter pays principle' which simply requires that the cost of remedying the affected area and other consequential costs should be borne by the person in connection with whose activities the breach occurred.[48]

Resettlement

This is a remedy that can also avail victims of breach of environmental standards. Thus, where bio and hydro energy activities result in such a level of environmental degradation and pollution that make the area unfit for human habitation, the victims can be resettled in another place with a more conducive environment.[49]

3. RECOMMENDATIONS

In line with the findings and submissions in this study, the following recommendations are proffered. There is need for special courts and procedural hurdles in environmental litigation. Environmental disputes are technical in nature which an untrained mind cannot handle. In Nigeria a judge is expected to handle every matter even when it is obvious that he is professionally deficient in the area. For efficient adjudication of breach of environmental standards in Nigeria, there is need for creation of environmental courts to be presided over by crop of seasoned professionals with independent knowledge and experience in environmental matters. Several bottlenecks impede environmental litigation in Nigeria. These include frivolous adjournments, interlocutory appeal procedure, etc. Nigeria could borrow a leaf from India where the special courts established for to handle environmental litigations are not bound by rigid codes of civil procedure but are rather guided by the principles of natural justice.[50] These provisions, if imported into Nigerian law, will surely eliminate most of the bottlenecks that impeded environmental litigation.

The Constitution should be reviewed in relation to environmental rights. The constitutional provisions on environmental protection in Nigeria, though they extend to the bio and hydro energy sector, are not

[44] (1970)26 NY 2d 219, 259.
[45] AP Isa, *op. cit.*
[46] *Supra.*
[47] AP Isa, *op. cit.*
[48] BY Ibrahim, 'The Framework of Environmental Law in Nigeria: A Critical Analysis', (2006) 1(2) *ABU JPCL*, p. 224; OG Amokaye, *op. cit*, p. 10; RO Ugbe, 'The Polluter Pays Principle: An analysis', (2002 – 2003) Vol. vi – vii *The Calabar Law Journal*, p. 155.
[49] AP Isa, *op. cit.*
[50] Electricity Act No. 36 of 2003 (as amended by Act No. 26 of 2007), s. 153; National Environment Appellate Authority Act No. 22 of 1997, ss. 1 – 12; National Environment Tribunal Act No. 27 of 1995, s. 8.

justiceable.[51] Indeed, these rights are not expressly included in the fundamental rights provisions of the Nigerian Constitution.[52] There is a need to amend the Nigerian constitution in this regard so as to bring it at par with the South African constitution which recognizes the justiceability of environmental rights as part of fundamental rights.[53]

More still, NESREA is statutorily conferred with the power to enforce compliance with the provisions of international agreements, protocol, treaties and conventions on environmental standards.[54] This appears to conflict with the provisions of the Nigerian constitution which bars the municipal enforcement of undomesticated international instruments.[55] In the light of the above, urgent legislative action becomes necessary to resolve this problem, and two approaches are hereby proposed. On one hand, Nigeria may follow the South African example and amend the provisions of section 7(c) of the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act to impose a duty on the executive to submit to the legislature all international instruments on environmental protection to which Nigeria is a state party; with the added requirement that such international instruments must be domesticated before they can be enforced by NESREA.[56] Alternatively, section 12 of the Nigerian constitution may be amended to exempt all international instruments relating to environmental protection from the mandatory requirement of domestication.[57]

It is found that no Nigerian statute expressly provides for the *locus standi* necessary for a private person to maintain an action for the enforcement of environmental standards. Thus, the overtly restrictive common law rules on *locus standi* which requires a plaintiff to show peculiar interest, over and above the general interest common to the society in relation to the subject matter of the litigation continues to apply.[58] It is recommended that the common law principle of *locus standi* should be abolished in environmental matters litigation, just like the case of actions for enforcement of fundamental rights.[59]

With respect to criminal proceedings for breach of environmental standards, South African law allows same to be instituted by any person acting in the public interest or in the interest of the protection of the environment.[60] The only limitation is that such a private prosecutor must initiate the proceedings through a qualified lawyer; cannot maintain criminal proceedings against any organ of government; and can only maintain the criminal action after a written notice of such intention has been given to the appropriate public prosecutor and within 28 days of receipt of such notice, the public prosecutor fails to issue a written statement of an intention to prosecute the alleged offence.[61] In India, such criminal proceedings may be brought by any private person who has given notice of not less than sixty days to the Central Government, or its authorized agencies or officers.[62] There is a need to review the Nigerian law to bring it at par with the laudable statutory provisions in these foreign jurisdictions.

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[51] 1999 Constitution of the Federal Republic of Nigeria (as amended 2011), ss. 6(6)(c) & 20.

[52] 1999 Constitution of the Federal Republic of Nigeria (as amended 2011), Chapter IV.

[53] Constitution of the Republic of South Africa, 1996 (as Amended 2013), s. 24.

[54]National Environmental Standards and Regulations Enforcement Agency (Establishment) Act No. 25 of 2007, s. 7(c).

[55]1999 Constitution of the Federal Republic of Nigeria (as amended 2011), s. 12(1); P Onyenweife, 'The Jurisdiction of the National Industrial Court of Nigeria over Domesticated Treaties Ratified by Nigeria: Another Look', (2012) 6(3) *Nigerian Journal of Labour and Industrial Relations,* pp. 38-42, 40.

[56]National Environmental Management Act No. 107 of 1998 (as amended by No. 56 of 2002, No. 46 of 2003, No. 8 of 2004 and No. 44 of 2008), s. 25. For the constitutional requirements for domestication, see the 1996 Constitution of the Republic of South Africa (as amended 2013), s. 231.

[57] 1999 Constitution of the Federal Republic of Nigeria (as amended 2011), s. 12.

[58]*Shell Petroleum Development Co. Nig. Ltd v Chief Otoko & Ors* [1990]6 NWLR (pt. 159) 693; *NNPC v. Sele* (2004) All FWLR (pt. 223) 1859 CA. Also see RA Mmadu, 'Judicial Attitude to Environmental Litigation and Access to Environmental Justice in Nigeria: Lessons from Kiobel', (2013) 2(1) *Afe Babalola University Journal of Sustainable Development Law and Policy,* 149 – 170, 161.

[59]The Fundamental Rights (Enforcement Procedure) Rules 2009, by virtue of Paragraph 4(e) of the Preamble thereof, as well as Order I Rule 2 allows public interest litigation, class actions and representative actions in Fundamental Rights cases.

[60] National Environmental Management Act, s. 33(1) & (2).

[61] *Ibid.*

[62] Environment (Protection) Act No. 29 of 1986, s. 19.

There is no statutory provision expressly making government departments and agents criminally responsible for breach of environmental standards in Nigeria, albeit arising from bio and hydro energy activities. Such provisions exist in India where the head of the department is deemed guilty unless he or she proves that offence was committed without their knowledge or that they exercised due diligence to prevent it. Any other person other than the head of the department, who consented to the offence or was in connivance, or neglected their duties in preventing the offence, is also liable.[63] A review of the Nigerian law in this regard will go a long way to make government officials to be more responsive to the need to protect the environment while performing their functions.

In environmental cases, the burden of proof is placed on the plaintiff in civil cases and on the prosecution in criminal trials. While the plaintiff is expected to prove his claim in civil cases by preponderance of evidence, in criminal trials the prosecution is mandated to prove its case beyond all reasonable doubts.[64] Environmental claims are usually technical in nature and proof of same may require an expert witness which the plaintiff may lack the capacity to procure. There is an urgent need to reform the law in Nigeria to make violators of environmental standards strictly liable. This would serve as strong deterrent to polluters in Nigeria.

This study calls for the abolition of statute of limitations in relation to environmental litigation. Statutes of limitation usually stipulate that an action for breach of environmental standards must be commenced within a prescribed time frame; and in the case of public officers, the prescribed period is 3 months.[65] Considering the impunity of public officers and most corporate bodies engaged in bio and hydro energy activities in Nigeria, and also considering the fact that effects of such breach of environmental standards may take a period of time to manifest, it is most desirable to review the statutes of limitation and expressly declare them as being inapplicable to environmental litigations.

There is no legal provision in Nigeria for the protection of workers refusing to do environmentally hazardous work, including works associated with bio and hydro energy undertakings. Such statutory provision exists in South Africa and its introduction into Nigerian law will go a long way to enhance the push for protection of the environment.[66]

Nigerian statutes on environmental protection as applicable in the bio and hydro energy sectors do not expressly provide for the liability of defaulters to restore or rehabilitate the environment, or pay all costs incurred in that regard. Such provisions surely are necessary in Nigeria to further enhance the quality of the environment.

Bio and hydro energy activities are capital intensive in nature involving corporations with vast resources at their disposal while the risks such activities pose to the environment when embarked on without compliance with environmental standards are enormous. In view of this, the fines prescribed as penalties for such breaches of environmental standards should be reviewed upwards so as to achieve a greater deterrent effect. The basic principle that should underlay the imposition of such heavy fines is the need to rehabilitate the environment.

A careful perusal of the Nigerian policy document on bioenergy shows that the lofty ideals therein contained are far from being realized primarily because of the failure to infuse life into the said policy by means of appropriate legislative action.[67] A call is hereby made to the legislature to enact appropriate laws in this regard.

There is a need to amend the Environmental Impacts Assessment Act[68] to expressly prescribe that the EIA be done by an expert in the field of the proposed development and which expert must prepare the EIA

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[63] *Ibid*, s. 17; Electricity Act No. 36 of 2003 (as amended by Act No. 26 of 2007), s. 148; Air (Prevention and Control of Pollution) Act No. 14 of 1981 (as amended by Act No. 47 of 1987), s. 41.

[64] Evidence Act, 2011, ss. 131 – 135.

[65] Public Officers Protection Act, Cap. P41 *Laws of the Federation of Nigeria* 2004, s. 2.

[66] National Environmental Management Act, s. 29(1).

[67] Federal Republic of Nigeria, 'Official Gazette of the Nigerian Bio-fuel Policy and Incentives', <http://www.sunbirdbioenergy.com/docs/Nigeria_E10_POLICY_GAZETTED.pdf> Last accessed on 16th April, 2016.

[68] Environmental Impact Assessment Act Cap. E12 *Laws of the Federation of Nigeria* 2004.

report and also include therein details of his qualification and expertise. Further, the amendment should make it mandatory for the NESREA to consult experts in the relevant field while considering any application under the Act.

In all, a religious adherence to the above recommendations will surely provide the requisite impetus for the sustainable development of an eco-friendly bio and hydro energy sector in Nigeria.