

An Evaluation of the Role of Stakeholders in the Control of Industrial and Automobile Emissions in Nigeria

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Abstract:

Industrial and automobile emissions have continued to generate unpleasant challenges for the Nigerian Environment. Some of these problems include the risk of lung cancer, respiratory tract diseases, acid rain and global warming. Nigeria has enacted several legislations to tackle these challenges. Despite the enactment of emission control laws and policies, failure to fully implement these laws is one of the greatest challenges to mitigating or abating emissions. This paper therefore seeks to critically examine the role of stakeholders in the control of industrial and automobile emissions in Nigeria. In adopting the doctrinal method of research, the study relied on the primary and secondary sources of legal materials. The paper has identified several factors as undermining the role of stakeholders. To tackle the problem of emissions effectively, collaborative efforts amongst key players are required. Among other things, this paper has recommended the inclusion of a right to a healthy environment in the constitution of Nigeria, and the increased funding of environmental protection agencies.

Keywords: Evaluation, stakeholders, control, industrial and automobile emissions

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1. INTRODUCTION

Decades of rapid urbanization, population growth and industrialization continue to leave many developing countries with the world's most severe environmental menace; which is air pollution.¹ This is because the fruits of technological growth and advancement often come laced with the 'poison' of the environment. Industrial and automobile emissions are major sources of emissions in Nigeria. Various studies² continue to highlight their deleterious effects on the environment. Industrial emissions refer to emissions emanating from flare stacks in the oil industries, plants, generators in factories, smoke from coal smelting factories, dust from cement factories and smoke from incinerated wastes amongst other things. Automobile emissions, on the other hand, refer to emissions released into the atmosphere from motor vehicle exhausts in the process of driving, especially in traffic where the vehicle is semi-stationery and continuously releasing pollutants such as hydrocarbons, nitrogen oxides, carbon monoxides and carbon dioxides in excess.³ In different cities across Nigeria, pollution emanating from motor vehicle exhausts constitutes the most widespread and intractable source of urban air pollution.⁴ The carbons released through both industrial and automobile emissions have deleterious effects on human health and the entire ecosystem.

In an effort to manage the problem of industrial and automobile emissions, Nigeria has focused its environmental management plan on a number of legislations, standards, guidelines and regulations.⁵ Indeed, in Nigeria there exists in theory, several laws aimed at the regulation of air pollution. As a result, it has been repeatedly pointed out by environmentalists and environmental law enthusiasts that the problem of environmental law in Nigeria, is not the want or lack of laws but their enforcement. Hence, the poser is where and how laws, legal strategies and policies can be deployed to tackle the problem of pollution.⁶ As efforts continue to be made to address the concern of weak enforcement of air pollution control laws in Nigeria, this paper seeks to examine of the role of stakeholders in shaping and implementing an effective legal framework for air pollution, particularly, industrial and automobile emissions.

¹Temitope O. Sogbanmu and others, 'Air Pollution in Nigeria; A Review of the Causes, Effects, Control and Management'(A conference: Society for Environmental Toxicology and Pollution Mitigation (SEPTOM) International Conference held at University of Lagos, Nigeria , 2019) 3-16.

² These include G.Okere *et al*, 'Alternative Automobile Pollution Control Policies: Perspective of Motorists in Owerri Municipal of Imo State, Nigeria', *Journal of Educational and Social Research* (2013); E. Popoola, 'An Examination of Factors Militating Against Effective Enforcement of Environmental Law in Nigeria', *SSRN Electronic Journal* (2019); S. Abila, 'Laws, Policies and Strategies against Air Pollution in Nigeria' *International Review of Law and Jurisprudence* (1) (2019).

³ (n 1)

⁴G. Okere and others, 'Alternative Automobile Pollution Control Policies: Perspective of Motorists in Owerri Municipal of Imo State, Nigeria', *Journal of Educational and Social Research* (2013) 9-12.

⁵E. Popoola, 'An Examination of Factors Militating Against Effective Enforcement of Environmental Law in Nigeria,' *SSRN Electronic Journal* (2019) 1-26.

⁶S. Abila, 'Laws, Policies and Strategies against Air Pollution in Nigeria' *International Review of Law and Jurisprudence* (1) (2019) 48-52

To achieve its purpose, this paper shall examine the meaning of air pollution along with the concept of emissions. It shall also identify stakeholders and their roles in implementing the legal framework for air pollution. The paper will also review the challenges facing the control of air pollution.

2. MEANING OF AIR POLLUTION

The National Environmental (Air Quality Control) Regulations 2021⁷ defines the term “air”, as the mixture of gases that envelopes the earth otherwise known as the atmosphere, which usually comprises various natural gases.⁸ Air is invisible, intangible, and can be easily contaminated or polluted. Pollution according to the National Environmental Standards and Regulations Enforcement Agency Act (NESREA Act) 2007, means, man-made or man-aided alteration be it of chemical, physical or biological quality beyond acceptable limits.⁹ From the above definitions, air pollution means any alteration of the air by man. A more encompassing definition of air pollution, provided by Article 1 of the 1979 Convention on Long-Range Transboundary Air Pollution is:

The introduction by man, directly or indirectly, of substances or energy into the air resulting in deleterious effects of such a nature to endanger human health, harm living resources and ecosystems and material property and impair or interfere with amenities and other legitimate use of the environment...

The aforementioned definition offers a broad understanding of not only the term, but also the effects of air pollution for not just man but the entire ecosystem. Air pollution is simply the release of hazardous particulate matter by man into the air or atmosphere. Air pollution has become a critical burden for the entire human race.¹⁰ In Nigeria, air pollution comes second to HIV/AIDS in terms of impact on life expectancy.¹¹ Pollutants released into the atmosphere, have been associated with various diseases like lung damage, respiratory tract diseases, diseases of the central nervous system and blood stream, and deformities in children.¹²

⁷National Environmental (Air Quality Control) Regulations, S.I No 88, 2021.

⁸See Regulations 41 of Part II of the Miscellaneous Provisions of the NESREA Act, 2018.

⁹ Section 37 of the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007.

¹⁰ J. Nwazi and A. Christopher, 'Legal Framework for Air Pollution Control in Nigeria: Lessons from India and Australia' *Sri Lanka Journal of International Law*, (2020) (28) 137.

¹¹ University of Chicago Air Quality Life Index (AQLI) Report of 2021.

¹² S. Ovuakporaye *et al*, 'Effects of Gas Flaring on Lung Function among Residents of a Gas flaring Community in Delta State, Nigeria', *Res. J. Env. Earth Sci.*, (2012) 4(5). 525-528.

3. UNDERSTANDING THE CONCEPT OF EMISSIONS

Emissions are the proverbial burden which runs alongside the benefits of industrialization and growth in technology. Section 31 of the National Environmental (Control of Vehicular Emissions from Petrol and Diesel Engines) Regulations, 2011 defines emissions as:

The discharge of any pollutants into the atmosphere from any portion of petrol or diesel engine including the exhaust assembly, engine crankcase, ventilation or lubrication system.

Emissions are a major source of air pollution which can generally be described as, airborne suspensions of solid or liquid particles called particulates, for example, soot, dust, smokes, fumes and mists.¹³

There are several sources of emissions that contribute to air pollution globally. Some countries have designated some common pollutants as “criteria” pollutants.¹⁴ The term, criteria pollutants, implies that by measuring the concentrations of these pollutants or hazardous gases in the atmosphere, one can determine the overall air quality at every given time.¹⁵ These pollutants serve as useful indicators of overall air quality. The criteria pollutants are carbon monoxide (CO), nitrogen oxides (NO and NO₂), sulfur dioxide (SO₂), ozone (O₃), particulate matter and lead (PB).¹⁶ It is therefore worthy of note that the common source of these pollutants can be traced to industrial processes, that is, industrial emissions and automobile emissions.¹⁷ While there are acceptable concentrations of these pollutants in the atmosphere, concentrations over the limit have a disastrous effect on human health, plants and animals.¹⁸ For humans, some of the health risks associated with high volumes of pollutants are inflammation and irritation of the lungs, breathing difficulties particularly for people with asthma and various cardiovascular effects on adults and children.

3.1 Industrial and Automobile Emissions Explained

There is a global reliance on industrial activities for a wide range of products, materials and services.¹⁹ Emissions from the industrial sector, including construction, manufacturing and electricity, and the heat utilized at various facilities, constitute around one-third of global greenhouse gas emissions.²⁰ In Nigeria, petroleum refining, cement manufacturing, chemical production, food and beverage production, are examples of

¹³ J. Nathanson, ‘Air Pollution’ <<https://www.britannica.com/topic/criteria-air-pollutant>> accessed 11 November 2023.

¹⁴ *Ibid.*

¹⁵ (n 14).

¹⁶ The six major pollutants have been designated by the U.S Environmental Protection Agency as criteria pollutants

¹⁷ (n 12).

¹⁸ *Ibid.*

¹⁹ R.Oliver, ‘Reducing Industrial Emissions’ <<https://www.sinai.com/post/reducing-industrial-emissions>> accessed 11 November 2023.

²⁰ *Ibid.*

industrial processes and activities that generate the emission of hazardous substances. The industrial sector produces a vast range of raw materials and goods that are used daily on a global scale.

Industrial emissions are usually categorized into two; that is, direct emissions which occur at production facilities or on-site, and indirect emissions which are emitted off-site, but can still be associated with a production facility's use of resources and energy.²¹ Direct emissions occur through leaks from industrial equipment and through chemical reactions. Most of these emissions are produced through the use of fossil fuels. The remainder is produced through leaks from petroleum and natural gas systems, and the chemical reactions that take place during metal, chemical, and mineral production.

Indirect emissions, on the other hand, emanate from the burning of fossil fuels at power plants to produce electricity, which industrial facilities use to power their equipment and premises. Whether it is direct or indirect, the key contributors to Nigeria's industrial emission levels have been identified to be gas flaring, petroleum product refining, thermal plants for electricity generation, medical waste incineration and emissions from the manufacture of cement.²²

An automobile refers to any four-wheeled passenger vehicle, for example, cars, buses, trucks, lorries and other heavy-duty vehicles. The power to move a vehicle comes from burning fuel in an engine. By section 31 of the National Environmental (Control of Vehicular Emissions from Petrol and Diesel Engines) Regulations, 2011,²³ a motor vehicle can be either fitted with a petrol engine or a diesel engine. In either case, whether the vehicle is a diesel or fuel-powered automobile, emissions have three sources; the exhaust, the fuel system, which is usually evaporative, and the crankcase.²⁴

Gasoline and diesels are a mixture of hydrocarbons, nitrogen oxide, carbon monoxides and carbon dioxide and because the combustion process is never fully completed,²⁵ these aforementioned pollutants are always emitted.

Nigeria's technological advancement and the continuous demand for the transportation of goods and delivery of services across different cities have resulted in an increase in the number of automobiles operating in the country. The use of motor vehicles as a major means of transportation has resulted in several environmental, economic and social problems. In an overpopulated city like Lagos, where traffic congestion is a daily inconvenience, the volume of emissions released into the atmosphere daily can be

²¹ (n 20),

²²O. Okedere *et al*, 'Drivers of Anthropogenic Air Emissions in Nigeria- A Review', *Heliyon Journal* (2021) (7) 1-7.

²³ National Environmental (Control of Vehicular Emissions from Petrol and Diesel Engines) Regulations, 2011 FRN Vol 98.

²⁴J. Johnson, 'Automotive Emission' in Ann Watson and others (eds), *Air Pollution, the Automobile and Public Health*. National Academy Press Washington D.C (1988) 40-70.

²⁵ Combustion is the chemical process by which fuel is converted to energy in a vehicle.

enormous. In several states across Nigeria, pollution emanating from vehicle exhaust systems have proven to be the most widespread and intractable urban air pollution problem.

Nigeria has the biggest automobile market amongst all the countries in the Economic Community of West African States (ECOWAS), and accounts for over half of the number of cars in the entire West Africa.²⁶ Studies show that road transport accounts for three quarters of transportation-related pollution, and from the period of 2010 to 2015 alone, the health burden associated with road transport emissions in Nigeria grew by 25%.²⁷ The poor control of importation of fairly used automobiles and excessive reliance on the use of vehicles in recent years have resulted to more vehicular emissions.²⁸ Although cars are beneficial to human life, the benefits however, have been accompanied by air pollution which is detrimental to man.

4. THE ROLE OF STAKEHOLDERS IN THE IMPLEMENTATION OF AN EFFECTIVE LEGAL FRAMEWORK FOR INDUSTRIAL AND AUTOMOBILE EMISSIONS IN NIGERIA

A legal framework refers to “a body of domestic and international laws that apply to a particular country, which defines the parameters for legal conduct”. It will be quite apt to say that legislation is critical to effective environmental management and governance.²⁹ Fagbohun expressed the same view when he said the rule of law is a powerful tool for streamlining and redirecting critical national activities.³⁰ In view of the magnitude of the problem of industrial and automobile emissions, Nigeria has enacted several laws and regulations to catalyze the abatement of emissions. These laws include the Nigerian Constitution,³¹ Criminal Code Act 1990,³² Petroleum Industry Act 2021,³³ the National Environmental Standard and Regulation Enforcement Agency Act,³⁴ Minerals and Mining Act 2007, National Environmental (Control of Vehicular Emissions

²⁶ Africa Network for Environment & Economic Justice Nigeria. (2017). SON releases new industrial standards on petroleum products. < <http://www.aneej.org/sonreleases-new-industrial-standards-petroleum-products/> > accessed 8 November 2023.

²⁷ S. Anenberg and others ‘The Global Burden of Transportation Tailpipe Emissions on Air Pollution-Related Mortality in 2010 and 2015’. *Environmental Research Letters*, (2019) (14) 1-2.

²⁸(n 3).

²⁹ D. Ogunkan, ‘Achieving Sustainable Environmental Governance in Nigeria: A Review of Policy Consideration’. *Urban Governance Journal* (2022) (2)(1) 212-220.

³⁰ O. Fagbohun, Mournful Remedies, Endless Conflicts and Inconsistencies in Nigeria’s Quest for Environmental Governance: Rethinking the Legal Possibilities For Sustainability (Being the 4th Inaugural Lecture of the Nigerian Institute Of Advanced Legal Studies, Nigeria, September 2012).

³¹The 1999 Constitution of the Federal Republic of Nigeria (As Amended) Criminal Code Cap C38 LFN 2004.

³² Cap C38 LFN 2004.

³³ Cap C21 LFN 2004.

³⁴The National Enforcement Standard and Regulation Enforcement Agency (Establishment) (Amendment) Act, 2018.

from Petrol and Diesel Engines) Regulations, 2011,³⁵ Federal Road Safety Commission Act, ³⁶ The Harmful Waste (Special Criminal Provisions, etc.) Act,³⁷ Flare Gas (Prevention of Waste and Pollution) Regulations 2018,³⁸ Environmental Impact Assessment Act, 2004.³⁹

Despite the aforementioned legal provisions, the problem of industrial and automobile emissions continues to pose a threat to the environment. If the current legislations and regulatory frameworks are adequate, why do we still have problems controlling industrial and automobile emissions? Environmentalists and environmental law enthusiasts have repeatedly identified the hindrances or obstacles to these laws to include weak enforcement mechanisms,⁴⁰ inadequate funding for regulatory bodies, lack of modern technology or infrastructure,⁴¹ overdependence on crude oil, conflicts over roles in environmental management, justiciability of environmental issues, lack of commitment from the government or the absence of political will,⁴² and low level of public participation. Therefore, there is a need to identify the most appropriate mechanisms for implementing regulations, including incentives and penalties for those who fail to comply. This requires collaboration amongst stakeholders to ensure that legislations do not only reflect global standards and best practices, but are also effectively enforced. Hence, there is a need to highlight the duties of each stakeholder as regards the enforcement of the legal framework for industrial and automobile emissions.

4.1 Identified Stakeholders and their Roles

A stakeholder is a person, group or organization with a vested interest or stake in the decision-making processes and activities of a business, organization or project. The term can be extended to mean any individual, or group of individuals that may be affected by, or cause an effect on the ability of an organization to achieve its objectives.⁴³ For the purpose of this paper, the entities which have a stake or an interest in the development and enforcement of the legal framework for industrial and automobile emissions have been identified as government agencies, industries, civil society organizations, host

³⁵ (n 25).

³⁶ Federal Road Safety Commission Act No. 22 2007.

³⁷ Cap. 165, LFN 2004.

³⁸ Federal Republic of Nigeria Official Gazette Volume 105, 2018.

³⁹ Cap E12, LFN 2004.

⁴⁰ E. Orié *et al*, 'Examining the Legal Framework for Criminalising Environmental Pollution in Nigeria: The Case for Ecocide', *National Open University of Nigeria Law Journal (Special Edition On International and Environmental Law)* (2023) (1) 1-32.

⁴¹ U. J. Orji, 'Moving from Gas Flaring to Gas Conservation and Utilization in Nigeria: A Review of the Legal and Policy Regime', *OPEC Energy Review* (2014) 149 - 183

⁴² Bassey Abasiubong, 'A Critical Appraisal of The Legal and Institutional Framework for The Regulation Of Climate Change In Nigeria (LL.M Dissertation Submitted To The Faculty Of Law, University Of Lagos, Akoka, Lagos, Nigeria 2018)

⁴³ A. Cundy and others, 'Developing principles of sustainability and stakeholder engagement for "gentle" remediation approaches: The European context. *Journal of Environmental Management*, (2013) (129) 283-291.

communities, the media, lawyers and the judiciary. The identified stakeholders are discussed below.

4.2 The Role of Government Agencies

Government agencies such as ministries, regulators and legislators play a significant role in shaping and implementing the legal framework for the control of emissions. In 1999, the Federal Ministry of Environment was established to protect the environment and ensure effective coordination of all environmental matters. The vision of the ministry is “to ensure that Nigeria develops in harmony with the environment”, while the mission is “to ensure environmental protection and natural resources conservation for sustainable development.”⁴⁴ The main function of the ministry revolves around policy awareness, enforcement and intervention in the following major environmental issues: desertification, deforestation, pollution, waste management, climate change, clean energy, flood, erosion, coastal management, shoreline protection, and environmental standards and regulations. Other responsibilities of the ministry include reclamation and rehabilitation of degraded land, biodiversity conservation and eco-tourism, effective waste management, mitigating the effects of climate change and effective environmental Governance.⁴⁵ The ministry has zonal offices in the six geopolitical zones of the country as well as field offices in all of the 36 States and the Federal Capital Territory, Abuja.

Since its establishment, the ministry has raised environmental consciousness in the minds of Nigerians as well as attempted to replicate global environmental best practices. The initiatives of the ministry include the Ogoni Clean-up, Green Bonds, Clean and Green Initiatives, Great Green Wall Programme, Nigerian Erosion and Watershed Management Project, and Clean Energy Initiatives. In order to fulfil its function of intervention and the enforcement of environmental standards and regulations, the ministry supervises the National Environmental Standards and Regulations Enforcement Agency (NESREA), alongside other government agencies concerned with the protection of the environment. NESREA is a body corporate with perpetual succession and a common seal. The Agency has the power to sue and be sued in its corporate name.⁴⁶ NESREA is saddled with the responsibility of the protection and development of the environment, biodiversity conservation and sustainable development of the country’s natural resources in general. The agency is saddled with the following functions: ensuring the ‘enforcement, compliance with laws, guidelines, policies and standards on environmental matters. NESREA also has the power to enforce compliance with the provisions of international agreements, protocols, conventions and treaties on the

⁴⁴ Federal Ministry of Environment, <<https://euepin.unilag.edu.ng/federal-ministry-of-environment/>> accessed 12 November 2023.

⁴⁵ Ibid.

⁴⁶ See section 1(2) of the National Environmental Standards and Regulations Enforcement Agency (NESREA) Act 2007.

environment, including climate change, biodiversity, conservation, desertification, forestry, chemicals, hazardous waste, ozone depletion, marine and wild life, pollution, sanitation and such other environmental agreements as may from time to time come into force. NESREA has the mandate to enforce compliance with policies, standards, legislation and guidelines on water quality, environmental health and sanitation and pollution abatement. By virtue of section 8 of the NESREA Act, the agency with the approval of the Minister, has the power to collaborate with other relevant agencies and establish programmes for setting standards and regulations for the prevention, reduction and elimination of pollution.

In the discharge of its duties, the agency is authorized to collaborate with relevant agencies on environmental degradation in the nation's air, land, oceans, seas and water bodies, and for restoration and enhancement of the environment and natural resources. NESREA is responsible for evolving environmental technology, including coordination and liaison with relevant stakeholders within and outside the country on matters of enforcement of environmental standards, regulations, rules, laws, polices and guidelines.⁴⁷

Section 33 of the NESREA Act, empowers the Minister of Environment to make regulations for the general purposes of carrying out or giving full effect to the functions of the Agency. These Regulations are to be implemented at all levels of government. One of such Regulations is the National Environmental (Control of Vehicular Emissions from Petrol and Diesel Engines) Regulations, 2011. This regulation, is one of the thirteen regulations made by the then Minister of Environment in 2011. The purpose of the regulation is to restore, preserve and improve the quality of air. The standards contained therein, provide for the protection of the air from pollutants, as well as, taking into account amongst others the right of citizens to access clean air; (b) reducing and preventing air pollution through the improvement of the quality of automobiles that operate on the road way; and (c) improving the health of Nigerians especially in the urban areas with high incidence of air pollution due to increased number of automobiles that ply the roads.⁴⁸

Regulation 8(1) of the regulation provides thus “every petrol engine which is in use or in operation or is capable of being operated shall not emit visible smoke from the exhaust pipe”. The reality however is that vehicles which breach this regulation freely ply the roads. The regulation also provides for the yearly emission testing of all vehicles in the country. The Regulation also provides that any person whose vehicle has undergone an emission test and is in violation shall be issued a prohibition order. Such order shall

⁴⁷ *ibid* section 2.

⁴⁸ Regulation 1 of the National Environmental (Control of Vehicular Emissions from Petrol and Diesel Engines).

be visibly attached to the windscreen of the prohibited vehicle.⁴⁹ The owner or the person operating the motor vehicle shall ensure that the prohibition order is not in any way obscured, rendered illegible or removed, except with the written approval of the Agency.⁵⁰ Another agency responsible for the control of automobile emissions is the Federal Road Safety Commission. By section 5 (h) of the Federal Road Safety Commission (FRSC) Act 2007, the commission shall make regulations in relation to the registration, licensing and the road worthiness of vehicles.

The role of the legislature cannot be underestimated. The legislature is the government's decision-making arm, with the authority to enact, amend and repeal legislations. As a result, it serves as the legal foundation for all environmental policy instruments.⁵¹ Legislators represent the public's interest, scrutinize policies and hold government to account when necessary. The National Assembly consists of the Senate and the House of Representatives, vested with the legislative powers of the federation. They are responsible for developing policies, drafting regulations, and providing oversight to ensure compliance.⁵² The legislature performs, three basic roles; law making, representation and oversight. It provides an oversight role over Ministries, Departments and Agencies (MDAs).⁵³

The aforementioned government agencies are responsible for developing policies, drafting regulations, and providing oversight to ensure compliance with environmental regulations. The agencies conduct research, carry out environmental impact assessments, collaborate with international organizations, and enact legislation to protect the environment. Additionally, they establish emission standards and certify compliance with these standards, thus playing a crucial role in creating a robust legal framework for the environment. However, the role of these agencies is hampered by several challenges including a shortage of funds. Agencies like the NESREA need to be well-funded to perform their functions effectively at industrial facilities across the 36 states of the federation. There is a need to train or retrain law-makers on current global environmental standards and practices in emissions control. Other challenges include a lack of modern infrastructure and technology for monitoring;⁵⁴ the absence of a statutory role for NESREA in the oil and gas industry, especially in matters of environmental

⁴⁹ibid section 10-11.

⁵⁰ 'Agency.' In this instance is the NESREA.

⁵¹ S. Odey. 'Role of the Legislators in Environmental Governance in Nigeria', *International Journal of Humanities Social Sciences and Education* (2015) (2) 71-74.

⁵² Ibid.

⁵³ Section 4 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

⁵⁴ (n 50).

pollution,⁵⁵ and poor coordination of roles and efforts among the agencies responsible for environmental protection at the national and regional levels.⁵⁶

4.3 The Role of Industries:

Industries, particularly those emitting pollutants, have a significant role to play in the abatement of pollution. While some industries may resist stringent regulations due to potential increment in operational costs, many others have realized the long-term benefits of sustainable practices. As a result, they are willing to contribute to the effectiveness of the legal framework by implementing cleaner technologies, advocating for environmentally friendly policies, and voluntarily embracing emission reduction measures. This group of industries collaborate with government agencies, financing research to develop new technologies and practices, thereby influencing the legal framework positively.

Oil companies who are the biggest contributors to industrial emissions can transform host communities into emotional stakeholders, by ensuring their active engagement and participation in designing and framing their Corporate Social Responsibility (CSR) efforts which would minimize environmental pollution, extend human capacity training and deliver sustainable development. A stakeholder collaborative approach to CSR would make the communities consider themselves as having a stake in the sustainability of CSR efforts,⁵⁷ knowing that CSR programs and plans were designed by them and for them. Companies are to carry out a series of interdependent activities, each of which must be effectively executed in order to achieve favourable results. These activities include the identification of stakeholders; analysis of stakeholders; prioritization of stakeholders; formulation and implementation of stakeholder engagement strategies.⁵⁸

In terms of involving stakeholders, the industry has not fared well in identifying and communicating with the appropriate stakeholders, resulting in conflicts. This situation highlights the importance of the application of stakeholder theory, which stresses the need for organizations to adopt appropriate business ethics in their processes and effectively collaborate and communicate with various stakeholders.⁵⁹ The approach of the petroleum company; Shell, to community engagement involves first, identifying the concerns of host communities. This is followed by planned activities in the region, as well

⁵⁵ (n 43).

⁵⁶ H.Ijaya and O.Joseph, 'Rethinking Environmental Law Enforcement in Nigeria' *Beijing Law Review*, (2014) 306-321.

⁵⁷ S. Lugard, 'Stakeholder Approach to Corporate Social Responsibility: Recipe For Sustainable Peace in the Niger Delta Region?', *Afe Babalola University: Journal of Sustainable Development Law and Policy* . (2014) 15.

⁵⁸ *Ibid.*

⁵⁹ (n 61).

as the implementation of corporate social responsibility programmes like scholarship to indigenous students; providing sponsorship for sports activities organized by indigenous communities; providing health facilities and employment opportunities to indigenes. Several oil and gas companies including Chevron, ExxonMobil, Perenco, Addax and Soco International Plc also share a similar approach in implementing corporate social responsibility programmes in regions where they operate.⁶⁰ Despite these initiatives, industries continue to face challenges like loss of revenue from routine vandalization of oil pipeline, which hinders them from fully carrying out their CSR in host communities. The absence of mandatory disclosure of information by industries whose activities lead to pollution hampers monitoring by regulators.

4.4 Role of Civil Society Organizations (CSOs)

The term civil society organizations (CSO) is generally used to classify persons, institutions and organizations that have the goal of advancing or expressing a common interest through ideas, actions and demands on the government.⁶¹ The membership of CSOs is quite diverse, ranging from individuals, religious and academic institutions, to issue focused groups such as non-profit or non-governmental organizations. CSOs are proactive development organizations usually existing in all nooks and crannies where man is found. They complement government programmes and are able to get to the grassroot where the government often fails to reach.⁶² Their roles include, awakening the intellectual and social competence of the masses, acting as watchdogs, and holding both the government and industries accountable for their actions. CSOs advocate for stricter regulations, publicize environmental violations, encourage public participation, challenge anti-poor policies and projects, and promote awareness campaigns on the impact of emissions and pollution generally.⁶³

CSOs also contribute to the legal framework by conducting independent research, providing expert input in policy formulation, and representing the interests of affected communities. Through their collaboration with other stakeholders, CSOs support the development and implementation of effective emission control policies. An example of a proactive CSO is the Socio-Economic Right and Accountability Project (SERAP). In the case of *SERAP v. Nigeria*,⁶⁴ the Economic Community of West African States (ECOWAS) court unanimously found the Nigerian government responsible for abuses by oil companies in the Niger Delta Region. The court ruled that they violated Article 21 (the right to natural wealth and resources) and Article 24 (Right to a general satisfactory

⁶⁰ Uthman Salami, 'Shell's Social Responsibility Leads the Pack in Nigeria Oil and Gas Sector' *Nigerian News Direct* (Lagos, 12th August 2023).

⁶¹ Cohen. J and Arato.A, '*Civil Society and Political Theory*'. MIT Press, Cambridge, MA. (1992).

⁶² O.Eneh, 'The Role Of Civil Society Organizations In Sustainable Development In Nigeria', *Journal of Social Policy Issues*, (2007) 15-21.

⁶³ Ibid.

⁶⁴ NO: ECN/CCJ/JUD/18/12.

environment) of The African Charter on Human and Peoples Rights, 1981 by failing to protect the Niger Delta and its people from the operations of oil companies that have for many years devastated the region. The court further emphasized that the quality of life of a people is usually determined by the quality of the environment. Article 15 (4) of the ECOWAS Treaty made the judgment of the court binding on member states. In several other instances, the courts have interpreted the environment-related parts of legislations and treaties as imposing binding obligations on the government.

Another notable CSO is Amnesty International. Amnesty International usually conducts investigations on human rights violations in host communities, and its findings are embodied in well publicized reports that are accessible to everyone. Invariably therefore, Amnesty International serves as a watchdog.⁶⁵ CSOs in Nigeria operate in an environment in which they have to source for, and gather information without the aid of a freedom of information regime. CSOs battle to overcome the limitations of conducting independent investigations at their own costs and risk as well as making their findings easily accessible. The information gathered often forms the basis for further research and litigation. However, it is expected that access to information will improve as public institutions strive to comply with the Freedom of Information (FOI) Act.⁶⁶ The FOI provides a legal basis for CSOs to make legitimate requests for information that is not in the public domain. Additionally, CSOs have offered inputs into Bills of the National Assembly by submitting memorandums to the National Assembly whenever a law is to be enacted.⁶⁷

Litigation has now become a deliberate strategy employed by CSOs as they attempt to influence the activities of the state and oil companies that operate in Nigeria. The rising number of cases instituted both in Nigeria and abroad by, or, with the assistance of CSOs is an indication of the rising reliance on litigation. These cases have been instituted across court systems and jurisdictions around the globe. For instance, while *Gbemre v. SPDC*⁶⁸ was initiated in a Federal High Court in Nigeria; *Bowoto v. Chevron*⁶⁹ and *Wiwa v. Shell*⁷⁰ were instituted in the USA. *Akpan v. Shell* was heard at The Hague, Netherlands while *Bodo Community v. SPDC*⁷¹ was heard in the United Kingdom.

⁶⁵ See Amnesty international reports of 2013, 2014 and 2015 for instance.

⁶⁶ Freedom of Information Act 2011 Cap, A2 LFN 2004.

⁶⁷ Amnesty International Nigeria: Joint Memorandum on Petroleum Industry Bill, March 2012. Which was a coalition of Amnesty International and 12 Nigerian NGOs. Also see the Joint Position Paper on Petroleum Industry Bill: Issues of Concern to Communities and Civil Society. May 2011. Prepared by coalition of CSOs including the Civil Society Legislative Advocacy Centre (CISLAC) and Environmental Rights Action/Friends of the Earth, Nigeria amongst others. Available online at CISLAC website at <www.cislacnigeria.net/2011/07/policybrief-on-petroleum-industry-bill/> accessed on 20 October 2023.

⁶⁸ (2005) Suit No. FHC/B/CS/53/05.

⁶⁹ 557 F. Supp. 2d 1080 (N.D. Cal. 2008).

⁷⁰ No. 04 Civ. 2665, at 4 (S.D.).

⁷¹ [2014] EWHC 1973 (TCC).

Challenges to the role of CSOs include difficulty in obtaining statistics and relevant information on polluters. The multinational corporations (MNCs) operating in the extractive industry usually regard information on their operations as being sensitive and confidential. Justice Onalaja noted this problem when he said in *Shell v. Isaiah*⁷² that ‘a vital consideration in the oil spillage cases is the extent of the oil spillage. The pattern of defence of the appellant has been to withhold from the court the report of the oil spillage carried out by their employees.’ Another problem is the shortage of trained personnel. It is often difficult for CSOs to recruit trained personnel who are willing to work for free. This problem is compounded by the unwillingness of many individuals to work in rural areas which are bedeviled by insecurity and lack of basic amenities.⁷³ Again, most CSOs are poorly funded, and rarely benefit from grants from the government.⁷⁴ There is also a lack of enthusiasm among youths to volunteer for social work. The desire of the average youth appears to be to make as fast as possible.⁷⁵ In addition, CSO operations are often obstructed by the government as their interests often clash, resulting in little or no collaboration between government institutions and CSOs.

4.5 The Role of Host Communities:

Host communities refer to the communities where production industries or facilities are situated and where they carry out exploration, manufacturing and production. These communities are among the most affected by industrial and automobile emissions. Their engagement is crucial in the implementation of an effective legal framework to ensure their voices are heard and their concerns addressed. Community-based organizations and grassroots movements actively engage in advocacy, raising awareness about the detrimental effects of emissions on health and environment. Host communities are stakeholders of significant influence because their reaction to industry activities in their region can heavily impact on the value chain. They are the most severely impacted by industry operations, from socio-economic and environmental perspectives, and are capable of causing significant disruptions to operations in their region.

Oppositions from communities at the preliminary stages or after the commencement of operations highlight key concerns which indigenes of oil producing communities have regarding industry operations in their regions. They include the contamination of ground water aquifers, waste disposal, emissions, the movement of heavy moving vehicles and noise pollution. In many host communities, there has been

⁷² 11 NWLR (P.t 723) 168.

⁷³ A.Matsimbi, ‘Business Sustainability Challenges Experienced by Philanthropic Non-Governmental Organizations: The case of the Capricorn District Municipality, South Africa’, *Mediterranean Journal of Social Sciences*, (2014) 711-721.

⁷⁴ S.Palekar, ‘*Development Administration*’ (PHI Learning Private. Ltd.,New Delhi, 2012).

⁷⁵ J. Murinda, ‘*Research on the Role of Civil Society in Environmental Governance*’,(Grin Verlag, Munich 2016).

little engagement with oil companies, invariably presenting the resource curse phenomenon. However, the contributions of some community-based organizations, including the Movement for the Survival of Ogoni People (MOSOP),⁷⁶ and the Ijaw Youth Council (IYC),⁷⁷ in environmental protection in Nigeria cannot be ignored. In 1990, the Ogonis presented the Ogoni Bill of Rights to the Nigerian government and demanded among other things:

...Political autonomy to participate in the affairs of the Republic as a distinct and separate unit (by whatever name called), provided that this autonomy guarantees political control of Ogoni affairs by Ogoni people; the right to control and use a fair proportion of Ogoni economic resources for Ogoni development; adequate representations, as of right, in all Nigerian national institutions, and the right to protect the Ogoni environment and ecology from further degradation.⁷⁸

In the Kaima Declarations, the Ijaw youths, while recalling the severe degradation of their villages due to oil activities, declared among others things, their determination to ‘...demand and work for self-government and resource control for the Ijaw people’.⁷⁹

In 1995 the military government in Nigeria executed the leader of the Movement for the Survival of Ogoni People (MOSOP), Ken Saro Wiwa and five others. The execution followed a trial that was widely condemned across the world.⁸⁰ The struggle however changed with the involvement of Environmental Right Action, the Nigerian partner of the Friends of the Earth International. Environmental Right Action’s work is focused on the defence of the human ecosystem in terms of human rights, and the empowerment of local people as a means of promoting environmental responsibility by government, corporation and individuals.’⁸¹

⁷⁶ Representing the indigenous Ogoni people of Rivers State, Nigeria. founded in 1990 by Ken Sarowiwa.

⁷⁷Representing the interests of the Ijaw ethnic group of the Niger Delta. Nigeria, founded in 1998.

⁷⁸ Shell in Nigeria: What are the issues? < " <http://www.essentialaction.org/shell/issues.html>" _ <http://www.essentialaction.org/shell/issues.htm_1> accessed 16 October 2023.

⁷⁹Kaima Declarations by the Ijaw Youths of Niger Delta. 11 November 1998.

<"<http://www.unitedijawstates.com/kaiama.html>"_ <http://www.unitedijawstates.com/kaiama.html>_ >, accessed 18 October 2023.

⁸⁰ President Bill Clinton of the United States was reported to have made personal call to the then head of the Nigerian Military government General Sanni Abacha. See Ken Saro –Wiwa (1945-1995) <<http://kirjasto.sci.fi/saro.html>> accessed October 2023.

⁸¹ See Environmental Rights Action. About ERA<"<http://www.eraaction.org/about-era>"_ <http://www.eraaction.org/about-era>_ > accessed 22 October 2023.

The organization partners with the local people and engages in capacity building while also sensitizing the local people about their environmental rights. It equally convenes workshops and training on environmental issues for government officials and the private sector. One important aspect of the work of the group in the promotion of environmental justice is the empowerment of local communities to prosecute environmental injustice in court.

Host communities encounter many challenges which include the absence of mandatory disclosure of information by an industry which resists monitoring and disclosure. The absence of mandatory disclosure of information by industries and operators of facilities whose operations are likely to cause pollution is another pitfall in the enforcement of environmental laws. Conflicting interests between community representatives and community indigenes make it difficult for companies to fulfill their corporate social responsibility. There is also the challenge of hoarding of funds provided by international companies by community representatives, and a lack of grassroots representation of host communities at relevant government agencies.

4.6 The Role of Lawyers and the Court

Under the Nigerian legal system, the judiciary interprets the law and consequently, breathes life into the law in a way that it can ensure compliance. By way of judicial precedence, the judiciary also plays a vital role in the formulation of the legal framework in Nigeria.⁸² The idea that judges make the law was aptly captured by Lord Denning when he said that ‘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.’⁸³ Although, judgments on environmental disputes have gone either way, there have been some pronouncements in favour of the protection of the environment even if some of them were merely symbolic or pyrrhic.⁸⁴ The court continues to serve as the last hope of the common man, and this faith is expected to reflect in decisions made in disputes on environmental degradation.

In the case of *Wiwa v. Shell*,⁸⁵ the high-profile nature of the dispute put Shell and its subsidiaries in the spotlight and further propelled the situation in the Niger Delta into international reckoning and resulted in financial settlements that the company would otherwise not have agreed to pay. Other cases have had even more direct effects on corporate behaviour. For instance, the activities of CSOs working on the *Gbemre* case; the Rights Action/Friends of the Earth and Climate Justice Programme (CJP) had two

⁸² Obilade, Akintunde Olusegun, *The Nigerian Legal System* (Ibadan: Spectrum Law Publishing, 1990) 111.

⁸³ Chianu, E., *The Horse and Ass Yoroked: Legal Principle to Aid the Weak in a World of unequal*. (Being an Inaugural Lectures Series 91, Benin City: University of Benin, (2007).

⁸⁴ Engobo Emeseh and Rhuks Ako, “The *Wiwa v Shell* Settlement: Victory for Corporate Accountability for Environmental and Human Rights Abuses?” SLSA Conference (University of West England, Bristol, UK, April 1 2010).

⁸⁵ (n74).

significant impacts on the Iwherekan community. First, the community became aware of the negative impacts of gas flaring on their lives and the environment. Second, with the support of CSOs, they were able to initiate legal proceedings to challenge the continued flaring of gas in their community. The decision of the court also mandated the Federal Government to review relevant laws. It has been pointed out that the promulgation of the Gas Flaring Prohibition and Punishment Bill of 2009 is a direct response to the *Gbemre* case.⁸⁶ The *Gbemre* case has contributed to the jurisprudence on oil related litigation in Nigeria and has highlighted the significant impact that litigation may have on effecting the required change in Nigeria's oil industry.⁸⁷

In *Centre for Oil Pollution Watch v. Nigerian National Petroleum Corporation (NNPC)*,⁸⁸ the appellant, an NGO involved in environmental activities, sued the respondent at the Federal High Court, Lagos for reinstatement, restoration and remediation of the environment, particularly some streams which had been contaminated by an oil spill, in Acha community in Isukwuato local government area of Abia state. The appellant also asked for provision of portable water as a substitute to the contaminated streams which were the only sources of water supply to the community. The respondent, in its defence, filed a motion challenging the locus standi of the appellant to file the action as the appellant was not directly affected by the spillage notwithstanding the mention of some of her members as indigenes of the affected community.

The trial court, in its judgment delivered on 31st October 2006, dismissed the suit as lacking in merit and as constituting an abuse of court process as the respondent had no locus standi to institute the proceedings. This was upheld by the Court of Appeal which unanimously dismissed the appeal and held that for a person to have locus standi, he must be able to show that his civil rights and obligations have been or are in danger of being infringed. On appeal, the Supreme Court unanimously allowed the appeal and held that the appellant had the right to institute the action. Notably, this decision expanded the scope of locus standi on environmental matters in Nigeria. The Supreme Court further held that there is no provision in the constitution of Nigeria which limits standing to enforce the performance of a public duty to only the Attorney General. The decision of the Supreme Court was commendable for extending the frontiers public of public interest litigation in environmental law, and for relaxing the rule on locus standi. This decision provides a good stimulus for lawyers to institute actions for redress for environmental

⁸⁶ Funmi Abioye, *The rule of law in English speaking African countries: the case of Nigeria and South Africa* (PhD Thesis submitted to the University of Pretoria, South Africa 2011).

⁸⁷ G. Ojo, 'Against the Expansion of the Oil Frontier: Historicizing Civil Society Initiatives to Leave Oil in the Soil in Nigeria' ;in L. Temper and others, 'Towards a Post-Oil Civilization: Yasunisation and other initiatives to leave fossil fuels in the soil' *EJOLT Report* (2013) 41-43, <www.ejolt.org/2013/05/towards-a-postoil-civilisation-yasunisation-and-other-initiatives-to-leave-fossil-fuels-in-the-soil/ > accessed 20 October 2023.

⁸⁸ 2019) 5 NWLR (Pt. 1666) 518

harm. Lawyers may also liaise with CSOs to provide professional services and offer them legal assistance for seeking environmental justice.

Despite these success stories, the contributions of lawyers and the courts to environmental justice face enormous obstacles. Litigation is an expensive undertaking. Access to courts and legal representation for victims of human rights abuses are affected by the ability of victims to pay the fees for filing court processes and for legal services.⁸⁹ This situation is compounded by intractable delays in the administration of justice. It is common for litigation to drag on and on for years making it more expensive and frustrating. The case of *SPDC v. Anaro*⁹⁰ is a vivid example. The action was instituted in 1983 at the High Court of the old Bendel State and final judgment by the Supreme Court was delivered in 2015, that is, thirty-two years after the institution of the action.

In recognition of the importance of providing technical assistance to the judiciary, NESREA and the United Nations Environmental Programme (UNEP) have at various times organized workshops and symposia on environmental law for judicial officers. UNEP has developed a training manual for judicial officers,⁹¹ enriched with trends and case law from different jurisdictions. These developments underscore the need for bold and proactive judges who are willing to interpret the constitutional provisions on fundamental rights in a way as to give effect to the protection of the environment.

4.7 The Role of the Media

The significance of the media today is undeniable in the information age. The Koko incidence is a classic example of the fierce power of the media. In 1988, it came to the attention of some Nigerian students studying in Pisa, Italy, that hazardous wastes originating from several European countries were being dumped in Koko, a town in the then Bendel State.⁹² The students promptly wrote letters to all major Nigerian news agencies informing them of the incident, and providing copies of the stories on the issue carried by the Italian press, with English translations. The story was confirmed by a correspondent from 'The Guardian'⁹³ and as of 5th June 1988, articles began to appear in tabloids backed by pictures of stacks of drums, shipping containers, steel casks, and bags marked "radioactive." Other media organizations rapidly joined the reportage, and within

⁸⁹ International Commission of Jurists, *Access to Justice: Human Rights Abuses Involving Corporations-Federal Republic of Nigeria*, (International Commission of Jurists 2012).

⁹⁰ (2015) LPELR-24750(SC); (2001) FWLR (Pt.50) 1815 (CA).

⁹¹ D. Shelton and A. Kiss, *Judicial Handbook on Environmental Law* (UNEP 2005).

<<http://wedocs.unep.org>> accessed 12 May 2020; UNEP Training Curriculum on Environmental Law for Judges and Magistrates in Africa: A Guide for Judicial Training Institutions (UNEP 2018).

<<https://unenvironment.org/resources/toolkitsmanuals-and-guides/training-curriculum-environmental-law-judges-and-magistrates>> accessed 12 November 2023.

⁹² As of today, Koko is situated in Delta State, Nigeria.

⁹³ Segun Ogunseitan and Emeka Ogbeide, "Toxic Waste Dump in Koko Town," *The Sunday Guardian*, 5 June 1988.

a couple of days, the Koko story had been whipped up into frenzy, with journalists covering it from different angles. The media frenzy over the toxic-waste dumping at Koko spurred an investigation by the Nigerian government. The investigation revealed that over 3,884 tons of hazardous toxic wastes had been imported into the country between June 1987 and May 1988 by a company owned and controlled by two Italian nationals,⁹⁴ who were aided by their Nigerian associates.⁹⁵

This incident generated a diplomatic face-off between Nigeria and Italy, which was resolved only by the intervention of the international community. Subsequently, the Nigerian government sent the toxic-waste cargo back to Italy, and the Italian government was obliged to help with the cleanup of Koko, with support from other countries such as the United Kingdom and the United States. Motivated by the 1988 Koko incident, the Harmful Waste (Special Criminal Provisions) Act was enacted solely for the purpose of regulating the disposal of toxic wastes. The Act prohibits the carrying, dumping or depositing of harmful wastes without lawful authority, whether in the air, land or waters of Nigeria.⁹⁶ In addition, the government established the Federal Environmental Protection Agency (FEPA) to regulate and protect the environment. The role played by the media in bringing the dumping of wastes to public attention was remarkable. In the absence of the news media, only the residents of Koko would have been aware of the menace going on in their community. However, the role of the media nowadays is challenged by many factors including the presence of an endless pool of blogs which publish both fake and factual occurrences. It is therefore difficult to differentiate between fact and fiction.

5. CONCLUSION AND RECOMMENDATIONS

This paper has examined the role of stakeholders in the implementation of an effective legal framework for industrial and automobile emissions. The factors hindering the implementation of roles of stakeholders were examined. The research found that existing laws do not operate to effectively protect the environment. It is also evident that there is little to no collaboration between relevant stakeholders and this can be attributed substantially to a clash of interest among other factors. While this paper does not suggest that our environment can be entirely free from emissions, it can however be minimized to manageable levels through the collaborative efforts of relevant stakeholders. To this end, it is recommended that the institutions responsible for the control or mitigation of industrial and automobile emissions should be adequately strengthened in terms of

⁹⁴ The names of the Italians were given as Gianfranco Raffaeli and Desiderio Perazzi.

⁹⁵ Toxic Waste: Italian Ship Detained,” Saturday Sketch, 11 June 1988. _ For a more in-depth discussion of the Koko issue see Tunde Akingbade, *On the Trail of the Environment* (Lagos: Triple “E” Systems Associates Ltd., 1991); and Greenpeace, *The Database of Known Hazardous Waste Exports from OECD to Non-OECD Countries, 1989–1994* (Washington, DC: Greenpeace, 1994).

⁹⁶ Section 15 of the Harmful Waste (Special Criminal Provisions) Act LFN (2004).

facilities, human capacity and adequate funding to enhance their performance. Furthermore, a comprehensive review of environmental law is due and necessary to provide sufficient penal sanctions, adequate public participation, proper regulatory coordination and collective responsibility in emission control.