

Criminal Justice System and the Conflicts of Environmental Safety in Nigeria

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ABSTRACT

Despite the numerous environmental laws enacted to ensure environmental safety, environmental abuse remains unceasing adversary to our fight against extinction. This is an aftermath of oil explorations by the Multinational Oil Corporations in the past fifty years in Nigeria. The politics of oil economy which provides over 80% of government's earning has compounded the problems of environmental justice. A number of environmental policies put in place in Nigeria in the past have not been effective in checking and addressing environmental justice. In the centre of the conflicts is the criminal justice system which has not been effective in responding to the challenges of environmental abuse in Nigeria. This paper provides an overview of environmental abuses in Nigeria and its consequences. This study made use of the documentary research method to gather data. The paper noted that, though the Nigeria Criminal Justice System is visible in the fight against notable environmental abuses like: oil spills, toxic dump and illegal logging but de-emphasize relatively dangerous human practices such as: sound pollution, air pollution among others. This paper recommends societal reorientation with emphasis on ecological citizenship and ecological justice, thus, the extension of moral co-existing to include non-human nature.

Keywords: Conflicts, Environmental Pollution, Ecological Justice, Nigeria.

INTRODUCTION

An environmental issue dominates media headlines today and is forcing many people to re-evaluate their day-to-day practices as citizens, as workers, as parents and as members of communities, as the environment now attracts greater romance within the criminal justice field (White, 2008:3). This could be as a result of human developmental activities which most often have not been wholesome positive since it latently led to harmful situations against human communities. As a result of environmental hazard, the developmental activities gave rise to a series of violent conflicts and movements that have impacted on the politics and economies of some countries. The social movement that centers on the environment has become global as in all nations and people are concerned about the destruction of the earth's resources (Henslin, 2010:676).

The emergence of the modern environmental movement in the 1960s and 1970s marked a dramatic turning point in our understanding of the dangerous consequences of pollution and

our demands to be protected from it' (Cunningham, Cunningham & Saigo, 2007:542). Since then, 'much attention has been paid to intentional or negligent environmental pollution caused by many large corporations' (Siegel, 2005:299). Some would argue that the most criminogenic agents of environmental harm within a global political capitalist economy are members of the capitalist class operating within the institutional context of transnational corporations (White, 2008:145). In spite of this, pollution and degradation of environment which constitute serious abuse has gone unabated in Nigeria. This could be seen as *environmental injustice* which amounts to exposure and the risk the minorities and the powerless suffer as a result of harmful environmental pollution (Henslin, 2010; Laszewski, 2008).

Because of the feedback to nature, human actions have many unintended consequences as a result of increased extraction of resources which led to ecological problems, as governments create environmental problems by encouraging the accumulation of capital (Henslin, 2010: 675). This human actions can be referred to as crime because; environmental crime is seen as harmful activities against natural environment, animal life and human community (Marshall, 1998). The question is, how far has the environmental abuse in Nigeria received judicial prosecution? Hence, the Criminal justice system is seen as any formal organized process that plays the role of preventing, curtailing, examine crimes, punishing offenders and rehabilitating offenders as well as formulating policies that deal with crime (Ugwuoke, 2010:33). It is equally seen as 'the aggregate of all operating and administrative or technical support agencies that perform criminal justice function' (Schmalleger, 1955: 17).

In Nigeria, especially in the Niger Delta region, farmlands have been destroyed, marine life going into extinction and communities suffering adversely from physical degradation, water and air pollution caused by gas flaring and oil spillage by Multinational Oil Corporations. 'Because of environmental problems and depletion of the world's natural resources, the possibility that economic growth may not be 'sustained' in the long run is now widely discussed' (Clunies-Ross, Forsyth & Huq, 2009:285). Against this background, in the late 1980s, the government in Nigeria started to develop national policies to address environmental issues in which the period represented a milestone in the environmental protection for Nigeria because, it was the first time the government made efforts to create a national plan for environmental management (Adeyemo, 2006). From 1988 to 1999, governments in Nigeria came up with a number of environmental policies in the attempts to structure the management of environmental pollution and degradation. This study therefore, focused on highlighting the environmental issues and the related constraints on the criminal justice system as it relates to environmental safety in Nigeria.

THEORETICAL FRAMEWORK

Green Criminology which theoretically supports this study is an extension of the globalization of criminological concern about man's activities on the environment (Haralambos and Holborn, 2008). In Green Criminology, the 'elements of this perspective generally include things such as a concern with specially environmental issues, social justice, ecological consciousness, the destructive nature of global capitalism, the role of the nation-state, the regional and global regulatory body, and inequality and discrimination as these relate to class, gender, race and nonhuman animals (White, 2008: 14). This implies that green criminology explores the complex nature of social relationship in terms of power, fairness and inequality with the bureaucratic elements. It emphasizes on the relationship between human and the natural environment. In this perspective, 'there are three broad theoretical tendencies that generally frame how specific writers view the nature of environmental issues, including harm and response to harm (White, 2008: 14). First; Environment right and environmental justice: this is conceptualized as a function of social right that relates to the quality of human life and equity

for the present generations. Second; this takes into consideration that human being as one component of complex ecosystems should be preserved as a matter of right from environmental harm which relates to destructive techniques of human intervention, as a result of the environmental hazards resulting from the application of technological inventions around the world (Appelbaum and Chambliss, 1995). Third; Animal right and species justice, which emphasized that animals deserve maximum pleasure and minimal pains, and should be protected from the abuse in the process of exploration of the environment for developmental activities. Therefore, green criminology draws attention for the importance of the protection of human, animal, aquatic and ecological elements in the process of the exploration of the environment for whatever use, and the fair share for the human elements from the dividends of the exploration of their environment. Consequently, green criminology as a theoretical perspective captures the themes of the environmental safety and the issues surrendering the social equity and the related justice for human, ecological and animal wellbeing. The perspective equally emphasized the exposure and harms the powerless suffer as a consequence of interplay between the interests of the powerful, politics and the goals centered on economic development.

METHODOLOGY

Although, the study focus is relatively less popular in this part of the globe, it is imperative to note that literatures on this are available. To this effect, the documentary research method was adopted for this study. Documentary research is the use of documents to support the view point or argument of an academic work. A lot of data can be collected from reading through existing documents, such as: government publications, newspapers, textbooks, internet materials and pictorials sources, among others (Scott, 2006). To Hakim (1982), documentary research is one of the three major types of social research and arguably has been the most widely used of the three throughout the history of sociology and other social sciences.

NATIONAL POLICIES AND ENVIRONMENTAL SAFETY IN NIGERIA

The aforementioned sections of this work enunciated the need to encapsulate environmental regulations in black and white. The purpose of the national policy on the environment is to define a framework for environmental governance in every given jurisdiction (Nigeria inclusive). McCarthy (2016), affirmed that the National Environmental Policy Act (NEPA) was among the first laws written to project national framework for environmental protection. NEPA's basic policy is to ensure that every segment of the government gives adequate attention to the environment, before embarking on Federal or State actions that could significantly affect the environment.

Nigeria environmental policy has its root dated as far back as November 1989. It was introduced to ensure environmental safety in Nigeria. According to Rainforest (2003), the main objective of the policy is to achieve sustainable development which can be achieved by:

- Providing all Nigerians a quality environment sufficient for the sustenance of good health and wellbeing.
- Preserving and utilizing available natural resources for the advantages of current and yet to come generations.
- Restoring, sustaining and improving the ecosystem and ecological process necessary for retainance of biological difference.
- Sensitizing the public on the relevance of the interrelationship between environment and development.
- Collaborating with countries and international bodies to adhere to the goal enunciated above and avoid trans-boundary environmental pollution.

The fundamental objective of environmental policy in Nigeria is contained in the 1999 constitution of the Federal Republic of Nigeria. Section 20 of the constitution states that “the state is empowered to protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria. In addition, Section 2 of the Environmental Impact Assessment Act of 1992 (EIA Act) provides that the public or private sector of the economy shall not undertake or embark on or authorize projects or activities without prior consideration of the effect on the environment (Oghogho & Adeyoke, 2007).

Sequel from the enactment of Nigerian Environmental Policy, the Federal Government of Nigeria promulgated several laws and regulations to protect the Nigerian environment. These include:

- a. Federal Environmental Protection Agency Act of 1988 (FEPA Act)
- b. Environmental Impact Assessment Act of 1992 (EIA Act)
- c. Harmful Wastes (Special Criminal Provisions etc) Act of 1988 (Harmful Waste Act).

Currently, the Federal Ministry of Environment (FME) administers and enforces environmental laws in Nigeria. FME took over management from FEPA, which was crafted by FEPA Act. Oghogho and Adeyoke (2007), submit that:

FME achieves its mandate through the regulation of potentially harmful activities and the punishment of willful harmful damage whenever this occurs. The environmental agencies also adopt the approach of engaging individuals and communities at risk of potential environmental damage in dialogue. The EIA approval process adopted by the FME involves a system of public hearing during the EIA evaluation process and interested members of the public are invite to such hearings.

Some of the other environmental policies made by the government during the 1980s and 1990s include the following (Adeyemo, 2006).

- National Council on Environment – 1990
- Solid and Hazardous Waste Regulation – 1991
- National Guideline and Standard for Environment Pollution Control – 1991
- National Policy on Environment (Revised) 1999
- Federal Ministry of Environment – 1999.

These were some of the environmental policies floated by different governments in the past since environmental abuse started enjoying a global concern. Governments followed up some of these policies with committees for monitoring and implementation. These indicated that different governments in the past did not fold their arms regarding environmental safety in Nigeria. However, the points remain around the following issues:

- What is the nature of environmental abuse in Nigeria?
- How had development affected environmental issues in Nigeria?
- To what extent have government policies being effective in checkmating environmental abuse in Nigeria?
- To what extent was the role of the criminal justice system emphasized with the enabling conditions to function effectively with regards to environmental safety?

Somehow, both the social and political resentments generating from the Niger Delta region in Nigeria, started as complaints against environmental abuse and official neglect. Environment degradation as a result of oil exploration in the Niger Delta region in Nigeria has been contributing significantly to violent conflicts that are heating the polity (Ugwuoke, 2010: 36). This violation of environmental safety in the Niger Delta region has led to other forms of circle

of criminal violence like armed robbery, murder, arson, kidnapping, rape, pipeline vandalization, aggravated assault and numerous threats to violence. As a result, national security has been endangered, political stability suffered and the pace of economic development slowed. Apart from the complexity of processing the criminality arising from environmental abuse, the spill-over effects had generated and have continued to generate other forms of violent criminality which have contributed in exposing the inadequacies of the judicial system in Nigeria.

THE NATURE OF ENVIRONMENTAL ABUSE

Throughout the developing world, rapid structural economic changes have resulted in increasing pressure on the environment (Haynes, 2008: 136). Environmental degradation has made life difficult for the people of Nigeria especially in the Niger Delta as economic activities have fallen almost into a state of ruin. It is argued that over 40 years of ecological devastation and neglect caused by oil explorations have brought sufferings to the people of Niger Delta (Folaranmi, 2017; Bisina, 2003). Environmental abuse has the prospect of resulting to various forms of problems like air pollution, water pollution, solid waste and resource depletion (Gidden, 2009). This creates the complex problems of *sustainable environment* which is seen as 'a world system that takes into account the limits of the environment, to produce enough material goods for everyone's needs, and leaves a heritage of a sound environment for the next generation' (Henslin, 2010: 668). The contemporary environmental problem is a product of industrialization as agents of global economy. Currently, China is on the top of polluted countries as it has 36 out of 40 most polluted cities in the world (World Bank, 2007). It is noted that in China, the Yangtze River serves as industrial sewer for the nine thousand chemical plants located along its banks (Zakaria, 2008).

The issues in enforcement of environmental safety are always problematic. That is to say, it is not easy to articulate and enforce environment laws. This is because, most activities that involve environmental violations have to do with the politics and development and the economy. Moreso, corporate crime offences committed by legitimate business organizations remain largely beyond the reach of the criminal justice systems since those crimes are subject to very different processes of surveillance and investigation in comparison to the crimes committed by relatively powerless, lower status individuals (Whyte, 2004). It also involves the problem of clear definition of the nature of the offences. This implies that 'developing effective laws to protect the environment is a complex problem. It is far easier to define the crimes of murder and theft than to define acts of pollution, which are infinitely varied' (Adler, Mueller and Laufer, 1998: 296). This is pointing to the fact about the difficulty in drawing a line between the positive and negative aspects of business activities in the process of polluting the environment that will constitute hazard to land, water, air, animal and human safety. This led to the following observation:

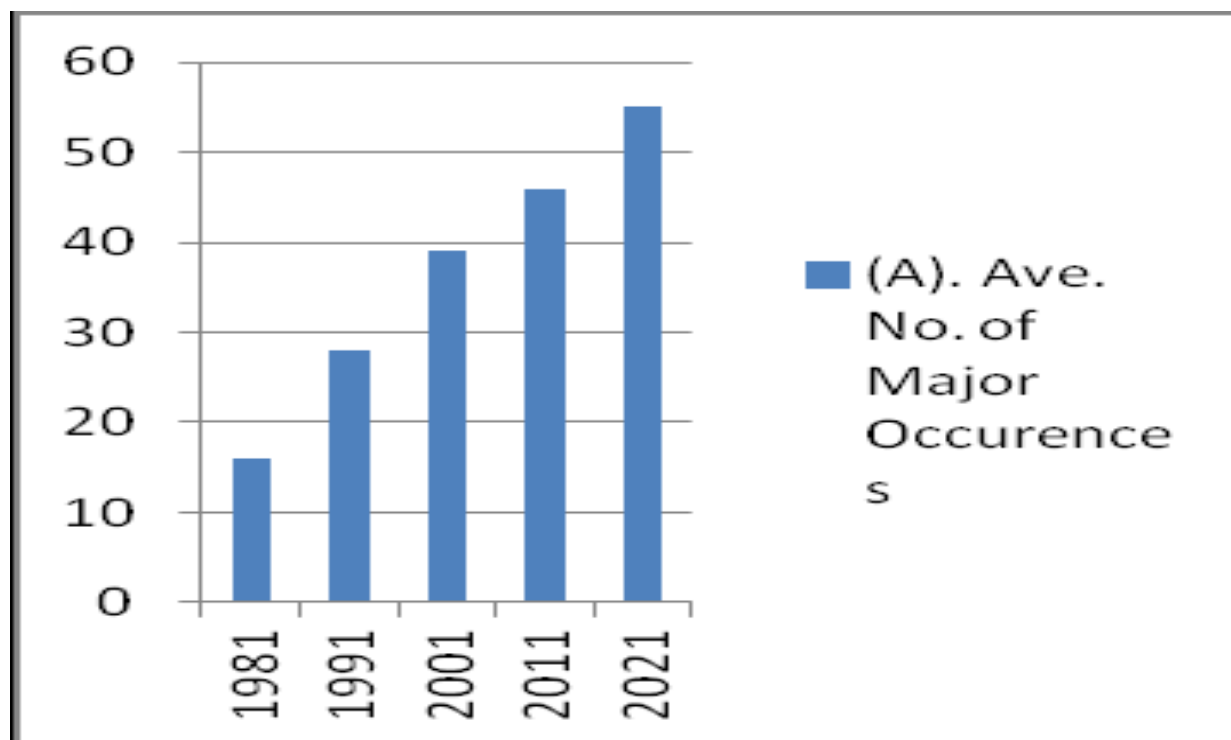
A particular challenge is the separation of harmful activities from socially useful ones. Moreover, pollution is hard to quantify. How much of a chemical must be discharged into water before the discharge is considered noxious and subjects the polluter to punishment? Discharge of a gallon by one polluter may not warrant punishment, and a small quantity may not even be detectable. But what do we do with a hundred polluters, each of whom discharges a gallon? (Adler et al, 1998: 297).

This has clarified further the problems of defining and enforcing environmental regulations. While some of the emphasis here may be narrowed to individual contributions to pollution, the issues involved in the environmental pollution in the Niger Delta region are a different one. In the case of the Niger Delta, the level of environmental pollution is high and it is as a result of business activities by the Multinational Oil Corporations. The nation's blessing of crude oil has

turned out to be a curse to the people of oil producing communities in the Niger Delta Region where the physical environment had been highly degraded and the people of the area exposed to various environmentally induced illness, some of which, previously unknown to modern medicine (Ugwuoke, 2010; Agbo, 2001) This in a way, could be seen as a corporate criminality on the basis of environmental crime. The enforcement of environmental regulations against the oil companies in Nigeria is compounded by the politics of development and national economy as earlier highlighted. This appears to overshadow the potency of the criminal justice system and its ability to process the cases arising from environmental crimes in Nigeria. Enger and Smith (2006: 464), observed that 'national security may no longer be about fighting forces and weaponry alone as it also relates increasingly to watersheds, croplands, forests, climate, and other factors rarely considered by military experts and political leaders but that, when taken together, deserve to be viewed as equally crucial to a nation's security as are military factors'. Viewed critically from the point of national security, the turmoil in the Niger Delta hinged on the protest against environmental degradation. This has led to various forms of criminal violence including a globally publicized armed confrontation between the Niger Delta militants and Nigerian security forces. This can justify the view that environmental problems can endanger the national security. In a nutshell, 'the environmental problems that exist today reflect the use of technologies developed around the world (Appelbaum & Chambliss, 1995:524).

Despite the numerous environmental laws enacted to safeguard the environment, environmental abuse remains a constant denomination in our fight against extinction. Specifically, willful environmental abuses have continued unabated. Environmental abuse in this context could be defined as any addition or subtraction to soil, water and air that jeopardizes healthy existence of living organisms. Similarly, Mahoney (1999) assert that the United Kingdom's Protection of Environment Act (1990) declares pollution of the environment as what is released into any environmental medium as a result of human activity which is capable of causing harm to human or other living organisms supported by the environment.

Among the several environmental abuses perpetrated by man two informed the need for this study. The most unabated environmental abuse in Nigeria and most developing nations today is irrational annexation of water ways for physical development. This invariably contributed to the yearly flood threat and incidence recorded in Nigeria. Aderogba (2012), assert that activities such as road construction, residential and commercial buildings, hospital, filling stations etc. reduced the channel of water and some have attempted to divert their natural courses. Consequently, since every construction demand concrete surfaces all of these have increased surface run off water from rainfall, especially in cities. In most cases, even after the sensitization of the public on the need to preserve and utilize available natural resources for the advantages of current and yet to come generations, people tend to focus on now, only to end up jeopardizing the future. Figure I present a picture of future dangers.



Source: Aderogba (2012).

The other form of environmental abuse pressing to this work is environmental noise pollution. This is a form of environmental abuse that threatens health and well-being of the people. Noise pollution has assumed alarming proportions of environmental abuse in Nigeria. In Nigeria, there is no legal framework upon which noise pollution can be abated. FEPA in Nigeria only provided daily noise exposure limits for workers in industry (i.e., 90 dB (A) for 8 hours exposure). In short, the Nigerian government and her citizenry appear not to be conscious of the present and future hazards in their environment. No wonder nothing is done by the government and public to expunge loud/noisy open space, street to street advert by most of the leading herbal medicine dealers, including that of motor packs, worship centres among others (Oyedepo, 2012). Unless and until measures are taken to stipulate the acceptable volume of sound, the wave of unplanned urbanisation and industrialization may complicate the problem so much that it will become incurable.

DEVELOPMENT AND ENVIRONMENTAL ISSUES IN NIGERIA

The notion that environmental problems associated with massive industrialization are exclusive problems of the developed nations is now a thing of the past, since it has become clear that massive environmental degradation has occurred in the developing countries (Field and Field, 2009). They argued that in the developing countries, rural areas have seen the impact of environmental devastation with attendant large-scale soil erosion, water – quality deterioration, deforestation and the declining soil productivity. Field and Field (2009: 401) cited in a recent World Bank assessments on the damaging impact of environmental problems in developing countries as follows:

- 5 to 6 million people die each year in developing countries due to waterborne diseases and air pollution.
- Economic costs of environmental degradation have been estimated at 4 to 8 percent of GDP a year in many developing countries.
- Climate change threatens to further undermine long term development and the ability of many poor people to escape poverty.

The developing nations are in a dilemma of difficult choice between the two sides of development angles. The choice of strict enforcement of environmental regulations and the slow down on development pace or, accelerating their development pace with attendant exposure to environmental harms. The implication is that the 'developing countries, according to this view, cannot afford the high levels of environmental quality sought in the developed world because this would mean lower monetary incomes and a lessened capacity to support their growing population (Field and Field, 2009: 403). The authors maintained that the developing countries act as *pollution havens* for the firms who are running away from the strict environmental regulations of the developed countries, since developing countries are willing to compromise environmental safety in an exchange for enhanced development programme. This they argued is seen as *The Pollution-Haven Hypothesis*, which stated thus:

- That stringent environmental standard in industrialized countries is causing some firms, especially *pollution-intensive* ones to flee to countries with less stringent standards.
- That some developing countries have tried with some success to attract *pollution-intensive* firms with the promise of lower *pollution-control* standards in the hope of bolstering their rates of economic growth.

'Another important issues is the failure that makes the outcome of public policy somewhat problematic which relates to government failure as a result of systematic tendencies and incentives within legislatures and regulating agencies that militate against the attainment of efficient and equitable public policy' (Field and Field, 2009: 192). Furthermore, the authors noted that the environmental issues are embedded on the policy process of political phenomena in which the policy outcomes are affected by the vagaries of political horse-trading that most often result in a kind of public policy that may not advance the welfare of the society. 'The ways in which nation-states and other levels of government attempt to deal with environmental concerns is contingent upon the class character of political power, and the interests bound up with different forms of class rule' (White, 2008: 217 - 218). White however argued that, it is very important to regulate environmental harms, whatever their specific nature, origins and dynamics.

ENFORCEMENT OF ENVIRONMENTAL REGULATIONS

To protect environment, in the United States, the Environmental Protection Agency, has successfully prosecuted significant violations of environmental laws ranging from false environmental data, hazardous waste dumping, industrial ocean dumping, oil spills that cause damages to waterways, wetland, beaches, and illegal handling of hazardous substances that exposed the citizens to potentially serious illness (Siegel, 2010: 158). Furthermore, 'environmental crime prosecution - a field that mixes elements of law, public health and science, has emerged as a new area of specialization with dramatic increase in both federal and local environmental crime prosecutions' (Siegel, 2010: 388). Also, Inciardi (2002:91) noted that 'what is known is that the cruise industry has long been found guilty of violating environmental laws'. He stated that, in 1999, for example, Royal Caribbean Cruises agreed to pay a record \$18 million fine as part of a plea agreement involving 21 federal felony counts for deliberately dumping waste oil, hazardous chemicals, and other pollutants in United States harbours and coastal waters. Consequently, since dumping of hazardous substances at sea appears to be a regular activities of many ocean-going voyages, other cruise shiplines have been found guilty of similar environmental offences (Inciardi, 2002). Most countries have their relevant agencies that are expected to respond to environmental matters based on their socio-political and economic climate. White (2008: 184), outlined some of the process through which regulations of environmental violations are checked as follow:

- Regulating environment crime through administration of environmental protection legislation;
- Educating the community about environmental issues;
- Reporting on the state of environment to state/provincial or national legislature and other relevant bodies.

White stated that the 'implementation of this mandate includes protecting and conserving the natural environment, promoting the sustainable use of natural capital, ensuring a clean environment and reducing risks to human health'.

NIGERIA CRIMINAL JUSTICE SYSTEM AND ENVIRONMENTAL ABUSE

The criminal justice system and criminal liability for offences against the environment can be considered to reflect a fraction of the broader concept of environmental justice. Though, environmental justice has become an important component of domestic and international legislation all over the world, it has attracted very little attention from the criminal justice system. Martins (2015) assert that, in Nigeria as well as most other developing countries, the government mostly preoccupy themselves with the provision of basic social amenities. Environmental justice was treated as both esoteric and an attempt to slow down the pace of industrialization. These ideas however, met a brick wall in 1988 when the illegal dumping of toxic waste of Italian origin was discovered.

The reaction of the government to this toxic dump supported the expectation for proper adjudication of environmental offences, but with weak foundation and choosing fast industrialization over environmental safety made environmental justice to be neither here nor there. Martins (2015) affirmed that, The Federal Environmental Protection Agency was created and a national policy on environment was launched. These two instruments though coming 16 years after the Stockholm conference put Nigerians in the forefront in Nigeria and somehow equal with a number of developed countries. However, unlike the developed countries, Nigeria was starting *de novo* without any industrial pollution law or an enforcement tradition and in a period of rapid dwindling economic fortunes. The absence of pollution waste management laws, the lack of tradition of enforcement, the expectations of a restive press and a populace sensitive to toxic waste scares have all compounded the challenge of environmental enforcement in Nigeria.

CONCLUSION

Environmental issues constitute global debates in terms of the hazards it pose to human communities and the attendant problems of damages and injustice. The environmental abuse from Nigerian experience attracts global concern. In spite of the level of environmental degradation in Nigeria, criminal justice system has not been effective in responding to criminal activities resulting from environmental abuse. Consequently, the situation stimulates public concern (White, 2008). In critical assessment of environmental issues in Nigeria, this study supported the views that developing countries compromise safety standard to favour economic growth by making their countries a *Pollution Heaven* for individual corporations (Field & Field, 2009).

It is important to reaffirm that though from 1988 to 1999, government in Nigeria came up with a number of environmental policies in an attempt to arrest the emerging environmental challenges and equally prevent the foreseen danger of global warming, desertification, alarming lack of sound awareness and most likely extinction (Adeyemo, 2006). However, the implementation of these noble policies cannot be said to share similar enthusiasm, hence, more devastating activities went unchecked (Bisina, 2003). Although, environmental protection

agencies are visible in the prosecution of false environmental data, hazardous waste dumping, industrial-ocean dumping, oil spill and illegal logging; they do almost not exist when it comes to preservation of green areas and water ways from unlawful constructions, sound pollution and air pollution among others.

The interest of this paper among other things, is to incorporate the concept of ecology (i.e. complex interaction of non- human nature, including its abiotic components: air, water, soil and its biotic components: plants, animals, fungi, etc.) to the folk of citizens. In essence, Ecological Citizenship and Ecological Justice should be the core of societal reorientation. If this is done, human beings will acknowledge that:

- They are merely one component of the complex ecosystem thus, the extension of moral co-existing to include non-human nature.
- Environmental hazard may have global trans-boundary consequences such as global warming and season alteration.
- Finally, present generations should act in ways that will ensure the existence and quality of future generation.

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