

# The Challenge of Globalization and Transnational Environmental Crime

Damfebo K. Derri\* Grace Oruwari Popoola\*\*

## ABSTRACT

Globalisation is a concept used in describing the world as a small compact-village. Viewed in this perspective, what happens in one part of the globe easily gets affected by all other parts. Thus, environmental crimes committed in one country can easily permeate other countries due to easy communication and transportation, which are associated with globalisation. Globalisation, therefore has important consequences on environmental crimes. The challenges or consequences (both negative and positive) of globalisation on transnational environmental crimes are considered in this article.

**KEYWORDS:** Globalization; Transnational Crime; Environmental Crime; Hazardous Wastes

## 1. INTRODUCTION

Globalisation has become an everyday word associated with ‘compressing’ and making the world ‘smaller’ for easy transportation and communication. With the world becoming a small global village, environmental crimes of transnational or multinational origin can have direct effect on different countries. Thus transnational activity takes place faster and more easily. Vast numbers of people can now do very often and quickly what few people were able to do only occasionally and slowly in the past.<sup>1</sup> Globalization has important consequences or challenges on transnational environmental crime. This article examines these challenges. In doing this, the effects, types and the factors favouring transnational environmental crime as a result of globalization are also considered.

## 2. DEFINITION OF CONCEPTS

Words which have technical meaning and which occur repeatedly are explained in this section.

### 2.1 GLOBALIZATION

Globalization can be described as the closer integration of countries and peoples of the world which has been brought about by the enormous reduction of costs of transportation and communication and the breaking down of artificial barriers to the flow of goods, services, capital, knowledge and people across borders.<sup>2</sup>

### 2.2 ENVIRONMENTAL CRIME

Various writers have attempted to define what is meant by an environmental crime.<sup>3</sup> As with other key terms in environmental law, these definitions tend to reflect different perspectives. According to Clifford, An environmental crime is an act committed with the intent to harm or with a potential to cause harm to ecological and/or biological systems and for the purpose of securing business or personal advantage.<sup>4</sup> To Situ and Emmons, An environmental crime is an unauthorised act or omission that violates the law and is therefore subject to criminal prosecution and criminal sanction. This offence harms or endangers people’s physical safety or health as well as the environment itself. It serves the interests of either organisations – typically corporations – or individuals.<sup>5</sup> Environmental crime includes littering, abandoned vehicles, graffiti, fly posting, dog fouling, fly-tipping, dumped business waste, vandalism, abandoned shopping trolleys and noise nuisance.<sup>6</sup> Also, environmental crime includes all offences either created by statute or developed under the common law that relate to the environment.<sup>7</sup>

The above definitions reflect different perspectives on environmental crime, from moral and physical to legal and local amenity-led perspectives. Each of these perspectives characterize environmental crime differently

\* Lecturer and Head, Department of Private and Property Law, Niger Delta University, Bayelsa State, Nigeria.

\*\* Lecturer, Faculty of Law, Niger Delta University, Bayelsa State, Nigeria.

<sup>1</sup> Keenan, P. J., “The New Deterrence: Crime and Policy in the Age of Globalization.” (2006) *Iowa L. Rev.* P.505.

<sup>2</sup> This has given impetus and value to fostering human rights, protecting the environment and improving the overall economic, social and living conditions of fellow humans. See Nelken, d. “Culture, International Norms, and Legal Change in East Asia.” (2006) *Mich J. Int’l.* p.933

<sup>3</sup> Bell Stuart & McGillivray Donald. *Environmental Law*. 6<sup>th</sup> ed. (Oxford: Oxford University Press, 2006), 277.

<sup>4</sup> Clifford, M. *Environmental Crime Enforcement, Policy and Social Responsibility*. (Gaithersburg: Aspen, 1998), 26.

<sup>5</sup> Situ, Y., and Emmons, D. *Environmental Crime: The Criminal Justice System’s Role in Protecting the Environment*. (Thousand Oaks: Sage, 2000), 3.

<sup>6</sup> [www.together.gov.uk](http://www.together.gov.uk)

<sup>7</sup> See Environmental Audit Committee: Session 2003-4, Sixth Report, Environmental Crime

from a broad interpretation incorporating the notion of environmental harm which may be lawful as a crime to more legalistic definitions which place law at the centre of defining what is 'right' and 'wrong'. The definition of environmental crime matters because it helps to frame many of the key aspects of criminal liability for environmental harm – whether an activity is viewed as a technical regulatory breach or a 'crime against the environment'; whether liability for environmental crime should be strict and if so what the justification is for doing so; the extent to which offenders should be viewed as truly criminal; the attitudes that should be taken towards enforcing the law; and the sanctions which should be imposed for breach.

### 2.3. TRANSNATIONAL ENVIRONMENTAL CRIME

The word "transnational" means all-national, multinational or international, while environmental<sup>1</sup> crime<sup>2</sup> means harm done to the environment due to illegal acts by a person. Such illegal acts include illegal trade in wildlife, smuggling of Ozone Depleting Substances (ODS), illegal trade in hazardous waste, unregulated fishing, illegal logging and the associated trade in stolen timber. Thus, transnational environmental crime means illegal acts which directly cause harm to the environment due to the acts of multinational or transnational bodies such as multinational, transnational or international oil companies. International environmental crime also means an activity that violates the letter and spirit of an environmental treaty and the implementing national legislation. International environmental crime is crime exported from one country to another. Examples are crimes committed by multinational oil companies. For instance, oil has to be transported by ships, railway and through extensive pipelines from producing to consuming areas. Also, the Torrey Canyon, an ocean tanker was grounded off the coast of England on the 18<sup>th</sup> of March 1967, causing large oil spill. And in April, 2010, there was a major oil spill in the Gulf of Mexico which involved compensation cost of \$44b. When the above stated illegal acts cut across different nations, they assume transnational or international character.

Transnational environmental crimes involve breach of international treaties designed to curb trade in substances harmful to the environment or to restrict trade in endangered species. Trade in wildlife is controlled by the Convention on International Trade in Endangered Species (CITES); The trade in ODS is regulated by the Montreal Protocol, Hazardous waste shipment is controlled by the Basel Convention and Bamako Convention. Neither illegal fishing nor illegal logging is covered by existing international regulations. Perceived as victimless and low on the priority list, such transnational crimes often fail to prompt the required response from governments and the international community. In reality, their impacts affect all of society. For example, illegal logging contributes to deforestation. It deprives forest communities of vital livelihood, causes ecological problems like flooding and is a major contributor to climate change.<sup>3</sup> Illegal trade in ODS like the refrigerant chemicals chlorofluorocarbons (CFCs) contribute to a thinning of ozone layer, which causes human health problems like cancer.<sup>4</sup>

### 3. NEGATIVE EFFECTS OF GLOBALIZATION

Globalization is a very controversial issue today. Opinions vary considerably over its pros and cons. Here we take a look at its negative effects.

Globalization is the buzzword of today. The economies of the world are being increasingly integrated. Mobile phones and Internet have brought people closer. The world is becoming a smaller place. Goods which were once confined to western countries, are available across the globe. Work can be outsourced to any part of the world that has an internet connection. Because of improvements in traffic infrastructure, one is able to reach one's destination in a relatively short span of time.

Opponents of globalization point out to its negative effects. Some of them are listed below. Developed nations have outsourced manufacturing and white collar jobs. That means less jobs for their people. This has happened because manufacturing work is outsourced to developing nations like China where the cost of manufacturing goods and wages are lower. Programmers, editors, scientists and accountants have lost their jobs due to outsourcing to cheaper locations like India. Globalization has led to exploitation of labour. Prisoner and

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<sup>1</sup> The concept of environment is difficult to define. It is generally considered to be a phrase which has no singular definition as it is a relational concept. It is usually defined very simply as consisting of land, air and water, flora and fauna and natural ecosystem. But see generally Black's Law Dictionary (Group Publishing Co. New York, 6<sup>th</sup> ed.); The New Webster's Dictionary of English Language, (Lexicon Publications Inc., Guild Group, New York, 1993); The Concise Oxford Dictionary (Clarendon Press, Oxford, 1995). Oludayo, A. G., Environmental Law and Practice in Nigeria (Lagos: University of Lagos Press) pp.3-4.

<sup>2</sup> A crime is an illegal act which causes harm to another.

<sup>3</sup> The United Nations Framework Convention on Climate Change is a major convention that seeks to regulate global climate change. For a detailed understanding of the historical development of this Convention, see the seminal article of D. Bodamsky, "The United Nations Framework Convention on Climate Change: A Commentary," Yale J. Int'l. (1993) 451. Available at <http://www.greggbarak.com/custom4.html> (visited on February 2, 2001)

<sup>4</sup> See Oludayo, A. G., op cit p.394

child workers are used to work in inhumane conditions. Safety standards are ignored to production.

1. Job insecurity – Earlier, people had stable, permanent jobs. Now people live in constant dread of losing their jobs to competition. Increased job competition has led to reduction in wages and consequently lower standards of living.
2. Terrorists have access to sophisticated weapons enhancing their ability to inflict damage.
3. Companies have set up industries causing pollution in countries with poor regulation of pollution. The benefits of globalization are not universal. The rich are getting richer and the poor are becoming poorer.
4. Bad aspects of foreign cultures are affecting the local cultures through TV and the Internet.
5. Enemy nations can spread propaganda through the Internet.
6. Deadly diseases like HIV/AIDS are being spread by travellers to the remotest corners of the globe.
7. Local industries are being taken over by foreign multinationals.
8. The increase in price has reduced the government's ability to sustain social welfare schemes in developed countries.
9. There is increase in human trafficking.
10. Multinational Companies and corporations which were previously restricted to commercial activities are increasingly influencing political decision.

#### 4. THE POSITIVE ASPECTS OF GLOBALIZATION

Globalization has a positive side as well. Supporters of globalization argue that it is good and beneficial. Some of their arguments are listed below:

1. Globalization has created the concept of outsourcing.
2. Work such as software development, customer support, marketing, accounting and insurance is outsourced to developing countries. So the company that outsourced the work enjoys the benefit of lower costs because the wages in developing countries is far lower than that of developed countries.
3. The workers in the developing countries get employment.
4. Developing countries get access to the latest technology.
5. Increased competition forces companies to lower prices. This benefits the end consumers.
6. Increased media coverage draws the attention of the world to human right violations. This leads to improvement in human rights.<sup>1</sup>

Globalization is a tool that benefits all sections of mankind. But one cannot ignore its negative effects. These must be addressed for the world's peace and prosperity.

#### 5. TYPES OF TRANSNATIONAL ENVIRONMENTAL CRIME

Some of the types of transnational environmental crimes are:

- (a) **Illegal Logging Causing Deforestation** – The spread of agriculture and commercial timber felling is a major source of transnational environmental crime. In 2005, a syndicate involved in timber theft from Indonesia to China was exposed
- (b) **Crude Oil Leakage from Off-Shore Petroleum Installations** – Decommissioning of offshore petroleum installations and crude oil leakage from offshore installations is another source of transnational environmental crime. Oil pollution destroys soil, farmland, water, crops, economic trees and dislocates settlements.
- (c) **Release of Geothermal Steam** – Geothermal Steam is emitted into the atmosphere during the process of oil drilling. The steam consists of hydrogen sulphide, methane and ammonia. On reaching the earth's surface, these gases undergo chemical reactions to produce acid rain which is harmful to buildings, plants and animals including human beings.
- (d) **Dumping of Hazardous Wastes** – Hazardous waste is poisonous, toxic, injurious and contains radioactive substances and may subject any person to the risk of death. Lead, arsenic, cadmium and mercury and their compounds from industrial, mining and smelting activities are potentially toxic and poisonous. Hazardous waste may be imported,<sup>2</sup> or buried underground, but later re-surfaced.<sup>3</sup>
- (e) **Trade in Endangered Species and Chlorofluorocarbons (CFCs)** – Trade in endangered species<sup>4</sup> and chlorofluorocarbons are veritable sources of transnational environmental crimes.<sup>5</sup>

<sup>1</sup> Available at [http://www.buzzle.com/article/negative\\_effect\\_of\\_globalization.html](http://www.buzzle.com/article/negative_effect_of_globalization.html) (accessed February 21, 2011)

<sup>2</sup> The Koko incident of 1988 is an example where an Italian businessman colluded with desperate lucre-conscious Nigerian to ship canoes of toxic waste into the port of Koko at the outskirts of Warri in Delta State.

<sup>3</sup> The mercury poisoning in Minamata, Japan 1953 – 1960 is a good example. See also the Love Canal Incidence of 1977.

<sup>4</sup> In 2002, a syndicate involved in smuggling ivory from Zambia through Malawi to Singapore and Hong Kong was smashed when the Singaporean authorities seized a shipment of a large quantity of ivory.

<sup>5</sup> Oludayo, A. G., op cit. At p.399.

## **6. GLOBALIZATION AND FACTORS FAVOURING TRANSNATIONAL ENVIRONMENTAL CRIME**

During the last two decades, neo-liberal globalization has resulted in significant growth in transnational environmental crimes. Some of the more important developments and influential factors are:

### **6.1. THE CHANGED POST-COLD WAR LANDSCAPE**

The end of the Cold War resulted in the breakdown of political and economic barriers. This change brought relative piece which allowed international criminals to expand their networks and increase their cooperation in illicit activities. People are now trained in skills that are suitable for organized crime.

### **6.2. ECONOMIC AND TRADE LIBERALIZATION**

Globalization has increased economic interdependence and liberalization. Countries have evolved policies of economic reforms to boost trade and become more competitive in the global market place. Criminals have taken advantage of this to establish front companies that facilitate smuggling, money laundering and environmental crimes. Bilateral or multilateral economic treaties or agreements reducing trade barriers among nations of the world have increased the volume of international trade. Criminals and terrorist groups have taken advantage of the high and growing volume of legitimate trade to smuggle wastes and other contrabands across national boundaries.

### **6.3. TECHNOLOGICAL ADVANCEMENTS**

The last decade has presented revolutionary advancements in information and communication technologies that have brought the world closer together. Modern telecommunications and information systems that underpin legitimate, commercial activities in today's fast-paced global market are easily used by criminal networks as they are by legal businesses. Commercially available and constantly improving state-of-the-art communications equipment greatly facilitates international criminal transactions including making deals and coordinating the large volume of illicit trade. In addition to the reliability and swiftness of communications, constantly evolving and improving technology like disposable phones, also affords criminals considerable security and privilege of being shielded from law enforcement detection.

### **6.4. THROUGH THE USE OF WORLD WIDE WEB COMPUTERS**

International criminals have an unprecedented capability to obtain, process and protect information and sidestep law enforcement investigations. They can use the interactive capabilities of advanced computers and telecommunication systems to plot marketing strategies for illicit commodities, to map the fastest and most efficient routes and methods for smuggling and moving money in financial systems, and to mislead law enforcement or banking security. International criminals also take advantage of the speed and magnitude of financial transactions and the fact that there are few safeguards to prevent abuse of the system to move large amounts of money without scrutiny. Some criminal organisations also appear to be adept at using technology for counterintelligence purposes and for tracking law enforcement activities.

## **7. THE CHALLENGES**

Globalization has brought a lot of challenges to transnational environmental crime. These challenges include;

### **7.1. THE SLOWNESS OF THE LAW TO UPDATE ITSELF AND ADAPT TO CHANGING CONDITIONS**

Globalization brought prosperity and improvements in many respects. Thus, the overall steady improvement of human condition coupled with the ease of shipping, travel, communications, information, transfer of funds and abolition of many borders create some of the best conditions for transnational environmental crime to flourish. The crime is also a function of the slowness of the law to update itself and respond to the rapidity changing conditions on the terrain. This is a serious challenge.

### **7.2. CORRUPTION OF PUBLIC OFFICERS**

Global economic and legal conditions foreshadow an increase in transnational environmental crimes because criminal actors can avoid liability under existing legal theories while they simultaneously increase their operations across the globe since a whole human chain of decision makers and bureaucrats with whom actors deal are vulnerable to bribery and corruption.

For example, undercover Russian police officers in the city of Vladivostok recently trailed two investigators from environmental groups posing as eager purchasers of Siberian tiger skins from a corrupt official. When the deal was down, the officers arrested the wildlife trader on the spot. Russian investigators earlier had infiltrated the wildtrade crime ring and determined that it was raking in some \$5 million a year from smuggling wild

ginseng, tiger skins and bear paws and gall bladders across the Russian border.<sup>1</sup>

### 7.3. POVERTY AND THE DESIRE TO EARN FOREIGN EXCHANGE

Globalization under its various forms can also impact the behaviour of countries and ensnare them in the wide network of globalized transnational environmental crime. While countries may sign and ratify all sorts of treaties and international agreements including those on transnational environmental crime, they may turn a blind eye and even favour the importation of wastes, the smuggling in of CFCs and the export of wildlife and endangered species taking place in or out of their territories because of poverty and the foreign exchange element involved which they desperately need. This foreign exchange link may at times influence a government to turn a blind eye or not to enforce the law against the import and export of such commodities. This indeed, is a serious challenge.

### 7.4. THE CHALLENGE OF USING VIOLENCE TO TRADE IN WILDLIFE AND ILLEGAL DEFORESTATION

Globalization facilitates demand and supply of certain types of commodities that can elicit considerable violence as they are traded. This violence involves acts and areas that include murder and serious wounding, psychological harm, and damage to other living creatures and to the environment.<sup>2</sup>

One such commodity is the commerce in rhinoceros horns. Prohibited under the Convention on International Trade in Endangered species<sup>3</sup> (CITES), a thriving illegal market operates in China, Taiwan, South Korea, Thailand, Vietnam, Macau and Yemen. Rhino horns are smuggled over land through China, by international criminal syndicates. This trade has been illegal in China since 1993. The quest for these horns, sought after because in traditional Chinese medicine they are believed to increase sexual vigour and endurance,<sup>4</sup> has transformed the areas where the rhinoceros live into killing fields.<sup>5</sup>

Poaching has exploded especially with increased wealth spreading to China. Tiger penises are thought to have aphrodisiacal powers as well, especially in Korea, Vietnam and Indonesia.<sup>6</sup> Endangered Sumatran tigers are especially killed for this item. Bear and elephants are killed for similar purposes. The same is true of sharks and other endangered fishes.

Users may perpetuate crimes of violence to raise the money to buy them. Traffickers and suppliers use violence for a variety of reasons. To obtain and defend their control and possession of the commodity, to protect their shipments, to guarantee for themselves a market free of competitors, to distribute goods, to protect their earnings. Other areas where there is strong violence component is illegal deforestation.

### 7.5. IMPLEMENTATION OF AGREEMENTS

The number of international agreements has exploded as countries are awoken to the seriousness of trans-boundary and global ecological threats. But reaching such agreements is only the first step. The larger challenge is seeing that the ideals expressed in them become reality. What is needed is not necessarily more agreements but a commitment to breathe life into the hundreds of existing agreements by implementing and enforcing them.<sup>7</sup>

Countries that ratify treaties are responsible for upholding them by enacting and enforcing the necessary domestic laws.<sup>8</sup> This requires the backing of businesses, consumers<sup>9</sup> and other constituencies, which may not be

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<sup>1</sup> Mastny, Lisa, French, Hilary (2002) "Crimes of Global Nature: Forging Environmental Treaties is difficult. Enforcing them is even tougher." *World Watch*

<sup>2</sup> One of the best examples is the so-called "blood diamond" from West Africa. The diamond is a stone artfully marketed as an essential symbol of love, caring, fidelity and engagement to millions of women involved in a relationship they hope will lead to marriage. We know of thousands of people who were killed, cruelly mutilated, their limbs cut off with machete, displaced, raped, and abandoned, especially the elderly and the children now without parents or family, in the name of those who controlled diamond mines and their traffic in West and Central Africa. See [www.Un.org/peace/africa/Diamond.html](http://www.Un.org/peace/africa/Diamond.html). Nigeria has been expelled from CITES.

<sup>3</sup> [www.CITES.org](http://www.CITES.org).

<sup>4</sup> There is no scientific basis for this belief. The rhino horn is mostly composed of keratin also common in nails, hair, skin and teeth. The fact, however, does not curb the increasing demand for it.

<sup>5</sup> [www.ecoafrika-travel.com/.../rhino-threatened-by-hunting/](http://www.ecoafrika-travel.com/.../rhino-threatened-by-hunting/)

<sup>6</sup> *Ibid.*

<sup>7</sup> Available at <http://www.greggbarak.com/custom4.html> (visited February 2, 2011)

<sup>8</sup> See section 12 of the Constitution of the Federal Republic of Nigeria, 1999.

<sup>9</sup> In February 2001, armed troops and fisheries officials on two Australian navy ships and helicopter boarded and seized the *Volga* and the *Lena*, two Russian-flagged fishing vessels operating near Heart Island, some 2,200 nautical miles Southwest of Perth. The two ships were found to be carrying about 20 tonnes of illegally caught Patagonian toothfish in their holds, in violation of conservation agreements negotiated under the auspices of the Commission for the Conservation of Antarctic Marine Living Resources. Few months after February, 2001, nearly 60 restaurants and caterers in Washington DC pledged to keep the fish off their menus. More than 90 restaurants in Los Angeles area did the same thing. Similar promises were made by chefs in Northern California, Chicago and Houston. In Chile, the Patagonian toothfish is known as sea bass. But many



easily secured. This is a serious challenge. Countries with strong fossil fuel industries, for instance may meet staunch resistance to international rules to mitigate climate change.<sup>1</sup> And countries where natural resources industries are politically powerful will probably find it difficult to adequately enforce environmental treaties designed to regulate resource related activities. The effect has been to expand trafficking and smuggling in a number of restricted substances, an increasingly urgent problem that is beginning to stimulate a stronger international response.

## 7.6. GLOBALIZATION OF BUSINESSES

The increased volume of international commercial transactions brought about by globalization makes governments relax economic regulations in order to boost commerce and facilitate financial transactions and the rapid transshipment of products, especially for export. Thus, the shipping speed made possible by computer software also has helped transnational crime ship its products quickly and undetected, taking advantage of the elimination of thorough inspections in the interest of boosting commerce and the speed of delivery. Transnational criminals count on avoiding close scrutiny of their activities. This is a serious challenge.

## 8. INTERNATIONAL RESPONSE TO TRANSNATIONAL ENVIRONMENTAL CRIME

Transnational environmental crime arising from the dumping of toxic wastes was in the increase and received international response in the 80s as a result of many factors.

First the higher domestic disposal costs, stricter national legislation in many developed countries, particularly United States, and increased liability operated as an incentive to export wastes.<sup>2</sup> For example, rather than incinerating waste at higher cost, many generators of waste preferred to dump waste in landfills of developing countries at a lower cost. The strict environmental laws of many developed countries that impose greater liability on generators further fostered export of hazardous waste into developing countries.<sup>3</sup> Second, the environmental laws of many developing countries are lax and permissive. Third, even if a developing country has stringent environmental laws, it often lacks the administrative infrastructure for adequate enforcement. Customs officials may even circumvent national regulations by accepting bribes and ignoring dumping activities.

The international legal framework for the control of transnational environmental crime such as trading and disposal of hazardous waste is contained in Basel Convention on the Control of Transboundary Movement of Hazardous Waste,<sup>4</sup> Bamako Convention on Transboundary Movement and Management of Hazardous Waste Within Africa<sup>5</sup> and other regional agreements.

### 8.1. THE BASEL CONVENTION

The Basel Convention provides a regulatory framework for transboundary movement of toxic wastes and their disposal. It forms part of a complex network of domestic and international efforts to improve hazardous waste management, coupled with efforts to improve the management of chemicals, pesticides, pharmaceuticals and biotechnology. It has three main objectives. The first goal aims at minimizing both the quantum and hazard level of waste generated worldwide. The second objective promotes the disposal of waste as close as possible to the source of generation. The third principle encourages “environmentally sound management of waste” and disposal of hazardous waste.

### 8.2. THE BAMAKO CONVENTION

The apparent or inherent weakness identified in the Basel Convention received attention in the Bamako Convention<sup>6</sup> in 1991. Before then, the Council of Ministers of the Organization of African Unity (OAU)<sup>7</sup> had earlier passed a resolution banning the dumping of nuclear and industrial wastes in Africa.<sup>8</sup> The resolution also declared the dumping of nuclear and industrial wastes in Africa to be a crime against Africa and against African peoples and calls for the clean-up of all the areas contaminated. This was adopted by the Bamako Convention. The Bamako Convention was a significant improvement on the Basel Convention which provided only a regulatory framework while the Bamako Convention produced both regulatory and prohibitory framework.

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Chilean sea bass fans remain unaware that they may be accomplices to a growing phenomenon known as international environmental crime.

<sup>1</sup> The US refused to sign treaties reducing the emission of greenhouse gases.

<sup>2</sup> Oludayo, A. G., op cit at p.316

<sup>3</sup> See generally the United States Comprehensive Environmental Response, Compensation and Liability Act, (CERCLA) 1980; 42 USC ss 9601.

<sup>4</sup> 28 ILM (1989). Nigeria is a signatory to this Convention.

<sup>5</sup> 30 ILM (1991) 775. Nigeria is a signatory to this Convention but is not yet in force.

<sup>6</sup> Bamako, 29<sup>th</sup> January 1991, 30 ILM (1991) 775, not yet in force.

<sup>7</sup> Now African union (AU)

<sup>8</sup> See OAU Resolution CM/Res.1153(XLVIII)

## **9. DOMESTIC RESPONSE TO TRANSNATIONAL ENVIRONMENTAL CRIME**

State intervention through direct enactment of legislation is a good source for control of transnational environmental crime.

### **9.1. THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999**

The Federal Government has promulgated various laws to safeguard the Nigerian environment. The foundation of environmental policy in Nigeria is contained in section 20 of the Constitution of the Federal Republic of Nigeria, 1999. The section provides that “the State shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria.”

The National Assembly was thus mandated to enact laws for the protection of the Nigerian environment.

### **9.2. THE PETROLEUM ACT**

Following the discovery of oil in commercial quantity in 1956 and subsequent discoveries, legislative response was directed at oil pollution arising from oil prospecting and explorative activities in the country. The legislative response began with the promulgation of the Petroleum Act<sup>1</sup> and the regulations made thereunder.

Essentially, the Act does not address the environmental effect of petroleum exploration activities. Most of the regulations are concerned with the safety of personnel working in the oil fields and the safety precautions to be observed in course of oil exploration activities.

### **9.3. THE OIL IN NAVIGABLE WATERS ACT**

The Oil in Navigable Waters Act<sup>2</sup> was another responsive legislation to protect the environment in post-oil discovery era. The Act has direct impact on environmental protection by prohibiting the discharge of oil into the sea and navigable waters. It must be noted that the law domesticated the international obligations assumed by Nigeria under International Convention for the Prevention of Pollution of the Sea by Oil 1954 to 1962.<sup>3</sup> It prohibits the discharge of certain oils into prohibited areas of the sea and territorial waters of Nigeria, imposes obligations on ship owners to install anti-pollution equipment and prescribes penalties for violations.<sup>4</sup> It is also an offence punishable by imprisonment to dump oil into the Nigerian territorial waters with attendant criminal sanctions of fine or imprisonment. The power to enforce the provisions of the Act is vested in the Minister of Transport. Despite the importance of this Act, the penalty for its breach is ridiculous and inadequate given the environmental impacts of oil pollution and cost of remediation.

### **9.4. THE ASSOCIATED GAS RE-INJECTION ACT**

The Associated Gas Re-Injection Act<sup>5</sup> and the regulations made pursuant to the Act represent important legislative concern to address the menace of atmospheric pollution through gas flaring in Nigeria. It was meant to compel companies producing oil and gas in Nigeria to submit preliminary programmes for gas re-injection and detailed plans for implementation of gas re-injection.<sup>6</sup> Section 3 prohibits the flaring of gas produced in association with oil production after 1<sup>st</sup> January 1984, without a written permission of the Minister. Penalties prescribed under this Act in respect of offences created by section 3 include forfeiture of concessions and withholding of all or part of any entitlements of any offending person by the Minister in charge of Petroleum Resources. This Act is very important in controlling the effect of gas flaring on the atmosphere, although it did not succeed in stopping gas flaring after 1<sup>st</sup> January 1984. Again, gas flaring could continue if the company that intends to continue flaring gas after the prescribed date applies and is licensed to continue flaring gas. This is a major shortcoming of this Act. In effect, oil companies could apply and be granted licenses to flare gas.<sup>7</sup>

### **9.5. ENDANGERED SPECIES (CONTROL OF INTERNATIONAL TRADE AND TRAFFIC) ACT<sup>8</sup>**

This Act is aimed at bio-diversity and wildlife conservation. The Act primarily domesticates international obligations assumed by Nigeria under CITES.<sup>9</sup> It also provides the necessary legal framework for the protection,

<sup>1</sup> 1969 No.51 (now Cap P13 LFN 2004)

<sup>2</sup> 1968 No.34 (Now Cap O7 LFN 2004)

<sup>3</sup> See the Long Title to the Oil in Navigable Waters Act.

<sup>4</sup> See Sections 1,3,5 and 6 of the Act.

<sup>5</sup> 1979 No.99 (Now Cap. A25 LFN 2004)

<sup>6</sup> See the Long Title to the Associated Gas Re-Injection Act.

<sup>7</sup> In the landmark case of *Gbemre v SPDC & Ors* Unreported Suit No. FHC/B/CS/53/05, a Federal High Court Judge, C. V. Nworie declared gas flaring a human rights matter and accordingly the learned judge held that the Associated Gas Re-Injection Act and the regulations made thereunder were all illegal, null and void. The judge held that the right to life includes the right to a clean environment.

<sup>8</sup> 1985 No. 11

<sup>9</sup> See the Long Title to the Act. Nigeria is a signatory to the 1973 Convention on International Trade on Endangered Species

conservation and management of Nigeria's wildlife by imposing stringent permit system on persons trading in wildlife. Again, the Act absolutely prohibits international trade in and hunting of certain species of animals regarded as being threatened, listed in the First Schedule to the Act. Certain other species of animals and plants, which may become extinct or threatened if not regulated are listed in the Second Schedule to the Act. The Act further imposes a duty on applicant to obtain permit before any trading could take place.<sup>1</sup>

#### **9.6. THE HARMFUL WASTE ACT<sup>2</sup>**

The Harmful Waste Act prohibits the carrying, depositing and dumping of harmful waste on any land and territorial waters of Nigeria. It prohibits and criminalises activities relating to harmful waste<sup>3</sup> and other related activities. It conferred exclusive jurisdiction on the Federal High Court in respect of criminal trials under the Act. The Act was direct reaction to the dumping of Toxic Wastes in Koko Town near Warri in Delta State by an Italian firm, in 1988. Police officers were conferred with power of search, seizure and arrest without warrant.<sup>4</sup>

#### **9.7. NATIONAL ENVIRONMENTAL STANDARDS AND REGULATION ENFORCEMENT AGENCY (ESTABLISHMENT) ACT, 2007**

This enactment is aimed at protecting and development of the Nigerian environment as well as bio-diversity conservation and sustainable development of Nigeria's natural resources.<sup>5</sup> NESREA is significant in so many respects. It expressly repealed the Federal Environmental Protection Act<sup>6</sup> (FEPA). Secondly, it expressly excludes from its operations the oil and gas sector in so many respects.<sup>7</sup> Thirdly, it provides for the establishment of mobile courts to expeditiously dispense cases of violation of environmental regulations. The establishment of mobile courts is a commendable innovation. Fourthly, sanctions for environmental violation are mainly penal<sup>8</sup> - without corresponding civil remedies for victims of environmental violation. The oil and gas industry is a major player in environmental crimes in Nigeria. Therefore, a law on environmental protection should contain adequate safeguards for this industry. In this regard, it is suggested that NESREA should be a consolidating enactment to consolidate the FEPA rather than repealing it outrightly.<sup>9</sup>

#### **9.8. THE ENVIRONMENTAL IMPACT ASSESSMENT ACT<sup>10</sup>**

As the name implies, this Act is solely concerned with the assessment of the likely adverse effects a proposed project may have on the environment and to provide measures aimed at mitigating the likely effects.<sup>11</sup> Section 60 of the Act creates criminal offences stipulating penalties for non-compliance.

#### **9.9. STATE ENVIRONMENTAL PROTECTION AGENCIES**

The application of any strategy for protecting the environment and conserving national resources calls for cooperation for all concerned especially the Federal, State and Local Governments. States and Local Governments are encouraged to set up their own environmental protection bodies for the purpose of maintaining good environmental quality in their areas. Toward this end, State Environmental Protection Agencies (SEPA) and Ministries of Environment were established. In this direction, many State Governments have introduced environmental laws to complement the federal standard.<sup>12</sup>

#### **9.10. NATIONAL POLICY ON ENVIRONMENT AND NATIONAL AGENDA 21**

The National Policy on Environment was formulated in 1989 after an extensive local and international

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(CITES), but was later expelled from CITES.

<sup>1</sup> See sections 1 and 2 of the Act.

<sup>2</sup> Harmful Waste (Special Criminal Provisions etc) Act.

<sup>3</sup> See section 15 of the Act for the definition of what constitutes "harmful waste" within the meaning of the Act. See also the Long title to the Act.

<sup>4</sup> See sections 6 and 12 of the Act in respect of criminal and civil liabilities.

<sup>5</sup> See the Long Title to the Act and particularly section 2 thereof.

<sup>6</sup> See section 36 of NESREA

<sup>7</sup> See sections 7(g),(h),(j),(k) and (l) and 8(g),(k),(l),(m),(n) and (s) of NESREA

<sup>8</sup> See sections 20 – 27 of NESREA

<sup>9</sup> Derri, D. K., and Abila, S. E., (2009) "A Critical Examination of the National Environmental Standards and Regulation Enforcement Agency (Establishment) Act, 2007 in Emiri and Deiduomo (2009) Eds. *Law and Petroleum Industry in Nigeria* (Lagos: malthouse) 1, 9.

<sup>10</sup> Cap. E12, LFN, 2004

<sup>11</sup> See section 4 of the Act.

<sup>12</sup> See the various Environmental Sanitation Laws of each state of the Federation, for example, Bayelsa State Environmental Sanitation Law (Cap. E5) laws of Bayelsa State, 2006; Environmental Sanitation Authority Law (Cap. E6) Laws of Bayelsa State 2006 and Environmental Development Planning Authority Law (Cap. E4) Laws of Bayelsa State, 2006; Environmental Sanitation Law, 2000 of Lagos State; Environmental Sanitation Law, 1985 of Kaduna State.



consultation, with the overall aim of achieving sustainable development for the country. It also sets in motion strategies of implementation of the policy by formulating environmental guidelines, standards and regulations for industrial pollution, effluent limitation and solid waste management. In addition to National Policy on Environment, there exists a document titled Agenda 21 for Nigerian Environment.<sup>1</sup> The agenda seeks to integrate in holistic manner, environmental policy into development planning at all levels of government and the private sector, intensify the transition to sustainable development; address sectoral priorities, plans, policies and strategies for the major sectors of the economy and simultaneously foster regional and global partnerships.

The implementation of the Agenda is left in the hands of various governmental ministries and departments with the Federal Ministry of Environment as the coordinating Ministry.

### **9.11. ASSESSMENT OF THE DOMESTIC RESPONSE**

Penal laws on Nigerian environment are largely ineffective due to the fact that the sanctions attached to violation are minimal. Secondly, since they are crimes, there is the problem of enforcement. For example, who is the proper person to sue in case of violation. Thirdly, poverty of victims sometimes force them to accept paltry compensation. Fourthly, there is an apparent lack of awareness by environmental crimes. Fifthly, since it is a crime, there is always the evidential burden of proof beyond reasonable doubt.

## **10. RECOMMENDATIONS**

In order to arrest the rising tide of transnational environmental crime, the following suggestions are made.

### **10.1. ATTITUDINAL CHANGE**

The dangers of transnational environmental crime are real, therefore, there should be a change of attitude by all stakeholders towards the crime. To this end, all environmental officials, police, customs and immigration officials as well as other security agencies should ensure that they are alert to their responsibilities without unnecessarily compromising their offices.

### **10.2. POLITICAL WILL**

Most environmental regulations are hardly enforced, so government ministries, parastatals, policy makers and regulatory agencies must have the political will to implement and enforce environmental regulations.

### **10.3. UPDATING OF ENVIRONMENTAL STATUTES AND RATIFICATION OF INTERNATIONAL AGREEMENTS**

Most Nigerian statutes on the environment are out of tune with the emerging technological realities. Accordingly, it is suggested that serious attempts should be made to keep our environmental laws in line with modern trends to make them more stringent. To this end, all international treaties on environment which are yet to be enforced must be ratified and domesticated.

### **10.4. ENVIRONMENT CAMPAIGNS**

It is advocated that there should be sustained environmental campaign to create the desired environmental awareness because some of the environmental problems are associated with lack of awareness of the dangers the crime poses to the environment and mankind

### **10.5. ENFORCEMENT BY THE JUDICIARY**

The constitutional formulation of environmental policy in Nigeria is section 20 of the constitution of the Federal Republic of Nigeria, 1999. This provision is part of the fundamental objectives and directive policies in Chapter II of the Constitution, which is non-justiciable.<sup>2</sup> Similarly, policies formulated under Agenda 21 are non-justiciable.<sup>3</sup> This approach should give way to the more progressive approach whereby environmental issues are regarded as human rights issues so that they should be enforced by the courts. Thus, a more pro-active approach

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<sup>1</sup> The United Nations Conference on Environment and Development (UNCED) held in Rio de Janeiro, Brazil on June 3 – 14, 1992 produced a blue print of action by governments from then into the 21<sup>st</sup> century and beyond. This blue print is known as Agenda 21 and participating countries were required to fashion out a local version of the document to suit their respective peculiar situations and environmental conditions. This Conference was the largest global gathering on environmental matters. It pulled together over 178 Heads of Government from various countries all over the world.

<sup>2</sup> See section 6(6)(c) of the Constitution of the Federal Republic of Nigeria, 1999.

<sup>3</sup> A litigant who wishes to enforce any substantive or procedural right cannot use the documents, as they are not legally binding on the government. As observed by Caldwell: "Policy does not necessarily imply action. A decision not to act in relation to a particular matter may be considered policy ... it may be no more than a declaration of presumed intent – which may or may not be put into effect as actual policy." See Caldwell, L. C., *International Environmental Policy, Emergence and Dimensions* (Duke University press. 1984) p.9

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to enforcement of environmental right is recommended for the judiciary.

#### **10.6. CAPACITY BUILDING**

Training (education) is very important for capacity building. It is accordingly suggested that there should be continuous training to educate people and build their capacity to handle environmental issues and to implement environmental policies. Capacity building is very important in this regard.

#### **11. CONCLUSION**

This article has shown that globalization has encouraged transnational environmental crime to flourish. To combat this trend, all concerned should have a change of attitude towards sustaining and protecting the environment. When this is done all other palliative or remedial measures will be effective.