



Combating Corporation-Induced Environmental Pollution in Nigeria vide Shari'ah Mechanism

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Abstract

The menace of environmental pollution is not limited to a particular clime. The scourge is being felt globally. Efforts to combat the menace are still ongoing at global, regional and national levels. Nigeria, as a sovereign nation, has suffered and is still suffering the menace of environmental pollution. The discovery of crude oil in commercial quantity gave birth to corporation-induced environmental pollution. National effort towards combating corporation-induced pollution gave rise to series of legal frameworks while the country continues to experience environmental degradation. Against this backdrop, this paper looks for options beyond the conventional corporate law vide Shari'ah mechanism. This paper, which employs the Qualitative Research Design, adopts both the doctrinal and non-doctrinal legal research approaches. For the doctrinal approach, content analysis was adopted to analyze the primary sources like texts of Fiqh and legislations as well as the secondary sources such as textbooks, journals, articles, reports, among others. With the aid of comparative analysis, the paper compares approaches to corporation-induced environmental protection under conventional law and Shari'ah. The paper further presents a visual representation of the various views using thematic analysis with the help of ATLAS.ti software. The paper contends that environmental pollution signifies corporate governance failure. It also argues that despite the availability of legal framework for environmental protection, the menace of corporation-induced pollution is persistent owing to certain challenges. It is contended that Nigeria has never considered Shari'ah perspective in protecting

its environment. Hence, Shari'ah approach is recommended for combating corporation-induced environmental pollution in Nigeria.

Keywords: Combating, Corporation-Induced-Pollution, Nigeria, Shari'ah, Mechanism

Introduction

Menace of environmental pollution is age-long and has at one point or the other affected the globe. Response to combat the menace resulted in numerous efforts put in place at the global, regional, and national levels. Interestingly, there is a new dimension to environmental pollution. This is brought to the fore by the activities of Corporations across the universe where Nigeria, like other countries in the world, has her own share in the menace. Thus, corporation-induced environmental pollution is a phenomenon to combat with in Nigeria owing to the activities of Oil corporations. The popular framework for combating such corporation-induced environmental pollution has being the traditional conventional legislations. Thus, despite the avalanche of legislations, corporation-induced environmental pollution has not been tamed. Honour of various calls for review and amendments of the existing framework has not yielded positive results. Nigeria, not being a mono-legal system country, has Shari'ah as one of the recognized legal systems though under-utilized. To this end, this paper seeks to examine the existing traditional common law framework for combating corporation-induced environmental pollution in Nigeria as well as the potential Shari'ah mechanism by way of comparative analysis with a view to preferring way forward.

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Conceptual Framework

Nigeria is not a mono-legal system country but a tripartite system country.³ This tripartite system span across the Received English Common Law, the Islamic Law (otherwise known as Shari'ah) and the Customary Law. Common law dominates the aspect of Nigerian corporate law by enactment of the Companies and Allied Matters Act, 2020.⁴ Thus, Nigerian corporate law is at the exclusive preserve of the Received English Common Law.⁵ The Nigerian Corporate Law perceives corporations as artificial entities of body corporates created by law with capacities, responsibilities and obligations.⁶ They are artificial persons clothed with incorporation in form of veil.⁷ The veil is popularly referred to as veil of incorporation that gives distinct personalities to corporations aside the individual members that formed them.⁸ Corporations are non-empirical in nature because they exist in abstraction. Their activities are carried out by their human organs.⁹ Such acts carried out by their human organs are attributed to the corporations as if it were done by them personally. Thus, the Companies and Allied Matters Act, 2020 creates corporations and accords them with certain powers which they exercise like natural persons.¹⁰

Corporations are registered for various activities but the focus of this paper is on oil corporations and their negative impacts on their immediate environment and beyond. The reason being that, under the Nigerian law, corporations' activities are capable of affecting environment in negative ways just like that of the natural persons.

Shari'ah perceives concept of corporation with unique dimension in a divine way. Islamic Scholars hold divergent views with respect to the existence of corporations in Islamic jurisprudence. Jurists perceive corporations as artificial persons which are accorded certain powers, rights and obligations.¹¹ This accounts for the reasons jurists are divided with regards to the existence and recognition of artificial persons under Shari'ah. The first view which opposes the recognition of artificial persons opined that the neither the Law Giver nor Shari'ah created fictitious persons. Their contention is that the only category of persons created under Shari'ah are natural persons purposely for religion and worship.¹² This is because corporations, as artificial persons, are not capable of discharging religious duties and obligations.¹³ The scholars concluded that existence of and recognition of corporations has no basis under Shari'ah.

- 3 C Mwalimu, *The Nigerian Legal System*. (1, Peter Lang: New York/Washington, D.C./Baltimore/Bern Frankfurt am Main/Berlin/Brussels/Vienna/Oxford,), 1, 1-39. There are three (3) systems of law co-existing side by side in Nigeria. These systems of law are the Received English Common Law, Islamic Law and Customary Law.
- 4 This Act replaces the age-long Companies and Allied Matters Act, 1990 that was long due for amendment. It was signed into law by President Muhammadu Buhari of the Federal Republic of Nigeria on Friday, the 6th August, 2020
- 5 BD Awosusi, *Appraisal of the Policies, and Laws for the Development of Corporate Business in Nigeria*. in Prof. ET Yebisi, et al, (ed) *Law, Policy And Development Review*, (EKSU Printing Press, Ado-Ekiti, ISBN:978-978-57307-6-0, 2020), 210, 201-203
- 6 Companies and Allied Matters Act, 2020, S. 42.
- 7 BD Awosusi, *Appraisal of the Policies, and Laws for the Development of Corporate Business in Nigeria*. *Supra* note 6 at 201-203
- 8 AA Muhammed-Mikaaeel, and FF Abdulrazaq, *Lifting the Corporate Veil by the Court: Nigeria and England in Focus*. 6(1) Joseph Ayo Babalola University Law Journal (JABU-L.J) 101, 105-106 (2018).
- 9 AA Muhammed-Mikaaeel, et al, *Corporate Governance and Practice in Nigeria: Exploring its Tricky and Prognoses*. 1(2) International Review Of Law And Jurisprudence (Irlj), 100, 108 (2019)
- 10 These powers included ability to sue and be sued, ability to enter into contracts, ability to hold land, and more importantly, ability to carry out all the objects for which they were incorporated. Companies and Allied Matters Act, 2020, S 42. See generally, AA Muhammed-Mikaaeel, and FF Abdulrazaq, *Lifting the Corporate Veil by the Court: Nigeria and England in Focus*. *Supra* note 8 at 102-104
- 11 N Ramli, and ZA Abdul Ghadas, *An Appraisal on the Obligation of Companies to pay Zakat: The Malaysian Law and Shari'ah Perspective*. 4(15) International Journal Of Law, Government And Communication, 1, 10-11 (2019)
- 12 *Id*, p. 12
- 13 *Id*.

The second view which justifies the existence and recognition of artificial persons under Shari'ah, premised their justification on the undisputed established Institutions since the era of Shari'ah. The proponents of this view contend that even though the corporations are incapable of discharging religious duties based on the Quranic positions, other rights and obligations which the corporations enjoy have traces within Islamic circle.¹⁴ By way of Qiyas, the jurists likened the existence of the institutions of *Baytul Mal*, Creation of *Waqf*, Mosques, creation of State, amongst others, as artificial persons clothed with various rights and obligations purposely to enable them live up to their expectations within territory of Muslim *Ummah*.¹⁵ For instance, *Baytul Mal*, *Dawla al-Islamiyyah*, *Waqf* and Mosques are distinct from individuals that regulates their affairs. This recognition of artificial persons other than natural beings under Shari'ah is further justified by theory of Islamic jurisprudence referred to as *al-Dhimmah*.¹⁶ This term, *al-Dhimmah*, is the attribution of natural persons with duties and obligations.¹⁷ Thus, since the institution of *Dawlah*, *Baytul Mal*, *Waqf* and Mosques, all have *al-Dhimmah*. These scholars concluded that the doctrine of artificial personality are also deeply rooted in Islamic jurisprudence. Thus, the concept of corporation is not alien to Shari'ah because Shari'ah is all encompassing and has left nothing untouched.¹⁸

The existence of corporations is also justified under *al-Maslaha al-Ummah* (public policy/interest). More so

when the primary aim of incorporation is for ease of business and reduction of risks associated with business.¹⁹ The general principle under Shari'ah is that, once an act has not been expressly forbidden, the performance of it is permissible.²⁰ Thus, in view of the numerous benefits of corporations coupled with the existence of artificial persons in Islamic jurisprudence, artificiality of corporations with activities capable of affecting the environment is recognized under Shari'ah.

The concept of environment is adequately captured under the Nigerian law. The Constitution of the Federal Republic of Nigeria, 1999 (as amended) which encompasses the environmental objectives of the Federal Government of Nigeria indirectly captures environment as including the water, air, land, forest and wild life of Nigeria.²¹ In the same vein, Environmental Impact Assessment Act defines environment in three (3) ways, viz: "the components of the earth which include land, water and air together with all layers of the atmosphere;"²² "the components of the earth including all organic and inorganic matter as well as living organism;"²³ and the components of the earth with the inclusion of the interacting natural systems that include components of everything contained within the spherical earth planet.²⁴

In Islamic jurisprudence, the Law Giver refers to environment as including the skies and earth and all that is between them.²⁵ The Law Giver does not only creates the environment as one of the unique signs of His existence but also endowed it with everything that are

14 ZA Abd Ghadas, and H Abd Aziz, "Shariah Compliant Companies" *An Appraisal of the Legal Theory of Body Corporate for Shari'ah Compliant Companies*. 1 HERALD NAMSCA, 900, 915-918 (2018)

15 *Id.*

16 *Id.*

17 *Id.*

18 See Quran Ch 6:38

19 N Ramli, and Abdul ZA Ghadas, *An Appraisal on the Obligation of Companies to pay Zakat: The Malaysian Law and Shari'ah Perspective*. *Supra* note 9 at 9

20 B Saiti, and A Abdullah, *Prohibited Elements in Islamic Financial Transaction: A Comprehensive Review*. *Al-Shajarah, Journal Of Islamic Thought And Civilization Of The International Islamic University Of Malaysia (IIUM)*, Special Issue: Islamic Banking and Finance, 128, 139-159

21 The Constitution of the Federal Republic of Nigeria, § 20

22 The Environmental Impact Assessment Act, § 61 (a)

23 *Id.*, 61 (b)

24 *Id.*, 61 (c)

25 See Qur'an Ch. 32:4

beneficial to human existence.²⁶ Hence, environment is held in high for mankind to make judicious use of it and avoid every act that is calculated towards desecrating it.²⁷ The Law Giver prohibits all forms of environmental pollution when He commanded the mankind not to desecrate the land after it has been created beautifully.²⁸ This shows that it is human activities that changes the nature of environment negatively. Thus, within the purview of Shari'ah, environmental degradation involves every activity of mankind that negatively affects the environment.²⁹ Under the Nigerian law, environmental pollution is defined as "man-made or man-aided alteration of chemical, physical or biological quality of the environment beyond acceptable limits."³⁰ The definition perceives occasion of environmental pollution from either man's activities or man-aided activities because corporation-induced environmental pollution is one of man-aided activities.

Degradation Activities of Corporations in Nigeria

The discovery of crude oil in commercial quantity initially gives hope of blessing to the nation.³¹ However, the degradation activities of Oil and Gas Corporations³² in the various host communities have reversed the earlier perception.³³ In Nigeria today, about nine (9) States of the Federation are Oil-producing States³⁴ owing to the discovery of crude oil in large quantity in those States.³⁵ These parts³⁶ of Nigeria therefore face the aftermath of degradation activities of the Oil and Gas corporations in their environments. The major degradation activities of these corporations include Gas Flaring, Oil Exploration and Production and Canalization and Oil Spillage.

Gas Flaring

Gas Flaring is described as the combustion of gas in an open flame that burns continuously at the top of the flame stacks in oil producing sites.³⁷ The process of gas flaring involves venting which is also described as the discharge of unburned gasses into the atmosphere leading to the release of chemicals in the forms of sulphur

- 26 W Zarman, *The Concept of Nature in Islamic Science Teaching*. Aip Conference Proceeding, 1708, 080010, published online on 08 February, 2016, p.2 available at <https://doi.org/10.1063/1.4941106> accessed on 9th August, 2020.
- 27 MF Daud, *et al*, *Islam and the Environment: Education Perspective*. 22(2) Al-Ta'lim Journal, 90, 96-106 (2015)
- 28 See Qur'an Ch. 7:56. See also, Quran Ch. 32:7
- 29 NB Ahmad, *Faith-Based Approaches to Ecological Harmony and Environmental Protection*. 21(1) Rutgers Race And Law Review1, 11-12 (2020)
- 30 National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007, S 37
- 31 A Elwerefli, and J Benhin, *Oil a Blessing or Curse: A Comparative Assessment of Nigeria, Norway and the United Arab Emirates*. Theoretical Economics Letters, 1132, 1136-1156 (2018). See also, S Tamuno, and JM Felix, *Crude Oil Resources: A Blessing or Curse to Nigeria – The Case of the Niger Delta*. 4(2) JORIND, 49, 53-58 (2006)
- 32 These Corporations are Oil and Gas Corporations. Most of them are owned by multinationals while a few of them are corporations owned by Nigerian nationals. This information is available at <https://nairametrics.com> accessed on 9th August, 2020. See also, E Uyiogue, and M Agho, *Coping with Climate Change and Environmental Degradation in the Niger Delta Saunter Nigeria*. Community Research And Development Centre (CREDC), Benin, Edo, Nigeria, 1, 1-28 (2007)
- 33 S Tamuno, and JM Felix, *Crude Oil Resources: A Blessing or Curse to Nigeria – The Case of the Niger Delta*. *Supra* note 31 at 53-58.
- 34 They are Delta State, Akwa-Ibom State, Bayelsa State, Rivers State, Edo State, Ondo State, Imo State, Abia State and Lagos State.
- 35 BSA desoji, *Nigerian Oil Producing States shared ₦302 Billion in 7-Months*. Business News, available at <https://nairametrics.com/2019/09/18/nigerian-oil-producing-states-shared-302-billion-in-7-months/> accessed on 9th August, 2020.
- 36 Among the Oil producing areas in Nigeria, the prominent of them is the Niger Delta Region of Nigeria which most of the literatures centre upon.
- 37 A Twum, *Environmental Impact of Oil and Gas Exploration and production on the Socio-Economic Life in Niger Delta*. African University Of Science And Technology Publication, 33, 39-41 (2019) available at <https://repository.aust.edu.ng> Accessed on 9th August, 2020.

compounds, methane, volatile organic compounds, carbon dioxide and gas impurities.³⁸ The processes of gas flaring constitute serious havoc to the environment of the host communities.³⁹ The pollutants released from gas flaring negatively affects every parts of the ecosystem, including the micro-organism in the soil as well as the ozone layers.⁴⁰ Despite the hazardous effect of gas flaring to the environment, the degradation activities continue to thrive in the host communities on a daily basis until recently when country started processing gas for domestic consumption.⁴¹ The unimaginable volumes of gas flared and vented over the years have left permanent scars to the environment of the host communities without remedies to both the inhabitants and the displaced inhabitants.⁴²

Oil exploration and production

Oil exploration is an activity of oil corporations which causes serious degradation to the environment.⁴³ Oil production undergoes certain stages⁴⁴ which have negative impact on the environment because they caused great destruction to the environment where the production activities occurred. The first point of call in oil production is oil exploration. This involves searching and extracting oil and gas naturally from beneath water and

land.⁴⁵ The exploration of the natural resources involves rigorous drilling of the land and water after exploration survey has been carried out.⁴⁶ Exploration drilling on land takes the form of operation in which a pad is constructed at the surveyed site to accommodate drilling equipment and to also serve as support services.⁴⁷ In the same vein, the exploration drilling over water is conducted by using a variety of self-contained mobile offshore drilling units depending on peculiar features of the water such as in-depth, prevailing meteorological conditions⁴⁸ and seabed conditions.⁴⁹ Therefore, by the very nature of oil and gas exploration, the precious parts of the environment which are land and water are not free from degradation.

Canalization

Another degradation activities of oil corporations is canalization. Canalization is conducted by these corporations through creation of path to oil fields and other important facilities purposely for ease of transfer of products from one place to the desire destination.⁵⁰ The canalization method is geared towards improving transportation of products within the exploration and production sites.⁵¹ The channels or the canals are usu-

38 *Id.*

39 PB Eregha, and IR Urughe, *Oil-Induced Environmental Degradation in the Nigeria's Niger Delta: The Multiplier Effects*. 11(4) Journal Of Sustainable Development In Africa 160, 160-173 (2009)

40 A Twum, *Environmental Impact of Oil and Gas Exploration and production on the Socio-Economic Life in Niger Delta*. *Supra* note 35 at 39-41

41 *Id.*, pp. 47-58.

42 PB Eregha, and IR Urughe, *Oil-Induced Environmental Degradation in the Nigeria's Niger Delta: The Multiplier Effects*. *Supra* note 37 at 173-174

43 OO Emoyan, *et al*, *The Oil and Gas Industry and the Niger Delta: Implication for the Environment*. 12(3) Journal Of Applied Science, Environment And Management, 29, 29-37, (2008)

44 CM Pearson, *The Seven Stages of Oil and Natural Gas Extraction*. 1, 1-3, available at <https://www.cred.org/seven-steps-of-oil-and-natural-gas-extraction/> accessed on 24th August, 2020.

45 *Id.* See also, E Darko, *Short Guide Summarizing the Oil and Gas Industry Lifecycle for a Non-technical Audience*. Oversea Development Institute, 1, 1-8 (2014)

46 *Id.*

47 J Chen, *Exploration and Production (E & P)*. 1, 1-3 available at <https://www.investopedia.com/terms/e/exploration-production-company.asp> accessed on 24th August, 2020.

48 This includes wind speed, wave height and current speed in the water .i.e. the sea.

49 J Chen, *Exploration and Production (E & P)*. *Supra* note 45 at 1-3.

50 A Twum, *Environmental Impact of Oil and Gas Exploration and production on the Socio-Economic Life in Niger Delta*. *Supra* note 35 at 44-47

51 *Id.*

ally linked to the nearby rivers or streams as well as the surrounding land of the immediate environment.⁵²

The foregoing degradation activities of the corporations inevitably led to unwarranted environmental pollutions in the host communities with their consequential negative effects.⁵³ The negative effects have been confirmed to land pollution,⁵⁴ water pollution⁵⁵ and air/noise pollution.⁵⁶

Environmental Pollution Signifying Corporate Governance Failure

To understand environmental pollution on the part of corporations as corporate governance failure, a cursory look at the concept of corporate governance becomes expedient. The concept of corporate governance is perceived from two perspectives. That is, from specific/internal perspective and general/external perspective.

Specifically, corporate governance entails observance of various codes, ethics, rules, regulations, guidelines and framework designed to effectively regulate the affairs human agents of the corporations such as the directors, secretary and other employees vis-à-vis, the corporations themselves with a view to achieving the purpose(s) for which the corporations were established in accordance with the law.⁵⁷ Corporate governance ensures that the affairs of corporations are run in compliance with applicable laws.⁵⁸ Thus, corporate managers are prevented from administering the affairs of corporations in odious, atrocious and fraudulent manners that may afterwards affect the interest of the corporations.⁵⁹

Looking at the concept of corporate governance in a general sense, the discussion goes beyond internal administration of the corporations. Great deal of focus is paid to the external stakeholders of the corporations such as the Government, the Law Enforcement Agencies, Government Institutions and the country at large.⁶⁰ This simply requires the corporation to be positioned in a way that it complies with all the relevant extant laws in the country. To this end, corporations are perceived as subjects of the law of the land just like other citizens of Nigeria in natural capacities. Therefore, corporations are to be run not only for the benefits of those who are their managers, members, creditors and employees but also for the benefit of the larger environment where they operate. The law expects the corporations to be law abiding members of the communities where they exist/operate. That is why the international best practices for corporate governance envisage that the corporations engage in impactful social corporate responsibilities with respect to the environment/communities they find themselves.⁶¹ The country should rather feel the corporations' positive impact as against the negative impact such as environmental degradation.

In view of the foregoing, the degradation activities of the corporations which gave birth to various environmental pollutions in the different host communities in Nigeria constitute negative impacts. There are a number of laws enacted in Nigeria to prevent and control environmental pollution. Despite the awareness of these laws, the corporations continue to flout the laws through their continuous degradation activities in the host com-

52 *Id.*

53 J Adekola, *et al*, *Health Risks from Environmental Degradation in the Niger Delta, Nigeria*. 35(2) Environmental And Planning C: Politics And Space, 334, 334-354 (2017)

54 N Takom, *Environmental Damage Arising from Oil Operations in Niger Delta of Nigeria: How not to Continually Live with their Specific Impact on Population and Ecology*. 3(9) International Journal Of Development And Sustainability, 1873, 1873-1893 (2014)

55 *Id.*

56 *Id.*

57 PE Idahosa, *Members, Directors and the Balance of Power in Corporate Governance in Nigeria: An Appraisal of the Corporate Governance Codes*. in Prof. ET Yebisi, *et al*, (ed) Law, Policy And Development Review, Eksu Printing Press, Ado-Ekiti, 220, 226-228(2020)

58 *Id.*

59 AA Muhammed-Mikaaeel, *et al*, *Corporate Governance and Practice in Nigeria: Exploring its Tricky and Prognoses*. *Supra* note 7 at 108-110.

60 OC Nwahcukwu, *et al*, *Corporate Governance and Corporate Secretary under the Nigerian Law: Issues and Challenges*. in Prof. ET Yebisi, *et al*, (ed) Law, Policy And Development Review, Eksu Printing Press, Ado-Ekiti, 19-20 (2020)

61 *Id.*, 20

munities in Nigeria. Since the artificial personality of the corporations exists in abstraction, the affairs of the corporation are inevitably subjected to corporate governance by the human agent of the corporations. Thus, the continuous environmental degradation by corporations signifies failure on the part of the human agents to effectively govern the affairs of the corporation as expected by law.⁶² The intention at the time of incorporation was not to make corporations flouters of the extant laws but to allow them operate within the purview of the laws of the land for the achievement of their purposes/objects through effective corporate governance. However, evidence of the various corporation-induced environmental pollutions which have left behind scars than they can repair smears nothing but the incidence of corporate governance failure.

Legal Frameworks For Protection Of Environment In Nigeria

The legal frameworks for environmental protection in Nigeria had been put in place since the colonial era up to the contemporary era. The legal framework deals with all manners of environmental pollutions but the focus in this section shall be placed on the ones that seek to protect corporation-induced environmental pollution.

Constitution of the Federal Republic of Nigeria, 1999 (As amended)

The Nigerian Constitution is the grundnorm of all the laws (either national or State) in force in Nigeria. It regulates all aspects of the Nigerian Federation. Under the provisions for Fundamental Objectives and Directive Principles of State Policy comes the environmental

objectives.⁶³ The Constitution imposes an obligation on the Federal Government of Nigeria to protect, improve and safeguard the environment in Nigeria.⁶⁴ According to the Constitution, the environment includes water, air, land, forest and wildlife within the territory of Nigeria.⁶⁵ It specifically provides that any form of exploitation of natural resources in Nigeria that is not for the good and benefit of the community must be prevented.⁶⁶ In spite of the specific constitutional provision, the government has failed to prevent oil exploration, gas flaring as well as canalization by corporations which have occasioned serious environmental problems to the host communities.⁶⁷

Oil in Navigable Water Act

This Act is the pioneer law on prevention of water pollution in Nigeria as a result of oil exploration and production. The main focus of the Act is the prevention of industrial waste such as toxic chemicals and other harmful substances over the water.⁶⁸ This is because, water is one of the surfaces under which exploration drilling takes place after survey. The shortcoming of the Act is that, paltry amounts were prescribed as penalties for defaulters which the pollutant corporations found easy to pay without any serious deterring impact on prevention of further occurrences. Another deadlock for the Act is the ineffective enforcement mechanism.⁶⁹ The aim of the Act is to prevent polluters but due to lack of proper enforcement mechanism, Nigeria contin-

62 BD Awosusi, *Appraisal of the Policies, and Laws for the Development of Corporate Business in Nigeria*. Supra note 5 at 198. See also, AA Muhammed-Mikaaeel, and FF Abdulrazaq, *Lifting the Corporate Veil by the Court: Nigeria and England in Focus*. Supra note 6 at 101.

63 See chapter 2 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), particularly section 20.

64 *Id.*, 20.

65 *Id.*

66 The Constitution of the Federal Republic of Nigeria (CFRN), 1999 As Amended, S 17

67 BO Chijioke, *et al*, *The Impact of Oil Exploration and Environmental Degradation in the Niger Delta Region of Nigeria: A Study of Oil Producing Communities of Akwa Ibom State*. XVIII (III) Global Journal Of Human-Social Science 55-67 (2018)

68 O Atanda, *An Overview of the Legal Framework for Oil Pollution in Nigeria*. 1-5, available at <https://www.researchgate.net/publication/281102181an_overview_of_the_legal_framework_for_oil_pollution_in_nigeria> accessed on 9th August, 2020.

69 *Id.*

ues to record more cases of corporation-induced environmental pollutions in the oil sector.⁷⁰

National Oil Spill Detection and Response Agency Act

This Act was primarily established fore-front agency called the National Oil Spill Detection and Response Agency (NOSDRA). The statutory responsibility of this Federal Government Agency is to prepare for, detect, and respond to oil spillage issues from any quarter in Nigeria.⁷¹ The functions of the agency are in two (2) folds. The first one is to carry out surveillance patrol to various exploration sites with a view to initiate investigation into any environmental issue that had arisen.⁷² The second one is to receive complaints from the various aggrieved host communities and investigate the complaints in accordance with the Act.⁷³ It is observed that the agency has failed to be proactive in their activities.⁷⁴ For instance, over the years, the agency rarely initiate investigation due to their redundancy. In most cases, oil spill investigations are usually championed by the pollutant oil corporations' personnel while NOSDRA staff play insignificant role.

Associated Gas Re-Injection Act

This Act makes important provisions for regulations of the activities of oil corporations. The fulcrum of the Act is the prevention of gas flaring that causes environmental degradation to the host communities. Apart from seeking to prevent the degradation activities, the Act also imposes fines for culprits in Nigeria. Thus, a fine of 10 US Cent was imposed per 1000 cubes feet of gas flared.⁷⁵ As laudable as the Act appears, the fine stipulated is ridiculous compared to the fine of \$10 usually imposed for such degradation in the western coun-

tries. This no doubt has contributed to continuous corporation-induced environmental pollution in Nigeria.⁷⁶

Federal Environmental Protection Agency Act

The enactment of Federal Environmental Protection Agency (FEPA) Act was a quick legal response especially with the dumping of Toxic waste in Koko Village of the then Bendel State in 1988 when an Oil Corporation dumped toxic waste on the land which adversely affected the host communities.⁷⁷ To this end, the Act creates a federal government agency known as FEPA to ensure environmental protection in Nigeria. The Agency has the responsibility to protect Nigerian environment throughout the federation. The primary duty of the agency is to enforce all environmental rules, regulations, and guidelines.⁷⁸ The agency is empowered, amongst others, to act with or without warrant in order to bring the polluters to book. The Act prohibits the discharge of harmful or hazardous substances on land, water and air within the territory of the Nigeria including adjoining shoreline but allows two (2) exceptions⁷⁹ i.e. where such discharge or harmful substance is permitted under the law. This first leg of exception is in contravention of sections 17 and 20 of Nigerian Constitution. The second exception under the Act is when such discharge of harmful substance is occasioned as a result war, sabotage or natural disaster.

National Enforcement Standards and Regulation Enforcement Agency Act

This Act is the extant federal law regulating and protecting environment in Nigeria. The National Enforcement Standards and Regulation Enforcement Agency (NESREA) Act was enacted to replace the FEPA Act discussed above. It empowers NESREA to take

70 *Id.*

71 ES Onome, *Environmental Law and Practice in Nigeria: Overview*. 1-2, available at [https://uk.practicallaw.thomsonreuters.com/w-006-3572?transitorType=Default&contextData=\(sc.Default\)&firstPage=true&bhpc=1](https://uk.practicallaw.thomsonreuters.com/w-006-3572?transitorType=Default&contextData=(sc.Default)&firstPage=true&bhpc=1) Accessed on 9th August, 2020.

72 *Id.*

73 O Atanda, *An Overview of the Legal Framework for Oil Pollution in Nigeria*. *Supra* note 66 at 5.

74 *Id.*

75 *Id.*

76 *Id.*

77 AL Naibbi, *Environmental Regulations in Nigeria: A Mini Review*.1(5) International Journal Of Environmental Science And Natural Resources, 00142 (2017)

78 *Id.*

79 N Ezeabasili, *Legal Mechanism for Achieving Environmental Sustainability in Nigeria*.3(2) African Journal Of Research Review, 300, 375 (2009)

charge of environmental protection across the federation. NESREA has the mandate to enforce compliance with different laws, regulations, standards, policies and guidelines pertaining to environmental protection and allied issues in Nigeria.⁸⁰ The Act has broader coverage compared to FEPA Act whose regulation is limited to waste discharges and wastewater emissions. The scope of NESREA covers conservation and wise use of wetlands and resources; protection of water catchment areas; minimization of pollution from mining; ozone layer protection; soil erosion and flood control; desertification control and drought mitigation; protection of endangered species in international trade; coastal marine protection; control of vehicular emissions; surface and ground water quality control; and sanitation and waste control.⁸¹ The NESREA Act is a robust legislation but unfortunately, it does not operate to curb the degradation activities of oil corporations.⁸² This is because, the Act itself ousts the jurisdictional power of the agency from petroleum exploration sector.⁸³ The aftermath of the foregoing leads to continuous degradation of the environment in Nigeria by oil corporations.

Environmental Impact Assessment Act

The Department of Petroleum Resources (DPR) is responsible for regulation of petroleum industry in Nigeria. The DPR sets out standards to be followed and complied with by the respective stakeholders in the industry. The work of the DPR takes into cognizance at every material time, the provisions of Environmental Impact Assessment Act (EIA). This is done by ensuring that the environmental impact assessment of any proposed projects in the petroleum industry is carried out with a view to prevent likely environmental hazards or associated risks. According to EIA, every proposed

project must be subjected to environmental impact assessment prior to approval or disapproval.⁸⁴ This is in a bid to prevent oil corporation-induced environmental pollution in Nigeria.

Environmental Guidelines and Standards for the Petroleum Industry in Nigeria

The Environmental Guidelines and Standards for the Petroleum Industry is to the effect that various operations of the oil and gas corporations are in compliance with all the laws made for regulation and protection of environment within the industry.⁸⁵ In the event of oil spillage, be it on land or over the water, the Guidelines/Standards impose immediate clean-up within twenty-four (24) hours of the occurrence.⁸⁶ The clean-up must be done in such a way that additional harm is not occasioned to the environment.⁸⁷ That is why, in the case of oil spillage on wetlands or inland water, what the oil corporations are required to do is to carry out clean-up of complete containment or total removal as the case may be. Unfortunately, in most cases, the guidelines and standards set are not usually being followed while the host communities face the negative consequences.

The above are some of the legal frameworks for protection of environment in Nigeria especially with respect to degradation activities of the corporations. It is not gain-said that the country boasts of robust legal framework in this respect. However, the country continues to experience degradation by the corporations especially in the host communities.⁸⁸ A number of factors has been said to be responsible for this which include lack of enforcement mechanism, lack of political will on the part of government, the infectious atmosphere of corruption and non-observance of rule of law.⁸⁹

⁸⁰ *Id.*

⁸¹ A Ogunba, *An Appraisal of the Evolution of Environmental Legislation in Nigeria*. 40(673) Vermont Law Review, 600, 685-690 (2016)

⁸² *Id.*

⁸³ *Id.*, 688-693

⁸⁴ The Environmental Impact Assessment Act, S. 1-24

⁸⁵ A Ogunba, *An Appraisal of the Evolution of Environmental Legislation in Nigeria*. *Supra* note 79 at 7

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ A Ogunba, *An Appraisal of the Evolution of Environmental Legislation in Nigeria*. *Supra* note 79 at 690-693

⁸⁹ *Id.*

Protecting Environment Through Shari'ah Mechanism

Shari'ah is a divine law of Allah sent to mankind through Prophet Muhammad Ibn Abdullah (PBUH).⁹⁰ It is complete codes of life which had left no matter untouched.⁹¹ The age of Shari'ah, as a legal system, is older than every other legal system across the universe.⁹² In fact, most other legal systems fashioned out their laws from Shari'ah with certain modification to suit human desires.⁹³ The legal injunctions under Shari'ah are derived from its primary sources as well as other secondary sources recognized by the Jurists of Islamic jurisprudence.⁹⁴ Though Shari'ah, as a binding law, is not amendable, but is all encompassing and flexible to contemporary issues through instrumentality of the principles of *Usul Fiqh*.⁹⁵

Environmental degradation by corporations in Nigeria and the need to protect environment in consequence appear to be contemporary issues, however, the rules of Shari'ah have extensively provided for the way and manner environment should be explored.⁹⁶ Thus, the role of Shari'ah in protecting environment cannot be over emphasized in view of its significance. The reason being that, Shari'ah has carefully provided certain

principles to be borne in mind while mankind explore the environment.

Basic Principles under Shari'ah for Environmental Exploration

The principles under Shari'ah for regulating the exploration of environment define the relationship between mankind towards the environment. Environment, from the broader Shari'ah perspective, includes land, water, air, animals, plants and forests. In Islamic jurisprudence, a number of principles have been designed to regulate environmental exploration. Some of the principles are discussed below.

Principle of *Tawheed*

The first point of discussion and knowledge in Islam is at-*Tawheed*.⁹⁷ This entails knowing and recognizing Allah appropriately. Holding steadfast to the oneness of Allah in all ramification is the first duty which Allah enjoins on all mankind when He commands mankind to strive to know Him before they commence act of worship.⁹⁸ The first assignment given to Prophet Muhammad (PBUH) at the earliest part of his Prophethood was to establish the principle of at-*Tawheed* in the hearts of the adherents of Islam before the obligation of worship came to them.⁹⁹

The relevant aspect of at-*Tawheed* to the discussion under reference is that, Allah is the Creator of earth and other heavenly bodies.¹⁰⁰ He shares no partner or helper in the creation of earth which constitutes our environ-

90 AI Doi, *Shariah: The Islamic Law*. Al-Yassar Publishers, Kurmi Market, Kano-Nigeria, 1, 2-16 (1984)

91 See Quran Ch. 6:38

92 AI Doi, *Shariah: The Islamic Law*. *Supra* note 80 at 2-16

93 The provisions of Quran Ch. 4:23 on prohibition degrees of marriage is adopted stock and barrel in section 3 of the Matrimonial Causes Act.

94 A Zubair, *The Major Sources of Islamic Law*. Al-Madinah Heritage Publication, Lagos, 1, 48-61 (2005)

95 A.A. Muhammed-Mikaaeel, *Capital Punishment in Nigerian Courts: Position of Abolitionists vis-à-vis Islamic Jurisprudence* in Prof. ET Yebisi, *et al*, (ed) Law, Policy And Development Review, (Eksu Printing Press, Ado-Ekiti, 96-106 (2020). See also, A Zubair, *The Major Sources of Islamic Law*. *Supra* note 92 at 32-34.

96 MF Daud, *et al*, *Islam and the Environment: Education Perspective*. *Supra* note 25 at 96-106

97 i.e. to sincerely profess oneness of Allah in all ramifications.

98 MA Hisham, *3 Reasons Why We Should Seek Knowledge*. 1, 1 available at <https://muslim.sg/article/seek-knowlegde-islam-quotes-hadith-cradle-to-grave> accessed on 17th August, 2020.

99 Prophet Muhammad (PBUH) called people to Tawheed for Thirteen (13) years before migrating to Madinah. See generally, A Murad, *Muhammad, the Messenger of Allah*, DARUL ISLAM, 1, 25 (2006)

100 See Qur'an Ch. 32:4

ment.¹⁰¹ Thus, knowing that the environment was created by Allah signifies the importance of the environment and the need to carefully explore it. Allah, in a number of injunctions in the Holy Qur'an, emphasizes that He created life and death with a view to testing mankind and detecting which of them would put upon good deeds.¹⁰² It must be noted that parts of putting up good deeds include exploring the environment within the limit set by Allah and avoiding any act amounting to environmental abuse. Allah thus warns that anyone who expects to meet Him on the Day of Resurrection should make adequate provisions by putting up good deeds.¹⁰³

Principle of Trusteeship/Responsibility

This principle entails the imposed duty of holding/managing something on behalf of another who might be the beneficiary or owner of the thing.¹⁰⁴ Allah declared in the Holy Qur'an that He shall create *Khalifah* (Vicegerent) on earth.¹⁰⁵ The vice-gerent in this sense refers to mankind. After completion of all creations including mankind, Allah makes the mankind the best among Allah's creatures and entrusted them with the responsibility of maintaining the gifts of nature such as land, water, air, mineral resources and so on, on behalf of other creatures. This responsibility is a great test that mankind has agreed to undergo after other creatures of Allah have declined it.¹⁰⁶ Although Allah is the controller of heaven and earth,¹⁰⁷ mankind plays direct role which directly affects the environment.¹⁰⁸ Due to the nature of the roles of mankind, they are therefore

made trustees such that they explore the environment with utmost care and diligence with a view to avoiding any form of environmental abuse. By the principles of trusteeship/responsibility, mankind has the duty to improve the environment rather than destroying it; to preserve the environment rather degrading it; and to leave the environment behind after their times in the best way they have met it for the benefit of the coming generations until the Last Day.¹⁰⁹

Principle of Islamic Sustainable Development

The principle of sustainable development is best appreciated under Shari'ah. Ever since Allah completed creation, the earth and other heavenly bodies have been the same yesterday, today and tomorrow. Allah made us to understand that He had created successive generations of mankind in the past with a particular Prophet sent to each of them until the last generation of Prophet Muhammad (PBUH).¹¹⁰ Day-in-day-out, Allah creates and takes souls by the Will of His Kingdom.¹¹¹ The foregoing is a notification to mankind to explore the environment in a sustainable manner for the benefit of coming generations after them. Thus, Shari'ah forbids selfish exploration of the environment in a manner that does not take into cognizance, the right of usage of the coming generations.¹¹² To this end, mankind have community responsibility to ensure preservation of the environment and avoidance of misuse in whatever form.¹¹³ This is line with the tradition of Prophet Muhammad (PBUH) that causing of harm or damage either towards individuals or against the environment should be avoid-

101 *Id.*

102 See Qur'an Ch. 67:2

103 See Qur'an Ch. 18:110

104 A Reda, *Human Vicegerency and the Golden Rule: The Islamic Case against Exclusion*. 78(4), *American Journal of Economics and Sociology*, 1, 1 (2019)

105 See Qur'an Ch. 2:30

106 See Qur'an Ch. 33:72

107 See Qur'an Ch. 32:5

108 NB Ahmad, *Faith-Based Approaches to Ecological Harmony and Environmental Protection*. *Supra* note 27 at 11-12

109 See Quran Ch. 3:103 and 110

110 See Qur'an Ch. 16:36

111 See Quran Ch. 2:258

112 See Quran Ch. 7:31

113 F Al-Banna, *Islam and Environmental Protection*. 1, 1-5 available at <https://www.ecomena.org/islam-environment/> accessed on 17th August, 2020.

ed even in the event of provocation.¹¹⁴ This is because, the hallmark of the objective of Shari'ah is to ensure the preservation and judicious use of the environment for the benefits of all generations.¹¹⁵

Justification of Environmental Protection under *Maqaasid Shari'ah*

Maqaasid Shari'ah is a combination of two Arabic words, *Maqaasid* and *Shari'ah*. *Maqaasid* is the plural form of *Maqsid* which means objectives. Shari'ah juristically means Islamic Law as explained in paragraph 6.0 above. Thus, the term '*Maqaasid Shari'ah*' is used to popularly refer to the Objectives of Shari'ah.¹¹⁶ The term signifies the intention of the Law Giver towards His creatures in the matters of rights, duties, obligations, prohibitions, worships etc.¹¹⁷ In the classical Islamic jurisprudence, *Maqaasid Shari'ah* have been classified into five (5), viz:¹¹⁸ *Hifz Deen*; (Protection of Religion); *Hifz Nafs*; (Protection of Life); *Hifz Nasb*; (Protection of Lineage); *Hifz 'Aql* (Protection of Intellect); and *Hifz Mal* (Protection of Property). Of utmost importance to the topic under discussion are *Hifz Nafs* and *Hifz Mal* i.e. the Protection of Life and Property respectively.

In ensuring protection of life and property, environmental protection cannot be compromised in the sense that they are inextricably interlocked. For man to enjoy his right to life under Shari'ah, he cannot do away with the environment.¹¹⁹ For instance, Allah creates fresh air and cool winds for breathing and temperature balancing; land for settlement, as source of food and shelter, as safe-keep of mineral resources; and water as sources of drinking, irrigation, transportation etc. All these altogether complement the realization of protection of life under Shari'ah being basic amenities of life.

In the same token, Allah also gave mankind temporary right to claim ownership of certain components of the environment to achieve the benefit listed above.¹²⁰ It is undisputable that environment in its natural state without any form of degradation enables mankind to achieve protection of life and property. Thus, any corporation that causes environmental pollution is indirectly working against the realization of the *Maqaasid Shari'ah*.¹²¹ It is against this backdrop that Shari'ah has made provisions for the protection of the environment.

Protection of Environment under Shari'ah

In Islamic jurisprudence, provisions for environmental protection are deduced mainly from the Qur'an, and Sunnah of Prophet Muhammad (PBUH) as well as from the practices of the companions of the Prophet and the various juristic views. The concept of environmental protection under Shari'ah encapsulates the protection of land, water, air, animals, plants and forests within the earth's ecosystem. This is owing to their innumerable benefits to the generations of mankind at large.

Land Protection

Shari'ah condemns the negative attitudes of mankind towards the landed environment and puts in place certain rules and regulations to protect the land. According to Shari'ah, abuse or misuse of land is strictly prohibited.¹²² Any abuse that causes degradation to land is viewed as disobedience to Allah's commandment. Under Shari'ah, no man is permitted to put land to waste in whatever form. Instead, Shari'ah prescribes the preservation of land fertility through cultivation for agricultural purpose.¹²³ Thus, waste and unused land are to be cultivated to preserve and improve its fertility. *Rasulullah* (PBUH) was reported to have said in this

114 Abu Amina Elias, *Daily Hadith Online*. 1, available at <https://abuaminaelias.com/dailyhadithonline/2016/08/15/la-darara-wa-la-dirar/> accessed on 17th August, 2020.

115 F Al-Banna, *Islam and Environmental Protection*. *Supra* note 111 at 1-5.

116 J. Auda, *Maqasid Al-Shariah: An Introductory Guide*, IIIT, 1, 3-16 (2008)

117 *Id.*

118 MH Kamali, *Maqasid Al-Shariah: the Objectives of Islamic Law*. 38(2) *Islamic Studies*, 181, 193-208, (1999)

119 Allah commanded in the Holy Qur'an that: '... *And do not kill yourselves*' see Quran Ch. 4:29

120 See Qur'an Ch. 7:54

121 This is against the spirit of Allah's Commandment in Quran Ch. 7:56

122 HFR Ahmed, and M Monjur, *Environmental Degradation: An Islamic Perspective*. 27(1) *Social Science Review* (The Dhaka University Studies, Part-D), 1, 9-10 (2010)

123 *Id.*

regards that the act of cultivating waste land which consequently serves as source of food to other creatures is a form of *Sadaqah* (Charity) that attracts rewards from Allah.¹²⁴

In view of the foregoing, Shari'ah holds land in high esteem, especially when Allah has accorded it spiritual cleanliness for worship purpose such as being used for *Masjid* (place of worship) and for *at-Tayammum* (means of purification prior to worship).

Water Protection

Water is one of the important components of the environment. In the words of Allah, it is inferred that the creation of water preceded that of the skies and earth when He declares that after the creation of skies and earth in six days, He then establishes His Throne on water above the skies.¹²⁵ Besides, Allah also makes us understand that every living creature originates from water.¹²⁶ Despite the foregoing significance of water, mankind has resorted to improper use of water thereby causing all manners of degradation to it. Thus, Shari'ah warns man against improper use of water so that it remains pure and fresh for usage. The Prophet was reported to have prohibited water pollution when he said: "No one should bathe in stagnant water when he is *Junub* (i.e. in a state of temporary impurity as a result of sexual intercourse or a wet dream)."¹²⁷ Committing water to waste is frowned upon under Shari'ah. For instance, in the course of water ablution, the Prophet warns Muslims against wastage.¹²⁸ There is a duty placed on mankind under Shari'ah to preserve water from being wasted or polluted.¹²⁹ Anyone who does not adhere to the ethics

of water protection under Shari'ah has disobeyed Allah and His Messenger.

Air Protection/Sound Regulation

Air is the atmosphere that surrounds the earth which consists of gases such as oxygen and nitrogen.¹³⁰ There is a fixed ratio for each of the gases for the benefit of the living beings/things created on earth.¹³¹ Any decrease or increase in the ratio has a negative consequence. For instance, the ratio of oxygen is fixed at 21% such that if it decreases, it will be difficult for every living being to breathe properly.¹³² The increase in the ratio can equally cause fire outbursts in the environment. Thus, the degradation activities of mankind in the environment do cause decrease or increase in the gases' ratio and make the living being susceptible to vulnerable diseases.¹³³ To preserve the air component of the environment, Shari'ah places certain duties on mankind because air is considered as a gift from Allah and signs of Allah. Little wonder the Prophet (PBUH) ordered his followers not to destroy the fragrance of the air by eating raw Garlic and Onion.¹³⁴ Therefore, Shari'ah accords great value to air and prohibits mankind from polluting it.

Also connected to air pollution is noise/sound pollution. Sound pollution is one of the environmental problems being faced day-in-day-out by man. It comes from different sources but the focus in this chapter is on corporation-induced sound pollution. Sound pollution is an unregulated offensive sound which has negative impact on ear functioning. If one is exposed to sound pollution, it can cause ear impairment. It is on this note that Shari'ah recommends civil and polite sounds and

124 *Id.*

125 See Qur'an Ch. 11:7

126 See Qur'an Ch. 21:30

127 HFR Ahmed, and M Monjur, *Environmental Degradation: An Islamic Perspective*. *Supra* note 120 at 10-11

128 *Id.*

129 F Al-Banna, *Islam and Environmental Protection*. *Supra* note 111 at 1-5.

130 MP Choudhary, and V Garg, *Causes, consequences, and Control of Air Pollution*. RESEARCHGATE, 1, 1-11 available at https://www.researchgate.net/publication/279202084_causes-consequences-and-control-of-air-pollution accessed on 17th August, 2020.

131 *Id.*

132 *Id.*

133 Like Malignant Melanoma that breaks Immune system and makes body vulnerable to different types of ailment.

134 A Muhammad, *Therapeutic Flora in Holy Quran*. 6(9) African Journal History And Culture, 141, 141-148 (2014) See also, HFR Ahmed, and M Monjur, *Environmental Degradation: An Islamic Perspective*. *Supra* note 120 at 8-9.

prohibits obnoxious sounds.¹³⁵ Allah hates the makers of or producers of obnoxious sounds.¹³⁶ This accounted for the reason heavily sounded musical instruments are prohibited under Shari'ah.¹³⁷ Any act that causes inconveniences or harm to others is strictly prohibited under Shari'ah.¹³⁸ It is not gain-said therefore that sound pollution is one of the acts that attracts the wrath of Allah.

Animal Protection

Animals in this respect include all species of living beings apart from man. It refers to those animals which walk on two legs, four legs, reptiles, and insects. All these are beautiful and useful creatures of Allah in their various positions and endeavors glorifying Allah.¹³⁹ Allah in the Holy Quran refers to Himself as the Lord of the Universe which accommodates man, animals, reptiles, birds, insects, fishes and plants.¹⁴⁰ The focus here excludes the plants. It is observed that the degradation activities of man on earth have caused water, air, and land pollutions which resulted into the loss of different species of animals estimated at 1.8 Million in the world over.¹⁴¹ This incident contravenes the position of Shari'ah on animal protection. Under Shari'ah, the unnecessary killing of any kind of animals, birds and insects is prohibited. The Prophet enjoined Muslims to be kind to animals and shun every act of cruelty towards them.¹⁴² The animals are accorded certain rights under Shari'ah which include right to life, freedom of move-

ment and freedom from cruelty.¹⁴³ Even, some types of animals recommended for consumption and sacrifice are to be killed with mercy and should not be killed indiscriminately but moderately for consumption without excessiveness.¹⁴⁴

Plants and Forest Protection

Plants are usually cultivated by man and grow with the permission of Allah for the benefit of man.¹⁴⁵ Forest also comes to being through human activities as a result of the afforestation policy.¹⁴⁶ In the same vein, the forest also comes to being naturally as a result of the mercy of Allah on His creatures.¹⁴⁷ The degradation activities of mankind have not spared plants and trees in the forests. During exploration activities by Oil Corporation, a great deal of destruction is caused to plants and nearby trees during the general clearing of the site and as a result of oil spillage on land.¹⁴⁸ To this end, Shari'ah enjoins all men to take proper care of plants and trees by avoiding indiscriminate cutting of trees and plants. The Prophet prohibited the cutting of a lot of trees for no just cause because the act attracts serious wrath of Allah in the hereafter.¹⁴⁹ The Prophet and his companions used to engage in plantation for the development of the forests and nature at large.¹⁵⁰ Because, plantation is considered a renewable job in this world and in the hereafter.¹⁵¹ By this notion under Shari'ah, every degra-

135 See Qur'an Ch. 3:19

136 Abu Bilaal Mustafa al-Kanadi, *Islamic Ruling on Music and Singing*, pp. 1-52, available on <https://d1.islamhouse.com.ebook/pdf> accessed on 17th August, 2020.

137 See Quran Ch. 31:19

138 Abu Amina Elias, *Daily Hadith Online*. *Supra* note 112 at 1.

139 See Qur'an Ch. 6:38

140 See Quran Ch. 1:1

141 HFR Ahmed, and M Monjur, *Environmental Degradation: An Islamic Perspective*. *Supra* note 120 at 11

142 *Id.*

143 *Id.*

144 JA Awan, and SF Rahim, *Animal Rights and Welfare in Islam*.8(6) International Journal Of Avian And Wildlife Biology, 427-430 (2018)

145 See Quran Ch. 50:7

146 *Id.*

147 *Id.*

148 J Adekola, *et al*, *Health Risks from Environmental Degradation in the Niger Delta, Nigeria*. *Supra* note 51 at 334-354

149 HFR Ahmed, and M Monjur, *Environmental Degradation: An Islamic Perspective*. *Supra* note 120 at 13

150 *Id.*

151 *Id.*

dation act against plants and trees attracts the wrath of Allah on the Day of Resurrection.

Culpability of Corporation under Shari'ah

It is established that the doctrine of artificial personality is recognized under Shari'ah. Corporations are artificial persons in the eyes of the law. The culpability of corporation for any of its act against the extant law is not disputed under the Nigerian law.¹⁵² This is because, under the Nigerian law, veil of incorporation offers statutory protection to the human agent of the corporation.¹⁵³ However, the case is reversed under Shari'ah. The position under Shari'ah is that the law directly imposes individual culpability on the human agent who acted on behalf of the corporation.¹⁵⁴ Allah said that everyman charged with one responsibility or the other shall be questioned regarding the matter of his charge.¹⁵⁵ Thus, under Shari'ah, the human agent cannot hide under the veil of incorporation to escape liability for corporation-induced environmental pollution. In other words, Shari'ah owes human agent culpable for the acts of environmental degradation perpetuated by the corporation the punishment of which goes beyond this world.

Conventional Approach/Shari'ah Approach

This segment compares the implication of the conventional Legal framework for environmental protection in

Nigeria and under Shari'ah. It is established that both the Nigerian Law and Shari'ah make provisions for environmental protection. The difference in the approaches of the two laws lies in their implication and strength on the subject. The statutory protection offered to corporate managers in form of a veil of incorporation¹⁵⁶ is one of the inherent loopholes in the conventional approach which culminates into the persistence corporation-induced environmental pollution in Nigeria. Thus, punishing the corporations for environmental pollution cannot be compared to punishing the corporate managers themselves as a result of the doctrine of corporate liability approach.¹⁵⁷

Despite the recognition of artificial personality in Islamic jurisprudence, Shari'ah does not give Divine protection to corporate managers to perpetuate environmental sins underneath as every corporate manager is responsible for his/her act. Shari'ah gives credence to the individual liability approach.¹⁵⁸ To this end, no corporate manager can hide under the veil of incorporation to escape punishment under Shari'ah even though the act was perpetuated *intra vires*.¹⁵⁹

More so, the punishment regime under the conventional approach does not go beyond this world. In most situations where the corporations escape punishment due to imperfection of the law, the case becomes *re judicata* in which the aggrieved party cannot claim remedy again.¹⁶⁰ However, the beauty of Shari'ah approach lies in its perfection and its regime transcending this

152 S Erhaze, and D Momodu, *Corporate Criminal Liability: Call for a New Legal Regime in Nigeria*. 3(2) Journal Of Law And Criminal Justice, 63-72 (2015)

153 Companies and Allied Matters Act, 2020, S 42.

154 See Quran Ch. 3:185

155 See Quran Ch. 17:36

156 AA Muhammed-Mikaaeel, and FF Abdulrazaq, *Lifting the Corporate Veil by the Court: Nigeria and England in Focus*. *Supra* note 6 at 100.

157 Although, there are some instances under which veil of incorporation can be lifted and the individuals behind the veil made to face personal liability. This rarely happens in environmental pollution cases. See generally, AA Muhammed-Mikaaeel, and FF Abdulrazaq, *Lifting the Corporate Veil by the Court: Nigeria and England in Focus*. *Supra* note 6 at 107-118

158 The Prophet was report to have said: "every one of you is a shepherd and is responsible for his flock." Se generally, H Amin, *Islamic Approach in Leadership*. 1, available at <https://www.nst.com.my/amp/opinion/letters/2018/03/343534/Islamic-approach-leadership> accessed on 21st August, 2020.

159 AA Muhammed-Mikaaeel, and FF Abdulrazaq, *Lifting the Corporate Veil by the Court: Nigeria and England in Focus*. *Supra* note 6 at 107-118

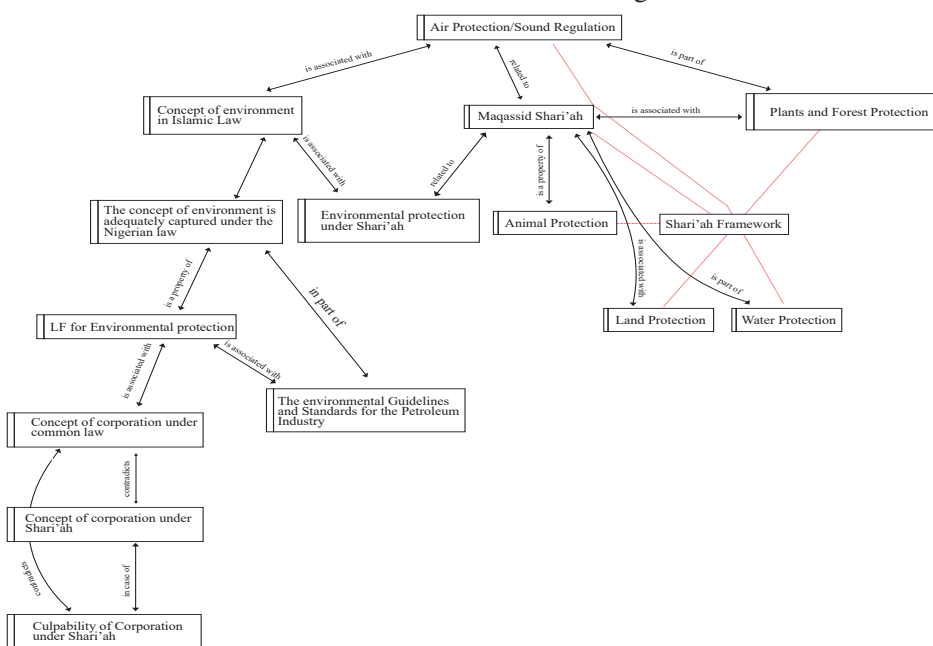
160 S.A. Oretuyi, *Operation of the Doctrine of Res Judicata in Nigeria*. 13 Anglo-American Law Review, 1 (1978)

Ahmed Abiodun Muhammed-Mikaaeel, Asihat Abdul-Qadir Zubair

world.¹⁶¹ The fear of greater punishment of Allah in the hereafter sounds like a serious warning to meticulous corporate managers. This is because, under Shari’ah, the real adjudication of environmental pollution cases, amongst others, is preserved till the hereafter.¹⁶²

Figure 7.1

Showing the thematic analysis on Shari’ah perspective in protecting its environment using ATLAS.ti



Source: Authors

Conclusion and Recommendations

Corporation-induced environmental pollution is a form of corporate governance failure. It came to force as a result of the degradation activities of corporations in Nigeria. The inhabitants of the host community consequently suffered negative effects of water, land and air pollutions. Under the various Nigerian environmental laws, corporations are punishable if contravened the law. However, several defects in the laws coupled with lack of political will and enforcement mechanisms constitute serious challenges to the protection of the environment against corporation-induced pollution.

Shari’ah, as an independent legal system, makes robust provisions for environmental protection on the principles of *Tawheed*, Trusteeship/Responsibility and Islam-

ic Sustainable Development. Unlike under the Nigerian law, corporate managers are directly responsible for the consequence of their degradation activities. The punishment regime under Shari’ah transcends this world as offences against the environment are considered as flagrant disobedient to Allah’s commandment which attracts wrath of Allah in the hereafter.

Although, Shari’ah is one of the legal systems operative in Nigeria, the Nigerian law favours the Received English Common Law which enjoys dominance over

other systems of law in the country with jurisdiction of Shari’ah constricted to personal matters. Thus, the extant legal framework for environmental protection in Nigeria is regulated only by the Common Law without exploring the position of Shari’ah.

The Nigerian environmental laws having failed to achieve their objectives in the face of the avoidable challenges, it is high time the country fathomed a way to adopt Shari’ah approach in combating menace of corporation-induced environmental pollution in the country. The reason being that, Shari’ah approach to environmental protection serves as deterrent in the real sense of it. Shari’ah corporate governance mechanism obligates corporate managers to fear Allah in course of administering the affairs of corporations. If the Oil corporations in Nigeria borrow from Shari’ah standpoint on corporate governance, corporate governance failure vide corporation-induced environmental pollution will become history.

161 See Qur’an Ch. 3:185
 162 See Qur’an Ch. 32:25