

AN APPRAISAL OF THE POLICY AND LEGAL FRAMEWORK FORENVIRONMENTAL SUSTAINABILITY IN NIGERIA

Obadoni B.C.

Lecturer II, Department of Public & International Law, Oba Erediauwa College of Law, Igbinedion University, Okada, Edo state, Nigeria. PhD Candidate, Igbinedion University, Okada, Edo State, Nigeria. E-mail: bc.obadoni@iuokada.edu.ng, Phone number: 08038076929, Postal Address: College of Law, Igbinedion University, Okada.

And

Emaviwe C.U.

Professor, Department of Private & Property Law, Oba Erediauwa College of Law, Igbinedion University, Okada, Edo state, Nigeria. E-mail: emaviwe.charity@iuokada.edu.ng Phone number: 08037141662, Postal Address: College of Law, Igbinedion University, Okada.

Abstract

Environmental sustainability means the management of the environment in such a way that ensures that the environment and its natural resources give their optimum yield and preserved for the benefit of both present and future generations. This study appraised the policy and legal framework for environmental sustainability in Nigeria. The study found that Nigeria enjoys a comparatively well-established body of laws and a ministry to regulate the environment but in spite of these measures, there is widespread regulatory failure. It further found that economic development is priced over and above the sustainability of the environment. The study comes to the conclusion that environmental concerns are not faithfully incorporated into economic and development activities in such a way as to significantly change people's behavior. The paper made several recommendations, one of which is the transition to renewable energy as the most viable option to sustaining the environment.

Keywords: Environment, sustainability, renewable, energy, climate change

1.1 Introduction

Environmental protection is an integral component of sustainable developmental measures. With the continued increase in the use of chemicals, energy and non-renewable resources by expanding global population, associated environmental problems will also increase. There is no gainsaying the fact that all human beings depend on the environment for provision of certain basic natural requirements to sustain life. Such requirements include but not limited to the appropriate temperature, adequate oxygen, food, water, air, etc. A healthy environment promotes healthy living. Thus, environmental protection is necessary to prevent health hazards. The abuse of the environment is so tremendously unhealthy that the continued existence of human life on earth is in danger if nothing is done to reverse this trend.¹ It is very important for us to protect our environment, so that we can continue to live on this planet - in a healthy and safe atmosphere.

The term 'environmental sustainability' came to be coined as a term for the ability of the environment to carry life. The need to protect the environment in view of deleterious changes to it caught global attention in the decades following the Second World War, leading to the United Nations Conference on the Human Environment in 1972 which became the first global attempt at environmental governance. Environmental sustainability as it is now known is a subset of the concept of Sustainable Development (SD) which arose from the Brundtland report of 1987 and became firmly rooted through the 1992 Earth Summit and other follow-up conferences and documents.

Unbridled industrialization and large-scale industrial pollution, the growing threat of nuclear radiation, documented mass destruction of entire ecosystems around the globe raised concerns about the environment. Furthermore, cross boundary problems such as air and water pollution which had manifested in '...burning rivers, dead forests, and toxic chemicals causing permanent damage in animals and humans' in Europe and United States of America.² The peculiar problem of acid rain in Europe in the 1960s, also raised global concerns about the environment.

Environmental sustainability means the management of the environment in such a way that ensures the environment and its natural resources give their optimum yield and preserved for the benefit of both present and future generations. From the theory of sustainable development, sustainability is concerned with ensuring that the dynamic equilibrium between man and nature is maintained in order to preserve the co-evolution of both within the earth surface.

In the case of *Minors Oposa v. Secretary of the Department of Environmental and Natural Resources*³ to stop the destruction of their nation's rapidly disappearing rain forests, a group of kids, including those of renowned environmental activist Antonio Oposa, filed this lawsuit in cooperation with the Philippine Ecological Network, Inc. The Philippines' 1987 Constitution, which recognizes the right of people to a "balanced and healthy ecology" and the right to "self-preservation and self-perpetuation," served as the foundation for the plaintiff's children's claims.⁴ Oposa also brought up the concept of "intergenerational equity" before the court, which holds that natural resources belong to people of all ages and that adults would be stealing from their children, their children's children, and all future generations if they harvested all of a nation's resources. The Supreme Court

¹ U.D. Ikoni, *An Introduction to Nigerian Environmental Law* (Malthouse Press Limited, 2010)11

² M Ivanova, 'Designing the United Nations Environment Programme: A Story of Compromise and Confrontation' (2007) *Intl Environ Agreements: Politics, Economics and Law* 7. 3: 337–361 at 338. <http://environmental.governance.org/cms/wpcontent/uploads/2009/06/Ivanova_DesigningUNEP_2007.pdf .> accessed 21 March 2023

³ 33 ILM 173 (1994).

⁴ see Section 16, Article II.

upheld the children's rights and issued a number of ground-breaking and impactful rulings, concluding that the rights to a healthy environment, the ability to live off the land, and the obligation to support future generations are fundamental rights. Children may file a lawsuit to uphold this right on behalf of both their generation and future generations because there is an intergenerational duty to maintain a clean environment, which means each generation has a responsibility to the next to preserve that environment. In accordance with the Philippine Constitution, the government must “protect and promote the people's health and instill health consciousness among them.”

1.2 The Origin of the Concept of Sustainability

Long ago, Aristotle referred to a Greek concept of ‘self-sustenance’ in talking about household economics.⁵ He meant that the household has to be self-sustaining at least to a certain extent and could not just be consumption oriented. In many ways, the idea of sustainability has gained acceptance across broad swathes of the public.⁶ The concept of SD was originally synonymous with the word “sustainability” in its technical sense, and is often still used in that sense. In the contemporary period, both terms derive from the older forestry term “sustained yield,” which is deemed a fair literal translation of the German term “nachhaltiger Ertrag” by Grober as far back as 1713.⁷ In order to maintain a balance between resource consumption and reproduction, the idea of sustainability was first applied to forestry from the 12th to the 16th century.⁸ Thus:

Linking the verb ‘sustain’ with the suffix ‘-able’ and coupling it with ‘development’ was certainly a semantic innovation. The source and blueprint for the new term, however, was a concept, which had deep roots. Those lay in the professional terminology of forestry. The term “sustained yield” has been semantically modified, extended, and transferred to the word “sustainability.” For more than two centuries, this had been the tenet and the “holy grail” of foresters everywhere. The essence of ‘sustained yield forestry’ was described for example by William A. Duerr, a leading American expert on forestry: Each generation should maintain its resources at a high level and pass them along undiminished in order to fulfill our obligations to our descendants and to stabilize our communities. One aspect of man's most basic need, to sustain life itself, is the sustained yield of timber. According to Grober, the origins of this idea can be found in the early ‘European Enlightenment’, when German Kameralists began to plan their dynasties’ woodlands ‘nachhaltig’ - in order to pass them along to future generations undiminished. They were inspired by the English author John Evelyn and the French statesman Jean Baptist

⁵ I Ehnert, *Sustainable Human Resource Management: A conceptual and Exploratory Analysis from a Paradox Perspective*. (2009) Springer. 35-36. <http://www.springer.com/business+%26+management/organization/book/978-3-7908-2187-1>. accessed 20 March 2024

⁶ UN.2012.From Rio to Rio+20: Progress and Challenges since the 1992 Earth Summit. (2012) *United Nations Conference on Sustainable Development Fact Sheet*. http://www.un.org/en/sustainablefuture/pdf/Rio+20_FS_RioRio.pdf . accessed 20 March 2024

⁷ U Grober, *Deep roots- A conceptual history of ‘sustainable development’* (2007) (Nachhaltigkeit). Berlin: Wissenschaftszentrum Berlin für Sozialforschung (WZB). 7.<<http://bibliothek.wzb.eu/pdf/2007/p07-002.pdf>> accessed 19 March 2024.

⁸ Ibid.

Colbert. In order to address the challenge of a predicted shortage of timber, the primary resource at the time, Hanns Carl von Carlowitz, head of the Royal Mining Office in the Kingdom of Saxony, created the word in 1713. Evidently, forestry management is where the current understanding of sustainability first emerged. While supporters of weak sustainability are content to maintain the current level of both natural and human capital, strong sustainability calls for living solely off the interest of natural capital (land).⁹

Sustainability is usually understood in three broad perspectives: social sustainability, economic sustainability and environmental sustainability.¹⁰ Goodland compares the three aspects: social sustainability is achieved by systemic community participation and strong civil society; economic sustainability involves maintaining capital or keeping capital stable; environmental sustainability originated from social concerns and seeks to improve human welfare by protecting the sources of raw material used for human needs and ensuring that the sinks for human waste are not exceeded to prevent harm.¹¹ Goodland claims that economic sustainability is prerequisite to social sustainability.

The United Nations World Summit also refers to the “interdependence and mutually reinforcing pillars” of SD as economic development, social development, and environmental protection,¹² thereby endorsing the three earlier mentioned aspects of sustainability.

2.1 The Concept of Sustainable Development (SD)

The concept of SD developed and gained popularity in the 1980s.¹³ The widespread awareness about SD can be traced to the Brundtland Commission. There were occurrences that mandated the work of the Commission during the period it met from October 1984 until the publication of the Report 900 days later in April 1987.¹⁴ According to the Commission, SD is not a static state of harmony but rather a process of change in which resource exploitation, investment focus, technological development direction, and institutional change are made consistent with both immediate and long-term needs. In order to achieve this kind of development, painful choices will have to be made by all.

⁹ M Quigley, *Encyclopedia of Information Ethics and Security*. (2008) Hershey: Information Science Reference. 623.

¹⁰ R Goodland, The Concept of Environmental Sustainability. (1995) *Annual Review of Ecology and Systematics* 26:1-24 at 4. <<http://are.berkeley.edu/courses/ARE298/Readings/goodland.pdf>> accessed 20 March 2024.

¹¹ Ibid.

¹² WHO, ‘World Summit Outcome Document’ (2005) <http://www.un.org/summit2005/documents.html> . accessed 22 March 2024.

¹³ It was introduced and promoted in publications such as the International Union for the Conservation of Nature's *World Conservation Strategy* (1980), Lester R. Brown's *Building a Sustainable Society* (1981) and the World Commission on Environment and Development's *Our Common Future* (1987).

¹⁴ There were environmental occurrences that triggered global attention like famines in Africa; the Union Carbide leak of toxic gas in Bhopal India which led to the death of thousands and permanent disability of hundreds of thousands more; the explosion of liquid gas tanks in Mexico City killing 1,000; the Chernobyl nuclear reactor underwent meltdown; a warehouse fire in Switzerland contaminated the River Rhine and the water supply of Germany, and the Netherlands.

Expanding on the concept of SD which it advocates, the Brundtland Commission stated that:

Humanity has the ability to make development sustainable to ensure that it meets the needs of the present without compromising the ability of future generations to meet their own needs. The concept of sustainable development does imply limits – not absolute limits but limitations imposed by the present state of technology and social organization on environmental resources and by the ability of the biosphere to absorb the effects of human activities. But technology and social organization can be both managed and improved to make way for a new era of economic growth. The Commission believes that widespread poverty is no longer inevitable. Poverty is not only an evil in itself, but sustainable development requires meeting the basic needs of all and extending to all the opportunity to fulfil their aspirations for a better life. A world in which poverty is endemic will always be prone to ecological and other catastrophes.¹⁵

One gathers from this assertion that SD simply means getting the best out of the environment with the minimum environmental cost. The lesser it costs to derive quality utility from the environment, the more sustainable the means of getting such utility. This satisfies both human development and environmental protection. While “Our Common Future” raised global awareness about the concept of SD, the Earth Summit was the first to embrace the concept of SD at the level of global diplomacy and international law as evidenced in its outcome documents: Agenda 21,¹⁶ the Statement of Forest Principles¹⁷ and the Rio Declaration on Environment and Development.¹⁸ The summit further publicized and promoted the concept of SD as the term, SD, appears 24 times in Agenda 21, 11 times in the Statement of Forest Principles, and 7 times in Rio Declaration on Environment and Development.

Principles 3 and 4 of the Rio Declaration essentially capture the concept of SD as defined by the Brundtland Commission as development that “...meets the needs of the present without compromising the ability of future generations to meet their own needs.” Rio also

¹⁵ G Brundtland, *Report of the World Commission on Environment and Development: Our Common Future* United Nations General Assembly Document A/42/427 (1987.)

¹⁶ UNGA, Agenda 21. Adopted at the U.N. Conference on Environment and Development (UNCED) at Rio de Janeiro U.N. Doc. A/CONF. 151/26 (1992) (Vol. J, II, & III) UNEP. [http://www.unep.org/Documents.Multilingual/Default.asp?documentid=52&articleid=49](http://www.unep.org/Documents/Multilingual/Default.asp?documentid=52&articleid=49). accessed 18 March 2024.

¹⁷ UNGA, ‘Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests. Adopted at the U.N. Conference on Environment and Development (UNCED) at Rio de Janeiro. U.N. Doc. A/CONF. 151/26 (1992) (Vol. III)(1992), 31 I.L.M. 881 < www.un.org/document/ga/conf151/aconf15126-3annex3.htm.> accessed 24 March 2024.

¹⁸ UNGA, Rio Declaration on Environment and Development. Adopted at the U.N. 1992. Conference on Environment and Development (UNCED) at Rio de Janeiro U.N. Doc. A/CONF. 151/26 (Vol. I), 31 I.L.M. 874 (1992). UNEP. <http://www.unep.org/documents.multilingual/default.asp?documentid=78&articleid=1163> accessed 21 March 2024.

assigned a critical role to law in achieving integration between environment and development policy. Principle 11 urges states to “enact effective environmental legislation” which should “reflect the environmental and development context to which they apply.” Principle 13 advocates the development of a liability and compensation regime for victims of pollution and other environmental damage.

In addition, chapter 8 of Agenda 21 which sets out mechanisms for “integrating environment and development in decision-making” provides, *inter alia*, that “laws and regulations suited to country-specific conditions are among the most important instruments for transforming environment and development policies into action.”¹⁹ Furthermore, chapter 39 dedicated to International Legal Instruments and Mechanisms provides for the “...further development of international law on SD, giving special attention to the delicate balance between environmental and developmental concerns.”

Apart from producing Rio Declaration on Environment and Development, Agenda 21 and Forest Principles, Rio also opened two very important supposedly binding international law instruments for signature at the 1992 summit, the United Nations Framework Convention on Climate Change (UNFCCC) and the United Nations Convention on Biological Diversity (UNCBD), the provisions of which seek to maintain the balance between sovereign right to development and the need to protect natural resources and reduce environmental pollution. The earth conference is therefore one that cannot be sidelined in discussions about SD in general, and environmental sustainability in particular.

Rio was followed by the World Summit on Sustainable Development 2002, otherwise called Rio+10, which was a platform for the global community to reinforce its commitment to achieving SD. Even this was followed up with the United Nations Conference on Sustainable Development, otherwise called Rio+20, in 2012 which brought the concept of green economy to the fore.

3.1 The History of Environmental Regulation in Nigeria

During the colonial period, Nigeria received the common law into the body of Nigerian laws,²⁰ thus making the common law principles of nuisance, trespass, negligence and the rule in *Rylands v. Fletcher*²¹ part of the Nigerian law. These guidelines could have protected the environment from domestic environmental violations, but at the time they weren't appropriate for Nigeria. Moreover, the common law principles have not proved adequate, considering the serious kinds of environmental threats that have emerged overtime.²² The origin of environmental legislations can also be traced to the colonial period. Earlier statutes containing environmental matters did not provide for remedies in environmental cases outside common law.²³

¹⁹ UNGA. 1992. Agenda 21. Ibid Chapter 8

²⁰ Supreme Court of Nigeria Ordinance of 1914, Section 14.

²¹ (1868) LR 3 HL 330.

²² The threats of climate change, global warming, loss of biodiversity, deforestation and other threats of unsustainable development.

In the late 1950s which marked the tail end of the colonial period, oil was found in commercial quantity. This marked the beginning of real environmental threats in Nigeria. After independence, more statutes were enacted to regulate the operations of the oil industries.²⁴ In these statutes, environmental protection and remedy were either secondary or vague as not to guarantee compliance with standards or enforceability. For instance, nine pollution offenses were created by the Oil in Navigable Waters Act of 1968²⁵ but was mainly a statute enacted in allegiance to the international community.²⁶ The Petroleum Act of 1969, which did not define "good oil field practice," gave the Minister the authority to revoke an oil mining license or lease if, in his opinion, the licensee was not conducting petroleum operations in a vigorous and businesslike manner in accordance with good oil field practice.²⁷ Furthermore, despite the fact that spillages have been increasing, no licenses or leases have been revoked as a result of the Petroleum Act of 1969.²⁸ Associated Gas Re-Injection Act of 1979 was enacted, and provides for the utilization of gas produced in association with oil and for the reinjection of such unused gases in industrial projects, but this Act was not practically implemented. Several communities in Nigeria's Niger Delta Wetlands protested the ecological issues caused by the oil industry and the lack of government action in the 1970s. In 1970, the National Council of Health's Expert Committee on Environmental Health examined a number of proposals on the topic with a view to recommending the creation of a sanitary inspectorate within the Federal Ministry of Health.

A bold attempt at salvaging the fast deteriorating state of the environment was in 1988 in response to the Koko incidence²⁹ which led to the enactment of the Harmful Waste

²³ For example, Criminal Code Act of 1916 which prohibited water pollution (section 245) and air pollution (section 247) and created the offence of nuisance. In 1917, the Public Health Act was enacted. Although somewhat broad in scope, this Act contained provisions of relevance to the regulation of land, air and water pollution. Thus it is evident that at this time, matters relating to the environment were dealt with in a rudimentary manner.

²⁴ The Oil in Navigable Waters Act of 1968 which created nine pollution offences, and was specifically made it an offence for a Nigerian ship to discharge oil into prohibited sea areas created under the International Convention for the Prevention of Pollution of the sea by Oil 1962; The Petroleum Act of 1969 which provided the Minister with powers to make regulations for the prevention of pollution of water causes pursuant to the Act, and the Petroleum Regulation (pursuant to section 3 of the Petroleum Act of 1916), The Oil Mineral (Safety) Regulations, Petroleum (Drilling and Production) Regulation and Petroleum Refining Regulation, made thereto; Associated Gas ReInjection Act of 1979 which provides for the utilization of gas produced in association with oil and for thereinjection of such associated gas not utilized in industrial projects; and so on.

²⁵ By section 1, it is an offence for a Nigerian Ship to discharge oil into prohibited sea areas created under the international convention for the prevention of pollution of the sea by oil.

²⁶ The Act was enacted in compliance with the requirements for the ratification of the International Convention for the Prevention of Pollution of the sea by Oil 1962.

²⁷ Ekpu, A.O. Environmental Law of Oil in Water: A Comparative Overview of Law and Policy in the US and Nigeria (1995) *Denver Journal of International Law* 24.1:55-108 at 57.

²⁸ *Ibid.*

²⁹ The story of environmental protection in Nigeria came into limelight with the discovery of an Italian ship in May 1988 with some imported toxic chemical wastes, made up principally of polychlorobiphenyls (PCBS). The waste came from Italy in five (5) shipment loads totalling 3,884 metric tonnes. This was given much publicity by the media. The wide media reaction that accompanied the discovery, hastened the enactment of the Harmful Waste

(Special Criminal Provisions)³⁰ Decree and Federal Environmental Protection Agency (FEPA) Decree.³¹ Subsequently, other statutes regulating environmental matters and providing for remedies in environmental law followed suit.

A Decree known as the Harmful Wastes (Special Criminal Provisions) Act of 1988 was passed in Nigeria to prevent illegal waste dumping. The Act's Section 1 forbade anyone living in the country from dealing in any way with hazardous waste.³² Police officers are given the authority to test any substances connected to crimes made possible by the Act, collect samples of those substances, and then seize the substance or item in question under Section 10 of the Act. The officer has full authority to detain any suspect involved in the crime.³³ In Nigeria, it was passed as part of a comprehensive environmental law that included environmental sectors whose laws had previously been dispersed among several enactments. The Act created FEPA as an organization responsible for environmental administration and enforcement. The Act included criminal penalties for releasing dangerous substances in large quantities into the land, water, or air.³⁴ Inadequacy of the penalties contained in the FEPA Act was one of its greatest defects. FEPA is the forerunner of the Federal Ministry of Environment.

3.1.1 Enforcement of Environmental laws in Nigeria

The need for an effective environmental enforcement is imperative given both the political, social and economic implication of environmental problems like oil spillage, gas flaring and deforestation on the environment. However, in Nigeria, environmental law enforcement is poor to say the least. Several factors are responsible for the unsuccessful enforcement of these laws namely: Corruption, Lack of political will, Lack of good governance, inadequate funding, dependency on oil etc.

The discovery of oil in Nigeria in the late 50s marked a watershed in Nigeria economic fortune. It led to massive wealth as petro dollars became more accessible and easy to come by compared to money from agriculture. To capitalize on the new source of wealth that oil brings, the Nigerian government took a direct approach in getting involved in oil

(Special Criminal Provisions) Decree No. 42 of 1988 and the then Federal Environment Protection Agency (FEPA)

Decree No. 58 of 1988 (repealed in 2007).

³⁰ Decree No. 42 of 1988 (Now Act).

³¹ Decree No. 58 of 1988 (Now repealed).

³² Section 8 states that any person who attempts to commit any of the crimes under the Act shall be guilty of a crime and shall on conviction be sentenced to imprisonment for life. Section 9 of the Act provides that the immunity from prosecution conferred on certain persons by or under the Diplomatic Immunities and Privileges Act shall not extend to any crime committed under the Act. The opinion has been expressed that section 9 cannot be invoked or enforced as immunities under the Diplomatic Immunities and Privileges Act have their origin from international conventions and treaties which have the force of law in Nigeria by virtue of Section 12 of the 1999 Constitution.

³³ Section 10 of Harmful Wastes (Special Criminal Provisions) Act.

³⁴ A fine not exceeding 100,000 naira and/or a term of imprisonment not exceeding 10years were the stipulated penalties for individual offenders while corporate offenders were liable to a fine of 500,000 naira and an additional fine of 1000 naira per day for every day the offence subsists.

production and exploration in the early 1970s through its Nigerian National Petroleum Corporations. While the rationale was understandable, it resulted in an unexpected problem: the government's reduced capacity to implement and enforce its regulations against massive environmental degradation caused by oil exploitation. This is because strictly enforcing its regulations entails indicting itself, which the government was unwilling to do.

The systematic undermining of the agriculture sector had further and seriously undermined the government capacity to enforce its own regulations. While the laws seem to address concerns about the environment and strive to meet global requirements, it was never meant to really indict the oil companies as doing so would affect the economic rents that the government was deriving from the sector especially following the relegation of its agricultural produce which was dominant before the discovery of oil. There is a shocking lack of political will to ensure compliance in the oil industry. No action espoused this notion more than the case of gas flaring in the NigerDelta region. In spite of the fact that the flaring of gas has been prohibited since 1984, it is a constant practice even today.

One of the major reasons often cited is the overarching corruption of public officials charged with enforcing these laws. Corruption is a major problem in Nigeria and has pervaded almost all sectors of the economy. Even considering whom enforcement agents have to deal with (oil companies), it becomes even easier to see how these official can be easily co-opted and bribed. Also the diversion of ecological funds to other use possibly of lesser significance has also been seen as a big problem to environmental enforcement in the country.

4.1 Key Environmental Regulatory Laws in Nigeria

Key enactments that currently regulate environmental activities in Nigeria are:³⁵

- i. National Environmental Standards and Regulations Enforcement Agency(NESREA) Act
- ii. Environmental Impact Assessment Act
- iii. Harmful Waste (Special Criminal Provisions) Act
- iv. Hydrocarbon Oil Refineries Act
- v. Associated Gas re-injection Act
- vi. The Endangered Species Act
- vii. Oil Pipelines Act
- viii. Petroleum Industry Act 2021
- ix. Territorial Waters Act
- x. Nuclear Safety and Radiation Protection Act
- xi. Nigerian Minerals and Mining Act 2007
- xii. National Oil Spill, Detection and Response Agency Act 2006 (NOSDRA)

³⁵ ELRI, 'Environmental law policies in Nigeria' (2022) <<https://elri-ng.org/environmental-law-policies-in-nigeria/>> accessed 23 March 2023.

- xiii. Water Resources Act (Cap W2 LFN 2004)
- xiv. Federal National Park Act

4.1.1 National Environmental Standards and Regulation Enforcement Agency (NESREA) Act 2007

The National Environmental Standards and Regulation Enforcement Agency (NESREA) is currently the major federal body charged with the protection of Nigeria's environment. The agency was created by the NESREA Act. The federal government, in line with section 20 of the 1999 constitution, established the Agency as an institution under the supervision of the Federal Ministry of Environment, Housing and Urban Development. NESREA was created to replace the defunct Federal Environmental Protection Agency (FEPA).

The NESREA Act and Regulations mark a new beginning because they aim to address the preponderance of antiquated environmental laws, standards, and enforcement mechanisms that have over time led to high rates of noncompliance with environmental laws, regulations, and standards, both in terms of their goals and their content.

Part II of the Act contains the functions of the Agency. The Agency is authorized to enforce adherence to environmental laws, regulations, policies, and standards.³⁶ Federal air and water quality standards are examples of such standards. Its duties include coordinating and communicating with stakeholders both inside and outside of Nigeria regarding environmental standards, laws, and enforcement.³⁷ Relevant stakeholders include the organised private sector, environmental groups at both national and international levels, and other Ministries and parastatals. A notable provision of the Act is section 7(c) which mandates the Agency to enforce compliance with the provisions of international agreements, protocols, conventions and treaties on the environment and such other agreement as may from time to time come into force.

Nigeria has ratified a number of international environmental treaties addressing issues like pollution, marine and wildlife conservation, forestry, oil and gas development, biodiversity loss, and desertification. Although Nigeria is a state party to many of these environmental treaties, most have not yet been domesticated. Therefore, there are two possible interpretations of this clause. First, it might be interpreted as granting NESREA the power to enforce environmental treaties in Nigeria whether or not those agreements have been domesticated there. This would be justified by the fact that Nigeria has declared its intent to be bound by the terms of the pertinent treaties by ratifying them. As a result, this nation cannot avoid upholding its treaty obligations under international law. The Vienna Convention on the Law of Treaties, which states that "every treaty in force is binding upon the parties to it and must be performed by them in good faith," expresses this principle in its Article 26.

³⁶ NESREA ACT 2007 s. 7.

³⁷ Ibid. s. 7(b)

This principle is also known as the Principle of Good Faith (*pacta sunt servanda*). This thinking was reflected in the judgment of the Court of Appeal in the case of *Mojekwu v. Ejikeme*.³⁸ Although Nigeria has not domesticated the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the court referred to it in its ruling and had no trouble concluding that the '*ili ekpe*' custom constituted discrimination against women.

Secondly, the clause might be read to limit NESREA's ability to enforce environmental treaties and international agreements that have been specifically domesticated in Nigeria by an Act of the National Assembly. "No treaty between the federation and any other country shall have the force of law except to the extent that any such treaty has been enacted into law by the National Assembly," states Section 12(1) of the 1999 Constitution. "Where the treaty deals with matters not included in the Exclusive legislative list, it must also be ratified by a majority of all the state Houses of Assembly in the federation."³⁹

The Agency is tasked with enforcing adherence to laws, regulations, and policies regarding water quality, environmental health, and sanitation, as well as pollution abatement.⁴⁰ The creation of such laws and policies is primarily intended to stop pollution and environmental deterioration. Therefore, it can be inferred that NESREA's duties are primarily focused on preventing pollution and environmental harm rather than correcting damage that has already been done to the environment. The Agency is responsible for enforcing pollution abatement where it is already happening.

NESREA is also concerned with the implementation of the rules and laws governing the conservation of biodiversity, sustainable management of the ecosystem, and the exploitation of Nigeria's natural resources.⁴¹ This clause grants NESREA broad authority over a variety of subjects. Guidelines and legislation on the sustainable management of the ecosystem and biodiversity conservation include the Sea Fisheries Act⁴² and the Regulations made pursuant to it, the Endangered Species (Control of International Trade and Traffic) Act,⁴³ and the National Park Act.⁴⁴

NESREA likewise possesses oversight functions over hazardous chemicals and waste other than in the oil and gas sector. Enforcing adherence to laws governing the importation, exportation, production, distribution, storage, sale, use, handling, and disposal of hazardous chemicals and waste is necessary. Additionally, it is used to ensure adherence to laws governing responsible chemical management, safe pesticide use, and

³⁸ (2002) 5 NWLR (PT.657), at 402.

³⁹ CFRN, section 12(3).

⁴⁰ NESREA Act, s.7 (d)

⁴¹ *Ibid*, s. 7(h)

⁴² Cap. S4 LFN 2004.

⁴³ Chapter E12, LFN 2004.

⁴⁴ Cap 197 LFN 1990.

package disposal.⁴⁵ The authority of NESREA in relation to this crucial issue is unquestionably established by this provision. It also has the effect of resolving the disagreement that existed in the 1990s regarding which organization was in charge of overseeing and controlling hazardous chemicals and wastes—the now-defunct FEPA or the National for Foods and Drug Administration and Control (NAFDAC). This provision is also admirable because it recognizes the need for strict monitoring of hazardous wastes and chemicals at every stage.

Nigerians are increasingly aware of the risks posed by the careless use and disposal of hazardous and toxic products of industrialization after becoming victims of the reckless discharge of polluting substances from industries and the dumping of toxic wastes.⁴⁶ As handling at every stage poses significant risks to the environment and people, there is a need for strict regulation and monitoring of such substances from the point of source to the point of final disposal. Environmental protection organizations must act immediately to prevent environmental harm brought on by the improper production, sale, use, handling, and disposal of such substances. The law needs to be strictly enforced in this area.

Enforcement Powers of NESREA

For the purpose of upholding the Act, NESREA is endowed with broad enforcement authority. As a result, an Agency officer may at all times enter and search with a warrant issued by a court any premises, including land, a vehicle, a tent, a vessel and floating craft, inland water, and other structures, which he reasonably believes carry out activities or store goods that violate environmental standards or legislation in order to conduct an inspection, search, and collect samples for analysis. Oil and gas facilities such as maritime tankers, barges, and floating production, storage, and offload are not included in this authority to enter and search premises (FPSO).⁴⁷ The search must be conducted with a search warrant issued by the federal or state high court in order to be considered lawful. In contrast, the repealed FEPA Act's section 26 and the Harmful Wastes (Special Criminal Provisions) Act's section 10 allowed environmental protection agencies to conduct warrantless searches. The court's new requirement for a search warrant is in recognition of the constitutionally guaranteed right to privacy.⁴⁸

The NESREA Act also granted the Agency the authority to examine any object discovered during the search that is covered by the Act or its regulations or that he has a good faith belief could be used in a way that would harm the environment. The Agency officer may also take a sample or specimen of any such item, open and examine any container or package, and examine and make copies of any book, document, or other

⁴⁵ NESREA Act, section 7(f)(g).

⁴⁶ Ogbodo, S. Gozie 'Environmental Protection in Nigeria: Two Decades After the Koko Incident,' (2009) Annual Survey of International & Comparative Law: (2009) (Vol. 15) : Iss. 1 , Article 2. <https://digitalcommons.law.ggu.edu/anlsurvey/vol15/iss1/2> accessed 28 January 2024.

⁴⁷ NESREA Act, s.30.

⁴⁸ CFRN, s. 37.

record he reasonably believes may contain information important to the enforcement of the Act or the regulations. All of these actions are permissible in the course of the investigation. Additionally, he has the right to seize and hold any items in connection with which he has a good faith belief that an Act or regulation has been broken, and to provide a written receipt for the items seized.⁴⁹

There has been a noticeable shift toward the enforcement of environmental standards and regulations rather than just the creation of standards and regulations as a result of lessons learned from the major shortcomings of the defunct agency (FEPA). As more realistic monetary fines can now be imposed, the prescribed penalties for environmental standard violations were reviewed upwards. Additionally, the NESREA was given the authority to enforce multilateral environmental treaties to which Nigeria is a party and to prohibit procedures and the use of machinery or technology that degrade environmental quality. Specific offenses were also introduced for violating each aspect of the environmental standards, namely air, water, and land.

It is clear from the review above that managing natural resources and protecting the environment are top priorities for Nigeria's sustainable development. Building the agency's human, technical, material, and financial capacity is necessary for the effective implementation of both the NESREA Act and its regulations. Additionally, it calls for the effective cooperation and collaboration of numerous stakeholders in Nigeria's management of natural resources and environmental protection.

4.1.2 Environmental Impact Assessment Act (Cap E12 LFN 2004)

To assess the potential impact of public and private projects on the environment, the Environmental Impact Assessment Law (hereinafter referred to as EIA Law)⁵⁰ was passed and section 2 of the Act prohibited the undertaking of authorized projects and activities the petroleum industry in both the public and private sectors without prior consideration of the impact of such activities and projects to the environment. The EIA Act⁵¹ was an attempt to increase environmental protection efforts through environmental impact risk analysis and development of mitigation efforts thereby pushing forward the goal of sustainable development as stated in the act. While noble and innovative, the act failed to include a financial consequence of carrying out a project without undertaking the required impact assessment which would have acted as a deterrent to disobeying the act. although the act in section 62⁵² states that:

Any person who fails to comply with the provisions of this Decree shall be guilty of an offence under this Decree and on conviction in the case of an individual to N100,000 fine or to five years

⁴⁹ NESREA Act, s. 30(1)(b c, d, e, f).

⁵⁰ Cap. E12 LFN 2004.

⁵¹ Ibid

⁵² Ibid

imprisonment and in the case of a firm or corporation to a fine of not less than N50,000 and not more than N1,000,000.

This punishment is ridiculously low for an industry whose operational currency is dollars. A paltry sum of \$200 is no motivation for multinational companies to mandatorily comply with the Act. It may be easier for the multinational companies to pay the fine than comply with the tenets of the EIA Act. The inadequacy in this law highlights the absence of any compelling reason whether punitive or inspiring that will compel and or encourage the multinational companies to comply with the law. Consequently, the Act did not serve as enough deterrent financial or otherwise. This coincidentally is one of the few preemptive environmental protection laws in the Nigerian petroleum industry.

4.1.3 Petroleum Industry Act

The Petroleum Industry Act⁵³ repealed Associated Gas Reinjection Act, 1979 CAP A25 Laws of the Federation (LFN) 2004, and its amendments;

- a. Hydrocarbon Oil Refineries Act No. 17 of 1965;⁵⁴
- b. Motor Spirits (Returns) Act;⁵⁵
- c. Nigerian National Petroleum Corporation Act No. 94 of 1993;⁵⁶
- d. Nigerian National Petroleum Corporation Act (NNPC) 1977 No, 33⁵⁷ as amended,(when NNPC ceases to exist pursuant to section 54(3) of this Act);
- e. Petroleum Products Pricing Regulatory Agency Act 2003;
- f. Petroleum Equalization Fund (Management Board etc.) Act No. 9 of 1975;⁵⁸
- g. Petroleum Equalization Fund Act,1975;
- h. Petroleum Profit Tax Act (PPTA);⁵⁹ and
- i. Deep Offshore and Inland Basin Production Sharing Contract Act (DOIBPSCA),1993⁶⁰

The PIA seeks to provide a framework for the legal, governance, regulatory and fiscal matters of the Nigerian Petroleum Industry as well as the development of Host Communities. It contains 5 chapters, 319 sections and 8 schedules.

The Act established the Nigerian Upstream Petroleum, Regulatory Commission and empowered it to regulate the technical and commercial aspects of upstream petroleum operations. The objective of the commission are stated in section 6 of the Act with the section relating to environmental management provided for in subsections (d) and (i) which provide that the commission is tasked to promote a safe, effective, health and

⁵³ PIA Act, 2021

⁵⁴ Cap. H5 LFN 2004.

⁵⁵ Cap. M20 LFN 2004.

⁵⁶ Cap. N124 LFN 2004.

⁵⁷ Cap. N123 LFN 2004.

⁵⁸ Cap. P11 LFN 2004.

⁵⁹ Cap. P13 LFN 2004.

⁶⁰ Cap. D3 LFN 2004.

effective conduct of upstream petroleum operations in an environmentally sustainable and acceptable manner and to ensure that it upholds and enforces environmental policies, laws and regulations for upstream petroleum operation.

Firstly, the Petroleum Industry Act did not give a definition of the phrase ‘environmentally acceptable and sustainable manner’. For example, as a result of the gas flared in the Niger delta, the United Nations Environment Programme (“UNEP”) noted that the hydrocarbon levels in drinking water wells in some Niger Delta communities is at least 1,800 times higher than the US Environmental Protection Agency’s (“EPA’s”) standard for drinking water. This is also more than 900 times higher than the drinking water guidelines set by the World Health Organization drinking water guidelines.⁶¹

The example shows two different standards and neither of them is the Nigerian standard. This industry is well established internationally even though it is less than a century old having become prominent in Nigeria since the 1970s. The standards of operation should be well established by now so that when talking about acceptable standards, it will be clear what standard, whether the one established by international best practices or the one established by local best practices. This is essential considering the limitations and peculiarities of Nigeria such as the geographical size, location, climate and other factors such as the health susceptibility of persons in the region.

Nevertheless, the provision of section 6(1) shows that the Agency is committed to enforcing environmental laws and regulations for the sector to the extent that it is not inconsistent with the provisions of the Act otherwise, such other laws will to the extent of its inconsistency be void in relation to matters provided by the Act.

4.1.4 Harmful Wastes (Special Criminal Provisions) Act

The Harmful Wastes (Special Criminal Provisions) Act⁶² prohibits, without lawful authority, the carrying, dumping or depositing of harmful wastes in the air, land or waters of Nigeria. The following sections are notable:

Section 6 provides for a punishment of life imprisonment for offenders as well as the forfeiture of land or anything used to commit the offence; Section 7 makes provision for the punishment accordingly, of any conniving, consenting or negligent officer where the offence is committed by a company while section 12 defines the civil liability of any offender. He would be liable to persons who have suffered injury as a result of his offending act.

4.1.5 National Oil Spill Detection and Response Agency (Establishment) Act 2006

This Act established the National Oil Spill Detection and Response Agency (NOSDRA) as the body charged with the responsibility of implementing the National Oil Spill

⁶¹ Kale Zainab Kponee et al., Petroleum contaminated water and health symptoms: a cross-sectional pilot study in arural Nigerian community, 14 ENVTL. HEALTH 1, 2 (2015)

⁶² Cap H1, LFN 2004.

Contingency Plan (NOSCP) derived from an international obligation under the International Convention on Oil Pollution Preparedness and Response Cooperation. The Act also makes regulations on waste emanating from oil exploration and production and its potential consequences in the Niger Delta area of Nigeria. Sections 6 and 7 of the Act 2006 provides for the functions of the Agency as to:

- a. Be responsible for surveillance and ensure compliance with all existing environmental legislation and the detection of oil spills in the petroleum sector;
- b. Receive reports of oil spillages and coordinate oil spill response activities throughout Nigeria;
- c. Co-ordinate the implementation of the plan as may be formulated from time to time by the Federal Government;
- d. Co-ordinate the implementation of the Plan for the removal of hazardous substances as may be issued by the Federal Government;
- e. Perform such other functions as may be required to achieve the aims and objectives of the Agency under this Act or any plan as may be formulated by the Federal Government pursuant to this Act.

In recent times, the bulk of the Agency's sanction letters and cases in Court have been on account of the failure of owners of facilities or operators to report incidences of oil spillages.⁶³ Whenever a spill occurs, the operator or facility owner is duty bound to inform the Agency about the spill.⁶⁴ The Act is very instructive on this position as the drafters of the Act deemed it fit to penalize any default on the part of operators. An oil spiller is by this Act to report an oil spill to the Agency in writing not later than 24 hours after the occurrence of an oil spill, in default of which the failure to report shall attract a penalty in the sum of five hundred thousand naira (N500,000.00) for each day of failure to report the occurrence.⁶⁵

Section 19(3) of The NOSDRA Act mandates the Agency to co-operate with an oil spiller in the determination of appropriate measures to prevent excessive damage to the environment and communities. They are also mandated to mobilize internal resources and assist to obtain any outside human and financial resources that may be required to combat any oil spill and also assist with the assessment of damage caused by an oil spillage.

5.1 Conclusion and Recommendations

Despite the efforts that stakeholders have made to protect the environment, environmental problems have continued to embattle developing countries.⁶⁶ There is a vicious cycle in

⁶³ See *NOSDRA v. CHEVRON Nigeria Ltd.* (Unreported) Suit No.:FHC/AK/CS/13/2013.

⁶⁴ The offending company fills and submit FORM A (Oil Spill/Leak Notification Report form). This form is contained in the First Schedule to S.I No. 25 Oil Spill Recovery, Clean-up, Remediation and Damage Assessment Regulations, 2011.

⁶⁵ See Section 6(2) of the NOSDRA Act, 2006

⁶⁶ UNGA.2002. We the Peoples: The Role of the United Nations in the 21st Century. Report of the Secretary General of the United Nations., <http://www.un.org/millennium/sg/report/> accessed January 10 2024.

which development activities cause environmental problems, leading to other social, economic, health, environmental, and political problems, and effectively making sustainable development difficult to achieve. To redress this, the following recommendations are proposed:

1. Stakeholders need to pay more attention to legislative frameworks proposing an effective mix of command and control as well as institutional capacity building and training of enforcement officers.
2. Nigerian government needs to foster sustainable environmental regime by energizing all parts of society to seek the end result of sustainable environmental governance through public participation that is founded on clearly defined principles, ground rules and objectives.
3. Environmental management should be delegated to lower levels of governance. Many problems manifest themselves at the local level and as a result of this, Nigeria can make substantive progress towards sustainability by encouraging local governments to create and implement their own sustainability strategies.
4. The promotion of individuals' right of access to information concerning the environment cannot be over emphasized. Routinely making environmental information public enables civil society to play an active role in ensuring reinforcement and expanding upon government efforts to ensure accountability. This provides a basis for community engagement and fosters development of an environmental ethics throughout civil society, industry and government.
5. Environmental objectives must be integrated into the economic goals of the nation. Sustainable economic growth cannot be achieved without tackling the challenges of environmental degradation. A core idea behind sustainability is that the goals of social equity, economic competitiveness and environmental protection should be integrated in planning for the future.
6. There should be effective compliance and unfettered access to fair and responsive environmental dispute resolution mechanisms. Lack of corporate compliance with environmental regulations forms a tremendous problem in many developing countries. The establishment of effective compliance and dispute resolution mechanism that would ensure compliance with instruments that encourage sustainability can be used to either effectively monitor compliance or settle disputes about possible non-compliance.
7. Governance is a critical factor in the process of development and to the attainment of sound environmental governance. Good governance is essential for sustainable environmental governance. The conservation and improvement of the environment can only take place effectively within the framework of good governance. A framework of good governance is fundamental to the development of policies that can protect and improve the environment.
8. The government needs to promote renewable energy as an alternative to conventional energy.
9. To achieve environmental sustainability, it is vital to create an environmental restoration fund. This will go a long way in ensuring restorative justice.