

## THE ENVIRONMENTAL PROTECTION REGIME IN NIGERIA: A LEGAL ANALYSIS\*\*

### **Abstract**

The environment comprises of land, air, water, forest, and everything that exist in them including man, and their interactions with one another. Man, in order to harness the numerous resources in his environment has devastated the environment to his own discomfort that he has no option than to resort to some remedies, to sustain and maintain an environment that will not only be in harmony with nature but also guarantees his health and safety. Thus, the Nigerian government has promulgated laws on environmental protection in Nigeria, and has, by means of legal option established an access through which international treaties, including treaties on the protection of human environment would be made relevant in Nigeria. However, the environment still appears polluted as if no legal remedies exist. This work will spotlight some of the legal instruments and their provisions on the protection of the environment in Nigeria, such as the NESREA Act 2007, the 1999 Constitution of the Federal Republic of Nigeria and others. It will also answer question as to whether these laws are obeyed or honored in breach as the reason for the continuous degradation of the Nigerian environment, or whether such reason is traceable to lack of will power and commitment on the side of the government to amend, implement or enforce laws, with the view to exposing some flaws in the laws that are deemed as impediments to environmental protection in Nigeria via appraisals, and preferring some suggestions.

**Keywords:** Environmental Hazards, Environmental Protection, Nigerian Laws, Constitutional Challenges, and Legal Remedies.

## **Introduction**

The sustenance of man on earth solely depends on the state of the environment in which he lives and explores the natural resources there in that support and maintain his existence sustainably. The exploration of these natural resources are not done without anthropogenic activities which ironically have resulted in the pollution and or degradation of the environment in a proportion that constitutes grave threats to human lives and the entire ecosystems at global dimension. Hence Nigeria, considering the need to stem the tide of and cushion the effects of environmental hazard occasioned by human activities and other natural occurrences prioritized as a matter of necessity on the protection of the Nigerian environment by means of a legal framework where in laws to that effect were severally enacted by the National Assembly of the Federal Republic of Nigeria; some have also undergone amendments in order to meet the needs of the contemporal society and be in ‘tandem’ with the present circumstances and realities.

The 1999 Constitution of Nigeria and other relevant provisions of other laws on environmental protection in Nigeria have posed some challenges to the realization of environmental protection in Nigeria. For example, section 6(6)(c) of the Constitution militates against the good objectives set to be achieved by section 20 of the Constitution, which empowers the state to protect the Nigerian environment. Some provisions of other laws on environmental protection in Nigeria, such as NESREA are still not weighty enough to deter people and organizations from polluting the Nigerian environment. Hence the environment is still being unabatedly polluted, and even at a geometrical proportion by both individuals and corporate organizations, with both man and ecosystems being at the receiving end, a situation that calls for a

question as to whether the ugly scenario is truly and indeed attributable to these deficiencies in the laws, or lack of implementation of the avalanche of the domestic legal instruments on environmental protection or both, in Nigeria.

### **The National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007<sup>1</sup>**

The National Environmental Standards and Regulations Enforcement Agency (NESREA) Act of 2007, repealed the Federal Environmental Protection Agency (FEPA) Act by its section 36. NESREA is saddled with the responsibility of enforcing environmental laws, regulations and standards in deterring people, industries and organizations from polluting and degrading the environment<sup>2</sup>. It is made up of regulations geared at the protection and sustainable development of the environment and its natural resources.

Section 7 provides the Agency with the power to enforce compliance with laws, guidelines, policies and standards on environmental matters local and international, environmental sanitation, pollution prevention and control through monitoring and regulatory measures<sup>3</sup>. Section 8(1)(k) empowers the Agency to make and review regulations on air and water quality, effluent

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<sup>1</sup> Cap N164 LFN, 2007

<sup>2</sup> NESREA <<http://www.nesrea.goving/abroad-us/>> accessed 28/11/2017

<sup>3</sup> S.7 *Ibid*

limitations, control of harmful substances and other forms of environmental pollution and sanitation.<sup>4</sup> Section 27 provides that the discharge of hazardous substances into the environment without lawful authority is prohibited. This offence is punishable under sub-section (2) and (3) of Section 27 with a fine not exceeding N1,000,000 (One Million Naira) and an imprisonment term of five years<sup>5</sup>. For a company, there is an additional fine of N50,000 for every day the offence persists.

Note that NESREA Act and Regulations constitute a new dawn because in both purpose and contents, they address the preponderance of obsolete environmental regulations, standards and enforcement mechanisms, which have resulted over the years because of non-compliance with environmental law<sup>6</sup>. Under section 20(1) NESREA<sup>7</sup>, the Agency is enjoined to collaborate with other relevant agencies to undertake to study data and recognize development in force in other countries regarding the cumulative effects of all substances, practices processes and activities which may affect the atmosphere, especially the ozone layer. For the purpose of this, the Agency is to embark on programmes for the control of any substance, practice, process, or activity which may reasonably be anticipated to affect the atmosphere, especially Ozone in the atmosphere which such effect may reasonably be anticipated to endanger public health<sup>8</sup> and welfare.

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<sup>4</sup> S.8, *Ibid*

<sup>5</sup> *Ibid*

<sup>6</sup> M.T Ladan, “*Review of NESREA Act, Cap N164 LFN, 2007 and Regulation in 2009-2011: A New Dawn in Environmental Compliance and Enforcement in Nigeria*” (2012)8 Law, Environment and Development Journal, 121.

<sup>7</sup> (n1), Section 20(1)

<sup>8</sup> (n1) S.20 (2)

Section 20(1)(c) of the Act<sup>9</sup> empowers the agency to protect and combat various atmospheric pollution, while subsection 20(1) (e) enjoys the agency to use appropriate means to reduce emission to permissible levels<sup>10</sup>.

Section 20(3) NESREA postulates that:

A person who violates the regulations made pursuant to subsection (1) of this section commits an offence and shall on conviction be liable to a fine not exceeding (N200,000.00) Two Hundred Thousand Naira or to imprisonment and an additional fine of (N2,000,000.00) Twenty Thousand Naira for everyday the offence subsists<sup>11</sup>.

Section 20(4) of the Act provides that, where an offence under subsection (1) of this section is committed by a body corporate, it shall upon conviction be liable to a fine not exceeding (N2,000,000) Two Million Naira and an additional fine of (N50,000.00) Fifty Thousand Naira for everyday the offence subsists<sup>12</sup>.

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<sup>9</sup> (n1)S. 20(1)(c)

<sup>10</sup> (n1)S.20(1)(e)

<sup>11</sup> (n1)S.20(3)

<sup>12</sup> (n1) S.20(4)

Section 21(4) of the Act<sup>13</sup> provides that where an offence under subsection of this section is committed by a body corporate, it shall on conviction be liable to a fine not exceeding (N2,000,000.00) Two Million Naira and an additional fine of (N50,000.00) Fifty Thousand Naira for everyday the offence subsists. Section 22(1)(6) NESREA<sup>14</sup> empowers the agency to make regulations on noise emission control, abatement, as may be necessary to preserve and maintain public health and welfare. Section 22(3) provides that a person who violated these regulations made pursuant to subsection 1 of this section commits an offence and shall on conviction be liable to a fine not exceeding (N50,000.00) Fifty Thousand Naira or a term not exceeding one year or both such fine and imprisonment and an additional fine of (N5,000.00) Five Thousand Naira for everyday the offence subsists<sup>15</sup>. Section 22(4) states that where an offence under subsection (3) of this section is committed by a body corporate, it shall on conviction liable to a fine not exceeding (N500,000.00) Five Hundred Thousand Naira for everyday the offence subsists<sup>16</sup>. The Agency under section 26(1) may make regulations, guidelines and standards for the protection and enhancement of the quality of land resources, natural watershed, coastal zone, dams and reservoirs including prevention of flood and erosion, to serve the purpose of this Act<sup>17</sup>, and a person who violates the provisions of this regulations made pursuant to subsection(1) above, commits an offence and shall on conviction, be liable to a fine not exceeding one year or to both such fine and imprisonment and an additional fine of N10,000 for every day the

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<sup>13</sup> (n1) S.21(4)

<sup>14</sup> (n1) S.22(1) (6)

<sup>15</sup> (n1) S.22(3)

<sup>16</sup> (n1) S.22(4)

<sup>17</sup> (n1) S.26(1)

offence subsists<sup>18</sup>. Where an offence under subsection (1) of this section is committed by a body corporate, it shall on conviction, be liable to a fine not exceeding N1,000,000 and an additional fine of N50,000 for everyday the offence subsists<sup>19</sup>. Note that NESREA Act specifically mandates the Agency to enforce the compliance with resolutions reached by Nigeria in International treaties on the environment<sup>20</sup>. Some of the Regulations made pursuant to NESREA Act are considered in this dissertation under this subhead, as stated below.

### **National Environmental (Ozone Layer Protection) Regulations, 2009**

These are regulations made pursuant to NESREA Act, on ozone layer depletion in Nigeria. Regulation 1 (1) provides that no person shall import, manufacture in part or in whole, install, offer for sale, sell or buy new or refurbished facilities intended to be used for the production of any ozone-depleting substance (ODS), unless for the recovery and recycling of substances already in use<sup>21</sup>. Regulation 2(1) (a) (b) (c) (d) provides that subject to the provision of regulation 2(2) of this regulation, no person shall release or permit the release into the atmosphere an ozone-depleting substance from an equipment or any part of an equipment; fire extinguishing equipment except during fire fighting a container used in the supply, recovery, recycling, reclamation, transportation or storage of an ozone depleting substance, or an ozone depleting substance recovery recycling or

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<sup>18</sup> (n1)S.26(3)

<sup>19</sup> (n1) S.26(4)

<sup>20</sup> (n1) S.7

<sup>21</sup> Regulation 1(1) National Environmental (Ozone Layer Protection) Regulations, 2009.

reclamation system<sup>22</sup>. The agency in exercising its powers to enforce compliance under this Act, is empowered under regulation 11(1)(2) over any premises used by industries/or enterprises using ozone depleting substances who shall require permit for its activities<sup>23</sup>. Regulation 22(1) provides that any person who violated the provisions of these regulations commits an offence and liable to conviction to a fine of not more than (N200,000.00) Two Hundred Thousand Naira or imprisonment for a term not exceeding one year or both fine and imprisonment and an additional fine of (N10,000.00) Ten Thousand Naira for everyday the offence subsists<sup>24</sup>. Regulation 22(2) provides that where an offence under these regulations is committed by a body corporate, it shall be liable to a fine of not exceeding (N1,000,000.00) One Million Naira and an additional fine of (50,000.00) Fifty Thousand Naira for everyday the offence subsists<sup>25</sup>.

### **National Environmental (Food, Beverages and Tobacco Sector) Regulations, 2009**

This is another regulation made pursuant to NESREA Act with the aim of preventing and minimizing pollution from all operations and ancillary activities of food, beverages and tobacco companies to the Nigerian Environment<sup>26</sup>. Under Regulation 3(1) every company shall plan and set up machinery for combating pollution hazard and maintain equipment in the event of an emergency<sup>27</sup>. The owner or operator of a facility shall prepare an

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<sup>22</sup> (n21) Reg. 2(1) (a) (b) (c) (d)

<sup>23</sup> (n21) Reg. 11 (1) (2)

<sup>24</sup> (n21) Reg. 22(1)

<sup>25</sup> (n21) Reg. 22(2)

<sup>26</sup> Regulation 1, National environmental (food, Beverages and Tobacco Sector) Regulations, 2009

<sup>27</sup> (n26) Reg. 3(1)



emergency response plan that describes the measures to be taken in respect of the discharge of deleterious substance; to prevent any deposit or mitigate the effects of such a deposit or discharge<sup>28</sup>. The regulations also mandate every company to install anti-pollution equipment for the detoxification of effluent and emissions standard<sup>29</sup>, and which shall be based on be Best Available Technology (BAT) or the Best Practicable Technology (BPT)<sup>30</sup>.

The regulations also provides for the polluter-pays principle which shall apply to every company that pollutes<sup>31</sup>, and in the event of an accident resulting in an adverse impact on the environment whether socio-economically or healthy wise, the company shall be responsible for: (a) the cost of damage, assessment, control and clean-up; (b) remediation; (c) reclamation or restoration; (d) compensation to affected parties; and (d) cost of damage assessment and control<sup>32</sup>. Regulation 40(1) provides the Agency with the primary responsibility of enforcing all applicable pre-treatment of standards and requirements, which the Agency may take action at any time as appropriate subject to available information to it<sup>33</sup>, whereas an enforcement notice shall be served if the agency is of the opinion that a company has contravened, is contravening or is likely to contravene any condition of the permit<sup>34</sup> issued to a company.

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<sup>28</sup> (n26) Reg. 3(3)

<sup>29</sup> (n26) Reg. 4(1)

<sup>30</sup> (n26) Reg. 4(2)

<sup>31</sup> (n26) Reg. 5(1)

<sup>32</sup> (n26) Reg. 5(3)

<sup>33</sup> (n26) Reg. 40(1)

<sup>34</sup> (n26) Reg. 41(1)

Regulation 45(1) a-d provides that it shall be an offence for a company to make false statement which is known to be false or misleading, while Reg. 46(1) a-g provide for the liability of a company upon its failure to comply with abatement measures<sup>35</sup>. By virtue of regulation 47 it shall be an offence if a company fails to: (a) maintain records of all discharges; (b) file quarterly and annual reports of all discharges<sup>36</sup>, whereas Regulation 48 provides for offence if a company discharges effluent beyond permit level<sup>37</sup>. Regulations 49(1) provides that: any person who violates the provisions of regulation 44, 45, 47 and 48 commits an offence and shall on conviction, be liable to a fine not exceeding N200,000.00 or to imprisonment for a term not exceeding two years or to both such fine and imprisonment and an additional fine of N5,000.00 for every day the offence subsists, and where an offence under sub-regulation 1 of this regulation is committed by a company, it shall on conviction, be liable to fine not exceeding N1,000.00 and an additional fine of N50,000.00 for every day the offence subsists<sup>38</sup>.

### **National Environmental (Sanitation and Wastes Control) Regulations, 2009**

This regulations made pursuant to NESERA Act, is for the purpose of adoption of sustainable and environment friendly practice in environmental sanitation and waste management to minimize pollution<sup>39</sup>. Under regulation 3(1) no person is to discard, throw or drop any litter or any similar refuse anywhere

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<sup>35</sup> (n26) Reg. 46(1)

<sup>36</sup> (n26) Reg. 47(a)-(b)

<sup>37</sup> (n26) Reg. 48(a)-(c)

<sup>38</sup> (n26) Reg. 49(1)(2)

<sup>39</sup> National Environmental (Sanitation and Wastes Control) Regulations 2009, Reg. 2

except in designated litter bins. Regulation 5 which is on cleaning of walkways enjoins the occupant or management of a premises to keep the sidewalks and drainage area all around the building clean at all times; ensures there is no sweeping out, or throwing of any litter into any drain, public place, private lands, vacant plots, streets, lanes, walkways, beaches or dock within 5 metres of the premises; and ensure there is no blocks of the streets, walkways, drains with building or construction materials such as sand, gravels or chippings, with stones, bricks or cement blocks, iron rods, etc<sup>40</sup>.

Regulation 6 ensures that the food vendors comply with National Policy Guidelines on food Sanitation, in order to ensure that litter and other wastes do not pollute the environment<sup>41</sup>, while regulation 8 which is on industrial sanitation provides *inter alia* that a person in care, management or control of any industrial facility shall keep the premises, drains and all public or private land, streets, lanes, walkways, beaches or docks within 5 metres of the boundary of the property free from litter at all times<sup>42</sup>. Regulation 12 places obligations on the citizens which comprises of individuals, groups of persons and bodies corporate to report any fly tipping and disposal of wastes in or on undesignated location to the appropriate authority; pay for the collection and disposal of waste; and incorporate environmental care concerns in their day to day activities<sup>43</sup>, while regulation 27 places a person granted a license to transport wastes with the responsibility of ensuring that waste is collected from designated area of operations and delivered to the designated transfer station,

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<sup>40</sup> (n39) Reg. 5(a)-(c)

<sup>41</sup> (n39) Reg. 6(1)(a)

<sup>42</sup> (n39) Reg. 8(e)

<sup>43</sup> (n39) Reg. 12(a)(b)(c)

disposal site or plant; the collection and transportation of wastes is conducted in such a manner that will not cause scattering, escaping or flowing out of the waste; and the vehicles and equipment for the transportation of waste are in such a state that shall not cause the scattering, escaping, flowing out of the waste or the emission of noxious smells, fumes or smoke from the waste<sup>44</sup>. Also, by virtue of regulation 44 no person shall emerge in any activity likely to generate any hazardous waste<sup>45</sup>.

Under regulations 98 any person who commits any offence in regulation 74 which is failure to comply with guideline and permit standard and others, shall on conviction be liable to a fine of N100,000.00 or imprisonment for one (1) year or to both such fine and imprisonment<sup>46</sup>. Under regulations 75 it shall be an offence if a food vendor fails to comply with any guidelines or standard under this regulation and as a result the person shall be guilty of an offence and shall on conviction be liable to a fine of N100,000.00 or imprisonment for twelve (12) months or to both such fine and imprisonment under regulation 99<sup>47</sup>.

It shall be an offence under regulation 76 to make a statement which is to be false or misleading, and such offender shall upon conviction be liable to a fine of N250,000.00 or imprisonment for eighteen (18) months or to both such fine and imprisonment.<sup>48</sup>

### **Environmental Impact Assessment (EIA) Act<sup>49</sup>**

The EIA act, being one of the legal instruments for environmental protection in Nigeria, deals with the considering environmental

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<sup>44</sup> (n39) Reg. 27(a)(b)(c)

<sup>45</sup> (n39) Reg. 44

<sup>46</sup> (n39) Reg. 98

<sup>47</sup> (n39) Reg. 99

<sup>48</sup> (n39) Reg S. 76 and 100

<sup>49</sup> Cap E12, LFN, 2004

impact in respect of public and private projects. Relevant Sections are as follows:

Section 2(1) requires public or private sectors of the economy not undertake or embarks or authorize projects or activities without prior consideration, at an early stage, of their environmental effects<sup>50</sup>. Where the extent, nature or location of a proposed project or activities is such that is likely to significantly affect the environment, its environmental impact assessment shall be undertaken in accordance with the provisions of this Act<sup>51</sup>. Section 2(2) requires all agencies, institutions to apply in writing to the Agency before they can embark on the proposed project<sup>52</sup>.

Section 13(2) provides the Agency with powers to give certain conditions before the carrying out of any project, without the fulfillment of which no project can be carried out<sup>53</sup>. Section 62 provides that any person who fails to comply with the provisions of this Act shall be guilty of an offence under this Act, and on conviction as the case of an individual to N100,000 fine or to five years imprisonment and or the case of a firm or corporation to a fine of not less than N50,000 and not more than N1,000,000<sup>54</sup>.

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<sup>50</sup> (n49) Section 2(1)

<sup>51</sup> (n49) S.2(2)

<sup>52</sup> (n49) S.2(4)

<sup>53</sup> (n49) S.13(2)

<sup>54</sup> (n49) S.62

Note that the EIA Act defines project to mean a physical work that a proponent proposes to construct, operate, modify, decommission, abandon or otherwise carry out or a physical activity that a proponent proposes to undertake or otherwise carryout<sup>55</sup>. Thus, it is a process used for predicting environmental consequences of a proposed major development project (such as a factory, a hydro-electric project, a large dam and associated irrigation project, developing a labour, etc), and planning the appropriate measures to reduce adverse effect; and examine how the project could cause harm to people, property and livelihood or to other nearby developments<sup>56</sup>.

### **National Oil Spill Detection and Response Agency (Establishment) Act (NOSDRA) 2006<sup>57</sup>**

The Agency was established to carryout responsibility for preparedness, detection and response to all oil spillages in Nigeria<sup>58</sup>. Consequently, the National Oil Spill Contingency Plan (NOSCP) was established in accordance with the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC) 1990<sup>59</sup>, which Nigeria has ratified<sup>60</sup>. The main objective of the Agency is to co-ordinate and implement the National Oil Spill Contingency Plan for Nigeria by establishing a viable national operational organization that ensures a safe,

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<sup>55</sup> (n49) S.63

<sup>56</sup> C.A Omaka, *Imperativeness of Insertion of Environmental right as a Fundamental right in the Constitution of the Federal Republic of Nigeria*, (2013) Vol. 1, RSU, JPPL 158

<sup>57</sup> NOSDRA Act Cap N157 LFN, 2006

<sup>58</sup> (n57) S.1(1)

<sup>59</sup> Adopted 30 November, 1990; entry into force: 13/1995 30 ILM 747 Final.

<sup>60</sup> Nigeria became a member of the International Maritime Organization (IMO) in 1962, hence ratified the convention.

timely, effective and appropriate response to major or disastrous oil pollution; identify high-risk areas as well as priority areas for protection and clean up; establish the mechanism to monitor and assist or where expedient direct the response, including the capacity to mobilize the necessary resources to save lives, protect threatened environment, and clean up to the best practical extent of the impacted site; maximize the effective use of the available facilities and resources of corporate bodies, their international connections and oil spill cooperatives, that is Clean Nigeria Association (CAN) in implementing appropriate spill response; and cooperate with the international maritime organization and other national regional and international organizations in the promotion and exchange of results of research and development programme relating to the enhancement of the state-of-the art of the oil pollution preparedness and response, including technologies, techniques for surveillance, containment, recovery, disposal and clean up to the best practical extent, etc<sup>61</sup>.

An oil spiller is required to report an oil spill to the Agency in writing not later than 24 hours after the occurrence of the oil spill and failure to report to shall attract a penalty in the sum of Five Hundred Thousand Naira (N500,000.00) for each day of failure to report the occurrence, and the failure to clean the impacted site, to all practical extent including remediation, shall attract a further fine of One Million Naira<sup>62</sup>.

### **Oil in Navigable Waters Act<sup>63</sup>**

The Oil in Navigable Waters Act is concerned with the discharge of oil from ships. The Act which provides for prevention of

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<sup>61</sup> (n57) S.5 (a)(b)(c)(d) and (i)

<sup>62</sup> (n57) S.6(2)(3)

<sup>63</sup> Cap O6, LFN 2004

pollution of sea by oil<sup>64</sup> was promulgated to reduce the incidence of pollution of the world's high seas and Nigeria waters in particular. The Act provides that offences under it are 'strict liability'<sup>65</sup>. It prohibits the discharge of oil from ships into the sea and navigable waters<sup>66</sup>. It is also an offence for a ship master, occupier of land, or operator of apparatus for transferring oil, to discharge oil into Nigerian waters<sup>67</sup>.

In a nutshell, the Act provides *inter alia* as follows:

- i. Prohibits the discharge of crude oil, fuel, lubricating oil, heavy diesel oil or any mixture containing not less than 100 parts of oil, etc, into prohibited sea areas of a Nigerian ship into territorial waters or shorelines<sup>68</sup>.
- ii. It designates prohibited areas<sup>69</sup> of the sea and empowers the Minister of Transport to designate by order other areas, outside the prohibited areas of the sea and Nigerian territorial waters, as prohibited areas for the purpose of protecting the coast and territorial waters of Nigeria from pollution by oil<sup>70</sup>, and to vary or exclude any prohibited area as such<sup>71</sup>.
- iii. The oil in Navigable Waters Act makes it an offence for a ship master, occupier of land, or operator of apparatus for transferring oil to discharge oil into Nigerian Waters. It

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<sup>64</sup> International Convention for Prevention of Pollution of The Sea by Oil 1954 (as amended in 1968) The International Convention of Civil Liability of Oil Pollution Damage 1969.

<sup>65</sup> E.I. Kachikwu "Legal Issues in Oil and Gas Industry" (1989) (2)(a) Business & Property Law 37

<sup>66</sup> (n63) S.1

<sup>67</sup> (n63) S.3

<sup>68</sup> (n63) S.1(1)

<sup>69</sup> (n63) S.2(1-2)

<sup>70</sup> (n63) S.2(3)

<sup>71</sup> (n63) S.2(4)



also requires installation of anti-pollution equipment in ships<sup>72</sup>. If any oil or mixture containing oil is discharged into the sea within the seaward limits of the territorial waters of Nigeria and all other waters (including inland waters) which are within those limits and are navigable by sea going ships<sup>73</sup>.

- iv. The Act makes discharge punishable with a fine of N2,000.00 (Two Thousand Naira)<sup>74</sup>, and it also requires that such oil discharges be recorded<sup>75</sup>.

However, section 3(3) provides *inter alia* the singular exception with regard to the discharge of dangerous petroleum only, wherein it authorizes the harbor authority to appoint a place within its jurisdiction where the ballast water of vessels in which a cargo of dangerous petroleum has been carried may be discharged into the waters of the harbor, at such times, and subject to such conditions as the authority may determine<sup>76</sup>.

### **Petroleum Act<sup>77</sup>**

This Act was principally enacted for the exploration of petroleum from the territorial waters and continental shelf of Nigeria. It promotes public safety and environmental regulations on operations for the prevention of air and water pollution<sup>78</sup>. It thus appears from the Act that section 9 is the only provision that has

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<sup>72</sup> (n63) S.3(1)

<sup>73</sup> (n63) S.3(2) (a-b); it appears section 1 applies to only Nigerian ships, whereas section 3 applies to all ships plying Nigerian waters

<sup>74</sup> (n63) S.6

<sup>75</sup> (n63) S.7

<sup>76</sup> (n63) S.3(3)

<sup>77</sup> Cap P10, LFN 2004

<sup>78</sup> (n77) S.9(i)(b)(iii)

direct nexus with environmental protection<sup>79</sup>, however, it has by the regulations made pursuant to it provided for environmental protection.

### **Petroleum (Drilling and Production) Regulation<sup>80</sup>**

The primary regulation relating to environmental pollution under the petroleum (Drilling and production) Regulations is regulation 25 which provides that:

The licensees or lessee shall adopt all practicable precautions, including the provision of up-to-date equipment approved by the director of petroleum resources, to prevent the pollution of inland waters, rivers, watercourses, the territorial waters of Nigeria or the high seas by oil, mud or other fluids or substances which might contaminate the water, banks or shorelines or which might cause harm or destruction to fresh water or marine life, and where any such pollution occurs or has occurred, shall take prompt steps to control and, if possible, end it<sup>81</sup>.

The basic focus of the regulation is on the prevention of the pollution of inland waters, rivers, water courses, the territorial waters of Nigeria or the high seas<sup>82</sup>. Regulation 3(b)(d) obliges the licensee or leasee to take all practicable steps to prevent the escape of petroleum into any water, well, spring, stream, river, lake, reservoir, estuary or harbours<sup>83</sup>.

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<sup>79</sup> (n77)

<sup>80</sup> PDPR 1969

<sup>81</sup> (n80) Reg. 25

<sup>82</sup> (n80)

<sup>83</sup> (n80) Reg. 3(b)(d)

Regulation 3(b)(a) of the Petroleum (Drilling and Production) Regulation<sup>84</sup> further requires the licensee to control the flow and prevent the escape of petroleum discovered in or obtained from the sea to which his license or lease covers. The licensee is further obligated to take all steps practicable to cause as little damage as possible to the surface of the relevant area and to the trees, crops, building, structure and other property thereon<sup>85</sup>. Regulation 40 of the same regulation obligates the licensee or lessee to drain all waste oil<sup>86</sup>, brim and sludge or refuse from all storage vessels, boreholes and well into proper receptacles constructed in compliance with safety regulations, and disposed of in a manner approved by the Director of Petroleum Resources or as provided by any other applicable regulations. The regulation also prohibits without lawful permission, the cutting down of trees in forests<sup>87</sup>. It is important therefore to posit that the principal objective of the petroleum (Drilling and Production) Regulation is the Prevention and Control of Pollution from Petroleum related activities in order to ensure human health and safety. It is observed from the petroleum (Drilling and Production) Regulation that there is no provision for penalty or civil liability in case of any violation or breach of the environmental provision.

### **Nuclear Safety and Radiation Protection Law, 1995<sup>88</sup>**

Focusing on the regulation of the use of radioactive substances and equipment emitting and generating ionizing radiation, this Act establishes the authority for the protection of the environment

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<sup>84</sup> (n80) Reg. 3(b)(a)

<sup>85</sup> (n80)

<sup>86</sup> (n80) Reg. 40

<sup>87</sup> (n80) Ss.23 and 27

<sup>88</sup> Cap N142, LFN 2004

from the harmful effects of ionizing radiation<sup>89</sup> and makes registration of premises and the restriction of ionizing radiation sources to those premises mandatory<sup>90</sup>. The Act defines a radioactive waste as any substance or article which has been contaminated in the course of production, storage or use of radioactive material or by contact with or proximity to other waste falling within the provisions of this law<sup>91</sup>. Under this law a consignor or carrier and consignee of radioactive waste shall have a valid licence from the Authority and notify it well in advance prior to the delivery, transport and receipt of such wastes<sup>92</sup>. Similarly, a person packaging radioactive wastes is required to do so according to laid down procedures in the code of practice<sup>93</sup>. Such a person is financially and otherwise liable for all incidents and accidents during the transportation or storage in transit of the said radioactive wastes<sup>94</sup>, ‘otherwise’ the liability of such a person will include the cost of restoring the environment to its original state<sup>95</sup>.

A person who breaches any of the above provisions will on conviction be liable to a fine not less than N100,000.00 or not more than N3,000,000.00 or to imprisonment of not less than 2 years or not more than 10 years or both such fine and imprisonment<sup>96</sup>. In addition, the Act provides that the authority

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<sup>89</sup> (n88) S.37(i)(b)

<sup>90</sup> (n88) Ss.15 and 16

<sup>91</sup> (n88) S.48

<sup>92</sup> (n88) S.42

<sup>93</sup> (n88)

<sup>94</sup> (n88)

<sup>95</sup> (n88) S.43(2)

<sup>96</sup> (n88)

may cancel, revoke or suspend any registration, exemption or license that might have been affected or granted to the person<sup>97</sup>. Where the offence has been committed by a body corporate and it is proved to have been committed with the consent, connivance or is attributable to any act or default on the part of any person or persons in apparent control of the body corporate, such persons as well as the body corporate shall be liable to be proceeded against and punished accordingly<sup>98</sup>.

### **Associated Gas Re-Injection Act<sup>99</sup>**

The Act was enacted in September, 1979, with the aim of compelling every company producing oil and gas in Nigeria to submit not later than 1<sup>st</sup> of April, 1980, preliminary programme for gas re-injection and detailed programmes for the implementation of gas re-injection<sup>100</sup>. Section 3(1) of the Act provides that:

Subject to subsection (2) of this Section no company engaged in the production oil and gas shall after 1<sup>st</sup> January, 1984 flare gas produced in association with oil without the permission in writing of the minister<sup>101</sup>.

The penalty for contravening section 3 of the Act is a withdrawal of the concession granted for the particular field where the

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<sup>97</sup> (n88)

<sup>98</sup> (n88) S. 45(3)

<sup>99</sup> Cap A 25, LFN 2004

<sup>100</sup> (n99) S. 207

<sup>101</sup> (n99) S.3(1)

contravention took place<sup>102</sup>, and the minister may withhold any entitlements towards the cost of completion or implementation of a desirable re-injection scheme or the repair or restoration of any reservoir in the field in accordance with good field practice<sup>103</sup>. Due to the fact that most companies could not meet up with the deadline, in 1984 the minister in pursuance of the powers conferred by section 3 and 5 enacted the Association Gas Re-Injection (continued flaring of Gas)<sup>104</sup> Regulation which had a commencement date of 1<sup>st</sup> January 1985. The Act provides that where the minister is satisfied after 1/1/1984 that utilization or re-injection of the produced gas is not appropriate or feasible in a particular field or fields, he may issue a certificate in that respect to a company producing oil or gas specifying such items and conditions as he may at his discretion choose to impose for the continued flaring of gas on the particular field(s); or permitting the company to continue to flare gas in the particular field(s), if the company pays a sum, as the minister may, from time to time prescribed for every 28.317 standard cubic metres (SCM) of gas flared<sup>105</sup>. Note that the Gas Re-Injection (Continued Flaring of Gas) Regulation<sup>106</sup> required the payment of two kobo (2k) penalty for M.S.F. of gas flared, which was reviewed to 50k in 1992 and N10.00 (Ten Naira) in 1998, hence the oil companies find it cheaper to flare gases than to put re-injection schemes in place.

However, the National Assembly of the Federal Republic of Nigeria had in 2009 passed a bill titled; ‘The Gas Flaring

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<sup>102</sup> (n99) S.4

<sup>103</sup> (n99) S.4(2)

<sup>104</sup> I. Ehighelua, *Environmental Protection Law* (New pages Publishing Co., 2007) Pp.301-302

<sup>105</sup> (n99) S.3(2)

<sup>106</sup> Ehighelua (n104) 301-131

(Prohibition and Punishment) Bill 2009 (S.3 126) which prohibits gas flaring in Nigeria after 31<sup>st</sup> December, 2010 and prescribes strict punishment for oil companies that violate the order<sup>107</sup>. Section 1 provides that, ‘natural gas shall not be flared in any oil and production, operation, block or field onshore or offshore or gas facility (processing treatment plant etc), which shall commence operations after the commencement of this Act<sup>108</sup>.

Section 2 specifically provides that no company engaged in the production of oil and gas shall after December, 2010 flare national gas produced whether in association with oil or not<sup>109</sup>. The Bill provides strict punishment for oil companies, which fail to stop gas flaring after 31<sup>st</sup> December 2010 by stating that they shall be made to pay twice the price of gas flaring in the international market<sup>110</sup>. The bill provides also that an additional 50% of that fine be paid to the host communities, which payment will be made through the ministry of petroleum and re-routed to local government chairman of affected communities<sup>111</sup>.

The bill further requires operators in the oil sector to present reports of all flared gas resources, such as daily quality flared, reserve, location and composition within 90 days<sup>112</sup>. It also requires them to submit data along with gas utilization plan to the minister, for the gas they intend to utilize prior to the December

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<sup>107</sup> L. Atsegbua, *Environmental Law in Nigeria: The theory and Practice* (Ambik Press 2010) p.195

<sup>108</sup> Atsegbua (n107)

<sup>109</sup> Atsegbua (n107)

<sup>110</sup> Atsegbua, (n107)

<sup>111</sup> Atsegbua, (n107)

<sup>112</sup> Adetutu Folasade-Key, Nigeria, Senate Okeys New Law, December 2010 Deadline for Gas Flaring <<http://al>>accessed 17<sup>th</sup> Jan, 2013

2010 flare out deadline, for his approval<sup>113</sup>. The minister may also impose as penalty a shut-down order as against the former fine of \$4 per cubic feet of gas flared<sup>114</sup>.

Despite the strict penalties provided in this law, there is also a downside, as it still permits continued flaring of gas on certain condition. For example, it provides that the minister may grant a permit to flare or vent gas in cases of start-up equipment failure or shut-down for period not more than 30 days<sup>115</sup>. Currently, the gas flaring (prohibition and punishment) Bill 2016, which is in many respects a reproduction of the 2009 bill, is being considered by the senate for possible passage into law<sup>116</sup>. The bill has fixed the flare-out deadline for December 2016<sup>117</sup>. Section 1 of the bill prohibits the flaring or venting of natural gas in any oil and gas production operation as soon as the Act comes into effect<sup>118</sup>. By its section 4, no company engaged in the production of oil and gas shall flare gas after December 31, 2016<sup>119</sup>. These are only two instances where gas is permitted to be flared under the bill. First is where flaring or venting is technically and economically justified. Second is in the case of start-up, equipment failure, shut down or safety flaring in which case a permit must be obtained from the minister of petroleum resources, and which permit must not last for more than 30 days<sup>120</sup>. This is the only instance where

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<sup>113</sup> Adetutu, (n112)

<sup>114</sup> Adetutu, (n112)

<sup>115</sup> Harrison Declan, 'What Gas Flaring Prohibition Bill will achieve' <<https://Punchng.com/gas-flaring-prohibition-bill-will-achive/>>.accessed 29/10/2019

<sup>116</sup> Harrison, (n115)

<sup>117</sup> Harrison, (n115)

<sup>118</sup> Harrison, (n115)

<sup>119</sup> Harrison, (n115)

<sup>120</sup> Harrison, (n115)



the minister is empowered to permit gas flaring, as the bill takes away section 3 of the Associated gas Re-injection Act<sup>121</sup> under which flaring of gas may be continued.

On the other hand, the petroleum industry Bill, which is now the Petroleum Industry and Governance Bill PIGB 2018 (SB.237)<sup>122</sup> the new framework to regulate the country's petroleum sector which has been passed into law by the National Assembly, fixed the end of gas flaring for 2012<sup>123</sup>. Unfortunately, notwithstanding the government efforts to discourage and/or stop the flaring of gas in Nigeria, through its laws, gas is still being flared in Nigeria and other oil producing communities in the Niger Delta<sup>124</sup>. It should be noted that gas flaring is against the human rights of the people living in affected communities<sup>125</sup>.

### **Harmful waste (Special Criminal Provisions) Act<sup>126</sup>**

Due to the toxic waste saga in Koko, Delta State, in 1988, the Federal Government was challenged to enact the above legislation to deal with hazardous and toxic wastes. Section 1 provides that, it is unlawful to purchase, sell, offer for sale, import, port, transit, deposit, store carried, dump, cause to be transported, buys any harmful waste without lawful authority<sup>127</sup>.

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<sup>121</sup> Harrison, (n115)

<sup>122</sup> Umuoru, *et al*, NASS Passes New PIGB Stipulating 5% Levy on Petroleum (Vanguard News-Paper Thursday March, 2018), p.12

<sup>123</sup> Harrison, (n115)

<sup>124</sup> Sufuya Ojeifo, "Nigeria: Gas Flaring-Senate Passes prohibition Bill" <<http://allafrica.com/stories/200907030119.html> accessed 17th Jan, 2013.

<sup>125</sup> Atsegbua et al, (n107) p198

<sup>126</sup> Cap H1 LFN, 2004

<sup>127</sup> (n126) S.1 (2) (a) (b) (c) (d)

The provides that ‘a person shall be deemed to deposit or dump harmful waste under this Act if he deposits the harmful waste, whether solid, semisolid or liquid in such circumstances, or for such period he may be deemed to have brought it to the place where it is so deposited or dumped for the purpose of its being deposited or abandoned whether by him or any other person<sup>128</sup>. Section 6 provides for life imprisonment for any person who is found guilty and convicted on any of the above, and in addition the carrier used for the transportation and land where waste was deposited shall be forfeited by the government<sup>129</sup>. And where the offence was committed by a corporate body, any officer involved and the body corporate shall be liable to be proceeded against and punished accordingly<sup>130</sup>.

### **Environmental Guidelines and Standards in the Petroleum Industry in Nigeria (EGAPSIN)<sup>131</sup>**

In a bid by government to establish guideline, standards and procedures for environmental control in the petroleum industry the Department of Petroleum Resources relied on authority conferred on it by existing legislations to issue temporary guidelines concerning the monitoring, handling, treatment and disposal of effluents oils and chemical drillings mud and cutting by leases and oil operative.<sup>132</sup>.

The EGAPSIN objectives are to establish guidelines and standards for environmental quality control in the petroleum

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<sup>128</sup> (n126) S.1(3) (a) (b) (c)

<sup>129</sup> (n126) S.6 (a) (b)

<sup>130</sup> (n126) S.7(a) (b)

<sup>131</sup> Environmental Guidelines and Standards in the Petroleum Industry in Nigeria as (EGAPSIN) 2002

<sup>132</sup> O. Fagbohun, “*The Law of Oil Petroleum and Environmental Restoration*” (Lagos: Odade Publishers, 2010) p.51

industry and to take into account existing local conditions and planned programmes; providing both for the operator and other interested persons an exhaustive integrated document on pollution abatement technology; making environmental pollution abatement and monitoring procedures standards<sup>133</sup>.

### **The Criminal Code Act** <sup>134</sup>

The criminal code also makes provisions which have sanctions in respect of acts which affect the environment. Sections 243-248 of the Criminal Code deals with offenses ranging from water fouling to the use of noxious substances to vitiate the atmosphere<sup>135</sup>. Section 245 specifically provides that any person who corrupts water of any spring, stream, well, tank, reservoir so as to make it less fit for the purpose for which it is originally used, is guilty of a misdemeanor and is liable to imprisonment for six (6) months<sup>136</sup>.

### **Constitution of the Federal Republic of Nigeria, 1999**

Section 12 (1) of the Constitution of the Federal Republic of Nigeria 1999 provides as follows with regard to the implementation of international treaties in Nigeria:

No treaty between the federation  
and any other country shall have  
the force of law except to the  
extent to which any such treaty  
has been enacted into law by the  
National Assembly<sup>137</sup>

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<sup>133</sup> (n132) Objectives of EGAPSIN, 2002

<sup>134</sup> Cap C38, LFN, 2004

<sup>135</sup> (n134) Ss. 245-248 *Ibid*

<sup>136</sup> (n134) S. 245 *Ibid*

<sup>137</sup> Cap C23 LFN 2004, Section 12(1)

Furthermore, section 12 (2) of the same constitution provides as follows:

The National Assembly may make law for the federation or any Part thereof with respect to matters not included in the exclusive legislative list for the purpose of implementing a treaty<sup>138</sup>.

Section 12 (3) went further to provide that: a bill for an Act of the National Assembly passed pursuant to the provisions of subsection (2) of this section shall not be enacted unless it is ratified by a majority of all the houses of Assembly of the Federation<sup>139</sup>.

More so, section 20 of the constitution under the environmental objectives provides as follows:

The state shall protect and improve the environment and safe guard the water, air, and land, forest and wild life of Nigeria<sup>140</sup>.

Under section 13 of chapter 11 of the 1999 constitution dealing with Fundamental Objectives and Directive Principles of State Policy, it is provided that ‘it shall be the duty and responsibility of all organs of government, and of all authorities and persons exercising legislative, executive or Judicial powers, to conform

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<sup>138</sup> (n137) S. 12(2)

<sup>139</sup> (n137) S. 12(3)

<sup>140</sup> (n137) S. 20

to, observe and apply the provisions of this chapter of this constitution'<sup>141</sup>.

However, these provisions have been whittled down and made non-justiceable by section 6 (6) (c) of the same constitution by providing as follows, in respect of chapter 11 of the Constitution:

The judicial powers vested in accordance with the foregoing Provisions of this constitution shall not, excepts as otherwise Provided by this constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the fundamental objective and directive principles of state policy set out in chapter 11 of this constitution<sup>142</sup>.

### **Implications and Weaknesses of the Environmental Regulations in Nigeria**

Granted that Nigeria has promulgated myriad of laws on environmental protection in Nigeria, however, some of these laws are not without hitches. Therefore, some of the challenges of regulations of environmental protection in Nigeria are the provisions of the laws themselves as observed in this work. For example, section 3 (1) of Associated Gas Re-injection Act<sup>143</sup> empowers the minister to give permission in writing to any company engaged in the production of oil and gas for purposes of continuation of gas flaring in Nigeria.

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<sup>141</sup> (n137) S.13

<sup>142</sup> (n137) S.6(6)(c)

<sup>143</sup> (n99)

Second, some of the penalties' sections for violations of environmental protection laws do not constitute deterrence in so far as they are not commensurable to the degrees of offences committed. For example, section 245 of the criminal code Act<sup>144</sup> provides a six (6) month imprisonment for any person who contaminates or corrupts the water. It also categorized such a serious act as a misdemeanor. An act that negatively affects life such as this shouldn't have been deemed minor but serious, with stiffer penalty.

The implication of these sections are that gas could be flared at will and upon permission by the minister; and that any person or group of persons could corrupt the water at the detriment of peoples' health without being adequately meted with penalties that will discourage others from committing the same act. Again, very annoying is the fact that the gas re-injection (continued flaring of Gas) Regulation requires the payment of just N10.00 (Ten Naira) as a penalty for M.S.F of gas flared.

On the provisions of section 12 (1) (2) and (3) of the constitution of Nigeria, with respect to the implementation of international treaties, the implication is that, although Nigeria is a signatory to various international Environmental Treaties, such treaties cannot have the force of law in Nigeria unless ratified by the National Assembly in keeping with the international law principle of state sovereignty<sup>145</sup>. This provision confers exclusive power on the federal government to the exclusion of the states, with regard to the making of laws and/or implementation of international environmental treaties in Nigeria, especially on the items listed

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<sup>144</sup> (n134)

<sup>145</sup> A.C. Osondu, *Our Common Environment: Understanding the Environment, Law and Policy* (University of Lagos Press, 2012) p.298

on the exclusive legislative list<sup>146</sup>. As a result of the exclusive power conferred on the federal government in respect of treaties relating to items contained on the exclusive legislative list, it has the overriding say on the ratification or non-ratification of treaties relating to such matters. The result of this is that even where the 36 component states of the federation wish that such treaties be ratified they cannot compel the federal government to do so, in this regard.

On the other hand, while it may be easier for the federal government alone to take decision to implement international environmental treaties, with respect to items on the exclusive list, it may not be so easy with regard to items on the concurrent list because of the requirement of section 12 (3) of the constitution, for ratification by a majority of all the 36 component states that make up the federation. This is because the required majority may not ratify the enactment of the law implementing the treaty<sup>147</sup>. Hence these provisions constitute serious impediment to the application of international law in Nigeria.

Furthermore, the implication of section 6 (6) (c) of the constitution is that the way and manner the state organs charged with the duty to protect and improve the environment under section 20 of the constitution cannot be challenged in court. This engenders a clog to the application of national and international environmental laws in Nigeria in view of the fact that government cannot be questioned on the way and manner in which it carries out the duty of protecting and improving the environment and safe guarding the water, air and land, forest and wild life of Nigeria. This is because, even where the federal government

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<sup>146</sup> Osondu (n145)

<sup>147</sup> Osondu (n145) 299

ratifies an international environmental treaty, there is a limit to which its actions can be challenged in court concerning the right of Nigerians there under<sup>148</sup>.

Section 6 and 7 of the oil in Navigable waters act<sup>149</sup>, which make discharge of oil into the Nigerian territorial waters punishable with a fine of just N2000.00 (two thousand naira) is better construed as a wake-up call for the pollution of the Nigerian waters than a deterrence, considering the meager penalty sum.

### **Power to Legislate on Environmental Protection in Nigeria**

Granted that there are laws on environmental protection in Nigeria, as discussed above, these laws however do not exist in isolation from their foundations. In Nigeria, the power to make laws is derived from the constitution<sup>150</sup>. The discourse on the allocation of functions as far as environmental protection is concerned has come to the fore lately because of the over dependence on law and the powerful position occupied by the constitution of the Federal Republic of Nigeria in the hierarchy of laws in Nigeria<sup>151</sup>.

The question of the allocation of responsibilities in a federal structure involves the division and limitation of powers amongst the different tiers of government and it connotes political pluralism and decentralization of the process of policy making and the division of power between the central government (in Nigeria the federal government), on one hand and the states, and other component parts of the government, on the other hand, each

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<sup>148</sup> Osondu (n145) 300

<sup>149</sup> (n63) Ss.6 and 7

<sup>150</sup> Ehighelua, (n104) 7

<sup>151</sup> (n187) S. 1(1)



of these tiers of government operating separately and independently of each other<sup>152</sup>.

Prior to 1999, the previous constitutions in Nigeria did not make specific provisions on environmental protection<sup>153</sup>. However, taking the 1979 Constitution as an example, although environmental protection was not focused upon directly, yet there were provisions, in the 1979 Constitution which, when viewed critically would seem to have a bearing on environmental protection. For example, section 11 of the 1979 constitution provided that the National Assembly shall make laws for the federation or any part thereof with respect to the maintenance and securing of public safety and public order<sup>154</sup>. Based on such a provision, the National Assembly could exercise substantive regulatory power over the environment.

The 1999 Constitution<sup>155</sup> made a bold and far-reaching provision in its chapter two, section 20 which empowers the state to protect the Nigerian environment. The word ‘state’ is defined in section 318(1) of the 1999 Constitution<sup>156</sup> and has been held by the court in *Attorney-General, Ondo State v. Attorney-General Federation 35 Ors*<sup>157</sup> to mean ‘all the three tiers of government’, namely, the Federal government, State Government and Local government. Section 13 in the same chapter 2 of the Constitution provides:

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<sup>152</sup> B.O. Nwabueze, “*Federation in Nigeria under the Presidential Constitution*”. (C. Hurst & Company, 1982) p.1

<sup>153</sup> Ehighelua, (n104) 8

<sup>154</sup> Ehighelu, (n104)

<sup>155</sup> (n137) S.20

<sup>156</sup> (n137) S.318(1)

<sup>157</sup> (2002) FWLR (Pt 111) 1972

It shall be the duty and responsibility of all organs of government, and of all authorities, and persons exercising legislative, executive or judicial powers to conform to, observe and apply the provision of this chapter of the constitution<sup>158</sup>.

Note that the same section 318(1) of the Constitution has defined ‘government’ to include ‘the government of the Federation, or of any state or, of a Local Government Council or any person who exercises power or authority on its behalf’.

The Supreme Court has held in the case of Attorney-General, Lagos State v. Attorney-General of the Federation & Ors<sup>159</sup> that physical and regional planning are not the same as the environment and that while the federal government has exclusive powers to legislate on matters touching on the environment, it has no powers to legislate on urban, physical or regional planning and that the provisions of the Urban and Regional Planning Act 1992, which purported to give the Federal Government Power to legislate on urban and region planning were void as the Federal Government of Nigeria cannot legislate on any matter not covered by the exclusive and concurrent lists<sup>160</sup>.

Going by the decision of the Supreme court in this case, therefore, the National Assembly is obliged and empowered to legislate in respect of section 20 (in chapter 2 of the constitution which

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<sup>158</sup> (n137) S.13

<sup>159</sup> (2003) FWLR (Pt. 168) 909

<sup>160</sup> The A.G. Lagos State (n159)

provides as earlier quoted in this paper ‘that the state shall promote and improve the environment and safeguard the water, air and land, forest and wildlife in Nigeria’<sup>161</sup>. However, it is our humble submission that, by the express provisions of section 13 of the Constitution which applies to ‘all organs of government and all authorities and persons exercising legislative, executive or judicial powers; section 318(1) of the same constitution which defined the Civil Service of the state to mean service of the Government of a state in a civil capacity as staff of the office of the Governor, Deputy governor or a ministry or department of the Government of the State assigned with the responsibility for any business of the government of the State, hence by inference, is referring to component unit of the federation or states within Nigeira<sup>162</sup>; and the case of *Attorney-General, Ondo State v. Attorney-General, Federation*<sup>163</sup> which held that ‘State’ means ‘all the three tiers of government’ such as the Federal Government, State Government and Local government, the power to protect and safeguard the environment of Nigeria under S.20 of the Constitution is concurrent and therefore extends to the State House of Assembly, irrespective of the position of the Supreme Court in *Attorney-General, Lagos State v. Attorney General of the Federation & Ors*<sup>164</sup>.

## Conclusion

It is not gainsaying that Nigeria has plethora of laws, for the protection of the Nigerian environment, even though not all of them are featured in this work. However, it is observed from the gamut of this piece that some of the legal instruments for the

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<sup>161</sup> Ehiguelua, (n104) 20

<sup>162</sup> (n137) S. 318

<sup>163</sup> The A.G. Ondo State (n157)

<sup>164</sup> The A.G. Lagos State (n159)

protection of the Nigerian environment are deficient in contents. For example, the penalty sections which are the grey aspects of the laws that determine obedience to and compliance with the laws as they either encourage or discourage acts or omissions capable of likely to constitute environmental hazard in Nigeria, provide for lesser penalties that either a corporate or individual polluter may consider too cheap to overcome. Hence not been deterred by such penalties, the option to continue to pollute the environment may be inevitable.

Second, the non-justiceable section of chapter 11 of the 1999 Constitution of Nigeria, i.e., section 6 (6) (c) is also an impediment to the protection of the environment since, by virtue of that provision, the responsibility of the state to protect the water, land, air, forests and wildlife of Nigeria under section 20, is a pipeline dream as no person has the legal sword to question the state, on its commitments toward the practicability and realization of section 20, and section 13 on fundamental objectives and directive principles of state policy. Section 12 of the constitution which confers exclusive power on the National Assembly to ratify international treaties also constitutes an impediment to the protection of the Nigerian Environment.

Conclusively, therefore, from the foregoing, it is apt to posit that while it is unarguable that Nigeria is rich with laws on environmental protection, some of such laws are undoubtedly deficient. Hence lack of implementation of laws by the government and the relevant agencies and authorities added to the flaws in the Nigerian laws are the major impediments militating against the successful protection of the Nigerian Environment.

It is therefore suggested that laws be amended, particularly the relevant sections on penalties for purpose of providing for stiffer penalties against defaulters considering the fact that pollution no matter the magnitude is a serious issue that jeopardizes human life and the economy of a nation; section 6 (6) (c) of the constitution be expunged to enable citizens hold the state accountable on issues of environmental protection, and to also derive their environmental rights and justice in courts. Government and relevant agencies and authorities should emphasize and prioritize on the implementation and enforcement of laws on environmental protection in Nigeria, and section 12 (3) of the constitution should also be amended in order to provide for easy and hitch-free passage of law on treaty, on matters not on the exclusive list by the National Assembly as securing a ratification by a majority of all the Houses of Assembly of the 36 states of the federation will appear cumbersome and occasion a delay in the enactment of laws for the purpose of implementing a treaty on environmental protection in Nigeria.