

**TITLE PAGE**

**ENVIRONMENTAL IMPACT ASSESSMENT ON SUSTAINABLE DEVELOPMENT:  
LEGAL PERSPECTIVE**

**AMAUKWU PROMISE CHUKWUDIOMIMI**

**2019/LW/12366**

**SUPERVISOR**

**DR. ONYEKACHI ENI**

**FACULTY OF LAW, ALEX EKWUEME FEDERAL UNIVERSITY, NDUFU ALIKE**

**IKWO**

**OCTOBER, 2024**

**APPROVAL**

The Long Essay titled “Environmental Impact Assessment on Sustainable Development: Legal Perspective” has been assessed and approved by the Undergraduate Studies Community of the Faculty of Law, Alex Ekwueme Federal University, Ndufu Alike Ikwo.

---

**Dr. Onyekachi Eni**

(Supervisor)

---

**Date**

---

**Dr. Kelechi Goodluck Onyebule**

(Project Coordinator)

---

**Date**

---

**Assoc. Prof. Eseni Azu Udu**

(Dean, Faculty of Law)

---

**Date**

**CERTIFICATION**

This is to certify that this long essay titled “Environmental Impact Assessment on Sustainable Development: Legal Perspective” has been assessed and approved by the Undergraduate Studies Community of the Faculty of Law, Alex Ekwueme Federal University, Ndufu Alike Ikwo” as an original work carried out by Amaukwu Promise Chukwudiomimi, with registration number: 2019/LW/12366 in the Faculty of Law, Alex Ekwueme Federal University, Ndufu Alike Ikwo, under the guidance and supervision of Dr Onyekachi Eni.

---

**Amaukwu Promise Chukwudiomimi.**

(Student)

---

**Date**

---

**Dr. Onyekachi Eni**

(Supervisor)

---

**Date**

---

**Assoc. Prof. Eseni Azu Udu**

(Dean, Faculty of Law)

---

**Date**

## **DEDICATION**

I dedicate this work to the all-sufficient God who is the only reason this work and I can see the light of day and to all who have genuine care and concern for the ailments that beset our lovely environment and are finding ways to advocate for change in the status quo, may your voices be heard.

## ACKNOWLEDGEMENTS

Firstly, I cannot cease to acknowledge my Heavenly Father, whose grace and mercies have been my sustenance over the years.

I also want to appreciate my parents, Pst. and Mrs. P.O Amaukwu for their unending care and support all through my journey as an undergraduate of law.

To my siblings, Chidera, FearGod, Perfect, Precious, and Chinecherem for their ceaseless show of love and affection at the times I needed it the most. You're the best!

To Dr. Onyekachi Eni, my supervisor, and Dr. Kelechi Onyegbule, the project coordinator without whose guidance and efforts this work would never see the light of day, I say A Big THANK YOU!

To my indomitable lecturers, Dr. Eseni Azu Udu, who is also my dean, for going above and beyond in bringing out the best in us both academically and otherwise, Barr. Nnaemeka Nweze, whose courses we always run to because of how makes them seem too easy and also being available to take our questions, Barr. Onyinye Theresa Eze, who treats us like her own children and ensures nobody is left without understanding her topics, Dr. Nnaemeka Amadi, whose interest in his students does not end in the four walls of the classroom, you are the reasons why law remained an interesting course to study, I cannot thank you enough.

To Barr. Okenwa Nkem, Barr. Stanley and the other solicitors at Okenwa Nkem & Co., for being beautiful sources of motivation to me in the legal profession.

To the members of WCCCF AE-FUNAI Chapter and CLASFON AE-FUNAI, for building such an amazing family on campus of which I am proud to be part of, God bless you all.

To my course mates, especially Okibe Emmanuel, for their help in bringing this work to light.

Finally, to Barr. Njaka Kelechi for his guidance all through the writing of this work.

### Table of Cases

<i>Deevor &amp; Ors v Shell B.P</i> (PHC/160/1972)	27
<i>A.G Akwa Ibom v I.G Essien</i> (2004) 7 NWLR (pt 872) 288	68
<i>Shell Petroleum Development Co. Nig Ltd v Farah</i> (1995) 3 NWLR (pt 382)48	46
<i>Centre for Oil Pollution Watch v NNPC</i> (2013) 15 NWLR (pt 1378) 556	32
<i>Oronto Douglas v Shell Dev. Co</i> (Unreported) Suit No: FHC/2CS/573193	68,50
<i>Gbemre v Shell Petroleum Dev. Corporation</i> (2005) AHRLR 151	47
<i>Umede v Shell B.P</i> (1975) 6 CCTTE 1267	58
<i>Western Nig. Trading Co Ltd v Ajao</i> (1965) NMLR 178	59
<i>Olale v Ekwelendu</i> (1989) 4 NWLR (pt 115) 326	60
<i>The Social &amp; Economic Rights Action Centre &amp; Anor v Nigeria</i> (2015) 2 NWLR (pt 5) 45 68	
<i>Defacto Bakeries v Alicore</i> (1974) ALL NLR (pt 11) 385	70

## Table of Statutes

### Constitution of the Federal Republic of Nigeria 1999 (as amended)

Section 20	22
Section 33	66
Section 36	67
Section 43	27
Section 45	30
Section 14(2)(c)	31
Section 46	32
Section 17	22
Section 251	61

### National Environmental Standard and Regulations Enforcement Agency Act

Section 37	27
Section 34	30
Section 7	65
Section 8(g), (n), & (o)	30

### Environmental Impact Assessment Act 2004

Section 7	62
Section 2(1)	47
Section 11	62
Section 20	59
Section 52	60

### National Oil Spill Detection and Regulation Agency Act 2006

Section 1	54
Section 2	47
Section 6	57
Section 5	54
Section 18	54
Petroleum Industrial Act 2021	
Section 9(1)	35
Pipeline Act	
Section 11	64



**List of Abbreviations**

EIA -	Environmental Impact Assessment
NMLR –	Nigeria Monthly Law Report
CFRN –	Constitution of Federal Republic of Nigeria
ICCPR –	International Convention on Civil and Political Rights
NWLR –	Nigeria Weekly Law Report
ALL NLR –	All Nigeria Law Report
PT –	Part
UNESCO –	United Nations Educational, Scientific and Cultural Organization
NESREA - Agency Act	National Environmental Standard and Regulations Enforcement
UN –	United Nations
NOSDRA –	National Oil Spill Detection and Response Agency
NLR -	Nigerian Law Report

## Table of Contents

<b>TITLE PAGE</b>	<b>i</b>
<b>APPROVAL</b>	<b>ii</b>
<b>CERTIFICATION</b>	<b>iii</b>
<b>DEDICATION</b>	<b>iv</b>
<b>ACKNOWLEDGEMENTS</b>	<b>v</b>
<b>Table of Cases</b>	<b>vi</b>
<b>Table of Statutes</b>	<b>vii</b>
<b>List of Abbreviations</b>	<b>ix</b>
<b>Table of Contents</b>	<b>x</b>
<b>ABSTRACT</b>	<b>xii</b>
<b>CHAPTER ONE</b>	<b>1</b>
<b>INTRODUCTION</b>	<b>1</b>
<b>1.1 Background to the Study</b>	<b>1</b>
<b>1.2 Statement of the Problem</b>	<b>5</b>
<b>1.3 Research Questions</b>	<b>6</b>
<b>1.4 Aim and Objectives of the Study</b>	<b>7</b>
<b>1.5 Significance of the Study</b>	<b>7</b>
<b>1.6 Research Methodology</b>	<b>8</b>
<b>1.7 Scope of the Study</b>	<b>8</b>
<b>1.8 Limitation of the Study</b>	<b>9</b>
<b>CHAPTER TWO</b>	<b>10</b>
<b>LITERATURE REVIEW</b>	<b>10</b>
<b>2.1 Conceptual Framework</b>	<b>10</b>
<b>2.1.1 Concept of Environment</b>	<b>10</b>
<b>2.1.2 Concept of Environmental Impact Assessment</b>	<b>12</b>
<b>2.1.3 Concept of Sustainable Development</b>	<b>13</b>
<b>2.1.4 Concept of Environmental Degradation</b>	<b>15</b>
<b>2.2 Theoretical Framework</b>	<b>16</b>
<b>2.2.1 Collective Action Theory</b>	<b>16</b>
<b>2.2.2 Adaptive Governance Theory</b>	<b>18</b>
<b>2.3 Review of Related Literature</b>	<b>20</b>

<b>2.4 Summary of Review/Gap in Knowledge</b>	<b>22</b>
<b>CHAPTER THREE</b>	<b>23</b>
<b>LEGAL AND INSTITUTIONAL FRAMEWORKS FOR THE PROTECTION OF THE ENVIRONMENT</b>	<b>23</b>
3.1 Legal Framework	23
3.1.1 The Constitution of Federal Republic of Nigeria 1999 as amended	23
3.1.2 NESREA Act 2007	25
3.1.3 Petroleum Industry Act 2021	27
3.1.4 Environmental Impact Assessment Act Cap E12 LFN 2004	30
3.1.5 Environmental Impact Assessment Procedures and Charges Regulations 2021	33
3.2 Institutional Framework	34
3.2.1 National Environmental Standard and Regulations Enforcement Agency	34
3.2.2 National Oil Spill Detection and Response Agency	36
3.2.3 Ministry of Environment	42
3.2.4 Court	43
<b>CHAPTER FOUR</b>	<b>45</b>
4.1 Environmental Impact Assessment in Nigeria	45
4.2 Sustainable Development in the Nigerian Environment	47
4.3 Environmental Rights in Nigeria	49
4.4 Challenges to the Environmental Sustainability in Nigeria	52
<b>CHAPTER FIVE</b>	<b>58</b>
5.1 Summary of Findings	58
5.2 Recommendations	59
5.3 Conclusion	60
<b>BIBLIOGRAPHY</b>	<b>61</b>

**ABSTRACT**

From time immemorial, lack of sustainable development has been the lot of man and the Nigerian society. The environment is full of evidence of degradation and hazards orchestrated by man's careless actions as engaging in developmental projects such as building of roads, houses, industries, agricultural practice, logging, and deforestation among others without firstly assessing the likely negative impacts of such projects on the environment. There is hardly any consideration as to the implications of these actions on the environment and future generations. Environmental Impact Assessment (EIA) first emerged on the international scene in the 1972 Stockholm Conference as one of those important international and domestic approaches for integrating environmental considerations into socio-economic development and the decision-making process. This study critically examined the positions of the existing legal frameworks in Nigeria and the roles played by several institutions in carrying out environmental impact assessment for sustainable development in Nigeria. In the course of carrying out this research, doctrinal research methodology was adopted and it was found that there are in existence several laws with beautiful provisions in Nigeria targeted at stamping out those careless activities of man in the environment that pose threat to lives and properties in the country. It was recommended, among others, that there is need for sensitization of both rural and urban dwellers on the need to carry out environmental impact assessment of every proposed project in order to preserve the environment because there cannot be a healthy life where there is no healthy environment. The study concluded that the menace of environmental abuse orchestrated by the misguided actions of humans in the society can be averted by fully observing environmental laws and regulations.

## CHAPTER ONE

### INTRODUCTION

#### 1.1 Background to the Study

The state of the environment has become a source of concern for the global system over time, as shown by the measures taken by members of international organizations to ensure environmental security. Nations recognize the importance of preserving the environment in order for humanity to continue to survive. Life in the world of today comes with several issues, obstacles, and opportunities. The planet and its treasure base are under attack from all facets of human endeavors, ranging from environmental misuse, violence, and destruction that has become so readily visible every day and almost everywhere. In the international arena, environmental impacts on human life are undeniable. The quest to safeguard the environment from further degradation has been of global concern for many years now. Many countries have had long histories of environmental protection through indigenous local institutions, taboos, norms and cultural values.<sup>1</sup>

However, it is worth noting that environmental management is not achieved only through environmental laws but also through the application of various formal and informal administrative mechanisms. The requirement of a state to conduct an environmental impact assessment (EIA) in respect of activities with the potential to significantly affect the environment is reflected in Principle 17 of the UN Conference on Environment and Development (UNCED) (United Nations, 1992). The UNCED recognized EIA as a key tool for environmental protection and sustainable development. By implication, unless sustainable development criteria are included specifically among those used in environmental assessment, EIA may not contribute to sustainable

---

<sup>1</sup> R T Ako & A A Addeji, *Public Participation: An Imperative to the Sustainable Development of the Nigerian Oil Industry* (AKT Publishers 2010) 37.

development. This is crucial if developing countries are to integrate environmental concerns into their development plans. It is worthy to note that, after attaining independence, the development of most African countries have been characterized by vicious cycles of crises: escalating pressures from fast-growing populations, uncontrolled urbanization, expanding agricultural and industrial activities.<sup>2</sup>

In their quest for accelerated economic growth, many national development efforts and foreign direct investment projects did not consider the adverse impacts of the projects on the environment and natural resources. As a result, significant damage to the physical and human environments went unchecked for many decades. In part, the arbitrary division of territories and peoples, as well as inequitable development patterns set during colonial times also led to significant economic and environmental damage and spatial differences that fueled civil conflicts and wars. Also, natural disasters, droughts, bush fires and famine have continued to wreak havoc on the continent. These situations have devastated the environment, affected livelihoods and way of life of the people of Africa.

Environmental Impact Assessment (EIA) has evolved and become part of major project requirement in many countries including Nigeria for the attainment of sustainable development and reduction of poverty levels of people affected by such projects. For development to be sustainable, it should meet the emerging needs of the present and succeeding generations. Environmental Impact Assessment (EIA) is also considered as the official appraisal process to identify, predict, evaluate and justify the ecological, social, and related biophysical effects of a proposed policy, program or project on the environment.

---

<sup>2</sup> U D Ikoni, *An Introduction to Nigerian Environmental Law* (Malthouse Publisher 2011) 2.

Sustainable development underpins environmental governance in all jurisdictions, but its legal status is still controversial. The major problem which Nigerian courts and policy-makers continue to face in implementing and enforcing sustainable development in environmental governance is whether it is a moral or legal concept and, if it is the latter, whether it has metamorphosed into a legal principle or the rule of law having a normative value.<sup>3</sup>

Physical factors in relation to ecological hazards are conditions such as temperature, light, wind, humidity, current and rainfall that are created when solar energy interacts with chemicals in the ecosystem and with structural features of the earth's surface, which altogether determine the climate and weather of the ecosystem.

Environmental protection is an integral component of sustainable developmental measures. That the environment is threatened in all its biotic and abiotic components, and ecosystems comprising biological diversity which form the physical components of habitats and ecosystems, and all the interactions between the components, of biodiversity and their sustaining habitats and ecosystem, is to state the obvious. With the continued increase in the use of chemicals, energy and non-renewable resources by an expanding global population associated environmental problem will also increase. Despite increasing efforts to prevent waste accumulation and to promote recycling, the amount of environmental damage caused by over consumption of resources, the quantities of waste generated and the degree of unsustainable land use appear likely to continue to grow<sup>4</sup>.

The major target of environmental protection is therefore to prevent, halt and reverse environmental degradation through appropriate carrying out of environmental impact assessment

---

<sup>3</sup> W C Couthan, *The Politics of Justice* (Kennikat Press Corp. 2004) 137.

<sup>4</sup> C T Moller, *Environmental Science: An Introduction* (Wadsworth Publishers 1984) 22.

of any developmental project, use of biotechnology in conjunction with other technologies, while supporting safety procedures as an integral component of environmental development.

So, the issue of environmental crises has gone beyond the fouling of air and water and now includes, but not limited to natural security. This means that these eco-migrants after crossing the national borders of any nation becomes security risks to the national or government of such country<sup>5</sup>. Eco migration within the boundaries of a nation could grow much worse in the future because of climatic changes. As global warming swells the seas and increase the frequency and severity of coastal storms, modest sea level rise of one meter would force thousands of people to leave their settlements in low lands to up high lands<sup>6</sup>.

It is therefore seen that law occupies a vital place in the protection of the environment from pollution. Although environmental law is a relatively new area due largely to the fact that, mankind had been solely interested in exploiting the resources in his environment with which nature has endowed him without much thought about the future consequences of such exploitation and use. It has now been realized, due to the efforts of environmentalists that the health, if not the very existence of mankind, stands threatened unless efforts to protect the environment receives serious attention through the instrumentality of law.

Environmentally sustainable development is pivotal to healthy environment. The effective implementation and enforcement of sustainable development in the Nigerian environmental law system requires integrating it expressly and directly into the Constitution of the Federal Republic of Nigeria 1999 as amended, as an essential element of the right to life and the relevant constitutional environmental provisions, as well as transferring section 20, which is the core

---

<sup>5</sup> U D Ikoni, *An Introduction to Nigeria Environmental Law*, (Malthouse Press Limited 2011) 13.

<sup>6</sup> N Singh, *The Role and Record of the international Court of Justice* (Martinus Publishers 1989) 164.



constitutional environmental provision, to the fundamental human rights chapter of the Constitution.

## **1.2 Statement of the Problem**

Mankind can only survive and thrive in an environment that is conducive for living and pollution free. Hence, the environment plays a vital role in ensuring the survival of mankind. This is one of the reasons the protection of the environment is enshrined in the constitution. Section 20 of the Constitution of the Federal Republic of Nigeria<sup>7</sup> provides that “The State shall protect and improve the environment and safeguard the water, air, land, forest and wildlife of Nigeria”. Section 17(2) (d) of the Constitution<sup>8</sup> complements the aforementioned provision by stating that: “Exploitation of human or natural resources in any form whatsoever for reasons other than the good of the community shall be prevented”. Further legislations have been enacted to better capture environmental pollution in the oil and gas sector in order to protect the environment.

The maintenance of a healthful environment can no longer be left to chances. When air and water become contaminated and dangerous to health, one must investigate, determine safe levels of contamination and enforce regulations to protect the citizens<sup>9</sup>. Food must be pure; medications must be safe and safety measures must be applied.

The issue of environmental degradation goes beyond the issue of pollution of air, water and land. Those things are critically important. The environment is also about something less tangible though no less important. It is about our sense of community, the obligation we have for each other and to future generations, to safeguard God’s earth. It is about our sense of responsibility and the

---

<sup>7</sup> Section 20 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

<sup>8</sup> Section 17(1) CFRN 1999 (as amended)

<sup>9</sup> U.D Ikoni, *An Introduction to Nigerian Environmental Law* (Malthouse Publisher, 2011) 2.

realization that natural beauty and resources that took millions of years to develop could be damaged and depleted in a matter of decades.

The rushed development of some areas including Nigeria leaves in its wake a trail of environmental disasters that includes oil, erosion, flooding and environmental hazards. As a result of the rapid increase in the rate of use of the land resources in Nigeria, due to pressure from population explosion and technology, it is imperative that adequate attention be given to problems of environmental degradation. The recent awakening in both developed and developing countries including Nigeria, to the deleterious consequences of environmental destruction by the unrestrained activities of man necessitated this research work in order to curb the above stated problems.

### **1.3 Research Questions**

Flowing from the background and subsequent problems revealed or disclosed in the statement of the problem, the researcher would rely on the following questions to direct the path of this study:

1. What does environment entail?
2. What are the reasons for protecting the environment against hazards?
3. Are there existing legal and institutional frameworks put in place to ensure sustainable development?
4. What are the prospects of environmental impact assessment?
5. What are the possible ways of ensuring sustainable development of the environment?

#### **1.4 Aim and Objectives of the Study**

The general aim of this research work is to critically appraise environmental impact assessment as a tool for sustainable development.

Specifically, this seeks to do the following objectives:

- (1) To extensively analyze what environment entails and its nature.
- (2) To examine and unravel the reasons behind environmental protection in Nigeria.
- (3) To extensively discuss the existing legal and institutional frameworks put in place to ensure sustainable development.
- (4) To examine the prospects of environmental impact assessment
- (5) To analyze the possible ways of ensuring sustainable development of the environment

#### **1.5 Significance of the Study**

This research work will be of great help to lawyers especially those who specialized in environmental law. This study can also be of great assistance to law lecturers in their course of researches and publication of articles on environmental law.

The study will also be of help to judges and justices of the court in the course of adjudicating disputes especially matters involving environmental law as an area of law with new legislations.

Law students will also benefit from this research work as it will form part of body of literature on the subject of environmental law. This research work will also be of great assistance to policy makers (law makers) because it will form precedence to their proposed bills on environmental

impact assessment and sustainable development in Nigeria. Generally, this research work will be of great assistance to the public as it will educate them on the effects of lack of sustainable development and failure to carry out environmental impact assessment of projects in relation to the health hazards and abuse of fundamental human rights.

### **1.6 Research Methodology**

In this research work, the researcher adopted a doctrinal method of research. The researcher based his research work on the analysis of primary and secondary materials relevant to the area of discourse. Some of the materials include but not limited to the following:

- (a) Relevant textbooks on environmental law
- (b) Journals or articles on the area of discourse
- (c) legislations
- (d) Case laws/ judicial authorities
- (e) Internet sources.

### **1.7 Scope of the Study**

The area of coverage of this work is on environmental impact assessment and sustainable development in Nigeria. This work looks critically at the legislations curbing the high rate of environmental degradation, the role of institutions in carrying out environmental impact assessment and preventing the abuse of the environment. This study emphasizes the need to protect the environment in Nigeria from degradation because of its adverse effects on living and non-living things in the ecosystem.

## **1.8 Limitation of the Study**

The task of researching and writing on this subject was educating, inspiring especially the fact that it involves a new area of law, but the research work is also demanding.

The following are some of the major challenges that were encountered by the researcher:

- (1) Time constraint: There was no sufficient time to carry out of this research, coupled with the fact that the researcher had to combine the course of this research work with his studies.
- (2) Dearth of materials on the topic: Aside the fact that there was no sufficient time, dearth of materials was another severe challenge the researcher encountered in the process of carrying out this study.
- (3) Lack of adequate power supply: This research study witnessed much fluctuation with power supply and this made the researcher delay in completing the work as against my set date.
- (4) Financial constraint: In addition to the above listed challenges and to make matters worse, the researcher did not have the financial where withal to meet up with the expenses of typing this work.

## CHAPTER TWO

### LITERATURE REVIEW

#### 2.1 Conceptual Framework

##### 2.1.1 Concept of Environment

According to NESREA Act, “environment” is defined to include water, air, land and all plants and human beings or animals living therein and the inter-relationship which exist among these or any of them.<sup>10</sup> The four basic components of the environment are abiotic, biotic, socio-economic and cultural systems including ways which interact and transform, for the benefit of man.<sup>11</sup>

Environment can be defined as a sum of all the living and non-living elements and their effects that influence human life. While all living or biotic elements include animals, plants, forests, fisheries and birds, non-living or abiotic elements include water, land, sunlight, rocks and air.

The term environment has been derived from a French word “*environia*” which means; to surround. It refers to both abiotic (Physical or non-living) and biotic (living) environment.<sup>12</sup> The word environment means surroundings in which organisms live. Environment and the organisms are two dynamic and complex components of nature. Environment regulates the life of the organisms including human beings. Environment is the sum total of conditions in which an organism has to survive or maintain its life process. It influences the growth and development of living forms.

---

<sup>10</sup> Section 37 of NESREA Act 2007.

<sup>11</sup> O Adewale, *Environmental Pollution in the Petroleum Industry* (Evans Brothers 1991) 31.

<sup>12</sup> E O Akanki, *Air Pollution Control Law* (Omotola Publisher Ltd 1999) 8.

In other words, environment refers to those surroundings and their lives in totality. It consists of atmosphere, hydrosphere, lithosphere and biosphere. Its chief components are soil, water, air, organisms and solar energy. It has provided us all the resources for leading a comfortable life.<sup>13</sup>

Environment could mean anything immediately surrounding an object and exerting a direct influence on it. It is an external force which influences us. Thus, environment refers to anything that is immediately surrounding an object and exerting a direct influence on it. Our environment refers to those things, organisms which though distinct from us, affect our life or activity. The environment by which man is surrounded and affected by factors which may be natural, artificial, social, biological and psychological.

Environment can be roughly divided into two types such as (a) micro environment and (b) macro environment. It can also be divided into two other types such as (c) physical and (d) biotic environment.

(a) Micro environment refers to the immediate local surrounding of the organism.

(b) Macro environment refers to all the physical and biotic conditions that surround the organism externally.

(c) Micro environment refers to all abiotic factors or conditions like temperature, light, rainfall, soil, mineral etc. It comprises of atmosphere, lithosphere and hydrosphere.

(d) Biotic environment includes all biotic factors or living forms like plants, animals, micro-organisms.<sup>14</sup>

---

<sup>13</sup> R T Ako & A A Addeji, *Public Participation: An Imperative to the Sustainable Development of the Nigerian Oil Industry* (AKT Publishers 2010) 37.

<sup>14</sup> *Ibid*

Environment provides the following functions:

- (1) It provides the supply of resources. The environment offers resources for production; it includes both renewable and non-renewable resources such as wood for furniture, soil, and land among others.
- (2) It sustains life; the environment includes sun, soil water and air, which are essential for human life. It sustains life by providing genetic and biodiversity.
- (3) Assimilates waste: Production and consumption activities generate waste. This occurs mostly in the form of garbage. The environment helps in getting rid of the garbage.
- (4) It enhances the continuity of life: Human being enjoy the beauty of nature that includes rivers, mountains amongst others.<sup>15</sup>

### **2.1.2 Concept of Environmental Impact Assessment**

Environmental Impact Assessment is a commonly used framework for evaluating a project's, policies, or program's possible environmental impacts. Many nations have legal requirements for environmental impact assessments (EIAs), and their efficacy in reducing the negative consequences of development initiatives is widely recognized. The process of assessing a proposed project's or activity's possible environmental effects before the implementation is known as EIA. Environmental Impact Assessment's objective is to locate and lessen any adverse effects on the environment, public health, and social welfare.<sup>16</sup> In Nigeria, the EIA Act of 2004 mandates that all projects that are anticipated to have a substantial impact on the environment undergo an EIA before

---

<sup>15</sup> O. Adewale, *Environmental Pollution in the Petroleum Industry* (Evans Brothers, 1991) 33.

<sup>16</sup> A. Obaji. "Environment Impact Assessment don't work in Nigeria: Here is why." <<https://www.theconversation.com/environmental-impact-assessments-dont-work-in-nigeria-heres-why-188796>>. Accessed on 3<sup>rd</sup> September, 2024.



approval and commencement. The EIA comprises multiple phases, such as scoping, baseline investigations, effect projection, and alternative appraisal. But it is found that projects are commenced and even completed in Nigeria without an EIA - a situation that negatively affects environmental sustainability in the country. In some cases where the EIA is done, provisions relating to the right to participation and information are violated. A good example is the dredging of the lower river Niger.<sup>17</sup> It was ugly enough that the EIA was conducted midway into the project as opposed to before commencement; some community members were not consulted, and the assessment report was provided for all relevant stakeholders. Cases like this are not owed to the non-provision of the law in terms of penalties for default, but the issue is the non-imposition of the penalties on the offenders. A successful EIA should evaluate the environmental elements that could impact a project's or activity's success and the effects the project or activity will have on the environment. This is so that any potential environmental repercussions of a project or activity can be assessed and mitigated.

### **2.1.3 Concept of Sustainable Development**

The term "sustainability" has been defined as "the development that meets the needs of the present without compromising the ability of future generations to meet their own needs".<sup>18</sup> This refers simply to the consistent protection of natural resources to preserve them for both current and prospective generations to come. It entails the exploitation and use of environmental resources without compromising the people's rights to environmental protection. Generally, sustainability demands that in development projects and programs, there must be a complete consideration of environmental factors. According to the Rio Declaration,<sup>19</sup> "in order to achieve sustainable

---

<sup>17</sup> O. Adewale, *Ibid*.

<sup>18</sup> See Brundland Report of 1987 <https://www.brundlandreport> accessed on 28<sup>th</sup> October, 2024

<sup>19</sup> Principle 4 Rio Declaration, 1992.

development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.<sup>20</sup> To enhance the health and well-being of all peoples on the planet, natural resources and ecosystems must be preserved or protected. Given that the environment is just as dynamic as people, it is crucial to stress the significance of environmental sustainability.

Environmental sustainability is a two-way concept. On the one hand, it is the sustainability that comes from human efforts to prevent industrialization, scientific, and economic advancements from having a negative impact on the environment. On the other hand, it is the sustainability that arises from the need to avert rapid changes to the environment.

Sustainability simply the capacity to meet current demands without endangering or impairing the capacity of future generations to meet their own needs. The concept of sustainable development implies limits; these are not absolute limits but rather restrictions placed on environmental resources by the State of technology and social organization today, as well as by the biosphere's capacity to absorb the effects of human activity. It is within humanity's power to ensure that development is sustainable—that is, to meet current demands without jeopardizing the ability of future generations to meet their own. Sustainable development principles require that environmental factors be considered when developing and implementing governmental policy. By mandating the inclusion of these issues in all decision-making processes, they also help to reconcile environmental and developmental values. The necessity that the private and public sector

---

<sup>20</sup> K P Njoku, *Devastating Effects of Pollution in Nigeria*. <<http://www.nigeria.com>> accessed on 8<sup>th</sup> September, 2024.

performs an environmental impact assessment before making any technical interventions in the environment serves as further evidence of this idea.

The National Policy on Environment of Nigeria serves as a framework for managing the environment and natural resources of the nation. It lays out directives for sector-specific and cross-sector-specific strategic policy declarations and environmental management practices that support sustainable development. The policy's goal is to "ensure environmental protection and the conservation of natural resources for sustainable development," acknowledging that environmental degradation "strikes at the heart of the sustainability of the society and is compounding human efforts to attain sustainable development."<sup>21</sup> Environmental sustainability cannot be comprehensively analyzed without referencing sustainable development as already considered above and environmental impact assessments (EIA).

#### **2.1.4 Concept of Environmental Degradation**

This is the degradation of the environment caused by human activity, which results in resource depletion, contamination of air, water, and soil, ecosystem disruption, and extinction of flora and fauna (wildlife). This could also refer to any change or disruption that has the potential to affect the environment, such as social, economic, technological, and institutional actions, resulting in unfavorable outcomes for current and future generations.<sup>22</sup>

Environmental degradation is a substance, state or event which has the potential to threaten the surrounding natural environment or adversely affect people's health, including pollution and natural disasters such as storms and earth quakes. It can include any single or combination of toxic

---

<sup>21</sup> S Wolf, *Principles of Environmental Law*, 2<sup>nd</sup> Ed. (Cavendish Publishing Ltd, 1997) 13.

<sup>22</sup> U O Umozunke, *Introduction to International Law* (Spectrum Brooks, 1993) 15.

chemical, biological or physical agents in the environment, resulting from human activities or natural processes, that may impact the health of exposed subjects, including pollutants such as heavy metals, pesticides, biological contaminant toxic waste, industrial and home chemicals.

Human-made degradation while not immediately health-threatening may turn out detrimental to a human's well-being eventually, because deterioration in the environment can produce secondary, unwanted negative effects on the human ecosphere. The effects of water pollution may not be immediately visible because of a sewage system that helps drain off toxic substances. If those substances turnout to be persistent, however, they will literally be fed back to their producers through the food chain. In that respect, a considerable number of environmental hazards listed below are man-made hazard.<sup>23</sup>

Environment health-related risks are becoming a primary concern in Nigeria, with diverse environmental problems such as air pollution, water pollution, oil spillage, deforestation, desertification, erosion and flooding (due to inadequate drainage systems) caused mostly by anthropogenic activities.

## **2.2 Theoretical Framework**

### **2.2.1 Collective Action Theory**

Collective action theory was introduced by Olson,<sup>24</sup> and then later popularized by Elinor Ostrom,<sup>25</sup> in *Governing the Commons* as a theory to explain why many communities using natural resources

---

<sup>23</sup> S. Ebohmhe, *Environmental Legislation Changes in Nigeria* <<http://www.geplaw.com>> accessed on 7<sup>th</sup> September, 2024.

<sup>24</sup> S.B Olson, *Crafting Coastal Governance in a Charging World* (University Rhode Island Press, 2003) 43

<sup>25</sup> E. Ostrom, A Behavioural Approach to the Rational Choice Theory of Collective Action. *American Political Science Journal*, (1998) 1(2) 9.

do not always experience overexploitation, that is, for common-pool resources, or under provisioning, that is, for public goods, a so-called tragedy of the commons. The theory hypothesizes a positive relationship between groups that are able to take effective collective action and the resulting social and environmental outcomes. The theory aims to understand how and why people cooperate through self-organization processes (i.e., a collective action) and what social (e.g., leadership; group size; knowledge; social capital; dependence) and ecological variables (e.g., resource mobility; system size; growth and replacement rates) influence self-organization.

Ultimately, the theory aims to explain why self-organized collective action can lead to more desired social and ecological outcomes, e.g., sustained provision or use, in some cases, and in others not. Ostrom's work on the framework has evolved into a commons and collective action take on what is now much broader social-ecological systems discourse. Collective action theory, focusing on community-based solutions in resource governance, is often juxtaposed as a third understanding, or governance perspective on, how to resolve resource appropriation and provision dilemmas through governance, which has historically been viewed as a problem of aligning individual and group interests. It is an alternative to other popularized approaches, such as privatization or top-down state enforcement to solve the same problems. Collective action theory has also been used to understand the self-organization of social movements and activism related to many issues including those related to the environment.<sup>26</sup>

---

<sup>26</sup> C.A Omaka, The Concept of Environmental Impact Assessment in Nigeria, *Ebonyi State University Law Journal*. (2009) 2(1) 13.

Collective action theory is useful for assessing the status of governance by identifying what variables may be enabling or hindering self-organization processes. More than 30 variables have been identified to be critical for collective action to occur.<sup>27</sup>

### **2.2.2 Adaptive Governance Theory**

Adaptive governance theory emerged in the late 1990s,<sup>28</sup> but was popularized by Agrawal,<sup>29</sup> it provides a detailed history and overview of adaptive governance scholarship, which has continued into the present.

Adaptive governance has been referred to as a vehicle for putting resilience theory into practice with the aim to reduce uncertainty through interactive and continual learning. Theoretically, adaptive governance hypothesizes that the more adaptive a governance system is to social-ecological system functioning and change, the more resilient that governance system is, making it more likely to achieve normative goals, for example, sustainability.

Adaptive governance theory is premised on understanding how formal institutions, informal networks, and individuals at multiple scales are linked for resilient collaborative environmental management that adaptive governance is operationalized through adaptive co-management systems and that the roles of social capital, focusing on networks, leadership, and trust, are emphasized in this context.” In this regard, the literature on adaptive co management, it draws attention to the learning (experiential and experimental) and collaboration (vertical and horizontal or networks) required to generate better outcomes in the context of complex social-ecological

---

<sup>27</sup> A. Agrawal, *Environmentality: Technologies of Government and the Making of Subjects* (Duke University Press, 2005) 4.

<sup>28</sup> L. Gunderson, *Resilience, Flexibility and Adaptive Management* (Sweet & Maxwell, 1999) 13.

<sup>29</sup> A. Agrawal, *Environmentality: Technologies of Government and the Making of Subjects* (Duke University Press, 2005) 50.

systems. As with most broad or combinatory governance theories, however, there is no clearly fixed definition of adaptive governance. All attempts to define or describe it emphasize the interdependencies in changes that occur between social and ecological systems, while also recognizing their complexity. This includes conceptualizing environmental and natural resource systems as linked social-ecological systems.

There are many useful features of adaptive governance relevant to coastal change and complexity. These features emphasize the importance of collaboration among diverse actors and interests, as well as institutions that are flexible and nested. The adaptive dimension of governance also draws attention to the importance of the deliberative processes that are required to build understanding based on multiple knowledge systems, encourage trust through repeated interactions, and finally, to encourage social (or collective) learning processes and continuous feedback. Adaptive governance theory is particularly oriented toward studying the capacity of a governance system to adapt to new (ecological and social) system conditions, given those changes that may stem from climate change, overfishing, or other issues that make coastal systems dynamic.<sup>30</sup> As such, in coastal systems, adaptive governance has been applied to diverse empirical settings, including disaster management, marine trans boundary governance, the response to changes in fisheries or fisheries management, and coping in response to climate change.<sup>31</sup>

---

<sup>30</sup> C.B Powell, *Oil Spill Environmental Impact – Effect on Aquatic Biology* (Evans Brother, 1983) 17.

<sup>31</sup> R.A Paul, *Population, Resources and Environment*. (W H Freeman & Co., 1972) 20.

### 2.3 Review of Related Literature

According to E.E. Okon,<sup>32</sup> EIA is a commonly used framework for evaluating a project's, policy's, or program's possible environmental impact. Many nations have legal requirements for environmental impact assessments (EIAs), and their efficacy in reducing the negative consequences of development initiatives is widely recognized. The process of assessing a proposed project's or activity's possible environmental effects before the implementation is known as EIA.

According to E.E. Badr,<sup>33</sup> Environmental impact assessment (EIA) has evolved and become part of major project requirements in many countries, since its introduction in the United States in 1970. However, its contribution to sustainable development and reduction in poverty of people affected by projects has not been sufficiently assessed in developing countries, especially in Africa.

According to U.D. Ikoni<sup>34</sup>, the maintenance of a health environment can no longer be left to chances. When our air and water become contaminated and dangerous to healthy, someone must investigate, determine safe levels of contamination and enforce regulations to protect the citizens. Food must be pure, medications must be safe, and work hazards must be accomplished. To accomplish these objectives, we need specialist of several kinds. The general specialist on environmental matters is usually referred to as environmentalist and may be divided into several kinds depending on the nature of job of each one.

According to A. Akinjide<sup>35</sup>, the issue of environmental degradation goes beyond the issue of pollution of air, water and land. Those things are important. But the environment is also about something

---

<sup>32</sup> E. E. Okon, "The Legal Status of Sustainable Development in the Nigerian Environmental Law. *Afe Babalola Journal of Sustainable Development Law and Policy*, (2016) 5(1) 122.

<sup>33</sup> E.A. Badr. *Evaluation of the Environmental Impact assessment System. Impact Assessment and Project Appraisal*. <<http://dx.doi.org/10.3152/146155109X465959>>. Accessed on 3<sup>rd</sup> September, 2024.

<sup>34</sup> *An Introduction to Nigerian Environmental Law* (Malthouse Press, 2010) 5.

<sup>35</sup> *Dimensions of Environmental Problems in Nigeria* (Davidson Press, 1997) 7.



less tangible, though no less important. It is about our sense of community, the obligation we have to each other and to future generations, to safeguard God's earth. It is about our sense of responsibility and the realization that natural beauty and resources that took millions of years to develop could be damaged and depleted in a matter of decades.

According to M.H Jackson<sup>36</sup>, environmental issues have assumed a global dimension. Mankind is threatened by global environmental changes of which all humanity is responsible. The problems of acid rain and global warming caused by the emission of greenhouse gases such as carbon dioxide, methane, chlorofluoro-carbons and nitrous oxide, is a major environmental concern and cannot be controlled on a fragmented national basis within the geographical limits of a state. It demands an international response. So also, are the problems of marine pollution, and trans-frontier or international movement of shipment of hazardous wastes. To the extent that environmental hazards may be caused by activities beyond national borders and their effect transcends such borders have to some extent become matters of international concern.

According to A.O. Uzokwe<sup>37</sup>, Nigeria is gradually being condemned to desolation and bareness by sustained and unmitigated pollution of her air, land and sea. Sometimes, one wonders what will be the state of health of Nigerians in the next 20 years given the sustained and worsening nature of the scourge. There also appears to be a connection between environmental pollution and the rise of violent armed struggle in the Niger Delta area.

---

<sup>36</sup> *Environmental Health Reference Book* (Butter Worth, 1989) 18.

<sup>37</sup> Devastating Effects of Pollution in Nigeria. <[Http://Nigeria.com](http://Nigeria.com).> accessed on 10<sup>th</sup> December, 2023).

According to C.A Omaka,<sup>38</sup> environment is replete with evidence of distortions orchestrated by man's careless actions as touching the building of roads, houses, industries, agricultural practice, logging, and deforestation, etcetera.

#### **2.4 Summary of Review/Gap in Knowledge**

These various scholars stated above clearly in their views discussed in greater measures about environmental impact assessment and the need to keep the environment healthy against degradation.

This lacuna or gap in knowledge that necessitated this research work is how to link effective environmental impact assessment practices with sustainable development.

---

<sup>38</sup> C A Omaka, The Concept of Environmental Impact Assessment in Nigeria, *Ebonyi State University Law Journal*. (2009) 2 (1) 9.

## CHAPTER THREE

### LEGAL AND INSTITUTIONAL FRAMEWORKS FOR THE PROTECTION OF THE ENVIRONMENT

#### 3.1 Legal Framework

##### 3.1.1 The Constitution of Federal Republic of Nigeria 1999 as amended

Constitutional provisions offer broad and powerful tools for protecting the rights of citizens. The process of accessibility of citizens to courts to enforce their constitutional rights further strengthens the judiciary, empowers civil society and fosters an atmosphere of environmental stewardship. The constitution contains arrays of provisions that can be utilized to create and enforce legal rights.<sup>39</sup> Thus, it is necessary to evaluate the possibilities of an expansive approach through which provisions of the constitution may be utilized in deriving and protecting the right to a healthful environment. The Constitution of a nation is more than a mere organic law because it guarantees to its citizens' fundamental human rights such as the right to life, liberty, right to justice to mention but a few. With increasing environmental awareness in the last decades, the environment has become a higher political priority and many constitutions now expressly guaranteed a right to a healthy environment as well as procedural rights necessary to implement and enforce the substantive rights granted. This increase in awareness has led courts around the world to interpret increasingly the provision of these fundamental rights such as the right to life to include the right to a healthy environment in which to live that life.

The Constitution of Federal Republic of Nigeria, which came into force on May 29, 1999 and amended in 2011 specifically makes environmental protection a state objective and indeed provides for it in the chapter two on Fundamental Objectives and Directive Principle of State

---

<sup>39</sup> See Chapter Two of the Constitution of Federal Republic of Nigeria, 1999 (as amended).

Policy. Section 20 expressly contains provision on environmental protection and states as follows: “The state shall protect and improve the environment and safeguard the water, air, land, forest and wild life in Nigeria”. The main aim of section 20 is to ensure a healthy environment for Nigerian citizens. The protection of the environment is essential for the realization of human rights because human rights can only be enjoyed in an environment that is free of pollution, the need to effectively carry out environmental impact assessment. Thus, safeguarding the air, water, land and wild life as stated in section 20 would enhance a pollution free environment. In spite of the laudable provision of section 20 in the constitution, the question is whether an individual or aggrieved person has a right or the locus to approach the court to enforce the provision of section 20. In answering this question, it is pertinent to examine the provision of section 6(6)(c) of the Constitution which is reproduced below: “The judicial powers vested in accordance with the foregoing provisions of this section shall not except as otherwise provided by this constitution, extend to any issue or question as to whether any act or omission by any judicial decision is in conformity with the fundamental objectives and directive principles of state policy set out in chapter II of this constitution”.

This provision of section 6(6) (c) has been interpreted as denying the court the power to adjudicate on any issue having to do with the enforceability of the provision of section 20 of the Constitution, That is, protection of the environment. This is because section 20 also falls under the provisions of fundamental objectives and directive principles of state policy set out in chapter two of the Constitution which by section 6(6)(c) are generally not enforceable. This provision was judicially interpreted in the case of *Okogie & Ors v Attorney-General, Lagos State*<sup>40</sup>. This case was based and decided on the similar provision of the 1979 Nigerian Constitution. The issue in this case was

---

<sup>40</sup> *Okogie & Ors v AG Lagos State* (1981) 2 NCLR 1

on the Plaintiffs' fundamental right under section 32(2) of the 1979 Constitution to own, set up and manage private primary and secondary schools for the purpose of imparting ideas and information, and the constitutional responsibility of the Lagos State Government to guarantee equal and adequate educational activities at all levels under section 18(1), Chapter II of the 1979 Constitution. The Court of Appeal, while considering the constitutional status of the said Chapter stated: "While section 13 of the Constitution makes it a duty and responsibility of the judiciary among other organs of government, to conform to and apply the provisions of Chapter II, section 6 (6) (c) of the same Constitution makes it clear that no court has jurisdiction to pronounce on any decision as to whether any organ of government has acted or is acting in conformity with the Fundamental Objectives and Directive Principles of State Policy. It is clear therefore that section 13 has not made Chapter II of the Constitution justiciable. I am of the opinion that the obligation of the judiciary to observe the provisions of Chapter II is limited to interpreting the general provisions of Constitution or any other statute in such a way that the provisions of the Chapter are observed, but this is subject to the express provisions of the Constitution".

The interpretation of the court in the above cited case further supports the argument that no court has jurisdiction to pronounce or entertain any question regarding the enforceability of the provision of section 20 and of other matters stipulated in chapter two of the constitution. Commenting on the justification for making section 20 of the Nigerian Constitution unjustifiable.

### **3.1.2 NESREA Act 2007**

In 1999 the Government wisely decided to merge the Federal Environmental Protection Agency and relevant Departments from other Ministries into a single Federal Ministry of Environment. However, the new Ministry of Environment lacked the necessary laws to enable enforcement. This created a vacuum in the effective oversight of environmental laws, standards and regulations in

the country. To address this gap in line with section 20 of the 1999 Constitution of the Federal Republic of Nigeria, the Federal Government established the National Environmental Standards and Regulations Enforcement Agency, as a parastatal of the Federal Ministry of Environment. The National Environmental Standards and Regulations Enforcement Agency Act 2007 repealed the Federal Environmental Protection Agency Act. The areas of Focus of NESREA are: (a) To protect the environment (b) Enforcement of Laws and Regulations on the Environment. (c) Maintaining Environmental Standards. (d) To create environmental awareness (e) to engage in partnership in the protection of the environment.

The Act setting up NESREA empowers it to come up with modalities on ensuring environmental awareness and compliance in Nigeria. This is achieved through effective enforcement mechanism as championed by NESREA and its sister agencies; some of the techniques and mechanism used in ensuring environmental awareness and compliance includes; effective enforcement mechanism, Public Participation in Environmental Protection and Management, Environmental education, cooperation and Partnership with other inter government Agencies, non-Governmental organization and relevant agencies that are directly or indirectly involved in activities related to the protection of the environment in Nigeria and the global community at large, effective Enforcement Mechanisms. The NESREA Act of 2007 provides for an impressive array of enforcement mechanisms. They include: issuance of permits, licenses, certificates for environmental compliance, inspections, searches, seizures, arrests, sealing, notice of violation, notice of revocation of permit, revocation order, recourse to courts for civil penalties for violation, injunctive relief to require compliance, criminal sanctions for violations, citizen's suits to enforce the statutes in the absence of effective government enforcement, public Participation Environmental Education. The National Environmental Standards and Regulations Enforcement

Agency is involving the Nigerian citizenry in environmental governance, particularly in compliance monitoring and enforcement, by various ways, such as: advisory committees, document reviews, informational meetings, public forums, citizen monitoring, voluntary environmental marshals or corps.

In order for NESREA to effectively carry out its functions, sections 7 and 8 of the Act confers on the agency certain powers and functions to carry out.

### **3.1.3 Petroleum Industry Act 2021**

The Petroleum Act does not make direct provision on the prevention of marine and air pollution caused in the oil and gas sector. The only attempt to provide for environmental protection was in Section 9 (1) (b) of the Petroleum Act which empowers the Minister of Petroleum to make regulations for the prevention of pollution of the environment. Section 9 provides that the Minister of Petroleum Resources may make regulations providing generally for matters relating to licences and leases granted under this Act and operations carried out there under including the prevention of pollution of water courses and atmosphere. Furthermore, the said Minister of Petroleum Resources may also make regulations<sup>41</sup>:

- a. Regulating the importation, handling, storage and distribution of petroleum, petroleum products and other flammable oils and liquids, and in particular dangerous petroleum products, prescribing anchorages for ships carrying dangerous petroleum or dangerous petroleum products as cargo and requiring those ships to proceed to and remain at those anchorages.

---

<sup>41</sup> See Petroleum Industrial Act 2021, Section 9(1) (e).

- b. Regulating the loading, unloading, transport within a port, landing, transshipment and shipment of petroleum and petroleum products; and
- c. Prescribing conditions and restrictions to be imposed upon vessels arriving at a port after having carried petroleum, petroleum products, dangerous petroleum or dangerous petroleum product.

Thus, strict compliance to the Act and its regulations may ensure the safe handling of petroleum and its products and thereby prevent pollution of water courses and the atmosphere. Section 37 of Petroleum Act provides that the holder of an oil exploration license, oil prospecting license or oil mining lease shall in addition to any liability for compensation to which he may be subject to under any other provision of this Act, be liable to pay fair and adequate compensation for the disturbance of surface or other rights to any person who owns or is in lawful occupation of the licensed or leased land. In the case of *Shell Petroleum Development Co Nig Ltd v Farah*<sup>42</sup>, here, the Court of Appeal considered Section 21 of the Petroleum Act, in awarding compensation to the Respondent who suffered injury and damage as a result of oil spill. The court found in favour of the claimants and argued that "fair and adequate compensation" had not been paid and that the claimants were entitled to compensation for the loss of value to the land, compensation for loss of profits and compensation for future or prospective damages reasonably anticipated as a result of the defendant's activity.

Further, pursuant to Section 9(1)(c) of the Petroleum Act, Petroleum (Drilling and Production) Regulations (PDPR) was enacted with the objective of protecting the environment against hazard. These regulations are archaic and deficient. From the provisions of Regulation 25 of the

---

<sup>42</sup> *Shell Petroleum Development Co. Nig. Ltd v Farah* (1995) 3 N.W.L.R. (Part 382)48.



Petroleum (Drilling and Production) Regulations “the licensee 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, the territorial waters of Nigeria or 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 freshwater or marine life, and where any such pollution occurs or has occurred, shall take prompt steps to control and, if possible, end it”.

Regulation 44 also contains preventive principle to prevent environmental pollution by oil operators. It provides that the Director of Petroleum Resources may give such directions as may in his opinion be necessary from time to time to ensure the proper exploitation of petroleum and to encourage good conservation practices in any licensed or leased lands, and licensee or lessee shall comply with any such directions which affect him. Under Regulation 37, licensees and lessees are enjoined to maintain all apparatus and appliances in use during oil operations and to also carry out their operations in a proper and workman-like manner and to take reasonable steps to control the flow and to prevent the escape or avoid waste of petroleum discovered in or obtained from the relevant area, prevent damage to adjoining petroleum bearing strata, prevent the escape of petroleum into any water, well, spring, stream river, lake, reservoir, estuary or harbour, and cause as little damage as possible to the surface of the relevant area and to the trees, crops, buildings, structures and other property.

### **3.1.4 Environmental Impact Assessment Act Cap E12 LFN 2004**

The provision of the Environmental Impact Assessment (EIA) Act requires that public and private sectors of the economy shall not undertake, embark or authorise projects without prior considerations of their environmental effects<sup>43</sup>. An EIA is a national procedure for evaluating beforehand, the likely impacts of a proposed development project on the environment. The 'Impact' that is assessed in an EIA is any effect caused by a proposed project on the environment, including human health and safety, flora, fauna, soil, air, water, climate, or the interaction among these factors<sup>44</sup>. It also includes effects on cultural heritage or socio-economic conditions resulting from alterations to those factors. It is in line with this that the Act provides in section 21 that after completion of a screening report in respect of a project the Agency shall take one of the following courses of action, that is- (a) where, in the opinion of the Agency

- (i) The project is not likely to cause significant adverse environmental effects, or
- (ii) Any such effect can be mitigated,

The Agency may exercise any power or perform any duty or function that would permit the project to be carried out and shall ensure that any mitigation measures that the agency considers appropriate are implemented where, in the opinion of the agency the project is likely to cause significant adverse environmental effects that may not be mitigable, or public concerns respecting the environmental effects of the project warrant it. The Agency shall refer the project to the council for a referral to a mediation or a review panel in accordance with section 35 of this Act or where, in the opinion of the Agency, the project is likely to cause significant adverse environmental effects

---

<sup>43</sup> Section 2(1) of EIA

<sup>44</sup> J. Glasson et al., *Introduction to Environmental Impact Assessment*. 3<sup>rd</sup> Ed. (Routledge Publishers, 2005) 506.

that cannot be mitigated, the agency shall not exercise any power or perform any duty or function conferred on it under any enactment that would permit the project to be carried out in whole or in part.

This principle is also provided for in section 52(1) of EIA that:

1. Where, on the application of the Agency, it appears to a court of competent jurisdiction that a prohibition made under section 51 of this Act in respect of a project has been, is about to be or is likely to be contravened, the court may issue an injunction ordering any person named in the application to refrain from doing any act or thing that would commit the proponent to ensure that the project or any part thereof is carried out-
2. At least 48 hours before an injunction is issued under sub-section (1) of this Act, the agency is satisfied that the serious adverse environmental effects referred to in that subsection has been mitigated.

Under section 4 of the Act, an Environmental Impact Assessment (EIA) shall include at least the following minimum matters i.e.:

- a) A description of the proposed activities;
- b) A description of the potential affected environment including specific information necessary to identify and assess the environmental effects of the proposed activities;
- c) A description of the practical activities, as appropriate;
- d) An assessment of the likely or potential environmental impacts on the proposed
- e) An identification and description of measures available to mitigate adverse environmental impacts of proposed activity and assessment of that measure;

f) An indication of gaps in knowledge and uncertainty which may be encountered in computing the required information:

g) an indication of whether the environment of any other State, Local Government Area or areas outside Nigeria is likely to be affected by the proposed activity or its alternatives;

h) A brief and non - technical summary of the information provided under paragraph (a) to (g) of this section.

It spells out in Section 4; the minimum content of an E.I.A. Section 13(l) prohibits a proponent (industry or government) of any project described in the mandatory study list from exercising any power that would permit the project to be carried out whole or in part until the Agency has taken a decision or issued an order authorizing the project with or without conditions.

Environmental Impact Assessment Act also contains penal regime to deter environmental degradation. It is an offence for any person who fails to comply with the provisions of this Act. When a person violates the provisions of the Act, the person will be guilty, and liable on conviction in the case of an individual to N10, 000.00 fines or to five years imprisonment. In the case of a firm or corporation to a fine of not less than N50,000 and not more than N1,000,000.00. The underlying *raison d'être* for this provision is to check, prevent, and remedy any likely environmental degradation.

In *Oronto Douglas V. Shell Petroleum Development Co. Ltd*,<sup>45</sup> the respondents were engaged in a project for the production of liquefied natural gas. For the project to take place off, they were required to do preliminary studies on the impact of the project on the environment as well as

---

<sup>45</sup> *Oronto Douglas v Shell Petroleum Development Co. Ltd* (1999) 2 NWLR (pt. 59) 466

comply with the provisions of the Environmental Impact Assessment Act. In *Jonah Gbenre V. Shell Ltd & Ors*<sup>46</sup>, the learned judge ruled that the failure of the company to carry out An Environmental Impact Assessment in the said community concerning the effects of their gas flaring activities is a clear violation of the Environmental

Impact Assessment Act and has contributed to further violation of the said environmental rights. The judge's order restrained the respondents from further gas flaring and to take immediate steps to stop the further flaring of gas in the community.

A major flaw in Nigeria's EIA legislation is that the public has virtually no role to play in the EIA process. As a result, stakeholders' interests are not protected by the law. Although Section 7 provides that the Agency shall give the public an opportunity to make comments on any environmental assessment, this falls short of the requirements of multi-stakeholder consultation.

### **3.1.5 Environmental Impact Assessment Procedures and Charges Regulations 2021**

Environmental Impact Assessment Procedures and Charges Regulation 2021 has to do with a procedure for evaluating beforehand, the likely impacts of a proposed developmental project on the environment. These impacts have to do with the likely effect of such proposed project on the environment including human health and safety, flora, fauna, land, air, water and other components of the environment.

Section 1 of the Regulation sets out its objective mainly to indicate the procedures of carrying out environmental impact assessment starting from the conception of the proposed project, to

---

<sup>46</sup> John Gbenre v Shell Ltd & Ors (2005) Suit No. FHC/B/CS/53/05

commissioning, to follow-up activities. The hallmark of this objective is to ensure that the proposed project is carried out with optimum regards to the environment.

Under section 2 of the Regulation, the proponent of any given project has to firstly notify the Environmental Impact Assessment department of the ministry of environment and such notification must contain all necessary information in relation to the project so as to enable the department carry out the environmental impact screening of the proposed project and find out the likely environmental impact before making approval.

By sections 6, 7 and 8 of the Regulation, the following procedures must be adopted by the environmental impact assessment department of the ministry of environment. These include: (a) screening: purposely to determine whether environmental impact assessment is required on the proposed project and (b) scoping: to find out the necessary information that would be required and (c) reviewing the adequacy of the environmental statements.

## **3.2 Institutional Framework**

### **3.2.1 National Environmental Standard and Regulations Enforcement Agency**

Part II of the NESREA Act contains the functions of the Agency. The Agency is authorised to enforce compliance with laws, guidelines, policies and standards of environmental matters. Such standards would include the federal water quality standards and air quality standards. In carrying out its functions, it is to coordinate and liaise with stakeholders within and outside Nigeria on matters of environmental standards, regulations and enforcement. Relevant stakeholders would include the organised private sector, environmental groups at both national and international levels, and other ministries and parastatals.

The Agency has powers to:

- a. Prohibit processes and use of equipment or technology that undermine environmental quality.
- b. Conduct field follow-up of compliance with set standards and take procedures prescribed by law against any violator.
- c. Subject to the provision of the Constitution of the Federal Republic of Nigeria, 1999, and in collaboration with relevant judicial authorities, establish mobile courts to expeditiously dispense.
- d. Cases of violation of environmental regulation;

Functions and Role of NESREA in preventing the environment includes:

NESREA has responsibility for the protection and development of the environment, biodiversity conservation and sustainable development of Nigeria's natural resources in general and environmental technology including coordination, and liaison with, relevant stakeholders within and outside Nigeria on matters of enforcement of environmental standards, regulations, rules, laws, policies and guidelines.

It is empowered to enforce compliance with laws, guidelines, policies and standards on environmental matters, carry out activities necessary for the performance of its functions, prohibits processes and use of equipment or technology that undermine environmental quality, conduct field follow-up of compliance with set standards and take procedures prescribed by law against any violator, conduct public investigations on pollution and the degradation of natural resources, develop environmental monitoring networks and do such other things other than in the oil and gas sector as are necessary for the efficient performance of the functions of the Agency.

The Act empowers NESREA to enter and search with a warrant issued by a court any premises including land, vehicle, tent, vessel and floating craft, inland water, activities or stores goods which contravene environmental standards or legislation for the purpose of conducting inspection, searching and taking samples for analysis.

In order to ensure effective compliance, monitoring and enforcement, NESREA has adopted

Environmental permitting and licensing system; promoting the development of local technologies to aid compliance monitoring and enforcement; pursuing technical assistance to strengthen capacity through exchange of knowledge and experience, and learning of best practices in environmental management from other countries whose policy systems have some similarities with Nigeria.

NESREA is also concerned with the enforcement of the guidelines and legislation on sustainable management of the ecosystem, biodiversity conservation and the development of Nigeria's natural resources.

### **3.2.2 National Oil Spill Detection and Response Agency**

NOSDRA is a parastatal under the Federal Ministry of Environment, Housing and Urban Development established by an Act of the National Assembly on the 18th day of October, 2006 as a body Corporate with perpetual succession and a seal, which may sue and be sued in its corporate name<sup>47</sup>. NOSDRA is vested with the responsibility to co-ordinate the implementation of the National Oil Spill contingency plan (NOSCP) for Nigeria in accordance with the international convention on Oil Pollution Preparedness, Response and Co-operation (OPRC) 1990, to which Nigeria is a signatory. Section 1 (1) states that NOSDRA is the federal agency with the statutory

---

<sup>47</sup> Cap 157 LFN 2004.



responsibility for preparedness, detection and response to all oil spillages in Nigeria. It also established the advisory, monitoring, evaluating, mediating and co-ordinating arm of NOSDRA known as the National Control and Response Centre (NCRC)<sup>48</sup>. The NOSDRA Act provides that the objectives of NOSDRA shall be to co-ordinate and implement the National Oil Spill Contingency Plan for Nigeria. The objectives of NOSDRA include<sup>49</sup>;

- (a) Safe, timely, effective and appropriate response to major or disastrous oil pollution;
- (b) Identify high-risk areas as well as priority areas for protection and clean-up;
- (c) Establish the mechanism to monitor and assist or where expedient direct the response, including the capability to mobilizing the necessary resources to save lives, protect threatened environment, and clean up to the best practical extent, the impacted site
- (d) Maximize the effective use of the available facilities and resources of corporate bodies, their international connections and oil spill co-operatives, that is Clean Nigeria Associates in implementing appropriate spill response;
- (e) Ensure funding and appropriate and sufficient pre-positioned pollution combating equipment and materials, as well as functional communication network system required for effective response to major oil pollution;
- (f) Provide a programme of activation, training and drill exercise to ensure readiness to oil pollution preparedness and response and the management and operational personnel;

---

<sup>48</sup> Section 18 of the NOSDRA Act.

<sup>49</sup> Section 5 of the NOSDRA Act.

- (g) Co-operate and provide advisory services, technical support and equipment for purposes of responding to major oil pollution incident in the West African sub region upon request by any neighbouring country, particularly where a part of the Nigerian territory may be threatened.
- (h) Provide support for Research and Development (R&D) in the local development of methods, materials and equipment for oil spill detection and response
- (i) 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;
- (j) Establish agreements with neighboring countries regarding the rapid movement of equipment, personnel and supplies into and out of the countries for emergency oil spill response activities;
- (k) Determine and preposition vital combat equipment at most strategic areas for rapid response;
- (l) Establish procedures by which the Nigerian Customs Service and the Nigerian Immigration Services shall ensure rapid importation of extra support response equipment and personnel;
- (m) Develop and implement an appropriate audit system for the entire plan.
- (n) Carry out such other activities as are necessary or expedient for the full discharge of its functions and the execution of the Plan under this Act.

Clean up is a remedial method adopted by National Oil Spill Detection and Response Agency Act to ensure that any oil operator who spills oil or petroleum product on the environment, should clean up the environment. The National Oil Spill Detection and Response Agency Act also

embrace the polluter pays principle in section 19(1)(j) that: “The Agency shall monitor the clean-up operation to ensure full rehabilitation of the affected areas” In fact Section 5(c) of the NOSDRA Act specifically stated that the agency shall establish the mechanism to monitor and assist or where expedient direct the response, including capability to mobilize the necessary resources to save lives, protect threatened environment and clean up to the best practical extent of the impacted site...” The Act provides further in section 6(3) that; “failure to clean up the impacted site to all practical extent including the remediation, shall attract a further fine of one million naira”. Section 19(1) (j) of the Act still emphasized the responsibility of the Agency to “monitor the clean-up operations to ensure full rehabilitation of the affected areas”. National Oil Spill Detection and Response Agency Act 104 contain penal provisions to punish those who pollute the environment arising from the operation of oil industry in Nigeria. In fact, Section 6 (2) specifically provides that; 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”. The Act stated further in subsection (3) of section 6 that failure to clean up the impacted site to all practical extent including the remediation, shall attract a further fine of one million naira (N1,000,000.00) This penal provision is very commendable in that the amount fixed as punishment is very good. It is not an amount that the polluter can decide to pay and continue with the pollution. It may deter the would-be polluter to some extent. The Act appears to be the first legislation that truly seeks to protect the environment against oil pollution without considering any other type of pollution

The functions of NOSDRA in Section 6 are as follows, “The Agency shall be responsible for surveillance and ensure compliance with all existing environmental legislation and detection of oil

spills in the petroleum sector and receive reports of oil spillages and coordinate oil spill response activities throughout Nigeria; co-ordinate the implementation of the Plan as may be formulated, from time to time, by the Federal Government; co-ordinate the implementation of the Plan for the removal of hazardous substance as may be issued by the Federal Government; 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.”<sup>50</sup>

Furthermore, the special functions of the NOSDRA which are also for the attainment of the objectives are delineated in Section 7 as follows; The Agency shall –

(a) Ensure the coordination and implementation of the plan within Nigeria including within 200 nautical miles from the baseline from which the breadth of the territorial waters of Nigeria is measured;

(b) Undertake surveillance, reporting, alerting and other response activities as they relate to oil spillages;

(d) Strengthen the national capacity and regional action to prevent, control, combat and mitigate marine pollution.

As aforementioned, Section 18 established the National Control and Response Centre (NCRC) Act as a subsidiary of NOSDRA to act as a report processing and response coordinating centre for all oil spill incidents in Nigeria; receive all reports of oil spillages from the Zonal offices and units of the Agency; and serve as the command and control centre for compliance monitoring of all existing legislation on environmental control, surveillance for oil spill detection and monitoring and coordinating responses required in Plan activation. This Act also contains compensation provisions

---

<sup>50</sup> Section 6 of the National Oil Spill Detection and Response Agency Act 2006

as a remediation for victims of environmental degradation or pollution by oil and gas companies in Nigeria. For example, section 19(d) of the Act, provides that the Agency shall: “Advise the Federal and State Government on possible effects on the health of the people and ensure that appropriate remedial action is taken for the restoration and compensation of the environment;”

Under the sub-title: “Federal Government Intervention”, the NOSDRA Act at Section 19 provides the duties of the NCRC in the event of a major or disastrous oil spill. By the words of that Section, these functions are ordinarily to be performed by NOSDRA save in the event of major or disastrous oil spillage where the NCRC shall perform same. The functions are as follows:

- a. Undertake a post spill impact assessment to determine the extent and intensity of damage and long-term effects.
- b. Advise the Federal and State Governments on possible effects on the health of the people and ensure that appropriate remedial action is taken for the restoration and compensation of the environment.
- c. Assist in mediating between the affected communities and the oil spiller.
- d. Monitor the response effort during an emergency, with a view to ensuring full compliance with existing legislation on such matters.
- e. Assess any damage caused by an oil spillage.
- f. Expeditiously process and grant approval for any request made to it by oil spiller for the use of approved dispersant or the application of any other technology considered vital in ameliorating the effect of an oil spill.
- g. Monitor the clean-up operations to ensure full rehabilitation of the area.

The NOSDRA Act went on to provide that the Agency shall act as the lead Agency for all matters relating to oil spills response management and liaise with the other Agencies for the implementation of the Plan, as contained in the Second Schedule; cooperate with an oil spiller in the determination of appropriate measures to prevent excessive damage to the environment and the communities; expeditiously consider any proposal made for response effort by the oil spiller; mobilize internal resources and also assist to obtain any outside human and financial resources that may be required to combat any oil spill; and assist in the assessment of damage caused by an oil spillage. It should be noted that it is not apparent in the Act and all the functions of NOSDRA therein that NOSDRA is in anyway directly involved with clean-up or remediation of oil spill sites.

### **3.2.3 Ministry of Environment**

The Federal Ministry of Environment was established at the inception of the civilian administration in June 1999 to protect the environment and to ensure effective coordination of all environmental matters. The Vision of the Ministry is “To ensure that Nigeria develops in harmony with the environment”, while the Mission is “To ensure environmental protection and natural resources conservation for sustainable development”.<sup>51</sup>

The main function of the Ministry revolves around the following key environmental issues, especially, in the area of policy awareness, enforcement and intervention:

- a. Desertification and Deforestation.
- b. Pollution and Waste Management.
- c. Climate change and clean Energy;

---

<sup>51</sup> A Y Oyediran, *An Appraisal of Environmental Sanitation* (University Press, 2011) 23.

- d. Flood, Erosion and Coastal Management (Shoreline Protection); and
- e. Environmental Standards and Regulations

The Ministry's main thrusts are Reclamation and Rehabilitation of degraded land, Biodiversity Conservation and Eco-tourism, Effective Waste Management, Mitigating the effects of Climate Change and Effective Environmental Governance.

The Ministry has zonal offices in the six geopolitical zones of the country as well as field offices in all the 36 States and the FCT. Since its establishment, the Ministry has impacted on raising the issue of environmental consciousness in the minds of Nigerians as well as the interface with the global environmental best practices. The initiatives of the ministry include the Ogoni Cleanup, Green Bonds, Clean and Green Initiatives, Great Green Wall Programme, Nigerian Erosion & Watershed Management Project, and Clean Energy Initiatives.

The ministry plays various roles involving the national goals on desertification, deforestation, pollution, and waste management. It also superintends over climate change and cleans energy issues and enforces environmental standards and regulations in different parts of the country.

### **3.2.4 Court**

Environmental laws are put in place to mitigate the threatening environmental problems resulting from human activities. To checkmate these human activities, courts are established by governments with jurisdictions to entertain environmental litigations to protect and redress environmental wrongs in Nigeria.<sup>52</sup> To achieve this objective, the questions to interrogate among others include: What role has judiciary played in promoting and protecting the right to a healthy environment in Nigeria? What are the jurisdictional obstacles militating against the use of litigation to protect and

---

<sup>52</sup> J A Omotola, *Environmental Laws including Compensation* (University Press, 1978) 24.

redress environmental wrongs in Nigeria? In answering these questions, we discuss the nature of Nigerian environmental litigations and courts conferred with jurisdiction to entertain environmental litigation. We also examine various impediments to environmental litigation in Nigeria. We argue for the encouragement of private and public interest litigation and creation of procedure for enhancing public participation in Nigerian environmental protection.<sup>53</sup>

Jurisdiction is the power of a court to hear and determine a matter. Jurisdiction is a threshold matter and where the court holds that it lacks jurisdiction, it declines hearing the matter and the case comes to an end. It has been submitted that jurisdictional issues in environmental Law relates to subject matter jurisdiction, *locus standi*, pre-action notice, and limitation of action. There are also other problems encountered by Nigerian courts in the determination of liability which relates to the jurisdiction of the court. Section 251(1) of the Constitution of the Federal Republic of Nigeria<sup>54</sup>, provides that the Federal High Court shall have exclusive jurisdiction to the exclusion of any other court in civil cases and matters in (n) mines and minerals (including oilfields, oil mining, geological surveys and natural gas); see the case of Barry & Ors v Obi Eric<sup>55</sup> In addition to the above provision, Section 2 of the Federal High Court (Amendment) Act equally provides for the exclusive jurisdiction of the court over such matters. By the combined provisions of these aforesaid sections of the law, the Federal High Court is vested with exclusive jurisdiction over civil cases.

---

<sup>53</sup> C.S Ola, *Town and Country planning* (University Press, 1988) 31.

<sup>54</sup> Section 251(1) of the CFRN 1999 (as amended)

<sup>55</sup> Barry & Ors v Obi Eric (1998) 8 N.W.L.R. (Part 562) 404 at 416.



**CHAPTER FOUR**  
**APPRAISAL OF ENVIRONMENTAL IMPACT ASSESSMENT AND SUSTAINABLE**  
**DEVELOPMENT IN NIGERIA.**

**4.1 Environmental Impact Assessment in Nigeria**

The Environmental Impact Assessment (EIA) Act, which is administered by the Nigerian Federal Ministry of Environment, is the main legislation for environmental impact assessment practice in Nigeria. Section 2(1) of the EIA Act<sup>56</sup> provides that no project within the private and the public sector shall be undertaken without prior consideration of their effects on the environment at an early stage. The EIA Act provides for environmental democracy in Nigeria. The EIA Act contains democratic environmental rights, that is, right of public access to information on environmental issues, right to public participation in environmental decision-making, and right of access to justice in environmental matters, available to persons when the environmental impact of a large-scale project comes into question.<sup>57</sup> In Nigeria, one of the goals of environmental impact assessment as contained in the Environmental Impact Assessment Act is: To encourage the development of procedures for information exchange, notification and consultation between organs and persons when proposed activities are likely to have significant environmental effects on boundary or trans-state or on the environment of bordering towns and villages. The EIA Act also allows judicial review of any matter relating to assessments under the Act. In the light of the foregoing, it is clear that the EIA process includes exchange of information and notification (right of public access to information) and consultation (right of access to public participation) between organs and persons with regard to projects which will significantly affect the environment.<sup>58</sup> Also obvious is the fact

---

<sup>56</sup> Section 2(1) of EIA Act.

<sup>57</sup> Section 7 of EIA Act.

<sup>58</sup> Section 11(1)(c) of EIA Act

that the EIA Act allows for judicial review of any matter relating to assessments of environmental impacts under the Act.

One of the primary reasons for conducting environmental impact assessments is to inform the public of the proposed projects thereby establishing a meaningful dialogue with a view to identifying and deploying safeguards to mitigate adverse environmental impacts from the proposed activity. The EIA requires the environmental regulatory agency (the Federal Ministry of Environment) to notify the public of EIA reports submitted by project proponents to afford them an opportunity not only to be informed but also to make objection to or negotiate eventual outcomes of the process with the project proponents as well as decisions of the Agency.

In Nigeria, section 20 of the EIA Act provides that where the Agency (Federal Ministry of Environment) receives a screening report and the Agency is of the opinion that the report could be used as a method of conducting screening of other project within the same class, the agency may declare the report to be a class screening report which shall be published in the Gazette and the screening report to which it relates shall be made available to the public at the registry maintained by the Agency<sup>59</sup>.

The Nigerian EIA Act provides for the right of access to public participation in environmental decision-making. Section 6 of the EIA Act<sup>60</sup> provides that the information provided about the environmental impact assessment of an intended project shall be examined impartially by the Agency before any decision to be made thereto (whether in favour or adverse to it). However,

---

<sup>59</sup> Section 20 of Environmental Impact Assessment Act 2006

<sup>60</sup> Section 6 of Environmental Impact Assessment Act 2006

before the Agency decides on the assessment, it is obliged to give opportunities for public participation.

All these are targeted at ensuring that the environment is safe for living, promote sustainability and advance the economy of the country.

#### **4.2 Sustainable Development in the Nigerian Environment**

In Nigeria, the adoption of the National Policy on the Environment and the Objectives and Strategies for Nigeria's Agenda 21 introduced sustainable development practices and policies into environmental governance in the country.<sup>61</sup> Both instruments aim at integrating environment into development planning at all levels of government and the private sector. As sustainable development has become the bedrock of Nigerian environmental law, it is all the more necessary to ascertain its legal status and how best to enhance its implementation and enforcement.

It is easy for any environmentalist to claim that sustainable development has been integrated into the Nigerian environmental law, but determining its legal status or weight may not be as easy as expected. The 1999 Constitution contains environmental provisions, but there is no specific provision on sustainable development. Since it is not possible to examine the legal status of sustainable development in the plethora of Nigerian legislation on the environment, the focus here is on the National Policy on Environment and the NESREA Act because of their overarching effect on all aspects of the environment. This section also examines the status of sustainable development in the Desertification Control and Drought Mitigation Regulations and the Wetland, River Banks and Lake Shores Protection Regulations made under the NESREA Act.<sup>62</sup>

---

<sup>61</sup> F O Odemerho, *Urban Flood Problems* (SEAP Publishing Co. 1997) 25.

<sup>62</sup> U N Okah, *The Status of Nigerian Vegetable Resources* (University Press 2007) 65.

Regulation 2 of the National Environmental (Desertification Control and Drought Mitigation) Regulations, 2011 expressly states that the objectives of Part 1 (General Provisions on Desertification Control) of the Regulations are to... (c) encourage the sustainable use of fuelwood through the use of more efficient and energy saving devices with a view to encouraging their wider use and adoption at all levels... (g) ensure sustainable agriculture and range management practices, improved animal husbandry and management of water resources in the desertification prone areas with a view to achieving sustainable livelihood, poverty reduction and wealth creation; through introduction of modern and affordable production technologies to resource poor farming communities. In contrast, Regulation 3 of the National Environmental (Wetland, River Banks and Lake Shores Protection) Regulations, 2009 provides that ‘The following principles shall be observed in regulating all wetlands: (a) Wetland resources shall be utilized in a sustainable manner compatible with the continued presence of wetlands and their hydrological functions and services;’<sup>63</sup> The interesting aspect of expressing sustainability as objectives or principle in the two mentioned Regulations is that it is not expressed as a political statement. Rather, it is expressed in a precise manner and in the form of obligatory statements among other concrete lists of measurable criteria by which the effectiveness of the NESREA Act and the respective Regulations are to be assessed, thus offering the legislature a unique opportunity to take a degree of control over the executive’s post-legislative conduct.

The level of compliance with the environmental law in Nigeria is low, and all tiers of government, as well as their investment partners, are the major culprits. Meanwhile, as noted earlier, a combined effect of sections 1(2)(a)<sup>64</sup> and 7(a)<sup>65</sup> of the NESREA Act vests in the Agency the power to enforce

---

<sup>63</sup> R E Munn, *Environmental Impact Assessment* (UNIBEN Press, 2010) 19.

<sup>64</sup> Section 1(2)(a) of the National Environmental Standards and Regulations Enforcement Agency Act 2007

<sup>65</sup> Section 7(a) of the National Environmental Standards and Regulations Enforcement Agency Act 2007

and ensure compliance with environmental standards, regulation, rules, laws, policies and guidelines. Of course, this includes ensuring compliance with the sustainable development of Nigeria's natural resources. Notwithstanding the fact that the uncertainty in the language used to integrate sustainable development into the NESREA Act has been addressed by the specific obligatory language used in the Desertification and Drought Regulations, and the Wetland, River Banks and Lake Shores Regulations, enforcement of sustainable development of Nigeria's natural resources by the Agency is still poor.

### **4.3 Environmental Rights in Nigeria**

The right to environment, being a global matter, is recognized and policed by Humanitarian Law. The right to environment, in so far as it related directly to the existence of man and his survival, occupies the same position and importance as the constitutional right to life. This is because a poor, filthy, and putrid environment can negatively impact an individual's health and lead to death. As a result, there is no doubt that a polluted environment has an impact on human health, mental well-being, and physical well-being, and that survival has become more difficult due to changes in the physical, chemical, and biological characteristics of the environment.<sup>66</sup> Pollutants from effluents discharged into the atmosphere, oil spills, gas flaring, garbage dumping, and acid rains are just a few examples of pollution that have had a significant impact on human life. The right to life is a right guaranteed in the 1999 Constitution<sup>67</sup> and it provides that every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria. The word "life" here

---

<sup>66</sup> C T Miller, *Introduction to Environmental Science*, (Wadsworth Publishers, 1984) 5.

<sup>67</sup> Section 33 of CFRN 1999 (as amended).

means “human life. It follows therefore that when environmental degradation occurs as a result of oil spills, gas leaks, or flaring, this right is infringed, leading to the loss of human life.<sup>68</sup>

A right to health is an extension of the right to life. Human life and survival are inextricably linked to and reliant on the environment. A right to health, in simple terms, is the absence of pollution and protection from natural hazards.<sup>69</sup> Naturally, a healthy lifestyle enhances people's life expectancy, and this includes the rights to equitable access to high-quality health care and the right to decent living conditions, which ensure people's health to the greatest extent feasible. Although the right to a clean environment was not clearly stated in the 1999 Constitution's human rights provisions, it has been suggested that a claim for a violation of this right can be made not only in civil court but also in criminal court.

There is right to live in a safe environment where one's health, livelihood, and well-being are not jeopardized. Its preservation is consequently critical, as the environment in which people live has an impact on their lives. A dirty environment is known to lack adequate sanitation and is generally characterized by ills such as contaminated water, toxic hazards, disease vectors, ultraviolet radiation, and other environmental pollution, all of which are major contributors to illness, disability, physical injuries, and poisonings that endanger health and life. Environmental dangers can harm a person's health even before they are born.

Access to Justice in environmental matters presents a channel to implement extant laws on the preservation of the environment, remedy the erroneous decisions and actions taken by regulatory agencies, and to pressurize the relevant institutions and agencies to perform their duties. It is

---

<sup>68</sup> U D Ikoni, *Introduction to Nigerian Environmental Law* (Malthouse Law Books, 2010) 18.

<sup>69</sup> E Egede, Human Right and the Environment. *Sir Lanka Journal of International Law*. (2004) 19(1) 51.

critical to enable communities facing environmental threats to enforce environmental rights and seek remedy when it comes to environmental issues.

In Nigeria, the 1999 Constitution guarantees the right to go to court and be heard fairly as enshrined in its section 36<sup>70</sup>. As an addendum to the constitutional outlines on access to justice, the African Charter enshrines the right of every person to have their cause heard. The courts provide machineries and legal remedies in the exercise of their judicial powers, in matters bordering on the enforcement of human rights in issues of the environment in Nigeria. Scholars have opined that access to environmental justice in Nigeria is mostly determined by two socio economic factors: poverty and ignorance. The question of who has a legal right (*locus standi*) to institute an action on an infraction of the right to a healthy environment is an inhibiting factor to obtaining access to justice. In *Attorney General of Akwa Ibom State & Anor v I.G. Essien*,<sup>71</sup> the court defined locus as the right of a person to institute and defend a suit before a court of competent jurisdiction, free from any form of prejudice.

In *Oronto Douglas v Shell Petroleum Development company & 5 Ors*,<sup>72</sup> the plaintiff brought a suit in the federal high court contending that he (the plaintiff) had reasons to believe that the defendants did not sufficiently comply with the stipulations of the EIA Act before commencing the liquefied natural gas production project. The respondent raised a preliminary objection that the applicant did not have the requisite right to file the action, thus the case was procedurally defective. The court agreed with the submission of the respondents and struck out the case on the grounds that the applicant lacked the legal standing to prosecute the case. The implication of the judgment of the court is that except an applicant can show by *prima facie* evidence in the originating application

---

<sup>70</sup> Section 36 of the CFRN 1999 (as amended)

<sup>71</sup> *AG of Akwa Ibom State & Anor v IG Essein* (2004) 7 NWLR (PT 872) P.288

<sup>72</sup> *Oronto Douglas v Shell Development Company & 5 Ors* Unreported suit no: FHC/2CS/573193

that environmental damage or non-compliance with environmental laws have resulted or is likely to result in an infringement of his human right to a healthy environment, he would be caught up with the locus standi principle.

#### **4.4 Challenges to the Environmental Sustainability in Nigeria**

There are a lot challenges that environmental sustainability in Nigeria face and these challenges include the following:

##### **Unplanned Land Use Policies:**

Planning decision and environmental protection are intricately linked and it is sometimes unclear where the dividing line is to be drawn between planning and environmental control. Even though the two requirements of control have slightly different purposes, very often the purposes of the two requirements converge to form part of planning policy and procedure of the state.

The minimum standard of environmental quality for urban settlement has not been achieved due to a number of problems identified such as public apathy, problem of enforcement, haphazardness and inflexibility of physical devices. The problems of town planning and environmental quality that led to unplanned land-use policies include:

- (a) Public apathy: This problem arises out of the lukewarm attitude of the members of the public towards the two planning laws which accounted for the low level of public participation in the process of decision making. In other words, the principles and policies of the town planning are not internalized by members of the public for whom the use of land is being planned.

Consequently, this is lack of general enthusiasm towards the concept of licensed physical environment development. One of the reasons for the general enthusiasm is the difficulty and delay



in obtaining the building plan permit. In addition, the cost of printing the building plan and the payment for permit at the urban development board does not encourage the public to show any interest in the physical environment development. More so, most people are bent on holding on to their traditional ideas of physical environment planning, the differences between the common law approach and the traditional idea of physical environment planning.

(b) Problem of enforcement: Enforcement of the various town and country planning laws has been fraught with many problems, prominent of which are the official laxity in the enforcement by the authorities and inter-governmental conflict of interest. Planning authorities have by their acts or omissions contributed to the problems of enforcement of development schemes, to the detriment of healthy environment in our cities as in the case of *defacto bakeries v ajicore* (1974)<sup>73</sup>. Due to the laxity on the part of the planning authority, where there is a contravention of the planning scheme by a land owner, instead of demolishing the structure, the land owner will be compelled to pay some penal fee and no more.

(c) Haphazardness and inflexibility of physical device: Haphazard environmental impact concerns the unequal distribution of planning scheme in urban centres leading to overcrowding, housing shortage, slum, street trading etc.

Inflexibility of physical device has been the major reason for traffic congestion, bad housing and slums in most of our cities today. The scheme or master plan, because of its rigid nature or character does not develop mechanism to absorb the ever-increasing rate of urban population. This makes public utility in urban centres inadequate and often produce unhealthy environment.

---

<sup>73</sup>*Defacto Bakeries v Ajicore* (1974) ALL NLR (Pt 11) 385.

(d) Activities of affluent individuals: The consequences of the inadequate supply of public utilities have grave negative effects on the urban centres. For instance, the perennial water shortage in the city results in the frequent malfunctioning of the prescribed water toilet system with resultant offensive odours. This is also applicable to constant electric failures.

Consequently, the affluent individuals and establishments engage in the installation and maintenance of generation sets of various sizes. These activities are major services of noise and carbon monoxide pollution in our urban environment.

The object of town planning is to secure proper sanitary conditions, amenity and convenience in the development and use of certain land especially in urban centres. Town planning therefore encompasses the making of structure and local plans formulating the policies and proposal of the planning authorities for the development and other use of land.

### **Chemical Effluents:**

Toxic or harmful waste is any injurious, poisonous or noxious substance and in particular, includes nuclear wastes emitting any radioactive substance if the waste is in such quantity,<sup>74</sup> whether with any other consignment of the same, or of different substance, as to subjects any person to the risk of death, fatal injury or incurable impairment of physical and mental health<sup>75</sup>. Toxic wastes are by products of industrialization and constitute grave danger or threat to human lives where human life has been exposed to toxic properties, it may cause or contribute to increase in mortality rate, serious illness or deformity, or pose a substantial present or future hazard to human health or environment when improperly treated, stored, transported, disposed of or otherwise managed. Thus, at the

---

<sup>74</sup> A Akinjide, *Dimensions of Environmental problems in Nigeria* (Dailson Publisher Ltd, 1997) 70.

<sup>75</sup> Section 15 of the Harmful Waste (Special Criminal Provisions) Act

Stockholm Declaration on human environment in 1972, it was stated clearly that the discharge of toxic substances or of other substances as to exceed the capacity of the environment to render them harmless, must be halted in order to ensure that serious or irreversible damage is not inflicted upon ecosystems. States should therefore take all possible steps to prevent pollution of the seas by substances that are liable to create hazards to human health, the harm living resources and marine life, to damage amenities or to interfere with other legitimate use of the sea.

### **Ineffective Implementation of Legislations and Treaties**

Environmental laws have grown dramatically over the past three decades but, due to the lack of implementation and enforcement, they fall far short of what is required to address environmental challenges. Weak enforcement is a global trend exacerbating environmental threats.

Progress on implementation and enforcement however is lacking for a variety of reasons; several international and regional agreements aim to reduce emissions of pollutants and other ecological hazards. However, the problems associated with air pollution are far from being solved. The current legal and regulatory approaches to ecological hazards seem inadequate if the negative impacts already witnessed and the risks at stake are considered.

Effective air pollution laws for instance, require prompt action and co-operation at global, regional and national levels reaching across most economic sectors and engaging the public.<sup>76</sup>

Principles of international law matter show attitudinal regularities among states and other international actors. In that sense, principles show collective aspirations which shape the

---

<sup>76</sup> R.E Munn, *Environmental Impact Assessment* (UNIBEN Press, 2010) 15.

development of law and serve to frame the debate. The most significant influence that principles can exercise is through being specified in treaty norms and subsequent treaty body decisions<sup>77</sup>.

In Nigeria, efforts at bringing about a cleaner environment have relied on a philosophy of pollution control. This has in some cases involved costly measures and controversial political decisions. The foregoing clearly indicates government policies and legislation initiation and efforts in promoting environmental planning and protection in Nigeria since the early 1990s. In spite of these environmental laws in Nigeria by various successive governments, paradoxically, environmental problems in Nigeria are on the increase due to poor implementation and enforcement of the various laws. The sustainability of the Nigerian population is dependent on measures to replenish natural resources in order to continue to provide the people in with their sources of livelihood. To this end, there is need for political commitment by the leadership, who must recognize that failure to protect the environment necessitate failure in meeting the aspirations of the people. The political, social, and economic consequences of government failure in this regard will be too enormous for the nation.

The development and proper application of legal instruments in the field of environment is essential for the achievement of an environmentally sound and sustainable development. Possible strategies for environmental resource planning include; legislation on the control of hazards from exploration to implementation stages, land use demarcation or planning or control zoning, public participation in policy formulation, environmental education and enlightenment as well as cost benefit analysis of any action. In some areas of the North, such ecological disaster factors such as

---

<sup>77</sup> C.S Ola, *Town & Country Planning* (University Press 1988) 7.

the invasion of the quella birds in Jigawa and Adamawa State have also constituted a threat to the environment and agricultural activities in general.

## CHAPTER FIVE

### CONCLUSION

#### 5.1 Summary of Findings

In recent years, there has been worldwide concern for the deterioration of human environmental as a result of the impact of science, technology and population growth on the global landscape. Thus, environmental preservation and protection constitute one of the greatest challenges of the modern world. This is in recognition that the preservation of a nation's natural resources, determines the sustainability of its development and growth.

It therefore follows that conservation of the natural environmental wealth is an essential principle to be observed in the exploitation of nature's bounty if it is accepted that natural resources are not ear marked solely for the use of present humanity but are also meant to provide for future generations. This is the hallmark of preserving the environment against ecological hazards so that it will be sustained for the usage of generations to come. Moreover, no state could exclusively appropriate natural resources of the environment and ignore the essential aspect of heritage of the global community. Natural resources are therefore meant to be everlasting gift to mankind not only for the present but also for the future.

The state of the environment has become a source of concern for the global system for the time being such that proactive measures must be taken in ensuring sustainable development of the environment and ensuring that environment impact assessment is carried out on every developmental project. It is by so doing that environmental sanity would be guaranteed and preserved in order for humanity to continue to survive.

## 5.2 Recommendations

Having researched extensively on the environmental impact assessment and sustainable development of the environment. The following recommendations are important in order to totally reduce environmental degradation:

- (1) That there is need for sensitization in both rural and urban areas on the need to carry out environmental impact assessment of every proposed project in order to preserve the environment because there cannot be a healthy life where there is no healthy environment.
- (2) Environmental laws and its regulatory institutions in Nigeria should be strengthened with a view to recognizing the fundamental rights of individuals, to a healthy environment.
- (3) There is need to streamline the federal, state and local government functions with respect to implementation of environmental planning laws so as to avoid overlapping of functions and ensure compatibility of their various environmental planning programs.
- (4) Environmental planning should have both long-range problem prevention as well as shorter-range policy and programs planning goals.
- (5) There should be greater emphasis of environmental impact analysis for all projects as it will help to provide relevant data needed for robust decision making in order to ensure the environment is free from ecological hazards.
- (6) There is no doubt that the low level of environmental awareness in Nigeria affects individual's behaviour towards his environment. Poor environmental habit in Nigeria calls for government attention. It is therefore, recommended that government should mount strategic environmental campaigns to raise public awareness through various existing media in Nigeria.

### **5.3 Conclusion**

Environmental issues have a worldwide dimension. Humanity is threatened by global ecological hazards in which man contributes immensely especially by not observing environmental impact assessment and sustainable development mechanisms. The problems of embarking on a developmental project without assessing the likely negative impacts of such project on the environment, acid rain and global warming caused by the emission of greenhouse are major environmental concerns and cannot be tackled on a fragmented national basis within the geographical limits of a state. It demands an international response. So also, are the problems of pollution and international movement of shipment of wastes. To the extent that environmental hazards may be caused by activities beyond national borders and their effect goes beyond such borders.

In Nigeria, there is an urgent need for every development to observe environmental impact assessment so as to protect the environment and stamp out the problems of maintaining sustainable development. The menace can be averted by adequate regulations and environmental laws. This long essay concludes that Nigeria's degraded environment is a result of failure to implement appropriate policies in ensuring effective environmental impact assessment due to environmental management, poor funding and the low level of environmental awareness among other factors. In the rural areas, poor communities pay the price of this failure, in terms of insecure access to land, low agricultural output, low income and poor health.



**BIBLIOGRAPHY****Books**

- Adewale, O. *Environmental Pollution in the Petroleum Industry* (Evans Brothers, 1991).
- Akanki, E.O. *Air Pollution Control Law* (Omotola Publisher Ltd, 1999).
- Akinjide, A. *Dimensions of Environmental Problems in Nigeria* (Dailson Publisher Ltd, 1997).
- Ajomo, A. *Oil law in Nigeria* (Evans Brothers Ltd, 1972).
- Clark, J.C. *Alcoholism and Problem Drinking*, (Pergmon Press, 1989).
- Clausen, J A. *Drug Addiction in Contemporary Society*. (Harcourt Brace and World Inc, 1966).
- Ikoni, U.D. *Introduction to Nigerian Environmental Law* (Malthouse Law Books, 2010).
- Jackson, M H. *Environmental Health Reference Book*, (Butterworth Publisher, 1989).
- Miller, C T. *Introduction to Environmental Science*, (Wadsworth Publishers, 1984).
- Munn, R E. *Environmental Impact Assessment* (UNIBEN Press, 2010).
- Ndukwe, O.U. *Elements of Nigerian Environmental Laws*, (University of Calabar Press, 2000).
- Odemerho, F.O. *Urban Flood Problems* (SEAP Publishing Co., 1997).
- Okah, U.N. *The Status of Nigerian Vegetable Resources* (University Press, 2007).
- Ola, C S. *Town and Country planning* (University Press, 1988).
- Omotola, J.A. *Environmental Laws including Compensation* (University Press, 1978).
- Oyediran, A.Y. *An Appraisal of Environmental Sanitation* (University Press, 2011).
- Ozo, A.O. *Perception of Industrial pollution* (Sada Publishers, 2007).

Paul, R.A. *Population, Resources and Environment*. (W H Freeman & Co., 1972).

Powell, C.B. *Oil Spill Environmental Impact – Effect on Aquatic Biology* (Evans Brother, 1983).

Quarrie, J. *Earth Summit 92* (The Regency Press Corp., 1992).

Umozunke, U.O. *Introduction to International Law* (Spectrum Brooks, 1993).

Wolf, S. *Principles of Environmental Law*, 2<sup>nd</sup> Ed. (Cavendish Publishing Ltd, 1997).

### **Case Law/Judicial Authority**

*Deevor & Ors v Shell B.P* (PHC/160/1972)

*A G Akwa Ibom v I.G Essien* (2004) 7 NWLR (pt 872) 288

*Shell Petroleum Development Co. Nig Ltd v Farah* (1995) 3 NWLR (pt 382)48

*Centre for Oil Pollution Watch v NNPC* (2013) 15 NWLR (pt 1378) 556

*Oronto Douglas v Shell Dev. Co* (Unreported) Suit No: FHC/2CS/573193

*Gbemre v Shell Petroleum Dev. Corporation* (2005) AHRLR 151

*Umede v Shell B.P* (1975) 6 CCTTE 1267

*Western Nig. Trading Co Ltd v Ajao* (1965) NMLR 178

*Olale v Ekwelendu* (1989) 4 NWLR (pt 115) 326

*The Social & Economic Rights Action Centre & Anor v Nigeria* (2015) 2 NWLR (pt 5) 45

*Defacto Bakeries v Alicore* (1974) ALL NLR (pt 11) 385.

### **Statutes**

Constitution of the Federal Republic of Nigeria 1999 (as amended)

Section 20

Section 33

Section 36

Section 43

Section 45

Section 14(2)(c)

Section 46

Section 17

Section 251

National Environmental Standard and Regulations Enforcement Agency Act

Section 37

Section 34

Section 7

Section 8(g), (n), & (o)

Environmental Impact Assessment Act 2004

Section 7

Section 2(1)

Section 11

Section 20

Section 52

National Oil Spill Detection and Regulation Agency Act 2006

Section 1

Section 2

Section 6

Section 5

Section 18

Petroleum Industrial Act 2021

Section 9(1)

Pipeline Act

Section 11

### **Journal Article**

Albretch, H Criminal Law and Drug Control, *International Journal of Comparative and Applied Criminal Justice* (2010) 1(2).

Omaka, C A. The Concept of Environmental Impact Assessment in Nigeria, *Ebonyi State University Law Journal*. (2009) 2(1).

### **Internet**

Badr, E.A. *Evaluation of the Environmental Impact assessment System. Impact Assessment and Project Appraisal*. <<http://dx.doi.org/10.3152/146155109X465959>>. Accessed on 3<sup>rd</sup> September, 2024.

Brundland Report of 1987 <https://www.brundlandreport> accessed on 28<sup>th</sup> October, 2024

Ebomhe, S *Environmental Legislation Changes in Nigeria* <<http://www.geplaw.com>> accessed on 7<sup>th</sup> September, 2024.

Njoku, K P *Devastating Effects of Pollution in Nigeria*. <<http://www.nigeria.com>> accessed on 8<sup>th</sup> September, 2024.

Obaji, A. “*Environment Impact Assessment don’t work in Nigeria: Here is why*.” <<https://www.theconversation.com/environmental-impact-assessments-dont-work-in-nigeria-heres-why-188796>>. Accessed on 3<sup>rd</sup> September, 2024.