

ASSESSMENT OF LEGAL FRAMEWORKS ON ENVIRONMENT AND CLIMATE CHANGE ENFORCEABLE IN NIGERIA BY THE NATIONAL ENVIRONMENTAL INSTITUTION*

Abstract

It is supererogatory to reiterate that the environment and climate change issues are both cardinal to human continuous existence and sustainable development because of their direct impact on man. Given the environmental challenges and change in climate in recent years, globally coordinated efforts have culminated in adoption of multifarious regulatory frameworks to manage these challenges in Nigeria. By the combined effects of sections 2 and 7 of the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007 (NESREA Act), NESREA has the responsibility of enforcement of all 'laws' relating to the environment and climate change in Nigeria, be it domestic or international. The question raised by this development include, how adequate are those enacted laws and or rules on environment and climate change? How much of the enforcement of these laws has been carried out in Nigeria, among others? Using a doctrinal research method, this paper answers inter alia those agitating questions and argues that, available regulatory frameworks on the environment and climate change in Nigeria are inadequate. The paper further argues that the extant legal frameworks among other things lack effective enforcement mechanism and efficacious penalties, the concomitant effect of which is fecklessness of the regime generally in achieving its aims.

Keywords: *Environment, Climate change, Legal frameworks and enforcement*

1. Introduction

It is superfluous to reiterate that environmental and climate issues are both momentous to human continuous existence and sustainability because of their direct implication on human life. Given the challenges related to human environment and the changing climate, there has been emergence of multifarious international and domestic regulatory frameworks toward the effective management of the environment and mitigating the climate change problems. In any contemporary society, law, being an instrument of social engineering is central to every phenomenon of life that affects man and his habitat. The efficacy of law is also dependent on the efficiency of the law enforcement agency. By the combined effects of sections 2 and 7 of the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007 (NESREA Act),¹ the agency is responsible for environmental protection, biodiversity conservation, and sustainable development of the Nigerian natural resources in general and developing environmental technology including coordinating, and liaising with all relevant stakeholders both locally and internationally; and to also enforce all laws, guidelines, policies, standards and regulations on environment in Nigeria; and to enforce compliance with all international agreements, protocols, conventions and treaties on the environment including climate change *inter alia* to which Nigeria is a signatory.² The foregoing provisions of sections 2 and 7 unambiguously confer on NESREA the all-momentous responsibility of enforcement of all 'laws' related to the environment and climate change in Nigeria be it domestic or international. The objective of this paper is to, among other things examines these legal frameworks targeted at environment protection and mitigating climate change in Nigeria. Using a doctrinal research method, the paper answers *inter alia* the questions: how adequate, efficacious and or functional are those laws in regulating the environment and managing the challenges of climate change? What are the challenges relevant to the efficacy of environmental and climate change laws in Nigeria? It is the argument in this paper that available regulatory frameworks on the environment and climate change in Nigeria are inadequate, especially the Nigerian Constitution and NESREA Act in view of the enormity of the challenges related to the protection of human environment and mitigating climate change. This paper further argues that the extant legal frameworks among other things lack effective enforcement mechanism and efficacious penalties, the concomitant effect of which is fecklessness of the regime generally in achieving the aims.

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¹ Now Cap N164 Laws of Federation of Nigeria 2010. This law established National Environmental Standards and Regulations Enforcement Agency (NESREA) as the national environmental institution.

² See sections 2 and 7 of NESREA Act.

2. The Development of Regulatory Frameworks on the Environment and Climate change in Nigeria

Generally, the development of legal frameworks on environmental protection in Nigeria could broadly be divided into three distinct eras. The first period was the pre-colonial era when traditional people through their culture and customs preserved the environment. In this context, the regulatory frameworks on the environment as part of customary laws are totally unwritten but these norms were respected and observed through the use of taboos, beliefs and cultures of various traditional people and societies in Nigeria.³ The second era began with the introduction of common and statutory laws by the colonial administration to regulate pollution and related activities. This period witnessed the introduction of different regulations which were primarily targeted at protecting human health, forestry, and other natural resources.⁴ The third period is the emergence of some stringent statutory environmental laws.⁵ Primarily, these laws are made to regulate polluting activities arising from industrialisation, urbanisation and modernisation in Nigeria.⁶ The new attitude toward environmental protection in the third era in Nigeria was largely informed by the discovery of the five shiploads of toxic wastes at the small port town of Koko in South-South Nigeria, to which the Nigerian government responded with the promulgation of Harmful Toxic Waste (Special Criminal Provision) Decree, and the establishment of now defunct Federal Environmental Protection Agency (FEPA).⁷ FEPA, by its mandate had the overall objective or responsibility to manage the Nigerian environment and protect same. The emergence of FEPA put Nigeria as usual, in Africa as the first country to establish a national environmental institution or mechanism to manage and protect the environment through enforcement.⁸ The government in its wisdom merged FEPA and other relevant Departments in other Ministries in 1999 to form the Federal Ministry of Environment, but without an appropriate enabling law on enforcement issues; the development that created lacuna in the effective enforcement of environmental laws, standards and regulations in Nigeria. In order to bridge the gap and pursuant to Section 20 of the Constitution,⁹ NESREA, as a parastatal of the Federal Ministry of Environment was established to enforce all environmental and climate change laws in Nigeria. By the NESREA Act, the Federal Environmental Protection Agency Act¹⁰ was also repealed.¹¹ The national and international environmental regulatory frameworks in Nigeria are herein discussed *seriatim*.

3. Key National Legislations on Environment

Below are national legislative instruments on environmental protection and climate change mitigation in Nigeria which are enforceable by NESREA directly or indirectly.

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

The Constitution,¹² as the supreme national legal order in Nigeria, to a little extent, recognises the importance of improving and protecting the environment.¹³ The constitution therefore makes infinitesimal provisions for the environment in section 20 which makes it an objective of the Nigerian state to improve and protect environmental components which include the air, land, water, forest and wildlife of Nigeria. It is however regrettable that these provisions fall under Chapter 2 of the Constitution¹⁴ which are non-justiciable by virtue of section 6(6)(c) which provides:

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 of omission by any authority or person or as to whether any law or any judicial

³ G. O. Amokaye, *Environmental Law and Practice in Nigeria* (University of Lagos Press, Akoka, Lagos 2004) P1.

⁴ Ibid. page 2. See also Public Health Ordinance 1909, Town Improvement Act 1863, Leprosy Act 1916, Forestry Ordinance 1938, Mineral Ordinance 1958 among others which were meant to regulate public health and the environment.

⁵ Ibid.

⁶ Ibid.

⁷ FEPA was the first environmental institution in Nigeria and by extension in Africa.

⁸ See <<http://www.nesrea.gov.ng/about/index.php>> accessed 29 October 2017.

⁹ The Constitution of the Federal Republic of Nigeria, 1999. (hereinafter referred to as 1999 Constitution) Section 20 provides 'The State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria.'

¹⁰ Cap F 10 LFN 2010 (now repealed by NESREA Act)

¹¹ See <<http://www.nesrea.gov.ng/about/index.php>> op cit.

¹² See the Constitution of the Federal Republic of Nigeria 1999 (as amended).

¹³ See Environmental Law Research Institutes web page 'A Synopsis of Laws and Regulations on the Environment in Nigeria' <<http://elri-ng.org/newsandrelease2.html>> accessed 29 October 2017.

¹⁴ Chapter 2 of the Constitution is on the Fundamental Objectives and Directive Principles of State Policy

decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this constitution.¹⁵

This provision of section 6(6)(c) has been construed as negating the court's authority to decide 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 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 usually not enforceable.¹⁶ This provision was judicially interpreted in the case of *Okogie (Trustees of Roman Catholic Schools) and other v Attorney-General, Lagos State*¹⁷ where the Court of Appeal, held that section 13 has not made Chapter II of the Constitution justiciable among other things. The view of the court in the above cited case further backs the contention that no court has power to entertain any question concerning the enforceability of the provision of section 20 and of other matters specified in Chapter two of the 1999 Constitution (as amended). The collective reading of section 20 and section 6(6)(c) of the Nigerian Constitution shows that the Constitution does not contain any express provision for the right to a healthful environment. The conclusion from the foregoing is that the Nigerian Constitution, which is the highest law of the land, has no express provisions for justiciable environmental rights. Section 12 of the constitution also establishes, though impliedly, that international treaties (including environmental treaties) ratified by the National Assembly should be implemented as law in Nigeria.¹⁸ The constitutional requirement of the ratification of treaties by the National Assembly is highly unnecessary in view of importance of the environment to man and his sustainable development. This is particularly so because it merely slow down enforcement process. It does not also have in view globalisation era mankind in all spheres of life. Worst still, that provision does not promote international cooperation in environmental protection.

National Environmental Standards and Regulations Enforcement Agency Act

The NESREA Act¹⁹ was enacted and it established NESREA in place of FEPA. By section 36 of the NESREA Act, the FEPA Act²⁰ was repealed. In other words, the NESREA Act replaced the FEPA Act. NESREA Act is essentially an embodiment of laws and rules which has the objective of protecting the environment and promoting sustainable development within the Nigerian natural resources in line with global standards. Sections 7 and 8 set out respectively the functions and powers of the agency. In addition, the NESREA Act promotes corporate environmental responsibility.²¹ Section 27 prohibits the discharge on the Nigerian land and into her waters or air, such harmful quantities of any hazardous substance except where such discharge is permitted or authorised under any law in force in Nigeria.²² Violation of this provision by any person is an offence and such violator in Nigeria is liable on conviction, to a fine, not exceeding N1,000,000 or to imprisonment for a term not exceeding 5 years.²³ In the event that the offence under section 27 (1) of the NESREA Act is committed by a body corporate, every person who was in charge of such body corporate at the time the offence was committed shall be held guilty of such an offence and shall be liable to be proceeded against and punished accordingly provided that he shall not be held liable for any punishment if he or she could prove that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.²⁴ The provision in subsection 3 safeguards innocent corporate agents against undue punishment. Another important provision in the NESREA Act is the power of the Minister of the environment among other things, to make regulations generally in order to give full effects

¹⁵ See Section 6(6) (c) of the Constitution of FRN 1999 (as amended).

¹⁶ See A. B. Abdulkadir & A. O. Sambo; 'Human Rights and Environmental Protection: The Nigerian Constitution Examined' (2009) *Journal of Food, Drug and Health Law* 61, 73. See also, M. A. Olong, 'Human Rights, the Environment and Sustainable Development: Nigerian Women's Experiences' (2012) 5(1) *Journal of Politics and Law* 100, 108.

¹⁷ [1981] 2 NCLR 337.

¹⁸ See Environmental Law Research Institutes web page 'A Synopsis of Laws and Regulations on the Environment in Nigeria' <<http://elri-ng.org/newsandrelease2.html>> accessed 25 July 2015.

¹⁹ This Act was officially gazetted by the Federal Republic of Nigeria on the 31st July 2007. See Government Notice 61, Act No.25 Vol. 94, pages A635-655. Now Cap N164 Laws of Federation of Nigeria 2010.

²⁰ Cap F10 LFN 2004

²¹ See sections 20(4), 21(3), 22(4) and 23(4) of NESREA Act.

²² Section 27(1) NESREA Act

²³ Section 27(2) NESREA Act.

²⁴ Section 27(3) NESREA Act.

to the functions of the agency under the Act.²⁵ Not less than 40 regulations have been made since the inception of the agency. It appears the major problem with the NESREA Act is the implementation of its provisions on enforcement. Without doubt, enforcement of the law is crucial to its efficacy. This requires adequate human capacity which appears missing in NESREA. This is so, because the agency's capacity appears so small with less than 1500 workers in a country that is bedevilled with massive environmental challenges. This largely accounts for the reason why the agency has not been able to make its impact felt by the majority of Nigerians, especially the rural dwellers who ironically are closer to the environmental resources.

Environmental Impact Assessment Act

The Environmental Impact Assessment Act²⁶ basically deals with environmental impact assessment in Nigeria. The Environmental Impact Assessment (EIA) provides relevant and potential impact of a proposed project on the natural environment whether positive or negative.²⁷ The EIA Act deals with environmental impact assessments and or considerations of any public and private projects in Nigeria. The goals and objectives of the Act are set out in the law.²⁸ Some of the relevant provisions on environmental emergency prevention under the EIA Act include: Section 2 (1) which forbids the public or private sector of the economy from undertaking, embarking or authorising projects or activities without prior environmental consideration at an early stage of such projects.²⁹ The Act also provides for the identification and study of significant environmental issues that are involved before commencing any project or activity convened by the provisions of the Act.³⁰ The question now is; to what extent are the provisions of the Act complied with by public and private sectors in Nigeria? It is common in Nigeria to see public sector projects that are not environmental friendly.³¹ The connotation is that EIA is not carried out in violation of environmental laws. Most times, the attitude is that it is a government project and so it needs little or no legal compliance. This obviously does not support global best practices. Section 62 provides that failure to comply with relevant EIA Act provisions is punishable, where it is an individual with a fine of N100,000 or an imprisonment term of five years and in the case of a firm or company with a minimum fine of N50,000 and a maximum of N1,000,000.³²

Nigerian Urban and Regional Planning Act

The Nigerian Urban and Regional Planning Act³³ is a national law aimed at overseeing a realistic and purposeful planning of the country to avoid overcrowding and poor environmental conditions which are now a big challenge in the Nigeria of today. The following provisions in the law are very instructive and relevant in understanding the aim of the law: The Act requires a building plan to be drawn by a registered architect or town planner.³⁴ Section 39 (7) establishes that an application for land development would be rejected if such development is harmful to the environment or constitute a nuisance to the community. Under section 59, it is an offence to disobey a stop-work order. The punishment under this section, is a fine not exceeding N10, 000 (Ten thousand naira) and in the case of a company, a fine not exceeding N50, 000. The Act also provides for the preservation and planting of trees for environmental conservation.³⁵ This appears to be one of the national dead letter laws in Nigeria. Today, urban road network, landscaping, development scheme and architectural layout, open spaces, tree planting, lawns and flower gardens are poorly articulated thereby resulting to emergence of shabby and unadorned cities. NESREA has a lot to do in this regard. Furthermore, the penalties imposed on breaches of the law are undoubtedly meagre. NESREA does not have a strong partnership with urban and regional planning professionals. No viable environmental audit and or surveillance are carried out in Nigeria. This indeed is a challenge that must be surmounted by NESREA if useful environmental design must be achieved in Nigeria.

²⁵ Section 34 NESREA Act.

²⁶ Cap E12 LFN 2010.

²⁷ See Environmental Law Research Institutes web page 'A Synopsis of Laws and Regulations on the Environment in Nigeria' op cit.

²⁸ See Section 1 of EIA Act, cap E12 LFN 2010.(hereinafter EIA Act)

²⁹ Section 2(1) EIA Act.

³⁰ Section 3 EIA Act.

³¹ Especially when roads are purportedly being constructed. Although, it is claimed that EIA are carried out, but in reality there are many environmental law violations which often result to deaths of the masses or diseases.

³² Section 62 EIA Act.

³³ Cap N138 LFN 2010

³⁴ Section 30 (3) of the Act.

³⁵ Section 72 Nigerian Urban and Regional Planning Act, Cap N138 LFN 2010

Harmful Waste (Special Criminal Provisions) Act

The Harmful Waste Act³⁶ is a national law which prohibits, the carrying, dumping or depositing of harmful wastes without lawful authority in the Nigerian air, land or waters. The Act in its section 6 provides in the event of breach for a punishment of life imprisonment for offenders as well as the forfeiture of land or anything used to commit the offence.³⁷ Under Section 7 there is provision for the punishment if there is conniving, consenting or negligent officer where the offence is committed by a company.³⁸ Also, section 12 defines the civil liability of any offender.³⁹ The offender will be civilly liable to persons who have suffered injury as a result of his offending act.⁴⁰ This law is one of the most publicised laws because of the Koko incident which provoked the promulgation of same by the military government under General Babangida. It has largely impacted on the knowledge of Nigerians about the dangers of toxic or harmful wastes.

The Endangered Species (Control of International Trade and Traffic) Act

Given the nature of poverty in the Nigerian society, unguided exploitation of wildlife is pronounced especially in the rural communities where farmers depend largely on bush meat for food. The Endangered Species (Control of International Trade and Traffic) Act⁴¹ has its focus on the Nigerian wildlife protection and management as well as some of their species that under extinction threats as a result of overexploitation. This Act was amended by The Endangered Species (Control of International Trade and Traffic) Amendment Act 2016. The intendment of the amendment was to review the fines upward to have a more deterrent effect and reflect economic realities in the modern world.⁴² Section 1 of the Act⁴³ prohibits the hunting for animals, capturing or trading in animal species, except where a valid license is issued, where such species is either presently or likely to be under extinction threats.⁴⁴ Section 5 defines the liability of any offender under this Act which was formerly N1,000 but now under the amended Act as maximum of N5,000,000 or one year imprisonment depending on the nature of the offence.⁴⁵ In section 7, regulations are made necessary for the purposes of this Act with regards to environmental protection and control.⁴⁶

Associated Gas Re-injection Act

As earlier noted, one of the major causes of global warming remains greenhouse gases to which gas flaring contributes immensely. Nigeria is a major gas flaring nation. The first regulatory framework aimed at promoting anti-gas flaring policies in Nigeria was the Associated Gas Re-injection Act, 1979.⁴⁷ By the provisions of the Act, every oil and gas producing company in Nigeria is required to submit to the minister of petroleum, detailed programmes in relation to the re-injection of produced associated gas or programmes for the use of produced associated gas.⁴⁸ The Act was promulgated ostensibly to fill up some of the vacuum left by earlier legislation. The Act obligated all oil producing companies in the country to submit detailed plans for gas utilisation by October 1980.⁴⁹ It also prohibits the flaring of associated gas without the written permission of the Minister of Petroleum Resources by 1984 except with the permission of the Minister, or face fines.⁵⁰

³⁶ Cap H1, LFN 2010

³⁷ See Section 6 of the Harmful Waste (Special Criminal Provision) Act, Cap H1, LFN 2010

³⁸ See Section 7 Cap H1, LFN 2010

³⁹ See section 12 of the Act.

⁴⁰ Ibid.

⁴¹ Cap E9, LFN 2010.

⁴² See Explanatory notes to the amendment of 2016.

⁴³ Cap E9, LFN 2010.

⁴⁴ Section 1 Endanger Species Act, Cap E9 LFN 2010 as amended

⁴⁵ Section 5 Endanger Species Act as amended

⁴⁶ Section 7 Endanger Species Act as amended

⁴⁷ Associated Gas Reinjection Act Cap A26 LFN 2010.

⁴⁸ See Sections 1 and 2 of the Act

⁴⁹ Section 2 of the Act.

⁵⁰ See Section 3 of the Act. See also Malumfashi G.I., 'Phase-Out of Gas Flaring in Nigeria By 2008: The Prospects of a Multi-Win Project (Review of the Regulatory, Environmental and Socio-Economic Issues)' <[http://phase1.nccr-trade.org/images/stories/publications/IP6/Nig_GasFlaring_Petroleum%20Training%20Journal%20\(PTJ\)%20Vol1%5B1%5D.%204%20No.%202%20July%202007.pdf](http://phase1.nccr-trade.org/images/stories/publications/IP6/Nig_GasFlaring_Petroleum%20Training%20Journal%20(PTJ)%20Vol1%5B1%5D.%204%20No.%202%20July%202007.pdf)> accessed 30 October 2017

4. Selected International Legal Frameworks on the Environment and Climate Change in Nigeria

In view of globalisation, the protection of the environment has assumed transnational and transcontinental approaches in recent decades. The major justification and theoretical argument for international governance of environmental issues, especially, the human activities that affect the environment is that, environmental problem is generally a cross-border or transnational challenge. For example, pollution is a phenomenon that is borne out of human decision or individual incidental negligence, which affects other people than the decision maker or player.⁵¹ The effects of one man's act of pollution may spill across many countries. Given the fact that the world is now a global village, any dangerous action on the environment in one part of the earth equally spells a danger for the other part of the globe. Nigeria is over the years, a signatory to most international frameworks on the environment as part of the country's efforts to be environmental compliant in line with various attempts by the comity of nations to protect the environment for the present generation and those yet unborn. Some of these international environmental laws include:

United Nations Conference on the Human Environment (Stockholm Declaration)

The United Nations Conference on the Human Environment, popularly referred to as Stockholm Conference, was the first United Nations conference that focused on international environmental issues after World War II. The conference that was held in Stockholm, Sweden, from June 5th – 16th, 1972, mainly reflected a growing interest in environmental conservation issues globally and laid the foundation for international environmental governance. The final declaration of the Stockholm Conference (Stockholm Declaration) was an environmental manifesto that was a forceful statement of the finite nature of Earth's resources and the necessity for humanity to safeguard them.⁵² The Stockholm Conference also led to the emergence of the United Nations Environment Programme (UNEP) in December 1972⁵³ to coordinate global efforts to promote sustainability and safeguard the natural environment. Historically, the origin of the Stockholm Conference is traceable to the 1968 proposal from Sweden that the UN hold an international conference to examine environmental problems and identify those that could be addressed through international cooperation. The 1972 Stockholm Conference was attended by delegates from 114 countries including Nigeria. The conference was boycotted by Soviet-bloc countries because of the exclusion of the German Democratic Republic - East Germany, which did not have a seat at the UN then. The agreement drawn during the conference has till date impacted on international environmental law; notably, the final declaration, which elucidated 26 principles concerning the environment.⁵⁴

United Nations Conference on Environment and Development (The Earth Summit)

This conference which is otherwise known as the Earth Summit, was held twenty years after the pioneer international environmental conference that evolved Stockholm Declaration at Rio de Janeiro, Brazil from 3rd – 14th June 1992. In Rio, 108 governments represented by Heads of State or Heads of government adopted three major agreements aimed at changing the traditional approach to development in human history.⁵⁵ These agreements are:

- a. Agenda 21, which is the detailed programme of global actions in all areas of sustainable development⁵⁶;
- b. The Rio Declaration on Environment and Development, which is a series of principles that set out the rights and responsibilities of states on the environment and development⁵⁷; and
- c. The Statement of Forest Principles, which is a set of principles enunciating the management of global forests in a sustainable manner.⁵⁸

⁵¹O. G. Amokaye, 'Environmental Pollution and Challenges of Environmental Governance in Nigeria', (2012) Vol.10 No.1., British Journal of Arts and Social Sciences 29. Available on <http://www.bjournal.co.uk/paper/BJASS_10_1/BJASS_10_01_03.pdf> accessed 29 October 2017.

⁵²P. Boudes, 'United Nations Conference on the Human Environment' <<http://www.britannica.com/topic/United-Nations-Conference-on-the-Human-Environment>> accessed 29 October 2017.

⁵³ UNEP was established in 1972 with a Governing Council of fifty-eight member-states, an Environmental Coordination Board and a small secretariat based in Nairobi, Kenya. The programme has, to some extent succeeded in exercising a catalytic influence on other organisations within and outside the UN system. See U. O. Umzurike, *Introduction to International Law*, Spectrum Law Publishing, (1999, 2nd Ed), page 257.

⁵⁴ Boudes, 'United Nations Conference on the Human Environment', op cit.

⁵⁵ See 'Background to the Earth Summit', <<http://www.un.org/geninfo/bp/envirp2.html>> accessed 29 October, 2017.

⁵⁶ Ibid

⁵⁷ Ibid

⁵⁸ Ibid.

During the Rio Earth Summit, two purposive legally binding conventions with the objectives of preventing climate change globally and precluding the eradication of the diversity of biological species were also opened for signature.⁵⁹ The question however is, to what extent has this convention made impact in Nigeria with respect to environmental protection and sustainable development? It is in order that Nigeria has taken some steps toward environmental protection by not only being a signatory to the convention but also by setting up its environmental institution. It is expected that NESREA will pursue precise implementation in conformity with global standards.

Basel Convention on the Control of Trans Boundary Movement of Hazardous Waste and their Disposal (Basel Convention)

The Convention, which held in Basel in Switzerland was conveyed by the United Nations Environmental Programme and was adopted on 22 March 1989 by the Conference of Plenipotentiaries in response to a public outcry following the discovery, in the 1980s, in Africa and other parts of the developing world of deposits of toxic wastes imported from abroad.⁶⁰ The activities of environmentalists that promoted awareness and corresponding strict environmental regulations in the advanced countries in the 1970s and 1980s indeed led to serious public resistance to the disposal of hazardous wastes in accordance with what became popular as ‘Not in My Back Yard’ syndrome and also led to escalation of disposal costs.⁶¹ The foregoing development made some operators to seek cheaper disposal options for hazardous wastes in Eastern Europe and some developing countries, especially in Africa where environmental awareness was so low and regulations as well as enforcement mechanisms were lacking.⁶² It was against this backdrop that the Basel Convention was negotiated in 1989, and its thrust at the time of its adoption was to fight “toxic trade”, as it was termed.⁶³ The central objective of the Basel Convention is to protect human health and the environment against the adverse effects of hazardous wastes. The scope of application covers all wastes defined as “hazardous wastes” based on their origin and or composition as well as characteristics including two types of wastes defined as “other wastes”, that is, household waste and incinerator ash.⁶⁴ Article 4 of the Convention requires state parties to observe the fundamental principles of environmentally sound waste management.⁶⁵

Bamako Convention

The Bamako Convention is a treaty of African nations prohibiting the importation of any hazardous (including radioactive) wastes into the African continent.⁶⁶ The convention which was negotiated by 12 states of the then Organisation of African Unity (OAU) now African Union (AU) in 1991 at Bamako, Mali, came into force in 1998. The Bamako convention is a timely response by Africa to Article 11 of the Basel convention which encourages parties to enter into bilateral, multilateral and regional agreements on hazardous wastes with the aim of achieving the objectives of the Basel convention. Further impetus for the Bamako Convention includes (i.) the failure of the Basel Convention to prohibit trade of hazardous wastes to less developed countries (LDCs); and (ii.) the cognizance that many developed nations were exporting toxic wastes to Africa.⁶⁷ The Bamako Convention adopted a format and language similar to that of the Basel Convention, but is much stronger in the prohibition of all forms of importation of hazardous wastes. Also, it is all inclusive because it does not make exceptions on certain hazardous wastes (like those for radioactive materials) made by the Basel convention.⁶⁸ Till date, 29 countries are signatories including Nigeria. The ultimate purpose of the Convention is to prohibit the importation of all hazardous and radioactive wastes into the African continent for any reason; minimise and control trans-boundary movements of hazardous wastes within the African continent; prohibit all ocean and inland water dumping or incineration of hazardous wastes; ensure that disposal of wastes is conducted in an “environmentally sound manner”; promote cleaner production over the pursuit of a permissible emissions approach based on assimilative capacity assumptions; and establish the precautionary principle.⁶⁹ Both the Basel Convention and the Bamako Convention have made great impact in awareness creation and prohibition of hazardous waste dump in Nigeria. It is also

⁵⁹ These are (i) The United Nations Framework Convention on Climate Change; and (ii) The Convention on Biological Diversity.

⁶⁰ See < <http://www.basel.int/TheConvention/Overview/tabid/1271/Default.aspx> > accessed 29 October 2017.

⁶¹ Ibid.

⁶² Nigeria was a victim of hazardous waste disposal in 1988 when some toxic waste was deposited in Koko Port, which is now popularly known as Koko incident.

⁶³ The Basel Convention entered into force in year 1992.

⁶⁴ See < <http://www.basel.int/TheConvention/Overview/tabid/1271/Default.aspx> > accessed 29 October 2017.

⁶⁵ See Article 4 of Basel Convention.

⁶⁶ See < <http://www.unep.org/delc/BamakoConvention> > accessed 10 September 2015.

⁶⁷ This includes Koko case in Nigeria and Probo Koala case in Ivory Coast, among others...

⁶⁸ See < <http://www.unep.org/delc/BamakoConvention> > op cit.

⁶⁹ Ibid.

expected that NESREA will continue to strengthen the implementations of the two Conventions in Nigeria, especially the domestication in line with the spirit of section 12 of the Nigerian Constitution 1999 (as amended).⁷⁰

African Charter on Human and People's Rights

The African Charter on Human and Peoples' Rights⁷¹ has been ratified in Nigeria,⁷² and is now part of the Nigerian laws. The environmental aspect of the Charter is contained in the provisions of Articles 16 and 24 of the Charter, which provides respectively that "every individual shall have the right to enjoy the best attainable state of physical and mental health."⁷³; and "all people shall have right to a general satisfactory environment favourable to their development."⁷⁴ Among the impact of the Charter is the fact that it is the first African international instrument to proclaim the rights to a satisfactory environment as a human right to which every person is entitled. It is also a bold effort toward sustainable development in the African continent and a definite response to the damage occasioned by the exportation of toxic wastes from Europe to Africa. The Charter has been used in the Nigerian Courts to protect human rights of the Nigerian people.⁷⁵ The Charter has also been used in ECOWAS court to protect the rights of the people to a clean environment.⁷⁶ It is expected that implementation of the charter will be promoted by NESREA to further enhance environmental protection in Nigeria now that the Charter has long been domesticated.

United Nations Convention on Climate Change

In 1992, not less than 100 Heads of state converge in Rio de Janeiro, Brazil to address urgent problems of environmental protection and socio-economic development during the first International Earth Summit. One of the regulatory legal frameworks signed by the assembled leaders at Rio is the United Nations Frameworks Convention on Climate Change (UNFCCC). The summit identified high anthropogenic emissions as the main reason behind climate change. But it was rather a general approach and never specified emission targets or binding mechanisms and instruments of climate policy.⁷⁷ The ultimate objective of the UNFCCC was to achieve greenhouse gas concentrations' stabilization in the atmosphere in a dimension or degree that would prevent interference with the climate system in a dangerous way. Such a level should be achieved within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner.

Vienna Convention on Protection of the Ozone Layer

The Vienna Convention for the Protection of the Ozone Layer was adopted by the Conference on the Protection of the Ozone Layer and open for signature between 22 March 1985 and 21 September 1985 in Vienna, and also at New York, the United Nations Headquarters between 22 September 1985 and 21 March 1986. Nigeria became a signatory to the convention on the 31st October 1988.⁷⁸ The Vienna Convention for the Protection of the Ozone Layer is often called a framework convention, because it served as a framework for efforts to protect the globe's ozone layer.⁷⁹ In 2009, the Vienna Convention became the first Convention ever to achieve universal ratification.⁸⁰ The main objectives of the Convention were for parties to promote cooperation by means of systematic observations, research as well as information exchange relating to the effects of anthropogenic activities on the ozone layer and to combat through adoption of legislative or administrative measures, all activities likely to have adverse effects on the ozone layer.

⁷⁰ Section 12(1) provides 'No treaty between the Federation and any other country shall have the force of law to the extent to which any such treaty has been enacted into law by the National Assembly'.

⁷¹ The Charter came into force on 19th January 1981 through OAU, now AU.

⁷² Through the African Charter of Human and people's Right (Ratification and Enforcement) Act, CAP. A9, LFN 2010. See also the case of *Gani Fawehimi v. General Sani Abacha & Ors* [1996] NWLR (Pt 475)

⁷³ Article 16 of the African Charter Ratification Act

⁷⁴ Ibid, Article 24

⁷⁵ See the case of *Gani Fawehimi v. General Sani Abacha & Ors* supra.

⁷⁶ A case in point is *SERAP v. Nigeria* General List No. ECW/CCJ/APP/08/09, Judgment No. ECW/CCJ/JUD/18/12.

⁷⁷ See H. Ijaiya, 'Global warming: India's Participation in Asia-Pacific Partnership on Clean Development and Climate' being a Paper presented in India in 2009.

⁷⁸ See United Nations Treaty Collections <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-2&chapter=27&lang=en> accessed 27 October 2017.

⁷⁹ See Ozone Secretariat <<http://ozone.unep.org/en/treaties-and-decisions/vienna-convention-protection-ozone-layer>> accessed 29 October 2017.

⁸⁰ Ibid.

Montreal Protocol on Substances that Deplete the Ozone Layer

The original Montreal Protocol on Substances that Deplete the Ozone Layer which was agreed on 16 September 1987 and entered into force on the 1st day of January 1989 was designed to reduce the degree of production as well as the consumption of ozone depleting substances in order to reduce their concentration in the atmosphere, and thereby protect the earth's delicate ozone layer.⁸¹ The Montreal Protocol contains a unique adjustment provision that enables the parties to it to respond quickly to new scientific information and agree to accelerate the reductions required on chemicals already covered by the Protocol.⁸² The state parties to the Montreal Protocol have amended the Protocol to enable, *inter alia*, the control of new chemicals and the creation of a financial mechanism to enable developing countries to comply. Amendments must be ratified by countries before their requirements are applicable to those countries unlike adjustments to the Protocol. Nigeria commenced the process of domesticating Montreal Protocol since 2004 through the preparation of a draft "Bill for an Act to provide for the protection of the ozone layer, control of the import, export and use of ozone depleting substances and matters connected therewith". The draft has been subjected to stakeholders' reviews and Legal Drafting by the Federal Ministry of Justice. It has since been deposited in the Legal Unit of the ministry for further processing to the National Assembly.⁸³ Recently, the Federal Ministry of Environment in collaboration with United Nations Development Programme (UNDP) commissioned an innovative indigenous Prototype Pilot Hydrocarbon Plant for the production of high grade hydrocarbon refrigerants for the refrigeration and air-conditioning manufacturing and its related Servicing Sector in Nigeria at the Plant site in Irolu, Ogun State on 19th November, 2015 designed to demonstrate the feasibility of replacing the current use of Hydrochlorofluorocarbons (HCFCs) refrigerants in the refrigeration and air-conditioning sector in Nigeria with the hydrocarbon refrigerant based technology.⁸⁴ This is indeed a laudable initiative.

Kyoto Protocol

This is one of the most cogent actions by the world leaders in fighting global warming which is now changing the earth's climate. At the third Conference of Parties in Kyoto, Japan, in 1997, participating nations agreed to reduce greenhouse gas emissions by 5% by 2008-2012. Since the Protocol entered into force on 16th February, 2005, many nations have ratified it. The Kyoto Protocol is a legally binding agreement under which industrialized countries of the world will reduce their collective emissions of greenhouse gases by 5.2% compared to the year 1990 (but note that, compared to the emissions levels that would be expected by 2010 without the Protocol, this target represents a 29% cut).⁸⁵ The goal is to lower overall emissions from six greenhouse gases - carbon dioxide, methane, nitrous oxide, sulphur hexafluoride, HFCs, and PFCs - calculated as an average over the five-year period of 2008-2012. Basically, the Protocol set out emission target for developed countries which varies from countries to countries. It exempted developing countries from the emission target, so as not to hinder their development.⁸⁶ The Protocol also introduced an emission trading system which enables a state to exceed its target by buying "spare capacity" from a state that has not filled its quota.⁸⁷ The bane of Kyoto remains the initial disagreement on the part of the United States with the emission cut-down proposal. The conclusion by the US is that the Kyoto protocol promotes inequality and as such is an ineffective agreement and was described as "a cure to climate change, which is indeed a bitter medicine that will weaken the US economy".⁸⁸

Paris Agreement

In November and December 2015, the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC COP21) took place in Paris. UNFCCC is an international environmental agreement on climate change, which has not less than 195 States Parties, including Nigeria. The UN Intergovernmental Panel on Climate Change (IPCC) has warned of the consequences of failing to limit global temperature rises to at least 2 degrees Celsius (above pre-industrial times), highlighting that the impacts would pose a threat to humanity and

⁸¹ See <<http://ozone.unep.org/en/treaties-and-decisions/montreal-protocol-substances-deplete-ozone-layer>> accessed 27 October 2017.

⁸² Ibid.

⁸³ See National Ozone Office, Nigeria <<http://www.ozonenigeria.org/>> accessed 30 October 2017

⁸⁴ Ibid.

⁸⁵ See <http://www.kyotoprotocol.com/> accessed on the 01 November 2017.

⁸⁶H. Ijaiya, 'Global Warming: India's Participation in Asia-Pacific Partnership on Clean Development and Climate' op cit.

⁸⁷ Ibid.

⁸⁸ Ijaiya, 'Global Warming: India's Participation in Asia-Pacific Partnership on Clean Development and Climate' op cit Page 10

could lead to irreversible climate change.⁸⁹ The meeting in Paris was hailed as a make-or-break opportunity to secure an international agreement on approaches to tackling climate change. The agreement was a commitment to a longer-term goal of near zero net emissions in the second half of the century, and supporting a transition to a clean economy and low carbon society.⁹⁰ The agreement, which is due to come into force in 2020 have in its focus on mitigation by way of reducing emission, a long term goal as agreed by the governments of keeping the increase in global average temperature to well below 2°C above pre-industrial levels; limiting the increase to 1.5°C, since this would significantly reduce risks and the impacts of climate change. It is the hope that NESREA will have the agreement enforced nationally as part of its responsibilities of enforcing all international agreements on environment and climate change in Nigeria.

6. Challenges Relating to Environmental Protection and Climate Change Laws in Nigeria

From the long list of regulatory frameworks on the environment and climate change as examined above, it is clear that generally, Nigeria has over the years keyed into global efforts on environmental protection including mitigating climate change. This is further supported by the creation of national environmental institution. As a mark of her commitment to international best practices, Nigeria has been represented year in year out in almost all, if not all world conferences on environmental protection and climate change, including regional conferences, especially in African continent where Nigeria is a chieftain. Most times, there is a natural disposition for the people in the society to think that enacting a law automatically leads to the correction of the problem to which the law is addressed. But this is not in any way the case. The law on the environment must be specifically enforced; otherwise, it is naturally common for a blind pursuit of personal profit to override environmental responsibility of the people.⁹¹ In Nigeria, there are challenges that have crippled the desired implementation or enforcement of the environmental and climate change legal collection in a meaningful and beneficial manner to the Nigerian people as well as other members of our global village. These challenges include weak enforcement strategy, pandemic nature of corruption in the Nigerian society, non-domestication of relevant treaties and or conventions, funds problem, lack of political will, nepotism and favouritism in favour of oil and gas sector among others.

7. Conclusion and Recommendations

The paper has also examined the extant legal frameworks on environment and climate change that are enforceable by NESREA ranging from the Nigerian Constitution to other local legislations and international treaties to which Nigeria is a signatory. The major finding is that the Nigerian Constitution has no adequate provisions on environmental protection especially with the environmental right still standing non-justiciable in Nigeria till date. This has undoubtedly affected the efficacy of other local and international environmental laws and invariably climate change laws in Nigeria. The requirement of domestication under section 12(1) of the Constitution will continue to hamper the relevance and usefulness of international legislations in Nigeria, especially in environmental and climate change matters until it is expunged. It has also been found that enforcement of the extant laws, local and international on the part of the relevant authorities, especially NESREA, remains a big challenge among others. It is hereby recommended that Nigeria should adopt cooperative governance approach in addressing environmental and climate change issues by incorporating justiciable environmental rights into the Constitution which gives validity to all other laws relating to sustainable environmental standard enforcement, protection and development. NESREA should step up its strategic actions toward realisation of its mandates for effective environmental protection and mitigating climate change in Nigeria through radical enforcement or implementation of all laws, standards, and Regulations on the environment and climate change being the core mandate of the agency. This will drastically tackle the environmental problems, misuse and degradation that is prevalent across Nigeria. Awareness creation about NESREA and its activities should be increased by the agency. There should be intensive public enlightenment programme on the importance of the environment and the danger of climate change. This will enhance and increase environmental and climate change knowledge of the masses and will facilitate right attitude towards the environment. Also, there should be adequate capacity building of the agency by the government in terms of human, technical, material and sufficient financial resources for effective enforcements of all laws, standards and regulations on the environment and climate change. Finally, stiffer penalties should be integrated to all environmental laws The constitutional requirement that all international legislations or treaties must be domesticated before they become enforceable in Nigeria should be expunged.

⁸⁹ See C. Corbyn; 'The Paris Agreement on Climate Change – A Summary' Senedd Research, National Assembly for Wales, <https://seneddresearch.blog/2016/04/04/the-paris-agreement-on-climate-change-a-summary/> accessed 09 July 2018.

⁹⁰ Ibid.

⁹¹Z. O. Edo, 'The Challenges of Effective Environmental Enforcement and Compliance in the Niger Delta Region of Nigeria' *Journal of Sustainable Development in Africa* (2012) Volume 14, No.6, page 265, Clarion University of Pennsylvania, Clarion, Pennsylvania.