

## PROTECTING THE ONE EARTH: AN EXAMINATION OF THE LEGAL AND INSTITUTIONAL FRAMEWORKS ON ENVIRONMENTAL PROTECTION IN NIGERIA<sup>1\*\*\*\*\*</sup>

### Abstract

*The protection of the environment is one of the most fundamental factors that guarantee the quality of human health. It thus means that the safety of the environment impacts the life span of the people and determines the safety of humanity generally. One of the most fundamental challenges facing Nigeria, especially since the 1950s when oil was discovered is environmental protection. The interactions among the people within their environment have been blamed for these environmental challenges. Human activities such as gas flaring, deforestation, oil spillage, and desertification, amongst other things, have been identified as agents of destruction of the environment. This article seeks to examine the legal and institutional frameworks on environmental protection in Nigeria to ascertain the adequacy of these legislations and institutions to tackle environmental challenges. The research adopts a qualitative research methodology using a doctrinal method of legal research. The research finds the laws on environmental protection in Nigeria, the laws are docile and inoperative due to the failure of the institutions set up for environmental management to wake up to its responsibility. The research, therefore, recommends proper overhauling of the institutions and amendment of some of the laws to meet the increasing danger of environmental pollution.*

**Keywords:** Environmental Pollution, Pollution, Environmental Protection, Law and Pollution, Oil Spillage, Gas Flaring

### 1. Introduction

The importance of the environment to man and living organisms generally cannot be over-emphasised. Perhaps, this is why the prominent anthropologist, Margret Mead once asserted that “We won’t have a society if the environment is destroyed”. In a similar vein, the great Spanish writer Jose Ortega Y Gasset eloquently pronounced that “I am plus my environment, and if I do not maintain the latter, I do not maintain myself”. Therefore, it is abundantly clear that the protection of the earth is fundamental to the prevention of earth destruction. The longevity of a man’s life is dependent on the quality of his environment. When the environment is destroyed, one is destroyed as well<sup>2</sup>.

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<sup>2</sup> MA Hurlbert & Datta, ‘When the Environment is Destroyed, You’re Destroyed: Achieving Indigenous Led Pipeline Justice’ (2022) *Energy Research and Social Science*, Vol. 91, 1-9.

According to the Black's law dictionary, the environment is defined as our surroundings, especially material and spiritual influences which affect the growth, development and existence of living beings<sup>3</sup>. The environment is a result of how people perceive and interact with their surroundings and is constantly altered by how people use and interact with it<sup>4</sup>. Man is both a creature and a moulder of his environment, according to the United Nations Stockholm Conference on Human Development<sup>5</sup>, which provides him with bodily nourishment and opportunities for intellectual, moral, social, and spiritual growth.

The environment, therefore, has been described as the natural surroundings where living organisms such as man, animals, and plants live and interact with one another<sup>6</sup>. Also, it is the combination of external physical conditions such as water, air, soil and plants that affect and influence the growth, development and survival of living organisms including man<sup>7</sup>. The environment is a supporting system for living organisms without which there will be no life.

Unfortunately, with the degree of importance of the environment to living organisms, the day-to-day human activities or interactions among these living organisms have constantly impacted negatively on the environment<sup>8</sup>. These day-to-day activities include but are not limited to mining, deforestation, farming, bush burning, hunting, fishing, desertification, etc. In a bid to protect the environment for the continuous safety of human life, the Nigerian government has at various times enacted laws and established institutions to regulate human activities that may endanger the environment and threaten the existence of humanity.

Environmental protection on the other hand can be defined as the prevention of unwanted natural changes to ecosystems and their constituent's parts<sup>9</sup>. Clive Hamilton et al posit that environmental protection includes the protection of the environment from changes that occur through human activities and the prevention of unwanted natural changes to the ecosystem and its constituent parts<sup>10</sup>. It is pertinent to note that environmental protection has nothing to do with the measures put in place to regulate direct interaction with people. Rather, it is concerned with the regulation of the relationship between the people and the natural environment<sup>11</sup>. The relationship that exists between the people and their community does not fall within the

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<sup>3</sup> BA Garner, *Black's Law Dictionary*, 8<sup>th</sup> Ed ( Group Publishing Co., New York, U.S.A., 2004).

<sup>4</sup> OG Amokaye, 'Human Rights and Environmental Protection: The Necessary Connection', (2007) *UNILAG Journal of Human Rights Law*, 1(1), 93.

<sup>5</sup> Preamble, Paragraph 1, Report of the United Nations Conference on Human Development and Environment, Stockholm, 1972, A/CONF. 48/Rev. 1, New York, 1972, 2.

<sup>6</sup> ED Oruonye & YM Ahmed, 'The Role of Enforcement in Environmental Protection in Nigeria' (2020) *World Journal of Advanced Research and Reviews* 7(1) 48.

<sup>7</sup> *ibid.* See also OJ Oyebo, 'Impact of Environmental Law and Regulations on Nigerian Environment' *World Journal of Research and Review*, (2018) 7(3), 10.

<sup>8</sup> AA Kadafa, PZ Muhammed, & F Othman, 'Oil Spillage and Pollution in Nigeria: Organizational Management and Institutional Framework' (2012) *Journal of Environment and Health Science* 2(4) 22. AA Kadafa et al argued in their work that human activities and oil exploitation engineered some issues which include the depletion of biodiversity, coastal and riverbank erosion, flooding, oil spillage, gas flaring, noise pollution, sewage and wastewater pollution, land degradation and soil fertility loss and deforestation which they considered as major environmental problems.

<sup>9</sup> C Hamilton, A Macintosh, N Patrizi, and S Bastianoni, 'Environmental Protection and Ecology' (2018) Reference Module in Earth Systems and Environmental Sciences 1342. Available at [https://www.researchgate.net/publication/324699670\\_Environmental\\_Protection\\_and\\_Ecology](https://www.researchgate.net/publication/324699670_Environmental_Protection_and_Ecology) [Accessed 27th March 2023].

<sup>10</sup> *ibid.*

<sup>11</sup> *ibid.*

definition offered by Clive Hamilton et al<sup>12</sup>. Therefore, the key aim of environmental protection is to prevent the degradation of the natural environment which is affected by increasing population, technology and overconsumption, all of which have created a negative impact on the environment and continues to put humans and animals at a risk<sup>13</sup>.

In Nigeria, the Koko toxic waste dump incident in Delta State in 1988 sparked the need for environmental protection and prompted a swift reaction from the Nigerian government<sup>14</sup>. The Koko toxic waste disaster also played an important role in the enactment of local legislation and the adoption of international treaties relating to environmental protection and sustainability<sup>15</sup> as it is believed that the incident exposed the inadequacy of the Nigerian environmental protection laws as well as the weaknesses of the institutional framework<sup>16</sup>. Some of the legislations which the incident birthed to combat the incidents of dumping and trafficking in harmful waste on Nigeria's land and waterways are The Harmful Waste Decrees<sup>17</sup>, The Environmental Impact Assessment Decrees, and the Federal Environmental Protection Agency (FEPA) Decree<sup>18</sup>.

However, it is believed that only a few of these legislations and institutions have successfully proffered solutions to the environmental challenges posed by human activities<sup>19</sup>. Today, human activities continue to threaten the safety of the environment regardless of the existence of legislation and institutional framework to combat these problems militating against the protection of the environment. Therefore, this article seeks to examine the legal and institutional framework for the protection of the environment in Nigeria. This paper will also identify some of the challenges to environmental protection in Nigeria and make necessary recommendations to combat these challenges headlong.

## 2. Legal Framework of Environmental Protection in Nigeria

The role of legislation in ensuring environmental protection cannot be overstated. It is a powerful tool used to curb indecent behaviours leading to environmental pollution. This article provides a summary of the legal framework for the environment in Nigeria. Several legislations have been enacted to ensure environmental protection in Nigeria. However, a few of the most important shall be examined.

<sup>12</sup> *ibid.*

<sup>13</sup> [www.studymalaysia.com](http://www.studymalaysia.com).

<sup>14</sup> LO Alexander. 'The Contribution of Cartoonists to Environmental Debates in Nigeria: The Koko Toxic-Waste-Dumping Incident' In: "EcoImages: Historical Views and Political Strategies," (eds) G Parak, RCC Perspectives [2013], No. 1, 61–71; JO Ihonvbere 'The State and environmental degradation in Nigeria. A study of the 1988 toxic waste dump in Koko' (1994) *Journal of Environmental Systems* 23 (3) 207-227; G Ogbodo 'Environmental Protection in Nigeria: Two decades after the Koko Incident' (2009) *Ann Surv. Int'l & Comp L.* 15, 1,

<sup>15</sup> JA Babade 'The Koko Incident: The Law of the Sea and Environmental Protection' being a Seminar Paper submitted for Law of the Sea II to the Faculty of Law, the University of Lagos in Partial Fulfillment of the Award of Master of Laws, 2014, 3-43.

<sup>16</sup> *ibid.*, 4.

<sup>17</sup> Decree No. 42 of 1988, Cap 165 LFN 1990, Cap H. 1 LFN 2004.

<sup>18</sup> Decree No. 58 of 1988, CAP 135 LFN 1990, CAP F. 10 LFN 2004 (Now repealed).

<sup>19</sup> RG Bell and C Russell, "Environmental Policy for Developing Countries" (Spring, 2002) *Issues in Science and Technology*, Vol. 18. No. 3., 5 Available at <https://issues.org/greenspan-environmental-policy-developing-countries/> [Accessed 27<sup>th</sup> March 2023]

## **2.1. National Environmental Standards and Regulations Enforcement Agency (NESREA) Act, 2007**

It was the pressing need to address environmental problems in Nigeria that prompted the government of the day, led by Ibrahim Badamosi Babangida, to promulgate decree 58 of 1988, establishing the Federal Environmental Protection Agency (FEPA). This Act was established to protect, restore, and preserve the ecosystem of the Federal Republic of Nigeria<sup>20</sup>. However, the FEPA Act soon proved inadequate in scope. Its inability to address all the environmental challenges of the country led to the establishment of the National Environmental Standards Regulations Enforcement Agency (Establishment) Act (NESREA), in 2007. The NESREA Act was enacted by the National Assembly of Nigeria during the administration of the late President Musa Yar'adua to repeal FEPA due to the inadequacies of the latter<sup>21</sup>. NESREA is the major legislation in Nigeria that regulates environmental compliance and enforcement<sup>22</sup>.

It provides for the establishment of the National Environmental Standards and Regulations Enforcement Agency charged with the 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.'<sup>23</sup> NESREA is saddled with the responsibility of making regulations and standards for ozone protection<sup>24</sup>, federal water quality<sup>25</sup>, noise<sup>26</sup>, emission, environmental sanitation<sup>27</sup>, atmospheric protection<sup>28</sup>, effluent limitations, discharge of hazardous waste, land resources and watershed quality<sup>29</sup>. The act provides that the agency shall have the authority to ensure compliance with environmental laws.<sup>30</sup>

## **2.2. Constitution of the Federal Republic of Nigeria (1999)**

The Constitution, as the grundnorm takes to recognise the importance of improving and protecting the environment and makes provision for it. The Constitution makes it an objective of the Nigerian State to improve and protect the air, land, water, forest and wildlife of Nigeria.<sup>31</sup> This provision remains non-justiciable as it is contained in Chapter two of the Constitution. Section 6 (6) (c) of the Constitution has stripped the judiciary of its authority for matters

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<sup>20</sup> JA Adelegan, 'The History of Environmental Policy and Pollution of Water Sources in Nigeria' (1960-2004): The Way Forward' Available at <http://www.nigerianlawguru.com/articles/environmental%20law/THE%20HISTORY%20OF%20ENVIRONMENTAL%20POLICY%20AND%20POLLUTION%20OF%20WATER%20SOURCES%20IN%20NIGERIA.pdf> [Accessed 27<sup>th</sup> March 2023].

<sup>21</sup> M Ladan, 'Review of NESREA Act 2007 and Regulations 2009- 2011: A New Dawn in Environmental Compliance and Enforcement in Nigeria' (2012) *Law, Environment & Development Journal* Vol. 8 116.

<sup>22</sup> L Egunjobi, "Issues in Environmental Management for Sustainable Development in Nigeria" *Environmentalist* (1993) 13 33-40. Available at <https://link.springer.com/article/10.1007/bf01905501> [Accessed 27<sup>th</sup> March 2023].

<sup>23</sup> National Environmental Standards and Regulations Enforcement Agency Act (Establishment) 2007 s.7.

<sup>24</sup> *ibid* s. 21.

<sup>25</sup> *ibid* s.23.

<sup>26</sup> *ibid*, s. 22.

<sup>27</sup> *ibid*, s. 25.

<sup>28</sup> *ibid*, s. 20.

<sup>29</sup> *ibid*, s. 27.

<sup>30</sup> *ibid*, s. 7.

<sup>31</sup> Constitution of the Federal Republic of Nigeria, 1999, s. 20.

concerning Chapter two of the Constitution. However, it has been argued that the provisions of chapter four can be attached to environmental rights as the right to life and human dignity can only be achieved in a healthy and safe environment.

In *John Gbemre V Shell Petroleum Development Corporation & 2 Ors* the court ruled that the Associated Gas Reinjection Act and (Continuing Flaring of Gas) Regulations of 12984 which allowed flaring of gas were illegal as they violate the right to life and dignity of the human person guaranteed by sections 33 and 34 of the Constitution and Articles 4, 5, and 24 of the African Charter<sup>32</sup>.

The Constitution also makes provision for the implementation of international treaties by the Nigerian Legislative arm. By this section, Nigeria has adopted (by ratification, acceptance, approval or accession) various international treaties on environmental protection in this area (i.e. pollution control) namely; the International Convention for the Prevention of Pollution of the Sea by Oil 1954, as amended in 1962; International Convention on Civil Liability for Oil Pollution Damage 1969, (Civil Liability Convention).

### **2.3. Environmental Impact Assessment (EIA) Act<sup>33</sup>**

Environmental Impact Assessment Act (EIA) is a process of evaluating the likely environmental impacts of a proposed project or development, taking into account inter-related socio-economic, cultural and human-health impacts, both beneficial and adverse. The Environmental Impact Assessment act focuses on the environmental impact factors that should be taken into account for both public and private projects. The Act makes it a requirement that an assessment of public or private projects likely to have a significant (negative) impact on the environment should be taken. It also requires an application in writing to the Agency before embarking on projects for their environmental assessment to determine approval.

### **2.4 Harmful Waste (Special Criminal Provisions) Act<sup>34</sup>**

The Act is one of the major penal legislations on environmental protection in Nigeria. The Act prohibits and criminalises the illegal transportation, dumping, or depositing of harmful waste in Nigeria's air, land, or territorial water<sup>35</sup> or dealing in the sale or purchase of harmful waste. Under Section 13 of the Act, harmful waste under this Act means

any injurious, poisonous, toxic or noxious substance and, in particular, includes nuclear waste emitting any radioactive substance if the waste is in such quantity, whether with any other consignment of the same or a different substance, as to subject any person to the risk of death or incurable impairment of physical and mental health; and the fact that the harmful waste is placed in a container shall not by itself be taken to exclude any risk which might be expected to arise from the harmful waste.

By the provision of Section 2 of the Act, the aiding and abetting or procurement of anyone to commit an act which constitutes a crime under this Act is also an offence under this Act. Interestingly, by Section 7 of the Act, the principal officers of a corporate body shall be held liable for any offence committed under this Act while Section 9 removes the immunity from

<sup>32</sup> African Charter on Human and Peoples' Rights (Ratification and Enforcement) Cap. A9 Laws of the Federation of Nigeria, 2004.

<sup>33</sup> CAP E12, LFN 2004.

<sup>34</sup> CAP H1, LFN 2004.

<sup>35</sup> Harmful Waste (Special Criminal Provisions) Act 2004, s.1.

prosecution conferred on some persons by and under the Diplomatic Immunity and Privileges Act where such persons do anything that constitutes an offence under this Act. Offenders are liable to life imprisonment as well as forfeiture of land or anything used to commit the offence.<sup>36</sup> Notwithstanding this Act being a penal law, Section 12 provides for civil liability in damages by anyone whose act under this Act occasioned some damage to anybody.

### **2.5. The Criminal Code Act<sup>37</sup>**

The Criminal Code Act includes provisions for Environmental and public health protection. It covers a wide range of offences, from water pollution to the use of noxious substances and other degrading acts which could affect the environment.<sup>38</sup>

## **3. Institutional Framework of Environmental Protection**

Nigeria is a country that is blessed with a lot of mineral resources and favourable weather conditions, especially for agriculture. Following South Africa at \$125bn per year, Nigeria comes second in making the most money from her natural resources with \$53bn per year<sup>39</sup>, this shows how much the environment and natural resources have contributed to the economy and the world economy at large.

However, these resources are gradually being exhausted and the lack of healthy environmental practices is destroying our climate and environment. Also, massive industrialization and urbanization have resulted in large-scale projects leading to environmental degradation. To curb unhealthy environmental practices, the law established some governmental institutions and agencies that will be in charge of ensuring that environmental pollution does not become a norm and educating the public on keeping the environment clean. Some of these institutions include; the Federal Environmental Protection Agency, National Environmental Standard and Regulations Enforcement Agency (NESREA), National Biosafety Management Agency (NBMA), and the Forestry Research Institute of Nigeria (FRIN), and their functions are going to be discussed.

### **3.1. Federal Environmental Protection Agency (FEPA)**

The Federal Environmental Protection Agency (FEPA) (now Ministry of Environment) was established by Decree No. 58 of 1988 as revised by Decree 59 of 1992 which conferred on the agency the authority over all matters about the Nigerian environment, its resources, and administration. However, the agency was considered underperformed considering that the environmental problems that have plagued the country today are far worse than it was when the idea of the agency was conceived notwithstanding the funding the agency benefitted from the federal government<sup>40</sup>.

The operation of the agency is described as something similar to the local tax collectors in the olden days. The agency is said to be far from the people while its operation was foreign to the

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<sup>36</sup>Ibid, s. 6.

<sup>37</sup> Cap. 77 L.F.N of 1997.

<sup>38</sup> Criminal Code Act ss. 245-249

<sup>39</sup> Accessed at <https://www.google.com/amp/s/www.aljazeera.com/amp/news/2018/2/20/mapping-africas-natural-resources>.

<sup>40</sup> SI Omofonmwan & GI Osa-Edoh, 'The Challenges of Environmental Problems in Nigeria' (2008) *Journal of Human Ecology*, 23(1), 53–57 particularly 56. Available at <https://doi.org/10.1080/09709274.2008.11906054> [accessed 13th December 2022].

tradition of the people<sup>41</sup>. Hence, the failure of the agency. It is believed that the operation of the Federal Environmental Protection Agency ought to be community-based for it to achieve its goals and objectives<sup>42</sup>. The people ought to be sensitized on the use and protection of the environment with the involvement of their community heads and local government<sup>43</sup>.

### **3.2. The National Environmental Standard and Regulations Enforcement Agency (NESREA)**

The National Environmental Standard and Regulations Enforcement Agency also known as NESREA is a regulatory body charged with the function of protecting the environment in Nigeria. It was established by Section 1 of the NESREA Act of 2007. The importance of the agency is provided in section 20 of the 1999 constitution of the Federal Republic of Nigeria which provides that the state shall protect and improve the environment and safeguard the waters, air and land and forest and wildlife of Nigeria<sup>44</sup>

Although this provision provides a large limitation, it is the first time that any provision as to environmental law would be made in the constitution.<sup>45</sup> Under the section, the federal government established the Agency under the Federal Ministry of Environment, Housing and Urban Development, it was established to take the place of the Federal Environmental Protection Agency (FEPA) which did not fulfil its performance.

Established in 2007 as a body corporate with perpetual succession and a seal, the Agency has the legal capacity to sue and be sued in its name. The agency is in charge of enforcing environmental standards, regulations and policies like the National Policy on the Environment of 1999. They also have the following responsibilities<sup>46</sup> under the Act:

- a. Protection and development of the quality of Nigeria's environment
- b. Ensure the preponderance of functioning and viable environmental laws and working towards adherence to these laws
- c. Conducting public awareness seminars and educating people on healthy environmental protection and practices
- d. Enforcing existing regulations and providing guidelines for easier compliance
- e. Collaborating and partnering with institutions and agencies for the promotion of a healthy environment.

### **3.3. National Biosafety Management Agency (NBMA)**

The agency is charged with providing regulations, and serving as an administrative body that also provides the regulatory framework for the use of modern biotechnology in Nigeria. The purpose of regulating the use of biotechnology in Nigeria is to protect humans, plants, animals, every living organism and the environment at large.<sup>47</sup> The agency, just like the NESREA is a body corporate, incorporated under the Companies and Allies Matters Act (CAMA) with its

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<sup>41</sup> *ibid.*

<sup>42</sup> *ibid.*

<sup>43</sup> *ibid.*

<sup>44</sup> Constitution of the Federal Republic of Nigeria, s.20.

<sup>45</sup> S Mustapha, 'An Appraisal of the Regulatory Role of National Environmental Standards Regulations and Enforcement Agency (NESREA) in Nigeria' (2022) *International Journal of Diplomatic, Legal and International Studies* (10) (3).

<sup>46</sup> *ibid.*

<sup>47</sup> AA Adewunmi and OI Christopher, 'Appraisal of the National Biosafety Management Agency (NBMA)' (2019) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 10(2) 141-146.

seal and its juristic personality. The NBMA was also established with the duty of regulating newly created biotechnologies and their release to the public. It also monitors the exposure of the public to such technologies as too much exposure could hurt people who come in contact with it.

The establishment of this agency is in compliance with Cartagena Protocol on Biosafety (CPB) which Nigeria signed in 2000 and ratified in 2003. The protocol was created to create global protection from bio-hazards resulting from modified biotechnology, and the possible dire consequence of non-protection from this has placed great importance on compliance with the protocol.

Furthermore, the protocol requires the creation of a biosafety management and regulatory agency, which will be separate from the biotechnology promoting agency to promote transparency and prevent the promoting agency from regulating itself because there will be a conflict of interest in existence.<sup>48</sup> The agency aims to ensure an adequate level of protection and care during the making, transfer, handling and use of biotechnology to protect living organisms from harm.

### **3.4. Forestry Research Institute of Nigeria (FRIN)**

The forestry research institute of Nigeria is a government and statutorily established institute which has the duty of researching forestry, wildlife, agroforestry, forest products, etc. It was initially established in 1954 as the Federal Department of Forestry Research and was later changed into the status of an institute under the supervision of the Federal Ministry of Environment. Section 1 of the Forestry Research Institute of Nigeria (Establishment) Act of 2018 provides for the creation of the Forestry Research institute which will be a body corporate capable of suing and being sued. The functions are also listed in Section 2 of the Act, some include:

- A. Researching, experimentation, sample application and patenting<sup>49</sup>
- B. Forestry education and training through its National and Higher National Diploma awarding tertiary institutions<sup>50</sup>
- C. Innovation and technology dissemination through farming systems and extension services<sup>51</sup>

## **4. Challenges of Environmental Protection in Nigeria**

### **4.1. The Non-Justiciability of the Constitution**

The constitution is the major framework of the rules governing the country. The constitution of the Federal Republic of Nigeria makes provisions for section 20 of the 1999 constitution under fundamental objectives and directive principles of state policy. Section 20 provides that the state shall strive to protect and safeguard the environment and its natural resources which includes water, air, land etc. However, the provisions of this chapter have been made non-

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<sup>48</sup> National Biosafety Management Agency, <https://nbma.gov.ng/about-us/#:~:text=The%20National%20Biosafety%20Management%20Agency%20regulates&20modern&20biotechnology%20activities%20> accessed 23 March, 2023.

<sup>49</sup> Forestry Research Institute of Nigeria (Establishment) Act, s. 2 (a).

<sup>50</sup> *ibid*, s. 2 (i).

<sup>51</sup> *ibid*, s.2 (b).



justiciable by section 6(6)(c) which ousts the jurisdiction of the court from enforcing any provisions of this chapter<sup>52</sup>.

In interpreting the provision of Chapter two of the 1979 Constitution which is similar in wordings with Chapter two of the 1999 Constitution, the Court of Appeal in *Archbishop Olubunmi Okogie & Ors V Attorney General of Lagos state and Ors*<sup>53</sup> affirms thus:

The Fundamental Objectives identify the ultimate objectives of the nation and the Directive Principles lay down the policies which are expected to be pursued in the efforts of the nation to realize the national ideals. 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 ensures no court has jurisdiction to pronounce 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.

Also, the Supreme Court in the case of *Attorney General of Ondo State v Attorney General of the Federation*<sup>54</sup> affirming the non-justiciability of the provision of Chapter two of the Constitution held that:

“it is well established as per S. 6 (6)(c) of the Constitution that rights under the Fundamental objective and Directive Principles of State Police are not justiciable except as otherwise provided in the Constitution”.

Interestingly, notwithstanding the non-justiciability of the provisions of the Chapter, the African Commission of Human and Peoples’ Rights has on a number of occasions adjudicated over provisions of Chapter two particularly on socio-economic rights by coming under the African Charter which has been domesticated in Nigeria. In *Ogoni Community, NNPC V Shell Petroleum Development Corporation*<sup>55</sup>, the Ogoni people through the Social and Economic Rights Centre (SERAC) instituted an action against the government of Nigeria over the deposition of toxic waste in the waterways by oil consortium thereby destroying their right to clean environment by contaminating the water, air and soil which in turn has grossly affected their health. The African Commission found in favour of the Ogoni people for violating Articles 2, 4, 14, 16, 18(1), 21 and 24 of the African Charter.

The Commission recommended the protection of the Ogoni people by the Nigerian government and also the provision of adequate compensation to the Ogoni people. While the enforceability of this pronouncement is in doubt, the case served as a leeway on the enforceability of the provisions of Chapter two of the Nigerian Constitution<sup>56</sup>. Section 20 of the 1999 constitution gives citizens a right to a clean and improved environment. However, the citizens of Nigeria cannot boast of a clean environment. The fact that such a beautiful right has been encompassed

<sup>52</sup> O Ikpeze, ‘Non-Justiciability of Chapter II of the Nigerian Constitution as an Impediment to Economic Rights and Development (2015) Developing Countries Studies 5(18) 48-56.

<sup>53</sup> (1981) 2NCLR p.337.

<sup>54</sup> (2002) 9 NWLR (pt 772).

<sup>55</sup> Social and Economic Rights Action Centre (SERAC) and the Centre for Economic and Social Rights v Nigeria, Communication No 155 of 1996 decided on the 30th ordinary session, Oct, 2001.

<sup>56</sup> I Ogunniran, ‘Enforceability of Socio-Economic Rights: Seeing Nigeria through the Eyes of other Jurisdictions’ *Journal of International Law and Justice* (2010) 61-73.

in the web of non-justiciability is intriguing to citizens and society in general. This implies that the right is not enforceable as citizens cannot go to court to enforce this as a fundamental right they are entitled to.

One of the defences for the non-justiciability of this provision of the constitution is that Nigeria is a developing country and these objectives can only be achieved as time goes on<sup>57</sup>. These objectives cannot be achieved at once<sup>58</sup>. Does the question then become what then is the use of a right that citizens cannot enjoy? What is the purpose of its creation? The irrationality of this right is further made clear by the legal maxim *Ubi Jus, Ubi Remedium* which means where there is a right, there is a remedy. Though there has been advocacy for its enforceability, some argue that if it is linked with the provisions of fundamental human rights in Nigeria (which is enforceable) then it will be enforceable as well as accessing environmental justice through fundamental rights enforcement procedure yet it remains unenforceable.

#### **4.2. The non-performance of the regulatory bodies on Environmental Protection in Nigeria**

As an attempt made by the government to ensure that the citizens are dwelling in a good and clean environment, certain bodies were created to this effect. Such bodies include;

- a. NESREA- National environmental standards and regulations enforcement agency.
- b. NEMA- National emergency management agency
- c. FEN- Friends of the environment Nigeria, this is a non-governmental organization.
- d. NEMA- National biosafety management agency.
- e. NOSDRA-National oil spill detection and response agency etc
- f. FEPA- Federal environmental protection agency

The above agencies have been established to ensure the preservation of the environment and its natural resources. These environmental organizations were established for conservation, or environmental movements that seek to protect, analyse, or monitor the environment against misuse or degradation from human forces. The rampancy of environmental pollution in different parts of the country indicates the failure of these environmental protection bodies and agencies. These bodies have failed to carry out their purposes in that the issue of environmental pollution and degradation.

Also, at the state level for example in Lagos State, the LAWMA was established to serve the interests of the people by ensuring the proper disposal of waste. Lagos State Waste Management Agency is an agency established by the Lagos state government at the state level. Despite its establishment, Lagos is deemed as being buried in a heap of waste. Some particular communities cannot boast of a clean environment as their streets are full of waste despite the establishment of an agency for that purpose. Despite the increase in tariff for waste disposal, the residents of Lagos state are still dwelling in a very bad state. The waste pollutes both the air and land and is therefore hazardous to the inhabitants.

#### **4.3. Lack of proper sensitization of the Citizens:**

This is another major challenge caused by the citizens themselves. Environmental awareness is simply knowing and understanding the environment and the effect of human behaviours.

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<sup>57</sup> F Ogun, 'Non-Justiciability of Chapter Two of the 1999 Constitution: A Hinderance to Nigeria's Development' Available at <https://www.papers.ssrn.com> [14<sup>th</sup> December 2022].

<sup>58</sup> *ibid.*

Unfortunately, an average Nigerian do not know the impact of their behaviours on their immediate environment. They are ignorant of their rights to a clean environment, and they also unknowingly increase the rate of pollution by the use of loud generators with harmful fumes, cars and their discharge of obnoxious smoke, and the intentional act of cutting down on buildings. The citizens are supposed to protect the environment but they unknowingly destroy it. Indeed, man is the destroyer of his environment.

## **5. Conclusion**

So far, the legal and institutional frameworks on environmental protection in Nigeria have been examined. It must be stated that this research has merely examined a few of the legislations and agencies responsible for the protection of the environment in Nigeria. This connotes that the list is not exhaustive as there are more laws and agencies than examined in this research. Furthermore, the research finds that unless proactive measures are put in place by the government the environmental challenges of the country will worsen than it is already. The chief environmental problem in the country is the failure of the agencies responsible for the enforcement of regulatory legislation. The research, therefore, makes recommendations for tackling these challenges.

## **6. Recommendation**

The article recommends that:

- There is a need for the government and non-governmental organisations to mount a strategic campaign through various media platforms and physical orientations to educate the general public on how human activities or behaviours endanger the environment. There is no doubt that there are various programmes set up to create proper awareness of the use of the environment to enhance the quality of human life. However, the persistence of these environmental problems is an indication that a more strategic method of public awareness is adopted.
- There is a need for the government at all levels of governance to mobilise the environmental sanitation enforcement officers on period inspection of the environment for the monitoring of human activities endangering the quality of the environment as these routine inspections will curb the excesses of people which impacts negatively on the environment.
- The government at various levels should purge the institutions responsible for the implementation and enforcement of the environmental laws of corruption. Corruption is one of the major challenges to the safety of our environment. Oftentimes, the fund approved by the federal government for the improvement of the environment ends up in the pocket of a few individuals. This in the end impacts negatively our environment.
- Nigerian laws should be amended such as to confer on individuals the power to sue for any violation of their environmental rights as against the current legal regime that confers this power on the state only.
- The provision of Section 6(6) C of the 1999 Constitution of Nigeria should be amended in order to make justiciable the provisions of Chapter II of the Constitution. The provisions of Chapter Two of the Constitution constitute rights under international laws to which Nigeria is a signatory and some of which have been domesticated by virtue of Section 12 of the same constitution. The failure of the government of Nigeria to make justiciable Chapter Two of the constitution is a deliberate exhibition of its unwillingness to promote economic rights and development and to be held accountable for such failure which in turn worsens the environmental challenges of the country.