

**LEGAL FRAMEWORK FOR ENVIRONMENTAL RIGHT IN NIGERIA: REVIEWING THE PAST AND PROJECTING THE FUTURE\***

**Abstract**

*Leal framework for Environmental right remains the process of putting in place laws, rules and regulations to engender the concrete protection and preservation of the environment sustainably. For sometimes now, several authors, commentators and environmentalists have been brainstorming on the best approach to ensure that adequate legal framework is put in place for the purpose of protecting individuals from environmental damages. The paper was commenced by review of existing law on environmental right in Nigeria for the purpose of finding the challenge therein aimed proffering solutions.*

**Keywords: Legal Framework, Environment, Right, Past and Future.**

**1. Introduction**

This work shall attempt to give an insight into the historical development of environmental rights regime in Nigeria with particular focus on how far Nigeria as a country has gone in trying to give adequate legal framework to the recognition and enforcement of environmental rights for the purpose of achieving sustainable environmental development through policy formulation, legislations and institutional framework. The paper shall examine the keywords to wit: Legal Framework, Environment, Right, Past and Future. This will be done for the purpose of unearthing the areas that require further inputs in Nigerian law in order to meet the minimum benchmark for pollution free environment.

**2. Development of International Environment**

A concern for environmental protection has reoccurred in diverse forms, traversing different parts of the world as follows; In Europe, King Edward I of England banned the burning of sea-coal by proclamation in London in 1272, after its smoke had become a problem.<sup>1</sup> The fuel was so common in England that this earliest of names for it was acquired because it could be carted away from some shores by the wheelbarrow. In the Middle East, the Caliph Abu Bakr in the 630s commanded his army to ‘Bring no harm to the trees, nor burn them with fire’ and ‘Slay not any of the enemy’s flock, save for food.’<sup>2</sup> In the 9th to 13th Centuries, notable Islamic authors in the likes of Al Kindi, Qustalbn Lugaetc<sup>3</sup> wrote Arabic medical dealing with environmentalism and environmental science. Their works covered a number of subjects related to pollution, such as air pollution, water pollution, soil contamination, municipal solid waste mishandling and environmental impact assessments of certain localities.<sup>4</sup>

During the Industrial Revolution<sup>5</sup>, the emergence of great factories and the concomitant immense growth in coal consumption gave rise to an unprecedented level of air pollution in industrial centres, after 1900 the large volume of industrial chemical discharges added to the growing load of untreated human waste<sup>6</sup>. The first large-scale, modern environmental laws came in the form of British’s Alkali Act<sup>7</sup>, enacted to regulate the deleterious air pollution given off by the Leblanc process used to produce

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<sup>1</sup>[www.epa.gov/history/topics/perspect/london.htm](http://www.epa.gov/history/topics/perspect/london.htm) and also [www.pbs.org/now/science/smog.itnl](http://www.pbs.org/now/science/smog.itnl) sourced on 13/12/2017.

<sup>2</sup>About-*Enein, H. Yousuf; Zuhur, Sherifa*, Islamic Rulings on Warfare, Strategic Studies Institute, US Army War College, Diane Publishing Co Darby PA, 2004.

<sup>3</sup>*L. Gari*, Arabic Treaties on Environmental Pollution up to the End of the Thirteenth Century; Environment and History, November 2002, 8(4): 475-488.

<sup>4</sup>Ibid.

<sup>5</sup>The Industrial Revolution was the transition to new manufacturing processes in the period from about 1760 sometime between 1820 and 1840. This transition included going from hand production method to machines-[www.org/wiki/industrial.Revolution](http://www.org/wiki/industrial.Revolution) sourced on 13/12/2017.

<sup>6</sup>*Fleming, R. James, R. Knorr. Bethany*, “History of the Clean Air”, American Metrological Society [www.wikipedia/wiki/Environmentalism](http://www.wikipedia/wiki/Environmentalism) sourced on 13/12/2017.

<sup>7</sup> Alkali Act 1863, an Alkali Inspector and four Inspectors were appointed to curb discharge into the air of gaseous hydrochloric acid.

soda ash. The Act was enhanced through the promulgation of Alkali Order<sup>8</sup> which placed all major heavy industries that emitted smoke, grit, dust and fumes under supervision. At this time, typically the highest priority of environmentalism centered on water and air pollution.<sup>9</sup> It was, however, only under the impetus of the Great Smog of 1952 in London which almost brought the city to a standstill resulting in thousands of death that the clean Air Act<sup>10</sup> was passed and pollution in the city was finally checkmated as the act formed an important impetus to modern environmentalism, and caused a rethinking of the dangers of environmental degradation to people's quality of life.

The late 19<sup>th</sup> Century saw the passage of the first wildlife conservation laws emanated from the efforts of influential thinkers among is Alfred Newton. The Zoologist Alfred Newton<sup>11</sup> published a series of investigations into the desirability of establishing a close-time for the preservation of indigenous animals between 1872 and 1903. His advocacy for legislation to protect animals from hunting during the mating season led to the formation of the Royal Society for the Protection of Birds<sup>12</sup> which influenced the passage of the Sea Birds Preservation Act<sup>13</sup> as the first nature protection law in the world.<sup>14</sup> Furthermore, early interest in the environment was a feature of the Romantic Movement<sup>15</sup> in the early 19<sup>th</sup> Century as systematic efforts on behalf of the environment only began in the late 19<sup>th</sup> century. In the 20<sup>th</sup> century, Environmentalism continued to grow in popularity and recognition. Efforts were starting to be made to save some wildlife, particularly the American Bison<sup>16</sup>. The death of the last passenger pigeon<sup>17</sup> as well as the endangerment of the American Bison helps to focus the minds of conservationists and popularize their concern.

In 1916 the National Park Service<sup>18</sup> was founded by US President Woodrow Wilson.<sup>19</sup> Other notable efforts in environmentalism of this period are: the formation of forestry Commission in Britain to increase the amount of woodland by buying land for afforestation and reforestation.<sup>20</sup> It was also the mandate of the commission to promote forestry and production of timber for trade. During 1930s the Nazis had elements that were supportive of animal rights, zoos and wildlife, putting several measures to ensure their protection.<sup>21</sup> He created a stringent animal protection law which was enacted limiting hunting and the Reich Nature Protection Act which concepts include forest management and efforts to curb air pollution.<sup>22</sup> In 1949, *A Sand Almanac* by Aldo Leopold published which explained the author's

<sup>8</sup>Alkali Order 1958.

<sup>9</sup> See the coal Smoke Abatement Society founded by Sir, William Blake Richmond in 1898, Public Health Act 1875, Smoke Abatement Act 1926.

<sup>10</sup> Clean Air Act. 1956. During the regime of this Act Financial incentives were offered to householders to replace open coal fires with alternatives such as installation of gas fires.

<sup>11</sup> Prof. Alfred Newton FRS HFRSE (June 18-7 June 1907) was an English Zoologist and Ornithologist who had numerous publications among were a four-volume Dictionary of Birds (1893-6) and entries on Ornithology in the Encyclopedia Britannica (9<sup>th</sup> Edition).

<sup>12</sup>The Royal Society for the Protection of Birds is a charitable organization registered in England and Wales and Scotland founded as the Plumage League in 1889 by Emil Willianson for the promotion of Conservation and Protection of Birds and environment.

<sup>13</sup>Sea Birds Preservation Act 1869.

<sup>14</sup> G. Baeyens and M. L. Martinez, Coastal Dunes: Ecology and conservation. Springer p. 282, See also Jo.Makel, Protecting Sea Birds at Bempton Cliffs, 2 February 2011-newsbbc.co.uk sourced on 14/12/2017.

<sup>15</sup> Romanticism or Romantic era was on artistic literary musical and intellectual movement in Europe partly a reaction to industrial revolution. Wikipedia.org/wiki/romantic movement sourced on 14/12/2017

<sup>16</sup> American Bison is a north American species of Buffalo.

<sup>17</sup> North American Wild Pigeon named passenger because of its migrating habit.

<sup>18</sup>Created by National Service Organic Act 1916.

<sup>19</sup>28<sup>th</sup> American President of 193-1921.

<sup>20</sup> The Forestry Commission set up in 1916 –During the 1920s the Commission focused on acquiring land to begin planting out new forests, much of the land were previously for agriculture.

<sup>21</sup>Thomas R. DeGregor, Bountifu Harvest: Technology, Food Safety and the Environment, Cato Institute 2002. See also Martin Kitchen, A History of Modern Germany, 1800-2000. Black well publishing 2006.

<sup>22</sup>The Reich Hunting Law 1933 and Reich Nature Protection Act 1935. See also Jonathan Olsen, Green were the Nazis? Nature Environmental and Nation in the Third Reich, Technology and Culture vol. 48 No. 1 January 2007.

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belief that humankind should have moral respect for the environment and that it is unethical to harm it<sup>23</sup>. This book remains one of the most influential books on conservation.

During the 1950s, 1960s, 1970s and beyond, photography was used to enhance public awareness of the need for protecting land and recruiting members to environmental organizations. Prominent among these are the works of David Brower<sup>24</sup>, Ansel Adam<sup>25</sup> and Nancy Newhall who created the Sierra club exhibit format series, which helped raise public environmental awareness and brought a rapidly increasing flood of new members to the Sierra Club and to the environmental movement generally. Sierra Club initially focused on the preservation of wilderness but later broadened their focus to include issues as air and water pollution concern and curbing the exploitation of natural resources. Post War Expansion – The period culminated from the world war era to early 1970s. This period witnessed steady-state economy, post war economic expansion and emerging ecological concerns. It was this period that environmentalism started featuring in the world political settings. The work as published by American Biologist Rachel Carson<sup>26</sup> which in its objection is the indiscriminate use of the chemical DDT (Dichlorodiphenyl Trichloroethane) as a result of its negative environmental impact gave impetus to the creation of the United States Environmental Protection Agency in 1970, The Agency which subsequently banned the agricultural use of the said chemical in the US in 1972.

In the 1970s, environmental movement gained rapid speed around the world as a productive outgrowth of the counter culture movement<sup>27</sup> political parties started campaigning on environment protection and preservation platform<sup>28</sup>, for instance the first green party in Europe was People Party, founded in Britain in February 1973, which eventually metamorphosed into the Ecology Party<sup>29</sup> and then the Green Party.<sup>30</sup> Protection of the environment at this time also became important in developing world, the Chikpo Movement<sup>31</sup>, was formed in India under the influence of Mohandas Gandhi<sup>32</sup> which through its peaceful resistance to deforestation by literally hugging trees (leading to the term “tree huggers”) with its slogan “Ecology is permanent economy” led to serious environmentalism. Another milestone in the history of environmentalism of this period is the hosting of Earth Day<sup>33</sup> in San Francisco California. However, the united Nation’s first major conference on global environmental protection came on 5<sup>th</sup> June 1972 during the United Nations Conference on the Human Environment. It marked a turning point in the development of International Environmental politics<sup>34</sup>. In the mid-1970s, the events of the period

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<sup>23</sup> Aldo Leopold (January 11 1887-April 21, 1948) was an American authority, Philosopher, Scientist, ecologist, forester, conservationists and environmentalist. He was influential in the development of modern environmental ethics and in the movement for wilderness conservation. His book “A sand country Almanac: And Sketches here and there is a non-fiction book describing the relationship existing between people and the land they habit. [www.wikipedia.org/wiki.a](http://www.wikipedia.org/wiki/a), Sand Country Almanac sourced on 15/12/2017.

<sup>24</sup> David Brower was a prominent environmentalist and founded many environmental organizations like friends of the Earth 1969, the League of Conservation voters, Earth Island Institute. 1982 etc.

<sup>25</sup> Ansel Easton Adams was an photographer and conservationist.

<sup>26</sup> Silent spring by Rachel Carson, 1962. The book documented the adverse effects on the environment of the indiscriminate use of pesticides, (DDT). In 1996, a following book, Beyond silent spring, co-written by H. F. Van Emden and David Peak all was published. Silent spring was named one of the 25 greats science book of all time by editors of Discover Magazine 2006. [www.nytimes.com/1994/12/12/opinion/in\\_praise\\_of\\_the\\_counterculture.html](http://www.nytimes.com/1994/12/12/opinion/in_praise_of_the_counterculture.html) sourced on 15/12/2021.

<sup>27</sup> [www.nytimes.com/1994/12/12/opinion/in\\_praise\\_of\\_the\\_counterculture.html](http://www.nytimes.com/1994/12/12/opinion/in_praise_of_the_counterculture.html) sourced on 15/12/2017.

<sup>28</sup> Dann Christine, The development of the first two Green parties New Zealand and Tasmania. <https://web.archive.org> and [www.globalgreens.org/literature/dann/chapterfive.html](http://www.globalgreens.org/literature/dann/chapterfive.html)- sourced on 15/12/2017. Also RA. Bevan, Kelly Petra, The other Green, New political Science vol. 23, No. 2 November, 2001.

<sup>29</sup> The Ecology party of 1975 as a successor of people party.

<sup>30</sup> The Ecology party of 1995 of a successor of people party. The Green Party United Kingdom of 1985 but was dissolved in 1990

<sup>31</sup> The Chikpo Movement or Chikpo Andolan was primarily a forest conservation movement in India.

<sup>32</sup> Mahatma Mohandas Karamchad Gandhi was a leader of the India Independence Movement against British Rule.

<sup>33</sup> Earth Day is an annual event celebrated on April 22, it was first celebrated in 1970 as now globally co-ordinated by the Earth Day Network.

<sup>34</sup> John Baylis and Steve Smith, The Globalization of world politics, Oxford University Press 3<sup>rd</sup> edition 2005 pp 454-455. The formation of Black to the land movement which started in forming the ideas of environmental ethics

culminated into main stream environmentalism<sup>35</sup>, as more show off evolved leading to the signing of the Endangered Species Act<sup>36</sup> and the formation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)<sup>37</sup>. Significant of the period is the work of a British Scientist James Lovelock “Gaia”, A new look at life on Earth, it proposes that life on earth can be understood as a single organism<sup>38</sup>. Finally, environmentalism currently has committed to evolve Strategies to face the new issues such as global warming, over population, genetic engineering and hunger in order to secure a more habitable ecosystem through what is now called global environmentalism.<sup>39</sup>

### 3. Development of Environmental Protections in Nigeria

In tracing the growth of environmental protection in Nigeria, it will not be gainsaying stating the obvious inclinations that environmental protection has been an inherent culture in the lifestyle of the people of Nigeria. Pre-Colonia era in the cultural context of Nigerians, forest was preserved and kept out of bound from hunting, fetching of firewood, even farming and trespassing, only to lift such ban once in two or three years. Some streams were never allowed to be fished on. The reason for such restrictions was the protection and preservation of natural habitats and to avoid their extinction. But with the rise in consumerism, secularism, urbanization, civilization and industrialization, everything is hampered and such culture has grown into anachronism<sup>40</sup>. The growth of modern environmental protection in Nigeria aligns its root to colonization as it was from the era that document of policies and laws started. These developments can be categorized into three main phases thus:

**3.1 The Pre-Independent Era (Colonia days before 1960):** Nigeria situation of this era was not much different from the United State of American experience in environmental protection development except that during the era in Nigeria, the Colonia masters were more concerned with the exploitation of the mineral and other raw materials<sup>41</sup>. These minerals notably iron or zinc, crude oil etc and raw materials were mined without environmental impact consideration as there was no law on environmental directly protection. However, the first law of the era in Nigeria that had environment protection inclination was the Nigerian Criminal Code<sup>42</sup> which was not ordinarily promulgated to protect the Nigerian environment but it has provision that sought to maintain the sanity of the Nigerian environment, for instance both its Sections 245 and 247 prohibited the fouling of water and also acts capable of vitiating the environment and it further prescribe six months imprisonment for violation of the provision of any of the sections or both. Other notable environmental friendly legislations of the era are, Public Health Act of 1917 which adopted the provisions of Sections 245 and 247 of the Criminal Code<sup>43</sup>, Mineral Act<sup>44</sup>, which though not wide enough in its provisions to cover all manner of environmental degradations, had in its Section 118, the power of the president to make regulations for the prevention of pollution to any natural water, the disposal of sludge silt and tailing and of the control

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as the movement mainly graians called for people to take up small holding and to grow food from the land on a small-scale basis and also with victnam war sentiments and other political issues.

<sup>35</sup> The formation of Black to the land movement which started in forming the ideas of environmental ethics as the movement mainly graians called for people to take up small holding and to grow food from the land on a small-scale basis and also with victnam was sentiments and other political issues. Endangered Species Act, 1973.

<sup>36</sup>Endangered Species Act, 1973.

<sup>37</sup> CITES 1975, Significant amendments were also made to the United States Clean Air Act 1963 and Clean Water Act 1972 both laws were enacted to control pollution.

<sup>38</sup>Gaia Hypothesis 1979.

<sup>39</sup>Global environmentalism is a concern for, and action to help solve global environmental problems see [www.answers.com](http://www.answers.com) sourced on 14/1/2018.

<sup>40</sup>Nicholas Onuigbo, “Moderate Humanism and the Preservation of Natural Habitat in the Light of Holmes Rolston III”, *Focus Magazine*, vol. 19 December (2017).

<sup>41</sup>CA. Omaka, *Municipal and International Environmental Law*, (Lagos, Lion Unique Concept Publishers, 2012).

<sup>42</sup>Criminal Code of 1916.

<sup>43</sup> Section 13 (1) of Public Health Act, 1917 prohibited the following of Waters and acts capable of visiting the environmental with wider scope.

<sup>44</sup>Mineral Act 1958.

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of sludge channel and the Water Act<sup>45</sup>, which was the first Colonia Legislation promulgated to keep water from being polluted. It prohibited pollution of water works in Nigeria by noxious substance. That being for environmental protection *per se* as their provisions were not wide to cover all manner of environmental degradation but the position can be attributed to the fact that there was no monumental environmental problems at the time and also the fact that there was not much environmental awareness. The situation is aptly captured thus:

laws which would have in any way restricted economic activities or imposed additional responsibilities on the (Colonia Government) by way of environmental requirement would probably have been considered counter- productive if not repugnant, thus resulting in a situation where there was hardly any law deliberately directed at protecting the environment or the nations from the polluting effects of their activities<sup>46</sup>.

Furthermore, in the area of wildlife protection the regulation for environmental protection started with the promulgation of Wild Animal Preservation Act<sup>47</sup> in the then Eastern Nigeria with similar law enacted in the Western Nigeria in 1928. In combating the problem of bush burning, Forest Ordinance was enacted in 1937 which made an offence and illegal to set fire on any forest reserve it was succeeded by the Bush Burning Order of 1940 thereby extended the illegality of bush burning outside forest reserves<sup>48</sup>. Also in 1936, the Wild Animal Act was enacted for the protection of animals within areas designated as game reserves.

**3.2 The Post Independent Era (1960-1970):** After Nigeria got her independence in 1960, there was a high zeal to develop the country and coupled with the discovery of oil, it becomes apparent that existing laws dealing with environment were grossly inadequate owing to the fact that most of the provisions on environmental protection were scattered through different laws, resulting in an *ad hoc* response to different need in different situations<sup>49</sup>. This period witnessed the criminalization of government criminalizing polluting activities, particularly those relating to oil exploitation and exploration activities by the government.

The era has oil in Navigable Waters Act<sup>50</sup> enacted to deal with the prevention and control of pollution by oil. Sections 1 and 2 of the Act prohibit discharge of oil or lubricants and heavy diesel oil into areas 50 nautical miles from land. The Petroleum Act<sup>51</sup>, enacted to empower the Minister of Petroleum Resources to make regulation for the prevention and control of water and air pollution resulting from oil activities. The Oil Terminal Dues Act<sup>52</sup> was enacted to prevent pollutes during oil terminal discharge of oil the sea in a nature as to pollution the environment. The Associated Gas Re-injection Act,<sup>53</sup> enacted to curb gas flaring and finally the Sea Fisheries Act<sup>54</sup> which prohibit unlicensed operation or navigation within, the Nigerian territorial waters. The foregoing era saw the development of Nigerian's environmental legal regime in response to industrial growth associated with the oil boom. It was this period that the River basin authorities were created and the implementation of the laws were, however typically 'knee-Jerk responses to emergency situations. It was all about react and cure situations<sup>55</sup>.

**3.3 The Environmental Awareness Era (1980 till date):** This era birthed the beginning of the real environmental consciousness/protection. The concrete environmental consciousness/protection is

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<sup>45</sup>The Water Act 1915.

<sup>46</sup> K.C Nnadozie, "Pollution Control in Nigeria ; The Legal Framework", a paper presented at a workshop held at the Sheraton Hotels and Towers, Ikeja Lagos on the 5<sup>th</sup>-7<sup>th</sup> April, 1994.

<sup>47</sup>Wild Animal Preservation Act 1916.

<sup>48</sup> MT Ladan, "Trend in Environmental Law and Access to Justice in Nigeria, (Germany: Lambert Academy Publishing Co., 2012).

<sup>49</sup>Ibid.

<sup>50</sup>Oil in Navigable Waters Act, 1968 (Now Cap. 06, LFN 2010).

<sup>51</sup>Petroleum Act 1969 (Now Cap p. 10, LFN 2010).Oil Terminal Dues Act 1969 (Now Cap 08, LFN 2010).

<sup>52</sup>Oil Terminal Dues Act 1969 (Now Cap 08, LFN 2010).

<sup>53</sup> Associated Gas Re-injection Act 1979 (Now Cap A 25, LFN 2010).

<sup>54</sup>Sea Fisheries Act, 1971.

<sup>55</sup> M. T. Ladan *Op. Cit.*

aggravated by the unlawful dumping of toxic waste in the small Sea Port of Koko in Delta State in 1987. The dumping of the waste caught Nigerian environmental law flatfooted as there was no specific local law making the dumping of such wastes in the country a crime<sup>56</sup>. Consequently, in reaction to this unlawful dumping of the toxic waste, within weeks the military government of the former (General Ibrahim Badamosi Babaginda regime) promulgated legislations to curb such illegal dumping *vis a vis* Harmful Waste (Special Criminal Provision) Act<sup>57</sup>, being the first comprehensive national law aimed at environmental protection. Section 1(1) of the (Decree) Act prohibits the purchase, sale, importation, transit, transportation, deposit and storage of harmful wastes in Nigeria<sup>58</sup>. The Act is of significant interest because of the special safeguard to the environment it created particularly, as it excludes the protection afforded by the Diplomatic Immunities and Privilege Act 1962 for an office under the Act<sup>59</sup>. Furthermore, in December same year the government promulgated the Federal Environmental Protection Agency (FEPA) Act<sup>60</sup>, through Decree No 58 of 1988 (now abrogated). This Act, apart from establishing structure, in the implementation and enforcement of environmental law in Nigeria, dealt with such miscellaneous matters as national environmental standard on land, water and air, qualitative noise, environmental pollution and hazards substance. It was also framework legislation/regulation for making such as effluent regulation. It is worthy of note that the combine effect of the provisions of both Harmful wastes Act and FEPA enhanced the tempo of environmental protection in Nigeria.

Next to the promulgation of FEPA is the creation of the Environmental Impacts Assessment (EIA) Decree<sup>61</sup> (now Act), which makes compulsory for impact assessment to be undertaken on any proposed project likely to have environmental impact in Nigeria. In 1995, the Nuclear Safety and Radiation Protection Act (Decree No 19; 1995) was enacted to control and regulate the use of material and equipments emitting and generating ionizing radiation. The Act also prohibits the disposal of radioactive waste without lawful authority<sup>62</sup>. The constitution of the Federal Republic of Nigeria, 1999 (as amended)<sup>63</sup>, is also a mile stone in the development of environmental protection in Nigeria, being that the constitution is the supreme law of the land and it was the 1999 Constitutional that for the first time provided for environmental protection in its provisions. It is unfortunate that the constitution merely provides for non-justifiable environmental rights/objectives. It is the provision of the Constitution that the states shall protect and improve the environment and safeguard the water, air, land, forest and wildlife of Nigeria<sup>64</sup>. However, Section 6(6) (c) of the same provides thus;

The judicial powers vested in accordance with the foregoing provisions of this section shall not except 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 directives principles of state policy set out in chapter II of this constitution.

<sup>56</sup>Abubakar I. Bappah et al *Op.Cit*, p.6.Harmful Waste Act 1988 (Now Cap H 1 LFN) it was originally promulgated as a Decree No. 42 by the Federal Military Government. The reason for this pragmatic approach is not farfetched as it was observed that during the dumping at the Kobo Port, by Italian Company was done in Collaboration with some Nigerian businessmen.

<sup>57</sup>Harmful Waste Act 1988 (Now Cap H 1 LFN) it was originally promulgated as a Decree No. 42 by the Federal Military Government. The reason for this pragmatic approach is not farfetched as it was observed that during the dumping at the Kobo Port, by Italian Company was done in Collaboration with some Nigerian businessmen.

<sup>58</sup> The reason for this pragmatic approach is not farfetched as it was observed that during the dumping at the Kobo Port, by Italian Company was done in Collaboration with some Nigerian businessmen.

<sup>59</sup> See Section 9 of Harmful Waste Act, (no diplomatic immunity and privileges).

<sup>60</sup> FEPA Act, of 1988, Cap F. 10 LFN 2004 it has been repealed by the NESREA, Act 2007.EIA Act 1992 now Cap E. 12 LFN 2010.

<sup>61</sup> EIA Act 1992 now Cap E. 12 LFN 2010.

<sup>62</sup> It is however surprise that under Section 1(1) and (2) of the Act, an act as prohibited cease to be criminal offence once the harmful permission of the appropriate authority is obtained which seems to whittle down the effect of the law as Multinational Company can easily and unduly influence and obtain such permission.

<sup>63</sup> The 1999 Constitution of Nigeria (as amended).

<sup>64</sup>Section 20 of the Constitution.

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The literary implication/interpretation of the above provision is that issues of environmental protection are merely a state policy which is unenforceable in any court of law in Nigeria.

The Constitution of The Federal Republic of Nigeria, 1999 (as amended) is the supreme legal document from where every other law draws their sources and authority.<sup>65</sup> It is trite that any other law that is inconsistent with the provisions of the constitution is, to the extent of its inconsistency, null and void<sup>66</sup>. This is because environmental protection is contained in Chapter II of the said Constitution. Section 20 of the Constitution provides that “the state shall protect and improve the environment and safe guard the water, air, and land, forest and wildlife”. This laid the basis for every other legislation whether state or federal, providing for environmental protection. The difficulty is the justiceability of this section of the constitution. A piece of legislation or any part of it is said to be non-justiciable when it cannot be positively enforced by courts within a particular jurisdiction<sup>67</sup>. This is the literary implication of Section 6(6)(c) as expressly provided thus:

the judicial power vested in accordance with the foregoing provisions of this section shall not, except as otherwise provide by this Constitution, extend to any issue or question as to whether any act or omission by any authority or person as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out.

The non-justiciable status of chapter 11 of the constitution had been judicially confirmed in many cases. For example, in *Archbishop Anthony Okogie v. Attorney General of Lagos State*<sup>68</sup>, it was held that:

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 11, section 6 (6) (c) of the same Constitution makes it clear that no Court has the 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.

Also, in *Attorney General of Ondo v. Attorney General of Federation*<sup>69</sup>, the Supreme Court held, inter alia, that ‘courts cannot enforce any of the provisions of Chapter II of the constitution until the National Assembly has enacted specific laws for their enforcement, as has been done in respect of section 15(5)6 of the 1999 Constitution. According to the Supreme Court, those objectives and principles that serve as the constitutional policy of governance remain mere declarations which cannot be enforced by legal process but would be seen as a failure of duty and responsibility of state organs if they acted in clear disregard of them. The Court, in its wisdom, went further to maintain that the Directive Principles (or some of them) can be made justiceable by legislation.

However, there are two ways by which the provision of the Chapter II of the Constitution can be made justiceable in the light of the exception contained in section 6 (6) (c) of the Constitution. Thus, in the case of *Federal Republic of Nigeria v. Aneche & 3 Ors*<sup>70</sup>, Niki Tobi (JSC) observed as follows:

In my humble view, section 6 (6) (c) of the Constitution is neither total nor sacrosanct as the subsection provides a leeway by the use of the words “except as otherwise provided by this Constitution.” This means that if the Constitution otherwise provides in another section, which makes a section or sections of Chapter II justiceable, it will be so interpreted by the courts.

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<sup>65</sup> R. Bass, Evaluating Environmental Justice under the National Environmental Policy Act, environmental impact assessment review, 1998 Vol. 18, ISS.I, pp 83-92 see also [www.wikipedia.org](http://www.wikipedia.org) sourced on 6/11/2017.

<sup>66</sup> See Section 1(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). See also *A.G Abia State*

*v. A.G Federation* (2002) 6 NWLR part 763, 264 at p.472 parts E.F.

<sup>67</sup>Section 1(3) of the Constitution. See also the case of *Din v. Attorney General of the Federal Republic of Nigeria* (1988) 4 NWLR (part 87).

<sup>68</sup>(1981) 2 NCLR 337 at 350.

<sup>69</sup>(2002) 9 NWLR (pt. 772), 222.

<sup>70</sup>(2004) I SCM.

The first of these exceptions is where the constitution in its justiceable sections directs that a particular section of Chapter II of the Constitution shall be complied with in carrying out the provisions of that section of the Constitution. For example, Section 147(3) of the Constitution provides that “any appointment under sub-section (2) of this section by the President shall be in conformity with the provisions of section 14(3) of this constitution.” Also by section 197(3) of the Constitution, “in appointing the Chairman and members of boards and governing bodies of statutory corporations and companies in which the Government of the State has controlling shares or interests and Councils of Universities, Colleges and other institutions of higher learning, the Governor shall conform with the provisions of section 14 (4) of this Constitution.” It follows that while carrying out the provisions of Sections 147(3) and 197(3) of the Constitution, compliance with sections 14(3) and 14 (4) of this constitution becomes mandatory, thus justiceable.

The second way is where the Constitution in its justiciable sections empowers the National Assembly to implement the provisions of the Chapter II of the Constitution a separate and independent legislation. One example of this is items 60 of the Exclusive Legislative List under Part 1 of the Second Schedule to the Constitution that empowers the National Assembly to make laws with respect to “the establishment and regulation of authorities for the Federation or any part thereof... to promote and enforce the observance of the Fundamental Objectives and Directive Principle contained in this Constitution...” In the Indian case of *Mangru v. Commissioner of Budge Municipality*<sup>71</sup>, it was held that “the Directive Principles are required to be implemented by legislation, and so long as there is law carrying out the policy laid down in a Directive principle, neither the state nor an individual can violate any existing law or legal right under colour of following a directive.” It is upon this legal wit that the series of legislations relating to environmental protection have been made in Nigeria. However, the difference in authority between the Constitution and other legislations like the NESRA Act, etc, practically whittles down the right to healthy environment in Nigeria. Noting this obscured situation, G. N. Okeke and C. Okeke observed that using legislation to make the non-justiceable chapter II of the 1999 constitution justiceable is like a material contradiction<sup>72</sup>.

Recently a great effort was made in the pursuit of sustainable environmental protection in Nigeria through the passage of Petroleum Industry Act (PIA).<sup>73</sup> It is the most recent enacted legislation in Nigeria providing legal, governance, regulatory and fiscal framework for the Nigeria petroleum industry. This is the long awaited law to streamline the regulations of the oil operations which the hub of the Nigeria economy, to foster environmental justice and good governance. It was passed by the Nigeria National Assembly on 1<sup>st</sup> July, 2021 and asserted to by the president on 16<sup>th</sup> August, 2021, the date it became law in Nigeria. It remains the most comprehensive law on the regulation of oil exploration and exploitation in Nigeria. Other enacted legislations are:

The National Environmental Standard Regulations and Enforcement Agency Act, was established<sup>74</sup>. The Act provides for the establishment of the National Environmental Standard Regulations and Enforcements Agency to be in charged with the responsibility for the protection and development of the environment in Nigeria and for related matters. The Act repeals the FEPA Act. NESREA Act, empowers the Minister of Environment to make regulations for the general purposes of carrying out or giving full effect of the function of the agency under the Act.

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<sup>71</sup>(1951) 87 CLJ 361.

<sup>72</sup>GN Okeke and C Okeke, “The Justiceability of the Non-Justiceable Constitutional Policy of Governance in Nigeria”,

*Journal of Humanities and Social Science*, Vol. 7, Issue 6, (2013).

<sup>73</sup> Petroleum Industry Act (PIA) 2021.

<sup>74</sup>NESREA, Act, established through the act of the National Assembly Act No. 25 July 31<sup>st</sup> 2007.



## **ODOH: Legal Framework for Environmental Right in Nigeria: Reviewing the Past and Projecting the Future**

So far pursuant to the powers bestowed on the minister of Environment, notable regulations have been made which includes but not limited to<sup>75</sup>,

- (i) National Environmental (Soil Erosion and Flood control) Regulations, 2011 S.I No. 12 Gazette no 39 volume 98 of 2<sup>nd</sup> May 2011. Its purpose is to protect human life and the environment, minimize losses due to flood and erosion and their effect on vulnerable areas by controlling earth disturbing activities.
- (ii) National Environmental (Desertification Control and Draughty Mitigation) Regulation, 2011. S.I No 13 Gazette No 40. vol 8 of 3<sup>rd</sup> May 2011. The aim of the regulation is to provide an effective and pragmatic regulatory framework for the sustainable use of all areas already affected by desertification and the protection of vulnerable lands.
- (iii) National Environmental (Costal and Marine Area Protection) Regulations 2011 S.I No 18 Gazette No 45. vol. 98 of 13<sup>th</sup> May 2011. It seeks to provide regulatory framework for preserving the natural ecological systems and beaches so as to safeguard their natural productivity and their biological, economic and aesthetic values.
- (iv) National Environmental (Surface and Groundwater Quality control) Regulations 2011, S.I No 22, Gazette No 49 vol. 98 of 24<sup>th</sup> May 2011. Its purpose is to restore, enhance and preserve the physical, chemical and biological integrity of Nation's surface and ground waters and to maintain existing water uses.

### **4. Framework for Environmental Protection in Nigeria**

#### **4.1 National environmental standard and enforcement agency act (NESREA) 2007**

By section 1 of the NESREA Act 2007, the Federal Government of Nigeria established NESREA as a parastatal of the Federal Ministry of Environment, Housing and Urban Development. Section 1(2) of the Act provides that the agency; (a) shall be the enforcement agency for environmental, standards, regulations rules, policies and guidelines; (b) shall be a body corporate with perpetual succession and a common seal; and (c) may sue and be sued in its corporate name. Section 2 of the Act provides for the objectives of the Agency. The said section provides thus;

The Agency shall, subject to the provisions of this Act, have 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, regulation, rules, laws, policies and guidelines.<sup>76</sup>

Presently, NESREA is the major Federal Agency with the responsibility of protecting Nigeria environment<sup>77</sup>. NESREA is responsible for the enforcement of environmental standard in Nigeria. As part of its authority, NESREA can also enforce environmental guidelines and policies such as the National Policy on Environment, 1999. For environmental offences, the Act provides that the provisions of the Criminal Procedure Act (CPA) or the Criminal Procedure Code (CPC) shall apply as much as they apply in the trial of offences generally. Such offence is triable in the Federal or the State High Courts.<sup>78</sup>

In granting licenses under the NESREA Act and the Harmful Waste (Special Command Provisions Etc) Act, to industries and persons that deal in substances and materials likely to poise dangers to the

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<sup>75</sup>Abubakar I. Bappah and others *Op.Cit.*

<sup>76</sup>Section 3 of the Act establishes the Council which comprises; a chairman who shall be appointed by the President on the recommendation of the Minister; the Permanent Secretary on the recommendation of the Minister; a representative each not below the rank of Director from Federal Ministry of Solid Minerals Development; Federal Ministry of Agriculture and Natural Resources; Federal Ministry of Science and Technology; a representative of Standard Organization of Nigeria (SON); a representative of the Oil Exploratory and Production Companies of Nigeria.

<sup>77</sup>Section 25 of NESREA Act.

<sup>78</sup>Section 32(4) NESREA Act, This is unlike the Harmful Waste Act, which confers jurisdiction for the trial of any offence under it only on the Federal High Court. See Section 13 of the Act.

environment the authorities concerned must, as a principle follow the norms and standards laid down in the Environmental Impact Assessment (EIA) Act<sup>79</sup>. NESREA must comply with the provision of the EIA Act<sup>80</sup> in an environmental impact assessment leading to the grant of a license. Pursuant to section 25 of the Act, the NESREA has developed about twenty six (26) environmental regulations which are now in force in Nigeria<sup>81</sup>. In order to provide effective enforcement to environmental standards, regulation, rules laws, policies and guidelines by the NESREA, it is the duty of the Minister of Environment to make rules and regulation for the general intent of carrying out, or giving effect to the function of the Agency under the NESREA Act<sup>82</sup>. This eventually made the Federal Ministry of Environment to formulate the under-listed regulations:

**4.1.1 National Environmental (Mining and Processing of Coal, Iron-ore and Industrial Mineral) Regulation 2009.**<sup>83</sup> This particular Regulation provides for the protection of the environment from pollutions emanating from activities like mining and the processing of coal, iron-ore, and industrial mineral.

**4.1.2 National Environmental (Permitting and Licensing System Regulation).**<sup>84</sup> The provision of this regulation calls for constant application of environmental law. Its provisions affect all sectors of the economy with respect to Federal State and Local Government jurisdiction in the area of environmental protection.<sup>85</sup>

**4.1.3 National Environmental (Standards for Telecommunication and Broadcasting Facilities) Regulation, 2011.**<sup>86</sup> This particular regulation has as its main objective, the protection of the environment and the human habitats, ensures the general safety in its maximal form, sees to the elimination of public losses due to activities of telecommunication industries. For example, the place where their masts are mounted to safeguard the masses from its inherent consequence, like exposure to radio-active effects. However, this regulation seems to be the most disregarded and relegated environmental regulations in Nigeria. Currently, telecommunication masts are being mounted indiscriminately within residential and commercial areas in Nigeria.

**4.1.4 National Environmental (Wetland, Riverbanks and Lake Shores) Regulation 2009.**<sup>87</sup> This Regulation ensures the sustainable use of Wetlands as regards ecology and tourism and protects Wetland habitats for different species of fauna and flora. It also provides for the consideration and wise use of Wetlands and their resources in Nigeria. The Regulation is made up of three (3) parts and five (5) schedules. It is important to state that different segments of the Regulation deal with matters that have to do with the application, objective<sup>88</sup> and the principle of this part of the regulation. Also, the inventory of wetlands<sup>89</sup> issuing of particulars by state government, the wetland resources use permit<sup>90</sup>, etc are covered. Part three covers sundry provisions affecting EIA offences and punishment on environmental degradation and restoration orders<sup>91</sup>.

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<sup>79</sup>Sections 2 of the EIA Act, which provides that the public and private companies or industries which seek for license to carry on any of the prohibited activities must be subjected to prior consideration at an early stage, of their environmental effects.

<sup>80</sup>Section 25 (1) of NESREA Act.

<sup>81</sup>Section 34 of NESREA Act.,

<sup>82</sup>Regulation 63 of NESREA Act.

<sup>83</sup>Regulation No. 38, 29<sup>th</sup> April, 2011.

<sup>84</sup>This is the effect of the Thirty-Eight as well as Regulation of NESREA Act.

<sup>85</sup>Regulation 2, Objective 1 of the NESREA Act.

<sup>86</sup>Regulation 111 Schedule 201.

<sup>87</sup>Regulation 3, it makes the relevance of EIA clear on the issue.

<sup>88</sup>Regulation 2, Objective 1 of NESREA Act.

<sup>89</sup>Regulation 4, Schedule 1.

<sup>90</sup>Regulation 33. It covers the permit issued to a person, organization or community to excavate wetland.

<sup>91</sup>Regulation 28-34, NESREA Act.

**4.1.5 National Environmental (Chemical, Pharmaceuticals, Soap and Detergents manufacturing industries) Regulation 2009.**<sup>92</sup> This regulation is meant to prevent or minimize the effect of the pollutions coming from the activities of pharmaceutical companies, industries that manufacture soaps and detergent, industries that produce chemicals for all purposes, whose emissions could affect the Nigeria environment.

**4.1.6 National Environmental (Access to Genetic Resource and Benefit Sharing) Regulation, 2009.**<sup>93</sup> This particular regulation aids in the enforcement of environmental laws, standard and regulation in federal state and local government levels and equally aids in the building of the economy as it relates to all levels of governance.<sup>94</sup>

**4.1.7 National Environmental (Food, Beverages and Tobacco Sector) Regulation, 2009**<sup>95</sup>: This very regulation is saddled with the duty of checking the activities of factories and industries that are into the production of food, beverages, tobacco, to see that the bye-product of their productions have no negative impact on the environment.<sup>96</sup>

**4.1.8 National Environmental (Ozone Layer Protection) Regulation 2009.**<sup>97</sup> This regulation prohibits the importation, manufacture in part or in whole, install, offer for sale, sell or buy now or refurbished facilities intended to be used for the production of any Ozone Depleting Substance (ODS)<sup>98</sup> unless for the recovery and recycling of any substance already in use.<sup>99</sup>

**4.1.9 National Environmental (Watersheds, Mountainous, Hilly and catchment Area) Regulation 2009.**<sup>100</sup> This regulation foresees the accomplishment of the provision as contained in the schedule. It is to protect water ways and its environments.

**4.1.10 National Environmental (Sanitation and Wastes Control) Regulations 2009.**<sup>101</sup> This Regulation provides for the legal framework for the operations of sustainable environment, emphasizing friendly practices in respect of sanitation, waste management, so as to reduce pollution incidence in Nigeria.<sup>102</sup> The regulation criminalizes the release of effluent and sludge into the environment in excess of permissible levels<sup>103</sup> well as engaging in any activity likely to generate hazardous waste<sup>104</sup> without the requisite permit issued by the Agency or expert, transit hazardous waste without valid permit issued by the Agency similarly any person who transits toxic or hazardous waste destined for another country

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<sup>92</sup>FRN Regulation No. 36, 2009, Vol. No 11 of 20<sup>th</sup> October, 2009.

<sup>93</sup>Federal Republic of Nigeria Reg. No. 33, 2009, Vol. 96, No. 65, October, 2009.

<sup>94</sup>Regulation 1 Schedule 206.

<sup>95</sup>FRN Reg. No. 33, 2009, vol. 96. No. 64 13<sup>th</sup> October, 2009.

<sup>96</sup>Regulation No. 28 r009 Vol. 96, No. 60 NESREA Act.

<sup>97</sup>Statutory Instrument No. 32 of 2009.

<sup>98</sup>ODS are listed in Schedule 3 to include chlorofluorocarbons (OFCs) Azeotropic mixtures, hydro chlorofluorocarbons, and hydro fluorobromide.

<sup>99</sup>Schedule 6 of the regulation lists the phase out deadline for controlled substances between January 1, 2010 and January 1 2030. However, in spite of the fact the chlorofluorocarbon (CFCs) emitting substance ought to have been phased out by January, 1, 2010 no reasonable progress has been made to ensure compliance. See Violet Aigbokhaevbo, Combating Environmental Crimes in Nigeria: A Daunting Uncertainty”, *NIALS Journal of Environmental Law*, Vol. 1, (2011).

<sup>100</sup>Reg. No. 28, 2009, vol. 96, No. 60, NESREA Act.

<sup>101</sup>FRN Regulation No. 15 of 2011 vol. 98 No. 421, Official Gazette of 6<sup>th</sup> May, 2011.

<sup>102</sup>States and Local Governments are mandated to establish sanitation and integrated waste management programmes and ensure the provision and maintenance of abattoirs, adequate toilets and urinals in public places, waste receptacles in the streets and premises of all kinds. See Regulation 64 and 65.

<sup>103</sup>Regulation 77.

<sup>104</sup>Hazardous waste is defined in regulation 106 as any waste or combination of wastes that exhibit ignitable, corrosive, reactive or toxic characteristics and poses a substantial danger, now or in the future of human, plant or animal life and which therefore cannot be handled or disposed of without special precaution.

through the territory of Nigeria without valid prior informed consent for such movement issued by the Agency is held to commit an offence.<sup>105</sup>

**4.1.11 National Environmental (Bare Metals, Iron and Steel Manufacturing/Recycling Industries Sector) Regulations 2011.**<sup>106</sup> This regulation checkmates the activities of the operations of ancillary bodies in the Nigeria economy. It is to minimize pollution from all these ancillary sectors and helps to keep the environment safe.

**4.1.12 National Environmental (Control of Bush/Forest Fire and Open Burning) Regulation 2011.**<sup>107</sup> The principle objective of this regulation is to prevent and minimize the activities that may affect the nation's ecosystem through bush/forest burning.<sup>108</sup>

**4.1.13 National Environmental (Soil Erosion and Flood Control) Regulation.** This regulation is for the protection of the environment from erosion and flood and equally protects human lives and loss of property. This is meant to control earth disturbing activities.

**4.1.14 National Environmental (Coastal and Marine Area Protection) Regulation, 2011.**<sup>109</sup> This regulation provides for the regulatory frame work for preserving the natural ecological conditions of the estuarine system, barriers island system and the beaches so as to safeguard and perpetuate their natural productivity and their ecological and biological, economic and aesthetic values<sup>110</sup>.

**4.1.15 National Environmental (Electric/Electronic Sector) Regulation 2011.**<sup>111</sup> This regulation is to prevent and bring to the barest, minimum pollution from all operations and ancillary activities that come from electrical/electronic sector of the nation<sup>112</sup>.

**4.1.16 National Environmental (Quarrying and Blasting Operations) Regulation 2013.**<sup>113</sup> This regulation was set up to control the health hazard caused by quarrying and blasting, in the Nigeria environment.

**4.1.17 National Environmental (Surface and ground water quality control) Regulation 2011.** This regulation covers the areas of preservation of physical, chemical and biological integrity of the nation's surface and ground waters and to maintain the uses of the existing water in all parts of the country.

**4.1.18 National Environmental (Construction Sector) Regulation, 2011.**<sup>114</sup> This Regulation was made to bring about the prevention of pollution coming from construction, decommissioning and demolition activities in the Nigeria environment.<sup>115</sup>

**4.1.19 National Environmental (Control of Alien and Invasive Species) Regulation, 2013.**<sup>116</sup> This regulation is to provide a legal frame work for the preservation of the decline and minimization of the

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<sup>105</sup>Regulation 83.

<sup>106</sup>FRN Reg. No. 15, 2011, vol. 98, 213 6<sup>th</sup> May, 2011.

<sup>107</sup>Regulation 1 FRN, 2011.

<sup>108</sup>FRN Reg. No. 12.

<sup>109</sup>Regulation 1, 2011.

<sup>110</sup>FRN, Reg. No. 19 of 2011, vol. 98 No. 46, Official Gazette (Abuja) dated 17<sup>th</sup> May, 2011.

<sup>111</sup>Regulation 1, 2011.

<sup>112</sup>FRN Reg. No. 23, of 2011, vol. 98 No. 50, Official Gazette Abuja, 25<sup>th</sup> May, 2011.

<sup>113</sup>Regulation No. 33 of 2013, vol. 100 No. 79 of the FRN, 2013.

<sup>114</sup>FRN, Reg. No. 19 of 2011, vol. 100 No. 46, Official Gazette (Abuja) 17<sup>th</sup> May, 2011.

<sup>115</sup>Regulation 1, 2011.

<sup>116</sup>FRN, Reg. No. 34 of 2013, vol. 100 No. 32 Official Gazette (Abuja) of 29<sup>th</sup> October, 2013.

modification and destruction of ecological, economic and health problems caused by alien and invasive species in Nigeria.<sup>117</sup>

**4.1.20 National Environmental (Motor Vehicle and Miscellaneous Assembly Sector) Regulation, 2013.**<sup>118</sup> The purpose of this regulation is to prevent and minimize waste and pollution from all activities of motor vehicle and miscellaneous assembly sector to the environment<sup>119</sup>.

**4.1.21 National Environmental (Control of Vehicular Emission from Petrol and Diesel Engines) Regulation.** This regulation No. 21 of 2011 vol. 98, No. 48 of the Federal Republic of Nigeria, official gazette (Abuja) of 17<sup>th</sup> May 2011 provides that the prevention and minimization of pollution from all operations and ancillary activities of the non-metallic minerals manufacturing sector in Nigeria, in terms of environment, every facility shall be given equal treatment, without preference as far as enforcement of relevant laws and inspections are concerned.

**4.1.22 National Environmental (Domestic and Industrial Plastic, Rubber and Foam Sector) Regulation 2011.**<sup>120</sup> The principle thrust of this Regulation is to prevent and minimize pollution from all operations and ancillary activities of the domestic and industrial plastic, rubber and the foam sector so as to safeguard the Nigeria environment.<sup>121</sup>

#### **4.2 Nigerian Maritime Administration and Safety Agency Act (NIMASA)<sup>122</sup>**

With regard to environmental protection in the oil and gas sector, the provisions of the NIMASA Act granted NIMASA jurisdiction thereto as it provides, inter alia, that the objectives of the Agency shall be to regulate and promote maritime safety, security, marine pollution and maritime labour.<sup>123</sup> Thus in pursuit of this objective, section 22 of the Act provides that the Agency shall inter alia; establish maritime training and safety standards<sup>124</sup>; provide directions and ensure compliance with vessel security measures<sup>125</sup>; carry out air and coastal surveillance<sup>126</sup>; control and prevent marine pollutions<sup>127</sup>; inspect ships for the purposes of maritime safety, maritime security, maritime labour and prevention of pollution<sup>128</sup>; generally to perform any other duty for ensuring maritime safety and security or do all matters incidental thereto.<sup>129</sup> The jurisdiction of NIMASA in environmental protection in oil and gas sector therefore stems from two points provided in the objectives of the Agency. First of all, oil spill is inimical to maritime safety<sup>130</sup> and secondly, it is marine pollution. Therefore, to achieve the objective of regulating and promoting maritime safety, security, marine pollution and maritime labour, the Agency ought to get involved in environmental protection in oil and gas sector. This it can do through some of its functions already delineated in the last paragraph<sup>131</sup>. It may also make regulations with regard to pollution.<sup>132</sup> It is submitted that such regulations may include directives as to safety measures in oil tankers and oil drilling in the maritime zone.

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<sup>117</sup>Regulation 1, 2013.

<sup>118</sup>FRN, No. 35 of 2013, vol. 100 No. 98 November, 4<sup>th</sup> 2013.

<sup>119</sup>Regulation 1.

<sup>120</sup>Federal Republic of Nigeria, Regulation No. 17 of 2011, vol. 98, No. 44, Official Gazette (Abuja) dated 10<sup>th</sup> May, 2011.

<sup>121</sup>Regulation 1.

<sup>122</sup>Cap N161 LFN, 2010.

<sup>123</sup>See Section 1 (ii) of the Act.

<sup>124</sup>Section 22(1)(d) of the Act.

<sup>125</sup>Section 22(1)(g) of the Act.

<sup>126</sup>Section 22 (1)(h), of the Act.

<sup>127</sup>Section 22 (1)(i), of the Act.

<sup>128</sup>Section 22 (1)(2)(a), of the Act.

<sup>129</sup>Section 22(2)(f), of the Act.

<sup>130</sup>Section 23(g)(b), of the Act.

<sup>131</sup>Section 22(1)(d),(g),(h)(i); 2(a) & (f); of the Act.

<sup>132</sup>Section 44 of the Act.

Furthermore the Agency under the NIMASA Act is equally granted sundry powers with regard to environmental protection in the oil sector which include; to receive and consider any report of the commission of an offence; to stop enter, board, inspect and search a vessel or aircraft and to detain any vessel or aircraft within the Nigerian maritime zone; investigate offences; arrest offenders; to make determination imposing charges and specifying the persons by whom, and the times which such charges are payable; the charge or levy may include inter alia, a fee in respect of a matter referred to in regulations or orders made under all federal legislations on marine pollution, maritime labour, marine safety and maritime security. Accordingly, the NIMASA Act granted NIMASA powers to intervene generally in marine pollution in the maritime zone of Nigeria. However, considering the provisions of the NOSDRA Act and the establishment of NOSDRA and the fact that the NIMASA Act came after the NOSDRA Act, it is not clear whether all these functions are performed by NOSDRA or NIMASA given the doctrine of repeal by implication.

It is the constitutional rule of interpretation that, where a later provision or statute is inconsistent with an earlier provision of a statute, the legal presumption is that the later has modified or amended the earlier provision or statute<sup>133</sup>. This is known as the doctrine of “repeal by implication”. Hence in *Chairman Moro Local Government v. Lawal*<sup>134</sup>, the Court said, “Generally a statute is definite as to what it repeals by its enactment; and a schedule may recite the existing law repealed. The Courts in the performance of their functions as interpreters of the law usually lean against implying the repeal of law by implication. However, where the provisions of the two Acts are plainly repugnant, one to the other provision, and demand inconsistent conclusion that effect cannot be given to both at the same time, a repeal of the earlier provision of the law by implication is inevitable.” It is the opinion of this writer that some of the contents of the NIMASA Act with regard to its function vis-à-vis the provisions of NOSDRA Act and the functions of NOSDRA are in conflict evidencing the carelessness of the legislature. However, in Nigeria most of the laws are dormant if not dead letters that are not enforced, or enforced at whims and caprices of the authority responsible otherwise an amendment or review of these two laws (and most of the laws discussed in this research for that matter) by the legislature is necessary to remedy and reconcile the conflicts and duplication of functions. Thus, there is no way it can be said that the NIMASA Act of 2007 is meant to repeal by implication any part of the NOSDRA Act of 2006, because NOSDRA established by the NODRA Act is a specialized Agency established for environmental protection in the petroleum sector specifically.

#### **4.3 National oil spill detection and response agency (NOSDRA), Act**

National Oil Spill Detection and Response Agency (NOSDRA), Act<sup>135</sup> was established in 2006 as institutional framework to coordinate the implementation of the National Oil Spill Contingency Plan (NOSCP) for Nigeria in accordance with International Convention on Oil Pollution Preparedness, Response and Co-operation (DPRCO) to which Nigeria is a signatory<sup>136</sup>. It is an agency responsible for monitoring and responding to oil spills in Nigeria as it monitors oil spill and its clean up through its zonal offices. Also, it works to ensure industry compliance with the Nigerian legal and regulatory framework relating to the oil industry and the environment to ensure environmental justice and sustainable environmental development compliance.<sup>137</sup>

#### **5. Conclusion**

From the foregoing, probe into the journey so far in the development of environmental protection regime in Nigeria, in this article. It is evident to state that from history the processes of environmental

<sup>133</sup>See *Chorlton v. Tonge Overseas* (1871) LR 7 C.P. 178; *NPASF v. FASEL Services Ltd* (2002) FWLR (pt 97) 719 at 73b; *Abacha v. Fawehinmi* (2000) FWLR (pt 4) 533 at 600; and *Chairman Moro Local Government v. Lawal* (2008) All FWLR (pt 440) 684 at 727.

<sup>134</sup>*Supra*.

<sup>135</sup>NOSDRA (Establishment) Act, 2006, Act No. 15; See also <https://environreview.com.ng>>nat- sourced on 12/9/2021.

<sup>136</sup><https://www.un.spider.org>>national- sourced on 12/9/2021

<sup>137</sup><https://www.nosdra.gov.ng>- sourced on 12/9/2021.

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protection regime started merely as a routine of ‘react and cure’ and gradually now as a ‘protective and preventive’ measure. Environmental protection regime is gradual advancing to a concrete sustainability as issues that concern the environment are directly featuring in legislations. From the state of non-existence to now constitutional recognize status. Also is the progress that could be achieved environmentally wise with the passage of the Petroleum Industry Act 2021 being that the crux of the environmental protection problems in Nigeria centres more from pollutions emanating from our petroleum exploration and exploitation activities. However, as it can be seen that despite all these beautiful and commendable policies/efforts so instituted by the Nigeria government gearing towards achieving protection regime more need to be done as there are more environmental degradations springing up on daily basis ranging from air pollution, (the recent black slot in Rivers State),<sup>138</sup> water pollution as can be seen in the depletion and scarcity of fresh water ozone layer depletion effects ranging from now witnessed hot weather, unprecedented contaminated cloudy weather, unusual heavy rainfall, the recent mini earthquake (earth tremor)<sup>139</sup> etc despite these avalanche of legislation institutional framework and policies on environmental wellbeing in place. The point remains that more need to be done in terms of the governance and implementation of the legal regime. Concrete legal regime does not stop at good letters of law rather there must be the will for effective and efficient implementation of the letters of the legislations through adequate mechanism. There should be serious will power for adequate enforcement of the laws by the government and the enforcement agencies. For instance, the much praised/commended PIA 2021 should be strictly enforced by the concerned agencies without allowing economic and social interest overwhelmed the sustainable environmental protection principles or targets. Also, the issue of environmental protection should be urgently given the valid constitutionality by further amended the 1999 Constitution (as amended) on placing environmental rights as one of the fundamental human rights under the Chapter IV of the Constitution unlike the current position where issues concerning environment is in Chapter II.

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<sup>138</sup> [www.republic.com.ng](http://www.republic.com.ng) sourced on 8/1/2024.

<sup>139</sup> Anxiety as Earth Tremors Persist in Abuja, the Guardian Nigeria News; [guardian.ng](http://guardian.ng) sourced on 8/1/2024.