

**AN APPRAISAL OF THE LEGAL FRAMEWORK FOR THE ENFORCEMENT
OF ENVIRONMENTAL LAWS IN NIGERIA**

BY

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APRIL, 2020

DECLARATION

I hereby declare that this thesis entitled *An Appraisal of Environmental Management for Sustainable Development in International Law* is produced by me under the supervision of Prof. Yusuf Dankofa and Prof. I. F. Akande. It has not been presented for any previous application for higher degree. All quotations are indicated and sources of information are duly acknowledged.

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CERTIFICATION

This thesis entitled *An Appraisal of Environmental Management for Sustainable Development in International Law* by Aisha Usman Bukar meets the regulations governing the award of Master of Laws (LLM) Degree of Ahmadu Bello University, Zaria and is approved for its contribution to knowledge and literary presentation.

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DEDICATION

This work is dedicated first to my father; His Royal Highness, Alhaji Usman Abdullahi, the Ohimegye Opanda, who despite all odds would never give up on me, my mentor and my hero, whose sacrifices got me to where I am. I know if it were left to him alone, he would have given me all my dreams on a platter of gold. To you Sir, AGABA IDU! (The powerful Lion), May your reign continue to be fruitful and long in good health, Ameen.

My second dedication goes to my late mum, Hajiya Maryam Usman Abdullahi, the Queen of all Queens. My Nja (a word ordinarily known as Oyiza which mean sister in Egbura language but she was fondly called Nja by family members) who would give anything in this world, even her life at the end, just to give us the best of this world and the hereafter. A mother to all, an advocate of peace and our family strength, you are missed greatly. It is my prayer that I make it up to you in death than I ever did for you in life. May Allah in His infinite mercy cover you with His shroud of mercy and favours, Ameen.

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ABBREVIATIONS

Corporate Social Responsibility (CSR)

Department of Petroleum Resources (DPR)

Dispute Settlement Board (DSB)

Enugu State Waste Management Authority (ESWAMA)

Environmental Impact Assessment Act (EIA)

Federal Environmental Protection Agency (FEPA)

Gross Domestic Product (GDP)

International Court of Justice (ICJ)

International Environmental Law (IEL)

International Monetary Fund (IMF)

Kaduna State Environmental Protection Agency (KEPA)

Kaduna State Urban Development Agency (KASUPDA)

Kaduna State Urban Planning and Environment Agency (KASUPEPA)

Kwara State Environmental Protection Agency (KWEPA)

Lagos State Environmental Law (LASEL)

Local Governments Area (LGAs)

Millennium Development Goals (MDGs)

National Agency for Food and Drug Administration and Control (NAFDAC)

National Control and Response Centre (NCRC)

National Environmental Standards and Regulations Enforcement Agency (NESREA)

National Oil Spill Detection and Response Agency (NOSDRA)

National Orientation Agency (NOA)

National Water Resources Institute (NWRI)

Niger-Delta Development Commission Act (NDDC)

Nigeria Maritime Administration and Safety Agency (NIMASA)

Non-Governmental Organisation (NGOs)

Rivers State Waste Management Agency (RIWAMA)

States Environmental Protection Agencies (SEPAS)

The Nigerian Police Force (NPF)

United Nation (UN)

United Nations Committee on Environmental Development (UNCED)

United Nations conference on the Human and Environment (UNCHE)

United Nations Educational, Scientific and Cultural Organization (UNESCO)

United Nations Environmental Program, (UNEP)

United Nations Framework Convention on Climate Change (UNFCCC)

United Nations General Assembly (UNGA)

World Bank (WB)

World Business Council on Sustainable Development (WBCSD)

World Commission on Environment and Development (WCED)

World Trade Organization (WTO)

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ABSTRACT

The development of environmental management and sustainable development is borne out of the recognition that the environment is important and therefore human activities need to be guided strictly by enabling legal regimes so as to ensure environmental continuity for future generation. This general concern prompted the interest of the researcher in this area. The statement of the problem of this dissertation is borne out of the fact that management and protection of the environment can arguably be said to be one of the biggest contemporary issues and yet its effective protection remains unsettled. In addition, Nigeria is currently facing diverse environmental challenges ranging from depletion of natural forest, oil pollution, and desertification, high rate of soil degradation, gully and coastal erosion to the very recent large scale flooding. The aim of this work is to appraise the legal framework for the enforcement of environmental law in Nigeria. Thus, the objective of this dissertation is to examine the nature and scope of environmental management and sustainable development in Nigeria with a view to improving the implementation mechanism in Nigeria. The work relied on doctrinal method of research and places reliance on Statutes, Conventions, Case laws, books, articles in journals as well as internet materials. The dissertation found (among others) that, there was lack of adequate enforcement mechanisms in spite of the existing laws (at both local and national levels) on waste control and management. Finally, this dissertation was concluded by recommending (among others) that, the government at all levels should take proactive measures to strengthen institutional enforcement mechanisms in Nigeria

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the Research

The concern for a healthy environment became clearly evident from the actions and responses of the global community from late 60s and early 70s which gave rise to the informal conference on Human Environment organized in Stockholm in 1972. A critical look at this convention would show that the approach was to only tackle the problems as they arose and so, narrow in scope and aimed mostly in conservation of specific factors which were considered valuable resources to humans or to protect human health¹.

Towards the end of 1960s, the extent and implication of environmental degradation increased and became a focal point for public pressure on national government². It was at this time that focus on environmental degradation started to shift from ad-hoc attack of isolated environmental problems to a more holistic approach. Specifically, the United Nations Conference on the human environment in Stockholm in June 1972 brought enormous awareness of environmental problems to all nations of the world.

Despite various measures put in place by different nations, after this awareness there was no comprehensive plan, especially in developing countries to identify environmental problems and provide solutions nor was there hardly a machinery to create environmental consciousness³.

¹ Ladan, M. T. (2004). Materials and cases on Environmental Law. ECONET Publishing Co. Ltd. Zaria Nigeria p. 13.

² *ibid* p. 14

³ *ibid*

However, after the United Nations Conference on Environment and Development (UNCED) in 1992 where the seriousness of environmental issues were globally recognised and emphasized upon, many countries and institutions attempted to tackle these problems through various means.

1.2 Statement of the Research Problem

The effort by the government at all levels in Nigeria at ensuring sustainable development through numerous environmental legislation fiscal incentives and grants to environmental ministries and agencies remain largely elusive as Nigeria continues to experience complex environmental problems of atmospheric, noise and water pollution, oil pollution, climate change including flooding, coastal erosion, perennial oceanic surge and municipal solid waste management.

The reason for the minimal success recorded in the efforts of the Government towards ensuring sustainable development is the fact that the laws promulgated to this end are not effectively enforced. This is majorly as a result of weak regulatory frameworks that hamper successful implementation of environmental laws in Nigeria. Furthermore, because of weak or ineffective policy, enforcement is largely superficial thus environmental problems continue to grow to include urbanization, deforestation, desertification, over population and all kinds of pollution. The following are the research questions raised by this study:

1. What is the legal regime for environmental management and sustainable development in Nigeria?

2. What are the mechanisms established by the different levels of government for monitoring and enforcement of environmental management and sustainable development in Nigeria?
3. What are the challenges hindering effective enforcement of the laws and policies on environmental management and sustainable development in Nigeria?
4. What are the measures needed to ensure an effective enforcement of environmental law in Nigeria?

1.3 Aim and Objectives of the Research

The aim of this study is to appraise the legal framework for the enforcement of environmental laws in Nigeria. Arising from the aim, the objectives of this study is as follows:

- (i) Examine the legal regime for environmental management and sustainable development in Nigeria.
- (ii) Examine the mechanisms established by the different levels of government for monitoring and enforcement of environmental management and sustainable development in Nigeria
- (iii) To identify the challenges hindering effective enforcement of the laws and policies on environmental management and sustainable development in Nigeria
- (iv) To proffer viable measures for an effective sustainable development regime in relation to the challenges (identified) above in Nigeria.

1.4 Justification of the Research

The justification that warrants research on the subject matter is the fact that management and protection of the environment can arguably be said to be one of the biggest contemporary issues. This is borne out of the recognition that the environment is important and that proactive steps are taken to protect the environment from the effect of the various activities of man.

In addition, Nigeria is currently facing diverse environmental challenges ranging from depletion of natural forest, oil pollution, and desertification, high rate of soil degradation, gully and coastal erosion to the very recent large scale flooding. This is in spite of available environmental laws and policies targeted at ameliorating these problems. This research is further justified by the problems raised in the statement of research problem and its relevance to law students, law teachers and the general public.

1.5 Scope of the Research

This is a research in the field of international environmental law. Restrictively, it focuses on the legal and institutional framework for the enforcement of environmental law and policies in Nigeria. The study examines the nature and scope of environmental management for sustainable development in international law but it is also confined to the examination of the challenges constituting stumbling block to an effective protection of environmental management and sustainable development in Nigeria.

1.6 Research Methodology

This research employs the use of Doctrinal method of research. Doctrinal method of research also called library – based research is a method of research that relies on primary and secondary legal materials to understand, interpret, analyze and criticize legal

rules, norms and principles. The materials of interest in doctrinal method are Statutes, Conventions, Treaties, Protocols, Cases, which are primary sources and textbooks, articles in Journals, conference papers and newspapers as secondary materials.

1.7 Literature Review

The issue of environmental management for sustainable development is a very topical and contemporary one. Thus there abound lots of literatures on the subject matter. However most of the available literatures deal with some aspect of the topic and leaves out the others. In essence, no single material can be said to have adequately covered all the relevant issues related to the topic. Hence, the researcher consulted several works to bring about this study.

In the book⁴ titled “Environmental Law in Nigeria Theory and Practice”, the authors examined the concept, sources and legal and social challenges of environmental law. They most importantly discussed sustainable development and environmental law, seeking to establish the significant link between the two. The most valuable part of this book would have been the discussion on the legal framework for sustainable development. However, the discussion on this aspect is less than satisfactory. The authors dedicated little above one page of the book to discuss an important topic as the legal framework for sustainable development thereby making the discussion very shallow and merely introductory. This lacuna in the book greatly reduced the relevance of this book to this study.

⁴ Lawrence Atsegbua, et al. (2004) Environmental Law in Nigeria. Theory and Practice. Ababa Press Ltd. Lagos, Nigeria.

Also, in another book⁵, Ladan examined the scope and history of environmental law. He also examined the concept of environmental management as well as the promotion of sustainable development. He asserted that in the effort to define and achieve sustainable development, environmental law must continue to grow and adopt along with increasing understanding of the interrelationships within the environment and our part in it.

Harmelen, V. M., et.al in their article entitled “International Law of Sustainable Development: Legal Aspects of Environmental Security on the Indonesian Island of Kalimantan”⁶ examined the modern history of international environmental law in three main milestones: the Stockholm Declaration, the Report of the Brundtland Commission (also known as the World Commission on Environment and Development, WCED), and the Rio Declaration. These three central documents all refer to either sustainable development or its components. While the Stockholm Declaration makes no specific reference to it, several of its principles refer to its components. The report of the Brundtland Commission, on the other hand, places the concept of sustainable development in the centre of interest. With the Brundtland Commission a change took place. Instead of focusing on developmental needs and environmental concerns in terms of environment versus development, more attention was paid to something that would successfully combine environmental action with developmental needs in policies, strategies and programs. The report Our Common Future includes the most authoritative

⁵ Ladan M. T. (2004) Materials and Cases on Environmental Law. ECONET Publishing Co. LTD Zaria Nigeria.

⁶ (2005) Institute for Environmental Security Anna Paulownastraat 103, 2518 BC The Hague, The Netherlands, p.10.

definition of the concept: “Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs.” The work of Harmelen, et.al work is a comprehensive literature on sustainable management which is relevance to this work however; their research is limited to Indonesian Island of Kalimantan while this research aims at improving Nigeria situation.

In his book⁷, Ladan gave or brief overview of the development of environmental law in Nigeria as well as an appraisal of the NESREA Act. He stated that there are four broad issues being accorded highest priority in terms of Nigeria’s environmental problems. They are; ensuring sustainable industrial protection; preventing and reversing desertification; managing forest, wildlife and natural resources and combating floods and erosion. This work though very useful to this study, is however limited to the issues mentioned above.

Goosen, M.F. in his article entitled “Environmental management and sustainable development”⁸ examined how extreme poverty still affects the lives of one out of every five persons in the developing world. Soil degradation from erosion and poor irrigation practices continue to harm agricultural lands, jeopardizing production. The author noted that without a transition to more resource-efficient and less polluting farming methods, it will be difficult to meet world food needs without increasing the environmental burden that stems from intensive agriculture⁹. He further noted that for sustainable development

⁷ Ladan M. T. (2009). Cases and Policies in Energy, Mineral Resources, Climate change, Environment, Water, Maritime and Human Rights in Nigeria. Ahmadu Bello University Press Limited Zaria, Nigeria.

⁸ (2012) Published by Elsevier Ltd. Selection and peer-review under responsibility of ISWEE. <https://core.ac.uk/download/pdf/82027557.pdf>. Accessed on November 19, 2018, at 1:31pm. p.3-13

⁹ Ibid

to be meaningful, over- consumption has to be brought under control. In addition, in a free market economy, the private-sector may not bother to conserve nature. For the sake of profit, it may destroy forests, overuse mineral resources, or pollute air and water. The private-sector may not take into account social costs or benefits. Today there is an obsession with economic expansion. Growth should be defined not only in terms of the financial side but also in terms of societal and cultural parameters. The application of technology for the pursuit of profit has resulted in the overexploitation and the excessive utilization of natural resources¹⁰. The work of Goosen becomes relevant to this dissertation in the study of the promotion of sustainable development. However, the focus of the author is not particular on Nigeria which this dissertation considers important.

In another book¹¹, Ladan examined access to environmental justice in oil pollution and gas flaring cases in Nigeria. He examined the status and trend of environmental law in Nigeria. He asserts that the main advantage of focusing on procedural rights like access to effective justice is that it enables individuals and NGOs to enforce domestic environmental law which may help shape domestic environmental policy. He also opines that considering the high cost of litigation, especially environmental litigation, accessible and functional legal aid in a given system becomes the essential bedrock of right to justice. This work is however limited in its relevance to this work as it only focused on access to justice in environmental law.

¹⁰ Ibid

¹¹Ladan M. T. (2012) Trend in Environmental Law and Access to justice in Nigeria Lap. LAMBERT Academic Publishing Germany.

Ladan¹² provided an appraisal for a wide range of topical issues in environmental law. He examined the legal and policy frameworks on sustainable use and management of natural resources in Africa; Biodiversity resources law and policy for sustainable development in Nigeria as well as recent trends in environmental regulations in Nigeria between 2011 to 2013 among others. This work is perhaps the most beneficial work to this study as however its benefit is restricted to what has been listed.

Ikoni¹³ wrote an introduction to Nigerian environmental law. He highlighted a range of issues on environmental law ranging from, nature and concept of ecology, concept of environmental pollution, types of environmental pollution to the development of international environmental law. The most important part of this book is the discuss on achieving a sustainable world environment. The author identified level of illiteracy, sophistication, low level of hygiene consciousness and poverty as the factors that hamper the development of effective environmental protection measures in the society especially in the developing world. However, the book did not discuss any of these factors listed. Perhaps, it is because it is meant to be an introductory text to environmental law.

Fagbohun¹⁴ examined the character of sustainable development in colonial and post-colonial era in Nigeria as well as the institutional and administrative framework of environmental policy in Nigeria. He identified three major blocs of agents who are in a position to continue and maintain major policy shifts towards environmental protection.

¹² Ladan M. T. (2014) National Resources and Environmental Law and Policies for Sustainable Development in Nigeria. Ahmadu Bello University Press, Limited, Zaria, Nigeria.

¹³ Ikoni, U. D. (2010). An Introduction to Nigerian Environmental Law. Malthouse Press Limited Lagos, Nigeria.

¹⁴ Fagbohun A. O. (1999). Law and Policy in Nigeria: The Dilemma of the Concept of Sustainable Development Lagos State University Centre for Environment and Science Education Lagos, Nigeria.

These are the government bloc; the economic bloc and the pro-environment block. The government block are part of the three branches of government consisting of a host of policy making institutions and public bodies involved in rule – making, rule – adjudication and rule – enforcement. The economic bloc consists of all the major corporate productive and financial interest groups and includes the multinational corporations, financial organisations, international bodies and international development agencies. The pro-environmental block consist of a host of ecological oriented non-governmental organisations (NGOs), independent environmental research centres, a vast web of human right organisations and myriad of other organisations and think – tank bodies.

In Fagbohun’s opinion, the economic block are more concerned with profit – making, thus the block has often employed strategies that will produce a style of environmentalism more in line with the continuation of economic growth than with a move towards sustainable development. This classification or grouping of blocs by Fagbohun is an ingenious one as it helps us to understand the less than optimal result of environmental protection strategies despite the efforts of government and other interest group. This is because the economic bloc though not cohesive in appearance, posses a hard – core power centre which has unlimited access to official channels.

Sylvester Orhiere¹⁵ examines the concept of biodiversity and the biodiversity components in Nigeria. In addition, he examined conservation and utilization of biodiversity resources in Nigeria and concluded that though there are clear signs of

¹⁵ Orhiere, S. S. (1999). Biodiversity Conservation in Nigeria: The Role of the Nigerian Conservation Foundation (NCF), Lagos State University, Centre for Environment and Science Education Lagos, Nigeria.

Nigeria's growing awareness of its environmental problems, there is still however, a long march ahead in order to ensure that decision – makers take into account the long term sustainable productivities of the system they utilise. This work is highly restrictive to introductory discussions on biodiversity conservation in Nigeria.

In the book¹⁶ titled “Strategies for Sustainable Development in Nigeria”, contributors examined several issues relating to sustainable development in Nigeria. However, this book is hardly relevant to this study for the reasons. The first reason is that the whole discussions in the book are focused on the south – eastern states of Nigeria and particularly Anambra State. The second reason is that the book focused mainly on economic aspect of sustainable development, hardly was there any mention of the environment in relation to sustainable development.

The writers of the paper entitled ”Legal Framework for The Regulation of Waste in Nigeria”¹⁷, the problem of waste and the effective legal framework for solving it as well as the machinery for its enforcement in order to achieve a sustainable development was addressed. The writer discussed the main types, of waste viz: solid and liquid waste, toxic and radioactive, industrial and consumers waste. The paper is limited to discussions on waste only. The scope of this work is wider that waste management only.

In the paper entitled “Environmental Pollution and Challenges of Environmental Governance in Nigeria”¹⁸, the nature and scope of environmental challenges in Nigeria

¹⁶ Okechukwu Akaneme (ed.) (2012). Strategies for Sustainable Development in Nigeria. Onitsha Chamber of Commerce, Industry, Mines and Agriculture, Anambra State, Nigeria.

¹⁷ Nwufu C. C. ‘Legal Framework for the Regulation of Waste in Nigeria’. African Research. Review Journal, Ethiopia (2010). Vol. 4.

¹⁸ Oludayo A. Environmental Pollution and Challenges of Environmental Governance in Nigeria. British Journal of Arts and Social Science (2012) Vol. 10. No. 1.

was examined. The writer discussed the negative effect of industrialization to the ecosystem as well as the justification for environmental regulation. He identified some of the problem militating against achieving environmental protection to be inadequacies of Nigeria regulatory laws which are due to information shortcoming, administrative shortcomings and the problem of allocation of environmental responsibilities.

The article entitled “Policy Law and Environmental Protection in Nigeria: Charting Effective Measures against the E-Waste Challenge”¹⁹, the problem of electronic waste in Nigeria and the measures in place to mitigate it. The writer asserted that sustainable development is a visionary development paradigm that calls for a convergence between the three pillars of economic development, social equity and environmental protection. This paper though relevant is too restrictive to be of any serious importance to this study.

Obabori²⁰ and others appraised the concept of sustainable environment under Nigerian Law. They examined the meaning and concept of sustainable development and stated that the reasoning in sustainable development is to ensure that our environment is safe for human habitation and to check the adverse effect of emerging environmental problems. The title of the paper is very apt to this study but the same cannot be said if the content of the paper. The discussion is not thorough and therefore this paper has very little importance to this study.

¹⁹ Agu, O.B. Policy, Law and Environmental Protection in Nigeria: Charting Effective Measures against the E-Waste Challenges. *The Nigerian Law Journal* (2014). Vol. 17 No. 2.

²⁰ Obabori A. O. et al. An Appraisal of the Concept of Sustainable Environment under Nigerian Law. *Journal of Human Ecology* (2009) Vol. 28 No. 2.

Ladan²¹ reviewed the NESREA Act of 2007 and examined the antecedents of the Act and the major setbacks of the defunct Federal Environmental protection Agency (FEPA) Act and Regulations 1991 – 2006. The gaps identified were mainly that it lacked enforcement powers among other defects.

Okon, E. in his article entitled “the Legal Status of Sustainable Development in Environmental Law”²² examined the dilemma faced by states, international and national courts, and legal scholars in promoting sustainable development in environmental governance has always been whether sustainable development is a moral or legal concept and, if it is the latter, whether it has metamorphosed into a legal principle or rule capable of having normative value. This in the long run makes sustainable development one of which lacks precise definition. As such, its original conceptualisation is defined in ‘Our Common Future’ (otherwise known as the Brundtland Report) as “...development that meets the needs of the present without compromising the ability of future generations to meet their own needs”. The work of Okon, is directly of relevance to this dissertation because its covers the general basis of the subject matter except that it did not consider the present situation of Nigeria.

²¹ Ladan, M. T. Review of NESREA ACT 2007 and Regulations 2009. 2011: A New Dawn in Environmental Compliance and Enforcement in Nigeria. Law, Environment and Development Journal General Switzerland (2012). Vol. 8. No. 1.

²² (2015) Research Fellow and Head of International Law Department. <http://nials.edu.ng/index.php/2015-12-10-16-05-04/seminar/45-the-legal-status-of-sustainable-development-in-environmental-law>. Accessed on November 19, 2018 at 12:25pm.

Richardson, B.J., in his article entitled “Environmental law for Sustainability”²³ examined the relationship between environmental law and sustainability operates in at least two directions. First, environmental law may have an impact on sustainability, in terms of whether it helps to move societies toward ecologically sustainable patterns of production and consumption. Secondly, sustainability both as an idea and as a set of practices may have an impact on environmental law, for instance leading to a preference for some legal doctrines, institutions or instruments over others. It is easier to trace the latter kind of effects than the former, but, given the complexity of socio-legal phenomena, it is difficult to assess either with any certainty. The contributions to this book nonetheless explore both of these dimensions in fruitful and imaginative ways. Richardson’s work is of particular note to the study of the nature and scope of environmental management and sustainable development which is the focus of this dissertation.

In the paper “entitled Rethinking Environmental Law Enforcement in Nigeria”²⁴, the writers examined the deficiencies and challenges of environmental law enforcement. They identified the following as the major challenges of enforcement of environmental law in Nigeria; NESREA does not have enforcement powers over oil and gas sector, undue adherence to legalism, absence of mandatory disclosure of information by industries and poor communication among the material departments of federal ministry of environment.

²³ (2016) research gate publication on Environmental Law for Sustainability. <https://www.researchgate.net/publication/228162755>. Accessed on November 19, 2018 at 12:58pm. p.13

²⁴ Hakeem Ijaiya et al. Rethinking Environmental Law Enforcement in Nigeria. Beijing Law Review (2014). Vol. 5.

1.8 Organisational Layout

This work comprises of five Chapters; chapter one deals with the general introduction, highlighting on preliminary matters such as statement of the problems of the research, aims and objective of the study, justification, scope of the study, research methodology, literature review and organizational layout, all of which form the general basis for the comprehension of this dissertation.

Chapter two dwells on conceptual discourse of relevant key terms of the title of the dissertation such as the concept of environment, concept of environmental management, concept of sustainable development. Further this chapter considers the sources of international environmental law viz-a-viz its relationship with sustainable development in international law.

Chapter three discusses nature and scope of environmental management and sustainable development, the guiding principles of sustainable development and the legal framework for environmental management in international law with specific reference to Nigeria.

Chapter four examines the Regulatory framework for the enforcement of environmental laws in Nigeria. It specifically discusses some federal environmental legislation such as the Constitution, National Environment Standards and Regulations Enforcement Agency (NESREA) Act, Environmental Impact Assessment Act, Harmful Waste (Special Criminal Provisions) Act and the Petroleum Act among others, all of which establish on violators.

Chapter five as the concluding chapter provides a general basis for bringing this dissertation into conclusion through the examination of issues and challenges confronting the subject matter and suggested reforms for thereto.

CHAPTER TWO

CONCEPTUAL DISCOURSE

2.1 Introduction

In this chapter, the key concepts and goals of environmental management are explained in depth through the study of the concepts of environmental management and sustainable development. The chapter also considers the meaning and sources of international environmental law which includes international treaties, customary international, general principle of law and case laws.

2.2 Conceptual Discourse

For the purposes of the conceptual discourse the relevant key terms to be examined here include environment, environmental management, sustainable development and international environmental law all of which are needed for the comprehension of this dissertation and accordingly discussed below.

2.2.1 Concept of Environment

The Environment has been defined in the Black's law Dictionary, as: "The Totality of physical, economic, cultural, aesthetic and social circumstances and factors which surround and affect the desirability and value of property and also affect the quality of peoples' lives".²⁵

The above definition, though abstract, regards environment as a state of affairs of nature viewed holistically and based upon the milieu of man in his natural habitat. Various authors have made holistic representations of the environment. A particular

²⁵ Garner, A. B. (1999) Black's Law Dictionary, West Group, U.S.A,p.1200

exponent²⁶ is based on the view of environment that is not just based on nature or bio-physical systems, but as a totality (in other words taking a holistic view on the “concept of environment”) that results from the interactions of social, scientific-technological, political and economic systems with the bio-physical systems as people variously extract, utilize and manage natural and social resources to satisfy their needs and wants.

This definition is supported by another expression which states that the environment is the conditions and influences of the place in which an organism lives. In this definition organisms, include man, animals, plants and every living and non-living thing that exist in the atmosphere, water and earth. However, this definition of the environment fail to give enough impetus to the action of man in the environment considering that man is a reactionary agent in nature.

For the purposes of Law therefore, environment has been defined as: “The system of abiotic, biotic and socio-economic components with which man interacts and simultaneous to which he adapts, and transforms and uses in order to satisfy his needs²⁷”. Moving towards a sustainable environment requires simultaneous and balanced progress in the different dimensions of the environment that are totally and dynamically interdependent.

²⁶ Hugo Van Rooyen (2008) Environmental Systems in a systematic Approach to Education for sustainable environments. A model for education for sustainable development. The international journal on environment, cultural, Economic and Social Sustainability available at www.sustainability-Journal.com accessed on 24 June, 2018 at 3:09 pm

²⁷ ibid

Furthermore, this view on concept of environment is based upon a belief that environmental problem cannot be understood without reference to the social, scientific–technological, economic and political values of the societies in which they occur and that, as a result, the management of the current environmental crisis depends upon changes to human values concerning the environment²⁸. Human values form part of the personal dimension of the environment according to the Van Rooyen model²⁹. According to the Van Rooyen view on environment, there are seven dimensions of the environment; namely: Its bio-physical dimension (called the natural Environment), Economic dimension, Social dimension, Political-Juridical dimension, Scientific-technological dimension, Personal dimension and Contextual dimension all of which are further discussed below.

i. Bio-physical Dimension

This dimension (Sometimes called the natural environment) comprises of the bio-physical environment. In analyzing the term “bio-physical”; bio’ refers to living things in the natural environment, that is, plants and animals, including humans. “Physical” refers to the non-living components of nature and as such it includes things like the geographical location and size of the particular area we are looking at, climate, rainfall, hydrological characteristics, geology, soil type, air and so on. Thus, “bio-physical literally means the “the living and non-living components of the environment. A healthy bio-physical environment is crucial to human survival and health (mental and physical).

²⁸ *ibid*

²⁹Sustainable Development (Van Rooyen Model) at www.Researchgate.net/publication accessed on 15th March, 2020 at 2: 30 pm

ii. Economic Dimension

This dimension represents the acknowledged elements of the economy, namely; extraction and mining, production, manufacturing and commerce. Thus, the economic dimension of the environment provides a description of the economic characteristics and systems of a particular area. It therefore also covers the structure of that area's economy, economic growth, investments and future economic developments³⁰.

iii. The Social Dimension

The social dimension of the environment provides a description of the social characteristics of the specific area under discussion, including demographics, education, culture, employment, health, safety and security, welfare and general quality of life. This dimension, therefore, embraces the social institutions that both regulate and improve the lives of individuals and societies.

iv. Political-juridical Dimension

This represents those man-made structures and systems that regulate the processes and activities of human co-existence on earth. These include the political and legal structures manifested in governmental, civil society and private sector domains as well as those that manifest themselves at international, national and local levels. The core element within this dimension is government. By managing the legislative, executive and judicial matters of state, it enhances and co-ordinates the progress of society.

³⁰ Hugo Van Rooyen op.cit p.15

v. Scientific-technological Dimension

Science is about observation, identification, description, investigation, and explanation of phenomenon. The scientific method is generally described as a method that is based on these characteristics. For example, the physical sciences attempts to understand and then describe the physical universe around us.

vi. Personal Dimension

This dimension represents the characteristics of the person as an individual as far as it relates to their inter-relationship with the environment, while them, at the same time, being part of the environment (for man is part of or in the environment, but at the same time always in dynamic interaction with his environment). The behaviour of man is mostly driven by his own principal values and priorities.

vii. The Contextual Dimension

Each environmental situation occurs in a unique context. The combination of environmental factors from the different dimensions figuring in any situation or set of circumstances at a given point in time forms the context for environmental issues and /or problems. Environmental issues are unique in terms of one or more of their bio-physical, socio-economical, socio-cultural and political-juridical contexts. The inherent dynamic present in each of the preceding dimensions, together with the dynamic interaction between the various dimensions, creates a highly dynamic context. Moreover, environmental situations and issues are context specific. The same environmental issue, e.g. air pollution is different in Johannesburg compared to Cape Town, Lagos, New York or even Maiduguri compared to Calabar within a nation. It is therefore now clear that the term “environment” refers to a complex and dynamic concept.

Seen from another dimension, the above could be summarized as follows; process of improving the relationship between man and his environment; process of interaction between man and his environment; process of developing sound environmental management strategies; process of controlling human activities and process of tackling human activities in relation with its environment.

In conclusion, it is important to note that all definitions of environment agree on one basic point, that the environment includes the following; Natural resources both biotic, such as air, water, soil fauna, and the interaction between the same factors; property, which forms part of the cultural heritage, the characteristic aspect of the landscape.³¹

Furthermore, as Kiss and Shelton noted³², the ICJ, in its opinion on the legality of the threat or use of nuclear weapon includes a social dimension in the definition of the environment, stating that the environment is not an abstraction, but represents the living space, the quality of life and the very health of human beings including generations unborn. This description above made by Lawrence *et. al* conclusively confirms the validity of the analysis made above on the concept of Environment³³.

2.2.2 Concept of Environmental Management

Environmental management seeks to steer the development process to take advantage of opportunities, try to avoid hazards, mitigate problems, and prepare people for

³¹ Kiss A and Shelton D. (2004) International Environmental Law. UNEP, New York, Third Edition p.17

³² *ibid*

³³ Lawrence A. et al (2003). Environmental Law in Nigeria Theory and Practice, ABABA Press Ltd. Lagos. p. 58.

unavoidable difficulties by improving adaptability and resilience³⁴. The ecological balance and ecosystem stability are duly maintained by nature but the emergence of modern industrial era has disturbed the ecological balance through industrialization, technological revolution, faster growth of means of transportation, exploitation of resources and urbanization³⁵.

In other words, the anthropogenic activities of modern ‘economic and technological’ man have disturbed the harmonious relationships between the environment and human beings. Environmental management is thus, the process to improve the relationship between the human beings and environment which may be achieved through check on destructive activities of man, conservation, protection, regulation and regeneration of nature. In the light of this, Environmental management could be defined as a process concerned with human environment interactions, and seeks to identify: what is environmentally desirable; what are the physical, economic, social and technological constraints to achieving that; and what are the most feasible options³⁶. It could also be defined as an approach which goes beyond natural resources management to encompass the political and social as well as the natural environment which is concerned with questions of value and distribution, with the nature of regulatory mechanisms and with interpersonal, geographic and intergenerational equity³⁷.

³⁴ Erickson and King, 1999; International Network for Environmental Management website <http://www.inem.org> –accessed on November 19, 2018 at 1:48pm.

³⁵ Ladan, M. T. (2004) Materials and Cases on Environmental Law and Policy. ECONET Publishing Co. Ltd. Zaria Kaduna, p. 23.

³⁶ Erickson and King, 1999; op.cit. p.16

³⁷ Clarke, R., Birkbeck College, University of London: Personal Communication, in Erickson and King, *ibid*, p.39

Environmental management could also mean a formulation of environmentally sound development strategies when consider as an interface between scientific endeavour and policy development and implementation³⁸. Thus, formulation of environmental policies create synergy with allocation of natural and artificial resources and by so doing, environmental management is also perceived as the process of allocating natural and artificial resources so as to make optimum use of the environment in satisfying basic human needs at the minimum, and more if possible, on a sustainable basis³⁹.

Environmental management is the control of all human activities which have a significant impact upon the environment and as such it becomes a management of the environmental performance of organisations, bodies and companies⁴⁰. In this regard, it could be also be related to a decision-making process which regulates the impact of human activities on the environment in such a manner that the capacity of the environment to sustain human development will not be impaired⁴¹.

Environmental management is also a generic description of a process undertaken by systems-oriented professionals with a natural science, social science, or, less commonly, engineering, law or design background, tackling problems of the human altered environment on an interdisciplinary basis from a quantitative and/or futuristic viewpoint⁴². However, it should be noted that environmental management cannot hope to master all of the issues and environmental components it has to deal with. Rather, the environmental manager's job is to study and try to control processes in order to reach

³⁸ S. Macgill, Leeds University, UK: Personal Communication, in Erickson and King, *ibid*, p.16

³⁹ *Ibid*, p.65

⁴⁰ Sharratt, (1995), *Ibid*

⁴¹ *Ibid*, p.60

⁴² Dorney, (1989), in Erickson and King, *ibid*, p.15

particular objectives⁴³. From the above discussion, environmental management has two major aspects: viz; Socio-economic development and Stability of biosphere in general and stability of individual ecosystems in particular both of which are discussed below. This research adopts the aspect that deals with stability of biosphere in general and stability of individual ecosystems

i. Socio-Economic Development

Socio-economic development is a process that seeks to identify both the social and the economic needs within a community, and seek to create strategies that will address those needs in ways that are practical and in the best interests of the community over the long run⁴⁴. The general idea is to find ways to improve the standard of living within the area while also making sure the local economy is healthy and capable of sustaining the population present in the area. Socio-economic development occurs in neighborhoods in metropolitan areas, sections of smaller cities and towns, and even in rural settings.

ii. Stability of Biosphere and Stability of Individual Ecosystems

The Process of creation of the organic substance accumulating energy, and opposite processes of its decomposition with liberation of this energy are equally necessary for life existence. All chemical compounds accessible to live organisms in biosphere have a limit⁴⁵. In essence, the relationship between man and the ecosystem should be symbiotic and mutually beneficial. The stability of the ecosystem and biosphere in general must not

⁴³ Royston, (1978, Ibid.

⁴⁴ Paragraph 1 Our Common Future: Report of the World Commission of Environment and Development available at www.un.documents.net. Accessed on 24th December 2016 at 2:50pm.

⁴⁵ Kaj Barlund. Sustainable development – concept and action available at www.unece.org/ves/nutshel/2004-2005. Accessed on 25 May 2018 at 5:00 pm

be compromised in an attempt to create strategies that will address the needs of man through socio-economic development.

2.2.3 Concept of Sustainable Development

Sustainable development is most commonly defined as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”⁴⁶. The concept became one of the most successful approaches to be introduced in many years. In fact, it helped to shape the international agenda and the international community's attitude towards economic, social and environmental development. The concept supports strong economic and social development, in particular for people with a low standard of living. At the same time it underlines the importance of protecting the natural resource base and the environment. Economic and social well-being cannot be improved with measures that destroy the environment. Above all, intergenerational solidarity is crucial as it takes into account the impact of the development on the opportunities for future generations.

Thus, the term ‘sustainable development law’ describes an emerging corpus of international legal principles and instruments which address the intersections between international economic, environmental and social law (including human rights law), towards development that can last for the benefit of present and future generations. In international law, the concept of sustainable development has gained some definition over the course of the past two decades. It is not clear that sustainable development has, as yet, the character of a customary norm of international law. But neither is it void of all

⁴⁶ Ibid

meaning or normative value in international law. Rather, it can be argued that the concept of sustainable development has a dual nature in international law. It can be considered an international norm, which serves to reconcile other conflicting norms related to the environment, the economy and social development (including human rights), and also simply the object and purpose of many international treaties and legal instruments. In the recent decisions of international courts and tribunals, the concept of sustainable development facilitates the reconciliation and integration of other norms concerning socio-economic development and protection of the environment. It appears to have played such a role in *Gabcikovo vs Nagymaros*⁴⁷ (involving *Hungary vs Slovakia*) Case at the International Court of Justice: where it was said that:

Throughout the ages, mankind has, for economic and other reasons, constantly interfered with nature. In the past, this was often done without consideration of the effects upon the environment. Owing to new scientific insights and to a growing awareness of the risks for mankind for present and future generations of pursuit of such interventions at an unconsidered and unabated pace, new norms and standards have been developed, set forth in a great number of instruments during the last two decades. Such new norms have to be taken into consideration, and such new standards given proper weight, not only when States contemplate new activities but also when continuing with activities begun in the past. This need to reconcile economic development with protection of the environment is aptly expressed in the concept of sustainable development⁴⁸.

⁴⁷ (1997) ICJ Reports, 88. Judgement delivered on 25th September, 1997.

⁴⁸ *Ibid*

The Permanent Court of Arbitration reaffirmed this reasoning in its Arbitral Award for the Arbitration Regarding the Iron Rhine Railway (*Belgium vs Netherlands*)⁴⁹. In this case, The Netherlands, which had created nature reserves along the path of the historic ‘Iron Rhine’ railway line, sought to prevent its reactivation. Belgium argued that the upgrading of the Iron Rhine Railway was part of a shift from road to rail transportation, assisting in the reduction of greenhouse gases, in order to contribute to sustainable development. The Tribunal balanced environmental protection against socioeconomic development, finding that the application of environmental measures by the Netherlands could not amount to a denial of Belgium’s transit right, nor could these measures render the exercise of such a right unreasonably difficult. In its reasoning, the Tribunal refers to the “notion of sustainable development”, which is that;

Environmental law and the law on development stand not as alternatives but as mutually reinforcing, integral concepts, which require that where development may cause significant harm to the environment, there is a duty to prevent, or at least mitigate such harm. This duty, in the opinion of the Tribunal which has now become a principle of general international law applies not only in autonomous activities but also in activities undertaken in implementation of specific treaties between the Parties⁵⁰.

The implications of these cases for the meaning of sustainable development in general international law are clear. In instances where trade liberalization rules, as economic development norms, intersect with environmental norms, the concept of

⁴⁹ (1957) ICJ Report, No. 38

⁵⁰ Ibid

sustainable development may play a normative role in guiding a balanced, mutually supportive, integrated outcome. It may also, as is touched upon below, play such a role when social development norms are involved.

Sustainable development means the process of progressive change in the quality of life of human beings, which places them as the Centre and primary subjects of development, by means of economic growth with social equity and transformation of production methods and consumption patterns, sustained by the ecological balance and life support systems of the region. This process implies respect for regional, national and local ethnic and cultural diversity, and full public participation, peaceful coexistence in harmony with nature, without prejudice to and ensuring the quality of life of future generations. In summary, nevertheless sustainable development could mean the following⁵¹:

- i. Environmental care ‘married’ to development⁵².
- ii. Improving the quality of human life while living within the carrying capacity of supporting ecosystems⁵³.
- iii. Development based on the principle of inter-generational (i.e. bequeathing the same or improved resource endowment to the future that has been inherited), inter-species and inter-group equity⁵⁴.

⁵¹ Barrow, C.J., (2006), Environmental Management for Sustainable Development, Routledge Publishers , 270 Madison Ave, New York, USA, p.23. See also <http://marno.lecture.ub.ac.id/files/2012/06/PENGELOLAAN-LINGKUNGAN-UNTUK-PEMBANGUNAN.pdf>. Accessed on November 20, 2018, at 12:52pm.

⁵² Ibid

⁵³ Ibid

⁵⁴ Ibid

- iv. Development that meets the needs of the present without compromising the ability of future generations to meet their own needs. An environmental ‘handrail’ to guide development⁵⁵.
- v. A change in consumption patterns towards more benign products, and a shift in investment patterns towards augmenting environmental capital⁵⁶.
- vi. A process that seeks to make manifest a higher standard of living (however interpreted) for human beings . . . that recognises this cannot be achieved at the expense of environmental integrity⁵⁷.

More than a decade of experience of sustainable development work has produced both successes and challenges. One of the successes is the widespread local activity. Thousands of municipalities have taken the promotion of sustainable development seriously, with subsequent increased awareness and improved performance. But, of course, many problems still persist, for instance lack of understanding of the concept in administrations, insufficient political support, limited resources at different levels for effective action, inadequate involvement of civil society, inertia in education systems and various problems in specific sectors of the economy⁵⁸.

On the other hand, it was pointed out that different win-win solutions do exist. Active social housing policies promote social inclusion and equity, boost economic growth, and increase mobility and labor productivity. Likewise more sustainable transport leads to less pollution and fewer environmental and health problems, less

⁵⁵ Ibid

⁵⁶ Ibid

⁵⁷ Ibid

⁵⁸ Ibid

congestion and fewer accidents. One of the cross-cutting issues to promote sustainable development that has gained prominence recently is education. Even if sustainable development is not a scientific concept enabling understanding of the different interactions in relation to it, decision-makers and ordinary citizens would benefit from more learning. The United Nations Decade for Education for Sustainable Development starting in 2005 and led by the United Nations Educational, Scientific and Cultural Organization (UNESCO) illustrates the importance of education in achieving sustainable development.

In view of the foregoing, it would be correct to say that, the concept of sustainable development is clearly relevant not only to international law related to the environment and to natural resources, but it is also directly relevant for economic and trade law, and has been further defined in these contexts.

2.3 Meaning and Sources of International Environmental Law

The essence of discussing the meaning and sources of environmental law is to identify the requirements of legality and through which legal norms are made. However, this approach does not entail that the law-making methods listed in Article 38 of the International Court of Justice (ICJ) Statute have ceased to matter in International Environmental Law (IEL)⁵⁹.

⁵⁹ Brunnée, J. (2017), *The Sources of International Environmental Law: Interactional Law* (May 26, 2016). Samantha Besson & Jean d'Aspremont, eds., *Oxford Handbook on the Sources of International Law* (2017), Forthcoming. Available at SSRN: <https://ssrn.com/abstract=2784731>. Accessed on November 20, 2018, at 1:08pm.

2.3.1 Meaning of International Environmental Law

International environmental law is the body of international law that concerns the protection of the environment. Originally, it was associated with the principle that, states must not permit the use of their territory in such a way as to injure the territory of other states. However, international environmental law has been expanded by several and different legally- binding international agreements. These include a wide variety of issue-areas from terrestrial, marine and atmospheric pollution through wild life and biodiversity protection⁶⁰. This environmental problem could have an international dimension in obvious respects, for example, pollution generated within a particular state often has a serious impact upon other countries. The prime example will be acid rain, where chemicals emitted from factories rises in the atmosphere and reacts with water and sunlight to form acids. These are carried in the wind and fall eventually to earth in the rain, often thousands of miles away from the initial polluting event⁶¹. Thus, international environmental law aims to protect the biosphere from major determination that could endanger its present of future functioning⁶².

2.3.2 Sources of International Environmental Law

International environmental law derives its contents from four main sources: These are: International agreements (also called treaties, conventions, international legal Instruments, pacts, protocols, covenants); Customary international law; General principles of law and Other new sources (for example, court decisions that is, case law, resolutions; declarations, doctrine, recommendations given by world organizations).

⁶⁰ Ikoni, U. D.op.cit,p18

⁶¹ Shaw, M.N., (2005) International Law fifth edition, Cambridge University Press, United Kingdom, p.754

⁶² Ikoni, U.D., op.cit, p.18

i. International Agreements

International environmental agreements can be bilateral, regional or multilateral in nature. The Multilateral Environmental Agreements, frequently known as MEAS have become far more common in recent decades. Treaty law is known to be a traditional source of law⁶³. The majority of the conventions relating to international environmental law are specific as they deal directly with environmental issues. There are about thousands of environmental law treaties in existence today; no other area of law has generated such a large body of conventions on a specific topic.

Treaties can assist the crystallization and specification of pre-existing shared understandings. Indeed, given the practical challenge of capturing and communicating shared understandings in international settings, a treaty will often be an important step in interactional law-making. After all, the number of actors in the international arena is large and the opportunities for direct interaction are so limited that ‘snap shots’ of the common ground are often necessary to advance the law-making process. Treaties also facilitate the involvement of non-state actors, such as NGOs or representatives of salient expert communities in this process. While states remain the formal lawmakers, the non-state actors engaged in a given regime have considerable scope to inform and even influence the law-making process. Treaties can also provide for robust legality, grounded in the basic rules and practices of treaty making and treaty application, framed by the Vienna Convention on the Law of Treaties.⁶⁴ It is no accident that these universally supported rules and practices reflect, to a very large extent, the criteria of legality set out

⁶³ Shaw, M. N. op cit, p.18

⁶⁴ Vienna Convention on the Law of Treaties (Vienna, 23 May 1969, 1155 UNTS 331).

above. Through these rules, treaty law provides an array of mechanisms aimed at ensuring that a given treaty accords with the requirements of legality.⁶⁵ As a general matter, therefore, treaties provide not only law-making processes, but also 'places' where binding legal rules can be found.⁶⁶

ii. Protocols

Protocols are like mini agreements that “hang off” the main treaty. They exist in many areas of international law but are especially useful in the environment field, where they can be used to update scientific knowledge. They also permit countries to reach agreement on a frame work agreement that would otherwise be contentious, by allowing the details to be left to a later date for determination. Protocols are much easier to generate than a treaty and they can enter into force very quickly. The most widely known protocol in international environmental law is the Kyoto Protocol. Kyoto Protocol is an international treaty which extends the 1992 United Nations Framework Convention on Climate Change (UNFCCC) that commits state parties to reduce greenhouse gas emissions, based on the scientific consensus that (part one) global warming is occurring and (part two) it is extremely likely that human-made CO₂ emissions have predominantly caused it.

iii. Customary International Law

This is very important in international law. These are the norms and rules that countries follow as a matter of custom and they are so prevalent that they bind all states in the world. When a principle becomes customary law is not clear cut and many arguments are

⁶⁵Brunnée, J. (2017), *The Sources of International Environmental Law: Interactional Law*, op.cit, p.5

⁶⁶Ibid

put forward by states not wishing to be bound. Examples of customary international law relevant to the environment include: The duty to warn other states promptly about emergencies of an environmental nature

iv. Judicial Decisions

International environmental law also includes the opinions of International Courts and Tribunal. While they are few and have limited authority, the decisions carry much weight with legal commentators and are quite influential on the development of international environmental law. The courts include: The International Court of Justice (ICJ); the law of the Sea Court; European Court of Justice; Regional Treaty Tribunals. Arguably the World Trade Organization's Dispute Settlement Board (DSB) is getting a say on environmental law also.

2.4 Evolution of Environmental Management and Sustainable Development in International Law

Conceptual thinking of the environment began in the 1960, with Environmental management being mostly concerned with abating pollution caused by over development in the developed countries. The first United Nations global meeting to discuss the issue of environment and its impact on mankind was held in Stockholm in 1972, called the United Nations conference on the Human and Environment (UNCHE) and attended by world leaders and top environmental scientists. The process of environmental management is related to the rational adjustment of man to judicious exploitation and utilization of natural resources without disturbing the ecosystem balance and ecosystem equilibrium.

It was however characterized by many controversies, mostly emanating from the suspicion of the developing nations which felt that the conference was a ploy of the developed world to discourage ways of development in the third world, with some of them claiming that the conference was designed by heavily urbanized and industrialized developed nations consequent upon which the island countries of the Pacific decided not to attend. This is thus why UNCHE was only a modest success⁶⁷.

However in 1975, based on UNCHE outcome and recommendations, a new International Organization was established called United Nations Environmental Program, (UNEP). With the aid of UNEP, many countries began forming their own environmental committees, agencies and ministries. Some nations, based on UNCHE recommendations, started to set environmental standards and formulate environmental legislation. UNEP held the world's first ministerial level conference on the environment in 1982, adopting the Montevideo program for the development of International Environmental law which framed most of its normative activities⁶⁸.

Consequently, a World Commission on Environment and Development (WCED) was established in 1984, chaired by Gro Harlem Brundtland, who was at that time prime minister of Norway. WCED was an independent body linked to, but outside of, the UN system. Later, it was more commonly known as the Brundtland Commission. Its mandate was to examine critical environmental and developmental issues and formulate realistic proposals for dealing with them, to propose new forms of international cooperation on these issues in order to influence policies toward needed change and raise levels of

⁶⁷ Ibid

⁶⁸ Ibid

understanding and commitment to action of individuals, organizations, businesses, and governments. If the natural resources are overexploited, it will affect socio-economic development of a nation. Thus, environmental management must take into consideration the ecological principles and socioeconomic needs of the society i.e., it involves socio economic developments on one hand and maintenance of environmental quality on other hand.

Hectic international and national debate and activity were triggered by the report's publication. Actors from the entire social spectrum saw opportunities for using the new concept. It was soon pointed out that the concept was both broad and vague - its content could be given different interpretations⁶⁹. The Brundtland Commission, named after Norway's former Prime Minister, Gro Harlem Brundtland, who chaired it, found an eager audience for its proposals at the United Nations Conference on Environment and Development in Rio de Janeiro in 1992. The documents approved at the Conference, notably the comprehensive Agenda 21, included ambitious commitments by world leaders to ensure sustainable development in many areas and on all levels of society. The Rio Conference gave a boost to both national and local action.

National committees for sustainable development were established on a high political level in many countries. Local Agenda 21 documents and action plans were drawn up in a great number of municipalities. Many corporations jumped on the bandwagon and the newly established United Nations Commission for Sustainable Development started to scrutinize the implementation of the Rio decisions at its annual

⁶⁹ Ibid

meetings⁷⁰. At the same time, a skeptical debate about the concept continued, as one of the most striking characteristics of the term "sustainable development" is that it can mean all things to all people.

In the environmental community which is our concern, many accused government and business of "cosmetic environmentalism" under the umbrella of the concept⁷¹. Some felt that the term "sustainable development" was used as an alibi rather than as guidance for strong action. Another critical argument was related to the de facto dominance of environmentally centered actors in the work. These critical voices demanded more emphasis on the economic and social "pillars" of the concept.

More recently it has been argued that the political acceptability of sustainable development depends on its capacity to respond to a country's persistent social problems. It has also been noted that the economic "pillar" has to be integrated in the concept as a whole and not be seen as an independent part of it⁷². However, the term does not give any guidance on how to arbitrate between the unavoidably conflicting objectives of economic rationality/profitability, social justice and ecological equilibrium.

In particular, the social pillar poses its own complex problems of measurement. There does not seem to be a consensus on what is to be understood by "social" in the first place. Moreover, most social phenomena are difficult, often impossible, to quantify. Despite the cloud of ambiguity hanging over the concept of sustainable development, the international community has continued using it. The concept has been seen as inclusive

⁷⁰ Kiss A and Shelton D, op.cit

⁷¹ Ibid

⁷² Kaj Barlund. Sustainable development concept and action. See also www.unece.org/ves/nutshel/2004-2005. Accessed on 25 May 2018 at 5:00 pm

and operational enough to make meaningful action in pursuit of sustainable development possible and broadly supported. The preparations for the 2002 Johannesburg Summit on Sustainable Development showed that the enthusiasm of Rio had started to wane, but high-level political support for the process persisted⁷³.

The focus, however, clearly changed from all-encompassing attempts to cover a great number of areas simultaneously to a more practical approach with the emphasis on a limited number of substantive areas at a time. In this context the United Nations regional commissions were given stronger recognition for implementation than before. It was felt that better implementation demanded devolution of the global process. Because of the diversity of the region between them and within, using the same global actions for all regions was considered to be too rigid. The regional contributions from the outset brought an additional dimension to the process, giving further emphasis to practical solutions that can be implemented on the ground.

In conclusion, the impact of environmental management and sustainable development cannot be over emphasised because they strictly concern the human need and its continuous improvement. Therefore, a good fulfillment of this study requires examination the nature and scope of environmental management and sustainable development which is considers in the next chapter.

⁷³ Ibid

CHAPTER THREE

NATURE AND SCOPE OF ENVIRONMENTAL MANAGEMENT AND SUSTAINABLE DEVELOPMENT

3.1 Introduction

This chapter examines the nature and scope of environmental management and sustainable development with specific discourse on nature of environment management, scope of environmental management, nature of sustainable development as well as scope of sustainable development. The chapter further discusses the guiding principles of sustainable development as well as the progress and achievement in sustainable development despite challenge.

3.2.1 Nature of Environmental Management

Environment is generally defined as the sum total of water, air and land, inter-relationships among themselves and with human beings, also with other living organisms and properties. To buttress this point, the National Environmental Standards and Regulation Enforcement Act¹ of Nigeria define Environment to include water, air, land and all Plants and human beings or animals living therein and the inter-relationships which exist among these or any of them². Environment in this sense encompasses a community of living things and their relationships to their surrounding.

That the environment is threatened in all its biotic and biotic components (animals, plants, crops) and ecosystems comprising biological diversity (water, soil and air) which form the physical components of habitats and ecosystem, and all the

¹ NESREA (Establishment)(Amendment) Act 2018

² Section 38 ibid

interactions between the components of biodiversity and their sustaining habitats and ecosystems, is to state the obvious³. With the continued increase in the use of chemicals, energy and non-renewable resources by an expanding global population, associated environmental problems will also increase. Despite increasing efforts to prevent waste accumulation and to promote recycling the amount of environmental damage caused by over consumption of resources, the quantities of waste generated and the degree of unsustainable land use appear likely to continue growing⁴.

The aim of environmental management and protection is therefore to prevent, halt and or reverse environmental degradation through appropriate use of biotechnologies, while supporting safety procedures as an integral component of environmental development protection programmes with specific targets making optimal use of natural resources by recycling biomass, recovering energy, minimizing waste generation, promote the use of biotechnologies with emphasis on bio-remediation of land and water, waste treatment, soil conservation, reforestation, afforestation and land rehabilitation. To apply biotechnologies and their products to protect environmental integrity with a view to long-term ecological security⁵.

Environmental Management promotes due regard for physical, social and economic environment of the enterprise or projects. It encourages planned investment at the start of the production chain rather than forced investment in cleaning up at the end. It generally covers the areas as environment and enterprise objectives, scope, and structure of the

³ Ikoni U. D. (2010) An introduction to Nigerian Environmental Law. Malthouse Press Limited, Lagos. p.7.

⁴ Ibid

⁵ Ibid

environment, interaction of nature, society and the enterprise, environment impact assessment, economics of pollution, prevention, and environmental management standards.

One of the fundamental beliefs is that the people who live near or in a threatened ecosystem are those who are best positioned to repair and protect that system for the long term. Or, put another way, its believed that when people understand that their quality of life is reliant upon the health of their natural environment and that they have a direct hand in identifying and creating ways to protect and sustainably use their natural resources, both nature and people are served thus the emphasis on environmental development by every developing nation or developed nation.⁶

In Environmental Management, government, sometimes partnering with willing organizations act strategically, community by community, building on common interests and goals, to create alliances that will lead to cumulative, positive impacts—impacts that are not just local but on a regional scale and beyond.

3.2.1 Scope of Environmental Management

A study of environmental management is getting a lot of attention not only in the field of pollution control but also to sustain life and nature, thus, the scope of environmental science and its management has increased from manufacturing pollution control equipment, sewage and effluent treatment plants, biomedical waste treatment and mere company environmental management to something with a bigger scope and perspective.

⁶ Ibid p.20

In Nigeria, we have been witnessing significant environmental degradation during the last few decades. Increasing industrialization, high-intensity agriculture, (use of fertilizers and pesticides) deforestation, soil erosion, urbanization, transportation and population growth are the major environmental problems and these are likely to increase⁷. If the desire to lead higher living standard also increases, then problem would be too acute to be manageable. The ecological balance and ecosystem stability are duly maintained by the nature itself but the emergence of modern industrial era has disturbed the ecological balance through heavy industrialization, technological revolution, faster growth of means of transportation, rapacious exploitation of resources and unplanned urbanization.

In other words, the anthropogenic activities of modern ‘economic and technological’ man have disturbed the harmonious relationships between the environment and human beings. Environmental management is thus, the process to improve the relationship between the human beings and environment which may be achieved through check on destructive activities of man, conservation, protection, regulation and regeneration of nature.

The process of environmental management is related to the rational adjustment of man with nature involving judicious exploitation and utilization of natural resources without disturbing the ecosystem balance and ecosystem equilibrium. If the natural resources are overexploited, it will affect socio-economic development of a nation thus, environmental management must take into consideration the ecological principles and

⁷ Ibid

socioeconomic needs of the society i.e., it involves socio economic developments on one hand and maintenance of environmental quality on other hand.

Environmental management is very wide in scope and includes all the technical, economical and other aspects of environment. The broader features of environmental management include: Identifying the environmental problem and to find its solution; restrict and regulate the exploitation and utilization of natural resources; regenerate degraded environment and to renew natural resources (renewable); control environmental pollution and gradation; reduce the impacts of extreme events and natural disaster; make optimum utilization of natural resources; assess the impacts of proposed projects and activities on environment; review and revise the existing technologies and make them eco-friendly; formulate laws for the implementation of environmental protection and conservation programs. In this section, the study examines in some detail, the Nature and Scope of sustainable development.

3.2.2 Nature of Sustainable Development

The definition of sustainable development of the United Nations Committee on Environmental Development (UNCED) is still the reference. It stresses above all the satisfaction of the “needs”: Sustainable development intends to meet the “needs” of the present without compromising the ability of future generations to meet their own “needs”⁸.

⁸ Paragrap 1 our common future: Report of the world commission of environment and development at www.un-documents.net. Net accessed on 15th January, 2017 at 10:am

These “needs” arise out of the bodily demands: food, clothing, shelter, sleep, heat etc. They cover all what is essential to physical life. The “needs” are not very numerous because they are natural, legitimate and real. They differ from “desires”, which come close to the mental and consequently are innumerable, imaginary and artificial. It is obvious that the definition of sustainable development refers to legitimate “needs”, easier to satisfy than artificial “desires”. A society based on “desires” is definitely destined to be unsustainable as they are too innumerable to be able to be satisfied. So, what have these “needs” to do within such a definition? They should be satisfied even before being concerned by sustainable development. This is the least we could expect from a so-called civilized society.

Unless the definition also covers the “need” for pure air, fresh water, space etc. of every living being, who would be nothing without the air he breathes, the water he drinks, the nature surrounding him etc. In which case, it should not be limited to the “needs” of human beings only, but also extended to fauna and flora. However, the definition of sustainable development does not seem to point in this direction. It is nevertheless because of the ambiguous notion of “needs” that economic, social and environmental aspects are raised, which, considered all together, converge towards the same goal:

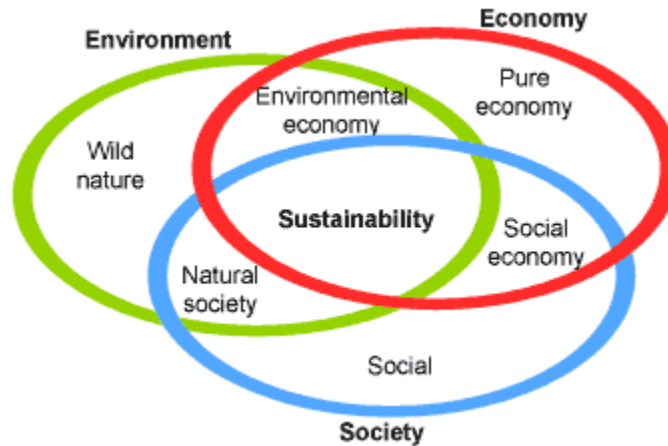


Fig 1 of Sustainable Development (Van Rooyen Model⁹)

As shown by the preceding diagram, wild nature and natural society are not part of sustainability. Their regression is one of the most striking features of the present world, which will definitely lead to an irreversible loss of cultural and biological diversity. In contrast to temperate forests, rain forests do not play a key role in the carbon cycle, but constitute an immense biodiversity reservoir, which should be preserved to respond to the “needs” of future generations. However, it is wishful thinking, for the loss of cultural and biological diversity is inevitable, with or without sustainable development, but it can be managed. If sustainable development tries to reconcile economic, social and environmental issues for the better, it nevertheless cannot respond to the specific “needs” of each of these spheres. The tools of sustainable development must naturally facilitate the alliance between economic, social and environmental issues. They are numerous and various and can apply to all levels, from the international to the local one. They go from

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the 21st century Agenda to the fair trade while passing by new production, transportation and consumer modes, in our new world.

The diagram below shows that economic issues lean on social ones and social issues on environmental ones. The economy occupying the highest of the three storeys, the market forces were naturally called upon to help remedy the damage they had caused. Just as the “social economy” beforehand, the “environmental economy” appeared to compensate the deficiencies of the neo-classical economy (“pure economy”). However, “social economy” and “environmental economy” are no more part of durability than wild nature and natural society (see the diagram above). Therefore, “environmental economy” cannot constitute the cornerstone of sustainable development. One of the basic points of “environmental economy” consists in appreciating the value of “goods and services” provided by nature and finding the market mechanisms able to integrate it into economic decisions that pass notably through the effective incorporation of damages caused to the environment (external costs) into prices. That is particularly true for the transport sector where no real competition between the various modes is possible outside real prices. The institution of environmental taxes on pollutants or natural resources compensated by a decrease of labour taxes or social contributions in order not to increase the global fiscal load; trading exchanges of polluting permits; integration of environmental performance into business bookkeeping.

3.2.3 Scope of Sustainable Development

The principle of sustainable development, even as a non-justiciable soft law, has an autonomous legal scope of a materially constitutional nature. One must then see it from a certain distance, as a development paradigm aiming towards the general integration, at all

levels and in all fields, by the lawmaker and the judge, of the interests of unborn generations who are by definition not represented democratically and judicially.

Sustainability requirements, like market and financial requirements of a product must be prioritized in the design process. For example, manufacturing and lifecycle use of a product have multiple environmental/social impacts including climate change, human health and biodiversity. Every product used, has once been in a factory. It is beyond our imagination to think what damages large scale manufacturing does to the environment. What we do not see in our daily life is that there is a world outside our cities, filled with polluted air, water and land. We are in a delusion that we can exploit natural resources, but the exploitation has already begun¹⁰. This is where a need for development in a sustainable fashion must be considered by designers. Every product must pass a sustainability assessment. Sustainability is not only about environment, but is substantially affected by economic and social criteria too. Therefore, these must be the very criteria of prioritizing sustainability requirements.

3.3 The Guiding Principles of Sustainable Development

The key principle of sustainable development underlying all others is the integration of environmental, social, and economic concerns into all aspects of decision making. All other principles in the sustainable development framework have integrated decision making at their core. It is this deeply fixed concept of integration that distinguishes sustainability from other forms of policy¹¹.

¹⁰ Ikoni U.D. Op. Cit. at p.28.

¹¹ Rogers, P. P. et al (2005) AN Introduction to Sustainable Development. Island Publishing House, Inc. Philippines. p. 42.

Since the Brundtland report and the Rio Summit, sustainable development has transitioned from being an interesting yet at times contested ideal, to a concept that enjoys widespread endorsement by international institutions, governments, businesses, and civil society¹². The nearly universal adoption of sustainable development as a guiding principle is, in part, due to its flexibility. It allows various stakeholders to adapt the concept to their own purposes. This strength, however, is also a liability because various interpretations have led to confusion and compromised implementation. Nonetheless, sustainable development has been integrated into the operations and governing mandate of many prominent international organizations. These include:

- a. The World Bank (2010), which has affirmed a commitment to “sustainable globalization” that “enhances growth with care for the environment”;
- b. The International Monetary Fund (IMF, 2010), with a commitment to “sustainable economic growth”;
- c. World Trade Organization (WTO, 2010) which endeavors to contribute to sustainable development through the pursuit of open borders and the removals of barriers to trade.

Sustainable development is also a prominent component of the MDGs, which have been widely endorsed by national governments and the world’s foremost development organizations since they were adopted at the Millennium Summit in 2000. Sustainable development has also gained currency in the private sector often in the form of the Corporate Social Responsibility (CSR) agenda. Several voluntary initiatives have

¹² John Derxhage et al (2010) Sustainable Development: from Brudtland to RTO 2012. Background paper prepared for consideration by the High Level Panel on Global Sustainability at its first meeting. p.9.

been formed over the past 20 years, including the World Business Council on Sustainable Development (WBCSD), Global Compact, Equator Principles, Global Reporting Initiative, and Extractive Industries Transparency Initiative¹³. In addition, various major international NGOs, such as WWF, Oxfam International, and Friends of the Earth, have increased the scale and sophistication of their involvement in sustainability principles. Local NGOs around the world have taken up the cause of sustainable development.

The 193-member United Nations General Assembly (UNGA) on 25 September 2015 formally adopted the Transforming of Our World: the 2030 Agenda for Sustainable Development along with a set of bold new Global Goals that are a universal, integrated and transformative vision for a better world¹⁴, top among which is the goal to protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity. Also, it aims to ensure availability and sustainable management of water and sanitation for all and ensure access to affordable, reliable, sustainable and modern energy for all. This Agenda, including its seventeen goals, can be met within the framework of a revitalized global partnership for sustainable development, supported by concrete policies and actions outlined in the Addis Ababa Action Agenda, which is an integral part of the 2030 Agenda for sustainable development.

3.3.1 Definition of Sustainable Development

While the concept is widely accepted and sustainable development has been adopted as a desirable goal by many institutions, governments, businesses, and NGOs; the term

¹³ Ibid

¹⁴ Rogers, P. P. et al, op.cit

sustainable development suffers from definitional ambiguity or vagueness¹⁵. The dominant view of governments and businesses is that sustainable development is continued economic growth made more environmentally sensitive in order to raise living standards globally and break the link between poverty and environmental degradation.

Others view sustainable development as a balancing act between the economy and the environment, meaning that the economy is an entity that is separate from the environment, where the latter inevitably loses out¹⁶.

Some critics accuse the business community of using sustainable development as a way to paint environmentally destructive practices, a rationalization for economic growth without due concern for environmental or social imperatives.

Some NGOs and academics have argued that sustainable development does not go far enough to create the required lifestyle, consumption, and behavioral changes that radical changes are needed in the world's economic order. "Deep ecology" critics argue that the concept of sustainable development is too human centric, and the paradigm of sustainable development does not adequately challenge the consumer culture¹⁷. Others question if sustainable development should continue to support economic growth at all, given the physical limits of the global ecosystem; while others have suggested that the concept does not give enough attention to the poor and their acute vulnerability to environmental degradation¹⁸.

¹⁵ Ibid

¹⁶ Kiss A and Shelton D. (2004) International Environmental Law. UNEP, New York, Third Edition p.35

¹⁷ Ibid

¹⁸ Ibid

The concept has also become synonymous for some with particular political agendas: in that those most vocal in support of sustainable development often come with political agendas that, at least in North America, are often associated with the left wing of the political spectrum. On the other hand, many developing countries see sustainable development as an ideology developed by developed countries for the purpose of imposing stricter conditions and rules on development aid and international trade.

And yet, despite all these detractors, one could argue that sustainable development might be the only “paradigm” of development left standing. With the recent fiscal and financial crises, and the loss of faith in the pure economic growth model of the Washington Consensus, there is renewed interest in the potential of sustainable development as an effective framework and tool to address these core structural challenges¹⁹.

3.3.2 Sustainable Development in International Practice.

The global implementation of sustainable development remains a challenge, but there is evidence of progress. The environment is a topic of greater priority for governments and business than it was 20 years ago, and there are some efforts to integrate environmental considerations more effectively into economic decision-making. Examples include legislative efforts in various developed countries to place a price on carbon, a growing recognition of the value of eco-system services to business and society, and efforts to measure progress toward sustainable development. The environment and climate change in particular continues to be rated a top concern for citizens in many countries, despite the

¹⁹ John Derxhage et al, op.cit

recent economic downturn and the hubris of the Copenhagen Climate Change Conference²⁰.

Concerns over environmental degradation and increasing pollution have led to increased investment in green technologies. The Montreal Protocol has been successful in phasing out ozone-depleting substances, and atmospheric concentrations of these substances have either levelled off or decreased since the protocol came into effect in 1989. UNEP's Global Trends in Sustainable Energy Investment 2010 reports that in 2009, for the second year in a row, both the United States and Europe added more power capacity from renewable sources such as wind and solar than conventional sources like coal, gas, and nuclear. And globally, investment in renewable energy power capacity (excluding large hydro) in 2009 was comparable to that in fossil-fuel generation, at around US\$100 billion each. Ecocity development is occurring in North America, Europe, China, and the United Arab Emirates and includes such features as water conservation, energy efficient building, smart grids with renewable energy, LED street lights, and walkability. Over recent decades both developed countries and emerging economies have made progress in reducing the rate of resource extraction per unit of GDP²¹.

Despite this progress on sustainable development, negative trends continue to prevail. Economic growth since the Rio Summit has been fed by unprecedented resource and material consumption and related environmental impacts. Large portions of the natural world have been converted to human use, prompting concerns about the ability of

²⁰ Ibid p.12

²¹ Kaj Barlund. Sustainable development – concept and action available at www.unece.org/ves/nutshel/2004-2005. Accessed on 25 May 2018 at 5:00 pm

the world's natural resource base to sustain such growth²². Increasing consumption, combined with population growth, mean that humanity's demands on the planet have more than doubled over the past 45 years. These impacts are revealed in a number of disturbing trends. Global biodiversity continues to decline, and species in all groups with known trends are, on average, being driven closer to extinction.

For example, fishery stocks are at the point of collapse, with around 80 percent of the world marine fish stocks for which data is available are fully exploited or overexploited. The Millennium Ecosystem Assessment reveals that the provision of many critical ecosystem services such as water, biodiversity, fiber, and food is being compromised due to the impact of human development. Scarcity of and competition over freshwater is a growing concern for many regions in the world, with around 50 countries currently facing moderate to severe water stress. Climate change will exacerbate water stress and other problems. Current predictions, summarized in the IPCC's 2007 assessment report, indicate that the carrying capacity of large parts of the world will be compromised by climate change. Significant political divisions threaten international progress on climate change, yet the window for action to avert the most dangerous effects of global warming is shrinking by the day²³.

3.3.3 Major Effective Approaches to Successful Sustainable Development

Only a global approach can really be sustainable. Various efforts are underway to characterize sustainable development; some of the major ones are given as follow;

²² John Derxhage et al, op.cit

²³ Ibid

- i. It is an interface of the three “E’s”. Environment, Economy and Education. They are inter-connected and Inter-dependent. They are not mutually exclusive. They should go together and cannot be separated and divided.
- ii. It is an enlarged view of development that extends beyond simple measures of “Growth”. It raises quality of life (happiness, satisfaction, secured and descent Life, fair, equitable and accessible).
- iii. It is a long-term thinking with a commitment to social equity and fair distribution of benefits and costs, both geographically and across current and future generations; it is about ecological equity (between human and non-human beings) on the Earth. Its vision is simple: a society, in which people understand the world they live in; that possesses rich biological diversities and cultural heritage; that has stable and well-informed population, and that has sustainable production and consumption within the carrying capacity of the Earth.
- iv. It means living in a way to create lasting economic prosperity, environmental health, and social justice for current and future generations.
- v. It means humans would enjoy a secured, decent quality of life, and that has a fair, equitable access to the Earth’s resources. Thus the society would enjoy universal equity among all living creatures.
- vi. It means that we must reinvent the world socially, economically and environmentally, if we want to achieve this stage.

In conclusion, this vision of a sustainable society requires a Herculean task. But the greatest challenge faced in this institution today are the growing population, absolute poverty, environmental problems, conflict, violence, terrorism and inappropriate

development, which are clasping together to weaken the ecological system on which we depend and live²⁴. Not only these forces, but also other forces (natural calamities, human actions and their combined effects) are in the loom. It is for these reasons that a huge shift in our thinking, values and action is required. In the opinion of, “The significant problems we face cannot be solved by the same level of thinking we used when we created them”²⁵. The existing paradigms of education are yet to prove that they are adequate enough to address these burning issues. At juncture, it is imperative to look at Legal and Institutional framework for the Enforcement of Environmental Laws in Nigeria which is discussed in the next chapter.

²⁴ Rogers P.P op. cit p. 39

²⁵ Ibid p12

CHAPTER FOUR

LEGAL AND INSTITUTIONAL FRAMEWORK FOR THE ENFORCEMENT OF ENVIRONMENTAL LAWS IN NIGERIA

4.1 Introduction

This chapter examines the legal framework for the enforcement of environmental law in Nigeria. It specifically discusses some federal environmental legislation such as the Constitution, National Environment Standards and Regulations Enforcement Agency (NESREA) Act, Environmental Impact Assessment Act, Harmful Waste (Special Criminal Provisions) Act and the Petroleum Act among others. In addition to these the environmental legislations of some states were discussed, for example Environmental Sanitation Law of Lagos State, Kwara State Environmental Protection Agency Law Rivers State Waste Management Agency and Enugu State Waste Management Law.

4.2 Legal Framework for the Enforcement of Environmental Law in Nigeria.

The government has consistently, through the various sector specific legislations and regulations and through policy statements declared its commitment to achieving a sustainable environment. In fact, Nigeria's Policy on the Environment states that 'Nigeria is committed to a national environmental policy that will ensure sustainable development based on proper management of the environment'¹. However, despite the laudable objectives of the National Policy on Environment of achieving environmental sustainability, the management and governance of the environment has not matched the ideals of the national policy on the environment. Furthermore, there seems to be a

¹ Nigerian Environmental Policy Document at www.nesrea.gov.ng accessed on 15th March 2020 at 2: 35 pm

situation of selective enforcement between the regulators, who choose what to enforce and what not to enforce. This situation is hampered further by the limitation placed on the provision relating to the environment in the 1999 Constitution, and the capacity and functions of the regulators themselves.

4.2.1 The 1999 Constitution of the Federal Republic of Nigeria.

The 1999 constitution of Nigeria is the first of its three previous constitutions to include a specific provision on the environment². This provision is contained in Section³ of the constitution which states that “the State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria⁴” The wording of the Section 20 is quite broad to promote a broad framework for environmental protection and management. However, this provision is hampered because it is included under Chapter II of the Constitution and therefore forms part of the non-justiciable ‘Fundamental Objectives and Directives Principles of State Policy’, unlike the provisions in Chapter IV, which guarantees certain rights classified as fundamental human rights, such as the right to life, and which are justiciable and enforceable and adequately protected by implementation mechanisms.

Section 20 of the 1999 Constitution forms part of the rights guaranteed by the International Covenant on Economic Social and Cultural Rights (the ECOSOC rights) and the African Charter on Human and Peoples’ Rights (African Charter) both of which Nigeria is signatory to. The African Charter was domesticated in Nigeria in 1983 under

² Fagbohun O. (2002). Reappraising the Nigerian Constitution for Environmental Management, Ambrose Alli University Law Journal Vol. 2 No. 1 P.24

³ Section 20 The Constitution of the Federal Republic of Nigeria, 1999

⁴ Ibid

the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act⁵. The African Charter is a regional treaty that affirms both civil and political rights such as those guaranteed by Chapter IV of the 1999 Constitution and economic, social and cultural rights such as those guaranteed under Chapter II of the 1999 Constitution and it makes no distinction between them.

However, the Nigerian Supreme Court has severally held that the provisions of the Constitution override the African Charter in the event of a conflict. In the case of *Sani Abacha vs Gani Fawehinmi*⁶ the Supreme Court held that although the African Charter is superior to other laws, it is subordinate to the Constitution of Nigeria. Although the rights guaranteed by the African Charter can rightly be classified as domestically justiciable by virtue of the domestication of the African Charter in Nigeria, the 1999 Constitution does not affirm economic and social rights as justiciable, and herein lays the thorny issue. If therefore, the Constitution overrides the African Charter in the event of a conflict, then the justifiability of the rights guaranteed under the African Charter in Nigeria is rendered of no practical value for those whose right to a healthy environment for instance, has been violated⁷.

Despite the limitations of Chapter II of the 1999 Constitution, Nigerian courts may still be prepared to entertain cases seeking to enforce economic and social rights, such as the right to a healthy environment, however such progressive courts and judges are threatened by executive high-handedness. As seen in the case of *Jonah Gbemre vs*

⁵ Cap A9 LFN 2004

⁶ (2001) A HRLR 172 (Ng Sc. 2000)

⁷ SERAP (2010) Opportunities and Prospects for the legal Defence of Economic, Social and Cultural Rights before National and Regional Courts: An Assessment.

*Shell Petroleum Development Company Nigeria Ltd*⁸. In this case, the Federal High Court made a declaration that the plaintiff's constitutionally guaranteed right to life included the right to a 'clean, poison-free, pollution free and healthy environment. The Court founded its decision on the right to life guaranteed by Chapter IV of the 1999 Constitution as well as Article 24 of the African Charter which guarantees the right to a clean environment.

However, as mentioned earlier, the realities of Nigeria being an oil-producing nation makes it imperative to make Section 20 justiciable. This is because Nigeria's economy depends heavily on the oil and gas sector and it is therefore important to ensure a sustainable management and exploration of the crude oil, more importantly, it is important to extend this sustainable management to the environment from which the crude oil is obtained. In addition the exploration and processing of crude oil threatens the health and the well-being of the communities in Niger Delta, and the flora and fauna and the general ecosystem of the communities. As a result, Section 20 should not only be made justiciable, the Section should affirm the right of every Nigerian to enjoy a clean and healthy environment. As the courts have held severally in other jurisdictions the protection of the right to life is inseparable from the protection of the right to a clean and healthy environment.

⁸ Suit No: FHC/B/CS53/05. The Judgement was delivered on the 14th day of November 2005.

4.2.2 National Environmental Standards and Regulations Enforcement Agency (NESREA) Act 2007

Following the Koko incident in 1988, the Federal Environmental Protection Agency Act (FEPA Act) was promulgated in 1988. The Act was a framework legislation which coordinated the various existing sectoral legislations and regulations and served as a comprehensive system for environmental management. The Act established FEPA as the agency primarily responsible for the protection and development of the environment in general. FEPA's main objectives were to administer environmental laws and coordinate governmental actions that affect the environment.

However, following the series of criticisms leveled against FEPA as a regulatory Agency, the FEPA Act was repealed and it was replaced by the National Environmental Standards and Regulations. Enforcement Agency (Establishment) Act, 2007 (NESREA). The Act provided for the establishment of an Agency similar to FEPA. The objectives of NESREA were similar to that of FEPA and included a broad set of responsibilities⁹. Significantly, beyond guiding federal agencies in assessing the impacts of their actions and coordinating anti-pollution research activities, NESREA has also been responsible for the development and enforcement of national standards, and for the development of national programmes in conjunction with the Federal Ministry of Environment. The creation of NESREA as the regulatory agency for the environment came eight years after the scrapping of FEPA. In between this time, the Ministry of Environment assumed the functions of regulator.

⁹ Section 7 NESREA Act, 2007

Despite the eight years interval and vacuum, the eventual NESREA Act, like its predecessor, was not able to provide a more coherent framework for monitoring compliance with environmental laws and regulations, rather, it created more confusion in the governance and management of the different sectors of the environment. The NESREA Act failed to cure one of the major inadequacies of the FEPA Act with regards to the environmental management of the oil and gas sector¹⁰. For example, despite the fact that NESREA is the overall regulatory body responsible for the management of the environment, its regulatory jurisdiction is limited in the oil and gas sector. The NOSDRA Act made the Department of Petroleum Resources (DPR) the environmental regulator in the oil and gas sector. As a result, DPR wears dual caps as the regulator and the regulated. On the one hand, it regulates environmental activities in the sector and on the other hand, it is responsible for the development of Nigeria's petroleum resources. This creates a conflict of interest situation and most likely than not the environment gets the short end of the stick¹¹.

4.2.3 Environmental Impact Assessment Act

The need to manage and control environmental degradation led to the emergence of the EIA regime. An EIA is a national procedure for evaluating beforehand, the likely impacts of a proposed development project on the environment. The 'Impact' that is assessed in an EIA is any effect caused by a proposed project on the environment, including human health and safety, flora, fauna, soil, air, water, climate, or the interaction among these

¹⁰ Sections 7, 8 and 29 NESREA Act, 2007

¹¹ Ladan, M. T. (2012) Review of NESREA Act 2007 and Regulations 2009 – 2011. A New Dawn and Environmental Compliance and Enforcement in Nigeria. Environment and Development Journal V. 8 Pt 1 p. 116.

factors. It also includes effects on cultural heritage or socio-economic conditions resulting from alterations to those factors. More importantly, an EIA is regarded as one of the tools for achieving sustainable development both nationally and internationally, it involves the infusion of environmental consideration into decision-making and the involvement of the public in the assessment of environmental impacts. Nigeria enacted an Environmental Impact Assessment Act in 1992¹².

It is doubtful that the EIA regime in Nigeria is lending itself to being a tool for achieving sustainable development. This is because the EIA process in Nigeria faces certain challenges. A key component for a transparent and genuine EIA process is public participation, particularly at the review and consultation stages. This is because it allows affected stakeholders and communities the opportunity to participate in the decision-making process on whether a developmental project should go ahead and it allows relevant mitigating measures to be built into the project.

However, non-governmental organizations (NGOs) and other stakeholders have expressed concerns that the EIA process is devoid of genuine and meaningful public participation and that the procedure is often used to justify a decision that has already been made rather than it being a procedure for evaluating beforehand, the likely impacts of a proposed project on the environment. As a result of this, decision makers rarely consider alternative course of action or projects which may have less negative impact on the environment. Another challenge of the EIA process is that EIA reports are usually written in non-accessible technical language and this discourages meaningful

¹² Cap E 12, LFN, 2004

participation of stakeholders who may be discouraged from active participation because of the technical language of the report. Furthermore, the EIA procedure in Nigeria is disadvantaged by the absence of baseline studies on social, economic and environmental data and the lack of relevant information weakens the assessment of the possible effects of proposed project on the environment. This act assesses the potential negative impacts public or private projects are likely to have on the environment. However, it ensures written applications are submitted to the agency before embarking on projects for their environmental assessment to determine approval. It also creates a legal liability for contravention of any provision.

4.2.4 Harmful Waste (Special Criminal Provisions) Act¹³

The Act was enacted with the specific object of prohibiting the carrying, depositing and dumping of hazardous wastes on any land, territorial waters and matters relating thereto. This Act is essentially a penal legislation. The offences are constituted doing any of the act or omission stated in the section 12 of the Act. The jurisdiction of the Act is far reaching as it sought to remove any immunity conferred by diplomatic immunities and privileges Act on any person for the purpose of criminal prosecution. It however important to note that despite its far reaching jurisdiction, it focuses mainly on criminal prosecution of damage and does not provide compensation to the victim of the damage. Section 6 of the Act provides a very stringent sentence of life imprisonment and in addition the forfeiture of any aircraft, vehicle or land connected with or involved with the violation. However it was observed that there had never been a decided case of any

¹³ Cap HI LFN 2004

person whether natural or artificial, prosecuted pursuant to the provision of this Act. It is equally presumptuous to hazard the assumption that no hazardous waste had found its way into Nigeria as contemplated by the Act since its enactment.

4.2.5 Petroleum Act¹⁴

This is the primary legislation on oil and gas activities in Nigeria. It ensures public safety and environmental protection. There are three basic regulations under the Petroleum Act.

They are:

- a. Petroleum Drilling and Production regulations which places restrictions on licensees from using land within fifty yards of any building, prohibits the cut down of trees in forest reserves and establishes that reasonable measures be taken to prevent water pollution and to end it, if it occurs.
- b. Petroleum Refining Regulation which requires the manager of a refinery to take measures to prevent and control pollution of the environment.
- c. Mineral Oil Safety Regulations and Crude Oil Transportation and Shipment Regulations which provide that precautions should be taken in the production, loading, transfer and storage of petroleum products to prevent environmental pollution.

4.2.6. Niger-Delta Development Commission (NDDC) Act¹⁵

This Act is concerned with using allocated fund to tackle ecological problems arising from the exploration of oil minerals in the Niger-Delta. The act empowers the commission to plan and to implement projects for the sustainable development of the

¹⁴ Cap 07 LFN 2004

¹⁵ Cap N68 LFN 2004

Delta in the field of transportation, health, agriculture, fisheries, urban and housing development, etc. The commission under this act has a duty to liaise with oil and gas companies and advice stakeholders on the control of oil spillages, gas flaring and other related forms of environmental pollution.

Other laws include; Land Use Act 1978, Hydrocarbon Oil Refineries Act, Associated Gas re-injection Act 1979, The Endangered Species Act 1973, Sea Fisheries Act 1992, Exclusive Economic Zone Act 1978, Petroleum Products and Distributions (Management Board) Act, Territorial Waters Act 1967, Nuclear Safety and Radiation Protection Act, Nigerian Mining Corporation Act, Quarantine Act 1969 Mineral and Mining Act, 2007.

4.3 Case Study of Selected States Environmental Legislations

Each of the 36 States of Nigeria and the Federal Capital Territory of Abuja has laws dealing with environmental protection and safety. Under the State laws, enforcement is placed in the hands of several bodies which include; Environmental Sanitation Task Force, Waste Management Boards, State Environmental Protection Agencies, Environmental Sanitation Courts, Special Courts are also established to try any person who violates the laws. Section 24 of the repealed Federal Environmental Protection Agency Act (FEPA), now NESREA encourage States and Local Government Councils to set up their own environmental protection bodies for the purpose of maintaining good environmental quality in the areas of related pollutants under their control subject to the provision of the Act. This research examines briefly the environmental legislations of; Lagos; Kwara; Rivers and Enugu States. These states have been chosen as selected case study because they represents sample of industry and commercial centres of Nigeria with

a number of flourishing industries and high population which consequently attracts waste generation. Therefore, a study of legislations and institutional practice of this state will serve as lessons to others states in Nigeria.

4.3.1 Lagos State Environmental Law (LASEL)

Lagos State Environmental Management and Protection Law (2017), is a law to consolidate all laws relating to the environment for the management, protection and sustainable development of the environment in Lagos State and for connected purposes. Thus, this law repealed law existing hitherto on environmental protection such as, environmental sanitation laws of Lagos State and Environmental Pollution of Lagos State. In pursuance of providing a good and healthy environment the law creates the following obligation on it's the Ministry¹⁶

(e) Monitor environmental impact of the waste management system related to air, water, and soil pollution, and adapting standards and regulations, as well as environment protection strategy and policies;

(f) Inspect waste management facilities permitted by the Authority after the completion of their construction and on a regular basis while under operation to ensure compliance with relevant environmental laws, regulations, standards and conditions of operation;

(g) Clean streets, roads and designated public places;

(h) Make regulations for the Local Government Areas and waste disposal contractors with respect to standard collection, removal and disposal of domestic, commercial,

¹⁶ Section 56, Lagos State Environmental Management and Protection Law (2017). See also <http://laws.lagosstate.gov.ng>. Accessed on November 21, 2018 at 11:25am.

construction, garden, and solid and semi-solid waste associated with electronic and healthcare waste;

- (i) Remove and dispose of animal carcass from public places;
- (j) Prepare and update the master plans for waste collection and disposal in the cities, towns and villages in the State and control resultant waste system within the State;
- (k) Approve and monitor all solid waste disposal systems in the State;
- (l) Make provisions for waste management services to State agencies, Local Government Areas, industries, business entities and private persons within the State by receiving waste at the Authority's facilities pursuant to contractual agreement between the Authority and such other party;
- (m) Issue, suspend, renew and revoke licenses of private waste collectors, incinerators and waste recycling plants;
- (n) Maintain a central data base information system for collation of data;
- (o) Develop guidelines and targets for waste avoidance and volume reduction through source reduction and waste minimization measures, including composting, re-use, recovery and green charcoal process;
- (p) Regulate proper segregation and containerization of waste through policy formulation and public awareness;
- (q) Preserve proper collection, transportation, treatment and disposal of waste by adopting best environmental practice;
- (r) Receive tenders and award outsourced public service to operators of incinerators and waste recycling plants;

(s) Tracking performance of service providers and managing the contracts of service providers and consultants under this Part;

It is worthy to note here that, Lagos State practices under the State Environmental and Protection Law (2017) is particularly unique because its worth under a modern computerized data based system which brings about ease and efficiency of performance considering its population and being a mega city.¹⁷ This practice is worth emulating by other industry states of Nigeria such as Kano, Rivers, Oyo, Abia and Federal Capital Territory.

4.3.2 Kwara State Environmental Protection Agency Law (KWEPAL)

The Kwara State Environmental Protection Agency Law was enacted in 1992¹⁸. The Act created the Kwara State Environmental Protection Agency (KWEPA) to promote a safe and healthy environment for the people of Kwara state to live in, and to ensure sustainable development for the purposes of the use of the environment. The Agency is shadowed with the powers to carry on all environmental protection activities, to carryout research and development activities for environmental protection and to educate the general public on the types of disposal methods acceptable by the State Government for domestic and industrial wastes among others. For the purpose of achieving its set goals, the law created a governing council whose function is¹⁹;

¹⁷ Section 5(q), Lagos State Environmental Management and Protection Law (2017), op.cit. which relates to collating and processing of data on waste generation and management as well as provide analysis on impact of waste and waste management on the environment

¹⁸ Ijaiya, H., (2013), The Legal Framework for Solid Waste Disposal and Management in Kwara State, Nigeria, Journal of Environmental Protection, Published Online November 2013 (<http://www.scirp.org/journal/jep>), p.1240-1244. See also <http://dx.doi.org/10.4236/jep.2013.411143>. Accessed on November 21, 2018, at 11:20am.

¹⁹ Section 49, Kwara State Environmental Protection Agency (KWEPA), 1992.

- i. to formulate policies and programmes aimed at enhancing the position and improvement of the protection of the environment in the state;
- ii. Formulate and enhance policies, rules and regulations on solid waste collection and disposal, co-ordinate the activities of all the agencies in the state connected with environmental matters;
- iii. Conduct public enlightenment campaigns and disseminate vital information on environmental matters, render advisory services and support to all Local Government in the state in areas of solid waste management matters;
- iv. Take measures to guarantee consistent effectiveness of environmental structures throughout the state for solid waste collection and disposal, formulate master plans for solid wastes management for development of environmental standard mobilize the inhabitants of all areas in the state for the effective observance of environmental rules and guidelines for the promotion of a healthy and safe environment; monitor and;
- v. Control disposal of solid waste generated by both Government and private facilities in the state and implement applicable laws and standards on activities related to the environment among others.
- vi. At the Local Government level, the law established the Local Government Committee on environmental protection for the purpose of maintaining good environment quality in their domain.

For the effective control and management of solid wastes in the state, the law authorized the Agency, local government council or private collector to assist in the disposal of refuse waste within the state. The law also provided that vehicle or container

used in transporting or conveying refuse or waste within the state should be covered in such a way that the content thereof does not litter the street.

The law provided that all owner or occupier of a tenement should have receptacle which shall kept within the tenement to be used for depositing refuse of any description and only to be brought out of the tenement for the disposal of refuse and that every owner or occupier of a tenement shall maintain in a good condition the receptacle and replace them when it is worn out.

Furthermore, the law also makes it an offence for any person to throw or deposit on any street, open space, gutter, drain or drainage system or tenement whether occupied or not obnoxious, toxic or poisonous waste except at such places authorized by the Agency. In addition, the law prohibits the burning of the contents of any dustbin or receptacle of the Agency. The law also provided that any person who contravenes any of the offences mentioned above commits nuisance and would be tried by either a Magistrate Special Environmental Court or Area Court within the jurisdiction and upon conviction shall be liable to a maximum fine of N5000.00 (five thousand naira) or imprisonment for six months.

In order to give the force of law to the existing laws on waste management and control in Kwara State, the State Government enacted the Environmental Sanitation Court with divisions in each of the three Senatorial Districts of the state to be manned by a Magistrate. The court is empowered to try offences on environmental matters in respect of cases arising out of the provisions of the Environmental Sanitation Law, Kwara State Environmental Protection Agency Law, its Regulations or any other laws on environmental protection and other related enactments. The court is also empowered to

try offenders summarily in accordance with the provision of the Criminal Procedure Code Law. However the jurisdiction of the court is limited to N5000000.00 (Five million naira). Appeals from the decision of the court lie in the High Court.

Kwara State practice for an effective and healthy protection of an environment presents a clear situation of a commercial state with a high but manageable population. Therefore, this practice is could easily be accommodated in the majority of Nigerian states because it adopts conventional system and as such less expensive for every states to be able to afford. Uniquely, Kwara State practice is supported with the establishment of sanitation court for compliance purposes.

4.3.3 Rivers State Waste Management Agency (RIWAMA)

The Rivers State Waste Management Agency (RIWAMA) is an agency of the Rivers State Government of Nigeria concerned with the responsibility of ensuring a clean and healthy environment. It was brought into existence in 2013 through an Act of Parliament²⁰. As part of its statutory responsibility of maintaining a clean environment, the agency organizes a monthly sanitation exercise which has not only instilled but also tries to sustain the consciousness of cleanliness among the residents of Rivers State. In terms of structure, the agency runs a highly centralized structure with a Sole Administrator at the helm of affairs. The operations of the agency are coordinated through a task force system. In other words, there is a task force (team) strategically set

²⁰ Obuah, P.F., and Godwin B. O., (2017) Environmental communication strategies of the Rivers State Waste Management Agency (RIWAMA): Implications for sustainable waste management in Nigeria *International Journal of Development and Sustainability* ISSN: 2186-8662 Volume 6 Number 11 (2017): pp. 1541-1558. www.isdsnet.com/ijds. Accessed on November 21, 2018, at 12:29pm.

up to address any pertinent aspect of the operations of the agency. Subliminally, the agency is expected to²¹:

- i. Develop the most suitable and effective means of building understanding and garner support in keeping Rivers State clean.
- ii. Engage in environmental education and awareness among decision makers geared towards ensuring a better integration of environmental issues into development planning, budgeting and policy formulations.
- iii. Sensitize the citizenry and, by extension, residents on waste management policies, procedures and practices.
- iv. Ensure a mainstreaming of consciousness on best practices in terms of attitudinal conditioning and favourable dispositions.

In particular, the environmental communication strategies of RIWAMA have engendered great awareness and sensitization of the citizenry on the core mandate of the agency as well as its integral programmes. This awareness has been predominantly generated through the mainstream channels of communication such as Radio and TV. Descriptively therefore, the strategies have yielded much in terms of awareness but significantly little in terms of compliance probably due to the near absence of interpersonal channels of communication and the non-inclusion of fear/threat appeals in its campaign messaging.

²¹ Section 51, Rivers State Waste Management Agency (RIWAMA), 2013. See Also Obuah, P.F and Godwin, B.O., op.cit. p.1548

4.3.4 Enugu State Waste Management Authority (ESWAMA)

Enugu State Waste Management Authority (ESWAMA) was established through Law No 8 of 2004 as the regulatory body charged with responsibility for management of solid and liquid waste in Enugu State. As part of Enugu State Ministry of Environment and mineral Resources, the mission of ESWAMA is to develop and implement Government policies on the management of solid and liquid wastes in Enugu State through ensuring a clean and sustainable environment for the good health and well-being of the people of Enugu State²². To achieve this mission, the Authority's commitment to the people of Enugu State is to ensure the following²³:

1. Effective and efficient of collection, removal, treatment and safe disposal of all classes of wastes.
2. Prevention of illegal dumping of wastes along roadside closures, adjoining streams in neighborhoods and gutters.
3. Daily monitoring of the activities of waste service providers in the State.
4. Creation of public awareness, offering advice, receipt of complaints and providing solutions to problems emanating from managing wastes, and prosecutions of defaulters within the ambit of the law.
5. Provision of waste management facilities.

²² OKAFOR, C. I., (2011) Problems and Prospects of Waste Management in Enugu State: A Case Study of Enugu State Waste Management Authority (ESWAMA), unpublished MSc Public Administration, University of Nigeria, Nsukka (UNN). See also <http://www.unn.edu.ng/publications/files/images/PROBLEMS%20AND%20PROSPECTS%20OF%20WASTE%20MGT%20IN%20ENUGU%20STATE.%20A%20CASE%20STUDY%20OF%20ESWAMA.%20BY%20OKAFOR,%20CHUKWUEMEKA%20IKECHUKWU.pdf>.

²³ Section 39, Enugu State Waste Management Authority (ESWAMA), 2004

4.3.5 Kaduna State Environmental Protection Agency (KEPA), 1998

The creation of the Federal Environment Protection Agency by Decree No 58 of 1988 (repealed by NESREA, 2007, discussed above), is a land mark achievement for Nigeria as a country. The Federal Environmental Protection Agency (FEPA) gave the instruction to all states to have its own body in 1993. Then the state had the Kaduna State Urban Development Agency (KASUPDA) and so, following the orders of FEPA, KASUPDA transformed to Kaduna State Urban Planning and Environment Agency (KASUPEPA). By the year 1994, the State House of Assembly passed a bill to the military administration that KEPA should be an agency of itself, as an authority that is going to oversee the edit No. 1 of 1994 signed by his Excellency, the former military Administrator of Kaduna State Col. Ja'afaru Isah²⁴.

The Kaduna State Environmental Protection Authority (KEPA) established by KEPA Edict of 1994 was later revised in 1998. The authority is charged with the responsibility of addressing all environmental problems in the state. By the establishment of the law, the agency is expected to function as follows²⁵:

1. The landfill dump site shall be underlain with an impermeable layer which is designed and constructed in such a manner as to prevent the migration of liquid in and out of the landfill dump site. A leachate detection, collection and removal

²⁴ Akingbehin, A. R., (2017) unpublished Evaluation of the Role of Kaduna State Environmental Protection Authority (KEPA) in Municipal Solid Waste Management and Control: A Study Of Ungwan Doma Dumpsite In Chikun Local Government Area Of Kaduna State, MSc Degree In Policy And Development Studies Department Of Local Government And Development Studies, Faculty Of Administration Ahmadu Bello University, Zaria, Nigeria, pp.41-44. See also <http://kubanni.abu.edu.ng/jspui/bitstream/123456789/10186/1/EVALUATION%20OF%20THE%20ROLE%20OF%20KADUNA%20STATE%20ENVIRONMENTAL%20PROTECTION%20AUTHORITY.pdf>. Accessed on November 22, 2018, 12:25pm.

²⁵ section 11, of the KEPA Solid Waste Management Regulation NO.1 of 2009

system should be constructed and operated to remove accumulated liquid from the system as quickly as possible.

2. The Authority shall specify in the permit any other requirement and operating practices that are necessary in the day to day operation of the landfill/ dump sites.
3. The Authority may operate and maintain landfill/ dump sites and give directives to local authority or licensed refuse contractors where such landfill/ dump sites are located, to transport and where to dispose their solid waste to these landfill/ dump sites owned by the authority.
4. The Authority may charge fees for every kilograms of solid waste to be disposed of in landfill/ dump sites owned by the authority.

4.4 Enforcement Mechanisms usually adopted in implementing Environmental Laws.

The environmental protection laws at the Federal and State levels in Nigeria provide for impressive array of enforcement mechanisms. They include: permit, license, certificate, inspection, search, seizure, arrest, sealing, notice of violation, notice of revocation of permit, revocation order, recourse to courts for civil penalties for violation, injunctive relief to require compliance, criminal sanctions for violations, citizen's suits to enforce the statutes in the absence of effective government enforcement. This dissertation provides a study on the following enforcement mechanism:

4.4.1. Inspection and Searches

The main purpose of inspection is to ensure that the laws applicable to individuals, industries and companies are obeyed. This is one of the most important enforcement methodologies; it also helps to know who has violated environmental laws in order to be

able to take legal actions against such persons. Authorized officers are empowered to request for and examine any mandatory license, permit, certificate or other document, as well as any appliance, device or other items used in relation to environmental protection when there is suspected violation of the law may without a warrant enter and search any land, building, vehicle, tent, vessel, floating craft or any inland water or other structure whatsoever, in which he has reason to believe that an offence against the law or any regulations made there under has been committed.

4.4.2. Arrest.

This is the most common of all the enforcement measures. It is provided for in all states and local governments that deal with environmental protection. The authorized government agent is given the power to arrest any person who he has a reason to believe has committed an offence under the said law.

4.4.3. Permit, License and Certificate

These serve as the most effective measures of enforcement of environmental laws. Environmental statutes and regulations provide for issuing permits, license and certificates upon application and satisfaction of laid down conditions prior to the issue. These permits, license and certificates are used by the government as monitoring devices to regulate the activities which are potential sources of environmental pollution. Therefore the issuance carries with it an understanding that the holder of the permit, license or certificate will forfeit such upon the breach of the regulations, statute or any of the laid down conditions specified on such permit, license or certificate.

4.4.4. Criminal Prosecution.

This is a viable method of enforcing environmental laws. Violators of environmental laws are charged to court and if found guilty, convicted. For example under NESREA, Act²⁶ offence of noise pollution shall on conviction be liable to a fine not exceeding N50,000 or to imprisonment for a term not exceeding one year or to both. In the same vein, the Harmful Wastes (Special Criminal Provision) Act²⁷, makes it clear that any person who engages in any of the prohibited activities (without lawful authority) shall be guilty of a crime under the decree and the offender shall on conviction be sentenced to imprisonment for life. This is a very potent enforcement strategy.

4.4.5. Civil Penalties

This involves the payment of damages or costs as a result of the violation of any of the environmental protection laws in Nigeria. Under NESREA, where an owner or operator of any vessel or onshore or offshore facility responsible for the discharge of hazardous substance contrary to Section 20, he will be in addition to the criminal penalty prescribed in that section be liable for:

- a. the cost of removal of the hazardous substance as well as any cost incurred by the Government or its agencies in the restoration or replacement of natural resources damaged or destroyed as a result of the discharge; and
- b. Costs of third parties in the form of reparation, restoration, restitution or compensation as may be determined by NESREA from time to time.

²⁶ Section 22, NESREA Act, 2007

²⁷ Section 1 (2) Harmful Waste (Special Criminal Provision) Act Cap H1 LFN, 2004

4.5 Institutional Framework for the Enforcement of Environmental Law in Nigeria.

There are many environmental law enforcement agencies that assist the implementation of environmental laws in Nigeria. Some of these are explained below:

4.5.1. National Environmental Standards and Regulations Enforcement Agency (NESREA)

This is the major enforcement agency in Nigeria. It is also referred to as “the agency” The agency is required by law to take charge of the protection and development of the environmental technology, including initiation of policy in relation to environmental research and technology and specifically to advise the Federal Government on natural environmental policies and priorities and on scientific and technological activities affecting the environment. It is the enforcement agency for environmental standards, regulations, rules, laws, policies and guidelines.

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

It provides authority to ensure compliance with environmental laws, local and international, on environmental sanitation and pollution prevention and control through

monitory and regulatory measures. The agency makes and reviews regulations on air and water quality, effluent limitations, control of harmful substances and other forms of environmental pollution and sanitation. The agency also prohibits, without lawful authority, the discharge of hazardous substances into the environment. There are different regulations under NESREA. This is:

- (a) National Effluent Limitation Regulation which requires industry facilities to have anti-pollution equipment for the treatment of effluent.
- (b) National Environment Protection (Pollution Abatement in Industries and Facilities Producing Waste) Regulations (1991) which prevents the release of hazardous substances into the air, land or water of Nigeria beyond approved limits set by the Agency.
- (c) Federal Solid and Hazardous Waste Management Regulations (1991) This act compels industries to identify solid hazardous wastes which are dangerous to public health and the environment and to research into the possibility of recycling them.

4.5.2. National Oil Spill Detection and Response Agency (NOSDRA)

This is a specialized and principal legislation on environmental protection in the oil and gas sector in Nigeria. It established the National Oil Spill Detection and Response Agency with responsibility for preparedness, detection and response to all oil spillages in Nigeria²⁸. It also established the advisory, monitoring, evaluating, mediating and coordinating arm of NOSDRA known as the National Control and Response Centre

²⁸Section 1 NOSDRA (Establishment) Act Cap N157, LFN 2004

(NCRC)²⁹ It must be pointed out that the constitution of the Governing Board of the Agency and the operational modus of the Agency in the event of major or disastrous oil spill takes into account the multi-sectoral demand of environmental protection in the oil and gas sector. Accordingly, the NOSDRA Act provides that the objectives of NOSDRA shall be to co-ordinate and implement the National Oil Spill Contingency Plan for Nigeria. The National Oil Spill Contingency Plan³⁶ as may be formulated (or revised) from time to time, by the Federal Government which coordination and implementation shall be the objective of NOSDRA include among others: Safe, timely, effective and appropriate response to major or disastrous oil pollution.

Identify high-risk areas as well as priority areas for protection and clean-up. Establish the mechanism to monitor and assist or where expedient direct the response, including the capability to mobilizing the necessary resources to save lives, protect threatened environment, and clean up to the best practical extent, the impacted site. Maximize the effective use of the available facilities and resources of corporate bodies, their international connections and oil spill co-operatives that is Clean Nigeria Associates in implementing appropriate spill response.

Ensure funding and appropriate and sufficient pre-positioned pollution combating equipment and materials, as well as functional communication network system required for effective response to major oil pollution. Provide a programme of activation, training and drill exercise to ensure readiness to oil pollution preparedness and response and the management and operational personnel. Co-operate and provide advisory services,

²⁹ Section 18 Ibid

technical support and equipment for purposes of responding to major oil pollution incident in the West African sub region upon request by any neighboring country, particularly where a part of the Nigerian territory may be threatened.

Provide support for Research and Development (R&D) in the local development of methods, materials and equipment for oil spill detection and response. Cooperate with the International Maritime Organization and other national, regional and international organizations in the promotion and exchange of results of research and development programme relating to the enhancement of the State of the art of the oil pollution preparedness and response, including technologies, techniques for surveillance, containment, recovery, disposal and clean up to the best practical extent.

4.5.3. National Water Resources Institute (NWRI)

This institute monitors the pollution of water and enforces the treatment of drinking water. It started operating in 1979 as a project under the Federal Ministry of Water Resources and later it was legally established through National Water Institute Decree No. 3 of 1985. It has the mandate among others to promote necessary codes of practice in water resources development and management suitable for Nigerian condition.

4.5.4. Nigeria Maritime Administration and Safety Agency (NIMASA)

Nigerian Maritime Administration and Safety Agency (NIMASA)³⁰ 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

³⁰ Cap N161 LFN, 2007

maritime labor³¹. Thus in pursuit of this objective the Act provides that the Agency shall inter alia; establish maritime training and safety standards; provide directions and ensure compliance with vessel security measures; carry out air and coastal surveillance; control and prevent marine pollutions; inspect ships for the purposes of maritime safety, maritime security, maritime labor and prevention of pollution; generally to perform any other duty for ensuring maritime safety and security or do all matters incidental thereto.

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 and secondly, it is marine pollution. Therefore, to achieve the objective of regulating and promoting maritime safety, security, marine pollution and maritime labor, 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. It may also make regulations with regard to pollution. It is submitted that such regulations may include directives as to safety measures in oil tankers and oil drilling in the maritime zone. This agency is committed to marine pollution and prevention control, search and rescue, sabotage.

4.5.5. National Orientation Agency (NOA)³²

The National Orientation Agency of Nigeria is the body tasked with communicating government policy, staying abreast of public opinion, and promoting patriotism, national unity, and development of Nigerian society. The motto on

³¹ Section 1 (ii) NIMASA Act, 2007

³² established by Act No. 100 LFN, 2004

its website states: "Do the right thing: transform Nigeria." Its specific objectives were set out in Decree 100 of 1993³³.

The National Orientation Agency helps in ensuring that Federal Government environmental programmes and policies are better understood by the general public. It enlightens the public on the pros and cons of environmental policies of the Federal Government and interprets these policies in the language best understood by them.

4.5.6. National Agency for Food and Drug Administration and Control (NAFDAC)³⁴

National Agency for Food and Drug Administration and Control (NAFDAC) is under the Federal Ministry of Health and it issues permits to industries for importation of foods, cosmetic and chemicals. The Agency performs the following functions in particular relation to environmental management and sustainable development³⁵:

(a) Regulate and control the importation, exportation, manufacture, advertisement, distribution, sale and use of food, drugs, cosmetics, medical devices, bottled water and chemicals;

(b) Conduct appropriate tests and ensure compliance with standard specifications designated and approved by the Council for the effective control of the quality of food, drugs, cosmetics, medical devices, bottled water and chemicals and their raw materials as well as their production processes in factories and other establishments;

³³ Yakubu A. (2009). "Nigeria: NOA, FCT Communities Interact on Health Issues". Daily Trust- allAfrica.com. See also [https://National_Orientation_Agency_\(Nigeria\)](https://nationalorientationagency.gov.ng/). Accessed on November 22, 2018 at 12:50pm.

³⁴ Established by NAFDAC Act Cap N1 LFN, 2004

³⁵ Section 5 pt II, NAFDAC Act, 2004

- (c) Undertake appropriate investigations into the production premises and raw materials for food, drugs, cosmetics, medical devices, bottled water and chemicals and establish relevant quality assurance systems, including certificates of the production sites and of the regulated products;
- (d) Undertake inspection of imported food, drugs, cosmetics, medical devices, bottled water and chemicals and establish relevant quality assurance systems, including certification of the production sites and of the regulated products;
- (e) Compile standard specifications and guidelines for the production, importation, exportation, sale and distribution of food, drug, cosmetics, medical devices, bottled water and chemicals;
- (f) Undertake the registration of food, drugs, cosmetics, medical devices, bottled water and chemicals;
- (g) Control the exportation and issue quality certification of food, drugs, cosmetics, medical devices, bottled water and chemicals intended for export.

The above functions as it specifically concerns the protection of the environment give the agency the responsibility of preventing environmental damages in the production items under its jurisdiction.

4.5.7. The Nigerian Police Force (NPF)³⁶

Nigerian Police Officers are empowered to ensure, monitor and enforce the laws on environmental activities in Nigeria particularly with respect to the Harmful Waste Act. They can conduct a warrantless search on any building, land, carrier, aircraft or any other

³⁶ established by S3 pt3 Police Act, cap 219 2004

thing whatsoever which they have reasons to believe is related to the commission of a crime under this act. As a result of this, the Nigerian police officers cooperate with NESREA to carry out its mandate to enforce environmental laws.

4.5.8. State Environmental Protection Agency and Local Government Environmental Protection Agency³⁷

The federating units constitute the environmental theatre where the “substantial degree of activities” is conducted. They play significant roles in the enforcement of environmental laws. As stated earlier, FEPA (repealed by NESREA) is thus the supreme reference authority in environmental matters in Nigeria although state and local government authorities and institutions including their environmental departments are still expected to play their traditional role of maintaining and enforcing standards as well as fixing penalties charges, taxes and incentives to achieve certain environmental goals. States Environmental Protection Agencies (SEPAS) were set up to be complemented by the Local Governments (LGAs) Environmental Protection Agencies.

4.5.9. The Court

Under the Nigerian legal system, the judiciary interprets the law thus the judiciary breathes life into the law to ensure compliance. Lord Denning succinctly captured the reality when he said; in theory the judges do not make law, they merely expound it. But as no one knows what the law is until the judges expound it, it follows that they make it.

Class actions by a group or a community of people pursuing environmental claims can be embarked on in the court of law. These actions are common in the oil and gas industries

³⁷ under NAFDAC Act 1993 and amended in 2001

where the industries pollute the land, air and water of a particular community and they seek redress in court. Nigerian courts have awarded special and general damages in actions for damages arising from environmental pollutions.

4.6 Issues and Challenges on the Enforcement and Environmental Law in Nigeria.

There are inadequate policies operative in Nigeria for coordinating and monitoring the relationship between environmental management and sustainable development. This leads to poor enforcement of the environmental protection legislation in Nigeria. Thus, the following challenges are identified in the area of enforcement of environmental law:

4.6.1 Information Shortcomings

One of the banes of policy formulation and implementation in many developing countries, such as Nigeria, is the absence of reliable data and information to guide policymaker at decision-making. Some degree of uncertainty plagues many areas of government activity, but few face the pervasive information inadequacies that are found in the environmental realm. Environmental regulation cannot be effective in an atmosphere of inadequate, unreliable and inconsistent data.

Undoubtedly, information and reliable data are key factors in formulating and implementing sustainable development. Determining what is going wrong when environmental problems arise is not easy. Pollution is often hard to perceive but the effect is easy to determine. Even if a source of harm is identified, specific harm causers are difficult to track down. In addition to the difficulties outlined above, further complexities emanate from our limited understanding about the policy options that may be available to

mitigate these harms and to lower the direct costs of pollution as well as the costs from the unintended and unforeseen consequences of governmental intervention.³⁸

4.6.2 Administrative Shortcomings

In addition to the lack of data and technical capacity, regulatory bodies may operate inefficiently or ineffectively³⁹. Bureaucracy in general and government agencies in particular frequently lack incentives to act otherwise. This is so where the functions of agencies overlap, it may create jurisdictional problem. They may refuse to act or cooperate with one another. Even where they act, they may under-regulate or condone polluting activities rather than perform their assignments with full diligence. The practice of under-regulation is well pronounced in the area of planning law but it is becoming a cankerworm in the field of environmental protection. For example, despite the myriad of environmental statutes imposing strict and stringent penalties on polluters, pollution continues on unabated.

First, planning officials are guilty of condonation. This arises where a person develops property without prior development permit from the appropriate planning authority but such development is in substantial compliance with the planning standards. In this respect, the authority has a choice of either ordering the demolition of the structure or imposing penalty for such illegal development. In most cases, the official imposes financial penalty rather than demolition. Primarily, condonation usually encourages

³⁸ Oludayo A. Environmental Pollution and Challenges of Environmental Governance in Nigeria. British Journal of Arts and Social Science (2012) Vol. 10. No. 1,p.36

³⁹ ibid

corruption and involves some elements of collusion with government officials and ultimately distorts the planning scheme in place within the affected area.

This aspect of regulatory failure is a complex one and a combination of many factors. Some of these are inadequate funding, personnel and improper delineation of authority among the regulatory authorities, Lack of focus and target, lack of adequate funding, threat to environmental officials by powerful politicians or industrialists who challenge effective environmental law enforcement. Another ugly factor is corruption and bad governance, fake agents, intimidation, and blackmail of agents and extortion of money for lenient sanctions or waver of penalties, lack of modern technology, low level constitutional provisions, conflicting roles of agencies in environmental management, lack of locus-standi, unclear role and lack of cooperation among agents, deficient search power of NESREA, unclear punishment and penalties for offenders and unnecessary government interventions in processes, thereby leading to policy choice not reflecting true will of the people.⁴⁰

4.6.3 Allocation of Environmental Responsibilities

In the case of *Attorney-General of Lagos State vs Attorney General of the Federation*⁴¹, the Supreme Court set a bright-line standard on how Federal and State governments should relate on physical planning matters but failed to set any precise standard on environmental protection. In that case, the Supreme Court held that though physical planning matter is a residual matter for the component states, the protection of the Nigerian environment is a joint responsibility of the Federal, State and Local Government

⁴⁰ Ibid, p.37

⁴¹ (2003)6 SC Pt 1

in accordance with provision 1999 Constitution⁴². Since then, diverse comments and opinions have been proffered on how best to achieve sustainable environmental governance in Nigeria. Some of these questions border on how we should regulate our environment under the present federal system of government being practiced in Nigeria.

Aside from the conflict arising from vertical structure of the Federal Government, there exist conflicts arising from horizontal structure of governance. This is often pronounced among the line of ministries charged with responsibilities to manage the nation's environment. No doubt, answers to these questions border on various aspects of socio-legal order: constitutional, environmental, politics and economics.⁴³

4.7 Panacea to the Challenges of Environmental Management in Nigeria

The challenges of enforcement of environmental law are universal. Several countries have attempted in their own ways to make and review laws to promote an effective enforcement of environmental laws⁴⁴. For Nigeria suggested environmental enforcement reforms would include: Environmental law awareness, training, effective environmental monitoring, funding, stiffer punishments of environmental offences, submission of periodic reports, private litigation, effective access to justice, job opportunities, quick response to environmental emergencies, establishment of environmental courts, etc. To securing effective and efficient enforcement strategies, enforcement must be examined under the following factors.

⁴² Section 20 Constitution of the Federal Republic of Nigeria, 1999

⁴³ Amokaye, O.G(1998) Securing Compliance With Environmental Law In Nigeria, FEPA Publication

⁴⁴ Amokaye O. G. (2012) British Journal of Arts and Social Sciences vol. 1 pp 37 – 41.

4.7.1 Rule of Law

The use of law as a tool for sustainable development cannot be over-emphasized. However, for law to be continuously relevant in the sustainable development paradigm there must exist a sound legal framework for environmental protection. Such legal framework must possess three essential characteristics. The first element represents the legally binding nature of the rules. Environmental rules and standards, whether legislative or administrative in character, should not only be known in advance but they must also apply equally to all those issues addressed by them. Their content should address the genuine social and environmental needs and where appropriate, reflect a pre-existing or emerging public opinion on the matter.

They should be based on sound social, ecological, economic and scientific principles. A sound environmental law must regulate all the media of pollution and provide for adequate civil remedy and criminal penalties for infringement and provide access to environmental justice and information. The second element consists of the appropriate processes through which such rules are made and enforced in practice. The appropriateness of such processes of rulemaking, rule enforcing and rule changing, obviously varies according to the culture, political system and other circumstances of each country. Experience shows, however, that legal processes will normally succeed to the extent that they are not complex or arbitrary.

Sustainable development laws, made upon consultation with the people they affect, are realistic in terms of implementation and transparency. Simplicity of procedures, transparency of legal processes, and participation of the affected people and the accountability of public officials involved in the regulatory processes add to the

legitimacy of the rule and contribute to the public confidence in the legal framework as a whole. The success of each enforcement mechanism depends on how the State exercises its discretion in determining its particular needs and environmental priorities and on choosing the appropriate enforcement method. The legal transposition of sustainable development principles must be pursued objectively and scientifically so as not to exacerbate the current state of poverty mostly prevalent in our society. The law should not unnecessarily dislocate existing positive culture, structure and economic welfare of the people. For example, government policy that unduly imposes strict environmental law will discourage investment and render a majority of the citizens jobless. Similarly, government policies that discourage large-scale farming and modern agricultural practice under the guise of sustainability risk the invasion of famine, war and hunger.

The third element consists of well-functioning public institutions such as regulatory agencies, efficient court system and administrative agencies that are staffed by trained personnel. These are transparent and accountable to the citizens and apply such environmental regulations without arbitrariness or corruption. A well-functioning law enforcement apparatus and judiciary, in which judges normally apply the law in a fair, justiciable and predictable manner, without undue delay or unaffordable cost, are essential conditions and proper legal framework for sustainable development. The existence of an efficient and honest regulatory body for environmental monitoring and surveillance will ensure the appropriate application of legal rules, especially when its decisions are subject to judicial review. Without some efficient and honest institution for the enforcement of rules and the resolution of conflicts, the first two elements: “rules and “processes” will fail to provide a sound legal framework for sustainable development.

The foregoing calls for a review of environmental laws and policies as a means of reducing multiplicity and duplication of institutions, laws and policies. It also calls for domestication of some of the international environmental treaties to which Nigeria is a signatory.⁴⁵

4.7.2 Efficient Government Regulation

Another strategy to achieve environmental enforcement and compliance is the analysis of governmental regulations in terms of efficiency. Analysis of governmental regulations, however, focuses on the choice of appropriate regulation to achieve the desired result. Therefore, in regulating any medium of environmental pollution a clear assessment of the effect of such regulation on the regulated entities must first be undertaken. It also calls for the choice of appropriate strategies to achieve desired result. What are the goals of the chosen regulation? Will it achieve the stated goal or standard? If the goal of any environmental regulation is to mobilize or increase government revenue, such additional revenue must be justified against cost incurred by government to provide other environmental services to the citizens. If the goal of any environment regulation is to reduce emission standards, the permissible target must be set. If the object of a regulation, for example is to reduce the level of air pollution, the choice of target and effect must be ascertained. The regulator must determine the categories of activities that contribute maximally to the regulated pollution. Should the regulation target the main source of pollutant or all media of pollutants? The regulator must also determine the effect of regulation on stakeholders and possible alternatives. Should the regulation target

⁴⁵ Oludayo A. op.cit

the use of clean technology in industrial process, a moratorium must be given to allow operators to change their plants and other processes. In addition, environmental regulation should be broad enough to encompass known and potential polluters.⁴⁶

4.7.3 Cost Effectiveness

Cost and benefit analysis of environmental regulation is understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider. In choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impact; and equity). In choosing environmental regulation suitable for environmental management, a variety of economic criteria have been posited. Will the regulation achieve the stated goals or standard at the lowest possible cost, including both private sector compliance and public sector monitoring and enforcement? Will it provide government with the information it needs to implement the policy? Will the instrument be flexible in the face of changes in taste and technology? Will the instrument provide dynamic incentive for research, development and adoption of better pollution-abatement technologies?

The need for cost-effectiveness in environmental governance is better appreciated when compared with the cost of implementing regulations. When applied in the context of multiplicity of environmental institutions in Nigeria, the cost implication is obvious. For example, there is Nigerian Agency for Food, Drug and Administrator (NAFDAC),

⁴⁶ Amokaye, O.G, op.cit

Nigerian Environmental Standards and Regulations Enforcement Agency (NESREA), Nigerian Oil Spill Detections and Response Agency (NOSDRA), Biotechnology Agency, Department of Petroleum Resources (DPR), State EPA, Local Governments environmental laws. There is the need to streamline some laws to reduce cost and wastage associated with the administration of environmental problems in Nigeria.⁴⁷

4.7.4 Public Participation

Another strategy for achieving compliance with environmental laws includes motivating the community and creating public awareness through education and incentives. Environmental education must be integrated into the curricula of primary and secondary schools to enable the citizens inculcate environmental culture at earlier stages of their lives. It will allow our children to appreciate the environment early enough and understand the basis for its protection. We need to develop an environmental ethic and redesign our decision-making procedure and educational process to address these problems by going back to the oldest values of community responsibility by giving a great regard for the land and the resources we share.

Mass media must be deployed to inform, educate and mobilize our citizens (old, young, educated and uneducated) to appreciate the importance of healthy living and protection of our common heritage: environment. Again, access to environmental information and public participation in environmental decisions constitute another impetus in achieving environmental compliance and efficient enforcement of our environmental laws. This will involve amending our environmental laws to allow citizens

⁴⁷ ibid

to participate in environmental decision-making at different levels particularly as it affects them the most and to have access to courts when State refuses or neglects to act on environmental issues.⁴⁸

4.7.5 Cooperative Federalism

An important step to achieve compliance and enforcement is to embrace the concept of cooperative federalism in the nation's environmental management. Cooperative federalism refers to cooperation among all the tiers of government in the implementation of environmental laws and policies affecting the citizens. As opposed to the present confrontation attitudes where Federal, State and Local Governments regard each other as competitors, and jostle for relevance, the administration of the Nigerian state particularly from environmental perspective must be done in a way to promote cooperation among the tiers of government because environmental damage has no trans-boundary hindrance.

The Federal Government must devise some schemes whereby State Governments are given incentives to enforce and implement certain federal environmental policies and laws at the State level. This can be better appreciated if we agree that climate change, flooding, water pollution and oil and gas pollution cannot be best administered by individual component states. Section 11 of the Constitution provides the constitutional base for mutual cooperation between the Federal and State Governments for effective and sustainable management of the nation's environmental problems. It authorizes both the

⁴⁸ Oludayo A. op.cit

federal and state governments to exercise concurrent powers on matters bordering on maintenance and securing public safety and public safety and public order. ⁴⁹

In doing this, the National Assembly may enter the field of environmental regulation by choosing from a number of regulatory processes. First, it can simply establish a set of Federal rules to govern environmentally hazardous activity; give authority to a government agency or official to ensure compliance with such rules, and authorize either the Federal courts or Federal agency to hear claims to enforce the law. Where the National Assembly has taken a comprehensive step, its regulatory scheme may pre-empt the existing State laws and foreclose the States from adopting conflicting rules or standards where the federal legislation evinces such intention or objective. This is consistent with the doctrine of covering the field as decided by the Supreme Court in *Attorney-General of Ogun State and Ors vs Attorney-General of the Federation*⁵⁰. The States cannot enact laws to abrogate or vary the objective of the federal legislation as such laws will be inconsistent with the provision of Constitution which confers superiority on Federal law.⁵¹

4.7.6 Voluntary Compliance

The techniques of negotiation and consultation have been used to resolve both domestic and international environmental disputes. At the national level, negotiation is a consultative process through which the regulatory authorities and the regulated person or organization consider the existing environmental standards, directives and factors

⁴⁹ *ibid*

⁵⁰ (1982)3 NCLR 166

⁵¹ *ibid*

militating against effective compliance and the variety of alternative responses with a view to developing mutually acceptable compliance schedules⁵². It provides an opportunity to obtain additional information and correct interpretation before pursuing legal action. In practice, negotiations do occur in cases where relevant laws are not enforceable and this fact is recognized by the regulatory authorities, the policymakers and the public at large, or in situations where laws and regulations are promulgated without giving enterprises reasonable time to adjust; or circumstances in which regulation does not allow for a transition period at all. In all these cases, the regulatory authorities might also consider a concession in which a strict timetable, and control and reporting obligations with a number of checkpoints are to be considered. It also provides clear repercussions in case of non-compliance once the concession period is over.

4.7.7 Economic Approach

Economic techniques involve the use of economic incentives and disincentives, mechanisms such as fines, effluent fees, pollution tax, licenses, user charges, loans and grants, to reduce a level of pollution to the desired standard. This approach is based on the neo-classical economists' argument that inefficiency in resource allocation is the primary reason for the unacceptable level of environmental degradation. Pollution is encouraged because the polluter can discharge effluent at no cost to himself, that is, he acquires a benefit free of charge while a cost accrues to others. A minimum level of pollution, therefore, will only be achieved when these external dis-economies are internalized. The introduction of pollution tax and other economic disincentives will

⁵² Shilling HSU (2002) A Game – Theoretic Approach Regulatory Negotiation and Framework for Empirical Analysis – Harvard Environmental Law Report p. 33.

internalize these “externalities”. It primarily seeks to discourage firms and individuals from causing pollution or otherwise damaging the environment not by persuasion or by prohibiting the polluting activity through legislation, but by imposing a price or economic cost on such conduct. By this process, environmental cost is internalized into the production process of the company. This presupposes that firms who wish to maximize profits will find ways of polluting less rather than paying more.⁵³

In conclusion, the foregoing shows that the Nigerian government has consistently, through the various sector’s specific legislations, regulations and policy statements declared its commitment to achieving a sustainable environment. However, despite the laudable regimes on environment, there are still many gaps needed to be fill for an effective actualisation of a good and healthy environment; and this brings us to the next chapter which deals with conclusion.

⁵³ Oludayo A. op.cit

CHAPTER FIVE

SUMMARY AND CONCLUSION

5.1 Summary

The importance of the study of environmental management for an effective sustainable development in international law is overwhelming and it has global concern in view of the fact that environmental damages surpass boundary limits. Therefore, domestic effort must be supported with international collaboration. The promotion of this general concern prompted the research in this area which is made of five chapters. The first aspect of the research dealt with the introductory discussions of this work. The chapter discussed the background to the study, statement of research problem, highlights the aim and objectives of the study, justification, scope of the study, the methodology of research used in the study, literature review as well as the organizational layout of the work.

Further, other aspect of the research examined the concept of environment with focus on the bio-physical, economic dimension, social dimension and scientific dimension of environment. The dissertation further examined the concept of sustainable development as well as the meaning and sources of International Environmental Law to include international agreements, protocols and customary international law. In addition the dissertation traces the history and evolution of the concept of sustainable development in international law.

More so, this work examined the nature and scope of environmental management and sustainable development with specific discourse on nature of environment management stressing that the aim of environmental management is to protect, halt and reverse environmental degradation through the appropriate use of biotechnologies. The

dissertation also discussed the scope of environmental management to include identifying the environmental problem and to find its solution; restrict and regulate the exploitation and utilization of natural resources; regenerate degraded environment and to renew natural resources (renewable); control environmental pollution and gradation; reduce the impacts of extreme events and natural disaster; make optimum utilization of natural resources; assess the impacts of proposed projects and activities on environment; review and revise the existing technologies and make them eco-friendly; formulate laws for the implementation of environmental protection and conservation programs. The dissertation also discussed nature of sustainable development as well as scope of sustainable development.

In addition, the dissertation examined the legal framework for the enforcement of environmental law in Nigeria. Specifically, it discussed some federal environmental legislation such as the Constitution, National Environment Standards and Regulations Enforcement Agency (NESREA) Act, Environmental Impact Assessment Act, Harmful Waste (Special Criminal Provisions) Act and the Petroleum Act among others. In addition to these the environmental legislations of some states were discussed, for example environmental sanitation law of Lagos State, Kwara State Environmental Protection Agency Law and Enugu State Waste Management. Finally, the concluding part of the study relates the summary, findings, recommendations and conclusions.

5.2 Findings

The following discussions in the preceding chapters the following findings are made:

- i. Lack of adequate Enforcement Mechanisms: In spite of the laws (local and national) on waste control and management in Nigeria, there are still battles against

the harmful consequences of unguided waste and the attainment of a clean healthy environment in the country. This is a common sight in all the States in Nigeria particularly in commercial towns such as Mushin, Oshodi, and Ketu Areas of Lagos State, Ilorin area of Kwara State capital to see heaps, accumulation of festering waste dumps. Consequently, this affects the mechanisms for collection and management of environmental wastes as a result of lack of proper coordination of environmental policies. This is due to the lack of penal powers of NESREA. Though NESREA Act confers power on the agency to enforce, it did not confer on it the power to punish or sanction offenders.

- ii. There is also the problem lack of fund: Lack of fund limits the performance of the various agencies involved in ensuring sustainable development no matter how ambitious and pro-active they are. Further, lack of fund leads to many other problems such as the capacity of the agencies to engaged professional waste managers for effective monitoring and control.
- iii. There is lack of awareness on the need to protect the environment. Recent years have seen an appreciable growth in the level of understanding of the dangers to be caused by having a poor an unhealthy environments.
- iv. Bureaucratic implementation lapses: The existing institutional framework does not operate efficiently due to number of factors chief among which is the problem of Bureaucracy. This is one of the banes of policy formulation and implementation in Nigeria. Environmental regulation cannot be effective in an atmosphere of inadequate, unreliable and inconsistent data. Generally, there is lack of modern technology/lethargy in implementing efficient waste management methods in all

the states of Nigerian except Lagos state which has a modern computer data based system.

- v. Absence of effective collaborative efforts among the various tiers of government as well as other relevant stakeholders in environmental management. Absence of effective collaborative efforts among the various tiers of government as well as other relevant stakeholders in environmental management. There is absence of cooperative federalism where there is collaboration among all the tiers of government in the implementation of environmental laws and policies. What is currently obtainable is that Federal, state and local Government regard one another as competitors and Jostle for relevance in environmental matters.
- vi. Government indifference to implementation: To achieve full implementation of the various policies environmental and regulations, the government has to demonstrate willingness to prosecute and punish offenders no matter how highly placed. The government has not shown the required political will to deal with violators of environmental laws especially the Multinational Oil companies in Nigeria. In order to demonstrate political will on this matter, the government needs to ensure the prosecution of big and influential multi-national companies who violate our environmental laws.

5.3 Recommendations

The following are suggestions that will enhance environmental management for a better sustainable development in Nigeria:

- i. The need for the Government to be Pro-active: The government and other stakeholders should strengthen collaborative efforts in order to improve efficiency and effectiveness of efforts geared towards environmental management. For the purposes of implementation there is a need to put in place a stronger mechanism for enforcement purposes which will create fear in the minds of the people. For example, should establish a sanitation court (as currently experience in Kwara State) so as to secure mass compliance from the population. This strategy could yield much in terms of awareness.
- ii. Provision of financial assistance: The environmental management requires financial expenses and it has become difficult for developing countries such as Nigeria to meet up with a perfect standard which includes provision of waste disposal at strategic place at the state and local levels. In the light of this, it is recommended that government at all levels should engage in collaborative mechanism with Non-Governmental Agencies (NGOs) for their supports as a developmental goal to developing countries. However, some feel that people must do this for themselves, and there are countries which have tried ‘decoupling’ their development from the rest of the world.
- iii. Creation of awareness: creation of awareness is a strategy that could yield much in terms of enlightening the public but significantly little in terms of compliance probably due to the lack of interpersonal channels of communication and the non-

inclusion of fear/threat appeals in its campaign messaging. Awareness creation will make the citizen to be proactive and understand that, Nigerians' attitude of saying the "government-does-everything" is not always tenable in issues that affect all and sundry such as environmental protection which is life threatening in the long run.

- iv. Provision of modern technology: the pro-activeness of government at all levels in terms of provision of modern technologies is recommended so as to provide a good atmosphere for job performance and at the same time it will be time saving particularly in mega cities. Nigeria should develop a national strategy that identifies principles and priorities that set short and long term goals and align legal and policy tools to those goals.
- v. There is a need for cooperation among the various agencies of government and other relevant stakeholder engaging in environmental management. By so doing, the aim will be geared towards the protection purpose
- vi. The government should demonstrate enough political will towards environmental management, for example, stamp out corruption in environmental management matters especially in disbursement of funds. Generally, all existing environmental laws should be revived so as to fill the existing laws and inadequacies, specifically Section (20) of the 1999 Constitution should be made justifiable and expanded to guarantee right to a healthy and balanced environment. In particular, NESREA which is the major environmental law enforcement agency in Nigeria should restructure and also be given autonomy to act independently, free from undue political influence.

5.4 Conclusion

This study, having closely examined the relevant issues on environmental management for sustainable development in Nigeria, concludes that while environmental regulation is justified in one breadth, strict application of command and control approach may be counter – productive in environmental management. Therefore, it advocate for a carrot and stick approach to infuse public confidence in environmental management through continuous environmental education and training. This will require a change in approach in environmental governance. Government must promote, implement and enforce environmental policies in a transparent manner.

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