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EVALUATION OF WATER POLLUTION IN NIGERIA

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ABSTRACT

Water pollution is a significant environmental issue in Nigeria, impacting public health, ecosystems, and economic activities. The legal framework for controlling water pollution in Nigeria encompasses various federal and state regulations, policies, and institutional structures designed to safeguard water resources and ensure sustainable management. This study investigates the legal framework for controlling water pollution in Nigeria, analyzing the effectiveness of existing legislation and regulations related to water pollution control in Nigeria, including key acts and regulations such as Federal Environmental Protection Agency Act, the National Water Resources Act, and the National Environmental Standards and Regulations Enforcement Agency Act examines key laws such as the Federal Environmental Protection Agency (FEPA) Act, the National Water Resources Act, and the National Environmental Standards and Regulations Enforcement Agency (NESREA) Act. The study aims to assess the effectiveness of these legal instruments in managing and mitigating water pollution. This includes examining enforcement mechanisms, compliance levels, and the impact on water quality, identify institutional roles and responsibilities to investigate the roles and responsibilities of various institutions involved in water pollution control such as the National Environmental Standards and Regulations Enforcement agencies, and highlight challenges and gaps in implementation which involves assessing issues such as regulatory overlaps, enforcement challenges, and the adequacy of water quality standards. By evaluating the current legal and institutional framework, the study seeks to provide recommendations for improving water pollution control measures that includes suggesting policy changes, enhancing enforcement mechanisms and improving stakeholders engagement. The findings aim to contribute to more effective management of water resources and enhanced protection of water quality in Nigeria.

Keywords: Evaluation, Pollution, Water, Nigeria

INTRODUCTION

Water pollution is one of the most ecological threats we face today. It is formed when chemical compounds or waste enters water bodies such as lakes, rivers and oceans, dissolving in them, lying suspended in the water and degrading the quality of the water. Water pollution can be caused in many ways such as city sewage and industrial waste, chemical waste, oil spills, and plastic. For this reason, in this essay will explore the effects of water pollution on human health, animals, and clean water.

Firstly, water pollution affects human health by causing diseases. Federal Environmental Protection Agency (FEPA) maintains that when we drink water that contains a dangerous algal bloom, it can cause serious health problems such as rashes, stomach or liver illness, respiratory problems and neurological affects. For instance, infants who drink water that consist of high nitrate will suffer from blue-baby syndrome, a condition of shortness of breath and blue-tinted skin¹. In addition, the most common diseases that have affected large number of populations in tropical areas are water-borne diseases. Pathogens such as virus, bacteria and parasitic worms are diseases-producing agents found in the faeces of infected persons. Therefore, in a poor sanitary environment, these diseases are easily spread through hand, food and water.

Secondly, water pollution might cause extinction and threaten animal life, including marine life. Furry animals or birds might not be able to fly or move properly and maintain their body temperature when they get oil on their fur or feathers. In fact, it might contaminate nesting areas, feeding grounds and even poisons them when the oil washes up on beaches. Furthermore, marine plants such as coral reefs are not just beautiful, but it is

important for food chain and home to the reef found in the oceans. So, oil may have a negative impact on coral reefs by blocking sunlight and preventing marine plants from using light for photosynthesis.

Finally, water pollution will deplete clean water. Natural Resources Defence Council (NRCD) states that “clean water provides the foundation for prosperous communities. We rely on clean water to survive, yet we are heading towards a water crisis”²

In particular, when water from rain runs off roofs and roads into our rivers, it picks up toxic chemicals, dirt, trash, disease-carrying organisms along the way, lack of basic protections and making these toxic chemicals vulnerable to pollution from factory farms and industrial plants. According to a World Wild Life (WWF) statistic reveals that “1.1 billion people globally unable to access to clean water, 2.4 billion people inadequate to sanitation, 2 million people, annually, diarrhoeal illnesses claim the lives of most children.”³. This is an enormous number; more than one third of the world population is affected by clean water shortage.

Water pollution has a huge effect such as causing diseases to humans, poisoning fur and marine animals and clean water depletion.

Water is an essential resource for life, serving as a crucial component for drinking, agriculture, industry, and various other human activities. However, the quality of water resources in Nigeria has been severely compromised due to increasing levels of pollution. This pollution stems from various sources, including industrial discharges, agricultural runoff, domestic sewage, and oil exploration activities, especially in the Niger Delta region.

² Natural Resources Defence Council (NRCD), 2014. Para. 1

³ Water Scarcity. *World Wild Life (WWF)* 2016. Para 2.

<http://www.worldwildlife.org/threats/water-scarcity>. Accessed August, 2024.

¹ Environmental Protection Agency (EPA). 2015. para 2&3

Nigeria's rapid population growth and urbanization have exacerbated water pollution, with many urban centers lacking adequate waste management systems. Consequently, untreated waste is often discharged directly into rivers, streams, and other water bodies, leading to the contamination of these resources. A significant percentage of the population relies on these polluted water sources for their daily needs, which poses severe health risks and undermines the socio-economic development of the country⁴.

There are numerous causes of water pollution, but two general categories of pollutants exist, namely direct and indirect sources. The former category includes effluents that are released into water supplies as a result of sewage outputs from factories, refineries and waste treatment plants. The latter category comprises contaminants that seep into the water supply from soils and groundwater systems that contain fertilisers, pesticides and industrial wastes. Over time, there has been increasing global awareness of, and concern about, water pollution and innovative approaches have been developed towards sustainable solutions to prevent the exploitation of water resources. There is general agreement that a properly developed policy framework is a fundamental element of sound water resource management. The control and management of water pollution are usually addressed through the establishment of effective environmental legislation. Developing countries face the escalating challenge of preventing disease, environmental degradation and economic stagnation as a result of precious water resources becoming increasingly polluted and urgent and correctly directed action is required.

Oil pollution, particularly in the Niger Delta, is a critical concern in Nigeria. The region, which is rich in oil, has

⁴ E. E. Ezenwaji, B. M. Eduputa, & H. O. Nwankwoala, Surface water pollution and environmental degradation in Nigeria: An analysis of causes and effects. *Journal of Geography and Earth Sciences*, (2016). 4(1), 112-125.

witnessed extensive environmental degradation due to oil spills and the improper disposal of industrial waste. Studies have shown that oil spills in the Niger Delta have led to the contamination of water bodies, making them unfit for human consumption and damaging aquatic ecosystems⁵. The environmental and health impacts of such pollution are profound, contributing to the spread of waterborne diseases and affecting the livelihoods of communities dependent on fishing and agriculture.

Recognizing these challenges, the Nigerian government has implemented a series of legal and institutional measures to control water pollution. The Federal Environmental Protection Agency (FEPA) Act of 1988 marked the beginning of structured environmental regulation in Nigeria. This was followed by the establishment of the National Environmental Standards and Regulations Enforcement Agency (NESREA) in 2007, which plays a crucial role in enforcing environmental laws and standards, including those related to water pollution⁶.

Despite the existence of these legal frameworks, the effectiveness of water pollution control in Nigeria has been hampered by several factors. These include inadequate enforcement of environmental laws, insufficient funding for regulatory agencies, and a lack of public awareness about the dangers of water pollution. Additionally, the overlapping functions of various regulatory bodies often lead to conflicts and inefficiencies in addressing water pollution issues.⁷

Given the importance of water to human survival and the adverse effects of pollution, there is a pressing need to

⁵ K. N. Aroh, I. U. Ubong, C. L. Eze, I. M. Harry, J. C. Umo-Otong, & A. E. Gobo, Oil spill incidents and pipeline vandalization in Nigeria: Impact on public health and rural livelihoods. *Journal of Environmental Health*, (2010). 73(6), 28-35.

⁶ M. T. Ladan, Law, Cases and Policies on Environmental Law in Nigeria. Zaria: Ahmadu Bello University Press. 2012.

⁷ A. M. Ibrahim. Environmental Law and Policy in Nigeria. Lagos: Malthouse Press Limited. , (2016).

strengthen the legal and institutional frameworks for water pollution control in Nigeria. This study aims to explore the existing legal mechanisms, identify gaps in enforcement, and suggest measures for improving the effectiveness of water pollution control in Nigeria.

AN OVERVIEW OF WATER POLLUTION IN NIGERIA

The importance of water for sustenance of life cannot be overemphasized; whether it is use as running water in our homes, rearing cattle and growing crops in our farms or the increased uses in industries remain immeasurable. Water pollution in Nigeria is a significant environmental and public health challenge. The issue arises from various sources, including industrial waste, agricultural runoff, domestic sewage, and oil spills. These pollutants contaminate water bodies, leading to adverse effects on human health, aquatic life, and the environment.

NATURE AND SOURCES OF WATER POLLUTION

Water pollution is the contamination of water bodies (like rivers, lakes, oceans, and groundwater) with harmful substances that affect the water quality, ecosystems, and human health. The nature and sources of water pollution can be categorized into several types.

i. Nature of Water Pollution

Water pollution is defined as “the addition of any substance to water or changing of water’s physical and chemical characteristics in any way which interferes with its use for legitimate purpose”⁸. Water pollution is one thing that has become common in contemporary industrial world. According to the celebrated case of *Shell Petroleum Development Company v. Otoko & Ors*⁹, any undesirable change in the characteristics of water

amounts to water pollution. It is thus, the poor quality of water, which adversely affects the user of water for agricultural, domestic, industrial and other uses. The availability of water supply adequate in term of both quality and quantity is essential to human existence. Pure water does not exist in nature. Rainwater collects impurities from air.¹⁰ Streams and rivers collect impurities from surface runoff and through the waste discharge on these sources.

Similar is the case with ground water. While the physical senses of sight, taste, and smell were once used to assess the quality of water, advances in biological, chemical, and medical research have made it possible to quantify water quality and assess its impact on human health and well-being. Water intended for drinking purpose should be free from chemical concentrations and other micro-organisms which are hazardous to human health because presence of micro-organism, decaying vegetation and other organic matter impart odour and tastes to water.¹¹

An initial issue in relation to water quality is as to what water quality is given the contrast previously drawn between cause and effect, that is, between substance that is introduced and its impact upon the aquatic environment. Another important distinction which needs to be stressed is that between categorization of waters according to their potential uses and the determination of minimum physical, chemical and biological parameters which enable water to be used for a particular use. Significant differences exist between the exercise, first, of allocating particular waters to potential use categories and, second, the scientific determination of qualitative requirements for such categories. The contrast between these exercises is not always aided by the terminology in

⁸ A. Omaka, *Fundamental of Maritime, Admiralty and International Water Law* (Lagos, Princeton & Associates Publishing Co Ltd, 2018) p.212.

⁹ (1990) 6NWLR (Pt. 159) 694

¹⁰ RK Jain and SS Rao, *Industrial Safety, Health and Environment Management System* (3rd ed., Khanna Publishers, 2011) p.1019.

¹¹ W. Howarth and D McGillivray, *Water Pollution and Water Quality Law* (Shaw & Sons Limited, 2001) p.19.

which quality issues are discussed by different commentators¹².

According to Owa, water is considered polluted if some substances or conditions are present to such a degree that, the water cannot be used for a specific purpose¹³.

WHO defined water pollution as any change in the physical, chemical and biological properties of water that has detrimental impacts on people's lives is termed "water pollution". Water pollution occurs when unwanted materials with potential to threaten human and other natural systems find their ways into rivers, lakes, wells, streams, boreholes or even reserved fresh water in homes and industries. The pollutants (i.e. the substance that causes pollution) are usually pathogens, silts and suspended solid particles such as soils, when this contaminated water is directly consumed without proper treatment (a common practice to local communities), spread of diseases such as typhoid, dysentery, cholera, hepatitis etc will occur.¹⁴ Similarly, pollution poses a serious risk to life especially when the water is a source of drinking and for domestic purposes.¹⁵ Sewage materials, decomposed foods, cosmetics, automobile emissions, construction debris and eroded banks from rivers and other waterways. Some of these pollutants are decomposed by the action of micro-organisms through oxidation and other processes.

ii. Types of Water Pollution

Water pollution may be divided into five categories on the basis of sources and storages of water, which are:

¹² Water Resources Act 1991, ss. 82-84. Previously ss.104-106, ~~water-Water~~ Act.

¹³ , F. D Owa, water pollution: source, effect, control and management, Mediterranean journal of social science, MCSER publishing. Rome – Italy. (2013). pp.95-100.

¹⁴ A. Galadima. Domestic water pollution among local communities in Nigeria causes and consequences. European journal of scientific research. 2011. vol 52 No, 4 pp 592- 603 <http://www.eurojournal.com/ejsr.htm> Retrieve on 2nd August 2024 pdf

¹⁵ F. D Owa, water pollution: source, effect, control and management, Mediterranean journal of social science, MCSER publishing. Rome – Italy. (2013). pp.95-100.

- a. **Ground Water Pollution:** The ground water is most prime water which has multipurpose uses ranging from drinking to industrial and agricultural uses. The quality requirement varies distinctly with respect to the specific uses. Ground water contamination is generally irreversible, i.e. once it is contaminated, it is difficult to restore the original water quality of the aquifer. Excessive mineralization of ground water degrades water quality producing an objectionable taste, odour and excessive hardness. Although the soil mantle through which water passes as an adsorbent retaining a large part of colloidal and soluble ions with its cation exchange capacity, but ground water is not completely free from the menace of chronic pollution.
- b. **Surface Water Pollution:** Surface water comes in direct contact with the atmosphere, seasonal, streams, rivulets, and surface drains. So there occurs a continuous exchange of dissolved and atmospheric gases while the waters are added through water conveyances. Major lakes, rivers, reservoirs of the world are now getting polluted by various ways and thereby posing a threat to the survivability of the life system on these diverse water bodies. There are a number of routes of entry of pollutants to the surface water. Regular monitoring of these contaminating routes and their effective protective action plan has to be evolved for better conservation of surface water resources in future.
- c. **Lake Water Pollution:** Coastal lakes and estuaries cover about hectares of water areas. The rapid pace of industrialization and urbanization has posed a serious threat to these vast varieties of water resources.
- d. **River Water Pollution:** Today, pollution of water resources has been most exploited due to increasing population, industrialization, urbanization, increasing living standards and broad spheres of human activities.

e. **Sea Water Pollution:** Oceans are the major sources of water supply in the world. More than 70% of the earth's surface is covered by water basis within this vast liquid expanse lines in exhaustible amount of food, mineral, energy, salinity gradients besides coal, oil and gas. Compelled by the sea in a frantic search for more and more resource to meet the increasing demand of population. In this pursuit, by mismanaging or by over exploitation. Man's activities are largely responsible for measurable and detrimental effects on the aquatic environment.³⁹ Oil pollution in the sea appears to be the main factor which poses serious threat to the marine ecosystem and fisheries of the world. Now, the oil pollution of harbors, bays, rivers, beaches and open oceans has been increasing tremendously every day.

iii. Sources of Water Pollution

Water pollution in Nigeria primarily emanates from three main sources: municipal, agricultural, and industrial activities.

i. Municipal water pollution

The origin of municipal water pollution stems from both household and commercial waste water. Starting from the 1970s, there has been a significant surge in municipal water pollution due to population growth and the country's oil boom and industry expansion. In Nigeria, it has become customary to directly release residential and industrial waste, including sewage, human and animal excrement, as well as biodegradable materials like paper, plastic bags, and containers, into drains, gutters, streams, and rivers¹⁶.

Water contamination also results from the disposal of waste from pit latrines, a common practice in Nigerian urban and rural areas. The unfortunate thing meanwhile is that this practice has far-reaching consequences, such

¹⁶ O. Akanle. "A legal perspective on water resources and environmental development policy in Nigeria". (1981). *Nigerian Law J.* 12(1), p.18.

as depriving aquatic organisms of oxygen, causing the death of aquatic life, and contaminating water sources, which ultimately results in harm to human lives. This method of contamination affects various water bodies that pass through multiple towns and urban regions in Nigeria¹⁷.

ii. Agriculture-induced water pollution

Pollution of water bodies greatly increased in early 1976 when successive Nigerian administrations began adopting policies to enhance food production and agriculture. Consequently, there was an increased usage of pesticides, herbicides, and fertilizers which eventually led to water contamination¹⁸. An illustration of this is seen in fertilized agricultural lands, where nitrates, phosphates, and other plant nutrients stimulate the growth of algae and phytoplankton in water bodies. This growth becomes hazardous as the decomposition of these organisms significantly diminishes the dissolved oxygen levels in the water, leading to the death of aquatic life and subsequent pollution. Sometimes also, these toxins are directly sprayed into water bodies to catch fish¹⁹ which further render water bodies undrinkable.

iii. Industrial water pollution and water pollution from oil industries

Unprocessed waste and industrial by-products, including chemicals used in manufacturing, are frequently discharged directly into streams, rivers, estuaries, lagoons, and the ocean, resulting in adverse effects on both humans and marine ecosystems. The affected rivers now display a consistent dark green-black colouration and contain notable levels of lead and sodium compounds. As a result of these factors and other

¹⁷ Nigerian Environmental Study. 'Nigeria's Threatened Environment: A National Profile'. Nigerian Environmental Study/Action Team, Ibadan, (1991), p. 78.

¹⁸ O. Odeh. "Industrialist responsible for lagoon pollution". (2006). *Daily Independent Lagos*, Vol. 3, No. 1033, pp. 1-2.

¹⁹ O. Odeh. "Industrialist responsible for lagoon pollution". (August 17, 2006). *Daily Independent Lagos*, Vol. 3, No 21, pp. 84.

pertinent concerns, the water becomes unsuitable for domestic and recreational uses²⁰.

The Niger Delta in the southern part of the country, on the other hand, is where Nigeria's oil and gas reservoirs are located. More than 32 million people live in this region, which is 22% of the entire population of the country²¹. Both renewable and non-renewable natural resources are abundant in Nigeria's Niger Delta. It contains more than 3 trillion cubic meters of known gas reserves and 20 billion of Africa's 66 billion proven barrels of oil. Significantly, oil and gas resources account for more than 85% of Nigeria's GDP, more than 95% of the national budget, and more than 80% of the country's total wealth²².

The upstream operations associated with oil exploration and production are principally responsible for the destruction of the marine ecology in the Niger Delta. These practices include the dispersal of drilling mud and waste items that have been soaked with oil, as well as oil spills and emissions from gas flaring that cause acid rain. Together, these elements increase water contamination and make it harder for locals to acquire clean water. Furthermore, as polluted water sources migrate into the adjacent water bodies, the availability of fresh water suitable for human consumption and usage is further reduced²³.

²⁰ P.B. Onaji. "Legislation and technical needs for river pollution in Nigeria", in: F. Shyllon, ed., 'The Law and the Environment in Nigeria, Vantage Publishers (Int'l) Ltd., Ibadan, 1989, pp. 45-46.

²¹ P. Francis, D. Lapin and P. Rossiasco. 'Securing Development and Peace in the Niger-Delta: A Social and Conflict Analysis for Change'. https://www.wilsoncenter.org/site/default/files/AFR_110929_Niger%20Delta_0113.pdf. – accessed on August 29, 2024.

²² K.K. Aaron. "Perspective: Big oil, Rural Poverty, and Environmental Degradation in the Niger Delta Region of Nigeria". (2005). *Journal of Agriculture and Safe Health*, Vol. 11 (2), 127.

²³ O.A. Salami. "Statutory control of municipal and industrial water pollution: Nigeria's efforts so far". (1998) in: S. Simpson, O. Fagbohun, eds., *Environmental Law and Policy*, LASU Law Centre, Lagos, p. 325.

Until now, it is estimated that oil spills in Nigeria have discharged a cumulative volume exceeding 2 million barrels into the surroundings, with the Niger Delta area bearing the brunt of the impact²⁴. The Nigerian authorities have asserted that there were over 7,000 leaks recorded between 1970 and 2000²⁵. Based on available data, it is alleged that Shell documented an annual average of 221 spills, amounting to approximately 7,350 barrels of oil per year from 1989 to 1994. In contrast, the UNDP documented an environmental impact involving the loss of 3 million barrels of oil and approximately 6,800 spills from 1976 to 2001²⁶.

An assessment conducted by international environmental experts approximates onshore and offshore oil spills to have amounted to around 9 to 13 million barrels over the last five decades²⁷. As a fact, in the year 2001, a ruptured pipeline in the Ogbodo community resulted in the release of more than 26,500 barrels of oil, causing environmental contamination and rendering the community's living conditions perilous. The severity of the pollution was exacerbated due to the prolonged duration it took to control the spill. Furthermore, the clean-up approach was below expectations. Despite the assurances from representatives of the exploration company who visited the site and pledged to undertake post-impact assessment and remediation, no such actions were executed in the affected areas. This negligence significantly compromised the quality and sustainability of

²⁴ Humphrey Onyeukwu. 'The Deepwater Horizon Spillage and Lessons in Liability Claims for Nigeria'. (2010) <<http://www.thenigeriabusiness.com/column22.html>> accessed 02/08/2024.

²⁵ Adam Vaughan, 'Oil in Nigeria: a History of Spills, Fines and Fights for Rights'. <http://www.theguardian.com/environment/2011/aug/04/oil-nigeria-spills-fines-fights> - Accessed August 4, 2024

²⁶ Fabig, H. "The Body Shop and the Ogoni in Addo, M.,(ed) Human Rights Standards and the Responsibility of Transnational Corporations". 39-45 (Great Britain, 1999: Kluwer Law International) pp.309-320.

²⁷ 'Niger Delta Natural Resources Damage Assessment and Restoration Project, Phase I Scoping Report'. May, 2006.

the environment, leading to substantial harm to the marine ecosystem, and the health of the residents in that community whose daily sources of income and means of livelihood include fishing. The pollution of their drinking water is conspicuously apparent, contrasting with situations where pollutants are less easily detectable in water bodies

These circumstances have prompted significant doubts and inquiries regarding the effectiveness of Nigeria's environmental regulatory framework and its multiple Agencies.

The peril posed by oil pollution lies in its potential to infiltrate water bodies through direct spills or via pollution originating from land, transported by rain, wind, or surface runoff. The chemical makeup present in the water inevitably has detrimental consequences for the environment, as even the smallest quantities can disrupt the transfer of oxygen within the cycle. This disruption impacts the supporting system for aquatic life, triggering a cascading effect on the reproductive life cycle of marine organisms. The release of pollutant chemicals by fish can pose significant health risks to humans when consumed. Furthermore, the mere presence of benzene in water could render it unfit for consumption²⁸. The bulk of Nigeria's oil exploration operations originate from the Niger Delta region, primarily encircled by water and whose major occupation is fishing. The persistent pollution stemming from these activities jeopardizes their livelihoods, health, and the safety of the food and water they rely upon²⁹.

²⁸ 'Environmental Assessment of Ogoni Land'. (2011). *United Nations Environment Programme Report* at pgs. 6, 103. Accessible at www.unep.org/nigeria - visited on the August 26, 2024

²⁹ The Exxon Valdez oil spill released about 30% of the spill into the atmosphere through evaporation of nearly 35,000 tonnes of oil. This happens with the light nature of the oil. See Kingston, P., "Long-term Environmental Impact of Oil Spills". (2002). *Spill Science & Technology Bulletin*, Vol. 7, Nos. 1-2, pp. 53-61

Humans face substantial risks due to the consequences of hydrocarbons being discharged into the environment. These hazards manifest through various means, such as inhaling polluted air, consuming contaminated fish, coming into contact with polluted water while bathing or drinking, and encountering soil that has been tainted³⁰. The aforementioned actions represent violations of fundamental human rights, including the right to life, the right to health, and ultimately, the right to a clean environment. Consequently, the quality of life generally and health within these communities is significantly compromised. Conversely, healthcare professionals have identified health issues, with many of these cases directly attributed to water pollution. Children experience skin rashes and eye problems, while the elderly population contends with chest infections, dizziness, and skin irritation³¹. The oil companies' dredging activities in Nigeria have led to the intrusion of salty water from the Gulf of Guinea into the freshwater creeks of the Niger Delta region. This intrusion affects the drinking water sources of neighbouring villages, compelling residents to spend extended periods in canoes while searching for safe drinking water³².

LEGAL FRAMEWORK FOR WATER POLLUTION CONTROL IN NIGERIA

1. Statutory Framework

A statutory framework refers to laws and legislation enacted by a governing body that define rules, obligations, and penalties concerning specific issues, such as water pollution. The statutory framework for

³⁰ P.J Saunders. "The estimation of pollution damage". Manchester university press; 1976.

³¹ *The Encyclopedia of Earth* (2010). 'Health effects of total petroleum hydrocarbons'.

Available at www.eoearth.org/article/health_effects_of_total_petroleum_hydrocarbons - Accessed on August 27, 2024

³² I .George-Ukpong. "Nature under siege: portrait of environmental crisis in the Niger Delta". (2023), pp. 79-121.

water pollution control in Nigeria is primarily shaped by various environmental laws and regulations. In Nigeria, water pollution control is governed by a framework of laws, regulations, and policies at both federal and state levels. These laws aim to protect water bodies, ensure public health, and promote sustainable water resource management.

Current Laws regulating water pollution control in particular and the environment generally in Nigeria run in diverse scopes and include; the 1999 Constitution of the Federal Republic of Nigeria (as amended), the National Environmental Standards and Regulation Enforcement (Establishment)(Amendment) Act, 2018, Harmful Waste (Special Criminal Provisions etc.), Act, 2004, Oil in Navigable Waters Act, 2004, National Oil Spill Detection and Response Agency (Establishment), Act, 2006, Water Resources Act, Cap. W2, LFN, 2004, Water Rights Act, 2004, Common Laws, all national and international Conventions and Treaties in force in Nigeria, Laws made by the Federal, State and Local Governments. Below is an overview of the major statutes:

a. The 1999 Constitution of the Federal Republic of Nigeria (as amended)

The Nigerian Constitution is supreme above all other laws, people, and authorities within Nigeria³³, just like the constitutions of other countries across the world. The Federal Government of Nigeria has sole jurisdiction over water issues coming from sources that have an impact on many States having been granted exclusive legislative authority over watercourses under the Nigerian Constitution, which includes activities like fishing in rivers and lakes as well as maritime shipping and navigation³⁴. A critical examination of the Nigerian Constitution clearly shows that neither the right to a healthy environment nor the right to obtain clean,

³³ Section 1, CFRN, 1999

³⁴ Items 29 and 36 of Part 1, Second Schedule of the Nigerian Constitution.

pollution-free water are clearly stated in its provisions³⁵. By the Objectives and Directive Principles of State Policy of the Nigerian Constitution, some provisions seemingly encourage the protection of the environment, especially water bodies as follows:

*“The State shall protect and improve the environment and safeguard the water, air and land, forests and wild life of Nigeria”.*³⁶

On the surface, the aforementioned provision appears plausible, however, it has received criticism for having serious flaws³⁷. The major problem with this crucial provision⁹⁵ is the fact that it is covered by Chapter II of the Constitution, which is non-justiciable and this is extremely significant. The non-justiciable nature of that provision means that even in cases where the government fails to uphold its obligations under the said Chapter II, there is no legal recourse available to aggrieved citizens, and no Court in Nigeria can even consider or rule on such a case. This provision was incorporated to avoid a situation where environmental claims would interfere with the economic plans and interests of the government. So, it was created via a system that seeks to find a compromise between competing viewpoints. As a result, the very legal impact that Section 20 is supposed to create has regrettably become more illusory than substantial.

It is clear from the preceding provisions that while the 1999 Constitution recognizes the necessity for environmental protection, it does not address

³⁵ Section 6(6) CFRN, 1999; E. P. Amechi. "Litigating Right to Healthy Environment in Nigeria: An Examination of the Impacts of the Fundamental Rights (Enforcement Procedure) Rules 2009, In Ensuring Access to Justice for Victims of Environmental Degradation". (2010). *Law Environment and Development Journal*, pp. 320 - 324.

³⁶ Section 20, CFRN, 1999

³⁷ O. Fagbohun, "Reappraising the Nigerian Constitution for Environmental Management". (2002). *AAU Law Journal*, vol. 1, no.1, p. 44.

environmental problems. Although it raises environmental protection to a constitutional status, the provisions show a weak understanding of environmental problems. For instance, **Section 20** a fore-mentioned, mandates that the State protect and improve the environment for the benefit of the society as a whole. Additionally, **Section 17(1)(d)** of the Constitution strengthens Section 20 by declaring unequivocally that the government must step in to stop the exploitation of a natural resource if the devastating effects on the environment outweigh the benefits to the host community. **Section 13** of the same Constitution requires all governmental bodies, authorities, and individuals exercising legislative, executive, or judicial authority to abide by, respect, and enforce the provisions of **Section 20** and **Chapter II** of the Constitution. Therefore, the government has both the obligation and the power to impose restrictions on the use of resources and other variables that have a negative influence on human life and well-being in Nigeria.

Simply put, the Directive Principles require the government to protect the environment and limit the exploitation of natural resources to improve the quality of the human environment and existence. The Constitution emphasizes that every person has a responsibility to protect the environment and eliminate water pollution. This duty extends beyond the State and includes all governmental branches. As a result, people are prevented from ignoring their civic duties while exercising their rights as individuals or from carelessly endangering the environment.⁹⁸ Unfortunately, **Section 6(6)(c)** renders **Sections 13, 17(1)(d), 20, 24(e), 33** and **34** of the Constitution ineffective from a legal standpoint. This makes it far more difficult to make sure that the government abides by its fundamental obligations outlined in Section 13 of the Constitution.

The importance of the right to access a clean, pollution-

free environment and water comes from how closely water and life are intertwined. Sections 33 and 34 of the 1999 Constitution state that everyone has the right to life and dignity of a human person. Among other rights related to the right to life, the unimpeded right to access clean water and a healthy environment is essential for achieving the rights to life, food and human dignity. This is because unrestricted access to a pollution-free environment, including clean water, is crucial for the full realization of the right to life. Regrettably, the enforcement of these provisions becomes challenging due to the restriction imposed by Section 6(6)(c) of Nigeria's Constitution, which prevents the courts from determining and assuming jurisdiction over matters covered in Chapter II of the 1999 Constitution. This implies that although Nigeria recognizes the right to a pollution-free water and environment, this right is not absolute and thus lacks enforce-ability.

Because Chapter II of the 1999 Constitution is not subject to judicial interpretation, it follows that the Courts in Nigeria cannot rule on any of its provisions, including the requirement for the government to provide a pollution-free environment and water. In effect, these sections prohibit using the government as a legal adversary. This demonstrates that the government of Nigeria intentionally uses the in-applicability of the right to clean water and an unpolluted environment as a means of evading its obligations. This also underscores the idea that the government and its agencies are complicit in water pollution incidents in Nigeria. This work argues that Section 6(6)(c) presents a contradiction because it undercuts the basis of its constitutionality and conflicts with the preceding sections like **Section 6(a)** and **(b)**, which gives Nigerian Courts inherent authority and sanctions against people, governments, and their agencies.¹⁰³ This paradox appears to be developing a fundamental policy that affects social and economic rights, which is contrary to

all the public policy norms. In plainer terms, it limits the scope to which Nigerian Courts may exercise their inherent authority to decide cases and issue sanctions in situations involving Nigerian citizens, governments, or authorities to resolve their civil rights and obligations.

This line of reasoning was the basis for the Court of Appeal's decision in the case of **Badejo v. Federal Minister of Education**³⁸. In this case, the Court declined to exercise jurisdiction in a lawsuit challenging the Government's University Admission Policy on the ground that the lawsuit aimed to establish a right that falls under Directive Principles and is therefore unenforceable under Chapter II of the Constitution. This is the foundation for the lapses currently experienced in the environmental implementation and enforcement sector in Nigeria.

b. National Water Resources Act

The NWRA vests on the federal government of Nigeria the duty to regulate, develop and license all water operators in Nigeria³⁹. This includes planning, development, and usage of Nigeria's water resources, protection, and management of water resources, ensuring quality, quantity, distribution, use and management of water⁴⁰.

The NWRA provides that any person may take water without charge for domestic purpose⁴¹, and for the purpose of fishing or for navigation⁴². A person who possesses a statutory right of occupancy to any land may take or use water from the underground water source without charge for domestic purpose⁴³. Any person or public authority can acquire a right to use or take water from any watercourse or groundwater for any purpose, provided it is in accordance with the provisions of the

NWRA⁴⁴. The NWRA provides that the diversion, storage, pumping or use on a commercial scale of any water shall be carried out in accordance with a license issued pursuant to the NWRA⁴⁵. Any person in breach of this provision commits an offence⁴⁶. The NWRA provides that for an application of the grant of a license for the use of any water, for the purposes of storage, diversion and commercial scale shall be made to the Minister in such form and manner, and must be accompanied by such relevant information and document the Minister may prescribe from time to time⁴⁷.

The Minister shall, before issuing a license, consider the allocation of usable water in the particular area, and may cancel or modify any licence for the diversion and use of water for the purpose of accommodating the needs of another user of water to which that licence relates⁴⁸. The Minister is given very wide powers on water regulation, including to issue licenses for water, use of water for commercial scale, operation, and repair of any borehole or hydraulic work⁴⁹. The Minister may, define places from which water may be taken or used, define the amount of water which may be taken by any person, prohibit temporarily or permanently the use of water that is hazardous to health⁵⁰. The Minister may revoke the right to use water where such right overrides the public interest, and license any drilling operations and regulate the place, depth, manner of construction of borehole or well⁵¹. The NWRA provides that the Minister shall in the discharge of his duties, have the power to regulate the activities on water, which may likely affect the quality and quantity of the water resource⁵². The Minister is also empowered to refuse a license, where the activity for the

⁴⁴ Sec 3 of NWRA.

⁴⁵ Sec 9(1) of NWRA.

⁴⁶ Sec 9(2) of WRA.

⁴⁷ Sec 10 of WRA

⁴⁸ Sec 11(b) of National Water Resources Act 1993

⁴⁹ Sec 13 of NWRA.

⁵⁰ Sec 4(c) of NWRA.

⁵¹ Sec 11 of NWRA.

⁵² Sec 8(d) of NWRA.

³⁸ (1996) 8 NWLR (Pt. 464).

³⁹ Sec 1 of National Water Resources Act 1993.

⁴⁰ Sec 1 of NWRA.

⁴¹ Sec 2(a)(i) of NWRA.

⁴² Sec 2(a)(ii) of NWRA.

⁴³ Sec 2(a)(iii) of NWRA.

application of such license is likely to interfere with the quality of the water resource⁵³. The Minister in the discharge of his powers and duties is to make provision for the adequate supply of suitable water for animals, irrigation, domestic and non-domestic use, safe disposal of sewage⁵⁴, and prevention from pollution⁵⁵. The Minister may make regulations generally for the proper administration of the NWRA⁵⁶.

Any person who commits an offence under the WRA is liable upon conviction to a fine not exceeding two thousand naira (one hundred rands) or to a term of imprisonment for a period not exceeding six months or to both such fine and imprisonment, and, in the case of a continuing offence, an additional fine not exceeding hundred naira (five rands) for every day that the offence continues⁵⁷. What constitutes an offence under the NWRA includes any activity that interferes with the quality or quantity of water⁵⁸, and the failure or refusal to use a license granted under the NWRA⁵⁹.

Although the NWRA contains some provisions relating to the management of water resources, the WRA arguably does not give proper effect to any of the international environmental law principles outlined above as it only imposes an inadequate and ineffective liability and compensation provision for any pollution cause to water resources.

Under the NWRA, the liability that exists for polluters is seen in sections 18 and 24 of the NWRA. These provisions make it an offence to perform any activity that is likely to interfere with water quality or quantity, including pollution. The penalty is limited to a fine of two thousand naira or six months imprisonment. These liability provisions in the NWRA are not strong enough to

⁵³ Sec 11(a) of NWRA.

⁵⁴ Sec 5(b) of NWRA.

⁵⁵ Sec 20 of NWRA

⁵⁶ Sec 19 NWRA.

⁵⁷ Sec 18 of National Water Resources Act, 1993

⁵⁸ Sec 11(a) of NWRA.

⁵⁹ Sec 11(c) of NWRA.

combat water pollution issues in Nigeria. The provisions of the NWRA were made primarily to manage water use and not the genuine interest to reduce water pollution. There is a need to enhance the regulatory mechanism in order to ensure and stimulate water pollution prevention in Nigeria by the imposition of stricter liability and compensation provisions.

c. Environmental Impact Assessment (EIA) Act

The Environmental Impact Assessment (EIA) procedure⁶⁰ also controls water pollution management as the probable impacts of a project on the environment; including water, must be carried out prior to their commencement.

Unfortunately, the assessment process in Nigeria is carried out to merely fulfil legal requirements rather than its main intended purpose of assessing the environmental impacts to assess the project's viability⁶¹. This is due in part to the prioritization of economic development over environmental concerns in Nigeria as in many other developing countries⁶². It is however important to state that awareness level in many communities in Nigeria has greatly increased to a level that the people not only demonstrate greater awareness of their expected roles in the EIA process, they also ensure that they are actively involved at various stages of the EIA process and thus able to act to protect their environment.

d. Federal Environmental Protection Agency (FEPA) ACT⁶³

⁶⁰ Cap. E12 Laws of the Federation of Nigeria, 2004.

⁶¹ See, *Oronto Douglas v. Shell Petroleum Development Company Limited*, Suit No. FHC/2CS/573/93.

⁶² R.T. Ako, Ensuring Public Participation In Environmental Impact Assessment of Development Projects in the Niger Delta Region of Nigeria: A Veritable Tool for Sustainable Development, *Environtopica*, 3(1-2) (2006) 1-15.

⁶³ Cap. F10 Laws of the Federation of Nigeria, 2004.

Water pollution in Nigeria has become a pressing environmental issue due to industrialization, urbanization, and other human activities. The country's water resources are increasingly contaminated by chemical effluents, waste discharge, and agricultural run-off, endangering human health, aquatic life, and the environment. Recognizing the gravity of this problem, Nigeria has established various regulatory frameworks, notably the Federal Environmental Protection Agency (FEPA), to manage and control water pollution⁶⁴.

In 1988, an unforeseen occurrence led to an aggressive environmental policy. This was when toxic wastes were dumped in koko, a village in Delta State. However, according to Edo (2012) the action of the Nigerian government in responding to this national embarrassment was decisive and quick. The creation of the Federal Environmental Protection Agency (FEPA) by Decree 58 of 1988 set FEPA as the sole body charged with the responsibility of protecting the environment. The decree gave the agency broad enforcement powers to act, even without warrants, in bringing violators, to book. They have the power to gain entry, inspect, seize and arrest with stiff penalties of a fine and or jail term on whoever obstructs the enforcement officers in the discharge of their duties or make false declaration of compliance. The FEPA Decree prohibits⁶⁵ the 'discharge in such harmful quantities of any hazardous substance into the air , or upon land and the waters of Nigeria or at the joining shorelines except where such discharge is permitted or authorised under any law in Nigeria. However, an owner or operator is exempted from strict liability where the oil spillage was as a result of "natural disaster" or an act of war or by sabotage.

Main Functions of Federal Environmental Protection Agency (FEPA)

⁶⁴ Federal Environmental Protection Agency Decree*. (1988). Decree No. 58 of 1988, Laws of the Federation of Nigeria.

⁶⁵ Section.20(1) FEPA Decree 1988 No.58

- **Environmental Monitoring and Enforcement:** FEPA was tasked with ensuring compliance with environmental standards, addressing issues such as industrial pollution and waste management.
- **Environmental Education and Awareness:** The agency worked on promoting awareness among citizens regarding environmental protection.
- **Regulatory Standards:** It established guidelines for industries on pollution control, waste management, and the use of natural resources.
- **International Collaboration:** FEPA coordinated with international bodies on global environmental matters, such as climate change and biodiversity conservation.

The establishment of the Federal Environmental Protection Agency (FEPA) marked a significant step toward addressing environmental challenges in Nigeria. FEPA's role in developing policies, regulations, and standards for pollution control, waste management, and environmental education laid the foundation for the country's current environmental protection efforts. Although FEPA was later merged into the Federal Ministry of Environment, its legacy continues to influence Nigeria's approach to environmental management. The commitment to sustainability, as demonstrated by both FEPA and its successor, remains critical for the country's ability to cope with ongoing and emerging environmental issues.

e. Harmful Waste (Special Criminal Provisions etc.) (HWA) Act, Cap. H1, LFN, 2004

This legislation extends to hazardous substances and explicitly forbids the disposal of detrimental or perilous materials on the land or within Nigeria's territorial waterways. Additionally, the Act deems it an offence to assist in any way in the commission of

such an offence⁶⁶. It stipulates a penalty of life imprisonment for both the attempt and the actual commission of the offence under the Act. Furthermore, in cases of the latter, it allows for the confiscation of any property, whether movable or immovable, employed in the commission of the offence, which shall be surrendered to the Federal Government.⁶⁷

It is worth mentioning that the Act removes the immunity of Diplomats and corporate entities. Consequently, any Diplomat or corporate entity officers found guilty of committing offences outlined in the Act will be subject to the specified penalties as outlined within the Act⁶⁸. This is impressive if it can be implemented. Regrettably, the Act appears to diminish the impact of its provisions by incorporating a defence mechanism that may likely absolve the polluter of responsibility if he can prove that the damage occurred due to the fault of the victims or if the victims willingly accepted the risk⁶⁹.

This provision introduces ambiguity and creates a loophole for offenders to exploit. It undermines the effectiveness of the carefully articulated earlier provisions, as many environmental victims are impoverished farmers, fishermen, and rural residents who are vulnerable to the actions of multinational corporations and unresponsive government authorities. These individuals, having lost their livelihoods due to environmental destruction, often find themselves susceptible to exploitation with minimal or no compensation and would readily accept risk to absolve the polluters upon being offered compensation no matter how paltry. This again contributes in no small way towards unabated

environmental degradation and ineffective implementation and enforcement.

f. Oil in Navigable Waters Act, (Cap., 337), LFN., 2004 (as amended)

This Act (otherwise known as ONWA) represents the inaugural legislation dedicated exclusively to addressing the industrial waste produced by oil production companies. ONWA, having adopted the International Convention for the Prevention of Pollution from Ships (MARPOL), meticulously outlines measures for averting watercourse and marine pollution caused by oil. Therefore, its focus lies primarily on regulating the discharge of oil from vessels⁷⁰. The Act prohibits the release of oil within the territorial waters of Nigeria as well as within all other inland waterways⁷¹. These limits are accessible to ocean-faring vessels. The Act imposes penalties for oil discharge, which include a nominal fine of ₦2,000⁷². The ONWA grants authority to the harbour organization to designate a location for the release of ballast water from ships that have transported petroleum cargo, and such an action will not be deemed a violation⁷³.

The ONWA also addresses matters concerning Nigeria's territorial waters. Considering the nature of oil pollution, a question may arise regarding the pollution of the adjacent sea areas beyond Nigeria's territorial waters or the oil terminals located outside the prohibited sea zones. How would these navigable waters be safeguarded against oil pollution? Section 6 of the Oil Terminal Dues Act (OTDA), 1969 provides a comprehensive response to this question. This particular section ensures that the provisions established under Section 3 of the ONWA apply to any region where an oil terminal is situated, even if it

⁶⁶ Section 1, HWA

⁶⁷ Sections 6 and 8, HWA

⁶⁸ Sections 7 and 9, HWA

⁶⁹ Section 12 (1) (a), HWA

⁷⁰ Section 3, ONWA.

⁷¹ Section 3 (2)(a) ONWA

⁷² Section 6, ONWA

⁷³ Section 3(3), ONWA

happens to be located beyond the confines of Nigeria's territorial waters.⁷⁴ As a result, any release or escape of oil from pipelines, tanks, vessels, or any oil terminal evacuation operation is considered an offence, and the owner is liable under Section 3 of the Act as previously mentioned.

ONWA is directly applicable to both designated and forbidden zones outside of Nigeria's territorial waters. Additionally, it indirectly applies to any area where a Nigerian oil terminal is located through the OTDA, regardless of whether that area is outside the boundaries of Nigeria's territorial waters. By imposing a ban on ship oil discharge, the ONWA successfully carries out the preventive principle.¹⁵¹ However, the punishment section is ridiculously low and cannot act as a deterrent whatsoever. It rather encourages impunity. Hence, a review would be necessary.

g. National Oil Spill Detection and Response Agency (Establishment) (NOSDRA) Act, No. 15, 2006

The increasing environmental deterioration and destruction of the marine ecosystem, particularly in the Niger Delta Region, prompted the Federal Government of Nigeria to introduce this Act as a deliberate and well-defined response. Nigeria has ratified a number of international environmental laws accords. The International Convention for the Prevention of Pollution of the Sea by Oil (1954), which was amended in 1962, is one of them⁷⁵. The Oil in Navigable Waters Act, of 1965, and the Civil Liability Convention are some of the major legislation birthed as a result. It adheres to conventions like the International Convention on the Prevention of Marine Pollution by the Dumping of Waste and Other Matters, 1972 (London Convention), the Basel Convention on the Control of Trans-boundary

Movement of Hazardous Waste and their Disposal, 1989, and the International Convention on Oil Pollution, Preparedness, Response, and Cooperation, 1990, which require participating States to develop a contingency plan. NOSDRA was founded in Nigeria in compliance with this clause, among other things.⁷⁶

The National Oil Spill Contingency Plan for Nigeria is to be organized and carried out using the framework established by the passage of this Act. The goal is to ensure a secure, timely, effective, and appropriate response to major or catastrophic oil pollution occurrences. One of the Agency's main responsibilities is to assess the ecological effects of a spill, advise the Federal Government on the appropriate remedial actions for recovery, and make sure that the affected populations are fairly compensated. In essence, the Agency acts as a liaison between the Government and the effected communities⁷⁷.

It is argued here that playing the mediator role in these situations might not uphold impartiality and justice. This is a worry because the government which often has connections with the polluting companies or, at the very least, retains an interest in those polluting businesses, established the Agency. Due to this potential prejudice, its actions might be unbalanced, which might cause suspicion and unfair treatment in the impacted communities.

The Agency also has the power to monitor adherence to all environmental laws now in effect in Nigeria, in addition to its duty to track down oil spills in the petroleum industry. Its responsibilities include receiving reports of oil spills and facilitating coordinated national response activities. The Agency

⁷⁴ Section 6, OTDA.

⁷⁵ See, Section 3, ONWA

⁷⁶ <<https://www.stakeholderdemocracy.org/policy-analysis-nosdra-amendment-draft-bill/>> Accessed August 30, 2024.

⁷⁷ https://susinaf.org/database_directory/? - Accessed August 30, 2022.

is tasked with managing plans that the Federal Government may occasionally develop, including the oversight of initiatives aimed at getting rid of dangerous substances⁷⁸. Conversely, individuals responsible for oil spills are obligated to promptly submit a report to the Agency within 24 hours of the incident, or incur a penalty of ₦500,000 fine each day they fail to submit the said report⁷⁹. The legislation also includes provisions for remediation in the form of conducting clean-up activities in the impacted areas, with a corresponding fine of ₦1,000,000 for non-compliance⁸⁰.

This provision aims to incorporate the polluter pays principle and a form of remediation. However, a closer examination of **Section 6(3)** and its fine of ₦1,000,000 suggests that the polluter is only liable for a single payment, which does not account for continuous or daily fines for ongoing violations. It is argued here that this fine is inadequate and falls short of establishing a sustainable remediation standard, as polluters might prefer paying such a nominal amount rather than engaging in the costly clean-up of the affected area.

h. The National Water Policy, 2004

To combat water and environmental pollution, the Nigerian government introduced its initial environmental policy, the National Policy on Environment, in 1989⁸¹. This Policy underwent revisions in 1999 and 2004. One of its primary objectives is safeguarding the environment *vis-a-vis* the marine ecosystem against pollution to promote the overall well-being of Nigerian citizens.

Furthermore, in 2009, the Nigerian Government launched Vision 20:2020, a comprehensive plan for Nigeria's economic transformation over eleven years (2009-2020). This initiative underscores the importance of environmental protection, designating it as a crucial goal to be achieved by 2020. NV20:2020 encompasses specific objectives, including the reduction of environmental hazards and various forms of pollution such as land and water contamination.' Regrettably, upon the conclusion of the NV20:2020 initiative and to this day, the realization of these objectives, particularly the protection of water from pollution, remains unfulfilled. The 2004 National Policy on Environment, serving as a comprehensive policy framework, emphasizes essential imperatives such as coordination, environmental protection, and conservation of natural resources to foster sustainable development. This can be accomplished by ensuring environmental quality that supports food, health, and well-being, promoting the sustainable utilization of natural resources, and preserving and enhancing ecosystem diversity.

i. The National Policy on the Environment (NPE)

The National Policy on the Environment (NPE), which served as the basis for the creation of the FEPA Act, currently known as the NESREA Act, is meant to be aligned with the Nigerian laws governing environmental protection. The NPE emphasizes the importance of using the legal system as a vehicle to achieve a healthy balance between environmental concerns, development goals, and socioeconomic factors. The fundamental goal of the NPE is to protect the environment through the use of law, ultimately promoting sustainable development on a domestic scale. This involves:

- a. Providing a good environment that is supportive of well-being and health.

⁷⁸ Section 6 (1), NOSDRA.

⁷⁹ Section 6 (2), NOSDRA

⁸⁰ Section 6 (3), NOSDRA

⁸¹ 'Review of the National Policy on the Environment 1999' (Federal Ministry of Environment 2014);

<http://environment.gov.ng/index.php/downloads/3-environmental-policies>- Accessed 28 July 2024

- b. Protecting the environment and managing natural resources for the benefit of current and future generations.
- c. Restoring, protecting, and promoting ecosystems and ecological processes essential to the biosphere's healthy operation, protecting biodiversity and upholding the idea of sustainable yield in the use of living ecosystems and natural resources.
- d. Encouraging understanding of the underlying links between the environment, resources, and development in the general public. This also entails promoting the active participation of people and communities in projects designed to improve the environment.
- e. Working in earnest cooperation with other countries, organizations, and agencies to ensure the best possible use of international natural resources and the efficient prevention or mitigation of environmental degradation that cuts across national boundaries.

k. Common Law

Just like many other African countries, which were colonized by Britain, Nigeria adopts the Common Law system as part of her legal systems. As a result, most of the provisions controlling water and environmental pollution in Nigeria though appearing in Statutory Laws,¹⁶⁵ derive their roots from the Common Law principles; particularly nuisance and neighbour's Law, even sustainability concepts and other eco-friendly principles. That is what influences most of the current liability regimes in Nigeria as would be discussed hereunder.

Under the principles of Common Law, people have options for taking legal action against polluters and seeking civil remedies for compensation for property loss or personal injury. The importance of Common

Law is highlighted by its function as the primary source for determining civil culpability in pollution-related matters, especially in circumstances where there is a noticeable *lacuna* in the statutory law. The cases of **Rylands v. Fletcher**⁸², **Donoghue v. Stevenson**⁸³, and others established the legal frameworks by which people in Nigeria can seek redress or defend their rights under torts law today. In fact, Nigerian Courts often rule on environmental matters as well as Common Law concepts that support environmental preservation and compensation claims brought by people and communities in cases like the ones stated below.

a. Negligence

Under Common Law rules, the injured party must first establish that the alleged polluter owes him a duty of care to prevail in a negligence action. To prove that the polluter or one of their workers was responsible for the injury suffered by the injured party, it must be shown that they were careless or failed to use reasonable caution when handling a situation or object under their control. The injured party may also rely on the doctrine of *res ipsa loquitur* to argue that the alleged act or omission that caused the pollution-related damage was of such a nature that they could not have naturally happened had the Defendant/polluter or their employees acted diligently or with reasonable care. This was the contention in **Donoghue v. Stevenson**.⁸⁴ In that case, Plaintiff's friend purchased a ginger beer drink manufactured by Defendant. After consuming half of the contents she discovered that the drink contained remnants of a decayed snail, which gave her acute stomach pain and gastroenteritis. The court, Lord Atkin held that the Defendant has a responsibility to take care of his neighbors, who include everyone who may

⁸² [1866] L.R. 3 H.L.300

⁸³ [1932] A.C. 562

⁸⁴ *Supra*

be directly or adversely affected by an act or omission that he should have known would have an adverse effect.

This principle has been followed by the Nigerian courts in many cases like **NNPC v. Sele**.⁸⁵ Here, crude oil spillage from Defendant's (NNPC) pipeline polluted fresh water wells in Plaintiff's community in Delta State, Nigeria; damaged crops in their farmlands as well as their fishing ponds. The Plaintiff sued NNPC as a representative of their community and sought for Order of ₦20,000,000 (Twenty Million Naira) as compensation for damage caused by the Defendant. The Court ordered that NNPC pay the plaintiff ₦15,000,000 (Fifteen Million Naira) as special damages and ₦3,000,000 (Three Million Naira) as general damages to restore the environment.

It is noteworthy to state that the Courts generally take into account the interest of the local community by providing compensation (not necessarily appropriate or adequate remedy) to landowners and others affected by the operation of the oil companies. Compensation for environmental damage and loss of use of water courses or land is undoubtedly, about the single most critical issue in community relations with the oil companies in Nigeria. The basic levels to which the issue of compensation concerns the individual, family/communal, the State and national are dependent on who is in possession, or owner of the land/territory within which pollution activities are undertaken. However, it is trite to say that payment of monetary compensation generally for environmental damage or other loss is inadequate to restore the environmental harm done to the ecosystem. Unfortunately, our Courts hardly make any remedial or consequential orders to clean up the spill. The significance of the above decisions however is that

they create a duty of care for the polluter or producer of the effluent to prevent them from causing harm to others. This is crucial as everyone is expected to control their behaviour and refrain from activities that are capable of harming others. But in some cases, the amount of compensation Courts assess to be paid, tends to be extremely little sums and therefore calls for a more strengthened environmental law regime to ensure strict enforcement.

b. Nuisance

Nuisance involves unauthorized interference causing pollution, and affecting human comfort, either publicly or privately. Public nuisance disrupts collective rights, like water pollution while private nuisance harms individual land use, allowing harmful substances⁸⁶. The available remedies for nuisance include financial compensation in the form of damages for harm suffered, issuance of injunctions to prevent ongoing harm, or order of mandamus to compel the cessation of the polluting activity or its consequences. The case of **Trail Smelter Arbitration (U.S) v. Canada**⁸⁷ is apt in this instance. The Trail Smelter case started as a transboundary pollution case by a smelter plant company in British Columbia, Canada which polluted some water bodies in some regions in Washington, United States, causing severe damage to humans' health and property thereat. The International Tribunal held that Canada had a duty not to cause

⁸⁶ Jimoh Lawani v. West African Portland Cement Company Limited [1971] Abeokuta High Court Suit No. AB/82/71; see also Amos v. Shell BP Petroleum Development Corporation [1974] 4 U.I.L.R. 345.

⁸⁷ Alternately referred to as "The Trial-Smelter case"; Trail-Smelter Arbitration 1931-1941, 3 U.NR.I.A.A.A.A. 1905. A Canadian aluminum smelting factory that released fumes that harmed American wheat farmers' crops was the cause of the pollution in this instance involving trans-frontier pollution. Important rules of customary international law were established in this case, stating that states must not permit the use of their territory to further the interests of other states. Available at https://legal.un.org/riaa/cases/vol_III/1905-1982.pdf - Accessed on July 3rd, 2024.

⁸⁵ (2004) ALL FWLR (Pt. 223) 1859 CA.

nuisance and to prevent environmental pollution in the United States.

The above case laid the foundation for transboundary pollution control laws and the principles thereof have been incorporated in Nigeria through legislation like the NOSDRA Act, ONWA, NESREA Act etc. Similarly, the Nigerian courts have continued to apply the same in nuisance cases like **SPDC. Ltd vs. F.B. Farar & Ors**⁸⁸. In this case, a blowout resulted from an oil well owned and managed by SPDC in July 1970. This incident persisted for many weeks, during which time dangerous compounds from the effluent, sulphur and crude hydrocarbons erupted in thick fountains and damaged about 607 hectares of land comprising water courses and economic trees that belonged to various households in the Niger Delta region of Nigeria. The plaintiffs brought an action for compensation. The Court held that a holder of an Oil Exploration or Oil Prospecting License is obligated to pay fair and adequate compensation for the disturbance of the surface water or other rights to any person who owns or is in lawful occupation of the licensed or leased land. The Court also held that the Plaintiffs were entitled to damages for loss of income as well as damages for potential or future harm that was reasonably anticipated as a consequence of the Defendant's conduct.

In cases of nuisance in Nigeria however, certain limitations exist concerning these principles. For instance, in private nuisance, only the person in possession of the affected land can institute a legal action. In cases of public nuisance, only the Attorney General is authorized to take action. However, an

⁸⁸ (1995) 3 NWLR (Pt.382) p.112-148:

<https://www.google.com/search?q=Shell+Petroleum+Development+Co.+Ltd+v+F.B.+Farar+%26+Ors&oq=sh&aqs=chrome>. Popularly known as Shell-BP Bomu II and ELF Obagi II blowouts in Nigeria's Niger Delta in 1970 and 1972, which severely damaged agricultural land, caused brackish water and mangrove swamps respectively

individual who wants to bring an action in public nuisance must show foreseeable, specific harm to succeed. Additionally, a causal link between the polluter's actions and adverse outcomes must also be proven. Thus, if the Attorney General doesn't intervene or is absent from a public nuisance case, widespread pollution's legal remedy might be absent.

c. Strict Liability

The rule in **Rylands v. Fletcher** establishes that when someone brings and retains on their land anything likely to cause harm if it escapes, they are held responsible for any resulting damage. Strict liability in environmental law holds a polluter accountable for the harm caused by environmental damage, regardless of intent⁸⁹. To establish liability, a plaintiff must prove "escape" due to the defendant-polluter's "non-natural use" of land – a requirement that lacks a universal test. Thus, if a corporation engages in a hazardous activity, it must bear the cost of any resulting accidents, which extends to its shareholders. Courts consistently impose liability on officers, employees, and shareholders for environmental damage caused by the corporation's actions. Instances abound where Nigerian Courts have variously upheld this Common Law principle. In **Umudje vs. Shell BP Petroleum Development Co of Nigeria Ltd**⁹⁰, SPDC blocked a stream from flowing, during the course of oil exploration, and this interfered with the fishing rights of the Plaintiff. Also, the oil waste accumulated by SPDC escaped onto the Plaintiff's land, causing damage. The Defendant was held liable for the oil spill.

Although it is evident from the analysis under Common law that these doctrines lack an inherent

⁸⁹ G. P. O'Hara. "Minimizing Exposure to Environmental Liabilities for Corporate Officers, Directors, Shareholders and Successors". (1990). Santa Clara High T L.J 1 6.

⁹⁰ Shell Petroleum Development Co. Ltd V F.B. Farar & Ors.102 [(1995) 3 NWLR (Pt 382) p 112 – 148

comprehensive obligation to ensure environmental protection which makes them fail to provide remedies for addressing widespread environmental pollution, yet, the applicability of these remedies in pollution control cases primarily revolves around assessing the magnitude of damages or harm incurred and particularly helps to secure an individual's monetary entitlement to unimpeded enjoyment of their property and immediate surroundings. Unfortunately, these legal principles do not mandate the restoration or remediation of the broader ecosystem as a whole.

k. International Conventions, Treaties and Common Law Regimes in Nigeria

The Nigerian government has ratified several international Treaties, Policies, and Protocols endorsing the principle of sustainable development, which has influenced their integration into legislative and policy frameworks like the HWA, NESREA, and more. These measures align with the goals of the National Policy on the Environment (NPE) and encompass various Policies aimed at promoting sustainable development through effective environmental management and protection within Nigeria. Moreover, several entities have been endowed with the authority to oversee the safeguarding and management of our marine ecosystem.

2. REGULATORY FRAMEWORK

a. National Environmental (Surface Water Quality Control) Regulations

The National Environmental (Surface Water Quality Control) Regulations are part of Nigeria's framework to ensure that surface water resources are managed sustainably to protect the environment and public health. These regulations are enforced by the National Environmental Standards and Regulations Enforcement Agency (NESREA), which was established under the NESREA Act of 2007. The main goal of the regulations is

to protect water bodies from pollution and maintain their quality for safe use.

The primary objectives of the National Environmental (Surface Water Quality Control) Regulations include:

- Ensuring that Nigeria's surface water bodies (such as rivers, lakes, and streams) meet prescribed water quality standards.
- Regulating the discharge of effluents into surface waters by industries, municipalities, and other sectors.
- Protecting aquatic ecosystems and ensuring that water resources are safe for human consumption, recreation, agriculture, and other uses.
- Implementing measures to prevent, control, and abate water pollution.

The regulations cover several aspects of water quality control, including:

1. Water Quality Standards: The regulations prescribe permissible limits for various pollutants, including heavy metals, organic and inorganic compounds, oil and grease, and other hazardous substances. These limits are designed to protect both aquatic life and human health.

2. Effluent Discharge Limits: Industries, municipalities, and other entities are required to treat their wastewaters to specific standards before discharging them into surface water bodies. The regulations establish guidelines for permissible levels of pollutants in effluents, which must be adhered to by all discharging entities.

3. Monitoring and Reporting: The regulations mandate regular water quality monitoring by industries and municipalities. Entities must submit periodic reports to NESREA detailing the quality of their effluents and the condition of nearby water bodies. This ensures continuous oversight of potential polluters.

4. **Prohibition of Harmful Discharges:** The regulations prohibit the discharge of certain highly toxic substances into surface waters. These include hazardous chemicals that can cause irreversible damage to aquatic ecosystems and endanger human health.

5. **Licensing and Permits:** Entities seeking to discharge effluents into surface water bodies must obtain the necessary permits from NESREA. The application process requires demonstrating compliance with water quality standards and effluent limits.

6. **Public Awareness and Participation:** The regulations encourage public involvement in water quality management. This includes providing communities with information about the status of water bodies and engaging stakeholders in decision-making processes concerning water resources.

7. **Penalties and Enforcement:** NESREA has the authority to impose penalties on entities that violate the regulations. This includes fines, suspension of operations, and, in severe cases, the closure of non-compliant facilities. The agency can also take legal action against polluters to enforce compliance.

Implementation and Challenges of National Environmental (Surface Water Quality Control) Regulations

While the National Environmental (Surface Water Quality Control) Regulations are an important step toward safeguarding Nigeria's water resources, their implementation has faced several challenges:

- **Limited Resources:** NESREA, like many regulatory agencies in developing countries, often lacks the necessary funding and technical capacity to fully monitor all surface water bodies and enforce the regulations effectively.
- **Non-compliance by Industries:** Despite the regulations, many industries continue to discharge

untreated or inadequately treated effluents into surface waters due to weak enforcement and the cost of compliance.

- **Pollution from Non-point Sources:** While the regulations primarily address point source pollution (pollution from identifiable sources such as factories and wastewater treatment plants), non-point source pollution (such as runoff from agricultural fields and urban areas) remains a significant challenge. Addressing non-point source pollution requires a more comprehensive approach, including land use planning and agricultural practices.
- **Public Awareness:** Although the regulations call for public participation, many communities lack adequate knowledge of their rights and responsibilities regarding water quality protection. Increasing public awareness is essential for ensuring community involvement in water management efforts.

The National Environmental (Surface Water Quality Control) Regulations are a vital component of Nigeria's efforts to protect its water resources from pollution. By setting water quality standards, regulating effluent discharges, and promoting public participation, the regulations aim to ensure that surface water bodies remain clean and safe for all uses. However, achieving these goals requires addressing implementation challenges, particularly in the areas of enforcement, funding, and public awareness.

b. National Environmental Standards and Regulations Enforcement Agency (Establishment) (Amendment) (NESREA) Act, 2018

The NESREA Act is a major part of the regulatory framework for the protection of Nigeria's environment⁹¹. The NESREA Act repealed the Federal

⁹¹ M.T. Ladan 'Review of NESREA Act 2007 and Regulations 2009-2011: A New Dawn in Environmental Compliance and Enforcement in Nigeria' *Law Environment and Development*

Environmental Protection Agency Act of 1988 (FEPA Act) in 2007. The NESREA Act was established in line with section 20 of the Nigerian Constitution. The NESREA Act establishes an Agency for the protection of Nigeria's environment⁹². This Agency is then tasked with:-

the protection and development of the environment, biodiversity conservation and sustainable development of Nigeria's natural resources in general and environmental technology, including coordination and liaison with relevant stakeholders within and outside Nigeria on matters of enforcement of environmental standards, regulations, rules, laws, policies, and guidelines⁹³.

The Minister of the Environment created 33 Regulations pursuant to Section 34 of the Act. This legislation repealed the FEPA Act of 1988 in accordance with Section 20 of Nigeria's 1999 Constitution. Under the Federal Ministry of Environment, NESREA is the primary agency for environmental regulation. It is charged with protecting the environment in Nigeria and upholding all environmental laws, rules, guidelines, and standards. This includes the enforcement of environmental Conventions, Treaties, and Protocols to which Nigeria is a party⁹⁴. Though these Instruments might not possess the legal binding power, they serve as crucial and indispensable components in the safeguarding and conservation of the environment.

The regulatory framework intended to protect Nigeria's environment includes the NESREA Act as a key component⁹⁵. It functions as the physical

representation of laws and regulations as well as the Agency in charge of protecting the environment, preserving biodiversity, and facilitating the sustainable exploitation of natural resources in Nigeria⁹⁶. In terms of both its intent and content, this Act and its Regulations herald a new era in the environmental regime. It aims to address the prevalence of out-of-date environmental standards, rules, and enforcement practices that have, over time, resulted in significant non-compliance with environmental laws, regulations, and standards.

The Agency's enforcement power is outlined in Part II of the Act. According to Section 7 of the Act, the Agency's responsibilities include enforcing compliance with all pertinent existing and future international environmental conventions, protocols, and treaties. The Act gives the Agency the authority to make sure that laws, regulations, and guidelines about environmental health, sanitation, and pollution control are followed in the context of managing water pollution. The Agency must in particular make sure that laws and regulations governing the appropriate use of Nigeria's natural resources and the sustainable management of ecosystems are followed⁹⁷.

The Agency has the power to develop programs aimed at formulating Standards and Regulations designed to prevent, reduce, and eliminate pollution and various types of environmental degradation in the nation's air, land, oceans, seas, and other water bodies after receiving approval from the Minister⁹⁸.

Regarding water pollution, the Agency is empowered to work with other relevant agencies to develop regulations that are intended to enhance water quality

Journal 118 121.

⁹² Sec 1(1) of NESREA Act

⁹³ Sec 2 of NESREA Act

⁹⁴ Section 7, NESREA Act, 2007.

⁹⁵ M. T. Ladan. 'Review of NESREA Act 2007 and Regulations 2009-2011: A New Dawn in Environmental Compliance and Enforcement in Nigeria'. *Law Environment and Development*

Journal. pp. 118, 121.

⁹⁶ Section 2 of the Act.

⁹⁷ Section 7(a-e), NESREA Act.

⁹⁸ Section 8(o), NESREA Act.

and protect human health⁹⁹. The Agency must take into account the use and significance of public water when developing these Regulations and Standards¹⁰⁰. Additionally, the Agency is specifically empowered to create rules and guidelines for improving the quality of land resources and maintaining natural watersheds, which includes reducing flood risk and eroding soil¹⁰¹. To ensure efficacy, the concept of sustainable development has been concretely incorporated into subsidiary Regulations enacted under the NESREA Act.

The NESREA Act contains, in part II, the enforcement powers of the Agency¹⁰². Section 7 of the NESREA Act enumerates the functions of the Agency. The Agency shall enforce compliance with the provisions of international agreements, protocols, conventions and treaties on the environment and such other agreement as may from time to time come into force¹⁰³. In relation to water pollution control, the NESREA Act provides that the Agency shall enforce compliance with policies, standards, legislation and guidelines on water quality, environmental health and sanitation including pollution abatement¹⁰⁴. The Agency is required to specifically enforce compliance with guidelines and legislation concerning the sustainable management of the ecosystem and the development of the Nigeria's natural resources¹⁰⁵.

The Agency is armed with a wide range of powers with a view to ensuring its operations are effective. The Agency can 'prohibit processes and the use of equipment or technology that undermine environmental quality'¹⁰⁶. The Agency can conduct public investigations¹⁰⁷, and make proposals to the Minister for review of existing guidelines

and standards on the environment¹⁰⁸. With the approval of the Minister, the Agency can establish programmes for setting standards and regulations for the prevention, reduction and elimination of pollution and other forms of environmental degradation in the nation's air, land, oceans, seas and other water bodies¹⁰⁹. The NESREA Act, specifically excludes the Ministry of Environment from enforcing compliance in the oil and gas industry¹¹⁰.

If any person obstructs an officer in the performance of his duty he will be liable to a minimum fine of two hundred thousand naira (equivalent to ten thousand rand) or to a term of imprisonment of one year or to both fine and imprisonment, and an additional fine of twenty thousand naira for each day the offence continues¹¹¹. Where the person obstructing is a sole corporate body, it shall, upon conviction, be liable to a fine of two million naira (equivalent to one hundred thousand rand) and an additional fine of two hundred thousand naira (equivalent to ten thousand rand) for each day the offence continues¹¹².

In relation to water pollution, the NESREA Act provides that the Agency shall in collaboration with other relevant agencies, make regulations for the purpose of enhancing water quality and protecting public health¹¹³.⁹⁶ When making proposals for regulations and standards, the Agency shall take into consideration the use and value of public water¹¹⁴. The Agency is specifically empowered to make regulations and standards for the protection and enhancement of the quality of land resources and natural watershed, including prevention of flood and erosion¹¹⁵. The NESREA Act prohibits the discharge of harmful quantities of any hazardous substance into the air or upon the land and the waters of Nigeria, except where

⁹⁹ Section 23(1), NESREA Act.

¹⁰⁰ Section 23(2), NESREA Act.

¹⁰¹ Section 26(1), NESREA Act

¹⁰² Sec 7 (a-m) of NESREA Act

¹⁰³ Sec 7(c) of NESREA Act.

¹⁰⁴ Sec 7(d) of NESREA Act

¹⁰⁵ Sec 7(e) of NESREA Act.

¹⁰⁶ Sec 8(d) of NESREA Act.

¹⁰⁷ Sec 8(g) of NESREA Act.

¹⁰⁸ Sec 8(k) of NESREA Act.

¹⁰⁹ Sec 8(o) of NESREA Act.

¹¹⁰ Sec 7(g) of NESREA Act.

¹¹¹ Sec 31 of NESREA Act.

¹¹² Sec 31 of NESREA Act.

¹¹³ Sec 23(1) of NESREA Act.

¹¹⁴ Sec 23(2) of NESREA Act.

¹¹⁵ Sec 26(1) of NESREA Act

such discharge is permitted or authorized under any law in force in Nigeria¹¹⁶.⁹⁹ Any person who is found guilty of discharging hazardous substance into the air or upon the land and waters of Nigeria is liable upon conviction to a fine not exceeding one million naira (equivalent to fifty thousand rand) or a term of five years imprisonment¹¹⁷. In the case of a body corporate, it shall, upon conviction, be liable to a fine not exceeding one million naira and an additional fifty thousand naira (equivalent to two thousand five hundred rands) for every day the offence persists¹¹⁸.

For effective enforcement of environmental standards, rules and regulations, the Minister is empowered to make regulations for the general purposes of giving full effect to the functions of the Agency¹¹⁹. This power given to the Minister under the NESREA Act has brought about the promulgation of twenty-four regulations. The regulations promulgated that relate to water pollution include the NEMPCOIMR, the NECMAPR and the NESGQCR 2011¹²⁰. These regulations are structured into 13 parts. I will discuss the regulations that relate to water pollution.

3.3. INSTITUTIONAL FRAMEWORK

a. National Environmental Standards and Regulations Enforcement Agency

This Agency is a parastatal under the Federal Ministry of Environment. The Act provides an extensive selection of enforcement tools which include: the granting of licenses, permits, certificates of environmental compliance, inspections, searches,

¹¹⁶ Sec 27(1) of NESREA Act.

¹¹⁷ Sec 27(2) of NESREA Act.

¹¹⁸ Sec 27(3) of NESREA Act.

¹¹⁹ M. T. Ladan 'Review of NESREA Act 2007 and Regulations 2009-2011: A New Dawn in Environmental Compliance and Enforcement in Nigeria' *Law Environment and Development Journal* 118, pp.127.

¹²⁰ M. T. Ladan 'Review of NESREA Act 2007 and Regulations 2009-2011: A New Dawn in Environmental Compliance and Enforcement in Nigeria' *Law Environment and Development Journal* 118 pp.128.

seizures, arrests, sealing of premises, notices of violations, notices of permit, revocation of licenses, revocation orders, recourse to courts for civil penalties for violations, injunctive relief to compel compliance, criminal sanctions for violations, and citizen lawsuits to enforce the laws in the absence of effective government enforcement¹²¹.

NESREA is also concerned with the implementation of rules and laws on biodiversity preservation, sustainable ecosystem management, and the exploitation of Nigeria's natural resources¹²². The Agency is also given authority by the Act to develop policies to guarantee environmental awareness and observance in Nigeria. These can only be accomplished through efficient enforcement mechanisms, which NESREA and other relevant authorities have to champion. Effective enforcement mechanisms, public involvement in environmental protection and management, environmental education, cooperation and partnership with other inter-governmental agencies, non-governmental organizations, and relevant agencies that are directly or indirectly involved in activities related to the protection of the environment in Nigeria and the global community are some of the techniques and mechanisms used to ensure environmental awareness and compliance at large¹²³. These and more can be achieved by the Agency through the under-listed mechanisms.

i. Public Participation /Environmental Education

The main purpose of this duty is for the Agency to engage Nigerians in environmental governance, particularly in compliance, monitoring, and enforcement, through a variety of channels, including advisory committees, document reviews, informational meetings, open forums, citizen

¹²¹ Section 7, NESREA Act.

¹²² Section 34, NESREA, Act

¹²³ Section 34, NESREA Act.

monitoring, and volunteer environmental marshals or corps. An essential approach for obtaining significant public input on government decision-making is to allow for public comments on project documents, policy studies, or plans. It encourages ownership and strengthens the perception of the legitimacy of decisions to ask the public for feedback on papers and reports. When reviewing current regulations or developing new ones, the Agency is expected to solicit advice from industry professionals from a variety of fields¹²⁴.

ii. Cooperation and Partnership with other Agencies

The Agency is empowered to consult with various other organizations, agencies or bodies that share similar goals and aspirations with it¹²⁵. The Agency in collaboration with State Governments, has established offices in 17 States of the Federation and has zonal offices in all the six (6) geo-political zones of the country. This collaboration aims to help ensure the effective implementation of compliance and enforcement programs of the agency. The Agency, with the support of UNDP, came up with the Federal-State Regulatory Dialogue on compliance monitoring and enforcement. This platform provides a forum for participants from the various regulatory agencies at the Federal and State levels to exchange experiences and cooperate on the implementation of the agency's numerous regulations. This effort aims to increase environmental protection knowledge and compliance in Nigeria. Nigeria is collaborating with the global

community through NESREA to facilitate effective networking and prompt exchange of knowledge and expertise about environmental compliance and enforcement challenges. Networking with groups like the Seaport Environmental Security Network (SESN), the International Criminal Police Organization (INTERPOL), and the International Network for Environmental Compliance and Enforcement (INECE) as well as international organizations like the United States Environmental Protection Agency (USEPA), the United Kingdom Environmental Agency (UK, EA), and the Netherlands' Inspectorate of Housing, Spatial Planning and Development is still yielding fruit. Even with all these, the impact of the Agency is yet to be felt locally and generally.

b. Federal Ministry of Environment (FME)

Through NESREA, the Federal Ministry of Environment is largely in charge of enforcing environmental laws and regulations at the federal level. Other ministries, such as Solid Minerals, Energy, Petroleum, Agriculture, and other Agencies, have some minor and specialized roles in the protection of the environment resulting from the operations monitored by the respective ministry. The Environmental Impact Assessment (EIA) Act is also managed and upheld by the Federal Ministry of the Environment. According to Section 20 of the Nigerian Constitution, the main responsibility of this Ministry is to safeguard and improve Nigeria's water, air, land, forest, and wildlife. A variety of priority programs were established to address urban waste management and sanitation, industrial pollution control, including oil and gas, afforestation, and protection of biodiversity and wildlife to effectively carry out its mandate. The mission of NESREA is to uphold laws pertaining to the environment and people, including those governing air, water, flora, and wildlife. Multiple responsibilities with conflicts of interest are

¹²⁴ B. J. P. ,Ngeri. 'Using Enforcement Cooperation to Promote Environmental Governance: The Case of the National Environmental Standards and Regulations Enforcement Agency of Nigeria'. (2014). Paper presented by the Director General/Chief Executive Officer, National Environmental Standards And Regulations Enforcement Agency, Nigeria, Dg@Nesrea.Org. At the Ninth International Conference on Environmental Compliance and Enforcement, 2011.

¹²⁵ Section 34, NESREA Act.

unavoidable with so many ministries and regulatory bodies. As a result, enforcing the law would ultimately not be met and in the end, the job of enforcing the laws would be left undone.

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

This organization reports to the Ministry of the Environment. It was created in 2006 as an institutional framework to coordinate Nigeria's National Oil Spill Contingency Plan (NOSCP) implementation in compliance with the International Convention on Oil Pollution Preparedness, Response, and Cooperation, to which Nigeria is a signatory. The Agency has struggled ever since it was founded to make sure that the Nigerian petroleum industry complies with environmental laws without success. It carries out its responsibilities through collaborative investigative visits, environmental rehabilitation of the impacted sites, oversight of oil drill operations, and facilitating inspections.¹²⁶

CHALLENGES OF IMPLEMENTATION AND ENFORCEMENT IN NIGERIA

Evaluation of Enforcement Mechanisms Regulatory Challenges

The enforcement mechanisms for the control of water pollution in Nigeria have faced several challenges, particularly with respect to institutional weaknesses, lack of resources, and overlapping mandates among regulatory bodies. Scholars have pointed out that, while the National Environmental Standards and Regulations Enforcement Agency (NESREA) is the main body responsible for enforcing environmental regulations, it

¹²⁶ L. Atsegbua, V. Akpotaire, F. Dimowo. "Environmental Law in Nigeria: Theory and Practice" (Benin: Ambik Press, 2010).

often struggles with issues such as inadequate funding, insufficient personnel, and poor coordination with other agencies, which significantly affects the agency's effectiveness¹²⁷.

For example, Akpan¹²⁸ has highlighted that enforcement of water pollution laws is often hampered by a lack of political will, corruption, and bureaucratic inefficiencies. This has led to inconsistent enforcement actions and leniency towards industries responsible for major pollution incidents. Moreover, the fines and penalties stipulated in existing laws, such as those under the Environmental Impact Assessment Act (1992), are often too lenient to deter non-compliance, thereby undermining the overall effectiveness of enforcement.

Faure and Niemeijer¹²⁹ argue that judicial enforcement also plays a crucial role in implementing water pollution controls. However, in Nigeria, the judiciary has shown limited proactive engagement in environmental cases, often due to a lack of technical expertise and reluctance to challenge powerful industrial actors. This gap has led to insufficient punitive measures against polluters and, consequently, weak enforcement outcomes.

To improve enforcement mechanisms, there is a need to strengthen the capacity of NESREA, ensure that laws are harmonized to remove contradictions, and promote greater cooperation among relevant agencies. Additionally, providing training for judicial officers on

¹²⁷ E. Emeseh. 'The limitations of law in promoting synergy between environment and development policies in developing countries: A case study of Nigeria', *Law, Environment and Development Journal*, 2009. 5(1), pp. 35-55.

¹²⁸ A. Akpan, 'Legal and institutional framework for the control of environmental pollution in Nigeria', *Environmental Policy and Law*, .2004. 34(2), pp. 118-127.

¹²⁹ M. Faure, & L. Niemeijer. 'The enforcement of environmental law: Some observations from an interdisciplinary perspective', *Law and Policy*, (2016). 38(4), pp. 304-331.

environmental issues could improve the judiciary's effectiveness in dealing with pollution cases¹³⁰.

Evaluation of Enforcement Mechanisms

The NESREA Act also mandates that an Environmental Health Authority be established in each of the 36 member states of the federation for the control of domestic and non-radioactive wastes. Each State has the authority to enact legislation to safeguard the environment on its own.¹³¹ There are two primary laws on environmental protection in each of Nigeria's 36 States as well as the Federal Capital Territory of Abuja. Environmental laws and State environmental protection organizations are present in each of these States. Additionally, in certain States, environmental sanitation task forces, Waste Management Boards, State Environment Protection Agencies (SEPAS), etc. enforce the aforementioned laws. The Federal Capital Territory of Nigeria has also published the Environmental Protection Board (Solid Waste Control/Environmental Monitoring) Regulations, 2005, which primarily regulates solid waste control in Abuja¹³².

It is clear that the goal of implementing environmental laws and environmentally friendly practices in Nigeria to restore what has been harmed by pollution through remediation and hold polluters accountable for the harm they cause does not depend on the number of environmental ministries and enforcement agencies as we have seen, it is highly dependent on the will power and untainted decision to do what is necessary. This decision, coupled with action will guarantee environmental sustainability on all fronts. Otherwise, we

have seen from the above that though there are numerous environmental laws, ministries and agencies in place, it is alarming that they have not been able to adequately protect against the negative consequences that pollution has impacted on the marine ecosystem, the environment, and the victims.

Regulatory Challenges

The control of water pollution in Nigeria faces several regulatory challenges, including inadequate funding, weak enforcement mechanisms, lack of coordination, and corruption. These issues hinder the implementation and effectiveness of existing laws and policies. Below are some of the major regulatory challenges:

A. Government Entities as Environmental Enforcement Agencies

Major polluting companies in Nigeria today such as Nigerian National Petroleum Corporation (NNPC) are either owned by the government or are affiliated with it or its officials and political associates. NESREA, NOSDRA, and FME are the major Agencies entrusted with environmental protection across the country. These Agencies were created, empowered and maintained by the government; and the government retains the powers to hire and fire its officials. This is the first and major reason why the enforcement of environmental pollution laws will remain docile in Nigeria because these Agencies find it difficult to strictly enforce environmental sanctions against their paymaster. As a result, the impunity rages on.

B. Non-justiciable nature of environmental provisions in Nigeria's Constitution

The provisions concerning access to pollution-free water and environmental sanitation in Nigeria, which falls under Nigeria's Concurrent Legislative List, resemble neutered dogs. This is because the Nigerian Constitution neither guarantees nor supports

¹³⁰ A. A. Adeyemi, & M. A. Omololu. 'The legal framework for environmental protection in Nigeria', *Journal of Environmental Law and Litigation*, 2018. 33(2), pp. 259-282.

¹³¹ Sections 5, 6(1), 19 (a-j), NOSDRA Act

¹³² Aluko & Oyebo. "A Practical Insight to Cross Border Environmental Law: The Interaction as Comparative Legal Guide to Environmental Law". (2008), p. 299.

an enforceable right to a clean and pollution-free environment or water. The absence of a clear constitutional provision for the right to access pollution-free water is a violation that could stifle the ecosystem¹³³. Pursuing legal action to enforce these rights is riddled with challenges, as legal technicalities often override the merits sought after¹³⁴. As a result, this right has never been adjudicated by any court in Nigeria, except in cases where damages are awarded for pollution under Common Law principles¹³⁵. A valid argument can be made that the non-justiciability of Chapter 2 in general and Section 6(6)(c) in particular, of the Nigerian Constitution is a primary factor behind the lack of strict implementation and enforcement of water pollution control laws in Nigeria. This situation also contributes to the lack of progress and accountability within agencies responsible for water pollution control and environmental law enforcement.

C. Poor draftsmanship

Beyond the inherent non-justiciable nature of the right to a pollution-free environment, the efficacy of the legal framework supporting water pollution control in Nigeria is further hindered by ineligible drafting and regressive clauses. A case in point is the NESREA Act, designed to address contentious environmental concerns, which instructs the Agency to emphasize compliance with policies, standards, regulations, and guidelines concerning water quality, environmental health, sanitation, and pollution mitigation. This emphasis leans toward preventive measures rather

¹³³ O. Ajai . Law, water and sustainable development: framework of Nigerian law'. *Law, Environment and Development Journal*. (2012) 8 (1), pp. 89-115.

¹³⁴ E.O. Aluta Participatory Water Governance in Nigeria: Towards the Development of an Effective Legal Framework for Rural Communities" (2016), p.66

¹³⁵ Section 20 CFREN 1999: O.L. Niyi-Gafar "Adopting a Human Rights-based Approach to Access to Water in Nigeria: Lessons from Selected Jurisdictions". (LL.D Thesis, University of Pretoria. p. 3.

than remedial actions.

Furthermore, a crucial gap emerges as the polluters pay principle is not explicitly enshrined in the Act. This gap has the potential to create legal complications, obstructing the courts' ability to enforce remedies for breaches of laws on the protection of water resources in Nigeria.

Similarly, the NESREA Act lacks specific provisions for the removal and clean up of contaminated sites, despite the presence of Section 29. Moreover, the Agency's reliance on foreign technology referred to as 'best cleanup technology' and 'best management practices'¹³⁶ is impractical within the Nigerian context, given their unavailability locally. This dependence on foreign expertise significantly hampers efforts to eliminate pollutants and restore affected sites, rendering these provisions impractical and unattainable.

Section 6(3) of NOSDRA provides punishment for non-compliance and clean-up in such an inelegant manner that creates room for mischievous interpretation.

HWA frowns against toxic dumping within Nigeria's territorial waters and provides plausible punishments under Sections 6, 7, 8 and 9 but made a mess of the plausible provisions in Section 12(1)(a) which gives polluters a defence if they can show that the victims, usually poor rural dwellers accept the risk - and in almost all the cases, they accept in the face of coercion, threats and paltry compensation by the multinational companies.

D. Unenforceable Nature of International Laws

- i. The NESREA Act is the primary piece of legislation in Nigeria that regulates environmental

¹³⁶ Section 8(d), NESREA Act.

protection. With the help of this Act, Nigeria is required to respect its obligations under international Treaties, Protocols, and Conventions that support environmental protection and the sustainable use of the country's maritime resources. However, the fact that the provisions of these international rules cannot be legally enforced in Nigerian courts without being domesticated first as national legislation raises concerns regarding their efficiency in the Nigerian legal context. This is because they are viewed as soft laws and their responsibilities have persuasive, rather than obligatory authority in Nigeria¹³⁷.

- ii. Similarly, Nigeria is a signatory to several international agreements that recognize the right to a clean environment and clean water, however, the majority of these agreements have not yet been domesticated. Additionally, she declares that access to clean, safe drinking water is a fundamental human right that is necessary for both survival and the enjoyment of all other rights, but this is not at all possible in Nigeria. Also, the Nigerian government supported General Assembly Resolution 64/292 in July 2010 and co-sponsored Resolutions of the Human Rights Council in September 2013 and 2014. These actions demonstrate that the Nigerian government recognizes the human right to clean water and the environment yet, she has not really assimilated these values in practice¹³⁸.
- iii. The African Charter on Human and People's

¹³⁷ S.12 (1) CFRN; Also, in *Abacha v. Fawehinmi* (2000) 6 NWLR (pt. 660) p.228 at 228, Ogunbare JSC held that an international treaty entered into by the government of Nigeria does not become binding until enacted into law by the national Assembly. Before its enactment into law, it has no such force of law as to make its provisions justiciable before Nigerian courts.

¹³⁸ <http://www.fao.org/Legal/advserv/FAOIUCNcs/Nigeria.pdf>. Accessed 2024/08/12.

Rights operates at the regional level. Although Nigeria has ratified and accepted several of these agreements, the key question is how much of the right to a pollution-free environment and water is enforced within the country. Sadly, the non-justiciability of these rights, as stated in Section 6(6) of the Nigerian Constitution, makes the answer tilt toward the negative.

E. Lack of Judicial Activism and Disobedience to Court's Order

In addition to the aforementioned, it is clear that there is a lack of judicial activism among members of the judiciary, a branch of government tasked with providing profound clarification and vigour to issues about the socioeconomic rights entrenched in Chapter II of the Constitution. The realization of the right to health and the preservation of clean water and ecosystems should be included as natural extensions of this duty. Surprisingly, despite the recognition of numerous fundamental rights under the purview of the Nigerian Constitution and international treaties and conventions, Nigeria's regulatory framework for the control of water pollution still falls short in its incorporation of economic, social, and cultural rights within its tenets.

On the other hand, the Executive arm of the Nigerian government in recent times tends to pick and choose which Court Order to obey. This is evident in cases, whose judgments do not favour the government or its Agencies or parastatal. Hence, most Courts in Nigeria show timid postures with matters involving private individuals, institutes or organizations on the one hand, and the government or its agencies on the other hand. However, even in the face of the Court's disobedience, very few Judges have exhibited rare strides of judicial activism. One such rare instance is in the case of

Jonah Gbemre v. SPDC Ltd¹³⁹ which should serve as a precedent for safeguarding Nigeria's ecosystem and ensuring pollution-free water because here, the Nigerian Court showed a rare case of activism when it upheld the sustainable doctrine for development of the environment, which includes access to pollution-free water¹⁴⁰. Gas flaring operations led to the filing of the lawsuit. The plaintiff filed a lawsuit against Shell Petroleum Development Company, seeking a determination from the court as to whether the rights to life and dignity of human beings, as protected by Sections 33 (1) and 34 (1) of the 1999 Constitution of the Federal Republic of Nigeria, and Articles 4, 16, and 24 of the African Charter on Human Rights and People's Rights (Ratification and Enforcement Act), are inextricably linked with the right to a healthy, poison-free, and peaceful environment¹⁴¹. The court ruled that the right to a clean, healthy environment is closely linked to other rights of the public protected by the constitution and restrained the Respondent from further gas flaring. The Court further ordered the Attorney-General of the Federation to, after proper consultation with the Federal Executive Council, start the necessary procedures for a Bill for an Act of the National Assembly to amend Section 3 (2) (a) and (b) of the Associated Gas Re-Injection Act and Regulations, which permits the flaring of gas, and to bring it in line with the provisions of Chapter 4 of the Constitution.

F. Ineffective penalties and sanctions

An exhaustive evaluation of the Nigerian regulatory framework on water pollution control reveals a pronounced deficiency in the establishment of effective penalties and sanctions for non-compliance with the provisions of water pollution legislation. To illustrate this, the Water Resources Act and ONWA,

¹³⁹ 2005 HRLR 151

¹⁴⁰ Section 20 of the 1999 Constitution of the Federal Republic of Nigeria

¹⁴¹ CAP A9, 4011, Laws of the Federation of Nigeria, 2004.

in their present state prescribes a nominal fine not exceeding Two Thousand Naira or a maximum imprisonment term of six months for polluters¹⁴². Regrettably, the provisions encompassing sanctions within the framework of both Acts fail to provide a commensurate remedy to rectify the resultant harm precipitated by water pollution¹⁴³.

Likewise, the NESREA Act stipulates that any individual found culpable of discharging hazardous substances into Nigeria's air, land, or watercourses without lawful authorization is liable to be convicted and subject to a fine that does not surpass One Million Naira or a sentence term of up to five years¹⁴⁴. Evidently, these penalties for the pollution of water resources in Nigeria are palpably inadequate, for they inadequately address the extensive environmental degradation and neglect the imperative of site clean-up for areas adversely affected by pollution. Moreover, these sanctions fail to sufficiently deter future water polluters. Surprisingly, Section 27 of the NESREA Act was not reviewed to encourage stricter penalties even with the recent amendments. Unfortunately, also, even the reviewed punishments in Sections 20, 21, 22, 23, 24, 25 and 26 of the Act are inadequate considering the fact that the areas affected by pollution may never be regenerated.

G. Reliance on outdated statutes

While certain Environmental and Water Pollution Control Laws such as the Public Health Act of 1917 and the Criminal Code Act may have become disconnected from contemporary realities, they nonetheless retain their status as essential

¹⁴² Section 18 of WRA; Section 6, ONWA.

¹⁴³ A. Musa & H.Y. Bappah. "Issues and Challenges on Environmental Rights: The Nigerian Experience". (2014) *American International Journal of Social Science* 143-150.

¹⁴⁴ Section 27 (2) NESREA Act.

components of Nigeria's Environmental Laws. Regrettably, certain polluters exploit these laws to perpetuate their unlawful activities, causing harm to both the ecosystem and citizens. An additional illustration is the WRA and ONWA, which levy an unjustifiably paltry fine not exceeding Two Thousand Naira upon polluters.

H. Lack of Accountability

The majority of these regulatory Agencies receive annual grants and government allocations. However, they consistently fail to provide transparent reports on their financial management and operational responsibilities, perpetuating a concerning lack of accountability. Unfortunately, this culture of impunity remains unchecked. Consequently, the ecosystem and pollution victims suffer the consequences as the funds intended for their welfare persistently vanish into private hands.

I. Multiplicity of Environmental Agencies and Lack of clear roles

The fusion of regulatory bodies with the entities they are meant to oversee has played a role in hindering the enforcement of environmental rights. Such arrangements create conflicts of interest, making it challenging to effectively enforce laws. Moreover, the proliferation of Environmental Regulatory Agencies in Nigeria has led to overlapping functions, hampering the enforcement of water pollution control laws; like NESREA, Federal Ministry of Environment, DPR and NOSDRA which have overlapping functions and should be merged or streamlined for effective performance. Unfortunately, despite consuming substantial annual budgets for operational expenses and staffing, many of these agencies fail to yield significant results and nobody holds them accountable whatsoever. Thus, the impunity continues.

J. Bureaucracy and Nepotism

Environmental pollution remains an ongoing concern in Nigeria, largely because of the economic gains associated with polluting industries. While some of these industries are owned by the government, many others maintain close relationships with government officials and enforcement personnel, resulting in a reluctance to curtail their activities. These relationships often translate into financial incentives, share allotment, revenue, job opportunities, or the desire to attract foreign investments¹⁴⁵. Conversely, the majority of environmental officers and workers within these agencies lack adequate expertise as they are often hired based on religious or ethnic affiliations. This unfortunate situation undermines the enforcement powers and effectiveness of these Agencies due to widespread incompetence.

K. Absence of Legal Liability for Misuse of Public Power and Resources

Presently, there is generally a lack of effective legal penalties targeting corrupt personnel within these environmental protection Agencies, except for a limited number of cases driven by political motives. This absence of legal repercussions fosters an environment where many officers engage in unrestrained embezzlement. A notable example is within NESREA, where officers and staff may benefit from the protective measures outlined in the Public Officers Protection Act. This legislation imposes a time limitation within which legal action can be initiated against them in any court.¹⁴⁶ Furthermore, it is mandated that prior consent from the Attorney General of the Federation is required

¹⁴⁵ E P Amechi. 'Litigating Right to Healthy Environment in Nigeria: An Examination of the Impacts of the Fundamental Rights (Enforcement Procedure) Rules 2009, In Ensuring Access to Justice for Victims of Environmental Degradation'. (2010). *Law Environment and Development Journal*, p. 322

¹⁴⁶ Section 2 (a), Public Officers Protection Act, Cap P41, LFN, 2004

to execute, levy or attach legal proceedings against the Agency in any lawsuit. These stipulations effectively insulate the Agency and its personnel from litigation, potentially fostering a sense of invulnerability among them.

L. Zero Judicial Precedents

An additional challenge contributing to the sluggish progress in enforcing Water Pollution Laws is the lack of judicial precedents concerning the right to access a pollution-free environment. Beyond the non-justiciable nature of the law as per Section 6(6) of the Nigerian Constitution, environmental rights constitute an emerging facet of International Law, yielding limited authoritative sources for court decisions. Evidently, the economic interests of the government have often outweighed environmental rights in court deliberations, rendering enforcement of these rights complex. For example, in **Allar Iron v. Shell-BP**¹⁴⁷, the court declined to issue an injunction, because it feared that such action would disrupt the Defendant's developmental operations in the community. Often, when cases arise in these impacted regions, they are resolved out of court with an undisclosed amount to prevent the establishment of legal precedent that could serve as a benchmark for future decisions. Although dispute settlements are encouraging, they have hindered the evolution of judicial precedents concerning environmental rights.

Conversely, initiating legal action based on environmental rights encounters the hurdle of *locus standi*, which recognizes collective rights over individual ones. This stance is rigorously maintained by Nigerian courts, complicating the ability of individuals to sue for personal harm resulting from environmental damage¹⁴⁸.

CONCLUSION

¹⁴⁷ Unreported Suit No./W/89/71.

¹⁴⁸ Oronto Douglas v. Shell Petroleum Development Company Ltd & Ors., Suit No., (1999) 2 NWLR (Pt. 591).

The legal framework for water pollution control in Nigeria is comprehensive on paper but has significant challenges that undermine its effectiveness in practice. Key laws, including the Water Resources Act, NESREA Act, and the Environmental Impact Assessment Act, provide the foundation for managing water pollution, but their implementation is hindered by institutional fragmentation, inadequate enforcement capacity, and overlapping regulatory mandates. Weak penalties and insufficient judicial involvement have further contributed to the persistence of water pollution issues, as industries often find it more economically viable to ignore environmental regulations than to comply.

The enforcement mechanisms are largely reactive, focusing on addressing pollution after it has occurred rather than preventing it in the first place. Strengthening regulatory bodies, harmonizing the fragmented legal framework, and enhancing public participation in environmental governance are crucial steps to improving the effectiveness of water pollution control. Effective policy reforms, capacity building, and judicial activism are necessary to create an enabling environment for sustainable water resource management in Nigeria.

It is important to acknowledge that since the repeal of the FEPA, environmental challenges in Nigeria have continued to persist daily, showing no clear signs of improvement. Many of the challenges and limitations that were present during the FEPA era still persist within NESREA, yielding similar results in terms of environmental management outcomes. An ironic aspect is that environmental legislation and regulations span nearly every aspect of human interaction with the environment in Nigeria, with the ultimate aim of ensuring a healthier, livable, and sustainable pollution-free water and environment for the Nigerian population.

Addressing water pollution necessitates a proactive approach where polluters are held accountable for rectifying their actions and engaging in clean-up and

remediation efforts to restore water to a clean and safe state. The growth of the economy is intricately tied to the health of the natural environment, including water bodies. This outcome cannot be achieved through mere wishful thinking. Therefore, a collective effort is required to accomplish this objective, as no economy has ever thrived or will thrive on an environment or ecosystem that is compromised or unhealthy.

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