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An Appraisal of the Regulatory Role of National Environmental Standards Regulations and Enforcement Agency (NESREA) in Nigeria

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Abstract: *This paper is an attempt to explore or reveal the evolution of environmental legislation in Nigeria. It also looks at the regulatory role of National Environmental Standards and Regulations Enforcement Agency (NESREA) in Nigeria as the leading environmental agency of the federal government of Nigeria. The paper concludes with observations and recommendations on how best to strengthen the enforcement capacity of NESREA in ensuring the sustainable use of the Nigerian environmental resources.*

Keywords: *Regulations, Enforcement, Standards, Environment, Challenges.*

Introduction:

The focus of this paper is on national environmental standards regulations and enforcement agency (NESREA), Nigeria's lead environmental agency which is saddled with the huge task of ensuring that Nigerian environment is sustainably used for the benefit of the present and future generations. The importance of this task informed the framers of the Nigerian constitution incorporate environmental issues as a matter of constitutional concern (Falola,*2008).* Thus, section 20 of the constitution of the federal republic of Nigeria, 1999 (as amended) provides: "the state shall protect and improve the environment and safeguard the waters, air and land, forest and wild life of Nigeria". The construction of this provision is indisputably broad, this notwithstanding, the observance of the principle by the state is not mandatory but merely a persuasive one. The implication of this is that there is an immutable limitation on the enforcement of this provision. However, this is the very first time that the framers of the constitution thought it wise to include provision in the constitution as far as environmental matters is concerned.

EVOLUTION OF ENVIRONMENTAL LAW IN NIGERIA

Colonial and Early Independence Legislation

Nigeria, was a British colony, beginning from 1861 when the British annexed Lagos to the year 1900, when the entire country was colonized, and remained occupied until Nigeria's independence in 1960 (Mabogunje, 1964). During this period, the colonialists concentrated on trading activities. Historical accounts indicate that early European settlers found Lagos to be particularly convenient for trade because of its strategic location as the only permanent break on the eastern west African coastline, in particular, the Lagos island's frontage was ideal for piers and wharves that received ships.
During this time, there seemed to be an overall disinterest in, or lack of awareness about environmental issues. The colonial administrators who were involved in national governance between 1861 and 1960 did not pursue or prioritize environmental protection. Rather, they were preoccupied with their political and economic interests.

A major motivation during colonialism was the desire to secure access to the natural resources of the colonies (Bratspies, 2015) Since the exploitation focused on the colonialists rather than the welfare of the local inhabitants, there was little attention paid to the environmental costs that the activities imposed (*Ibid*). Colonial administrators convened environmental meetings that were ostensibly aimed at natural resource protection, but were in fact meant to promote trade and enhance the economic growth of their countries (Bratspies, 2005). For instance, the parties to the Convention on the preservation of wild animals, birds, and fish in Africa were Germany, France, Spain, Great Britain, Portugal and Italy. The main objective was to ensure seamless supply of wild life resources for ivory traders, trophy hunters, and skin dealers. Consequently, the welfare of the local inhabitants was subjected to the overriding economic interests of these countries(*Ibid*).
Colonial regions functioned primarily to supply imperial powers with raw materials and cheap labour. Therefore, the structure of imperial and colonial powers, which dominated the world in 19th and 20th centuries, made little provisions for either economic or social advancement of the developing world (Takang, 2014).

In summarizing the colonial rulers' commercial preoccupation of Nigeria, any law that might have restricted economic activities in the form of environmental requirements would have been considered counterproductive (Nnadozie*, 1994*). Thus, there were no laws directed towards either protecting the environment or natives from the polluting effects of the government's economic activities.

During this period, local legislation and public health laws had only a minimal bearing on the environment. these includes the Criminal Code Law of 1916 and the Public Health Act of 1917(The Public Health Act is no longer in force but the Criminal Code remains in Force in Nigeria). The 1916 Criminal Code, which is still in force, briefly addresses some aspects of public health violations. The law prohibits the selling of noxious food or drink and the adulteration or poisoning of any article of food or drink meant for sale. (S243 of the Criminal Code Act (1916) Cap. C38) It also criminalizes the carrying of dead animals into slaughter houses and fouling of water from any source that makes it unfit for use (*Ibid section 244-245)*

Other provisions prohibit the burying of corpses in houses, premises, or within a hundred yards of such structures, or in any open space situated within a township(ibid). Furthermore, the vitiation of atmosphere in any place that makes it noxious to health of persons in the neighborhood, or carrying out of any act likely to spread infectious diseases, are also prohibited (ibid section 248(b)). These provisions are focused on public health, not environmental issues, and can hardly be regarded as serious environmental legislation.

In the absence of specific environmental laws, remedies for environmental violations were sought within English Common Law of Tort of negligence, strict liability, public nuisance, and trespass (Fagbohun, *2012*).

Typically, claimants relied on negligence and strict liability to redress personal injury resulting from environmental pollution, while resorting to action in trespass and nuisance to redress environmental harm to property interest. To illustrate this, the renown 1868 English case of *Ryland V. Fletcher* established the doctrine of *strict liability,* a non-fault liability where responsibility is imposed for damage caused by a defendant's actions regardless of intent (1868 LRE&I App. 330 (HL)). This principle has provided an important precedent in subsequent Nigerian cases including *Umudje v. Shell British Petroleum*. Here, the plaintiffs successfully relied on the strict liability doctrine to hold the defendants liable for their crude oil waste that escaped on to the plaintiff's land, polluting their ponds, and killing their fish (M. Umudje& Anor. V Shell-BP Petroleum Development of Nigeria Ltd. (1975)). Similarly, the 1932 English case of *Donoghue v. Stevenson* provided major precedent in negligence and that is premised on a duty of care (1932 A.C 562 (HL) 564). This case has been adopted as a binding precedent in subsequent Nigerian cases (1973 7 CCHC71 Nigeria).

The Common Law principles were not designed for environmental cases however, and do not address any particular natural resources or the intricacies thereof. Likewise, other laws made at the time were not meant for natural resource protection. Any environmental protection in the enactments seems entirely accidental. This 'accidental' nature of environmental legislation was the status quo until the discovery of petroleum in later years.

Current Legislation On Environment

In 1987, an environmental catastrophe ignited and energized efforts to pass meaningful environmental legislation. An Italian company imported several tons of toxic industrial waste and deposited it in Koko, Delta state, within Southern Nigeria (Brooke, N. *Y. Times*, 1988). The waste leaked into surrounding environment and resulted in the endangerment of some residents of that community(*ibid*). The egregious nature of the incident forced the Federal Government to react by enacting the Harmful Waste (Special Criminal Provisions etc.) Decree now Act (Now Harmful Waste (Special Criminal Provisions etc) Act (1988) Cap. C49)

The Act criminalizes activities involving the sale, purchase, transportation, importation, deposit, or storage of harmful waste, either singly or in conjunction with others on Nigeria's soil, air, or sea([1] *Ibid* ss 1-2).

In the same year, the governing Federal Military Government promulgated the Federal Environmental Protection Agency (FEPA) Decree. This Decree (now Act) established Federal Environmental Protection Agency (FEPA) with broad powers to manage and protect environmental resources and to develop environmental research technology (FEPA Decree (1987) cap. F10). The Act also empowered states within the Federation to set up their respective state environmental protection agencies, primarily to maintain good environmental quality in relation to pollutants within the state's control (*Ibid* section 25). Three important subsidiary legislation made under this Decree directly stipulated standards. They were National Environmental Protection (Effluent Limitation) Regulations (1991), the National Environmental Protection (Management of Solid and Hazardous Wastes) Regulation No. 15 (1991), National Environmental Protection (Pollution Abatement in Industries and Facilities Generating Wastes) Regulations No. 9 (1991).
The FEPA Act authorized the Agency to prescribe national guidelines; criteria; and standards for water quality; air quality and atmospheric protection; noise level; gaseous emissions; and effluent limit; to monitor and control hazardous substances; and to supervise and enforce compliance. It also gave the agency broad enforcement powers even without warrants, to enter premises, inspect and seize property, and arrest offenders who obstruct the enforcement officers in the discharge of their duties.

In 1989, FEPA formulated the current National Policy on the Environment. Egunjobi described the policy as " perhaps the most positive achievement Nigeria has ever recorded in the area of environmental management"(Egunjobi,1993). The Policy's overreaching objectives is sustainable development based on proper management of the environment in order to meet the need of present and future generations([1] *ibid*[1]*)*. It aims to secure for all Nigerians a quality of environment adequate for their health and wellbeing; to "raise public awareness and promote understanding of the…essential linkages between environment and development", and to "encourage individual and community participation in environmental protection and improvements efforts"(Overview on the National Policy on the Environment ,1999).
In 1999, the Federal Ministry of Environment took over the functions of Federal Environmental Protection Agency (FEPA). Since then, the scope of environmental legislation has become progressively more sophisticated and demonstrates an increasing awareness of the importance of environmental resources.

The Federal Environmental Protection Agency Act and its regulations, as well as the Harmful Wastes Act were a good development in view of the relatively obscure environmental Regulations at that time- even though both were reactive.

It is remarkable that in spite of the various enactments, and especially of Federal Environmental Protection Agency's Regulations that aimed to control industrial emissions to minimize environmental pollution, arbitrary discharge of waste water has been a pervasive practice amongst industrialists. During that period, Lagos State Environmental Protection Agency (LASEPA) lamented a paltry 20% industry compliance with effluent limitation standards, resulting in Lagos State's groundwater suffering considerable and

escalating pollution (Lagos State Government Final Draft Report of Lagos State Effluent Limitation Standards and Guidelines,1999).

Several other environmental and public health laws have since been enacted. These includes: The National Agency for Food and Drugs Administration and Control Decree, which has had amendments and 39 subsidiary legislations; and the Merchant Shipping Decree which also had amendments with many subsidiary legislations. In 1992, the Environmental Impact Assessment Decree was passed (EIA Decree (1992) Cap. E12). For the first time, the country could claim to have generally applicable law that mandates prior appraisals of likely environmental impacts of intended projects belonging to both public and private sectors must undergo an initial early appraisal in case of resulting harm to the environment.

Finally, in July of 2007, the National Assembly repealed the Federal Environmental Protection Agency Act and enacted The National Environmental Standards Regulations and Enforcement Agency (Establishment) Act. The Act creates new Federal Agency called the NESREA which replaced the FEPA (Ladan, 2012*).* The NESREA Act is the major Federal Government legislation in Nigeria, and has been described as "a new dawn in environmental compliance and enforcement" because of its efforts to address and safeguard all aspects of the environment (*Ibid* at 116)

The Constitution of the Federal Republic of Nigeria 1999 (as amended) (Cap. 23, Laws of Federation of Nigeria,2004) is the apex law of Nigeria. It does not contain any express provision for environment legislation. The Nigerian Constitution does not also provide for the enforcement of any international environmental treaty that has not been domesticated as an Act of the National Assembly. Section 12(1) of the Constitution provides that "No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by any law made by the National Assembly." By implication, any international treaty on the environment to which Nigeria is a signatory can be enacted into law in Nigeria. There are so many of such treaties and some have become the basis of several environmental enactments relevant to the oil and gas industry in Nigeria. Such pieces of legislation which owe their roots to international treaties includes Oil in Navigable Waters Act (Cap. O6 Laws of the Federation of Nigeria,2004) which was enacted as part of the international action to domesticate the International Convention for the Prevention of Pollution of the Sea by Oil (1954, as amended in 1972), and the National Oil Spill Detection and Response Agency Act (Cap. N157, Laws of the Federation of Nigeria, 2006) which was enacted in compliance with the terms of International Convention on Oil Pollution Preparedness, Response and Cooperation (OPRC) (1990). Nigeria is a signatory to both conventions and by virtue of section 12 of the Constitution, the terms of the two conventions have become part of *juris Nigerianae*. Section 12 can in this manner said to have made implied provisions for environmental management in the oil and gas sector (Eze and Eze,2017*).*

Chapter II of the 1999 Constitution which is christened "Fundamental Objectives and Directive Principles of State policy" is however a non-justiciable part of the 1999 Constitution. In other words, it does not provide for rights that can be enforced by the Nigerian citizens but is stated to be a policy guide for the policy makers in sovereign state of Nigeria. Being a mere guide, it does not create enforceable rights and whatever is found therein is lofty dream which the Nigerian state is supposed to be aiming at achieving. The

Constitution of the Federal Republic of Nigeria 1999 has twelve of such provisions (ss 13-24 of CFRN, 1999 as amended). Section 20 of the Constitution provides as follows: "the state shall protect and improve the environment and safeguard the waters, air and land, forest and wild life of Nigeria." The construction of the above provision is indisputably broad. This fact notwithstanding, the observance of the principle by the state is not mandatory but merely directory. The implication of this is that there is an immutable limitation on the enforcement of this provision.

The Nigerian state appreciates the need to make environmental protection a constitutional right but does not want issues of environmental protection to disturb it economic strategies with respect to the oil industry. It is also possible to infer that the Nigerian government had non-interference with oil and gas exploration and production at the back of its mind when it decided to take such a middle ground provision on the environment in the 1999 Constitution. This may be understandable given the mono-crop nature of its economy which is heavily dependent on oil. This attitude would appear to be begging the question in view of the violent agitations raging the Niger Delta region as a result of the pollution of the environment by the oil and gas exploration and production activities. It is therefore suggested that the section should be made justiciable so that operators or owners of facilities in the oil and gas sectors and Nigerian citizens in general which eschew acts that are capable of degrading, destroying or contaminating the environment in the course of oil production. This will give more bite to the anti-pollution provisions of the proposed "National Oil Pollution Management Agency" Act as well provisions of the Oil Spill and Oily Pollution Management Regulations and the Oil Spill Recovery, Clean up Remediation and Damage Assessment Regulations 2011. By making section 20 justiciable, the duties and rights contained in these sensitive legislation can then be enforced by the Fundamental Human Rights (Enforcement Procedure) Rules 2009, made pursuant to the 1999 Constitution (*Ibid*n.131).

Environmental regulation does not appear in the Exclusive Legislative List or in the Concurrent Legislative List of the Nigerian Constitution. By implication it is a matter for the residuary list for which both the National Assembly and the state Houses of Assembly can make laws. In practical terms however, pollution in the oil and gas sector appears to be a matter incidental to Item 39 of the Second Schedule to the 1999 Constitution. By virtue of Item 68, in the Second Schedule, environmental pollution in the oil and gas sector is supposed to be a matter for Exclusive Legislative List being a "…matter incidental or supplementary" (Item 39 2nd schedule of the CFRN 1999 as amended) to the matter mentioned in item 39, to wit, mines, and minerals, including oil fields, oil mining in geological surveys and natural gas (*ibid)*. In the spirit of the Constitution, State Houses of Assembly may however venture to legislate on general environmental matters but not such as are "incidental or supplementary" to "oil fields" and "oil mining". This is the reason why the state governments are able to establish sanitation authorities or sanitation and environmental protection authorities drawing on their residuary legislative competence impliedly provided for under the Constitution. However, where any of the provisions of the state sanitation and environmental protection laws conflict with any Federal legislation on the environment, the law made by the National Assembly shall prevail and that the other law shall be void to the extent of the inconsistency (Section 4(5) CFRN 1999 as amended).

The implication of the above provision is that no Federating state in Nigeria could enact laws for the control of oil and gas pollution. This is strictly within the legislative competence of the National Assembly by virtue of Items 39 and 68 of the Second Schedule and section 4(5) of the Nigerian Constitution. Some people have clamored for a change of this position contending that the state governments are closer to the people and better positioned to make laws for the prevention, control and remediation of environmental pollution caused by oil and gas exploration and production activities (Ibid n.131). Granted that this position is desirable, it is submitted that the position is not practicable in view of the ownership and control structure of oil and gas resources in Nigeria. The position can clearly become plausible when the Constitution is radically amended to include the state and the local communities where minerals are found in the ownership structure and they are given a role in the exploration and production process. The ownership of mineral resources in Nigeria as currently constituted will make any environmental control of the sector by any tier of government other than the Federal government difficult. It is bound to create confusion in the environmental regulatory regime thereby worsening the problem of oil and gas pollution. Furthermore, the provision of the Constitution which declares any state law that is inconsistent with a law enacted by the National Assembly will make legislative control of environmental issues in the oil and gas sector by state government a child's play. It could lead to clashes and endless litigation which has the potentials of inflaming an already heated up system.

Besides the Constitution of the Federal Republic of Nigeria 1999 (as amended), which is the basis and the grand norm for all environmental legislation in Nigeria, there are other key environmental regulatory framework legislation. The National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007 (NESREA Establishment Act, 2007) and the Regulations made by the Minister of Environment under section 34 of the Act. This statute was created pursuant to section 20 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and repealed the Federal Environmental Protection Agency (Establishment) Act (FEPA) of 1988. The NESREA is the major federal body responsible for protecting Nigeria's environment, is responsible for enforcing all environmental laws, Regulations, Guidelines, and Standards. This includes enforcing environmental Conventions, Treaties and Protocols to which Nigeria is a signatory.

The Environmental Impact Assessment Act (Cap. E12 LFN 2004). This Act sets out the general principles, procedures and methods of environmental impact assessment in various sectors. The Act requires that public and private sector projects must conduct assessment on the possible impact the project may have on the environment.

Harmful Wastes (Special Criminal Provisions etc.) Act (Cap. H1 LFN 2004). This law prohibits the carrying, depositing and dumping of harmful wastes on land and in territorial waters. This law was originally enacted in the aftermath of the infamous Koko toxic dump waste in 1988 by an Italian company. Before the incident, there was no such legislation in Nigeria. It thus awakened the Nigerian government on the need to be proactive in providing environmental legislation.

Endangered Species (Control of International Trade and Traffic) Act (Cap. E9 LFN 2004). This Act provides for the conservation and management of wild life and the protection of endangered species as required under certain international treaties.

National Oil Spill Detection and Response Agency Act 2006 (NOSDRA). Its objective is to put in place machinery for the coordination and implementation of the National Oil Spill Contingency plan for Nigeria to ensure safe, timely, effective and appropriate response to major or disastrous oil pollution.

National Park Services Act (Cap. N65 LFN 2004). This makes provision for the conservation and protection of natural resources and plants in national parks. Nigerian Minerals and Mining Act 2007. This repealed the Minerals and Mining Act No. 34 of 1999 and re-enacted the Nigerian Minerals and Mining Act 2007 for the purpose of regulating the exploration of solid minerals, among other purposes.
Water Resources Act (Cap.W2 LFN 2004). This aims at promoting the optimum development, use and protection of water resources.
Hydrocarbon Oil Refineries Act. The Act is concerned with the licensing of refining activities.

The Associated Gas Re-Injection Act. This law deals with gas flaring activities by oil and gas companies. Prohibits, without lawful permission, any oil and gas company from flaring gas in Nigeria and stipulates the penalty for breach of permit conditions.

Nuclear Safety and Radiation Protection Act: The Act regulates the use of radioactive substances and equipment emitting and generating ionizing radiation. In particular, it enables the making of regulations for protecting the environment from harmful effects of ionizing radiation.

Oil in Navigable Waters Act: This Act concerned with the discharge of oil from ships. It prohibits the discharge of oil from ships into territorial waters and shorelines.

ESTABLISHMENT AND LIMITATION TO THE REGULATORY ROLE OF NESREA

NESREA is currently the major agency charged with the protection of Nigeria's environment. NESREA was created by the NESREA Act (s1 NESREA Act No. 25 July, 30, 2007). The Federal Government pursuant to section 20 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), established NESREA as an institution under the supervision of the Federal Ministry of Environment, Housing and Urban Development. NESREA was created to replace the defunct Federal Environmental Protection Agency (FEPA). In examining the enforcement of the preventive principle in Nigeria, it is necessary to look at the establishment, mandate and powers of NESREA.

NESREA was established on 30th July, 2007 as a body corporate with perpetual succession and a common seal, which may sue and be sued in its corporate name (*Ibid* section 1(2)). It is responsible for the enforcement of environmental standards, regulations, rules, laws, policies and guidelines. Its authority extends to the enforcement of environmental guidelines and policies such as the National Policy on the Environment, 1999. This is indicative of the importance and relevance of standards, rules, policies and guidelines on the environment. Although, they may not have the force of law, they are vital and necessary element in the protection and the preservation of the environment (Ibid n124*)*. The Agency

is charged with the responsibility for protection and development of the environment, biodiversity conservation and sustainable development of Nigeria's natural resources as well as environmental technology.

The NESREA Act and Regulations constitute a new dawn because in both purpose and contents, they aim at addressing the preponderance of obsolete environmental regulations, standards and enforcement mechanisms, which resulted, over the years, in the high rates of non-compliance with environmental laws, regulations and standards (*ibid*).

In order to deliver on her mandate, the immediate implementation strategies of NESREA are:

1) Collaborations and partnerships;
2) Conducting public education and awareness on topical environmental issues; and
3) Strengthening institutions and building capacity to monitor compliance and enforce existing regulations, including guidelines for best practices.

In terms of collaborations and partnerships, NESREA'S enabling law and regulations provided a platform for:

a) Creating fora for dialogue, exchange of information and best practices as well as build consensus and partnerships among all stakeholders. This informed NESREA'S decisions to organize the 1st National Stakeholders Forum on "The New Mechanism for Environmental Protection and Sustainable Development in Nigeria" with the theme: "ensuing a safer and cleaner environment in Nigeria through partnerships".
b) As part of partnership strategy, NESREA proposes to have zonal headquarters in the six geopolitical zones and offices in all states of the federation.
c) To date, NESREA has established five (5) functional zonal offices in Port-Harcourt Rivers State; Owerri- Imo State; Jos- Plateau State, Gombe-Gombe State and Kano-Kano State. NESREA has thirteen state offices.
d) NESREA goes beyond local partnerships to collaborate with international bodies, agencies, and non-governmental organizations including international regulatory bodies e.g. UN Agencies, World Bank; Partners for Water and Sanitation (PAWS-UK), United Kingdom Environment Agency.
e) Sector specific consultative meetings for sharing of ideas and experience, and better dissemination of information e.g. Nigerian Tanners Council, Association of Food Beverages and Tobacco Employers.

Between 2007-2011, there has been continuous advocacy at all levels in the print and the electronic media to properly communicate the concept of voluntary compliance and enlist the support and participation of key stakeholders including trade unions, professional and business associations, traditional, cultural and faith based organizations (*Ibid*).

In order to ensure effective compliance, NESREA has adopted environmental permitting and licensing system by promoting the development of local technologies to aid compliance monitoring and enforcement; pursuing technical assistance to strengthen capacity through exchange of knowledge and experience, and learning of best practices in environmental management from other countries whose policy systems have some similarities with Nigeria. Partnerships and networks have been established with institutions and

organizations in Japan and Singapore. Establishing modern reference laboratories for prompt and reliable analysis of environmental samples for effective compliance, monitoring and enforcement (*ibid*).

Part II of the NESREA (Establishment) Act, 2007 contains functions of the Agency. The Agency is authorized to enforce compliance with laws, guidelines, policies and standards of environmental matters (S 7(a) of NESREA Act No. 25 of 2007). Such standards would include the Federal Water Quality Standards. In carrying out its functions, it is to coordinate and liaise with stakeholders within and outside Nigeria on matters of environmental standards, regulations and enforcement (*Ibid s* 7(b)). Relevant stakeholders would include the organized private sector, environmental groups at both national and international levels and other ministries and parastatals.

Another notable provision of the NESREA Act is section 7(c) which empowers the Agency to enforce compliance with the provisions of international agreements, protocols, conventions and treaties as may from time to time come into force (Ibid n.124).

Nigeria has ratified several international agreements on the environment on matters such as climate change, biodiversity, desertification, forestry, oil and gas, hazardous wastes, marine and wild life and population. However, most of these environmental treaties to which Nigeria is a state party are yet to be domesticated. This provision could therefore be interpreted in two ways ([1] *Ibid)*.

First, it could be interpreted in terms of giving NESREA the authority to enforce such environmental treaties in Nigeria whether or not they have ben domesticated in the country. This would be based on the fact that by ratifying the relevant treaty, Nigeria has signified its intention to be bound by the provisions of the treaty. The state can therefore not shy away from the performance of treaty obligations under International Law (*Ibid*). This principle is expressed in Article 26 of the Vienna Convention on the Law of Treaties, which provides that 'every treaty in force is binding upon the parties to it and must be performed by them in good faith'. This principle is also known as the principle of good faith (pacta sunt servanda). This thinking was reflected in the judgement of the Court of Appeal in the case of *Mojekwu v. Ejikeme* (2002, 5 NWLR PT.657 at 402). Although, the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW) (Nigeria signed and Ratified the CEDAW on 23rd April, 1984 and 13th June, 1985 respectively) had not been domesticated in Nigeria, the court referred to it in its judgement and had no difficulty in holding that the "*ili ekpe*" custom was a form of discrimination against women.

Second, the provision could be interpreted in such a way as to limit the enforcement powers of NESREA to those international agreements and treaties on the environment that have specifically been domesticated in Nigeria by an Act of National Assembly (Ibid n.124).

Section 12(1) of the Constitution of Federal Republic of Nigeria, 1999 (as amended) provides that:

"No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly where the treaty deals with matters not included in the Exclusive Legislative List, it must in addition be ratified by a majority of all State Houses of Assembly in the Federation" (S.12(3) of the Constitution of Federal Republic of Nigeria, 1999).

For NESREA to enforce compliance with the provision of such treaties to which Nigeria is a state party, the relevant treaty would first of all have to be domesticated before it could be

said to properly "come in to force". Treaties on the environment that have been domesticated in Nigeria include the Convention on International Trade in Endangered Species of Fauna and Flora and Convention on the Prevention of Pollution of the Sea by Oil. There is also the African Charter on Human and Peoples Rights, containing provisions relevant to environmental protection. NESREA could play a vital role in the domestication process (Ibid n.124).

Whichever view taken by the court, in the event relevant section being referred for judicial interpretation. Section 7(c) of the NESREA Act has laudable effect of highlighting the importance and relevance of International Environmental Law as a veritable source of Nigerian Environmental Law (*Ibid*).

Once ratified, a treaty becomes binding on the state party. Nigeria is therefore under obligation to domesticate her environmental treaties by incorporating them as part of her national law to ensure effective implementation. This requires political will on the part of both Legislative and the Executive arms of government to comply with the provisions of ratified treaties into consideration in arriving at decisions involving questions of right of access to justice in environmental matters, non-discrimination and equality (Ladan, 2005).

It is the considered view of the research that the inclusion of 'oil and gas' in the list of international treaties on environment to be enforced by NESREA under section 7(c) is contradictory in the light of the provision of the Act which expressly removed oil and gas from the purview of NESREA. Section 7(h), for example, empowers NESREA to 'enforce through compliance monitoring, the environmental regulations and standards on noise, air, land, seas, oceans and other water bodies other than in the oil and gas sector'. The provision of section 7(h) is buttressed by section 7(g) which, mandates NESREA to enforce compliance with regulations on the importation, exportation, production, distribution, storage, sale, use, handling and disposal of hazardous chemicals and wastes other than in the oil and gas sector.

The inclusion of 'oil and gas' in section 7(c) therefore introduces some confusion as the other provisions of the Act have the effect of precluding NESREA from exercising its enforcement powers in the oil and gas sector. There were agitations by scholars for the removal of the phrase 'oil and gas' from section 7(c) to bring same in conformity with the rest of the Act particularly section 7(g, h, j, k and I) and to give effect to the intention of the legislation which was to clearly remove the oil and gas sector from the authority of NESREA.

Conversely, the NESREA Act, 2007 was amended in November 2018 by the National Environmental Standards and Regulations Enforcement Agency (Establishment) (Amendment) Act to further empower the NESREA in protection and development of the environment. Specifically, the Amendment Act seeks to amend the NESREA Act to review the conditions of appointment of some council members, increase penalties and permit the search of premises without warrant and other matters (*ibid)*.

One of the notable amendments under the Amendment Act is section 7(c) of the NESREA Act by deleting the NESREA power to enforce compliance with the provisions of international agreements, protocols, conventions and treaties on oil and gas in line with scholars' agitation. The foregoing as well as the removal of the representative of oil and gas

from the NESREA governing council seem to suggest that the legislators intend to limit NESREA's control over the oil and gas companies regarding environmental matters (*Ibid*). This amendment to section 7(c) of the NESREA (Establishment) Act has effectively removed all the confusions and contradictions that hitherto existed between express provisions of section 7(c), (g) and (h) respectively of the same section.

In Nigeria, there are various laws protecting the Nigerian environment. Some of the laws includes legislative enactments on gas flaring, the Environmental Impact Assessment Act 1992, the NESREA (Establishment) Act 2007 (as amended) and the National Policy on the Environment, Oil and Navigable Waters Act 1968, among others (Ekhajor, 2013*)*.

Furthermore, there are governmental or public agencies involved in the enforcement and monitoring of Nigerian environment. some of these includes the NESREA, DPR, Federal Ministry of Environment, NNPC and NOSDRA among others.

Section 2 of the NESREA Act provides that the Agency:

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

However, when it comes to issues pertaining to the environment in the oil and gas sector of Nigeria, NESREA as the lead environmental Agency in Nigeria is statutorily barred or excluded from having regulatory authority. This is even as there are scholarly arguments on this limitation of authority placed on NESREA. For instance, section 27 of the NESREA Act prohibits the discharge of harmful quantities of hazardous substances into air, land, water and the shorelines of Nigeria except permitted by law. Scholars including Oshionebo argues that the Oil released waste can qualify as hazardous in the context of NESREA Act, according to him, section thereof defines hazardous substances as "any chemical, physical or biological and radioactive, materials that poses a threat to human health and the environment" (Oshionebo,*2009)*. Despite this argument by Oshionebo, the statutory powers of NESREA over environmental governance, it authority do not extend to environmental issues arising from Oil and gas industries operations in Nigeria. For instance, section 8(8) of the NESREA enabling Act provides that the agency shall have the power to 'conduct investigations in oil pollution and degradation of the natural resources except investigations on oil spillage". Consequently, the Agency is stripped of authority to investigate oil spillage which constitute one of the greatest threats to Nigeria's environment particularly in the Niger delta region of Nigeria.

Therefore, from the community reading of the provisions of NESREA Act under sections 3(i)(c)(vii), 7(g),8(g)(k)(l)(m) and (n) and 30(4), it is clear that the Agency's power to regulate and enforce environmental regulations and standards in Nigeria is only limited to the oil and gas sector of the Nigerian economy.

Hitherto, the NESREA Act contained conflicting provisions as to the exact mandate of the Agency as it related to the oil and gas sector. This conflict necessitated the review of the NESREA Act in 2018 which led to the amendment of the Act to rid the Act of the contradictory provisions thereby deleting some provisions of the Act to make it in line with its mandate. For instance, the provisions of section 3(i)(c) (vii) of the Act which provided for a representative of the oil exploratory and production companies as part of the membership of the Agency's Governing council was deleted and substituted with new subsection (c) (vii) which states that a representative of the federal ministry of health shall be a representative of the council. Section 7 of the Act provides for the functions and powers of the NESREA. Section 7(c) provides that the NESREA shall have powers to enforce compliance with provisions of international agreements, protocols, conventions and treaties on the environment including climate change, biodiversity, conservation, desertification, forestry, oil and gas, chemicals, hazardous wastes, ozone depletion, marine and wildlife, pollution….The Amendment Act amends paragraph 7(c) by deleting "to enforce with the provisions of international agreements, protocols, conventions and treaties on oil and gas".

This and other consequential adjustments to the Act has effectively barred the NESREA from having regulatory control on environmental issues arising from the oil and gas exploration activities particularly oil spillage.

The question that naturally comes to mind is, who then is saddled with the regulatory responsibility on environmental issues in the oil and gas sector? To answer this question, the Federal Government of Nigeria in 2016 established the National Oil Spill Detection and Response Agency (NOSDRA), department under the federal ministry of environment. under the NOSDRA Act No. 15 of 2016, the Agency is charged with the responsibility to implement the Oil Spill Contingency Plan (NOSCP) for Nigeria in accordance with the International Convention on Oil Pollution Preparedness Response and Cooperation (OPRC) 1990 (Ibid n.197). NOSDRA is mandated to play the major role in ensuring appropriate and effective response to oils and to ensure the cleanup and remediation of oil spills sites in Nigeria (National Oil Spill Detection and Response Agency < nosdra.gov.ng> accessed on 09-02-2020). One of the NOSDRA's objectives is the identification of high-risk areas in the oil producing communities or environment for protection as well as ensuring compliance of the oil industry players or companies with the extant environmental laws and regulations in the sector (*Ibid)*. NOSDRA has powers to make regulations pursuant to the powers conferred on it by virtue of section 26 of its enabling Act.

In the final analysis, NESREA lacks the statutory authority and power to regulate environmental issues relating to operation of oil and gas exploratory industry. This has been effectively taken care of by the 2018 NESREA (Establishment) (Amendment) Act. This is arguably to prevent conflict of mandate between NESREA and NOSDRA (*Ibid* n.197).

OBSEVATIONS

In the course of this research, the following observations are noted thus:

a) Despite being the lead environmental agency in Nigeria, when it comes to issues pertaining to the environment in the oil and gas sector of Nigeria, NESREA is statutorily barred or excluded from having regulatory authority.
b) The mandate of National Oil Spill Detection and Response Agency (NOSDRA) can be effectively accommodated under the mandate of NESREA.

RECOMMENDATIONS

The following recommendations are made thus:

a) NESREA being the lead environmental agency of the federal government of Nigeria should be mandated to handle all environmental issues in the Nigerian federation as limiting its mandate not to include environmental issues in oil and gas industry is a mere political approach to addressing the serious issue of environmental degradation in Nigeria particularly in the oil producing Niger Delta region of Nigeria.
b) Establishment of NOSDRA is a duplication of responsibly that can be effectively discharged by NESREA hence the call for the outright repealed of the NOSDRA establishment Act to avoid duplication as wastage of public resources.

CONCLUSION

In conclusion therefore, it is very much necessary that the federal government of Nigeria strengthens the lead environmental agency NESREA to be able to positively response to the traditional and emerging environmental issues that are posing threat to the Nigerian environment. the duplication of agencies in charge of different environmental issues within the same Nigerian federation may not be helpful in tackling environmental challenges which are in many ways related and approach to addressing them same.

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