



# UDUS LAW JOURNAL

This Journal may be cited as  
UDUS LAW JOURNAL, Vol. 2, No. 2, 2021

A PUBLICATION OF THE FACULTY OF LAW,  
USMANU DANFODIYO UNIVERSITY,  
SOKOTO

**Edited By:**

Assoc. Prof. Ibrahim Abdullahi, SAN  
Assoc. Prof K.G. Muhammad  
Safiyyah U. Mohammed, LLB, BL, LLM

# UDUS LAW JOURNAL

(C) 2021, *FACULTY OF LAW, USMANU DANFODIYO UNIVERSITY,  
SOKOTO*

All Rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means or stored in any retrieval system of any nature without prior written permission; except for permitted fair use under the Copy Right Act.

Application for permission for other use of Copyright material including permission to reproduce extracts in other published works shall be made to the Faculty of Law, Usmanu Dan fodiyo University, Sokoto. Full acknowledgment of the author, publisher and source must be given.

The views expressed in this journal are those of the contributors and not necessarily those of the Faculty of Law, UsmanuDanfodiyo University, Sokoto. Copyright of the content of the articles shall be retained by the author subject to the condition that it cannot be republished in another journal. The reproduction of the article as book chapter requires the acknowledgement of its prior publication inUDUS LAW JOURNAL

## EDITORIAL ADVISORY BOARD

**Prof. Muftau Rufai,**  
Dean of Law,  
Usmanu Danfodiyo University,  
Sokoto.

**Prof. O. V. C. Okene,**  
Rivers State University.

**Prof M. T. Ladan,**  
Ahmadu Bello University,  
Zaria.

**Prof. Mamman Lawan SAN,**  
Bayero University,  
Kano.

**Prof. F. C. Nwoke,**  
University of Jos.

**Prof. F. A. R. Adeleke,**  
Lagos State University.

**Prof. M. L. Ahmadu**  
Usmanu Danfodiyo University,  
Sokoto.

**RE-EXAMINING THE LEGAL FRAMEWORK AND DRAWBACKS OF  
NATIONAL ENVIRONMENTAL STANDARDS AND REGULATIONS  
ENFORCEMENT AGENCY(NESREA)**

**Awodezi Henry\***  
**Safiyah Ummu Mohammed\*\***

**ABSTRACT**

The National Environmental Standards and Regulations Enforcement Agency (NESREA) was established in 2007. The major aim of establishing the agency is to ensure that the Nigerian environment is clean and healthy enough for human existence. Over the years, this is scarcely achieved as the state of Nigerian environments is very poor. It is an environmental agency that operates under the Department of Federal Ministry of Environment. NESREA is responsible for enforcing environmental standards for all sectors, except the petroleum sector. NESREA 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. This paper critically examined the fundamental function of the NESREA in enforcing environmental standards vis-à-vis the poor state of the Nigerian environment. This paper was researched through doctrinal legal research technique and a major cause identified was the lack of stringent implementation of environmental laws. This is premised on the fact that the average Nigerian is reluctant in obeying environmental laws due to his overriding selfish developmental interest at the expense of destroying his environment. A stringent implementation of environmental laws is therefore recommended.

**Keywords:** Implementation, Environment, Sustainability, Conservation.

**1. INTRODUCTION**

This study involves doctrinal legal research methodology. This was done in areas bordering majorly on the legal frameworks, functions and the ills that the National Environmental Standards and Regulations Enforcement Agency (NESREA) is intended to cure. Upon establishment, it beholds on NESREA to balance developmental interest against environmental interest.

The study also relies on the use of primary source materials and secondary source materials. This employs the use of legislation and case laws including legal encyclopaedias, dictionary, internet materials, journals, seminars, workshops and texts.

\*Ph.D., Faculty of Law, University of Delta, Agbor, henryawodezi@gmail.com, 08062977801.

\*\*Lecturer, Department of Public Law and Jurisprudence, Examination Officer, Faculty of Law, UsmanuDanfodiyo University, Sokoto.

Sequel to the above, the study now consider the following frame works relevant to the scope of this research.

## **2. HISTORICAL BACKGROUND OF ENVIRONMENTAL PROTECTION BEFORE THE ESTABLISHMENT OF NESREA**

Before the establishment of NESREA, the evolution and development of legal tools and strategies to maintain a balance between man's continuous activities and the ecosystem has attracted a serious national attention. For instance, the Criminal Code<sup>1</sup> provides for sanction on the fouling of water in spring, stream, well, tank, reservoir, the sale, possession or manufacture of matches with white phosphorous<sup>2</sup>. The concept of environmental law at the time actually provided ridiculous punishment for some of the violations<sup>3</sup>. It has been observed with dismay that in the immediate post-independence era in Nigeria, the perceived environmental problems were actually begging for some forms of control and management principally in the area of domestic waste management. There was no regulated policy on forest conservation at the time which was capable of achieving sustainable development, neither was there any legal mechanism in place to check the emerging environmental problems due largely to the economic activities of the colonial powers.<sup>4</sup> The developmental needs of Nigeria as a young economy justified the turning of a blind eye on some of these problems. The period between independence and 1988 actually witnessed a combination of political and socio-economic factors which began to enhance the development of environmental law in Nigeria. During the period, it may be said that the erstwhile concept of environmental law changed.<sup>5</sup> In the first place, there was a sudden growth in the development of local industries which created problems associated with industrial waste management. These industries actually brought about various forms of pollutants into the environment. Again the discovery of oil in the first decade of independence and the attendant oil boom actually highlighted the unpreparedness of Nigeria to tackle environmental problems associated with industrial development. In consequence of the impact of industrialization on the environmental policy in Nigeria, a new concept of environmental law had to be articulated. This brought about the enactment of Factory Act, the Oil in Navigable Wasters Act 1968, Oil in Navigable Wasters Regulation 1968, Petroleum Act 1969, Petroleum (Drilling and Production) Regulation 1969, Petroleum Drilling and Production (Amendment) Regulation 1973, Petroleum Refining Regulation 1974 and the Oil Pipe Line Act 1956<sup>6</sup>. It has been observed that the prevalence of these laws and regulations in the first decade of

<sup>1</sup>Criminal Code Cap. 77 Laws of the Federation of Nigeria 1990

<sup>2</sup> Ibid, sections 245-248.

<sup>3</sup>Lawrence Atsegbua et al Supra, n.2 P.5.Six months punishments or a fine of N10 in case of white phosphorous.

<sup>4</sup> Ibid

<sup>5</sup> Ibid

<sup>6</sup>Okoye, N.V. "Oil Pollution Control" in *The Law and the Environment in Nigeria*, Shyllon, F. ed. (Ibadan: Vantage Publishers,1989) p.64.

Nigeria's independence is an indication of a sudden shift in the concept of environmental law from what it was in the colonial era. The protection of the citizens' health, the balancing of the ecosystem, adequate management of natural resources, the problem of compensation of pollution victims and socio-economic and political consideration actually accounted for this movement in the concept of environmental law<sup>7</sup>. This dynamic nature of the concept of environmental law admits the proposition that the categories of environmental problems governed by law are not closed. The continuing expansion of these categories was succinctly expressed by a learned legal scholar thus:

The range of topics under the general heading of environmental law is extensive. It could include planning law, the law relating to the quality of air and water, the disposal and transport of waste, control of the nuclear industry and statutory nuisances. It represents a new classification which absorbs many areas previously considered to fall under different headings...<sup>8</sup>

It is important to note that the Koko incident of June 1988 actually increased Nigeria's awareness of the need not only to identify pollution agents but also to adopt a conceptual and systematic approach in environmental protection. At this point, the concept of environmental protection in Nigeria began to follow the pattern in some developed countries of the world. The Federal Government of Nigeria actually organized an International Workshop<sup>9</sup> on environmental policy from which it came out with a document titled "Federal Republic of Nigeria National Policy on the Environment"<sup>10</sup>. For the first time a deliberate conceptual approach was adopted in formulating this policy. Among other things, the National Policy on the environment formulated national policy goals and strategies for implementation.

The human factors, land use and soil conservation, water resource management, forestry, wildlife and reserves, marine and coastal resources, sanitation and waste management, toxic and hazardous substances, mining, air and noise pollution became easily recognized concepts in an effort to provide a regime of management regulations and laws to balance the problem they posed. It was here that the establishment of an administering and enforcement organ known as the Federal Environmental Protection Agency Act was established in 1988 and was repealed by NESREA Act<sup>11</sup>. The NESREA Act was established as a take-off from the defunct Federal Environmental Protection Agency Act with similar provisions and functions though with modification but has not been able to put finality to environmental problems.

<sup>7</sup>Ogbugwe, A.E. "Compensation and Liability for Oil Pollution in Nigeria" (1985) 3 J.P.P.L. p.21

<sup>8</sup>Malcolm, R. A. "A Guidebook to Environment Law (London: Sweet & Maxwell, 1994) pp15-16

<sup>9</sup>The Workshop was held in collaboration with United Nations Environmental Programme (UNEP) on 12<sup>th</sup> -16<sup>th</sup> September, 1988.

<sup>10</sup>Aina, E.O.A. and Adedipe, N.O ed., *The Making of the Nigerian Environmental Policy* (Ibadan: University Press 1991) P. 311

<sup>11</sup>Section 36, NESREA Act, 2007.

### 3. NATIONAL ENVIRONMENTAL STANDARDS AND REGULATIONS ENFORCEMENT AGENCY ACT<sup>12</sup>

National Environmental Standards and Regulations Enforcement Agency Act (hereinafter referred to as NESREA Act) was enacted by the National Assembly of the Federal Republic of Nigeria.<sup>13</sup> NESREA was created by the NESREA Act as a major Federal body charged with the protection of Nigeria's environment. The Federal Government, in line with the provision of the Constitution<sup>14</sup>, established the Agency 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 hereinafter referred to as FEPA. NESREA is responsible for enforcing environmental standards for all sectors, except the petroleum sector.<sup>15</sup> NESREA 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<sup>16</sup>.

NESREA as a body corporate with perpetual succession and a common seal, may sue and be sued in its corporate name.<sup>17</sup> 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<sup>18</sup>.

Environmental law is that branch of law which regulates human conduct towards the environment. Different types of environmental laws exist in various Countries. Increase in industries and in energy consumption was considered inevitable for development as factors that could not be interfered with for any reason. This is no longer the case. All nations rich or poor have no alternative but to be concerned with the environment.<sup>19</sup>

Laws which achieve this purpose provide the framework for such regulation and control<sup>20</sup>. This bothers on the surrounding condition, influences or forces which modify lives.

A number of factors are still militating against the use and protection of the environment in Nigeria despite the establishment of NESREA. It is therefore the primary concern of this research to look into the 'why' and 'how' and suggest

<sup>12</sup>Established on the 30<sup>th</sup> of July 2007.

<sup>13</sup>Atsegbua Lawrence et al; *Environmental law in Nigeria: Theory and Practice* 2<sup>nd</sup> Ed. (Benin City-Nigeria, Ambik Press Isiohor, 2010). n.2 p.60.

<sup>14</sup>Section 20 of the Constitution of the Federal Republic of Nigeria, 1999.

<sup>15</sup><http://www.nesrea.org/>--30<sup>th</sup> November, 2021. Resource ID 7-500-2774 @ Thomson Reuters

<sup>16</sup>[https://wastesmart.org-2017/12--30<sup>th</sup> November, 2021.](https://wastesmart.org-2017/12--30th November, 2021)

<sup>17</sup>Section 1 (2), NESREA Act, 2007.

<sup>18</sup>The National Policy on the Environment, 1999.

<sup>19</sup>Omorogbe, Y., *The Growth of Environmental Law in Developing Countries: Problems and Prospects* (Mimeo) p.1

<sup>20</sup>Lawrence Atsegbua et al; *Environmental law in Nigeria: Theory and Practice* 2<sup>nd</sup> Ed. Ambik Press Isiohor, (Benin City; Nigeria) 2010 P. 50.

possible way forward. To achieve this, it is necessary to first delve into the historical background before the establishment of NESREA.

#### **4. DEVELOPMENT AND SOCIO-ECONOMIC ISSUES**

Development and socio-economic issues emanating from environmental problems in Nigeria are of different kinds and dimensions. It ranges from erosions, deforestation, water, land and air pollutions from the oil industries, industrial effluents up to dumping of refuse and toxic wastes. These problems are classified as natural, developmental, and socio-economic. The dumping of harmful toxic waste materials in Koko in Delta State of Nigeria in June, 1988, triggered the Nigerian government into passing series of legislation like Harmful Waste (Special Criminal Provisions) Decree<sup>21</sup>, Federal Environmental Protection Agency Decree<sup>22</sup>, which was repealed by the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007 (NESREA Act), Environmental Impact Assessment Decree<sup>23</sup>. Findings show that the purpose and impact of some of these environmental policies are to an extent cosmetic in conception with no objective structure for implementation to achieve the desired goals.

Environmental issues have constituted a major concern to world leaders especially in the industrialized nations of the Western World. These originated from the activities of man since man began to live in settlements. In the earlier days of nomadic hunting communities, the tribal group moved on when food in their current location became depleted and the area around their camp became polluted. These nomads were a part of a balanced eco-system. As human societies developed, land became cultivated, livestock domesticated and as permanent settlements became established, environmental pollution began to emerge.

The problem became more serious as these permanent communities grew into cities. The increase in human population and consumption pattern also led to the increase in wastes generated, thereby creating environmental problems of collection and disposal. Several communities and a number of social and environmental NGOs have adopted a confrontational attitude towards the industry and the Government. There have been limited opportunities for a dialogue to help create the conditions needed to improve the socio-economic situation of the environment, ensure sustainable benefits for the affected communities, and foster a more active and more balanced role for the government to lead a process of negotiation in the sector. Some of the key socio-economic issues that are common across the various industries are:

- (a) Unfulfilled expectations for employment and benefits;
- (b) Land acquisition and resettlement impacts;
- (c) Lack of adequate communication among companies, communities and the government in environmental issues;

<sup>21</sup>Now cited as Harmful Waste (Special Criminal Provisions) Act, Cap. 165, Laws of the Federation of Nigeria, 1990.

<sup>22</sup>Also cited as FEPA Act Cap. 131, Laws of the Federation of Nigeria, 1990.

<sup>23</sup>Decree No. 86 of 1992, hereinafter cited as E.I.A Act 1992 as amended by the Environmental Impact Assessment Act Cap E12 Laws of the Federation of Nigeria, 2004.



- (d) An increase in prostitution and violence;
- (e) Weak enforcement of regulations or even absence of the government and
- (f) Lack of local capacity for negotiating and management.

In Nigeria, these are all serious socio-economic matters that lack attention, not just because of governmental indifference or a lack of the basic education necessary to comprehend such concepts. It is simply that the average man does not have that luxury. He cannot afford the time, effort and expense that environmental concerns entail<sup>24</sup>. His immediate concerns are how to survive, how to exist on his meagre salary and still feed his extended family, how to sleep in his dirty airless room and so on.<sup>25</sup> He is concerned with his immediate survival and environmental issues outside the cleanliness and condition of his very immediate environment<sup>26</sup>.

This attitude of "Mr. Average" in the development country is what is translated into efficacious laws at the inter-governmental level<sup>27</sup>. It is concerned with immediate wellbeing and is given expression to its strategic plans.

It appears that laws for immediate situation, health and wellbeing are more certain of success than those concerned with industrial regulation even if such industries will pose for more problems in future. The average man will fight tooth and nail for such industries to be sited in his home town because of the increased earnings and some droppings of development that will accrue to the area as a result. Thus this practice does not go well with environmental protection. There is a lacuna on the part of the functions of NESREA to enforce compliance<sup>28</sup>.

#### **5. CONFLICT BETWEEN DEVELOPMENTAL INTEREST AND THE ENVIRONMENTAL INTEREST**

Many developed Countries have recorded substantial advances in living standards as a result of their industrial development over the past two centuries. Now it is realized that many of the processes used are detrimental to the environment and can no longer be sustained if there is to be a future at all for the planet earth. The problem is that, for developing nations, the standard of living shows a decrease and they must understandably seek ways of improving the lives of their inhabitants. They cannot do this in the same way that the developed industrialized nations have because the environment has already suffered too much as a result of the developed nations' industrialized processes. For instance, mining in Peru is carried on in poor rural areas, characterized by economic stagnation, lack of employment opportunities and underdeveloped social capital.

The problem is therefore how to balance environmental interest against the development interests of the developing world in particular. To balance this interest, it therefore means that NESREA must coordinate and liaise with stakeholders within and outside Nigeria on matters of environmental standards, regulations and

---

<sup>24</sup>Lawrence Atsegbua et al Op. Cit., n.2 P. 58

<sup>25</sup> Ibid

<sup>26</sup> Ibid

<sup>27</sup> Ibid, P.59

<sup>28</sup> See Section 7 (a) NESREA Act.

enforcement;<sup>29</sup> create public awareness and provide environmental education<sup>30</sup>. The result of this balancing act is that some of these policies which would have been environmentally stringent provisions are watered down by developmental needs and this has rendered the NESREA ineffective.

The Brunt land Reports,<sup>31</sup> attempts to present a common solution to the problem of how to develop without harming the environment by expanding upon the use of the term "sustainable development". This is seen as constituting development that meets the need of the present without compromising the ability of future generations. But this can only be successfully achieved if the regulatory laws and man's activities are complementary to each other. Invariably these new environmentally friendly processes are also expensive.

Sustainable development can also be achieved through no-growth policies, which are maintaining existing lifestyles. However this alternative does not appeal to developing countries but only to those with comfortable living standards. Below are some major causative factors which were identified and assessed in this research.

### 5.1 Non-Compliance and Enforcement of Environmental Policies

The issue of non-compliance with environmental regulations is a common phenomenon; the presence of this problem cannot be overemphasized in Nigeria. Some of the difficulties associated with this are:<sup>32</sup>

- (i) Corruption
- (ii) Lack of environmental consciousness
- (iii) Lack of qualified staff for effective implementation of environmental laws
- (iv) Lack of data
- (v) Government interest
- (vi) Lack of environmental know ho-w and technology.
- (vii) Economic considerations
- (viii) Dearth environmental audits

It is the responsibility of NESREA to attend to the challenges stated above in the performance of its functions. Thus, it has a duty to conduct environmental audit and establish data bank on regulatory and enforcement mechanisms of environmental standards<sup>33</sup>.

Environmental planning as a tool of environmental management is intended to ensure that development activities and exportation of natural resources for different purposes are harmonized with the need to conserve the environment.

The natural resource governance is of special importance for many social movements because natural resources form a central pillar of growth models and

<sup>29</sup> See Section 7 (b) NESREA Act.

<sup>30</sup>Section 7 (l) NESREA Act.

<sup>31</sup>The Report of the World Commission on Environment and Development (WCED) "Our Common Future" (Also known as Bruntland Report). See also Peter Malancuzuk, Akehurst's *Modern Introduction to International law*. (New York: Routledge, 1997) at PP 241-253.

<sup>32</sup>Lawrence Atsegbua et al *Supra*, n.2 P.60

<sup>33</sup> See Section 7 (k) NESREA Act.

development policy. Civil society demands for transparent, accountable and participatory governance. Economic reform and action against corruption and human right abuses are often closely related to natural resources and the environment. This is particularly evident in the increasing pressures on the resources based and the communities that host them, of which most times, host communities are often excluded from the benefits of growth despite historical high commodity prices and record corporate profits. Sen envisaged the growing challenges of inequality especially that of grinding poverty in a world of unprecedented prosperity and of public goods<sup>34</sup>.

Social movements also called into question, the role of the State in the socio-economic order over natural resources. Environmental law is therefore saddled with the responsibility of tackling questions such as:

- (a) To what ends and in whose interest do we regulate such resources?
- (b) Who can own these resources and in what form?
- (c) Should limits be placed on the use of resources to protect other social value?

These questions are rightly in the domain of International and Municipal laws.<sup>35</sup> These challenges show how enforcement can be trapped between the politics which rendered the enforcement of environmental standards and laws largely impotent in regulating and protecting the environment.<sup>36</sup>

From the African perspective, in the past few years, many African countries have served as dumping grounds for nuclear and industrial wastes. These wastes continue to be generated for economic reasons. Due to stringent environmental laws and public awareness in areas where they are generated, the industrialists considered the fact that if these wastes were to be disposed of within the territories where they are generated, the cost involved will be quite enormous. Therefore, they arrange for their disposal in Countries with little or no knowledge of the dangers involved and in consideration of an amount which appear large to the cash trapped Country but which is a small fraction of what they would have paid to dispose of wastes within their own territory. These, by trans-boundary movements are allowed and facilitated by the governments of the industrialized Nations who could rather have these waste products exported.

Export of toxic waste to Africa became officially known in 1988. This was following the discovery of containers of toxic wastes imported by a Nigerian peasant living near the small port of Koko<sup>37</sup>. Thus, in September 1987, an Italian businessman, based in Nigeria and acting on behalf of an Italian Waste Disposal Company, shipped to the port of Koko 4,000 tons of industrial and nuclear waste for

<sup>34</sup>A.Sen; *Development as Freedom* (1999), 267.

<sup>35</sup>R. Bornes; *Property Rights and Natural Resources* (2009), 10.

<sup>36</sup>Ajomo A.O & Adewale O.; *Environmental Law and Sustainable Development in Nigeria* (Lagos:Nigeria Institute of Advance Legal Studies, 1994) pp.71-72

<sup>37</sup>Peter, C.M. "Taking Environment" *Revue Africaine des Droits de l'Homme* vol.3 1993, P.42

over a period of eighteen months. The wastes were brought into Nigeria purportedly as industrial chemicals for a Nigerian Construction Company<sup>38</sup>.

On the contrary most of these Countries have not been innocent victims and in most cases there are contractual arrangement between their governments and Multi-national Corporations. These are done because of the financial gains involved and ignorance of the dangers of such actions.

### 5.2 Constraints for Enforcement of Environmental Law

Nigeria, being a federation with a supreme Constitution<sup>39</sup> has three tiers of governments, the Federal, State and Local levels among which distinct powers and responsibilities are unequally dispersed. However, within the structure of the Federation, the responsibilities for managing the environment are dispersed amongst the three tiers.

Before the formation of Federal Environmental Protection Agency, Federal Government hardly paid any attention to environmental matters until it recognized that environmental problems in Nigeria were often the result of extreme poverty and lack of economic and social development. While the Federal Government was responsible for meteorology, mining, shipping, national parks, very large water bodies spanning states and international boundaries, the State Government looks after health matters, social welfare, transport and public safety while the Local Governments were charged with the following responsibilities of refuse disposal, construction and maintenance of roads, streets, parks and open spaces.

The conflict relations that exist between the three tiers of government, the lack of co-ordination of responsibilities, institutional overlaps and confusing jurisdictions made the enforcement of environmental laws difficult.

The local governments were often starved of funds or could not afford the required high level man-power. They also could not afford the sophisticated expensive equipment or meet the demands of varied responsibilities, a problem which was more pronounced in local governments than in urban areas.

However, the coming of NESREA has to some extent enhanced the co-ordination of environmental management though not without challenges. These problems of enforcement is not peculiar only to Nigeria or Africa Countries, it has a global link. It is common phenomenon in Europe, United States, China as well as India where there is an anti-corruption and natural-resource movements. In India, "there is no dearth of legislations on environmental protection but their enforcement has been far from satisfactory. There is need for effective and efficient enforcement of the constitutional mandate and other environmental legislations. The creative role of judiciary has been significant and laudable for the purpose of efficient and effective enforcement of these laws, it is necessary to set up an adjudicatory body which should consist of both legal and technical experts. Regulating and improving the

<sup>38</sup>Eguh E.C; "Regulations of Trans-boundary Movements of Hazardous Wastes, Lessons from Koko" (1997) 9 RADIC 130

<sup>39</sup>Section 1 Constitution of the Federal Republic of Nigeria 1999 (As Amended).

socio-economic aspect of the environment is essentially a device to see that national development should proceed along the rational of sustainability.

### **5.3 Inadequacies and Problem of Implementation of Conservation Legislation**

A number of factors could be summarized here as the characteristics of the Nigerian environmental problems. These mostly include the consequences of rapid urbanization and industrialization which led to increased demand for variety of goods and services, resulting to construction of roads, houses and industrial buildings which in one way or the other has led to environmental problem<sup>40</sup>. Government intervention to regulate the use of the environment through law, establishment or regulatory agencies and imposition of sanctions to deter polluters may to a certain extent enhance the socio-economic wellbeing of the Nation. All Nations rich or poor have no alternative but to be concerned with the environment<sup>41</sup>. It is quite apparent that environmental legislation establishes binding policies and standards, provide the foundation for substantive and procedural regulations and creates institutions for implementing policies and enforcing the rules. Unfortunately, most African Countries for example are yet to evolve enough environmental jurisprudence. Few personnel have been trained in the legal mechanisms for regulating environmental conservation and quality with the result that the quality of environmental management in the Country continues to suffer and that is one of the reasons why NESREA is yet to actualize its goal.

However, environmental problems cannot be considered as something new in the world. It exists in both the developing world and the developed world as well.

Despite the elaborate and comprehensive laws and regulations passed by the government over the years, it is uncertain whether much has been done in terms of implementation and enforcements of these laws by the appropriate agencies. This observation should not be surprising as the Nigerian government is usually good at formulating public policies but grossly fall short when it comes to implementation of such policies. Worthy of mentioning, are the NESREA,E.I.A.<sup>42</sup> For instance, there are well considered relevant goals and principles on which E.I.A anchors its assessment. In addition, there is procedural framework which has been provided for EIA such as; The EIA processes started from the proposal to approval for implementation, resulting in the issuing of an Environmental Impact Statement (EIS) and then the Certificate. NESREA also has the frameworks of enforcement but are mere hypothetical.

It is pertinent to add here that, apart from the aforementioned provisions meant to guard against the pollution and degradation of the Nigerian environment,

---

<sup>40</sup> JORIND (9)1 June, 2011. ISSN 1596-8303. [www.transcampus.org/journals](http://www.transcampus.org/journals).  
[www.ajol.info/journals/jorind](http://www.ajol.info/journals/jorind)

<sup>41</sup> Omorogbe, Y.; *The Growth of Environmental Law in Developing Countries: Problems and Prospects* (Mimeo) P.1

<sup>42</sup> Laws of the Federation of Nigeria 2004.

Constitution of the Federal Republic of Nigeria.<sup>43</sup> clearly states that the State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria. It is unfortunate to state that the attitude of some of the Nigerian Judges towards matters relating to environmental hazards created by the companies have rendered the enforcement of environmental laws ineffective.

Some members of the judiciary as noted by Ebeku<sup>44</sup> have been reluctant to give orders compelling companies whose operations are damaging to the environment to ease the action complained of perhaps, these judges consider the potential loss of income and their investments at the expense of the environmental protection. In addition to this, could be the fact that Nigeria's economy depends largely on the sales of crude oil. Whichever is the case, such actions retards the implementation of environmental laws and thereby encourages relegating these laws to mere paper tigers. According to Osho,<sup>45</sup> there have been several oil related cases filed in the Nigerian Courts by affected Nigerians ranging from pollution from oil exploration, loss of incomes loss of properties, contamination of drinking water leading to water borne diseases etc. In this wise, the environmental laws that were meant to protect human beings and other living things are rendered ineffective. However, hope is not completely lost as it is hoped in some circles that, the judiciary may in future begin to base cases of environmental problems brought to the courts not merely to award monetary compensations without addressing the preservation of a healthy environment (Okorodudu).<sup>46</sup>

Many reasons have been advanced for the lack of an effective environmental enforcement programme by the NESREA. One of the reasons often cited is corruption of public officials charged with the duty of enforcing these laws. Corruption is a major problem in Nigeria and has pervaded almost all sectors of the economy. Even considering whom enforcement agents have to deal with (oil companies), it becomes even easier to see how these officials can be easily co-opted and bribed.

#### 5.4 Some Short Comings of the NESREA

NESREA is charged with the responsibility for the protection and development of the environment, biodiversity conservation, desertification and sustainable development of Nigeria's natural resources in general and environmental technology including coordination and liaison with relevant stakeholders within and outside Nigeria on matters of enforcement of environmental standards, regulations, rules, laws, policies, and guidelines<sup>47</sup>.

<sup>43</sup> Section 20, 1999

<sup>44</sup> Ebeku, K. (2003) *Judicial Attitudes to Redress for Oil Related Damages in Nigeria*, RECIEL 12(2) 199-208

<sup>45</sup> Osho-Adejonwo, Olawatoyin (2005) *The Evolution of Human Rights Approaches to Environmental Protection in Nigeria*. [www.iucnael.org/index.php?OptiocomDocumans&task](http://www.iucnael.org/index.php?OptiocomDocumans&task). Retrieved 12/03/2010.

<sup>46</sup> Okorodudu, M.T. (1998) *Law of Environmental Protection: Text C*. From Ebeku, K. *Judicial Attitudes to Redress Oil Related Environmental Damage in Nigeria* RECIEL 12 (2) 2003, P.207.

<sup>47</sup> Section 2 NESREA Act.

*Re-Examining The Legal Framework And Drawbacks of National Environmental Standards and Regulations Enforcement Agency(NESREA)*

Functions<sup>48</sup> and powers<sup>49</sup> of the NESREA are provided for in the NESREA Act. Some of its functions are: enforce compliance with laws, guidelines, policies and standards on environmental matters.

In addition, it has the power to - enforce compliance with the 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 wild life, pollution, sanitation and such other environmental agreements as may from time to time come into force.

It also has the power to: enforce compliance with policies, standards, legislation and guidelines on water quality, environmental health and sanitation including pollution abatement.

Enforce compliance with regulations on the importation, exportation, production, distribution, storages sale, use, handling and disposal of hazardous chemicals and waste other than in the oil and gas sector.

Enforce compliance through monitoring the environmental regulations and standards on noise, air, land, seas, oceans and other water bodies other than in the oil and gas sector.

Conduct environmental audit and establish data bank on regulatory and enforcement mechanisms of environmental standards other than in the oil and gas.

It is crystal clear from the above provisions that NESREA is an enforcement agency but in practice, this is not so. More often than not, its functions are not carried out as contained in the paper work; a lot of factors have crept in to make it an advisory body rather than enforcement agency.

Today, for instance, what we see is lack of proper inspection on building site and as a result of which people build on oil pipe line, road side and electricity high tension areas, water ways by sand-filling areas they are not supposed to build on, building of poultry farms in residential environment, corruption of inspection/sanitary officers who no longer have interest in visiting streets and homes for inspection of refuse disposals, delay by Government officials in removing refuse from refuse disposals point, ineffective enforcement of policies, standards, legislation and guidelines on water quality, environmental health and sanitation including pollution abatement, importation, exportation, production, distribution, storages sale, use, handling and disposal of hazardous chemicals.

In spite of the provisions of NESREA, today, most industries do not have waste treatment facilities to deal with the solid waste, effluent and air emissions they generate. The few treatment plants that do exist are out-dated; not functioning effectively as a result of overuse and lack of proper servicing; and unable to cope with the vast amounts and types of industrial waste, effluent and emissions passing through them.

---

<sup>48</sup>Section 7 NESREA Act.

<sup>49</sup>Section 8 NESREA Act.

Deforestation and loss of wildlife resources are problems throughout Nigeria. Deforestation affects timber production and the production of associated products such as medicines, food and paper. The depletion of Nigeria's wildlife is an additional major concern. Hunting has contributed to its demise and there should be a national call to protect wildlife and biodiversity by specifically providing for the protection of certain species and areas that are of scientific and recreational or aesthetic value.

All these factors are what are identified as major drawbacks making the NESREA an agency of mere paper work without realization of its goal.

#### **6. CONCLUSION AND RECOMMENDATIONS**

It is evident from the above that protection of the environment and management of natural resources is a key priority for sustainable socio-economic development in Nigeria.

Effective implementation of the NESREA Act requires necessary capacity building of the agency in terms of human, technical, material and financial capacity. It further requires effective cooperation and collaboration of various stakeholders in the protection of the environment and management of natural resources in Nigeria.

It is crystal clear that a major challenge for the 21<sup>st</sup> Century is to preserve as much of our natural resources as possible. The issue of non-compliance with environmental regulations is a major socio-economic challenge and a threat to sustainable development in Nigeria. The need to employ Environmental Planning as a tool of environmental management becomes necessary. This is to ensure that development activities and exportation of natural resources for different purposes are harmonized with the need to conserve the environment, if the future must be protected.

Conclusively, the framework or structural organization of NESREA is good, but lack of stringent implementation, due to socio-economic activities has reduced its functions to a mere paper work.

For effective implementation of environmental standards and regulations by the NESREA, there should be capacity building of the agency, in terms of human, technical material and financial capacity.

Enforcement or implementing bodies of environmental regulations such as environmental task force and monitoring committee should be adequately funded by the governments at rural and urban levels.

Environmental studies should be made a compulsory course of studies in all Institutions of higher learning.

It is highly recommended that the dictates of the law should be followed by every citizen practicing what the law says and not mere studying what it says. In this regard, stringent implementation is recommended.