AN APPRAISAL OF THE LAWS ON PROTECTION OF ENVIRONMENT IN NIGERIA

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AN APPRAISAL OF THE LAWS ON PROTECTION OF ENVIRONMENT IN NIGERIA

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Abstract

Industrialization has brought about severe consequences on our environment and our ecosystem as a whole, in form of pollution of the environment. There have been cases of air pollution emanating from gas flaring, severe water pollution emanating from discharge of petroleum wastes into the rivers, earth pollution and land degradation emanating from oil spillage with terrible consequences on human lives animals, aquatic lives, farm land and crops etc. In realization of dire consequences of industrialization and pollution, efforts have been made at international, regional and national levels to put up law and regulations that are aimed at protecting the environment. Despite existence of the law, it is observed that environmental pollution continues. This paper therefore examines the effectiveness of the existing legal regime for protection of environment in Nigeria with a view to knowing whether or not the laws are effective for pollution control. Meanwhile, the paper first discusses about the meaning of environment, environmental pollution and environmental law with a view to justifying the need for law to protect the environment.

Keywords: Appraisal, Laws, Environmental protection.
**Introduction**

Successive government in Nigeria, pre and post independence, had been sensitive to the need to protect man and his environment against the adverse consequences of energy exploitation and production processes, even before environmental protection awareness became fashionable on the international and national scenes. This is evident in the promulgation and enactment of appropriate laws to cushion the adverse impacts of energy resource exploitation and to ensure that the benefits accruing to man and modern technological society from energy resource exploitation are not wiped out by its negative aspects. However, despite the existence of law and regulations, it is observed that pollution of environment still continues. To this effect, this chapter shall enumerate and examine the effectiveness of environmental protection laws in Nigeria particularly in the pre 1988 and post 1988 era. However, it shall first of all discuss about the meaning of environment, environmental pollution and environmental law.

**Meaning of Environment**

Environment means where we live and develop. This includes, the air, the land, the vegetation and the water surrounding human beings. The term “Environment” has been defined in various ways: The Oxford Advanced Learner English Dictionary defines environment as the condition and circumstances affecting people’s lives. Environment has also been defined as the sum total of all conditions that surrounds man at any point in time on the earth surface. Section 37 of the National Environmental Standard And Regulation Enforcement Agency (Establishment) Act 2007, defines environment as including water, air, land, all plants and human beings or animals living therein and the inter relationship which exists among these or any of them. From the above, it can be understood that environment is the totality of the constituent of the earth where human beings and other living things exist. The earth is therefore regarded as a source of human sustenance which human beings rely upon for food, fuel, machine material, beauty and even spiritual assistance.

**Environmental Pollution**

As a result of increase in industrialization activities of human beings on the earth environment, the problem of living under a clean and healthy environment also increased, thereby constituting environmental pollution. As at today, environmental pollution has been identified as one of the major problems facing the environment globally and Nigeria specifically. Pollution according to Websters Collegiate Dictionary, is making ceremonially or morally impure, to defile, to foul or to debase. The National Environment Standard and regulations Enforcement Agency (Establishment) Act No 25, 2007, defines pollution as a man made or man aided alteration of chemical, physical or biological quality of the environment to the extent that it is detrimental to the environment. The notable types of pollution include air, water and earth pollution. In Nigeria, there have been several cases of pollution of the earth emanating from oil spillage which destroyed soil, farm land, crops, damage to fishes in the water and economic trees as well as displaced human settlement. As regards air pollution, there have been reported cases of gas flaring in the Niger Delta area of Nigeria. Atmospheric contaminants from the gas

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1. Ehusani J.A and Etudaiye E.M, A critical analysis of the existing legal regime for Environmental protection; paper presented at national workshop on climate change University of Ilorin 2010, page 28
2. Ibid
5. Uwem E.U, n3 at 68.
6. NESREA (Establishment Act 2007) n4 at 20
flaring which include oxides of Nitrogen, Carbon, sulphur oxide and hydro carbons have caused serious air pollution and inflicted untold hardship and damage to human, plant and animal life. There are, reported cases of water and pollution arising from discharge of petroleum waste and hazardous substances into the water thereby making the water become polluted and harmful for human consumption, killing the fishes and other aquatic lives.7 There are also problems of erosion, noise pollution as well as problems of deforestation in the savanna and forest land and desertification in the northern part of Nigeria. Alongside the above is the global environmental problem of global warming and climate change and depletion of ozone layer which also affects Nigeria.

Environmental Law
Environmental law is concerned with those areas of law, national, regional or international which aim at protection of environment. Also, environmental law has been explained to comprise the set of laws, conventions and legislations which are made for regulating and protecting the environment.8 However, it is as a result of the need to combat various aforementioned problems of environmental pollution and the quest to protect the environment from further degradation, that the international community came up with laws and conventions to control pollution of environment. Further efforts were also made by government at national level, to evolve legislations and laws(legal regime) for protection of environment as it is the case in Nigeria.

Environmental Protection Laws in Nigeria
The basis of environmental law in Nigeria is contained in the 1999 constitution of Federal Republic of Nigeria section 20.9 The constitution clearly provides that Nigeria shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria. Although, it may be said that section 20 of the constitution may be totally unenforceable in court, because it falls under fundamental objectives and directive principles of state policy set out in chapter 11 of Nigeria constitutions, it was a good attempt on environmental legislation.10 Apart from the above, all other enactments made by the government of Nigeria to check some form of environmental pollution in Nigeria even before the emergence of Federal Environmental protection Agency Act (Degree 458 of 1988) shall be discussed as follows:

The Environmental Protection Laws in Nigeria (Pre-1988)
The Environmental Protection Laws in Nigeria before 1988 include the following:

Criminal Code Section 247.
It should be noted that certain provisions of the criminal code of Nigeria relate to what may be called harmful waste. Section 247 of the criminal code provided that any person who vitiates the atmosphere in any place so as to make it noxious to public health or any person who does any act to which he knows or has reason to believe to spread infection or any disease dangerous to life, whether human or animal is guilty of misdemeanour or and is liable to imprisonment for six months. Although there is awareness for existence of this law, its enforcement through

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7 Uwem E.U, n3 at 68.
8 Olugbenga O.S, Appraising the sources of Environmental Law in Nigeria,in Nigerian Environmental Law Review,C.O Omaka (e) Kingdom Age publication 2007 at 92.
9 The constitution of Federal Republic of Nigeria 1999 s. 20
arrest and securing conviction to serve as deterrent to others in the act have not achieved much.\textsuperscript{11}

**Petroleum Act 1969**
There was the petroleum Act of 1969, with regulations made to control pollution activities in this sector on the following.\textsuperscript{12}

i. Mineral oil safety regulation 1963
ii. Petroleum regulation 1967
iii. Petroleum drilling and production regulation 1969,

The effects of all the above regulations at preventing pollution of environment and making oil operations less hazardous to the community are not much felt, considering the rate of gas flaring and environmental pollution in the Niger Delta today.

**Mineral Act 1946\textsuperscript{13}**
The general statute applicable to mining in Nigeria is the mineral act of 1946. It applies to all prospecting mining rights and mining leases given or granted on or after commencement date of the act. However, the act does not apply to mineral oil. Section 34 of the mineral act is significant in the sense that it imposes a statutory duty of reparation on the mining companies to restore or reclaim mines at all level. Section 34 vested the legal power on the minister to grant mining lease and conditions he may think fit for restoration of the area used for mining operation. The provision in the above section hereby shows further legislative intent to protect the environment from permanent damage arising from mining operation.\textsuperscript{14}

**Oil Pipeline Act 1956\textsuperscript{15}**
The Oil Pipeline Act (1956) aimed at preventing accidental discharges or oil leakage resulting from faulty, rusty or improperly maintained equipment, Section 36 of the Act provides that the licensee or lease shall maintain all apparatus used for oil operation including the oil boreholes. Additional legislation on the above include Oil terminal dues decree of 1966.

**Oil terminal dues decree 1969\textsuperscript{16}**
The Oil Terminal dues decree which is aimed at ensuring protection against oil spillage. However, this law has not stemmed oil spillage today.

**The Territorial Water Act\textsuperscript{17}**
The above reiterates Nigeria’s rights and power as a foreign nation over her territorial waters, particularly where offences are committed within the nation’s territorial waters.

**The Navigable Water Ways (Declaration) Act\textsuperscript{18}**
This act designated specified rivers, creeks, lagoons and intra-coastal waters as federal navigable ways. These designated water ways are expected to be free from any form of

\textsuperscript{11} See section 15 of harmful waste special criminal provisions decree 1988 page 45.
\textsuperscript{12} Petroleum Act 1969 section 8
\textsuperscript{13} Section 32, Mineral Act.
\textsuperscript{14} Section 118 see mineral act
\textsuperscript{15} See oil pipeline act (1956) page 36
\textsuperscript{16} See oil terminal decree 1969
\textsuperscript{17} Cap 155, Laws of the Federation of Nigeria 2004
\textsuperscript{18} Cap 287 Laws of the Federation of Nigeria 1990
pollution. However, the situation today is that many of the creeks especially in the Niger Delta cannot boast to be free from any form of pollution from petroleum oil.

**The Exclusive Economic Zone Act 1978**

The above vests in the Federal Republic of Nigeria, exclusive rights to of the sea bed, sub soil and superjacent within 200 nautical rules seawards from Nigerian coasts. This law is still relevant in defining the extent of Nigerian environment from the coast.

**The Oil in Navigable Water Decree 1968**

The above decree was promulgated by the Federal Government to implement the terms of international convention for the prevention of pollution of the sea by oil 1954-1962 to which Nigeria is a signatory. The decree makes provision for prevention by oil in the nation's navigable water. This law has not stemmed water pollution by the oil companies in the Niger Delta.

**The Water Works Act 1915**

This act which came up during the colonial administration prohibited pollution of water works in the country by noxious or injurious matter. This law is also not effectively complied with in Nigeria.

**Explosives Act 1964**

Although the primary objective of explosives act was to make provision for the control of the use of explosive for the purpose securing and maintaining public safety, the statute has positive implication for protection of the air in Nigeria. It also curbs indiscriminate importation and use of explosives in the country.

**The Nigerian Atomic Energy Commission (Decree) Act 1976**

This act which established the Nigerian Atomic Energy Commission in 1976, was made to ensure that no nuclear damage occurred from anything or any premises or that occupied by the commission. The act seeks to ensure safety of carriage of nuclear fuel, radioactive products or waste, regulating and controlling installation, maintenance and disposal of nuclear installations. The law has not overcome the problem of illegal importation of radio carbon materials into Nigeria.

**Factories Act 1987**

This act which contains specific safety provisions seeks to secure the safety and health of workers by controlling activities which are connected with gaseous dust fume emission which are dangerous to human existence. Section 30, provides precaution with respect to explosive or inflammable dust, gas, vapour or substances. Section 45 recommends that all practicable measures shall be taken to protect person employed against inhalation of the dust or fume or other impurity and to prevent its

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19 Cap 17 Laws of the Federation of Nigeria 2004 without prejudice to terminal water and petroleum decree cap 350 LFN 1990
20 Now CAP 06 Laws of the Federation of Nigeria 2004
21 The Water Resources Act cap W2 Laws of the Federation of Nig. 2004
22 Section (2) the explosives Act 1964
23 See the Nigerian Atomic Energy Commission Decree Art 1976
24 See section 29-45 Factories Act 1987
accumulation in any work room. Where the nature of the process makes it practicable, exhaust appliances shall be provided and maintained, as near as possible to the point of origin of the dust or fume. This law did not prevent emission of poisonous chemical gas into the air by some factories in Kaduna State in Nigeria. Apart from the above, there are other federal laws even on conservation of natural resources. Such include:

**Kainji Lake Park Act (iv)**
This act provides for establishment of Kainji lake park. The act makes provision for control, maintenance and management of the park. The act makes provision for protection of object of aesthetic and historical interest and for conservation and protection of vegetable and wildlife within the park. The act contains penalty for offenders which range between five hundred and one hundred naira or specified terms of imprisonment for the violator. This law did not prevent illegal killing of wildlife in our parks by range poachers in Nigeria today.

**The Endangered Species (Control of International Trade Traffic Act 1985) purpose and policy:**
The above act came as a necessity out of Nigerian's commitment to carry out the agreement jointly reached by other African countries at the convention for conservation of nature and national resources 1968. The agreement or joint regulation of fauna and flora on the Lake Chad basin and the convention on international trade in endangered wildlife species and in conserve wildlife and plants in the country. The act therefore gives legislative effect to government's wildlife conservation policy, by prohibiting and regulating activities relating to wildlife in Nigeria. A contravention of the provisions of this act amounts to criminal offence and the penalty for this involves a time for first offender and a penalty of a term of imprisonment for second and subsequent offender. The severity of the penalty for the offences under this provision shows the determination to ban absolutely all traffic in relation to endangered species.

**Sea Fisheries Act:**
The above act makes it illegal to harm fishes within the Nigerian waters by use of explosive, poisonous or noxious substances. Section 1, prohibits any unlicensed operation of motor fishing boats on Nigerian waters, section 10 makes destruction of fishes punishable with a fine of N50,000 or two years imprisonment. However, this act is often violated by the activities of illegal local fisher men.

**Quarantine Act**
This act provides regulation preventing the introduction, spread and transmission of infectious diseases such as cholera, yellow fever, typhoid, bird fluiz etc. Violation of the above regulations is punishable with a fine of N200 or two years imprisonment. This Act has been violated in Nigeria without any legal action. The latest violation took place in Murtala International Airport, Lagos and in Port Harcourt in 2014. This violation which resulted in outbreak of Ebola virus disease, killing many Nigerians would have been averted if the Quarantine Act was

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25 Kainji Lake Park Act (I)
26 Section 5 see the endangered species Act 1985
27 Ibid
30 Cap Q2 LFN 2004
effectively enforced. More so the penalty of N200 for violation has been considered grossly inadequate to deter violation in future.

However, a critical observations of all the pre 1988 environmental laws, shows that none of the provisions recorded significant impact on the air environment in Nigeria. The acts were geared primarily towards safety, protection and conservation of economically important natural resources like petroleum, but did not have effect on industrial pollution and hazardous waste. To a large extent, it can be said that the pre-1988 environmental laws existed for the oil industry public safety, management of public waste and wildlife conservation. Apart from the fact that the penalties prescribed for violating the environmental regulations by then were mild, the fines were meagre and outdated i.e. N200. Most of all, the laws were not subjected to serious test of enforcement and conviction in Nigerian courts.31

A serious effort by the Federal Government of Nigeria at formulating policies on environmental laws was made in September 1988. The concept of environmental laws and protection began to follow the pattern in some developed economics of the world at this point.32 The Federal Government of Nigeria organised international workshop on environmental policy from which it came out with a national policy on environment formulated national goals and strategies for implementation. The human factors; land use and soil conservation, water resources, sanitation and waste management, toxic and hazardous substances, mining, agro chemical, air and noise pollution, health safety and green belt became easily recognised concepts in a regime of management regulations and laws to balance the problems posed by them.33 The post 1988 environmental protection laws in Nigeria include the following;

Harmful Waste (Special Criminal Provision) Act, (Decree No. 42 of 1988).
Promulgation of harmful waste (Special Criminal Provision Act) Decree took place in 1988, sequel to dumping of 3888 tons of assorted toxic wastes at Koko port in old Bendel State.34 The dumping of the harmful wastes made the populace aware of the dangers posed by waste product in whatever form. The harmful waste Act prohibited the purchase, sale, importation, transmit, transportation, deposit and storage of harmful waste in Nigerians. It also made it an offence for anybody to collect and keep or dump harmful waste anywhere within the territorial water, the contiguous zone or the exclusive economic zone of Nigeria or the inland water ways. A section of the Act also provided that apart from criminal liability, anyone responsible for dealing in harmful wastes will also suffer civil liability.35

Federal Environmental Protection Agency Act (Decree No. 58 1988)
The Federal Environmental Protection Agency Act (FEPA Act) came into existence in 1988, with a view to establishing the basic institutional machinery for environmental management in Nigeria. Although preceded by an earlier environmental protection statute prohibiting activities on harmful wastes, The FEPA Act was established for two purposes; the establishment of

31 Uche Gbouou C.C. Critical examination of the enforcement of environmental protection laws in Nigeria, LLM thesis Unilorin 2009 page 31
32 Aina E.O and Adedipe N.O. (ed); the making of Nigeria environmental policy, Ibadan University Press 1991 page 311
33 Ibid
35 Section 1 harmful wastes decree 1988
Federal environmental protection Agency and provision of legal foundation for the national policy on environment.  

Decree 58 of 1988 was amended by FEPA (Amendment) Decree no. 59 of 1992. This legislation vests in FEPA overall responsibility for the protection and development of the environment bio-diversity conservation and sustainable development of Nigeria's natural resources in general and environmental technology, including initiation of policy related to environmental research and technology among other functions. Section 37 of the decree also charged FEPA with responsibility of making regulations generally for its purpose and in particular, prescribed standard for; (a) Noise control (b) control of hazardous substances and removal control methods (c) Atmospheric protection (d) influent limitations, (f) water quality and (g) Air quality.  

FEPA developed the following policies and instructions for combating environmental degradation;  

i. The National Policy on the Environment;  
   The above document which was launched in 1989, described guideline and strategies for achieving the policy goal of sustainable development.  

ii. National Guidelines and Standard for Environmental pollution Control in Nigeria  
   The above launched in 1991, represents the basic instrument for monitoring and controlling industrial and urban pollution.  

iii. National Effluent Limitation Regulations  
   This makes it compulsory that industries install anti-pollution equipment, make provision for further effluent treatment, prescribe maximum limit of effluent parameters allowed for discharged and spell out penalties for contravention.  

iv. National Environmental Protection (Pollution Abatement in Industries and Generating Wastes)  
   The above imposed restriction on the release of toxic waste substances and requirement stipulated. It also monitors and ensure pollution control. It provides that the collection, treatment, transportation and final disposal of waste shall be the responsibility of the industry or facility generating the waste the polluter pays.  

v. Waste Management Regulation S. 15 of 1991  
   The above regulates collection, treatment and disposal of solid and hazardous waste for municipal and industrial sources and gives list of chemical and chemical waste by toxicity grades. A careful study of FEPA Act shows that although the act stands as the major statutory reference for national policy on environmental protection in Nigeria, the act suffered the following defects;  
   i. the provision of FEPA act was weak and inadequate with regard to specific control of oil pollution. Section 23 of the act provides that the petroleum resources to play such

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36 Uche Gbuonu C.C. examination of the enforcement of environmental laws in Nigeria, LLM thesis Unilorin 2009 page 37  
37 Olorunfemi G.A; An assessment of Environmental Laws in Nigeria since 1988; LLM seminar paper Unilorin 2010 page 10 & 11  
38 Ibid page 11  
39 Ibid page 12
supportive role as the ministry of petroleum resources department may from time to time request from the agency.ii.

FEPA's provision which imposed restriction on the release and monitoring of toxic waste substances was not effective, judging by the volume of media into Nigeria through the Apapa sea port.

iii. FEPA's regulations were not effective on curbing atmospheric pollution like Green House Gas (GHG) emission and depletion of ozone layer and global warming.

However, it should be known that FEPA Act has been abrogated and presently replaced with Nation Environmental Standards Regulation and Enforcement Agency (Establishment) Act 2007 (NESREA).

**National Environmental Standards and Regulation Enforcement Agency (establishment) Act 2007.**

This act which replaced the Federal Environmental Protection Agency (F.E.PA) Act, is the embodiment of laws and regulations that focused on protection and sustainable development of the environment and its natural resources. The creation of NESREA by section I of the NESREA Act, is the core of the Federal Government's determination to combat the problem of increased environmental degradation in Nigeria. The NESREA Act is divided into six parts; Part I established National Environmental Standards regulation and Enforcement Agency, states the objectives of the Agency and establishes the governing Council of the Agency, its tenure and emolument. Part II provides for the power of the Agency, functions of the agency and functions of the council. Part III establishes the Directorates of the Agency. Part IV provides for the appointment of the Director General and staff of the Agency. Part V deals with finances of the agency and provides for environmental standards in the country. Part VI relates to miscellaneous matters and the repeal of the FEPA Act Cap FIO LFN 2004. The Agency is the integral part of the presidency with operative organs like, the Governing Council and the Director General.

The noticeable sections of NESREA include:

i. **Section 7:** This sections provides authority to ensure compliance with environmental laws local and international, on environmental sanitation and pollution prevention and control through monitory and regulatory measures.

ii. **Section 8 (a)-(k)** empowers the Agency to make and review regulations on Air and water quality, effluent limitations, control of harmful substances and other forms of environmental pollution and sanitation.

iii. **Section 27:** prohibits, without lawful authority, the discharge of hazardous substances into the environment. The offence is punishable under this section, with a fine not exceeding ₦1,000,000 (One million naira) and an imprisonment term of 5 years. In the case of a company, there is an additional fine of ₦50,000 for every day the offence persists.

By section 7 of the NESREA Act, the agency's functions include:

i. enforce compliance with laws, guidelines, policies and standards on environmental matters.

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40 Uche Gbuonu C.C. examination of the enforcement of environmental laws in Nigeria, LLM thesis Unilorin 2009 page 37
41 Ehusani J.A and Etudaiye E; A critical analysis of the existing legal regime for Environmental protection; paper presented at national workshop on climate change University of Ilorin 2010 page 21
42 Ibid
43 Nigeria Environmental Standard Regulation and Enforcement Agency Act 2007
44 Ehusani J.A. and Etudaiye E. n41 at 22.
ii. co-ordinate and liaise with stakeholders, within and outside Nigeria, on matters of environmental standard regulations and enforcement.

iii. 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, sanitation and such other environmental agreements as may from time to time come into force.

iv. enforce compliance with policies, standards, legislation and guidelines on water quality, environmental health and sanitation, including pollution abatement.

v. enforce compliance with guidelines and legislations on sustainable management of ecosystem, bio-diversity conservation and the development of Nigeria's natural resources.

vi. enforce compliance with any legislation on sound chemical management, safe use of pesticides and disposal of spent packages thereof.

vii. enforce compliance with regulations on the importation, exploration production, distribution, storage, scale, use, handing and disposal of hazardous chemicals and waste other than in the oil and gas sector:

viii. enforce through compliance monitoring, the environmental regulation and standard on noise, air, land, seas, oceans and other water bodies other than in the oil and gas sector.

ix. ensure environmental projects funded by donor organization and external support agencies adhered to regulations in environmental safety and protection;

x. enforce environmental control measures through registration, licensing and permitting systems other than in the oil and gas sector.

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

xii. Create public awareness and provide environmental education on sustainable environmental regulations other than in the oil and gas sector and publish general scientific or other data resulting from the performances of its function.

xiii. Carryout such activities as are necessary or expedient for the performance of its function.

**Nigerian National Environmental Standards**

The NESREA is also empowered to continue with certain policy guidelines for enhancement of environmental standards, laid down by the repealed FEPA in the following:

**Water**

The repealed FEPA Act now NESREA Act 2007, calls for establishment of water quality standards for the interstate water of Nigeria to protect public health or welfare and enhance quality, taking into consideration the use and value for public water supplies, propagation of fish and wildlife, recreational purposes, agriculture, industrial and legitimate uses. By the powers under section 5 of the then FEPA, the agency issued first national guidelines and standards for industrial effluent, gaseous emission and hazardous wastes management in Nigeria in 1991. Also, the agency issued National Environmental Protection (Effluent Limitation) regulations, 1991 aimed at encouraging industries to install anti pollution equipment for detoxification of effluent and chemical discharges from industries. Also, there

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46 Ibid
47 National Environmental Protection (Effluent Institutions) Regulations 1991
48 Ibid
existed the management of Hazardous Wastes regulations 1991; which specifies the maximum concentration level of constituents for groundwater protection.\(^{49}\)

**Land and Forest**

Section 26 (1) of NESREA prohibits discharge of harmful substances upon the nation's land. The NESREA provisions also prohibits some specified environmentally unfriendly acts in a forest reserve, such as illegal trafficking in timber bush burning etc.\(^{50}\)

**Air**

The provisions of section 17 (I) of FEP A now NESREA empowered NESREA to establish criteria, guidelines, specification and standard to protect and enhance the quality of nation's air resources. Sub section 2 empowered the agency to combat all forms of atmospheric pollution as contained in the pollution abatement in industries and facilities generating wastes regulations 1991.\(^{51}\) Section 18 of the Act deals with issue of ozone layer where it provides for sensitizing the industries on the imperatives and need for controlling emission of substances known to deplete the ozone layer.

**Noise**

Section 22 of the NESREA Act requires the agency to identify the major sources of noise and noise control technology.

To establish noise abatement programmes, noise emission standard and maintain public health and welfare. To make recommendations to control noise originating from industrial, commercial domestic, sports, recreation, transportation and other similar activities.\(^{52}\)

The NESREA Act as well as other legislations and guidelines prescribing standards for the protection of environment contain various enforcement procedures which range from granting of permit, license, inspection and searches of certain facilities. Others include, sealing, seizure and forfeiture of areas being used for depositing or dumping of harmful wastes; Arrest of offenders. of environmental laws; criminal prosecution, fines and or compensation; imprisonment.\(^{53}\)

From the above, although it can be said that the NESREA Act 2007 and regulations provided comprehensive attempt at stemming the tide of environmental degradation in Nigeria, it is however observed the NESREA laws have not achieved much going by incessant reports of importation and dumping of toxic wastes and radio carbon materials at the Apapa sea port in Nigeria and the spate of environmental pollution through oil spillage and gas flaring in the Niger Delta area of Nigeria.\(^{54}\) Added to the above, it has been observed that the provision

\(^{49}\) See National Environmental Protection (Management of solid and Hazardous Wastes) Regulation, 1991

\(^{50}\) See Section 26 of the NESREA Act

\(^{51}\) See National Environmental Protection (Pollution Abatement in Industries and Facilities Generating Wastes) Regulation, 1991

\(^{52}\) See Section 22 of the NESREA Act

\(^{53}\) See Section 25 and 26 of FEPA Decree, Section 10 and 11 Harmful Waste Act

\(^{54}\) News paper and NTA news television report on dumping of toxic wastes and importation of radio active material at Apapa port, Nigeria between 15\(^{th}\) July and 19\(^{th}\) Aug. 2010.
in section 27 of NESREA Act (2007)\textsuperscript{55} suffers the defect of prove of knowledge. Under section 27, a defence is acceptable if an individual proves that the discharge of waste made by him is not harmful. But the issue is, who is the appropriate person to prove the effect of the discharge between the offender and a qualified chemist? Also, it is observed that the sum of N10,000 to be paid as penalty for offence of oil spillage is small while a sum of N1 million prescribed as fine for discharge of harmful waste is however considered adequate.

**Environmental Impact Assessment Act No. 86, 1992**
The creation of impact assessment act above, brought about the establishment of a formal legislative framework for environmental impact assessment in Nigeria. This seeks to ensure that all activities by all persons at the commencement of the project's identification and planning in order to inculcate an environmental ethic in all citizens, persons and institutions in the country. It also aims at encouraging free dissemination of information relating to the Environmental impact activities to relevant interested parties and public generally.\textsuperscript{56} The Act established a framework that would make a rigorous environmental impact assessment. It specifies that assessment minimum content of EIA and stipulates that assessment should be as detail as the severity of the impact requires. The act vests on the NESREA, the duty to consider Environmental Impact Assessment. Impartially, to state clearly reasons for its decisions and to ensure transparency in its decision making. Section 4 of the Act requires mandatory evaluation assessment report whenever the extent, nature or location of a proposed project or activity is such that it is likely to significantly affect the environment.\textsuperscript{57} By the provision of section 14, an EIA is mandatory;\textsuperscript{58}

(a) when any of the government in the federation is itself the proponent of a project and does any or thing to commit government to carry out the project wholly or in part.

(b) Where any of the governments in the federation by virtue of specific legal authority issues a permit or license or grants an approval or takes any other action for enabling the project to be carried out wholly or in part.

(c) Where any government in the federation makes or authorities payments, guarantees a loan or provides financial assistance to the proponent to carry out the project wholly or in part. Section 14 equally provides for transfer of administration and control of lands or interest therein in favour of the federal government or its agency to enable the project to be carried out. An EIA is also mandatory in respect of projects that have a trans-boundary impact and NESREA of the opinion that;

(a) a project is likely to cause adverse environmental effects that may not be mitigable;

(b) Where public concerns demands that EIA be carried out.\textsuperscript{59}

**Environmental Impact Assessment Process**;
The Environmental Impact Assessment (EIA) process involves screening, mandatory study and a follow up programme. A screening study and preparation of a screening report shall be required for projects that do not cause significant adverse effect and are not listed in the

\begin{itemize}
\item \textsuperscript{55} Omaka C . A, Environmental Regulation in Nigeria, Understanding the National Environmental Standards Regulation Enforcement Agency Act 2007, page 40.
\item \textsuperscript{56} Ehusani J.A and Etudaiye E; A critical analysis of the existing legal regime for Environmental protection; paper presented at national workshop on climate change University of Ilorin 2010 page 27
\item \textsuperscript{57} See Section 14 of Environmental Impact Assessment Act.
\item \textsuperscript{58} Ibid
\item \textsuperscript{59} Ibid
\end{itemize}
mandatory study list. However, projects described in the mandatory must undergo a mandatory study and a report prepared and submitted to NESREA. Where the project is not likely to cause immitigable damage, NESREA is empowered to give approval but shall ensure that mitigation measures are implemented. Projects that are suspected to have a serious adverse effect shall be referred to a mediation and review panel. The outcome of the review panel will determine approval or otherwise by NESREA. The logical effect of a negative assessment is the termination of the proposed project. However, where NESREA approves a project that has been subjected to a review panel, it shall embark on follow up programme for the project and inform the public of this fact as well as of its decision an any mitigating measures to be implemented and the extent to which the recommendations of review panel has been adopted. Section 59 of the Act makes provision for a judicial review in connection with any matter of assessment.

The schedule of activities and industries for which Environmental impact Assessment are mandatory include; agriculture, airport, drainage, irrigation, land reclamation, fisheries and forest projects. Others include, rousing, industry, petroleum, mining, power generation, ports, infrastructure, quarries, transportation, resort and recreation development, waste treatment and disposal and water supply.

Any person who fails to comply with the provisions of the EIA Act commits an offence and is liable to a conviction. In the case of an individual a fine or a term of imprisonment for up to five years and fines are also imposed on guilty firms or corporation. However, the spate at which Environmental Impact Assessment report is being evaded by Federal Government officials and officials of foreign oil companies in the Niger Delta leaves one in doubt about the effectiveness of EIA.

Niger Delta Development Commission (NDDC) Act
The above is concerned with using allocated funds of Federal Government to tackle ecological problems arising from exploration of oil minerals in the Niger Delta section 7 (i) (b) empowers the commission to plan and implement projects for sustainable development of the Niger delta. However, it has been observed that the activities of the commission so far, have not really solved the ecological problems in the Niger Delta area.

Other legislations made for protection of environment in Nigeria include the state environmental sanitation laws applicable in the respective states of the federation. Few of such States Government laws include;

Lagos State Environmental Pollution and Control Law;
This is a law of Lagos State which focused on environmental sanitation and protection. It punishes in varying degrees acts like street obstruction, failure to cover refuse bins or dispose wastes properly.
Section 12 of this law makes it an offence to cause or permit a discharge of raw untreated human waste into any public drain, water course or on to any land or water. This offence is punishable with a fine not exceeding ₦1,000 or in a case of company, not exceeding ₦500,000.

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60 See Section 19, 20 and 23 EIA Act
61 Ehusani J.A and Etudaiye E; A critical analysis of the existing legal regime for Environmental protection; paper presented at national workshop on climate change University of Ilorin 2010 page 27
62 Olorunfemi G.A; An assessment of Environmental Laws in Nigeria since 1988; LLM thesis Faculty of Law Unilorin 2010 page 13
63 Ibid
64 Atofarati G.A, environmental rights and sustainable development and inventors rights in Nigeria; LLM thesis Unilorin 2010, page 14
65 Ibid
**Kwara State Environmental Protection Agency Law.**
The Kwara State environmental protection agency is the body created by Kwara State government and empowered by the laws of the state to see to prevention and control of environmental pollution in many spheres. The body is also saddled with responsibility of hazardous waste disposal and maintaining clean environment in the state. The KWEPA task force is also empowered to apprehend and prosecute offenders for violating the state sanitation laws.  

Although it can be said that the agency through the efforts of another company, Kwara State Waste Management Company (KWWMC), is presently responsible for day to day collection and disposal of solid wastes and cleaning of streets in Ilorin the State capital, efforts of the agency is yet to be felt in the areas of water and air pollution i.e. preventing erosion, flood, Green house gas emission and climate change.

**Conclusion**
This paper has exhaustively discussed various environmental protection laws of the federal and state governments In Nigeria. The conclusion at the end of examination of the laws and acts, is that the environmental protection laws are fraught with problems, many are not effectively implemented and thus generally not effective. Importantly, the paper reflected that the Petroleum Act, the Criminal Code, the Oil Pipeline Act, the Atomic Energy Act, the Explosive Act and the Factories Act are not effectively implemented in Nigeria.

The National Environmental Standards and Regulation Enforcement Agency (Establishment) Act 2007, the new body that replaced the repealed FEPA is observed not to achieve much on protection of environment in Nigeria judging by incessant reports of importation and dumping of toxic waste and radiocarbon materials in Nigerian ports and the spate of air and oil pollution in the Niger Delta area in Nigeria. The Environmental Impact Assessment Act, also suffers from problem of compliance by both the Federal Government agencies and the multinational oil companies In Nigeria. Therefore, in order to have effective laws that will curb environmental degradation and pollution and as well guarantee effective protection of environment in Nigeria, it is suggested that the existing environmental laws in Nigeria should be effectively implemented while some of the laws and their penalties should be reviewed to be in line with the demand of time.

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66 Adeniran; Solid waste management in Kwara State, a research Journal on environmental protection and enforcement in Ilorin vol. 2, 2005
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7. Ehusani, J & Etudaiye, M,(2011), A critical Analysis of the Existing Legal Regime For Environmental Protection in Law And Climate Change in Nigeria, Egbewole W.O, Etudaiye M.A & Olatunji O.A, Faculty of Law, University of Ilorin.