



**A CRITICAL ANALYSIS OF THE NATIONAL ENVIRONMENTAL STANDARDS
AND REGULATIONS ENFORCEMENT (NESREA) ACT.**

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Abstract.

Nigerians do not pay enough attention to their environment and the negative effect of their activities on the environment. Even the Agency saddled with the protection of the environment has not made much difference. The National Environmental Standards and Regulations Enforcement Agency ('NESREA' or 'the Agency') was established by the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act No. 25 of 2007– as a replacement to the Federal Environmental Protection Agency (repealed by Section 36 of the NESREA Act. The extant legislation is currently codified as the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, Cap N164, Laws of the Federation, 2010 ('the Act'). This study focuses on the NESREA ACT, its establishment, powers and limitations of the Agency. The Act should be amended to include the regulation of the oil and gas industry. Pre action notice as a prerequisite to instituting legal action in Court should be removed from the Act.

Keywords: Awareness, Compliance, Regulations, environment, enforcement, Pollution, Environmental Law.

Introduction

It has been discovered that the importance of the environment in a nation's growth phase cannot be overstated. The environment, in addition to being physical ecosystems, serves as the foundation for man-made exploitation for the development of a society based on agriculture, manufacturing, commerce, technology, and tourism. Environmental issues have now become the focus of

scholarly and other public forums at the national and international levels for these and other reasons. The preservation and protection of the environment is one of the most pressing issues confronting humanity. The value of the environment cannot be overstated, and rules and legislation have been developed to regulate man's activities on the environment to preserve it. To be enforceable, these rules must go beyond simply existing. As a result, states must start reforming their implementation and enforcement processes.

Methodology.

This research work is based on the doctrinal research method. By doctrinal approach, I employed primary sources of law such as the statutes, case laws, official gazette, and secondary sources of law, which includes journals, dictionaries, articles, textbooks, Dissertation work, Internet materials such as online articles and essays. With this method, detailed explanations are made to justify a segment of the law as part of a more extensive system of law. It can be more or less abstract binding or non-binding as it consists of distinct or individual components.

Conceptual frameworks.

Before delving into the crux of the discourse, it is only but imperative to conceptualize frameworks of certain terms; environment, enforcement, compliance and others.

Environment

The environment is considered as the totality of air, water, land, forest, wildlife *etc.*³⁰ However, this definition was broadened to not just include water, air, land, plants, humans or animals therein, but an inclusion of the inter-relationships between them; which is the adverse or positive effect of one on the other. It is also not especially appropriate to conceptualize the 'environment' without any notion of inter-relationship. The environment affects in turn, the persons, artefacts, components and structures and in some situations, the broad and exceedingly dynamic networks of connections between these various elements.²

³⁰ CFRN 1999 Cap. C23 LFN
2004, Section 20² NESREA
(Establishment) Act 2007, Sec
37.

Fagbohun,³¹ in its most common sense, identified the environment as not only that which relates to land, air and water, but also to housing and the state of the community. The entire amount of environmental conditions surrounding an organism, community or entity was described to be an environment. From the definitions highlighted above, it is possible to consider the ecosystem within the context of the human natural environment. It may also involve social, aesthetic, economic, cultural and mental events affecting the biophysical and natural soil, water and beyond. More descriptions of the scope of the 'environment' may be contentious, as they can include public and personal property, diverse media (water, land, air); traded natural resources on the market; 'clean' environment, such as wildlife and the dynamic of habitats, and general issues such as biodiversity conservation, and cultural elements.³²

There is no universally agreed definition of the term "environment." Its definition appears to be equally difficult to grasp as the concept of what defines an environment. The concept appears to be influenced by background, culture, religion, tribe, and occupation, and each of these components strives to define an environment in its unique facet. The diversity of definitions and conceptions of the environment is also strongly related to the fact that the study of the environment is multidisciplinary, and thus each discipline tends to generate and adopt definitions in accordance with its interest.

Ogbuigwe defined the environment in its simplest term as 'where we live'. This definition, despite its simplicity encompasses the natural and man-made. The term "natural environment" refers to and comprises all living species and non-living items that occur naturally in the environment, as well as the interaction between these three components that the earth supports. The health of all three of these components is critical to the survival of the earth's species. The artificial or built environment is one that was made by man's hand and thinking and is not part of the natural environment. A more comprehensive definition provides that, the environment could be treated within the framework of natural human surroundings and activities, which comprise biophysical components and natural environment processes of land, water, and air. It also covers all layers of the atmosphere, inorganic and organic matter - both living and non-living,

³¹ O. Fagbohun, *The Law of Oil Pollution and Environmental Restoration; A Comparative Review* (Odade Publishers, 2010) 41

³² C. R. Payne, 'Protection of the Natural Environment' In Dapo Akande and Ben Saul (Eds.), *Oxford Guide to International Humanitarian Law* (Oxford University Press, forthcoming 2017) 8

socioeconomic components, and human environmental processes. Social, economic, technological, administrative, cultural, historical, and archaeological components and processes are among those included. Land and its accompanying resources, structures, and places, as well as human health, nutrition, and safety, are all included.³³ In adopting the above definition, the environment can be classified into two facets. The geographical environment which is also known as the terrestrial environment, being the creation of complex natural and environmental condition, arising independently of humankind, it is the complement of direct interaction between nature and human society. It revolves around the subject of the climate, geology and biogeography. The man-made environment on the other hand is based on the fact, that man cannot directly live in a geographical environment, so a human-made creation is necessary. This man-made creation includes the inner and outer environment. The inner environment is the social environment that endures as long as society cherishes. The outer environment is the physical environment that man has created on his own with the evolving technology and science.

According to Milaré,³⁴ the term 'environment' comes from the French milieu ambience and was first used in 1835 by the French naturalist Geoffrey Saint-Hilaire in his book *Études advances d'un naturaliste*. The term milieu refers to the location or movement of a living being, whereas ambience refers to the environment that surrounds this being. Part of today's dilemma, according to that author, revolves around sustainability; it is a rigid perspective of natural heritage and the relationships among living species, but in a broad sense, the concept goes beyond the limits imposed by traditional ecology. As a result, the environment covers everything natural and manmade nature, including cultural assets. To Milaré, sustainable development and eco-development are three intertwined goals: development, environmental preservation, and improved quality of life.

On an international standpoint, the meaning of the environment includes water, air, soil, flora and wildlife.⁷ Historically, the Stockholm United Nations Conference on Human Environment and the *Rio de Janeiro* UN Conference on Environment and Development, commonly known as the Earth Summit, galvanized mounting environmental concerns into political action in 1972 and 1992, respectively.

³³ O. Bayode and others, Environmental implications of oil exploration and exploitation in the coastal region of Ondo State, Nigeria: A regional planning appraisal' [2011] (4) (3) *Journal of Geography and Regional Planning*; 111

³⁴ E. Milaré, 'Environmental law and practice in Brazil: overview' (Environmental Law Focus 2011) ⁷ English Environment Protection Act 1990, Section 1(2)

These conferences not only reflected the growing worldwide concern about the environment, but also established links between environmental sustainability and development, thus defining the environment to extend beyond air, water, land to include particularly, representative specimens of natural ecosystems.³⁵ Thereby This growing awareness was also emphasized when the Kyoto Protocol and the United Nations Framework Convention on Climate Change were adopted in 1997 with the goal of protecting the environment. In its definition of the environment, the ICCLD has also included natural resources – both organic and abiotic – covering the natural environment and the created landscapes as well as things which are part of human cultural patrimony.³⁶

Enforcement

The United Nations Environmental Programme defined the term ‘enforcement’ as a collection of procedures and measures used by a State, its responsible authorities and agencies to ensure that institutions or individuals who are liable to non-compliance with the laws or regulations of the environment may, by legal, administrative and criminal proceedings, be complied with and /or re-examined.³⁷ Though closely related, ‘compliance’ can be defined as the condition of conformity with obligations enforced directly or impliedly, which requires licenses, permits and authorizations, by a State, its competent authorities and agencies.³⁸ Naturally, there may be overlaps between enforcing environmental laws and compliance to it, as both are closely related. For an instance, to establish a reasonable standard, questions of conformity will need to be investigated to see if the practice has been beneficial in a state

Wasserman,³⁹ in his definition of enforcement, described it as the collection of measures taken by a government or its agency to completely comply with environmental standards (compliance) and to fix or avoid conditions or practices that pose a danger to the environment. The literature went further to explain that enforcement by State government typically involves inspections which are aimed

³⁵ Declaration of the UN Conference on Human Environment, Stockholm 1972, Principle 2

³⁶ E. Okon, ‘The Environmental Perspective in the 1999 Nigeria Constitution’ [2004] (38) (1-4) *Journal of Constitutional and Parliamentary Studies*; 54

³⁷ UNEP, *Enforcement of Environmental Law: Good Practices from Africa, Central Asia, ASEAN Countries and China* (UN Document Repository, 2014) <<https://wedocs.unep.org/handle/20.500.11822/9968>> accessed on 28th January, 2021

³⁸ *Ibid*

³⁹ C.E. Wasserman, *Principles of Environmental Enforcement* (Washington, D.C.: U.S. Environmental Protection Agency 1992) 6

to assess the degree of adherence of persons and entities occupying the environment and to identify potential violations with an agreement on a mutually agreed schedule and solution to the execution of legislation, in order to ensure compliance. Enforcement shall also involve the application of legal action to compel compliance, when necessary, and to impose some consequences for violation of any act detrimental to public and environmental health.⁴⁰ Odoeme,⁴¹ analysed enforcement as the role of the existing environmental regulatory system of a state, and the capacity and ability of the state to implement it.

Institute of Environmental Management and Assessment examined 'enforcement' from an experimental point of view, wherein it posited that, experience has shown that enforcement is important because certain individuals and organizations would naturally not comply with a rule or legislation without specific penalties for non-compliance. Regulatory authorities take enforcement measures to ensure that certain enterprises or organizations, through means of warning notices, enforcement advisories, formal cautions and trials, meet the legislative specifications of environmental licenses and directly applicable regulations.⁴²

Niel,⁴³ in explaining the concept of environmental enforceability, opined that, a functional environmental legislation extends beyond just well-designed set of laws, to include a rather efficiently and effectively enforceability mechanisms, and as such, strategies should be established for regulators to take steps to ensure conformity with the laid-down set of environmental rules.

Enforcement may also refer to steps and actions carried out by the government against infringers of environmental law, in order to compel them to act in accordance with the provisions of the law. The provisions of these laws, usually grant power on a government agency to enforce penalties, either in an administrative, civil or criminal means, and compel the defendant to comply with the law. Some other laws, also provide for the government to cleanse the damage

⁴⁰ E. Oruonye and Y. Ahmad, 'The Role of Enforcement in Environmental Protection in Nigeria' [2020] (7) (1) *World*

Journal of Advanced Research and Reviews; 50

⁴¹ C.V. Odoeme, 'Global Environmental Politics and Environmental Law in Nigeria' [2019] (1) (2) *Nile University Law Journal*; 45

⁴² Institute of Environmental Management and Assessment, *Managing Compliance with Environmental Law: A Good Practice Guide* (Best Practice Series 2005) 6.

⁴³ N. Gunningham, 'Enforcing Environmental Regulations' [2011] (23) (2) *Journal of Environmental*; 169

or provide for the polluter to pay for the damage incurred by non-conformity with the law.⁴⁴

Compliance

The conformity to comply with government environmental standards can be regarded as environmental compliance. It is the act that conforms with all environmental regulatory standards related to the operations, programs and activities of the environment.⁴⁵ Compliance is the act of 'accordance' with the duties placed on the controlled society by the State, its competent authority and institutions, whether explicitly or by the terms.¹⁹

European Union network, 'Implementation and Enforcement of Environmental Law' defines Compliance as the complete application of environmental regulations - ensured by meeting requirements and by achieving required improvements. Compliance with legal environmental conservation standards can lead to adequate environmental monitoring and increased environmental efficiency.⁴⁶ Environmental compliance means conforming with environmental rules, laws, guidelines and other criteria, such as site authorisation. In recent years, the number and degree of conformity imperatives have been dramatically increased in all global regulatory environments. As a result of the strong relation, environmental issues and regulatory practices are increasingly associated with organizational success targets and incorporated with conflict avoidance, inefficient duplication and shortcomings.⁴⁷

Environmental Protection Conceptualized

From water pollution to air, soil, thermal, radioactive, noise and light pollutions, the environment needs protection. In the face of these clear and present dangers of environmental degradation, the Nigerian state has responded through agencies, policies, and programmes aimed at the protection of the environment and to ensure sustainable development. Some of these intentions are clearly

⁴⁴ International Network for Environmental Compliance and Enforcement, *Principles of Environmental Compliance and Enforcement Handbook* (USEPA 2009) 8

⁴⁵ M. Fitzmaurice and P. Merkouris, 'Environmental Compliance Mechanisms' (2017) International Law

<<https://doi:10.1093/obo/9780199796953-0010>> accessed on 4th February, 2021 ¹⁹ (n11)

⁴⁶ IMPEL. (1992). 'Principles of Environmental Enforcement'.

⁴⁷ (n18)

evident in a plethora of documents, laws and establishments which traverse the entire Nigerian administrative system. From the 1999 constitution with its provisions for the protection of the environment.⁴⁸ The National Policy on Environment of 1989, the Millennium Development Goals project; to the many International conventions and summits which the country is a signatory to, there have been obvious attempts in the developmental rhetoric of various Nigerian governments to include environmental protection and sustainability in the development agenda. However, the contention remains as to the effectiveness of these various efforts in accomplishing their major objectives of facilitating socio-economic development while ensuring environmental sustainability especially, when viewed in relations to other sectoral policies which also aim at the same objectives.⁴⁹

As environmental law is intended to "improve mankind's living conditions," mankind is the primary beneficiary. In general, humanity benefits because environmental protection aims to save humanity from itself. Unless legal checks and balances are imposed on mankind's current activities, future generations may suffer unduly as a result of the current generation's irresponsible environmental damage.⁵⁰

Emejuru,⁵¹ succinctly states that, previous Nigerian constitutions did not include provisions for environmental protection until the 1999 Constitution was enacted. While the 1999 Constitution made provisions for the environment, it did not specifically address environmental protection.

Although the environment was granted constitutional status, its inclusion only reveals Nigeria as an environmentally unconcerned country.

Environmental Sustainability

Environmental sustainability tackle concerns such as: long-term environmental health, which preserves long-term production and resource health in order to satisfy potential economic and social requirements, including food sources,

⁴⁸ CFRN 1999 Cap. C23 LFN 2004, Section 20, 16(2), 17(2)

⁴⁹ J. O. Leke, 'Environmental Sustainability and Development in Nigeria: Beyond the Rhetoric of Governance' [2019]

(14) (1) *International Journal Of Development And Management Review*; 26

⁵⁰ G. Ogbodo 'Environmental Protection in Nigeria: Two Decades After the Koko Incident' [2009] (15) (1) *Annual Survey of International & Comparative Law*; 4

⁵¹ C.T. Emejuru, 'Human Rights and Environment: Whither Nigeria?' [2015] (35) (1) *Journal of Law, Policy and Globalization*; 108-109

farming land and fishing stocks. It also tackles intergenerational decision-making which reflects on the impacts on future generations when making economic choices, not just today. For an instance, the short-term advantage of affordable electricity is, burning coal, but increased emissions will cost future generations. Another issue environmental sustainability is concerned with is renewable resources, which is the diversification into non-renewable energy sources. Solar and wind power, for starters.⁵² Environmental Sustainability prevents the effects of the global warming triggered by man and create measures to ensure that the climate does not get worse in such a manner that future generations experience water depletion, extreme weather conditions and excess temperatures. It also acts as a defence of the diversity of organisms and biological structure - limits potential scientific progress as certain animals become extinct.⁵³

According to the United Nations World Commission on Environment and Development, environmental sustainability is a matter of environmental protection as a way to ensure that future generations have the natural opportunities to enjoy the same way of life, if not better, than current generations.⁵⁴ Although not widely agreed, the UN definition of environmental sustainability and well-being, including non-economic variableness such as education and wellbeing, clean air and water, and safety for natural beauty is fairly standardised and extended in recent years. It has been described alternatively as an environmental protection with the desire to increase human life quality while working within the potential of the sustaining habitats of the planet. Alternatively, environmental sustainability seeks to stabilize today's distressing ties between two most dynamic processes of the earth: human society and the world of life.⁵⁵

Environmental Pollution

In essence, the environment is said to be polluted by any waste or noxious material or chemical that is accumulated, injected or poured into the ground, or in a state or condition that is harmful to human or animal health, or to the

⁵² T. Pettinger, 'Environmental Sustainability – Definition and Issues' 2018

<<https://www.economicshelp.org/blog/143879/economics/environmental-sustainability-definition-and-issues/>> accessed on 25th May, 2022

⁵³ *Ibid*

⁵⁴ United Nations Environment Programme 'Sustainability' <<https://www.unenvironment.org/about-un-environment/sustainability>> accessed on 25th May, 2022

⁵⁵ J.C. Dernbach and J. A. Mintz 'Environmental Laws and Sustainability: An Introduction' [2011] (3) *MDPI Journal*;

vegetation and/or to the aesthetic quality of the physical environment; Land contamination entails human land destruction by practices such as the disposal of hazardous products such as chemical inputs that are unsafe for agriculture and farming.⁵⁶ However, the word still encompasses everything that immediately detracts from the environment, its arableness, yield or cultivability, such as land mines, atomic bombs, and other similar devices. Pollution of the environment affects beyond land, and extends to contamination or detrimental act or omission negatively affecting the air, the sea, mental health and even the sounds.

The unfavourable change in our environment, primarily as a by-product of human activity, is known as environmental pollution, attributable to a direct or indirect influence of changes in the energy pattern, radiation levels and chemical and physical constitution and species in their quantity. Environmental contamination is a global issue that is endemic to all developed and developing countries, which has significant, long-term implications and draws human interest. A depletion of plants, habitats, disproportionate concentrations of toxic chemical compounds in the atmosphere and food crops and threats are indicative of the deterioration in environmental health as a result of pollution.⁵⁷

NESREA

From pre-independence to the present, various environmental laws have been enacted in Nigeria as a direct response to the country's environmental degradation. This degradation of the environment has posed unpleasant challenges to Nigeria's economic development and the well-being of its citizens. Environmental issues/challenges include, but are not limited to, deforestation, desertification, oil spillage, pollution, and global warming. The National Environmental Standard and Regulations Enforcement Agency (NESREA) Act 2007 is one of the most recent and effective laws passed by the Nigerian government to address environmental issues and raise awareness about environmental protection. This paper examines the NESREA Act of 2007. It investigates the mandate and power, functions, and enforcement of Nigerian environmental laws. It also emphasises the importance of Effective Enforcement Mechanisms, Public Participation, Environmental Education, Cooperation, and

⁵⁶ G. Ogbodo, *Environmental Protection in Nigeria: Two Decades after the Koko Incident* [2009] (15) (1) (2) *Annual*

Survey of International & Comparative Law; 3-6

⁵⁷ K. Rai, *Biomagnetic Monitoring of Particulate Matte In the Indo-Burma Hotspot Region* (Elsevier 2015) 1-13

Partnership with Other Agencies in promoting environmental awareness and compliance.

Nigeria as a nation was unable to manage serious environmental crises prior to the Koko incident in Delta State in 1987, because there were no institutional arrangements or mechanisms in place for environmental protection and enforcement of environmental laws and regulations in the country. As a direct response to the illegal dumping incident at Koko, the Federal Government issued the

Harmful Waste Decree 42 of 1988, which paved the way for the establishment of the Federal Environmental Protection Agency through Decrees 58 of 1988 and 59 (amended) of 1992. The Agency was given overall environmental management and protection responsibilities.⁵⁸

The Federal Environmental Protection Agency and relevant Departments from other Ministries were merged into a single Federal Ministry of Environment in 1999, which was a wise decision. The new

Ministry of Environment, on the other hand, lacked the necessary legislation to ensure enforcement. This left a gap in the country's effective oversight of environmental laws, standards, and regulations.

To close this gap, the Federal Government established the National Environmental Standards and Regulations Enforcement Agency, a parastatal of the Federal Ministry of Environment, in accordance with Section 20 of the 1999 Constitution of the Federal Republic of Nigeria. The Federal

Environmental Protection Agency Act Cap F10 LFN 2004 was repealed by the National Environmental Standards and Regulations Enforcement Agency Act 2007.

Defects of the Defunct Federal Environmental Protection Agency (FEPA) Act and Regulations 1991-2006

The Federal Environmental Protection Agency (FEPA) was defunct, and its Act and Regulations were repealed by the NESREA Act in 2007. FEPA's major drawbacks were as follows:

⁵⁸ B. Ngeri, *Using Enforcement Cooperation to Promote Environmental Governance: The Case of the National Environmental Standards and Regulations Enforcement Agency of Nigeria*; (2014) paper presented by the Director General/Chief Executive Officer, National Environmental Standards And Regulations Enforcement Agency, Nigeria, Dg@Nesrea.Org. At the Ninth International Conference on Environmental Compliance and Enforcement, 2011.

1. Existing environmental laws and regulations are not being enforced or are being enforced ineffectively: In 1990, the FEPA granted industries a five-year moratorium on installing pollution abatement facilities, which expired in 1994. Nonetheless, industry compliance rates were generally low (between 20-40 per cent). Even then, the efficiency of many pollution-control facilities was questionable. Many had failed, were grossly inadequate, or were only operationally cosmetic to give the appearance of compliance.⁵⁹
2. Visits to facilities for compliance monitoring, facilities work through, find out challenges for non-compliance, examine monitoring records where they exist, conduct in-situ environmental monitoring of some parameters and discuss findings with the facility manager; and offer appropriate advice to promote compliance or issue warnings where non-compliance is persistent.⁶⁰
3. The following industrial pollution concerns and their impact on the environment and human health in Nigeria resulted from the above-mentioned poor environmental compliance or enforcement regime: Surface waterways in metropolitan areas were discoloured, foul-smelling, fishless, and non-potable and non-swimmable (60-70%); Petroleum waste materials, toxic and nontoxic; shallow groundwater aquifers affected by intrusion of home and industrial wastes; Reduced fish capture in coastal and marine waters due to visual impairment; Industrial effluents deposited on land or in wetlands cause nuisance and health problems; Pollution exposure worsens public health, putting the lives of millions of Nigerians at danger from water-borne diseases like as the typhoid fever outbreak.⁶¹

As a result, the following are the primary lessons learnt: it is counterproductive and unsustainable for a leading environmental protection agency to adopt a poor or obsolete compliance monitoring and enforcement strategy. Another lesson learnt is that, lacking a focus on pollution prevention strategies, a life cycle analysis approach, and the integration of environmental treaty obligations into

⁵⁹ A. Ahmad, Policing Industrial Pollution in Nigeria 131- 5, Essay submitted to the Harvard Law School, Cambridge MA, USA (in partial fulfillment of the award of LLM degree, 2001)

⁶⁰ *Ibid*

⁶¹ M.T. Ladan, Biodiversity, Environmental Litigation, Human Rights and Access to Environmental Justice in Nigeria 80-89 (Zaria: Faith Publishers, 2007)

national environmental compliance and enforcement frameworks on industrial, waste, and chemical pollution control for the benefit of current and future generations is retrogressive.

The Birth of NESREA; its Mandate and Powers

The National Environmental Standards and Regulation Enforcement Agency (NESREA) is the main government agency in responsibility of environmental protection in Nigeria. The NESREA Act established NESREA. The Agency was founded by the federal government as an organisation under the supervision of the Federal Ministry of Environment, Housing and Urban Development, in accordance with section 20 of the 1999 constitution. The National Environmental Standards and Research Agency (NESREA) was established to replace the defunct Federal Environmental Protection Agency (FEPA). Examining the use of the preventive principle in Nigeria necessitates a review of NESREA's establishment, mandate, and powers. NESREA was incorporated on July 30, 2007, as a corporation with perpetual succession and a common seal that has the authority to sue and be sued in its own name.⁶² It is in charge of enforcing environmental norms, regulations, rules, laws, policies, and recommendations. Its powers include enforcing environmental rules and policies, such as the 1999 National Policy on the Environment. This demonstrates the importance and relevance of environmental standards, laws, policies, and recommendations. They are an essential

and necessary aspect in the conservation and preservation of the environment, even though they do not have the force of law.⁶³

The Agency is responsible for environmental protection and development, biodiversity conservation, sustainable development of Nigeria's natural resources, and environmental technology. The NESREA Act and Regulations usher in a new age by tackling the majority of antiquated environmental regulations, standards, and enforcement mechanisms, which have resulted in high rates of non-compliance with environmental laws, regulations, and standards over time. The Agency's functions are listed in Part II of the NESREA Act. The Agency has the authority to enforce compliance with environmental laws, guidelines, policies, and standards. Federal water quality and air quality

⁶² NESREA Act No. 25 of 2007, section 1(2).

⁶³ M. T. Ladan 'Towards an Effective African System for Access to Justice in Environmental Matters' 23-24(2) A.B.U Law Journal 10-11 (2005)

standards are examples of such standards. Its responsibilities include coordinating and liaising with stakeholders both within and outside Nigeria on environmental standards, regulations, and enforcement. The organised private sector, national and international environmental groups, as well as other ministries and parastatals, would be relevant stakeholders.⁶⁴ The NESREA Act's section 7(c) compels the Agency to enforce compliance with the requirements of international environmental accords, protocols, conventions, and treaties, as well as any other agreement that may enter into force from time to time. Nigeria has ratified a number of international environmental treaties, including those on climate change, biodiversity, desertification, forestry, oil and gas, hazardous waste, marine and wildlife conservation, and pollution. However, most of the environmental treaties to which Nigeria is a signatory have yet to be implemented in Nigeria. As a result, this regulation could be read in two ways. First, it might be read as granting NESREA the right to implement such environmental treaties in Nigeria, regardless of whether they have been domesticated. This would be predicated on the fact that Nigeria has shown its willingness to be bound by the treaty's obligations by ratifying it. As a result, the state cannot avoid fulfilling its treaty responsibilities under international law. Article 26 of the Vienna Convention on the Law of Treaties states that "any treaty in force is binding upon the parties to it and must be performed by them in good faith." The Principle of Good Faith is another name for this principle (*Pacta Sunt Servanda*). The Court of Appeal's decision in the case of *Mojekwu v. Ejikeme*⁶⁵ echoed this viewpoint. Despite the fact that Nigeria had not yet domesticated the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),⁶⁶ the court referenced to it in its decision and had no trouble concluding that the 'ili ekpe' custom was a form of discrimination against women. Second, the provision could be understood to limit NESREA's enforcement powers to international environmental agreements and treaties that have been explicitly domesticated in Nigeria by an Act of the National Assembly. Before NESREA could compel compliance with the requirements of such treaties to which Nigeria is a party, the relevant treaty would have to be domesticated first.

⁶⁴ M. TawfiqLadan, 'Review of NESREA Act 2007 and Regulations 2009-2011: A New Dawn in Environmental Compliance and Enforcement in Nigeria', 8/1 *Law, Environment and Development Journal* (2012), p. 116

⁶⁵ (2002) 5 *NWLR* (PT.657), at 402.

⁶⁶ On the 23rd of April 1984 and the 13th of June 1985, Nigeria signed and ratified the CEDAW.

The Convention on International Trade in Endangered Species of Fauna and Flora and the Convention on the Prevention of Pollution by the Sea by Oil are two environmental treaties that have been domesticated in Nigeria. There's also the African Charter on Human and Peoples' Rights, which includes environmental protection requirements. NESREA has the potential to play a key role in the domestication process. Whatever the court's decision, section 7c of the NESREA Act has the admirable consequence of stressing the importance and relevance of international environmental law as a true source of Nigerian environmental law in the event that the relevant section is referred for judicial interpretation. A treaty becomes obligatory on the state party once it is ratified. Nigeria must therefore domesticate her environmental treaties by incorporating them into national law in order to ensure their effective implementation. To comply with the provisions of Section 12 of the 1999 constitution, both the executive and legislative branches of government must demonstrate political will. Nigerian courts, on the other hand, are free to consider the terms of ratified treaties when making judgements on issues such as environmental access to justice, non-discrimination, and equality. In light of the provisions of the Act that expressly remove oil and gas from NESREA's jurisdiction, the inclusion of "oil and gas" in the list of international environmental accords to be implemented by NESREA under section 7(c) is incongruent. For example, Section 7(h) enables NESREA to implement environmental rules and standards for noise, air, land, seas, oceans, and other water bodies other than in the oil and gas sector through compliance monitoring.⁶⁷ NESREA is responsible for enforcing environmental legislation and standards in the areas of noise, air, land, seas, oceans, and other bodies through compliance monitoring. As a result, NESREA is intended to enforce environmental standards covering water quality, air quality, noise control, and atmospheric protection, preventing an alteration of the environment's chemical, physical, or biological quality, as defined by section 37 of the Act. The Agency must implement efficient monitoring methods in order to achieve this responsibility. Accordingly, the Agency may create monitoring stations or networks to discover sources of air pollution and assess their actual or prospective threat.⁶⁸ For the purpose of enforcing the Act, NESREA has broad enforcement powers. Thus, an officer of the Agency may enter and search any premises, including land, vehicle, tent, vessel and floating craft, inland water, and

⁶⁷ NESREA Act, section 7(g, j, k, l)

⁶⁸ *Ibid*, Section 20 (2)

other structure, with a warrant issued by a court, which he reasonably believes carries out activities or stores goods that violate environmental standards or legislation, for the purpose of conducting inspections, searching, and taking samples for analysis. Oil and gas infrastructure such as maritime tankers, barges, and floating production, storage, and offloading are not included in this power to enter and search premises.

NESREA Amendment Act 2018 – A New Dawn

The National Environmental Standards and Regulations Enforcement Agency (Establishment) Amendment) Act (Amendment Act) amended the National Environmental Standards and Regulations Enforcement Agency Act, 2007 (NESREA Act) in November 2018 to further empower the National Environmental Standards and Regulations Enforcement Agency (the NESREA) in the protection and development of the environment. The Amendment Act aims to change the NESREA Act in order to evaluate the circumstances of some council members' appointments, enhance penalties, and allow for the inspection of properties without a warrant, among other things. The Amendments includes:

1. withdrawal of the representative of oil exploratory and production companies from the governing council
2. environmental regulations must be obeyed by government agencies
3. power to review and certify environmental audit
4. power to charge administrative fees
5. revenue transfer to federation account
6. Penalties have been increased
7. The authority to search premises without a warrant
8. Applicability of Public Officers Protection Act
9. Restriction on execution against NESREA property

It is important to note from the preceding highlights of the Amendment Act in relation to the NESREA Act that NESREA has been endowed with additional powers, the full impact of which on organisations and individuals is far-reaching. Effective implementation of the NESREA Act and its regulations necessitates the agency's capacity building in terms of human, technical, material, and financial capacity. It also necessitates the effective cooperation and collaboration of various stakeholders in Nigeria's environmental protection and natural resource management. If all of these measures are implemented, environmental sanctity

will rapidly improve. However, the constitution's relevance to the environment lies in the fact that it should lay the groundwork for the legal framework for environmental enforcement and protection by empowering citizens to have legal standing and access to justice in order to protect and enforce the protection of a clean, healthy environment for long-term development.

Conclusion.

Nigeria's environmental laws have gradually evolved with time. From the days of the FEPA Act to NESREA Act and to the amendment. A lot of changes and improvements have been made. The NESREA Act empowers the Agency to ensure full compliance, monitoring and enforcement with legislations, relevant treaties, and regulations for the sustainability of the environment in Nigeria. With the amendment to the NESREA Act, there is no gain saying that NESREA has been fully positioned by the government for the protection of the environment.