# Protection of the Nigerian Environment: Legal and Critical Analysis of Laws and Regulations

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***Abstract***

*Environmental problems have become one of the most worrisome problems in our time both locally and internationally. The media is replete with news of tsunamis, hurricanes, droughts, overflowing river banks, flooding, etc around the globe. These problems often cause so much devastation that they cannot be adequately resolved by individuals. To bridge this gap and in fulfillment of their responsibilities to her citizenry, different nations/countries have enacted laws which protect the environment from environmental problems such as degradation and pollution. Nigeria is one such country which has enacted a body of laws geared specifically towards the protection of the environment. However, despite of the availability of these laws as well as the enforcement agencies, these problems have continued to multiply and persist on a daily basis. This article will show that these problems persist because of several issues such as: lack of environmental consciousness, inadequate waste management system, poor enforcement mechanisms, lack of expertise, corruption, inadequate and obsolete penalties for violation of environmental regulations, inadequate funding, poverty, inadequate manpower, equipment and technical infrastructural decay, overlapping laws and lack of joint venture partnership to mention but a few. This work therefore submits that there is an urgent need for training and revamping of our environmental laws. This training is dual in nature; it should focus on the citizenry on the one hand and the law enforcement agencies on the other hand. The revamping of environmental laws will also achieve the aim of providing stiffer penalties for infractions of environmental laws which will deter intending environment polluters. This revamping of the laws must also address the issue of compensation of victims of such violations/infraction as well as the issue of funding of agencies.*

## Introduction

### Nigerian Regulatory Framework on the Environment

The need for criminal sanctions for environmental pollution/challenges in Nigeria can be said to have risen as a result of the incident of the dumping of harmful toxic waste materials in Koko, Delta State of Nigeria in June, 1988 which led to the promulgation of a series of Decrees.[1] It is true that there were several laws dealing peripherally with the environment with little or no provisions for criminal sanctions for environmental pollution. We should not forget that environmental issues belong to the realm of public law and so most of the regulatory frameworks placed to control environmental damages do not contain any private remedies.

In addition, in order to prevent the disaster of environmental infractions in Nigeria, government has entered a number of treaties and also put in place pieces of National and Local legislations to prevent environmental pollution.[2] These laws includes Factories Act,[3] Oil in Navigable Waters Act[4], Petroleum Refining Regulation 1974, the Oil Pipe Lines Acts[5], the Associated Gas Reinjection Act[6], the Explosive Act, 2004, the National Oil Spill Detection and Regulation Agency (NOSDRA), the National Environmental Standard and Regulations Enforcement Agency Act

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1 Umoru P.A., *The Nigerian Environmental Problems Conservation and Sustainability*, (Benin City: Giftprint Associates, 2001),106

2 ibid.

3 Factories Act, 1987.

4 Oil in Navigable Waters Act, 1968.

5 Oil Pipelines Act, 1965.

6 Associated Gas Re-injection Act, 1979.

(NESREA)[7], Environmental Impact Assessment Decree No 86 of 1992, and the Harmful Waste (Special Criminal Provisions) Act,1990.[8] Despite all these laws and many more environmental challenges, infracting activities remain unabated.
An examination of some of these laws will form the bedrock of this section.

**Constitution of the Federal Republic of Nigeria, 1999 (As Amended)**

The constitution recognises the importance of improving and protecting the environment and makes provision for it. The Constitution makes it an objective of the Nigerian State to improve and protect the air, water, land, forest and wildlife.[9] Relevant sections are:

- Section 12 which establishes, though impliedly, that international treaties (including environmental treaties) ratified by the National Assembly should be implemented as law in Nigeria.
- Sections 33 and 34 which guarantee fundamental human rights to life and human dignity respectively have also been argued to be linked to the need for a healthy and safe environment to give these rights effect[10]. The basis for the enforcement of any right in Nigeria is the 1999 Constitution. The Constitution provides under section 20 that "the state shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria" and this provision is complemented by section 17(2)(d) which states that "exploitation of human or natural resources in any for whatever reasons other than the good of the community shall be prevented", these provisions are by their very nature non-justiciable being included under

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[7] NESREA Act 2007 which replaced the Federal Environmental Protection Agency (FEPA) Act.
[8] 1990, cap.165 LFN, 2004.
[9] Ibid, s. 20,
[10] Ibid, ss. 33 and 34.

chapter II of the constitution on the fundamental objectives and Directive principles of state policy. This means that although provided in the constitution, no individual can bring any action before any court for any remedy upon the makers included in the said chapter II.

**National Environmental Standards and Regulation Enforcement Agency Act, 2007**[11]

Administered by the Ministry of Environment, the National Environment standards and Regulation Enforcement Agency (NESREA) Act of 2007 is the embodiment of laws and regulations focused on the protection and sustainable development of the environment and its natural resources. It is note-worthy that NESREA Act, of 2007 replaced the Federal Environmental Protection Agency (FEPA) Act, of 1988. The Act is the embodiment of laws and regulations centered on the protection and sustainable development of the environment and its natural resources. The following sections are worth noting:

- Section 7 provides authority to ensure compliance with environmental laws, local and international, on environmental sanitation and pollution prevention and control through monitory and regulatory measures.
- The Act 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.[12]
- Section 27 prohibits, without lawful authority, the discharge of hazardous substances into the environment. This offence is punishable under this section, with a fine not exceeding, ₦1, 000, 000 .00 (One Million Naira) and an imprisonment term of 5 years. In the case of a company,

[11] National Environmental Standards Regulations Enforcement Agency Act, (NESREA) 2007

[12] S. 8(1) (k) NESREA Act, 2007.

there is an additional fine of ₦50, 000, for every day the offences persist.

**Federal Solid Hazardous Waste Management Regulations, 1999**

The regulation makes it an obligation for industries to identify solid hazardous wastes which are dangerous to public health and the environment and to research into the possibility of their recycling.[13]

- Section 20 Makes the giving of notice of any discharge to the Agency mandatory
- Section 108 stipulates penalties for contravening of hazardous materials the regulations.

**Environmental Impact Assessment (EIA) Act, 1992[14]**

An Environmental Impact Assessment (EIA) is an assessment of the potential impacts whether positive or negative, or a proposed project on the natural environment. The EIA Act deals with the consideration of environmental impact in respect of public and private projects. The principal goal of this enactment was stated under section 1 which is to ensure that possible negative impacts of developmental projects are predicted and addressed prior to any project take-off. The effect of this is to promote sustainable development. Sections relevant to environmental emergency prevention under the EIA include:

- the assessment of public or private projects likely to have a significant (negative) impact on the environment[15]
- the requirement of an application in writing to the Agency before embarking on projects for their environmental assessment to determine approval[16]
- the establishment of cases where EIA is required[17] and

[13] S. 1 Federal Solid Hazardous Waste Management Regulations (1999).
[14] cap. E12 LFN, 2004.
[15] S. 2(1) Environmental Impact Assessment Act, 1992 LFN, 2004.(EIA)
[16] Ibid, s. 2(4).
[17] Ibid, s. 13.

- the creation of a legal liability for contravention of any provision[18].

**The Nigerian Urban and Regional Planning Act, 1992[19]**

The Urban and Regional Planning Act is aimed at overseeing a realistic, purposeful planning of the country to avoid overcrowding and poor environmental conditions. In this regard, the following sections become instructive:

- The Act requires a building plan to be drawn by a registered architect or town planner[20].
- The Act establishes that an application for land development would be rejected if such development would harm the environment or constitute a nuisance to the community[21].
- The Act makes it an offence to disobey a stop-work order. The punishment under this section, is a fine not exceeding N10, 000 (Ten Thousand naira) and in the case of a company, a fine not exceeding N50, 000.[22]
- The Act provides for the preservation and planting of trees for environmental conservation[23].

**Harmful Wastes (Special Criminal Provisions) Act, 1998.[24]**

The Harmful Wastes Act prohibits, without lawful authority, the carrying, dumping or depositing of harmful waste in the air, land or waters of Nigeria. The Act was therefore enacted with the specific object of prohibiting the carrying, depositing and dumping of hazardous wastes on any land, territorial water and matters relating thereto. This Act is essentially a penal legislation. The offences are constituted doing any of the act or omission stated in

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[18] Ibid, s. 60.
[19] Cap N138, LFN 2004.
[20] The Nigerian Urban and Regional Planning Act, s. 30(3).
[21] Ibid, s. 30(3).
[22] Ibid, s. 59.
[23] Ibid, s. 72.
[24] 1988 cap H1, LFN 2004.

section 12 of the act. The jurisdiction of the Act is far reaching as it sought to remove any immunity conferred by diplomatic immunities and privileges Act on any person for the purpose of criminal prosecution. It is instructive to note that despite its far reaching jurisdiction, it focuses mainly on criminal prosecution of damage and does not provide compensation to the victim of the damage. The following sections are notable:

- It provides for a punishment of life imprisonment for offenders as well as the forfeiture of land or anything used to commit the offence.[25]
- It makes provision for the punishment accordingly, of any conniving, consenting or neglect officer where the offence is committed by a company.[26]
- It also defines the civil liability of any offender. He would be liable to persons who have suffered injury as a result of his offending act.[27]

**Oil Navigable Waters Act, 1968[28]**

The Oil in Navigable Waters Act is concerned with the discharge of oil from ships. The Act was enacted pursuant to the adoption of the International Convention for the prevention and control of pollution of the sea by oil. The Act is infact the first law that deals specifically and solely with the industrial waste generated by oil production. The Act has created some offences in respect of oil pollution for the purpose of reducing the incidence of pollution of the global high seas generally and particularly Nigeria waters. The enforcement of this legislation has been watered down by several loopholes in its provision through which offenders may wriggle through. It is indeed an amusing rhetoric to assume that there seem not to be many differences between legislation riddled with lacunas and the water tight legislation in the absence of concrete

[25] S. 6 Harmful Waste (Special Criminal Provisions) Act, 1988 cap H1 LFN 2004.
[26] Ibid, s. 7
[27] Ibid, s. 12
[28] 1968 cap 06, LFN 2004.

steps towards the latter's enforcement. The following sections are significant:-

- The Act prohibits the discharge of oil from a Nigerian ship into territorial waters or shorelines[29].
- The Act makes it an offence for a ship master, occupier of land or operator of apparatus for transferring oil to discharge oil into Nigerian Waters. It also requires the installation of anti-pollution equipment in ships[30].
- The Actmakes punishable for such discharge with a fine of N2, 000 (Two Thousand Naira)[31].
- The Actrequires the records of occasions of oil discharge[32].

**Associated Gas Re-injection Act, 1979[33]**

The Associated Gas Re-injection Act deals with the gas flaring activities of oil and gas companies in Nigeria. The following sections are relevant to pollution prevention:-

- The Actprohibits, without lawful permission, any oil and gas company from flaring gas in Nigeria[34].
- The Actstipulates the penalty for breach of permit conditions[35].

**Oil Pipelines Act, 1965**[36]

The oil pipelines Act and its Regulations guide oil activities. The following sections are pertinent;

- Section11 (5) creates a civil liability on the person who owns or is in charge of an oil pipeline. He would be liable to pay compensation to anyone who suffers physical or

[29] Ibid, s. 1(1).
[30] Ibid, s. 3.
[31] Ibid, s. 6.
[32] Ibid, s. 7.
[33] cap 20, LFN 2004.
[34] Ibid, s. 3(1).
[35] Ibid, s. 4.
[36] cap. 07 LFN, 2004.

economic injury as a result of a break of leak in his pipeline.

- Section 17 (4) establishes that grant of licenses are subject to regulations concerning public safety and prevention of land and water pollution.

**Petroleum Act, 1969**[37]

The Petroleum Act and its Regulations remains the primary legislation on oil and gas activities in Nigeria. It promotes public safety and environmental protection. The following sections are relevant:

- Section 9(1) (b**)** provides authority to make regulations on operations for the prevention of air and water pollution.

**Natural Safety and Radiation Protection Act, 1999**[38]

The Act is concerned with the regulation of the use of radioactive substances and equipment emitting and generating ionizing radiation. In particular:

- Section 4 provides authority to make regulations for the protection of the environment from the harmful effects of ionizing radiation.
- Section 15 and 16 makes registration of premises and the restriction of ionizing radiation sources to those premises mandatory.
- Section 37(1)(b) allows an inspector verify records of activities that pertain to the environment.
- Section 40 clarifies that the same regulations guiding the transportation of dangerous goods by air, land or water should also apply to the transportation of radioactive substances.

[37] 1969 Cap. P10 LFN, 2004.
[38] cap. N12 LFN, 2004.

**Niger-Delta Development Commission (NDDC) Act, 2000[39]**

The Niger-Delta Development Commission Act is concerned with using allocated funds to tackle ecological problems arising from the exploration of oil minerals in the Delta.

Section 7 (1)(b) empowers the Commission to plan to implement projects for the sustainable development of the Delta in the field of transportation, health, agriculture, fisheries, urban and housing development, etc. The Commission, under this Act, has a duty to liaise with oil and gas companies and advice stakeholders on the control of oil spillages, gas flaring and other related forms of environmental pollution.

**Environmental Pollution Control Law, 2007[40]**

Section 12 of this law under the Laws of Lagos State makes it an offence to cause or permit a discharge of raw untreated human waste into any public drain, water course or onto any land or water. This offence is punishable with a fine not exceeding N100, 000 (One Hundred Naira) and in the case of a company, a fine not exceeding N500, 000.

**The Criminal Code Act, 1916[41]**

The Criminal Code contains provisions for the prevention of public health hazards and for environmental protection. Hence:

Section 245-248 deal with offences ranging from water fouling, to the use of noxious substances.

**National Oil Spill Detection and Response Agency Act, 2006[42]:**

This agency is responsible for surveillance and detection of oil spill accidents and also for clean up, remediation and damage control[43] and this Agency in line with its powers under section 26 created 2 regulations, that is;

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[39] cap. N68 LFN, 2004.
[40] cap. E46 ,LLS, 2007.
[41] cap. C38 LFN, 2004.
[42] cap. N157 LFN, 2004.
[43] Ibid, s. 5 (q) and 6.

(a) Oil Spill Recovery, Clean up, Remediation and Damage Assessment Regulations, 2011[44] the objective of this regulation is to establish procedures, methods and other requirements for detection, response, clean up and remediation of oil spills from onshore and off shore petroleum facilities into or upon land and navigable waters in Nigeria and adjoining shorelines.[45]
(b) Secondly, Oil Spill and Oily Waste Management Regulations, 2011[46]. This regulation contains procedures meant to prevent, monitor and manage discharge of oil or oily waste in harmful quantities into or upon land navigable waters in Nigeria.

**International and Regional Environmental Laws and Policies**

International and regional laws are relatively a new subject, but there are a lot of laws and policies in that regard to support environmental protection to its fullest. It is also important to reiterate that there are lots of international laws that have done well in protecting the environment and citizens' right. The regional laws also have done well in protecting the environment and they include: The Stockholm Declarations 1972[47], The Basel Convention on the Control of Trans-Boundary Movements of Hazardous Wastes and their disposal[48], The Kyoto Protocol to the United Nations Framework Convention on Climate Change[49], The African Charter on Human and Peoples Rights 1981[50] and TheBamako Convention on the Ban on the Import into Africa and

[44] Published on July 17, 2011 as Government Notice 158 in vol. 98 of the Federal Republic of Nigeria official Gazette.
[45] Regulation 1.
[46] It entered into force in 1975. Nigeria signed it on the 19th of March 1976.
[47] 16 Jun. 1972, UN DOC. A/conf.48/14/Rev.1 (1973); 11ILM 1416 (1972)
[48] 22 Mar.1989, 1673 UNTS 126; 28 ILM 657 (1989) (entered into force 5 May 1992).
[49] 11 December 1997, UN DOC FCCC/CP/1997/7/Add.10 Dec. 1997, 37 ILM 22 (1998) (entered into force16 February 2005).
[50] 27 Jun. 1981, OAU Doc. CAB/LEG/ 67/3 rev. 5, 21 I.L.M. 58 (1982), (entered into force 21 Oct.1986).

the Control of Transboundary Movement and Management of Hazardous Wastes within Africa[51].

**The Stockholm Declaration 1972**

The Stockholm and Rio Declarations are outputs of the first and second global environmental conferences, respectively, namely the United Nations Conference on the Human Environment and the United Nations Conference on Environment and Development.[52] Other policy or legal instruments that emerged from these conferences, such as the Action Plan for the Human Environment at Stockholm and Agenda 21 at Rio, are intimately linked to the two declarations, conceptually as well as politically. However, the declarations, in their own right, represent signal achievements. Adopted twenty years apart, they undeniably represent major milestones in the evolution of international environmental law, bracketing what has been called the "modern era" of international environmental law.[53]

The United Nations Conference on the Human Environment is generally referred to as the Stockholm Declaration and is considered as the cornerstone of modern international law. The Stockholm Declaration is the first of the international declarations that was set for the protection of the environment and it came into force in 1972, followed by the Rio Declaration of 1992[54]. The declaration also affirms the sovereign right of states to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States

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[51] 30 Jan. 1991, (entered into force 22 April 1998).

[52] United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro, June 3-14, 1992.

[53] Sand P. H., 'The Evolution of International Environmental Law', Bodansky D., Brunnée J., & Hey E., (eds.), *The Oxford Handbook of International Environmental Law,* 29 (2007), 23-25

[54] Malanczuk P., *Akehurst's Modern Introduction to International Law*, 7th ed. (London: Routledge, 1997), 241. see also Birnie P. W. and Alan Boyle, *International Law and the Environment,* 2nd ed., (Oxford: OUP, 2002).

or of areas beyond the limits of national jurisdiction in accordance with the United Nations Law[55]

However, the counterpart to this treaty is the Rio Declaration which came into existence in 1992, and the principle is generally the responsibilities of states in view of their different contribution to global environmental degradation and the need to reduce and eliminate unsustainable patterns of production and consumption. Probably the most significant provision common to the two declarations relates to the prevention of environmental harm. In identical language, the second part of both Stockholm Principle 21 and Rio Principle 2 establishes a State's responsibility to ensure that activities within its control do not cause damage to the environment of other States or to areas beyond national jurisdiction or control. This obligation is balanced by the declarations' recognition, in the first part of the respective principles, of a State's sovereign right to "exploit" its natural resources according to its "environmental" (Stockholm) and "environmental and developmental" policies (Rio)[56].

Some of the principles emphasize the need for environmental and developmental planning.[57] The absence of any reference in the Declaration to a State's duty to inform a potentially affected state of a risk of significant transboundary environmental effects was due to the working group on the Declaration's inability to reach agreement on such a provision. However, the working group did agree on forwarding the matter to the General Assembly which, as noted, endorsed such notification as part of States' duty to cooperate in the field of the environment. Also emphasized and affirmed was the sovereign right of states to exploit their own resources pursuant to their own environmental policies in accordance with the United Nations Laws.[58]

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[55] Principle 21 Declaration of the United Nations Conference on the Human Environment from June 5 to 16,1972.

[56] Ibid

[57] Principles 13-15 and 17-18 of the Stockholm Declaration.

[58] Atsegbua L. A. et al., *Environmental law in Nigeria*, (Benin-City: Ambik Press, 2010) 269-270.

**The Basel Convention on the Control of Trans-Boundary Movements of Hazardous Wastes and their Disposal 1989**

This is a convention on the control of trans boundary movement of hazardous wastes and their disposal. Nigeria as a nation is a signatory to this convention. The Basel Convention came into force on May 5, 1992, after being ratified by 20 countries. This Convention was a treaty prepared at the instance of the Governing Council of the United Nations Environmental Programme (UNEP) and which was intended to be a global treaty governing movement of hazardous waste and their disposal. It was also to protect by a strict legal regime the human health and its environment against the effects which may result from generation and management of hazardous waste.

The importance of the Basel Convention is captured in Article 4(9) which provides that:

> Parties shall take the appropriate measure to ensure that the trans-boundary movement of hazardous wastes and other wastes only be allowed if the wastes in question are required as raw material for recycling or recovering industries in the state of import[59]

The Basel Convention's key objectives are to:

- Minimize the generation of hazardous waste and hazardous recyclable materials;
- Ensure they are disposed in an environmentally sound manner and as close to the source of generation as possible;
- Minimize the international movement of hazardous waste and hazardous recyclable materials.

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[59] Eguh E. C., 'Regulation of Trans-boundary Movement of Hazardous Waste: Lessons from Koko.' 9 (1997) *RADIC*, 141; Amechi Uchegbu, 'Trans-boundary Movement of Hazardous Waste and international Law,' in Omotola J. A., (ed.) *Environmental Laws Including Compensation* (Lagos: University of Lagos, 1990) 223.

One of the significant attributes of this convention under Article 8 is that if wastes are smuggled into the territory of one state without the competent authority's consent or such consent is by fraud, such waste can be returned back by the country[60]. This was the case in Koko toxic incident, where Nigeria as a country returned the waste back to Italy.

**The Kyoto Protocol**

This was the convention that brought about the green house gas effect, the depletion of the ozone layer, and global warming which inspired world leaders to meet and deliberate. It was adopted December 11, 1997 in Kyoto, Japan but came into force February 16, 2005 after it was ratified by many nations. As at September 2011, 191 states have signed and ratified the protocol with exception of USA, Afghanistan, Andorra and South Sudan. The purpose for this treaty is treating the green house gases instead of allowing it to radiate back into space. The peculiar nature of the Kyoto treaty is that many industrialized nations entered into the treaty to reduce industrial emission of six green house gases over a certain period of time by harnessing the forces of the global market place to protect the environment.[61]

The Kyoto Protocol set emission targets; focusing on developed and industrial nations: 8% below 1990 emission levels for European Nations; 7% below 1990 emission levels for USA and 6% below 1990 emission levels for Japan. The USA on whose proposals majorly the protocol was drawn desired that developing nations make meaningful participation and commitments as the developed nations. This the conferences did not agree to as they perceived that the developed nations have to set the pace before the developing nations can follow.[62]

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[60] Article 8 (Duty to Re-import), The Basel Convention on the Control of Trans-Boundary Movements of Hazardous Wastes and their Disposal 1989.

[61] Atsegbua L. A. et al., *Environmental law in Nigeria*, (Benin-City: Ambik Press, 2010) 273-275.

[62] Ibid, 275.

Amongst other decisions reached were various strategies which were adopted on how to reduce industrial emissions and its effects. These included:

1. The use of Sinks, which is the carrying out of activities that absorb carbon e.g. the planting of trees?
2. Emissions trading amongst nations, whereby countries/companies can purchase less expensive emission permits than they need (because they have met their target with room to spare).
3. Clean Development Mechanism whereby developed countries will be able to use certified emission reductions from project activities in developing countries to contribute to their compliance with the green house gas reduction.[63] It is note worthy

   that just like in the United States of America, a treaty needs to be ratified and enacted into law by the Senate before becomes biding and enforceable in the country.[64]

**The African Charter on Human and People's Right 1981**

This charter was adopted in 1981, but unlike other regional human rights instruments, the African Charter is novel in its attempt to ensure protection of the African continent against environmental degradation. The African Charter is a regional regulatory mechanism which has made bold attempt at sustainable development of the African continent. It makes satisfactory and favorable the environment an inherent human right of every African.[65] The aspect of the charter that treated environmental issue was particularly the Article 24, and this is the first international instrument to proclaim the right to a satisfactory

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[63] Atsegbua L. A. et al., *Environmental law in Nigeria*, (Benin-City: Ambik Press, 2010) 273-275.

[64] ibid. s. 12(1) of the 1999 Constitution of The Federal Republic of Nigeria, cap. C23, LFN 2004; See also Aigbokhaevbo V. O., 'Environmental Regulatory Standards: Problems of Enforcement in an Emerging Nigerian Economy,' 3, 2005, *Igbinedion University Law Journal*, 106-107.

[65] Article 24 of the African Charter on Human and People's Rights

environment as human right to which all people are entitled. The main reason behind the charter was a response to the danger pose by the export of toxic waste from Europe to Africa. It also represents sustainable development of the continent.

**The Bamako Convention**

This was a convention that came into existence as a result of the dissatisfaction of developing countries with the Basel Convention over the partial ban on transboundary movement of hazardous waste. The Bamako Convention permits the trans-boundary movement of waste within Africa but prohibits importation of such waste into Africa.[66] The prohibition is therefore limited to importation into Africa. The Bamako Convention imposes strict unlimited liability as well as joint and several liabilities on hazardous waste generators with the aim of reducing such wastes to its minimum.[67] Where such waste is to be moved across boundaries, the exporting state must obtain prior written consent of the state of import and confirmation of the existence of a contract between the exporter and the disposer, specifying environmentally sound management of the wastes in question.[68] It is important to note that International Environmental law like the Conventions, Protocols and Accord has attained the standing of an independent discrete subject with its own principles.

**Case Law on Environmental Issues**

Case law is a source of Environmental law in Nigeria and at the international terrain. Naturally, the courts are saddled with the responsibilities of interpreting the state laws and international conventions. Under the Nigerian legal system, victims of

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[66] Akper P., 'Transboundary Disposal of Hazardous Waste: Where is the Refuge for Developing Countries?' in Popoola A. O. and Adodo E. (eds.) *Current Legal Developments in Nigeria* (Ife: OAU Press, 2007) 277.

[67] Article 4(3) (b) of the Bamako Convention on the Ban on the Import into Africa and the Control Of Transboundary Movement and Management of Hazardous Wastes within Africa Convention.

[68] Ibid, Article 9(1)

environmental pollution can seek judicial redress to abate any environmental pollution either under the statues governing such pollution or under the common law torts. The former consist of a plethora of legislations[69] regulating the three media of the environment: Air, Land and Water. The common law control of environmental infractions is generally in the area of the law of torts, under the following heads, nuisance, trespass, negligence, the rule in *Rylands v. Fletcher*[70]and others.

**NUISANCE:**

Nuisance arises when the emission of noxious or offensive materials from the defendant's premises significantly impairs the use and enjoyment by another of his property or prejudicially affects his health, comfort or convenience. Private nuisance arises when there is a substantial or unreasonable interference with a person's use and enjoyment of land occupied by him or some right over or in connection with it.[71] While public nuisance involves conducts that materially affects the enjoyment of a right which members of the public have in common.

However, before an individual can bring an action under public nuisance, he must prove to the satisfaction of the court that he has sustained special damage by way of personal injury, property damage or pecuniary damage over and above that suffered by members of the general public[72]. For instance, a community suffers damage arising from pollution of its rivers and streams which serves as sources of drinking water for the community, no individual in that community will be able to bring an action against the company which caused the damage even though this might have deprives or affected the individual's source of drinking water. In the case of *Amos v. Shell B.P Petroleum*

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[69] Ranging from local statute, Criminal Code Act, Petroleum Associated Gas Re-injection Act, to regional tactics and then international treaties.
[70] (1868) L.R 3HL 300.
[71] *Abiola v. Ijeoma* (1970) 2 All NLR 768.
[72] Amos v. Shell BP Nigeria Ltd (1977) 6 SC

*Development Company of (Nigeria) Ltd,*[73]the plaintiff claimed damages from the defendant (amongst others) for public nuisance. They alleged that, the defendant made a large earth-dam across their creek during oil mining operations. As a result, farms were flooded and damaged. Canoes could not bring goods to the market or take produce to the outside world and the whole commercial and agricultural life of the community absolutely stopped. The trial court and the Supreme Court both found that the defendant conduct amounted to public nuisance. However, there was no evidence from the plaintiff showing that, they suffered damages over and above those suffered by the general public. The action was therefore dismissed on ground of failure to prove peculiar damages suffered by the plaintiff. Similar decisions were reached in *Dumez Nigeria Limited v. Ogboli.*[74]

From the above, it is clear that Nigerian courts have insisted that anyone who is suing for public nuisance must prove the harm he has suffered over and above that suffered by members of the public. The 1976 constitution put an end to this and lends a helping hand in protecting the right of the individual against environmental public nuisance. The effectiveness of the constitution was tested in the case of *Adediran and Anotherv. Interland Transport Ltd,*[75] where the court held in the light of section 6 (6)(b) of the 1979 constitution, that a private person can commence an action in public nuisance without obtaining the consent of an *Attorney* General is no longer necessary for the competence of action in public nuisance. In *Airobuyi v.Nigeria pipeline limited*[76] the defendant company conducted sand blasting and pipe coating operation in a shed of about 300 feet from the plaintiff's house. As a result of the operation, dust and smoke escaped from the pipe yard in sufficient quantities and caused damage to the plaintiff's house, discomfort and danger of health. The plaintiffs sued in

[73] (1977) 6 SC

[74] (1972) All NLR 241.
[75] (1986) 2 NWLR (Pt 20) 78
[76] (1976) 6, ECSL 53.

nuisance. The court found the defendant liable for private nuisance. Also in the case of *Oladehin v. Continental Textile mills ltd*[77] in this case poisonous and contaminated water flowed from the defendant factory and caused serious damage to the plaintiffs. It was held that defendants were liable to pay damage in private nuisance. Consequently, it is only where it could be shown by a person that the discharge is unreasonable, that it has specifically interfered with his use and enjoyment of his land that he would be entitled to compensation for the harm caused to him.

**NEGLIGENCE:**

Negligence is the breach of the duty of care imposed by common law or statute law thereby resulting in damages to the complainant.[78] A claim in negligence is premised upon the breach of a legal duty to exercise care which results in damages which though never desired by the defendant is nevertheless foreseeable.[79] The problem under negligence is that the onus is on the plaintiff to prove the following elements.

1. That the defendant who caused the pollution damage owed him a duty of care.
2. That the duty has been breached.
3. That the breach has caused foreseeable damage to the plaintiff.

It is pertinent to note that a successful claim in negligence entitles the claimant to damages and injunctions which may be prohibited or mandatory. In the case of *J. Chinda and Others v. Shell BP Petroleum Company of Nigeria*[80] the plaintiff sued the defendant company for the heat, noise and vibration resulting from the negligent management and control of the flare set used during gas

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[77] (1978) 2 S.C.23.

[78] *Donogue v. Steveson* (1932) AC 502

[79] Atsegbua L. A. et al., *Environmental law in Nigeria*, (Benin-City: Ambik Press, 2010) 44

[80] Ogbuigwe A. E. 'Compensation and Liability; Need for a Positive Approach' (1985) *JPPL* 21 at 29

flaring operation which had resulted in a lot of damage to the plaintiff's property. The judge held that the plaintiff could not prove any negligence on the part of the defendant in the management and control of the flare set.

**LOCUS STANDI:**

In order for an individual to take action at private law, such a person whether human or 'legal' persons such as companies must show that his or her private right as they stand at law have been harmed or pre-judicially affected.[81] Where a person is not able to show that he has suffered special damage or a legal right particular to him has been infringed, he would not be able to maintain a suit successfully.[82]

In *Oronto Douglasv.SPDC &ors*[83], the plaintiff sought for a declaration that the 1st – 4th defendants cannot lawfully commission, carry out and operate LNG projects without first complying strictly with the EIA Act. According to the court, the plaintiff could not show that he had a legal interest superior to that of other members of his community whose environment has been polluted by shell, he was held not to have locus standi to sue. In Philippines, in the celebrated case of minors *Oposa v.Secretary of the department of environmental and natural resources*[84], the Plaintiff who were minors sued the defendant seeking an injunction restraining the Philippines government from continuing licensing the felling of timber on the basis that deforestation from timber logging was causing environmental damage. The supreme court of the Philippines held that the plaintiffs have both a justifiable cause and the locus to sue.

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[81] Fagbohun O. and Simpson Struan. (eds.) *Environmental Law and Policy.* (Lagos-: Law Centre, Faculty of Law, Lagos State University, 1998).

[82] *Shell Petroleum Development Company v. Chief Otoko* (1990) 6 NWLR (pt 159) 693

[83] Unreported suit No.FC/C5/573/93.

[84] (1973) 3 UILR (part v) 459.

**Burden of Proof:**

In environmental litigation, where the claim is damage to property, the plaintiff must prove ownership of the property damaged.[85] Why if the claim is for loss or destruction of farm crops, farm land and economic trees, the plaintiff must adduce sufficient evidence to show the name, nature and number of economic trees allegedly destroyed. For instance, In *Shell Petroleum Development Co. Ltd v. Tiebo*[86], the plaintiff claimed ₦64m, general damages from the defendant for oil spillage into river Nun for which plaintiffs get their drinking water and also fish and desecration of their juju land among allegations, despite the fact that the community was able to proof the damage alleged by calling experience and knowledgeable export witnesses, the court awarded a paltry sum of N6m to the community. In *R. Mon &anorv. Shell B.P Development Co. of Nigeria*[87]the judge admitted that the plaintiffs' fish pond had been damaged by the activities of the defendants but said:

> There is no evidence what it caused them to dig the pond. they must have spent some money or at least some considerable effort on getting this work done; but if they cannot be bothered to tell me how much this work is worth, then they must satisfy with my attempt to assess it fairly…. I will therefore assess the damage at a figure which consider fair and if the plaintiffs' consider it inadequate, they have nobody to blame but themselves[88].

He awarded N200.000 damages, an amount grossly inadequate in the light of proof of damage made by plaintiffs.

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[85] *Sommer and Others v. Federal Housing Authority* (1992) 1.NWLR pt.219 548.
[86] (1995) 5 NWLR (pt 398) 561.
[87] (1970) IRSLR. 711.
[88] Ibid.

**Lack of impartial judicial resolution of conflict:**

The attitude of Nigerian judges to environmental litigation also operates as a challenge to the enforcement of environmental laws. This is so because apart from the award of damages, Nigeria courts do not seem readily to issue injunction against owner of polluting facility. In *Allan Irouv. Shell B.P Development Co Nigeria Limited*[89], the plaintiff requested the court to grant him an injunction which would restrain the defendants from further pollution of his land, creek and fish pond. The warri High court in refusing his injunction held that.

> … carelessness by the definitions' employees cannot be controlled by the defendants. To grant the order would amount to asking the defendants to stop operating in the area. The interest of the third persons must in some cases be considered. For example where the injunction would cause stoppage of trade or throwing out a large number of people… the defendants having been granted an oil exploration license, it will not be just and convenient to grant an injunction in this case.

**Lack of timely conflict resolution:**

Another enforcement challenge bedevilling environmental laws is the unnecessary protraction of cases in courts. Polluting agencies often employ delay tactics to sap the patience and resources of the plaintiff with the hope of eventually making him abandon the suit or at least delay justice. Such act was 2condemned by Justice Morankeji Ohalaja as an abuse of process of court.[90] In the case of *Mr. Jonah Gbemre v.Shell petroleum development co. Ltd*[91], after series of adjournment by the respondent, the court per justice C.V Nwakorie granted the plaintiff's claims and declared that section 3(2) of the Associated Gas Re-injection (continue flaring of gas)

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[89] Suit no W/89/7 Warri High Court 26th November, 1973.

[90] *Nwadiaro v. Shell Petroleum Development Co. Ltd* (1990) 5 NWLR (pt 150) 322

[91] Unreported Suit No.PHC/B/C5/53/05.

regulations to be unconstitutional and ordered the Attorney General to meet with the Federal Executive council (FEC), in order to bring the law in line with present day practice, rules and regulations governing oil and gas activities. The court also order the company to stop flaring gas in the Niger delta as it violates constitutional right to life and dignity. The respondent being dissatisfied with the judgment applied for a stay of the judgment. This application was granted with conditions, still dissatisfied, the respondents appealed to the court of appeal which granted the stay and up till date, the case is still pending in court.

In *Umudjev*. *Shell BP Nig. limited*[92]the plaintiff respondents claimed damages from the defendants/appellants for the escape of oil waste, which the respondents alleged caused damage to their ponds, lakes and farm land. The Supreme Court held that the appellants were liable under the rule. For instance in *Shell Petroleum Dev. Co. v. Chief Otoko*[93] the court held that where the proximate cause of damage by oil spill is the malicious act of a third person against which precautions would have been taken, the defendant is not liable in the absence of a finding that he instigated it or ought to have been foreseen and provided against.

Another challenge of this kind of remedy is that a defendant may further predicate the failure to keep the oil from reaching the place where it had caused damage on the fact that the host community where the spill occurred, for instance prevented speedy clean-up operation by reason of hostilities.[94]

**TRESPASS:**

A victim of pollution can sue in trespass if he is the owner or he is in rightful possession of the land trespassed upon. Trespass arises when there is unjustifiable intrusion by one person upon the land in the possession of oil pollution is a good example of environmental

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[92] (1975) 9-11 S.C 115.

[93] Ibid.

[94] This is a common defence that most Multinational Oil Companies use where it is obvious that they had the resources to mount speedy clean-up operations but failed to do so.

trespass. In *South Port Corporation v. Esso Petroleum*,[95] the Court found the defendants liable in trespass when oil from the defendant's tanker polluted plaintiff's shore. Trespass to land is actionable perse; thus, a person can commence an action without having suffered any particular damage.[96] This is a characteristic shared with strict liability. In *Martin v. Reynolds Metal Co.*[97], the plaintiff land owner argued that fluoride particles which emitted from the defendant's plant and settled on the plaintiff's land constituted trespass. The defendants contended that because the fluoride particles were invisible, there could be no direct invasion. The court stated that although one cannot see an atom with the naked eye, "even the uneducated knows the great and awful force contained in the atom and what it can do to property if released", the court thus held that the intrusion of the invisible fluoride particle constituted trespass.

***The Rule in Rylands v. Fletcher:***

The rule is one of strict liability and one chief instance in which a man act at his peril and he is responsible for accidental harm independently of the existence of either wrongful intent or negligence. The rule was originally formulated by Blackburn J. in the Court of Exchequer and was further affirmed by the House of Lords in the following terms.

> we think that the rule of law is that the person who brings on his land collects and keep there, anything likely to do mischief if it escapes, must keep it at his peril and if he does not do so, he is prima facie answerable for all the damages which is the natural consequence of the escape[98].

A plaintiff who relies on the rule must prove that there was a non natural use of land by the defendant. He must also prove that there

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[95] (1956) AC 218.
[96] *Elioochin (Nigeria) Ltd &Ors*. *v*. *Mbadiwe* (1986) 1 SC 99 at 134.
[97] Cited in O. Fagbohun supra note 22.
[98] (1868) L R 3 HL.330-340.

was escape of materials or objects from the defendant's land to his property. This rule saves the plaintiff the burden of proof and has been successfully invoked in environmental pollution cases affecting the oil industry. In *Umudjev. Shell BP Nig. limited*[99]the plaintiff respondents claimed damages from the defendants/appellants for the escape of oil waste, which the respondents alleged caused damage to their ponds, lakes and far land. The Supreme Court held that the appellants were liable under the rule.

The rule does not completely help victims of environmental pollution, because defendant could raise defences such as "act of God, act or default of plaintiff, consent of plaintiff, statutory authority and thereby plaintiff's claim as was the case in *Ikpede v. Shell BP Development Company of Nigeria Limited*[100]where the court held for the defendant, that the laying of pipeline was done in pursuance to a licence issued under the Oil Pipeline Act thereby leaving the plaintiff with no compensation for damage to plaintiff's fish swamp by crude oil leakage from defendant's pipelines. It is apparent from the analysis so far that however attractive the torts of negligence, nuisance trespass and the rule in *Rylands v. Flecher* appears, the remedies provided by these torts are available essentially to a private individual claiming damages for infringement of his private right. Consequently, they are inadequate as theories of liability for public wrongs where the plaintiff is a "non aggrieved person"[101] and as such ineffective and a problem as a measure for pollution abatement.

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[99] (1975) 9-11 S.C 172.

[100] (1975) All NLR, 61.

[101] Bowen O. A. 'The Role of Private Citizens in the Enforcement of Environmental Laws' in *Environmental Laws in Nigeria Including Compensation*, Omotola J. A. (ed.) ( Lagos: Faculty of Law UNILAG, 1990) 159

**Conclusion**

The fact that Nigeria has more than enough laws to protect its environment from environmental infractions is not in doubt. What seems to be in doubt is whether Nigeria has been able to effectively protect the environment through due enforcement of the existing laws and policies. The different Laws and policies have not been able to effectively protect the environment. One may safely conclude that with the notable and conscious efforts presently being made by all law enforcement Agencies such as The Nigerian Police, The Nigerian Custom Officers, Federal Ministry of Environment, States Enforcement Authorities and their innovative approaches to combating environmental issues, more positive results which will make hitherto important laws and policies become truly viable tools for protection of the environment, may be expected in the nearest future.