

**THE NATIONAL ENVIRONMENTAL STANDARDS REGULATION ENFORCEMENT ACT
2007: HICCUPS AGAINST EFFECTIVE ENVIRONMENTAL PROTECTION IN NIGERIA**

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Abstract

The post independent period in Nigeria has witnessed gradual growth in the nation's economy through industrialization made possible from mineral resources, exploration and exploitation. The above economic development, no doubt has left its own toll on the environment, with the environment suffering one form of degradation or the other. Therefore, there is need to put some mechanisms in place to address the various abuses that the environment is facing. The Federal Government of Nigeria has no doubt taken a number of steps to address these obvious environmental problems in the country. Concerted efforts in this regard date back to the year 1988 following the unfortunate incident of the dumping of toxic hazardous wastes at Koko Port in the Delta area of Nigeria. This incident led to the establishment of the Federal Environmental Protection Agency (FEPA) through Decree No. 58 of 1988 as amended by Decree 59 of 1992. This Act however was repealed by the National Environmental Standards and Regulation Enforcement Agency (Establishment) Act (NESREA), the Act under Consideration. This paper X-rayed by way of Literature review with specific focus on the Act, the hiccups militating against the effective protection of the environment and discovered among others that non-enforcement of the provisions of the Act by the environmental agencies is a thorn in the flesh of the Act. It is recommended that environmental stakeholders should go back to the drawing board so as to ascertain the reasons for non enforcement of the provision v of the Act..

Key Words: Nesrea, Environment, Protection

Introduction

In the beginning the earth was without shape and form, the earth, our environment was without any form of abuse and degradation. However, it is sad that since God introduced man into the environment, the environment has lately known no peace. At the initial stage, man's relationship with his environment was that of mutual respect and dependence, however, with man's insatiable quest for technological advancement, man has breached the tacit agreement of trust reached with his environment. Man has continued to lord it over the environment to his own detriment.

The issue of environmental protection is a global one and many nations including Nigeria have preoccupied themselves with evolving best practices for protection of the environmental problem such as global warming, natural ecological problems, acid rain, desertification, industrial pollution and waste management.¹ To express its commitment to environmental protection, Nigeria came up with national environmental policy that will ensure sustainable development based on proper management of the environment. This policy calls for positive and

¹ C-A Omaka, "Environmental Regulation in Nigeria." Lions Unique Concepts, Lagos, 2010, p. v.

realistic planning that balances human needs against the carrying capacity of the environment. This policy is to ensure that: a Environmental concerns are integrated into major economic decision- making process; b Environmental remediation costs are built into major development projects; c Economic instruments are employed in the management of natural resources; d Environmentally friendly technologies are applied; e Environmental monitoring and auditing of existing major development projects are routinely carried out.

The importance of effective environmental protection policies backed up by appropriate statutes can never be or emphasized in any nation. The reason for this, is that every citizen of Nigeria is entitled to a clean environment. This entitlement includes the right to pure and unpolluted air, un-degraded land and right to water that is free from all forms of waste.² The need to put in place a legal structure was identified by the Federal Government in 1988 following the unfortunate Koko incident. Prior to that, environmental matters were handled by the Environmental Planning and Protection Division (EPPD) within the Ministry of Works and Housing in 1985. The Ministry works and Housing made a draft decree for the deliberation of General Ibrahim Babangida's Armed Forces Ruling Council (AFRC). However, the draft decree was never presented by the Federal ministry of Justice to the AFRC. Power tussle between EPPD NNPC, and Federal Ministry of Petroleum Resources further delayed the presentation of the draft decree to the AFRC.³ However it was at the international Conference on petroleum and the Nigeria Environment held in Owerri. I mo state in 1987, that the Conference delegates requested the National Institute for Policy and Strategic Studies (NIPSS),⁴ Kuru to assist in enhancing the speedy promulgation of the (FEPA) decree. After the Successful deliberations of the "warring factions" made possible by the director-general of the National Institute. Major General Charles Ndiomu (Rtd) in march, 1988. FEPA was established as Decree No. 58 of 1988 with effect from December 30. 1988/ As has been stated before, this decree has been repealed by the NESERA Act under consideration.

Meaning of Environment and Environmental Protection In the most general sense environment refers to our surroundings. ⁵It should be understood not just to mean only land, air and water, but also the built, local and international environment and the condition of the local neighborhood. The environment to some, means something more specific and refers to the conservation of natural habitats and ecology.⁶ "To some still." the environment is the place of human, plant and animal existence. It is where we live and develop. This includes the air, land, water, vegetation, our surroundings, and the entire ecosystem.

² C.I.N.Emelie, "Environmental Law and Practice in Nigeria". Rhyce Kerex Publishers, Enugu, 2016, p.2-3.

³ E.Arene, "An Assessment of Policies and Strategies for a healthier Environment in Nigeria" A mimeograph of the Nigeria Institute of Policy and Strategic Studies (NIPSS), 1991, p. 195.

⁴ C.O.Omaka, *ibid*

⁵ Susan Wolf et al, *Principles of Environmental Law: 3rd (Ed)*, Cavendish publishing Ltd, London, 2002,5

⁶ L.M. Ibeh "Problems of Environmental Pollution Victims in Their Quest for Compensation in Nigerian oil industry" in Nigerian Environmental Law Reviewop.cit 54.

Environment according to Hornby⁷ means, "the national condition (air, land and water) in which we live". It is a synonym for the "surrounding". Black's Law Dictionary on its part, defines the environment as "the totality of physical, economic, cultural, aesthetic and social circumstance and factors which surround and affect the desirability and value of property, and which also affect the quality of people's lives""

The principal legislation on Environmental protection in the United Kingdom(The Environmental Protection Act 1990) under section 1(2) of its provisions contains the following definition of the environment. "The environment consists of all, or any of the following media namely, the air, water and land, the medium of air includes the air within buildings and the air within other natural or man-made structures above or below ground." ⁸ Coming back home. The National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007, defines environment to "include water, air, land and all plants and human beings or animals living therein and the inter-relationships which exist among these or any of the"⁹ The word has also been judicially defined by the supreme court of Nigeria in the popular case of **Alton cy- General of Lagos State v The Attorney General of the federation & Others**¹⁰ as follows, "Environment connotes the natural conditions, for example, Land, air, and water, in which people, animals and plants live" From these different definitions of the Environment, it is clear that a broad perception of the environment is generally accepted than the narrow view expressed by a learned professor¹¹ who views the environment simply as a "product or creature of Nature" and nothing more.

Protection:

The need for the protection of the environment dates back to the pre-colonial days, as the indigenous people in ancient time had adopted some methods aimed at environmental protection, practices like crop rotation and the bush fallow rotational system of farm lands were all efforts directed at environmental protection albeit from a very crude point of view.¹²

protection has been defined as the action of protecting or condition of being protected; shelter, refuge, cover, safety or care.¹³ For Geddes and Grosset, protection is the act of protecting, the condition of being protected, something that protects; shelter; defense; patronage¹⁴ From the above definitions, it is save to conclude that protection is nothing else than the act of honest guard and guide.

Environmental protection:

Environmental protection is therefore the act of giving maximum protection to the "environment" for the benefit enacted of both the present and future generation. There is no doubt, that we are now more aware of the dangers posed on our environment by our activities and therefore must seek better ways of protecting the said environment. The protection to the

⁷ A.S Hornby, Oxford Advanced Learner's Dictionary of Current English. (7th edition) Oxford University Press, Oxford 1993,403

⁸ H.C Black, BrayanA. Garner (ed.)7thed, Black's Law Dictionary, Thormson west group America, 1999, p.479

⁹ United Kingdom Environmental Protection act (EPA) 1990

¹⁰ (2003) 6.S.C(PT. 1)24

¹¹ A. Uchegbu, "The Legal Regulation of Environmental Protection in Nigeria" JAPPLP, Vol.8 & 9, 1937 & 1988, 58

¹² Iklinde Ehiguelua. Environmental Protection Law, New Pages Law Publishing, Warri, 2007,3

environment is likewise a vital part of contemporary human rights doctrine. For it is a *sine qua non* for numerous human rights such as the right to health and the right to life itself. Also, it has been recognized that development cannot be pursued to such a point as to result in substantial damage to the environment within which it is to occur. Therefore, there is general agreement that development can only be prosecuted in harmony with the reasonable demands of environmental protection.¹⁵

Environmental Protection Regimes Available in Nigeria: The available environmental protection regimes under the Nigerian Jurisprudence are namely, the legal and institutional framework. These regimes are made up of the status and the core institutions set up under the statutes and empowered there under to apply those statutes for the purpose of achieving the aim and objectives for which the legislations are enacted.¹³ Put together, both constitute the environmental protection policy framework. This means that legislative provisions are mere declarations of policy, attitudes and intentions because the actual execution of such provisions depends on the human institutions established for that purpose.¹⁷ Consequently, the success or otherwise of a legislation in achieving its purpose depends to a very large extent on the effectiveness of the institutional or the administrative framework set up by it or available to it. The world over, it is the statutory responsibility of the government to protect its citizen from unsafe environment. From 1988, Nigeria had paid much laudable attention to the issue of environmental protection by bringing into existence a number of statutory bodies and agencies. Most of these organizations have their roles complementary and interwoven. The major broad based and all encompassing body is the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, which is the focus of this discourse.

Establishment of the Agency and Composition of the Council:

The Agency established under this Act¹⁵ is to be the enforcement Agency for environmental standards, regulations, rules, laws, policies and guideline, is a body corporate with perpetual succession and a common seal: and may sue and be sued in its corporate name.¹⁴ The Agency has the responsibility for the protection and development of the environment, biodiversity conservation and sustainable development of Nigeria's natural resources in general and environmental technology, including coordination and liaison with relevant stakeholders within and outside Nigeria on matters of enforcement of environmental standards, regulations, rules, laws, policies and guidelines¹⁵ The chairman of the governing council, is appointed by the president on the recommendation of the Minister, other members includes the permanent secretary of the Federal Ministry of Environment or his representative, a representative each, not below the rank of Director from the Federal Ministry of Solid Minerals Development, Federal Ministry of Agriculture and Natural Resources, Federal Ministry of water Resources, Federal Ministry of Science and Technology, Representative of the Standards Organization of Nigeria, Representative of the manufacturers¹⁶ Association of Nigeria, Representative of the Oil Exploration and Production Companies in Nigeria. The Director-General of the Agency and three other persons to represent public interest, to be appointed by the minister of environment.¹⁷

¹³ Main Robinson (ed) " Chambers 21 " Century Dictionary", Allied publisher London, 2003, p.440.

¹⁴ New English Dictionary and Thesaurus, (New edition), Geddes and Grosset (Eds.) 2000,474.

¹⁵ Reuben T. Okonkwo, The Law of Environmental Liability. Afrique Environmental Development and Education centre, Lagos, 2003,266.

¹⁶ N.J. Obumneme- okafor, " The Consumer Protection Council Act: Hiccups Against Effective

¹⁷ Protection in Nigeria" ESUTLaw Journal.vol 1, No 1 Enugu,2011.

Tenure, Cessation and Emolument of the Governing Council

With the exception of Director-General, membership of the council shall be on part- time basis. The members of the council shall be paid such allowances as provided under existing regulations on such payments. A member of the council appointed, otherwise than by office and the Director-General, shall hold office for a term of four years and shall be eligible for re - appointment for only one further term of four years. The office of a member of the council shall become vacant if he resigns as a member of the council by notice in writing under his hand addressed to the Minister or the minister, subject to the approval of the president, if satisfied that it is not in the interest of the Agency for the person appointed to continue in office and notifies the member in writing to that effect." Also, if it appears to the council that a member of the council, other than ex-officio member or the director-general, shall be removed from office on the grounds of misconduct or inability to perform the functions of his office, the council shall make recommendation to the Minister. The Minister after making such enquiries as he considers necessary, approves the recommendation, the minister shall declare the office of such a member vacant. As for the emolument, the chairman and members are to be paid such emoluments, allowance and benefits in accordance with the existing regulations on such payment.

Functions And Powers of the Agency and Council

The functions of the Agency as Spelt out include to: a Enforce compliance with laws, guidelines, policies and standards on environmental matters. b Coordinate and liaise with stakeholders within and outside Nigeria, on matters of environmental standards, regulations and enforcement; c Enforce compliance with the provisions of international agreements, protocols, conventions and treaties on the environment, including climate change, biodiversity, conservation, decertification, forestry, oil and gas. chemicals. hazardous wastes, ozone depletion, marine and wild life. pollution, sanitation and such other environmental agreements as may from time to time come into force; d Enforce Compliance with policies, standards, legislations and guidelines on water quality, environmental health and sanitation, including pollution abatement; e Enforce compliance with guidelines and legislation on sustainable management of the eco-system, biodiversity conservation and the development of Nigeria's natural resources; f Enforce Compliance with any legislation on sound chemical management, safe use of pesticides and disposal of spent packages thereof; g Enforce Compliance with regulations on the importation, exportation, production, distribution, storage, sale. use. Handling and disposal of hazardous chemicals and waste other than in oil and gas; h Enforce through compliance monitoring the environmental regulations and standards on noise, air. land, seas, oceans and other water bodies other than in the oil and gas sector; i Ensure that environmental projects funded by donor organizations and external support agencies adhere to regulations in Environmental safety and protection; j Enforce environmental control measures through registration. licensing and permitting systems other than in the oil and gas sector; k Conduct environmental audit and establish data bank on regulatory and enforcement

A oiuwole, "Regulation of Occupational Safety. Healthand Environments Nigeria. NIALS. Lagos, 1991 p.18.
Sectionl (2)
Section 1 (a) (b) (c)
Section 2

mechanisms of environmental standards other than in the oil and gas sector; 1 Create public awareness and provide environmental education on sustainable environmental management, promote private sector compliance with environmental regulations other than in the oil and gas sector and public general scientific or other data resulting from the performance of its functions; m Carry out such activities as are necessary or expedient for the performance of its functions.¹⁸

By the provision of Section 8, the Agency among other has the following powers; (a) Prohibit processes and use of equipment or technology that¹⁹ undermine environmental quality; (b) Conduct field follow-up compliance with set standards and take procedures prescribed by law against any violator:

(c) To collaborate with relevant judicial authorities to establish mobile courts to expeditiously dispense cases of violation of environmental regulations;

(d) Conduct public investigations on pollution and the degradation of natural resources, except investigation and oil spillage;

(e) Submit for the approval of the minister, proposals for the evolution and review of existing guidelines, regulations and standards on environment other than in the oil and gas sector, including -atmospheric protection, air quality, ozone depleting substance, noise control, effluent, limitations, water quality, waste management and environmental sanitation, erosion and flood control, coastal zone management, dams and reservoirs, watershed, deforestation and bush burning, other forms of pollution and sanitation, and control of hazardous substances and removal control methods;

(f) Develop environmental monitoring networks, compile and synthesize environmental data from all sectors other than in the oil and gas sector at national and international levels;

(g) Undertake, coordinate, utilize and promote the expansion of research experiments, surveys and studies by public or private agencies, institutions and organizations concerning causes, effects, extent, prevention, reduction and elimination of pollution and such other matters related to environmental protection and natural resources conservation other than in the oil and gas sector as the Agency may from time to time determine;

(h) Enter into agreement and contracts with public or private organizations and individuals to develop, utilize, coordinate and share environmental monitoring programmes, research effects, and basic data on chemical, physical and biological effects of various activities on the environment and other environmental related activities, other than in the oil and gas sector.

(i) In collaboration with other relevant agencies and with the approval of the minister, establish programmes for setting standards and regulations for the prevention, reduction and elimination of pollution and other forms of environmental degradation in the nation's air, land, oceans, seas and other water bodies and for restoration and enhancement of the nation's environment and natural resources;

(j) Collect and make available through publications and other appropriate means and in cooperation with public or private organization, basic scientific data and other information pertaining to environmental standards.

¹⁸ Section 3 (a) (b) (c) (d)(e)

¹⁹ Section 5(1) (a) (b)

Structure and Staff

The directorates of the Agency are that of administrative and finance, planning and policy Analysis, inspection and enforcement. Environmental quality control and legal services, which shall also function as the legal adviser to the Agency. The Agency also shall have zonal offices in the six geopolitical zones of the country.²⁰ The director-general as the chief executive, is also the chief accounting officer, and is responsible for the day to day running of the organization, must be a person with a minimum of 15 years postgraduate experience in environmental management or related discipline. He holds office for a period of 4 years on such terms and conditions as may be specified in his letter of appointment and be eligible for re- appointment for another period of 4 years and no more. This provision is laudable as it ensures that nobody holds on to the position as his exclusive preserve.²¹ To enable the agency function effectively, it provides that the agency from time to time. shall appoint such other persons as members of staff as it deem necessary. The director- general is to appoint a staff in the junior cadre, while appointment of a staff In senior cadre shall be made with the ratification and approval of the council. The promotion of staff in the junior cadre is recommended by the junior staff committee to the director-general for ratification -and approval, while that of the senior staff is by recommendation from the senior staff committee to the council for ratification and approval.

How The Agency Operates

By section 25(1) of the Act, the agency may make regulations for the purpose of protecting health and promotion of sound environmental sanitation. Violation of the provisions of the regulations, amounts to an offence and punishment under the penalties imposed in the regulation.²² An officer in the course of his duty has right at any reasonable time and on production of his certificate of designation, if so required, enter and search with a warrant issued by a court, any premises including land, vehicle, tent, vessel, floating craft except maritime tankers, barges or floating production, storages, offload (FPSO) and oil and gas facilities or any inland water and other structures, at all times, for the purpose of conducting, inspection, searching and taking samples for analysis which he reasonably believe, carries out activities or stored goods which contravene environmental standards or legislations. The officer can also examine any book, document or other record, seize and detain, obtain an order of court to suspend activities, seal and close down premises including land, vehicle, lent, vessel ,etc. all in respect of any acnity reasonably believed to be detrimental to the environment." I lowever. the official is expected to give a written receipt in respect of the article seized. By section 30 (5) the expression "'article" refers to the following: a Liquid. Soil. Vegetation;

- b Biological and chemical samples:
- c particular filters. Air quality gauges:
- d such other articles or samples *as* may be determined by the Agency.

Offences, Penalties and Legal Proceedings

A person who obstructs an officer of the Agency in the performance of his duties commits an offence liable on conviction to a line of not less than #200.000 for an individual or to imprisonment for a term not exceeding one year or to both such line of #20.000 for each day the

²⁰ Sections 7 of the Act

²¹ 24, Section 10 (3) (5)

²² 25, Section 11 (a) (b) (c) (d)

offence subsists and in the case of a body corporate, it shall be liable for a fine of #2,000,000. On conviction and an additional fine of #200,000 for every day the offence subsists. In the case of legal proceedings, a suit shall not be commenced against the Agency before the expiration of the period of limitation. The notice to commence the suit shall have been served on the agency by the intending plaintiff or his agent and the notice shall clearly state the: a Cause of Action:

- b particulars of Claim:
- c Name and place of abode of the intending plaintiff
- e Relief which he Claims²³

This must be served by delivering the same to the office of the director-general and addressed to the director-general at the head office of the Agency. Failure to strictly comply will make the suit bad or pre-mature. The effect of section 32 (1) which provides for limitation on cause of action is maintained after the prescribed period. In the case of *Katsina*

Local Authority v. Makudawa,²⁴ Coker JSC (as he then was) in interpreting section 116 (1) (2) of the Local Authority Law, 1977, Laws of Northern Nigeria, which is equivalent to section 32 of the NESREA Act 2007, states as follows:

This section is no more than a rewording of some of the provisions of section 2 of the Public Officers' Protection Law (CAP 11), the sole aim of which is the protection of public officers in the execution of their official duties so that if a public officer is made a party in a proceeding involving another person who is not a public officer, such other person would not be entitled to the protection of the statute.

The aim of the section is not only to protect the officers of the Agency by restricting the period during which they may be answerable for their deeds or misdeeds, but also to have their memory alive, to the true facts of the case, not when their memory must have gone blank as a result of long time frame.

The Constraints of the Agency under the Act

The NESREA Act is fraught with provisions that do not and cannot make good the yearning of the environment with respect to according it protection in the hands of environmental abusers.²⁵ So the environment faces continuous degradation in spite of the existence of an Agency created with the purpose of ensuring its protection. These provisions are the impediments and hindrances which we intend to examine below:

Appointment of Three Persons to Represent Public Interest By the Minister

In the establishment and composition of the council, three persons are to be appointed by the Minister of Environment.²⁵ Looking at this provision, some questions obviously come to mind. Firstly, how can just three persons represent the public interest in a nation with six geopolitical zones, 36 states, a federal capital territory and seven hundred and seventy-four (774) local government areas and six Areas Councils at the federal capital territory²⁶. Secondly, who are these three persons and from which part of the geopolitical zones will they come from. This piece of provision is very subjective. To make matters worse, there is no approving body for the

²³ Section 25 (2)

²⁴ Section 30 (a) - (g)

²⁵ Section 32(2)

²⁶ Section 32 (4)

appointment exercise, which may probably question the basis for the appointment, the appointment is at the discretion of the minister for environment. The legislation gives leeway for self opinionated decision to appoint without any reasonable consideration.

Poor Criteria for Appointment of Members of Council

The appointing authorities are the president, the minister and the director general respectively. The chairman is appointed by the president on the recommendation of the minister.²⁷ There is no recommending body for the appointment of the ministers and representatives statutorily required to be members of the council. Neither the minister nor the head of such organizations are provided as the recommending authorities²⁸ The president solely appoints the director-General of the Agency, the president or the minister acting alone is perilous and risky and more so, where the qualifying criteria to be employed in the selection of people for the appointment are not known. The Act neither provide for qualification for people appoint able to these positions nor gave the criteria to be followed in the selection for such appointments.²⁹ Also, the provision that a member of the council, other than the chairman shall be appointed by the minister on the recommendation of the body, if any, he represents, at best can be described as vague and ambiguous. Which body , one may ask? And where nobody exists, the minister is the sole person to appoint the member, without any laid down criteria to be followed. This power is bound to be abused, as person without the interest of the environment at heart may be appointed, thereby putting a round peg in a square hole.

Imprecise and Vague Functions

The functions of the Agency under the provisions of the Act, no doubt are vague and uncertain are is found in³⁰ section 7 which state that one of the provisions of International Agreements... in oil and gas. The same Act section 7 (h) provides for enforcement of environmental Standards on the environmental media other than in oil and gas sector. These two sections are contradictory and makes one be in doubt as to the real intent of the legislature that enacted the function, who definitely will not implement it. **Actually Unprotected, but Ostensibly protected** Another worrisome provision, is the exclusion of the Agency in performance of its function and exercising of its powers over the oil and gas sectors.³⁸ One wonders why such important sector would be removed under the control of an Agency acclaimed to be the eye of the nation as far as environmental issues are concerned. Added to this, is the fact that the 38. Section 7 (h) for example, provides that the Agency shall enforce through compliance monitoring, the environmental regulations and standards on noise, air, land, seas, oceans and activities of the oil and gas sector possess the greatest threat to the environment as a whole. The exclusion of the sector is somewhat nebulous and simply points to the fact that the drafters of the Act are in the ocean of contradiction of ideas and probably lack of understanding of what environmental protection and public safety mean. No doubt the provision must have been haunted by the dilemma of the legislators.

²⁷ 1971 NMLR, 100.

²⁸ 31. C.A. Omaka, *ibid*

²⁹ 32. N.J.Obumneme-Okaforibid

³⁰ 33. Section 1(e)

Non Accommodation of Victims of Environmental pollution

The Act is fraught with provisions that do not put into consideration the victims of environmental degradation. The Act cast criminal liability on the violator of the act or regulation which is redressed by the Agency by conducting criminal proceedings in respect of the offences. The affected victims are not empowered in the Act to institute civil action against the offenders of the act for compensation or restitution, unless in tort laws which of course, has its own limitations. The victims of environmental degradation should not be allowed to go without compensation. 'this is a serious over-sight on the part of our legislators. There is no exhibition of hindsight regarding the position of the victims in enacting these laws. The Act provides for the payment of fine to the Government, while the victim who suffered the impact of environmental degradation goes empty-handed, an anomaly that needs to be revisited and straightened out. for even in the face of a conviction for an offence under the Act. the victim should have the backing of the Act to proceed to court against the offender for civil action for compensation. What is more, the court should also be able to make an order requiring the victim to be paid compensation for damage suffered.³¹

Non Inclusion of Law Enforcement Agency in the Membership

The Act also did not provide in the membership of either the Governing council, in the structure or anywhere in the section the appointment of any law enforcement agency preferably the police force as the services of this body are of utmost importance, considering the nature of the function^{4"} which the agency performs. Most of such functions can definitely not be possible of performance without the participation and/or presence of the Police Force. A closer look at the miscellaneous provisions which deal with the powers of the agency to enter premises, leaves one in no doubt as the need for the presence of the police in running the affairs of the agency. The sudden inclusion of "any police officer not below the rank of Inspector of police or any custom officer' in section be explained, thus the said section needs to be revisited, to ensure the proper place of the law enforcement personnel so mentioned in the structure of the Agency.

Absence of a Comprehensive legislation

The fact remains that laws on environment protection are scattered throughout our statute books, as the laws, so also are environmental protection institutions. The reason for this obvious fact is because the said laws and institutions are made and created as ad-hoc responses to different needs in diverse situations/' Some of these laws include the Petroleum Act, the Oil pipelines Act. Oil in Navigable Waters Act. Associated Gas Re-Injection. Oil Terminal Dues Act among others. The environmental protection institutions for example are the National Environmental Standards and Regulatory Enforcement Agency (**NESREA**) and the National Oil Spill Detection Response Agency (**NOSDRA**). A coordinated institutional and legislative framework is essential for effective environmental protection. This is because the absence of such system brings about an ineffective implementation of such laws and functioning of the Agencies. This will in turn defeat the aims and objectives of the legislature and government policies, administrative capacity to analyze and implement. A coordinated environmental protection framework is needed for effective analysis and functional implementation of environmental policy. A strong constituency is crucial for serious environmental protection. There is, therefore, the need to close the gaps that

³¹ Section 3(1) (a)

exist in the environmental institutions and the laws. The institutions as well as the one thousand and one laws should be harmonized for effective environmental protection. The Government should not just be able to make policies on environmental protection, they should also be able to articulate, coordinate the institutions and the laws into a more formidable, articulate and result-oriented force.

The Environmental Protection institutions should not and do not spring up overnight. They ought to evolve slowly over time, adapting and adjusting in response to the pressure of events and the lessons of experience. On the other hand, environmental problems, at least, in the complex way we conceive of them today, are relatively new. There is, therefore, an almost universal link between existing institutional structures and their ability to adjust to the demands of environmental problems.³² **Cumbersome Legal Proceeding:** To commence legal proceeding against the Agency, a written notice of intention commence the suit shall have been served on the Agency by the intending plaintiff or his agent, and the said notice is said to have been served when same is delivered to the office of the director-general at the head of the Agency." The procedure is cumbersome and time consuming on the part of a victim of environmental pollution whose environment has been polluted and needs redress within the earliest possible time. The process is wearisome, where for instance, the pollution, occurred in River state, and in remote village, the poor peasant farmer or fisherman will find it difficult, if not impossible to bear the burden of having to have his claim sent across to the office of the director-general, not to talk of having the case prosecuted.³³

Inelegant Provision in The Act

The gospel truth that our legislators do not read and re-read these laws to ensure the elimination of noticeable flaws and mistakes and retouch them properly. For instance typographical errors." omissions" and misplacement of the sections attend the provisions." Consequently, there is the need for re-visiting, retouching and amendments of the act by the legislature.

The Way Forward

From the above discussions, it is obvious that the major legislation for environmental protection is fraught with much imperfection that requires some re-touching or statutory amendment..

Effective Implementation of the Provisions

Environmental protection in Nigeria like in other developing Countries has often been described as rule- oriented and poorly implemented and enforced. Most problems result from difficulties in setting up control and enforcement mechanisms and even of translating statutory provisions into practical regulations. In other cases, the difficulties are more structural than functional. In addition, effective implementation of environmental law requires promulgation of appropriate regulations, designation of appropriate executing agencies, recruitment and training of personnel, provision of material means and equipment, assignment of appropriate budgets, and effective operation and management. Without these measures, implementation of legislation will remain ineffective and polluters will continue to be able to act with impunity. The legislative process

³² F.Shyllon,op.cit90

³³ In our Hand", paper presented by the United Nations Development Programme Department of the Earth summit, Paper No.45,1992, 31

will amount to a waste of time and resources, if the agents of enforcement of such law lack the capacity and the will to implement such legislations. According to a learned writer.³⁴ the greatest obstacle to the problem of environmental protection through our laws is that of implementation of the laws.

Taking Away Environmental pollution offence from the Agency: By the provision of the Act, the enforcement of these regulations appears to be under the monopoly of the environmental protection control authorities or public officers.

However, these environmental authorities or agencies sometimes either do not have the financial capability, manpower resources or the "will" or zeal to push and ensure effective enforcement of the environmental protection control regulations. Where the above situation is the position, it is only proper, that, legal persons (such as individuals and companies) and even pressure groups should be allowed or permitted to prosecute and assist in the enforcement of environmental protection regulations. For example, this modern approach of enhancing effective environmental protection regulations is provided for in the European Community Environmental Protection Act of 1990. This provision enables citizens to bring their own prosecution against those who commit offences against the environment. Regrettably, one is yet to see such provision even in the most recent NESERA Act which is the principal Environmental protection Regulation in the country.

Need to Amend the Existing Act

The call is for a review of the provision especially as it relates to non control of the Act on the oil and Gas-sector³⁵For as it stands now, the act cannot effectively ensure environmental protection. This is because the oil and gas sector are the major source of environmental pollution in Nigeria. That the activities of the multinationals have led to the pollution or degradation of the environment of especially the Niger-delta area is no longer news, every Tom, Dick and Harry now knows about the environmental situation in that area. The exclusion of the sector is somewhat nebulous and simply points to the fact that the drafters of the act are in the ocean of contradiction of ideas and probably lack of understanding of what environmental protection and public safety means. No doubt the provision must have been hunted by the dilemma of the legislators.

Enlarging the Number of Persons to Represent the Public Interest

The representation of the public interest by just three persons solely appointed by the Minister of Environment looms larger than life over the management of the affairs of the victims of environmental pollution and degradation. When considered, the harmful effect of environmental abuses suffered by the victims, one should appreciate the delicate balance on which the fate of the public affected by environmental degradation is hanging and the need for a review of the provision of the section under consideration. It is suggested that the various State Commissioners of Environment be allowed to represent their States in the composition of the Governing Council of the Agency.

³⁴ Section 32(1) (2) (a) (b)

³⁵ Section 31 of the Act

Ensuring Compensation for Victims of Environmental Pollution

The Act casts criminal liability on the violator of the act or regulation which is redressed by the Agency by conducting criminal proceedings in respect of the offences." The affected victims are not empowered in the Act to institute civil action against the offenders of the act for compensation or restitution, unless in tort laws which of course, has its own limitations. The victims of environmental degradation should not be allowed to go without compensation. This is a serious oversight on the part of our legislators. There is no exhibition of hindsight regarding the position of the victims in enacting these laws. The Act provides for the payment of fine to the Government, while the victim who suffered the impact of environmental degradation goes empty-handed, an anomaly that needs to be revisited and straightened out, for even in the face of a conviction for an offence under the act. the victim should have the backing of the act to proceed to court against the offender for civil action for compensation, what is more, the court should also be able to make an order requiring the victim to be paid compensation for damages suffered. Couching our laws with criminal undertone is of no positive consequence on the environmental victim neither does it provide the desired deterrence on the manufacturer because most times, except in very insignificant few cases, the fines imposed are so meager and laughable that they achieve nothing after all.

Statutory Assignment of Law Enforcement Agents to the Agency

The Act also did not provide in the membership of either the Governing council, in the structure or anywhere in the section the appointment of any law enforcement agency preferably the police force as the services of this body are of utmost importance considering the nature of the function" which the agency performs. Most of such functions can definitely not be possible of performance without the participation and/or presence of the Police Force. A closer look at the miscellaneous provisions which deal with the powers of the agency to enter premises, leaves one in no doubt as the need for the presence of the police in running the affairs of the agency. The sudden inclusion of "any police officer not below the rank of Inspector of police or any custom officer" in section 37 of the act. cannot be explained, this the said section needs to be revisited to ensure the proper place of the law enforcement personnel so mentioned in the structure of the Agency.

Establishment of Environmental Claims Court by the Act

A honest consideration of the place of environmental protection in the country, will support this fact that the existing Environmental court is a mockery to the notion of environmental protection. These courts are said to be mobile, one doubts the ability of such Courts to properly and adequately address the environmental matters brought before it. Also, the fact that the Court is presided over by a magistrate, leaves much to be desired, from an interview with Mr. Keh'in Okafor, an environmental officer with the Anambra State Environmental Protection Agency, he maintained that the court is used for minor environmental offences like: not obeying the stay at home to clean your environment order, illegal dumping of refuse and not cleaning ones' immediate environment among others. With respect, none of the above mentioned 'offence'¹ is minor. Environmental degradation from whatever angle one wants to look at it from, is a serious issue and cannot be treated with kid's gloves.³⁶ Also, the problems of jurisdictions and delay to

³⁶ Section 30 of the Act

mention, but a few associated with pursuing environmental claims in the regular courts has also necessitated the quest for the reform or better still establishment of Environmental Court.

This court should undoubtedly be for the handling of Environmental protection claims. This court of course should have legislative back up like every other court with unlimited jurisdiction in matters of and relating to environmental protection. The environmental Court should be presided over by at least three (3) judges and should maintain the status of a Court of Appeal, so that appeals from the decisions by the Court will go to the Supreme Court for final determination. This is to encourage swiftness and arrest the negative effects of environmental pollution to both the victim and the environment. The rules of this Court should be such that the proceedings are not haunted by undue adherence to technicalities, which give rise to delay and in some cases serve as an "escape route for environmental polluters. The judges of the Court should be tested and knowledgeable in environmental protection jurisprudence while counsel should also be known and acclaimed expert in environmental laws. Being a court established with environmental protection in mind, the processing fees should be such that victims of environmental pollution can readily have access to the court to pursue their claims. Of importance also is that the court/s should be located as close as possible to the source point of the major environmental pollution operating areas, so that the victims of such environmental degradation can access the court with less difficulties, unlike the ones that are visible in the normal civil court where federal high courts that have jurisdiction to try environmental matters are at times not even present in the state where the environment degradation occurred. With this Court in place, the environmental polluting companies will know that it is no longer business as usual and that both the government, the victims and even the court are set to do business.

The Precise Functions and Powers for the Agency

The enacting of the NESERA Act-,2007 was a major breakthrough for environmental protection in Nigeria. However, the functions and powers of the agency are vague and too wide respectively. The functions should be more direct on the aims and objectives of the Act and made to address the specific target for optimal performance and enforcement. The power of the Agency, for example as provided in section 8 (k) appears to overlap with the function of the ministry of environment power to effectively coordinate and better management of the environment coastal and inland erosion, a forestation, desertification..... and national biodiversity strategy Action plan, forestry, development, municipal waste management among others. Also the ministry in order to effectively discharge the above responsibilities, is represented in all the states of the federation, with liaison offices in the local government. This duplication of function will do more harm than good to the effective protection of the environment.

Conclusion

The place of legislation in environmental protection cannot be made in achieving a protected environment without having in place the do's and don'ts on the environment. We are all part and member of the environment and we are already and would further be affected by the dangerous effects of a polluted environment. Therefore, the hydra headed name of the problems and dangers posed by a weak and porous environmental protection regulations should be urgently addressed. According to Nlerum,³⁷ legislation no matter how well drafted cannot be too

³⁷ F.N, Nlerum, "The challenges of Environmental Protection in Nigeria" Nnamdi Azikwe University Law Faculty of Law, Awka, 2000, p 343

comprehensive as there will always be new discoveries of environmental problems. Thus, these laws should be constantly reviewed, amended and if need be, be totally over-hauled, to ensure effective implementation and in an attempt to meet with the realities of the time.