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A Review Of Some Legal And Institutional Framework Regulating Environmental Governance In Nigeria

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ABSTRACT

Since the 1972 United Nations Conference at Stockholm, in Sweden, the UN has been in a steady and continuous expression of environmental concerns, and steadfast, firm pursuits of global environmental objectives, towards sustainable development and earth survival through the ecosystem preservation, biodiversity conservation and climate change control programmes. Pursuant to this huge and crucial global environmental objective, Nigeria has put in place some legal instruments and regulatory institutions for effective governance, protection, remediation and sustainability of the Nigerian environment. This paper is intended to review some of the legal and institutional frameworks regulating environmental governance in Nigeria.

Keywords: Legal and Institutional Frameworks, Environmental Governance and Nigeria

INTRODUCTION

1.1 Municipal Legal Instruments

1.1.1 Harmful Wastes (Special Criminal Provision, etc) Act[2]

This Act provides that where a crime has been committed by a body corporate and it is proved that it was committed with the consent or connivance of or is attributable to any neglect on the part of (a) a director, manager, secretary or other similar officer of the body corporate; or (b) any other person purporting to act in the capacity of a director, manager, secretary or other similar officer, as well as the body corporate, shall be liable to be proceeded against and punished accordingly.

Sections 1 to 5 list the offences under the Act. The sections state that all activities relating to purchase, sale, importation, transit, transportation, deposit and storage of harmful wastes are hereby prohibited and declared unlawful. Section 6 provides for a punishment of life imprisonment for offenders as well as the forfeiture of land or anything used to commit the offence. Section 7 of the Act makes provision for the punishment accordingly, of anyone conniving, consenting or a negligent officer where the offence is committed by a company. The offence is said to be of strict liability, in that case, no mens rea needs to be proved. However, if the alleged conduct is based on negligence attributable to any of the officials mentioned, a criminal process may only be resorted to if there is sufficient evidence of environmental catastrophes evincing such neglect for human life and property to make them compatible with some form of subjective criminal of mens rea.[3]

In an English case of *Alpbacell v. Woodward*,[4] the House of Lords upheld the conviction of a corporate body convicted under the Rivers (Prevention of Pollution) Act 1951 on the grounds that a conviction could be obtained under the Act irrespective of mens rea. Sections 6,7, and II of the Act provides that any carrier, including aircraft, vehicle, container any other thing whatsoever used in the transportation or importation of the harmful waste, and land on which the harmful waste was deposited or dumped, shall be forfeited to and vested in the Federal Government.

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[2] Cap H1 LFN, 2004.

[3] (1972) 2 ALL ER 475 cited by Akujobi, A.K 'The effectiveness of criminal sanctions under environmental laws in Nigeria' in Law and Petroleum Industry in Nigeria: Current Challenges, (ed.) Festus Emiri and Gowon Deinduomo, Lagos-Nigeria Malthouse Law Books Ltd, 2009 p.352.

[4] Cap. EI2 LFN 2004

1.1.2 Environmental Impact Assessment Act (EIA)[5]

The Environmental Impact Assessment Act was first passed in 1992;[6] the country could claim to have a generally applicable law that mandate prior appraisals of likely environmental impacts of intended projects.[7] The law requires that projects belonging to both public and private sectors must undergo an initial early appraisal in case of resulting harm to the environment.[8]

Environmental Impact Assessment has been subjected to a myriad of definitions, all of which focus on the functional scope of the process. EIA was defined by the ESPOO Convention 1991 as a national procedure for evaluating the likely impact of a proposed activity on the environment. It further defines impact as; "any effect by a proposed activity on the environment,"[9] including human health and safety, flora, fauna, soil, air, water, climate, landscape and historical monuments or other physical structures or the interaction among these factors; it also includes effects on cultural heritage or socio-economic conditions resulting from alterations to those factors.[10]

Cashmore[11] defines it as a decision tool employed to identify and evaluate the probable environmental consequences of certain proposed developmental action in order to facilitate informed decision-making and social environmental management. EIA has also been statutorily defined as an assessment of the environmental effects of a project.[12]

From the foregoing definitions, it is evident that the EIA is;

a. A decision-making tool or process;
b. It identifies and evaluates the impacts of a proposed project on the environment;
c. Its impact could be beneficial or adverse;
d. It is pre-decision-making and
e. It leads to or helps to make an informed decision.

It needs be noted that much as the EIA entails a holistic process to determine the impact of a project on the environment which could be positive or negative, the very essence of the EIA weighs more on identifying and managing negative or adverse effects of proposed projects on the environment. One may therefore attempt a definition of the EIA as tool of sustainable development used to evaluate the impact of a developmental project on the environment in order to determine its beneficial or adverse environmental effect/impact. In sum, the EIA is geared towards the protection and conservation of the environment.

This Act is an assessment of the potential impacts, whether positive or negative, of a proposed project on the natural environment. Section 2 (1) of the Act requires an assessment to have a significant (negative) impact on the environment. Section 2 (4) requires an application in writing to the Agency before embarking on projects for their environmental assessment to determine approval. Section 60 creates a legal liability for the contravention of any provision.[13] Section 62 which defines the liability states that any person who fails to comply with the EIA Act shall be guilty of an offence and conviction. In the case of an individual he shall be liable to N200, 000 fine or five years imprisonment and in the case of a firm or corporation to a fine of not less than N50, 000 and not more than N1, 000,000. Liability under the EIA Act does not require mens rea which means that liability under the Act is strict. The purpose of the Act is to guarantee uniformity and 'control programmes against environmental pollution, and to ensure compliance with sound and efficient environmental of all operators.[14]

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[5] Environmental Law Research Institute (Ltd. Gte) 'Synopsis of Laws and Regulations on the Environment in Nigeria

[6]Environmental Impact Assessment Act (1992) Cap. (E12)

[7]*Ibid*

[8]Olusegun A. Ogunba, E.I.A *System in Nigeria: Evolution Current Practice and Shortcoming,* 24 ENVTL. IMPACT ASSESSMENT REV. 643, 648 (2004):

[9]i.e the convention on Environmental Impact Assessment in a Transboundary Context 1991. The ESPOO Convention is the first multilateral agreement to lay down detailed rules, procedures and practices for transboundary environmental effect assessment, albeit on a regional basis.

[10]The ESPOO Convention Art.1 (vii).

[11]Cashmore M., 'The Role of Science in Environmental Impact Assessment Process and Practice versus purpose in Development Theory' [2004] (24) Environmental Impact Assessment Review 403, 404

[12] 12 Environmental Impact Assessment (EIA) Act Cap E12 Laws of the Federation of Nigeria (LFN) 2004, S. 63(1).

[13]Akujobi, A.IC 'The effectiveness of criminal sanctions under environmental laws in Nigeria' in Law and Petroleum Industry in Nigeria: Current Challenges, (ed.) Festus Emiri and Gowon Deinduomo, Lagos-Nigeria Malthouse Law Books Ltd,2009 p.354.

[14]Akujobi, A.K 'The effectiveness of criminal sanctions under environmental laws in Nigeria' in Law and Petroleum Industry in Nigeria: current challenges, (ed.) Festus Etniri and Gowon Deinduomo, Lagos-Nigeria Malthouse Law Books Ltd, 2009 p.350

1.1.3 Oil in Navigable Waters Act

The intention of the legislature in enacting this legislation was to protect Nigeria's waters from pollution. The legislation was enacted in order to domesticate international conventions on the protection of waters from pollution, which Nigeria accepted in 1968. The areas of water covered by the legislation include Nigeria's water and other international waters within 50 miles land and outside the territorial waters of Nigeria, the whole of the sea areas extending to 50 miles from the nearest land of a) the Pacific Ocean, b) the North Atlantic Ocean, North sea and Baltic sea, c) Mediterranean and Adriatic seas, d) Black sea of Azor, e) Persian Gulf, f) Arabian sea, Bay of Bengal and the Indian sea, and g) Australia.[15]

The Act particularly addresses pollution from Nigerian ships on the high seas or Nigerian Waters through discharge. It imposes penalties and the offences carry strict liability.[16] The Act is to be operated or regulated and enforced by the Ministry of Transport who may appoint inspectors to report to him and for the purpose of enforcement of the Act. The Act provides as follows:

i. The discharge of crude oil, fuel, lubricant oil, heavy diesel oil or any mixture containing not less than 100 parts of oil, etc into prohibited sea areas from a Nigerian ship into territorial waters or shorelines.[17]
ii. Designates prohibited area[18] of the sea and empowers the Minister of Transport to designate by order other areas, outside the prohibited areas of the sea and Nigerian territorial waters, as prohibited areas for the purpose of protecting the coast and territorial waters of Nigeria from pollution by oil,[19] and to vary or exclude any prohibited area as such.[20]
iii. The oil in Navigable Waters 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.[21] If any oil or mixture containing oil is discharged into the sea within the seaward limits of the territorial waters of Nigeria, and all other waters (including Inland water) which are within those limits and are navigable by sea going ships.[22]
iv. The Act makes discharges punishable with a fine of N2,000 (Two Thousand Naira),[23] and it also requires that such oil discharges be recorded.[24]

It is manifestly obvious that the oil in Navigable Water Act is concerned with the territorial waters of Nigeria. Considering the nature of oil pollution, a question that may arise is what of the near sea outside the territorial waters of Nigeria or those oil terminals outside the prohibited sea areas and designated prohibited sea areas; how would such navigable waters be protected from oil pollution? These questions were appropriately addressed by the Oil Terminal Dues Act,[25] which in section 6 makes the provisions of section 3 of the Oil in Navigable Waters Act applicable in any areas within which any oil terminal is situated (even) if it is situated outside the limits of the territorial waters of Nigeria.

Therefore, any discharge, escape, damage or hazard resulting from a pipeline, tank, apparatus or vessel or as a result of any operation for evacuating oil from any such oil terminal is an offence and the owner thereto is guilty of an offence under section 3 of the Oil in Navigable waters Act and is punishable as provided in section 6 thereto.

Thus, oil in Navigable Waters Act is directly applicable to prohibited areas within Nigerian Territorial Waters) and designated prohibited areas (outside Nigerian Territorial Waters); and is directly

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[15] Oil in Navigable Waters Act, Cap 06, LFN 2004, s.1 (2) and (4).
[16] E.I Kachikwu, 'Legal Issues in Oil and Gas Industry' (1989) (2) (9) Business and Property Law; 37
[17] Oil in Navigable Waters Act s.1 (1)
[18] *Ibid,* s. 2(1-2)
[19] *Ibid, s. 2(3)*
[20] *Ibid,* s. 2(4)
[21] *Ibid,* 3(1)
[22] *Ibid,* s. 3(2)(a-b); it appears section 1 applies to only Nigerian ships, whereas section 3 applies to all ships plying Nigeria waters.
[23] *Ibid,* s. 6
[24] *Ibid, s.* 7
[25] Oil Terminal Dues Act, Cap 08 LFN, 2004

applicable through the Oil Terminal Dues Act[26] in any area within which 'Nigerian' terminal is situated even if outside the territorial waters of Nigeria. Thus, the whole field of Navigable Waters in Nigeria is covered between the two laws; the question however lies in the efficiency and effectiveness of the monitoring and enforcement with regard to these laws.

It is important to point out that this Act makes no provisions for bio-remediation and environmental clean-up or funding of such clean-up in both legitimate and illegitimate spillages, whether discharge, escape or leakages. In as much as other legislations on the issues might take care of it, it would have been appropriate to provide that the 'Polluter Pays Principle' shall apply to both legitimate and illegitimate spillages under the Act, to complement the object and effort of NOSDRA.

The legislation prohibits some activities capable of polluting waters with criminal sanctions. The Minister is given quasi-legislative power to make provision against discharge of any type of oil in accordance with any convention in relation to the prevention of pollution of the sea, which has been ratified by the Federal Government.[27] The effectiveness of this legislation in preventing pollution of the sea depends on how anticipatory and assertive the officials responsible for its enforcement are.[28] Section 1 of the Act prohibits the discharge of oil or oil mixture from a Nigerian ship into any part of the prohibited sea area created by the International Convention for the Prevention of Pollution of the Sea by Oil as amended in 1962 and outside the international waters of Nigeria.[29] The Act has a trans-boundary effect in that its objective is two-fold, which is to protect the Nigerian waters and international waters from oil pollution. The Master of the Ship or Occupier has responsibility under Section 3 of the Act to prevent the discharge of cruel oil into Nigerian waters. Sadly, the criminal sanction under the Act is only N2000.00. It is submitted that this sanction may be adequate if it is imposed before pollution occurred. Otherwise, it is makes a mockery of a preventive law to impose such amount when pollution has occurred considering the threat posed by pollution to the eco-system of the people and on the health of the community as well.

1.1.4 Nuclear Safety and Radiation Protection Act

This Act[30] established the Nigerian Nuclear Regulatory Authority (NNRA) in 1995. The function of this body shall include the control and regulation of the use of radioactive substances, material, equipment, emitting and generating ionising radiation.

Nuclear Safety and Radiation Protection Act of 3rd August, 1995[31] established the Nigerian Nuclear Regulatory Authority (NNRA) in 1995. The function of this body shall include the control and regulation of the use of radioactive substances, materials and equipment, emitting and generating ionising radiation. The establishment of a regulatory infrastructure is *sine qua non* towards developing a national nuclear energy programme that will not result in a national calamity. Hence in 1995; the Nuclear Safety and Radiation Protection Act was established the Nigeria Nuclear Regulatory Authority and its Governing Board.

The Nigerian Nuclear Regulatory Authority (hereinafter "Authority") is responsible under the Act among others for nuclear safety and radiological protection regulation and it shall regulate the possession and application of radioactive substances and devices emitting ionizing radiation, ensure the protection of life, health, property and the environment from the harmful effects of ionizing radiation, while allowing beneficial practices involving exposure to ionizing radiation, regulate the safe promotion of nuclear research and development, and the application of nuclear energy for peaceful purposes. The Authority shall perform

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[26] Oil Terminal Dues Act, Cap 08 LFN, 2004

[27] Kola A, 'Legal Control of Pollution Hazards from Petroleum Operators Implications for the Nigerian Oil and Gas,' University of Ghana Law Journal Vol. 2 1975, p. 113 — the learned author argued that since the Act can be invoked before the pollution occurs, it may have preventive potentials. See Akujobi, A.K. 'The effectiveness of criminal sanctions under environmental laws in Nigeria' in Law and Petroleum Industry in Nigeria: Current Challenges, (ed.) Festus Emixi and Gowon Deinduorno, Lagos-Nigeria Malthouse Law Books Ltd. 2009, p.350.

[28]Akujobi, AK. 'The effectiveness of criminal sanctions under environmental laws in Nigeria' in Law and Petroleum industry in Nigeria: current challenges, (ed.) Festus Erniri and (3owon Deinduomo (Moulthhouse law books, Lagos — Nigeria, 2009) p. 350.

[29] Environmental law - Wikepedia, the free encyclopedia - http://en.wikipedia.org/wiki Environmental-law< accessed 24 November, 2021

[30]Nigerian Nuclear Regulatory Authority No.19 of 3rd August, 1995, CAP.N142 LFN, 2004. Available online at <http://lawnigeria.com/LawsoftheFederation/nuclear-safety-and-radiation-protection-act.html accessed 24 November, 2021.

[31]*Ibid*

all necessary functions to enable Nigeria meet its national and international safeguards and safety obligations in the application of nuclear energy and ionizing radiation.[32]

The Act further prohibits the disposal of radioactive waste without lawful permission. Regrettably, under section 1(1) and (2) of the Nuclear Safety and Radiation Act, 1995, it ceases to be a criminal offence to acquire and use radioactive substance and materials, once the lawful permission of the appropriate authority is secured. The implication here is that our country lacks the political will-power to protect our common good, ensure preventive and precautionary measures towards environmental survival and sustainability. This is so because a powerful international oil company and other corporate multinationals can easily secure such permission from the appropriate authority to produce, use or distribute radioactive substance and materials at the risk of our environment and collective common good.

Functions and Powers of the Governing Board

The functions and powers of the Board are different from that of the Authority and they are provided in Sections 5 and 7 of the Act respectively. While the "Authority" of the Nigerian Nuclear Regulatory Authority acts as the substantive administrative organ of the body, the "Board" acts as the regulatory agency. As part of its functions, the Board shall be responsible for managing and superintending the affairs of the Authority, the overall policy and general administration and shall act in its name. As part of its function, the Board will form a go-between or an intermediary to the Authority and the Federal Government, formulate policies and guidelines for regulating nuclear safety and radiological protection and their implementation; work closely with the management of the Authority to ensure a smooth operation of the affairs of the Authority among others.[33]

Apart from Sections 1 to 7 which appear to the most important provisions of the Nuclear Safety and Radiation Protection Act, other Sections include Sections 8 to 48 addressing different regulatory activities of the body. The Director-General and other staff of the Authority appointed by the President will be responsible for the day-to-day administration of the affairs of the Authority and shall hold office for a term of five years in the first instance and may be re-appointed for such further term as the President may determine.[34]

Section 9 deals with the Structure of the Authority which establishes the following departments, Radiological Safety, Nuclear Safety, Physical Security and Safeguards; Administration and Finance and such other departments as may be approved by the Board on the recommendation of the Director-General and to be headed by a Director, which is appointed by the Authority.[35] The Act provides for the establishment of the National Institute of Radiation Protection and Research. Such an Institute is to be established either independently or in collaboration with a university in Nigeria.[36]

Section 15 recognises the need for the restriction on keeping sources of ionizing radiation in premises and it provides that no person shall, keep or use a source of ionizing radiation of any description, on any premise which is used for the purpose of an undertaking carried on by him, unless he is registered under this Act.[37]

Section 18 addressed the Control of Consumer Products and it provides that no person shall produce or market any consumer product containing radioactive substances without licence issued by the Authority. Therefore, the Authority can issue licence to private individuals and corporations regarding the production of and marketing of, radioactive substances as long as it obtained licence from the Authority for that purpose and as long as radioactive substances shall not result in undue radiation exposure to the users or the environment.[38] As a follow up to the Control of Consumer Products, Section 19 makes it mandatory that no source or practice involving

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[32]*Ibid*, Section 4 (1) (a)-(d)

[33]*Ibid*, Section 5(a)-(e). Other Functions of the Board include: deciding on and approving the borrowing power and credit limits of the Authority, approving annual reports and statement of accounts of the Authority, appointing and approving fees for auditors; and carrying out such other activities connected with or incidental to the other functions of the Board. See Section 5(f)-(j).

[34]*Ibid*, Section 8

[35]*Ibid*, Section 9 (1) (a)-(e).

[36]*Ibid*, Section 11

[37]*Ibid*, Section 15(1)(a).

[38]*Ibid*, Section 18(1).

exposure of man to ionizing radiation shall be authorised, except through a system of application, notification, registration or licensing established by the Authority.[39] This is to ensure safety of lives of those persons residing in the vicinity where production and management of nuclear products by licence holders is taking place.

Article 20 further stressed that no body shall carry out iodizing radiation and at the end of his activity abandon, de-commission or rehabilitate installations thereof without a licence issued by the Authority knowing fully the harmful effect of such iodizing substance on human health.[40]

1.1.5 Petroleum Industry Act (PIA)

One of the objectives of this Act[41] is to create efficient and effective regulatory agencies and to protect health, safety and the environment in the course of petroleum operations.[42] Haven identified that; we will look at some sections of the Act that provide for the protection of the environment in the oil and gas industry.

Section 179(3)(c) provides that the licenses in it commercial discovery and development plans ensure to meet adequate health, safety and environmental standards.[43] Paragraph (f) provides for the elimination of routine gas flaring. Section 195(l)(b) provides that licence or lease can be revoked by the Minster on the advice of the inspectorate that operations are not conducted well in a manner or in accordance with good oil field practice. This can amount to a revocation where licensee or lease fails to implement their environmental management plan in accordance with good oil field practice.[44]

Section 198(1) provides for operators not to cause injury or destroy any tree or object which is of commercial value; or object of veneration of people, resident within the prospecting area. Sub-section (2) provides that in case of any damage, the operators will be liable to pay fair and adequate compensation. However, section 199(1) provides that the amount of compensation payable under section 198 shall be determined by the inspectorate in consultation with designated persons and representatives of the persons whose protected objects have been damaged. Failure to pay compensation by the licenses or leases, their license or leases will be suspended.[45] Where the licensee or lease fails to make payment within 30 days after the suspension of the lease and license, the Minister may revoke the lease or license.[46]

Section 200 of the Act provides for environmental quality management. By this provision, every licensee or lease will submit an environmental management plan which will contain environmental policy, objectives and targets; it will also include commitment to comply with relevant laws, regulations, guidelines and standards. The plan will include investigating, assessing and evaluating the impact of the operators' proposed exploration and production activities on the environment, develop an environmental awareness plan describing the manner in which the applicant intend to inform his employees of any environmental risks which may result from their work and the manner in which the risks may be dealt with in order to avoid pollution or the degradation of the environment and how the licenses or leases intends to modify, remedy, control or stop any action, activity or process which cause pollution or environmental degradation; contain or remedy the causes of pollution or degradation and migration of pollutants and comply with prescribed waste management standards or practices.[47]

Section 201 provides that the lease shall pay such gas flaring penalties as the Minister may determine from time to time and the leasee shall install all measurement equipment as ordered by the inspectorate to properly measure the amount of gas being flared.[48]

The provisions of section 232 of the Act enjoins a transportation pipeline owner/licensee to conduct its licensed activities safely and reliably in compliance with any law then in force and prescribed health and safety regulations made pursuant to this or any other Act; to have regard for the effect of its activities on the

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[39] *Ibid*, Section 19
[40] *Ibid*, Section 20
[41] Petroleum Industry Act of 23rd August, 2021.
[42] See the Petroleum Industry Act Objectives
[43] *Ibid*.
[44] *Ibid*, s. 195(1)(a)
[45] *Ibid*, s. 199(2).
[46] *Ibid*, s. 199(3)
[47] *Ibid*, ss 2-3
[48] Ibid, s. 201(1, 2)

environment and comply with the requirements for environmental protection, management and restoration under this Act and any applicable law.[49]

Section 275 stales that gas shall not be flared or vented after a date ('the flare-outdate') to be prescribed by the Minister in regulations made pursuant to this part, in any oil and gas production operation, block or field, onshore or offshore, or gas facility such as, processing or treatment plant, with the exception of permits granted under subsection (1) of section 277 of this Act.

Section 277 provides for the prohibition of gas flaring and punishment. However, gas flaring may be permitted by the Minister based on some exceptions. In cases where the licensee or leasee flares or vents gas without permission of the Minister in line with circumstances outlined in S.2 of this section, shall be liable to pay a fine which shall not be less than the value of the gas flared.[50]

The Act went further to provide that all government ministries/agencies work together to ensure the overall health safety and environmental protection in respect of the petroleum industry. Licenses and leasees are charged with the responsibility of ensuring compliance with all environmental health and safety laws, regulations, guidelines or directives issued by the Federal Ministry of Environment to ensure that their activities are in accordance with international acceptable principles of sustainable development for a healthy and safe environment.[51]

Section 293 provides for duty to restore the environment. Operators who by their activities impact on the environment are required to rehabilitate the environment to its natural or pre-existing state before the operations resulted in an impact; or to a state in conformity with generally accepted principles of sustainable development.[52]

Section 354 of the PIA provides for the repeal of following, from the date of effect of the Act. Associated Gas Re-injection Act, Cap A25 Laws of the Federation of Nigeria, 2004.Petroleum Act, Cap FlO Laws of the Federation of Nigeria, 2004.[53]

The Nigerian National Petroleum Corporation Act shall be deemed repealed on the date that the Minister signifies by legal notice in the Gazette that the assets and liabilities of NNPC are fully vested in successor entities.[54]

1.1.6 Endangered Species (Control of International Trade and Traffic) Act 1985 CAP E9 LFN, 2004

The Endangered Species (Control of International Trade and Traffic) Act 1985 CAP E9 is to provide for the conservation and management of Nigeria's wild life as well as the protection of some of her endangered species in danger of extinction. The ESCITT Act prohibits hunting, capture or trading in animals which are not immediately threatened but may become threatened in the future. 'According to the law, license can however, be issued by the relevant Minister for the hunting or capture of such species under certain conditions.[55]

This ESCITT Act focuses on the protection and management of Nigeria's wildlife and some of their species in danger of extinction as a result of over-exploitation. These sections are noteworthy:

i. Section 1 prohibits, except under a valid license, the hunting, capture or trade in animal species, either presently or likely to being in danger of extinction.
ii. Section 5 defines the liability of any offender under the Act.
iii. Section 7 provides for regulations to be made necessary for environmental prevention and control as regard the purposes of this Act.

Suffice to point out here that in 2016, some sections of the ESCITT Act were amended[56]. amended Act comprises of six (6) sections. By the provision of *sec 1*of the Amended Act. Sections 1 and 2 of the ESCITT Act were amended to delete the words "as from the commencement of this Act" in line l.[57] Also, section 5(1) (a) of the ESC1TT Act is amended by substituting for the words "1,000" in line 2 the expression

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[49] PIA s. 232(1)(a,b).
[50]*Ibid*
[51]*Ibid*, ss 289, 290, 291
[52] PIA 293(1) (b) (i, ii)
[53]*Ibid*, s.254 (1) (a, C).
[54]*Ibid*, (2)
[55] ESCITT Act s.2
[56]The Endangered Species (Control of International Trade and Traffic (Amendment) Act 2016.
[57]*Ibid*, s.1

5,000,000h18. Also, section 5 (1) (b) of the ESCITT Act is amended by substituting the expression '500" in line 2 the expression 1,000,000.[58]

1.1.7 Exclusive Economic Zone Act 1978 Cap T5 LFN 2004

The Exclusive Economic Zone Act was promulgated by the Federal Government of Nigeria in 1978 in line with the provisions of the UN Convention on the Law of the Sea.[59]The Exclusive Economic Zone Act[60] makes it illegal to explore or exploit natural resources within the Exclusive zone without lawful authority. The Federal Government regulates the activities of the Exclusive Zone.[61] The Act empowers Nigeria to extend her territorial waters by 200 nautical miles seaward from the coast of Nigeria.[62] With this Act, the natural resources of the exclusive economic zone within the Federal Republic of Nigeria can be exploited under the Nigerian regulations. It also contains the penalties (lines, imprisonment, or both) for contravening the provisions of this Act.

The creation of the EEZ also set into motion its own dynamic system leading to compliance and enforcement problems. The majority of coastal states, especially developing states, cannot afford the sophisticated patrol vessels or satellite vessel monitoring systems (VMS) required for monitoring and surveillance of the vast and turbulent waters of the EEZ with less risk. The inability of coastal states to effectively monitor and enforce conservation measures in their EEZ encourages fishing in the area by unauthorized persons including foreign fishing vessels, thus exacerbating the depletion and collapse of marine fish stocks.[63]

The EEZ Act, contains 7 sections which recognize Nigeria's interest in exploiting its EEZ but further provides for only the right to erect installations; artificial islands and so on. It made no regulations regarding other possible means of exploitation.

1.1.8 Water Resources Act 1993 Cap W2, LFN 2004

The Water Resources Act[64] prohibits the carrying, depositing and dumping of harmful waste on land and in territorial waters. It aims at promoting the optimum development, use and protection of water resources.

The WRA vests the right to the use and control of all surface and groundwater and of all water together with the bed and banks in any watercourse affecting more than one state in the Government of the Federation.[65] However, the WRA Act essentially preserves existing rights, including customary rights, provided they are for domestic use, watering of livestock and personal irrigation scheme.[66] A proviso to section 1(1) states that the subsection shall not be deemed to infringe or to constitute a compulsory right over or interest in property. Apparently, the idea is to separate rights over water resources from other rights in property.

An alternative view is that Government has not acquired a right of property in the water but only a right of control over the exercise of that right by existing owners; in other words, the right to supervise the use and management of the resource. That this is correct appears to be borne out by sections 3 and 4(d) of the Act, which make provision for the acquisition of rights to use or take water from any watercourse and to revoke a prior right to use or take water when its exercise would be detrimental to public interest. Furthermore, other subsections of section 4 and 5 prescribe wide powers by the Minister of Water Resources to regulate the manner and ambit of rights of use of water and in so doing to have regard to the need to ensure water security, environmental sanitation and protection, flood control, biodiversity protection and so on. It is incumbent on the Minister to draw up a master plan for the development, use, control, protection, management and administration of all water resources and to review them from time to time in light of changing circumstances.[67]

The WRA is targeted at developing and improving the quantity and quality of water resources.

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[58]*Ibid*, s.3

[59]F.M. Nwosu and Others. Fisheries Management in Nigeria: A Case Study of the Marine Fisheries Policy' [2011] (1) (3) international Research Journal of Agricultural Science and Soil Science; 70-76.

[60] EEZ Act Cap TS LFN 2004.

[61]EEZ ACTs. 2(I)

[62]*Ibid* s. 1(1).

[63] A.J. Oppenhiem. The plight of the Patagonian Toothish: Lessons from the Volga case. [2004] (1) (30) *Brooklyn Journal of International Law*. 293328.

[64] WRA Cap W2, L.F.N. 2004.

[65]WRA, s. 1(1).

[66]*Ibid* s. 2(a) (iii).

[67]WRA s. 6.

The following sections are pertinent:
Sections 5 and 6 provides the Authority to make pollution prevention plans and regulations for the protection of fisheries, flora and fauna.
However, in 2016 the National Assembly promulgated the Water Resources (Amendment) Act of 2016 to review upward the stipulated fines and offences under the WRA. Section 18 of the WRA Act which makes offenders liable, to be punished with a fine not exceeding N2,000 or an imprisonment term of six months. He would also pay an additional fine of Nl00 for everyday that the offence continues is amended by substituting the expression "N2,000" in line 3 with the expression "₦500,000",[68] '"₦100" in line 5 with the expression "N2,000",'32, the words 'six months" with the words "one year."[69]

2.1 Municipal Institutions

2.1.1 National Environmental Standards and Regulation Enforcement Agency (NESREA)

This agency came into operation by virtue of an Act[70] of the National Assembly and is an organ under the Federal Ministry of Environment. This Act is superintended by the Ministry of Environment. Section 7 of the Act charges the Agency to ensure compliance with environmental laws, local and international on environmental sanitation and pollution prevention and control through monitory and regulatory measures. Section 8(1) (k) empowers the Agency to make and review regulations on air and water quality, effluent limitations, control of harmful substances and other forms of environmental pollution and sanitation. Under Section 27 (2) of the Act, it is an offence for a person without lawful authority to discharge in such quantities any harmful substance into the air or upon the land and the waters of Nigeria. Any person who violates this section is liable to imprisonment to a term not exceeding one year or to a fine not exceeding N1,000, 000.00. If the offence is committed by a legal person, it shall on conviction be liable to a fine not exceeding N1,000, 000.00 and an additional fine of N50, 000.00 for every day that the offence subsists. Section 27 (1) goes further to specifically make every person who at the time the offence was committed was in charge of the body corporate guilty of such offence and shall be liable criminally and punished accordingly.[71]
The NESREA have 33 national environmental regulations that cut across almost all sectors of human activities that can have negative effect on the environment which have been gazetted into the NESREA Act.

2.1.2 National Oil Spill Detection and Response Agency (NOSDRA) Act 2006

The government's response to the continuing environmental pollution in Nigeria and the inefficient regulatory frameworks thereto, was the promulgation of the National Oil Spill Detection and Response Agency Act 2006 (NOSDRA).[72] Consequently, the National Oil Spill Contingency Plan (NOSCP) was established in accordance with the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC) 1990,[73] which Nigeria has ratified.[74] The main objective was to address the environmental degradation in the oil-producing areas, to co-ordinate oil spill management and to ensure the implementation of the National Oil Spill Contingency Plan (NOSCP) in Nigeria.[75] The Agency created under Section 1 of the Act, shall be responsible for surveillance and ensuring compliance with all existing environmental legislation in the industry.[76] The Agency will ensure that polluters report oil spill incidents within 24 hours and that impacted sites are cleaned up to 'all practicable extent.[77] Failure to report any oil spill incident attracts a fine of N500, 000 (2000) for each day.[78] The Agency depends

[68] WRA s. 2(a) (i)
[69] *Ibid*, s. 2(b)
[70] National Environmental Standards and Regulation Enforcement Agency Act, 2007
[71] Cap 202, Laws of the Federal Republic of Nigeria (LFN) 2004
[72] Act No 15 of 2006
[73] Adopted 30 November 1990; entry into force: 13 May 1995 301 LM 747 final
[74] Nigeria became a member of the International Maritime Organisation (IMO) in 1962, hence ratified the Convention?
[75] *Ibid*, Section 5 (a) - (d) and 6 of the Act
[76] Federal Ministry of Environment, NOSDRA'<http://environment.gov.ng/about-moe/departrnents agencies/agencies-paralstatals/national-oil-spi I I-detection-and-response-agency-nosdra/> accessed 28 May November 2013.
[77] *Ibid*, Section 6 (2) (ii)

largely on government for its funding but can obtain loans and aids from other organizations.[79] Part of the criticisms of NOSDRA is that it enjoins the Agency to ensure that oil spill clean-up is done 'to all practical extent without defining what 'practical extent meant.[80] This ambiguity has not helped in clearly stating the level of remediation required from the IOCs, thereby creating enforcement difficulties which contribute frequent oil spill incidents.[81]

The Agency is also not adequately funded and has no sufficient capacity. Furthermore, the Agency secures loans to fund its activities and depend on IOCs to provide transport and other facilities. This again exposes the Agency to regulatory capture, which affects the enforcement of its regulations against the industry.[82] Further, also the Agency is primarily established to address oil pollution leaving gas pollution, which equally poses serious environmental damage.[83] Finally, the jurisdictional conflict between the Agency and the DPR over the legal responsibility[84] to address oil pollution matters, equally erode its capability to deal with an unsustainable petroleum industry.[85]

2.1.3 Nigerian Maritime Administration and Safety Agency (NIMASA)

The Nigerian Maritime Administration and Safety Agency (NIMASA) was established to regulate the maritime industry of Nigeria.[86] It was formerly the National Maritime Authority (NMA) which is responsible for regulations related to Nigerian shipping, maritime labour and coastal waters. The agency also undertakes inspection and provides search and rescue services.[87]

NIMASA was created on 1 August, 2006 when the National Maritime Authority was merged with the Joint Maritime Labour Industrial Council. Both were formerly parastatals of the Federal Ministry of Transport. Under the Act establishing NIMASA, 5% of annual income would support the Maritime Academy of Nigeria (MAN) and 35% of income would be used to develop maritime infrastructure.[88] In December 2009, the agency said it is setting up a fund which would cover 40% of the cost of a nautical education with the student being responsible for the remainder.[89] In June 2010, it was confirmed that NIMASA was encouraging Nigerians to enter the maritime industry. The agency was enforcing the directive that all ship operators engaged in the Cabotage trade whether Nigerian or foreign owned, must have Nigerian cadets on board so they could gain sea time experience.[90]

In May 2011, NIMASA was mediating between the Seaport Terminal Operators Association of Nigeria and the Maritime Workers Union of Nigeria, who were seeking improved wages and terms of services.[91] NIMASA was involved in the debate over a proposal to create Maritime Security Agency (MASECA) as a successor to the Presidential Implementation Committee on Maritime Safety and Security (PICMSS). The objective was to provide greater protection for merchant vessels against rising levels of piracy. However, NIMASA and the United Nations were concerned that MASECA could be in conflict with the International Convention for the Safety of life at sea, which does not allow merchant ships to be armed. The MASECA act also seemed to be in conflict with the act establishing NIMASA.[92]

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[78] *Ibid,* First and Second Schedule

[79] *Ibid,* Section 11

[80] Section 6 (3)

[81] See recent oil spill by Shell Nigeria Exploration and Production Company (SNEPCO), 'Nigeria: Bonga field oil Disasters'< http://allafrica.comlstories/201201 170885.htm$ ' accessed 28 Nov 201; and Mobil Producing Company Unlimited, Oil Spill <http://www.reuters.com/article/20 12/Il/I 8/us-Nigeria- exxonspill-idUSBRE8AGOCZ2OI2I 118 accessed 5 June 2013.

[82] *Ibid*

[83] Total Gas Explosion, 'Senate Vows to Curb Abuse, This thisday live (Nigeria 17 April 2012) <http://www. thisdaylive. com/articles/total-gas-explosion-senate-vows-to-curb-abuse/1 I 3895/>accessed5 August 2013

[84] UNEP, 'Environmental Assessment' (n49) 139-140. The report indicted DPR and NOSFDREA for their unpreparedness to discharge their regulatory duties

[85] E O Jameruanye, 'On the $5 Fine imposed on SNEPCO by NOSDRA' *Business day Nigeria*, 30 August 2012 <http://businessdayonline.com/NG/index.php/analysis/commentary/43508-on-the-5bn-fine-imposed-on-snepco-by-nosdra-1> accessed 24 November 2021 on the power of NOSDRA

[86] Section 3(1) of NIMASA Act, 2007

[87] www.nigerianmaritimeLaw.com accessed 28/03/2020.

[88] www.nimasa.gov.ng/aboutphp <accessed 28/03/2020.

[89] www.nimasa.gov.ng/servicephp <accessed 28/03/2021.

[90] www.vertic .gov/media/national <accessed 28/03/2021.

[91] www.shipsandports.com.ng/detail <accessed 29/03/2021.

[92] *Ibid*

The NIMASA Act established the agency,[93] and provides for its functions and powers under the Act.

Functions and Powers of NIMASA

The Act empowers the agency to:

a. Pursue the development of shipping and regulate matters relating to merchant shipping and seafarers.
b. Administer the registration and licensing of ships.
c. Regulate and administer the certification of seafarers.
d. Establish maritime training and safety standards.
e. Regulate the safety of shipping as regards the construction of ships and navigation.
f. Provide search arid rescue service.
g. Provide direction and ensure compliance with vessel security measures.
h. Carry out air and coastal surveillance.
i. Control and prevent maritime pollution.

In addition, the Act also conferred on the agency powers to do all things necessary for or incidental to or in connection with the performance of its functions to:[94]

a. Enter contracts
b. Acquire, hold and dispose of real and personal property.
c. Join in the formation of companies.
d. Enter partnership; and
e. Let or hire plant machinery, crafts or equipment.

2.1.4 Nigeria Institute for Oceanography and Marine Research (NIOMR)

The Nigerian Institute for Oceanography and Marine Research (NIOMR) was established in November 1975 by the Research Institute Establishment Order of 1975. The Institute is charged with responsibilities to conduct research into the resources and physical characteristics of the Nigerian territorial Waters and the High Seas beyond.

The Institute is mandated to undertake the following:[95]

1. Management measures for the rational exploitation and conservation of abundance, distribution, biological and other characteristics of species of fish and other marine forms of life.
2. Improvement of brackish/marine waters aquaculture
3. Genetic characterization of marine and brackish water cultural fish species including the development of improved strains if fish species culture.
4. Effective and sustainable management of fisheries resources through improved post-harvest preservation, utilization and storage using profitable technological processes.
5. Physical characteristics of the Nigerian territorial waters, the high seas beyond topography of the sea beds and deposit on or under the sea beds.
6. Effect of pollution on the health of Nigerian coastal waters and its prevention.
7. The socio-economic challenges of exploitation of the resources of the sea and brackish water.
8. Global Climate Change and sea level rise.
9. Improvement of coastal and brackish water fishing and fish culture through the design and fabrication of ecosystem friendly fishing gear types and fisheries implements.
10. The nature of coastal and marine environment including coastal erosion, monitoring marine hazards, forecasting/prediction and the topography of the sea beds and deposits on or under it.
11. Extension research and liaison services.
12. Provision of technical training in areas of mandate.

In the light of the above, it is appropriate here to briefly address the issue of how the practice in international law relating to the exploitation of the natural resources beneath the high seas has come to have a bearing or influence on Nigerian municipal law. It will be recalled that two important amendments were introduced to the scope of the Mineral Oils Act 1914, in 1950 and 1959 respectively. By the 1950 amendment, the submarine areas of whatever constituted Nigeria's territorial waters at that time were to be regarded as "land" within its usage in the 1914 Act. As for the

[93] Section 3(1) of NIMASA Act, 2007
[94] *Ibid*, Section 23(1)
[95] www.arenigeria.org/index.php <accessed 28/07/2020.

1959 legislation, it empowered the Nigerian Federal legislature to extend its future legislative competence on mines and minerals, to cover the areas beneath other waters. The 1959 amendment had the effect of extending the geographical areas of the waters in respect of which Nigerian laws on mining and minerals would apply, which naturally brought into the purview of Nigerian law on this subject, the Nigeria's continental shelf areas. It is significant to observe that shortly before the 1959 zone the continental shelf had just been concluded in the spring of 1958. Under Article 2 of the Geneva Convention on the Continental Shelf 1958, the right of a sovereign state to exercise control over the exploration and exploitation of the natural resources of its continental shelf was recognised.

It is clear therefore, that the provisions of the Minerals Oils Act had properly prepared the stage for the reception of this aspect of international law into the Nigerian corpus juris. This was before any specific references and pronouncements on the subject were made in later laws like:

i. Territorial Waters Act 1967 now known as Territorial Waters Act (Cap. 428) as amended by the Territorial Waters (Amendment) Act 1998 No. 1.
ii. Oil in Navigable Waters Act 1968 now known as Oil in Navigable Waters Act (Cap 337) (see Section 17 thereof).
iii. Oil Terminals Dues Act 1969 now known as Oil Terminal Dues Act (Cap. 339) (see Section 7 thereof).
iv. Petroleum Act 1969 now known as Petroleum Act (Cap. 350) (see section 1(1) thereof).
v. Exclusive Economic Zone Act now known as Exclusive Economic Zone Act (Cap. 116) (see section 2 thereof as well as section 1 of the Petroleum (Amendment) Act,1998 No. 22.).
vi. Offshore Oil Revenues (Registration of Grants) Act (Cap. 336) (see section 1(3) thereof).

In fact, quite a few pre-1969 oil exploration and prospecting licenses and leases granted by the Nigerian government, were made in respect of the submarine zones of the territorial waters and continental shelf areas. The influence of international law on the source and development of Nigerian petroleum legislation may therefore be gauged by the aspects of the foregoing listed laws which have international connections.

2.1.5 River Basins Development Authorities Act 1987 Cap R9 LFN 2004

In 1986, the River Basins Development Authorities Act established 11 River Basin Development Authorities across Nigeria to undertake a comprehensive development of surface and groundwater resources. These Authorities focused particularly on providing irrigation infrastructure and the control of floods and erosion.[96]

Pre-independent economy of Nigeria was mainly agriculture dependent. However, the advent of crude oil in the sixties shifted attention from agriculture to the exportation of crude oil and oil products as the mainstay of the Nigerian economy. The oil boom of the seventies led to the proliferation of oil-related companies which accounted for about 90% of the nation's gross earnings and subsequent economic development which are visible in infrastructural and human development. Similarly, attempts were made to use the proceeds from the crude oil exportation to develop agriculture as a means of diversifying the economy.

This led to the establishment of River Basin Development Authorities (RBDAs) in different parts of the country in 1976. The RBDAs were primarily established to provide a framework on how to ensure agricultural development through the provision of water for irrigation (to ensure all- year farming), fisheries projects, mechanized farming and livestock development by the authorities. Also, they are to improve navigation, hydro-electric power generation and encourage the establishment of industrial complexes that could bring about the private and public sectors in joint business partnerships. Furthermore, RBDAs are meant to bridge the gap between the rural and urban centres by taking development to the grassroots and prevent rural-urban migration which is one of the scourges affecting the nation's economic development.

The first two RBDAs in Nigeria are the Chad Basin and Sokoto-Rima Basin Development Authorities established in 1973. The RBDAs in the country became eleven in 1976 when General Olusegun

[96] Rivers Basin Development Authorities Act (1986) Cap. (R9), & 12. An earlier River Basins Development Authorities Act had been enacted in 1979 but was repealed by this Act. It is interesting to note that this Act was synchronized with the Land Use Act by actual reference, i.e., all of the River Basin Authorities' powers to acquire land for their purposes are limited by the Land Use Act's requirement of the Governor's consent within areas of operations. A similar limitation is placed on every person in the country within the new ownership structure enshrined by the Land Use Act. This demonstrates the primacy of the Land Use Act.

Obasanjo's regime added another nine to cover the whole country.[97] During General Muhammad Buhari's regime, the basin authorities were divided into eighteen in 1984 and renamed the River Basin and Rural Development Authorities. However, in 1986 during Gen Babangida's regime, the new nomenclature was invalidated and the status quo of eleven RBDAs maintained.[98] Today, there are twelve RBDAs in Nigeria as a result of the splitting of the Niger Basin Development Authority into upper and lower Niger.

The RBDAs were charged with the following responsibilities/mandate[99]:

i. To undertake comprehensive development of both surface and underground water resources for multi-purpose use;
ii. To provide water from reservoirs and lakes under the control of the authority for irrigation purposes to farmers and recognised association as well as for urban water supply authority concerned;
iii. The control of pollution in rivers, lakes, lagoons and creeks in the authority's area in accordance with national laid standards;
iv. To resettle persons affected by the works and schemes specified under special resettlement schemes;
v. To develop fishes and improve navigation on the rivers, lakes, reservoirs, lagoons and creeks in the authority's area;
vi. To undertake the mechanical clearing and cultivation of land for the production of crops and livestock etc.;
vii. To undertake large scale multiplication of improved seeds, livestock and tree seedlings for distribution to farmers and for afforestation schemes;
viii. To process crops, livestock products and fish produced by farmers in the authority's area in partnership with state agencies and other person; and
ix. To assist the state and local governments in the implementation of rural development works (construction of small dams, provision of power for rural electrification schemes, establishment of grazing reserves, training of staff) in the authority areas.

2.1.6 Niger Delta Development Commission (NDDC)

Niger Delta Petroleum is the major foreign exchange earner of the Nigerian government. Since 1956, petroleum exploration activities have caused very severe consequences that have required a steady stream of laws and subsidiary regulations that strive to address these consequences. In the earlier years of oil exploration and new into the 1990s, oil spillages were reported to have been of such great magnitude as to adversely affect local agricultural and fishing activities. Between 1976 and 1988, two thousand reports of spillages, causing an estimated loss of two million barrels of oil, were recorded nationwide.[100] In 1999, in response to concerted efforts to compensate affected communities, carry out bioremediation on the polluted Niger-Delta lands and ensure environmental protection, the Act established the Niger Delta Development Commission to tackle ecological problems that arose from the exploration of oil minerals within the Niger Delta Region.[101]

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[97]Ayoade, Tropical Hydrology and Water Resources (London, Macmillan Publishers Ltd,1988), 53.

[98] RBDA Act P' Schedule

[99] RBDA Act, s. 5

[100] 91. Margaret T. Okorodudij-Fubara, The Law of Environmental Protection 815 (1988). Notable oil spills over the years include: FUNIWA-5 Texaco Oil Well Blowout (1980.37 million litres); Qua Iboe Spill (1998, 40,000 barrels of oil); Bodo Oil Spill (2009, 100,000 barrels of oil). The spills are widespread, affecting more communities, and occurring with alarming regularity. Ordinioha & Brisibe report that 240,000 barrels of crude oil are spilled yearly with severely adverse effects on water and crops. The spills and resulting devastation portray a vivid picture of a region suffering from poverty and excruciating hardship, instead of transforming into a "gigantic economic reservoir of national and international importance." UNITED NATIONS DEVELOPMENT PROGRAMME, NIGER DELTA KUMAN DEVELOPMENT REPORT 9 (2006). Preye K. Inokoba& David L. Imbus, Vexation and Militancy in the Niger Delta: The Way Forward, 29 J. HUM. ECOLOGY 101, 105 (2010): B. Ordinioha& S. Brisibe. The Human Health implications of Oil Spills in the Niger Delta Nigeria: An interpretation of Published Studies, 54 NIGERIAN MED. J. 10 (2013).

[101] Niger-Delta Development Commission Act (2000) Cap. N86 LFN, 2004. Indeed there has been a history of governmental interventions beginning in 1961 with the establishment of the Niger Delta Development Board (NDDB). Subsequently, the Niger Delta Basin Development Authority was set up in 1976. Again, the Oil Mineral Producing Areas Development

The Niger Delta formerly had a reputation as a leader in swamp rice cultivation and was famous for its mangrove swamps, which supported commercially important species of fish and shellfish.[102] Unfortunately, oil pollution is a chronic and long-standing issue for the region, which has undercut that enviable status. Groundwater, a major source of potable water supply for residents of the Niger Delta, also suffers from considerable oil pollution.[103] This is regrettable, because groundwater polluted by oil spills cannot always be completely cleaned up. Therefore, experts advise that pollution prevention is much safer and wiser.[104]

Considering that petroleum exploration provides the country with its main source of foreign exchange earnings, the region's environmental devastation and impoverishment which exact a serious toll on the lives of the residents are startling and sad. Many scholars have written about this perennial and thorny problem, and have sought a resolution. For instance, Yemi Osinbajo and Olukonyisola Ajayi wrote that the Ogoni people, who occupy a significant part of the affected areas, suffer some of the worst cases of ecological devastation, because their agricultural and aquatic environments are virtually destroyed.[105]

Repeat intervention efforts mentioned earlier, to ameliorate both the pollution and the devastation arising from this pollution do not appear to have achieved much. More importantly, laws enacted have had limited effect. The NESREA Act does not apply to the petroleum exploration sector. In fact, the Act specifically ousts the Agency's power in its provision that the Agency shall "…enforce compliance with legislation... other than in the oil and gas sector."[106] Nevertheless, a good number of laws aim to minimize and remediate pollution. For instance, the Petroleum Act, the Petroleum (Drilling and Production) Regulations, and the Oil Pipelines Act require oil exploration licenses to prevent pollution and to remediate damage done in the course of their petroleum exploration activities although provisions of the Petroleum Act are largely reactive.[107] Persistence of the pollution problem over many decades, and the apparent ineffectiveness of existing laws, raise a question about the role of law and institutions in the sustainability of this and other important natural resources.

2.1.7 Nigerian Atomic Energy Commission

In the mid-1970s, the then Federal Military Government promulgated the Nigeria Atomic Energy Commission Act.[108] By its preamble, this Act established the Nigeria Atomic Energy Commission (NAEC), responsible for the development of atomic energy and all matters relating to the peaceful use of atomic energy. There is also the Nuclear Safety and Radiation Protection Act of 1995 which establishes the Nigeria Nuclear Regulatory Authority and its Governing Board, The Authority is responsible for controlling and regulating the use of radioactive substances, materials, and equipment emitting and generating ionizing radiation.[109] Further, this Act prohibits the acquisition and use of such substances and equipment on any premises, vehicle, ship, or aircraft except as prescribed in the Act. It also prohibits the disposal of radioactive waste without permission and provides for penalties to be imposed for the infringement of its provisions. This paper posits that Nigeria currently does not produce or utilize nuclear energy even though attempts have been made to develop a policy

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Commission (OMPADEC) was inaugurated in 1992, but all of these efforts have not resolved the chronic and disturbing problems. J.P. Eaton, *The Nigerian Tragedy, Environmental Regulation of Transnational Corporations, and the Human Right to A Healthy Environment.* 15 B.U. lNT'L L.J. 261, 287—89 (1997).

[102]SO.Aghalino& B. Eyinla, *Oil Exploitation and Marine Pollution: Evidence from Niger Delta, Nigeria*, 28 J. HUM. ECOLOGY 177, 179 (2009).

[103] Gordon T. Amangabara & John D. Njoku, *Assessing Groundwater Vulnerability to the Activities of Artisanal Refining in Bob and Environs, Ogu Bob Local Government Area of Rivers State; Nigeria,* 2 BRITISH J. ENV'T & CLIMATE CHANGE 28, 30(2012).

[104] 95. Aghalino & Eyinla, supra note 93; Ana R.E.E. Godson, Mynepalli K.C. Sridhar & Michael C. Asuzu, Environmental Risk Factors and Hospital-Based Cancers in Two Nigerian Cities, 2 J. PUB. HEALTH & EPIDEMIOLOGY 216, 218 (2010).

[105] 96. Yemi Osinbajo & Olukonyisola Ajayi, *Human Rights and Economic Development in Developing Countries*, 28 INT'L L. 727, 740 (1994).

[106] M T Ladan, *Review of NESREA Act 2007 and Regulations 2009-2011: A new Dawn in Environment Compliance and Enforcement in Nigeria,* 8 LAW ENV'T & DEV. J. 84, 123—124.

[107] Oil Pipelines Act (1990) Cap. (338).

[108]No. 46 of 1976, 102 (NAEC Act).

[109]Ibibia Worika, "Energy Development and Utilization in Africa", in: A. J Bradbrook, *et al* (eds), *The Law of Energy and Sustainable Development*, New York: Cambridge University Press, 2005, pp.342-343.

framework geared towards nuclear energy development and use. This paper will now discuss the two legislation that addressed issues of nuclear energy development, regulation and use in Nigeria.

The idea of pursuing a Nigeria's nuclear technology was mooted after her independence when the Federal Radiation Protection Service was established in 1964[110] and at the same time the country joined the International Atomic Energy Agency (IAEA).[111] Nigeria Atomic Energy Commission (NAEC) came into existence through the enactment of Decree No. 46 in August 1976 leading to the launching of the national nuclear programme. Though the idea became abandoned and NAEC was dormant for thirty years until 2006 when it was activated by same Chief Olusegun Obasanjo the then Military Head of State who originally established it 30 years ago in 1976. NAEC's board was formally inaugurated in July 2006. It is a 10-man board with the President as its head.[112] The implementation of the nation's nuclear energy programme was also revitalized. [113]

The Nigeria Atomic Energy Commission (NAEC) Act made useful provisions for the development of a nuclear energy programme for Nigeria. The Act took into consideration salient issues such as: the establishment and functions of the Nigeria Atomic Energy Commission, an Educational Development Trust for the commission, legal personality, responsibility of the commission, Powers of Nigerian President under the Act, compulsory acquisition of land for nuclear power programmes, restriction on disclosure of information relating to nuclear installation and the duty to prevent nuclear damages. These provisions shall be discussed as hereunder outlined.

i. **Establishment and Functions of the Nigeria Atomic Energy Commission**

The Act establishing the Nigeria Atomic Energy Commission for the development of atomic energy and its peaceful use was first enacted on 27 August, 1976[114] and provides that it shall have power to: prospect for and mine radioactive minerals, construct and maintain nuclear installations for the purpose of generating electricity, produce, use and dispose of atomic energy and carry out research into matters connected with the peaceful uses of atomic energy, manufacture or produce, buy, acquire, treat, store, transport and dispose of any radioactive substances as part of its corporate responsibility under the Act.

ii. Educational Development Trust of the Commission

As part of its educational mandate, the Commission shall collaborate with universities and other institutions or persons in Nigeria to conduct research into matters connected with atomic energy or radioactive substances and give grants for production and use of atomic energy or radioactive substances or in research into matters connected with atomic energy or radio-active substances in Nigerian Universities. In connection with its educational responsibility, the commission shall educate and train persons in studies connected with atomic energy and radio-active substances in seven centres for nuclear energy research and training established in different universities across Nigeria.[115]

iii. Legal Responsibility of the Commission

The Commission carries out legal and advisory role to the Federal Government of Nigeria on questions relating to atomic energy. As a corporate entity, the Commission has power to do anything in accordance with the Act to facilitate the carrying on of its activities, it can sue and be sued in its corporate name, own movable and immovable property and enter into contract with parties in fulfilling its mandate under the Act establishing it.[116]

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[110]Nigerian Atomic Energy Commission Act, enacted 27 August, 1976, CAP.N90 LFN 2004. See also E. Yehuwdah, and Chad-Umoren and Bamidele F. Ebiwonjumi, "Nigeria's Nuclear Power Generation Project: Current State and Future Prospects", 2013, *Journal of Energy Technologies and Policy*, Vol.3, No.7, 12

[111]A, Mundu, and A.M Umar, "The Quest for Nuclear Technology and the Challenges of Knowledge Management in Nigeria", *Proceeding of the International Conference on Nuclear Knowledge Management*, Saclay, France, 7-10 September, 2004, 123.

[112]F.E Osaisai, "Nuclear Power Introduction in Nigeria: Organization and Way Forward", Paper presented at the Second Regional Conference on Energy and Nuclear Power in Africa, Cape Town, South Africa, 30-31 May, 2011.

[113]E. Yehuwdah, and Chad-Umoren and Bamidele F. Ebiwonjumi, "Nigeria's Nuclear Power Generation Project: Current State and Future Prospects", 2013, *Journal of Energy Technologies and Policy*, Vol.3, No.7, 12

[114]Nigerian Atomic Energy Commission Act enacted 27 August, 1976, CAP. N90 LFN 2004, Sections 1, 2(1)(a)-(e).

[115]*Ibid*, Section 2(1)(f). See Nigeria Atomic Energy Commission, "About the Commission"., available on https://www.nigatom.org.ng/about-the-commission/ Accessed 21 November, 2021

[116]*Ibid*, Section 2(1)(g) and (2)(a) (b) and (c).

iv. Powers of Nigerian President under the Act

The Nigeria Atomic Energy Commission is the national coordinating body for the Nigeria nuclear energy programme. Although it was established in the 1970s, the Board was not formally activated until July 2007, when the President of Nigeria assumed chairmanship.[117]

The President of Nigeria is entrusted with wide powers under the Act to decide what should be the operational policies of the commission. He shall *initiate* on one side and on the other side *approve policies initiated and developed* by the Commission. The Act may give directions of a general or specific nature as to the manner in which the Commission is to exercise its powers. In protecting the authority of the President over the Commission, the court of law is barred from any inquiry as to whether the President complied with the provision of the Act with regard to his consultation and approval rights under the Act.[118] He shall be responsible for the appointment of a chairman, five to eight other members who shall compose the membership of the Commission. Anyone among them who is not a public officer, shall hold office for such period not exceeding three years as may be stated in the letter or instrument of appointment and shall be eligible for reappointment. Such a person may resign his appointment in writing to the President and upon receipt of the notice by the President, the appointment of that member shall be determined.[119] Presently, the Commission maintains three technical Commissioners on full-time basis while the other members are on part-time basis.

v. Compulsory Acquisition of Land for Nuclear Power Programmes

As an extension of the powers of the President under Section 3(3) of the Act, Section 8 provides that, "Whenever there is any hindrance to the acquisition of any land required for any purpose by the Commission, the President, may declare that the land is required and acquired for the service of the Commission within the meaning of the Land Use Act".[120] The President may vest the land under acquisition in the Commission by means of a Certificate under the hand (signature) and the compensation, if any, payable under the Land Use Act or appropriate law for the revocation of any rights relating to the land, shall in the first instance be paid by the Federal Government, but later refunded by the Commission including all incidental expenses incurred in the process of acquisition of the land by the Government.[121] The Commission therefore is responsible for acquisition of land for purposes of Nuclear Power Programmes in terms of cost liability but facilitated by the President of Nigeria using his executive powers in conformity with the Land Use Act, where hindrances in acquisition may exist.

vi. Restriction on Disclosure of Information Relating to Nuclear Installation

Section 9 provides that, nobody shall disclose any information relating to nuclear installation whether existing or proposed nuclear installation, operated or proposed to be operated, the purpose or method of its operation, whether by or on behalf of the Commission without the prior consent of the President except if such person is expressly authorised[122] to do so under the Act.[123] The Act went further to specify the punishment for violators of this provision by providing that anyone found guilty of violating this provision shall be liable on conviction to imprisonment for a term not exceeding ten years.[124]

vii. Duty to Prevent Nuclear Damages

One of the greatest fears of nuclear energy production and industrial reactors is the damages associated with nuclear accident. The Act mandates the Commission to ensure that no nuclear damage

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[117]*Ibid*., Other members of the NAEC board include the ministers of science and technology, energy, defence, solid minerals and steel, and finance, the national security advisor, the special adv

isor to the president on energy, and the director general of the NAEC. There are five directorates in the Commission: international cooperation and liaison; Manpower training and Capacity Development; Nuclear Energy Planning; Nuclear Power Plant Development; and research and infrastructure Development. See Nathaniel Lowbeer-Lewis, "Nigeria and Nuclear Energy: Plans and Prospects", *Nuclear Energy Futures Paper* No. 11,the Centre for International Governance Innovation (CIGI), Waterloo, Ontario, Canada, January, 2010, p.6.

[118]*Ibid*, Section 3(3)

[119]*Ibid*, Section 4(1)(2)a)-(c)

[120]*Ibid*, Section 8(1)(2)

[121]*Ibid*, Section 8(3)(b) and (4)

[122]"Authorised Person", in relation to disclosure of information on any subject on nuclear installation, means, a person to whom the President granted a general authority to communicate information nuclear matters. See Section 9 (2) of the Act.

[123]*Ibid*, Section 9 (1)(a) and (b)

[124]*Ibid*, Section 9 (1)(c)

results from anything on any premises occupied by the Commission or such premises used for nuclear project elsewhere, no damage shall also result in the course of carriage of nuclear facilities or waste discharged from nuclear production on or from premises used for such purpose as specified under the Act.[125] As a foregoing to the powers vested in the President under Section 3, Section 11 vested in him powers to make regulations relating to the security and safe operation of any nuclear installation, carriage and disposal of any nuclear fuel, radioactive products or waste from the Commission or any premises on which there is a nuclear installation and ensure that the Commission secures the maintenance of an efficient system for detecting and recording the presence and intensity of any ionising radiation from anything carried or discharged on or from such premises. The President by regulation shall also prohibit or restrict access by persons to any land or premises held or occupied by the Commission.[126] This paper therefore turns to examine the provision of the Nuclear Safety and Radiation Protection Act having considered the Act establishing the Nigerian Atomic Energy Commission.

2.1.8 Federal Ministry of Environment (FMENV)

The FMENV which is relatively new and was created under Fourth Republican dispensation of Nigeria is the primary regulatory regime for the conduct of EIA including the oil and gas sector.

Amongst its several technical departments is the Environmental Assessment Department (EAD) which has the mandate of "ensuring that all developmental projects are carried out in compliance with relevant environmental laws and regulations in order to ensure environmental sustainability." It is charged with the following functions;

i. Implementation of the provisions of the Environmental Impact Assessment (EIA) Act of 1992 on developmental project.
ii. Ensure environmental sustainability of development projects through the regulation of activities within oil and gas, mining, infrastructure, agriculture, manufacturing sectors etc.
iii. Development of guidelines and standards for environmental quality monitoring, eco-labelling etc.
iv. Accreditations of environmental laboratories.
v. Implementations of Environmental Audit and Environmental Management system (EMS) in Nigeria.

Also, the FMENV is saddled with the responsibility of making EIA guidelines and Codes of Practice.8' In line with this statutory mandate, the FME is developing new environmental guidelines as well as revising the existing ones as follows;

a. EIA Guidelines for Renewable Energy;
b. EIA Guidelines for oil and gas:
c. EIA Guidelines for Urban Development etc.

The Federal Ministry of Environment (FMENV) is now the body saddled with the overall responsibility of environmental management in Nigeria; it is also the regulatory body for ETA administration in Nigeria.[127] In accordance with the 1995 ETA procedural guidelines ETA requires practical steps from project conception to its commissioning which must be complied with. They include project proposal, initial environmental evaluation (TEE), screening, scoping, EIA study review, decision-making monitoring and auditing.

In Nigeria, a technical committee approves the EIAs and after due consideration, the committee considers and approves the issuance of an EIS and certificate within 60 days of receiving the final EIA report upon receiving the two permits (ETS & Certificate), the proponent is still required by the Nigerian Urban and Regional Planning Decree 58 of 1992 to submit their applications for development construction permit. Once the latter is issued, development construction can commence.

In addition, public sector projects, copies of the EIS and certificate are deposited with the National Planning Commission so that the project can be admitted into the National Rolling Plan. The Rolling plan is a three year plan of public sector investments and projects where unfinished aspects of the plan in the first year are rolled over for completion in the succeeding year and so on.[128]

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[125] *Ibid*, Section 10(a)(b)(c) & (d)
[126] *Ibid*, Section 11 (a) (b) (c) (d) & (e)
[127] The functions of the Environmental Assessment Departments, Federal Ministry of Environment <www.ead.gov.ng> accessed 12 October, 2021
[128] Mohammed Nuruddeenlsah, Environmental Impact Assessment in Nigeria's Oil and Gas Industry, (Ph.d Thesis.Cardiff University 2012) 51.

Under the EIA Act, the Agency is required to conduct a mandatory study where it is of the opinion that a project is described in the mandatory list, and ensures that a mandatory study Report is prepared by the project proponent.

The Federal Ministry of Environment coordinates all aspects of environmental and climate matters in Nigeria, including the protection and sustainability of the biodiversity and ecosystem of the coastal and marine environment. FMENV has a number of technical departments such as Erosion, Flood and Coastal Zone Management; Climate Change and Environmental Assessments Departments that monitor issues affecting the coastal and marine environment. The Ministry is responsible for identifying areas of the marine environment that should be conserved as MPAs as part of her National Network of Parks. However, Nigeria has not established an MPA to help conserve her marine resources and protect them from environmental degradation. The Ministry actively represents Nigeria as a party at regional and global conferences such as the UNEP Regional Sea Programme, CBD and UNFCC, and the Nigerian Metrological Agency (NIMET).