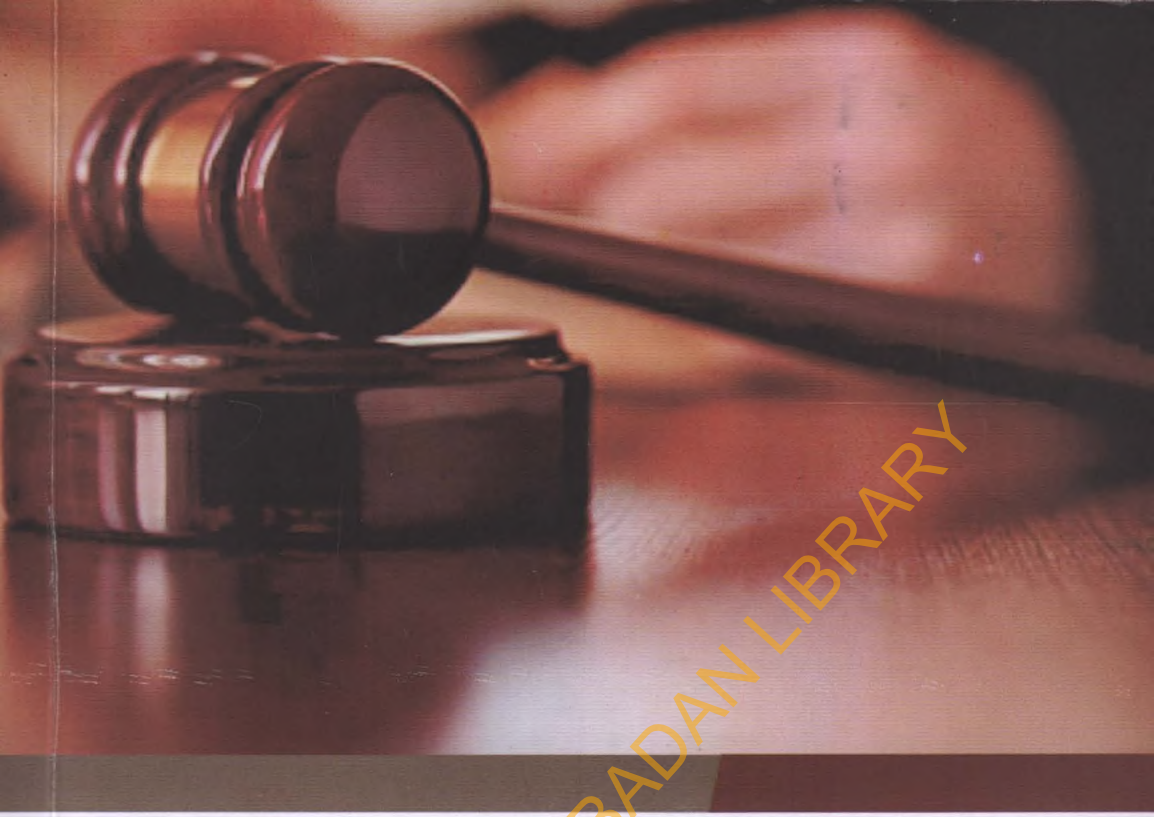

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CHAPTER EIGHT

OUTLINE OF THE HISTORICAL DEVELOPMENT OF LAWS FOR ENVIRONMENTAL PROTECTION IN NIGERIA

Dr. Ruth B. Akinbola*

Introduction and background

Environmental sustainability is a critical factor to the continuity of meaningful life on the earth, which is dependent on a healthy environment from which clean air, portable water, and land that can produce food can be derived. Environmental factors such as under development, industrialization, desert encroachment, soil erosion, oil spillages, pollution and poor waste mismanagement practices are major causes of a poor environment. These elements preceded the development of a formal environmental regime in Nigeria. Nevertheless, in the view of Ladan, Nigeria's formal environmental protection regime developed significantly from humble beginnings[1]. Notwithstanding how it began, it is important that at a point, environmental protection became a subject of attention for the law in Nigeria. Different authors have posited that the development of environmental law in Nigeria has three or four stages[2]. This writer aligns with the assertion that there are four broad phases that one could identify in the development of environmental law in Nigeria, beginning with the pre-colonial era, to the colonial era, the post-

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1 Ladan, M. T. 2010. Review of NESREA Act and Regulations 2007-2009: A New Dawn in Environmental Protection in Nigeria. *Nigerian Bar Journal* 6.1. p. 176 at 176.

2 See generally, Amokaye, O. G. 2004. *Environmental Law and Practice in Nigeria,* Akoka Lagos, University of Lagos Press, pp. 1-3. Ladan; M.T., 2004. *Materials & Cases on Environmental Law,* Zaria, ECONET Publishing Co.LTD, p. 8. Adamu Kyuka Usman, 2012. *Environmental Protection Law and Practice*, Ibadan, Ababa Press Ltd. p. 2.

colonial but pre-1988 era, and then the period from 1988 to date[3]. It is notable that each of the phases was characterized by different experiences. The kind of laws, the philosophies and motives behind them as well as the level of enforcement, gave each of the phases it's uniqueness. The objective of this work is to set out the way and sequence by which environmental laws in the modern sense evolved in Nigeria's jurisprudence and also to argue that environmental law existed in Nigeria before the advent of colonialism. The chapter will endeavour to examine the eras seriatim, beginning with the pre-colonial era, which discusses the traditional or customary ways of regulating the environment for sustainable use and also for protecting it. Two important concepts in this work, namely "environmental law" and "sustainability" will be briefly clarified before proceeding to examine the different eras of environmental law as a background. This is to enhance the understanding of the subject.

1.1 Environmental law: Environmental law is the body of rules both from national and international levels that ensure the sustainable utilization of resources for the social and economic development of the society[4]. It exists to regulate the use of the environment by man with a view to protecting it from damaging and unsustainable use. Environmental law is derived from the term "environment". In view of its importance, the Constitution of the Federal Republic of Nigeria (CFRN) 1999 has provided that:

> The State shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria"[5]
>
> and the "environment" consists of all, or any, of the following media, namely, the air, water and land; and the medium of air includes the air within buildings

[3] Akinbola, B.R. & Onifade, T.T.2013. Legal and Administrative Remedies in Environmental Law in Nigeria: Reform Proposition. *ABUAD Law Journal* 1.1: 320-352 at 325.

[4] Amokaye, O. G. 2004. *Environmental Law and Practice in Nigeria,* Akoka Lagos, University of Lagos Press, p. 3.

[5] Section 20, Constitution of the Federal Republic of Nigeria (CFRN) 1999.

> and the air within other natural or man-made structures above or below ground[6].

Honourable Justice Belgore JSC was expressed his joy in a seminar on environmental law and endorsed it as follows:

> This gathering will discuss the problem of the survival of this earth in relation to manmade destructive things, nay, you are going to discuss the whole legal ramification of the environment in Nigeria, but you may discover you are thinking of life on the earth most of the time[7].

On a similar note, a former member of the International Court of Justice (I.C.J), Honourable Prince Bola Ajibola corroborated the aforesaid opinion, stating that it was the policy of the administration to vigorously pursue the protection of the Nigerian environment in order to preserve the quality of life of all citizens and conserve the resources for the benefit of future generations of Nigerians[8]. The justification for this view can be gleaned from the view of Olagbaiye who posits that all life is dependent on land as people are born in hospitals, and homes are built on land; when people ultimately die, their remains are buried in the land; life's basic needs are also derived from land including food, clothing and shelter and therefore he asserts that there is only one essential or basic need of life which he concludes is land[9]. However, while the value of the land cannot be underestimated and the author is also right in his description of the importance of land to mankind, the environment (of which land forms a part) may even be a more appropriate substitute for land in respect of its role in the life of man. In describing the contents and scope of environmental law, Akintayo

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6 Chapter 43, UK Environmental Protection Act 1990.

7 Belgore JSC 1989. The need for Environmental Protection Law in Nigeria, in Shyllon F., (Ed.), *The Law and the Environment in Nigeria,* Ibadan, Vantage Publishers, p.1.

8 Bola Ajibola, 1989. The Protection of the Nigerian Environment through the Law, in Shyllon F., (ed.), *The Law and the Environment in Nigeria*, p. 10.

9 Olagbaiye, T., 1990. Statutory Regulations of the Environment – An Appraisal of the Lagos State Environmental Sanitation Edict, 1985, in J.A. Omotola (ed.), *Environmental Law in Nigeria including Compensation*, p.1

and Akinbola stated that the contents are wide and extensive, covering wide subject areas including water pollution, air pollution and land degradation, noise pollution, wildlife and natural resources conservation, pest control, fishery, environmental sanitation and solid waste management, land use and planning, matters of afforestation and deforestation and desertification[10]. The authors noted that the marriage between law and the environment brought about the branch of the law described as environmental law[11].

1.2 Environmental Sustainability: Environmental sustainability in this context refers to the use of the environment in such a manner that it serves the purpose of the present generation without compromising its ability to serve the purpose of future generations by being permanently impaired. A strong link has been established between development and the environment. Development and its processes depend on using environmental resources to achieve a result that enhances the standard of life for human beings. The use of the environment in unsustainable ways have resulted in near permanent damage to the environment and has brought about unpleasant consequences including deforestation, dissertation, flooding, global warming, climate change, ozone layer depletion, extinction of certain species of animals and extinction of some flora. A realization that development could no longer be sustained without conserving the environment,[12] led to global initiatives which began to emerge on the need to integrate the environment into development[13]. Such initiatives included the World Conservation Strategy (WCD) 1980, jointly issued by the International Union for the Conservation of Nature and Natural Resources (IUCN), the

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10 Akintayo, J.O.A. and Akinbola B.R., 2012. *Sustainable Environmental Management in Nigeria,* Matt F.A. Ivbijaro & Festus Akintola (eds.) 2nd edition, Ibadan, Book Builders Editions Africa, pp. 363-407 at p. 367.

11 *Ibid,* p. 366.

12 Ladan, M.T., 2004. *Materials & Cases on Environmental Law, Zaria*, ECONET Publishing Co.LTD, p. 8. Ladan has described development without conservation of the environment as an "ecological debt", which according to him, will be borne by children yet unborn as well as non-human.

13 Ivbijaro, M.F.A., 2012. Sustainable Development in Nigeria, in Matt F.A. Ivbijaro & Festus Akintola (eds.), *Sustainable Environmental Management in Nigeria,* 2nd edition, Ibadan, Book Builders Editions Africa, pp. 9-36 at p. 9.

United Nations Environment Programme (UNEP). Due to the unsavory environmental consequences of development, the Gro Harlem Brundtland Commission[14] which was established to formulate the global agenda for change by reviewing critical environmental, economic and social issues in its report submitted in 1987 which focused on the interdependence between conservation and environment, gave credence to the term 'sustainable development', which was the theme of the report entitled: *Our Common Future*. The report emphasized sustainable development objectives; essential ecological processes and life support systems must be maintained; genetic diversity must be preserved; and any use of species or ecosystems must be sustainable[15]. Sustainable development according to Ladan, has afforded a conceptual solution to the environmental problem, allowing the values of environment and development to be reconciled, by calling for the integration of both in every level of decision-making[16]. Sustainable development has been defined as; Development that meets the needs and aspirations of the current generations without compromising the ability to meet those of future generations[17]. Saba advocates for understanding of the linkage between human activities and dynamics of within the ecosystem, as a precursor to the effective enforcement of environmental laws in Nigeria and captures the essence of sustainability thus:

> If human activities clearly threaten to overwhelm the sustaining capabilities of the natural system as available data at the disposal of the Agency indicate, either nature must be technologically "redesigned" or human beings must alter the 'destructive' pattern of human behaviour through the development o f an effective legal framework.[18]

[14] The World Commission on Environment and Development (WCED) 1987 was named the Brundtland Commission after the its Chairman who was then the Prime Minister of Norway.

[15] Ivbijaro, M.F.A., 2012. *Op.cit.* (note 8 above), p.9.

[16] Ladan, M.T., 2004. *Op.cit.*, (note 8 above).

[17] Saba, A. R. K., 1994. After Rio – What Next? In M.A. Ajomo and Adewale Omobolaji (Eds.), *Environmental Law and Sustainable Development in Nigeria*, pp. 1 – 10 at p.2.

[18] *Ibid.*, p.5.

Sustainable development requires a re-prioritization of the value that Nigeria places on the environment. Integrating environmental protection as part and parcel of the process of development is the minimum that Nigeria can afford to do in the face of gross environmental degradation that have already been recorded in many parts of the country, in the interest of future generations.

2.0 The Pre-Colonial Era

The concept of sustainable management, preservation, conservation and utilization of natural resources and environmental protection, is not alien to African culture in the opinion of Amokaye who also holds the view that traditional people of Africa, including Nigeria, recognized the place of nature in the continued existence of the people[19]. The author observes that Africans lived in harmony with nature, ensuring a balance between themselves and the environment and environmental management was practiced through rudimentary but very effective methods[20]. The author further illustrated this by stating that there was a strong awareness of planning and sustainable development principles in land use practices through the observation of the principles and practice of conservation and strict application of the customary principles of corporate ownership of land and eminent domain and that in a similar vein over time, experience about the knowledge and the use of resources was transmitted from generation to generation[21]. On the mode of transmission of knowledge, Amokaye posits that it was through an intergenerational system of classification, empirical observations about the local environment, traditional beliefs, practices, lifestyles and the land-tenure systems practiced from one generation to another, that a sustainable system of traditional ecological knowledge which underscores the contemporary concept of sustainable development had developed[22]. The traditional people's protection of the environment is hinged upon the system of land ownership. In the opinion of Ladan, the environment and more particularly land, is the essence of human self-definition, economic and cultural survival;

19 Amokaye, O. G. 2004. *Op.cit.* (note 4 above). p. 6.
20 *Ibid.*
21 *Ibid.*
22 *Ibid.*

destruction of which is considered as threat to the society[23]. This view is shared by Amokaye who stated that land was viewed as a common heritage, and as such owned and managed cooperatively and the protection and beautification of the environment was conducted and administered by the community as a whole.[24] It was highly valued and was preserved from generation to generation. In the opinion of Eias, the relation between the individual and the group over the same land ownership coexist within the same social context.[25] For instance, the Yoruba of the South West of Nigeria believe that 'family land is preserved for the living and the dead'. The Elesi of Odogbolu before the West African Land Committee captured the position thus: *"I conceive that land belongs to a vast family of which many are dead, few are living and countless are yet unborn"*[26]. The importance attached to land by Africans formed the basis of diverse but integrated agricultural, religious and social norms and value systems aimed at protecting the environment, comprising taboos that forbade specific acts that degraded the environment and its components.

There were beliefs; lifestyles and practices like land-tenure system which, though not 'civilized' in nature, improved the living standards of the people within their environment. Practices that aimed at ensuring perpetuity of species were customary in traditional societies. For instance, the killing of pregnant animals was forbidden by customary law even during hunting festivals among the Ajah people of Lagos State[27], while the customary law of Iroko community in former western Nigeria similarly forbids bush burning for hunting purposes[28]. In terms of conservation, it is an Ijebu customary law requirement that communities located in areas where the soils are sedimentary, must plant trees, invariably to

23 Ladan, M. T. 2010. *Op.cit.* (note 1).

24 Amokaye, G. O., 2004. *Op.Cit.* (note 4), p. 8.

25 Elias, T. O. 1971. *Nigerian Land Law London:* Sweet and Maxwell, p. 147.

26 See Colonial Office Legal Library (London) Folio 13080 dated 1917 cited in Elias *"Nigerian Land Law"* (Sweet and Maxwell, London, 4th edn, 1971) p.73.

27 Adewale, O., 1994. Customary Environmental Law, in Ajomo, M.A.& Adewale O., *Environmental Law and Sustainable Development in Nigeria* Lagos (NIALS), 1st Ed. P. 160.

28 *Ibid.*, p. 159.

check erosion[29]. Fishing for seafood like periwinkles and lobsters was also forbidden by the customary law of Bola community in the former Eastern Nigeria. In terms of forest conservation, customary laws generally disapprove indiscriminate felling of trees as demonstrated in the case of Samuel *Bale* of *Idona vs. Abiodun Kaya*[30] where the defendant was alleged to have entered into the sacred groove in his community and cut down some trees, the *Baale* ordered him to leave the groove but he refused. Defendant was then sued under native law and custom and the *Igun* Native Court ordered him to leave the groove, forbidding him from further cutting of trees in the groove. Also, to achieve health protection and sanitation, the burial of dead people who died of infectious and contagious diseases like leprosy and tuberculosis in the forests, location of markets outside the main town and maintenance of sparse physical town development.[31] In addition, and as part of the land conservation principle applied by the traditional people, they classified and zoned their entire landmass into thick and lower forests and grooves. The lower forests were utilized for farming, housing and social needs. The thick forests were not cultivated or utilized for any economic purpose; rather, they served as buffer for variety of purposes and constituted significant harbingers for useful medicinal plants and herbs.[32]

In like manner, customs and religions recognised some sacred plants, sacred animals, sacred forests, holy mountain ranges, and 'valley of spirits'; the destruction of which was considered a taboo. By reason of these beliefs, the biological diversity in such areas remained safe, and to a large extent, thrived. In some cases where cultivation took place, the people preserved the *in-situ* useful species

[29] *Ibid.*

[30] (Unreported) case at Igun Native Court 85/1956, in Adamu Kyuka Usman, 2012. Environmental Protection Law and Practice, Ibadan, Ababa Press Ltd. P.1.

[31] Amokaye, O. G. 2004. *Op.Cit.*, (note 4 above) p. 7.

[32] *See generally*, Adewale, O. 1994. Customary Environmental Law. *Environmental Law and Sustainable Development in Nigeria.* Ajomo, M. A. & Adewale O. (Eds), (NIALS Conference Paper Series 5, 1994) p. 157; cited in Amokaye, O. G. *Op cit.* (note 4 above), p. 7.

of plants, either as individual plants, or in clusters of whole groves, and this served to further conserve the biological diversity.[33]

The institutions involved in the administration and enforcement of these environmental protection measures included the community heads and the council of elders at the community level, village heads and their officers at the village level, and family heads together with the principal members (and in fact, every member) of the family at the family level. These parties did not only observe and hand down the rules and principles for the protection of the environment; they also served as watch dogs to ensure compliance with the rules and regulations, together with law enforcement institutions (like the Dongaris in the North and the Akoda Oba amongst the Yorubas of the South-West) and spiritual groups (like the Ogbonis of the Old Oyo Empire)[34].

In summary, in pre-colonial Nigeria, land was a common asset jointly owned by "... a vast family of which many are dead, few are living and many are yet unborn"[35] and there were diverse integration of agricultural, religious and social norms and value systems for the protection of the environment. In rating the effectiveness and adequacy for achieving environmental protection and sustainability, Adamu has assessed environmental customary law (and this writer is in agreement with his assessment) thus:

> The problem with most Nigerian customary environmental law however, is that they either suffer from lack of a coherent underpinning philosophy or they are taboo-based. These make them inadequate tools for protecting the modern environment under the onslaught of toxic industrial waste among other poliutants.[36]

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33 *Ibid.* p. 8. See also Ejere, O. D. *Op.Cit.* (note 45) pp. 84-85.

34 Elias, T. O. 1971, *Op.Cit.* (note 6).

35 Ademola, T.A. *African Concept of Environment and Environment Protection.* 11. Retrieved on December 3, 2012, from www.nou.edu.ngnoun/NOUN_OCL/pdf .

36 Adamu Kyuka Usman, 2012. *Environmental Protection Law and Practice*, Ibadan, Ababa Press Ltd. p. 2.

Also, the enforcement of customary environmental laws are largely dependent on religious and diabolical beliefs, which makes it difficult to enforce under the present state of development in Nigeria. In this 21st Century when scientific proof or basis is the vogue and global economic transformation has brought Nigeria into a globalised system of massive pollution activities, more than a heterogeneous system of customary laws that are not based on scientific and systematic set of laws are needed for the protection and sustainability of the environment in Nigeria. A more coherent and scientific system is needed to protect and make the Nigerian environment sustainable.

3.0 The Colonial Era

The arrival of the colonial government in Nigeria disrupted the order described above and brought other types of laws into Nigeria for environmental protection. The advent of the Colonial administration entailed changes in Nigeria's administrative system and its values as well as the methods of enforcing them. The next part of this paper examines environmental protection under the colonial rule that lasted till 1960 when Nigeria became an independent state. Generally, the law under the colonial rule comprised both the English laws and rules of customary law[37].

3.1 Common Laws: As a result of the colonial rule, Nigeria received the common law into the body of Nigerian laws,[38] thus making the common law principles of Nuisance, Trespass, Negligence and the Strict Liability Rule in Rylands v. Fletcher part of the Nigerian law. These principles had the capacity to conserve the environment against domestic environmental violations, but they were unsuitable for Nigeria at that time. Although common law principles moved environmental laws further from the scope of customary law, the common law principles have not proved

[37] Generally, the applicability of customary law was subject to passing the tests of not conflicting with any laws for the time being in force; not being contrary to public policy; and not being repugnant to natural justice, equity and good conscience.

[38] Supreme Court of Nigeria Ordinance of 1914, Section 14.

adequate, considering the serious kinds of environmental threats that have emerged over time[39].

3.2 Environmental Legislation: The origin of environmental legislation can also be traced to the colonial period. Earlier statutes containing environmental matters did not provide for remedies in environmental cases outside the common law.[40] Osondu has posited that during the colonial era, protection of the environment was not a priority in Nigeria and there was accordingly no policy aimed at preserving and protecting it[41]. Environmental matters were not treated as problems of a serious nature[42], but as tort of nuisance, because disputes in environmental law were not viewed as public matters that warranted state intervention[43]. It was therefore not surprising that there were few environmental laws and the few criminalized activities that could degrade the environment such as prohibition of water pollution[44] and air pollution[45] respectively as well as creating the offence of nuisance. Similarly, Burnet has observed that environmental law of the 19th Century Britain was not motivated by the desire to protect and conserve the environment in the sense of the 20th Century *green movement*, but rather emerged (out of necessity) to temper the insanitary living conditions of a rapidly urbanizing nation facing crises[46]. Thus, the three stages of the development of environmental legislation in Nigeria were

[39] The threats of transboundary movement of hazardous and toxic waste, climate change, global warming, loss of biodiversity, deforestation and other threats of unsustainable development.

[40] For example, Criminal Code Act of 1916, which prohibited water pollution (section 245) and air pollution (section 247) and created the offence of nuisance. In 1917, the Public Health Act was enacted; although somewhat broad in scope, this Act did contain provisions of relevance to the regulation of land, air and water pollution. Thus it is evident that at this time, matters relating to the environment were dealt with in a rudimentary manner.

[41] Ladan, M.T., 2004. *Materials & Cases on Environmental Law,* Zaria, ECONET Publishing Co.LTD, pp.62-63.

[42] See Osondu A. C. *Op.Cit.* (note 31) p. 193.

[43] Ladan, M.T., 2004. *Op.cit.*, p.63.

[44] Section 245 of the criminal code Act of 1916.

[45] Section 247 of the Criminal Code Act of 1916.

[46] Burnett-Hall, Richard, (1995). *Environmental Law,* London Sweet & Maxwell cited in Akintayo and Akinbola, op.cit., (note 6 above), p. 378.

identified, namely the era of environmental sanitation laws; the period of petroleum-based environmental laws; and the era of broad-based environmental legislation[47]. Matters relating to the environment were dealt with as tort of nuisance because disputes in environmental law were not viewed as public matters warranting state intervention. There were a few environment-related laws that criminalized activities that could degrade the environment. For example, the Criminal Code Act of 1916,[48] which prohibited water pollution[49] and air pollution[50] and created the offence of nuisance.[51] In 1917, the Public Health Act[52] was enacted; although somewhat broad in scope, this Act did contain provisions of relevance to the regulation of land, air and water pollution. Thus it is evident that at this time, matters relating to the environment were dealt with in a rudimentary manner, that is, from the view point of environmental sanitation.[53]

In the late 1950s which marked the tail end of the colonial period, oil was found in commercial quantities.[54] This marked the beginning of real environmental threats in Nigeria.

Two main features characterized colonial environmental legislations. Firstly, the legislations were mainly sectoral in scope and largely "use-oriented". The colonial administrators promulgated

[47] Akintayo J.O.A. & Akinbola, B.R (2012). Op.cit. (note 9 above), p. 377.

[48] Criminal Code Act 1916, Cap. C38, Laws of the Federation of Nigeria (LFN), 2004.

[49] Criminal Code Act, Section 245.

[50] Section 247.

[51] Ladan, M. T. 2010. *Op.Cit.* (note 85) p. 177.

[52] Public Health Act 1917, Cap. P40, LFN 2004.

[53] Ladan, M. T. 2010. *Op.Cit.* (note 85) p. 177.

[54] See Odularu, G. O. 2008. Crude Oil and the Nigerian Economic Performance. Oil and Gas Business 1-29, 3 at: http://www.academia.edu/attachments/5921722/download_file?st=MTM5MzgwMTg1NCw0MS4yMDYuMTIuMzI%3D&ct=MTM5MzgwMjExMQ%3D%3D. Accessed 12 June 2003

See also Omofonmwan, S.I. and Odia, L.O. 2009. Oil Exploitation and Conflict in the Niger-Delta Region of Nigeria. J Hum Ecol 26. 1: 25-30 at 28. Retrieved on Dec. 3, 2013, from http://www.krepublishers.com/02-Journals/JHE/JHE-26-0-000-09-Web/JHE-26-1-000-09-Abst-PDF/JHE-26-1-025-09-1819-Omofonmwan-S-I/JHE-26-1-025-09-1819-Omofonmwan-S-I-Tt.pdf.

laws to regulate specific natural resources and these laws were primarily concerned with the allocation and exploitation of natural resources, rather than their management. Secondly, the colonial laws were "rule-oriented". The laws either completely prohibited certain forms of social conduct which may adversely affect environmental resources; or subjected them to prior authorization by administrative agencies. In effect, environmental law during this era was permeated with prohibitions, administrative and judicial remedies, as well as coercion techniques. The law neither addressed the issue of rehabilitation of environmental damage, nor considered the undertakings of positive measures to enhance environmental quality[55].

4.0 Post-Colonial but Pre-1988 Era

Following Nigeria's independence in 1960 and the discovery of oil in commercial quantities shortly before then, it became apparent that existing laws that dealt with the environment were at best, grossly inadequate and at worst, totally irrelevant. There were no coherent legislative or administrative policy towards the preservation and protection of the environment in Nigeria. This was due to the fact that issues of environmental pollution and general degradation were treated as if they were part of the traditional common law of nuisance which was left to the victim to pursue in his private capacity[56]. In addition, most of the provisions on environmental protection were scattered throughout different laws, resulting in an *ad hoc* response to different needs in different situations.

Thus, the period between independence and 1988 actually witnessed a combination of political and socio-economic factors which began to enhance the development of environmental law in Nigeria. During this period, it can be said that the erstwhile concept of environmental law changed. In the first place, there was a sudden

[55] *See* Amokaye, O. G. *Op.Cit.* (note 4) pp. 58-59. See also, Adams S. 2010. Environmental Law and Policy in Nigeria: The Institutional Framework. *Kogi State University Bi-Annual Journal of Public Law.* 3:1 p. 214 at 220.

[56] Ikhariale, M. A. 1998. *A Constitutional Imperative on the Environment: A Programme of Action for Nigeria. Environmental Law and Policy* Eds: Simpson S. & Fagbohun O. Lagos: Law Centre, Lagos State University p. 56. See also, Dawood, H. A., 2008-2009 Climate Change: A need for Paradigm Shift in Environmental Legislation. *Kogi State University Law Journal.* 2&3 p. 210 at 225.

growth in the development of local industries which created problems associated with industrial waste management. These industries brought about various forms of pollutants into the environment. Secondly, the discovery of oil in the first decade of independence and the attendant oil boom actually highlighted the unpreparedness of Nigeria for environmental problems associated with industrial development. Thus, in consequence of the impact of industrialization on the environmental policy in Nigeria, a new concept of environmental law had to be articulated. This brought about the enactment of the Factories Act, the Oil in Navigable Waters Act 1968, Oil in Navigable Waters Regulation 1968, Petroleum Act 1969, Petroleum (Drilling and Production) Regulation 1969, Petroleum Drilling and Production (Amendment) Regulations 1973 and the Petroleum Refining Regulations 1974. The prevalence of these laws and regulations in the first decade of Nigeria's independence was an indication of a sudden shift in the concept of environmental law from what it was in the colonial era[57].

The United Nations Conference on Human Environment (UNCHE), Stockholm 1972 which was attended by Nigeria also awakened the consciousness of the Nigerian government on the need to evolve a holistic rather than sectoral approach to environmental protection. The 1979 Federal Constitution addressed environmental hygiene, with emphasis on refuse clearance, and the management of liquid and solid waste in abattoirs, residential homes and streets, all of which came under the supervision of local government councils. Thus, the Constitution did not prohibit activities violating environmental protection, but only provided the formalities for waste management which is a meagre area of environmental protection.[58] The military government of Buhari and Idiagbon in

[57] See generally, Shyllon F. 1999. Present and Future Institutional Framework for Environmental Management in Nigeria. *The Law and the Environment in Nigeria*. Shyllon F. (Ed.) Ibadan: UI Press. p. 1; Okoye N. V. 1999. Oil Pollution Control *The Law and the Environment in Nigeria*. Shyllon F. (Ed.) p. 64; Ola C. S. 1984. *Town and Country Planning and Environmental Laws in Nigeria*. 2nd Ed. Ibadan: University Press Ltd. pp.152-153, 165; Ladan, M. T. 2010 *Op.Cit.* (note 85). pp. 177-180; and Atsegbua L. et al. *Op.Cit.* (note 27). p. 5.

[58] Ola C. S. *Op.Cit.* p. 165.

1983 tried to bring the old days of environmental cleanness through their programme, War Against Indiscipline (WAI), that made it compulsory for everyone to clean his environment every Saturday.[59] These were some of the measures that were in place for the protection and preservation of the environment prior to 1988.

4.1 The Post colonial and Post-1988 Era

It was not until 1988, that Nigeria had structured environmental protection machinery and this was because, prior to the Koko toxic incident, the Nigerian state had no central policy on environmental issues.[60] The discovery of toxic waste dumped in Koko,[61] a remote part of southern Nigeria, in June 1988, and the attendant media and public outcry prompted the government to react swiftly to the prevailing but inefficient state of environmental protection measures in the country[62]. Through diplomatic channels, the Government of Nigeria at that time succeeded in getting the Italian government and the Italian company that was responsible for the act to evacuate the toxic waste out of the country[63]. Thereafter, rapid development has been recorded in legislative protection of the environment in Nigeria

[59] Atsegbua L. et al. *Op.Cit.* (note 27). p. 149.

[60] Ola C. S. *Op.Cit.* (note 34), p. 165; Akeredolu A. 2011. NESREA Vis-a-Vis FEPA: An Old Wine in a New Bottle? *NIALS Journal of Environmental Law* 1. p. 309 at 310. See also, Fagbongbe, M. 2012. Criminal Penalties for Environmental Protection in Nigeria: A Review of Recent Regulations Introduced by NESREA. *NIALS Journal of Environmental Law* 2. p.145 at 146.

[61] The story of environmental protection in Nigeria got to its peak with the discovery of an Italian ship in May 1988 with some imported toxic chemical waste, made up principally of polychlorobiphenyls (PCBS). The waste came from Italy in five (5) shipment loads totaling 3,884 metric tonnes. This was given much publicity by the media. The hostile media reaction that accompanied the discovery hastened the creation of the then Federal Environment Protection Agency (FEPA) (Now Federal Ministry of Environment) since Nigeria lacked both the institutional and legal framework to address the issue. Hence, in December 1988, as part of the emerging coordinated approach to environmental issues, the agency was established by Decree. The coming of FEPA represents a milestone in environmental management effort in Nigeria.

[62] Ogbodo S. G. 2009. Environmental Protection in Nigeria: Two Decades After the Koko Incident. *Annual Survey of International & Comparative Law* 15.1. p. 2.

[63] *Ibid.*

through local enactment and adoption of international legal instruments that are relevant for environmental sustainability in the 21st Century. Some of the important laws and institutions which are randomly selected, will be highlighted herein.

4.1.1 Harmful Waste (Special Criminal Provisions etc) Act, 1988: The first legislative reaction to the Koko toxic waste incident was the enactment of the Harmful Waste (Special Criminal Provisions etc) Act, 1988,[64] to deal specifically with illegal dumping of harmful waste. The Harmful Waste (Special Criminal Provisions) Act 1988 was enacted as a Decree to arrest illegal dumping of waste in Nigeria. Section 1 of the Act prohibited any person within the country from having any dealing whatsoever with harmful waste,[65] while section 10 empowered police officers to perform tests and take samples of any substances related to the commission of crimes created by the Act and seize the item or substance. The officer is equally empowered to arrest any culprit in the commission of the crime.[66]

4. 1.2 National Policy on the Environment 1989: In addition, the Koko experience prompted the Nigerian Government to sponsor an international workshop on the environment which resulted in the formulation of a National Policy on the Environment[67]. The policy among other things, formulated national policy goals and strategies for implementation. The human factors, land use and soil conservation, water resources management, forestry, wildlife and

[64] Harmful Waste (Special Criminal Provisions etc) Act 1988, Cap H1, LFN 2004.

[65] Section 8 states that any person who attempts to commit any of the crimes under the Act shall be guilty of a crime and shall on conviction be sentenced to imprisonment for life. Section 9 of the Act provides that the immunity from prosecution conferred on certain persons by or under the Diplomatic Immunities and Privileges Act shall not extend to any crime committed under the Act. The opinion has been expressed that section 9 cannot be invoked or enforced as immunities under the Diplomatic Immunities and Privileges Act have their origin in international conventions and treaties which have the force of law in Nigeria by virtue of Section 12 of the 1999 Constitution.

[66] Section 10 of Harmful Waste (Special Criminal Provisions) Act.

[67] Aina, E. O. A. & Adedipe, N. O., (Eds.) 1991 *The Making of the Nigeria Environmental Policy* Ibadan: University Press. p. 311.

reserves, occupational health safety and preservation of greenbelts, among others, became easily recognized as concepts in an effort to provide a regime of management regulations and laws to balance the problems they posed. It was at that point the establishment of an administering and enforcement organ in the nature of the Federal Environmental Protection Agency was proposed[68].

4.1.3 Federal Environmental Protection Agency (FEPA) Act 1988 (Now repealed by the NESREA Act 2007): The Federal Environmental Protection Agency (FEPA) Act 1988[69] was also enacted and the agency was established. It is discussed herein because of its significance in the development of Nigerian environmental law. It is so significant that before its repeal, the FEPA Act was considered to be the statutory threshold of a national policy on environmental protection in Nigeria according to Okorodudu-Fubara.[70] The major function of the agency was the establishment of national environmental guidelines, standards and criteria most especially in the areas of water quality, effluent discharge, air and atmospheric quality, including the protection of the ozone layer which was unavailable before then.[71] The agency also had power to initiate policy in relation to environmental research and technology and in formulating and implementing policies related to environmental management. In addition, FEPA was given some enforcement powers including the right to inspect facilities and premises, search locations, seize items and arrest people contravening any laws on environmental standards and prosecute them. The agency was also empowered to initiate specific programmes of environmental protection and to establish monitoring stations or networks to locate sources of and dangers associated with pollution. Furthermore, it had powers to conduct public investigations or enquiries into aspects of pollution.[72]

[68] *Ibid.* p. 327.

[69] Federal Environmental Protection Agency (FEPA) Act 1988, Cap. F10 LFN 2004.

[70] Okorodudu-Fubara, M.T., 1998. *Law of Environmental Protection in Nigeria: Materials and and Text,* Ibadan , Caltop Publications, p. 168.

[71] See Ikhariale, M. A. *Op.Cit.* (note 102) pp. 58-59.

[72] *Ibid.*

Federal Environmental Protection Agency (FEPA) Act was enacted as a comprehensive legislation on the environment in Nigeria to the extent that it covered environmental sectors whose laws were initially scattered in several enactments. The Act established FEPA as an administrative and enforcement agency on environmental matters. [73] The Act covered penal provisions against discharging hazardous substances in harmful quantities into the air, land or water.[74] Inadequacy of the penalties contained in the FEPA Act was one of its greatest defects. FEPA is the forerunner of the federal Ministry of Environment.

The Purpose of FEPA as provided in the Act was to prescribe standard for:

[73] Federal Environmental Protection Act (FEPA) 1988 (later codified as Federal Environmental Protection Act Cap 131 LFN, 1990), before it was repealed, performed the function of stipulating environmental guidelines, standards and criteria, most especially in the areas of water quality, effluent discharge, air and atmospheric quality, including the protection of the ozone layer which was the first time such was given legislative attention in Nigeria. Other areas were: noise control, hazardous substance discharge control and the removal of waste and ascertaining spillers' liability. The agency also had power to initiate policy in relation to environmental research and technology, and in formulating and implementing policies related to environmental management. Federal Environmental Protection Act (FEPA) 1988 was also given some enforcement powers including the right to inspect facilities and premises, search locations, seize items and arrest people contravening any laws on environmental standards and prosecuting them. The agency was also empowered to initiate specific programmes of environmental protection and to establish monitoring stations or networks to locate sources of and dangers associated with pollution. Furthermore, it had powers to conduct public investigations or enquiries into aspects of pollution. See FGN. 1988. Federal Environmental Protection Agency Decree. Lagos: Federal Ministry of Information and Culture. 58.

[74] A fine not exceeding 100,000 (One Hundred Thousand) Naira and/or a term of imprisonment not exceeding 10 years were the stipulated penalties for individual offenders while corporate offenders were liable to a fine of 500, 000 (Five Hundred) Naira and an additional fine of 1, 000 (One Thousand) Naira per day for every day the offence subsists. See Chegwe E.N. (2006) op.cit. at 318.

(a) Water quality;[75] (b) Effluent limitation;[76] (c) Air quality and Atmospheric protection; [77] (e) Ozone protection;[78] (f) Noise control;[79] and (g) Control of hazardous substances,[80] spiller's liability[81] and removal control methods[82].

Accordingly, FEPA developed the following instruments in combating environmental degradation

1. The National Policy on the Environment of 1989 which described guideline and strategies for achieving the Policy Goal of Sustainable Development[83].
2. National Guidelines and Standards for Environmental Pollution Control in Nigeria of 1991 which represents the basic instrument for monitoring and controlling industrial and urban pollution[84].
3. National Effluence Limitation Regulations S.I.8.of 1991 which makes it mandatory that industrial facilities install anti -pollution equipment, make provision for further effluent treatment, prescribe maximum limit of effluent parameters allowed for discharge, and spell out penalties for contravention[85].

[75] FGN.1988.FEPA Act. *Ibid*. s. 16.
[76] *Ibid*. at S17.
[77] *Ibid*. at s18.
[78] *Ibid*. at s19.
[79] *Ibid*. at s20.
[80] *Ibid*. at s 21.
[81] *Ibid*. at s22.
[82] *Ibid*. at 23.
[83] Launched by Government on 27th November 1989. See FEPA.1989. National Policy on the Environment. World Resources Institute. Retrieved on July 3, 2013, from http://projects.wri.org/sd-pams-database/nigeria/national-policy-environment.
[84] Launched on March 12th 1991. See FEPA.1991. *National guidelines and Standard for Environmental Pollution Control in Nigeria*. World Resources Institute. Retrieved on July 3, 2013, from http://projects.wri.org/sd-pams-database/nigeria/national-guidelines-and-standards-environmental-pollution-control.
[85] FEPA.1991.*National Effluence Limitation Regulations*. World Resources Institute. Retrieved on July 3, 2013, from http://projects.wri.org/sd-pams-database/nigeria/national-effluent-limitation-regulation.

4. Pollution Abatement in Industries Facilities Generating Waste Regulations S.I.9 of 1991 which imposes restrictions on the release of toxic substances and requirement stipulated.[86]
    a. Monitoring of pollution to ensure permissible limits are not exceeded;
    b. Unusual and accidental discharges;
    c. Contingency plans;
    d. Generator's liabilities
    e. Strategies of waste reduction and safety for workers.[87]
5. Waste Management Regulation S.I.15 of 1991 which regulates the collection, treatment and disposal of solid and hazardous waste for municipal and industrial sources and give the comprehensive list of chemicals and chemical waste by toxicity categories[88].

FEPA was thus the supreme reference authority in environmental matters in Nigeria although state and local government authorities and institutions including their environmental departments were still expected to play their traditional role of monitoring and enforcing standards as well as fixing penalties charges, taxes and incentives to achieve certain environmental goals.

FEPA was very important in the development of environmental legislation in Nigeria, but it was not a perfect piece of legislation. It had some defects. The FEPA Act had several defects of form and contents, including poor draftsmanship, being initially a hurriedly drafted Decree of the Federal Military Government of Nigeria at the eve of its expiration. Also, the penalties under the FEPA Act were grossly inadequate to serve as deterrence against intending environmental offenders, thereby necessitating legislative reform. FEPA Act has been repealed and replaced by the NESREA Act, 2007. To compound this, the Nigerian constitution also defectively

[86] FEPA.1991.*Pollution Abatement in Industries Facilities Generating Waste Regulations. World Resources Institute*. Retrieved on July 3, 2013, . from http://projects.wri.org/sd-pams-database/nigeria/pollution-abatement-industries-and-facilities-generating-waste-regulations

[87] *Ibid.*

[88] FEPA.1991.Waste Management regulation. Retrieved on July 3, 2013, from http://projects.wri.org/sd-pams-database/nigeria/waste-management-regulations.

located the provision on the environment in chapter II of the Constitution which deals with the fundamental Objectives and Directive Principles of State Policy, rather than in chapter IV which provides for the fundamental human rights. By so doing, the enforceability of the provision of section 20 of the CFRN 1999 has been subject to some controversies which could have been avoided if the section were part of chapter four rather than chapter two of the CFRN.

4.1.4 Environmental Impact Assessment Act 1992[89]: Another important law which was enacted is the Environmental Impact Assessment (EIA) Act. After Nigeria attended the 1992 Earth Summit and the endorsed AGENDA 21, the National Council on Environment gave a directive that led to the enactment of the Environmental Impact Assessment Act.[90] The then Federal Environmental Protection Agency (FEPA) went straight to action giving legal backing on the enactment of Environmental Impact Assessment (EIA) Decree of December 1992 later redesigned as an Act.[91]

The Act provided for a systematic process that should produce a statement on the environmental consequences of development actions. This statement is to be used in guiding decision-making as they affect the impact of developments on the environment of proposed projects. The 1980s and 1990s witnessed the most drastic and systematic development of environmental laws in Nigeria, partly owing to Nigeria's subscription to a number of international instruments during the period. Notwithstanding these developments, there were still environmental challenges. The Act makes EIA mandatory for new major industries and prescribed the process, follow-up actions and conditions for it.

The EIA Act is in three parts: part 1 deals with the general principles of environmental impact Assessment; part 2 deals with

[89] Environmental Impact Assessment (EIA) Act 1992, Cap. E12, LFN 2004 (It was initially promulgated by the Federal Military Government of Nigeria as Decree No. 86).

[90] Glasson.A.J, Therivel. R, Chadwick. A. 1999. *Introduction to Environmental Impact Assessment.* 2nd ed. London: University Press. 9.

[91] Environmental Impact Assessment Act 1992 CAP E12 *LFN* 2004.

environmental assessment of projects; and part 3 deals with miscellaneous issues on EIA and powers that would facilitate environmental assessment. This Act was a groundbreaking one at that time, but not for the present, as we have seen that environmental law has grown beyond the confines of the preventive principle. Absence of scientific evidence no longer prevents environmental protection measures, based on the precautionary principle which is now becoming more and more popular in environmental protection. The idea of enacting the EIA Act has been traced to the American National Environmental Policy Act (NEPA).[92] In America, the Environmental Impact Assessment is referred to as the "Environmental Impact Statement" (EIS). By Nigeria's EIA Act, it is mandatory to carry out an EIA as a general rule, in respect of projects that are likely to affect the environment[93].

4.1.5 African Charter on Human and Peoples' Rights (ACH&PR) 1981: The African Charter on Human and Peoples' Rights (ACH&PR) which was adopted on 19 January 1981 and to which Nigeria as a party is bound, appears to supply the shortfall in the constitutional provisions of the CFRN 1999. The African Charter became part of Nigerian law by virtue of the African Charter on Human and Peoples' Rights (Application and Enforcement) Act[94]. By virtue of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act 2004, "*All peoples shall have a right to a generally satisfactory environment favourable to their development*"[95]. The import of this provision is that all the people of Nigeria have a right to an environment that is satisfactory and favourable to their development. The ACH&PR has made a connection between the environment and development by virtue of its section 22 which states that:

[92] NEPA was passed by the US Congress in 1969 (42 USCS 4331) in Akintayo, J.O.A. and Akinbola B.R., 2012, *op.cit.*, (note 9 above), p.385

[93] Section 2(2), EIA, 1992 op.cit. (note 89 above).

[94] ACH&PR Act Cap 10, 1983, Now African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap. A9, 2004, by which the ACH&PR has become part of Nigeria's enactments and operational laws.

[95] Article 24, African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9, Laws of the Federation of Nigeria 2004.

> All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.

In view of this provision, the law in Nigeria has provided for all Nigerians, the entitlement to a healthy, satisfactory and a favourable environment as a right, which is enforceable under the law, as well as the right to equal enjoyment of the common heritage of mankind which is the environment, for their economic, social and cultural development. The inclusion of the right to a healthy environment has generally been noted to occur first in the African Regional Charter, making it a step ahead of other regional instruments in providing the human right to a satisfactory environment..

4.1.6 Constitution of the Federal Republic of Nigeria 1999: Constitutional protection of the environment formerly dates to the CFRN 1999. After the return to democracy in 1999, there was a renewed interest in environmental management and protection. A direct environmental provision was introduced for the first time into the 1999 Nigerian Constitution by virtue of Section 20.[96] It provides that '*the state shall protect and improve the environment and safeguard the water, air, land, forest and wildlife of Nigeria.*' Though the section does not create environmental rights for the Nigerian citizen per se, its integration in the Constitution is however a powerful evidence of societal awareness in Nigeria, of the need to protect and preserve the environment. Section 20 of the 1999 Constitution became the first constitutional basis for environmental protection in Nigeria. The 'right' provided under this section is however not justiciable and this means it cannot be relied upon by an aggrieved person in a court of law by virtue of section 6(6) (c) of the same Constitution, which provides that "the judicial powers vested in accordance with the foregoing provisions of this section – (c) shall not except as otherwise provided by this Constitution, extend to any issue or question as to whether any act of omission by any authority or person or as to whether any law or any judicial

[96] Constitution of the Federal Republic of Nigeria, 1999, Section 20, CAP. C.23, Vol.3, LFN 2004. See also, Akeredolu A. *Op.Cit.* (note 106) p. 310.

decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution."

The general provisions such as those giving both the Federal and State Governments power to make laws "for ... peace, order and good government" and "maintenance and securing of public safety and public order",[97] can also be used as the basis for environmental legislation.

4.1.7 National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007[98]: The most current and existing laws is the National Environmental Standards and Regulations Enforcement Agency (Establishment) (NESREA) Act, which came into force in 2007. The Act establishes the NESREA as Nigeria's leading environmental protection Agency[99]. Though intended to be an improvement on the FEPA Act, NESREA Act also employs coercion for securing compliance by providing for various punitive measures against offenders.[100] The use of financial punishment[101] in preference to imprisonment under the FEPA Act is clearly a point of deviation from the status quo, creating additional revenue for the state from which it is hoped that the environment may be better catered for. Its introduction of substantial daily accumulation of penalties for continuing violation of the provisions of the Act is also innovative and should provide more deterrence than what was obtainable under the repealed FEPA Act. A further improvement of environmental protection under the NESREA Act is the provision for Mobile courts which will achieve speedier dispensation of justice[102]. NESREA Act also acknowledges the trans-boundary nature of pollution and provides for collaboration across national boundaries in the fight against pollution and

[97] Section 4 (2) and 11 (1), Constitution of the Federal Republic of Nigeria, 1999.

[98] NESREA Act, No. 25 of 2007, which came into force on 30th July 2007, repealing the Military enacted FEPA.

[99] Section 1 of the NESREA Act, 2007.

[100] Sections 7 and 8 of the NESREA Act provide for the powers of the Agency, create specific offences and also spell out appropriate punishments against offenders.

[101] Sections 20 – 28, NESREA Act, 2007.

[102] Section 8 (f), NESREA Act, 2007.

protection of the environment[103]. The NESREA Act appreciates the importance of cooperation and collaboration among relevant regulatory agencies and requires the Agency to consult for the purpose of making regulatory instruments[104].

The NESREA Act is the first major environmental enactment by a democratic legislature in Nigeria and therefore it enjoyed a broad-based consultation among major stakeholders. It therefore reflects greater regard for the political rights of people as shown by its requirement of a court warrant before a NESREA Officer can enter into premises to conduct a search, inspect or take samples for analysis upon a reasonable belief that there are activities or storage which amount to a contravention of the law or environmental standard[105]. The NESREA Act generally has improved on legislative provision on environmental protection in Nigeria, although its success will largely depend on the level of its enforcement and constant recourse to the use of its delegated authority to make instruments that will make it adequate to deal with emerging environmental challenges.

4.1.8 National Oil Spill Detection and Response Agency (NOSDRA): The National Oil Spill Detection and Response Agency (Establishment) Act 2006 was enacted by a democratic government in Nigeria. NOSDRA Act established the National Oil Spill Detection and Response Agency (NOSDRA) as the agency charged with the responsibility of implementing the National Oil Spill Contingency Plan (NOSCP), derived from an international obligation under the International Convention on Oil Pollution Preparedness and Response Cooperation. The Act also makes regulations on waste emanating from oil exploration and production and its potential consequences in the Niger Delta area of Nigeria. Section 6(1)(a) of NOSDRA Act empowers the agency to carry out surveillance on oil exploration activities, and to ensure compliance with all existing environmental legislation, especially in areas of detection of oil spills in the Petroleum sector. The agency is mandated to 'police' oil companies in their activities. The law

[103] *Ibid.* Sections 7 (b) and 8 (n), NESREA Act 2007.
[104] See sections 2, 8(6), 23 NESREA Act, 2007.
[105] Section 30 (1)(a), NESREA Act, 2007.

requires oil spillers to report oil spills to the agency not later than 24 hours of the spill,[106] and provides for penalty on default[107].

4.1.9 Institutional Framework for environmental protection and sustainability

4.1.9.1 Federal Ministry of the Environment (FME) 1999: The development of environmental laws in Nigeria did not leave out the establishment of institutional framework for the protection of the environment. The Federal Ministry of the Environment (FME) was created in 1999 to replace the first agency on environmental protection, which was the FEPA. The Ministry pushed an agenda, prioritizing issues of gas flaring, marine and coastal resources degradation, desertification, industrial and urban pollution, among others. The Niger Delta Development Commission was also established to devise means of improving the oil-rich Niger Delta area of Nigeria which was most hit by environmental accidents in the course of oil exploration and processing.

4.1.9.2 Department of Petroleum Resources (DPR): The Department of Petroleum Resources (DPR) is an arm of the Ministry of Petroleum. The department supervises all petroleum industry operations carried out under licences and leases in Nigeria in order to ensure compliance with the applicable laws and regulations in line with best oil producing practice and standards.[108]

4.1.9.3 Nigerian Police Force (NPF) and other Law Enforcement Agencies: Officers of the Nigeria Police Force and other law enforcement officers are empowered to enforce the laws on environmental degradation, particularly with respect to the Harmful Waste Act.[109] The Harmful Waste Act places a total ban on the purchase, sale, transportation, deposit or storage of harmful waste. Violators of the Act are held strictly liable and their punishment range from fine and/or restoration of the polluted environment, to

[106] NESREA Act 2007. *op.cit.* Section 6(2).
[107] NESREA Act 2007. *Ibid.* Section 6(2)&(3).
[108] Organization Roles. About DPR. Retrieved on August 20, 2013, from http://www.dprnigeria.com/dpr_roles.html
[109] See The Harmful Waste (Special Criminal Provisions) Act 1988, s. 10. Retrieved on June 20, 2013, from http://www.placng.org/new/laws/H1.pdf.

life imprisonment. Section 10 of the NESREA Act empowers a police officer to conduct a warrantless search on any land, building, or carrier, including aircraft, vehicle, container or any other thing whatsoever which he has reasons to believe is related to the commission of a crime under the Act. Similarly, the Act empowers an officer to perform tests and take samples of any substances related to the commission of the crime[110] and seize the item or substance.[111] The officer is equally empowered to arrest any culprit in the process of committing a crime.[112]

4.1.10 Influence of international instruments: Nigerian environmental law experienced greater development between the 1980s and 1990s, owing largely to Nigeria's subscription to a number of international instruments during this period.[113] The main national laws and Decrees enacted during this period, relating directly or indirectly to environmental governance; and many of which are still in operation today include:[114]

Animal Disease (Control) Act;[115] *Bee (Import Control and Management) Act;*[116] *The Endangered Species Act;*[117] *Hides and Skins Act;*[118] *Live Fish (Control of importation) Act;*[119] *National Crop Varieties and Livestock Breeds Act;*[120] *Agricultural (Control of Implementation) Act;*[121] *Agricultural and Rural Management Training Institute Act;*[122] *Pest (Control of Produce) Act;*[123]

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[110] *Ibid.*
[111] *Ibid.*
[112] *Ibid.*
[113] A survey of many National Environmental legislations shows that many countries got their national law for the protection of the environment around 1990.
[114] See Ladan M. T. 2010. *Op.Cit.* (note 85) pp. 178-180.
[115] *Animal Disease (Control) Act,* Cap. A17 Laws of the Federation of Nigeria (LFN) 2004.
[116] *Bee (Import Control and Management) Act,* Cap. B6 LFN 2004.
[117] *The Endangered Species Act,* Cap. E9 LFN 2004.
[118] *Hides and Skins Act,* Cap. H3 LFN 2004.
[119] *Live Fish (Control of importation) Act,* Cap. L14 2004.
[120] *National Crop Varieties and Livestock Breeds Act*, Cap. N27, LFN 2004.
[121] *Agricultural (Control of Implementation) Act*, Cap. A13, LFN 2004.
[122] *Agricultural and Rural Management Training Institute Act,* Cap. A10 LFN 2004.
[123] *Pest (Control of Produce) Act,* Cap. P9 LFN 2004.

Quarantine Act;[124] *Associated Gas Re-injection Act;*[125] *Civil Aviation Act*[126]*; Oil in Navigable Waters Act;*[127] *River Basin Development Authority Act;*[128] *Sea Fisheries Act;*[129] *Territorial Waters Act;*[130] *Exclusive Economic Zone Act;*[131] *National Water Resources Institute Act;*[132] *Harmful Waste Act*[133]*; Land Use Act;*[134] *Minerals Act;*[135] *Petroleum Act;*[136] *Criminal Code Act;*[137] *Energy Commission of Nigeria Act;*[138] *Environmental Impact Assessment Act;*[139] *National Environmental Standards Regulation Enforcement Agency Act;*[140] *and The Nuclear Safety and Radiation Protection Act.*[141]

5.0 Conclusion

It is quite clear that the concept of environmental law in Nigeria is rather dynamic considering that its policy and juridical basis has moved over the years beyond the necessity for the mere control and management of environmental health hazards, to the need for the prevention of environmental pollutions generally through legal policing. This study has found that as important as the environment is, as a subject of law in the sense it is now addressed, it is relatively new compared to many other law subjects. A study of the history of environmental law is valuable to prevent the repeat or re-occurrence

[124] *Quarantine Act,* Cap. Q2, LFN 2004.
[125] *Associated Gas Re-injection Act,* Cap. A25 LFN 2004.
[126] *Civil Aviation Act,* Cap. C13 LFN 2004.
[127] *Oil in Navigable Waters Act,* Cap. O6 LFN 2004.
[128] *River Basin Development Authority Act,* Cap. R9 LFN 2004.
[129] *Sea Fisheries Act,* Cap. S4, LFN 2004.
[130] *Territorial Waters Act,* Cap. T5, LFN 2004.
[131] *Exclusive Economic Zone Act,* Cap. E17 LFN 2004.
[132] *National Water Resources Institute Act,* Cap. N83 LFN 2004.
[133] *Harmful Waste Act,* Cap. H1 LFN 2004.
[134] *Land Use Act,* Cap L5 LFN 2004.
[135] *Minerals Act,* Cap. M12 LFN 2004.
[136] *Petroleum Act,* Cap. P10 LFN 2004.
[137] *Criminal Code Act,* Cap. C38 LFN 2004.
[138] *Energy Commission of Nigeria Act,* Cap. E10 2004.
[139] *Environmental Impact Assessment Act,* Cap. E12 LFN 2004.
[140] *National Environmental Standards Regulation Enforcement Agency Act,* 2007 which repealed the Federal Environmental Protection Agency (FEPA) Act Cap. F10 LFN 2004.
[141] *The Nuclear Safety and Radiation Protection Act,* N142 LFN 2004.

of negative environmental events, such as the Koko waste dump incident and also for adequately engaging the law to deal with current and future environmental challenges such as climate change, flooding, toxic wastes management, and much more, for achieving sustainable development. It is recommended that since environmental protection and sustainability did not enjoy extensive protection by the law (both at international and national levels) in the same way as other subjects like crime, contract, tort and the like until as recently as 1972 and 1988 respectively, there should now be aggressive pursuit of both enactment of comprehensive and adequate laws as well as their enforcement to make up for the gaps in the NESREA for instance..