

The Legal Framework for the Protection of Wetlands in Nigeria

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Abstract

Traditionally, wetlands have been viewed as places to be avoided and dreaded or as a breeding ground for mosquitoes, diseases and sources of air pollution. But times have changed. Various roles have now been attributed to wetlands which have succeeded in elevating those to popular venues not only of recreation, but also being economic power houses. Wetlands are described as “areas of marsh, fen, wetland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six metres. The purpose of this paper is to examine the existing legal framework for the protection of wetlands in Nigeria with a view to identifying gaps and deficiencies in the laws. The paper notes that the existing legislations are inadequate. Recommendations will also be made for possible rules that can be accommodated in future to ensure a vibrant legal framework for ensuring a healthy and sustainable use of wetlands in Nigeria.

1.0.0. INTRODUCTION

Wetlands have been described as water body in the terrestrial and semi terrestrial ecosystem characterised with low drainage, soil and plant habitat.¹ Wetlands perform important ecological functions including water retention and purification, flood and erosion control. The importance of wetlands also lies in acknowledging the amount of wildlife that would be rendered homeless by their removal.² Some of the world’s largest wetlands include the Okavango Delta in Botswana and the Pantanal in Brazil, as well as the Ga-Mampa wetlands in South Africa.³ In Nigeria they can be found in the Niger Delta and North East areas. Wetlands are very beneficial as they ‘...perform a wide range of functions that are essential for supporting plant and animal life and for maintaining the quality of the environment. These functions include: flood control; shoreline stabilization; sediment, nutrient and toxicant retention; and food chain support.’⁴ Studies have shown that in pointing out this interrelatedness of the ecosystem, all life on earth is part of a dynamic interdependent ecological system.⁵

The ever increasing demand for agricultural and other natural resources to meet the needs of an ever growing population has continued to impact on wetlands. The Ramsar convention was a crystallization of the arising awareness about the environment. At the international level, it became fashionable to talk about ‘sustainable use’ and ‘sustainable development’⁶ Parties are to align their activities in such a way that the environment is not unduly degraded.⁷ At the MAR Convention⁸ the idea was mooted that it was necessary for governments to know what they had to conserve through classification and designation of wetlands of international importance.⁹

¹ J.P Raffety., “Lakes and Wetlands” in Olalekan E.I and Abimbola L.M et.al. (ed) *Wetland Resources of Nigeria: Case Study of the Hadejia-Nguru Wetlands* Rosane Publishing Group (2011)

² Missouri Botanical Garden 2002, www.mgbnet.net/on accessed on 27th September 2016

³ International Water Management Institute(IWMI) ; Contributors: Matthew McCartney et.al. ‘Wetlands and People’ www.iwmi.cgiar.org/Publications/Books/PDF/wetlands-and-people.pdf pp1-36

⁴ Edward Matby., ‘Wetlands and their Values’ in Max Finlayson and Michael Moser (eds.) *Wetlands* (Oxford/ New York: Facts on File), 8 in 7 Michael Bowman, “The Ramsar Convention on Wetlands: Has it made a Difference? Yearbook of International Co-operation on Environment and Development 2002/03”p.61

⁵ Gretchen Daily, ed., *Natures Services: Societal Dependence on Natural Ecosystems* (Washington, Island Press, 1996) in Hunter, D., et al *International Environmental Law and Policy* 2nd Edn, (New York Foundation Press: New York: 2002) p.6

⁶ The move for conservation was started by the International Union of the Conservation of Wetland Resources (IUCN) in the 60’s. They were concerned with the conservation of wetlands, in <www.iucn.org> accessed from <www.ramer.org> on 06 June 2015, pp. 27-29

⁷ International Union of the Conservation of Wetland Resources (IUCN) p.29, *supra*

⁸ The Mar Conference was organised by Hoffmann in 1962. Representation IX was mainly concerned with the compilation of a list of wetlands of international importance. It was designated project MAR; the first three letters represent the word for wetlands in several languages; marshes, marismas, marecages It also recommended that the list was further to serve as foundation for international convention on wetlands. Thus this was when the idea for the Ramsar Convention was conceived. See Matthews, G.V.T ‘The Ramsar Convention on Wetlands: its history and Development’ (1993) www.ramer.org accessed on 06 June 2015, pp.1-90.

⁹ See Article 2.1. of the Ramsar convention; See also Matthews G.V.T ‘The Ramsar Convention on Wetlands: It’s history and Development’ p.1-90 at 31.

THE CONCEPT OF WISE USE OF WETLANDS

The Ramsar Convention was a crystallization of the arising awareness about the environment. At the international level, it became fashionable to talk about ‘sustainable use’ and ‘sustainable development’.¹ The Ramsar Convention did not describe ‘wise use’² or establish how such ‘wise use’ was to be implemented. But it is clear that the overriding message is that parties are to align their activities in such a way that the environment is not unduly degraded.³ In advocating for wise use of wetlands, policy and decision makers are cognisant of the fact that wetlands support over ‘.....1.5 million in the Hadejia-Nguru wetlands in Nigeria; more than 1 million in the Sudan wetland in South Sudan.....’⁴ Wise use also implies that government development activities support wetlands, rather than detract from them. For example, the dams constructed over the Hadejia-Nguru wetlands in Nigeria reduced the volume of water flowing to the wetlands and negatively impacted on the fish population.⁵ Wise use of wetlands entails inclusiveness of the local people’s right to use and benefit from wetlands. These needs are ⁶acknowledged by international bodies such as ‘International Union for the Conservation of Nature’ the ‘African Wildlife Foundation’ and many others. Wise use of wetlands are encouraged because those that are degraded serve as breeding ground for mosquitoes and their predators

2.0.0. NATIONAL POLICY ON WETLAND PROTECTION

The content of the National Policy on the Environment⁷ is based on realistic planning that balances human needs against the carrying capacity of the environment. The avenue to achieve this is to put in place strategies and policies to ensure that ‘environmental concerns are integrated into major economic decision –making process.’ The dominant vibrating principles of the policy include the need of the present generation being met without compromising future generations, the rights of all communities to a clean and healthy environment, and the principle that as much as possible communities should be involved in making decisions which involve them.⁸ This provisions have responses to all facet of the Nigerian Nation state. But we may outline the ones that do directly impact on wetlands, amongst others:

- monitor pesticides and agrochemical residue levels in air, soil, water, sediments, flora and fauna and human, document the environmental fate of such chemicals;⁹
- improved water management technology including the safe disposal of waste, water, waste water- reuse and recycling;¹⁰
- establish measures against the transboundary movement of toxic and hazardous substances within Nigerian Marine and coastal waters;¹¹
- highlight vulnerable species and ecosystems bearing in mind the limited stocks of living and non-living exploitable resources;¹²
- proscribe all forms of oil and gas exploration and production in estuaries, coastal waters, beaches and resorts, take such measures as will minimize disturbances to....., wetlands, avian migratory routes, during the process of exploration....., of oil and gas;¹³
- Support the role of cognate NGO’s, professional associations and other civil groups in activities designed to propagate environmental protection, information, techniques and concepts;¹⁴ and honour

¹ The move for conservation was started by the International Union of the Conservation of Wetland Resources (IUCN) in the 60’s. They were concerned with the conservation of wetlands. See www.iucn.org accessed on 27th September 2016

² The term was described by the COP in 1987 as the ‘sustainable use of wetlands for the benefit of mankind in a way that is compatible with maintaining the natural properties of the ecosystem

³ Op.cit p.29

⁴ International Water Management Institute; contributors; Matthew McCartney et.al (2010) “Wetlands and People”

⁵ McCartney M.P, et al, “Wetland Agriculture and Poverty Reduction” Colombo Sri Lanka; International Water Management Institute. (IWMI Research Report 137) p.14

⁶ Chase J.M, and Knight T.M, “Drought-Induced mosquitoes outbreaks in wetlands” (Ecology Letters) in International Water Management Institute., Matthew McCartney et.al (2010).

⁷ National Policy on the Environment: Federal Environmental Protection Agency (FEPA) 1998 (Draft Revised National Policy on the Environment under the auspices of : UNDP Supported Environment and Natural Resources Management Programme for Nigeria; NIR/C3 1998)

⁸ National Policy on the Environment: Federal Environmental Protection Agency (FEPA) 1998 (Draft Revised National Policy on the Environment under the auspices of : UNDP Supported Environment and Natural Resources Management Programme for Nigeria; NIR/C3 1998)

⁹ National Policy on the Environment: Federal Environmental Protection Agency (FEPA) 1998

See paragraph 4 (7) (m),

¹⁰ See Paragraph 4 (8) (i), *ibid.*

¹¹ See paragraph 4 (10) (j), *ibid.*

¹² See paragraph 4(10) (o), *ibid.*

¹³ *Ibid.* Paragraph 4 (14) (b)

¹⁴ *Ibid.* Paragraph 6 (6) (g)

International Treaties and Obligations.¹

NIGERIAN ENVIRONMENT AND THE USE OF WETLAND PROTECTION

There are many important wetland belt in Nigeria, ‘.....the majority of which are found in the Niger, Benue and Chad Basins.....wetlands represent 2.6% of the country’s area of about 923,768km². The Niger Delta is one of the most important wetlands in Nigeria, the largest in Africa and third largest in the world.’²Others are found in the axis of the ‘Sokoto-Rima. Komadugu Yobe, Lake Chad, Upper Niger and Kainji Lake, Middle Niger-Lokoja-Jebba-Lower Kaduna, Lower Benue-Makurdi; Cross River, Lower Niger, Niger Delta, Benin-Owena Lagoon, Badagry and Yewa Creeks and the trans boundary wetlands of the Upper Benue’³ However, in Nigeria, only eleven wetland sites are recognised as Ramsar sites. The Niger Delta, despite its size and richness in biodiversity is yet to be included or gazetted as a Ramsar site.⁴

The attitude of the government of most nations was a policy not to unduly interfere in environmental issues which they perceived as purely corporate or business affairs as being outside their spheres of influence.⁵ In Nigeria, the situation was the same. Most literature on environmental protection can identify four decades or timeframes which more or less reflect the historical growth of Nigeria from a colonial to a post-colonial nation.⁶ These periods coincide with the dissemination of scientific knowledge on the environment. More so, environment protection is linked to a people’s culture and values. What is predominant in most societies is a quest for a better standard of life. Once this is attained, nations begin to look for the legislative and the executive arms of government to make and execute laws to improve the environment.

There were no laws at the earliest period in Nigeria’s history to specifically take care of the specific safeguards needed to protect wetlands. The scope of protection granted by the government was under common law.⁷ The restricted nature of the common law rules were highlighted when applied to the oil industry, especially given the exploitative and non-sustainable nature of oil exploration.⁸ Laws that came up at this time dealt with water pollution and air pollution⁹ and were also targeted at land, air and water pollution.¹⁰ The environmental laws were mainly geared towards public health, but somehow they offered protection to wetlands by putting a stop to some unconscionable behaviour of people that adversely affects wetlands.

The attitude of government towards wetlands at the earliest times was to sand fill them and use them for developmental purposes such as construction of roads or cities. Other wetlands still are used by government as dumpsites for wastes.¹¹ But with growing awareness, it became obvious that wetlands had many useful purposes. The flood absorbing qualities of wetlands was discovered and for the first time, town planning laws made provision for the need for permits for development on wetlands.

3.0.0. LAWS ON WETLAND PROTECTION IN NIGERIA

The protection of the environment is an important link to human existence and health. In this regard, the protection of wetlands is vital as damage to them may reasonably interfere with enjoyment of life and economies of the affected communities, and the nation. We may now examine the various laws that set out to protect wetlands in Nigeria.

3.1.0. Constitution of the Federal Republic of Nigeria.

Law guarantees members of society some rights such as right to freedom, conscience and association as envisioned in Part IV of the 1999 Constitution of the Federal Republic of Nigeria.¹² The right to a healthy

¹ Ibid. Paragraph 9 (0)

² Nwankwoala H, “European Journal of Sustainable Development” (2012) ECSDEV Via-dei Fiori 34,00172 Rome, Italy

³ Asibor G, “Wetlands: Values, Uses and Challenges” A Paper Presented to the Nigerian Environmental Society and the Petroleum Training Institute Effurun (2009) European Journal of Sustainable Development

⁴ Chidi H.O and Erhabor F.O “Biodiversity of Wetlands and Wealth Creation in Niger Delta” in Nwankwoala H.O. European Journal of Sustainable Development (2009)

⁵ Kubasek G.S and Silverman N.K, *Environmental Law* 6th edn, (Prentice Hall New Jersey, Prentice 2002)

⁶ Robert W.K, Thomas M.P and Anthony A.L., “What is Sustainable Development? Goals, Indicators, Values and Practice” Science and Policy for Sustainable Development available at <http://www.environmentmagazine.org/editorials/kates-apr05-full.html> accessed on 28th September 2016

⁷ Akinbola B.R, “Legal and Administrative Remedies in Environmental Law in Nigeria: Reform Proposition” ABUAD Law Journal (2013) Vol,1 No. 1 p.326-328

⁸ Ibid.

⁹ Criminal Code Act of 1916

¹⁰ Public Health Act.

¹¹ World Lake Vision Action Report: Implementing the World Lake Vision For Sustainable Use of Lakes and Reservoirs available at http://www.ilec.or.jp/en/wp/wp-content/uploads/2013/03/World_Lake_Vision_Action_Report.pdf accessed on 28th September 2016

¹² ‘The US Declaration of Independence of 1776 and the Declaration of the Rights of Man and Citizen and the French

environment belongs to the category of newly recognised rights. It is in the light of this that many world constitutions now recognise the right to a healthy environment, and have made available process and procedures for their attainment. It may be necessary to point out that the Nigerian Constitution¹ does not specifically make provision for reliefs relating to violations of the environment. What are in place are common law reliefs in tort, and these may not be able to cope with the technological advancement of today's world, especially in complex terrain such as the oil industry.²

Rather, the constitution makes provision in Chapter Two³ on the fundamental objectives and directive principles of state policy for the protection and improvement of the environment and 'safeguard the water, air and land, forest and wild life of Nigeria.' Section 20 of the fundamental objectives and directive principles of state policy lays out the guidelines to guarantee a safe environment for Nigerians and emphasises the duty of states to not only protect the environment, but also to continually enhance it.⁴

But these provisions are non-justiciable by virtue of section 6(6) (c) of the constitution.⁵ They are rightly so seen as policy guidelines. Rather, the justiciable provisions relate to right to life as guaranteed by section 33 of the 1999 Constitution.⁶ Section 46 of the constitution provides for relief to the High Court for any person who feels that their fundamental rights under Chapter four of the Constitution have been infringed.⁷

It becomes necessary to consider if the time is right to include environmental rights in the constitution in order to ensure a healthy environment.⁸

3.2.0. Land Use Act

In pre-colonial Nigeria, the traditional mode of land use was in place with families owning land. Natural means of land conservation and restoration were used such as crop rotation, fallowing and so forth. However the Land Use Act was promulgated on 29th March, 1978⁹ and has been in operation for over three decades. It was primarily promulgated to ease the burden on government for acquiring land for public purposes.¹⁰

A very important aspect of the Act is to enable government determine the uses which land can be put to as a planning tool, by vesting land in each state territory in the governor of the state.¹¹ But according to Nwabueze, the takeover of all land in the country should not be regarded as a socialist or social justice action by government. Rather it is a deliberate attempt to put all the land firmly in the control of government.¹²

However, by virtue of section 22 of the Land Use Act, a holder who has been granted a Statutory Right of Occupancy (SRO) or Customary Right of Occupancy (C of O) cannot alienate such rights without the governor's consent. To do so would be to risk revocation of the right of occupancy.¹³ However, section 36(2) preserves the rights of holders of land who were using such for agricultural purposes prior to the inception of the act.

Revolution of 1789, have similarly adopted it.

¹ Constitution of the Federal Republic of Nigeria (as amended in 2011)

² Atsegbua L, 'Oil Pollution and the Protection of the Environment in Nigeria.' [1992] *Justice* Vol.2 p.57. No.34 of 1968

³ Chapter 4 of the 1999 Constitution, in Akinbola B.R and Onifade T.T, 'Legal and Administrative Remedies in Environmental Law in Nigeria: Reform Proposition.' 332. XXXXXXXX INCOMPLETE

⁴ Gozie Ogbodo, 'Environmental Protection in Nigeria: Two Decades after Koko Incidences' (2010) 15 (1) *Annual Survey of International and Comparative Law* 1, 18.in in Abdulkadir B.A, 'The Right to a Healthy Environment in Nigeria: A Review of the Alternative Pathways to Environmental Justice in Nigeria' *Nigeria* (2014) 3 (1) *Journal of Sustainable Development Law and Policy*, Afe Babalola University, Nigeria.pp.118 -130 at 123 p.123

⁵ Akinbola B.R and Onifade T.T, 'Legal and Administrative Remedies in Environmental Law in Nigeria: Reform Proposition.' 332.

⁶ Constitution of the Federal Republic of Nigeria (as amended in 2011)

⁷ In Nigeria, a Federal High Court has held that the constitutionally guaranteed fundamental right to life and dignity of human persons includes the right provided by Section 33(1) and 34(1) of the Constitution of the Federal Republic of Nigeria, 1999 and reinforced by Article 4, 16 and 24 of the African Charter on Human Procedure Rules (Procedure and Enforcement) Act Cap A9 Vol.1 Laws of the Federation.' The African Charter on Human and People's Rights, came into existence on 19th January 1981 through the OAU (Organisation of African Union), now known as the AU (African Union). See also section 14 of the Supreme Court Ordinance of 1914 on healthy environment.

⁸ Abdulkadir B.A, 'The Right to a Healthy Environment in Nigeria: A Review of the Alternative Pathways to Environmental Justice in Nigeria: Reform Proposition. at 121

⁹ The Land Use Act 1978, formerly known as Decree No.6 of 1978, was a reaction of the military Government under General Obasanjo (as he then was) took effect from 29th March, 1978, to undertake an in depth study of the various land tenure, land use and conservation practises in the country and recommend steps to be taken to streamline them., in Olajide O. and Shodimu. O., *The Land Use Act*, (Reported Locus Classicus, Cases and materials.) (Lawlords Publications, Abuja, 2005) p.3

¹⁰ James R.W, *Nigerian Land Use Act: Policy and Principles* (University of Ife Press Ltd, Ile -Ife, 1987) 26-27, in Taiwo E.A, *The Nigerian Land Law* (Ababa Press Ltd, Ibadan, 2011) 202

¹¹ *Ibid*, 202-204; See Section 1 of the Act.

¹² Nwabueze B.O, *Military Rule and Social Justice in Nigeria*. (Spectrum Law Publishing, Ibadan , 1993)278 in in Taiwo E.A, *The Nigerian Land Law* (Ababa Press Ltd, Ibadan, 2011) 205

¹³ See Section 50 of the Land Use Act for proper definition.

Abudu C.O recalls the challenges posed by accessibility to land which makes it difficult for farmers to engage in agriculture. The resultant effect is resort to wetlands.¹ Through the provisions of the land use Act,² most of the country's wetlands reverted to the government. This has led to pollution of wetlands by farmers seeking alternate fertile land, and mass extinction of breeding ground for fish and other species of aquatic life.

3.3.0 The Harmful Waste (Special Criminal Provision)³

In the United States, the 1969 oil spill in Santa Barbara, California was seen as a 'cataclysmic event' which led to the celebration of the first Earth Day on April the 22nd 1970.⁴ This gingered law makers to set about adopting tough environmental stance. In the same manner, the Koko incidence of 1988 marked a turning point in the history of environmental protection in Nigeria. There had been a plethora of legislation before now. However, there were not really effective, given the fact that there was no serious commitment to its implementation. At best available threats to sanction offenders were purely administrative, such as seizing of operating licenses of the oil companies in exercise of the powers conferred on the minister under the under the Petroleum Act.⁵

All this dramatically changed in 1988 when an Italian ship with five shipment load of toxic waste (mostly polychlorobiphenyls (PCBS) berthed in Koko.⁶ With the Koko incidence, a potentially harmful physical mass was on ground and the authorities could not ignore their obligation to protect the public. But it became obvious that there was no legal framework to deal with the amount of toxic waste and chemical menace in question.⁷

The enactment of the Harmful Waste (Special Criminal Provisions) Decree No.42 of 1988, which is now an Act sought to take advantage of the maximum extent of a regulatory legal framework in consonance with international best practices to initiate action to stem in its infancy, this new unparralled and dominant stress to Nigeria.⁸

3.4.0. ENVIRONMENTAL IMPACT ASSESSEMENT (EIA)

At the United Nations Summit in Rio de Janeiro in 1992, the delegates from Brazil, after analysing the close relationship between development and the environment, pointed out that development must be sustainable. There was a need to check man's developmental activities to ensure sustainability; one of its components being the need to avoid damage to the regenerative capacity of the environment. This is where the need for an environmental impact assessment regime in Nigeria comes in.

The main thrust of Nigeria's leap to laying out guidelines for EIA 'became effective since the 1970's in developed countries. Nigeria took a giant leap when she promulgated her main EIA legislation.⁹ EIA is proclaimed in Principle 17 of 'Agenda 21' (Agenda for the 21st century) of the United Nations Conference on Environment and Development (UNCED) which was held on the 3rd to 14th of June, 1992 in Rio de Janeiro Brazil.¹⁰

In Nigeria, 'the 1981-86 National Development Plan Guidelines required that 'feasibility studies for all projects both private and public should be accompanied by environmental impact statements.'¹¹ The main

¹Abudu. C.O. 'The Role of Government in Improving Land Accessibility to Urban Crop Farmers: The Case of Metropolitan Lagos.(2010) The Lagos Journal Of Environmental Studies, Vo.7 No.1, p.2

² The Land Use Act 1978, formerly known as Decree No.6 of 1978, was a reaction of the military Government under General Obasanjo as he then was) took effect from 29th March, 1978, to undertake an in depth study of the various land tenure, land use and conservation practises in the country and recommend steps to be taken to streamline them., in Olajide O. and Shodimu. O, *The Land Use Act*, (Reported Locus Classicus, Cases and materials.) (LawLords Publications, Abuja, 2005)p.3

³ The Harmful Waste (Special Criminal Provisions) Decree No.42 Of 1988 (Now Act).

⁴ Kubasek.K.& Silverman, G.S. *Environmental Law*, p. 139

⁵ See the Petroleum Act of 1969.

⁶ Akinbola, B.R "Legal and Administrative Remedies in Environmental Law in Nigeria: Reform Proposition" , p.328-331

⁷ The Public Health Act 1968; see also the Criminal Code 1958, as well as the 'Oil in Navigable Waters Act' of 1968 which among other 9 pollution offences, made it an offence for a Nigerian ship to discharge oil into sea areas created under the International Convention for the Prevention of Pollution to the Sea.

⁸ The Harmful Waste (Special Criminal Provisions) Decree No.42 Of 1988 (Now Act).

At the international level shipment of trans -boundary hazardous waste are handled by the Basel Convention on the Control of Trans boundary Movement s of Hazardous Wastes and their Disposal. See also FEPA Decree, part 2 subsection 20 (1) which also prohibits discharge in harmful quantities upon the land or waters of Nigeria of hazardous substances without permission. (Now repealed).

⁹ Environmental Impact Assessment Legislation Act No. 86 of 1992.

¹⁰Nwoko, C.O. 'Evaluation of Environmental Impact Assessment System in Nigeria' www.gjournals.org accessed on 22nd July, 2015

¹¹ See Nicholson Robinson, referred to in Okoriodudu-Fubara, *Law of Environmental Protection, Materials and Text*. (Caltop Publications, Ibadan, 1998) 57-58 where reference to the 1988 International Workshop organised by the Federal Ministry of Works and Housing (Environmental Planning and Protection Division), and the United Nation Environmental Programme

objective is to ensure that potential environmental impacts are foreseen at the appropriate stage of project design and addressed before any decision is taken on the project.¹

It is important to protect our fishery, wildlife, creeks wetlands and other lands, air, medicinal plants and mineral resources from the impact of human activities. Most EIA assessment is carried out by consultants who are paid for specific projects, and need to turn in their reports within a specific time frame. The public are also allowed to participate after the reports from the consultants have been turned in for their comment within a 21 day time frame.

The projects that specifically relate to wetlands and are most likely to have direct impact on plants, fauna and fish species relate to the area of agricultural development, particularly reforestation/ afforestation project, small scale irrigation, small scale aqua culture, saw milling, logging, rubber processing, fish processing, road rehabilitation and other forms of quarrying or mining..²

3.5.0. Sea Fisheries Decree No. 71 Of 1992

The Sea Fisheries Decree³ was a response to a clarion call to improve practices in the fishing industry in Nigeria. In the decree, 'fish' refers to 'any aquatic creature whether fish or not and includes shellfish, crustaceans, turtle and aquatic mammals.'⁴ Generally, the decree sets out to⁵ 'regulate, prohibit or restrict the taking of fish in any specific areas' within the territorial waters of Nigeria' This is necessary to highlight proper fishing methods. The fishing gears used by canoe fishers such as hooks, gil-nets, purse seine nets do a lot of damage to juveniles and breeding populations.⁶ There was thus a need to embrace modern fishing methods that promote environmental sustainability.

Section 14(2) (c) of the Decree provides for a prescription of the 'limits to the size of nets or the mesh of nets that may be employed in the taking of fish within the territorial waters of Nigeria or in any specific area therein.' This is to guard against capture of smaller fish. It does appear that the shrimping business is being sustained by the 'by-catch' of fish from the shrimp trawlers.⁷ This is to totally unacceptable. It does appear that the trawling merchants are encouraged to sell such catch of fish, rather than throw them back into the waters.⁸

The courts have a role to play to assist monitoring. The courts may decree or order a forfeiture to the government of the Federation fishing boats, apparatus or catch connected with any conviction;⁹ the court may also cancel or suspend some licences as it may deem fit.¹⁰ These gaps in monitoring and implementation have been attributed to incomplete formulation of policies. There is the suggestion for a purposive approach which should involve local fishing tribes who derive their livelihoods from surrounding wetlands and other committed fishers to be involved in policy making.¹¹

BENEFITS OF PROTECTING WETLANDS

Traditionally, wetlands have been viewed as places to be avoided and dreaded or as a breeding ground for mosquitoes, as a mire for diseases and sources of air pollution. These impression have been proven to be false as new scientific manners of relating with the environment become available and modern modes of fast and accurate dissemination of information is within the reach of the populace. Various roles have been attributed to wetlands which have succeeded in elevating it to popular venues, not only of recreation, but also being economic power houses.

- a) **Maintaining the earth's ecological balance:** Wetlands are very beneficial and they ".....perform a wide range of functions that are essential for supporting plant and animal life and for maintaining the quality of the environment.¹² These functions include: flood control, shoreline stabilization, sediment,

(UNEP) on the Goals and Guidelines of the National Environmental Policy for Nigeria.

¹Nwoko, C.O. 'Evaluation of Environmental Impact Assessment System in Nigeria'.

² Nwoko, C.O. 'Evaluation of Environmental Impact Assessment System in Nigeria.' see Table 1 on category, i

³ Sea Fisheries Decree No. 71 of 1992, Laws of the Federation of Nigeria (LFN), promulgated on 30th November, 1992.

⁴ See section 15 *ibid*.

⁵ See section 14(2) (a) *ibid*.

⁶Nwosu F.M, et.al. 'Fisheries Management in Nigeria: A case Study of the Marine Fisheries Policy' (2011) International Journal of Agricultural Science and Soil Science (IRJAS) Vol.1 (3) pp. 070-076 www.interestjournals.org. accessed on 16 October 2015

⁷ Nwosu F.M, et.al. 'Fisheries Management in Nigeria: A case Study of the Marine Fisheries Policy'

⁸Nwosu F.M, et.al. 'Fisheries Management in Nigeria: A case Study of the Marine Fisheries Policy'

⁹ See section 13(a) of the Sea Fisheries Decree No. 71 of 1992, Laws of the Federation of Nigeria.

¹⁰ See section 13(b) *ibid*.

¹¹ Nwosu F.M, et.al. 'Fisheries Management in Nigeria: A case Study of the Marine Fisheries Policy'

¹² Edward M., "Wetlands and their Values" in Max F. and Michael M. (eds) *Wetlands* (Oxford: New York; Facts on File). Michael Bowman, "The Ramsar Convention on Wetlands: Has it made a difference?" Yearbook of International Cooperation on Environment and Development 2002 p. 61

nutrient and toxicant retention and food chain support.¹ All these functions are interwoven in an intricate balance that is not immediately obvious, but has continued to gain prominence and recognition over time.

- b) **Breeding grounds for migratory birds:** Many migratory birds also travel several long distances from developed countries to nest in wetlands in developing countries. Two thirds of the fish we eat depend on wetlands at some stage in their life cycle and more than 90 percent of harvested fish are wetland dependent species.²
- c) **Protection of Public Health and Safety:**³ In Africa, they are necessary for the survival of various plants and animals and control of shoreline erosion. They also improve the quality of drinking water. This is through the protection of 'the wetland water courses, surface and groundwater supplies and water bodies of the town and city from degradation.'⁴ Water quality is enhanced by removing sediments nitrogen, phosphorus and other pollutants from surface water.⁵
- d) **Wetlands are highly suited for Agriculture:** This has to be consistent with best global practices. They provide nutrient for soils by ensuring wetness even during dry seasons by maintaining ecological balance and preservation of wildlife habitat.⁶

3.6.0. REGULATORY FRAMEWORK ON WETLANDS IN NIGERIA

The National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007, the NESREA Act⁷ was passed by the Yar' adua administration and repealed the Federal Environmental Protection Agency Act (FEPA Act)⁸. The NESREA Act established a corporate entity known as the National Environmental Standards and Regulation Enforcement Agency. The Agency lacks the powers to monitor the oil and gas sector. As such it cannot oversee the various forms of degradation that may emanate from these sectors.⁹ The enforcement powers of the agency are outlined in Part Two of the NESREA Act.¹⁰ The objectives of the agency are very encompassing: "including coordination and liaison with relevant stakeholders within and outside Nigeria, on matters of enforcement of environmental standards, regulations, rules, laws, policies and guidelines."¹¹

It becomes necessary for the minister of environment to truly demarcate the supervisory powers of the agency by making twenty four new regulations It becomes imperative in this paper to analysis some of these regulations that may directly or indirectly have effect on wetland areas.¹² Some of them include:¹³

3.6.1. National Environmental (Wetlands, River Banks and Lake Shores) Regulation, 2009:¹⁴

Under this regulation, an inventory of wetlands in Nigeria is listed. Data is collected from states and local governments. With the available data, protected areas are declared such that their use is strictly controlled and monitored. It is recommended that wetland resources are used in a sustainable manner that will allow them support future generation.¹⁵ Permit systems are also¹⁶ put in place. This is a '...permit granted to a person, community or organisation to make over extractive utilisation of wetlands and other non- extractive uses such as

¹ Gretchen D. *Natures Services: Societal Dependence on Natural Ecosystem* (ed) (Washington Island Press, 1996). Hunter D., et al *International Environmental Law and Policy* 2nd ed (New York Foundation Press: New York,) 2002 p.6

² Edward M., "Wetlands and their Values" opcit

³ "Innovative Land Use Planning Technique" Model Language and Guidance for Implementation- Wetland Conservation Overly District, A Handbook for Sustainable Development

⁴ Ibid McCartney M.P. et al. "Wetland Agriculture and Poverty Reduction" International Water Management Institute, Sri Lanka

⁵ Larry .M., "Restoring and Protecting Wetlands: State Policy Options" National Conference of State Legialatures available at www.ncls accessed on 25th September 2016. Abdulkadir A.B, "Threat to Marine Environment: An Evaluation of the Role of Nigerian Maritime Administration and Safety Agency in the Protection of Maritime Environment in Nigeria.

⁶ McCartney M. et al " Wetlands and People" International Water Management Institute; www.iwmi.cgiar.org/Publications/Books/Pdf/wetlands-and-people.pdf pp.1-36

⁷ Gozie Ogbodo.S.G, Legal Alert February 2014 Environmental Compliance Requirement for Non –Oil and Gas Companies ,The NESREA Act 2007, commenced on 30th July, 2007.

⁸ See section 36 of the NESREA Act 2007, which expressly repealed the FEPA Act, Cap. F.10 LFN, 2004,

⁹ See sections 8 (g), (k), (n), (s) of the NESREA Act, 2007

¹⁰ See Part 11, section 7(a), (b), (c), (d), e, (f), (g), (h), (i), (j), (K), (l) (m) of the 2007 NESREA Act.

¹¹ Gozie Ogbodo.S.G, Legal Alert February 2014 Environmental Compliance Requirement for Non –Oil and Gas Companies.

¹² Muhammed Tawfiq Ladan, 'Review of NESREA Act 2007 and Regulations 2009-2011: A New Dawn in Environmental Compliance and Enforcement in Nigeria', (2012)8/1, Law, Environment and Development Journal p.116, (Lead Journal) < www.lead-journal.org/content /1216.pdf> accessed on 11 June 2015.

¹³ See section 34 of the 2007 NESREA Act

¹⁴ Federal Republic of Nigeria, Abuja Regulation no. 26 of 2009; Official Gazette, Vol.96, No. 58, dated 2nd October , 2009.

¹⁵ See Regulation 3 of the 2007 NESREA Act

¹⁶ See Regulation 33 of the 2007 NESREA Act

tourism. River banks and lake shores are also protected.¹

3.6.2. National Environmental (Watershed, Mountains, Hilly and Catchment Areas) Regulation 2009;²

This regulation is mostly targeted at landowners or occupiers in watershed, mountainous hilly or catchment areas. These areas are particularly prone to ‘landslides, floods drought, desertification, situation, heavy sediment loads, falling rocks, fires and damage by wind.’ As such land owners in these areas are encouraged to align their activities to benefit the areas. They have a duty and responsibility to observe the ecological capacity of these areas and in turn, utilise the best technologies that will ensure optimal soil conservation, and avoid significant damage to such a landscape. Typical activities in these areas include livestock grazing, farming and some form of cottage industries.

4.0.0. CHALLENGES TO THE LEGAL AND REGULATORY FRAMEWORK

Good environmental principles should be put into place which can quickly be activated along alternate remedial lines. The challenges to the legal framework may be outlined below.

a) Administrative Bottlenecks Leading to Weak Monitoring in EIA Assessments

It can be assumed, except the contrary is proved that the authorities in charge of putting in place the administrative structures for monitoring of project such as the DPR (Directorate of Petroleum Resources) and the Federal Ministry of Environment (FMEEv.) are not properly coordinated. There is no effective screening and processing of initial Environmental Examination (EE). Even where this is done it is often done late and sometime when the projects have commenced without consulting other stakeholders and the public.³

b) Unsatisfactory E.I.A Reports

In Nigeria, some establishments are quite advanced, such as in the petrochemical industries. Most times, the EIA assessors and even some consultants lack the technical know-how to fully document and appraise certain project. In the developed countries like the United States, there is a provision made for third party assessors. Third party assessors give an independent review of already completed EIA reports with a view to further strengthening it. It is suggested by Nerry Echefu and Akpofure that the staff involved with Environmental Impact Assessment should be well motivated and remunerated. Adequate plan made in form of insurance pursuant to on job hazards and accidents, as well as pension plans should also be put in place.⁴

c) The Constitution: As far as the Constitution⁵ goes it may be necessary to make the policy guidelines justiciable. The notion that making them justiciable will lead to multiplicity of actions against the government is quite unfounded and derogates from the right of citizens to live in a healthy and vibrant environment.⁶

d) The Land Use Act 1978: Nwosu avers, in examining the Land Use Act that rather than enabling individuals to own land, the Act instead enables the upper class in society to own lands which also consist of wetlands. He concludes that ‘these large scale acquisitions have limited farmers rights to land, hindered small scale farming and led to land fragmentation with negative consequences for improved production and/or sustainable agriculture.’⁷

e) Sea Fisheries Decree No. 71 Of 1992: This decree despite putting in place stringent monitoring paraphernalia is in need of further fine tuning as it does not properly serve as a deterrent to avoid over fishing. More fish is landed by shrimp trawlers than shrimps due to wrong interpretation of allowable percentages for permissible fish hauling. The process of registration of fishing trawlers is not comprehensive. It also leaves out rural and urban small time fishers who operate on wetlands and other inland estuaries with smaller vessels such as canoes, log rafts, and small sized boats. Their activities are neither documented nor controlled.⁸ There is need for more stringent monitoring and policy implementation.

¹ See Regulation 17, 18, 19, 25-26 of the 2007 NESREA Act.

² Federal Republic of Nigeria, Abuja; Regulations No. 27 of 2009; Official Gazette, Vol. 96, No.59.

³ Nwoko, C.O. ‘Evaluation of Environmental Impact Assessment System in Nigeria.’

⁴ Nerry Echefu and Akpofure. E. ‘Environment Impact Assessment in Nigeria: Regulatory Background and Procedural Framework’ <www.unep.ch> accessed on 25 July, 2015, pp.63-71

⁵ The Constitution of the Federal Republic of Nigeria (as amended in 2011)

⁶ Mathew Adefi Olong, ‘Human Rights, the Environment and Sustainable Development: Nigerian Women’s Experience’(2012) Journal of Politics and Law 100,108, in Abdulkadir B.A., ‘The Right to a Healthy Environment in Nigeria: A Review of the Alternative Pathways to Environmental Justice in Nigeria’ p.124

⁷ Nwosu Alloysius, ‘The impact of the Large-Scale Acquisition of Land on Smallholder Farmers in Nigeria’ in Cheryl Doss and Carol Olson (eds.), *Issues in African Rural Development: African Rural Sciences Research Networks* (Morrilton AR: Winrock Publications Sales, 1991) in Ajala. O. ‘Evolution of Agricultural Policies and Laws in Nigeria’ in Rhuks T. and Olawuyi D. (eds.) *Food and Agricultural Law*(Afe Babalola University Press, Ekiti State, Nigeria, 2015) p.24-25

⁸ Nnadozie Kent, ‘Nigeria’ in Robert J. et.al. (eds.) *Case Studies on Access and Benefit-sharing* (The International Plant Genetic Resources Institute, Rome, Italy, 2006,) in Ajala. O. ‘Evolution of Agricultural Policies and Laws in Nigeria’ in Rhuks T. and Olawuyi D. (eds.) *Food and Agricultural Law* p.24-25

5.0.0. THE NEED FOR A NEW LAW

There are various International Human Right Instruments (IHRI). But it is felt that human rights, though universal, may have various modes of enforcement. As such it is the popular v5 (1) that states reserve the right to evolve the manner in which they implement human rights.¹ Despite this, there is a minimum obligation that each state must observe when taking into consideration which laws are in conformity or relevant to the individual's right to a healthy environment. Such laws can then be incorporated into the legal framework for the environment.

a) The African Charter on Human and People's Rights (ACHPR), 1981.

The African Charter is an integral part of Nigerian Legal System. Section 1 of the application and enforcement Act provides:²

As from the commencement of this Act, the provisions of the African Charter on Human and Peoples' Right which are set out in the schedule of this Act shall, subject as thereunder provided have force of law in Nigeria and shall be given full recognition and effect and be applied by all authorities and persons exercising legislative, executive and judicial powers in Nigeria.

The significance of this is that it 'ousts the exercise of judicial power where the question revolves around whether any 'act or omission is in conformity with the fundamental objectives and directives principles of state policy set out in chapter two of the Constitution'³

Because the charter has been designed in such a way that it takes cognisance of various international legislations, now, it takes cognisance of environmental rights. It is noteworthy that the provisions of section 6(6) does not out the jurisdiction of most international instruments such as the African Charter on Human and Peoples rights. Section 6(6) of the Constitution only ousts the jurisdiction of the court with regard to the state principles. It was this lacuna that was explored by Gani Fawehinmi in the case of *Fawehinmi v. Abacha*.⁴

See the case of *The Social and Economic Rights Action Center and the Center for Economic, and Social Rights v. Federal Republic of Nigeria*.⁵ In this matter there was a clarion call for a stop to be put to the degradation of Ogoni land in the Niger Delta area of Nigeria. There was monumental loss of farmlands fish population and other aquatic species from the activities of oil conglomerates. The specific rights said to have been violated in regard to the Ogoni community were violations of the following provisions of the African Charter, such as

Right of People to freely dispose of their wealth and natural resources,⁶ Right of Peoples to a satisfactory Environment,⁷ amongst others. In a landmark decision, the commission was of the opinion that the Nigerian Government had gravely undermined its duty to monitor the activities of the oil companies and guarantee right to healthy environment.⁸

b) The Constitution of the Federal Republic of Nigeria's Provision on Human Rights.⁹

Human rights are universal rights attaching to the human being wherever he appears without regard to time, place, colour, sex parentage or environment.¹⁰ An elaborate machinery exists for the implementation of human rights. Law guarantees members of society some rights such as right to freedom, conscience and association as envisioned in Part IV of the 1999 Constitution of the Federal Republic of Nigeria. 'The US Declaration of Independence of 1776 and the Declaration of the Rights of Man and Citizen and the French Revolution of 1789, have similarly adopted it.' Other rights that are recently being propounded include the right to development and the right to peace, as well as health. The right to a healthy environment belongs to the category of newly recognised rights¹¹

¹ Shaw, M.N., *International Law* 4th edn. (Cambridge University Press, Cambridge, 1997) p.199, citing Tunkin Theory who stated that 'conventions on human rights do not grant rights directly to the individual' in Ajigboye.O., 'An Overview of the Legal Framework for the Protection of the Right to Health in Nigeria', in *Afe Babalola University Ado-Ekiti (ABUAD))Law Journal*. (2013) Vol.1 No.1., 262-286

² African Charter on Human and Peoples' Rights (Application and Enforcement) Act Cap.10, 1983

³ Lawrence Atsegbua et al., *Environmental Law in Nigeria*: (Ababa Press, Lagos, 2004) p.140, See also *Sanni Abacha v Fawehinmi* [2000] Vol. 77, Law Reports of Courts of Nigeria, 1254-1401

⁴ *Abacha v fawehinmi* [2001] 51 WRN 29

⁵ Comm. No. 155/96[2001]

⁶ See Article 21 of the African Charter on Human and People's Rights.

⁷ See Article 24 *ibid*.

⁸ Communication 155/96, *The Social and Economic Rights Action Center and the Centre for Economic, and Social Rights/Nigeria*, in Abdulkadir B.O., 'The Right to a Healthy Environment in Nigeria: A Review of the Alternative Pathways to Environmental Justice in Nigeria' p. 127-128

⁹ The Constitution of the Federal Republic of Nigeria (as amended in 2011)

¹⁰ Referred to in Dakas C.J., 'The implementation of the African Charter on Human and Peoples Rights in Nigeria' (1886-1990) *University of Jos L.J.*Vol.3, 39 in Lawrence Atsegbua et.al. *Environmental Law In Nigeria (Theory and Practice)* p.129

¹¹ *Ibid*.

The Nigerian Constitution also has a number of fundamental human right provisions from which the right to a healthy environment can be adduced. Amongst them are such rights as the right to life (section 33), the right to freedom from discrimination (section 42) right to fair hearing (section 36) and so on.¹ Some of them are parallel to the rights found in the African Charter on Human and Peoples Rights 1981. Some of these rights have been relied upon as a good enough ground to guarantee citizens right to a healthful environment.² See *Jonah Gbemre v. Shell Petroleum Development Company of Nigeria Limited*, where gas flaring was declared ‘as illegal, unconstitutional and a breach of the fundamental right to life.’³

CONCLUSION

Wetland degradation is on the increase as the benefits of such areas are being brought to the public consciousness through the work of International Conventions such as the Ramsar Convention on Wetlands. Wetland classification made it easier for nation states to pay close attention to the wetlands in their domain. The concept of ‘wise use’ is now being implemented by African countries that have abundant wetland resources such as Nigeria. International legal regimes that have relevance in Nigeria also provide a strong incentive for control of wetlands with more legislations being implemented to avert wetland degradation. The environment is ‘the totality of physical, economic, aesthetic and social circumstances and factors which surround and affect the desirability and value of property or which also affects the quality of people’s lives.’

We all have a duty to make the planet earth a better place to live in. Friendly policies and planning programmes towards wetland sustainability should be put in place. With proper funding, women can be encouraged to take up environmental friendly commercial activities such as commercial fishing farm. Dry fish is in great demand in urban areas and does not pose any threat to the environment as it makes minimal use of fertilizers or pesticides which sometimes have been shown to have adverse effects on the environment and wetlands. To further boost local participation, the use of Supplementary Environmental Projects is to encourage and obtain environmental and public health protection and improvements that may not otherwise have occurred without the settlement incentives provided by the policy. These improves the lives of inhabitants in terms of health and safety net from biotic components of the environment in issue.

The legal framework on wetlands in Nigeria is enmeshed in the laws on the environment. It is important that the legal framework does not churn out laws that are antagonistic to each other there is a bright future for the environment and indeed wetlands in Nigeria. Though the provisions in section 20 of the 1999 Constitution as amended on environmental protection are not justiciable, it is incisive and encouraging for potential applicants that aggrieved persons seeking reprieve from environmental offences can now resort to the ACHPR as well as constitutional provisions to get relief towards a better quality of life. As such there may be no urgent need to include specific provisions on environmental protection in the constitution. The legal and policy framework for wetlands in Nigeria must make use of existing laws and must be directed at all areas that are likely to impact wetlands such as agriculture, fishing, oil spills and so on. In India, resort is made to constitutional provisions such as the right to life to enforce some other rights that are not specifically provided for in the constitution to make them justiciable and enforceable. This can be done in Nigeria as well.

Arguably, developing countries lack the full technological and manpower support that may be needed to properly regulate wetlands and other aquatic ecosystems. It is suggested that there is need for coordinated legal actions, not only using the domestic framework, but also having resort to international regimes. In all of these, the rural communities who are custodians of long standing practices on conservation and management should be carried along for optimal results.

The Land Use Act in conjunction with the National Policy on State Directives as already stated can be used to reverse the irregular use of land such as wetlands by all and sundry in an unsustainable manner. The government, especially the state governments should make adequate provision for land to farmers who need wetland areas.

The Constraints to the implementation of the Fisheries Law include the lack of political commitment to proper enforcement as it is not seen as a pressing issue. Instead, the revenue generating function is given more priority, so most licensing agents are under pressure to license more trawlers; even above what may be considered sustainable in any given area. The primary motive for registration is revenue and not monitoring. It is hoped that the monitoring function will also be given better emphasis.

¹ See Chapter 4 of the 1999 Constitution

² Kane M.J, ‘Promoting Political Rights to Protect the Environment’ (2006) 18 (1) The Yale Journal of International Law 389,390. See also the case of *Charan Lal Sahu v Union of India* [1990] AIR SC 1480 in Abdulkadir B.O, ‘The Right to a Healthy Environment in Nigeria: A Review of the Alternative Pathways to Environmental Justice in Nigeria’ p. 128-129

³ Suit No: FHC/B/CS53/05