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<https://doi.org/10.61796/ejcbt.v1i3.405>**EXAMINING SOME INSTITUTIONAL FRAMEWORK ON ENVIRONMENTAL POLLUTION IN NIGERIA****Zekeri, Glory Ojomachewu**Faculty of Law Federal University Wukari  
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**Abstract:** Institutions are established to uphold certain programmes of government which are helpful for development of the human society. The control of pollution activities of individuals and corporate organizations are some of the concerns of modern day world. Diligence and compliance with rules will assist institutions perform optimally. However, innovation and technology can aid in carrying out functions and achieving set goals efficiently. This paper focuses on institutional framework on environmental pollution in Nigeria. To prevent destruction of environmental resources through pollution, institutions like the NESREA and National Council for Climate Change are established. Statute like National Environmental Standards and Regulations Enforcement Agency Act 2007 as amended and Climate Change Act 2021 created institutions to promote anti-pollution campaign. It was found that environmental pollution can be curtailed and climate change curbed if the institutions perform their duties with patriotism. It was recommended that Agencies like NESREA and National Council for Climate Change should synergise in areas of technical assistance and pollution remediation equipment acquisition and utilisation.

**Keywords:** NESREA, Climate-Change, Environment, Environmental, Pollution

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## Introduction

Conceptualizing environmental pollution and understanding the institutions set by law to protect the environment is fundamental in appreciating functions performed by some of the institution for the sustenance of human health and maintenance of the environment in the society (Amokaye, 2007). Humans cannot leave outside an unpolluted environment for long without attendant disease and complications on person and other lives hosted in an environment. Institutions like the NESREA and the National Council on Climate Change will be analysed based on their functions and objectives. Pollution is one of the activities which destroy human environment. If the environment is destroyed, the existence of human is greatly threatened (Hurlbert and Datta, 2022).

Pollution consists in activities which may not necessarily be illegal but have capacity to make the environment lose its natural endowments or incapable of sustaining its potentials (Egunjobi, 1993); or “man aided alteration of chemical, physical or biological quality of the environment to the extent that is detrimental to that environment beyond acceptable limits” (section 34 NESREA Act 2007). In

the Stockholm Conference of 1972, pollution was defined as “The discharge of toxic substances and the release of heat, in such quantities or concentrations as to exceed the capacity of the environment to render them harmless”. Air pollution is the upsetting of the natural arrangement of different gases in air.

It includes the accumulating of substances in the air, in sufficient concentrations to produce measureable effects on man, plants and animals. It involves the emission of harmful substances or chemicals into the atmosphere which will cause danger to any living thing. The effects of air pollution are likely to be exacerbated by changing meteorological conditions of temperature humidity, wind and precipitation, among others, particularly in this era of increasing variability in climate. The country needs not only to commence on serious research work in estimating the effects of air pollution and contamination on agriculture, forestry, ornamental horticulture, health, but must also put in place means for standardization, effective monitoring and enforcement of standards against atmospheric pollution.

The International Law Association conference in 1924 defined pollution at the sea to mean “an act whereby the inoffensive use of the water becomes impossible either for animal life or human use, or create a danger to such life or such use” (Heijnsbergen, 1979:11). At the Stockholm Conference of 1972, pollution was defined as “The discharge of toxic substances and the release of heat, in such quantities or concentrations as to exceed the capacity of the environment to render them harmless”. Similarly, for the WHO, marine pollution is

the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects such as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities (Odeku and Paulos, 2017:127-136).

Water pollution occur in oceans, lakes, rivers and streams and affects life directly through toxicity, killing of most water plants and animals, and causing reproductive failure in others. It is now known that technological advancement and urbanization are twin challenges to environmental pollution around the world; the crucial issue is not whether we should halt all commercial and industrial activities in order to sustain the quality of the environment. The real issue at stake is the role which law must play in striking equilibrium between the forces of degradation and the environmental protectionists (OECD, 2004). Toxic materials and solid and liquid waste causes water pollution; fertilizers and de-oxygenating materials can also cause pollution of water. Olufunke (2022) had been quoted to have said:

As a result of oil loses, vast tracks of agricultural land have been laid waste, thus becoming unproductive, surface water and river courses are invariably contaminated and polluted, rendering the water undrinkable, and the aquatic life is destroyed. The result is great hardship for the inhabitants who become impoverished and deprived. These unfortunate citizens are therefore compelled to migrate to other towns and villages in search of decent life (Olufunke, 2022:10).

## Literature Review

Air, land and sea as well as the things in or on them compose the environment (Anyogu&Nyekwere, 2020-2021). They contain in them what human society needs for socio-economic development. It provides the raw materials for scientific discoveries and technological advancement. The environment hosts all of these activities which at some point may become burdensome and unbearable for it to retain its potentials. This is where the institutions come in to regulate and make policies which will safe-guide human environment from human activities which deleterious(Orji, 2012).

Institutions are usually established on the basis of an Act of National Assembly or Law enacted by the House of Assembly of a State. National Environmental Standards and Regulations Enforcement Agency (NESREA) was established by the NESREA Act 2007; in the same vein, the National Council for Climate Change is established by Climate Change Act 2021. The NESREA Act vests in the Agency the responsibility and function of ensuring that Nigeria has safe unpolluted environment (Onwuemele, 2011) while the Climate Change Act provides for its Council to make policies on matters relating to climate change in the country.

The Nigerian Constitution envisages that the State will protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria (section 20, CFRN 1999) with the understanding that environmental resources will be deployed for the good of the communities of Nigerian people(section 17, CFRN 1999). Unfortunately, this vital provision on environment is relegated to unenforceability by virtue of section 6(6)(c) of the Constitution. Most times, in discourses on Nigerian environment, this vital section is not potent following several decisions of the Supreme Court of Nigeria to the effect of its unjusticiability (Ugbe & Umo(2015); Olarewaju (2002).

## Methodology

This article adopts the doctrinal methodology of research by sourcing its data from legislation like the National Environmental Standards and Regulations Enforcement Agency Act, Climate Change Act among others. It is expected the recommendation would be implemented via a legislation for sustainable environmental administration in Nigeria.

## Research Results

### **Institutional Framework:**

#### **National Environmental Standards and Regulations Enforcement Agency (NESREA)**

The National Environmental Standards and Regulations Enforcement Agency (NESREA) was established under section 1 of the National Environmental Standards and Regulations Enforcement Agency Act 2007 as amended. It is established under the Ministry of Environment to enforce environmental standards and regulations for the general protection of the human environment in Nigeria. The Functions of NESREA were already cut out for it in the areas of protection of the Nigerian environment; enforcement of Laws and Regulations on the environment (Monsurat and Olalekan and Olawale, 2019); maintaining environmental standards; create environmental awareness;

engage in partnership in the protection of the environment; utilize international laws and conventions on environmental protection and conservation provided Nigeria was a signatory to such Convention or International Treaty/Agreement.

NESREA grants permits as a mechanism for pollution prevention and remediation. Permit is an authorization before the doing of a thing by a body or person which the doing of it would be illegal or continuation of the doing after the expiration of the permit would be illegal. This is a veritable tool for environmental sustainability as the Minister or Agency in consideration of environment impacts of the act applied may refuse such application for the sustenance of the environmental resources. Licence is authorization to do for government that which is its right or within its powers to do. This too, is another tool for protection of the environment from actions that are unsustainable to it. It required good will and public conscience for the Agency or Minister to commit to safe, protected and unpolluted environment. Certificate on itself authorizes its bearer to limit or confine itself to that which are expressly provided in the certificate. In the oil and gas industry for instance, it is required that the Commission or Authority issue a certificate after some conditions precedent had been satisfactorily documented by the corporation which applied or paid to be so certified. As argued by Ikoni et al

environmental statutes and regulations provide for issuing permit, licence or certificates etc, upon application and satisfaction of laid down conditions prior to the issue of the permit, licence or certificate. The importance of these devices is to assist the Agency in monitoring and regulation of activities which are potential sources of environmental degradation. Such permits, licence or certificate when issued is subject to revocation upon a breach of the regulations, statute or any of the laid down conditions specified on such permit, licence or certificate.

The powers to revoke certificate, permit or licence are provided for the Agency or Authority to regulate the activities authorized under each instrument for the protection of the environment; not for economic or personal considerations. It further argued that the conditions precedent should be religiously satisfied and chronologically followed by the Applicant through the time or period authorized. Where during the subsistence of the authorization there appear to the Agency or Authority that the conditions had been or is likely to be violated, it should proactively protect the environment by requesting the corporation of body to do or undo such inimical acts or omission within the precinct of the authorization earlier given.

The provision of air resources is settled under section 20(1) of the NESREA Act. The section provides that the Agency may make regulations setting specifications and standards to protect and enhance the quality of Nigeria's air resources, so as to promote the public health or welfare and the natural development and productive capacity of the nation's human, animal, marine or plant life including, in particular, minimum essential air quality standards. The Agency may proceed against individual or corporate violators under section 20 of the Act for an infringement of section 20(1). So that a person who violates the regulations made pursuant to subsection (1) of section 20 above, commits an offence and shall on conviction, be liable to a fine not exceeding N200,000 or to imprisonment for a term not exceeding one year or to both such fine and imprisonment and an additional fine of N20,000 for every day the offence subsists. Where the offence is committed by a body corporate, it shall on conviction be liable to a fine not exceeding N2,000,000 and an additional fine of N50,000 for every day the offence subsists under subsection 4 of section 20 of the Act (Orji, 2012).

The power of inspection and searches as protection approach for the environment are recognized under the Nigerian corpus juris (Ijaiya and Joseph, 2014). One of the unique features of this approach from other strategies relates to the time of its application (Ogbodo, 2009). While most other strategies are invariably embarked upon after the legislation or regulation concerned has been infringed upon and possible damage occasioned, the power of inspection and searches are applied before the contravention occurred or on the suspicion of such contravention. It is preventively enacted to stop the incidence from happening if due diligence and proactively initiated. The powers relating to inspection and search is provided for in section 30 (1) of the NESREA Act, 2007 which states that an officer of the Agency may, in the course of his duty, at any reasonable time and on production of his certificate of designation if so required: (a) enter and search with a warrant issued by a court, any premises including land, vehicle, tent, vessel, floating craft at all times for the purpose of conducting inspection, searching and taking samples for analysis which he reasonably believes carried out activities or stores goods which contravene environmental standards or legislation.

### **National Council on Climate Change**

The Climate Change Act (CCA) 2021 is in response to Nigeria's commitment to complying with the minimum required of the country in anti-climate change efforts of the international community. The CCA is to achieve low greenhouse gas emission (GHG), green growth and sustainable development (section 1, CCA 2021). Ensuring that Nigeria formulates programmes for achieving its long term goals on climate change mitigation and adaptation is part of the objects the legislature had in mind on enacting the CCA (section 1(a), CCA). Long-term climate objective needed to be part of what the country would be doing from 2021 in reducing GHG (section 1(b), CCA). Climate change action plans are to be subject to national priorities; where the national priorities are over and above climate change issues, such national priorities would prevail (section 1(c), CCA). Monies needed to combat climate change would be provided by the government (section 1(d), CCA). Environmental integrity and socio-economic development will be product of policy and actions integration by the office charged with complying with Nigeria's GHG requirement (section 1(e), CCA). Nigeria has set year 2050-2070 as its net-zero GHG emission target in line with Nigeria's international climate change obligation (section 1(f), CCA).

Climate change is not an occurrence from natural phenomenon but an aggression on nature by human activities which tend to pollute the environment beyond what the natural existences can accommodate. Therefore, nations are supposed and expected to identify risks and vulnerable factors that encourages GHG emissions, build resilience against such weaknesses identified and strengthen existing adaptive capacities in curtailing climate change (section 1(g), CCA). Building resilience and risks ascertainment are actions based; a country must show in real time what it has done, from which what it can do would be verifiable, and detailed information of what it needs to accomplish resistance to climate change challenges in its immediate environment (section 1(g), CCA). Then, the country should implement mitigation measures that promote low carbon economy and sustainable livelihood (section 1(h), CCA) as well as ensure that private and public entities comply with stated climate change strategies, targets and National Climate Change Action Plan (section 1(i), CCA). The CCA applies to everyone for the purposes of the development and implementation of mechanisms geared towards fostering low carbon emission, environmentally sustainable and climate resilient society (section 2, CCA).

The CCA established a National Council on Climate Change (section 3, CCA) with the powers to make policies decisions on matters of climate change in Nigeria. They are to coordinate implementation of sectoral targets and guidelines for reduction of GHG and other human activities which affect the climate (section 4(a), CCA). The Council approve and implement Climate Change Action Plan (section 4(b), CCA); administer the Climate Change Fund (section 4(c), CCA); formulate guidelines for determining vulnerability to climate change impact and adaptation assessment, and facilitate the provision of technical assistance for their implementation and monitoring (section 4(f), CCA); they recommend to the legislature and executive actions for adaptation and mitigation of climate change impact; collaborate with federal inland revenue service to develop carbon tax mechanism in Nigeria (section 4(i), CCA); make collaborations for carbon trading (section 4(j), CCA); advice government on climate change international agreements (section 4(k), CCA); and among others, disseminate information on climate change, local vulnerabilities and risk, relevant laws and protocols, and adaptation and mitigation measures (section 4(l), CCA).

Membership of the National Council on Climate Change is statutory to wit only those listed in the law are members (section 5(1), CCA). National Council on Climate Change consist of Nigerian President as Chairman, Vice President as Vice Chairman, Environment Minister, Minister for Petroleum, Justice, Budget and National Planning, Mines and Steel, Finance, Agriculture, Power, Women Affairs, Transportation, Water Resources, Central Bank Governor, National Security Adviser, Chairman of Nigeria's Governors' Forum, President of Local Government Association, representative of private sector national umbrella association, representative of women, youths and persons with disabilities, environment civil society organization, and Director-General of National Council on Climate Change as Secretary of the Council (section 5(1)(a-u), CCA). The Council meet when it is necessary (section 5(2), CCA); members are on part time basis (section 5(3), CCA); ex-officio members hold office for four years term and not eligible for reappointment, ex-officio terms and conditions of appointment is stated in the letter of appointing them (section 5(4)(a&b), CCA). Membership ceases upon resignation, unsoundness of mind, bankruptcy, conviction for criminal offence or death; vacancy is filled by another who takes the person's position (section 6(1&2), CCA). The core duties of the National Council on Climate Change are policy formulation and decisions making; the enforcement and day to day administration on Climate Change rest on the Secretariat for National Council on Climate Change. The Council 'legislate' while the Secretariat 'execute'.

### **The Secretariat for National Council on Climate Change**

The Secretariat (section 7, CCA) for National Council on Climate Change is established in section 7 of the Climate Change Act 2021. The Secretariat for the National Council on Climate Change does the secretarial and clerical administration works for the Council; it serves as the Council's scientific and technical arm and performs functions and discharge duties assigned to it in the CCA (section 7(1), CCA). The Council formulates the policy which the Secretariat should carry out. It is more as the enforcement arm of the Council. In other to give the Secretariat the required spread for effective performance of its responsibilities, the Council can establish zonal and state offices, committees and such other administrative apparatus for the effective implementation of the CCA (section 7(2), CCA). Section 7(2) CCA clarifies that the essence of the Secretariat is to give the Council administrative apparatus by which its duties can be performed under the Act.

Roles assigned to the Secretariat include those of advising and assisting the Council in performing its duties, functions in line with the objectives for which it was established (section 8(a), CCA). The estimation of how much carbon should be allowed into the atmosphere, the monitoring, verification and reporting is done by the Secretariat in view of conforming to the carbon budget(section 8(b), CCA). It makes progress reports on action plan implementation as well as monitor and verify same; it reviews periodically the Action Plan and provide analytical, technical support, drafting of climate change policies and action plan; collect data and make projections; disseminate information on climate risk and climate impact and carbon budget(section 8(c-f), CCA). The Secretariat prepares and serves guidelines on public and private entities and monitor compliance with the CCA, guidelines and other legislations, it collaborates with ministries to meet Nigeria's international climate change obligations, and perform other functions the Council may assign to it(section8(g-k), CCA).

### Conclusion

Climate change Act 2021 is one of such legislation which grouped the most powerful of the executive arm of government to a Council where environment could be discussed and implementation of the nation's commitment to climate change and anti-pollution activities against the environment enforced. The National Council for Climate Change is chaired by the Nigerian President and Vice-Chaired by the nation's Vice President. Who else could discuss and implement Nigeria's obligation to GHG than the chief executive himself. It behoves on the Secretariat of the National Council for Climate Change to perform with patriotism their technical and advisory functions to the Council and reduce GHG emission with its consequential desertification, flooding, erosion and other environmental consequences. There is need for collaboration between the National Council for Climate Change and the NESREA for optimum results in the fight against pollution and its effects on climate change.

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