



## AIR POLLUTION CONTROL UNDER NIGERIAN LAW: ISSUES AND CHALLENGES

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### Abstract

*In Nigeria, air pollution is a serious issue with the country ranking among the most polluted countries in the world. In recent times, the emission of Greenhouse Gases (GHGs) in Nigeria particularly in the Niger Delta region has become an issue of grave concern for all environmental stakeholders. The problem of air pollution in Nigeria has often been attributed to industrial activities, agricultural practices, vehicular emissions, poor waste management, poor sanitation exercises and many other factors. This paper therefore examined the issue of air pollution control under Nigerian law with a focus on the challenges and barriers to effective implementation. It argued that despite the existing laws, air pollution has continued to threaten the economic, social, health and environmental well-being of the society. The authors thus identified several critical challenges such as overdependence on fossil fuels, inadequate infrastructure for gas capture and storage, weak enforcement of environmental protection laws and limited compliance with international obligations. It also highlighted socio-economic factors such as illiteracy and poverty, contributing to the ineffective control of air pollution. The paper also made comparative analyses of air pollution control using South Africa and India and concluded that these issues and challenges facing the Nigerian legal framework on air pollution control must be adequately addressed before air pollution can be curbed in the country. It recommended among other things for the independence of the environmental regulatory agencies.*

**Keywords:** Air Pollution, Environmental Impact, Industrialisation, Challenges, Global warming, Waste Management.

### 1.0 Introduction

Air pollution is a serious problem in Nigeria with many studies indicating that the atmospheric loading of anthropogenic air pollutants is on an alarming increase. The sources of air pollution in Nigeria are numerous including industrial activities, agricultural practices, gas flaring, indiscriminate waste disposal, vehicular emissions and many more. These factors have different devastating economic, social, health and environmental impacts.<sup>1</sup> The Nigerian government has enacted a number of laws and regulations to control air pollution and improve air quality across the country, but these laws are often not enforced effectively. Despite these legal measures, there are several issues and challenges that have continued to undermine air quality control in the country. This is a serious issue that needs serious attention because the environment is the only home for mankind and the ozone layer is the protector of the ecosystem from dangerous ultraviolet radiation from the sun. Addressing the problems facing air pollution control implies addressing the needs of the ozone layer, climate system and mankind.

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<sup>1</sup> S I Efe, 'Spatial Distribution of Particulate Air Pollution in Nigerian Cities: Implications for Human Health' [2008](7)(2)*Journal of Environmental Health Research*



## 2.0 Meaning of Air Pollution

Section 37 of the NESREA Act of 2007 defines pollution as ‘the man-made or man-aided alteration of the chemical, physical or biological quality of the environment beyond acceptable limits.’ According to the World Health Organisation (WHO), air pollution is the alteration of the natural condition of the atmosphere either indoors or outdoors by any chemical, biological or physical agent.<sup>2</sup> Indoor air pollution refers to the presence of pollutants in the air inside buildings or other enclosed spaces such as homes, offices, schools and hospitals. Common sources of indoor air pollution include household combustion devices such as stoves and fireplaces, tobacco smoke building materials, chemical substances and cleaning products. Outdoor air pollution, on the other hand, refers to the presence of pollutants in the air outdoors which can be caused by various human activities such as transportation, industrial activities, bush burning, construction activities and other activities that emit greenhouse gases outdoor.

## 3.0 SOURCES AND CAUSES OF AIR POLLUTION IN NIGERIA

### 3.1 Industrial Activities

Industrialization is seen as a potential solution to Nigeria's economic challenges primary among which are the high unemployment rates and over-reliance on oil exports. Industrialization has the potential to diversify the Nigerian economy, create employment opportunities and lift people out of poverty. However, industrialization also has its side effects if not adequately regulated and controlled. These side effects arise particularly in terms of air pollution and its adverse effects on human health and the environment.

Industrial activities in Nigeria such as petroleum operations, manufacturing operations and power generation operations contribute substantially to air pollution. Nigeria is Africa's largest oil producer and the petroleum operations at different levels including the upstream, midstream and downstream sector emits various pollutants that are dangerous to the environment. When fossil fuels such as diesel and natural gas are burned for energy in industrial processes, they release greenhouse gases (GHGs) that contribute to global warming. Gas flaring is a prevalent and significant source of air pollution in Nigeria's oil and gas industry. During oil production, associated gases are often flared or burned off, releasing large quantities of pollutants into the air. Pipeline vandalism and illegal refineries also contribute to air pollution. With the increasing cost of fuel and other petroleum byproducts, people may be motivated to vandalise oil pipelines and refine oil through illegal means. Due to poor infrastructure, expertise and safety measures, these illegal refining activities are more likely to cause fire outbreak and release large amount of GHGs in the atmosphere. The emissions of sulfur and nitrogen oxides from burning fossil fuels are particularly harmful as they can lead to the formation of acid rain and depletion of the flora and fauna.

Manufacturing plants in Nigeria, such as those producing cement and chemicals also contribute to air pollution. These plants emit large amounts of dust and particulate matter during the production process. The dust consists of various pollutants which can have severe health effects when inhaled. The release

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<sup>2</sup> World Health Organisation, 'Air Pollution' <[https://www.who.int/health-topics/air-pollution#tab=tab\\_1](https://www.who.int/health-topics/air-pollution#tab=tab_1)> accessed 26 May 2023.



of particulate matter, along with other industrial pollutants, contributes to diminished air quality in the area. Also, power generation in Nigeria primarily relies majorly on fossil fuels, particularly coal and petroleum products. The Egbin Power Station in Lagos State is one of the largest thermal power plants in Nigeria and contributes to air pollution in the region. The emissions from this coal-fired power station contribute to high levels of particulate matter and sulfur dioxide, further exacerbating air pollution and its associated health risks

### 3.2 Vehicular Emissions

In Nigeria, concerns about pollution have primarily focused on general industrial pollution and pollution caused by oil industries. However, no significant attention has been given to the damage caused by mobile transportation as a source of air pollution. However, the pollution from the road transport industry is increasing due to the rise in per capita vehicle ownership and high congestion of vehicles on city roads. The rapid increase in the number of vehicles on Nigerian roads has exacerbated air pollution issues. The emissions from cars, trucks and motorcycles contribute substantial amounts of pollutants.

NESREA holds the legal mandate to enforce all environmental laws, standards and regulations in the country while the Vehicle Inspection Officer (VIO) is responsible for checking the roadworthiness of vehicles. Other related agencies involved in this effort include the Federal Road Safety Commission (FRSC), the National Automotive Design and Development Council (NADDCC) and the Nigeria Customs Services (NCS). However, there is an apparent lack of action by regulatory agencies responsible for implementing and enforcing measures to reduce emissions.<sup>3</sup> The concern of Nigerians towards vehicular emission as a major source of air pollution in Nigeria arises particularly in light of the recent identification by the World Health Organization (WHO) of four cities in Nigeria as the world's worst for air pollution, with vehicular pollution being highlighted as a significant contributing factor.<sup>4</sup>

### 3.3 Agricultural Practices

Agricultural activities in Nigeria contribute significantly to air pollution through practices such as bush burning and the use of chemicals and pesticides. Bush burning is a common agricultural practice in Nigeria, particularly during the dry season. Farmers often burn vegetation and crop residues in order to clear land for cultivation or to manage pests and diseases. However, the smoke and pollutants released from these fires contain harmful substances such as carbon monoxide. The use of chemicals and pesticides in agriculture also leads to air pollution in Nigeria. Farmers use pesticides to control pests and increase crop yields. However, improper handling, storage and application of these chemicals can result in their volatilization into the air, causing air pollution. Pesticides contain toxic compounds that when released into the atmosphere, can contaminate the air and pose risks to human health.

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<sup>3</sup> K Jeremiah, 'Vehicle emission: Failure of roadworthiness scheme?' <<https://guardian.ng/features/executive-motoring/vehicle-emission-failure-of-roadworthiness-scheme/>> accessed 10 July 2023.

<sup>4</sup> *Ibid.*

### 3.4 Poor Waste Management Practices

Nigeria produces an estimation of 32 million tons of solid waste annually. However, only about 20-30% of this waste is properly collected and managed. The remaining waste either ends up being dumped in unauthorized places or burned. The improper disposal of waste poses a detrimental impact on the environment and public health in Nigeria. Thus, it is crucial to develop effective strategies to address this issue and ensure sustainable solid waste management practices. One of the critical sources of air pollution in Nigeria is poor waste management practices. As previously mentioned, a significant percentage of solid waste in the country is not collected and managed correctly.

This leads to the accumulation of waste in unauthorized places such as open dumps, water bodies and drainage channels. In these areas, decomposition of organic waste takes place, releasing a variety of gases into the atmosphere. Methane is produced during the anaerobic decomposition process of organic waste. Methane is known to contribute to the greenhouse effect and climate change. In addition, the burning of waste, either intentionally or unintentionally, leads to the emission of toxic gases and hazardous chemicals into the air. These emissions not only contribute to air pollution but also pose severe health risks to the population.

### 3.5 Inadequate Sanitation Exercises

Inadequate sanitation exercises are another critical source and cause of air pollution in Nigeria. In many areas, especially in densely populated urban centres and informal settlements, there is a lack of proper sanitation facilities and infrastructure. As a result, open defecation and urination are prevalent. These human excreta produce unpleasant smell and often ends up in open spaces, water bodies or near residential areas. The decomposition of fecal matter releases foul odours and various gases, including ammonia, hydrogen sulfide and volatile organic compounds into the air which create a pungent and unpleasant environment for nearby communities and organisms.

### 4.0 Impacts of Air Pollution in Nigeria

There are several impacts or effects of air pollution in Nigeria. Ambient air pollution in Nigeria has led to emissions of carbon monoxide, carbon dioxide, nitrogen oxides, sulphur dioxide and particulate matter in the atmosphere, which increase air pollution and lower air quality. Air pollution in Nigeria has resulted in the occurrence of acid rain. Acid rain arises when pollutants emitted into the air combine with moisture in the atmosphere, forming sulfuric acid and nitric acid. These acids are then deposited onto the Earth's surface through precipitation, damaging crops, forests and aquatic ecosystems. Acid rain can directly impact agricultural productivity by affecting the nutrient availability in soils and disrupting the growth and development of crops. It can also lead to the acidification of lakes, rivers and streams which inevitably endanger fish and other aquatic organisms.

Air pollution in Nigeria also contributes to the depletion of the ozone layer. Greenhouse gases and ozone-depleting substances released into the atmosphere through human activities, interact with ozone molecules in the stratosphere, resulting in their breakdown. The depletion of the ozone layer increases the levels of ultraviolet radiation reaching the Earth's surface. This radiation has harmful effects on human health. Furthermore, the radiation can also have ecological implications, such as damage to phytoplankton and other marine organisms which form the foundation of aquatic food webs.

Furthermore, air pollution is a significant contributor to climate change. The release of greenhouse gases into the atmosphere contributes to the greenhouse effect. These gases trap heat from the sun which results in global warming. Climate change has various environmental impacts, including rising sea levels, changes in precipitation patterns, increased frequency and intensity of extreme weather events like hurricanes and floods and shifts in ecosystems. These changes disrupt habitats and have harmful consequences for biodiversity including species loss and population declines.

Air pollution in Nigeria is associated with different health risks such as cardiovascular diseases, respiratory infections, tuberculosis, lower respiratory infections, chronic respiratory diseases, ischemic heart disease, stroke, communicable, maternal, neonatal, and nutritional diseases.<sup>5</sup> Nigeria is ranked amongst the world's first five and the largest country in Africa, with the top-most level of premature death associated with air pollution.<sup>6</sup> In 2019, air pollution in Lagos alone led to approximately 23,900 premature deaths, accounting for 12.4% of total deaths.<sup>7</sup> Surprisingly, this surpassed the number of deaths caused by malaria, which accounted for 12% and was more than double the deaths caused by HIV/AIDS, which accounted for 5.2%.<sup>8</sup>

## 5.0 Nigerian Laws on Air Pollution Control

### 5.1 Constitution of the Federal Republic of Nigeria 1999 (as amended)

Section 20 of the CFRN places a legal obligation on the Nigerian government to ensure environmental sustainability for its citizens. As part of this mandate, air pollution control is integral and essential. Despite the constitutional provision for environmental protection, section 6(6)(c) of the CFRN makes it non-justiciable as it falls under Chapter II of the Constitution. Therefore, no individual can approach the court to enforce Section 20 of the Constitution which seeks to protect the ecosystem. The courts have established that Chapter II of the Constitution is non-justiciable as it is a solemn duty imposed on all organs of government and authorities to abide by the mandates contained therein.<sup>9</sup> However, Section 20 of the CFRN, read in conjunction with Section 33(1) of the CFRN and Article 24 of the African Charter on Human and Peoples' Rights, provides an avenue for Nigerians to sustain an action for enforcement against the violation of their right to a peaceful environment without relying solely on Section 20 of the Constitution. These provisions may be relied upon by aggrieved parties to seek redress for the polluted atmosphere or air quality.<sup>10</sup>

### 5.2 National Environmental Standard and Regulations Enforcement Agency Act 2007 (as amended)

Section 20 of the NESREA Act aims to protect Nigeria's air quality and promote public health and the natural development of the environment. One of the key provisions is the ability of the NESREA to make regulations setting specifications and standards to protect and enhance the quality of Nigeria's air

<sup>5</sup> H T Pona, 'Environmental health situation in Nigeria: current status and future needs' [2021](7)(3) Helyon <[ncbi.nlm.nih.gov/pmc/articles/PMC8022161/](https://ncbi.nlm.nih.gov/pmc/articles/PMC8022161/)> accessed 9 July 2023.

<sup>6</sup> *Ibid.*

<sup>7</sup> Clean Air Fund, 'Lagos and Air Pollution' <<https://www.cleanairfund.org/clean-air-africas-cities/lagos/>> accessed 10 July 2023.

<sup>8</sup> Clean Air Fund (n 6).

<sup>9</sup> *Attorney General of Lagos State v Attorney General of the Federation & Ors.* (2003) 35 WRN 7

<sup>10</sup> *Centre for Oil Pollution Watch v NNPC* (2019)5 NWLR (Part 1666) 518.



resources. This includes establishing minimum essential air quality standards for human, animal, marine or plant health as well as setting control measures to limit the concentration of substances in the air, which can cause damage to property, human and animal health, and marine or plant life.<sup>11</sup> The NESREA Act also gives NESREA the power to establish monitoring stations to locate sources of atmospheric pollution and determine their potential danger. Violators of these regulations face stiff penalties, including fines and imprisonment, especially where such pollution may endanger public health or welfare.<sup>12</sup>

### 5.3 Climate Change Act 2021

One of the objectives of the Climate Change Act is to ensure that Nigeria formulates programmes that achieve long-term goals on climate change mitigation and adaptation.<sup>13</sup> It also seeks to mobilize resources and finance to ensure effective action on climate change while setting a target for net-zero GHG emission by 2050-2070 in line with Nigeria's international climate change obligations.<sup>14</sup> The CCA aims to identify the risks and vulnerabilities of climate change, build resilience and strengthen existing adaptive capacities to climate change impacts.<sup>15</sup> It also seeks to implement mitigation measures that promote a low carbon economy and sustainable livelihood, ensuring that private and public entities comply with stated climate change strategies, targets, and the National Climate Change Action Plan.<sup>16</sup>

The CCA reinforces the Nigerian decarbonization policy and Energy Transition Plan. Decarbonisation and energy transition plan are measures put in place by the Nigerian government to problems of GHG emissions and climate change. Following the Conference of Parties held in 2021 (COP26), Nigeria has committed to achieving carbon neutrality by 2060. This commitment is supported by the Energy Transition Plan (ETP), which has been fully approved by the Federal Government. The ETP focuses on five key sectors: power, cooking, oil and gas, transport and industry, and it aims to reduce GHG emissions in these areas.

### 5.4 Environmental Impact Assessment Act 1992

The Environmental Impacts Assessment Act 1992<sup>17</sup> establishes a legal framework for environmental impacts of development projects in Nigeria. The Act provides a guideline for the assessment of the impact of development projects on the environment and requires developers to submit an environmental impact statement to the regulatory authority.<sup>18</sup> The EIA Act requires developers to submit an air quality impact assessment as part of the environmental impact statement. The assessment should identify the sources, types and quantities of pollutants likely to be emitted during the project and evaluate the potential impact of such emissions on air quality, human health and the environment.<sup>19</sup>

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<sup>11</sup> NESREA Act (n 8), s.20.

<sup>12</sup> *Ibid.*

<sup>13</sup> Climate Change Act 2021, s.1.

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*

<sup>17</sup> Cap E12 LFN 2004.

<sup>18</sup> *Ibid.*, s.1.

<sup>19</sup> O Amokaye, *Environmental Law and Practice in Nigeria* (University of Lagos Press 2004) 540





In *Gbemre v Shell*,<sup>20</sup> the court held that the fundamental rights of the applicants including the right to a clean and healthy environment were violated by the respondents' gas flaring activities. It further stated the failure to conduct an EIA further contributed to this violation. The court also found that the relevant provisions of the Associated Gas Re-Injection Act (AGRA) and regulations in support of the respondents' activities contradicted the applicants' rights and ordered the immediate cessation of gas flaring in the community. Also, the court directed the Attorney General to initiate the necessary procedures to amend the relevant sections of the AGRA and regulations to align with the CFRN 1999.

### **5.5 Harmful Waste (Special Criminal Provision) Act 1988**

The Harmful Waste (Special Criminal Provision) Act 1988<sup>21</sup> is a legislation that was enacted as a policy response to the Koko waste dumping incident and was the first of its kind in the country. The Act criminalizes the carrying, depositing and waste dumping of harmful waste on any land, territorial waters, and the associated concerns that pollute the air. It applies to any person who transports, sells, offers for sale, buys or deals in any harmful waste without lawful authority. Section 12 of the Act is critical in establishing the principle of polluter pays, which is a principle of environmental law that requires persons responsible for pollution to bear the costs of damage caused to the environment or human health. The provision ensures that the party responsible for the production of harmful waste is held accountable for any harm caused to human health or the environment, thus creating a financial incentive to prevent or minimize the production of such waste. As a result, individuals, companies or organizations that produce harmful waste will have to consider the environmental and health consequences of their actions which could promote better practices and overall air pollution control.

### **5.6 Petroleum Industry Act 2021**

The Petroleum Industry Act 2021 (PIA) aims to overhaul the administration and governance of Nigeria's petroleum industry. It has provisions for environmental management and financial contribution for remedying environmental damage.<sup>22</sup> Sections 104 to 108 of the PIA address the issue of gas flaring, including the prohibition of natural gas flaring and the imposition of penalties for flaring or venting gas. Section 105 allows the Nigerian Upstream Petroleum Regulatory Commission to take flare gas from a licensee or lessee, who intended to flare it, free of charge. This provision is aimed at encouraging alternative uses for natural gas, such as electricity production, rather than the wastage through flaring or venting.

### **5.7 Criminal Code Act 1990**

The Criminal Code Act<sup>23</sup> contains several provisions relating to substantive crimes including injury or death resulting from air pollution or other environmental pollution. By virtue of Section 247 of the Criminal Code Act,<sup>24</sup> it is an offence to pollute the atmosphere in such a way as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood. Any person found guilty shall on conviction be liable to the criminal penalties imposed by the act. Similarly, under Section 245 of the CCA, any person who corrupts or fouls the water of any spring, stream, well, tank, reservoir, or place, so as to render it less fit for the purpose for which it is ordinarily used, is guilty of a misdemeanour and is liable to imprisonment for six months.

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<sup>20</sup> Suit No. FHC/B/CS/53/05.

<sup>21</sup> Cap H1 LFN 2021.

<sup>22</sup> Petroleum Industry Act 2021, ss.102 and 103.

<sup>23</sup> Cap C38 LFN 2004.

<sup>24</sup> Cap C38 LFN 2004



### 5.8 National Environmental (Ozone Layer Protection) Regulations 2009

The National Environmental (Ozone Layer Protection) Regulations 2009 is a legal instrument in Nigeria that regulates activities that may lead to the depletion of the Ozone Layer. It was made pursuant to section 38 of the NESREA Act. The regulations were enacted following Nigeria's ratification of the Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol on Substances that Deplete the Ozone Layer both of which have established measures to protect the ozone layer. The regulations aim to promote ozone layer protection by enforcing compliance with international agreements in Nigeria, as the country continues to work towards its climate goals. The regulations prohibit the importation, manufacturing, installation, sale or purchase of ozone depleting substances (ODS) whether in whole or in part in Nigeria.<sup>25</sup>

### 5.9 National Environmental (Air Quality Control) Regulations 2014

The National Environmental (Air Quality Control) Regulations 2014 was enacted to monitor and regulate air pollution in Nigeria.<sup>26</sup> The regulations aim to protect public health and the environment by setting standards for air quality and regulating emissions from industrial, commercial and residential sources.<sup>27</sup> One of the innovative provisions of the Regulations is that it provides a comprehensive regulatory framework for controlling air pollution in Nigeria. The regulations set standards for the quality of ambient air, industrial and vehicular emissions, and operate a permit system for companies that produce or emit pollutants.<sup>28</sup> Another strength is that the regulations promote the adoption of best practices for air quality control such as the use of cleaner fuels,<sup>29</sup> low emission tools and equipment and waste reduction and control policies. The regulations also encourage collaboration among stakeholders, including industry, local communities, and regulatory agencies, to improve air quality in the country.

Part VI of the Regulations also established the Ambient Air Quality Standards (AAQS). The AAQS sets limits for the concentration of major air pollutants in ambient air like nitrogen dioxide, sulphur dioxide, carbon monoxide and particulate matter.<sup>30</sup> The AAQS guidelines can act as a roadmap to help states set their air quality standards to guide monitoring and evaluation of ambient air quality.

### 5.10 Police Act 2020

The Nigerian Police Act 2020 is a significant milestone in the history of policing in Nigeria. The Act seeks to establish a framework for modern policing that is accountable, efficient, and citizen-friendly. One of the key features of the Act is the power of the police to investigate and arrest offenders, including those who pollute the environment by fouling the air and water under sections 247 and 245 of the Criminal Code Act. Under section 4 of the Police Act 2020, the police have the primary responsibility to maintain law and order and protect lives and property in Nigeria. This responsibility includes the power to investigate and prevent crimes. This power also extends to the provisions under the Harmful Waste (Special Criminal Provisions) Act.

### 5.11 Gas Flaring, Venting & Methane Emissions (Prevention of Waste and Pollution) Regulations 2022

<sup>25</sup> National Environmental (Ozone Layer Protection) Regulations 2009, reg.1.

<sup>26</sup> National Environmental (Air Quality Control) Regulations 2014, reg.1.

<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*, reg.39.

<sup>29</sup> *Ibid.*, reg.29.

<sup>30</sup> *Ibid.*, regs.32 and 33.





The Gas Flaring, Venting & Methane Emissions (Prevention of Waste and Pollution) Regulations 2022 were established by the Minister of Petroleum in accordance with the Petroleum Act of 1969 and the PIA. The aim is to prevent waste and pollution from gas flaring, venting and methane emissions in the Nigerian upstream oil and gas sector. The regulations cover various aspects including the Federal Government's right to take flare gas, requirements for reporting flare, vent gas and methane emissions data and prohibitions against the flaring and venting of natural gas. Any producer who flares gas may be liable for a penalty expenditure of USD2.00 per 28.317 standard cubic meters of gas flared and vented, irrespective of whether it is routine or non-routine flaring.<sup>31</sup> Although this approach discourages gas flaring, the penalty may not be high enough to discourage such practices, and the regulations do not differentiate between routine and non-routine flaring. There is a need for companies to reduce routine flaring, which is responsible for most of the gas flaring in Nigeria.

## **6.0 Issues and Challenges Facing the Control of Air Pollution in Nigeria**

### **6.1 Overdependence on Fossil Fuel Industry**

Nigeria, being a major oil and gas producer, heavily relies on this industry for its economic growth. This overdependence on the industry is mounting serious pressure on the environment as more toxic substances from the industry have continued to be emitted into the environment right under the nose of the government and its legal frameworks. The government desires economic posterity from the industry which appears to come with corresponding environmental degradation. Thus, it pays lip service to the pollution of the atmosphere despite its environmental obligations under regional and international laws. Instead of developing strong deterrents against large emitters, the government is slow and reluctant due to the fear of economic collapse. The overdependence of fossil fuels and emitters has made the government focus more on the economic benefits the country will derive from the long-term depletion of the atmosphere air and the ozone layer.

### **6.2 Lack of Infrastructure for Gas Capture, Storage, Transportation and Utilization**

Natural gas is an important energy resource in Nigeria. However, the lack of infrastructure for gas capture, storage, transportation and utilization leads to its flaring and venting, causing air pollution. The absence of adequate infrastructure hinders the capture and proper utilization of gas, resulting in environmental and health challenges. Developing and investing in infrastructure for gas capture and utilization is essential to mitigate air pollution in Nigeria.

### **6.3 Poor Enforcement of Environmental Protection Laws**

Despite having environmental protection laws and regulations in place, Nigeria faces challenges in enforcing these laws effectively. Weak enforcement mechanisms, corruption, lack of resources and poor institutional capacity play a significant role in the poor enforcement of environmental protection laws.<sup>32</sup> Industrial facilities, including those involved in oil and gas production, may violate emission standards and operate without proper pollution control technologies or monitoring systems.<sup>33</sup> This lack of enforcement allows polluters to continue emitting pollutants into the air without consequences. Some of the regulatory agencies still rely on the technical tools and expertise of polluting corporations to

<sup>31</sup> Gas Flaring, Venting & Methane Emissions (Prevention of Waste and Pollution) Regulations 2022, reg. 16(1).

<sup>32</sup> Z O Edo, 'The Challenges of Effective Environmental Enforcement and Compliance in the Niger Delta Region of Nigeria' [2012](14)(6) *Journal of Sustainable Development in Africa*:1-16.

<sup>33</sup> *Ibid.*

comply with their tools. This affects the independence, fairness and transparency of the monitoring system and compliance level. For example, section 107 of the PIA requires the NURPC to install meters to ensure the metering of flare gas so as to ensure that permissible flaring of gas does not exceed the standard or quantity prescribed by law. However, the personnel of the NURPC may still rely on the meters and other technologies provided by their foreign companies which may be manipulated to suit their pollution activities.

#### **6.4 Meagre Fines as Penalties for Non-Compliance**

One of the challenges in air pollution control in Nigeria is the issue of meagre fines imposed as penalties for non-compliance with environmental regulations. In some cases, the fines imposed on polluting industries are relatively low, which may not effectively deter violations.<sup>34</sup> This situation undermines the effectiveness of regulatory measures aimed at controlling air pollution.<sup>35</sup> It is crucial to establish proportionate penalties and fines that reflect the severity of the violation and its impact on public health and the environment. Strengthening and enforcing punitive measures can incentivize industries to invest in pollution control technologies and practices.

#### **6.5 Lack of Independence of Regulatory Agencies**

The lack of independence of regulatory agencies is another challenge in air pollution control in Nigeria. Regulatory bodies responsible for enforcing environmental protection laws often face political interference, inadequate funding, and limited institutional capacity. This lack of independence can lead to compromised decision-making processes and weakened enforcement of regulations. Ensuring the autonomy and impartiality of regulatory agencies and empowering them with adequate resources and technical expertise is essential for effective air pollution control. Nigeria also faces challenges associated with the multiplicity of environmental laws and regulations. There are multiple laws that address various aspects of environmental protection, including air pollution control. While having comprehensive legislation is essential, the existence of multiple laws and overlapping jurisdictions can lead to ambiguity, confusion, and ineffective implementation.

#### **6.6 Poor Domestication and Compliance with International Obligations**

Under international environmental law, it is trite that states are entitled to utilize their own natural resources in alignment with their own environmental policies.<sup>36</sup> However, they also have the responsibility to prevent activities within their jurisdiction from causing harm to both the environment of other states and areas that fall outside their national boundaries.<sup>37</sup> This obligation is further reflected in articles 1 and 24 of the African Charter on Human and Peoples' Rights 1981 (ACHPR). In *SERAP v Nigeria*,<sup>38</sup> the Court of Justice of the Economic Community of West African States (ECOWAS) ordered Nigeria relying on articles 1 and 24 of the ACHPR to implement all necessary measures to restore the environmental conditions of the Niger Delta region. The order also emphasized the importance of

<sup>34</sup> O Alagoa, 'An Examination of the Criminal Provisions for Environmental Protection in Nigeria: A Bird's Eye View of the NESREA Act 2007 [2021](6) *African Journal of Energy and Environmental Law*;95-105.

<sup>35</sup> *Ibid.*

<sup>36</sup> Stockholm Declaration 1992, principle 21; Rio Declaration 1992, principle 2.

<sup>37</sup> *Ibid.*

<sup>38</sup> ECW/CCJ/JUD/18/12.



preventing any additional damage to the environment and holding those responsible for environmental harm accountable.

However, it is doubtful if these obligations have been adequately complied with. Given Nigeria's position in the Global Air Quality Index (GAQI), one would reasonably expect the government to be swift in not only ratifying and domesticating international environmental treaties but also in enforcing them in reality. Apart from the ACHPR, it appears there is no other viable international treaty that protects the right to a healthy environment duly ratified in full compliance with section 12 of the CFRN. This presents a serious setback because the environmental rights provision of the ACHPR is too terse. Also, the lack of domestication shuts the window against victims of air pollution from taking advantage of the essential provisions of some international environmental treaties.

### **6.7 Unwillingness of Victims of Air Pollution to Litigate**

One of the challenges in air pollution control in Nigeria is the reluctance or unwillingness of victims of air pollution to engage in legal action against polluters. Many individuals and communities affected by air pollution face various barriers, including financial constraints, lack of awareness about their rights and fear of reprisals or intimidation.<sup>39</sup> This leads to a lack of legal recourse for those impacted by air pollution and hampers efforts to hold polluters accountable for their actions.<sup>40</sup> Raising awareness about legal avenues, providing legal assistance and ensuring the protection of victims are necessary steps to address this challenge.

In most cases, even where victims are willing to pursue actions, proving air pollution and its specific impacts on health and the environment can be challenging. Air pollution is often caused by multiple sources, making it difficult to attribute specific emissions to individual polluters. Also, establishing a cause-and-effect relationship between air pollution and health effects requires extensive scientific evidence and expert evidence which are expensive and difficult to procure. Limited resources, technical expertise, and inadequate monitoring systems further exacerbate this challenge. Strengthening scientific research, investing in monitoring technology, and developing standardized methodologies for proving air pollution can enhance the ability to address this challenge effectively.

### **6.8 Lack of Environmental Courts in Nigeria**

Another challenge in controlling air pollution is the absence of specialized environmental courts in Nigeria. Environmental disputes often involve complex scientific, technical and legal considerations, which can be difficult to handle in regular courts. The lack of dedicated environmental courts leads to delays, inadequate expertise and inconsistent decisions in environmental cases. Establishing specialized environmental courts can ensure the effective adjudication of environmental disputes, streamline legal processes and enhance access to justice for victims of air pollution.

### **6.9 Ignorance, Illiteracy and Poverty**

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<sup>39</sup> M I Ocheri, 'Environmental Health Hazards and National Survival and Stability: A need for Education' [2003](4)(2) *Benue State University Journal of Education*:174-188

<sup>40</sup> *Ibid.*



Ignorance, illiteracy and poverty contribute to the challenges of air pollution control in Nigeria. Many communities affected by air pollution lack awareness and understanding of the health risks and environmental impacts associated with this type of pollution. Limited access to education and information further exacerbates this issue. Poverty can prevent individuals and communities from taking proactive measures to address pollution or seek legal recourse. In *Centre for Oil Pollution Watch v NNPC*,<sup>41</sup> the Supreme Court recognized public interest litigation as a remedial device to address the problem of poverty as an issue to pursuing environmental rights in the country.

The court recognized the increasing global concern regarding climate change, ozone layer depletion, waste management, flooding, and global warming. The court acknowledged that countries and organizations worldwide are adopting stronger measures to protect and preserve the environment for the present and future generations. It emphasized the importance of expanding the *locus standi* of the applicants to sue by considering itself as a court of policy. This way, well-spirited individuals, human rights activists and NGOs can file environmental action against communities or individuals who may not have the financial muscle or capacity to pursue the matter.

### 7.0 Comparative Appraisal Using India and South Africa

Nigeria, India and South Africa share several similarities in their approaches to air pollution control. These countries have established legal frameworks to tackle air pollution, with India implementing the Air (Prevention and Control of Pollution) Act 1981 and South Africa having the National Environmental Management: Air Quality Act 2004 and Nigeria with the NESREA Act 2007. Indian and South African constitutions recognize the right to a healthy environment. While the CFRN 1999 does not explicitly recognize the right to a healthy environment, the Nigerian court has interpreted the right to life and dignity of the human person to inevitably include the right to a clean and healthy environment. Also, India and South Africa have experienced landmark court cases that reinforce the constitutional right to clean air and a healthy environment. These similarities highlight the commitment of these countries to addressing air pollution and protecting the health and well-being of their citizens.

Nigeria has a constitutional clog that prevents the court from exercising jurisdiction to enforce the constitutional protection of the environment against the government or any of its arms. Although India has a similar, the Indian Supreme Court has adopted judicial creativity by giving a liberal interpretation to the non-justiciability of its constitutional protection of the environment. The position in Nigeria appears to remain the same as the provision of section 6(6)(c) of the CFRN 1999 has continued to have full force. There is no provision in South Africa that clogs the power of the South African courts from adjudicating environmental matters against the government.

Both India and South Africa have implemented innovative provisions in their approach to air pollution control that can serve as valuable lessons for Nigeria. In India, the establishment of the National Clean Air Programme (NCAP) is a notable initiative. This programme mandates the development of city-level Clean Air Plans and sets specific targets for reducing particulate matter concentrations. Nigeria can adopt a similar approach by implementing a comprehensive national programme that includes city-level plans tailored to specific pollution hotspots. South Africa's carbon tax system is another innovative

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<sup>41</sup> (2019) 5 NWLR (Pt. 1666) 518.



provision that Nigeria can learn from. The South African Carbon Tax Act imposes a tax on GHG emissions, encouraging businesses to transition towards cleaner energy sources and reduce their carbon footprint. Nigeria can consider introducing a similar system to incentivize industries to adopt greener practices and invest in renewable energy technologies. This can be integrated into the decarbonization and ETP systems currently in place in Nigeria.

Nigerian courts can also learn from the Indian courts by adopting liberal approaches in adjudicating environmental cases, particularly in relation to the non-justiciability provision of the CFRN 1999. Alternatively, the Nigerian legislature can learn from South Africa by completely deleting this clog entirely from the CFRN. These lessons can help to intensify current efforts to tackle air pollution problems in Nigeria.

### **8.0 Conclusion**

This article has shed light on the issue of air pollution control under Nigerian law and uncovered several significant challenges and barriers. Despite the existence of legal and institutional frameworks, the implementation and enforcement of these measures have been insufficient, leading to inadequate air quality control in the country. The identified issues include overdependence on fossil fuels, poor infrastructure for gas capture and storage, weak enforcement of environmental protection laws, inadequate penalties for non-compliance, lack of independence for regulatory agencies, limited compliance with international obligations and socioeconomic factors such as illiteracy and poverty. The research also highlights the importance of learning from successful approaches adopted by countries like India and South Africa, which have recognized the right to a clean environment and have implemented effective measures to improve air quality.

### **9.0 Recommendations**

The following are the recommendations of this dissertation:

- i. The National Assembly should delete the provision of section 6(6)(c) of the CFRN 1999 which makes environmental protection under section 20 of the CFRN non-justiciable. Alternatively, the National Assembly should move section 20 of the CFRN from Chapter II to Chapter IV of the CFRN, thereby recognizing environmental protection as a fundamental and enforceable right in Nigeria.
- ii. The National Assembly should also enhance the enforcement of air pollution control laws in Nigeria by increasing penalties for non-compliance with air pollution regulations. This can serve as a deterrent to industries and individuals engaging in activities that contribute to air pollution.
- iii. The regulatory agencies responsible for air pollution control should be independent and free from undue influence or interference from the government. This can be achieved through proper funding, appointment of qualified personnel and establishing clear mandates for each of these agencies.