

## LEGAL CONTROL OF WATER RESOURCES IN NIGERIA: POLICY ISSUES AND CHALLENGES

**Michael Kehinde Osadare\***

### ***Abstract***

*Water is the only substance found on the earth naturally in three forms solid, liquid and gas. Water is a remarkable substance. Although a simple compound, it shrouds two-thirds of the planet, caps the poles and pervades the air we breathe. It is the genesis of and the continuing source of life. Without water, humankind - indeed all forms of life on earth - would perish. Important though this substance is its preservation has been treated with complacency as well as its availability denied where urgently required. An appreciation of water as key to environmental health and as a commodity that has real value will no doubt enhance a better management and provision of water. This paper considered the historical review of water resources development in Nigeria and adopted doctrinal methodology to undertake the research study, which includes relevant laws, cases, legal literatures, internet materials, etc. This paper found that the availability of the legal measures put in place by the government or regulating authorities in controlling water resources in Nigeria are inadequate leading to several challenges. It concluded that the low service level of water accounts for why water borne diseases are prevalent sometimes to epidemic scale and food shortages. The way forward is proffered through necessary recommendations.*

**Keywords:** Nigeria, Watercourses, Water Resources, Riparianism and Riparian Rights

### **1. INTRODUCTION**

Water is originally derived from the precipitation of rain, hail, snow or dew into the surface of the earth. On reaching the surface, part of this precipitation is evaporated, or transpired by plants, to continue the atmospheric cycle and be precipitated again; part percolates into the soil to form underground collections of water at various depths below the surfaces; and part runs over the surface to form streams, rivers, lakes and oceans.<sup>48</sup> Prior to 1960, water resources development was an exclusive preserve of the private individuals and groups.<sup>49</sup> The government's major intervention came during the first National Development plan period (1962 - 1968) through the

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\* LL.B, LL.M, PH.D. College of Law, Afe Babalola University, Ado-Ekiti., [osadarekehinde@abuad.edu.ng](mailto:osadarekehinde@abuad.edu.ng), Mobile: +234 8062148723

<sup>48</sup> *John Deed & Son LTD v. British Electricity Authority & Croydon Corporation* (1950) 66 TLR at P.572.

<sup>49</sup> <http://ga.water.usgs.gov/edu/wuoft.html> "IrrigationWaterUse" accessed on 28 February 2025.

establishment of the River Niger and Lake Chad Basin Commissions charged with the responsibility of producing hydrological maps of the country's water resources which were used to fashion out a comprehensive development of agriculture, fisheries, animal husbandry and navigation.<sup>50</sup> This was followed in 1973 and 1974 with the establishment of Sokoto-Rima and Chad Basin Authorities and subsequent increase of the number to eleven River Basin Development Authorities in 1976 to cover the whole country.<sup>51</sup> The River Basin Development Authorities were charged with the responsibility of comprehensive water resources development and management in Nigeria for multipurpose uses. In 1984, they were increased to eighteen and re-designated River Basin and Rural Development Authorities.<sup>52</sup> With the change of the Military Administration in 1985, the number was scaled down eleven<sup>53</sup> and retained the name River Basin Development Authority and its function limited to purely water resources development. Regrettably, however, the impacts of the Authorities are still not much felt. In 1962, the Niger Dam Authority was created<sup>54</sup> for hydroelectric power generation at Kanji Federal Inland Waterways Division (of the Federal Ministry of Transport) for data collection and development of the Niger and Benue River Systems for water transportation.

The quest to intervene in water provision was given impetus given drought of the early seventies. This prompted the intervention of the Federal Government to take a number of actions which resulted in the establishment of some federal agencies. These Agencies include the Federal Ministry of Water Resources (1976), National Water Resources Institute (1977) and the River Basin Development Authorities (1976). While the Ministry has the responsibility to formulate policies and give advice, the Institute is charged with the responsibility of manpower training and research while the River Basin Development Authorities are charged with the development of inter-state surface and underground water resources in specified river basin areas and for the supply of water storage schemes to users for a fee. The tempo of water supply was raised in 1980 with the preparation for and campaign in favour of the United Nations' International Drinking

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<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

<sup>52</sup> River Basin Development Authority Act No 35 of 1987 now Cap R9 LFN 2004.

<sup>53</sup> The current River Basin Development Authorities are Anambra-Imo, Benin-Owena, Chad Basin, Cross River, Hadejia-Jama'are, Lower Benue, Niger Delta Basin, Niger, Ogun-Osun, Upper Benue and Sokoto-Rima.

<sup>54</sup> <https://www.aelix.com> accessed on 18 April 2025.

water Supply and Sanitation Decade (1981 -1990). The goal of the program was to provide water for all by the year 1990 but this was not actualized<sup>55</sup>.

In 1991, several legislations were enacted to conserve water and control poster discharge of substances into water to enable it useful for consumption<sup>56</sup>. This was followed by the water resources decree 1993<sup>57</sup> which vests in the federal government the right to the use and control of all surface and ground water and all in any water course affecting more than one state, for the purpose of promoting planning, development and use of the country's water resources; coordinating the distribution, use and management of water resources and ensuring the application of appropriate standards for the investigation, use, control, protection, management and administration of water resources. The National water supply and sanitation policy (NWSSP) was introduced in January 2000 and it provides guidelines on urban and rural water supply (UWS), 40% of small towns' water supply (SWS) and 25% of rural water supply (RWS).<sup>58</sup> As with the division of institutional and funding responsibilities under the NWSSP, the institutional and legal framework for water supply reflects the federal-state divide.

On account of the provisions of the Constitution<sup>59</sup> and the water resources Act<sup>60</sup>, the Federal Government has the right to the use and control of inter-state water resources. In all other cases, the State Governments are empowered to enact laws for the development and management of intra-state water resources.<sup>61</sup> At the Federal level, the apex institution is the Federal Ministry of Water Resources, which is also responsible for the River Basin Development Authorities (RBDAs) established under the River Basin Development Authority Act.<sup>62</sup> At the State level, it is the norms for State governments to establish statutory corporations known as State Water Authorities with the responsibility same with the federal government. These bodies are usually

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<sup>55</sup> <https://en.wikipedia.org> accessed on 18 April 2025.

<sup>56</sup> National Environment Protection (Effluent Limitation) Regulation 1991, National Environmental Protection Management of Solid and Hazardous Waste Regulation 1991, National Environmental Protection (Pollution Abatement in Industries and Facilities Generating Wastes) Regulation 1991. These Regulations are subsidiary legislations of the Federal Environmental Protection Agency Act Cap.F10 LFN 2004.

<sup>57</sup> Now Water Resources Act Cap. W2 LFN 2004

<sup>58</sup> <https://washmatters.wateraid.org> accessed 18 April 2025.

<sup>59</sup> Constitution of the Federal Republic of Nigeria, 1999 as amended, item 64, part 1 of the second schedule.

<sup>60</sup> No 101 of 1993

<sup>61</sup> There are 36 states in the Federation and the Federal Capital Territory.

<sup>62</sup> Cap. R9 LFN 2004.

placed under the supervision of a line Ministry.<sup>63</sup> In a few cases, some local governments have established departments for water and sanitation involved in Rural Water Supply activities.<sup>64</sup> Otherwise, it is fair to state that excluding inter-state water resources and specified river basin areas, the State Water Authorities have general responsibility for water supply development and management within the territories of their respective states.<sup>65</sup>

The problem of pollution of rivers and streams has assumed considerable importance and urgency in recent years as a result of the growth of industries and the increasing tendency to urbanization. So, it is essential to ensure that the domestic and industrial effluents are not allowed to be discharged into the water courses without adequate treatment as such discharges would render the water unsuitable as source of drinking water as well as for supporting fish life and for use in irrigation. Pollution of rivers and streams also causes increasing damages to the country's economy. Therefore, this research seeks to examine legal issues in the control of water resources and address relevant government policies *vis-à-vis* the challenges for the prevention and control of water resources by the relevant concerned agencies and regulators and where there are pitfalls, to provide solutions to fill the inadequacies..

## **2. CONCEPTUAL CLARIFICATIONS**

The following relevant terms are discussed to fully grasp and appreciate the content of this paper, which are:

**i. Watercourses:** Water is a finite resources and a basic necessity for all life on earth.<sup>66</sup> Water is used for domestic consumption, irrigation, family; resources for industry and a major source of renewable energy in the form of hydropower. Apart from human use, water is also needed to

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<sup>63</sup> The emergence of dedicated State Ministries of Water Resources mirrors the experience at the federal level.

<sup>64</sup> There are 774 Local Governments in the Federation. It is further noted that the local government area councils usually appoint supervisory councilors in respect of water supply and services. Nevertheless, most RWS schemes in Nigeria are invariably fallen into various states of disrepair and disuse mainly on account of the lack of adequate maintenance.

<sup>65</sup> RG Templeton, *Freshwater Fishers Management* (Fishing Newsbooks, 1984) pp:1-2; RS Fort and JD Brayshaw, *Fisheries Management* (Faber and Faber Ltd., 1961) p.11; DH Mills, *An Introduction to Freshwater Ecology* (Oliver and Boyd, 1972) p.1

<sup>66</sup> National Environmental (Wetland, Rivers and Lakeshores) Regulation, 2009, pp.4-5

sustain the natural ecosystems found in wetlands, rivers, and the coastal waters into which they flow. Water plays a significant role in the continuity of land due to its unique qualities.<sup>67</sup>

A watercourse envisages a relatively permanent course for moving water with reasonably determined boundaries, though not necessarily a permanent flow of water.<sup>68</sup> Thus, the element of a permanent course was found to be lacking where an artificial marsh of a temporary character, which was only present during the times when it was required by mine owners, was found not to be a water course.<sup>69</sup> Similarly, surface water which was intermittently present over an undefined area, without a definite or regular course was held not to constitute a watercourse,<sup>70</sup> and natural source flows of underground water from chalk which at times of flood flowed over the surface land, have been held not to constitute water courses.<sup>71</sup> Likewise it has been found that water which percolates through marshy ground did not constitute a stream.<sup>72</sup> Another defining feature of a stream or water course is the existence of a flow of moving water. Hence, this feature will be lacking where water is stationary, as was held in a case concerning abstraction of water from a canal where no flow of water existed.<sup>73</sup> Although not within the definition of watercourse, however, it has been suggested that if the waters of a Stillwater, lake or pond are polluted the owner will have the same remedies as those that are available to a riparian owner of a stream or water course.<sup>74</sup>

**ii. Water Resources:** Water resources are natural resources of water that are potentially useful for humans, for example as a source of drinking water supply or irrigation water. This includes surface water and groundwater.<sup>75</sup>

**iii. Riparianism and Riparian Rights:** Riparianism is a doctrine of ancient origin<sup>76</sup> which defines water rights in terms of use of water in association with ownership of land that borders a water source. The common law doctrine of riparian rights state that the owner of land adjoining

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<sup>67</sup> PN Narayanan, *Environmental Pollution: Principles, Analysis and control* (CBS Publishers & Distributors PVT. Ltd., 2011) p.2.

<sup>68</sup> W Howarth and D MC Gillivray, *Water Pollution And Water Quality Law* (Shaw&Sons, 2001) p.3.

<sup>69</sup> *Arkwright v Gell* (1839) 5 M&W 203.

<sup>70</sup> *Rawstron v Taylor* (1855) 156 ER 873.

<sup>71</sup> *Pearce v Croydon Rural District Council* (1910) 74 JP 429.

<sup>72</sup> *M' Nab v Robertson* (1897) AC 129 HL

<sup>73</sup> *Staffordshire Canal Co v Birmingham Canal Co* (1866) LR 1HL 254

<sup>74</sup> AS Wisdom, *The Law of Rivers and Watercourse* (4<sup>th</sup>ed, Shaw & Sons, 1979) p.124.

<sup>75</sup> <http://ga.water.usgs.gov/edu/wuapt.html> "IrrigationWaterUse" accessed on 18 April 2025.

<sup>76</sup> <http://en.wikipedia.org> accessed on 18 April 2025.

water laying in a lake or pond or water flowing in a river, stream, or other water course has certain rights respecting the water. The rights arise by virtue of the ownership of the bank of that water course. One of the major fundamental riparian rights is the right of access to the water itself. However, this right is subject to the lawful and reasonable use of water by other riparian owners upstream.<sup>77</sup> The two major undertakings of riparian doctrine are the definition of a user class and articulation of the corrective rights of its several members. Riparian user class highlights the important of defining what land is riparian and what land is not. The simplest definition deems riparian those tracts of land that are contiguous with the water is edge as well as those that include both upland and beds below watercourse.<sup>78</sup>

### **3. Sources and Uses of Water**

There are several sources of water. We can get water from surface water, ground water or rainfall. Surface water refers to the water that exists in rivers, lakes or streams. Groundwater exists almost everywhere underground. It is found underground in the spaces between particles and rock and soil or in crevices and cracks in rock. Rainfall is the amount of water that falls in a location over a period of time. Although science has proved that man can survive for at most three days without water<sup>79</sup>, there are other personal, economic or industrial needs of man and the society which water must meet daily. The main uses of water include commercial water use, domestic water use, hydroelectric power water use, industrial water use, livestock water use, mining water use, etc.

## **4. LEGAL FRAMEWORK OF WATER RESOURCES IN NIGERIA**

### **1. The 1999 Constitution**

The Constitution of the Federal Republic of Nigeria<sup>80</sup> provides for environmental objective contained in section 20 and principle 2 of the Declaration of the United Nations Conference on the Human Environment. Inherent in section 20 of the constitution is the need to protect and safeguard Nigeria's environment from pollution activities. Though the provision of section 20 efface appears non-justifiable in the courts<sup>81</sup>, it highlights the continuing importance of imposing upon the state a solemn obligation to preserve the environment, otherwise "the day would not be

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<sup>77</sup> Ibid.

<sup>78</sup> Narayanan, *opcit.*

<sup>79</sup> <http://infinitylearn.com> accessed on 18 April 2025.

<sup>80</sup> CFRN, 1999 as amended.

<sup>81</sup> *AG Lagos State v A.G Federation* (2003) 35, 1-6. See also J Crawford, 'The Constitution and the Environment' (1991) 13 *Syd. L.R.* p. 11.

too far when all else would be lost not only for the present generation, but also for those to come generations which stand to inherit nothing but parched earth incapable of sustaining life.<sup>82</sup> The constitutional powers over the environment, which principally includes water, subject matter of this research work, are now shared between the Federal Government and the State government.<sup>83</sup> Nigeria is constitutionally a Federation of three district tiers of government<sup>84</sup>. Major Federal and state actions significantly affect the quality of the human environment, within the meaning of National Environmental Standards and Regulations Enforcement Agency (Establishment) Act<sup>85</sup>.

One of the basic principles of the 1999 Constitution of the Federal Republic of Nigeria, is that the functions and specific powers should be divided between the Federal and state Governments as to vest certain specified powers exclusively<sup>86</sup> in the Federal Concurrently<sup>87</sup> in the Federal and state Government; and residence power<sup>88</sup>. The present decade can apathy be described as at age of environment.<sup>89</sup> In Nigeria, as in most other countries of the world, environment is the problem of the moment<sup>90</sup>. Protecting, controlling and regulating water is important for the health and welfare of the human race and for the survival of plants and animals.<sup>91</sup> Writing on the environmental situation in developing nations of the world, authors have said: Developing does not subsist upon a deteriorating environment. Sustainable development recognizes balancing the values of both development and environment.<sup>92</sup> The overcrowding in our towns and the paucity of health facilities aggravate the slum problems and cause serious harm to the health of the people. Planning Authorities hardly have at the back of their minds the existence of Environmental Law.<sup>93</sup>

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<sup>82</sup> T Okonkwo, *The Law of Environmental Liability* (2<sup>nd</sup> ed., Afique Publishers, 2010) p. 360.

<sup>83</sup> CFRN, *opcit*, s.20.

<sup>84</sup> AA Utuama, 'Waste Management in Lagos Metropolis: Constitutional Conflicts and Resolutions' (1992 /93) *Nigerian Current Law Review*, p. 81.

<sup>85</sup> NESREA Act, 2007.

<sup>86</sup> CFRN, 2<sup>nd</sup> Sch, Legislative powers, pt 1, Exclusive Legislative List.

<sup>87</sup> Ibid, pt 1 concurrency Legislative List

<sup>88</sup> *AG Lagos state v AG Federation & Ors* (2003) vol.35 WRN 1-226.

<sup>89</sup> CO Chester and W Rowley, 'Environmental Committees and Corporate Governance' (1992) 20 *Int'l Bus Law* 7, p.342

<sup>90</sup> G Ray and D Siberson, 'Green Economic: National Institute Economic Review' (1991) no. 135, p.50.

<sup>91</sup> DK Mintzer, 'A Warming World: Challenges for Privacy Analysis; Economic Impact' (1988) vol. 4, no.5, p.6

<sup>92</sup> EC Leelakrisnan, 'Law and sustainable Development in India', *Journal of Energy and Natural Resources Law* (1991), vol. 3 No.3, p.193.

<sup>93</sup> CS Ola, 'Confusion Arising between Planning Law and Environmental Law' (1990) vol.3 no.14, *The Gravitas Review of Business and Property law*, p.76.

The above writing depicts the situation in Nigeria, where rapid industrialization, increasing population, and rapid urbanization has contributed to the overall environmental degradation. The importation of obsolete technology into the country with its attendant side effects on the environment has made the government realize the need for environment control legislations to protect our environment from undesirable pollution through different sources, including importation of harmful radio-active goods and services. All these raise the issue about the adequacy of the constitutional provisions over the environment.

The constitutional arrangement in Nigeria has led to a lot of friction between the Federal, State and Local Governments,<sup>94</sup> and there is a clear tendency that the Federal Government is winning and waxing stronger at the expense of the State and Local Governments. These Conflicts on constitutional and jurisdictional issues between the tiers of government are due to several factors. First, certain specified powers are concurrently vested in the Federal and State Governments. There are 12 main items on the concurrency list, subdivided into 30 subsidiaries and 65 numbered items and two items of matters incidental and supplementary to those mentioned on the Exclusive list. In addition to this, it can also legislate for the Federal Capital Territory on any matter whether or not it is intended in the legislative lists. In respect of matters on the Exclusive Legislature list, only the relational assembly may legislate. A state legislature may legislate on any matter not on Exclusive list. This means that the state can legislate on matters within the concurrent legislature list as well as on all matters which are not either of those two lists except where the matters are incidental or supplementary to matters on the Exclusive Legislature List.

Since there is no specific reference in the Constitution vesting the power on the Federal Government to exclusively make law with respect to environmental matters, the state governments possess primary constitutional powers in this area,<sup>95</sup> provided it legislates within its competency. So far as natural resources in Nigeria is concerned, the constitution contains formidable list of Federal powers, a list which generally confers superior legislative authority with respect to water resources regulation and management. All the significant environmental laws in our state books are Federal Laws and Regulations and thus pointing to the facts that the

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<sup>94</sup> O Awolowo, *Thoughts on Nigeria Constitution* (Oxford University Press, 1966) p. 122.

<sup>95</sup> Crawford, *opcit*, p.14; *AG Lagos v AG Federation* (2004) 45 WRN 1-226.



constitution creates exclusive powers for the Federal Government in certain specific areas within the Exclusive Legislative list. The Federal Government has the exclusive powers to water resources and can, therefore, validly legislate on matters of environment including water, within 68 granted heads of power in the exclusive legislative list and the 30 items in the concurrent legislative list.

## **2. The Water Resources Act**

The water Resources Act<sup>96</sup>, among other provisions, vests the right and control of water in the Federal Government. The Act is designed to promote the optimum planning, Development and use of the Nigeria water resources and other matters connected therewith. The right to the use and control of all surface and groundwater and of any watercourse affecting more than one state together with the bed and banks are by virtue of this Act and without further assurance vested in the Government of the Federation. The Legislative power for this Act is derived from the second schedule, part 1 of the Exclusive Legislative List, paragraph 64 of the Constitution of the Federal Republic of Nigeria, 1999 as amended. The Act<sup>97</sup> provides for rights to access, take and use water by any person for domestic purposes including rearing livestock and personal irrigation schemes. The Act<sup>98</sup> further provides that any person or any public authority may acquire a right to use or take water from any watercourse or any groundwater for any purpose in accordance with the provisions of the Act and any regulations made pursuant thereto. Finally, the Act<sup>99</sup> empowers the Minister who has the responsibility for Water Resources to control groundwater and ensure the effective Administration of the provisions of the Act.

## **3. River Basins Development Authorities Act<sup>100</sup>**

In 1976, the Federal Government established ten (10) statutory corporations known as River Basins Development Authorities. Each authority is vested with powers to develop and manage within its area the projects specified in section 2 of the River Basins Development Authorities Act 1976 as amended, which amongst its functions include the control of pollution in rivers and lakes

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<sup>96</sup>Cap W2, Laws of the Federation of Nigeria, 2004.

<sup>97</sup> Ibid,s. 2.

<sup>98</sup> Ibid, s. 3.

<sup>99</sup> Ibid,ss. 4&5.

<sup>100</sup> Now River Basins Development Authorities Act, Cap. R9, LFN 2004 which has thirteen (13) sections. There are now eighteen (18) River Basins Development Authorities.

in the authority's area in accordance with the laid down standards<sup>101</sup>. The function of each Authority is contained in section 2(1) of the Act<sup>102</sup> amongst others is to undertake comprehensive development of both surface and underground water resources for multipurpose use.

#### **4. National Water Resources Institute Act**

The Act<sup>103</sup> contains sixteen (16) sections, which establishes the retrieval water resources institute for the promotion and development of training programmes and courses in water resources and to advise the Government on water resources training needs and priorities and other matters ancillary thereto.

#### **5. National Inland Water Ways Authority Act**

This Act<sup>104</sup> establishes the National Inland Waterways Authority with responsibility, among other things, to improve and develop inland waterways for navigation. The objectives of the Authority and its general functions and powers as contained in sections 2, 8 and 9 of the Act, which evince intention to safeguard the nation's inland waterways from pollution.<sup>105</sup>

#### **6. Harmful Waste (Special Criminal Provision, Etc.) Act**

The Act<sup>106</sup> contains all activities relating to harmful waste, the purchase, sale, importation, transit, transportation, deposit, storage of harmful wastes are prohibited under this Act.<sup>107</sup> The Act<sup>108</sup> creates criminal liability in respect of offences under the Act, while also imposes civil liability upon offenders who run afoul of the provisions of the Act<sup>109</sup>. The Act, in effect prohibits the carrying, depositing and dumping of harmful waste on any land, territorial waters and matters relating thereto.

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<sup>101</sup> Ibid, s. 2 (1)(f).

<sup>102</sup> Now section 4 of Cap N47 LFN 2004. This new Act CapR9 contains no equivalent provision akin to section 2 (1) (f) of the 1976 Act.

<sup>103</sup> Cap. N47, LFN 2004

<sup>104</sup> Cap. N83, LFN 2004.

<sup>105</sup> The Act, in section 29, defines 'inland waterways' to include all waterways, river, creeks, lakes, tidelands, lagoons below the low water baseline. Also, defined to mean 'the low water along the coast of Nigeria.

<sup>106</sup> Cap. H1, LFN 2004.

<sup>107</sup> Ibid, s. 1.

<sup>108</sup> Ibid, ss. 2 to 11 and 14

<sup>109</sup> Ibid, s. 2

## **7. National Environmental Standards and Regulation Emergency Agency (Establishment) Act<sup>110</sup>**

The promulgation of the repealed Federal Environmental Protection Agency Act<sup>111</sup> (FEPA) brought with it the institutionalization of holistic approach to environmental regulation in Nigeria.<sup>112</sup> The FEPA was later scrapped in 1999 and replaced by another agency in 2006 known as NESREA clothed with similar environmental regulation and enforcement powers and functions established by NESREA Act which provides for protection and installation of anti-pollution equipment in industries and restriction on the release of toxic substances. The Act creates certain criminal offences as well as civil liability. It prohibits discharge of hazardous substances and provides for offences.<sup>113</sup> Other offence sections are on powers to inspect; power to search, seize and arrest; and obstruction of authorized officers, provision for procedure in respect of suits against the Agency<sup>114</sup> and liability of companies and firms.<sup>115</sup> The Act also prohibits harm being done to the air, land and waters in Nigeria.<sup>116</sup>

Considering the availability of the legal and policy measures put in place by the government in controlling water resources in Nigeria, there are obvious challenges that have impeded effective control of water resources, which render these legislations and government policies ineffective. Therefore, there is need for adoption of new policies and management of water resources which requires a fundamental change in attitude towards the value and importance of water and related resources to society, the economy and the environment. Concerted efforts should be undertaken to make Nigerians fully aware of the pressures of their water resources. A well informed public and clearly delineated channels for public participation provide the best assurances that water management decisions will take into account the full spectrum of public values.

## **5. Institutional Framework of Water Resources in Nigeria**

### **i. River Basin and Rural Development Authorities**

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<sup>110</sup> NESREA Act, 2007

<sup>111</sup> FEPA, Cap. F10 LFN, 2004

<sup>112</sup> OG Amokaye, *Environmental Law and Practice in Nigeria* (2<sup>nd</sup> edn, MIJ Professional Publishers Ltd, 2014) p. 684.

<sup>113</sup> NESREA Act, s. 27.

<sup>114</sup> Ibid, s.30. *AG Lagos State v AG Federation* (2003) WRN 1 – 266.

<sup>115</sup> Ibid, s. 37.

<sup>116</sup> Ibid, s. 21.

Prior to 1960, water resources development was an exclusive preserve of the private individuals and groups.<sup>117</sup> The government's major intervention came during the first National Development plan period (1962 - 1968) through the establishment of the River Niger and Lake Chad Basin Commissions charged with the responsibility of producing hydrological maps of the country's water resources which were used to fashion out a comprehensive development of agriculture, fisheries, animal husbandry and navigation.<sup>118</sup> This was followed in 1973 and 1974 with the establishment of Sokoto-Rima and Chad Basin Authorities and subsequent increase of the number to eleven River Basin Development Authorities in 1976 to cover the whole country.<sup>119</sup> The River Basin Development Authorities were charged with the responsibility of comprehensive water resources 'surface and ground water) development of Nigeria for multipurpose uses.

In 1984, they were increased to eighteen and re-designated River Basin and Rural Development Authorities.<sup>120</sup> With the change of the Military Administration in 1985, the number was scaled down eleven<sup>121</sup> and retained the name River Basin Development Authority and its function limited to purely water resources development. Regrettably, however, the impacts of the Authorities are still not much felt. In 1962 the Nigeria Dam Authority was created for hydroelectric power generation at Kainji Federal Inland Waterways Division (of the Federal Ministry of Transport) for data collection and development of the Niger and Benue River Systems for water transportation. On account of the provisions of the 1999 constitution<sup>122</sup> and the water resources Act<sup>123</sup>, the Federal Government has the right to the use and control of inter-state water resources. In all other cases, the State Governments are empowered to enact laws for the development and management of intra-state water resources.<sup>124</sup> At the Federal level, the apex institution is the Federal Ministry of Water Resources,<sup>125</sup> which is also responsible for the River Basin Development Authorities

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<sup>117</sup><http://ga.water.usgs.gov/edu/wupt.html>"IrrigationWaterUse"last accessed on 29 February 2025.

<sup>118</sup> Ibid.

<sup>119</sup> Ibid.

<sup>120</sup> River Basin Development Authority Act No 35 of 1987 now Cap R9 LFN 2004.

<sup>121</sup> The current River Basin Development Authorities are Anambra-Imo, Benin-Owena, Chad Basin, Cross River, Hadejia-Jama'are, Lower Benue, Niger Delta Basin, Niger, Ogun-Osun, Upper Benue and Sokoto-Rima.

<sup>122</sup> Item 64, pt 1 of the 2<sup>nd</sup> Sch.

<sup>123</sup> No 101 of 1993

<sup>124</sup> There are 36 states in the Federation and the Federal Capital Territory.

<sup>125</sup> Basically, institutional frameworks in the water sector have been transformed within the last two decades in order to emphasize the importance of water supply and services. At the federal level, there has been the emergence of a Ministry for the management of water resources. This is distinct from the previous situation when management of

(RBDAs) established under the River Basin Development Authority Act.<sup>126</sup> At the State level, it is the norms for State governments to establish statutory corporations known as State Water Authorities with the responsibility same with the federal government. These bodies are usually placed under the supervision of a line Ministry.<sup>127</sup> In a few cases, some local governments have established departments for water and sanitation involved in Rural Water Supply activities.<sup>128</sup> Otherwise, it is fair to state that excluding inter-state water resources and specified river basin areas, the State Water Authorities have general responsibility for water supply development and management within the territories of their respective states.

## **ii. National Environmental Standards and Regulation Enforcement Agency**

The NESREA was established with the preconceived objectives of protection of the nation's environment, conservation of the nation's biodiversity and sustainable development of Nigeria's natural resources and environmental technology.<sup>129</sup> Its primary responsibility is the enforcement of compliance with national and international environmental laws, guidelines, policies and standards in other sectors other than oil and gas sector on matters touching on water quality, environmental health, sanitation and pollution abatement, sound chemical management, safe use of pesticides and disposal of spent packages: importation, exportation, production, distribution, storage, sale, use, handling and disposal of hazardous chemicals and waste; noise, air, land, seas, oceans and other water bodies; climate change, desertification, forestry, hazardous wastes, ozone depletion, marine and wildlife pollution, sanitation and other environmental agreements as may from time to time come into force.<sup>130</sup> The Agency may promote co-operation in environmental science and technology with similar bodies in other countries and with international bodies connected with the protection of the environment; it co-operates with Federal and State Ministries, Local Government Councils, statutory bodies, stakeholders and research agencies on matters and

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water resources was the responsibility of a department within the Federal Ministry of Agriculture, Water Resources and Rural Development.

<sup>126</sup> Cap. R9 LFN 2004.

<sup>127</sup> The emergence of dedicated State Ministries of Water Resources mirrors the experience at the Federal level.

<sup>128</sup> There are 774 Local Governments in the Federation. The Local Government Area Councils usually appoint supervisory councilors in respect of water supply and services. Nevertheless, most RWS schemes in Nigeria are invariably fallen into various states of disrepair and disuse mainly on account of the lack of adequate maintenance.

<sup>129</sup> NESREA Act, s. 2.

<sup>130</sup> Ibid, p.7.

facilities relating to environmental protection; and carries out such other activities as are necessary or expedient for the full discharge of the functions of the Agency under the Act.<sup>131</sup> It also has wide powers<sup>132</sup> to make grants to suitable authorities and bodies with similar functions for demonstration and for such other purposes as may be determined appropriate to further the purposes and provisions of the Act; to collect and make available, through publications and other appropriate means and in cooperation with public or private organizations, basic scientific data and other information pertaining to pollution and environmental protection matters; to enter into contract with public or private organizations and individuals for the purpose of executing and fulfilling its functions and responsibilities pursuant to the Act; to establish, encourage and promote training programmes for its staff and other appropriate individuals from public or private organizations; and to enter into agreements with public or private organizations and individuals to develop, utilize, co-ordinate and share environmental monitoring programmes, research effects, basic data on chemical, physical and biological effects of various activities on the environment and other environmentally related activities as appropriate. The Agency may establish such environmental criteria, guidelines, specifications or standards for the protection of the nation's air and inter-State waters as may be necessary to protect the health and welfare of the population from environmental degradation; establish such procedures for industrial or agricultural activities in order to minimize damage to the environment from such activities; maintain a programme of technical assistance to bodies (public or private) concerning implementation of environmental criteria, guidelines, regulations and standards and monitoring enforcement of the regulations and standards thereof; and develop and promote such processes, methods, devices and materials as may be useful or incidental in carrying out the purposes and provisions of the Act.<sup>133</sup>

Prior to the establishment of the defunct Federal Environmental Protection Agency (FEPA), there had been conscious Federal Government efforts to tackle environmental problems even though on minimal level. The groundwork for a Federal Government institution, which would deal with environmental protection, was laid in 1975 when a Division of Urban Development and Environment was created as part of the defunct Federal Ministry of Economic Development. The

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<sup>131</sup> Ibid.

<sup>132</sup> Ibid, ss. 5, 10, 13, 25, 26 and 37.

<sup>133</sup> Ibid, ss. 7(k) & 8.

function stipulated for the Division was the handling of pollution and related environmental matters. Later the same year, the Division was transferred to the former Federal Ministry of Housing, Urban Development and Environment. The Division under the new Ministry was later found to be ineffective, partly because of lack of personnel, but mainly because it was then managed as a component of the Administrative Division of the Ministry.

The promulgation of the repealed Federal Environmental Protection Agency Act<sup>134</sup> brought with it the institutionalization of holistic approach to environmental regulation in Nigeria. The Federal Environmental Protection Agency was later scrapped in 1999 and replaced by another agency in 2006 known as the National Environmental Standards and Regulations Enforcement Agency (NESREA) clothed with similar environmental regulation and enforcement powers and functions. The Agency has wide powers and extensive functions to regulate the environment and also to make regulations for the purposes of carrying out or giving full effects to the functions of the Agency. Also in 1999, the Federal Government created a separate Federal Ministry of Environment and by a Presidential Directive,<sup>135</sup> relevant ministries, departments and units of the Federal Ministries<sup>136</sup> were drafted into the Ministry. Its primary mandate is to achieve the environmental objectives of the State as set out in Section 20 of the 1999 Constitution, which is 'to protect and improve water, air and land, forest and wildlife of Nigeria'. The Ministry is also empowered to co-ordinate the activities of the three tiers of government - Federal, State and Local Governments in respect of environmental protection activities.

### **iii. National Council on Environment**

The National Council on Environment consists of the Minister of Environment, Minister of State for Environment, Commissioners of Environment and the Chief Executive of the States' Environmental Protections Agencies in case of States without a Ministry of Environment. The Council functions as a consultative and advisory body on national environmental matters. In

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<sup>134</sup> Cap. F10, Laws of the Federation of Nigeria, 2004 (now repealed).

<sup>135</sup> Ref. No. SGF.6/S.221 of October 12, 1999.

<sup>136</sup> Such departments and units include Forestry Department (including wildlife, forestry monitoring, evaluation and coordinating unit - FORMECU of the Ministry of Agriculture; Environmental Health and Sanitation Unit of the Federal Ministry of Health; Oil and Gas Pollution Control Unit of the Department of Petroleum Resources of the Ministry of Petroleum Resources; Coastal Erosion Unit, Environmental Assessment Division, Sanitation Unit of the Ministry of Works and Housing; and Soil Erosion and Flood Control Department of the Ministry of Water Resources.

essence, the Council participates in the formulation, coordination, harmonization and implementation of national sustainable development policies and measures for broad national development.<sup>137</sup>

#### **iv. State Environmental Protection Agencies**

The application of any strategy for protecting the environment and conserving natural resources calls for clear definitions of the roles and responsibilities of all concerned especially the Federal, State and Local Governments. Toward this end, State Environmental Protection Agencies and in some States, Ministry of Environment was established. With the ‘floor standard’ set by the NESREA in Environmental Guidelines and Standard, each State was encouraged to adopt NESREA standards as the minimum standards without necessarily restricting them from imposing higher standards. In this direction, many State Governments have introduced environmental laws to complement the Federal standard.<sup>138</sup>

#### **v. National Policy on Environment and National Agenda**

The National Policy on Environment and National Agenda was formulated in 1989 after an extensive local and international consultation, with the overall aim of achieving sustainable development for the country. It also sets in motion strategies of implementation of the policy by formulating environmental guidelines, standards and regulations for industrial pollution, effluent limitation and solid wastes management.<sup>139</sup> The agenda seeks to integrate in a holistic manner environmental policy into development planning at all levels of government and the private sector; intensify the transition to sustainable development; address sectorial priorities plans, policies and strategies for the major sectors of the economy and simultaneously foster regional and global partnerships. The implementation of the Agenda is left in the hands of various

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<sup>137</sup> <http://environment.gov.ng>. Accessed on 18 April 2025.

<sup>138</sup> See the various Environmental Sanitation Laws of each state of the federation, for example, Environmental Sanitation Law, 2000 of Lagos state, Environmental Sanitation Law, 1985 of Kaduna State.

<sup>139</sup> The United Nations Conference on Environment and Development (UNCED) held in Rio de Janeiro, Brazil on June 3 - 14, 1992 produced a blue print of action by governments from then into the 21<sup>st</sup> century and beyond. This blue print is known as Agenda 21 and participating countries were required to fashion out a local version of the document to suit their respective peculiar situations and environmental conditions. This Conference was the largest global gathering on environmental matters. It pulled together over 178 Heads of Government from various countries all over the world.



governmental ministries and departments with the Federal Ministry of Environment as the coordinating Ministry.

## **6. WATER POLICY ISSUES IN NIGERIA**

The National Water Policy in Nigeria is the development of the water resources potentials of the country in order to ensure the availability, equitable distribution and conservation of water for domestic and industrial uses, food production, navigation, hydropower, recreation activities etc. Mabogunje<sup>140</sup> has stated that part of the crisis in the development of water resources in Nigeria is due to differences of opinion with regard to the objectives of economic development in developing countries. According to him, there are two schools of thought. One school of thought sees the objective of economic development as that of increasing over a period of time the real income of a country. This appears to have been the overriding policy of the colonial government in developing Nigeria's water resources at least up to the early fifties when self government was granted to the then regional governments in the west, east and north. The second school of thought sees the objective of economic development as the improvement in the standard of living of the people through an increase in their per capita income over a period of time. It is believed by the proponents of this view that the provision of such amenities as good roads, pipe-borne water and electricity should be extended to areas where the immediate effects are likely to be no more than that of improving the quality of life of people.

Policy decisions in Nigeria as regards provision of pipe-borne water supplies have tended to veer between these two views of development planning up to the time the Army took over in 1966. The present regime seems to be guided in its water resources development policy by the belief that water should be a welfare necessity but the trend is gradually moving towards seeing water as a commodity.<sup>141</sup> However, the development of Nigeria's water resources is still uncoordinated.

## **7. CHALLENGES FACING LEGAL CONTROL OF WATER RESOURCES IN NIGERIA**

The remote causes or impediments and challenges affecting effectiveness of the legal measures put in place to control of water resources, which include:

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<sup>140</sup>AL Mabogunje, 'Water Resources and Economic Development in Ecology and Economic Development in Africa' (DW Brockensha ed) (California: University of California Press, 1965), in Ayoade loc. Cit. at 589.

<sup>141</sup> <http://washmatters.wateraid.org> accessed on 18 April 2025.

**i. Weak Institutional Framework:** These institutions include River Basin Development Authorities, National Environmental Standards and Regulation Enforcement Agency, National Council on Environment, State Environmental Protection Agencies and National Policy on Environment and National Agenda. These institutions were conceived as vehicles for attaining an effective control of water resources development. The statutes establishing these institutions spell out diverse functions and objectives for these authorities from which it may be inferred that their existence nationwide propels their acceptance as an appropriate unit for water management. These institutions are ideally public administrative bodies endowed with civil personality and their objectives are to promote and regulate water resource for public interest. The present organization of these institutions need to be revisited with the aim of restructuring them and re-ordering priorities. A new approach to their orientation and mandate will require statutory and institutional changes.

**ii. Lack of Basic Planning Data:** This has led to failure of many projects because of the unreliable and inadequate data on which analysis planning and management are based. Flow pattern in space and time in rivers have largely been neglected. Nigeria experiences persistent drought flood and erosion without any long-term solution.

**iii. Flood and Erosion:** The event of flood has particularly been devastating in the coastal areas of the country. This has sometimes led to severe erosion and consequent loss of agricultural soils and lands and damage to engineering structures including those for water resources.<sup>142</sup> Under this circumstance, a lot of sediment is transported which culminates in a situation of clogging up of reservoirs, river channels, etc. and reduces their potential for water storage.

**iv. Manpower shortage:** Proper planning, implementation and control of water resources depend principally on the availability of competent personnel. It is common knowledge that in Nigeria, there has been a marked shortage of manpower in water resources particularly at professional and sub professional levels. The paucity of trained personnel in the middle technical and management levels has been limiting the scale of success of various developments. There is therefore need to step up manpower training.

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<sup>142</sup> <http://floodlist.com> accessed on 18 April 2025.

**v. Fund Shortages and Generations:** This has always posed a major problem to water resources development globally. Most of the developments in these sectors are government financed. The dividing of resources at the government disposal has also adversely affected successive allocations of money to water resources projects.<sup>143</sup> Most projects therefore remain uncompleted and those whose systems have broken down are financially stunted and cannot be easily rehabilitated all over the country. Those projects that are completed that could have been yielding on lot of revenue could not do so because the beneficiaries enjoy a lot of subsidies. The charges are below the operation and maintenance costs. Revenues which would have accrued to the agencies or institutions concerned and re-invested in other projects are lost. Compiled with this, is the inefficient manner in the billing and revenue collection system of the concerned agencies considerable amount of revenue is cost in the process.

## **8. CONCLUSION AND RECOMMENDATIONS**

This work reveals that a lot has been done to address the challenge of water shortage, management, access, pollution and protection in Nigeria. In view of these challenges and to have effectively controlled water resources vide statutes, this paper recommends the following:

- i. There is need for adoption of new policies and management of water resources which requires a fundamental change in attitude towards the value and importance of water and related resources to society, the economy and the environment. .
- ii. Policies and legal reforms that will bring about formation of an independent regulatory and monitoring body for the water sector should be put in place and be monitored to prevent being captured for political patronage purposes.
- iii. Relevant bodies must manage water resources in an orderly manner so as to prevent waste and ensure that the environment is protected.
- iv. For best practices in groundwater management, this research recommends dividing the regions of each state or nation into different basins depending on water yield as a basis for legal licensing of water permits. This because, in some jurisdictions, waters are over appropriated/exploited, unmindful of estimate of availability of water in the area.

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<sup>143</sup> Ibid.