



ENVIRONMENTAL COMPLIANCE AND ENFORCEMENT IN NIGERIA: AN APPRAISAL

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Abstract

Environmental problems are being experienced in almost all countries of the world today, the extent and the intensity of the problem, however, differ from country to country. Nigeria as a whole has long been facing many environmental problems, mainly from oil extraction activities by the multinational companies which have, to a large extent affected the ecological environment. The average rainfall ranges from about 500mm/year in the north to over 2000mm/year in the south. The country is blessed with mineral, physical, biological and energy resources. In general, the environment provides all life support systems in the air, on water and on land as well as the materials for fulfilling all developmental aspirations. The growing impact of Urbanization, Industrialization, and Technological advancement have negatively affected the environment over the years. The most pronounced environmental problems in Nigeria are related to oil extraction activities of the multinational companies. Here, many forest areas were cleared for either heavy machine installation or running of pipelines from one destination to another. These environmental problems resulted from rampant incidents of oil spillage and sporadic spread of petroleum resources within the natural environment. This in turn caused a great deal of damage to the entire ecosystem, including aqueous environments, aquatic animals, as well as the health status of the concerned communities which in most cases can lead to death.

Keywords: *Environment, Compliance and Enforcement*

1.0 Introduction

Environmental compliance and enforcement measures in Nigeria, presupposes that there are some regulations and measures put in place by legislation or legislative processes to control the pollution and degrading the environment.¹ Compliance here refers to the subtle submission or surrender to the dictates or the directives of the enacted legislations for the control of environmental pollution degradation. Where there is violation, then, it becomes imperative for the various agencies in management of the environment to enforce² such laws.

Before actually delving into the various environmental laws, statutes, treaties, compliance and enforcement, it will be appropriate to know the various ways our environment gets polluted and degraded. Thus, the environment may be polluted or degraded through: Deforestation, Desertification, Atmospheric pollution, Erosion, Drought, Industrial pollution and Municipal waste management and trans-boundary movement of hazardous waste materials. This categorization is important as they direct the necessary legislations in these regards. In other words, whatever legislations enacted to deter or

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¹ Ikhariale, M., "A Constitutional Imperative on. the Environment: A Programme of Action for Nigeria", in Simpson & Fagbohuned; (Law Centre, Faculty of Law, Lagos State University, (1988), at 2.

² Okorodudu-Fubara, M; Law of Environmental Protection, Materi'ls and Text (Ibadan; Caltop Publications, 1998) at 3.



discourage pollution/degradation shall be holistic in nature to enforce comprehensive compliance.³ Resource will be made to the socio—eco, political and cultural biases as a national phenomenon.⁴

One of the national phenomenon is the political biases of our regulatory policies tailored towards conservatism and capitalism which are further truncated by regional inequality. In this socio-eco, political and cultural fantasies, national policies on environmental protection⁵ is seen as mere paper work and it does not matter which environment is polluted, degraded and destroyed. What matters to them is how much benefits financially the environmental pollution/degradation has brought to them. From the foregoing, it is clear that legislating laws for the protection of our heritage (Environment) is one good thing and the selfless efforts to promote enforcement measures is another and a better thing.

Environmental compliance and enforcement measure in Nigeria is aimed at protecting the environment from destruction and the extinction of the flora, fauna and other media of the environment. This is in response to the clarion calls made severally by the United Nations to member states at various fora. Examples are; the 1972 Stockholm conference for the protection of the environment, 1992 Rio Declaration in Brazil for environment protection and sustainable development⁶ and the subsequent responses from Nigeria through its various legislations and establishments of regulatory Agencies.

According to Benebo (2008),⁷ the rates of non-compliance with environmental laws, regulations and standards have continued to be high, coupled with the fact that most environmental laws are not only obsolete but in dear need for a revisit as some sanctions are indeed out of place considering the weight of the giant pollutants as against the weight/value of sanctions put in place to ensure environmental compliance for instance the united nations environment programme report (UNEP) for over years have stated that it could take over 30 years to cleanse Ogoni land but up till date the cleansing process is like a nightmare, whereas both man, animals and plants are suffering from pollution. Having introduced the objectives or aim of this work, next will be sub- thematic discussions on compliance and enforcement, opportunities and challenges for compliance.

2. Compliance and Enforcement

The act of obeying or obedience to any enacted legislations, Acts, regulations and rules may be referred to as an act of compliance. Put in another way, compliance is the act of carrying out a stipulated procedure or procedures as guides for the implementation of any given rule within a given society and for a specified period. Therefore, it follows that when certain given procedures are followed to maintain the prescriptions of certain rules, the singular act of obedience to such procedure or procedures will be referred to as 'compliance. The issue of compliance to environmental matters in Nigeria is viewed with seriousness because of the lackadaisical attitudes of the users of the Nigerian environment. Sometimes,

³ Osipitan, T. The Survey of Environment Law in Nigeria (Unpublished) at 6.

Afsegbua, L; Oil Pollution: The future of Law in Nigeria (1998) 1

⁴ Nnadozie, K; Pollution Control in Nigeria; The legal framework, Being a paper presented at a workshop at Sheraton Hotel and Tower, Ikeja Lagos on the 5th-7th April, 1994, at 2.

⁵ Okorodudu-Fubara; Law of Environmental Protection, Materials and Text (Ibadan: Caitop Pollutions, 1998 at 3

⁶ Ibid, n.5 at 3

⁷ Zephaniah Osuji, Edo University of Delta Abraka Ngeria. <https://pdfs.semanticscholar.org>. Journal of Sustainable Development in Africa (Vol. 14 No. 6 2012 ISSN: 1520-5509) Clarion university of Pennsywana Clarion, Pennyswane

Nigerians and other foreign users of the environment often thought that environment is unowned⁸ with the consequence that the environment dies in silent. The validity of the fact that the environment is unowned. In international law, environment which comprises the Air (Atmospheric), the Land (Lithosphere) and the Sea (Hydrosphere) have never been treated as unowned in law. Rather, the law categorizes areas that are free for, general usages to all the states and areas restricted to the authority of sovereign states, often times being referred to as the Exclusive zones. For example, Article 77(1) of the United Nations Conventions on the Law of the Sea, 1982 clearly authorizes ownership exclusively of continental sea shelves to the sovereign states. Compliance is assessed by the level of positive responses of the users of the environment to the laws protecting the environment pollution/degradation. Juxtaposing this level of compliance with the existing laws, it follows that compliance could either be seen or measured with the international legal instruments or by the municipal or national legal instruments or both.

The reason for this is to address a range of environmental objectives, from limiting or banning contaminants that may cause harm to human health⁹ and environment. The problem of compliance is not a paucity of national regulations and standards rather, it is their implementations. Before looking at some of these environmental laws, treaties and conventions, it is important to state here that, in 2012, survey of both developed and developing countries, Nigeria inclusive and their national auditing offices were asked to identify the greatest obstacles militating against compliance to environmental protection. The result or responses was the problem of implementing¹⁰ the law, which has resulted to non-compliance. This information is sourced from the working Group on Environmental Auditing, 2013. In this audit Report, compliance is said; could be made effective and possible through the establishment of Reforms environmental protection and management system in which all pollutants are monitored and regulated and timely reports of compliance or non-compliance communicated to the individual states. Compliance is really not settling scores but to prevent violation in the first place and enforce effective compliance. It is obvious that compliance is dependent upon several factors. In Nigeria, compliance is also not very easy as enforcement of the regulatory laws are not effectively enforced by the various regulatory agents because of some lacunae created in these laws by the same processes of institutionalization. This is as seen in *Seismograph Services Ltd V Akpruoyo*¹¹ where 'NQSDRA' was made to appear as a bulldog who could only back but cannot bite.

Because of some specific duties placed on the Agencies and victims of environmental pollution/degradations, compliance has been difficult. For instance, in the liability for public nuisance, claimants who are victims of the act are required to prove that they have suffered over and above other members of the public. Where such victims do not have the way vital, he/she or the victims simply withdraw such actions to the benefits and non- compliance of the defendants. This is even worst in the

⁸ Macht Department of Assets of Baltimore City. Chris, P. Taking Environment seriously: The African Charter on Human and Peoples Rights and the Environment; in Review of the African Commission on Human and Peoples Right, RADIC (1993), Vol. 3, pts 1 & 2, 38 at 41.

⁹ Graham Oloko & Sors V. SPDC (Nig) Ltd (1990) 6 NWLR Pt. 159. 693
Ifegwu V Tabansi Motors Ltd (1972) 2 SLR at 790

¹⁰ Prieto, I. C. and Nosedal, R; ed: The Legal Protection of the Environment in Developing Countries (1976) Mexico p'p 12-16

¹¹ (1974) 6 SC 199 at 136.



private nuisance where the courts look at the reasonability of the defendants in the offence, even, when most times, such acts are foreseeable and intended.¹²

For oil and gas spillages and flaring, the court would always rely on the expert evidence of specialists in the field of study. Most of these pollutants are multinational oil companies (IOC) with huge revenue; who could hire and fire the experts, the opportunity the native victims of the pollution cannot afford. The end result is always that the violators of these environments would have a field day, ready to cause more pollution the next minutes. On the other hand, the noncriminal cases of environmental pollution/degradation are made to pay monetary penalty, which of course are inadequate to the level of environmental damages caused. For compliance to be effective and enduring, the Ministry of Environment, Petroleum and Natural Resources, and other regulatory Agencies including the social institutions should develop a system of enforcement, monitoring and regulatory Network.

3.0 Environmental Enforcement

Compliance and enforcement programs in the environment sector seek to improve the environment and reduce the harmful incidents. The ultimate goal of all environmental compliance and enforcement efforts is to improve human, animal, plant, ecosystem and reduce the frequency and consequences of environmental pollution such as chemical and oil spills.¹³

In Nigeria like in most developing countries, the major preoccupation of government for many years has been the provision of basic social amenities. Environmental protection was synonymous with conservation of natural resources, while concerns for industrial pollution control and hazardous waste management were treated as both unclear and an attempt to slow down the pace of industrialization. Under such a state of apathy in environmental protection, a strong will' was needed to wake up both government and the populace to their responsibilities. For Nigeria this much needed catalyst for environmental enforcement came in 1988 in the form of an illegal dumping of toxic wastes of Italian origin. The response of government was swift and decisive.

Thereafter, the Federal Environmental Protection Agency was created and a National Policy on Environment was launched. Before these two instruments, Nigeria was without any industrial pollution law or an enforcement tradition. The absence of pollution waste management laws, the lack of tradition of enforcement and the people's sensitive to toxic waste have compounded the challenges of environmental enforcement in Nigeria. This dissertation presents the foundation for environmental protection and enforcement in Nigeria.

Past efforts of the Nigeria Government in environmental protections were geared primarily either towards safety or the protection and conservation of the economically important natural resources. This is clearly demonstrated by the, list of environmental laws enacted before 1988, they include:

1. Oil Pipeline Act. 1956.

¹² Gold Thorde, i.E.; *An Introduction to Sociology* (1974) Cambridge University press (2edn) at 190.

¹³ Tom Tyler, *Procedural Fairness and Compliance with the Law* (1997) v.133 *Swiss Journal of the Economic and Statistics* 219



2. Forestry Act. 1958.
3. Destruction of Mosquitoes Act. 1958.
4. Public Health Act. 1958.
5. Minerals Act. 1958 cap. LFN1990.
6. Mineral Oil (Safety) Regulations 1963 cap. 350 LFN 1990.
7. Oil in Navigable waters Act. 1968 cap: 339 LFN 1990.
8. Endangered Species Act. cap. 108 LFN 1990.
9. Quarries Act. cap. 385 LFN 1990.
10. Sea Fisheries Act. cap. 404 LFN 1990.

There were no laws on industrial pollution and hazardous wastes. Industrialization was considered a key indicator of development. States and Local governments gave tax and other concessions to lure industrialists to establish industries in their domain, and the citizens being uninformed, lived happily with the resultant pollution and hazardous wastes. Over time, hot and heavy, metal laden, coloured effluent discharged into streams by these factories in some localities assumed mythical references. Industrial effluents and sludge were erroneously used as manure to produce “fresh” but deadly crops for people. Fishes and crabs caught from polluted rivers and lagoons were sold and eaten freely. Containers of chemicals (and pesticides) littered the surroundings in open dump- sites waiting to be picked by innocent and illiterate folks who would use them to store their own food and water. Particulates, from quarries, asphalt, cement settled on many houses. Fumes from stacks occlude sunlight and cause burning and other irritations of the eye, nose, lungs and skin.

The turning point was in June 1988, while Nigeria was busy condemning other West African States for accepting foreign toxic waste cargoes for disposal, it was revealed that toxic waste had been dumped on a site in Koko port town in the Bendel State of Nigeria. The waste came from Italy in five (5) shipment loads totaling about 3,884 metric tons. For government, this was a national embarrassment. But the incident awoke the consciousness of government and the people to environmental protection. A Ministerial Task Force was immediately set up to evacuate the waste within weeks. The government also pledged commitments which raised hopes for sound environmental management in Nigeria.

To stem these embarrassments, the Federal Environmental Protection Agency was created by the Decree No. 58 of 1988 as the overall body charged with the responsibility of protecting the environment in Nigeria. Specifically, the Decree establishing the Agency authorizes it to, among other things, establish and prescribe national guidelines, criteria and standards for water quality, air quality and



atmospheric protection, noise levels, gaseous emissions and effluent limits; to monitor and control hazardous substances, supervise and enforce compliance'¹⁴

The Decree also gave the Agency broad enforcements powers, even without warrants, to gain entry, inspect, seize and arrest with stiff penalties of fine or prosecute¹⁵. They were also empowered to arrest whosoever obstructs the enforcement officers in the discharge of their duties or makes false declaration of compliance¹⁶ The Federal Environmental Protection Agency operated a central system with headquarters at the Federal Capital Territory, Abuja and five zonal offices located in Lagos, Port Harcourt, Benin-City, Kaduna and Kano for efficient enforceability.

The zonal offices were established to address environmental problems of the various ecological and industrial zones and to place within easy reach of states the required technical advisory support needed by state Environmental Protection Agency (EPAs). A consultative and policy making forum called the National Council on Environment was created to promote cooperation, coordination and harmonization of policies and implementation of enforcement strategies between the Federal and States EPAs as well as among the Loci Government EPA.¹⁷

Again, in order to stop the bad practices of industries and toxic waste merchants and reverse the horrifying state of environmental pollution described above, government had to enact a number of Legal instruments which spell out in clear terms specific offenses, requirements and penalties for contraventions. The following are the instruments of intervention in pollution control enacted in Nigeria:

1. The Hazardous Waste Criminal Provision Decree 42 of 1988.
2. The National Guidelines and Standards for Environmental Pollution control in Nigeria.
3. The National Effluents Limitations Regulations S. I8. of 1991 which make it mandatory for industrial facilities generating wastes to retrofit or install at commencement of operations, anti-pollution equipment for detoxification of effluents and chemical discharges. The regulations also spell out by industrial categories, crucial parameters and their limits in effluents or emissions and prescribe penalties for their contravention.
- 4 The Pollution Abatement in Industries and Facilities Generating Regulations S. 1 (9 of 1991 which spell out: restrictions on release of toxic substances into Nigeria's ecosystem; the pollution monitoring requirement for industries, the strategies for waste reductions, requirements for environmental audits and penalties for contravention.
5. The Management of Solid and Hazardous Wastes Regulations S.I. 15 of 1991 which give a comprehensive list of dangerous and hazardous wastes, the contingency plans and emergency

¹⁴ Sections 15,16,17,19, and 20, FEPA Act, Cap. F10 LFN 2004.

¹⁵ Ibid, section 26

¹⁶ Ibid, section 27

¹⁷ Section 2 FEPA, Act CaP E10, LFN 2004



procedures; the regulations also prescribe the guidelines for ground water protection, toxic waste tracking programs., and the environmentally-sound technologies for waste disposal.

6. The Environmental Impact Assessment (EIA) Decree 86 of 1992 which is to infuse environmental considerations into development project planning and execution. It prescribes the guidelines for EIA studies; spells out the project areas and sizes of projects requiring ETA in all areas of national development and the restrictions on public or private projects without prior consideration of the environmental impact. All these instruments were meant for effective enforcement of environmental standards.

4.0 Challenges

Enforcement of the various environmental laws in Nigeria has been fraught with many challenges, especially when there was no measurement scheme to measure performance. Some of the challenges are:

- a. **Official laxity:** over the years, environmental enforcement officers have by their acts or omission contributed to the challenges of environmental enforcement scheme, to the detriment of healthy environment in Nigeria. Majority of the departments in charge of enforcement of environmental law were given broad enforcements powers, even without warrants, to gain entry, inspect, seize and arrest with stiff penalties of fine or to prosecute. They also have power to arrest and prosecute whosoever that obstructs the enforcement officers in the discharge of their duties or makes false declaration of compliance. But due to the laxity of the enforcement officers, where there is contravention of the environmental law or regulations by the industrialist, instead of painstakingly caring out a thoroughly investigations to ascertain the level of environmental pollution/degradation, the pollutants will be compelled to pay some paltry fee and no more, thereby living the people to continue to suffer environmental pollution.
- b. **Powerful individuals and groups:** One of the greatest challenges of an enforcement department in a developing country like Nigeria comes in form of threats from powerful individuals and groups. When such individuals or groups own industries which in turn form themselves into associations, they become extremely formidable. For instance, the perennial water supply is the direct result in the frequent malfunctioning of the prescribed water toilet system with their sultant offensive odours is lack of enforcement of town planning. This is also applicable to the constant electric failures. Consequently, the powerful individuals or groups engage in the installation of generating sets. These activities are major sources of noise and carbon-monoxide that pollutes our environment. The object of town planning is to secure proper sanitary conditions, amenity, and convenience in the development and use of land. It includes the comprehensive treatment of certain area by means of development and improvement, the regulation through planning permission and other controls of the development or other use of land and the conservation and enhancement of both the natural and built environment.¹⁸
- c. **Haphazardness of Urban Planning:** haphazard environmental impact is the unequal distribution of planning scheme in the urban centres. These leads to over-crowding, housing

¹⁸ Halbury's Law of England, 4th ed. Vol 146, p.7, para.1

shortage, slum, and street trading. The effect of haphazard environmental impact can be best described in the following exert:

They often create pockets of Improved environment here and there In the urban centres which often take the form of Government Reservation Area (GRA) or new layouts, as well as new towns development by planning Authorities In conjunction with State Housing Corporation. A coverage of the total- urban Centre of which these areas are parts has remained elusive¹⁹

- d. Inter-governmental Agencies conflict of interest:** **Conflict** of interest and inter-governmental agencies over-lapping functions are the ban of poor environmental enforceability.²⁰ Immediately FEPA was promulgated, a dispute arose between the National Agency for Food and Drug Administration and Control of the Federal Ministry of Health and FEPA on which Agency has responsibility for the control of hazardous chemicals. Prior to the establishment of FEPA, NAFDAC was responsible to grant permits to industries for the importation of chemicals along with narcotics, foods and drugs. NAFDAC delegated this power to grant permits to the Pharmacist's Registration Board of Nigeria (PBN) which issues the permits on behalf of NAFDAC under the provisions of the Poisons and Pharmacy Act cap 152 Section 40 (5)1.

It was one of such permits, IMPORT PERMIT NO 676 granted to Iruekpen Construction Company for the importation of "industrial land Laboratory chemicals" that was used to import toxic waste into Nigeria in 1988. This was contained in a report of the Ministerial task Force setup to - evacuate the toxic wastes of Italian origin dumped at Koko port, 1988. Consequently, it recommended that authority - to issue permit for importation of chemicals should be withdrawn from the Pharmacist Board and was approved. Therefore, FEPA then became the agency to issue such permits. Thereafter, Government also created the National Drug Law Enforcement Agency (NDLEA) to handle narcotics.

Other challenges militating against the effective environmental enforcement are official corruption, poor funding, lack of technical know-how and cultural practices.

5.0 Conclusion

Effective enforcement mechanism and measurement are essential tools to measure performance in the regulation of our environment. Measurement needs not be difficult, but it requires clear thinking about the objective and how to assess progress on those objectives, as well as a commitment to start to measure performance and continuously use data to find way to improve. Without a strong system of outcomes-based measurement, environmental regulators run a high risk of being wasteful and ineffective.

When measurement is integrated wholly into environmental compliance and enforcement decisions, it is an opportunity for environmental regulatory agencies to achieve a better environmental outcome, higher compliance rate, improve fairness, and a better understanding of environmental problems.

6.0 Recommendations

1. For an enduring compliance and enforcement mechanism, the Ministries of Environment, Petroleum and Natural Resources, and other regulatory Agencies including the social

¹⁹ Outline of the Fourth National Development Plan (1981-1995) p.80

²⁰ Ipadeola Ibadan Metropolitan Planning Authority v. Abiodun (1987)3 NWL.R (pt.59) 18



institutions should develop an effective system of enforcement, monitoring and regulatory Network.

2. There should be opportunities for improvement strengthening legal framework review and strengthen environmental laws to address loopholes and ensure effective enforcement.
3. Enforcement agencies should be provided with the necessary resources, training and authority to effectively enforce regulations.
4. Community involvement should be encouraged by engaging communities in environmental monitoring and enforcement effort to build ownership and accountability.
5. There should be increased public awareness about environmental issues and the importance of compliance with environmental regulations.
6. Employment of environmental experts should also be encouraged.
7. Adequate funding and resources should be provided for environmental agencies to effectively monitor and enforce environmental regulations.