ANTI-POLLUTION LAWS IN NIGERIA: THE ROLES OF LEGISLATURES (NATIONAL ASSEMBLY), STATE ASSEMBLY AND LOCAL GOVERNMENT COUNCILLORS

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Abstract

Against the background of these developments, there arose a tidal wave of public opinion worldwide urging a consented global initiative to combat the growing threat to the earth's environmental balance. This culminated in the 1992 Earth Summit at Rio de Janeiro, at which world leaders from about 150 countries converged to fashion out ways of dealing with problems posed by these developments and also agree on measures to stem further deterioration of the earth's environment. These efforts at combating the deleterious effects on the earth's environment of man's activities are under girdled by an attitudinal change. In a bid to curb and manage environmental degradation Nigeria formulated environmental protection policies, spanning 1915 to 1992. This article is a critique of these policies. Not only that many of the policies are out-dated, many are fragmented. Many of them were not formulated with contributions from informed masses, nor based on nationally generated baseline data. Rather, they are mostly guidelines and standards adapted from the adopted and approved materials of the appropriate system of the United Nations, thereby compromising socio-economic and climatic differences. Participation of the people in policy formulation and implementation is lacking in Nigeria. Implementation and monitoring are wishy-washy and din-don affairs crippled by widening and deepening corruption. It is recommended that anti-graft agencies be overhauled. Environmental sustainability education needs to be mainstreamed in the curricula of schools and universities while awareness creation on environmental pollution needs to be given the seriousness it deserves.

Keynote: Anti-pollution, Legislation, Roles and Laws.

Introduction

Environmental issues have been in the domain of public discourse, especially in the industrialized nations of the western world, for about two decades. At the close of the 80s, such issues raised question of global concern as the future of earth's climatic conditions and man's survival on the planet were called into question by the result of scientific studies. Scientists all over the world have persistently reported a continuous rise in the earth atmospheric temperature, popularizing the expression, "global warming" as a catch phrase for this phenomenon.

Two developments were clearly identified as casual factors in the alteration of the earth's climatic conditions. First, there is a continuous depletion of the "ozone layer" above the earth's atmosphere (an actual layer of ozone gas which shields the earth and its atmosphere from direct contact with the sun's ultraviolet rays). The depletion of the ozone layer is, in turn caused by a continuous rise in the emission level of what scientists term "greenhouse gases" which consist largely of carbon related fumes emitted by motor vehicles and industrial plant (Sharma, 2002).

In quest for economic development, which seeks to increase the quantum of economic output without caring about the short- and long-term short-changes of human and material resources arising from the process, the activities of people and nations conquer and wreck the world, rather than sustain it for the present and future generations. Progress in agriculture, industry, transportation and technology is usually the barometer of economic development of any nation. Such activities of man have created adverse effects on all living organisms in the biosphere. Rapid industrialization has left with us polluted rivers, contaminated soil, depleted wildlife and exhausted natural resources. As a result, the environment of today has become foul, contaminated and harmful for the health of living organisms, including man. The unlimited rapacious exploitation of the splendid plentifulness of nature by man has disturbed the heritage of ecological balance existing between living and non-living components on the earth planet. This undesirable situation created by man has threatened the survival of man himself and other biota on the earth (Bhasin, 1991).

Most horrible ecological crises result from urban-industrial technological revolution and speedy exploitation of every bit of natural resources. Globally, man-made pollutants from combustion, construction, mining, agriculture and warfare are increasingly significant in the air pollution equation. Motor vehicle emissions are one of the leading causes of air pollution (Van Loon & Duffy, 2000). Principal stationary pollution sources include chemical plants, coal-fired power plants, oil refineries, petrochemical plants (Beychok, 1987), nuclear waste disposal activities, incinerators, large livestock farms (dairy cows, pigs, poultry, etc.), polyvinyl chloride (PVC) factories, metals production factories, plastics factories and other heavy industries. Agricultural air pollution comes from contemporary practices, which include clear felling and burning of natural vegetation, as well as spraying of pesticides and herbicides (Sharma, 2002&Eneh, 2011a).

Carbon dioxide, while vital for photosynthesis, is sometimes referred to as pollution, because raised levels of the gas in the atmosphere are affecting the Earth's climate. Long-term rising levels of atmospheric carbon dioxide has the potential to cause slight, but critical, increases in the acidity of ocean waters, with the possible adverse effects on marine ecosystems (Sharma, 2002).

Some of the more common soil contaminants are fertilizers, pesticides and chemical substances/elements, such as lead from paint dust contacting with the soil, chlorinated hydrocarbons, heavy metals (such as chromium, cadmium found in rechargeable batteries and lead found in lead paint, aviation fuel and still in some countries, gasoline), zinc, arsenic and benzene (Eneh, 2011a). A widespread practice of recycling industrial by-products, into fertilizer, result in the contamination of the soil, with various metals. Ordinary municipal landfills are the source of many chemical substances in the soil environment (and often groundwater). There have also been some unusual releases of polychlorinated dibenzodioxins, commonly called dioxins (Nwafor, 2006).

Some common types of pollution have main health effects on humans. Adverse air quality can kill many organisms, including humans. Ozone pollution can cause respiratory disease, cardiovasculardisease, throat inflammation, chest pain and congestion. Water pollution causes approximately 14,000 deaths per day,

mostly due to contamination of drinking water by untreated sewage in developing countries (Kallman, 2008; Lorenz, 2007&Eneh, 2011c).

Oil spills can cause skin irritations and rashes. Noise pollution induces hearing loss, high bloodpressure, stress and sleep disturbance. Mercury has been linked to developmental deficits in children and neurologic symptoms. Older people are majorly exposed to diseases induced by air pollution. Those with heart or lung disorders are under additional risk. Children and infants are also at serious risk. Lead and other heavy metals have been shown to cause neurological problems. Chemical and radioactive substances can cause cancer and as well as birth defects (Sharma, 2002&Eneh, 2011c).

Pollution widely found in the environment is responsible for a number of effects (Van Loon & Duffy, 2000):

- Biomagnification - situation where toxins (such as heavy metals) may pass through trophic levels, becoming exponentially more concentrated in the process
- Carbon dioxide (CO2) emissions cause ocean acidification and ongoing decrease in the pH of the Earth's oceans as CO2 becomes dissolved
- The emission of greenhouse gases leads to global warming which affects ecosystems in many ways
- Invasive species can out-compete native species and reduce biodiversity. Invasive plants can contribute debris and biomolecules (allelopathy) that can alter soil and chemicalcompositions of an environment, often reducing native species competitiveness and adaptability
- Nitrogen oxides are removed from the air by rain and fertilize land which can change the species composition of ecosystems
- Smog and haze can reduce the amount of sunlight received by plants to carry out photosynthesis, leading to the production of tropospheric ozone which damages plants
- Soil can become infertile and unsuitable for plants, affecting other organisms in the food web
- Sulphur dioxide and nitrogen oxides can cause acid rain which lowers the pH value of soil (Van Loon and Duffy, 2000).

Environmental Legislations, Standards, Regulations and Administrations on Nigeria's Environment

The Nigerian environmental policy covers the legislations, standards, regulations and administrations adopted to control activities with potential damaging effects on the country's environment. Environmental laws have been formulated to deal with a variety of environmental pollutants, such as toxic chemicals, noise, etc.; control particular activities, such as mining, power generation, etc.; and provide general guidelines for protecting basic natural resources, such as air, land and water (Eneh, 2010&Anukam, 1997).

Environment legislation in Nigeria can be viewed broadly under two time-related categories. First, is the legal regime, which existed in the years, preceding 1988? The other consists of particular legislation, consequent guidelines and standards, and regulation introduced since the creation of the Federal environmental Agency by Decree No. 58 of 1988.

Pre- 1988

This period was characterized by certain features. Principal among these was the near - total lack of public awareness concerning environmental protection and development. Issues as biodiversity, conservation, effluent limitations, pollution abatement and sustainable development of Nigeria's natural resources did not form part of the general public discourse.

At the official level, there seemed to be a slow realization of the interdependence of environment and development. This was underlined by the absence of a deliberate national policy aimed at protecting the environment while ensuring the conservation and sustainable use of natural resources. The absence of such deliberate policy naturally meant the non- existence of an agency entrusted with the responsibility for the protection and the development of the environment.

The resultant effect was that environment issues were reduced to matters of periodic litigation between aggrieved individuals and communities on the one hand and the oil producing companies on the other in the event of damage occasioned to fishes and the environment through oil spillages or damming of the water ways. In these parochial environmental pollution conflicts, parties invariably relied on common law remedies in pursuit or defense of their cases. Issues thus revolved around the rights, duties and obligations developed by the courts as pertaining to the established tortuous liabilities of Negligence and Nuisance and encapsulated by the rules in Donoghue v. Stevenson (1932)A.C. 562 and Rylands v. Fletcher (1868) L.R.3. Respectively.

A broader view of environment pollution and development was effectively curtailed by the fact that whatever legislation existed in that regard in the general body of the laws were disparate and inchoate. Some of such laws are outlined as follows:

- Kanji Lake Park Act (iv) This Act provides the establishment of the Kanji Lake Park. It also makes further provision for controlling, managing and maintaining the park as well as ensuring the security of animal and plant life within the park.

- Criminal Code Act (v). Relevant sections of the law provide for the prevention public health hazards. For instance, Section 245, which deals with water fouling.

- The River Basin Development Authorities Act (vi). This makes provisions for the comprehensive development of water resources and of floods and erosion.

- The Endangered Species (Control of International Trade Traffic) Act (vii). This Act provides for the conservation and management of the wildlife of the country and the protection of species in danger of extinction due to over –exploitation

- The Oil Mineral (Safety) Regulations (viii). This Acts forbids the discharge of noxious or inflammable gas and penalizes its contravention.

- Petroleum Regulation (ix). This prohibits the discharge or escape of petroleum into waters within harbor areas and makes provision for precaution in the conveyance of petroleum and rules for safe operations of pipelines.

- Oil in Navigable Waters Act's (x) under this Act the discharge of oil or any mixture containing oil into the territorial or navigable inland waters is prohibited.

- Petroleum Refining Regulations (xi). Among other things this makes provisions for the construction requirements for oil storage to minimize damage from leakage.
- Associated Gas Re- Injection Act (xii) . It makes provision for the utilization of gas produced in association with oil and for the re- injection of such associated gas not utilized in industrial project.
- Oil Pipelines Act (xiii). This prevents the pollution of land or any waters.

Post -1988

According to Ogbalu Obi (1992): in his Environmental Regulation in Nigeria, (xiv) "real environmental legislation in Nigeria was a product of National emergency". He explained further,

"The development of environmental regulation was greatly aided in the late 1980s by the Kook incident that occurred in the country. On 19th September 1987 Sunday Oyemire Nana, a farmer in kook, a small village five kilometers From the coast in the former Bendel State of Nigeria, was approached by Gian Franco Raffaelli, an Italian business man who had resided in Nigeria for some 20years, to dump about 3,880 tons of toxic and hazardous waste on behalf of Italian Company. The kook episode propelled the Federal Government Of Nigeria To reassess the general state of its environmental regulation...The kook episode Alarmed the general public of the inadequacy of the legal frame work for the Environmental protection in Nigeria. What emerged was the harmful waste (Special Criminal Provision etc) Decree 42 of 1988. The Decree prohibit the Carrying, depositing and dumping of harmful waste on any land, territorial Waters, contagious zone, Exclusive Economic Zone of Nigeria or its inland Water ways and prescribes severe penalties for any person found guilty of any Crime relating thereto. In addition to the harmful decree, an encompassing Legislative frame work for environmental protection was found necessary".

By Decree 58 of 1988, the Federal government created the federal environmental agency (FEPA). Decree 58 of 1988 was amended by FEPA (Amendment) Decree No. 59 of 1992. This legislation vests in FEPA overall responsibility for the protection and development of the environment, biodiversity conservation and sustainable development of Nigerian's natural resources in general and environmental technology, including initiation of policy related to environmental research and technology, among other function. (S.4 Decree No. 59 1992). S.37 of the said decree charges FEPA further with the responsibility of making regulations generally for the Purpose of Act and in particular prescribe standard for:

- Water quality;
- Influent limitation;
- Air quality;
- Atmospheric protection;
- Ozone protection;
- Noise control; and
- Control of hazardous substances and removal control methods.

Accordingly, FEPA developed the following instructions in combating environmental degradation xv:

- **The National Policy on the Environment**

This was launched by Government on 27th November 1989. This document described guidelines and strategies for achieving the policy goal of sustainable development.

- **National Guidelines and Standard for Environmental Pollution Control in Nigeria**

This was launched on March 12th 1991 and represents the basic instrument for monitoring and controlling industrial and urban pollution.

- **National Effluent Limitation Regulations S.I.8 of 1991**

This instrument makes it mandatory that industrial facilities install anti -pollution equipment, make provision for further effluent treatment, prescribe maximum limit of effluent parameters allowed for discharge, and spell out penalties for contravention.

- **Pollution Abatement in Industries facilities Generating Waste regulations S.I.9 of 1991**

Restrictions are imposed hereunder on the release of toxic substances and requirement stipulated

- Monitoring of pollution to ensure permissible limits are not exceeded
- Unusual and accidental discharges
- Contingency plans
- Generator's liabilities
- Strategies of waste reduction and safety for workers.

- **Waste Management regulation S.1.15 of 1991**

This regulates the collection, treatment and disposal of solid and hazardous waste for municipal and industrial sources and gives the comprehensive list of chemicals and chemical waste by toxicity categories.

- **Environmental Impact Assessment (EIA) Decree No86 of 1992**

This legislation makes EIA mandatory for any major developmental project likely to have adverse impact on the environment, and prescribes the procedure. (S.2 Decree No86 of 1992)

- **The Sectoral for EIA**

It makes pursuant to S.60 (1) (a) of Decree No 86 of 1992, it prescribes the detailed guidelines for conducting EIA for projects and on Industry-by-Industry basis.

Environmental Legislative Changes

The post - 1988 corpus of environmental laws and regulations are represented previously continued to prevail without any mentionable change. What change has occurred relates to FEPA's commencement of strict implementation of these legislations and regulations at the end of a five years moratorium unilateral declared by it.

In 1990, when specific environmental laws and regulations were still nascent development in the general body of our laws FEPA decided on a five years moratorium in the implementation of their provisions. The move was aimed as designing and effecting a public awareness campaign in the interim, allowing industries time to make contribution to proposed regulations and also adjust and align their production method and possess to the guidelines and standard made by FEPA.

At the Expiration of the five years period in 1995, FEPA commenced the monitoring and enforcement of its standards, guidelines and regulations through its department of inspectorate and compliance monitoring.

However, in Lagos State of Nigeria, and edict formally establishing the Lagos State environmental Protection Agency ("LASEPA") has been enacted. Aside from charging the LASEPA with the setting, monitoring and enforcement of environmentally standards and guidelines, it introduces and environmental development levy specified under No. 9 (nine) categories. The levy is payable annually by any person engaged in any form of manufacturing. The edict cited as edict No. 9 also prescribes fines for non-compliance.

Proposed Changes to Environmental Changes

Given that FEPA has only recently commenced the actual existing environmental laws and

regulations, they are in practical effect new laws. Consequently, there are no compelling reasons presently to propose changes to the principal legislations. However, FEPA continued to meet new situation with the insurance of fresh guideline in pursuance of the general and broad provision of the principled laws.

In this regard, FEPA has announced the proposed issuance of fresh guidelines to regulate noise, emission and vibration around residential areas. This is necessitated by the growing use of power generating plants and industries.

The proposed environmental sanitation edict of 1997 in Lagos State of Nigeria prescribes varying fines for individuals and corporate organization with violent environmental sanitation standard, such as failure to clean side works, street obstruction, failure to cover waste trucks, improper disposal refuse.

Roles of the National Assembly

The National Assembly shall, subject to this Act, have responsibility for the protection and development of the environment and biodiversity conservation and sustainable development of Nigeria's natural resources in general and environmental technology, including initiation of policy in relation to environmental research and technology; and without prejudice to the generality of the foregoing, it shall be the duty of the Agency to- (1992 No. 59)

- Prepare a comprehensive national policy for the protection of the environment and conservation of natural resources, including procedure for environmental impact assessment for all development projects;
- Prepare, in accordance with the National Policy on the Environment, periodic master plans for the development of environmental science and technology and advise the Federal Government on the financial requirements for the implementation of such plans;

- Advise-The Federal Government on national environmental policies and priorities, the conservation of natural resources and sustainable development, and scientific and technological activities affecting the environment and natural resources;
- The President on the utilization of the one per cent Ecological Fund for the protection of the environment;
- Promote co-operation in environmental science and conservation technology with similar bodies in other countries and with international bodies connected with the protection of the environment and the conservation of natural resources;
- Co-operate with Federal and State Ministries, local governments, statutory bodies and research agencies on matters and facilities relating to the protection of the environment and the conservation of natural resources; and carry out such other activities as are necessary or expedient for the full discharge of the functions of the Agency under this Act. (1992 No. 59).

Roles of State Assembly

Air quality

- The State Assembly shall establish more criteria, guidelines, specifications and standards to protect and enhance the quality of Nigeria's air resources so as to promote the public health or welfare and the normal development and productive capacity of the nation's human, animal or plant life, and include in particular-
- Minimum essential air quality standards for human, animal or plant health in the state
- The control of concentration of substances in the air which separately or in combination are likely to result in damage or deterioration of property or of human, animal or plant health in the state
- The most appropriate means to prevent and combat various forms of atmospheric pollution by Industries in the state
- Controls for atmospheric pollution originating from energy sources, including that produced by aircraft and other self-propelled vehicles and in factories and power generation stations

Roles of Local Government Bodies

The President shall, as soon as possible after the commencement of this Act, encourage local government councils to set up their own environmental protection bodies for the purpose of maintaining good environmental quality in the areas of related pollutants under their control, subject to the provisions of this Act.

i. **Powers to inspect**

For the purposes of enforcing this Act, any authorised officer may, without a warrant-

- require to be produced, examine and take copies of, any licence, permit, certificate or other document required under this Act or any regulations made there under;

- require to be produced and examine any appliance, device or other item used in relation to environmental protection.

ii. **Powers to search, seize and arrest**

- Any authorised officer, where he has reasonable grounds for believing that an offence has been committed against this Act or any regulations made there under, may without a warrant-

- enter and search any land, building, vehicle, tent, vessel, floating craft or any inland water or other structure whatsoever, in which he has reason to believe that an offence against this Act or any regulations made there under has been committed;

- perform tests and take samples of any substances relating to the offence which are found on the land, building, vehicle, tent, vessel, floating craft or any inland water or other structure whatsoever, searched pursuant to paragraph (a) of this subsection;

- cause to be arrested any person who he has reason to believe has committed such offence; and

- seize any item or substance which he has reason to believe has been used in the commission of such offence or in respect of which the offence has been committed.

A written receipt shall be given for any article or thing seized under subsection (1) of this section and the grounds for such seizure shall be stated on such receipt.

Nigeria's environmental policy is aimed at achieving sustainable development in the country and, in particular, at securing for all Nigerians a quality environment adequate for their health and well-being; conserve and use the natural environment and resources for the benefit of present and future generations; restore, maintain and enhance ecosystems and ecological processes essential for the functioning of the biosphere and for the preservation of biological diversity and to adopt the principle of optimum sustainable yield in the use of living natural resources and ecosystems; raise public awareness and promote understanding of essential linkages between environment and development and to encourage individual and community participation in environmental improvement efforts; and co-operate in good faith with other countries, international organizations and agencies to achieve optimal use of trans-boundary natural resources and effective prevention or abatement of trans-boundary environmental pollution (Eneh, 2010; Anukam, 1997).

Six guidelines and standards were introduced as part of the implementation of Nigeria's environmental policy. They are

i. Effluents limitations

ii. Water quality for industrial water uses at point of intake

iii. Industrial emission limitations

iv. Noise exposure limitations

v. Management of solid and hazardous wastes and

vi. Pollution abatement in industries (Eneh, 2010&Anukam, 1997).

Nigeria's environmental protection policy notwithstanding, protection of Nigeria's environment leaves much to be desired. For instance, water pollution in Nigeria occurs in both rural and urban areas. In rural areas, drinking water from natural sources, such as rivers and streams, is usually polluted by organic substances from users upstream who apply the stream water to agricultural purposes. Forestry activities upstream increase concentrations of soil particles washed into the stream by land disturbance. The large particles sink to the bottom and increase the bed load, while, depending on the stream velocity, smaller particles remain in suspension. The suspended matter may obstruct the penetration of light and limit the photosynthetic zone to less than one metre depth. In water supply courses, they also increase water treatment costs. Many industries, such as petroleum, mining (gold, tin and coal), wood and pulp, pharmaceuticals, textiles, plastics, iron and steel, brewing, distillery fermentation, paint and food, located on river banks use the rivers as open sewers for their effluents. In addition, accidental oil spillages occur from the petroleum industry, which endanger local sources of water supply and fresh water living resources. Inadequacy of resources occasioned risk for about 40 million urban poor and landless people. This level of environmental degradation would create water-borne diseases due to consumption of unsafe drinking water, as well as place fisheries and land resources at risk (Eneh, 2010; Anukam, 1997).

Many of the policies are dated, for example, the Water Works Act 1915 and Public Health Act 1917 (Eneh, 2010). This is unlike the National Environmental Policy Act (NEPA) enacted by the Senate and House of Representatives in Congress of the United States of America on 23 December 1969 and signed into law by President Nixon on 1 January 1970. Only five years later, this policy was amended twice within the same year on 3 July and 9 August 1975. Seven years following, it was amended on 13 September 1982. This updating shows the seriousness attached to environmental protection and enhances implementation.

Many of Nigeria's policies are also fragmented, for example, the diverse pieces of legislation, which fall within the armpit of environmental protection, including Civil Aviation Act 1964, Antiquities Act 1915 (1958), Live Fish (Control of Importation) Act 1965, Explosives Act 1964, Territorial Waters Act 1967, Exclusive Economic Zone Act 1958, Petroleum (Drilling and Production) Regulations Act 1969, Nigerian Atomic Energy Commission Act 1976, Natural Resources Conservation Act 1989, River Basin Development Authorities Act 1987, Sea Fisheries (Licensing) Regulations 1992, Quarries Act 1969, Land Use Act 1972 and National Parks Acts 1991 (Eneh, 2010). This approach negates the usually effective and time-saving one-stop table

implementation strategy. Rather, it encourages fragmented implementation processes that waste time and promote corruption.

There was no understanding of the environment by the masses when the policies were being formulated, nor is there mass environmental education and awareness creation regarding sustainable environment. People participation in formulation and implementation of the policies is lacking (Nwafor, 2006).

Standards were set without nationally generated baseline data usually lacking in the country, but with adapted guidelines and standards of the World Health Organizations (WHO). In transposing these data between countries, socio-economic and climatic differences are compromised (World Bank, 1990).

In the era of globalization driven by information communications technologies (ICTs) and all the efforts by Nigerian government towards adoption of ICTs as a means of bridging information gaps and marginalization in the global market system, electronic wastes (e-wastes) are common in Nigeria and worse still, discarded and disposed of in manners that enhance their environmental pollution. Yet, Nigeria has no recycling or management policy on e-waste, some of which contain hazardous and toxic chemicals, unlike the United States of America (USA), where The Electronic Waste Recycling Act or Senate Bill 50 was signed into law in 2004 (Eneh, 2011d).

Conclusion

Environment issues and attendant legislations will assume higher placement in the order of national priorities in ensuing years due to the public awareness programmes FEPA and environmentally conscious NGO's. However, the Agency's preferred option of compliance promotion in discharging its mandate will continuously guarantee conducive atmosphere for Nigerians, simultaneously.

Recommendations

It is recommended, therefore, that:

- Nigeria’s environmental protection policies are revised for their obsolescence and lack of currency
- Implementation and monitoring agencies need to be re-organized and re-oriented for improved performance
- Law enforcement and anti-graft agencies need to be overhauled
- Environmental sustainability education needs to be mainstreamed in the curricula of schools and universities, while awareness creation on environmental pollution needs to be given the seriousness it deserves

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