



(NESREA) AND THE CHALLENGES OF ENVIRONMENTAL REGULATION IN NIGERIA

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Cite this article:

Nwachukwu Okechukwu (2024), (NESREA) and the Challenges of Environmental Regulation in Nigeria. British Journal of Mass Communication and Media Research 4(1), 1-11. DOI: 10.52589/BJMCMR-FLJQLR8S

Manuscript History

Received: 20 Oct Sept 2023

Accepted: 12 Dec 2023

Published: 15 Jan 2024

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ABSTRACT; *The paper is an assessment of several efforts undertaking as well as challenges faced by National Environmental Standards Regulatory and Enforcement Agency (NESREA) being the regulator in enforcing the provisions of various environmental laws which have been enacted from independence to the present as an unwavering answer to dealing with environmental threats challenging Nigeria as a country. The work examines the effectiveness of NESREA in Nigeria as an enforcement agency, looks in brief the environmental challenges to economic development of Nigeria and the well-being of its citizenry in line with the national and international provisions for environmental assessment in Nigeria. This work employed the use of primary and secondary sources in gathering of information. The paper identified a lot of challenges confronting NESREA to include flagrant abuse of environmental laws without commensurate penalties, weak enforcement, corruption on the part of the staff of the regulatory agency, poor public enlightenment education while also advocating for the reinforcement of the regulatory institution to make room for a broader participation, an elaborate supervisory, monitoring and enforcement of environmental rules, laws and principles.*

KEYWORDS: NESREA, Environment, Regulation, Nigeria, Rules, Challenges



INTRODUCTION/BACKGROUND

Historically, environmental regulation in Nigeria did not begin as an organized effort towards providing a progressively all-encompassing framework for managing its natural resources. In lieu of a considerable number of years after the country's independence in 1960, the new nation was more worried with providing basic social amenities and advancing national economic development. Environmental concerns were not a priority. On the contrary, they were rather regarded as luxurious or esoteric preoccupations that posed a threat to advancing industrialization¹ (Adegoke, 1994). As a result, Nigeria's eco-resources were sadly neglected. Nigeria's historical indifference towards environmental safety is similar to that of other emerging African countries which experienced austere environmental problems, but lacked substantial environmental regulation for a long time. Unexpectedly, as stated, African nations have since the 1960s known the importance of the environment to life by meeting frequently and issuing statements intended for further action by nation-states² (CCPDMCE, 1981). Yet not much was done to regulate the environmental challenges surrounding the nation.

The necessity to stabilize economic evolution and prosperity with environmental protection has become more appropriate now, more than ever. Systematic studies have revealed the damaging effects of the abusive use of the environmental resources. Increased development, expansion in technology and the reckless misuse of natural resources have produced threats that may make the environment uninhabitable for coming generations³ (IPCCR, 2012). Consequently, in an attempt to offer solutions to these sustainability issues, environmental law has become a handy tool for governments and policy makers at both national and international levels and in this case, the Nigerian government in safeguarding the environment. For instance, in August 1987, an environmental catastrophe ignited and energized efforts to pass meaningful environmental legislation. An Italian company imported several tons of toxic industrial waste and deposited it in Koko, Delta State, within Southern Nigeria⁴ (Brook, 1988). The waste leaked into the surrounding environment and resulted in the endangerment of some residents of that community. The hazardous nature of the incident forced the Federal Government to react by enacting the Harmful Waste (Special Criminal Provisions Act 1988)⁵. In the same year, the Military Junta promulgated the Federal Environmental Protection Agency (FEPA) Act. This Act established a Federal Environmental Protection Agency with broad powers to manage and protect environmental resources and to develop environmental research technology (NESREA Act, 2007)⁶. The National Environmental Standards and Regulations Enforcement Agency (establishment) Act, 2007, (Now Cap N164 Laws of Federation of Nigeria (LFN) 2010). This Act which established the National Environmental Standards and Regulations Enforcement Agency (NESREA) was signed into law by President Umaru Musa Yar' Adua and published in the Federal Republic of Nigeria Official Gazette No. 92. Vol. 94 of 31st July, 2007.

This study shall therefore look at several cases of environmental abuses and laws, regulations, statutes, enactments and conventions designed to foster environmental protection in Nigeria, not to mention that Nigeria is presently a party to a plethora of international environmental agreements and conventions, all of which are significant in achieving adequate environmental protection for Nigeria.

The base of environmental policy in Nigeria is contained in the 1999 Constitution of the Federal Republic of Nigeria. Pursuant to section 20 of the Constitution, the State is empowered to protect and improve the environment and safeguard the water, air and land, forest and wildlife



of Nigeria. In addition to this, section (2) of the Environmental Impact Assessment Act of 1992 (EIA Act) provides that the public or private sector of the economy shall not undertake or embark on or authorize projects or activities without prior consideration of the effect on the environment. Prominent environmental problems in Nigeria include oil spillage, gas flaring, impacts of climate change, air pollution, water pollution, the toxic impacts of the unsafe disposal of hazardous wastes and the increased extinction of rare plant and animal species. To discuss these problems, quite a few road maps, action plans, declarations, laws and structures have been agreed internationally and across federal, state and local government levels in Nigeria, to change the trajectory of resource use in Nigeria on the road to a more sustainable future; and to encourage a more bearable use of the environment. To begin with, what is the environment?

OBJECTIVE OF THE STUDY

The target of this paper is for policy makers to be better informed on the areas the regulators have failed and the need for more efforts in terms of a cleaner environment. Clearly there are no specific regulations and penalties on the level of chemical and industrial pollution on the environment in Nigeria. Hence, policy makers need to understand the extent to which abuse on resource and environmental conditions impinge upon the development efforts of Nigeria. Excessive pollution levels damage not only economic assets but human health as well. Excessive levels of pollution-linked illness result in loss of productivity, and excess levels of mortality will imply considerable welfare loss.

DEFINITION OF THE “ENVIRONMENT”

There is at present no general and all-embracing definition for the “environment” as there are numerous definitions of the same subject by different scholars and environmentalists. For the sake of our study, a more expansive view is that the environment includes all the elements of the physical and biological world (including humans), and the interactions between them. These elements may be categorized as ecosystem goods and services. Goods, meaning the actual natural resources themselves (flora, fauna, soil mineral, air, water); while services, include the harvestable products (crops, timber), processes essential to sustain the provision of these resources (nutrient cycles, climate patterns, flooding control) and aesthetic and cultural benefits of ecosystems (recreation).⁷ For the Nigerian government, according to the Environment Protection Act of 1990, the environment consists of all, or any, of the following media, namely the air, water and land, and the medium of air includes the air within buildings and the air within other natural or man-made structures above or below ground (EPA, 1990).⁸

Furthermore, Section 37 of the Nigerian NESREA Act defines the environment to include:

water, air, land and all plants and human beings or animals living therein and the inter-relationships which exist among these or any of them (NESREA Act, 2007).⁹

Generally speaking and for the purpose of this study, there are two different schools of thought on environment and environmental protection. While some scholars and environmentalists view the environment from an ecocentric and nature standpoint, others assign an anthropocentric/human related connotation to the term environment. From an anthropocentric or human point of view, the environment has been defined as the relationship of human beings with water, air, land and all biological forms; the combination of elements whose inter-relationships make up the settings, surroundings, and conditions of life of the individuals and



the society¹⁰ (Bodansky, 2010). From the eco-centric or nature standpoint, the environment is defined as the sum of all external conditions affecting the life, development and survival of an organism¹¹ (Rowe, 1994).

NESREA as an agency of the Federal Ministry of Environment, is charged with the following mandate;

1. The implementation of all environmental laws, guidelines, policies, standards and regulations in Nigeria.
2. To prohibit the use of equipment or technology that undermine environmental quality.
3. The agency also has the responsibility to enforce compliance with the provisions of international agreements, protocols, conventions and treaties to which Nigeria is signatory.
4. The agency also registers consultants who engage in environmental audit, environmental management systems, environmental studies, waste management, environmental Technology and environmental laboratory service.¹² (NESREA Act 2007)

There is a nexus between environment enforcement and environment compliance. Environmental laws are said to be ante or preventive laws that seeks to prevent or mitigate environmental degradation from source and remedial or post damage laws that provide remedies to victims of environmental damage¹³ (Adamu, 2017). While Environmental Impact Assessment is considered to belong to the ante or preventive laws which seeks to prevent or mitigate environmental degradation from source when looking at environmental issues. Enforcement as it relates to environmental standards is seen as a set of actions that the government or others take to attain compliance within the regulated community and to correct and halt situations that endanger the environment or public health. Compliance is the full implementation of environmental requirements.

For example, where there is an effective and responsive Governance Structure and Environmental Regulatory framework, it should be part of NESREA's functions, and their responsibility to mitigate, supervise and check technology that undermine environmental quality, and one aspect that is viciously neglected and not even planned in the Act that they can effectively control and fulfill their statutory functions in both the impact assessment and enforcement is in the oil and gas sector of the Nigerian economy. It is expected of NESREA to be involved in infrastructural evaluation of oil and gas operations equipment from initiation, conceptualization, design and manufacturing/production to installation, commissioning, operations, maintenance and through the life cycle of all oil facilities in Nigeria to the decommissioning of such oil and gas operations, but the Act limits the agency from carrying out responsibility related to the oil and gas industry¹⁴ (Akpan, 2006). The following below general actions could be taken to ensure enforcement of environmental standards:

- (a) Inspections
- (b) Negotiations
- (c) Legal action



- (d) Compliance through educational programmes and technical assistance and subsidies

DEVELOPMENT OF ENVIRONMENTAL REGULATION IN NIGERIA

While environmental degradations in Nigerian spans as far back as 1963, the Koko Dumping Incident in 1988 was an acme to the development of detailed environmental legislations in Nigeria. Prior to the Koko dumping, laws and institutions regulating the environment in Nigeria were offshoots of other areas of law as such scattered around several statutes. With the revolution in Nigeria regarding environmental laws, the Federal Environmental Protection Agency Act (“FEPA Act”) 1988 (amended as Decree No. 59 of 1992), now repealed and replaced by the National Environmental Standards Regulatory and Enforcement Agency (NESREA) Establishment Act of 2007 was promulgated as a Degree. The FEPA Act created the Federal Environmental Protection Agency (FEPA) with the responsibilities of protecting and developing the environment and biodiversity conservation and sustainable development of Nigeria’s natural resources¹⁵ (Olawuyi, 2015). Part II of the NESREA Act contains the functions of the Agency which includes but is not limited to authorization to enforce compliance with laws, guidelines, policies and standards of environmental matters. Such standards would include the federal water quality standards and air quality standards. In carrying out its functions, it is to coordinate and liaise with stakeholders within and outside Nigeria on matters of environmental standards, regulations and enforcement.

NESREA’S REGULATORY PURVIEW

According to the Act establishing NESREA, it has 24 subsidiary regulations under its authority. NESREA regulations attempt to address all environmental resources. Their coverage includes conservation and wise use of wetlands and resources; protection of water catchment areas; minimization of pollution from mining; ozone layer protection; soil erosion and flood control; desertification control and drought mitigation; protection of endangered species in international trade; coastal and marine protection; control of vehicular emissions; surface and groundwater quality control; and sanitation and waste control. In addition, some of the regulations directly address effluent and waste discharges from specific industries, including textiles, steel and metals, industrial plastic and rubber, minerals manufacture, electronics, chemicals and pharmaceuticals, and textiles and footwear¹⁶ (Ladan, 2012).

CHALLENGES

Historically, the NESREA Act of 2007 and its regulations were a good development in view of the relatively ambiguous environmental regulation in Nigeria, despite being reactive in my view. Some argue that the establishment of the body, places Nigeria on “equal” footing with some developed countries’ environmental protection laws, conversely, this is an overestimation. It is striking that in spite of the countless enactments, and especially of NESREA’s regulations that aimed to control industrial emissions and to abate environmental pollution, capricious contamination of the environment and release of waste water has been a persistent practice amongst industrialists till date in Nigeria. Lately, environmental challenges that Nigeria faces include: waste supervision; community health (especially in cities and urban shantytowns); environmental deprivation (including desertification, noise, flood, erosion and deforestation); oil and gas pollution; loss of biodiversity; ecological documentation; the dearth



of enforcement of environmental laws; and other related damaging impacts of climate change. Thus in evaluating the challenges of environmental regulations in Nigeria, it is important to refer to specific natural resources. In this regard, erosion problems in South Eastern Nigeria, deforestation in the mid-western Nigeria, groundwater problems in Lagos and the marine environment in the Niger Delta bear special mention on account of their importance. For instance, LASEPA lamented a paltry 20% industry compliance with effluent limitation standards, resulting in Lagos State's groundwater suffering considerable and escalating pollution¹⁷. Groundwater is particularly an important natural environmental resource in Lagos, Nigeria's major city, where according to Adepelumi, an unreliable water supply plagues the residents and compels them to seek a more permanent water supply till date. Unfortunately, this resource is encountering profound and escalating pollution, in spite of the NESREA regulations and other environmental laws. To date, Lagos does not have a single law dedicated to managing its groundwater¹⁸ (Adepelumi, 2009). Furthermore, NESREA policies provides no punishments against disobedient organizations who violate environmental laws or even real incentives for industries to adopt pollution monitoring and reduction measures or clean technologies. So far, there are no clear formulated policies in Nigeria aimed at coordinating and monitoring the relationship between environmental management and sustainable development of the country. Presently, the environmental protection legislation in Nigeria is poorly enforced. There are no incentives for the adoption of pollution abatement measures and very few disincentives for polluting the environment. To worsen the situation, wastes are disposed indiscriminately especially for small and medium scale industries.

NOISE STANDARDS AND CONTROL

One of the biggest challenges facing Nigeria as a country is noise pollution. Religious organizations and the certain class of automobiles constitute presently in Nigeria an environmental nuisance to humans. Governments at various levels and particularly NESREA seem not to be doing enough to control the noise pollution emanating from automobiles and religious houses. For instance, the design of many cities makes it permanently impossible and difficult to address the problems of noise pollution. There is clearly no attempt by NESREA to enforce her own laws on the environment as it pertains to noise control. Noise effluence is one of the greatest serious factors in assessing urban residents' quality of life. The size of noise effluence all through the city is also being hindered by various other things. A vital difficulty is the quantification of the population's noise-related effects. Again, population growth leads to higher noise generation. The area's connectivity will increase the noise volume generated if transportation routes are used where trucks pass. The negative effects of noise pollution have grown to the point where it is considered a serious health hazard. Noise pollution is a serious concern for the quality of life in metropolitan places across the world. Noise pollution in Nigeria has increased dramatically with the growth of car ownership, industrialization and particularly the presence of worship places in nearly every building and streets in Nigeria.

CONTROL OF BUSH FIRE, FOREST FIRE AND OPEN BURNING

Bush burning is the elimination of the natural vegetation cover that protects the soil surface through the use of fire. This exposes the land to the effect of wind, water erosion and ultraviolet radiation. Bush burning has a damaging effect on the environment, health and the economy. According to Stern, bush burning is one of the major air pollutants that are emitted during bushfire and these include carbon monoxide, carbon dioxide, oxides of nitrogen, oxides of sulphur, particulates and hydrocarbon as a result of incomplete combustion of cellulose



materials¹⁹ (Stern, 1976). The principal thrust of this regulation is to prevent and minimize the destruction of the ecosystem through fire outbreak or the burning of any material that may affect the health of the ecosystem through the emission of hazardous air pollutants. The essence of this law was to ensure that no person or persons shall without approval burn any bush, forest or even engage in any activity that may cause bush or forest fire outbreak except in accordance with the extant laws of NESREA, but this is not the case. For emphasis, the NESREA law says in Part II 4 (1) of the National Environmental (Control of Bush, Forest Fire and Open Burning) Regulations 2011. “That the National Environmental Standards Regulatory Enforcement Agency (NESREA) shall have power to issue permits for bush/ forests and all open burning activities”²⁰. Part II 6 (2) of the law which deals with issuance of permit equally specified that “the Agency shall after receipt of an application for grant of permission to burn bush/forest enter upon and inspect the land in respect of which permission is sought and upon being satisfied that the burning can be controlled and conducted with safety, may subject to the succeeding provisions of these regulations, issue a permit...”²¹. Among the harmful effects of bush burning are global warming, habitat destruction, loss of biodiversity, increase erosion problems, vector-borne diseases, cancer, change in phenology, and economic losses of unbelievable magnitude. For example, Egunjobi cautioned that bush burning has contributed to deforestation with its attendant problems. Frequent bush burning is generally considered to have negative effects on biodiversity²² (Egunjobi, 1971). It is observed that wildlife populations are severely depleted due to bushfire, and animal habitats in unprotected forests and savannas continue to be threatened with the attendant scarcity of meat in Nigeria. Fire is used to chase out, kill and destroy animal habitats, such as African hare, antelope, waterbuck, bushbuck, elephant, grass cutter, giant rat etc²³ (NSBC, 2000). Recurrent bush burning in Nigeria, but particularly in the northern states of Nigeria is gradually becoming a norm, hence the need to bring to notice its dangerous impact.

SOIL EROSION AND FLOOD CONTROL

Erosion menace in Nigeria is at an alarming rate thereby creating an impression that NESREA seem not to be conducting her regulatory roles adequately. For instance, the year 2012 was one of the most challenging for Nigeria in recent history with the unprecedented flood that ravaged several States of the country, affected over 7 million people, displaced 2.3 million people, killed over 363 persons and destroyed or damaged about 597,476 houses²⁴ (GFDRR, 2012/2013). Flooding threatens sustainability because it negatively affects the economy, health, social life and environment. Flooding constitutes a threat to Nigeria achieving the global sustainable development goals. In 2012, Nigeria experienced its worst flooding recorded in recent history. Total losses were put at US\$16.9 billion²⁵ (NEMA, 2013). According to Pius Utomi Ekpei, “Unlike some natural disasters, rainfall flooding can be controlled with proper planning and provision of necessary infrastructure. Nigeria’s flooding is mainly human induced with poor urban planning practices and inadequate environmental infrastructure being contributing factors”²⁶ (Ekpei, 2021).

Nigeria’s flooding is commonly human made and worsened by human-nature interactions. Pitiably or non-existent drainage systems are a major cause of flooding in Nigeria and the regulators of the environment fail to effectively take responsibility. Poor waste management is one accepted factor contributing to flooding in Nigeria. Citizens’ unfortunate attitude to waste disposal and non-provision of waste disposal services by municipal authorities contributes to flooding. It is not surprising to have drains blocked by refuse in urban areas. Corruption is also a factor challenging the regulatory agency from performing effectively. It is not unusual for



officials of NESREA and other sister agencies despite having the responsibility to regulate these environmental duties to accept bribes and overlook issues. These may include unlawful use of land and alteration of the habitat in conspiracy with officials.

PETROLEUM EXPLORATIONS THREAT ON THE ENVIRONMENT

Historically, since 1956 when oil was discovered in Nigeria, petroleum has been the main foreign exchange earner of the Nigerian government. Oil exploration activities have triggered very severe environmental consequences that have necessitated consistent laws and minor regulations that strive to address these environmental consequences. Regrettably too, laws enacted have had limited effect owing to the fact that the NESREA Act does not apply to the oil exploration sector. Unacceptably, the Act specifically ousts the Agency's power in its provision that the Agency shall “. . . enforce compliance with legislation . . . other than in the oil and gas sector”²⁷ (OPA 1990) Thus, The persistence of the pollution problem over many decades, and the apparent ineffectiveness of existing laws, raises a question about the role of law and NESREA as an institution in the sustainability of the environmental standards and other important natural resources. Oil spillages of great magnitude have been reported to have adversely affected local agricultural and fishing activities particularly in the Niger Delta areas. For example, between 1976 and 1988, two thousand reports of spillages, causing an estimated loss of two million barrels of oil, were recorded nationwide²⁸ (Inokoba & Imbua, 2010). Notable oil spills over the years include: FUNIWA-5 Texaco Oil Well Blowout (1980, 37 million liters); Qua Iboe Spill (1998, 40,000 barrels of oil); Bodo Oil Spill (2009, 100,000 barrels of oil). The spills are widespread, affecting more communities, and occurring with alarming regularity²⁹ (UNDP/NDHDR, 2006), Similarly, Ordinioha & Brisibe report that 240,000 barrels of crude oil are spilled yearly with severely adverse effects on water and crops. The spills and resulting devastation portray a vivid picture of a region suffering from poverty and excruciating environmental hardship, instead of transforming into a “gigantic economic reservoir of national and international importance”³⁰ (Ordinioha & Brisibe, 2013).

Regrettably, oil pollution is a chronic and long-standing issue for the region, which has undercut that enviable status. Groundwater, a major source of potable water supply for residents of the Niger Delta, also suffers from considerable oil pollution³¹ (Amangabara & Njoku, 2012). Yemi Osinbajo and Olukonyisola Ajayi also lend credence to this developments when they wrote that, the Ogoni people, who occupy a significant part of the affected areas, suffer some of the worst cases of ecological devastation, because their agricultural and aquatic environments are virtually destroyed³² (Osinbajo & Ajayi, 1994).

WATER POLLUTION AND THREATS TO HEALTH

Water pollution have continued to generate unpleasant implications for health and economic development in Nigeria and the consequences are enormous of which include the death of many citizens. It is further said that, the fast growing populations coupled with the deteriorating environment are some of the factors responsible for this trend¹. There are an estimated 4 million cases of guinea worm, while about 500 million cases of trachoma which leads to blindness of about 8 million people each year³³ (Hoddinott, 1997). According to a World Bank study, the impact of water pollution on variables that determines health status of the household members posited that an improvement in water quality has a direct effect on people's health via reduced exposure to water-associated diseases³⁴ (World Bank Study Report, 1993). Of all the costs of urban environmental degradation, damage to human health is by far the highest. There is a



straight connection between metropolitan environmental filth and public health in terms of water related diseases such as diarrhea, dysentery, cholera and typhoid. Thus, it is my view and perhaps also evident that the fast growth of urban centers in Nigeria, coupled with the development of unstructured infrastructural and social services have created an unhealthy environmental situation in many parts of the country which is becoming harmful and inimical to healthy living.

Latest lessons have revealed that animal to humans diseases are yet to be eliminated or fully controlled in above 80 percent of the public abattoirs in Nigeria³⁵ (Olugasa, Cadmu & Atsanda, 2000). Thus, they pose serious environmental health risk to the extent that there is hardly any day the social media in Nigeria fails to warn citizens against eating bush meats and cow meats from local abattoirs. Some of these infectious diseases warned against are tuberculosis, colibacillosis, salmonellosis, brucellosis and helminthoses. These are common examples of zoonosis prevalent in the slaughtered cattle population in south-western Nigeria.

CONCLUSION

Historically, Nigeria has been more dedicated to post-environmental response than regulation and control. Decreasing and addressing exposure to environmental risk should be a national priority in the Nigerian government's disaster risk management agenda. It is agreeable that environmental regulation in Nigeria has progressed from a state of virtual non-existence to its present state of environmental laws and institutions at federal, state, local government and with control of environmental management in environmental protection agencies spread across the nation. Ostensibly the mixture of environmental laws, and especially NESREA and its relevant regulations, have not been as effective as desired. As a result, the resource has continued to be polluted, across all areas and sector's processes³⁶ (Adeyemi, Oloyode & Oladiji, 2007). It must be stated that the National Environmental Standards and Regulations Enforcement Agency (NESREA) is handicapped by the limited environmental information available, the array, nature and diversity of information required as well as the scope of the work itself constitute a big restraint. At a time when environmental health damage is worsening in many cities, careful quantification of the damages will help policymakers address environmental challenges adequately. Again, estimation of the problems would help set priorities, mobilize public awareness, and encourage communication across different areas and interest groups.

Furthermore, in the grade of Nigeria's environmental difficulties by NESREA in the context of socio-economic, cultural and ecological problems, environmental pollution of water (industrial effluent, chemical fertilizers, human waste, eutrophication, deposits by run offs, oil spillage, etc) and issues of health (water borne diseases such as cholera, typhoid, dysentery brought about by the use of contaminated water), these areas have been deemed critical and therefore deserves a place in any master plan for environment and natural resource regulation. Similarly, appropriate action to mitigate noise pollution, bush burning and fires but most importantly, the flooding of our environment requires a deliberate approach to curtail. Presently, there is no flood management policy in Nigeria. The lack of relevant legal and policy frameworks from the challenges raised is an indication of the low importance given to controlling and managing the environment in Nigeria.



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