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# LIMITATIONS AND DRAWBACKS OF NIGERIA's ENVIRONMENTAL PROTECTION LAW (1980 – 2010)

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**ABSTRACT**
Ever since the UN Stockholm conference on the environment in 1972, it took Nigeria about sixteen good years before a viable environmental protection law came upstream. Environmental laws in Nigeria where however given a boost by virtue of the Koko waste dump incidence, and since then, various laws have been enacted to protect the Nigeria environment. In spite of the existence of environmental protection laws in Nigeria, various environmental anomalies, hazardous to the health and well–being of the people and biodiversity have been on-going. The paper is a critical examination of the environmental protection laws in Nigeria. It situates the Niger Delta in this context and argues that environmental protection laws in Nigeria are ineffective because politics is at work, and issues about the environment have being politicized. It is strongly recommended here that the people and communities should demand for an EIA report before any project is carried out on their land. Also, the paper calls on the government to be responsible and accountable to the people by ensuring proper implementation of environmental laws in Nigeria.
**Key words**: environment, environmental protection law, environmental impact assessment, Niger Delta, FEPA, EIA.

## INTRODUCTION

Prior to the early 1970's issues of the environment where considered national issues, as States sort for ways to handle Trans – bounder environmental issues politically. The development towards a more integrated legal approach to the issue of the environment, particularly as regarding its management owes perhaps much to the political push generated by two major international conferences organized by the United Nations.

The starting point of this is anchored on the Human Environment Conference held in Stockholm in 1972. Thus, it is on records that the conference marked the worldwide recognition of the environmental crises of the time as a matter of international concern which definitely required an integrated approach. In this conference, a declaration on the human environment was adopted. Twenty years after, the 1992 United Nations Conference on Environment and Development

(UNCED), was held in Rio De Janeiro. This however constituted the second major milestone in the development of International Environmental Law (Glasbergen & Blowers, 1995).

Here, a linkage between the environment and development and the need for sustainable development was emphasized. This marked the emergence of Agenda 21 – a comprehensive plan of action to be taken globally, nationally and locally by organizations of the United Nations System, Governments, and major groups in every area in which human impact on the environment (Strzelczyk, and Rothschild, 2009; Shrader – Frechette, 1994). From then on, a growing concern about the environment and development has been on. The expectation is that all States and Nations of the World would begin to see the need to protect their environment with viable legal frameworks for sustainable development. After the Stockholm conference, many countries of the world became nonchalant with the issue of the environment. Particularly, it took Nigeria about sixteen years to formulate an environmental law to protect her citizens and their environment from poisonous substances. It is such that the people continued to relax in the mist of pollution and contaminations, whereas Multinational Corporations like Shell BP, now SPDC continued to degrade, and pollute the Niger Delta with deleterious activities without fear or favour knowing too well that the country had no protective environmental laws.

Consequent upon the dumping of about 3,884 tons of toxic and hazardous waste in Koko, a small village five kilometers from the coast in the former Bendel State of Nigeria, did the Nigerian State awoke from slumber to the promulgation of environmental protection laws in Nigeria. To this end, this work will examine the limitations and drawbacks of the Nigeria Environmental Protection Laws since 1980 to 2010. It is argued here that Environmental Protection Laws in Nigeria are ineffective. This ineffectiveness, the work further maintains is as a result of politics and the politicisation of issues about the environment. Before forging ahead in this work, it would be worth while to have an understanding of what the environment is. We have organized the study into segments. Immediately following the introductory segment, we discuss the environment; in the third segment we provide a historical background of environmental laws in Nigeria. Fourthly, we also discuss the new beginning of environmental laws in Nigeria, the fifth and sixth segments deal with the Federal Environmental Protection Agency Act and the Environmental Impact Assessment (EIA) Act, followed by the concluding remarks.

**WHAT IS ENVIRONMENT?**

The term environment has been defined as the conditions, circumstances and influences under which an organization or system exist (Winpenny, 1991). It is frequently used to refer to the circumstances in which man lives. The environment includes everything around us. It includes the trees, forest, birds, rivers, houses and even the people we see. The environment cannot be understood to mean just the trees and rivers, as some naturally say. Adeyemo (2008) posits that environment is usually understood to mean the surrounding conditions that affect people and other organisms, interactions between people and their environment. Salau (1993) opines that as man affects the quality of the environment, so the environment affects the quality of man's life.

The environment interplays with man, as well as man the environment. The environment is not an isolated system but one which interacts within a complex and interdependent social and economic force. Resources for man are found in the environment; as such man interacts with the environment to gain access to social survival in terms of food and clothing. As a result of the growing and ever increasing population, with concomitant migration to urban centres, man's interaction with the environment has equally increased. Hence this increase has led to the destruction of the environment. This comes in manifold, especially in the production of food. Preparation for planting season compels man to engage in bush burning – a process perceived as enhancing soil fertility, but that actually increases agricultural emissions of methane and carbon dioxide (CSE, 1999).

These emissions are a major contributor of green house gases (GHG) in the atmosphere which leads to global warming and climate change bringing about forces like "Haiyan" in the Philippines. Again, industrial production of goods especially oil exploration and exploitation has astronomically degraded the environment. The flaring of gas, oil spillage, etc are all ways man has provoked a great change to the negative, on the environment. These negativities created by

man on the environment has provoked hatred for the human race in certain quarters, and a religion dedicated to the worship of the environment very well sees man in the light of negativity. This religion called "Gaia"- Greek word for Mother Earth, believes and teaches the interconnectedness of everything save man. Man is a destroyer of the good of mother earth; as such every little thing destroyed by man naturally translates to destruction and unbalancing of whole ecology. To continue the steady state of ecology therefore requires only one simple solution, and this is rightly stated by Dave Foreman, the founder of Earth First. According to him;

> *"Phasing out the human race will solve every problem on earth, social and environmental."* (O'Leary, 2003:13)

All these scenarios bringing about negativities on the environment has however led to the need to do things differently. Thus, this has provoked a graduation from the concept of development for the environment to that of sustainable development. Meaning that we must not compromise the ability of the future generation from seeing or enjoying what we are relishing. The concept of sustainable development of the environment was given clear definition by the World Commission on Environment and Development (WCED). According to the commission, sustainable development is:

> *"Development that meets the needs of the present without compromising the ability of future generations to meet their own needs*" (WCED, 1987).

Meaning that sustainable development is an imperative to protect the natural resources on which human life depends by integrating human development and environmental sustainability going forward (Melamed, and Ladd, 2013). It also involves making progress as well as right decisions on meeting the needs of the poor in every society. Therefore, States are expected to formulate significant policies and laws that stimulate sustainable development in all facets of the environment, otherwise called environmental protection laws. Pursuant to this, the 1999 constitution, according to Makinde and Adeyoke (2007) empowered the state to protect and improve the environment, safeguard water, air and land, forest and wildlife of Nigeria.

**ENVIRONMENTAL LAWS IN NIGERIA: HISTORICAL BACKGROUND**

Before the 1980's there was a total lack of awareness concerning the interface between environmental protection and development. Important issues like biodiversity, effluent limitations, pollution abatement and sustainable development did not form part of the general public discourse in Nigeria. In fact, one would argue, which we do here that at the official level, there was no effective comprehension of the interrelatedness of environment and development. The rationale behind this position of ours is that by this time, there was no deliberate national policy aimed at protecting the environment while ensuring the conservation and sustainable use of natural resources in the country. By extension, it however means that by this very period there was the absence of an agency entrusted with the responsibility for the protection of the Nigerian environment. Vikram (2008) is of the view that like colonial Nigeria, post independent Nigeria of the early 1980s cum 1990s was without substantial understanding of environmental problems and the dangers it could pose.

Apparently, subsequent efforts of the Nigerian State in environmental protections were geared primarily either towards safety or the protection and conservation of the economically important natural resources to the detriment of the otherwise very significant ones. The following laws listed below, underscores this fact:

- Oil pipeline Act 1956
- Forestry Act 1958
- Destruction of Mosquitoes Act 1958
- Mineral Act 1958 Cap. LFN 1990
- Mineral oil (safety) regulations 1963 Cap 350 LFN 1990
- Oil in Navigable water Act 1968 Cap 339 LFN 1990
- Endangered Species Act Cap 108 LFN 1990
- Quarries Act Cap 385 LFN 1990 (Adegoroye, 1995).

From the foregoing, there were actually no laws on industrial pollution and hazardous wastes. There were equally no laws protecting the oil bearing communities, post – discovery of oil from the harsh techniques and methods of exploiting crude in the Niger delta.

**ENVIRONMENTAL LAWS IN NIGERIA: THE NEW BEGINNING**

In this section, we will be looking at the various environmental protection laws that have been enacted from the 1980's to recent time. We hope to make a list of these laws, perhaps discuss generally on them and placing maybe two on the context to show their drawbacks. We will equally be juxtaposing the Niger Delta in this context.

Thus, the turning point for new beginning in environmental protection laws in Nigeria dates back to 1987 when a toxic waste ranging to the ton of 3,884 metric tons was dumped in Koko; a small port town in the southern part of Nigeria. Immediately, the government responded by pledging commitments which raised hopes for sound environmental management in Nigeria (Adegoroye, 1995). Subsequently, what emerged was the harmful waste (special criminal provision) decree 42 of 1988. The decree prohibited 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 prescribed severe penalties for offenders (Adibe and Essagha, 1999). In addition to the harmful decree, an encompassing legislative framework for environmental protection was deemed necessary. Hence, the emergence of decree 58 of 1988, therefore establishing the Federal Environmental Protection Agency (FEPA). Clearly, after the Koko incidence, a lot of environmental promulgations were enacted in Nigeria, as shown below:

- National policy on the environment 1989
- National guidelines and standard for environmental pollution control in Nigeria 1991
- National effluence limitation regulations 1991
- Pollution abatement in industries facilities generating waste regulations. 1991
- Waste management regulation. 1991
- Environmental impact assessment decree. Decree 86. 1992
- Federal solid and hazardous waste management regulation. 1991
- Hydro carbon oil refineries Act. 2004
- Petroleum Act. 2004
- Pest control production (special powers) Act. Cap 9 LFN 2004
- Animal Diseases (Control) Act. Cap 17. LFN 2004
- National Environmental standards and regulation enforcement Agency (NESREA) Act. 2007

The above shows that after the Koko incidence, a lot of laws have been put in place by the Nigerian State to protect the environment and checkmate environmental ills. In spite of all these environmental legislations and policies geared towards the protection and conservation of the environment, environmental despoliation and degradation has however continued to be on the increase and to a large extent is worse in the Niger Delta region. The blame according to the World Bank (1995) is as a result of the lack of the enforcement of environmental laws. It is our position in this work that environmental laws in Nigeria are ineffective, to the degree that culprits even go unpunished. Thus, corroborating this is Ibaba (2010), who argues that enforcement Agencies lack the mechanism for monitoring and evaluating the impact of industrial pollution with a view to controlling them.

The lack of enforcement of environmental laws is seen as the most fundamental causative of the inability of the environmental legislations to effectively promote environmental decency and sanity in Nigeria particularly the Niger Delta area (Adibe & Essagha 1999). In this work however, the rationale behind these failures is sincerely "politics". Politics as a concept in Nigeria is different from the understanding one may get, say from the developed world. Here, politics is all about selfishness and personal aggrandizement (Nduonofit and Nkpah, 2011). Indeed, politics in the Nigerian State is seen as a means of accumulating wealth (Ibaba, 2010). The aftermath of this accumulation is the privatization of the states for the pursuit of private interest. In order words, the privatization of the environment. What we mean here is that the environment has been politicized; as such it is seen as the private property of certain individuals who own and control

large industries in the country. Their game is the politics of control, and control here means the control of the environmental Agency in Nigeria.

At this juncture, we take a look at two of these environmental legislations so as to divulge their limitations and drawbacks.

**The Federal Environmental Protection Agency Act**

Decree No 58 of 1988 established this agency as part of the Nigerian Government determination to implement appropriate projects intended to improve eco – development problems in the country. The function of the agency is defined in section 4 of the act:

> *"Protection and development of the environment in general and environmental Technology, including initiation of policy in relation to environmental research and technology."*

The general function of the organization is equally specified in the same section. Section 20 of the law prescribes penalties for the discharge of hazardous substances into the environment. There is also a prescription of #100,000 fine or 10 years imprisonment for individual offenders in subsection 2 of section 20. Whereas subsection 3 prescribes a fine not exceeding #500,000 and an additional #10,000 for corporate offenders. So what is the limitation and drawback of this law? The wrong here is that the disciplinary measures are not evidently stringent to compel compliance. This law is unable to adequately address environmental problems. Issues such as the use of dangerous chemicals for fishing, logging and inimical agricultural practices are obviously missing in the law. The FEPA Act does not even have a definition for what is known as waste (Ibaba, 2010).

Furthermore, given the impressive impact of the oil sector on the environment of the oil bearing communities, in terms of gas flaring, oil spillage and what you have, the provision of the law on the industry is wholly inadequate. One can confidently say here that the wide gap created by the provisions of this law, makes it defective and ineffective. Hence it is exploited to avoid punishment to the detriment of the environment, and this has induced environmental degradation in the Niger delta and thus undermining the source of livelihood of the people of the region, by so doing provoking poverty. The rational behind this low coverage of the petroleum industry by this law can be explicated on the bases of the political economy of the petroleum industry. Politicians who represent foreign capital in Nigeria politicize everything, and certainly politicized the formulation of these laws. In order words, the law serves perhaps the interest of certain "wealthy elements" vis – a – vis the ordinary man who exist in the oil bearing communities as it where.

In recent times the National Environment Standards and Regulation Enforcement Agency (NESREA) Act of 2007 eventually replaced the Federal Environmental Protection Agency (FEPA) Act. FEPA failed, and has now given room for NESREA. According to Nduonofit et al (2012) FEPA is a victim of political high-jacking or rather, was serving a different purpose. The conundrum becomes, what difference can NESREA make, given the fact that those behind it are actually the "degraders"?

**Environmental Impact Assessment (EIA) Act**

This particular law outlines the various procedures and methods to be considered before the erecting of certain public or private projects. In order to realise the stipulated objectives of the Act, the law authorizes FEPA to facilitate the assessment of projects. It is required, in accordance with the provision of the EIA Act, that before any project is initiated, the Impact Assessment must of necessity be considered. According to section 2 (i) of the Act:

> *The public or private sector of the economy shall not undertake embark or authorize project or activities without prior consideration, at an early stage, of their environmental effect (EIA Act, 1992).*

Furthermore, the same law equally prescribed the minimum content of Environmental Impact Assessment as thus:

i. A description of the proposed activities
ii. A description of the potentially affected Environment including specific information necessary to identify and assess the environmental effect of the proposed activities.

iii. A description of the practical activities as appropriate.
iv. An assessment of the likely or potential environmental impact of the; proposed activity and the alternatives, including the direct or indirect cumulative, short term effect.

It is clear from the aforementioned that the Federal Ministry of Environment holds the four Aces. The Ministry is responsible for evaluating EIA submissions, consult and make final decisions bordering on the environment. But from all indication concerning the environment in Nigeria, particularly the Niger Delta, it shows that the law is not strictly adhered to by the private sector (Ibaba, 2010). To a large extent, various unethical practices which are not in tandem with the environmental law are apparent.

The EIA laws are very clear, and if anything is to go by the law, then it means such environmental despoliation ongoing in the country would not have been. Manufacturing companies hardly undertake EIA for their manufacturing activities. In many cases, these activities have enormous impact on the environment. Like we said earlier, oil companies actually embark on impact assessment before commencing any project; but the wrong here is that they usually violate the rules. How? The project might have gone far before they actually embark on EIA (Environment Watch, 2002). For instance, Environment Watch (2001), reports that Shell Petroleum Development Company (SPDC) actually commenced the multi – Billion Dollar project – the Estuary (Amatu) project in Bayelsa State without an Environmental Impact Assessment. Such impunity is the rationale behind various degradations and environmental threatening situations experienced in many communities in the Niger delta. On the other hand, Government at all levels are equally defaulters. Their activities in terms of development project erection are usually incongruous with the dictates of the law. In fact they seldom carry out an EIA in their various projects, and where they do, it is merely a semblance of an EIA.

What is more is that, the EIA law is bedeviled, perhaps the rational behind its ineffectiveness. In the main, the obvious thing to note about the law is the exclusion of certain projects from mandatory EIA studies. According to Ibaba (op cit), this can be seen in section 15, sub – section 1 which states:

i. In the opinion of the Agency, the project is in the list which the President, Commander – in – Chief of the armed forces or the Council is of the opinion that the Environmental effect of the project is likely to be minimal.
ii. The project is to be carried out during National emergency for which temporary measures have been taken by the government.
iii. The project is to be carried out in response to circumstances that in the opinion of the Agency, the project is in the interest of public health of safety.

Sub – section 2 further states:

> *"for greater certainty, where the federal, state or local government exercises power or performs a duty or function for the purpose of enabling project to be carried out, an environmental assessment may not be required….."* (EIA Act, 1992).

Essentially, this is politics, and the environment has been politicized. One may ask, which we do, what then is the essence of the EIA Law when a waiver is given to a project that may impact negatively on the people? This shows that while the EIA law exists, 'special consideration' is still given to projects that may degrade the environment immensely. Hence, such legislation is legislation for the "elites".

Besides, we are of the view that the provision of the law with regards to punishment of offenders just like that of FEPA Act is equally very moderate to provoke strict compliance. For clarity purpose, section 62 of the Act provides #100,000 fine or 5 years imprisonment for individual offenders and #1 Million Naira for Corporate offenders. This amount is gravely infinitesimal to deter big corporations. To this end, we argue that the law is made politically to favor politicians and their cohorts in the private sector. These giant corporations however have these political classes in their pay roll. Hence environmental laws are meant to exist, and not to dissuade or compel compliance in Nigeria. After all, compliance is paying a fine of #1 Million Naira. To

crown it all, our submission here is that environmental laws in Nigeria has aided the destruction and degrading of the environment especially the Niger Delta environment, rather than protect it.

## CONCLUSION

Agenda 21 is all about taming the environment for sustainability. A degraded environment obviously means that the future generation is not in the scheme of things, and above every other thing is the clear fact that hazardous environment would only lead to destruction of livelihood, and even life. The essence of environmental legislation is to adhere positively to global environmental trend.

In this work we have noted that environmental legislation in Nigeria is ineffective and is shrouded with defects and this is as a result of political interest. The law which is to actually protect the environment has rather turned to favor polluting corporate bodies to the detriment of the environment as well as the people. Thus, the defects and incapability of the law to protect is generally apparent in the state of the Niger Delta environment.

It is obvious from our discussion that the limitations and drawbacks of these laws are clear, little wonder in recent time the government had to establish the National Environmental Standards Regulation Enforcement Agency (NESREA) to replace FEPA. Therefore, the work recommends that government should be responsible and accountable to the people on democratic principles and ensure the total enforcement of environmental protection laws in the country. Again, the people and communities (especially in the Niger delta areas) on whose environment various projects would be carried out or erected upon should insist on seeing a comprehensive EIA report before any work commences on the environment. With such insistence, the Nigerian society would experience social dynamics in the sustainable implementation of environmental laws in the country.

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