

ENVIRONMENTAL PROTECTION: THE CRUX OF UBIQUITY OF LAWS IN NIGERIA

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ABSTRACT

The concept of environmental protection in Nigeria has seemingly been caught up in the quagmire of the country's cliché of corruption. Stemming from the national outcry to probe the expenditure of funds allocated for defence (particularly for the fight against Boko-haram) in the national budget, as well as the demand to probe past administrations of the Niger Delta Development Commission, it seems appropriate to allude that despite the funds expended and the implication of further huge cost, the issue of environmental protection in the Country has been enmeshed in the quagmire of favouritism, otherwise christened 'man know man', where public officials through the back door approve short-cuts for some individual and corporate personalities whose activities adversely impact the environment. This is notwithstanding the existence of several laws with the object to checkmate such activities. This work advocates for laws of quality, rather than quantity, proper review or considerations respecting the penalties to be stipulated before enactment of any laws, and the foresight of an end result of a law, by establishing strong institutions of enforcement, rather than beginning a legal regime that may never be enforced.

Keywords: Environment, Laws, Niger Delta, Nigeria.

INTRODUCTION

During and long after the era of colonialism in Nigeria, the issue of protection and development of the environment was relegated to the background. Strictly, there was no particular law enacted primarily on 'environmental protection'. Matters affecting the environment were seen as and treated under the traditional common law tort of nuisance.¹ Consequently, it was always a difficult task to seek redress in private nuisance.² Cases of nuisance were most of the times initiated and litigated only by the Attorney-General in the public interest; thereby making it difficult to the effect that where an individual litigant wants to prove private nuisance, he must show that the extent of the nuisance suffered by him, beyond that suffered by other people in the same vicinity.

¹ PB Ajibola, 'Protection of the environment through law' in F Shyllon (ed), *The Law and Environment in Nigeria* (Ibadan: University Press, 1989) p. 7.

² This is predicated on the rule that only the Attorney-General can institute an action for nuisance in the interest of the public. For an individual to seek redress and claim damages, he must prove that the damage suffered by him was over and above that suffered by the ordinary members of the public.

Interestingly, long before its renaissance on environmental protection awareness in 1987, Nigeria had a large compendium of laws aimed at prohibiting air and water pollution. However, despite the existence of numerous laws on environmental protection, it is very worrisome that rather than enforce the laws to the letter for the common and collective good of Nigerians and their environment, short-cuts are devised by the users of the environment who require certain permits in collusion with some public officers who should protect or enforce those laws. Consequently, the several extant laws on the protection of the environment in Nigeria, rather than proffer the needed solution appear to constitute serious puzzling problems in themselves. It is the aim of this research to make recommendations on how to ensure that the extant laws on environmental protection serve the purpose for which they are enacted.

THE DEVELOPMENT OF THE ENVIRONMENTAL PROTECTION LAWS

During the colonial era in Nigeria, the legal instruments focused on prohibiting water and air pollution, and thereby created the offence of trespass and nuisance, for example, the Waterworks Act of 1915 and the Criminal Code Act of 1916.³ In 1917, the Public Health Act was proclaimed to prohibit the fouling of water and the introduction of any vitiating thing into the atmosphere.⁴ However, the Public Health Act did not go beyond mere abatement of nuisance.⁵ There were also the Carriage of Goods by Sea Act of 1926⁶; Quarantine Act⁷; and Hides and Skin Act.⁸

In the 1960s following Nigeria's attainment of independence status in 1960; preceded by the discovery of crude oil in commercial quantity in 1958⁹, it was apparent that crude oil which is mainly exported by water had started polluting the Nigerian waters. Consequently, in order to criminalise water pollution caused by oil, the Oil in Navigable Waters Decree, 1968¹⁰ was promulgated. This was also to give effect to the International Convention for the Prevention of Pollution of the Sea by Oil, 1954 (as amended) to which Nigeria acceded to earlier that year.¹¹ Similarly, the Petroleum Act, 1969 was promulgated and it empowered the Minister of Petroleum Resources to make regulations for the prevention of pollution of water courses and the atmosphere.

Following the remarkable industrial growth associated with the oil boom,¹² the 1960s, 1970s and early 1980s witnessed more regulations respecting the environment. These include all

³ *Impari materia* with the Criminal Code Act, Cap C 38, LFN 2004; Ss. 245, 247 and 248 of the Criminal Code. Particularly S. 247 provides: 'Any person who- (a) vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood, or passing along a public way; or (b) does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, whether human or animal; is guilty of a misdemeanour, and is liable to imprisonment for six months'.

⁴ PB Ajibola, *opcit*, p. 42.

⁵ SMA Belgore, 'The need for environmental protection law in Nigeria' in F Shyllon (ed) *The Law and Environment in Nigeria* (Ibadan: University Press, 1989) p. 4.

⁶ Cap. C 2, Laws of the Federation of Nigeria (LFN), 2004.

⁷ Enacted on 27/5/26, now Cap.Q1, LFN, 2004.

⁸ Cap.H3, LFN 2004, enacted on 6/10/42.

⁹ It is now of common knowledge in Nigeria and the world over that crude oil was discovered first in 1956 in Oloibiri in the now Bayelsa State of Nigeria.

¹⁰ *Impari materia* with the Oil in Navigable Waters Act, Cap. O 6 LFN, 2004

¹¹ Ajibola, *loc cit*.

¹² MT Ladan, *Cases and Materials on Environmental Law and Policy* (Nigeria: Econet Publishers, 2004) p. 2.

the laws promulgated or enacted on environmental issues before the year 1987, namely: African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act¹³; Agricultural (Control of Importation) Act;¹⁴ Animal Diseases (control) Act;¹⁵ Associated Gas re-injection Act;¹⁶ Bees (Impact Control and Management) Act;¹⁷ Civil Aviation Act;¹⁸ Customs and Excise Management (Disposal of Goods) Act;¹⁹ Endangered Species (Control of International Trade and Traffic) Act;²⁰ Energy Commission of Nigeria Act;²¹ Excise (Control of Distillation) Act;²² Exclusive Economic Zones Act;²³ Explosives Act;²⁴ Factories Act;²⁵ Hydrocarbon Oil Refineries Act;²⁶ Land Use Act;²⁷ Mines and Quarries (Control of Buildings, Etc.) Act;²⁸ Nigerian Atomic Energy Commission Act;²⁹ Nigerian Mining Corporation Act;³⁰ Nigerian Shippers' Council Act;³¹ Nigerian Steel Development Authority Act;³² Oil in Navigable Waters Act;³³ Oil Pipelines Act;³⁴ Oil Terminal Dues Act;³⁵ Pest Control of Production (Special Powers) Act;³⁶ Petroleum Act;³⁷ Petroleum Products and Distribution (Anti-Sabotage) Act;³⁸ River Basins Development Authority Act;³⁹ Standards Organisation of Nigeria Act;⁴⁰ Territorial Waters Act;⁴¹ Water Resources Act,⁴² etc.

THE ENACTMENT OF PROACTIVE LEGISLATION

¹³ Cap A 9, LFN 2004, ratified in 1980.

¹⁴ Cap A 13, LFN 2004, enacted in 1964.

¹⁵ Cap A 17, LFN 2004, promulgated in 1988.

¹⁶ Cap A 25, LFN 2004, enacted in 1979. This law has however been repealed in light of the Petroleum Industry Act, 2021 which now allows for flaring of gas for what the law terms 'facility start-up and other strategic reasons'.

¹⁷ Cap B 6, LFN 2004, promulgated in 1970.

¹⁸ Cap C 13, LFN 2004, enacted in 1965.

¹⁹ Cap. C 46 LFN 2004, promulgated in 1970.

²⁰ Cap E 9, LFN 2004, promulgated in 1985.

²¹ Cap. E 10, LFN 2004, enacted in 1979.

²² Cap. E 16, LFN 2004, enacted in 1964.

²³ Cap E 17, LFN 2004, promulgated in 1978.

²⁴ Cap. E 18, LFN 2004, enacted in 1964 and its Regulations in 1967.

²⁵ Cap. F 1, LFN 2004, promulgated in 1987.

²⁶ Cap H 5, LFN 2004, enacted in 1965, now repealed by the Petroleum Industry Act, 2021.

²⁷ Cap L 5, LFN 2004, promulgated in 1978.

²⁸ Cap. M 13, LFN 2004, promulgated in 1970.

²⁹ Cap. N 91, LFN 2004, promulgated in 1976.

³⁰ Cap N 120, LFN 2004, promulgated in 1972.

³¹ Cap. N 133, LFN 2004, promulgated in 1977.

³² Cap. N 134, LFN 2004, promulgated in 1971.

³³ Cap O 6, LFN 2004, promulgated in 1968.

³⁴ Cap O 7, LFN 2004, enacted in 1958.

³⁵ Cap. O 8, LFN 2004, enacted in 1965.

³⁶ Cap P 9, LFN 2004, promulgated in 1968.

³⁷ Cap P 10, LFN 2004, promulgated in 1969.

³⁸ Cap P 12, LFN 2004, promulgated in 1975.

³⁹ Cap R 9, LFN 2004, promulgated in 1986.

⁴⁰ Cap. S 9, LFN 2004, promulgated in 1970.

⁴¹ Cap T 5, LFN 2004, promulgated in 1967.

⁴² Cap W 2, LFN 2004, promulgated in 1993.

In 1987, following the dumping of toxic waste in Koko village⁴³ in the now Delta State,⁴⁴ by an Italian company Nigeria's consciousness to environmental protection was re-awakened. The incident caused widespread airborne inflammatory skin diseases; drought and extinction of many crops varieties around the region. Consequently, in 1988, the Harmful Waste (Special Criminal Provisions) Decree, No. 42⁴⁵ was promulgated by the Military junta, headed by General Ibrahim Badamosi Babangida. This Decree facilitated the birth and establishment of the Federal Environmental Protection Agency (FEPA).⁴⁶ The FEPA became the lead Agency which was for the first time charged with the administration and protection of the environment of Nigeria.

In 1999, FEPA and other relevant Departments in other Ministries were merged to form the Ministry of Environment, but without an appropriate enabling law on enforcement issues. This situation created a vacuum in the effective enforcement of environmental laws, standards and regulations in the country.⁴⁷ Consequently, there was need to either amend the FEPA Act or create a new Agency to be statutorily empowered to enforce the regulations. Thus, in line with the Constitution of the Federal Republic of Nigeria, 1999 (as amended),⁴⁸ the National Environmental Standards and Regulations Enforcement Agency (NESREA)⁴⁹ was established in 2007 as a parastatal of the Federal Ministry of Environment, Housing and Urban Development. Accordingly, the NESREA Act repealed the FEPA Act.⁵⁰ Today, NESREA is the enforcement Agency for environmental standards, regulations, rules, laws, policies and guidelines in Nigeria.⁵¹

Since the promulgation of the FEPA Act, which was later collapsed into the NESREA Act, plethora of other legal instruments on the protection of the Nigerian environment has continued to emerge; examples of which include: Environmental Impact Assessment Act;⁵² Fertilizer (Control) Act;⁵³ Inland Fisheries Act;⁵⁴ International Convention for The Prevention of Pollution from Ships, 1973 and Protocol (Ratification and Enforcement) Act;⁵⁵ International Convention on Civil Liability for Oil Pollution Damage (Ratification and Enforcement) Act;⁵⁶ International Convention on The Establishment of An International Fund for Compensation for Oil Pollution Damage 1971 as Amended (Ratification) Act;⁵⁷ National Agency for Food and Drug Administration and Control Act;⁵⁸ National Drug Law

⁴³ Until the Koko incident which preceded the promulgation of the Federal Environmental Protection Agency (FEPA) Decree, there was no adequate legal response to the emerging grave problems of environmental abuse in Nigeria. The responses were limited to the various environmental Sanitation Edicts enacted by most States governments which did not go beyond the aesthetic aspect of the national land scape. See M Ikhariale, 'The Koko incident, the Environment and the Law' in F Shyllon, (ed) *The Law and Environment in Nigeria* (Ibadan: University Press, 1989) p. 75.

⁴⁴ Formerly part of old Bendel State, which became Edo State, on the 27th day of August, 1991.

⁴⁵ Now Harmful Waste (Special Criminal Provisions) Act, Cap H1, LFN 2004.

⁴⁶ Created by the now repealed FEPA Act, Decree No. 58 of 1988, Cap F 10, LFN 2004.

⁴⁷ Retrieved January 30, 2016 from <http://www.nesrea.org=faq.html>

⁴⁸ Section 20 of the said Constitution provides: 'The State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria'.

⁴⁹ Signed into law by late President Umaru Musa Yar'Adua, GCFR, the NESREA Act is published in the Federal Republic of Nigeria Official Gazette No. 92, Vol. 94 of 31st July, 2007.

⁵⁰ NESREA Act, 2007 s. 36.

⁵¹ NESREA Act, 2007 s. 1(2).

⁵² Cap E 12, LFN 2004, promulgated in 1992.

⁵³ Cap. F 25, LFN 2004, promulgated in 1992.

⁵⁴ Cap I 10, LFN 2004, promulgated in 1992.

⁵⁵ Ratified in 2007.

⁵⁶ Ratified in 2006.

⁵⁷ Ratified in 2006.

⁵⁸ Cap. N 1, LFN 2004, promulgated in 1992.

Enforcement Agency Act;⁵⁹ National Oil Spill Detection and Response Agency (Establishment) Act;⁶⁰ National Steel Raw Materials Exploration Agency Act;⁶¹ Niger-Delta Development Commission (NDDC) Act;⁶² Nigeria Extractive Industries Transparency Initiative (NEITI) Act;⁶³ Nigeria Hydrological Services Agency (Establishment) Act;⁶⁴ Nigerian Airspace Management Agency (Establishment, etc) Act;⁶⁵ Nigerian Civil Aviation Authority (Establishment, Etc) Act;⁶⁶ Nigerian Communication Commission Act;⁶⁷ Nigerian Export Processing Zones Act;⁶⁸ Nigerian Maritime Administration and Safety Agency Act;⁶⁹ Nigerian Minerals and Mining Act;⁷⁰ Nigerian National Petroleum Corporation (Projects) Act;⁷¹ Nigerian Oil and Gas Industry Development Content Act;⁷² Nigerian Urban and Regional Planning Act;⁷³ Nuclear Safety and Radiation Protection Act;⁷⁴ Oil and Gas Export Free Zone Act;⁷⁵ Sea Fisheries Act;⁷⁶ The international Convention for The Safety of Life at Sea (Ratification and Enforcement) Act;⁷⁷ Treaty to Establish Rotterdam Convention on The Prior Informed Consent Procedure For Certain Hazardous Chemicals and Pesticides in International Trade (Ratification and Enforcement) Act;⁷⁸ United Nations Convention of Carriage of Goods by Sea (Ratification and Enforcement) Act;⁷⁹ Constitution of the Federal Republic of Nigeria, 1999 (as amended),⁸⁰ etc.

AN OVERVIEW OF THE RELEVANT STATUTES

At this juncture, it is pertinent to consider a brief overview of the enumerated statutes and how they relate to the protection, regulation and development of the environment in Nigeria.⁸¹

- a) Constitution of the Federal Republic of Nigeria, 1999 (as amended). *Inter alia* the Constitution⁸² as well as the African Charter on Human and Peoples Rights provides for the right or entitlement of citizens to the government's protection and improvement of their environment and to safeguard the water, air and land, forest and wild life of Nigeria.

⁵⁹ Cap. N 30, LFN 2004, promulgated in 1989.

⁶⁰ Enacted in 2006.

⁶¹ Cap. N 77, LFN 2004, promulgated in 1992.

⁶² Cap N 86, LFN 2004, enacted in 2000.

⁶³ Enacted in 2007.

⁶⁴ Enacted in 2010.

⁶⁵ Cap. N 90, LFN 2004, enacted in 1999.

⁶⁶ Cap. N 94, LFN 2004, enacted in 1999.

⁶⁷ Cap N 97, LFN 2004, Enacted in 2003.

⁶⁸ Cap. N 107, LFN 2004, promulgated in 1992.

⁶⁹ Enacted in 2007.

⁷⁰ Enacted in 2007.

⁷¹ Cap. N 124, LFN 2004, promulgated in 1993.

⁷² Enacted in 2010.

⁷³ Cap N 138, LFN 2004, promulgated in 1992.

⁷⁴ Cap N 142, LFN 2004, promulgated in 1995.

⁷⁵ Cap. O 5 LFN, 2004, promulgated in 1996.

⁷⁶ Cap. S 4, LFN 2004, promulgated in 1992.

⁷⁷ Ratified in 2004.

⁷⁸ Ratified in 2005.

⁷⁹ Ratified in 2005.

⁸⁰ As amended in 2011, promulgated in 1999.

⁸¹ The website <http://www.elri-ng.org/newsandrelease2.html>, is acknowledged for been helpful in this compilation.

⁸² Section 20 CFRN, 1999 (as amended)

- b) Land Use Act:⁸³ By allowing for allocation of land in compliance with regional and urban planning rules, the Land Use Act is by extension protecting the environment.
- c) Harmful Waste (Special Criminal Provisions) Act:⁸⁴ Except duly authorised legally, this law prohibits, the carrying, dumping or depositing of harmful waste in the air, land or waters of Nigeria.
- d) Hydrocarbon Oil Refineries Act:⁸⁵ This Act regulates the licensing and control of refining activities.
- e) Associated Gas re-injection Act:⁸⁶ This law is yet to become enforceable in Nigeria, because despite its enactment, gas flaring by oil companies has continued unabated.
- f) Endangered Species (Control of International Trade and Traffic) Act:⁸⁷ This focuses on the protection and management of Nigeria's wildlife and some of their species in danger of extinction as a result of over-exploitation.
- g) Sea Fisheries Act:⁸⁸ This Act makes it illegal to take or harm fishes within Nigerian territorial waters by use of explosives, poisonous or noxious substances.
- h) Exclusive Economic Zone Act:⁸⁹ This Act makes it illegal to explore or exploit natural resources within the areas that have been mapped as exclusive economic zone without lawful authority by the Federal Government.
- i) Oil Pipelines Act:⁹⁰ This Act and its Regulations guide oil activities in Nigeria.
- j) Petroleum Act:⁹¹ Principally enacted to provide for the exploration of petroleum from the territorial waters and continental shelf of Nigeria.
- k) Nuclear Safety and Radiation Protection Act:⁹² This Act focuses on the regulation of the use of radioactive substances and equipment emitting ionizing radiation.
- l) Nigerian Maritime Administration and Safety Agency Act:⁹³ This is an Act to provide for the promotion of maritime safety and security.
- m) Nigerian Minerals and Mining Act:⁹⁴ This Act repealed the Minerals and Mining Act, No. 34 of 1999 and re-enacted the Minerals and Mining Act, 2007 for the purpose of regulating all aspects of the exploration and exploitation of solid minerals.
- n) Quarantine Act:⁹⁵ This provides authority to make regulations for preventing the introduction, spread and transmission of infectious diseases.
- o) River Basins Development Authority Act:⁹⁶ This establishes the River Basins Development Authority, concerned with the development of water resources.

⁸³ Cap L 5, LFN 2004.

⁸⁴ Cap H1, LFN 2004.

⁸⁵ Cap H 5, LFN 2004.

⁸⁶ Cap A 25, LFN 2004.

⁸⁷ Cap E 9, LFN 2004.

⁸⁸ Cap. S 4, LFN 2004.

⁸⁹ Cap E 17, LFN 2004.

⁹⁰ Cap O 7, LFN 2004.

⁹¹ Cap P 10, LFN 2004

⁹² Cap N 142, LFN 2004.

⁹³ Enacted in 2007.

⁹⁴ Enacted in 2007.

⁹⁵ Cap. Q1, LFN, 2004.

⁹⁶ Cap R 9, LFN 2004.

- p) Agricultural (Control of Importation) Act:⁹⁷ This is concerned with the control of the spread of plant diseases and pests.
- q) Civil Aviation Act:⁹⁸ This Act promotes public safety by providing regulations to secure the safety of persons and property in aircraft and others endangered by it.
- r) Water Resources Act:⁹⁹ This Act aims at developing and improving the quantity and quality of water resources; including protection of fisheries, flora and fauna.¹⁰⁰
- s) Nigerian Communications Commission Act:¹⁰¹ This Act applies to the provision and use of all communications services and networks, in whole or in part within Nigeria or on a ship or aircraft registered in Nigeria.¹⁰²
- t) Nigerian Urban and Regional Planning Act:¹⁰³ This Act is aimed at overseeing a realistic, purposeful planning of the country to avoid overcrowding and poor environmental conditions.
- u) Oil in Navigable Waters Act:¹⁰⁴ This Act prohibits the discharge of oil from ships into the sea and navigable waters.¹⁰⁵
- v) Oil Terminal Dues Act:¹⁰⁶ This is for levying and payment of terminal dues on any ship evacuating oil at any oil terminal in any port in Nigeria.
- w) Criminal Code Act:¹⁰⁷ The Act contains provisions for the prevention of public health hazards and for environmental protection. Thus, it is an offence to foul the water of any spring, stream, well; tank or any reservoir.¹⁰⁸

THE EXTENT OF LEGAL EFFICIENCY

Undoubtedly, the foregoing statutes have helped in creating much awareness on the protection and development of the Nigerian environment. However, it is appalling that despite the ubiquity of the laws, there exist so many lacunae in the law themselves to the extent that securing their strict enforcement is hardly achievable. For example, despite the Constitutional provision that the government shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria; it is far from being achieved as the same Constitution seems to make the enforcement of this right unenforceable.¹⁰⁹ Similarly, despite the common good for the enactment of the Land Use Act, in practice many of the State Governors, who are supposed to hold the lands in trust for the citizens, end up allocating the lands to themselves using their pseudo names and cronies, without payment of adequate compensation contrary to the essence of the land use Act.¹¹⁰ In the same vein, because of high cost of housing in urban areas, many citizens who manage to purchase half plot of land are forced to develop same without recourse to urban planning rules and approvals. This has resulted in many people building living houses on the water-ways thereby blocking the channels and causing heavy flooding in recent times.

⁹⁷ Cap A 13, LFN 2004.

⁹⁸ Cap C 13, LFN 2004.

⁹⁹ Cap W 2, LFN 2004.

¹⁰⁰ Water Resources Act ss. 5 and 6.

¹⁰¹ Enacted in 2003.

¹⁰² Nigerian Communications Commission Act s. 2.

¹⁰³ Cap N 138, LFN 2004.

¹⁰⁴ Cap O 6, LFN 2004.

¹⁰⁵ Oil in Navigable Waters Act s. 1.

¹⁰⁶ Cap. O 8, LFN 2004.

¹⁰⁷ Cap C 38, LFN 2004.

¹⁰⁸ Criminal Code Act s. 245.

¹⁰⁹ Section 6(6)(c) CFRN, 1999 (as amended)

¹¹⁰ Enactment section of the Land Use Act, 1978, Cap L 5, LFN 2004. See also S. 1.

Notably, the fact that the Harmful Waste (Special Criminal Provisions) Act was the aftermath of the Koko incident, some production companies still dispose harmful waste in various areas undisturbed, once they have settled the few settlers of a locality who know little or nothing about the adverse effects of such waste. Similarly many illegal refineries and dealers on such crude method refined petroleum products commonly called '*kpo-fire*' usually spill the harmful product, without recourse to its adverse impact on the environment. Despite the enactment of the Hydrocarbon Oil Refineries Act, many oil thieves in collusion with military officers, e.g. the navy still transport illegally refined products to their destinations. This is not withstanding the loss of revenue such diversion of products constitutes to the common wealth of the citizens.

The Associated Gas re-injection Act is yet to become fully enforceable in Nigeria, because it is difficult to extinguish gas flaring. The multi-national companies prefer to pay the penalty prescribed by the law which is supposed to prohibit, and particularly so, because drilling and transportation of petroleum products is cheaper with gas flaring. In this case, a company producing oil and gas could be permitted to continue to flare gas in if the company pays such sum as the appropriate authority may from time to time prescribe for every 28.317 Standard cubic metre (SCM) of gas flared.¹¹¹

Regarding the Endangered Species (Control of International Trade and Traffic) Act, there is at present no well-celebrated reserve, as the Yankari game reserve used to be in the past. Worse still, the various zoos which existed to boost wide life preservation in the country are gradually becoming extinct in geometric progression. Also, the essence of the Sea Fisheries Act is hardly enforceable in the face of the Nigerian economy struggling to be self-serving in production and supply of fish.

The issue of environmental protection has remained a major concern, despite the ubiquity of laws in that regard. It seems apparent that the Nigerian government is yet to rid itself of endemic corruption, notwithstanding the change mantra of the incumbent administration. The Goodluck Jonathan administration was heavily criticised for not been able to decimate the Boko haram sect. It was the boast of General Buhari and his teeming supporters that the sect would be decimated within six months of his regime. However, the sect still exists, operates, and has since the ascendancy of the General to power continued to unleash series of attacks on harmless Nigerians. Similarly, several killings have been attributed to armed herdsmen in parts of the Country, including Benue, Plateau, Ondo, Ekiti, Enugu, and Ebonyi states. Despite the killings, the body language of President Buahri has been seemingly indifferent to the national outcry to proscribe the sect as done to the unarmed Independent People of Biafara (IPOB).

Like the Jonathan's administration, huge funds are still being expended to fight insurgency and other spates of insecurity and coordinated attacks in the Country despite his successor's promise to tackle insecurity head-on. In December, 2017, more than 2 years, into President Buhari's administration, serious criticisms trailed the National Executive Council unilateral approval of 1 billion US dollars from Nigeria's excess crude oil account to fight Boko Haram.¹¹² Yet, the claim that the Nigerian military has defeated the Boko Haram or that it

¹¹¹ S. 3(2)(b), Associated Gas re-injection Act.

¹¹² Retrieved 2/2/2020 from <https://www.vanguardngr.com/2017/12/critisims-trial-govs-approval-1bn-fight-boko-haram/>

actually expended the funds allocated to fight the Boko Haram has remained an issue of national debate on how the money was processed and released.¹¹³ In the same vein, following the national outcry against endemic corruption in the administration of the Niger Delta Development Commission,¹¹⁴ President Buhari, has ordered a forensic audit of the operations of the agency, from 2001 to 2019, for reason that what is presently on ground in the South-South region does not justify the huge resources that have been made available to the Commission.¹¹⁵

In line with the foregoing overview of endemic corruption in Nigeria, it is viewed that notwithstanding the huge resources expended in the process and procedure of enacting the several laws aimed at protecting the Nigerian environment; the laws instead of achieving the desired solution, seem to exist as mere document, without more. This is akin to a case when an individual is faced with many variants of a particular product, to the point of becoming confused on which of the products to take or settle for. The several laws on the protection of the environment are in most instances innate with loopholes/provisions which constitute more problems. Consequently, there is the need to advocate for fewer more result-oriented, sustainable and enforceable laws rather than having several, which merely exist as barking bulldogs without biting.

Strictly, better is the end of a thing than the beginning thereof.¹¹⁶ In this wise, positive outcome of one law is better than enacting numerous laws without results. It is better for the Nigerian legislators to have a re-think on the rush, with which they dish out laws in the quest to justify their jumbo pay and budgetary allocations. Some of these laws as we have shown are latent with lee-ways on their core purpose provide escape routes from liability for prospective violators. For example, despite the enactment of the Associated Gas (re-injection) Act, which object is to prohibit gas flaring, the same law allows for lawful permission to flare gas. In other words, the law prohibits gas flaring, only if it is flared 'without lawful' permission.¹¹⁷ This means that gas flaring will continue unabated once done with lawful permission and perhaps in connivance with the permit authorities.

Some project proponents carry on with their development activities without the required approvals and compliance with extant laws and regulations. It is more worrisome, where some public servants who should enforce strict compliance with extant laws and regulations collude with many developers who carry out activities capable of adverse environmental impacts to issue illegal approvals. The end result is that execution of impactful projects in defiance of proper approvals and compliance monitoring cause more irreparable damages.

¹¹³ This is particularly so because on January 6, 2020, The theater Commander of Operation Lafiya Dole, Major General Olusegun Adeniyi, survived an ambush by Boko Haram insurgents along Maiduguri-Damaturu road. See: <https://www.ripplesnigeria.com/so-what-has-become-of-the-1bn-arranged-to-fight-boko-haram-2/> accessed 2/2/2020

¹¹⁴ This Agency was established by the Niger-Delta Development Commission Act, Cap N86, Laws of the Federation of Nigeria (LFN), 2004 during the tenure of President Olusegun Obasanjo in 2000, with the mandate to facilitate rapid, even and sustainable development in the oil producing Niger Delta region.

¹¹⁵ <https://www.today.ng/news/nigeria/nddc-probe-stakeholders-commend-president-buhari-board-supervise-audit-257938>

¹¹⁶ Ecclesiastes 7:8, The Holy Bible, King James Version

¹¹⁷ This is the purport of s. 3(1), Associated Gas re-injection Act.

In Rivers State, the 21st day of November, 2018, came with the sad news of the collapse of a seven storey building at Woji Road, GRA, Port Harcourt. The incident claimed so many lives and left many injured, and maimed. According to the State Governor, he was surprised that approvals were given for the construction of the property through the back door. In the words of the Governor:

I feel so pained that we have to face this kind of calamity at this time. I commiserate with the families who have lost their loved ones; who came to seek their daily bread. Government will do all it can to give them the necessary support.

I have directed the Attorney-General to ensure that all legal steps are taken to do what is right within the ambit of the law.

Whoever approved this structure and those involved in the construction will face the law. Government will take every necessary step to ensure that culprits are brought to justice. Whoever is involved, from the owner or the contractor or the officials of the state, they will face the full weight of the law. Government will take steps to acquire this property. We cannot allow this illegality. If you look at the master plan of this area, a seven-storey building is not allowed here...¹¹⁸

According to the reports, in order to match his words with action, the Governor ordered the immediate arrest of the owner of the collapsed building. This action was followed by the voluntary resignation of the State Commissioner from whose Ministry of Urban Development; the illegal approval was allegedly procured. However, it was not yet public whether the perpetrators were being prosecuted as at the time of this research.

THE DEFECTS IN THE PRIOR LAWS ON ENVIRONMENTAL PROTECTION

Despite the ubiquity of the above laws, the lacuna on environmental protection still existed and lingered, for the following reasons:

- a) Most of the promulgated laws addressed only infinitesimal aspects of the environment.
- b) No particular institutional framework or Agency was established to pilot the effective administration of the laws.
- c) The enacted laws merely existed in theory, but practically, they were far from being enforced, and achieving environmental protection objective.
- d) The actual purpose of environmental protection was lacking as the old prevailing attitude of citizens to doing things persisted; e.g. bush burning, ‘short put toilets’, etc.

THE PETROLEUM INDUSTRY ACT, 2021

More recently, the Petroleum Industry Act, 2021 was enacted to among other objects to restructure and transform the Nigerian oil and gas industry. The Act provides legal, governance, regulatory and fiscal frameworks for the Nigerian oil and gas industry and development of petroleum host communities. Consequently, the following laws were repealed including: Associated Gas Reinjection Act; Hydrocarbon Oil Refineries Act; Motor Spirit (Returns) Act; Nigerian National Petroleum Corporation (“NNPC”) (Projects) Act; NNPC Act (when NNPC ceases to exist under section 54(3) of the Act); Petroleum Products Pricing Regulatory (Establishment) Act; Petroleum Equalisation Fund Act; Petroleum Profit Tax Act (“PPTA”); and Deep Offshore and Inland Basin Production Sharing Contract Act.

¹¹⁸Retrieved on 5/02/2020 from: <https://www.sunnewsonline.com/collapsed-7-storey-building-wike-orders-arrest-of-owner/>; <https://www.channelstv.com/2018/11/24/updated-port-harcourt-building-collapse-five-dead-36-rescued/>; and <https://punchng.com/wike-orders-arrest-of-owner-of-rivers-collapsed-building/>;

However, while some of the repeals will take effect from the effective date of the Act,¹¹⁹ others are contingent upon the occurrence of certain events. The provisions of some laws are saved until the termination or expiration of all existing oil prospecting licenses and oil mining leases.¹²⁰

The Petroleum Industry Act is still at its start-up experimental stage and may certainly be caught up in the conundrum of wishy-washy or selective implementation. This is particularly so as the incumbent president Muhammadu Buhari has since assumption of office as president ascribed to himself the office of the Minister of Petroleum. For this reason after assenting to the Act on 16th August, 2021, the president in his capacity as the Minister of Petroleum Resources inaugurated a steering committee, to be chaired by the Minister of State, Ministry of Petroleum Incorporated to oversee the process of the implementation of the Act. The steering committee will be responsible for the seamless and timely implementation of the Act and ensure that the new institutions created under the Act have the full capability to deliver their mandates under the Act. We are patiently waiting and watching.

CONCLUSION

From a consideration of the laws enacted for the purpose of protecting the Nigerian environment, it is apparent that so much are extant. Consequently, the crux of the protection and development of the environment in Nigeria is not that of paucity of laws. The puzzling problem faced by the government is how to enforce the existing laws. In other words, how can the government achieve compliance by the citizens with the existing laws on the protection of the environment? It is more worrisome when it is some of the public officers that collude with environmental violators to short-change the public treasury and by extension cause adverse impacts which affect the inhabitants of the environment collectively. Consequently, the approach in the discipline of public officers who collude with violators of the environment needs to be revamped. When a hunter learns how to shoot at its target without missing, the flying bird must also device how to fly without perching.

RECOMMENDATIONS

- a) It is thus advocated that quality and not quantity should pre-determine an individual's choice of a product. In this wise, it is better to have fewer laws which actually serve their purpose in essence and enforcement on the protection of the environment, instead having a multiplicity or duplicity of several laws, without achieving the required enforcement and compliance. Thus, it is not in the number of laws that are enacted based solely on the theory or political instigations, without the practical holistic considerations of the effects and enforcement of such laws.
- b) Legislator must rethink and rejig the speed with which they make laws, without adequate consideration of process and procedures of enforcement to secure compliance.
- c) It is submitted that rather than make provision for payment of penalty in cases of gaseous pollution with its swift life-threatening implications, a law enacted in that regard should prohibit such pollution strictly without option of fine. Thus, it is better not to have such laws in the first place; than to enact them with several escape loopholes for violators.

¹¹⁹ 16th August, 2021

¹²⁰ The laws whose provisions are saved include the Petroleum Act, PPTA, Oil Pipelines Act, Deep Offshore and Inland Basin Production Sharing Contract Act.

- d) There is the need to make progress from the ordinary awareness on environmental issues to achieve the result of ensuring that violators face severe penalties, including: punitive fines, assets forfeiture, and imprisonment without option of fines.
- e) It is also recommended that recruitment of the indigenes or residents of the *situs/locus* of prospective environmental threatening projects/activities will checkmate and reduce the incidents of backdoor/ illegal approvals. In respect of project execution, the recruited workers will act as spies and informants to report a feed-back of compliance or otherwise to the appropriate agencies of government in a coordinated/documentated format. The format would be such that before submission of the report to the officer that would act on it, it must have been submitted to another unit of government for certification and record keeping. By doing this, the extent of non-compliance or illegal approvals will be reduced; and particularly so, where the recruited indigenes or residents are adequately remunerated and re-oriented on the damaging effects of non-compliance with standards of project execution. Aware of this, citizens would be more aware and enlightened of the fact that if corners are cut in environmental law compliance, they are the ones that would be most affected.