International Journal of Academic Multidisciplinary Research (IJAMR)
ISSN: 2643-9670
Vol. 6 Issue 8, August - 2022, Pages: 295-299

An Examination of Nigeria's Legal and Policy Frameworks for the Sustainable Development of The Marine Environment

Amade Roberts Amana PhD, BL

School of Law, Kampala International, University, Uganda.
Email: Manderoberts2008@yahoo.com , made.roberts@kiu.ac.ug

Abstract: *The sustainable development of the marine environment and the rational exploitation of its resources are peremptory concerns for Nigeria today. Rapid declines in the resources of the zone constitute a constant reminder of the alarming proportions of the damage already inflicted. Industrial development, particularly in the petroleum and manufacturing sectors coupled with efforts to satisfy the increasing need for food are taking a huge toll on the integrity of the ecosystem. Industrial discharges have resulted in the contamination of water bodies and the destruction of aquatic life. More often than not, governmental agencies have been entrusted with the regulation of the environment under statutory authority, but environmental protection requires the synergy of both statutory and common law instruments. Public institutions and private persons have pivotal roles to play in the enforcement of the regulatory framework.*

Keywords: Conservation, sustainable development, marine environment, statutory framework.

1. INTRODUCTION

Nigeria is a coastal nation with a lush marine environment which can provide a strong foundation for sustainable development. But on account of poor conservation practices, the environment has continued to suffer heavy degradation, with dire consequences on ecosystem services, specifically, the sustainability of food supplies and the stability of biodiversity. Human population inflation and economic growth have also given rise to irrational resource exploitation, pollution of water basins, and habitat destruction which jeopardize the integrity of this unique ecosystem. Protecting the marine environment and living resources from these forces is important not only for maintaining ecological balance but also for meeting the food needs of a rapidly increasing population. The coastal environment provides seafood, including fish, sea turtles, and periwinkles, which serve as income sources and foreign exchange earners. Fisheries constitute an estimated 40% of the total animal protein consumed by the average Nigerian.[1] In addition, about four million people are directly engaged in fishing activities. Despite its nutritional value and contribution to national income, Nigeria's fishery resources have not been properly harnessed and managed. The bulk of landings from Nigeria's offshore water result from peasant fishing. Although Nigeria's estimated 12.5 million hectares of inland waters are capable of producing about 512,000 tons of fish yearly, its inland water facilities are mostly producing less than 250,000 tons of fish per annum. The situation arises from the prevalence of haphazard and poorly organized harvests due to the absence of effective legal regimes on inland fisheries. Water pollution constitutes the major bane of Nigeria's aquatic life. Its principal sources include oil spills, industrial refuse and agricultural nutrients. Besides the fact that agricultural and municipal wastes are the largest water pollutants, industrial effluent in the form of direct liquid waste discharges, solid waste dumping into water bodies and indiscriminate hazardous waste disposal are growing problems for water quality management in Nigeria.[2] Activities in the petroleum industry have also created serious hydrological problems in the oil producing Niger-Delta region. Nigeria has recorded over 3,000 oil–spill incidents with over 2.4 million barrels released into her coastal and offshore marine environment.[3] The impact of oil spills has ranged from the barely tolerable to the utterly disastrous: the loss of fisheries, crustaceans, and other aquatic animals, eutrophication of water bodies, loss of recreational and aesthetic services of water bodies, worsened rural underdevelopment; and the embitterment of the affected individuals and communities.[4] Consequently, vast tracks of agricultural land have been laid waste, surface water and river courses are invariably contaminated, polluted, and the aquatic life is destroyed.[5]

2. CONCEPTUAL FRAMEWORK

[1] Nigerian Environmental Study / Action Team (NEST) (1991). Nigeria's Threatened Environment: A National Profile. Ibadan: Intec Printers Ltd, 200.
[2] Atsegbua, L. Akpotaire, V and Dimowo, F (2004) Environmental Law in Nigeria, Theory and Practice: Lagos, Ababa Press Ltd, 7.
[3] The Guardian: Lagos, 9 March 1992, 15.
[4] NEST (note 1 above) 45.
[5] Abimbola, O. S. "Securing Environmental Protection in the Nigerian Oil Industry" (1999) Modern Practice Journal of Finance and Investment Law, Vol. 3. No. 2, 337.

Environmental obligations have been constitutionally imposed upon the State by Section 20 of the 1999 Constitution, by which the government is obliged to protect and improve the environment: safeguard the water, air, land, forest, and wildlife resources of Nigeria. However, the duty upon the state is not one which is enforceable against it at law, but is one consisting of "directive principles" laid down by the policies which are expected to be pursued in the efforts of the nation to realize its national ideals.[6] Environmental issues generated widespread outcry and publicity in the country in the later part of the 1980s culminating in the formulation of The National Policy on Environment in 1989. The National Policy, which was subsequently revised to encompass emerging problems, was formulated to promote the sustainable development of the environment. Its objective was to ensure the conservation of the ecosystem as a dependable stock of resources for present and future human populations, as well as the preservation of its biodiversity. Sustainable development is described in the Brundtland Report as development which meets the needs of the present without compromising the ability of future generations to meet their own needs. The National Policy declared that the health and welfare of all Nigerians depend on making the transition to sustainable development as rapidly as possible; and provided the concepts and strategies required for its achievement. It also articulated strategies for implementation and accorded formal recognition to water resources management, wild life and reserves, marine and coastal resources, waste management, etc., as critical issues for environmental regulation. The National Policy is supplemented by some other policy statements dealing with the conservation of the Nigerian environment. For instance, the National Economic Empowerment Strategy of 2004 provides a comprehensive framework for addressing critical issues in the environmental sector.

3. THE ESTABLISHMENT OF THE FEDERAL ENVIRONMENTAL PROTECTION AGENCY AND SUBSEQUENT DEVELOPMENTS

Before the establishment of the Federal Environmental Protection Agency (FEPA) in 1988, institutional efforts to tackle environmental degradation in Nigeria were conducted in a vague, sporadic and incidental manner.[7] But this approach experienced a radical reformation following the Koko incident of June 1988, when 3 000 tons of assorted toxic wastes were imported by an Italian businessman and dumped at Koko Port, in the old Bendel state. This incident exposed the inadequacies of existing legislations and regulatory bodies, and spurred the Nigerian government into establishing the FEPA. The FEPA was created as a specialized agency solely responsible for environmental surveillance and the management of the nation's ecosystem.[8] The Agency was granted wide powers and extensive functions to regulate the environment, and to set national environmental standards in respect of water quality, noise pollution, hazardous substances, air quality and atmospheric protection.[9] As part of the government's efforts to reorganize the machinery for environmental protection, in 2007, it repealed the statute establishing FEPA, and replaced the agency with the National Environmental Standards and Regulation Enforcement Agency (NESREA).[10] Furthermore, it created the Federal Ministry of Environment to coordinate and superintend environmental protection efforts and the conservation of natural resources. Like the erstwhile FEPA, NESREA is also an autonomous body, charged with the legal responsibilities of the protection and development of the environment, biodiversity conservation and sustainable development of Nigeria's natural resources.[11] It is empowered to enforce compliance with laws on environmental matters; the provisions of international agreements on the environment, including biodiversity conservation...marine and wild life, pollution, etc.[12] consequently, NESREA may commence prosecutions against offenders. However, statistics of prosecutions and convictions of environmental crimes in Nigeria is scanty, but there are indications that such cases are rare despite the fact that increasing industrialization and population boom have brought in their wake, unprecedented instances of ill-health, natural resource depletion and environmental degradation.

4. THE REGULATORY STATUTES

Although most policy instruments do not constitute law in the strict sense of the word, they may still serve as templates for legal development. In Nigeria, the statutory frameworks as well as common law postulates are the basic methods of protecting the marine environment. An examination of the relevant legislations will be undertaken in this section.

4.1 THE OIL IN NAVIGABLE WATERS ACT

The Oil in Navigable Waters Act[13] was passed to implement the terms of the International Convention for the Prevention of Pollution of the Sea by Oil, 1954. The Act is by far, the most comprehensive legislation on the matter of oil pollution in the country. Section

[6] Akande, O.A. (2000) Introduction to the Constitution of the Federal Republic of Nigeria 1999. Lagos: MIJ Professional Publishers Limited, 52.
[7] Omokaye, O.G. (2004) Environmental Law and Practice in Nigeria: Lagos, University of Lagos Press, 72.
[8] E.O. Aina. 'The Journey So Far' in Aina & Adedipe (eds). (1991)The Making of the Nigerian Environmental Policy, Lagos; FEPA Monograph 1, 17-p18.
[9] Omokaye, O.G., *op. cit*. p. 73.
[10] National Environmental Standards Regulations Enforcement Agency (Establishment) Act, 2007. Act No. 25.
[11] SS. 1 and 2.
[12] S. 7.
[13] Cap O6 LFN 2004. Originally passed as Act No. 34 of 1968.

1(1) makes it an offence for a Nigerian ship to discharge oil into the prohibited sea areas created under the 1954 Convention. Similarly it is an offence for the owner or master of a ship or occupier of land adjoining Nigerian waters or the operator of apparatus for transferring oil, to discharge oil into Nigerian waters.[14] The Act empowers the Minister of Transport to make regulations for the installation of equipment in ships to prevent or reduce oil discharges into the sea. It is an offence for a Nigerian or foreign owned ship operating within the territorial waters not to install such preventive equipment. However, the penalties for these offences are too light: a fine not exceeding two thousand naira.[15] Furthermore, the absence of strict liability for the offences created under sections 1 and 3 of the Act, which is, the discharge of crude oil, fuel and lubricating oil, and heavy diesel, is considered as a loophole in its application. It is a defense under Section 4(1) to prove that the oil or moisture in question was discharged for the purpose of securing the safety of any vessel, or of preventing damage to any vessel or cargo or of saving life. The Act makes a feeble attempt to provide civil liability for oil pollution damage in Section 13(2) where the court may order compensation for environmental restoration out of the fine to be paid by a guilty person.

4.2 THE SEA FISHERIES ACT

The Sea Fisheries Act[16] provides for the control, regulation and protection of sea fisheries in Nigeria's territorial waters. Used in an extensive sense under the Act, "fish" means any aquatic creature whether fish or not, and includes shell-fish, crustacean, turtles and aquatic mammals. The Act regulates activities as diverse as the licensing of fishing vessels, methods of harvest, handling, processing and storage of fishes, to the sale and distribution of fish products. Section 10 prohibits hazardous methods of fishing including the use of explosive substances, noxious or poisonous matter. The Sea Fisheries (Fishing) Regulations made under the Act authorizes the Nigerian Institute of Oceanography to prescribe the minimum total length of species of commercial fish, measured from the beak to the flap of the tail, which may be harvested for each year. One major impact of the Sea Fisheries Act with far reaching effects is its realization of the growing need for the establishment of marine reserves. Reserves have the potential of diminishing the degree of exploitation and depletion of marine living resources and protecting the ecosystem. Establishing reserves is a precautionary tool which ensures the availability of fisheries resources for present exploitation simultaneously with their conservation for posterity. Instructions or guidelines may be issued under the Act regulating, prohibiting or restricting fisheries harvest in specific areas of Nigeria's territorial waters. Furthermore, motorized fishing boats are prohibited from fishing within the first five nautical miles of the continental shelf. On the whole, the Sea Fisheries Act is considered an essential statutory measure for protecting the nation's water resources, fisheries and sea water quality.[17]

4.3 THE PETROLEUM ACT

Although the foremost concern of the Petroleum Act[18] is to vest the ownership and control of all petroleum resources in the Federal Government and to provide a regulatory framework for exploration activities,[19] section 9(1) (b) (iii) of the Act empowers the Minister of Petroleum Resources to make regulations for the prevention of the pollution of water courses and the atmosphere. In addition, the Petroleum (Drilling and Production) Regulations 1969, made pursuant to the Act makes it mandatory for a licensee or lessee to adopt all practicable precautions including the provision of up-to-date equipment approved by the Director of Petroleum Resources, to prevent the pollution of inland waters, rivers, water courses, the territorial waters of Nigeria or the high seas by oil, and mud or other fluids or substances which might contaminate the water, banks, or shoreline or which might cause harm or destruction to fresh water or marine life. The licensee or lessee has an obligation to take immediate steps to control and also, discontinue polluting activities,[20] maintain 'good oil field' practices and take practicable steps to prevent the escape of petroleum into any water, well, spring, stream, river, lake, reservoir, estuary or harbor.[21] A lot of skepticism has been expressed about the effectiveness of the Act in regulating marine pollution mainly because the provisions relating to fines in the Act and the accompanying regulations are not stiff enough to act as deterrents...and there are no express penalties for pollution offences.[22]

4.4 THE CRIMINAL CODE ACT

[14] See generally S. 3. S. 3(2) (a) and (b) define "Nigerian waters" to include the whole of the sea within the seaward limits of Nigeria's territorial waters and all other navigable inland waters.
[15] See SS. 6, 7(5) (a), 8(8) and 9(5) of the Act.
[16] Cap. S 4. LFN, 2004.
[17] Okorodudu-Fubara, M.T (1998) Law of Environmental Protection, Materials and Text. Ibadan; Caltop Publications, 654.
[18] Cap. P 10 LFN 2004.
[19] S. 1(1) and (2). See Okorodudu-Fubara, (note 17 above) 645.
[20] Petroleum (Drilling and Production) Regulations 1969, parag 25. See also parag 13 Petroleum Regulations, 1967 which prohibits the discharge of petroleum into the waters of a port.
[21] Id. parag 36.
[22] Okorodudu-Fubara (note 17 above) 652 – 653.

Before the promulgation of the Oil in Navigable Waters Act of 1968, criminal liability for damages caused by oil pollution was regulated solely by the general rules relating to the "fouling of water" under Section 245 of the Criminal Code Act.[23] The statute imposes a penalty of six months' imprisonment on any person who corrupts or fouls any spring, stream, well, tank, reservoir, or the water of any place, so as to render such less fit for the purpose for which it is ordinarily used. It is also observed here that the code treats the fouling of water as a misdemeanor, a minor irregularity. In addition, the provision appears too broad or vague for any effectiveness. Consequently, it has remained latent for years and can boast of no prosecution.

4.5 THE HARMFUL WASTE (SPECIAL CRIMINAL PROVISIONS ETC,) ACT

This legislation, passed as a result of the Koko dumping incident of 1988, prohibits the carrying, depositing and dumping of harmful wastes on any land, inland waterways and territorial waters of Nigeria.[24] *"Harmful waste"* as defined by Section 15 of the Act means injurious, poisonous, toxic or noxious substances.., including nuclear waste emitting any radioactive substance as to subject any person to the risk of death, fatal injury or incurable impairment of physical or mental health. The offence of carrying or dumping hazardous waste is punishable by life imprisonment;[25] and if committed by a body corporate, the guilty officer is liable to criminal prosecution and punishment.[26] Section 12 of the Act integrates civil liability, rendering the offender liable for injury or death resulting from the dumping of waste except where the damage was wholly due to the fault of the person who suffered it or was suffered by a person who had voluntarily assumed risk. This situation raises some practical complexities for enforcement: poverty, the assurance of pecuniary rewards by the tort-feasor, or simply ignorance of the consequences of waste dumps may contribute to the acceptance of risk, which may be difficult to prove or disprove in the event of death.

5. THE COMMON LAW SYSTEM

The common law has always served as a valuable system for the protection of environmental rights, but its preoccupation with the private rights of individuals undermines its usefulness since many environmental amenities or resources are "public property" in the sense that they are owned by all.[27] This non-proprietary approach tilts the law towards the overuse and over-exploitation of ecosystem resources. Furthermore, the operation of the common law can only be invoked where damage has been caused to an ascertained person rather than to the environment *strictu sensu*. Civil liability for environmental regulation usually consists of actions for nuisance, negligence, the escape of noxious or toxic substances: the rule in *Rylands V. Fletcher*, and trespass to land. In recent times, there has been a paradigm shift from the traditional common law approach of civil liability in environmental litigation founded on fault to one founded on strict liability. This evolution is meant to dissipate the burden of proof imposed upon victims of environmental damage. Classified as either private[28] or public, nuisance is an effective remedy for environmental harm. Both are instances of unlawful interferences with a person's use or enjoyment of land. Public nuisance is both a tort and a crime: "it materially affects the reasonable comfort and convenience of the life of a class..."[29] An individual can enforce his right in public nuisance only if he has sufficient facts to establish his special damage in the nature of personal injury, property damage or pecuniary loss over and above that suffered by other members of the general public. The tort of negligence comprises the breach of a duty of care imposed by common law or statute, resulting in damage to the complainant.[30] Liability for negligence converges on the tripartite factors of proof that a duty of care was owed the complainant, which duty had been breached, and that the injury suffered was foreseeable. Failure to prove all three components could be fatal to a case, as it was in *Atunbi V. Shell BP Petroleum Development Company of Nigeria Ltd*.[31] The plaintiff's claim was that the defendant had caused oil, gas and chemicals to escape from pipelines under its control thereby destroying fishes in the lake and his farmland. The court held that since the plaintiff could not establish the ingredients of the tort, the defendant had incurred no liability. On account of the difficulty involved in proving all the ingredients of negligence, victims of pollution incidents have sometimes had to rely on the principle of *Res Ipsa Loquitur* which shifts the burden of proof from the plaintiff to the defendant. But two conditions must be shown to exist in order to invoke the principle: the thing that inflicted the damage must have been under the sole management and control of the defendant or of some one for whom he has responsibility, and that the event would not have occurred without the negligence of the defendant. Another common law protection is articulated in *Rylands V. Fletcher*. The rule espoused in the classical case is that:... the person who for his own purposes brings on his land and collects and keeps thereby anything likely to do mischief if it escapes, must keep it in at his peril and if he does not do so, is prima

[23] Cap C. 38 Laws of the Federation of Nigeria 2004.
[24] Cap H1 Laws of the Federation of Nigeria 2004.
[25] S. 6.
[26] S. 7.
[27] For further reading, see Thornton, J. and Beckwith, S. Environmental Law, (2004) London; Sweet and Maxwell Limited, (2nd.ed.) 239.
[28] See Salmond and Heuston, (1992) Law of Torts London; Sweet and Maxwell, 57.
[29] Per Romer L.J. in Attorney-General Vs. P.Y.A. Quarries Ltd (1957) 2. Q.B. 169 at 184.
[30] See Charlesworth on Negligence, (1997) London; Sweet and Maxwell, (5th ed.) 11.
[31] Unreported. Suit No. UCH 48 / 73 of Nov. 12th. 1974 Ughelli High Court.

facie answerable for all the damage which is the natural consequence of its escape.[32] The plaintiff is also required to prove that there was a non – natural use of the land. Non-natural use of land will depend on the time of its use. Despite the fact that the rule has proved useful in environmental litigation, the liberal defenses which it affords defendants have diminished its utility. These defenses include the act of God, default or consent of the plaintiff, acts of third parties and statutory license. Thus, In *Ikpede V. Shell BP Development Company Co of Nigeria Limited*,[33] there was a leakage of crude oil from the defendant's pipelines which occasioned damage to plaintiff's fish swamp. The court held that even though all the requirements of the rule had been met, the defendants were not liable as the pipelines had been laid in accordance with the provisions of the Oil Pipelines Act.

6. CONCLUDING REMARKS

The marine environment is a multifunctional one, and as such, its sustainable development requires the interplay of regulations and institutions which control resource depletion, maintain biodiversity and prevent environmental degradation. This is necessary in order to sustain those derivable benefits that make human life possible and worth living, and to enable organisms to interact with one another and to respond to changes in the environment. The recognition of this task has led to the integration of control measures into the National Policy, the spectrum of governing statutory and common law frameworks and the creation of regulatory bodies. The conservation of the marine environment depends not only upon the extent to which the under-lying regime is enforced, but also upon the degree to which the degradation of the ecosystem is made unattractive. Furthermore, since the anti-pollution measures of these statutes incorporate the polluter pays principle, it may be indispensable to raise the penalties higher: that is, pay more if you cannot avoid discharging pollutants into the ecosystem. The effectiveness of these regulations requires the vigilance and determination of governmental institutions and private persons to enforce them. Lastly, greater precautionary safeguards should be imposed upon industries whose activities constitute potential dangers to the marine ecosystem.

[32] (1866) L. R Ex 265 at p. 279.
[33] (1973) All N.L.R. 61.