

CONSTRAINTS IN THE ENFORCEMENT OF ENVIRONMENTAL LAWS IN KADUNA STATE

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The Nigeria Government both Federal and States have initiated policies and legislation for the protection and preservation of the environment. Various legislation were made to deal with specific and general matters that affect the environment. Protection and preservation of the environment is not only the concern of Nigerian government, it is today a global agenda. For a country to achieve success in maintaining a healthy environment, it must have made the necessary policies and legislation. However it is one thing to have the policies and legislation and yet another thing to have them implemented or enforced. Therefore it becomes necessary as well to have an effective enforcement machinery. This paper will examine the various environmental regulations and the constraints of the agencies charged with the responsibility of enforcement.

BACKGROUND TO THE ENVIRONMENTAL LAWS

Prior to 1988, the Government appears as a matter of policy to lay more emphasis in matters of environment that affect personal hygiene and general sanitation to the neglect of other environmental issues such as hazardous waste, pollution and global environmental problems such as global warming, ozone layer and the depletion of tropical forest.¹

The real environment regulations in Nigeria was borne out of national emergency with the discovery of five ship loads of toxic waste of Italian origin in 1988 at Koko town in former Bendel State. This incidence brought to the fore greater public environmental awareness and to the inadequacy of the legal framework for environmental protection in Nigeria. In response to this incidence, the Government swiftly promulgated, the harmful waste (special criminal provisions) Decree.² The Decree prohibits the carrying, depositing and dumping of harmful waste on any land, territorial waters, contiguous zone, Exclusive Economic zone of Nigeria or its inland water ways and prescribed severe penalties on those found guilty of breaching the provisions of the Decree.¹

The Government further promulgated the Federal Environmental Protection Agency Decree⁴ thereby bringing into existence the Federal

Environmental Protection Agency charged with the responsibility of the overall management of the Nigerian Environment.⁵ The Agency was mandated to encourage the establishment of similar bodies by the States and Local Governments within their territorial jurisdictions, to be charged with the responsibility of managing their own environment, subject however to the Federal Environmental Agency Decree.⁶

THE ENVIRONMENTAL LAWS

Environmental laws in Kaduna State could be divided into two. (1) There are Federal legislation and regulations which are applicable to the state. Note that the Federal Government legislate for the whole country but some laws are of general application while some could only apply to some part of the country. For example legislation on drilling of oil could only apply to the territory where oil drilling takes place. (2) There are Kaduna State environmental laws. We shall examine some of the Federal legislation and that of the State.

SOME FEDERAL LEGISLATIONS

First and foremost is the Harmful Waste (special criminal provisions etc) Decree which was mentioned earlier.

There is the Natural Resources Conservation Act and the Natural Conservation Council, a body established for the conservation of the environment. Note that the Act has now been repealed by section 36B Decree 59 of 1992, thereby resting responsibility with the Federal Environmental Protection Agency.

Furthermore, there is legislation for the Conservation of Wildlife and the Protection of Endanger Species.⁷ This is intended for the conservation and management of Nigerian's wild life and the protection of some of her endangered species in danger of extinction as a result of over exploitation. The first schedule to the Act contains endangered species or animals in relations to which international trade is absolutely prohibited. While the second schedule concerns animals in relation to which international trade may only be conducted under license.

The National Park Decree,⁸ established five National Parks all over the country. Its functions among other things include, preservation, protection, conservation and management of vegetation and wild animals in the National Park. It is not within the scope of this paper to discuss all the legislations on environmental matters because the legislations are so many, they include Petroleum Act, Mineral Oil (safety) Act, Factories Act, Land Use Act to mention but a few more.

As for Environmental Regulations, the Federal Environmental Authority in discharging its responsibility has taken the lead by making regulations which will protect and preserve the Nigerian environment. Examples of such regulations are: National Environmental protection (Effluent Limitation) Regulations 1991, it contains important waste water parameters for selected industries which are set out in columns 2 and 3 respectively of schedule 1 to the regulation, there is the National Abatement Environmental Protection (Pollution Abatement in Industries and Facilities Generating wastes) Regulation 1991; National Environmental Protection Management of Solid and Hazardous waste Regulation 1991, part II of the Regulation contained list of dangerous waste and Guidelines and Standards for Environmental Pollution Control in Nigeria 1991.

The discussion of Federal Legislation will be incomplete without mentioning the function of Federal Environmental Protection Agency⁹ (FEPA) because it is the body with sole responsibility of managing the whole of the Nigerian Environment. It is its responsibility to set guidelines and standards and to see to the implementation or enforcement of the Federal Environmental laws and regulations. Section 4 of FEPA states inter-alia.

The agency shall, subject to this Act, have responsibility for the protection and development of the Environment and biodiversity Conservation and sustainable development of Nigeria's Natural Resources in general and environmental technology, including initiation of policy in relation to environmental research technology.

The Agency in performing this function since 1989 evolve the National Policy on the Environment. In the policy it sets out the goal for the Agency and the strategies for implementation. It has also set out the legal arrangement for achieving the policy goal of the Agency. The policy states the purpose thus,

"The purpose of a legal framework as an integral part of National Environmental Policy is to consolidate, strengthen, provide and extend legislation for environmental protection and improvement in all spheres whilst also providing for effective implementation and enforcement procures"¹⁰.

STATE LEGISLATION

Like the Federal Government, the State Government has equally concern itself with the protection and preservation of the State Environment. The applicable State environment laws¹¹ are: Public Health

and Forestry Laws of Northern Nigeria, Kaduna State Bush Burning (Control), Environmental Sanitation, State Urban and Planning and Environmental Protection Edicts.

The Authority charged with the responsibility of protecting and preserving the State environment is the Kaduna State Environmental Protection Authority otherwise known as KEPA¹². The powers and functions of the Authority is found in Section 4 of the Edict. Section 5(2) of the Edict empowers the Authority with the "responsibility for all matters relating to environment and environmental protection, technology, research, initiation of policy relating thereto". The section further empowers the Agency to "without prejudice to the generality of the foregoing it shall be the duty of the Authority to:

- e) Generally investigate, ascertain all violations of this edict and any relevant rules and regulations under this edict and the terms and conditions upon which any permit is granted by the Authority and to take or cause to take appropriate legal and penal remedies to prevent, remove, rehabilitate any aspect of the environment that has been violated or degraded" Emphasis supplied.

This is the enforcement provision granting KEPA the power to commence legal action against any person who violates the provisions of the edict for the purpose of prevention, removal or rehabilitation of the degraded part of the environment. The Edict has in addition to paragraph (e) of section 5(2) has specifically provided the Authority with power to prosecute any violation of the edict. Section 5(2)(c) of the edict states.

"Without prejudice to the provision of paragraph (e) relating to enforcement powers under this Edict to prosecute or cause to be prosecuted any violation of this Edict or any regulation under this Edict or any other enactment" Emphasis supplied.

The import of Section 5(2)(a) is that it is couched in a wide and comprehensive manner. It is the duty of KEPA to enforce its laws. Not only that, it can cause any person to be prosecuted under any other environmental regulation. For example it is the duty of KEPA to enforce its law. Not only that, it can cause person to be prosecuted under any other environmental regulation. For example if there is a violation of the Harmful waste Decree and the violation is not within KEPA's competence to prosecute, can cause the prosecution of the law violator.

Having set the various Federal and State Legislation on the environmental matters together with Agency and authority for implementation, we shall now turn to the constraints in enforcing the Environmental laws.

THE CONSTRAINTS OF FEPA LACK OF ADEQUATE MANPOWER

The Headquarters of FEPA is situated at Abuja, it has some Zonal Offices and some state offices¹³. In Kaduna State it has only a Zonal office which the writer understand to be in charged of four states and the personnel are a little above ten. Bearing this fact in mind, it is doubtful if this zonal office is capable of checking environmental pollution and conservation in the State.

INADEQUACY OF LABORATORIES

Laboratories is very essential to the activities of FEPA particularly for the purpose of inspection, compliance, monitoring and enforcement. Regrettably FEPA's laboratory office complex is located in Lagos¹⁴. Therefore one wonders how long it will take FEPA Kaduna Office to transport a sample to and fro Lagos.

1. THE CONSTRAINTS OF KEPA

Lack of Proper Prosecution Machinery

The KEPAE merely provide KEPA with powers to prosecute or cause to prosecute any person who violates its laws and regulations or any other enactment. But the law is silent on how it will achieve this objective. For example, whenever it decides to prosecute any person for violating environmental laws in complex matters, will it make use of the State Ministry of Justice or will it maintain its lawyers or will it engage private legal practitioners? It is thought that lack of explicit method of carrying out the prosecution of environmental laws violator by the Authority could be a constraint on it.

Observation In Offences and Penalty

So far, KEPA has not made out environmental regulations which will go along way in matters of enforcement of its law. Perhaps it is in the regulations that offences and penalties may be found. Akin to this point, is the fact that KEPAE has not created offences and penalties. In other words there are no specific offences and penalties created by the Edict. Even though Section 5(2)(e) talks of penal remedies, nowhere in the Edict does it provide for the specific penal remedies.

Personnel and Equipments

It is doubtful if KEPA has at the moment the necessary technical expertise both in terms of personnel and equipment where complex environmental protection arise.

Lack of Laboratory

KEPA does not have laboratory of its own at the moment. This is a serious constrain on the part of the authority. Environmental problems of today supersede elementary sanitation and hygiene, particularly Kaduna State is one of the Industrial State in the Federation.

Law Enforcement Agents e.g. Investigators, Assets, etc.

ENVIRONMENTAL LITIGATION

Environmental jurisprudence is relatively new in Nigeria. Suffice to say that very few environmental cases were decided by the courts. This goes to show that there are few lawyers and judges who are familiar with environmental issues. As more industries are established in developing countries such as ours, complex environmental problems of scientific nature are bound to arise. This view point was rightly observed by one writer when he said,

The development of environmental protection jurisprudence is Arthur hamstrung by the dearth of inter-disciplinary expertise amongst legal practitioners. A good grasp of several areas of the physical sciences is crucial in being able to efficiently handle environmental litigation and advice clients on the pollution regulations. But perhaps more important is the need to have courts which possess adequate theoretical familiarity with environmental issues".

It is against this background that one may say that there could be constrain in enforcement of environmental laws in the State, particularly the task of enforcement of the laws and regulations is vested in the laws and courts.

THE CORPORATE POLLUTER

The corporate organisations today are the great polluters. Serious and notorious cases of pollution or damage to the environment are usually perpetrated by corporate entities especially the big manufacturing companies and public corporations. Infact one may say that both the Federal and State Environmental Agency and Authority respectively could face serious constraints in enforcing the environmental laws and regulations when it come to dealing with the corporate organisations for the following reasons¹⁶.

- (1) They tend to be highly secretive about there operations and correct information about possible discharge of hazardous substances may

be difficult to obtain. This is further compounded by the fact that the actual operations of the company is only known by the top management staff, this may aid in the distortion of facts and enable the company to escape prosecution.

- (2) Where the true facts are available top executives and directors with wide social connections and power in society may use their influence to obstruct the initiation of criminal proceedings against these companies except in the worst cases of pollution which become public knowledge.
- (3) The corporate polluters often have the resources to retain the best legal services available in the market to protect themselves in legal proceedings initiated against them.
- (4) Some erring corporate organisations could be numerous techniques employ delay tactics to escape justice. The situation could be worse where the company involved is trans-national corporation, with affiliated or subsidiary company in the country, this supported by the fact that more than three years after the Bhopal disaster in India, legal proceedings against the Union Carbide of India or the parent company in the United States of America have not been entirely successful.

CONCLUSION

The task of Environmental Protection, and Preservation and Conservation is quite an enormous one. In order to achieve success and efficiency in this regard, one is of the opinion that there should be total reorganisation and restructuring of the environmental agency and the authority. The Nigerian Federation is very wide with different climate conditions. Starting with the tropical rain forest in South to the arid desert in the North. With the observation made or the constraints of FEPA on personnel and equipment one may suggest that the current task of Environmental Protection undertaken by FEPA should be handed to the State Environmental Authority. For example the major environmental problem of Katsina, Sokoto, Kano, Jigawa, Yobe and Borno State is desertification, while erosion menace is in Imo, Anambra, Akwa Ibom and Plateau States. It is inconceivable if FEPA could meet up these challenges. In addition some states have more industries than others. It is for these reasons that we suggest that FEPA should hand over activities or protecting our environment to the States for effective management. We do not

suggest the abrogation of FEPA, instead we are of the opinion that it can provide supervisory role to the estate agencies in ensuring that they live up to expectation. For KEPA we recommend that it should amend its legislation in two ways:

- (1) By creating offenses and penalties.
- (2) By spelling out who should specifically carry out litigation or how litigation of the authority could be carried out.

KEPA should make sure that it employs staff with the necessary expertise in discharging its activities. Furthermore, a well equipped laboratory should as a matter of necessity be set up.

In the area of litigation the state government should ensure that both its lawyers and judges are adequately trained for the purpose of meeting up the challenges of enforcing environmental laws. The Federal Government in its effort to protect and preserve the environment should direct the Universities or National Universities Commission to include environmental law in the Universities academic curricular. This will solve the problem of inadequate legal personnel in the field.

Finally, our great constrain in the enforcement of environmental laws and regulation is the corporate polluter. The solution to this problem lies in using advance technology in monitoring their activities. Information regarding their operation should be obtained through other means i.e. covertly, perhaps by use of inside informants from the corporate organisations.

REFERENCE NOTES

George Etomi, Environmental Regulations in Nigeria 1993 Jus Vol. 8, 6, p. 36.

See Decree No. 42 of 1988 now Act \Cap 165, of 1990.

See Sections 2(a), 6, 7 and 8 ibid.

See Decree No. 58 of 1988 now Decree No. 559 of 1992.

See Section 4 Ibid.

See 25 Ibid.

Endangered Species Control of International Trade and Traffic (Act) See 109 LFN, 1990.

National Park Decree 1991

See Note No. 4 above.

See National Policy on the Environment (FEPA) 1989, P. 21.

See Caps. And 44, 1963 Laws of Northern Nigeria; and Edicts Nos. 11 a of 1985 respectively.

Kaduna State Environmental Protection Authority Edict No. 1 of 1991

See Corporate Profile of the Federal Environmental Protection Agency

See p. 10 Ibid.

See Yemi Osinbajo, Environmental Laws in Nigeria Edited by J. A. O. P. 148.

See pp. 76 - 78 Ibid.