

CONSTRAINTS ON ENVIRONMENTAL PROTECTION IN DEVELOPING COUNTRIES

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Abstract

Human activities in pursuit of advancement have impacted both positively and negatively on the environment. On the negative part, the by-products of these activities have brought about severe consequences on our environment and our eco-system in general. This is so as there is a palpable reduction in the quality of the land, air and water which constitute the environment. These by-products ranges from air pollution emanating from gas flaring, severe water pollution emanating from discharge of petroleum wastes into the rivers, earth pollution and land degradation emanating from oil spillage with terrible consequences on human lives, animals, aquatic lives, farm land, crops etc. There is need for a cost-benefit analysis which clearly indicates that these negative aspects must be contained irrespective of the benefits

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accruable as lives outweighs it, for a healthy environment. This paper takes a critical look at the various causes of this ugly menace, addressed them and positions by way of recommendations taken. Doctrinal method is used where it was concluded that there is need to enforce existing laws, promulgate more to fill the vacuums and others for a safe environment.

Keywords: Environmental Law, Environmental Protection Agency, Constraints, Developing Countries and Environmental Regulation

1. Introduction

Pricto I. C. and Nocedal R. co-authors shared their opinion on the issue of waste and the environment in their book titled ‘The Legal protection of the Environment in developing Countries’.¹ They stated that the need for environmental regulation is premised on the fact that, the amount of pollution especially in the developing countries, has grown to enormous proportion and is increasing at such rapid rate unless controls are interposed and enforced promptly, man is likely to perish in his own waste.

Unfortunately, most developing countries are much more concerned with the exploitation of their natural resources, than the effect of such activities on their environment. These they do either ignorantly or they are blinded by the benefits derivable from such activities. The gradual devastation of their natural environment has

¹ 1976 (Mexico) 12-13, 16

in recent time generated public concern for the regulation and protection of the environment.²

It has been recognized that environmental protection and, or regulation is a common problem among developing countries especially Africa. The need therefore for these developing countries to start the fight for environmental protection cannot be over emphasized. These developing countries we must accept, are not unaware of the environmental issues at stake or that are plaguing them, but for some reasons (especially economic), they tend to under play them. It is very glaring that the problem confronting developing countries is one which is chronic and as such requires swift and aggressive attention.

The constraints thus faced by these developing countries will be examined here, and suggestions made of possible ways in overcoming these constraints in the face of mounting environmental pollution in these countries. Meanwhile, the constraints on environmental protection in developing countries will be viewed from different areas of clean air, soil, water use, agricultural production, natural habitat, loss of biodiversity and management of hazardous waste.

2. Definition of Terms

2.1. Environment Law

This simply means a field of law dealing with the maintenance and protection of the environment, including preventive measures such as the requirements of environmental-impact statements, as well as

² Omotala J.A, Environmental laws in Nigeria including compensation Edited by the Article Oyelowo Oyake, The problem of Environmental Regulation in the Nigeria Federation P. 98

measures to assign liability and provide cleanup for incidents that harm the environment.³

2.2. Environment

The word environment can be simply defined as the surroundings or condition in which a person, animal, or plant lives or operates. It is the natural world, as a whole or in a particular geographical area, especially as affected by human activity.⁴ It can also be referred to as habitat, territory or domain.

2.3. Constraints

The term constraint simply means something that limits or controls what you can do.⁵ It depicts control that limits or restricts someone's actions or behavior. Something that limits or restricts someone or something.⁶

2.4. Developing Countries

Black's law defines developing country as a country that is not economically or politically advanced as the main industrial powers.⁷ Developing Countries therefore are countries that are not economically or politically advanced as the main industrial powers

³ B. A. Garner, *Black's Law Dictionary* (9thedn., Texas, Law Prose Inc. 2009) 614

⁴ Oxford University Press, *Oxford Languages Dictionary* <www.Languages.oup.com> accessed 23 July 2022

⁵ Collins Dictionary, 'Constraint definition and meaning' <<https://www.collinsdictionary.com>> accessed 10 may 2022

⁶ The Britannica Dictionary, 'Constraint' <<https://www.britannica.com/dictionary/constraint>> accessed 10 May 2022

⁷ *Ibid* (n3)516

2.5. Environmental Regulation

Environmental Regulations means any federal, state or local law, statute, code, ordinance, regulation, requirement or rule relating to dangerous, toxic or hazardous pollutants, Hazardous Substances or chemical waste, materials or substances.⁸

3. Constraints on Environmental Protection

The constraints are majorly multidimensional in nature. These constraints ranges from Ignorance, Population, Lack of Technological know-how, Poverty, Cultural practices and beliefs, Lack of environmental legislations and enforcement, Corruption and bribery, Porous borders and so on. These will be examined hereunder:

a) Ignorance

The most endemic constraint which is causing the greatest hazard in the protection of the environment is ignorance. It is also perhaps the most dangerous factor of environmental pollution in developing countries. This is principally because these developing countries have a vast majority of their people as illiterates. It therefore becomes very difficult for them to understand and take simple environmental precautions. A very good example comes from the dumping of the toxic waste at Koko in Delta State. It was discovered during the television coverage of the dumping of toxic waste, that the owner of the land on which the waste was dumped allowed it being completely unaware of the grave danger it poses to majority of Nigerians and even himself. Worst part is that he collected a meager sum for the purpose. The level of awareness in

⁸ Law insider, 'Environmental Regulations definition' <<https://www.lawinsider.com/dictionary/environmental-regulations#>> accessed 10 May 2022

environmental protection in these countries is extremely low. Bush burning is rampant and its attendant hazards and loss to the biodiversity and generic resources, shortage of firewood and industrial timber, destruction of wildlife habitats, flood and erosion is ignored.

For example in Nigeria, most people are not aware of the fishing laws,⁹ Endangered species Act,¹⁰ National park Decree,¹¹ Petroleum and other products law,¹² Harmful waste (special criminal provision etc.) Act,¹³ Domestic waste disposal¹⁴ and pollution laws. Thus ignorance and a high level of illiteracy have allowed for example the incidence of chemical fishing and fingerlings to continue, with the attendant wasting of a whole generation of fishes, just for today's consumption or benefit. Totally lacking in the ability to think about the impact of their today's actions on tomorrow.

Noise pollution; another big issue to environmental problem needs attention too. The Nigerian Government and her citizenry for example appear not to be conscious of the present and future impacts of noise induced health hazards in their environment. Even in the cities of developing countries the level of noise pollution is alarming. Happily however, in Nigeria, the Federal Environmental Protection Agency, F.E.P.A, in its Guidelines and standards for

⁹ Decree No. 58 of 1988

¹⁰ Cap 108, LFN 1990

¹¹ Decree No. 360 1991 supplementary to Official Gazette Extraordinary No 44 Vol. 78

¹² Cap 26 LFN 1990

¹³ Cap 165, LFN 1990

¹⁴ Waste Management Regulation 155 of 1991

Environmental pollution control¹⁵ has set standards for noise exposure limits in Nigeria which should not exceed 90 decibels, dB(A) daily for an 8 hour working period. Most Nigerians are unaware of this regulation. Another set back here is that this seemingly nice provision tends to address only industrial noise pollution than noise from other sources, like roadside music cassette sellers, music from passenger buses and even private cars. In short, Unless and until measures are taken to control the level of noise, the ongoing urbanization and industrialization may complicate the problem so much that it becomes incurable.¹⁶

b) Population

There is a wise saying that goes thus; the more the merrier. This is however not the case here, as it now seems to be the other way around; the more the messier. This is a major problem in developing countries especially Africa. The continent has one of the highest population growth rate in the world, yet development does not match its population growth. This has made the amount of pollution generation to increase. According to Prof. S. Killick on impact of population explosion, he disclosed that, not only do over 2.5million people die from water pollution in the developing nations annually, but there is evidence of competition for water for agricultural, domestic and industrial purposes, as a result of which many people in the developing nations are forced to turn to unsafe sources of water for their daily needs,¹⁷ this being the resultant

¹⁵ See Guidelines and Standards for Environmental Pollution Control in Nigeria (FEPA Publication) culled from MP JFIL (1998) vol. 2 No. 2

¹⁶ Oyedepo S. O., 'Effective Noise Control Measures and Sustainable Development in Nigeria' <<http://citeseerx.ist.psu.edu/>> accessed 20 April 2022

¹⁷ Population explosion-What can we expect? The Wachtower, March 28, 2003

effect of over population. The UN has predicted that by 2005 two third of the world's population will be affected by water shortage.¹⁸ Now water scarcity already affects every continent. Around 1.2 billion people, or almost one-fifth of the world's population, live in areas of physical scarcity, and 500 million people are approaching this situation. Another 1.6 billion people, or almost one quarter of the world's population, face economic water shortage (where countries lack the necessary infrastructure to take water from rivers and aquifers). Water scarcity is among the main problems to be faced by many societies and the World in the 21st century.¹⁹

One other major source of air pollution is the increased use of motor vehicles especially "Tokunbor" (used vehicles) as in the case of Nigeria. Also the quest for creation of jobs in industries because of increase in population, leads to increase in the number of industries with the attendant increase in fumes flared into the atmosphere and discharges of waste and sewages into the rivers. Economic activities such as farming, construction and mining operation leads to soil disintegration and erosion.

c) Lack of Technological Know-How

Developing countries are still into the use of mundane or obsolete and crude methods of farming. The continuous use of these unrefined methods of farming in developing countries is also traceable to lack of technological know-how leading to the harsh reality of environmental problems. These nations are still glued to

¹⁸ NNNDP report, 'CFR Text for Human Right Teaching in School - Human rights and environmental protection'(1997) 96

¹⁹ International Decade for Action " Water for Life" 2005-2015 <<https://www.un.org/waterforlifedecade/scarcity.shtml>> accessed 21 April 2022

these obsolete farming practices such as bush burning, which has been identified as a great source of air pollution and soil depletion. It also destabilizes and displaces the original eco-system of the forest for both plants and animals and at worse, result in the death of animals as well as the destruction of trees. Consequently, erosion and desert encroachment is also encouraged. Also, the issue of over grazing by developing countries constitute environmental problem as it is also brought about by lack of technological know-how. Such method of grazing is no longer the trend with modern agricultural practices as it leads to desertification and erosion.

Lack of technological know-how is also prevalent in most developing countries in the area of waste and pollution management. These countries also largely require people with requisite knowledge, experience, facilities, technical and financial capacity to help manage the waste and pollution, by either recycling municipal solid waste composition or re-using wastewater for irrigation. But this problem is further compounded by the lack of adequate infrastructure, deficiency in regulatory system and lack of education to handle this problem. Even where the requisite personnel is available, they lack the tools necessary for monitoring and inspecting key polluters, thus making compliance almost impossible.

d) Poverty

Poverty they say is a disease, this time not just a disease but a highly destructive disease. Poverty ranks as one of the most important factors in the constraints on the protection of the environment by developing countries. Two very good examples of the grave impact of this destructive disease of poverty come from two countries; Guinea Bissau and Nigeria. Guinea Bissau had to

import about five hundred thousand (500,000) tons of hazardous waste from Switzerland to enable it make some money, with a view to reducing its balance of payment deficit. The company in Switzerland paid just a paltry sum of \$40.00/ton for the hazardous waste to be taken away, and Guinea made just \$20m, but yet they were happy. The second incidence is the Nigeria case which took place at Koko, a small fishing village in Delta State. It was discovered with great shock that two Italian firms were into Toxic waste dumping agreement in Koko, Delta state of Nigeria in 1988 and had in fact dumped some. Meanwhile the landowner, Sunday Nana who entered into such an agreement with the Italian firms was happy for a pittance of \$100 per month²⁰ to allow his property to be used as the dump site.²¹ This is the extent to which poverty can be damaging.

In Nigeria for example, S. 14 (2) of the Sea Fisheries Decree No. 71 of 1992²² prescribes limits to the size of nets or the mesh of nets that may be employed in the taking of fishes within the territorial waters of Nigeria or in any specific area therein. But a visit to our markets shows that any type of size of fish is on display for sale. This is borne out of poverty, as there is no regard for or time to ensure that only matured fishes are caught and sold. There is no rigid enforcement as to size of fishnets or mesh used.

A journey through our highways will reveal a lot of “Bush meat” put out for sale by the villagers. Some of the animals were killed

²⁰ Stephanie Buck, ‘Koko Toxic Waste’ <<https://timeline.com>> accessed 12 Jan 2022

²¹ Follarin Shyllon, ‘The law and the environment in Nigeria’ (1990) 246

²² See supplementary of Official Gazette Extraordinary No, 72 vol. 79, 31st Dec 1992, Part A

from hunting; captured at night²³ or through the use of fire.²⁴ These methods are prohibited for hunting animals by the Endangered Species (Control of International Traffic and Trade) Act.²⁵ Now because of poverty, ignorance and customary support, the use of these methods goes on unabated and uncontrolled. Thus, if this practice is allowed to continue unchecked by way of enforcement, in not too distant time, these creatures would no doubt go extinct. Again, as far back as 1997, the Guardian Newspaper brought to the fore the havoc been done to our rainforest out of poverty and greed of the Nigerian People. According to the report:²⁶

Armies of illegal wood cutters have invaded Nigerian's rain forest in search of fortunes estimated at about ₦30 billion a year, their main market is teak wood which is in hot demand in European and American furniture factories, from which they earn about ₦5.5 billion a year from Cross River forest alone...environmentalists have begun to voice opposition to the goings on... And raising concern about the environmental and ecological implication in the future of the plundering going on today

From the report above, it can safely be gleaned that the Developing Nations people's good sense of judgment or reasoning has been taken over by financial gains. With this kind of attitude of illegal activities, in the nearest future, there maybe little or no forest to be

²³ s5(6)(p) of the Endangered Species (Control of international traffic and Trade) Act, Cap 108 laws of the Federation of Nigeria, 1990

²⁴ s5(6)(d) *Ibid*

²⁵ Cap 108 laws of LFN 1990

²⁶ Guardian Newspaper of July 26 1997 at 1-5

seen. This is a clear product of poverty, greed and insensitivity. As long as a substantial proportion of the people in the developing countries are affected by poverty, it will be difficult to implement measures which will take full account of the environmental impact of the action of the poor.

Most of these developing countries have to generate the required budgetary and investment resources to meet urgent development needs. Removing farming from steep hills, ensuring food law use and watershed protection, protecting over-grazing and deforestation, all become more difficult, if not impossible under conditions of pressing short term needs. It is unfortunate that environmental consciousness has come at a time when developing countries are badly strapped for cash and its people ravished by poverty.²⁷

e) Cultural Practices and Beliefs

Also very worrisome, discouraging as well as disappointing is the role played by the African tradition in the Killing of bush animals. In some areas for instance; the ancient Binis, Yorubas and Zulus. In these tribes, those who kill certain species of animals like the Elephant, Buffalo, Tigers and Lions are rewarded with titles. This therefore encourage onlookers to cultivate the hunting of these animals wherever found as their thematic pre-occupation, if only this would guarantee their clinching a title in a society where ambiguous and ostentatious way of living is the order of the day.

This same cultural practices are widely responsible for the over population. This is simply because of the crude method of farming

²⁷ See M.T. Ladan, 'CRP, Text for Human right Teachings in School, Article Human Rights and Environmental Protection' 98

wherein more hands were always required for the maintenance of the farm. This further encouraged the farmers to marry more wives and the resultant effect being more children as it also was a determinate factor for the acquiring or securing of larger farm land.

f) Lack of Environmental Legislations and Enforcement

In most developing countries of the world, there is usually comprehensive legal provision to control environmental degradation. However, sometimes the machinery to implement these legislation where available, are lacking or archaic. In Nigeria, before the FEPA Act 1988, only scattered environmental legislations existed. There was no comprehensive legal provision to control environmental degradation compared to developed countries that started pollution control in well over five decades ago.²⁸ Another area worthy of note is the incommensurate penalty available in the environmental legislation. For instance, in Nigeria, the entire penalty section of our laws should be overhauled as they make a mockery of the laws itself thereby effecting little or no protection to the environment. For example, where a person captures or trades in animals like Lion, Leopard, Gorilla, Eagles etc., he may be liable to a fine of just ₦1,000.00²⁹ when some of these animals can be sold for as much as \$3,000 USD. Same goes for illegal felling of trees which can attract 5 years imprisonment or a fine ₦10,000. Some of these trees if successfully felled could

²⁸ Elizabeth Fredl, 'Controlling Air Pollution: How Developed & Developing Nations Differ', <<https://study.com/academy/lesson/controlling-air-pollution>> accessed 12 Jan 2022

²⁹ See s5(1)(a) of the Endangered Species (Control of International Trade and Traffic) Act Cap108 LFN, 1990.

fetch a handsome price when exported.³⁰ Again is the fouling of water source which imposes a fine of ₦4,000 and ₦250 for companies and individuals³¹ respectively. These ridiculously low fines make them deliberately foul the sources of water supply. These penalties are rather too liberal for the nature of things done. These will make the corporations or and the individuals to pollute the environment and pay the prescribed fine which will be far cheaper rather than incur heavy costs in treating wastes.

However, where the laws appears sufficient, the judges in adjudication treat matters of environmental protection with kid-gloves especially with the application of the rule in *Rylands v. Fletcher* as was applied in *Machine Umudge v Shell*,³² where the plaintiff was awarded damages. But in developed countries like Britain where, the Polluter-pays-principle is largely in operation as applied in the case of *N.R.A. v Shell*.³³ This led to Shell been fined £1 million pounds for polluting the River Mersey.

g) Corruption and Bribery

Corruption has been and is still a major problem to environmental protection in developing countries. For example, in the 1980's, in Koko, Nigeria, certain toxic waste were imported from Italy by some unscrupulous Nigerians and dumped at a particular site. Although, there was at that time no legislation dealing with such a situation, but indications are that the very harmful nature of toxic

³⁰ Forestry laws of Oyo State, Laws of Oyo State of Nigeria 1978, Cap. 40 s44(4)

³¹ A.Y. Okediran, " An appraisal of Environmental sanitation edicts in Nigeria" National Conference on Environmental law (1988) November 8-9

³² (1975) 911 SC 155

³³ (UK) 1990 water law 40

was known to officials of certain Corporations and Ministries. These are the Nigeria Ports Authority, the Federal Ministry of External Affairs, who preferred to rather accept bribes and allowed the importation of that very hazardous wastes which were evil residue of industrialization, and also known to constitute high nuisance because of the grave danger they pose to humans as well as possess toxic properties which when exposed to human or animal lives in form of solid wastes, may cause or contribute to increase in mortality rates. They also cause serious illness or deformity, or pose a substantial present or future hazard to human health or environment when improperly treated, stored, transported, disposed of or otherwise merged³⁴ to Nigeria and thereby constitute for themselves an original bulging brief case at the expense of human and animal lives.

The Directorate of Petroleum Resources is the government establishment that monitors the activities of oil companies as to compliance to guidelines and regulations as it affects environmental issues in the oil industry. But these government officials Compromise their duties by accepting bribes and allowing these companies use outlawed and out dated equipment from the developed countries where these companies come from, with no regards to the damage done to their ecosystem. As Ekpu posited, oil is a commodity that has uniform price all around the world, and has almost a standard cost of production, yet the technology used by the oil companies especially in Nigeria leaves much to be desired.³⁵

³⁴ R. G. Gordon, 'Everybody's problem-Hazardous wastes'(1980)1

³⁵ UNIBEN Environmental Law Introductory Class (L.L.M) 2004 Session

h) Porous Borders

Most developing countries have very porous borders such that for a pittance, people can move in and out of one country to another, without anybody raising an eyebrow. This encourages a lot of trading and trafficking in endangered species of animals. A good example is the export of a gorilla and 2 Drill Monkeys to the Philippines,³⁶ from Nigeria. These Monkeys were however returned to Nigeria after it was discovered that they were illegally exported to the Philippines. An official of the World Society for the Protection of Animals (WSPA) reported that he could have been able to successfully export more than 42 chimpanzees, 10 gorillas and several Parrots within a week. He claimed to have been told of a case of an Egyptian lady dealer who exported between 12-13 chimpanzees and about four Gorillas to Egypt every six months.³⁷ All these statistics shows the rate with which trafficking in endangered species in being regularly carried out illegally without something being done to curb this menace. As a matter of urgency, we must begin to work out solutions to these problems.

4. Conclusion and Recommendations

That there is need for developing countries especially Africa to start the campaign for environmental protection cannot be over emphasized. From the above, it is manifestly clear that the problem confronting developing countries is one which is serious and deserving a swift and desperate treatment. The environmental challenges thus posed must be defined within a developmental perspective. The challenge here relates to ways in which the effect of development on the environment can be reversed without affecting economic development. All over the world, there is a

³⁶ See Guardian Newspaper of July 27, 1997, 2

³⁷ *Ibid* p.6

growing consensus that development must meet the needs of the present generation without compromising the ability of future generation to meet theirs.

As true as this statement is, it must be noted that most developing countries still require some basic minimums like adequate food, clothing, shelter, clean water and sanitation before the talk of environmental protection can make some sense. So firstly, economic growth and technological change is urgently needed to alleviate the pressures of poverty on the environment and put on the top agenda of these developing countries environmental issues. Another approach that can be used in developing countries is a complete reformation or formation of the environmental laws to have more biting powers, like as is found in developed countries like Britain that uses the polluter-pays-principle. Even the use of the traditional methods of setting regulations through permits, monitoring and enforcement has often been too slow, contentious and costly. Rather, new methods like preventing pollution by improvement in the production process (technologically) and management to reduce the volumes of pollution generated, should be encouraged, because there will always be the need for regulations, quality standards and clearly defined limits on certain discharges.

There is need to educate our people as a matter of urgency as illiteracy constitutes one of the major setbacks in the seemingly endless environmental quagmire. Awareness of environmental problem is still very low in developing countries. Without an enlightened public, enforcement of environmental laws by citizens have very little prospect of success. The starting point therefore, is to educate the general populace about the dangers of environmental

pollution and encourage the formation of environmental friendly scheme and policies. Citizens must be made aware that every person has a fundamental and inalienable right to a healthy and safe environment.

Education on the environment should start at the elementary (primary) school level as part of the social studies curriculum to the secondary school level. Information to expand our knowledge on environmental issues should be done via Radio and Television in all the local languages. Posters, Handbills, Radio jingles, Billboards etc. should also be utilized to make people more environmentally aware.

To crown it all, enactment of environmental laws where they are absent and enforcement of existing laws where present must be adequately strengthened. Whichever way this may sound, population has to be put under control/check. Adequate policing of various nations border and the promulgation of anti-corruption laws as well as massive investment in the development of human and material resources would sure bring about some positive results in the environmental protection in the developing countries. This will in turn be profiting to the entire world for if the developing countries are left to continuously dwell or wallow in their own environmental constraints unchecked, the already threatened world runs the risk of going extinct someday and somehow and soonest.³⁸

We therefore submit by suggesting that it is high time developing countries acknowledge the danger inherent in the neglect of environmental matters. A manifest autopsy and surgical operation

³⁸ Pricto I. C. and Nocedal R., *'The Legal protection of the Environment in developing Countries'* *Supra*(n1)

must first be carried out on the thought and conscience of the inhabitants of the developing countries for as John S. Mill once observed, “there will be no great improvement in the general ecological condition until great changes take place in our modes of thought.”³⁹

³⁹ Mill, *Autobiography and other writings*(1969) 142.