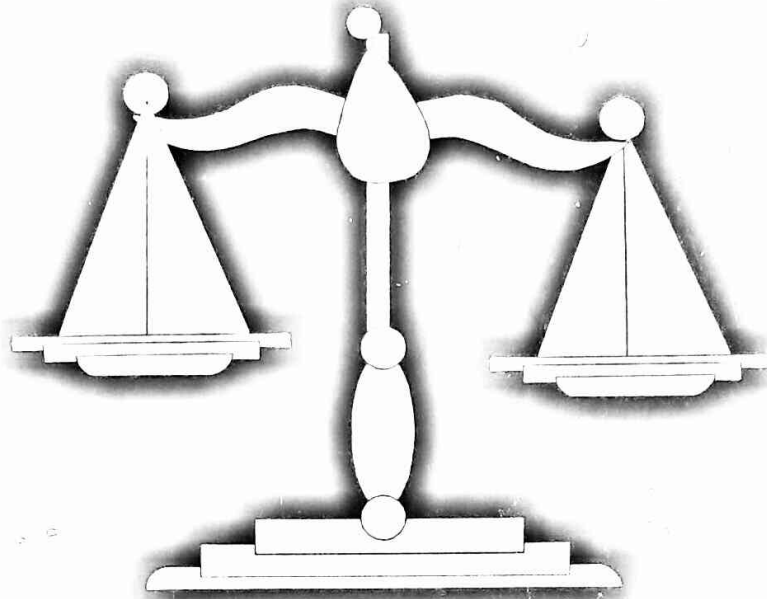


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APPLICATION OF SCIENCE AND TECHNOLOGY AND HEALTH PROBLEMS: UPDATING ENVIRONMENTAL LEGISLATIVE EFFORTS IN NIGERIA

BY

OLATOYE K.A.*

INTRODUCTION

Science and technology no doubt has brought a lot of succour to human beings as it has engendered a great deal of improvement to human standard of living. Infrastructural facilities like electricity, treated water, good roads etc. are products of science and technology, industries which can be grouped into food and beverages; textiles and cosmetics; iron and steel; petrochemicals, chemicals and allied products etc. engage in mass production in order to meet the level of ever increasing demand for their products. Similarly by science and technology fishes are caught en mass from the ocean and get preserved in fridges or freezers; foods equally get preserved through chemical and mechanical processes of packaging or outright freezing.

However, in the process of the foregoing scientific and technological activities, tonnes of hazardous effluents as well as toxic gases are emitted into the air and water from industrial plants, private homes, vehicles and other sources. These contribute in a great deal to the poisoning of rivers, oceans, and other sources of man's food. When food, water and air get contaminated, it culminates in eventual death or bodily harm that is capable of resulting into eventual death of human beings.

While food and other Infrastructural facilities of convenience are of great benefit to human beings, the process of production and management are often characterized by associated hazards of environmental pollution and degradation. This is where law comes in to prevent or mitigate any consequential health problems and to entrench and enforce human rights to a clean and healthy environment.

If the law is an instrument of social engineering it must seek to balance the various forms of private, social and public interests herein involved.

In this paper I intend to update and intimate the audience with the environmental legislative efforts so far made in Nigeria and examine the effectiveness or otherwise of such legislations. This paper shall also look into the various forms of remedies available and the adequacy of same and shall also proffer some solutions to the lingering environmental degradation related health problems with a view to sustaining healthy and safe environmental standards.

AN OVERVIEW OF ENVIRONMENTAL LEGISLATIONS IN NIGERIA

A search through the corpus of our statutes in Nigeria show plethora of legislation at the national, regional, state or local government levels on environmental protection be it atmospheric, water or land environment. Apart from these laws, Nigeria has signed or acceded to a number of environmental protection related bilateral or multilateral treaties which have become part of our laws either by way of enactment into our laws or by way of ordinary application of international customary laws.

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At the national level, we have inter-alia the following enactments regulating environmental activities.

(i) **The Criminal Code**

Section: 247 – prohibit acts which render the atmosphere noxious to the health of persons in specified places. The criminal code in S.246 also prohibits burials in houses without requisite consent.

(ii) **Petroleum Decree**

Section: 8 (i) (b) (iii) - empowers the Minister of Petroleum to make regulations among other matters for the prevention of pollution of water courses and the atmosphere.

(iii) **Bees (Import Control and Management) 1976**

Sections 10 & 11 - prohibit the importation of the said insects without necessary approval.

(iv) **Civil Aviation Act 1964**

Sections 1, 7, 8 and 9 – regulate air navigation.

(v) **Explosives Act 1964**

S.1 – regulate the use of explosives for purpose of maintaining and procuring safety.

(vi) **Nigerian Atomic Energy Commission Decree 1976**

Sections 10 & 11 – relates to control of nuclear fallout/discharge.

(vii) **Land Use Decree 1978**

– Vests all land in the territory of each state (except land vested in the Federal Government or its agencies) solely in the Governor of the state to be held in trust and administered for the use and common benefit of all Nigerian in accordance with the provision of the decree⁶. It also has provisions aimed at the preservation of the quality and healthy utilization of land.

(viii) **Quarries Decree 1969**

Sections 2, 8 & 38 - prohibit persons from conducting any quarrying operations except in accordance with the provisions of the Decree.

(ix) **Forestry Act 1958**

– This Act contains Provisions relating to the preservation and control of our forestlands.

(x) **Factories Decree 1987**

– Has provisions regarding the health safety and welfare of persons employed in factories.

(xi) **Oil in Navigable Waters 1968**

Sections 1, 2, 3, 5, 6 & 17 prohibits the discharge of oil into designated sea areas, provided penalties for the specified offences and the enforcement of the International Convention for the prevention of pollution of the sea by oil.

(xii) **Sea Fisheries Decree 1971**

Sections 1, 8, 9 & 17 - regulates motar fishing within the Nigerian territorial waters.

At international level, some of the treaties which have now become part of our national environmental protection laws are:

- (i) Convention on the Prohibition of the Development production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their destruction, 1972.
- (ii) African convention on the conservation of nature and national Resources, 1968.
- (iii) International Convention for the Prevention of Pollution of the Sea by Oil, 1954.
- (iv) Convention on Fishing and Conservation of the living Resources of the High Seas, 1958.
- (v) United Nations Convention on the Law of the Sea, 1982.
- (vi) Convention on the Prevention of Marine Pollution Dumping Wastes and other Matter, 1972.

At the state level, due to the fact that health and environmental pollution fall within the ambit of regional/state legislative competence in accordance with the constitution, we have had so far legislations such as: the public health ordinance Cap 165, 1958, Public Health Law Cap. 103 1959 (Western Nigeria); Public Health Law, Cap. 134, 1976 (Bendel); Public Health Law, Cap. 109, 1963 (Northern Nigeria).

All these laws were promulgated to establish standard and regulate the preservation of a healthy, clean and safe environment. The laws contain inter-alia, provisions generally regulating abatement of nuisance, infectious diseases, clearing and cleaning of tenant surroundings, sanitation, vaccination and sale of food.

Also at the state level, in the 80s emerged various environmental sanitation laws of Anambra¹, Bauchi State², Bendel State³, Imo State⁴, Oyo State⁵, Lagos State and Rivers State⁶ etc.

These laws which were similar in tenor prohibit, inter alia, the discharge of obnoxious water or other toxic water from a tenement to a highway or adjoining gutter or drains. The laws also prohibit the making of noise or nuisance through the regular use of sound equipment. Also the laws prescribe a manner of ensuring against the contamination of food, meat et cetera.

LATEST ENVIRONMENTAL PROTECTION LAWS

Much as the foregoing exploit into the corpus of our laws has shown that the list of laws relating to environmental protection in Nigeria is rather long, the experience of the Koko Toxic Waste Dump of 1988 showed glaringly the gross inadequacy of the then existing laws regarding the protection of Nigerian environment. This circumstance prompted the then Military Government to promulgate two major environmental protection laws namely: Harmful Waste (Special Criminal Provisions) decree⁷ and Federal Environmental Protection Agency Decree.⁸ The harmful waste decree deals with crimes in respect of harmful waste and declares unlawful all activities relating to the purchase, sale importation, transit, transport, deposit and storage of harmful wastes⁹ under the decree any person who without lawful authority (a) carries deposits, dumps or cause to be carried, deposited or dumped any harmful waste on any land or in any territorial waters or contiguous zone or exclusive economic zone of Nigeria or its island waterways or (b) transports or causes to be transported any harmful waste or (c) imports or causes to be imported any harmful waste or (d) sells, offers for sale, buys or otherwise deals in any harmful waste shall be guilty of a crime¹⁰.

1. Anambra State Environmental Sanitation Authority Edict, 1985
2. Bauchi State Environmental Sanitation Edict, 1984
3. Bendel State Environmental Sanitation Edict, 1986
4. Imo State Environmental Sanitation Authority Edict, 1980
5. Oyo State Environmental Sanitation (Miscellaneous Enforcement Provisions) Edict, 1986
6. Lagos State Environmental Protection Edict 1988
7. Decree No. 42, 1988
8. Decree No. 58, 1988
9. S.I (1) Harmful Waste (Special Criminal Provision) Decree No. 42, 1988.
10. S.I (2)

Some of the offences under this decree might be committed by a body corporate. Where that is the case, if it is proved that the crime was committed with the consent or is attributed to any neglect on the part of a director, manager, secretary or other similar officers of the body corporate, he as well as the body corporate shall be guilty of the crime¹¹, and a person shall on conviction be sentenced to life imprisonment¹².

The Federal Environmental Protection Agency Decree is another legislation equally promulgated in 1988¹³. The decree established the Federal Environmental Protection Agency and empowered the Agency to inter-alia: Prepare periodic master plans for the development of environmental science and technology; to establish such environmental criteria, guidelines and standards for the protection of the nation's environment and waters as may be necessary to protect the health and welfare of the population from environmental degradation.

The Agency also has power to establish water quality standards for the public health or welfare¹⁴ but in exercising this power the Agency takes into consideration the use and value for public water supplies propagation of fish and wildlife, recreation purposes agricultural, industrial and other legitimate uses¹⁵.

Furthermore, the Agency has the mandate to establish criteria, guidelines and standard of air quality in order to protect and enhance the quality of air resources in the country, so as to promote the public health and welfare. In doing so, the Agency controls the concentration of substances in the air, which are likely to result in damage or deterioration of property or of human, animal or plant health. It also controls atmospheric pollution originating from energy sources including emissions and noise from factories, which are capable of endangering public health or welfare.

ENFORCEMENT OF ENVIRONMENTAL PROTECTION LEGISLATIONS

In order to ensure effectiveness of environmental protection legislations, some enforcement elements have been employed. These range from the sanctions both criminal and civil, put in place for the violation of any part of these environmental legislations, to the enforcement agencies established by law and charged with the responsibility of enforcing the legislations.

For instance under the states environmental sanitation edicts, enforcement agencies such as Environmental Sanitation Task Force, Environmental Sanitation Committee or Environmental Sanitation Authorities have been established and vested with the powers of inspection, abatement, arrest and prosecution.

Under the Harmful Waste (Special Criminal Provisions) Decree 1988 the regular law enforcement officers of the state constitute the enforcement agents.

Enforcement of environmental regulations can be generally categorized into criminal enforcement, administrative enforcement as well as civil liabilities and remedies.

11. S. 7

12. S. 6

13. Federal Environmental Protection Agency Decree No. 58, 1988

14. S. 15, FEPA Decree

15. The implication of this is that the Agency has the discretion to establish different water quality standard for different uses.

CRIMINAL ENFORCEMENT

One potent instrument of enforcement is criminal liabilities and prosecution. Under the Harmful Waste Decree any person who engages in activities prohibited under the Decree is guilty of a crime¹⁶ and in accordance with section 6 of the Decree, any person found guilty of such crime on conviction shall be sentenced to life imprisonment. Also under the Decree, there is provision for Corporate Criminal Liability but it may also translate to personal liability of the corporate officers where such corporate environmental crime is committed with the consent or connivance of or is attributable to the negligence of a director, manager, secretary or other similar officers of the body corporate¹⁷.

Federal Environmental protection Agency Decree has a double penalty for violation in that it provides for a term of 10 years imprisonment and/or a fine of N100, 000.00. If the offence is committed by a body corporate, it shall on conviction be liable to a fine of N500, 000.00 and an additional fine of N1000.00 for everyday the offence subsists¹⁸.

Apart from that foregoing, the Criminal Code under S. 245 prohibits the fouling of corruption of water at any source while under S. 247 the code prohibits air pollution likely to injure the health of person. The punishment for the breach of each provision is six months imprisonment¹⁹. There is copious criminal penalties within the corpus of our law, the problem however lies with strict implementation by enforcement agents especially under FEPA Decree where power of seizure, search, inspection and arrest of a suspect may be exercised without warrant and consequently their actions including prosecution is not bogged down by the requirement of court leave or injunctions.

ADMINISTRATIVE ENFORCEMENT

This is a vital element in environment law enforcement mechanism. An example of FEPA's administrative enforcement of environmental regulation is in the case of the Continental Iron and Steel Company Nig. Ltd, in which Case CISCO's factory in Ogba, Ikeja violated FEPA's environmental regulations by its failure to install the waste treatment facility recommended by the FEPA even at the end of 5 years moratorium. The factory was consequently closed down. Barely three months after the sanction had been imposed CISCO Company attained 40% level of compliance which had hitherto not been the case in about three decades of the company's existence.

The problem of administrative method in enforcement mechanism however is lack of incentives for administrative agencies. The incentives given to agencies, both financial and in term of tool of operation, constitute a strong determinant of the effectiveness of such regulations.

CIVIL LIABILITY AND REMEDY

The civil aspect of environmental cases is that non-criminal penalty (liability) in a non-criminal proceedings in court. Apart from the criminal sections imposed on defaulters of environmental regulations, an aggrieved person may proceed to civil court to demand for damages for the damage he sustained from the actions of the defaulter. Such civil cases are usually brought in negligence, nuisance, and trespass to land or under the rule in **Ryland V Fletcher**.

16. See S. 1 (2) Harmful Waste Decree, 1988

17. See S. 7.

18. See S. 20 (1) & (3), FEPA Decree 1988.

19. SS. 245 and 245 Criminal Code Act (Cap. 77) LFN 1990

Liability for negligence lies in owing a duty of care to the tortfesse, breaching of such duty and sustaining of foreseeable injury due to the breach²⁰. These principles were clearly enunciated in the consumer protection case of **DONOGHUE V STEVENSON**²¹ wherein the defendant in the process of producing the bottled ginger negligently left a decayed tooth. The plaintiff consumed the ginger and suffered health damage. The court held the company liable in negligence and compelled payment of damages to the plaintiff.

However, in order to succeed in this kind of action, the complainant must proof that a duty of care is owed to him, that the duty has been breached and that he has sustained injury as a result of the breach.

Victims of environmental pollution usually rely on the principle of *Res Ipsa Loquitor* because of the difficulty usually encountered in proving the elements of negligence.

NUISANCE

Nuisance as a cause of action in environmental matters can be pursued in two ways namely public nuisance and private nuisance. It is public nuisance where the damage is inflicted on a class of people or the public in general. In that case it is the Attorney General being the custodian of public rights who can commence a legal action on the wrong committed²². Private nuisance on the other hand is that where a person suffers injury peculiar to himself. And in which case the aggrieved can constitute enforcement action against the violator if the complainant can proof special damage²³.

Ryland V Fletcher Rule

This rule is an aspect of common law strict liability principle. The rule was laid down in the case of *Ryland V Fletcher*²⁴. In that case it was held that where a thing was brought and kept in the land under the control and operation of the defendant in the process of non-natural user of the land and anything escapes and causes damage, such defendant is liable for the consequence of his action. This principle has been helpful in the pursuit of claims for damage sustained due to environmental pollution.

CONCLUSION

From the foregoing exploit it is obvious that we have plethora of environmental protection legislations which contain a number of basic penal provisions for violation of the laws. Also in abundance is the possible ways by which an action could be brought to court to seek civil remedies in form of damages in case of environmental wrongs committed against individuals or group of individuals. The basis of churning out of plethora of legislations on environmental protection is the seriousness of an abuse of the environment as social economical and health problem. No nation can afford to neglect its environment and allow its abuse to affect the health of its citizenry otherwise its stand could be negatively affected amongst the comity of nations.

20. See Authority *Atribie & Anor V Shell PDC* Suit No. UCH/48/73, Ugheli High Court delivered on 12/11/74.

21. *Donoghue V Stevenson*

22. *Jimoh Lawani & Ors V The West African Portland Cement Co.* (1973) UILR (Pt. IV)

23. *Ejowohomu V Edok – Eter Mandilas Ltd* (1986) 9 Sc 47.

24. *Ryland V Fletcher* (1866) LRI Ex 265

However though there is evidence of environmental offences committed regularly by individuals, groups or companies, there is no commensurate rate of criminal prosecution. Just as we have apathy in area of criminal litigation, so we have in area of civil actions because though there are constant actionable environmental wrongs committed against individuals few have led to litigation in court. Environmental claims affecting human health are hardly pursued and if pursued, not with adequate vigour.

Actions in environmental wrongs are usually commenced on a wrong premise objective of making quick money. This attitude makes the cases emanating in court confined to Oil spillage and pollution to the detriment of other environmental civil wrongs in term of their effect on human health.

One basic problem is lack of awareness on the part of society in respect of people's legal rights on their immediate environment. Education will enable people to protect these rights by applying rules of hygiene and sanitation and also by instituting actions in court against environmental wrongs regardless of the negative or positive financial implications of such actions.

The industries need to be encouraged and, where necessary, forced to adapt production practices capable of minimizing damage to the environment. In fact there is need also to get consumers of product of technological devices of today enlightened on how environmental friendly the manufacturing process is and environmental impact of the use of such products. Environmental law education I think is so important that it is not out of place to publish books or pamphlets in Nigerian local languages in order to explain to our people the environmental conservation strategies and the legal consequences of same.

It is also recommended that environmental regulation enforcement agencies should be adequately trained and remunerated and also equipped to enable them efficiently discharge their responsibilities.