



CAUSES, EFFECTS AND LEGAL CONTROL OF WATER POLLUTION IN NIGERIA

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Abstract

Water Pollution, as a dangerous threat to humanity and ecosystems like other types of pollution has attracted responses across nations, including Nigeria, in their bid to ensuring the protection of their environment for the good health of their citizens, and for the preservation of aquatic and other lives, for the benefit of man. In fact, the health and economic importance of water to man cannot be overemphasized. Obviously, water pollution is an antidote to National Development of any State, as water is very essential and evitable in all facets of human activities and existence, such as domestic uses, transportation and navigation, Industrial use, aquatic habitations, etc. Unfortunately, water is polluted by anthropogenic activities as a result of man's desire to keep life of afloat through the harnessing of the numerous natural resources he is endowed with, a situation which has given rise to dire consequences and effects to humanity, hence the need to prevent and control this menace by the Nigeria government via legal instruments. Nigeria has promulgated laws on water pollution and entered into international agreements on same, with the sole reason of tackling the challenges of water pollution in the country. This work will x-ray the sources, effects and control of water pollution in Nigeria, and some of the National laws on water pollution in Nigeria, such as the NESREA Act of 2007, the criminal code Act, etc. It will also discuss some of the international treaties on water pollution Nigeria entered into, such as the UNCLOS 1982, and others. The work further will expose the strength and weakness of the National laws and regulations, if any, on water pollution, including the constitution of the Federal Republic of Nigeria, 1999, with the view to ascertaining whether the issue of water pollution in Nigeria is that of laws or implementation.

Keywords: Water pollution, Environmental, Implications, National Laws, International Laws, Remedies.

Introduction

Environmental pollution includes the pollution of water, air and land as the principal components of the environment. The pollution of any of these three elements either by human activities or natural

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occurrences will undoubtedly result to hazards to the environment, to any proportion that will likely endanger human lives and safety. This is not unconnected to the fact that man absolutely relies on the environment for his survival at present and for the survival of the future generations. Hence, if the state of the environment is not human friendly, human health, living resources and ecological systems, etc., will be adversely interfered with, and the resultant effect is death and economic stagnation, in so far as man, relying on natural resources, exploits them for his sustenance to the extent that such human activities pose grave risk and threats to human existence. Water is very inevitable for the existence of humanity world over. Water pollution among other principal elements or components of the environment has, at various occasions resulted in threats to aquatic lives, loss of livelihood, deaths and scarcity of material resources that man depends on, as unclean water is neither good for human consumption nor fit for the survival of aquatic lives and other marine living resources. Therefore, for life to be in continuity and healthy, the environment must be free from pollution, particularly water, wherever it is found must be clean for purposes of consumption and other uses and of course, for the healthy existence of the entire ecosystems, a reason which provides for the need to protect the environment and control the scourge of water pollution in Nigeria through some domestic legislations, more especially, the Federal Legal Instruments which we are concerned with, in this work. Also, considering the global recognition of the importance of water there are, in existence, international laws on the protection of the global environment, which Nigeria is a signatory to and which is to that extent.

What is Water?

The Black's Law Dictionary defines water as the transparent liquid that is a chemical compound of hydrogen and oxygen (H₂O), and as a body of this liquid, as in a stream, river, lake or ocean¹. Water therefore comprises territorial waters which is the waters under state's or nation's jurisdiction, including both inland water and surrounding sea; floodwater which is water that escapes from a watercourse in large volumes over adjoining property in no regular channel; foreign water, i.e., water belonging to another nation or subject to another jurisdiction; ground water which is water found in layers of permeable rock or soil; inland waters i.e, internal waters; navigable water; percolating water which is water that oozes or seeps through the soil without a defined channel (such as rainwater or other water that has lost its status as part of a stream); posted water which is a body of water that is reserved for the exclusive use of the person who owns the land surrounding it; private water which is non-navigable water owned and controlled by one or more individuals and not subject to public use; public water which is water adapted for purposes of navigation or public access; surface water which is water lying on the surface of the earth but not forming part of a watercourse or lake such as rain, springs, or melting snow; wastewater which is water that escapes from the canals, ditches, or other receptacles of the lawful claimant and water that is left over, especially after a chemical or manufacturing process; subterranean water which is water that lies or flows beneath the earth's surface and that is not artificially confined; watercourse i.e. a body of water of natural origin, flowing in a reasonably definite channel with bed and banks which includes not just rivers and creeks, but also springs, lakes, and marshes in which such flowing streams originate or through which they flow, etc². The Environmental Standards and

¹ B.A Garner, Black's Law Dictionary (8th edn., Thomas West, 2004) 1622

² Garner (n1)1622,1623.

Regulations Enforcement Agency (Establishment) Act³ defines water of Nigeria to mean all water resources in any form including atmospheric, surface and sub-surface, and underground water resources where the water resources are interstate, or in the Federal Capital Territory, Territorial Waters, Exclusive economic zone or in any other area under the jurisdiction of the Federal Government of Nigeria.

Pollution

According to Hodge pollution is:

The introduction by man into the environment of substances or energy liable to cause hazard to human health, harm to living resources and ecological system, damage to structure or amenities or interference with legitimate use of the environment.⁴

In 1974 the World Health Organization limiting the guide-lines for determining whether environment is polluted noted that:

The environment is polluted when it is altered in composition or condition directly or indirectly as a result of the activities of man so that it becomes less suitable for all or some of the uses for which it was naturally suitable.⁵

As early as 1924, at a conference of the International Law Association, ‘pollution’ of the sea was defined as: ‘an act whereby the in offensive use of the water becomes impossible either for animal life or human use, or create a danger to such life or use’.⁶ The NESREA Act in section 37 defines ‘pollution’ as man-made or man –aided alteration of chemical, physical or biological quality of the environment beyond acceptable limits and ‘pollutants’ shall be construed accordingly.⁷ The United Nations Conference at Stockholm defines pollution as the discharge of toxic substances and the release of heat; in such qualities or concentrations as to exceed the capacity of them environment to render the homeless.⁸ Another definition that is of general acceptance is that given by OECD regarding Trans-Frontiers pollution which postulates that ‘pollution’ means the introduction by man, directly or indirectly, of substances or energy into the environment resulting in deleterious effects of such a nature as to endanger human health, harm living resources and ecosystem, and interfere with amenities and other legitimate uses of the environment.⁹

Water Pollution

By far one of the most important human needs is water, water is required in almost all facets of human activities, it can provide energy, food, fiber and industrial goods and it is a means of transportation.

³ Cap N164, LFN 2007, Section 37

⁴ I. Ehiguelua, Environmental Protection Law (New Pages Law Publishing Co., 2007) 33

⁵ Ehiguelua (n4)

⁶ L. Atsegbua, et al, Environmental Law in Nigeria: Theory and Practice (Ambik Press, 2010) 93

⁷ (n3)

⁸ Atsegbua (n6) 94

⁹ Atsegbua (n6)

Water comprises hydrogen and oxygen which chemically is represented as H₂O, the introduction of elements into the marine environment as to affect the pure composition of water mentioned above to such extent as to have deleterious effect on the environment and thereby impacting the marine ecosystem is water pollution.¹⁰ By S. 15(2) of the FEPA Act,¹¹ water pollution could be said to be making the quality of water poor in such a manner or degree which adversely affects the use of water for propagation of fish and wildlife, recreational purpose, agricultural or other legitimate uses. It should be noted that FEPA Act is now defunct having been repealed by section 36 of NESREA Act, 2007. Furthermore, water pollution could be defined as the introduction by man, directly or indirectly of substances or energy into the marine environment resulting in such deleterious effects as are harmful to the marine environment and marine activities like fishing and which may cause impairment of quality of use of water, and reduction of amenities.¹²

Sources of Water Pollution

The sources of water pollution may be any or all of the following:

- i. Lead: Due mainly to the use of metal pipes, the laying of oil pipes line through rivers and streams and the storage of water in tanks made of iron.
- ii. Sewage: Discharging of sewage effluent into water can also cause serious problems of pollution. Sewage may result from both domestic and industrial sources, domestic organic wastes when put into water may cause a significant imbalance in consuming a great deal of oxygen due to decaying process. Effluent from septic system may also contain toxic chemicals; metals from photo processing, chemicals from paint and waste oil can also be sources of water pollution.
- iii. Nutrient Enrichment: Commercial Fertilizers can cause serious water pollution problems. Nitrogen contained in the fertilizers oxidizes to Nitrates. It can increase the level of nitrate in drinking water and at the same time cause and acceleration in plant growth which can adversely increase plants growing around bodies of water and lead to a significant decline in water quality.
- iv. Pesticides: Pesticides are toxic to aquatic life and the careless dumping or handling of materials from pesticides and allowing them mix up with water can cause serious problems for aquatic life.
- v. Oil: Oil has been identified as the single largest pollutant of water in Nigeria. One study has noted as follows:

When used motor oil is poured on the ground, it can seep down to the ground water and contaminate drinking water supplies. A single quart of oil can pollute 250,000 gallons of drinking water. Also, pouring oil into the sewer or on the

¹⁰ Theghelua (cn4) 35

¹¹ Cap F10 LFN 2004, s. 15 (2) now repealed by NESREA Act.

¹² Atsegbua (n6) 98

street where it will eventually wash into the sewer is like pouring it directly into a stream or a river, and just one quart of used motor oil can produce a poisonous slick an acre in diameter.¹³

Effects of Water Pollution

Water pollution touches virtually every aspect of human life and poses much health problems. Water that seeps through porous rocks and stored within the ground is called ground water zones. Ground Water moves down into the low pressure fresh water zones. Polluted ground water will flow into streams, this contaminating them and the rivers, lakes and oceans into which they flow.¹⁴

The polluting substances emanating from a wide range of activities, such as human and industrial activities, i.e. sewage nutrients, synthetic organic compounds, sediments, litter and plastics, metals, radio nuclides, oil and hydrocarbons and polycyclic aromatic hydrocarbons cause water pollution.¹⁵ Such human activities include urban and rural development initiatives, land use, construction activities, forestry and agricultural activities, and a number of others.¹⁶

The effect of water pollution can be illustrated by the famous minimata incident of 1956 in Japan. It was reported that as a result of sea pollution, fish in the particular sea accumulated a lot of dangerous chemical (mercury), which led to the death of many people who ate the contaminated fish. It was further reported that this incident also led to pregnant women who ate the contaminated fish giving birth to deformed children. Apart from contaminating the fish stock, it also killed many of them and rendered the river toxic.¹⁷

Note that water pollution by organic wastes is a source of diseases such as cholera, typhoid fever, dysentery, and so forth. Water pollution also contributes to the problem of water scarcity in that it makes the available water to become toxic and unsuitable for human consumption and for use in industrial activities.

The effect of water pollution on plants and animals could result from the discharge of untreated waste water into the environment by industrial organizations. This practice leads to the contamination of the environment, which in turn affects plants and animals, which inhabit such contaminated environments¹⁸.

The World Bank report “Towards the Development of an Environmental Action plan for Nigeria” identified water pollution as the second highest potential for future negative impact on the Gross Domestic Product (GDP) (estimated at US\$ 1 billion annually) and puts 40 million people at risk.¹⁹

¹³ Ehigelua (n4) 35,36;

¹⁴ Atsegbua (n6) 99

¹⁵ A.C. Osondu, *Our Common Environment: Understanding the Environment, Law and Policy* (University of Lagos press, 2012) 77

¹⁶ Osondu (n15)

¹⁷ Osondu (n15)

¹⁸ Osondu (n15) 78

¹⁹ Atsegbua (n6) 99



Water pollution impacts the urban and landless poor most, because they are not educated about or able to afford defensive sanitary practices. Many Nigeria communities lack water treatment or even water supply facilities and rely on local surface and shallow ground water supplies, even when they are contaminated.

Although agricultural and municipal wastes contribute the largest amount of water pollution, industrial effluents in the form of direct liquid waste discharges, solid waste dumping into water bodies and indiscriminate hazardous waste disposal are growing problems for both surface and ground water quality in Nigeria.²⁰

In the case of industrial pollution, the major water pollution concerns are suspended solids, PH, oil and grease, heavy metals and elevated temperature.²¹

The main type of water pollution in Nigeria, especially in the riverine areas is oil pollution. This affects the life of the people, ecosystems, etc. The impact of this oil spillage on water cannot be over-emphasised.²²

Also, a good example of the effect of oil spillage on water and oceans was made clear by leading environmentalist and former vice president of the United States of America, Mr. Al Gore:

One of the most viable contaminants in oceans and some inland river system released by Saddam Hussein into the Persian Gulf, or the negligently released by the Exxon Valdez Prince William Sound, capture spills that take place unnoticed every year probably do more cumulative damage to the oceans. It is in the third world where the effects of water pollution are most keenly and tragically felt in the form of high rates from cholera, typhoid fever, dysentery and diarrhea from both viral and bacterial sources.²³

Note that, as part of the environmental effects of the oil spill during the Persian Gulf oil war a lot of damages were done to the marine life. These effects can be classified primarily as loss of marine life, damage to the gulf system, and atmospheric pollution. Within hours of the oil gush, several marine animals, which became immediate victims, lay dead, disabled, or contaminated along the pathway of the oil slick destruction. Countless birds were killed and large population of dolphins, whales, sea turtles, and fishes were wiped out as oil wreaked havoc in the sea.²⁴

According to late professor Ambrose Ali:

As a res of oil loses, vast tracks of agricultural land
have been laid waste, thus becoming unproductive,

²⁰ Atsegbua (n6)

²¹ United Nations Group of Experts on Scientific Aspects of Marine pollution in 1969.

²² Atsegbua (n6) 100

²³ Environmental Network 1994 P. 10

²⁴ M. Okorodudu-Fubara, Oil in the Persian Gulf War. 1991.Vol.23:123.ST.Mary's Law Journal 134



surface water and river courses are invariably contaminated and polluted, rendering the water undrinkable, and the aquatic life is destroyed. The result is great hardship for the inhabitants who become impoverished and deprived. These unfortunate citizens are therefore compelled to migrate to other towns and villages in search of decent life.²⁵

Thus, oil spills can result in health hazard to human beings and can also cause fire outbreaks, constituting extensive damage to life and property.²⁶

Laws Relating to Water Pollution in Nigeria

Nigeria, for purposes of ensuring and maintaining clean and quality water for consumption and other uses, has via legal instruments provided myriads of antidotes to water pollution in Nigeria, which comprises of both the National Laws and State Laws respectively. The Nigerian Government has also entered a number of treaties in order to prevent water pollution in Nigeria. Some of these laws are as follows:

Water Resources Act 1993

The Nigerian Government in 1993 promulgated the water resources Act No. 101²⁷ of that year, acting under the power conferred upon it by the Nigerian Constitution.²⁸

In passing this Act, the Government intends to vest in Federal Authority; the rights to use and control certain categories of water sources in all main objectives of the Act are cases where they affect more than one state of the federation. The four are:

- a) The promotion of the optimum planning development and use of Nigeria's water resources;
- b) The co-ordination of such activities that are likely to influence law, enhance the quality, distribution, use and management of water;
- c) The application of appropriate standards and technologies for the investigation, use, control, protection, management and administration of water resources; and
- d) The facilitation of technical assistance and rehabilitation for water supplies.²⁹

²⁵ A.O. Salu, Securing Environmental Protection in the Nigerian Oil Industry 1999, Vol.3 No.2 MPSFIC 337

²⁶ A. F. Ali, "Ceremonial Opening Address" in the Petroleum Industry and the Nigerian Environment Proceeding of the 1981, International Seminar in Port Harcourt, P.2

²⁷ Supplement to the official Gazette Extraordinary No. 27.vol 80, 1st 1993 Para A, amended in 1995 to include certain provisions on irrigation, now in Cap W2, LFN 2004.

²⁸ Pt 1, 2nd schedule, Para 62 of Constitution of Nigeria 1979. Note that the 1979 Constitution of the Federal Republic of Nigeria is now defunct as the extant Constitution of Nigeria is the 1999 Constitution, now in Cap C23 LFN 2004.

²⁹ Atsegbua (n6) 107



Under this Act, the minister of water resources is charged with the responsibility of ensuring that proper and adequate provision is made for the environment through the supply of water for the drainage, the safe disposal of sewage, effluent and water borne waste, and the control and prevention,³⁰ flooding, erosion and waterborne damage to the water shed areas, and also the protection of inland fisheries, flora and fauna,³¹ and also the protection of inland fisheries, flora and fauna.³² Non-compliance makes the culprit liable on conviction to a fine not exceeding N2000.00 (Two Thousand Naira) or an imprisonment term of six months,³³ with additional fine of N100 (One Hundred Naira) for each day the offence subsists.

It is apt to note that under the 1999 Constitution of the Federal Republic of Nigeria, the Federal Authority is vested with the right to control certain categories of water resources in all cases where they affect more than one State of the federation under paragraph 64, Second Schedule, Part 1.

River Basin Development Authorities Act, 1976 (as amended)

This Act³⁴ establishes the River Basin Development Authority, which is concerned with the development of water resources for domestic, industrial and other uses, and the control of floods and erosion. The Act established the River Basin Development Authorities, the objectives of which are follows:

The preservation and enhancement of their respective areas of operation by, for instance undertaking comprehensive development of both surface and subterranean water resources for multipurpose use... undertaking schemes for the control of floods and erosion and for shed management and similar conservation activities.³⁵

Under the Act the function of the River Basin Authority is said to be the control of pollution in Rivers and Lakes in the Authority's area in accordance with national laid down standards.

Oil in Navigable Waters Act, 1968

Another Federal Law that protects water pollution is the Oil in Navigable Waters Act,³⁶ 1968. Nigeria, in accordance with its assumed International obligation under the 1954 International Conference for the Prevention of the Sea from Oil, proceeded to promulgate this Act in 1968.

The Oil in Navigable Waters Act No. 34³⁷ of 1968 treats:

- a) Discharge of oil into prohibited sea area

³⁰ Cap W2 LFN 2004 (n27) s.5(b)

³¹ (n27) section 5 (e)

³² (n27) sections 5 and 6

³³ (n27) section 18

³⁴ Cap R 9. LFN 2004.

³⁵ (n34) Section 2(1)

³⁶ Cap06, LFN, 2004

³⁷ (n36)



- b) Discharge of oil into Nigerian Waters
- c) Failure to install oil pollution equipment on ships
- d) Failure to keep records of Oil Matters
- e) Failure by Labour authority to provide oil reception facilities
- f) Failure to report presence of oil in harbour³⁸

By S.I of the Act, it is prohibited to discharge oil into the sea and the oils covered by the Act include; crude oil, fuel oil, lubricating oil and heavy diesel oil.³⁹ By S.1(2)(a) and (b) of the Act, ‘Sea Areas’ was defined to include all sea areas within 50miles from land and outside the waters of Nigeria.⁴⁰ Section 2(2) of the Act created the first schedule to the Act and specifically extended the provisions of the Act to cover those areas mentioned in the schedule.⁴¹

Under the Act, it is an offense for any person to discharge oil or a mixture containing oil into water from any vessel or from any place on land or from any apparatus used in transferring oil from or to any vessel.⁴² This offence is committed when oil is discharged into the navigable water of Nigeria which stands at 30 nautical miles.⁴³

The Act also provides penalties for offence under section 1, 3 or 5. Section 6 specifically provides that a person guilty of an offense under sections 1, 3 or 5 of this Act shall, on conviction by a High Court or a Superior Court on summary conviction by any court of superior jurisdiction will be liable to fines.⁴⁴ Prosecution under the Act has to be initiated with approval of the Attorney General of the Federation,⁴⁵ while offences created by it are subject to concurrent jurisdiction of magistrate courts.⁴⁶

Broad as these provision may seem; the law also creates defenses to the offences created under the Act. Where a person is charged with an offence under the Act, it shall be a defense under section 4 of the Act to show that the oil or mixture of oil and water was discharged for the purpose of securing the safety of the vessel or cargo or of saving life, it is also a defense to show that the oil was contained in an effluent produced by any operation for the refining of oil or that it was not reasonably practicable to dispose of the effluent otherwise than by discharging it into the water.⁴⁷

Under the Act, the minister is given powers to make regulations requiring Nigerian Ships to be fitted with equipment that will prevent or reduce the discharge of oil and mixtures containing oil into the sea.

³⁸ Atseqbua (n6) 108

³⁹ (n36) S.I

⁴⁰ (n36) S.1(2)(a) and (b)

⁴¹ (n36) S.2(2)

⁴² (n36) Preamble to the Act

⁴³ (n36)

⁴⁴ (n36) S.6

⁴⁵ (n36) S.12

⁴⁶ (n36) S.56(4)

⁴⁷ (n36) S.4



As a means of ensuring compliance with regulations, the Act provides that all masters of Nigerian ships must keep records of matters relating to oil, the Act also provides for facilities to be placed in harbours for the transfer of oil by Night; the Act also creates a duty to report cases of discharge of oil into waters or harbours and the minister has power to appoint any person as an inspector to find out whether all the prohibitions, restrictions, obligation and measures have been complied with.⁴⁸

The Petroleum Act

This Act⁴⁹ was principally enacted to provide for the exploration of petroleum from the territorial waters and continental shelf of Nigeria. It gives the Minister in charge of petroleum resources power to make regulations for the prevention of pollution of waters courses and the atmosphere.⁵⁰ Pursuant to the above powers, the minister made the Petroleum (Drilling and Production) Regulation, under these Regulations, the licensee or lessee is expected to adopt all practical precautions including the provision of up to date equipment to prevent the pollution of inland waters, rivers, courses, territorial waters of Nigeria or the High Seas by oil, mud or other fluids or substances which might contaminate the waters, banks or shorelines or which might cause harm or destruction to fresh water or marine life, and where such a pollution has occurred, the licensee or lessee shall take prompt and adequate steps to control and if possible end the effects of the pollution⁵¹. This places restriction on licensees from using land within fifty yards of any building, dam, reservoir, public road, etc⁵².

Regulations 36(d) provides as follows:

The licensee or lessee shall maintain all apparatus or appliances in use in his operation and all boreholes and wells capable of producing petroleum, in good repair and condition and shall carryout all his operation in a proper and workman like manner in accordance with these and other relevant regulations and methods and practices accepted by the directors of petroleum resources as good outfiel practice and without prejudice to the generality of the foregoing he shall in accordance with the practices take all steps practicable: To prevent escape of petroleum into any water, well, spring, stream, river, lake, reservoir, estuary or harbour.⁵³

Oil Terminal Dues Act

This Act⁵⁴ regulates the discharge of oil or mixture containing oil into the territorial waters of Nigeria. Thus, the Act makes it an offence for any pipeline, vessel or any apparatus used for evacuating or transferring oil to discharge same into any part of Nigerian territorial water, for which any person found guilty is liable to payment of fine⁵⁵ under section 3 of the oil in Navigable waters Act, he shall also be

⁴⁸ (n36) Ss. 10 and 11

⁴⁹ Cap P10. LFN 2004

⁵⁰ (n49) S.9 (1)(b)(iii)

⁵¹ (n49) Regulation 25

⁵² (n49) Regulation 17 (1)(b)

⁵³ (n49) Regulation 36(d)

⁵⁴ Cap 08, LFN, 2004

⁵⁵ (n54) Section 6

subject to the penalties under section 6 of the oil in Navigable waters Act, the defenses under the oil in Navigable Waters Act are also open to an accused person under the Oil Terminal Dues Act.

Sea Fisheries Act

The purpose of the Sea Fisheries Act⁵⁶ is to protect water resources, Sea Fisheries and Seawater quality. Under the Act, It is prohibited to navigate in any motor fishing boat within the territorial waters of Nigeria without licence.⁵⁷ Hence, by this Act, it is illegal to take or harm fishes within Nigerian waters by the use of any noxious or poisonous matter or by use of any explosive substance,⁵⁸ an offender under this provision is liable on Conviction to two years imprisonment or to a fine of N50, 000.00 (Fifty Thousand Naira) or to both such fine and imprisonment and in addition the offender may forfeit to the Federal Government any fishing boats or apparatus used in Committing the offence. These methods of fishing can actually introduce toxic substances into the waters of Nigeria and pollute the marine environment and endanger sea life.

Territorial Waters Amendment Act 1971

Territorial Waters Amendment Act 1971 provides that the Territorial Waters of Nigeria shall for all purposes, include every part of the open sea within Thirty Nautical Miles of the Coast of Nigeria. This Act makes punishable any act or omission committed within Nigerian waters which would be an offence under any other existing law.⁶⁰

Harmful Waste (Special Criminal Provision) Act

This Act⁶¹ prohibits, without lawful authorization, the carrying, dumping or depositing of harmful waste in the air, land or waters of Nigeria. Under the Act, it is an offense to carry, deposit or dump harmful waste on any land in Nigeria or in Nigerian territorial waters, contiguous zone or exclusive economic zone without lawful authority or to transport, import, sell or buy harmful waste. Any person found guilty under this Act is liable, on conviction to imprisonment for life as well as the forfeiture of land or anything used to commit the offence.⁶² Apart from the criminal liability imposed by the Act, the offender is also liable in civil proceeding to persons who have suffered injury as a result of his offending act.⁶³

This Act defines harmful waste to include injurious, toxic or noxious substances if the waste is of such quality as to subject any person to the risk of death, fatal injury or incurable impairment of physical or mental health.⁶⁴ Note that, this Act is a reaction to the 1988 dumping of toxic waste at Koko Town in

⁵⁶ Decree No. 71 of 1992, now Cap S4, LFN 2004

⁵⁷ (n56) Section 1 (1)

⁵⁸ (n56) Section 10 (1)

⁶⁰ F.T. Aguma, Definition of the Environment, its Legal Framework and causes of Environmental Degradation: An Analysis, being a seminar paper presented at the PhD class, Nnamdi Azikiwe University, Awka in 2015, 15

⁶¹ Cap H1 LFN, 2004

⁶² (n61) Section 6

⁶³ (n61) Section 12

⁶⁴ Ehigelia (n4) 47

Delta State, in Nigeria and also to curb the increasing rate of trans-boundary movement of hazardous wastes.⁶⁵

Criminal Code Act

The Act⁶⁶ provides for the prevention of water pollution in Nigeria. Section. 234(e) of the Criminal code makes it an offence for any person to deliberately divert or obstruct the course of any navigable water so as to diminish its convenience for purposes of navigation.⁶⁷ It is a misdemeanor and the offender is liable to imprisonment for two years.

Section 245 of the code provides as follows:

Any person who corrupts or fouls the water of any spring, stream, well, tank, reservoir or place so as to render it less fit for the purpose for which it is ordinarily used is guilty of a misdemeanor and is liable to imprisonment for six months.⁶⁸

Constitution of the Federal Republic of Nigeria, 1999

The 1999 Constitution of the Federal Republic of Nigeria⁶⁹ provides in Section 20 that: the state shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria.⁷⁰

The above Constitutional provision guaranteed not only protection of the Nigerian environment in its various media but also the improvement of such environmental media with their flora and fauna, presumably. So couched, the provision provides a framework for National Environmental Standards on Land, Water and Air.

This provision seeks to prevent environmental damage before such damage is inflicted on the environment. The preventive principle of environmental protection relative to this constitutional provision, however, does not seem underpinned by anthropocentric, bio centric or egocentric ethical philosophies of environmental protection.⁷¹ This Constitutional provision is a far cry from the provision of the Philippines Constitution, under S. 16 of the Philippines, Constitution, it is provided that: 'the State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature'⁷² It was this provision, when read in conjunction with s.15 of the same constitution, which subjects the State to a duty of protecting and promoting the people's right to health, that was held in *Minors Oposa v. Secretary of the Department of Environment and Natural Resources*⁷³ to entitle the petitioners minors to sue for themselves, others of their generation and generations yet unborn to press their fundamental human right to a healthful ecology in harmony with

⁶⁵ Ehigelia (n4)

⁶⁶ Cap 38 LFN 2004

⁶⁷ (n66) Section 234(e)

⁶⁸ (n66) Section 234

⁶⁹ Caps C 23 LFN 2004

⁷⁰ (n69) Section 20

⁷¹ A.K. Usman, Environmental Protection Law and Practice (Ababa Press Ltd., 2012) 6

⁷² Philippines Constitution, Section 16

⁷³ 33kmv(1994) 173 Supreme Court of the Philippines



nature. By the decision of the Philippines Supreme Court in this case, the right to a healthful ecology in harmony with nature is a Fundamental Human Right Justifiable at the instance of the aggrieved persons.

Now, given the wording of section 20 of the Nigerian Constitution of 1999, it is not open to argument that the section creates any right in favour of citizens to a sound environment, including the right and access to clean and quality water in Nigeria. It appears in our view that the Constitution only speaks for the state, instead of speaking for the citizen as the phrases, such as 'The State shall ... or, the State shall not ...' usually confers no right on the citizen by such provisions. Also, it should be noted that this section which talks of environmental objectives and other objectives directing state policies are not justifiable by the express provision of section 6(6)(c) of the Constitution.⁷⁴ Again, the provision (s.20) is not within the part dealing with Fundamental Human Right. Worse, there is something decidedly haunting about a provision that says that the state shall protect and improve the environment and safeguard the water, air and land, Forest and Wildlife, without suggesting the means by which these shall be achieved.⁷⁵ However, the African Charter on Human and Peoples' Rights⁷⁶ to offers a solution to this problem. With the enactment of the African Charter on Human and Peoples' Rights, (Ratification and Enforcement) Act⁷⁷ as part of Nigerian law, it became an integral part of our legal system with a full force of law and enforcement machinery, the Article 24 of the Charter Specifically provides: 'All people shall have the right to a general satisfactory environment favourable to their development.'⁷⁸

Section 1 of the Act provides:

As from the commencement of this Act, the provisions of the African Charter on Human and Peoples' Right which are set out in the schedule of this Act shall, subject as thereunder provided have force of law in Nigeria and shall be given full recognition and effect and be applied by all authorities and persons exercising legislative, executive or judicial powers in Nigeria⁷⁹

The Supreme Court in arriving at its decision in *Gen. Abacha v. Gani Fawehiwi*⁸⁰ made some notable worth considering statements:

That an international treaty becomes binding when enacted into law by the National Assembly in that section 12(1) 1979 Constitution provides:

No treaty between the federal and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.

⁷⁴ (n69) S. 6(6)(c)

⁷⁵ Usman (n71)7

⁷⁶ ACHPR, 1981

⁷⁷ Cap A9 LFN 2004

⁷⁸ (n76) Article 24

⁷⁹ (n77) Section 1

⁸⁰ 2000 Vol. 77, Law Report of Courts of Nigeria, p.1254-1401



Not that this provision is replicated in section 12(1) of the 1999 Constitution of Nigeria as amended 2011. From the foregoing, therefore, it is our submission that citizen can benefit from the environmental provision of section 20 of the Nigerian Constitution despite the non-justifiability clause of section 6(6)(c) by invoking the provision of the African charter on Human and People's Rights in a court of competent jurisdiction in Nigeria. Hence, the right to clean and quality water in Nigeria is achievable in this regard.

Note that our emphasis on the term 'right' in this regard was driven by the compass navigating the relevance or import of section 20 of the constitution and the best means to realize same by citizens, otherwise the section would have been far from being a categorical imperative for environmental protection in Nigeria and foster a mere normative regime for environmental protection in Nigeria, considering the express provision of section 6(6)(c).

National Environmental Standards and Regulations Enforcement Agency (establishment) Act 2007

The NESREA (Establishment) Act No. 25 of 2007, a framework legislation, established the framework for the establishment of national environmental standards on water quality, air quality, noise and atmospheric protection⁸¹. Section 23(1) of the NESREA Act provides that 'the Agency shall in collaboration with relevant agencies make regulations for the purpose of protecting public health or welfare and enhancing the quality of water to serve the purpose of this Act⁸². The Agency in drawing up proposal for such regulation and standard is to take into consideration the use and value of the water for public water supplies, propagation of marine and wildlife, recreational purpose, industrial and other legitimate uses.

The provision of the NESREA Act in this regard is similar in some respects to the UK environmental legislation. Under the Water Resources Act (WRA) 1991, the secretary of state for the environment has a duty to set targets for the quality of certain stretches of water⁸³. Once such regulations on water quality have been made, the NESREA would be under a duty to ensure that the regulations are enforced. This is in line with section 7(d) of the NESREA Act which mandates the Agency to enforce compliance with policies, standards legislations and guidelines on water quality, environmental health and sanitation, pollution abatement⁸⁴.

Section 8(k) (vi) of the NESREA Act empowers the Agency to submit for the approval of the minister, proposal and standards on environment other than in the oil and gas sector including water quality⁸⁵.

This provision, when taken together with section 23, means that any regulations made by the agency shall be submitted to the minister of Environment for his necessary approval. Thus, the power to make

⁸¹ (n3) Ss 8(k), 20, 21, 22 and 23

⁸² (n3) 3. 32(1)

⁸³ Water Resources Act (1991) of the UK, S. 83

⁸⁴ (n3) S.7(d)

⁸⁵ (n3) Section 8(k) (vi)



delegated legislation in the form of regulations is exercised subject to the approval of the minister of environment⁸⁶. By this provision, states are entitled to pass their own laws establishing water quality standards in respect of water bodies and water courses limited to their territories. Another notable provision of section 23(1) of the NESREA Act is meant to enhance quality of water to serve the purpose of the Act. The sum effect of the provision of section 23(1) and (2) of the Act is that in establishing natural standards on water quality, NESERA shall take into consideration the various uses to which the affected waters are put. This effectively means the level of protection a given water body or course gets depends on the uses to which it is put. In this regard, water bodies or course used for human consumption will enjoy higher level of protection than water bodies and courses not put to such use⁸⁷.

The National Guidelines and standards for water quality in Nigeria issued by the Minister of environment list uses to which water can be put. These include human consumption, agricultural uses, livestock drinking, aquatic life uses, recreational uses and industrial uses⁸⁸. These Guidelines being issued have the force of law and therefore attract legal consequences on being breached. This punishment can be on the basis of the NESREA Act or indeed the criminal code which provides in S.245 that, ‘any person who corrupts or fouls the water of any spring, stream, well, tank, reservoir or place, so as to render it less fit for the purpose for which it is ordinarily used is guilty of a misdemeanor and liable to imprisonment for 6(six) months or fine.

Another notable provision of section 23(1) of the NESREA Act is ‘...in collaboration with other relevant agencies...’ These relevant agencies would likely be the various states environmental protection agencies. Section 24 of the repealed FEPA Act provided for states and local government councils to set up their own environmental protection bodies for the purpose of maintaining good environmental quality in the area of related pollutants under their control subject to the provision of the Act⁸⁹.

The various state governments subsequently established environmental bodies which subsist⁹⁰. The NESREA, in making and enforcing environmental regulations and standards may have to liaise and collaborate with the state environmental protection bodies especially in aspect where the functions of state and federal bodies overlap⁹¹.

Note that the violation of these regulations by a person shall on conviction, be liable to a fine not exceeding N50,000 (fifty Thousand Naira) or to imprisonment for a term not exceeding one year or to both such fine and imprisonment and an additional fine of N5,000 (Five Thousand Naira) for every day the offence subsists and where an offence in this regard is committed by a body corporate, it shall on

⁸⁶ Usman (n71) 9

⁸⁷ Usman (n71) 10

⁸⁸ Usman (n71)

⁸⁹ The Federal Environmental Protection Agency (FEPA) 1988 was repealed by section 36 of the NESREA Act, 2007

⁹⁰ (n3) S.26(1) (3) and (4)

⁹¹ This Act is a product of several improvements on the Mineral Ordinance of 1914 as amended in 1925, 1950 and 1958 respectively. It was compiled as Cap 12 LFN 1958, Cap 236 LFN, 1982 bidrepealed by the Minerals and Mining Act, 2007.

conviction, be liable to a fine not exceeding N50,000 (Fifty Thousand Naira) and an additional fine of N10,000 (Ten Thousand Naira) for everyday the offence subsists⁹².

Note further that the ‘National Environmental (Textile, Weaving, apparel, Leather and Footwear industry) Regulations, 2009’ and the ‘National Environmental (Food, Beverages and Tobacco sector) Regulations, 2009’, both made pursuant to the NESREA Act contain comprehensive provisions aimed at controlling water pollution regulation respectively, in their regulations 11(2) which provide ‘that a facility shall discharge any effluent or oil in any form into water system, public drains, or underground injection and land without a permit from the Agency⁹³, and that violation of regulations and protection of natural water shed coastal zone, dams and reservoir etc., by any person, such a person shall be liable to a fine not exceeding N200,000 or to imprisonment for one year, or both; and if the violation is a corporate body, it shall be liable to a fine of N1,000,000 and an additional fine of N50,000 for every day the offence subsists⁹⁴.

Also, section 24 of the NESREA Act makes provision for effluent limitations, and provides under subsection (3), (4) and (5) that the Agency may make regulations on effluent limitations, on existing and new point source, for the protection of human, animal, marine and plant life; and provides for a punishment of a fine of N200,000 or to imprisonment for a term of 2 years or both for an individual violator and an additional fine of N5,000 for every day the offence subsists. If however, where this offence under subsection (3) is committed by a body corporate, it shall be liable to a fine of N1,000,000 and an additional fine of N50,000 for every day the offence subsists.

Nigerian Minerals and Mining Act

The Act⁹⁵ repealed the Minerals and Mining Act, No. 34 of 1999 and re-enacted the minerals and mining Act, 2007 for the purpose of regulating all aspects of the exploration and exploitation of solid minerals in Nigeria for related purposes⁹⁶. Section 46 of the Act provides that; No person shall in the course of mining or prospecting operations or any works connected therewith, pollute or permit to become polluted the water or any water course⁹⁷. A breach of this section is punishable with a fine of N200.00 or imprisonment for 12 months⁹⁸. It should be noted that there is an upward review of the fine penalties in the NESERA Act in view of the march of time and the continuous devaluation of the naira⁹⁹. This is commendable, however, there is still a need to amend fine penalties provision of the mineral Act and others.

⁹² (n91) Enacted Section to the Mineral and Mining Act, 2007

⁹³ (n3) Reg 11 (2) TWALFI & FBTS Regulations 2009

⁹⁴ (n3) s. 26 (1), (3) and (4)

⁹⁵ This Act is a product of several imprisonments on the Minerals Ordinance of 1914 as amended in 1925, 1950 and 1958 respectively. It was compiled as Cap 12 LFN 1958, Cap 236 LFN 1990 but now repealed by the Minerals and Mining Act, 2007

⁹⁶ (n95) Enactment Section to the Mineral and Mining Act, 2007.

⁹⁷ (n95)

⁹⁸ Usman (n71) 27, 28

⁹⁹ Usman (n71) 28



National Oil Spill Detection and Response Agency (Establishment) Act (NOSDRA)

This Act¹⁰⁰ provides for the establishment of the National Oil Spill Detection and response Agency, with responsibility for preparedness, detection and response to all oil spillages in Nigeria. Section 7 of this Act provides that the Agency shall ensure the co-ordination and implementation of the plan within Nigeria including within 200 nautical miles from the baseline for which the breadth of the territorial waters of Nigeria is measured; encourage regional co-operation among member states of West Africa sub-region and in the Gulf of Guinea for combating oil spillage and pollution in our contiguous waters and strengthen the national capacity and regional action to prevent control combat and mitigate marine pollution¹⁰¹.

Recently, there were incidences of death of fishes in the Nigerian waters, particularly within the Niger Delta coastline. The NOSDRA reviewing its findings following it's investigation on the causes of the dead fishes said finding on the dead fishes littering the Atlantic Coastline indicated levels of toxicity caused by toxic wastes discharge. The Agency noted that the discharge of materials into the Atlantic may have come from land as the wastes from domestic and industrial sources often empties into the water body¹⁰².

International Laws and Conventions on Pollution Control

Apart from laws which exist locally in Nigeria, on water pollution, there are international laws and conventions which deal with the problems of pollution control. Nigeria is a signatory to some of these conventions which are as follows:

Convention of the High Sea

The Convention of the High Sea was adopted in Geneva on 29th April 1958, and it came into force on 30th September, 1962 on which date also, Nigeria accepted the Convention¹⁰³. The aim of the Convention was to codify the rules of international law relating to the high seas. The convention enjoined states to draw up regulations to prevent pollution of the sea by oil from ships and pipelines or resulting from the exploration and exploitation of the sea bed. States were also enjoined to take steps to prevent pollution of the sea by dumping of radioactive waste and also to collaborate with international bodies and agencies in taking such measures to prevent pollution of the seas or airspace above the seas resulting from radio-active materials or other harmful agents¹⁰⁴.

International Convention on Civil Liability for Oil Pollution Damage

The International Convention on Civil Liability for Oil Pollution Damage was adopted in Brussels, Belgium on 29th November, 1969, it came into force on 19th June, 1975 and was accepted by Nigeria on 5th August, 1981¹⁰⁵. The convention underwent amendments in 1976 and 1984 respectively in London¹⁰⁶. The aim of the convention is to ensure that adequate compensation is paid to persons who

¹⁰² NOSDRA, Discharged waste killed Fishes on Niger Delta Coastline <theadvocatengr.com> accessed May 14, 2020.

¹⁰³ Convention of the High Seas 1958

¹⁰⁴ (n103) Art. 24

¹⁰⁵ International Convention on Civil Liability for Oil Pollution Damage 1969

¹⁰⁶ Ehigelia (n4) 54

suffer damage caused by pollution arising from the escape or discharge of oil from ships and to create a standard for international rules and procedures for the determination of the question of liability and adequate compensation¹⁰⁷.

Article 3 of the convention excludes liability of the owner of a ship if the incident which leads to the leakage of oil is caused by an act of war, natural disaster or phenomenon, negligence of a government or other authority in maintaining navigational aids and malicious acts of a third party¹⁰⁸. The convention imposes strict liability on ships, it also makes provision for compulsory insurance and the highest liability that is insurable and the establishment of a compensation fund to the tune of thirty million dollars¹⁰⁹. This compensation fund requires an upward review if not yet reviewed, in line with the present reality considering the year of the adoption of this convention i.e. forty years (4 decades) now, from the year of the adoption of the convention in 1969.

Note that the convention excludes expressly, oil pollution caused by exploration or exploitation of the sea-bed, sewage operation industrial operation, as well as oil storage tanks situated at sea and does not cover ships which have oil in their bunkers.

Convention of the Prevention of Marine Pollution by Dumping Wastes and other Matters

The convention on the Prevention of Marine Pollution by Dumping Waste and Other Matters was adopted in London, Mexico City, Washington DC and Moscow on 29th December, 1972, and it came into force on 30th August, 1975¹¹⁰. Nigeria accepted the convention on 18th April, 1976. This convention underwent amendment on October 1978 and September 1980 respectively¹¹¹. The objective of the convention is to control pollution of the sea by dumping and to encourage regional agreements supplementary to the convention¹¹².

Agreement on the River Niger Commission and the Navigation and Transport on the River Niger

In 1964, Nigeria entered into an agreement concerning the River Niger Commission and the navigation and transportation on the River Niger¹¹³. The other countries to the agreement are Niger, Mali, Guinea-Bissau and Sierra Leone.

Article 12(2) of the agreement enjoined the states which are parties to the agreement to:

Abstain from carrying out on the portion of the River, its tributaries and sub-tributaries under their jurisdictions, any works that are likely to pollute the water or any modification likely to affect the biological characteristics of flora and fauna without prior consultation with the commission¹¹⁴.

¹⁰⁷ Ehigelua (n4)

¹⁰⁸ (n105) Art. 3

¹⁰⁹ Ehigelua (n4)

¹¹⁰ Convention on the Prevention of Marine Pollution by Dumping Waste and other Matters 1972.

¹¹¹ Ehigelua (n4) 55

¹¹² Ehigelua (n4)

¹¹³ Agreement on the River Niger Commission and the Navigation and Transport on the River Niger

¹¹⁴ (n113) at. 12(1)

United Nations Convention of the Law of the Sea (UNCLOS)

Among the many international legal developments concerning environmental protection that have emerged in the years since the Earth Summit (United Nations Conference on the Environment and Development-UNCED in 1992 at Rio de Janeiro, the entry into force of the 1982 UN Convention on the law of the sea¹¹⁵ on 16 November 1994, is arguably the ‘main event’. As Nanda has put it, ‘during the decade following the Stockholm Conference (on the Human environment), the environmental provisions of the 1982 United Nations Conventions on the Law of the Sea (UNCLOS) constituted the single most International Environmental Law’,¹¹⁶

The main objectives of the UNCLOS are:

- a) To establish a comprehensive legal order to promote peaceful uses of the oceans and seas, the equitable and efficient utilization of their resources, the conservation of their living resources, and the study and protection and preservation of the marine environment as well as to facilitate international navigation;
- b) To integrate and balance the right to exploit natural resources with the duty to manage and conserve such resources to protect and preserve the marine environment; and
- c) To provide the comprehensive legal framework for the protection and preservation of the marine environment to be complemented and developed by further legal rules at the global or regional level and national measures¹¹⁷.

Some of the rules and standards of the UNCLOS are that states parties must *inter alia* take all measures necessary to prevent, reduce and control pollution of the marine environment from any source; to assess the potential effects of planned activities on the marine environment and publish reports thereon; and to monitor the risks of effects of pollution and publish thereon¹¹⁸.

Note that part xii of the convention which is devoted to the protection and preservation of the marine environment, is an important advance on other conventions relating to various aspects of marine pollution since it formulates the obligation to protect the environment in terms which cover all sources of marine pollution: Pollution from ships, land-based sources, sea-bed operations, dumping and the atmosphere. It also provides the framework for the series of treaties, both global and regional, which have or will be negotiated, on each of these topics¹¹⁹.

Apart from part xii of the law of the sea convention articles 145, 147 along with article 142(3) and the general provision of article 192 which falls within the part xii foresee the possibility of harmful effects

¹¹⁵ UNCLOS 1982

¹¹⁶ P. Nanda, International Environmental Law and Policy (Transnational 1995) 257.

¹¹⁷ (n115) UNCLOS Objectives as recognized in the UN Conference on Environment and Development (UNCE) Agenda 21, Chapter 17

¹¹⁸ Sources on the Internet: <http://www.un.org/Depts/Los/>, <http://www.isa.org.jm>><http://www.itlos.org/> accessed 7/11/2007.

¹¹⁹ P. Birne, A. Boyle, International Law and the Environment (Clarendon, 1992) 255



which may rise from such activities and therefore made provision to ensure effective protection of the marine environment from such harmful effects¹²⁰.

Note that article 193 of the UNCLOS asserts the sovereign right of state to exploit their natural resources pursuant to their environmental policies and in accordance with their duty to protect and preserve the marine environment, while Article 194 put in place measures by which states could prevent, reduce and control cases of pollution of the marine environment, and they are also expected to take either individually, or jointly all appropriate measures consistent with the convention to prevent, reduce and control pollution of the marine environment from any source, using the best practicable means at their disposal. It is worthy of note that Nigeria ratified the United Nations convention on the law of the sea (UNCLOS) 1982, on the 14th August, 1986¹²¹, thereby making itself bound by the convention.

Conclusion

From the foregoing, it is germane to conclude that water pollution is deleterious to human health and the entire ecosystems, as it interferes with their natural and or physical existence. It also poses a great threat to the economic growth and development of any nation, including Nigeria. It's a violation of the right to health and right to life constitutionally guaranteed by the Nigerian constitution.

The Nigerian government, in its bid to control and prevent water pollution in Nigeria with its avalanche of National laws, some of which not been captured in this work, also entered into some international treaties with other states, and ratified same. Apart from the National laws on pollution in Nigeria, the states within the federal republic of Nigeria also have laws for the control and prevention of water pollution wherein they interface and corporate with the Federal Agencies, where the need arises, in ensuring a successful control and prevention of water pollution in Nigeria. More so, it's very interesting to note that the environmental protection provision in the 1999 Nigerian constitution, in section 20 of the chapter II on the fundamental objectives and Directive Principles of state policy which has been rendered non-justiciable by virtue of section 6(6)(c) is resurrected with full strength by the provisions of the African Charter on Human and Peoples Rights, as citizens can now successfully rely on the charter in court, where their right to a clean environment or to quality and standard water is in issue. Therefore, the issue of water pollution in Nigeria is not the laws but implementation of the laws.

It is therefore our suggestions that the federal government of Nigeria should implement the National laws for the control and prevention of water pollution in Nigeria. First, enforcement of laws is key to national development. Second, international treaties and conventions on water pollution entered into by Nigeria should be domesticated and respected for the country to fully enjoy the benefits thereof, as that is in harmony with the principle of '*pacta sunt servanda*' (treaties must be obeyed), the federal government of Nigeria having derived the legal audacity to so do by virtue of section 12 (1) of the constitution which enjoins the National Assembly to enact any treaty Nigeria is a party to, into law.

¹²⁰ UNCLOS (n115) arts. 145, 147 and 142(3), 192

¹²¹ Babatunde, Akpambang, '*Impediment to Enforcement of Environmental Treaties Against Oil Pollution*' (2017)8(2) Nnamdi Azikiwe University *Journal of International Law and Jurisprudence* 17