

Pollution of the Environment: A Violation of Fundamental Human Right in Nigeria

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Abstract

The right to life is guaranteed constitutionally as a fundamental human right and the environment consist of air, water, land, forest and wildlife upon which man's life is dependent on. The activities of the oil and gas industries have been identified as the major source of pollution to the Nigerian environment which has indeed given rise to gross violation of the right to life. The Nigerian Constitution expressly prohibits over exploitation of human or natural resources in any form whatsoever as a fundamental objective and directive principles of the state policy but stipulated as a fundamental right the responsibility of the state to protect and improve the environment as well as safeguard the water, air, land, forest and wildlife of Nigeria. This paper also appraised continuous violation and pollution of environment in respect to human life. It also viewed the inadequate sanction and lack of compliance of existing laws as touching pollution occasioned by activities of oil and gas industries in Nigeria. This paper recommends total review of sanction mechanism as to include capital punishment and strengthening of the environmental protection institutions.

Key words: *Environment, Pollution, Human right, Violation, Sanction mechanism*

INTRODUCTION

The environment was created and perfected by God according to the Holy Scripture before the creation of man. This suggests that the environment is vital for the survival of man. An in-depth view of creation of the environment buttresses the fact that the component of the environment which is made up of the air, land and sea is of vital importance to the survival and sustenance of man. However after the creation of man, he become the major cause of pollutions, the foregoing gave rise to protection of the global environment which led to several international convention on protection and preservation of the environment and natural resources. Unfortunately, what has remained most worrisome is the fact that in the face of plethora of these laws and international conventions, human had consistently polluted and violated the environment in a most unacceptable manner that have raped human and its environment of their natural content intended for their sustenance.

The quest for expansion of economic gains by National and International oil and gas companies has led to deliberate and constant pollution of the environment by both developed and developing nations, particularly in Nigeria. It is however, worrisome that the scale and magnitude of pollution in Nigeria is unprecedented following deliberate refusal of oil and gas companies to comply with the existing environmental protection laws in Nigeria.

The constitution¹ made express provision for protection of human and environmental right² and also prohibits over exploitation³ as contained in the fundamental objective and directive principle of state policy.

Paradoxically, in the face of these elaborate provision of the 1999 constitution, the same constitution by virtue of section 6 (6) (c) whittle down the effect of section 20 that provides for protection of the environment.

The lukewarm attitude of Nigerian Government in respect of protection of the environment has largely given room for continuous violation and displacement of the environment. This is evident in statutory functions carried out by the Department of Petroleum Resource (DPR). The Department of Petroleum resources lacks man power and technical know – how to execute its primary responsibility. They depend on the International oil companies for logistics and general data for operations. They also lack the technology to ascertain the extent of pollution caused by oil exploration and the effect on the environment.

In conclusion, it is observed that the environmental protection institutions in Nigeria are extremely very weak and subject to mercy of the executive arm of government which ought not to be so. Strengthening the institution in our opinion should top paramount as to bar any interference by the executive or any other aim of the government.

The courts should be empowered to exercises unfettered discretion generally on environmental matters. Deliberate activities that lead to pollution and displacement of the environment should attract life imprisonment or death penalty.

POLLUTION OF THE ENVIRONMENT

The introduction of contaminants whether chemical substances or energy into the natural environment which causes adverse change is regarded as environmental pollution⁴. It is also the unfavorable alteration of our surroundings wholly or largely as a by-product of man's action through direct or indirect effects of the changes in the energy pattern, radiation levels as well as chemical and physical constitution and abundance of organisms⁵. The laws on environmental pollution are not wholly significant and adequate to cope with the challenges posed by environmental pollution and human health hazard.⁶ The non- reprovng sanctions in the laws makes it weak and like the positive law theory, laws are enacted by state to protect the rights of individuals, the governed to maintain order and safety.⁷

The off shot of the activities of the oil and gas industries have kept the environment depleted, polluted and degraded with immense health defects on man, endangering species habitats. During their drilling exercise⁸, water is contaminated being the Aquifer, deforestation also surfaces and the presence of toxic heavy metals in their drilling mud causes reduction in

¹ CFRM 1999 Cap C23 LFN 2004 (amended)

² CFRM 1999 Cap C23 LFN 2004 ()S, 20

³ CFRM 1999 Cap C23 LFN 2004 () S. 17 (1)(d) (3)

⁴ Environmental management, 'environmental pollution' <https://www.sciencedirect.com>>accessed, 8th January, 2021

⁵ P.K. Rao, 'Bio Magnetic Monitoring of Particulate matter'(2.16) <https://www.sciencedirect.com>>accessed 8th January, 2021

⁶ D. S. Sengar, 'Environmental Law' (3RD Edition, New Delhi, 2012) 19

⁷ T. Hobbes, 'Legal Positivism' <<https://www.lawteachers.nets>>accessed 8th January, 2021.

⁸ JFH Abowei and S. D. Sikoki; 'Water pollution management and control' (1st Edn.) Port Harcourt: Double trust publication company 2005) 87.

growth, death, brain damage, respiratory disorder which is a violation of the right to life guaranteed constitutionally.

Consequently, when man eats heavy metal contaminated sea food like Oysters, Lobsters, since the metal cannot be excreted, it results to death on man and also brain damage like in Minamata Bay in Japan in 1952 where poisonous mercury consumed in fish led to hundreds of casualties thereby making Japan to have the strictest environmental law in industrialized world⁹.

Gas flaring which is also a major source of environmental pollution is one of the activities of the oil and gas industries wherein during the drilling stage, oil, water and gas is around. Oil is reserved in the reservoir while the produce water is discharged to the ground. The gas is flared, it is cheaper to do so rather than transporting it to be used for power generation or cooking gas and the effect on man is deafness, cough mix blood resulting to death¹⁰ yet there are laws prohibiting gas flaring and the right to life as guaranteed by law.

RIGHT TO LIFE VERSUS ENVIRONMENTAL RIGHT

The constitution¹¹ provides that every person has a right to life and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.

Flowing from this paper as earlier stated, the environment is made up of air, land, water upon which man's life is dependent on and the constitution¹² also provides that the state shall protect and improve the environment and safeguard the water, air, land, forest and wildlife of Nigeria.

Paradoxically, the right to life is encapsulated under the chapter IV of the constitution which is enforceable in the court of law and termed fundamental rights whereas the right to environment is captured in Chapter II which by the provision of section 6 (6)(c) is non-justifiable and is simply termed fundamental objective and directive principles of state policy.

Ironically, to guarantee right to life and merely direct as a policy, environmental life is the greatest height of hypocrisy, hence the life guaranteed is tied to the environmental life as it cannot be separated.

Life is the existence of an individual human being or animal and the environment is made up of air that man breathes in to live, water that man drinks and takes in to survive, land that man consumes proceeds from it to sustain life and even wildlife which consist also of animals that man feeds on cannot be separated as it is tied together.

Submissively, the environmental right stipulated under chapter II of the constitution should be reviewed in its drafting language and moved to chapter IV of the constitution as fundamental as there is no right to life without the right to safe and clean environment as pollution of the environment is a violation of the fundamental right to life hence man's life is dependent on the environment for living and survival.

⁹ Lentech 'Heavy metals' (1998) <<https://www.lintech.com>> accessed 8th January, 2021

¹⁰ JFN Abowei

¹¹ CFRN 1999 Cap C23 LFN 2004 (as amended); S. 33.

¹² CFRN 1999 Cap C23 LFN 2004 (as amended); S. 20

ENVIRONMENTAL PROTECTION LAWS AND RIGHT TO LIFE

Nigeria has several environmental protection laws, majorly an off shoot of International Convention but this paper will consider few critical laws.

1. Environmental Impact Assessment Act¹³.

The Act generally is to regulate and safeguard the environment. The whole essence of environmental impact assessment, is to identify, predicate, evaluate and present probable consequences whether negative or positive of any proposed project, policy or programme. However, the Act exempts some projects from EIA¹⁴ and these exemptions are at best of political interest but not in the interest of man and the environment. For instance, Section 2 (a) says where the project is on the list of projects which in the opinion of the president of Nigeria have minimal environment effects.

The foregoing is worrisome in the light of the effect of the activities of the oil and gas industries on the environment and man generally amidst the constitutional provision for right to life whereas the after math consequence that would have been averted has been subsumed by the executive waiver even where the president is not an environmentalist.

The court conferred with the duty of interpreting laws and making decisions, have also refused to strengthen the laws by its pronouncement. The court in *Oronto Douglas v. SPDC*¹⁵ as well as *Shell v. Chief Tiebo*¹⁶, did not give a lead way in its pronouncement hence in the first case, the court only stated that the injunction sought by Oronto Douglas cannot be granted on the basis of locus standi whereas he is a Nigerian entitled to right to life whose life is also dependent on the environment which is the bane of the case; the chief rushed to court alleging that Shell has refused to comply fully with the provisions of the Act and in the second case compensation was the only issue considered in a case where gross pollution occurred thereby killing fishes and shortening human life in the presence of the constitutional right to life guaranteed.

The EIA even though its effectiveness and power has been whittled down by the numerous exemptions, the sanctions accompanying it is too low. It prescribes for hundred thousand (N100,000) or five years imprisonment for individuals and for the giant polluters, a fine not less than fifty thousand and not more than one hundred thousand. This of course is no penalty for the giant polluters also considering that the failure to comply with the EIA violates the right to life.

NATIONAL ENVIRONMENTAL STANDARD REGULATION AND ENFORCEMENT AGENCY

This body is to ensure that the environmental standards put in place are complied with. However, NESREA has an Act¹⁷. The Act is to ensure quality air and protection of atmosphere as to promote public health or welfare and the natural development and productive capacity of humans, marine and plant life, it ensures quality of water and

¹³ EIA Act Cap E 12 LFN 2009

¹⁴ EIA Act Cap E12 LFN 2004; S. 2 (a) C J S. 2 (2) a - b

¹⁵ (1994) 6 NWLR (PT 312) 258

¹⁶ (1996) 4 NWLR (Pt. 445) 657

¹⁷ NESREA Act Cap F10 LFN 2004

protection of ozone layer¹⁸. Notably, this agency whose activities should ordinarily fight or curb pollution, its functions does not extend to the oil and gas sector¹⁹ even though it has the responsibility for the protection and development of the environment, biodiversity conservation and sustainable development of Nigeria's natural resources in general.²⁰

The oil and gas industries are the major polluters and yet the country that has provided for fundamental human right, especially right to life, and also stipulated that it is its responsibility in section 20 of the constitution to protect and safeguard the environment has also excluded the oil and gas sector from NESREA's activities.

CONCLUSION

The natural human environment has suffered severed consequence owing to human expedition in his quest to expand and broaden economic borders. This drive and expedition has led to displacement and violation of natural human environment. Emerging nations have made little or no progress to check the massive and devastating impact of pollution. Both developed and developing states have suffered directly or indirectly from this menace, which has led to several global summits on environment. Most nations have domesticated these conventions in their national laws and constitution. The Nigerian position in respect thereof is however not a departure in spirit and letters of the convention. What has remained most worrisome is the Nigeria context is the arms twisting of the environmental protection laws for example the constitution of federal Republic of Nigeria (1999) as amended provided for protection of the environment under chapter 11 Section 20 vested on the state responsibilities to protect and improve the environment and safe guard the water, air, land, forest and wildlife of Nigeria. Section 33 of same constitution guaranteed right to life, while Section 17 provided for protection of natural resources as to its over exploitation.

The same constitution by virtue of section 6 (6) (c) made it non justiciable to enforce environmental right which is a total violation of human right. This development has given rise to wide scale pollution owing to its unenforceability and non-justifiability nature. This development has rendered the environmental protection laws in Nigeria impotent and has made the Nigeria environment most vulnerable to pollution

RECOMMENDATION

We hereby recommend

- 1) Section 20 of the constitution of the federal republic of Nigeria 1999 as amended is moved to Chapter four of the same constitution as to critically address the menace of environmental challenge hence right to life cannot be successfully separated from environmental right.
- 2) The environmental protection institutions in Nigeria should be strengthened and accorded with such power as to override any executive waiver that would be detrimental to the environment.
- 3) Deliberate activities that cause environmental pollution and loss of life should attract death penalties.
- 4) Environmental law defaulters that consciously carry out activities that causes pollution to the environment upon conviction as a second offender should be made to suffer life imprisonment.

¹⁸ NESREA Act Cap F10 LFN 2004; 8, 20 (1); 21 (1)

¹⁹ NESREA Official Website, 'Our Functions' <<https://www.nesrea.yoo>>

²⁰ Ibid

