

Analysis of the Federal, State and Local Governments Responses to Environmental Issues and Management in Nigeria

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Abstract

Nigeria is blessed with immense natural resources which are spread over her various ecosystems. However, these natural resources have continued to suffer pressures in the quest for development, uncontrolled socio-economic activities and consumption thus putting the land, air, water, forest and animals species to greater risk of abuse and deterioration. To arrest monumental degradation and extinction of these natural resources, Nigeria governments, at each stratum of governance, are constitutionally saddled with responsibilities to ensuring the protection and sustainability of the environment in the face of natural resources exploration and exploitation. This paper seeks to critically analysis the responses of the three tiers of government in Nigeria to environmental problems. The paper will in particular examine the legislative lists as relate to environmental matters under the Constitution of the Federal Republic of Nigeria, 1999 (as amended). The objective of this exercise is to determine the justification or otherwise of the authority given to each tiers of government to legislate on environmental issues. The outcome from this pursuit will be used to proffer solutions to the apparent lopsidedness in the allocation of legislative powers and functions to the three tiers of government in Nigeria on environmental issues.

Introduction

Environment, as it is universally understood, is made up of plant, animal, the entire ecosystem and the surrounding *infra* and super structure. It is a universal web, which man depends on for his food, shelter, medicines, development, well-being, oxygen and the

entire elements that forms his bodies.⁶¹ According to Aigbokhaevbo and Ewere,⁶² the quality of human life and existence of life is under tremendous threat from various polluting activities caused by man in his insatiable quest for development, industrialization, food, clothing, housing, rural-urban migration and the necessities of life. The deleterious effect of unsustainable utilization of environmental resources and environmental pollution calls for greater attention, hence, deliberate and concerted efforts are required to curb the high rate of environmental degradation in order to ensuring sustainable utilization of the natural resources within the ecosystem to avoid a doom day for the earth and by extension human existence.

Nigeria, being a federation made up of 36 component States and the Federal Capital Territory, Abuja and numerous Local Governments areas, legislative powers are divided among these tiers of government by the Constitution since independence. The outcome of this is the enactment of several laws and establishment of agencies for the enforcement of environmental legislations. The present legislative lists in the 1999 Constitution has to a large extent render the responsibilities of State and Local Governments to subsidiary position in the scheme of environmental legislation in Nigeria *vis-à-vis* the Federal government. The aim of this paper is to analyze the sphere of authority of the three tiers of government on environmental matters. This paper further discusses the legislative competence of each systems of government in Nigeria on environmental issues. It

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⁶¹ Omaka, C. A and Ugwuoke, I. M., "A Critical Examination of the International Convention on International Trade on Endangered Species of Wild Fauna and Flora 1975 and the Endangered Species (Control of International Trade and Traffic) Act 1995" in Omaka, C. A., (ed) *The Nigerian Environmental Law Review*, Vol. 1, No. 2 (2010) p. 6.

⁶² Aigbokhaevbo, V. O. and Ewere, E., "The Challenges of Enforcement of Environmental Protection Regulations in Nigeria's Non-Oil Sector", Vol. 6, No. 1 (2015) *Ebonyi State University Law Journal*, p.38.

enumerates the extant legislations at the Federal, State and Local Governments level in response to environmental problem. To determine justification or otherwise of the legislative lists in the 1999 Constitution, the paper also discusses the impediments to the enforcement of environmental protection laws in Nigeria.

Legislative Competence of Each Tiers of Government in Nigeria on Environmental Issues

Most developing countries are much more concerned with the exploitation of the natural resources than the effects of such activities on the environment. The devastation of the natural environment has continued to generate public concern for the regulation and protection of the environment. Environmental protection which has for many years standing on the threshold of international prominences is now at the center of national concern. In Nigeria, action to improve the environment was initiated by government with the launching of the environmental sanitation programme. The environmental sanitation programme was overtly embarked upon with the advent of the military regime in 1983. With this programme, both Federal and State governments raised social consciousness regarding environmental sanitation.⁶³ To give legal backing to the environmental sanitation programme introduced by government, various state governments in Nigeria passed edicts, albeit at piece meal without any central policy,⁶⁴ for the regulation of environment sanitation. However, the incident at Koko Port in the Delta Region in 1988 ignited in Nigeria the necessity to evolve a holistic rather than sectorial approach to issues relating to the environment. For instance, the Federal Government in collaboration with United Nations Environmental

⁶³ Okediran, A. Y., "An Appraisal of Environmental Sanitation Edicts in Nigeria", in Folarin Shyllon, (ed), *The Law and the Environment in Nigeria*, (Ibadan: Vantage Publishers 1989) p. 23

⁶⁴ The Nigerian National Policy on the Environment was launched by the Federal Government on 27th November, 1989 in response to the dumping of several tons of toxic waste by Italian Ships at Koko Village, Delta State in 1988

Programme (UNEP) set the ball rolling by organizing an international workshop in 1988 on the environment.⁶⁵ This workshop led to the official launching of the National Policy on the Environment in 1989.⁶⁶

As at today, responses to environmental problems are evident at the three tiers of governments in Nigeria. Nigeria, as a nation, practices a federal system of government. A federal system of government according to Garner,⁶⁷ relates to a system of associated governments with a vertical division of governments into national and regional components having different responsibilities. Within the context of the above meaning of federal system of government, federalism could be described as a principle of government that ensures the division of powers between autonomous governments within the federation. Analyzing the principle of federalism, Popoola⁶⁸ opines that ‘the principle of federalism represents a deliberate attempt to synthesize the principle of autonomy and control’. It presupposes the existence of a number of state governments having executive, legislative and judicial power over each of the territories comprising the federation. In summary, Oyewo,⁶⁹ describes federalism as an arrangement whereby powers within the country are divided among the central government and a number of state governments in such a way that each exists as a government separately and independently from the other within its territorial areas, with a will

⁶⁵ The workshop was held on 12-16th September, 1988

⁶⁶ Aina, E. O. and Adedipe, N. O., ed, *The Making of the Nigerian Environmental Policy*, (Ibadan: University Press, 1991) p. 311.

⁶⁷ Garner, B. A., *Black's Law Dictionary*, 8th edition, (USA: West Publishing Company, 2004) p. 642.

⁶⁸ Popoola, A., “Law Making in a Federal System of Government: The Nigeria Experience”, (2000) *Ibadan Bar Journal*, p. 94.

⁶⁹ Oyewo, O., “The Problem of Environmental Regulation in the Nigeria Federation” in Omotola, J. A., (ed) *Environmental Laws in Nigeria Including Compensation*, (Lagos: Faculty of Law, University of Lagos, 1990) p. 99; Nwabueze, B. O., *The Presidential Constitution of Nigeria*, (United Kingdom: G. Hurst & Co. (Publisher) Ltd., 1981) p. 39; Atsegbua, L., Akpotaire, V., and Dimowo, F., *Environmental Law in Nigeria: Theory and Practice*, (Surulere, Lagos: Ababa Press Ltd., 2004) p.10.

of its own and its own apparatus for the conduct of its affairs with an authority in some matters occlusive of all others.

In Nigeria, the power of each organs of government is derived from the Constitution and in line with the principle of federalism; the Nigerian Constitution regulates the divisions of powers within the federation into the legislative, executive and judicial power.⁷⁰ The Constitution further regulates powers among the three tiers of government in Nigeria and within each tier of government; various organs or bodies are assigned with different powers for administrative conveniences to avoid conflict and ensure effective administration.

Prior to the 1999 Constitution, the previous Constitutions in Nigeria did not make specific provisions on environmental protection except provision having a mere bearing on the environment. For instance, section 11 of the 1979 Constitution provided that the National Assembly shall make laws for the Federation or any part thereof with respect to the maintenance and securing of public safety and public order. Based on this provision, Ehiguelua,⁷¹ posits that ‘the National Assembly could exercise substantive regulatory power over the environment’. However, the weakness of the provision is that it could be abused even by the legislators to suppress or subvert environmental initiatives on the grounds of matter of the national significance.⁷² It is therefore comforting to observe that the 1999 Constitution made a bold and far-reaching provision in its section 20 to safeguard the environment in term of protection and conservation of the environment resources. The section enjoins the State to protect and improve the environment and safeguard the water, air and land, forest and wildlife in Nigeria. The implication of this provision is to make each tiers of government in Nigeria responsible for evolving environmental legislations, policies and action within

⁷⁰ See in this connection sections 4, 5 and 6 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

⁷¹ Ehiguelua, I., *Environmental Protection Law*, (Effurun/Warri: New Pages Law Publishing Co., 2007), p. 8.

⁷² *Ibid*, pp.8-9.

their sphere of authority. However, the implementation of the provision is curtailed by section 4 of the 1999 Constitution, which vests legislative power on the legislative arms of governments within the country. For example, at the Federal level, the legislative power is constitutionally conferred on the National Assembly consist of a Senate and a House of Representatives,⁷³ while at State level, the Constitution confers on the House of Assembly of a State legislative power.⁷⁴ Although no legislative functions is constitutionally assigns to the Local Government within the provision of section 4 of the 1999 Constitution, however, section 7 (1) of the 1999 guarantees the existence of a system of local government by democratically elected local government council. Subject to this provision, there are two powers at the Local Government level namely: legislative and executive; their legislative powers enable them to make bye-law.⁷⁵ Furthermore, for the purpose of exercising their power within the provisions of section 4, the Nigeria Constitution divides legislative power into the Exclusive Legislative Lists and Concurrent Legislative List. The National Assembly has absolute power to legislate on any matter included in the Exclusive Legislative List as set out in Part I of the Second Schedule to the Constitution and in addition has power to make law with respect to any matter in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to the Constitution. The State House of Assembly is excluded from legislating on Exclusive legislative list but confer with power to legislate on any matter in the Concurrent Legislative List set out in the first column to part II of the Second Schedule to the Constitution and any matter with respect to which it is empowered to make laws in accordance with the provisions of the Constitution.⁷⁶

⁷³ Section 4 (1) (2) (3) and (4) of the 1999 Constitution (as amended)

⁷⁴ Section 4 (6) and (7) of the 1999 Constitution (as amended).

⁷⁵ Orifowomo, O. A., "Understanding Local Government Council's Legislative Standing Orders" Vol. 6, (2011), *University of Ibadan Journal of Private and Business Law*, p. 165.

⁷⁶ That is residual power.

It is observed that distribution of powers within a federal government is usually based on the presumption that matters of common interest or those requiring a unified national action be given exclusively to the federal legislature, while those requiring regional differentiation are given exclusively to the States' legislative houses. However, a careful look at the exclusive and concurrent legislative lists in the 1999 Constitution did not reveal any specific reference to the environmental issues as preserve of the National Assembly. Rather what we have are items that touch on the environment. For instance, under part I of the Second Schedule to the Constitution, the following matters which relate to environmental issues namely: Arms, ammunition and explosives, Aviation, including airports. Safety of aircraft and carriage of passengers and goods by air, Drugs and poisons, Fishing and fisheries other than fishing and fisheries in rivers, lakes, waterways, ponds and other inland waters within Nigeria, Maritime shipping and navigations, Meteorology, Mines and minerals, including oil fields, oil mining, geological surveys and natural gas, National parks, Nuclear energy, Quarantine, water from such sources as may be declared by the National Assembly to be sources affecting more than one state and any matter incidental or supplementary to any matter mentioned elsewhere in this list are listed in the Exclusive Legislative List for the National Assembly.

The National Assembly, in addition to the above, is conferred with legislative power under the Concurrent Legislative list in the following terms: the National Assembly has power to regulate and coordinate scientific and technological research throughout the Federations, while the state legislative houses have power to establish or making provisions for an institution or other arrangement for the purpose of scientific and technological research. The federal legislature is also vested with the power to make laws for the federation or any part thereof with respect to statistics, while the states legislatures have powers in respect of statistic relating to state outside the competence of the federal legislature.

Impliedly, environmental matters not mentioned in the two legislative lists can be asserted to fall within the residual matters for which the states can legislate. These invariably will include the power to regulate health and medical care with certain exceptions. As stated earlier, the Nigeria federation is made up of the Federal Government at the centre, 36 States, 768 constitutionally recognized Local Governments and a Federal Capital Territory, Abuja.⁷⁷ Hence, in view of the wide and acceptable meaning given to the concept of Federalism, which presupposes the sharing of power between a national and a number of regional government in such a way that each exists as a government separately and independently from the other operating directly on persons and property within its territorial area, with a will of its own and its own apparatus,⁷⁸ one would have expected that each tier of government in Nigeria would be responsible to legislate on environmental matters as it affects the area constitutionally allocated to it.⁷⁹ However, the present situation is that wide legislative power is conferred on the National Assembly to legislate on environmental matters at the expenses of the State House of Assemblies and legislative arm of Local Governments in Nigeria.

Constitutional Legislative Impediments to Environmental Legislations

Perhaps the most potent impediment to the realization of environmental sustainability in Nigeria is the legislative power on environment matters enshrine in the 1999 Constitution. Nigeria

⁷⁷ Section 3 (6) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

⁷⁸ Nwabueze, B. O., *op cit*, p. 37

⁷⁹ For example, section 7 (2) of the 1999 Constitution provides that the person authorized by law to prescribe the area over which a local government council may exercise authority shall: (a) define such area as clearly as practicable; and (b) ensure, to the extent to which it may be reasonably justifiable, that in defining such area regard is paid to – (i) the common interest of the community in the area, (ii) traditional association of the community, and (iii) administrative convenience.

practices a federal system of government comprising Federal, States and Local Government. In line with the principle of federalism, a federation presupposes the co-existence of different levels of government sharing powers in a way as to meet the national aspirations of the peoples in the federating units thus ensuring and protecting their decisions, be it voluntary or forced, to live together as one entity.⁸⁰ In tandem with the principle of federalism, the Nigeria Constitution confers at the Federal level, the legislative power on the National Assembly consist of a Senate and a House of Representatives, while at State level, the Constitution confers on the House of Assembly of a State legislative power.⁸¹ At the Local Government level, legislative power is conferred on the Councilors representing their wards to enact bye-laws.⁸²

The above section according to Niki Tobi (JSC) (as he then was)⁸³ provides for the common law doctrine of *covering the field*.⁸⁴ Although this doctrine as it were, vindicates the true

⁸⁰ Orifowomo, O. A., *op cit*, p.163; Wheare, K. C., *Federal Government*, 4th edition, (London: Oxford University Press, 1967) p.33. Wheare defines 'federalism' in the following terms: 'federal government exist when the powers of government are divided substantially according to the principle that there is single independent authority for the whole area in respect of some matters and that there are independent regional authorities for the other matters each set of authorities being co-ordinates with and not subordinate to the others in its own prescribed sphere.

⁸¹ Section 4 (6) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

⁸² For instance, section 7 (1) of the 1999 Constitution guarantees the system of local government by democratically elected local government councils.

⁸³ See the case of *Attorney General Abia State v Attorney General Federation* Suit Nos S.C. 99.2005; S.C. 121/2005 and S.C.216/2005 (Consolidated)

⁸⁴ The list of powers the doctrine operates on is the concurrent list where both tiers of government have joint interests. The doctrine originated in the US and was imported to Australia where it was fully developed. In the US, the expression, 'covering the same ground', was used. See *Houston v Moore* 18 US 1 (1820). The doctrine simply means that where there is a conflict between the legislation of a state and the federal parliament on a matter in the concurrent legislative list, an inconsistency arises; and as between the two laws so passed, the one passed by the federal parliament prevails and that of the state is rendered inoperative during the lifetime of the federal law. The

meaning of federalism, however, it fails to recognise the autonomy of other tiers of governments constituting the federal republic of Nigeria. In the case of *Attorney-General of Lagos State v Attorney-General of the Federation*,⁸⁵ The Supreme Court while construing the federalism and the federal structure in the Constitution of the Federal Republic of Nigeria, 1999 held that by the doctrine of federalism which has been adopted by virtue of section 2(2) of the 1999 Constitution, the autonomy of each government, which presupposes its separate existence and its independence from the Federal Government, is essential to federal arrangement. Therefore each government exists not as an appendage of another government but as an autonomous entity in the sense of being able to exercise its own will in the conduct of its affairs, free from direction by another government.⁸⁶ It is submitted that the present situation where the Nigeria National Assembly enjoys over-riding legislative authority on environmental matters at the expense of the State and Local Government will affect the expected enforcement of environmental legislations due to the country vary and distinct environmental problems.⁸⁷ Apart from different environmental problems confronting each geo-political zone of the country, it is a fact the State and Local Government are closer to people than the federal government. Hence, it is hereby suggested that the 1999 Constitution should be amended to give more power to the State House of Assembly and Local Governments Legislative

reasoning behind the doctrine is that (1) it would be too presumptuous of a lower legislative body to legislate on the same subject matter as covered by the higher legislative body and (2) to subject a citizen to obedience of two laws at the same time on the same subject will be too oppressive. See the "Doctrine of Covering-The-Field in Federal Constitutional Theory", retrieved from <http://tnaidike.wordpress.com/principle-of-functionality-in-interpretation-of-treaties>, accessed on 21/9/15 at 5.05pm

⁸⁵ (2004) 18 NWLR (Pt. 904) 1

⁸⁶ It should be noted that a contrary view was expressed by the Supreme Court in the case of *Chief Olafisoye v Federal Republic of Nigeria* (2004) 4 NWLR (Pt. 864) 580, in this case, the Supreme Court held that the concept of State autonomy must be examined in the context of the Constitution of the Federal Republic of Nigeria, 1999.

⁸⁷ For example, Nigeria is touted to have about 250 ethnicities groups with different outlook, different weather conditions and different environmental problems.

Body to enact laws touching on environmental matters as it affects their area of jurisdiction leaving only environmental matters of federal character to the National Assembly. To achieve this, it is further suggested that environmental related matters in the Concurrent Legislative List in the 1999 Constitution should be removed and subsumed as part of residual power of State and make the preserve of the State House of Assembly, while environmental issues in the fourth schedule to the Constitution should be made the exclusive preserve of local government. If these are done, the issue of inconsistent legislations between the National Assembly and State House of Assembly will not arise. Again, Local Government Legislative House will be able to enjoy its full status as envisage under section 7 (1) of the 1999 Constitution without any interference from the State House of Assembly. This arrangement will also take care of the various reasons highlighted by people for the inability of Local Government to cope with the management of solid wastes and other environmental problems.

As a way out of these problems, it is suggested that Local Government should be given financial muscle in term of allocation of money to it directly from the federation account to tackle environmental problems as it affect people within their locality. It is noted that one of the major principles in the Nigerian National Policy on Environment is Subsidiary Principle. The principle is a process of making and implementing of decisions beginning at the lowest effective level of government or other organisations. It is a decentralized system of governance, which allows problems to be first tackled at the lowest appropriate level of governance believed to have the means and capacity of resolving the problem. This lowest level could be individual, community or local government level. Subsidiary principle has been adopted by the European Union (EU) in tackling the problem of governance in the area of environment,⁸⁸ hence, it is recommended for Nigeria.

Conclusion

From the foregoing analysis, there is no doubt that a lot of efforts, in term of legislative and regulatory instruments have been made at the

⁸⁸ Ibid, p. 114.

three tiers of government in Nigeria in response to environmental challenges. Also to ensure environmental sustainability, several mechanisms have been evolved. The main question is how effective or adequate are these regulations and mechanisms? Of course, no laws can provide for all situations hence, most environmental legislations in Nigeria though inadequate, yet they are not indifferent toward decent environment. The major impediment to the realization of environmental sustainability in Nigeria is attributable to the division of legislative powers among the three tiers of government in the 1999 Constitution. In other words, other impediments noted in this paper are subsidiary to constitutional impediments. The consequences of various impediments discussed in this paper have combined together to render environmental legislations in Nigeria ineffective. Hence, the first antidote is to amend the 1999 Constitution namely: section 4 of the Constitution to ensure proper demarcation of legislative power among the three tiers of governments in Nigeria so as to prevent inconsistent legislations between the National Assembly and State House of Assembly. Secondly, section 6 (6) (c) of the 1999 Constitution should also be amended to elevate environmental rights to human rights enforceable in the court of law like other human rights in Chapter IV of the 1999 Constitution. It is submitted that if the above suggestions are implemented to letter, they will go a long way to ensuring environmental sustainability and development and various responses of Federal, States and Local Governments in Nigeria to environmental challenges will not be in vain.