

Role of the Legislators in Environmental Governance in Nigeria

Stephen Adi Odey Ph.D

Department of Sociology, University of Calabar, Calabar, Nigeria, steveodey2009@yahoo.com

Abstract

The aim of this article is to examine the role of the legislators in environmental governance in Nigeria. It focused on strategies that will increase the efficiency of law makers in addressing environmental regulation, drawing from the economic analysis of legal rules. It identified normative reasons for the poor formation and implementation of environmental law in Nigeria which resulted in increased pollution and environmental injustice. It concluded by proffering regulatory techniques and suggests amendments to most of the environmental laws to enable regulatory agencies function effectively.

1. INTRODUCTION

A legislature is a decision-making organization, a member of this organization is called a Legislator, usually associated with national government, which has the powers to enact, amend, and repeal laws. Legislatures observe and steer governing actions and usually have exclusive authority to amend the budget or budgets involved in the process and checking the executive branch through oversight functions.

The legislature is an assemblage of the representatives of the people elected under a legal framework to make laws for the good health of the society, in this instance, make laws that will make the environment be safe for all. It is also define as “the instrumental body responsible for making laws for the nation and one through which the collective will of the people or part of it is articulated, expressed and implemented” (Ayade, 2003).

2. DEFINING ENVIRONMENTAL GOVERNANCE

For the purpose of this paper, environmental governance is synonymous with interventions aiming at changes in environment-related activities, knowledge, institutions, decision-making, and behaviours. More specifically, we use “environmental governance” to refer to set of regulatory processes and organizations through which political actors influence environmental actions and outcomes. International accords, national policies and legislation, local decision-making structures, transnational institutions, and environmental NGOs are all examples of the forms through which environmental governance takes place. Environmental governance is varied in form, critical in importance, and near ubiquitous in spread, (Ayade 2003:4).

3. ROLES OF THE LEGISLATURE

The National Assembly, which in our case consists of the Senate and House of Representatives, is vested with the Legislative Powers of the Federation. Section 4 (1) under part II, of the 1999 constitution as amended states inter alia; “The Legislative Powers of the Federal Republic of Nigeria shall be vested in the National Assembly for the Federation which shall consist of a Senate and a House of Representatives”. It goes further, in Section 4 (2), to states as follows: “The National Assembly shall have power to make laws for the peace, order and good government of the Federation with respect to any matter included in the Exclusive Legislative List”.

For the purpose of explanation, the Exclusive Legislative List, which is contained in Part 1 of the second schedule to the constitution deals with specific items which only the National Assembly has the sole prerogative to legislate upon, to the exclusive of the states and local governments, for example, the items, which are 68 in number, included defence, aviation, currency, customs and excise duties, citizenships, drugs and poisons, copyright, insurance, external affairs and meteorology.

On the other hand, there is a concurrent Legislative List provided for under Part II, of the Second Schedule to the Constitution. It includes '30 items' it is called concurrent list because the constitution allows both the National Assembly and the State House of Assembly to legislate on the items so specified.

The 30 items include the following amongst others: public funds at state and local government levels, antiquities and monuments, collection of taxes, stamp duties, voters registration in the local government councils, agriculture, environment, education, cadastral and topographical surveys etc.

There is yet another category of powers described as residual list. This is the exclusive prerogative of the states. This is the implication of the provisions of section 4 (7a) of the 1999 Constitution as amended.

A comparative study of the National and State Legislatures, in the discharge of the enormous powers bestowed upon them by the constitution since the inception of the current democratic experiment, clearly shows that whereas the National Assembly has been very assertive and proactive, most State Legislatures, regrettably, have allowed themselves to be completely emasculated and castrated by the state governors who, in several instances, have been very overbearing in the way they conduct the affairs of their various states, (Odey and Okeyim, 2014:2).

In simple terms, the legislature performs three basic Roles namely: Law Making, Representation and Oversight. The Legislature oversight the executive arm of government which include the Ministries, Departments and Agencies (MDAs), to ensure that government is held accountable to the people from where it derives its sovereignty.

However, the differences is that environmental governance requires that policy makers, decision-makers and practitioners (i.e NESREA & NOSDRA) have full knowledge of the environmental factors within and around their municipalities. In environmental management and governance, knowledge of the international regional, national and local environmental priorities is critical. Coupled with an in-depth understanding of the legislative requirements (i.e the constitution, National Environmental Management Act, Disaster Management Act, National Health Act; Municipal System Act etc); municipalities should be able to translate national policy tools at a local level; and put them into practice by designing environmental sector plans, by-laws and management system for implementation, compliance monitoring and enforcement.

4. THE ROLE OF THE LEGISLATURE AND JUDICIARY IN ENVIRONMENTAL GOVERNANCE

The importance of Legislature and Judiciary in a democratic setup for protection of life and personal rights can hardly be overestimated. Nigeria has a highly developed judicial system with the Supreme Court having plenary powers to make any order for doing complete justice in any cause or matter and mandate in the constitution, to all authorities, Civil and Judicial, in the territory of Nigeria to act in aide of the Supreme Court. This is consistent with the doctrine of covering the field as decided by the Supreme Court in Attorney-General of Ogun State and Ors V. Attorney-General of the Federation.

In considering the role of the legislature and judiciary in environmental governance, there are two issues that need to be considered. The first is the role of the legislature in making laws and judiciary in the interpretation of the environmental laws, in law making and the second is the capability of jurists to effectively interpret the increasing cross-linked issues brought to their attention.

The Oil and gas sector is the major aspect of environmental hazards, hence, the special treatment which ought to be given to it in environmental protection regime in every country on the face of the globe. The environmental hazards may be in the form of greenhouses gases, poisonous and carcinogenic chemicals produced as a result of gas flaring and other activities in the sectors; or through the destruction of the fauna, flora, clean water, soil and the environment generally through oil spills and oil drilling and handling activities, or even through exhaust fumes released into the

environment by the final consumers of the product of the sector. Oil and gas from its cradle to its grave, though very essential to the modern man, is indeed a highly hazardous substance and a carton of troubles to the environment hence the need to take a critical look of legislations in that sector, review the legislation and institutional framework of environmental protection in the oil and gas sector and other indices in Nigeria, proffer recommendations to perceived inadequacies therein.

5. LEGISLATIVE AND INSTITUTIONAL FRAMEWORK FOR ENVIRONMENTAL GOVERNANCE IN OIL AND GAS SECTOR IN NIGERIA

Under this heading I will examine the principal statutes in Nigeria dealing with environmental governance in the oil and gas sector with a view to reviewing their provisions which is the sole responsibility of a legislator and the modus operandi of environmental governance through these laws:

- National Oil Spill Detection and Response Agency (Establishment) Act.

This is a specialized and principal legislation on environmental governance in the oil and gas sector in Nigeria. It established the National Oil Spill Detection and Response Agency with responsibility for preparedness, detection and response to all oil spillages in Nigeria. It has been observed that this legislation has some lacuna for instance, the penalty provided in the NOSDRA Act is only against the oil spiller and from the language of the section, it appears the only oil spiller in view in the corporate or Oil producing company or tanker owner and not the individual who for example perforates an oil pipeline to siphon petroleum products and eventually left it open thereby causing oil spillage. It is considered view that this Act needs a complete amendment.

Other agencies involved in environmental governance includes

- Nigerian maritime Administrative and Safety Agency (NIMASA)
- Nigerian National Petroleum Corporation (NNPC) Act
- Nigerian Ports Authority (NPA), Act
- Nigerian Security and Civil Defence Corps (NSCDC) Act
- Petroleum Act
- Oil in Navigable Waters (Onwa) Act
- Merchant Shipping Act etc.

These laws and penalties therein should therefore be reviewed so as to give the laws greater bite, and to bring them in tune with contemporary realities.

6. CONCLUSION AND RECOMMENDATION

The provisions of Nigerian Statutes on environmental governance particularly in the oil subsector are generally copious, wide and highly encompassing in theory. This shows that the Nigerian government and legislature is environmental conscious and friendly at least in theory. Secondly, the defences and exceptions allowed in most of the laws watered down the laws to the extent that every offender can conveniently escape liability. However, in as much as the National Oil Spill Contingency Plan have provided for a synergy of all relevant stakeholders in the event of a disastrous oil spills, nevertheless there is every need to harmonize the provisions of all these laws with regard to their provisions on environmental governance since they emanate from the same legislature and are for the same purpose.

Further, worthy of attention is the provision of NESREA Act which at Section 7 (c) granted NESREA (a parastatal of Federal Ministry of Environment) powers to enforce compliance with the provisions of International Agreements), Protocols, Conventions and treaties on environment generally including that of the oil and gas sector.

Thus, apparently removing the jurisdiction from the Federal Ministry of Transport as granted

to it under the Merchant Shipping Act.

However, given the provisions of the other paragraphs of the same section 7 of the NESREA Act which excluded oil and gas sector from the jurisdiction of NESREA and the aforementioned provision of the NOSDRA Act that granted NOSDRA Special jurisdiction over environmental legislations in the petroleum sector, serious doubt is cast as to whether NESREA is indeed responsible for the enforcement of these international instruments with regard to petroleum sector in Nigeria. It is my candid view that NESREA and NOSDRA should therefore streamline and harmonize all these legislations on environmental governance for better performance.

National Environmental Standard Regulation and Enforcement Agency (NESREA) should not be excluded from Oil and Gas Sectors. This paper has clearly shown that the mandate of NOSDRA thereto is not sacrosanct as it had shown from all the enabling laws that other agencies are also legitimately involved therein. Therefore, it is my recommendation that as the Agency responsible for National Environmental Standards Regulations and Enforcement Agency (NESREA) which includes standards for air, water, etc NESREA should be involved in Environmental governance in the Oil and Gas Sector. Infact, in my opinion NESREA should be more relevant in that sector which is a purely Federal Matter than say in Municipal Waste or noise management which the state and the local governments can conveniently handle if adequately empowered. Accordingly, the NESREA Act and the NOSDRA Act should be amended so as to provide and empower NESREA to play its role in the oil and gas sector.

Government must promote, implement and enforce environmental policies in a transparency in environmental law making process, environmental policing and environmental prosecution.

REFERENCES

1. Ayade, B.B (2003) "Field Evaluation and Performance of Indigenous Oil Degrading Bacteria in Hydrocarbon Contaminated Soil" *Journal of Nigeria Environmental Society* 1: (i) 23-25.
2. Odey, S.A. and Okeyim, M.O (2014) Community Participation and Government Vision towards the Conservation and Management of the Ecosystem in Cross River State, Nigeria, *Interaction Journal of Academicians* 2: (i) 7-10.
3. Yemi, A.G. (2000) *Legal System, Corruption and Governance in Nigeria*, New Century Law Publishers Ltd. P.41.
4. See: Attorney General of Ogun State and Ors V. Attorney General of the Federation of Nigeria. NWLR Part 2.
5. Constitution of Nigeria 1999 as amended.
6. Nigerian Maritime Administration and Safety Agency (NIMASA) Act 2007.
7. Nigerian National Petroleum Corporation (NNPC) Act Nigerian Port Authority (NPA) Act.
8. Petroleum Act.
9. Merchant Shipping Act.
10. National Environmental Standard Regulation Enforcement Agency (NESREA) Act.
11. National Oil Spill Detention and Response Agency (NOSRA) ACT.