

EFFECTIVE COMPLIANCE MONITORING AND ENFORCEMENT: A KEY TO COMBATING WATER POLLUTION IN NIGERIA

BEING A PRESENTATION MADE AT THE 13TH NESREA
NATIONAL STAKEHOLDERS' FORUM:- ON WATER
POLLUTION:- INNOVATIVE SOLUTIONS FOR
ENVIRONMENTAL COMPLIANCE MONITORING AND
ENFORCEMENT.

BY

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INTRODUCTION

The National Environmental Standards and Regulations Enforcement Agency (NESREA) is proposing to organise her 13th National Stakeholders' Forum. The event is a key component of NESREA programme on public involvement and citizens' participation in environmental compliance. The theme for this year's Stakeholders' Forum is 'Water Pollution: Innovative Solutions for Environmental Compliance Monitoring & Enforcement'.

Nigeria as a nation is faced with excessive environmental issues among these are; combating floods and erosion, curbing environmental pollution on water, air and Land ecosystems, to mention a few. Water is one of the medium that is essential for life on earth. The vast water resources in Nigeria can be categorized into Fresh Surface water (includes ocean, rivers, streams, lakes, etc.),

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and Groundwater which depends on the rainfall and the water storage in the ground. A survey conducted by Nigeria's Bureau of Statistics and UNICEF, published on the 1st of March 2019 by Voice of America revealed that only about 33% of the Nigerian Population have access to safe drinking water and adequate sanitation. Further survey carried out by the United Nations showed that about 67% of the Nigerian population do not have access to toilet facilities while 26% practice open defecation. These now go further to adversely affect the environmental health of the general population.

Water can be polluted from different sources in Nigeria. These include:

- Sewage (Waste Water)

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- Pollution of Underground water (by oils from filling station underground tanks, generator oil spills).
- Open defecation
- Industrial effluents
- Plastic waste in Marine environments
- Pollution of Territorial Waters by Ballast water from ships
- Agricultural Pollution.
- Oil Pollution in the Wetlands, (Oil Spillage, Oil waste, artisanal refinery, pipeline vandalism, bunkering and other related activities.)
- Solid waste disposal in water. (Micro Plastics in Marine Environment)

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Sadly, fairly high infections and mortalities in Nigeria arise from water-related diseases. Waterborne diseases like cholera, bilharzias and diarrhea, water-contacted diseases like trachoma, and Malaria are caused by insect vectors living close to polluted water.

It is within the ambits of the foregoing concern, that the Federal Government of Nigeria through NESREA has developed and enacted several regulations on water protection to prevent water pollution. These regulations include the following:

- -The National Environmental (Wetlands, River Banks and Lake Shores) Regulations, 2009. S. I. No. 26;
- National Environmental (Watershed, Mountainous, Hilly and Catchments Areas) Regulations, 2009. S. I. No. 27;

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- National Environmental (Coastal and Marine Area Protection) Regulations 2011 S.I. No 18;
- National Environmental (Surface and Ground Water Quality Control) Regulations 2011. S.I. No. 22; and
- National Environmental (Dams and Reservoirs) Regulations 2014. S.I. No.66.

The Role of Environmental Compliance and Enforcement:

In recent years, environmental concerns have led to a significant increase in the number and scope of compliance imperatives across all global environmental regulatory bodies. The goal of environmental compliance and enforcement is to prevent irreversible environmental damage associated

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with water pollution, verify that implementation of environmental protection measures to tackle water pollution actually occurred and are implemented as designed, and also provide feedback to the Agency and stakeholders regarding the effectiveness of these measures so that improvements may be implemented during compliance monitoring and made more effective for the future.

In line with its Mandate, NESREA carries out several environmental compliance monitoring and enforcement exercises on facilities and makes sure they comply with extant Environmental Rules and Regulations.

This 13th National Stakeholders' Forum will further deliberate on the causes and effects of water pollution, and explore innovative solutions to effectively stem its tide for the achievement of a cleaner and healthier environment for the present and future generations of Nigerians.

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There has been a global concern on water pollution recently. Anthropogenic activities are primarily responsible for water pollution. Though, Natural phenomenon such as landslides and floods can also contribute to degrade the water quality. Water pollution affects biodiversity and aquatic ecosystems especially from the solid and liquid waste from unsustainable waste management. The toxic chemicals from effluents can change the colour of water and increase the amount of minerals giving rise to eutrophication affecting aquatic and marine life.

The Food and Agriculture Organization (FAO) of the United Nations and the Water, Land and Ecosystems (WLE) programme led by the International Water Management Institute in their report done in 2017 titled “Water Pollution From Agriculture: a global review”, stated that applying innovative solutions will eliminate or minimize as much as possible water pollution and its effects on the environment.

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The report which was written by Javier Mateo-Sagasta (IWMI), Sara MarjaniZadeh (FAO) and Hugh Turrall with contributions from Jacob Burke (formerly FAO), also highlighted that Water pollution is a global challenge that has increased in both developed and developing countries, undermining economic growth as well as the physical and environmental health of billions of people.

With the rising concern on water pollution in Nigeria caused by man-made activities both on land and on sea, there is need to protect the environment, by deploying best available practices in eliminating or minimizing the unsustainable use of chemicals in agriculture, the indiscriminate dumping of waste by ships, the draining of industrial waste into water bodies, dumping of household waste in drainages, etc.

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This paper aims at underscoring the importance of combating water pollution and showcasing regulatory good practices in Nigeria. It sets out to achieve the following objectives: to provide a justification for environmental enforcement and compliance monitoring scheme in Nigeria; examine the legal basis for, and challenges in, the enforcement and compliance of environmental regulations, standards, guidelines and regulatory good practices in Nigeria; and to conclude with viable options for Nigeria.

Contextual background

Nigeria's formal environmental regime has developed significantly from humble beginnings. Having been initiated in the colonial period during which environmental issues were generally couched within public health regulation, and having developed in a rather ad-hoc manner in the early days of independence during which heavy reliance was placed on the law of nuisance, to the drastic and systematic development in the 1980s and 90s, Nigeria now has a relatively comprehensive legal and institutional environmental regime.

This new regulatory regime has been adequately empowered by the NESREA Act, 2007, to ensure effective compliance, monitoring and enforcement of all relevant environmental treaties to which Nigeria is a state party, legislations and regulations for sustainable development, use and conservation of natural resources in Nigeria.

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The Agency normally adopts pre-emptive measures to secure compliance within the regulatory system. Failure to comply voluntarily with relevant legislative and regulatory requirements will compel the Agency to trigger its enforcement powers for compliant purpose.

The Agency's key enforcement strategies are: - inspection, compliance monitoring, negotiation and legal action in a competent court or tribunal.

The above enforcement strategies are imperative because there cannot be a healthy Nation without a healthy environment, free from all forms of pollution or degradation. Such a healthy environment promotes a healthy living and improves productivity level of a nation, as a fundamental human right of all people.

NATURE AND RATIONALE BEHIND COMPLIANCE MONITORING AND ENVIRONMENTAL ENFORCEMENT

It is important to stress that environmental management cannot be achieved without effective environmental governance including the enforcement of environment laws and regulations at both national, state and local levels. Through laws and regulations, the State controls those human and corporate activities that have significant impact on the environment. These State tools of environmental governance give all stakeholders (the state, industry and civil society organizations) and different sectors of the economy as well as individual users of the environment a precise indication of which activities they can undertake, which activities are forbidden and what their responsibilities are in the event that their activities jeopardize any component of the environment.

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This justifies the creation of federal and state ministries of environment and the establishment of national and state environmental protection agencies as well as state environmental sanitation and waste management authorities with enforcement powers to ensure compliance with environmental regulation, standards and guidelines in the best interest of both the current and future human generations.

Statutorily the term '*Enforcement*' is defined to mean, "Actions to obtain compliance with environmental laws, rules, regulations or agreements or obtain arbitral award, penalties or criminal sanctions for violations".

While the term '*Environment*' is also statutorily defined to mean "the sum of all external conditions affecting the life, development and survival of an organism."

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Section 20 of the Nigerian Constitution sets out the fundamental environmental objective by declaring that, “the States shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria”.

Hence, the term ‘*Environmental Enforcement*’ is one of the key elements of environmental governance. It essentially seeks to ensure that the ambitious goals of our environmental status are realized. Enforcement refers to the set of actions that the government can take to promote compliance with environmental law. It is indeed the application of all available tools to achieve compliance, including compliance promotion, compliance monitoring and non-compliance response. In a narrow sense, enforcement can be defined as the set of actions that governments or others take to correct or halt behavior that fails to comply with environmental management requirements.

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- Enforcement by the government usually includes: -
 - Inspections to determine the compliance status of the regulated community and to detect violations.
 - Negotiations with individuals or facility managers who are out of compliance to develop mutually agreeable schedules and approaches for achieving compliance.
 - Legal action, where necessary, to compel compliance and to impose some consequence for violating the law or posing a threat to public health or environmental quality.
- Enforcement may also include compliance promotion (e.g. educational programmes, technical assistance, and subsidies) to encourage voluntary compliance (see U.S. EPA, 1992).

Why are compliance and enforcement important?

An effective compliance strategy and enforcement programme brings many benefits to society:

- First and most important, is the improved environmental quality and public health that results when environmental requirements are complied with.
- Secondly, compliance with environmental requirements reinforces the credibility of environmental protection efforts and the legal systems that support them.
- Thirdly, an effective enforcement programme helps ensure fairness for those who willingly comply with environmental requirements.
- Finally, compliance can bring economic benefits to individual facilities and to society.

NESREA and the Challenges to the Enforcement of Environmental Laws in Nigeria

Enforcement Powers of NESREA

NESREA possesses broad enforcement powers for the purpose of enforcing the Act. Thus an officer of the Agency may at all times enter and search with a warrant issued by a court any premises including land, vehicle, tent, vessel and floating craft, inland water and other structure which he reasonably believes carries out activities or stores goods which contravene environmental standards or legislation for the purpose of conducting inspection, searching and taking samples for analysis. This power to enter and search premises excludes oil and gas facilities such as maritime tankers, barges and floating production, storage offload (FPSO).

Thus, the right of NESREA and other environmental protection bodies to search and seize environmental substances considered harmful is not absolute.

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It must be based on a reasonable belief that the premises are used for activities or storage of goods, which contravene environmental standards or legislation. The court, in the interest of the 'privacy of the citizens', has construed narrowly the police power of entry, search and seizure. As Lord Denning stated in *Ghani v. Jones*, the requirement of reasonable grounds for searches and seizures based on the principles that the individual's privacy and his possession are not to be invaded except for the most compelling reason.

The NESREA Act in addition gave the Agency powers to examine any article found pursuant to the search to which the Act or regulations apply or which he reasonably believes is capable of being used to the detriment of the environment.

The officer of the Agency may in furtherance of his investigation

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also take a sample or specimen of any such article, open and examine any container or package and examine and make copies of any book, document or other record found in the course of the research, which he reasonable believes may contain any information relevant to the enforcement of the Act or the regulations. He may also seize and detain any articles by means or in relation to which he reasonable believes the provision of the Act or regulations has been contravened and issue a written receipt for the articles seized.

Finally, the officer of the Agency may obtain a court order to suspend activities, seal and close down premises. Thus, the enforcement powers conferred upon the NESREA Act are far reaching, extending even to the closure of the premises used in contravention of the law

ADDRESSING THE CHALLENGES OF ENVIRONMENTAL ENFORCEMENT

- **Decisions not being implemented at the appropriate levels**
- **Compliance monitoring:-**The problem is not one of laws or regulations but of lack of appropriate enforcement, after enactment
- **Rule of law:** -Unfortunately, the experience so far in Nigeria is that the governments are the worst offenders in breaking environment laws and regulations. The governments do not adhere to the laws they make and so cannot themselves engage in any exercise of legitimate enforcement.
- **Substantial Overlap:-** substantial overlaps and conflicts among the laws enacted at the federal, state and local government levels.
- **Others factors of poor enforcement:-** poor enforcement of environmental laws on Influential individuals, MDAs, and groups.

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- **Inadequate Monitoring, Evaluation and Reporting:-** Access to environmental information is a prerequisite to effective public participation in decision making and monitoring governmental and private sector activities.
- **Inadequate Capacity and Understanding:-** While the civil society is hampered to a large extent by poor knowledge and lack of information, environmental management is yet to be mainstreamed into the private sector in Nigeria, in relation to environmental governance, the judiciary on the other hand is yet to attain the relevance required of it by every citizen, who has a right to a clean and healthy environment.

APPLICATION OF BEST PRACTICES IN ENVIRONMENTAL COMPLIANCE, MONITORING AND ENFORCEMENT IN NIGERIA

- The Federal and State levels of government convene to share progress in implementation of environmental laws, problems and challenges in each area and reach collaborative solutions.
- Provision of training manuals for environmental enforcement officers is a good practice which helps to avoid arbitrariness and promote professionalism as well as a knowledge-driven enforcement scheme.
- Sustainability of annual training workshop series for federal and state high court judges and for senior magistrates with the collaboration of National judicial Institute (Continuous Legal Education).

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- Institutionalising the Federal-State Regulatory Dialogue on compliance monitoring and enforcement initiated by NESREA with the support of UNDP as part of its participatory approach to involve the state governments and other stakeholders in environmental governance.
- Involvement of the citizenry in environmental governance by NESREA, particularly in compliance monitoring and enforcement, by various ways, such as: - advisory committees, document reviews, informational meetings, public fora, citizen monitoring and voluntary environmental corps marshals.
- Reactivation by NESREA of the Toxic Waste Dump Watch Programme, resulting from the clandestine movement and influx of hazardous chemicals and wastes, including non-serviceable second-hand goods (especially electrical and electronics equipment) into Nigeria.

Recommendation

- Improved regulatory enforcement at all levels.
- Devolution of powers and decentralization of regulatory functions.
- Improved Overall Environmental Governance.
- Effective working relations between NESREA and other agencies.
- Environmental Corps Marshall.
- Effective monitoring, evaluation and reporting.
- Capacity Building. Judges must fully understand the Environmental Impact Assessment (EIA) Process and EIA Reports.

Conclusion

The protection and preservation of the environment is now of crucial importance to the future of mankind. And since item 60 (a) of the second schedule to the Constitution of the Federal Republic of Nigeria confers on the National Assembly exclusive power to establish and regulate the authorities for the federation or any part of Nigeria to promote and enforce the observance of the fundamental objectives and directive principles contained in Chapter II of the 1999 Constitution, the Nigerian state shall by virtue of Sections 15(5) and 20 of the Constitution be responsible for the protection and improvement of the environment so as to safeguard the water, air and land, forest and wild life of Nigeria.

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Therefore, the role of judiciary is to carefully examine the provisions of the environmental statutes and remove the chaff from the grain and arrive at a proper decision. In this light, the Court must closely examine the language or wordings of the statutes vis-a-vis the constitutional provisions because a judge has no jurisdiction to amend the Constitution by his pronouncements.

Thank you for listening.