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Environmental Protection And The Role Of National Policy And Guidelines In Nigeria

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Abstract

National policies generally are meant to guide the government in decision making towards the achievement of a specific result. In desiring to and improve on the environment, the Nigerian government has put in place a number of legislations and formulated policies and guidelines on the environment but whether there is an equivalent result is a subject matter requiring some level of scholarship. Thus, this article seeks to explore the contribution of the National Policy on the Environment (NPE) and the guidelines for the protection of the environment in Nigeria especially considering that they are mere action plans and policy statements. The article observes that, though, the NPE and the guidelines are very robust, all-embracing and ambitious, there is a significant divide between the policy, the law and the practice as regard the protection of the environment in Nigeria. The article observes that the implementation of the NPE and the relevant guidelines presents enormous challenge as a result of the constitutional source from which the guidelines and policies derive their strength i.e. the non-justiciability constitutional clause. The article finds that the objectives of the guidelines and the NPE have not been extensively achieved as a result of a number of factors which include lack of political will and the failure of the administrative bodies and the government to provide a medium for involving the public in the making of the policies and in the implementation strategy.

Keywords: Policy, environmental guidelines, environmental agencies, legal status, implementation,

1. Introduction

Legislations and administrative interventions on the protection of the environment started playing central role in the political and administrative agenda of the Nigerian government since the '80s. The discovery of toxic waste which was deposited in Koko in 1988 has been largely acclaimed as the major event which brought about awareness of environmental protection in Nigeria.¹ The outcome of this awareness has now defined the current Nigerian environmental policy objectives. Since this consciousness, Nigeria has been struggling through dozens of environmental legislations in an attempt to ensure a protected environment.² An important event in the history of the evolution of environmental laws in Nigeria is the formulation of the National Policy on the Environment (NPE) and Guidelines which have helped in the discharge of the duty of the State to protect and improve on the environment. A National Policy is a course of action and set of principles which a government desires to follow in achieving a definite goal.³ It is a set of "idea(s) or a plan of what to do in particular situations that has been agreed officially by a group of people, a business organization, a government or a political party."⁴ They are used to

¹Ogbodo, SG 'Environmental Protection in Nigeria: Two Decades After the Koko Incident' (2009) 15 (1) Annual Survey of International & Comparative Law at 2.

² Ajala, T 'Taking environmental Right Seriously: Time to break New Ground' (1999/2000) The LASU Law Journal at 88.

³ National Policy on the Environment 2016 edition (March 2023) (hereafter, NPE 2016)

<http://extwprlegs1.fao.org/docs/pdf/nig176320.pdf>

⁴ *Ogundipe v The Minister of FCT & Ors* (2014) LPELR-22771(CA)

direct decision making towards achieving a stated outcome. Several countries have national policies which specify the focus of the government in a particular sector, depending on the desire of the government. This is intended to inspire the government as to how those ideals may be effectively realised. Thus, this article seeks to inquire into the role of guidelines and national policy on the protection of the environment, the legal status of these soft instruments and challenges of implementation in Nigeria particularly in the face of lack of will by the government to pursue quality implementation of environment laws in Nigeria.

2. The National Policy on the Environment

The NPE is a set of guidelines, action plans and statements which are intended to inspire and direct the government towards the realisation of a protected and sustainable environment. The overall goal of the NPE is to guarantee sustainable development through the preservation of the environment and the natural resources.⁵ This goal is to be achieved, *inter alia*, by securing quality environment which is suitable for good health and wellbeing of the people and which promotes "sustainable use of natural resources and the restoration and maintenance of the biological diversity of ecosystems."⁶ The first NPE in Nigeria was formulated in 1991, revised in 1999 and in 2016.⁷ The process started in 1988 in a bid that looked as if Nigeria was moving closer to a well-entrenched environmental right regime. This time Nigeria was moving towards a new Constitution. Apart from the fact that the new Constitution failed, there was no such provision in the proposed Constitution that addressed the issue of enforceable right to a protected environment despite the elaborate and laudable goals of the NPE⁸ which were laid out in 1991 immediately before the expected coming into force of the Constitution. The NPE has as a major objective which is securing of a quality environment for the good health and well-being of Nigerians. One of the key guiding principles of the NPE is to guarantee environmental right of every Nigerian to a clean and healthy environment by safeguarding and enhancing the environment.⁹ The NPE equally recognises that these guiding principles are central to the attainment of the strategic objectives of the policy.

The policy makers in framing the NPE put into consideration treaties and conventions on the environment to which Nigeria is a party.¹⁰ The 2016 edition of the NPE, unlike the previous versions, is said to have been initiated through wider consultations with experts and relevant stakeholders which include "federal and state agencies, university scholars, international agencies and relevant organs in some countries of Europe."¹¹ The NPE is particularly a very robust and comprehensive instrument on for the protection of the environmental and it has led to the enactment and reviews of several legislations on the environment in attempt to give teeth to the objectives of the NPE.

The success of policy objectives is more than formulating formidable guidelines. Appropriate policies as well as strategies and management techniques are the vehicles through which the goal of the NPE can be achieved.¹² The legal foundation for the 2016 edition of the NPE is the Constitution of the Federal Republic of Nigeria, 1999 (as amended). The 1999 Constitution in section 20 states that the "State shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria." This is the first Nigerian Constitution placing obligation on the government to safeguard the environment. Shortly after the Koko incidence in 1988, the Federal Military Government in a swift reaction promulgated the popular Decree no. 58 of 1988.¹³ The Decree established the Federal Environmental Protection Agency (FEPA). By

⁵ NPE 2016.

⁶ Ibid.

⁷ Ibid.

⁸ Okorodudu-Fubara, M *Law of Environmental Protection* (Ibadan: Caltop Publications Ltd., 1998) at 88.

⁹ NPE 2016.

¹⁰ Ibid.

¹¹ Kpae, G and Kamabea, UB 'Critique on Nigeria National Policy on Environment: Reasons for Policy Review' (2021)

11(1) *International Journal of Social Sciences and Humanities Reviews* at 279.

¹² Elenwo, EI, Akankali, JA 'Environmental Policies and Strategies in Nigeria Oil and Gas Industry: Gains, Challenges and Prospects' (2014) 5 (14) *Natural resources*, pp. 884-896.

¹³ The Federal Environmental Protection Agency Decree.

section 5 of the Decree,¹⁴ the first duty of FEPA was to “prepare a comprehensive national policy for the protection of the environment and conservation of natural resources, including procedure for environmental impact assessment for all development projects.” Thus, the NPE was actually the baby of FEPA under the Federal Ministry of Environment. The NPE has influenced the enactment and amendment of several statutes on the environment both at national and state level to keep pace with the demands for an improved environment. For instance, paragraph 6.1 of the NPE recognises that climate change is beginning to become the “greatest global environmental challenge” and provides a policy statement to the effect that the government should “domesticate the United Nations Framework Convention on Climate Change (UNFCCC),¹⁵ including the implementation of the Nationally Determined Contributions (NDCs) and the Paris Agreement.¹⁶ In reaction to this, the Federal Government of Nigeria enacted the Climate Change Act 2021 (CCA)¹⁷ incorporating most of the policy statements on climate change in the NPE.

Apart from inspiring legislative actions, the NPE contains several guidelines and policy statements on how the legislations themselves should be implemented and enforced. For instance, section 2 of the Environmental Impact Assessment Act (EIA Act)¹⁸ prohibits any one from carrying on any activity or project without first assessing the likely effect on the environment. The NPE, in line with the EIA Act, stipulates as a policy statement under paragraphs 7.5, 4.2, 4.3, and 5.3 respectively that the Government will: “[e]nsure that all export projects conform to EIA process and procedures”; “ensure that developmental activities within the freshwater and wet-land ecosystems conform to EIA process and procedures”; “[a]dhere to strict Environmental Impact Assessments (EIA) when considering activities such as aquaculture that places demand on marine ecosystem resources”; and “[e]nsure that all major industrial development projects are mandatorily preceded by approved and certified Environmental Impact Assessment (EIA).” These policy statements and others under the paragraphs mentioned above are a compendium of action plans for the implementation of the EIA Act.

Similarly, some of the policy statements under paragraph 5.3 of the NPE incorporates the plan of action on how to enforce some of the provisions of the National Environmental Standards and Regulations Enforcement Agency (NESREA).¹⁹ The said paragraph of the NPE stipulates that the government will strengthen the capacity of NESREA to enforce laws that will, among others, “ensure that major industrial locations are selected on the basis of environmental considerations; prevent industries from being sited close to ecologically sensitive areas, historic and archaeological monuments, national parks, scenic areas, beaches and resorts, coastal areas and estuaries, bird and animal sanctuaries, natural lakes, swamps, floodplains, wetlands, etc.; discourage the trend to appropriate forest reserves and prime agricultural lands for industrial use; prohibit the location of industries close to residential areas” and so on. The article argues that these are sound principles of environmental protection for achieving environmental sustainability.²⁰

The NPE saddles the Government with the duty to safeguard the environment in line with the provisions of the Constitution.²¹ Environmental policies generally rotate around activities of the government. Environmental policies were once designed as the sole responsibilities of the government and its officials but now seen as a broader project, requiring the direct involvement

¹⁴ This Decree is now the Federal Environment Protection Agency Act Cap F10 Laws of the Federation of Nigeria (LFN) 2004

¹⁵ United Nations Framework Convention on Climate Change, S. Treaty Doc No. 102-38; U.N. Doc. A/AC.237/18 (Part II)/Add.1; 31 ILM 849 (1992).

¹⁶ Paris Agreement (13 December 2015), in UNFCCC, COP Report No. 21, Addendum, at 21, U.N. Doc. FCCC/CP/2015/10/Add.1 (Jan. 29, 2016),

https://unfccc.int/sites/default/files/english_paris_agreement.pdf accessed 23 march 2023.

¹⁷ Climate Change Act 2021.

¹⁸ Environmental Impact Assessment Act Cap E10 LFN 2004

¹⁹ National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, Federal Republic of Nigeria Official Gazette No. 92 Vol. 94, Govt Notice No. 61 of 31 July 2007.

²⁰ Kpae and Kamabea (n11) at 279.

²¹ See section 20 of the Constitution.

of communities, individuals, nongovernment organisations, and the corporate sector.²² The NPE seeks to continually measure and improve on environmental performance. This is in line with modern environmental protection targets which is to reduce energy, limit fuel consumption, lessen emissions, prevent pollution, reduce greenhouse gases, and an infinite number of other appropriate metrics, that when measured can show improvement in environmental sustainability.²³

3. Environmental Guidelines

Apart from the NPE which is a set of general statements defining government plan of actions for the protection of the environment, there are a number of guidelines which different environmental regulatory organs in Nigeria have formulated over time to achieve specific environmental objectives. One of these guidelines is the Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN 2022), first introduced by the Directorate of Petroleum Resources (DPR) in 2002.²⁴ The Federal Ministry of Environment (FME) has also developed a number of guidelines especially with respect to how the EIA Act should be implemented.²⁵ These include the National Guidelines for Decommissioning of Facilities in Nigeria, EIA Guidelines for Renewable Energy and the EIA Guidelines for Oil and Gas.²⁶ Most of these are silent guidelines because they apply to some specific narrow areas, however, the objectives are the same. It is doubtful if the FME is deliberately concerned with ensuring compliance with some of these guidelines having regard to the general reports of noncompliance with environmental laws in Nigeria. Many of the guidelines are reported to have been adopted from other countries, for instance, the USA, thereby lacking in contextualisation.²⁷ Sam observes that the conditions in the USA for land use, soil type, and soil total organic carbon vary from the situation in Nigeria and that this disparity will sufficiently affect the suitability and efficiency, particularly, of the EGASPIN.²⁸ The EGASPIN for instance, outlines environmental and safety standards that must be observed by petroleum and oil prospecting licensees in Nigeria. It is designed to prevent, minimise and control pollution from the various aspects of petroleum exploration.²⁹ However, it has been criticised as too technical and bulky for any single regulatory agency to manage and fully adopt.³⁰ Though the mandate of EGASPIN is to minimise oil pollution to the least minimum, Nigeria recorded 4,919 oil spills between 2015 and March 2021³¹. This shows that responses by multinational oil companies to oil spills in Nigeria has been far from fair. Spills continue for weeks in Nigeria undetected while clean-ups are haphazard.³² Olawuyi and Tubodenyefa equally observe that though the Guideline is tailored in line with best practices, adopting approaches consistent with international standards, it lacks transparency while accountability and implementation remain serious issues.³³ Notwithstanding these shortcomings, the guidelines are important tools for modern environmental protection strategies since they can

²² Abdallah, T. *Sustainable Mass Transit: Challenges and Opportunities in Urban Public Transportation* (Elsevier, 2017) 123.

²³ Ibid.

²⁴ Sam, Kabari Simeon, 'Environmental management of Oil Contaminated Sites in Nigeria: Improving Policy and Risk-based Framework (Unpublished PhD Thesis, Cranfield University, 2016) 20

²⁵ Federal Ministry of Environment, Office of Environmental Assessment Department, Environmental Guidelines Revision (March 2023) // <https://ead.gov.ng/environmental-guidelines-revision/>

²⁶ Others are EIA Guidelines for Urban Development, Guidelines Procedures for Biophysical Environmental Impact Assessment, EIA Guidelines for Pesticides, EIA Procedural Guidelines, EIA Guidelines for Food and Beverages, Social Impact Assessment Guideline and Standard, EIA Guidelines for Fertilizers, Phosphates and Urea Plant, Health Impact Assessment (HIA) Procedural Guideline, Procedural Guideline for Lab Accreditation and Strategic Environmental Assessment (SEA) Guidelines.

²⁷ Sam, (n24) at 20.

²⁸ Ibid

²⁹ Olawuyi, DS and Tubodenyefa, Z 'Review of the Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN), (OGEES Institute, ABUAD, Ado Ekiti, Nigeria, November 2018).

³⁰ Sam (n24) at 20.

³¹ Ovakporie, E 'EIA Act violation: House C'ttee threatens to recommend shutdown of 6 coys,' (Vanguard, 18 December, 2017). <https://www.vanguardngr.com/2017/12/eia-act-violation-house-cttee-threatens-recommend-shutdown-6-coys/> (23 March 2023).

³² Ele, M. 'Oil Spills in the Niger Delta-Does the Petroleum Industry Act 2022 Offer Guidance for Solving this Problem?' *The Journal of Sustainable Development Law and Policy*,(2022) 13(2) at136.

³³ Oluwaiyi and Tubodenyefa, (n29)

be reviewed very easily to meet contemporary demands and best practices. While the NPE majorly provides inspiration leading to enactment and reviews of environmental legislations, the guidelines are designed to assist implementation.

4. The Legal Status of National Policies and Guidelines in Nigeria

One major inquiry as regard implementation of policies and guidelines generally is in the area of their legal status. The NPE and the guidelines are not statutes. They do not go through legislative debate process.³⁴ This means that they are purely guidance documents having no force of law.³⁵ Ekhaton, in agreement, notes that the NPE "has no force of law, and sanctions cannot be meted to firms who are in breach of the policy."³⁶ He posits further that the policy is more advisory rather than regulatory in the context of oil and gas industry in Nigeria.³⁷ The NPE and the guidelines are soft instruments; very useful to national development but are not justiciable. They do not create a legally binding agreement between the agencies and the oil prospecting or exploration company. In *Fombo v Cookey*, the Court of Appeal held that government policies such as the Monetization Policy and such related policies do not confer a cause of action on a party.³⁸ This position was further strengthened by the Supreme Court when it held that: "[a] policy statement or guideline by the Federal Government does not give rise to a contractual relationship between the Government and a third party; and its non-implementation does not entitle the third party to a legal redress against the Government."³⁹ The general position is that policies are not law and do not also create legally binding relation between parties. This, no doubt, is a huge challenge to the effective implementation of the NPE and the guidelines on environmental protection.

The question therefore is why have policies if they cannot be enforced. Are they mere decorations on papers? The same question has been asked by socio-economic rights activists as to the relevance of socio-economic rights in the Constitution if they will never be enforced. The response has always been that they are directive principles meant to inspire the government. This is likely the answer to why policies and guidelines are not ordinarily justiciable. Though the NPE is not a binding legal document, not being a legislation,⁴⁰ the policy is very important to the implementation of the binding legal instruments on the environment. It is worthy of note that in considering EMP under the PIA, section 102 of PIA requires that the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) or the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA) shall put into consideration the National Policy of the government on the environment.⁴¹ This, not doubt, incorporates the NPE into the PIA, at least for the purpose of implementation. The law on the legal status of policies and guidelines is not without criticisms. In examining the legal status of the National Tax Policy (NTP), Richards, notes that "although the NTP is not legislation, it is intended to have some force of law and operates as the foremost guiding regulation for tax administration in Nigeria."⁴² The article argues that a policy can only show the intention of bindingness if it is directly derived from a statute and the same is incorporated into the relationship between the government/agencies and the parties affected by it. It is in this light that the Court in *Wilkie v FGN*, observed that the appellant "did not aver anywhere in his pleadings that this policy is part of his contract with the Government or that the policy has acquired a legal flavour either by legislation or by incorporation into his contract of employment as a civil servant. Above all else, there is no pleading to show that this policy is enforceable at law."

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ekhaton, E. O. 'Environmental Protection in the Oil and Gas Industry in Nigeria: the Roles of Governmental Agencies,' *International Energy Law Review* (2013) 5 at 196

³⁷ Ibid.

³⁸ *Fombo v Cookey* (2005) 15 NWLR (Pt. 947) 182 at 207

³⁹ *Ebhota v. P. I. & P. D. Co. Ltd* (2005) 15 NWLR (PT.948) 266 at 289

⁴⁰ *UBN Plc v Ifeoruwa Nig. (Ent.) Ltd* (2007) 7 NWLR (pt. 1032), 135

⁴¹ Petroleum Industry Act Federal Republic of Nigeria Official Gazette No. 132 Vol 108 of 27 August 2021(Government Notice no. 134).

⁴² Richards, NU 'Overview of the National Tax Policy and its Implication for Tax Administration in Nigeria,' *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, 10 (2) (2019) at 44.

Though the NPE is founded on the Constitution, the said constitutional provision is non justiciable and does not directly provide for the formulation of environmental policy or guidelines like FEPA Act did. It would have made a wall of difference if the Constitution had provided further, for instance, that the FME or any appropriate authority may make policies for the purpose of realising the provisions of the Constitution for the protection of the environment. This would have clothed the guidelines and policies with the garb of subsidiary legislation. In *Comptroller General of Customs & Ors v. Gusau*, the apex Court held that: [t]he statement of policy, general or otherwise by the Nigerian Customs Service Board ...cannot overrule or wipe away the specific provisions of the Public Service Rules made by the Federal Civil Service Commission (FCSC) which are written into the terms of Pensionable Contract of an Officer in the Public Service."⁴³ This is so because by the combined provisions of Sections 153(1)(d) to 159(1), and 160(1) of the Constitution, the FCSC is vested with power, with the approval of the President, to make rules to regulate its own procedure and exercise power to impose duties in furtherance of the exercise of its functions. The Civil Service Rules, though not legislations, are legally binding instruments and higher than mere policies because their making is directly authorised by the Constitution.

As long as the guidelines and policies are not directly derived from the basic law, the government or those the policies are intended to regulate are at liberty to honour them at will. In *Olusa v NICO & Ors*,⁴⁴ the Court of Appeal of Nigeria, held that the Government is at liberty to cause a change in policy at any time and it is within its legitimate powers and right to do as it may consider fit and lawful for the due administration and the discharge of its functions. In *Elephant Group Plc v National Security Adviser & Anor*, the Court of Appeal per Georgewill JCA held a similar view when he stated that when it comes to policies and policy decisions, the Government "is not fettered by law to change its policy based on the goals it sets out to achieve for the good governance of the country."⁴⁵ The Court in *Olusa v. NICO & Ors* relied on the English case of *Shepherd Masimba Kambadzi v Secretary of State for the Home Department*, where Lord Hope of the United Kingdom opined that: "[t]he principle that policy must be consistently applied is not in doubt and that the Courts now expect Government Departments to honor their statement of policy. Policy is not law so it may be departed from if good reason can be shown."⁴⁶

Be that as it may, policies and guidelines may be enforced in certain circumstances. A policy or guideline that has satisfied the requirement of incorporation or being statutorily flavoured should be enforced as binding between those subject to it if it does not create criminal liability. Policies that have been incorporated into business relationship should be honoured as between the parties. It is proposed that where a policy has been applied for a period of time, it should wear the force of law in the same way as customs and traditions become binding on the people over a period of time. The article further suggests that except there is a conflict between a legal instrument and a policy, the court should give effect to such policy or guidelines having regard to the overall interest they are meant to serve. This is particularly suggested for the NPE and the various guidelines.

5. Problem of Implementation

Many factors exist why compliance and enforcement or implementation of the NPE and certain environmental guidelines are very difficult in Nigeria. It has been suggested that it is partly because some of the laws meant to back the policies were enacted out of exigencies and were not properly planned.⁴⁷ Some of these issues relating to implementation have been grouped along legal, non-legal and institutional challenges.⁴⁸ Without necessarily following this order, the article identifies three major setbacks accounting for policy failure in the effort to protect the Nigerian environment. These are mismanagement and the issue of overlapping functions of

⁴³ *Comptroller General of Customs & Ors v Gusau* (2017) LPELR-42081(SC)

⁴⁴ (2022) LPELR-57459(CA) 46-48

⁴⁵ *Elephant Group Plc v National Security Adviser & Anor* (2018) LPELR - 45528(CA)

⁴⁶ *Shepherd Masimba Kambadzi v Secretary of State for the Home Department* (2011) LPELR - 17790 (UKSC) at 60 – 62

⁴⁷ *Ibid*

⁴⁸ Cleverline TB, 'Effective Environmental Compliance and Enforcement in Nigeria:

Motivation, Challenges and Prospects" *African Journal of Law & Criminology* (2021) 11(1) 91–107.

several regulatory organs, corruption, lack of partnership in policy making and funding. They are discussed seriatim.

5.1 Mismanagement and Institutional overlapping of Environmental Agencies

Policies are usually implemented through legislative interventions because they are not laws. Some of the time, these legislations equally create organs by way of agencies to monitor compliance with the law. The NPE itself recognises this phenomenon. The NPE at paragraph 7.0 states that a viable national mechanism for environmental management requires co-operation, coordination and regular consultation, including the harmonious coordination of the policy formulation and implementation process through the establishment of effective institutions and linkages within and among the various tiers and levels of government.⁴⁹ Unfortunately, the functions of some of the regulatory bodies are overlapping while there are reports of mismanagement in the interventionist agencies making enforcement of the NPE difficult. The agencies and environmental management organs are uncoordinated and operate independently⁵⁰ and this is a major setback to the goals of sustainable environmental management in Nigeria.⁵¹ Environmental agencies may be created directly to enforce compliance with an enabling statute as in the case of FEPA and NESREA or to develop the oil producing areas like the NNPC and the oil producing area development commissions of the various states in Nigeria. The latter is also very important to policy decisions and success of environment protection. The Court of Appeal of Nigeria aptly noted this when it observed that the Government felt the need to bring succour, and to stem the tide of this "unwholesome, unbridled and systematic extermination of Niger-Deltans by the oil and gas companies/exploiters masquerading as investors" hence it created these interventionist institutions to cushion the effects of the scourge of oil and gas exploitation in Nigeria.⁵² The then military government established the Oil Minerals Producing Area Development Commission (OMPADEC) as an interventionist organ. Although, OMPADEC tried its best, its best was not good enough to address "the socio-economic conditions of Niger Deltans owing to the poor management and administrative structure of the Commission."⁵³ OMPADEC was replaced with the Niger-Delta Development Commission (NNDC) under the Niger-Delta Development Commission (Establishment) Act.⁵⁴ On other hand, other relevant regulatory bodies compete as to which is superior over which majorly because of similarity of functions. The National Oil Spill Detection and Response Agency (NOSDRA), NESREA, FME and a number of other bodies play overlapping regulatory role over environmental law compliance yet with minimal result.⁵⁵

The overlapping functions of the environmental regulatory agencies played out very prominently in the petroleum industry till 2021 when the PIA scrapped some of the regulatory bodies including the DPR, Petroleum Products Pricing Regulatory Agency (PPPRA) and the Petroleum Equalization Fund (PEF). Before now, the NOSDRA and the DPR were in some cold wars as to which is responsible for monitoring, responding, mediating and detecting oil spill occurrences. The DPR and NOSDRA competed in the discharge of this role thereby creating conflict in policy implementation. For instance, when oil spills occurred, the oil prospecting company was expected under EGASPIN to notify DPR while the same company is required statutorily to notify NOSDRA which is the body created for responses to oil spills under the NOSDRA Act 2006. Besides, the DPR and NOSDRA initiated independent risk assessment on affected sites thereby duplicating energy and manpower and causing waste of resources. The DPR has been scrapped. The FEPA Act which created FEPA has also been repealed by section 36 of NESREA Act. Even though PIA has delisted some regulatory bodies, there is still the subtle challenge of intersection of roles among NOSDRA, NESREA and the FME.

⁴⁹ NPE 2016.

⁵⁰ Budnukaeku, AC and Hyginus, O 'Environmental Laws and Management Agencies in Nigeria– What Hope for Desecrated Landscape' (2021) 5(1) Biodiversity International Journal at 4.

⁵¹ Ibid.

⁵² NDDC v. NLNG Ltd (2010) LPELR-4596(CA)

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Ijaiya, H and Joseph, OT 'Rethinking Environmental Law Enforcement in Nigeria' Beijing Law Review (2014)(5) at 313. <http://dx.doi.org/10.4236/blr.2014.54029>. accessed 23 March 2023.

While FEPA existed, there was the confusion as to the difference between FEPA and NEMA in terms of their roles. The former did not create any agency called the Nigerian Environmental Management Agency (NEMA). Thus, the definition of "agency" in section 61 of the EIA Act as "Nigerian Environmental Protection Agency established by the Federal Environmental Protection Agency Act" is misleading and should be amended. NEMA is under National Emergency Management Agency (Establishment, etc.) Act of 1999 and it is generally concerned with the management of disaster and not environmental protection.

Apart from the conflict of roles among regulatory agencies, it was also reported that state agencies were enforcing environmental regulations in matters which are for the federal agencies. In *Helios Towers Nig. Ltd. v NESREA & Ors.*,⁵⁶ the Court was called upon to intervene and banned Kaduna State under the Kaduna Environmental Protection Agency Edith no. of 1998 from issuing EIA. The Court affirmed that the states and local governments have some role to play in the process leading to the EIA in their area but FEPA was the body entrusted with the implementation and enforcement of the FEPA Act and issuance of EIA. This strive for supremacy has contributed in no small measure to low standard and policy failure in the fight to safeguard the environment.

5.2 Corruption

The oil boom in Nigeria and the resultant environmental crisis came with their own share of challenge which is rooted in corruption. Some of the agencies were created as "explicit instrument of personal political agenda" to syphon public fund.⁵⁷ They were never intended to guarantee the protection of the environment. The Nigerian National Petroleum Corporation (NNPC) which is now NNPC Limited has been submerged in allegations of financial mismanagement and accused of playing major role in the disappearance of huge fund from the state treasury.⁵⁸ Apart from this level of corruption, there are allegations of compromise and abdication of duty by officials of some of the environmental regulatory agencies leading to non-compliance with environmental laws with impunity. Some of the personnel of the agencies cooperate with violators and overlook infractions of environmental laws after receiving gratifications.⁵⁹ A number of oil prospecting licensees and oil mining leaseholders in Nigeria do not have Environmental Impact (EIA) Certificate yet they carry on the businesses of oil prospecting and mining without obstruction. In 2017, the House of Representatives sub-Committee on Environment in investigating the issue of wide non-compliance with environmental guidelines summoned certain companies to appear before it. It was found that some companies which had been operating in Nigeria for over 16 years had no Environmental Impact Assessment, EIA, certification.⁶⁰ This may have been encouraged by compromise.

5.3 Lack of Partnership in the Making and Implementation of the NPE

For policies to be effective there is need for a functional partnership among the stakeholders.⁶¹ Modern policy making is no longer the business of the government alone. The NPE has elaborate

⁵⁶ (2014) LPELR 24624 (CA) at 57

⁵⁷ Omotola, SJ 'Through a Glass Darkly' Assessing the 'New' War Against Corruption in Nigeria, Africa Insight (2006)36 (3) & (4) at 214-228.

⁵⁸ Duyne, PC van and Harvey, JH 'Grand Corruption in Nigeria', Working Paper 12.

<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwig4IPG1-D9AhVoRfEDHU1nB8QQFnoECA8QAQ&url=https%3A%2F%2Face.globalintegrity.org%2Fwp-content%2Fuploads%2F2021%2F06%2Fgrand-corruption-in-nigeria-harvey-06.-2021-1-1.pdf&usg=AOvVaw0IpXEn8p9SYLYOsCmiyClh>. accessed 23 March 2023.

⁵⁹ Budnukaeku and Hyginus, (n50) at 4.

⁶⁰ Ovuakporie, E, 'Nigeria recorded 4919 oil spills in 6 years'.

https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwi0ke_qq-b9AhVB7rsIHaoNA5EQFnoECC8QAQ&url=https%3A%2F%2Fwww.vanguardngr.com%2F2021%2F07%2Fnigeria-records-4919-oil-spills-in-6-years-minister%2F&usg=AOvVaw07gyrJo--WVZiHoGrP9bNp. accessed 23 March 2023

⁶¹ Hallsworth, M, Parker, S and Rutte, J 'Policy Making in the Real World, Institute for Government' 2011. https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwj2-PvV5d_9AhXPU6QEHBurDycQFnoECDMQAQ&url=https%3A%2F%2Fwww.instituteforgovernment.org.uk%2Fsites%2Fdefault%2Ffiles%2Fpublications%2FPolicy%2520making%2520in%2520the%2520real%2520world.pdf&usg=AOvVaw0BC7CtQ6_hsQK97OT8OhDW. accessed 23 March 2023

provisions guaranteeing community participation especially through NGOs, CBOs and CSOs and the people directly affected, however, there appears to be a wide gap between the policy and the law especially as it relates to public participation – which in this context, is beyond representation by public interest organisations. The strategy of partnership, self-help and community empowerment are a key to initiating all-inclusive participation and promotion of avenues for communities, industries and the government to work together the promotion of environmental protection.⁶² In Nigeria, those who are often affected directly by the activities of users of the environment are hardly involved in environmental policy formulation and implementation. The participation of the public in environmental decision making and governance is an important factor in engendering high-quality environmental decisions which invariably helps to ensure protection and sustainability of the environment. A critical observation of the laws and current implementation strategies of the environmental agencies suggest that the government is still far from partnering in the practical implementation of the laws and the guidelines in Nigeria. For instance, the PIA and the Climate Change Act 2021 do not provide for reasonable participation of the people in the implementation of these laws. The PIA recognises the role of the Host communities but only to the extent of receiving some monetary compensations and forfeiture in the event of sabotage. In section 102(5) the PIA requires that before embarking on any activity, a licence holder must provide Environmental Management Plan (EMP) and in deciding whether to approve EMP, the Commission or Authority may demand for additional information from licensees or lessees. There is no room for the those who may be affected by the plan to provide any information.⁶³ Apart from the forgoing, other implementation challenges include poor resource allocation, weak institutions, outdated or inadequate equipment, government interference, armed conflicts and corruption, and other.⁶⁴

6. The Role of Non-Governmental Organisations (NGOS) under the NPE

Part of the policy statements of the NPE in paragraph 8.5 is that government will work with relevant NGOs, Civil Society Organisations (CSOs) and Community Based Organisations (CBOs) to drive advocacy on the value of biodiversity, in resilience building and in monitoring activities that could impact on the environment negatively.⁶⁵ The policy statements also obliges the government to consider relevant NGOs, CSOs and CBOs as critical parts of national delegations to regional and multilateral negotiations.⁶⁶ Environmental NGOs play a very important function in bridging the gaps by steering research towards policy development, institutional capacity, and facilitate avenue for dialogue with civil society in order for people to live more sustainably.⁶⁷ These organisations act as catalyst in bringing about initiative and participation by the public in environmental matters and in improving on the quality of life of the people.⁶⁸ This was reflected in the recent decision in the hallmark case of *Centre for Oil Pollution Watch v NNPC* when the

⁶² Cocklin, C, Mautner, N and Dibden, J ‘Public policy, private landholders: Perspectives on Policy Mechanisms for Sustainable Land Management’ *Journal of Environmental Management* 85 (2007) at 988

⁶³ Umukoro, B. E. “The Ogidigben EPZ Gas Project and the Environmental, Health and Human Rights Implications”, *Ajayi Crowther University Law Journal*, 1 no.1 (2017):1-38. See also Etemire, U. "A Fresh Perspective on the Human Right to Political Participation and Environmental Decision-Making in Nigeria," *African Journal of International and Comparative Law* 26 no. 4 (2018) at 570

⁶⁴ Cleverline, (n48) at 91-107.

⁶⁵ NPE 2016.

⁶⁶ Ibid

⁶⁷ Mubarak, RA and Alam, T ‘The Role of NGOs in Tackling Environmental Issues 2012 (March 2023) // <https://www.mei.edu/publications/role-ngos-tackling-environmental-issues>. accessed 22 March 2023. See also, Ekhaton, E. O. ‘The Role of Non-Governmental Organisations in the Environmental Justice Paradigm’ *NAULR* (2017) 8 (2) 33

⁶⁸ Pant, H, Verma, J and Singh, MK ‘Role of NGO's in Environmental Protection" *Green Technology: A Roadmap for Sustainable Development*’ 2020 (March 2023) // https://www.researchgate.net/profile/Hemlata-Pant-3/publication/355409065_Role_of_NGO's_in_Environmental_Protection/links/6172c2423c987366c3c7ad83/Role-of-NGOs-in-Environmental-

[Protection.pdf?origin=publicationDetail&_sg%5B0%5D=a8hgcfzr1nc9K7_GdnDXfQ7k6adxHA0mfiO61HjSuX0HDsEWHezioNYa75ilxo_GdFRBhs-gOWLR2kgEl6GfYg.0AUy2liqgfRw9TX81Ycm_bUn5ljDhS5100KxIw4oyYc2Pv3IOzY7nwLQ6Q1pvXv5mkrCY16H_PnCXVATZbmHjg&_sg%5B1%5D=6M6PqvR44Hckl0ANaKIutAsQc1bA2yMc2BNFj1LVD-MUvcqo3qLD8pveqkNcjRuKQGAFTdS3aQbHBnBnkvlL51sDT2gzHwhAiTjKjdR32nX.0AUy2liqgfRw9TX81Ycm_bUn5ljDhS5100KxIw4oyYc2Pv3IOzY7nwLQ6Q1pvXv5mkrCY16H_PnCXVATZbmHjg&_iepl=&_rtd=eyJb250ZW50SW50ZW50IjoibWFpbk10ZW0ifQ%3D%3D](https://www.researchgate.net/profile/Hemlata-Pant-3/publication/355409065_Role_of_NGO's_in_Environmental_Protection/links/6172c2423c987366c3c7ad83/Role-of-NGOs-in-Environmental-Protection.pdf?origin=publicationDetail&_sg%5B0%5D=a8hgcfzr1nc9K7_GdnDXfQ7k6adxHA0mfiO61HjSuX0HDsEWHezioNYa75ilxo_GdFRBhs-gOWLR2kgEl6GfYg.0AUy2liqgfRw9TX81Ycm_bUn5ljDhS5100KxIw4oyYc2Pv3IOzY7nwLQ6Q1pvXv5mkrCY16H_PnCXVATZbmHjg&_sg%5B1%5D=6M6PqvR44Hckl0ANaKIutAsQc1bA2yMc2BNFj1LVD-MUvcqo3qLD8pveqkNcjRuKQGAFTdS3aQbHBnBnkvlL51sDT2gzHwhAiTjKjdR32nX.0AUy2liqgfRw9TX81Ycm_bUn5ljDhS5100KxIw4oyYc2Pv3IOzY7nwLQ6Q1pvXv5mkrCY16H_PnCXVATZbmHjg&_iepl=&_rtd=eyJb250ZW50SW50ZW50IjoibWFpbk10ZW0ifQ%3D%3D)

apex court relaxed the age long doctrine of *locus standi* and held that NGOs need not have an interest before initiating environmental protection cases. In the said case, the Court held that “the issue of environmental protection against degradation has become a contemporary issue and the plaintiff/appellant being in the vanguard of protecting the environment should be encouraged to ensure that actions or omissions by government agencies or multi-national oil companies that tend to pollute the environment are checked ... the [local people] affected by the spillage leading to the environmental degradation may not muster the financial muscle to sue and if good spirited organisations such as the plaintiff is denied access to sue, it is the affected communities that stand to lose.”⁶⁹ It is argued that if the NPE recognises that these organisations could work with the authorities to monitor activities that could negatively affect the environment then it is only logical that these bodies should equally be able to file law suits on behalf of victims of environmental degradation in furtherance of their monitoring role.

One of the major challenges to the realisation of environmental justice in Nigeria is the doctrine of *locus standi*⁷⁰ and the failure to effectively prosecute environmental wrongs. *Locus Standi* is a common law doctrine which holds that “a general interest shared with all members of the public is not litigable interest to accord standing.”⁷¹ Until recently, Nigerian courts have followed this doctrine slavishly in several cases to the undoing of the weak and miserable individual victims who ordinarily would have been helped by concerned NGOs.⁷² As aptly described, the attitude of Nigerian courts to public interest litigation has been that of “mixed grill.”⁷³ For a full appreciation of the impact of the authority on the right to the environment, it is necessary to set out a summary of the facts and part of the holding of the Supreme Court of Nigeria in *Centre for Oil Pollution Watch v NNPC*. The appellant sued the respondent at the Federal High Court, Lagos claiming reinstatement, restoration and remediation of the impaired and/or contaminated environment of the Acha Community people in Isukwuato Local Government Area of Abia State of Nigeria. The appellant claimed that there was oil spill on their land caused by the respondent’s negligence. The appellant is a Non-Governmental Organisation (NGO) with interest in the reinstatement, restoration and remediation of the environment for the preservation of human and aquatic lives. The Respondent is a corporation established by an Act of the Parliament to carry on the business of prospecting, mining, producing, exploring and storing persistent hydrocarbon mineral oil. It has oil pipelines, oil installations, oil rigs, etc across Nigeria, including Acha community. On 13th May 2003, the appellant noticed a strange oily substance (crude hydrocarbon oil) floating on the streams and surging into adjoining lands, estuaries, creeks and mangroves. It was the Respondent’s oil pipelines which had corroded due to lack of maintenance that ruptured and poured its contents on the land of the Acha community people. The Respondent in its defence denied the allegation and challenged the *locus standi* of the Appellant in bringing the suit. The trial court held for the Respondent that the appellant lacked the *locus standi* to institute the case and struck out the entire case. On appeal, the Court of Appeal affirmed the holding of the court below. On further appeal the apex court undertook an extensive review of the old principle of *locus standi* after hearing from counsel on both sides and from a number of seasoned *amici curiae*. The Supreme Court held with copious references to the current state of the law in other jurisdictions as follows: “I am on safe grounds by making a finding in favour of the appellant’s *locus standi*. In this instance, the law as to who has the standing to complain against the violation of the environment was expanded to include NGOs as part of the duty of the judiciary to meaningfully discharge the real purpose of its judicial function.”⁷⁴ The Court

⁶⁹ Centre for Oil Pollution Watch v NNPC (2019) 5 NWLR (Pt. 1666) 517

⁷⁰ Mbadugha, J. N. ‘Locus Standi and Public Interest Litigation in Environmental Matters in Nigeria: Lessons from Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation’, *Gravitas Review of Business and Property Law*, (2020) 11 (5) at 53.

⁷¹ Adesanya v President, Federal Republic of Nigeria [1981] 5 SC 112.

⁷² Amechi, EP, Etemire U and Ihua-Maduenyi, A ‘Access to Justice through Environmental Public Interest Litigation: Exploring Contemporary Trends in Nigeria’, *VRÜ Verfassung und Recht in Übersee*, (2021) 54 (3) at 402.

⁷³ Olatunbosun, AI and Onu, KO ‘The Liberalisation of Locus Standi in Environmental Cases in Nigeria: An Appraisal of the Supreme Court’s Decision in Centre for Oil Pollution Watch V NNPC,’ *The Gravitas Review OF Business & Property Law* (2020) 11(2) at 4.

⁷⁴ Centre for Oil Pollution Watch v NNPC, (n69).

relying on the Indian authority of *SP Gupta v President of India & Ors.*⁷⁵ quoted the Indian scholar, Thio as follows:

Is the judicial function primarily aimed at preserving legal order by confirming the legislative and executive organs of government with their powers in the interest of the public ... or is it mainly directed towards the protection of private individuals by preventing illegal rights? ... Requirements of *locus standi* are ... unnecessary in this case since they merely impede the purpose of the function as concerned here.⁷⁶

The apex court also cited Lord Diplock in *Rex v. Inland Revenue Commissioners* where the learned jurist opined that it would be a grave lacuna in the system of public law if a pressure group, like the federation or even a single public-spirited tax-payer were prevented by out dated technical principles from approaching the court to defend the rule of law and restrained unlawful behaviours.⁷⁷

The Nigerian Supreme Court took a long voyage into several common law jurisdictions and observed that some of the jurisdictions like India, without any statutory enactment, acting on the overall need to do justice, generally liberalised the traditional rule on *locus standi* with respect to environmental degradation, since in the court's view, maintaining a clean environment was the responsibility of all persons in the Country.⁷⁸ The apex court while relying on the English authority of *Reg v IRC Exp Fed. of Self-Employed*,⁷⁹ observed that in England, as in other common law jurisdictions, there was liberalisation or extension of the meaning of *locus standi* based on the principle or view that "any judicial statements on matters of public law made before 1950 are likely to be misleading guide to what the law is today."⁸⁰ In essence, the rule of *locus standi* are judges-made and can be unmade by judges too.⁸¹

Interestingly, the Supreme Court considered a number of legislations including section 17 (4) of the Oil Pipelines Act,⁸² section 6(2)(3) of the National Oil Spill Detection Response (Establishment) Act 2006, Article 24 of the African Charter of Human and Peoples (Ratification and Enforcement) Act and sections 6(6) (b) and (c) and 20 of the Constitution in holding that "in environmental matters such as in the instance one, the NGO such as the plaintiff in this case, has the requisite *locus standi* to sue." In concurring with the lead judgment, Onnoghen CJN (as then was) without equivocation added:

...[P]laintiff, an NGO, seeks the enforcement of the defendant's obligations under law vis-à-vis the rights of the affected communities to maintain a healthy environment which extends to their forest, rivers ..., they should be heard.⁸³

Environmental degradation are a specie of public nuisance and the result is that the duty of bringing proceedings against public nuisance is on the States.⁸⁴ Unfortunately, the government and its agents have economic interest in the companies which constitute a considerable level of violation of the environment. How then will the government bite itself? The decision in *Centre for Oil Pollution Watch v NNPC* has set a very important legal platform for the advancement of

⁷⁵ *SP Gupta v President of India & Ors* AIR 1982 SC 149. See the text of the decision at <https://indiankanoon.org/doc/1294854/> accessed 30 October 2022.

⁷⁶ *Centre for Oil Pollution Watch v NNPC*, (n66).

⁷⁷ *Rex v. Inland Revenue Commissioners*(1981) 2 WLR 722, 740

⁷⁸ *Centre for Oil Pollution Watch v NNPC*, (n69)

⁷⁹ (1982) AC(HL)(E) 640-641

⁸⁰ *Centre for Oil Pollution Watch v NNPC*, (n69).

⁸¹ Anozie, MC and Wingate, EO 'NGO Standing in Petroleum Pollution Litigation in Nigeria—Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation', *Journal of World Energy Law and Business*, (2020) at 7. <https://doi:10.1093/jwelb/jwaa031>

⁸² Oil Pipelines Act Cap O7 LFN 2004

⁸³ *Centre for Oil Pollution Watch v NNPC*, (n69)

⁸⁴ Mbadugha, (n70) at 53.

the jurisprudence on environmental rights and promotion of environmental justice in Nigeria⁸⁵. As rightly observed, the pronouncements on the right to clean environment are *obiter dicta* as the issue before the apex court was only on the *locus standi* of NGOs on public interest litigation on environmental matters.⁸⁶ However, the pronouncements have given judicial impetus to the Fundamental Rights (Enforcement Procedure) Rules 2009⁸⁷ and it is hoped that the government would follow suit by making and implementing appropriate policies and environmental laws in Nigeria.

7. Conclusion

A good environmental policy is expected under the United Nations Environmental Programme (UNEP) to address certain cardinal issues, that is, health, energy, agriculture and population concerns. Others are sustainable resource exploration and conservation of biodiversity. These are sufficiently addressed in the NPE and the guidelines. The challenge however is with the issue of implementation strategy.⁸⁸ While the 2016 NPE is appraised for being a product of wider consultation, there is still little or no room for public participation in environmental decisions. Implementation is still a matter between the regulatory bodies and the investors leaving those prone to environmental harm side-lined. Broad public participation in decision making process is one of the fundamental precondition for sustainable development.⁸⁹ The local people and those within the area of operation of oil prospecting and mining companies must have a say in the suitability of proposed projects.⁹⁰ EMP for instance should not be a matter between the agencies and the companies alone.

Corruption is a general malady in Nigeria but creating serious concerns in the effective implementation of environmental policies. This trend has continued unabated because those who should take responsibility are not being held accountable. Appropriate sanctions must be meted out on officials of regulatory agencies who condole environmental wrongs for whatever reasons. This also applies to cases of mismanagement of resources meant for effective environmental implementation. The probe of NNPC for financial mismanagement has always ended without direct indictment and prosecution.

The PIA has attempted to streamline the functions of the regulatory bodies in the petroleum sector into two major bodies: the NUPRC and the NMDPRA. Having scrapped the DPR, PPPRA and the PEF, it is expected that these two new bodies will learn from the conflict of roles which marred environmental implementation prior to the PIA. It is also hoped that the functions of the NESREA, NOSDRA and FME will be more clearly defined to allow harmony in order to provide a common front in the implementation of environmental laws, policies and guidelines in Nigeria.

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⁸⁵ Etemire, U. 'The Future of Climate Change Litigation in Nigeria: COPW v NNPC in the Spotlight' CCLR, (2021) 2, pp.158-170. See also Akintayo JO and Eyongndi, DT 'Promoting the Right to Environmental Justice through the Supreme Court's Liberalisation of *Locus Standi* in Nigeria', *SA Journal of Environmental Law and Policy* (2019) 25 at 223.

⁸⁶ Umukoro, BE 'Looking Beyond the Constitution: Legislative Efforts toward Environmental Rights in Nigeria: A Review of Some Salient Legislations,' *Brawijaya Law Journal : Journal of Legal Studies* (2022) 9 (2) at141-164.

⁸⁷ Philip E. Oamen, PE and Eunice O. Erhagbe, EO 'The Impact of Climate Change on Economic and Social Rights Realisation in Nigeria: International Cooperation and Assistance to the Rescue?', *African Human Rights Law Journal* (2021) 21 p1090. <http://dx.doi.org/10.17159/1996-2096/2021/v21n2a43>.

⁸⁸ Kpae and Kamabae, (n11) at 279.

⁸⁹ NPE 2016.

⁹⁰ Umukoro, (n60) at 1-38. and Umukoro, BE 'Gas Flaring, Environmental Corporate Responsibility and the Right to a Healthy Environment' in Festus Emiri & Gowon Deinduomo (eds.) *Law and Petroleum Industry in Nigeria- Current Challenges* (Malthouse Press Ltd., Lagos: 2008) 49-64.

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