

An Appraisal of the Legal Frameworks on the Effect of Soot, Right to Healthy Environment and Public health in River State, Nigeria.



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ABSTRACT

The unresolved prevailing widespread air pollution by Soot in Rivers state is considered a threat to environmental health. Global Research confirms that this particle pollution correlates positively with a range of morbidities and an increased risk of mortality among exposed populations. This shows the need for rigorous implementation of existing environmental legislation to protect our rights to a healthy environment and public health. This paper examines the legal framework on the effect of carbon emission in River State. The objectives were to highlight the effect of soot on the

residents and the legal frameworks that protect the residents from such hazardous air pollution.

Keywords: Environmental pollution, soot, environmental rights and Laws.

INTRODUCTION

Soot had been a threat to their fundamental right to a healthy environment on residents in River state. According to the World Health Organization (WHO)¹, air pollution constitutes the largest among all of the environmental risks: 3 million annual deaths are associated with outdoor air pollution exposure. The question remains how many residents of River state have died as a result of this? Findings from a different study indicate the adverse health conditions of black soot such as eyes and skin disorders, breathing difficulty, lung cancer, etc. occurred amongst workers who spent eight hours per day working at facilities with poor air quality due to ineffective control. Additionally, statistical analysis indicated a strong association of number of residences in homes with cancers, deformed children, and health effects are related to air pollutants, miscarriage, or stillbirth, and respiratory diseases.

Plumes of soot in the air have affected the residents in Rivers state and its environments. The severe consequences of human exposure to this air and particles pollution indicate the need for the implementation and enforcement of existing National Environmental Regulations. Customarily, fishing and farming have been the main source of employment and consequently their livelihoods, thereby increasing the poverty rate of these citizens. Air pollutants such as Carbon Monoxide (CO), ground-level Ozone (O₃), Lead (Pb), Nitrogen Dioxide (NO₂), Sulphur Dioxide (SO₂), etc. can also result in property damage. This paper discussed the severe consequences of human exposure to air pollution and the implementation and enforcement of existing legal frameworks to protect our rights to a healthy environment and public health.

¹World Health Organization (WHO). WHO Releases Country Estimates on Air Pollution Exposure and Health Impact. Available online: <http://www.who.int/mediacentre/news/release/s/2016/air-pollution-estimates/en/>

Definition of issues

Air pollution

Air pollution is the contamination of the air by dust, fumes, gas, smoke, etc. Black

soot is injurious to living things and properties.

Environmental law

Environmental law deals with laws that protect the environment from degradation. It is a body of law that protects living things from harmful activities. These laws include Federal, State, and International Laws. Nigeria's Environmental Policy provides structural elements that encourage responsible environmental behavior by individuals and industries. Formulation, enactment, implementation, and enforcement of legislation with other environmental

planning will help to prevent pollution and control, help to achieve environmental goals. Some of these national laws include the following:

1. The constitution of the Federal Republic of Nigeria as amended.
2. National Environmental Standards and Regulation Enforcement (NESREA) Act 2007
3. Environmental Impact Assessment (EIA) Act 1992. Etc.

Constitution

Section 20 of the 1999 constitution of the Federal Republic of Nigeria as amended makes provision for environmental preservation and upgrade, establishes the fundamental idea of environmental policy in the country. Consequently, the Nigerian state enforces the protection of air, land, and weather as well as ecosystems including forests and wildlife. **Section 12** establishes, though impliedly, that international treaties (including environmental treaties) ratified by the National Assembly should be implemented as laws in Nigeria. **Section 20** under chapter two of the 1999 constitution of the Federal Republic of Nigeria is not enforceable². Therefore, rights to a healthy environment and public health are linked with the right to life on the realization that environmental contamination and degradation pose a persistent threat to human life and health. Life depends upon one's physical environment. **Section 33** and **34** which guarantee fundamental human rights and human dignity respectively have also been argued to

be linked to the need for a healthy and safe environment to give these rights effect.

² Section 6 6(c) of the constitution of the Federal Republic of Nigeria as amended provides that the judicial powers of the courts shall not extend to the question of ascertaining whether the actions of the governments comply with the provisions of chapter two of the constitution.

Right to Healthy Environment and Public Health

The right to a healthy environment and public health is an international concern. In the first international conference on the human environment held in Stockholm in 1972. Health has seemed to be the subject that bridges the two fields of environmental protection and human rights. Stockholm proclaimed that "man is both creature and molder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth." Every aspect of man's environment, the natural and the man-made are essential to his well-being and the enjoyment of basic human rights³. Principle 1 of the Stockholm Declaration established a foundation for linking human rights, health and declaring that: "Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being". The Rio De Janeiro on Environment and Development Declaration formulates a link between human rights and environmental protection in Principle 10 that access to information, public participation, and access to effective judicial and administrative proceedings including redress and remedy should be guaranteed because "environment issues are best handled with the participation of all concerned citizens at the relevant level". The Stockholm Declaration and Subsequent instruments⁴ emphasize the duty of each environment for present and future generations. It is also consistent with human rights instruments that affirm the duties of each individual to others to promote and observe

internationally-guaranteed human rights. All these international treaties have been domesticated into our national laws including the 1999 constitution of the Federal Republic of Nigeria as amended.

Harmful Waste (Special Criminal Provisions) Act,⁵

The Harmful Waste Act prohibits, without lawful authority, the carrying, dumping, or depositing of harmful waste in the air, land, or waters of Nigeria. The following sections are notable:

Section 6 provides for a punishment of Life imprisonment for offenders as well as the forfeiture of land or anything used to commit the offenses.

Section 7 makes provision for the punishment accordingly, of any conniving, consenting or negligent officer where the offense is committed by a company.

Section 12 defines the civil liability of any offender. He would be liable to persons who have suffered injury as a result of his offending act.

ENVIRONMENTAL IMPACT ASSESSMENT (EIA) ACT⁶

An Environmental Impact Assessment (EIA) is an assessment of the potential impacts whether positive or negative, of a proposed project on the natural environment:

E. I. A Act, as it is informally called, deals with the considerations of environmental impact in respect of public and private projects. **Section 2(1)** requires an assessment of public or private projects likely to have a significant (negative) impact on the environment.

Section 2(4) requires an application in writing to the Agency before embarking on projects for their environmental assessment to determine approval.

Section 13 establishes cases where an EIA is required and **Section 60** creates a legal liability for contravention of any provision.

³Stockholm Declaration of the United Nations Conference on the Human Environment, 16 June 1972. U.N Doc. A/ CONF.48/14/Rev.1 at 3 (1973).

⁴ Universal Declaration of Human rights preamble, Article 1 and Article 29; International Covenant on Economic, Social and Cultural Rights (16 December 1966), African Charter on Human and People's Rights (Banjul June 26, 1991) Article 16, and Article 24, etc. Agenda 21 of Rio Conference on Environment and Development.

⁵CAP H1, LFN 2004

⁶ CAP E12, LFN 2004

NATIONAL ENVIRONMENTAL STARDARDS AND REGULATION

ENFORCEMENT AGENCY (NESREA) ACT

Administered by the ministry of environment, the National Environmental Standards, and Regulation Enforcement Agency ACT⁷ replaced the Federal Environmental Agency (FEPA) Act. It is the embodiment of laws and regulations focused on the protection and sustainable development of the environment and its natural resources. The following sections are worth noting: -

Section 7 provides authority to ensure compliance with environmental law, local and international, on environmental sanitation and pollution prevention and control through monitory and regulatory measures.

Section 8(1) (k) empowers the Agency to make and review regulations on air and water quality, effluent limitations, control of harmful substances, and other forms of environmental pollution and sanitation.

Section 27 prohibits, without lawful authority, the discharge of hazardous substances into the environment. This offense is punishable under this section, with a fine not exceeding, N1, 000,000(One Million Naira) and an imprisonment term of 5 years. In the case of a company, there is an additional fine of N50, 000 for every day the offense persists.

REGULATIONS (UNDER NESREA)

National Effluent Limitation

Regulations.

Section 1(1) requires industrial facilities to have anti-pollution equipment for the treatment of effluent. **Section 3(2)** requires a submission to the agency of a composition of the industry's treated effluents. National Environment Protection (Pollution Abatement in Industries and Facilities producing Waste) Regulations (1991).

Section 1 prohibits the release of hazardous substances into the air, land, or water of Nigeria beyond approved limits set by the Agency.

Section 4 and 5 require industries to report a discharge if it occurs and to

submit a comprehensive list of chemicals used for production to the Agency. Federal Solid and Hazardous Waste Management Regulations (1991).

Section 1 makes it an obligation for industries to identify solid hazardous wastes which are dangerous to public health and the environment and to research into the possibility of their recycling. **Section 20** makes the notification of any discharge to the Agency mandatory.

Section 108 stipulates penalties for contravening any regulation.

HYDROCARBON OIL REFINERIES ACT⁸

The Hydrocarbon Oil Refineries Act is concerned with the licensing and control of refining activities. Relevant sections include the following:

Section 1 prohibits any unlicensed refining of hydrocarbon oils in places than a refinery. **Section 9** requires refineries to maintain pollution prevention facilities.

ASSOCIATED GAS RE-INJECTION ACT⁹

The Associated Gas Re-Injection Act deals with the gas flaring activities of oil and gas companies in Nigeria. The following sections are relevant to pollution prevention:

Section 3(1) prohibits, without lawful permission, any oil and gas company from flaring gas in Nigeria. **Section 4** stipulates the penalty for breach of permit conditions.

OIL PIPELINE ACT¹⁰

The Oil Pipelines Act and Its Regulations guide oil activities. The following sections are pertinent:

Section 11(5) creates a civil liability on the person who owns or is in charge of the oil pipeline. He would be liable to pay compensation to anyone who suffers physical or economic injury as a result of a break or leak in his pipelines.

Section 17(4) establishes that the grant of licenses is subject to regulations concerning public safety and the prevention of land and water pollution.

⁷ NESREA ACT 2007

⁸ CAP H5, LFN 2004.

⁹ CAP 20, LFN 2004.

¹⁰ CAP 07, LFN 2004.

OIL PIPELINES REGULATIONS (UNDER OIL PIPELINE ACT)

Section 9 (1) (b) establishes the requirement of environmental emergency plans. **Section 26** makes punishable any contravention with a fine of N500, 000 and/or an imprisonment term of six months.

PETROLEUM ACT¹¹

The petroleum Act and its Regulations remain the primary legislation on oil and gas activities in Nigeria. It promotes public safety and environmental protection. The following sections are relevant:

Section 9(1) provides authority to make regulations on the operations for the prevention of air and water pollution.

REGULATIONS

PETROLEUM REFINING REGULATION

Section 43(3) requires the manager of a refinery to take measures to prevent and control pollution of the environment. **Section 45** makes any contravention punishable with a fine of 100N or an imprisonment term of six months.

MINERAL OIL SAFETY REGULATIONS AND CRUDE OIL TRANSPORTATION AND SHIPMENT REGULATION.

This Act prescribes precautions to be taken in the production, loading, transfer, and storage of petroleum products to prevent environmental pollution.

PETROLEUM PRODUCTS AND DISTRIBUTION ACT, CAP P12, LFN 2004.

Under this Act, the offense of sabotage which could result in environmental pollution is punishable with a death sentence or an imprisonment term not exceeding 21 years.

TERRITORIAL WATER ACT, CAP T5, LFN 2004

The Territorial Waters Act makes punishable any act or omission committed within Nigerian waters which would be an offense under any other existing law.

NIGERIAN MINING CORPORATION ACT, CAP N120, LFN 2004.

This Act establishes the Nigerian Mining Corporation. It has the authority to engage in mining refining activity and to

construct and maintain roads, dams, reservoirs, etc. In particular:

Section 16 creates a civil liability on the corporation for the physical or economic damage suffered by any person as a result of its activities.

CRIMINAL CODE ACT¹²

The criminal code contains provisions for the prevention of public health hazards and environmental protection. Hence:

Sections 245-248 deal with offenses ranging from water fouling to the use of obnoxious substances.

INSTITUTION AND REGULATION

The major institutions at the federal and state level that protect its inhabitants from hazardous wastes and nuisance, and ensure efficient and effective mode of managing waste in Rivers state includes:

1. National Environmental Standards and Regulations Enforcement Agency.
2. Federal Ministry of Environment (FMOE)
3. Rivers State Ministry of Environment, Port Harcourt
4. Rivers State Environmental Sanitation Authority, Port Harcourt.

History

Soot has been persistent in Rivers State and its environment. It began to be observed in River's state in the last quarter of 2016 and has become an environmental issue for the residents¹³. The case of the soot has been a mystery. Many residents and activists believe it is a result of the flaring of petroleum products and the burning of tires and refineries such as the illegal oil activities undertaken by bunkers and vandals. Currently, the governor of Rivers State, Nyesom Wike declared war on artisanal refineries operatives (*kpofire*) in the state saying that no reasonable government would allow the inducement of such hazardous soot across the state¹⁴.

¹²

¹³(Accessed on 23 July 2017).
or *Environments* 2018, 5(1), or
<https://doi.org/10.3390/environments5010002>

¹⁴ Vanguardngr.com, January 14, 2022.

¹¹ CAP P10, LFN 2004

Current Status

The increased rate of this soot is caused by the illegal refining of crude oil. Lack of unemployment and a high level of poverty lead to this illegal refining of crude oil. Soot is the talk of the town among the residents in Rivers state. Residents are worried about the effects of breathing in the pollutant. My first experience was when I entered Rivers

state for my Compulsory National Youth Service which showed me that the air is polluted and the environment is automatically dirty. I had serious allergic reactions that forced me to start wearing a nose mask. The air is black, I can see the soot on my white shirt and shoes; if I take a clean tissue and clean my nostril; I will always see the blackness that has mixed with the natural mucus.

PERSONAL IMPACT

Soot is detrimental to human health as it is associated with upper respiratory illnesses and other diseases because they take part in gas exchange during each breath. Research has shown that many premature deaths are directly related to soot in the environment. Environmentalists say the soot has been found to contain Sulphur dioxide and Nitrogen dioxide which cause acid rain when combined with moisture. Therefore the recommendation to survive the soot menace includes the followings:

1. Conscious use of nose mask: wearing a nose mask in this period is one of the best preventive measures as it will prevent you from inhaling the contaminated air.
2. Keep windows and doors closed: windows and doors should be

closed as often as possible to prevent the soot from entering homes and workplaces.

3. Reduce contact with open spaces: contact with open space should be reduced to avoid your hands touching the soot.
4. General cleaning: detergents should be used to clean surfaces daily to avoid the accumulation of soot. This would reduce the amount of soot gathered around the house and offices. Clean your AC air filter often.
5. Avoid abuse of antibiotics in this period due to constant flu and cough, always see your doctor.
6. Drink water often and take a lot of vitamin C and fruits.

CONCLUSION/RECOMMENDATION

The universal environmental law problem should be done collectively through local, national, and international laws and bodies established for the purpose. Government should ensure that environmental plans are put into practice by ensuring thorough environmental impact assessment plans are achieved for sustainable development. A concrete effort by the Rivers state ministries of Environment and Health as well as academia and private organization is required. Consequently, there is a need to make **section 20** of the constitution of the Federal Republic of Nigeria¹⁵ enforceable for the protection of air and preservation of the ecosystem. We should bear in mind that the environment is global because the air has no boundary,

we all have to partake in environmental sanity to preserve the environment for the present and future generations. Finally, the exclusive jurisdiction of the federal high court in environmental pollution cases conferred by **section 251** of the 1999 constitution of the Federal Republic of Nigeria as amended should be abolished and extend such jurisdiction on the state high courts in the interest of justice.

¹⁵ As amended.