

THE DUTY OF THE NIGERIAN STATE TO SAFEGUARD THE NIGERIAN ENVIRONMENT: AN ETHICAL PERSPECTIVE

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Abstract

The environmental question is a grave one that humanity must attend to in a vigorous manner. Right from the late 1960s when the environmental question began to come into prominence, humanity has become more aware of the plight of the environment. It has come to be seen that many environmental problems are anthropogenic, arising from human activities and footprints on the earth. Nigeria is not exempted from environmental problems. In Nigeria there are environmental problems such as oil spillage and pollution of land, marine, and atmospheric resources; gas flaring; soil erosion, desertification; deforestation; environmental displacement of people; poor management of solid waste; noise pollution, etc. In Nigeria, especially in the light of dumping of toxic waste in Koko in the Delta State of Nigeria, the Federal Environmental Protection Agency was set up to administer and enforce environmental laws. But the fundamental environmental law in Nigeria is the 1999 constitution as amended. While it is true that there are many environmental laws in Nigeria, and the constitution puts an obligation on the government to ensure a safe and healthy environment (section 20); this duty of government is not enforceable or justifiable, as there is an ouster clause (section 6.6c) in the constitution. This paper uses critical analytic and hermeneutic methods to argue that the responsibility of the Nigerian state to protect the environment should be an enforceable duty not just an objective or aspiration. The paper concludes that if it becomes an enforceable duty, Nigerians will enjoy more environmental safety and welfare.

Keywords: Nigeria, duty, state, environment, ethics, constitution.

Introduction

The supreme law of the land of Nigeria is the constitution. The Federal Republic of Nigeria (2023) clearly states its environmental objectives as: “The State shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria” (p. 36). An objective is a goal, aim, aspiration, or target that a person or group intends to achieve. The Nigerian State has set before itself this objective. This paper argues that beyond being objective, it ought to be an obligation or duty or responsibility, a moral one of the Nigerian state.

The Nigerian State is plagued by many environmental problems that include: desertification, deforestation, climate change, seasonal flooding, oil spillage and pollution of land and marine places, gas flaring, endangerment of biodiversity, poor management of solid waste, noise pollution, air pollution, illegal trade in endangered species, herdsman-farmers clashes, environmental insecurities leading to displacement of people and many others. Amid Nigeria's environmental problems, the Nigerian State, its government, and its people have a grave duty to promote environmental protection and ensure that environmental problems are resolved. The gravest responsibility should be on the government which by the fact of the social contract

has a responsibility to provide the good life for the people and ensure an enabling environment to flourish. United Nations (1972, 1992) in its declarations places great responsibility on States to ensure environmental conservation. Nigeria has a duty, even as it exploits its resources to strive for sustainable development and ensure that the environment is not compromised in meeting the needs of present and also future generations.

In carrying out the aim of this paper, a conceptual clarification is followed by a presentation of the situation of the Nigerian environment. Not every environmental issue in Nigeria can be discussed in a brief paper like this, but a few shall be mentioned. When that has been done, the paper shall argue that protecting and safeguarding the environment is a duty of the Nigerian state and that this duty ought to be enforced. When that has been done, the paper shall be brought to a conclusion. It is through the critical analytic and hermeneutic methods that this paper is carried out.

Clarification of Concepts

The first term to be explicated here is *duty*. Frazier (1998) states that a duty is a binding obligatory requirement that the person or group that has the requirement has to fulfill, except if there is an exculpating reason. To fail to carry out a duty is to fail to carry out an obligation and the person or group that has a duty but fails to fulfill it can be criticized justifiably. A duty is not an optional or voluntary task, it is something that ought to be done by the fact of acquiring the duty. Frazier (1998) notes further that a feature of duty is that it implies justifiable reasons for an action. Another definition is by Hill and Hill (2002) who write that duty is "... a legal obligation, the breach of which can result in liability." New World Encyclopedia (n.d) writes duties imply requirements and oughts. A person who has a duty ought to perform the duty and a duty is a compulsory obligation.

Requiring definition here also is the concept of the *Nigerian State*. One of the most common words in Political Science is the State. Ayeni-Akeke (2008) writes that the State is a political organization existing in a society that comes into being through the process of management of the common matters of the society's members and is ordered to promote the security, welfare, and well-being of the members; this state which is also a political society is marked by having the features of territory, population, sovereignty, and government. Hoffman and Graham (2009) cite Dunleavy and O'Leary to assert that the modern institution called the State is distinguished by five features: it is a public institution, it has sovereignty, it has a law, it has recruited personnel, and it can collect revenue from its citizens or the population. Related to the above, as Burnham (2009) writes the State could be seen as a public institution concerned with domination for the common interest of a particular territory. One special power of the State according to some scholars is its coercive power over the members of the State. It formerly had a monopoly of power, though today many non-state actors illegitimately impose their power upon some members of the State. The Nigerian State located within the West African sub-region has sovereignty, a population, and a government and also has coercive powers to carry out its duties.

People often confuse the term government with the State, but the government is just an agency of the State. Governments do come and go but the State often remains unless it is dissolved. The State exists for the well-being of the members of the State. Every State is saddled with certain duties if not the State has no reason for its existence. It is through the government, the agency of the State that these duties are essentially carried out. Ayeni-Akeke (2008) writes that government is here seen as a set of public institutions with the people elected or selected as the case may be to enable the State to perform its numerous functions, and these functions include

forming and maintaining law and order, and protection of the citizens. It is indisputable that government exists for the well-being of the people. Though, unfortunately, there are people who come into government and instead of working for the well-being of the people, they corruptively enrich themselves and their cronies.

Another term that requires a definition also is *safeguard*. To safeguard is to protect a thing, a person, property, a group, or an entity. It is to protect from harm, abuse, misuse, plunder, and abnormality. You normally safeguard what is precious, valuable, good, worthwhile and what is in existence already. There are objective functions for which a state or government exists. The government has to ensure that those functions are not tampered with but enhanced and exercised. To safeguard means to guard safely as the word implies. Within the context of this paper, the Nigerian state is to protect the Nigerian environment from harm, abuse, misuse, and degradation.

The word, “environment,” refers to everything in existence in the created material and unseen universe. From the French word, “environ,” environment is what surrounds a thing, organism, place, entity, etc. Everything you see around you and even what you don't see is in the environment. Human beings are part of the environment, so also are animals, plants, birds, rivers, mountains, rivers, microorganisms, etc. The Editors of the Encyclopedia Britannica (2024) state that: “Environment, the complex of physical, chemical, and biotic factors that act upon an organism or an ecological community and ultimately determine its form and survival.” Ezedike (2020) writes that the environment is also “...totality of physical, economic, cultural, aesthetic and social circumstances and factors which surround and affect the quality of life of the biotic community (human and non-human natural world).”

Also requiring definition here is the term, “ethical.” Ethical is the adjectival version of ethics. Ethics deals with right and wrong human actions or behaviours. Ezedike (2020) states that from the Greek word “ethos,” ethics means custom or character; and ethics can be seen as principles of morality, theory of morality, and moral values. Ethics is concerned with the standards or norms by which human decisions, judgements, and actions are based. What is considered by society to be right and the appropriate way to behave or order one's life in that society is considered to be ethical or moral. It is unethical when it deviates from the standard of morality and good order. Though ethics may differ from one society to another there are common universally held standards of ethical conduct. This is why for instance in the international community, there are laws of war, there are crimes against humanity, and there is genocide, ethnic cleansing, etc. No matter where crimes against humanity are committed, the perpetrators will be held accountable. The Universal Declaration on Human Rights sets out some basic human ethical manners of conduct, and so also are many other human rights instruments. The implications for instance are that Nigeria as a country, and a member of the international community cannot exempt herself from global public morality, or ethical codes of conduct. The question of the environment for instance, in light of this, implies that Nigeria has to strive to conduct her environmental obligations and laws in line with universal ethical norms and frameworks. The right to a healthy and safe environment has been explicitly codified into laws that are enforceable in other national jurisdictions but this is not the case with Nigeria. The situation of the Nigerian environment is a troubling one.

The Situation of the Nigerian Environment

Much can be said about the Nigerian environment. Unfortunately, much of this is on the environmental problems facing Nigeria. No matter how you conceive the environment, there are environmental problems facing Nigeria. Take for instance the Nigerian social and cultural

environment (socio-cultural environment.) The Nigerian socio-cultural environment is bedeviled with social problems that leave the country in a pitiable and shameful state. Insecurity pervades the Nigerian state. There is hardly any place that you go in Nigeria that is free from insecurity. Terrorism and kidnapping of people is the order of the day in Nigeria. A month hardly passes in Nigeria without you hearing of the kidnapping of people. Examples include the kidnapping of the Chibok girls in 2014, the Abuja-Kaduna train kidnaps, Dapchi in 2018, Kankara school children in 2020, etc. All these are all threats to the natural environment and environmental security. Violence, terrorism, and warfare all hurt the natural environment. Ikeke (2014) has opined that violent conflicts have negative effects on the social and natural environment.

The Nigerian natural environment is afflicted by problems such as soil erosion, deforestation, desertification, gas flaring, oil spillage and pollution, displacement of people, poor management of solid waste, climate change, etc. Since the discovery of oil in Nigeria in commercial quantity in Oloibiri the land has always experienced oil spillage leading to pollution of land, marine, and atmospheric space. The level of oil spillage in the Niger Delta is troubling. People's land, farmland, and streams have been devastated as a result of oil spillage. Biodiversity in the Niger Delta has been either endangered or destroyed. A place like Ogoniland in Nigeria's Niger Delta is so polluted and degraded that the United Nations asserted that it will take up to 25 years to remediate. There is so much environmental harm in Nigeria arising from the activities of oil companies. Human Rights Watch (1999) states that oil exploration has caused pollution that has damaged the livelihood of people in the oil communities, and unfortunately Nigeria has very record of enforcement of environmental laws compared to some other nations in the world.

Another problem confronting the Nigerian environment is gas flaring. Among the negative effects of gas flaring are: environmental health hazards, precipitation of sickness and diseases, emission of toxic and poisonous air, death of plants and animals, etc. Because of the negative effects of gas flaring, the Nigerian State has made laws to end it. But many deadlines have come and gone and there is still gas flaring. Osondu (2012) writes that a 2008 deadline that was set has come and gone and yet there is still gas flaring in Nigeria. Oil companies prefer to pay fines and continue flaring gas. The government has a responsibility to end gas flaring.

Nigeria is also a land inundated with different types of pollution. In the country, people are experiencing air pollution, marine pollution, land pollution, etc. Pollution can come from poisonous chemicals or solid waste dumped into the land and water bodies, pollution can also come from oil spillage and oil exploration activities. Almost all the processes of exploiting and exploring oil can precipitate environmental pollution. To lay their pipelines, oil companies have to cut down trees and precious forests while excavating the ground. They destroy at times people's farmland and even houses. Oil companies at times use weak and decadent equipment which side effects pollute the land and water bodies. In Nigeria's Niger Delta oil spillage and leakages in streams and rivers can be there for weeks and even months without being attended to. Ikeke (2013) notes that it is common practice for oil companies to use dilapidated technologies to save costs in the Niger Delta. Hazardous wastes that are dumped into the land also pollute the land. Careless dumping of solid waste in Nigeria can also cause pollution and pose health hazards to people. There is also industrial pollution in Nigeria. Osondu (2012) states that industrial pollution is a multidimensional problem and as industries produce and carry out their activities they create both solid and toxic waste, and also effluent discharges which are often entered into rivers, creeks, and other water bodies.

The Constitution of the Federal Republic of Nigeria remains the fundamental law of the

land. Whatever is not guaranteed and explicitly defined as justifiable in it or any other enabling law becomes a mere wish or desire. Concerning government, if the government cannot be held accountable it becomes difficult for the government to prefer its duty. See examples of provisions from the Nigerian Constitution that should solidify a right to environmental health and place it on the government as an obligatory duty. Section 20 states: “The State shall protect and improve the environment and safeguard the water, air, forest and wildlife of Nigeria.” Section 17 states that: “...exploitation of human or natural resources in any form whatsoever for reasons, other than the good of the community, shall be prevented...” The Constitution is clear that the use of natural resources should serve the common good of the citizens, this means that non-sustainable use, misuse, abusive use, and any form of exploiting the environment that harms human welfare and well-being is unacceptable. The government has a responsibility to stop such. The point that should also be made is that not only human interests should be considered by the government, but also ecosystems health and stability of the earth community of life. Government response should be Ecocentric, not simply anthropocentric.

Section 13 in Chapter Two of the Constitution clearly states that: “It shall be the duty and responsibility of all organs of government and all authorities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of this Chapter of this Constitution.” Eminike, Ebikake-Nwanyanwu and Ajie (2020) have rightly noted that section 6(6c) of the Nigerian Constitution has ousted the provisions of Chapter Two as it denies the court power to entertain cases arising from Chapter Two concerning the duties of government and this means that the provisions of Chapter Two are not enforceable or justifiable. In other countries of the world, there is an explicit provision for environmental rights and the government must safeguard it. Eminike, Ebikake-Nwanyanwu and Ajie (2020) note further that the constitutions of countries like Malawi, Uganda, Pakistan, Spain, Peru and South Africa all expressively and explicitly provide for a right to a healthy environment.

These three authors just mentioned equally state that, in Ethiopia, art 14 and 92 of her constitution make it the duty of the government to provide a healthy and clean environment; and in Ghana under her Directive Principle of State Policy are enforceable as interpreted by her supreme court, and only applicability of the *African Charter on Human and People's Rights* (ACHPR) accords her citizens environmental rights. Eneyo (2018) corroborates these three authors just mentioned when he states that the constitutions of countries like Japan, Australia, Germany, Portugal, South Africa, Brazil, and Spain make environmental provisions justifiable and enforceable. Awolowo (2017) writes: “In spite of the human rights and environmental abuses, there is the absence of a constitutionally guaranteed 'environmental right' under the Nigerian law to remedy the various acts of environmental degradation and abuses” (p.17). The ACHPR which has been domesticated in Nigeria can give an opening for the implementation of environmental rights in Nigeria, but there is still a conflict as the Supreme Court states that the Charter is not superior to Nigerian law, despite notable jurists Ejiwunmi and Uwaifo favouring standing on the side of the Charter when there conflict between it and the nation's law. It becomes very difficult if not impossible to enforce section 20.

Another issue with the Nigerian environment is the issue of environmental laws in Nigeria. It is important to remark upon this because it borders on the functions of the Nigerian state. Because of a degraded and polluted environment, the Nigerian State has made various environmental regulations. Nigerian environmental laws are very many. They include the National Oil Spill Detection and Response of 2006, the National Environmental Standards and Regulations Enforcement of 2007, the Environmental Impact Assessment Act of 1992, the National Policy on Environment of 1989 and 1999, the Harmful Waste Act of 1988, etc. If these

laws were effectively implemented and enforced, it would go a great way to enable the Nigerian State to achieve its environmental objectives. Nigerian environmental laws are obsolete, outdated, or poorly enforced. The failures of the Nigerian State to fulfill her environmental objectives may be one of the reasons why different governments in Nigeria have failed to enact environmental rights in the constitution or affirm that the Nigerian state must perform environmental protection, from the justifiability perspective. That is, if the State does not perform its environmental duties one can sue the state for damages.

Safeguarding the Environment as a Duty of the Nigerian State

In the foregoing section, it was clearly shown that environmental rights are justifiable in some other national jurisdictions. If the state fails to perform its environmental duties to citizens, the state can be sued. Not until the rise of environmentalism the functions of the state in the West and European formerly colonized land, were mainly perceived in terms of security, protection, and provision of the good life. The environmental question was rarely raised. It is as if the state has no environmental functions or duties. Take Nigeria as a case in point. The Nigerian Constitution states vividly some fundamental rights that all Nigerian citizens are entitled to, such as the right to life, the dignity of the human person, personal liberty, fair hearing, private and family life, thought, conscience, religion, freedom of expression and the press, to peaceful assembly, freedom of movement, freedom from discrimination, etc. These are spelled out in chapter four of the Constitution. Because they are fundamental rights, the Nigerian State must ensure that they are safeguarded and protected. A citizen can easily sue the government or the individual or group that violates his/her rights. The fundamental human rights are justifiable. Egede (2007) has argued that pollution has led to the death of people in the Niger Delta and infringed on their right to a clean environment, and there is no reason why it should not be a justifiable right in Nigeria.

Unfortunately, the issue of the environment is not presented in the framework of rights or duties that the Nigerian State is supposed to guarantee. As previously argued, in some states in the world, environmental rights are guaranteed in the Constitution of the land. It is enacted as a duty and obligation of the State. This is not the case with Nigeria. It is simply presented as an objective that the Nigerian State should aim towards. Though at present section 20 of the Nigerian constitution is merely an aspirational objective of the Nigerian State, and so you cannot sue the government if it fails to protect the environment, it should be made a duty of the state. It should be obligatory on the part of the government to protect the environment. There are many reasons why protection of the environment should be an obligation of the State and not simply what is expected of the State. The first fundamental reason here is the issue of fundamental human rights that accrue to the citizens. It is difficult if not nearly impossible for citizens to truly enjoy and exercise their rights if the environment is degraded and polluted. In a polluted environment the right to life, freedom of association, and movement are all threatened. Environmental health is necessary for people to enjoy their right to life and human dignity. In many places especially in rural locations in the Niger Delta and other mining areas in the nation, people have been deprived of their right to life as their source and means of livelihood are endangered by oil pollution, banditry, kidnapping, and terrorism. A fundamental condition that makes life meaningful and accessible is a good and healthy environment. United Nations (1972) states: "Man has the fundamental right to ...adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generation" (p.4).

The Nigerian State is a respected member of the international community. Nigeria is a signatory to many international declarations. It is unfortunate to state that there are restrictions on the implementation of international instruments in Nigeria. In section 12, of Chapter One of the Nigerian Constitution, “No treaty between the Federation and any other country shall have the force of law to the extent to which any such treaty has been enacted into law by the National Assembly.” Also in this section 12, the Constitution is clear that without a majority of houses of assembly in the country, the National Assembly cannot enact a bill to pass to the present for assent regarding this section 12. Osondu (2012) writes that this makes it more difficult for the National Assembly to domesticate an international environmental law, it cannot be implemented in Nigeria and even if the National Assembly attempts to domesticate an international law, it cannot succeed unless there is majority of States of Houses of Assembly in the nation that agrees to it.

It should be argued here that having a healthy environment is a human right. The Organization of African Unity (1981) in the *African Charter on Human and Peoples Rights* states in article 24 that: “All people shall have the right to a general satisfactory environment favourable to their development” (p. 8). The Charter places an obligation in Article 25 upon states to see it as their duty to ensure that Article 24 is safeguarded and realized. The United Nations (1972, 1992) has also affirmed that human beings have a right or at least the environment should be made homely and friendly to meet their needs. It is unfortunate to state, as Ogidiagba and Umuakpo (2016) state that despite all the environmental laws in the land, the Nigerian state has recorded and continues to record a poor state of environmental governance. It must be affirmed avowedly that living in a healthy, safe, and conducive environment is a right. The state must ensure environmental rights are protected, and this right should be justifiable.

What about the issue of the Sustainable Development Goals (SDGs)? Among the 17 SDGs are: promoting sustainable cities and communities, responsible consumption and production, climate action, affordable and clean energy, etc. These and many others concern environmental matters. It is the duty and responsibility of every state that is a member of the United Nations to ensure that these goals are implemented in their various states. According to Glass and Newig (2019), it is the role of government in the State to ensure that there is environmental governance. Environmental governance should enhance development. If the government of a State does not foster development, one wonders what the State exists for. The Nigerian State must ensure development. In the light of the SDGs, it has an enormous responsibility in this. Many of the SDGs embrace environmental issues. The United Nations in Nigeria (2024) states from 2015 Nigeria has demonstrated commitment to the implementation process of the SDGs. No responsible government in the global community should exempt itself from the global community. It is difficult for the SDGs to be achieved if they are simply left as objectives or to the whims and caprices of the State. If the State is not accountable and responsible and can be sued for failing in its responsibility, then it becomes difficult to achieve the goals of development. People in Nigeria should be able to sue the Nigerian government when it fails in its environmental responsibility.

From an ethical viewpoint, protecting the environment is the right thing to do. It is the right thing to do for it enhances human life and non-human life. Environmentalism must colour the activities of government. What is environmentalism by the way? Mautner (2005) writes that environmentalism in politics and ethics is the position that protecting the natural environment should be a major moral and practical concern for humanity. It is an issue that can no longer be neglected by the State. The very survival of the State depends on it. If there is no environment, there is no State, and if there is no good environment, the purpose of the State will be vitiated. Ikeke (2022) cites Wangari Maathai that meaningful developments depend on healthy

ecosystems. One of the ways to ensure that the Nigerian State dutifully safeguards environmental protection is to ensure that it is spelled out in the constitution as an obligatory duty of government, not just an objective. Until people can be able to sue the government in court for violating their environmental rights, there will be so much impunity on the part of government officials. If the local government fails to dispose of waste generated in the market for instance and a person sustains an injury from it, a citizen should be able to sue the government. Aniyie (2007) states that environmental laws are necessary for every state to preserve the environment, promote sustainable development, and for the good and welfare of the people. This being the case the government must see it as a duty on its path, not simply as an objective. Because if environmental duties on the path of the Nigerian state are not justifiable, the state can and does act with impunity. As argued previously protecting the environment is a moral or ethical issue. Osondu (2012) writes that the implications of Section 6(6) of the Nigerian constitution is that the State cannot be sued if it fails to carry out its responsibility to protect the environment. The Constitution should be rightly amended to make provisions for enforceable environmental rights.

It should be realized that conserving and protecting nature on the part of human governments, organizations and individuals is a moral obligation. It is a duty of the government. It is not something optional that governments have to embark upon. It is a priority for the peace and security of the citizens. If nature or the environment is not effectively governed and managed it will be subjected to vandalization and plundering from capitalist profiteers. These will endanger the lives of the people. Anthropogenic environmental problems caused by humans often cause floods, droughts, climate change, etc that affect people's lives.

Conclusion

This paper has argued that the environmental objectives of the Nigerian State should not simply be aspirations and goals that the State wishes to accomplish, without the objectives being enforceable and justifiable. The paper asserted that the environmental objectives are duties that the Nigerian State should perform. To this end, the ouster clause (section 6.6c) of the Constitution should be amended. It was shown that in many other States in the world environmental rights are justifiable and enforceable. People can sue the State if the State fails to perform its environmental duties. But this is not the case in Nigeria. This is unacceptable. Protecting the environment is an essential aspect of the United Nations SDGs. Without a safe and healthy environment, other rights and freedoms are gravely impeded and people cannot enjoy them to the full. Ethically, it is the right thing to do for the State to protect the environment and guarantee environmental rights. If environmental rights are secured and enforceable, Nigerians will enjoy more welfare and well-being.

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