



Partners for Water and Sanitation

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Partners for Water and Sanitation

REPORT

**NESREA WORKSHOP & Office Meetings held in Abuja,
Nigeria MONDAY 24 April – 28 April 2010**

Submitted by:

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June 2010

Contents amendment record

This report has been issued and amended as follows:			
Revision	Description	Date	Signed

1 Executive Summary

- NESREA hosted a successful and illuminating national workshop on the Enforcement of Environmental Laws, Regulations and Standards for the Judiciary and Law Enforcement Agencies in Abuja on Monday 26 April to Tuesday 27 April 2010.
- NESREA has shown through the Workshop that since its inception it has established itself as a credible regulator and has raised awareness of its role.
- The Workshop provided an opportunity for NESREA to exchange ideas, experience and understanding with other stakeholders involved in environmental protection and to raise the profile of the work of NESREA.
- NESREA has shown that it has a well developed Prosecution Policy but work is needed in how its prosecutors apply it.
- NESREA is beginning to concentrate on areas beyond the strategic focus it necessarily had when PfWS previously visited.
- NESREA needs to continue its good work on raising the profile of its initiatives in environmental enforcement with judges, magistrates and other state and national agencies.
- The visit provided a valuable opportunity to exchange ideas and practices on environmental enforcement and prosecution.

2 Background

The Environment Agency and K&L Gates are members of Partners for Water and Sanitation ('PfWS') and are represented on the PfWS Steering Group.

PfWS is a not for profit partnership that focuses on sharing technical expertise to build the capacity of the water and sanitation sector in Africa. It should be noted that from June 2010, PfWS will no longer be a functioning entity and any further support initiatives will need to be arranged directly with the individual members of PfWS.

NESREA was created in 2007 by the NESREA Act 2007 and is a parastatal of the Federal Ministry of the Environment. NESREA has responsibility for the protection and development of the environment, biodiversity conservation and sustainable development of Nigeria's natural resources and environmental technology.

The Environment Agency for England and Wales (EA) was established in 1996 by the Environment Act 1995. Its role is to regulate and manage the environment across England and Wales by taking an integrated approach to protecting and improving the quality of air, land and water.

K&L Gates is an international law firm with almost 2,000 lawyers in 36 offices around the globe. K&L Gates represents leading corporations, governmental bodies, philanthropic organisations and individuals. K&L Gates has experienced lawyers worldwide dedicated to developing creative and cost effective solutions to environmental and land use challenges confronting its clients.

The Environment Agency has had a relationship with NESREA since 2008 through PfWS. The capacity building activities which have been carried out during this time include:

1. Support to scoping mission for capacity building on gully erosion; Clare Twelvetrees and Michael Kehinde Feb 2007 (report available)
2. Institutional Appraisal and Strategic Planning visit; Catherine Lorenzen, John Seager, Keith Ashcroft Feb 2008
3. Review of Strategic Action Plan; Michael Kehinde (report available)
4. Professional Fellowship Placement from NESREA to Environment Agency (3 months); Olikitan Ogungbuyi, September 2008 (report available)
5. Professional Fellowship Placement from NESREA to Environment Agency (3 month and 7 week); Simon Joshua (Zonal Director) and Godwin Atsegwasi (Deputy Director) September 2009 (reports available)
6. Support to the development of the Corporate Strategy; Steve Moore, August and November 2009 (reports available)

3 Objective

The objective of the PfWS visit to Nigeria, as defined in the terms of reference, was to strengthen NESREA's legal and enforcement teams and enhance awareness within the Nigerian judiciary and law enforcement agencies, on appropriate Environmental Law enforcement and prosecution practices.

The terms of reference are annexed to this report (annex 1).

4 Visit overview

The visit to NESREA took place 25 April to 1 May 2010. It included attending and participating in the National Workshop held on 26 and 27 April, meeting with John Odey, Minister for the Environment and informal meetings at the offices of NESREA.

An itinerary is annexed to this report (annex 2).

5 National Workshop on Enforcement of Environmental Laws, Regulations and Standards for the Judiciary and Law Enforcement Agencies

A National Workshop was organised by the relatively newly formed National Environmental Standards & Regulations Enforcement Agency (“**NESREA**”) on the enforcement of environmental laws for the judiciary and law enforcement agencies. The Workshop was sponsored by the United Nation Development Programme, the United States Environmental Protection Agency and Partners for Water and Sanitation.

There were a wide number of attendees, including Federal and State High Court judges, police, the army, the navy, private practice lawyers, members of staff of NESREA and many others.

5.1 First day of Workshop, 26 April 2010

On Monday morning the Permanent Secretary in the Ministry of Environment delivered the opening remarks on behalf of the Honourable Minister of Environment, Mr John Odey.

There followed a series of goodwill messages by the Chairman of the Senate Committee on Environment Ecology, Senator (Doctor) Grace Bent; Chairman House Committee on Environment, the Honourable Duro Faseyi; the Inspector General of Police, Mr Ogbonnaya Omovo; the Controller General of Customs, Alhaji Dikko Abdullahi; Country Representative of the United Nations Development Programme, Daouda Toure; Chairman, Nigerian Bar Association, Abuja Branch, Barrister Abdul a Ibrahim.

The Attorney General of the Federation and Minister of Justice, Mr Mohamed Bellow Adoke, SAN addressed the gathering.

An entertaining and interesting short drama was presented by the staff of NESREA to show how communities are informed of the work of NESREA and how a complaint is given and acted upon.

The keynote address on the access to justice and fundamental rights to a safe and healthy environment was given by Chief Akin Olujinmi, SAN, former Attorney General of the Federation and Minister of Justice.

After a vote of thanks by the Director General of NESREA Dr. (Mrs) Ngeri S.Benebo, JP, the technical session began.

The technical sessions were made up of papers delivered by technical experts in their field. The majority of the technical experts were from Nigeria but were assisted by experts from the UK and USA to provide an international perspective. The international experts were Davis Jones of the US Environmental Protection Agency; Lal Nawbatt of the Environment Agency for England and Wales; and Paul Thompson of K&L Gates (the latter two were sponsored by Partners for Water and Sanitation).

The subjects covered included:

1. Nigerian environment: issues and challenges by Professor Emmanuel Oladipo
2. Challenges of enforcement by Professor A.M.A. Imevbore.
3. Prosecution of environmental crime in England and Wales by Lal Nawbatt of the Environment Agency for England and Wales
4. The workings of NESREA was given by Dr. Ngeri S.Benebo, the Director General of NESREA.
5. Understanding of the NESREA acts and regulations by Barrister Bola Odugbesan, Legal Adviser, NESREA.
6. Global approaches and environmental protection and conservation; the legal perspective by Dayo Amokaye Esq, of the University of Lagos.
7. Application of the precautionary principle to environmental cases by Davis Jones of the United States Environmental Protection Agency.
8. The role of the judiciary in environmental compliance monitoring enforcement by the Honourable Justice M L Shuaibu.
9. Balancing environment and sustainable development by Paul Thompson of K&L Gates LLP.

General discussions were had at various stages and interesting and informative questions were asked and answered. Copies of the papers are attached to this report (annex 3).

To finish the day a dinner was had at the Rockview Hotel with the attendees of the Workshop.



5.2 Second Day of Workshop – Tuesday, 27 April 2010

The Workshop reconvened and the technical session continued.

1. The first paper was on evidence in environmental cases by Davis Jones, United States Environmental Protection Agency.
2. The next paper was based on the UK Magistrates' Courts' Association's, "Costing the Earth - Guidance for Sentencers - 2009" on the role of sentencers in environmental crime by Lal Nawbatt, Environment Agency of England and Wales.
3. The next paper was given on public participation in environmental law enforcement by Davis Jones of the United States Environmental Protection Agency.
4. The final technical paper was on the role of environmental permitting and civil regulation in protecting the environment by Paul Thompson of K&L Gates.

Further general discussion was had on these topics, with a series of questions and answers. Copies of the papers are attached to this report (annex 4).

5.2.1 Working Group Sessions

The attendees of the conference were split into three groups. Into Working Group 1 was a discussion on environmental enforcement and sustainable development. In Working Group 2 was a discussion on enforcement of environmental laws and Working Group 3 was public participation and partnerships.

Each Group was comprised on roughly a third of the attendees of the conference. The Group was chaired by a Federal Judge and the resource persons acted as facilitators.

Volunteers acted as secretaries and the results of findings were relayed in papers which were delivered to the conference at a later point.

5.2.1.1 Group 1

Group 1 discussed environmental enforcement and sustainable development. For this topic the Group discussed the major environmental issues, the concept of sustainable development, challenges and the way forward.

Group1 identified many environmental issues and discussed the concept of sustainable development. The challenges they saw were that there was a poor awareness on environmental issues; that some extant environmental laws were obsolete; there was conflicting policies and mandates between the Federal Ministry, States and Local Government; a lack of integration of environmental matters within natural development plans and environmental matters were considered as secondary considerations, weak penalties, lack of appreciation of the seriousness of environmental issues; little environmentally efficient or friendly technologies; a poor attitude to environmental issues; lack of proper and restrictive enforcement of environmental laws and corrupt activities at regulatory offices and governmental agencies.

Group 1 saw the way forward that NESREA and other environmental stakeholders should embark on sustainable environmental awareness; communities and individuals should be encouraged to report defaulters; government should ensure that there is consistent policies so to reduce conflicting roles and minimise abuse of the environment; and the promotion of environmental awareness amongst the judiciary should be sustained; a police unit for environmental issues be created; stiffer penalties imposed to deter violators; governments to ensure the training and re-training of prosecutors and law enforcement officers in collaboration with the judiciary; the government should incorporate environmental consideration to national development plans; utilisation of environmentally friendly technologies; an award system should be instituted to encourage voluntary compliance; and the government should demonstrate sound political will in the area of environmental governance.

5.2.1.2 Group 2

Group 2 was chaired by the Honourable Justice Ibrahim Auta of the Federal High Court. It was facilitated by Lal Nawbatt. The terms of reference were to identify issues militating against effective enforcement of environmental laws in Nigeria and to proffer solutions.

The discussion focussed on issues of jurisdiction; adjudication; integrity of enforcement officers; information and policy; information to companies as to their liabilities; human capacity and development; collaboration with other regulatory and law enforcement agencies; qualified and experienced prosecutors; fewer adjournments; less dependence on technicalities; and licensing and permits.

The recommendations the Group 2 were that the environmental laws should be updated to give jurisdiction to all levels of courts; NESREA staff should be adequately remunerated to shield them from temptation or compromise; definite policies should be articulated and administrative penalties should be stipulated; information should be readily available to stakeholders; a need for more specialist human capacity development to meet the enforcement process; NESREA should collaborate with other regulatory and law enforcement agencies for cross-breeding of ideas; NESREA should engage qualified and experienced prosecutors; judges should allow fewer adjournments and not permit too much dependence on technicalities; a need to build up a compendium of regulations for ease of reference; and NESREA should establish a

permitting and registration system and institute regular audits of companies based on risk-based assessment ("EIA").

5.2.1.3 Group 3

The third working Group was on public participation and sought to identify issues affecting public participation environmental concerns. Davis Jones of the US Environmental Protection Agency was the facilitator.

Group 3 identified key issues in jurisdictions; public awareness; scope of public participation; public awareness to information; economic incentives; lack of political will and determination; determination and responsibilities of the different government authorities; and the enforcement of enabling law.

Group 3 saw that citizen awareness of environmental issues should extend to grass root level and should be educated through accurate facts and figures on environmental concerns; the limit and scope which the public has to participate should be defined as to deny a negative effect on the environmental sustainability; there should be transparency in the way the government relates to people and to be involved explaining the decisions they have taken; NESREA should partner with corporate bodies and encourage corporate social responsibilities on their parts; legislators should be involved more actively; national policy on environment needs to be updated and implemented; NESREA should partner with community sanitary officers, other paramilitary and enhanced partnership with the judiciary states and local government.

The papers of the three Working Groups as delivered are annexed to this Report (annex 5).

Following the reports of the Working Groups and the papers delivered at the Workshop a communiqué was written and presented. This is attached to this Report (annex 6) and sets out what was achieved by the Workshop and what NESREA is seeking to achieve as a result of the Workshop.

The conference/workshop was well received by all attendees. The attendees were articulate and collaborative and all appeared to have a good grasp on the general environmental issues affecting Nigeria. It was a good opportunity to discuss the issues, relay experience and knowledge between the different attendees. Particularly encouraging was the attendance of Federal and State Judges and it is hoped that there would be a follow-up with the Honourable Justices Association or the Judiciary Training Board for continued information exchange.



**NATIONAL ENVIRONMENTAL STANDARDS
& REGULATIONS ENFORCEMENT AGENCY (NESREA)**

**NATIONAL WORKSHOP ON ENFORCEMENT OF
ENVIRONMENTAL LAWS, REGULATIONS
AND STANDARDS FOR THE JUDICIARY AND
LAW ENFORCEMENT AGENCIES**

Monday 26 - Wednesday 28 April, 2010



Environment
Agency



6 Informal Meetings/Discussions with the NESREA team 28 April to 30 April 2010 at NESREA offices.

NESREA: DG Dr Negeri Benebo, Bola Odugbesan Legal Adviser, Regional Directors and team lawyers

Resource Persons : Lal Nawbatt (Prosecution Lawyer - EA) , Paul Thompson (Solicitor, K & L Gates) and Davis Jones (Training Co-ordinator / Lead Investigator US EPA).

The DG opened the sessions (copy programme attached (annex 7)) by expressing her appreciation for the successful outcome of the workshop and the contributions made by all who participated and particularly thanked PfWS, the EA and US EPA for their efforts in making the workshop such a success. The Legal Adviser and Regional Directors joined with the DG in expressing their heartfelt appreciation. The Resource persons thanked the DG, her team and PfWS for their warm welcome and support.

The following three days were made up of presentations, discussions, informal talks and a meeting with the Federal Minister of the Environment, the Honourable John Odey Esq.,

The presentations made by NESREA Directors included:

1. NESREA's Enforcement Policy;
2. The Permitting and Licensing Systems of NESREA; and
3. Environmental Compliance Monitoring, Enforcement and the interaction with other agencies.

Presentations by the Resource persons were made on:

1. Evidence gathering by investigators (Davis Jones);
2. The permitting regime in England (Paul Thompson);
3. Evidence and sentencing in Environmental crime in the England & Wales (Lal Nawbatt); and
4. A case study based on the trans-shipment of paper waste contaminated by municipal waste in England (Lal Nawbatt).

All the presentations and the case study provoked a lot of interactive discussions on how NESREA can benefit from the US & English experiences. Telephone masts also were a hot topic for NESREA and Paul Thompson took the lead on giving the "international" experience.

On Wednesday **28.04.2010** afternoon a meeting was held with the Federal Minister of the Environment in the Ministry's conference room attended by officials of NESREA and the local media. The Minister and his Permanent Secretary expressed their thanks and appreciation for our contributions to the workshop and the discussions we were engaging in. The Minister recognised the benefits that would flow from our visit and the support for the challenges NESREA face in protecting the environment in Nigeria. He expressed the wish that this co-operation would continue.

On Thursday **29.04.2010** we met at NESREA's offices where case officers of NESREA presented two cases currently being investigated. One involved a historic contaminated industrial site where ground water had been contaminated from dumping of waste from batteries. The other involved the deaths of mine workers from drinking contaminated water.

The Resource persons presented case studies on practices, experiences and trends in environmental compliance monitoring and enforcement from the perspective of a law enforcement agency, the public and the private sector.



On the morning of Friday **30 April 2010** Paul and Lal had a final session at the NESREA office (Davis Jones left that morning for Nairobi for another training programme). The case study and discussions centered mainly on waste exported to Nigeria particularly WEEE waste and evidence gathering.

The DG, the legal adviser and the Regional Director in their closing remarks:

- reiterated how much they valued the contributions of Paul and Lal at the Workshop and the exchange of experiences at NESREA's offices.

- DG would like to explore the feasibility of having a Memorandum of Understanding ('MOU') with the EA to build on the outcomes of the workshop.
- DG saw the benefits of an exchange programme with the EA to support NESREA in their work and also to further the aim of capacity building within NESREA.

Gabriel Ekanem, the PfWS country manager, joined in his appreciation for the efforts of NESREA and the Resource persons. He hoped that the week's efforts will contribute to NESREA's capacity building and a greater appreciation of the environmental concerns facing Nigeria and how to cope with the challenges ahead.

Paul and Lal expressed their appreciation to:

- PfWS for their country support and making the visit possible
- to the DG & NESREA for inviting us and giving us the opportunity to learn from NESREA's activities and challenges and also share our experiences
- the DG & NESREA for their hospitality and engagement with us.

Finally it was recommended that discussions regarding the scope for any further co - operation / MOU rest with the DG, PfWS and the Government and International Relations team of the EA.

7 Conclusions and recommendations to develop awareness and strengthen capacity

After the initial concerns about the travel disruption and insurance arrangements, we were both relieved to board our flight at Heathrow to Abuja. Any mixed feelings of venturing into the unknown and hoping that we would fulfill the expectations of our hosts were to a large extent quickly alleviated after the initial meeting with Gabriel and the NESREA Legal Adviser when we met them on Sunday the 25 April for a briefing on Nigeria and the workshop arrangements.

The workshops and the group discussions were an overall success. We were impressed by the quality of the papers presented and the interactive discussions.

NESREA must be congratulated in bringing together such a disparate gathering of Federal and State Judges, law enforcement agencies, the Bar and other NGOs. The summary of the three group discussions (annex 5) and the final written communiqué (annex 6) speak volumes as to how much was achieved. NESREA were particularly pleased how much the Judges took on board the role they need to play in ensuring that enforcement of environmental matters are dealt with expeditiously and appropriately. It was encouraging to hear the Judges say that this message needs to be taken to the Appeal Judges as well.

Support for NESREA's capacity building is vital at both the national and international level if NESREA is to meet the huge challenges they face in starting to make an impact on the environmental concerns facing Nigeria.

We were impressed with the achievements the DG and her team have made in the relatively short time they have been set up and they need all the international support that can be provided.

Finally we are grateful we were given the opportunity to participate in the workshop and the ensuing discussions with the NESREA management team and lawyers. Our thanks to PfWS, NESREA, the EA and K & L Gates for their encouragement and support.

7.1.1 Recommendations

If possible, to identify and provide further technical assistance between the EA and NESREA on environmental law enforcement and prosecution practices.

NESREA should utilise their website to provide details of Nigerian environmental laws and regulations and guidance for companies/individuals on how to comply. This will help to raise awareness and communicate environmental messages to the public.

It would be beneficial for prosecutors/investigators in NESREA to be given standardised training in enforcement policy, investigation and prosecution.

Regular training/awareness seminars should be held with judges and magistrates.

NESREA need to continue strengthening its links with other national and state agencies, in particular, its input and role in the land use regime in Nigeria.

NESREA need to decide on how the environmental permitting regime is to be developed in Nigeria and how it will interact with other national and state agencies. Both the permitting regimes of England and Wales and the USA are highly complex and expensive to administer. This could be a further technical area of cooperation depending on a sustained source of funding.

NESREA should explore liaison with the Inns of Court UK to host Advocacy Training sessions for its advocates (Lal Nawbatt is willing to initiate contact with Middle Temple if NESREA wishes to pursue this).

To explore further work placement opportunities with the EA to aid capacity building within NESREA.

Many constructive suggestions came out of the working sessions groups (annex 5) and in the written communiqué (annex 6) and it is recommended that NESREA consider these and devise a strategy to implement the achievable recommendations in conjunction with local interested parties (such as the Judges Training Council, the US EPA and the EA).

8 List of Annexes (in separate document)

1. Terms of reference
2. Itinerary of the visit
3. Copy of papers delivered to the Workshop on 26 April 2010
4. Copy of papers delivered to the Workshop on 27 April 2010
5. Copy of Working Group presentations from 27 April 2010
6. Copy of Written communiqué from the Workshop
7. Copy of Agenda of Meeting with Resource Persons 28 to 30 April 2010