



Partners for Water and Sanitation

Note on project reports

The following report has been prepared by Partners for Water and Sanitation in response to a project Terms of Reference.

The content of the report is based on the opinion of the author(s) and does not necessarily represent the opinions of the wider PfWS partnership, or the project funders.

Any extracts from the report should only be used with prior permission of the report author(s).

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TERMS OF REFERENCE

NESREA INSTITUTIONAL STRENGTHENING - Nigeria	
Title and Reference	<p>Environmental Law: Enforcement and Prosecution. The National Environmental Standards and Regulations Enforcement Agency (NESREA) is a parastatal of the Federal Ministry of Environment of Nigeria. The core responsibilities of NESREA include the enforcement of regulations, laws and guidelines on the environment (Air, Land, and Water). NESREA also enforces international conventions, treaties and agreements on the environment.</p> <p>NESREA's powers include the prosecution of violators of Environmental Standards and Regulations. This Terms of Reference is to support the agency in the awareness of Environmental Law Enforcement and Prosecution practices and trends.</p>
Justification	<p>One of NESREA's strategic actions in its recently published Corporate Strategic Plan (CSP) document is to "work with the Judiciary to explain the regulations, environmental risks, and the responsibilities of those who should be accountable", to gain judiciary understanding of environmental challenges and a supporting legislative framework.</p> <p>The Environment Agency (of England and Wales), with our facilitation, supported completion of NESREA's CSP 2009 – 2012. The CSP incorporates the areas within which the Environment Agency and Partners for Water and Sanitation will focus technical advice and support, to help NESREA in the implementation of strategic plans. Raising awareness and knowledge sharing with Judges, Magistrates, Prosecutors and law enforcement agencies is one of the identified areas of short term support to NESREA.</p> <p>Our support to NESREA is in line with our Nigeria programme purpose of institutional strengthening and reform of key actors within the water sector, working in partnership with Federal Government agencies to ensure that our input compliments the plans of the Government of Nigeria.</p>
Objectives	<p>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.</p>
Deliverables	<ol style="list-style-type: none"> 1. Workshop presentations to and discussions with a broad stakeholder group (NESREA staff, judges, magistrates, etc.) on; <ol style="list-style-type: none"> a. Practices, experiences, and trends on environmental litigation, prosecution, and enforcement b. Practices, experiences and trends on the relationship between the legal sector, law enforcement agencies, and the environment regulator 2. A visit report complete with recommendations for further areas in which to develop awareness and strengthen capacity.
Impact	<p>The workshop on Environmental Law enforcement and prosecution will help to improve;</p> <ul style="list-style-type: none"> • the knowledge of the enforcement and legal team within NESREA to carry out their roles and responsibilities • awareness of the legal framework, enforcement and prosecution policies of the environmental regulator, within the Judiciary • effectiveness of enforcement of regulations and timely prosecution of environmental crimes.

Scope	<p>NESREA wishes to improve the awareness of environmental laws and regulations within the legal sector in Nigeria, by interacting with judges, magistrates, prosecutors and law enforcement agencies in Nigeria. This phase of interaction will be achieved through workshop sessions and discussions, in line with NESREA's corporate strategic focus of "building capacity" within the legal sector. Key issues and themes on Environmental Law, regulations, enforcement, and prosecution will be discussed during the workshop sessions.</p> <p>The UK experts will work with NESREA in the facilitation of the workshop by sharing knowledge, experiences and practices. Workshop presentations and interactive sessions will be held, in line with the workshop theme and sub-themes.</p> <p>The main theme for the workshop is Environmental Law: Enforcement and Prosecution). The sub-themes for presentation and discussion are;</p> <ul style="list-style-type: none"> a) Environmental challenges in Nigeria and the role of NESREA b) Environmental Conventions, Protocols, and Treaties applicable in Nigeria c) NESREA's Regulations: Implications for the judiciary and law enforcement agencies d) NESREA's Enforcement and Prosecution policy e) Practices, experiences, and trends in environmental crime, litigation, prosecution, and enforcement f) Practices, experiences and trends in the relationship between the legal sector and the environment regulator <p>Our UK experts will focus their inputs and presentations on UK and international experience within items e) and f) of these sub-themes, for which specific topics can be developed. NESREA staff will lead in facilitating the workshop to enhance understanding of the Nigerian context within themes a) to d). UK experts will contribute UK and international experience to these sub-themes as appropriate and agreed with NESREA in advance.</p> <p>The UK experts will be able to provide technical advice to the Legal and Enforcement team of NESREA on enforcement and prosecution, as and when identified and agreed with key staff during the visit.</p>
Organisation and methodology	<p>This project requires travel to Nigeria. Our Secretariat will provide all necessary logistics required for timely completion.</p> <p>A draft visit programme including workshop activities and overall programme will be forwarded to the UK team, a minimum of two weeks before the visit to Nigeria. Our Country Manager will work with NESREA to respond to all enquiries and clarifications that may be needed.</p> <p>The UK team will consist of experts with significant experience in Environmental Law, Regulation, Litigation, and Enforcement, and knowledge of the workings of an environmental regulatory and enforcement institution.</p> <p>They will spend the first day with NESREA, for introductions and discussions on NESREA's enforcement and prosecution strategy. This will increase appreciation of NESREA's regulations, enforcement and prosecution policies. They will then participate in delivering, workshop sessions and facilitating discussions with a broad stakeholder group, with support from NESREA staff. The last two days of the week will be spent with NESREA staff, reviewing the workshop outcomes, developing next steps and possible support plans</p>

	A visit report will be forwarded to NESREA via our Country Manager. Further inputs and clarifications on the visit report and recommendations will be channelled through our Country Manager.
Milestone plan	<p>Early February 2010: Draft visit and workshop programmes completed and forwarded.</p> <p>Late February 2010: Visit to Nigeria for workshop sessions with the broad group of stakeholders and discussions with NESREA staff.</p> <p>Mid to End March 2010: Visit report and recommendations submitted to NESREA.</p>
Resource estimate	<p>The estimated time required for each UK expert's input is:</p> <ul style="list-style-type: none"> • 3 days preparation in the UK • 6 days input in-country • 3 days input in the UK, on reporting and preparing recommendations <p>Follow-up support may be identified after this activity.</p>
Dependencies	This project will depend on the workshop for judges, magistrates, prosecutors and law enforcement agencies being held as planned.
Issues/Risks	<p>Risk: Lack of participation by invited participants. Mitigation: NESREA to coordinate and ensure adequate participation.</p> <p>Our Country Manager will keep the Secretariat informed on any changes on risk levels associated with travel to Nigeria. Mitigation plans by NESREA and our Country Manager are in place for any identified risk.</p>
Activities of others relevant to this ToR	None, although NESREA is presently consulting with donor partners for possible support in the implementation of their CSP.
Communications Strategy	After the appointment of the UK team, communication will be between the team, our Country Manager and UK Secretariat. This will be achieved with the use of e-mails, and phone calls where necessary. Discussions with the NESREA team will be initiated through a teleconference in advance of the visit. Further direct communication between NESREA and our UK team will be maintained after the mission to Nigeria.
Review Mechanism	<p>The Country Manager will carry out a review of the visit report to identify areas for follow-up and ensure that expectations are adequately met. Reviewed report will be forwarded to our UK team and the Secretariat for final comments, before forwarding to NESREA. Areas for further support will be identified and agreed with NESREA.</p> <p>The UK team will be updated on further activities relating to NESREA's Legal and Enforcement teams.</p>
Approvals (as appropriate)	<i>Rebecca Scott, Partners for Water and Sanitation Project Manager</i>
Compiled by	Nyananso Gabriel Ekanem, Country Manager, Nigeria Dr. (Mrs.) N. S. Benebo, the Director General/CEO, NESREA
Date	4th December 2009

10 Annex 2: Itinerary of the visit

Visit Programme For Lal Nawbatt and Paul Thompson 25th April to 1st May 2010

S/N	Date	Time	Activity	Objective	Venue	Person responsible	Remark
1	24th April Saturday	10:15pm	Depart UK for Abuja			UK Secretariat	Our UK office will manage all activities in the UK
2	25th April. Sunday	4:35am - 5:30am	Arrival, pick up and Check in	Reception and accommodation	Abuja International Airport and Rock View Hotel Abuja	Anthony	Person receiving Lai and Paul will have partners for Water and Sanitation Logo. Check in and rest. Hotel rooms booked under WaterAid
3		6:30am - 1:30pm	Rest and Refresh	Settle in	Rock View Hotel, Abuja	Dayo	Refresh, rest, and replenish. Just sign all hotel expenses to your room.
4		1:30pm - 2:30pm	Meeting with Gabriel	Country Briefing and Logistics	Rock View Hotel, Abuja	Gabriel	Country update, Visit programme and Logistics will be clarified
5		3:00pm - 4:00pm	Meeting with Gabriel	Project Briefing	Rock View Hotel, Abuja	Gabriel	NESREA Institutional Strengthening support Project Briefing and update
6		4:00pm - 5:00pm	Meeting with Gabriel	Activities and logistics clarifications	Rock View Hotel, Abuja	Gabriel	Activities for the week and any other issue will be clarified
7	26th April. Monday	8:30am - 9:00am	Pick - up from hotel to NESREA event venue	To get registered, introduced, and appreciate the event venue	NICON Luxery Hotel	Bola	The NESREA team will organise Logistics
8		9:00am - 5:30pm	NESREA event on Environmental Law and litigation	To participate and contribute to the event	NICON Luxery Hotel	Bola	The NESREA team will organise all event activities
		5:30pm - 6:00pm	Pick - up from event venue back to hotel	To retire for the day, rest, and prepare for the next day	NICON Luxery Hotel, Rock View Hotel, Abuja	Bola	The NESREA team will organise Logistics
	27th April. Tuesday	8:30am - 9:00am	Pick - up from hotel to NESREA event venue	To get registered, introduced, and appreciate the event venue	NICON Luxery Hotel	Bola	The NESREA team will organise Logistics
		9:00am - 5:30pm	NESREA event on Environmental Law and litigation	To participate and contribute to the event	NICON Luxery Hotel	Bola	The NESREA team will organise all event activities
		5:30pm - 6:00pm	Pick - up from event venue back to hotel	To retire for the day, rest, and prepare for the next day	NICON Luxery Hotel, Rock View Hotel, Abuja	Bola	The NESREA team will organise Logistics
	28th April. Wednesday	8:30am - 9:00am	Pick - up from hotel to NESREA event venue	To get registered, introduced, and appreciate the event venue	NICON Luxery Hotel	Bola	The NESREA team will organise Logistics
		9:00am - 4:30pm	NESREA event on Environmental Law and litigation	To participate and contribute to the event	NICON Luxery Hotel	Bola	The NESREA team will organise all event activities
		4:30pm - 5:00pm	Pick - up from event venue back to hotel	To retire for the day, rest, and prepare for the next day	NICON Luxery Hotel, Rock View Hotel, Abuja	Bola	The NESREA team will organise Logistics

	29th April. Thursday	8:30am - 9:00am	Pick - up from hotel to NESREA offices	To get introduced to the NESREA team Abuja	NESREA offices	Bola	The NESREA team will organise introductions
		9:00am - 10:00am	Reception and Introduction	To get introduced to NESREA management and staff	NESREA offices	Bola	The NESREA team will organise introductory meetings
		10:00am - 5:00pm	Discussions and interaction with NESREA management team and the Legal department	To appreciate the plans of NESREA with respect to Litigation and enforcement	NESREA offices	Bola	The NESREA team will organise all meetings and discussions
		5:00pm - 6:00pm	Pick - up from NESREA to Hotel	To return to hotel and rest	Rock View Hotel, Abuja	Bola	Lal and Paul to prepare key advice for the NESREA legal team, going forward
	30th April. Friday	8:30am - 9:00am	Pick - up from hotel to NESREA offices	To continue discussions with NESREA Legal team	NESREA offices	Bola	The NESREA team will organise introductions
		9:00am - 2:00pm	Discussions and interaction with NESREA Legal team	To identify key areas of external support going forward	NESREA offices	Bola	The NESREA team will organise introductory meetings
		2:00pm - 4:00pm	Debrief session with NESREA management team and Legal department	To give feedback and advice on next steps and plans going forward	NESREA offices	Bola	The NESREA team will organise all meetings and discussions
		4:00pm - 5:00pm	Pick - up from NESREA to Hotel	To return to hotel and rest	Rock View Hotel, Abuja	Bola	Lal and Paul to have a wrap-up chat with Gabriel
	1st May. Saturday	5:30am - 6:30am	Pick-up from Hotel to Abuja Airport	Flight Check in and departure to the UK at 8:30am	Rockview Hotel, Wuse II, Abuja. Abuja International Airport	Anthony	Gabriel will coordinate Further follow-up activities
NOTE: Time is Nigerian time (GMT+1); Gabriel (PWS; +234 8023815028) and Bola (NESREA; +234 8033277140) are the key contacts for all activities							

11 Annex 3: Copy of papers delivered to the Workshop on 26 April 2010

OPENING ADDRESS

BY THE

HONOURABLE MINISTER

FEDERAL MINISTRY OF ENVIRONMENT

MR. JOHN OGAR ODEY

AT THE

**APPRECIATION WORKSHOP FOR JUDGES AND LAW
ENFORCEMENT OFFICERS, ON ENVIRONMENTAL
LAWS, REGULATIONS AND CONVENTIONS.**

ROCKVIEW HOTEL, ABUJA.

APRIL 26, 2010

PROTOCOLS:

It gives me great pleasure, to welcome you all to this important Appreciation Workshop For Judges and Law Enforcement officers on the Enforcement of Environmental Laws, Regulations, and Conventions. I am particularly pleased to deliver this opening address to this gathering of distinguished Judges and law enforcement officers.

2. Today, more than ever before, our planet is facing daunting challenges of natural and man made upheavals. These challenges are not only environmental in nature, they are also economic, developmental, and social. To say that our environment is under siege is an understatement. Man's uncontrolled activities in the name of development has put our environment at risk of catastrophe. Recent occurrences of unpredictable natural phenomena like earthquakes, tsunamis and volcanic eruptions are creating social tensions and conflicts as people who are internally displaced due to environmental stress, struggle to compete with others for survival.

3. You will all agree with me that without peace, there can be no development, and to have peace, we must have a benign environment. For a good environment, we must have laws that protect the environment, and these laws must be enforced. This is where the role of the judiciary and law enforcement agencies come to bear. Peace, however cannot be achieved in any society without justice.

4. Principle 25 of the Rio Declaration states that 'peace, development and environmental protection are interdependent and indivisible'. To borrow a quote from Martin Luther king Jr, "True peace is not merely the absence of tension: it is the presence of justice."

5. This brings us to the realm of Environmental Justice, which is about social transformation directed towards meeting basic human needs and enhancing our quality of life, health care, housing, human rights, environmental protection, and democracy. Environmental justice should also seek to challenge the abuse of power which results in poor people having to suffer the effects of environmental damage caused by the greed of others."

6. We are all witnesses today of the cry of the Niger Delta for Environmental Justice, and the courageous efforts that the present administration is making to address environmental problems in Nigeria. Environmental protection cannot however be sustained without the effective enforcement of environmental laws. Hence, this workshop which seeks to increase the collaboration between law enforcement agencies and environmental planning and protection authorities could not have come at a more auspicious time.

7. The Federal Government of Nigeria established the National Environmental Standards and Regulations Enforcement Agency (NESREA) to protect the Nigerian environment through the enforcement of all environmental laws, regulations, standards and international environmental conventions to which Nigeria is signatory. NESREA's mandate however cannot be achieved without the co-operation and support of the Judiciary and law Enforcement Agencies.

6. I hold the firm view that the judiciary is one of the most stable and respected institutions of our society. As much, the judiciary both reflects and sets the tone for society at large. The voice of the Judge represents reason, impartiality and understanding of all interests at stake. Accordingly, through their judgments, Judges are able to encourage all groups in society to share in the task of environmental stewardship.

8. With the quality of the resource persons and in particular, our technical partners, I have no doubt in my mind that the objectives of this workshop, which is to strengthen the enforcement of environmental laws, regulations, standards and Multilateral Environmental Agreements will be achieved.

9. I cannot end my address without thanking everyone here present, especially the United Nations Development Programme (UNDP) for their support. I also thank the United Kingdom Environment Agency (UKEA), the United States Environment Protection Agency (USEPA) and the Partners for Water and Sanitation (PAWS), for the technical support for this workshop.

10. I thank you all for your attention and wish you fruitful deliberations.

**KEYNOTE ADDRESS DELIVERED AT THE APPRECIATION WORKSHOP FOR
JUDGES AND LAW ENFORCEMENT OFFICERS ON ENVIRONMENTAL LAWS,
REGULATIONS AND CONVENTION, HELD AT ROCKVIEW HOTEL, ABUJA FROM
26TH TO 28TH APRIL, 2010**

BY

CHIEF AKIN OLUJINMI, SAN

INTRODUCTION

Let me begin by thanking the National Environmental Standards and Regulations Enforcement Agency (hereinafter referred to as 'the Agency') for the invitation to engage with you through this keynote address on the topic "Access to Justice and Fundamental Rights to a safe and healthy environment". I do congratulate the Agency for its forward looking initiative in organising this workshop in collaboration with the National Judicial Institute, the United Nations Development Programme, the United Kingdom Environmental Agency, the United States Environmental Protection Agency, and the Partners for water and Sanitation . The environment has become a topical issue around the world. It is in the front burner of universal discourse particularly with the realisation that human activities have significantly attenuated or degraded the quality of our natural environment.

There is a threat to human health, indeed a threat to our existence. The pursuit of all the universal discourse and actions is directed at how humanity can maintain sustainable development and protection of the environment. How can we make our environment safe and secure? The United Nations has done so much in stimulating awareness and creating several public fora and indeed the formulation of multilateral agreements and conventions for countries of the world to become parties to. Several such international instruments exist today and Nigeria is a party to some. At the international level judges and legal experts are debating key environmental issues on a regular basis. Communiques are issued but the problem of the environment persists. This workshop is a country effort to engage the problem once again by promoting further awareness of it and sensitising our judges, lawyers, the law enforcement officers and the general public on the need for a synergy to combat the problem of environmental abuse and degradation.

Meaning of Environment

Section 37 of the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act No. 25 of 2007 defined the term 'environment' as including

“ water, air, land and all plants and human beings or animals living therein and the inter-relationships which exist among these or any of them”

This precisely is the same definition given to the term in the Federal Environmental Protection Act Cap. F10 Laws of the Federal Republic of Nigeria, 2004 which was repealed by Act No. 25 of 2007 which set up the Agency.

However, the definition of the same term in the Environmental Impact Assessment Act No. 86 of 1992 (now Cap. E12 Laws of the Federal Republic of Nigeria, 2004) took a different approach. Its section 61(1) reads as follows:

“In this Act, unless the context otherwise provides – ‘environment’ means the components of the Earth and includes –

- (a) land, water and air, including all layers of the atmosphere,
- (b) all organic and inorganic matter and living organisms, and
- (c) the interacting natural systems that include components referred to in paragraphs (a) and (b)”

It does not seem however that in the practical application of the laws any difference will be read into the two definitions.

Apart from these legislations, Section 20 of the 1999 Constitution of the Federal Republic of Nigeria, under Chapter two dealing with Fundamental Objectives and Directive Principle of State Policy also made reference to the environment. Even though the word environment was not defined in the constitution it is obvious that the drafters of its Section 20 were conscious of the meaning of environment in the way they drafted the Section. It provides as follows:

“The state shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria”

This provision spells out the minimum environmental objective which the Nigerian State should strive to achieve.

From the definition of the word "environment" it is clear that the environment is a natural gift to man. It is not created by the decree or efforts of man. Man came into the world and met the air, land, water, forest, plants and animals already in existence. The fact that the environment predates man's existence, means the environment is indispensable to human survival. It is a natural right. Natural rights are certainly more fundamental than rights created by man which are merely additional rights. Even though environment is not listed as one of the rights set out in chapter four of the Constitution and referred to collectively as Fundamental Rights, it is beyond argument that the right to life imposes a corresponding duty on others not to terminate, diminish or endanger that life by activities which degrade the environment. By this process of reasoning, the right to an unimpaired environment can be seen as an element or component of the fundamental right to life guaranteed by the Constitution. A similar reasoning was adopted by the Italian Court in a case referred to below in treating a particular environmental abuse as a case coming within the fundamental right to health guaranteed by the Italian constitution.

It is this environment that we have degraded by a lot of activities. The emission from our automobiles, the aircraft, plants and machineries, space machines, construction activities, bush and coal burning, deforestation, desertification, and land use change etc. have all inflicted so much harm on the environment. As a result, the universe today has to contend with greenhouse gases which are seen as the likely causes of global warming etc. There is therefore the need to reclaim the environment. The Kyoto Protocol on Greenhouse gases, Basel convention on the Control of Transboundary movements of hazardous wastes, Rotterdam convention on pesticides and industrial chemicals that have been banned, Rio conventions dealing with Biodiversity, climate change and desertification are instances of global efforts to combat the degradation of the environment. This is what the Agency is seeking to do through the enforcement of its regulations. Nigeria is a party to some of the international multilateral instruments on the environment.

Development of environmental policy in Nigeria

In looking for the beginning of what may be termed as coordinated efforts by the Government of Nigeria to evolve a clear policy on the environment, one

can do no better than quote the views of former Chief Justice of Nigeria, Hon. Justice M.L. Uwais on the same, in his paper titled "Recent developments in Nigeria strengthening legal and institutional frameworks for promoting environmental management" which he delivered at the Global Judges Symposium on Sustainable Development and the Role of Law in Johannesburg, South Africa 18-20 August, 2002. His Lordship said and I quote

"Until the development of the National Policy on the Environment in 1989, Nigeria had no defined nor clearly articulated national policy goals for the nation's environment.

In September 1988, the Federal Ministry of Works and Housing and the United Nations Environment Programme (UNEP) organised the International Workshop on the Goals and Guidelines of the National Environmental Policy for Nigeria. This marked the first major step taken by a committed administration to readjust the nation's relationship with the environment based on the principle of sustainable development and proper management of the environment and its resources.

The goals and strategies developed by the workshop were streamlined to meet the particular needs of the Nigerian environment in key areas such as – land use and soil conservation, water resources management, forestry, wildlife and protected natural areas, marine and coastal areas and resources, toxic and hazardous substances, occupational health and safety, energy production and use, mining and exploitation of mineral resources, agricultural chemicals and pesticides, guidelines for public participation and legal and institutional arrangements for environmental protection. Ideas and principles espoused by major international efforts and reports also had significant influence on the proposed goals and guidelines.

The workshop came up with proposed goals and guidelines providing for a new and firm foundation for developing policies, law and institutions for environmental protection and improvement which the Federal Government of Nigeria adopted and formally made public in November, 1989. The occasion coincided with the inauguration of the National Council on the Environment and the laying of the foundation stone of the National Headquarters of the Federal Environmental Protection Agency, in Abuja. The then President of the Federal Republic of Nigeria, General Ibrahim Babangida said that these events represent:-

“...the consummation of our desire not only to protect our environment as a clean and healthy place for all of us to live in, but more importantly, to preserve it as a worthy legacy to bequeath to our unborn generations...”

This statement shows that prior to 1988 not much was being done in Nigeria in matters relating to the environment. It was in fact the proceedings of the International Workshop of 1988 that gave birth to the Federal Environmental Protection Agency Decree of 1988 which later became an Act. The Act was repealed by Act No. 25 of 2007. It is the Agency created by Act No. 25 of 2007 that is now hosting this workshop.

Objectives of the Agency

As set out in Section 2 of its establishment law “The Agency, shall, subject to the provisions of this Act, have responsibility for the protection and development of the environment, biodiversity conservation and sustainable development of Nigeria’s natural resources in general and environmental technology, including coordination and liaison with relevant stakeholders within and outside Nigeria on matters of enforcement of environmental standards, regulations, rules, laws, policies and guidelines”.

Pursuant to this objective, the law has vested the Agency with some powers and functions, some of which are as follows:

- (a) to enforce compliance with laws, guidelines, policies and standards on environmental matters;**
- (b) coordinate and liaise with stakeholders, within and outside Nigeria, on matters of environmental standards, regulations and enforcement;**
- (c) enforce compliance with the provisions of international agreements, protocols, conventions and treaties on the environment, including climate change, biodiversity, conservation, desertification, forestry, oil and gas, chemicals, hazardous wastes, ozone depletion, marine and wild life, pollution, sanitation and such other environmental agreements as may from time to time come into force;**

- (d) enforce compliance with policies, standards, legislation and guidelines on water quality, environmental health and sanitation, including pollution abatement.
- (e) create public awareness and provide environmental education on sustainable environmental management, promote private sector compliance with environmental regulations other than in the oil and gas sector and publish general scientific or other data resulting from the performance of its functions.

These are just some of the functions and powers of the Agency.

For the purposes of carrying out or giving full effect to the functions of the Agency the Minister of Environment has pursuant to Section 34 of the enabling Act given his approval to at least eleven pieces of regulations made by the Agency on different subjects but all relating to the development and protection of our environment. They are as follows:

- (i) Statutory instrument No. 26 titled National Environmental (Wetlands, River Banks and Lake Shores) Regulations, 2009
- (ii) Statutory Instrument No. 27 titled National Environmental (Watershed, Mountainous, Hilly and Catchment Areas) Regulations, 2009
- (iii) Statutory Instrument No. 28 titled National Environmental (Sanitation and Wastes Control) Regulations, 2009
- (iv) Statutory Instrument No. 29 titled National Environmental (Permitting and Licensing System) Regulations, 2009
- (v) Statutory Instrument No. 30 titled National Environmental (Access to Genetic Resources and Benefit Sharing) Regulations, 2009
- (vi) Statutory Instrument No. 31 titled National Environmental (Mining and Processing of Coal, Ores and Industrial Minerals) Regulations, 2009
- (vii) Statutory Instrument No. 32 titled National Environmental (Ozone Layer Protection) Regulations, 2009
- (viii) Statutory Instrument No. 33 titled National Environmental (Food, Beverages and Tobacco Sector) Regulations, 2009
- (ix) Statutory Instrument No. 34 titled National Environmental (Textile, Wearing Apparel, Leather and Footwear Industry) Regulations, 2009
- (x) Statutory Instrument No. 35 titled National Environmental (Noise Standards and Control) Regulations, 2009

- (xi) **Statutory Instrument No. 36 titled National Environmental (Chemical, Pharmaceutical, Soap and Detergent Manufacturing Industries) Regulations, 2009**

Looking at the regulations one by one it seems clear that the Agency will definitely have huge enforcement challenges. All the regulations impose duties and prescribe sanctions of fine or imprisonment or both for a breach of any of the provisions of the regulations. For lack of time, we shall just briefly look into the provisions of three of the Statutory Instruments to enable us have an idea of the duties imposed on each and everyone of us by those regulations in the effort to sanitise our environment. The first one we are looking at is

- (i) **Statutory Instrument No. 28 titled National Environmental (Sanitation and wastes Control) Regulations 2009**

The purpose of the statutory instrument is to promote sustainable and environment friendly practices in environmental sanitation and waste management to minimise pollution.

- 3.-(1) No person is to discard, throw or drop any litter or any similar refuse anywhere except in designated litter bins
- (2) No owner, operator, occupant or person in care, management or control of premises is to allow the release of litter into the environment.
- (3) No occupant or passenger of any vehicle is to throw or drop any litter onto the streets, roads, highways, public spaces and other undesignated places.
4.any person whose activities generate waste shall ensure that the waste is handled by a person licensed to transport and dispose of the wastes in designated waste management facility.
- 6.-(1) All food vendors shall, in line with National Policy Guidelines on Food sanitation
- (a) ensure that litter and other wastes do not pollute the environment;
- (b) maintain hygiene or cleanliness of the location of business at all times; and

- (c) collect and dispose all wastes generated in the course of business to a designated collection point

10.-(1) Every owner of premises shall

- (a) provide potable water supply for the premises to ensure sound environmental sanitation and personal hygiene;
- (b) provide adequate number of toilets for the occupants as prescribed in Schedule 3 to the regulations

64.-(1) States shall establish sanitation and integrated waste management programs and ensure the provision and maintenance of

- (a) abattoirs;
- (b) adequate toilets and urinals in public places;
- (c) waste receptacles in the streets and premises of all kinds

The regulations also put a duty on commercial, industrial and recreational facilities to provide adequate toilet facilities or conveniences for the use of both sexes just as it also puts a duty on organisers of a public, religious, or private event, party, meeting or the custodian of such venue to provide clean and hygienic toilets for the use of guests. The contents of such toilets after use must also be sanitarily disposed into designated sewage handling facility or treatment plant by a licensed operator. Failure to perform any of these duties amounts to an offence punishable with fine or imprisonment or both.

In cases of violation by commercial, industrial and recreational facilities the regulations encourage employees to act as whistle blowers without saying so clearly. It makes it an offence for any employer to suspend, dismiss or impose penalty on any employee who reports any contravention of the regulations to the Agency.

In its Schedule 1 the regulations provide guidelines for food Handlers. Failure to comply with the guidelines amounts to an offence. Some of the guidelines are as follows:

1. Anybody engaged in the handling, preparation, process or sale of food meant for human consumption shall:
 - (a) undergo routine food handlers test and obtain a medical certificate of fitness;
 - (b) provide adequate potable water supply in the facilities as prescribed by these regulations

2. When handling food, food handlers shall observe the following, among others
 - (a) not handling food when they are ill, especially if you have diarrhoea, open wound, boils, running nose, eye discharge, etc;
 - (b) covering cuts, burns, sores and abrasions with a water proof dressing;
 - (c) showering or bathing daily;
 - (d) keeping their clothes clean; wearing clean apron and changing it, if they wipe their hands on it or if it becomes soiled;
 - (e) keeping their hair clean and covered;
 - (f) keeping their finger nails short, clean and unpolished;
 - (s) when tasting, always use the two-spoon tasting method as this ensures that the spoon used for tasting does not get in contact with the food being prepared;.
 - (t) not talking over food

Even though these guidelines are meant for food vendors, I believe it is not out of place if we also try to maintain these minimum levels of sanitation in our individual homes.

There appears to be an omission in the regulations. It did not address the menace of people who answer the call of nature right in the open spaces along our roads and streets. There is hardly any day one moves around in Abuja, as in the states, when you will not see some people doing their own thing right in the open along the streets, some facing the walls or trees, others facing nothing. The streets are their conveniences. I am aware that Abuja Environmental Protection Board Act criminalises such conduct and offenders are often arrested and tried summarily in mobile courts. May be we should not in fact blame them since there are no public lavatories around the city, free or pay per use.

Again the regulation that puts a duty on the owner of premises and food vendors to provide potable water fails to take account of the water situation around the country. It is the responsibility of the Water Board to supply treated water to the community. But there is generally a failure of service in this regard. Most homes in the country do not have access to pipe-borne water. They rely on wells and boreholes water for drinking and other domestic uses. It is even worse in the rural areas where inhabitants rely on streams and stagnant pools as sources of their water supply. Since owners of premises do not have their own waterworks how are they going to comply with the duty to provide potable water supply for their premises.

I think I also need to mention a particular type of waste that needs to be specially disposed off but which has not been addressed in the regulations. It is the GSM phone and its accessories at the end of their working life. Accompanying each phone is an owner's manual which contains warnings on how to dispose of these items when they are no longer serviceable. Let me quote here a typical warning.

"This marking (a cross sign on a litter bin) on the product, accessories or literature indicates that the product and its electronic accessories (e.g. charger, headset, USB cable batteries) should not be disposed of with other household waste at the end of their working life. To prevent possible harm to the environment or human health from uncontrolled waste disposal, please separate these items from other types of waste.."
(italics, mine)

I am not sure how many users of GSM pay attention to these warnings. The GSM is admittedly very useful to us but in its expired status it becomes a threat to human health and the environment. Something needs to be done by the Agency.

The second Statutory Instrument we are looking at is

- (ii) Statutory Instrument No. 29 titled National Environmental (Permitting and Licensing System) Regulations 2009

These regulations deal with cases where licences and permits may be issued by the Agency. What particularly interests me in the regulations is the timeline set by the regulations for actions to be taken on applications for permits and licences. This is about service delivery. We

need to build this into all aspects of our operations in the public sector i.e. a culture of commitment to timelines in the execution of our duties to members of the public. In most public offices today applications which can be processed within a matter of hours may lie unattended to for weeks without any feedbacks for the delay. The efficiency of the public service is compromised by a retrograde culture of laziness. We need to make our public service result-oriented. This is what the Agency seeks to achieve with this statutory instrument, which is indeed commendable.

The third Statutory Instrument for special mention is

- (iii) Statutory Instrument No. 35 titled National Environmental (Noise Standards and Control) Regulations, 2009

This regulation has set permissible noise levels to which a person may be exposed at a factory, workshop, construction site, place of entertainment or worship. Even the permissible noise level your vehicle may generate is also prescribed. Any deviation from these permissible levels amounts to an offence punishable with fine or imprisonment or both. Where however the noise level of your machines may exceed the permissible limit, you are at liberty to apply for permit to make more noise which may be issued subject to such terms and conditions as may be deemed fit by the agency. Without such permit you would have fallen foul of the regulations.

Enforcement Challenges

The Statutory Instruments of the Agency are definitely bold pieces of regulations. They are far-reaching and radical. Given the prevailing level of illiteracy in our communities, some of the regulations are perhaps ambitious. But I have the sense that with a massive and sustained programme of publicity the message of the regulations will get down to every individual. The undeniable truth is that if faithfully and rigorously implemented there is abundant hope of remediation of our environment. The Agency has quite a lot to do and so will need adequate number of enforcement officers and materials to be able to perform at optimum level. Of course, only a good budget can guarantee the requisite publicity, the number of enforcement officers and the materials needed for effective performance. If therefore government believes in the effort to reclaim our environment it must quickly

come to the aid of the Agency. Society is a pre-condition for government and government exists for the society. Government needs a healthy workforce for the execution of its projects. This is what the Agency is seeking to secure through amelioration of our environment. There is therefore a need for proper funding of the Agency.

Part of the enforcement challenges is the prosecution of cases of defaulters. First and foremost, it needs to be stated that before any prosecution can take place enforcement notices must have been served on violators of any of the regulations. An enforcement notice shall specify the matters required by the regulations and be served in one of the several ways set out in the regulation. Where there is a failure to comply with the notice, a second notice must be served on him. This is a condition precedent to any enforcement proceeding in the court. Failure to comply may provide an escape route for a violator.

I notice that a Directorate of Legal Services has been created by the establishment law of the Agency. The directorate must be made fully functional. It should have adequate number of lawyers as it seems inevitable that given the range of enforcement activities the Agency will face there will definitely be a lot of prosecutions to do. Defence lawyers will stall proceedings by various advocacy strategies. You will then begin to see them as irritants but they have a job to do. No doubt, a speedy determination of cases arising from enforcement efforts of the Agency is highly desirable if the Agency is to make an impact. But a proper balance will still need to be maintained between the requirement of speedy hearing and the need for fair trial. The expedient of mobile courts is probably attractive when one is concerned about early disposal of cases. But that may not be feasible under the regulations which impose high threshold fines beyond the jurisdiction of mobile courts for any infraction of the regulations. The alternative suggestion is to have courts specifically designated to handle environmental cases. Again that will pose its own challenges because even as at now the judges are over-stretched with other criminal and civil matters. Appointment of new judges is a process not an event. So that may also not be an option. Experience they say is the best teacher. Ultimately, it may be the experience from the prosecution of the first set of defaulters that will define the way out of these enforcement challenges.

I also foresee potential conflicts between the States and the Federal Government on certain aspects of the provisions of the regulations, particularly those that seek to put duties on the States. See for example regulation 5 of Statutory Instrument No. 26 which provides that "State

Governments shall furnish the Agency with the particulars of all wetlands within their respective States for registration and shall ensure that no individual or group of persons goes into the wetlands for the activities likely to degrade the wetlands". Similar provisions exist in the other Statutory Instruments referred to earlier. As held by the Supreme Court in Attorney General of Lagos State v. Attorney General of the Federation reported in (2003) 12 NWLR (Pt. 833) 1 at 194

"...the National Assembly cannot enact any law, in contravention of the Constitution, imposing any responsibility on a State and expect obedience to such a law. It is a non-controversial political philosophy of federalism that the federal government does not exercise supervisory authority over the state governments."

Since co-operation cannot be compelled, it means the Agency will have to work out collaborative strategies to engage the partnership of the States as may be necessary for the enforcement of the regulations.

There is also overlap of functions between the Agency and some other bodies established by other laws and charged with functions similar to those vested in the Agency. For instance regulation 30(j) of the Statutory Instrument No. 26 titled National Environmental (Wetlands, River Banks and Lake Shores), and regulations 28, 29, 30 and 36 of Statutory Instrument No. 31 titled National Environmental (Mining and Processing of Coal, Ores and Industrial Minerals) appear to overlap with sections 65, 71, 99 and 115 of the Minerals and Mines Act Cap. M.12 dealing with pollution of the environment. Similarly regulations 6, 75 and 99 of Statutory Instrument No. 28 titled National Environmental (Sanitation and Wastes Control) appears to overlap with section 6 of the Food and Drugs Act Cap. F.32 Laws of the Federal Republic of Nigeria. NAFDAC may also flex muscles over the provisions of regulation 9(2) and (3) of the same Statutory instrument No. 28 which sets quality standards for operators and suppliers of treated water and criminalising failure to comply. These observed overlaps may lead to conflict of roles and wrangling between the Agency and bodies set up under those laws to enforce infractions of the laws. This may impede the effectiveness of the Agency. It is my view that such conflicts of roles should be resolved in favour of the Agency which is specifically charged with environmental issues. The law establishing the Agency may be amended to make the agency law prevail in case of any conflict of role between the Agency and any other body or person created under any other law.

In rounding up on the enforcement challenges, and to catalyse the Agency and other stakeholders to decisive enforcement actions, let me add the words of His Excellency Joseph Ejercito Estrada, President of the Republic of the Philippines in his welcome address to the Southeast Asian Justices Symposium on The Law on Sustainable Development held in Manila from 4th to 7th March, 1999. In regard to enforcement of environmental laws, he said as follows:

“Environmental law is one of the tools by which human beings can regulate their use of natural resources. Its primary function is to prevent damage to natural systems which often cannot be repaired. Once a tree is cut, a hundred convictions for illegal logging can never bring that tree back to life.

Environmental law, therefore, must be applied in a manner that is swift, painful and public. It must be swift to ensure that arrest is made certain. It must be painful to ensure that the violators will not repeat the offense. And it must be public to ensure that others will not commit a similar offence.”

Claims for Civil Damage

Apart from the criminal sanctions that may be invoked against violators of the various regulations referred to above, individuals who suffer damage as a result of environmental damage caused by another, may seek redress in court. In this regard, pollution resulting from oil production has been a subject of many litigations in which substantial damages have been awarded and may still be awarded by the courts.

As our law stands today, an individual who has not suffered damage above what other members of the society suffered from any action causing environmental devastation may not have the locus standi to sue. In other words the concept of public interest litigation is still not fully developed in our jurisprudence. The Italian Supreme Court has however adopted pro-active reasoning in such matters in some cases including the recent case of LOCATELLI, contained in III Criminal Division, Reporter decided by Judge Amedeo Postiglione: His Lordship reasoned as follows:

“Environmental damage is not only an ‘endangering of the environment’ in violation of environmental laws, as expressed in Article 18 of Law 349/86, but it is, at the same time, also an ‘offence against the human

Constitutional Court in Cases No. 210 and 641 of 1987 and by this Court (.....in the Castaldi case).

In its fundamental principles, the Constitution of the Italian Republic implements an 'open' concept of inviolable rights of the human being "as both an individual and in the society where he/she lives", in the sense that a "numerus clausus" is not established, but that which society produces in terms of sensitivity and culture is recognised. The Court holds that, at this time, our Constitution not only protects health (Art. 32) and the natural and cultural heritage of the nation (Art. 9), but recognises and guarantees the environment as a fundamental human right (Art. 2) and, therefore, grants all individuals the right to take action to protect this right (Art. 24).

In the light of these principles, precisely because environmental damage is inseparable from harm to natural and cultural values, and, at the same time, harm to the human and social values of every individual, the right to take action before the courts is not limited to public bodies only such as the State, Regions, Provinces, Municipalities, National Park Authorities, etc. (in the name of the environment as a matter of public interest) but it is also available to individuals or associations (in the name of the environment as a subjective fundamental right of every person.

The difficulty in differentiating the individual component in each case of environmental damage is not equivalent to the fact that it does not exist and it can be overcome in legal terms not only when the claim has as its objective an injunction or, where possible, restoration of places (a penalty that has general significance) but also when it is necessary to assess and qualify the environmental damage in monetary terms, because "compensation" can only be paid to public bodies, whilst individuals and associations can only ask for their costs and legal fees in bringing proceedings.

Environmental protection associations, including those of a local kind that are not officially recognised under Art. 13 of Law 349/86, may take part in proceedings and become civil plaintiffs in a criminal action, when they have given proof of the continuous nature of their action, its adherence to the territory, and the importance of their contribution, but above all because of the social groups in which the personality of every individual dynamically grows, the individual as the person is entitled to the human right to the environment. Therefore, WWF is given standing in this case."

We can see in this passage that even though there was no autonomous human right to the environment under Italian law, yet through progressive reasoning by the Italian court the sphere of application of the Italian fundamental right to health was extended to cover environmental right.

CONCLUSION

In concluding this address, let me reiterate that a healthy environment is important to human existence. We all therefore have a duty to co-operate with the Agency in its efforts to protect our environment from degradation. It is the only assurance we have for living a full life. Let all the stakeholders play their roles well to enhance the efforts of the Agency. There is need for massive and sustained programme of publicity to get the message across to every individual to promote the much needed attitudinal re-orientation. Proper funding of the Agency is an absolute necessity to strengthen the enforcement capacity of the Agency.

Once again, I thank the Agency for the opportunity to deliver this keynote address on this very important topic.

CHIEF AKIN OLUJINMI, SAN

REMARKS BY THE HONOURABLE ATTORNEY GENERAL OF THE FEDERATION AND MINISTER OF JUSTICE, MR MOHAMMED BELLO ADOKE, SAN, ON THE OCCASSION OF THE APPRECIATION WORKSHOP ON ENVIRONMENTAL LAWS, REGULATIONS AND CONVENTIONS FOR JUDGES AND LAW ENFORCEMENT OFFICERS, ON MONDAY 26 APRIL 2010, AT ROCKVIEW HOTEL, ABUJA.

PROTOCOLS

The development and enactment of environmental laws and regulations are, without implementation, empty gestures. They are not an end in themselves; rather, they are only the beginning of the process of protecting natural resources and minimizing pollution. Indeed, the development of legal regimes which remain unimplemented and under-implemented can be ominously counter-productive, endangering an illusion of progress where in truth, none exists.

Which is why this Workshop is of extreme importance in removing any illusion about our readiness to enforce environmental laws, regulation and conventions.

A key element of enforcement is a practical understanding of the laws sought to be enforced. Accordingly, a deficiency in the knowledge, relevant skills and information in regard to environmental law is one of the principal causes that contribute to the lack of effective implementation, development and enforcement of environmental law.

I am proud to say that Nigeria is not lacking in the availability of environmental laws. We have among others, the:

- 1) Harmful Wastes (Special Criminal Provisions, etc) Act;
- 2) Environmental Impact Assessment Act;
- 3) Endangered Species (Control of International Trade and Traffic Act)
- 4) National Oil Spill Detection and Response Agency Act, and of course, the threshold environmental legislation in Nigeria; the
- 5) National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007.

These legislative interventions by the Federal Government is to check mate the excesses of those human activities that tend to impact on the environment negatively.

I expect this Workshop to further sensitize our revered Judges and law enforcement officers to the environmental challenges, introduce them to the growing jurisprudence in the field of environmental law, and enhance their capacity to manage environmental litigation and to apply and enforce environmental law.

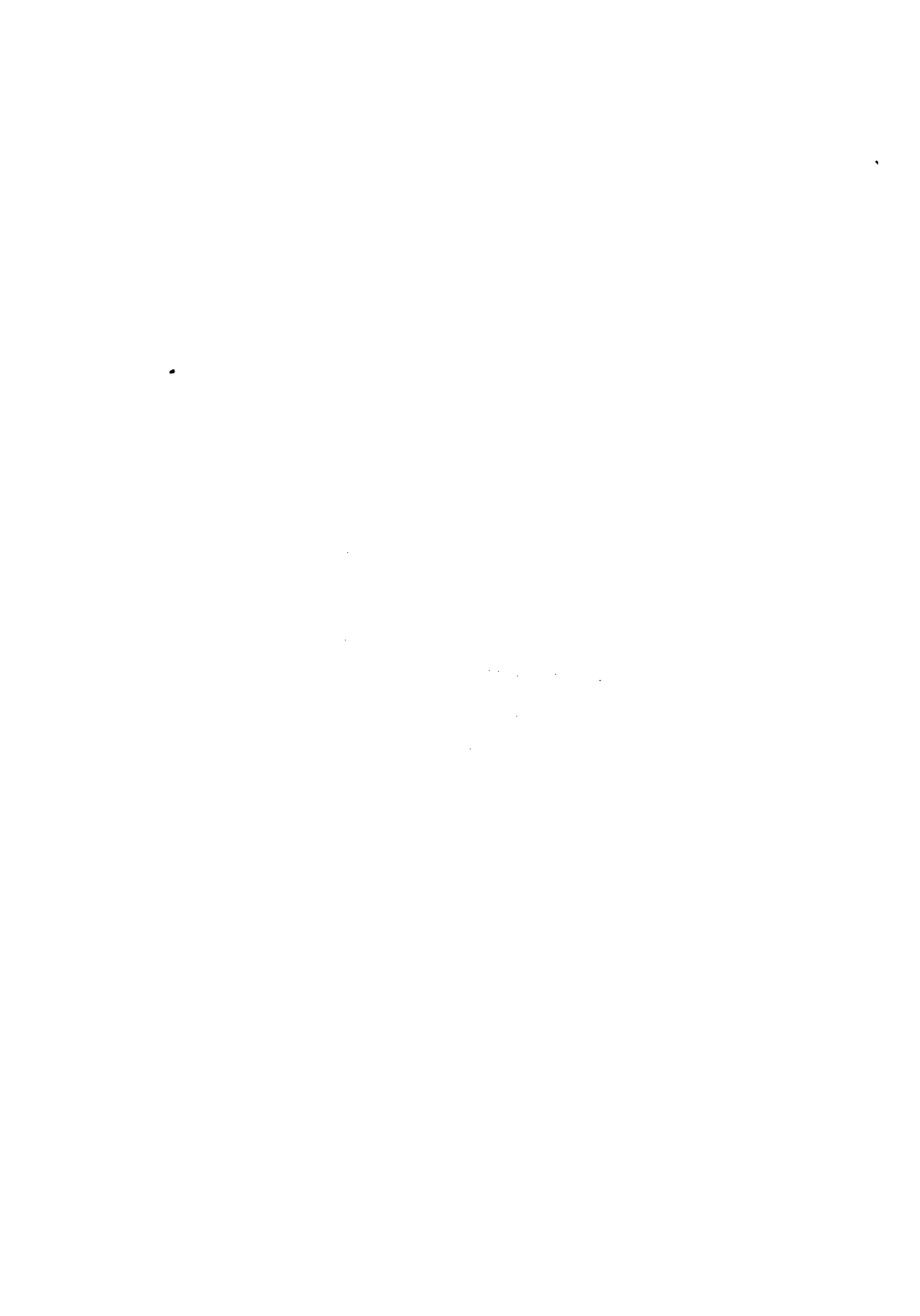
I congratulate the organizers of this event, particularly the National Environmental Standards and Regulations Enforcement Agency, for their laudable achievements within such short period of their existence - they are barely three years old and they have:

- i) churned out 11 (eleven) environmental regulations, which I had the pleasure to vet and approve for gazetting last year;
- ii) prevented the dumping of toxic waste on Nigerian soil by a vessel MV Nashville. It is my hope that the Agency will

go after the perpetrators of this crime and bring them to book.

My office is always ready to assist the Agency in any way and manner, to assist in the realization of her mandate.

I thank you all for listening and wish you fruitful deliberations.



THE NIGERIAN ENVIRONMENT: ISSUES AND CHALLENGES

PROF. EMMANUEL OLADIPO

**PRESENTED AT THE APPRECIATION WORKSHOP FOR JUDGES AND LAW
ENFORCEMENT OFFICERS ON ENVIRONMENTAL LAWS, REGULATIONS
AND CONVENTION, ABUJA, NIGERIA, 26 – 28 APRIL 2010**

Introduction

The purpose of this presentation is to brief my Lords and Learned friends of the environment on the relevance of the state of our environment to our socio-economic development and to solicit your support for a holistic approach to tackling the key environmental challenges that our dear country Nigeria faces, using appropriate legal frameworks and regulations. This can only be done if all hands are on deck at all levels of governance.

We live in a small and limited environment that nonetheless provides the main support for human economic and social needs and aspirations. But this environment is a complex weave of physical, chemical and biotic factors that interact with each other and impact upon all living things and their surroundings. It is the life supporting system for human existence and survival as well as providing physical milieu and the raw materials required for socio-economic progress. If properly managed, it can be geared to productive domestic aesthetic and even spiritual requirements. Conversely, if poorly managed, the environment could easily become hazardous and threatening to human survival.

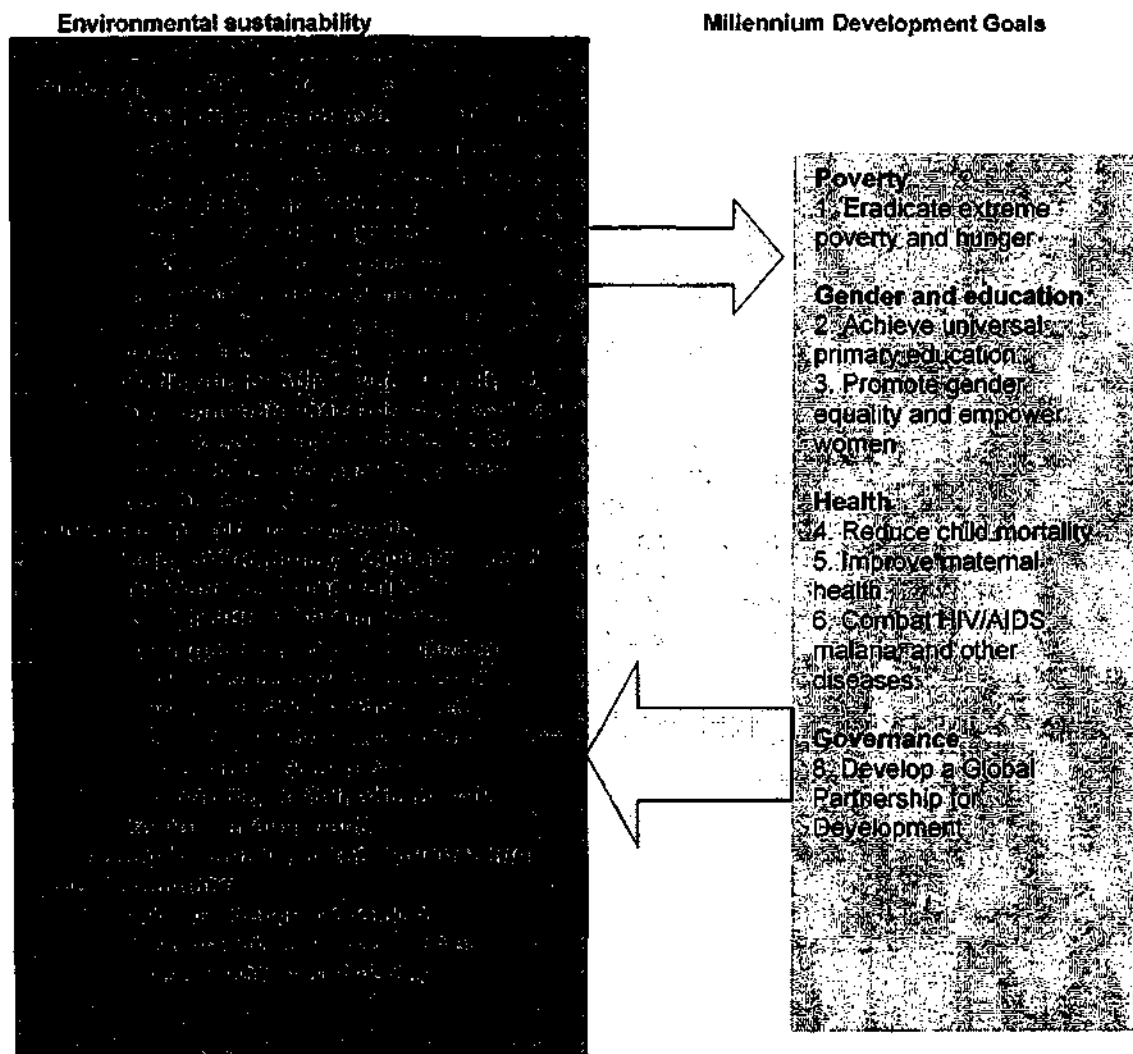
Where human interaction with the environment results in degradation, including depletion of renewable and non-renewable resources and pollution of air, water and soils, it can be a significant source of economic loss and stress upon human societies. By the 1990s, a World Bank report estimated that Nigeria was losing about US\$5.1 billion per annum to environmental degradation, if there are no serious mitigation measures and initiatives.

There is a general consensus that any development that does not take into consideration the environment will be self-defeating. Thus, national efforts to achieve the objectives of the 7-Point Agenda and attain the Millennium Development Goals (MDGs) must see the sustainable use of our environmental resources as an integral part of the country's development process.

The centrality of environmental sustainability to the MDGs is depicted in Table 1. For example, the Table demonstrates the importance of maintaining land and water resources while improving agriculture to reduce poverty. Also, it shows that reduction in

child mortality will be attainable only within the context of households' access to adequate water supply and sanitation. In the same vein, a major environmental consequence of climate change could be increased spread of vector-borne diseases and increase in climate-related disasters; thereby militating against efforts to combat malaria and other diseases. Those disasters could in turn reduce income, destroy the infrastructure for health and education and divert valuable resources from development to relief assistance. These interwoven linkages between the environment and the MDGs further demonstrate the need to take environmental issues into consideration in our development efforts.

Table 1. Environmental sustainability and the Millennium Development Goals



2. Key Environmental Threats

Nigeria is naturally well endowed and, in ecological terms, it is a land of extremes. In the south, lush forests (mangrove forest, fresh water swamp forest and rainforest) dominate the "natural" vegetation. This gives way to Guinea savanna in the middle belt, while savanna woodland and thorny vegetation dominate the semi-arid and arid regions of the north. Annual rainfall increases from north to south, from less than 600 mm in the north-eastern-most zone to more than 3000 mm in the southern-most part. Thus while rainfall is usually abundant and reliable in the south, it is generally inadequate and highly variable - spatially, seasonally, and from year to year - in the north. Consequently the carrying capacity of traditional farming and livestock practices vary from one zone to the other.

Nigeria's environment is, however, under increasing threat from natural disasters, such as drought, and human activities. There are already certain ominous problems with the environment and visible scars associated with the destruction of the natural resource base (land, water and air) upon which all life depends are being noted. The country's large population (about 140 million in 2006) and its rapid growth rate (about 3 per cent) are contributing to the process of environmental degradation.

The key environmental threats facing Nigeria can be captured broadly in terms of land degradation and air and water pollution. Land is by far the most important resource necessary for subsistence. Yet much of Nigeria's arable land is being sapped insidiously of its productive potential through overuse and inappropriate technologies. Rapid deforestation, resulting from multiple use of forest resources for human survival, is a major contributing factor to land degradation. The end result of deforestation and other agricultural activities, including intensive grazing, over-plowing and over-cultivation, is severe land degradation, usually referred to as desertification, particularly in the northern part of the country.

Fossil fuel use, particularly oil and gas exploration, has aggravated the problem of ecological damage in the Niger Delta. Similarly, indiscriminate and illegal mining for tin and columbite on the Jos Plateau and other mineral resources in many parts of Nigeria has left many areas of the country bare and unproductive.

There is also a growing nuisance of air and water pollution, associated with continued urbanization and industrialization in the country. As far back as 1986, when the country was flaring only about 17 million cubic metres of natural gas per year, it was estimated that gas flaring was responsible for an annual emission of about 2,700 tonnes of dust, 160 tonnes of oxides of sulphur, 5,400 tonnes of carbon monoxide and 27,000 tonnes of oxides of nitrogen into the atmosphere. Some of these gases have implications for global warming and climatic changes. Nigerians in general are increasingly being exposed to the hazards of highly polluted gaseous and dust emissions from industries and vehicles and dangerous industrial wastes that are constantly being discharged into their environment.

The impact of the above-mentioned environmental threats that Nigeria faces become more obvious when each is discussed in greater details. The key ones are deforestation and land degradation; drought and desertification; flooding; erosion; pollution (marine/coastal, industrial); urban decay and municipal waste disposal; climate change and other energy-related problems.

2.1 Deforestation and de-vegetation

As at 1977, the total area occupied by reserved forests in Nigeria was approximately 10 per cent of the total landmass. This is considerably lower than forest estate covers of at least 25 per cent that obtains in many other countries in line with international standards. The proportion is, however, reducing by the day as less than 1 per cent of forest areas cleared for domestic and commercial purposes get reforested. In the 1980s, about 400 hectares of forest and woodland out of every 1000 hectares suffered from deforestation while only 26 hectares were reforested on an annual basis (UNDP Nigeria, 1996). According to Food and Agricultural Organization (FAO), the remaining forest area in Nigeria will likely disappear by 2020 if the current rate of forest depletion continues unabated. The value of lost forest cover has been estimated at US\$750 million annually at 1989 prices.

The annual rate of deforestation of the woodlands averaged 3.5 per cent in the 1980 to 1990 period. For northern Nigeria alone, the annual deforestation of woodlands runs to about 92,000 hectares, while the whole country consumes about 50 to 55 million cubic metres of woods annually. The southern rain forest, which covers only 2 per cent of the total land area in Nigeria, is being depleted at an annual rate of 1.6 per cent (Salami and Balogun 2006). ***Nigeria has the highest rate of deforestation in Africa and loss of primary forest in the world (FAO 2005).*** Over 25,000 ha of the gazetted forest are being lost to de-reservation annually (Oyebo, 2006).

Within the last 30 years, about 43% of the forest ecosystem has been lost through human activity. Close to 96% of the original 20% forest cover has been cleared and only 2% of what remains is little undisturbed. This has resulted in massive loss of the very rich and diverse forest flora and fauna, including indigenous tree species. Large parts of the savanna are also being ravaged by man-induced desertification, causing ecosystem impoverishment and biodiversity loss.

A major contributory factor massive deforestation and devegetation is the almost total dependence of over 90 per cent of rural population in Nigeria on the forest for livelihood and economic survival. Fuelwood extraction, shifting cultivation and conversion of forest to agricultural land are some of the activities with the most serious impact on the forest resources in Nigeria. Other practices that are contributing to vegetation degradation in Nigeria include intensive grazing, persistent bush burning, and reduction in or absence of fallow periods, as well as extension of agricultural activities into less-favoured, often environmentally fragile areas.

The end result of deforestation, intensive grazing, bush burning, over-ploughing and over-cultivation is severe land degradation. In general, vegetation removal accelerates rainfall runoff and increases soil erosion, diminishing land productivity and aggravating local flooding. This partly forms the basis for the spectacular and destructive gully erosion that has laid waste vast areas in many parts of the country. Severe land degradation has also resulted in desertification.

2.2 Biological diversity depletion

Nigeria derives all her food and a broad array of medicines and industrial inputs from both wild and domesticated components of biodiversity. Nigeria has a considerable diversity of habitats, from savanna forest in the extreme north to freshwater swamp forest in the south. Several plant and animal species exist in the country. About 248 species of mammals are found in these various vegetation zones of Nigeria, while 274 are found in the forests. There is high diversity of primates which are important to be conserved.

The future of Nigeria's rich biological endowments is under threat from increasing degradation of the ecosystem stemming primarily from economic motives. Since the rate of replacement has not been commensurate with use, the number of threatened and endangered species is increasing. Uncontrolled logging and felling of trees are rampant and with increased pressure from hunters, poachers and bush burning, Nigeria's wildlife is declining. Animals that have recently disappeared to the neighbouring Cameroon include the cheetah, the pygmy hippopotamus, the giraffe, the black rhinoceros and the giant eland. World Atlas (1991) estimated that at least 50% or more gorillas are killed in Nigeria than born each year. Almost all surviving species of antelopes are threatened mainly due to over hunting. Leopards (*Panthera pardus*) that were common species are now rare, particularly because they are killed for the skins. There are about 2000 elephants remaining in Nigeria, the population are fragmented and declining due to poaching and to deforestation.

In all, about 10-12 species of primates, including the white-throated guenon species of primates and sclater's guenons, are under threat. An estimated 484 plant species from 112 families are also threatened with extinction as a result of habitat destruction and deforestation (FGN, 1997). Even birds, tortoises, monkeys, crocodiles, monitor lizards are not left out in the declining population. Wrapping leaves, chewing sticks, medicinal plants are rapidly facing extinction. There are 839 bird species recorded in Nigeria, but only six of these including three from montane rainforest, are believed to be threatened. In Cross River State alone, about 75 species of frog have been discovered but facing declining state because of deforestation.

The biodiversity of the marine environment has been under threat from the introduction of exotic species and destruction of mangrove communities that shelter a diverse marine community. In 1984, the creeks and lagoons of South-western Nigeria became infested with the prolific aquatic weed Water hyacinth, *Eichhornia crassipes*. This ornamental floating water plant, believed to have entered Nigeria through Porto Novo creeks (Benin Republic), now covers about 60km² and a distance of 300km of Nigeria's coastal waterways (CCA, 2001). Eutrophication of the lagoons due to nutrient enrichment by unprocessed fertiliser effluent is believed to be responsible for the prolific growth of the weeds which forms a mat covering the water surface thus making fishing and navigation almost impossible.

Another exotic species introduced into the Nigerian coastal waters is the Nypa Palm (*Nypa fruticans*) that is spreading fast in the eastern Niger Delta replacing the mangrove forests. The Indopacific Sea Urchin, *Temnopleurus toreumaticus* was previously unknown in Atlantic waters but was introduced into Nigerian waters through oil tankers from Pacific Ports, most likely as larvae in the ballast waters of the marine

tankers. They have now become major pests to artisanal fishermen in the estuaries in the eastern flank of the Niger Delta (CCA, 2001).

2.3 Drought and desertification

Drought and desertification are by far the most pressing environmental problems afflicting northern parts of the country. The visible sign of desertification, resulting from persistent drought and climatic change, is the gradual shift in vegetation from grasses, bushes and occasional trees, to grass and bushes and in the final stages, expansive areas of desert-like conditions.

It has been estimated that between 50% and 75% of Bauchi, Borno, Gombe, Adamawa, Jigawa, Kano, Katsina, Kebbi, Sokoto, Yobe, and Zamfara States in Nigeria are being affected by desertification. These states, with a population of about 35 million people account for about 35% of the country's total land area. In addition, seven adjacent states to the south are reported to have about 10% to 15% of their land areas threatened by processes of desertification. It is estimated that the country is currently losing 351,000 hectares of its landmass to desert-like conditions annually, and such conditions are estimated to be advancing southwards, in a haphazard manner, at the rate of about 0.6km per year¹.

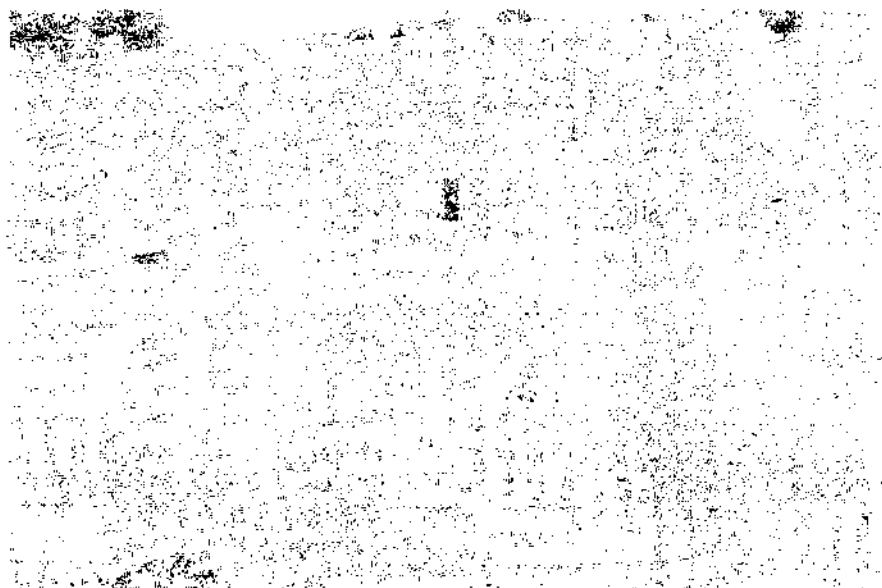


Figure 1: A typical desertified landscape

Desertification has resulted in the burial of some entire villages and major access roads under sand dunes in the northern portions of some states, particularly Borno, Jigawa, Katsina, Sokoto and Yobe states. While natural forces such as extreme and persistent climatic events play some causative roles, direct anthropogenic pressures such as intensive grazing, over-cultivation and deforestation have aggravated the impact of drought to re-intensify desertification process.

¹ This figure remains largely conjectural, as the country is yet to undertake a full environmental analysis of the situation using GIS and other techniques to ascertain the actual extent and severity of desertified lands in Nigeria.



Figure 2: A typical gully erosion site

Wind erosion is common in northern Nigeria where the vegetation is scarce, and causes frequent sweeping away of topsoil. Borno, Kano, Sokoto, Zamfara and Yobe States are the most vulnerable to wind erosion and its impacts in Nigeria.

In general, erosion results in the depletion of farmlands, loss of forest resources and reduction in agricultural outputs. It also results in loss of land resources for other developmental purposes, destruction of properties and social amenities, as well as loss of lives.

2.5 Land resources degradation

The cumulative result of deforestation, desertification, erosion and biodiversity depletion is massive changes in the ecological conditions (Figures 3 – 5) and land use in the country. Table 2 shows the pattern of land cover changes between 1975 and 2005 in Nigeria. The results of static land cover changes for the 30-year period show that disturbed forest increased by about 33%, extensive small holder rain fed agriculture by about 13% and flood plain agriculture by 123%. Forest plantation increased by 58% and rain fed arable crop plantation by 3000%. All these suggest intensification in southward movement of the grazing zone in the country. The increase in flood plain agriculture suggests intensification of cultivation within the Fadamas while other surrounding lands are already close to the climatic limit of cultivation. A 425% increase in the extent of sand dunes/aeolian deposits and the over 50% decrease in the area of undisturbed forest is a strong evidence of land degradation.

Table 2: Changes in some land use-land cover in Nigeria between 1975 and 2005

No	Land use type	Area (km ²) 1975	Area (km ²) 2005	Change 1975- 2005	%Change
1	Agricultural Tree Crop Plantation	824.15	1656.88	832.73	101.0
2	Alluvial	523.61	282.38	-241.23	-46.1
3	Discontinuous grassland dominated by grasses and bare surfaces	7614.72	1251.23	4902.51	64.4
4	Disturbed Forest	14677.70	19491.29	4813.59	32.8
5	Dominantly grasses with discontinuous shrubs and scattered trees	13053.77	12487.62	-566.15	-4.3
6	Dominantly shrubs and dense grasses with a minor tree component	118529.55	85020.98	-33508.57	-28.3
7	Dominantly trees/woodlands/shrubs with a subdominant grass component	154933.40	83281.15	-71652.25	-46.2
8	Extensive small holder rainfed agriculture	170837.55	192892.33	22054.77	12.9
9	Extensive Small Holder Rainfed Agriculture with Denuded Areas	447.88	10118.47	5700.58	129.0
10	Floodplain Agriculture	9671.81	21576.03	11904.21	123.1
11	Forest Plantation	1000.85	1581.24	580.39	58.0
12	Forested Freshwater Swamp	18564.71	16696.51	-1868.20	-10.1
13	Graminoid/sedge Fresh Water Marsh	5882.74	1136.51	-4746.22	-80.7
14	Grass Land	1196.74	8146.74	6950.00	580.7
15	Gullies	125.35	19070.48	18945.13	15113.2
16	Intensive row crops	3292275.97	373481.34	44253.37	13.4
17	Irrigation Project	148.85	1008.86	860.01	577.8
18	Livestock Project	51.02	139.65	88.63	173.7
19	Major Urban	1102.58	1362.37	259.79	23.6
20	Mangrove Forest	10157.12	10067.31	-89.81	-0.9
21	Minor Urban	958.69	4022.98	3064.29	319.6
22	Montane Forest	7900.02	8053.76	153.74	1.9
23	Montane Grassland	2502.27	3898.15	1395.88	55.8
24	Natural Water bodies/Ocean	6766.53	15588.36	8821.83	130.4
25	Rainfed Arable Crop Plantation	15.92	521.39	505.46	3175

26	Reservoir	1331.41	2901.16	1569.75	117.9
27	Riparian Forest	7506.46	5330.46	-2176.01	-29.0
28	Rock Outcrop	1445.15	2647.96	1202.81	83.2
29	Salt marsh/Tidal Flat	18.84	596.92	578.08	3068.37
30	Sand dunes/Aeolian	1032.77	5428.30	4395.53	425.6
31	Shrub/Sedge Graminoid freshwater Marsh/Swamp	17749.63	10251.68	-7497.95	-42.24
32	Teak/Gmelina plantation	624.44	1156.43	531.99	85.19
33	Undisturbed Forest	28022.42	13477.90	-	-51.90
				14544.52	
34	Canal		30.76	3076	
35	Mining Areas		61.15	61.15	

Source: Abbas, 2009

Figure 3: Ecological Zones of Nigeria in 1953

Ecological Zones - 1953 (after Keay 1959)

Sahel Savanna	Montane Region	Lowland Rain Forest
Sudan Savanna	Jos Plateau	Freshwater Swamp Forest
Guinea Savanna	Derived Savanna	Mangrove Forest and Coastal Vegetation

Figure 4: Ecological Zones of Ni9geria in 1976/78

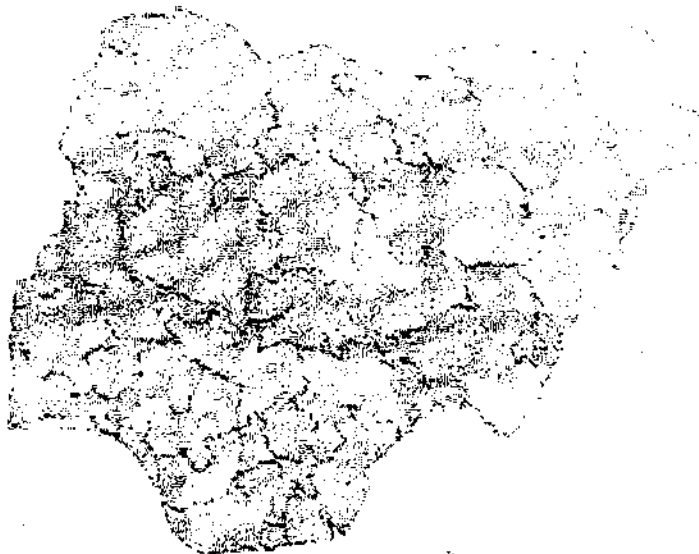
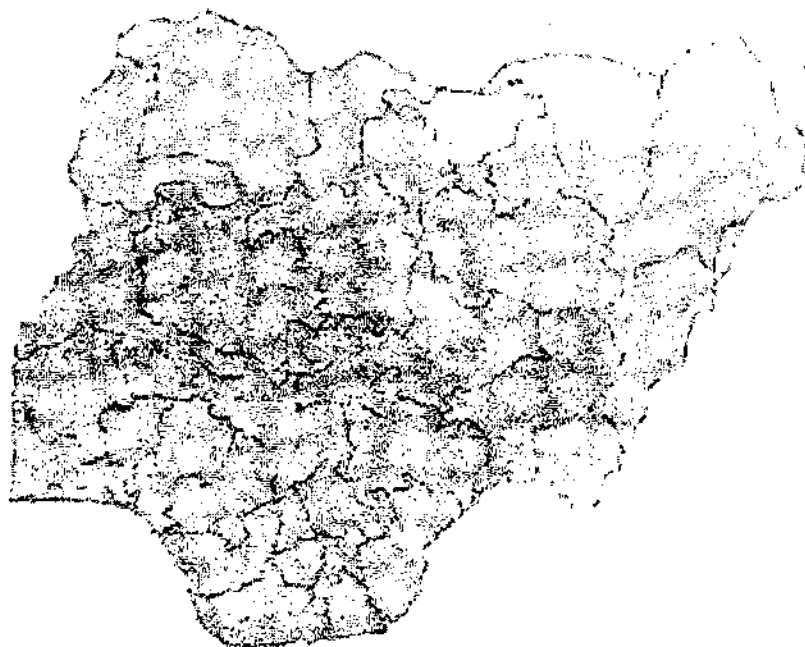


Figure 5: Ecological Zones of Nigeria In 1995



2.6 Oceanic Surge and Flooding

The Nigerian coastal zone is very low lying with nowhere exceeding 3 meters above mean sea level. With increasing human activities coupled with a number of natural forces, coastal and marine erosion and land subsidence have been recorded in the

coastal areas of Lagos, Ogun, Ondo, Delta, Rivers, Bayelsa, Akwa Ibom and Cross River states resulting in oceanic surging (Vision 2010 Committee, 1997). The overflow of the Lagos Bar Beach by the surging waves of the Atlantic Ocean, which has been recurring since 1990, presently constitutes a threat to prime properties in Victoria Island and its environs.

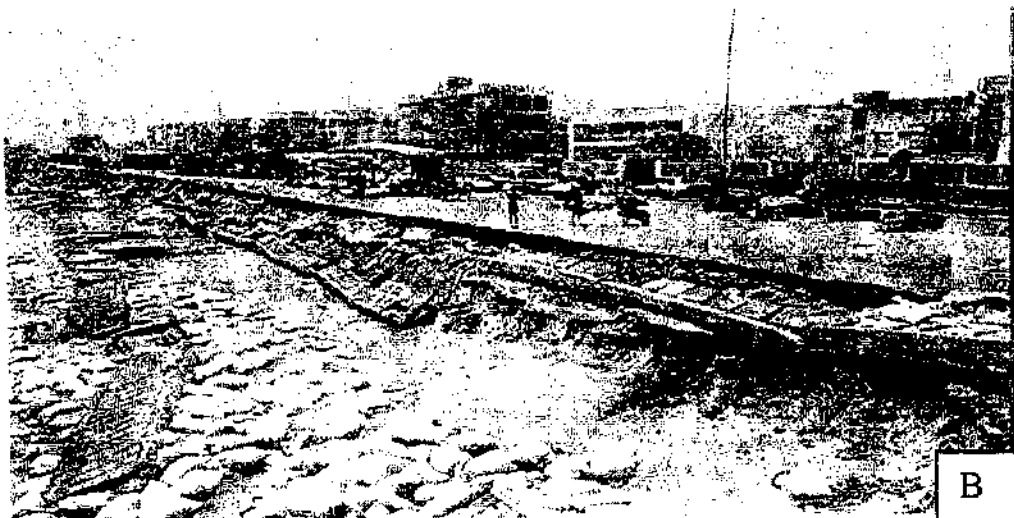
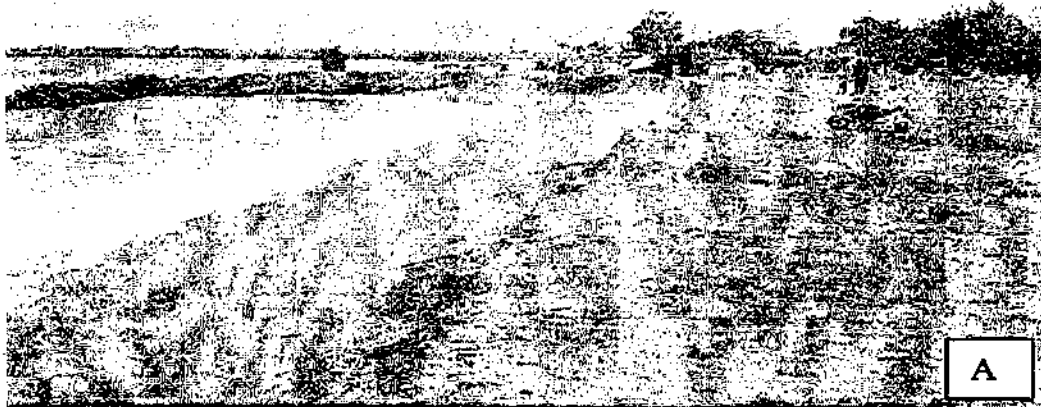


Figure 6: States of the Lagos Bar Beach (Ojo, 2008)

Flooding is a common occurrence in many parts of Nigeria. Generally, floods result mostly from heavy and high intensity rainfall, coupled with poor watershed management. For example, as a result of eight hours of heavy rains that occurred on 7 August, 2005 one of the the heaviest and worst floods in 40 years in Nigeria occurred in Jalingo (Taraba State). It resulted in the death of over 100 people, and the displacement of more than 50,000 others. More than 80 people were swept off when the bridge on River

Jalingo that they were using to cross from Jalingo to other parts of the State collapsed. Human activities such as unplanned rapid urbanization, blockage of river/drainage channels, land clearing for agricultural purposes, poor dam construction and deforestation may contribute to flooding. The most flood-prone areas in Nigeria include:

- Low-lying coastal areas of southern Nigeria where annual rainfall is quite heavy; such as Calabar, Warri, Port-Harcourt and Lagos. The adverse effects of flooding are more apparent when stormy weather coincides with high tides.
- The floodplains of the major rivers such as the Niger, Benue, Gongola, Sokoto, Hadejia, Katsina-Ala, Donga, Kaduna, Gurara, Ogun and Anambra, etc.
- The flat, low-lying areas around and to the South of Lake Chad which may be flooded during and even a few weeks after the rains.

Many urban centers including Dutse, Enugu, Ibadan, Kaduna, Kano, Lagos, Maiduguri, Onitsha, Owerri, Port Harcourt, and Sokoto have significant experienced flood episodes in recent times. In general, urban floods are more common in towns located on flat and low-lying terrain or where adequate provisions have not been made for surface drainages or drainages have been blocked by municipal wastes and eroded soil sediments.

2.7 Pollution

Nigeria suffers from different types of pollution. Main sources are land, marine or atmospheric-based. Point sources of pollution in Nigeria are primarily industrial discharges along with discharge from petroleum production, mining, and other energy exploration activities.

2.7.1 Air Pollution

The quality of air has deteriorated as a result of non-environment friendly activities and practices such as bush-burning and gas flaring. Almost any airborne substance can be a pollutant when it occurs in excess. Pollutants such as dust and smokes, and toxic substances such as lead, sulphur and nitrogen oxides, methane, carbon dioxide, vehicular emissions and domestic fires are common in Nigeria. Sulphur, resulting from gas flaring has often resulted in the deposition of acid rain that corrodes roofs of houses and contributes to the scorching of vegetation and acidification of soil and water resources. This phenomena has been observed in Akwa Ibom and Cross River States

2.7.2 Marine/Coastal Pollution

Major environmental problems facing the coastal/marine environment of Nigeria include water contamination and bathing beaches and degraded ecosystems (e.g. declining water quality, habitat degradation, loss of fishery resources and marine biodiversity and eutrophication). Related to these primary problems are other socio-economic and cultural issues notably declining incomes arising from loss of recreational and tourism amenities and loss of access to fish harvest.

Rapid urbanisation of coastal areas has exacerbated pressure on the their infrastructural facilities with the result that many facilities have fallen below acceptable standards due to inadequate financial resources, irregular maintenance and lack of control and enforcement measures. Sewage is directly discharged into coastal waters posing a risk of contamination not only to surface waters but also to ground waters because of the

relatively high water tables in the coastal zone. This has led to an increase in diseases associated with contaminated and stagnant waters such as diarrhea and malaria in the densely populated areas along the coast of Nigeria.

2.7.3 Industrial Pollution

Nigeria's push for rapid industrialisation and sustained socio-economic growth, in the absence of strict environmental monitoring, has led to the development of a manufacturing sector whose activities sometimes produce undesirable effects on the environment. Thus, with rapid expansion in industrial activities, the problem of environmental pollution problems has heightened in the main industrial cities of Lagos, Aba, Kaduna, Kano, Lagos and Onitsha. Among the states of the federation, Kaduna, Kano, Lagos and Rivers have been recorded as most polluted (World Bank, 1995).

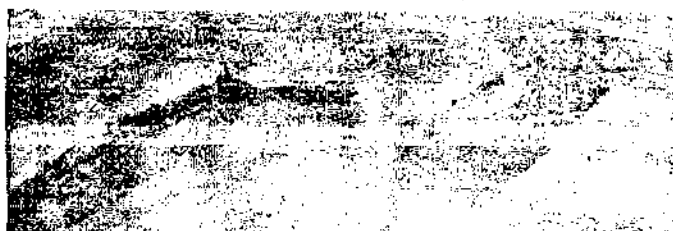
Environmental problems resulting from industrial pollution vary considerably in pattern and depend mainly on the type of industrial process involved, the scale of production, and the manner of handling the resultant waste products. Air pollution, for example, has been recorded in the neighbourhood of cement industries, while water pollution has been experienced in areas of operation of textile mills, tanneries, and petrochemical, as well as paints industries with untreated wastewaters discharged into streams and open drainages. Mining and its associated activities are also sources of considerable environmental damage to surface water, ground water and land. Indiscriminate mining for tin and columbite has left Jos and neighbouring areas in Plateau state bare and unproductive. Mining wastelands also exist in other parts of the country, especially, Adamawa, Bauchi, Borno Enugu, Niger, and Yobe states.

The top eight polluting industries in Nigeria are steel works, metal fabrication, food processing, tanneries, textiles, pharmaceuticals, petroleum refineries, and paints. In addition, there is a growing recognition that many persistent chemicals and unwanted by-products of industrial processes or combustion can have damaging impacts on human health as they are easily transported on ocean currents in rivers and groundwater, and washed out by rain. These substances accumulate in the food chain and may act as endocrine disruptors, suppressing immune systems and altering reproductive and developmental pathways.

Figure 7: A typical evidence of industrial pollution – Tower Aluminum Company, Lagos (Osibanjo, 2008)



Canal situated along BABS Animashaun road



The stream Canal just before Tower Aluminium

2.8 Urban Decay and Municipal Waste

About 40 per cent of the population of Nigeria lives in urban areas, and the rate is increasing rapidly. Urbanisation has both benefits and problems for humans and the environment. If well planned, urban centres generate economic growth and prosperity for themselves. However, if cities are not properly managed, they may generate major environmental problems that could impact negatively on development.

Urban environmental impacts stem from the use of resources, including land, water and energy; waste and wastewater treatment and disposal practices; and, both industrial and domestic uses of chemicals (UNEP, 2000). These problems already exist in Nigeria, and they are being compounded by other problems. In general, main urban environmental issues include liquid and solid waste management, unplanned and blighted settlement, air pollution from increasing motor vehicle use (most of which are poorly maintained and use leaded fuel), water pollution, poor urban transportation, urban land degradation, lack of open spaces and poor management of the urban informal sector.

The problem of solid waste disposal has become one of the most intractable environmental problems facing many cities in Nigeria. By 1989, an estimated 2.2 million tonnes of garbage per year was being generated in Nigeria, equivalent to about 20 kg of solid waste per capita. It was estimated that by the year 2000, Lagos metropolis alone was generating about 998,081 tonnes of solid waste per year. In general, the volume of solid wastes is overwhelming urban administrators' capacity to plan, evacuate and dispose wastes.

Most of the urban areas in Nigeria lack effective system of refuse collection. As a result, most urban households resort to open dumping of refuse, although a few engage private refuse collectors or burn or bury solid waste. The common arrangement, in the very few urban communities where a system is in place, is for waste management authorities to collect refuse from households and public containers on a regular basis. Unfortunately, the operation of the waste management authorities is inefficient and ineffective as evidenced by mounds of decomposing rubbish that is fast becoming part of the regular landscape some of the urban areas.

On the whole, solid waste disposal creates environmental problems in two main ways. First, much of it is not collected in major cities, and the rate of waste collection is generally between 30 – 50%. The remainder is usually burned or dumped haphazardly in illegal landfills or streets, where it creates health hazards and block drains, contributing to urban flooding. Secondly, because of the inability to sort waste at source, household and industrial wastes, including toxic ones, are often handled together, leading to soil and groundwater pollution (UNEP, 2000). In view of the environmental situation in the urban areas, Nigeria cities have been described as some of the dirtiest, the most unsanitary, and the least aesthetically pleasing in the world (Mabogunje, 1996).

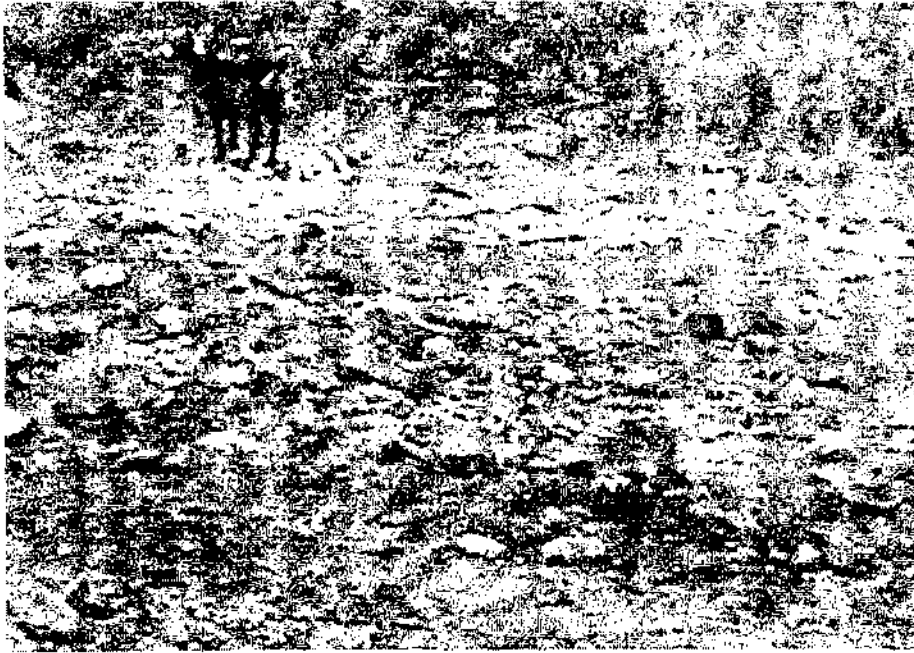


Figure 8: A typical dump site (Osibanjo, 2008)

2.9 Climatic Change and CDM

The fourth assessment report of the Intergovernmental Panel on Climate Change (IPCC, 2007) makes it clear that even if the Kyoto Protocol is fully implemented, the impacts of climate change will start being felt within the next two decades. Indeed, some impacts are already being felt. The first countries likely to be affected most by climate change are the poor countries, which will be struck by more climate change impacts and have less capacity to adapt to them. This is despite the fact that they have contributed little to the problem of global warming.

The IPCC recognises Africa as a whole to be "one of the most vulnerable continents to climate variability and change because of multiple stresses and low adaptive capacity" (IPCC 2007). Besides this, many African countries are heavily dependent on climate sensitive sectors, such as rain-fed agriculture. Issues like food scarcity, degrading lands and inequitable land distribution make the African continent particularly vulnerable. In addition, development challenges like high population growth rates, high prevalence of diseases such as HIV/AIDS and malaria, growing poverty, inadequate technological development and insufficient institutional and legal frameworks to cope with environmental degradation all make it even harder for Africa to cope with additional challenges like climate change (Sokona *et al.* 2001).

Nigeria will not be an exception. Although Nigeria's contribution to the total volume of global greenhouse gas emissions is low, (0.3 per cent in 1996 (UNDP, 2000)), the amount has been increasing. The total carbon dioxide emissions increased from 68.1 million in 1980 to 83.3 million of carbon dioxide in 1996 (World Bank, 1999). The climatic changes that may occur as a result of global warming may however have significant implications to Nigeria. Already, there is an indication of an increase in the mean

temperature conditions in the country (e.g. Figure 9). With a one-meter sea level rise, for example, Nigeria could lose over 18,000 square kilometres of coastal land, and well over 3.8 million people affected (WMO, 2000).

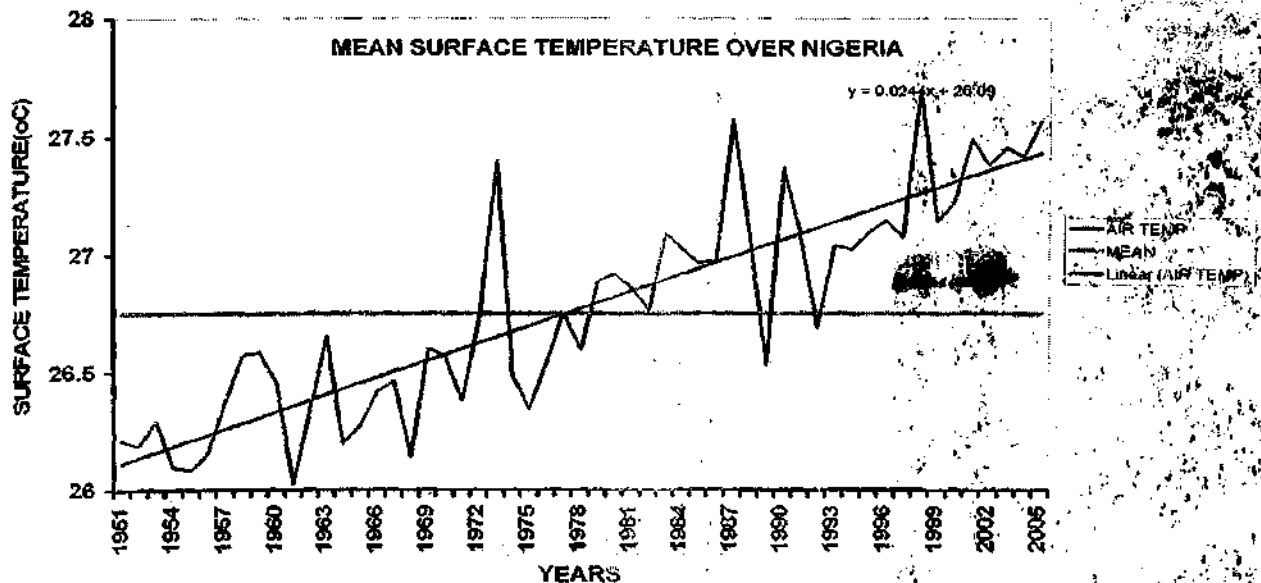


Figure 9: Mean surface temperature over Nigeria (Ojo, 2008)

2.10 Niger Delta Environment

The Niger Delta environment comprises the southernmost extension of the Nigerian coastline abutting the Gulf of Guinea. The region is traversed by several rivers, their tributaries and distributaries, numerous tortuous creeks and rivulets that contribute to its difficult terrain. There is a close correlation between micro-relief and ecology comprising mangrove and freshwater swamps, and moist lowland rainforests. These fragile ecosystems are amazingly rich in habitat, species and genetic biodiversity. Prominent among the important wildlife are the elephants of Andoni, the chimpanzees of Okoroba, the red Colobus monkeys of Gbaraun, and the grey parrots of Igoria and Amassoma.

The Niger Delta mangrove is estimated to be the largest in Africa and the third largest in the world; its fresh water ecosystem is the most extensive in the west and central African coastal environment. The region equally contains some of the remnants of the pristine rainforest vegetation in Africa. There are also pockets of Barrier Island forests dotting the Niger Delta coastline. Although yet unrecognised, the Niger Delta is of the Pleistocene forest type and the centre of endemism of a wide array of biodiversity. The biogeography of the Niger Delta indicates that it is a transitional zone between the upper and lower Guinea forests and thus has disjunct species affinity to both zones. However, there is a greater faunal affinity to the lower Guinea zone than the upper.

Prior to oil and gas exploration and exploitation, the Niger Delta is by virtue of its location, has been consistently susceptible to flooding, siltation and occlusion, erosion and shortage of land for development (UNDP, 2006).

Flooding is widespread in the Niger Delta because of low relief, reduced hydraulic capacities of water channels and high rainfall. Seasonal flooding occurs in the freshwater swamp forest zone during high floods, induced by local rains and releases at peak flood from upstream dam spillways.

Riverbank and coastal erosion are prevalent in the region, resulting in the displacement and forced relocation of many communities, and destruction of public facilities, houses and other economic assets. While riverbank erosion is caused by river flood waters, coastal and brackish water zones are eroded by the combined action of high tides and waves. In some of the larger settlements, there have been attempts to control this erosion, but the problem remains acute in many large settlements and in most small settlements.



Figure 10: A typical coastal flood

The sluggish nature of the river meanders in the Niger Delta has encouraged the **siltation** of many river channels and narrow creeks. This in turn increases the rate of filling up and the growth of aquatic plants in the fresh water swamps. The weeds **occlude** the navigable section of waterways and hamper fishing.

Niger Delta suffers from **shortage of land for development**, because of the scarcity of dry and relatively well-drained land in the region especially in the Barrier Island Forest, Mangrove and Freshwater Swamp Forest zones. This has made housing and settlement development very difficult and costly. The dynamics of flood and tidal movement further reduce available land space, creating the need for many communities to engage in uncontrolled land reclamation with some negative environmental impacts. The commencement of oil and gas exploration and exploitation about half a century ago, has brought additional environmental problems associated with canalization, oil spillage, gas flares, land subsidence, depletion of forest resources, riverbank and coastal erosion, and so on.

Canalisation, resulting from attempts by oil companies to construct canals to shorten travel time and improve access to production facilities has caused saltwater intrusion

into freshwater zones, and destroyed ecological systems. The increased accessibility resulting from canalization has aggravated illegal logging activities with adverse environmental consequences. The canals have also provided access for water hyacinth to invade swamps and waterways and so impede navigation.

With the expansion of oil exploitation, the incidence of *oil spills* has increased considerably in the region. Available records show that a total of 4,835 oil spills occurred between 1976 and 1996 and approximately 2.5 million barrels of oil were spilled on the environment. Out of this amount 77% was not recovered. Approximately 6%, 25% and 69% respectively were spilled on land, swamp and offshore environments. These oil spills have degraded the forest and depleted aquatic fauna in a number of localities. In 2007 alone, 553 oil spills were reported by NOSDRA.

Gas flaring remains a major issue in the country. Nigeria currently flares about 95% of associated gas because of limited local market and the lack of infrastructure. In addition to contributing to localized air and thermal pollution with adverse consequences for biodiversity and local climate, gas flaring amounts to a monumental waste of valuable resource.



Figure 10: A typical gas flare

There are indications that the extraction of large quantities of oil and gas from the region is continuing to cause *subsidence*. Land subsidence is suspected to have occurred in Molume and Bonny and in other parts of the central delta axis.

Oil exploration has increased the rate of illegal logging and further worsened the rate of *deforestation* and *biodiversity loss*. Extensive deforestation has accentuated the inflow of eroded materials deposited by the major water bodies, disturbing aquatic animals in particular.

Deforestation, canalization and subsidence, have worsened erosion problems. In addition, oil and gas activities have also contributed to the increasing menace of *erosion* through the construction of shore-crossing pipelines, jetties and moles.

3. ISSUES AND CHALLENGES²

In the country's endeavour to utilize its environment for socio-economic development, the issues of sustainable use and conservation of natural resources to continue to meet the need of the current generation without jeopardising the chances of the future or coming generations are critical. In this regard, it is imperative to check against environmental degradation (degradation of air, land and water) and ensure that the various sectors of Nigeria's development take cognizance of the imperative to mainstream environment into their development programmes, projects and initiatives. This calls for the need to see environment as a cross-cutting development issue and ensure that our environmental resources are properly valued and accounted for in our development process.

The future economic growth of Nigeria will continue to rely on its natural resource base, including oil. To this end, a number of priority environmental issues that must be properly tackled stand out. They include:

- Sustainable management of natural resources
- Harnessing of natural resources
- Climate change
- Land degradation and desertification
- Waste management
- Pollution
- Environmental hazards and disasters
- Urban decay
- Non-integrated coastal management
- Weak environmental governance
- Inadequacy of environmental education and awareness
- Dichotomy between environment and growth, and environment and poverty alleviation
- Limited private sector participation in environmental management

Addressing these issues and understanding the trade-offs between present and future consumption of resources have to be carefully analyzed. This raises a number of challenges that must be overcome. The main challenges include:

a) **Sustainable management of natural resources:** Environment-unfriendly agricultural practices such as large-scale deforestation and land clearing, nutrient mining, excessive irrigation water supply, inappropriate use of agrochemicals and fertilizers, have resulted in alteration in vegetation cover, soil degradation, as well as distortion in drainage system, loss of biodiversity, pollution, increase incidence of disease vectors and the like in many parts of Nigeria.

² The remaining part of this paper draws heavily from the interim report of the Vision 2020 Technical Working Group on Environment and Sustainable Development, which the author coordinated.

Poor forestry and afforestation practices, inappropriate fishing practices and poor livestock practices are contributing to a high rate of natural resource depletion. Poor forestry and afforestation practices result in increased risk of wild fire, invasion of alien tree species, and the lowering of the surrounding water-table. Inappropriate fishing practices such as over fishing, the use of Gammalin 20 etc., explosives and jetties, result in poisoning of the marine food web and damage to the substrates, acute decline of certain species of fish, increased coastal sedimentation, downstream eutrophication etc. Uncontrolled and poor livestock practice results in overgrazing and disruption of the ecological system, soil degradation, fall in water level of aquifers, pollution of surface water bodies, invasion of alien pests and disease agents, conflicts between farmers and pastoralists; etc

In the area of water resources development, uncoordinated dam construction and the inundation of river valleys have invoked a complex range of channel responses, culminating in increased land degradation and loss of biodiversity, reduction in peak flows and water storage capacity of many reservoirs, downstream of the dam. The general failure to adopt best practices in solid mineral development has resulted in aggravated environmental problem, in particular deforestation and general land degradation as well as pollution

Problems with energy development and consumption result from oil spills, gas flaring and deforestation. Nigeria continues to suffer the effects of oil spills, as well as air pollution from the flaring of gas which occurs during the exploitation of oil. The indoor air pollution from unvented bio-fuel cooking stoves is probably a major cause of respiratory illness in many parts of Nigeria. Reliance on biomass (especially in the form of charcoal) also encourages land degradation.

b) Environmentally Sound Technology: The exploitation of natural resources, consumption of energy, production processes and generation of environmental pollution, wastes and degradation depend on the types of technology adopted. Global experience also shows that all of the aforementioned features usually increase with rising rate of gross national product. However, the competitiveness of nations is now largely determined by the production and export of environmentally friendly products and services.

A very significant proportion of the technology used in the country is imported and not commonly environmentally unfriendly, yet, Nigeria's transition to sustainable development is imperative. Sustainable development can only be achieved by the decisions and actions of Nigerians on the basis of its own interests, needs and priorities including its responsibilities to the regional and wider international communities. The challenge then is to adopt and use environmentally sound technologies (ESTs), whether exogenously or endogenously developed because they will contribute significantly to productivity and the sustainability of resources through renewable-energy generation, pollution control, and waste reduction.

c) Climate change: Climate change is a challenge for four main reasons:

- The effects of the change are already manifesting in increasing extreme climatic events particularly storms, flooding and rising temperatures as well as altered climatic and weather regimes. These are creating many other effects such as declining productivity of rain-fed agriculture and relocation of populations with all

its consequences. In the long run all the sectors of the economy could be severely impacted with huge losses including life. This would slow down the pace of development in the country as many economic activities are climate sensitive. There could be shift in the boundaries of ecological belts.

- The requirement for coping with the change is enormous: basic infrastructures must work for the country to effectively adapt to the visible consequences of the change. This is estimated to be in many billions of US dollars (HBF 2008). The Stern Review on the Economics of Climate Change (2006) estimates that the amount of money needed for deforestation avoidance or prevention would be between \$5 and 10 billion annually for all developing tropical countries with forest resources among which Nigeria is crucial. Indeed, it can be anticipated that coping with the well established change would require measures that are beyond the capacities of individuals, communities and even governments in the country.
- Climate change would *not* stop in the foreseeable future even if all the known factors can be put under control. This makes it a particularly precarious phenomenon of all time for the country.
- Nigeria may become a dumping ground for environmentally unfriendly products. For example, as the US government sets emission standards, many of the Sport Utility Vehicles (SUVs) in the country may be outlawed. Many of these could find their way into Nigeria.

d) Land degradation and desertification: Major development and environment problems affecting many parts of the country result from a combination climatic variations and unsustainable human activities.

The major challenges faced in attempts to combat land degradation and desertification include:

- meeting the energy, water, food and other needs of the people living the affected areas, particularly in view of scarce natural resources and pervasive poverty;
- influencing the socio-cultural perception of the people concerning the root causes of drought and desertification to enable them develop appropriate adaptation strategies and coping mechanisms;
- availability of correct information on the extent and severity of land degradation and desertification;
- unpredictability of drought and determination of the impact of climate change on desertification intensity;
- limited political will to mainstream the National Action Plan (NAP) to combat desertification and mitigate the impact of persistent drought and other sustainable land management initiatives into national development programmes;
- ineffective implementation of planned initiatives in the medium-term sector strategy;
- multiplicity of agencies responsible to combat desertification and non-existence of a national coordinating body to tackle the problem in a coherent manner devoid of duplication of efforts;
- inadequate financing for sustainable land management to combat desertification;
- inappropriate management mechanisms and failure of regulatory failure;

- inadequacy of information for education, policy advocacy and planning as well as monitoring of trends and impact of the twin environmental problems of drought and desertification; and
- continued predominance of subsistence agriculture characterized by low inputs and the attendant low output that poses a serious problem of food security, as well as poor land use practices, poor land use planning and inadequate land characterization and land capability classification.

e) **Waste management:** Poor waste management that is prevalent in Nigeria is inimical to the sustenance of the environment as well as the overall economic development of the country. Some of the challenges of sustainable waste management include:

- Raising the low level of awareness of the implications of waste on the health and general wellbeing of the citizens
- Strengthening waste management institutions to cope with increasing volumes of waste especially in urban areas. This will involve improvement in funding, as well as ensuring strict enforcement of laws on waste management.
- Domestication of Multilateral Agreements (MEAs) on waste already ratified by the country. Such agreements include the Basel, Stockholm, and Rotterdam Conventions.
- Controlling indiscriminate dumping of industrial wastes on land, water and air.

f) **Pollution:** There are three dimensions to the challenge of environmental pollution in Nigeria.

- Poor understanding of the sources of specific pollutants
- Acquiring appropriate technology for waste management
- Developing appropriate legal framework, institutions and human capacity to bring the pollutants to acceptable levels that conform to international standards.

g) **Environmental hazards and disasters:** Despite their devastating impacts on many sectors of the economy and the livelihoods of the people, managing environmental hazards and disasters faces a number of challenges. They include:

- Lack of comprehensive annotated checklist of existing/potential nation-wide, regional and local environmental hazards and disasters, their effects on man and mitigation/control protocols;
- Non-establishment of early warning systems for the purpose of detecting the initial effects of environmental hazards and disasters and utilizing the indicators as precursors to portray the manifestation of future full-scale EHS impacts;
- Inadequate human capacity for the effective prediction, mitigation and management of environmental hazards and disasters;
- Limited research and documentation of apparent and potential environmental hazards and disasters and their impacts on the ecosystem, human health and resources; and
- Inadequate equipment, materials and other resources to institute timely intervention measures including rescue operations, medical/social care and rehabilitation of victims.

h) **Urban decay:** Major challenges are:

- High rate of urbanization (Nigeria ranks among the most urbanized countries in the world with the rate projected to increase from 48.2% in 2005 to 56% in 2015). The pace of urbanization increase has been such that maintenance of modest environmental standards inevitably had to lag behind.
- Poor urban planning - most urban areas are in a state of squalor and overcrowdedness characterized by decrepit structures, poor sanitary conditions, overcrowding, under-provision of amenities and general deterioration of the urban environment. The functionality of most urban areas is thus reduced in addition to exerting adverse impacts on households, macro-economic performance and social well-being. This situation poses a major challenge to economic growth and sustainable development.

i) Non-integrated approach to coastal management: Nigeria's coastal region suffers degradation from diverse of human activities, particularly oil exploration and exploitation, agricultural and industrial development. Attempts to address critical environmental problems have been mainly piece meal. The main challenge for the sustainable management of the coastal and marine environment is to put in place an integrated approach that will address the issues.

j) Weak environmental governance: Environmental governance is the sum of organizations, policy instruments, financing mechanisms, rules, procedures and norms that regulate the processes of environmental protection. It is about how decisions are being made, who is responsible, how they carry out their mandate, and how they are accountable.

Although Nigeria has been a party to a number of international high-powered gatherings, agreements and commitments, little progress has been achieved in improving the environment and in pursuing sustainable development. In general, environmental trends continue to be negative and the promise of significant financial resources to address the challenges has not materialized. Key among the reasons is weak and fragmented environmental governance. Many of the institutions dealing with environmental issues adopt sectoral approaches. This has led to a number of overlapping functions that are usually conflicting. The institutions are generally weak, under-funded and ineffective in their core functions. Above all, there is limited coordination of their activities. They need to be strengthened with renewed mandates and improved funding for an effective and functional environmental governance structure in the country.

k) Inadequate environmental education and awareness: Nigerians are poorly aware of their environment and the damages being done to it through various activities like bush burning, littering/open dumping of human waste, polluting rivers with sewage among others. Also the changing climatic patterns and their increasingly grievous consequences are little appreciated. Moreover, there is no established environmental protocol or information system for Government Executives, parents, teachers and the youth, to enable them access environmental information. The current provisions in national educational curricular, as well as R&D programmes are inadequate in providing environmental awareness. In addition, there is the challenge weak environmental legislation and enforcement to coordinate environmental planning and action.

l) Dichotomy between environment and growth, and environment and poverty alleviation: Environmental issues and concerns are lowly rated in national priorities. The fact, therefore, is that over time environmental degradation and intractable poverty have become more complex. Alleviating poverty and protecting the environment for sustainable development is not only necessary but also imperative. For sustainability, there is the need to maintain balance between (i) maintaining a constant natural capital stock and environmental "sink" capacity and (ii) improving the quality of life through poverty alleviation.

m) Limited private sector participation in environmental management: A prosperous economy depends on a well-defined and functional market. But for environmental resources, the market forces are not functioning well and this is one of the reasons for environmental degradation. The private sector as a major player in the market forces must therefore be adequately involved in environmental management.

Factories for instance, normally release their effluents into the environment (e.g. streams used for bathing, drinking or fishing); thereby reducing the quality of the environment. These effects do not enter into the private calculations of the firms. There is therefore a need to improve the level of private sector participation in environmental management to take economic responsibilities for damages done to the environment. This would mean establishing a framework for proper environmental valuation of the activities of the private sector. The cost of environmental mitigation needs to be incorporated into the capital outlay as part of the Corporate Social Responsibility (CSR) of every private establishment.

4. OPPORTUNITIES

The management of the environment for the sustainability and rapid economic development also provides the country a number of "win-win" opportunities. These include:

a) Green jobs and carbon trading: To mitigate and adapt to the climate change, attention would have to shift to technologies and practices that are 'clean' and environmentally friendly particularly with respect to energy sources. In this way new jobs would be created in both the public and private sectors. CDM projects such as generating energy from renewable sources like biomass and solar as well as the use of efficient stoves would attract more investments which would create jobs. Already, many young people are involved in provision of solar panels at the small scale.

Trees are important in the environment for many life-support processes. As the awareness of their significance in addressing climate change becomes more appreciated, more and more hectares of land in the country would be grown to trees creating jobs in the forestry sector.

b) Waste to wealth: Effective waste management could provide opportunities of turning waste to wealth. This is in the sense that waste management will not only be a source of revenue, but will also be utilized as raw materials for organic fertilizers and biogas domestic. Further more, waste could also be utilized for generating carbon credits.

c) Efficient use and conservation of natural resources: Efficient management of natural resources is an essential component of sustainable development and a stable, secure and prosperous society. Rural populations in several parts of the country retain a basic reliance on natural resources that directly supply a wide range of their needs and often display a remarkable knowledge of these resources. The sustainable use of the resources would make substantial contributions towards adaptation to climate change, and protection of watersheds. Judicious and coordinated harness of wild and domesticated biodiversity will supply food, medicines and wealth to the population. Similarly, if the varied energy sources are properly harnessed, a steady supply of electricity can be guaranteed. Putting an end to gas flaring has significant environmental and economic benefits.

d) Promotion of best management practices: Best practices are successful development management initiatives which (i) have a demonstrable and tangible impact on improving people's quality of life, (ii) result from effective partnership between the public, private and civic sectors of society, and (iii) are socially, culturally, economically and environmentally sustainable. They are usually promoted and used as a means of (a) improving public policy based on what works; (b) raising awareness of decision-makers at all levels and of the public of potential solutions to common social, economic and environmental problems; and (c) sharing and transferring knowledge, expertise and experience through networking and learning. In the promotion of environmental sustainability for Nigeria, the documentation and dissemination of environment "best practices" that are innovative or creative, replicable, sustainable, relevant, participatory and with impact will be critical, especially in this era of "green economy".

e) Development of ecotourism: With such a large land mass, which stretches from the Sahel to the Atlantic coast, and harbours diverse people and cultures, Nigeria has the potential to develop as a significant tourist destination. The country has many natural and man-made attractions, potentially large domestic markets, access to primary foreign markets, and a small, but expanding tourism services sector, that should form the basis of a viable tourism industry. However, many areas of the tourism resource base are both fragile and irreplaceable. This calls for mainstreaming of ecological sustainability in the tourism industry. The pursuit of ecotourism will provide a good opportunity for the tourism sector in Nigeria to also encompass the principles of economic and socio-cultural sustainability. Economic sustainability will ensure that the tourism industry is economically efficient and that resources are sustainably managed. Social and cultural sustainability will ensure that the development of the sector increases people's control over their lives, is compatible with the culture and values of people affected by it, and maintains and strengthens community identity.

f) Effective wetland management: A number of opportunities exist in efforts to sustainably manage wetlands and waste in the country. They include:

- Creation of a wetland mitigation bank to mitigate impacts from any activity. Credits generated and used by the bank sponsor or sold to another party can be used to offset impacts to wetlands that occur in other locations.
- Innovative wetland restoration through which sustainable production of non-timber products can be grown.
- Converting degraded land in the inland valleys and watersheds to farm lands.
- Sustainable creation of wetlands in coastal areas to support small and medium enterprises.

- Increasing Ramsar site to provide opportunities for ecotourism and international cooperation for the wise use of wetlands.
- Developing new techniques for managing wetlands.
- Using constructed wetlands for waste water treatment.
- Using constructed wetlands to provide ground water recharge.
- Reducing the effect of flooding along rivers and streams through eco-engineering practices.
- Conservation and restoration of large riparian corridors, floodplains and mangroves to serve as nursery reservoirs.
- Development of indigenous biotechnology that can be applied in the restoration of wastelands.
- Using degraded or waste lands to grow bio-energy products.
- Integration of the National Wetland Policy with other strategic and planning processes.

g) Innovative technological development from natural products: The country's natural resources have large potentials for propelling development. The main challenge is to develop appropriate technologies to convert them into valuable finished products.

h) Industrialization, trade and investment opportunities: Nigeria still has a number of globally significant biological resources that can be transformed into products, which could form the basis for some industrial expansion. This provides a good opportunity for the private sector to partner with government to explore the trade and investment potentials.

i) Foreign exchange earning through exports: In the context of carbon trading, sustainable management of natural resources, particularly the forest provides a good opportunity to earn foreign exchange.

j) Facilitating the emergence of environment advocacy organizations: Non-governmental organizations (NGOs) have been active in keeping environmental issues in the front burner of public discourse. With good political will, a well-formulated integrated approach to sustainable management of the environment will include building partnerships with NGOs, and using them as environment advocacy groups.

k) Enhanced Research and Development (R&D): Sustainable environmental management would trigger off the following opportunities that could accelerate the rate of research for development in the country:

- Capacity building and training to produce personnel specialised in environmental management.
- The development of generic methodologies for addressing environmental problems.
- The development of indigenous technologies and domestication of conventional ones.
- The development of a practical and cost effective Environmental Management Plan and veritable implementation strategies.
- The development of the knowledge base necessary to engineer stable management schemes for environmental problems.
- The development of appropriate Environmental Training Manual.

- Encouragement of Participatory Research and Development where other stakeholders contribute to the process.

l) Engagement of development partners for technology transfer: Nigeria can take advantage of international opportunities to complement her efforts in pollution control. This can take the form of bilateral agreements on technology transfer for pollution management. A number of countries have developed pollution control technologies from which Nigeria can domesticate. The bilateral agreement could involve staff training exchange programmes and cooperation to develop technologies to control specific pollutants.

m) Urban renewal: The country is urbanizing at a very rapid rate, the consequence of which is the emergence of urban slums and associated environmental problems. Promoting urban environmental sustainability in the country provides a good opportunity to implement an urban renewal programme for sustainable economic development.

n) Establishment of Environmental Information System: A major problem in evaluating the environment of the country is the paucity of relevant data. Environmental sustainability requires that a functional environmental information system, which is imperative for the proper monitoring of and reporting on the state of the country's environment, is put in place.

o) Coordinated and participatory approach to environmental management: Environmental management remains largely sectoral. This creates overlapping of function and duplication of efforts with little achievement. There is a need to streamline environmental management concerns in the country.

p) Integrated Ecosystem Management: Sustainable management of the environment requires an integrated approach rather than the piecemeal initiatives that are currently the norm. Adopting an integrated ecosystem management would provide a strategic way to handle environmental challenges in a more coherent manner. The adoption of this approach would mean seeing the various parameters of the environment as interrelated.

5. NATIONAL EFFORTS TO ADDRESS ENVIRONMENTAL ISSUES AND CHALLENGES IN NIGERIA

Government has taken the issues of environmental degradation seriously and various national efforts have been put in place at all levels of governance to promote environmental sustainability in the context of national development. These efforts can be captured under (i) policy and institutional, (ii) legal/regulatory and (iii) special initiatives and actions, all of which are aimed at enabling the country to:

- Ensure a quality environment conducive for good health and well-being of fauna and flora.
- Promote sustainable use of natural resources.
- Restore and maintain the ecosystem, ecological process and preserve biodiversity.
- Raise public awareness and promoting understanding of linkages of the environment.

5.1 Institutional/Policy - Since 1988 when Federal Environmental Protection Agency was established, with the statutory responsibility for overall protection of the environment, the institutional and policy framework has received increasing attention from the government. Following the step of the federal government, each state has established its own State Environmental Protection Agency (SEPA). In 1999 a Federal Ministry of Environment was created, bringing together under one administrative set up all branches, departments and units of the federal government that deal with respective aspects of the environment, including FEPA and the former environmental health unit of the Federal Ministry of Health (FMOH). It later metamorphosed into the Federal Ministry of Environment, Housing and Urban Development in 2007. In addition, specific Agencies have been created to provide more focussed attention to some specific environmental problems. They include the National Oil Detection and Response Agency (NOSDRA) and National Environmental Standards and Regulations Enforcement Agency (NESREA), which were created respectively in 2006 and 2007.

At the policy level, the 1989 National Environment Policy was revised in 1999. In addition, **specific policies and action plans** have been put in place with respect to:

- (i) **drought and desertification** (National Policy on Drought and Desertification; Drought Preparedness Plan);
- (ii) **erosion, flood control and coastal zone management** (National Policy on Erosion, Flood Control and Coastal Zone Management);
- (iii) **environmental sanitation** (National Environmental Sanitation Policy, National Environmental Sanitation Action Plan, National Policy Guidelines on (a) Solid Waste Management, (b) Market and Abattoir Sanitation, (c) Excreta and Sewage Management, (d) Sanitary Inspection Premises and (e) Pests and Vector Control);
- (iv) **forestry** (National Forest Policy);
- (v) **biodiversity protection** (National Biodiversity Strategy and Action Plan);
- (vi) **medical waste management** (National Healthcare Waste Management Policy/Action Plan and Guidelines - under preparation);
- (vii) **state of the environment reporting** (The first State of the Environment Report that will be used for policy monitoring is under preparation).

5.2 Legal and regulatory measures

Many laws and regulatory measures have been put in place to promote sustainable environmental management in many sectors of the economy. Some of the critical laws include:

- (i) Federal Environmental protection Agency Act – retained as Cap F10 LFN 2004, but repealed in 2007 by the NESREA Act 2007, which is being developed into the National Environmental Management Bill.
- (ii) Environmental Impact Assessment Act – retained as Cap E12 LFN 2004 (sets out the general principles, procedures and methods of Environmental Impact Assessment in various sectors).
- (iii) Harmful Waste Act – retained as Cap H1 LFN 2004 (prohibits the carrying, depositing and dumping of harmful waste on land and territorial water of Nigeria).
- (iv) National Park Service Act – retained as Cap N65 LFN 2004 (for conservation and protection of natural resources (wildlife and plants) in national parks).
- (v) Endangered Species (Control of International Trade and Traffic) Act- retained as Cap E9 LFN 2004 (conservation of wild life and protection of threatened and endangered species).

- (vi) National Oil Spill, Detection and Response Agency (NOSDRA) Act.
- (vii) National Environmental Standards and Regulations Enforcement Agency (NESREA) Act.
- (viii) Other laws that indirectly environmental issues include:
 - Water Resources Act – retained as Cap W2 LFN 2004;
 - Agriculture (Control Importation) Act – retained as Cap A13 LFN 2004;
 - Immigration Act – retained as Cap H 11 LFN 2004;
 - Exclusive Economic Zone Act – retained as Cap E17 LFN 2004;
 - Oil Pipeline Act - Cap 07;
 - Oil Terminal Dues Act – Cap 08;
 - Petroleum Act – Cap P10;
 - Associated Gas Re-Injection Act – Cap A28

National regulatory measures that have been put in place include:

- (i) National Environmental Protection (Effluent Limitations) Regulations S. 18 of 1991 (to ensure the installation of antipollution equipment for the detoxification of industrial effluent chemicals discharges).
- (ii) Environmental Guidelines and Standards for the Petroleum Industry in Nigeria 2002 - seeks control and prevention of pollution from petroleum operation.
- (iii) Mineral Oil Safety Regulations 1997 – to ensure that oil and gas operators provide necessary safety materials to their employees.
- (iv) Petroleum Drilling and Production Regulation 1969 – regulates the licensing of oil exploration, prospecting and mining.
- (v) National Environmental Protection (pollution abatement in industries and facilities generating wastes) Regulations s.19 of 1991 – regulates the release of hazardous substances into the ecosystem.
- (vi) National Environmental Health Practice Regulations 2007

To put most of the national environmental challenges into their global perspectives, Nigeria is a party to a number of Multilateral Environmental Agreements (MEAs) including: (a) Convention on Biological Diversity; (b) Protocol on Biosafety to the Biodiversity Convention (the *Cartagena Protocol*); (c) Framework Convention on Climate Change (UNFCCC); (d) Protocol to the UNFCCC (Kyoto Protocol); (e) Convention to Combat Desertification; (f) Convention for the Protection of the Ozone Layer (1985); (g) Convention on International Trade on Endangered Species (CITES)

5.3 Special Initiatives and Actions to Combat Environmental Degradation

These are being undertaken to address (i) environmental degradation; (ii) Drought and Desertification Control; (iii) erosion, flood and coastal zone management; (iv) pollution and waste management; (v) environmental health and sanitation; (vi) climate change; (vii) oil and gas sector monitoring; and (viii) regulations and standards enforcement. Details about these initiatives are available in a recent publication by the Federal Ministry of Environment (2008).

With reference to regulations and standards enforcement, government recognized that lack of effective enforcement of existing environmental laws, guidelines, standards and regulations accounts to a large extent for the environmental problems that persist around us and across the nation. Government has intensified its efforts in this regard and it is strengthening its institutional mechanisms for the enforcement of environmental laws, standards and regulations. To this end, the National Environmental Standards and Regulations Enforcement Agency (NESREA) has been established.

NESREA has responsibility for the protection and development of the environment, biodiversity conservation and sustainable development of Nigeria's natural resources in general and environmental technology including coordination, and liaison with, relevant stakeholders within and outside Nigeria on matters of enforcement of environmental standards, regulations, rules, laws, policies and guidelines.

The NESREA Act empowers the Agency to be responsible for enforcing all environmental laws, guidelines, policies, standards and regulations in Nigeria, as well as enforcing compliance with provisions of international agreements, protocols, conventions and treaties on the environment to which Nigeria is a signatory.

6. KEY SUCCESS FACTORS FOR ENVIRONMENTAL SUSTAINABILITY IN NIGERIA

Despite the above-mentioned efforts, the environment in Nigeria continues to perform poorly by the global standard. For example, in 2008, the country's Environmental Performance Index (EPI)³ was 56.2, ranking it as number 126 out of 149 countries surveyed in the world. The low EPI figure puts the country behind many other African countries like Mauritius (78.1), Egypt (76.3), Ghana (70.8), Kenya (69.0), Mauritius (78.1), South Africa (69.0), and Cameroon (63.8). A value of 56.2 indicates that Nigeria has limited capacity to handle environmental problems and it has not been able to minimize its high rate of air, land and water pollution. When compared with Norway (93.1), Canada (86.6) and Venezuela (80.0) with similar oil resources, Nigeria has a lot to do to achieve the MDG 7 of maintaining environmental sustainability for meaningful socio-economic development. The following factors are critical to promoting of environmental sustainability in Nigeria:

- Environmental awareness and education
- Participatory involvement of stakeholders in decisions.
- Integrated approach to environmental management
- Policy consistency and political will
- Adequate funding
- Effective institutional coordination
- Implementation of Multilateral Environmental Agreements (MEAs)
- Information and knowledge sharing
- Development of environmental friendly infrastructure
- Reinforcement and promotion of indigenous knowledge.

a) Environmental awareness and education: Given the world's increasing technological sophistication and the close interaction between technological progress and environmental concerns, there is a need to develop an environmentally literate citizenry. Formal and informal environmental education would be effective means to involve creating appropriate awareness of critical environmental issues.

b) Participatory involvement of stakeholders in decisions-making: Irrespective of socio-economic status, everyone depends on the environment for survival. Thus,

³ The Environmental Performance Index (EPI) was developed by Yale University Centre for Environmental Law and Policy to assess environmental health and ecosystem vitality of 149 countries world wide. It is based on 25 well-selected performance indicators (2008 Environmental Performance Indicators, Yale University)

ensuring environmental sustainability in the development process of the country requires that all stakeholders be involved in making decisions about the environment. This will be critical in achieving the goal of environmental sustainability for Nigeria.

c) Integrated approach: The current approach to environmental management in Nigeria is largely sectoral. The integrative nature of the environment requires that the imperative of multi-sectoral approach is given a priority attention to ensure the sustainable use and conservation of the country's natural resources for meaningful socio-economic development.

d) Policy consistency and political will: Frequent policy shifts and limited or lack of political will are some of the problems that contribute to environmental degradation in the country. Thus policy consistency for the sustainable use and conservation of the natural resources of Nigeria, as well as enhanced political will to make environmental concerns a national development priority are critical for the success of ensuring environmental sustainability for the country.

e) Adequate Funding: Adequate funding of environmental programmes and projects is critical to attaining sustainable development. In the face of competition for funding among different development needs and initiatives, funding for environmental management is usually at a disadvantage. Thus, Nigeria needs to put in place a coherent and explicit resource mobilization strategy for environmental management. In addition to the Ecological Fund additional sources of funding such as the establishment of an environment endowment fund and taxation should be explored. Building Public-Private Partnerships (PPP) and collaborating with development partners should also be explored towards mobilizing resources for environmental management.

f) Effective institutional coordination: The involvement of several institutions in environmental management has resulted in overlapping functions. Also, these institutions are weak and poorly funded. A key success factor for ensuring a safe and healthy environment the context of national development will be the development and adequate funding and coordination environmental management activities in the country.

g) Implementation of MEAs: Nigeria is a signatory to many Multi-lateral Environmental Agreements (MEAs) and Conventions. Some of these are (i) Convention on biological Diversity, (ii) Protocol on Biosafety to the Biodiversity Convention (the *Cartagena Protocol*), (iii) Framework Convention on Climate Change (UNFCCC); (iv) Protocol to the UNFCCC; (v) Convention to Combat Desertification, (vi) Convention for the Protection of the Ozone Layer (1985). Effective implementation of the MEAs will provide a good opportunity for Nigeria to meet her international environmental obligations, and ensure environmental sustainability in her development process towards achieving the goals of Vision 2020. This would require increasing national awareness about the MEAs, mainstreaming them into national development plans and strategies, ensuring multi-stakeholders involvement in their implementation, building capacity needs, and ensuring adequate financing.

h) Information and knowledge sharing: Information and communication and technology (ICT), has turned the world into a global village. Real time information about the state of the environment can readily be documented. Information and knowledge sharing about best environmental practices for sustainable development is a success factor in the national effort to mainstream environmental sustainability into Vision 2020.

This requires that the country develops systems for environmental information sharing and knowledge networking for sustainability, such as the Global System for Sustainable Development (GSSD). GSSD is an adaptive, interactive system for knowledge networking, knowledge management, and knowledge sharing for use in conjunction with internet resources to (i) define the dimensions and dilemmas of changing from current policies and strategies based on imperatives of growth, (ii) identify policies and strategies that facilitate social and environmental sustainability, and (iii) track the range of policy responses nationally and internationally.

l) Development of environment-friendly infrastructure: In the pursuit of infrastructural development that will be required for the realization of the goals of Vision 2020, adequate consideration must be given to the development of infrastructure that will not further damage the environment.

k) Reinforcement and promotion of indigenous knowledge: Truly sustainable systems are known to survive with minimum support from outside. Despite the fact that most environmental problems revolve around human misuse of the land resources, it is equally the case that most rural communities possess or have generated a wealth of knowledge, based on the understanding of their environment, on the conservation and sustainable use of their resources. Such indigenous knowledge that is often ignored, together with local organizations, could provide the bases for participatory approaches to development that is generally agreed is both cost-effective and sustainable. A key success factor therefore is ensuring that development plans, programmes and projects are built on what the people already know and practice.

Integrating indigenous knowledge and practices that are environmentally sustainable into natural resources management for poverty reduction will (a) provide possibility for testing/assessing/understanding traditional natural resource management practices before introducing new techniques; (b) adapting rather than doing away with indigenous knowledge and finding alternatives to supplement the decrease in traditional outputs; (c) providing space/time/funds to promote indigenous knowledge of natural resource management practices and make the public and government aware of the sustainability of indigenous resource management; and (d) addressing local natural resource management needs and interests as identified by local people.

7. CONCLUSION

If a nation's environmental foundations are depleted, its economy may well decline, its social fabric may deteriorate, and its political structure may even become destabilized. Development will be meaningful if it does not increase a country's vulnerability to environmental impacts. Development seeing purely from economic growth view that is an increase in quantity cannot be sustainable indefinitely on a finite planet.

Overcoming the challenges of managing the country's environment for sustainable development will require political vision and courage in policy, regulatory and institutional changes in Nigeria, with adequate and focused funding of initiatives. The challenge is not insurmountable, once there is a national will to do so.

Bibliography

Federal Environmental Protection Agency (FEPA) (1999). *National Policy on the Environment*. Revised Edition, 1999. FEPA, Abuja.

Federal Environmental Protection Agency (1999). *Nigeria's National Agenda 21*. FEPA, Abuja.

Federal Government of Nigeria (1991): *Achieving Sustainable Development in Nigeria: A Report for UNCED, Rio de Janeiro, Brazil, 1-12 June 1992*. Federal Environmental Protection Agency, Lagos

Federal Ministry of Environment, Housing and Urban Development (2008): *Managing the Nigerian Environment: Challenges and Opportunities*. Mimeo prepared for the First National Environmental Summit. Abuja

Igugu, G.O. (1988): *Creating An Environmental Policy for Nigeria: The Forestry Perspective*. Proceedings of the 18th Forestry Annual Association of Nigeria Conference. p. 37.

National Planning Commission 2009: *Interim Report of the Vision 2020 National Technical Working Group on ENVIRONMENT AND SUSTAINABLE DEVELOPMENT*

Ojo, O. 2008: *State of the Environment Report - Paper Presented at the First National Environmental Summit*. Abuja

Osibanjo, O. 2008: *Pollution and Waste: Issues and Management Strategies*. Paper Presented at the First National Environmental Summit. Abuja

United Nations 2001: *Common Country Assessment (CCA) Nigeria*.

United Nations Industrial Development Organisation (2000): *African Industry 2000 The Challenge of Going Global*. UNIDO, Austria.

Vision 2010 (1997). *Report of the Vision 2010 Committee. Main Report*. Abuja.

ENVIRONMENTAL LAWS AND REGULATIONS IN NIGERIA: CHALLENGES OF ENFORCEMENT

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Environmental Laws and Regulations in Nigeria: Challenges of Enforcement*

INTRODUCTION

I feel truly honoured to be invited by the Director General of the National Environmental Standards and Regulations Enforcement Agency (NESREA) to this Appreciation Workshop for Judges and Law Enforcement Officers on Environmental laws, regulations and conventions. Not being a lawyer myself but a simple environmental scientist, I truly appreciate the opportunity to interact with "*learned friends*" especially as I have been given the privilege to deliver a paper entitled **Environmental Laws and Regulations in Nigeria: Challenges of Enforcement**.

Today, protection and management of the environment is one of the most important challenges of the global community. Recognized as a universal peril, human induced environmental degradation affects all humans and other life forms and is therefore a collective responsibility for present and future generations. Efforts to improve the effectiveness and efficiency of environmental management in Nigeria have been underway for several years. Measurable progress has also been made and is being further made since NESREA was established and functioning.

According to UNDP (1992), environmental management is the strategy by which human activities that affect the environment are organized with a view to maximizing social wellbeing and to preventing and mitigating potential problems by addressing their root causes. Some of the major tools for environmental management include environmental policy setting, environmental impact assessments which are for both planning and decision making as well as the use of information and analysis provided by the EIA to design strategies to protect and conserve the environment. In designing these strategies, environmental law enactment and enforcement as well as monitoring of compliance become important. The information provided by environmental monitoring is often used to make better environment decisions on the conditions and trends of change that take place in the environment. Information provided from environmental monitoring also helps management decisions that must be made over a time period and enables an evaluation of the effectiveness of environmental management decisions already taken. Monitoring is particularly important in countries like Nigeria where natural resources exploration becomes the basis of the national

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economy and where monitoring must show trends of wastefulness, irrational exploration or under utilization; thus providing a useful basis for protection and conservation.

Regulate.

It is also important to stress that environmental management cannot be achieved without effective environmental governance including the enforcement of environmental laws and regulations. Environmental governance involves all stakeholders, the state, industry and civil societies. Through laws and regulations, the State controls those human activities that have significant impact on the environment. These State tools of environmental governance give different sectors of the economy and diverse interest groups as well as individual users of the environment a precise indication of which activities they can undertake, which activities are forbidden and what their responsibilities are in the event that their activities jeopardize the environment.

ENVIRONMENTAL ENFORCEMENT

Against this background, we have gathered here to consider the challenge of environmental enforcement. The document entitled "**Caring for the Earth**" published in 1991 by the partnership of the IUCN – *The World Conservation Union*, UNEP – *United Nations Environment Programme* and the WWF – *the World Wide Fund for Nature* has made clear that governments will need to review the adequacy of their institutional machinery for carrying out environmental enforcement at both national and local levels. They should adopt a cross-sectoral approach preferably by establishing an integrated environment protection agency with wide powers. This is exactly what Nigeria government did by establishing the National Environmental Standards Regulations and Enforcement Agency (NESREA) with Act number 25 which was signed into law by Mr. President in 2007

What is Environmental Enforcement?

Environmental enforcement is one of the key elements of environmental governance. It seeks essentially to ensure that the ambitious goals of our environmental statutes are realized. Enforcement refers to the set of actions that the government can take to promote compliance with environmental law.

It is indeed the application of all available tools to achieve compliance, including compliance promotion, compliance monitoring and non-compliance response. In a narrow sense, enforcement

can be defined as the set of actions that governments or others take to correct or halt behaviour that fails to comply with environmental management requirements.

Enforcement by the government usually includes:

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

Non-government groups may also become involved in enforcement by detecting noncompliance, negotiating with violators, commenting on government enforcement actions, and where the law allows, taking legal action against a violator for noncompliance or against the government for not enforcing the requirements.

In addition, certain industries such as the banking and insurance industries may be indirectly involved in enforcement by requiring assurance of compliance with environmental requirements before they will issue a loan or insurance policy to a facility.

In some countries, societal norms of compliance have been a powerful force compelling compliance with any form of legal requirement. A system that relies on social norms for enforcement may not be effective in every situation and may become vulnerable to abuse if societal norms break down over time. This possibility has stimulated new consideration internationally of the need for dedicated enforcement programmes within government and non-government organizations.

Why are compliance and enforcement important?

An effective compliance strategy and enforcement programme brings many benefits to society (Table 1).

- First, and most important, is the improved environmental quality and public health that results when environmental requirements are complied with.

- Second, compliance with environmental requirements reinforces the credibility of environmental protection efforts and the legal systems that support them.
- Third, an effective enforcement programme helps ensure fairness for those who willingly comply with environmental requirements.
- Finally, compliance can bring economic benefits to individual facilities and to society.

Table 1: Reasons why Environmental Enforcement Programmes are important (U.S. EPA, 1992)	
1.	To Protect Environmental Quality and Public Health. Compliance is essential to achieving the goals of protecting public health and environmental quality envisioned by environmental laws. Public health and the environment will be protected only if environmental requirements get results. Enforcement programmes are essential to get these results.
2.	To Build and Strengthen the Credibility of Environmental Requirements. To get results, environmental requirements and the government agencies that implement them must be taken seriously. Enforcement is essential to build credibility for environmental requirements and institutions. Once credibility is established, continued enforcement is essential to maintain credibility. Credibility means that society perceives its environmental requirements and the institutions that implement them as strong and effective. Credibility encourages compliance by facilities that would be unlikely to comply if environmental requirements and institutions are perceived as weak. The more credible the law, the greater the likelihood of compliance, and the likelihood that other government efforts to protect the environment will be taken seriously.
3.	To Ensure Fairness. Without enforcement, facilities that violate environmental requirements will benefit compared to facilities that voluntarily choose to comply. A consistent and effective enforcement programme helps ensure that companies affected by environmental requirements are treated fairly. Facilities will be more likely to comply if they perceive that they will not be economically disadvantaged by doing so.
4.	To Reduce Costs and Liability. Though compliance is often costly in the short-term, it can have significant long-term economic benefits to both society and the complying facility. The healthier environment created by compliance reduces public health and medical costs, as well as the long-term cost to society of cleaning up the environment. Compliance benefits industry by reducing its liability and long-term cleanup costs. Industry may also realize immediate economic benefits if compliance involves recycling valuable materials or increasing the efficiency of its processes. A strong enforcement programme may also encourage facilities to comply by preventing pollution and minimizing waste, rather than installing expensive pollution control and monitoring equipment.

WHAT IS THE SITUATION WITH ENVIRONMENTAL ENFORCEMENT IN NIGERIA?

According to Ladan (2009) during the colonial era, environmental protection was not a priority in Nigeria and there was accordingly no policy and legal framework aimed at preserving or protecting it. Currently, however, Nigeria has a number of National Policies leading to or associated with several environmental existing laws and regulations (see Annex 1 and 2). It should be understood that policies are not laws and policies cannot be the basis for environmental enforcement, however policies should guide environmental enforcement. Indeed as James (1982) points out, *“anyone writing on “law and policies” in a common law jurisdiction is immediately on the “horn of a dilemma”. He is confronted at the outset with two difficulties: (i) the details of land policy are not*

comprehensively set out in any single document; and (ii) common law judges have always expressed unconcern with policy in guiding the exercise of powers or the interpretation of statutes.

With reference to the general jurisdiction of the court, it is a trite saying that, "common law courts are courts of law, not policy" or that "justice must be according to law not according to policy." The assumption is that there is a dichotomy between law and policy, rather than that the law is the handmaiden of policy. However, at a closer study of the individual cases it is apparent that judges, whilst expressing a lack of concern with policies, invariably, in their decisions, support one or the other of possible competing policies."

In addition to the Federal laws and regulations, most of the 36 States in Nigeria have issued environmental regulations backed by State laws. For instance, the Federal Capital Territory has issued the Abuja Environmental Protection Board (Solid Waste Control/ Environmental Monitoring) Regulations 2005 ("the Abuja Environmental Protection Board Regulations") which principally governs solid waste control in Abuja.

Similarly, Lagos State Environmental Protection Agency Law was enacted to regulate the protection of the state's environment and establish the Lagos State Environmental Protection Agency (LASEPA). LASEPA's functions include monitoring and controlling the disposal of waste in Lagos State and advising the State Government on all environmental management policies. Lagos State has also enacted the Environmental Pollution Control Law, to provide for the control of pollution and protection of the environment from abuse due to poor waste management.

In Bauchi State, the Bauchi State Environmental Protection Agency regulates and monitors environmental Standards and is also charged with the executive responsibility for sanitation.

The Rivers State, which is one of the major oil and gas exploitation states has a Ministry of Environment that is responsible for the promotion of a clean and healthy environment. The Ministry formulates, executes and reviews policies on environmental/ecological programmes and projects in the state. The State has its own set of standards and effluent/emission limits, which it expects industries (including oil and gas producing companies) to comply with.

It is clear that Nigeria has the requisite policies, laws and regulations to progress our national environmental management goals.

THE ROLE OF NESREA

It is clear from the forgoing and as Imevbore (2010) pointed out, “the challenge of enforcing environmental regulations in Nigeria is not so much the inadequacy of environmental legislation but a number of other factors including conflict in roles and a general lack of environmental governance. NESREA’s establishment is therefore a welcome development.

NESREA was established with the following vision “to ensure a cleaner and healthier environment for Nigerians”, and its mission was stated as follows “to inspire personal and collective responsibility in building an environmentally conscious society for the achievement of sustainable development in Nigeria”.

Some major functions of NESREA among others are to:

- enforce Compliance with Laws, Guidelines, policies and standards on all Environmental matters;
- coordinate and liaise with Stakeholders, within and outside Nigeria on matters of environmental standards, regulations and enforcement;
- enforce compliance with the provisions of international agreements, protocols, conventions and treaties on the environment including climate change, biodiversity, conservation, desertification, forestry, oil and gas, chemicals, ozone depletion, marine and wild life, pollution, sanitation and such other environmental agreements as may from time to time come into force;
- enforce compliance with standards, legislation and guidelines on Environmental Health and Sanitation including pollution abatement;
- enforce compliance with guidelines, and legislations on sustainable management of the ecosystem, biodiversity conservation and the development of Nigeria's natural resources;
- enforce compliance with any legislation on sound chemical management, safe use of pesticides and disposal of spent packages thereof;
- enforce through compliance monitoring the environmental regulations and standards on noise, air, land, sea, ocean and other water bodies;
- create public awareness and provide environmental education on sustainable environmental management, promote private sector compliance with environmental regulations and publish general scientific or other data resulting from the performance of its functions;

- Prohibit processes and use of equipment or technology that undermine environmental quality; conduct field follow-up of compliance with set standards and take procedures prescribed by law against any violator;
- conduct public investigation on pollution and the degradation of natural resources; and
- submit for approval of the Minister, proposals for the evolution and review of guidelines, regulations and standards on the environment.

Indeed, with the establishment of NESREA, one can affirm with confidence that the Federal Government has established the right policy regulating and implementing framework for sustainable resource management and environmental performance in Nigeria. The agency has since establishment issued a number of regulations in pursuance of its vision and responsibilities (Annex 3).

The progress being made the scope of the reform effort and the level of attention it is receiving since NESREA was established are all sources of hope. Those of us who are convinced that NESREA has a central role to play in the achievement of environmental sustainability in this country feel truly encouraged by the progress being made. The fear that NESREA will spiral into irrelevance no longer exists.

ENVIRONMENTAL ENFORCEMENT CHALLENGES

To succeed, NESREA must confront and address a number of challenges, which bedevil the best environmental enforcement efforts in Nigeria.

- **Decisions not being implemented at the appropriate levels.** Taking the overall picture of the state of the environment in the country, it must be said that the quality the environment has deteriorated, is deteriorating and will continue to deteriorate unless the resources and know how for effective environmental enforcement are mobilized and utilized effectively. Enforcement decisions are not sufficiently multi-stakeholder in nature and clearly have not been delegated or taken at the lowest level where issues can be effectively managed. Working relations with other agencies and departments whose activities influence environmental enforcement have also not been formulated.
- **Compliance Monitoring.** First, it must be re-emphasized that we have adequate laws and regulations. The problem is not one of laws or regulations but of lack of appropriate enforcement. After enactment, it is the responsibility of relevant Regulatory Agencies, to

make sure that those whom the laws were enacted for, know what they must do to comply. Environmental laws without compliance would mean that pollution problems would continue and get worse.

- **Rule of law.** As Lal Kurukulasuriya (2003) of UNEP has pointed out, the rule of law is symbolized in the image of the blindfolded maiden holding aloft evenly balanced scales. It embodies the principles – that the government itself is bound to abide by the law which means equality before the law: equal treatment before the law by the government and the governed as well as the independence of the judiciary, and the transparency and accountability in the administration of the law.

Unfortunately, the experience so far in Nigeria is that the governments are the worst offenders in breaking environment laws and regulations. The governments do not adhere to the laws they make and so cannot themselves engage in any exercise of legitimate enforcement. Examples of government disregard for environmental laws and regulations abound including non compliance with the provisions of the EIA laws and wide scale pollution from government run or sponsored projects in some cases.

- **Substantial overlaps.** As far back as 1989, the World Bank reported that “there are substantial overlaps and conflicts among the laws enacted at the federal, state and local government levels. Often subsidiary legislation has not been issued to assist in the implementation of the enabling law. Penalties under most laws are uniformly low and seldom enforced.”
- **Others factors of poor enforcement.** According to Adegoro (1994), factors contributing to the poor enforcement of environmental laws in Nigeria include:
 - Influential individuals and groups;
 - Industries with environmentally unacceptable technology;
 - Role conflicts among government MDAs;
 - Political instability - leading to the scrapping of the enforcement arm of FEPA. If allowed to function properly, the establishment of NESREA should however address this problem
 - Need for capacity building.

- **Inadequate monitoring, evaluation and reporting.** According to UNEP (2005), access to environmental information is a prerequisite to effective public participation in decision making and monitoring governmental and private sector activities. Unfortunately, in Nigeria today, environmental information is not readily available to the public nor to government agencies that are responsible for enforcement. Up to date and regular environmental information such as may be available from environmental monitoring, purposive studies and EIA Reports provide information on the past and current state, and are valuable for identifying long term deleterious trends. For example, environmental monitoring might reveal that human activities are threatening the existence of certain species and thus provide the validation for taking corrective action. Without environmental monitoring and evaluation and adequate reporting, society will be at a loss to understand the threats and changes to natural resources and their ecosystems and may be aware of the poor situation only when a disaster looms.
- **Inadequate capacity and understanding.** A critical factor contributing to poor enforcement of environmental regulations is inadequate capacity and understanding of how our activities interact with and destroy the environment. As mentioned earlier, environment governance is multi stakeholder in nature and must include the civil society, private sector and the state; executive, legislative and the judiciary. While the civil society is hampered to a large extent by poor knowledge and lack of information, environmental management is yet to be mainstreamed into the private sector in Nigeria. In relation to environmental governance, the judiciary on the other hand is yet to attain the relevance required of it by every citizen, who has a right to a clean and healthy environment.

RECOMMENDATIONS

The fact that Nigeria has adequate policies, laws and regulations, and recent establishment of NESREA show that there is hope for achieving effective environmental enforcement. The following recommendations are hereby proposed to overcome the attendant shortcomings in environmental enforcement.

- **Improved regulatory enforcement at all levels.** Given the fact that the increasing pressure on natural resources is causing destructions and conflicts in several regions, there is a greater need for regulatory enforcement to create conditions of greater certainty at the local, national and regional levels.

At the local level, people need firm rights to manage and control access to the resources upon which their livelihoods depend. Since the environment is a common good, many of the problems of environmental degradation in various regions of the country have been caused by a lack of clarity regarding who controls access to resources, and contradiction between customary rights and those provided by modern legislation. It is now recognized that local users are likely to be the best managers of resources, as their own survival and that of their descendants depends on using their resources sustainably.

At the national level, the greatest challenge is to develop a framework within which decision makers of all sorts face greater certainty. This framework needs to guarantee reduced vulnerability to the erratic physical environment in which people live, and greater certainty regarding the performance of institutions, markets and structures that affect their ability to make ends meet.

At the regional level, the progress being made on various fronts with the Economic Community of West African States (ECOWAS) demands that parallel framework of greater certainty regarding protection from adverse physical conditions, and that the performance of regional institutions, markets and structures be harmonized.

- **Devolution of powers and decentralization of regulatory functions.** Today, it is widely recognized that in keeping with the changing relative roles of the public and private sectors there is a need for devolution of powers and decentralization of regulatory functions from central to local government levels. To achieve the above state of increase certainty and reduce risks about the quality of the environment, NESREA must recognize the merit in devolution of powers as a way to reduce risks and increase the certainty of the quality of the environment. Achieving this will require that NESREA pays special attention to capacity building efforts at the appropriate levels.
- **Improved Overall Environmental Governance.** As Kurukulasuriya has pointed out, *"governance is the process of decision-making. It is the sum of the many ways in which individuals and institutions manage their common affairs. It is undergirded by fundamental notions of inclusiveness, transparency and accountability, which themselves are ways of realizing the ideals of democracy, justice and fairness."*

Here again, with regard to the environment, it has been recognized that there must be a shift in the mindset in judicial decision making in the country. More laws are not needed, neither more institution. Rather, what is needed is the elevation of environmental considerations in the collective judicial consciousness. After all, maintaining the quality of the environment should be in the forefront in the judicial decision making so that judges will always attempt to balance the promotion of the well being of people and alleviation of poverty with preserving the integrity of the environment and advancing the imperatives of economic development.

The revised environmental policy (not yet enacted into law) proposed in December, 2002 that the command and control posture of the previous policy be replaced by approaches that encourage partnerships among different tiers of government including assigning specific roles to communities and civil society groups in collective environmental measures. This new policy should now be backed by a National Environmental Management Bill which will facilitate greater cooperation and collaboration between agencies at the federal and state levels in environmental matters and will empower individuals and communities with inalienable rights that cannot be denied by constituted governments. It also advocates the need for capacity building to remedy the difficulties in the knowledge, skills and information in regard to environmental laws. The policy in addition proposes that environmental administrative tribunals be set up to exercise exclusive jurisdiction over all causes and matters relating to the environment.

- **Streamlining environmental legislations.** There is clearly a need to review, streamline and extend our legislation for environmental protection and improvement. For example, NESREA must also put in place more effective implementation and enforcement procedures which significantly increase penalties for non-compliance. This should include much larger fines and imprisonment for gross violations as well as financial responsibility for any clean-up and restoration costs and compensation for injured parties.
- **Effective working relations between NESREA and other agencies.** If improved environmental enforcement will be achieved by NESREA, the agency must identify and establish effective working relations with other agencies and departments which activities influence environmental enforcement. This will also require that NESREA should ensure effective communication with general public and provide opportunities for citizens to contribute to more effective environmental enforcement. NESREA should also have access

to adequate remedies in order to sanction non-compliance in a timely and proportionate manner. This is why NESREA must also make use of the environmental sustainability indicators which have been developed with the ministry with the support of UNDP against which performance can be measured and continuously improved.

- **Special Police Unit.** Another major environmental enforcement challenge comes from the overriding importance of promoting public awareness and environmental education. The more one reflects on the root causes of environmental pollution and natural resources depletion, the conclusion is inescapable that there is a need to establish a special police unit to serve as a deterrent and help resolve environmental disputes. The application of the public trust doctrine in regard to natural resources and the environment also justifies the need to have such a unit that will help to defend and improve the litigation process in environmental matters for present and future generations.

The suggestion from the National Stakeholders Forum on New Institutional Mechanism for Environmental Protection and Sustainable Development organized by NESREA in November, 2009 that corp-marshall of women and men volunteers be established to promote and police compliance and environmental enforcement at the community level should also be considered. Such people can work cooperatively with the proposed police unit.

- **Effective monitoring, evaluation and reporting.** Far more effective monitoring and evaluation of the state of the environment is required. Equally important is the need reporting on the state of the environment and access to information for all stakeholders. There is need, for example, for effective management of water and soil quality, including the treatment of municipal and industrial effluence and proper solid waste disposals. The loss of biodiversity should also be regularly monitored. All these will mean putting greater efforts towards compliance monitoring by both the federal and states environmental control agencies and ensuring the results of such monitoring is properly document for future reference and fed back into the environmental management cycle. NESREA should also carry out planned and executed inspections to ensure that environmental regulations and laws are being respected. It should also encourage communities to conduct self monitoring and to report on environmental performance.

- **Capacity Building.** We must admit that environmental law is a comparatively new branch of the judiciary. Moreover, environmental law is one of the newest branches of public law, which was not taught in schools until recently. Pollution cases for example pose special problems with regard to establishing causation, identifying the polluter and proving damage for a number of reasons. This distance separating the source from the place of damage may be hundreds of miles. The noxious effects of a pollutant may also not be experienced until several months or years after the act. What is more, the type of damage may become manifest only if the pollution continues over time.

This is why training in the concepts and procedures of environmental pollution and natural resources degradation is still widely needed. To cite one glaring example, our courts will have to rethink how they deal with evidence in environmental conflicts. Today, you can only present still photographic evidence of any particular area of our ecosystem if you possess the negative. Without negatives, you cannot tender pictures in a court. To maintain this stand today means that our courts do not appreciate the advances in technology which allow pictures to be taken without negatives.

For similar reasons, our judges must fully understand the **EIA Process and EIA Reports**. They must henceforth take the EIA Reports as covenants put out by their proponents. The EIA Reports are the direct consequences of the EIA Law, in which a proponent commits itself to doing a number of things to make the environment of a project sustainably acceptable. This understanding must be brought to bear in environmental litigations.

Experience also shows that **another environmental enforcement challenge comes from the fact that the Polluter Pays Principle has been abused**. This principle says that the polluter shall bear the cost of pollution. The principle is normally applied most easily in a geographic region which is subject to uniform environmental law. There, the polluter is defined as one who directly or indirectly damages the environment or who creates conditions leading to such damage. Generally, polluters should pay for the cost of pollution control measures such as the construction and operation of anti-pollution installations, investments in anti-pollution equipment, or new proceedings so that a necessary environmental quality objective is achieved. Other measures of ensuring the polluter pays principle are through taxes and charges.

Today, the application of this principle, in one state in the country is to rely mainly on taxes and charges which are made arbitrarily. None of the funds generated is applied to achieve an environmental quality objective or to improving the state of the environment. The charges are also not quantified in a scientific manner. The way the principle is being applied in that state does not allow it to promote the wider social economic and environmental interests on which the principle is based or allow the sanctions to force the internalization of environmental and other costs (UNEP, 2005).

With regard to the need for capacity building of the judiciary, it will be useful to stress again the need to seek the support of the UNEP Advisory Group of Chief Justices and other Senior Judges which will also provide country specific modifications in the use of UNEP's Judicial Handbook on Environment and UNEP's Manual on Environmental Law and its accompanying Compendium of Summaries of Judicial Decisions in Environmental Cases. (see UNEP, 2005).

CONCLUSIONS

Nigeria's environmental problems are many and complex and they cover several areas. In the 2005/2006 Annual Report issued by the Federal Ministry of Environment, the Ministry admitted that its efforts towards achieving environmental sustainability are being hampered by the following shortfalls:

- Lack of integrating environmental concerns into sectoral development plans;
- Uncoordinated implementation of various reform programmes on poverty alleviation;
- The rapid rate of deforestation, desertification and erosion;
- Weak institutional framework for environmental management at all levels;
- Non adoption of efficient and environment friendly technologies (e.g industries, power generation, transmission and distribution of energy as well as management of solid wastes);
- Unsustainable exploitation and utilization of nature resources;
- Inadequate funding.

To this list must be added the issue of enforcement failures. If NESREA will sustain the tempo of success that it has already initiated, its enforcement programmes must access the causes of failure which have plagued previous efforts and remedy the regulatory imperfections which led to inadequate enforcement. U.S. EPA (1992) has shown that the component of a successful enforcement programme involves the following:

- Creating requirements that are enforceable.

- Knowing who is subject to the requirements and setting programme priorities.
- Promoting compliance in the regulated community.
- Monitoring compliance.
- Responding to violations.
- Clarifying roles and responsibilities.
- Evaluating the success of the programme and holding programme personnel accountable for its success.

These components form a framework within which to consider issues pertinent to any enforcement programme, no matter what its stage of development.

Given that this is a workshop for judges and lawyers, I hope some time will be spent to look at the appropriateness, efficiency and cost effectiveness of the legal aspects of environmental enforcement as they exist today in the federation of Nigeria.

REFERENCES

Adegoroye, A (1994), *The Challenges of Environmental Enforcement In Africa: The Nigerian Experience*. Paper Presented at the Third International Conference on Environmental Enforcement, April 25-28, 1994, Oaxaca, México.

Federal Ministry of Environment (2000), *The Blueprint on Environmental Enforcement: A Citizen's Guide*. Published by the Federal Ministry of Environment, Abuja.

Federal Ministry of Environment, *2005 and 2006 Annual Reports on Programme Implementation*; December, 2006, Abuja.

Imevbore V.O (2010), *Environmental and Social Management Framework for Nigeria Public Private Partnership Programme*. Report prepared for the Infrastructure Concession and Regulatory Commission (ICRC), 153 pp.

IUCN (1991), *Caring for the Earth. A strategy for Sustainable Living*. Gland Switzerland.

James R.W. (1987), *Nigerian Land Use Act: Policy and Principles*. University of Ife Press Ltd. University of Ife, Ile-Ife. 195pp.

Kurukulasuriya Lal (2003), *The Role of the Judiciary in Promoting Environmental Governance and the Rule of Law*. Paper prepared for the Global Environmental Governance: the Post-Johannesburg Agenda, 23-25 October 2003, Yale Center for Environmental Law and Policy, New Haven, CT.

Ladan M. (2009), 527-552, *Nigeria: In the Role of the Judiciary in Environmental Governance: Comparative Perspectives*. Edited by Louis J. Kotze and Alexander R. Paterson, Wolters Kluwer Law and Business.

U.S. EPA (1992), *Principles of Environmental Enforcement*. U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, USA

UNDP (1992), *Handbook and Guidelines for Environmental Management and Sustainable Development*. Prepared by the Environment and Natural Resources Group of the Programme Development and Support Division, Bureau for Programme Policy and Evaluation, UNDP, New York, NY10017, USA.

UNEP (2005), *Judicial Handbook on Environmental Law*. Environmental Law Branch, Division of Policy Development and Law, United Nations Environment Programme, P.O. Box 30552 Nairobi, Kenya.

Annex 1: National Environmental Policies		
Policy	Year	Comments
National Policy on the Environment,	1989 and revised in 1999	This policy identifies key sectors requiring integration of environmental concerns and sustainability with development. It presents specific guidelines for achieving sustainable development in the following fourteen sectors of Nigeria's economy: Human Population; Land Use and Soil Conservation; Water Resources Management; Forestry, Wildlife and Protected Natural Areas; Marine and Coastal Area Resources; Sanitation and Waste Management; Toxic and Hazardous Substances; Mining and Mineral Resources; Agricultural Chemicals; Energy Production; Air Pollution; Noise in the Working Environment; Settlements; Recreational Space, Green Belts, Monuments, and Cultural Property.
National Action Programme to combat Desertification and Mitigate the effects of drought	2000	The policy describes the drylands of Nigeria, desertification in the drylands of Nigeria, causes of desertification in the Nigerian environment, impact of desertification, efforts at combating desertification in Nigeria using national policies, institutional and legal framework, sectoral programmes, lessons from past experiences, the national action plan, and funding mechanism.
Draft National Forest Policy	2002	The policy describes institutional management and empowerment at all levels, the need for education and awareness creation, forestry research and development, poverty alleviation and food security, drought and desertification control, agroforestry, forest management, information and database management, private sector involvement and participation, forest fires, forest fiscal policies, pests and disease control, supply of seeds and seedlings, biodiversity conservation, national parks and games reserves of conservation interest, non-timber forest products, community participation in and outside forest reserves, environmental services of forests, gender issues, youth programmes, watershed management, urban forestry, forest industries, trade (internal and external), cross cutting issues, landuse and conflict resolution, national and international cooperation, wood fuels, national tree planting campaign, funding mechanism for forestry development, and coordination, monitoring, evaluation and review.
National Environmental Sanitation Policy	2005	This policy contains strategies as well as an action plan to improve sanitary inspection of premises, sanitary management of sewage and excreta, increase in the numbers of markets and abattoirs with improved sanitary standards, establishment of pest and vector control units, institute school sanitation programmes; reduce the menace of animal rearing/grazing in urban centers, capacity building on sound food sanitation practices, improve the knowledge, attitude, behaviour and practice of the general population to sound environmental sanitation, reduce the incidence of sanitation related illness and death, increase private sector participation in environmental sanitation services delivery, and empower women and youths on income generating environmental sanitation activities.
National Biosafety Policy	2005	This national policy was developed from a national biosafety framework. It supports a draft law which controls various aspects of modern biotechnology especially import, research, development, use, export placing on the market, a system for applications and notification, a system to ensure public participation, awareness and education, and a system for monitoring compliance with different aspects of policy and law.
National Policy on Erosion and Flood Control	2006	This policy contains strategies for effective checking of erosion and flood and outlines strategies for: Evaluation and settlement preparedness plan; Regulation on use of flood plain; Embarking on Early Warning and awareness programmes; Flood mapping/food risks study; Mapping of Nigeria coastline showing inventory of facilities along shoreline; Topographic and bathymetric surveys of coastal land forms; Feasibility studies and engineering design/implementation of erosion control structures; Community participatory preventive measures; Land degradation mapping and Assessment for erosion prevention and control.
National Policy on Chemicals Management	2009	This policy is based on existing chemicals related laws and regulations in Nigeria, chemicals management policy statement, policy goals, policy objectives, policy overview expected outputs, strategy for policy implementation, strategy for sustainable production and marketing of chemicals, legal and legislative instruments, finance, capacity-building, risk reduction programmes, prevention of illegal trans-boundary movement of chemicals, integration of chemical management studies in education curriculum, establishment of chemical emergency response centres, establishment of inter-ministerial coordinating mechanism, governance, role and responsibilities of federal ministries and agencies, role of industries and the private sector, role of academic, research institutions and private sector, specific and cross-sectoral issues, enforcement of laws and regulations as well as monitoring and evaluation.

Annex 2: Environmental Laws and Regulations

• The National Agenda 21 (published in 1999),
• The National Guidelines and Standards for Environmental Pollution Control in Nigeria (published in March, 1991);
• National Effluent Limitation Regulation, S.I. 8 of 1991;
• Pollution Abatement in Industries and Facilities Generating Wastes Regulations, S.I. 9 of 1991;
• Waste Management Regulations S.I. 15 of 1991;
• Environmental Impact Assessment (EIA) Decree No. 86, 1992;
• National Environmental Sanitation Policy (2004)
• Procedural and Sectoral Guidelines for EIA (Jan. 1999);
• Natural Resources Conservation Action Plan;
• National Fuel Wood Substitution Programme;
• National Guidelines on Waste Disposal Through Underground Injection; (1999)
• National Guidelines & Standards for Water Quality in Nigeria;
• National Guidelines for Environmental Audit in Nigeria 1999;
• National Guidelines on Environmental Management Systems in Nigeria (June 1999);
• National Guidelines for Spilled Oil Fingerprinting (1999); and
• National Guidelines on Registration of Environment
• Friendly Products and Eco-labeling (June 1999).

Annex 3: List of Laws and Regulations Promulgated after NESREA was established
• National Environmental (Wetlands, River Banks and Lake Shores) Regulations, 2009. S.I. No. 26.
• National Environmental (Watershed, Mountainous, Hilly and Catchments Areas) Regulations, 2009. S.I. No. 27.
• National Environmental (Sanitation and Wastes Control) Regulations, 2009. S.I. No. 28.
• National Environmental (Permitting and Licensing System) Regulations, 2009, S. I. No.29.
• National Environmental (Access to Generic Resources and Benefit Sharing) Regulations, 2009. S.I. No. 30.
• National Environmental (Mining and Processing of Coal, Ores and Industrial Minerals) Regulations, 2009. S.I. No. 31.
• National Environmental (Ozone Layer Protection) Regulations, 2009, S. I. No.32.
• National Environmental (Food, Beverages and Tobacco Sector) Regulations, 2009. S.I. No. 33.
• National Environmental (Textile, Wearing Apparel, Leather and Footwear Industry) Regulations, 2009. S.I. No. 34.
• National Environmental (Noise Standards and Control) Regulations, 2009. S.I. No. 35.
• National Environmental (Chemicals, Pharmaceuticals, Soap and Detergent Manufacturing Industries) Regulations, 2009. S. I. No. 36.

**The Prosecution of Environmental
Crime in the United Kingdom**

Lal NAWBATT
Principal Prosecution Lawyer

Thames Region E.A.

NESREA WORKSHOP

- Scope of this presentation

**Role of Law Enforcement Agencies in
Environmental Compliance Monitoring
and Enforcement in the UK.**

What will be covered during this presentation ?

- Background:

The UK,
It's Legal System,
The "Environment"

- Who does what in the UK Environment.
- The role of the (English & Welsh) E. A.
- Enforcement & Prosecution with the E.A.

Typical U.K. Landscape

Scottish Highlands

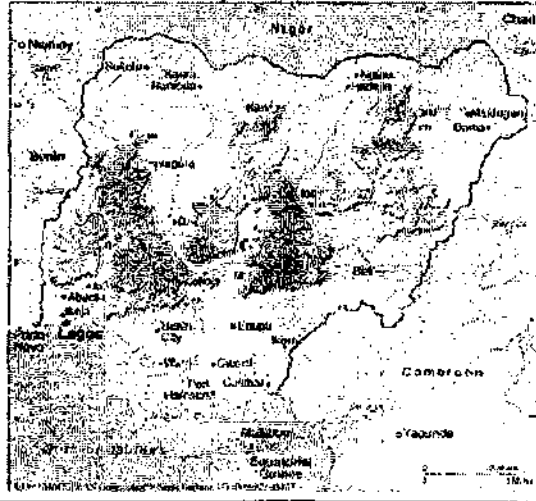


English Countryside



Nigeria – UK basic comparison

- Nigeria - 923,768 km²
- Population – 155 million
- U.K. – 245,000 km²
- Population – 60 Million



THE U.K. – GOVERNMENTAL HISTORY

- PARLIAMENTARY DEMOCRACY
- MONARCHY (CONSTITUTIONAL)
- UNION
- DEVOLUTION
- E.U.



The English Legal System

- Common law
- Statutory law (incl. implementing EU Directives and international treaties)
- Criminal Courts structure
- Other tribunals for E.A. enforcement powers
- Juries in higher courts – jurisdiction.
- Lay benches in Magistrates Ct and DJs.
- E.A. cases commenced in Magistrates Ct.

The Environment

- "Environment" definition (Concise Oxford Dict.):
"physical surroundings and conditions, esp. affecting people's lives....external conditions affecting the growth of plants and animals"
- UK Environmental Protection Act, 1990:
"The "environment" consists of all, or any, of the following media, namely, the air, water and land: and the medium of air includes air within buildings and the air within other natural or man-made structures above or below ground"

Who does what for the Environment in the UK?

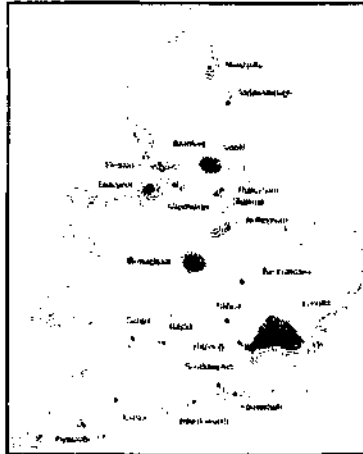
The EA (or the Scottish and Nth Ireland equivalent):

- We look after almost anything to do with freshwater (rivers, groundwater and reservoirs) its' quality and use, incl abstraction of water, discharge into water, pollution, fishing and fish movement, navigation on rivers.
- Flood defence – river and sea.
- Oversight of waste, including the permitting of all waste handling facilities and registration of all waste carriers. Trans Frontier Shipping of Waste.
- Permitting and regulation of industrial facilities that could cause significant pollution.
- Permits conditioning the use of radioactive sources.

EA examples – fish kill /milk pollution

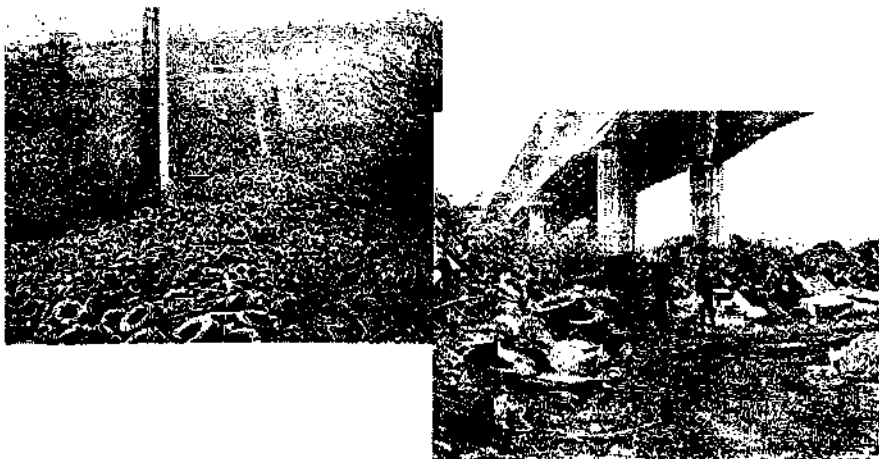


Examples - Waste



■ Fly-tipping

EA examples - Waste



Who does what in the UK - continued

- Here are some other important players: Local Authorities have coextensive powers with the EA over some waste powers, but not for permitting facilities. They have powers in relation to noise and air quality. They also have planning powers which can impact on habitat.
- Our parent Dept, DEFRA, has a number of Directorates, that in turn preside over units or other agencies which enforce laws protecting the natural environment including wildlife and such matters as marine pollution, sea fishing, forestry and the regulation of farm subsidy payments that encourage wildlife.
- Each Police force in the country has some officers dedicated to the enforcement of DEFRA supervised laws for wildlife species and habitat protection.
- HM Customs have special units to deal with CITES (Ban on Trade of endangered species) offences.
- Powerful NGOs such as the Royal Soc for the Protection of Birds, Wildlife Trusts act as informants for the enforcement of laws relating to their interest.

EA/H&S – The Biggest Oil Storage Fire in Europe since WW2





EA examples – more waste

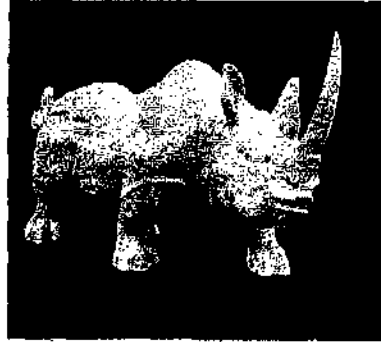


Exhibit 100





Wildlife Crime - Ivory



E. A. (Eng & W) – Key Features

- 1996 Amalgamation of National Rivers Authority, HM Inspectorate of Pollution and the Waste Management Authorities.
- Staff – 11,000 plus (significant number in flood defence)
- 8 Regions covering whole of England & Wales.
- Every Region has, amongst other staff, a number of Environment Management Teams, each allocated to a specified area – major duty is regulated sites
- Each Region has a smaller number of Environmental Crime Teams – dealing with more complex offences.

E.A. Key Features - continued

- There is a Legal Dept and specialist Prosecutors in each Region.
- Biggest pure environmental prosecution group in country.
- Annually over 800 + prosecutions a year in Magistrates and Crown Courts. (About 500 for waste offences and 200 water related).
- Over 4200 fishing licence offences dealt with annually (In the UK all persons who fish have to obtain a licence).


How Does It Work? - Instigation

- Information will frequently come from the observations of officers, particularly during inspections of regulated sites.
- The public also play an important part and often provide the eyes, ears & nose that provide evidence of illegal activity. All complaints are recorded and have to be appropriately actioned.
- Examples: Waste (almost all activities require permit) – information will therefore come from both inspections and from the public.
Water pollution – fishing clubs, riverside dwellers and walkers.

E.A. Published Policies & Guidance

- We have a published Enforcement and Prosecution Policy and Guidance. Prosecution of many offences relates to seriousness of environmental impact.
- The above Guidance refers to other EA published guidance that deals with the categorisation of the seriousness of offences

Categorisation of Seriousness

- Incidents & breaches – Numeric categorisation
- Category 1 – most serious.
-  Category 4 – least serious.
- Apply categorisation to Enforcement & Prosecution Guidance. Prosecution or Caution in contemplation?

Enforcement Responses

Permitted sites: Possible issue of Notices. This can lead to an appeal against issue or terms of the notice (civil track to Secretary of State), or, if notice stands and is not complied with, Prosecution.

Generally (3 levels): Warning Letter (lowest)
Caution (written admission of Guilt),
Prosecution (highest response)

Criminal Investigations

If the initial assessment of the facts against the Guidance has the prospect or possibility of prosecution, then the full force of other laws relating generally to the conduct of criminal enquires are brought into play.

Some Important Criminal Legislation

- **Criminal Procedure & Investigations Act 1996.**
- **Police & Criminal Evidence Act 1984 - which introduces the concept of fairness, and sets out Codes for such matters as detention & questioning, identification, and tape recording of interviews.**
- **Human Rights Act 1998 - Fair trial, Torture, Privacy.**
- **The Regulation of Investigatory Powers Act 2000 (Surveillance).**
- **Proceeds of Crime Act 2002.**

Other sources of guidance

- **Code for Crown Prosecutors (Evidential Sufficiency & Public Interest factors)**
- **Regulators' Compliance Code**
- **Better regulation agenda.**

Decision making

- Non-Financial Scheme of Delegation.
- Area (operational) endorsement.
- Regional Legal endorsement, ensuring compliance with our E & P Policy and Guidance, and Code for Crown Prosecutors –and national consistency.

Aims of Prosecution

- Focus on OUTCOMES, not just proof of Guilt
- Environmental Consequences
- Remediation
- Compensation
- Confiscation
- Post Conviction Plans for permit holders or persons with registration.

Legal Hurdles

Abuse of Process Arguments



The Future

Modern regulation – Civil Penalties

Thank You

Any questions?



 **THE WORKINGS OF NESREA** 

By

Dr. (Mrs.) Ngeri S. Benebo, JP
Director General/CEO of NESREA

*A presentation at the National Workshop on Enforcement of
Environmental Laws, Regulations and Standards for Judges and Law
Enforcement Officers
Held at the Rockview Hotel, Abuja*

26 – 28 April, 2010

2



WORKINGS OF NESREA

- 1. Establishment of NESREA;**
- 2. Vision, Mission and Mandate of NESREA;**
- 3. Functions and Powers;**
- 4. Organizational Structure;**
- 5. Evolution of Environmental Protection;**
- 6. Implementation Strategy; and**
- 7. Achievement of NESREA.**

3



EVOLUTION OF ENVIRONMENTAL PROTECTION IN NIGERIA (I)

- Until the Koko Toxic Waste episode, Nigeria had no National Policy on Environmental Control;
- Protection of the Environment was the responsibility of each government department which was expected to deal with environmental problems as it affects its mandate;
- Environmental protection was only incidental to the performance of the primary duties of Ministries and Departments;
- Environmental matters of inter-ministerial concern were dealt with on ad hoc basis by inter-ministerial committees.

4



EVOLUTION OF ENVIRONMENTAL PROTECTION IN NIGERIA (II)



- The Koko toxic waste episode was an eye opener to environmental consciousness.
- Promulgation of the Harmful Waste Decree 42 now Harmful Wastes (Special Criminal Provisions etc) Act;
- Creation of the Federal Environmental Protection Agency (FEPA) (1988);
- Articulation of the National Policy on Environment;
- Development of some regulations and standards;
- Promulgation of the EIA Decree, now cited as the E.I.A. Act;
- Active participation and involvement of Nigeria in global environmental protection and sustainable development matters

5



EVOLUTION OF ENVIRONMENTAL PROTECTION IN NIGERIA (III)



- **Merging of FEPA and some relevant environmental Departments and Agencies from existing Ministries to form Federal Ministry of Environment.**
- **Creation of the Federal Ministry of Environment (FMEnv);**
- **More activities and emphasis on policy matters and less or no enabling law on enforcement issue;**
- **Series of Committees set up to proffer solution to the identified gaps.**

6



ESTABLISHMENT OF NESREA



- The Act was signed into law by His Excellency, President Umaru Musa Yar'Adua, GCFR and published in the Federal Republic of Nigeria Official Gazette No. 92, Vol. 94 of 31st July, 2007.
- The National Environmental Standards and Regulations Enforcement Agency (NESREA) is a Parastatal of the Federal Ministry of Environment.
- The Agency was established by NESREA (Establishment) Act, 2007, thus repealing the Federal Environmental Protection Agency Act Cap F 10 LFN 2004.
- NESREA among other things is empowered to enforce all environmental laws, guidelines, policies, standards and regulations in Nigeria, as well as enforcing compliance with provisions of international agreements, protocols, conventions and treaties on the environment to which Nigeria is a signatory.



VISION AND MISSION OF NESREA



- **Vision:** to ensure a cleaner and healthier environment for Nigerians;
- **Mission:** to inspire personal and collective responsibility in building an environmentally conscious society for the achievement of sustainable development in Nigeria.



NESREA MANDATE



NESREA has responsibility to enforce all environmental laws, guidelines, policies, standards and regulations in Nigeria, as well as enforce compliance with the provisions of all international agreements, protocols, conventions and treaties on the environment to which Nigeria is a signatory.



MAIN THRUST



To ensure that individuals, facilities, corporate organizations and the public comply with environmental laws, regulations and standards through the building of strategic alliances and partnerships in pursuit of voluntary compliance .



FUNCTIONS OF NESREA (I)



- **enforce compliance with laws, guidelines, policies and standards on environmental matters;**
- **coordinate and liaise with stakeholders, within and outside Nigeria, on matters of environmental standards, regulations and enforcement;**



FUNCTIONS OF NESREA (II)



- **enforce compliance with the provisions of international agreements, protocols, conventions and treaties on the environment, including climate change, biodiversity, conservation, desertification, forestry, oil and gas, chemicals, hazardous wastes, ozone depletion, marine and wild life, pollution, sanitation and such other environmental agreements as may from time to time come into force;**



FUNCTIONS OF NESREA (III)



- **enforce compliance with any legislation on sound chemical management, safe use of pesticides and disposal of spent packages thereof;**
- **enforce compliance with regulations on the importation, exportation, production, distribution, storage, sale, use, handling and disposal of hazardous chemicals and waste other than in the oil and gas sector;**
- **enforce compliance with guidelines and legislations on sustainable management of the ecosystem, biodiversity conservation and the development of Nigeria's natural resources;**



FUNCTIONS OF NESREA(IV)



- **conduct environmental audit and establish data bank on regulatory and enforcement mechanisms of environmental standards other than in the oil and gas sector;**
- **create public awareness and provide environmental education on sustainable environmental management, promote private sector compliance with environmental regulations other than in the oil and gas sector and publish general scientific or other data resulting from the performance of its functions; and**
- **carry out such activities as are necessary or expedient for the performance of its functions.**



POWERS OF NESREA (I)

Among the powers of the Agency include:

- to prohibit processes and use of equipment or technology that undermine environmental quality;
- to conduct field follow-up compliance with set standards and take procedures prescribed by law against any violator;
- subject to the provisions of the Constitution of the Federal Republic of Nigeria, 1999, and in collaboration with relevant judicial authorities establish mobile courts to expeditiously dispense cases of violation of environmental regulations;
- to conduct public investigations on pollution and the degradation of natural resources, except investigations on oil spillage;



POWERS (II)

- submit for the approval of the Minister, proposals for the evolution and review of existing guidelines, regulations and standards on environment other than in the oil and gas sector including:-
 - atmospheric protection;
 - air quality;
 - ozone depleting substances;
 - noise control;
 - effluent limitations;
 - water quality;
 - Waste management and environmental sanitation;
 - Erosion and flood control;
 - Coastal zone management;
 - Dams and reservoirs;
 - Watershed management;
 - Deforestation and bush burning;
 - Other forms of pollution and sanitation; and
 - Control of hazardous substances and removal control methods.



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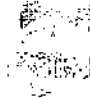


POWERS (II)

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 - **atmospheric protection;**
 - **air quality;**
 - **ozone depleting substances;**
 - **noise control;**
 - **effluent limitations;**
 - **water quality;**
 - **Waste management and environmental sanitation;**
 - **Erosion and flood control;**
 - **Coastal zone management;**
 - **Dams and reservoirs;**
 - **Watershed management;**
 - **Deforestation and bush burning;**
 - **Other forms of pollution and sanitation; and**
 - **Control of hazardous substances and removal control methods.**



POWERS (III)



- **develop environmental monitoring networks, compile and synthesize environmental data from all sectors other than in the oil and gas sector at national and international levels; and**
- **in collaboration with other relevant agencies and with the approval of the Minister, establish programmes for setting standards and regulations for the prevention, reduction and elimination of pollution and other forms of environmental degradation in the nation's air, land, oceans, seas and other water bodies and for restoration and enhancement of the nation's environment and natural resources.**



ADMINISTRATIVE STRUCTURE OF NESREA

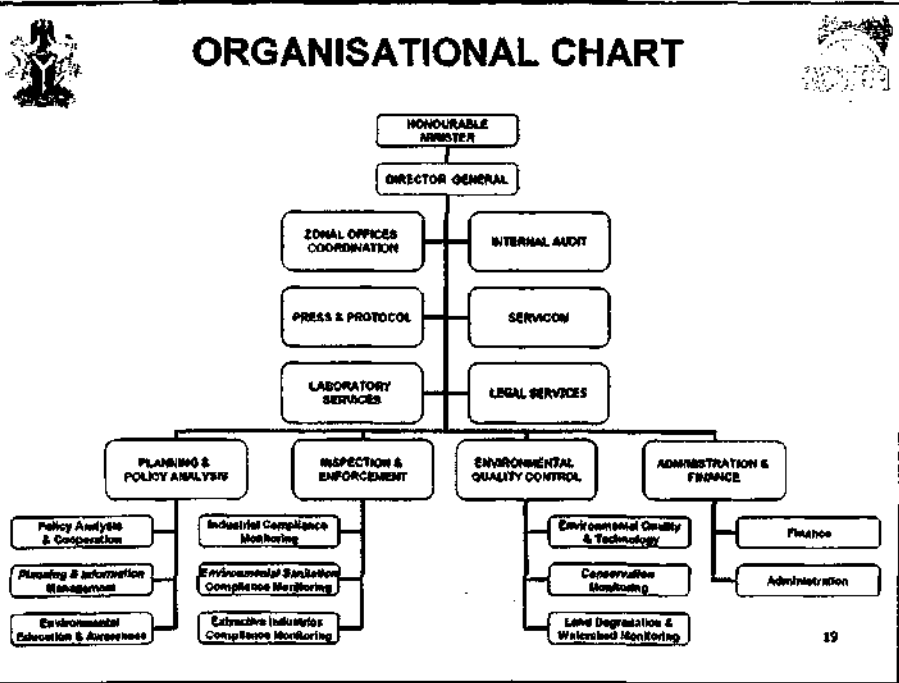


•The Agency (NESREA) is structured into three technical and one service Department viz:

- **Planning and Policy Analysis;**
- **Inspection and Enforcement;**
- **Environmental Quality Control; and**
- **Administration and Finance.**

•The office of the Director General comprises the following Units:

- **Legal Services Unit**
- **Servicom Unit**
- **Internal Audit Unit**
- **Press and Protocol Unit**
- **Zonal Office Coordination Unit**
- **Laboratory Services Unit**



DEPARTMENT OF PLANNING AND POLICY ANALYSIS (PPA)

The Department is to ensure effective mainstreaming of existing and emerging policy issues into the mandate of the Agency through effective planning and public education including application of information management system and the building of viable partnerships at all levels.

The Department has three Divisions namely:

- Policy Analysis and Cooperation (PAC);
- Planning and Information Management (PIM); and
- Environmental Education and Awareness (EEA).



DEPARTMENT OF INSPECTION AND ENFORCEMENT (I&E)

The Department is to ensure compliance with regulations, standards and guidelines on the brown environment. The Department has three Divisions, namely:

- Industrial Compliance Monitoring (ICM);**
- Extractive Industries Compliance Monitoring (EICM); and**
- Environmental Sanitation Compliance Monitoring (ESCM).**



DEPARTMENT OF ENVIRONMENTAL QUALITY CONTROL (EQC)

The Department is to monitor and ensure the integrity of the ecosystem and the preservation of the nation's environmental resources.

The Department has three Divisions, namely:

- Environmental Quality Technology;**
- Land Resources and Watershed Monitoring;
and**
- Conservation Monitoring.**



DEPARTMENT OF ADMINISTRATION AND FINANCE (A&F)



The Administration & Finance Department offers common and miscellaneous services to the technical departments for optimal efficiency in the delivery and realization of the overall mandate of the Agency.

The Department has two Divisions:

- **Administration Division; and**
- **Finance Division.**



UNITS



The Agency has six (6) Units which are directly coordinated by the Director General / Chief Executive Officer.

The Units are:

- **Legal Services;**
- **Laboratory Services;**
- **Servicom unit;**
- **Press and Protocol unit;**
- **Zonal Coordinating unit; and**
- **Internal Audit.**



LEGAL SERVICES UNIT



Supports the enforcement functions of the Agency by proffering legal advice/opinion on all matters. It drafts agreements and MoUs as well as files and represents the Agency in courts.

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LABORATORY SERVICES UNIT



Provides laboratory services for evaluation and interpretation of environmental data and also provides technical back stopping to all technical Departments of the Agency.

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SERVICOM UNIT



- **Serves to facilitate the Agency's service delivery by providing safe and conducive working environment to staff; and**
- **Manages the Agency's customer relations, including provision of opportunities for customer feedback on services.**



PRESS AND PUBLIC RELATIONS UNIT



- **Responsible for press and public relations matters as well as protocol duties.**



INTERNAL AUDIT

- **Serves as an internal check and control within the Agency to ensure that due process and appropriate financial procedures are adhered to in all transactions.**

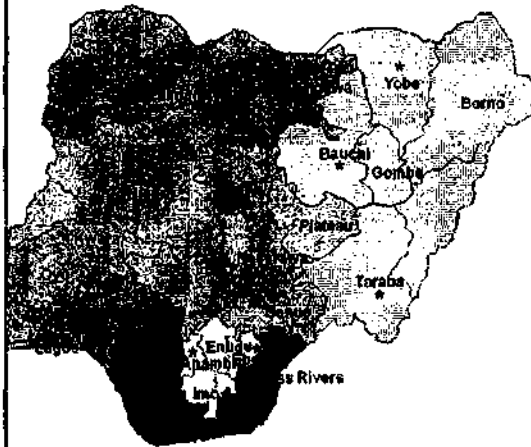


STATE /ZONAL OFFICES COORDINATION

- **Serves as a clearing house for Zonal and State office matters.**



Zonal & State Offices

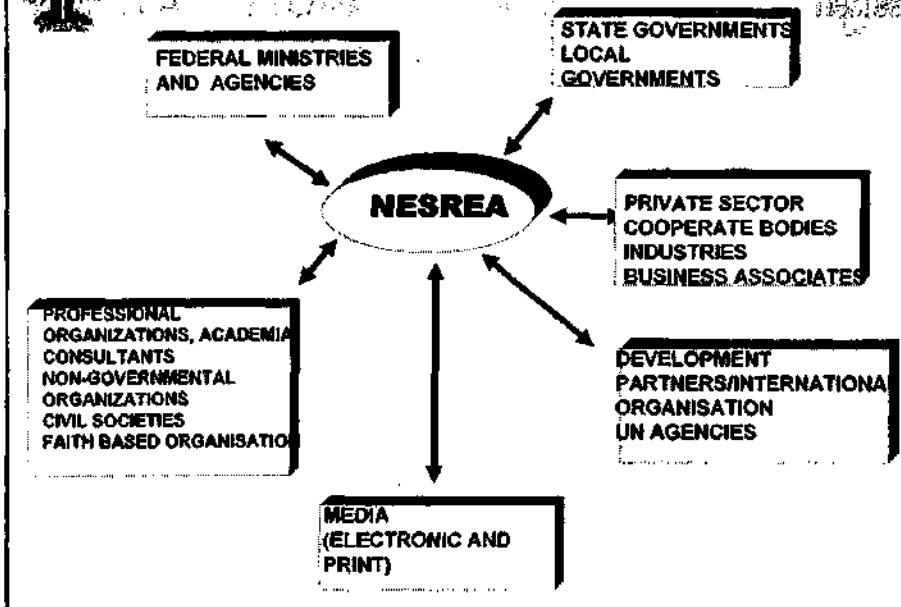
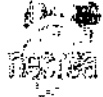


- North East
 - Gombe, Borno.
- North West
 - Kano, Kebbi
- North Central
 - Plateau, Benue, Nasarawa, Kwara.
- South West
 - Lagos, Oyo, Osun, Ondo, Ekiti.
- South South
 - Rivers.
- South East
 - Imo, Enugu.

*Acquisition of Offices in Progress



IMPLEMENTATION STRATEGY





IMPLEMENTATION STRATEGY

- **Development of new, and review of existing environmental guidelines, regulations and standards;**
- **Development of compliance monitoring and enforcement programmes;**
- **Capacity building and institutional strengthening for Headquarters, Zonal and State Offices;**
- **Environmental Education, awareness and advocacy; and**
- **Development of Sectoral Strategic Alliance Programmes for enhanced environmental compliance.**

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ACHIEVEMENTS OF NESREA (I)

NESREA has recorded some milestones since inception in 2007, and within the framework of the 7-Point Agenda of Mr. President, particularly with regards to wealth creation; human capital development; national security and intelligence; land tenure and home ownership; and food security. Some of these included:

- **Development of the following eleven (11) Environmental Regulations which have been published in the Federal Republic of Nigeria Extraordinary Gazette and presented to the public:**
 - I. **National Environmental (Wetlands, River Banks and Lake Shores) Regulations, 2009. S.I. No. 26.**
 - II. **National Environmental (Watershed, Mountainous, Hilly and Catchments Areas) Regulations, 2009. S.I. No. 27.**
 - III. **National Environmental (Sanitation and Wastes Control) Regulations, 2009. S.I. No. 28.**
 - IV. **National Environmental (Permitting and Licensing System) Regulations, 2009, S. I. No.29.**
 - V. **National Environmental (Access to Genetic Resources and Benefit Sharing) Regulations, 2009. S.I. No. 30.**
 - VI. **National Environmental (Mining and Processing of Coal, Ores and Industrial Minerals) Regulations, 2009. S.I. No. 31.**
 - VII. **National Environmental (Ozone Layer Protection) Regulations, 2009. S. I. No.32.**
 - VIII. **National Environmental (Food, Beverages and Tobacco Sector) Regulations, 2009. S.I. No. 33.**
 - IX. **National Environmental (Textile, Wearing Apparel, Leather and Footwear Industry) Regulations, 2009. S.I. No. 34.**
 - X. **National Environmental (Noise Standards and Control) Regulations, 2009. S.I. No. 35.**
 - XI. **National Environmental (Chemicals, Pharmaceuticals, Soap and Detergent Manufacturing Industries) Regulations, 2009. S. I. No. 36.**



ACHIEVEMENTS OF NESREA (II)



- Development of its Corporate Strategic Plan [CSP] 2009-2012 which has been presented to all stakeholders. The implementation of the CSP will give the Agency a focus as it ensures environmental sustainability in line with the MDGs and the 7 point Agenda.
- Commissioning of a National Reference Environmental Laboratory located in Kano to checkmate the reckless effluent discharge from industries.
- Commissioned a Mobile air quality monitoring station in the FCT as a veritable component of NESREA air quality monitoring programme. A second air quality monitoring station will soon be commissioned in Port Harcourt, Rivers State.
- Institutionalisation of an Annual Stakeholders' Forum as a means of continuous dialogue with its Stakeholders and the public. NESREA has held 3 such annual for a since inception.
- Publication of a quarterly newsletter as a means of informing the public of its activities and educating the reading populace on topical environmental issues. To date, 5 editions of 'nesreanews' have been produced.



ACHIEVEMENTS OF NESREA (III)



In partnership with some State Governors, NESREA has established and operationalised 16 State offices located in Kano, Kebbi, Plateau, Gombe, Benue, Enugu, Borno, Lagos, Nasarawa, Ondo, Kwara, Osun, Oyo, Ekiti, Imo and Rivers; and 6 Zonal offices in Port-Harcourt, Jos, Owerri, Kano, Gombe and Ibadan.

- As part of creating awareness on topical environmental issues, NESREA produces the 'NESREA WATCH' - a weekly environmental education and awareness programme on Radio in 16 States and the FCT. The weekly radio programme is produced in English, Pidgin English, Igbo, Hausa and Yoruba and aired in the language most appropriate to each of the States, so as to get the message to the community and grass root levels. NESREA also runs television jingles to bring environmental consciousness to the fore of Nigerians. The Agency also conducts environmental awareness campaigns in schools and markets in the FCT and the States where it has offices.
- NESREA organized an International Conference on E-Waste Control in Abuja from 20th -21st July, 2009. The communiqué of the Conference is called the "Abuja Platform on E-Waste". It contains concrete observations and recommendations for charting a new course in e-waste control and has formed part of global template on e-waste issues.



ACHIEVEMENTS OF NESREA (IV)

- NESREA has been appointed a member of the Seaport Environmental Security Networks Advisory Committee, and is also actively involved in the activities and programmes of the International Criminal Police Organization (INTERPOL), particularly in the areas of Environmental Pollution and Wildlife Crimes. NESREA is collaborating with the Nigeria Customs Service and the Nigerian Police on these programmes.
- NESREA, in collaboration with the Consumer Protection Council (CPC) and the Standard Organization of Nigeria (SON) signed a Memorandum of Understanding (MOU) with the Alaba International Market Amalgamated Traders Association (AIMATA) to check cases of sub-standard quality, counterfeiting and dumping of near-end-of-life and end-of-life electrical and electronic appliances into Nigeria.
- NESREA is partnering with Nigerian Police, Force Headquarters, in developing a special curriculum for the training of different cadres of Officers on environmental issues,



ACHIEVEMENTS OF NESREA (V)

- NESREA, in collaboration with the Nigeria Communication Commission (NCC) organized an Interactive Session with keystakeholders in the Telecommunications Industry to address the environmental implications of the Telecommunications Industry and the need to apply precautionary principles and use of environment-friendly technology and green designs in all telecommunication operations.
- NESREA has established partnership/working relationships with some International organisations including sister agencies, which have resulted in the award of fellowships to 20 staff members in various fields of environmental compliance and enforcement. To date, 14 members of staff have benefitted from the fellowship programmes in the UK and Germany, the remaining are going at various times within the next year. In-house technical training has been concluded for all staff of the Agency.



ACHIEVEMENTS OF NESREA (VI)



- **NESREA Organized a second Special Management Retreat for her management staff from 15th - 19th February, 2010 in Lafia, Nasarawa State, to provide them a unique opportunity to share ideas and thoughts on the activities of the Agency so far, and plan for 2010 in line with the developed Corporate Strategic Plan.**
- **In response to public complaints, the Agency made a telecom Operator to dismantle a telecoms base station in Kubwa, Abuja; and sealed two in Enugu and Lagos, respectively.**
- **Instituted criminal proceedings against a telecom company whose activities polluted drinking wells in a community.**
- **NESREA is providing leadership in revitalising the national implementation of the CITES.**
- **NESREA is coordinating the national implementation of the Toxic Waste Dump Watch Programme to monitor and control illegal dumping of Toxic and hazardous wastes in Nigeria; and**
- **NESREA acted decisively and timely on the alert it received and provided leadership in tracking, intercepting and arresting of a vessel from Austria to Nigeria carrying hazardous waste**



CONCLUSION



- **NESREA is the new Institutional mechanism created by the Federal Government of Nigeria to ensure effective environmental governance through compliance monitoring and enforcement of environmental laws, standards and regulations ;**
- **Effective compliance monitoring and enforcement of environmental laws, standards and regulations are key to protecting our environment and achieving sustainable development;**
- **The Judiciary and Law enforcement Agencies have key roles to play in upholding the rule of Law and ensuring that environmental offenders are brought to book;**
- **NESREA shall build and promote partnerships in both public and private sectors including civil societies and professional organizations;**
- **NESREA looks forward to building viable partnerships with the Judiciary and Law enforcement Agencies for adequate policing of our environment and effective prosecution of violators of environmental laws, standards and regulations; and**
- **Every Nigerian is a stakeholder in the NESREA process, and we must all work together to ensure a cleaner and safer environment for the country.**



THANK YOU

NESREA

... ensuring a cleaner and healthier environment for Nigerians

UNDERSTANDING THE NESREA ACT AND REGULATIONS

**A Presentation by:
Bola Odugbesan Esq
Legal Adviser, NESREA**

**On the occasion of the National
Workshop on Environmental Laws,
Regulations and Standards for the
Judiciary and Law Enforcement
Agents**

Introduction I

- Law emerges from the cultural traditions, moral and religious values of each society. These traditions and values continue to impact on the development of legal norms. In the context of environmental protection, cultures, religions and legal systems throughout the world contain elements that respect and seek to conserve the natural basis of life.
- The basic rationale for the existence of laws is to guide inter-personal interactions for the purpose of peace and harmony.

Introduction II

- Environmental law can thus be generally described as the body of laws which contains elements to regulate and control natural and human impact on the environment.
- The basic rationale for these laws is to ensure compliance with set rules and standards.

ENVIRONMENTAL PROTECTION

- The threshold environmental legislation in Nigeria is the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007.
- The NESREA Act 2007 repealed the erstwhile Federal Environmental Protection Agency (FEPA) Act which created the then Federal Environmental Protection Agency.

BACKGROUND ACT

- ▣ Thus, for a period of about 9 years there was no effective institutional mechanism saddled with the responsibility for the protection and development of the environment, biodiversity conservation and sustainable development of Nigeria's natural resources in general and environmental technology including coordination, and liaison with relevant stakeholders within and outside Nigeria on matters of enforcement of environmental standards, regulations, rules, laws, policies and guidelines.
- ▣ The Enabling Act establishing NESREA came into force on the 30th July, 2007. It was one of the first Bills that President, Umaru Musa Yar'Adua signed into law on assumption of office. NESREA is a child of necessity birthed to fill the vacuum created by the coalescence of the erstwhile Federal Environmental Protection Agency (FEPA) with the newly created Federal Ministry of Environment, Housing and Urban Development in 1999.

KEY FEATURES OF THE ACT

- ▣ The NESREA Act empowers the Agency to enforce compliance with provisions of all environmental laws, regulations, policies and standards, including international agreements, protocols, conventions and treaties to which Nigeria is a signatory.
- ▣ For purposes of readability and comprehension, the Act is divided into six parts encompassing 38 Sections including one Schedule.
- ▣ Part I covers Section 1 - 6 which spells out the objectives of the Agency (Section 2), Establishment and composition of the Governing Council (Section 3), Tenure of office (Section 4), Cessation of membership (Section 5) and Emolument of members (Section 6).
- ▣ Part II covers Sections 7 - 9 which provides for functions of the Agency (Section 7), powers (Section 8) and functions of the council (Section 9).

NE REA ACT

- Part III covers only Section 10 which provides for the organizational structure of the Agency divided into directorates.
- Part IV covers from Sections 11 - 12 which provides for appointment of the Director General and other staff of the Agency and Pensions matters
- Part V extends from Section 13 - 29 and covers Sections dealing with financial provisions such as funds of the Agency (Section 13), Expenditure (Section 14), Exemption from income tax (Section 15), Annual estimate (Section 17), Accounts and audit section 18, Annual Report (Section 18), Investment (Section 19). The remaining Sections on environmental concerns such as Air quality and atmospheric protection (Section 20), Ozone Layer Protection Section 21, Noise pollution Section 22, Water quality standards section 23, Effluent limitations section 24, Environmental Sanitation Section 25, land resources and watershed quality Section 26, Discharge of hazardous substances and related offences section 27, Removal methods section 28 and Cooperation with appropriate authorities section.

IN AREA ACT

- Under this Part, covering Sections 30 - 38 includes powers to enter premises; definition of Offences and Penalties, Legal Processing; Power of the Minister to give directives; Power to make regulations; Saving Provisions Section; Repeal of FEPA Act; Interpretation Section; and Citation Section.

Functions of the Agency

- enforce compliance with laws, guidelines, policies and standards on environmental matters;
- coordinate and liaise with stakeholders, within and outside Nigeria, on matters of environmental standards, regulations and enforcement;
- enforce compliance with the provisions of international agreements, protocols, conventions and treaties on the environment, including climate change, biodiversity, conservation, desertification, forestry, oil and gas, chemicals, hazardous wastes, ozone depletion, marine and wild life, pollution, sanitation and such other environmental agreements as may from time to time come into force;
- enforce compliance with any legislation on sound chemical management, safe use of pesticides and disposal of spent packages thereof;

- enforce compliance with regulations on the importation, exportation, production, distribution, storage, sale, use, handling and disposal of hazardous chemicals and waste other than in the oil and gas sector;
- enforce through compliance monitoring, the environmental regulations and standards on noise, air, land, seas, oceans and other water bodies other than in the oil and gas sector;
- enforce environmental control measures through registration, licencing and permitting systems other than in the oil and gas sector;

POWERS OF THE AGENCY

- prohibit processes and use of equipment or technology that undermine environmental quality;
- conduct field follow-up compliance with set standards and take procedures prescribed by law against any violator;
- Conduct public investigations on pollution and the degradation of natural resources, except investigations on oil spillage
- develop environmental monitoring networks, compile and synthesize environmental data from all sectors other than in the oil and gas sector at national and international levels.
- Evolve and review existing guidelines, regulations and standards on the following:
 - atmospheric protection,
 - air quality
 - ozone depleting substances,
 - noise control,
 - effluent limitations,
 - water quality,

- waste management and environmental sanitation,
- erosion and flood control,
- coastal zone management, dams and reservoirs,
- watershed
- deforestation and bush burning, other forms of pollution and sanitation, and
- control of hazardous substances and removal control methods.

- seize and detain for such time as may be necessary for the purpose of this Act, any article by means of or in relation to which any provision of this Act or the regulations has been contravened; and
- obtain an order of a court to suspend activities, seal and close down premises including land, vehicle, tent, vessel, floating craft or any inland water and other structure whatsoever.

3.11.11.11

- NESREA recently evolved 11 Regulations made pursuant to Sections 8 and 34 of the NESREA Act which became effective from 29 September, 2009.
- Each Regulation focused on specific area/sector of the economy whose activities generate environmental concerns such as land degradation, air, water pollution etc. A common thread that runs through these regulations is the establishment of parameters and standards that must be complied with, failing which the erring facility will be sanctioned.

The Regulations made pursuant to the parent Act are as follows-

- ❑ National Environmental (Wetlands, River Banks and Lake Shores Protection) Regulations, 2009. S. I. 26
- ❑ National Environmental (Protection of Watershed, Mountainous, Hilly and Catchment Areas) Regulations, 2009. S. I. 27
- ❑ National Environmental (Sanitation and Waste Control) Regulations, 2009. S. I. 28
- ❑ National Environmental (Permitting and Licensing System) Regulations, 2009 S.I. 29
- ❑ National Environmental (Access to Generic Resources and Benefit Sharing) Regulations, 2009 S.I. 30

- ❑ National Environmental (Mining and Processing of Coal, Ores and Industrial Minerals) Regulations, 2009 S.I. 31
- ❑ National Environmental (Ozone Layer Protection) Regulations, 2009 S.I. 32
- ❑ National Environmental (Food, Beverages and Tobacco Sector) Regulations, 2009 S.I. 33
- ❑ National Environmental (Textile, Wearing Apparel, Leather and Footwear Industry) Regulations, 2009, S.I. 34
- ❑ National Environmental (Noise Standards and Control) Regulations, 2009 S.I. 35
- ❑ National Environmental (Chemicals, Pharmaceuticals, Soap and Detergent Industries) Regulations, 2009 S.I. 36

- ❑ **National Environmental (Wetlands, River Banks and Lake Shores) Regulations, 2009. S.I. 26.**
- ❑ **Objectives**
- ❑ **Provided for in Section 2(a) - (e) as follows:**
- ❑ **Provide for the conservation and wise use of wetlands and their resources in Nigeria;**
- ❑ **Ensure water catchments conservation and flood control;**
- ❑ **Ensure the sustainable use of wetlands for ecological and tourism purposes for the common good of all citizens;**
- ❑ **Ensure that wetlands are protected as habitats for species of fauna and flora; and**
- ❑ **Minimize and control pollution.**

- ❑ **Principles**
- ❑ **The principles to be observed in regulating all wetlands include:**
- ❑ **Utilizing wetlands resources in a sustainable manner that is compatible with their hydrological functions and services,**
- ❑ **Conducting an E.I.A in accordance with relevant laws on all wetlands activities which are likely to have adverse effect on them**
- ❑ **Applying environmental best practices for their conservation**
- ❑ **Incorporating the importance and wise use of wetlands into the national and local approaches for public awareness.**
- ❑ **Penal Provisions**
- ❑ **Offences are as provided for in Section 30**
- ❑ **Penalties**
- ❑ **Penalties both monetary and/or imprisonment of not less than N500,000 or 3 months respectively /and or both and in addition, the guilty party shall be required to carry out remediation work.**

❑ **National Environmental (Watershed, Mountainous, Hilly and Catchment Areas) Regulations, 2009. S.I. 27.**

❑ Objectives

❑ Section 1 (1) provides for the objectives of this regulation to the effect that every land owner or occupier while utilizing land in the above mentioned areas shall:

- ❑ Observe and respect the carrying capacity of the land;
 - ❑ Carry out soil conservation measures
 - ❑ Carry out measures for the protection of water catchment areas;
 - ❑ Use the best available environmentally friendly technologies to minimize significant risks and damage to ecological and landscape aspects; and
 - ❑ Maintain adequate vegetation cover.
- ❑ Offences and Penalties are as provided for in Sec. 10, and it includes the offender having his permit revoked;
- ❑ Different levels of cash penalties depending on the nature of offence. i.e. if afforestation or deforestation related or if committed by an individual or a corporate body.

❑ **National Environmental (Sanitation and Wastes Control) Regulations 2009. S.I. 28.**

❑ Objectives

❑ To adopt sustainable and environment friendly practices in environmental sanitation and waste management to minimize pollution.

❑ The Regulation basically dwells on the general cleanliness of the environment i.e. food, market and industrial occupiers of properties and premises, citizens obligations on sanitation, States and Local government responsibilities etc.

❑ Offences and penalties - as provided for in Section 71 - 104.

❑ Several offences which range from failure to handle waste in the stipulated manner to failure to complying with conditions of any guideline, and; making a false statement in connection with compliance to the provisions of these Regulations.

❑ Penalties

❑ Violation of the provisions of these regulations attract different levels of penalties of both monetary and imprisonments. Minor offences attract about N20,000 or 6 months imprisonment or both while more serious offences could attract as much as N5 million or 5 years imprisonment or both i.e. for offences which relate to the generation of hazardous wastes.

❑ **National Environmental (Permitting and Licencing Systems) Regulations 2009. S.I. 29.**

❑ Objectives

❑ To enable consistent application of Environmental laws, Regulations and Standards in all sectors of the economy and geological regions.

❑ Penalties

❑ Penalties are provided for in Sections 19 - 27 and include suspension and cancellation of permit depending on the nature of violation.

❑ **National Environmental (Access to Generic Resources and Benefits Sharing) Regulations, 2009. S.I. 30.**

❑ Objectives

❑ The objectives of this regulation is generally for the conservation of threatened and endangered species and provide access to generic resources and its procedures.

❑ Penal Provisions

❑ Offences are provided for in Sec. 22 of the regulation to the effect that failure to comply with the provisions of these regulations constitutes an offence.

❑ Penalties

❑ Upon conviction, like all other Regulations penalties range from various monetary inform of fines to terms of imprisonment depending on the nature of offence. For individuals, between N1 million and N10 million or/and 1 year imprisonment for individuals and additional N100, 000 for each day the offence subsists. While it is between N10 million and N100 million and an additional N1 million for every day the offence subsists.

- ☐ **National Environmental (Mining and Processing of Coal, Ores and Industrial Minerals) Regulations. S.I.31.**
- ☐ Purpose
- ☐ The purpose of this Regulation as provided for in Section 1, is to minimize pollution from mining and processing of coal, ores and industrial materials using efficient and cleaner production technologies.
- ☐ Penal Provisions
- ☐ The offences are as provided for in Sec. 28 and Sec. 43 of the Regulation.
- ☐ Penalties
- ☐ Violations of the provisions of Sec.28 of the Regulations shall on conviction, in case of individual be liable to a fine not exceeding N100,000 or imprisonment for a term not exceeding two years or both such fine and imprisonment and an additional N5,000 for every day the offence subsists. And in case of a facility, shall on conviction be liable to a fine not exceeding N100,000.00 and an additional fine of N5,000 every day the offence subsists.

- ☐ **National Environmental (Ozone Layer Protection) Regulations, 2009. S.I. 32.**
- ☐ Objective
- ☐ To prevent and prohibit sale and use of ozone depleting substances.
- ☐ Penal Provisions
- ☐ Provided for in Section 22 of this regulation. A fine not exceeding N200, 000 and N10, 000 for each day the offence subsists and/or 1 year imprisonment for individuals who violate provisions of this regulation. While for Corporate bodies, fine not exceeding N1 million and an additional N50, 000 for every day the offence subsists.

☐ **National Environmental (Food, Beverage and Tobacco Sector) Regulations 2009. S.I. 33.**

☐ **Objectives**

☐ As provided for in Sec. 1, is to prevent and minimize pollution from all operation and ancillary activities of food, beverages and Tobacco companies of the Nigerian environment.

☐ **Penal Provisions**

☐ Offences are as provided for in Sections 44 to 48 of the Regulation. Some of the offences amongst others are;

- ☐ Contravention of permit condition
- ☐ Making statements which is known to be false or misleading.
- ☐ Failure to comply with abatement measures.

☐ **Penalties**

☐ The penalties are both monetary and/or imprisonment of not more than two years.

☐ A person shall on conviction be liable to a fine of not more than N200, 000 for individual and N1, 000,000 for corporate body.

☐ **National Environmental (Textile, Wearing apparel, leather and footwear industry) Regulations 2009. S.I.34.**

☐ **Purpose**

☐ The purpose of this Regulation is to present and minimize pollution from all operations and ancillary activities from the sectors to the environment.

☐ **Penal Provisions**

☐ **Offences**

☐ The offences are as provided for in Section 45 - 50 of the Regulations. Some of the offences include;

- ☐ Failure to comply with condition of the permit or requirements of an enforcement notice.
- ☐ Intentionally making false statement or report
- ☐ Failure to comply with abatement measures.
- ☐ Discharge of pollutants beyond permissible level.

☐ **Penalties**

☐ The penalties are monetary and/or imprisonment upon conviction. Imprisonment for a term of not more than two years and/or a fine of not more than N200, 000 for individual and N1, 000,000 for company.

- ▣ **National Environmental (Noise Standards and Control) Regulations 2009. S.I.35.**
- ▣ Objectives
- ▣ Section 1 (a) - (c) provides for the objectives of the regulations. The purpose of the regulation is to ensure maintenance of a healthy environment for all people in Nigeria, the tranquility of their surroundings by regulating noise level, and generally to elevate standard of living by
 - ▣ Prescribing the maximum permissible noise level a facility or activity to which a person may be exposed;
 - ▣ Providing for control of noise and for mitigating measures for reduction of noise; and
 - ▣ Generally giving effect to the provisions of Section 22 of the Act.
- ▣ Penal Provision
- ▣ Offences
- ▣ Offences are as provided for in Section 17 (a) - (k)
- ▣ Penalties
- ▣ The penalties are on conviction monetary and/or imprisonment. i.e. a fine not more than N50,000/or a term of imprisonment of not more than one year or both for an individual, and not more than N500, 000 for a corporate body.

- ▣) **National Environmental (Chemical, Pharmaceuticals, Soap and Detergent Manufacturing Industries) Regulations 2009. S.I. 36.**
- ▣ Objectives
- ▣ To prevent and minimize pollution from all operations and ancillary activities from the Sector in the Nigerian Environment.
- ▣ Penal Provisions
- ▣ Violations of the provisions of this regulation as provided for in Sections 46 to 50 attract both monetary penalty and imprisonment terms upon conviction. For individuals, terms upon conviction. Fine not exceeding N200, 000 or to imprisonment not 2 years and/or both and an additional fine of N5, 000 for every day the offence subsists, while facilities upon conviction are liable to a fine not exceeding N1 million and additional N50, 000 for every day the offence subsists.

CONCLUSION

- ▣ There is no doubt that the Agency has enormous environmental responsibilities to grapple with by virtue of the functions and powers vested in it by the enabling Act.
- ▣ In the light of the above and in line with the Agency's framework for action, subsumed in its Corporate Strategy, to partner and work through others, we graciously solicit the support and cooperation of the Bar and Bench, Law Enforcement Agencies, the Mass Media and Civil Society Organisations for the achievement of our mandate in ensuring a cleaner and healthier environment for all Nigerians through a robust and effective enforcement of environmental laws.

THANK YOU

VERY MUCH

FOR YOUR ATTENTION

GLOBAL APPROACHES TO ENVIRONMENTAL PROTECTION AND CONSERVATION: THE LEGAL PERSPECTIVE

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Being text of paper delivered at the International Workshop on Nature Conservation, Abuja, April 26th 2010.

Presentation Outlay

- Environmental Challenges
- Conservation and Biodiversity: The Nexus
- Area of Convergence
- Justification for Conservation and Environmental Protection
- Types of Conservation
- Regulatory Model
- Economic Model
- Non-Legal Best International Practices

Our Environment

- Every religion in the world testifies to the beautiful creation of God and the subsequent bequest to mankind. See Genesis 1. Those creation of God include the atmosphere, lithosphere, hydrosphere and
- The environment is our source of sustenance that we depend upon. We look to it for food, fuel, medicines and materials. We look to it also for a realm of beauty and spiritual assistance - Kofi Anan, Secretary-General, United Nations, Opening Statement at the World Summit on Sustainable Development. See, A/CONF./99/20 at p. 154.
- How do we cherish, protect and sustain the free beauty heritage of mankind. Is there any role of law? If so, how effective?

Environmental Challenges

- The United Nations Environmental Programme in one of its *Global Environmental Outlook* highlights major environmental challenges that confront mankind today. These are:
- effect of greenhouse gases emitted at levels higher than the stabilisation target internationally agreed upon at the United Nations Framework Convention on Climate Change;
- use of renewable resources such as land, forest, fresh water, coastal areas, fisheries and urban areas beyond the natural regeneration capacity;

Environmental Challenges

- increasing pervasive use and spread of chemicals to fuel economic development and disposal of hazardous wastes which expose mankind to health risk;
- rapid growth of unplanned urbanisation particularly in coastal areas thereby putting major stress on adjacent eco-system, flooding and unhealthy living standards; and
- problems of desertification.

Environmental Challenges

- At the national level, Nigeria is equally confronted with glaring environmental challenges of :
 - excessive pressure on available resources, infrastructure and space due to unabated rural-urban migration in the past three decades; this stress has been reinforced by industrial and urban development that has caused a rising rate of pollution;

Environmental Challenges

- the high rate of soil degradation, sheet, gully and coastal erosion and flooding through non-judicious land use practices;
 - the depletion of natural forest resources through uncontrolled logging, tree felling and over-grazing;
 - unfettered bush burning and the risk of exterminating wildlife species as well as uncontrolled fishing and related activities which endanger the species of fish in Nigeria waters;

Environmental Challenges

- pollution of surface and underground water systems through indiscriminate disposal of solid and liquid wastes;
 - destruction of valuable agricultural land through bad mining practices;
 - permanent dangers posed by the encroachment of the desert on vast agricultural lands along northern borders; and
 - oil pollution and related environmental consequences, particularly in the Niger Delta area of Nigeria.

Conservation and Biodiversity: The Nexus

- Conservation is the sustainable exploitation of natural resources (land, forestry, wildlife and marine resources) for optimal or maximum yields of the present generations while maintaining its potential to meet the needs and aspirations of future generations.
- Biological diversity or biodiversity, on the other hand, is the variety of nature. Article 2 of the Convention on Biological Diversity defines biodiversity to mean, "the variability among living organisms from all sources and includes diversity between species, within species and of ecosystems."
- By this definition, biodiversity not only encompasses more than specie diversity, but also includes genetic, specie and ecosystem diversity. Specie diversity refers to the variety of species with given populations within which gene flows occur under natural conditions. Within a species, all normal individuals are capable of breeding with other individuals of the opposite sex, or at least of being genetically linked with them through chains of other breeding individuals.

Conservation and Biodiversity: The Nexus

- Genetic diversity, however, means the range of genetic material found in the world's organisms, on which depends the functioning of many of the above processes and life-support systems, the breeding programmes necessary for the protection and improvement of cultivated plants, domesticated animals and micro-organisms, as well as much scientific and medical advance, technical innovation and the security of the many industries that use living resources. Ecosystem diversity relates to the variety of habitats, biotic communities and ecological processes in the biosphere as well as to the diversity within ecosystems.
- According to Soule, there are levels in the biodiversity hierarchy: (a) whole system such as landscapes or ecosystems; (b) assemblages such as associations or communities; (c) species; (d) populations; and (e) genes. Of these elements, the diversity of ecosystems might be regarded as the concept commanding the highest level of importance, since all living organisms exist and function not in isolation but as part of a wider environment, occupying a particular niche within their appropriate ecosystems, and it is through the preservation of entire ecosystems that diversity can most effectively be secured. M. E. Soules, "Conservation: Tactics for A Constant Crisis" (1991) Science 253, pp. 744-750.

Area of Convergence?

- The global natural resources which constitutes of various plants, animals and other microorganisms currently estimated at about 1.7million are faced with the threats of loss of biodiversity, erosion of genes, and the depletion and extinctions of global species continue to constitute an important concern to national and international authorities.
- These threats emerge from several factors ranging from the pollution of ecosystems, loss of habitat, overexploitation of certain species and the introduction of exotic species. The loss of biodiversity is also experienced through massive deforestation and other unsustainable land-use practices leading to the destruction of temperate forest, wetland and coral reefs.
- The existence of illegal market and lucrative trade in exotic wildlife by poachers and traders for many years accounted for significant loss of wildlife. The major consumers of this exotic wildlife are the local herbalists, local people, food vendors and foreigners . The world market for exotic wildlife is surprisingly large. Worth at least \$5 billion, one year's international trade includes some 40,000 primates, tusk ivory from at least 90,000 African elephants, at least 1 million orchids, 4 million live birds, 10 million reptile skins, 15 million pelts from wild furbearers, over 350 million tropical fish and other items as diverse as kangaroo leather and tortoise shell trinkets.

Justification for Environmental Protection & Conservation

- Biodiversity plays a crucial role in agriculture. It is also an important source of medicinal value, food, fiber, and energy to man.
- Nature conservation promotes aesthetic value of the natural world. The beauty of birds, animals and plants creates a lot of aesthetic interest and improves human life in a non-material way as when people experience joy at sighting a humming bird or when they walk in the groves.
- The notion of the aesthetic value of nature has been accorded a pivotal place in many international treaties.

Justification for Conservation

- The 1972 World Heritage Convention defined the "world heritage" to include "natural features consisting of physical and biological formation... of outstanding universal value from the aesthetic ... point of view "and "natural sites ... of outstanding value from the point of view of ... natural beauty."
- Maintenance of essential ecological processes and life support system,
- Preservation of genetic resources and sustainable utilisation of species and ecosystems.
- Fair and equitable sharing of the benefits arising through the utilisation of genetic resources.

Area of Divergence?

- Using the law to conserve nature, however, involves finding solutions to some complex policy issues.
- Finding space for species and habitats to be conserved often clashes with other legitimate social interests like economic development and respect for private property. These tensions- which means that nature conservation law can be a controversial policy area

Types of Conservation: Ex-situ or in-situ?

- Modern approach to conservation as recognised under the Convention of Biological Diversity is the *ex-situ* conservation. *Ex-situ* conservation is defined in the Convention as "the conservation of components of biological diversity outside their natural habitats". The alternative, *in-situ* conservation, is defined as "the conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties".

Ex-situ or In-situ Conservation?

- *Ex-situ* conservation, involves the removal of one or more specimens or parts thereof from the wild and keeping them in a viable condition elsewhere. As a distinction from *in-situ* conservation, however, this is not completely clear. Would it be *ex-situ* conservation or *in-situ* conservation to remove specimens from the wild and transfer them to another site in the wild that has all the qualities of the natural habitat of the species but from which the species was absent, perhaps through loss or simply because it had failed to colonise? Warren once suggested that the answer would seem to be that it would depend on whether the specimens would survive in their new home unaided or whether they would need to be managed in some ways, such as, by feeding them or fencing them in. If the site happens to be a protected area, however, it may well be a managed habitat anyway, thus blurring the distinction further.

Ex-situ or in-situ Conservation?

- The immediate purpose of *ex-situ* conservation is, of course, to preserve an element of biological diversity. There may, however, be several reasons for wishing to do this as indicated. In most cases *ex-situ* conservation has been the last resort without which the species would have become extinct. The immediate aim has been to increase numbers of individuals by captive breeding or artificial propagation. The possibility of reintroduction into the wild comes later if sufficient numbers can be produced and the circumstances giving rise to the original vulnerability in the natural habitat have been rectified.

Environmental Protection and Conservation: The Legal Connection.

- Law generally shapes societal norms and serves as a tool for social mobilisation, social engineering and social justice. It provides a basis for analysing the normative relationship among generations and the instruments for transforming normative values into rights and obligations. Birnie and Boyle discussing the importance of law in nature conservation remarked that law can serve and serves a number of functions in relation to sustainable management of environment, it can be distributive, determining who is to have ownership or access to the resources, conservatory, preserving the resources as such, or at least doing so at levels that can sustain exploitation; or proscriptive, prohibiting, for conservatory, ethical or moral reasons, exploitation of the resources or particular forms and methods of exploitation.

Environmental Protection and Conservation: The Legal Connection

- The proper function of government in the exercise of its police power to consider the problems and risk that may arise from the use of new technology and endeavour to adjust private rights and harmonise conflicting interests by comprehensive statutes for the public welfare. Yet, in a world of conflicts where established economic interests were engaged in a battle for survival against the forces of social change and environmental protection, the job of law is not to fashion other worldly concepts but to assure that the battle of conflicting interests is "carried on in a fair and equal way". But how can a State translate its sustainable development obligations into legal action without impairing economic interest? This can be achieved by effective reformation of the law through legislative process that will impose appropriate control

Regulatory Approaches to Conservation

- The traditional approach to biodiversity conservation emphasised the separation of ecosystems, species, and genetic resources from human activities through the creation of protected areas, prohibition on harvesting endangered species, and the preservation of germs plasma in seed banks or cryogenic storage facilities. Traditionally, the motive has been simply to ensure the survival of a species, population or variety.

Ex-situ or in-Situ Conservation?

- The Convention defines *in-situ* conditions as "conditions where genetic resources exist within ecosystems and natural habitats, and in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties". This suggests that any site that was not currently inhabited by the species in question would not be *in-situ*.

Regulatory Approaches

- Legal instruments –
- Economic Instruments
- Integration of nature conservation into general decision making, e.g. agriculture, tourism, land use and physical development, housing and transportation.
- Effective conservation depends as much on the responses to other environmental threats – especially climate change, pollution and inappropriate land uses-as on the specific methods of protecting species and habitats.
- Public Participation/Education/Awareness

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Economic Instruments

- Economic techniques involve the use of economic incentives and disincentives, mechanisms such as fines, effluent fees, pollution tax, licences, user charges, loans and grants to reduce a level of pollution to desired standards. This approach is based on the neo-classical economists argument that inefficiency in resource allocation is the primary reason for the unacceptable level of environmental degradation. Pollution is encouraged because the polluter can discharge effluent at no cost to himself, that is, he acquires a benefit free of charge while a cost accrues to others. An efficient level of pollution therefore, will only be achieved when these external diseconomies are internalised. The introduction of pollution tax and other economic disincentives will internalise these "externalities". It primarily seeks to discourage firms and individuals from causing pollution or otherwise damaging the environment not by persuasion or by prohibiting the polluting activity through legislation, but by imposing a price or economic cost on such conduct. By this process, environmental cost is internalised into the production process of the company. This presupposes that firms who wish to maximise profits will find ways of polluting less rather than paying more.

Non-Legal Best International Practices: Way Forward

- **Procedural Integration -**
 - Principle 4 of Agenda 21 states that "environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it. It calls for incorporation of environmental criteria into the planning and implementation of any public policy at all levels of decision making.
 - Agenda 21 Principle 8.4 states that governments must review and modify their decision-making processes to "achieve the progressive integration of economic, social and environmental issues.
 - Application of precautionary principles in our environmental management.
- **Review and streamline most of our environmental laws.**
- **Undertake efficient and effective analysis of our environmental enforcement strategies.**
 - Agenda 21 Principle 8.4 states that governments must review and modify their decision-making processes to "achieve the progressive integration of economic, social and environmental issues.

Non-Legal Best International Practices: Way Forward

- Capturing of environmental data for regulatory and enforcement purposes.**
- Monitoring and Evaluation of Policies and Laws**
 - **Tracking environmental pollution/polluters .**
 - **Regular follow-up actions on environmental delinquents**
 - **Environmental Audits**
 - **Applying Polluter Pay Principle**
 - **Reforms of Environmental Law**
 - **Reappraisal of Environmental Compliance Strategies**
 - **Prompt, effective and efficient prosecution of polluters.**

Non-Legal Best Practices: International Approaches

- Drawing of Action Plans consisting of short, medium and long term strategies to combat, minimise or reduce the identified environmental threat or environmental concerns
- Draw up an inventory of all structural and non-structural measures to prevent, control and reduce identified environmental threats; analyse the existing scope of human activities based on a risk analysis that goes beyond national borders in the catchment area; and identify the inadequacies of the existing scope of the technical and non-technical control and preventive measures.
- Institutional frameworks and decision-making processes that assign clear roles and responsibilities to various levels and groups of actors, such as central and local governmental organisations and community-based organisations;
- Efficient, transparent and accountable management systems that make more effective use of human, technical, financial and natural resources.
- Financial strengthening of environmental Management system;
- Institutional capacity building;
- Improvement of Waste Management operational capacity;
- Private sector involvement in environmental management activities such as waste management, energy renewable and carbon sequestration, climate-change reduction technologies, biotechnological processes and products

The Precautionary Principle and the Polluter Pays Principle as used in Environmental Enforcement Cases

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April 27, 2010

I was invited to speak about the role of the precautionary principle in enforcement cases, but I would also like to spend a few minutes on another, related idea, the "Polluter Pays" principle. I believe the two are related in how they assign responsibility and shift the burden of environmental law away from the people and to those engaged in a potentially harmful activity.

Debate has erupted during the past decade around the question whether there should be a uniformly recognized principle of precaution to guide governmental decision making when there is scientific uncertainty particularly concerning potential harm to human health and the environment. Simply put, the Precautionary Principle assumes that substances or activities are harmful unless they can be proven to be safe, rather than waiting on the government or others to determine that hazards exist before requiring controls. This puts the burden on the person or company that wishes to engage in an activity or create a product, such as a new chemical, to prove that it is safe before it could introduce it into the market.

Different countries have taken different approaches to applying the precautionary principle into their environmental law framework. Certainly, within American legal scholarship, there is no consensus at this time that such a principle should always be followed, or what level of scientific uncertainty or potential environmental harm should trigger its application, or even

what types of precaution would be appropriate when applying a precautionary principle. Nevertheless, it is also clear that the United States Congress, from time-to-time when enacting legislation, has determined that the U.S. Environmental Protection Agency should take precautions in specific contexts when faced with either scientific uncertainty or significant risk of environmental harm as they construct a political resolution to uncertainty.

In general, determinations about the level of precaution are made by the legislature as they decide what controls are best suited to a particular problem and how to construct the legal basis for those limits and controls. In addition to potential harm, politicians take into account many other factors such as economics and feasibility, and may require controls less restrictive than would be required to ensure absolute safety due to the expense of the treatment or prevention control. That is their role as legislators in a democracy, and they rarely make everyone happy.

It is seldom the role of enforcement officers and the judiciary to make such policy decisions; we are limited to the execution and implementation of the law, not what the creation of the law or determination of what it should cover. We can not go beyond the authority given to us, even if they do not include enough precautions. Our decisions must be based on the standards and requirements set by the legislature, or properly promulgated by the Agency. In other words, enforcement authorities do not have the authority to base their decisions on general principles or ideas that do not find expression within the law governing the matter at issue.

However, we frequently apply what could be called "**Legislatively Directed Precautions.**" Legislatively Directed Precautions have a number of striking similarities to the precautionary principle some have discussed in international literature. For example, Congress has employed Legislatively Directed Precautions in response to (1) scientific uncertainty

regarding Amount or Severity of Environmental Harm or Damage; (2) scientific uncertainty regarding the Probability that the Harm or Damage will Occur, (3) difficulty in determining the Cause of the Harm or Damage, (4) difficulty in determining which of Several Actors is Responsible for the Cause, and (5) where there is not agreement within the scientific community regarding the Best Remedy or Method to Avoid the Harm. Each of these types of scientific uncertainty has been identified in some of the international literature as potentially appropriate circumstances for applying a general precautionary principle.

Congress has shifted the burden of proof from one party to another, or changed the degree of proof required. In other words, Congress has identified specific circumstances where the person seeking to engage in an activity that creates a potential risk must prove that it is safe before being allowed to continue. In other contexts, legislatures have directed that before action is taken there must be an assessment of alternatives or that best available technologies must be used to control risk. When that assessment is not done, or when safety has not been assured as required by the law, enforcement officers and the courts can step in to mandate precaution. Congress (or Parliament) makes the law defining the limits of precaution, hence directing the enforcement officials and the judiciary in how to apply "Legislatively Directed Precautions.

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA, also known as Superfund) was enacted by Congress to address growing concerns about the need to cleanup uncontrolled, abandoned hazardous waste sites and to address future releases of hazardous substances into the environment. Under this program, the Environmental Protection Agency can issue an enforcement order requiring clean up where "there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility." Clean-up

orders may be issued before knowing the extent of the harm, and will require the potentially responsible party to assess the potential harm as they develop a remediation plan. These clean-up orders must be complied with unless the defendant can prove that the Agency was "arbitrary and capricious" in its decision. In other words, we don't have to prove harm and instead can apply precaution making the polluter show they've cleaned up to a safe level. We can also issue the order to any Potentially Responsible Party, eliminating the need to determine causation or who was responsible for the risk – anyone from a transporter to generator to disposer can be liable for the clean-up costs, as long as we can show they were potentially responsible. Congress expressly shifted the burden of proof from the government in justifying the issuance of the order to the petitioner in challenging the order's PRP determination, and shifted the standard of proof to the very low level of "arbitrary and capricious" with respect to the order's chosen remedy.

Another example is that we can issue a clean-up order even when there is scientific uncertainty regarding the potential harm to human health or the environment that gives rise to the need for the order. Specifically, the law authorizes the government to issue cleanup orders when there is an "imminent and substantial endangerment" to human health or the environment, but Federal Courts have concluded that "Endangerment means a threatened or potential harm and does not require proof of actual harm." Further, the "endangerment" need not be an emergency, nor does it have to be immediate to be "imminent." Given the importance of any threat to public health and the reality that implementing a corrective plan might take years, "imminence" must be considered in light of the time that might be needed to sufficiently protect the public health. Thus, an "endangerment" is "imminent" "if factors giving rise to it are present even though the harm might not be realized for years." Furthermore, the word "substantial" does not require quantification of the endangerment; "an endangerment is 'substantial' if there is reasonable cause

for concern that someone or something may be exposed to a risk of harm by a release or a threatened release of a hazardous substance if remedial action is not taken."

The legal regime shouldn't make enforcement officials the decider of what is sufficiently protective. Clear rules are needed to avoid litigating appropriate precaution in every case. The clear role for the legislature is to apply precaution as they determine levels of control, and there may be a role for courts to litigate whether the regulations and permits written through the authority from that law. Once the standards are set, enforcement officials have a bright line they can use to determine whether a violation has occurred and the regulated entity has the clarity they need to know what their obligations are and how they can demonstrate compliance. Vague standards make enforcement very difficult.

This brings us to the Clean Water Act, but in the determination of effluent standards, not in the enforcement of those standards. Individual discharge permits are written based on technological requirements for best available technology, except when that technology will not ensure protection of the waters. Agency regulations prohibit the issuance of a permit when the allowable discharge cannot *ensure* compliance with the applicable water quality standards for the receiving waters. This requirement that the permitting authority must find that the permit will "ensure" compliance with water quality standards is similar to the notion discussed in connection with a general precautionary principle that polluting activities should not be allowed unless they can be shown to be environmentally safe. Again, though, the principle is applied in the development of the standards, not in the enforcement action.

When the permit is well written, enforcement officers only apply the standard, and do not have to determine whether it is protective or not. There is a greater role for the judiciary, though, to determine whether a standard set by a regulatory body is as protective as the law intends. We

have had many cases where the defendants agree to the facts of the case, but question the legitimacy of the regulation. In other cases, NGOs or the public sue the agency for failing to issue regulations as stringent as required, causing the courts again to determine what level of precaution is required by law. However, the court is not directly applying the principle of precaution and setting policy regarding protective levels of controls, but only determining if the levels of protection set by the legislature have been followed.

As officers of the court, enforcement officers and judges play a much more active role applying the "Polluter Pays Principle." I will discuss four examples: 1) requiring expenditures for environmental protection, 2) compensation for environmental damages, 3) the recovery of economic benefits achieved by violating the law, and 4) punitive penalties.

As enforcement officers, we ensure that laws are obeyed. If those laws require financial expenditures, part of our job is to ensure those expenditures are made. For example, if the law requires that a company install a waste water treatment plant or other technology, we would enforce against companies that do not make the appropriate investments, and ask a judge to compel those expenditures. Failure to do so is a clear violation of the law, and we have the authority to shut down the facility, which can be an even more extreme form of financial penalty.

To me, the payment for environmental damages is most difficult of the four to implement. Payment can take one of two forms. The first is for restoration of the damaged ecosystem, either by the polluter or by reimbursing the government. The second is compensation for the economic losses caused by the damage. Both require measurement of the environmental harm that was caused. In addition to determining the amount of lost resources a monetary damage assessment also requires an estimate of the cost of restoring the resource, and economic estimates of the value of the resources lost. You may be familiar with the Exxon Valdez, an oil

tanker that ran aground close to the Alaska shore. The company was required to reimburse the emergency responders for their cost of cleaning the oil off the beaches and waterfowl, and long-term work to restore the ecosystem. In addition, they were required to compensate the fishermen and the local communities for the economic losses incurred in the loss of their livelihood and decline in tourism due to the spill.

The Exxon Valdez also shows the difficulties with an economic approach. The primary reason for the failure is that the market does not have values for many resources and services provided by the environment. Other than the immediate resource lost it can be impossible to measure other values of the resource impacted and the public values affected. For example, it is relatively easy to value a reduction in the number of shrimp that are caught because of a oil or chemical spill. However, the shrimp are also food for fish and the fisherman also lost income. When people fish for subsistence and eat what they catch, it is difficult to count their loss. Birds eat both shrimp and fish. People eat some birds and tourists (birdwatchers) come to watch them. No birds, fewer tourists. It is very difficult to include all these values in a claim and more difficult to determine who should receive payments and how long the payments should continue. Even if they can be measured and there are payments to individuals the resources are not fully restored so the injury continues. Finally, it was almost impossible to get even general agreement among the economists on the evaluation of the resources that could be measured. The process became a complex negotiation among economists and lawyers and the result did not reflect the environmental resources that had been lost. The Valdez case took years of expensive litigation, and lawyers probably made more on the case than the fishermen.

Damages are not punitive; they are compensation paid, or actions taken, to restore the injured environment and the people harmed by the release. The government acts in the public

interest in seeking restoration damages in the same way that a company would seek damages for harm that someone has done to their property.

We collect the third type of payment through the recapture of the economic benefit gained by violating the law as part of an enforcement penalty. This is different than the first example of required investments, but should not be ignored. When we find companies that have failed to invest in pollution controls as required, we ask the court to order them to make those investments and do not include that investment as part of the penalty. However, we do recapture the economic benefit they earned by both avoided costs, and the use of the money over time.

I'll use my wastewater treatment plant as an example again. Let's say the investment is worth \$500,000. The law said that the company was supposed to start treating their waste in 2005, 5 years ago, and we just found out. We are going to require them to spend the money now, so we would not include the \$500,000 in the penalty. However, they have had the use of that money for the last 5 years, and have collected a return on the investment, either through profits earned by illegal operations, or by putting the money in the bank, or by investing into their business.

The other factor is the avoided costs that would have been spent to operate the plant. They avoided paying technicians and engineers to run the plant. They avoided the electricity and treatment chemicals they should have paid for, as well as other operating and maintenance expenses. That clearly gives them an economic incentive to violate the law. These two can quickly add up, and we don't want to give them an economic advantage that can result in a competitive advantage over a company that is doing the right thing. We want to encourage everyone to comply with the law, and that is difficult when there is a perception that you can make money by ignoring the requirements.

Finally, there is a punitive penalty or fine designed to punish the violator and deter them and others from violating the law. This should be consistently applied in a transparent way so that everyone knows the consequences of noncompliance. Penalties should reflect the seriousness of the violation, and be variable depending on the circumstances. However, there should be consistency among different violators to ensure fairness in the application of the fines. Clear policies should be established to determine the amount of the penalties, and they should guide enforcement officials, prosecutors, and judges in sanctioning violators. The results should also be publicized so others understand the consequences and you can achieve widespread deterrence through an understanding of the importance of compliance.

By using these tools, we can motivate compliance and help prevent pollution from ever happening, which is the best form of precaution.

**WORKSHOP FOR JUDGES AND LAW ENFORCEMENT
OFFICERS ON ENVIRONMENTAL LAWS, REGULATIONS AND
CONVENTION ON 26TH APRIL 2010**

**ROLE OF JUDICIARY IN ENVIRONMENTAL COMPLIANCE,
MONITORING AND ENFORCEMENT**

BY

**HONOURABLE JUSTICE M. L. SHUAIBU
FEDERAL HIGH COURT, KADUNA**

1. INTRODUCTION

The word 'Environment' is one of those widely used expressions whose meaning varies according to the context in which it is employed. In the case of **Attorney-General of Lagos State Vs Attorney-General of the Federation** (2003) 12 NWLR (Prt 833) 1 at 180, adopting the Oxford Advanced Learner's Dictionary 5th Edition page 387, the word 'environment' means the components of the Earth and includes:

- (a) Land, water and air including all layers of the atmosphere.
- (b) All organic and inorganic matters and living organisms and
- (c) The interacting natural systems that include components referred to in paragraphs (a) and (b).

Also in the context of Section 63(1) of the Impact Assessment Act Cap E12 Laws of the Federation of Nigeria 2004, it was defined as "the natural conditions" for example land, air and water in which people, animals, plants live. Another widely used expression is 'ecology' which has been defined as a branch of biology dealing with living organisms, habitats, modes of life and relations to their surroundings. More recently, the word, 'ecosystem' has been employed and this has been defined as "a unit of ecology, which includes the plants and animals occurring together plus that which they have an influence. The meaning of such expression will have to be displaced where specific treaty or legislation gives a particular meaning to an expression.

The word 'judicial' pertains to a judge or court of justice. It also has the connotation of something established by statute arising from the process of law. It is in a nutshell, judge-like. It may refer to the discharge of duties exercisable by a judge or justice in court, or to administrative duties in court but in respect of which it is necessary to bring to bear a judicial mind, that is a mind to determine what is fair and just in respect of the matter under consideration. Refer to **Onagoruwa Vs Inspector-General of Police** (1991) 5 NWLR (Prt 193) 593 at 643 – 644 and **Kotoye Vs Saraki** (1993) 5 NWLR (Prt 296) 710 at 722.

2. ENVIRONMENTAL COMPLIANCE, MONITORING AND ENFORCEMENT

The protection of the environment is an essential part of the development because without adequate environmental protection, there will be no development and resources will undoubtedly be inadequate. As we all know that environmental problems vary from one nation to another and so also such problems are dependent on their respective stages of development. Also the structure of the economies and environmental policies of individual nations is another major index. However, recent years have seen an appreciable growth in the level of understanding of the dangers facing the international environment and an extensive range of environmental problems are now the subject of serious international concern as evident in the establishment of Special Chamber of International Court of Justice in July 1993 to deal with environmental questions. Thus, the interest in environmental matters account for the speedy increase in the number of international structures and volume of different treaties on environment. It is also pertinent to stress that now, there exists an international human right to clean environmental and of course a range of general human rights provisions that have relevance in the field of environmental protection such as the right to life, adequate standard of living, health, food and so forth but

specific reference to a human right to a clean environment have tended to be few and unambiguous.

The preamble to the Seminal Stockholm Declaration of the United Nation's Conference on the Human Environment 1972 noted that the environment was essential to the enjoyment of basic human rights even the right to life itself while Principle 1 stated that "man has the equality and adequate conditions of life in an environment of a quality that permits a life of dignity and well-being". Article 24 of the African Charter on Human and Peoples Rights 1981 provided that all people shall have the right to a general satisfactory environment favourable to their development. While Article II of the Additional Protocol to the American Convention on Human Rights 1988 declared that "everyone shall have the right to live in a healthy environment" and the states, parties shall promote the projection, preservation and improvement of the environment. Article 29 of the Convention on the Right of the Child 1989 explicitly referred to the need for the education of the child to be directed inter alia to the development of respect for the natural environment.

Likewise, the final text of the Conference on Security and Cooperation in Europe (CSCE) meeting on the environment in Sofia in 1989 reaffirmed respect for the right of individual groups and organizations concerned with the environment to express freely their views to assemble peacefully, to obtain and distribute relevant information and to participate in public debates on environmental issues. Also the Convention on Environmental Impact Assessment in a Trans-boundary context 1991 calls for the establishment of an environmental impact assessment procedure that permits public participation in certain circumstances. However, the references to human rights in the Rio Declaration on Environment and Development adopted at the United Nations Conference on Environment in

1992 are rather sparse. Principle 1 declares that human beings are 'at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature. Beyond this, reference to human rights concerns were not at the centre of the documentation produced by 1992 Conference. The focus of the Conference was rather upon states and their sovereign rights than upon individuals and their rights. In 1994, the final report on Human Rights and the Environment was delivered to the United Nations Sub-Committee on Prevention of Discrimination and Protection of minorities. The Report contains a set of Draft principles on Human Rights and the Environment which includes the notion that human rights, ecologically sound environment, sustainable development and peace are interdependent and indivisible "and that "all persons have the right to a secure healthy and ecologically sound environment. The institut De Droit International, a private but influential association adopted a resolution on the environment at its Strasbourg Session in September 1997. Article 2 of this noted that "every human being has the right to live in a healthy environment".

An important stage has been reached with the adoption of Aarhus Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters 1998 which linked human rights and environment and recognizing adequate protection of environment as essential to human well being and the enjoyment of basic human rights including the right to life itself. Article 1 provides that each contracting party 'shall guarantee the rights of access to information, public participation in decision making and access to justice in environmental matters' and thereby marks the acceptance by parties of obligations towards their own citizens. Article 9 stipulates that parties review procedure before a court of law or other independent and impartial body for any person who considers that their request for information has not been properly addressed

and Article 15 provides that “optional arrangements of a non-confrontational, non-judicial and consultative status” should be established for reviewing compliance with the Conventions. Such arrangements are to allow for appropriate public involvement and may include the option of considering communications from members of the public on matters relating to this Convention.

3. LEGAL CONCERN FOR ENVIRONMENT IN NIGERIA

Environmental consciousness and quest for regulating bodies and statutes peaked in the 1980s probably due to the worsening environmental degradation. The dumping of toxic substances in Koko in 1987 accelerated the legislative activities for the protection of environment and the preservation of the Nigerian environment. The following are the major legislations and these are:

1. National Resources Conservation Council Act.
2. Oil Navigable Water Act.
3. Harmful Waste Special Criminal Provisions Act.
4. Federal Environmental Protection Agency.
5. Environmental Impact Assessment Act.
6. Water Works Act.
7. Public Health Act.
8. The River Basin Development Authorities Act.
9. Petroleum Act.
10. Montego Bay Convention on the Law of the Sea 1982 which was ratified in Nigeria on July 11th 1986.

These Environmental Legislations contain preventive measures as well as procedures which develop community interest in compliance to civil liability and ultimately to criminal punishment. The Federal Environmental Protection Agency Act for instance was established for the purposes of

other forms of environmental degradation in the nation's air, land, oceans, seas and other water bodies and for restoration and enhancement of the nation's environment and natural resources.

4. THE ROLE OF JUDICIARY IN ENVIRONMENTAL CONTROL

The provision of Section 6 of the Constitution of the Federal Republic of Nigeria 1999 vested the judicial powers of the Federation and States in courts being courts established for the Federation and States as the case may be. Also, Section 20 of the Constitution provides for the environmental objective and it states as follows:

20. The State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria.

The aim of government under the Constitution is the welfare of all Nigerians by changing their situation for the better. The judiciary as one of the three arms of government has a duty and a commitment to be partners with the other arms of government in this process of change. In his paper entitled "The Role of Judiciary in Sustaining Democracy in Nigeria" Honourable Justice Umaru Eri OFR opined that in the task of administering justice, the Judiciary is constantly confronted with the challenge of mediating between constitutional idealism and naked and practical realism between the hopes of ordinary men and women and their despair. In that wise, the judiciary is expected in the main to look forward rather than backward, look to the future rather than shackle itself with the heavy and dead bones of the past, use the past only as a means of understanding the present and the present as the forerunner of the future.

Although, the courts and by extension the judiciary is created by the Constitution but the Constitution cannot by itself provide all the answers to the multifarious problems of a country and hence the importance of interpretation and the ability of the judges to discover the spirit of the Constitution. Thus, the interpretative role of the judiciary is of great importance. In **Fawehinmi Vs Akilu** (1987) 4 NWLR (Prt 67) 797 at 848 Eso JSC (as he then was) stressed the role of the judiciary thus:

“Law does not exist in vacua. The Constitution exists for Nigerians who are not just having experiment in democracy. A Constitution is not an academic document meant for abstract consideration. It is a revelation of the social contract made by people of a particular nation for peculiar background of those people”.

In the case of **Attorney-General of Lagos State Vs Attorney-General of the Federation** (supra), the Supreme Court in its interpretative role held that it is only the National Assembly that is empowered to legislate on behalf of the entity known as the Federal Republic of Nigeria in regards to any of the matters under Chapter 11, through item 60(a) in the Exclusive Legislative List by virtue of Section 4 subsection (1), (2) and (3) of the Constitution. One of such matters is ‘environment’ in section 20 of the Constitution of the Federal Republic of Nigeria. Also in the unreported suit No. FHC/KD/CS/65/2009, the Federal High Court sitting in Kaduna has held that by virtue of the provisions of both the National Environmental Impact Assessment Act and the National Environmental Standards and Regulations Enforcement Agency Act, construction or installation of a huge telecommunication mast in a residential area is an activity likely to affect the environment. And that since it is only the National Assembly that can legislate and/or make laws on Environmental Impact Assessment, the certificate/approval issued by the Kaduna State Environmental Protection Authority for the installation of a huge telecommunication mast is ultra

vires their power. Thus, the judiciary has an important role to play in the environmental compliance, monitoring and enforcement.

5. CONCLUSION

The protection and preservation of the environment is now of crucial importance to the future of mankind. And since item 60 (a) confers on the National Assembly exclusive power to establish and regulate the authorities for the federation or any part of Nigeria to promote and enforce the observance of the fundamental objectives and directive principles contained in Chapter II of the 1999 Constitution, the Nigerian state shall by virtue of Sections 15(5) and 20 of the Constitution be responsible for the protection and improvement of the environment so as to safeguard the water, air and land, forest and wild life of Nigeria. Therefore, the role of judiciary is to carefully examine the provisions of the environmental statutes and remove the chaff from the grain and arrive at a proper decision. In this light, the Court must closely examine the language or wordings of the statutes vis-à-vis the constitutional provisions because a judge has no jurisdiction to amend the Constitution by his pronouncements.

REFERENCES

1. Environmental Law and Practice in Nigeria – Amokaye G. Oludayo.
2. International Law – John O'Brien
3. International Law fifth Edition – Malcolm N. Shaw.
4. Environmental Law including compensation – J. A. Omotola.
5. Law of Environmental Protection – Margret T. Okorodudu Fabura.
6. Nigerian Judicial Lexicon – Honourable Justice R. N. Ukeje, OFR.
7. The Role of the Judiciary in Sustaining Democracy in Nigeria.
8. Constitution of the Federal Republic of Nigeria 1999.

Citizen Participation in the Enforcement of U.S. Environmental Law
Catherine McCabe
U.S. EPA's Principal Deputy Assistant Administrator for Enforcement
and Compliance Assurance

AECEN Regional Forum
Beijing, China
December 14, 2007
Panel 3:45 – 5:15

(One of three 15 minute presentations with 45 minute discussion)

Introductory comments

- I have discussed the public's role in decision making and setting standards, but how do we ensure citizens are a productive component to the resolution of violations of those standards and environmental policies?
- This afternoon, I want to make some observations about the vital role public participation can play in the U.S. environmental protection program, focusing on how the public influences policy, how citizens help us detect violations, and how we consider the public's input in the enforcement process that takes place after a violation is detected.

Public Participation in the U.S. compliance and enforcement program

- Citizens play an essential role in ensuring that U.S. environmental laws are implemented and complied with. The general public is, after all, most directly affected by the consequences of pollution and ecosystem destruction. They are closest to the problems, and they have the most at stake.
- In the United States, citizens have access to information and to the judicial system—the courts. These are two critical ingredients for the role that citizens can and do play in holding governments accountable for protecting public health and the environment for the long term as well as response to immediate problems such as spills or flagrant violations.

- We have found that a well informed public is a strong ally in promoting environmental compliance, and have developed laws specifically requiring the release of information on environmental conditions and the government's activities.
- The U.S public has access to:
 - Inventory information including information on individual enterprises in the regulated community.
 - Permitted discharge limits for individual facilities.
 - Source specific generation and release of toxic chemicals to air, water and land.
 - Individual source compliance status and results of inspections.
 - Administrative enforcement orders and settlements.
 - Judicial injunctions and settlements.
- With very few exemptions, most all information we have can be requested through the Freedom of Information Act, and we have worked very hard over the past few years to make more and more of our information available through Internet based online systems.
- The public can easily search on compliance information, release data, and demographics for almost any regulated facility in the United States allowing them to identify problems in their own community and see how we are responding to those problems.

Public access to the courts for direct enforcement

- The NGO community can use this information to compare requirements in the permit with reported discharges, and where they believe a violation has occurred they may seek correction and consequences through the judicial system.
- Most of our environmental statutes provide citizens with the authority to bring civil actions
 - Against any person who is alleged to have violated the environmental law or an agency order, and
 - Against the EPA Administrator alleging failure to perform any act or duty required by law.

- The courts may be asked to do several things:
 - to compel violators to comply,
 - to compel violators to pay penalties and/or damages,
 - to compel violators to repay the court fees and other legal expenses of the NGO, if successful.
- Under U.S. air, water and waste laws those bringing citizen suits must provide notice to the State and Federal agency about their intentions to bring a law suit to compel compliance which provides the government officials an opportunity to pursue enforcement themselves.
- We often either join as a co-plaintiff in these citizen actions or take our own case to address different legal issues related to the same activity.
- NGOs, through citizen suits, have been able to seek injunctive relief, which includes correcting the environmental problems and correcting the damage that had been done, as well as penalty assessment for violations. However, recently the highest court in the U.S., the Supreme Court, has ruled that under most of our laws the citizen suits cannot result in the levying of penalties.
- This process of citizen suits works best in the Clean Water Act where limits and monitoring requirements are quantifiable, and fairly straightforward. The self-monitoring reports are public, so the NGOs can easily see where violations may exist. It works less well for management practices such as those required under our hazardous waste law where NGOs typically do not have the authority to inspect facilities.

Public Access to Courts to Compel Enforcement

- As I said before, many of our environmental statutes give the public the authority to bring suits against the EPA for failure to promulgate regulations, issue permits, or to adequately enforce against violating facilities.

- This provides the public with a mechanism to keep us accountable. In a number of instances, these suits have forced us to improve and strengthen our regulatory and enforcement programs. We often need that outside push, and, while it is usually seen as a criticism of our efforts, it is often appreciated by enforcement personnel.
- Please allow me to share a little anecdote. We have an annual fundraising drive for charity in our office that includes many environmental NGOs among other worthy causes. One of my colleagues asked EPA's Office of General Counsel which organization has the most law suits *against* the EPA. He then selected that group for his personal financial contribution. In other words, many of my employees see these citizen actions as a way to help them do their job better.
- I have heard of several citizen actions in the Philippines, India, and other countries, where citizen suits against the government have mandated widespread changes in governmental control and enforcement.
- Tony Oposa, a fellow INECE board member from the Philippines, has told me about his work on the case "Concerned Residents of Manila Bay v. Government of the Philippines." As a result of the case, the court ordered the DENR, being the lead agency, to develop "a consolidated, coordinated and concerted scheme of action" to clean up and rehabilitate Manila Bay.
- I will be interested to hear more from the experts that will speak more on this topic in a later panel.

Citizen monitoring and complaints

- Citizen complaints can help governments detect violations of environmental laws.
- There are many more individuals in any one area who observe our air, water, and land than all of our inspectors combined. Through better education and awareness, they can be effectively mobilized to significantly extend the reach of our compliance monitoring.

- In the United States, there are many “Riverkeepers” which are NGOs that monitor and care for particularly watersheds. One such group is concentrated on the Hudson River in New York where it enlists citizens as “Watchdogs” to watch for and report on polluters.
- The Riverkeepers’ Watchdog program provides volunteers with the tools and knowledge necessary to bring an end to persistent pollution sources, and deploys them as additional eyes and ears on their specific waterways.
- These Watchdogs also serve as advocates and educators in their communities to build public awareness of the need to protect the river.
- When the Watchdogs discover violations, the Riverkeepers work with environmental law students and other volunteers to build and prosecute a case. In many situations, they may instead refer the violations to local, state, or federal authorities for enforcement.
- While it may be difficult to directly incorporate citizen observations and evidence into our enforcement actions, referrals from citizens and NGOs like these are extremely beneficial in calling attention to violations that merit additional investigations that we may otherwise have missed.

Tips and Complaints Button

- My boss, Granta Nakayama, from whom you heard yesterday, initiated a program that provides a link on the EPA website available for anyone to report a “Tip or Complaint” regarding potential environmental violations.
- That link provide citizens with brief information about what to do for emergencies, the types of activities that may be a violation, which government agencies may have responsibility for the activity, and requests enough information to allow our investigators to follow-up.
- The information is then reviewed by EPA enforcement staff who route it to the officials responsible for that area. In the United States, when we at the federal government level receive a complaint, it is most often sent to our Regional office, and they in turn refer it to the State or local levels for follow up.

- The number of tips and complaint submissions more than doubled since the Web site's inception in January 2006.
- The credibility of any enforcement program with the public is dependent upon prompt follow up to complaints and reports of possible illegal activities. This requires tracking and communication about the government's response.
- To State and local level government officials, follow-up to citizen complaints is even more critical to the successful operation of their programs. Due to scarce resources, they must be careful to target and respond to the most credible complaints.

Public Participation in the Resolution of Violations

- When a violation of environmental law is detected, we have three different forums we can use to resolve the case: criminal, civil judicial, and administrative procedures.
- Environmental crimes are resolved through criminal procedures, and hold no real opportunities for public involvement. However, most of our enforcement actions are to resolve violations that don't merit criminal sanctions, and we actively seek public participation in those cases.
- Many of our enforcement cases, ranging from minor to serious, are resolved in the administrative forum. EPA enforcement directors can issue an administrative order to compel compliance, which may include penalties.
- These orders offer the violator an opportunity to meet with the agency to discuss a settlement if they wish to negotiate the terms of the order. The violator may choose to negotiate, or they can request a hearing before an Administrative Law Judge if they are unwilling to negotiate or can not resolve the matter through negotiations. The administrative judgments can be further appealed to EPA's Administrative Appeals Board and then to the federal judicial court system.

- For more severe violations, we can skip the administrative process and refer cases to our Department of Justice for prosecution in the courts. As part of that process, the EPA and DOJ also offer the violator the opportunity to negotiate a settlement prior to going to court.
- Approximately 90 – 95 % of our enforcement actions, both judicial and administrative, are settled through negotiations before going to court.
- While the public is rarely at the negotiation table, we do actively seek their input during the negotiations and once a tentative settlement is reached.
- Before the judge will sign the settlement (which is required to make it legally enforceable), the agreement is publicized and the agency must respond to any public comments received.
- In some cases, EPA or the judge may reopen the negotiations in response to public comments. In other cases, judges may change the terms of the agreement to ensure it addresses valid citizens concerns.
- Citizen participation in the resolution of these cases is yet another way that citizens can insure that the government is acting in the best interests of the public and the environment.

Conflict Resolution

- One obvious question you may have is how do government officials reconcile the very different views that the public or stakeholders may have in a proposed action?
- Remember that the public includes private citizens as well as the regulated industries.
- Certainly we have found that there is no single public interest – nor does the public necessarily have a single common view. We have learned that the opportunities for public participation need to ensure that the different communities of the public can hear and understand each other.

- We have also learned about the need to tailor techniques for involving the public to the nature of the issue, the complexity of the issues, and what will work in a particular setting to try to bring these interests together.

Barriers to effective public participation

- Despite efforts to involve the public, many barriers still exist in the United States:
- Because of the history of inadequate communication of information to the public, the public doesn't always understand how to engage in the decision making process.
- Within the government, there is a lack of confidence in what the non-technical public has to offer. Often, written comments are not sufficiently detailed, supported, or specific and/or do not offer solutions. However, just because the format and details of the information may be wrong, the basic premise of the input is usually still valid.
- In the U.S., like most countries, there remains a lack of trust of public officials. There also exists the perception that the average citizen does not have the ability to influence decisions.

Conclusion

- Only by actively seeking out the public participation and fully responding to citizen input can we change that perception. The public can be a tremendous ally and asset. We should take every advantage possible and utilize that support in every way we can.



BALANCING ENVIRONMENT AND SUSTAINABLE DEVELOPMENT



Sustainable Development

- Definition

"Living on earth's income rather than eroding its capital"

- *Social progress which recognises the needs of everyone*
- *Effective protection of the environment*
- *The prudent use of natural resources*
- *The maintenance of high and stable levels of economic growth and employment"*

- Core Principle of Land Use

- Definition means different things to different people

Land Use Regime in England and Wales

- Controls all 'Development' in England and Wales
Development is:

"the carrying out of building, engineering, mining or other operations in, on, over or under the land or making any material change in the use of any buildings or other land"

- Some operations not development

Maintenance, alterations not materially affecting external appearance or only affecting interior
Use of buildings for land within curtilage of a dwelling house for incidental purposes
Use of land for agriculture or forestry
Change of use within specified use class

Development Consent

- If operation is 'Development' will require planning permission before any work commenced
- Granted by District Council, County Council, or by or on behalf of Secretary of State
- Creates Value as limited in supply

Plan Led System

- Objective is to make system plan led
- Creation of Policy Documents
- Consultation and public/business interest participation in policy formulation
- National: PPS; Circulars; Guidance
- Regional: Regional Plans especially Housing, Minerals and Waste
- Local: Local Plans; SPD; Area Action Plans; Local Development Orders
- Strategic Environmental Assessment

Development Plan

- Planning decisions must be:

"made in accordance with the development plan unless material considerations indicate other wise"

- Development plan is: Regional and Local Plans and starting point for consideration of planning applications
- Decision maker must decide whether in accordance with development plan and what weight to give to material considerations
- Material Considerations: e.g. impact on neighbourhood, design

PPS1 – Sustainable Development & Climate Change

- Protection and Enhancement of the Environment

“Planning authorities should seek to enhance the environment as part of the development proposals”

- Protection of wider environment/reduction of emissions/waste management/prudent use of natural resources

Climate Change

- Supplement to PPS1
- General Principles to spatial distribution, location and design to limit CO2 emissions
- Climate Change considerations
- New development to make use of decentralised and renewable energy resources e.g. Merton Rule – non-residential development above 1,000 sq m 10% and use of sustainable building materials

Environmental issues in any decision

- **National policy:** Planning Policy Statements e.g. PPS1 Sustainable Development & Climate Change
Circulars e.g. Circular 06/2005 Biodiversity & Geological Conservation
- **Local Policy:** Regional Plan, Local Plan, Supplementary Planning Guidance
- **Law:** Town and Country Planning Act 1990; EU Law; Other England & Wales Statute; Case Law
- **Protected Areas:** National Parks, Areas of Outstanding Natural Beauty, Green Belt, Sites of Special Scientific Interest, Conservation Areas, Ramsar Sites

Planning Application Information

- **Design and Access Statement**
- **National List**
- **Local Lists**
 - **Air Quality**
 - **Biodiversity**
 - **Environmental Impact Statements**
 - **Sustainability/Climate Change Statements**



Environmental Impact Assessment

- To assist decision making in evaluating potential environmental impact
- Required on major industrial development e.g. waste disposal, crude oil refineries, nuclear power (Schedule 1 Development)
- Required on other development listed (Schedule 2 Development) if likely to have significant effects due to its nature, size or location
- Screening Opinions/Scoping Opinions
- Environmental Statement – Transport, Air Quality, Sustainability, Noise etc. Alternatives/Mitigation
- Material Consideration but does not have to refuse
- Publicity requirements – both a document and a process

Consultation

- Key part of process
- Members of the Public
- Statutory Consultees – Must be consulted on certain applications
 - Environment Agency (flood zones, waste, sewage, SSSI)
 - Natural England
 - Highways Authority
- Government order restricting grant of permission

Conditions and Planning Obligations

- Can help mitigate possible environmental impact of any development
- Conditions must be:
 - Necessary; relevant to planning; relevant to development permitted; enforceable; precise; reasonable in all other respects
 - E.g. contaminated land, landscaping, drainage
- Obligations can make development acceptable which might not be otherwise
- Can prescribe more detail, mitigate impact, compensate for loss
- Obligations can be used to provide financial contributions but not to buy or sell a permission

Appeal System

- Planning Inspectorate on behalf of the Secretary of State
- Call-in – for cases of larger than local significance
- Public Inquiry
- Infrastructure Planning Commission

Land Use Enforcement

- Not criminal offence to build without planning permission
- Options include:
 - Enforcement notice
 - Stop notice
 - Breach of condition notice
 - Injunction
- Criminal offence if breach of enforcement notice
- Discretion of local authority to take enforcement action and only when satisfied breach and action expedient

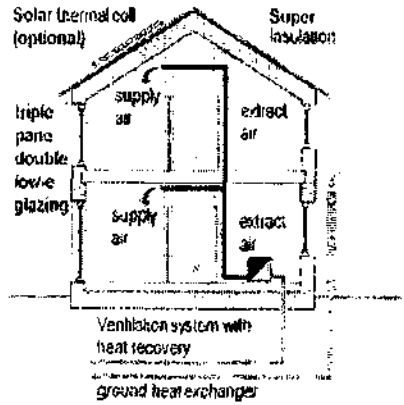
Judicial Review and Civil Litigation

- Provides control on decision makers to ensure consistency
- Can apply to court to review decisions that have public law implications
- Judicial Review – on grounds of illegality, irrationality or procedural unfairness
- Statutory procedure: enforcement notice appeal/Appeal or Policy
- Can delay development
- Debate about third party right of appeal against grant of planning permission




Sustainable Development Standards

- Building Regulations
- LEED/BREEAM
- Code for Sustainable Homes
- Easier to implement on new development
- Increasingly impacts current buildings



12 Annex 4: Copy of papers delivered to the Workshop on 27 April 2010

Collecting Defensible Evidence

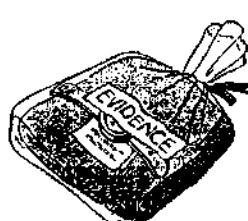


Davis Jones
Associate Director for International Compliance Assurance
United States Environmental Protection Agency

1

What Is Evidence?

- Any information or proof which clarifies or helps establish the truth.



- Is it relevant and can it be authenticated?

2

Types of Evidence

- Testimonial
- Documentary
- Demonstrative
- Real



3

Testimonial Evidence

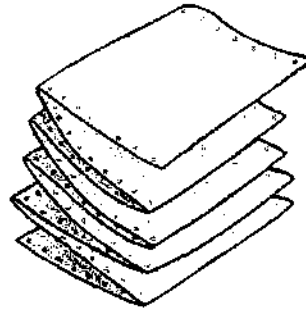
- Reported sense impressions and opinions
 - “I smelled”, “I saw”, “I heard”
- Interview
 - “Mr. Honest said...”
- Witness testimony



4

Documentary Evidence

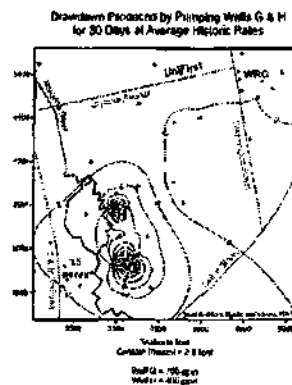
- Field notes
- Documents
 - Messages/letters
 - Accounting ledgers
 - Computer printouts/files
 - Manuals/SOPs
- Inspection Reports
- Sample Results



5

Demonstrative Evidence

- Other evidence presented to clarify or explain:
 - Photographs
 - Maps
 - Flow charts
 - Diagrams



6

Real Evidence

- Samples
- Container or label
- Object or item



7

Is The Evidence Relevant?

- Does the evidence tend to make the existence of a material fact more or less probable than it would be without the evidence?
- Always ask: why do you want that piece of evidence admitted? What element does it prove?

8

Representative Samples

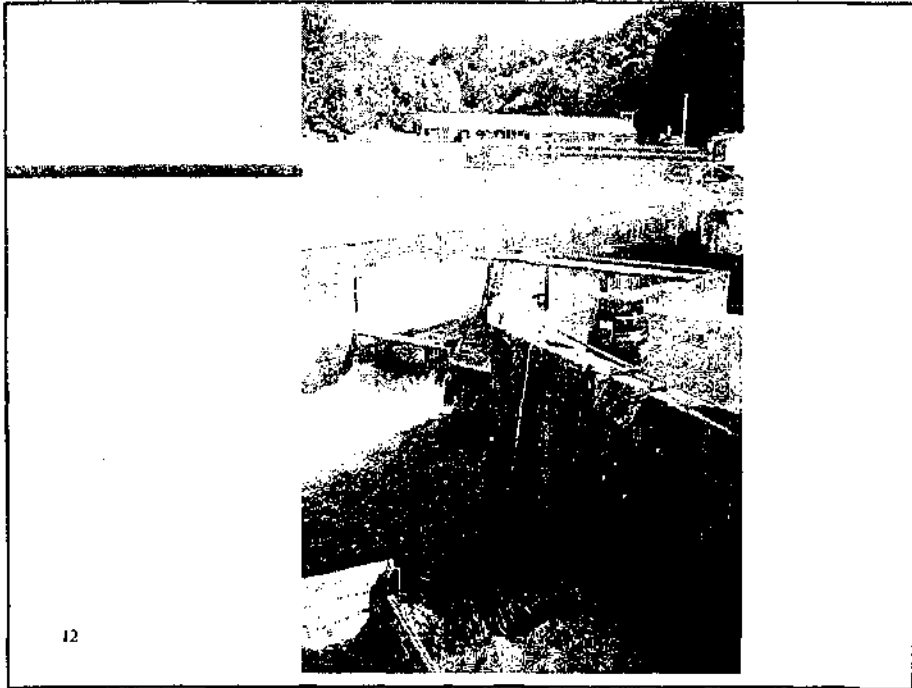
- A representative sample means a sample of a universe or whole which can be expected to exhibit the average properties of the universe or whole.
- Not only must inspectors take representative samples, they must prove they are accurate exhibitions.

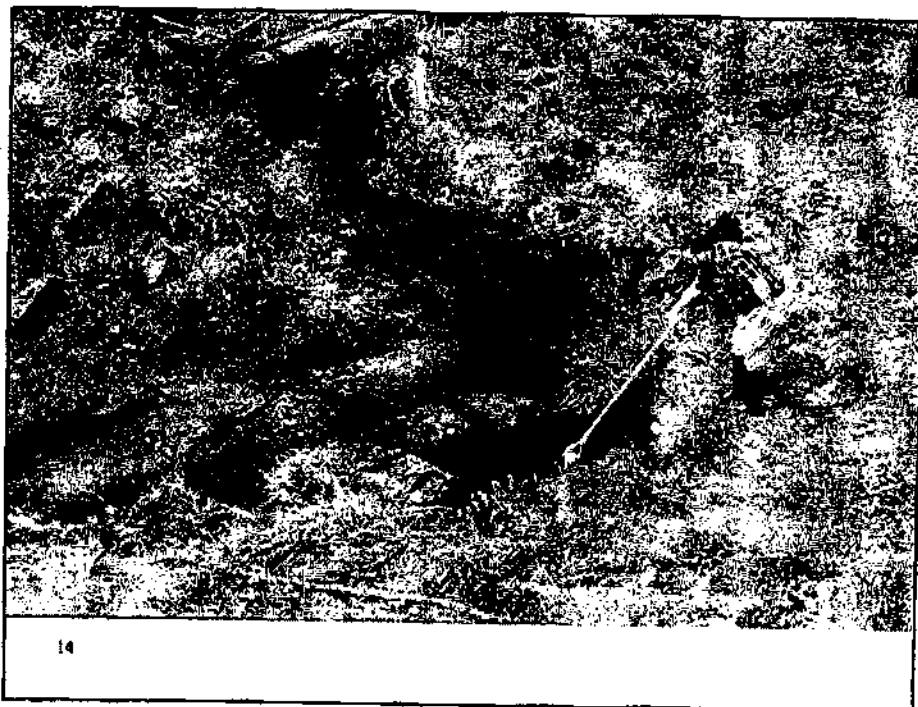
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How Do You Prove Reliability?

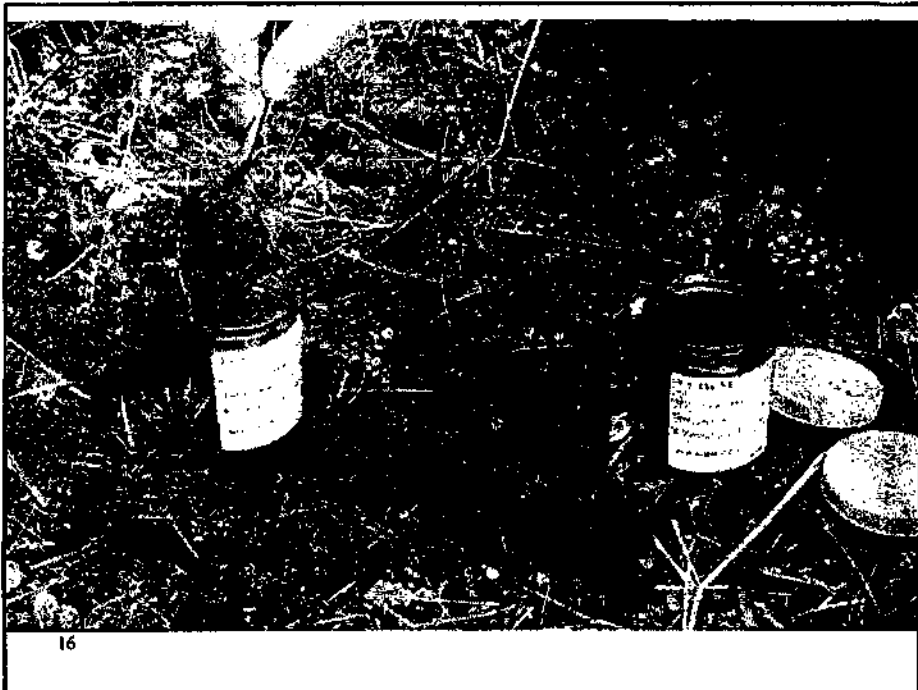
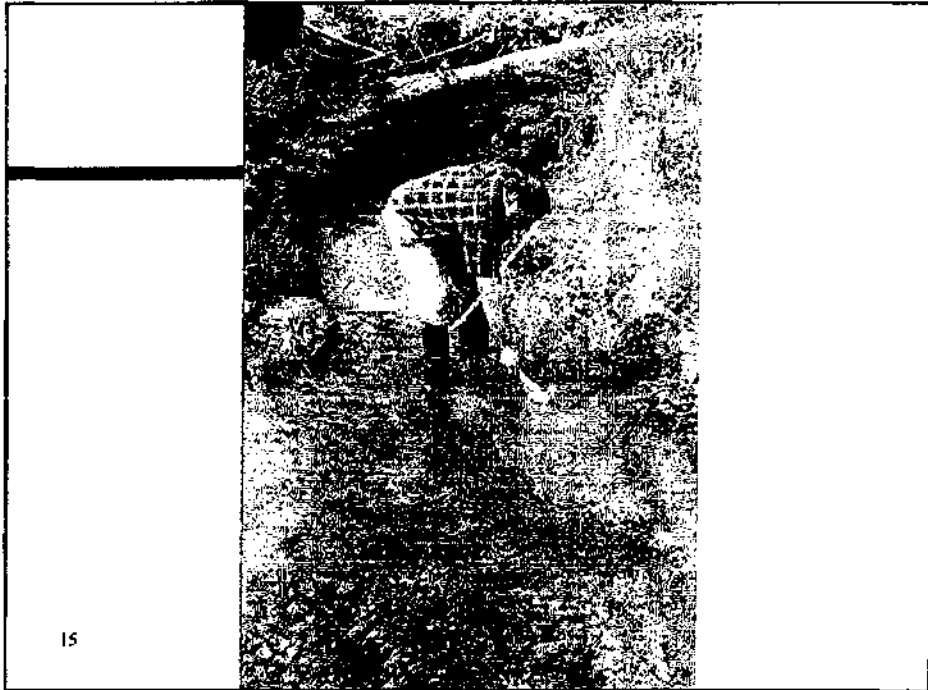
- The methodology has been tested.
- The methodology has been subjected to peer review.
- There is a known and low margin of error.
- Accepted technique in the scientific community.
- In other words, is it good science?
- Lastly, was it appropriately applied?

10





14





Proper Handling of Evidence

- Identification
- Chain-of-Custody



18

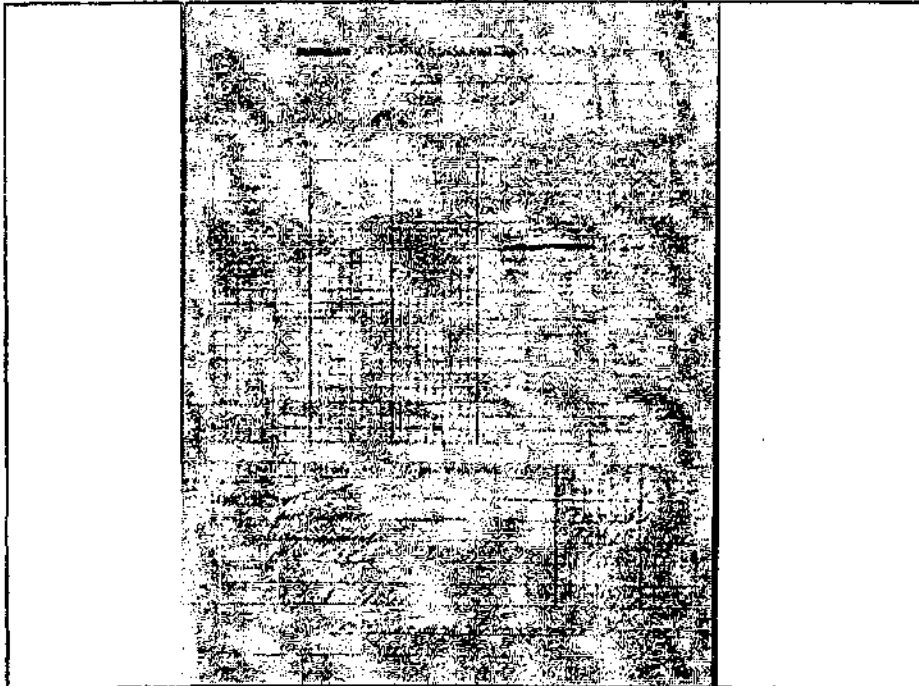


Connecting the Chain of Custody

- The meticulous process of showing the succession of persons who handled or had access to the evidence



20



Habit; Routine Practice

- Regularly doing things the same way increases strength of evidence
- Establish habits and standard operating procedures
- Inspectors should always follow protocols (or explain why not)

24

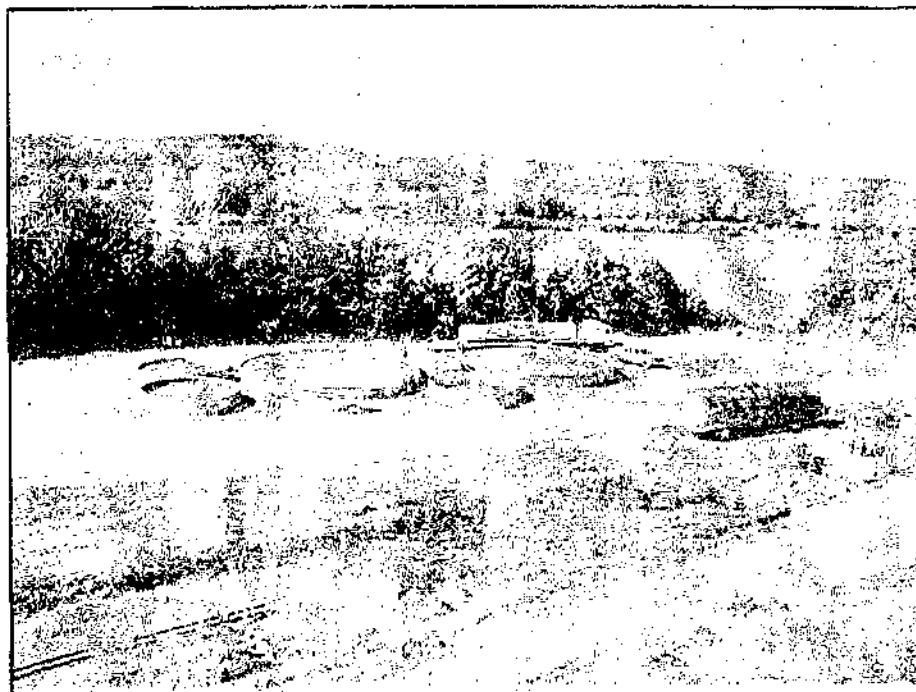
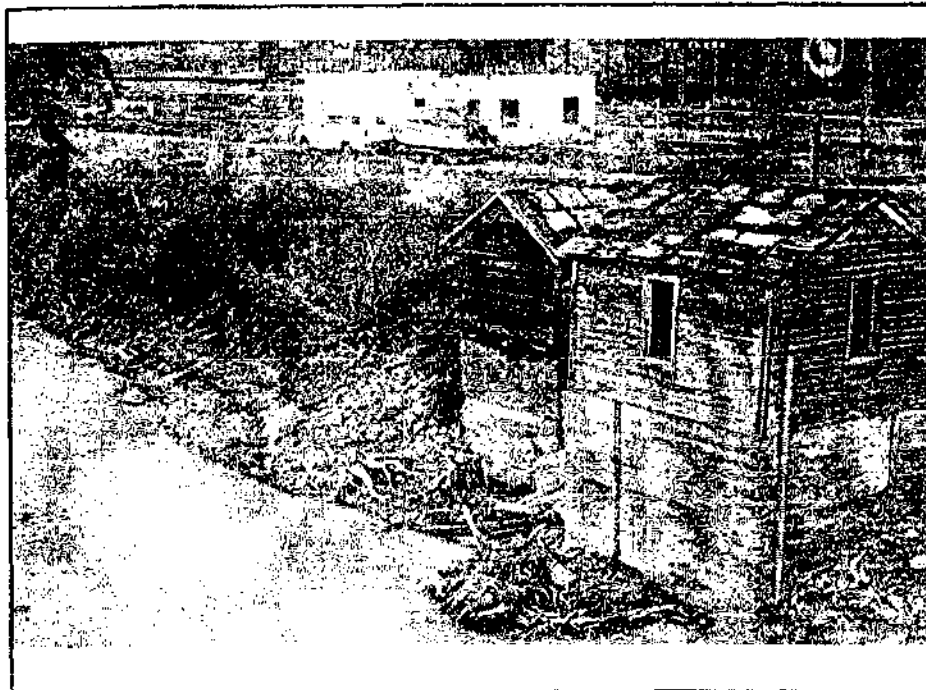
The log book

- Every field inspector keeps a log book.
- The log book should detail all relevant information about the sampling: where, what, when, how, etc.
- The inspector should **ALWAYS** assume that the log book will be scrutinized by court and defense attorneys.

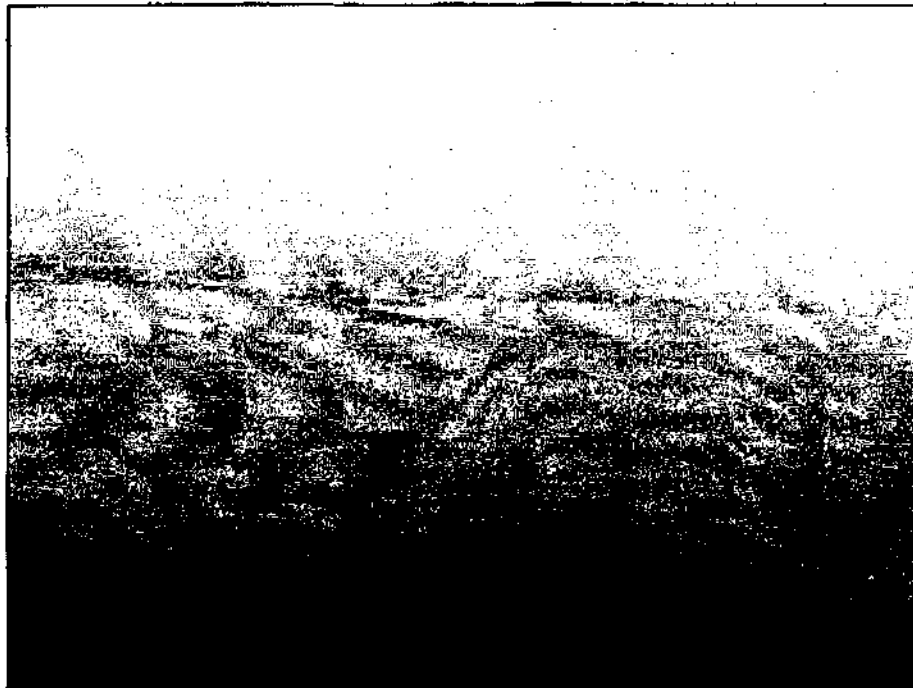
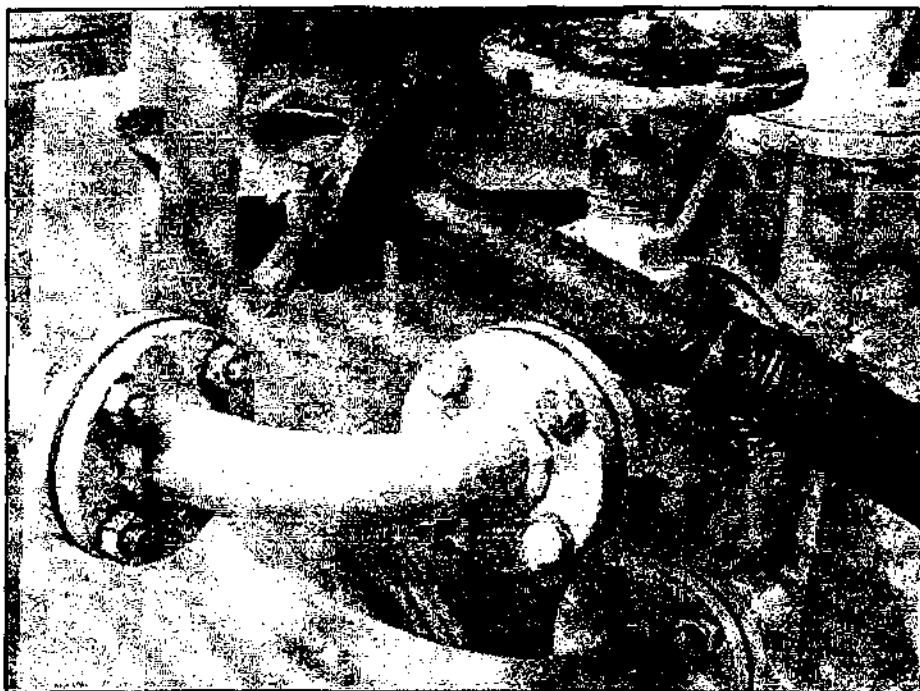
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26







Guidance for sentencers (UK) 2009 - ENVIRONMENTAL CRIME

The Right Hon. Lord Justice Sedley

“The despoliation of the environment is arguably the gravest of all the problems we are going to hand on to our children and grandchildren. They will not thank us – particularly those of us who work in the administration of justice – for having done too little about it at a time when action and prevention were feasible.”

1.1 Purpose of and need for the guidance

- number of environmental crimes prosecuted is still relatively low
- clarify areas of environmental sentencing and,
- in particular, the way that it may impact on judicial decision-making

Need for environmental sentencing information

- Environmental offences and cases are rarely seen in court but their impact can be significant.

- This seriousness is highlighted by i) the maximum sentences in the Magistrates' Court to be 10 times higher than standard sentencing levels (e.g. £50,000 compared to £5,000 under the Magistrates' Courts Act 1980) and

ii) the fact that many of the offences are of strict liability. In the Court of Appeal case of *Environment Agency v Milford Haven Port Authority (The Sea Empress)* [2000] 2 Cr App R (S) 423,

Lord Bingham CJ noted that: Parliament creates an offence of strict liability because it regards the doing or not doing of a particular thing as itself so undesirable as to merit the imposition of criminal punishment on anyone who does or does not do that thing irrespective of that party's knowledge, state of mind, belief or intention. The extent of the blameworthiness can increase or decrease depending on any mitigating and aggravating circumstances.

- **Unscrupulous companies and individuals regard it as cheaper to commit offences and pay the fines rather than to comply with the law and pay the real cost.**
- **Criminal justice system should act as a preventative mechanism as well as a form of punishment.**
- **The prosecution must draw the court's attention to guideline cases.**

Questions to be asked of Prosecutors:

- **cost of any damage arising from the illegality – both financial and qualitative- cost of any clear-up ; who will bear/has borne it? compensation order to cover some or all of that cost?**
- **Company's accounts available? Does it show impact of the illegality on the firm's finances?**
- **cost of conducting the business legally – obtaining licences, permits, remedial/preparatory/compliance works to enable a licence to be granted etc?**
- **Court's powers – fine, custody etc? Compensation? Prosecution costs? Confiscation order or other ancillary orders?**
- **sentences imposed in other similar cases?**

The importance of sustainable development

2.1 What is sustainable development?

Brundtland Commission Report of 1987 explains that sustainable development is:

“... Development that meets **the needs of the present** without compromising the **ability of future generations** to meet their own needs. Two concepts: ‘needs’, in particular the essential needs of the world's poor, to which overriding priority should be given; and the idea of **limitations** imposed by the state of technology and social organisation on the environment's ability to meet present and future needs.”

Simply put:

‘Please leave this planet as you would wish to find it.’

Sustainable development not being achieved because e.g.

- **Waste.** Every home in UK generates around half a tonne of waste every year. The Government's remedy is making the polluter pay and increasing the cost of disposal. The downside is that it incentivises unscrupulous operators to dispose of waste illegally e.g. by burning and fly-tipping.

- **Wildlife.** Increasing pressure on habitats and wildlife causes the population of many species to decline. Thus financial value of vulnerable species to collectors increases. But the payback in illegal trade of such species can be greater and more attractive to animal traders.

- **Over-fishing.** European Commission predicted that a total ban on fishing for cod, haddock and whiting in UK coastal waters is now necessary. Often, environmental cases are a response to legislative action in pursuit of sustainable development. Other examples not so readily apparent but nevertheless significant include:

- **Climate change.** 2007 Assessment Report of the Intergovernmental Panel on Climate Change (IPCC) concluded that 11 of the last 12 years (1995 to 2006) had ranked among the 12 warmest years since 1850.

In 2008, up to 134,000 people died and nearly half a million people had to leave their homes after a cyclone hit southern Burma.

A wet winter in the UK in 2000 resulted in widespread flooding, followed by an unusually mild autumn.

Flooding problems have continued

- **Noise - Unwanted sound.**

Complaints are among the most frequently encountered. Noise is a pollutant because - serious damage to the quality of life and often the physical, psychological and social circumstances of those exposed to it.

2.2 The UK sustainable development strategy

Five guiding principles:

- *Living within environmental limits.* Respecting the limits of the planet's environment, resources, and biodiversity - improve our environment and ensure that the natural resources needed for life are unimpaired and remain so for future generations.

- *Ensuring a strong, healthy, and just society.* Meeting the diverse needs of all people in existing and future communities, promoting personal wellbeing, social cohesion and inclusion, and creating equal opportunity for all.

- *Achieving a sustainable economy.* Building a strong, stable, and sustainable economy, providing prosperity and opportunities for all, and making environmental and social costs fall on those who impose them (polluter pays), and efficient resource use is incentivized.

- *Using sound science responsibly.* Ensuring policy is developed and implemented on the basis of strong scientific evidence, whilst taking into

account scientific uncertainty (through the precautionary principle) as well as public attitudes and values.

- *Promoting good governance.* Actively promoting effective, participative systems of governance in all levels of society - engaging people's creativity, energy, and diversity.

2.3 Prevention, precaution and the polluter pays

Three fundamental principles:

- **The preventative principle** - prevention of environmental harm should be the primary aim when taking decisions or action that may relate to adverse environmental effects.

- **The precautionary principle** founded in Principle 15 of the Rio Declaration 1992 'where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation'.

In *R (Thames Water Utilities) v Bromley Magistrates' Court* [2008] C-252/05 the European Court of Justice recently affirmed its status in environmental cases, stating that: In this respect the verb 'to discard' must be interpreted in the light not only of the aims of Directive 75/442, that is, the protection of human health and the environment against harmful effects caused by the collection, transport, treatment, storage and tipping of waste, but also of Art 174(2) EC. provides that 'Community policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Community. It shall be based on the precautionary principle and on the [principle] that preventive action should be taken ...'

- **The polluter pays principle** -reaction to pollution and environmental harm rather than a preventative mechanism. It can be a financial incentive to operate more efficiently and a sanction for carrying on polluting activities. (cf The opinion of Advocate-General Leger in *R v SSETR ex p Standley* [1999] C-293/97)

3 ASSESSING SERIOUSNESS IN ENVIRONMENTAL OFFENCES

Two critical factors:

- seriousness of the offence; and
- sentencing criteria

Early assessment of seriousness carried out to determine Mode of Trial & sentence:

- i) Assess offence seriousness (culpability and harm), including:
 - (a) identifying the appropriate starting point; and
 - (b) considering aggravating and mitigating factors.
- ii) Form preliminary view of the appropriate sentence then consider offender Mitigation.
- iii) Consider a reduction for a guilty plea.
- iv) Consider ancillary orders, including compensation.
- v) Decide sentence and give reasons.

Requires detailed analysis of:

- a) **direct and immediate harm**
- b) **wider environmental consequences,**
- c) **potential impacts** and, in some instances,
- d) **risk of harm arising from an offence.**

Environmental impacts will include:

- i) **direct impacts**, e.g. water pollution, loss of species or contamination land and
- ii) **indirect impacts** including social or economic impacts, e.g. health problems from air pollution, the decline in local amenity through litter, fly-posting, graffiti and other vandalism, loss of work due to ill health and commercial advantage by non-compliance.

The **culpability** of the defendant to be assessed, e.g. the extent of involvement in crime, motivation and co-operation with regulators.

Important to ignore the now outdated assertion that environmental offences are not 'real crimes' due to their strict liability nature cf to *R v Anglian Water Services* [2003] EWCA 2243, a case involving significant water pollution from a sewage discharge, Lord Justice Scott Baker commented that:

"We would not categorise breaches of section 85(3) [of the Water Resources Act 1991] of the nature that occurred in this case as being of a non-criminal character, albeit the offence is one of strict liability. The environment in which we live is a precious heritage and it is incumbent on the present generation to preserve it for the future. . . . Parliament has imposed on people like the appellant a heavy burden to do everything possible to ensure that they do not cause pollution".

3.1 The immediate and direct impact of environmental crime

Section 143(1) of the Criminal Justice Act 2003 (CJA 2003) Courts must consider any harm the offence caused, was intended to cause or might

foreseeably have caused. Look at the core environmental, social and economic aspects of sustainable development. **Actual harm arising include:**

• **Environmental impact (protection and use of resources).**

Include:

- dead fish poisoned by polluted water;
- loss of threatened or endangered species or their habitats, - may be irreplaceable;
- contamination of land, air or water by a pollutant; and
- poor plant health due to air pollution.

Important to determine the **extent of the damage** e.g. how many fish killed? Did the pollution travel far downstream? Were invertebrates and other wildlife affected? What will the long-term impact be, i.e. how long will it take to re-establish and restore the local fish population?

• **Social impact.** Consider:

- effect of abandoned vehicles on a neighbourhood: *attracting similar offences and consequent downward spiral* in the quality of the local environment and neighbourhood.
- impact of nuisance and mental health of victims,
- food poisoning and
- physical health problems,
- **air pollution and health problems,**
- polluted waters and an inability to fish, the pollution effect on **amenity values,**
- difficulty in **remediation** of blighted areas,
- graffiti **decreasing aesthetic value, regeneration, renovation, poverty** and concentration of factors that cause **environmental deterioration.**

• **Economic impact.** Consider:

- effect on businesses (including **undermining legitimate businesses**) and employment,
- replenish **fish stocks,**
- cost of crop damage by **air pollution,**
- impact on **tourism,**
- costs of **clean-up,**
- cost of **loss of time** at work due to health impacts,
- **re-offending and the savings** from not carrying out the work activities necessary to prevent the crime occurring in the first place.

3.2 The wider effects in environmental, social and economic terms

• **Bigger picture (global, trans-boundary) –**

- Link between fishing offence and the global fishing problem of **extinction of species and loss of fish stocks?**

- Consider **threatened species and the global status of species.**

- Is there a link between **water pollution from pesticides or oil and the contamination of global waters, or air emissions and trans-boundary air pollution and global warming?**

• **Diffuse impact.** Air pollution, water pollution in rivers, seas and beaches, can have a **small impact over a large area** including that caused by the use of **pesticides leaching into watercourses. Radioactivity is likely to have a diffuse effect.**

• **Cumulative effects.** Include impact on health from multiple sources of pollution:

- high number of factories in one area,

- fly-tipping encouraging others to dump waste in the locality,

- some toxins 'bio accumulate' – once absorbed by wildlife and not excreted builds up, to toxic levels to wildlife concerned or to other species

that consumes it.

• **Long-term effects.**

- health impacts from radiation or asbestos,

- persistent pesticides in soil and the irretrievable loss of natural resources (unsustainable fishing by **over-harvesting, over-abstraction** of water, loss of habitat by the **destruction of micro-organisms and loss of groundwater** through a pollutant).

3.3 Human fatality, serious injury or ill health

- Take account of any human fatality, **serious injury or ill health** as a consequence of the defendant's actions, e.g. loss of limb or loss of sight or persistent respiratory problems from air pollution, carcinogens, ease of access (inadequate security) to toxic chemicals or the spread of disease.

3.4 Health of flora and fauna

- Has animal health or flora health been adversely affected?

- Were endangered species killed or injured by the offence?

- Were they poisoned by pesticides?

- Has air pollution affected crops and plants or

- Has there been destruction of trees and woodland?

3.5 State of mind of the defendant

- **Intentional action.** Was there a **deliberate breach** of the law?
e.g. by intentionally disposing of a pollutant in a river;
by collecting wildlife specimens (rare species, bird eggs) for personal pleasure and with no regard for conservation implications;
by fly-tipping waste?
- **Recklessness.** Recklessness often relates to **unjustified risk-taking** and so although a pollution incident may not have been intended, there may have been **no thought by the defendant as to the possible risk of pollution occurring.**
- **Carelessness/lack of awareness (mitigates offence).** Being unaware that discharge is polluting a watercourse would fall into this category.

Environmental offences of strict liability

No fault or guilty knowledge required - quite deliberate and is due:

- in part, to the heavy obligation on operators because of the inherent risks in the processes and materials they handle.
- re-enforces the seriousness of the offence and
- the potential to cause long-term and irreparable harm.

3.6 Assessing the potential harm and risks taken

Lack of actual damage does not render the offence merely **technical**: it may still be serious if there has been risk.

In considering risks of harm also consider:

- **Negligence.** Has there been a risk of harm to workers, the local community or the local environment through negligent action?
- **Characteristics of pollutant.** Is the pollutant highly toxic? E.g. radioactivity and the potential impact on human and environmental health. High toxicity and pervasiveness means there is a larger risk and potential harm to be aware of and the possibility of the spread of disease in plants, animals or humans.

3.7 Relationship with regulatory authorities and attitude to regulation

- **Advice from enforcing authority.** Complete disregard when an enforcing authority advises how to abate pollution?
- **Warnings from enforcing authority.** Failure to take notice of warnings given? Highly relevant factor when sentencing and the prosecution should produce relevant written warnings.
- **Warnings from workforce.** Has the workforce notified the employer of unsafe work methods?
- **Disregarding an abatement notice.** Has the polluter taken steps to abate the pollution once an abatement notice has been served?
- **Lack of co-operation.** Failure to attend interviews or

court? Uncooperative attitude towards regulatory authority?

• **Ignorance of/disregard for environmental standards.** How far below the relevant statutory environmental standard?

3.8 Licensing/permit

Defendant's licence/permit status?

• **Breach of licence or permit.** Carrying on activities outside licence or permit conditions?

• **No licence or permit.** Licence or permit required for offending activities?

• **Fraudulent papers.** Operating on a fraudulent permit or licence or other papers such as a stolen driving licence?

3.9 Economic gain for the defendant

Economic gain to the defendant such as:

• **Profit.** Include:

i) demolishing a listed building and profiting from the development;

ii) charging a fee for collecting waste and then dumping it illegally; or

iii) illegally trading in wildlife specimens.

• **Cost saving.** Illegally disposed of own waste to avoid disposal costs? - undermining other operators carrying on lawful activities.

• **Neglecting preventative methods.**

- Inadequate training for workers handling toxic substances;

- failing to install telemetry technology which could have detected equipment failure;

- failing to use preventative equipment when necessary, e.g. air filters, noise insulation or protective gear.

• **Avoiding licence fees.** Carrying out activities without a licence or not operating within the conditions imposed.

• **Tax and Duties evasion.** Import and/or export duties been avoided?

3.10 Offence pattern

Relevant previous convictions are aggravating factors, or if committed on bail.

Consider offence pattern and evidence of:

• **Re-offending.** e.g. repeat conviction of fly-tipping.

• **Repeat offending.** Has broken the law previously but has not received a formal sanction from the court.

- **Unrelated previous offences.** Non-environmental, but possibly anti-social, offences committed by the defendant?
- **Isolated incident.** One-off incident?

3.11 Abatement and reparation

Necessary reparation, clean-up and restoration work undertaken by the regulatory authority, the defendant or any other party such as the emergency services: -

- resources used to clean up contaminated land or water, or
- the cost of replenishing fish stocks.
- Whether fire brigade attended to a dangerous incident.
- Actual cost should also be considered in setting any sentence.
- Cost of abatement and reparation need to be considered when determining and deciding the type of sentence.
- Need for a compensation order and the level of any fine.

3.12 Mitigation

Mitigating circumstances?

- **Isolated incident.** Good past record? One-off offence or evidence of repeat offending? Accidental or in character?
- **Awareness.** Genuine and reasonable lack awareness or understanding of the regulations specific to the activity?
- **Guilty plea.** Timely plea of guilty?
- **Co-operation.** Co-operation with the enforcing authority?
- **Role in the offending activity.** Relatively minor role? Steps taken to prevent the offence?
- **Personal position.** Genuine hardship or adverse social/personal circumstances?
- **Tackling the problem.** Were steps taken to remedy the problem as soon as possible?
- **Public contrition and remorse.** Genuine concern - what has happened and its consequences? Unlikely given much weight if only expressed on the day of sentencing and in the case of a **company** normally have to be demonstrated by **acts rather than a simple statement.**

4. SENTENCING CRITERIA FOR ENVIRONMENTAL OFFENCES

Many environmental offences carry maximum summary penalties of £50,000. Discharge of oil from a ship into certain UK waters has a maximum summary penalty of £250,000.

The **second stage** of environmental sentencing builds on the assessment of seriousness.

Range of criteria to consider:

- the seriousness of the offence,
- the purpose of sentencing,
- the defendant's ability to pay,
- any economic gain,
- the preventative and polluter pays principles,
- any abatement and prosecution costs,
- whether a fine is the most appropriate sentence and
- the ability of referral to the Crown Court. Each of these is considered below.

4.1 Statutory purpose of sentencing

Under s 142(1) of the Criminal Justice Act 2003 (CJA 2003) must have regard to the following purposes of sentencing:

- (a) punishment of offenders;
- (b) reduction of crime (including its reduction by deterrence);
- (c) reform and rehabilitation of offenders;
- (d) protection of the public; and
- (e) reparation.

4.2 Seriousness

Extent of the damage, risk, culpability etc of the defendant should be reflected in the level of any fine.

First assess the *seriousness* of the offence, includes:

- determining sentencing thresholds crossed; and
- indicating whether a custodial, community or other sentence is most appropriate.

Seriousness is the **key factor** in deciding the length of a custodial sentence

Secondly imposing a sentence that is **commensurate** with the seriousness of the offence.

4.3 Commit to Crown Court?

Magistrates may commit for sentence to the Crown Court if they feel that their sentencing powers are insufficient.

4.4 Type of sentence

The **starting point should usually be a fine**. Consider also whether another form of sentencing, rather than a financial penalty, is more appropriate, such as a custodial sentence, a conditional discharge or community service.

Should compensation / or remediation be considered e.g.

- i) under the Wildlife and Countryside Act 1981 the court has the power to order the offender to restore harm caused to protected habitats,

- ii) for waste offences under s 33 of the Environmental Protection Act 1990 the court may order the offender to pay the clean-up costs. The courts may also order higher levels of compensation.
- iii) Under the new Permitting Regulations the Court may also make a remediation order.

However, and despite all the options, should not lose sight of the seriousness of environmental harm. In *R v Sissen* [2000] All ER (D) 2193, Mr Justice Ouseley stated that: "... the law is clear as to where the interests of conservation lie. These are serious offences. An immediate custodial sentence is usually appropriate to mark their gravity and the need for deterrence".

In *R v Humphrey* [2002], the court recognised the serious nature of damage in trafficking endangered birds of prey. The trial resulted in a custodial sentence of over six years.

4.5 Economic gain

The financial gain or cost saved from the crime should be reflected in the sentence e.g. dumping waste illegally to avoid landfill tax should be punished so that the sentence is higher than the landfill tax

4.6 Ability to pay

- The fine imposed should reflect the means of the individual or company convicted.
- A fine for a multinational company with a multi-million pound turnover will not have the same economic impact as it will on a small local company or an individual.
- *R v Howe & Son (Engineers) Ltd* [1999] 2 All ER 249 - emphasises that fines need to be large enough to bring the message home not only to the management of an organisation but also to its shareholders.
- adverse publicity accompanying substantial fines may also help to change corporate behaviour.
- Under *Howe*, magistrates are entitled to conclude that a company is able to pay any fine imposed unless it has supplied financial information to support any representations to the contrary before the hearing.
- deliberate and/or regular breach of legislation with a view to profit seriously aggravates the offence.
- bear in mind that a large fine may make it difficult to improve conditions to comply with the law. Or,
- the company may have to close down, which would lead to unemployment and affect the local economy. The closure of a company should be avoided unless it appears the only way to stop serious repeat offending. or

- Should a re-offending company be in business at all, bearing in mind that prosecutions are to protect employees, the public and the environment?
- **In summary**, the fine imposed should reflect the means of the defendant, whether an individual or a company. The onus is on the company to produce its **audited accounts**.

4.7 The preventative and polluter pays principles

- the full cost of abatement, restoration and reparation is covered in the overall sentence/costs award, e.g. the resources used to clean up contaminated land or water or the cost to replenish fish stocks.

4.8 Prosecution costs

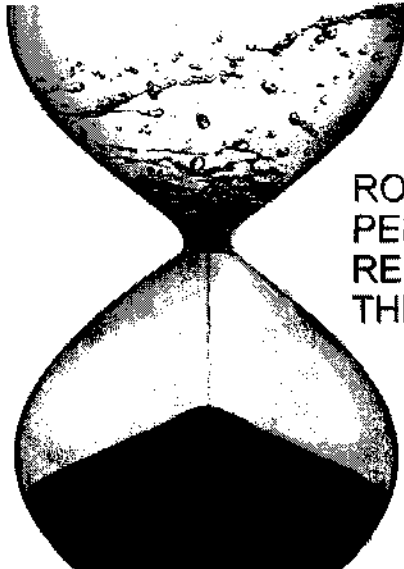
- Level of the fine should reflect the process of negotiation and discussion.
- Repeated requests to abate and site visits are costly, and
- while monitoring and maintenance costs are now anticipated in the permitting charging regime these may well be exceeded.
- Important to apply the polluter pays principle.
- An uncooperative defendant increases the costs.
- The general rule that prosecution costs should be proportionate to the sentence will not cause concern if the full severity of the offence is demonstrated to the court. - *R (Dove) v Northallerton Magistrates' Court* [1999] EWHC Admin 499.

RECENT GUIDANCE FROM THE CA

- In *R v Thames Water Utilities Ltd* 2010 EWCA 202, Sweeney J offered the following guidance in a case where Thames Water had admitted causing polluting matter to enter controlled waters. The main issue here was the appropriate level of fine where the defendant company had pledged £500 000 in compensation to restore the river. The Court in reducing the fine imposed of £125, 000 to £50 000 said **"Using the example of a plea of guilty by a company to a single offence which requires the imposition of a fine, we therefore suggest that the following principled approach to sentence may assist the Court in a case of this type:-**
- The Court should **first assess the seriousness of the offence** by reference to its facts. This assessment should include consideration of all aggravating and mitigating features relating to the offence itself.

- Given the resultant assessment of seriousness, and consideration thereafter of the offender's means, the Court should **then identify the amount of a notional fine after a trial. The notional fine should combine both the punishment and deterrent elements of the sentence. The deterrent element should be the amount, over and above the amount of the punishment element, that is required to reach a total figure that brings the necessary message home to the offender's managers and shareholders (and thereby to others).**
- The Court should **then consider the making of any appropriate compensation order(s), and (if made) the extent to which the amount of any such order(s) should be imposed in addition to, or deducted from, the amount of the notional fine identified thus far.** In addition to the requisite consideration of the **means** of the offender, the fact of a **prompt offer** by the offender to submit to such an order or orders may be a significant feature in such a decision.
- The Court should **then** go on to consider the question of the extent to which **(in addition, if it be the case, to the acceptance of any compensation order or orders) the offender has brought the message home to itself, and then the extent (if any) to which that should be reflected in a deduction from the amount of the notional fine thus far identified as appropriate.**
- The **cost of putting right the failures that led to the offence, and of ensuring lack of repetition, should not be taken into account in this regard.** Such **corrective action** should be regarded, save in the most exceptional case, as the minimum response to an offence, with failure to carry it out being regarded as a **significant aggravating feature.**
- In contrast, **the making of substantial voluntary reparation should, depending on its nature and amount, generally be regarded as a significant mitigating feature in this respect, typically requiring at least some reduction in the level of the deterrent element of the notional fine thus far identified.** It may, in an appropriate case, result in a very significant reduction. In an exceptional case it may even reduce the deterrent element of the notional fine to a nil amount.

- However, **a deduction for voluntary reparation should not generally reduce the level of the notional fine below the amount already identified as representing the punishment element of the sentence.** There may, nevertheless, be very exceptional cases in which justice requires that the extent and amount of voluntary reparation should, at this stage of the process, be reflected in a reduction of the notional fine to an amount below that hitherto identified as representing the punishment element of the sentence. This will all depend upon the particular facts of each case.
- Having made any reduction for the extent to which the offender has brought the necessary deterrent message home to itself, the Court (which will have considered the mitigating features of the offence itself when assessing seriousness) should then **consider whether there are any other mitigating features requiring any further reduction in the amount, thus far reached, of the notional fine.**
- Finally, the Court **should deduct the appropriate percentage of discount for the plea, thereby arriving at the final amount of the actual fine to be imposed (together with any compensation order/orders) “.**



ROLE OF ENVIRONMENTAL
PERMITTING AND CIVIL
REGULATION IN PROTECTING
THE ENVIRONMENT



Environmental Priorities for Companies

- Corporate and Property Transactions
- Development and redevelopment
- Regulatory matters and Environmental Permitting
- Environmental litigation
- CSR / Public perception
- Recruitment and Retention
- Green weighting to stock market valuations



Environmental Law

- Common Law in US and UK
- Impact of EU Law
- Major EU Trading Partners
- Multi-nationals operating elsewhere often adopt EU Environmental Law



Statutes and Regulations

EU:

- Environmental Impact Assessment Directive
- Habitats Directive and Birds Directive
- Waste Electrical and Electronic Equipment Directive
- Environmental Liability Directive
- Landfill Directive
- Integrated Pollution Prevention and Control Directive
- End of Life of Vehicles Directive
- Registration, Evaluation, Authorisation & Restriction of Chemicals Directive
- Waste Incineration Directive
- Waste Framework Directive



Statutes and Regulations

UK:

- The Control of Pollution Act 1974
- Environment Protection Act 1990
- Water Resources Act 1991
- Wildlife and Countryside Act 1981
- Town and Country Planning Act 1990
- Pollution Prevention and Control Act 1999
- Regulatory Enforcement and Sanctions Act 2008
- The Environmental Permitting (England and Wales) Regulations 2010
- Hazardous Waste (England and Wales) Regulations 2005
- Control of Asbestos Regulations 2006
- Producer Responsibility (Packaging Waste) Regulations 2005
- Landfill Regulations 2005
- The Control of Noise at Work Regulations 2005
- The Air Quality Standards Regulations 2007



Environmental Permitting Regime

- Permit regime for Pollution Prevention and Control and Waste Management



EPR: Who is Regulated?

Seven classes of Regulated Facilities

- Installation carrying out activities listed in regulations
- Mobile Plant carrying out activities listed in regulations
- Waste operation
- Mining waste operation
- Radioactive substances activity
- Water discharge activity
- Groundwater activity



EPR: Who is regulator

- Environment Agency for Part A(1) installations; mining waste; groundwater activities; radioactive substances activities
- Local Authority for Part A(2) installations and Part B installations
- Responsible for permit application process and enforcement



The Permit

- Standard Permit
 - For activities with defined outcomes
 - Condition on permit
 - Monitoring
 - Reporting requirements
 - Emission limits
- Bespoke Permit
 - For higher risk activities
 - More site specific conditions



Who can apply for a permit?

- Control of Regulated Facility
- Competent Operator
 - Management systems adequate?
 - Operator technically competent to operate facility?
 - Operated convicted of any environmental offences?
 - Sufficient financial means?



Offences, Enforcement and Appeals

- Offences
 - Operating facility without permit; in breach of conditions; failure to comply with enforcement notice

- Enforcement
 - Enforcement notice; suspension notice; revocation notice; prosecutions

- Appeals
 - to the Government Department if refused to grant permit, disagrees with conditions on bespoke permit or served an enforcement/suspension or revocation notice



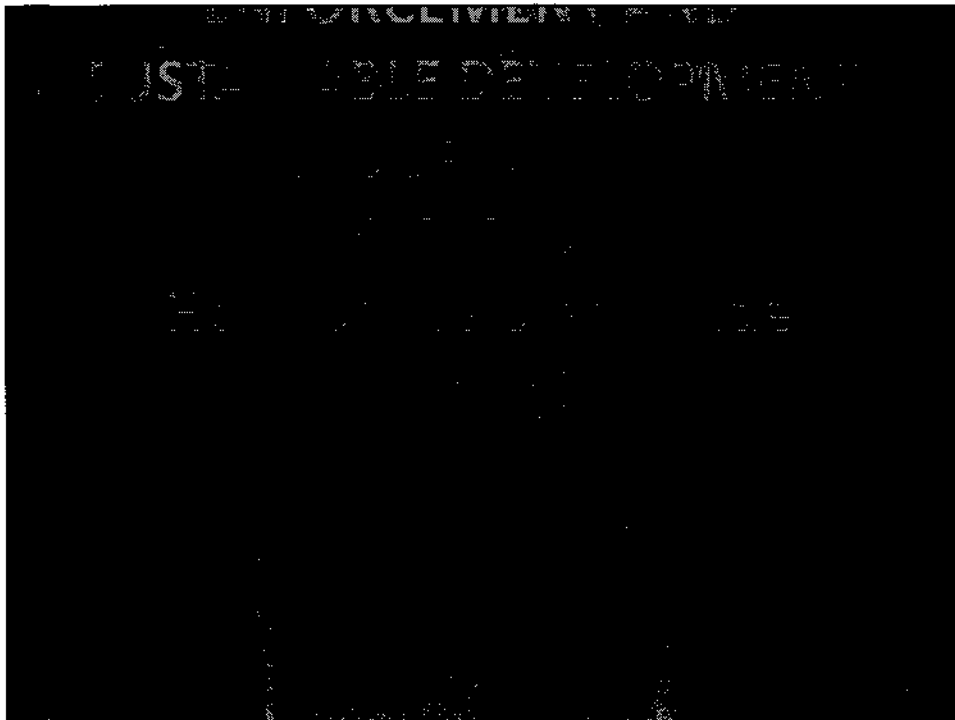
Overlap with Land Use Regime

- Often applied for at same time or after

- Land use policies on air, water pollution and contaminated land

- Improvements sought

13 Annex 5: Copy of Working Group presentations from 27 April 2010



INTRODUCTION

After the various presentations, participants were assigned into three groups to discuss some thematic issues. Group I discussed the topic "Environmental Enforcement and Sustainable Development".

Major items discussed include the following:

- i. Major environmental issues;
- ii. Concept of sustainable development;
- iii. Challenges and the way forward; and
- iv. Conclusion

The group comprised of 26 members. The group was chaired by Hon. Justice Olasheinde Kumuyi, with Prof. S.C. Teme and Paul Thomson of UKEA as facilitator and resource person respectively. Mr. L.O. Ineke and Barr. Blessing Nkwocha served as rapporteurs

Major Environmental Issues

- Three main environmental issues that were discussed include:
 - i. Natural -erosion, flooding, drought, desertification etc,
 - ii. Human-deforestation, bush burning, construction activities etc
 - iii. Industrial-effluent discharge- untreated waste water into water bodies, gaseous emission, improper solid wastes disposal etc

Concept of Sustainable Development

- Sustainable development is defined as one that meets the needs of the present generation without compromising the ability of the future generation to meet their own needs. It is environmental stewardship of which we must give a responsible account to the future generation.
- What we should do to attain sustainable development? Enforcing environmental compliance to laws is one of the strategies for achieving environmental sustainability.
- Environmental enforcement is all activities/ efforts put together to ensure that facilities comply with laws, regulations, standards etc that sustainably protect the environment from degradation

Environmental Enforcement Challenges

- There is poor awareness on environmental issues such as the impact of deforestation; desertification etc.
- Some extant environmental laws are obsolete and need urgent reviews.
- Conflicting policy and mandates within the Federal Ministry, States and Local Government.
- Lack of integration of environmental matters within natural development plans, so environmental matters are considered as second fiddle.
- Weak penalties

Environmental Enforcement Challenges Cont'd

- Lack of judiciary appreciation of the seriousness of environmental issues.
- There are no environmentally efficient or friendly technologies such as solar energy, wind energy, energy saving stoves.
- Poor attitude to environmental issues
- Lack of proper/strict enforcement of environmental laws
- Corrupt activities of regulatory offices and government Agencies

Way Forward

- NESREA and all environmental stakeholders should embark on sustained environmental awareness
- Communities and individuals should be encouraged to report defaulters as it is done in other countries
- Government should ensure consistence policies such that the abuse of the environment is minimized and there are no conflicting roles
- The promotion of environmental awareness among the judiciary should be sustained to ensure sound environmental stewardship
- A police unit for environmental issues be created and trained to facilitate prosecution of violators
- Stiffer penalties should be imposed to deter violators from further polluting

Way Forward Cont'd

- Public participation by CBOs, NGOs, CSOs should be encouraged
- Government should ensure the training and retraining of prosecutors and law enforcement officers in collaboration with the judiciary
- The government should incorporate environmental consideration into national development plans
- Utilization of environmentally friendly technologies such as solar, wind, energy saving stoves
- Award system should be institutionalized to encourage voluntary compliance
- Government should demonstrate sound political will in the area of environmental governance

Conclusion

- The group found the paper presentations to be rich in content and has therefore impacted positively on the participants.
- The group therefore commend the efforts of government and in particular NESREA for organizing the workshop.

• THANK YOU

GROUP II REPORT

Topic: ENFORCEMENT OF ENVIRONMENTAL LAWS

Chairman: Hon. Justice Ibrahim Auta of the Federal High Court

Terms of Reference: To identify issues militating against effective enforcement of environmental laws in Nigeria and proffer solutions.

Discussions started with a brief comment by the Chairman to the effect that from the background of papers presented at this workshop, the problem does not have to do with shortage of laws or regulations, but with enforcement and compliance. He gave the example of the sanitary inspector of those days, saying that they were effective in enforcing their mandates. He wondered which way forward for Nigeria now, thus throwing open a robust discussion from the entire group.

From the discussion the following issues emerged:

- Jurisdiction
- Adjudication ie delays in trials etc
- Integrity of enforcing officers (NESREA)
- Information and Policy; Administrative Penalties
- Information to companies as to their liabilities for violations
- Human capacity development
- Collaboration with other regulatory and law enforcement agencies
- Qualified and experienced prosecutors
- Fewer adjournment i.e expeditious trials
- Less dependence on technicalities

- Licensing and permits

Recommendations

- The group suggests the updating of NESREA laws to give jurisdiction to all levels of courts including area and customary courts for quick dispensation of justice and to create awareness of the laws and the penalties attached to them (ie put environmental issues on the concurrent legislative list)
- NESREA staff should be adequately remunerated to shield them from the temptation to compromise on standards

- Definite policies should be articulated, stipulating administrative penalties to limit resort to litigation.
- Information on the above should be readily available to stakeholders
- There is need for more specialized human capacity development to ease enforcement processes
- NESREA should step up collaboration with other regulatory and law enforcement agencies for cross breeding of ideas to effective compliance with environmental regulations
- NESREA should engage qualified and experienced prosecutors who will ensure that water tight cases are built up through proper investigation and with admissible and credible evidence
- On their part judges should allow for fewer adjournments and not permit too much dependence on technicalities
- There is also Need to build up a compendium of regulations for ease of reference
- NESREA should establish a permitting and registration system and institute Regular audits of companies based on risk- based assessment (EIA)

WORKING GROUP 3

PUBLIC PARTICIPATION

The Group identified the following key issues as affecting public participation in environmental concerns:

1. Jurisdiction
2. Public Awareness
3. Scope of Public Participation
4. Public Access to Information
5. Economic Incentives
6. Lack of Political Will and Determination
7. Determination of Responsibilities of the different Govt. Authorities
8. Enforcement of the Enabling Law

1. JURISDICTION

It was agreed that the various levels of government should share responsibilities, partner with themselves and work together while each tier is being carried along. And also working in partnership with already existing structures at all levels of government. NESREA is to in this regard be the focal point of coordination.

2. PUBLIC AWARENESS

- Citizens awareness of environmental issues should extend to grass root level.
- Present alternatives
- Environmental education
- To educate the public with accurate facts and figures on environmental concerns.

3. SCOPE OF PUBLIC PARTICIPATION

The limit and scope under which the public is to participate should be defined as not to have a negative effect on environmental sustainability. Punishments should also be commensurate to environmental offences or crimes. Indigenous communities should be involved in education of environmental problems.

4. PUBLIC ACCESS TO INFORMATION

There should be transparency in the way the government relates with the people which should involve explaining decisions taken.

5. ECONOMIC STABILITY

NESREA to partner with corporate bodies and encourage corporate social responsibilities on their part. Since poverty plays a major role on environmental degradation, government should put in structures to eradicate poverty so that the communities can comply voluntarily on environmental laws and regulations. There should also be economic incentives. The principle of "PAY TO POLLUTE" should also be introduced.

6. POLITICAL WILL AND DETERMINATION

This was captured under the following:

- Lack of political will and determination on the part of the government on issues of environmental sustainability;
- Government to bring up programmes/projects to assist NESREA.
- Organisational sustainability
- Involve the Legislators more actively

7. DETERMINATION OF RESPONSIBILITIES

- Update and implement the National Policy on Environment.
- Develop the National Policy on Environment and reflect it in the Legislation.

8. ENFORCEMENT

- NESREA to partner with community sanitary officers
- Partner with other paramilitary i.e. security agencies and train them in line with the NESREA mandate.
- The new NESREA regulations should be popularised
- Enhanced partnership with the Judiciary
- States and Local governments to provide necessary infrastructure in order to curb environmental violations.

14 Annex 6: Copy of Written communiqué from the Workshop

COMMUNIQUE PRESENTED AT THE END OF THE THREE-DAY NATIONAL
WORKSHOP ON THE ENFORCEMENT OF ENVIRONMENTAL LAWS,
REGULATIONS AND STANDARDS FOR THE JUDICIARY AND LAW
ENFORCEMENT AGENCIES
ABUJA, NIGERIA
26TH - 28TH APRIL, 2010

The National Workshop on the Enforcement of Environmental Laws, Regulations and Standards for the Judiciary and Law Enforcement Agencies was organized by the National Environmental Standards and Regulations Enforcement Agency (NESREA), in collaboration with United Nations Development Program (UNDP) and with technical support from the United Kingdom Environment Agency (UK EA), the United States Environmental Protection Agency (USEPA), and Partners for Water and Sanitation (PAWS). The Workshop was held at the Rockview Hotel, Abuja, from 26th - 28th April, 2010.

The main objective of the Workshop was to strengthen the enforcement of environmental laws, regulations, standards and guidelines in Nigeria through capacity building of the Judiciary and other Law Enforcement Agencies.

Two hundred and twelve (212) participants attended the Workshop including Judges, representatives from the National Assembly, Federal and State MDAs, Regulatory and Security Agencies, the Academia, and the Media.

Having considered the thirteen technical papers presented and deliberated upon at both plenary and at the three parallel working group sessions;

Recognizing that the environment is the life support system for human existence and survival, as well as the provision of physical milieu and the required raw materials for socio-economic progress;

Aware that the increasing pressure on natural resources is causing destructions and conflicts in many States of the Federation;

Noting that Nigeria's major environmental threats include deforestation, desertification, industrial pollution, urban growth, decay and municipal waste, coastal and inland erosion, land resources degradation, oceanic surge and flooding, uncontrolled gas flaring, including climate change;

Noting also that sustainable development means living on earth's income rather than eroding its capital; social progress, which recognizes the needs of everyone; effective protection of the environment; and the prudent use of natural resources;

Realizing that effective compliance monitoring and enforcement of environmental laws, standards and regulations are key to protecting our environment and achieving sustainable development;

Recognizing that environmental governance is the sum of organizations/institutions policy instruments, financing mechanisms, rules, procedures and norms that regulate the processes of environmental protection;

Recognizing also that NESREA is the new institutional mechanism created by the Federal Government to ensure effective environmental governance through compliance monitoring and enforcement of environmental laws, standards and regulations;

Noting that a well informed public is a strong ally in promoting environmental law compliance as its complaints can help governments detect violations of environmental laws;

Noting also that the efforts of the citizens provide invaluable input into the enforcement process and they act as eyes, ears and nose that provide evidence of illegal activity;

Recognizing that environmental justice is about social transformation directed towards meeting basic human needs and enhancing quality of life, health care, housing, human rights, environmental protection and democracy;

Realizing that the Judiciary and Law Enforcement Agencies have key roles to play in upholding the rule of law and ensuring that environmental offenders are brought to book;

Recognizing that the Judiciary is one of the most stable and respected institutions of our society as its voice represents reason, impartiality and understanding of all interests at stake;

Noting that through their judgments, Judges can encourage all groups in society to share in the task of environmental stewardship;

Noting also that environmental law is comparatively new and only recently taught in Nigerian Institutions of Learning;

Concerned that a myriad of other challenges face environmental law enforcement in the country, which include:

- Low political will;
- Low level of integration of environmental concerns into sectoral developmental plans;
- Poor adoption of efficient and environment- friendly technologies in the business/industrial sectors;
- Jurisdictional conflicts;
- Adjudication i.e. delays in trials;
- Integrity of enforcement officers;
- Dearth of science-based data and difficulty in accessing environmental information;

- Poor compliance monitoring of the many environmental laws and regulations;
- Overlaps and conflicts among many laws enacted at the Federal, State and Local Government levels;
- Role conflicts among Government Ministries, Departments and Agencies (MDAs); and
- Inadequate capacity;

Concerned also that there is poor understanding and abuse of some environmental management principles such as the precautionary principle, inter-generational equity and the-polluter-pays principle;

Recognizing that Environmental Impact Assessment (EIA) is a veritable planning tool for achieving sustainable development and assisting decision makers in evaluating potential environmental impacts of projects/activities;

Concerned that many of the major projects implemented in the country were without appropriate EIA;

Recognizing that there is need to strengthen collaborative strategies in order to promote and nurture partnerships among all stakeholders to achieve voluntary compliance to environmental laws;

Concerned that a number of Multilateral Environmental Agreements are yet to be domesticated; and

Concerned also that there is a need to secure people's rights to access and enjoy the resources upon which their livelihood depends.

decided to RECOMMEND that:

1. There is need to have massive and sustained programme for publicity and environmental awareness to facilitate the much needed attitudinal change and re-orientation;
2. Communities should be encouraged to conduct self-monitoring and to report on environmental performance;
3. There is need for a strategic framework within which decision makers can consistently support the enforcement processes for improved environmental governance;
4. There should be holistic effort at integrating environmental considerations into national development plans, policies, decisions and measures;
5. There is need to promote focused awareness and sensitization programmes for Judges, Lawyers and Law Enforcement Officers on environmental policies, laws, regulations, guidelines and standards;
6. Training and retraining of Judges and other relevant stakeholders should be carried out to achieve effective dispensation of justice;

7. There is need to organize similar Workshop for the Justices of Appellate Courts;
8. There is need to collaborate with the United Nations Environment Programme (UNEP) and her Advisory Group of Chief Justices and Senior Judges in promoting environmental law enforcement in Nigeria;
9. There is need to establish special Courts to handle environmental cases and/or evolve other strategies on handling offences for timely dispensation of environmental cases;
10. Environmental justice should challenge the abuse of power, which results in poor people having to suffer the effects of environmental damage caused by the greed of others;
11. A specialized Police Unit should be established to aid environmental law enforcement;
12. There is need for special training of the Police and other Law Enforcement Agencies on environmental law compliance monitoring and enforcement;
13. There is need to clearly define and delineate roles and responsibilities at all tiers of Government to promote environmental governance;
14. NESREA should work out collaborative strategies for effective engagement and partnership with all enforcement agencies at the Federal and State levels towards complimentary compliance monitoring and enforcement of environmental laws;
15. There is need for increased budgetary allocation, increased manpower, and continuous capacity building and human resources development programme for NESREA workforce for effective implementation of her mandate;
16. The National Assembly should as a matter of urgency consider and domesticate all Multilateral Environmental Agreements (MEAs) signed and ratified by Nigeria;
17. The procedure for the collection, analysis and custody of environmental evidence should be standardized for effective prosecution of environmental offenders;
18. There is need for NESREA law to be amended to give jurisdiction to all levels of Courts including Area and Customary Courts for quick dispensation of justice;
19. NESREA should engage the services of qualified and experienced prosecutors who will ensure that strong cases are built up through proper investigation and with admissible and credible evidence;
20. NESREA staff should be adequately remunerated to maintain integrity and to shield them from the temptation of compromising on the job;
21. Policies should be articulated, stipulating administrative penalties to limit resort to litigation;

22. Judges should endeavor to reduce the number of adjournments in their Courts and discourage too much dependence on technicalities in environmental cases;
23. There is need for the provision of science-based data and environmental information in accessible form to the public;
24. NESREA should operationalise its permitting and registration system and institute regular environmental audits of companies using the risk- based assessment technique; and
25. There is need for effective follow-up and proper implementation of the recommendations of this Workshop.

Acknowledgement and Appreciation

The Workshop:

Acknowledged the efforts and commitment of the Federal Government of Nigeria through the Federal Ministry of Environment, for promoting environmental governance in the country;

Commended NESREA, a parastatal of the Federal Ministry of Environment, for her excellent performance since her inception less than three years ago and for her noble and timely initiative in organizing this specialized Workshop for the Judiciary and other Law Enforcement Agencies;

Also commended the paper presenters, national and international resource persons, facilitators and indeed all participants, for their expertise and genuine interventions; and

Expressed appreciation to the United Nations Development Program (UNDP), United States Environmental Protection Agency (USEPA), United Kingdom Environment Agency (UKEA) and Partnership for Water and Sanitation (PAWS), for their invaluable support in the organization and conduct of the Workshop.

Dated this 27th day of April, 2010, in Abuja, Nigeria.

15 Annex 7: Copy of Agenda of Meeting with Resource Persons 28 to 30 April 2010

Agenda of Meeting with Resources Persons

28th - 30th April 2010

1. Opening Prayer
2. Introduction of Resource Persons
3. Opening Remarks by Director General/CEO
4. Presentation and Discussion on The Agency's Enforcement Policy
5. Presentation and discussions on Operationalizing the Permitting and Licensing systems of the Agency.
6. Practices, experiences and trends in environmental litigation, prosecution and enforcement.
7. Practices, experiences and trends in coordinating the legal sector, law enforcement agencies, and the environment regulator in environmental compliance monitoring and enforcement.
8. Proposed sub-regional training on seaport inspection.
9. Proposed 1 month regional seaport inspection by seaport environmental security Network (SESN)
10. AOB
11. Closing

**16 Annex 8: Copy of report by PfWS/EA on NESREA
Institutional Appraisal and Strategic Planning Support
dated March 2008**



Partners for Water and Sanitation

NESREA Institutional Appraisal and Strategic Planning support

Submitted by:

The Environment Agency for England and Wales

March 2008

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1 Executive Summary

- The six day mission with NESREA was a mutually valuable visit.
- There is clear evidence of ambition, commitment and focus in an organisation less than 12 months old and facing immense environmental and social challenges. There are obviously high expectations of what it will deliver and it is seen as a 'fresh start' on the previous Federal Environmental Protection Agency (FEPA).
- The NESREA Act gives it a very broad remit for which it is not sufficiently resourced at present.
- NESREA therefore needs to agree through its **Strategic Action Plan** where it will use its limited resources to greatest benefit for the Nigerian environment and what environmental outcomes it can realistically achieve. As with many new organisations the SAP currently has some degree of inward focus (focussing for example on developing new offices, building libraries and new laboratories). We gained relatively little insight into the broader organisational structure and tactical and operational approaches.
- NESREA should consider **adopting more risk-based approaches** based on current knowledge about the state of the environment in Nigeria. What are the highest priorities, environmental problems and risks, and how NESREA will work with others to resolve them.
- NESREA needs to **establish itself quickly as a credible regulator** and needs to be seen to be taking effective action on the ground to deliver some real environmental outcomes.
- NESREA needs to **develop a clear strategy on how it will work with other organisations at Federal, State and local level**. It needs to recognise that successful delivery of environmental outcomes will be effected through partnership with a large number of different organisations with different political priorities. It must be realistic about what it can achieve with its current resources and expertise and target some key partners to work with.
- NESREA needs to look seriously at how it will **develop its own capacity** to address the huge task that it has been given. It should consider how best to implement the 'Polluter Pays Principle' in environmental protection and how it could develop a charging base to provide income streams for its work. It also needs to develop a strategy for recruitment of the necessary skills and expertise to do its job and how it will develop the talented work force that it already has to establish itself as an effective force for environmental protection and sustainable development in Nigeria.
- Our experience in other countries (including other African countries) is that partnership between environment agencies can be mutually beneficial provided that it is focussed around some well-defined priorities and outcomes, and is based upon developing close and responsive relationships between staff. We would recommend this approach for a **partnership between NESREA and the Environment Agency**. The scoping work has identified a range of priority areas that could be taken forward through this partnership. These include sharing information and guidance, staff exchanges, specific projects and targeted training and mentoring. Sustained sources of funding will need to be secured to support these initiatives.

2 Background

The Environment Agency is a member of Partners for Water and Sanitation (PAWS) and is represented on the PAWS Steering Group. The Environment Agency has previously been involved in PAWS work in Nigeria and South Africa. NESREA approached PAWS for support in carrying out an institutional analysis and the Environment Agency was able to provide the right expertise to carry out this assignment with the support of PAWS. The Environment Agency had previously been approached directly by NESREA for technical support and responding to the PAWS request proved a good opportunity to engage further with NESREA.

The Environment Agency for England and Wales was established in 1996 by the Environment Act. 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. The Environment Agency's work includes tackling flooding and pollution incidents, reducing industry's impacts on the environment, protecting rivers and coastal waters, cleaning up contaminated land, improving wildlife habitats, and limiting and adapting to climate change. The Environment Agency has around 12,000 staff.

The Nigerian National Environmental Standards and Regulations Enforcement Agency (NESREA) was created in 2007 by the NESREA Act. It is a parastatal of the Federal Ministry of Environment, Housing and Urban Development. NESREA has responsibility for the protection and development of the environment, biodiversity conservation and sustainable development of Nigeria's natural resources and environmental technology. This includes coordination and liaison with relevant stakeholders within and outside Nigeria on matters of enforcement of environmental standards, regulations, rules, laws, policies and guidelines. NESREA currently has approximately 200 staff and is looking to grow to about 2,000 staff in total.

3 Objective

The objective of the Environment Agency visit to Nigeria, as defined in the terms of reference, was to appraise the structure, strategic plan and capacity needs of NESREA

Following the visit the Environment Agency will develop a technical report which will:

- identify NESREA's institutional arrangement and support plans and
- assess NESREA's capacity gaps

Annexes for reference

Terms of reference (annex 2)

4 Visit overview: people and institutions met

The Environment Agency's visit to NESREA took place 3rd-9th February 2008. It included a good mixture of meetings with NESREA, site visits and meetings with external stakeholders. An overview of the main outcomes of the various meetings is attached in annex 5.

Annexes for reference

Overview of people and institutions met (annex 5)

Itinerary (annex 3)

5 Observations on NESREA and their Strategic Action Plan

NESREA has developed a Strategic Action Plan (SAP), which outlines the organisations priorities in the short, medium and long term. The SAP aims at providing the road map and benchmarks towards implementing NESREA's mandate. It identifies goals, strategies, activities, resources needed, who is responsible and timeframe and performance measures.

The Environment Agency team had the opportunity to discuss the SAP with the broader management team and each of the Directorates and their staff. The team found a strong commitment for meeting the challenges faced by NESREA head on, and a lot of thought and technical expertise had gone into developing the strategic goals. We found that each Directorate had identified a number of priority activities for the short term as well as identifying the capacity building needs related to achieving these priorities (the priorities and capacity building needs of each Directorate are listed in annex 5).

The team found that the priorities were focussed around the operational functions of each Directorate. For purposes of strengthening the strategic plan and identifying capacity gaps in line with our terms of reference, we felt the strategic plan could be improved by focusing more clearly on **environmental outcomes** rather than focusing on organisational functions of NESREA.

In order to develop the focus on environmental outcomes, the Environment Agency team facilitated a number of workshops and discussions with NESREA's technical staff. The aim was to identify the environmental risks facing NESREA and to reach a consensus on which of these risks need tackling in the short to medium term. In turn this would be used to identify NESREA's priorities and approaches in addressing them.

5.1 Outcomes of workshop on identifying environmental risks

In order to ensure that the priorities of NESREA's SAP are directly linked to environmental outcomes, the team undertook an analysis of the environmental risks facing Nigeria.

The analysis of environmental risk and the risk based prioritisation exercise were all carried out in a plenary workshop session with virtually all of NESREA's technical staff present. This methodology allowed us to ascertain a consensus within NESREA around the main environmental risks that Nigeria – and consequently NESREA – will face.

NESREA's staff were asked to individually define the environmental risks to Nigeria. Following this participants were divided into four groups and asked to identify the top five environmental risks. These came forward with a high degree of overlap – signalling that amongst NESREA staff there is strong agreement on the challenges faced by the organisation. From this session six different environmental risks were identified in order of prioritisation:

Environmental risk	No. of points when prioritising (high points = strong priority)
Improper Waste management	18
Water / land / air pollution	16
Poor governance	10
Biodiversity loss	6
Land Degradation	5
Poor hygiene and sanitation	4

Table 1: List of environmental risks

5.2 Using a risk based approach to prioritise environmental risks

Using a risk based approach, the team worked with NESREA to prioritise the environmental risks based on an analysis of the *likelihood* of each environmental risk identified taking place in the short to medium term balanced against the *consequence* should the risk materialise. For the purposes of this exercise the consequence was measured as risk to human health. This exercise was carried out in plenary and again illustrated the high level of agreement within NESREA about environmental risks.

Likelihood		
High		- Waste - Air/land/water pollution - Poor governance
Medium		- Poor sanitation and hygiene - Land degradation
Low		- Loss of biodiversity
	Low Medium High	
		Consequence

Table 2: A risk based approach to analysing the likelihood and consequence of environmental risks.

As table 2 illustrates, when analysing whether each environmental risk was likely to occur in the short to medium term and what level of consequence this would have for Nigerians (the ultimate risk being death) **waste; air, land and water pollution and poor governance** were identified as being the highest risks.

Poor sanitation and hygiene as well as **land degradation** were identified as being less likely to happen in the short to medium term. Participants did however identify that the consequence to human life will be high if these risks were to materialise.

The likelihood of **loss of biodiversity** taking place in the short to medium term was judged as being low to medium. However, as above, the consequence to human life if loss of biodiversity occurs was identified as high.

5.2.1 Reflections on Site Visits – assessing approaches, priorities and resource needs

Groups considered the experience of visiting waste sites, the abattoir, the dam and land degradation. They were asked to think about approaches to resolving issues and the amount of effort required – both for an individual site – and then for Nigeria as a whole. This highlighted a number of key issues:

- Need for working in partnerships: NESREA cannot deal with all the issues itself, but will rely on cooperation and coordination with other stakeholders
- Thinking micro to macro: local to national level
- May provide slightly different approach to taking this forward over next weeks and months.
- Emphasis of the usefulness of risk based approach – use the matrix to analyse the problems and various levels – hone in on issues at closer and closer level

5.3 Analysing waste in order to identify quick wins and NESREA's unique selling points

As is evident from the above, waste management was identified as a top environmental risk and further identified as having a high likelihood of posing a risk to the environment in the short to medium term and with high consequences in terms of human health as a result.

The Environment Agency team therefore worked with NESREA to further identify what activities within the area of waste management NESREA would be able to undertake in the short term (next 12 months) in order to:

1. **Establish NESREA's reputation and credibility:** what are the quick wins NESREA can achieve, which will have high impact and require low effort in terms of resources? and
2. **What is NESREA's unique selling point (USP)** in the area of waste management? What can NESREA add to this area of environment protection taking into account other stakeholders already operating in the waste sector?

5.4 Establishing reputation and credibility: quick wins

Participants identified actions NESREA could take in order to tackle the area of waste management. In groups participants were then asked to plot these actions on a graph, identifying the level of impact the activity would have on protecting the environment and the amount of effort it would require in terms of resources from NESREA. The graph is illustrated below.

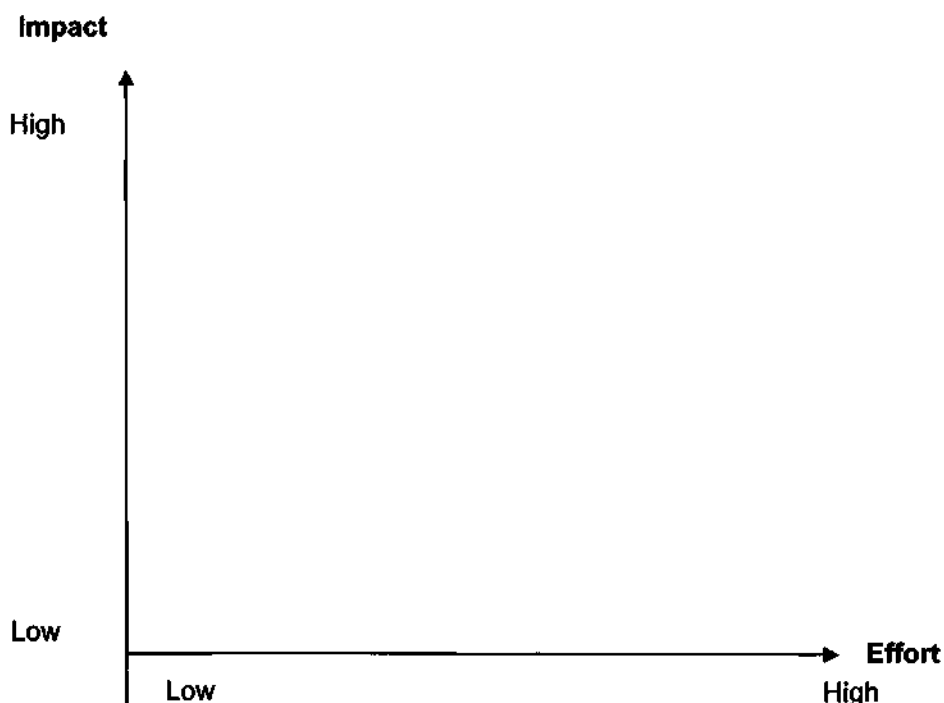


Table 3: Graph used to identify quick wins through impact and effort analysis

The activities identified varied between the four groups. Some groups identified some activities as quick wins with other groups identifying the same activities as requiring too much effort and having too low impact to be classified as a quick win. Below is a list of all the quick wins identified.

Group	Quick wins identified (high impact / low effort)
Group one	<ul style="list-style-type: none"> • Setting standards, regulations and guidelines on waste • Enforcing and sanctioning violators • Evolving a partnership framework
Group two	<ul style="list-style-type: none"> • Collaborating with Local Government through their State • Sanctioning violators for instance by using the already existing regulations of other organisations such as AEPB • Environmental education and awareness / training etc.
Group three	<ul style="list-style-type: none"> • Training Local Government workers on waste issues and ensuring their commitment to this area • Developing standards and guidelines on waste management. This could be done through external consultants.
Group four	<ul style="list-style-type: none"> • Intensive and robust enlightenment. This would include all media of communication such as radio, workshops, electronic media etc. • Collaborate with States and Local Governments • Development of regulations • Undertake enforcement actions

Table X: Outcomes of work on identifying quick wins

The exercise illustrated consensus within NESREA for the need to work with Local Government and the States in the short to medium term to ensure quick impact on the ground, and subsequently boost NESREA's reputation and credibility. Many States and Local Governments already have policies and activities in place to tackle waste management, which NESREA can buy into.

Likewise there was consensus around the need for NESREA to develop standards and regulations for the waste sector.

There was less consensus on the feasibility of rolling out awareness and education campaigns. Although there was general agreement that this was a long term objective for NESREA, there were varying opinions on the amount of resources this would require, and hence whether it could be considered a quick win in the next 12 months.

5.5 Identifying NESREA's unique selling points

As is evident from the quick wins identified, NESREA acknowledged the broad range of stakeholders already involved in waste management. In particular State and Local Governments already have policies and regulations in place with regard to waste, and already undertake some enforcement work. Although it varies between States and Local Governments what level of awareness and enforcement and compliance exists, NESREA must define its particular niche and what it can deliver that will complement and not duplicate the existing efforts.

The unique selling points identified by NESREA were grouped in three main areas:

- **National scope:** the fact that NESREA is a national agency means it can achieve national coverage in terms of its policies on waste. NESREA has the ability to set national standards. NESREA also has the opportunity to identify the best practices already existing at State and Local Government level and replicate these at the national level.
- **Technical expertise:** NESREA would like to be the main provider of technical expertise on environmental issues in Nigeria. Given the experience and expertise that already exists at State and Local Government level this provides a capacity challenge for NESREA. NESREA has to ensure its staff is recruited and trained to reflect this unique selling point.
- **Provide leadership:** for instance in the area of enforcement where NESREA can lead on large scale or technically specific areas of enforcement which cannot be handled at the State and Local Government level. In its enforcement role NESREA can make use of regulations and laws already existing at State level, only developing new ones when there is added value in doing so.

6 Recommendations for further follow-up

Based on the workshops, interviews and discussions held with NESREA during our week long mission, the Environment Agency has identified a number of recommendations for NESREA to take forward. The recommendations are based on two broad aspects: what NESREA needs to focus on in terms of getting the priorities right and what capacity gaps will need to be addressed in order to achieve the priorities.

6.1 Prioritising for NESREA's Strategic Action Plan

The Environment Agency identified three areas that we would recommend NESREA focus on in order to strengthen the prioritisation in their Strategic Action Plan.

6.1.1 Increased focus on environmental outcomes

We believe the SAP should be based around environmental outcomes. This means prioritising the activities of each department of NESREA based on agreed environmental outcomes. Currently the emphasis of the SAP is on the activities of each directorate, based on functional goals rather than the environmental outcomes NESREA wishes to achieve for Nigeria.

The Environment Agency's current strategic plan provides an interesting source of inspiration. Rather than each Directorate having its own strategic goals, the Environment Agency's strategic plan identifies nine environmental themes that all activities undertaken by the organisation must contribute to. This provides clear guidance for the organisation as a whole, rather than each Directorate working disparately to achieve its particular objectives.

Prioritising environmental risks

NESREA's strategic goals are very broad. If NESREA wants to have impact on the ground, it will need to prioritise its resources by addressing the top risks rather than trying to deal with everything at once. According to our discussions with NESREA the top environmental risk facing Nigeria in the short to medium term is waste management.

This risk based approach to prioritising resources has proved very successful for the Environment Agency. The tools used during the Environment Agency's discussions with NESREA provide a good methodology for analysing environmental risks. The matrix analysing the *likelihood* of an environmental risk occurring against the *consequence* if it did occur can be replicated to look at broad environmental risks or focus on sub-sectors of a particular risk, such as we have done with waste management in this report. Likewise the matrix can be used to analyse various timescales: short term, medium term or long term.

Using the State of Environment report

The Environment Agency recommends NESREA focus on gathering and improving the information available on the state of the environment in Nigeria. The information that already exists should be used to identify the key environmental risks facing Nigeria. This scientific information should drive the strategic thinking of NESREA and provide the basis for prioritising in the strategic action plan.

6.1.2 Defining NESREA's unique selling point

NESREA needs to be clear on what added value the organisation brings to the environment sector in Nigeria. Many stakeholders already operate in the sector and it is key for NESREA to demonstrate its added value from the beginning.

The role of States and Local Governments came up many times in our work with NESREA. Regulators at these levels (such as the Abuja Environment Protection Board whom we visited) are already carrying out enforcement, prosecuting and collecting revenue. NESREA needs to gain an overview of the work ongoing so as to ensure that NESREA's activities complement the work of other stakeholders and does not duplicate existing initiatives and create competition rather than cooperation.

6.2 Capacity building needs

6.2.1 Financial resources

- **Developing charging schemes**

The Environment Agency recommends NESREA looks further into how it can

obtain alternative sources of revenue through for instance charging schemes for pollution and environmental uses and enacting the Polluter Pays Principle.

- **Funding from development partners**

During our visit with NESREA we met with the European Commission (EU), the United Nations Development Programme (UNDP) and the UK Department of International Development (DFID). There did seem to be opportunities for possible cooperation with these three development partners in the future (these are further elaborated in annex 5). However any support will be dependent on NESREA articulating clearly what areas of work they would like support for, and how this will have an impact in terms of achieving environmental objectives set out in NESREA's Strategic Action Plan.

- **Funding from Nigerian Government**

Only one percent of Nigeria's State budget (?) is funded by international development partners. This means that by far the largest financial supporter of NESREA's work will be the Nigerian Government. The Director General is already working hard to ensure NESREA figures prominently in the priorities for Government funding. NESREA should continue to ensure that lobbying efforts are focussed on Government. In particular the National Planning Commission seems a key partner in determining Government spending priorities. Establishing a strong relationship with NPC should therefore be key for NESREA.

6.2.2 People development

The main resource available to NESREA is its human resources. Recruiting the right skills and providing the right staff development opportunities will be key to ensuring NESREA is able to achieve the objectives of its Strategic Action Plan.

NESREA's unique selling points should drive the process of defining what skills and competencies NESREA needs to recruit. We further recommend that an analysis of the capacity gaps at State and Local Government level should define what skills NESREA needs to have on board to ensure it is the top source of technical environmental resource in Nigeria.

At this early stage of NESREA's institutional development, when most of the recruiting is yet to be carried out, it is important to develop a clear recruitment strategy for the organisation as a whole. This should be a cross-departmental strategy that has a direct link to the environmental outcomes NESREA wishes to achieve. This strategy also needs to consider the wider issue of availability of technical skills and expertise in Nigeria, and how these can be developed through higher education organisations and targeted training programmes.

7 Possible areas of future cooperation between NESREA and the Environment Agency

A partnership between NESREA and the Environment Agency should be based on technical assistance and cooperation. The Environment Agency's budget does not allow funding support to other organisations such as NESREA, and therefore the cooperation will have to be externally funded either through NESREA's own resources or through other avenues of support.

There are several areas of overlap between NESREA's mandate and that of the Environment Agency. Subsequently there are several areas of potential cooperation between the two organisations. Below are some ideas for what areas of cooperation this could be.

7.1 Short term

- Exchange of information through email or telephone on particular issues.
- Use of the Environment Agency's website for information and documentation.

7.2 Medium term

- **Participation in the Professional Fellowship Programme:**
NESREA has been invited to participate in the Environment Agency's Professional Fellowship Programme. The programme offers a three month placement with the Environment Agency from September – December 2008. The Environment Agency offers approximately 4-5 such placements every year to colleagues in sister agencies in our focus countries. The placement is offered to a mid-career professional and it is important the individual NESREA nominates for the placement is aware that their role will be to ensure whatever they learn is disseminated throughout NESREA once they return to their post after the placement. It is therefore also important that NESREA nominate a person who works in a priority area and who they think as an individual will be appropriate for the placement.
- **Further work through the PAWS partnership:**
If NESREA identifies focussed technical support to follow up on the first Environment Agency mission, which can be carried out during one or two short term missions, then there is the possibility of requesting technical assistance through PAWS, where this is relevant to PAWS' mission.
Possible areas for such short term input could be:
 - Further support in developing NESREA's Strategic Action Plan
 - Developing a risk-based approach to water quality regulation and addressing the environmental impacts of water pollution and poor sanitation.

7.3 Longer term

As mentioned there are many areas of overlap between NESREA's mandate and the Environment Agency's mandate. This means that there are many areas of potential technical capacity building support, which could be developed through a longer term partnership between the two organisations.

Possible technical areas of cooperation could be:

- strengthening NESREA's work on building awareness and communicating environmental messages to the public
- working with prosecutors and magistrates to sensitise them on environmental law and dealing with environmental prosecutions
- developing a regulatory framework and carrying out training of enforcement officers
- further developing a risk based approach to implementing legislation

Our experience shows that a two year framework is a good timeframe to allow for the benefits of a long term partnership. This would require a sustained source of funding for the partnership to be effective.

8 List of annexes

1. List of acronyms
2. Terms of reference
3. Itinerary of the visit
4. List of people met
5. Overview of outcomes of meetings and site visits
6. Case study and reflections on site visits
7. Enforcement cycle

9 Annex 1: List of acronyms

ADB	African Development Bank
AEPB	Abjua Environment Protection Bureau
CIDA	Canadian International Development Assistance
DCG	Donor Coordination Group
DFID	UK Department for International Development
EFCC	Economic and Financial Crimes Commission (?)
FAO	UN Food and Agriculture Organisation
FCT	Federal Capital Territory (Abuja)
LG	Local Government
MDG	Millennium Development Goal
MoE	Ministry of Environment
NESREA	National Environmental Standards and Regulations Enforcement Agency
NPC	National Planning Commission
PAWS	Partners for Water and Sanitation
SAP	Strategic Action Plan
SEPA	State Environment Protection Board
UNDP	United Nations Development Programme
UNIDO	United Nations Industrial Development Organisation (??)
USP	Unique selling point

10 Annex 2: Terms of reference

11 PROJECT TERMS OF REFERENCE

PROJECT NO:	87_Nlg
Project Title and Reference	<p>National Environmental Standards and Regulations Enforcement Agency (NESREA): Institutional Appraisal and Strategic Planning</p> <p>The National Environmental Standards and Regulations Enforcement Agency (NESREA) is a parastatal of the Federal Ministry of Environment, Housing, and Urban Development. The core responsibilities of NESREA include; the enforcement of regulations, laws and guidelines on the environment. It also enforces international conventions, treaties and agreements on the environment.</p> <p>This Terms of Reference is the initial PAWS support to NESREA in the area of strategic planning, which will build the foundation for further support.</p> <p>PAWS support to NESREA is in line with the PAWS strategy of working in partnership with Federal Government agencies, to ensure that PAWS compliments the plan of the Government of Nigeria.</p>
Justification	<p>In July 2007, the Federal Government of Nigeria established NESREA by an Act, as a parastatal of the Federal Ministry of Environment, Housing, and Urban Development, to ensure a cleaner and healthier environment for Nigerians.</p> <p>The big challenge for NESREA is that before this Act, there was no agency in place to enforce environmental standards and regulations in Nigeria. Therefore the task ahead of the agency is challenging, and with the socio-economic situation of Nigeria, the agency requires institutional strengthening to effectively carry out its mandate..</p> <p>NESREA has requested for PAWS support in institutional strengthening towards the implementation of its mandate, especially in the areas of water quality and environmental</p>

	<p>sanitation. PAWS is committed to supporting NESREA, in line with its country plan.</p>
Objectives	<p>Appraisal of NESREA's institutional structure, strategic plans and capacity needs.</p>
Deliverables	<p>A technical report identifying:</p> <ul style="list-style-type: none"> ▪ NESREA's institutional arrangement and support plans; and ▪ an assessment of its capacity needs.
Impact	<p>The NESREA strategic planning, when completed will:</p> <ul style="list-style-type: none"> • increase understanding of NESREA's current institutional arrangements; • offer useful inputs into NESREA's strategic plan, to enhance implementation of its mandate; • identify the capacity needs of NESREA, for strengthening through partnership.
Scope	<p>NESREA is made up of five departments, each headed by a Director, two service departments (Legal Services and Administration & Finance) and three technical departments (Planning & Policy Analysis, Inspection & Enforcement, and Environmental Quality Control). These are all headed by the Director-General who is the Chief Executive Officer (CEO) of the Agency. There are also laboratory services, zonal offices coordination, SERVICOM, internal audit and press & protocol, all under the office of the CEO.</p> <p>The departments and office of the D-G were created by the Act establishing NESREA and can only be changed by legislative processes. Therefore the scope of work within this ToR will <u>not</u> involve aspects of institutional restructuring. The support will appraise the existing structure of NESREA and its capacity needs within that structure.</p> <p>NESREA has developed short, medium, and long term strategies. Each department has also developed a work-plan on how to implement these strategies. The strategic planning</p>

	<p>phase of the PAWS support covers capacity building needs assessment in the area of strategic planning, to be conducted for the NESREA team. This should help NESREA effectively implement its short term strategy. The strategic planning phase will also develop a plan for further PAWS support to the agency, identified for each department and the office of the CEO.</p>
<p>Organisation and methodology</p>	<p>This project requires a team of 2 people to visit NESREA. The PAWS team will be hosted by NESREA in its Abuja head office. Initial formal introductions and discussions will be organised by NESREA, to develop a clear understanding of the PAWS partnership, the UK- and in-country partners, and the NESREA team.</p> <p>A detailed study of relevant documents and interview sessions with key management staff and heads of departments of NESREA will be carried out, to help the PAWS team obtain necessary information for thorough capacity needs assessment.</p> <p>An appraisal of the NESREA strategic plan (short, medium and long term) will then be carried out with the NESREA team. A plan for further PAWS support will be developed with the team, once an implementation plan for the strategy has been considered.</p> <p>At the end of the visit, the PAWS team will debrief the NESREA team. A final technical report will be forwarded through the Country Manager to the NESREA team, after further development in the UK.</p> <p>The PAWS team will consist of staff from UK partners with expertise in institutional development and appraisal, strategic planning and human resources. Experience in environmental regulatory institutions is also required.</p>
<p>Milestone plan</p>	<ul style="list-style-type: none"> • Early December 2007: Visit to Abuja for in- country support activities. • Early to mid December 2007: Presentation of findings to NESREA in Abuja.

	<ul style="list-style-type: none"> • Mid December 2007: Submission of technical report.
Resource estimate	<p>6 days of PAWS team input in-country (each)</p> <p>3 days of PAWS team input in the UK, on technical report writing (each)</p> <p>Follow-up support may be identified after this initial activity.</p>
<u>Dependencies</u>	<p>Availability of documents and information on NESREA, its plans and programmes.</p> <p>Availability of key NESREA staff for interview sessions.</p>
<u>Issues/Risks</u>	<p>Risk: Lack of participation and access to key NESREA staff and documents.</p> <p>Mitigation: NESREA management to coordinate and ensure participation and access to information.</p> <p>The PAWS Country Manager will keep the PAWS Secretariat informed on any changes on risk levels in the risk assessment document.</p> <p>Mitigation Plans by the NESREA management team and PAWS Country Manager are in place for any identified risk.</p>
<u>Other Active Donors</u>	<p>Consultations are ongoing with the Donor Coordinating Group on Environment (DCGE).</p>
<u>Communications Strategy</u>	<p>After the appointment of the PAWS team, communication will be between the team, the Country Manager and the PAWS Secretariat. This will be by e-mail primarily and phone calls as required.</p>

	<p>Initial communication prior to travel between the PAWS team and the in-country partner (NESREA), for clarifications on the scope of work, etc, will be channelled through the Country Manager. Direct communication can be established when appropriate.</p>
Review Mechanism	<p>The PAWS Country Manager, PAWS Secretariat and the in-country partners will review a draft technical report before its final production. This will ensure that the expectations of the in country partner are adequately met..</p> <p>The PAWS team will be updated on any subsequent NESREA activities and progress.</p>
Approvals appropriate) (as	<i>Rebecca Scott, PAWS Project Manager</i>
Compiled by	Nyananso Gabriel Ekanem, PAWS Country Manager, Nigeria Dr. (Mrs.) N. S. Benebo, the Director General, NESREA
Date	9 th November, 2007

12 Annex 3: Itinerary of the visit

Programme of activities for the EA team visit to Nigeria (3rd - 9th February 2008)

Sr No	Date	Time	Activity	Objective
1	3rd February Sunday	5.30am	Arrival, pick up and Check in	Reception and accomodation
2		12 noon - 1.00pm	Meeting with Gabriel	Country Briefing and Logistics
3		1.00pm - 2.00pm	Discussion on PAWS and activities in Nigeria	To introduce PAWS Nigeria in details, for clear understanding of goal
4		2.00pm - 5.00pm	Discussion on PAWS-NESREA partnership and the institutional strengthening work	To clarify Visit Objectives and PAWS NESREA partnership plan
4th February Monday				
5		8.30am-9.00am	Pick up from hotel to NESREA office	To meet with Director General of NESREA and her team
7		9.00am - 10.00am	Reception and Introductions	To get formal introduction of everyone in the EA and NESREA teams
8		10.00am - 11:00am	Power Point presentation on NESREA (Overview, History, Status)	To present NESREA to the EA team for a clear understanding of the Organisation
9		11:00am - 11:30am	COFFEE/TEA BREAK	COFFEE/TEA BREAK
10		11:30 - 12.00noon	Power Point presentation on PAWS and PAWS Nigeria	To get a clear understanding of the PAWS offering and PAWS work in Nigeria
11		12:00noon - 1:00pm	Power Point presentation on the UK Environment Agency (Introduction, Overview, Activities, Expectations)	To present The EA to the NESREA team for a clear understanding of the Organisation

12		1:00pm - 1:30pm	Discussion on Presentations	Discussion on Presentations
13		01:30pm - 3:30pm	LUNCH BREAK	LUNCH BREAK
14		03:30pm - 4:30pm	Presentation of NESREA Strategic Plan (Overview)	To get a clear understanding of the NESREA Strategic plan
15		04:30pm - 5:30pm	Presentation of EA Strategic Plan (Overview)	To get a clear understanding of the EA Strategy on Environmental Regulation
16	5th February Tuesday	8.30am-9.00am	Pick up from hotel to NESREA office	
17		09:00am - 11.30am	One -On-One with each director	To understand the roles and responsibilities of each department and unit, and how they support the delivery of NESREA strategy
18		12:00am - 12:30am	Depart to the office of the Minister for Environment	To Pay a courtesy call on the Minister
19		01:00pm - 2:00pm	Meeting with the Minister for Environment	To get an understanding of the Ministry's plans for the Environment
20		02:00pm - 3:00pm	LUNCH BREAK	LUNCH BREAK
21		3:00pm - 5.00pm	Workshop on priorities and focus areas	To identify the key focus areas to help develop astrategic plan
22	6th February Wednesday	8.30am-9.00am	Pick up from hotel to NESREA office	
23		10.00am - 11.00am	Visit to EU office	To understand Donor community plans on Environment issues
24		11.00am - 12.00noon	Visit to AEPB office, central area	To appreciate the work of regulation and enforcement in Abuja city
25		12.30pm - 2.00pm	Visit to Karu community, the traditional ruler, and the abbatoir	To appreciate environmental challenges (Sanitation)
26		2.00pm - 3.00pm	Visit to UNDP office	To understand the UN agency's plans for the Environment and NESREA

27		3.00pm - 4.00pm	LUNCH BREAK	LUNCH BREAK
28		4:00pm - 6.00pm	Visit to Usuma Dam, Abuja	To appreciate environmental challenges (Water Treatment)
29	7th February Thursday	8.30am-9.00am	Pick up from hotel to NESREA office	
30		09:00am - 1.00pm	Visit to Kuje community, Abuja	To appreciate environmental challenges (Water and Sanitation)
31		01:00pm - 2:00pm	LUNCH BREAK	LUNCH BREAK
32		2:00pm - 5.00pm	Workshop session	To appreciate the challenges on ground, with respect to NESREA,s mandate
33	8th February Friday	8.30am-9.00am	Pick up from hotel to NESREA office	
34		09:00am - 10.00am	Press Briefing	To interact with the press on the UK EA visit
35		10:00am - 12:00noon	Visit to Garki Market	To appreciate market condition in Abuja
36		12.00noon - 1.00pm	visit to WaterAid office	To meet with and appreciate waterAid Nigeria
37		2.00pm - 3.00pm	Visit to DFID office	To understand DFID's plans for the Environment
38		3:00pm - 5.00pm	Wrap-Up sessions: Presentation by EA team on visit outcome, Closing Remarks by D-G NESREA	To reflect on the value of the visit, and identify further support areas and modalities
39	9th February Saturday	5.30am-6.30am	Pick-up from Hotel to Abuja International Airport	Flight Check in and depart for the UK
NOTE: Time is Nigerian time (GMT+1)				

13 Annex 4: List of people met

Name	Organisation	Job Title
Mr Mohammed K Hamadina	AGRIFOR Consult	Environment and Energy Specialist
Mr Giorgio V Brandolini	AGRIFOR Consult	Team Leader Environment Specialist
Engr. Kosmat Bolaji Anibilowo	Abuja Environmental Protection Board	
Rob Shooter	Department for International Development (DFID)	Senior Programme Coordinator – Human Development
Veronique Marx	European Union	Project Officer – Water and Sanitation
Daniel Plas	European Union	First Secretary – Head of Section Rural and Social Development, Water and Sanitation
Patience Olaloye	Kuje Area Council	Information Officer
G G Bako	Kuje Area Council	Personal Assistant to Hon Chairman
Barr. Bola Odugbesan	NESREA	Legal Adviser
Mrs Ronke Soyombo	NESREA	Director, Inspection and Enforcement
Maiwada M Omar	NESREA	Director, Environmental Quality Control
Lawrence Chidi Anukam (PhD)	NESREA	Director, Planning & Policy Analysis
Dr. (Mrs) Ngeri S Benebo, JP	NESREA	Director General/CEO
Mrs Kitan Ogungbuyi	NESREA	Asst. Director, Industrial Compliance Monitoring
A Sam Akpabio	NESREA	Deputy Director, Head, Policy Matters & International Co-operation
Mrs Miranda A Amachree	NESREA	Ag. Deputy Director – Industrial Compliance Monitoring
Mr Razaq O Ashiru	NESREA	Deputy Director, Environmental Sanitation Compliance Monitoring
Mrs Ajuma V Enemali	NESREA	Assistant Director, Industrial Compliance Monitoring
Mr Olufunbi O O Sode	NESREA	Deputy Director, Extractive Industry Compliance
Lateef A Olatokunboh	NESREA	Assistant Director, Environmental Sanitation Compliance Monitoring
Mrs Florence I Oti	NESREA	Head, Environmental Education & Awareness
Victor Ojogbo	NESREA	Head, Planning & Information Management
Mrs Ezinwa C Ezeka	NESREA	Special Assistant to the DG
Nyananso Gabriel Ekanem	Partners for Water and Sanitation (PAWS)	PAWS Nigeria Programme Co-Ordinator
Muyiwa Odele	United Nations Development Programme	Programme Analyst

Hakon Olav Iglirbaek	United Nations Development Programme	Junior Professional Officer – Energy and Development
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14 Annex 5: Overview of people and institutions met

14.1 Sunday 3rd Feb 2008

All day: Briefings from PAWS representative on Nigeria, PAWS in Nigeria and clarification of mission objectives

The day gave the team a better foundation for understanding the context NESREA operates in, and the PAWS framework within which the assignment took place.

14.2 Monday 4th February

14.2.1 Reception and introduction at NESREA

The Environment Agency team met with NESREA's technical staff. The main contacts for the visit were:

- Dr. (Mrs.) Ngeri S. Benebo, Director General / CEO
- Mr. Lawrence Chidi Anukam, Director Planning and Policy Analysis
- Mr. Maiwada M. Omar, Director Environmental Quality Control
- Mrs. Ronke Soyombo, Director Inspection and Enforcement
- Barr. Bola Odugbesan, Legal Adviser

14.2.2 Power point presentation on NESREA

Dr. Benebo presented an overview of the history of NESREA as well as the overall goals of the organisation.

14.2.3 Presentation by PAWS Nigeria

Mr. Gabriel Ekanem presented an overview of PAWS with particular emphasis on their activities in Nigeria

14.2.4 Presentation on the Environment Agency

The team presented the background and history of the Environment Agency explaining the roles and responsibilities of the organisation. The team also presented an overview of the Environment Agency's International Programme.

(Presentation enclosed)

14.2.5 Presentation of NESREA's Strategic Action Plan (SAP)

Dr. Benebo presented the overall goals of NESREA's Strategic Action Plan

14.2.6 Presentation of the Environment Agency's strategy

The Environment Agency presented the organisation's strategy emphasising the focus on modern regulation.

14.3 Tuesday 4th February

14.3.1 One on one with the Directors from the three technical directorates of NESREA.

The Environment Agency met with the three Directors and their respective teams. The Directors used the session to outline the main priorities of the Directorates in terms of activities as well and the main capacity building needs in order to achieve this as they saw it. These are listed below:

Directorate for Planning and Policy Analysis	
Priorities	<ul style="list-style-type: none"> ■ Information management system ■ Public education and awareness ■ Physical library that NESREA staff and public can use to access environmental and regulatory information
Capacity needs	<ul style="list-style-type: none"> ■ Training on information management systems
Directorate for Inspection and Enforcement	
Priorities	<ul style="list-style-type: none"> ■ Writing regulations ■ Prioritising sectors ■ Training of enforcement officers
Capacity needs	<ul style="list-style-type: none"> ■ Training on permitting ■ Development of charging schemes
Directorate for Quality Control	
Priorities	<ul style="list-style-type: none"> ■ Developing standards ■ Ecological classification ■ Catchment monitoring
Capacity needs	<ul style="list-style-type: none"> ■ Training on air quality monitoring ■ Compendium of best available technologies
Legal Department	
Priorities	<ul style="list-style-type: none"> ■ Provision of legal information ■ Liaison with Office of Attorney General ■ Networking and collaborating with civil society organisations
Capacity needs	<ul style="list-style-type: none"> ■ Training on enforcement of environmental laws ■ Training in prosecution of high risk polluters

	<ul style="list-style-type: none"> ■ An expose on environmental crime ■ Training for magistrates and judges
Zonal offices	
Priorities	<ul style="list-style-type: none"> ■ Training of laboratory staff ■ State of the art technology
Capacity needs	<ul style="list-style-type: none"> ■ Sampling and analysis training

14.3.2 Meeting with Honourable Mrs. Halima Tayo Alao, Minister of Environment and Housing

- The Minister highlighted her support for NESREA and the fact that NESREA has a key role to play in securing Nigeria's environment. She pointed out that the NESREA Act represented the first bill signed by new President, His Excellency, Alhaji Umaru Musa Yar' Adua after he entered into office in June 2007.
- When asked to name the main environmental challenges facing Nigeria the Minister mentioned waste management, solid waste disposal, pollution and large industries.
- The Minister also highlighted the urgent need in Nigeria for the development of a database of environmental information. There is currently very little basic data available, making it difficult to base policy development on factual information about the state of the Nigerian environment.

14.3.3 Deliberations of NESREA's Strategic Action Plan

The Environment Agency led a workshop with the NESREA team, which focussed the discussion on environmental outcomes.

14.4 Wednesday 6th February

14.4.1 Meeting with the European Commission (EU)

Present:

- Mr. Daniel Plaas, Head of Section Rural and Social Development, Water and Sanitation
- Ms. Véronique Marx, Project Officer Water and Sanitation
- NESREA team
- Gabriel Ekanem, PAWS
- Environment Agency team

Current EU support

- The EU has **two main focal sectors** in Nigeria: 1) Good governance at a Federal level and 2) the Water and Sanitation sector
- The **Good Governance** programme supports areas such as the fight against corruption through support to the EFCC (Economic and Financial Crime Commission??), support to election activities etc.

- The **Water and Sanitation Programme** focuses on six States to improve the institutional set-up at State level to tackle water and sanitation issues. The focus of this work is on health issues and currently the environment does not factor as part of this programme.
- In addition to the focal sectors the EU has projects / programmes in **non-focal sectors**. These include immunisation programmes and a Micro-project programme in the Niger Delta region.
- The Environment Sector is currently not funded by the EU.

Future EU support

- The EU is currently developing its Country Strategy Paper (CSP) for 2008-2013.
- One of the **non-focal sectors will probably be the Environment Sector**. For this purpose the EU is currently carrying out an Environmental Profiling of Nigeria. The outcome of this consultancy study will provide the basis for deciding which areas within the Environment Sector to fund. As a stakeholder in the Environment Sector NESREA is being interviewed for the study. This is not a guarantee that NESREA will receive support, but the EU is open for the idea.
- The EU would like to see Government led coordination of the Environment Sector.
- The EU is keen to provide **support at Local Government level**. Most service delivery is provided through the Local Governments and support at this level is seen as crucial in order to attain the Millennium Development Goals.
- The EU currently has no experience in Nigeria of funding **'Twinning' projects** between two institutions. However, were this part of a programme (such as the proposed Environment Programme) then this would be a possibility.
- EU support is channelled through the National Planning Commission (NPC).
- The EU has a number of **budget lines**, some of which support issues around sustainable development. These are managed centrally in Brussels and the Delegation in Nigeria only plays an advisory role. Information on calls for proposal under the budget lines are advertised on EuropeAid's website.

14.4.2 Meeting with Abuja Environment Protection Board (AEPB)

Present

- Mr. Kosamat Bolaji Anibilowo Director AEPB
 - Other AEPB staff
 - NESREA team
 - Gabriel Ekanem, PAWS
 - Environment Agency team
- AEPB has a mandate to enforce environmental legislation in the FCT. It is guided by a Federal Act, which empowers AEPB to carry out environmental monitoring, enforcement and control.
 - AEPB has a laboratory where they can do sampling and analysis
 - AEPB receives budgetary support from the Government, but also generates its own revenue. This is through fines for illegal activities (through "mobile courts" or fixed penalty spot fines) and charging for service delivery for example in the waste sector.
 - AEPB runs a number of mobile courts in Abuja set up to give on the spot fines to environmental offenders. It is estimated that AEPB prosecutes over 50 offences each day through the mobile courts every day. In addition they have over 200 offences per month needed issuance of a warrant (??).
 - AEPB has approximately 250-280 staff.
 - Being part of FCT means that AEPB is ensured the support of the Nigerian Government and as a result is probably not highly representative of the State level Environment Protection Bureaus, who have to fight harder for funding and putting environment high on the agenda.

14.4.3 Visit to Karu community and Abattoir

Present

- NESREA team
 - Gabriel Ekanem, PAWS
 - Environment Agency team
-
- The team visited the local chief in Karu, who gave an overview of some of the environmental challenges facing Karu community. We inspected a waste site next to the market place and Abattoir and local settlements.
 - We also visited the Abattoir in Karu, which is responsible for much of the slaughtering of domestic animals in the community. The Abattoir currently lacks the drainage system to provide it with an alternative to disposing of its animal waste into the drains that run straight into the local river.

14.4.4 Meeting with UNDP

Present

- Mr. Muiyiwa Odele, Programme Analyst, UNDP Energy and Environment Unit
 - Mr. Haakon Olaw Iglebaek, Junior Professional Officer UNDP Energy and Environment Unit
 - UNDP staff member
 - NESREA team
 - Gabriel Ekanem, PAWS
 - Environment Agency team
-
- UNDP is currently developing its 7th Country Programme, which will have a duration of five years. The current 6th Country Programme will finish in 2008. 2008 is therefore a bridging year where programmes under the 6th CP are being wrapped up and new programmes are being piloted.
 - UNDP is interested in providing institutional capacity building support to NESREA, but they want to ensure that the right basis is in place from the beginning. In this regard UNDP encourage NESREA to critically assess their current SAP so that it is easy to sell to UNDP.
 - NESREA has been invited to UNDP's stakeholders workshop 12th-15th February. This will be the forum in which they can present their SAP in order to 'sell their case' to UNDP.
 - There will be a meeting between the UNDP Country Representative and the Minister of Environment in March, where UNDP support to capacity building for institutional strengthening will be decided upon. NESREA needs to ensure UNDP and MoE has a clear idea of what they want to achieve, so they can decide whether or not to support well in advance of this meeting.
 - UNDP's current budget in Nigeria is US\$2.3 million per year for the next five years.
 - UNDP chairs the Donor Coordination Group on Environment. CIDA acts as Secretariat for the group. Other members include World Bank, British High Commission, FAO, ADB, UNIDO and UN-Habitat. The main aim for the DCG is to share information and best practice as well as to influence Government policy on the environment. There has been discussion of a joint project in the coordination group possibly with the theme of climate change. NESREA has presented at a DCG meeting.

14.4.5 Visit to Usuma Dam, Abuja

Present

- NESREA team
 - Environment Agency team
 - Gabriel Ekanem, PAWS
 - Representative from the Federal Capital Territory Water Board (FCTWB)
- The team visited Usuma Dam outside Abuja, which is managed by the water board. The Dam is currently the only water reservoir to provide water to Abuja (apart from locally sourced water direct from the ground water or local water sources). The impression was of a well run dam with good technology.
 - When we discussed the role of NESREA this was mainly around monitoring pollution points along the water sources feeding into the dam. For instance industries polluting into the water sources. This included some discussion regarding catchment management approaches to protect this valuable water resource.

14.5 Thursday 7th February

14.5.1 Visit to Kuje community, Abuja

Present

- NESREA team
 - Gabriel Ekanem, PAWS
 - Environment Agency team
 - Representatives from Kuje Local Government
- Together with the Head of Environment and Sanitation from Kuje Local Government and other representatives from Kuje the team visited several sites in Kuje demonstrating the environmental challenges Kuje faces.
 - We visited a site popularly used by the local community to dispose of refuse. This had recently been emptied by the LG authorities. There seemed little alternative for households to dump their waste although the LG were introducing schemes for collection of waste and dumping in a designated waste site. Such schemes are implemented by private contractors.
 - We visited a soil erosion site, where a large hole in the ground was created over time due to soil erosion. This was an example of a problem the LG had appealed to AEPB for help in resolving.
 - We visited a local water hole. A family had privately dug a well which allowed it to extract ground water for domestic use. In Kuje the availability of running water for domestic use was practically non-existent.
 - We passed sites subject to land degradation due to extraction of soil for brick making and due to the trees being cut down to use for wood or to clear the space.
 - The LG go to AEPB when there are issues beyond their capacity. AEPB then investigates and provides funds or technical assistance as necessary.
 - When we discussed the role of NESREA the main area of support identified was capacity building in technical environmental issues and awareness raising amongst the population.

14.5.2 Workshop with NESREA team

- The Environment Agency team facilitated a series of workshop sessions with most of the NESREA technical staff present. The sessions were:
- Using practical case studies from the site visit to analyse the role of NESREA in relation to various environmental challenges.

- Further developing the environmental risks related to waste management (identified previously top environmental risk facing Nigeria (and hence NESREA)).
- Identifying possibly quick wins for NESREA. Issues that NESREA can tackle in the short to medium term, which will have high impact but require relatively little effort from NESREA's team.

14.6 FRIDAY 8th February

14.6.1 Press briefing

The press briefing received good coverage in the radio and television news afterwards. The printed press was still to cover the story at the time of the Environment Agency team's departure.

14.6.2 Visit to UK Department for International Development (DFID)

Present

- Rob Shooter, Senior Programme Coordinator, Human Development
 - NESREA team
 - Gabriel Ekanem, PAWS
 - Environment Agency team
- DFID Nigeria is currently going through a transitional stage. A number of programmes are ending this year and successive programme are being designed.
 - Four programmes should be established by April / May this year. The focus areas of these programmes will be: education, health and two governance programmes. Procurement for service deliverers is ongoing. Year one of the programmes will be an inception phase, which will define the framework for the rest of the programme. The programmes last six years with a midterm review after three years.
 - DFID currently does not have much in the area of supporting environmental regulation. There is some work through the current Governance programme. The next Governance programme will support Federal Ministries, but predominantly the core ministries such as Ministry of Finance. The future support to State and Local Government could possibly include support for environmental regulation.
 - DFID's water and sanitation programme focuses predominantly at community level, although it has done some work with the Ministry of Water at Federal level.
 - DFID operations are very decentralised in Nigeria. This means that although overall policy guidance comes from DFID HQ, the country office has a lot of autonomy in deciding the in-country programmes and support.
 - In Nigeria DFID does not give global budget support / sector wide support. Donor support in Nigeria amounts to less than 1% of the Government's budget, which means that DFID finds it most effective to target their support through programmes and projects with specified management agencies. Target areas are based on DFID's particular expertise and niche in Nigeria. This in turn is largely defined by past experiences and current expertise on DFID's staff.
 - Overall coordination and prioritisation sits with the National Planning Commission.
 - Other relevant contacts in DFID's country office could be
 - Scott Coldwell: Governance Adviser (supervising the State and Local Government Programme)
 - Graham Gass: Social Development Adviser

14.6.3 Wrap-up meeting

The meeting highlighted the main observations by the Environment Agency with regard to NESREA's institutional arrangement and support plans as well as capacity building needs.

15 Annex 6: Case study and reflections on site visit

Based on our site visits we worked with NESREA staff to identify how NESREA should deal with various environmental problems.

For purposes of the exercise we used the following four examples of environmental issues, illustrated with pictures from the site visits:

1. Dealing with land degradation (illustrated from example of soil erosion in Kuje community where soil is used for making bricks and where the trees are being removed from the land)
2. Dealing with waste refuse (illustrated from visits to Kuje and Karu communities)
3. Water resources (illustrated from visit to Usuma Dam)
4. Water pollution (illustrated by visit to Karu abattoir, with discharge from the abattoir goes untreated into the nearby water source)

In four groups NESREA staff were asked to answer the following questions:

1. What were the environmental/social risks or impacts?
2. What would NESREA do to regulate these sites?
3. How would NESREA prioritise regulation at these sites?
4. How much effort would be required at each of these sites?
5. How many sites like these are there in Nigeria?
6. How would you work with others to deal with these challenges ?
7. Does this experience affect thinking about the Strategic Action Plan?

The outcomes of the group discussions are detailed below

Environmental issue	Land degradation
Answers to questions:	<ol style="list-style-type: none"> 1. Erosion, flooding, loss of arable land, economic dislocation, desertification, climate change and global warming 2. Development of appropriate guidelines, standards and regulations <ol style="list-style-type: none"> a. Ensuring compliance with relevant MEAs on e.g. Climate change and degradation) b. Assistance compliance programmes (alternative source of fuel and financial instruments) 3. NESREA will prioritise according to the severity of impact especially when it is life threatening and has negative socio-economic impact. 4. Considerable efforts to ameliorate continuous land degradation / Deployment of resources depending on severity / Role of sector players 5. Several and numerous 6. Consultations and meetings to explain issues and find a way forward / Partnership with States and LG and CBOs / NGOs and Private sector players 7. Further reinforces our thinking about the SAP
Environmental	Waste issues

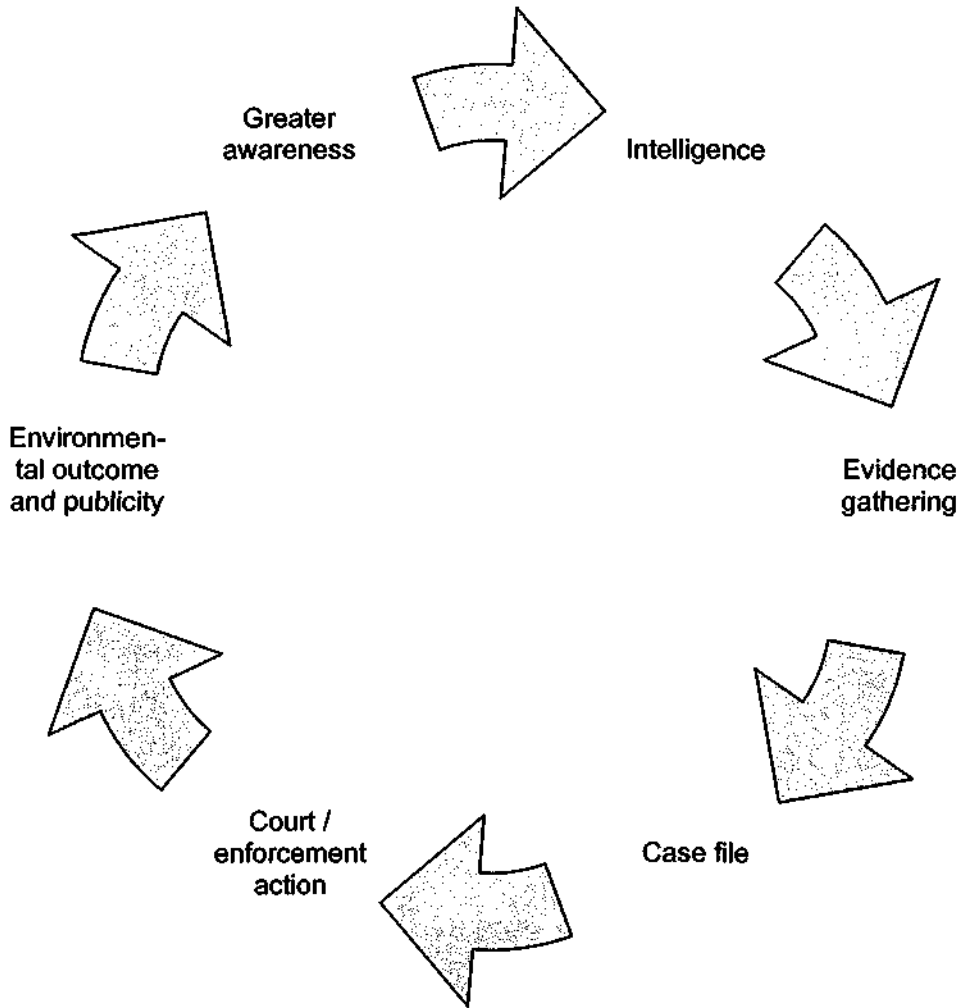
issue	
Answers to questions:	<ol style="list-style-type: none"> 1. <ol style="list-style-type: none"> a. Water air land pollution b. Pestilence / pest infestation c. Loss of aesthetics d. Epidemics 2. <ol style="list-style-type: none"> a. Information gathering b. Legislation / regulation c. Awareness and education d. Partnership 3. Prioritisation based on magnitude of risk to i. human health and ii. Ecosystem 4. Continuous regular monitoring and enforcement 5. Thousands 6. Partnership with states, LGs, communities, CSOs, private sector and law enforcement agencies 7. Slight adjustment may be required
Environmental issue	Water resources
Answers to questions:	<p>Environmental risk:</p> <ol style="list-style-type: none"> a. Land contamination b. Flies infestation c. High BOD – Eutrophication <p>1b. Social risk</p> <ol style="list-style-type: none"> a. Aesthetics b. Flies infestation <ol style="list-style-type: none"> 2. Set of regulatory guidelines, capacity building, pilot models, designs, creation of awareness and enforcement through the state / local government. Training of local staff 3. We look at immediate – short term priorities 4. Once a month monitoring 5. At an average of 1548 sites 6. Joint monitoring, partnership, human capacity development 7. Place abattoir sanitation on higher priority
Environmental issue	Water pollution
Answers to questions:	<ol style="list-style-type: none"> 1. <ol style="list-style-type: none"> a. Failure of Dam b. Flooding c. Improper treatment of water d. Opening of dam e. Displacement f. Sludge 2. <ol style="list-style-type: none"> a. control of quality of water b. Permitting through water quality standards c. Permitting of water treatment chemical d. Monitor operating standard of the infrastructure e. Permitting by abstraction of water 3. Low risk when standards are strictly followed with respect to dam

	<ol style="list-style-type: none">4. Quarterly5. Not less than one hundred6. Partnership with agreement on roles and responsibilities (MOU) (e.g with Ministry of Water)7. Big problem of Nigeria is water budgeting – NESREA should develop water conservation education to ensure this.
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KEY OUTCOMES OF DISCUSSION

- Need for working in partnerships: NESREA cannot handle it all by itself
- Thinking micro to macro: local to national level
- May provide slightly different approach to taking this forward over next weeks and months.
- Emphasis usefulness of risk based approach – use the matrix to analyse the problems and various levels – hone in on issues and closer and closer level

16 Annex 7: Enforcement cycle



Contents amendment record

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