

The Challenges of Public and Environmental Health Law Enforcement in Nigeria

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Abstract

Environmental degradation has continued to generate unpleasant challenges for health and economic development in Nigeria. These problems include deforestation, pollution, global warming, and improper pesticides, which are now a major problem to public health. Public health challenges have been a nagging problem bedeviling many countries well-being and stability for a long time. Despite environmental laws and policies targeted at ameliorating these problems, the situation in Nigeria seems to degenerate because these laws are not effectively enforced. This paper analyzes the sources and public health law enforcement bodies, types of public health laws, processes of enforcing public health laws, and challenges of enforcing public health laws in Nigeria. The paper recommends that, the encouragement of private and public interest litigation, the creation of procedures for enhancing public participation in Nigerian environmental protection, establishment of environmental emergencies to care for public health and environmental eventuality, while environmental courts decide on the available punishment for non-compliance to public health and environmental laws.

Keywords: Public health, Challenges, Public & environmental health laws, and Enforcement

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1.0. Introduction

The essence of a good environment can never be over-emphasized. The interdependency of man within or within the ecosystem is fundamental to human existence (Okorodudu-Fubara, 1998). Biblically, it can be perceived that God ensured that a good environment was created for mankind even before the creation of mankind. The environment constitutes a basic necessity which was put in a good condition for mankind to explore, maintain and use for sustenance.

It is common to have things done excessively where there are no rules and regulations. Laws are put in place to mitigate the threat of public health and environmental problems which emanate from human activities in the quest for economic growth and development. The need for environmental control arises from the fact that it brings improved health and better living conditions (Adelagan, 2004). Legal checks and balances are imposed on mankind's present activities, to prevent the upcoming generations from suffering for present generation's reckless environmental damaging activities.

However, the major environmental problems in Nigeria which include oil spillage, deforestation and associated soil erosion, ozone layer depletion, desertification, acid deposition, global warming, oil pollution amongst others arise as a result of the ineffective enforcement of environmental laws (Egbon & Behrooz, 1996). This ineffectiveness is ascribed to some challenges of enforcement which ranges from role conflicts in environmental management, corruption and bad governance prevalent in the country to inadequate enforcement facilities.

However, the major public health issues facing Nigeria are poor sanitation and hygiene, control of vector borne diseases, maternal and infant mortality, infectious and non-communicable diseases, sewage disposal, drug and substance abuse, alcohol abuse, environmental pollution, road traffic injuries, incessant doctors strike among others. The World Health Organisation Global Status Report (2014) on non-communicable disease listed Nigeria and other developing countries as the worst hit with deaths from non-communicable diseases. These diseases with a rising burden in Nigeria include cardiovascular disease, tuberculosis, hepatitis, cancer, diabetes, chronic respiratory diseases, sickle cell disease, malaria, asthma, coronary heart disease, obesity, stroke, hypertension, road traffic injuries and mental disorders etc.

According to a report published by the Statistical Research Department, (2019) the top 10 causes of death in Nigeria in 2019 are neonatal disorders accounting for 12.25%, Malaria 12%, Diarrhea 11.36%, Respiratory Infections 10.85%, HIV/AIDS 5.18%, Ischemic Heart Diseases 4.37%, Stroke 3.98%, Congenital birth defects 3.26% Tuberculosis 2.84% and Meningitis 2.82% respectively. The summation of these ailments alone has accounted for almost 69% deaths of Nigerians in that particular year! Also, as of 2021, the life expectancy at birth in Nigeria stands at about 60.87 years. More specifically, this figure equaled 59 years for males and 63 years for females. It is not encouraging that Nigeria's figure is among the lowest in Africa as well as in the world. Nigeria has one of the highest Tuberculosis burdens in the world (311 per 100,000) resulting in the largest burden in Africa (Long term Vision for Nigeria, (LTV) 2021). Nigeria, being an attractive destination for

commerce, is therefore not isolated from global pandemics which occur with some degree of unpredictability. Despite these occurrences of outbreak, there has not been an effective and efficient emergency response and disease prevention system in Nigeria to tackle these issues.

It is on this background that this paper seeks to examine the enforcement of public health laws, the challenges faced by the enforcement agents in enforcing these laws, the deficiencies of the laws and suggest possible reforms for effective enforcement of the laws in Nigeria.

2.0. Definition of Public Health Law and Enforcement

According to Gostin, 2000 understand public health law as; the study of the legal powers and duties of the government that guarantee healthy conditions of the people (such as identification, prevention and improve risks to health in the population). They also understand the limitations on the power of the government to liberty, constrain the autonomy, privacy, or other legally protected interests of individuals for protection or promotion of community and public health.

Definition of enforcement or law enforcement as they mean the same thing both in ordinary criminal procedure and environmental or public health law circle. It is important to say that the method of public health laws enforcement in Nigeria is one of the weakest. And it is more tailored towards domestic offenders than industrial and commercial offenders whose activities actually pose more threat to life and physical damage to the environment. Most companies in Nigeria do not have noise monitors or do not even provide respirators to workers working in very hazardous environment. It is also doubtful whether there is any pollution level set for the various types of industries and where certain industry should be sited. In fact, the Environmental Sanitation Authorities themselves do not often comply with these standards, for instance, we see road sweepers sweeping road without respirators or face mask, refuse truck most times carry refuse across the city without covering them.

However, Enforcement is the process of bringing any person who has committed an offence to attend or answer the charge against him/her before a competent authority or tribunal or court for the purpose of determining his/her innocence or guilt and to give appropriate sanction. According to Webster's Online Dictionary enforcement are federal or state or local legal actions to obtain compliance with environmental laws, rules, regulations, or agreements and/or obtain penalties or criminal sanctions for violation.

Enforcement procedures may vary, depending on the requirements of different laws and related implementing regulations. The point you need to note from the above definitions is that once we mention enforcement of public health laws, we are talking about the various ways public health rules or regulations are complied with and the sanctions that could be imposed on an offender if found to have breached a public health offence and also the challenges faced in enforcing these laws (Ijaiya, 2013).

It would also be necessary to point out that the process of enforcing public health laws is slightly different from normal criminal enforcement procedure. While in normal criminal procedure it entails all those steps that may be required to compel the accused attendance of the police station or the court and which in most cases begin with either an arrest or a summons (Osamor, 2004). In public health law the procedure does not begin with arrest or summons, on the contrary it begins with an inspection, notice, then a summons and followed by arrest where necessary.

2.1.Sources of Public Health Law

The sources of public health laws are cross cutting, there are several sources of public health laws because public health cut across several fields of human endeavor. They include; the Constitution, Federal, States and Local Government environmental protection laws, law of torts dealing with nuisance, trespass and negligence, criminal law, town and country planning laws, labor laws, land laws, consumer protection laws, drug laws, human rights laws and international laws (Bell and McGillivray, 2008).

- The 1999 Constitution of Federal Republic of Nigeria
- The African Charter on Human and People
- The Federal, State and Local Government Legislation
- Town and Country Planning Law
- The Law of Torts Dealing with Nuisance
- Environmental Law
- International Law (WHO)

2.2. Public Health Laws Enforcement Bodies

1. Public Health Laws Enforcement Bodies at Federal Level

- Federal Environmental Protection Agency (FEPA)
- National Environmental Standards and Regulations Enforcement Agency (NESREA)
- National Agency for Food and Drugs Administration and Control (NAFDAC)

- Standard Organization of Nigeria (SON)
 - National Agency for Oil Spill Detection and Control
 - Federal Ministry of Environment
 - All Federal Courts (Federal High Court, Court of Appeal and the Supreme Court).
- 2. Public Health Laws Enforcement Bodies at State Level**
- State Environmental Protection Agency (SEPA)
 - State Environmental Sanitation Authority (SESA)
 - Housing and Property Development Authority
 - State Capital Development Authority and the Courts (Magistrates and State High Courts).
- 3. Public Health Law Enforcement Bodies at The Local Government Level**
- The Local Governments do not have independent bodies like the federal and state level which are involved in environmental health enforcement. However, the Environmental Health Unit of the Local Government Primary Health Care Department has the responsibility of enforcing environmental health laws at the Local Government level. Also, some of the federal and state level bodies have local government branch offices which complement the role of the Environmental Health Unit.

2.4.Types of Public Health Laws

- Noise pollution Law
- Solid Waste and Refuse Disposal Law
- Disease Notification and Quarantine Service Law
- The Air Pollution Law
- Water Pollution Law
- Effluent discharge regulations
- Laws Relating to Drugs Trial and Vaccination
- Laws Regulating Manufacturers and Industries
- The Laws Regulating Food and Drugs in Nigeria

3.0. Public Health Laws Enforcement Process

The Public health laws enforcement process are as follows;

1. **Inspection** - The first process in the enforcement of public health law is inspection. It is the statutory duty of the Local Government Authority and other Environmental Protection Agencies to carry out regular inspection of premises, streets and industries as well as measure the level of either air or water pollution from time to time so as to determine what action they should take in the performance of their functions under the relevant law establishing them (Ormandy and Burr ridge, 1988).
2. **Abatement Notice** - This is the second step in the enforcement of public health laws, once the inspector has submitted his report and the local government are satisfied that there is existence of statutory nuisance then an abatement notice must be served on the persons occupying the premises or living within the vicinity asking them to remove the nuisance (Ormandy and Burr ridge, 1988). An Abatement notice can be defined as a notice issued under the authority of the Local Government Council by a person so authorized to do so informing an occupant of a inspected premises or area of the existence of some nuisance which needs to be removed, stating details of the nuisance and the steps required to remove them, and the time within which to remove the said nuisance. It is important that the abatement notice contain the necessary details otherwise it would be invalid.
3. **Court Proceedings** – This is the third process in the enforcement of public health laws, which are always commenced at the Magistrates Court. The court could be a permanent or mobile court. A mobile court is often used during special sanitation days or occasion that requires the immediate trial and conviction of several offenders. The court session is always not held in the regular to court sitting place time. Conversely, the permanent court holds or sits at its regular place and time to hear the allegation of breach of public health laws brought against any person. However, while the proceedings for the enforcement of an abatement notice still subsist the Local Government Council or the relevant enforcement agency could still take other measures to ensure the abatement and prevention of the recurrence of the conditions that have led to the existence of the nuisance (Ormandy and Burr ridge, 1988).

3.1.Challenges of Public Health Laws Enforcement

The Nigerian health sector is currently facing significant challenges which include, among others an uncompleted agenda on the containment of infectious disease, as well as the rapid and on-going emergence of

non-communicable diseases. While there is shortage of health workers as a result of economic and social brain drain, it has been estimated that there are only about 27 physicians per 100,000 people in Nigeria as against the WHO's recommendation of 1 physician to 600 people (Ibet-Iragunima, 2006).

These multifaceted challenges are compounded by arisen economic policies, socio-political factors in the country's history and limited institutional capacity to provide efficient responses at a population level. According to the latest version of National Security Strategy 2019, a document released by the Office of the National Security Adviser (ONSA), the global trends of antimicrobial resistance and substance abuse exacerbated by influx of counterfeit drugs also remain a potent threat to Nigeria. This phenomenon is further reinforced by the activities of fake drug cartels and globalized criminal networks which eventually breed drugs and substance abuse. The primary health care on which the Nigerian health care system is based has not helped in effectively solving the numerous health problems in Nigeria. Cost effective interventions for priority public health issues such as non-communicable diseases, injuries, maternal and child health etcetera are hardly being used. The followings are the challenges of public and environmental health laws in Nigeria.

1. **Ineffective Enforcement Strategy and Mechanisms** - There are inadequate policies operative in Nigeria for coordinating and monitoring the relationship between environmental management and sustainable development. This leads to poor enforcement of the public health laws in Nigeria (Aina, 1992). Most of the enforcement strategies and mechanisms are poor and not being implemented. For instance, the mechanism for collection and management of public health statistics of facilities and service providers including waste transporters, waste vendors, landfills areas, company's effluent emission data, carbon footprints, sewage treatment plants and other recycling companies are neither developed nor implemented (Okonkwo, 2003).
2. **Lack of Focus** - The focus and target of public health and environmental law enforcement is also a problem. It is ridiculous to have the Agency arresting goats instead of human beings for violating laws. On the 9th of January 2013, five goats were arrested in Osun State, Nigeria by police officers for violating environmental protection law by roaming around the residential area of Oshogbo instead of being caged by their owners.
3. **Fund** - Fund is also a challenge, to meet their obligations and be able to perform their functions effectively, the agencies must be financially viable (Okorodudu-Fubara, 1998). Lessons from the experience show that Local Governments are devoid of the requisite human and material resources to undertake environmental management as a result of inadequate funding. This however affects effective public health and environmental law enforcement (Ogbuigwe, 1996). In Lagos State for example, except for the Lagos Pollution Fund, all revenues from fines go to the general government revenues and not to State Environmental Protection Agency. Without direct gain from enforcement through increased agency revenue, there is still little incentive to pursue enforcement aggressively and to meet the demands of varied responsibilities.
4. **Political Factor and Unprofessionalism** - Threats from powerful individuals and groups challenge the public health law and effectiveness of environmental law enforcement. Powerful individuals and groups who own industries become vicious and formidable. An example is the interference of the Federal Government in functions exclusive to NESREA. The Federal Government in May 2012, barred NESREA from sealing telecoms Mast (Otu, 2010).
5. **Corruption and Bad Governance** - Corruption and bad governance prevalent in the country also affect the enforcement of environmental laws. Some owners and operators of the facilities fight back NESREA using blackmail and/or intimidation. Some pose as officers of the Agency to harass and threaten owners/operators of facilities with the aim of exhorting money from them in exchange of lenient sanctions or waiver of penalties (Ladan, 1998).
6. **Shortage of Building Facilities** - Another major challenge in enforcing environmental laws is lack of modern technology. Till date, officers monitoring the environment do not have the effective modern equipment like Monitor, Ventilator, Ultrasound, X-Ray machine, PET & CT scanners, Thermal camera, Leak detector, Particle counters, XRF analyzer and Sound level meters to enhance monitoring of some of the Public health and environmental problems (Wing, Annas & Strouse, 2007).
7. **Shortage of Public Health and Environmental Courts** - Low-level constitutional provision for environmental protection is a deficiency (Nwafor, 2006). The provision for and the emphasis laid on environmental protection and management by the Nigerian constitution are low compared to the rate and stage of environmental degradation in the country.
8. **Constitutional Factor** - The 1999 constitution contains very few provisions enabling citizens to enforce their fundamental rights to a clean environment except that such right might not be justiciable. This has led to the nonchalant attitude of most citizens towards the preservation and the protection of the environment.
9. **Deniable Justice for Victims** - Undue adherence to legalism by the courts is also a challenge. One of

the major problems of enforcement of environmental laws in Nigeria is the issue of locus standi. Individuals do not have environmental rights (locus standi) to pursue their environmental related problems in the court of law in order to claim the infringement of a particular environmental right or law, the litigant must be competent to commence an action and must show that he has suffered great loss or harm from the actions of the defendant (Chianu, 2007).

10. **Civil Litigation** - However, in Nigeria, matters relating to Public health or Environmental civil litigation are far from being liberalized by our courts and this hinders private individuals from participation in the enforcement of environmental protection legislation (Nwafor, 2006).
11. **Lack of Expertise and Professionals** - Limited number of experts in the environmental field to give evidence, also frustrates environmental litigation in Nigeria. Some Public health and Environmental health Practitioners lack knowledge in drafting and administration of legal documents like notices, Court complaints, and charge sheets, these are legal procedure when seeking legal action and implementing court orders (Ogidiolu & Balogun, 2000). In addition, most training curriculum for environmental health and public health academic programs, the facilitators often do not have the requisite training and competences.
12. **Lack of Awareness and Communication** - In Nigeria our communication channel is very low, there is no legal arrangement which guarantees public access to information on compliance monitoring of industries and facilities. However, as the number of legislative requirements increases, so is the need to promote public awareness of Public health and environmental laws and regulations at national and local levels through training and information transfer on Environmental Impact Enforcement (EIA) (Nwafor, 2006).

3.2.Suggested Reforms for Public Health Enforcement Laws in Nigeria

Other suggested public health and environmental enforcement reforms include:

- **Public Health and Environmental Law Awareness:** The government and non-governmental organisation, civil society groups must work together to enlightens and sensitise the citizens on the environmental and public health dangers as well as benefits of compliances to public and environmental health laws.
- **Training of Workers:** The public and environmental health officers need constant training and re-trainning to meet up with the current health challenges. These will enable them up to the task whenever there is environmental and health disasters. The recent COVID-19 that ravaged the world is a lesson for government, non-governmental and all stakeholders in the public and environmental health industry.
- **Effective Monitoring:** All States and Local Governments should have their independent supervisory and monitoring bodies that will be responsible for the review and enforcement of environmental law and awards should be given to the units and individuals that have made outstanding achievements in protecting and improving the environment. China's environmental law gives the local government responsibility for environmental quality and reward all units and individuals that made outstanding achievements in protecting the environment; a good model for Local Government Areas in Nigeria. Therefore, the governments should provide the logistics, equipment and other relevant materials to the public and environmental health officers for effective, proper and efficient monitoring. This will enable the officers to reports the emergency cases to the higher authority in the health sector.
- **Funds:** The organisation cannot be run successfully without adequate funding. The government must as a matter of urgency make fund available to all the public and environmental organisation, in order to carry out their activities as expected. This will allow the public and environmental health officer to do due diligence in the course of their services to the community. However, funds for the creation of awareness, purchase of equipment and other necessities should be disbursed and channeled to the appropriate quarters for effective environmental management and enforcement of environmental laws.
- **Stiffer Punishments of these Law Offences:** The government must make sure whoever, that violate the public and environmental health laws were strictly dealt with accordingly. This will serve as a deterrent to others who might thinking of committing relevant or same offences.
- **Submission of Reports:** It is expected that the environmental and public health officers will collate the reports on the Environmental and public health in their domain. This also involved the collections of different reports written at various categories for the purpose of informing the higher authority about the current situations of our environmental and public health, which can help the government to formulate and implement the Environmental and Public health policies.

- **Private Litigation:** The government should give room for private litigation of individuals, communities, societies and other stakeholders in the public and environmental health industries. The decision of their litigation must be done within the stipulated time in order to build confidence on the judiciary arms of government.
- **Effective Access to Justice:** The timely access to justice by the environmental and public health laws offender will go a long way to sanitize the public and environmental health sector. It is therefore, recommended that the Federal, State and Local Government should all reassert a stringent enforcement of environmental laws in Nigeria with the aim of punishing adequately all defaulting firms.
- **Job Opportunities:** Effective and efficient implementation of public and environmental law will create thousands of employments. The creation of environmental and public laws court will directly or indirectly create a job opportunity for Nigerians.
- **Quick Response to Emergencies:** The Pre-1988 environmental and public health laws lacked adequate policies for coordinating the environmental laws and making them effective. There were also no mechanisms for collection and management of environmental statistics, no waste transporters, companies' emission data and other anti-pollution equipment. The major concern of the government was environmental sanitation and not eradication of environmental pollution, desertification, deforestation, use of pesticides and other core environmental problems. These had made quick response to environmental and public health difficult to achieve and it has invariably put the country at the higher risk of health/environmental disaster.
- **Establishment of Environmental Courts:** The Federal, States and Local governments should establish environmental courts to entertain environmental matters and to promote rapid awareness of the needs of public health laws and aid enforcement of these laws.

4.0. Conclusions

It is trite to say that most of the public health problems in Nigeria are as a result of the lackadaisical attitude of government towards the enforcement of the laws. The Environmental health and public health legal framework in Nigeria are very elaborate, and it is critical and crucial in the public health promotion, protection and preservation efforts. It is therefore important to note that Public health professionals play important roles in health law ranging from the development of policies, through their enforcement, to the scientific evaluation of the health impact of laws, the Government of Nigeria through Ministry of Health and all other stakeholders need to formulate an integral agenda to support the environmental health and public health legal framework that will ensure the protection, preservation and promotion of Environmental and public health in Nigeria.

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