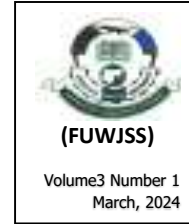


**APPROPRIATENESS OF WUKARI
ENVIRONMENTAL SANITATION EXECUTIVE
ORDER NO.1 2023 IN ENSURING
ENVIRONMENTAL SUSTAINABILITY IN
TARABA STATE, NIGERIA**



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Abstract:

Environmental sustainability is anchored on the knowledge and recognition that the natural environment is first a gift from the creator entrusted to the present generation to care for it so as not to jeopardize the ability of future human generations to also appropriate the natural environment for their own development. Thus, environmental sustainability advocates for the developmental needs of the present generation while maintaining the usability of environmental resources for future generations. This paper examines the suitability of the Wukari Environmental Sanitation Executive Order No.1 2023 in achieving sustainable environment in Taraba State, Nigeria. The paper adopts the doctrinal method of data collection which involves the sourcing of materials from environmental laws and regulations as well as international instruments on sustainable environment. Findings established that the Wukari Environmental Sanitation Executive Order lacks appropriate environmental sanitation concepts like polluter-pays and buy-back principles which deter source points and encourage end-users participation. The paper concludes that the

Wukari Environmental Sanitation Executive Order No.1 2023 being the first of its kind since the inception of the local government is not adequate to provide for environmental sustainability in Taraba State in its present form. Consequently, the paper recommends that a Bye-Law should be enacted by the Legislative Arm of the Wukari Local Government Council which specifies guidelines for the operations of the Wukari Environmental Sanitation and Waste Management Committee.

Keywords: Environment, sanitation, sustainable, Wukari, Executive-Order.

Introduction

Environment connotes human surroundings and all the natural endowment as well as those provided by man in his efforts to make life meaningful and comfortable (Nwanne, 213). It is a composite term referring to conditions in which organisms, biotic and abiotic consisting of air, water, land, weather, live and become living sources for all the living and non-living things including human, animal and plant life (Lawanson, 2006). Broadly speaking, environment also includes temperature, wind, electricity (Liu & Li, 2020). It is from the environment that all the essential necessities of life are derived. Section 37 of the National Environmental Standard and Regulations Enforcement Agency (NESREA) Act, defined environment to include: 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 (NESREA Act, 2007). Section 61 of the Environmental Impact Assessment (EIA) Act defined 'environment' to mean 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). The Wukari Environmental Sanitation Executive Order No.1 2023 was signed into law and made effective 1st April 2023. It is welcomed as the first of its kind since the inception of the local government.

The Executive Order established the Wukari Environmental Sanitation and Waste Management Committee to among other things mobilise people and materials for environmental sanitation exercise at designated periods and spots (this could include announced date/time and place); do sensitisation of residence of Wukari on necessity for clean environment; monitor environmental sanitation exercise; clear refuse and wastes; etcetera. This paper reviews the provisions of the Wukari Environmental

Sanitation Executive Order No.1 2023 to ascertain its adequacies or otherwise for sustainable environment in the local government area and propose enactment of a Bye-Law which will among other things provide for a more adequate system for environmental sustainability in the local government area. The inadvertence of the Executive Order in providing for basic principles of environmental sustainability has hindered informed environmental practices by source point polluters like restaurants, mechanic workshops and persons selling by the road sides. Possibilities of buy-back programmes was omitted in the Executive Order which would have enabled indirect sanitation exercise by those who would pick items for buy-back, thereby making the Local Government Area more environmentally sustainable.

Conceptualizing Sustainable Development

The sustainable development theory found its root in the United Nations Stockholm Conference of 1972 on Human Environment (Brosius, 2005). It provided under the principles that humans bears a solemn responsibility to protect and improve the environment for present and future generations (Tietenberg & Lewis, 2012). It advised States to use her natural resources including air, water, land, flora and fauna in a safe and method beneficial to present and future generation through careful planning or management (Rinkesh). According to Brundtland Commission (1987) report *“Sustainable development is development that meets the needs of the present, without compromising the ability of future generations to meet their own needs.”* States in the exercise of their sovereign rights over their natural resources should utilised same in a sustainable manner with best practices that are environmentally friendly because the environment and natural resources are loaned from the future generations to meet socio-economic needs of the present generation (Nelson & Agrawal, 2008).

A sustainable environment is one where humans take responsibility for anthropogenic activities (Leke & Leke, 2019) which are likely to degrade the environment or which are beyond what the environment can absorb without altering its natural compositions (Brosius and Tsing & Zerner, 2007). Flowing from the view that humans are driven by development or wealth, which some time may become over prioritised over the environment (Montt and Fraga), it became necessary that laws or bye-laws be enacted to define what human conduct would not be sustainable to an environment. According to Gbenga (2012, p.3),

Environment sustainability refers to the conservation, management and rational utilization of natural resources in such a way to maintain the integrity of each ecosystem, support all life, ensure the

preservation of biodiversity and prevent environmental degradation.

For Leke and Leke (2019, p.27) “environmental sustainability forms one of the pillars of sustainability development, the others being social sustainability and economic sustainability. It is an aspect of the development process which emphasizes the harnessing of natural and social resources with major considerations for continuity and the future.” Many of the projects that are rooted in environmental sustainability will involve replanting forests, preserving wetlands and protecting natural areas from resource harvesting (Dokpesi, 2013). The biggest criticism of environmental sustainability initiatives is that their priorities can be at odds with the needs of a growing industrialized society (Adejumo & Adejumo, 2014). Burning of bushes for gaming or farming, use of some kind of pesticide or herbicide for preservation of agricultural produce or farming may of necessity be legislated in an agrarian local government like Wukari. Creating opportunity for the survival of all plant species, animal existence and micro-biological creatures that utilises the earth surface where residence would use for farming is the bane of sustainable environment.

Theoretical Framework: Theories of Polluter-Pays and Buy-Back

Polluter-pays theory advocates that anyone who originates pollution to the environment should pay for failure to control the waste which defaced or caused damage to the environment (Leke & Leke, 2019). Buy-back on the other hand is to buy-back those materials which constitute the packages for a product in a scheme (by the manufacturer or his distributor) which attracts every user to return the package after usage. This tool or principle is useful for local government environmental sanitation enactments because it allows manufacturers within that locality to buy-back what would have constituted an offence to the sanitation laws of the locality and profit with recycle or reuse of such materials. It is a stick and carrot approach to environmental management where those who are charged with source point pollution control and responsible for any pollution or degradation arising from their points; while the end-users of those possible-pollutants are encouraged to return it for some form of gratification or reward instead of littering the environment. This theory if well applied in Wukari sanitation processes would yield more environmental sanitation results than criminalising environmental sanitation violations.

This paper also engaged the environmental rights theory. According to this theory, the environment is the natural gift to mankind for her enjoyment and keep. It includes the totality of physical, economic, aesthetic and social circumstances and factors which surround and affect the desirability and

value of property or which also affects the quality of people's lives. The National Environmental Standards and Regulations Enforcement Agency Act defines environment to include, water, air, land, all plants and human being or animals living therein and the inter-relationships which exist amongst any of them. The above definitions therefore regard the environment as a state of affairs which is based upon the activities of man in his natural habitat and the relationships he has with his immediate environment in terms of water, air, animals and so on. Environmental rights can therefore be defined as the right of the citizens to have a clean, safe and decent environment and to enforce it in case of violation by the government or private citizens. This definition indicates the need to protect human, animal and plant health, safety and interest. It requires the maintenance of a certain level of environment because of human use and enjoyment of nature. Therefore, healthy and clean environment becomes a human right.

Research Methodology

The doctrinal method is deployed for this research with primary data gotten from Wukari Environmental Sanitation Executive Order No.1 2023 and other legislations. Books, journal articles were used to source secondary data in examining environmental sustainability under the Wukari Local Government Executive Order. This method adopted envisages a legislative action for improved environmental framework in the Local Government.

How Adequate is the Wukari Environmental Sanitation Executive Order No.1 2023 for Sustainable Environment

A sustainable environment carries with it identification of endangered species (plants and animals including snails/slugs/gastropods). It is all inclusive preservation of all forms of life and their relevance to human and plant continued interactions in nature. Sustainable environment is protecting, promoting and preserving those plants, animals and biological existences which are exposed to frequent and unabated attacks in the course of human strive for self-preservation. A common example of human activities which endanger sustainable environment in Wukari will include bush burning, tree and shrub felling, use of herbicides and pesticide as well as other chemicals for farming activities. Sustainable environment envisages use, reuse and recycle used materials. It envisages proper disposal of farm chemicals and waste waters. It equally contemplates a regulation promulgating committee or body particularly on food and pure water factories around the Wukari Local Government Area.

Wukari Environmental Sanitation Executive Order No.1 2023; consists of 18 sections and a schedule of two parts. It began with miscellaneous

provisions, established the Wukari Environmental Sanitation and Waste Management Committee and their composition (section 13 (a)) and their functions (section 13(b)); it contains definitions, citation/commencement and Schedule. The Executive Order seemed to have narrowed environmental sanitation in the local government area. Environmental Sanitation is noble idea but does not of itself constitute what is required to bequeath an environment fit for future generations. It seemed not to have taken cognisance of some principles for environmental sanitation like the buy-back and polluter pays principles. The Executive Order lacked provisions for regulatory powers either to be vested or vested in the Executive Chairman/Chairperson of the Local Government or the Committee charged with environmental sanitation. It is in regulations that some principles for environmental sanitation like polluter-pays and buy-back programmes or schemes can be properly articulated.

Section 12 criminalises the act of hindering, preventing or obstructing authorised Environmental Health Officer or any person engaged in carrying out the Executive Order. The first challenge is with the designation of Environmental Health Officer – the Executive Order did not assign any roles to such officer; except it is presumed that the officer may have been instructed by the Environmental Sanitation Committee pursuant to s.13(c) of the Executive Order. It is generally observed that criminalisation of environmental sanitation non-participation leads to enriching enforcement officers rather than achieving environmental cleanliness contemplated by the Executive Order or any such laws. Sometime, it leads to unwarranted incidences which results in litigation with compensation and damages awarded the government. This is the reason polluter-pays and buy-back principles or concepts are advocated. Where offences are defined based on polluter, it is easier to prove. For example, a pure water *sachet* bears the name of the manufacturer. It becomes easier to hold the producer accountable if such producer has no verifiable buy-back scheme; or, the person or body in possession of the premises where *sachet* are littered can be held accountable.

It appears that there are no penalties for infractions against the provisions of sections 1 to 9 of the Executive Order. This is because the section which penalises actions or omissions restricted it to obstructing or preventing Environmental Health Officer or anyone designated to carry out the provisions of the Executive Order (the Executive Order, 2023, section 12). The implication of section 12 is that only the acts or omissions against environmental health officer and their designate can constitute offence. In Nigeria, acts or omissions are crimes only to the extent it is proscribed by law and punishment prescribed. It follows therefore, that those who litter their courtyards and backyards as well as those who do not keep their

gutters and frontages clean under section 1 (a&b) of the Executive Order are not liable under this Order. Notorious activities like garbage dumping, grasses in undeveloped plots of lands, lack of waste bins in premises, throwing of ashes, refuse, papers, nylon and rubbish into streets vacant lands and waterways are to escape punishment under the executive order because of the words with which section 12 was couched. Section 13(b) of the Executive Order designated members of the Environmental Sanitation Committee. The section ought to provide for proxy representation of members who may not be available; such proxy representative must appear with a letter authorising him/her to act for the person or body within specified periods. This is to allow applicability of the law in the face of responsibilities which the designated office may be occupied with.

Section 3 of the Executive Order envisage owners or operators of restaurant, school, motor-park, wood mill, food processing equipment, lottery house, shop to keep their surrounding clean. The vision of the section for sustainable environment would have included personalising the liability of each source point polluter in the category listed in section 3 of the executive order. Here too, the concept of buy-back can be introduced particularly for pure water manufacturers, bakery, shops – dealers in items which are packed in nylons, plastics and disposable containers or cans; industrial and commercial wastes; vehicle spare parts fall within the category (the Executive Order, 2023, section 6).

National Environmental Standards and Regulations Enforcement Agency (Regulations)

There is the Food, Beverages and Tobacco Sector Regulations by the National Environmental Standards and Regulations Enforcement Agency. The purpose of the Regulations on food beverages and tobacco companies is to prevent and minimize pollution from all operations and ancillary activities of Food, Beverages and Tobacco Companies to the environment (National Environmental (Food, Beverages and Tobacco Sector) Regulations, 2009). The Regulations provides the need for environmental impact statement from every new companies in the sector and environmental audit report every three years for companies already in operation in the sector at the time the Regulations came into force as well as environmental management plans for both new and old companies in the sector (the Regulations, 2009, Reg.2(a,b&c). For a new company, it must submit to the NESREA an environmental impact statement containing the possible environmental impact of its activities, the resultant pollutions and ways or processes it intend to deploy in remediation. It is required also to submit an environmental management plans as to how it intend to eliminate pollution and environmental degradation occasioned by it activities. The

regulations places premium on source elimination of pollution than tending to remediation after the pollution had gone into the environment (the Regulations, 2009, Reg.2(4)). It further encourages reuse, recover and recycle of packaging materials to reduce environmental pollution resulting from littering of packaging wastes (the Regulations, 2009, Reg.2(5)).

Companies in the sector are required to set up and maintain machinery combating pollution hazards and maintain equipment in event of emergency. This is to make ready safety equip to reduce impact in situations of accident or emergency. It is required that companies or anyone operating a facility covered by the Regulations, maintain emergency response plan including measures to be taken in such emergencies or accident (the Regulations, 2009, Reg.3). The regulations also prescribe a Best Available Technology or Best Practicable approaches to anti-pollution equipment installation by companies for detoxification of effluent and emission originated from their facilities. The idea for anti-pollution equipment installation is to gather momentum against the limit of effluent or emission which should be released into the environment. Choosing which model of anti-pollution should be part of the pollution management plans indicating how and when the company intends to move from Best Practicable to Best Available Technology. This is because what is practicable for the company at the time may not be the best available technology in detoxifying such pollutant (the Regulations, 2009, Reg.4).

The principles of 'Polluter Pays' has been formally enacted vide the regulations as it relates to companies on food, beverages and tobacco to pay for every pollution caused by them on the environment (the Regulations, 2009, Reg.5(1)). To place the responsibilities on the companies, it was further provided that the collection, treatment, transportation and final disposal of wastes shall be the responsibility of the company generating the wastes within the specified standards and guidelines (the Regulations, 2009, Reg.5(2)). The regulations shed further light to wit: in the event of an incident resulting in an adverse impact on the environment whether socioeconomically or health wise, the company shall be responsible for: (a) the cost of damage, assessment, control and clean-up; (b) remediation; (c) reclamation or restoration; (d) compensation to affected parties; and (e) cost of damage assessment and control (the Regulations, 2009, Reg.5(3)).

Regulation 6, for example, enacts that the essence of implementing cleaner production processes and pollution prevention measures is to achieve economic social and environmental benefits (the Regulations, 2009, Reg.6(1)). The focus of pollution prevention programmes should be of process chemicals rather than water; this is to reduce effluents from factory or production sites. It is deemed that process chemicals are better management in pollution prevention measures than water (the Regulations,

2009, Reg.6(2). The regulation further commends companies in the sector to recycle all recyclable, damaged and disused packaging materials like glass, plastics, metals, paper, wood, nylon, etcetera (the Regulations, 2009, Reg.6(3)). The regulations provides it shall conduct training, lectures, courses and assessments environmental pollution control managers and operators so as to endow them with requisite qualifications and certifications suitable for the proper execution of pollution control in their companies (the Regulations, 2009, Reg.7(2)). It appears that the company may have to finance such training or course. The companies in the food beverages and tobacco sector are mandated to create within their structure systems for pollution control and to assign environmental pollution control management to oversee pollution control within their place of operation or production (the Regulations, 2009, Reg.7(1)). To ensure that manufacturers and importers of food, beverages and tobacco do not endanger the environment from their activities, the regulations provide that manufacturers and importer of food beverages and tobacco establish a Buy Back Programme (the Regulations, 2009, Reg.8(1)). To ensure the workability of the buyback programme, the Agency is to work with such manufacturers and importer within three years to activate the buyback programme (the Regulations, 2009, Reg.8(2)). It appears that the buyback programme is mandatory under the regulations with the use of the active word 'shall'. It is a long established principle of interpretation of statute that the word 'shall' imposes a mandatory duty or responsibility on the person or body it so describes or the duty or responsibility is so assigns.

Conclusion and Recommendations

The Wukari Environmental Sanitation Executive Order No.1 2023 is a well thought-out initiative which should be sustained with legislative support for a more robust sustainable environment in the local government area. Identified lacunas should be improved upon during legislative drafting for an environmental Bye-Law and principles/concepts like polluter-pays and buy-back should form the core provisions in the new law. The paper examined the Wukari Environmental Sanitation Executive Order No.1 2023 and therefore recommended that the Legislative Arm of the Wukari Local Government Council should enact a Bye-Law on Environmental Sanitation encapsulating the relevant concepts and principles for sustainable environment. The said Bye-Law should enable the Chairman or Chairperson of the Council to make regulations and guidelines for efficient and effective implementation of the Environmental Sanitation Bye-Law. The Environmental Sanitation Committee should be co-chaired by a traditionally respected person selected from the Palace and a Legal

Practitioner of at least 10 years with cognate experience on environmental law. The traditional co-chair will ensure mobilisation of persons for education and monitoring of sanitation bye-laws while the legal practitioner co-chair will ensure enforcement and prosecution of offenders. Section 12 of the Executive Order should be reviewed to include all acts or omissions prohibited under any provisions of the Executive Order particularly sections 1 to 9 thereof.

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