



EXAMINATION OF THE ROLE OF CIVIL SOCIETY ORGANISATIONS IN ENVIRONMENTAL POLICY MAKING

BY

TOLU OGBORU, Ph. D.*

AND

AUGUSTA UCHECHUKWU UZU**

INTRODUCTION

The present realities of the degradation of the environment by the activities of man brings to the fore the need for measures to be taken to ensure that the environment is protected from the activities of man. In most cases these activities that pollute the environment are as a result of man's quest for a better life. In a *Businessday* editorial it was stated thus:

According to a World Bank Statistics more than 850,000 persons live in regions affected by desertification. Nearly half a million persons mainly women and children in poor rural areas live in severely polluted environments; 500 million annual premature deaths can be attributed to the high levels of pollution in cities. It is estimated that the deterioration of the ozone layer will lead to more than 300,000 thousand additional cases of skin cancer in the world and 1.7 million cases of cataracts.

*Lecturer, Faculty of Law, University of Jos. E-mail: ogboruit@yahoo.com

**Legal Practitioner based in Port-harcourt. E-mail: uccejoy@yahoo.com

¹Environmental Degradation in Nigeria. *Business Day*. Businessdayonline.com/2014/07/environmental-degradation-in-nigeria> Accessed: 30 06 15.

The degradation of the environment is caused chiefly by the various technological and industrial activities of man in a bid to achieve a better life and meet the demands of the ever increasing population of man. It is worthy of note that it is not only multinational companies involved in technological and industrial activities that are the culprit in the degradation of the environment. Local farmers, fishermen, and indeed every individual the world over have played one role or the other in the degradation of the environment. For example the indiscriminate dumping of domestic waste into drainages and into the streets when it is raining, and building on waterways have been responsible for aggravating the problem of flooding in Nigeria. There have been various attempts by the government of various countries and indeed the international community to address the issue of environmental protection via international treaties and local legislation viz-a-viz the need for technological, industrial and economical growth of the nations.

For some time now civil society organisations/nongovernmental organisations have emerged as prominent players in environmental issues. Various governments now recognize that civil society organisations/nongovernmental organisations have the capacity to play a very vital role in preserving the environment. In fact the United Nations now collaborate more with environmental NGOs.

This work examines the activities of the role of civil society organisations in policy making and policy implementation. The work attempts to examine the activities of environmental Civil Society Organisations in Nigeria in protecting the Nigerian environment. The work also makes recommendations on how environmental civil societies can be more proactive in Nigeria.

WHAT ARE CIVIL SOCIETY ORGANISATIONS?

CSOs are defined as organized civil society and can come in many forms, some informal and some as formal entities such as Non-Governmental Organisations (NGOs), CBOs, Faith-Based Organisations (FBOs), among many others. This is when a group of individuals come together for a common purpose, as in to fulfill a particular mandate driven by need. According to the Global Environment Facility, the term Civil Society Organization is broad, and includes various and diverse types of

organizations. Recognizing the definition of major groups agreed by Governments at the United Nations Conference on Environment and Development in 1992, civil society consists of nine major groups: non-governmental organizations (NGOs), farmers, women, the scientific and technological community, youth and children, indigenous peoples and their communities, business and industry, workers and trade unions and local authorities. In line with this definition, and for the purpose of attending/observing Council meetings, CSOs are defined as 'non-profit organizations whose mandate, experience, expertise and capacity are relevant to the work of the GEF'

It is important to consider the definition of CSOs by the World Bank which seems to elaborate on other definitions of CSOs. The World Bank states:

The term civil society to refer to the wide array of non-governmental and not-for-profit organizations that have a presence in public life, expressing the interests and values of their members or others, based on ethical, cultural, political, scientific, religious or philanthropic considerations. Civil Society Organizations (CSOs) therefore refer to a wide of array of organizations: community groups, non-governmental organizations (NGOs), labor unions, indigenous groups, charitable organizations, faith-based organizations, professional associations, and foundations".

The definitions seem to agree on the voluntariness of CSOs and the need for them to be independent of the government. However it must be noted that many NGOs and CSOs especially those in developing countries rely heavily on donations from foreign governments. Also some multinational companies in their bid to fulfill their corporate social responsibility make donations to CSOs. It is also desirable that NGOs/CSOs are not established for the purpose of making profit. Profit making organisations are focused on generating income and they may not be able to strike a balance when the need to make profit conflicts with the supposed goal of humanitarian services which ought to be and should be the goal of CSOs. Consequently

² *Kokerso Moeti*. 'Understanding the Differences between Civil Society and Civil Society Organisations'. <<http://www.ngopulse.org/blogs/understanding-differences-between-civil-society-and-civil-society-organisations>> Accessed: 26/01/16

³ The A-Z of the GEF: A guide to the Global Environment Facility for Civil Society Organisations. <https://www.thegef.org/gef/sites/thegef.org/files/publication/AZ-CSO_EN.pdf>. 57 Accessed: 26/01/16

⁴ The World Bank. 'Defining Civil Society' 1990.

<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/CSO/0,contentMDK_20101499~menuPK_244752~pagePK_220503~piPK_220476~theSitePK_228717,00.html> Accessed: 26/01/16

the definition by the World Bank which excludes commercial ventures is a better definition of what CSOs are.

It has been recognized that eradication of environmental problems has two dimensions. One is finding the technical solution to the problem. The second is adoption of the technical solution as a policy and effective implementation of that policy.

CIVIL SOCIETY ORGANISATIONS AND ENVIRONMENTAL POLICY MAKING

One of the major ways civil societies contribute to environmental protection is involvement with the government in the process of formulating Environmental policies. Environmental policy of a State refers to the deliberate actions taken by a State to manage the activities of the population within that State in order to prevent, reduce or alleviate any harmful effects on nature and its natural resources. Such policy also aims to ensure that any man made changes to the environment does not result in any harm to its population. For example in the United States the purposes of her national policy on the environment has three major aims. The first aim is to encourage productive and enjoyable harmony between man and his environment. Secondly, it aims at promoting efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man. The third aim is to enrich the understanding of the ecological systems and natural resources important to the Nation.

The policy of the United Kingdom is to protect the environment by reducing pollution, reducing the amount of waste sent to landfill, protecting areas of parkland, wildlife reserves and marine biodiversity, and enforcing regulations that keep the water and air clean. The government is also committed to helping communities avoid or recover from flooding and other weather-related hazards. A Civil Society Organization which is actively involved in environmental policy making in the United Kingdom is the Environmental Protection UK (EPUK). The EPUK is a national charity that

⁵ Nazrul Islam, Protecting Bangladesh's Environment: The Role of the Civil Society <<http://www.eng-consult.com/ben/papers/paper-nislam.pdf>> Accessed: 24/10/15

⁶ Environmental Policy Law & Legal Definition <<http://definitions.uslegal.com/e/environmental-policy/>> Accessed: 24/10/15

⁷ Section 2 National Environmental Policy Act, 1969. <<http://www.epw.senate.gov/nepa69.pdf>> Accessed: 29/01/16

provides expert policy analysis and advice on air quality, land quality, waste and noise and their effects on people and communities in terms of a wide range of issues including public health, planning, transport, energy and climate. Furthermore they offer clear and critical analysis of UK government and European Union policy proposals through a range of high-quality publications and expert-led events, as well as up-to-date regulatory information through comprehensive guide to UK and EU environment legislation. A major strategy used by EPUK is to bring together policy-makers, business, local authorities and academics to enable and foster successful partnerships for environmental action and provide networking opportunities to support the careers of environmental professionals and allow them to share best practices. By this the EPUK achieves support for effective policy-making which supports sensible and workable solutions to pressing environmental challenges.

Recently, the EPUK engaged with the government of the UK on National Air Quality Strategy which according to the EPUK is outdated and lacks ambitious targets and actions to tackle air pollution problems in the UK. Owing to the governments' breach of the EU air quality Directive, the UK Government was taken to the Supreme Court by a campaign group called Client Earth⁹ for failing to comply with the European Union Air Quality Directive¹⁰. The Supreme Court then mandated the government of the UK to draft a national plan by the end of 2015 which will allow the UK meet the Nitrogen dioxide limit values as soon as possible. The UK government consulted with EPUK on the draft National Plan and the EPUK after due consideration of the proposed National Plan submitted a robust response raising concerns over the plans, their evidence and the lack of support for the local measures included. The Response of EPUK also advocated for more government action by DEFRA¹¹ and other government departments in relation to environmental issues.¹²

It is noteworthy that the posture of the government of a given country will

⁹The NEPA 1969 also establishes the council on Environmental Quality.

¹⁰ Policy Area, Environment <<https://www.gov.uk/government/topics/environment>> Accessed: 19/02/16

¹¹ A group of activist lawyers in the UK who are committed to securing a healthy planet.

¹² Directive 2008/50/EC which was adopted on 21 May 2008. <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008L0050>> Accessed: 01/02/16

¹³Defra is an acronym for UK's Department for Environment, food and Rural Affairs

affect the involvement of the CSOs in the process of making policies generally. For instance in places like china where most CSOs are seen as illegitimate organisations fighting against the government of the day, the involvement of CSOs in policy formulation is almost non-existent. In their work titled, 'The Role of Civil Society in Environmental Governance in the United States and China', Percival and Huiyu stated thus:

Chinese environmental NGOs have functioned at a much lower level than some international NGOs, focusing on tree planting, calling for the protection of wild animals, and helping the government to raise public awareness of environmental problems. Chinese environmental NGOs have been less active than international NGOs in promoting environmental legislation, enforcement, and participating in the process of regulatory development. Even the MEP's active promotion of environmental NGOs would not seem to be enough. Institutional or political reform may be needed before Chinese NGOs participate in the legislative and judicial processes that shape environmental policy as closely as NGOs do in the United States."

In Africa we also see examples of governments collaborating with CSOs in policy making. For example, the Climate Change Working Group, a CSO in Zimbabwe has successfully advocated for a new national climate change strategy. By the advocacy activities of another CSO, the Cook Islands Climate Action Network, a climate change unit has been established within the office of the Prime Minister to ensure that the issue affecting climate change falls within the portfolio of the highest government officials."

Many countries are beginning to see the need to collaborate with CSOs in environmental policy making. The CSOs work directly with the masses and have better evidence on the state of the environment and how it impacts on the day to day lives of the people. This underscores greatly the need for countries to work hand in hand with CSOs to formulate policies that are truly relevant. Specialized CSOs can also deliver technical expertise on particular

¹⁴National Air Quality Strategy

<<http://www.environmental-protection.org.uk/committees/air-quality/air-pollution-law-and-policy/air-pollution-laws/>> Accessed: 01/02/16

¹⁵R. V. Percival and Z. Huiyu, 'The Role of Civil Society in Environmental Governance in the United States and China'. <<http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1255&context=delpf>> Accessed: 19/02/16

environmental issues as needed by government officials as well as participate directly in operational activities.

CIVIL SOCIETY ORGANISATIONS AND ENVIRONMENTAL POLICY IMPLEMENTATION

A major instrument in the hands of CSOs in ensuring implementation of environmental policies is advocacy. Advocacy has been categorized into two, firstly, relationship-building, otherwise known as lobbying, which is about building relationships with people in authority and speaking with them about particular issues or community needs. Secondly, mobilizing the public, otherwise known as campaigning, which is about raising awareness about certain issues amongst the general public in order that this precipitates action due to increasing public demand.

With the instrumentality of advocacy, Civil Society Organizations can be pivotal in ensuring that government policies are implemented; that policies are not mere talk or government propaganda. This is imperative because no matter how well conceived policies are, except they are implemented environmental protection will remain a mirage. As a matter of fact it is usual for government (especially in third world countries) to have laudable environmental policies but lack the will power to implement these policies chiefly because of the economical gain from technological and industrial activities which impact negatively on the environment. The need to generate funds to keep the economy running and the desire to save money which otherwise would be used for environmental protection for other purposes takes priority over environmental protection. Worse still is the issue of misappropriation of funds donated by donor agencies for environmental protection.

In Nigeria there is a legal requirement for the government and the private sector to carry out an environmental impact assessment of any project they wish to embark on and for such assessment to be made public.¹⁶ The aim is to ensure that the environment is not degraded by the activities of the government and citizenry.¹⁷ This legal requirement is usually disregarded and

¹⁶ 'Civil Society Plays Key Role In Policymaking In A Changing Climate' <<http://www.iiied.org/civil-society-plays-key-role-policymaking-changing-climate>> Accessed: 19/02/16

¹⁷ H. Reid, et al. 'Southern Voices On Climate Policy Choices: Analysis of and Lessons Learned From Civil Society Advocacy on Climate Change' <<http://pubs.iiied.org/pdfs/10032IIED.pdf>> Accessed: 02/02/16.

¹⁸ Section 9(2)(3) EIA Act, Cap E 12. LFN2004

where an assessment is done and there are recommendations to alleviate the effect of the assessed activity the recommendations are not implemented. A case in hand is the dredging of the lower Niger River. The Federal Government of Nigeria proposed to dredge a navigation channel in the Lower Niger River upstream from Warri in Delta State to Baro in Lokoja to promote the economic development of the country, especially Northern Nigeria. A number of “concerned communities” along the proposed waterway and throughout the Niger Delta voiced concerns about the potential environmental, social, and economic impacts. They contended that, contrary to the provisions of the Environmental Impact Assessment Act, they were not consulted or even contacted during preparation of the federal EIA report and that the report was not made available to the public. An international CSO, International Association for Impact Assessment (IAIA) which is one of the leading global networks on best practice in the use of impact assessment for informed decision making regarding policies, programs, plans and projects, with a voluntary membership of professionals from a diverse array of interests and organizations, all of whom are concerned with environmental stewardship and sustainability¹⁹ recommended that the communities undertake an independent assessment of the proposed dredging.

The IAIA-Nigeria has also been involved in campaigns by creating awareness on environmental issues through workshops where members of the general public are invited to participate in exploring problems and possibilities for community development in their local government areas.²⁰ One such workshop called the Niger delta Project was held in Bayelsa State in October 2000 and another one in March 2001. At the conclusion of the October workshop, representatives of IAIA-Nigeria and the Social Impact Assessment Center were invited by the Bayelsa Ministry of Environment to join in memoranda of understanding to assist in upgrading their capability to independently assess the impacts of oil spills and appropriate compensation for their damages. IAIA-Nigeria had previously initiated an emergency response unit to assist local communities in damage assessment and monitoring.

¹⁹ Section 2, Ibid.

²⁰ C. P. Wolf, C. P. Emerhi, E. A. and Okosi, P. H., ‘Community Impact Assessment of Lower Niger River Dredging’ <<http://www.waado.org/environment/Wetlands/Dredging/LowerNiger.htm>> Accessed on 02/02/16

After the March workshop these terms of reference were broadened to encompass not only oil development but all development, such as primary road construction. Part of the process will be the involvement of communities in all phases of impact assessment.²¹ It is however discouraging to note that the government can pay lip service to the memorandum signed upon the initiative of IAIA because there is no legislative framework within which to compel the government in Nigeria to carry out its obligations under the memorandum. This is because S. 20 of the Constitution of the Federal Republic of Nigeria (CFRN) as amended which stipulates the environmental objective of the government is contained in Chapter 2 of the Constitution which has been held to be non-justiciable. The benefit of the process is that as more awareness is created among the population the judiciary will be encouraged to take a more proactive posture in interpreting environmental laws. In countries where environmental issues are justiciable some environmental activists have done as much as suing the government to ensure standards are met as relates to environmental protection, by compelling the government implement policies.

It must be noted that environmental policy formulation and implementation does not only relate to governments it also relates to corporate organisations and companies since corporate organisations are required by law to adhere to good environmental practices. In 2008, four Nigerian farmers from oil-producing communities in Nigeria who were co-sponsored by the International Green Campaigning Group and Friends of the Earth filed a suit against Shell, a multinational oil producing company in Nigeria. The suit was filed against the oil company in the Netherlands, where its global headquarters is based. The case involved five allegations of spills in Nigeria, and four of these were quashed by the court. On the fifth count, Shell was ordered to pay compensation, of an amount yet to be decided. The lower court ruled that Shell's Dutch based parent company was not liable for oil spills at its Nigerian subsidiary.²² On Appeal, a Dutch appeals court ruled that Royal Dutch Shell can be held liable for oil spills at its subsidiary in Nigeria.²³

²¹ International Association for Impact Assessment <<http://www.iaia.org/>>. Accessed: 02/02/16

²² C. Wolf, et al (n. 19)

²³ Ibid.

²⁴ Fiona Harvey and Afua Hirsch, 'Shell Acquitted Of Nigeria Pollution Charges', The Guardian (30 January 2013) <<http://www.theguardian.com/environment/2013/jan/30/shell-acquitted-nigeria-pollution-charges>> Accessed: 03/02/16.

The advocacy campaign of the Friends of the Earth in assisting the farmers in seeking legal redress in the UK has created awareness among locals in communities where multinational companies do their oil exploitation that they can seek redress. This will put the multinationals on their toes in ensuring that they maintain best practices in their businesses to ensure that oil spillage does not occur and where oil spillage occurs to clean up as quickly as possible. Thereby the health and wealth of communities hosting oil companies in Nigeria will be greatly improved.

EFFORTS OF CIVIL SOCIETY ORGANISATIONS IN NIGERIA ON ENVIRONMENTAL PROTECTION.

One Civil Society Organisation that has been instrumental in dealing with oil spillage in the Niger Delta is the Stakeholders Democracy Network (SDN). The SDN is an international Civil Society Organisation based in London but has a secretariat in Port Harcourt, Rivers State, Nigeria. SDN works with and supports many local partner organisations and communities in the Niger Delta on the issues that affect them. Issues such as improving oil spill response and compensation, mediating inter-communal conflicts, addressing local energy needs, supporting the struggle against slum clearance, monitoring elections, dealing with corruption and striving for environmental and social justice.

The SDN have provided technical assistance to the National Oil Spill Detection and Response Agency (NOSDRA) *by making available state-of-the art web-based tools to manage data on oil spills and also gas flares.* The SDN has made *available state-of-the art web-based tools to help NOSDRA manage data on oil spills and gas flares.* In early 2010 SDN launched its Niger Delta Watch website to map and track a number of environmental, social and human rights issues in the Niger Delta. In 2012, SDN embarked on a two year project working with NOSDRA on improving their capacity to monitor and track the oil spills in the region and gain strategic insight from the data they had been gathering since 2007.²² The SDN has also provided training for the staff of NOSDRA.²³

²² 'Dutch Appeals Court Says Shell May Be Held Liable for Oil Spills in Nigeria', Reuters (18 December 2015) <<http://www.theguardian.com/global-development/2015/dec/18/dutch-appeals-court-shell-oil-spills-nigeria>> Accessed: 03/03/16

²³ SDN Communications, 'Dealing With Oil Spills in The Niger Delta – Towards Technology-Driven Crisis Prevention' 20 May 2014 <<http://www.stakeholderdemocracy.org/dealing-with-oil-spills-in-the-niger-delta-towards-technology-driven-crisis-prevention/>> Accessed: 03/03/16

A major concern in the activities of NOSDRA is that NOSDRA relies on the voluntary engagement and support of oil companies to provide data, logistics, quantity estimates, soil/water samples and to carry out cleanup operations.²⁷ This state of affairs raises questions on the integrity and reliability of the data collected by NOSDRA. According to the SDN,

The other story not told by the official data is the human-impact, the poisoned waters, the dead fish, the local demand for illegally refined fuel, the problems in the process of collecting spill data, the implication of military and government elements in oil theft protection rackets and the wholesale theft of entire tankers of fuel oil. It doesn't tell the story that oil company contractors, paid to fix pipes and clean up oil spills, also break pipes and steal oil by night.²⁸

The SDN partners with other CSOs like Oil Spill Witness and Environmental Rights Action to obtain data directly from the inhabitants of the community where the spill occurred by crowd sourcing to fill in the lacuna in the data of NOSDRA thereby providing a more holistic perspective of the oil spillage in Niger Delta to enable stake holders proffer a more effective solution which will positively alleviate the hardship on communities that have suffered from oil spills.

Most of the CSOs and NGOs that are making impact in Nigeria and collaborating with the government (e.g. Friends of the Earth, IAIA, SDN) are international CSOs with affiliations in Nigeria. As noted in the definition of CSCo, virtually every group in Nigeria can act as an environmental CSO. Nigerians must take the cue from these international agencies. Lawyers can associate themselves, form an alliance for environmental protection and with their tool of advocacy encourage the judiciary to be more liberal in interpreting environmental laws. Accountants can associate themselves and clamour for more government funding for environmental agencies and hold these agencies accountable for the funds made available to them.

There is massive and in depth environmental illiteracy in Nigeria. It is recommended that CSOs should work with the ministry of education to

²⁷ Ibid.

²⁸ 'Oil Spill Monitor. 'About the Nigeria oil spill monitor'. < <https://oilspillmonitor.ng/> > Accessed: 03/02/16.

develop a curriculum that will enhance environmental literacy and emphasis the need for discipline in waste disposal at all levels of education. The media houses are a useful instrument for environmental literacy campaigns. Civil Society Organisations must work with the media to sponsor jingles that will enhance environmental literacy.

It is recommended that NGOs and CSOs in Nigeria should play the role of shaping the policy of the government in the area of adequate funding of the existing environmental agencies by the instrument of strong public opinion on environmental matters. However, shaping public opinion in Nigeria can only be achieved by radical and massive environmental literacy programmes especially at the grassroots.

CONCLUSION

The massive involvement of CSOs and NGOs in awareness campaigns on environmental issues is of great need. There is a need for more concerted effort from the government and civil society organisations, donor agencies etc. to ensure that the deterioration of the earth is stopped if not reversed by sustainable development. This is particularly important in a nation like Nigeria, where an overwhelming majority of the populace is yet to appreciate the correlation between their day to day activities and environmental degradation because they do not feel an immediate repercussion like the Ebola Scourge. If the common man on the street is enlightened and understands the impact of environmental degradation, there will be a clamour for stronger environmental policies to enforce the existing laws and amend where necessary will be embarked upon by the government.

²⁴ SDN Communications.