

Topical Issues in The Nigerian Law: A Book of Readings



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CHAPTER THIRTY-EIGHT

REGULATORY INTERVENTION AGAINST TELECOMMUNICATIONS INSTALLATIONS HAZARDS IN NIGERIA AND INDIA

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&

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Summary of the Chapter

This chapter examines the laws, regulation, practice and the institutions/bodies put in place to prevent or minimize the negative impacts of telecommunications installations on the environment with particular reference to Nigeria, India and South Africa. It is observed herein that though there have been tremendous progress in the past decade in the telecommunications industries, the existing laws and regulation have not been adequate to protect the environment against telecommunications installations hazards.

Introduction

Protection of environment against negative interference has been a major concern in the international community since the Second World War. Following the independence of many countries after the World War II, there were agitations from these newly independent countries to have total control over their natural resource and this led to the coming into being of a declaration

known as Permanent Sovereignty over Natural Resources (PSNR).¹ The adoption of PSNR, no doubt, increased the economic activities of states by way of exploration of their natural resources in their environment for their well-being. These activities which include the development in the telecommunications industries posed some environmental challenges to the world and this led to the Stockholm Declaration of the United Nations Conference on the Human Environment of 1972. This is perhaps the first major international environmental law instrument that introduced the idea of conserving natural resources unto the agenda of international economic issue. Among the notable provisions of the Stockholm Declaration are Principles 2, 3 and 5 which provide as follows:

Principle 2

The natural resources of the earth including, the air, water, land, flora and fauna and especially representative samples of natural ecosystem must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate.

Principle 3

The capacity of the earth to produce vital renewable resources must be maintained and, wherever practicable restored or improved.

Principle 5

The non-renewable resources of the earth must be employed in such a way as to guard against the danger of their future exhaustion and to ensure that benefits from such employment are shared by all mankind.

¹ This International Treaty in its famous paragraphs 1 and 2 emphasis the right of peoples and nations to permanent sovereignty over their natural wealth and resources which must be exercised in the interest of their national development and of the well-being of the state concerned. It also provides that the exploration, development and disposition of such resources, as well as the import of the foreign capital required for these purposes should be in conformity with the rules and conditions which the peoples and nations freely consider to be necessary or desirable with regard to the authorization, restriction or prohibition of such activities.

As stated earlier, until this time, international law had sought to strengthen the sovereignty of states to exploit their natural resources to the fullest through various instruments such as PSNR. However, while enduring this right of states to freely exploit their natural resources, Principle 21 of the Stockholm Declaration reconciles this with the need for environmental protection. The Principle provides thus:

Principle 21

States have, in accordance with the charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of the other states or of areas beyond the limits of national jurisdiction.

The importance of protecting the environment for future generation and development is one of the significant features of the Stockholm Declaration. In other words, the popular environmental principle of 'sustainable development'² was introduced for the first time in the Stockholm Declaration.

Before the Koko³ toxic waste dumping incidence in 1987, Nigeria had neither a comprehensive environmental law nor any institution or commission saddled with responsibility of environmental protection and enforcement of environmental laws and regulation in the country. Following the Koko toxic waste incidence however, the Harmful Waste Decree 42 of 1988⁴ was promulgated by Federal Government and the Federal Environmental Protection Agency (FEPA) was established thereafter through Decree No 58 of 1988.

²This principle is commonly understood as development that 'meets the needs of the present without compromising the ability of future generations to meet their own needs'.

³Koko is a village in Delta State of Nigeria.

⁴Ariyoosu D. A., 'Legal Regulation and Environmental Impacts of Telecommunications Installations: The Nigerian Experience' (Paper Presented at the 13th Annual Conference & AGM of the Environment Division of the Nigerian Society of Engineers at International Conference Centre, Abuja between 9th and 11th November, 2010).

Since then, attention has been relatively paid to environmental issues and various enactments have been made by the Government to address environmental challenges.

It should be noted that effective and quality of telecommunications service, especially in the area of mobile telephony, can only be guaranteed with installation of telecommunications equipment and gadgets such as masts, towers, cables, power generating set, etc. However, in the process of installing these equipment and gadgets which are necessary for the availability of quality telecommunications and internet services, certain issues and concerns are brought to the fore. Aside the legal and administrative issues arising from control over citing of masts and towers, the market explosion in the telecommunications industries with a corresponding need to deploy more telecommunications equipment has engendered serious issues bothering on health, social, business and environmental concerns.

Appraising the Laws in the Protection of Environment against Telecommunications Installations Hazards In Nigeria

The primary regulation or instrument in the telecommunications industry in Nigeria is the Nigeria Communications Act, 2003. The Act establishes⁵ the Nigerian Communications Commission (NCC) as primary regulatory body of the telecommunications sector in the country with various oversight functions which include making regulations and guidelines⁶ for effective running of telecommunications industries in the country. However, there are other laws and regulations administered by other bodies that

⁵See Section 3 (1), Nigerian Communications Act, 2003, *Cap N97, Laws of the Federation of Nigeria, 2004*.

⁶See Section 4(1) (i) of the Nigerian Communications Act, which empowers the Commission to make and enforce of such regulations as may be necessary under the Act to give full force and effect to the provisions of the Act. See also Section 70 of the Act.

have relevance with the protection of environment against telecommunications installations hazards but because of the pivotal and primary role of the NCC, the Nigerian Communications Act, 2003 will be considered.

Nigerian Communications Act, 2003

The provisions of the Constitution of Federal Republic of Nigeria, 1999⁷ (as amended) vest the National Assembly with power to make laws on any matter on exclusive legislative lists to the exclusion of the States. Telecommunications is covered under items 46, 66 and 68 of part 1 in the 2nd schedule of the exclusive lists of the Constitution. In exercise of this power, the National Assembly passed into law the Nigerian Communications Act⁸ to create and provide a regulatory framework for the Nigerian communications industry *and all matters related thereto*. The Act detailed an elaborate and comprehensive administrative and regulatory framework for the development, growth and sustenance of the telecommunications industry in Nigeria. This includes the protection of environment in the course of development of the telecommunications industry. The Act also gives power to the Commission to propose, adopt, publish and enforce technical specifications and standards for the importation and use of communications equipment in Nigeria and for connecting or interconnecting communications equipment and systems.⁹ The Commission is also expected according to the Act to carry out type approval tests on communications equipment and to issue certificates therefore on the basis of technical specifications and standards prescribed from time to time.¹⁰

⁷See Sections 4(2) and (3) thereof.

⁸Nigeria Communication Act, Cap N97, Laws of Federation of Nigeria, 2004.

⁹Ibid, Section 4(1)(l).

¹⁰Ibid, Subsection (n) thereof.

The environmental protection drive against negative impact of telecommunications installations in the Nigerian telecommunication industry is expressed in the provision of the Act in a clear term thus: 'A licensee shall, in installing its network facilities, take all reasonable steps to ensure that he causes as little detriment and inconvenience, and does as little damage, as is practicable.'¹¹

The law also mandates the network operator to restore back the land through which it carried out its installations to the condition similar to the condition of the land before the installation.¹² Licensees are further admonished in carrying out their installations to take reasonable steps to:¹³

- (a) act in accordance with good engineering practice;
- (b) protect the safety of person and property;
- (c) ensure that the activity interferes as little as practicable with-
 - (i) the operations of a public utility;
 - (ii) public roads and paths;
 - (iii) the movement of traffic; and
 - (iv) the use of land;
- (d) protect the environment.

Guidelines on Technical Specifications for The Installations Of Masts And Tower, 2009

In exercising its power under the Act to make regulations and guidelines, the Nigeria Communication Commission (NCC), in April, 2009 issued Guidelines on Technical Specifications for the Installations of Masts and Towers. The guidelines provide for measures to prevent environmental challenges in the course of mast and tower construction. The objectives of the guidelines particularly, in respect of citing telecommunications towers and masts include minimizing their number, protecting and promoting public safety, and mitigating the adverse visual impacts on the

¹¹See Section 136(1) of Nigerian Communications Act.

¹²Section 136(2) of Nigerian Communication Act.

¹³Ibid, Section 136(3).

community 'whilst promoting the provision of telecommunications service to the public.¹⁴

National Environmental Standard And Regulations Enforcement Agency (Establishment) Act, 2007

The significant development of environmental regime in Nigeria was from humble beginnings,¹⁵ having gone through series of stages. The most recent and important of all these developmental stages is the passage into law and coming into force in 2007 of the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, which can be adjudged as relatively the most comprehensive environmental law in Nigeria, compared to previous laws. The Act establishes¹⁶ the National Environmental Standards and Regulations Enforcement Agency as Nigeria's lead and primary environmental protection agency.¹⁷ The Agency is empowered by the Act to 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.¹⁸

¹⁴Ladan M. T., *Materials and Cases on Environmental Law and Policy* (ECONET Publishers, Zaria, Nigeria, 2004) Pp. 117-244.

¹⁵See: Section 1 (1), National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007

¹⁶Ibid, Section 1 (2) (a).

¹⁷Ibid, Section 7.

Against environmental hazards i.e air, noise and water pollution, ozone layer depletion, land degradation, discharge of hazardous waste etc which may result from any private or industrial activities which include telecommunications industries, the Act empowers the Agency to make regulations setting specifications and standards for the protection and enhancement of the quality of Nigeria's environmental resources, so as to promote the public health or welfare and the natural development and productive capacity of the nations' human, animal, marine or plant life.¹⁹ Non-compliance or violation of these provisions by individual or corporate bodies attracts penalty of a fine or a term of imprisonment or both.²⁰

It is to be noted that these NESRA Regulations particularly, National Environmental (Standards for Telecommunications and Broadcasting Facilities) Regulations, 2011 have generated a lot of controversies in the regulation of telecommunications installation as they affect the environment. One of such controversies is in the area of set-back of towers and mast to the residential building. In the NCC's Regulations, the minimum set-back of telecommunications towers to residential building is 5 metre²¹ while the NESRA Regulations provide for minimum of 10 metre.²² Apart from the fact that the dichotomy in these Regulations generated serious rift between the NCC and NESREA²³ it also gives room for excuses for non-compliance on the part of operators.

¹⁹Ibid: see Sections 20, 21, 22, 23, 25, 26 and 27 on air pollution, ozone depletion, noise pollution, water resources protection, environmental sanitation, land resource protection and hazardous waste prevention respectively.

²⁰Ibid, Sections 20 (3 & 4), 21 (3), 22 (3 & 4), 23 (3 & 4), 26 (3 & 4) and 27 (2 & 3).

²¹See Chapter Five, Section 9 (9) (c) (i), Guidelines on Technical Specifications for the Installation of Telecommunications Masts and Towers.

²²National Environmental (Standards for Telecommunications/Broadcasting Facilities) Regulations, 2010, S.I.No. 11

²³NESRA Vs. NCC: Raging Battle over Regulation of Telecoms Masts' accessed on 01 July, 2014

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¹⁴ Udoan M.T., *Materials and Cases on Environmental Law and Policy* (ECONET Publishers, Zaria, Nigeria, 2004) Pp. 117-244.

¹⁵ See Section 1 (1), National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007.

¹⁶ Ibid, Section 1 (2)(a).

¹⁷ Ibid, Section 7.

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²²National Environmental (Standards for Telecommunications/Broadcasting Facilities) Regulations, 2010, S.I No. 11.

²³'NESRA Vs. NCC: Raging Battle over Regulation of Telecoms Masts' accessed on 01 July 2014

Environmental Impact Assessment Act, 1992

The enactment of this Environmental Impact Assessment Act is another development in the Nigerian environmental regime. One of the objectives of the Act is that before any individual, corporate body or government agencies should take any decision or embark on any activities that may likely or to a reasonable extent affect the environment, an environmental impact assessment of such action should be firstly considered.²⁴ The Act empowers the Agency in charge with the approval of the Presidency to make regulations prescribing the list of projects or classes of projects where environmental impact assessment may or may not be required.²⁵ In case of violation of the provisions of the Act or any regulations made thereunder, an individual or corporate body may be liable to a fine or terms of imprisonment.²⁶

Other Nigerian Relevant Laws in the Protection Of Environment Against Telecommunications Installations Hazards

By the provisions of the Guidelines on Technical Specifications on Installations of Masts and Towers, 2009, permission and approval of certain bodies other than NCC must be sought and obtained before erecting certain telecommunications structures.²⁷ One of such bodies is the Nigerian Airspace Management Agency. The Agency is established by the Act²⁸ and is empowered to generally secure the safety, efficiency and regularity of air

²⁴ See Sections 1 (a) and 2 (4) of the Environmental Impact Assessment Act, 1992, *Cap E12, Vol 5, Laws of the Federation of Nigeria, 2010*.

²⁵ *Ibid*, Section 59.

²⁶ *Ibid*, Section 60.

²⁷ See Chapter 2, Sections 4 (2) (a) and Section 4 (3) (a) of the Guidelines on Technical Specifications on the Installation of Towers and Mast, 2009 which provides for painting of towers in accordance with paint schedule of NAMA/ICAO; Section 4 (4) (a) provides for installation of obstructing light on the tower in accordance with ICAO/NAMA guidelines, Chapter 3, Section 7 (1) (a) (vi & vii) provide that tower above 30 metre should not be installed within 15 kilometre to the Airport without NAMA clearance certificate first obtained.

²⁸ Nigerian Airspace Management Agency (Establishment, etc.) Act, 1999, *Cap. N90, Vol 11, Laws of the Federation of Nigeria, 2004*.

navigation in Nigeria by minimizing or preventing interference with the use or effectiveness of all apparatus used in the air navigation which may endanger the aircraft or Nigerian airspace.²⁹

Also on the erection of telecommunications masts and towers, section 7 (1) (n) of Nigerian Civil Aviation Authority (Establishment) Act, 1999 empowers the Authority to prohibit and regulate the installation of any structure which by its height or position is considered to endanger the safety of air navigation. The height and closeness of tower to the airport or helipads may constitute air navigation danger. Therefore, in order to prevent this possible air navigation hazard, a tower which height exceeds 30 meters must not be approved by the Nigerian Airspace Management Agency (NAMA).³⁰ No masts or towers (irrespective of the height) may be installed within 15 kilometres of any airport without prior approval and a permit from the Nigeria Airspace Management Agency (NAMA).³¹ Another relevant law in the protection of the environment which includes safety of personnel on a site is the Factory Act, 1987. The Act as contained in the Laws of the Federation of Nigeria seeks to legislate and regulate the conduct of health and safety in the Nigerian workplaces.

The obvious inadequacy in the scope, suitability and applicability of the Factories Act within the current occupational health and safety realities informed the proposition of the Occupational Safety and Health Bill 2005.³²

²⁹Ibid. Section 7 (1) (c) and (d).

³⁰Ibid. Chapter 3, S. 7 (1) (a) (vi).

³¹Ibid. Chapter 3, S. 7 (1) (a) (vii).

³²Eneye I. B., 'The Health, Safety & Environment Challenges of Mobile Telecommunication Infrastructural Deployment in Nigeria', http://www.ncc.gov.ng/index.php?option=com_docman&task=doc_download&gid=293&Itemid= accessed on 28 July 2014.

For instance, the various categories of penalties³³ in term of fine for contravention of any provision of the Act are inadequate to serve as deterrence. Unfortunately however, aside the fact that the Bill does not provide regulations standards for telecoms specific occupational health and safety hazards challenges, it is yet to be passed into law after its second reading at the National Assembly since 2009.³⁴

Appraising the Laws in the Protection of Environment against Telecommunications Installations Hazards in India

Telecommunications in India started with the introduction of telegraph.³⁵ The rapid developmental pace in the Indian telecommunications sector was facilitated by liberal policies of the government that provide easy market access for telecommunications equipment and a fair regulatory framework for offering telecom services to the Indian Consumers at affordable prices.³⁶ This development had also led to the establishment of the regulatory body called Telecom Regulatory Authority of India (TRAI) in 1997.

The Telecom Regulatory Authority of India is established by the provision³⁷ of the Telecom Regulatory Authority of India Act, 1997. The Act empowers the Authority to perform various functions which include ensuring technical compatibility and effective inter-connection between different service providers.

³³Section 51 (4) provides for a fine of N1000 for failure to report fatal accident by a company. It is not doubtful that this fine is so ridiculous to deter small factories let alone multimillion factories.

³⁴The Health, Safety & Environment Challenges of Mobile Telecommunication Infrastructural Deployment in Nigeria, p 6
http://www.ncc.gov.ng/index.php?option=com_docman&task=doc_download&gid=293&Itemid=
See also 'The Content of Nigerian Occupational Health and Safety Bill'
<http://ohsmcoming.blogspot.com/2010/04/content-of-nigerian-occupational-health.html> accessed on 28 July 2014.

³⁵Telecommunications in India, <http://en.wikipedia.org/wiki/Telecommunications_in_India> accessed on 06 July 2014. See also 'Indian Telecommunication History', Vol. 1, Telecom India Daily available at <<http://www.telecomindiaonline.com/indiantelecomhistory>> accessed on 06 July 2014.

³⁶Ibid.

³⁷See section 3(a) of Telecommunication Regulatory Authority of India Act, 1997.

The Act³⁸ empowers both the Central Government and the Authority to make rules and regulations in enforcing the provisions of the Act.³⁹ It is to be noted that there are some other states in India where no permission is required for erection of telecommunications towers. These States include Tamilnadu and Karnataka.⁴⁰

Conclusion

The efforts by the Nigeria and India governments at curbing environmental pollution as it relates to telecommunications industries serve as the major gist of this paper. The conclusion that can be drawn from the analysis done is that, though efforts of various governments in the protection of environment against telecommunications installations hazards are commendable, the multiplicity of regulations and regulators, non-uniformity of standards and lack of free access to court play down these governmental efforts.

Recommendations

Following the above highlighted issues playing down the efforts of governments in curbing environmental pollutions resulting from telecommunications installations, the under-listed are hereby humbly recommended for effective protection of environment against telecommunications installations hazards:

- **Intensified Monitoring and Research in the Long Term Effect of EMF Emissions**

The relevant regulatory bodies in the telecommunications industries and the protection of environment should jointly engage in a comprehensive research on the long-time effect of exposure to non-ionizing electromagnetic radiation on human health.

³⁸Ibid, section 11(1).

³⁹Ibid, Sections 35 and 36.

⁴⁰Ibid

- **Creation of More Awareness and Public Enlightenment on Environmental and Telecommunications Issues**

Public awareness should be created to enlighten the public on the existing laws and regulations meant for the protection of environment against any form of pollution in general and the telecommunications installations hazards in particular.

- **Harmonization of the Statutory and Operational Legal Frameworks**

there is the need to identify the areas of overlapping functions in the legal frameworks with the view to streamlining them to ensure national economic growth and security. In the interim and pending the amendment of the relevant regulatory frameworks, it is recommended that the concerned regulatory agencies and bodies should enter into memorandum of understanding to determine which functions should be performed by which agency or body.

- **Compliance with the Best Engineering and Construction Practices**

Operators must also comply with the provisions of the laws ensuring best engineering practice in the manufacturing and installation of telecommunication towers and masts in order to prevent unnecessary collapse of the tower or other related disaster. Operators must also be willing to share existing infrastructural facilities among themselves.