

COMPARATIVE ANALYSIS OF THE LEGAL FRAMEWORK AGAINST AIR POLLUTION IN NIGERIA AND INDIA*

Abstract

Air is one of the major areas which state is mandated to protect and safeguard under the Nigerian Law. But this natural resource is being distorted and affected by man thereby making it uninhabitable to man and other users of air by pollution. Air pollution can be understood as presence of contaminants in the atmosphere that injure life on earth. Air pollution sources can be grouped as domestic pollution, industrial pollution, and vehicular pollution respectively. This paper is aimed at evaluating the Nigerian and Indian Laws vis-à-vis International Law on Air pollution to seeing how they effectively and efficiently address the consequences of these sources of air pollution on man and other users of air; such as plants, animal life or to property or which unreasonably interfere with the comfortable enjoyment of life and property in Nigeria and India. The researcher adopted doctrinal approach using primary and secondary sources in gathering information for this research. There is no doubt that Nigeria and India have legal framework on Air pollution since after the UN Conference on the Human Environment at Stockholm in 1972. However, in both Constitutions, Act and Judicial decisions, India displayed activism earlier than Nigeria in developing legal framework on Air pollution. We recommended that Nigeria through our legislatures and court to have a robust, active and people oriented Constitution and other Laws that would make and enforce Laws on Air Pollution free for humans and other users of the air in Nigeria environment.

Keywords: Comparative Legal Frameworks, Air Pollution, Nigeria, India and International Laws.

1. Introduction

Air pollution is any harmful substance or energy emitted directly or indirectly into the air especially if the harm is to the environment or to the public health or welfare; contaminants in the atmosphere.¹ It is also the artificial introduction of such substances or contaminants into the atmosphere; the emission of impurities into the air.² Air pollution means the presence in the outer atmosphere, of one or more contaminants such as dust, fumes, gas mist odour, smoke or vapour in such quantities and of such characteristics and duration as to be injurious in humans, plants or animal life or to property or which unreasonably interfere with the comfortable enjoyment of life and property.³ This is the most difficult of the types of pollution. It spreads fast and is not easily noticeable until harm has been done. Polluted air could be remedied by the spraying of dispersants or aerosols so as to coagulate the oil globules on the ground for accumulation and disposal.⁴ With the increased awareness of the environmental problem worldwide in the past 30 years, conscious efforts have been made by governments at all levels for the protection of the environment from air pollution.⁵ In Nigeria, it was only in 1988 that the Nigeria Government introduced environmental Legislation aimed at reducing the atmospheric impact of various sources of pollution.⁶ Thus, the Koko incident actually stampeded the Nigerian government into passing a series of Legislation posed thereby; the Harmful Waste (Special Criminal Provisional) Decrees, the Federal Environmental Impact Assessment Decree 7. One way of doing this is through the legal control of air pollution. Given that the effective control of air pollution entails the use of modern technologies, which are not generally cheap, wealthy countries are better placed to confront the demands of air quality enhancement and air pollution control.⁷ The main contemporary sources of significant transboundary air pollution are the Sulphur dioxide (SO₂) and Nitrogen oxides (NO₂) produced by the combustion of

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¹B A Garner, *Black's Law Dictionary* (United States of America: 11th ed., Thomson Reuters, 2019) 1403

²Ibid

³S Upadhyay & V Upadhyay, *Handbook on Environmental Law: Water Laws, Air Laws and the Environment* (India: New Delhi, Lexis-Nexis - A Division of Reed Elsevier India Pvt Ltd, 2002) 94

⁴L Atsegbua, V Akpotaire & F Dimowo, *Environment Law in Nigeria: Theory and Practice* (Benin: City: AMBIK Press, 2010) 115

⁵Ibid

⁶ Hereinafter cited as F.E.P.A Act Cap 131 Laws of the Federation of Nigeria 1990 (now repealed by NESREA Act, 2007)

⁷ J O Ezeanokwasa, Legal Control of Air Pollution: An Imperative for Sustainable Industrialization in Africa, *International Review of Law and Jurisprudence*, vol. 2(1) 2020 at p. 123

fossil fuels for power generation and industrial use, to which must be added the increasing volume of vehicle exhaust emission since the 1960s.⁸

2. Legal Framework on Air Pollution in Nigeria

In Nigeria our extant law on Air pollution, National Environmental Standards and Regulations Enforcement Agency (Establishment) Act,⁹ did not define air pollution but defined pollution to mean man-made or man aided alternation or chemical, physical or biological quality of the environment beyond acceptable limits and ‘pollutants’ shall be construed accordingly.¹⁰ NESREA was charged with the responsibility of protection and developing the environment in general and environmental technology, including the initiation of policies in relation to environmental research and technology, and to advise the government on environmental policies.¹¹ Further, under the NESREA Act, the Agency is empowered to establish programmes for the prevention, reduction and elimination of pollution of the nation’s air, land inter-state water, as well as programmes for the restoration and enhancement of the nation’s environment.¹² However, it provided under the functions and powers of the Agency and Council that the agency shall submit for the approval of the Minister, Proposals for the evolution and review of existing guidelines, regulations and standards on environment other than in the oil and gas sector including –(a) atmospheric protection (i) air quality etcetera.¹³ It means that the NESREA Act of Nigeria made provision against air pollution, but failure of the Act to include oil and gas as one of the areas of its cover age by its agency makes the functions of the agency to be incomplete. Other national laws on pollution include standards and guidelines issued by the defunct FEPA. They are:

1. *National Effluent Limitation Regulation*¹⁴: This mandates every industrial facility to install anti-pollution equipment, compels in- house effluent treatment, prescribes maximum limit of effluent parameters allowed to discharge, and stipulates penalties for contravention.
2. *Under the National Environmental Protection (Pollution Abatement in Industries and Facilities Generating Waste) Regulation, 1991*, industries are supposed to have a pollution monitoring unit at each site and to analyse all discharge and make monthly report to FEPA. Accidental or unusual discharge must be reported to FEPA within 24 hours.

Air Pollution in States

Air pollution, like other types of pollution is dangerous to human health, and that is why various states have their own laws regulating air pollution.

Lagos State

Section 15(1) of the Lagos State Environmental Pollution Edict, 1989 prohibits the discharge into the air of any inadequately filtered and purified gaseous wastes or gases containing substances injurious to life.¹⁵ Under ‘Section 13, no person shall: (a) Burn refuse on any tenement open place; (b) Burn the contents of any public owned dustbin; (c) Throw or by industrial or commercial waste on an tenement.’¹⁶ Under Section 15, no obnoxious, toxic or poisonous waste shall be deposited in the a waste dustbin.’ The State should emulate Lagos State that has provided for pollution discharged charges, which means that the more pollution you caused the more you are charged. The will discourage air pollution.

Industrial Air Pollution Treaties which Nigeria has signed

Article 1 of 1979 Convention on Long Range Trans-boundary Air Pollution defined air pollution as:

The introduction by man, directly or indirectly of substance of energy into the air, resulting in deleterious effect of such a nature as to endanger human health, farming, living resources and ecosystems and material property, and to cause an impairment or to interfere with amenities and other legitimate use of the environment.

⁸ P Birnie and A Boyle, *International Law and the Environment* (Oxford: 2nd edition, Oxford University Press, 2002) 500
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¹⁰Ibid at section 37; section 2 of the Anambra State Waste Management Law, 2015

¹¹ See Section 2, NESREA Act

¹² See Sections 7 & 8 of NESREA

¹³Ibid at Section 7(k)

¹⁴ Special Instrument No. 8, 1991

¹⁵Section 15(1)

¹⁶Section 13 of Lagos State Environmental Sanitation Edict, 1998

Vienna Convention for the Protection of the Ozone Layer

This was signed by Nigeria on 29th January, 1989, but came into force on 22 September 1989. The objective is to protect the ozone layer by taking precautionary measures to control global emission of substances that deplete it.¹⁷ India in their active legislation, defines air pollution as the presence in the atmosphere of any air pollutant. Air pollutant is any solid, liquid or gaseous substance (including noise) present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment.¹⁸ At international level, the parties shall take appropriate measures in accordance with the provisions of the Convention and of those Protocols in force to which they are party to protect human health and the environment against adverse effects resulting or likely to result from human activities which modify or are likely to modify the ozone layer.¹⁹ The ozone layer means the layer of the atmospheric ozone above the planetary boundary layer.²⁰ Analysing from the evolution perspectives, Indian's consciousness on air pollution started since 1860 with the enactment of the Indian Penal Code of 1860, the Easement Act 1882, the Bengal Nuisance Act 1905, the Bombay Smoke Nuisance Act 1913 and the Smoke Nuisance Act 1914 were the earliest Legislations that sought to check air pollution in India.²¹

3. Institutional and Legislative Context

The institutional and legislative frameworks for pollution control in Nigeria have been viewed as inconsistent and too limited to address the scale and nature of urban air pollution.²² High population growth, mass migration to unplanned urban developments and under-regulated industrial pollution in large cities present clear and present threats to the environment as well as to the public health of millions.²³ Legal and regulatory frameworks are weak and in most cases uncertain on the statutory responsibilities and duties of the government with regard to environmental management and protection.²⁴ The establishment of the Federal Environmental Protection Agency (FEPA) Act in 1988 provided, for the first time, an attempt at coordinating a statutory and institutional response to environmental pollution.²⁵ However, subsequent policies pursued by the government through the Agency were reactive control measures. Most of the policies were directed at regulating pollution from the oil and gas industries without adequate consideration for other sources and their impacts in densely populated areas.²⁶

The emergence of a new democratic government in 1999 brought, among other things, new hopes for environmental, management and protection in Nigeria. The new government created a Federal Ministry of the Environment (EMoE) with a more focused agenda of tackling issues of industrial and urban pollution, marine and coastal resources degradation and the growing threat of desertification. The ministry facilitated major reforms in the environmental legislative and institutional framework. In 2007 the National Assembly repealed the FEPA Act and replaced it with the National Environmental Standards and Regulation Enforcement Agency (NESREA) Act.²⁷ The new agency, NESREA, was given the primary responsibility for all environmental laws, guidelines, policies and standards. Part II of the NESREA Act provided statutory enforcement powers and functions of the Agency.²⁸ This includes responsibilities for 'compliance monitoring, the environmental regulations and standards on noise, air,

¹⁷ L Atsegbua *et al*, *op.cit* at p. 117

¹⁸Section 2(a) of (Prevention and Control of Pollution) Act, 1974

¹⁹ Article 2 of Vienna Convention for the Protection of the Ozone Layer (1985) Entry into Force: 22 Sept., 1988

²⁰ *Ibid*, Article 1

²¹ S Upadhyay & V Upadhyay, *op.cit* at p 99

²²P B U Achi, An update on the Nigerian environment 3rd International Conference on Quality, Reliability, and Maintenance (QRM 2000) Ed. McNulty GJ Oxford Univ England Consortium IntAct; InstMech Engineers (2000)

²³A Adegoye, The challenges of environmental enforcement in Africa: The Nigerian Experience (2000). The Third International Conference on Environmental Enforcement held in Oaxaca, Mexico, April 25-28

²⁴O A Ogunba, *EIA Systems in Nigeria: Evolution, Current Practice and Shortcomings. Environmental Impact Assessment Review* (2004) 24, 643-660

²⁵B A Chokor, Government Policy and Environmental-Protection in the Developing World: The Example of Nigeria. *Environmental Management* (1993), 17(1) pp 15-30

²⁶*Ibid*

²⁷The Federal Government Printer. National Environmental Standards and Regulations Enforcement Agency (Establishment) Act. 2007. Federal Republic of Nigeria Official Gazette (2007) 94(92) 31 July

²⁸*Ibid*

land, seas, oceans and other wafer bodies other than in the oil and gas sector'.²⁹ The corporate strategic plan document published by NESREA identified 'improved air quality' as one of the major environmental priorities within its corporate vision.³⁰ In December 2010 the agency undertook a consultation process on various National Environmental Regulations including sections on the Control of Vehicular Emissions from Petrol and Diesel Engines. The establishment of NESREA can thus be seen as a progression from the previous *laissez-faire* approach to air quality management of previous governments.

4. Air Pollution from Traffic-Related and Domestic Sources

Pollutants from industrial sources, especially from the oil and gas sector in Nigeria have been studied extensively. Sources of emissions include flared gases in the Niger Delta, fumes from metal-smelting and cement works, fugitive gases from other chemical and allied industries, and charred particulates and sulphur dioxide emissions from the steel industries.³¹ These pollutants are not usually confined to the emission point sources. For example, pollutants from flared gases have been observed with concentrations beyond recommended exposure limits in residential communities within 60 m range of the emission source.³² Existing Environmental Impact Assessment (EIA) legislation and other pollution control policies have been disproportionately focused on regulating the oil and gas industries.³³ Conspicuously ignored were the emerging problems from traffic growth, unplanned urban settlements and dependence on wood and kerosene for domestic energy. Various studies conducted in Lagos, Abuja, Port Harcourt, Kano, Calabar, and other major cities in Nigeria, attribute significant emissions to transport, domestic and other industrial sources within close proximity of residential areas.³⁴ A large proportion of the population are increasingly exposed to air pollution due to growth in vehicular transport and consequent congestion in urban areas, increased reliance on petrol and diesel fuelled generators for electricity supply, and uncontrolled open incineration of waste and major thermal power stations within the city limits.³⁵ Pollution from exhaust pipes is often recognisable without measurements, by reduced visibility, adverse smell and eye irritation on most busy roads.³⁶ In major cities there are high concentrations of PM₁₀, NO₂, CO and VOCs with annual mean concentrations many times greater than the WHO or the Nigerian Ministry of Environment acceptable thresholds.³⁷ A WHO study in 2007 indicated a growing trend in vehicular-derived air pollution in Lagos due to traffic volume comprising of 2-stroke engines motorcycles (which have higher emissions of particulate matter and unburnt hydrocarbons than other types of engines) and old imported vehicles.³⁸ An earlier study also indicated high concentrations of aromatic hydrocarbons, CO and PM especially in areas within close proximity of bus stops and industries within and around Lagos.³⁹ The level of CO concentrations in Lagos has been shown to be higher than those found in oil-producing cities in the Niger Delta.⁴⁰ These findings highlight the significance of other sources, such as transport, to air pollution beyond that of oil

²⁹Ibid

³⁰NESREA. Corporate Strategic Plan (2009-2012). Building Capacity, Enforcing Compliance. A publication of National Environmental Standards and Regulations Enforcement Standards and Regulations Enforcement Agency (2009) online. <http://www.nesrea.org/forms/NESREA%20CSP.pdf> Accessed on 10/06/11

³¹L C Osuji and G O Awiri, Flared gases and other pollutants associated with air quality in industrial areas of Nigeria: an overview, (2005) 2(10), pp 1277-89

³²E O Obanijesu et al, Air-borne SO₂ Pollution Monitoring in the Upstream Petroleum Operation Areas of Niger-Delta. Nigeria Energy Sources Part A-Recovery Utilization and Environmental Effects (2009) 31(3), pp 223-231

³³Op.cit

³⁴O O Faboye, Industrial Pollution and Waste management, Dimensions of Environmental Problems in Nigeria, ed. A Osuntokun (Ibadan: Davidson Press, 1997), pp 26-35. M A Iyoha, The Environmental effects of oil industry activities on the Nigerian Economy: A theoretical Analysis: Paper presented at National Conference on the management of Nigeria's petroleum Resources, Department of Economics, Delta State University Nigeria, (2009)

³⁵E A Oluyemi and O I Asubiojo, Ambient air particulate matter in Lagos, Nigeria: A study using receptor modeling with X-ray fluorescence analysis. Bulletin of the Chemical Society of Ethiopia (2001) 15(2), pp 97-108

³⁶G Baumbach et al, Air pollution in a large tropical city with high traffic density-results of measurements in Lagos, Nigeria. The science of the Total Environment (1995) 169, pp 25-31

³⁷C A Koku and B AOsuntogun, Environmental impacts of road transportation in South-Western States of Nigeria. *Journal of Applied Sciences* (2007) 7(16), pp 2536-2360

³⁸O Taiwo, Carbon Dioxide emission management in Nigerian megacities: the case of Lagos. Presentation at United Nation Environmental Protection (2009) online. http://www.unrep.org/urban_environment/PDFs/BAQ09olukayode.pdf Accessed on 10/6/11

³⁹Op.cit

⁴⁰F I Abam and G O Unachukwu, Vehicular Emissions and Air Quality Standards in Nigeria. *European Journal of Scientific Research* (2009) 34(4), pp 550-560

and gas operations. The UK National Centre for Atmospheric Sciences conducted an aerial emissions estimate studies in Lagos using the Atmospheric Research BAel46 aircraft.⁴¹ The results showed that emissions are attributed to the evaporation of fuels, mobile combustion and natural gas activities around the city. However, Nigeria is among the few countries with no effective procedures or framework for managing ambient air quality.⁴² There are no coordinated or continuous assessments to inform an appropriate policy framework to manage the local air pollution that residents of cities such as Lagos routinely experience.⁴³

5. Framework on Air Pollution in India

Constitution

It has been said above that the Air Act was passed in pursuance of the UN Conference on the Human Environment at Stockholm in 1972. The Constitution of India enables the Parliament to make laws for giving effect to international agreements. Thus, the Parliament has the power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.⁴⁴ The basis for this can be seen from the provision under the Directive Principles of State Policy which requires that 'the state shall endeavour to 'foster respect' for international law and treaty obligations...'⁴⁵ Under Schedule 7 of the Constitution, which lays down the subjects on which the Centre and the states can legislate, there is no specific mention of air pollution. However, there are other subjects mentioned which have implications for prevention of pollution of air. These include matters of public health and sanitation, industries including regulations of mine and mineral development in the State List and the provision for mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied under the Concurrent List.⁴⁶

The prevention of air pollution is a mandatory constitutional obligation. The courts have also repeatedly held this on a combined reading of arts 21,⁴⁷ 48A and 51A (g)⁴⁸ of the constitution. Though art 21 confers the Fundamental Right to Life and personal liberty, the Supreme Court has expanded the scope of this right to include the right to a 'wholesome environment'. In *Subhash Kumar v State of Bihar*,⁴⁹ the apex court held that 'right to life includes the right to enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs threat on the quality of life in derogation of laws, a citizen has the right to have recourse to art 32...' In *Virender Gaur v State of Haryana*,⁵⁰ the court reiterating the decision in *Subhash Kumar's* case, observed that 'enjoyment of life including the right to live with human dignity encompasses within its ambit the protection and preservation of environment, ecological balance free from pollution of air... any contra acts or actions would cause environmental pollution..., environmental, ecological, air water pollution etcetera should be regarded as amounting to violation of art 21.' In *Sachidanand Pandey v State of West Bengal*, the Supreme Court held 'Whenever a problem of ecology is brought to the court, the court is bound to bear in mind art 48 A of the Constitution and art 51A (g)...' In addition, several High Courts have also explicitly recognised the right to environment as part of art 21.⁵¹

⁴¹G Capes et al, Secondary Organic Aerosol from biogenic VOCs over West Africa during AMMA. *Atmospheric Chemistry and Physics*, (2009) 9, pp 3841-3850

⁴²C A Koku and B A Osuntogun, Environmental impacts of road transportation in South-Western States of Nigeria. *Journal of Applied Sciences* (2007) 7(16), pp 2536-2360

⁴³Ibid

⁴⁴Article 253 of Constitution

⁴⁵Article 51 of the Constitution

⁴⁶See Entry 6, 23 and 24 of the State List (List II) and Entry 24 of Concurrent List (List III)

⁴⁷Article 21 reads 'No person shall be deprived of his life or personal liberty except according to the procedure established by law'

⁴⁸Articles 48 A and 51 A(g) were incorporated in the Constitution with the Constitution 42nd (Amendment) Act 1976. Article 48 A imposes a duty upon the state to 'endeavour to protect and improve the environment...' while art 51A(g) obliges the citizens to 'protect and improve the natural environment...'

⁴⁹AIR 1991 SC420

⁵⁰(1995) 2 SCC 577

⁵¹AIR 1987 AP 171, AIR 1988 Raj 2, AIR 1994 Raj 195, (1988) 2 Ker L T 730, (1990) 1 KER LT 580,, AIR 1994 KER 308, AIR 1988 HP 4, AIR 1994 Kant 57, AIR 1994 MP 48

The Air (Prevention and Control of Pollution) Act 1981

The Coming of the Air Act

The first major global initiative for prevention of pollution was the United Nations Conference on Human Environment held at Stockholm in June 1972. To implement the decisions taken at the Conference, all the participating countries, including India, decided to take appropriate steps for the conservation of natural resources including the preservation of the quality of air and control of air pollution. The government appointed an expert committee to assess whether the problem of air pollution can be tackled with modifications in the existing legislation. However, the committee found the existing provisions in various Acts⁵² to be inadequate and recommended a central legislation. This led to the enactment of the Air (Prevention and Control of Pollution) Act 1981.

Objectives of the Act

The objectives behind passing of the Act can be gathered from both the Preamble and its statement of objects and reasons. The statement of objects and reasons is given below.

Statement of Objects and Reasons

- (1) With the increasing industrialisation and the tendency of the majority of industries to congregate in areas, which are already heavily industrialised, the problem of air pollution has begun to be felt in the country. *The* problem is more acute in those heavily industrialised areas, which are also densely populated. Short-term studies conducted by the National Environmental Engineering Research Institute, Nagpur, have confirmed that the cities of Calcutta, Bombay, Delhi, etc, are facing the impact of air pollution on a steadily increasing level.
- (2) The presence in air, beyond certain limits, of various pollutants discharged through industrial emissions and from certain human activities connected with traffic, heating, use of domestic fuel, refuse incinerations, etc, has a detrimental effect on the health of the people as also on animal life, vegetation and property.
- (3) In the United Nations Conference on the Human Environment held in Stockholm in June 1972, in which India had participated, decisions were taken to take appropriate steps for the preservation of the natural resources of the earth which, among other things, include the preservation of the quality of air and control of air pollution. The government has decided to implement these decisions of the said conference insofar as they relate to the preservation of the quality of air and control of air pollution.⁵³
- (4) It is felt that there should be an integrated approach for tackling the environmental problems relating to pollution. It is, therefore, proposed that the Central Board for the Prevention and Control of Water Pollution constituted under the Water (Prevention and Control of Pollution) Act 1974, will also perform the functions of the Central Board for the Prevention and Control of Air Pollution and of a State Board for the Prevention and Control of Air Pollution in the union territories. It is also proposed that the state board constituted under the said Act will also perform the functions of state boards in respect of prevention, control and abatement of air pollution. However, in those states in which state boards for the prevention and control of water pollution have not been constituted under that Act, separate state boards for the prevention and control of air pollution are proposed to be constituted,

The preamble to the Act lays down that the Act seeks 'to provide for prevention-'control and abatement of air pollution, establishment, with a view to carrying out the aforesaid purposes, of Boards, for conferring on and assigning to such boards powers and functions relating thereto and for matters connected therewith.'⁵⁴

Authorities under the Act

The nodal agencies under the Act are the Central Pollution Control Board; (CPCB) at the central level and the State Pollution Control Board (SPCB) at the level of individual states. Although by a Central

⁵²Such as the Motor Vehicles Act, The Factories Act, Smoke Nuisance Act etc

⁵³S Upadhyay & V Upadhyayop.cit at p 108

⁵⁴Ibid at 109

statute, executive functions under the Air Act are carried out in the states by the Central Pollution Control Boards. Article 258(2) of the Constitution permits this delegation of function.⁵⁵ These boards have the power to appoint committees or to associate with persons for assistance or advice to discharge their functions.⁵⁶ Apart from the central and state board, certain powers have also been vested in the Central and state governments.⁵⁷ Section 3 provides that the functions of the Central Pollution Control Board for prevention and control of air pollution are to be performed by the CPCB constituted under Water Act 1974. At the state level a classification is made between states in which Water Act is in force and SPCB is constituted and those in which Water Act is not in force or though it is in force, the state government has 'not constituted SPCB.⁵⁸ The act provides that in case of the former, the SPCB constituted under Water Act is to act as the Air Prevention and Control Board, while in the case of the latter the state government has to constitute a SPCB.⁵⁹ So far as the union territories are concerned, the functions of the State Board are to be performed by the CPCB. However, the CPCB has the power to delegate all or any of its powers to any person or body as the Central Government may specify.⁶⁰ The CPCB, in all matters, is bound by any direction given by the Central Government while the SPCB is bound by the directions given by the CPCB or state government. In case of an inconsistency between directions given by either the state government or the CPCB, matter is to be referred to the Central Government.⁶¹

6. Conclusion and Recommendations

There is no doubt that Nigeria and India are signatories to many international Conventions cum treaties against air pollution. The contents of these treaties are novel towards reducing, if not eliminating the effects of air pollution in both countries. The difference lies on the time of domesticating these treaties in their jurisdictions and the seriousness of their implementation towards ameliorating the effects of air pollution. For instance, in pursuance of the UN Conference in the Human Environment at Stockholm in 1972, India parliament relying on the Constitution and through active legislation passed Air Act to give effect to international agreements. Thus, in their Constitution, the prevention of Air Pollution is a mandatory constitutional obligation. This was the basis of Indian courts to make positions for the justiciability of the environmental rights in India since after the Stockholm Conference. This is unlike Nigerian whose Section 20 of the grund norm (Constitution) is weak as per the justiciability of the Environmental rights since the Stockholm Conference. Consequently, some of the judicial decisions denied citizens their environmental rights relying on technical rule of *locus standi*. However, quite recently, judicial authorities started to allow citizens and nongovernmental organizations to maintain actions on behalf of citizens. Again, there is no doubt that Nigeria and States in Nigeria have Laws against air pollution, but some of these Acts/Laws were based on military decrees and edicts, they could not address air pollution issues generally, their sanitation implementation notwithstanding. Some of the Acts or Laws that has democratic norms are still compounded with some institutional administrative enforcement and policy problems. We recommend an amendment to overhaul Acts such as NESREA Act and Laws for better implementation. Nigeria Judges should actively move towards giving effect to citizens/organizational environmental rights against governmental/companies' policies that run counter to these rights. Enough compensations and damages should be awarded in favour of citizens/communities to their degraded environment. Nigerian Constitution should be amended to provide for the Environmental rights of citizens as contained in Chapter IV of the Constitution. Nigeria should domesticate some of the International Conventions which they have not domesticated unlike India for citizens/communities environmental rights and for sustainable development in line with International Law.

⁵⁵Diwan and Rozencranz, *Environmental Law and Policy in India*, page 244

⁵⁶Section 11 and 12

⁵⁷Section 18, 19, 28, 47, 53 and 54

⁵⁸Interestingly, the qualifications of the state board members mentioned under Air and Water Act differ. While members of SPCB constituted under Air Act necessarily have to possess knowledge on matters relating to air pollution, for the members of authorities constituted under Water Act, such knowledge is not requisite

⁵⁹Sections 4 and 5

⁶⁰Section 6

⁶¹Section 18.