

## CHAPTER 28

# A Critical Analysis of the Penalty Provisions Under the National Park Service Act

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### Introduction

Conservation of natural resources is a goal that every society desires to achieve as it is the most important challenge of the present century.<sup>1</sup> Vegetation and wildlife which are part of natural resources were generally looked upon as unlimited resources, it became clear that this was not so after the population of certain animals had declined to a point beyond which recovery was impossible.<sup>2</sup> This was as a result of man's uncontrolled exploitation of this resources. Therefore, national governments throughout the world have since devised conservation measures to protect their vegetations and wildlife. One of such measures is the establishment of National Parks whereby unique public lands or bodies of water are set aside to protect ecosystems, plant and animal species. Scenic landscapes, geologic formations, or historical or archaeological sites are also protected.<sup>3</sup> In order to ensure the controlled use and systematic protection of the natural resources in these parks, national governments further set out laws to govern the activities of visitors to the parks. Such laws or regulations outline acts that would be considered as 'wrong' or 'right' for imposing sanctions accordingly.

Nigeria was not left out of the pursuit of this goal. In fulfillment of Nigeria's obligations under the various bilateral and multilateral treaties like

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1. Ebeku, K.S., *Biodiversity Conservation in Nigeria: An Appraisal of the Legal Regime in Relation to the Niger Delta Area of the Country*, Journal of Environmental Law Vol. 16 No.3, Oxford University Press, 2004, p.361. See also Amokaye, G.O., *The Convention of Biological Diversity, Access to and Exploitation of Genetic Resources and the Land Tenure System in Nigeria*, African Journal of International and Comparative Law, March 1999 Vol. 11 Pt. 1, p.86.
2. Encyclopaedia International (USA: Lexicon Publications, 1981) at 470.
3. Repanshek, K., *National Parks and Preserves*. Microsoft Student 2007 [DVD]. Redmond, WA: Microsoft Corporation, 2006.

the Convention on Biological Diversity (CBD), 1992<sup>4</sup> and the African Convention on Conservation of Nature and Natural Resources, 1968,<sup>5</sup> the Federal Military Government enacted the National Parks Service Act No. 46 of 1999 (“the Act”). The Act basically seeks to protect and preserve vegetation and wildlife,<sup>6</sup> amongst other eco-systems, in the National Parks established in the country. It provides for offences and imposes penalties accordingly. In this paper, we shall examine the nature and scope of offences and penalties under this Act and their adequacy or effectiveness in the conservation of biodiversity.

## **The National Park Service**

A National Park is defined in s. 53 of the Act as:

A defined area of land set aside, managed and controlled by the Federal Government for the protection, preservation and conservation of its flora, fauna and their habitat, outstanding aesthetic, geomorphological, cultural and historical features for conservation of bio-diversity, recreational, educational and scientific purposes.<sup>7</sup>

The dictionary<sup>8</sup> defines it as “a large piece of land which is kept in its natural state by the government of a country for people to visit and for native plants and animals to live in.” The New Standard Encyclopaedia<sup>9</sup> defines it to mean “an area a national Government sets aside for the people because of their natural scenery or historical values”

All the definitions project a National Park but the Act describes it more comprehensively, however, they all restricted the ownership of the National Park to the Federal Government of a country. That may be so in certain cases but it is not so everywhere. According to Thornton and Beckwith,<sup>10</sup> in

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4. Signed by Nigeria on 13th June, 1992 and has since been ratified. S.6(a) and S.8(b) particularly. S.8 requires each contracting party to develop guidelines for the selection, establishment and management of protected areas or areas where special measures need to be taken to conserve biological diversity.
  5. Signed by Nigeria on 15th September, 1968 and has since been ratified.
  6. See also Brennan, D., *Extraterritorial Application of Federal Wildlife Statutes: A New Rule of Statutory Interpretation*, Cornell International Law Journal Vol. 12, No.1 1979, p. 143.
  7. See also Laitos, G., *Natural Resources Law: Cases and Materials* (St. Paul Minnesota: West Publishing Company, 1985) p. 342.
  8. Longman Dictionary of Contemporary English, (London: Longman, 1978) p.725.
  9. Vol. 10. (Chicago: Standard Educationl Corporation ) p.48.
  10. Thornton, J., *et. al. Environmental Law*, 2nd edn., (London: Sweet and Maxwell, 2004) p. 282.

England, the name “National Park” does not signify national ownership because most of the designated land is owned by farmers and other private landowners. Therefore, such land is managed by its owners or by public bodies such as a Forest Commission or by a National Park Authority (like we have in Nigeria).

In Nigeria, we have seven National Parks namely:

- (a) Lake Chad National Park in Borno State
- (b) Gashaka – Gumti National Park in Taraba State
- (c) Kamuku National Park in Kaduna State
- (d) Cross – River National Park in Cross River State
- (e) Old Oyo National Park in Oyo State
- (f) Okomu National Park in Edo State
- (g) Yankari National Park in Bauchi State

These Parks were upgraded from game reserves to National Parks in 1992. The Act thus established the National Park Service (“the Service”) to administer the parks. By the provisions of the Act, the Service is a body corporate with perpetual succession and common seal. The Chief Executive of the Service is known as Conservator – General and the Service is governed by a Board; each National Park has a director. The fundamental objective of the Service is the promotion and regulation of the use of National Parks in order to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for their enjoyment in such manner as will leave them unimpaired for the benefit of Nigerians.<sup>11</sup> It is therefore expected that any one that enters into any of the National Parks should assist in realizing these objectives.

### **Offences and Penalties**

S. 30–S. 36 of the Act deal with offences while s. 38 (1)–(8) deals with penalties.

#### **Restriction on entry (S. 30(1))**

The Act provides that any person who enters into, resides, erects a building or camp in the National Park without a permit is guilty of an offence. Any

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11. S. 6 of the Act outlines the objectives.

person who contravenes this provision is liable on conviction to a fine not exceeding ₦20,000 or imprisonment.

This provision is rather too strict. In view of the fact that most of the National Parks are not fenced, it will be difficult for a visitor to the community where the park is located or Fulani herdsmen to identify the boundaries of the Park. As a result, the possibility of any of these people entering the park unknowingly is quite high and this should have been taken into consideration during the drafting of the legislation.

### **Restrictions on hunting, etc. (S. 31)**

The Act provides for a number of offences under this section. A person who, unless authorized to do so under this Act:

- (a) hunts or captures an animal; or
- (b) destroys or collects an animal; or
- (c) uproots, burns, strips of the bark or leaves from or otherwise damages a tree or plant; or
- (d) sets fire to any grass or herbage or kindles a fire; or
- (e) digs, cuts, trims, or cultivates the soil or makes a farm or plantation; or
- (f) constructs a dam or weir across a river or stream or otherwise obstructs the channel of a river or stream; or
- (g) introduces a chemical or otherwise caused any pollution; or
- (h) removes from or damages the nest of a bird or reptile; or
- (i) fishes or attempts to kill any fish; or
- (j) is in possession of a wild animal, bird or reptile, dead or alive or;
- (k) is in possession of, uses, or sets a snare, net trap or any other instrument for the purpose of capturing or killing an animals; or
- (l) drives, stampedes or in anyway disturbs unnecessarily any animal;
- (m) carries out an undertaking connected with forestry, agriculture, grazing or excavation; or
- (n) does any leveling or the ground or construction or any act tending to alter the configuration of the soil or the character of the vegetation; or
- (o) does an act likely to harm or disturb the fauna or flora; or
- (p) engages in drilling, mining, prospecting or exploration of any kind of natural resources; or

- (q) Uses any bait, decoy, hide blind or any calling device whatsoever to bring animals closer for the purpose of hunting them; or
- (r) Uses or is in possession of a motor vehicle's dazzling or artificial light or radio communication; or
- (s) Damages or removes a material that is of geological, prehistoric, archaeological or scientific interest; in a National Park, is guilty of an offence under this Act.

S. 38(2) provides that a person who is guilty of any of the above offences is liable on conviction and it further specifies the penalties for the offences as follows:

- (a) For an offence of hunting, wounding, killing or capturing of a mother or a young animal, large mammal or any endangered, protected or prohibited species to imprisonment for a term or not less than three months but not exceeding five years without the option of a fine.

We respectfully submit that the inclusion of the phrase “protected or prohibited species” in s. 38(2)(a) above, in relation to animals within the park is a surplusage as all animals in the park are meant to be protected. Furthermore, the wording of the section presupposes that the offence stated therein is different from that provided for in S. 31(a). S. 38(2)(a) specified certain categories of animals while the latter encompasses all animals. If indeed the offences are separate and distinct, it means no penalty is imposed on an offender under S. 31(a). Even if one were to opine that the offence stipulated in s. 31(a) is implied in or contemplated by S. 38(2)(a), then there was no need for the provision in S. 31(a) because a combination of these sections as they are makes the provisions ambiguous and verbose.

- (b) For offences specified in paragraph (g), (m), (n), (p) or (y)<sup>12</sup> of that section, to imprisonment for a term of not less than six months but not exceeding ten years without the option of a fine.

With respect to paragraph (m) particularly, in relation to “grazing”, this penalty appears too stringent. In Nigeria where Fulanis move their cattle from place to place in search of pastures for grazing, how are they expected

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12. There is no such paragraph in S. 31, thus it is not clear which paragraph is being referred to.

to know that such an act amounts to an offence if the pasture they found happens to be located in a National Park? Moreover, the Park is not fenced.<sup>13</sup> Furthermore, since the lifestyle of the Fulanis is nomadic in nature, how will imprisonment deter them from this act and when they are imprisoned, what happens to their cattle? The draftsmen did not seem to consider that the cattle will likely stray further into the Park thereby introducing another offence<sup>14</sup> and destroying more biodiversity. Enforcement of this provision by the court – bearing these questions in mind – may not only be difficult, it may also be impossible. This position was buttressed by the Litigation Officer of Yankari National Park, Bauchi,<sup>15</sup> Sadiq Kumo (hereinafter referred to as “the Litigation Officer”) who gave an instance of the arrest of a Fulani by the Park rangers. The Fulani cattle rearer brought his cattle into the Park for grazing. He was charged to the magistrate Court, convicted and fined. Yet the penalty is meant to be imprisonment without option of fine. According to the litigation officer, this has always been the courts’ approach when these Fulanis are so charged. Could it be that the courts adopted that approach because they realized there was nothing they could do to contain the cattle if the Fulanis were jailed?

- (c) In the case of any other offence, to a fine of not less than ₦10,000 but not exceeding ₦50,000 or imprisonment for a term of not less than one year but not exceeding five years or to both such fine and imprisonment.

### **Restriction on Weapons, etc. ( S. 32)**

The Act provides that a person who conveys into a National Park or is in possession of any firearm, spear, bow, arrow, explosive, snare, net trap or other weapon or instrument for the purpose of capturing or killing an animal is guilty of an offence. Such a person is liable on conviction to a fine of not less than six months but not exceeding five years or both such fine and imprisonment.

We wonder if a person who is in possession of any of these weapons or instruments without permit in a National Park will have any other intention other than to capture or kill an animal. In our view, the provision will afford an offender a defence where there should have been none. Therefore, we

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13. This is the case in Yankari National Park, Bauchi.

14. S. 34 prohibits animals straying into the Park.

15. In an interview when we paid a visit to the Park in the course of this research.

consider the words, 'for the purpose of capturing or killing an animal' a surplusage.

### **Prohibition of Introduction of Wild Animals (S. 33)**

A person who without the consent of the Conservator-General, conveys, drives or introduces a wild animal whether indigenous or imported into a National Park is guilty of an offence under this Act. A person who is guilty of this offence is liable on conviction to a fine of not less than ₦10,000 but not exceeding ₦50,000 or imprisonment for a term not exceeding five years or to both such fine and imprisonment.

### **Prohibition of Domestic Animals (S. 34)**

The Act makes it an offence for a person being owner, or the person in charge or control of a domestic animal who, without consent conveys, drives or introduces the domestic animal into a National Park; or permits or causes the domestic animal to worry, harass or otherwise interfere with a wild animal within the confines of a National Park is guilty of an offence.

The Act does not specify what a domestic animal is for this purpose. Neither does it state when a person is said to be 'in charge' of a domestic animal. A definition of these words will undoubtedly remove any form of ambiguity and thereby make the offence and penalties more realistic and effective. In addition, a close examination of this section conveys an understanding that consent can be given to a person to drive or introduce a domestic animal into the park; but the Act does not state under what circumstances this consent will be given. We doubt if the legislature intends this meaning to be ascribed to this section because driving an animal into the park will be inimical to the biodiversity within the park; but the manner of drafting leaves one with no other interpretation.

### **Prohibition of Introduction of Plants (S. 35)**

The Act makes it an offence for a person who without consent brings or introduces a plant or any other vegetation, whether indigenous or imported into a National Park. Such a person upon conviction is liable to a fine of not less than ₦50,000 or imprisonment for a term not exceeding five years or to both such fine and imprisonment.

Again we wonder if this provision is to be interpreted to mean that a person can introduce a plant or other vegetation into the Park with consent. If so, for what reason will this be allowed?

### **Restriction on Prospecting for Genetic Materials (S. 36)**

The Act provides that no person shall prospect for a genetic material or remove or attempt to remove any biological material from a National Park for the purpose of exploiting its genetic material except with the written prior informed consent of the Minister on the recommendation of the Service. Any person who offends this provision is guilty of an offence and is liable upon conviction to imprisonment for a term of not less than six months but not exceeding five years without option of a fine.

### **Offences by Bodies Corporate (S. 39)**

The Act provides that where an offence under it has been committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person purporting to act in any of those capacities, he, as well as the body corporate shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

S. 38(2)(d) provides that on conviction a body corporate will be liable to fine of not less than ₦10,000 but not exceeding ₦1,000,000.

This provision obviously got its bearing from S. 65 of the Companies and Allied Matters Act, 1990 which holds the company criminally and civilly liable for the acts of its directors and officers. Even though S. 39 of the Act states that:

“...he, as well as the body corporate shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly”,<sup>16</sup> the penalty section does not specify any punishment for the officer of the body corporate. It is therefore not clear who is to pay the fine imposed by the Act – the officer or the body corporate or both?

### **Compounding of Offences**

S. 42(1) of the Act provides that the Service may, subject to general or specific directions as may be given by the Attorney – General of the Federation state or compound any proceeding for an offence or for the condemnation of anything as being forfeited. S. 42(2) allows a person to pay a sum of money stipulated as penalty instead of initiating proceedings against him.

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16. Emphasis added.



## Compensation

By virtue of S. 40(2) of the Act, the court may order that compensation for the conservation value of a wild plant, wild animal or the ecosystem be paid by an offender to the National Park. The exercise of this power is discretionary.

## An Assessment of the Act

From our interaction with the officers of the Yankari National Park, the indigenous dwellers in the community wherein the Park is situated are the major offenders under this Act. They also mentioned that Fulani cattle rearers are culprits as well. We thus presume that this is likely the case in other National Parks in the country. If this group of offenders are charged to the High Court where there are certain procedures to be followed with respect to filing of papers, appearance and so on, it will be difficult for them to cope. In the first place, they are illiterates; in the second place, they are not likely to be able to afford the services of a lawyer. This will make it difficult for the objectives of these provisions to be realized.

The fines imposed for the offences are quite high considering that rural dwellers are not economically empowered. However, we do not rule out the fact that highly placed individuals and organized groups can also be offenders. Where this is the case, then the fine can serve as a deterrent. A review that will consider these distinctions will be welcome.

We observe that most of the offences are strict liability offences except for the offences under Ss. 31(k), (q), (r), 32 and 36 of the Act, which are ordinary liability offences. It is however suggested that offences under Ss. 31(k),<sup>17</sup> 32<sup>18</sup> and 36<sup>19</sup> should be subjected to strict liability because those acts can only be carried out for the same reason the Act seeks to prohibit. While offences under S. 30(1) of the Act which relates to entry should be made ordinary liability offences because someone can enter the park unknowingly since the Parks are not fenced.

We wonder if the traditional treatment of crimes with respect to sentencing should actually be applied to offenders under the Act. Besides the difficulty the courts may encounter in imposing this penalty - as pointed out earlier - the experience of imprisonment by an offender may be counter

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17. Possession of snare or trap.

18. Restriction on Weapons.

19. Prohibition from prospecting for genetic resources materials.

productive. He may come in contact with a professional criminal, get influenced and when discharged, he becomes a menace to the society. He may even become so hardened that he may no longer fear the consequences of legal sanctions and as a result continue to commit the act for which he was previously imprisoned. For instance, the litigation officer of Yankari National Park narrated the case of a man he referred to as a “notorious poacher” who has been caught four times entering into the Park without permit. He is presently facing a similar charge in court.

We are therefore of the opinion that steps that will encourage the conservation of biodiversity and in turn reduce the commission of offences within the park should be focused upon much more. We recommend that the Service carry out intensive and consistent enlightenment campaign on the need for conservatory measures especially among the indigenous people in the community where these Parks are situated.

The National Parks should be fenced or the boundary properly demarcated to prevent unauthorized entry especially by cattle rearers.

The rural dwellers should be provided with alternatives to the natural resources they go to seek in the parks. Indeed S. 6(j) of the Act provides that one of the functions of the Service is “to promote and develop alternatives to wildlife as a source of protein and income for the rural population.” This is one important responsibility that if the Service is able to successfully discharge will reduce the frequent incidents of poaching since the major offenders are the rural populace.

Payment of compensation should be made mandatory rather than discretionary where the biodiversity affected is scarce. The reason is that compensation will afford the National Park the possibility of replacing the vegetation or wildlife that was destroyed. For instance, the Conservation Education Officer at Yankari National Park informed us that recently some Kenyan officials came to Nigeria to collect certain specie of wildlife that they did not possess. Where compensation is paid, our officials can also replace such a natural resource in this manner.

The inelegant manner in which the Act was drafted is another aspect that needs to be addressed. Some of the sections we examined in this work are replete with ambiguity, which makes it difficult to understand the intention of the legislature. S. 31(a) and s.38(2)(a) are examples of such sections. In the interpretation of statute, the object is to ascertain the intention of the legislature and this intention must be discovered from the words used. This has not been achieved in these sections. Having not met this requirement, we

recommend a review of the relevant sections. Such a review will engender a proper understanding of the objectives of the Act by the rural community particularly and the citizens generally.

## Conclusion

The government need to realize that environmental conservation involves the management of resources in such a way as to create communities that are capable of giving a continuous yield of useful products and human values. The Nigerian Conservation Foundation<sup>20</sup> puts it aptly in the following words:

Nothing affects the quality of our lives quite like the welfare and state of nature and not future can be quite so bleak as one in which the living resources, such as plants and wildlife, which are very essential for human survival and development, are increasingly being destroyed or depleted by human carelessness. Put in another form, we all rely on nature for food, water, energy, clothing, shelter, minerals drugs and more. And we rely on millions of animals and plant species to keep the system that provides those needs in running order...the total disappearance of so many forms of wildlife would be a loss that we and our children would bitterly regret.<sup>21</sup>

If the provisions of this Act will be effective as instruments for biodiversity conservation, the problems highlighted above must be addressed. In as much as we are not advocating that penalties should be done away with completely,<sup>22</sup> it should be borne in mind that “the type of person for whom criminal activities hold the most attraction is the least likely to be deterred by the risk of penalties”.<sup>23</sup> Remedies for the violation of the provisions of the Act should not be punitive but corrective. We believe the objectives of the Act will be realized more easily with the collaborative role of the rural dwellers in conservation efforts.

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20. The Nigerian Conservation Foundation is a non-governmental organization (NGO).

21. Quoted in Nigerian Environmental Study/ Action Team (NEST), *Nigeria's Threatened Environment: A National Profile* (Lagos, 1991) at 182 cited in Ebeku, K. S., op. cit.

22. This is clear from our observations and recommendations above.

23. Harding, C. et. al., *Sentencing and the Penal System; Text and Materials* (London: Sweet and Maxwell, 1988) p.8.