

Environmental Sanitation Management in Nigeria: An Overview of Its Challenges and Prospect

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Abstract: *Environmental Sanitation and Waste Management in Nigeria have become a major issue to be tackled by the government at all levels. Various laws dealing with environmental issues have been enacted over the years by both Federal, State and Local governments, yet the problem of environmental sanitation and waste management persists. There has been established various departments and bodies in a bid to realize the environmental policy of the Nigerian State. Amongst these bodies is the judiciary whose duty it is to interpret and give life to the various environmental legislations even as it grapples with its own challenges. The aim of this article is to examine the legal issues in environmental sanitation and waste management in Nigeria and the challenges of environmental Courts. To achieve this aim the article adopted the doctrinal method, which comprises of primary and secondary sources of law. In the course of the article it was found that lack of public awareness in the law making process, ineffective enforcement of the law by government agencies, inadequate punishment/penalties for environmental offences/offenders, lack of the culture of environmental responsibilities among the citizens, inadequate waste management infrastructure and services, undue adherence to legalism by the Courts, and lack of expertise by those who handle environmental cases are some of the legal issues militating against environmental sanitation and waste management in Nigeria. In view of these observations recommendations that there should be an environmental education to create public awareness on the benefits of environmental sanitation, involvement of the public in formulation of environmental policies, the amendment of the constitution to introduce the setting up of specialised environmental Court, review of environmental punishment for offenders and capacity building for the judicial officers and need for the introduction of environmental procedure rules for the use of the Court. The article also recommends the introduction of cleanliness competition among towns and the provision of incinerators.*

Keywords: environmental sanitation, management, Nigeria, challenges, prospect

INTRODUCTION

Environmental sanitation management is the cornerstone of public health, environmental sustainability, and economic development. In Nigeria, a country endowed with vibrant landscapes and diverse ecosystems, the lack of effective sanitation systems poses a formidable challenge. From the bustling streets of Lagos to the serene villages of the north, improper waste disposal and inadequate sanitation infrastructure continue to threaten the health of citizens and the environment. Yet, amidst these challenges lies a beacon of hope: innovative solutions and policy frameworks are paving the way for a cleaner, healthier future. This article explores the intricate tapestry of Nigeria's environmental sanitation landscape, shedding light on its obstacles and the promising prospects that can transform the nation into a model of environmental stewardship.

Nigeria, endowed with abundant and diverse natural resources stands at the intersection of a critical juncture in its developmental trajectory. The rapid surge in population, juxtaposed against a backdrop of insufficient infrastructure and basic social services has given rise to pressing concerns regarding environmental sanitation and basic waste management. This discordance is characterized by the proliferation of urban slums, strained sanitary facilities and the haphazard generation and disposal of wastes, collectively contributing to a perceptible reduction in the overall quality of life and standard of living for the people.

Legal Framework

As it is often noted that Einstein argued that “The environment is everything that isn’t me” but should be noted that man is a very important part of the environment. Environment is the complex of physical, chemical and biotic factors that act upon an organism or an ecology, community and ultimately determine its form and survival¹

As can be gleaned from the various definitions and environment can be considered as the sum total of all things that exist both living and non-living upon which life and survival depends through constant interactions and its effect thereof in the case of Attorney-general of Lagos State V Attorney-General of the federation²the Supreme Court defined environment thus “the environment connotes the natural conditions for example land, air and water in which the people, animals and plants live.” It appears that there is no universally accepted definition of the word “Environment.” The reason for this is perhaps due to the diverse nature of human environment itself.

Solid waste management is the most pressing environmental challenge faced by urban and rural communities in Nigeria and other developing nations. Its attendant health, safety, environmental, land use and socio-economic challenges are enormous. Due to environmental justice inadequacies the indiscriminate dumping of refuse in unauthorised places such as; waterways, gutters and roadsides has continued unabated leading to living unhygienic environment. According to study the environmental sanitation and waste management situation in Nigeria is at its lowest ebb, despite the availability of several environmental laws. This article aims to determine the factors which hinder the effectiveness of environmental Courts in the

administration of justice, which has resulted in the Nigerian urban and semi-urban settlements overflowing with waste. This article also aims to promote a more effective, efficient and accessible environmental justice system, ultimately contribution to a healthier environment and improved quality of life for Nigerians.

The lack of public waste disposal services particularly in city centres, forces communities to resort to burying, burning or haphazardly disposing of their wastes. This alarming trend extends to the disposal of toxic, hazardous and infectious and harmful wastes posing threats to human health, aquatic life, animals and plants. Recognising the gravity of these challenges, the Nigerian government has responded by enacting series of laws aimed at addressing environmental sanitation and waste management issues. These legal measures are designed to mitigate the adverse health, economic and developmental effects stemming from inadequate waste management practices.

At the heart of this legal framework is the pivotal role played by environmental Courts. These institutions are tasked with ensuring compliance with environmental laws, upholding the rule of law and fostering effective environmental protection. The centrality of environmental Courts in promoting a healthier nation and advancing sustainable development underscores their significance for the present and future generations.

Managing the waste which results from the interaction that takes place in the environment is a different ball game. This involves the planning, handling and disposal of waste. The national policy on solid waste management 2020 acknowledged that solid waste is currently one of the fastest growing waste streams in the world. Thus, managing solid waste has become an important concern in both domestic and international material cycles for environmental preservation, efficient source utilization and sustainable development. Nigeria like many nations is faced with gross environmental problems and solid waste stands as one of the major challenges.³

Research works in legal and institutional frameworks concerning waste management are far from being a new discipline in Nigeria. Research works have been conducted over the years, with a view to identifying the source, causes and possible precautions to take regarding waste management. In terms of legal frameworks, they refer to the set of constitutional and legislative rules that govern the act of waste management in the country. In addressing the impacts of legal and institutional frameworks on waste management, some researches mentioned that they serve as vehicles for proper solid waste management⁴ in the light of the above, institutional frameworks are guidelines required to ensure proper waste routines as institutions are a critical element to consider when it pertains to waste management. They facilitate decision and policy making processes, guarantee stability and ensure that the demonstrating effect of improper waste management is well handled.

Also, institutional regulating bodies in Nigeria such as NESREA, Ministries of Environment of various States, waste management boards and local government environmental health departments promote waste reduction and prevention for the betterment of the environment.

In a research paper, a study was undertaken in two Nigerian cities in the North and Eastern part of the country while reviewing the characteristics of Municipal solid waste management sector in Nigeria⁵ Kano is regarded as the capital for commerce and centre point for industrialization in Northern Nigeria while Enugu the Coal City is comprised of three local Government areas. It was gathered that the primary operations for waste management in Nigeria are either the public sector or the private sector⁶ thus the private sector of waste management, which can be listed as an institutional framework is controlled by individuals or group of people or organizations who have chosen a business career in handling and removal of waste materials. Contrarily, the public sector refers to the agencies that are financed and owned by the State either the Federal, State or Local government with the sole responsibility of removing waste from domestic or industrial generators and dispose at the necessary and mandated dumpsites often times neglect their duties. Those in the private sectors are sometimes engaged by the public institutions in a private/public partnership basis for the removal and management of waste⁷.

There is a close relationship between government and the provision of institutional infrastructures for waste management, even though the effects of the organizations are not felt across the country owing to other significant reasons but they are in existence. It must be noted that not all laws and regulations are adhered to by each State within Nigeria, since there is still evidence of pollution and waste management in the country. Despite the efforts and financial investment by government in the creation of organizations and bodies that regulate environment, waste and its impacts, there are little or no tangible results to show. Hence the mere presence of legal and institutional frameworks for waste management in Nigeria is not enough. There is a need to explore the possibility of sustainability to keep the program running well at the Federal, State and Local Government levels by putting in place an effective enforcement method and a strong judicial process to enhance compliance. This is to tackle the challenges of the loopholes present in the legal and institutional framework to waste management.

IMPROPER WASTE DISPOSAL PRACTICES AND ENVIROMENTAL POLLUTION AND WASTE MANAGEMENT STRATEGIES

In Nigeria, the solid waste management requires immediate attention and the adoption of best practicable environmental approach to preserve the environment. To achieve a sustainable solid waste management every step of the management process must be functional and effective. These steps include: Solid waste generation and characterization, collection and transportation and disposal and treatment.⁸

Similar pattern of management at different steps of solid waste management have been identified and reported by researchers.⁹ In Nigeria most often the process of waste management starts with waste generation, waste characterization seldom takes place, followed by the collection of the waste, transportation and finally at disposal sites. This simple method has presented some benefits and some problems to the management process.

Waste

The term “waste” is any liquid, solid or gaseous material substance or object which is no longer wanted but intended to be discarded or because it has become useless and completely valueless¹⁰ Waste is defined by the interpretation section of the Delta State Waste Management Board law as “includes any discarded material or substance whether or not the same can be put to any other use other than its original use. Neither the Harmful Waste (Special Criminal Provisions) Act²⁶ nor the National Environmental Standards and Regulation Enforcement Agency (Establishment) Act 2007 and its 24

Regulations promulgated between 2009 and 2013 defined the term waste. According to Atsegbua, et al waste is any substance or object, whose owner or producer, intends or is required to discard because it is useless or lacks market value¹¹.

Under the Lagos waste management authority law 2007 waste is defined as all materials whether solid or liquid including but not limited to garbage, refuse and other discarded waste materials resulting from industrial, commercial and agricultural operations, including waste from mines and quarries and shall also include¹²This may not be entirely true as what is not useful to one person might be of great use to another hence our dump sites are full with scavengers of all sorts. Materials scavenged from these dump sites are of great value to the scavengers. Adjudicating on the provision of section 75(2) of the U.K Environmental Protection Act 1990, relating to definition of waste similar to the definition of waste in the section of the Delta State Waste Management Board law Cap 92 Volume 111 Laws of Delta State of Nigeria 2006, the term unwanted was specifically addressed in the case of Kent Country Council v Queens Borough Rolling Mill Co. Ltd case, the material in question came from a disused site which was being cleared by a demolition company. The defendant company argued that the material was not a waste because it was put to a useful purpose and therefore could not be unwanted. Pill. J held that although the material was put to a useful purpose, it was not a relevant consideration in deciding whether or not it was waste. The important factor was the nature of the material at the time it was discarded²⁹

Classification Of Waste

Waste can be classified in various ways; it is a matter of convenience. They can be classified into various categories based on different characteristics, their sources and potential hazards or the appropriate means of their control. Solid, semi-solid and liquid wastes can be classified as putrescible or non-putrescible and may include garbage, trash, refuse, paper, rubbish, ashes and industrial waste¹³

Domestic waste also known as household waste or residential waste, is solid waste comprised of garbage rubbish that originates from private homes or apartments. It may include items such as bottles, cans, clothing, food packaging, food scraps, newspapers and yard trimmings.

Section 29 of the Lagos waste management authority law 2007 defines domestic waste as garbage and other discarded solid waste from a private material resulting from dwelling residential home or tenant, a university or school or other educational establishment, a hospital

or nursing home and includes liquid and carcass of animals the term domestic waste(s) is also known as municipal, household or community wastes.

Regulation 106 of the National Environmental (Sanitation and waste Control) Regulations 2009 defines community waste¹⁴ as non-hazardous wastes generated from households, commercial and institutional land uses, construction sites, and recreational facility. Municipal waste is further defined by the regulation as any garbage, refuse, sludge, rubbish, tailings, debris, litter and commercial or institutional facilities which are commonly accepted at a municipal solid waste management facility but excludes wastes from industrial activities regulated by the agency (NESREA)⁴⁰

Waste Management

Waste Management means waste management planning, handling, treatment, processing and disposal, including the supervision of these operations as well as the measures for protection of the environment and of human life and health during the operation of the facilities and installations for waste disposal and the care taken after the termination of the operations, generation and of its negative impact on the environment, human life and health including waste handling.¹⁵

Waste management therefore ranges from waste generation, collecting, processing, disposal and supervision of these operational stages, solid, liquid, gaseous and harmful/hazardous wastes if properly managed can lead to enhancing the quality of human, animal and plant life as well as the sustainability of the environment¹⁶

According to Atsegbua L, waste management is the collection, keeping, treatment and disposal of waste in such a way as to render them harmless to human life, animal life the ecology and the environment.³²

Waste management is a concept which refers to the collection, transportation, treatment and disposal of waste products in a less destructive way that causes less harm to the environment.¹⁷ In addition, waste management involves more than the practices mentioned above; it has evolved and advanced to prevent, recycle and recuperate materials in essence, waste management is focused on preventive and regulatory practices to curb the dumping of wastes in inappropriate places and regulate policies that can create a greener environment while taking care of the deeds done in the environment already. In lay man's terms, waste management can be defined as collecting all dumped materials to reuse, recycle and reduce their effects on environmental health¹⁸

In analysing the above definition of waste management, it is essential to note that it involves practical steps. Such practical steps include strategies in terms of directives from government or local officials that can emphasize the importance of managing waste through rules and regulation. It also involves the establishment of frameworks, like constitutional, federal and local laws, including enforcement agencies. It can be considered an activity that systematically and persistently reduces waste accumulation and fosters proper waste handling.

The roles and responsibilities of the various institutions have been clarified and guidelines given to ensure the effective management of waste in Nigeria to this end there has been clear and defined roles and responsibilities given to federal, State and local governments as it affects waste collection and transportation, extended products, responsibility program, permissible limits for waste water discharging and treatment facility, labelling and packaging of hazardous waste containers and natural colour code for health care waste¹⁹

Waste is managed through various methods

Composting Method

This method of waste management is a process that uses microorganisms to break down materials such as food scraps, leaves and grass clippings. This process converts the materials into nutrients-rich materials called compost. Composting is a natural process that can be done at home or in a community setting. It has many benefits, including reducing the amount of waste going into landfills, improving soil health and reducing the need for chemical fertilizers²⁰ there are two main types of composting. They are aerobic and anaerobic. Aerobic composting requires oxygen to break down the organic materials while anaerobic does not require oxygen.

The most common type of composting is aerobic and it can be done either on open air system or an enclosed system.

Incineration method²¹

This is the controlled ways of burning solid waste materials in a special furnace called an incinerator. The incinerator helps to break down the waste and reduce its volume. This process produces ash which is a safe and non-toxic material that can be used as construction materials. It is especially useful in the destruction of municipal solid waste. Incineration is practised in countries where landfill space is no longer available, which includes Japan.

Landfill method

Landfill is a method of waste disposal or management in which waste material is buried in an already excavated pits for the purpose of filling and waste disposal or pits solely made for the purpose of waste management. It is usually done far from residential areas and the oldest method and most common form of waste disposal or waste management.

Some Enviromental Laws In Nigeria

The Nigerian Environmental regime is comprised of many laws, statutes, rules and regulations. Essentially the application of these laws when complemented by international conventions which Nigeria has ratified are targeted at protecting the natural environment from man induced pollutions.

The constitution of the Federal Republic of Nigeria 1999 forms the basis of Environmental policy in Nigeria. Section 20 of the constitution provides;

“The state shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria.” This is the ground norm and the organic law of the land.

The constitution²² establishes, though impliedly, that international treaties (including environmental treaties) ratified by the National Assembly should be implemented as Law in Nigeria. Fundamental Rights to life and Human dignity²³ respectively, have also been argued to be linked to the need for a healthy and safe environment to give these rights effect. Aside the constitution, there are other laws which help in actualizing the objective of the sustainable development of the environment, these include;

- i. the African Charter on Human and Peoples' Rights(Ratification and Enforcement) Act²⁴(Article 24 of the Charter establishes Right to a general satisfactory environment), the Fundamental Rights (Enforcement Procedure) Rules ,2009, the National Environmental Standards and Regulation Agency(NESREA) Act 2007²⁵ the Criminal Code,⁴⁶ Vol.4;Cap C38,LFN,2004
- ii. the Harmful Waste(Special Criminal Provision Etc) Act Vol.7;Cap H1,LFN, 2004²⁶, the Nigerian Urban and Regional Planning Act⁴⁸.
- iii. Oil in Navigable Waters Act²⁷ and Environmental Impact Assessment Act²⁸ National Environmental Standards and Regulation Enforcement Agency (NESREA) Act 2007.

This Act is administered by the Ministry of Environment, and it replaced the Federal Environmental Protection Agency (FEPA) Act. It is the body of laws and regulations focused on the protection and sustainable development of the environment and its natural resources. Section 7 of NESREA provides authority to ensure compliance with environmental laws local and international Sanitation and pollution prevention and control through monitoring and regulatory measures.

The Act²⁹ empowers the agency to make and review regulations on air and water quality, affluent limitations, control of harmful substances and other forms of environmental pollution and sanitation. Prohibits, without lawful authority the discharge of hazardous substances into the environment³⁰ this offense is punishable with a fine of not exceeding One Million Naira (N1, 000,000) and an imprisonment term of 5 years. In case of a company- there is an additional fine of N50, 000.00 for every day the offense persists.

Enforcement Of Environmental Laws Nature and Benefit

The effective enforcement of environmental laws and Regulations at both the Federal, State and Local levels is key to environmental management. Environmental law enforcement refers to the implementation of laws and regulations aimed at protecting the environment. Environmental sanitation refers to the promotion of clean and healthy environments through the provision of adequate sanitation facilities, clean water and proper waste management. Both human, civil societies and corporate activities are controlled by the State through legislations. The stake holders and different sectors of the economy as well as individual users of the environment, a precise indication of which activities they can undertake, which activities are forbidden and what their responsibilities are in the event that their activities jeopardize any component of the environment³¹

This justifies the creation of Federal and State ministries of environment between 1999 and 2001 during the President Olusegun Obasanjo's administration and also the national and State environmental protection agencies. There was also established during the era the State environmental sanitation and waste management authorities³² with enforcement powers to ensure compliance and environmental regulation standards and guidelines in the best interest of both the current and future human generations. The Nigerian Constitution set out the fundamental environmental objective by declaring in Section 20⁵⁶ that "the State shall protect and improve the environment and safeguard the water, air, land, forest and wildlife of Nigeria" Environmental enforcement is therefore an essential element in environmental governance it seeks to ensure that the lofty goals of our environmental status are realized. It is the various actions taken by the government to ensure and promote compliance with environmental law. It is indeed the application of all available tools to achieve compliance, including compliance promotion, compliance monitoring and non-compliance response. Enforcing environmental standards and regulations is one of the surest ways governments can use to checkmate the negative impact of unsustainable developmental activities on the environment and on the lives of citizens. Without an effective environment enforcement culture one that is capable of ensuring compliance by big corporations as this can improve the quality of life drastically.³³ Environmental enforcement generally has to do with evaluation of compliance with the various environmental legislations.

Enforcement by the government includes.

- i. Inspections to determine the compliance status of the regulated community and to detect violations
- ii. Negotiations with individuals or facility managers who are out of compliance to develop mutually agreeable schedules and approaches for achieving compliance
- iii. Legal action, where necessary, to compel compliance and impose some consequences for violating the law or posing a threat to public health or environmental quality
- iv. Enforcement may also include compliance promotion (e.g. educational programs, technical assistance, subsidies) to encourage voluntary compliance.

When enforcement is effective it can bring about several benefits such as improved quality in public health, credibility of environmental protection efforts and the enforcement agencies including the Courts, fairness to those who comply with environmental requirements and economic benefits both to individuals and the State.

THE CONCEPT OF SPECIALISED ENVIRONMENTAL COURTS

Environmental Courts are specialized Courts that handle cases related to environmental law. These Courts deal with Civil and Criminal environmental cases, ensuring compliance with environmental laws and regulations. The establishment of such Courts aim to provide a dedicated forum for addressing environmental disputes efficiently and with expertise³⁴.

In Nigerian, environmental/ sanitation Courts are mostly Magistrate Courts, tribunals or mobile Courts or as may be constituted or designated by the Chief Judge of the State with jurisdiction

and powers over all environmental matters specified under any environmental protection law or sanitation and waste management law of a State.

In Ondo State specific Courts are designated as Environmental/ Sanitation Courts by warrants issued under the hand and seal of the Chief Judge.³⁵

In Lagos State, they are known as “appropriate” Court which include a customary Court, Magistrates’ Court and High Court of the State³⁶

At the Federal level an environmental Court could be either the Federal High Court or the High Court of a State clothed with General jurisdiction to hear and determine any Civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is an issue or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offense committed by any person³⁷ and shall also exercise jurisdiction over any matter conferred on the Federal High Court by any Act of the National Assembly or in the case of the State High Courts conferred on them by the State House of Assembly.

Environmental Courts may vary in structure, ranging from fully developed judicial branch bodies to simpler village Courts handling cases periodically. The presence of these Courts is seen as beneficial for ensuring expertise in decision making, efficiency in resolving cases and demonstrating government support for the environmental protection. Overall, environmental Courts also play a crucial role in upholding environmental laws and promoting sustainable development. It is a very strong tool for realization of the theory of Environmentalism. This theory views environment as the important factor in development of culture and intellectual aspects of an individual or group rather than heredity.³⁸

The Constitution of the Federal Republic of Nigeria 1999 as amended in Section 6 creates the judiciary and gives the power to create Courts. The Judicial powers of the Federation shall be vested in the Courts to which this section creates, being Courts established for the Federation.³⁹ The Judicial powers of a State shall be vested in the Courts to which this Section relates, being Courts established, subject as provided by this constitution, for a State. The Courts to which this section relates, established by this constitution for the Federation and the States, specified in subsections⁴⁰ (5) (a) to (i) of this section, shall be the only superior Courts of record in Nigerian; and save as otherwise prescribed by the National Assembly or by the House of Assembly of a State, each Court shall have all the powers of a Superior Court of record.

The Role of Environmental Courts

The primary role of the Judiciary is the interpretation and expounding of the Law. Under the Nigerian constitution, the judiciary is vested with judicial powers i.e. the power to interpret and expound both the letter and the spirit of the law.⁴¹

The importance of the role of the judiciary in Nigeria is underscored by the appreciation that ‘it is not the words of the Law but the internal sense of it that makes the law. Letter of the law is nobody, sense and reason of the law is soul’⁴². Apart from the provisions of NESREA, The Harmful Waste (Special Criminal Provision Etc.) Act⁴³, Urban and Regional Planning Act⁴⁴,

the River Basin Development Authority Act⁴⁵ and sections 1,2,3 4(5), 5,7 and 10 of the Oil in Navigable Waters Act. Vol. 13 CAP.06 LFN,2004 and the Environmental Sanitation and Waste Management laws of the various States, some common law rules relating to criminal and civil litigations of environmental offences also are applicable in Nigeria, they include locus standi, negligence, Rule in Ryland v Fletcher, trespass, and nuisance which attracts damages and compensation.

The principle of sustainable development are encapsulated in Agenda 21 of the 1992 Rio Declaration, which was adopted by the United Nations World Commission on Environment and Development (UNWCED) at Rio de Janeiro Brazil in 1992. The report was dubbed “our common future” According to the Brundtland Report, Sustainable Development is ‘Development that meets the need of the present without compromising the ability of the future generations to meet their own needs.’⁴⁶ What is obvious from this is that Human beings are the centre of concern for sustainable development in the sense that it advocated a balance between the environment and development. Human beings are therefore entitled to a healthy and productive life in harmony with nature⁴⁷. The present generation holds the earth in trust for the next and it must therefore endeavour to protect it as best as it can. This trusteeship carries with it the enormous responsibility of protecting it. It is the duty of Court to ensure that this responsibility is carried out accordingly.

The attitude of Nigerian Courts with respect to locus standi, jurisdiction, and pre –action notice frustrates environmental litigation in Nigeria⁴⁸. These clogs in the wheel of environmental justice leave litigants and injured parties with nothing but resort to self-help.

The Courts’ jurisdiction in respect of environmental protection can be invoked by either public litigation or private litigation.⁴⁹ Public litigation is conducted by the State on behalf of the Attorney General in the enforcement of the environmental law¹³⁵. It is undertaken in the public interest and benefit.

Private litigation commands two aspects they are as follows⁵⁰

- i. Action relating to injury to private property and other personal rights
- ii. Public interest litigation or ‘Citizen Standing’.

litigation.

A remarkable fit was achieved by the Nigerian Court in the case of Jonah Gbemre v SPDC Ltd and Others (2005) Suit No FHC/B/CS/53/05 where in a proactive move the Court granted leave to the applicant to institute a proceeding in a representative capacity for himself and every member of Iweherekan community in Delta State and apply for an order enforcing and securing the enforcement of their fundamental rights to life and human dignity as provided under the 1999 constitution(sections 33(1) and 34(1))

Environmental Courts are confronted with many challenges in dealing with environmental issues which has hampered the impact of environmental justice delivery. These challenges inherently appear to border mostly on procedural limitations imposed by Locus Standi, inadequate enforcement, difficulty in proving environmental damages by expert evidence,

Judicial corruption, executive interference with the independence of the judiciary, jurisdictional and justice delivery dilemmas in environmental litigation, lack of purposive statutory interpretation by the Courts, lack of independence of the judiciary, problem of determining quantum of damages and compensation, lack of self-discipline or self censorship among the populace and poor delivery of environmental sanitation services by relevant sanitation authorities.

Environmental offences are serious as they deal serious harm on the environment and the Court should not lose sight of this fact and as in the Case of R v Sissen,⁵¹ Mr Justice Ouseley Stated that the law is clear as to where the interest of conservation lie. These are serious offences an immediate custodial sentence is usually appropriate to mark their gravity and the need for deterrence.

CHALLENGES OF ENVIRONMENTAL COURTS IN NIGERIA

The Courts are the avenues whereby the judiciary carries out its constitutional role and functions. In the case of environmental and sanitation obligations, the legal framework by both the federal and State governments even at the international environmental space is in dire need to secure their observance. The Court in realizing this noble goal has always been confronted with various degrees of challenges. The challenges may appear to operate exclusively, but could be mutually complementing as well as re enforcing each other. These challenges include

Establishment of the Environmental/Sanitation Courts

There is no uniform method of establishing the environmental/sanitation Courts in Nigeria, every State sets up its environmental Court as is convenient to its operation and management. In Ondo State some Courts are designated as Environmental/Sanitation Courts vide a fiat or warrant under the hand of the Chief Judge of the State. In Delta State the waste management law does not define Court in its interpretation section. However, section 25 of the law provides that any person who contravenes any provision of this law or any regulation made hereafter commits an offense and on conviction shall, where no specific penalty is prescribed therefore, be liable to a fine of Five Thousand Naira or to imprisonment for a period not exceeding three months. Under the Delta State

Environmental Sanitation Law jurisdiction is vested on the Customary Court or Magistrate Court or Mobile Court⁵² where the punishment provided by the law is above the jurisdiction of the customary, Magistrate or the mobile Court, the case is instituted in the High Court. In the case of the Mobile Court, it sits once in a month during the monthly environmental sanitation exercise which is usually observed on the last Saturday of every month. There are no conducive Court rooms, as the name implies it is a mobile Court, the Court moves to the locus. If this persists doing justice will be difficult as the security of the Court itself is not guaranteed and it operates with ad hoc staff.

The Nigerian judicial system is comprised of the totality of its Court system. Its composition, hierarchy and jurisdictions collectively form the judicial system. The Courts system in Nigeria is established by the constitution and other laws of the States or federation depending on the

nature of the Court and its powers. The superior Court of record in Nigeria⁵³ are those established pursuant to the constitution which is the Supreme law of the country. Other Courts that are established by any other Act or law are not classified as 'Superior Courts' even if they rank in the same status as those expressly established by the constitution.⁵⁴ The basis of the power of the Courts system in Nigeria is derived from Section 6 of the constitution. In Nigeria there is no special superior Court of Record with exclusive jurisdiction to hear and determine environmental cases⁵⁵ the existing State High Courts, and Federal High Court (FHC) have jurisdiction in matters relating to environmental cases. FHC has the jurisdiction to hear environmental cases as it affects the federal government while the State High Courts hear those environmental cases which are directly within the purview of the State High Court. The jurisdiction of Courts is however determined by the statute providing for the offense or establishing the Court. In Cross-River State, there exist at the Magistrate Court level certain Courts known as environmental Courts. On detailed investigation, the Court is not any special creation of law for that purpose but merely so designated by the Chief Judge of Cross River State. They merely exercise criminal jurisdiction over those who are brought before it for breaching environmental sanitation exercise and other sanitation regulations of the State.⁵⁶ These environmental cases heard in the regular Courts with crowded cause list suffer delay. Only a Court which is established through its in house technical and scientific personnel with a clear understanding of the issue that would be better placed to resolve the disputes. As noted by scholars a Court that is constituted with judges that are knowledgeable in environmental law and science would most likely show a better appreciation and understanding of issues in dispute between the parties and this would also obviate, to some degree the 'cast on stone' requirement of expert evidence to prove damages as always in the case of evidential litigation in Nigerian Courts.⁵⁷

Many of those saddled with the responsibility to adjudicate over environmental cases are not vast in environmental law. Unlike specialized Courts dealing with trade disputes where the judges must have labour law background.

Proof of Environmental Damage by Expert Evidence

The scientific proof also serves as a major disincentive to the attitude of both Courts and the prosecutors. Environmental and sanitation offenses may sometimes involve horrendous damages by the polluters sometimes quite a good number of the damages are difficult to ascertain and prove for the purpose of paying fair and adequate compensation to pollution victims. This could be as a result of the high financial burden often experienced by some victims in procuring the services of scientific expert witnesses to prove their cases even when they could rely on the Latin Maxim Res Ipsa Loquitur⁵⁸

Judicial corruption: The Black's law dictionary did not define the expression, judicial corruption but it merely defines the word corruption as "Depravity, perversion or taint, an impairment of integrity, virtue or moral principle, especially an impairment of a public officials' duties by bribery. It therefore indicates impurity, or debasement or gross impropriety⁵⁹. This may occur where a judge or Magistrate may allow or exclude evidence with

the aid of justifying the acquittal or guilt of a defendant of high political or social status or declining to assign liability against environmental offenders, even when they are found liable. It also includes the deliberate disappearance of case files or documents in the case for a price⁶⁰

Executive Interference with the Independence of the Judiciary.

The judiciary is an organic institution that operate far from the Executive influence, the legislature and from private or partisan interest. There are various ways of encumbering judicial independence, it could be in the form of financial starvation, transferring judges punitively, appointment of judges who can be influenced by them. Manipulation of the judiciary especially in cases of trans- National corporations which causes the majority of the pollution. This serves as a chilling effect on the enthusiasm of both the prosecutors and the Court as their actions are misinterpreted as an indirect action.

Taking the overall picture of the environment into consideration, the quality of the environment has deteriorated, is deteriorating and will continue to deteriorate unless, there is effective enforcement of Court decisions in environmental matters. It does not matter whether they are out of Court settlements or outright judgments handed down by Courts. The rule of law is symbolized in the image of a blindfolded maiden holding aloft evenly balanced scale. It embodies the principles of equally before the law, not even the government is exempted from this, equal treatment before the law by the Government and the governed as well as the independence of the judiciary and transparency and accountability in the administration of justice will help the Courts maintain sanity.

The issue of locus standi is one of the most frustrating factors inhibiting environmental litigation in Nigeria. Locu standi is the legal right of an individual or group to bring a case before a Court or other judicial body. In the context of environmental justice in Nigeria locus standi refers to the ability of an individual or group to bring a case before Court that pertains to environmental damage or harm caused to them or the community they belong to⁶¹ Locus standi does not always depend on the success or merit of a case, but on whether the plaintiff has sufficient interest in the subject matter of the dispute, it has been slated as one of the indices of challenge because the procedural limitations it often imposes on litigation involves environmental offences in Courts. Absence of such standing may render an environmental suit most incompetent before the Court and the suit may be liable to be struck down. In the past, this procedural restrictions imposed by the concept was observed very strictly to the extent that litigants and legal critics called for its liberalization. The cases of *Adediran v. Interland*,⁶² and *Senator Abraham Adesanya v. The President of Federal Republic of Nigeria* ⁶³ were said to have represented the antiquated restrictive application and interpretation of the concept by the Supreme Court of Nigeria and for years it remained an insurmountable challenge. But in *Chief Gani Fawehinmi v. Akilu*,⁶⁴ the Supreme Court jettisoned the tendency towards the restrictive application of the concept and adopted a more liberal, enlarged and progressive application of the concept. It is settled that under the principle of stare decisis, all the lower Courts in Nigeria are bound by this decision. But the challenge to be contended with is the orientation of some lower Court judges in the application of the concepts, especially those who never studied environmental law as an elective course in the university and hence may not be well aware of

the emerging trend. This emerging trend transcends the borders of Nigeria as some decided cases have shown. In the Indian case of *S.P.Gupta v. Union of India*,⁶⁵ the India Supreme Court prescribed the modern rule on standing thus:

Where a legal wrong or legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically in disadvantaged position, unable to approach the Court for relief, any member of the Public can maintain an application for an appropriate direction, order or writ, in the High Court....⁶⁶

The Nigerian Courts have developed a rubber stamp syndrome of 'give me an authority' for that submission and have become inactive in creating such precedents.⁶⁷ It is further observed that the legal training in Nigeria does not take into account the realities of the scientific world in which the legal practitioners have to operate. The lawyers and judges are both marooned, the resultant effect is that neither judge nor the lawyers as well as the victims are in position to appreciate the cause, effect and remedy from the sophisticated scientific questions they need to resolve. Thus they seek shelter in technical rules of procedure while sacrificing substantial justice on alter of their inadequacies. This in most cases causes environmental litigation to face the dilemma of whether it would be appropriate or cumbersome to initiate it in domestic Courts in Nigeria or in foreign Courts especially in relation to offenses committed by multi-national companies overseas. It also appears that because of the fact that the Nigerian Tort regime is not litigant friendly, the emerging trend is for environmental litigants or victims to approach foreign Courts for redress.⁶⁸

If Nigeria is desirous of growing its environmental and sanitation litigation laws it is encouraged to fashion out distinct rules of procedure to govern the environmental litigation process different from the regular civil and criminal procedure rules currently in use. This will give the environmental Court an identity of its own.

Delay in Administration of Justice

There are unnecessary delays associated with the prosecution of cases in our Courts. Polluting agencies often employ delay tactics to sap the patience and resource of plaintiff with the hope of eventually making him abandon the suit or at least delay justice.⁶⁹ The resultant effect is that justice is delayed and often times denied as most litigants complain about incessant delays and some seem to have lost hope in the judiciary because of its delays.⁷⁰

Derri stated that a number of reasons give rise to this delay. This includes:

a. Lawyers writing letters of Adjournments of cases

Inability of judges to deliver judgments on time, indiscriminate public holidays and rule that once a judge is transferred and a new one takes over, a case has to start de novo. Although this rule is well intended but has become a factor contributing to delay of trial of cases, no doubt that delay has greatly eroded public confidence in the judicial process and it has also

undermined the very existence of our Courts. This is in spite of the fact that speedy trial is guaranteed by Section 36(1) of the Constitution of the Federal Republic of Nigeria

CONCLUSION

The article emphasizes the protection and preservation of the environment which is now of crucial importance to the health and well-being of the present and future generations. The National Assembly is clothed with power to make laws to protect and enforce the observance of the fundamental objectives and principles contained in chapter 2 of the 1999 constitution; the State shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria.

Recommendations

1. A major environmental enforcement challenge comes from the overriding importance of promoting public awareness and environmental education to this end a multifaceted approach through mass enlightenment and grass root street to street campaign, public lectures at motor parks, markets and schools is necessary to properly educate the citizens of the enormous health benefits of keeping the environment clean while leveraging on the waste to wealth opportunities available to the government
2. There should be provided by the government one incinerator in each of the local governments, to be sited in a location accepted by the local government to cater for the waste generated within the local government concerned.
3. To drive down the importance of compliance, the public should be made to participate in the process of formulating environmental policies, while there should be introduced a cleanliness competition with prize attached, for the cleanest town and street bi annually. This will act as a catalyst to achieving a clean environment by boosting the peoples' morale.
4. The working relationship between the various environmental agencies should be synchronized, the various laws dealing with the environmental sanitation should be harmonized and roles of the various agencies and environmental enforcement departments clearly spelt out and assigned to avoid conflict and ensure effective communication with the general public. This will ensure effective monitoring of environmental performance, compliance, and growth through effective monitoring, evaluation and reporting.

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