



Sustainable Environmental Management in Nigeria

second edition

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Legal and Regulatory Reforms to Enhance the Nigerian Environment

John O.A. Akintayo and Bukola R. Akinbola

Recent events around the world have made humans more conscious of the environment in which they live. Since the environment is not subject to human command, attention must focus on how to use the instrumentality of the law, a potent weapon of social control, to regulate human activities that abuse the environment and unleash devastating consequences on the entire ecosystem. This work is a survey of efforts at enhancing the quality of life in Nigeria viewed from the prism of environmental law. It highlights constitutional provisions, statutory enactments and institutional framework, and judicial remedies that seek to protect the environment. The work also offers useful suggestions on how to ameliorate the deplorable environmental situation in Nigeria by improved enforcement of extant laws, efficient coordination of relevant government agencies, effective utilization of delegated legislative authority, reform of the legal landscape by conferment of statutory standing to sue in environment-related cases and the recognition of the right to a healthy environment as a constitutional right.

Introduction

"The environment is where we all live in and the law is what we live in and by." The above statement introduces two very important concepts which are crucial to our discussion in this chapter: environment and law. It is perhaps easier to comprehend and therefore accept without hesitation the first aspect of the statement which is a matter of fact and which appears to be apparent to all. The second aspect requires some elucidation. It was Ronald Dworkin

(1987: vii) who wrote: "We live in and by the law. It makes us what we are: citizens and employees and doctors and spouses and people who own things. It is a sword, shield and menace: we insist on our wage, or refuse to pay our rent, or are forced to forfeit penalties, or are closed up in jail, all in the name of what our abstract and ethereal sovereign, the law, has decreed." He continued "We are subjects of law's empire, liegemen to its methods and ideals, bound in spirit while we debate what we must therefore do." We may probably conclude from the above by saying that humanity is placed under two sovereigns. The first sovereign is the physical sovereign, the environment; the other is the abstract sovereign, which is the law.

Recent events around the world have made humans more conscious of the environment in which they live. Conditions which had hitherto been taken for granted are no longer stable. Media reportage now devotes considerable attention to issues of the environment and the challenges of one form of environmental devastation or the other. It is either some section of the globe is being plunged into one form of environmental challenge or is struggling to come out of another and recovering albeit very slowly. As politicians make concern for the environmental part of their agenda, governments are increasingly being judged by their responses to grave humanitarian crises occasioned by adverse weather conditions. There is progressive realization of the need for caution in the attempt to re-order the course of nature in order to satisfy human quest for energy. However, it is widely acknowledged that the law remains a most potent weapon to check human adventures that exacerbate a precarious situation.

Clarification of concepts

Law and environmental law

It is easier to describe law than to define it. Many of the attempts to provide a universally acceptable definition of law have been met with considerable difficulties and little success. Elias (1956: 37-55), described the law of a given community as "the body of rules regulating human conduct regarded as obligatory or binding by its members." The above broad definition can be applied to specific branches of the law and this is what Burnett-Hall (1995: vii) has done by defining environmental law as "the body of laws concerned with the protection of living things (including humans) from the harm that human activity may immediately or eventually, cause to them or their

species, either directly or to the media and the habitats on which they depend." According to Thornton and Beckwith (1997: 2), the body of laws to which the label 'environmental' has been attached is concerned with protecting the natural resources of land, air and water (the 'three environmental media') and the flora and fauna which inhabit them." The above definitions of environmental law are to be preferred to that offered by McEldowney and McEldowney (1996: 3) as "the various laws that are applied to the environment" because the latter definition failed to take note of the point made by Ball and Bell (1994: 5) that environmental law "is not about all those laws which 'relate to' the environment, since that...could cover virtually anything" but "those laws and practices which have as their object or effect the protection of the environment." Amokaye (2004: 3) captured the essence of the wide subject of environmental law when he described it as the legal platform upon which the environment could be protected and natural resources conserved through the sustainable use of natural resources, pollution control measures and the integration of environmental considerations into developmental process.

The question to be asked is what is the relationship between law and the environment? The answer to this question is found by having a glimpse into the functions of law in the society. As it is apparent from the above description of law by Elias, the primary function of law is to regulate human conduct. Law is obviously not the only instrument of social control in the society as there are others like public opinion, religion and custom. Law is unique, especially within the confines of our discussion here, because its prescriptions are backed with sanctions. As an instrument of social control, law helps to maintain public order and suppress deviant behaviour. Furthermore, it facilitates co-operative action; it constitutes and regulates the principal organs of power; and it communicates, regulates and reinforces social values (Farrar & Dugdale, 1990: 4-7).

All the functions of law highlighted above can be illustrated in the field of the law relating to environmental protection. With particular reference to this branch of the law, the primary function of law is to regulate human conduct with a view to sustaining life. The right to life is incontrovertibly the most important of all fundamental rights. This is a practical matter as the enjoyment of the right to life is a condition precedent to the enjoyment of all other human rights. The stipulations of law for the

protection of the environment are in the form of duties addressed to human beings and human institutions as environmental problems by themselves cannot obey legal commands. Failure to observe these stipulations diminishes the quality of both animal and plant life, and this invariably amounts to an infringement, on the part of human beings, of the fundamental right to life.

We, however, admit that not all environmental problems are human-generated. Granted the fact that some environmental problems are occasioned by factors outside the immediate control of man, the role of law, here, is to ameliorate their impacts by preventing additional disturbances to the ecosystem that might be occasioned by the activities of man either by omission or commission. Law combines a number of techniques in environmental protection to achieve sustainable development and these include the penal technique, the administrative regulatory technique and the grievance-remedial technique. The paramount social value which law communicates, regulates and reinforces is that of the survival of the society. It has been acknowledged that a massive pollution of the environment through despoliation of land, water and the air, by industrial waste, chemicals, oil, the dumping of garbage, the indiscriminate use of pesticides and by other means threatens the very conditions of social survival (Friedmann, 1972: 199). Law is apparently the most potent weapon that can be employed to regulate human activities with a view to sustaining social survival.

Sources and scope of Nigerian environmental law

As noted above, the marriage between law and the environment has brought about the branch of the law described as environmental law. The scope of environmental law in each legal system differs as it is the case with most areas of law. With particular reference to a federal country like Nigeria, where we have federal environmental law and state environmental laws side by side, the point must be further made that with respect to matters within the legislative competence of the states of the federation, the unity of jurisprudence in the environmental laws of states can hardly be guaranteed. Apart from its municipal or domestic aspect, there is also international environmental law. The recognition that the impacts of industrial and other activities on the environment often extend beyond national boundaries, and

the need for effective control of same are the major factors that have prompted international cooperation in this area and this has found expression in many international conventions, agreements and declarations. It is of note that most of the human rights issues in environmental law are first articulated in international environmental law. This chapter will focus primarily on the domestic aspect of environmental law, and, because of the large volume of legislation in this field, only the federal enactments will be discussed.

The content of environmental law is wide and extensive. It covers subject areas like water pollution, air pollution and land degradation, noise pollution, wildlife and natural resources conservation, pest control, fishery, environmental sanitation and solid waste management, land use and planning, matters of afforestation and deforestation, desertification, among others. In most of these areas there are federal and state enactments which seek to regulate and protect the environment either directly or indirectly. A few enactments and subordinate legislation are selected to illustrate the points.

A consideration of the content of the Nigerian environmental law makes an inquiry into the sources of law in Nigeria imperative. This exercise will assist in assessing legal and regulatory reforms in this area and at the same time enable us to identify the mechanism for further reform. A source of law in the lawyer's sense is that to which someone -whether a legislator, jurist, law agent, or private individual goes to find out what the law is (Robinson, 1997: 25). This chapter highlights the principal or main sources of Nigerian law, that is, the legal sources. These are the Constitution, which is the supreme law of the land; legislation, federal and state, and primary and secondary; judicial precedents or Nigerian case law; the received English law; Islamic law and customary law. Not all the various sources of Nigerian law listed above are equally relevant to contemporary environmental law. The contribution of religion-based laws and customary law to the protection of the environment is noticeable from the angle of the conservation practices they promote. This is accentuated not by environmental objectives but traditions usually rooted in culture, myths and religion. Traditional African cultural and social practices play a dominant role in this connection (Okediran, 1996). The point being made here is that efforts to protect and enhance the environment preceded the coming of the

Europeans and the attendant establishment of colonial administration and legal system with its embedded penal technique. However, our discussion of legal and regulatory reforms to enhance the Nigerian environment shall now focus on the Constitution, legislation and Nigerian case law and it is to these that we shall now turn.

The Constitution and human rights legislation

The evolution of the environment clause in the 1999 Nigerian Constitution

The Constitution can be described as the basic or fundamental law of a state. It is usually stated to be the supreme law. The Constitution gives force and effect to every other law, be it legislation, judge-made law or customary or religious law either directly or ultimately. The Constitution cannot therefore contain all the laws in a legal system. The role of a constitution is to provide the framework for the government of a political entity and to allocate governmental functions and powers. Successive Nigerian Constitutions since independence have not paid much attention to environmental protection. Even the 1979 Nigerian Constitution which was expressed to be designed to take care of the country for 100 years failed in this respect. The explanation for this is not hard to come by. As rightly observed by Burnett-Hall (1995), it was not until the early 1980s that public concern for improved protection of the environment developed from being the preoccupation of a small minority to a popular issue. As at 1975 when the search for a new constitution began in Nigeria, the environment had not become a prominent issue at least in developing countries, including Nigeria. The writer to a work on environmental law as far back as in 1976 is quoted to have referred to the subject as "the new subject of environmental law" (Shyllon, 1989a: x). Notwithstanding the above, section 17(2) of the 1979 Constitution provided *inter alia* as part of the social objectives of the Nigerian state that in furtherance of the social order, exploitation of human or natural resources in any form whatsoever for reasons other than the good of the community, shall be prevented. This could be seen as embodying, though in a veiled and vague manner, the idea of sustainable development which had gained recognition since the Stockholm Declaration of 1972. However, by 1999, a lot had happened both on the domestic and international scenes and the question of environmental protection could not be ignored anymore in Nigeria's fundamental law. This explains why the draftsmen of the 1999

Constitution found it compelling to borrow the environment clause of the 1995 Draft Constitution which was prepared by the Constitutional Conference 1994-1995, despite the fact that the complete package was rejected. This clause is to be found in section 20 of the 1999 Nigerian Constitution which provides as follows: *The state shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria.*

The idea of including an environment clause in a nation's fundamental law is not peculiar to Nigeria. The 1992 Constitution of the Republic of Ghana, in its chapter six which deals with the Directive Principles of State Policy, as part of the social objectives of Ghana in its Article 36(7) provides:

The state shall take appropriate measures needed to protect and safeguard the national environment for posterity; and shall seek co-operation with other states and bodies for purposes of protecting the wider international environment for mankind.

The Ghanaian provisions are obviously more down to earth than the provisions of the 1999 Nigerian Constitution. In addition, it is part of the duties of a citizen of Ghana, as enumerated in Article 41 of the 1992 Constitution, to protect and safeguard the environment. However, whereas the provisions of the Nigerian and Ghanaian Constitutions are declaratory of the respective states' duty to safeguard the environment, some other constitutional documents are more explicit and committing in the express recognition of the right to a healthy environment. For instance, section 15 of the 1992 Malian Constitution provides: *Every person has a right to a healthy environment. The protection and defence of the environment and the promotion of the quality of life are a duty for all and the state.*

Section 46 of the 1992 Constitution of the Democratic Republic of Congo (DRC) provides: *Every citizen shall have the right to a satisfactory and sustainable healthy environment, and shall have the duty to defend it. The state shall supervise the protection and the conservation of the environment.*

Section 24 of the Constitution of the Republic of South Africa 1996 is more elaborate than the Malian and DRC provisions. It states as follows:

Everyone has the right - (a) to an environment that is not harmful to their health or well-being; and (b) to have the environment protected, for the benefit of present and future generations, through

reasonable legislative and other measures that – (I) prevent pollution and ecological degradation; (ii) promote conservation; and (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

The significance of enshrining environmental rights in national constitutions has been highlighted by Ogolla (1995: 412-4) who said that:

The constitution of a country constitutes the first and primary level in its hierarchy of norms. Constitutional provisions, inter alia, underline national priorities and hence determine the direction and nature of future legislative policies and executive actions. The elevation of environmental concerns to constitutional status in these countries has no doubt enhanced the priority to be accorded by government on sound environmental management and sustainable development.

The introduction of the environment clause into the 1999 Nigerian Constitution can be said to be a major reform in the quest towards enhancing the Nigerian environment though the expectation of Nigerian environmentalists has not been fully realized in view of the fact that the Constitution has not given recognition to the right to a good and healthy environment as a fundamental right. There is no provision in the 1999 Nigerian Constitution close to the Malian, the DRC or the South African provisions above or Article 1 of the General Principles concerning Natural Resources and Environmental Interferences which states, *inter alia*, that *All human beings have the fundamental right to an environment adequate for their health and well-being.* (Munro & Lammers, 1986: 38).

Another objection is the fluid character of chapter II obligations that no government in Nigeria can be sued for failing to perform its obligations on the basis of the provisions of chapter II of the Constitution. Thirdly, the Constitution fails to list environmental protection or the environment expressly as a substantive item in either of the legislative lists, especially the concurrent legislative list, suggesting that it is an incidental or ancillary matter. Akanle (1991: 29) has presented the two sides to this argument on the basis of the earlier provisions of the 1979 Nigerian Constitution though we cannot gloss over the important distinction of the novel provisions of

section 20 of the 1999 Nigerian Constitution in Nigeria's constitutional jurisprudence. According to him: It may be argued that environmental laws cannot be a substantive legislative subject being a law aimed at controlling man's inactiveness which may have some deleterious impact on the environment and that it can only be incidental to the activities being regulated. On the other hand, the consequences of man's activities in relation to the environment have, in recent times, assumed great dimensions that it may be argued that to effectively deal with the problem, environmental regulation ought to be accorded the status of a substantive legislative subject.

Were the above provisions of Section 20 of the 1999 Nigerian Constitution to feature in any other place in the Constitution then a legally enforceable obligation would have been imposed on all tiers of government. But regrettably, the lofty provisions of Section 20 come within the ambit of chapter II of the Constitution which is on Fundamental Objectives and Directive Principles of State Policy. The provisions contained in this chapter of the Constitution are not justiciable except other specific provisions of the Constitution outside chapter II equally entrench them. The breach of the provisions of Section 20 cannot on their own form the basis for the assertion of environmental right which the courts can recognize and enforce. A liberal interpretation of the constitution will admit environmental pollution which results in health problems and nuisance as a violation of the constitutional provisions which guarantee the right to life, the right to human dignity and the right to privacy (Rostron, 2001: 24-29).

The 1999 Nigerian Constitution was altered three times between July 2010 and April 2011. Regrettably, a democratically elected legislature did not consider it necessary to upgrade the environment clause to the level of a justiciable right. The significance of a constitutionally guaranteed right to a healthy environment cannot be over-emphasized for the protection of the environment in a developing country like Nigeria.

Judicial interpretation of Section 20 of the 1999 Nigerian Constitution

The provisions of section 20 of the 1999 Constitution came for judicial interpretation in the case of *Attorney General Lagos State v. Attorney-General of the Federation & Ors.* [2003]. Kalgó JSC in his concurring judgment at pages 177-179 noted *inter alia* that the main object of Section 20 is to protect the

external surroundings of the people and ensure that they live in a safe and secure atmosphere free from any danger to their health or other conveniences. According to his Lordship, the provisions of the section do not give the National Assembly the power to legislate on planning and development control over land in the states or local governments.

The plaintiff, the Government of Lagos State, instituted this action against the federal government to protest the interference of the federal government and its incursions into the arrangements made by the Lagos State Government in town and country planning. The plaintiff contended that the action of the federal government was predicated on the Urban and Regional Planning Act (Decree No. 88 of 1992) whereas the state had its own town and country planning laws which include the Building Lines Regulation Law of 1936, now Cap 16 Laws of Lagos State 1994; the Land Development (Provision for Roads) Law, Cap 110 and the Town and Country Planning Law, Cap 188. The plaintiff's first and perhaps the principal relief was a declaration that by virtue of the provisions of Sections 4 and 5 of the 1999 Nigerian Constitution, Urban and Regional Planning as well as physical development is a residual matter within the exclusive legislative competence of the states.

The Supreme Court by a bare majority of 4 to 3 granted the plaintiff's relief in part. The Supreme Court noted the close relationship between environmental laws and country planning laws, but was not unanimous as to the exact place of planning and physical development control of land in the legislative list.

It is submitted that the majority of the Supreme Court took a restrictive view of the expression "environment" in coming to the conclusion that town and regional planning is a residual matter under the Constitution. There is considerable weight in the concurring minority opinion that there are several aspects to urban and regional planning and that the objection to the use of planning laws by the federation as an instrument of protection of the environment is informed by a narrow view of planning laws. The dissenting opinion was categorical that town planning and physical development is not a residual matter but a matter under the concurrent legislative list.

A cardinal feature of federalism is the allocation of legislative responsibilities between the federal or central government and the

governments of the constituent units, which in Nigeria are known as states. The technique of division of powers entrenched in the Constitution of the Federal Republic of Nigeria 1999, as it is the case with the previous 1979 Constitution, entails the existence of two lists; the exclusive legislative list (ELL) and the concurrent legislative list (CLL). The ELL sets out items in respect of which only the National Assembly can by virtue of Sections 4(2) & (3) of the Constitution validly legislate. A cursory look at the ELL brings out the following substantive items particularly relevant to environmental matters:

Item 29: Fishing and fisheries other than fishing and fisheries in rivers, lakes, waterways, ponds and other inland waters within Nigeria

Item 36: Maritime shipping and navigation, including-
shipping and navigation in tidal waters;
shipping and navigation on the River Niger and its effluents and on any such other inland waterways as may be designated by the National Assembly to be an international waterway or to be an inter-state waterway;
lighthouses, lightships, beacons and other provisions for the safety of shipping and navigation:
such ports as may be declared by the National Assembly to be federal ports (including the constitution and powers of port authorities for federal ports).

Item 39: Mines and minerals, including oil fields, oil mining, geological surveys and natural gas.

Item 64: Water from such sources as may be declared by the National Assembly to be sources affecting more than one state.

In the above areas the National Assembly is empowered to make laws to the exclusion of Houses of Assembly of states. Though such laws are usually expressed to have force throughout the nation, the reality is that the practical application of these laws is confined to parts of the federation where the activities envisaged are carried on. Both the National Assembly and the state legislative houses, the Houses of Assembly, may, by Section 4 (4), (6) & (7), make laws in respect of items within the CLL within the narrow confines of the specific provisions of each item. The Constitution provides further in

Section 4(5) that if any law enacted by the House of Assembly of a state is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail and that other law shall to the extent of the inconsistency be void.

However, since Section 13 of the 1999 Constitution enjoins all organs of government and all authorities and persons exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of Chapter II of the Constitution, a duty, albeit a non-constitutional duty, is imposed on the legislative and executive arms of government at all levels to make legislation and regulations respectively for the protection of the Nigerian environment. It is submitted that though the provisions of Chapter II of the Constitution cannot be used as a sword, i.e., as a cause of action, against an organ of government, they can rightly be employed as a shield, i.e., a defence by the state especially the federal government. It seems any act, including legislative acts, done in pursuance of conforming to, observing and applying the provisions of Chapter II cannot be easily impeached even though it is not expressly mentioned in the CLL, once it is not expressly prohibited. Nwabueze (1983: 81) has rightly opined that the power to make law for the maintenance and the securing of public order and public safety contained in section 11 of the Constitution necessarily implies the power to make law for the prevention of danger to the safety of the community arising from natural concerns such as disaster caused by flood, earthquake, tornado, drought or for human activities for example, widespread fire, oil spillage from a refinery or from mining operation.

From the above, it is apparent that both the federal government and the state governments are obliged to take steps to ensure the progressive realization of the lofty objectives of chapter II within the respective scope of their legislative competence. This obligation becomes particularly important in view of the deleterious effect of the failure or neglect to take appropriate steps in matters affecting the environment. Protection and improvement or enhancement of the environment in the specific areas specified by the Constitution (water, air, land, forest and wildlife), which are by no means exhaustive, go beyond mere environmental sanitation or hygiene which is the primary focus of first generation environmental legislation in Nigeria as we shall observe presently.

Though the provisions of Chapter II of the 1999 Nigerian Constitution as pointed out earlier are not justiciable, in circumstances where an organ of government, particularly the legislature, has committed the government to a course of action by making a law pursuant to its provisions, it is submitted that an action may lie against such organ or any other organ or authority of government entrusted with duties under the appropriate legislation for breach of the statutory duties so conferred. The usual procedure under the general law, and not the special procedure for the enforcement of fundamental rights under the Constitution, is to be invoked in this case.

African Charter of Human and Peoples' Rights Cap. A9, Laws of the Federation of Nigeria 2004

Another source of substantive human rights provisions in Nigeria is the African Charter of Human and Peoples' Rights which was enacted into law by the African Charter of Human and Peoples' Rights (Enforcement and Ratification) Act, Cap A9, Laws of the Federation of Nigeria 2004. Article 24 of the African Charter of Human and Peoples' Rights provides that *All peoples shall have the right to a general satisfactory environment favourable to their development.*

The Supreme Court of Nigeria in the case of *Abacha & Ors v. Fawehinmi* [2000] held that the provisions of the African Charter are justiciable for as long as the Act incorporating same, *i.e.*, the African Charter of Human and Peoples' Rights (Enforcement and Ratification) Act, is not abrogated. It has been argued that the language of the African Charter reflects a general focus on collective economic and social conditions rather than on individual right (Worika, 2002: 316). The Supreme Court has not pronounced on the nature and scope of the right guaranteed in Article 24 of the African Charter but at the appropriate time the apex court shall hopefully draw inspiration from the decision of the African Commission on the complaint brought before the Commission by two NGOs, the Social and Economic Rights Action Centre (SERAC) and the Centre for Economic and Social Rights (CESR) based in Nigeria and the USA, respectively, on behalf of the Niger Delta people of Nigeria (specifically the Ogoni people) in whose area Nigeria exploits its vast oil resources. This case is otherwise known as *SERAC v. Nigeria* (Communication 155/96 Fifteenth Annual Activity Report). The gravamen of the complaint was that the Nigerian government,

through its involvement in the exploitation of the Niger Delta, contributed both directly and indirectly to gross violations of the rights of the Ogoni people. The Commission found Nigeria to be in violation of the right to a clean environment under Articles 16 and 24 of the Charter. The statement of the Commission is instructive:

The right to a general satisfactory environment, as guaranteed under article 24 of the African Charter or the right to a healthy environment, as it is widely known...imposes clear obligations upon a government. It requires the state to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources. Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESR) to which Nigeria is a party, requires governments to take necessary steps for the improvement of all aspects of environmental and industrial hygiene. The right to enjoy the best attainable state of physical and mental health enunciated in article 16(1) of the African Charter and the right to a general satisfactory environment favourable to development (article 16(3))...oblige governments to desist from directly threatening the health and the environment of their citizens.

The question of reconciling the competing interests between economic development and protection of the environment has been the central theme of the concept of sustainable development which has been said to involve the successful integration of environmental considerations into development management (Maconick, 1990:44). In the words of Morne van der Linde and Lirette Louw (2003), the African Commission in *SERAC v. Nigeria*, gave clarity on the fact that although it can be balanced against development, the right to a satisfactory environment will not necessarily take a back seat if it impacts negatively on economic development.

Ebeku (2003) after a review of the decision predicted that the above decision will ultimately influence the decisions of Nigerian domestic judges and his prediction has been confirmed. In a judgment delivered on 14 November 2005, in the case of *Jonah Gbemre & ors. v. Shell Petroleum Dev. Co. Nig. Ltd*,

NNPC & A.G. Federation, (Suit No. FHC/B/CS/53/05), Hon. Justice C.V. Nworiokorie of the High Court No. 3, Benin City, Edo State, while giving judgment in favour of the plaintiffs in pollution case declared that –

... the constitutionally guaranteed fundamental rights to life and dignity of human person provided in sections 33(1) and 34(1) of the Constitution of the Federal Republic of Nigeria, 1999 and reinforced by Arts 4, 16 and 24 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, Cap. A9, Vol. 1, Laws of the Federation of Nigeria, 2004 inevitably include the right to clean poison-free, pollution-free and healthy environment.

This is a welcome pronouncement which we hope the Supreme Court will endorse when an opportunity is presented to it.

Legislation

Stages in the development of environmental legislation

It is observed that there are three stages in the evolution of environmental law or environmental legislation in Nigeria. The first stage could be termed the era of environmental sanitation laws; the second was the period of petroleum-based environmental laws; and the third stage is that of broad-based environmental legislation.

The first era coincided with the colonial and immediate post-independence period. The perceived environmental problems which were targeted for control and management were principally in the area of domestic waste management. Regulated policy on issues like forest conservation capable of achieving sustainable development did not exist. There was also no legal mechanism in place to check the emerging environmental problems which were due largely to the economic activities of the colonial powers. (Atsegbua et al, 2004: 4). Enactments of the first era are mostly found in the public health laws, the criminal and penal codes, and other enactments including local government bye-laws made pursuant to the public health laws and other pieces of legislation dealing with specific subjects. The basic provisions of this era, however, are to be found in primary legislation. The penal technique is the underlying philosophy of enactments of this era. With the introduction of the English common law into most parts of Nigeria towards the end of the 19th century, the rules of

the common law for the protection of the environment, in form of the common law of negligence, nuisance and the rule in *Rylands v. Fletcher* (1866) were invariably received into Nigeria. The object of the law of tort, being part of the civil law and not criminal law, is to compensate the party who has suffered injury, and not primarily to impose punishment in form of imprisonment or fines on a wrongdoer. The British system of indirect rule for its effective operation entailed a system of separate residential accommodation for native Africans and the British administrative officers and this was rigidly maintained. This phenomenon has had its impact on the enforcement of environmental legislation and the internalization of certain environmental values. With the sparse population of the emerging urban areas, the problem of waste management which has now become serious was not particularly acute. There was therefore little or no need for the common law of nuisance.

The Public Health Ordinance, embodying statutory nuisance, was made in the early part of the 20th century. The public health law, which is currently in force in Oyo, Osun, Ogun, Ondo and Ekiti states, commenced on 1st August 1957. The public health law confers wide powers on the local government and medical officers of health in relation to abatement of nuisance, notifiable infectious diseases, sale of food, vaccination, sanitation and housing, among others. Now, the provisions of the public health law exist side by side with the provisions of the environmental protection agency laws of each state whose coverage include similar issues but with heavier punishments. (Ishola and Akintayo, 1999)

The development of environmental sanitation laws in Nigeria is borne out of the experience of Britain, Nigeria's colonial master. As Burnett (1995: 1-3) observed, the environmental law of the 19th century Britain was motivated not by the desire to protect and conserve the environment in the sense of the 20th century *green movement* but rather emerged (out of necessity) to temper the insanitary living conditions of a rapidly urbanising nation facing crisis. This philosophy has informed the enactment of the public health laws.

The second era of petroleum-based environmental legislation employs both the legislative and regulatory techniques. The primary legislation is concerned essentially with general standards; they are mainly a framework legislation. The bulk of legislation dealing with the protection

of the environment is to be found in regulations made pursuant to the primary legislation. Some schemes of prevention are put in place by regulations but in the main, breaches of legal provisions are attended by imposition of fines or imprisonment on conviction. The challenge of this era was how to reconcile the desire for rapid industrial development with adequate protection of the environment. Almost all industrialized nations of the world had contended with this; it was not a new phenomenon. It was not until towards the end of the 20th century, when the consequences of past failure to ensure sustainable development became obvious, that the need for protective action became more widely recognized (Burnett-Hall, 1995).

The World Bank places premium on the achievement of sustainable development. It has articulated the view that the goal of sustained and healthy economic growth inherently requires careful attention to the environment. In view of the fact that developing countries can ill afford an expensive curative approach to environmental degradation, the Bank's recommendation is for the adoption of what Lee (1985: 5) has described as the more efficient approach of preventive management which places emphasis on building measures into project planning and design.

The promulgation of the Federal Environmental Protection Agency Decree in 1988 marked the beginning of the third era in environmental legislation. This combines both the legislative and regulatory techniques in fairly similar terms. The Supreme Court in *Attorney General Lagos State v. Attorney-General of the Federation & Ors.* (2003) observed that the primary aim of the federal government in seeking to protect and develop the environment can be garnered from the FEPA Act it promulgated. The perception of the environment in this era is much broader than in the previous eras. There are stages within this era which are marked by landmark developments in legislation or institutional frameworks for the protection of the environment, but they amount to a redecoration rather than building an entirely new edifice. The punishments here are mostly punitive and in addition to fines and imprisonment, the obligation to repair or restore the environment to its original state is imposed. Furthermore, a scheme of compensation to those who are victims of breach of provisions which aim at protecting the environment is also sanctioned by statutes.

Notwithstanding the fact that Nigeria is in the third era of development of environmental legislation, the basic problems presented in

the first era are yet to be surmounted. The perception of environmental law in Nigeria within the narrow confines of sanitation laws is still very much real despite the fact that environmental law has expanded beyond this narrow area. It must be acknowledged that in Nigeria we do not seem to be making much progress in the basic area of environmental sanitation as our streets are lined with filth, drains are blocked with rubbish and heaps of garbage have narrowed down the width of our roads creating further problems of congestion. There is palpable failure of public facilities for contending with this basic aspect of public health. Nigeria is obviously dirtier today than it was the case twenty-five years ago. The setting aside of a day in the month for environmental sanitation, which was abolished in the late 1990s, has been revisited. Some state governments are contemplating reintroducing the house to house sanitary inspectors, not minding the overzealousness of the officers coupled with abuse of power and invasion of private rights of citizens which were some of the factors that informed the abolition of this scheme. Basic public facilities that enhance environmental cleanliness like availability of pipe borne water, stable electricity and adequate waste disposal system have either broken down or are in a state of decline.

Even though we are still grappling with the basic environmental problems that affect our health in Nigeria, we already have statutes to address environmental pollution and degradation. These statutes are in three broad categories, for convenience. In the first category are general enactments. In the second category we have petroleum or mineral oil enactments and the third category contains conservation laws.

General Enactments

a. *National Environmental Standards and Regulations Enforcement Agency (Establishment) Act (No. 25 of 2007).*

The National Environmental Standards and Regulations Enforcement Agency (NESREA) Act came into force on 30th July 2007. The NESREA Act has repealed the Federal Environmental Protection Agency Act, a Decree promulgated by the federal military government in 1988. Before its repeal, the FEPA Act was *the statutory threshold of a national policy on environmental protection in Nigeria* (Okorodudu-Fubara, 1998: 168). The development, which led to the birth of FEPA, has been a subject of profound academic

discussion and we do not intend to revisit this issue (Aina & Akindipe, 1991). However, it must be noted that the establishment of FEPA in 1988 marked an important turning point in the development of environmental law in Nigeria. It was the first time Nigeria rose up to address the issue of environmental protection on a scientific basis with determination and courage.

However, the NESREA Act has re-enacted some of the provisions of the repealed FEPA Act to the extent that one may describe it as a rehash of the earlier legislation (Akeredolu, 2010). What seems apparent is the realization that a national agency should concentrate more on standard setting rather than direct enforcement of environmental rules and regulations. NESREA is endowed with considerable subordinate legislative authority which it can effectively employ to raise the quality of the environment in Nigeria. The NESREA Act defines *environment* to include *water, air, land, and all plants and human beings or animals therein and inter-relationships which exist among these or any of them* (Section 37). There are specific provisions that empower NESREA to make regulations setting specifications and standards to protect and enhance the quality of Nigeria's air resources (Section 20); make regulations on noise, emission, control and abatement (Section 22); make regulations on water quality (Section 23); make regulations on effluent limitations (Section 24 (3)); make regulations on environmental sanitation (Section 25); and make regulations, guidelines and standards for the protection and enhancement of the quality of land resources, natural watershed, coastal zone, dams and reservoirs including the prevention of flood and erosion (Section 26). The primary purpose of these regulations is to promote, protect and preserve human, animal, marine and plant life. Within this framework, however, the NESREA Act gives prominent attention to public health and welfare above other considerations.

The NESREA Act represents the first major attempt by a democratically elected legislature to enact broad-based environment legislation. It emerged after a broad-based consultation and democratic input by major stakeholders. A provision which underscores the political milieu under which the NESREA Act was made is section 30(1)(a) which imposes the requirement of obtaining a court warrant on an officer of NESREA before the officer can enter and search any premises at all times for the purpose of conducting inspection, searching and taking samples for

analysis which he reasonably believes carries out activities or stores goods which contravene environmental standards or legislation. This requirement will help to checkmate possible abuse of powers by the officers of the agency and enhance the protection of the human rights of owners of the search target.

The essence of the NESREA Act is to improve upon and achieve a better level of environmental regulation through legislation. To this end Section 2 captures the mandate of NESREA as an agency with

responsibility for the protection and development of the environment, biodiversity conservation and sustainable development of Nigeria's natural resources in general and environmental technology, including coordination and liaison with relevant stakeholders within and outside Nigeria on matters of enforcement of environmental standards, regulations, rules, laws, policies and guidelines.

The NESREA Act combines effectively the regulatory, administrative and penal techniques to achieve the objective of the Agency. It empowers the Agency to protect, monitor air quality, water resources, control noise pollution and effluent levels and to prevent the discharge of hazardous substances in all areas and industries. The Act establishes, in addition to the Governing Council of the Agency, five Directorates; namely, Directorates of Administration and Finance; Planning and Policy Analysis; Inspection and Enforcement; Environmental Quality Control; and Legal Services

In terms of machinery to secure compliance, the Act also adopts the usual style of setting out penalties in sections 20 - 28. The Act distinguishes the weight of penalties between the case of a private person and corporate bodies, especially from the perspective of multinational and other companies. Unfortunately, the NESREA Act excludes the Agency from exercising jurisdiction over the field of petroleum operations and flaring of gas (which is dangerous to both human health and environment) (section 7 (g), (h), (j), (k), (l) and & section 8 (g), (k), (l), (m), (n), (s)) While it is acknowledged that there are specific enactments for the petroleum and gas sector, NESREA ought to have jurisdiction over aspects of the sector that directly affect health, like air and water quality and land degradation to ensure a holistic approach to managing environmental issues and to achieve

more effective control over oil and gas pollution which is most rampant in the Niger Delta region.

NESREA Act has improved significantly on the adequacy of sanctions for various offences. It provides for various offences and appropriate penalties (Sections 20-28). The penalty sections are linked to the specific powers of NESREA to set standards and make regulations and guidelines. The penalties are significantly above the punishments prescribed by equivalent provisions of the criminal and penal codes. They are, considering the devastation and the financial strength of the corporate bodies involved, more realistic than the position under the repealed FEPA Act. The imposition of substantial daily accumulation of penalties for the continuing violation makes the NESREA Act more punitive. There is also a tilt towards the imposition of financial penalties as against longer jail terms. For instance, the repealed FEPA Act provided for a fine of one hundred thousand naira (₦100,000) or a term of imprisonment not exceeding 10 years for the offence of unauthorized discharge of hazardous substances. A similar offence under the NESREA Act attracts a fine of one million naira (₦1,000,000) or a term of imprisonment not exceeding five years. Where the offender is a corporate body, it shall be liable to a fine not exceeding ₦1,000,000 and an additional fine of ₦50,000 for every day the offence subsists. The NESREA Act further provides for the "lifting of the veil" to hold individuals in control of corporate bodies liable in the case of a corporate offender (Section 27 (1) and (4)). The NESREA Act has provided for speedier dispensation of justice by providing for the establishment of "a mobile court system" (Section 8(f)). This is a welcome development at the national level presumably based on the successful operation of the mobile court system to try environmental sanitation offenders under state laws. If properly utilized, the mobile court system will enhance the visibility of the judicial process by bringing environmental justice nearer to the average citizen. It will also strengthen the capacity of the law to deter would-be offenders, make environmental protection more effective, and on the whole, contribute to a more robust environmental jurisprudence.

The NESREA Act also demonstrates the significance of collaboration among relevant regulatory bodies and charges NESREA with the responsibility to facilitate the required cooperation. NESREA has a statutory

duty to consult and collaborate before making appropriate instruments in some aspects of environmental protection (Sections 2, 8(6) and 23).

The NESREA Act has the potentials of effectively assisting in maintaining a successful optimal environmental equilibrium within the general environment in Nigeria. The utility of this Act lies in NESREA's ability to exercise its power to make appropriate subsidiary legislation and enforce their provisions. To achieve its objectives NESREA must collaborate with relevant stakeholders. Notwithstanding the administrative structure of NESREA that requires it to establish offices in the six geo-political zones of the country, effective enforcement of environmental laws, standards and guidelines requires the cooperation of state ministries of environment, environmental protection agencies, research institutions, non-governmental organizations and professional associations.

Harmful Waste (Special Criminal Provisions, etc) Act, Cap. H1 LFN 2004

The Koko (Nigeria) toxic waste incident which involved the illegal dumping of tons of radioactive wastes, encased in several containers, drums and even polythene bags into the little port of Koko provided the impetus needed to promulgate Nigeria's first broad-based environmental legislation, the FEPA Decree of 1988. The ensuing investigations revealed that the wastes came from Pisa in Italy (Ikhariale, 1989). However, the immediate legislative reaction to the Koko toxic waste was the Harmful Waste (Special Criminal Provisions, etc) Decree No. 42 of 1988.

This Act as noted in the judgment of Uwaifo JSC at p. 95 in *Attorney-General Lagos State v. Attorney-General Federation and Ors* [2003] is "obviously meant to protect the environment, and particularly to safeguard land and territorial waters." Despite its short title, this Act provides for both criminal liability and civil liability. Section 1(2) of the Act, the principal criminal provision, states:

As from the commencement of this Act, any person who, without lawful authority-

- (a) carries, deposits, dumps or causes to be carried, deposited, or dumped, or is in possession for the purpose of carrying, depositing or dumping, any harmful waste on any land or in any territorial waters or contiguous zone or exclusive economic zone of Nigeria or its inland waterways; or

- (b) transports or causes to be transported or is in possession for the purpose of transporting any harmful waste; or
- (c) imports or causes to be imported or negotiates for the purpose of importing any harmful waste; or
- (d) sells, offers for sale, buys or otherwise deals in any harmful waste,

shall be guilty of a crime under this Act.

The Harmful Waste (Special Criminal Provisions, etc) Act, prescribes the punishment of life imprisonment for any of the above offences as well as their attempt. It also excludes the operation of immunity from prosecution conferred by virtue of the Diplomatic Immunities and Privileges Act does not extend to any crime committed under this Act.

Environmental Impact Assessment Act Cap E 12 LFN 2004

The Environmental Impact Assessment Act was promulgated in 1992 as Decree No. 86 of that year. Environmental impact assessment (EIA) involves

the evaluation, prediction and public discussion of the direct and indirect effects that policies, programmes and investment have on the social and national environment (Garner, 1979).

The idea of an EIA can be traced to the United States of America (USA). It is provided in the National Environmental Policy Act (NEPA) passed by Congress of the US in 1969 (42 USCS 4331) that

recognizing the profound impact of man's activity on the interrelations of all components of the natural environment ... [Congress directs that] all agencies of the federal government shall ... include in every recommendation or report on proposals for legislation and other major federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on (i) the environmental impact of the proposed action; (ii) any adverse environmental effect which cannot be avoided should the proposal be implemented; (iii) alternatives to the proposed action; (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and (v) any irreversible and irretrievable

commitments of resources which would be involved in the proposed action should it be implemented.

The statement referred to above by the US Congress is generally known as the Environmental Impact Statement (EIS). It also provides that copies of the statement must be made available to the president of the United States, to the Council on Environment Quality and to the public. The federal legislation does not apply to activities proposed by individuals or undertakings outside the public sector although several states have since introduced similar legislation applying to state activities. The whole concept of EIA is capable of being transplanted to other countries and this prompted Garner (1979) to urge the United Kingdom to learn from the American experience and it finally did in 1990.

Garner suggested that the required contents of an EIS should be carefully spelt out in the legislation and that it would be desirable to specify a maximum length say 5000 words (plus any essential appendices). He advocated that an EIS should also be required in respect of private development of a kind to be specified in departmental register; these should include grand or chemical workings, development exceeding a specified acreage in the countryside or the green belt. To ensure access to EIS and to guarantee informed public discussion, he suggested that the statements should at once be made available to the public and the press.

The Nigerian EIA Act is divided into three parts and 64 sections. Part I deals with General Principles on EIA (Sections 1 - 13); Part II deals with Environmental Assessment of Projects (Sections 14 -59); while Part III deals with Miscellaneous (Sections 60 -64).

The objective of the EIA Act is to empower NESREA (the successor to FEPA) to make an assessment of any project intended to be carried on in the country by any person, authority, corporate or unincorporated body including the government, which is likely to affect the environment and to determine the extent of the effect which such activity might have on the environment. Section 2(2) makes it obligatory as a general rule for EIA to be undertaken in respect of projects likely to significantly affect the environment. The Act sets out the procedure which persons or bodies promoting such projects are to take and the minister of environment has to give approval before such a project can be approved to be environmentally

sustainable. The potential investor or the owner of such a project is expected to prepare a report of the project which must meet with the minimum standard set out in the Act. Rather than preparing an accurate report, investors prepare reports that meet the requirements of the Act. It is important to strengthen the effectiveness of public hearing on the EIS. This will raise the awareness of the citizenry. Interested individuals and non-governmental and civil society organizations that wish to contradict the reports will be given adequate time and opportunity to do so.

Section 15 of the EIA Act deals with projects exempted from the requirement of EIS. It excludes assessment of some projects carried out or sponsored by the president or if the NESREA Council (formerly FEPA Council) is of the opinion, that the effect of such project is likely to be minimal. It also excludes projects to be carried out in time of emergency. The section also excludes project that may seem desirable in the interest of public health or safety.

Section 62 which is the offence and penalty section, allows for a fine of one hundred thousand naira (₦100,000) or 5 years imprisonment in the case of an individual and in the case of a firm or corporation, a fine of not less than fifty thousand naira (₦50,000) and not more than one million naira (₦1,000,000). The main problem of the EIA Act is that it lacks stringent conditions among other things that can make it work. Though the Nigeria's EIA Act is now more than two decades old its implementation is still fraught with problems (Omorogbe, 2002).

Petroleum legislation

The first piece of legislation on petroleum in Nigeria was the Petroleum Ordinance of 1889, followed by the Mineral Regulation (Oil) Ordinance of 1907 and both laid the basic framework for the development of petroleum and its natural resources. However, the foundation of the Nigerian petroleum industry today is based on the Petroleum Act, Cap P10 LFN 2004 which was promulgated as a decree in 1969 and the Petroleum (Drilling and Production) Regulations 1969. Laws like the Associated Gas Re-injection Act, Cap A25 LFN 2004 and Oil in Navigable Waters Cap O6 LFN 2004 affect the industry directly and indirectly. It is hoped that when the Petroleum Industry Bill is passed into law it will significantly improve the structure of the petroleum industry in Nigeria and environmental issues related to it. As

noted before, the NESREA Act does not apply to the oil and gas sector where devastating environmental activities take place and it would only be fair and equitable that appropriate provisions are included in the long awaited Petroleum Industry Act when it is ultimately enacted.

The Petroleum Act Cap P10 LFN 2004

This is an Act to provide for the exploration of petroleum from the territorial waters and continental shelf of Nigeria and to vest ownership of all on-shore, off-shore petroleum resources and revenue derivable therefrom in the federal government and all other incidental matters. Section 8 empowers the minister of petroleum resources to exercise general supervision over all operations carried on under licences and leases granted under the Act. The minister may in writing direct the suspension of any operations which in his opinion are not being conducted in accordance with *good oil practice*. It has been observed that even in the best of oilfield practice, spillage of crude oil and the resultant pollution cannot be completely eliminated (Etikerentse, 1985: 62). Section 9 empowers the minister to make regulations inter alia for the conservation of petroleum resources and the prevention of pollution of water courses and the atmosphere. It is pursuant to the provisions of this section that the petroleum regulations were made.

Petroleum (Drilling and Productions) Regulations 1969

This Petroleum (Drilling and Productions) Regulations 1969 are divided into seven parts and six schedules (A-F). The schedules contain a standard form of application, oil exploration licence, prospecting licence, mining lease, drilling rig licence (application) and form of drilling rig licence.

This chapter is interested in sections which border on the protection of the environment. Regulation 36 requires the licensee or lessee to maintain all his equipment and all boreholes and wells capable of producing petroleum in good repair and condition, and to carry out all his operations in a *proper and workmanlike* manner in accordance with these and other relevant regulations and methods and practices accepted by the Department of Petroleum Resources (DPR). Contravention of this regulation makes a person liable on conviction to a fine of two hundred and fifty thousand naira (₦250,000) or imprisonment of 6 months or both.

Associated Gas Re-Injection Act Cap A25 LFN 2004

The Associated Gas Re-Injection Act was enacted as a decree in 1979 to arrest the incidence of gas flaring in acknowledgment of Nigeria's reputation of being the world's worst gas flaring state within two to three decades. Gas flaring, which involves the process of using flaming towers which burn off natural gas, a by-product of the crude oil refining process, results in serious environmental and complex health problems, stemming from the pollution. The Act seeks to compel every company producing oil and gas in Nigeria to submit preliminary programmes for 'gas re-injection and detailed plans for implementation of gas re-injection'. As at 2001 Nigeria had 70 per cent flaring rate which is still one of the world's highest notwithstanding the fact that the Associated Gas Re-Injection Act has been in our statute books since 1979. Section 1(3) provided that by 1st January 1980 all the companies were to submit gas utilization preliminary programmes on utilization or re-injection to the minister and no company was to flare gas by 1 January 1984 without the minister's permission. Section 4 provides for a rather unrealistic and stringent penalty of forfeiture of concessions, for non-compliance. In the light of the fact that only one man, the minister, appointed by the president, has the power to decide the fate of very rich and politically influential multinational oil companies and make a forfeiture of their concessions or leases, the deadline to stop gas flaring had to be shifted to April 1984 and later to January 1985. Up till this moment in 2012, gas is being flared without regard for the environment and the people of Nigeria.

The Associated Gas Re-injection (Continued Flaring of Gas) Regulations 1984, a subsidiary legislation, was made pursuant to the provisions of the above Act. It provided basically for exemptions to the general ban on flaring. The Regulations imposed fines for inability to comply with the 1979 law under certain circumstances. The circumstances are that 75 per cent of the produced gas is effectively utilized or conserved or that the produced gas contains more than 15 per cent impurities or that the on-going utilization programme is interrupted by subsequent failure (Worika, 2002: 164-165). A total of 86 out of 156 fields were exempted from the anti-flaring law! The remaining fields were subject to a fairly insignificant penalty. It is noteworthy that the easing of the government's position was due to the following factors: First, the law was made despite

the absence of the basic infrastructure for re-injection and associated gas utilization. Second, the federal government had no moral authority to enforce the law prohibiting gas flaring since it could not extricate itself from the problem of finance in respect of its joint-venture commitments. Lastly, Regulation 2 of the Associated Gas Re-injection (Continued Flaring of Gas) Regulations provides that the minister may from time to time review and amend, alter, add to or delete any of the provisions therein.

Nigeria began exporting Liquefied Natural Gas (LNG) to Europe in 1999 and the arrangement to construct a gas pipeline that will link Nigeria with some other West African countries for the purpose of transporting Nigeria's liquefied gas is now being implemented.. There is therefore the felt need to subject the provisions of this legislation and the subsidiary legislation made thereunder to constant review in the light of the appreciable progress being made to curb gas flaring.

In 1991, the Department of Petroleum Resources published the *Environmental Guidelines and Standards for the Petroleum Industry in Nigeria*. Part V Section B of the document contains detailed guidelines and standards on natural gas (NG) and liquefied natural gas (LNG) as well as liquefied petroleum gas (LPG). The guidelines deal with issues like sources and characteristics of wastes, treatment and control of wastes, monitoring effluent limitations and standards, scope, control of existing/new point sources, control of points of discharges, treatment and disposal of wastes from NG, LNG and LPG, monitoring, methods of sampling and measurements, use of abrasive agents in blasting activities, spill prevention and counter measures plan. These guidelines are a directory and they do not contain any penalties for violation.

Oil in Navigable Waters Act Cap O6, LFN 2004

This is an Act to implement the terms of the International Conventions for the Prevention of Pollution of the Sea by Oil (1954 to 1962) and to make provisions for such prevention in the navigable waters of Nigeria. It commenced on 22 April 1968 and contains 21 sections. The primary aim of this law is to reduce the incidence of pollution of the world's high seas generally and of the Nigerian waters in particular (Etikerentise, 1985:64).

Section 1 prohibits discharge of oil in certain prohibited sea areas from a Nigerian ship and declares such an act an offence. The prohibited sea

areas are enumerated in the schedule to the Act. It includes all sea areas within 50 miles from land and outside the territorial waters of Nigeria *etc.* Section 3 makes provisions for persons who shall be guilty of an offence for prohibited discharges. These are the owner or master if the discharge is from a vessel; the occupier, if the discharge is from a place on land; and the person in charge of the apparatus, if the discharge is from an apparatus on a vessel. Section 4 provides for the defences to the offences in Section 1 and Section 3 and these include discharge of oil for the purpose of securing the safety of a vessel, for preventing damage to it or for saving life.

Section 15 provides that the Federal Executive Council may, as it thinks fit, exempt any vessels or class of vessels from any of the provisions of the Act. However, section 16 specifically exempts vessels of the Nigerian Navy and government ships employed by the Nigerian Navy from the general effect of the Act.

A subsidiary legislation which commenced on 22nd April 1968, that is, the Oil in Navigable Waters Regulations, in its paragraph 2 provides for the fitting of oily water-separator equipment for certain Nigerian ships to prevent pollution by oil. Paragraph 3 provides that the master of every Nigerian ship (not being a tanker) of 80 tons gross tonnage or more using fuel oil shall maintain oil discharge records. Paragraph 4 requires the master of all ships (of all nationalities) to keep a record of the particulars later specified relating to the transfer of oil to and from the vessel while in Nigerian territorial waters. Lastly, Paragraph 5 contains the precautions to be taken when loading, discharging or bunkering oil.

Many factors combine to undermine the impact of petroleum enactments which seek to protect the environment. Principal among these are vesting in the minister or other authorities the power to grant exemption and provisions for statutory defences in relevant legislation.

National Oil Spill Detection and Response Agency (Establishment) Act, Cap. N157 Laws of the Federation of Nigeria

The federal government's decision to establish the ministry of environment was informed by the desire to adopt a holistic approach to the issue of the environment. However, the challenges of bringing petroleum-related environmental pollution under the ministry of environment hindered the realization of this objective. The administrative-regulatory technique

adopted to overcome this intractable problem was to dissolve FEPA and in its place establish, in addition to NESREA another agency, the National Oil Spill Detection and Response Agency (NOSDRA), in the ministry of environment which would be fully devoted to what is perhaps the most devastating petroleum-related environmental concern in Nigeria. Section 1 of the NOSDRA Act establishes the Agency. It is charged with responsibility for preparedness, detection and response to all oil spillages in Nigeria. It coordinates the National Oil Spill Contingency Plan for Nigeria. Its objectives are enumerated in section 5 but the primary one is to ensure safe, timely, effective and appropriate response to major or disastrous oil pollution.

NOSDRA is responsible for surveillance and to ensure compliance with all existing environmental legislation and the detection of oil spills in the petroleum sector. It receives report of oil spillages and co-ordinates oil spill response activities throughout Nigeria (Section 6). An oil spiller is obliged to report an oil spill to NOSDRA in writing not later than 24 hours after its occurrence. Failure to comply with this provision attracts a penalty in the sum of five hundred thousand naira (₦500,000) for each day of failure to report the occurrence. Failure to clean up the impacted site, to all practical extent including remediation attracts a further fine of one million naira (₦1,000,000).

The minister of environment may give to the Governing Board or the Director-General such directives of a general nature or relating generally to matters of policy with regard to the exercise of its or his functions as he may consider necessary and it shall be the duty of the Governing Board or the DG to comply with the directives or cause them to be complied with.

In the event of a major or disastrous oil spill, NOSDRA in collaboration with other Agencies shall co-opt, undertake and supervise all response management activities. Inter-agency collaboration, which involves the Nigerian Institute of Oceanography and Marine Research, the following federal ministries: works, health, transport, information, water resources, agriculture and rural development, communications, aviation (NIMET), science and technology, defence and agencies like NEMA, the Oil Producers Trade Sector (OPTS), Lagos Chamber of Commerce and the Nigeria Police Force. Non-governmental organizations, industrial groups and academic organizations may also collaborate with NOSDRA.

Other relevant legislation

Mineral and Mining Act, Cap. N162 LFN 2004

The Nigerian Minerals and Mining Act was enacted in 2007. It repealed the Mineral and Mining Act No. 34 of 1999. Though this legislation is outside the scope of petroleum legislation, it is closely related to them. In fact, the expression "minerals" or "mineral resources" is defined in section 164 to exclude petroleum and waters without mineral content. Section 1 of this Act vests in the government of the federation on behalf of the people of Nigeria, the entire property and control of all minerals, in under or upon any land in Nigeria, its contiguous continental shelf and of all rivers, streams and watercourse throughout Nigeria, any area covered by territorial waters or constituency, the Exclusive Economic Zone. By subsection (2) of section 1 all lands in which minerals have been found in commercial quantities shall be acquired by the government of the federation and the minister may from time to time, with the approval of the federal government designate such lands security lands. Section 4 sets out the functions of the minister and paragraph (b) which is particularly relevant says the minister shall develop a well-planned and coherent programme of exploitation of mineral resources taking into account the economic development, ecological and environmental factors. Section 65 prohibits pollution of water course and section 66 imposes an obligation on miners to purify water.

Pollution of the environment and use of water contrary to the provisions of the Act are offences under the Act. Section 115 (3) provides as follows:

A person who commits an offence which involves the pollution of the environment contrary to the Federal Environmental Protection Act and regulations made under it, or to sections 65, 66 and 69 of this Act, is liable on conviction to a fine not exceeding ₦50, 000 or imprisonment for a term not exceeding 3 years or to both fine and imprisonment.

In view of the repeal of FEPA Act necessary modification will have to be made while reading the above provision in the light of the Interpretation Act.

Section 30 of the Act adopts a fiscal technique to encourage companies engaged in the exploitation of mineral resources to establish a tax

deductible reserve for environmental protection, mine rehabilitation, reclamation and mine closure. The appropriateness of the reserve must be certified by an independent qualified person, taking into account the determination made under the provisions of this Act. The adequate enforcement of this provision will take a lot of financial pressure off mining companies and will serve the cause of environmental protection.

Nuclear Safety and Radiation Protection Act, Cap. N142 LFN 2004

The Nigerian Nuclear Regulatory Authority (NNRA) is established under Nuclear Safety and Radiation Protection Act which came into operation on 3rd August 1995. NNRA is charged with the overall responsibility for nuclear safety and radiological protection regulation in Nigeria. Its main functions include the control and regulation of the possession and application (use) of radioactive substances, material, equipment, emitting and generating ionizing radiation. NNRA is also charged with the duty of ensuring the protection of life, health, property and the environment from the harmful effects of ionizing radiation while allowing beneficial practices involving exposure to ionizing radiation. The Mineral and Mining Act imposes a duty on the holder of a mining title to report the discovery of radioactive mineral or any mineral that may reasonably be expected to be radioactive substances to Mines Inspectorate Department. The report shall be dealt with as provided in the NNRA. (Section 44, Minerals and Mining Act)

The Fukushima (Japan) nuclear crisis of March 2011 which was triggered by a 9.0-magnitude earthquake and tsunami led to debates on nuclear energy and mass anti-nuclear protests, especially in several countries in Europe. The damage to the nuclear plants had resulted in escape of radioactive substances which are extremely dangerous to human and plant life. The German chancellor set up a panel to review nuclear power policy and in the end Germany resolved to phase out all nuclear power plants by 2020. Also, in May 2011, the Swiss government announced its decision not to replace the country's five ageing plants after they reached the end of their lifetimes between 2019 and 2034.

The extent to which nuclear energy has been embraced in Nigeria is not known. As far back as 1979, the federal government established the Energy Commission of Nigeria with the responsibility for coordinating and

general surveillance over the systematic development of the various energy resources of Nigeria by virtue of the Energy Commission of Nigeria Act, Cap E10 LFN 2004. A technical advisory committee, which consists of professionals representing selected relevant ministries, government agencies and professional organizations was established to serve as the nerve centre of the Commission in its responsibility for the strategic planning and coordination of national policies in the field of energy in all its ramifications. The impact of the Commission is hardly felt as the challenge of power still remains Nigeria's most intractable national infrastructural problem. The tendency is to think of alternative sources of energy. However, the Fukushima nuclear crisis and Nigeria's weak disaster management system emphasize the need for caution. In the limited areas where radiation technology may be in use it is important to strengthen the capacity of NNRA for effective monitoring.

Conservation laws

Endangered Species (Control of International Trade and Traffic) Act, Cap E9 Laws of the Federation of Nigeria 2004

Preservation of wildlife resources has been a legal concern from the colonial period to the early post-colonial period. This has given rise to different enactments *viz*: the Wild Animals Preservation Act 1916 (Federal); Wild Animals Preservation Law 1959 (West); Wild Animals Preservation Law 1963 (North); Wild Animals Preservation Law 1965 (East). The late post independence period also gave birth to the Wild Animal Preservation Law (Lagos State 1972); Wild Animals Law (Amendment) Edict (North Eastern State) 1975; and Wild Animals Law (Amendment) Edict, Kano State 1978 to mention but a few.

As pointed above, the conservation and preservation of wildlife and other biological diversity is now a global concern. The alarming rate of depletion of these resources therefore gave rise to a series of Conventions on the preservation of wildlife including the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) held in Washington on March 3, 1973. Here, it is recognized that international cooperation is essential for the protection of certain species of wild fauna and flora against over exploitation through international trade. The parties to the Convention resolved to protect the endangered species from excessive exploitation

through a system of import and export permits. Though Nigeria acceded to the Convention on July 1, 1975, it was not until 10 years later that the text of the Convention was domesticated through the promulgation on April 20, 1985, of the Endangered Species (Control of International Trade and Traffic) Decree. This law (now an Act) is, Cap E9 LFN 2004. The Act provides for the conservation and management of the country's wildlife and the protection of some of the endangered species in the country. In its sections 1 and 2, the hunting or capture of, or trade in animal species listed in the first schedule to the Act is expressly prohibited, while trade in animal species listed in the second schedule to the Act is subject to an approved licence by the minister.

Some of the animals listed in the first schedule are the pigmy chimpanzee, gorilla, African palm squirrel, brush-tailed porcupine, lion, leopard, cheetah, caracal, golden cat, spotted hyena, Aardwolf, Cameroon otter, black rhinoceros, Nile crocodile, shot-nosed crocodile, royal python, falcons, kites. In the second schedule are the following animals jackal, civet fennec, genets, mature elephant, warthog, red-fronted gazelle among others.

Where any person contravenes the provisions of this Act in respect of any specimen under the first schedule such a person shall be guilty of an offence and liable on conviction to a fine of one thousand naira (₦1,000) for a first offence and for a second and subsequent offence to imprisonment for one year without the option of a fine. Any offender in respect of any specimen in schedule 2 is liable to a fine of five hundred naira (₦500) for a first offence and six months imprisonment without an option of fine for a subsequent offence. Any person convicted under section 5(1) may be ordered by the court to forfeit such a specimen.

This Act has been criticized by different conservation-oriented groups and organizations for many reasons. Some of its weaknesses are in the total protection of fairly common species (e.g. kites) and the permission to trade, under licence in endangered species, such as cranes, secretary birds, and ostriches. Again the Act does not offer any protection to any of the country's amphibians although some rare ones are threatened by habitat destruction. Also, looking at the severity of penalty ascribed to violations against schedule 1 species when compared with the penalty for violations against schedule 2 species, Okorodudu-Fubara (1998: 361) is of the opinion that this underscores the determination to ban absolutely all traffic in the specified activities in relation to the endangered species. However,

considering this penalty in relation to the present economic situation, the fine of one thousand naira (₦1,000) or even five hundred naira (₦500) cannot deter a potential offender.

The National Parks Service Act Cap. N65 LFN 2004

The National Parks Service Act was originally promulgated as Decree No. 46 of 1999. Its objectives include (i) conservation of selected and representative examples of wildlife communities in Nigeria, (ii) the protection of endangered species of wild plants and animals and their habitat; (iii) the conservation of wildlife throughout Nigeria; (iv) the protection and maintenance of crucial wetlands and water catchment areas; and (v) conservation of biological diversity in Nigeria. One interesting provision is contained in section 49 which supports the establishment of a Local Advisory Committee consisting of local residents in the management of the national parks. The National Parks Service Act has, by and large, vested the functions conferred on the defunct National Conservation Council on the authorities of the national park

Nigerian case law

Environmental law cases in our courts fall into two categories: civil and criminal. When the criminal jurisdiction of the courts is invoked, it is because a specific provision of the law or regulations made pursuant thereto has been violated. Civil cases involve actions instituted by a private individual or group of persons against a wrongdoer to recover damages, that is, monetary compensation, for breach of the claimant's legal rights. Nigerian courts still employ the common law principles of trespass to land, negligence, nuisance and the rule in *Rylands v. Fletcher* (1866) in dealing with environmental claims (Shyllon, 1989b, pp. 90-96). The specific provisions for compensation in some environmental legislations have imposed on the court the duty to assess what is reasonable compensation in the event of disputes between parties. The traditional heads of common law principles are only being employed through the process of analogical reasoning to meet new situations presented to the court for determination. This explains why we must look to other areas for reform in the protection of the environment.

Access to court in environmental cases is very important. Section 251 (1)(n) of the 1999 Nigerian Constitution vests exclusively in the Federal High

Court jurisdiction to try cases and matters connected with or pertaining to mines and minerals including oilfields, oil mining geological surveys and natural gas. In *Isaiah v. Shell Petroleum Company of Nigeria Limited* [2001] a case decided on the basis of section 230(1) (a) of the Constitution (Suspension and Modification) Decree No. 107 of 1993, the Supreme Court laid to rest what the position of the law is with respect to jurisdiction in oil pollution cases by holding that, the subject matter of the claim, which is oil spillage, falls under the exclusive jurisdiction of the Federal High Court as provided under the section mentioned above. In view of the fact that the Federal High Court does not maintain courts in all the states of the federation, considerable hardship is imposed on persons who intend to sue in respect of oil spillage. The technical nature of proof of environmental claims is also a formidable obstacle which a plaintiff must surmount before he can succeed. The case of *Ogiale & 2 Ors v. SPDC* [1997] vividly brought this out.

Law reform in the field of environmental law

The concept of law reform

The expression "reform" is from a Latin word "*reformare*". Its meanings include the removal of faults or abuses especially of a moral or political or social kind or an improvement made or suggested. The idea of law reform connotes a systematic development, simplification and modernization of the law (Rutherford & Bone, 1993:194-195). Law reform is a concept under the larger concept of legal change. Legal change may raise two types of questions: first, how should the law be changed to meet changing social goals and policies; and second, how should the law be changed to give greater coherence and sense to the existing framework of principles? Farrar and Dugdale (1990:225) quoting Sawyer refer to the first type of change as policy change and suggest that this type of change will be most clearly associated with what Sawyer terms *social administration law*, for example, laws concerned with social welfare, regulation of the economy and environment or promotion of social policies such as good race relations.

The second type of change referred to as *law reform* is the one that is most closely associated with lawyers' law, that is, the technical law primarily developed by lawyers such as tort, contract or equity. The broader perception of law reform includes both the first and second type of change

above (Farrar & Dudgale, 1990: 228-229). The mechanisms for law reform are legislation and judicial decisions. Through judicial law-making, judges have advanced the frontiers of the law particularly in the areas wholly or largely regulated by the common law. Judges, including Nigerian judges, have inherent powers to modify the common law. The role of the judiciary is however limited since the primary task of law-making is that of the legislature.

As Obilade (1979: 67) has pointed out: Legislation is the most important instrument of legal development. It has tremendous effect on all other sources of law. It can readily alter their content. It is also a useful tool for the social, economic and technological development of the country. Obilade further remarked in another work that legal instrumentalism for the purpose of realization of goals of society involves, principally, legislation (Obilade, 1991:4). Ayoola (1990:7) divided the objectives of law reform into two: the immediate and the long term and contended that the principal and immediate objective of law reform in Nigeria should be the attuning of Nigerian laws to the fundamental objectives set out in the Constitution of the Federal Republic of Nigeria and in consonance with Nigeria's sovereign status. It is to the long term he assigned the duty of keeping constant watch over the content and operation of the laws, and recommending, from time to time, adequate measures to keep the laws modern and in line with societal values and needs.

The Nigerian Law Reform Commission Act in its section 5(1) provides that:

...It shall be the duty of the Commission generally to take and keep under review all federal laws with a view to their systematic and progressive development and reform in consonance with the prevailing norms of Nigerian society including, in particular, the codification of such laws, the elimination of anomalies, the repeal of obsolete, spent and unnecessary enactments, the reduction in number of separate enactments, the reform of procedural laws in consonance with changes in the machinery of administration of justice and generally the simplification and modernisation of the law.

From the above provisions it is obvious that the task of keeping laws under review relates primarily to legislation and not judicial decisions. The best law reform exercise is the one that satisfies the needs of the people for whom it is meant. Therefore, efforts should be directed towards ascertaining the wishes of the people. Every member of the community comes in contact with the law at one stage or the other (Orojo, 1990: 27).

Reform of the law relating to the environment in Nigeria

Reform of the law relating to the environment in Nigeria requires a multifaceted approach and the country must harness the potentials of all aspects of its legal system to realize this objective since the environment is everyone's business. As noted above, the legislature plays a key role in this matter. The legislature should strengthen appropriate enforcement agencies by endowing them with adequate powers to perform their functions effectively and by appropriating sufficient funds to enable them discharge their statutory duties. Everyone is a stakeholder in the business of the environment but the organized stakeholders like relevant agencies in the public and private sectors of the economy, universities and research institutes and friends of the environment must provide leadership by engaging the legislature both at the federal and state levels to enact relevant legislation. There must be effective monitoring of the activities of agencies in the environmental sector. There must also be effective use of subordinate legislative powers where they have been conferred.

The most effective way to carry the courts along in this enterprise is for the legislature to confer statutory standing on citizens in environmental claims. This is one of the valuable lessons in the US Clean Water Act.

In 1972, the US Congress enacted the Clean Water Act, also known as the Federal Water Pollution Control Act. Section 402 of the Act provides for the issuance, by the administrator of the Environmental Protection Agency (EPA) or by authorized states, of National Pollutant Discharge Elimination System (NPDES) permits with the overall objective of improving the cleanliness and safety of US waters. The permits impose limitations on the discharge of pollutants, and establish related monitoring and reporting requirements. Section 505(a) authorizes a citizen, an expression defined as "a person or persons having an interest which is or may be adversely affected," to bring a suit to enforce any limitation in an

NPDES permit. However, before instituting action, a would-be plaintiff citizen must give a sixty-day notice of alleged violation to the EPA, the state in which the alleged violation occurred and the alleged violator. The citizen's action is not maintainable where the EPA, or the state has already commenced, and is "diligently prosecuting," an enforcement action. According to the Supreme Court, the purpose of the pre-action notice to the alleged violator is "to give it an opportunity to bring itself into complete compliance with the Act and thus . . . render unnecessary a citizen suit." *Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Foundation, Inc.*, 484 U. S. 49, 60 (1987). In a Clean Water Act suit initiated by "a person or persons having an interest, which is or may be adversely affected" a federal district court may prescribe injunctive relief. The court may, in addition to the injunctive relief, alternatively impose civil penalties payable to the US treasury. The significance of conferring statutory standing on a citizen in an environmental claim is to dispense with the formidable hurdle of common law standing. The payment of civil liabilities to the US treasury is to underscore the reason why statutory standing is conferred; it is to demonstrate the public interest aspect of this litigation and to prevent a situation where meddlesome interlopers sue with the sole aim of taking pecuniary advantage of the violation of the Clean Water Act.

Role of the Ministry of Environment and the Council on the Environment

The establishment of the ministry of environment in 1999 by the Obasanjo administration and the appointment of successive ministers by the succeeding Yar'Adua and Jonathan administrations demonstrate clearly that matters of the environment have been brought to the front burner in our national life. The establishment of a ministry of environment without recourse to the National Assembly and the appointment of ministers for the ministry illustrate the enormous power of a chief executive who is committed to driving reform in a particular area. Agitations for a ministry of environment began as far back as November 1988 when part of the communiqué adopted at the end of a national conference on the environment called for the establishment of a ministry of environment with state counterparts. The effort of the federal government to establish a holistic and integrated regulatory and institutional mechanism for the protection of the environment has not been particularly acceptable to the Department of

Petroleum Resources which still operates outside the framework of the ministry of environment. The picture this development portends is that environmental issues still remain incidental matters, notwithstanding the fact that a minister of cabinet rank oversees the affairs of this ministry and sits at the meetings of the Federal Executive Council. For ease of operation and good performance, all environment-related agencies of the federal government should be under the Federal Ministry of Environment.

The responsibilities of the ministry of environment are enormous. Ecological matters like erosion, desertification, water pollution and ocean surge fall within the purview of the ministry. In 1999, the NEMA Act was amended to make provision for 20 per cent of the ecological fund to be used in the management of ecology-related disaster. In 2003, the Federal Executive Council took over the management of ecological fund from the defunct ministry of inter-governmental affairs. However, in practice, the ministry of environment plays a prominent role in the allocation of the fund. Unfortunately, the National Emergency Management Act (NEMA), Cap. N34 LFN 2004, which established NEMA has not been amended to incorporate the ministry of environment. There is no representative of the ministry of environment on the Governing Council. The additional responsibility of the Federal Ministry of Environment in this regard demands greater staff commitment and efficiency. The structure of NESREA and NOSDRA indicates that their technical units would be manned by competent experts in environmental matters. The Ministry of Environment is therefore endowed with competent workforce who can contribute remarkably to the attainment of the goals for establishing the ministry.

The National Council on Environment, which consists of the minister and state commissioners for environment, meets annually to harmonize policies in environmental matters. The meetings of the Council are usually preceded by those of the Technical Committee which comprises technocrats and experts in environmental matters. This forum should be used to advantage by presenting state environmental matters for national approval and action. The Council should partner with the ministry of education and the National Council on Education to introduce courses or modules on environmental degradation and protection at all levels of the educational system to cultivate the right attitudes among Nigerians. The National Agency for Food and Drug Administration and Control (NAFDAC) has in

the recent past played a commendable role in curbing the menace of fake and counterfeit drugs. In view of the more pervasive consequences of environmental pollution and degradation, no effort should be spared in ensuring that the need to protect the environment becomes indelible in the hearts of the generality of Nigerians. In this regard the Council should direct the ministry of environment and its state counterparts to engage relevant stakeholders to ensure high visibility for environmental issues.

Conclusion

Increased public concern for the environment is a positive response to the crusade that humans must be conscious of the implications of their various activities in the quest to conquer nature and exploit natural resources to their benefits. Since environmental problems are by their nature diverse and multifaceted, the appropriate approach to combat them must be broad and comprehensive. The use of the instrumentality of the law has been acknowledged as a potent tool in this direction. One of the unique characteristics of law is its general application to the generality of people whose activities it is intended to regulate. There is the need to ensure that all stakeholders are carried along in the preparation of environmental legislations. The resultant law will be the outcome of mutual discussions and negotiations by the government on the one hand and the public whose activities are to be regulated. By doing so, the level of commitment and compliance with such statutes will be raised. This does not amount to abdication of responsibility on the part of the government or the legislature; rather it is consistent with the modern trend in legislation and regulations. The agreed bill procedure is an example of this approach. (Akintayo, 1999:44-45)

The Federal Ministry of Environment and its state counterparts, in collaboration with the National Orientation Agency and relevant health institutions, should embark on serious campaigns to educate the citizenry on the deleterious effects of the misuse of the environment. The law in the statute books cannot achieve much if it does not find a place in the consciousness of the people. In a ministerial press briefing in 2006, the minister of environment after announcement of the creation of a climate change unit in the ministry stated in clear terms that government cannot completely shoulder the responsibility for environment management. He

appealed to the citizenry to begin to imbibe ethics and good behaviour. However, the programme of action for attitudinal change was not articulated. We have suggested partnering with the National Orientation Agency for the informal sector and introduction of study modules on the environment for students at all levels.

Some constitutional aspects of environmental law must be addressed. Access to court by victims of environmental degradation and public-spirited individuals or bodies to enforce statutory duties of government agencies established to safeguard the environment, must be secured. This entails that the courts must be willing to ease the requirements of locus standi or standing for the development of this branch of the law. We have recommended the adoption of a scheme of conferring statutory locus standi on citizens who are adversely affected by activities of polluters as it is in the case of the US Clean Water Act. Public authorities must be made to discharge their statutory responsibilities and they must realize the utility of taking advantage of delegated legislative powers.

In view of the fact that Nigeria appears to have a catalogue of legislations for protecting the environment, the reform that is needed must focus on strengthening the institutional framework to enforce environmental legislation. It is only by doing this that the objective of sustainable development can be attained. The environment must be perceived as a national heritage (Shyllon, 1989b: 95) and its protection and preservation must be a matter of concern to all. There is definitely much that everyone can do in this regard since the business of the environment is every one's business.

References

- Aina, E.O.A. 1991. The journey so far. in Aina, E.O.A & Adedipe, N.O., (eds.) *The Making of the Nigerian Environmental Policy: Proceedings of the International Workshop on the Goals and Guidelines of the National Environment Policy for Nigeria*, Lagos: FEPA.
- Akanle, Oluwole. 1991. The Constitution and the Nigerian Environment. in Aina, E.O.A & Adedipe, N.O., (eds.) *The Making of the Nigerian Environmental Policy: Proceedings of the International Workshop on the Goals and Guidelines of the National Environment Policy for Nigeria*, Lagos: FEPA, pp. 27 - 33.
- Akeredolu, Alero. 2010. NESREA vis-a-vis FEPA: An Old Wine in a New Bottle *NIALS Journal of Environmental Law* Vol. 1 (forthcoming).
- Amokaye G. Oludayo. 2004. *Environmental Law and Practice in Nigeria*, Lagos: University of Lagos Press.

- Atsegbua Lawrence, Akpotaire Vincent & Dimowo Folarin, 2004. *Environmental Law in Nigeria Theory and Practice*, Lagos: Ababa Press.
- Ayoola, E. O. 1990. Rationale: Objectives and scope of Law Reform. in Osinbajo, Yemi & Kalu, Awa U. (eds.) *Law Development and Administration in Nigeria*, Lagos: Federal Ministry of Justice, pp. 1-23.
- Ball, Simon & Bell, Stuart, 1994. *Environmental Law*, 2nd ed., London: Blackstone Press.
- Black's Law Dictionary* 1990. 6th ed., St. Paul, Minnesota: West .
- Burnett-Hall, Richard, 1995. *Environmental Law*, London: Sweet & Maxwell .
- DK Illustrated Oxford Dictionary*, 1998, London & Oxford: Dorling Kindersley & Oxford Univ. Press.
- Dworkin, Ronald, 1987. *Law's Empire*, Cambridge, Massachusetts: The Belknap Press of Harvard Univ. Press.
- Ebeku, Kaniye S A, 2003. The Right to a Satisfactory Environment and the African Commission. *African Human Rights Law Journal* 3(1): 149 -166.
- Elias, T.O., 1956. *The Nature of African Customary Law*, Manchester: Manchester Univ. Press.
- Etikerentse, G., 1985. *Nigerian Petroleum Law*, London: Macmillan.
- Farrar John H & Dugdale, Anthony M. 1990. *Introduction to Legal Method*, 3rd ed., London: Sweet & Maxwell.
- Friedmann, W. 1972. *Law in a Changing Society*, 2nd ed., London: Stevens.
- Garner, J. F. 1979. Environmental Impact Statements in U.S. and U.K.. *Journal of Planning and Environmental Law*, March: 142 - 145.
- Ikhariale, Mike, 1989. Koko incident, the environment and the law, in Shyllon, Folarin (ed.), *The Law and the Environment in Nigeria*, Ibadan: Vantage, pp. 73 -89.
- Ishola, O. & Akintayo, John Oluwole A. 1999. *Revision of Environmental Law ensuring Macro Coverage of all Sectors Finalised*; a technical report submitted to Oyo State UNDP Sustainable Agriculture, Environment and Rural Development Stakeholders Board (Ibadan, Ishola & Ishola).
- Lee, James A., 1985. *The Environment, Public Health and Human Ecology: Considerations for Economic Development*, Baltimore & London: The Johns Hopkins University Press for The World Bank.
- van der Linde, Morne & Louw, Lirette. Considering the interpretation and implementation of article 24 of the African Charter on Human and Peoples' Rights in light of the SERAC communication. *African Human Rights Law Journal* 3(1): 167 -187.
- Maconick, R., 1990. Environment and the Concept of Sustainable Development. in O. S. Adegoke (ed.) *The Environment and Sustainable Development in Nigeria*, Lagos: FEPA, pp. 44 -52.
- McEldowney, John F. & McEldowney, Sharron, 1996. *Environment and the Law: an introduction for Environmental Scientists and Lawyers*, Essex: Longman.
- Munro, R. D., & Lammers, L.G., (eds) 1986. *Environmental Protection and Sustainable Development: Legal Principles and Recommendations* (World Commission on Environment).
- Nwabueze, B.O. 1983. *Federalism in Nigeria under the Presidential Constitutions*, London: Sweet & Maxwell.
- Obilade, A.O. 1979. *The Nigerian Legal System*, London: Sweet & Maxwell.

- Obilade, A.O.1991. The Relevance of Customary Law to Modern Nigerian Society, in Yemi Osinbajo & Awa U. Kalu (eds.) *Towards a Restatement of Nigerian Customary Laws*, Lagos, Federal Ministry of Justice, p. 4.
- Ogola, B.D. Environmental Law in Africa: Status and Trends. 23 9. International Business Lawyer (IBY) 412-4 cited in Worika, Ibibia Lucky 2002, *Environmental Law and Policy of Petroleum Development: Strategies & Mechanisms for Sustainable Development in Africa* (Port Harcourt, Anpez Centre for Environment and Development).
- Okediran, Adefolake O., 1996. Conventions, Customs and Community Participation in Natural Resources Conservation in Nigeria: Doing so little with so much. in J.D. Ojo (ed.), *Ibadan University Law Essays*, Ibadan: Editorial Contacts, pp. 43-70.
- Okorodudu-Fubara, Margaret T., 1998. *Law of Environmental Protection in Nigeria: Materials and Text*, Ibadan: Caltop Publications .
- Omorogbe, Yinka 1986. An Appraisal of Nigerian Natural Gas legislation. 4 Issue 2 *Oil and Gas Law and Taxation Review* .
- Omorogbe, Yinka. 2002. The Legal Framework for Public Participation in Decision-Making on Mining and Energy Development in Nigeria: Giving Voices to the Voiceless. in Zillman, Donald N., Lucas, Alastair R. & Pring, George(Rock), *Human Rights in Natural Resources Development: Public Participation in the Sustainable Development of Mining and Energy Resources*, Oxford, pp. 549-587.
- Orojo, J. O. 1990. Comments on the paper titled 'Rationale: Objectives and scope of Law Reform' in Osinbajo, Yemi & Kalu, Awa U. (eds.) *Law Development and Administration in Nigeria*, Lagos: Federal Ministry of Justice, pp. 24-31.
- Robinson, O.F., 1997. *The Sources of Roman Law: Problems and Methods for Ancient Historians*, London & New York: Routledge.
- Rostron, Jack (ed.) 2001. *Environmental Law for the Built Environment*, London, Cavendish.
- Rutherford, Leslie & Bone, Sheila. 1993. *Osborn's Concise Law Dictionary*, 8th ed., London: Sweet & Maxwell.
- Shyllon, Folarin, 1989a. Introduction, in Shyllon, Folarin (ed.) *The Law and the Environment in Nigeria*, Ibadan: Vantage, pp. x -xii.
- Shyllon, Folarin, 1989b. Present and Future Institutional Framework for Environmental Management in Nigeria. in Shyllon, Folarin (ed.) *The Law and the Environment in Nigeria*, Ibadan: Vantage, pp. 90-96.
- Thorton, Justine & Beckwith, Silas, 1997. *Environmental Law*, London: Sweet & Maxwell.
- Worika, Ibibia Lucky, 2002. *Environmental Law and Policy of Petroleum Development: Strategies & Mechanisms for Sustainable Development in Africa*, Port Harcourt, Anpez Centre for Environment and Development.

Cases

- Abacha & Ors v. Fawehinmi* [2000] NWLR (Pt. 660) 288.
- Attorney General Lagos State v. Attorney-General of the Federation & Ors.*[2003] 35 WRN 1.
- Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Foundation, Inc.*, 484 U. S. 49, 60 (1987).
- Isaiah v. Shell Petroleum Company of Nigeria Limited* [2001] 11 NWLR (Pt 723) 168.
- Jonah Gbemre & ors. v. Shell Petroleum Dev. Co. Nig. Ltd, NNPC & A.G. Federation*, (Suit No. FHC/B/CS/53/05).

Ogiale & 2 Ors v. SPDC [1997] 1 NWLR (Pt 480) 148.

Rylands v. Fletcher (1866) 1 Exh 265 or (1861-73) All E.R. 1.

SERAC v. Nigeria (Communication 155/96 Fifteenth Annual Activity Report of the African Commission).

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