

The Role of The Judiciary in Protection of Environment in Nigeria

By

Osato Mabel Oniha*

Abstract

The protection and preservation of human environment is very crucial to the future of mankind. To safeguard this, regulatory laws and organs were promulgated and established respectively. The arm of government established to adjudicate over such matters is the judiciary. This paper examines the role of the judiciary in the dispensation of justice on environmental protection. It employed the doctrinal method and concluded that the judicial arm has to some extent measured up with this task, but a lot still needs to be done to achieve the desired result of a healthy environment desired by man.

Keywords: Judiciary, Environment, Courts, Protection and Constitution

Introduction

One of the greatest challenges faced by man in recent time has been that of environmental degradation. This has continued to pose a very great challenge to man and his environment. Some of these problems include air pollution emanating from gas flaring, soil erosion emanating from deforestation, severe water pollution emanating from discharge of petroleum wastes into the rivers, earth pollution and land degradation emanating from oil spillage.

The state of the environment has a direct relationship with human existence, hence the need to ensure protection of such environment by man. Therefore, is the interest of man to ensure that his environment is guided jealously for him to ensure good health. This clearly amounted to the need for the legislative arm saddled with the responsibility of making laws to protect the environment to formulate regulatory laws. These laws are meant to protect the environment by imposing punitive measures where appropriate and deter intending offenders. These laws cannot punish the offenders without passing through the judiciary; the arm of government vested with the powers to interpret laws with a view to laying disputes to rest.

Under the Nigerian Constitution, the judicial arm of government is vested with the power and responsibility of interpreting and applying the laws to all cases with a view to settling disputes before the courts¹. The judicial arm of government has long assumed this highly tasking duty, of interest been that of environmental protection. Under the Nigerian legal system, without Judiciary, the laws are lifeless. Since it is the judiciary that interprets the law, it is the judiciary that therefore breathes life into the law² to ensure effectiveness. Since it is judiciary arm through the court system that determines the effectiveness of the laws enacted by the legislative arm, it follows that the judiciary is pivotal in the effective

*Ph.D., LL.M, BL, B.Sc. (Hons), Lecturer, Edo State Polytechnic, Usen, Edo State, Nigeria.

mabeloniha2@yahoo.com

¹Section 6 of the Constitution of the Federal Republic of Nigeria, 1999

² Hakeem Ijaiya, O. T. Joseph, "Rethinking Environmental Law Enforcement in Nigeria" available at <http://creativecommons.org/licenses/by/4.0> Accessed 6th January 2019

protection and preservation of the environment. This paper looks at the extent of the effectiveness of judiciary in playing this role.

Definition of terms

Judiciary

This is the arm of government for interpreting the laws and administering justice.³ It is the branch of government concerned with the legal system and the administration of justice.⁴

Environment

The term environment means the surroundings or condition within which something or someone exists. It is the combination of external conditions that surround and influence a living organism.⁵

Courts

This means a governmental body consisting of one or more judges who sit to adjudicate disputes and administer justice.⁶ It is the judge; law officials and members of the jury gathered to hear and decide on a legal case.⁷

Protection

Chamber's 21st century dictionary defines *protection* as the action of protecting, or condition of being protected; shelter, refuge, cover, safety or care.⁸

Constitution

This is the fundamental and organic law of a nation or state that establishes the institution and apparatus of government, defines the scope of governmental sovereign powers, and guarantees individual civil rights and civil liberties.⁹ Reference is made in this paper to the Constitution of the Federal Republic of Nigeria 1999 as amended.

Law Enforcement Agencies

There exist many environmental law enforcement agencies that assist in the implementation of environmental laws in Nigeria. Some of these are:

a. National Environmental Standards and Regulation Enforcement Agency (NESREA)¹⁰

NESREA was formerly known as Federal Environmental Protection Agency (FEPA). FEPA was an agency known for its primary environmental protection law in Nigeria until it was repealed on July 30, 2007, by the NESREA Act.¹¹ The National Environmental Standards and Regulation Enforcement Agency Act

³ Garner, B. A., *Blacks' Law Dictionary* (9th ed., Texas: Law Prose Inc., 2009) p. 924

⁴ Mairi Robinson, *Chambers 21st Century Dictionary* (Rev. ed. Chambers Harrap Publishers Ltd, Edinburg, 2004) p. 734

⁵ *Ibid* p. 440

⁶ Garner, B. A., *Blacks' Law Dictionary*, *Supra* n. 2, p. 405

⁷ Mairi Robinson, *Chambers 21st Century Dictionary*, *supra* n. 3, p. 311

⁸ Mairi Robinson, *Chambers 21st Century Dictionary*, *supra* n. 3, p. 1114

⁹ Garner, B. A., *Blacks' Law Dictionary*, *supra* n. 2, p. 353

¹⁰ National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007.

¹¹ Section 36 of NESREA Act.

replaced the FEPA Act as Nigeria's flagship environmental law. The NESREA Act established an entity known as the National Environmental Standards and Regulations Enforcement Agency. The Act also charged the Agency with the enforcement of environmental standards, regulations, rules, laws, policies and guidelines.¹² The Agency is headed by a Director-General who serves as both the Chief Executive and Chief Accounting Officer.¹³ There are five Directorates, each headed by a Director. These are the Directorate of Legal Services;¹⁴ Administration and Finance;¹⁵ Planning and Policy Analysis;¹⁶ Inspection and Enforcement;¹⁷ and the Environmental Quality Control.¹⁸ In addition, there is a Governing Council which is the supreme organ of the Agency and headed by a Chairman.

The agency has wide enforcement powers. These include the ability to prohibit processes and use of equipment or technology that undermine environmental quality,¹⁹ the establishment of mobile courts to expeditiously dispense cases of environmental infringements,²⁰ and the power to compel public investigations.²¹ An Officer of the Agency, with a court warrant, can enter and search any premises he reasonably believes is being used to contravene environmental standards or legislation. In effecting the search warrant, the Officer is authorized to examine any article, take a sample or specimen, open and examine any container or package, and examine any book, documents or record. The Officer may also seize and detain any article and can obtain a court order to suspend activities. The officer also has the power to seal and close down premises including land, vehicles, tents, vessels, floating craft or any inland waterway.²² Any disturbance by way of obstruction of an Officer under the Act carries a stiff penalty.²³ Any obstruction caused by an individual is punishable by a minimum fine of ₦200,000 or a maximum sentence to one year's imprisonment. This also attracts an additional fine of ₦20,000 for each day the offense continues. Again, any obstruction by a corporate body attracts a fine of ₦2m, and an additional fine of ₦200, 000 for each day the offence continues.²⁴

b. The Nigeria Police

Nigeria Police Officers are empowered to enforce the laws on environmental degradation, particularly with respect to 10 of the Harmful Waste (Special Criminal Provisions) Act, 1990. The Act places a total ban on the purchase, sale,

¹²Section 12(I)(a) of NESREA Act.

¹³*Ibid*, Section 11 (2)(a)

¹⁴*Ibid*, Section 10 (I)(e)

¹⁵*Ibid*, Section 10 (I)(a)

¹⁶*Ibid*, Section 10 (I)(b)

¹⁷*Ibid*, Section 10 (I)(e)

¹⁸*Ibid*, Section 10 (I)(d)

¹⁹*Ibid*, Section 8 (d)

²⁰*Ibid*, Section 8 (t)

²¹*Ibid*, Section 8 (g)

²²*Ibid*, Section 30

²³*Ibid*, Section 31 93. See S. 10 of the Harmful Waste (Special Criminal Provisions) Act, 1990.

²⁴*Ibid*

transportation, deposit or storage of harmful waste. Violators of the Act are held strictly liable and punishment range from a fine, and restoration of the polluted environment, to life imprisonment. Section 10 of the NESREA empowers a police officer to conduct a warrantless search on any land, building, or carrier, including aircraft, vehicle, container or any other thing whatsoever which he has reasons to believe is related to the commission of a crime under this Act. Similarly, the Act empowers an officer to perform test and take samples of any substances related to the commission of the crime and seize the item or substance. The officer is equally empowered to arrest any culprit in the commission of the crime.²⁵

c. State And Local Government Environmental Protection Agency

It is pertinent to know that these federating units constitute the environmental scenes where the “substantial degree of activities” of environmental issues are conducted. The States and Local governments also play critical roles in the enforcement of environmental laws in Nigeria.²⁶ The state and local government authorities and institutions including their environmental departments are expected to play their traditional role of maintaining and enforcing standards as well as fixing penalties charges, taxes and incentives to achieve certain environmental goals. The respective State Environmental Protection Agencies (SEPAs) are complemented by the Local Governments Agencies (LGAs) to ensure that the desired results are achieved. The critical role the state and local governments are expected to play in environmental protection matters, including enforcement of environmental laws does not affect the authority and powers of NESREA as the supreme reference authority in environmental matters in Nigeria.

d. National Orientation Agency (NOA)

The National Orientation Agency is one of the federal agencies that play very essential role in the enforcement of environmental protection laws. This is so in that it helps in ensuring that Federal Government environmental programmes and policies are better understood by the general public, so they do not fall victims unknowingly. It enlightens the public on the pros and cons of environmental policies of the Federal Government and translates these policies in the language best understood by them.²⁷ This helps the general populace in ensuring that they do not cause any environmental harm which consequently will produce healthy environment for Nigeria.

e. National Oil Spill Detection and Response Agency (NOSDRA)

The Federal Government established this agency as an institutional framework to implement the National oil spill contingency plan which is a blueprint/manual for checking oil spill through, containment, recovery and remediation/restoration.

²⁵ Section 10 of the Harmful Waste (Special Criminal Provisions) Act, 1990.

²⁶ Fagbohun, O., “Reappraising the Nigerian Constitution for Environmental Management,” AAU Law Journal, Vol. 1, 2002, No.1, 44.

²⁷ Hakeem Ijaiya, O. T. Joseph, “Rethinking Environmental Law Enforcement in Nigeria” *supra* n. 1

f. The Judiciary

Nigeria is known for its operation of the federal system of government and runs her governmental functions via the separation of powers. These powers are shared by the three arms of government which are the Executive, Legislative and the Judicial arms of government. The judicial powers of the Federation are vested in the courts.²⁸ The Judicial arm of government is saddled with the responsibilities of interpreting the law with a view to settling disputes. It takes charge of dispute settlements; in this case environmental protection disputes. It is one of the environmental law enforcement agencies in Nigeria in view of the important role it plays in ensuring that there are consequences for violation of environmental laws. It is a very sensitive arm of government in that without it, there cannot be peace and harmony to create enabling environment for other arms of government to function.

Other law enforcement agencies are the Nigeria Maritime Administration and Safety Agency (NIMASA), National Water Resources Institute (NWRI) and National Emergency Management Agency (NEMA).

The Judiciary and Environmental Protection Laws

As earlier stated, the judicial arm of government also known as Judiciary is saddled with the power and responsibilities of interpreting the law with a view to settling disputes. This special role of judiciary can be gleaned from the quotation of Lord Denning who succinctly captured the reality when he said that “*In theory the judges do not make law, they merely expound it. But as no one knows what the law is until the judges expound it, it follows that they make it.*”²⁹ That is to say, without judiciary, the laws are completely lifeless since it takes judiciary to breathe life into the laws. In theory the judges do not make law, they merely expound it. But as no one knows what the law is until the judges expound it, it follows that they make it indirectly. The Judiciary works through the instrumentality of the courts where matters are brought to and settled by judges. This means that environmental protection cases throughout the country are sent to courts for adjudication. By so doing, offenders are punished in accordance to the laws guiding the environmental.

Unfortunately, there are only few cases in Nigeria where the judges have boldly lent their heavy judicial weight in this their life saving task. In *Jonah Gbemre v Shell PDC Ltd and Ors*³⁰ The Federal High Court granted leave to the defendant to institute an action in the representative capacity and to apply for an order enforcing the fundamental rights to life and human dignity as provided by the constitution³¹ and reinforce in the African Charter on Human and People’s Right.³² The court held that these constitutionally guaranteed rights inevitably include the rights to clean, poison and pollution-free healthy environment. The judge’s order restrained the respondents from further gas flaring and

²⁸Section 6 of the Constitution of the Federal Republic of Nigeria, 1999

²⁹Quoted by Chianu, E., “The Horse and Ass Yoked: Legal Principles to Aid the Weak in a World of Unequals,” Inaugural Lectures Series 91, University of Benin, 2007, p. II.

³⁰(2005) Suit No. FHC/B/CS/53/05.

³¹See Section 33(1) and 34(1) of the 1999 Constitution of the Federal Republic of Nigeria.

³²See African Charter on Human and People’s Rights, Cap.A9, LFN 2004.

to take immediate steps to stop the further flaring of gas in the community. The case of *Adediran v Interland Transport Ltd.*,³³ also gives a glimmer of hope in this direction.

Class actions by a group or a community of people pursuing environmental claims can be embarked on in the court of law. These actions are common in the oil and gas industries where the industries pollute the land, air and water of a community and they seek redress in court. Nigerian courts have awarded special and general damages in actions for damages arising from environmental pollution. Also, recent strong sentiments expressed by the members of judiciary³⁴ reinforces the hope that, perhaps, the Nigerian judiciary is anxious to join the ranks of other progressive judiciaries in the world.³⁵

The scanty cases where the judges have boldly lent their heavy judicial weight in the task of environmental protection in Nigeria can be tied to the issues of undue adherence to legalism by the courts, enforcement is superficial, excessive time exists between non-compliance and enforcement (delay), injured parties are not properly compensated and some environmental crimes receive administrative instead of remedial measures or criminal punishments, issues of jurisdiction and *locus standi*. The issues of jurisdiction and *locus standi* in environmental litigation have contributed to the setback experienced in the judiciary. For instance, the issue of jurisdiction was a problem and challenge for the Supreme Court in the case of *Shell Petroleum Development Company (Nigeria) Ltd v Abel Isaiah*³⁶ where there was an Oil spillage that polluted the swamp of the plaintiff/respondent. At the time, it was only the Federal High Court that had jurisdiction³⁷ over oil spillage cases since the court had exclusive jurisdiction. The Supreme Court had to deliberate on the Court of Appeal's decision that the High Court jurisdiction's is right.

Conclusion

From the foregoing, the role of judiciary is indispensable in the fight for the protection and preservation of the environment for the purpose of crating healthy environment for mankind. This vital role of the judiciary is clearly not been effectively carried out, thereby making the legislative objectives remain unachieved. This is so as the situation in Nigeria seems degenerating because these laws are not effectively enforced by the judiciary. To cure these problems of ineffectiveness and give life to the legislative objectives, the following recommendations should be considered-

Establishment of Environmental Courts

Same way we have the National Industrial Courts in the Nigeria, environmental courts that would entertain environmental matters should be established for speedy enforcement of environmental laws in the country. This would ensure

³³ (1991) 9 NWLR (PI. 214) 155 (holding that a citizen has a right to bring a case against the government when they fail to address a public nuisance).

³⁴ Justice C. C. Nweze, "Book Review: Selected Essays of Hon. Justice Karibi-Whyte on Jurisprudence," Nigerian Bar Journal, Vol. 2, No.3, July 2004. For example, the Indian courts, the Ghanaian courts and the South African courts.

³⁵ For example, the Indian courts, the Ghanaian courts and the South African courts.

³⁶(2001) 5 S.C. (pt. 11) 1.

³⁷See Section 230(1) of the Constitution (Suspension and Modification) Decree No. 107 of 1993.

quick response to the needs of the environment, popularize environmental laws and aid enforcement of those laws in the most efficient way.³⁸

ICT Practice

The practice of utilising ICT devices should be encouraged and adopted in various courts in Nigeria to reduce the backlog of cases and in effect improve the speedy disposal of the environmental cases. This will also aid easy storage and retrieval of materials, assist with research and also improve correspondence and communication.

Electricity Supply

One of the crucial ways to improve the economy of any nation is provision of stable electricity supply. Virtually all the sectors, without exempting the judiciary, need electricity to perform effectively. Therefore, government should have the political will to provide stable electricity supply to enable judiciary to achieve the desired result.

Quick Response to Environmental Emergencies

As with the popular saying that ‘prevention is better than cure’ there should be quick response to environmental emergencies in the courts by granting injunctions to prevent the occurrence of worst-case scenarios.³⁹

Effective Access to Justice

Poverty humbles a man in the sense that where a man lacks the financial muscle to pursue cases which are usually very expensive, he goes home helpless. Legal aid scheme should therefore be provided for those victims that cannot afford the high cost of litigation. The citizens should have equal and effective access to justice to protect the environment.⁴⁰

Private Litigation

Private litigation to enforce environmental laws and regulations in the face of threatening actions by private or public organizations which are detrimental to the environment should be allowed and encouraged. The “polluter” must pay for his actions. This is a viable tool for the enforcement of environmental laws to give the environment its priority in the consciousness of the citizenry. The average citizen should have a proprietary interest in the human environment, such that he feels a personal responsibility to protect and defend that interest.⁴¹ A citizen of the country can institute an action against any private or public organizations who threatens to act or acts in a way that is detrimental to the environment. Access to court or administrative tribunal is a human right of an aggrieved person. This will

³⁸Hakeem Ijaiya, O. T. Joseph, “Rethinking Environmental Law Enforcement in Nigeria” *supra* n. 1

³⁹*Ibid*

⁴⁰Ogbodo S. G. “Environmental Protection in Nigeria: Two Decades After the Koko Incident” Annual Survey of International and Comparative Law: Vol. 15: Iss. 1, Article 2. available at <http://digitalcommons.law.ggu.edu/annlsurvey/vol15/iss1/2> Accessed 6th January, 2019

⁴¹*Ibid*

in no small measure enhance the enforcement of environmental laws in the country via the courts.⁴²

Stiffer Punishments of Environmental Offences

Courts are enjoined to impose maximum punishments on those found guilty to serve as deterrent to intending offenders. The attitude of the court and the liabilities of those that violate environmental laws are also important in the enforcement of environmental laws. The attitude of courts in their various judgments towards environmental justice should be positive. Just orders should be made to remedy the damages done to the physical environment of private individuals who seek redress in the law court.⁴³ This would enhance enforcement of the set rules and regulations due to the fact that people would be subjected to obey the regulations and guidelines of environmental laws as a result of the harsh penalties imposed by courts for those found guilty of environmental offences.

⁴²*Ibid*

⁴³Hakeem Ijaiya, O. T. Joseph, "Rethinking Environmental Law Enforcement in Nigeria" *supra* n. 1