

Understanding Environmental and Sanitation Laws in Nigeria:

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By

Hon. Justice Cyprian O. Ajah, Ph.D*

Salutations:

Let me start this presentation with acknowledging with immense gratitude and profound appreciation my nomination by the astute and very resourceful Administrator of this great Institute, Hon Justice R. P. I. Bozimo, OFR, to come and perform this privileged assignment of presenting a paper to this august virtual assemblage of highly Learned Magistrates. My Lord, I remain eternally grateful.

May I also use this opportunity to thank my boss, the highly cerebral, hardworking, reform minded, erudite jurist and astute judicial administrator, the Chief Judge of Enugu State, Hon Justice N. P. Emehelu, FCiArb, F.DRI, FICMC, who graciously approved and sponsored my coming here to do this presentation. My Lord I say thank you very much.

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1.Introduction

There are many environmental and sanitation laws in Nigeria. They range from the Nigeria's constitution to subsidiary legal frameworks covering both the oil and gas sector and non-oil and gas sector of the Nigerian economy. Understanding them entails indepth knowledge of their evolution and scope of their applications, including their enforcement schemes and palpable challenges associated with such enforcement schemes. From historical perspectives, it is notorious fact that in 15thCentury; the ancient societies like the *Maya* of Central America and Southern Mexico were so passionate about cultural environmental protection via basic personal hygiene and household sanitation.

As a result of this culture, they observed a fixed monthly ritual whereby people of the village would normally gather together and burn their rubbish in large dumps. Such refuse dumps

were not as gargantuan as in the period of the industrial revolution.¹ Similar culture was also observed in many traditional African societies like Nigeria. These rural communities operated certain environmental decision-making institutions for dealing with the task of refuse accumulation, sewage disposal and other innumerable sundry sanitation problems. The local environmental institutions were said to have been organized under kingdoms, chiefdoms and under community elders, based on community knowledge system acquired over a long period of time to suit their immediate needs.² Refuse in the rural areas at that time were often disposed in the backyard of each family unit, while open defecation in surrounding bushes was virtually the norm. Such traditional approach to environmental management, particularly the community-based system of refuse disposal accorded with the *theory of communalism*,³ which accorded with the spirit of collective efforts of local communities. For the Igbo tribe in the south-eastern part of Nigeria, spirit of communalism has remained the key in the attainment of their collective developmental goals and in the realization of their mutually common interests, destiny and aspirations. The community-based system of refuse disposal was also considered as environmentally sustainable then, even in the absence of any written regulations, in the sense that most refuse generated, substantially composed of food and agricultural wastes, which were biodegradable, or easily decomposed by nature and re-used as household or farm manure.⁴ By implication, customary law norms and authority of community heads appeared to have prevailed over how people lived in harmony with nature such that equipoise between human activities and the natural environment was consistently and substantially struck and sustained. Although, this facet of indigenous approach to environmentalism generally was neither asserted as public policy during the pre-colonial era in Nigeria, nor allowed to develop fully during the colonial era, it nevertheless appeared to have laid the foundation for modern development of environmental and sanitation laws, statutes, regulations and policies which were enunciated during the colonial rules, and many years after colonialism.⁵

***LL.B (Hons), BL, LL.M, Ph.D, FIIA, KSM, Judge, Enugu State High Court. Formerly , Director of Research (2010-2013) and Director of Studies (2013-2015), National Judicial Institute, Abuja.**

1. Ikechukwu E.I., *Environmental and Sanitation Laws in Nigeria, Application and Enforcement Challenges*. (First Edition, Etiquette Affairs Books, Enugu, Nigeria 2020), Pp. 1-2 ISBN: 978-978-981-172-4

² *Ibid*

³ For more insights into the theory, see Free Online Dictionary, “*Communalism*” available at <www.thefreedictionary.com/communalism> accessed June 29 2015.

⁴ Nwaru E.I., *op. cit.*, note 1

⁵ Adebisi A., “Environmental Sanitation and Waste Management”, *Journal: Geo-Studies Forum vol. 1, No 1 & 2, Department of Geology University of Ilorin Kwara State* (2000) pp. 31-32. Available online at:<www.ori.ng.org/newsandrelease2-htm/. accessed> 8th June, 2015. See also Kirkpatrick E. M., *Chambers 20th Century Dictionary*, p. 778 (explaining the meaning of the word “*Maya*”). However, the colonial era in fact presented an entirely different scenario of some sort. Following the establishment of central government of Nigeria for the British colonial regime, traditional resources management systems were disrupted in the process of complete integration of the Nigerian economy into the world capitalist economic system. By doing so, environmental and sanitation issues were based on western models and public policy on environmental sanitation and management were fashioned to serve the political and economic interests of Britain rather than the traditional communities. The post-colonial era,

For instance, under the British rule in Nigeria, the first development planning exercised in Nigeria came into operation in 1946.⁶ It was aimed at environmental sanitation and hygiene. Emphasis was mainly placed on refuse disposal and management of liquid and solid waste in abattoirs, residential areas and streets of local government authorities.⁷ In implementing a widespread programme of environmental sanitation, the British people were purported to have invested in the institution of health and sanitary inspection. As far back as 1940s, schools of hygiene were said to have been established in Ibadan, Kano and Aba for the training of environmental personnel known as Sanitary Inspectors.⁸ Although, these Sanitary Inspectors had numerous functions, the most notable of the functions for which they were popularly identified were to enforce refuse management in the residential premises and to conduct house-to-house inspection on the local people's source of water supply⁹. They were also popular for imposing drastic and immediate penalty for the infraction of sanitary regulations. By the policy initiative, the colonial authority had hoped to stimulate public awareness and actions about environmental sanitation and hygiene¹⁰.

Furthermore, apart from the defunct *ad hoc* War Against Indiscipline (WAI) campaign that was never based on any form of policy framework, but merely emphasized *ad hoc* militant enforcement of good moral discipline and sanitary behaviours in 1983 under the former military regime of General Muhammadu Buhari, the illegal dumping of hazardous waste by an Italian Company, *Giani Franco Rafaeli* at Koko Town in the former Bendel State in 1988 has remained the most notable incident of environmental pollution that immediately raised the environmental consciousness of Nigeria both nationally and internationally. Following the ugly incident, the federal government, in quick successions, enacted some environmental laws. These included the repealed Federal Environmental Protection Agency (FEPA) Act¹¹ and *Harmful Waste (Special*

development plan tagged: "*The Third National Development Plan (1975 – 1980)*" was however more innovative in the general perception of the environmental problems of the nation and the articulation of general sanitation goals.

6 Ikechukwu E. I., *op. cit.*, note 1

7 *Ibid*

8 *Ibid*

⁹With the greatest respect, it is submitted that under the *Constitution of the Federal Republic of Nigeria 1999* the inclusion into national economic development blue print such issues like health, water supply, sewerage, drainage, refuse disposal, housing and regional planning, establishment, maintenance and regulation of slaughterhouses, slabs, markets, motor parks, public conveniences, movement and keeping of pets of all descriptions as part of the functions of a Local Government Council in the *Fifth Schedule of the Constitution*, could be interpreted expansively to include a mandate for both the State governments and local Government Councils to show some measure of concern for the promotion of Public hygiene and environmental wellness generally, even though the 1999 Constitution does not expressly say so. This implies that the issue of environment is under the concurrent legislative list, implying also the Federal laws have not adequately covered the field.

¹⁰ The result was the enactment of some public health and forest conservation laws in Nigeria, including the public health Ordinance of 1912, the *Criminal Code of 1916*, the Eastern Region Forestry Law of 1955, Western Region Wild Animal Preservation Law of 1959, and Forestry Law of the Northern Region of 1960, among others.

¹¹ It has been repealed by *section 36* of the *NESREA Act LFN 2004*. But by virtue of *section 6(1)* of the Interpretation Act, LFN, 2004, the repeal of an enactment would not affect the previous operations of the enactment or anything

Criminal Provision etc) Decree,¹² which is currently an Act of the National Assembly by virtue of the savings clause i.e. *section 315 of Constitution of the Federal Republic of Nigeria, 1999* (as amended).

In addition, the advent of industrial revolution also expanded the nature, magnitude and impact of pollution activities at an amazing rate. Waste products from the industries were discharged directly into the environment.

The purpose of this paper is to comparatively analyze the scope and mode of application of some federal and state environmental-related laws, as well as, their enforcement challenges and the emerging trends in the international and domestic environmental spaces. However, before further discussion, it may be imperative to offer the definitions of certain key words in this paper.

2. Definitions of key Words and Terms

Every writer has the unmitigated penchant for clarifying the meaning of certain words in order to facilitate understanding of the entire text by the reader. It is therefore germane to hazard the definitions of some key terms in this paper. They are, environment, Environmental Law, and sanitation.

2.1 Environment

It appears that there is no any universally accepted definition of the word, “environment”. The reason for this is perhaps due to the diverse nature of the human environment itself. Nevertheless, for the purpose of this paper both statutory and judicial definitions of the word would suffice. According to the *Section 37 of the NESREA Act*¹³, environment includes “*Water, air, land and all plants and human beings or animals leaving therein and the inter-relationships which exist between these or all of them*”. The definition also has a striking semblance with the definition of the word as offered by the *Environmental Impact Assessment (EIA) Act*.¹⁴ In the express wordage of the EIA Act, environment basically comprises “*the totality of physical, economic, cultural, aesthetic and social circumstances, which affect the durability and value of life and property*” These statutory definitions contrast aptly with the definition of word by the Supreme Court of Nigeria in *Attorney-General of Lagos State v. the Attorney-General of the Federation*.¹⁵ In that case, the Nigeria Apex Court stated that “*the environment connotes the natural conditions, for example land, air, and water in which people, animals and plants live*”. These definitions are hereby adopted as guides.

duly done or suffered under the enactment. Such repeal would also not affect any prior right, immunities, privileges, obligations or liabilities which had accrued or incurred under the enactment.

¹² *No 86 of 1988*

¹³ *Extra-Ordinary Official Gazette of the Federal Republic of Nigeria No 92, Vol. 94 of 2007.*

¹⁴ *CAP E12 VOL. 6, LFN 2004. Ss. 2, 3, 39(7) & 60* are all relevant in this context.

¹⁵ *(2003) 12 NWLR (Pt. 833) ISC*, see particularly p. 180. Paragraph D-E

2.2 Environmental law

According to the Black's Law Dictionary,¹⁶ environmental law is the field of law dealing with the maintenance and protection of the environment, including preventive measures such as the requirements of environmental impact statements, as well as measures to assign liability and provide clean-up for incidents that harm the environment.

2.3 Sanitation

Sanitation simply refers to measures for the promotion of health, especially drainage and sewage disposal.¹⁷ By this definition, sanitation laws could therefore connote rules, and codes, guiding the use of facilities and services for safe disposal or re-use of waste; and maintenance of hygienic conditions through services such as garbage collection and waste water or liquid disposal.¹⁸

3. PRINCIPLES ESTABLISHING STANDARDS FOR THE APPLICATION OF ENVIRONMENTAL AND SANITATION LAWS IN NIGERIA

Because of progressive developments in international jurisprudence some international environmental law principles have evolved to establish standards for the application of environmental and sanitation laws worldwide, especially in view of the fact that by the exponential growth in international trade and trans-boundary effects of pollution and natural resources depletion, environmental and sanitation problems are no longer entirely local.

Understanding these basic principles is therefore vitally critical for effective understanding of Environmental and Sanitation Laws and their implementation. Notable among these principles are the Principle of State Sovereignty over Natural Resources and responsibility not to cause damage to the environment of neighbouring States or to area beyond national jurisdiction, principle of sustainable development; Polluter-Pays-Principle; principle of preventive action; principle of co-operation; principle of common, but differentiated responsibilities, as well as, the precautionary principle. Three out of these principles are hereunder briefly discussed.

3.1 Principle of State Sovereignty over Natural Resources and the Responsibility not to cause Damage to the Environment of Neighbouring States or to Area beyond National Jurisdiction

This principle allows States to conduct their activities as they choose within their territorial jurisdiction, including activities that will have effects on their own environment. It is equally called

¹⁶ Garner B. A. (ed.), *Black's Law Dictionary* (8th Edition, Thomson West Ground, USA 1999), p. 1347

¹⁷ Kirkparick, E. M. (ed.) et al; *Chambers 20th Century Dictionary* (W&R Chambers Ltd 1983), p. 1146

¹⁸ *Ibid* p 1146

the Principle of Trans-boundary Responsibility.¹⁹ It imposes an obligation to protect one's environment and to prevent damage to neighbouring environment.²⁰ The principle involves a duty of States to ensure sustainable use of natural resources²¹. The *Trail Smelter* case (*USA v. Canada*) is always a locus classicus in this regard. It involved a dispute over trans-boundary pollution incident involving the federal governments of both Canada and the United States. Smoke from the smelter caused damage to forests and crops in the surrounding area and also across the Canada-US border in Washington. The dispute between the smelter operators and affected landowners could not be resolved, resulting in the case being sent to an arbitration tribunal. Negotiation and resulting litigation and arbitration was settled in 1941.

3.2 Principles of Sustainable Development

International understanding of both sustainability and development has evolved a great deal in recent decades.²² The current global trend is that international courts and tribunals in their pronouncement are becoming more willing to go beyond a simple "balance" of environmental and economic concerns, towards actual integration of environmental, economic and social consideration in development.²³ As a general principle, international forums have contributed to the growth and expansion of sustainable development by providing a *space* which State and Non-State Actors may come together for a collective discussion of their sustainably-related challenges.²⁴

In the 2005 *Iron Rhine Railway case (Belgium v. Netherlands)*²⁵ award of Arbitral Tribunal which was struck under the auspices of the Permanent Court of Arbitration, the emerging trend in the sustainability concept was aptly spotlighted. The Tribunal emphasized the need for balance between environment and development considerations. In the case, Netherlands sought to reactivate a railway across the territory of Belgium pursuant to a venerable treaty, but it was unclear which State should bear the burden of Environmental Impact Assessment (EIA) and mitigation measures. In its decision, the Tribunal first recognized that "...the emerging principles, whatever their current status, make reference to conservation, management, notion of prevention and of sustainable development and protection for future generations".

¹⁹Omaka, C.A.; p.32, note 23

²⁰*Ibid* p. 32

²¹ See also *Pulp Mill on the Rivers Uruguay* i.e. *Argentina v. Uruguay* 2007, ICJ, 135-180. This case contrasts with *Trail Smelter* case. (*USA v. Canada*)

²² OrellanaM., p.2, note 37 However, it ought to be emphasized that unlike international treaties or clearly recognized international customary law, the 1992 *Rio Declaration and the Agenda 21* along with the 2002 *Johannesburg Declaration and Plan of Implementation* (JPOI) are not binding. Rather such consensus declarations by States are usually described as "soft laws".

²³ *Ibid*, p 2 note 48

²⁴ SeggerMarie - Claire C., 'The Role of International Forums in the Advancement of Sustainable Development', *Journal of Sustainable Development, Law and Policy* (FALL 2009) p.4.

²⁵ (2005) *Pert. Ct. Arb 1*, 28-29 & 49, available at <[http://www/pca-cpa.org/upload/files/BE-WIL%20Award%20240505 pat/pca](http://www/pca-cpa.org/upload/files/BE-WIL%20Award%20240505%20pat/pca)> accessed December 15 2014.

Contextually, it could be seen from the decision in *Rhine Railway case* that the Arbitral Tribunal applied both the preventive principle, and the integration principle as encapsulated in *Agenda 21*, in order to find that the lost of impact assessment and mitigation measures should be borne by the Netherlands which was carrying out the development as an integral part of the reactivation of the Iron Railway rather than by Belgium through whose territory the railway would pass. It is submitted that this decision is a landmark judicial precedent in the sense that the finding bordered essentially on the adoption of necessary precautionary measures by way of Environmental Impact Assessment and the generational index of sustainable development.

3.3 Polluter-Pays-Principle

The Polluter-Pays-Principle requires the Polluter to bear the cost or expenses of preventing, controlling and cleaning up pollution to prevent damage to human health or the environment²⁶. Its main goals are cost allocation and cost internalization²⁷. The principle appears to be an explicit part of legislation in some nations and in others it maybe an implicit subtext for both environmental regulation and liability for pollution.²⁸ This principle contrasts with the principle of preventive action²⁹ and the precautionary principle. There are many other principles in this regard. But for the sake of brevity, they would not be discussed.

4. APPLICATION OF ENVIRONMENTAL AND SANITATION LAWS IN NIGERIA

From the discussions in the preceding sections, it has become obvious that the Nigerian environmental legal regime is comprised of many laws, statutes, rules and regulations. Essentially, the applications of these laws, when complemented by international conventions which Nigeria had ratified, are targeted at protecting the natural environment from man-induced pollutions, especially the trans-boundary effects of such pollution on neighbouring countries. To amplify this assentation, it is necessary to embark on brief analysis of federal environmental sanitation laws in

²⁶ See Grossman M. R.; 'Agriculture and Polluter-Pays-Principle', the *Netherlands Comparative Law Association Journal*, (2006), pp.1-2, available at <www.ejcl-org/113/article-15pdf> accessed May 11 2015.

²⁷ United Nations Conference on Environment and Development (UNCED), Doc. A/CONE.151/5/Rev. 1, 31 ILM (1992), it must be noted that the Polluter-Pays-Principle was mention as *Principle 16 of Rio Declaration* of 1992.

²⁸ Hodge L., 'Agric-environmental Policy: A UK Perspective' in D. Heln (Ed), *Environmental Policy* (2000) pp.216-219. *Precautionary Principle and Principle of Preventive Action*, May at times, help to avoid environmental damage that could trigger the Polluter-Pays-Principle. The polluter-pays-principles appear to be its converse. The converse of Polluter-Pays-Principle however appears to be the *Provider – Pays – Principle*, implying that the producers could receive government supports and incentive for his activities that positively enhance or protect the environment. Sometimes producers could do so either by avoiding harm during their production activities or by providing environmental amenities by way of attractive rural or urban landscape and preservation of some important habitats which the Public values

²⁹ *Principle 14 of Rio Declaration of 1992* is apt.

Nigeria. They include the *Constitution of the Federal Republic of Nigeria 1999*, (amended)³⁰ which is the organic law of the land, the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act;³¹ the Fundamental Rights (Enforcement Procedure) Rules, 2009;³² the *National Environmental Standards and Regulation Agency (NESREA) Act*;³³ the Criminal Code Act;³⁴ the Harmful Waste (Special Criminal Provision Etc) Act;³⁵ the Nigerian Urban and Regional Planning Act;³⁶ the River Basin Development Authority Act;³⁷ the Oil Pipeline Act;³⁸ and the Oil in Navigable Waters Act;³⁹ Some common law rules relating to criminal and civil litigations of environmental offences in both international and domestic courts would also be discussed. They include *Locus Standi*, negligence, *Rule in Ryland v. Fletcher*,⁴⁰ trespass, and nuisance. Remedies of damages and compensation were also spotlighted.

³⁰ S. 20 provide that “the State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria”

³¹ Vol. 1, CAP A1, LFN, 2004, Article 21 (1) (2) and Article 24 are relevant. Article 24 specifically provide for the right for healthy environment.

³² Order 1 Rule (2), defines public interest to include “the interest of Nigerian society, any segment of it in promoting human rights and advancing human rights”. It equally define human rights to include fundamental rights under Chapter IV of the Constitution of Federal Republic of Nigeria 1999 and the rights stipulated in the African Charter on Human And Peoples’ Rights (Ratification and Enforcement) Act, LFN 2004.

³³ Ss. 7, 8 (k) & s. 25, 26, 27, 36, as well as, 37 are relevant.

³⁴ Vol. 4; CAP C38, LFN, 2004, s. 243; s. 245; s. 247 & s. 248 are apt.

³⁵ Vol. 7; CAP HI, LFN, 2004; ss. 6, 7 & 12 are relevant.

³⁶ Vol. 12, CAP N138, LFN, 2004; s. 30 (3), & 39(7) should be read in conjunction with ss. 7, 8, 9, & 10 of the Public Health Law of Enugu State, CAP 128 Revised Law of Enugu State of Nigeria, 2004. Particularly remarkably is the fact that section 7 of the Public Health Law stipulates 14 circumstances which could be deemed as incidences or acts of nuisance as follows: (a) Any premises in such a condition as to be injurious to health; (b) Any premises which are so dark or so ill-ventilated or so damp or in such a condition of dilapidation, as to be dangerous or prejudicial to the health of the persons living or employed therein. (c) Any premises which contain rat holes or rat runs or other similar holes or which are infested with rats or in which the ventilating openings are not protected by gratings in such manner as to exclude rats there from; (d) Any pool, ditch, gutter, watercourse, cesspool, drain, ash pit, refuse pit, latrine, dustbin, washing place, well, water tank, barrel, sink, collection of sullage water, receptacle containing stagnant water, or other thing in such a state or condition as to be injurious to health; (e) Any animal or bird so kept as to be injurious to health of man or molesting to neighbour and any animal or bird suffering from a noxious or contagious disease. (f) Any hole or excavation, well, pond or quarry in or near any street which is or is likely to become dangerous to the public; (g) Any stable, cow house, piggery, or other premises for the use of animals or birds which are in such a condition as to be injurious to the health of man or of such animals or birds; (h) Any noxious matter or water flowing or discharged from any premise into any public street or into any gutter or side channel of any street; (i) Any accumulation or deposit of rubbish of any kind whatever, or any decaying animal or vegetable matter, whether in the form of refuse, manure, decayed or tainted food, or in any form whatever; (j) Any growth of weeds, cactus, long grass, weeds or wild bush of any kind which may be injurious to health, and any vegetable that of itself is dangerous to children or others either by its effluvia or through eating its leaves, seeds, fruits or flowers; (k) Any premises certified by the Health Officer to be so overcrowded as to be injurious or dangerous to the health of the inmates; (l) Any premises on which servant or workmen are employed and suitable and adequate sanitary conveniences are not provided (m) Any act, omission, place or thing which is or may be dangerous to life, or injurious to health or property; (n) Any plant or tree which may be specified by the commissioner, by a notice published in the Enugu state Gazette on the recommendation of a Public Health Officer in relation to the breeding of mosquitoes, found in any area which may be specified in the said notice.

³⁷ Vol. 14, CAP R9, LFN, 2004. Ss. 1 & 5 are apt.

³⁸ Vol. 13, CAP 07, 2004, ss. 11(2), (5) (a)-(d), 5, 6, 14, 15(1) & (2). This should be read jointly with the Exclusive Economic Zones Act, Vol. 6; CAP E17, LFN, 2004 and United Nations Convention on Law of Sea (UNCLOS) of 1982

³⁹ Vol. 13; CAP 06, LFN, 2004. Ss. 1, 2, 3, 4(5), 5, 7 & s. 10 are germane.

⁴⁰ (1949), 2KB, p.48

4.1 Constitutional Provisions Relating to the Environment

A reference to combination of relevant national principal environmental and human rights legal instruments like the Constitution is the opening gambit in this discussion. Such reference would help to determine the extent the Nigeria's Constitution generally or impliedly accord recognition to environmental issues. Taking together with international legal instruments to which Nigeria is a party, the Nigerian Constitution in *section 20 of Chapter II* makes environmental welfare, a Fundamental Objective and Directive Principle of State Policy. A critical perusal of the provision of Chapter II of the Constitution would reveal that there was no express provision for the right to healthy environment therein. Nonetheless, the Constitution in Chapter IV provides for substantive rights like right to life, dignity of human person, private and family life, equality and property.⁴¹ These rights are often expansively interpreted to include the rights to healthy environment; especially with regard to such public interest matters like *Jonah Gbemre v. Shell Petroleum Development Company (SPDC) Nigeria limited*.⁴² In that case, the Federal High Court held that the action of the 1st and 2nd respondents in continuing to flare gas in the course of their oil exploration was a gross violation of plaintiff's constitutionally guaranteed right to life, including right to healthy environment and dignity to human person.

It is submitted that although *section 20 of the Nigerian Constitution 1999*, places a mandatory duty on the State to direct its policies towards achieving the above environmental objectives, but it is obvious that it however never placed any corresponding legal right on the citizens to enforce such provision or any other provisions of the Chapter II of the Constitution in the event of non-compliance by the State. The reason for this state of affairs might have stemmed from the fact of the constitutional limitation imposed by *section 6(6) (c)* of the Constitution against the justice ability of the rights under the Fundamental Objectives and Directive Principles of State Policy in chapter II of the Constitution.

The stipulation of *section 6 (6) (c)* was judicially interpreted in *Okogie (Trustees of Roman Catholic Schools) v. Attorney-General, Lagos State*,⁴³ which is based on equivalent provision of the erstwhile 1979 Nigerian Constitution. The case dealt with the Constitutional issues of the

⁴¹ See generally *ss. 33, 34, 37, & 43 of the Constitution of the Federal Republic of Nigeria 1999*, (as amended).

⁴² Suit No. FHC/B/CS/53/05 (unreported), delivered on 14th November 2005. For judicial activism, see generally the case of the *Military Governor of Lagos state v. Chief OdumegwuOjukwu*, (1986), 2 NWLR (Pt 18), p. 621, where the Apex Court held that "in a country where the rule of law operates, the government cannot be allowed to resort to self-help by engaging in executive lawlessness". Section 20 of the Constitution merely provides that: "the State shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria". Chapter II of the 1999 constitution which borders on Fundamental Objectives and Directive Principles of State Policy therefore appears only declaratory. Essentially, they merely constitute a set of guidelines designed to secure, national targets of social wellbeing, social justice, political stability and economic growth in accordance with the espoused vision of the preamble to the constitution, but not that it has expressly and firmly entrenched environment rights as part of the fundamental rights of Nigerians.

⁴³ (1981) 2 NCLR p. 3337

Plaintiff's fundamental rights under *section 32(2) of the 1979 Constitution* to own, establish and operate private primary and secondary schools for the purpose of imparting ideas and information, and the constitutional obligation of the state governments like Lagos state government to ensure equal and adequate educational activities at all levels under *section 18(1) of Chapter II of the 1979 Constitution*, which is the equivalent provision of the 1999 constitution. On reference to the Court of Appeal, the Court while considering the constitutional status of the *Chapter II of the 1979 Constitution*⁴⁴ stated that it was not justiciable by virtue of section 6 (6) (c).

With equal force, it is respectfully contended that the obligation of the judiciary to observe the provisions of Chapter II ought to be limited to purposive interpretation of the general provisions of Constitution in such a way that the provisions of Chapter II would adequately serve its purpose. The reasoning in the decision was affirmed in the later case of *Adewole v. Jakande*.⁴⁵ The effect of these decisions is that the provisions of Chapter II of the Nigerian Constitution are only regarded as mere declarations or cosmetic constitutional provisions while their constitutional weight lies at the moral level and this paper agrees with the view of Mamman Nasir JCA (as he then was) in the *Okogie's case*, that its justice ability can only be attained through appropriate legislation or constitutional amendment via the National Assembly. This appears to have been reaffirmed by the Nigerian Supreme Court in the case of *Attorney-General, Ondo State v. Attorney-General, Federal Republic of Nigeria*,⁴⁶ involving the constitutional validity of the *Corrupt Practices and Other Related Offices Act No. 5 of 2000 and the Independent Corrupt Practices and Other Related Offences Commission (ICPC)*. Both the Act and ICPC were established to enforce the observance of the Fundamental Objectives and Directive Principle set out in *section 15(5) of the 1999 Constitution*. The Supreme Court amplified the issue by stating that the justiciability of the Fundamental Objectives and Directive Principles of State Policy could only be possible by legislation.

However, in the interim, the decision of the court in *Gbemre v. Shell*⁴⁷ has remained one of the landmark judicial decisions on the right to healthy environment in Nigeria. In that case, the presiding Judge, Justice C. V. Nwokorie commendably adopted the expensive interpretational orientation by considering the scope environmental rights in the African Charter in conjunction with rights to life in section 33 of the 1999 constitution to arrive at his decision.

⁴⁴ *Supra*

⁴⁵ (1981), 1 NCLR p. 152. Also significant is the case of *Attorney-General Lagos State v. Attorney-General of the Federation*, (2005) 2 WRN p. 1, where the Supreme Court as per Niki Tobi JSC (as he then was) stated that "...the courts are available to accommodate all sorts of grievances that are justiciable in law and section 6 of the constitution gives the court power to adjudicate on matters between two or more competing parties".

⁴⁶ (1980), ALR SC 1789.

⁴⁷ *Supra*

4.2 African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act⁴⁸

The Act domesticates the provisions of the African Charter on Human and Peoples' Right in Nigeria. By the domestication, the Charter has become part of existing Nigerian legislation recognized under the Nigeria's Constitution⁴⁹ and has such effect until modified by the appropriate authority. The domestication of the African Charter in Nigeria extends the corresponding obligations not only to the government, but also, to private individuals in Nigeria. Thus, any person who felt that any of the rights provided by the Act, including the right to a healthy environment, in relation to him is infringed or threatened by conducts of the State, corporate entity or private individuals can initiate action in court for a redress under the African Charter.⁵⁰

It must be noted however that *Article 24* and other provisions of the Act are subject to the provisions of the Nigerian Constitution and any other subsequent law repealing or modifying it. The effect of this is that in the event of any conflict between the provisions of the Act and that of the Nigerian Constitution, particularly in relation to its fundamental human rights provisions, the Nigeria Constitution prevails.⁵¹

4.3 The National Environmental Standards and Regulation Agency (NESREA) Act

The NESREA⁵² Act has established a new Agency known as National Environmental Standards and Regulations Enforcement Agency. Consequently, it took over the duty of environmental regulation from the defunct FEPA. The NESREA has the statutory mandate, among other things, of protection and development of the environment, biodiversity conservation, and sustainable development of Nigeria's natural resources in general⁵³.

It is submitted that by its structure and objective, covering wide speculum of the nation's environment, including, air, water, land use, stratosphere or atmosphere or the ozone, conservation of natural resources and other aspects of sustainable development with the exception of issues affecting the oil and gas sector, the NESREA appears also to be a veritable working legal document

⁴⁸ In this regard, *Article 21(1) & (2), and Article 24* of Charter are particularly very germane.

⁴⁹ IluN., '*Interpretation of Taxing Act: Construction and Exemption*' (2015) pp. 1-2. (Affirming that... "*the principles of interpretation which have evolved are those based on plain meaning of the words used and their grammatical meaning and those based on the intention or purpose of the legislation*" available online at <www.legalservicesindia.com/.../interpretation-of-taxing-stute-as-strict-e> accessed February 25 2015, p.1.

⁵⁰ *Section 12(1)* of the 1999 Constitution relating to implementation of treaties authorizes such domestication by the National Assembly.

⁵¹ In *Medical & Health Workers Union v. Ministry of Labour and Productivity* (2005) 17 NWLR (Pt. 953), 120 at 156, the Supreme Court of Nigeria held that an international treaty entered into by the government of Nigeria would not become binding until enacted into law by the National Assembly. See also Ajah C. O., '*The Jurisprudence of War Crimes*' (DEMI Printing & Allied Resources Limited 2012).pp. 191- 192. In his book, Dr. Ajah discussed domestic implication of International Laws relating war crimes in Nigeria, and implementation of treaties in Nigeria.

⁵² It must be noted that *s. 36 of NESREA Act of 2007 particularly repealed the FEPA Act.*

⁵³Ss. 2 &7(a), (b), (c) – (m) are very significant.

for Public Interest Litigation advocates and could be readily invoked in Public Interest Litigation involving rights violations of the citizen. For instance, the Act criminalizes environmental offences relating to quality of air resources, so as to promote public health and welfare and natural development and productive capacity of the nation's human, animals, marine, or plant life. A person who violates it shall on conviction be liable to imprisonment for a term not exceeding one year or fine not exceeding ₦50,000 or to both such fine and imprisonment and additional fine not exceeding ₦20, 000 every day the offence persists. If the offence is committed by a body corporate, the penalty is fine not exceeding ₦2,000,000 or fine not exceeding ₦50,000 every day the offence subsists.⁵⁴The NESREA also criminalizes offences relating to noise pollution, effluents, discharge of hazardous wastes and more significantly imposes standards and regulations for environmental sanitation.⁵⁵ The imposition of standards for environmental sanitation by NESREA has been commended as very innovation. The defunct FEPA Act was widely criticized for the apparent absence of such provision.⁵⁶

4.4 The Criminal Code Act⁵⁷

The *Criminal Code Act* appears to be one of the statutes in Nigeria that has direct bearing in environmental protection and management. It appears to have pre-dated other statutes in Nigeria relative to environmental wellness. However, for the purpose of this paper, only *sections 245 and 247* are relevant because they border on environmental pollution and control. For the purposes of clarity, section 245 criminalizes the act of “*corrupting or fouling the water of any spring, stream, well, tank reservoir or place, so as to render it unfit*”, while *section 247* prohibits the “*vitiating of the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way*”. Such an offender would be guilty of a misdemeanor and if convicted, he would be liable to six months imprisonment under section 245 and section 247 respectively.⁵⁸It is submitted that the provisions of *sections 245 and 247* are very remarkable. Because the provisions in their objectives to give adequate protection

⁵⁴ S. 20 (1) & (3) are relevant.

⁵⁵ See also *s. 23(1) – (4)*. For effluent limitation, see also *s.24 (1) – (5)*. See also *s. 25(1) & (2)* which relate to the protection of public health and promotion of sound environmental sanitation.

⁵⁶ OmakaC. A., *Environmental Regulation in Nigeria: Understanding the National Environmental Standards Regulation Enforcement Agency Act 2007*, (Lion Unique Concepts Lagos Nigeria 2010) p. 26. See generally *s. 20(1) and s. 23 of NESREA Act (supra)*. Similar water standards provision exists in *s. 245 of the Criminal Code Act* which makes it a criminal offence for any person to foul water or water course or make it unfit for the purpose for which it is ordinarily used

⁵⁷ *Vol. 4, CAP 38, LFN, 2004. Ss. 243, 245 & 247* are relevant.

⁵⁸ *CAP 165 LFN 1990. Ss. 243 & 248* are significant.

to Public Health, essentially, recognizes the *Neighbourhood principle* as enunciated by Lord Atkin in the antiquated, but classical case of *Donoghue v. Stevenson*.⁵⁹

4.4 The Harmful Waste (Special Criminal Provision Etc) Act⁶⁰

This Act is another significant environmental enactment in Nigeria. It is aimed at ensuring that individuals, business tycoons and corporations conduct their activities in a very sound environmental manner. The Act equally criminalizes environmental offence in Nigeria. It prohibits transactions, in any form, on harmful wastes with appropriate punishments for any one in breach. Criminal action could therefore be commenced against oil pollution offences or act of dumping of hazardous substances by an aggrieved person by virtue of *section 1 of the HWSCP Act*. For brevity, *section 1(1)* of the Act stipulates that “*Notwithstanding the Provisions of the Customs Excise Tariff etc (Consolidation) Act... all activities relating to the purchase, sale, importation, transit, transportation, deposit, storage, of harmful wastes, are hereby prohibited and are declared unlawful*”.⁶¹ On the other hand, *Section 2 of the HWSCP Act*, enumerates the offences and further provides that a person shall be deemed to deposit or dump the harmful waste, whether solid, semi-solid or liquid in such circumstances or for such periods that he may be deemed, to have abandoned it or to have brought it to the place where it is so deposited or dumped.

Of more significance, is the fact that the Act also stipulates that any person found guilty of crime under the Act, will on conviction be sentenced to life jail.⁶² In addition, any *carrier* whatsoever used in the transportation or importation of the harmful waste and any land on which harmful waste is deposited or dumped will be forfeited and vested in the Federal Government. Harmful Waste is defined by the Act to include “*injurious, poisonous, toxic or noxious substance, if the waste is in quantity as to subject any person to the risk of death, fatal injury or incurable impairment of physical or mental health*”.⁶³

⁵⁹ (1932) *E.A.C*; 562. In that case, a manufacturer of a ginger beer sold to a retailer, ginger beer in an opaque bottle. Another consumer bought a bottle of the ginger beer from the retailer and treated his girl friend to its content. The girl alleged she suffered some injuries as a result of seeing and drinking the contaminated contents of the beer manufactured by the defendant, the ginger beer in fact, contained decomposed remains of a snail. Since she had not herself been in contractual relationship with the proprietor, she could not sue him. She therefore sued the manufacturer. The boy himself could not sue anyone because he did not suffer any injury. The Scottish Court held that there was no legal connection between the girl and manufacturer and hence dismissed the case. On appeal to the House of Lords, it was held that the bottle did contain noxious matter and that manufacturer owed a duty of care and would be liable if the duty was broken. The rule of thumb from the above quotation, is therefore one of close relationship and the criterion is whether the likelihood of injury ought to have been foreseen by the defendant. An aggrieved party in an action against oil pollution may find it more advantageous to file an action on the tort of negligence, and/or under the Rule in *Ryland v Fletcher* (supra) or even trespass. This may have informed the decision of the court in *Shell Petroleum Development Company of Nigeria Limited v. Chief Otoko* (1990) 6NWLR (PT 159) 693. Applying both the principles of negligence and the Rule in *Rylands v Fletcher*", the Court held the defendants liable for negligence.

⁶⁰ Vol. 7, CAP H1, LFN 2004. Ss. 6, 7 & 12 are very apt.

⁶¹ Sections 2, 6, & 15 are relevant.

⁶² Section 6 is relevant.

⁶³ Section 15 of the Harmful Waste Act is apt.

Contextually, all the relevant provisions of the HWSCP Act herein mentioned, have far-reaching implications in environmental control in Nigeria. Under Section 1 (2), an environmental offence is committed only if an accused person does the acts enumerated therein without lawful authority. The converse is that if there is lawful authority to commit the act, then no offence is committed. And what is a lawful authority is a matter of facts.

4.5 The Environmental Impact Assessment (EIA) Act

This particular Act⁶⁴ makes provision for an assessment of the potential impacts whether positive or negative of a proposed project on the natural environment. And all prospective industrialists or corporate bodies are under obligation to observe the provision of the law before establishing their industries.⁶⁵ This is important in order to determine in good time the environmental impacts of such proposed project on human and animal lives. Environmental Impact Assessment (EIA) could for instance, ensure that possible negative impacts or deleterious effects of industrial process, construction and town planning development projects are addressed prior to the project take off. It ensures that such projects are regularly monitored even long after their execution. A rule of EIA is usually incorporated into the planning stage and decision making process or such project by way of EIA Report.⁶⁶

4.6 The Nigerian Urban and Regional Planning Act

The Urban and Regional Planning Act⁶⁷ is aimed at overseeing a realistic purposeful planning of the country to avoid overcrowding and poor environmental conditions. In this regard, *section 30(3) and section 39(7)* are instructive. *Section 30(3)* requires a building plan to be drawn by a registered Architect or Town Planner as a pre-requisite for undertaking a building project, while *section 39(7)* provides that “*an application for land development would be rejected if such development would harm the environment or constituted a nuisance to the community*”.

These sections should be compared with *section 7 of Public Health Law of Nigeria*⁶⁸, of Enugu State which provides for control of nuisance even after the completion of such buildings and their habitations by people. In fact *section 7* of the law stipulates 14 circumstances which could be

⁶⁴ CAP E12, LFN, 2004.

⁶⁵ See generally *s. 1, 2 & 60* of the Act.

⁶⁶ By virtue of *section 63* of the EIA Act, environmental impact assessment is an assessment of the environmental effects of a project. For the three projects that could be excluded from EIA, including projects relating to emergencies and over-riding public interest by the President of the Federal Republic of Nigeria, see *section 15* of the EIA Act, which is subject to the powers of the President *under section 305 of the 1999 Constitution*. But such projects under this exclusion list can be reviewed if the environmental impacts become significantly adverse. There are also numerous references to EIA in *Agenda21*. See particularly *principle 17 of Rio Declaration of 1992*. See also Article 2 of the United Nations Convention on Biological Diversity

⁶⁷ Vol. 12 CAP 138 LFN 2004.

⁶⁸ See generally *sections 7, 8, 9, & 10 of Public Health Law of Enugu State of Nigeria, 2004*. Notably, *s. 7* of the Public Health Law enumerates 14 circumstances which could be deemed as incidences or acts of nuisance. See note 64.

deemed as incidences or acts of nuisance.⁶⁹ By *section 8(1)* of the law, a health officer shall, if satisfied that there is existence of a nuisance, serve a notice, hereinafter called an abatement notice, on the person by whose act, default or sufferance the nuisance arises or continues, or if such person cannot be found, on the occupier or owner of the premises on which the nuisance arises requiring him to abate it.

Section 9 (1) (a) and (b) of the Enugu State Public Health Law⁷⁰ is equally significant. It harps on the nature of the court order to be made in the event of non-compliance with such abatement notice. It empowers the court on receiving complaint on such act of non-compliance to summarily make a *nuisance order* against the offender. And such *nuisance order* of the court may be an abatement order; a prohibition order or a closing order, or a combination of such orders⁷¹. An abatement order may require a person to comply with any of the requisition of the notice, or otherwise to abate the nuisance within the time specified in such order⁷². A prohibition order may prohibit the recurrence of a nuisance.⁷³ An abatement order or prohibition order shall, if the person on whom the order is made so requires, or the court considers it desirable, specify the work to be executed by such person for the purpose of abating or preventing the recurrence of the nuisance.⁷⁴ A closing order may prohibit any structurally defective premises from being used for human habitation.⁷⁵ However, a closing order shall only be made where it is proved to the satisfaction of the court that, by reason of a nuisance, the premises could be unfit for human habitation, and, if such proof is given, the court shall make a closing order, and may impose a *fine of ₦40*.⁷⁶ And the court when satisfied that the premises have been rendered fit for human habitation, may declare that it is so satisfied and cancel the closing order. It is submitted that, regrettable a major shortcoming of this Law is that it provides for meager or paltry sum of ₦40 as fine under *section 8 (3)* of the law. Such paltry sum is no longer in tune with modern economic and social realities. It ought to be reasonably reviewed upwards.

4.7 Oil in Navigable Waters Act

⁶⁹ See also particularly *ss. 8(3) (a), (b), (4) & 9* for nuisance arising from the defect of a structural nature or where the premises is unoccupied and the person to be served the abatement notice and penalty for non-compliance with requisitions of the notice.

⁷⁰ *Supra*

⁷¹ *S. 9 (2)*

⁷² *S. 9 (3)*

⁷³ *S. 9 (4)*

⁷⁴ *S. 9 (5)*

⁷⁵ *S. 9 (6)*

⁷⁶ *S. 9 (7) of the Law is applicable in this regard.*

This is an Act⁷⁷ aimed at fulfilling Nigeria's obligation towards the implementation of the terms of the *International Conventions for Prevention of Pollution of the Sea by Oil of 1954 – 1962* and to make provisions for such prevention in the navigable waters of Nigeria. Nigeria acceded to the convention on 22nd day of April 1968.

Five anti-pollution-related offences are created by the Act *under Sections 1,3,5,7 and 10* respectively. But for purpose of this paper *Section 3* is most relevant in the sense that it proscribes the discharge into the waters of Nigeria, of any oil or mixture containing oil from any place on land or from any apparatus used for transferring oil from or to any vessel (whether to or from a place on land or to or from another vessel). Its importance stems from the fact that it covers cases of oil pollution arising from the incidences of oil pipelines breakages and also effluent discharges from oil refineries. By virtue of *Section 6 (1) of the Oil Terminal Dues Act of 1969*, the provision of *Section 3* of the Act extends to oil terminals in Nigeria. However, the special apparently curious statutory defence under *Section 4(5)* of the Act seems to have substantially whittled down its efficacy as many of the culprits may escape liability and prosecution by virtue of those defences under *section 4(1), (2) and (5)*. For instance, a defendant may escape liability by establishing that he discharged oil from the ship to save life. The question is: assuming that an oil tanker is stranded in a river estuary and the captain jettisoned some tons of oil cargo in order to save life and the tide carries the oil to foreshore and caused damage, even if such stranding was due to negligence act of ship owner for instance in not repairing faulty steering or engine of ship when the intentional oil discharge occurred, can the ship Captain or the owner be held liable in negligence? By virtue of the joint effects of *section 4 (1), (2) and (5)* of Act, it appears that the conduct of the Captain of the ship or owner would be justified in law and he would consequently escape liability.⁷⁸ It is however, submitted that cases arising out of scenarios such as this should be treated on the merit i.e. on case-by-case basis subject to discretion of the court and evidence before the court.

5. SOME COMMON LAW RULES THAT COULD SET STANDARDS FOR THE APPLICATION OF ENVIRONMENTAL AND SANITATION LAWS IN NIGERIA

Judicial intervention arises when a person resorts to court action to seek redress for a grievance. Environmental litigation in domestic courts in Nigeria is critical component of such intervention. Environmental and sanitation do not exist in vacuum. There are some common law rules that can set standards for their application. They include negligence, the rule in *Ryland v.*

⁷⁷ *Vol. 13, CAP 06 LFN 2004, ss. 1 (6), 3, 4 (5), 5, 7 & 10.* This Act contrasts with the Oil Pipeline Act, *vol. 13, CAP 07 LFN 2004*, see generally *ss. 6 (3) & (4) 5, 11 (2) & (5) (a) – (d); 14 & 15 (1) & (2).* Compare them with the *Petroleum Act, vol. 13 CAP P10, 2004; s. 9 (i) (b) (ii) & (c).*

⁷⁸ See *ESSO Petroleum Company Ltd v. Southport Corporation (1965) A.C. 218.* In this case, the defendant escaped liability by establishing that he discharged oil from the ship, because of faulty navigation in order to save life. See Nwaru E.I., *An Appraisal of Oil Pollution-Related laws in Nigeria...* Niger Delta in Focus (Etiquette Affairs books, Enugu) pp. 23 – 24.

Fletcher, trespass and nuisance. Doctrinally, these common law rules provide veritable reliefs when they are invoked, especially in situations where some national environmental and sanitation laws fail to provide adequate grounds in environmental litigation. The applications of the rules are also resorted to in both *criminal and civil* environmental litigations.⁷⁹

5.1 Negligence

A breach of a legal duty to take care which resulted in damage suffered by the aggrieved party is called negligence. Such damage might not have been contemplated by the person committing the breach to the person to whom the duty is owed.⁸⁰The Supreme Court of Nigeria gave expression to this definition in the case of *Makwe v. Nwuko*.⁸¹Thus, for the aggrieved party to be availed of his environmental rights in court, he must prove to the satisfaction of the court, that the defendant was negligent in causing the environmental wrong doing in issue. He must also show that there was a sufficient relationship or proximity or neighbourhood existing between him and the defendant such that in the reasonable contemplation of the defendant, carelessness on his part may be likely to cause damages to the plaintiff.⁸² This case contrasts with the *Deepwater Horizon Oil Spill case of (US v. BP Plc), Transocean Ltd & Halliburton Energy Service*⁸³ wherein the defendant were held liable by the court to pay \$18.7 billion as compensation, on the basis of gross negligence committed by BP and its business partners, as a result of oil spillage from their facility in the Gulf of Mexico in April, 2010. The incident killed 11 persons and injured 17 persons.

4.3 The Rule in *Ryland v. Fletcher*:

However, the damage to the plaintiff may be of such a critical nature, that apart from relying on nuisance, and negligence alone, the plaintiff could also invoke the rule in *Ryland v. Fletcher*⁸⁴and trespass all together in order to prove his case or to show that the defendant breached the common law duty of care owed him. For one to say that a duty of care has been breached one must know the acceptable limit of the care required, and the breach of which caused a particular hazard as in *Deepwater Horizon Oil Spill case*. This is most often a near impossibility, since in the oil and gas sector of the Nigeria economy the victim of environmental hazard more often than not is

⁷⁹ Nwaru E.I., *An Appraisal of Oil Pollution-Related Laws in Nigeria: Niger Delta in Focus* (First Edition Etiquette Affairs Books, Enugu Nigeria, 2004).pp.70-72

⁸⁰ Section 217Torts Law, CAP 150, Revised Laws of, Enugu State of Nigeria, 2004.

⁸¹ (2001) 1 NWLR (Pt. 733) at page 361

⁸² *Donoghue v. Stevenson*, (1952), EAC, 562

⁸³ For more details, see note 103. The case was decided on 4th September, 2014. The spill, the largest in US history, occurred on April 20 2010 in the Gulf of Mexico. The incident killed 11 people and injured 17 people.

⁸⁴ (1949) 2KB p.48, however the inherent problem could be averted by the court invoking the Latin maxim: Res ipsa loquitur, meaning the facts speak for themselves, or the affair speaks for itself.

not part of the operation. Most of the operations that lead to environmental hazards usually border on expert operations which only the operator can understand and assess scientifically.

In *Seismograph Services Ltd v Onokpasa*,⁸⁵ wherein the Respondent claimed damages for destruction to his house during the Appellant's seismic operations, the Supreme Court viewed the issue as having a technical nature which required the evidence of a technical expert who is knowledgeable in seismology and civil engineering. Regrettably, the claim of the Respondent in that case failed because of his inability to procure the services of such scientific expert.

4.4 Trespass

Acts which can ground actionable trespass include unlawful entry into the land of the plaintiff by the defendant without the consent of the plaintiff or remaining on the land after a right to do so must have ceased. Another act that can ground it is any tendency by the defendant towards abusing the rights of entry or causing some objects to enter on the land.⁸⁶ This was the import of the decisions in *Seismography Services Nigeria Ltd v. Akporuovo*⁸⁷, *Seismography Services Nigeria Limited v. Benedict Onokpasa*⁸⁸ and *Seismography Services Nigeria Ltd v. R. K. Ogbeni*⁸⁹. However, sometimes it is difficult to determine how an intrusion could amount to actionable trespass. This is in view of the common law condition that placement of such object on the plaintiff's land must be direct.

4.5 Nuisance

In its legal sense, nuisance means annoyance or harm. There are many types of nuisance. But there seems to be a common law restriction on the application of the doctrine. This is, perhaps, because not every annoyance is actionable in nuisance under the common law. However, the element of unlawful annoyance is the only thing common to all types of nuisance. In the oil producing areas for instance, a ready source of nuisance consists of the seismic activities of the oil companies, preparatory to petroleum operation, mining of crude oil, refining, transportation and oil spillage arising from these operations.⁹⁰

4.9 An Appraisal of Some State Sanitation Laws

⁸⁵ (1992) ALL NLR, p. 347.

⁸⁶ *Seismography Services Nigeria Ltd v. Akporuovo* (1994) 4SC 85, *Seismography Services Nigeria Limited v. Benedict Onokpasa* (1992) ALL NLR 347 and *Seismography Services Nigeria Ltd v. R. K. Ogbeni* (1990) 4SC 85.

⁸⁷ (1994) 4SC 85

⁸⁸ (1992) ALL NLR 347

⁸⁹ (1990) 4SC 85

⁹⁰ See generally sections 7, 8, 9, and 10 of *Public Health Law of Enugu State of Nigeria, 2004* (supra). Notably section 7 of the Public Health Law stipulates 14 circumstances which could be deemed as incidences or acts of nuisance. See note 126

All the 36 states of the federation, including the Federal capital territory Abuja have their respective Environmental Protection Agencies and Sanitation laws aimed at protecting the environment.

In Enugu state for instance, apart from *Public Health Law*,⁹¹ there is also the *Enugu State Waste Management Authority Law*.⁹² It established the Enugu State Waste Management Authority. It has a total of 43 sections, with sub-sections which are however too numerous to mention here. It is submitted that although it has inappropriately been tagged “Waste Management Law”, it is currently the most prominent state law aimed at the protection of the state environment. These two environmental legal instruments could often be augmented with relevant Federal environmental legislation. *Section 12 – 29 of the Enugu State Waste Management Authority Law* relate to wide range of human activities and personal hygienes like ownership of tenements, ownership of under-developed plots in built up areas, industrial waste, commercial waste, provision of dust bins in commercial vehicles, public conveniences, removal of silt, disposal of construction debris, observation of compulsory sanitation day on the last Saturday of every month, restriction of movements on sanitation days, and general penalty.

However, the most significant aspect of the law is the establishment of the Enugu State Environmental Protection Court.⁹³ Since its establishment, the court has relatively contributed immensely in the promotion of the general sanitation of the state. The court is usually presided over by a Chief Magistrate. But it appears that one of the negative features of the court like any other Environmental Court in Nigeria is that it appears to be operating more as a revenue court, and as such, all its activities often appear to be revenue-based rather than substantially environmental sanitation-based.

In Abuja, the federal capital territory, there exists the Abuja Environmental Protection Board (Solid Waste Control) and the *Abuja Environmental Protection Regulation 2005*; which principally governs solid Waste Control in Abuja. This contrasts with Lagos State law.

Lagos State has the *Lagos State Environmental Protection Agency (LASEPA) law*⁹⁴. It established the Lagos State Environmental Protection Agency (LASEPA). Like most Environmental Protection Agencies across the country, LASEPA functions include monitoring and control of waste disposal in Lagos State and advising the state government on all environmental management policies. Lagos State has also enacted the Environmental Pollution Control Law to

⁹¹ CAP 128, Revised Laws of Enugu State of Nigeria, 2004.

⁹² CAP 75, Revised Laws of Enugu State of Nigeria, 2004.

⁹³ For this, see *section 30* of the law for exclusive and original jurisdiction of the court, over matter specified under, see *section 31*.

⁹⁴ CAP, E5, laws of Lagos State of Nigeria 2000, S.5. See also ss. 1, 4, 6 & 7, for more effects of the law.

provide for the control of pollution and protection of the environment from abuse due to poor waste management. A curious aspect of the Lagos State Environmental and Sanitation law like the Enugu State Waste Management Authority Law is that it imposes restriction on human and vehicular movements except those on essential duties on the last Saturday of every month. On that day, people are expected to participate in the compulsory state-wide sanitation exercise for three hours commencing from 7am -10am in the morning.

6. ENFORCEMENT CHALLENGES

It is apparent that the development of certain environmental legal frameworks by both the Federal and state governments and even at the international environmental space was informed by the dire need to secure their observance, compliance or enforcement in order to protect the living resources of environment. Incidentally, the attainment of this noble goal has always been confronted with many challenges. What are really these challenges? Are these challenges diminishing or enhancing the prospects of implementing these laws? This segment strives to proffer some answers to these questions. Each of the challenges and prospect may appear operationally exclusive, but it could mutually complement and re-enforce the other.

As could be distilled from the discourse so far, some of the challenges inherently appear to border mostly on procedural limitations imposed by *Locus Standi*, inadequate enforcement ,difficulty in proving environmental damages by expert evidence, judicial corruption, executive interference with the independence of judiciary, jurisdictional and justice delivery dilemmas in environmental litigation, lack of purposive statutory interpretation by the courts, imprecise legislative rules making, lack of independence of the judiciary, problem of determining quantum of damage and compensation, lack of self-discipline or self-censorship among the populace and poor-delivering of environmental sanitation services by relevant sanitation authorities. However, for brevity and want of time, each of these enforcement challenges would not be discussed herein.

6. CONCLUSION AND RECOMMENDATIONS

Totality of this analysis has revealed that because federal laws appeared not to have adequately covered the field, they tend to exist concurrently with state sanitation laws in form of policies, rules and regulations and with provisions for administrative actions by some environmental agencies. They are equally complemented by international Treaties or Conventions. It is also obvious from the discourse that only strictly enforced laws could provide adequate solutions for the myriad of environmental problems daily confronting the nation. This can only be possible if the philosophies or policy objectives of these laws are adequately promoted by

enforcement agencies. However, a fundamental shortcoming of these laws and conventions is the near absence of setting enforceable overall targets and deadlines. Often the laws set omnibus or umbrella targets that appear to be making enforcement, compliance, and environmental accountability, especially in the industrial sector, virtually impossible.

6.1 Recommendations

It is recommended that strict enforcement of these laws is critical to the attainment of their policy objectives. Legislative measures by the National Assembly could also stem the glaring gaps between legislative, administrative and judicial interventions. Ultimately, there is the dire need for high-level constitutional provisions for the protection of the environment. Chapter IV of the Nigeria's 1999 Constitution could be amended so that they could be critical components of substantive fundamental human rights as South Africa, India, Sri Lanka, Ecuador, and even Kenya have all done. Mere constitutional declaration of environmental protection as an aspect of the Fundamental Objectives and Directive Principles of State Policy in chapter II of Nigeria's 1999 Constitution appears nebulous, ambiguous and can hardly address the horrendous environmental problems in the country.

More actions need to be taken. All the agencies responsible for environmental sanity must be alive to their duties. The courts should also not hesitate to apply the law and impose the necessary sanctions whenever there is any deviation from environmental safeguards and security. In doing so, the courts would be carving a niche for themselves as worthy knights of the order of environmental sanitation and protection.

To God be the glory.

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