

ENVIRONMENTAL JURISPRUDENCE: A CRITIQUE ON RESTRAINT TO ECOLOGICAL DEGRADATION

Roseline O. Moses-Oke

BA, LL.B, LL.M, Mphil, PhD, B.L

Associate Professor of Law and Dean, College of Law, Western Delta University, Oghara, Delta State. Nigeria. Tel: 08062479391

Email:moses-oke@wdu.edu.ng

And

Mercy O. Erhun

LLB,LLM, Mphil, PhD, BL

Associate Professor of Law, Faculty of Law, Obafemi Awolowo University, Ile-Ife, Osun State Nigeria.

Tel:08036837087. Email: mercyerhun@gmail.com.

Abstract

The environment is the aggregate of social and cultural condition that influences the life of an individual and community. The public is most impacted by environmental contamination. In view of this fact, the environment must be protected from damage destruction, degradation or annihilation. Man, therefore, needs to think seriously about how to make use of the environment in a fair way to reduce risks to personal survival. The problem of how to use the earth's resources without harming the environment has become increasingly difficult for man, necessitating investigations into what steps must be taken to moderate how he interacts with the environment in order to stop environmental degradation. In order to examine the meaning of law as it relates to environmental management, this study turns to environmental jurisprudence. It emphasizes the role of law in ensuring a balance between the rights of the present generation and those of future generations as well as the promotion of sustainability in order to stop further degradation of the environment that supports humans. The study discovered that comprehending various legal viewpoints is necessary to address environmental issues. The study came to the conclusion that in order for man to live a healthy life, the environment must be kept free from pollution and toxins and this will go a long way to bring about sustainable development of the society.

Keywords: Environmental-jurisprudence, Pollution, Sustainable-development, Ecological-degradation, Environmental ethics, Anthropocentric ideas

Introduction

The environment accommodates the natural resources of the world that is needed by man for his survival. The environment has always been at the receiving end of man's unrestrained activities. The present day environmental challenge is quite alarming as the environment is under significant pressure of all sorts. More than ever before, tremendous burden is placed on the environment and its natural resources. The magnitude of environmental destruction is on a scale that could never have been imagined before now. Scientific predictions on the impact of increased greenhouse

gases can result in damage to the homeostatic balance and this has the likelihood of resulting in unstoppable changes which can lead to the demise of the human race. According to Boulter,¹ species come and species go and there is no scientific reason to think that humans are immune from this process. Extinction of any specie occurs when changes in circumstances gets to the extent that such a specie can no longer adapt.

The ability of man to make use of the environment in such a way that restrain threats to individual survival which could have served as a feedback mechanism can lead to the extinction of man. As remarked by Williams,² nature provides a free launch, but man must learn to control his appetite. It has come to a crucial stage when man must of necessity begin to think and act for the collective good of all things on the environment. This calls for an urgent need to devise a means of achieving harmony with the rest of the planet and to ensure effective protection of the environment, so as to give life and meaning to peoples' right to a healthy and balanced ecosystem.

There exist many and varied dominant applications inter-facing the realm of environment in modern and contemporary times, which cumulatively extends and continue to extend to the regime of environment, apparently because of the fact that humanity depends solely on the environment, which ipso facto manifest as environmental pollution; environmental sustainability; environmental right; environmental justice; environmental compensation, and etcetera, which unarguably cannot be accommodated here due to space constraint. However, the present enterprise is limited to environmental jurisprudence. Law is a social construct developed to regulate the behavior of man and his environment. Environmental jurisprudence is an interrogation of the meaning of law by applying legal theories in the area of environmental management in order to appreciate the function of law in furthering the promotion of sustainable development as well as balancing the rights of the current generation with those of future generations, hence the environmental jurisprudence approach to this study.

Theoretical Approach

In the last two decades, there have been impressive awareness in the area of environmental theoretical framework, coinciding with the development of anthropocentric, deep green ecology/eco-centric, ecofeminism, intergenerational equity, justice and sustainable development theories among others. Undoubtedly, the growth of these environmental theories has helped greatly to explore the intellectual and moral causes for environmental destructive practices of human beings. It has correspondingly assisted in proposing alternatives that might stop these practices, as the theories are inextricably connected with policy and law making.

A. Earth Jurisprudence Approach³

¹ Boulter

² William Ruckelshaus, Business Week of 18 June 1990

³ XXXX Supply footnote

The Earth Jurisprudence is the socio-legal stake on Gaia which has been developed from the ideas of Thomas Berry. Earth Jurisprudence argued that all species, including non-living things, have fundamental rights to exist and that it is our responsibility to enable everything to fulfill its promise. It places the human species firmly in the context of a living world. It has been asserted that the Earth Jurisprudence approach points man towards a more effective environmental management. It helps man to seek to protect the environment for the environment's sake.⁴

The Judaeo-Christian Notion of Stewardship

This theory places man as the master of the environment, in which man makes use of the environment in a way that affects other organisms negatively. This by extension places man in the position of a master and the environment in the position of a servant. Ordinarily, in a servant master relationship, the master is held accountable for the tort of the servant against a third party.⁵ When it now appears that it is the master who is committing a tort against the servant, there is little or no hope for the servant to get justice. This is especially so in jurisdictions where matters of environmental protection are non-justiciable and to complicate issues, where there is absence of environmental suits and where environmental rights are not guaranteed, just as we have in Nigeria present day Nigeria.

The Creationist Theory

The Creationist theory, which relies more on intuitive responses than scientific evidence, places the human race in a superior position among all the entities in the world. This superiority position of man requires man to care and protect all species around him species in the world because the position exerts a strong sense of moral responsibility and duty of care on man. It is unfortunate to note that man has not been able to fulfil the role of master caretaker of the environment, thus, making the environment vulnerable to man.

Anthropocentric School on Environmental Protection

The term 'anthropocentric' was coined in the 1860's during the controversy over Darwin's theory of evolution to describe the idea that humans are at the center of the universe. Anthropocentrism considers human to be the most important life form. In this case other forms of life are only relevant only if they are useful to man. To the anthropocentric scholar, the goal of environmental protection is the preservation of the ability of man to enjoy the environment and its resources.⁶ The anthropocentric approach focuses on the relationship between man and nature, as well as the benefits which nature provides for man.⁷ To the anthropocentric, the motive for the preservation

⁴ Warren, Lynda M. (n.d.) Working Towards an Environmental Jurisprudence, Department of Law and Criminology, Aberystwyth University, Penglais, Aberystwyth, U.K.

⁵ XXXX Develop it here

⁶ Feinberg, J. (1974) "The Rights of Animals and Future Generations" in William Blackstone (ed.) (1974) Philosophy and Environmental Crisis in Athens and Georgia, University of Georgia Press

⁷ Babara MacKinnon (2007) Theory and Contemporary Issues (5th Ed.) Wadsworth, California

of the environment arose from the fact that the enjoyment of human comfort, health and good quality of life depends on how man is able to ensure the preservation of natural resources and a healthy ecosystem,⁸ for the benefit of man only

The Deep Ecology/ Eco-centric Approach to Environmental Protection

The Deep Ecology theory, which is otherwise known as Eco-centric theory, is a contemporary Ecological theory which recognizes inherent worth of all living things, regardless of their instrumental utility to all needs. This philosophy emphasizes the fact that organisms depends on one another within the ecosystem and biosphere. To the eco-centric scholar, nature is worth conserving for its own sake. Eco-centrism lays emphasis on the interconnectedness between humans and other aspects of nature which transcends the ability of natural resources to satisfy human wants, be it material or physical. According to them, the environment is made up of both natural elements⁹ and the human element. The eco-centric school views the environment as the metaphor of life which provides ecological support for all organisms on earth.¹⁰ This school also views people as inseparable from the organic/inorganic nature that encapsulates them.¹¹ They are also of the view that non-human organisms and the natural environment as a whole, as far as they are susceptible to suffer,¹² deserve consideration when appraising the need for environmental protection. They therefore advocate a nature -centred view on the environment. According to them, nature will only allow man to continue living when man protect nature on its own merits.¹³ To the eco-centric, the reason for man's intervention as far as the environment is concerned is the provision of benefits to the environment. There can be no sustainable future until recognition is given to inherent rights of the natural world, as having legal status.

In the exercise of its authority as master over the environment, man ascribes environmental rights unto himself. According to Singer,¹⁴ the restriction of environmental rights to human beings alone and to deny animals adequate legal protection amounts to speciesism¹⁵ which is an injustice and a widespread discrimination practiced by man against other species of which the environment is chief. Despite the strong position of the eco-centric scholars, it has also been argued that plants and animals cannot be regarded as genuine moral agents and as such cannot

⁸ Susanne C. Gagnon Thompson & Michael A. Barton (1994) Ecocentric and Antropocentric Attitudes Towards the Environment *Journal of Environmental Psychology* 14 149-157

⁹ Such as plants, trees, soil, water etc.

¹⁰ Rowe, S. (1994) "Eco-Centrism: "The Chord that Harmonizes Humans and Earth" The Trumpeters 11(2) at pp. 106-107

¹¹ Donnelly, B. and Bishop, P. (2007) "Natural Law and Eco-Centrism" *Journal of Environmental Law* 19 at p 89

¹² Bentham, J. (1823) Introduction to the Principles of Morals and Legislation

¹³ Storm, P. (1974) Environmental Laws: Introduction" available at <<http://www.iuscomp.org/gla/literature/envirmt.htm#loc21>

¹⁴ Singer, P. (1975) Animal Liberation: A New Ethics for Our Treatment of Animals New York Review, Random House, New York

¹⁵ Speciesism is assigning different values or rights to beings on the basis of their membership of a particular specie

have rights¹⁶ any-more than they can be blamed or held responsible for misconducts of any kind.¹⁷ Though both Anthropocentric and eco-centric are concerned with matters relating to environmental management and the preservation of natural resources, they are guided by different philosophies. They both have different motives for the preservation of the environment and its resources.

Ecofeminism

Ecofeminism is described as a new term for ancient wisdom. It developed out of various social movements about a global community of feminists, offering a more ecological way of seeing, thinking and interacting.¹⁸ It is a branch of feminism that examines the connections between women and nature. The term was popularized through its use to protest against environmental destruction.¹⁹ It has roots in both feminism and environmentalism, and which makes connections between environmentalism and feminisms.²⁰ It places a feminist lens into environmental issues. It is also a version of feminism/feminist movement which seeks to rework a long standing feminist critique of the naturalization of an inferior social and political status for women so as to include the effects of feminizing nature on the environment. Ecofeminism is feminist movement which focuses on the parallels between the oppression of nature and animals and the oppression of women. This theory presumes a special connection between nature and women and that it takes feminist analysis to fully understand the genesis of environmental challenges.²¹ Ecofeminists believe that there is a direct relationship between the life threatening environmental damage done to the earth and the repression of women worldwide. It therefore creates a unique focus on matters of environmental justice and how it affects women more than men in a disproportionate manner.²² Feminism as a concept is of the view that there are connections between the domination of nature and the domination of women in contemporary society and that it takes an understanding of these connections to put an end to such dominations.

Sustainable Development

Since time immemorial, societies have always had rules for managing the environment but it is of recent that the international legal framework for governing the environment

¹⁶ Elder, P (1984) "Legal Rights for Nature: The Wrong Answers for the Right Questions" Hall LJ 285, Osgoode

¹⁷ Gray, J. (1963) *The Nature and Sources of the Law* (2nd Ed.) Beacon Press, Boston at p. 43

¹⁸ Gaard Greta, supra, at P. XXX. The term was coined by a French writer called Francoise d' Eaubonne in 1974 to demonstrate the potential for women to make significant contributions to an ecological revolution.

¹⁹ Charlene Spretnak (1990) "Ecofeminism: Our Roots and Our Flowering" in Irene Diamond et al *Reweaving the World: The Emergence of Ecofeminism*, Sierra Club Books, San Francisco at p. 5

²⁰ Noel Sturgeon (1997) "Ecofeminist Movements" in *Ecofeminist Nature: Race, Gender, Feminist Theory and Political Action*, Routledge, New York pp. 23-30

²¹ See the discuss on "Women, environment and Development"

²² Laura Minton Gonzales (2020) *What is Ecofeminism? The Connection Between Women and the Environment*. Available at

emerged.²³ Men generally fail to view acknowledge the interdependence of the ecosystems. This male-dominated culture views nature, women and the earth as a mechanical object that can be manipulated and controlled. Ecofeminism focuses on the parallels between the oppression of nature and animals and the oppression of women. Ecofeminism envisages a huge variety of actions necessary to create non-oppressive relationships between men, women and nature. It is a kind of feminist rebellion within male-dominated radical environmentalism, social ecology, sustainable development, environmental justice systems etc. According to Odote,²⁴ the balancing of egocentrism and anthropocentrism led to the emergence of the concept of sustainable development which is the modern discourse in environmental law developed by experts²⁵ as a tool for the modern day management of the environment in order to ensure the reconciliation of the tension between the different approaches to managing the environment.²⁶

Mal-development which is synonymous with nature's depletion, militates against equality.²⁷ The concept of sustainable development is one of the prime efforts of man to address the limitations of environmental protection measures. The approach of sustainability gives room for universal rules to govern the shared environment. The commitment to sustainable development is a very good way of ensuring that the needs of the environment in particular, are met. The law of sustainable development requires that the threshold of sustainability particularly as it affects the environment, is assured and protected in the process of development.

All life on earth are interdependent and humanity has a crucial role to play as part of the ecosystem of the earth. Giving the non-hierarchical nature of the ecosystem in which all parts affect each other, every relationship dominated and characterized by values of control and oppression must of necessity be discarded with. Hence the need to revalue the relationship between men and women and between man and nature if sustainable development is to be attained. Hence the ecofeminism theory as an approach to create non-oppressive relationship between men, women and nature becomes necessary.

Nature and scope of Law in Environmental Management

Law is a social construct.²⁸ In its prescriptive sense, law is intended to regulate

²³ Okoth-Ogendo, H.W.O. () "The Juridical Framework of Environmental Governance". In HWO Okoth-Ogendo and Godber W Tumushabe, *Governing the Environment: Political Change and Natural Resources Management in Eastern and Southern Africa* pp. 41 - 62

²⁴ Odote, Collins (2019) "Environmental Jurisprudence and Sustainable Development in Kenya: A Theoretical Foundation" In Mameri-Mbote, Patricia and Odote, Collins (2019) *Blazing the Trail – Professor Charles Okidi's Enduring Legacy in the Development of Environmental Law University of Nairobi* pp. 176 -193 at p. 181

²⁵ These experts came from the academia, government and NGOs

²⁶ Brown Weiss, Edit (2011) *The Evolution of International Environmental Law Japanese Year Book of International Law* pp. 1-27

²⁷ Vandana Shiva (1988) "Staying Alive: Women, Ecology and Survival in India" *Healing the Wounds* at p. 83

²⁸ Hart, H. L. A (2012) *The Concept of Law* (3rd Edition), Oxford University Press, Oxford

the behavior of human beings. It prescribes how human beings ought to behave²⁹ and environmental law constitutes those rules and doctrines³⁰ which deal with the protection, management and utilization of natural resources and the environment.

Environmental law has the following essential purposes: It provides a regulatory framework for human activities which may undermine the vital natural assets which give support to normal economic and social life. It also provides appropriate legal theory and explains and guides the law in environmental management. Lastly, environmental law prescribes the threshold of sustainability of the environment, natural resources as well as the required tools by which 'Our Common Future' is to be realized.³¹ Conservation and preservation were the underlying debate and rationale for the development of environmental law. The ultimate concern of environmental law is in two folds. Firstly, it helps to provide a regulatory framework for those human activities which may undermine the vital natural assets that supports normal economic and social lives and secondly, it helps to provide appropriate legal theory to explain and guide the path of the law in environmental management.³² Environmental jurisprudence hangs on the second limb of environmental law.

Pollution impacts on the lives and health of people as well as on the larger geographical territory and generations unborn. The magnitude of environmental challenges is presently being fully and better appreciated and accepted as real and attributable to human action. It is therefore imperative for legislation to imbue conservation imperatives in order to reflect the new reality of increased modern day environmental challenges. A strong legal framework remains an important component for an effective environmental management. It was Lord Denning who said: "the well-being of a people depends not only on the form of government they have, but also on the laws of their land."³³ The realization of sustainable development requires the existence of a strong, legal, policy and institutional arrangements. The discourse on environmental jurisprudence will not only provide appropriate legal theory to explain and guide the path of the law in environmental management, but will also enables man to realize the role of law in the promotion of sustainability.

Society is based on progress through development and man must be engaged in development activities in order to make tangible progress. Man cannot make meaningful progress without exploiting the natural resources in his environment. The more development activities man engages himself in, the more the amount of pollution. Centuries of invention driven development has brought existence on the earth to a crossroad. Hasty development efforts over a long period of time can be catastrophic,

²⁹ Omoregbe, Joseph (2007) *An Introduction to Philosophical Jurisprudence*, Joja Educational Research and Publishers Ltd., Lagos at p. xvii

³⁰ These rules and doctrine arise from provisions of the common law, Constitution, statutes, treaties and general principles (soft laws)

³¹ Okidi, C. O. (1990) *The Role of International Law in Sustainable Development in Africa*, unpublished paper presented to Commonwealth Law Conference in Auckland, New Zealand

³² Ojwang, J. B. (1996) "The Constitutional Basis for Environmental Management" In *Land We Trust: Environment, Private Property and Constitutional Change*, Initiative Publishers pp. 39-60

³³ Lord Denning (1960) quoted in Ewuommuo (2007) *supra*

with the ability of pushing nature and ecosystems to the brink,³⁴ leading to increased conflict over scarce resources, and bringing the existence of man and every other living species to a halt. The time has come for environmental law to focus more on how to remedy the collective and cumulative impacts on the environment as a matter of necessity and compulsion.

The world is committed to environmental protection based on sound science. This has led to the explosion of environmental rules, regulations, policies and principles at all levels of society. Despite this, environmental degradation is on the increase, pointing to the fact that the current environmental regime has failed to give satisfactory answer to environmental challenges. Past regime on environmental management have not been able to rescue the environment from the menace of pollution. Most of the laws on environmental protection set standards which are hardly implemented. Traditional environmental law approach has not been able to achieve effective environmental management. It therefore becomes imperative to focus search light on how best to develop a governance regime to effectively remedy environmental challenges. Hence the resort to environmental jurisprudence approach of this work. This is to enable man to realize the role of law in the promotion of sustainability, particularly the area of environmental sustainability. A study of this kind will give a better understanding of the function of law not only in promoting sustainable development, but also in ensuring the balancing of the rights of current generation with those of future generations.

Environmental Jurisprudence

Austin divided jurisprudence into general jurisprudence and specific jurisprudence. General jurisprudence touches on those subjects which are common to all natural legal systems while specific jurisprudence refers to the study of any particular system of law or any portion of it.³⁵ The aim of jurisprudence as a course of study is to provide an understanding of the nature, place and role of law within a community or society. It has been observed³⁶ that the general theory of jurisprudence was formulated at a time when ecological concerns were largely unknown. Traditional doctrine of jurisprudence remains largely inadequate in grasping a proper understanding of the role of law in the promotion of sustainable development.³⁷ This is because traditional jurisprudence imposes a reductionist legal hegemony on the planet and this fails to recognize the fact

³⁴ Gregorio Rafael P. Buesta (2019) Environmental Jurisprudence from the Philippines: Are Climate Litigation Cases Just Around the Corner? Available at <https://www.iucn.org/news/world-commission-environmentallaw/201906/environmental-jurisprudence-philippines-are-climate-litigation-cases-just-around-corner>

³⁵ Austine J. (1890) "The Province of Jurisprudence Determined (1st Ed.) Cambridge University Press, Cambridge.

³⁶ Ojwang, J. B. & Juma Calestous (1996) "Towards Ecological Jurisprudence" In Calestous Juna & Ojwang J. B. (Eds.) (1996) In Land We Trust supra at p. 329

³⁷ Odote, Collins (2019) "Environmental Jurisprudence and Sustainable Development in Kenya: A Theoretical Foundation" In Patricia Mameri-Mbote and Collins Odote (2019) Blazing the Trail – Professor Charles Okidi's Enduring Legacy in the Development of Environmental Law University of Nairobi pp. 176 -193

that natural systems are interdependent and interconnected.³⁸ This therefore makes it imperative for environmental jurisprudential approach.

The theories of environmental governance have also failed to deliver a sustainable environment. The theory of the Tragedy of the Commons is to the effect that where a polluter is made to pay for the external harm it causes, there is the tendency to reduce pollution. Move to conclusion [It was once thought that standards setting high cost for pollution, for example the pollution pays principle, would serve as a deterrent to pollution. It is unfortunate to note that in most cases, payment for cost of pollution is often made conditional. To make matters worse, the true payers of environmental pollution is shifted from the real polluter in most cases, to the general public, who suffer the adverse effect of pollution. From the ecological economists' point of view, when the cost of pollution is not included in the production or consumption decisions of economic agents, excess pollution is introduced. Experience has shown that in most cases, the cost of pollution is often not included in the production or consumption decisions of economic agents. The free-market economics advocates for the introduction of property rights is an economic instrument which can be used to reduce environmental degradation. Property rights involve the vesting of property rights in individuals or communities. Property rights as an economic instrument induces rational resource use.]

From the anthropocentric point of view, the motive for the preservation of the environment arise from the fact that the enjoyment of human comfort, health and good quality of life depends on how man is able to ensure the preservation of natural resources and a healthy ecosystem,³⁹ for the benefit of man. Recognizing that all species, the environment inclusive, have fundamental rights to exist and that it is the responsibility of man to enable everything to fulfill its promise, the Earth Jurisprudence approach points man towards a more effective environmental management. It helps man to seek to protect the environment for the environment's sake. The Judo-Christian approach places man in the position of a master, and the environment in the position of a servant. The creationist approach lays emphasis on human superiority, and places man in a position of care for the world and other species in the world. According to eco-feminism movement which places a feminist lens into environmental issues, the ideologists that authorize injustices based on gender etc. are related to the ideologies that sanction the exploitation and degradation of the environment.

Environmental Jurisprudence is an evolving area of law which draws its knowledge base from different disciplines. Environmental jurisprudence emerged as a distinct area of law for the following reasons: It helps man to focus on the present day ecological concern of climate change which has now been fully recognized as real and attributable

³⁸ Boulo, Peter (n.d.) A New Legal Paradigm: Towards a Jurisprudence Based on Ecological Sovereignty. *Macquane Journal of International and Comparative Environmental Law* 18(2) at p. 2

³⁹ Susanne C. Gagnon Thompson & Michael A. Barton (1994) Ecocentric and Antropocentric Attitudes Towards the Environment *Journal of Environmental Psychology* 14 149-157

to human activities. It helps to come to the reality of the fact that natural resources are finite and therefore needs to be used with caution. It helps us to ensure that regulations imbue the imperatives of conservation in order to ensure that such regulations reflect the new reality of increased environmental challenges. It will also help to ensure that ecological principles are adequately incorporated into jurisprudence. This approach will not only enable policy makers to be guided by those legal theories which ought to explain and guide the law in environmental management, but also to ensure that ecological concerns are reflected in modern day environmental management. The emergence of environmental jurisprudence becomes imperative in order to ensure that ecological principles are incorporated into jurisprudence.

Environmental jurisprudence falls under the specific jurisprudence divide of Austine. Though derived from the general theories of jurisprudence, environmental jurisprudence is a particular and specialized science of what the law is. It helps to appreciate the interconnectedness and interdependence of the environment. It takes environmental jurisprudence to properly align law with nature both at the stages of development as well as application, thereby giving recognition to ecological sovereignty.⁴⁰ The focus of environmental jurisprudence is on those legal theories which ought to explain and guide the law in environmental management.⁴¹ Environmental jurisprudence helps to prescribe the threshold of sustainability of the environment and natural resources. It is described⁴² as the tool by which our common future is to be realized. Knowledge of the study of environmental jurisprudence helps man to appreciate the function of law in furthering the promotion of sustainable development as well as ensuring the balancing of the rights of current generation with those of future generations.⁴³ The discourse on environmental jurisprudence enables man to analyze the role of law in promoting sustainability. It enables universal rules governing the shared environment to be fused within the context of customary rules.⁴⁴ Environmental jurisprudence helps to prescribe the threshold of sustainability of the environment and natural resources. It is the tool by which our common future is to be realized.⁴⁵ The questions which environmental jurisprudence seek to answer are: What is the extent of the laws which seeks to regulate the use of the environment and in what context are these laws made to operate? What theory influences the choices of making and developing the regulatory arrangement and in what manner are the developed rules

⁴⁰ Odote, Collins (2019) *supra*, at P. XXXXX

⁴¹ Ojwang, J. B. & Juma Calestous (1996) "Towards Ecological Jurisprudence" In Calestous Juna & Ojwang J. B. (Eds.) (1996) *In Land We Trust* *supra* at p. 329

⁴² Okidi, C. O. (2008) Concepts, Functions and Structures of Environmental Law in C. O. Okidi et al (2008) *Environmental Governance in Kenya the Law (EAFP)* 3-60 at p. 6

⁴³ This is what is referred to as inter-generational and intra-generational equity

⁴⁴ Odote, Collins (2015) "Retracing Our Ecological Footsteps: Customary Foundations for Sustainable Development for Higher Education" *University of Nairobi Law Journal* 18(1) pp. 55-71 available at >http://uonlj.uonbi.ac.ke/sites/default/files/media/vil_8_2015_unlj.pdf<

⁴⁵ Okidi, C. O. (2008) "Concepts, Functions and Structures of Environmental Law" in Okidi, C. O. et al (2008) (eds.) *Environmental Governance in Kenya: Implementing the New Law (EAFP)* pp. 3-60 at p. 6

implemented? What are the underling considerations and value judgements when these regulations are made? The study on environmental jurisprudence will help us to provide adequate answers to the above questions.

Environmental jurisprudence is an interrogation of the meaning of law by applying the use of legal theories as a guide in the area of environmental management in order to appreciate the function of law in furthering the promotion of sustainable development as well as ensuring the balancing of the rights of the current generation with those of future generations. The study on environmental jurisprudence is concerned more with enforcement rights of victims of environmental pollution.

Framework on Environmental Protection

A. Common Law Provisions on Environmental Governance

In most cases of environmental pollution, affected persons often seek remedy through civil remedy under the principles of Common Law, which prescribes control of environmental pollution.⁴⁶ The legal protection of private persons and propriety rights at common law which gives liability for environmental pollution in civil law is mostly based on actions in the tort of trespass to land, nuisance, negligence and the rule in *Rylands v. Fletcher* and these deal with liability for damage caused by the escape of noxious substances from the land.⁴⁷

The tort of nuisance is recognized as the area of common law which has contributed most significantly to environmental protection.⁴⁸ Typical nuisance action in an environmental context relates to unreasonable use of land⁴⁹ or any inconvenience interfering with the ordinary physical comfort of human existence,⁵⁰ resulting in physical damage to property and chattels caused by the defendant's polluting emissions which come into contact with the claimant's property, causing damage to it.⁵¹ There is no provision for claim of general damages for action in private nuisance.⁵² In order to succeed in an action in private nuisance, the claimant must prove that he has suffered inconveniences materially interfering with the ordinary physical comfort of human existence.⁵³ The damage caused must have been that which is reasonably foreseeable at the time when the action causing the damage occurred.⁵⁴

The tort of trespass to land is any direct interference⁵⁵ with land in the possession of

⁴⁶ Nwogugu, E. I. (1975) "Law and Environment in Nigeria Oil and Gas Industry" *Earth Law Journal* pp. 91-105

⁴⁷ Emejuru C., (2006) "Legal Framework for the Environment Against Oil and Gas Pollution in Nigeria" M.Phil thesis Submitted to the Faculty of Law Ile-Ife. p. 225

⁴⁸ *R. v. South West Water Authority* (1991) LMELR 2(3) 65

⁴⁹ Ese Malemi (2013) *supra*

⁵⁰ *Walter v Selfe* (1851) 64 ER 849 at 852

⁵¹ *Siesmograph Services Ltd. v. Akporuvo* (1974) 5 S.C. 119

⁵² That is, the difference between the money value or interest before and after the nuisance

⁵³ *Oboyi v. Nigerian Pipeline Ltd.* (1976) E.C.S.L.R. 253

⁵⁴ *Cambridge Water Co. Ltd. v. Eastern Counties Leather Plc*, (1994) 1 ALL ER 53

⁵⁵ Any indirect interference with the land of another is referred to as indirect trespass. Action can only be brought in such a case in the tort or nuisance or under the rule of *Ryland v Fletcher*. If

another person. Where the head of action in environmental matters is based on trespass and where such trespass affects farmland and economic trees, the general principle is to restore the property to its original position.⁵⁶ For trespass to be established, the damage which results to the plaintiff must be a direct consequence of the defendant's activities, thereby making the tort of trespass of limited utility in environmental protection.

Negligence is the breach of a duty to take care which results in damage⁵⁷ to another person. As a general rule, whenever a person is under a duty of care to be careful so that his conducts will not injure others, neglect or failure in this duty renders the person liable in the tort of negligence. The proof of causation is a requirement in the tort of negligence. This often pose a challenge as this requires the engagement of the services of experts who can easily be engaged by culprits in environmental cases.

The Rule in *Rylands v. Fletcher* extends liability in nuisance to cover cases of escape of noxious substances from land. Where there is an escape from a defendant's land causing extensive damage, he will be liable for the consequences even where he shows that he took all reasonable care to prevent that escape. Liability under this rule is a strict liability.⁵⁸ According to the court in the above case, the person who for his own purpose brings to his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and if he does not do so, he is prima facie answerable for all the damage which is the natural consequence of its escape."⁵⁹ Under the strict liability rule, where the matter relates to contaminated land, the defendant will be liable even where he cannot foresee that the escape of the thing in question will cause damage to the defendant. This is the liability that gives effect to the polluter pays principle under some environmental statutory provisions. Private law instruments such as liability rules have a preventive⁶⁰ effect and serve as a deterrence to potential polluters.⁶¹ Liability systems aim at inducing socially responsible behavior by establishing legal liability for damages.⁶² The imposition of strict liability provides the potential polluters optimal incentives for accident reduction.⁶³

Considering the magnitude and dimensions of present day sophistication of technology at the disposal of mankind, Common Law as a mechanism for environmental protection

such indirect interference affects the public, action can only be brought in a public nuisance. See Malemi supra at p. 237 and also the case of *South port Corp v Esso Petroleum Co* (1954) 2 All ER 570

⁵⁶ See the case of *S.KD. Law v Stirling Arbaldi (Nigeria) Limited* (1977) 11-12S.C pp 56-57

⁵⁷ *Donoghue v Stephenson* (1932) All ER 1

⁵⁸ Strict Liability means liability without fault. It is liability that attaches to a person once a wrong occurs without the proof of actual negligence or intention because there has been a breach of an absolute duty to refrain from doing a prohibited act.

⁵⁹ *Rylands v. Fletcher* (1868) L.R. 3H.L. 330 Per Blackburn J.

⁶⁰ Shavell, S. (1984) "Liability for Harm Versus Regulation of Safety" *Journal of Legal Studies* vol. 13, 357-374

⁶¹ Michael G. Faure (2009) "Instruments for Environmental Governance: What Works?" A Paper Presented at the Annual Colloquim of the Academy for Environmental Law of the IUCN

⁶² Such as natural resource damage, environmental damage, property damage, damage to human health or loss of life, non-compliance with environmental laws, non payment of due taxes, fees or charges etc.

⁶³ Shavell, S. (1980) "Strict Liability Versus Negligence" *Journal of Legal Studies* Vol. 9, 1-25

is inadequate and ill-equipped to effectively deal with the specific needs of the present quest for environmental protection. The primary function of common law is to protect private rights, sometimes to the detriment of environmental amenities. Many environmental amenities are public properties which are not owned by ascertained individuals. In most cases, the right to take action is limited strictly to those whose property⁶⁴ or property related interests have been harmed.⁶⁵ Limitations to common law provisions include the requirement of standing⁶⁶ to commence the action introduced as a prerequisite for recovery in nuisance will have the effect of limiting the claims of historic pollution,⁶⁷ the requirement of directness⁶⁸ in trespass to land which is particularly difficult to overcome in environmental matters,⁶⁹ reasonable foreseeability⁷⁰ in an action in negligent, the application of the statute of limitation to common law claims all serve as limitation to the effectiveness of common law in the protection of the environment.

Constitutional provisions on Environmental Jurisprudence

The constitution is a fundamental document which establishes a framework for the social order of a State⁷¹. It guarantees citizens basic fundamental rights which now increasingly include a right to a clean and healthy environment.⁷² The structure of the entrenchment of environmental and accompanying rights in a constitution determines the way in which it is construed and the manner of enforcement of such rights. When construed as Directive Principles of State Policy which are non-justiciable and unenforceable as we have it in Nigeria, the right to a healthy environment cannot be enforced. When construed as a Bill of Rights, it becomes a fundamental right which are individually enforceable as obtains in South Africa⁷³. It could also be structured to impose a duty on the country's citizens to protect and conserve the natural environment as found under the Indian Constitution⁷⁴ which imposes a fundamental duty on every citizen of Indian⁷⁵ to protect and improve the natural environment.⁷⁶The Ecuador

⁶⁴ Blackburn v. ARC Ltd (1998) Environmental LR 469

⁶⁵ Hunter v. Canary Wharf Ltd. (1997) 2 WLR 684

⁶⁶ A person's right to make a legal claim or seek judicial enforcement of a duty or right

⁶⁷ Cambridge Water Co. v. Eastern Counties Leather Plc (1994) 2AC 264

⁶⁸ Directness is an essential element to be proved in the tort of trespass to land. Any indirect interference is not within the scope and protection of trespass to land.

⁶⁹ Eze v Obiefuna (1995) 6 NWLR Pt 404 p. 639SC

⁷⁰ Foreseeability is an element of proximate cause in the Law of Tort. The quality of being reasonably anticipated.

⁷¹ James R. May (2006) "Constituting Fundamental Environmental Rights Worldwide" 23(1) *Pace Environmental Law Review* 113

⁷² Carl Bruce et al "Breathing life into Fundamental Principles: Implementing Constitutional Environmental Protection in Africa" Working Paper Series, Working Papers: WP // 2, Institutions and Governance Program, World Resources Institute at p. 22

⁷³ Section 38 of the Constitution of the Republic of South Africa, 1996

⁷⁴ Article 51A(g) of the Constitution of India as modified in 2007

⁷⁵ See for example, Article 51-A(g) of the Indian Constitution

⁷⁶ This includes, forests, lakes, rivers and wild life

Constitution bestows the right to sue on behalf of an ecosystem on the citizens. According to the Constitution, nature has the right to exist, persist, maintain and generate its vital cycles, structures and its processes in evolution. It could also take the form of a combination of the above three structures as witnessed in Mali where it is stated that every person has the right to a healthy environment.

The first time an attempt was made to make matters of the environmental a constitutional issue was in 1999,⁷⁷ where it was stated that “The State shall protect and improve the environment and safe-guard the water, air, land, forest and wildlife of Nigeria”⁷⁸. This section of the constitution confers no right to a clean and healthy environment on Nigerians, neither does it place any duty on Nigerians to protect the environment. Rather the constitution merely places a duty on the Nigerian government to protect the environment. It is unfortunate to note that the constitutional responsibility of the Nigerian government to safeguard the environment cannot be judicially enforced as the Nigerian government cannot be compelled to carry out its responsibility to ensure the safeguard of the environment.

While it can be said that there are quite a number of legal provisions⁷⁹ imposing a basic duty on the State to protect the environment, it is however sad to note that there are no provisions for specific rights of citizens to an adequate environment. According to the Constitution,⁸⁰ “the State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria.” On paper, the duty and responsibility to conform to, observe and apply the provisions of Chapter II of the Constitution titled Fundamental Objectives and Directive Principles of State Policy has been vested on all organs of government, all authorities and persons exercising legislative, executive and judicial powers.⁸¹ However, the judiciary, which is the organ of government responsible for the interpreting the law and giving life to any piece of legislation has been barred from interfering with any matter bothering on Chapter II of the Constitution. The Constitution⁸² states: “The judicial powers vested in accordance with the foregoing provisions of this Constitution, shall not, except as otherwise provided by this Constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the fundamental objectives and directive principles of state policy set out in Chapter II of this Constitution.” Consequently, the State organ charged with the duty to protect and improve the environment, cannot be challenged in court, not even when the State violates international environmental treaties duly ratified by it. The right

⁷⁷ Constitution of the Federal Republic of Nigeria, 1999, Cap.C.34 Laws of the Federation of Nigeria 2004

⁷⁸ Section 20 of the Constitution of the Federal Republic of Nigeria, 1999, Cap.C.34 Laws of the Federation of Nigeria 2004

⁷⁹ Section 20 of the 1999 Constitution of the Federal Republic of Nigeria for instance, states: “The State shall protect and improve the environment and safe-guard the water, air and land, forests and wild life of Nigeria”

⁸⁰ Section 20 of the 1999 Constitution of the Federal Republic of Nigeria

⁸¹ Section 13 of Chapter II of the 1999 Constitution of the Federal Republic of Nigeria

⁸² Section 6(6)© of the 1999 Constitution of the Federal Republic of Nigeria

to a clean and healthy environment recognized in international environmental treaties⁸³ are therefore not guaranteed under Nigeria's environmental regime neither does the 1999 Constitution guarantee environmental rights given recognition to under international environmental treaties. As a result, those involved in the management of the environment cannot be held accountable for the misuse of the environment. Other statutes on environmental jurisprudence include:

Institutional/Policy framework on Environmental Jurisprudence

A. Nigeria Vision 2020 Economic Transformation Blueprint

The above Vision is an articulation of the long term intend and plan for stimulating Nigeria economic growth and launching the country into a path of sustained social development and rapid economic progress for the period 2009 – 2020. This Blueprint Agenda was given the mandate of spearheading the development and implementation of the economic transformation plan of the nation. The Blueprint was designed by Nigerians and for the Nigerian populace, with a view to placing the Nigerian citizens and their welfare at the forefront of the Agenda. This Vision prioritizes and offers strategies to drive the full realization of Nigeria's potentials and her energies as one of the leading economies in the world within a decade. The Vision was also designed to reflect the collective interest of all Nigerians, using a bottom-up approach that is anchored on the understanding of the future needs of the country. Two fundamental objectives of optimizing human and natural resources to achieve rapid economic growth, and translating that growth into equitable social development for all citizens are contained in the Vision. The environmental dimension of the Vision is the creation of a level of environmental consciousness that enables and supports sustainable management of the nation's God-given natural endowments to ensure their preservation for the benefit of present and future generations.⁸⁴ The recent demonstration engaged in by Nigerians, calling on the Nigerian government for good governance is only a reflection of the effectiveness of the Nigerian Vision=2020.

Other institutional frameworks on environmental jurisprudence are:

B The Impact of Environmental Harm on Human Rights

Environmental harm can interfere with the values that human rights are designed to protect.⁸⁵ The right to life can be affected by environmental harm and more long term environmental degradation. An adequate, clean and healthy environment is a pre-requisite to the fulfillment of the wide spectrum of rights.⁸⁶ As a result, the environment is treated as a pre-requisite for the enjoyment or satisfaction of a wide spectrum of

⁸³ Such as the Convention for the Protection of Human Rights and Fundamental Freedoms

⁸⁴ See generally the National Planning Commission (2009) "Nigeria Vision 20=2020 Economic Transformation Blueprint"

⁸⁵ Such as the ability of every human being to live a life of dignity, freedom and equity

⁸⁶ Such as the right to life, health, water, food, culture, development, work, access to information and participation.

human rights⁸⁷ and freedoms.⁸⁸ Environmental violations constitute a serious threat to various human rights.⁸⁹ Effective environmental governance depends on the exercise of certain human rights such as the right to information, public participation in decision making and access to information.⁹⁰ Claims for environmental harm can therefore be brought to human rights institutions through the human rights approach.

A healthy environment is vital to the quality of life of human beings.⁹¹ Environmental harm and the abuse of human rights often go together.⁹² This is because environmental degradation contributes to the infringement of human rights to life, health and livelihood. Little wonder, therefore, why human rights activist see environmental protection as an end to fulfilling human rights standard. The concept of a healthy environment is therefore inseparable from the right to life⁹³ and the right to a clean and healthy environment,⁹⁴ is the most fundamental of all human rights. The right to life, which includes the right to enjoy pollution free air and water for the full enjoyment of life,⁹⁵ is a right to livelihood, better standard of living and hygienic workplace.⁹⁶

Environmental right is one of the tools used to address environmental problems not only at the global, regional and national levels but also even at municipal levels. Environmental rights come under the classification of third generation of rights of peoples or solidarity rights⁹⁷. Environmental rights epitomize the integrated interrelationship between humans and the environment in a holistic and legal manner. Environmental rights are those rights that are basic to the enjoyment of a quality of environment that is beneficial to human life and well-being, and that belongs to members of both existing and future generations. They are rights of action and rights of recipients that consider the state of the environment, the relation and interaction between people and their environment and the interdependence of human life on the natural resource base.⁹⁸ Environmental rights create an avenue to successfully institute court actions in halting and curtailing environmentally harmful activities.

Environmental rights can be conceptualized principally through the anthropocentric

⁸⁷Such as the right to life, health, food and privacy

⁸⁸ Such as freedom of information and political participation, freedom of association and expression and cultural freedom

⁸⁹ Such as the right to life, good health and a sound environment for all

⁹⁰ The Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters (Aarhus Convention)

⁹¹ Mekete B.T. and Ojwang J.B. (1996) "The Right to a Healthy Environment: Possible Juridical Bases", 3 *AJELP* pp 155 - 156

⁹² Tim Hayward (2005) *Constitutional Environmental Rights*, Oxford University Press, New York p. 8

⁹³ Mekete B.T. and Ojwang J.B. (1996) "The Right to a Healthy Environment: Possible Juridical Bases", 3 *AJELP* at pp 159

⁹⁴ Kaniye S. A. Ebueku "Constitutional Rights to a Healthy Environment and Human Rights Approach to Environmental Protection in Nigeria

⁹⁵ Subhash Kumar v. State of Bihar AIR 199SC420/1991 (1) SCC 598

⁹⁶ Kirloskar Bros. Ltd. v. ESI Corporation (1996) 2 SCC 682

⁹⁷ Jan Glazewski (1991) "The Environment, Human Rights and a New South African Constitution" *South African Journal of Human Rights*, 167 at 172

⁹⁸ Dowrick (ed.) *Human Rights Problems* cited in Plessis above

view and the bio centric view. Anthropocentrism is based on the belief that the earth should be preserved for human interests and focuses on the interconnectedness between humans and the environment as well as the important role that humans fulfill in nature. The bio centric view on the other hand, is based on the belief that the environment has intrinsic value which entitles it to an existence regardless of the interest of human beings.⁹⁹ The bio centrics displaces humans from the centre of creation by holding that all species are equal, and that human beings have no right to reduce natural resources except to satisfy their basic needs.

The human rights approach provides both substantive and procedural obligations which governments ought to follow in planning and designing environmental policy. Just like the human rights approach, Sustainable Environmental Governance consists of both substantive and procedural elements which facilitate the implementation, which enhances the pursuit of effective environmental governance.¹⁰⁰ A proper discussion on human rights regime will involve the following:

Substantive Human Rights Obligations

As proclaimed in Stockholm,¹⁰¹ everyone has the fundamental right to freedom, equality and adequate condition of life, in an environment of a quality that permits a life of dignity and well-being.¹⁰² The right to life, which is linked to the right to be free from hunger, is foundational¹⁰³ and non-derogable.¹⁰⁴ Without it, all other rights will have no meaning. It has been urged¹⁰⁵ that this right should not be interpreted narrowly and that States should take positive measures to guarantee it. These rights, even where they are guaranteed, cannot be enjoyed in a degraded environment.

Procedural Human Rights Obligations

There can be no proper enforcement of environmental rights without giving effect to procedural rights which are indispensable in ensuring the proper implementation and enforcement of environmental rights. There are certain indispensable rights called procedural rights such as access to information, public participation, access to justice, (including judicial and administrative remedies, which have to be incorporated alongside environmental rights in national constitutions to ensure the proper enforcement of environmental rights. These categories of rights are indispensable to the implementation

⁹⁹ Carl Bruce et al "Breathing life into Fundamental Principles: Implementing Constitutional Environmental Protection in Africa" Working Paper Series, Working Papers: WP // 2, Institutions and Governance Program, World Resources Institute

¹⁰⁰ Eryk Hysing (2010) "Governing Towards Sustainability – Environmental Governance and Policy Change in Swedish Forestry and Transport" *Orebro Studies in Political Science*

¹⁰¹ Recognition has been given to the solemn responsibility to protect and improve the environment for present and future generations.

¹⁰² See the 1972 Stockholm Conference on the Human Environment

¹⁰³ Article 6 of the International Covenant on Civil and Political Rights (ICCPR)

¹⁰⁴ Article 3 of the Universal Declaration of Human Rights (UDHR)

¹⁰⁵ The United Nations Human Rights Committee

of environmental rights. Such procedural rights provide civil society with the mechanism for learning about actions that may affect them, participate in governmental decision making processes and hold the government accountable for its actions. They also serve to enable civil society bond together to protect the environment through the exercise of those procedural rights¹⁰⁶. Agencies are expected to follow these laid down procedures in the drafting/making of environmental rules as well as allow some time for citizens to adjust to the new rules made. Procedural rights include access to information, access to justice, public participation in decision making, right to legal standing in courts.

Access to relevant information is an essential public policy tool not only in ensuring effective protection of the environment, but is also very vital to the enforcement and implementation of environmental rights. Provision for access to administrative justice and judicial review are made in some constitutions¹⁰⁷ of the world to enable individuals to have access to information concerning the environment.

Access to justice, which include the right to object to governmental environmental decisions, as well as the right to bring action against departments, agencies, firms and individuals who fail to carry out their duties according to the law,¹⁰⁸ is an important provision which can be used to challenge environmental action or lack of action in the realization of right to a healthy environment. Such provisions will not only enhance judicial activism in the Nigerian courts in the area of environmental protection but will also go a long way in empowering Nigerians to compel implementation of safeguarding the health of the Nigerian environment as well as the people.

The right to public participation in environmental decision making is based on the right of citizens who may be affected in decision making to have a say in the determination of their environmental future.¹⁰⁹ Public participation, which entitled the people with a right to know about pending government decisions,¹¹⁰ entails having a voice in governance through representation deliberation or some other forms of action. Public participation can take the form of public hearings and it requires government to consider the comments and evidence of citizens before embarking on decisions.

The discourse on environmental jurisprudence is also incomplete without appreciating property relations and property rights in society. Property which is a core component of societal development right from the primitive societies, is also one of the most

¹⁰⁶ Carl Bruce et al "Breathing life into Fundamental Principles: Implementing Constitutional Environmental Protection in Africa" Working Paper Series, Working Papers: WP // 2, Institutions and Governance Program, World Resources Institute at p. 22

¹⁰⁷ Examples are the Constitutions of South Africa, Kenya, Liberia, Botswana, Democratic Republic of Congo, Cameroon etc.

¹⁰⁸ Tim Hayward (2005) *Constitutional Environmental Rights*, Oxford University Press, New York p. 179

¹⁰⁹ Kiss Alexander and Shelton Dinah (2004) *International Environmental Law* (3rd ed.) Transnational Publishers Inc., United States of America p. 379

¹¹⁰ Carl Bruce et al "Breathing life into Fundamental Principles: Implementing Constitutional Environmental Protection in Africa" Working Paper Series, Working Papers: WP // 2, Institutions and Governance Program, World Resources Institute at p 70

enduring phenomenon of human societal existence.¹¹¹ Property right therefore is very important in the discourse of environmental jurisprudence. Bhallas¹¹² defined property as a conglomeration of social, moral, economic, political and legal factors. Property has also been defined as a mirror of a society's socio-economic and legal development. It implies the existence of ordered relations, which means the existence of norms to regulate human activities.

Challenges and Prospects in Environmental Regime

All species, including non-living things and the environment in particular, have fundamental right to exist. The human species who has assumed the position of master of the environment confers on man the duty of care for the world and other species therein. It is the responsibility of man to enable everything to fulfill its divine promise. Man has an irrevocable duty to protect the environment because the environment serves as the home that houses every living organism. Man must of necessity take a bold step in fulfilling her stewardship role in catering and caring for the environment as the master of the environment. Until man begins to curtail those activities which have deleterious effect on the environment, man's life will be short-lived. The environment must therefore be made free from pollution and pollutants, if man is to live a healthy life. Man must of necessity begin to adhere to the principles of nature, so as to retrace its steps from the path of self- destruction. The approach of environmental jurisprudence must be adopted to serve as a guide in the area of environmental management so as to ensure that the environment and its resources are preserved for the benefit of all in the present generation and for generations to come.

Conclusion

Since the enjoyment of other human rights can be affected directly or indirectly by environmental factors,¹¹³ the right to a clean and healthy environment should be adopted as a fundamental to enable Nigerians to be assured of a healthy and ecologically balanced environment. The right of the public, particularly locally affected communities to participate in the environment and development decisions that affect their lives should also be recognized by the proposed Statute in order to ensure the enforcement of environmental rights in Nigeria in a broader sense. Law and policy makers should make the right to healthy environment paramount. Procedural rights have to be incorporated along-side environmental rights in national constitutions to ensure the proper enforcement of environmental rights.

Empowering Nigerians with provision for direct citizen legal action against polluters

¹¹¹ Odote, Collins (2010) *Regulating Property Rights to Ensure sustainable Management of Wetlands in Kenya*'' (Unpublished Ph.D.) Thesis, University of Kenya

¹¹² Bhallas, R. S. (1990) *The Concept of Jurisprudence* Oxford University Press, Oxford at p. 111

¹¹³ Murray Raff (2008) "Integration of Environmental Considerations into Legal Decision-Making at the Domestic Level". A paper on Land Tenure and Cadastral Infrastructures for Sustainable Development presented at the UN-FIG Conference in Melbourne, Australia, 25-27 October, 2008

can complement government enforcement efforts as well as enhance the system of checks and balances on government behavior on environmental matters. This can help to empower Nigerians to compel the National Assembly to effectively safeguard the health of the Nigerian environment as well as the Nigerian populace. The Nigerian government can also be called to order to account for the environment which it holds in trust for the Nigerian people by virtue of such provisions. Such provisions will also enhance judicial activism in the Nigerian courts in the area of environmental protection. In charting the way forward in the quest for the attainment of the SDGs, the voices of all Nigerians on environmental matters must be heard and their priorities on environmental concern should be taken into account through effective public participation.

Citizen suit can create a new legal precedent to hold polluters responsible as well as enable Nigerians to make government agencies to perform their roles in the event of failure to perform their legislatively mandated duty. Citizen suits should be made to form a substantial portion of enforcement suits in Nigeria. Nigerians, including private individuals, corporations, states or civil society organizations should be conferred with the right to bring citizen suits. Specific provisions for citizen suit against violators or government agencies to enforce environmental laws as a means of ensuring compliance with environmental laws should be included in the proposed Statute. The provision for citizen suits will empower Nigerians to hold polluters responsible, as well as enable Nigerians to make government environmental agencies to perform their legitimately mandated duties.

Despite the domestication of the provisions of the African Charter which states that all people shall have the right to a generally satisfactory environment favourable to their development, the Nigerian judiciary is yet to construe this provision as imposing a duty on the Nigerian State to preserve the environment. The judiciary appears to be intimidated by section 6(3) of the 1999 Constitution. The non-justiciability clause in the Constitution renders the courts powerless. This incapacitates them from breathing life into the provisions under the Fundamental Objectives and Directive Principles of State Policies.

REFERENCES

- Allen, C. K. quoted in Egwummuno (2007)
- Anderson, T. L. and Leal, D. R. (2001) *Free Market Environmentalism* (Revisited Edition) Palgrave, New York
- Aristotle, In Stephen Everson (Ed.) (1988) *The Politics* Book 5
- Austine J. (1890) "The Province of Jurisprudence Determined" (1st Ed.) Cambridge University Press, Cambridge.
- Babara MacKinnon (2007) *Theory and Contemporary Issues* (5th Ed.) Wadsworth, California
- Bentham, J. (1823) *Introduction to the Principles of Morals and Legislation*
- Bhallas, R. S. *The Concept of Jurisprudence* Oxford University Press, Oxford
- Bhass (1990) *The Concept of Jurisprudence* Oxford University Pres

- Block, W. E. (1990) *Economics and the Environment: A Reconciliation*. The Fraser Institute, Vancouver, B.C.
- Boulo, Peter (n.d.) A New Legal Paradigm: Towards a Jurisprudence Based on Ecological Sovereignty. *Macquane Journal of International and Comparative Environmental Law* 18(2)
- Brown Weiss, Edit (2011) *The Evolution of International Environmental Law* Japanese Year Book of International Law
- Carl Bruce et al “Breathing life into Fundamental Principles: Implementing Constitutional Environmental Protection in Africa” Working Paper Series, Working Papers: WP // 2, Institutions and Governance Program, World Resources Institute
- Charlene Spretnak (1990) “Ecofeminism: Our Roots and Our Flowering” in Irene Diamond et al *Reweaving the World: The Emergence of Ecofeminism*, Sierra Club Books, San Francisco
- Constitution of the Federal Republic of Nigeria, 1999, Cap.C.34 Laws of the Federation of Nigeria 2004
- David Hunter, James Salzman and Durwood Zaelke (2002) *International environmental Law and Policy* (2nd Ed.) Foundation Press, New York
- Dias, R. M. W. (1970) “Jurisprudence)
- Donnelly, B. and Bishop, P. (2007) “Natural Law and Eco-Centrism” *Journal of Environmental Law* 19
- *Dowrick (ed) *Human Rights Problems cited in Plessis above*
- Elder, P (1984) ”Legal Rights for Nature: The Wrong Answers for the Right Questions” *Hall LJ* 285, Osgoode
- Egwummuo, J. N. (2007) *Focus on Law and Jurisprudence*, Academic Publishing Company, Enugu
- Emejuru C., (2006) “Legal Framework for the Environment Against Oil and Gas Pollution in Nigeria” M.Phil thesis Submitted to the Faculty of Law Ile-Ife.
- Ese Malemi (2013)
- Fagbohun, A. O. (1998) “Public Environmental Litigation in Nigeria – An Agenda for Reform” in Struan Simpson & Olarewaju Fagbohun (Eds.) (1998) *Environmental Law and Policy*, Law Centre, Faculty of Law, Lagos State University, Nigeria
- Feinberg, J. (1974) “The Rights of Animals and Future Generations” in William Blackstone (ed.) (1974) *Philosophy*
- Freeman, M. F.B. A. (2014) “Lyod’s Introduction to Jurisprudence (9th Ed.) Sweet and Maxwell
- Greta Gaard, (1993) “Living Interconnections with Animals and Nature” in *Ecofeminism: Women, Animals, Nature*, Philadelphia Temple University Press
- Gold, S (1986) “Causation in Toxic Torts: Burden of Proof, Standard of Persuasion and Statistical Evidence” *The Yale L. Rev.* 96(2)
- Godber W Tumushabe, *Governing the Environment: Political Change and Natural Resources Management in Eastern and Southern Africa*

- Gray, J. (1963) *The Nature and Sources of the Law* (2nd Ed.) Beacon Press, Boston at p. 43
- Gregorio Rafael P. Buesta (2019) *Environmental Jurisprudence from the Philippines: Are Climate Litigation Cases Just Around the Corner?* Available at <https://www.iucn.org/news/world-commission-environmentallaw/201906/environmental-jurisprudence-philippines-are-climate-litigation-cases-just-around-corner>
- Hart, H. L. A (2012) *The Concept of Law* (3rd Edition), Oxford University Press, Oxford
- Hohfel, N. W In Walter W. Cook (Ed) (1923) *Fundamental Legal Conceptions as Applied in Judicial Reasoning and Other Essays* 67
- Honore, A. M. (1961) *Ownership* In Guest, A. G. (Ed.) (1961) *Oxford Essays in Jurisprudence* at 107
- James R. May (2006) “Constituting Fundamental Environmental Rights Worldwide” 23(1) *Pace Environmental Law Review* 113
- Jan Glazewski (1991) “The Environment, Human Rights and a New South African Constitution” *South African Journal of Human Rights*, 167 at 172
- Jona Razzaque “Human Rights and the environment: The National Experience in South Asia and Africa” Available at <<http://www.2ohchr.org/English/issues/environment/envIRON/bp4.htm>>
- Kaniye S. A. Ebueku “Constitutional Rights to a Healthy Environment and Human Rights Approach to Environmental Protection in Nigeria
- Lord Denning (1960) quoted in Ewuommuo (2007)
- Mekete B.T. and Ojwang J.B. (1996) “The Right to a Healthy Environment: Possible Juridical Bases”, 3 *AJELP*
- Michael G. Faure (2009) “Instruments for Environmental Governance: What Works?” A Paper Presented at the Annual Colloquium of the Academy for Environmental Law of the IUCN
- Noel Sturgeon (1997) “Ecofeminist Movements” in *Ecofeminist Nature: Race, Gender, Feminist Theory and Political Action*, Routledge, New York
- Nwogugu, E. I. (1975) “Law and Environment in Nigeria Oil and Gas Industry” *Earth Law Journal*
- Odote, Collins (2010) *Regulating Property Rights to Ensure sustainable Management of Wetlands in Kenya*” (Unpublished Ph.D.) Thesis, University of Kenya
- Odote, Collins (2015) “Retracing Our Ecological Footsteps: Customary Foundations for Sustainable Development for Higher Education” *University of Nairobi Law Journal* 18(1) pp. 55-71 available at >http://uonlj.uonbi.ac.ke/sites/default/files/media/vil_8_2015_unlj.pdf>
- Odote, Collins (2019) “Environmental Jurisprudence and Sustainable Development in Kenya: A Theoretical Foundation” In Mameri-Mbote, Patricia and Odote, Collins (2019) *Blazing the Trail – Professor Charles Okidi’s Enduring Legacy in the Development of Environmental Law* University of Nairobi
- Ojwang, J. B. (1996) “The Constitutional Basis for Environmental Management” In *Land We Trust: Environment, Private Property and Constitutional Change*, Initiative Publishers

- Ojwang, J. B. & Juma Calestous (1996) "Towards Ecological Jurisprudence" In Calestous Juna & Ojwang J. B. (Eds.) (1996) *In Land We Trust Environment, Private Property and Constitutional Change*, Initiative Publishers
- Okidi, C. O. (1990) *The Role of International Law in Sustainable Development in Africa*, unpublished paper presented to Commonwealth Law Conference in Auckland, New Zealand
- Okoth-Ogendo, H.W.O. () "The Juridical Framework of Environmental Governance". In HWO Okoth-Ogendo and Okidi, C. O. (2008) *Concepts, Functions and Structures of Environmental Law in C. O. Okidi et al (2008) Environmental Governance in Kenya the Law (EAFP)*
- Omoregbe, Joseph (2007) *An Introduction to Philosophical Jurisprudence*, Joja Educational Research and Publishers Ltd., Lagos
- Pennington, M. (2005) "Liberty, Markets and Environmental Values – A Hayekian Defense of Free-Market Environmentalism," *The Independence Review*, X/1: 39-57
- Cordato, R. E. (2004) "An Austrian Theory of Environmental Economics", *Quarterly Journal of Austrian Economics* 7/1
- Sukhvinder Singh Dari & Rangam Sharma (2014) *An Overview of Environmental Jurisprudence in India Journal of General Management Research* Vol. 1 Issue 1
- Susanne C. Gagnon Thompson & Michael A. Barton (1994) *Ecocentric and Anthropocentric Attitudes Towards the Environment Journal of Environmental Psychology* 14
- Redgewell, C. (1996) "Life, the Universe and Everything: A Critic of Anthropocentric rights" in *Human Rights Approach to Environmental Protection*, Oxford University Press, Oxford
- Rogers (1994) in, Winfield and Jolowice on Tort (1994) (14th ed.,)
- Rothbard, M. (1990) "Law, Property and Air Pollution" in Block, W. E. (Ed.) (1990) *Economics and the Environment: A Reconciliation*, The Fraser Institute, Vancouver, B.C. pp. 233-280
- Stroup, R. L. (2000) "Free Riders and Collective Action Revisited" *The Independent Review* IV/4
- Rowe, S. (1994) "Eco-Centrism: "The Chord that Harmonizes Humans and Earth" *The Trumpeters* 11(2)
- Scott Gordon (1954) "The Economic Theory of Common Property Research: The Fishery" 62 *J. Political Econ.* 124, quoted in Elinor Ostrom
- Shavell, S. (1980) "Strict Liability Versus Negligence" *Journal of Legal Studies* Vol. 9, 1-25
- Ayres, R. U. and Kneese, A.V (1969) "Production, Consumption and Externalities" *American Economic Review*, 59
- Shavell, S. (1984) "Liability for Harm Versus Regulation of Safety" *Journal of Legal Studies* vol. 13, 357-374

- Singer, P. (1975) *Animal Liberation: A New Ethics for Our Treatment of Animals* New York Review, Random House, New York
- Storm, P. (1974) "Environmental Laws: Introduction" available at <http://www.iuscomp.org/gla/literature/envirmt.htm#loc21>
- Tim Hayward (2005) *Constitutional Environmental Rights*, Oxford University Press, New York
- Warren, Lynda M. (n.d.) *Working Towards an Environmental Jurisprudence*, Department of Law and Criminology, Aberystwyth University, Penglais, Aberystwyth, U.K.
- Williams Ruckelshaus, Business Week of June 1990