

# The Roles of the Court in Environmental Protection in Nigeria

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**Abstract:-** Food is to man what a healthy environment is to the universe. An important element in the continual existence of lives in the society, is the environment, and for the earth to continue to be inhabitable, a healthy environment must be prioritized in the scheme of things. This work takes cognizance of some of the most urgent causes and effects of environmental degradation in Nigeria, and the roles of litigation in making for a healthier and safer environment; these it achieved through the use of the doctrinal and analytical research methods, as the most thorough approaches towards the expounding of the subject matter, and the protection of the environment.

**Keywords:-** Litigation, Environment, Protection and Nigeria.

## I. INTRODUCTION

By definition, the Environment is the external conditions which influences the development of any living organism. It consists of surroundings; the totality of things that may affect an organism in a way, including both physical and cultural conditions. In the context of this essay, it includes the atmosphere, water bodies, lands and things found in them.

Man's interaction with his environment is a thing of necessity and compulsion, and not of choice, this is because his continual survival and proper existence is dependent on his symbiotic relationship with his environment. For instance, man as a living being needs oxygen to survive. Consequently, it must be ensured that no action or activity which is detrimental to the continued quality of this gas should be allowed to persist. Also, land and water bodies are sources of agricultural produce and seafood respectively, which are fundamental to our nutrition. So, any practice that is detrimental to these sources, among others, is detrimental to our survival as a specie. Therefore, the duty of protecting man and other organisms resides with man. Therefore, environmental protection is a venture that society should hold sacred, converse of which will be detrimental to all us.

## II. CAUSES AND EFFECTS OF ENVIRONMENTAL DEGRADATION

It is important to emphatically state that there are innumerable causes of environmental degradation in Nigeria and Africa at large. They include Deforestation, Industrial activities, Fossil fuel exploration and use, Agricultural activities, etcetera.

Against the above background, industrial activities and oil and gas exploration are infamously renowned for being the most daunting causes, and would thus be the focus of this work.

Petroleum is a major source of revenue that sustains the Nigerian economy as oil is widely needed, and Nigeria produces it in commercial quantities. The production of petroleum in Nigeria is estimated at an average of 2.2million barrels per day. Notwithstanding the humongous revenue from oil production in Nigeria, and other industrial activities, their negative impacts on the environment are enormous. They range from oil spillages, gas venting and flaring, unchecked disposal of industrial wastes and attendant noise pollution.

### ➤ Land

It has become common practice that oil companies after their exploration activities abandon the oil fields without proper decommissioning and abandonment. There has also been inordinate occasions of spillages and disposal of wastes on land during production. These spillages result mostly from carelessness on the part of the companies in the use of faulty equipment during production and transportation; improper examination of pipelines, and the recklessness of oil tanker drivers. The Niger Delta region has experienced a number of blowouts and pipeline leakages over the years, such as the Shell-Bp bomu11 well blowout of 1970, the Texaco Funiwa oil well blowout of 1980, etcetera. Statistics show that about 240,000 barrels of unrefined petroleum are spilled in the region, most of which are as a result of unknown causes (31.85%); outsider movement (20.74%) and mechanical disappointment (17.04%).

➤ *Air*

Flaring of associated gas, which unfortunately has become a standard practice for oil companies in Nigeria, emits noxious gases which pose environmental and health threats. Uncontrolled flaring and venting are major contributors to global warming and also lead to the breathing in of polluted air by the host communities. Currently, it is estimated that Nigeria has over 123 flaring sites in the Niger Delta region, and is among the highest emitters of greenhouse gases in Africa.

➤ *Water*

Oil exploration in both onshore and offshore areas has adverse effects on the water and aquatic life in Nigeria. Oil spillages on the land are washed into the rivers and streams, and the ones offshore are directly spilled into the rivers and oceans which then pollute the waters and make them unfit for drinking, domestic usage and for aquatic life. As seen in oil host communities, which are usually littoral states, there is always a scarcity of water for domestic usage and the distortion of aquatic life.

➤ *Agro-Economic issues*

Due to onshore and offshore oil spillages and the dumping of oil wastes in such places, a lot of indigenes of the Niger Delta region have lost their occupations and means of livelihood. This is because a lot of them engage in either subsistence farming or fishery, which has now been grossly polluted. This condition has gone ahead to affect the economic development of the area in that they cannot even export or trade any agricultural produce or even engage in successful commercial agriculture.

### III. LITIGATION AS A TOOL FOR ENVIRONMENTAL PROTECTION IN NIGERIA

Litigation can be an effective tool in ensuring the safety of the environment and its inhabitants, because the 1999 Constitution of Nigeria as amended has made the courts accessible to the public to use to determine and enforce their rights. Environmental protection litigations take the form of human rights action, nuisance, trespass and the non-performance of corporate social responsibilities action.

In *Gbemre v. Shell Petroleum Development Company of Nigeria Ltd & Ors.* the applicant brought a representative action on behalf of the Iwherekana community of the Niger Delta Region (NDR), in the Federal High Court (FHC), against the Nigerian government for its failure to stop shell company's gas flaring; and against Shell company for engaging in unchecked gas flaring, which has now affected the community adversely as seen in premature deaths, respiratory illnesses and cancer. The applicant further alleged that Shell failed to undertake an environmental impact assessment (EIA) on the community's environment, and because of that, the flaring violated the community's right to life and dignity guaranteed in the 1999 constitution of Nigeria, and by the

African Charter as domesticated in Nigeria, which encompasses their right to a clean poison free, pollution free and healthy environment.

The respondents opposed the case on the grounds of jurisdiction and lack of enforceable law; however, the FHC sitting in Benin City held in favour of the plaintiff on the ground that the respondent's activities violated the plaintiff's constitutional rights which is inclusive of the rights to a clean, poison and pollution free environment. The Court further ordered the immediate amendment of the Associated Gas Re-injection Act to be in tandem with the human rights obligations in the constitution and African charter.

Also, the court in *Abiola v. Ijoma*, where the plaintiff who lived in Surulere, Lagos State, brought an action in nuisance, complaining that the chickens bred by the defendant in an adjoining compound produced noise that disturbed his sleep at night; and that the nauseating smell emanating from the pen interfered with his comfort and health. The court held for the plaintiff by finding that taking into account the number of chickens, and the weekly cleaning of the pens, that it was possible that the plaintiff's convenience was disturbed.

Furthermore, in *SERAP v. FEDERAL REPUBLIC OF NIGERIA*, the Socio-Economic Rights and Accountability Project (SERAP) brought an action in court against the federal Republic of Nigeria on its inability to enforce and maintain a healthy environment in the Niger Delta region, which has posed both health and economic risks in the region. The defendant opposed the suit on the ground that the plaintiff acted on its own accord without recourse to the affected region, and that the ECOWAS court lacked jurisdiction to entertain a domestic matter. However, the court found that the laws it relies on to acquire jurisdiction are the international instruments such as the ICCPR and the ICESCR which member states voluntarily bound themselves, and not domestic laws. It went ahead to hold against the federal government and ordered it to take immediate measures to ensure the restoration of the NDR; to prevent further damage to the environment; and to hold perpetrators of such environmental damage accountable.

In *Centre for Oil Pollution Watch (COPW) v. NNPC*, the COPW brought an action in 2005 against the Nigerian National Petroleum Corporation (NNPC) over an oil spillage by the defendant in the ACHA community of Abia State. The plaintiff alleged that the spillage was a result of the defendant's non maintenance of its corroded and ruptured pipelines, which consequently spewed its contents into the streams and rivers of the community, the major sources of water supply. The plaintiff further alleged that there was no proper containment of the spillage by defendant, which has in turn been detrimental to the marine life and human health of the community. The defendant challenged the action on the lack of locus standi by alleging that the plaintiff had not suffered any injury at all. The trial and court of appeal struck

out the suit on that ground. On a further appeal to the Supreme Court, the appeal was allowed and the court held among other things: **a).** that the appellants had the standing to sue. That public individuals and organizations can bring actions against relevant entities to demand their compliance with relevant laws, and to ensure the remediation, restoration and protection of the environment. **b).** That every person, including NGOs, who seek the performance of statutory functions or public laws, especially designed to protect human lives, public health and the environment should be regarded as proper persons clothed with standing in law to request adjudication on issues of public nuisance. And this public interest litigation will enable poor communities without finance to access to justice.

As a corollary from the above, it is evident that the court leans in favour of environmental hazards victims, therefore, litigation is a handy effective tool at the disposal of Nigerians in ensuring a safe environment. However, this does not come without some challenges as is encountered in establishing locus standi, since most suits are in representative capacities; the challenge of showing the extent of damage that one has suffered so as to put him above every other person in order to accord him some remedies as is seen in most nuisance proceedings.

More so, there is a challenge of inequality in terms of the financial capacities of the parties. In most cases the victims of environmental desecration are poor individuals and communities, as against the rich industries and government, who find it hard to employ good legal practitioners or experts to prove their case.

Finally, it takes a good number of years before environmental litigations are determined. In such years, the pollution and its impacts usually causes irreparable damage. It does not end here, most often when judgments are eventually given against such perpetrators, they violate court orders usually because of their nature (international oil companies; governments). This was evident in *Gbemre* case.

#### IV. RECOMMENDATIONS

It is the view of this writer that courts should regard environmental pollutions as human right violations. This will go a long way in ensuring that the safety of the environment is taken more seriously, and will also allow for individual enforcements rather than by class actions.

The judiciary is also encouraged to remain unbiased in its determination of environmental suits as it is the last hope of common men even in the face of the rich industries and their huge bribes.

The courts are also urged to water down the strict locus standi rule. This is to accommodate the poor masses who suffer environmental degradations, but may not have the

financial capacity to sue. Such innovation will encourage the NGOs to handle environmental cases on behalf of the victims.

The judiciary should be timely in determining environmental rights cases so as to ensure justice, because justice delayed is justice denied.

Finally, litigation has proved to be an effective method of environmental protection. This stems from the fact that when stringent sanctions and huge compensations are given against perpetrators of environmental damage, they serve as deterrents to both the liable and potential defaulters. And also as seen in the above cases, litigations help in protecting the environment in that the court orders the defendants to remedy the situation, or to amend the law to the benefit of the environment and the people.

#### V. CONCLUSION

The importance of a safe environment cannot be overemphasized because, it is the life blood of the continuous existence of living organisms on earth. This protection is the duty of human beings through the exhibition of environmental friendly behaviours; however, if deviations occur, or damage results, litigation is a handy tool at an aggrieved party's disposal to remedy the situation.

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