

RIGHT TO A CLEAN ENVIRONMENT: THE NIGERIA PERSPECTIVE

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ABSTRACT

Right to a clean environment is what every living thing including human beings should enjoy in a society. It is a right that should not be compromised in any way. People who are not in a society where this right is enjoyed live in total discomfort and susceptible to various forms of illnesses and death in the extreme situation. This paper examines what right to a clean environment is all about and looks at some laws governing this in some jurisdictions and compared them to what is obtainable in Nigeria. In Nigeria, right to a clean environment is enshrined in the 1999 Constitution of the Federal republic of Nigeria as amended but it is in Chapter II of the said Constitution which makes it non-justiciable. Effect of the non-justiciability is considered together with the impact on the Nigeria society at large. This paper goes further to make appropriate recommendations.

Keywords: Environment, Clean, Right, Nigeria, Constitution

INTRODUCTION

Right to a clean environment is not negotiable in any sane society. This paper focuses on the right to a clean environment and personal efforts made by some countries of the world in respect of this right. There is a need for all those who live in a particular environment to enjoy a clean environment. Life becomes uncomfortable whenever something is wrong with the environment and that is why it is important that the government of every nation should ensure adequate environmental protection for the people living in such a nation. God himself from the creation of the world wants human beings and all the creatures to have access to, and enjoy a perfectly clean environment that is safe for them (Okorodudu-Fubura, 1998).

Nigeria and the right to a clean environment

Nigerian government recognizes the need to protect the environment as it can be found in the 1999 Constitution of the Federal Republic of Nigeria which provides that “the state shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria.” It can be deduced from this provision that the government

realizes that there is a need to protect the environment so as to make it worth living for the Nigerian people. It is worthy of note that as beautiful as this

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provision is, it falls within the rights under Chapter II of the Constitution which are non-justiciable rights. It is our view that this right be included among those rights under Chapter IV of the Constitution so as to enable it have the kind of weight it ought to have in the country. As far as this right is concerned, it is just a toothless bull dog. The Constitution as the principal legislation in the country should ensure that this right is justiciable.

Right to a clean environment in some selected jurisdictions:

So many countries of the world have amended their Constitutions to ensure and guarantee a right to a clean environment (Fagbohun, 2015).

The Constitution of South Korea recognizes that all citizens have the right to a healthy and pleasant environment. It provides that "All citizens shall have the right to a healthy and pleasant environment, the state and all citizens shall endeavor to protect the environment". South Africa in her own Constitution provides for a right to a healthy environment. The Constitution of the Republic of South Africa provides to the effect that everyone has a right to an environment that is not harmful to their health or wellbeing and to have the environment protected, for the benefit of present and future generations through reasonable legislative and other measures that prevents pollution and ecological degradation, promote conservation and secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development (from the tone of this provision, the concept of sustainable development as stipulated under the Stockholm Declaration of 1972 can be perceived).

The countries like Portugal, Philippines, Peru and Hungary have also celebrated the right to a clean and healthy environment. The major point is not the inclusion of these rights in the Constitution but such provision must be the one that is enforceable in the court of law. Nigeria as earlier stated has this right in her Constitution but it falls among the non-justiciable rights; that is, the rights contained under Chapter II of the 1999 Constitution.

Under the Illinois Constitution for instance, it makes provision to the effect that each person has the right to a healthy environment. Each person may enforce this right against any party, governmental or private, through appropriate legal proceedings subject to reasonable limitations and regulation as the General Assembly may provide by law. The provision of the Constitution must be the one that is self-executing; a provision is said to be self-executing when it expressly so declares.

Massachusetts Constitution provides that the people shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic and esthetic qualities of their environment. This has been held not to be self-executing.

In Pennsylvania for example where the Constitution provides that the people have a right to clean air, pure water and to the preservation of the natural scenic, historic and esthetic

values of the environment, the Court in *Commonwealth of Pennsylvania v National Gettysburg Battlefield Tower Inc.*, ruled that the state's environmental provision was not self-executing. Few years later in the case of *Payne v Kassab*, where the same environmental provision was asserted against the state held that it is self-executing. What to be noted in this instance is that where the Constitution decides to be silent, the decision in such regard can go either way.

In *Carlos Roberto Garcia Chacon*, the plaintiff brought the action on the ground that his and his neighbor's right to life and a healthy environment had been violated because a cliff in their neighborhood was being used as a dump. In affirming the right to a healthy environment, the Supreme Court of Costa Rica ordered the immediate closure of the place and stated that the authorities in charge of the place had not been effective or diligent enough in carrying out their obligations in protecting the life and the environment. It held further that life "is only possible when it exists in solidarity with nature, which nourishes and sustains us not only with regard to physical food but also with physical wellbeing. It constitutes a right which all citizens possess to live in an environment free from contamination." It is very obvious from the pronouncement of the court that the country has made adequate provision for the protection of lives and environment of the nation (Fagbohun, 2015).

The need to ensure a healthy environment:

It is our view that Nigeria and even all the countries of the world should ensure that right to a healthy environment is guaranteed. The countries should make express provisions for this in their Constitutions and make them self-executing so as not to give rise to any misinterpretation by the courts of law when they are faced with the task of interpreting same as it occurred in Pennsylvania. Also, all the International Conventions and Agreements should be honored by all the countries of the world who are parties to same if we are going to enjoy a right to a healthy environment. In essence, when countries agree to bind themselves with one treaty or the other, such countries should ensure compliance with the provisions if such a treaty. Where such a treaty needs to be domesticated in such a country, such domestication should be done without any hesitation on the part of those saddled with the responsibility of doing same.

It must be noted that Nigeria has made some efforts in this regard but needs to do more. The Constitution has to be amended so as to give the force of law to the said Section 20 of the Constitution that provides for the right to a healthy environment and make it self-executing.

Also, international Agreements signed by Nigeria must be respected and obeyed if Nigerians are to enjoy a right to a healthy environment. A notable provision of NESREA Act in this regard is Section 7(6) which mandates NESREA to enforce compliance with international Agreements, Protocols, Conventions and Treaties on the environment; and such other agreements that may from time to time come into force. Section 12 (1) of the Constitution provides for implementation of treaties and it provides to the effect that "No Treaty between the Federation and any other country shall have the force of law except

to the extent to which any such Treaty has been enacted into law by the National Assembly”.

It can be seen by the careful perusal of the above provision of the Constitution, for any international Agreement to be operational in Nigeria, it must be ratified by the National Assembly. It is quite obvious that the two laws in this regard are in contrast and by virtue of the provision of the Constitution, any law that is inconsistent with the provision of the Constitution shall to the extent of its inconsistency be null and void.

However, the provision of NESREA Act as stated above may mean that NESREA has the authority to enforce such international Treaties in Nigeria whether or not they have been ratified by the National Assembly in line with the provisions of Section 12 of the Constitution or not. This could be based on the fact that by ratifying the relevant Treaty, Nigeria has signified its intention to be bound by the provisions of such ratified Treaty. The State cannot therefore shy away from the performance of its Treaty obligation under international Law. This principle is expressed under the Vienna Convention which provides to the effect that every treaty in force is binding upon the parties to it and must be performed by them in good faith. This principle is known as the “principle of good faith”. This was reflected in the judgment of the Court of Appeal of Nigeria in the case of *Mojekwu v Ejikeme* which bothers on a customary law of Igbo land in Nigeria where despite the fact that the Convention for the Elimination of Discrimination Against Women had not been domesticated in Nigeria, the court referred to it in its judgment and had no difficulty in holding that the “ili ekpe” custom was a form of discrimination against women.

Considering the foregoing therefore, Nigeria needs to be more serious, committed and dedicated to the issue of environmental protection. The Laws in this regard must be harmonized and the provisions of the Constitution amended so as to give room for effective implementation of environmental rights and that of International Agreements so ratified by her so as to guarantee the right to a clean and healthy environment.

The development of international and national Environmental Laws resulted from the need to combat environmental problems being faced by the whole world or a particular nation at a given time/period. Environmental problems cannot be seen as an individual problem and that is why there is always a worldwide alert on any environmental issue which on several occasions calls for Conventions, Treaties, and Protocols in order to collectively solve such environmental challenges. Environmental problems have no respect for any nation which could be seen in a nuclear explosion where its occurrence in a particular nation may affect another nation and consequently damage the environment and the human health.

Nigeria has become more aware of international Treaties Conventions and collaborations relevant to environmental protection in its effort to forestall a repetition of Koko Incidence permanently. Nevertheless, Environmental Law should not be confined to the areas of sustainable development of the environment only, it should be made to include the right of man to live in a healthy, hygienic and safe environment; this right should without any hesitation be inserted into our Constitution and be made one of the justiciable rights. This right has been made non justiciable by virtue of the provisions of Section 6(6)(c) which

provides to the effect that “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 Directives Principles of State Policy set out in Chapter II of this Constitution”.

In effect if any of the rights contained in Chapter II of the Constitution is breached, the affected party cannot seek redress in the law court for violation of that particular right. Unfortunately, right to a clean environment as discussed above falls in Chapter II of the 1999 Constitution (as amended)

It is worthy of note that for a sustainable environment to be achieved, there must be adequate laws on ground and enforcement body as we have in NESREA. All the Laws put in place in Nigeria prior to the Koko incidence of 1988 were toothless Bull dogs in the sense that they were not able to achieve environmental protection in Nigeria, thanks to the Koko incidence which puts Nigeria on its toes and made it look beyond her shoulders and promulgated FEPA. Since FEPA has metamorphosed into NESREA, it has been trying in performing its own bit. More performances are expected in the area of environmental protection and human health particularly in the area of telecommunication installations by telecommunication operators in Nigeria.

In addition, the right to a clean environment cannot be severed from the principle of sustainable development. Sustainable development is the ability of the present generation to meet their needs without compromising the ability of the future generation to meet theirs too. According to Fubara M.T while quoting H.E Judge Nagendra Singh, President, International court of Justice, in his foreword to the report of the Experts Group on Environmental Law of the World commission on Environment and development, expressed the concept of sustainable development as follows:

The right to development does, however, have certain limitations inasmuch as it cannot be asserted at the expense of the community or even at the expense of the neighboring States whose prospects may be jeopardized. For example, a State cannot, in the name of development, proceed to applications of nuclear energy in such a way as to harm the environment and imperil human life, whether in the immediate neighborhood or in the surrounding region. In fact, environment and development go together and have to be examined simultaneously in this context. In the process of advocating sustainable development, one has to examine the rights and responsibilities of States, both bilaterally and in relation to the international community as a whole. The need for cooperation among nations has to be viewed in the light of new imperatives. The efforts of the World Commission need to be briefly mentioned here because it makes a major contribution to the concept of development in relation to sustainability, the Commission’s emphasis on “Sustainable Development” is vital to the well being of humanity not only today but in the context of future generations.

This aspect deserves to be fully appreciated not only in the legal domain but in terms of the physical world and its prosperity on which must depend the future of humanity.

Thus, environmental protection and right to a clean environment cannot be severed from the principle of sustainable development. The principle which was defined as using living resources in a manner that "does not exceed their natural capacity for regeneration" and using "natural resources in a manner which ensures the preservation of the species and ecosystems for the benefit of future generations is very germane to the right to a clean environment. The way and manner the environment is being put into use today will definitely have an impact on the future generation. The principle advocates for proper and careful use of the environment by the present generation so as to grant the future generation the opportunity to enjoy a good and clean environment.

RECOMMENDATION

It is hereby recommended that efforts must be made by the Nigerian government to ensure that the right to a clean environment as enshrined in the 1999 Constitution as amended must be made justiciable by moving the right from Chapter II of the Constitution to Chapter IV.

REFERENCES

Article 26 of the Vienna Convention

Article 35(1) of the Constitution of South Korea.

Article XLIX of Massachusetts Constitution

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The Constitution of the Federal Republic of Nigeria 1999 (as amended)

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