

## An Appraisal of the Concept of Sustainable Environment under Nigerian Law

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**ABSTRACT** The exploitation of natural resources and the desire to carry out developmental projects have brought with it positive and negative impact necessitating the need to exercise restraint in terms of activities of man. The environment is the domain where all desires of man are accomplished. The protection of the environment is sequel to the awareness of man to control it. The reasoning of using the law to regulate and ensure a safer environment becomes fundamental in our ways of life. "The science of law, i.e. an organized and critically controlled body of knowledge both of legal institutions and legal precepts and of the legal order i.e. of the legal ordering of society informed the question to what extent can this be achieved." There have been cases of environmental degradation, environmental pollution and many other environmental hazards that are either natural or man-made. Sustainable environment which is the key focus of this article can be realized depending on the approaches adopted. The Kyoto accord which is a world wide agenda is being put in place to reduce green house effect of climate change. The environment is the focal point in the drive for development in various sectors and institutions, stressing that there would be no development without the environment. Furthermore, suggestions to accomplish sustainable development are made.

### INTRODUCTION

The quest of man to be productive has necessitated the exploitation activities by man. The developmental effort in all spheres which include manufacturing, processing, industrialization, housing, construction, agriculture, rural and urban growth and development have subjected the environment to changes that are being witnessed today. The negative impact has brought its own problems resulting from lack of control and negligence. The position of the law is respect of the environment has to be examined. The essential linkage is the sustainable environment which can be brought about with the operation of the law in collaboration with the concerned citizens.

### The Environment

According to Akinbode (2002) environment is the totality of the places and surroundings in which we live, work, and interact with other people in our cultural, religious, political and socio-economic activities for self fulfillment and advancement of our communities, societies or nations. It is within this environment that both natural and man made things are found.

In a broader and more explicit sense, it has been defined by Federal Environmental Protection

Agency Act in Section 38 as including water, air, land and all plants and human being or animals living therein and the inter-relationship that exist among these or any of them. Also, arising from the provisions of Section 20 of the 1999 Constitution of the Federal Republic of Nigeria the term environment means the following:

- (a) The water, air and land
- (b) Forest and wild life
- (c) All layers of the atmosphere
- (d) All organic and in-organic matter and living organisms and
- (e) The interacting natural systems that include components referred to in paragraph (a) to (d).

Alongside many long-standing issues, new environmental challenges are continuously emerging. The tragic tsunami event served as a stark reminder of the region's vulnerability to natural disasters and underlined the importance of the Bank's activities to support effective coastal resource management. In the wake of the disaster, the bank made rapid assessments of environmental damages and made adjustments to ongoing and planned projects. New Environment Monitors in the Philippines and Thailand are also focusing on coastal resource management.

In this section of literature review, the concept of the environment and sustainable developments are considered along with arising environmental issues

### **The Meaning and Concept of Sustainable Development**

The reasoning in sustainable development is to ensure that our environment is safe for human habitation and to check the adverse effect of emerging environmental problems. The extent at which the law will assist in environmental matters will be of great benefit. Sustainable development as accounted by Segynola (2002, 2004) in its concept highlighted namely the environmental-based, the poverty-based and the political/governance-based, nature of sustainable development. In addition economic development has positive and adverse effects on man and his environment. It has brought reward to people all over the globe-higher incomes and material welfare, lower sickness and deaths rates, greater knowledge and freedom. The aftermath of it is pollution, environmental degradation and destruction of resources. Indeed poorer countries do not enjoy the benefits of development rather they disproportionately suffer the cost.

For better understanding of the sustainable development different dimensions are being considered. In the context of United Nations (UN) World Committee on Environment and Development, Agenda 21 sustainable development is "Development that meets the need of the present without compromising the ability of the future generations to meet their own needs" Sustainable development is a policy by which the environment can be protected from pollution, degradation and or restored, replaced or restituted after degradation. It involves economic and development activities that meet the needs of the present generation without compromising, reducing or destroying the ability of the future generation to meet their needs. Sustainability rests on three pillars-economic social and environmental activities that promote the ability of the present and future generations to live within, the earth's capacity to support us. Thus, economic activity, social equality and environment. Segynola (2002, 2004) ascertained that "sustainable development as a concept is very wide and multidimensional. Three aspects that are considered relevant are examined. Firstly, sustainable development is highly related to the environment. The three issues involved are environmental management, environmental resource analysis, evaluation and protection/conservation. Also, on sustainable development Habitat 1994; stated in its elabo-

ration that sustainable development "emphasizes how decisions and actions today can affect the future, especially in relation to natural resources availability, environmental health and destruction and global ecosystems. Sustainable development is fundamentally concerned with the two-way relationship between development and the environment. It is now clear that more attention has to be exercised in order to live a balanced life within the environment that should be kept away from destruction. NEST's itemization of the key elements of the concept is to further express view on sustainable development (Onyedika 2005) through the United Nations Development Programme (UNDP) stressed the need to include environmental concerns in the nations sectoral policies, plans and programmes to achieve a sustainable development. The environment is the focal point in the drive for development in various sectors and institutions, stressing that there would be no development without the environment.

An effort towards the sustainable environment will require adequate funding which is expected to span between 10 to 15 years. The principal funding will be coming from the World Bank, the Global Environment Facility (GEF) and the United Nations Food and Agricultural Organisation (FAO). Also on the list of contributors are African Development Bank (ADB) and the governments of Belgium, Canada, Denmark, Finland, France, Japan, Sweden and Switzerland as well as the European Union and the World Bank Development Grant Facility.

"The Africa stockpiles programme is an unprecedented partnership" says Ian Johnson, the World Bank's vice president for the environment and socially sustainable development sector.

Also, an authenticated inventory of stock piles for Nigeria is yet to be ascertained, it is estimated that \$2.67 million will be spent on the programme in the country with activities involving inventory, preparation for disposal and prevention. It is on this account and regarding statement credited to (Umezurike 2005) that "Environmental protection is thus concerned with the preservation and protection of the air, water and soil from pollution or degradation and preservation of the heritage of mankind for the benefit of the present and future generation. Ability to meet the terms as stated will assist in realisation of sustainable environment. It can further be stated that "pollution has been defined

as the introduction by man directly or indirectly of substances into the environment, resulting in such deleterious effects as harm to living resources, hazard to human health, impairment of quality for use of sea amenities.

### ARISING ENVIRONMENTAL ISSUES

There are reported cases of violence emanating from adjudication for better deal by inhabitants that suffer losses as a result of cost due to contamination and farm land, landslide pollution of water bodies and degradation of the environment. Since the beginning of time human activities have continuously revolved around environment whether considered scientifically or technologically, the experiences and endeavours of man dwell with his inseparable and unceasing interaction with the environment. Ejere (2003) in his view on this matter cited cases where it was noted that “selfishness and greed have been identified as the true driving forces behind such destruction. In *Gabeikoro Nagymaros Project Hungary vs. Slovakia* where it was observed by International Court of Justice that “Throughout the ages mankind has for economic and other reasons, constantly interfered with nature.

Badly-managed economic growth can and does damage the environment both locally and globally through air and water pollution, soil contamination and destruction of resources. Economic development is a necessity but it is equally important that control systems for environment quality be improved. For a country of Nigeria’s size and geopolitical importance, non strategic, arbitrary and inadequate efforts on environmental stewardship have both present and future negative impacts on economic development quality of life and peace. In addition to its effect on public health, poor environmental conditions drive away foreign investment and tourism that are needed to promote Nigeria’s economic growth. On the part of oil and gas sectors in both private and public organizations. It should be noted that oil exploration and production waste were “necessarily generated, adding that shell was fully aware that the way and manner such waste was managed had tremendous impacts (Obioha 2003; Olokesusi 2003) while considering population pressure and economic activities of man on the environment, highlighted the major environmental problems confronting Imo State in general. They include

the following: Gully erosion, flooding, environmental pollution, loss of biodiversity, urban environment decay and slum, deforestation and degradation. Relatively, one of the consequences of population growth is the environmental degradation. This degradation becomes manifest as human activities increase in consonance with population growth. At the present time in Imo State, like in other Niger-Delta region states, examining population growth and environmental degradation without linking the problem up with its import or requirement for good governance makes it superfluous. The population growth exerted pressure on available infrastructure that is not functioning at their best. With the environmental degradation, majority of the people in the state are negatively affected. The permanent secretary, Federal Ministry of the Environment noted that “the issue of the environment is not extensively reflected in the nation’s planning instrument owing to poor advocacy and limited technical capacity.

Relatively, there has been agreement between African countries, donor governments, civil society and multilateral organization to cooperate in the comprehensive effort to eliminate the accumulation of obsolete pesticides. This partnership addresses a serious and growing public health and environmental danger, which confronts almost every country in Africa.

It has been observed that solid waste management has not succeeded in some cases because of attitude of the residents, the cultural factors, government factors and seemingly the adhoc measures being adopted. Lagos state officials have traditionally blamed the lack of equipment, shortage of operational funds, indiscriminate dumping of waste and the unsanitary attitude of residents as being the bane of refuse management in the metropolis. Added to these factors are unabated increase in population, insufficient number of dumpsites, lack of adequate personnel and evacuation equipment still remain the obstacle to refuse management.

It is important to rekindle ourselves of the Federal Environmental Protection Agency (FEPA) principles at dealing with solid waste management. The highlights are as follows: the full application of “*polluter pays principle*” in which waste disposal would be fully commercialized and not treated as a social service by local government councils; the commercialization of waste disposal which must be devoid of monopoly, official or

non-official, but would be operated under free market leases for which government owned waste disposal boards/corporation will compete in order to ensure visibility and profitability; the construction of sanitary landfills and identification of suitable sites for such landfills as an indispensable requirement in the waste disposal system/chain.

### **THE PERSPECTIVE OF ENVIRONMENT IN NIGERIA**

The promulgation of the Federal Environmental Protection Agency Decree No.58 of 30<sup>th</sup> December, 1988, Signal attempts at contending with the ugly incidents of environmental problems for Nigeria. The responsibility for the protection and development of the environment in general and environmental technology including initiation of policy in relation to environmental research and technology and without prejudice to the generality of the foregoing shall be the duty of the Agency to perform duties as stated in the provisions of the Act.

At state and local government levels, Section 24 of the Federal Environmental Protection Act made provision for the establishment of the State and Local Government Environmental Protection Bodies. In spite of these laudable steps there are persistent cases of environmental abuse which bothers on unsanitary conditions or environmental pollution in the society and the attendant human and animal hazards. It also deals with issues such as waste disposal, sewage water supply, sanitary maintenance of residential and work place, premises and pollution.

Coping with the incident of removal, collection and management of refuse in urban and rural areas have been issues that call for more concern. The mechanism of operation which relate to function of local government as set out in Section 7, fourth schedule of the 1999 constitution which is on the function of local government is on provision and maintenance of public conveniences, sewage and refuse disposal which have not worked out for the management of refuse disposal. The case in Lagos state could not be handled by government alone. For this reason the idea of private participation was suggested. Details of the wider picture are yet to be fully clarified, but under a blue print being articulated over the past year by officials of the state's waste management agencies, the thrust will be to shift the essentials

of managing the estimated 7,500 metric tones of refuse generated daily into the hands of private operators. The agreement is that four major PSP operators as observed by Bello, Lagos State Environmental Commissioner disclosed that the site at Charity Bus Stop is being rehabilitated into a Transfer Loading Station (TLS) while rehabilitation work is being extended to Olusosu, Sulous and Abule Egba by government while dumpsites were contracted out to private investors, the rehabilitation exercise cost the State government between N300 million to N400 million. For now the idea of recycling the waste is being considered. From the survey conducted in 1997 by the Urban Development Bank, the yearly waste generated in Lagos was 1,464,681 metric tonnes in contrasts slightly with official figure from the Lagos Waste Management Authority (LAWMA) which put the quantity at 1,825,000 tonnes. The breakdown provided under the UDBN further showed that the composition by weight of the components were food remnants/leaves and vegetable matter (40.41) percent, paper (13.06) percent and plastic (10.61) percent. Others are: Textile matter (6.91) percent, metals (4.0) percent. Again in a related development, there is need to have a picture of development in Niger Delta regarding environmental condition. Unless rapid action is taken by government and the multinational oil companies to reduce green house emissions occasioned by gas flaring in the Niger Delta region, communities in the coastal areas of the country may suffer immensely from an eventual sea level rise in the Gulf of Guinea, scientists have warned.

Citing the World Bank's 2002 interim gas flaring report on Nigeria, it was noted that the most striking examples of environmental neglect in the country had been recorded in the oil sector where natural gas flaring had contributed more emissions of green house gases than all other sources in Sub-Sahara Africa combined. Consequently, what might happen if the sea level in the Gulf of Guinea rises and the people in the Niger Delta start to get flooded as it will happen. Then there is no serious doubt in terms of the mainstream science. Another notion by the scientist is that there has been increased understanding of the determinants of population vulnerability to adverse health effects and they are 67-95 percent confident that any increase in flooding will increase the risk of diarrhoea and respiratory diseases as well as hunger and

malnutrition in developing countries and would constrain development in Africa.

### **THE INTERNATIONAL PERCEPTION OF THE ENVIRONMENT**

At international level, effort is being made by European Union at protecting the environment. A bill to protect the public from toxic chemicals, reaching a deal despite opposition from industry and cries from activists that the measure was too weak. By the time the law is operational according to the Environment commissioner Stavros Dimas, it will avert tens of thousand of cases of infertility, cancer, skin disease and neurological disorders. In support of this move Ministers backed a compromise on Registration, Evaluation and Authorisation of Chemicals (REACH) almost a month after the European Parliament backed a different version of its own. The (REACH) has been endorsed paving way for political agreement which emanated from the council of ministers. This has made the Europeans working together for the benefit of all its citizen possible.

REACH was designed to protect people and the environment from the adverse effects of chemicals found in a wide range of products like paint, detergents, cars and computers. The law requires properties of roughly 30,000 chemical produced or imported in the EU to be registered with a central agency. Attention has to be paid to carcinogens of highest concern which will require testing and authorization to be used. Germany recorded the largest European chemicals companies. There is an alternative move where stronger rules on substituting dangerous substances with safer alternatives.

Another environmental matter that has called for concern is the depletion of the ozone layer. The world's governments met to set the course for the global phase out of ozone depleting substances over the next five years and beyond. Series of conferences have been held in respect of this matter. On this particular one that consists of the seventh meeting of the conference of the parties to the Vienna convention for the protection of the ozone layer and in conjunction with the 17<sup>th</sup> meeting of the parties to the Montreal protocol on substances that deplete the ozone layer. Since the adoption of the Vienna convention in 1985 followed by the Montreal protocol in 1987, the International ozone regime has expanded to address almost 100 ozone-depleting chemicals-

some of which also contribute to global warming.

This idea was developed under the auspices of the United Nations Environment Programme (UNEP). The result from this action is that the ozone regime has transformed the refrigeration, electronics, foam making and other industries and thus touched the lives of virtually all the world's citizens, usually without their even being aware of it.

The Montreal Protocol Technology and Economic Assessment Panel (TEAP) are recommending that developed countries provide approximately \$439m over the next three years to support the developing country phase-out.

UNEP Executive Director Klaus Toepfer on the Montreal Protocol clearly demonstrates that once they have access to technical and financial resources, developing countries are ready, willing and able to take aggressive actions to protect the global environment. The use of methyl bromide which is a source of ozone depletion which is agricultural fumigant which developing countries have until 2015 to phase out has been a source of concern.

This has led 16 developed countries to request "critical-use exemptions" from the methyl bromide phase out on the grounds that there are no technically or economically feasible alternatives available to them for specific uses. At the instance of the conference exemption were granted to these countries totaling 16,050 metric tonnes for 2005 and 13,014 tonnes for 2006.

Other consideration in Dakar bothers on critical use exemptions for 2007 amounting to less than, 8000 tonnes. There is strong pressure on the users of methyl bromide to find replacement has clearly succeeded in maintaining the downward trend in use of this chemical.

In a related development with up to 50,000 metric tonnes of disused, obsolete pesticides and toxic products lying unprotected around the African continents, a multi-stake holder effort now underway is seeking to eliminate the chemicals stockpile and prevent any further build up. For the first time in late 2000 the international conservation organisation WWF initiated the move tagged Africa stockpiles programme which is a comprehensive attempt to clean up the growing stockpile of chemicals, notably expired and banned pesticides, damaged and degraded chemical products unusable formulations and packages. Okunola 2005; noted that the exercise involves not less than 15 countries, including

Nigeria. The stock piles are spread across the continents 53 countries. The action is believed to have inflicted substantial damage to both the environment and to human health. These pesticides pose serious threats to rural and urban population, particularly the poor and contribute to land and water degradation as disclosed by Dr Kwame Koranteng, WWF East Africa representative at a recent media briefing in Nairobi, Kenya. On the part of the organization the 12 persistent organics pollutant (POPs) chemicals currently targeted by the Stockholm convention, nine are pesticides. These form a significant proportion, an estimated 30 percent of known obsolete pesticide stock piles development sector.

The Kyoto protocol on cutting green house gases is still being opposed by some countries of the world. Australia and the United States, which have refused to ratify the Kyoto Protocol on cutting green house gases remain opposed to binding limits on emissions and have refused to set up national trading schemes, similar to one in place across Europe.

The consequence of this development by Washington is that carbon trading would simply move industries and emissions from one country to another "if you impose a trade on CO<sub>2</sub> (carbon dioxide), you are really pushing energy intensive manufacturing out of our country to another country where the green house gases still go up into the atmosphere.

It is expected that six of the world's biggest polluters led by United States will create a multi-million dollars fund to encourage mining and power industries to develop and use cleaner energy technologies to combat climate change.

"The Asia Pacific Partnership on clean Development and climate between the United State, Australia, Japan, China, South Korea and India will also form eight working groups with business and industry to develop clean energy projects of the fund.

In a way the six countries account for half the world's green house gases from the burning fossil fuels such as coal and oil. This is the outcome of the meeting in Sydney which is the first for their clean energy partnership.

In anticipation of chemical control in Africa. It is important to identify factors responsible for stockpiles so that it will assist in terms of international law that can be made in that respect. Amongst them are poor information flow, lack of management expertise, lack of customs and

regulatory controls (including analytical facilities), over-assessment of needs, fake and substandard product supply and corruption. The chemical effect that causes damages to man and his environment is as a result of human exposure to chemicals stockpiles through soil infiltration, run off from surface water, wind dispersal, evaporation into global atmosphere and contamination of the food sources in the food chain.

In developing countries, however, regulation and management of pesticides is often inadequate due to lack of resources. Many of these countries suffer from weak import controls, poor storage and stock management and a lack of training and education on appropriate pesticide use. The responsible causes of accumulation are inappropriate procurement - central purchasing by parastatals and agencies of products that farmers are unable or decline to use, due to timing of purchase, pack size, poor labeling or lack of suitable application equipment, leads to unwanted stocks.

The circulation system is not easy, untimely distribution - excessive delays in moving products from ports to ware house to farmers result in missed applications and unused quantities at the end of the season.

Also noticed is the problem of inadequate storage and stock management - pesticides have a limited shelf life, which can be shortened if they are not stored properly. Its manifestation is found in many African countries that lack appropriate storage facilities. Poor stock control result in unused pesticides being kept beyond their useable life. There is also donation in excess of need - in some situations, the quality and quantities of pesticides supplied exceed annual usage due to changed crop economics, non appearance of the pest (e.g. locusts) or drought. Products that remains unused for years become obsolete through damage or deterioration.

In terms of organization network there is lack of co-ordination between donor agencies duplicate, unsolicited or excessive donations have contributed to stock piles in many African countries.

Nishida 2005; in his view stated that "as the rate of urbanization increases, issues of solid waste need particular attention in the region. Management of solid waste is a broad topic covering not only municipal waste but also industrial, hazardous and biomedical waste."

What is operational in India shall be examined. In India, for example, larger cities have solid waste

collection system in place that achieves reasonable levels of performance. However, treatment and disposal of the collected wastes typically lags behind, and despite some innovative schemes - most of the waste ends up in offensive and polluting dumps. Recent legislative and judicial pressure have put pressure on public sector providers (municipalities) to introduce upgraded and acceptable alternatives to these dumps, but there are institutional capacity, technical and financial challenges that must be addressed.

In dealing with this matter in India, the Bank is supporting municipal authorities in improving the environmental quality of urban areas with consequent health, environment and economic benefits. Based on specific requests from the state governments of Karnataka and Andhra Pradesh, the Bank has helped municipalities to develop municipal action plans as a basis for identifying future sector investments and attracting private sector finance. This work supports the municipal reform efforts in these states, particularly in areas such as efficiency in the role of the private sector, performance assessment and increasing emphasis on community led solutions.

On the part of Chalal it was observed that “under the trust fund for Environmentally and Socially Sustainable Development (TFESSD), the World Bank obtained a grant to prepare a regional activity that included (a) the development of new generic legal and procurement documents for implementation of waste disposal facilities through a Design-build-Operate concepts; (b) preparation of a Manual of Good Practice for Management of Health Care Wastes (HCW) suitable for implementation at the health care establishment level; (c) preparation of model/generic regulations or bye laws on health care waste management suitable for sub national and/or municipal levels; and (d) development of a regional awareness program on HCW management. The regional awareness program’s main objective is to assist national and health care institutions to raise the awareness of decision makers, community activities and the staff of medical and health care facilities regarding the environmental impact.

#### RECOMMENDATION

There should be establishment of a technical

institution to be saddled with the responsibility of developing and implementing programmes on contaminated site clean up standards is desirable. Also continuous environmental monitoring, data gathering and interpretation. There should be National centre for Environmental Research Community Education and Training (NCERCET).

There is strong call for review and sectoral levels review and strategic assessment of policies, plans and programmes for impact on environment and its scheme should be incorporated into the National Economic Empowerment Development Strategy (NEED) document whenever it is being reviewed where possible such review should be extended to State Economic Empowerment Development Strategy (SEED) and Local Economic Empowerment Development Strategy (NEED).

Communities in Niger-Delta should work hand in hand with the oil companies through their leaders to ascertain their rights, obligations and their limitation regarding employment, rights to benefits and modalities available to them to exercise their rights without necessarily resulting into violence.

There is need to improve the energy sector and create avenue for conversion of energy in such a way that there will be reduction in the emission of hazardous gases that affect the ozone layer. It is only when the country attain a stable energy sector that enabling law will facilitate its operation.

To achieve the desired result, there is need for constant monitoring to ensure maintenance of standard. Also on solid and hazardous waste generated locally FEPA has to set up guidelines through its waste management regulation. This is meant to take care of mainly dangerous wastes from industrial sources and highly generated waste. Also to be included is hazardous waste from clinical source which is a serious source of pollution that must not be ignored. Waste to wealth package must be encouraged at local, state and federal level to solve the problem of solid waste disposal.

The concept of grass-root mobilization of the environment should be adopted starting from individual, then household and later to the entire society at large. Infrastructural facilities Act being proposed should have as part of its agenda, effective system of environmental protection that will include water quality, effluent limitations, air quality atmospheric protection, ozone protection,

noise control, control of hazardous substances and other related matter to the environment.

Earnesting, the present technological opportunity in area of recycling of solid waste through appropriate techniques and regulation will enhance the ability to turn waste to wealth.

In the diagnostic attempt on sustainable environment generally there should be "a balance between man and the use of his environment through correct attitude, good and relevant laws and proper enforcement and application of those laws in order to achieve the desired goal of a sound environment. This will help address the future desire.

The realisation of sustainable environment through the machinery of law is to ensure that there is rule of law and justice. However, according to Ojealoro 2004; "As study of Jurisprudence, therefore, encourages the students to question his assumptions and to develop a wider understanding of the nature and working of the law. Jurisprudence seeks to provide answers to such questions inter alia as: what is law? Is law necessary in society? What is Justice? What is the proper content and role of law in a society? What is meant by the validity and effectiveness of law in society and many more" These questions are yawning for answers as they relate to the environment.

### CONCLUSION

The existence of man will continue to register its effects and impact on the environment. This development will continue to trigger off questions which must be answered. It is the responsibility of all of us to pay particular attention to protect the environment by ensuring that we avoid anything that might destroy the environment and at the same time obey rules and regulation that will help sustain the environment.

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