

PUBLIC ENVIRONMENTAL LITIGATION IN NIGERIA: AN ADVOCACY FOR COLLABORATIVE ACTION AGAINST ENVIRONMENTAL POLLUTION*

Abstract

This paper was developed from the background of the importance of a healthy environment for human life and development. As a result, environmental protection becomes a sine qua non for a healthy living, and one avenue for environmental protection is environmental litigation, which cannot be successful if all persons involved in the process do not collaborate. The paper therefore, argues that for collaborative action to be achieved in environmental litigation in Nigeria, popular ignorance of the nature of the environment as well as the causes and effects of its degradation and pollution has to be adequately addressed. It argues also that official corruption which restrains many persons involved in environmental litigation from collaborative action should equally be fought head. The methodology of the paper is doctrinal

Keywords: environmental pollution, environmental degradation, environmental litigation, collaborative litigation, ignorance, corruption

1. Introduction:

It was the American Supreme Court Justice, Oliver Wendell Holmes, Jr. that, held that law is nothing more pretentious than what the court can say. By this he implied that what the law is, is what the court says it is and not what legislators or scholars may think it is or imagine it to be. This makes the court and the processes for reaching judicial judgment or decision very important in determining what the law is on any subject. This highlights the critical value of court in the dispensation of law. This gives the background for the importance of the topic of this paper, which, in other words, is a clarion call for synergy among the parties in the public litigation of environmental pollution cases in Nigeria. It calls all parties involved in litigating environmental law cases to understand that they are, according to each person's status, actors in the temple of justice for the achievement of environmental justice in Nigeria.

2. Explanation of Key Terms

Public

The Black's Law dictionary defines 'public' as pertaining to a state, nation, or whole community, proceeding from, relating to or affecting the whole body of people or an entire community.¹ The opposite of public is private. It is in this context that we have the division of law into public and private. When 'public' is joined to 'litigation' it shows that the prosecution of environmental pollution cases is in public fora (that is, State judicial institutions like courts and tribunal) as against private fora (that is, organizational dispute resolution committees or bodies).

Environmental Pollution

The term 'environment' is defined differently from different perspectives. The National Environmental Standards and Regulations Enforcement Agency Act defines 'environment' to include 'water, air, land and all plants and human beings or animals living therein and the inter-relationships which exist among these or any of them.'² Environmental pollution thus is the introduction into the environment by human beings or nature, or doing of certain things by human beings in the environment which undermine or degrade the ability of the environment to sustain human life and development. Although in this definition we have pointed at human beings and nature as the sources of environmental pollution, the main sources of environmental pollution are anthropogenic, that is, having to do with human activities. Pollution from nature comes from things like volcanic eruptions which do not occur often as to disturb, on a cumulative scale, the carrying capacity of the environment. The various polluting elements and actions come predominantly from unregulated or ill-regulated human technological, scientific and developmental activities, which include interlocking of premises, use of fossil fuel, explorative and engineering activities.

Litigation

Another key concept for our paper is litigation. According to the Legal Information Institute of Cornell Law School, litigation 'refers to the process of resolving disputes by filing or answering a complaint through the public

*By **Jude O. EZEANOKWASA, PhD (Civil Law), PhD (Canon Law), LLM, JCL, BL, BTh, BPhil**, Senior Lecturer, Department of International Law and Jurisprudence, Faculty of Law, Nnamdi Azikiwe University, Awka, Nigeria. jo.ezeanokwasa@unizik.edu.ng; joselokal1@gmail.com

¹'Public',

<<https://thelawdictionary.org/public/#:~:text=Definition%20%26%20Citations%3A,general%20%3B%20open%20to%20common%20use>> accessed 21st June 2022.

² S. 37 NESREA Act 2018.

court system.’³ For KCY-at-law it is ‘the process of taking legal action. It is the act, process or practice of settling a legal dispute.’⁴ Both definitions underscore the fact of litigation involving settling disputes through the process of public court system. The public court system being a process means that it is stage by stage with many persons involved in different things at the various stages until the case is definitively disposed of. These are the different officers in the temple of justice that is the court. The fact that litigation involves taking legal action makes it different from Alternative Dispute Resolution, whose processes do not involve legal actions even though they are in some cases offered by courts.

Collaborative Action

According to the Cambridge dictionary, ‘collaborative’ means ‘involving two or more people working together for a special purpose’.⁵ A collaborative action against environmental pollution therefore refers to the joint efforts of persons involved in the litigation against environmental pollution in the country. The fact that these people work together implies that they are pursuing a common goal of serving justice in the environmental pollution case they participate in. As collaborators therefore they are not adversaries but colleagues in pursuit of justice in environmental protection issues. Collaborative action connotes team spirit and team ethics which ensures that each person works for the attainment of the common purpose and not does anything that would undermine the attainment of this object.

Advocacy

The Cambridge dictionary defines ‘advocacy’ as ‘public support for an idea, plan, or way of doing something’.⁶ And for the Merriam-Webster dictionary, it is ‘the act or process of supporting a cause or proposal: the act or process of advocating’.⁷ Supporting something demands making efforts and contribution towards achieving the particular cause or purpose, which, of course, must be legitimate and worthwhile. In the context of this paper, it is the support for collaborative litigation of environmental pollution issues. In all, the topic of our discussion is a call for support for building synergy amongst persons involved in the litigation of environmental pollution cases. It reminds such persons of the need to see themselves as colleagues in the pursuit of justice in the environmental pollution cases. The topic presupposes that already there are laws already on environmental pollution and what is needed for persons involved in litigation to work collaboratively in prosecuting cases in accordance with the law. Having explained the key terms in the topic and understood the overall idea of the topic, the next thing is to appreciate the importance of avoiding environmental pollution by looking at the kinds of environmental pollution and their dangers.

3. Kinds of Environmental Pollution and their Dangers

Environmental pollution can be classified according to the major environmental media namely; land, atmosphere and water and thus we have land pollution, atmospheric pollution and water pollution.

Land Pollution

In this context land refers to the ground or the soil of the planet earth, which covers fields, meadows, pastures, woods, moors, waters, marshes and rock. Land pollution/degradation consists in human and natural activities that cause the elements of land to lose their wholesomeness and sustainability of the physical, economic, cultural and aesthetic factors of the environment that sustain life.

Major Causes of Land Pollution

Major causes of land pollution include deforestation, soil erosion, mining activities, industrial waste, urbanization, nuclear waste, and sewage treatment.⁸ With gas flaring, for instance, the acid rains that result from the emission into the air of the oxides of nitrogen and sulphur acidify the soil together and the ground water contained it. This

³Legal Information Institute, ‘Litigation’

<<https://www.law.cornell.edu/wex/litigation#:~:text=Overview,through%20the%20public%20court%20system>> Accessed 23 June 2022.

⁴ KCY-at-law, ‘What Does Litigation Mean?’ <<https://www.kcyatlaw.ca/what-does-litigation-mean/>> accessed 23 June 2022.

⁵Cambridge Dictionary, ‘Collaborative’ <<https://dictionary.cambridge.org/dictionary/english/collaborative>> accessed 23 June 2022.

⁶Cambridge Dictionary,

‘Advocacy’ <<https://www.google.com/search?q=advocacy+meaning&oq=advocacy+&aqs=chrome.1.69i57j0i131i433i512j0i512l8.7194j1j15&sourceid=chrome&ie=UTF-8>> accessed 23 June 2022.

⁷ Merriam-Webster Dictionary, ‘Advocacy’ <<https://www.merriam-webster.com/dictionary/advocacy>> accessed 23 June 2022.

⁸ ‘What is Land Pollution?’ <<https://www.conserve-energy-future.com/causes-effects-solutions-of-land-pollution.php>> accessed 5 July 2022.

causes, amongst other things, poor agricultural harvest. Oil spillage, on its part, makes farming impossible with the impossibility of a spilled land supporting crops.

Effects of Land Pollution

The effects of land pollution include Groundwater poisoning,⁹ Soil pollution¹⁰, Drinking-water problem¹¹, Air pollution¹², Wild life impacts – e.g. loss of habitat.¹³

Atmosphere Pollution

The atmosphere is the mass of air surrounding the earth surface.¹⁴ In a much broader sense it is the air in any place.¹⁵ Part of the atmosphere is the air which contains the oxygen we breathe and the carbon dioxide we exhale. Atmospheric pollution comes in three forms: air pollution, ozone layer depletion and climate change.

Air Pollution

Air pollution is ‘the introduction by man, directly or indirectly, of substances or energy into the air resulting in deleterious effects of such a nature as to endanger human health, harm living resources, ecosystems and material property, and impair or interfere with amenities and other legitimate uses of the environment.’¹⁶ Principal amongst the substances that cause air pollution are sulphur dioxide (SO₂), nitrogen oxides (NO), carbon dioxide (CO₂), carbon monoxide (CO), hydrocarbons, volatile organic compounds and trace metals.¹⁷ Air pollution bears telling effects on the environment. On human health, smog caused by sulfur pollution of the air is dangerous for people with respiratory problems such as asthmatic people, people with heart conditions, aged people and children.¹⁸ It can cause sudden death. On other living things such as birds, fish and animals, it can cause respiratory problems just like in human beings.¹⁹

Ozone Layer Depletion

Ozone is a form of oxygen having the chemical symbol ‘O₃’ and the layer is found between 25-40 kilometers above the earth’s surface.²⁰ It is a very essential part of the atmosphere in that it forms a protective shield over the earth, protecting human beings and other life forms from the harsh effects of ‘short wavelength ultraviolet radiation from the sun.’²¹ The depletion of the ozone layer exposes the atmosphere to greater ultraviolet radiation which can cause eye and skin diseases.²² The ozone layer is depleted by substances generally known as ‘chlorofluorocarbons’ (CFCs) which come in five families of chemicals, namely: Carbon substances, Nitrogen group, Chlorine, Bromine substances and Hydrogen substances.²³ Ready sources of these ozone-layer depleting substances include: foam manufacturing chemicals, chemicals used in aerosol spray production.²⁴ Aerosol sprays include deodorant, perfumes, insecticides, and degreasers.

⁹ ‘What is Land Pollution?’ <<https://www.conserve-energy-future.com/causes-effects-solutions-of-land-pollution.php>> accessed 5 July 2022.

¹⁰ *ibid.*

¹¹ *ibid.*

¹² *ibid.*

¹³ *ibid.*

¹⁴ Merriam-Webster Dictionary, ‘Atmosphere’ <<https://www.merriam-webster.com/dictionary/atmosphere>> accessed 23 June 2022.

¹⁵ Cambridge Dictionary, ‘Atmosphere’ <<https://dictionary.cambridge.org/dictionary/english/atmosphere>> accessed 27 July 2022.

¹⁶ L. Gundling, *International Environmental Law: Atmosphere, Freshwater and Soil*, UNITAL, (Geneva, Switzerland, 1998) 6; *See also*, Article 1(a), 1979 Convention on Long Range Transboundary Air Pollution.

¹⁷ Ajuzie C. Osondu, *Our Common Environment: Understanding the Environment, Law and Policy*, (Lagos: University of Lagos Press) 60.

¹⁸ ‘Air pollution and your health’ <<https://www.niehs.nih.gov/health/topics/agents/air-pollution/index.cfm>> accessed 5 July 2022; Adel Ghorani-Azam, Bamdad Riahi-Zanjani, and Mahdi Balali-Mood, ‘Effects of Air Pollution on Human Health and Practical Measures for Prevention in Iran’ <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5122104/>> accessed 5 July 2022.

¹⁹ ‘Wildlife and Pets Are Affected by Air Pollution Too’, <https://www.venta-air.com/en_us/wildlife-pets-affected-air-pollution/> accessed 5 July 2022.

²⁰ ‘Basic Ozone Layer Science’ <<https://www.epa.gov/ozone-layer-protection/basic-ozone-layer-science#:~:text=The%20ozone%20layer%20lies%20approximately,Earth's%20surface%2C%20in%20the%20stratosphere>> accessed 5 July 2022.

²¹ Gundling, *International Environmental Law*...., *supra* note 17.

²² JD Longstreth, FR de Gruijl, ML Kripke, et al, ‘Effects of Increased Solar Ultraviolet Radiation on Human Health’ <<https://sedac.ciesin.columbia.edu/ozone/UNEP/chap2.html#:~:text=Dam%20Eye%20Study%5D,-Impact%20of%20Ozone%20Depletion%20on%20Eye%20Conditions,e.g.%2C%20pterygium%20and%20snow%20blindness>> accessed 5 July 2022.

²³ *See* Gundling, *International Environmental Law*...., *supra* note 17 at 10.

²⁴ A propellant is a compressed gas used to force out the content of an aerosol container.

Climate Change

‘Climate’ points to the weather characteristics of a given region of the world or the universe as a whole.²⁵ Climate change refers to the alteration of these characteristics over a period of time due directly or indirectly to human activities as well as due to natural factors that alter the composition of the regional or global atmosphere. A feature of climate change is global warming, the marked increase in the temperature of the earth due to harsh effects of sunlight on account of ozone layer depletion.²⁶ Global warming is caused by the injection of the greenhouse gases into the atmosphere and these gases are carbon dioxide, nitrous oxide, methane, etc.

Effects of Atmospheric Pollution

This boils down to the effects of air pollution, ozone layer depletion and climate change. According to the World Health Organization (WHO) air pollution (Outdoor and indoor) causes respiratory and other diseases and are important sources of morbidity and mortality.²⁷ On human health, the reduction of the ozone layer, with the consequence of the penetration of more and more ultraviolet radiation, weakens human immune system, causes skin and eye problems. On animal health, the reduction of the ozone layer weakens and suppresses their immune system and can cause eye problems to dogs, swine, sheep, horses, cats, etc.²⁸ On environmental health, acid rain resulting from the emission into the air of the oxides of nitrogen and sulphur reduces fresh water production by contaminating streams, rivers and lakes. In turn it leads to the death of fish stock of various species.²⁹

Water Pollution

Water pollution refers to the direct and indirect activities of man and nature that negatively affect the quality of water for any particular use. In the context of pollution water is classified into three, namely, rain water, surface water and ground water.

Surface Water

Surface Water refers to the big bodies of water like rivers, lakes and oceans. Surface water polluters include inadequately treated or completely untreated wastewater, indiscriminate effluent discharge, Sewage discharge, Chemical run-offs which come from fertilizers, herbicides, and pesticides used in agriculture, and Oil discharges from ships and ocean liners.

Ground Water

Ground water refers to the water found below the surface of the soil. Here belong well-water and spring water. Ground water polluters include hazardous substances from agricultural chemicals like fertilizers, insecticides and herbicides, and toxic chemicals from dumps of solid wastes. These go down into the underground water reserve.

Rain Water

Rain water is the water that comes with rain fall. Its polluters include the oxides of nitrogen and sulphur emitted into the air which under humid condition oxidize into nitric acid and sulphur dioxide. This leads to acid rain.

The foregoing exposition of the kinds of environmental pollution and their harmful effects on human, animal and environmental health create not just the need to combat it but also the need for persons in environmental pollution litigation to collaborate in seeking environmental justice.

4. Persons Involved in Environmental Pollution Litigation

Court is the primary and principal institution concerned with litigation of environmental cases. So, besides the parties to the suit, officers of courts are also persons involved in litigation who need to collaborate in the litigation

²⁵ Cambridge Dictionary, ‘Climate’ <<https://dictionary.cambridge.org/dictionary/english/climate>> accessed 7 July 2022; Collins Dictionary, ‘Climate’ <<https://www.collinsdictionary.com/dictionary/english/climate>> accessed 7 July 2022

²⁶United Nations, ‘Causes and Effects of Climate Change’ <<https://www.un.org/en/climatechange/science/causes-effects-climate-change>> accessed 7 July 2022.

²⁷World Health Organization (WHO), ‘Air Pollution;’ <https://www.who.int/health-topics/air-pollution#tab=tab_1> accessed 27 July 2022.

²⁸Derek Dodds, ‘What Impact Does Ozone Depletion Have On Plant And Animal Life?’ <<https://www.wavetribe.com/blogs/eco/what-impact-does-ozone-depletion-have-on-plant-and-animal-life>> accessed 31 July 2022.

²⁹United States Environmental Protection Agency, ‘Effects of Acid Rain’ <<https://www.epa.gov/acidrain/effects-acid-rain>> accessed 7 July 2022;----- ‘Health and Environmental Effects of Ozone Layer Depletion’ <<https://www.epa.gov/ozone-layer-protection/health-and-environmental-effects-ozone-layer-depletion#:~:text=Scientists%20have%20demonstrated%20a%20direct,amphibians%2C%20and%20other%20marine%20animals.>>> accessed 27 July 2022.

process where each person is required to discharge his officially and legitimately assigned role. These persons can be classified into two, namely, parties to a case and officers of court. Persons involved in environmental pollution cases vary depending on whether it is a civil or criminal case.

Persons involved in a civil case

In civil litigation the cause of action is an act of the defendant which has infringed or continues to infringe the legal right of the plaintiff. For this the plaintiff has instituted a legal action in order to get a civil remedy by way of damages. The Court in *Dapialong v. Lalong*³⁰ classified parties to a civil action into three, namely; proper parties, desirable parties and necessary parties. Some writers add nominal parties and party by standing.³¹

Proper parties

The Supreme Court in *Green v. Green*³² defined proper parties as those who, though not interested in the plaintiff's claim, are made parties for some good reasons. An instance is where an action is instituted to rescind a contract; any person is a proper party to it who was active or concurring in the matters which gave the plaintiff the right to rescind.

Desirable parties

These are those who have interests in the case or who may be affected by the result of the action.

Necessary parties

A necessary party is a person who should be bound by the result and the question to be settled. Thus, there must be a question in the action which cannot be effectually and completely resolved unless he is a party.³³

Nominal parties

A nominal party is a person who has no direct interest in the subject matter before for the court but made a party by virtue of his office. An instance is the A. G. of the State or Federation in actions against the government.³⁴

Party by standing by

This is a person who has full knowledge of a pending suit but is content to stand by and see his battle fought by someone else in the same case in which he has interest. He is bound by whatever result that comes out of it and will be estopped to free himself from it.³⁵

Persons involved in a criminal case

In a criminal case the act that constitutes environmental pollution has been made an offence by law and court proceedings seek to punish the offender with imprisonment or any other penalty sanctioned by law. Person involved in criminal litigation can be classified under the following subheadings: complainant, prosecutors, defendant and witnesses.

Complainant

In criminal proceedings a complainant is a person who reports wrongdoing to law enforcement and he may be an individual, a group, the State, a bystander or the victim.³⁶ The complaint of the complainant initiates the litigation process as the law enforcement takes up the case through the consequent stages in the litigation process.

Prosecutors

The following persons can legitimately prosecute crimes in Nigeria and so are involved in the litigation of environmental pollution crimes. They are the Attorney-General of the Federation and States, the Police, private persons and special prosecutors.

³⁰ (2007) 5 NWLR (Pt. 1026) 199.

³¹ Nigerian Law Claz, 'Parties to a Civil Action' <<https://www.nigerianlawclaz.com/2018/01/parties-to-civil-actions.html>> accessed 23 June 2022

³² (1987) NWLR (Pt. 61) 481. *Dapialong v Lalong* (2007) 5 NWLR PT. 1026, at p.199.

³³ *NBA v Kehinde* (2017) 11 NWLR (Pt. 1576) 225

³⁴ Nigerian Law Claz, 'Parties to a Civil Action' *supra* note 32.

³⁵ See *AG Federation v AG Abia State* (No. 2) (2002) 6 NWLR (Pt. 764) p. 542. Nigerian Law Claz, 'Parties to a Civil Action' *supra* note 32.

³⁶ 'What is a Complainant in Criminal Law' <<https://study.com/learn/lesson/complainant-criminal-law.html>> accessed 10 July 2022.

Attorney-General (Federal and State)

Section 174 of the 1999 Constitution gives the Attorney-General of the Federation the power to institute, undertake, takeover and continue criminal proceedings against any person before any court of law in Nigeria, other than a court martial, in respect of any offence created by or under any Act of the National Assembly. Section 211 of the Constitution gives a similar power to the Attorney-General of a State in respect of any offence created by or under any law of the House of Assembly.

Police

Section 66 of the Nigerian Police Act, 2020, empowers a police officer to prosecute a crime, which power is to be exercised subject to the powers given to the Attorney-General of both the Federation and a State. Similar power is given to him under the Civil Procedure Act³⁷ and Civil Procedure Code.³⁸

Private persons

Sections 174(1)(b) and (c), and 211(1)(b) and (c) of the Constitution contemplate a private person instituting criminal proceedings by providing that the Attorney-General can take over and continue or discontinue any criminal proceedings instituted by a person.³⁹

Special Prosecutors

Some statutes, in establishing some agencies, expressly give power to some persons named in the statutes to prosecute offences created under the statutes. This nonetheless is to be done subject to the overriding powers of the Attorney-General. For instance, section 5 of the Independent Corrupt Practices and Other Related Offences Act, vests in the officers of the Commission, all the powers and immunities of a police officer under the Police Act and any other laws conferring power on the police, or empowering and protecting law enforcement agents. These prosecutors do not institute action in their personal names but in the name of the State. This is why the title of a criminal case is always *State* against so and so, for instance, *State against James Okeke* (not a real person) written as, *State v James Okeke*.

Defence Parties

Alleged offenders or the accused are the defenders in criminal actions. These fall into two categories, principal offenders and accessories after the fact.

Principal Offenders

Section 7 of the Criminal Code Act names the principal offenders. They are: a person who actually does the act or makes the omission which constitutes the offence (s. 7(a)); a person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence (s. 7(b)); a person who aids another person in committing the offence (s. 7(c)); and a person who counsels or procures any other person to commit the offence (s.7(d)). Section 8 of the Code provides for principal offenders by common intention. It states:

When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence.

Accessories after the fact

Section 10 of the Criminal Code Act provides for offenders as accessories after the fact. It states: ‘A person who receives or assists another who is, to his knowledge, guilty of an offence, in order to enable him to escape punishment, is said to become an accessory after the fact to the offence.’

Witnesses

A court witness is a person called to testify or provide evidence in a trial.⁴⁰ Usually he possesses knowledge or proof Court witnesses usually possess knowledge or relevant proof to the facts of a suit, and he conveys the relevant knowledge as lay testimony or as expert testimony, depending on his experience and expertise.⁴¹

³⁷ Section 78(b) CPA.

³⁸ Sections 118, 119 and 143(b) CPC which is *in pari materia* with the CPA.

³⁹ In Lagos, the authority of a Private Person to institute criminal proceedings by way of information is now limited to the offence of perjury by virtue of amendment to Section 340 (2) of the Criminal Procedure Law Cap. 32 of Lagos State by the Administration of justice (Miscellaneous Provisions) Law No. 4 of 1979 and the Criminal Procedure (Amendment) Edict No. 7 1987. See *Akilu v Fawehinmi* (No. 2) (1989) 2 NWLR (Pt. 102) 122; (1989) 1 NSCC (Pt. 1) Vol. 20 445 at 473; *Atake v Mene-Afejuku* (1996) 3 NWLR (Pt. 437) 483. See also Section 143(e) CPC of Northern Nigeria and Section 342 CPA (1916) (Cap C. 38 LFN 2004).

⁴⁰ Legal Information Institute, ‘Court Witness’ <https://www.law.cornell.edu/wex/court_witness> accessed 27 June 2022.

⁴¹ *ibid*.

Officers of Court

Officers of court are also key players in litigation process against environmental pollution and so are actors in the collaborative synergy in litigations against environmental pollution. They include judicial officers (judges, magistrates), lawyers and administrative staff of courts.

Judicial Officers

By judicial officers is meant persons who judge cases and they include judges of both the higher and lower bench, that is, judges and magistrates. On the basis of law and evidence they weigh the submissions of the parties and give judgments. Duties of a judge include: to honour the oath of office and defend the Constitution, to be impartial and to maintain his position as an impartial arbiter in proceedings before him, to develop and keep the law alive, to *suo motu* suggest out of courts settlement of a matter, and to do justice without fear and favour.⁴² As members of the bench, though of the lower bench, magistrates, share in these duties at their own level.

Lawyers:

Lawyers include both those in public service (like those in the ministry of justice) and those in private service. Section 30 of the Rules of Professional Conduct for Legal Practitioners makes it clear that a lawyer is an officer of court. Thus, it provides: 'A lawyer is an officer of the court and accordingly, he shall not do any act or conduct himself in any manner that may obstruct, delay or adversely affect the administration of justice.' This duty is on every lawyer involved in any litigation regardless of the side of the isle where he is standing, that is, whether for the plaintiff or for the defendant, or whether for the prosecution or for the defendant.

Administrative Staff of Courts

These are persons who work in courts supporting the judges and magistrates. They do not necessarily need to be lawyers. They include persons like court clerks and bailiffs.

5. Ignorance and Corruption as Challenges to Collaborative Action in Environmental Pollution Litigation

Ignorance and corruption are critical factors frustrating collaborative action in litigating environmental cases in Nigeria. We look at the factors individually.

Ignorance

The Britannica Dictionary defines ignorance as 'a lack of knowledge, understanding, or education'.⁴³ For the Cambridge Dictionary it is 'lack of knowledge, understanding, or information about something'.⁴⁴ Catholic theology recognizes three types of ignorance, namely: invincible ignorance, vincible ignorance, and nescience.⁴⁵ Invincible ignorance is lack of knowledge that a person has no way of obtaining⁴⁶ and vincible ignorance is lack of knowledge that a rational person is capable of acquiring by making an effort.⁴⁷ Nescience (from Latin *ne-*, 'not' plus *scire*, 'to know') is lack of knowledge that doesn't matter in the circumstances.⁴⁸ Ignorance about the environment, and ignorance of the causes and effects of its degradation and pollution is something that can be overcome by the provision and acquisition of the requisite knowledge. So it is vincible ignorance. It refers particularly to the ignorance of many persons involved in the litigation of environmental pollution cases. It is only logical that if they do not have sufficient knowledge about the environment and factors that pollute it, they cannot be enthusiastic and committed to discharging their duties towards securing environmental justice in environmental litigations. Unfortunately, the ignorance of person involved in the litigation of environmental cases is not exclusive to them. Their ignorance draws rather from the general and pervasive ignorance about the environment in the Nigeria society. Thus, Osondu wrote: '... a large percentage of the Nigerian public is ignorant of environmental issues. Also, environmental education has not been officially included in schools' curricula to inculcate in our youths the environmental consciousness and awareness. Some universities have introduced

⁴²Other duties are: to have regard to the rules of grammar in taking minutes of proceedings, to refrain from engaging in extra judicial dialogue/argument with counsel, to recuse himself in a matter he has fore-knowledge of facts of the case before him, to be restrained and civilized in dealing with counsel, parties and members of the public who appear in court, and not to abuse judicial immunity. Unini Chioma, 'Role of Judges in the Due Administration of Justice in Nigeria' <<https://thenigerialawyer.com/role-of-judges-in-the-due-administration-of-justice-in-nigeria/>> accessed 27 June 2022.

⁴³ Britannica Dictionary, 'Ignorance' <<https://www.britannica.com/dictionary/ignorance>> accessed 20 July 2022

⁴⁴ Cambridge Dictionary, 'Ignorance' <<https://dictionary.cambridge.org/dictionary/english/ignorance>> accessed 20 July 2022

⁴⁵Maeve Maddox, 'Types of Ignorance' <<https://www.dailywritingtips.com/types-of-ignorance/>> accessed 20 July 2022; Catholic Encyclopedia, "Ignorance" <<https://www.newadvent.org/cathen/07648a.htm>> accessed 20 July 2022.

⁴⁶ *ibid.*

⁴⁷ *ibid.*

⁴⁸ *ibid.*

environmental law as part of law programmes, but most of these courses are not made compulsory. So majority of the students graduate without taking the course'.⁴⁹

Since about nine years ago when Osondu made this uncomfortable observation about environmental ignorance, things have not changed significantly. For instance, Environmental Law still remains an elective course in faculties of law in the country meaning that there are some law students who would graduate and become lawyers and even judges without knowing about the environment. Although environmental education has been introduced in Nigerian universities,⁵⁰ the number of students who offer the course is of little significance when compared to the vast population of Nigeria that is ignorant of the environment. The woman smoking fish with firewood for a living has little knowledge about the effects of felling trees for firewood and the consequent smoke from burning firewood on the environment.⁵¹ Similarly the men logging trees indiscriminately in the forests of Ekiti State know little about the environmental effects of deforestation that they cause.⁵² It is from this vast ignorant population that the persons involved in environmental litigation come from. Without the knowledge of the environment and the knowledge of the causes and effects of its degradation and pollution these persons would not be very enthusiastic and committed to the enforcement of environmental law. A police officer who, for instance, does not know that air pollution in a neighbouring town can eventually affect him could frustrate a proceeding on air pollution thereby undermining collaborative action in environmental litigation. The same is true of other persons involved in environmental litigation such as bailiffs, court clerks, magistrates and even judges.

Corruption

Corruption is discussed from the perspective official corruption and it is a malaise that has pervaded almost all sectors of the life of the country. Defining corruption the Corrupt Practices and Other Related Offences Act, 2000 states: "Corruption" includes bribery, fraud and other related offences'.⁵³ By introducing the definition with 'includes' it means that the definition is not exhaustive,⁵⁴ other actions connected with bribery and fraud also come within the purview of this definition. The Black's law dictionary gives a rather more detailed definition of corruption. It defines it as 'Illegality, a vicious and fraudulent intention to evade the prohibitions of the law. The act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others'.⁵⁵ Corruption is a problem to collaborative action in environmental litigation in that it veers a person involved in environmental litigation off discharging his official duties. It either leads him to do what he should not do or to leave off doing what he should do. Either way it is an obstruction to environmental justice. Witnesses, in environmental litigations, can be bought to give false testimonies.⁵⁶ Similarly, other persons involved in environment litigation can be bribed to do the wrong thing. With police corruption being almost a culture in the country,⁵⁷ there is the high tendency that police

⁴⁹Etop Ekanem, 'Nigerian Public Ignorant of Environmental Laws – Osondu', *Vanguard*, 20 June 2013 <<https://www.vanguardngr.com/2013/06/nigerian-public-ignorant-of-environmental-laws-osondu/>> accessed 20 July 2022.

⁵⁰Norris I. Erhabora and Juliet U. Don, 'Impact of Environmental Education On the Knowledge and Attitude of Students Towards the Environment' (2016) 11(12) *International Journal of Environmental & Science Education* <<https://files.eric.ed.gov/fulltext/EJ1115646.pdf>> accessed 21 July 2022.

⁵¹Ifedayo Ogunyemi, 'Pollution, Deforestation: How Ignorance, Unclear Environmental Policies Influence Booming Fish Smoking Industry', *Nigerian Tribune*, 15 December 2020

<<https://tribuneonline.ng/pollution-deforestation-how-ignorance-unclear-environmental-policies-influence-booming-fish-smoking-industry/>> accessed 20 July 2022; Yemisi Babalola, Akinola Babalola and Faith Okhale, 'Awareness and Accessibility of Environmental Information in Nigeria: Evidence from Delta State':

<<https://publication.babcock.edu.ng/asset/docs/publications/AGRI/9512/4373.pdf>> accessed 21 July 2022.

⁵²Peace Oladipo, 'How Ignorance, Poverty Drive Illegal Logging, Deforestation in Ekiti' <<https://www.icirnigeria.org/how-ignorance-poverty-drive-illegal-logging-deforestation-in-ekiti/>>

⁵³ CPA s. 2.

⁵⁴ *Rabiu v Kano State* (1980) LPELR-2936(SC).

⁵⁵ *U. S. v Johnson* (C. C.) 20 Fed. 082; *State v. Ragsdale*. 59 Mo. App. 003; *Wight v. Rindskopf*, 43 Wis. 351; *Worsham v Murchison*, 00 Ga. 719; *U. S. v. Edwards* (C. C.) 43 Fed. 07. <<https://thelawdictionary.org/corruption/>> accessed 21 July 2022.

⁵⁶ See Section 117 of the Criminal Code Act in Nigeria on the offence of Perjury; ZO Edo, 'The Challenges of Effective Environmental Enforcement and Compliance in the Niger Delta Region of Nigeria' (2012) 14(6) *Journal of Sustainable Development in Africa* <<https://jsd-africa.com/Jsda/Vol14N6-Fall2012B/PDF/The%20Challenges%20of%20Effective%20Environmental%20Enforcement.Zephy%20Obazee.pdf>> accessed 23 July 2022.

⁵⁷OO Oluwaniyi, 'Police and the institution of corruption in Nigeria' (2011) 21(1) *Policing and Society*, <https://www.researchgate.net/publication/233009064_Police_and_the_institution_of_corruption_in_Nigeria> accessed 22 July 2022; AA Ibrahim, 'Police Corruption and the State Prevalence and Consequences: Prevalence and Consequences' (2016) 4(9) *Global Journal of Arts Humanities and Social Sciences* <<https://www.eajournals.org/wp-content/uploads/Police-Corruption-and-the-State-Prevalence-and-Consequences-1.pdf>> accessed 22 July 2022; DE Agbiboa, 'Protectors or

officers would compromise their duties in investigating environmental crimes bearing in mind that big time violators of environmental prescriptions are rich persons and corporations like oil companies who are disposed to pay any amount in order to destroy evidence and avoid successful prosecution. According to Aborishade and Fayemi, 'The corrupt practices of the Nigerian Police has been identified as one of the most visible manifestations of corruption in the country with the erstwhile Inspector General of Police noting that 'corruption has come to characterise the behaviour of the average policeman'.⁵⁸ What is more telling to collaborative judgment in Nigeria is the corruption of judges. The Latin adage, *corruptio optimi pessima* (the corruption of the best is the worst thing) is exemplified in the fact that court judgments are today bought in Nigeria thereby subjecting justice to the higher bidder. This phenomenon has been dubbed transactional justice.⁵⁹ According to Adegboruwa, '... there is a growing disposition to purchasing judgments of judges by the highest bidder'.⁶⁰ Going further Adegboruwa observed on the insidiousness of this malaise. He stated: 'The ugly side of this is that once it is possible to influence a judge in a particular judicial transaction, then the door is open permanently for other subsequent influences, as for instance once you are able to sway a judge to tilt the even scale of justice in an election petition, then that judge becomes a permanent customer even in other regular cases, whenever the need arises'.⁶¹

Although the National Judicial Commission (NJC) the body responsible for the discipline of judges intervenes and punishes judges found wanting in this regard,⁶² the cancer of transactional justice does not appear to be in recession. Transactional justice does not compromise only the collaborative disposition of judges in environmental litigation, but also compromises lawyers as they are often the couriers of monetary offers to judicial officers.⁶³ Transactional justice has a kind of domino effect particularly on the clerical staff of court who would have little inhibition in taking cues from transactional judges by also selling their services to the highest bidders. Another dimension of the corruption militating against collaborative justice is executive interference with the judiciary.⁶⁴ Under the doctrine of rule of law, the decision of a duly constituted court on a matter that it has competence should bind all including government. This does not obtain always in Nigeria. The executive arm of government has earned the reputation of picking and choosing which judgment to obey. On this, Adegboruwa wrote: 'It is beyond debate that the draconian practice of the Executive of picking and choosing which order or directive of the courts it would comply with has been the focal point undermining the rule of law and socio-political stability of the nation.'⁶⁵ When this is done the collaboration of the Executive, which inherently is a critical stakeholder in environmental litigation, is undermined.

6. Conclusion and Recommendations

Collaborative action in the litigation of environmental pollution cases is an invitation to all the persons involved in environmental pollution cases to live up to their legitimate duties to the court in the litigation of environmental pollution. The harmful effects of environmental pollution to the ability of the environment to sustain life and human development constitute the backdrop for the need for all persons involved in environmental litigation to work collaboratively to secure environmental justice. The effects are more concerning because they are often long lasting and transboundary. Two key challenges to the ability of these persons to work collaboratively are ignorance and corruption. These challenges need to be addressed in order to enhance collaborative action in environmental litigation. To combat ignorance, periodic enlightenment programmes on the nature of the environment and on the causes and effects of environmental degradation and pollution need to be organized for the different classes of persons involved in environmental litigation. It can be organized for the different groups of persons such as lawyers (under the aegis of Nigerian Bar Association (NBA)), police, judges, clerical staff of court, etc. Something like this is already happening in the United States of America where the Environmental Law Institute (ELI) has what it calls Climate Judicial Project under its Judicial Education Program.⁶⁶ ELI is an organization with the mission of fostering innovative, just, and practical law and policy solutions

Predators? The Embedded Problem of Police Corruption and Deviance in Nigeria' (2015) 47(3) *Administration & Society* <<https://journals.sagepub.com/doi/abs/10.1177/0095399713513142?journalCode=aasb>> accessed 22 July 2022.

⁵⁸ Richard A. ABORISADE & John A. FAYEMI, 'Police Corruption in Nigeria: A Perspective on Its nature and Control' XVIII(2) *Nigerian Journal of Social Sciences*, 246 [https://njss.org.ng/publications/NJSS%20Vol.%20XVIII%20\(2\)%20October%202015/Untitled-55.pdf](https://njss.org.ng/publications/NJSS%20Vol.%20XVIII%20(2)%20October%202015/Untitled-55.pdf) accessed 22 July 2022.

⁵⁹ Ebun-Olu Adegboruwa, 'Challenges Of The Judiciary In Contemporary Nigeria (3): Judicial Corruption And Transactional Justice' *Nigerian Tribune*, 9 November 2021 <<https://tribuneonlineng.com/challenges-of-the-judiciary-in-contemporary-nigeria-3-judicial-corruption-and-transactional-justice/>> accessed 21 July 2022.

⁶⁰ *ibid.*

⁶¹ *ibid.*

⁶² Evelyn Okakwu, 'NJC Recommends Sack of Two 'Corrupt' Nigerian Judges' <<https://www.premiumtimesng.com/news/headlines/288310-breaking-njc-recommends-sack-of-two-corrupt-nigerian-judges.html>> accessed 23 July 2022; Olufemi Olaniyi, 'Some judges sell judgments, retire to escape NJC sanctions – Jega' <<https://punchng.com/some-judges-sell-judgments-retire-to-escape-njc-sanctions-jega/>> accessed 23 July 2022.

⁶³ Ebun-Olu Adegboruwa, 'Challenges Of The Judiciary....', *supra* note 59.

⁶⁴ *ibid.*

⁶⁵ *ibid.*

⁶⁶ Environmental Law Institute, 'Judicial Education Program' <<https://www.eli.org/judicial-education>> accessed 11 July 2022.

to enable leaders across borders and sectors to make environmental, economic and social progress.⁶⁷ It wants to foster progress in sustainable development. One of the avenues it follows to achieve this is the Judicial Education Program under which it has the Climate Judiciary Project. The Climate Judiciary Project, collaborating with leading national judicial education institutions, tries to meet the needs of judges for basic familiarity with methods and concepts on climate science.⁶⁸ To combat corruption in Nigeria a war that is conscientiously and sincerely waged is needed. This should come from the background awareness that environmental degradation and pollution is an evil that spares no one on the long run.

⁶⁷ *ibid*, 'About the Environmental Institute' <<https://www.eli.org/about-environmental-law-institute>> accessed 26 July 2022.

⁶⁸ Environmental Law Institute, 'Climate Judiciary Project' <<https://www.eli.org/about-environmental-law-institute>> accessed 11 July 2022.