



Encapsulation of a philosophy in appointment of judicial officers, the place of the cross river state judiciary in the achievement of environmental planning objectives under section 20 of the 1999 Nigeria constitution

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Abstract

The role of the Judiciary under Chapter II Section 20 of the 1999 Constitution of the Federal Republic of Nigeria in ensuring environmental sustainability as provided for under the fundamental objectives and directive principle of the State policy is imperative. The implication of a wrong Judicial decision on Environmental sustainability is a major challenge facing the Cross River State today. This is despite the fact that the Cross River State Judiciary was contemplated under Section 13 of Chapter II Section 20 of the Constitution when reference was made to all organs of government and all Authorities and persons exercising Legislative, Executive and Judicial powers in making it mandatory for all organs of government, including the Judiciary to observe its implementation. This paper therefore examined the relevance of the Cross River State Judiciary in the exercise of its constitutional role in the protection of the environment and in the achievement of the Environmental planning objectives under Section 20 of the 1999 constitution. Recommendations were made for a deliberate policy in the recruitment of Judicial Officers with the goal of the attainment of objectives set out under the chapter II section 20 of the country's constitution. This would entail the recruitment of Judicial Officers, Magistrate and Judges, who in addition to the requirement of Law, are also trained in other disciplines which will aid the sustainable protection of the Cross River State Environmental Resource and encourage sustainable development. Beginning with the next set of Judges and Magistrates to be appointed by the in-coming administration, it was also recommended that provision be made for lawyers who have cognate experience and background in environmental studies. Also, Recruitment into the State ministry of Justice should follow suit to provide needed personnel for persecution of environmental causes.

Keywords: environmental objectives, judicial officers, judicial decision, judicial powers, sustainable development, Nigeria constitution

Introduction

This paper seeks to address the strategic role of the Judiciary in fulfilling the objectives set out under Chapter II Section 20 of the 1999 constitution of the Federal Republic of Nigeria under the fundamental objectives and Directive principle of the state policy as applicable in Cross River State, Nigeria.

This section provides that "the state shall promote and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria" ^[1]. The state here is clearly defined by section 13 of this same chapter to include "all organs of government and all Authorities and persons exercising legislative, executive and judicial powers". The section makes it mandatory for all such organs of government to observe and apply the provisions of the chapter of the constitution dealing with directive principles of state policy. It is therefore important that the fundamental principles of our state policy might not merely operate as a mental construct but shall translate into meaningful and successful implementation programmes to indeed save our environment and future.

Environment here refers to water, air, land and all plants and human beings or animals living therein and the

interrelationship which exists among the different components of the environments ^[2] that eludes non-environmental lawyers. In its perfect state it is necessary to note that our environment exist in a state of equilibrium or balance. In this state, living and non-living organisms co-exist depending on each other for survival and they also exist in a constant ratio, a distortion of which results in the pollution and devastating short and long term consequences.

Importance of the environmental objectives

The draftsmen and the law makers, when putting together section 20 under consideration, had a deeper understanding of the serious implication of non-protection and improvement of our environment. And in making it mandatory for all organs of government, including the Judiciary to observe its implementation, they were not merely paying lip service to their responsibility.

It is important to note that previous constitutions did not as much provide for Environmental objectives as was considered expedient under the present 1999 constitution. This, to my mind clearly demonstrates the importance of the

¹ Constitution of The Federal Republic of Nigeria 1999

² Federal Environmental Protection Agency 1998

Environmental objectives as enshrined under chapter II of the Nigerian Constitution; To the end, that the protection of our water, air and land, forest and wildlife, etc., is important for the continued survival and safety of its citizens, irrespective of class.

The relevance of the judiciary and its role in the protection of the environment

The relevance of the Judiciary in this regard is its important role of the interpretation of environmental laws, policies and regulations. And unless our Judicial officers; to wit, Judges and Magistrates are better equipped and trained to be able to give proper interpretation in the spirit of the original provisions, then the objectives cannot be attained and advancement would be slow in this area of law. In this regards however, it is rather sad to say with due respect, that these important environmental objectives have eluded our Judiciary, for not much advancement has been made in this area.

Firstly, our court structure, recruitment and criterion in the appointment of Judges and Magistrate do not reflect the environmental gaps and needs in a fast developing and evolving eco-tourism state like Cross River State. They do not reflect the challenges of emerging urban structure, the infrastructural development, lopsided and otherwise and their consequences for conflict, increasing resistance to law and order, difficulties in environmental compliance, development of slums and their attendant consequences for crime generation, etc.

A simple indicator of a rather low awareness level among sampled Judicial officers in 2017 lends credence to the fear that if nothing is done quickly our now apparently enviable environmental amenities would be a thing of past glory. And it is rather undesirable that a Magistrate or Judge, with due respect, does not as much appreciate the correlation between daily human activities, corporate and otherwise, and environmental distortion and pollution. This clearly shows that given the important role of our Judiciary, the environmental objectives can hardly be attained at the much desired pace in view of the forgoing. It is further observed that apart from two Magistrate Courts in the whole of Cross River State, no cognisance is taken of the important role played in the adjudication of environmental causes by the High Court in its original jurisdiction. Even though the High Court has original jurisdiction in such matters, our Judges may not be adequately seized with the requisite training in the new and evolving trends or models in environmental causes and adjudication. And yet, environmental causes are bound to arise in every tourism driven state, where there is bound to arise population explosion with its attendant criminal related consequences. There are not many leading reported cases, with due respect, handed down by our Judges on environmental causes in Cross River State. And yet our cities master plans have continued to be grossly violated and relevant department without fear of being called to account, have aided and abated related environmental crimes. Again, previous government lacked the political will to bring to book such corporate culprits.

One should wonder why despite seemingly on-going demolition exercises, there have all the more been persistent non-compliance to environmental laws across the state. A

2006 research carried out in Cross River State by this researcher clearly indicates that Cross River State is yet to evolve a culture of environmental education and consciousness^[3]. Although the constitution clearly stipulates so, *the National Judicial Council, with due respect, apart from its performance in the area of discipline of erring Judicial Officer is yet to reflect its Environmental protection from the Judicial point of view*^[4]. *Its selection of Judicial officers have over the past eight years and up till this moment, been in disregard to the importance accorded the environment by the constitution.* Environmental causes are specialized and lawyers must be learned in human related causes or crimes that pollute and harm the environment. A lawyer should hardly be regarded as learned if all he knows for over ten years is only procedural law and its technicalities. The substantive law is a body of law that is dynamic and subject to growth. The era is gone when environmental cases were limited to sanitation and hygiene. There is a paradigm shift today as much as there are new trends and models to explain the environmental causes. Our Court system, structure and composition should make room for requisite contemporary training to face the challenges of environmental adjudication. The relevant prosecuting departments, mostly made up of environmental experts, seem to lack the will to continue to bring environmental matters before the courts that so many of such cases are hanging in the air between the violators and the prosecutors. Our ministry of Justice should also recruit lawyers with environmental background, while our legislator should equally enhance the jurisdiction of our Courts, to incorporate environmental adjudication as part of our Judicial values.

The two Magistrate Courts assigned to handle environmental cases should be provided with the necessary training opportunities to sufficiently appreciate environmental causes and new models in handling non-compliance case, while increasing effort is made to employ more Magistrates with environmental background. Cases of global warming that have seriously taken the centre stage in global politics is seriously threatening Cross River State despite the green land and forest reserves, and yet our judicial values make little or no provision for the appointment of more Judges and Magistrates who are knowledgeable in the field of environmental philosophy and Jurisprudence .

Without a deliberate policy to change the status quo, our environment shall be worst for it and Cross River State cannot remain a tourist destination if no serious attention is paid to the issues raised in this paper^[5]. This is obvious because of the important role the judiciary has to play in maintenance of social and political stability in the society. There is a change currently going on in our environment, eyes cannot observe but are degrading, polluting, destroying, altering, and in such devastating manner that life and forms of life on planet Earth are gradually being lost. The situation as alarming as it is now

³ Geo-spatial Compliance with Planning Law in Calabar Built-Up, Area, Cross River State, Nigeria. International Journal of Humanities and Social Science Review 2017

⁴ *Nigeria Judiciary*” A Colossal Example Magna Juris 2007

⁵ Spatial Compliance with the Least Observed Provision of Building Law- A Quantitative Judgment of A Legal Practitioner , 2017

can best be understood by persons trained in the field. Presently, Cross River environment is one of the very few where environmental observers, researchers and commentators have indicated that the world would have an eye on^[6]. If we do not take steps to preserve what we have, even the weather of the ranch resort will be exchanged. We cannot allow things to go business as usual. The time to act is now.

A call to action

This paper calls on the Nigeria Judiciary to take immediate action:

1. First, it is for our Judiciary to understand how the many worrisome environmental phenomena arise and how they are related to daily human activities.
2. To position herself, working in partnership with the legislature and the executive, to give environmental direction to the citizenry.
3. To equip Judicial officers to begin to take issues of environmental compliance more seriously.
4. To train Judicial officers to understand how over-dependence on our environmental amenities can affect continued existence of our natural resources.
5. To understand how sustainable development is the answer to the impending environmental catastrophes that have been severally predicted.
6. To appreciate that it is the responsibility of the government to protect the environment as enshrined under Section 20 of the 1999 constitution

Legislative framework and judicial policy in recruitment of judicial officers

Environmental protection as being scientifically indicated is much more than sweeping our homes and premises. Our environmental problems have gone beyond the issues of sanitation. Emerging concept of urban renewal is, with due respect, yet to be understood by many lawyers, Magistrate and Judges. This apparently appears to be suffering defeat for lack of support. Judgements are apt to grant whopping sum as compensation than lend credence to government effort at providing liveable environment.

Therefore, a well-planned legislative framework and deliberate Judicial policy with regards to recruitment, appointment and training of officers would be a great booster to our environmental objectives in addition to the appointment of *Judicial Aides* for the development of research in the field. By Section 20 of the 1999 constitution earlier cited, the state include the Judiciary. Pursuant to this section therefore, it becomes apparent to provide enabling environment to ensure the protection of our environment by the Judiciary. Key area through which this provision can be achieved is by a deliberate policy to recruit Magistrates and Judges who, not only have basic qualification of law, but also have the requisite training knowledge and training in environmental protection and resource management. The ones who have this

knowledge would have passion for environmental protection. Protection here being the duty of those who make the law as much as those who interpret. And it is needless to say that no proper interpretation can be given to what an adjudicator does not clearly understand. Cases abound in our courts in which the issues are fundamentally rooted in environmental degradation and damages arising from pollution and distortion. Issues of non-compliance with environmental impact assessment, non-compliance with emission standards, cases involving urban planning, developmental control forest reserve etc., are all parts of the issues raised in our environmental objectives. These ought to be reaffirmed to ensure that the incoming administration pays sufficient attention to our environment.

Akin to this is the fact that such policy naturally promotes our foreign policy objectives as enshrined under section 19 of the 1999 Constitution. Our courts, by this, would provide a much desired environment for the respect of International law and treaty obligations in regards to environmental standards. Again, Judges and Magistrates would need to understand the interrelationship that exists amongst the three environmental media: water, air land, mentioned in section 20, supra. The protection mentioned in the section no doubt can be accorded our environment by legislative enactment, and executive implementation. But where there is misunderstanding as is often the case, the Judiciary provides necessary interpretation. Our Judges when confronted with the duty of interpretation cannot by law recall the law makers to interpret their laws. There are rules of interpretations, but we must realize that the law has its own spirit; o\r the underlying philosophies for the enactment. By this, it is clear that environmental laws have their underlying philosophies founded on the inter-disciplinary nature of the field. And the membership of our state legislature does not necessarily comprise lawyers and in fact it need not because there are many other legislative issues outside of the discipline of law for which other experts need to make contributions. Now, where a Bill for environmental protection is to be considered, members who are environmental experts or in related environmental disciplines would more likely constitute the House Committee membership.

It is at this level, the spirit of a given law is birthed. This is important as much as there are other philosophies that underpin environmental policies and regulations^[7]. Therefore, lawyers usually need explanations, sometimes scientific explanations to be able to catch a glimpse at the spirit when it is to imparted into a prospective Bill.

Conclusion

Considering the importance of environmental protection and the need to avert impending catastrophies predicted by contemporary science, our state Judiciary needs to be restructured to make room for recruitment of more Magistrates and Judges who have additional training in fields related to environmental protection. This is important more so, if the Environmental objectives contained in part II section 20

⁶ Geographic Spread of Compliance with The Least Observed Provision of Building Law – A Quantitative Investigation, evaluation and Judgment of a Planning Law Practitioner in Calabar Metropolis, Nigeria, 2018

⁷ Law Examination Techniques and The New Environmental Law Perspective... 2002

of the 1999 constitution is to be speedily achieved in Cross River State.

It is important, therefore that beginning with the next set of Judges and Magistrates to be appointed by the administration, that provision is made for lawyers who have background in environment. Recruitment into the state ministry of Justice should follow suit to provide needed personnel for effective prosecution of environmental causes. Judicial aides to be appointed as earlier suggested, should include practitioners equally trained in the field.

It is by this we can be on the progressive path to enhanced chances of social and political stability in Nigeria, beginning with Cross River State.

Recommendation

A deliberate policy in recruiting Judicial Officers, Magistrates and Judges, who in addition to the requirements of law are not also trained in other disciplines as a lawyer, is doubtfully learned if all he knows is procedural law, its technicalities and no more. A modern day lawyer should know some simple Statistical methods and Geographic information system as they relate to lands, and proof of ownership, land encroachments or trespass to Lands, and Land use allocation etc.

Training in sociology and philosophy were thought to be important to the discipline of law, since law is practiced within diverse cultures, beliefs and religions, etc. A study of their evolution and impact on society therefore became important. These were imported into the discipline of law to give the needed impetus to its practice. A course such as criminology for instance, was initially taught in most university as a course in the Department of sociology but today, leading Nigerian universities have Department of Criminal Law of their own. Therefore, Judges are meant to tap from other fields that have relevance to the discipline of law. This philosophy can without further delay be extended to the field of environment as critical as the emerging issues of the environment are. We can start with one or two practitioners if there are many with such qualification. But I doubt. Does this suggest a judge must know it all? No, the idea here is for a Judge to know something else other than procedural law. Issues so important to this knowledge of substantive law and also important to the achievement of social and political stability in our society; issues touching on water and life, air and life, sustainable land use, greenery, forest and wildlife reserve, conflict resolution in these and many other areas that require specialized knowledge. It is therefore to this end suggested that the incoming government makes adequate provision for new Judges to be appointed with additional training in this and other disciplines. This will ensure that cases involving specialized issues can be assigned to Judges and Magistrates more acquainted with their philosophies; in the case of environmental compliance under consideration, Judges and Magistrates with additional bias in environmental law or planning etc. should be given consideration. By this, our state Judiciary can be on its way to having specialized adjudicators who can handle issues arising out of multidisciplinary legislative and executive Acts. Cross River State is known to be a trail blazer in many sectors; the Judicial sector can be inclusive. The National Judicial Council can

make this part of its recommendations for the recruitment of Judges. And when this is achieved, the Chief Judge of Cross River State, beginning with the present Chief Judge, the Honourable Justice Michael Edem, will have a wide range of discretion and choice to assign cases.

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