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CHALLENGES TO THE APPLICATION OF INTERNATIONAL ENVIRONMENTAL LAW IN NIGERIAN COURTS

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Abstract

The global concern for the growing crisis of development and environment has led to the emergence of International Environmental law and adoption of several treaties to deal with environmental issues. Nigeria is a signatory to many environment treaties but few of these treaties have been domesticated into the Nigerian Law. This paper therefore discussed the application of International Environmental Law in Nigerian courts. It also discussed the challenges to the application of International Environmental law by Nigerian Courts. It relied on information from textbooks, journals, newspapers and internet materials. The paper also found that the importance of International Environmental Law to environmental protection globally and particularly Nigeria cannot be over emphasized. It revealed that the application of International Environmental Law in Nigerian Courts is confronted with many challenges; these challenges bother on domestication, judicial attitude, locus standi and remedies. It concluded that the provisions of section 12 (1) of the Nigerian Constitution, which stipulates that a treaty must be domesticated before it can have the force of law in Nigeria is a major hindrance to the application of International Environmental Law in Nigerian Courts. The paper recommended tackling the challenges to the application of International Environmental Law in Nigerian Courts, such as domestication of treaties, widening of locus standi, capacity building for judges.

Keywords: International environmental law, Nigeria, Treaties, Courts

1. Introduction

Environmental problems have become globalised in recent times because of their impacts on all facets of life.[1]For instance, the continuous pollution of air and water, extinction of countless species of animals and plants, depletion of the ozone layer, the release of greenhouse gases, shrinking of the world's forests, and so on are detrimental to the environment.[2]Nigeria is facing significant pollution and unchecked loss of its natural resources.[3] These environmental degradations constitute a risk to the health of Nigerians as well as other species of biodiversity. The assurance of a serene place of habitation for the next generation is also greatly threatened.

While sovereign states have various mechanisms for addressing environmental problems, the necessity for international measures to safeguard the environment cannot be over emphasized. The growing consciousness of the global environmental issues and the necessity of concerted multilateral action to resolve them have led to the emergence of International Environmental Law.[4]Modern international environmental law emerged as a result of the United Nations Conference on the Human Environment of 1972 held in Stockholm, Sweden.[5] The Stockholm conference created more awareness about environmental problems and called for a uniform

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[1]R E Dunlap and A.K Jorgenson, 'Environmental Problems'<https://www.researchgate.net/publication/269409535> accessed 23 August 2024.

[2]L. Flower, 'Environmental Challenges in the 21st Century'<http://www.journal.au.edu/au_techno/2006/apr06/vol9num4_a8.pdf> accessed 23August 2024.

[3]A A.Ogundipe and Others, 'Environmental Degradation and Food Security in Nigeria' *International Journal of Energy Economics and Policy* (2020) 10 (1) 317, E.E.Emodi, 'Environmental Degradations, Strategies and Effective Management Practices in Enugu, Nigeria' *Merit Research Journal of Education and Review* (2017) 5 (3) 35.

[4]P. Sands,*PrinciplesofInternationalEnvironmentalLaw* (2ndedn,CambridgeUniversityPress UK. 2003) 2.

[5]The conference was held 5 to 16 June 1972 and was attended by representatives of 113 Member States of the United Nations, as well as members of the specialized agencies of the United Nations.

approach in the safeguard of the natural environment as well as the formulation of principles geared towards[6] the protection and safeguard of the human environment to serve humanity.[7]Several international environmental laws have been developed overtime to address environmental problems globally.

However, international environmental law is as stipulated in environmental treaties, protocols, conventions; which apply to sovereign state members of international communities. International Environmental law enjoys some form of flexibility; because it makes stipulations for its domestication at states' levels for the purpose of providing core details and procedures to make it operational. Generally, domestic courts can interpret, apply, or otherwise use international environmental law in interpreting or applying domestic provisions,[5] where domestic law is vague. Alternatively, to fill the lacuna where domestic law has gaps by providing an interpretive aid. Countries can opt for monism or dualism systems in the domestication of treaties. For the monism system, international law classified as a domestic law of the country.[8] Thus, once a country accedes to an international agreement, such an agreement becomes directly applicable and enforceable in the country[8].In a dualist system, international law is on a different plane from domestic law, and implementing legislation is necessary for international law to be enforceable within a country. So, where a dualist state accedes to a treaty, it is obligatory for it to discharge its duties under the treaty, but such a treaty will only be enforceable after being domesticated.

In Nigeria, the application of treaties by Nigerian Courts generally is premised on the stipulations of section 12 (1) of the Constitution (as Altered)[9] that stipulated that treaties to which Nigeria acceded to will not be enforceable in our national courts, unless such treaties have been domesticated. This is also applicable to international environmental treaties acceded to by Nigeria, despite the fact that Nigeria is bound by the treaties which it is party to within the international setting and it can claim full rights and assume full duties under such ratified treaties, the advantages and benefits accruing from these treaties will not be realised municipally[10] until such treaties are domesticated.

The paper therefore seeks to discuss the application of international environmental law in Nigerian courts and the challenges that hinder the application. It also provides recommendations to surmount such challenges.

2. Evolution of International Environmental Law

The origin of international environmental law dates back to problems of trans-boundary pollution.[11] For instance, the pollution caused by a lead and zincs melter in Canada, the sulphurdioxide and the emissions of which caused damage to crops in the United State.[12] All these attracted the cooperation of all nations throughout the world, thus paving ways for the United Nations Conference on Human Environment in 1972 to create the awareness of global and transitional environmental issues and the formation of United Nations Environmental Programme. The Stockholm Conference of 1972 was the first international agreement where international recognition was first given to the concept

[6]Björn-Ola Linnér &Henrik Selin, 'The United Nations Conference on Sustainable Development: Forty Years in the Making' *Environment and Planning C: Government and Policy* (2013) 3. 974.
[7]E Scotti, 'Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration, 1972)' <http://docenti.unimc.it/elisa.scotti/teaching/2020/22646/files/stockholm-declaration> accessed 2August 2024.
[8]J L Dunoff*, International Law: Norms, Actors*, *Process* (3rd edn, Aspen Law and Business Publishers New York, 2010).253-258.
[9] CAP. C23 LFN2004.
[10]M T Okorodudu-Fubara, 'Development and Codification of International Environmental Law: Whither Nigeria a Quarter of a Century After Stockholm and Half a Decade after Rio' in S Simpson and O Fagbohun (eds.) *Environmental Law and Policy*, (Lagos State University Press Lagos, 1997) 40.
[11]M.N Shaw,*InternationalLaw*(6thedn,Cambridge University Press UK, 2008) 771-772
[12]R K Gardiner,*InternationalLaw*(1stedn,PearsonLongmanUSA,2003) 429.

of the right to a healthy environment.[13] It was recommended at the conference that worldwide communication should be done by the developed countries to the developing countries about the international environmental implications such as air pollution and dumping of toxic wastes. The greatest achievements of this conference was a Declaration containing 26 principles concerning the environment and development; an Action Plan with 109 recommendations, and a Resolution and creation of United Nations Environmental Programme based in Nairobi Kenya.[14]

As a follow up to the Stockholm Conference, the United Nations Conference on Environment and Development was held in Rio De Janeiro, Brazil in 1992. The Conference was tagged as the Earth Summit embraced the concept of sustainable development.[15] The United Nations was deeply concerned by the continuing deterioration of the state of the environment and the serious degradation of the global life-support systems, as well as by trends that, if allowed to continue, could disrupt the global ecological balance, jeopardize the life-sustaining qualities of the Earth and lead to an ecological catastrophe. The Rio Summit focused on the relationship between environment and development and its sustainability for the use of the future generation. It also emphasized the need for government and private organizations to map out strategy for the future generation. The Rio Summit produced five documents setting out the international agenda for sustainable development for the twenty-first century.

Different International environmental principles have been developed through treaties, conventions, protocols and so on to address global environmental problems and pollution. Countries are as a matter of commitment expected to adhere to their obligations under the treaties they are signatories to by not engaging in any acts that will defeat the objectives of the treaties.[16] Counties were also encouraged to provide workable mechanisms in their respective states to realize the objectives of these treaties.

3. Sources of International Environmental Law

The sources of International Environmental Law are the followings:

a. Treaties, Protocols and Conventions. Bilateral and multilateral agreements and treaties are the major sources of International Environmental Law. These treaties bother on specific environmental problems of member states to the agreement.[17] There are also some general treaties with one or two clauses referring to environmental issues but these are rarer.[18]
b. Protocols are ancillary agreement developed after a treaty. They are developed to address new areas that were not provided for in the existing treaties.[19].
c. Customary international law. It is a valuable aspect of international law that derives from customs, norms and rules that states follow as a matter of binding law. It consists of rules that come from a general practice accepted as law and that exist independent of treaty law.[20] Customary international law is deemed to be part of customary laws which the courts are bound to give judicial recognition to.
d. Judicial Decisions. Another source of international environmental law is decisions and opinions of international courts and tribunals. These decisions have helped in the development of international environmental law. Many international courts and regional treaty tribunals have helped in the development of international environmental law through their various decisions.

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[13]B E Umukoro& P.A. Oboreh, '50 Years after: Appraising the Impact of the Stockholm Conference on the Advancement of Environmental Rights' *Russian Law Journal* (2023) 11(5) 329.
[14]UNEP, 'The Impact of the Stockholm Conference on the UN System: Reflections of 50 Years of Environmental Action'<https://wedocs.unep.org/bitstream/handle/20.500.11822/39963/Final_Impact%20of%20the%20Stockholm%20Conference%20on%20the%20UN%20System.pdf> accessed 23April 2025.
[15]United Nations 'Peace, Dignity and Equalityon a Healthy Planet<https://www.un.org/%20documents/ga/conf1%2051%20/aconfi5126-iannex%201.htm> accessed 23April 2025.
[16] Article 18 of the Vienna Convention on the Law of Treaties of 1969.
[17]A. Sharma & R. Sharma 'Role of International Convention in Environment Protection' *International Journal for Multidisciplinary Research (IJFMR)* (2023) 5(4) 2.
[18]P. Sands & J. Pee, *Principles of International Environmental Law* (3rd edn, Cambridge University Press Cambridge, 2012)34
[19]Polsci Institute 'Understanding Environmental Treaties Protocols and Declarations' <https://polsci.institute/globalisation-environment-development/understanding-environmental-treaties-protocols declarations/>accessed 23April 2025.
[20] ibid

4. Importance of International Environmental Law in Domestic Environmental Protection

The importance of International environmental law cannot be overemphasized in the protection of the environment at municipal level. International environmental law set the pace for municipal legislations to follow in the quest for sustainable environment and gives the state and citizens the full benefits vis a-vis the protection and preservation of the environment. It also enables states to collaborate with other nations in protecting the global environment against environmental degradation in a manner that benefits the municipal and the universal environments.

5. Application of International Environmental Law in Nigerian Courts

It is important to note that while principles of International Environmental law are generally applicable in Nigerian Courts, environmental treaties must however have been enacted into law by the legislature before they can be enforceable in Nigeria. Significantly, Nigeria has been a party to and signed many treaties, especially those that bother on the protection of the environment.

To an extent, it can be safely said that Nigeria made provisions for regulatory and legal measures for the purpose of safeguarding the environment[21]. No doubt, Nigeria has signed many treaties on environment, and at the same time acceded to and ratified many of them but it has a weak disposition to their domestication[22] and compliance at the domestic level vis-à-vis its obligations under most of the treaties.

Section 12(1) of the 1999 Constitution (As amended)[23] stipulates that: '*No treaty between the federation and any other country shall have the force of law except to the extent that such treaty has been enacted into law by the National Assembly*'.

It is necessary to point out that this stipulation means that treaties will not be enforceable in our courts, unless they are domesticated. Ordinarily, Nigeria is bound by treaties which the country is party to within the international setting. Nigeria can claim full rights and assume full duties under such ratified treaties. But the snag is, without compliance with section 12 (1) of the Constitution[24],it will be impossible to reap the gains of environmental treaties at the municipal level.[25]

It is pertinent to state that some decisions of courts in Nigeria are in tandem with different principles of international environmental law, even though courts most times do not particularly mention that principles of international environmental law informed their decisions. In *Agip Oil Company Ltd v Akpati & Others*[26], the polluter pays principle was applied by the court. The *Gbemre's*[27]case also signifies the use of international environmental law as a basis for decision, the court held that the actions of the 1st and 2nd Respondents in continuing to flare gas in the course of their oil exploration and production activities in the applicant's community was a gross violation of their constitutionally guaranteed rights to life (including healthy environment) and dignity of human person. This decision was given pursuant to the provisions of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act,[28] which domesticated The African Charter on Human and Peoples' Rights in Nigeria.

It is important to note that in the cases of *Shell v TieboVII*[29], *Shell v Isaiah*[30], *Seismograph services v*

[21]C C Nwufor, 'Legal Framework for the Regulation of Waste in Nigeria' *African Research Review* (2010) 4 (2) 492
[22]C E Okeke & M I Anushiem 'Implementation of Treaties in Nigeria: Issues, Challenges and the Way Forward'*Nnamdi Azikwe University Journal of International Law and Jurisprudence* (2018) 9 (2) 216.
[23] CAP. C23 LFN 2004
[24]Constitution of the Federal Republic of Nigeria (As Altered)
[25]M T Okorodudu-Fubara,(n.10)
[26](2018) LPELR 45145 (CA).
[27] *Jonah Gbemre v Shell Petroleum Development Company of Nigeria & Others,* Federal High Court, Benin 14 November 2005, Unreported Suit No FHC/B/CS/53/05,
[28] Cap.A9LFN,2004.
[29] 1996]4NWLR(Pt445)657.
[30] [1997]6NWLR(Pt508)236.

Mark[31]*,Ogiale v Shell*[32]*, Shell v Amba*[33]*,*where the facts and claims are similar, the courts in their various judgements did not give judgement to remediate the damages done to the physical environment, the land, and water resources. The polluter pays principle should ordinarily be applicable; it was however not applied in the above-mentioned environmental cases for one technical reason or the other.

6. Challenges to the Application of International Environmental Law in Nigeria

a. Domestication of Treaties in Nigerian Law

This is a challenge to the application of International Environmental Law by Nigerian Courts. By the provisions of Section 12 (1) of the Nigerian Constitution[34], international law is distinct from municipal law, and treaties must be domesticated before they can be enforceable within Nigeria. Therefore, treaties on environment have no effect until the Nigerian legislature passes implementing legislation and litigants can only enforce them after they have been domesticated.

b. Judicial Attitude to Environmental Treaties

In Nigeria the attitude of the courts to international environmental law and environmental law generally is not encouraging. It should be noted that judicial attitude means what the court will do or how the court will behave[35] or the extent to which the court will go[36] while adjudicating a matter to arrive at its decision. Judicial attitude is influenced by different factors such as judicial precedents, psychology, morality, religion, emotional, social and economic backgrounds, political affiliation, nature of cause of action, legislative intent[37] and state's interest. All these factors are also applicable to judicial attitude to environmental matters and application of international environmental law in Nigeria.

However, many environmental matters in Nigeria bother on oil and gas activities. In an effort to protect the revenue generation drive of the Federal Government, courts are sometimes reluctant in vindicating environmental protection. For example, in the matter of *Allan Irou v Shell B P*[38], the court did not grant a prayer that sought to protect the environment but will create unemployment and affect revenue generation.[39] A number of cases[40] have also shown that the Nigerian courts are often not liberal in applying international environmental law. This has actually precluded courts from pursuing many deserving cases to logical conclusion. As a result of the attitude of Nigerian courts to environmental matters and application of international environmental law, many litigants have resorted to pursuing their cases abroad by opting for foreign litigation of environmental violations perpetrated by International Oil Companies (IOC's) operating in Nigeria in their home countries (domestic jurisdiction). An example is the case of the *Four Niger Delta Farmers/Fishermen v Shell,* where the litigants decided to institute an action against Shell in the District court of Hague in2008.[41]

c. Standing or *Locus Standi*

Standing may be a challenge to the application of international environmental laws in Nigerian Courts. This is because a plaintiff must show the court that he is an interested party in the matter he is instituting and he has an exclusive and sufficient interest.[42] If a plaintiff fails to show the court that he has sufficient

[31] [1993]7NWLR(Pt304) 203.
[32] [1997]1NWLR(Pt480) 148.
[33] [1999]3NWLR(Pt593)1.
[34] CAP. C23 LFN 2004
[35]J A Segal, 'Judicial Behavior' in Gregory A. C and others (ed.) *The Oxford Handbook of Law and Politics* (Oxford University Press Oxford. 2009) 20.
[35] ibid.
[36]ibid
[37]ibid.
[38]Suit No. W/89/91 Warri HC/26/11/73 (Unreported).
[39]J A Adams and M Nabiebu, 'An Appraisal of the Attitude of Nigerian Courts in Oil and Gas Pollution Cases' *International Journal of Law*(2019) 5 (5)69.
[40]*Shell v TieboVII, Shellv.Isaiah, Seismographservicesv. Mark, Ogialev.Shell, Shellv. Amba*
[41]U Mkpoikana, 'Oil Spill: Court rules on four Nigerian Farmers Vs Shell case January, 2021' *Sweet Crude Reports* (Nigeria, 30 November 2020) <https://sweetcrudereports.com/oil-spill-court-rules-on-four-nigerian-farmers-vs-shell-case-january-2021/> accessed 22August 2024.
[42]R A Mmadu, 'Judicial Attitude to Environmental Litigation and Access to Environmental Justice in Nigeria: Lessons from Kiobel' *Afe Babalola University: Journal of Sustainable Development Law and Policy* (2013) 2 (1)161.

interest, the court will decline jurisdiction.[43]That was the circumstance in the case of O*ronto Doughlas v SPDC& 5 Others*[44], where the court declined jurisdiction because the plaintiff failed to establish his interest in the case. The requirement is applicable to environmental litigation generally as well as to those where international environmental law is applicable. However, the Supreme Court recently liberalized the rule of standing in the case of *Centre for Oil Pollution Watch v NNPC*[45]when it held that everybody including NGOs who seek due performance of law for safeguarding the environment against abuse should be clothed with standing.

d. Remedies under International Environmental law

The challenge of remedies is also linked to the problems of standing and it may be a challenge to the application of international environmental law. There are no unified provisions for remedies under international environmental law, except for few that relate to liability and compensation for hazardous activities.

7. Conclusion and Recommendations

The importance of international environmental law to the protection and preservation of the environment globally and domestically cannot be over emphasized. Nigeria as a sovereign state has acceded to many environmental treaties and few of them have been domesticated into the Nigerian Law. However, several challenges plague the application of International environmental law in Nigerian Courts. The study discussed these challenges and noted that the provisions of section 12(1) of the Nigerian constitution, which stipulate that treaties must be domesticated before they can be enforceable constitutes a constraint to the application of international environmental law by courts. The paper therefore makes the following recommendations in order to enhance the application of international environmental law in Nigerian courts for the purpose of safeguarding the Nigerian environment from pollution and degradation:

a. Nigeria as a dualist state should always domesticate all environmental law treaties it acceded to as it has an obligation under those treaties to provide workable mechanisms to realize the objectives of the treaties. It will enable the provisions of such treaties to be enforceable in Nigeria.
b. Statutory provisions should guarantee standing of individuals and NGOs to institute cases for the protection of the environment. Victims of environmental pollution and NGOs committed to environmental protection should explore the benefits of the Supreme Court's decision in *Centre for Oil Pollution Watch v NNPC,*[46] which widened *locus standi* in environmental protection matter and litigate environmental pollution matters whenever it is necessitated. This will enhance the application of international environmental law and principles to deserving environmental matters and enhance the protection of the environment in Nigeria.
c. Judges and their supporting staff must also have access to up-to-date judicial capacity building tailored towards environmental protection to enhance their knowledge about environmental protection issues and developments in order to be liberal to the application of international environmental law to matters and also enable them do justice to environmental matters they adjudicate upon.
d. Relevant protocols should be developed to provide for remedies, where a treaty or convention does not provide.

[43]A.B. Abdulkadir and A.J. Maidin 'Issues and Challenges In Environmental Justice Delivery System in Malaysia and Nigeria: The Need for Liberalising the Strict Rules of *Locus Standi' Legal Network Series (A)* (2012) 1(6) 20.
[44] Suit No. FHC/2CS/573/93.
[45] (2018) LPELR-50830(SC).
[46] (2018) LPELR-50830(SC).