



Customary Law, the Environment and Sustainable Development.

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ABSTRACT

The state of the political health of the voter has become an issue of concern in recent time. In electoral malpractice matters the voter is viewed as the victim but as it often turns out, the voter fails to appreciate the value of what he has – the franchise? He has no qualms to sell his vote for bags of salt and rice. The power of one-man-one-vote to an individual who cannot act independently but must depend on the head of his family, the village or his church to be told how and where to vote is worrisome. The challenge of this paper is to undertake a study of how we can make the right to vote effective. What this means that the people must be allowed to elect their representatives, express their choices and make their preference at the polls, i.e. free from force or fraud; free from intimidation and corrupt or undue influences. Citizens must be given the opportunity to cast their votes without any form of intimidation. This study which is done within the context of certain issues peculiar to Nigerian democracy addresses education and awareness of civic duties for the voter and the role of tertiary institution to address the defects. The paper acknowledges the unique role of these institutions in the context of the demographic advantage they hold as being custodians of these large potential voters to institute campus outreach.

Keywords: Right to vote, the ballot, tertiary institutions & Nigerian democracy

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1. INTRODUCTION

Environment and sustainable development are pivotal factors to every society. In the former heterogeneous settings of many tribes making sovereign entity called Nigeria today, traditional people lived in harmony with nature, ensuring a balance between themselves and the environment.³⁹ Environmental management was practised, though rudimentary, in ensuring sustainability of resources...through an intergenerational system of classification, empirical observations about the local environment, traditional beliefs, practices, lifestyles and the land-tenure systems practiced from one generation to another have developed a sustainable system of traditional ecological knowledge which underscores the contemporary concept of sustainable development.⁴⁰ Before the advent of British colonialism, customary laws on the environment and sustainable development were strictly adhered to by the major tribes comprising present day Nigeria.

Under Nigerian law, environmental law includes all the sources of Nigerian law that impact the environment.⁴¹ As a federation, there are numerous sources of environmental law including the Constitution, International treaties, state laws, local government laws, and common law.⁴² All these statutes are not, in any way directly point to the need to incorporate the customary law in which rural peoples obey easily based on the generational beliefs, practices, customs and norms that are incidental to management and control of the environment and sustainable development.

³⁹ Amokaye, O. G., 2014. Environmental Law and Practice in Nigeria, 2nd ed., MIJ Professional Publishers, Lagos, at p. 7

⁴⁰ Ibid.

⁴¹ Ogbodo, S. G., (2009) "Environmental Protection in Nigeria: Two Decades after the Koko Incident," Annual Survey of International & Comparative Law: Vol. 15: Iss. 1, Article 2., p. 2.

⁴² Ibid.



1.1 Importance of Nigerian Customary Laws to the Environment

Impacts of Nigerian customary laws cannot be undermined on the current global trends on the environment and sustainable development. The physical environment provides majority of materials for living and development. The United Nation Environment Programme (UNEP) opines that many movement began.⁴³ The survival of their cultures and ways of life is invariably linked to maintaining the traditional knowledge which supports and nurtures the healthy relationships with the ecosystems in which they live.

Their continued existence is also linked to ensuring that Indigenous Peoples are in most cases able to live within the carrying capacity of their ecosystems.⁴⁴ It pertinent to reinstate that environment with its sustainability has been with mankind from medieval periods till date. People having taking measures towards better environment. Customary law has the capacity to adjust to changing demands of a developing society⁴⁵ and its ecological environment and sustainable development.

2. NIGERIAN CUSTOMARY LAWS BEFORE THE ADVENT OF COLONIALISM

In the days before the introduction of British institutions, customary law was the sole governing law, and the machinery for its administration consisted entirely of customary tribunals.⁴⁶ In the protection and management of the environment, customary law has played vital roles in Nigeria even before the present environmental law regime.⁴⁷ Depending on the culture of the people, Nigerian societies generally have many rich cultural practices which are humane, unique and allow for true environmental protection and administration of environmental resources in a sustainable manner.⁴⁸

However, within the different cultures are some practices that are discriminatory, lopsided and archaic in a modern world and summarized generally as being repugnant to natural justice, equity and good conscience.⁴⁹ Some of the cultural practices and beliefs that have direct or indirect impacts on the environment and notions of sustainable development are controlled by various customary laws of the tribes. Most of differences in the customary laws of many cultural settings are traceable to different concepts and cultural heritage such as language, proximity, origin, history, social structure and economy. Nevertheless, protection and sustenance of the environment are mostly similar in various tribal communities, though with slide practices.

Generally, customary law has common features among many ethnic groups in Nigeria. These features keep and preserve its sanctity. These common features are its unwritten nature, community acceptability, flexibility, generational transmission among others. Aside the features of customary law, its validity, ascertainment and applicability was set earlier through the incursion of the British Colonial Ordinance⁵⁰ which provides that, " Nothing in this Ordinance shall deprive any person of the benefit of any law or custom existing in the said colony and protectorate, such law and custom not being repugnant to natural justice, equity and good conscience nor incompatible either directly or by necessary implication with any enactment of the colonial legislature existing at the commencement of this Ordinance."

With all these features and validity tests, customary law still remains relevant till date on issues relating to the environment and its sustainability. Customary laws of many ethnic settings in Nigeria had earlier adopted various features of the current international laws' measures towards the environment and sustainable development. Under the native customs and values system, apart from the mundane hygienic practice, there are systemic and sustainable conservation and forestry practices applied by the traditional people primarily for the preservation and protection of environment and ensuring the biodiversity of the plants and animals.⁵¹

⁴³ UNEP and Indigenous Peoples: A Partnership in Caring for the Environment Policy Guidance November, 2012. Available at https://wedocs.unep.org/bitstream/handle/20.500.11822/11202/UNEP_Indigenous_Peoples_Policy_Guidance_endorsed_by_SMT_26_11_12.pdf?sequence=1&isAllowed=y, accessed on 7 September, 2018 at 4:05am.

⁴⁴ Ibid.

⁴⁵ Asien, J. O., Introduction to Nigerian Legal System, 2nd edition. Lagos: Ababa Press. P. 117.

⁴⁶ Okany, M. C., 1984. The Role of Customary Courts in Nigeria, Fourth Dimension Publishers, Enugu, at p. 3

⁴⁷ Adeoluwa, Raphael Oladele, An Examination of Customary Practices Related to Environmental Protection in Nigeria.

International Journal of Education and Human Developments, Vol. 3 No. 2; March 2017, p. 48.

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Section 19 of the Supreme Court Ordinance of 1876, which has been injected to rules and laws of many statutory courts in Nigeria till date.

⁵¹ Amokaye, G. O. Supra at pp. 8-9.



More also, it is noteworthy to point out that there are heterogeneous collaborations among traditional people towards preservations of natural resources, conservation of wildlife, disposal of wastes, festivals of new seasons, among others.

3. THE INTERNATIONAL CONCERNS OF THE ENVIRONMENT AND SUSTAINABILITY

Since the United Nations Conference on the Human Environment held at Stockholm in 1972,⁵² many international instruments made available subsequently indicate the urgent needs to protect the environments and imbibe the principles of sustainable development. The United Nations (UN) describes sustainable development goals as blueprint to achieve a better and more sustainable future for all.

They address the global challenges we face, including those related to poverty, inequality, climate, environmental degradation, prosperity, and peace and justice. The Goals interconnect and in order to leave no one behind, it is important that we achieve each Goal and target by 2030.⁵³ To achieve the goals of sustainable development in Nigeria, there is need to incorporate customary laws in Nigeria. The contributions of indigenous people at various ethnic setting in Nigeria are very important, because these people are the custodians of the customary laws which have been made applicable over times on certain aspects of the environment.

The state of Indigenous Peoples and their environment and health conditions are increasingly under threat by a general population increase, large scale industrial activities, climate change, toxic waste, conflicts and migration, as well as by other unsustainable development activities. The structures of the world's ecosystems have been significantly degraded through human actions, including through the transformation of approximately one quarter of the Earth's terrestrial surface to cultivated systems. 4 Most Indigenous Peoples suffer disproportionately from loss of biological diversity and deterioration of ecosystems such as forests, due to their subsistence economies and occupations and their spiritual connection to their traditional lands and territories.⁵⁴ Disconnects of indigenous people from implementing customary laws to address environmental challenges and sustainable development do not help many national and international legal instruments. There is need to reconcile customary laws with the statutory laws on the environment and sustainable development in Nigeria. Most of the environmental challenges that directly or indirectly affect the customary laws in Nigeria are considered hereafter.

⁵² The conference was first and unique international instrument that caused serious concerns for the environment and development globally.

⁵³ United Nations' Statement on Sustainable Development Goals from: <https://www.un.org/sustainabledevelopment/sustainable-development-goals/>, accessed on 10th September, 2018 by 5:45pm.

⁵⁴ UNEP and Indigenous People, Supra 3 above.



4. CUSTOMARY PRACTICES AND ENVIRONMENTAL CHALLENGES

Deforestation: Deforestation in Nigeria is one of the major challenges of the environment and sustainable development. Forests in Nigeria is rich in wildlife, aquatic and terrestrial biodiversity which is a major source of rural life sustenance as well as play vital role in ecosystems stabilization.⁵⁵ The soil protects the plants and the roots, helping them retain water.⁵⁶ Forests do the same thing for our environment. They provide shelter, water, building materials, and food for livestock and hunters. Forests and trees are important in the progress of our country because they provide economic development.⁵⁷ Furthermore, forests act as sanctuary for rare and or endangered animals; act as storm breaks, thereby protecting the towns and villages against destruction from various winds in their violence; provide useful products such as timber or wood and char-coal for fuel, fibre for paper and textiles, medicine from the bark and leaves of some plant, breeding ground for animals, check erosion, and supply of food and materials for building houses.⁵⁸ The customs, practices and beliefs of indigenous people, in the past, strictly secured forestry. Okediran⁵⁹ opines that village known as *Igbo-Ile* within the old village organisation paved the way for the establishment of forest reserves in their Region.⁶⁰ For example, an Igbo-Ile was founded at *Isale-Ijebu* area of Ibadan. The forest land is also referred to as *Igbo-Aiwo*.⁶¹ Modernisation and development have put the latter heritage to extinction in many ethnic settlements in Nigeria today. The increasing rate of deforestation can be reduce if some customary practices and laws are infused into the statutory legislations on deforestation in Nigeria.

Land Use System: Land use system under customary tenancy has been expunged in the Land Use Act.⁶² What is known as customary tenancy in Nigeria land law arises where a person who has the legal capacity to do so permits, grantor is deemed to have granted to another, usually a stranger who is not a member of the land holding group such as the family or community, the right of possession or use of the land for a specified or an indefinite period of time with the intention that the use of the land shall revert to the grantor when the purpose for which the right is conferred has been fulfilled.⁶³ Under customary law of by-gone days, absolute alienability of land was not permitted but the custom began to change in response to the social needs of the community.⁶⁴ The change in customary land use vis-a-vis statutory provisions on customary use of land has hampered the rich preservation and land control systems among various ethnic people in various tribal settings in Nigeria. The recent increase of Fulani herdsmen conflicts with some communities borders on the land use system and environmental challenges.

Conservation of Environmental Resources: Customary law, before the advent of the British Colonial Administrators, was in force in various ethnic settlements to conserve wildlife and biodiversity, though in rudimentary forms. The Nigerian Supreme Court stated that customary laws were formulated from time immemorial as our society advances, they are more removed from its pristine social ecology.⁶⁵ Hunters, fishermen, farmers and herdsmen were being prevented under customary law to conserve certain wildlife biodiversity in the communities. The conservation of wildlife and the biodiversity were strictly enforced taboo, command, custom and precedent.⁶⁶ The annual *Argungu* Fishing Festival in Kebbi State in Nigeria is one of the sustained customary practices that brings fishing prowess into display among the people. The festival is embedded in customs that preserve and sustain development in the community.

⁵⁵ Ogunwale, A. O. 2015, "Deforestation and Greening the Nigerian Environment," International Conference on African Development Issues (CU-ICADI) 2015: Renewable Energy Track. Culled from: <http://eprints.covenantuniversity.edu.ng/5327/1/Paper%2055.pdf> on 11 September, 2018 at 3:10am.

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Omofonmwan S. I. and Osa-Edoh G. I., 'The Challenges of Environmental Problems in Nigeria' (2008), 23(1) J. Hum. Ecol. 53-57, Culled from <http://www.krepublishers.com/02-Journals/JHE/JHE-23-0-000-000-2008-Web/JHE-23-1-000000-2008-Abst-PDF/JHE-23-1-053-08-1650-Omofonmwan-S-I/JHE-23-1-053-08-1650-Omofonmwan-S-I-Tt.pdf> on 11 September, 2018 at 3:45am.

⁵⁹ Okediran, A. Y., 1996. Convention, Customs and Community Participation in Natural Resources Conservation in Nigeria- Doing so Little With so Much, Ibadan University Law Essays, J. D. Ojo, ed, 1996. P. 62.

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Chapter L5 Laws of the Federation of Nigeria 2004.

⁶³ Agbosu, L. K. 1983, "Extinction of Customary Tenancy in Nigeria by the Land Use Act: Akinloye v. Ogunbue." *Journal of African Law* Vol. 27, No. 2 (Autumn, 1983), pp. 188.

⁶⁴ Okay, M. C. op. cit at p. 40.

⁶⁵ In the case of Agbai v. Okogbue (1991) 7 Nigerian Weekly Law Report (Part 24) at 391.

⁶⁶ Details on enforcements of customary laws is in: Oyewo, A. T. and Olaoba, O. B., (1999) A Survey of African Law and Custom with Particular Reference to the Yoruba Speaking People of South Western Nigeria, Ibadan.



5. RELEVANCE OF CUSTOMARY LAW TO THE ENVIRONMENTAL SUSTAINABILITY

Customary law, among rural dwellers, is still relevant to environmental sanitation. The customs and practices of rural dwellers are guided by customary law on disposal and treatment of human excreta, solid waste, wastewater, and preservation of sources of drinkable waters. Rural dwellers in Nigeria work together in egalitarian ways to form a hygienic environment. Traditional African society, Nigeria inclusive,⁶⁷ places emphasis on groups, those groups could be family, kindred, hamlet, village, clan, tribe, age grade, and associational groups.⁶⁸ Rights, duties and obligations are structured along the lines of these groups. And law is also meant to protect these patterns of human relations.⁶⁹ Middle-aged groups in most of the rural community are given responsibilities to ensure that the communities' environmental sanitations are observed. The practice can help to strengthen the urban environmental sanitations as well. Such practice will enhance sustainable development at every human settlements in Nigeria.

6. COMPARATIVE ANALYSIS OF OTHER AFRICAN COUNTRIES

A comparative analysis among few African countries shows that other African customary laws are concerned with the environment and sustainable development from time immemorial. For example, among the Akan community which forms the majority ethnic group in Ghana, water bodies are associated with the gods or *abosom* and are used in accordance with strictures and rules that are relayed to the local folks by fetish priests who are the mouthpiece of the gods.⁷⁰ Customary laws mandate users to keep lakes and rivers pure because they are regard as the dwelling place of the gods (*abosom*).⁷¹ The *abosom* were highly revered and feared in the past and even they are still accorded that respect by some Ghanaians⁷². It is believed that, these gods are highly endowed with divine powers and will strike defaulters dead instantly with no mercy nor give a second chance.⁷³ In the past, our ancestors used a very astute way to protect the water bodies and avoided many water related diseases.⁷⁴ Those part of the river used for bathing, swimming, or for watering crops and washing domestic animals were found downstream in relation to those used as a sources of drinking water.⁷⁵ In another perspective, South Africa is one of the most multicultural countries in the world. In urban areas many different ethnic groups will make up the population.

⁶⁷ Emphasis is mine.

⁶⁸ Ngwakwe, E. C., *African Customary Law: Jurisprudence, Themes and Principles*. (2013: Ave Maria Academic Publishers, Abakaliki, Nigeria), p. 78.

⁶⁹ Ibid.

⁷⁰ Elvis Acheampong, *The Role of Ghanaian Culture and Tradition in Environmental Sustainability*. Culled from: <https://www.modernghana.com/news/306123/1/the-role-of-ghanaian-culture-and-tradition-in-envi.html> on 11 September, 2018 at 6:43am.

⁷¹ Ibid.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ Ibid.



7. CONCLUSION

In conclusion, it is essential for the governments at every level, every stakeholder and statutory institutions to collaborate and ensure that customary laws enhance conservative preservation of the environment. Every stakeholder must protect and uphold customary laws that are still relevant to various communities in Nigeria which are very impactful to improving the environment and sustainable development. Although there are various limitations on the applicability of the customary law, needs still arise to utilise the relevant ones that are useful to the environmental protection. The position of this article is to expand the scope of importance attached to the environment. is not to jettison the valuable available Nigerian statutory provisions on the environmental challenges and sustainable developments issues, it is to reinforce practical approach to actualise the purposes of the legislation through the tenets and principles of customary law. However, if the customary laws are strictly applied to the issues of the environment for sustainable development.