

Planning and Environmental Law Indispensable Partners in Environmental Protection

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Abstract:- Planning law undoubtedly represent an essential tool in achieving sustainable development and practical expression of the precautionary principle in environmental sustainability. If planning law is rationally applied, it could effectively reduce environmental problems of waste management, industrial pollution, poor habitat, deforestation and flooding. The unplanned use of the environment has necessitated this research. Although there are no strictly environmental planning laws in Nigeria; there are however planning Laws as well as environmental laws. This is the core of this research; planning and environmental law are indispensable partners in environmental protection. Agencies charged with enforcement of environmental laws do not believe that planning is the core of environmental sustainability. The aim of this research therefore points that environmental as and planning are only but two sides of a coin. In achieving this, the doctrinal research method is adopted by utilizing both primary and secondary source materials; to include scholarly work in this area and scholarly work in the periodical. In this regard, the research exposed the short coming in environmental planning legislation in Nigeria which has also led to unsustainable planning practices in Nigeria in relation to the environment. The article therefore recommends a legal framework for environmental planning. Planning every usage of land like drainages to channel flood, periodical or weekly sanitation, planned residential/commercial areas are advanced as ways of achieving environmental sustainability.

Keywords:- Environment, Planning, Land, Environmental Laws.

I. INTRODUCTION

Planning and environmental law are two sides of a coin. Nigeria's environmental control comprises of statutes and enforcement agencies in harnessing the natural resources. Planning on its part propels the stages within which these environmental frameworks can be actualized. Upon Nigeria's independence, focus was majorly on meeting up with social wants and how to advance economic development in Nigeria; and as a result Nigeria neglected the environment.¹ This was the position until the toxic dump

at Koko in Delta State in the year 1988.² Meeting up with economic wants was more of necessity than considering the environmental mishaps. In fact, a call for environmental protection/consideration would be a treat to industrialization.³

As a rising country, Nigeria was concerned on harnessing and tapping the natural resources from the environment without more. As a consequence, Nigeria's environmental protection was reduced to nothing. Environmental problems were to be solves by an action plan which are put in place. But the omen which beclouds the Nigerian environment is traceable to the Nigerian constitution.⁴

This work explores planning of the environment as the major way of putting an end to the numerous environmental problems. Problem relating to flood control, residential/commercial built up environment, oil related pollution/emission, and the unwillingness of the individual to participate in environmental protection are some of the major setback identified in this work. The blind eyes by the government and its agencies in not protecting the environment is also another hiccup. The paper also discusses that inspection are not carried out the way they should be as a result of inadequate facilities.

environmental-protection-agency-epa> assessed 5 August, 2021.

² S Buck, Toxic colonialism at its worst <https://www.timeline.com/koko-nigeria-italy-toxic-waste-159a6487b5aa> accessed 10th August, 2022

³ L N Chete, etal; Industrial development and growth in Nigeria: Lessons and challenges. Nigerian Institute of Social and Economic Research (NISER), Ibadan. https://www.brookings.edu/wp-content/uploads/2016/07/l2c_wp8_chete-et-al-1.pdf accessed 11 October, 2021

⁴ Section 6(c) of the Constitution of the Federal Republic of Nigeria (CFRN), 1999 (as amended) made every action brought to safeguard the environment, a fruitless journey. This is also the case with all matters under Chapter II of the CFRN, 1999. By this provision, Chapter II is declared non justiciable. The entire Chapter is declared to be merely Fundamental Objectives and Directive Principles of State Policies.

¹ P. Wisman, Environmental Protection Agency (EPA) History, USA (1970-1985) <https://www.buschsystems.com/resource-center/knowledgeBase/glossary/what-is-the->

In view of the above, this work discusses the ways planning aids environmental protection. And to effectively debate the topic, the work is divided into four (4) segments including the introduction. Part I discusses the conceptual framework; Part II examines environmental planning in Nigeria while Part III concludes the paper.

II. CONCEPTUAL FRAMEWORK

➤ *What is the Environment?*

The Black Law Dictionary defines environment as “The totality of physical, economic, cultural, aesthetic, and social circumstances and factors which surround and affect the desirability and value of property and which also affect the quality of people's lives. The surrounding conditions, influence or forces which influence or modify.”⁵ The Oxford Advanced Learners Dictionary defines environment to be the natural world in which people, animals and plants live.⁶

Flowing from the definition above, the environment can be sum up to be the state of affairs of nature view holistically and based upon the milieu of man in his natural habitat.⁷ Environment is the material and spiritual influences which affect the growth, development and existence of a living being.⁸ The environment is regarded as a place where living organisms interacts with the every element.

The environment is the sum of all the features and conditions surrounding an organism that may influence it. Even in the absence of man, the environment undergoes continual changes. The nature of the environment prompts Albert Einstein, to say that the environment is everything that isn't me.⁹

The recognition of the importance of the environment for human survival resulted in the issuing of Agenda 21 by the Earth Summit in 1992¹⁰ which urged all nations to include environmental planning as an integral part of their development process. Environment is a product of man's understanding and experience of his surroundings, and it is perpetually shaped by man's usage and interaction with it. Hence, the United Nations Stockholm Conference on Human Development asserts, “man is both creature and moulder of his environment which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth.”¹¹

Statutory definition of environment in most legal instruments is extensive and integrative in nature and it incorporates the natural, human and non-living inhabitants of the planet.¹² Section 37 of the Nigerian NESEREA 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. The Nigerian Water Resources Act¹³ defines the environment to include all aspects of the surroundings of man whether affecting him as an individual or his social and aesthetic factors of those surroundings. The International Court of Justice (ICJ) in *Legality of the Threat or Use of Nuclear Weapon in the environment* stated that the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn. In all of these definitions, Albert Einstein definition of the environment shall be adopted.

⁵ Black's Law Dictionary with Pronunciations (6th edition), p. 534

⁶ <<https://www.oxfordlearnersdictionaries.com>>

⁷ L. Atsegbua, e'tal; *Environmental Law in Nigeria: Theory and Practice* (2nd Ed., Ambik Press, Isiohor, Benin City: 2010) 3

⁸ See A Kumar, *Brief Introduction of Environment, Ecology and Environmental Pollution*. (Inspira- Journal of Modern Management & Entrepreneurship (JMME)) 314 (08, No. 01) 2018, pp. 314-322

<https://inspirajournals.com/uploads/Issues/159348613.pdf> accessed 22 August, 2022.

See also L Atsegbua, *Environmental Law Course Guide*. (p. 5)

<https://nou.edu.ng/coursewarecontent/Law%20322%20ENVIRONMENTAL%20LAW%20II.pdf> accessed 21 August, 2022.

Black's Law Dictionary (8th Edition), Group Publishing Co., New York, U.S.A, 2004

⁹ M O U. Gasiokwu; *Ecology: Concept and Politics of Environmental Protection and Climate Change in Ecology: Concept, Politics and Legislation* (2013) 1. See also Advisory Opinion expressed by International Court of Justice (ICJ) in *Legality of the Threat or Use of Nuclear Weapon* (1996) I.C.J. Reports 241 – 242 (29)

<<https://www.thestatesman.com/supplements/law/environment-and-the-law-1502821899.html>> accessed 20 July, 2021.

¹⁰ <<https://www.google.com/search?q=Agenda+21+by+the+Earth+Summit+in+1992&sxsrf=ALeKk02I7>> accessed 10 July, 2021. Agenda 21 is a non-binding action plan of the United Nations with regard to sustainable development. It is a product of the Earth Summit (UN Conference on Environment and Development) held in Rio de Janeiro, Brazil, in 1992.

¹¹ Preamble, para 1, Report of the United Nations Conference on Human Development and Environment, Stockholm, 1972, A/CONF.48/Rev. 1, New York, 1972 p. 3.

¹² See Section 38 of the Federal Environmental Protection Agency Act, Cap 131, Laws of the Federation of Nigeria which defines environment as “water, air, land and all plants and human beings or animals living therein and the relationships, which exist among these or, any of them. (Section 38, Federal Environmental Protection Agency Act, Cap 131, Laws of the Federation of Nigeria).

¹³ 1993. See also Indian Environment (Protection) Act, 1986, Section 2(a). See S. K. Nanda, *Environmental Law* (Central Law Publications, Allahabad) 5th ed., 3

➤ *What is Planning?*

Planning has no fixed meaning. Land is the subject matter of Planning.¹⁴ It is an indispensable resource in the socioeconomic and political development of any nation and possesses unique features such as permanence, indestructibility, multiple uses and relationship to surrounding land.¹⁵ It is the process of making plans for something. It is the control of urban development by a local government authority, from which a licence must be obtained to build a new property or change an existing one.¹⁶ Planning is the process of thinking about the activities required to achieve a desired goal. Planning can be defined to mean a systematic approach of a desired goal by first laying out the procedures and patterns to follow before commencing on the goal. It is the first and foremost activity to achieve desired results. It involves the creation and maintenance of a plan, such as psychological aspects that require conceptual skills. Planning therefore is a fundamental property of intelligent behaviour. It is to be noted that planning is majorly seen from the side of town planning. As rightly noted, planning, when used in connection with community development, is a generic term rather than a word of art, and has no fixed meaning.¹⁷

➤ *What is Zoning?*

Zoning refers to the divisions of a city into districts within which building activity and land use are regulated by legislation. This also can be likened to having and or ascribing an area to be urban or rural area.¹⁸ Zoning is aimed at dividing or classifying land layouts and prescribing in each area rules, standards or regulations towards building and structural design within such area. This pattern saves residential areas from being taken over by commercial activities. By zoning, a developer must first write to the concerned authority his intention to develop such area and must accompany same with a building or structural plan. And his application must first be considered and approved before he can go ahead with the development. To this end, planning agencies have control over use of land within such area.¹⁹

➤ *What is Environmental Planning?*

Environmental planning are those comprehensive planning activities related to the preservation or enhancement of environmental quality.²⁰ With the aim of sustaining the environment, most developing countries, including Nigeria have long shown interest in environmental planning and have over time-established laws and institutional framework to address a plethora of environmental issues.²¹ The Indian Supreme Court in the case of *Intellectuals Forum v. State of A.P.*²² taking into consideration the concept of environmental planning, held thus; ...we cannot shut our eyes that shelter is of the basic human needs just next to food and clothing. Need for a national housing and habitat policy emerges from the growing requirements of shelter and related infrastructure.

➤ *What is Environmental Law? Check for meaning from Authors*

It is that branch of law that provides the general legal framework for the regulation and protection of elements of the environment such as air, land, water, sea etc.²³ Environmental law provides appropriate standard for measuring and apportioning liability in case of pollution or default. Environmental law borrows and transplant well tested notions and principles from other traditional areas of law such as torts law, criminal law and international law.

III. ENVIRONMENTAL PLANNING IN NIGERIA

Environmental planning efforts in Nigeria can be traceable to colonial era. And during these periods Nigeria was governed by the British laws. The colonial policies were not to protect the Nigerian environment and some of the plans put forward as environmental control as at that time were majorly weak as all what they desire was to reap Nigeria of her resources. The main laws²⁴ during this period were on water pollution and public health. It is instructive

¹⁴ O G Amokaye, *Planning and Compulsory Acquisition Law and Practice in Nigeria* (Concept Publications Limited, 2016) p. 53

¹⁵ S. K. Nanda, *Environmental Law* (Central Law Publications, Allahabad, 2019) 5th ed., 53

¹⁶ <<https://www.google.com/search?q=meaning+of+planning+&sxsrf=ALeKk03l2oAspsZeA--EAMyBQgA>> accessed 10 June, 2022. See also <https://en.wikipedia.org/wiki/Planning> accessed 11 June, 2022.

¹⁷ S K Nanda, *ibid*, p. 660.

¹⁸ S K Nanda, *ibid*, p. 659

¹⁹ See Kayode Oyesiku, *Modern Urban & Regional Planning Law & Administration in Nigeria* (Ibadan: Kraff Books Ltd., 1998) p. 107.

²⁰ R E Munn, *Environmental Impact Assessment: Principles and Procedures*; Scope Workshop On Impact Studies in the Environment (1975)

<<https://books.google.com.ng/books/about/EnvironmentalImpactAssessment>> accessed 8 June, 2021.

²¹ R G Bell and C Russell, *Environmental Policy for Developing Countries, Issues in Science and Technology*, Spring (2002) <<https://issues.org/greenspan-environmental-policy-developing-countries/>> accessed 17 June, 2021

²² (2006) 3 SC 549

²³ D O Olawuyi, *The Principles of Nigeria Environmental Law* (Afe Babalola University Press, 2015) revised edition, p. 15

²⁴ See 246 of the Criminal Code of 1958 which seek to control burial in houses. See also the Public Health Act of 1958 which seek to control the spread of diseases, slaughtering of animals and disposal of night soil and refuse.

to note that the fines and penalties for violators during the period were liberal and poorly enforced.²⁵

Nigeria did not take any serious step towards planning of the environment, neither did Nigeria protect the environment in its policies. The first Nigeria step was seen after the Koko incidence wherein toxic waste was deposited at Koko. This incidence woke Nigeria from slumber. It must be pointed out that Nigeria followed the footsteps of her colonial master by concentrating on pollution control. There were no plans for designated waste dump. In fact, the idea of protecting the environment was seen as an expensive adventure.²⁶ This position is gradually changing as the new paradigm postulate that neglecting the environment can impose high economic and even financial costs, while many environmental benefits can in fact be achieved at low cost.²⁷

Water pollution was the first initiative taken by Nigeria in 1964. Upon an inquiry by the committee set up to look into the issues surrounding water pollution, Water Pollution Act of 1964 was enacted.

Another major milestone in environmental planning in Nigeria was the setting up of Expert Committee on environmental health wherein National Council of Health was birthed in 1970. The institutional environmental regulation in Nigeria was without a clear scientific criteria and standards on toxic wastes and on pollution levels. Again the enforcement of basic environmental and household hygiene depended largely on qualitative legal rules.²⁸

In 1979, the Federal Constitution focused on environmental hygiene, with emphasis on refuse clearance, and the management of liquid and solid wastes in abattoirs, residential homes and streets, all of which came under the supervision of local government councils.²⁹ Therefore, it can be argued that mainstreaming environmental variables into

development processes in Nigeria is largely a post 1980 effort. Environmental sector budget, that is allocations to environmental development and protection remained abysmally low, being generally under 2% of the National budgets until recently. The setting aside of 3% of the Federation Account in the 1999 constitution (from 1% in 1991) as ecological fund for natural disasters of flood, erosion et cetera, represents the most formal allocation to environmental activities.³⁰ Unfortunately, the utilization of these funds for environmental development is another problem as the funds have been misappropriated.

Several empirical studies have been carried out on environmental hazards and the need for planning and control of the Nigerian environment. Some of these studies include industrial solid waste in Enugu³¹, flooding, biodiversity,³² soil erosion, urban solid waste management, among others.³³ In relating some of the empirical studies vis-a-vis the legal framework, Nwafor suggested that with proper planning it is possible to achieve sustainable development.³⁴ Adding to Nwafor's suggestion, Onovughe pointed that possible strategies for environmental planning include legislation on the control of hazards from exploration to implementation stages, land use demarcation/planning/control, zoning, and public participation in policy formulation, environmental education and enlightenment as well as cost-benefit analysis of any action.³⁵ Invasions into reserved areas, break of quelling birds in Jigawa and Adamawa States can be termed as

²⁵ O Onovughe, *ibid*

²⁶ See J A Adelesgan, *The history of environmental policy and pollution of Water Sources in Nigeria (1960 – 2004) The way forward*: Department of Civil Engineering University of Ibadan, Ibadan, Oyo State, Nigeria. <<https://www.semanticscholar.org/paper/The-history-of-environmental-policy-and-pollution2169dcbd4bbd2e0>> accessed 29 July, 2021.

²⁷ Pollution Prevention and Abatement Handbook, Toward Cleaner Production, The World Group in Collaboration with UNEP and UNIDO, IBRD/The World Bank, Washington DC, USA

<<https://documents1.worldbank.org/curated/en/758631468314701365/pdf/multi0page.pdf>> accessed 1 August, 2021.

²⁸ B A Chokor, Government Policy and Environmental Protection in Developing World, Environmental Management (17) 1, 15 – 30 <<https://agris.fao.org/agrissearch/search.do?jsessionid=4D17F08FD7149406DC42>> accessed 2 August, 2021.

²⁹ C S Ola, Town and country planning and Environmental Laws in Nigeria, (University Press, Ibadan, Nigeria, 1981) <<https://searchworks.stanford.edu/view/1653584>> accessed 2 August, 2021

³⁰ *Ibid*

³¹ Uchegbu, S.N.(2002), Issues and Strategies in Environmental Planning and Management in Nigeria, <https://scholar.google.co.jp/citations?view_op=view_citation&hl=ja&user=Va-FiTgAAAAAJ&citation_for_view> accessed 1 August, 2021.

³² P Eze, Biodiversity and Environmental Problems in Nigeria as cited by I O Onovughe & O Andrew, Planning The Nigerian Environment: Laws And Problems Of Implementation.

<<https://www.researchgate.net/publication/252628876>> accessed 4 August, 2021

³³ *Ibid*

³⁴ JC Nwafor, Environmental Impact Assessment For Sustainable Development: The Nigerian Perspective as cited in O Onovughe, *ibid*.

³⁵ Onovughe, *ibid*

threat to environment.³⁶ We believe such invasion can be averted through proper environmental planning.³⁷

The case that seemed to have ignited a lot of debate on environmental planning is the decision of the full panel of the Supreme Court in the case of *A.G of Lagos State v A.G of Federation & Ors.*³⁸ The issues in this case was whether the Federal Government had the power to legislate on regional and urban planning, deriving its power under Section 20 of the 199 Constitution to legislate on the environment. The apex court held that urban and regional planning did not fall within the meaning of environment and was therefore not within the legislative competence of the National Assembly. It held further that section 20 empowers the National Assembly to enact any appropriate law on matters of environment as a subject item under the Exclusive Legislative List.³⁹

➤ *Environmental Planning as a Tool for Sustainable Development*

Planning and environmental protection laws are similar in purpose and content. They both control land use to secure harmony and orderliness in the use and enjoyment of land. While planning is restricted to physical land use only, environmental law is concerned with control of damaging effects on the environment through processes that causes pollution to land. Planning undoubtedly represents an essential tool in achieving sustainable development and practical expression of the precautionary principle. If rationally applied, it could effectively reduce environmental problems of waste management, industrial pollution, poor habitat, deforestation and flooding.⁴⁰ By planning, physical development are carried out in an orderly manner and in conformity with the appropriate development plans and diverse underlying planning policies of the government, including environmental protection. It is from this perspective that the Supreme Court in the case *Attorney General Lagos State v. Attorney General of the Federation*⁴¹ that, “the opposition to the use of planning laws by the

Federation as an instrument of protection of the environment emanates, it appears to me, from a rather narrow view of the extent to which planning can be utilized, with imagination and perspicacity, as an instrument of environmental protection in a federation without impairing the sovereignty of the federating units. There are, no doubt, several aspects to urban and regional planning. It will be mistaken to decide this case on a misconceived notion that a planning statute essentially addresses only one aspect. I venture to think that there may be health aspects, environmental aspects, aesthetic aspects and so on and so forth (per Ayoola, JSC, page 234).

Planning law as a tool for sustainable development involves the adoption of measures and policies to ensure that resources within the environment are conserved preserved and replenish. It determines the most efficient form for the use of all resources. It enables regulatory policies and guidelines to be put in place to ensure compliance with the planned pattern and maintenance of the character of neighbourhood without deviation; they may cause overuse, abuse and eventual degradation of such resources.

It provides the legal frameworks for directing, controlling and managing the present and future growth trend as well as patterns and directions of the physical environment in the overall interest of the society. The planning authority can protect the environment by imposing limits on noise, vibration and dust.

- Environmental planning assessment encompass areas such as land use, socioeconomics, transportation, economic and housing characteristics, air pollution, noise pollution, the wetlands, habitat of the endangered species, flood zones susceptibility, coastal zones erosion, and visual studies among others, and is referred to as an integrated environmental planning assessment. An objective view of the environmental planning process is often framed in perspectives offered by the integration of assessment of the natural resources, the environment as a system, the scientific perspective, and the social scientific perspective. As with other forms of planning, the entire processes in environmental planning is to achieve sustainable development also known as green building technologies.
- Structural design as a means of sustainable environmental planning and development. This can be achieved by creating structures and using processes that are environmentally responsible and resource-efficient through-out a buildings lifecycle. An efficient structural design helps not just the immediate but also the future purpose. In developed country, structural designs like building plans helps to put out fire during fire outbreak. Such structural designs also aid green buildings.
- Flood control and sanitation planning as a means of environmental sustainability. Flood control refers to methods used to reduce or prevent the detrimental effects of flood waters. This can be achieved by building drainages, dam, and reservoirs e.t.c. Sanitation planning on the other hand is required in order to reduce the menace of flood caused by improper disposal of

³⁶ *Adediran v. Interland* (1991), SC. In this case, the Supreme Court held that the action of commercial workers in residential area amount to nuisance. The court’s position was borne of the fact that the area was specifically zoned and or planed for residential area and not commercial area. see <https://hbriefs.com/sc/adediran-v-interland-1991/?highlight=Adediran%20v.%20Interland%20%281991%29%20%2E%20%80%93%20SC>

³⁷ Quela attacks, farmers seeks Nyako’s Intervention. Daily Independent Tuesday, September 11th 2007. <<https://www.researchgate.net/publication/327427555>>

Accessed 8 August, 2021.

³⁸ (2003) 12 NWLR (pt. 283) 1.

³⁹ See item 60(a) of the Exclusive Legislative List, Second Schedule to the CFRN, 1999 as amended.

⁴⁰ See Amokaye, *ibid* p. 76

⁴¹ (2003) 12 NWLR (pt. 833) 1

waste especially solid waste. Sanitation is an act of controlling, providing and management of all kinds of human waste and adequate disposal of them in a built environment. The objective of sanitation planning is to safeguard the people in the neighbourhood or communities, their health and to promote a safe and sustainable environment.⁴² It has been established that flood control and proper sanitation planning is paramount in the drift towards sustainability because it safeguards the health of the people.

- Land use planning is another way for achieving environmental sustainability. Land use planning is aimed at protecting the future community land needs, showing by location and extent the areas to be used for residential, commercial, industrial, educational, agricultural, and public purposes among others. Land use is best suited for Albert Einstein view of the environment. It is planning everything that isn't me for sustainable development. Land use planning in a nutshell, promotes orderly use of land to avoid conflicts.

➤ *The Synergy Between Planning and Environment.*

Urban and regional planning law is not necessarily coterminous with environment law; planning and environmental protection laws are similar in purpose and content. They both control land use to secure harmony and orderliness in the use and enjoyment of land. They promote the aesthetics value of land with the overall purpose of securing a decent environment for healthy living.⁴³

The dissimilarities lie in the scope of control, different regulatory authorities and different enforcement mechanisms. The scope of the former is restricted to physical land use only, while the latter is concerned with control of damaging effects on the environment through processes that causes pollution to land, water, air, wildlife and nature's conservation. Yet, the two control regimes are overlapping.⁴⁴

The Relationship between planning and environment under the planning system is that planning control is primarily concerned with the type and location of new development and changes of use. Once land uses have been sanctioned by the planning process it is the job of the pollution control to limit the adverse effects the operation may have on the environment.⁴⁵

Although environmental controls seek to protect health in the environment, planning controls are concerned with the impact of development on the use of land and the appropriate use of land. A decision as to the condition under which a development permit may be undertaken may have

effect on the environment. Where the potential for harm to man and environment affects the use of land (for example, by precluding the use of neighbouring land for a particular purpose or by making use of that land inappropriate), then planning and pollution control may overlap.

In *Attorney General of Lagos State vs. Attorney General of the Federation*,⁴⁶ the majority of the Supreme Court Justices painstakingly attempted but failed to find the necessary connection between planning and environmental protection. The court, respectfully, gave an ordinary, restrictive and narrow interpretation to the concept of environment, confining it to external surroundings as against the contemporary holistic approach.⁴⁷ The drawback of this approach is its failure to recognise that environmental protection is broader and that it regulates equitably the sustainable utilization and enjoyment of natural resources. Legislation and regulation therefore provide a more formal, encompassing approach to land use control and development control than the application of common law doctrines, especially the doctrine of nuisance. The most veritable instrument used by legislation and regulation to control land use and development is zoning. In this particular instance, zoning would likely separate the incompatible land uses, precluding the offending impact from arising in the first place.⁴⁸

It is from this perspective that Ayoola JSC held in *Attorney General Lagos State v Attorney General of the Federation*⁴⁹ that the opposition to the use of planning laws by the Federation as an instrument of protection of the environment emanates, as it appears to me, from a rather narrow view of the extent to which planning can be utilized, with imagination and perspicacity, as an instrument of environmental protection in a federation without impairing the sovereignty of the federating units. There are no doubt, several aspects to urban and regional planning... I venture to think that there may be health aspects, environmental aspects; aesthetic aspects and so on and so forth.⁵⁰

Environmental consideration in planning activities is reflected in those mechanisms entrenched in the National Urban and Regional Planning Act,⁵¹ Lagos State Urban and Regional Planning and Development Law,⁵² Delta State

⁴⁶ Supra

⁴⁷ See the dicta of Uwaifo JSC at pp 175 – 177; Kalso JSC at pp. 161 - 163

⁴⁸ E Onyeabor & H U Agu: Is Environmental Protection Implicit in Planning Law? (2013) 11 Nig. J. R. <https://www.researchgate.net/publication/304748343_Is_Environmental_Protection_Implicit_in_Planning_Law?enrichId=rgreq-47bf410b2c589dcd8b191D&el=1_x_3&_esc=publicationCoverPdf> accessed 6 September, 2022

⁴⁹ Ibid

⁵⁰ *Attorney General Lagos State v Attorney General of the Federation*, supra

⁵¹ Cap 138, LFN, 2004.

⁵² 2010

⁴² National Environmental Sanitation Policy, 2005 <<https://tsaftarmuhalli.blogspot.com/2011/07/national-environmental-sanitation.html>> accessed 30 July, 2021.

⁴³ O G Amokaye, ibid p. 73 – 78. See

⁴⁴ Ibid

⁴⁵ Ibid

Urban and Regional Planning Authority Law⁵³ and other urban and regional planning law of many states. These various legislations contain;

- System of development plans.
- Development control process, which requires planning permission from the planning authority before any development could take place, the definition of 'development' is broad enough to cover environmental effects on land.
- Power to impose regulation.
- Integration and requirement of environmental impact assessment⁵⁴ in respect of certain categories of projects.
- Public participation approach to planning.

➤ *Effects of Planning on Environment*

- It reduces environmental problems of waste management, industrial pollution, poor habitat, deforestation and flooding.
- By proper planning, the planning authority are empowered protect the environment by making sure that environmental standards are followed.
- It determines the most efficient form for the use of all resources having regard to climate, soil, natural resources, accessibility and markets.
- It ensures that residential, commercial, industrial, educational and agricultural areas are properly and carefully zoned to prevent conflict and promote a harmonious interrelationship.
- Development control is aimed at checking the activities of real estate developers and landowners by ensuring that they do not develop the property as they like and to the detriment of public interest. A development plan cannot work without development control.

➤ *Problems of Environmental Planning Laws in Nigeria*

- Ineffective solid waste management, land degradation, pollution, flood and erosion, desertification, inefficient use of energy resources, loss of biodiversity, environmental disasters and deforestation.
- Problems of implementation of environmental planning and protection laws. This relate to the limitation of the legal framework, institutional bottleneck and corruption, inadequate funding, inadequate Environmental Impact Assessment (EIA) and ignorance.
- The Nigerian Constitution did not protect the environment.⁵⁵

- The problem of how to balance environmental interest against the development interest of the developing world in particular. This is what the United Nations documents such as the "Action Plan and the Development on the Human Environment" purports to do. The result of this balancing act is that some of what would have been environmentally stringent provisions are watered down by developmental and other needs.⁵⁶ The World Commission on Environment and Development suggest a way to balance the present needs without destroying the future by emphasising the concept of sustainable development.⁵⁷ It is this sustainable development through environmental planning that this paper refers to.

IV. CONCLUSION

The paper concludes that poor environmental planning and ineffective governmental policies are the major causes of environmental depletion. Also, corruptible practice of allowing the ruling class to act at will without following the already planned or zone areas contribute to the environmental malady. Again, poor awareness of environmental practice, non-community participation in environmental decision making also frustrate environmental planning. The poor area suffers this more. To settle the situation requires a holistic approach from the government as required by Agenda 21 of the Earth Summit.

RECOMMENDATION

Aside exploration of oil to finance the Nigerian budget, the Nigerian government is not concerned with any other as much as she can continue to finance its budget. The government forgot that failure to protect the environment is a sin- qua-non-to failure in meeting the aspirations of the people. The political, social, and economic consequences of government failure in this regard will be too enormous for the nation.

➤ *Consequently, this Paper Recommends the Following*

- A review of the Land Use Act. The Act tends to discriminate against the poor people especially in rural areas. It does not provide the security of land tenure on which their livelihood largely depends. Entrusting the government with responsibility of controlling the land on behalf of the people has made it possible for government to acquire community land and its resources with little or no protection of the land from degradation.

⁵³ 2007

⁵⁴ See for example Section 30 of Delta State Urban and Regional Planning Authority Law, 2007. Section 31 of the Law empowers the Control Department to approve or reject such development plan.

⁵⁵Section 20 of 1999 CFRN provides that "The state shall protect and improve the environment and safeguard the water, air, land, forest and wild life in Nigeria".

⁵⁶ L Atsegbua, etal; Environmental Law in Nigeria: Theory and Practice. New Edition, Ababa Press, 2009

⁵⁷ The Report of the World Commission on Environment and Development (WECD), "Our Common Future@ (otherwise known as Brundtland Report) <https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf> accessed 4 August, 2021.

- The noncompliance with the provision of Environmental Impact Assessment Act should be visited with stiff penalty.
- Environmental laws and its regulatory institutions in Nigeria should be reviewed with a view to recognizing the fundamental rights of individuals to a healthy environment.
- The liberal charges for violators of environmental laws should be reviewed to that of “polluter – must – pay” and this principle of financing and fiscal management of environmental problems should be strictly applied.
- There is need to streamline the Federal, State and Local Government functions with respect to implementation of environmental planning laws so as to avoid overlapping of functions and ensure compatibility of their various environmental planning programs.
- The endemic corruption among enforcement officers should be checked and through methods such as direct bank payments/mandatory sanitation rates by the citizenry. And corrupt enforcement officers should be appropriately punished in terms of being sacked as to serve as future deterrent to others.
- Environmental planning should have long range problem prevention perspectives as well as shorter-range policy and programs planning goals.
- There should be greater emphasis of environmental impact analysis for all projects as it will help to provide relevant data needed for robust decision-making.
- The funding to environmental management programs should be increased.
- The government should mount strategic environmental campaigns to raise public awareness through the various existing media in Nigeria on environmental management and planning.
- There should be seminars to raise public awareness on the importance of the peoples’ participation in the physical planning and development of their environment.
- The need for the residents to be educated and empowered to detect, report and monitor oil spills, resource degradation and participation in clean up restoration.
- There is need to foster partnership and collaboration between Environmental Authority and the residents in evolving an environmental management strategy, through this medium the residents will stop looking at oil spills as a commercial asset and make them realize that the spills create long term damage to the environment.
- Ministries responsible for the environment should be empowered with adequate funds and standard equipment.
- Stakeholders in the environmental sciences (Town planners, Geographers, Civil engineers, Architects, Surveyors etc) should be involved in the preparation and implementation of master plans.