SPECIALISED ENVIRONMENTAL COURTS AND TRIBUNALS AS LEGAL INSTRUMENTS FOR SUSTAINABLE ENVIRONMENT JUSTICE*

Abstract

Globally, there are alarming surge of environmental problems – climate change, oil spillages, flaring of Gas, emission of greenhouse gases that drastically affect our environment, loss of biodiversity has generated a worldwide demand for creation of new forms of legal instruments to adjudicate environmental issues and enforce environmental laws for sustainable environmental justice. These demands stem from the increased recognition that environmental justice should be 'just, fast tracks, cheap and affordable to common man' and this can only be accomplished by the creation of specialized environmental courts and tribunals (SECTs). This paper highlights the urgent need for the creation of SECTs, the benefits, challenges and possibility of SECTs in Nigeria. This is achieved through already existing literature review, media and internet sources. The article reveals lack of strong political will and poor clueless leadership strengths, illiteracy, poverty, inadequate of environmentally trained lawyers and judges amongst others as major challenges hindering the creation of SECTs in Nigeria. The study recommends the prioritization of environmental laws and principles by the Government from primary schools, Public awareness campaigns as done in this era of COVID -19, continuing professional legal training for advocates and judges amongst others to ensure fast track and improve environmental justice in Nigeria.

Keywords: Specialised Environmental Courts and Tribunal, Sustainable, Environmental Justice, Legal Instruments

1. Introduction

The urgent need for good environmental governance has been globally recognized as fundamental to achieving sustainable development. In response for this clarion call for a sound and healthy environmental protection, 178 countries adopted the Rio Declaration at the First Earth Summit held in 1992 at Brazil. Principle I clearly recognized that 'Human beings are at Centre of Concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature. In this necessary implication, they are also entitled to have their environmental rights and obligations determined before a specialized court'[1]. Succinctly put across by Justice Briam Preston, Chief Judge of the Land and Environmental Court of New South Wales, 'The judiciary has a role to play in the interpretation, explanation and enforcement of laws and regulations. Increasingly, it is being recognized that a Court with special expertise in environmental matters is best placed to play this role in the achievement of ecologically sustainable development'.[2] SECTs are increasingly being looked to justice and environmental governance. SECTs provide one avenue for fairly and transparently balancing the conflicts between human rights of safety environment and sustainable development.[3] Principle 1 of the 1992 Rio Declaration recognises that human beings ' are entitled to a healthy and productive life in harmony with nature', this provisions which recognized this 'right to life', right to a healthy environment' and similar guarantees have become enshrined in the constitutions of about 108 countries.[4] This is because there is increased recognition that environmental justice has to be 'just, quick and cheap'. These Special Environmental Courts and Tribunals (SECTs) are now widely viewed as a gateway to accomplish this import goal. This paper evaluates the urgent need for the creation of

* **By Chi Johnny OKONGWU, PhD, BL**, Senior Lecturer, Faculty of Law, Chukwuemeka Odumegwu Ojukwu University, Igbariam Campus, Anambra State. Email lawleviokongwu@gmail.com; and

***Aniefiok EA OKPOSIN, LLB (Calabar) , BL, LLM, PhD** (Benin), Lecturer, Department of Public Law, University of Benin, Benin, E- mail: andrewokposin@gmail.com. Tel. no. +2348036522768;

[1] Rio Declaration of the UN Conference on Environmental and Development (13 June 1992, UN Doc. A/CONE. 151/26 (1992) (Vol.1), (1992) 31 ILM 874.

[2] Briam J. Preston, 'Benefits of Judicial Specialization in Environmental law: The Land and Environment Court of New South Wales as a case study (2012) 29 (2) Pace Environment Law Review 396 http://digitalcommons.pace.edu/ pelr/Vol.29/iss2/2assessed 14 April 2020.

[3] George Pring and Catherine Pring. 'Specialized Environmental Courts and Tribunals at the Confluence of Human Rights and the Environment' (2009) 11 Oregon Review of International Law 307

[4] S.56(1) and (2) Civil Procedure Act 2005 New South Wales State of Australia.

specialized Environmental Courts and Tribunals in Nigeria and determines how the new legal instrument should practically and effectively be utilized, and what its legal structure should be in order to achieve sustainable environmental justice.

2. Meaning of Specialised Environmental Courts and Tribunals (SECT)

To some people it is the usual court where adjudication of cases are done, but scholarly it can be defined as 'judicial or administrative bodies of government empowered to specialize in resolving environmental, natural resources, land use developing, and related disputes. Environmental Courts (ECs) refer to bodies within the judicial branch of government and environment tribunals (ETs) are those within the executive or administrative branch. They include free-standing ECs and ETs, formal and informal panels of judges within a court of general jurisdiction ('green benches' or lists'), individual judges within generalist courts who have training and expertise in environmental law and to whom environmental cases are assigned formally or informally, and ETs housed within another government body such as the environmental agency.[5]

3. The Importance and Necessity for the Creation of Specialized Environmental Courts and Tribunals

There are deep concerns with how the general, non-specialized court systems handle environmental and land use issues affecting development and future sustainability – concerns of litigants, judges, government policy and decision makers, public interest (especially their participation on EIA), non-governmental organizations (NGOs), and developers alike – have accelerated the creation of ECTs[6]. A systems analysis of traditional general courts has been done to identify the hurdles to effective environmental dispute resolution and environmental justice which resulted in the necessity for creation of specialized Environmental courts and tribunals.[7] They include:

Need for Expertise

General/Regular Courts and tribunals are increasingly failing to expectations of litigants due to the complexity of the rapidly growing body of environmental laws and the necessity to balance complicated scientific evidence speedily. Environmental issues and the legal and policy responses to them demand special knowledge and expertise.[8] Specification facilitates a better appreciation of the nature and characteristics of environmental disputes and selection of the appropriate dispute resolution of complex, technical and novel questions. The rule of law and sound environmental jurisprudence depend upon judges and decision makers who are knowledgeable and experienced in environmental law or their environmental profession.[9]

Workload Consideration

Due to the fact that environmental litigation does involve technical expertise of at least comparable magnitude and complexity there is no doubt that general/regular Courts would perforce be compelled

[5] George Pring and Catherine Pring, 'Specialized Environmental Courts and Tribunals: The Explosion of New Institutions to Adjudicate Environmental Climate change, and sustainable development (Yale University and Un Institute for Training and Research's 2nd Global Conference on Environmental Governance and democracy – On strengthening Institutions to Address Climate Change and advance a Green Economy, Connecticut, 17-19 September 2010) 3< http://www.law.du.edu/ect.study assessed on 17 April 2020.

[6] George Pring and Catherine Pring: Greening Justice: Creating and Improving Environmental Courts and Tribunals (The Access Initiative 2009)1. George Pring and Catherine Pring, 'Specialized Environmental Courts and Tribunals: The Explosion of New Institutions to Adjudicate Environmental, Climate Change, and Sustainable Development' (Yale University and UN Institute for Training and Research's 2nd Global Conference on Environmental Governance and Democracy – On Strengthening Institutions to Address Climate Change and Advance a Green Economy, Connecticut, 17-19 September 2010) 3http://www.law.du.edu/ect-studyassessed on 5 May 2020. 14.50HRS

[7]George Pring and Cathering Pring, Greening Justice: Creating and Improving Environmental Courts and Tribunals (The Access Initiative 2009) I. See also *Ikenga K.E. Oraegbunam, MVC Ozioko & Chukwubuikem J. Azoro,* 'Remedies for Breach of Environmental Standards in Nigeria', *International Journal of Innovative Legal & Political Studies,* 7(2):13-21, April-June, 2019.

[8] Brian Preston, 'Characteristics of Successful Environmental Courts and Tribunals' (2014) 26(3) Journal of Environmental Law 17.

[9] Print and Pring (n 5) 57

to familiarize itself with a large corpus of complex and novel concepts outside normal judicial expertise in order to perform its function. This is because the resolution of complex issues raised by environmental litigation would be time-consuming for general court judges who have insufficient knowledge in environmental matters. This poses the problem of whether the Court's workload permits involvement in environmental litigation in addition to the already overcrowded cause-list. mOne approach that offers some prospect of relieving this mounting pressure is the creation of special courts to the free the regular judicial machinery from significant amounts of its present workload.[10]

Problem of Delay

The problem of delay is an important factor in considering the creation of a specialized environmental court. In Nigeria, delays significantly plague the course of litigation. Litigation is characterized by unduly long intervals which elapse between the time when a case first arises and when it is finally decided if it proceeds through the entire gamut of review. The delay in getting judgment in the general courts discourages the prospective litigants from instituting any environmental action in court.[11] The general slowdown that results from an overloaded docket, and the technical nature and volume of the subject matter of the litigation, which is comparatively more time-consuming than most other types of cases, especially for judges who have not developed specialized expertise,[12] leads to lengthy delays in the determination of environmental matters and a denial of justice. The case of *Shell PDC (Nig.) Ltd v Chief Joel Anaro & Ors*[13] is illustrative. In this case, the original suits commenced in 1983 and the State High Court delivered its judgment in 1997. The Defendant was dissatisfied and appealed against the judgment to the Court of Appeal. The appellant was still dissatisfied with the judgment and appealed to the Supreme Court. The Supreme Court heard and dismissed the Appeal in 2015, more than 30 years thereafter. Also, in the case *Shell Petroleum Development Company of Nigeria Ltd v Chief G.B.A. Tiebo VII & Ors*[14] the cause of action in this case accrued on January 16, 1987, the suit was commenced on June 6, 1988and the State High Court delivered its judgment on 27th February 1991. Subsequently, the Defendants appealed against the decision of the lower court up to the Supreme Court which delivered its judgment in 2005, almost twenty years thereafter.

Inadequate Knowledge in Environmental Matters

Inadequate legal and technical expertise on environmental matters of judicial officers of regular courts, sometimes lead to miscarriage of justice. *In Gulf Oil Co. Ltd v Oluba*[15] the Appellant commenced oil exploration on the Respondents' land in 1973 and continued until 1989. This injuriously affected swamps, channels and lakes resulting in loss of income from fishing and farming. The Respondents commenced action some thirteen years later in 1989. The Appellants took a preliminary objection praying that the action be dismissed in that it was statute-barred. In respect of actions founded on tort, the applicable Limitation Law (of Delta State) provided for six years of limitation from the date on which the cause of action accrued. The trial judge held that the cause of action was a continuing one and not statute-barred. On appeal, the Court of Appeal called the trial judge's decision 'outlandish' because the words he relied on in reaching his decision, that is, 'unless the wrong or act is a continuing one,' are not to be found in Section 4 of th Law. The Court of Appeal held that the cause of action accrued with the cessation of the Appellants act, which resulted in the damage. It held further that the trial judge was a continuing one. There might admittedly have been some weakness in the pleading of the Respondents' case by their counsel in the *Gulf v Oluba* case. But even so, there was sufficient ground for the Court of Appeal taking the opposite view, and not abandoning such a vast quantity of land to permanent ecological ruin, when the appellant could have restored the land.[16] In *Allar Irou v.*

[10] Scott C. Whitney, 'The Case for the Creation of Specialized Environment Court System' (1973) 14 (3) *Williams & Marry Law Review* 485http://scholarship.law.wm.edu/wmlr/vol14/iss3/2assessed 20 November, 2018. 13.32HRS

[11] Godwin Uyi Ojo and Nosa Tokunbor, Access to Environmental Justice in Nigeria: The Case for a Global Environmental Court of Justice (Friends of the Earth International 2016) 7.

[12] Whitney (n 12) 504

[13] (2015) LPELR-24750 (SC)

[14] (2005) 9 NWLR (pt 931), (2005) 3- 4 SC 137

[15] (2003) FWLR (pt 145) 712

[16] Rufus Akpofurere Mmadu, 'Judicial Attitude to Environmental Litigation and access to Environmental Justice in Nigeria: Lessons from Kiobel' (2013) 2(1) Afe Babalola University: Journal of Sustainable Development Law and Policy 149, 166.

Shell B.P Development Company (Nigeria) Limited[17] the court denying the injunction stated that 'to grant the injunction would amount to asking the defendant to stop operating in the area…and cause the stoppage of a trade… mineral which is the main source of the country's revenue'. Such consideration is not in the interest of the facts of the case presented to the court.[18] This is also reflected in most environmental cases involving Shell Petroleum Development Company (Nigeria) Ltd where regular courts grant paltry sums as compensation for environmental infraction. In *Jonah Gbemre v Shell PDC Ltd and Ors*[19] although the court granted the reliefs of the Applicants, the Judge made no award of damages, costs or compensation whatsoever. Also, in the case *Shell Petroleum Development Company of Nigeria Ltd V Chief G.B.A Tiebo VII & Ors*[20] the court granted five million naira as damages with no order as to the cleanup of crude oil spill.

Insufficient Continuing Legal Education

Insufficient continuing legal education compromises judicial officers' ability to appreciate the expanding frontiers of specialized areas of the Law including environmental law.

Restricted Standing

Standing (*locus standi*) – the qualifications one must have in order to file or participate in a lawsuit – is prescribed by legislation, court rules and case precedent. Many general court systems have the practice of restricted standing (*locus standi*) which poses a challenge to environmental justice. The judicial attitude in regular court is that a plaintiff who sues for damage arising from an environmental abuse must show that he suffered damages, he must establish an interest peculiar to him and not an interest which he shares in common with general members of the public; otherwise the action fails. In *Shell Petroleum Development Company Nig. Ltd V Chief Otoko and others*[21] the respondents who were plaintiffs at the Bori High Court in Rivers State claim the sum of N499,855.00 as compensation for injurious affection to and deprivation of use of the Andoni Rivers and creeks as a result of thee spillage of crude oil. The action was brought in a representative capacity. The Court of Appeal held that: (a). it is essential that the persons who are to be represented and the person(s) representing them should have the same interest in the cause of matter; (b). Given common interest and a common grievance a representative suit would be in order if in addition to the relief sought it is in its nature beneficial to all whom the plaintiff proposes to represent. The Court rejected the purported representative action. In *Adediran and Anor v Interland Transport Ltd*[22] the appellants as residents of the Ire-Akari Housing Estate, Isolo, *inter alia* brought an action for nuisance due to noise, vibrations, dust and obstruction of the roads in the estate. The Supreme Court dealt with the common law restrictions on the right of a private person to sue on a public nuisance. The Court held that in the light of section 6(6)(b) of the 1999 Constitution, a private person cannot commence an action on public nuisance without the consent of the Attorney-General, or without joining him as a party and struck out the action as it was wrongly brought in a representative capacity[23].

Inadequate Resources/Facilities

Poor staffing, low budget and inadequate access to judicial authorities or precedents on environmental issues by the judicial officers of the regular courts results in jaundiced judicial decisions.

Cost

High cost for litigant in court fees, attorney fees, expert witness fees, security bonds and appeal strengthen the calls for creation of SECTS.

[17] Suit No.W/89/71 (Warri High Court, 26 November 1973)
[18] Mmadu (n 18) 149, 169
[19] (2005) Suit No. FHC/B/CS/53/05
[20] Ibid
[21] (1990) 6 NWLR (pt 159) 693
[22] (1991) 9 NWLR (pt 214) 155
[23] See also *Amos v Shell BP PDC Ltd* (1974) 4 ECSLR 48

Lack of Flexibility
Lack of flexibility in court rules and procedures which makes it impossible to respond to international environmental laws and standards, to provide ADR options, to encourage public participation in the process of decision making to ensure public access to information has led to the calls for the creation of SECT.

4. Arguments for and against the Creation of SECTs

The preliminary question to be resolved is whether some form of environmental court or system of court is necessary or desirable in the sense that such specialized court or system would produce significant benefits. If some demonstrable need or significant benefits over the status quo are found to exist, then it becomes necessary to determine how the new entity should function and what its structure should be to meet such need or achieve such benefits.[24] In fairness, creation of an ECT may not be the ideal solution to improve environmental justice and the rule of law when they are found lacking. There are advocates both for and against specialization[25] and there are compelling reasons given by both sides of the pro-con debate.[26]

Arguments for the Creation of SECTs
Proponents of ECTs cite the following 'pro' arguments in favor of specialized environmental adjudication bodies:
Expertise: It has been argued that creation of specialized ECTs would ensure expert decisions are made.
Efficiency: Creation of specialized ECTs would ensure greater efficiency, including cheaper and quicker decisions.
Visibility: Specialized ECTs are the most visible way government can show support for the environment and sustainability and provides an easily identifiable forum for the public.
Cost: SECTs would reduce the cost, time and burden of litigants proving their cases as the judicial officers are already knowledgeable about the issues sought to be canvassed.
Uniformity: Establishing specialized ECTs would help achieve uniformity or consistency of decisions in environmental matters, so litigants know what to expect.
Standing: Specialized ECTs can adopt rules and procedures that expand standing, for individuals, environmental related NGOs and public interest litigation (PIL). (China has recently adopted legislation expanding standing for environment NGOs and public interest litigators in their ECs, as have other nations). Instead of the present rigors of having to prove that the litigant is a direct victim of the environmental infraction.
Commitment: Specialized ECTs would also enhance government interest in the environment and demonstrates government's commitment to the environment and sustainability.
***Accountability*:** It can encourage enhanced accountability of governments and other multinational corporations operating in Nigeria to the public.
Prioritization: Specialized ECTs have the ability to prioritize of environmental matters and accommodate environmental emergency cases.
***Creativity*:** Specialized ECTs may adopt rules allowing for innovative and flexible procedures and remedies.
Alternative Dispute Resolution (ADR): ECTs have the ability to employ ADR and other non-adversarial dispute resolving processes, including restorative justice, to provide win-win enforceable agreements.
***Issue and Remedy Integration*:** Specialized ECTs can deal in a more integrated way with multiple laws and encourages the integration of civil, criminal and administrative issues, remedies and enforcement under one roof, instead of having a multiplicity of issues for dispute resolution. It will reduce the multiplicity of actions with increased costs to the litigant.
***Public participation*:** Creation of specialized ECTs will assist public enlightenment process and increase the involvement of the public, reinforcing one of the critical access pillars to justice.

[24] Whitney (n 12) 475
[25] George Pring and Catherine Pring, *Environmental Courts and Tribunals. The Policy Makers Guide*. (UNON/Publishing Services Section 2016) 13.
[26] Ibid 13 – 14

***Public Confidence*:** Establishing specialized ECTs would lead to a boost in public's confidence in the judicial system and the government's ability to protect their environmental rights.
***Problem Solving*:** Establishing specialized ECTs will encourage judges to look beyond narrow application of rule of law ('Right Wrong') and craft creative new solutions.
***Judicial Activism*:** Specialized ECTs will encourage judicial activism in environmental matters as the judges can apply new international principles of environmental law and natural justice as well as national/local laws in arriving at decisions.
***Investigation*:** Specialized ECTs may be authorized to undertake investigations of environmental problems on its own initiative without a case being brought.

Argument against the Creation of SECTs
Opponents of specialization in general and ECTs in particular raise the following 'con' arguments in support of maintaining a non-specialized, general court approach to environmental dispute resolution,[27].
***Competing Needs*:** Apart from environmental issues, there are other areas of the law that arguably need specialization as much or more than environmental law and there is no reason for environmental matters to be singled out for preferential treatment.
***Marginalization*:** Creation of specialized ECTs may lead to marginalization of environmental cases as it takes environmental cases out of the mainstream and may mean less attention, less qualified judges, less budget and limited opportunities for judicial advancement, thus crippling the ECTs effectiveness.
Fragmentation: The establishment of specialized ECTs could lead to the fragmentation of the legal system and isolates important environmental issues and judges.
***Internal Reform*:** Specialized ECTs may be isolated in the process of reforming the existing general court system.
***Insufficient Caseload*:** There may not be enough environmental cases to justify the creation of an ECT.
Cost: Creating an entirely new agency or court can entail substantial additional budget for judges, staff, space, equipment, training and oversight, which would increase the burden of running courts especially in view of the financial dire state Nigeria is navigating at the moment.
***Multiple Demands*:** Creation of specialized ECTs may open a flood gate of requests by other areas of the law with specialized interests for the creation of their own specialized courts.
Confusion: The public may not understand the law and jurisdiction of the SECT, and therefore be confused about where to file a complaint.
What is 'Environmental'? The public may have difficulty in defining what is an 'environmental case and how to handle cases with both environmental and non-environmental issues as environmental cases can involve non-environmental and non-environmental cases may have a subsidiary environmental issue.
Capture: Special interests – be they developers, government agencies or environmental advocates – will be able to more easily influence and control a small ECT outside the general court system.
It has also been canvassed that environmental justice cannot only be obtained in a strictly designate court or tribunal.
***Judicial Bias*:** Specialist judges may be advocates and biased in favor of environmental protection, not balanced and comprehensive in their analysis which could be to the detriment of the Respondent.
***Judicial activism*:** A SECT will encourage the judges to overstep their judicial authority and act like legislators and policy makers.
***Training Gap*:** there are not enough judges or lawyers with the needed expertise to warrant the creation of specialized SECTs.
Judicial Careers: The narrow focus will be a 'dead end' for a judge's career. Assigning judges to a specialized court or chamber can limit their professional growth and advancement to higher courts that may not be specialized.[28]
***'Inferior' Courts*:** SECTs could be treated as an inferior court or tribunal with lower status than the general courts and 'Lesser' judges with consequently less power. Apart from creating SECTs with independent judicial branch, highly paid staff and large budget, SECTs can be simple with rotational judges sitting periodically, some of their jurisdiction could be strictly environmental while others could

[27] Ibid 15.
[28] Ibid 16

be including civil, criminal and administrative issues. Another opposition concern, expressed by one expert survey, is that SECTs could foster 'a patronage culture of providing sinecure, post-retirement assignments to former (general court) judges, senior administrators or technocrats[29].

5. The Nigerian Situation

In Nigeria, there are no specialized ECTs on the national level. The National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007 empowers the Agency, subject to the provisions of the Constitution of the Federal Republic of Nigeria, 1999 and in collaboration with relevant judicial authorities, to establish mobile courts to expeditiously dispense case of violation of environmental regulation.[30] In line with the aforementioned provision, some states have constituted environmental courts either at the state level or at the local government level as mobile court which are also referred to as 'Environmental Sanitation Courts'.[31] However, it is pertinent to point out that for far reaching and improved environmental governance, it is essential that specialized ECTs be established in Nigeria. Specialized Courts and Tribunals provide an ideal forum for assuring quality environmental justice and consequently, the achievement of ecologically sustainable development. These specialized courts or tribunals may be sited in jurisdictions prone to certain environmental hazards or alternatively environmental trained judges and decision makers can travel for site visits and conduct hearings on site as practiced in Ontario, Queensland, New Zealand and Philippines. According to the Prings, 'there is no one best model for an ECT – no 'one-size-fits-all' design. Every Environmental Court (EC) and Environmental Tribunal (ET) reflects its national character, culture and legal system[32]. This is understandable because what is 'best' for each country is an ECT that fits that country's unique ecological, historical, legal, judicial, religious, economic, culture and political environment. It is the model that results in the most effective dispute resolution process with access to justice for all affected interests. What will work best should be explored in an open, transparent planning process that permits thorough analysis.[33] Consequently, the Nigerian court system could be fragmented to establish specialized ECTs. Environmental courts or tribunals could be established as individual judges or panel of judges within the courts of general jurisdiction ('green benches' or 'lists') or as a separate independent court as is the case of the National Industrial Court.[34] Whatever type of forum is chosen, independence from undue political influence is a critical best practice for achieving a fair, just, and respected ECT. Ideally, legal jurisdiction should be broad enough to permit integrated review of both land use and environmental areas of concern and should incorporate civil, criminal and administrative powers. Anticipated case volume, based on a careful review of past experience, will drive the initial structure of an ECT, and can permit starting small and adjusting procedures as caseload grows or diminishes.[35]

6. Challenges to the Creation of Specialized ECTs in Nigeria

Lack of Political will and leadership strength: The ECT will flounder with no political will and without strong leadership. Lack of political will is occasioned by the economic and pecuniary interest of government in various joint venture agreements with multinational corporations whose operations cause environmental degradation. The creation and maintenance of ECTs is impracticable without strong leadership. The results are lax environmental laws and non-justiciable environmental rights. In Nigeria, lack of political will and strong leadership is evident in our environmental laws, most of which are not deterrent enough. The fear of economic reprisals by thee multinational corporations seems to kill efforts to establish a national environmental court in Nigeria. Also, the antithetical effect of section

[29] Ibid 14
[30] S 8(f)
[31] In 2017, the Lagos State Government tried to establish a division of environmental court to sit at both the High Court and Magistrate Court to try defaulters of sanitation laws. See Victor Gbonegun, 'Lagos to Establish Environmental Courts, Trust Fund' The Guardian: property (Lagos, 18 September, 2017) http://t.guardian.ng/property/lagoss-to-estaablish-environment-courts-trust-fund/ assessed 5 May 2020; in 'Cross River Government Establishes Mobile Court to try sanitation offenders' Daily Post (Calabar, 24 January 2018) www.dailypost.ng/2018/01/24/assessed on 18 September. 2018.
[32] Prings and prings (n 5) 20.
[33] Ibid
[34] See s254 CC of the Constitution of the Federal Republic of Nigeria 1999 (as amended) Cap C23 LFN 2004
[35] Prings and Prings (n 9) xvi

6(6)(c) of the Constitution[36] on the only constitutional provision on the environment, that is, sections 20 results in non-justifiability of environmental rights.

Illiteracy of the affected population: Community education and awareness is the cornerstone of an effective ECT and an important element to develop in the planning process. Illiteracy of the affected populace may lead to lack of public demand for environmental justice. Lack of public demand will lead to low case load for the courts.

Opposition arguments – powerful opposition from the judiciary, the administration and business interests thwart ECT creation. Also, opposition of the existing judiciary to specialization can kill efforts or result in authorization but no establishment.

Physical access: Physical distance in a court's jurisdiction makes access prohibitively expensive and time-consuming and requires parties to take time off from work to participate in an environmental case.

Inadequate or corrupt enforcement agencies – without effective enforcement agencies, an ECT may be powerless.

Inadequate environmentally trained judges and decision makers- Inadequacy of judicial officers who are environmentally knowledgeable which results from insufficient judicial training capacity, through a judicial training academy, university, IGO or NGO with environmental education expertise and commitment leads to failure of ECTs.

Lack of or Inadequate environmentally trained attorneys – without a base of environmental lawyers the ECT may not get cases or have them presented well.

8. Conclusion and Recommendation

It is not enough to adopt environmental laws; until non-governmental organizations or public prosecutors can seek judicial enforcement of these laws and public environmental rights, the legislation and treaties languish merely as good intentions. An honest and effective judicial programme is essential to the realization of environmental protection.[37] An ECT is the 'right' solution to improve environmental justice, the rule of law, sustainable development, community credibility and 'just, quick and cheap' environmental dispute resolution. An ECT is better positioned than an ordinary court or tribunal to develop innovative remedies and holistic solutions to environmental problems[38]. Today, in their efforts to deal with these increasingly complex environmental/developmental conflicts and to improve access to environmental justice, many nations and subnational jurisdictions have created successful ECTs while others are considering establishing them or reforming the ones they already have.[39] Although the creation of an ECT or any new institution does not necessarily guarantee a better outcome in terms of sustainable development, the improvements in efficiency, competence, and transparency afforded by an ECT can enhance environmental justice. Government should embrace and priorities the observance of international principles of environmental law and sustainable development goals even in their quest for pecuniary gains from multinational corporations. The result would be the assurance of judicial access for environmental law matters. Partnership of the judiciary with civil societies, advocacy groups, the mass media, schools, religious organizations and community leaders will ensure public enlightenment on the rights to environmental justice. Traveling courts (Mobile courts), traveling judges, electronic filings, night court, and testimony by phone, video, or teleconferencing, making special accommodations for the disabled, for persons with language barriers and for differing cultural values will go a long way to abridge the barrier of physical distance.

[36] 1999 Constitution of the Federal Republic of Nigeria (as amended)
[37] Nicholas .A. Robinson, 'Ensuring Access to Justice through Environmental Courts' (2012) 29 (2) Pace Environmental Law Review 386 <http//digitalcommons.pace.edu/pelr/vol29/iss2/1>_assessed 18 September, 2018.
[38] Don .C. Smith, 'Environmental Courts and Tribunals: Changing Environmental and natural Resources law Around the Globe' (2018) 36 (2) Journal of Energy and Natural Resources law 137 – 138
[39] Pring and Pring (n 4) 307

Machineries and strong institutional frameworks should be set up to curb corruption in all environmental enforcement departments and agencies. There is a need for education for judges and other members who are to be appointed to a specialized ECT as well as continuing professional development of judges and other ECT members during their tenure. This is achieved through UN Environment Programme, judicial training academy, university, ECT conference, IGO or NGO with environmental education expertise and commitment. This same applies with respect to ECT attorneys and prosecutor. In spite of the drawbacks of the regular courts systems in view of the fact that environmental cases are not so many they can be accommodated within the regular courts.