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# IMPROVING ENVIRONMENTAL PROTECTION IN NIGERIA: A REASSESSMENT OF THE ROLE OF INFORMAL INSTITUTIONS

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## ABSTRACT

The success of an approach or strategy for the implementation of legal instruments in one country does not imply that the same approach or strategy would be successful when replicated in another country because there is no 'one-size-fits-all approach' to policy implementation. The rationale for the above assertion is that institutions play a major role in the success of any policy. Undoubtedly, institutional approach provides a solid foundation to explore the interplay between formulation of policies and their effective implementation. Therefore, for an environmental policy to be successfully implemented, the institutional peculiarity of the country must be considered. This article explores the role of informal institutions (embedded institutions) in policy implementation focusing on Sub-Saharan Africa with specific focus on Nigeria. It provides theoretical basis for an informal institutional approach in environmental policy implementation. This article suggests that the institutional approach can be extended to environmental protection and management through informal institutions.

**Keywords:** Environment, Institutions, Informal institutions, Indigenous knowledge, Taboos, Environmental protection

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## 1. INTRODUCTION

In practice, providing a workable legal framework for environmental protection could be challenging even if a similar legal framework was successful in another jurisdiction. This is important in jurisdictions where plural legal systems operate because there is a tendency of policy failure if implementation is reliant exclusively on formal institutions without due recourse to informal institutions. For example, despite the plethora of environmental regulations and laws in Nigeria, implementation has remained a challenge.<sup>1</sup> There are a glut of laws and environmental regulations protecting the Nigerian environment.<sup>2</sup> Some of the laws include enactments on gas flaring, the Environmental Impact Assessment Act 1992, National Oil Spill Detection and Response Agency Act (NOSDRA Act) 2006, the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007, the Criminal Code Act, Oil in Navigable Waters Act 1968 and the recently passed Petroleum Industry Act 2021 amongst other laws and regulations. Arguably, the environmental protection regime in Nigeria is underpinned by a plethora of laws. However, these laws are buffeted by implementation challenges including environmental problems in the Niger Delta such as oil pollution, gas flaring and human rights violations.<sup>3</sup> This is against the backdrop of the lack of political will of the Nigerian government in enforcing or

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<sup>1</sup> Nelson Ojukwu-Ogba, 'Legal and regulatory instruments on environmental pollution in Nigeria: much talk, less teeth' (2006) 8 *International Energy Law and Taxation Review* 201; Eghosa Ekhatör, 'Environmental Protection in the oil and gas industry in Nigeria: the roles of governmental agencies' (2013) 5 *International Energy Law Review* 5, 196; Osamuyimen Enabulele, 'Mitigating the Effects of Environmental Degradation in the Oil Industry: An Assessment of Government Compensation Scheme in Nigeria' (2020) 16 *Law Env't & Dev. J.*, 76.

<sup>2</sup> Generally, see Adebola Ogunba, 'An appraisal of the evolution of environmental legislation in Nigeria' (2015) 40 *Vt. L. Rev.* 673; Damilola S. Olawuyi, *The Principles of Nigerian Environmental Law* (Afe Babalola University Press, 2015); Ekhatör *ibid.*

<sup>3</sup> Generally, see Olawuyi *ibid.*

implementing laws on environmental protection in the oil and gas industry. This is also accentuated by the plethora of challenges inherent in the formal institutions on environmental protection in Nigeria.<sup>4</sup> Thus, due to the failings of the extant environmental protection regime in Nigeria, there is the need to search for solutions in the informal institutions in the country.

This article explores an institutional approach to the enactment and implementation of environmental laws and policies through informal institutions in Nigeria. Informal institutions can be defined “as socially shared rules, usually unwritten, that are created, communicated, and enforced outside of officially sanctioned channels.”<sup>5</sup> This article draws insight from the role of informal institutions in the implementation of environmental policies. Analysis of informal institutions in policy implementation advocates the integration of social norms (belief and customs) inherent in a community into formal regulations. This is because it is common knowledge that implementation of formal rules relies on their compatibility with prevalent societal norms.<sup>6</sup> Hence, this article examines and analyses the various levels of institutions (including embedded institutions, institutional environment, institutions of governance and short-term resource allocation) and their potential influence on implementation of legal frameworks.

This article is divided into six parts including the introduction. After this introduction, Section II explores the concept of institutions with the aim of clarifying informal institutions’ long-lasting influence over other levels of institutional analysis. It also discusses the importance of informal institutions in policy implementation. Section III examines the potential and importance of informal institutions in advancing environmental protection in African societies. It explores African informal institutions vis-à-vis environmental protection and management in Nigeria. Section IV provides a critical analysis of informal

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<sup>4</sup> Also see, Afe Babalola and Damilola S. Olawuyi, ‘Advancing Environmental Education for Sustainable Development in Higher Education in Nigeria: Current Challenges and Future Directions’ (2021) 13 (19) *Sustainability* 10808.

<sup>5</sup> Gretchen Helmke and Steven Levitsky, ‘Informal institutions and comparative politics: A Research Agenda’ (2004) 2 (4) *Perspectives on politics* 725-740, 727.

<sup>6</sup> Robert D. Cooter, ‘Three effects of social norms on law: expression, deterrence, and internalization’ (2000) 79 (1) *Or. L. Rev.*, 1, 2.

institutional approach to environmental management legislation in Nigeria. Section V provides recommendations on how those challenges can be addressed to enhance the utility and value of informal institutions in African societies. Section VI is the concluding section.

## 2. INSTITUTIONS: CONCEPTUAL ANALYSIS

In an institutional analysis, it is first important to ascertain the meaning of the word ‘institutions.’ Institutions in this context should not be misconstrued to connote organizations such as firms, government agencies, industrial associations, and hospitals.<sup>7</sup> As with most academic concepts, institutions have no precise definition as the concept is broad.<sup>8</sup> However, Menard and Shirley<sup>9</sup> define institutions as:

The written and unwritten rules, norms and constraints that humans devise to reduce uncertainty and control their environment. These include (i) written rules and agreements that govern contractual relations and corporate governance, (ii) constitutions, laws and rules that govern politics, government, finance, and society more broadly, and (iii) unwritten codes of conduct, norms of behavior, and beliefs.

This set of rules or constraints, be they formal or informal, are backed by sanctions to penalize violators.<sup>10</sup> The primary purpose of institutions is the reduction of uncertainty in a society, which is achieved through establishing a stable structure

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<sup>7</sup> Thráinn Eggertsson, ‘Quick guide to New Institutional Economics’ (2013) 41 (1) *Journal of Comparative Economics* 1

<sup>8</sup> Richard R. Nelson & Bhaven N. Sampat ‘Making sense of institutions as a factor shaping economic performance’ (2001) 3(5) *Revista de Economía Institucional* 17

<sup>9</sup> Claude Menard and Mary M. Shirley, ‘What is New Institutional Economics’ in Claude Menard and Mary M Shirley (ed), *Handbook of New Institutional Economics* (Springer 2005) 1

<sup>10</sup> Douglass C. North, *Institutions, Institutional Change and Economic Performance* (CUP 1990) 4

for the interaction of the populace.<sup>11</sup> Institutions serve as tools to provide frameworks for everyday life to proceed.<sup>12</sup> This suggests a person's conduct in every society is regulated by institutions, such that non-compliance attracts sanctions which act as checks.

A treatise on institutions is not complete without elucidating the different levels of institutional analysis. Williamson portrays four levels of interconnected institutional analysis.<sup>13</sup> At the apex is the *embedded institutions* that encompass informal institutions (norms, mores, customs, and traditions). At this level, religion performs a fundamental role. These fundamental socio-cultural institutions change slowly as adaptation takes millennia because they are difficult to alter.<sup>14</sup> The manner informal institutions evolve has remained impenetrable, which makes it less prone to deliberate human manipulations.<sup>15</sup>

The second level is the *institutional environment*. The institutional environment operates at the macro level.<sup>16</sup> It constitutes the background constraints or rules of the game, consisting of formal rules, especially property right (the executive, legislative, judiciary and bureaucratic functions of government).<sup>17</sup> Institutional environment describes the conventional rules that set the basis for societal activities.<sup>18</sup> At this level, change occurs faster than in the previous level and it takes at least a decade for there to be an adjustment.<sup>19</sup>

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<sup>11</sup> North *ibid.* Peter G. Klein, 'New Institutional Economics' in *Encyclopedia of Law and Economics* (2000) 456; Douglass C. North, 'Institutions' (1991) 5 (1) *Journal of Economic Perspectives* 97.

<sup>12</sup> North (n 10).

<sup>13</sup> Oliver E. Williamson, 'The New Institutional Economics: Taking stock, looking ahead' (2000) 38 (3) *Journal of Economic Literature* 595, 596

<sup>14</sup> Williamson *ibid*

<sup>15</sup> Douglass C. North, *Understanding the Process of Economic Change* (Princeton University Press 2005) 50

<sup>16</sup> Lance E. Davis, Douglass C. North & Cynthia T. Smorodin *Institutional Change and American Economic Growth* (CUP 1971) 6; Williamson (n 13).

<sup>17</sup> Williamson (n 13) 598.

<sup>18</sup> Davis et al (n 16); Oliver E. Williamson, 'The Evolving Science of Organization' (1993) 149 (1) *Journal of Institutional and Theoretical Economics* 36, 46

<sup>19</sup> Paul L. Joskow, 'Introduction to New Institutional Economics: Report Card' in Eric Brousseau and Jean-Michel Glachant (eds), *The New Institutional Economics: A Guidebook* (CUP 2008), 8.

*Institutions of governance* or *institutional arrangements* are the third level of institutional analysis, which represents the specific guidelines or governance structures designed to facilitate economic relationships.<sup>20</sup> They operate at the micro level and represent the arrangement that governs interaction within an economic unit.<sup>21</sup> Institutions of governance have been tagged as the play of the game.<sup>22</sup> They refer more to the modes of managing transactions and include market, quasi-market, and hierarchical modes of contracting. Rapid change occurs more frequently at this level than in previous levels and occurs in less than a decade.<sup>23</sup>

Lastly, the fourth level is the *short-term resource allocation* or *institution of resource allocation and employment*.<sup>24</sup> This is the level neoclassical analysts operate at.<sup>25</sup> It focuses on issues relating to pricing, wages, costs, and quantities bought and sold, as well as the implications of market structures.<sup>26</sup> Change is continuous at this level because it generally relates to daily operations.<sup>27</sup>

The different levels of institutional analysis are illustrated in a pyramid developed by Williamson.<sup>28</sup> In the pyramid, solid arrows that link a higher to a lower level indicate that the higher level imposes constraints on the immediate level below. The reverse arrows that link lower levels with higher levels are dashes indicating feedbacks.<sup>29</sup> This suggests that institutions at the higher level have strong influence over institutions at the lower level. As informal institutions stand at the top it exerts a level influence over other institutions, its long period of

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<sup>20</sup> Klein (n 11) 456.

<sup>21</sup> Davis et al (n 16) 7; Mylène Kherallah, & Johann F. Kirsten, 'The New Institutional Economics: Applications for Agricultural Policy Research in Developing Countries' (2002) *Agrekon*, 41(2), 110, 112; Williamson (n 13)

<sup>22</sup> Oliver E. Williamson, 'Transaction Cost Economics: How it works; where it is headed' (1998) 146 (1) *De Economist* 23

<sup>23</sup> Joskow (n 19).

<sup>24</sup> Joskow *ibid*

<sup>25</sup> Williamson (n 13).

<sup>26</sup> Joskow (n 19).

<sup>27</sup> Williamson (n 13).

<sup>28</sup> Williamson (n 13) 597.

<sup>29</sup> Williamson (n 13).

adaption and the difficulty in altering it, makes it more stable compared to other institutions.

Strong and effective institutions are important to environmental protection because they promote rule of law, environmental justice, and good governance practices amongst others thereby enhancing environmental sustainability.<sup>30</sup>

As this article focuses on the importance of informal institutions in environmental policy implementation, the next section explores how informal institutions complement formal rules to enhance efficiency.

### 3. INFORMAL INSTITUTIONS AND POLICY IMPLEMENTATION

From Williamson's analogy of institutional analysis, it can be deduced that there is a tendency for informal institutions to structure human conduct before formal institutions are considered.<sup>31</sup> Regardless of the status of any society, advanced or more ancient, the citizens impose some sort of constraints upon themselves to coordinate their interactions.<sup>32</sup> As the literature suggests, informal institutions develop spontaneously and endogenously to address specific challenges.<sup>33</sup> When informal institutions are adopted by the community, they possess the potential to become 'locked in' within a long period and transform to an integral part of tradition, cultural heritage, or the religious beliefs of the community.<sup>34</sup>

Informal institutions are vital in the sense that the implementation of novel formal rules is commonly reliant on

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<sup>30</sup> Generally, see, Ibrahim Ayoade Adekunle, 'On the search for environmental sustainability in Africa: The Role of Governance' (2021) 28 (12) *Environmental Science and Pollution Research* 14607-14620.

<sup>31</sup> Williamson (n 13).

<sup>32</sup> North (n 10).

<sup>33</sup> Valentin Seidler, 'The Role of Informal Institutions in Building the Institutional Framework of an African State: The Case of the Kanuri in Nigeria' (2011) < The Role of Informal Institutions in Building the Institutional Framework of an African State: The Case of the Kanuri in Nigeria by Valentin Seidler :: SSRN>accessed 10 May 2021; North (n 10) 37.

<sup>34</sup> Seidler *ibid*; North *ibid* 37.



their compatibility with the prevalent social norms in society.<sup>35</sup> There is a common misconception that societal conduct is governed solely by formal institutions, without acknowledging the prevalence of informal institutions.<sup>36</sup> But informal institutions are important and do not play a lesser role than formal rules,<sup>37</sup> as they exercise a lifelong grip on the modes of conduct for individuals in a society.<sup>38</sup> For example, Cooter<sup>39</sup> employed several illustrations to ascertain how formal law is dependent on inherent informal institutions for its effectiveness by examining the three effects of informal institutions, namely expression, internalization, and deterrence. Expression identifies that the effectiveness of formal laws emanates from the manner such legal instruments are expressed, while internalization operates at the level or extent laws are accepted and can be improved by aligning formal laws with societal norms.<sup>40</sup> Deterrence manifests in the aligning of social norms with formal laws, resulting in increased effectiveness because laws can utilize penalties prescribed by the state to complement social sanctions.<sup>41</sup> These three effects of informal institutions relate to the functions of law by pronouncing obligation, justifying it, and sanctioning wrongdoers.<sup>42</sup>

Indeed, a set of integral formal institutions governs the administration of all societies. In some instances, the creation of nation states brought about the codification of some sets of norms which became known as formal institutions or laws, while those that were not codified were regarded as mere informal institutions.<sup>43</sup> England had the opportunity to develop its formal institutions from society's norms as evidenced by the

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<sup>35</sup> Eggertsson (n 7).

<sup>36</sup> North (n 10) 36.

<sup>37</sup> North (n 10) 6.

<sup>38</sup> Williamson (n 22); Williamson (n 13).

<sup>39</sup> Cooter (n 6). Also see Robert Axelrod, 'An Evolutionary Approach to Norms' (1986) 80 (4) *American Political Science Review* 1095.

<sup>40</sup> Cooter (n 6.)

<sup>41</sup> Cooter (n 6); Franklin N. Ngwu, 'Promoting formal financial inclusion in Africa: An institutional re-examination of the policies with a case study of Nigeria' (2015) 16 (4) *Journal of Banking Regulation* 306.

<sup>42</sup> Cooter (n 6) 3.

<sup>43</sup> Ngwu (n 41).

English common law.<sup>44</sup> For instance, the new merchant law (*lex mercatoria*) provides the sequential development of an aspect of the English formal institutions from informal institutions.<sup>45</sup> However, not every nation has had the opportunity to build up their formal laws through sequential development from informal institutions. Most developing countries and former colonies of western nations fall into this category. This provides the justification for considering significantly different social contexts of various countries when attempting to implement environmental regulations.<sup>46</sup>

Jha and Whalley rightly observed that consideration of the social context of different countries is particularly important in developing countries, where their environmental management schemes usually depend on informal institutions.<sup>47</sup> As such, there is the tendency for informal institutions to “be more effective than modern state laws [prevalent in African States] because their normative foundations were embedded in traditional society and not imported from outside.”<sup>48</sup> Prior to the colonial era, informal institutions provided the tools to adequately resolve all conflicts that arose in African societies.<sup>49</sup> To this end, the relevance of informal institutions in African nations to meet the challenges of environmental policy and management, cannot be overstated.

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<sup>44</sup> Raoul C. Van Caenegem, *Judges, Legislators and Professors: Chapters in European Legal History* (CUP 1986) 1

<sup>45</sup> Robert D. Cooter, *Decentralized law for a complex economy: the structural approach to adjudicating* (1996). However, see Eghosa Ekhaton, ‘AFCFTA: An emergent concept of *Lex Mercatoria Africana*?’ *Afronomics Law Blog*, September 19, 2020, online at: [AFCFTA: An emergent concept of ‘Lex Mercatoria Africana’ | Afronomics law for discussion of African conceptualisation of \*lex mercatoria\*](#).

<sup>46</sup> Andrew Farmer, *Handbook of Environmental Protection and Enforcement: Principles and Practice* (Earthscan 2012) 2

<sup>47</sup> Raghendra Jha & John Whalley, ‘The Environmental Regime in Developing Countries’ in Carlo Carraro and Gilbert E. Metcalf (eds), *Behavioural and Distributional Effects of Environmental Policy* (University of Chicago Press, 2001) 234

<sup>48</sup> Werner F. Menski, *Comparative law in a global context: the legal systems of Asia and Africa* (CUP 2006) 420

<sup>49</sup> Rene David, & John E.C. Brierley, *Major Legal Systems in the world today: An Introduction to the Comparative Study of Law* (Simon and Schuster 1978) 513

### **3.1 Some Features of Informal Institutions in African Societies**

In Africa, informal institutions remain incredibly significant in guiding the behaviour of people in their respective societies.<sup>50</sup> This is evident in the immense pride people take in maintaining well established informal institutions.<sup>51</sup> There is a strong connection between informal institutions and the existence of people in African societies, as it is easy for people to relate to the conduct expected of them in conforming to informal institutions.<sup>52</sup> While African informal institutions have common features in terms of principles,<sup>53</sup> procedures, and institutions, they differ in such a manner that reflects the advantages of those differences in recognizing the specificities of the different environments.<sup>54</sup>

African informal institutions evolved from social practices, which over time became accepted and obligatory to the specific community.<sup>55</sup> It is a form of chthonic laws, basically concerned with “people who live ecological lives by being chthonic... which means that they live in or in close harmony with the earth.”<sup>56</sup> It is a form of customary norms and practices developed over a long period of time. The main influences on informal institutions in Africa are social systems, the environment and oral tradition.<sup>57</sup> To make or alter existing informal institutions is devoid of any legislative process, as the responsibility to do so is strictly within the preserve of the community.<sup>58</sup> They are normally localized, expressed in simple language and, to a large extent, every inhabitant of the society is

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<sup>50</sup> Gordon R. Woodman & Akintunde O Obilade, *African Law and Legal Theory* (Dartmouth Publishing Company 1995) xiv

<sup>51</sup> Peter de Cruz, *Comparative law in a changing world* (2<sup>nd</sup> edn, Cavendish Publishing 1999)

<sup>52</sup> Menski (n 48).

<sup>53</sup> David & Brierley (n 49).

<sup>54</sup> Anthony N. Allott, ‘African law’ in J.D.M. Derret (ed), *An Introduction to legal Systems* (Sweet & Maxwell 1968)

<sup>55</sup> T.W. Bennett, *Customary law in South Africa* (Juta 2004).

<sup>56</sup> H. Patrick Glenn, *Legal traditions of the World: Sustainable diversity in law* (5<sup>th</sup> edn, OUP 2014); Edward Goldsmith, *The way: An ecological world view* (University of Georgia Press, 2008)

<sup>57</sup> Allott (n 54).

<sup>58</sup> Anthony N. Allott, *The limits of law* (Butterworths 1980); Anthony N. Allott, ‘People as Law-Makers: Custom, Practice, and Public Opinion as Sources of Law in Africa and England’ (1977) 21 (1) *Journal of African Law* 1

potentially part of the law-making and administration process.<sup>59</sup> These rules are well recognized regardless of the absence of legal documents; however, in some instances, such as the assignment of property, marriage rites or inheritance, they tend to be highly formalized.<sup>60</sup> In the community, some people are specialists in the rules, having acquired the necessary knowledge through frequent involvement in dispute resolutions.<sup>61</sup> However, all members of the community are expected to have knowledge of the informal institutions operational in their community.<sup>62</sup> This implies that no matter the status of an individual in the community, the person is expected to keep abreast of the developments of the informal institutions in regulating various aspects of the community, because ignorance is not accepted as an excuse in breach of the expected code of conduct. In most societies, customary rules are open for debate and susceptible to some forms of modification.<sup>63</sup> This suggests that customary rules are not static but flexible and can be modified to suit the circumstance.

Essentially, African traditional religions have had significant influence on informal institutions in the continent. There is a strong connection between religion and the people's way of life, as religion is deeply rooted in all facets of traditional African societies.<sup>64</sup> In traditional belief-systems, harmony between humans and the higher entities of supernatural forces is essential.<sup>65</sup> African informal institutions firmly underline man's bond with the environment and different divine beings.<sup>66</sup> For instance, having religious and social significance, land is viewed as "a sacred institution given by God for the sustenance of all members of the community, and as such it is deemed to belong

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<sup>59</sup> Menski (n 48) 439.

<sup>60</sup> Allott (n 54).

<sup>61</sup> Allott (n 54).

<sup>62</sup> Allott (n 54).

<sup>63</sup> Menski (n 48) 422.

<sup>64</sup> A. Shorter, 'African Religions' in John R. Hinnells (ed), *A Handbook of Living Religions* (Penguin 1991); John S. Mbiti, *African Religions and Philosophy* (2<sup>nd</sup> edn, Heinemann 1990); Idahosa Osagie Ojo and Eghosa O. Ekhatior, 'Precolonial Legal System in Africa: An Assessment of Indigenous Laws of Benin Kingdom before 1897' (2020) 5 *Umewaen: Journal of Benin and Edo Studies* 38.

<sup>65</sup> Menski (n 48) 422.

<sup>66</sup> George Ayittey, *Indigenous African Institutions* (2<sup>nd</sup> edn, Transnational Publishers Inc 2006)

to the dead, the living, and the unborn.<sup>67</sup> The implication is that land is passed from the ancestors to those currently living, who simply hold the right to usufruct properties within the vicinity and pass it on to future generations.<sup>68</sup> Thus, the living simply hold the land as a sort of ancestral trust for their own benefit and for that of future generations.<sup>69</sup> Therefore, families, clans, villages, and communities are vested with the control over land. Individuals do not have complete control over the land but are merely holders of the right to use it without absolute ownership. Therefore, outright sale of land is prohibited and/or restricted.<sup>70</sup> Ownership rights over land are equal among every member of the community, but the leader of the community holds some privileges over land which enables him to be in control of or be the trustee over communal land.<sup>71</sup> Members of the community are granted a piece of land for farming and residential purposes, while some rights apply to customary tenancy upon a request to the community leader with the consent of the elders of the community, after agreeing to pay the annual tributes.<sup>72</sup>

### **3.2 Informal Institutions, Environmental Protection and Management in Nigeria**

Scholars have demonstrated the significance of appreciating the impact of informal institutions in proffering effective solution to environmental challenges.<sup>73</sup> Like other aspects of human endeavour, African informal institutions can be integral in

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<sup>67</sup> Ehi P Oshio, 'The Indigenous Land Tenure and Nationalization of Land in Nigeria' (1990) 10 Boston College Third World Law Journal 43, 46.

<sup>68</sup> Menski (n 48) 426.

<sup>69</sup> Oshio (n 67).

<sup>70</sup> Gesiye Angaye, 'Who Owns Papa's Land and Oil in Nigeria?' (2002) <[www.ngrguardiannews.com](http://www.ngrguardiannews.com) (biafranigeriaworld.com)> accessed 10 May 2022.

<sup>71</sup> Oshio (n 67).

<sup>72</sup> Oshio (n 67) 46.

<sup>73</sup> Emmanuel M. Akpabio, 'Notions of environment and environmental management in Akwa Ibom State, Southeastern Nigeria' (2006) 26 (4) Environmentalist 227; Charles S. Sokile and Barbara van Koppen, 'Local water rights and local water user entities: the unsung heroines of water resource management in Tanzania' (2004) 29 (15-18) *Physics and Chemistry of the Earth, Parts A/B/C* 1349; Dilys Roe and Fred Nelson, 'The Origins and Evolution of Community-Based Natural Resource Management in Africa' in Dilys Roe, Fred Nelson and Chris Sandbrook (eds), *Community Management of Natural Resources in Africa: Impacts, Experiences and Future Directions* (International Institute for Environment and Development 2009) 5.

environmental protection and management, in what can be termed ‘community-based approach.’ African societies have from earlier times had code of conduct for environmental protection and management.<sup>74</sup> Scholars largely agree that “resource and environmental management practices should incorporate the benefit of local perception, knowledge and the informal institutional arrangements.”<sup>75</sup> Like other local communities around the world, indigenous societies in Africa have over time developed intricate environmental management systems that can be a more effective system to disentangle the environmental problems in Africa.<sup>76</sup>

### **A. Indigenous knowledge**

One of the hallmarks of community-based approaches to environmental management, is their attention to the indigenous knowledge base.<sup>77</sup> Indigenous knowledge is a “cumulative body of knowledge and beliefs handed down through generations by cultural transmission about the relationship of living beings, (including humans) with one another and with their environment.”<sup>78</sup> It is common knowledge that traditional indigenous communities acquire their sociocultural and spiritual identity from the environment, and these knowledge are usually transferred orally to the next generation.<sup>79</sup> The sense of

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<sup>74</sup> Bolanle T. Erinsho, *Environmental Law in Africa* (Kraft 2015); Osamuyimen Enabulele, *Oil Pollution and the Polluter Pays Principle: The Nigerian Experience* (PhD thesis, Glasgow Caledonian University 2018); Enabulele (n 1).

<sup>75</sup> Akpabio (n 73) 227; Eghosa O. Ekhatior, ‘Regulating the activities of oil multinationals in Nigeria: A case for self-regulation’ (2016a) 60 (1) *J. Afr. L.* 1; Yinka O. Omorogbe, ‘Alternative Regulation and Governance Reform in Resource-Rich Developing Countries of Africa in Barry Barton, and others (eds.) *Regulating Energy and natural Resources* (Oxford University Press 2006) 39-65; Faustin P. Maganga, ‘Incorporating customary laws in implementation of IWRM: some insights from Rufiji River Basin, Tanzania’ (2003) 28(20-27) *Physics and Chemistry of the Earth, Parts A/B/C* 995

<sup>76</sup> Christo Fabricius, ‘The Fundamentals of Community-Based Natural Resource Management’ in Christo Fabricius and Eddie Koch (eds), *Rights, Resources & Rural Development: Community-based Natural Resource Management in Southern Africa* (Earthscan 2004)

<sup>77</sup> Fabricius *ibid* 33. Also see Emeka P. Amechi, ‘Customary and Indigenous Approaches to Conservation of Natural Resources in Africa’ (2019) 4 *University of Port Harcourt Journal of Private Law* 211-229, 114

<sup>78</sup> Madhav Gadgil, Fikret Berkes & Carl Folke, ‘Indigenous knowledge for biodiversity conservation’ (1993) 22 (2/3) *Ambio* 151.

<sup>79</sup> Achim Steiner and Gonzalo Oviedo, ‘Indigenous Knowledge and Natural Resource Management’ in Reinhard Woykec, Preeti Shroff-Mehta, and Prasad C Mohan (eds),

harmonious relationship with the environment and the recognition of traditional values, forms the catalyst for indigenous practice.<sup>80</sup>

In Africa, local communities “have evolved ways of living in harmony with their environment through the traditional understanding of nature and natural phenomena.”<sup>81</sup> Ordinarily, in typical African societies, the inhabitants are instinctively aware of the importance of understanding their environment to possess the capacity to predict and manage it in the event of a disaster.<sup>82</sup> Usually, the elders in the community are saddled with the responsibility of foretelling or divining impending disasters and providing guidance on procedure the people are expected to follow to avert or alleviate the disaster.<sup>83</sup> There is a belief that disasters occur when the community is not in the right standing with gods and the spirits.<sup>84</sup> The people are aware that if they do not have the capacity to avert the disaster, they can alleviate the consequences.<sup>85</sup> The practice of traditional foretelling potential disasters is not given credence in contemporary formal consideration, apparently because it is challenging to subject its accuracy to empirical analysis. This does not take away the fact that African societies have developed elaborate indigenous knowledge systems for the purpose of environmental management and strategies to cope with or respond to environmental phenomena.<sup>86</sup> This knowledge is still being revered in societies where they have

Local Pathways to Global Development: Marking Five Years of the World Bank Indigenous Knowledge for Development Program (World Bank 2004) 30.

<sup>80</sup> Steiner and Oviedo *ibid* 31.

<sup>81</sup> G.O. Anoliefo, O.S. Isikhuemhen, O. S., and N.R. Ochiye, ‘Environmental implications of the erosion of cultural taboo practices in Awka-South Local Government Area of Anambra State, Nigeria: 1. Forests, Trees, and Water Resource Preservation’ (2003) 16 *Journal of Agricultural and Environmental Ethics* 281, 282.

<sup>82</sup> Peter Mwaura, *Indigenous Knowledge in Disaster Management in Africa* (United Nations Environment Programme 2008) 56.

<sup>83</sup> Mwaura *ibid*.

<sup>84</sup> Mwaura *ibid*.

<sup>85</sup> Mwaura (n 82).

<sup>86</sup> Emma Crewe, & Richard Axelby, *Anthropology and development: Culture, morality and politics in a globalised world* (CUP 2013); Uzuazo Etimire & Uwoh Sobere, ‘Improving public compliance with modern environmental laws in Nigeria: looking to traditional African norms and practices’ (2020) 38 (3) *Journal of Energy & Natural Resources Law* 305

been preserved over the years.<sup>87</sup> This is because environmental management has been rooted in these local communities since time immemorial.<sup>88</sup> Local communities possess in-depth knowledge of their environment which includes the understanding of flow pattern, the currents of water bodies, as well as the marine life in the areas.<sup>89</sup>

Communities in Nigeria from time immemorial developed traditional methods for environmental protection and conservation with the aid of indigenous knowledge. Land preparation is through the traditional practice of non-tillage farming which involves land preparation by hand and growing crops without having serious impact on the soil structure.<sup>90</sup> Shifting cultivation and mixed cropping in land use and management is widely practiced.<sup>91</sup> These farming practices are “to allow regeneration; increase heterogeneity of landscape; improve resilience as a buffer for other disturbances; to avoid over exploitation of natural resources and also to allow regeneration and breeding of species.”<sup>92</sup> Some have argued that these processes are more vital to the conventional farmers than the reliance on fertilizer, which they abhor.<sup>93</sup>

Furthermore, environmental conservation in Nigerian communities extends to harvesting methods. Fruits are picked when they fall on the ground, fruit trees are not cut and only

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<sup>87</sup> Crewe & Axelby *ibid*; Paul Osei-Tutu, ‘Taboos as informal institutions of local resource management in Ghana: Why they are complied with or not’ (2017) 85 *Forest Policy and Economics* 114.

<sup>88</sup> Crewe & Axelby (n 88); Ngozi F. Unuigbo, ‘African eco-philosophy on forests: A path worth exploring for the implementation of Earth jurisprudence’ in Kirsten Anker, Peter D. Burdon, Geoffrey Garver, Michelle Maloney, Carla Sber (eds) *From Environmental to Ecological Law* (Routledge 2021).

<sup>89</sup> National Research Council, *Responding to Oil Spills in the US Arctic Marine Environment* (National Academies Press 2014)

<sup>90</sup> Yetunde A. Aluko, ‘Women’s use of indigenous knowledge for environmental security and sustainable development in Southwest Nigeria’ (2018) 9 (3) *International Indigenous Policy Journal* 1

<sup>91</sup> Anoliefo et al (n 81); Akpabio (n 73)

<sup>92</sup> Jibrin Abdullahi et al ‘Importance of indigenous knowledge in Biodiversity Conservation: A case study of communities surrounding Kpashimi Forest Reserve, Niger State, Nigeria’ 5(6) (2013) *IOSR Journal of Environmental Science, Toxicology and Food Technology (IOSR-JESTFT)* 10, 15; Anoliefo et al (n 81).

<sup>93</sup> Akpabio (n 92).



deadwood are cut for firewood.<sup>94</sup> Debarking of medicinal plants is done on the side not facing the sun directly.<sup>95</sup> The purpose of these practices is to reduce “competition among people, birds and fruitivores thereby balancing the ecosystem; reduces deforestation; and regulates the drying rate of trees after debarking and to reduce deforestation.”<sup>96</sup>

There are conservation strategies practiced by traditional Nigerian communities for protection and management of watershed. The purpose of these strategies is to prevent condemnation of water bodies.<sup>97</sup> These practices include prevention of washing in or around the sources of water bodies and prevent the discarding of waste into water bodies.<sup>98</sup> Also, communities prohibit the clearing of vegetation and felling of trees around water bodies.<sup>99</sup> The implication of maintaining vegetation around water is to prevent riparian erosion, reduce evaporation that could eventually lead to drying up of the stream especially when it is the source of the stream.

## **B. Taboos**

According to Anoliefo *et al* cultural values were safeguarded using traditional taboos (laws) and sanctions.<sup>100</sup> From time immemorial, social norms such as taboos backed by sanctions have been developed for the purpose of environmental protection and conservation.<sup>101</sup> Thus, “Cultural taboos and their sanctions have helped to check abuse of the environment at least

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<sup>94</sup> Abdullahi et al (n 92).

<sup>95</sup> Abdullahi et al (n 92).

<sup>96</sup> Abdullahi et al (n 92) 15; Angguk Lamis, Concordius Kanyan and Y. Paulus Bundeand, ‘Patterns of Traditional Land Control among three Kenyah groups’ in Cristina Eghenter, Bernard Sallato and G. Simon Devung, (eds), *Social Science Research and Conservation Management in the Interior of Borneo, Unveiling Past and Present Interactions of People and Forests* (CIFOR, WWF Indonesia, UNESCO and Ford Foundation 2003).

<sup>97</sup> Grace Cheserek, *Indigenous knowledge in water and watershed management: Marakwet conservation strategies and techniques* (2005) 3 FWU Water Resources Publications 25; Aluko (n 90).

<sup>98</sup> Aluko (n 90).

<sup>99</sup> Aluko (n 90).

<sup>100</sup> Anoliefo et al (n 81).

<sup>101</sup> Etemire and Sobere (n 86); A.D Banjo et al ‘Taboo as a means of plant and animal conservation in South-Western Nigeria: A case study of Ogbe River and its Basin’ (2006) 1 (1) *World Applied Sci. J* 39

among the local people.”<sup>102</sup> In a study carried out by Abdullahi *et al* it was noted that some of the taboos include prohibiting slaughter of young, pregnant or lactating animal, banning of the killing of animals found in the birth delivery stage and restricting the “hunting of certain species to specific seasons to allow breeding.”<sup>103</sup> This is evidenced in the conservation of sacred groves.

According to Onyekwelu and Olusola, a sacred grove is a stand of trees of religious, social and cultural importance to a particular culture. They feature in various cultures and occur in various forms including remnants of old forests, sites for religious and cultural festivals, burial grounds for chiefs and sites of ancestral worship. Sacred groves are found in all continents but their methods of conservation vary according to their intrinsic nature, distribution and local beliefs.<sup>104</sup>

Sacred groves which were initially created for religious worship and cultural purposes but now are significantly contributing to environmental conservation especially as it relates to preservation of biodiversity.<sup>105</sup> For instance, located at the outskirts of Osogbo the capital of Osun State is the Osun-Osogbo Sacred Grove which is dedicated to the Osun goddess of fertility and is said to be one of the last vestiges of “primary high forest in southern Nigeria.”<sup>106</sup> Identified taboos associated with the Grove are “hunting of animals, felling of trees, farming, fishing, water pollution using chemicals and erection of unauthorized structures.”<sup>107</sup> These have grievous consequences for offenders if violated including death, ire of the goddess and insanity amongst others.<sup>108</sup>

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<sup>102</sup> Anoliefo *et al* (n 81) 281.

<sup>103</sup> Abdullahi *et al* (92) 15.

<sup>104</sup> J.C Onyekwelu & J.A. Olusola ‘Role of sacred grove in in-situ biodiversity conservation in rainforest zone of south-western Nigeria’ (2014) 26 (1) *Journal of Tropical Forest Science* 5, 6

<sup>105</sup> Onyekwelu and Olusola *ibid*; Anoliefo *et al* (n 81).

<sup>106</sup> UNESCO, ‘Osun-Osogbo Sacred Grove’ < <https://whc.unesco.org/en/list/1118/>> accessed 10 May 2022.

<sup>107</sup> Adesoji A. Adeyemi and Tolulope H. Oyinlola, ‘Effectiveness of Alternative Conservation Means in Protecting the Osun-osogbo Sacred Grove in South-West, Nigeria’ (2020) 8(1) *Plant*, 1, 3

<sup>108</sup> Adeyemi and Oyinloye *ibid* 11.

Another example is the sacred forests, called Mgbe forest (Eten Mgbe) in the Oban communities of Cross River State of Nigeria.<sup>109</sup> These forests are rich in fauna and flora species and are protected by taboos. Some identified taboos associated with the Mgbe forest are prohibited to anybody who is not initiated into the cult which helps to control forest resources extraction, strict prohibition of harvesting and hunting.<sup>110</sup> Violation of these prohibitions attracts penalties such as payment of fine and on some occasions, exclusion of the wrongdoer from the society or community.<sup>111</sup>

Arguably, due to the influence of modernity and the rise of Islam and Christianity in Nigeria and many parts of Africa, the fear of taboo as a deterrence is no longer as effective as in the past. Furthermore, some taboos on environmental management seems to have lost their authority on the people in different local or indigenous communities.<sup>112</sup> However, many taboos have survived societal changes and continue to impact practice.<sup>113</sup> Therefore, Osei-Tutu argues that “to retain their influence on resource use practice in contemporary local communities, resource management taboos need to have instrumental relevance in addition to their mythical relevance.”<sup>114</sup> Similarly, Unuigbe avers that a re-examination “of the principles of traditional African religious practices on forests would promote the implementation of Earth jurisprudence and ecological law by providing modern conservation programs in Africa and globally with an insight into the activities of communities that managed to live alongside the rivers and forests and use them sustainably.”<sup>115</sup> Hence, informal institutions and modern-day

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<sup>109</sup> Saka O. Jimoh et al, ‘The role of traditional laws and taboos in wildlife conservation in the Oban Hill Sector of Cross River National Park (CRNP), Nigeria’ (2012) 39 (3) *Journal of Human Ecology* 209, 212-213

<sup>110</sup> Jimoh et al *ibid.*

<sup>111</sup> Jimoh et al (n 109); B.I. Dagba, L.N. Sambe, & S.A. Shomkegh, ‘Totemic beliefs and biodiversity conservation among the Tiv People of Benue State, Nigeria’ (2013) 3(8) *Journal of Natural Sciences Research* 145

<sup>112</sup> Abosede O. Babatunde, ‘Environmental Conflict, Traditional Institutions, and Durable Peace in Niger Delta’ (2019) 9(2) *African Conflict and Peacebuilding Review* 33; Osei-Tutu (n 87).

<sup>113</sup> Osei-Tutu (n 87).

<sup>114</sup> Osei-Tutu (n 87) 114.

<sup>115</sup> Unuigbe (n 88) 165.

regulations on environmental protection can be used in tandem to promote and protect the Nigerian environment in a more sustainable manner.

### **C. Oil and Gas Industry in Nigeria and Informal Institutions**

The bulk of the oil is found in the Niger Delta region of Nigeria where multinational corporations (MNCs) maintain a significant presence. The Niger Delta has become a theatre of incessant violent conflicts. Local groups attack oil installations and staff (leading most companies to declare *force majeure*) on oil shipments.<sup>116</sup> Oil theft (otherwise called bunkering) is rife in the Niger Delta. The consequences of oil bunkering include damage to oil pipelines, environmental pollution, and loss of production amongst other consequences.<sup>117</sup> The MNCs operating in the Niger Delta region have been accused of exacerbating the environmental pollution issues in the Niger Delta. However, arguably due to the recourse to informal institutions in dispute settlement of oil related conflicts, some parts of the Niger Delta appear to be more peaceful than others.<sup>118</sup> For example, Babatunde argues that some parts of the Niger Delta have had relative peace due to the reliance on indigenous traditional institutions for dispute settlement and peace related activities in the communities.<sup>119</sup> She justifies this assertion “by associating the relative peace in some of the oil communities in Ondo state (e.g., Ilaje), which is in the Western Niger Delta, to the resilience of traditional institutions and authorities.”<sup>120</sup> Thus, reliance on informal institutions can be one of the strategies for resolving environmental disputes arising from the activities of MNCs in Nigeria.

In Nigeria, the mineral or natural resources found in or upon the land are deemed by the Nigerian state as public goods and

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<sup>116</sup> US Energy Information Administration (EIA) ‘Nigeria’ 25 June 2020 < International - U.S. Energy Information Administration (EIA)> accessed 10 May 2022.

<sup>117</sup> EIA *ibid*

<sup>118</sup> Enabulele (n 74); Babatunde (n 112).

<sup>119</sup> Babatunde (n 112).

<sup>120</sup> Babatunde (n 112) 35.

government's involvement in their development simply becomes a case for public or societal use.<sup>121</sup> This is a major impediment of the compensation regime in the oil and gas sector. In Nigeria, especially in the Southern states (the Niger Delta is in Southern Nigeria), land is of cultural importance to the indigenous land users.<sup>122</sup> The land users have sentimental or emotional connection to land.<sup>123</sup> The reasons for this attachment include that the land has been in the possession of the local community (or family) for centuries or their ancestors (progenitors) were buried in such lands.<sup>124</sup> This is exacerbated by the impacts of environmental degradation on the lands which the people hold in high spiritual esteem. For example, the violation or destruction of shrines by the activities of MNCs in Nigeria have been a source of discord and conflict in between the oil producing communities and the MNCs in Niger Delta.<sup>125</sup> For example, "a community sued Shell for the desecration of their ancestral and juju shrines."<sup>126</sup> Thus, MNCs operating in the Niger Delta should respect the wishes of the people and avoid destroying their cultural items or shrines during their activities.

One major defect of the present self-regulatory model on the activities of oil MNCs in Nigeria is the apparent neglect of the culture and way of life of the people of the Niger Delta in the various codes of conduct developed by MNCs in Nigeria.<sup>127</sup> For example, the people of the Niger Delta have strong emotional or sentimental attachment to their environment, especially land. None of the codes of conduct expressly provides for the sustenance of such environmental sentiments of the people of the Niger Delta.<sup>128</sup> One suggestion is for codes of

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<sup>121</sup> Wilson Akpan, 'Oil, people and the environment: understanding land-related controversies in Nigeria's oil region' (2010) 5. <<http://www.codesria.org/IMG/pdf/akpan.pdf>> accessed 10 May 2022.

<sup>122</sup> Victor C. Uchendu, 'State, Land, and Society in Nigeria: A Critical Assessment of Land Use Decree (1978)' (1979) 6(2) *Journal of African Studies* 62

<sup>123</sup> Eghosa Ekhatior, E. O. (2016b). Public regulation of the oil and gas industry in Nigeria: An Evaluation' (2016b) 21 *Ann. Surv. Int'l & Comp. L.*, 43

<sup>124</sup> Ekhatior (2016b) *ibid*

<sup>125</sup> Kaniye Ebeku, *Oil and the Niger Delta, People in International Law – Resource Rights, Environmental and Equity Issues* (Köppe 2006).

<sup>126</sup> Ebeku *ibid* 229.

<sup>127</sup> Ekhatior (2016a) (n 75).

<sup>128</sup> Ekhatior (2016a) (n 75).

conduct in the oil and gas sector of Nigeria should seek to protect such cultural sentiments of the people. Thus, the protection of the environment in the Niger Delta will be akin to the sustenance of the way of life or culture of its communities.

Furthermore, the oil-related legislation in Nigeria does not take into consideration when computing the value of surface goods on the land, the emotional or sentimental attachment by the land users to such land in compensation cases.<sup>129</sup> Therefore, Akujuru and Ruddock submits that “findings indicate that to determine the total economic value of a contaminated coastal land, the social and cultural values of the goods existing in the area as perceived by the inhabitants of the land must be incorporated into the valuation, if the affected households are to consider the resultant damage estimate to be adequate.”<sup>130</sup> Thus, Nigerian laws should accord more recognition to traditional beliefs or informal institutions in the compensation and regulatory regime in the oil sector in Nigeria.

#### **4. INTEGRATING INFORMAL INSTITUTIONAL APPROACH TO ENVIRONMENTAL MANAGEMENT LEGISLATION IN NIGERIA**

The importance of environmental protection cannot be over-emphasized. The environment must be protected to safeguard the resources and processes as well as the ecosystem services. Ecosystem service is a generic term that describes the relationship that exists whenever a natural resource or process is expressed in terms of the benefits it provides for humans.<sup>131</sup> Explicitly, the environment provides the basic life-support

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<sup>129</sup> Ekhaton (2016b) (n 123).

<sup>130</sup> Victor A. Akujuru and Les Ruddock, ‘Incorporation of Socio-Cultural Values in Damage Assessment Valuations of Contaminated Lands in the Niger Delta’ (2014) 3 (3) *Land* 675, 676

<sup>131</sup> Rudolf S. de Groot, Matthew A. Wilson, and Roelof M.J Boumans, ‘A Typology for the Classification, Description and Valuation of Ecosystem Functions, Goods and Services’ (2002) 41 (3) *Ecological Economics* 393.

system for human existence.<sup>132</sup> The foregoing brings to light the need for a collective effort to protect the environment.<sup>133</sup> Thus, informal institutional approach should be embedded to environmental management legislation in Nigeria. However, there are a plethora of gaps or barriers militating against the formalization or integration of informal institutions to environmental management and protection in Nigeria including the lack of recognition of informal institutions in environmental management in Nigeria, unenforceable constitutional backing for informal institutions, lack of resources and capacity, and inadequate environmental education initiatives amongst others.

#### **4.1 Lack of recognition of Informal Institutions in Environmental Management in Nigeria**

Prior to introduction of British colonialism in the geographical entity known as Nigeria, customary norms were predominant mostly in the Southern part (and other parts of the non-Muslim parts) of the country with each ethnic group having their distinctive customs or norms.<sup>134</sup> Nigeria's informal institutions are recognized as 'existing law' by virtue of sections 315 (3) and (4)(b) of the Nigerian constitution. This is as far as such customary norms are not repugnant to natural justice, equity and good conscience which leaves a heavy burden on the judges to determine.<sup>135</sup> Earlier in this article, the process England developed its formal institutions from society's norms as

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<sup>132</sup> Chris C Park, *The Environment: Principles and Applications* (2nd edn, Routledge 2001); Ifeanyi A. Aniyie, 'What is the Much Ado About Environmental Law: Another Addition to the Rhetorics?' (2007-2009) *Nigerian Current Law Review*, 164

<sup>133</sup> Stuart Bell et al *Environmental Law* (9th edn, Oxford University Press 2017)

<sup>134</sup> John A. Yakubu, 'Colonialism, customary law and the post-colonial state in Africa: the case of Nigeria' (2005) 30 (4) *Africa Development* 201; Eghosa O. Ekhatior, 'Traditional Oath-Taking as an Anti-Corruption Strategy in Nigeria' in Akogwu Agada (ed) *Combating the Challenges of Corruption in Nigeria: A Multidisciplinary Conversation* (Black Towers Publishers Nigeria 2019) 309

<sup>135</sup> Edoba B. Omoregie, 'Ending Gender Discrimination in Succession to Traditional Ruler-ship in Nigeria' (2005) 3(1) *Intl. Journal of Gender and Women Studies* 143. Generally, see Amos Enabulele, and Bright Bazuaye, 'Validity and Enforceability of Customary Law in Nigeria: Towards a Correct Delimitation of the Province of the Courts' (2019) 63 (1) *Journal of African Law* 79 for criticism of the validity tests of customary law in Nigeria. The validity test is also known as the repugnancy doctrine. For example, in Nigeria customary law is held by courts to be valid or enforceable only if it is not repugnant to natural justice, equity and good conscience, incompatible either directly or by implication with any law for the time being in force, contrary to public policy and unconstitutional.

evidenced by the English common law was highlighted,<sup>136</sup> with the sequential development of the new merchant law cited as an example.<sup>137</sup> However, there is no sequential development of indigenous customary norm bordering on environmental protection into national environmental protection and conservation law in Nigeria.

It has been highlighted that Nigeria has never lacked the requisite legal instruments necessary for environmental protection and conservation, but the challenge has always been implementation. The United Nations Conference on Environment and Development (UNCED) held in June 1992 (Rio Declaration) brought to the fore the importance of indigenous knowledge in environmental protection and conservation. The significance of indigenous knowledge in environmental protection and conservation is also recognized other international documents such as the International Union for Conservation of Nature, and World Wildlife Fund (1980).

#### **4.2 Loss of Respect for the Efficacy of Taboos**

Whilst informal institutions have been identified as vital in environmental protection, its sustainability is under serious threat. For instance, Onyekwelu and Olusola cautioned that the gradual increase in the unbelief of the efficacy of taboos on which sacred groves were reputable may in time affect environmental protection anchored on informal institutions.<sup>138</sup> Similar viewpoint was echoed by Jimoh *et al*/who stated that “dwindling powers of traditional authorities and cultural erosion due to modernization and embracement of western religion; advent of sophisticated hunting equipment and widespread poverty incidence limit the efficiency of the application of these traditional conservation measures.”<sup>139</sup>

A study conducted by Adeyemi and Oyinloye at the Osun-Osogbo sacred grove revealed that the fear of the penalties associated with the taboos have assisted in the conservation of fauna and flora species in the area. It was further observed that the buffer zone covered by state laws and policies were severely

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<sup>136</sup> Van Caenegem (n 44).

<sup>137</sup> Cooter (n 45)

<sup>138</sup> Onyekwelu and Olusola (n 104).

<sup>139</sup> Jimoh et al (n 109) 217.



degraded.<sup>140</sup> It can be deduced from the above that effective environmental conservation can only be achieved when informal institutions prevalent in the area is incorporated into formal institutions. Similarly, while studying some group of wild monkeys found near some urban areas in Southeast Nigeria, Etemire and Sobere observed that "...the status of those species covered by traditional cultural and religious injunctions are usually healthier, especially due to a much higher degree of compliance with those norms."<sup>141</sup> In contrast, population of monkeys in officially protected reserves are dwindling due to high level of non-compliance with relevant conservation regulations.<sup>142</sup> Onyekwelu and Olusola decried the non-integration of informal institutions for environmental protection practiced in local communities from time immemorial into formal institutions.<sup>143</sup> On the other hand, traditional African norms or cultural practices are said to be economically inexpensive and sustainable contrasted to other approaches.<sup>144</sup> For example, "no huge funds are required to make communities respect local taboos governing resource use and conservation."<sup>145</sup>

### **4.3 Unenforceable Constitutional Backing for Informal Institutions**

In as much as it has been argued for the integration of informal institutions bordering on environmental protection into formal institutions in Nigeria,<sup>146</sup> there are still constitutional bottlenecks that militates not only against the integration of informal institutions into formal institutions but generally against environmental protection in Nigeria. For instance, section 20 of the Constitution of the Federal Republic of Nigeria provides that "the state shall protect and improve the

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<sup>140</sup> Adeyemi and Oyinloye (n 107).

<sup>141</sup> Etemire and Sobere (n 86) 309.

<sup>142</sup> A. Usman and L.L. Adefalu, 'Nigerian Forestry, Wildlife and Protected Areas: Status Report' (2010) 11(3 & 4) Biodiversity 44; A.A. Ogunjinmi et al 'The Challenges to Nigeria National Parks Conservation Efforts: Key Informants Approach' (2017) 1(1) Nigerian Journal of Wildlife Management (NJWM), 1(1), 25 – 30; Etemire and Sobere (n 86).

<sup>143</sup> Onyekwelu and Olusola (n 104).

<sup>144</sup> Unuigbo (n 88).

<sup>145</sup> Unuigbo (n 88) 166.

<sup>146</sup> Jimoh et al (n 109).

environment and safeguard the water, air, land forest and wildlife of Nigeria.” However, this provision is said to be non-justiciable, which means that the enforcement of these rights cannot be the subject of litigation in court. This is because it is contained in Chapter II of the Constitution, which is regarded as “fundamental objectives and directives principles of state policy.” Chapter II of the Nigerian Constitution has been described as the soul and spirit of the constitution.<sup>147</sup> Nonetheless, provisions in the chapter are perceived as not being proper rights but so called ‘objectives and principles’ which the government is expected to meet. It should be noted that several courts in Nigeria have held that socio-economic rights are neither justiciable nor enforceable as held by some Nigerian courts. Thus, the observance and enforcement of these rights as it were, is at the grace of the executive, who do not usually regard rights in this chapter as a matter of human rights, inalienable or otherwise which in the Nigerian context are less important than civil and political rights.

#### **4.4 Capacity gaps and lack of resources by Government Agencies in Environmental Protection in Nigeria**

There are various government or public agencies involved in the enforcement and monitoring of the oil and gas industry and environmental protection in Nigeria. Some of the agencies include National Environmental Standards and Regulations Enforcement Agency (NESREA), Department of Petroleum Resources, Federal Ministry of Environment, Nigerian National Petroleum Corporation (NNPC) and National Oil Spill Detection and Response Agency (NOSDRA) amongst others. This article briefly highlights the lack of capacity and resources by NOSDRA in the oil spill management in Nigeria.

The Federal government established the NOSDRA in 2006 by virtue of the NOSDRA Act and it is an agency under the federal ministry of environment.<sup>148</sup> NOSDRA is charged with the

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<sup>147</sup> F. Solanke, ‘Constitutional Issues and the Transition to Civil Rule in Nigeria’ in Ademola J. Yakubu (ed) *Administration of Justice in Nigeria, Essay in Honour of Hon. Justice Mohammed Uwais* (Malthouse Press Ltd 2000). However, several courts in Nigeria have upheld the enforcement of socio-economic rights in Nigeria and some of these cases will be discussed in the recommendations section of this article.

<sup>148</sup> National Oil Spill Detection and Response Agency Act (NOSDRA) No. 15 of 2006.

responsibility to implement the National Oil Spill contingency plan for Nigeria in accordance with the International Convention on Oil Pollution Preparedness, Response and Cooperation (OPRC) 1990.<sup>149</sup> It is mandated to play the major role in ensuring appropriate and effective response to oil spills and to ensure the clean-up and remediation of oil spill sites in Nigeria.<sup>150</sup> One of NOSDRA'S objectives is the identification of high risk areas in the oil producing communities or environment for protection as well as ensuring compliance of the oil industry players or companies with the existing environmental laws and regulations in the sector.<sup>151</sup> Oil spillage is one of the most common environmental disasters in the Niger-Delta and hence several regulations have made by NOSDRA to improve the oil spill responses.

However, NOSDRA is beset by many institutional ills including inadequate staff and resources, lack of proactive capabilities for prompt oil-spill detection and reliance on oil MNCs and CSOs for reporting of incidence of oil spills amongst others.<sup>152</sup> For example, NOSDRA staff frequently rely on the tools and facilities provided by oil MNCs in the oil spill investigation process including using boats or helicopters provided by MNCs in Nigeria.<sup>153</sup> This leads to conflict of interest whereby oil MNCs who are subjects of investigation have control over the oil spill investigation process in Nigeria.<sup>154</sup>

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<sup>149</sup> NOSDRA Website <About Us - NOSDRA> accessed 10 May 2022.

<sup>150</sup> *ibid*

<sup>151</sup> *ibid*

<sup>152</sup> United Nations Environment Programme (UNEP) Report (2011) 'Environmental Assessment of Ogoniland' at 139, <[http://postconflict.unep.ch/publications/OEA/UNEP\\_OEA.pdf](http://postconflict.unep.ch/publications/OEA/UNEP_OEA.pdf)> accessed 10 May 2022. Another major issue afflicting NOSDRA is whether it has the powers to fine oil firms. Generally, see Ekhaton (n 1) and Ikechukwu C. Aholu, Does the Application of the Polluter Pays Principle in Nigeria's Hydrocarbon Industry promote Environmental Justice? PhD Thesis submitted to the Faculty of Law, University of the West of England, Bristol, 2021 for the divergent academic commentary on the powers of NOSDRA to fine oil companies in Nigeria.

<sup>153</sup> Amnesty International, 'Bad Information: Oil Spill Investigations in the Niger Delta' (2013) <Nigeria: Bad information: Oil spill investigations in the Niger Delta - Amnesty International> accessed 10 May 2022.

<sup>154</sup> Generally, see Scott Pegg, and Nenibarini Zabbey, 'Oil and water: the Bodo spills and the destruction of traditional livelihood structures in the Niger Delta' 48 (3) (2013) Community Development Journal 391-405. However, see Shell 'Nigeria Briefing Notes' (2021)< Nigeria Briefing Notes | Shell Nigeria> accessed 10 May 2022.

Thus, NOSDRA lacks the requisite political will to address oil spills in the oil and gas industry in Nigeria. This is worsened by the lack of resources especially funding and expertise that impacts negatively on the ability of NOSDRA to discharge its responsibilities effectively. The apparent failure of the oil MNCs and governmental agencies to act and clean up oil spills has worsened the human rights and environmental consequences of such spills.<sup>155</sup>

#### **4.5 Challenges militating against Environmental Education Initiatives in Nigeria**

There is a strong environmental consciousness in Nigeria which is accentuated by range of environmental education programmes and initiatives aimed at promoting environmental awareness and sustainable habits is on the rise in the country.<sup>156</sup> A plethora of laws and policies promoting environmental management recognises the utility of environmental education as one of the strategies for the actualisation of sustainable development in Nigeria.<sup>157</sup> For example, section 7(1) of the National Environmental Standards Regulatory and Enforcement Agency (Establishment) Act of 2007, enjoins NESREA to “create public awareness and provide environmental education on sustainable environmental management.”<sup>158</sup>

Many Nigerian universities offer different programmes on environmental education and engage in extracurricular initiatives to enhance environmental awareness.<sup>159</sup> Furthermore, there is a network comprising of universities in Nigeria involved

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<sup>155</sup> Amnesty International, ‘Nigeria: Petroleum, Pollution and Poverty in the Niger Delta’ (2009) <Nigeria: Petroleum, Pollution and Poverty in the Niger Delta - Report - Amnesty International> accessed 10 May 2022.

<sup>156</sup> Babalola and Olawuyi (n 4).

<sup>157</sup> Generally, see Babalola and Olawuyi (n 4).

<sup>158</sup> Also, the Nigerian National Policy on the Environment (Revised 2016) also recognises the utility of environmental education as one of the key tools to enhance sustainable development in Nigeria.

<sup>159</sup> See Adenike A. Akinsemolu and Foluke V. Arijeniwa, ‘Current Trends in Sustainability Education and the Future of Sustainability Education in Nigeria’ 12 (2) (2021) *Journal of Sustainable Development Law and Policy* 421-441; Babalola and Olawuyi (n 4).

in SDGs.<sup>160</sup> However, there is little information publicly available online on the strategies utilised by Nigerian universities in embedding SDGs and environmental education in their curriculum. Nigerian universities are afflicted with a plethora of challenges. A major challenge is lack of funding for research in many universities (especially government-owned) in Nigeria. According to Professor Onyido, “One of the major constraints to meaningful, problem-solving and adaptive research in the Nigerian university system over the years has been the issue of poor funding. There has been little or no funding for research geared towards solving local problems.”<sup>161</sup>

The next section of the article focuses on the different strategies or recommendations that can be used for the integration of informal institutions in environmental management in Nigeria. Some of these strategies include a case for enforceable constitutional right to environment, reliance on traditional methods of dispute resolution such as customary arbitration, embedding environmental education (including informal institutions) in university curriculum, and improving the capacity gaps in environmental management in Nigeria.

## 5 RECOMMENDATIONS ON INTEGRATING INFORMAL INSTITUTIONS IN ENVIRONMENTAL MANAGEMENT IN NIGERIA

### 5.1 A Case for Constitutional Right to Environment in Nigeria

There seem to be a ray of hope in the recognition that the right to live in a healthy environment is a fundamental human right in Nigeria, with the decision in *Gbemre v. Shell Petroleum Development Company of Nigeria Limited &*

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<sup>160</sup> Generally, see SDSN-Nigeria website < Sustainable Development Solutions Network (unsdsn.org) > accessed 10 May 2022.

<sup>161</sup> Ikenna Onyido, ‘The Role of Nigerian Universities in Nigeria’s Quest to Attain the Sustainable Development Goals’ in Felicia A. Anyogu, Cecilia A. Eme, and John A. Ogbodo, *University-Led Knowledge and Innovation for Sustainable Development* (Nnamdi Azikiwe University, 2021).

*Other.*<sup>162</sup> In this case, the court held that the constitutionally guaranteed fundamental rights to life and dignity of human persons, are reinforced by Article 4, 16 and 24 of the African Charter on Human and Peoples' Rights (African Charter). These rights include the right to a clean poison-free, pollution-free, and healthy environment. It is important to state here that this judgement was made by a Federal High Court and cannot be said to be the position of the law, as it can be overruled considering the hierarchy of courts in Nigeria. Furthermore, there have been recent developments regarding the *Gbemre* case. In 2021, Shell Petroleum Development Company (SPDC) instituted an appeal at the Court of Appeal challenging the decision in *Gbemre* prohibiting gas flaring in Nigeria.<sup>163</sup> One of the grounds of the appeal by SPDC is that the Court of Appeal should "determine if the lower court judge had the jurisdiction to entertain the suit."<sup>164</sup>

In essence, if Nigeria intends to make headway in implementation of environmental policies, the Nigerian judiciary must tow the path of the Indian Court, where it has been held that environmental rights should be a part of fundamental human rights.<sup>165</sup> It should be noted that Nigeria is a signatory to African Charter and the African Charter was domesticated into municipal law in Nigeria via the instrumentality of the African Charter on Human and Peoples' Rights (Enforcement and Ratification) Act 1983.<sup>166</sup>

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<sup>162</sup> *Gbemre v. Shell Petroleum Development Company of Nigeria Limited & Other* (2005) (Unreported) Suit No. FHC/B/CS/53/05.

<sup>163</sup> Emmanuel Addeh, 'Shell Challenges Judgement Ordering Halt to Gas Flaring in N'Delta Community' (Thisday, 26 December 2021) <Shell Challenges Judgement Ordering Halt to Gas Flaring in N'Delta Community | THISDAYLIVE > accessed 10 May 2022.

<sup>164</sup> Addeh *ibid*

<sup>165</sup> Rhuks Ako, Ngozi Stewart and Eghosa O. Ekhaton, 'Overcoming the (non) justiciable Conundrum: The Doctrine of Harmonious Construction and the Interpretation of the Right to a Healthy Environment in Nigeria' in Alice Diver and Jacinta Miller (eds), *Justiciability of Human Rights Law in Domestic Jurisdictions* (Springer, Cham 2016) 123.

<sup>166</sup> Also see, Eghosa O. Ekhaton, 'Improving access to environmental justice under the African Charter on human and peoples' rights: the roles of NGOs in Nigeria' (2014) 22 (1) *African Journal of International and Comparative Law* 63

Furthermore, in a recent judgment of the Nigerian Supreme Court in *Centre for Oil Pollution Watch v NNPC*, the court explicitly relied on the provisions of article 24 of the African Charter and section 33 (1) of the Nigerian Constitution and section 17 (4) of the Oil Pipelines Act to hold that the right to environment can be justiciable in Nigeria and therefore, these instruments or provisions recognize the fundamental rights of Nigerians to a clean and healthy environment.<sup>167</sup> However, it should be noted that these remarks by the Supreme Court Justices on the right to environment were made *obiter* (made in passing) as the right to environment was not an issue directly before the court.<sup>168</sup> On the other hand, this judgment “can serve as a launchpad to further develop the evolving jurisprudence around economic and social rights (ESR) in Nigeria.”<sup>169</sup>

Furthermore, civil society organisations (CSOs) in Nigeria should apply pressure on the government to implement the report of 2014 National Conference. The Conference made some recommendations in respect of enhancing environmental governance and attenuating the barriers to justice in the oil gas sector in Nigeria.<sup>170</sup> Some of the recommendations of the Conference includes that the requirement of *locus standi* should be abolished in public interest litigation, the capacity of courts be enhanced in environmental right cases and there should be an explicit and enforceable constitutionalisation of environmental rights in Nigeria.<sup>171</sup>

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<sup>167</sup> *Centre for Oil Pollution Watch v. Nigerian National Petroleum Corporation* [2019] 5 NWLR 518. Also see, Eghosa Ekhator, 'Sustainable Development and the African Union Legal Order' in Olufemi Amao, Michele Olivier and Konstantinos D. Magliveras (eds.) *The Emergent African Union Law: Conceptualization, Delimitation, and Application* (OUP 2021) 335.

<sup>168</sup> Ekhator *ibid*

<sup>169</sup> Ekhator (n 167) 353. For further analysis of the implications of this case on socio-economic rights in Nigeria, see Philip E. Oamen and Eunice O. Erhagbe, 'The impact of climate change on economic and social rights realisation in Nigeria: International cooperation and assistance to the rescue?' 21(2) (2021) *African Human Rights Law Journal* 1080-1111.

<sup>170</sup> Generally, see Uzuazo Etemire, 'The 2014 Nigerian National Conference and the Development of Environmental Law and Governance' 2014) 4 *Law and Politics in Africa, Asia and Latin America* 482

<sup>171</sup> Etemire *ibid*. Generally see Draft Report of the National Conference (2014) <<https://media.premiumtimesng.com/national-conference/wpcontent/uploads/>

A notable recommendation of the 2014 National Conference was that a broader conceptualisation of right to environment (including to right to nature) should be enshrined in the Nigerian constitution. The National Conference suggested that a new type of environmental right should be added to the Nigerian constitution and that is, “the rights of nature to maintain its natural cycles without disruption.”<sup>172</sup> Any constitutional recognition of right to nature (includes reliance on informal institutions) will have positive implications for integrating informal institutions in environmental management in Nigeria. Also, Etemire states that

“This proposed new environmental right potentially expands the scope for environmental protection and conservation in Nigeria as it can be enforced solely for the good of the environment, as against other environmental rights that are mainly focused on securing the good of humans within the natural environment.”<sup>173</sup>

CSOs should apply pressure to the government to implement the recommendations of the Conference. This is against the backdrop that culture has a significant impact on law and policymaking in Nigeria. For example, climate change mitigation is profoundly influenced by cultural attitudes and ethos.<sup>174</sup>

## **5.2 Amendment of Existing Environmental Laws to incorporate Customary Arbitration and Informal Institutions Mechanisms**

The Nigerian legal system is known for delays in the administration of justice especially in the criminal justice systems. The conventional western legal architecture of dispute settlement in Nigeria is afflicted with a plethora of barriers impacting negatively on access to justice for litigants in the country. Some of these judicial obstacles or barriers in Nigeria, include congestion of cases, limited resources of

National-Conference-2014-Report-August-2014-Table-of-Contents-Chapters-1-7.pdf > accessed 1 May 2022)

<sup>172</sup> Generally, see Draft Report *ibid*.

<sup>173</sup> Etemire (n 170) 485.

<sup>174</sup> Olanrewaju Fagbohun, ‘Cultural Legitimacy of Mitigation and Adaptation to Climate Change: An Analytical Framework’ (2011) 5(3) *Carbon & Climate Law Review* 308.



litigants, paucity of legal practitioners amongst others.<sup>175</sup> Scholars have argued that modern arbitration and litigation practices have worsened the plight of many litigants in Nigeria.<sup>176</sup>

On the other hand, customary arbitration is said to be quicker, less procedural, and less adversarial in nature for the parties.<sup>177</sup> To date, the traditional institutions in Nigeria play an integral role in the justice administration machinery in the country.<sup>178</sup> Akin to what is happening in some parts of Africa, there appears to be a resurgence in customary arbitration mechanisms on the continent.<sup>179</sup> Hence, scholars and other relevant stakeholders have argued that traditional or customary arbitration mechanisms should be fully integrated or embedded into the national legal regimes in the continent.<sup>180</sup> For example, the United Nations Commission on Legal Empowerment of the Poor has emphasized the utility of reliance on non-formal or traditional dispute resolution measures which the citizens are familiar with thereby improving access to justice.<sup>181</sup> However, it should be noted that notwithstanding that traditional or customary

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<sup>175</sup> David McQuoid-Mason, 'Could traditional dispute resolution mechanisms be the solution in post-colonial developing countries—particularly in Africa?' (2021) 11 (2) *Oñati Socio-Legal Series* 590-604

<sup>176</sup> Generally, see Emilia Onyema, 'Shifts in Dispute Resolution Processes of West African States' in Maria F. Moscati, Michael Roberts, and Cheng Yu Tung (eds) *Comparative Dispute Resolution Handbook* (Elgar Publishing 2020) 519-531.

<sup>177</sup> Generally, see Adenike Aiyedun, and Ada Ordor, 'Integrating the traditional with the contemporary in dispute resolution in Africa' (2016) 20 *Law, Democracy & Development* 154-173, 158 states that "Justice in these indigenous processes was for the most part simple, understandable and flexible; and for those reasons, popular, speedy, inexpensive and accessible."

<sup>178</sup> Generally, see Suzzie Onyeka Oyakhire, 'Expanding the scope of 'appropriate measures': do traditional institutions play a role in facilitating the protection of witnesses of trafficking in persons?' (2019) 6 (2) *Journal of Comparative Law in Africa* 80-105.

<sup>179</sup> Onyema (n 176).

<sup>180</sup> Generally, see United Nations. Office of the High Commissioner for Human Rights, *Human Rights and Traditional Justice Systems in Africa* (UN, 2016).

<sup>181</sup> United Nations Commission on Legal Empowerment of the Poor, *Making the Law Work for Everyone: Report of the Commission on Legal Empowerment of the Poor*. (2008) New York: United Nations Commission on Legal Empowerment of the Poor/United Nations Development Programme. *Making the Law Work for everyone: Vol 1 - Report of the Commission on Legal Empowerment of the Poor - United Nations and the Rule of Law*. Also see McQuoid-Mason (n 175) 594.

dispute resolution mechanisms are imperfect, they have served as enduring tool of dispute settlement in different parts of Africa.<sup>182</sup> Thus, any proposed reform on fully integrating the traditional customary dispute mechanisms into current western-focused legal systems in Africa should not adapt every single aspect of traditional legal framework. There should be a mechanism to sift or remove some of the traditional practices that are not fit for the modern era.

This article suggests that relevant environmental laws should be amended in Nigeria to provide for customary arbitration especially in the Niger Delta where there is a strong attachment to the environment by the people. This fits within the bottom-up approach to law-making where the interests of relevant stakeholders or actors are taken into consideration when developing laws. According to Professor Levit, regarding a bottom-up approach to international law-making and states that the bottom-up approach involves “the practices and behaviours of various actors inform and constitute the rules, which, in turn, govern the practices and behaviours of those same actors. The drama in these bottom-up cases is how the informal, practice-based rules become law.”<sup>183</sup> Hence, for environmental management laws and rules in Nigeria to have the requisite legitimacy, the traditional environmental values and culture of the people must be embedded in the laws. However, it should be noted that not all indigenous approaches to environmental protection may be suitable for the today’s world.<sup>184</sup> Hence, only indigenous approaches that are fit for the modern era should be embedded into the environmental management framework in Nigeria. Thus, a holistic integration of informal institutions on environment

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<sup>182</sup> Some of the criticisms of customary law in Africa include the influence of patriarchy, human rights violations (especially discrimination against women) and that it does not promote the law of law in certain situations. Generally, see Adaye Okoye, ‘Is the AU Best Placed to advance Cross-Cutting Gender Rights’ Harmonization of Customary Laws?’ in Olufemi Amao, Michele Olivier and Konstantinos D. Magliveras, *The Emergent African Union Law: Conceptualization, Delimitation and Application* (OUP 2021) 171-188.

<sup>183</sup> Janet Levit, ‘A bottom-up approach to international law making: the tale of three trade finance instruments’ (2005) 30 (1) *Yale Journal of International Law* 126-209, 127.

<sup>184</sup> Generally, see Amechi (n 77); Yemi Oke, *Nigerian Energy & Natural Resources Law: Notes & Material* (Princeton & Associates Publishing, 2016)

and modern-day environmental management approaches will enhance environmental protection in Nigeria.

Furthermore, the Nigerian government should take inspiration from other African countries including Kenya and South Africa that have explicitly and implicitly enshrined traditional environmental values (informal institutions) into their environmental governance management framework.<sup>185</sup> This is against the backdrop that many communities in Nigeria attach intrinsic importance to traditional customs and practices (including cultural practices on the environment) and an “official recognition of these practices will be an important factor in complementing current economic incentives seeking to motivate people to support conservation efforts.”<sup>186</sup> Any amendment of existing environmental laws in Nigeria to incorporate informal institutions will be in line with the aims of the Nigerian National Policy on the Environment (revised in 2016). Furthermore, one of the strategies for actualising the aims of the Nigerian National Policy on the Environment, according to paragraph 4.7, is that the government will “Encourage community action to halt the loss of the nation’s biodiversity and wildlife by increasing devolution of the rights and management of natural resources to indigenous and local communities, communication outreach and capacity building.”

### **5.3 Embedding Environmental Education (including informal institutions) in Curriculum of Nigerian Universities**

Environmental education initiatives play a major role in enhancing environmental awareness in societies. This especially become paramount in societies that are facing the brunt of environmental injustices. This article suggests that environmental education in Nigerian universities should also include elements of indigenous knowledge or informal institutions on environment.<sup>187</sup> Students should be made

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<sup>185</sup> Generally, see Amechi (n 77) 227-228.

<sup>186</sup> Unuigbo (n 88) 165.

<sup>187</sup> Generally, see Charles C. Alaribe, *Sustainability in Southeast Nigeria Through Indigenous Environmental Education*, PhD Thesis submitted to York University 2015.

aware of the existence of the various indigenous concepts on environmental protection such as taboos and cultural practices amongst others. Also, environmental education can also be delivered in the different Nigerian languages, and this will help in the sustenance of indigenous knowledge on environment in the country.

Furthermore, effective manpower policy will enhance the delivery of environmental education programmes in Nigerian universities.<sup>188</sup> Effective manpower policy will have positive impacts on quality education thereby vital to the actualisation of the SDGs. For example, Goal 4 of the SDGs is focused on “ensuring inclusive and quality education and promote lifelong opportunities for all” by 2030.

Other strategies that can be relied upon by Nigerian universities to embed environmental education into their curriculum include the collaboration and networking between Nigerian and foreign universities, encouraging Nigerian-based academics to engage in research focusing on sustainability issues (including national, sub-regional and regional perspectives), encouraging undergraduate and postgraduate students to engage in research on SDGs, and environmental management (including informal institutions on the environment). These strategies will help embed environmental education in Nigerian universities’ curriculum.<sup>189</sup>

Furthermore, the federal government of Nigeria has an invaluable role to play in promoting environmental education in the country. For example, the government needs to increase the budgetary allocation for education.<sup>190</sup> The education sector is chronically under-funded in Nigeria, and this has negative impacts on the quality of education offered by government owned universities in the country. Thus, sustained increases in the budgetary allocation for the

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<sup>188</sup> Philip Igenegbai and Michael O. Osasuyi, ‘Implementing the teaching Manpower Policy in Nigeria: An imperative Sustainable Development’ in Eghosa O. Ekhatior, Serval Miller, and Etinosa Igbinsola, (eds.) *Implementing the Sustainable Development Goals in Nigeria: Barriers, Prospects and Strategies* (Routledge, 2021).

<sup>189</sup> Generally, see Eghosa O. Ekhatior, Serval Miller, and Etinosa Igbinsola, (eds.) *Implementing the Sustainable Development Goals in Nigeria: Barriers, Prospects and Strategies* (Routledge, 2021); Babalola and Olawuyi (n 4).

<sup>190</sup> Generally, see Babalola and Olawuyi (n 4).

education sector (including environmental education initiatives) will enhance the actualisation of sustainable development and environmental protection in Nigeria.

Environmental education initiatives should be integrated into the entire remit of the formal educational system in Nigeria and not limited to universities or higher education institutions. This will help in inculcating the benefits of environmental education into the minds of the different generations of Nigerian students (young and old). It is universally accepted that early environmental education is a spur in actualising sustainable development (including environmental protection) in Nigeria.<sup>191</sup>

#### **5.4 Enhancing capacity building and resources of Government Agencies in Environmental Management in Nigeria**

Engaging in capacity building initiatives will go a long way in improving environmental management in Nigeria. Capacity building in environmental management can be achieved via diverse strategies. For example, by environmental agencies engaging in public awareness or advocacy of environmental issues especially in the rural areas of the country or by translating environmental laws and guidelines into indigenous languages or pidgin English language (which is quite popular in the Niger Delta).<sup>192</sup>

Furthermore, civil society groups in Nigeria are also playing an integral role in enhancing capacity building initiatives in the environmental sector. For example, CSOs have been very proactive in disseminating the technical legalese in proposed laws in the oil and gas sector and on the environment to oil producing communities in Nigeria. One of such CSOs is Spaces for Change (S4C) which was founded in May 2011. Its major mandate is to coalesce human rights issues into the

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<sup>191</sup> Gbade Akinrinmade, 'Beyond the legal mechanism: Early environmental education as catalyst to achieving a sustainable environment in Nigeria' in Volker Mauerhofer (ed) *The Role of Law in Governing Sustainability* (Routledge: London, UK, 2021) 134–148.

<sup>192</sup> Ngozi F. Stewart, 'A roadmap for the effective enforcement of environmental laws in Nigeria' (2011) *National Environmental Law Review* 46-53. Also, many people living in the Niger Delta are not exposed to formal education and thus unable to read many of the existing environmental laws and regulations which are written in English language.

social and economic decision-making paradigm in Nigeria.<sup>193</sup> S4C is heavily involved in research, capacity building of oil community residents, community action and emphasis on increased public participation in governance amongst others. In furtherance of its mandate, it has produced a series of reports and organised training for people living in the Niger Delta to aid the peoples' understanding of the highly technical oil sector and environmental management in Nigeria. The S4C and a host of other CSOs, have played major roles by engaging in information gathering in the oil and gas sector in Nigeria, public awareness or advocacy of environmental issues and training for Niger Delta indigenes thereby impacting positively on the capacity building of the local people in the Niger Delta.<sup>194</sup>

Inadequate funding of government agencies in Nigeria (including environmental agencies) has negative impacts on the capacity or ability of the institutions to carry out their functions. This is reflected in the environmental management and the oil and extractive sector, where government agencies including NESREA and NOSDRA are underfunded. The agencies are beset with many institutional ills: for example, the enforcement capabilities of NOSDRA are weak and its staff do not have the capacity to “undertake environmental monitoring beyond oil spill related activities.”<sup>195</sup> Arguably, if the environmental agencies are adequately funded, they will be able to obtain “human and material resources, train their staff and create a better motivation for such staff, be able to mobilise to the location where their expertise and attention are needed, be able to act promptly when required and to generate and maintain its database of environmental information.”<sup>196</sup>

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<sup>193</sup> Spaces for Change Blog Website <<http://spacesforchange.blogspot.co.uk/p/policy-series.html>> accessed 10 May 2022.

<sup>194</sup> Eghosa O. Ekhaton, ‘Roles of Non-State Actors in the Regulation of Multinational Corporations in the Oil and Gas Industry in Nigeria’ (PhD thesis, University of Hull 2014); Spaces for Change *ibid.*

<sup>195</sup> Amnesty International (n 155).

<sup>196</sup> Cleverline Brown, ‘Effective Environmental Compliance and Enforcement in Nigeria: Motivation, Challenges and Prospects’ 11 (1) (2021) *African Journal of Law & Criminology* 91-107, 103

## 6. CONCLUSION

This article has provided theoretical foundation for an informal institutional approach in environmental policy implementation. It brought to the fore the importance of informal institutions in the enactment and implementation of legal framework on environmental protection in Nigeria. It has advocated the infusion of social norms (belief and customs) inherent in a community into formal regulations. This is because it is common knowledge that implementation of formal rules is reliant on their compatibility with prevalent societal norms. It underscored that an institutional approach can be extended to environmental protection and management. This is through informal institutions that cover what could be referred to community-based approach. It emphasizes that Africa and indeed Nigeria require their informal institutions, as in the past for their survival.<sup>197</sup> Thus, for effective implementation of environmental regulations in Africa, a detailed appreciation of African institutional peculiarities is needed. In this regard, formal and informal institutions prevalent in a specific African country must be integrated to create efficient laws, policies, strategies, and procedures for environmental protection. Indeed, it is eminently clear that integrating informal institutions originating in local communities into formal institutions, remains critical for achieving effective environmental policy implementation to advance the goals of sustainable development.

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<sup>197</sup> Menski (n 48).