

ENFORCEMENT CHALLENGES OF ENVIRONMENTAL PROTECTION LAWS IN THE TELECOMMUNICATIONS INSTALLATIONS IN NIGERIA

by

ARIYOOSU, D A*

&

ALAJO, Y A**

ABSTRACT

Following the boom in the global Telecommunications market as a result of the liberalization, privatization and technological advancement in the sector, there has been tremendous increase in the number of service providers as well as subscribers which necessitated the need for a corresponding increase in the installation of telecommunications facilities. In the process of installation of these facilities and their operations, certain environmental challenges ensue which tend to negate the principle of sustainable development. In order to address these challenges, certain attempts were made and some measures were put in place in terms of laws, regulations and practice. However, as superfluous as some of these laws are in the attempt to protect the environment against all sorts of environmental pollutions including ones resulting from telecommunications installations, some challenges have held back the enforcement of these laws and by extension, have put into question their effectiveness and efficiency. This paper, therefore, examines the various environmental impacts of telecommunications installations and the various challenges confronting the enforcement of the laws, regulations and practice put in place to prevent or minimize them. In conclusion, some recommendations were therefore suggested to address these challenges and thereby ensure adequate protection of the environment against

telecommunications installations hazards without necessarily compromising the development of the sector.

Key words: Environmental, Installations, Protection, Telecommunications

1.0. INTRODUCTION

The provision and siting of towers within the country are *sine qua non* to the availability of telecommunications and internet services for fast-tracking business and government cum social services. This is not without issues and concerns from many quarters. Apart from the legal and administrative issues arising from control over its siting, the arrival of the telecommunications mast has engendered serious issues affecting health, business and the environment.

Undoubtedly, there have been various governmental efforts to tackle environmental concerns generally and in the telecommunications sector in particular. These efforts are in terms of laws, regulations, guidelines, policies, declarations, etc. However, these efforts at environmental regulation have been confronted with different enormous challenges which are mostly interlinked with political, economic, institutional and cultural factors.

In this paper therefore, the various impacts of telecommunications installations on the environment will be examined from the following perspectives: Alteration of the earth habitation, Alteration of the aquatic habitation, Obstruction and alteration of vision, Waste and hazardous materials, Emission of electromagnetic fields, Air pollution, Noise pollution and Occupational health and safety; while the various challenges which include multiplicity of regulations and regulatory bodies, judicial bottle-neck,

poverty and lack of awareness as well as corruption and insincere governmental policies facing the enforcement of environmental protection laws particularly in the telecommunications industries will also be examined and discussed.

2.0. ENVIRONMENTAL IMPACT OF TELECOMMUNICATIONS INSTALLATIONS

Considering the technological workings of telecommunications, certain infrastructures must be put in place to ensure efficient and effective service delivery to the subscribers wherever they may be. In other words, some telecommunications installations are required for the effective coverage of telecommunications services. One of such installations is a Base Station which usually consists of: Towers/Masts, Antennas, Cables, Base Transceiver Station (BTS), Power Generating Set/Backup battery and Air Condition. In some jurisdiction, the apparatus that help in the working of the telecommunications are referred to as Cellular Telecommunication Infrastructure (TI) and these include: Antenna Structure, Base Station Site, Equipment room, Antenna Support Structure and Microwave dish.⁽¹⁾

In the process of constructing these installations or infrastructures or in the process of maintaining them, some environmental challenges usually ensue and these challenges include: Alteration of the earth habitation, Alteration of the aquatic habitation, Obstruction and alteration of vision, Waste and hazardous materials, Emission of electromagnetic fields, Air pollution, Noise pollution and Occupational health and safety.

2.1. ALTERATION OF THE EARTH AND ACQUATIC HABITATION

The ability of operators to offer telecommunications services often requires the building

2.1. ALTERATION OF THE EARTH AND ACQUATIC HABITATION The ability of operators to offer telecommunications services often requires the building of infrastructure, such as installation of cable or optical fiber lines, poles, ducts, and construction of towers, which in turn involves the need to access public or private property. A location usually referred to as Base Station is needed for the construction of tower or mast and the connection of cable thereto. Also, depending on their location, the installation of fixed line components, including shore approaches for long distance fibre optic cables, and access roads to transmission towers and other fixed infrastructure, may require some constructions crossing aquatic habitats. In the process of doing this, the face of the earth or the aquatic habitation may be altered depending on the nature of the infrastructure that is being put in place. For instance, digging of land or laying of linear cable defaces the earth while mounting of towers in certain environments reduces its serenity.

Laying of optic fiber cables across shores also has the potential of disrupting watercourses, wetlands and underwater vegetations. In the course of construction of the Base Station, access to public utilities may also be temporarily denied.

2.2. OBSTRUCTION AND ALTERATION OF VISION

Another environmental challenge usually posed by telecommunications installations especially towers and masts is obstruction of vision or visual alteration. The importance of towers and masts in the provision of quality service in telecom industries cannot be overemphasized. Towers houses antennas that receive and send signals and the closeness of these towers to each other no doubt ensures better quality of service.^[2] Without a Base Station, a call cannot be made and when Base Stations are few and far in between each other, holes or breakages in coverage appear and calls are interrupted or dropped especially when the caller/subscriber is on the move.^[3] The higher the tower upon which the antenna is hung the better the receptive capacity of the antenna. Therefore, the need to roll out more towers to meet the growing number of subscribers will no doubt create a proliferation of towers; thus

impairing the visibility of the environment. The obstruction of vision by towers and masts is more properly appreciated when considering the air transportation sector and other creatures that fly in the air.

2.3. HAZARDOUS MATERIALS AND WASTE

Though the operation of telecommunications may not necessarily require the use of hazardous materials, however, because of an adopted style or system of operation by each operator or the environment in which the operator operates, some hazardous materials which are not primarily necessary in the operation of telecommunications may be used. For instance, the operation of certain types of switching and transmitting equipment in Base Stations may require the use of backup power systems to keep the Base Station powered and functional at all times. This power backup system may consist of a combination of batteries (typically lead-acid batteries) and diesel-fueled backup generator sets.

Operation and maintenance activities of Base Stations and other telecommunications facilities may also result in the generation of electronic wastes like circuit boards from computer and other electronic equipment. The operation and maintenance of backup generators and service vehicles may also result in the generation of used tires, and waste oils and used filters. Transformer equipment may potentially contain Polychlorinated Biphenyls (PCBs) while cooling equipment may contain refrigerants (potential Ozone

Depleting Substances [ODSs]).^[4]

2.4. EMISSION OF ELECTROMAGNETIC FIELDS

There is no doubt that this issue is one of the most controversial areas in the telecommunications industry. This is due to the claims and counter-claims from experts that the emission of the electromagnetic fields constitute health challenges and dangers. It is to be noted that Mobile Site (MS) or mobile handset communicates with the Base Station through radiofrequency signals. On the other hand, a Base Station communicates with another Base Station through microwave link. The handset has an inbuilt antenna which sends signal transmission, or voice and data traffic to the radiofrequency (RF) antenna mounted on the tower in a Base Station. The signal sent by the handset is processed by the Base Transceiver Station (BTS) which is usually housed in a prefabricated shelter located in the Base Station; and the processed signal is sent to other Base Stations *via* the microwave antenna also mounted on the tower. The RF antennas are usually the long white objects mounted on the tower while the microwave antenna is the white drum-like object also mounted on the tower.

In the process of this signal transmission, radiation is emitted in the electromagnetic field. Radiation is the energy that comes from a source and travels through space and may penetrate various materials.^[5] It may be ionizing and non-ionizing radiation.^[6] Ionizing radiation, also referred to as higher frequency radiation, is generally considered to be potentially harmful to human health when continuously exposed to for a very long time without adequate protection and precaution. Non-ionizing radiation, on the other hand, is the extremely low frequency radiation which, arguably, is considered to pose no significant harm to human health. An example of the non-ionizing radiation is the one used in the telecommunications industries.

There is no gainsaying the fact that the issue of emission of electromagnetic fields in the telecommunications industries being harmful to the environment has been a subject of controversy since the market explosion in the industries. There are claims that the radiation emitted into the atmosphere in the telecom industries causes a series of health challenges ranging from cancer, hampering of memory and sleep patterns, brain tumours, infertility, anxiety, etc.^[7]

The above claims (though not their veracity) were even acknowledged by the then Executive Vice Chairman of NCC, Engr. Earnest Ndukwe when he said:

As evidenced by all the papers presented there are a myriad of health related concerns associated with EMF emissions from Mobile telecommunications. There has been growing concern throughout the developed world that exposure to radiation from base stations and mobile handsets could lead to increased risk of illnesses such as cancer and may adversely affect cognitive functions like concentration and may cause memory loss, headaches, dizziness and epilepsy among others.^[8]

Unfortunately, this belief or claim has been identified as a factor responsible for the attitudinal change in the operators' prospective and existing landlords and neighbours to now either resist or reject the requests to site mobile telecoms equipment/infrastructures in and around their premises^[9] which reverse was the case hitherto.

The recent classification of electromagnetic fields (EMF) radio frequency (RF) as a possible cause of cancer in human beings by the International Agency for Research on Cancer (IARC) in May 2011,^[10] is surely lending credence to the concerns of people who believe radiation causes health risks.

Conversely, there are other claims to the effect that exposure to non-ionizing radiation emitted by telecom installations has no significant health hazard that warrants the fear exhibited by neighbours of Base Stations or other phone users. Their claim is premised on the World Health Organization's (WHO) report that says exposure levels to radiation by living near a Base Station is extremely low and thus, poses no health risk.^[11] Interestingly however, the WHO also acknowledged that there is need for further research on the possibility of nonionizing radiation posing any health risk.

Although reports of the various research findings have not shown conclusive empirical evidence of negative effects on health and cognitive functions resulting from radiation from base stations and mobile sets, there is however, evidence in psychological and medical literature that the fear and uncertainty surrounding the potential health effect of radiation from base stations is capable of causing significant health problems.^[12] The well-being of some people are thought to be adversely affected by their concerns for the health impact of their exposure.^[13]

Remarkably, it may be argued that since telecommunications in commercial quantity is a relatively recent development and any significant health hazard can only manifest over some relatively long period of time, one may need to take some precautionary measures to reduce exposure to radiation whether ionizing or non-ionizing, so that no damage would have been done by the time outcome of researches confirm the hazardous nature of non-ionizing radiation. Examples of such measures may include discouraging the use of phones by infants and very young persons, encouraging limited holding time on phones, avoidance of siting base stations very close to residential areas, etc. However, precautionary measures are advised not to be

arbitrary as they may increase public concern in addition to undermining science, which has established safe limits.

2.5. AIR AND NOISE POLLUTION

Another area of environmental challenges in telecommunications industries are air and noise pollution. It is needless to mention here that the emission of radiation into the air as already explained in the preceding paragraphs also constitutes air pollution. There are currently well over 15,000 BTS sites in Nigeria and more than 80% of them are powered by fossil fuel driven generators necessitating the need for between 2,000-6,000 litre capacity storage facilities on each BTS site.^[14] No fewer than 125 incidents of ground water and land pollution cases have been recorded by the telecommunications operators over the last three years around the BTS facilities.^[15] Between 5-10% of the incidents are due to either malfunctioning of the fuel flow regulators or functional failures, while 20-25% are deliberate acts by the neighbours or owners of such well water to attract compensation.^[16] The rest are caused by the unwholesome activities of vandals/thieves, who after breaking the diesel lines and helping themselves sufficiently to the products, leave the lines open to flow freely into such water bodies and lands. The case of *Engr. Charles Jimoh vs. Globacom Limited & Anor*^[17] well demonstrates the negative effect of oil or fuel spillage, percolation and escape from telecommunications base stations to near-by residential premises. In this case, the claimant claims that it was the diesel oil that escaped from the defendant's base station that percolated into his well and contaminated the water therein.

Also, in the operation of these power-generating sets used as power backup or regular power supply to power the telecommunications installations, fumes are released into

the atmosphere and the generator set also makes unpleasant continuous noise thus, constituting both air and noise pollution to the people living within the vicinity. Deployment of service vehicles and other equipment for the construction of telecommunications sites can also result in air and noise pollution.

2.6. OCCUPATIONAL HEALTH AND SAFETY

In the construction and maintenance of telecommunications sites, workers are exposed to certain occupational hazards. For instance, in the course of assemblage and construction of towers and masts, workers are exposed to possible falls from the tower because of its enormous height. They may also be exposed to electrical and fire accident, electromagnetic fields, eye injury from particles and other hazards. In summation, occupational health and safety issues in telecommunications projects can be said to primarily include the following:^[18] Electrical safety, Electromagnetic fields (occupational), Optical fiber safety, Elevated and overhead work, Fall protection, Confined space entry and Motor vehicle safety.

3.0. ENFORCEMENT CHALLENGES OF ENVIRONMENTAL PROTECTION LAWS IN NIGERIA

Following the environmental challenges posed by environmental exploration by industries in general and by telecommunications industries in particular, efforts were made by the Nigerian Government through various agencies to address these challenges. These efforts are in terms of laws, regulations and Guidelines some of which are to address environmental challenges generally while some are specifically made to address environmental hazards resulting from telecommunications installations. Some of the laws that are generally meant to protect the environment

include: National Environmental Standard and Regulations Enforcement Agency (Establishment) Act, 2007 and Environmental Impact Assessment Act, 1992 while laws meant for protection of the environment against telecommunications installations hazards are the Nigerian Communication Act, 2003 and some Regulations and Guidelines made thereunder. Other relevant laws for the purpose of protection of the environment against telecommunications installations hazards are: Nigeria Airspace Management Agency (Establishment) Act, 1996; Nigerian Civil Aviation Authority Establishment) Act, 1999 and Factories Act, 1987.

However, as laudable as these laws are, there exist some factors that militate against their effective enforcement. These factors include: multiplicity of regulations and regulatory bodies, judicial bottle-neck, poverty and lack of awareness as well as corruption due to ineffective and inefficient regulation and supervision by regulatory bodies.

3.1. MULTIPLICITY OF REGULATIONS AND REGULATORY BODIES

Multiplicity of regulations has been identified as a clog in the growth of the Nigerian telecommunications industry.^[19] Stability and certainty of regulation and policy in the telecommunications industry no doubt, have the ability and capacity to bring about accelerated investment inflow into the sector. However, where there are various regulations administered by various regulatory bodies on the same subject matter, sustenance of the growth in the sector may be stalled. In Nigeria, there are various bodies saddled with the responsibility of protecting the environment against all sort of hazards and pollution from any source including telecommunications installations. In the telecommunications industry, the Nigerian Communications

Commission (NCC) is the sectorspecific regulatory body. In the discharge of its responsibility for the monitoring of performance standards and indices relating to telecommunications services and facilities particularly in the area of technical specifications and standards for the importation and use of communications equipment, NCC issued a guideline on Technical Specifications for the Installation of Telecommunications Masts and Towers. By these Guidelines, environmental issues such as alteration of the earth and aquatic habitation, air and noise pollution, exposure to electromagnetic field, obstruction of airspace and distortion of environmental serenity are taken into consideration. If applied in good faith by the sector-regulatory body (NCC), it is believed that the provisions of the Nigerian Communications Act and the Guidelines on Technical Specifications for the Installation of Telecommunications Masts and Towers are enough to safeguard the environment against pollution or degradation resulting from telecommunications installations.

Unfortunately, however, the government does not see the Act and the Guidelines as covering the field in this regard, thus, saddles other bodies, other than NCC, through other laws, with responsibility of protecting the environment against any pollution including one resulting from telecommunications installation. One of such bodies is the National Environmental Standards and Regulations Enforcement Agency (NESREA) which has statutory duties in the general environmental issues. In exercising its power under the Act that establishes it, the supervising minister of the agency (NESREA) is empowered to make regulations for the protection and development of the environment, biodiversity conservation and sustainable development in Nigeria.^[20] The vision of the agency is to ensure a clear and healthier environment for all Nigerians while the mission is to inspire personal and collective

responsibility in building an environmentally-conscious society for the achievement of sustainable development in Nigeria.^[21]

Other bodies that are saddled with one role or the other in the protection of the environment against telecommunications installations hazards include: Nigerian Airspace Management Agency (NAMA)^[22] and Nigerian Civil Aviation Authority (NCAA),^[23] while other relevant regulations in this regard include: Environmental Impact Assessment Act, 1992, Factories Act, 1987, Nigerian Airspace Management Agency (Establishment, etc.) Act, 1999 and Nigerian Civil Aviation Authority (Establishment) Act, 1999.

From the above, it can be seen that not only the NCC but other bodies like NESREA, NAMA, NCAA, etc. have major roles to play in the regulation and formation of regulatory instruments that govern the conduct of telecommunications operators in the installation of telecommunications equipment and facilities as it relates to the protection of the environment. As a result of this regulatory overlap, there have been several clashes between these bodies; the most apparent is the one between NCC and NESREA. On the issue of distance to be maintained between telecommunications mast/tower and residential apartment, the NCC regulation provides for 5 meters while the NESREA regulation provides for 10 meters. This difference resulted in the shutting down of telecommunications base stations by NESREA over alleged environmental breaches.^[24]

Multiplicity of regulations and regulatory bodies as well as differences in the provisions of regulations in the protection of environment against telecommunications installations hazards have the potential of hindering the quality

of service and foreign investment in the sector.^[25] In order to avoid this anti-growth effect in the industry, the Association of Licenses Telecommunications Operators of Nigeria (ALTON) has suggested that since NCC, as the sole statutory regulator of the telecommunications industry, has issued Guidelines on Technical Standards for the Installation of Masts and Towers based on applicable international standards, there is no need for a fresh set of regulations from NESREA; rather the NESREA should review its regulations and appropriate provisions be subsumed into the NCC's Guidelines on Technical Specifications for the Installation of Masts and Towers to address any additional concerns which NESREA believes have not been adequately addressed by the NCC Guidelines.^[26] This suggestion is also applicable to other bodies like NAMA and NACC.

3.2. JUDICIAL BOTTLE-NECK

The Judiciary is the third arm of Government in Nigeria and it is seen as the last hope of the common man. It is saddled with the responsibility of interpreting the laws for their proper enforcement. Where any provision of the law is violated and anybody is aggrieved by this violation, the general principle is that such person can approach the court for redress. Under the various Nigerian laws relating to curbing the environmental challenges resulting from telecommunications installations hazards, there are provisions setting standards and prohibiting certain acts in the telecommunications industry. These laws in some cases also provide for penalties in case of non-compliance with the laws. However, there are certain factors in the administration of justice that hinder the enforcement of these environmental protection laws. These factors include: Delay in justice, *Locus Standi*, Pre-action notice, Conservativeness of court to environmental cases, etc.,

Delay in Justice

The common adage is that justice delayed is justice denied. The desire of every aggrieved person approaching the court is to get redress for the injury caused him by another. He desires the removal of the injury and other remedies as quickly as possible from the court. However, where these remedies are not forthcoming or delayed in coming, it dispirits the aggrieved party and makes him lose confidence in the justice administrative process. It can further discourage any other person aggrieved by the act of others to approach the court for redress. The net effect of this situation is that impunity will reign and observance of provision of the laws will be minimal.

One of the challenges staring the Nigerian judiciary in the face is the delay in the justice system. Cases on preliminary issues have lasted for years¹²⁷¹ going through all the hierarchy of courts without resolving the substantive matter. This unpleasant development spurred the efforts of heads of courts in Nigeria to design some ways in the form of Rules or Practice Direction to fast-track the hearing of cases in court.

Protection of the environment against all sort of pollution is for life sustenance.

In other words, all the provisions of the laws relating to curbing the environmental pollution resulting from telecommunications installations intend to create a conducive environment for human survival and sustainability. For instance, the distance to be maintained between a tower and residential apartment as provided for by NCC and NESREA is meant to avoid or limit the human exposure to electromagnetic fields which is considered in some quarters as capable of causing cancer. Therefore, if this provision of the law is violated by a telecommunications operator and anybody aggrieved by this violation approaches the court for the removal of the tower but the court refuses to hear the case on time due to some administrative bottle-necks, the damage which the law seeks to prevent in the first place would have been done and the case becomes an exercise in futility. The delay

in the administration of justice no doubt constitutes a serious challenge to the enforcement of laws in the protection of the environment.

Locus Standi

Another hurdle that frustrates the enforcement of environmental protection laws in Nigeria is the issue of *locus standi*. This concept is considered as a fundamental gate-keeping requirement for access to the court system. In its traditional and strict form, it means a person's (Plaintiff) direct personal and proprietary relationship with the subject matter of litigation which entitles him to approach the court for redress. In other words, it means the ability of the person to demonstrate damage suffered as a result of the action or inaction of the other person (Defendant). The application of the concept of *locus standi*, like many other legal concepts, has generated a lot of controversies in different jurisdictions. In some jurisdictions, the application of the doctrine has been approached with its traditional rigidity, while others have shown a preparedness to allow for a more flexible approach. In all, three major positions have been identified in the application of the doctrine in various jurisdictions. The first position is the broad approach which allows public interest actions to be brought in the form of *actiopopularis*,^[28] while the second position is the restrictive or strict approach which requires a potential litigant to demonstrate a breach of one of its own peculiar rights, thus, not accommodating litigation to protect collective interests. The last position is the intermediate approach. Here the concept of 'interest' is broader than the requirement of a subjective right, but still ensures that a connection exists between the plaintiff and the cause of action.

Following the application of the doctrine of *locus standi* in some cases by the Nigerian Courts, one may say that the concept is still applied as recognized

traditionally under the common law. Consequent upon the decision of the Supreme Court in *Fawehinmi v. Akilu*,^[29] it was though, observed by many that the common law concept of *locus standi* has been widened and broadened from the inconsistent and conflicting interpretation of section 6(6) (b) of the 1979 Constitution^[30] in the earlier decided case of *Abraham Adesanya v. President of Federal Republic of Nigeria*.^[31] However, when the case of *Owodunmi v. Registered Trustees of the Celestial Church of Christ*^[32] was decided, it became clearer that the Supreme Court was more disposed to the restrictive approach underscored by Bello JSC in Adesanya's case. The net effect of these cases decided by the Supreme Court in relation to the concept of standing is that it facilitates inconsistency, contradiction and confusion in the exercise of discretion by the lower courts. While some have continued to affirm the traditional individualistic application of *locus standi*, others have embraced a different public interest approach.^[33]

Considering the provisions of the environmental protection laws in relation to telecommunications installations, it will be observed that non-compliance with the environmental pollution preventive measures set down therein is criminalized in some laws. In other words, the violation by the telecommunications operators of any provisions of the Nigerian Communications Act, Environmental Impact Assessment Act, NESREA Act, NCAA Act, NAMA Act, etc, and the Regulations and Guidelines made under them attracts penalty in terms of fines or imprisonment. Therefore, the laws on the surface do not recognize the right of an individual to challenge its violation by the telecommunications operator. However, the common law principle of *ubi jus ubi remedium* in relation to the tort of nuisance could be called in aid where an individual can demonstrate a peculiar damage suffered or likely to be suffered as a result of non-compliance with the provision of the laws.

Also, there is a need to view the concept of *locus standi* with particular reference to environmental pollution litigation as different from other litigation because the environment does not have a voice of its own to complain of any injury to it. It often needs committed representatives, independent from government functionaries who the laws require to protect the environment but in certain situations engage with impunity in activities detrimental to the environment. There are numerous advantages in relaxing the concept of *locus standi* to allow for public interest litigation. One of the advantages is that the existing enforcement challenge associated with environmental law could be tackled more successfully if more litigation rights exist. It will also bring about positive environmentally friendly actions because the possibility that a polluter can be sued will itself have a positive effect by making public authorities and business enterprises be conscious and examine more carefully the compatibility of their decisions and activities with environmental law stipulations.

Because of the importance of the environment to human survival and the challenges of *locus standi* in the enforcement of environmental protection laws in Nigeria, it is imperative to have the concept of *locus standi* reformed particularly in connection with environmental litigation. This reform could be achieved by way of legislative and judicial influence. The legislative influence can be achieved by enacting laws or amending the existing ones to widen access to courts and give a boost to public interest litigation in environmental cases; while the judicial influence should follow the admonition of his Lordship, Tobi JCA (as he then was) in the case of *Busari v. Oseni*,^[34] where His Lordship eruditely admonished as follows:

In my view, the frontiers of the concept of *locus standi* should not be static and conservatively so at all times. The frontiers should expand to accommodate the dynamics and sophistication of the legal system and the litigation process respectively. In other words, the concept must move with time to take care of unique and challenging circumstances in the litigation process. If the concept of *locus standi* is static and conservative while the litigating society and the character and contents of litigation are moving in the spirit of a dynamic changing society, the concept will suffer untold hardship and reverses. That will be bad both for the litigating public and the concept itself.

Pre-action Notice Requirement

This is the notice statutorily required to be served, in some cases between 1 - 3 months by the aggrieved party on the prospective defendant, in most cases, a governmental agency before the commencement of his action.^[35] This is to give the said defendant ample opportunity to know beforehand the legal claim against her and the possibility of resolving the matter out of court. The requirement of pre-action notice has been considered so fundamental that failure to serve same renders a case incompetent.^[36] There is no doubt that the various government authorities and institutions play a significant role in the protection of the environment particularly in terms of planning control system, investigating and abating nuisances, authorizing emissions, identifying contaminations, monitoring hazardous and toxic substances, promoting new legislation, issuing regulations and general enforcement of compliance.

Therefore, if the environment is polluted or likely to be polluted and cause or likely to cause any damage to any person as a result of the action or inaction of the government authorities and institutions to perform its duties under the law and the aggrieved person has to serve pre-action notice and wait for 1 - 3 months before

seeking redress in a court of law, the damage the law intends to prevent would have been done and it may be irreparable. This is because most environmental risks/pollutions are of the nature that needs to be prevented by way of prompt court injunction sought *via ex parte* application.

Accordingly, if our laws on the protection of environment particularly in relation to the telecommunications installations are not to be rendered ineffective, the approach of our courts to issue of pre-action notice ought to be reviewed. In some other jurisdictions, the requirement of pre-action notice has been held to be merely procedural such that the court will be prepared to stay proceedings and allow notice to be served rather than dismissing or striking-out the suit;^[37] or that case can be commenced without serving the pre-action notice.^[38] Although, the Supreme Court of Nigeria had also held the service of pre-action notice as procedural and not an issue of substantive law^[39] but the Court still maintained that failure to serve same renders the case incompetent unless it is waived by the defendant. This partial remedial approach of the Supreme Court to the clogging issue of pre-action notice in the enforcement of environmental laws has caused an environmental expert, Professor OlanrewajuFagbohun, to submit thus: "it is time for the Supreme Court to lift the stakes in purposive construction, and at the minimum allow for stay of proceedings while the notice is being served. This will enable courts to be in position to grant orders of injunction in deserving situations."^[40]

Conservativeness of Nigerian Courts to Environmental Cases

In a civilized and decent society, when a person is aggrieved by the act of another, he approaches the court with the hope that he will get adequate redress in accordance with the law. However, where this hope is dashed by the court by not giving adequate

redress, the society may gradually slip into a state of impunity. The environmental protection laws contain some remedial provisions meant to ensure compliance with the laws. Under these laws, there are three major benefits derivable from redress /remedy the court may grant. Firstly, if the redress is in form of fine or imprisonment, it serves as deterrence to the polluter and others. Also, the court may make an order for the repairs of environmental damage; and lastly, the court may order payment of compensation for the harm done.

Unfortunately, however, the attitude of Nigerian courts towards environmental litigation has always been conservative. This conservativeness is better appreciated in terms of ridiculous compensation or damages awarded by the court and or reluctance in granting injunctions in environmental litigation. The case of *Shell Petroleum Development Co. Ltd v. Tiebo*^[41] aptly demonstrates this conservative attitude of the Nigerian court to environmental pollution victims. In the case, the plaintiff claimed N64m general damages for the oil spill that permanently destroyed all his farm land, fish pond, sources of drinkable water, etc.,. The court however awarded N6m, a ridiculous amount considering the magnitude of the environmental damage.

Apart from inadequacy in the award of damages in environmental cases, Nigerian courts have also shown reluctance in granting injunctions in cases relating to environmental pollution. In the case of *AllarIrou v. Shell B.P Development Co.*^[42] the plaintiff approached the court for an injunction restraining the defendant from further pollution of his farm land, fish pond and the creek. The High Court of Warri in refusing the injunction held thus:

First, negligence or carelessness by the defendants' employee cannot be controlled by the defendants. To grant the order would amount to asking the defendants to stop operating in

the area. The interest of the third persons must in some cases be considered. For example, where the injunction would cause the stoppage of the trade or throwing out a large number of people out of work... Mineral oil is the main source of this country's revenue. The defendants having been granted an oil exploration licence, an order of injunction may render nugatory such licence. It will not be just and convenient to grant an injunction in this case.

It is not doubtful that if Nigerian courts continue to view the issue of injunction in connection with environmental litigation as expressed in the above case, it will not be long before the effectiveness of our environmental protection laws will be eroded.

3.3. POVERTY AND INADEQUACY OF AWARENESS

Poverty and inadequacy of awareness are other challenges facing the enforcement of environmental laws in Nigeria. Considering the expensive nature of environmental litigation, one will appreciate the inhibiting power of poverty in the enforcement of environmental laws. A careful examination of the provisions of the environmental protection laws as they relate to telecommunications installations will show that a party aggrieved by the violation of the laws may require in most cases the service of an expert witness to prove his case. This is because of the highly technical, scientific and specialized facts needed by the court to resolve the dispute. Expert's testimony gives the judge a deep understanding of the technological issues involved in the case. For instance, a party who wants to challenge in court a telecommunications operator for erecting a telecommunications mast beside his residential apartment, thus exposing him to harmful electromagnetic field would surely need to call an expert witness in that field to establish his case. The Supreme Court in the case of *Seismograph Services Ltd vs. Ogben*⁴⁴³ illustrates the importance of expert evidence in environmental cases. In the case the trial judge held that expert witnesses were not

necessary but on appeal to Supreme Court it was held that expert witnesses are necessary in seismic operations in order to properly assess the damages to properties affected by the operations.

It is stating the obvious that these expert witnesses are not easy to come by and where they are available, they are not within the reach of the common man. Many of these experts are found in the ministries and other government parastatals or in the private sector.^[44] Because of the law^[45] prohibiting civil servants from private practice, the service of these experts in ministries and government parastatals cannot be engaged for private purpose, whereas, the available ones in the private sector are too expensive and not within the reach of the ordinary victim of environmental pollution. Many of these victims therefore fall back on technical personnel who may not be sufficiently qualified and well versed in the relevant field.

The role poverty plays in inhibiting the enforcement of environmental protection laws can also be appreciated in the character of parties to environmental litigation. In most cases, it is usually an impoverished individual or community against a rich company or government parastatal. While the poor individual or community usually lacks the means and in some cases even the knowledge of employing the services of experts to give evidence for them, the company or government parastatal is always in possession of financial means to employ high caliber lawyers and the best experts to give evidence in their favour with almost guaranteed success.^[46]

Another hindrance to the enforcement of environmental protection laws is the issue of ignorance or lack of awareness. The laws are there in the statutes beautifully couched and until their efficacy is tested by the aggrieved party they will continue to

remain valueless in the statutes. Regrettably, however, a majority of victims of environmental pollution are not aware of the existence of these laws. Also, because of the fact that many environmental pollutants and their health implications can only be detected with some level of scientific knowledge, many cases of environmental pollution continue unabated due to ignorance and lack of awareness. Many people sold their backyard to telecommunications operators to erect telecommunications masts without knowing that it has some health implications.

3.4. CORRUPTION DUE TO INEFFECTIVE AND INEFFICIENT REGULATION AND SUPERVISION BY REGULATORY BODIES

Though corruption is a global phenomenon, its level of practice defers from one jurisdiction to the other. In Nigeria, it is a common knowledge that corruption has eaten deeply into our developmental fabric. The fight against this antidevelopmental agent has proved to be a losing battle. There are many negative effects of corruption on development, some of which include, irrational decisions which are myopic and motivated by greed, squandering of resources on unsuitable projects, loss of confidence of the people in government and the development of cynical attitude towards leadership.^[47] Corruption also results in wastage of resources, poor delivery of service, ill-equipped and ill-trained bureaucracy, avoidable death resulting from sharp practices and poor corporate governance due to inefficient and ineffective regulation and supervision by regulatory bodies.

From a careful examination of the above listed effects of corruption on national development, it will be seen that the most relevant cause is poor corporate governance due to inefficient and ineffective regulation and supervision by regulatory bodies. Under the various laws particularly, EIA Act, NESREA Act,

NCAA Act, NCC Act and the regulations made under them, certain measures are provided for the protection of the environment. For instance, environmental impact assessment must be carried out and a certificate issued before certain projects can be executed. Also, before any telecommunications mast or any other telecommunications installations can be constructed, clearance and a certificate must be obtained from the appropriate authorities. These clearance and certificate ordinarily ought to be issued after thorough inspection of the site/location by the officers of these authorities. Regrettably, however, with the closeness of some telecommunications mast to the residential apartment as evident all over the place, one wonders whether these officers actually carry out any inspection before issuance of clearance and certificate. In some cases, the closeness of telecommunications towers to the residential apartment is less than minimum 5 meters required by law and the only thing that could be responsible for this is corruption due to inefficient and ineffective regulation and supervision by regulatory bodies.

4.0. CONCLUSION

There is no doubt that no matter how good the intention behind any legislation is if mechanisms for its efficient and effective implementation or enforcement are not put in place, the good intention will surely be defeated. It must be acknowledged here that the intention behind the various environmental protection laws in Nigeria are good and for the benefit of all but only that their enforcement and implementation is clogged by some factors which are discussed above.

In this paper, it has been shown that the existence of multiple regulation and regulatory bodies in the protection of environment against telecommunications installations hazard has been a clog rather than lubricant in the wheel of effective and

efficient enforcement of the laws. Apart from the fact that the existence of multiple regulations and regulatory bodies creates confusion for a telecommunications operator willing to comply with the laws it also provides an excuse for a villain operator to violate the laws. Other challenges discussed in this paper include judicial bottle-neck, poverty and lack of awareness, and corruption due to inefficient and ineffective regulation and supervision by regulatory bodies.

Therefore, in order to ensure efficient and effective implementation and enforcement of the environmental protection laws, there is a need to harmonize the existing laws and the regulatory bodies. Further efforts also need to be made in the judicial sector to fast-track hearing of cases particularly one concerning the environment. Attitude of judges towards environmental litigation must also change from conservatism to a more liberal and pragmatic approach in terms of granting injunctions and awarding damages exemplary enough to serve as deterrence to other potential environmental polluters. To tackle the issue of poverty and inadequacy of awareness, the government should provide an avenue for free service of expert witnesses and they should provide intensive public enlightenment about environmental issues and the environmental protection laws. On the issue of inefficient and ineffective regulation and supervision of regulatory bodies due to corruption, the government should intensify her effort in the fight against corruption with sincerity. An independent monitoring and supervisory agency should be put in place to independently monitor and supervise these regulatory bodies.

* LL.B, LL.M, Ph. D. BL, PGDE, ACTI, ACI Arb, Notary Public, Lecturer, Department of Business Law, Faculty of Law, University of Ilorin, Ilorin - Nigeria. E- mail: ariyoosu4law@yahoo.com; ariyoosu4law@gmail.com. Phone No: +2348066497298.

** LL.B (Hons), BL Solicitor & Advocate of the Supreme Court of Nigeria Alajofo Associates, Ilorin, Kwara State. E-mail: alajoyahaya@yahoo.com, Phone No:

+2348064441809.

Endnotes:

[1] See Policy Cellular Telecommunication Infrastructure, 2002, S 3. This is a policy regulation made by Council of Cape Town in South African to regulate the siting of telecommunications infrastructures within the jurisdiction of the Council.

[2] 'Telecommunication', <http://www.worcester.gov.uk/index.php> accessed 27 July 2014.

[3] *Ibid.*

[4] 'Environmental, Health, and Safety Guidelines for Telecommunications' <www.ilec.org/wpc/wcm/connect/telecommunication> accessed 27 July 2014.

[5] 'What is Radiation' <<http://hps.org/public/information/ate/faqs/whatisradiation.html>> accessed 27 July, 2014.

[6] 'Ionizing and Non-Ionizing Radiation' <<http://www.ehpa.gov/radiation/understand>> accessed 27 July, 2014.

[7] <<http://www.mast-victims.org/index.php?content=news&action=view&type=country&id=129>> accessed 02 August 2014.

- [8] A Keynote Address delivered by Engr. Earnest Ndukwe, the then Executive Vice Chairman, Nigerian Communications Commission at the Workshop on Electromagnetic Compatibility Problems in Industrial and Commercial Installations/Equipment held at University of Lagos on June 27, 2005. Also available at <http://www.ncc.gov.ng/archive/speeches_presentations/EVC%27s%20Presentation/EVC%27s%20Paper%20Electromagnetic%20compatibility%20problems%20at%20University%20of%20Lagos.pdf> accessed 20 July 2014.
- [9] Eneye IB, 'The Health, Safety & Environment Challenges of Mobile Telecommunication Infrastructural Deployment in Nigeria. Also available at <http://www.ncc.gov.ng/index.php?option=com_docman&task=doc_download&gid=293&Itemid=> accessed 05 August 2014.
- [10] IARC classifies Radiofrequency Electromagnetic Fields as possibly carcinogenic to humans, Press Release N° 208, Media Centre- IARC Press Release <<http://www.iarc.fr/en/media-centre/pr/2011/index.php>> accessed 05 August 2014.
- [11] Telecommunications<<http://www.worcester.gov.uk/index.php?id=1176>> accessed 27 February 2014.
- [12] A Keynote Address delivered by Engr. Earnest Ndukwe, Executive Vice Chairman, Nigerian Communications Commission at the Workshop on Electromagnetic Compatibility Problems in Industrial and Commercial Installations/Equipment held at University of Lagos on June 27, 2005, p2.
- [13] *Ibid.*
- [14] 'The Health, Safety & Environment Challenges of Mobile Telecommunication Infrastructural Deployment in Nigeria. p7.

[15] *Ibid*, p8.

[16] *Ibid*.

[17] (Unreported) Suit No.; KWS/OM/21/2014.

[18] Environmental Health and Safety Guidelines for Telecommunications,
www.ife.org/wpc/wcm/connect/telecommunication accessed 27 February 2014.

[19] Ariyoosu DA, 'An Examination of the Legal Regulations and Taxation of Telecommunications and Electronic Commerce in Nigeria' (PhD Thesis, Faculty of Law, University of Ilorin, 2012).

[20] It is to be noted that many regulations have been made in exercise of the power but the relevant one to this research is National Environmental (Standards for Telecommunications and Broadcasting Facilities) Regulations, 2011 which is considered to be controversial in the sense that some of the standards set therein are at variance with the provision of the regulation made by NCC, the sector primary regulator.

[21] 'An Examination of the Legal Regulations and Taxation of Telecommunications and Electronic Commerce in Nigeria' (PhD Thesis, Faculty of Law, University of Ilorin, 2012).

[22] The Agency is established by the Act and is empowered to generally secure the safety, efficiency and regularity of air navigation in Nigeria by minimizing or preventing interference with the use or effectiveness of all apparatus used in the air navigation which may endanger the aircraft or Nigerian airspace. See Nigerian Airspace Management Agency (Establishment, etc.) Act, 1999, *Cap. N90, Laws of the Federation of Nigeria, 2004*, s. 7 (1) (c) and (d).

[23] The Authority is empowered to prohibit and regulate the installation of any structure which by its height or position is considered to endanger the safety of air navigation. See Nigerian Civil Aviation Authority (Establishment) Act, 1999, s. 7 (1) (n).

[24] Patrick Osadebamiren, 'Telecoms Revolution and Environmental Sustainability' *Summit Newspaper* (Nigeria 21 July 2011) 20; Emeka Ezekiel, 'FG Shuts MTN Base Stations over Environmental Breaches' *The Punch Newspaper* (Nigeria, 24 August 2010) 17; Aminah Mohammed, 'Communications Commission, NESREA Clash over Regulation of Telecoms' <<http://www.allafrica.com/stories/201007150188.html>> accessed 15 July 2014.

[25] *Ibid.*

[26] This opinion was expressed by the Association of Licensed Telecommunications Operators of Nigeria (ALTON) in her reaction to the NESREA'S Draft National Environmental (Standards for Telecommunications Facilities) Regulations 2010 <http://www.altoning.com/docs/Alton%20Comments%20on%20NESREA%20Regulations%20for%20Telecoms%20facilities.pdf> accessed 09 August 2014.

[27] See *Nwadiaro v. Shell Petroleum Development Co. Ltd* [1990] 5 NWLR (Pt 150) 322.

In this case, the defendant's oil exploration activities caused some environmental pollution in Utiyeli creek in 1966. An agreement was reached between the parties to the effect that the defendant will pay the community compensation. When the defendant failed to pay as agreed, the plaintiff sued her in 1985 for payment of compensation. An objection was raised by the defendant on the ground of statute of limitation; the trial court upheld the objection but same was overruled on appeal. When the matter was relisted before another High Court Judge in 1988, the defendant filed another application objecting to the competence of the suit. The objection was overruled by the trial court and the decision of the trial court was affirmed on appeal.

[28] Meaning 'Popular Action'. It also means an action that a male member of the general public could bring in the interest of the public welfare.

[29] [1982] 18 NSCC (pt. II) 1265, 1301.

- [30] The provision of Section 6(6)(b) of the 1979 Constitution of the Federal Republic of Nigeria is *in parimateria* with the 1999 Constitution as amended.
- [31] [1981] 5 SC 112. In this case, their Lordships, Fatai Williams, CJN and Obaseki, JSC would appear to support a liberal interpretation of *locus standi*, while Bello JSC with Idigbe and Nnamani JJSC adopted a restrictive interpretation. Sowemimo, JSC on his part maintained a silent position on the interpretation of Section 6(6)(b) of the 1979 Constitution as it relates to *locus standi* on the ground that its interpretation was not a direct issue for determination.
- [32] (2002) 6 SC (pt. 111) 60.
- [33] See *NNPC v. Sele* (2004) All FWLR (pt. 223) 1859 CA in contrast to the cases of *Adediran & Anor v. Interland Transport Ltd* (1991) 9 NWLR (pt. 214) 155, and *Jonah Gbemre v. SPDC Ltd & Ors* (2005) Suit No. FHC/B/CS/53/05.
- [34] [1992] 4 NWLR (pt. 237) 557 at 589.
- [35] See NESREA Act, s. 32 (1).
- [36] See *Abakaliki Local Government Council v. Abakaliki Rice Mills Owners Enterprises of Nigeria* [1990] 6 NWLR (pt. 155) 182, *The University of Ife v. Favehinmi Construction Company Ltd*, [1991] 7 NWLR (pt. 201) 26; *Nigerian Ports Plc v. Nuero* [1998] 6 NWLR (pt. 555) 640; *Aro v. Lagos Island Local Government Council* [2000] FWLR (pt. 13) 2132.
- [37] See *Pymatuning Water Shed Citizens for a Hygienic Environment v Eaton* 644 F. 2d 995 (3rd Gr. 1981).
- [38] See *Natural Resources Defence Council Inc. v. Train* 510 F. 2d 692 (Dr. C. Gr. 1974).
- [39] See *Mobil Producing (Nig) Unlimited v. LASEPA, FEPA & Ors*, [2002] 18 NWLR (pt. 798) 1; [2003] FWLR (pt. 137) 1029.

- [40] Olanrewaju F. 'Mournful Remedies, Endless Conflicts and Inconsistencies in Nigeria's Quest for Environmental Governance: Rethinking the Legal Possibilities for Sustainability' (Paper delivered at the 4th Inaugural Lecture of Nigerian Institute of Advance Legal Studies, Lagos, Nigeria, August 19th, 2012). Available at <[http://www.elri-ng.org/Inaugural% 20Paper%20-%20Prof%20Fagbohun%20\(NIALS\).pdf](http://www.elri-ng.org/Inaugural%20Paper%20-%20Prof%20Fagbohun%20(NIALS).pdf)> accessed 09 August 2014.
- [41] [1996] 4 NWLR (Pt 445) 657.
- [42] [Unreported] Suit No.: W/89/71.
- [43] [1976] 4 SC 85.
- [44] Agboola T O, 'Appraise the Implication of the Netherlands' Judgment on Environmental Protection in Nigeria' (Paper presented to 2013/2014 LL.M Class of International Environmental Law, Faculty of Law, University of Ilorin, Ilorin, Nigeria).
- [45] See Regulated and other Professions (Private Practice Prohibition) Act, *Cap 320 Laws of the Federation of Nigeria, 1990*.

[46] 'Appraise the Implication of the Netherlands' Judgment on Environmental Protection in Nigeria' (Paper presented to 2013/2014 LL.M Class of International Environmental Law, Faculty of Law, University of Ilorin, Ilorin, Nigeria).

[47] Felix EO, 'Corruption in the Matrix of Development in Nigeria' European Scientific Journal, March 2013 edition vol.9, No.7 <http://eujournal.org/index.php/esj/article/viewFile/856/899> accessed 18 July 2014.