

THE CHALLENGES OF MOBILE COURTS IN ENVIRONMENTAL LITIGATION IN NIGERIA

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Abstract

As the world approaches the 50th anniversary of the United Nations Conference on the Human Environment (also known as Stockholm Conference) 1972, attention is focused on developing new frameworks to inspire and guide the people of the world in the preservation and enhancement of the environment. An indispensable component of these frameworks is the mechanisms to ensure the consistent enforcement of environmental laws and policies at the grassroots level. In this context, one significant development in recent decades is the emergence of mobile courts that specialise in the adjudication of environmental disputes. These courts prosecute both environmental crimes and civil cases fairly, efficiently and effectively with powerful transformative effect on the society. In Nigeria today, these courts have become an indispensable aspect of the administration of justice. However, they are bewildered with a lot of challenges which include narrow jurisdiction and inadequate security. In this article, we explore the central role these courts play in enforcing environmental laws and in promoting sustainable development at the grassroots level. This article reviews the challenges inhibiting these courts from accomplishing these objectives and suggests ways in which they can actively participate in realising a sustainable future especially by creating more efficient access to justice for those living in remote areas in Nigeria.

Keywords: mobile court, environmental court, Nigeria.

I INTRODUCTION

The greatest dividend of democracy and civilisation is access to justice.¹ People who seek justice should obtain a remedy through formal or informal institutions of justice in compliance with human rights standards. There is no access to justice where citizens, especially the downtrodden, fear the system, see it as alien, and do not access it. Lack of access to environmental justice in Nigeria,² especially, is among the greatest causes

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¹ RK Salman and OO Ayankogbe, 'Denial of Access to Justice in Public Interest Litigation in Nigeria: Need to Learn from Indian Judiciary' (2011) 53(4) *Journal of Indian Law Institute*, 594.

² Nigeria, being a common law country by virtue of its colonial heritage, has numerous sources of environmental law, which include the *Constitution of the Federal Republic of Nigeria, 1999*, international treaties, state laws, local government laws and the common law.

of self-help and violence, especially in the Niger Delta region, where oil exploration activities take place with the attendant environmental pollution. Principle 10 of the Rio Declaration 1992³ seeks, among others, to ensure that every person has access to justice in environmental matters with the aim of safeguarding the right to a healthy and sustainable environment for the present and future generations. The implementation of this Principle at the national and grassroots levels is a crucial component of its fulfilment without which the efficacy of the principle is undermined. George Spring and Catherine Spring⁴ noted that sound governance and the enforcement of environmental rule of law are crucial to delivering the 2030 agenda for sustainable development and the Paris agreement on climate change, whereas some countries face judicial backlog of up to ten years. Against this backdrop, the United Nations Environment Programme commissioned the Environmental Courts and Tribunals to provide access to justice for all and to build effective, accountable and inclusive institutions at all levels.⁵ Again, the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, otherwise known as the Aarhus Convention,⁶ was drafted to enhance people's access to environmental justice through public participation in governmental decision-making processes on matters concerning the environment.

Worries about the capacity of the traditional courts to resolve the magnitude of environmental problems have gained some momentum in the past few decades. There is evidence that the solutions developed by the traditional courts are not all-inclusive.⁷ Justice hardly gets to the remote and rural areas. There is therefore the need for mobile courts as a necessary option. Mobile courts have contributed to improving formal justice service delivery in most regions of the world. The main goal is to bring judicial services closer to the people and provide timely justice to the remote communities, especially where traditional justice system is non-existent.⁸

In Nigeria, the introduction of mobile courts is in tandem with the national policy on environment and sustainable development formulated by the Federal Government of

³ United Nations Conference on Environment and Development also known as the 'Earth Summit' was held in Rio De Janeiro in June 1992. See Avi Brisman, 'Rio Declaration' in Chatterjee D.K. (eds) *Encyclopedia of Global Justice* (Springer, Dordrecht, 2011) 27.

⁴ George Spring and Catherine Spring, 'Environmental Courts and Tribunals: A Guide for Policy Makers' (United Nations Environment Programme, 2016) September 2016 <[https://wedocs.unep.org/bitstream/handle/20/](https://wedocs.unep.org/bitstream/handle/20/>)> ('George Pring & Catherine Pring').

⁵ Ved Nanda and George Pring, *International Environmental Law and Policy for the 21st Century* (Brill Nijhoff, 2nd rev ed, 2013) ('Nanda and Pring').

⁶ The Aarhus Convention was adopted on 25 June 1998 in the Danish city of Aarhus at the Fourth Ministerial Conference on the Environment for Europe. The parties to the Convention are to ensure that public authorities at the national, regional or local level facilitate the enforcement of these rights. *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters*, signed 25 June 1998, 2161 UNTS 447 (entered into force 30 October 2012). See the United Nations Economic Commission for Europe (UNECE) Sustainable Development Goals <<https://www.unece.org/env/pp/introduction.html.>>.

⁷ Ibid.

⁸ Jordan Lesser, 'The Future of Conservation in Namibia: Making the Case for an Environmental Court and Legislative Reforms to Improve Enforcement of Wildlife' (2018) 32(1) *Tulane Environmental Law Journal* 66.

Nigeria in 1989.⁹ The policy provides, amongst others, the concepts and strategies which will lead to the procedures and other concrete actions required for launching Nigeria into an era of social justice, self-reliance and sustainable development.¹⁰ Unfortunately, the impact of these courts on the population has not been felt as it could have been, the reason being the various challenges confronting these courts. This paper is however drawing attention to the necessity of mobile courts in improving access to environmental justice in Nigeria. This is imperative today as the global attention is focused on the global environmental crisis brought about by climate change. Adequate attention should also be given to the sources of greenhouse gas emissions that exacerbate this climate crisis. This cannot be complete without global binoculars into the environmental activities in the rural communities. The importance of mobile courts in this regard cannot be overlooked because infraction of environmental laws and human rights abuses with impunity are a constant re-occurrence in the remote and rural areas outside of the world's attention. An instance is the creeks in the Niger Delta region of Nigeria which is not even accessible by the courts. Consequently, the remote populations do not ventilate their grievances as and when due. Therefore, this article recommends ways of checkmating the barriers to the operation of the mobile courts in these areas for maximum efficiency.

II THE MOBILE COURTS

A *Meaning of Mobile Court*

According to the Cambridge Dictionary, mobile means 'able to be moved from one place to another', while court by the same dictionary refers to 'a place where trials and other legal cases happen, or the people present in such a place, especially the officials and those deciding if someone is guilty'.¹¹ In this context, a mobile court means a court that can easily move from place to place for the determination of cases. They are courts on wheels as they travel to places especially remote and rural areas, where no traditional courts exist, to carry out their judicial functions to the people which are not easily available in other courts.¹² In some cases, vehicles are converted into 'mobile courtrooms', each staffed by a Magistrate, a Commissioner for Oaths and an interpreter, complete with their mobile ICT¹³ apparatus and recording system. These vehicles traverse the tough terrain

⁹ The Nigerian government in collaboration with the United Nations Environment Program (UNEP) organised the workshop from September 12-16, 1988 but came into effect in 1989. See Ubleble Benjamin and Gbenemene Kpae, 'A Critique of Nigerian National Policy on Environment: Reasons for Policy Review' (2018) 32(1) *International Journal of Geography and Environmental Management* 22. See also Gozie S. Ogbodo, 'Environmental Protection in Nigeria: Two Decades after the Koko Incident' (2009) 15(1) *Annual Survey of International and Comparative Law* 2 ('Gozie S. Ogbodo').

¹⁰ Aliyu Ibrahim Kankara, 'Examining Environmental Policies and Laws in Nigeria' (2013) 4(3) *International Journal of Environmental Engineering and Management* 170.

¹¹ See *Cambridge Advanced Learner's Dictionary* (4th ed, 2008).

¹² Gazi D Hosen and Syed R Ferdous, 'The Role of Mobile Courts in the Enforcement of Laws in Bangladesh' (2010) 1 *The Northern University Journal of Law* 83.

¹³ Information and Communication Technology.

in the interiors where court officials dispense legal aid and justice to those in need.¹⁴ All the parties, their witnesses and counsel who are expected to be present in court, must be there. They provide speedy and inexpensive justice at the doorsteps of these citizens, especially the downtrodden. In the words of H.A.S. Azcuna;

Mobile court system has been working in different countries, Guatemala (started in 2003), Philippine (started in 2004), India (started in 2007) and Bangladesh (started in 2009), providing inexpensive justice. Pakistan got inspired from Philippine's Justice on Wheels (Mobile Court) and established it in 2013. ... Mobile court is extremely useful innovation as it supplements formal court system.¹⁵

In 2018, for instance, the mobile court established by the Lagos State government in Nigeria to try essentially environmental offences was vested with powers to sit in any convenient place close to the scene of the incident.¹⁶ The sense behind mobile courts is that the terrain of a case is better understood when the court officials see where the crimes were committed than the testimonies from parties and witnesses in the conventional court premises. These courts have successfully concluded a good number of cases pending in the rural areas.¹⁷ Ordinarily, people go to courts to get justice, but mobile courts move to the people to give them justice. An instance is the recent trial of warlord, Masudi Alimasi (a.k.a Kokodikoko) in the Eastern Democratic Republic of Congo (DRC) where he, with his men, persecuted the population of more than 15 villages in two remote areas of the province of South Kivu, which was hitherto inaccessible by the traditional courts. When the mobile court moved there, it symbolised the presence of the state with unquantifiable confidence in the people that justice was guaranteed. The mobile courts provided better access to justice and expedited actions. These extraordinary hearings did not take place in the courthouse of a large city, but in the areas where the crimes were perpetrated.¹⁸ In other words, the entire Court, with its prosecutors, clerks, lawyers and defendants, moved closer to the victims.

This upholds human rights and equality as it ensures equal protection of the law, especially in circumstances where the cases are between two unequal parties as we have in the Niger Delta Region of Nigeria. Most often, the cases are between large multinational oil companies and poor inhabitants of communities whose means of survival has been

¹⁴ Judge Zainun Ali, 'Malaysia's Mobile Court: Judging in the Still of the Forest' *United Nations Office of Drugs and Crime* (Article) <<https://www.unodc.org/dohadeclaration/en/news/2019/12/malaysias-mobile-court---judging-in-the-still-of-the-forest.html>>.

¹⁵ Azcuna H.A.S. 'The Justice on Wheels of the Philippines' (International Conference and Showcase on Judicial Reforms, Makati City, Philippines, 28 November 2008).

¹⁶ See Bilikis Bakare, 'Lagos Mobile Courts and the Quest for Justice', *PM News*, (online, 19 February 2019) <<https://www.pmnnewsigeria.com/2016/02/19/lagos-mobile-courts-and-the-quest-for-justice/>>.

¹⁷ For instance, in the year 2013, a Mobile Court in Bomali, Delta State, Nigeria, convicted 55 out of 79 persons for flouting Sanitation Orders during the monthly environmental sanitation exercise in the State. See Daniel Gumm, 'Mobile Court Prosecute 79 Persons for Sanitation Offences in Bomali' (2013) *The Vanguard* 19.

¹⁸ See 'Mobile Courts in the Democratic Republic of Congo: Why and How?' *TRIAL International*, (Web page, 28 October 2019) <<https://trialinternational.org/latest-post/mobile-courts-in-the-drc-why-and-how/>>.

spoil by pollution.¹⁹ Such people may feel cheated as they do not possess adequate social and material resources to withstand the rich companies. In *George Ngor v. Compagnie Generale De Geophysique (Nig.) Ltd. & Anor*,²⁰ the plaintiff claimed that his sound factory was damaged by the defendant's seismic activities. The plaintiff could not afford the cost of an expert witness in the industrial noise and vibration control in and outside Nigeria at the cost of one million naira (USD\$2,610) to testify that the dynamite shot which allegedly caused the damage was fired at a distance which was not safe. The defendant, on the other hand, was able to call a witness who testified that the dynamite was shot at a distance which was considered safe by seismic standard. This evidence was not contradicted. So, the court relied on it and the plaintiff lost the case. This was unfortunate because there was no doubt that the plaintiff's sound factory, the only source of sustenance to the plaintiff and his family, as alleged, was destroyed by the seismic survey of the defendant. Due to the plaintiff's inability to procure an expert, he lost. It is surprising how a victim, whose means of livelihood was destroyed, could be expected to raise one million naira (USD\$2,610). No doubt, about 90% of the Nigerian population today cannot afford one million naira. It means that the poor in Nigeria are invariably deprived of access to the legal and administrative institutions to vindicate their rights.

The mobile court is the best option to address this problem. However, because of their non-permanent nature, some countries often choose to limit the jurisdiction of these courts to more simple cases that can be treated in relatively short court sessions.²¹ Due to the distance and remoteness, the dates of sittings of the mobile courts are published in advance by way of radio announcements and publications in the local newspapers or by the primitive town crying system or other community-based formal and informal networks.

Mobile courts operate like any other court in the regular justice system. They are governed by the same rules of evidence and the principles of natural justice. Nevertheless, the type of cases they can handle is determined by the type of mobile court and the country's legal framework. The World Bank funded mobile courts in Tanzania which conducts all cases triable by primary courts, such as marital disputes, civil litigation, inheritance and criminal matters, including cases arising from the operation of various government agencies and entities.²² The courts helped not only to ease timely dispensation of justice but also enabled people to get access to justice irrespective of their distance from urban centres. In 2018 alone, the mobile courts in Tanzania received 177,614 criminal and civil cases, equivalent to 64 percent of all cases filed in the country's judicial system.²³ To date, the United Nations (UN) has supported different forms of mobile courts in many

¹⁹ Joseph Nwazi, 'A Critique of Courts' Insistence on the Operation of the Regular Standard of Proof in Oil Related Litigations between Two Unequal Parties' (2007) 2(1) *Ikeja Bar Review*, 86.

²⁰ (2018) LPELR - 46 185 (Court of Appeal of Nigeria).

²¹ M.S. Siddiqui, 'Mobile Courts and Independence of the Judiciary' (2011) 18(301) *The Financial Express*.

²² 'Mobile Court System Triggered into Motion' *All Africa Press*, (Web page, 11 January 2020) <<https://www.africa-press.net/tanzania/community/mobile-court-system-triggered-into-motion>> ('Mobile Court Triggered').

²³ Louis Kolumbia, 'Judiciary Launches Mobile Courts' *The Citizen*, (Web page, 7 February 2019) <<https://allafrica.com/stories/201902070749.html>>.

different conflict settings, including in Côte d'Ivoire, Haiti, Liberia, Mali and Somalia.²⁴ Their scope and mode of operation may also vary.

The most popular area of functioning for mobile courts is in the area of the protection of the environment. The lowest levels of courts that deal with sanitation-related offences are magistrate courts, and sometimes area and customary courts, depending on the country and its legal framework.²⁵ They often help resolve disputes between the victims of pollution and the polluters. Many countries of the world today have established such courts to help improve access to environmental justice in their respective jurisdictions²⁶ Some of these countries precisely provide for mobile courts in their respective flagship statutes,²⁷ and holding them to international standards. In several remarkable ways, the mobile court is positioned in the vanguard of change, helping to empower a broader group of stakeholders to participate in the process of achieving environmental justice, and using informal networks to collaborate and exchange information.

B Is the Mobile Court a Special Court?

Special courts refer to courts with a specific subject-matter jurisdiction, for example, bankruptcy, tax, domestic violence, mental health, family law etc. Specialised environmental courts and court-like tribunals first appeared over a century ago. Denmark's Nature Protection Board, created in 1917, focused on the preservation of the natural environment, and Sweden's Water Court focused only on water right issues.²⁸ Interest in Environmental Courts and Tribunals (ECTs) is spreading globally, and several jurisdictions are currently considering the creation of an ECTs or the reforming of their existing court structures for more environmental focus. For example, the UN Environmental Program (UNEP) Experts Group on Access to Environmental Justice in the Caribbean noted in 2007 that 'consensus has emerged in the region on the need for the establishment of specialised and independent courts or specialised environmental divisions of the High Court Judicial System'.²⁹ The same Experts Group recommends expanding ECTs' jurisdiction beyond traditional environmental issues to include 'the built environment,

²⁴ See 'Bringing Justice to the People: How the UN is Helping Communities Deal with Disputes in Remote and Dangerous Areas', *United Nations News*, (Web page, 29 April 2019) < <https://news.un.org/en/story/2019/04/1037411>>. See also Nanda and Pring (n 5).

²⁵ Sanitation is concerned with the improvement of the basic environmental condition affecting the health and wellbeing of the people. See 'Meaning of Environmental Sanitation', *Dictionary University* (Web page) <<https://dictionary.university/environmental%20sanitation#:~:text=%22Environmental%20sanitation%22%20means%20the%20art,and%20factors%20therein%20%5B.%5D>>. Because these courts are low in hierarchy and closer to the people, they shoulder these responsibilities to the remote rural communities more than other courts as High Court, Court of Appeal and Supreme Court.

²⁶ Instances include Bangladesh, Australia, and India, though some refer to it as Environmental Courts and Tribunals (ECTS). See Michael Ukponu, 'Environmental Law and Access to Justice in Nigeria: A Case for a Specialised National Environment and Planning Tribunal (NEPT)' (2019) 1(1) *Nnamdi Azikiwe University Law Review* 26.

²⁷ See the *Mobile Act* 1975 of Bangladesh.

²⁸ George Pring & Catherine Pring (n 4).

²⁹ George Pring and Catherine Pring, 'Specialised Environmental Courts and Tribunals at the Confluence of Human Rights and the Environment' (2009) 11 *Oregon Review of International Law* 301, 311 ('Specialised Courts').

indigenous peoples' rights, development planning issues and land tenure'. UNEP has been a leader in promoting ECTs through recommendations, publications and judicial training.³⁰ Other jurisdictions that have followed suit and their respective environmental courts and tribunals include:

- Australia – Land and Environmental Court of New South Wales, Planning and Environmental Court of Queensland;
- New Zealand – Environmental Court (established by *Resources Management Act*, 1991);
- Thailand – Green Bench in the Supreme Court;
- India – Environmental Tribunals (established by *National Environmental Tribunal Act*, 1995);
- Pakistan – Environmental Tribunals; and
- Japan – Environmental Dispute Coordination Commission.³¹

These are specialised courts and are exclusively reserved for environmental cases. They are special courts because they are constituted by judges or magistrates exclusively trained in environmental matters. This is not the case in Nigeria where any Judge or Magistrate can sit in the mobile courts to adjudicate on environmental cases without the requisite knowledge in environmental law.

III THE LEGAL FRAMEWORK

Nigeria's national policy on environment formulated by the Federal Government of Nigeria in 1989³² strongly encapsulates sound environmental principles intended to bring about environmental sustainability, equity and justice. The policy states that effective enforcement of environmental laws and policies at the grassroots level requires collaboration between the federal, states and local governments.³³ As a federation, there are numerous sources of environmental law including the Constitution.³⁴ Section 20 of the 1999 Constitution of Nigeria (the 1999 Constitution) provides that 'the State shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria'. In line with this provision, the Federal Government in 2007, through the National Assembly, enacted the *National Environmental Standards and Regulations Enforcement Agency Act* (NESREA)³⁵ to facilitate the achievement of the environmental objectives of the government. Section 8(f) of the NESREA provides that the Agency shall

³⁰ George Pring and Catherine Pring (n 4).

³¹ Wanhua Yang, 'Emerging Trends in the Judiciary and Environmental Enforcement in the Asia-Pacific Region' (Third ASEAN Chief Justices' Roundtable on Environment, 17 November 2013).

³² See n 9 above. See also Gozie S. Ogbodo (n 9).

³³ M.K.C. Sridhar, et al, 'Waste Management Policy and Implementation in Nigeria' (2017) 3(3) *National Journal of Advanced Research* 31.

³⁴ Constitution of the Federal Republic of Nigeria, 1999, s. 2(2) ('1999 Constitution'). Today, there are 36 States and a Federal Capital Territory (FCT), Abuja, as well as 768 local governments. See the First Schedule, Parts 1 and 2 to the Constitution.

³⁵ No. 25 of 2007. The Act was enacted in 2007 and by s. 36, it repealed the *Federal Environmental Protection Agency (FEPA) Act* promulgated in 1988 by the then Federal Military Government of Nigeria as the flagship environmental statute (then Decree) in Nigeria.

‘subject to the provisions of the Constitution of the Federal Republic of Nigeria, 1999, and in collaboration with relevant judicial authorities establish mobile courts to expeditiously dispense cases of violation of environmental regulations’. Each state of the federation is empowered to make laws to protect the environment within its jurisdiction. Therefore, all the 36 States of the Federation, including the Federal Capital Territory Abuja, have their respective environmental agencies and State laws on environmental protection. The mobile courts are manned by the Magistrates of the state judiciary. That is why mobile courts are referred to as ‘Magistrate courts on wheels’.

Section 6(4)(a) of the 1999 Constitution provides that no provision in the whole of s. 6 shall be construed as precluding the National Assembly or any House of Assembly from establishing courts, other than those enlisted in the said section,³⁶ with subordinate jurisdiction to that of the High Court. By the Federal High Court (Judicial Divisions) Notice of 2003, there are 24 Judicial Divisions of the Federal High Court in Nigeria.³⁷ In some states, there is only one Federal High Court while in some other states, none exists. For instance, there is no Federal High Court in Gombe and Yobe States, and only one in the whole of Rivers State.

By s. 6(5)(k), the judicial powers of a state shall also vest in ‘such other courts as may be authorised by law to exercise jurisdiction at first instance or on appeal on matters with respect to which a House of Assembly may make laws’. In *Gadi v. Male*,³⁸ the court held that ‘such far-reaching and fundamental powers as conferred upon the courts are traceable to the constitution and laws as may be enacted by the legislature, Federal and/or state’. It is implied from the foregoing that it is the Constitution that created the Magistrate Courts. Therefore, the legitimacy of the various Magistrate Courts of the states in Nigeria is traceable to these provisions. The Magistrate Court in a state is created by the state House of Assembly while that of the Federal Capital Territory, Abuja is created by the National Assembly acting as a state House of Assembly under s. 299 of the Constitution. The jurisdiction of every Magistrate Court in a state is delineated by the Magistrate Court Law enacted by the state’s legislature and the Magistrate Court Rules made by the Chief

³⁶ The courts listed in that section are the Supreme Court, the Court of Appeal, the Federal High Court, the High Court of the Federal Capital Territory, Abuja, a High Court of a State, the Sharia Court of Appeal of the Federal capital Territory, Abuja, a Sharia Court of Appeal of a State, the Customary Court of Appeal of the Federal Capital Territory, Abuja, a Customary Court of Appeal of a State, and such other courts as may be authorised by law to exercise jurisdiction on matters with respect to which the National Assembly may make laws. See s 6(5)(a) – (j) of the 1999 Constitution (n 34). A Sharia Court is the court of Islam administering the explicit texts of the Quran and the legal binding Sunnah. It is not only exclusive to religious rules but also administers other aspects of the day-to-day life in Islam which may encompass environmental cases. See Omar A. Bakhshab, ‘Islamic Law and the Environment: Some Basic Principles’ (1988) 3(3) *Arab Law Quarterly* 291-295. Sharia used to be categorised as customary law in Nigeria until the decision in *Alkamawa v. Bello* (1998) 8 NWLR pt. 561, 173, where the Supreme Court stated explicitly that Sharia Law is not a customary law in Nigeria as it does not belong to any particular tribe. Outside the Sharia Courts, other courts in Nigeria can handle any other cases involving Christian and traditional religions.

³⁷ Abeokuta, Abuja, et al, *Introduction to the Nigerian Legal System* (Ababa Press Ltd, 2nd ed, 2005) 185 (‘Abeokuta’).

³⁸ (2010) 7 NWLR pt. 1193, 225 at 266.

Judge of the respective states.³⁹ In the Edo State, the Environmental Sanitation Edict of 1994⁴⁰ vests jurisdiction over environmental sanitation⁴¹ in the Magistrate courts.

Each of the 36 States has its own Mobile Court Laws empowering it to set up mobile courts for expeditious handling of environmental cases within the states. An instance is the Mobile Courts (Establishment) Law No. 4 of 1984 of the Rivers State of Nigeria. Similar provisions are also contained in some of the Bye-laws of the Local governments. Section 15 of the Abuja Municipal Area Council Bye-Law, for instance, provides that the Chairman may constitute a mobile court whose functions shall include to carry out on the spot trial and sentence of persons contravening any provision of the environmental protection laws,⁴² and the courts shall operate only on days of environmental sanitation, which is the last Saturday in every month.⁴³

IV WHY MOBILE COURTS IN ENVIRONMENTAL CASES?

As stated earlier, environmental law is rapidly changing on a global and national scale, perhaps on account of the abuse of the environment with impunity and especially the injustices of natural resources exploitation. Mobile courts today are considered a more potent tool in environmental cases than the conventional traditional courts, especially in the remote villages. Advocates of mobile courts are unanimous in their passion and support for the expansion of the scope of operation of these courts, especially in the context of environmental litigation, for the following reasons as discussed below.

A *Cost Effective*

No doubt, mobile courts are less expensive than the traditional courts. This is an invaluable advantage, especially today, where the cost of litigation in Nigeria has soared to the extent that many litigants can no longer pursue their cases.⁴⁴ Animashaun and Odeku rightly observed:

Many poor people cannot access the formal legal system because they cannot afford to pay the registration and representation fees necessary to prosecute cases in the courts. This is because payment of legal fees is probably the largest barrier

³⁹ Yusuf O. Ali, 'Delay in the Administration of Justice at the Magistrate Court: Factors Responsible and Solution' (2016) 18, referred to in Marshal Umukoro, 'Access to Justice in the Lower Courts: Re-Examining the Civil and Criminal Jurisdiction of Magistrate Court in Nigeria' (Conference Paper, Conference of All Nigeria Judges of the Lower Courts, 21 – 25 November 2016) 19 ('Umukoro').

⁴⁰ Now the Edo State Sanitation and Pollution Management Law, No. 5 of 2010.

⁴¹ Mobile Court Triggered (n 22).

⁴² See s. 15(1)(b).

⁴³ Ibid para (d).

⁴⁴ Chukwudifu Oputa, 'Human Rights in the Political & Legal Culture of Nigeria' (1989) *Nigerian Law Publications* 75 referred to in Ifedayo Akomolode, 'An Overview of ADR in the Dispensation of Justice in Nigeria' (2005) 2(1) *Ife Juris Review* 35.

to formal dispute resolutions for many people in developing countries and in particular by the poor in Nigeria.⁴⁵

It is worse in the third world countries such as Nigeria where many of the litigants live in abject poverty. The victims of pollution in the remote villages are very wretched. In some cases, everything they have, food and water, are lost to pollution. Many can hardly afford adequate legal representation. Rather, they go hat in hand asking for paltry sums from the polluters. Unfortunately, their requests are turned down in most cases. The polluters prefer litigation because of its frustrating attributes, especially in view of the astronomical increase in the filing fees in the courts in Nigeria. Order 53(1) and Appendix 2 of the Federal High Court Civil Procedure Rules, 2000 provides that for a claim of N10 million (USD26,109) and above, the litigant must pay a filing fee of over N50,000 (USD130) which is a pre-condition for the filing of the suit.⁴⁶ The filing fees in the Magistrates and High Courts in Nigeria range from N3,000 to N10,000, equivalent to USD7 and USD26 respectively whereas the minimum wage in Nigeria is N30,000 (USD 78). It is submitted that this is exorbitant. The payment of the filing fees or lawyer's fees is not a guarantee of the successful outcome their cases. Again, the importance of a right to a legal practitioner of one's choice as a root of fair hearing is recognised under s. 36(6) (c) of the 1999 Constitution. Therefore, when a court system is backlogged, for instance, it can take months or years before a case is heard, and the cost of paying a lawyer for so long is borne by the poor litigant. Nlerum Okogbule observed that:

Legal practitioners in Nigeria have devised method of collecting not only their professional fees but also transportation fees each time they go to court, thus invariably adding to the financial burden of the litigants. When this is considered against the background that a particular case could last up to four or five years, then the enormity of the financial burden on litigants can be better appreciated.⁴⁷

The cost of environmental litigation through the traditional courts is worse when the services of experts are required as a prerequisite for the establishment of a case because the fees of the experts are exorbitant. Some cost millions of naira to procure and the poor victims of pollution have no option than to concede their rights. It gives the polluters an edge over the victims. In *Seismograph Services (Nig.) Ltd. v. Ogbeni*,⁴⁸ for instance, the plaintiff/respondent was frustrated out of the court for want of an expert witness to prove that the vibration radiating from the seismic explosions caused damage to his buildings. Therefore, in a situation where one of the parties to a litigation belongs to a poor and deprived section of the community, and does not possess adequate social and material resources, they are bound to be at a disadvantage as against a stronger and more powerful

⁴⁵ Oyesola Animashaun and Kola O. Odeku, 'Industrial Conflict Resolution Using Court-Connected Alternative Dispute Resolution' (2014) 5(16) *Mediterranean Journal of Social Sciences* 686.

⁴⁶ Nlerum Okogbule, 'Access to Justice and Human Rights Protection in Nigeria: Problems and Prospects' (2005) 3 *Benin Journal of Public Law* 43.

⁴⁷ *Ibid* 39.

⁴⁸ (1976) 4 SC 85.

opponent. The after-effect is the exclusion of large sectors of the society from accessible justice. Ese Malemi postulates that no society can survive or prosper where justice is available only to those who can afford it, rather it breeds violence and resort to self-help.⁴⁹

In contrast, the mobile courts' process promotes the settlement of disputes in a manner that avoids many of the transactional costs associated with the conventional courts. The introduction of mobile courts in most countries of the world is in recognition of the equal status of all people before the law and their right to legal representation. The mobile court litigation can be conducted effectively without much delay and the money which would have ordinarily been spent on the lawyers in a protracted litigation is saved. In other words, they have the potential to provide inexpensive justice at the doorsteps of the poor litigants.⁵⁰ The rationale here is that there should be no social or economic hindrance whatsoever restricting litigants from approaching the courts in their quest for justice. Inexpensive and accessible justice to the people brings about confidence in the government to care for the people, irrespective of their status. This upholds human rights and equality, a component of the rule of law for any society. It is not a charity, but a civil right of the citizens.⁵¹ It ensures equal protection of law.

B *Inordinate Delay in Litigation*

Litigation in Nigeria today is extremely time consuming. It has become a culture that cases must last several years in the courts before they are determined. Even when a case has lasted up to 10 years in the courts and the judge handling the matter is transferred or retired, the case has to start *de novo*. Professor M.O. Ogunbe rightly noted that:

Some cases have been pending in our courts for more than ten years as a result of certain constraints like retirement or transfer of judges handling the cases which have been opened and evidence had been taken. Such cases have to start *de novo*. The devastation, frustration, and economic stress which litigants undergo are better imagined than experienced.⁵²

The celebrated case of *Ariori and others v. Elemo and others*,⁵³ for instance, took 23 years to reach the Supreme Court, which nevertheless remitted it to the trial court for a retrial *de novo*. Other cases like *Atanda v. Ajani*⁵⁴ took 10 years to reach the apex court,

⁴⁹ Ese Malemi, 'The Challenges in Providing Legal Aid in Nigeria' (2005) 3 *Benin Journal of Public Law* 112.

⁵⁰ See Mohammad Shahjahan Siddiqui, 'Mobile Court and Independence of the Judiciary' *The Financial Express* (Dhaka, 3 September 2011) ('Mohammad Shahjahan').

⁵¹ Jordan Lesser, 'The Future of Conservation in Namibia: Making the Case for an Environmental Court and Legislative Reforms to Improve Enforcement of Wildlife Crimes' (2018) 32(1) *Tulane Environmental Law Journal* 66.

⁵² Ogunbe MO, 'Arbitration & Mediation: When Is Either Best Suited for Dispute Resolution?' in *Nigerian Law: Contemporary Issues: Essays in honour of Sir. G.O. Igbinedion* (College of Law, Igbinedion University, 2003) 2003 319.

⁵³ (1983)1 SC NLR 1.

⁵⁴ (1989) 3 NWLR pt. 511, 103.

which ordered a trial *de novo*, and *Ugo v. Chukwu Obikwe*⁵⁵ took 18 years to get to the Supreme Court, which also ordered a trial *de novo*.⁵⁶

The problem of delay in environmental litigation, just like any other judicial process in this country, also assumes an enormous proportion. No doubt, victims of pollution rush to courts for rescue either because their health is put at risk or their means of survival such as creeks and farms have been spoilt by pollution. Nevertheless, such cases still linger in the courts for decades that some of the litigants may even die in the process. For instance, an annual report of the Civil Liberties Organisation (CLO) Lagos revealed a case which involved four Ijaw communities and the Shell Petroleum Development Company. The case lasted for 14 years in the High Court, and before its conclusion, six out of the eight representatives of the communities had died.⁵⁷ One can hardly give an account of any environmental case in this country that has been determined within a space of three years and the victims got their reliefs. That is why the polluters expectedly prefer litigation to any other means of settlement.

This author in an earlier article⁵⁸ noted that sometimes, the victims of environmental damage are discouraged from litigation due to unnecessary delays and the consequent overstay of their cases in the courts. Sometimes, for undisclosed reasons, case files are alleged to be missing, while transfer of officers handling certain cases may result in the cases being overlooked or even neglected. The problems of delay are consequent upon certain factors such as the lawyer's inordinate frequent requests and letters for adjournment of cases⁵⁹ coupled with administrative incapacities, including lack of modern facilities.⁶⁰ Sometimes, the oil companies which cause almost 90% of the environmental damage in Nigeria employ delay tactics deliberately to frustrate the victims of pollution when a court action is pending, especially now that the reputation of the judiciary in Nigeria has been tainted with corruption. The case of *Ambah v. SPDC*,⁶¹ for instance, lasted for 19 years in the courts that before its final determination, two-thirds of the litigants had died. Other instances abound. According to R.T. Ako,

The case of *SPDC v. Tiebo VII and four others*,⁶² a matter of oil spill that occurred in Peremabiri, Bayelsa State, Nigeria in January 1987, got to the High Court in 1992, and to the Court of Appeal in 1996. The case of *SPDC v. Chief George Uzoaru and*

⁵⁵ (1989) 1 NWLR pt.566, 144.

⁵⁶ See Oyesola Animashaun and Kola O. Odeku, 'Industrial Conflict Resolution Using Court-Connected Alternative Dispute Resolution' (2014) 5(16) *Mediterranean Journal of Social Sciences* 684.

⁵⁷ Civil Liberties Organisation, *Annual Report* (Report, 1997) 205-206. See also *The Guardian*, 8 July 1997, 5 cited in Kaniye Ebeku, 'Compensation for Damage Arising from Oil Pollution: *Shell Petroleum Dev. Coy Nig. v. Ambah* Revisited' (2002) 6(1) *Nigerian Law and Practice Journal* 19.

⁵⁸ Joseph Nwazi, 'The Remedies Available to Victims of Oil Spillage in Nigeria' (2006) 1(1&2) *International Journal of Law and Contemporary Studies* 267.

⁵⁹ The case of *Wakino v. Ade John* (1999)9 NWLR pt.619, for instance, took 11 years in the High Court alone due to series of adjournments.

⁶⁰ Human Rights Watch, *The Price of Oil: Corporate Responsibility and Human Rights Violations in Nigeria's Oil Producing Communities* (Report, 1999) 15.

⁶¹ (1999) 3 NWLR pt.593 SC 1.

⁶² (2005) 4 FWLR pt. 283 674.

*three others*⁶³ was heard in the High Court in 1985 in relation to damage suffered on a continuous basis since 1972 was heard in the Court of Appeal in 1979, while *Elf Nig. Ltd. v. Opere Sillo and Daniel Etsemi*⁶⁴ was heard in the High Court in 1987 in relation to damage suffered in 1967, was heard in the Court of Appeal in 1990, and in the Supreme Court in 1994. The case of *John Eboigbe v. NNPC*⁶⁵ involved a damage caused in 1979 and was first heard in 1987, appealed against in 1989 and heard in the Supreme Court in 1994.⁶⁶

The after-effect is that sometimes, the citizens abandon their rights or resort to self-help. This not only undermines the very existence of the courts but is also inconsistent with the constitutional provisions on speedy trials. Section 36(1) of the 1999 Constitution (as amended) provides that ‘in the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time....’ ‘A prompt and speedy trial is a first condition of fair trial which involves the element of time’.⁶⁷ In contrast, justice delayed is justice denied, which can lead to unimaginable problems in the society.

Environmental conflicts require quick action or response which is incompatible with the slow pace of our traditional court system today. Expedient determination of cases remains one of the attributes of mobile courts which is unlikely to be available in the traditional courtroom. In the quest to decongest the courts, re-invent the judicial system and ease disputes settlement, the Government of Nigeria has opened its doors and encouraged the use of mobile courts in environmental litigation. The idea of mobile courts is that it offers a quicker resolution of conflicts by speeding up the dispute resolution process with a minimum disruption. Mobile courts have been recognised as an efficient mechanism to assist the government in re-establishing the formal justice system and responding to shortage of judges and magistrates. Congestion of cases which bores the judges and remoteness of venue common with our traditional courts are not attributes of mobile courts. The courts can sit in regions that are too remote such as the creeks in the Niger Delta regions of Nigeria. They not only deliver summary judgments but also see to the fact that hearings are not unnecessarily postponed. With this, they have been an effective tool in reducing the backlog of cases in such areas. In the words of Faustine Kapama:

The system enables people get access to justice regardless of the distance of their locations from urban centers. The court is aimed at reducing costs for citizens following judicial services away from the areas in which they live, since mobile court has the capacity of reaching different groups of people and communities.⁶⁸

⁶³ (1994) 9 NWLR pt. 366 51.

⁶⁴ (1994) 6 NWLR pt.350 258.

⁶⁵ (1994) 5 NWLR pt.347 649.

⁶⁶ Ako RT, ‘Mediation as a Conflict Settlement Mechanism in the Niger Delta Region of Nigeria’ (2006) 3(1) *Ife Juris Review* 65.

⁶⁷ Akande JO, *Introduction to the Nigerian Constitution* (1999) s. 36.

⁶⁸ Faustine Kapama, ‘Tanzania: Mobile Courts Introduced to Expedite Legal Services’ *Tanzania Daily News (Dar es Salaam)* (online, 13 December 2019) <<https://allafrica.com/stories/201912130398.html>> (‘Kapama’).

The availability of the mobile courts means that access to justice is possible for ordinary citizens. An aggrieved person can easily channel his grievances to court irrespective of financial status as the financial burden of traveling far distances to assert a right or ventilate grievances is reduced. The mobile courts, instead, come to the villages. Again, the compelling need for time consciousness is obvious because environmental issues are sensitive and delicate and a good number of them concern survival of species and properties that may be permanently destroyed with the lapse of time, as pollution is intrinsically linked with adverse impacts on human and natural environment. In some instances, the order may be too late – the harm may have already occurred and irreversible. Therefore, the importance of prompt dispensations of environmental justice especially in the remote rural areas devastated by poverty cannot be overemphasised.

C Jurisdictional Convenience

With the mobile courts, the jurisdictional problems of litigation which especially frustrates environmental litigants are tackled. Access to justice is impaired where the courts are located far from the homes of those who need them. Today, about 80% of environmental cases in the Nigerian courts are lost particularly on appeal for want of the courts' jurisdiction, the reason being that only the Federal High Courts, as against the State High Courts, have the exclusive jurisdiction to try almost all the environmental cases,⁶⁹ whereas the Federal High Courts are not enough to contain the number of environmental litigants vying for their attention. As stated earlier by the Federal High Court (Judicial Divisions) Notice of 2003, there are 24 Judicial Divisions of the Federal High Court in Nigeria.⁷⁰ In some states, there is only one Federal High Court, while in some other states, none exists. For instance, there is no Federal High Court in the Gombe and Yobe States, and only one in the whole of Rivers State. The after-effect is the accumulation of cases, which last for years in those courts without being determined. Cases like *Shell Pet. Dev. Co. v. Isaiah*,⁷¹ *C.G.G. (Nig) Ltd v. Asaagbara*,⁷² *C.G.G. (Nig) Ltd v. Amaewhile*,⁷³ and *C.G.G. (Nig.) Ltd v. Ogu*⁷⁴ are a few of those cases frustrated for want of jurisdiction after many years of litigation.

One advantage of mobile courts is the ability to serve rural populations and geographically dispersed locations. For instance, a lot of victims of environmental degradation in Nigeria live in remote corners. By and large, they are vulnerable by reason of their poverty and intellectual disadvantage. The geographical and physical impediment means that access to justice for them is extremely challenging. Their physical exclusion from the dignified space of a courtroom impels the court to go to them if the symbolic function and integrity of the court are to be maintained. The mobile courts have this

⁶⁹ See s. 251(1)(n) & Second Schedule Part 1 of the 1999 Constitution (n 34), as amended. See also s. 7 of the *Federal High Court Act*, Cap F12 LFN 2004.

⁷⁰ Abeokuta (n 37).

⁷¹ (1997) 6 NWLR pt. 508, 238.

⁷² (2001)1 NWLR pt. 693, 156.

⁷³ (2006) 6 NWLR pt. 967, 284.

⁷⁴ (2005) 8 NWLR pt. 927, 367.

advantage. They are everywhere in these corners and serve this class of people.⁷⁵ They provide all-inclusive justice at the grassroots levels by the extension of state presence and visibility through the state officials (the Magistrates, lawyers, representatives from the Office of the Public Defenders (OPD), registrars, cashiers, Commissioner for Oaths, an interpreter, and policemen) in areas where they are not ordinarily present. They can sit in open spaces. This will further enhance the confidence of these victims in the government, and in turn, promote peace and unity in these areas.⁷⁶ This also relieves people from social stress, tension and pressure related to litigation, and they feel safer than travelling to the cities merely to seek justice.

Another reason advanced for the justification of mobile courts is that its expeditious resolution of conflicts, facilitated by mobile investigations, prosecution and defence teams, can have direct and powerful effects on the levels of investment and economic activity. They avoid wastage of time without compromising the rules of evidence or defeating the end of justice. If environmental cases are resolved timely with well-established rules and procedures, investors perceive less risk and are more willing to invest. Entrepreneurs are scared where a lot of issues remain unresolved, but where there is peace, business thrives. For most people, where justice is delayed or denied, the victims are bound to feel some frustration and outrage, especially the most vulnerable people, and this may be counterproductive. In contrast, prompt and fair adjudication as well as the certainty of enforcement and penalties constitute the necessary inducement for respect and obedience to laws.

V CHALLENGES OF MOBILE COURTS IN NIGERIA

There is no wish to create the impression that mobile courts do not have any shortcomings. Perhaps, the greatest challenge is that it is not all kinds of environmental cases that the courts can handle. Mobile courts, which are magistrate courts on wheels, are inferior courts in Nigeria meant to dispose of cases of minor importance such as cases arising from monthly environmental sanitation exercise.⁷⁷ Magistrate Courts are established by the Magistrates Laws of the various states in Nigeria with limited jurisdiction. The

⁷⁵ Mobile courts are generally housed in temporary structures such as tents which are dismantled on daily basis after proceedings. They move within their jurisdiction and are manned by up to two Magistrates who prosecute Sanitation law violators arrested by the police. They can issue custodial sentences such as detention under nearby trees or tents, or non-custodial penalties such as fines or community services, like sweeping roads, picking of litter, impounding of cars or motorcycles etc. See Odi Lagi, 'NULAI Program Director Odi Lagi on the use of mobile courts and the impact of COVID-19 on pretrial detention', *Partners Global* (Web page, 25 May 2020) < <https://www.partnersglobal.org/newsroom/nulai-program-director-odi-lagi-on-the-use-of-mobile-courts-and-the-impact-of-covid-19-on-pretrial-detention/>>.

⁷⁶ Mohammad Shahjahan (n 50).

⁷⁷ Environmental sanitation refers to the promotion of hygiene for the prevention of disease and other consequences of ill-health. In Nigeria, it requires community participation in the clearing of their surroundings to improve people's health and living conditions. During the military era in Nigeria (between 1983-1999), people were compelled to remain indoors during the environmental sanitation exercise, which is once a month. Under the present civilian government, the governors still impose a curfew in their respective states during this exercise and people are forced to remain at home for at least three hours. However, there is no law empowering the government or law enforcement agencies to limit people's movement in this way. See Afe Babalola, 'Illegality of Forceful Restriction of Movement on Account of Environmental Sanitation' (2019) *The Vanguard* 18.

jurisdiction of each Magistrate Court in terms of the punishment it can impose varies from state to state. In the Oyo State, for instance, the highest punishment a Magistrate can impose is seven years imprisonment or a fine of N30,000 (USD78) or both.⁷⁸

Any matter regarding environmental rights of victims of pollution in Nigeria is beyond the jurisdiction of the mobile courts. Section 46 of the 1999 Constitution conferred that jurisdiction only on the High Courts. By s. 251 of the same Constitution, issues concerning mines and minerals (including oil fields, oil mining, geographical surveys and natural gas) are exclusively conferred on the Federal High Courts.⁷⁹ Even the *National Environmental Standards and Regulations Enforcement Agency Act* (NESREA) empowered to establish mobile courts for the enforcement of environmental laws, regulations, standards and policies, has no jurisdiction over pollution resulting from oil and gas sectors. The NESREA Act itself confers jurisdiction directly on the Federal or State High Courts.⁸⁰ Therefore, the mobile courts are incapacitated with a very narrow jurisdiction. Almost 80% of the air, land and water pollution in Nigeria today results from oil exploration activities without sufficient and accessible courts to manage the cases. Tens of thousands of Nigerians affected by oil pollution cannot access the courts without incurring serious travelling expenditures. The after-effect is self-help resulting from frustration. How do we account for the human rights violations? How do we guarantee environmental justice by enforcing compliance with the extant laws? In fact, mobile courts should be more relevant in this area than say, in municipal waste, traffic or environmental sanitation.⁸¹

Related to this is the inability of the mobile courts to grant civil remedies such as compensation or damages to the victims of environmental degradation. There is no record in Nigeria that mobile courts have granted compensation or damages to such victims. Even the NESREA Act empowering NESREA to establish mobile courts is a criminal statute. Therefore, its jurisdiction is limited to criminal cases, that is to say, to prosecute offenders of environmental sanitation laws. That is why its main justice approach has been arrest, prosecution, conviction and incarceration of offenders or fine in lieu of incarceration. For instance, under s. 29(1) of the *Environmental Sanitation Law of Lagos State, 2001*, the punishment prescribed for contravention of the Law is a fine of N200 (less than USD1) or three months imprisonment.⁸² The fine goes to the state not to individual victims. However, majority of environmental cases in Nigeria are instituted by individuals claiming damages on the restitutionary basis of *quantum meruit*.⁸³ Mobile courts, as criminal courts, lack such remedies, and it is a major defect. Any court that does not have the capacity to grant relief to victims of pollution is not a court of justice. More frequently, civil remedies are blended with or used to supplement criminal sanctions in

This restriction of movements in Nigeria has been declared illegal by the courts. See *Okafor v. Lagos State Government* (2017) 4 NWLR pt.1556 ('Okafor').

⁷⁸ James Atta Agaba, *Practical Approach to Criminal Litigation in Nigeria* (Renaissance Law Publishers, 3rd ed, 2015) 151-152.

⁷⁹ Section 251(1)(n).

⁸⁰ Section 37 NESREA Act.

⁸¹ See n 77 above.

⁸² Section 29(2) provides for a fine of N4,000 (US\$10) for a body corporate.

⁸³ See *Oladehin v. Continental Textile Mills Ltd* (1978) 2 S.C. 23, as an instance.

other courts of justice.⁸⁴ Mobile courts should therefore be courts of both criminal and civil matters with more emphasis on the rights and responsibilities of private parties. For instance, in Pakistan today, mobile courts resolve both civil and criminal cases. Access to justice is made easier by the mobile courts especially as the poor litigants are no longer charged litigation fees. In many instances, the judges offer to the parties the opportunity of settling their disputes through the Alternative Dispute Resolution mechanism without recurring to a formal judgment. As a result, the government of Pakistan, in collaboration with the United Nations Development Programme, (UNDP) has trained many judges and advocates in Pakistan for this special purpose.⁸⁵

Typically, mobile courts are held for a short period of time, usually a few days due to the dearth of logistics. These mobile courts dispense justice in a summary and arbitrary way since they do not have the room for full-fledged trials within the time at their disposal. Section 15 of the Abuja Municipal Area Council Bye-Law, for instance, provides, *inter alia*, that the mobile courts shall operate only on days of environmental sanitation. In Nigeria, environmental sanitation takes place once a month and it is mainly on Saturdays. Affirming this, Professor Lawrence Atsegbua, commenting on the functions of the Edo State Environmental Sanitation Task Force, stated that ‘enforcement by the Task Force is also irregular and ineffective, except on sanitation days when offenders are brought before Sanitation courts’.⁸⁶ The implication is that a lot of cases are left unattended and there is no rapid pace of justice. This also limits the ability of these courts to take a problem-solving approach or deal with environmental cases comprehensively. A court should sit regularly and promptly. Taking part in proceedings regularly facilitates administration of justice, be it in a court room or in a village square, as the courts are exclusively devoted to the cases for justice delivery.

One of the greatest challenges of mobile courts in Nigeria today is that environmental law was only recently introduced into Nigerian universities as an academic course, and so many of the Magistrates administering environmental sanitation cases today are untrained and inexperienced in environmental pollution laws to be able to make useful impact in the enforcement of these laws. Increasingly, it has been recognised that a court with special expertise in environmental matters is best placed to achieve the best for the people.⁸⁷ Therefore, an adjudicator should be well versed in the kind of law he is expected to administer. A magistrate must master the environmental laws such as the provisions of the NESREA Act, and other environmental sanitation laws in Nigeria. A magistrate cannot be expected to dispense environmental cases efficiently when he or she is not knowledgeable in such laws. According to Justice A.O. Obaseki:

⁸⁴ Mary M Cheh, ‘Constitutional Limits on Using Civil Remedies to Achieve Criminal Law Objectives: Understanding and Transcending the Criminal-Civil Law Distinction’ (1991) 42(5) *Hastings Law Journal* 1326.

⁸⁵ See ‘Mobile Courts Bring Justice to Rural Pakistan’ *United Nations Development Programme* (Web page, 26 September 2013) <<https://reliefweb.int/report/pakistan/mobile-courts-bring-justice-rural-pakistan>> (‘Mobile Courts Bring Justice to Rural Pakistan’).

⁸⁶ L Atsegbua, ‘A Critical Appraisal of Environmental Legislation in Edo State’ (1996/99) 3 *University of Benin Law Journal* 19.

⁸⁷ Umukoro (n 39).

The judgment seat in any court of law cannot be allowed to be occupied by anyone not versed in the art and science of judging. The resolution of any dispute between two persons even in the simplest of societies is not allowed to be undertaken by any person or tribunal ignorant of or untutored in the norms or rules and custom regulating the relationship and dealing among members of the society. Judging is a science in that it is governed by laws, rules and regulations with which it must comply in order to be acceptable in the society.⁸⁸

Specialisation enables the use of special knowledge and expertise in both the process and the substance of resolution of these problems. In other climes, we have special courts with specialised adjudicators exclusively for environmental cases.⁸⁹ Such adjudicators have a better understanding of the characteristics of environmental disputes and are better positioned to move more quickly through environmental cases, achieve efficiencies and reduce the overall cost of the litigation and dispute resolution process. In India, for instance, the *National Green Tribunal Act 2010* passed by the Indian Parliament established a special tribunal with the power to expedite legal cases pertaining to environmental issues in the country. The innovation has, in no small measure, succeeded in the reduction of environmental cases heaped in the traditional courts.⁹⁰ The same applies to other countries of the world, such as Australia, Bangladesh, New Zealand, Thailand, Pakistan and India. The environmental courts are made up of judges specialised and dedicated to specific matters of environmental cases with a degree of autonomy. Article 10 of the 2010 Constitution of Kenya required the Parliament to ‘establish courts with the status of the High Court to hear and determine disputes relating to . . . the environment and the use and occupation of, and title to, land’.⁹¹ The establishment of these courts has led to the astronomical reduction in the volume and costs of environmental actions in Kenya.⁹²

Security is another great challenge to the operation of mobile courts in Nigeria. It has become a notorious fact, especially as of recent that judges and magistrates being kidnapped in Nigeria for ransom. Unarguably, the series of kidnapping today have assumed an unprecedented dimension with the current data placing Nigeria as the third highest in kidnapping cases in the world.⁹³ The targets are the judges and magistrates, some of whom are kidnapped from their homes. It is worse when they try to navigate and access the rough terrain down to the remote villages for their assignment. Many have died in the process.⁹⁴ In fact, their safety is no longer guaranteed even in the court premises.

⁸⁸ A. O. Obaseki, ‘The Art and Science of Judging: Style and Creativity’, referred to in Umukoro (n 39), 22.

⁸⁹ Brian J. Preston, ‘The Enduring Importance of the Rule of Law in Times of Change’ (2012) 86 *Australian Law Journal* 175.

⁹⁰ Gita Gill, ‘The Indian National Green Tribunal – Environmental Lessons Learned’, (Web page) <<https://www.northumbria.ac.uk/research/research-impact-at-northumbria/legal-impact/the-indian-national-green-tribunal--environmental-lessons-learned/>>.

⁹¹ Specialised Courts (n 29).

⁹² Ibid.

⁹³ E. I. Obarisiagbon and A. A. Aderinto, ‘Kidnapping and the Challenges Confronting the Administration of Criminal Justice in Selected States of Nigeria’ (2018) 11 *African Journal of Criminology and Justice Studies* 42.

⁹⁴ See George Onyejiuwa, ‘Why I Kidnapped, Murdered Imo Magistrate-Suspect’ *The Sun Nigeria* (Owerri, 31 March 2019) 12. See also Chidiebube Okeoma, ‘Police Arrest Killer of Imo Judge, Rescue 15 Kidnapped Persons’ *The Punch* (Owerri, 30 March 2019) 17.

This hinders the progress of justice. Environmental business is a serious business. So, the common man and indeed the entire Nigerian populace expect the government to provide these Magistrates with adequate security and conducive environment for their operations so that justice can be dispensed in a friendly and fearless atmosphere, especially in the remote rural communities. This will enhance the enforcement of their duties. Regrettably, however, the incidence and prevalence of kidnapping of these court officials are still on the increase with no solution in sight. This trend is an unfortunate one and is not in accord with the dictates of democracy and constitutional order. In Pakistan, one of the efforts of the government, with the aid of the UNDP, to boost the security of the justice system was to bolster the police and other security operatives, especially in relation to mobile courts. Perhaps, Nigeria can adopt the same approach.⁹⁵

It is interesting to note that courts have ruled against the restriction of people's movements on environmental sanitation days as being inconsistent with ss. 35, 36(12) and 41 of the 1999 Constitution⁹⁶ and Article 12 of the *African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act*.⁹⁷ Even the Environmental Sanitation Laws have no provisions restricting peoples' movements during this exercise.⁹⁸ It was mere Executive proclamations. In *Okafor v. Lagos State Government*,⁹⁹ the appellant was arrested by the officers of the Lagos State Task Force on Environmental Sanitation. She was accused of wandering, loitering and walking about in defiance of the Governor's instruction that movements should be restricted during the State's monthly compulsory environmental sanitation exercise, and was held for five hours in a police vehicle. Thereafter, she was arraigned before a Sanitation Tribunal where she pleaded guilty and paid a N2,000.00 (USD5) fine. Dissatisfied with the arrest and arraignment, she appealed to the Lagos State High Court. The main thrust of her case was that the restriction of her movement during the exercise was unlawful, illegal and unconstitutional. Her application was dismissed. Still aggrieved, she appealed to the Court of Appeal which allowed the appeal. The respondents conceded that there is no written law in the Lagos State restricting the movement of persons within the State on its environmental sanitation days, but that the Governor's directive was sufficient to validate such restriction. While rejecting the respondent's submission, the appellate Court reiterated that 'the directive of the Governor of Lagos State does not amount to a written penal law under which any citizen could be arrested, tried, convicted and punished'.¹⁰⁰ Consequently, the trial and conviction of the appellant violated her right under the Constitution. Whilst we applaud this judgment, it

⁹⁵ See *Mobile Courts Bring Justice to Rural Pakistan* (n 85).

⁹⁶ Sections 35 and 41 provide for the rights to personal liberty and freedom of movement respectively, while s. 36(12) provides that a person shall not be convicted of a criminal offence unless that offence is defined and the penalty prescribed in a written law must be either an Act of the National Assembly or a Law of a state, a subsidiary legislation or instrument under the provisions of a Law.

⁹⁷ Cap A 9 LFN 2004. See also Unini Chioma, 'Court of Appeal Nullifies Restriction of Movement During Environmental Sanitation in Lagos' *The Nigeria Lawyers* (Web page, 8 November 2016) <<https://thenigerialawyer.com/court-of-appeal-judgement-on-restriction-of-movement-on-environmental-sanitation-staturdays/>>.

⁹⁸ See for instance Lagos State Environmental Sanitation Law, 2000.

⁹⁹ *Okafor* (n 77) 341-513.

¹⁰⁰ *Ibid*, pp.442-443, paras H-F.

should not be a cover for non-adherents to evade the monthly environmental sanitation exercise, which is a novel environmental policy in Nigeria.

As the sole responsibility of the mobile courts in Nigeria is to prosecute citizens flouting the stay-at-home order and clamping them into detention or with an option of paying a fine, the nullification of the restriction has seriously undermined the efficacy of the mobile courts. The Governors' emphasis today is on 'no restriction of movements during the exercise'.¹⁰¹ Therefore, the mobile courts have become moribund.

VI CONCLUSION AND RECOMMENDATIONS

In any democratic society, it is particularly important that all citizens get access to economic, social and environmental justice. Access to justice is fundamental to the establishment and maintenance of the rule of law because it enables people to have their voices heard and to exercise their legal rights, whether those rights are derived from constitutions, treaties, statutes or the common law. Over the years, courthouses only existed in urban and thickly populated areas, leaving the rest of the country without proper access to the formal justice system. Today, the mobile court system exists to make access to justice readily available.

Environmental issues are best handled with the participation of all concerned citizens at the relevant levels. In volatile areas, such as the Niger Delta region of Nigeria, victims of environmental degradation are especially vulnerable to discrimination and unequal treatment. Thus, seeing the havoc ravaging the Niger Delta region and the inability of the traditional courts to address such problem is a justification for the mobile court as a necessary option, especially considering that in most countries of the world where it operates, it has triumphed where the conventional courts have failed. Access to justice supports sustainable peace by affording the population a more attractive alternative to violence in resolving personal and political disputes. Mobile courts contribute to the promotion of a peaceful society, as conflicts are settled through legal means rather than through violence.

While mobile courts are the best option to get to the remote and rural areas and to the disadvantaged people, there is the need for legal awareness campaigns by the state in collaboration with non-governmental organisations and other administrative agencies to enable such people to understand their rights and the means for claiming them. Unarguably, a good number of people living in the remote communities in Nigeria today are illiterate and do not know their rights, whether fundamental, legal or environmental, and neither do they appreciate the importance of mobile courts within their vicinities. Nevertheless, they are all entitled to their rights to quality environment and access to environmental justice. Such campaign will highlight their environmental rights and the remedies available in cases of breach, and more so the proximity of the mobile courts to their doorsteps for justice delivery.

¹⁰¹ See for instance, 'Special Environmental Sanitation to Hold on Saturday April 13 by Edo Government' *Thisday* (Web page, 13 April 2018) <<https://www.thisdaylive.com/index.php/2018/04/13/special-environmental-sanitation-to-hold-on-saturday-april-14-edo-govt/>>.

The judiciary should expand the scope of these courts by establishing more centres in the remote villages, where the courts should access the rural dwellers for on-the-spot resolution of their environmental conflicts. In Tanzania, for instance, the judiciary expanded the scope of this service by establishing other centres in the remaining regions in different phases.¹⁰² In Bangladesh, the activities of mobile courts encouraged the government in 2005 to amend its existing laws to widen the area of functioning and powers of those courts.¹⁰³ Such expansion should include civil jurisdiction to enable the courts grant relief to victims of environmental pollution. Most victims of pollution approach the courts for relief – damages, compensation or injunction especially when the injury affects their personal rights. This should fall within the ambit of the mobile courts, particularly where injustice will result if none is awarded. As the court has the power to entertain criminal matters, it will be conferred with a corresponding power to entertain civil cases as and when due, as it is done in other courts – High Courts, Court of Appeal and Supreme Court.

Ordinarily, Magistrate court can hear criminal as well as civil cases, containing disputes in between individuals and the government, but there is no record that mobile courts has ever granted relief to successful litigants. Mobile courts will not protect the interest of all if it is exclusively a criminal court, i.e., to convict and send to jail. If we must relax our laws to allow mobile courts to protect the people, we have to do so. The downtrodden in the society need either free or state sponsored legal assistance to get justice. A victim of pollution in a remote village must not be required to travel to the city before he or she can claim damages.

Finally, the use of Information and Communication Technology (ICT) is another option. This is one of the key elements that provide general and specific information on its activities to many court users thereby significantly improving the administration of justice. An instance is the use of e-mail to share electronic documents. Fortunately, many countries in the world today have embarked on statutory reforms to accommodate the use and exchange of electronic documents within the national judicial systems. In Nigeria, for instance, s. 84 of the *Evidence Act 2011* provides that statements in documents produced by computers are admissible in evidence in Nigeria. Many courts' websites provide electronic forms to be downloaded, printed, filled up and filed rather than the traditional manual format. One must not travel to the court before he can obtain the necessary documents.¹⁰⁴ The only impediment is that to date, the internet remains inaccessible in most rural areas. Fortunately, the trend is changing due to the influx of affordable smart phones and constant expansion of telecommunication companies and their operations. Mobile phones can best be used to link up remote areas. An important innovation today in this respect is the use of WhatsApp for exchange of electronic documents and publication of court decisions. As access to the internet increases, more people can learn about their rights and the justice

¹⁰² Kapama (n 68).

¹⁰³ Gazi Delwar Hosen and Syed Robayet Ferdous, 'The Role of Mobile Courts in the Enforcement of Laws in Bangladesh' (2010) 1 *The Northern University Journal of Law* 83-95.

¹⁰⁴ Marco Velicogna, 'Justice Systems and ICT, What Can Be Learned from Europe?' (2007) 3(1) *Utrecht Law Review* 129.

system.¹⁰⁵ Other improvements include the use of radio and television programmes to fix dates for courts' sittings or notify the public when any court sitting is interrupted by unforeseen circumstances. All these not only increase accessibility, improve efficiency and promote confidence in the justice system but also help resolve disputes quicker and reduce the pressure on courts' premises.

The Courts should also open its doors to entertain cases from non-governmental organisations, which may intend to institute actions on behalf of the less privileged, especially in the remote rural communities without the restrictive standing rule as an albatross. There is also the need to create environmental awareness among the rural populace especially on the purpose, availability and accessibility of these courts. People perish for lack of knowledge. Therefore, this awareness is a necessity. Legal aid can as well be of immense assistance especially to the downtrodden in the creeks who do not approach the courts because they lack the wherewithal. Finally, we should expand the scope of mobile courts in Nigeria as is done in Bangladesh and other countries in the world so that part of the case files heaped on the High Courts for decades may be expeditiously treated and reduced.

¹⁰⁵ Halima Doma, 'Enhancing Justice Administration in Nigeria through Information and Communication Technology' (2016) 32(2) *John Marshal Journal of Information Technology and Privacy Law* 93.