

LAW PERSONALITY

Dr Olanrewaju Fagbohun, associate professor of Environmental Law and lecturer, Faculty of Law, Lagos State University (LASU), Ojo, is a graduate of the University of Ife, now Obafemi Awolowo University (OAU). He was called to the Nigerian Bar in 1988. In this interview with JOHN AUSTIN UNACHUKWU, he bares his mind on how the theme of this year's World Environment Day affects Nigeria, global warming, greenhouse gases, its relationship with International Law, appraisal of our National Environmental Standards and Regulations Enforcement Agency Establishment Act, 2007 and sundry issues.

'Stand up to climate change, most apt'

• Kudos to Lagos State

HOW does the theme of this year's World Environment Day affect us in Nigeria, considering the fact that environmental issues are global issues with local content?

Viewed critically, no nation, whether developed or developing is immune from the negative consequences and stress of climate change. This is why the theme of this year's World Environment Day, "Stand Up to Climate Change" is most apt. Many global environmental issues such as food security, availability of water, extreme weather conditions, protection of wildlife and several others are climate related and may be affected by climate change. The only difference is that its impact varies across our planet. Some nations will experience more adverse effects than others while other nations will benefit. Poorer nations are more vulnerable as they tend to be more dependent on climate-sensitive sectors such as subsistence agriculture and may lack resources to buffer themselves against the changes that global warming may bring.

You mentioned global warming just now. What connection does it have with climate change?

There are actually three distinct but inter-related concepts, namely, ozone layer depletion, global warming and climate change. The ozone layer protects life on earth against harmful ultraviolet radiation from the sun. Unfortunately, some substances have over the year been found to deplete the ozone layer. These are the greenhouse gases. These greenhouse gases such as chlorofluorocarbons (CFCs), hydrochlorofluorocarbon (HCFCs), halons, methyl chloride, methyl bromide etc which are emitted into the atmosphere from human activities (industrial and household use of products) also have the potentials to cause global warming. They also affect the natural climate balance, resulting in such extreme events like droughts, cyclones, floods, storms and landslides.

Does a country like Nigeria contribute to the increasing concentration of greenhouse gases?

I will ask the question the other way round. Is there any country that does not contribute to the increased greenhouse concentration? The truth is that there is none. The level of contribution only differs. With specific reference to Nigeria, reference can be made in particular to gas flaring. According to a World Bank report, it is estimated that the total emission of CO₂ (which is what UNEP is asking each and everyone of us to act on) from gas flaring in Nigeria amounts to 35 million tonnes a year with methane from Delta and Rivers States expected to contribute to around 12 million tonnes a year. Methane together with CO₂ is the main greenhouse gas responsible for global warming and it is this that has raised the average global temperature by

around 0.50C within the last century.

Since excessive concentration of Greenhouses gases is a global problem, how then is international law coping with it?

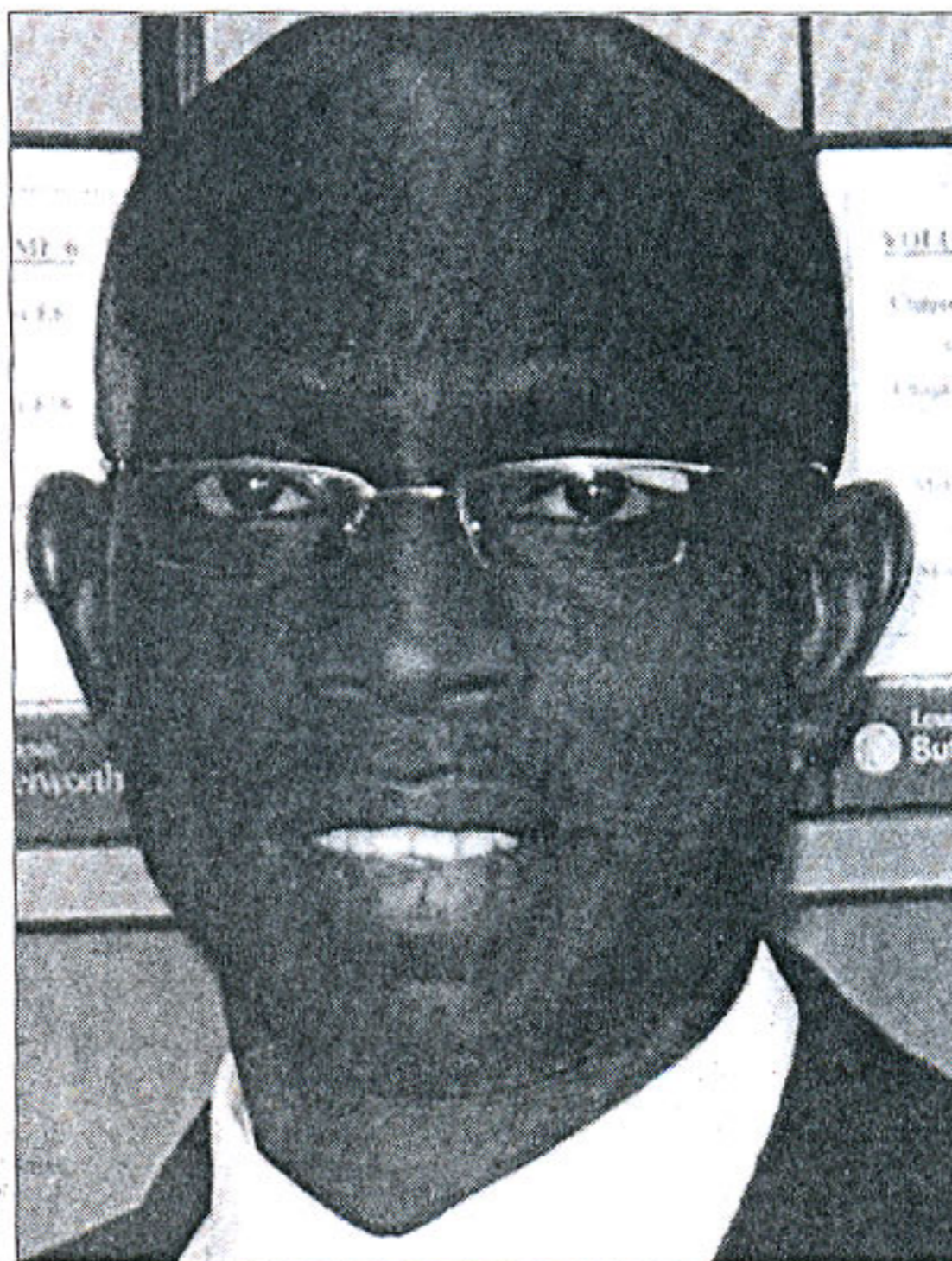
The global approach to meeting the challenges of climate change has been multi-disciplinary and interdisciplinary. An Intergovernmental Panel on Climate Change (IPCC) was formed in 1988 by the World Meteorological Organization (WMO) and United Nations Environment Program (UNEP). That Panel has done a lot. Its evaluations revealed that the most pronounced impacts will be related to water resources. Rising global temperature will also affect weather patterns. In terms of law, the United Nations Conference on Environment and Development (UNCED) held in Rio de Janeiro in 1992 resulted in the United Nations Framework Convention on Climate Change (UNFCCC). That treaty is aimed at stabilizing greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.

Would you say that UNFCCC has achieved its goals?

While it cannot be said that the treaty has fully achieved its goals, it was able to establish a national greenhouse gas inventory. The structure of the treaty was for it to be able to achieve incremental gains. It has no mandatory limits on greenhouse gas emissions for individual nations and contained no enforcement provisions. Instead, it provided for "protocols" that would set mandatory emission limits. Parties meet annually in Conference of the Parties (COP) to assess progress. One of the most significant COP was COP-3 held in Kyoto, Japan in 1997. It was there that parties agreed to legally binding reductions in greenhouse gas emission of an average of six to eight per cent below 1990 level between the years 2008 and 2012 (the first emission budget period). COP-13 was held in Bali, Indonesia in December, 2007 while COP-14 and COP-15 have been scheduled to hold in Poznan, Poland and Copenhagen, Denmark respectively.

What would you see as a problem for UNFCCC?

I think the split of parties into three, namely Annex I countries, Annex II countries and Developing countries is a problem. This apparently was done in recognition of that principle of "common but differentiated responsibilities". Annex I countries are the industrialized countries and they agree to reduce their emission to target levels below their 1990 emissions level. Where they fail, they buy emission credits. Annex II countries are a sub-group of Annex I countries who provide financial resources for the developing countries. Developing countries have no immediate restrictions under UNFCCC. They can volunteer to



• Mr Fagbohun

become Annex I countries when they are sufficiently developed. Opponents of the Convention have argued that both developed and developing countries need to reduce their emissions. Looking at the significant increases in emissions in such developing countries like India, China and Brazil, one will certainly agree that all nations must accept responsibility for reduction of emission. The refusal of developing countries (G-77) to agree to control their emissions is a major challenge. Climate change is a common threat, thus, it requires the co-operation of all.

What is your appraisal of the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007?

When FEPA was scrapped in 1999 and the Ministry of Environment assumed its functions, expectations were high that FEPA Act would be reviewed to reflect the new development and that in the course of such a review, provisions that were inarticulate in FEPA Act would become articulate in a succeeding legislation. For eight years the nation waited until the 2007 Act came into being. Looking at what we have in NESREA, in the context of legal development, the Act is not so much of a momentous piece of legislation. Rather it is a belated response of the law to what was at a time revolutionary change in the structure of environmental enforcement and regulation in Nigeria.

Can you give specific examples of some of those areas where the law fell short of expectation?

Look at the functions of the agency

under section 7 and those of its Governing Council. That Council is not a policy-making body as it ought to be in the true sense of it. Again, while Section 7 largely excluded enforcement environmental regulations in the oil and gas sector from the functions of the agency, sections 3 and 7(c) are indicative of some roles for the agency in relation to this sector. This certainly will engender conflicting interpretations. If for instance the Act is interpreted as not applicable to the oil and gas sector, the wider implication would be that its enlargement of "court" to now include "State High Court" will not extend to environmental matters in relation to oil and gas as this will still be governed by Section 251 (1)(n) of the 1999 Constitution. This is a problem for access to environmental justice. Also, the problem of pre-action notice is still a part of the new law. Nigeria needs to rethink that law.

Lagos State government has been pro-active in its approach to pollution and other environmental hazards. What do you think the state needs to do to further improve the quality of the environment?

A lot of commendation must go to the state for its present initiative, particularly the "greening" of Lagos. At the moment, enforcement is on the high. There are certain checks and balances that must be put in place, however, to ensure that enforcement remains high while at the same time people's rights are protected. If the tempo of enforcement is maintained for a significant period of time, people will get used to it. An area that the state still needs to critically review its strategies is waste management. The problem that Lagos is facing is not uncommon with mega cities. There are however workable strategies.

You are a member of the Nigeria Climate Action Network. What is the Network about?

Nigeria Climate Action Network (NigeriaCAN) is a network of groups and individuals in Nigeria working to promote government

and individual action to combat climate change. Members work to achieve this goal through the co-ordination of information exchange and civil society strategy on national and international issues. The vision of NigeriaCAN is to reduce the impact of global climate change on the economy and ecology of Nigeria while contributing to international effort to halt human-induced climate change. NigeriaCAN is presently working on a Bill to establish the National Climate Change Commission. The Secretariat is managed by Ewah Eleri of International Centre for Energy, Environment and Development (ICEED).

How do you expect the Federal Government to collaborate with the Network to achieve its objective?

The Federal Government is already giving full support to the activities of the Network. The Presidency is represented within the Network by a Special Adviser who also has a pedigree of being a renowned environmentalist, Ken Saro-Wiwa Jr. The moment the Climate Change Commission is established, it would be a veritable institution to drive the vision of the Network.

You were once at the Lagos State University Centre for Environment and Science Education. What Role is the Centre playing in relation to Climate Change?

I am no longer at CESE having completed my tenure as a representative of the Faculty of Law. I can confirm, however, that CESE is a full fledged centre for Environment and there are quite a number of activities that the Centre is engaged in. Aside of CESE, the Faculty of Social Sciences also recently organized a Seminar which had the theme: "Ozone Layer Depletion and Global Warming: Implications for Socio-Economic and Political Development of Nigeria."

You have also been linked with an NGO, Environmental Law Research Institute (ELRI). What is ELRI about?

ELRI is a non-profit organization for applied environmental research and policy analysis whose objective is to increase understanding of environmental laws and policies, supply information on environmental laws to a wider public and make the legal system and environmental rights more accessible to the ordinary person. ELRI is an affiliate of ENHICA International Foundation Inc. USA. I do give technical assistance to ELRI from time to time.

Legal Dairy

Maritime seminar for judges

THE 10th edition of the maritime seminar for judges organised by the Nigerian Shippers Council comes up on: Date: June 24 to 26 Venue: Sheraton Hotel & Towers, Abuja Time: 9 am daily. Chairman: Chief Ernest Shonekan (GCON) Guest Speaker: Prof Ridian Thoma.

NBA Young Lawyers Forum

THE Nigerian Bar Association (NBA), Young Lawyers Forum presents the first all Nigerian Conference of young Lawyers and the formal inauguration of the young Lawyers Forum-Theme: Young Lawyers and the Future of the Legal Profession. Date: June 19, 2008 Time: 09.am Venue: Nigerian Law School, Victoria Island, Lagos.

At the moment, enforcement is on the high. There are certain checks and balances that must be put in place. However, we have to ensure that enforcement remains on high while at the same time people's rights are protected. If the tempo of enforcement is maintained for a significant period of time, people will get used to it. An area that the state still needs to critically review its strategies is waste management. The problem that Lagos is facing is not uncommon with mega cities.