Environmental Law and Access to Justice in Nigeria: a Case for a Specialised National Environment and Planning Tribunal (NEPT)[±]

MICHAEL UCHE UKPONU[*]

Abstract

Nigeria has ratified (and domesticated) many international conventions and agreements, some of which are directed at protecting the environment. In addition, some national environmental laws and regulations have been enacted pursuant to Nigeria's international treaty commitments. However, the dispensation of environmental justice and the implementation of these soft and hard environmental legal frameworks in Nigeria have suffered inefficiencies, such as the slow adjudication of environmental cases by regular courts with heavy caseloads spanning across different causes of action. This causes delays in accessing environmental justice to the detriment of affected persons. This paper proposes the establishment of a specialised National Environment and Planning Tribunal (NEPT) to ensure the speedy dispensation of environmental justice in Nigeria, citing successes recorded by specialised environmental courts and tribunals in Australia and India.

Keywords: *Environmental Courts and Tribunals (ECTs), Environmental Justice, Environmental Law, Environmental Rights, Nigeria.*

1.0. Introduction

In the wake of climate change, environmental degradation and other global environmental challenges, various efforts have been made at the international level to prevent and mitigate the adverse effects of these environmental challenges.[1] The watershed came in 1972 where many

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[*] LL.B (Hons); B.L (Hons); MCIArb (UK)(*Australasia Branch)*; Barrister and Solicitor of the Supreme Court of Nigeria; Master of Energy and Resources Law (LLM) degree at Melbourne Law School, The University of Melbourne, Australia; Member, Environment Institute of Australia and New Zealand(EIANZ). He can be contacted with the following e-mail address: ucheukponu@yahoo.com.

[1] K Khoday, 'Environmental Justice – Comparative Experiences in Legal Empowerment' (Working Paper, United Nations Development Programme – UNDP, 12 June 2014) 5 www.undp.org/content/undp/en/home/librarypage/democratic-

countries gathered at the Conference on the Human Environment in Stockholm, Sweden to negotiate and agree on the 'Stockholm Declaration'.[2] Twenty years later, 172 countries met in Rio de Janeiro, Brazil to negotiate and agree on the 'Rio Declaration'.[3]In addition, a significant number of Multilateral Environmental Agreements (MEAs), treaties and conventions have been agreed and domesticated by many countries pursuant to global efforts aimed at protecting the environment.

The Stockholm Declaration, Rio Declaration and MEAs are heralded as the foundations of the principles of International Environmental Law (IEL) today.[4]These principles are gaining increasing global recognition and acceptance as many nations are ratifying and domesticating IEL as part of their domestic laws and applying various mechanisms of enforcing them.[5] One of such mechanisms is specialised Environmental Courts and Tribunals (ECTs).[6]An ECT is a public institution specialised in adjudicating cases relating to the environment, including the development and use of natural resources.[7]Principle 10 of the Rio Declaration stipulates that effective access to judicial and administrative proceedings, including redress and remedy, shall be provided in environmental matters.[8]There appears to be an 'explosion' of ECTs worldwide.[9]Many countries, notably Australia and India, have set up ECTs to help improve access to environmental justice in their respective jurisdictions.[10]ECTs are proving to be a viable

governance/access_to_justiceandruleoflaw/environmental-justice–comparative-experiences; P Kohona and B Ruis, 'Multilateral Environmental Agreements' in L Kurukulasuriya and N Robinson (eds) *UNEP Training Manual on International Environmental Law* (UNEP, Nairobi, 2006) 1, 1 https://www.unenvironment.org/resources/report/unep-training-manual-international-environmental-law.

[2] Kohona and Ruis, (n 1) 23.

[3]*Ibid*; M Rackemann, 'Environmental Dispute Resolution – Lessons from the States' (2013) 30 *Environmental Planning and Law Journal* 329.

[4] Kohona and Ruis, (n 1) 23.

[5] R Walters and D S Westerhuis, 'Green Crime and the Role of Environmental Courts' (2013) 59 *Crime, Law and Social Change* 279, 280.

[6] G Pring and C Pring, 'Greening Justice: Creating and Improving Environmental Courts and Tribunals' (Report, The Access Initiative – TAI, 2009) v and ix.

[7] G Pring and C Pring,'Environmental Courts and Tribunals' in Michael Faure (ed) *Elgar Encyclopedia of Environmental Law: Volume II* (Edward Elgar Publishing, 2016) 452, 453 https://www.elgaronline.com/view/nlm-book/9781786436986/9781786436986.xml?v=toc.

[8]*Rio Declaration on Environment and Development*, GA Res 151/26, UN GAOR, UN Doc A/CONF.151/26 (Vol I) (12 August 1992) annex I principle 10 ('*Rio Declaration*')http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm; Rackemann, 'Environmental Dispute Resolution – Lessons from the States' (n 3).

[9]D C Smith, 'Environmental Courts and Tribunals: Changing Environmental and Natural Resources Law Around the Globe' (2018) 36 (2) *Journal of Energy and Natural Resources Law* 137; Pring and Pring,'Environmental Courts and Tribunals' in Michael Faure (ed) *Elgar Encyclopedia of Environmental Law: Volume II* (n 7) 453.

[10] Pring and Pring, 'Greening Justice: Creating and Improving Environmental Courts and Tribunals' (n 6) 12.

mechanism for ensuring citizens' access to effective and efficient administration of environmental justice.[11]

Nigeria is experiencing its own share of environmental challenges such as -oil spills, mine tailings, climate change and deforestation- leading to loss of lives, livelihood, biodiversity, poverty, diseases and human rights violations, which pose serious uncertainties for present and future generations.[12]The Federal Government has ratified at least fourteen international environmental conventions and agreements and domesticated some of them into her body of laws as part of efforts to address these environmental challenges.[13]

The Federal High Court, High Courts of the States, Urban and Regional Planning Tribunals (URPTs) and summary environmental courts of a few States have jurisdiction to try environmental cases in Nigeria. Unfortunately, as is the case in some jurisdictions,[14]the adjudication of environmental cases in these courts has suffered inefficiencies due to huge numbers of ongoing cases on other various subject matters, which oftentimes span from as much as five to fifteen years. Environmental cases get caught up in the slow judicial processes to the detriment of affected communities who continually suffer environmental injuries. In time, these injuries become irreparable for any remedy to adequately ameliorate. Particularly, the URPTs for Nigeria's thirty-six States and the Federal Capital Territory (FCT) have been ineffective in comprehensively adjudicating environmental and planning cases.

Consequently, there is need for judicial reforms such as, a specialised environmental court, as a reliable platform for efficient access to environmental justice and better implementation of environmental and planning laws in Nigeria.[15]This paper advocates the establishment of a specialised court called the National Environment and Planning Tribunal ("NEPT") for this purpose. The writer believes that a specialised NEPT will go a long way in ensuring speedy and

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[11] Kohona and Ruis, (n 1); Pring and Pring,'Environmental Courts and Tribunals' in Michael Faure (ed) *Elgar Encyclopedia of Environmental Law: Volume II* (n 7).

[12] H Ijaiya and O T Joseph, 'Rethinking Environmental Law Enforcement in Nigeria' (2014) 5 *Beijing Law Review* 306, 307.

[13] M T Ladan, 'Review of NESREA Act 2007 and Regulations 2009-2011: A New Dawn in Environmental Compliance and Enforcement in Nigeria' (2012) 8 (1) *Law, Environment and Development Journal* 116, 118 http://www.lead-journal.org/content/12116.pdf.

[14] G Pring and C Pring, 'Environmental Courts and Tribunals – A Guide for Policy Makers' (Working Paper, United Nations Environment Programme – UNEP, September 2016) iii http://wedocs.unep.org/bitstream/handle/20.500.11822/10001/environmental-courts-tribunals.pdf?sequence=1&isAllowed=y.

[15] Ijaiya and Joseph (n 12) 319.

efficient access to environmental justice in line with Principle 10 of the Rio Declaration.[16]This paper also recommends the most appropriate features that will position NEPT to achieve Goal 16 of the *Sustainable Development Goals* in Nigeria, which aims to "promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels".[17]

2.0. Overview of environmental law and governance in Nigeria

In this part, the paper gives an overview of environmental law and governance in Nigeria and addresses legal and institutional barriers militating against the effective implementation of national and international environmental laws in Nigeria.

2.1. *Environmental governance and regulation*

In colonial Nigeria, environmental matters were not prioritised[18]and there was no clear environmental policy.[19] However, the tort of nuisance was relied upon as a claim to seeking redress for environmental injuries, but this was not regarded as a public matter that required the attention of the colonial government.[20] During this period, the only existing laws that criminalised environmental pollution were the Criminal Code Act 1916[21]and the Public Health Act 1917, [22]but these laws were not adequate due to their limited scope and ineffectiveness.[23]

However, since the oil boom of the 1970s, Nigeria began to prioritise environmental protection. The government started setting up river basin authorities to manage natural water resources at different parts of the country.[24] The major event which made the government intensify efforts to address environmental pollution was the 'Koko Toxic Waste Incident of 1988' where an Italian ship dumped harmful chemical materials in Koko Village, southern Nigeria.[25]In response, the Nigerian Military Government promulgated the Harmful Waste (Special Criminal Provisions etc)

[16] Khoday (n 1) 30.
[17] United Nations, *Sustainable Development Goals* <http://www.un.org/sustainabledevelopment>;Pring and Pring, 'Environmental Courts and Tribunals – A Guide for Policy Makers' (n 14) iv and x.
[18] Ijaiya and Joseph (n 12) 307.
[19]*Ibid*.
[20]*Ibid*.
[21]*Criminal Code Act 1916*(Nigeria) ch 22 s 234 and ch 23 ss 243 – 248 www.lawsofnigeria.placng.org.
[22]*Public Health Act 1917*(Nigeria) Cap P 40, LFN 2004.
[23] Ijaiya and Joseph (n 12) 307; Ladan (n 13) 118.
[24] Ijaiya and Joseph (n 12) 307.
[25]*Ibid*; A B Nabegu et al, 'Environmental Regulations in Nigeria: A Mini Review' (2017) 1 (5) *International Journal of Environmental Sciences and Natural Resources* 1.

Decree[26] and the Federal Environmental Protection Agency (FEPA) Decree.[27] The latter established the Federal Environmental Protection Agency (FEPA) with the mandate to protect and preserve Nigeria's environment and ecosystem.[28]Other serious events were oil spills caused by international oil corporations which degraded the environment in Ogoni land, southern Nigeria.[29]As Nigeria's environmental challenges became more topical, both federal and state/local governments became increasingly involved in environmental matters.

2.1.1. FEDERAL LEVEL

The Federal Government is empowered by section 20 of the Nigerian Constitution[30] to protect and improve the environment and safeguard the air, water, land, forests and wildlife. To this end, the National Assembly has enacted a number of domestic environmental laws for the Federation of Nigeria. Some of these laws such as -the National Environmental Standards, Regulatory and Enforcement Agency Act (NESREA Act),[31]Environmental Impact Assessment Act,[32]Land Use Act,[33] and Nigerian Urban and Regional Planning Act (NURPA)[34]- focus extensively on protecting the environment from the impact of infrastructure development, exploration, mining and use of natural resources. Other laws namely National Biosafety Management Agency Act (NBMA Act),[35]Harmful Wastes (Special Criminal Provisions) Act[36] and Water Resources Act[37] focus on protecting the environment from the impact of waste and harmful matter. The National Oil Spill Detection and Response Agency Act (NOSDRA Act)[38] is aimed at preventing and responding to oil spills. Nevertheless, the NESREA Act and the NOSDRA Act are the most comprehensive of all these domestic environmental laws.

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[26]*Harmful Waste (Special Criminal Provision etc) Decree 42 of 1988* (Nigeria).
[27]*Federal Environmental Protection Agency (FEPA) Decree 58 of 1988*.
[28] Ijaiya and Joseph (n 12) 308.
[29] National Oil Spill Detection and Response Agency (NOSDRA), *Oil in Nigeria: A History of Spills, Fines and Fights for Rights* www.nosdra.gov.ng; www.lawsofnigeria.placng.org.
[30] Constitution of the Federal Republic of Nigeria, 1999, Cap C23, LFN, 2004.
[31]*National Environmental Standards and Regulations Enforcement Agency Act 2007 (NESREA Act)* (Nigeria) www.nass.gov.ng; https://lawsofnigeria.placng.org.
[32]*Environmental Impact Assessment Act 1992* (Nigeria) https://lawsofnigeria.placng.org.
[33]*Land Use Act 1978*(Nigeria) https://lawsofnigeria.placng.org.
[34]*Nigerian Urban and Regional Planning Act 1992 (NURPA)* (Nigeria) https://lawsofnigeria.placng.org.
[35]*National Biosafety Management Agency Act 2015 (NBMA Act)* (Nigeria) www.nass.gov.ng.
[36]*Harmful Wastes (Special Criminal Provisions) Act 1988* (Nigeria) https://lawsofnigeria.placng.org.
[37]*Water Resources Act 1993*(Nigeria) https://lawsofnigeria.placng.org.
[38]*National Oil Spill Detection and Response Agency Act 2006 (NOSDRA Act)* (Nigeria) www.nass.gov.ng.

The Federal Government also drew up policies for environmental protection. They are the National Policy on the Environment,[39] Nigeria's Agenda 21[40] and the National Oil Spill Contingency Plan (NOSCP).[41]In June 1999, the Federal Ministry of Environment was established by a merger of FEPA with some environment-related departments from other federal ministries.[42] This Ministry advises the Federal Government on policy matters relating to environmental sustainability, represents Nigeria at international engagements concerning global environmental and climate matters, and coordinates the activities of other federal agencies charged with ensuring environmental protection.[43]

The main federal environmental agencies are the National Environmental Standards and Regulation Enforcement Agency (NESREA) and the National Oil Spill Detection and Response Agency (NOSDRA). NESREA, established by the NESREA Act, is responsible for enforcing all domestic environmental laws, policies, standards and regulations, as well as international environmental agreements and conventions, in Nigeria.[44]NESREA Act repealed and replaced the FEPA Decree and, in effect, NESREA replaced FEPA as Nigeria's prime environmental regulatory agency.[45] In accordance with the NESREA Act, NESREA has developed and currently enforces twenty-four different supplementary environmental regulations for various industries.[46]On the other hand, NOSDRA was established under the NOSDRA Act to ensure timely and effective response to oil spills, clean up and remediation of polluted sites, and coordination of the implementation of the NOSCP pursuant to Nigeria's commitment to the *International Convention on Oil Pollution Preparedness, Response and Cooperation*.[47]Other federal environment agencies

[39] Federal Ministry of Environment, *Articles and Downloads – Environmental Regulations, Acts and Policies* www.environment.gov.ng/index.php/resources/articles; National Environmental Standards and Regulations Enforcement Agency (NESREA), *Publications and Downloads* www.nesrea.gov.ng/publications-downloads.

[40] United Nations Department of Economic and Social Affairs – Division for Sustainable Development, *Sustainable Development* www.un.org/esa/agenda21/natlinfo/countr/nigeria/eco.htm; National Environmental Standards and Regulations Enforcement Agency (NESREA), *Publications and Downloads* www.nesrea.gov.ng/publications-downloads.

[41] National Oil Spill Detection and Response Agency (NOSDRA), *About Us* www.nosdra.gov.ng.

[42] Federal Ministry of Environment, *About the Ministry* www.environment.gov.ng.

[43] *Ibid*.

[44] Federal Ministry of Environment, *Our Agencies* www.environment.gov.ng; National Environmental Standards, Regulatory and Enforcement Agency (NESREA), *About Us* www.nesrea.gov.ng.

[45] National Environmental Standards, Regulatory and Enforcement Agency Act (NESREA Act)(n 30).

[46] National Environmental Standards, Regulatory and Enforcement Agency (NESREA), *Laws & Regulations* www.nesrea.gov.ng.

[47] National Oil Spill Detection and Response Agency (NOSDRA)(n 30); Federal Ministry of Environment (n 41).

include the Forestry Research Institute of Nigeria (FRIN) and the National Biosafety Management Agency (NBMA).[48]

The Federal High Court has jurisdiction to entertain certain environment-related matters such as impact assessment, oil spills and water pollution,[49] with the Court of Appeal and Supreme Court at the appellate and final appellate levels respectively.[50]

2.1.2. State and Local Levels

Section 37 of NESREA Act and section 32 of NOSDRA Act implies that the High Courts of the States also have jurisdiction to hear environmental cases. Almost all the States have a ministry and/or agency in charge of environmental regulation. Notably, Lagos State and Abuja have environmental laws implemented by the Lagos State Environmental Protection Agency (LASEPA) and Abuja Environmental Protection Board (AEPB) respectively.[51]A few States have set up special courts to entertain environmental matters. There is the Environmental Court of Lagos State,[52] Environmental Protection and Waste Management Agency Court of Akwa Ibom State,[53] Environmental Court of Ondo State[54] and Environmental Sanitation Court of Borno State.[55]Furthermore, the Local Government Councils are constitutionally empowered to make bye-laws specifically for waste disposal,[56]and they usually establish taskforces to implement such bye-laws. Some Local Government Councils has established mobile courts for on-the-spot trial and sentencing of violators of environmental bye-laws.

2.1.3. Urban and Regional Planning Tribunals (URPTs)

[48] Federal Ministry of Environment(n 41).
[49]*NESREA Act*(Nigeria)s 37; *NOSDRA Act*(Nigeria) s 32www.lawsofnigeria.placng.org.
[50]*Nigerian Constitution* ss 233 and 240.
[51]*Lagos State Environmental Management and Protection Law* 2017 (Nigeria); *Abuja Environmental Protection Board Act 1997* (Nigeria) https://laws.lawnigeria.com/2018/06/05/lagos-state-environmental-management-and-protection-law-2017. However, it is contestable that the States, through the instrumentality of State environmental regulatory agencies, are usurping the constitutional powers of the local governments especially in the area of waste management and disposal, thereby denying the local governments a potential source of revenue.
[52]*Lagos State Environmental Management and Protection Law* 2017 (Nigeria) s 155 https://laws.lawnigeria.com/2018/06/05/lagos-state-environmental-management-and-protection-law-2017.
[53]*Akwa Ibom State Environmental Protection and Waste Management Agency Law 2000* (Nigeria).
[54]*Ondo State Waste Management Authority Law* (Nigeria).
[55]*Borno State Environmental Protection Agency* Law.
[56]*Nigerian Constitution* (Nigeria)sch 4.

It is worthy to note that NURPA established the Urban and Regional Planning Tribunals (URPTs); the inferior courts of record for each State of the Federation to entertain appeals against the decisions or actions of the States' Development Control Departments with respect to developments on land –building, engineering, mining, tree felling, erection of advertisement boards and any other environmentally significant change in land use.[57]

Although each URPT Panel is comprised of a town planner, architect, engineer, land surveyor and legal practitioner specialised in Planning Law,[58] URPTs have a number of challenges such as, the limitation of its jurisdiction to developments on land alone;[59] and funding and limited operational independence, exemplified in the statutory provision empowering the Attorney-General of the Federation to make procedural rules for URPTs.[60]In essence, URPTs are under the control of the Executive arm of government. In the writer's opinion, these are the major reasons why URPTs have not been effective and the essence of their establishment –the protection of land resources– has not been (largely) felt in Nigeria. The paper proposes an upgrading or collapse of URPTs into a specialised NEPT framework, to meet contemporary national and international environmental objectives, ensure public participation and grant access to information and environmental justice which appear to be lacking in URPTs.

2.1.4. Ratification and domestication of IELs and MEAs in Nigeria

Nigeria has been increasingly active in global efforts to protect the environment.[61]The Government has ratified various international environmental conventions and MEAs including the *Stockholm Declaration*;[62]*Rio Declaration*;[63]*African Charter on Human and Peoples'*

[57]*Nigerian Urban and Regional Planning Act 1992 (NURPA)* (Nigeria) ss 86 and 91.
[58]*NURPA* (Nigeria) ss 87.
[59]*NURPA* (Nigeria) s 91.
[60]*NURPA* (Nigeria) s 89.
[61] A Ahmed-Hameed, 'The Challenges of Implementing International Treaties in Third World Countries – The Case of Maritime and Environmental Treaties Implementation in Nigeria' (2016) 50 *Journal of Law, Policy and Globalisation* 22, 27; I Babatunde and E Akpambang, 'Impediments to Enforcement of Environmental Treaties Against Oil Pollution' (2017) 8(2) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 12, 13-20; L Hart and O Sika, 'Applicable International Environmental Impact Assessment Laws for the Niger Delta Area of Nigeria' (2016) 10 (1) *African Journal of Environmental Science and Technology* 386, 388-390.
[62]*Declaration of the United Nations Conference on the Human Environment*, GA Res 2994 (XXVII) UN GAOR, 2112ndplen mtg, UN Doc A/PV.2112 (15 December 1972) ('*Stockholm Declaration*') www.un-documents.net/unchedec.htm.
[63]*Rio Declaration*, UN Doc A/CONF.151/26 http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm.

Rights;[64]*Vienna Convention;*[65]*Basel Convention;*[66]*United Nations Framework Convention on Climate Change (UNFCCC);*[67]*Convention on Biological Diversity;*[68]*Kyoto Protocol;*[69]*United Nations Convention on the Law of the Sea (UNCLOS);*[70]*International Convention on Oil Pollution Preparedness, Response and Cooperation*;[71]*International Convention on Civil Liability for Bunker*

[64]*African Charter on Human and Peoples' Rights1981*, opened for signature 1 June 1981, OAU Doc CAB/LEG/67/3 rev 5, 21 ILM 58 (1982) (entered into force 21 October 1986) ('*Banjul Charter*') www.achpr.org/instruments/achpr/#a24.

[65]*Vienna Convention for the Protection of the Ozone Layer 1985*, opened for signature on 22 March 1985, 1513 UNTS 293 (entered into force 22 September 1988) ('*Vienna Convention*') https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-2&chapter=27&clang=_en.

[66]*Basel Convention on the Control of Transboundary Movement of Hazardous Waste and their Disposal 1987*, opened for signature 22 March 1989, UNEP/IG.80/3 (entered into force 5 May 1992) ('*Basel Convention*') www.basel.int/TheConvention/Overview/History/Documents/tabid/3407/Agg10753_SelectTab/2/Default.aspx .

[67]*United Nations Framework Convention on Climate Change (UNFCCC) 1992*, opened for signature 4 June 1992, 1771 UNTS 107 (entered into force 21 March 1994) https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=IND&mtdsg_no=XXVII-2&chapter=27&clang=_en.

[68]*Convention on Biological Diversity 1992*, opened for signature 5 June 1992, 1760 UNTS 79 (entered into force 29 December 1993) https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=IND&mtdsg_no=XXVII-8&chapter=27&clang=_en.

[69]*Kyoto Protocol 1997*, opened for signature 11 December 1997, 2303 UNTS 162 (entered into force 16 February 2005) https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=IND&mtdsg_no=XXVII-7-a&chapter=27&clang=_en.

[70]*United Nations Convention on the Law of the Sea 1982*, opened for signature 10 December 1982, 1833 UNTS 3 (entered into force 16 November 1994) ('*UNCLOS*')https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&clang=_en.

[71]*International Convention on Oil Pollution Preparedness, Response and Cooperation 1990*, opened for signature 30 November 1990, 1891 UNTS (entered into force 13 May 1995) https://treaties.un.org/pages/showDetails.aspx?objid=08000002800aada6.

Oil Pollution Damage;[72]*Bamako Convention*;[73]*Bonn Convention;*[74] *World Heritage Convention*;[75]*Paris Agreement*[76] and many others.[77]

The Nigerian Constitution requires international treaties to be domesticated as an Act of the National Assembly before they can have force of law.[78]Among the international environmental conventions and MEAs that Nigeria ratified, only the *African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act;*[79]*International Convention for the Safety of Life at Sea (Ratification and Enforcement) Act;*[80]*International Convention on Civil Liability for Oil Pollution Damage (Ratification and Enforcement) Act;*[81]*Rotterdam Convention on Prior and Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (Ratification and Enforcement) Act*[82] and *Endangered Species (Control of International Trade and Traffic) Act,*[83] have been domesticated.

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[72]*Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa 1991*, opened for signature 30 January 1991 (entered into force 22 April 1998) ('*Bamako Convention*') https://www.opcw.org/chemical-weapons-convention/related-international-agreements/toxic-chemicals-and-the-environment/bamako-convention.

[73]*International Convention on Civil Liability for Bunker Oil Pollution Damage 2001*, opened for signature 29 November 1969, 973 UNTS 3 (entered into force 19 June 1975) https://treaties.un.org/pages/showDetails.aspx?objid=08000002801083db.

[74]*Convention for the Protection of the World Cultural and Natural Heritage 1978*, opened for signature 16 November 1972, 1037 UNTS 151 (entered into force 17 December 1975) ('*World Heritage Convention'*) https://treaties.un.org.

[75]*Convention for the Protection of the World Cultural and Natural Heritage 1978*, opened for signature 16 November 1972, 1037 UNTS 151 (entered into force 17 December 1975) ('*World Heritage Convention'*) https://treaties.un.org.

[76]*Paris Agreement 2015*, opened for signature 16 February 2016, CN.63.2016 (entered into force 4 November 2016) https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-7-d&chapter=27&lang=_en&clang=_en.

[77] A Ahmed-Hameed (n 61) 31; F A Onomrerhinor, 'A Re-Examination of the Requirement of Domestication of Treaties in Nigeria' (2016) 7 *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 17.

[78]*Nigerian Constitution* (Nigeria), s 12; F A Onomrerhinor (n 77) 18; C O Ngara, 'Nigerian National Assembly and Domestication of Treaties in Nigeria's Fourth and Fifth Assembly' (2017) 2 (2) *Socialscientia Journal of the Social Sciences and Humanities* 57, 58.

[79]*African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act 1983* (Nigeria)www.lawsofnigeria.placng.org.

[80]*International Convention for the Safety of Life at Sea (Ratification and Enforcement) Act 2004* (Nigeria)www.lawsofnigeria.placng.org.

[81]*International Convention on Civil Liability for Oil Pollution Damage (Ratification and Enforcement) Act 2006* (Nigeria)www.lawsofnigeria.placng.org.

[82]*Rotterdam Convention on Prior and Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (Ratification and Enforcement) Act*(Nigeria) www.lawsofnigeria.placng.org.

[83]*Endangered Species (Control of International Trade and Traffic) (Amendment) Act 2016* (Nigeria) www.nass.gov.ng.

The Nigerian Constitution states to the effect that the non-domestication of a treaty renders it inoperative.[84]Nigeria applies the transformational approach to the domestication of treaties, which is an approach that rejects any rules of international law unless such rules have been domesticated either expressly or by reference in a statute.[85]

2.2. Environmental rights and justice: Constitutional barriers to the enforcement of IELs and MEAs in Nigeria

The concept of environmental rights and justice is centred upon Principle 10 of the Rio Declaration which guarantees the rights of citizens to access information and justice in environment-related matters.[86]Many national and regional laws have recognised and enshrined this concept as it ensures transparency, accountability and inclusiveness in environmental governance.[87]The constitutions of many nations provide for environmental rights and protection and inter-generational equity. Where there is no such provision, the right to life has been interpreted in certain cases to include environmental rights.[88]The increasing global acceptance of a recurring overlap of human rights, justice and the environment is informing the widespread consideration of environmental rights as part of human rights,[89] largely influenced by IELs/MEAs. However, in the Nigerian context, there are certain legal constraints to implementing IELs/MEAs. They include the non-domestication of IELs/MEAs and *locus standi*.

2.2.1. NON-DOMESTICATION OF IELS AND MEAS

[84]*Nigerian Constitution* (Nigeria) s 12.

[85]*Abacha v Fawehinmi* (2000) 6 NWLR (pt 660) 228; *Abacha v Fawehinmi* (2000) LPELR-SC 45/1997 www.lawpavilionpersonal.com/newfulllawreport.jsp?suite=olabisi@9thfloor&pk=SC.45/1997&apk=4868; F A Onomrerhinor, above n 77, 21 and 24; B Preston and C Hanson, 'Globalization and Harmonization of Environmental Law: An Australian Perspective' (2013) 16 *Asia Pacific Journal of Environmental Law* 1, 12-13.

[86]*Rio Declaration on Environment and Development*, GA Res 151/26, UN GAOR, A/CONF.151/26 (Vol I) (12 August 1992) annex I principle 10 http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm; R T Ako, 'The Judicial Recognition and Enforcement of the Right to Environment: Differing Perspectives from Nigeria and India' (2010) 3 *National University of Juridical Sciences Law Review* 423, 425-426 https://www.researchgate.net/publication/228184440.

[87]D L Shelton and E M Duer, 'Human Rights and the Environment' in L Kurukulasuriya and N Robinson (eds) *UNEP Training Manual on International Environmental Law* (UNEP, Nairobi, 2006) 301, 301-313 https://www.unenvironment.org/resources/report/unep-training-manual-international-environmental-law;Pring and Pring, 'Greening Justice: Creating and Improving Environmental Courts and Tribunals' (n 6) x, xi and 6.

[88] Khoday (n 1) 8.

[89] Pring and Pring, 'Environmental Courts and Tribunals – A Guide for Policy Makers' (n 14) 6-11.

Nigeria is a party to the Vienna Convention which provides that signatories shall ensure the implementation of international treaties in their various jurisdictions in good faith.[90] Also, the Nigerian Constitution and African Charter on Human and Peoples' Rights both mandate the Federal Government to ensure that environmental rights of its citizens are protected.[91] Furthermore, the NESREA Act empowers NESREA to "enforce compliance with the provisions of international agreements, protocols, conventions and treaties on the environment".[92]

However, the Nigerian Government's environmental obligations are seriously hampered by section 12 of the Nigerian Constitution which provides that "no treaty between the Federation and any other country shall have force of law except to the extent that such treaty has been enacted into law by the National Assembly". The contradictory provisions of the Nigerian Constitution, Vienna Convention, NESREA Act, and the African Charter on Human and Peoples' Rights have hindered the implementation of IELs and MEAs in Nigeria.

It has been postulated that certain IELs/MEAs, the Vienna Convention and federal laws like the NESREA Act (made pursuant to some particular IELs/MEAs) are inconsistent with the constitutional requirement for the domestication of a treaty before it can have force of law in Nigeria.[93] However, it could be counter-argued that having ratified the Vienna Convention, any IEL/MEA that the Nigerian Government ratifies 'should' become binding or (at least) strongly persuasive and the Government is under the duty (in good faith) to domesticate and implement such IEL/MEA because the treaty was so ratified pursuant to the government's constitutional environmental obligations to Nigerians.[94]It is expected that the process of domesticating a treaty begins with its ratification at the international level. Therefore, the Legislature and the courts are urged to frown at the ratification of treaties by the Executive arm of government for the sake of international political correctness, only to turn around and refuse to domesticate the treaty, thereby misleading the citizens for whom the government holds state power in trust for

[90]*Vienna Convention on the Law of Treaties,* opened for signature 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980) pt 3 s 1 arts 26 and 27.
[91]*Nigerian Constitution* (Nigeria) s 20;*African Charter on Human and Peoples Rights (Ratification and Enforcement) Act 1983* (Nigeria) art 24.
[92]*NESREA Act* (Nigeria) s 7 (c).
[93]*Nigerian Constitution* s 12.
[94]*Nigerian Constitution* s 20.

their welfare and security,[95] which includes a cleaner and sustainable environment. Unfortunately, in the extant legal circumstances, this submission is only in the realm of the ideal rather than the practical.

It could be further argued that because the African Charter on Human and Peoples' Rights, which provides that "all peoples shall have the right to a generally satisfactory environment", has been domesticated in Nigeria, it means that the right to a clean environment could be regarded as part of the human rights of Nigerians. The Fundamental Rights (Enforcement Procedure) Rules, drafted to enforce Chapter IV of the Nigerian Constitution, directs the enforcement of the African Charter on Human and Peoples' Rights and other International Bills of Rights in Nigeria.[96] This may make ratified (but non-domesticated) IELs/MEAs enforceable or at least strongly persuasive because by virtue of the directive of the Fundamental Rights (Enforcement Procedure) Rules, environmental rights as a human right have been 'domesticated by reference'. Thus, by virtue of the directive of the Fundamental Rights (Enforcement Procedure) Rules employed to enforce the African Charter on Human and Peoples' Rights, the boundaries of human rights have been expanded to include environmental rights.[97]This is a fertile ground for 'judicial environmental activism'.

However, the current legal position is that a ratified but non-domesticated treaty remains unenforceable or at best merely persuasive. This paper calls for a legislative review of this legal position to the extent that upon ratification of a treaty, the Executive arm of government is mandated to submit same to the Legislature, within a stipulated period, for domestication. In the same vein, 'judicial environmental activism' is encouraged here. The courts should regard ratified but non-domesticated treaties as strongly persuasive, if not compelling, especially in matters that have direct impact on the security and welfare of Nigerians, such as environmental rights and protection. As stated earlier, this is because the government had ratified IELs/MEAs pursuant to its constitutional environmental obligations to Nigerians.

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[95]Senator Aliyu Sabi-Abdullahi, the spokesman of the Nigerian Senate of the 8th National Assembly, stated that on several occasions, the Senate had formally requested the Attorney-General's office to submit all ratified treaties to the National Assembly for domestication, but the Attorney-General failed to do so.

[96]*Fundamental Rights (Enforcement Procedure) Rules 2009,Nigerian Constitution*(Nigeria) preamble 3 (a) and (b) (i) and (ii), (c) and (d) and or II (1) https://drive.google.com/file/d/0B_cqwwSYzHNmUDJzemJW40UXJ3dDk0Ny1E21HOVR5MU4w/view.

[97]*Fundamental Rights (Enforcement Procedure) Rules 2009,Nigerian Constitution*(Nigeria) preamble 3 (a) and (b) (i) and (ii), (c) and (d) and or II (1).

2.2.2. LOCUS STANDI

Generally, environmental litigations are public matters within the purview of the State to prosecute. However, for a private citizen to institute an action in court regarding a public matter, s/he must have a 'sufficient interest' in the case by showing that the environmental injury s/he suffers is higher than that of the general public.[98]This is a legal doctrine known as *locus standi* meaning 'standing' or 'right of action'.[99]This doctrine has been applied by the courts to bar private litigation of environmental and other public matters.[100] Private litigants are required to obtain a *fiat* from the Attorney-General of the Federation or a State as authorisation to commence actions concerning public matters,[101]including environmental cases.

In *Oronto Douglas v SPDC,*[102]the plaintiff, a private citizen, brought an action against the defendant oil company seeking a mandatory order directing the defendant to comply with certain provisions of the EIA Act before continuing with a liquefied natural gas project. The trial court refused to grant the plaintiff's relief holding that he lacked the standing to commence the suit having failed to proffer evidence that he suffered any injury above that of the general public.[103]

It is submitted, however, that the doctrine of *locus standi* is not applicable to environmental matters. The Fundamental Rights (Enforcement Procedure) Rules,[104]provides thus:

> The Court shall encourage and welcome public interest litigations in the human rights field and no human rights case may be struck out for want of *locus standi.* In particular, human rights activists, advocates, or groups as well as

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[98] G U Ojo and N Tokunbor, 'Access to Environmental Justice in Nigeria: A Case for a Global Environmental Court of Justice' (Report, Environmental Rights Action/Friends of the Earth Nigeria and Friends of the Earth International, October 2016) 4.

[99]*Ibid*.

[100] Ako (n 85) 435.

[101]*Nigerian Constitution* (Nigeria) s 174; *Marcel Nnakwe v the State* (2013) iLAW/SC 254/2007, 45-46 www.ilaw.com.ng/marcel-nnakwe-v-the-state.

[102]*Oronto Douglas v Shell Petroleum Development Company Ltd (SPDC)* (2000)LPELR-CA/L/143/97 www.lawpavilionpersonal.com/lawreportsummary_ca.jsp?suite=olabisi@9thfloor&pk=CA/L/143/97&apk=53650; *Oronto Douglas v Shell Petroleum Development Company Ltd* (1998) 12 iLAW/CA/L/143/97 www.ilaw.com.ng/oronto-douglas-v-shell-petroleum-development-company-ltd-ors.

[103]*Ibid*.

[104]*Fundamental Rights (Enforcement Procedure) Rules 2009,Nigerian Constitution* (Nigeria). https://drive.google.com/file/d/0B_cqwwSYzHNmUDJzemJW40UXJ3dDk0Ny1E21HOVR5MU4w/view.

any non-governmental organisations, may institute human rights litigation, and the applicant may include any of the following:

(i) Anyone acting in his own interest;

(ii) Anyone acting on behalf of another person;

(iii) Anyone acting as a member of, or in the interest of a group or class of persons;

(iv) Anyone acting in the public interest, and

(v) Association acting in the interest of its members or other individuals or groups.[105]

The writer posits that the above provision effectively removes the *locus standi* barrier to public interest environmental litigation, especially where the subject matter is related to the violation and/or enforcement of environmental rights. Thus, environmental activists could rely on this provision to institute environmental cases before Nigerian courts, as well as the African Court of Human and Peoples' Rights, in a bid to advance the development of the law on whether the frontiers of human rights have been expanded to include environmental rights.[106]

3.0. Environmental Courts and Tribunals (ECTs) in Australia and India

In this part, the paper explores ECTs operating in Australia and India, highlighting their key distinctive features and extent of their jurisdictions and powers.

3.1. *Australia*

Australia has no national environmental court or tribunal. However, its various States and Territories have one viable form of ECT or another. They include the Land and Environmental Court (LEC) of New South Wales; Planning and Mining Tribunal of the Northern Territory; Lands, Planning and Environmental Court (PEC) of Queensland; Planning and Environmental List of the Victorian Civil and Administrative Tribunal (VCAT) of Victoria; and Environment Resources and

[105]*Fundamental Rights (Enforcement Procedure) Rules 2009,Nigerian Constitution* (Nigeria), preamble para 3(e) https://drive.google.com/file/d/0B_cqwwSYzHNmUDJzemJW40UXJ3dDk0Ny1E21HOVR5MU4w/view.

[106]*African Charter on Human and Peoples Rights (Ratification and Enforcement) Act 1983* (Nigeria) art 24; Shelton and Duer (n 87) 302; Khoday (n 1) 8.

Development Court of Tasmania.[107]Key common attributes of Australian ECTs are that they apply the principles of Ecologically Sustainable Development (ESD) and have broad powers to conduct both merits review and judicial review.[108]However, there are some differences in model and operation amongst Australian ECTs. While some are operationally-independent (eg LEC, New South Wales),[109]others are decisionally-independent (eg PEC, Queensland).[110]The writer has observed that for a court to be considered operationally-independent or decisionally-independent or both, depends on whether the court is under the substantial control or supervision of the Judiciary or Executive arm or whether the court is a special independent institution. The paper now examines these two courts:

I. LAND AND ENVIRONMENTAL COURT (LEC)

LEC was established in 1979.[111]It is an operationally-independent environmental court because it is a stand-alone superior court of record within the New South Wales judicial system.[112] It is not a branch of a court or a 'court-within-a-court' such as PEC and the Planning and Environmental List of the VCAT. This makes its management and procedures quite expensive and complex. LEC's operations and decisions are independent and it exercises well-defined and exclusive criminal and civil jurisdiction over environmental, land use planning and development cases.[113]It is on the same hierarchical level with NSW Supreme Court; however its decisions are subject to appeal at the High Court of Australia.

It has at least six judges and twenty-one scientific-technical commissioners. Continuous professional training for judges and staff are frequently conducted. LEC pioneered the application of restorative justice to ensure the participation of both victims and perpetrators of environmental injuries in repairing environmental harm and preventing recurrences.[114]LEC embraces a 'Multi-Door Courthouse' system which provides complainants with a cornucopia of

[107]Rackemann, 'Environmental Dispute Resolution – Lessons from the States' (n 3) 333.
[108]Rackemann, 'Environmental Dispute Resolution – Lessons from the States' (n 3) 334.
[109] Pring and Pring, 'Environmental Courts and Tribunals – A Guide for Policy Makers' (n 14) 20.Where a court is considered to be operationally-independent, the courtis usually inferred tobe both operationally and decisionally-independent.
[110]*Ibid*24.Where the court is considered to be decisionally-independent, it is usually not considered to be operationally-independent.
[111]*Land and Environment Court Act 1979* (NSW) s 5.
[112] Pring and Pring, 'Environmental Courts and Tribunals – A Guide for Policy Makers' (n 14) 20-21.
[113]*Ibid* 21.
[114]*Ibid*.

dispute resolution services, that is, litigation and other alternative disputes resolution options.[115] It also embraces innovations in expert witness management e.g. rules requiring expert witnesses' duty to court, over client; joint college of experts; and concurrent evidence ('hot-tubbing').[116]

II. PLANNING AND ENVIRONMENT COURT (PEC)

PEC was established in 1965. It is a decisionally-independent court. Although it conducts proceeding and delivers decisions independently, PEC can also be described as a quasi-operationally-independent court. This is because PEC is not a free-standing court as it is a branch of the District Court of Queensland under whose management, supervision, staff, and budget, it operates. This makes its management more cost-effective than that of the LEC. Only judges with knowledge and expertise inland use, planning and environmental law are posted to this court.[117]

PEC's jurisdiction covers only civil environmental and planning disputes, limited only to issuing; contempt, restraining and consequential orders to prevent or remedy the commission of an environmental crime.[118]Its jurisdiction is conferred on it by the *Sustainable Planning Act 2009* (Qld)[119] and it entertains appeals from decisions of Queensland State and Local Government agencies flowing from rejection of applications for land development permits.[120]The Registrar of the PEC conducts case management conferences, meetings with expert witnesses and mediates between parties. This helps to decongest the case docket and ensure speedy administration of justice.[121]

3.2. India – The National Green Tribunal (NGT)

The National Green Tribunal (NGT) was established in 2010 as the national environmental court for India.[122]Unlike Australia's ECTs, the NGT is a national court having several divisions across

[115]*Ibid*.
[116]*Ibid*.
[117]*Ibid*.
[118] E Hamman, R Walters and R Maguire, 'Environmental Crime and Specialist Courts: The Case for a 'One-Stop (Judicial) Shop' in Queensland' (2015) 27 (1) *Current Issues in Criminal Justice* 59, 69.
[119]*Sustainable Planning Act 2009* (Qld) ch 7 pt 1; Hamman, Walters and Maguire (n 117).
[120] Hamman, Walters and Maguire (n 117).
[121] Pring and Pring, 'Environmental Courts and Tribunals – A Guide for Policy Makers' (n 14) 24.
[122]*National Green Tribunal Act 2010 (NGT Act)* (India); D Amirante, 'Environmental Courts in Comparative Perspective: Preliminary Reflections on the National Green Tribunal of India' (2012) 29 (2) *Pace Environmental*

the country. Its procedures and decisions are independent. However, it is not an operationally-independent tribunal because it is under the supervision of India's Law and Justice Ministry.[123]Thus, it is a decisionally-independent court having original, appellate and special jurisdiction.[124]NGT has original jurisdiction over all civil matters relating to the natural resources and the environment, including the enforcement of any legal right to the environment and any legal questions arising from the implementation of India's environmental laws.[125]In essence, the jurisdiction of the NGT over environmental matters is quite wide.[126] However, unlike Australian ECTs, it does not have any criminal jurisdiction.[127] As an appellate court, NGT reviews actions of the Ministry of the Environment pursuant to India's environmental laws.[128]

NGT is not bound to follow the rules of procedure and evidence of regular courts; rather it has power to make and follow its own rules.[129]It also applies natural justice, 'polluter pays', precautionary principle and other IEL principles in its decisions.[130]NGT operates on a policy of open access to the general public.[131]The NGT Act guarantees an open standing rule which extends to persons not ordinarily connected to the suit, including foreigners.[132]It can issue summons and orders for restitution of a degraded environment; compensation and costs; interim and interlocutory injunctions; conduct discoveries; admit and order production of evidence; and issue sanctions for contempt.[133] Its decisions are appealable only to the Supreme Court of India, thereby leapfrogging the Appeal Court.[134]

Law Review 441, 461; G N Gill, 'Environmental Justice in India: The National Green Tribunal and Expert Members' (2016) 5 (1) *Transnational Environmental Law* 175, 186; M Angstadt, 'Securing Access to Justice Through Environmental Courts and Tribunals: A Case in Diversity' (2016) 17 *Vermont Journal of Environmental Law* 345, 354; D Y Chandrachud, 'Indian Environmentalism' (2017) 2 *National Green Tribunal International Journal on Environment* 1, 4.

[123] Pring and Pring, 'Environmental Courts and Tribunals – A Guide for Policy Makers' (n 14) 34.

[124] Gill (n 121) 186.

[125]*NGT Act 2010* (India) s 14; Gill (n 121) 186 and 187.

[126] Amirante (n 121) 462; Gill (n 121) 187.

[127] Amirante (n 121) 463.

[128]Gill (n 121) 187.

[129] Angstadt (n 121).

[130]*NGT Act 2010* (India) s 20; Gill (n 121) 187; Angstadt(n 121) 364 and 370; B Kumar, V Panwar and S Singh, 'Environmental Jurisprudence: Impact of Tribunal's Judgments Nationally and Internationally' (2017) 2 *National Green Tribunal International Journal on Environment* 64, 66, 81 and 83.

[131] Amirante(n 120) 462.

[132]*NGT Act 2010* (India) s 18; Gill (n 121) 187; Kumar, Panwar and Singh (n 129) 67.

[133]*NGT Act 2010* (India) s 15; (n 121) 187.

[134] Angstadt (n 121).

There are strict criteria for appointment to the NGT Bench. Like PEC, the NGT has a highly expert Bench, perhaps more expert than PEC's. The Chairperson of the NGT is usually a retired Supreme Court Justice or High Court Chief Judge and the other Members of the NGT Bench include between ten to twenty former High Court Judges (Judicial Members) and ten to twenty experts (Expert Members), all with fifteen years masters, doctorate and practice experience in science and engineering, as well as five years specialization in environment-related disciplines, thus ensuring a highly balanced legal and scientific-technical expert Bench.[135]Expert Members are central to the procedure and judgments of NGT.[136]The Chairperson is further empowered to summon any person(s) with expert knowledge and experience in a particular case to assist the NGT.[137] It has decided high-profile cases concerning water and air pollution, waste disposal, extractives, toxic dumps and dams, and is reputed to dispense matters quickly and effectively.[138]

However, one major drawback is that applications to NGT must be filed within six months from the date the cause of action arose.[139] This is quite a drawback because this statutory limitation may restrict litigations regarding environmental injuries that take years from the date of occurrence for the consequences to manifest on the victims.[140] The NGT will now have to decide when the cause of action arose between the date of occurrence of the act and the date the injury first manifested.

With regards to standing, there is one unique feature of NGT – it can institute an action *sua sponte* or *suo motu*, that is, it can initiate litigation on its own without an application or complaint from any person which is quite an unusual characteristic of courts.[141]This is a rare departure from the doctrine of *nemo judex in causa sua*, which means "one should not be a judge in his own cause". The NGT invokes this power when necessary as a proactive measure to ensure environmental protection and biodiversity conservation.[142] It had cause to invoke this power in reaction to two newspaper reports on a mining project which disrupted tiger habitats and another case of garbage littering on sea beaches.[143]In the former case, NGT summoned

[135]*NGT Act 2010* (India) s 5 (2) (a); Amirante (n 121) 463; Chandrachud (n 121).
[136] Gill (n 121), 177-186.
[137]*NGT Act 2010* (India) s 4 (2); Amirante (n 121) 464.
[138] Pring and Pring, 'Environmental Courts and Tribunals – A Guide for Policy Makers' (n 14) 34.
[139]*NGT Act 2010* (India) s 14 (3).
[140] Amirante (n 121) 463.
[141] Angstadt (n 121) 360.
[142] Kumar, Panwar and Singh (n 129) 67.
[143]*Ibid* 67-68.

nineteen parties to give evidence on the particulars of the Mining Leases for the affected areas and to ascertain for itself whether there were violations of mining and environmental laws.[144] By so doing, it could be said that the NGT is engaging in 'judicial environmental activism'.

4.0. Proposal for a specialised National Environment and Planning Tribunal (NEPT)

In this part, the paper advocates for the establishment of a specialised NEPT to entertain environmental cases in Nigeria. The paper also states why justifications for the establishment of NEPT outweigh plausible criticisms in the Nigerian context. In addition, the paper proposes the most suitable features that may be adapted to best position NEPT for a successful implementation of IELs and MEAs, especially with regards to speedy access to environmental justice.

4.1. *Background*

In many countries, special courts or tribunals are created to adjudicate specific matters such as employment, immigration, competition, juvenile delinquencies, mental health and drug offences, which their governments regard as posing peculiar challenges militating against social order.[145]In Nigeria's case, although there are few existing special courts, there appears to be a reluctance to create special courts as the preference has been to 'designate' some judges or courts to preside over specific matters. For example, instead of considering calls for a special court to entertain corruption cases, the former Chief Justice of Nigeria directed all Chief Judges of each State to designate two courts within their respective jurisdictions to adjudicate corruption cases.[146] The only specialised courts in Nigeria at the federal level are those with jurisdiction over election petitions,[147]employment matters,[148]conduct of public officials[149]and

[144]*Ibid*.

[145] C Warnock, 'Reconceptualising Specialist Environmental Courts and Tribunals' (2017) 37 (3) *Legal Studies* 391.

[146]*Economic and Financial Crimes Commission Act 2004* (Nigeria) s 19 (2) (b) - (c) and (3); I Nnochiri, 'Anti-graft War: CJN Okays Special Courts, Judges to Try Alleged Looters', *Vanguard* (online) 18 September 2017 https://www.vanguardngr.com/2017/09/anti-graft-war-cjn-okays-special-courts-judges-try-alleged-looters; O I Davidson, 'Designated Special Courts are Superior Courts of Record in Nigeria' on The Legal Watchmen, *Justice Walter Nkanu Samuel Onnoghen, Legal, Nigeria, Uncategorized* (3 October 2017) https://legalwatchmen.wordpress.com/2017/10/03/designated-special-courts-are-superior-courts-of-record-in-nigeria.

[147]*Nigerian Constitution* (Nigeria) s 6 (5) (b).

[148]*Nigerian Constitution* (Nigeria) s 6 (5) (b).

[149]*Nigerian Constitution* (Nigeria) sch 5 pt II.

investment and securities disputes.[150] The general reason adduced for this preference is expediency and avoidance of painstaking legislative process in establishing special courts and to keep a less complicated, court hierarchy.[151]

However, Nigeria's environmental challenges have prompted this paper's call for a specialised NEPT as distinct from merely 'designating' judges who may not have significant knowledge of environmental issues and intricacies to adjudicate environmental litigation. In fairness, the URPTs have fairly specialised Panels with an appreciation of environmental matters, but none of their members are Judges. Furthermore, they are "captive" tribunals under substantial control of the Executive arm and they only conduct merit reviews of the Development Control Department's actions. Environmental challenges increasingly require specialised legal and scientific-tackling measures. Thus, learning from Australia and India's experiences, NEPT is a viable mechanism to addressing environmental challenges and ensuring speedy access to environmental justice in Nigeria.

4.2. *"Court" or "Tribunal"?*

It is essential to examine the significance or otherwise of naming a judicial body a 'Court' or 'Tribunal', especially in the Nigerian context. Professors George and Catherine Pring, two foremost ECT advocates, drew a distinction between "Environmental Court" (EC) and "Environmental Tribunal" (ET). They postulate that ECs operate within the Judiciary while ETs operate from outside the Judiciary – typically they are either a special independent body or under the supervision of an agency of the Executive arm of government.[152]Their extensive research reveals that there are three types of ECTs: ECs, ETs and Special Commissions and Ombudsmen.[153] Below is a graphical illustration of different ECT models:

[150]*Nigerian Constitution* (Nigeria) s 6 (5) (j); *Investment and Securities Act 2007* (Nigeria) s 274.
[151] Pring and Pring, 'Environmental Courts and Tribunals – A Guide for Policy Makers' (n 14) 29.
[152]*Ibid* 19.
[153]*Ibid* 20-42.

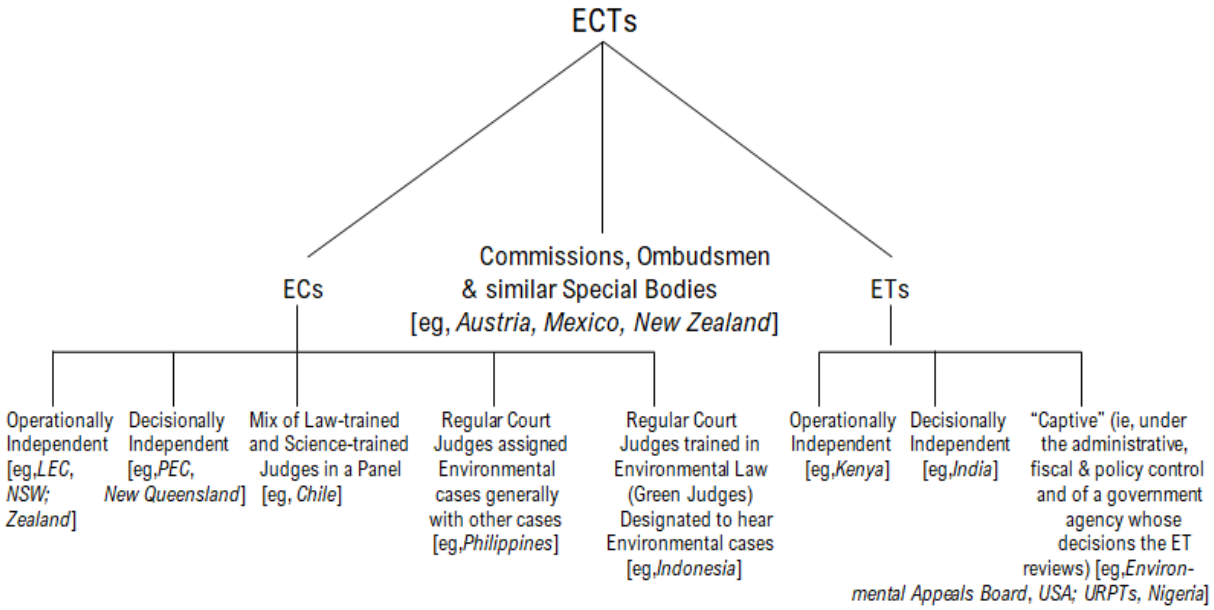

Figure: An Illustration of the Various Types of ECT Models.

However, this distinction may not be particularly significant in the Nigerian context as "court" and "tribunal" are being used interchangeably to name some special courts, for example, the Elections Petitions Tribunal, the National Industrial Court, the Investment and Securities Tribunal, the Code of Conduct Tribunal, Urban and Regional Planning Tribunal and Tax Appeal Tribunal. The National Industrial Court is a special court and a superior court of record within the Nigeria's judicial system alongside other regular courts.[154]It has jurisdiction to entertain employment matters, an area of law which was hitherto under the exclusive jurisdiction of the Federal High Court – a regular superior court of record. The Investment and Securities Tribunal, the Code of Conduct Tribunal, Urban and Regional Planning Tribunal and Tax Appeal Tribunal are special courts under the supervision of the Executive arm of government. The Elections Petitions Tribunal is a special court under the Judiciary, while the Magistrate Court is a regular court under the Judiciary. However, these courts are all inferior courts of record having not been listed in the Nigerian Constitution among the superior courts of record. Pring and Pring eventually admitted that while some countries use both words interchangeably, other countries, like Spain, translate 'tribunal' to mean 'court' in their languages.[155] In essence, as the taste of the pudding is in the eating, the 'court' or "tribunal" semantics is not more important than the model and effective operation of NEPT.

[154]*Nigerian Constitution* (Nigeria) s 6 (5) (b).

[155] Pring and Pring, 'Environmental Courts and Tribunals – A Guide for Policy Makers' (n 14) 19.

Pring and Pring categorised Special Commissions and Ombudsmen as an ECT model. In Nigeria, however, the closest we have is the Public Complaints Commission and the Human Rights Commission -special independent public institutions who entertain complaints from the general public, ranging from unfair dismissal to human rights violations.[156] Unfortunately, they do not have adequate capacity to entertain environmental complaints because they are not trained in environmental law or sciences. They are bedevilled with huge complaint dockets which could adversely affect environmental cases, hence another reason why this paper advocates for a specialised environmental court in Nigeria.

4.3. Justification for Establishing NEPT

1. UNIFORMITY AND CERTAINTY[157]

ECTs provide uniformity and certainty in environmental law jurisprudence. As has often occurred in Nigeria, an adverse consequence of regular courts with coordinate or concurrent jurisdiction to adjudicate a matter is the tendency to deliver contrasting rulings even on similar questions of law and facts. Since NEPT will consist of environmental law-trained judges, its decisions will be more certain and over time build a reliable jurisprudence on a given set of similar facts and applicable domestic and international environmental laws.[158] NEPT is an excellent opportunity to centralize or harmonize Nigeria's environmental law jurisprudence.

2. FAST-TRACK ADJUDICATION[159]

ECTs ensure speedier determination of environmental cases. Regular courts are overwhelmed with huge case load because they handle many different criminal and civil cases making the

[156]*Public Complaints Commission Act 1975* (Nigeria) www.lawsofnigeria.placng.org; *National Human Rights Commission Act 1995* (Nigeria) www.lawsofnigeria.placng.org.

[157]K S Bernard, 'The Environmental Court Proposal: Requiem, Analysis and Counterproposal' (1975) 123 (3) *The University of Pennsylvania Law Review* 676, 677; G Pring and C Pring, 'Specialized Environmental Courts and Tribunals: The Explosion of New Institutions to Adjudicate Climate Change and Other Complex Environmental Issues' (Paper presented at the United Nations Institute for Training and Research's 2nd Global Conference on Environmental Governance and Democracy on Strengthening Institutions to Address Climate Change and Advance a Green Economy, Yale University, United States of America, 17-19 September 2010) 16; G Pring and C Pring, 'Twenty-First Century Environmental Dispute Resolution – Is There an 'ECT' in Your Future?' (2015) 33 (1) *Journal of Energy and Natural Resources Law* 10, 12;

[158] B Preston, 'Characteristics of Successful Environmental Courts and Tribunals' (2014) 26 (3) *Journal of Environmental Law* 365, 396-398.

[159]Bernard (n 156) 676, 679-680; Pring and Pring, 'Greening Justice: Creating and Improving Environmental Courts and Tribunals' (n 6) 14.

judicial process quite slow.[160] By focusing on environmental matters alone, NEPT will be able to adjudicate with dispatch, in line with the notion that justice delayed is justice denied. This is quite essential because complaints regarding certain environmental injuries such as oil spills need to be quickly adjudicated upon to forestall graver or irreparable environmental damage.[161]

3. EXPERT DECISION-MAKING[162]

NEPT will be able to deliver well-informed and far-reaching decisions which emanate from sound knowledge and apt application of domestic and international environmental laws and principles, as well as environmental-related sciences, which are generally lacking among regular court judges. Australia's PEC and LEC are good examples of such ECTs which have judges that are vastly experienced in environmental law and principles. India's NGT Bench is comprised of both environmental law and science-trained judges and 'Expert Members' with high-level expertise in environmental sciences. These competencies have enabled these ECTs to build a solid environmental jurisprudence and give them greater capacity to comprehend, manage and apply expert evidence to arrive at environmentally-informed and far-reaching judgments in environmental matters than their regular court counterparts.[163]

4. RELAXED STANDING RULES[164]

Locus standi has been a major barrier to accessing environmental justice in Nigeria. ECTs, in line with the concept of substantial justice over technicalities and the global discourse regarding environmental rights as a human right, have a higher tendency to expand the standing rights to commence an environmental case; in order to accommodate public interest litigation, class actions and individual suits than regular courts. They do this to ensure that public participation and access to environmental justice, as elicited in the *Rio Declaration*, are not sacrificed on the altar of legal technicalities such as strict standing rules which restrict private litigation on public matters to only individuals who have suffered injuries over and above the general public. In this

[160] S C Whitney, 'The Case for Creating a Special Environmental Court System – A Further Comment' (1973) 15 (1) *William and Mary Law Review* 33, 48 http://scholarship.law.wm.edu/wmlr/vol15/iss1/3.
[161] Preston, 'Characteristics of Successful Environmental Courts and Tribunals' (n 157) 391.
[162]Bernard (n 156) 676, 680-682; Pring and Pring, 'Environmental Courts and Tribunals – A Guide for Policy Makers' (n 14) 13; Pring and Pring, 'Specialized Environmental Courts and Tribunals: The Explosion of New Institutions to Adjudicate Climate Change and Other Complex Environmental Issues' (n 156) 11-13.
[163] Whitney (n 160).
[164] Pring and Pring, 'Twenty-First Century Environmental Dispute Resolution – Is There an 'ECT' in Your Future?' (n 156) 12.

regard, India's NGT relaxed its standing rules to accommodate environmental litigation by foreigners.

5. INNOVATIVE AND FLEXIBLE RULES[165]

Many ECTs make innovative and flexible rules in the interest of ensuring public participation and access to justice in environmental matters. The more independent an ECT is, the more probable that it will exercise the power to make innovative and flexible procedural rules in order to effectively adjudicate novel and technical environmental cases.

6. ISSUE AND REMEDY INTEGRATION[166]

ECTs are a "one-stop judicial shop" for resolving environmental disputes.[167] As a specialized court, NEPT can effectively apply an array of domestic and international environmental laws and principles in adjudicating environmental matters. It will also exercise criminal, civil and administrative powers; entertain applications for both judicial and merits reviews; and issue combined criminal, civil and administrative remedies and enforcement.

7. ACCOUNTABILITY[168]

NEPT will exercise more robust oversight over actions of government environmental agencies than URPTs and other regular courts. It will motivate environmental agencies to be more responsible, transparent and accountable in their actions or inactions knowing that an independent and well-informed NEPT will always be on hand to check their excesses.

4.4. Counterarguments against establishing NEPT

1. FRAGMENTATION OF THE COURT SYSTEM

The adverse effect of creating specialist courts for every seemingly problematic issue is that it leads to fragmentation of the court system.[169] Environmental cases would be isolated from the general body of cases which may lead to lack of attention and an uneven development of

[165]Pring and Pring, 'Specialized Environmental Courts and Tribunals: The Explosion of New Institutions to Adjudicate Climate Change and Other Complex Environmental Issues' (n 156) 16.
[166] Pring and Pring, 'Greening Justice: Creating and Improving Environmental Courts and Tribunals' (n 6) 16.
[167] Hamman, Walters and Maguire (n 117).
[168] Pring and Pring, 'Environmental Courts and Tribunals – A Guide for Policy Makers' (n 14) 14.
[169]Bernard (n 156) 676, 679; Pring and Pring, 'Environmental Courts and Tribunals – A Guide for Policy Makers' (n 14) 15.

jurisprudence. Fragmentation will also create confusion for litigants as to which court has jurisdiction to adjudicate a particular matter. On this note, even though the judicial system may be slow and overburdened with a large caseload, critics would rather trust the regular courts to deliver environmental justice than creating a specialised court for such purposes.

Assuming without conceding that environmental matters are *sui generis* (ie, a special area of law) which need special attention such as creating a specialist NEPT, there are other areas of law that require special urgent intervention through judicial mechanisms. Nigeria is experiencing some social challenges including insurgency, domestic violence and kidnapping. Would the creation of special courts necessarily ameliorate these challenges?

Rather than create another specialist court, existing courts –like the URPTs– could be overhauled to ensure greater efficient delivery of environmental justice. For example, in reaction to age-long calls for reforms in criminal justice delivery, the Administration of Criminal Justice Act[170] was enacted and notable improvements have been recorded in the administration of criminal justice without necessarily creating a special court for criminal cases.

2. HUGE COSTS

The cost of creating and operating ECTs are quite high.[171] NEPT will require new infrastructure, judges, support staff, initial and continuous professional training for judges and staff in adjudication of environmental cases. This has significant budgetary implications especially where revenue generation is low and the government may have to continuously channel public funds, which would have been used for other critical sector expenditure on NEPT. Furthermore, these costs may be unnecessary as there may be no sufficient environmental cases to justify the establishment of NEPT and this will lead to redundancy on the part of the judges, staff and equipment effectively rendering them surplus to requirement.[172]Ironically, posting judges to adjudicate only environmental matters could hamper or limit their professional career growth in terms of promotion to higher courts.

3. OVERLAP BETWEEN ENVIRONMENTAL AND NON-ENVIRONMENTAL MATTERS

[170]*Administration of Criminal Justice Act 2015*(Nigeria) www.justice.gov.ng.
[171] Pring and Pring, 'Environmental Courts and Tribunals – A Guide for Policy Makers' (n 14) 15.
[172] Bernard (n 156) 676, 680.

It is not always the case that an environmental litigation may involve wholly environmental issues. Oftentimes, there is a mix of environmental and non-environmental issues in one environmental case. A litigant could be confused as to whether to initiate proceedings in NEPT, URPTs or the regular courts; or dissect the environmental issues from non-environmental issues and separately initiate them in NEPT and regular courts respectively.

4. UNDUE INFLUENCE BY INTERESTED PARTIES

Critics fear that certain interested parties such as government agencies, environmental activists or developers may exert inappropriate influence on ECTs.[173] Such influences could be experienced in judges' appointment, salaries and tenures as well as other political pressures. "Captive" tribunals -under the administrative, fiscal and policy control of government agencies whose decisions the tribunal reviews- are susceptible to these influences. It is more difficult to influence the regular courts in this manner.

5.0. Essential features for a successful NEPT

It is submitted at this point that the feasible benefits of establishing NEPT substantially outweigh the counterarguments. However, the counterarguments are only a reminder that essential strategies and best practices be applied to prevent NEPT from failing to achieve positive outcomes in environmental justice delivery.

In this part, the paper advises on the necessary features that NEPT should possess for the effective adjudication of domestic and international environmental law in Nigeria:

5.1. Operationally-Independent Model

It is posited that for effective dispensation of environmental justice, NEPT should be an operationally-independent model, similar to the model obtainable in LEC. NEPT should be a stand-alone court within the judicial system and not within another court as obtainable in PEC or a "captive" tribunal under the Executive arm. This is necessary in order to insulate NEPT from undue interference by the Government and other special interests. Also, it should be a court of first instance; a superior court of record on the same level with the Federal High Court

[173] Pring and Pring, 'Environmental Courts and Tribunals – A Guide for Policy Makers' (n 14) 15.

capable of hearing both merits and judicial reviews, and should be funded in same manner as every other superior court of record.

Borrowing a leaf from NGT, appeals by way of judicial review should lie straight from NEPT to the Supreme Court of Nigeria, thereby leapfrogging the Court of Appeal. In merits reviews, it should sit as a Full Court and should be the Court of last resort. This proposition is appropriate, given the need for environmental and planning cases to be determined effectively and in good time, because delays in justice delivery can ultimately cause irreparable environmental injuries. As earlier observed, delays in trial can cause continuing and ultimately irreparable environmental injuries without justice.

5.2. Composition and Qualification of the NEPT Bench

NEPT's Bench should only constitute judges who are trained in both environmental law and sciences. This is in line with the Nigerian Constitution which provides that only legal practitioners of at least ten years post-call experience are eligible for elevation to the Bench.[174] Also, one of the criteria for admission to the Bench of the National Industrial Court of Nigeria is considerable knowledge and practice experience in labour and industrial relations law and practice.[175]NGT's Bench is comprised of both judges and experts members, who are all trained and experienced in environmental sciences and law. However, the writer does not think that this composition is tenable in Nigeria because section 250(3) of the Nigerian Constitution provides to the effect that only legal practitioners having a minimum of ten years legal practice experience are eligible to be elevated to the Bench as judges of the Federal High Court. Since NEPT is proposed to be a superior court of record on the same level as the Federal High Court, non-legal practitioners are constitutionally barred from being elevated to the Bench.

This recommendation does not by any means relegate the expertise of non-judges in the adjudication of environmental and planning cases. The expertise of environmental scientists

[174]*Nigerian Constitution* (Nigeria) s 250 (3).
[175]*National Industrial Court Act 2006* (Nigeria) s 2 (4) www.lawsofnigeria.placng.org.

would be relevant in other capacities like court-appointed Referees (as in LEC),[176] Mediators or court-annexed experts[177] to assist NEPT judges in the adjudication processes.

5.3. Clear, Comprehensive and Exclusive Jurisdiction

The territorial jurisdiction of NEPT should cover the entire country with branches at least in each geo-political zone of Nigeria, just like NGT. NEPT should be a superior court of record and have exclusive jurisdiction over civil and criminal matters relating to natural resources and the environment whether land, sea, air, atmosphere, flora or fauna; enforcement of environmental rights; and any legal questions arising from the implementation of environmental and planning laws, whether national or international. In essence, the Federal High Court and URPT's jurisdiction over environmental matters should be stripped and vested in NEPT. However, the writers advises that NEPT should not be given jurisdiction over waste disposal matters which are clearly within the constitutional prerogative of Local Government Councils.[178]The focus for NEPT should be on environmental and planning matters emanating from natural resources and infrastructure development.

5.4. Standing Provisions

The right to commence environmental litigation in NEPT should be open to all persons, whether natural, corporate or foreign. This is clearly in line with Principle 10 of the *Rio Declaration* which provides for public participation, access to information and justice in environmental matters. The requirement by a private litigant to obtain a *fiat* from the Attorney-General to prosecute public matters should not be applicable to environmental and planning cases. It runs contrary to the intendment of the *Rio Declaration* and would stifle access to justice. Foreign organizations such as international environmental non-governmental organizations (ENGOs) are advised to be incorporated in Nigeria to give them the legal personality status to prosecute or defend environmental matters.[179]

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[176]*Land and Environmental Court Rules 2007* (NSW) pt 3 r 3.8 (1); B Preston, 'The Use of Alternative Dispute Resolution in Administrative Disputes' (Paper presented at the Symposium on Guarantee of the Right to Access to the Administrative Jurisdiction on the Occasion of the 10th Anniversary of the Supreme Administrative Court of Thailand, Bangkok, Thailand, 9 March, 2011) 7.

[177]Preston, 'Characteristics of Successful Environmental Courts and Tribunals' (n 157) 383.

[178]*Nigerian Constitution* (Nigeria) sch 4.

[179]*Companies and Allied Matters Act* (Nigeria)s 596 www.lawsofnigeria.placng.org.

However, the paper advises that NEPT should not be given *sua sponte* powers to commence environmental and planning cases, like NGT, bearing in mind the tendency for specialized ECTs to engage in judicial activism ahead of developing an environmental and planning jurisprudence based on law and science. As one should not be a judge in his own cause, the Judiciary should be seen as an impartial arbiter when adjudicating environmental matters.

5.5. Rules of Procedure and Evidence

NEPT should be empowered to develop its own rules and apply them in such a manner that will achieve substantial justice and equity over technical justice. In its procedures and orders, NEPT must apply IEL principles, natural justice, social justice, equity and fairness. As a court, it may follow the general rules of evidence provided in the Evidence Act[180]but may depart from same in the interest of justice.

PEC has an innovative and largely successful approach to expert evidence-taking which NEPT can adopt and adapt to suit its adjudication procedures. Firstly, each party should be permitted to engage one or more experts to furnish expert evidence on any particular discipline or specialty relevant to the case but must identify them at the preliminary stage of the case.[181] Secondly, to curtail potential bias, it is important that these experts realize their duty to the Court over and above their clients.[182] Thirdly, while parties must properly brief their experts, they must not teleguide their evidence. Also, the experts must swear to a Verifying Affidavit averring that no such teleguidance occurred.[183]Fourthly, both parties' experts, should thereafter, engage in meetings chaired by the Registrar in a bid to formulate a joint report to be used in evidence, and must not communicate with the parties throughout these meetings except where experts require further information from the parties.[184]

5.6. Case Management and Multi-Door Courthouse Options

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[180]*Evidence Act 2011* (Nigeria) www.lawsofnigeria.placng.org.

[181]*Planning and Environmental Court Rules 2010* (Qld) r 34; Rackemann, 'Environmental Dispute Resolution – Lessons from the States' (n 3) 339; M Rackemann, 'The Management of Experts' (Paper presented at the Judicial Conference of Australia Colloquium themed Innovation in Court Procedures, Alice Springs, Australia, 14-16 October 2011) 9.

[182]*Planning and Environmental Court Rules 2010* (Qld) r 26 (e); Rackemann, 'Environmental Dispute Resolution – Lessons from the States' (n 3)339; Rackemann, 'The Management of Experts'(n 190) 9.

[183]*Planning and Environmental Court Rules 2010* (Qld) rr 26, 29 and 31 (3); Rackemann, 'Environmental Dispute Resolution – Lessons from the States' (n 3) 340; Rackemann, 'The Management of Experts' (n 190) 9-10.

[184]*Planning and Environmental Court Rules 2010* (Qld) rr 22 and 27; Rackemann, 'Environmental Dispute Resolution – Lessons from the States' (n 3) 340; Rackemann, 'The Management of Experts' (n 190) 10.

Case management and multi-door courthouse systems are critical to ensuring speedy and effective determination of environmental and planning disputes. NEPT should not be solely a litigation arena; it should present a package of various dispute resolution options including expert adjudication, arbitration, mediation, conciliation, neutral evaluation and court-appointed refereeing.[185]After a case is filed, the NEPT Registrar should preside over a case management sitting with the parties. After hearing from both sides and going through their respective documents-in-support, the Registrar may deem it necessary or upon request by the parties to list the case for hearing before the Court or refer it to any alternative dispute resolution (ADR) mechanisms for determination. This is where the expertise of environmental sciences become relevant. The Court may have a list of experts who are members of professional association representing various disciplines. The Registrar will apply to the Court to appoint an expert to execute the ADR process as chosen by the parties or determined by the Court. In the event where ADR fails, the matter will then be listed for adjudication by the Court.

Furthermore, if the Court deems necessary or upon application by the parties, it could still refer the matter to ADR. Also, the Court could transmit the case to a court-appointed Referee to assist the Court with specific issues and report its findings back to the Court. In the course of his/her function, the Referee may decide to hear both sides in a proceeding. Case management and multi-door courthouse options are very useful in not only easing case load pressure on the Court; they also provide the litigants with an array of options to potentially resolve their disputes cost-effectively and in good time.

5.7. Costs, Remedies and Enforcement Mechanisms

Legal representation, briefing expert witnesses and obtaining evidence can be quite expensive and can prove significant barriers to environmental justice. Therefore, affordability of litigation costs is essential to accessing environmental justice. NEPT should fix low filing fees for litigation processes and upon application by indigent parties issue a writ of *forma pauperis* to waive their filing fees. Court-annexed ADR processes should be free-of-charge.[186] NEPT should not apply the 'cost-follows-the-event' rule which indicates that the loser of a case should pay for winner's

[185] Preston, 'Characteristics of Successful Environmental Courts and Tribunals' (n 158) 384.
[186] *Ibid*.

costs. This can discourage poor communities from accessing environmental justice.[187]NEPT should have the full powers of regular courts to grant all manner of Orders to enable it adequately compensate victims of environmental injuries, punish violators, protect the environment and prevent future violations.[188] Environmental justice must be both reparative[189] and restorative.[190]

6.0. Conclusion

The paper has argued that although Nigeria's URPTs comprise of experts in engineering, architecture, town planning, planning law and land survey, they are fraught with various challenges that significantly hamper their efficacy. They lack the necessary independence required for effective environmental adjudication. For example, it is the Attorneys-General who drafts the procedural rules of the URPTs.[191]Their jurisdiction does not extend beyond development and planning matters on land. The paper submits that an independent specialised NEPT is most suitable to adjudicate any environmental and planning matters affecting air, land, water, flora and fauna. It is recommended that the Federal High Court and States' High Court jurisdictions over environmental cases be transferred to NEPT and URPTs upgraded or collapsed into NEPT, giving it sole and wider jurisdiction and specialised capacity to effectively dispense environmental justice. Consequently, the Federal High Court's jurisdiction over environmental cases in the extractives sector should be transferred to NEPT.

These recommended features are in accordance with best practices in environmental adjudication as illustrated in Australia and India's ECTs and other successful ECTs around the globe. All that needs to be done is to adapt these best practices to suit Nigeria's circumstances.[192] As observed by Pring and Pring, specialised ECTs (such as the proposed

[187] *Ibid* 22.
[188] *Ibid* 32.
[189] R White, 'Reparative Justice, Environmental Crime and Penalties for the Powerful (2017) 67 *Crime Law and Social Change* 117, 128.
[190] Walters and Westerhuis (n 5) 286.
[191] *NURPA* (Nigeria) s 98 www.lawsofnigeria.placng.org.
[192] As earlier highlighted, these circumstances include the constitutional provisions for the qualification for appointment of a person to the position of a judge and the power of the local government councils in respect of waste management and disposal.

NEPT) may not be the silver bullet for surmounting environmental challenges,[193] but the value they bring to environmental protection, access to environmental justice and preservation of environmental rights cannot be overemphasise

[193]Pring and Pring, 'Twenty-First Century Environmental Dispute Resolution – Is There an 'ECT' in Your Future?' (n 156) 19.