ENVIRONMENTAL GOVERNANCE:-
A KEY TO ACHIEVING GREEN ECONOMY

BY

PROFESSOR MUHAMMED TAWFIQ LADAN (PhD Law)

MEMBER, IUCN ACADEMY/COMMISSION ON ENVIRONMENTAL LAW. HUBERT HUMPHREY FELLOW (USA).

EMAIL: MTLADAN@GMAIL.COM

BEING A LEAD PAPER PRESENTED AT THE 11TH NATIONAL STAKEHOLDERS FORUM

ORGANISED BY

THE NATIONAL ENVIRONMENTAL STANDARDS AND REGULATIONS ENFORCEMENT AGENCY (NESREA) ABUJA

DATE: 12 -13 DEC. 2017

VENUE: NICON LUXURY HOTEL, ABUJA

INTRODUCTION

- This paper seeks to achieve the following objectives:-
- To clarify the concepts of ‘Environmental Governance’ and ‘Green Economy’;
- To underscore their strategic importance to sustainable development; and
- To conclude with viable options for Nigeria.

WHAT IS ENVIRONMENTAL GOVERNANCE?

- In this paper, we look at governance specifically as it relates to the environment, and we try to evaluate it from the perspective of public empowerment and participation: Who has a voice? Who is empowered to make decisions that affect the ecosystem and the communities that depends on them: Is it local communities? Private corporations? Government agencies? International trade organizations?
- Environmental governance is also about the manner in which decisions are made: in secret or in public? Who has a seat at the table during deliberations? How are the interests of the affected communities and ecosystems represented? How decision-makers are held responsible for the integrity of the decision process and for the results of their decisions?

In fact, governance issues- matters of the environmental governance in particular- area extraordinarily dynamic today. The rights of citizen participation; the transparency of organizations and processes; the need to address public corruption; the rights to obtain information from governments and businesses about environmental conditions, pollutants, or inland use decisions; the extent to which environmental protection should be included in the global trade agreements: all of these are the subject not just of academic policy discussions, but daily newspapers articles and hot public debate.

Environmental governance is inevitably associated with institutions –organizations where official authority often resides. These commonly include the government ministries of environment, agriculture, mining or finance, or environmental regulatory agencies. But governance also encompasses oversight or advisory groups, corporate councils and trade groups, and even private think tanks and advocacy groups that helps to formulate policy. Overall, then, environment and decision-making practices that communities use to manage their environment and control natural resources.

But the environmental governance goes beyond the official actions of governments. Sometimes, corporations or individuals act in the state’s place to harvest or manage resources. For instance, states may grant forest or mining concessions to companies for free, allowing them broad discretion to cut trees, build roads, or make other important land use decisions. Or the state may privatize once-public functions like the delivery of water, electricity, or wastewater treatment, again putting a host of environmental choices-from water pricing to power plant construction-into private hands.

Nongovernmental organizations (NGOs) such as environmental organizations, civic groups, labour unions and neighborhood groups have become potent advocates for better and fairer environmental decisions in the past three decades. The actions of industry groups, trade associations, and shareholder groups also influence the way companies do business by promoting or obstructing cleaner processes, better environmental accounting practices, or by pointing out the financial liabilities of business practices that harm the environment.

Seven Elements of Environmental Governance

1. **Institutions and Laws:**
   i. Who makes and enforces the rules for using natural resources?
   ii. What are the rules and the penalties for breaking them?
   iii. Who resolves disputes? Government ministries; regional water or pollution control boards; local zoning departments and governing councils; international bodies like the United Nations or World Trade Organization; Industry trade organizations.
   iv. Environmental and Economic laws, Policies, rules, treaties and enforcement regimes; corporate codes of conduct
   v. Courts and administrative review panels.

Seven Elements of Environmental Governance

2. **Participation Rights and Representation**: How can public influence or contest the rules over natural resources? Freedom of information laws; public hearings, reviews, and comment periods or environmental plans and actions; ability to sue in court, lodge a complaint, or demand an administrative review of a rule or decision. * Elected legislators, appointed representative, nongovernmental organizations (NGOs) representing local people or environmental stakeholders.

Seven Elements of Environmental Governance

3. **Authority levels**: At level or scale-local, regional, national, international-does the authority over resources reside? Distribution of official rulemaking, budgeting, and investment power at different levels of government (e.g., district forest office, regional air pollution control board, national agriculture ministry, international river basin authority).

Seven Elements of Environmental Governance

4. **Accountability and Transparency**: How do those who control and manage natural resources answer for their decision, to whom? * How open to scrutiny is the decision-making process? Elections ; public oversight bodies; performance reviews; opinion polls; financial audits; corporate boards of directors; stockholder meetings. * Availability of public records of rules, decisions, and complaints; corporate financial statements; public inventories of pollutant releases from industrial facilities, power plants, and water treatment facilities.
5. **Property Rights and Tenure**: Who owns a natural resource or has the legal right to control it? Land titles; Water, mineral, fishing, or other use rights; tribal or traditional community-based property rights; logging, mining and park recreation concessions.

Seven Elements of Environmental Governance

6. **Markets and Financial Flows**: How do financial practices, economic policies, and market behavior influence authority over natural resources?

Private sector investment patterns and lending practices; government aids and lending multilateral development banks; trade policies and tariffs; corporate business strategies; organized consumer activities such as product boycotts or preferences; stockholder initiatives related to company environmental behavior.

Seven Elements of Environmental Governance

7. **Science and Risk**: How are ecological and social science incorporated into decisions on natural resource use to reduce risks to people and ecosystems and identify new opportunities?

Science advisory panels (e.g., Millennium Ecosystem Assessment); national censuses and economic tracking; company health, safety, and environmental reports.

Principles of Environmental Governance

Provide Access to Information, Participation, and Redress

The heart of good environmental governance is decision making that is "accessible" –that is, decisions are transparent and open to public input and oversight. The Rio Declaration established that access has three primary elements-access to information, access to decision making and the opportunity to participate, and access to redress and legal remedy. These three access principles must all be present for an effective system of public participation.

The first foundation of access to information: about the environment, about the decisions at hand and their environmental implications, and about the decision-making process itself. Without these, meaningful public participation is impossible.

Principles of Environmental Governance

Provide Access to Information, Participation, and Redress

A second foundation of access is the opportunity to participate in the decision-making process itself-the chance to give input and influence the decision-makers. In addition to opportunities to provide input on specific projects-such as the sitting of a dam or the size of a timber harvest-the public also needs a chance to weigh in on the design of more general laws, policies, or regulations. Thus, new framework legislation related to forest or mining, changes in policies on land use planning, and revisions to regulations governing automobile emission standards should all be subject to public hearings, comment periods, or other mechanisms to solicit public input, beginning at the earliest stages.

The third foundation of access is the ability to seek redress or challenge a decision if stakeholders consider it flawed or unfair.

- **Integrate the Environment into All Decisions**

The integration principle asserts that consideration for the environment should be part of every major business, resource, or economic development decision. This means making the environment a frontline factor in decisions rather than marginalizing it as something to be protected after the fact. Because ecosystems are affected by a wide range of decisions in every sector of the economy, ecosystem management and environmental protection cannot be the concern of environmental policy-makers alone. Ecosystems must be the responsibility of those charged with promoting the agriculture and industrial development, as well as those focused on providing access to electricity, transport and water services. They must be the concern of private businesses as much as the public agencies, of financial investors as much as fisheries or forest managers.

- **Integrate the Environment into All Decisions**

A critical challenge is thus bringing the goals of environmental sustainability into the decision-making practices of organizations that do not see environmental concern as part of their core mandates. For example, how can government agencies be responsible for navigation and flood control be encouraged to observe biodiversity when they alter the natural contours of rivers? How can the multinational development banks like the World Bank be encouraged to combine environmental sustainability with their effort to reduce poverty? How can financial markets be altered to enable investors to include environmental performance as a factor when deciding which company's shares to buy? At least part of the answer is the improved practice of access and governing at the correct scale-the first two Rio principles. Participatory management and open, transparent decision making about economic decision gives people with environmental concerns the chance to raise them-to "integrate" their larger goals and priorities for the ecosystem with business decisions.

2. Green economy in the context of sustainable development and poverty eradication

- The outcome document of Rio+20, The future we want, lays the foundation for green economy as one of the important tools available for achieving sustainable development and poverty eradication. Green economy referred by the outcome document should contribute to eradicating poverty, sustained economic growth, enhancing social inclusion, improving human welfare, creating opportunities for employment and decent work for all, while maintaining the health functioning of Earth's ecosystems[1].

2. Green economy in the context of sustainable development and poverty eradication

- The concept of green economy or green growth started in 1990's[2] The key characteristics of green economy are twofold: 1) increased investment in economic activities that enhances human capital, reduces ecological scarcity and risk; and 2) economic progress that fosters environmentally sustainable, low carbon and socially-inclusive development[3] Rio+20 has strengthened the link between green economy with sustainable development and poverty eradication. It is generally accepted that fundamental, rather than incremental changes based on business as usual, government must take the lead in reorienting economic infrastructure to support green economy, which requires strong political leadership and commitment from all branches of the government.

2. Green economy in the context of sustainable development and poverty eradication

- Because there are at least two gaps that need to be addressed by the governments in order to jump start the green growth: 1) the time gap between short term costs and long term benefits, and (2) the price gap between market prices and ecological prices. Governments can lead the process through fiscal packages issued by many governments in the wake of the financial crisis (4) Government can lead the process through fiscal reforms, introduction of new regulatory instruments, establishment of new institutions and providing incentives. Governments' clear vision of the system change needs to be strategically communicated to increase public awareness of the economic, social and environment benefits from sustainable consumption and product patterns. Legislation and law enforcement should play an important role to facilitate this systemic change process.
- For governance systems to be effective, laws should provide a clear roadmap for translating general legal mandates to facility specific requirements through such tools as implementing regulations. Laws should use clear, enforceable language to provide clarity to the regulated community regarding legal requirements to ensure compliance. Laws that are enacted but not implemented or enforced will fail to achieve desired results.

CONCLUSION

- *In designing modern smart regulations for green economy the regulatory instruments must be tested to be effective, complementary to the existing policies and regulatory instruments, administrative efficient performance-based and adequately motivated and enforced.* Crafting and passing laws and regulations for green growth are not the end, but rather beginning. Some frame work laws may need further subsequent regulations and rules to implement them and even the details rules need enforcement mechanisms.

CONCLUSION contd.

- Therefore, developing regulatory instruments for green growth should always be put into spotlight that whether it is cost effectiveness, administrative efficient enforcement, and is geared toward the desiring outcomes. Legislators and decision makers must consider how these regulatory instruments affect businesses and individuals, taking into account their decision-making biases and noneconomic incentives that affect behaviours. Implementation, compliance and enforcement of law multi-stakeholders should be attached great importance.

Better Governance for Sustainable Ecosystems

- **Invest in Governance Models that Respect Ecosystems**

Make ecosystems the fundamental unit of environmental management and governance.

- **Build the Capacity for Public Participation**

Increase the public's environmental literacy and ability to give useful input into environment decisions. Increase the government's willingness and capacity to deliver environmental information and digest public input.

Better Governance for Sustainable Ecosystems

- **Recognize the Standing of Every Environmental Stakeholder**

Broaden the definition of who can participate in environmental decisions to include all affected parties.

- **Insist on Sustainability to All Sectors of the Economy**

Incorporate sustainability into the mandates of agencies, businesses, and financial institutions beyond the usual environment and natural resources sectors.

- **Measure Governance as a Key Environmental Indicator**

Monitor and publicly report on indicators of environmental governance like transparency, access to information, and public participation.