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- AN EXPOSITION OF THE CONFLICTUAL LEGISLATIVE JURISDICTIONAL ENCROACHMENT IN THE 1999 CONSTITUTION OF NIGERIA.* 1-10
OLUFEMI ABIFARIN Ph.D
- THE COMMON LAW OBLIGATIONS OF AN AGENT AND ARRANGING BANK IN SYNDICATED LENDING* 11-32
MOHAMMED IDRIS & M.A. SULEIMAN
- THE LEGAL FRAMEWORK AND LEGISLATIVE INITIATIVES FOR THE PROTECTION OF THE RIGHTS OF PERSONS WITH DISABILITIES IN NIGERIA* 33-91
NGOZI OLUCHUKWU ODIAKA
- DOCTRINE OF "LAST SEEN" AND EXTENT OF ITS APPLICATION IN HOMICIDE TRIALS IN NIGERIA CRIMINAL JUSTICE.* 92-122
ABIFARIN OLUFEMI Jnr & ZAINAB YUSUF
- EMPLOYMENT CASUALIZATION, EMPLOYEE PROTECTION AND SOCIAL PROTECTION IN NIGERIA: SOME REFLECTIONS* 123-144
J.O. AGBANA Ph.D & ADEREMI OYEBANJI Ph.D
- EXPANDING THE FRONTIERS OF ENVIRONMENTAL RIGHTS UNDER THE 1999 CONSTITUTION* 145-166
O. B. AKINOLA, Ph.D, & T. O. BAMGBOYE
- IMPLICATIONS OF INTERNATIONAL LAW ON POLITICAL SOVEREIGNTY OF THIRD WORLD COUNTRIES* 167-204
AKANI, NNAMDI KINGSLEY & MAURICE N. OBASI
- NATIONAL YOUTH SERVICE CORPS DISCHARGE OR EXEMPTION CERTIFICATE AND ITS RELEVANCE FOR QUALIFICATION FOR ELECTION IN NIGERIA* 105-230
OLUFEMI ABIFARIN Ph.D, ADEREMI OYEBANJI Ph.D, & ZAINAB YUSUF.
- NAIJAFEMINISM": A TYPOLOGY OF AFRICAN FEMINISM* 231-256
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EXPANDING THE FRONTIERS OF ENVIRONMENTAL RIGHTS UNDER THE 1999 CONSTITUTION

O. B. Akinola, Ph.D, LL.M, LL.B (Hons), *Barrister at Law*
is a Senior Lecturer & Acting Head of Department,
Department of Professional Ethics and Skills, Nigerian Law
School, Augustine Nnamani Campus, Agbani, Enugu State,
Nigeria. omoniyi.akinola@nigerianlawschool.gov.ng

&

¹ **T. O. Bamgboye, Esq. LL.B (Hons)**, *Barrister at Law*
Counsel at Compos Mentis Chambers, Lagos

Abstract

Until the Constitution of the Federal Republic of Nigeria, (as amended) 1999 (the Nigerian Constitution) was enacted, Nigeria's constitutions during the pre-independence and post-independence era, had no constitutional protection for environmental rights. One of the lacunae the 1999 Nigerian Constitution sought to fill therefore was the absence of a constitutionally protected environmental right. Environmental rights proponents believed that with such welcome addition to Nigeria's supreme law, the herculean task of enforcing the right to a safe, harmless environment would be made much easier. Chapter II of the 1999 Constitution provides for Fundamental Objectives and Directive Principles of State Policy. Section 20 of the 1999 Constitution as amended provides for the environmental objectives. Environmental rights are not expressly provided for in Chapter IV of the constitution under Fundamental Rights. This paper will examine the scope of environmental rights under the constitution vis a vis recent developments across jurisdictions of the globe. The paper is a call for amendment of the relevant provisions of the 1999 constitution to expand the frontiers of environmental rights to the realm of fundamental rights.

Introduction

The word 'right' in the noun form means that to which a person has a just and valid claim, whether it be land, a thing, or the privilege of doing something or saying something.³⁶⁴ Hohfield defined human right as legal freedom, privileges and licences over conduct that is permissible in law. According to him, examples are the right to a reasonable use of one's property and freedom of speech within the law.³⁶⁵ Justice Kayode Eso of blessed memory describes human right in the case of *RansomeKuti v A. G. Federation*³⁶⁶ as a right which stands above the ordinary laws of the land and which in fact is antecedent to the political society itself. It is a primary condition to a civilized existence, and what has been done by our (Nigerian) constitution since independence is to have these rights enshrined in the constitutions so that rights could be immutable to the extent of the non – immutability of the constitution itself.³⁶⁷ Umozurike of blessed memory define human rights as claims, which invariably supported by ethics and which should be supported by law, made on society, especially on its official managers, by individuals or groups on the basis of their humanity.³⁶⁸

The subject of environmental law deals with the protection of the natural balance amongst the subjects of environment, the protection of the distortion of the balance; the preservation of the interaction of that existing balance, and finally the improvement, control, restoration and regulation of the

³⁶⁴ Ogbu O. N., *Human Rights Law and Practice in Nigeria*, 2nd Revised Edition, Snaap Press Nig Ltd, (2013), Enugu, Pg 1

³⁶⁵ Hohfield W. N., *Fundamental Right Legal Conceptions as Applied in Judicial Reasoning*, 1923, essay I.

³⁶⁶ (unreported), cited in F. Agbaje, 'Nigerian Courts and Fair Trial' 4 *Constitutional Rights Journal* October – December, 1994, pp 13, 11.

³⁶⁷ *Ibid.* Per Kayode Eso JSC (of blessed memory)

³⁶⁸ Umozurike, U. O., *The African Charter on Human and Peoples' Rights*. MartinusNijhoff Publishers (London), Pg 5

environment.³⁶⁹ Oloworaran identified major components of the environment to include: water, air, land and all plants and human beings or animals living therein.³⁷⁰ The concept of "Environmental right" is birthed from the merger of two words, namely "Environment" and "Right." Invariably therefore, we can decipher the meaning of "Environmental right" from the definitions of these two individual words. "Environment" is defined as the natural world in which people, animals, and plants live.³⁷¹ It may also be simply defined as the area in which something exists or lives.³⁷² "Right" on the other hand and in context is a legally enforceable claim that another will do or will not do a given act; a recognized and protected interest, the violation of which is a wrong.³⁷³

Environmental rights are rights enjoyed by human beings and other living things within their habitats. They are rights to peaceful, safe and livable environment. They are sacred rights in the sense that the biosphere of a living thing is threatened once its environment is threatened. It is not an exaggerated assertion to submit that environmental rights are akin to right to life. This is because environmental rights are an extension of the basic human rights that mankind requires and deserves. In addition to having the right to food, clean water, suitable

³⁶⁹Oloworaran B. A., The Extent of Federal and State Legislative Competence on Environmental Issues in Nigeria. *Nigerian Journal of Petroleum, Natural Resources and Environmental Law*, NJPNREL, Vol. 1, No. 2 pp. 1-30 at 6

³⁷⁰Oloworaran B. A., Environmental Protection through Public Procurement Legislations: The Nigerian case. *Petroleum, Natural Resources and Environmental Law Journal* (NJPNREL) Vol. 2, No. 1, pg 123 at 129

³⁷¹<http://www.oxfordlearnersdictionaries.com/definition/english/environment?q=Environment>

³⁷²<http://www.webster-dictionary.org/definition/Environment>

³⁷³Black's Law Dictionary, 8th Edition

shelter, and education, having a safe and sustainable environment is paramount as all other rights are dependent upon it. A man can be defined by the type of environment he lives. Animals are defined by the type of environment they live in as well. For instance, Zoos and game reserves are for particular species of animals and living things. This paper will examine the extent to which our laws protect the environment. It is a notorious fact that environmental problems are increasing on a daily basis across the globe. The environment must therefore be sustained for continued survival and future development of mankind. The 1999 Constitution of the Federal Republic of Nigeria made some laudable provisions in Chapter II on Fundamental Objectives and Directive Principles of State Policy which recognizes and guarantees environmental management as one of the policies which are expected to be pursued in the efforts of the nation to realize national ideals. This provision is supported by many Nigerian statutes on environmental protection.³⁷⁴ On the contrary, there is poor evidence of any enforcement of these legislations in the face of current realities.

The Scope of Environmental Rights within Developmental Rights Parlance

The second half of the twentieth century saw vast developments in human rights jurisprudence. This trend started with the adoption of the Universal Declaration of Human Rights (UDHR) in 1948 and the subsequent 1966 Covenants which divided human rights into political and civil rights on one hand and social, economic and cultural rights on the other. Over the last few years however a new category of rights

³⁷⁴Odoemenam Chika, *Environmental Degradation: An Assessment of the Legal Control of Oil Pollution in the Niger – Delta States of Nigeria. Issues and Responses in Contemporary Law and Practice in Nigeria.* Edited by Patrick Ugochukwu & Chika Odoemenam. Hudson – Jude Nigeria Limited (2009), Page 38.

known as the third generation of rights have evolved. This last category suffers much uncertainty when it comes to its exact nature and scope, especially when it comes to its enforcement. A concise description of fundamental rights was given as follows: "Fundamental Human rights are rights that attach to human beings by virtue of the very fact that they are human. They are inherent in being. This is irrespective of the age, locality, status and time of the person. They are rights which human beings everywhere 'naturally' feel entitled to and complain (or at least murmur) against any curtailment thereof by any person or authority, to the limits of their abilities, which may entail war in some cases. These rights are considered fundamental because they are deemed primary and paramount to human life, dignity, liberty and livelihood."³⁷⁵ Okojie lends his voice to the definition of fundamental rights when he described them as "those rights which by creation are made inalienable. They are those rights whereby every human being created by God deserves to be accorded with, ensuring a life of freedom, respect and dignity...human right is embellished with the force of human existence and that is why in most cases, the issue of 'human rights' are considered fundamental to the very existence of people to any civilized society."³⁷⁶ Oputa JSC also had this to say about fundamental rights: "...human rights must encompass all humans. The right to life is common to all human beings. It is a human right attaching to man as man because of his humanity. These rights must be clearly distinguished from civil rights, political rights, economic rights etc."³⁷⁷

³⁷⁵ Chinwo, C.A.J. 2007. *Principles and Practice of Constitutional Law in Nigeria*. Life, Law and Grace Bookhouse, Chi Amazing Grace Ltd Port Harcourt, Pg. 102-103

³⁷⁶ Okojie, E.A. 2004. Human rights and people living with HIV/AIDS. *Nigeria Education Law Journal*. 7.1

³⁷⁷ *Mustapha v Governor of Lagos State* [1987] NSCC 632; [1987] 7 SCNJ 143.

Merging these two words: environment and right as environmental right has been broadly described as “the protection of natural resources; the access to and use of natural resources; and how the access to and use of these resources affects surrounding populations, as well as the resources themselves.”³⁷⁸ The rights protected by a right to healthy environment include breathing clean air, drinking clean water, consuming safe food, accessing nature, knowing about pollutants and contaminants released into the local environment.³⁷⁹ The environment is man’s life support system.³⁸⁰

The Human Rights Council is an inter-governmental body within the United Nations system made up of 47 States responsible for the promotion and protection of all human rights around the globe. The resolution 16/11 adopted by the Human Rights Council on 12th of April 2011 entitled “Human Rights and the environment” requested the Office of the High Commissioner “in consultation with and taking into account the views of States Members of the United Nations, relevant international organizations and intergovernmental bodies, including the United Nations Environment Programme and relevant multilateral environmental agreements, special procedures, treaty bodies and other stakeholders, to conduct, within existing resources, a detailed analytical study on the relationship between human rights and the

³⁷⁸ <https://www.pachamama.org/environmental-rights>

³⁷⁹ What are environmental rights? Published by Bluedot Movement via www.bluedot.ca/wp-content/uploads/2015/01/4.-What-are-environmental-rights.pdf accessed on 15th April, 2017

³⁸⁰ Emmanuel Onyeabor, Precautionary Principles and Environmental Management and Control: How far, So Far in International Environmental Law? *Petroleum, Natural Resources and Environmental Law Journal* (2011) Vol. 3, Page 58

environment".³⁸¹ Environmental rights are inclusive of adequate information about the environment for the safety of living beings within and without the environment.³⁸² Article 24 of the African Charter on Human and Peoples Rights provides that all peoples shall have right to a general satisfactory environment favourable to their development.

However, the provisions of Section 20 of the 1999 Nigerian Constitution which stipulates that the State shall "protect and improve the environment and safeguard the water, air, land, forest and wild life of Nigeria" has proven grossly inadequate to protect Nigerians' right to a safe, harmless environment.³⁸³ This is chiefly because Section 20 is provided for under Chapter 2 of the 1999 Constitution, which expressly states that such objectives of state policy are not justiciable.³⁸⁴ Whilst certain other procedural laws and domesticated international conventions have been strenuously called to aid by persons seeking environmental right protection, not much success has been achieved in this regard. It is submitted that until the question of environmental right under the 1999 Nigerian constitution is expanded and rightly situated under Chapter 4 of the constitution, which is not only justiciable but is conferred with a special status, protection of environmental rights in Nigeria would largely remain a tantalizing mirage.

³⁸¹ <http://www.ohchr.org/EN/Issues/Environment/HREnvironment/Pages/HRandEnvironmentIndex.aspx> accessed on the 14th April, 2017

³⁸² Olalekan Adedokun – Odewale, *Petroleum, Natural Resources and Environmental Law Journal* (2014) Vol. 6, Page 4

³⁸³ The Constitution of the Federal Republic of Nigeria, 1999, s 20

³⁸⁴ The Constitution of the Federal Republic of Nigeria, 1999, s 6(6)(c)

Rationale for Adopting Environmental Right as Developmental Right

Unlike what was obtainable in the past, environmental right is now widely recognized and endorsed by an overwhelming proportion of countries, with more than 90 national constitutions incorporating same, some still argue that environmental right is not worth being adjudged as fundamental right.³⁸⁵ With such arguments being overly and continuously discredited, a new twist has been added to the contentions. It is now being increasingly argued that the express inclusion of the right to a healthful environment in the constitution is needless where existing provisions of the constitution can be liberally interpreted and adopted as relating to the protection of the environment.³⁸⁶ Specifically, with respect to the 1999 Constitution, it was further contended that the debates and the complex constitutional amendment process involved in establishing new constitutional rights should make the idea of expressly including environmental right under Fundamental Right unattractive.³⁸⁷ Indeed, the requirement of the law for amending Chapter IV of the 1999 Nigerian Constitution is quite tedious. The requisite stipulation is that this chapter of the Constitution shall not be passed by either House of the National Assembly unless the proposal is approved by the votes of not less than four-fifths majority of all the members of each House, and also approved by

³⁸⁵ David R. Boyd, *The Constitutional Right to a Healthy Environment in Environment Science and Policy for Sustainable Development*. <http://www.environmentmagazine.org/Archives/Back%20Issues/2012/July-August%202012/constitutional-rights-full.html> Accessed 19/4/2017

³⁸⁶ Abdulkadir Bolaji Abdulkadir, Ph.D. *The Right to a Healthful Environment in Nigeria: A Review of Alternative Pathways to Environmental Justice in Nigeria in Afe Babalola University: Journal of Sustainable Development Law and Policy* (2014)3:1 Page 118. Accessed at <https://www.ajol.info/index.php/jsdlp/article/viewFile/122619/112167>

³⁸⁷ Ibid

resolution of the House of Assembly of not less than two-third of all States.³⁸⁸

Nevertheless, it is averred that the difficulty of a cause does not make it impossible. If the importance of expressly including the right to a healthful environment in the constitution had been fully appreciated by the learned scholar, it is suggested that he would have arrived at a different conclusion. It is to the exceeding importance of adopting environmental right as developmental right that we shall now turn. Fundamental rights have not only been given a place of prominence in the Nigeria Legal System by incorporating them in the constitution which is the supreme law³⁸⁹, they have been conferred with a special status. This is because any person who alleges that any of these rights has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress.³⁹⁰ Furthermore, the challenges posed by the tricky issue of *locus standi* has been laid to rest, as no human rights case may be dismissed or struck out for want of *locus standi*.³⁹¹ A wide range of persons may institute a human right suit including anyone acting in his own interest, anyone acting a member of, or in the interest of a group or class of persons, anyone acting in the public interest, and association acting in the interest of its members or other individuals or groups.³⁹² Most significantly, the court is now obliged to pursue the speedy and efficient enforcement and realisation of human rights in a manner calculated to advance Nigerian democracy, good governance, human rights and culture.³⁹³ This is achieved by giving priority to human rights

³⁸⁸ Constitution of the Federal Republic of Nigeria, 1999, s 9(3)

³⁸⁹ The Constitution of the Federal Republic of Nigeria, 1999, s1(1)

³⁹⁰ The Constitution of the Federal Republic of Nigeria, 1999, s 46(1)

³⁹¹ Fundamental Rights Enforcement Procedure Rules, 2009, r 3(e)

³⁹² Fundamental Rights Enforcement Procedure Rules, 2009, r 3 (e)

³⁹³ Fundamental Rights Enforcement Procedure Rules, 2009, r 3 (f)

suits in deserving cases, and treating them as emergencies.³⁹⁴ In other words, with fundamental right, speedy trial should be guaranteed in line with the provisions of the Fundamental Rights Enforcement Procedure Rules of 2009 which made far reaching provisions for expediting fundamental rights actions.

Boyle opined that it remains to be seen whether environmental right qualifies to be counted in the league of such privileged developmental right or should be left in the fringes of the body of rights.³⁹⁵ A twin issue is whether we could risk leaving the construction of environmental right as fundamental right in the realm of subjective, liberal interpretations, thus maintaining the status quo.

It has been rightly contended that environmental rights are an extension of the basic human rights that mankind requires and deserves.³⁹⁶ Thus, having a safe and sustainable environment is paramount as all other rights are dependent on it. To this end, where a constitution for instance, as it is with the 1999 Nigerian Constitution, guarantees a person's right to life, respect for dignity of the human person, and right to own immovable property, but his immediate environment is despoiled, the hitherto mentioned rights cannot be guaranteed. It is further observed, and rightly so, that the desire to ensure access for all of earth's inhabitants to this essential standard of living is the primary concern of Environmental rights.³⁹⁷ It is on this premise that it is averred that the 1999 Constitution ought to guarantee expressly the right to a safe and sustainable environment. On whether the express inclusion of the right to a healthful environment in the constitution is needless since

³⁹⁴ Fundamental Rights Enforcement Procedure Rules, 2009, r 3 (g)

³⁹⁵ A Boyle 'The role of international human rights law in the protection of the environment' in A Boyle & M R Anderson (n 8 above) 50

³⁹⁶ <http://www.pachamama.org/environmental-rights>

³⁹⁷ <http://www.pachamama.org/environmental-rights>

existing provisions of the constitution can be liberally interpreted and adopted as relating to the protection of the environment³⁹⁸, suffice it to say that the intendment of those advocating for the former is not only that the right might be guaranteed but that it may be easier for same to be protected. It is trite that where the word of a statute is unambiguous, the literal canon of interpretation ought to be utilized. Nothing beats having a fundamental right to environment expressly stated. It saves every avoidable stress that not doing so could induce.

Recognition and Domestication of Environmental Rights in other Jurisdictions

Three notable international legal instruments that clearly illustrate this principle are the 1972 Stockholm Declaration, the 1992 Rio Declaration on Environment and Development, and the 1992 UN Framework Convention on Climate Change.³⁹⁹ Principle 1 of the Stockholm Declaration, adopted during the 1972 United Nations Conference on the Human Environment provides as follows: "Humanity bears a solemn responsibility to protect and improve the environment for present and future generations."⁴⁰⁰ In a similar vein, the Rio Declaration states that "The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations."⁴⁰¹ The

³⁹⁸ Abdulkadir Bolaji Abdulkadir, Ph.D. The Right to a Healthful Environment in Nigeria: A Review of Alternative Pathways to Environmental Justice in Nigeria in Afe Babalola University: Journal of Sustainable Development Law and Policy (2014) 3:1 Page 118. Accessed at <https://www.ajol.info/index.php/jsdlp/article/viewFile/122619/112167>

³⁹⁹ Ibid

⁴⁰⁰ Stockholm Declaration on the Human Environment of the United Nations Conference on the Human Environment, Jun 16, 1972, 11 I.L.M. 1415, princi 1.

⁴⁰¹ Rio Declaration on Environment and Development, U.N. ESCOR, princ. 2, U.N. CONF. 151/26 (Vol. I) (1992)

1992 UN Framework Convention on Climate Change goes a step further to describe how future generations can be made beneficiaries of environmental right protection in the following words: "The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities."⁴⁰²

The Draft Principles of the UN-Sub Commission on Human Rights and the Environment¹³ enumerate these rights. They include freedom from pollution and other related activities that threaten health, life and well being; protection and preservation of air, soil, water, flora and fauna necessary for maintaining biological diversity; safe food, water and working environment; preservation of unique sites; and enjoyment of traditional life and subsistence for indigenous people.⁴⁰³

The Norwegian constitution and the Indiana State Code of the United States of America are veritable models for Nigeria in the event that she sees the need to incorporate environmental right into her constitution as fundamental right. These models do not only take into consideration the principle exemplified above, they are exhaustive enough to serve as a framework for the protection of environmental rights in Nigeria. It is however germane that they are not slavishly adopted but adapted bearing in mind the peculiarities of the Nigerian society. The Norwegian Constitution states: "Every person has a right to an environment that is conducive to health and to a natural environment whose productivity and diversity are maintained.

⁴⁰² UN Framework Convention on Climate Change art. 3(1), opened for signature May 9, 1992, U.N. Doc. A/AC.237/18 (Part II) (Add. 1), 31 I.L.M. 848.

⁴⁰³ William Tate Olenasha, *The Enforcement of Environmental Rights: A Case Study of the New South African Constitutional Dispensation*. Thesis submitted to the Faculty of Law, University of Pretoria 2001.

Natural resources should be managed on the basis of comprehensive long-term considerations whereby this right will be safeguarded for future generations as well."⁴⁰⁴ The Indiana State Code on the other hand delimits the purposes of environmental policy as follows: "to preserve, protect, and enhance the quality of the environment so that, to the extent possible, future generations will be ensure clean air, clean water, and a healthful environment."⁴⁰⁵

The Organisation of American States (OAS) has also recognised the right to a healthy environment. Article 11 of the Additional Protocol to the American Convention on Human Rights in the Areas of Economic, Social and Cultural Rights provides that "everyone shall have the right to live in a healthy environment and have access to basic services".⁴⁰⁶ More recently the OAS General Assembly has passed a resolution emphasizing the need to study the link that may be there between the environment and human rights.⁴⁰⁷

In Europe, the first treaty which recognized environmental rights was the Convention on the Protection of the Environment between Denmark, Finland, Norway and Sweden.⁴⁰⁸ The Convention gives citizens of the member countries the right to seek damages against environmental nuisance and rights to appeal against decision on such complaint.⁴⁰⁹

⁴⁰⁴ Const. (1814, as amended 2007), article 110(b) (Nor.), available at <http://www.stortinget.no/english/constitution.html#fulltext>

⁴⁰⁵ Indian Code tit.13, art. 12, ch. 3(1) (2008)

⁴⁰⁶ 1988

⁴⁰⁷ The OAS formulation is different from that of the African Charter in that the former is concerned with individual rights while the latter is concerned with people's rights.

⁴⁰⁸ This is known as the Nordic Environmental Convention of 1974, which entered into force on 5th October 1976

⁴⁰⁹ *Ibid.* Article 3 of the Convention

The Rio Declaration on Environment and Development⁴¹⁰ recognizes the interdependence and indivisibility of peace, development and environmental protection;⁴¹¹ it introduces the concept of 'sustainable development' then asserts that 'the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations';⁴¹² and, 'in order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.'⁴¹³ The Conference on Trade and Development took up the position that 'the developed countries, in adopting any environmental policies and pollution control measures, should take into account the development needs of the developing countries and ensure that their economies are not adversely affected.'⁴¹⁴ It is a fact that in the developing countries most of the environmental problems are caused by underdevelopment. Bindu is of the view that environmental deficiencies generated by the conditions of underdevelopment, and natural disasters caused by climate change and drought, are problems best remedied by accelerated development through the transfer of substantial quantities of financial and technological assistance to

⁴¹⁰ Adopted by the United Nations Conference on Environment and Development, held in Rio de Janeiro (Brazil) in 1992, text report of the United Nations Conference on Environment and Development – Rio de Janeiro Vol. I. Resolutions adopted by the Conference UN DOC. A/CONF. 151/26/Rev. 1 (vol. I) New York 1993 no 3-28.

⁴¹¹ Principle 25

⁴¹² Principle 3

⁴¹³ Principle 4

⁴¹⁴ UNCTAD Resolution 46/III, paragraph 1, Principle 12

supplement the domestic efforts of the developing countries.

⁴¹⁵

In the Republic of Angola, Article 241 of the constitution provides that all citizens shall have the right to live in a healthy and unpolluted environment. Article 24(2) further states that the State shall take the requisite measures to protect the environment and national species of flora and fauna throughout the national territory and maintain ecological balance whereas article 24 (3) further provides that acts that damage or directly or indirectly jeopardize conservation of the environment shall be punishable by law.⁴¹⁶

In the same vein, Democratic Republic of Congo constitution under Article 53, everyone has the right to a healthy environment, one which is favourable to their integral development. He has a duty to provide for its defence.⁴¹⁷ In the Kingdom of Lesotho, Article 36 on the protection of the environment states: Lesotho shall adopt policies designed to protect and enhance the natural and cultural environment of Lesotho for the benefit of both present and future generations and shall endeavour to assure to all citizens a sound and safe environment adequate for their health and well-being.⁴¹⁸

In furtherance of the above recognition of the rights to environment, the Republic of Malawi under Article 13 (d) of

⁴¹⁵ Kihangibindu, Environmental and Developmental Rights in the Southern African development community with specific reference to the Democratic Republic of Congo and the Republic of South Africa. Being a thesis submitted in accordance with the requirements for the degree of Doctor of Laws at the University of South Africa (2010), Page 138.

⁴¹⁶ Law No. 12/91 on the amendment of the Constitution of Angola introduced in March 1991.

⁴¹⁷ Constitution of 18 February 2006.

⁴¹⁸ Constitution of the Kingdom of Lesotho

her constitution states that the State shall actively promote the welfare and development of the people of Malawi by progressively adopting and implementing policies and legislation aimed at achieving the following goals:

(d) To manage the environment responsibly in order to prevent the degradation of the environment; provide a healthy living and working environment for the people of Malawi; accord full recognition to the rights of future generations by means of environmental protection and sustainable development of natural resources; and (iv) conserve and enhance the biological diversity of Malawi.⁴¹⁹

In the Republic of the Seychelles, Article 38 provides that: The state recognises the right of every person to live in and enjoy a clean, healthy and ecologically balanced environment and with a view to ensuring the effective realisation of this right the state undertakes –

(a) to take measures to promote the protection, preservation and improvement of the environment;

(b) to ensure a sustainable socio-economic development of Seychelles by a judicious use and management of the resources of Seychelles;

(c) to promote public awareness of the need to protect, preserve and improve the environment.⁴²⁰

In essence, both the citizen and the state have a duty to protect and enjoy the environment for their common good and mutual sustainable development. This provision has made the provisions of section 20 of the Nigerian constitution a 'mere wish' when juxtaposed with a smaller country in terms of population compared to Nigeria.

Constitution of the Republic of Seychelles, Article 38, as amended by Act No. 12 of 1996. Adopted on 18 June 1993.

Suffice to add that the Kingdom of Swaziland recognize the right to environment under section 216 of her constitution when it proclaims that every person shall promote the protection of the environment for the present and future generations. It further recognized the right to urbanization or industrialisation which shall be undertaken with due respect for the environment. In addition, Section 216 (3) states that the Government shall ensure a holistic and comprehensive approach to environmental preservation and shall put in place an appropriate environmental regulatory framework for sustainable development of the state.⁴²¹

Comparatively, it could be deduced that a number of African nations have expressly recognized the right to environment beyond the provisions of Africa Charter on Human and Peoples' Rights (Application and Enforcement) Act Cap 10, Laws of Federation of Nigeria, 2004. In the 21st century, the right to and promotion of a safer environment for sustainable development is non-negotiable for Nigeria in the comity of nations. Nigeria should remain a model of good constitutional democracy where the rights of the citizens are expanded with modern modifications for mutual benefits of the citizen, the state and in the spirit of the New Partnership for African Development (NEPAD).

Environmental Rights under the Nigerian Constitution

Section 17 (2) (d) of the 1979 constitution of the Federal Republic of Nigeria recognised the protection of the social order by preventing exploitation of human or natural resources in any form whatsoever for reasons other than the good of the community. Whilst having made a novel addition on protection of the environment to the constitution, the 1999 Nigerian Constitution does not guarantee environmental right as fundamental right. Section 20 of the Constitution states: "the State shall protect and improve the environment and safeguard

⁴²¹ Constitution of the Kingdom of Swaziland

the water, air, land, forest and wild life of Nigeria,"⁴²² Both provisions of the 1979 and 1999 constitutions, have without mincing words, proven grossly inadequate to protect Nigerians' right to a safe, harmless environment. This is chiefly because Sections 17 (2) (d) and 20 is provided for under Chapter II of both constitutions and the constitution themselves expressly describe provisions under the Chapter as not justiciable⁴²³. Furthermore, unlike the provisions under Chapter 4 which is directed at "every person" or "every citizen," Section 20 and indeed other provisions under Chapter 2 are directed at "the State." These two peculiarities make mockery of claims that the addition on protection of the environment to the constitution is of some value. Not only are individual persons precluded from applying for redress on breach of environmental right under this provision, it is not their responsibility to do so. When one considers the huge revenue that comes into the State's coffers from the activities of the core polluters of the environment, viz—air-polluting and gas companies, one may safely predict that a realization of the objective is largely a mirage.

It is claimed that what the Nigerian people loses as a result of the weak constitutional provision on protection of the environment is compensated for by the relevant provision of the African Charter on Human and Peoples' Rights⁴²⁴. Indeed the Charter was domesticated by Nigeria's National Assembly as Africa Charter on Human and Peoples' Rights (Application and Enforcement) Act Cap 10, Laws of Federation of Nigeria 2004, and is to all intent and purpose part of Nigeria's body laws. This position was reinforced in the case of *Fawehinmi Abacha*⁴²⁵ where Ejiwumi JSC specifically noted that "The Africa Charter on Human and Peoples' Rights, having been

⁴²² The Constitution of the Federal Republic of Nigeria, 1999, s 20

⁴²³ The Constitution of the Federal Republic of Nigeria, 1999, s 6 (6)(c)

⁴²⁴ Abdulkadir Bolaji Abdulkadir *Op Cit*

⁴²⁵ (2001) 51 WRN 29

passed into our municipal law, our domestic courts have certainly has the jurisdiction to construe or apply the treaty. It follows then that anyone who felt that his rights as guaranteed or protected by the Charter, have been violated could well resort to its provisions to obtain redress in our domestic courts."⁴²⁶ In fact, the Fundamental Enforcement Procedure Rules 2009 specifically states the Constitution and the African Charter shall be expansively and purposely interpreted and applied.⁴²⁷

Nevertheless, these points are worth bearing in mind. The 1999 Constitution, especially Chapter 4 on the one side and the African Charter on Human and People's Rights on the other side are not by any stretch of imagination equal in status. The former is not only superior, it is supreme.⁴²⁸ As a writer brilliantly surmises it, "within countries, a constitution is the highest and strongest law, as all laws, regulations, and policies must be consistent with it."⁴²⁹ A constitution protects human rights, sets forth the obligations of the state, and restricts government powers. On a deeper level, constitutions reflect the most deeply held and cherished values of a society. A constitution is a mirror of a nation's soul.⁴³⁰

Secondly, and of equal fundamental weight, the Fundamental Enforcement Procedure Rules 2009, with its beautiful, innovative provisions are what they are: procedural rules. They

⁴²⁶ [2001] 51 WRN 29

⁴²⁷ Fundamental Enforcement Procedure Rules, 2009, r 3

⁴²⁸ The Constitution of the Federal Republic of Nigeria, 1999, s 1(1)

⁴²⁹ Who is the writer?

⁴³⁰ David R. Boyd, The Constitutional Right to a Healthy Environment in Environment Science and Policy for Sustainable Development, July-Aug 2012.

<http://www.environmentmagazine.org>

.../Back%20Issues/2012/July-August%202012.../Back%20Issues/2012/July-August%202012.html Accessed 19/4/2012

and included in the ongoing amendment process of the constitution by the National Assembly.⁴³²

If the above is taken into consideration, it will drastically reduce the agitation for a safer environment by the Niger Delta region in Nigeria. It is a notorious fact within the local and international parlance that the Niger Delta region in Nigeria has suffered and is suffering grave environmental degradation. A direct application for enforcement of the environmental rights by the region would deepen access to justice and put a check on violators of the rights to a safer environment in the region. These writers are of the view that if the right to a safe environment had been guaranteed and expressly included in the 1979 constitution as it obtains in India, Norway, U.S.A, and many African nations, the region would have been safer and a huge sum of money being expended in cleaning up the region would have been diverted to more developmental strides for the nation.

In further charting the way forward for stronger environmental rights enforcement, there is the need for stronger advocacy by Non - Governmental Organisations in the environmental sector. In the same vein, the various State Houses of Assembly should endeavour to strengthen local legislations with respect to enforcement of environmental rights in their various states. This is without prejudice to playing active roles in the constitutional amendment to include protection of environmental rights under Chapter IV of the constitution. The state Houses of Assembly need to take into consideration

⁴³² An Environmental Right for Future Generations, Model State Constitutional Provisions & Model Statute, Science and Environmental Health Network, The International Human Rights Clinic at Harvard Law School, November 2008.
http://www.sehn.org/pdf/Model_Provisions_ModIE7275.pdf Accessed 19/4/2017

international best practices across jurisdictions to bring bear in our national life.

This paper further suggests that agencies of government as the National Environmental Standards and Regulations Enforcement Agency and various Ministries of Environment across the states should jointly sponsor a Bill to the chambers of the National Assembly to propose an amendment for inclusion of environmental rights in Chapter IV constitution as argued in this paper. The Bill should provide modalities for recognition and enforcement of environmental rights in Nigeria without prejudice to existing legislative instruments in this regard.

Conclusion

It will be foolhardy to suggest that an express inclusion of right to a healthful environment in the constitution will summarily terminate all environmental challenges in Nigeria. Nevertheless, doing so is not only the right step in the direction but has great potentials for a tremendous, positive impact on the standard of living of Nigerians. These potentials will be realized if the Government can muster the political will to enforce the existing laws on environmental protection. As much as stakeholders in the environmental sector are consulted before laws are enacted, enforcement should be without fear or favour. Searchlight should be beamed on activities of the National Environmental Standards and Regulations Enforcement Agency, which among other powers conferred on it by law, has the right and duty to enforce compliance with relevant local and international standards and coordinate and liaise with stakeholders on matters of environmental standards, regulations, and enforcement.⁴³³ In the saying goes, prevention is better than cure.

⁴³³National Environmental Standards and Regulations Enforcement Agency Act 2007, s 7.