



## **Legal Consideration On The Constitutional Right To A Protected Environment**

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### **Abstract**

It is a truism that man has a constitutional right to a protected environment and there are laws and international conventions that provide for this protection. The 1999 Constitution of Nigeria as amended via sections 13 and 20 provide for environmental objectives. The African Charter on Human and People's Rights and other Protocol of which Nigeria is a signatory also provide for this. There are decided cases on this such as *Shela Zia v Water and Development Authority WAPDA PLD (1994) SCA 16* and *Oshevire v British Caledonia Airways(1996)7 NWLR (Pt 163)507*. The challenges plaguing these rights were also discussed including recommendations as way forward.

**Keyword:-**Legal consideration, constitutional right, protected environment, environmental law, Constitution of the Federal Republic of Nigeria.

### **1. Introduction**

Around the world, there has been a lot of concern about the need to safeguard<sup>1</sup> our environment. By granting individuals and groups the necessary legal protections and constitutional rights, the environment is better preserved. The idea that one requires a constitutional right to safeguard his environment is one that hardly anyone would contest. This article is necessary because these constitutional rights are accessible to both individuals and groups in a protected environment.

The Nigerian Constitution and its provisions on the right to environmental preservation will be examined in this paper to identify and analyze these rights. With a view to determining how much they protect these rights and, if they do, whether they are enforceable through the courts. We will examine the numerous international organizations to which Nigeria participates and which environmental rights legislations are applicable to Nigeria as a member. Additionally, examples of other nations having laws on constitutional rights to the environment will be examined. The difficulties in upholding these groups' and individuals' constitutional rights to a safe environment will be outlined, and where appropriate, suggestions or recommendations will be made.

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<sup>1</sup>Gasiokwu, PI, Akpomedae EG (2022) Appraising Applicable Laws in Waste Management in Nigeria vol 8 Commonwealth Law Review Journal 225.

## 2. Definition of Terms

Terms such as right, pollution, environment, constitution and a host of others will be defined in this section.

**2.1 Right:** What is right is what conforms to morals, ethics, or the law. It is an action that is legally enforceable, a recognized interest that is protected, and whose violation is improper<sup>2</sup>. Right may refer to something that is typically correct or mandated by the fact that it is a right. Each of these references has a specific moral significance. Right can also relate to a person's distinctive claim to a good or opportunity. It can also allude to moral standards, righteousness, and moral rectitude.

**2.2 Constitution:** It is the fundamental or organic legislation of a country or state, establishing the concept, nature, and structure of its government as well as outlining the scope of its sovereign power and the procedure by which it shall be exercised<sup>3</sup>. A constitutional right is one that is protected by the law<sup>4</sup> e.g. the Nigerian Constitution.

**2.3 Environmental Right:** Refers to the entirety of the physical, economic, aesthetic, and social conditions and elements that surround and influence the desirability and value of real estate or the standard of living for individuals<sup>5</sup>.

**2.4 Environment:** Environment includes water, air, land, all plants, people, or animals that live there, as well as any interrelationships between them. The term emphasizes the significance of safeguarding human health, safety, and interests. Due to human use and enjoyment of nature, it necessitates the maintenance of a specific degree of environment. As a result, having a safe and clean environment is a fundamental human right. The whole of the surrounding and influencing physical, economic, cultural, artistic, and social circumstances and elements that determine the desirability and value of property also affects how people's lives are lived. <sup>6</sup>

**2.5 Human Rights:** Are fundamental freedoms that apply to every individual, regardless of where they are born, when they are present, what they look like or who their parents are. <sup>7</sup>

### 2.6 International Recognition of Environmental Right:

- a. Principle 1 of the Stockholm Declaration.
- b. Rio De Janeiro Declaration of 6<sup>th</sup> June 1992.
- c. Hague Declaration of 1989.
- d. United Nations Environmental Programmes of 1993.
- e. The African Charter on Human and Peoples' Right of 1981, and others discussed in this paper.

**2.7 Pollution:** Is the intentional contamination of the air, water, or land, as well as the physical harm or destruction of another person's property rights<sup>8</sup>. The right of man to exist in a clean and healthy environment is violated by environmental pollution.

**2.8 Environmental Law:** Is a field of legislation that deals with the three "environmental media" of land, air, and water as well as the plants and animals that live there<sup>9</sup>.

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<sup>2</sup> Garner, BA Black's Law Dictionary (7th Edition, West Publishing Company, Dallas) 1322.

<sup>3</sup> *Ibid* 306.

<sup>4</sup> *Ibid* 307.

<sup>5</sup> *Ibid*.

<sup>6</sup> Atsegbua, L. Akpotarie, V. and Dimowo, F. Environmental Law In Nigeria, Theory and Practice, Ababa Press Ltd, (2004) Lagos at 3.

<sup>7</sup> Dakas, C.J. Dakas: Implementation of African Charter on Human and Peoples' Right In Nigeria, (1986 – 1990), University of Jos Law Journal, Vol. 3 at 39.

<sup>8</sup> Akande O. "Pollution Control Regulation In The Nigerian Oil Industry", Cited in Okonmah, P.O., Right To A Clean Environment: The Case For the People Of Oil Producing Communities In The Niger Delta, (1997), J.A.L, 61.

<sup>9</sup> Thorntin, J, Beckwith S. Environmental Law: Sweet and Maxwell, London (1997) 2.

### 3 Sources of Environmental Law

The following sources of environmental law are cited, among others, to help understand this paper.

- i. International Law: This is typically acknowledged as state sovereignty. States have obligations and rights because they are sovereign and independent, such as the right to have sole sovereignty<sup>10</sup> over their territory, people, and resources. Nigeria has also ratified or signed other environmental accords, such as the Convention on the Prevention of Marine Pollution by the Dumping of Waste and Other Matters (1972).
- ii. African Human and Peoples' Rights Charter.
- iii. Vienna Convention For The Protection Of The Ozone Layer (1985).
- iv. Basel Convention on the Control of Trans- Boundary Movement of Hazardous Waste and Their Disposal (1989)<sup>11</sup> and others.
- v. Constitution: According to the Nigerian Constitution, the country is a federation made up of states and a federal capital territory. Section 2 (2) of the 1999 Constitution makes provision for this. The aforementioned constitution serves as a guide for this power split. Section 4 grants the National Assembly the authority to enact laws for the Federation. Part 1 of the second schedule lists items on the Exclusive Legislative List, and Part 2 of the Concurrent Legislative List are made up some sections of the constitution that, while not specifically addressing environmental issues, are still relevant. The 1999 Constitution also establishes environmental goals in section 13, which reads as follows: "The state shall protect and improve the environment and safeguard the water, air, land, forest, and wildlife of Nigeria, specifically in section 20." This section recognizes the value of the environment to humans.
- vi. Other Statutes: A number of these laws were passed using the Federation's legislative authority, both during civil and military rule<sup>12</sup>.
- vii. Common Law: The common law's regulation of environmental pollution is primarily outlined in the Law of Torts. The four specific torts that come to mind are negligence, nuisance, trespass, and strict liability; all four have cases to back them up and are related to the environment, such as pollution<sup>13</sup>. Personal injuries resulting from these cases have been cited and contested in environmental law suits, particularly those affecting the oil industry for chemicals, explosives, gas, and other products.
- viii. Case Law as a Source: The role of case law is best understood when there is judicial activism. The responsibility of the court is to interpret the law. The Court determined in *Adediran v. Interland Transport Ltd*<sup>14</sup> that a person has unfettered access to the court to have his civil rights and obligations determined. Section 6(6) of the 1979 Constitution grants this right.

### 4. Rights which Environmental Law Affect

- i. The duty to protect life falls firmly<sup>15</sup> on the shoulders of the state. The right to life is dependent on numerous elements of the environment, such as air to breathe, water to drink, food to eat, and shelter to preserve. There are numerous constitutions and treaties that respect these

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<sup>10</sup> Ogisi, UM, Okumagba, EO (2021) International Law and Municipal Law: Towards a Unifying Framework of Applicability International Review of Jurisprudence and Law (IRLJ) Vol 3 Issue 1 at 90.

<sup>11</sup> The position of the Constitution of Nigeria on Treaties can be found in section 12 (1) of the 1999 Constitution, see also section 2 (2) of the same Constitution.

<sup>12</sup> For Examples: the Petroleum Act, the Oil Mineral Act, the Factories Act, the Criminal Code, the Harmful Waste Criminal (Special Criminal Provisions) Act, the Federal Environmental Protection Agency, the Oil in Navigable Waters Act, Oil Terminal Dues Act, the Environmental Sanitation Edicts, and so on.

<sup>13</sup> The Rule in *Rylands v. Fletcher* (1986) 2 NWLR, (Pt. 20), 78, *Umudje v. Shell BP Petroleum Company of Nig. Ltd*, (1975) 9 – 11 SC, 172, *Amos & Ors v. Shell PP Petroleum Company of Nig Ltd* (1977) 6 SC, 9 and *Abiola v. Ijeoma* (1970) 2 ALL NLR, 768, and so on.

<sup>14</sup> (1991) LPELR-88 (SC).

<sup>15</sup> Awhefeada, UV, Esavwede, JP (2022) Creation of State Police and Its Constitutionality: An Imperative for the Nigerian State. Journal of Legal Studies and Research Vol 8 Issue 5 at 105.

rights<sup>16</sup>. *Nasiru Bello v. Oyo State Government* provided a legal basis for and interpretation of section 33 of the 1999 Constitution<sup>17</sup>.

ii. The ability of a man to engage in economic activity for the goal of surviving is impacted by his economic, social, and cultural rights. Despite the differences in social life, individual and collective claims are still recognized, unless there is a conflict, and even then, the issue is resolved in favour of the individual's right for the benefit of society as a whole.

iii. Right to Health: According to section 17(3) of the 1999 Constitution (as modified), each state must focus its policies on protecting the health, safety, and welfare of all people who are employed and preventing their exploitation or exploitation of them. The right to health guaranteed by international and regional agreements to which Nigeria is a signatory, particularly article 16 of the African Charter, primarily presupposes a workable protection of the citizen from pollution and natural calamities.

## 5. Examination of these Constitutional Rights

The starting point is section 20 of the 1999 constitution which provides as follows: 'the state shall protect and improve environment and safeguard water, air and land, forest and wildlife of Nigeria' Although it is in chapter 2 of the Constitution, it is equally important. The Court determined that the provisions of chapter Two of the Constitution are not subject to judicial review in *A.G. Lagos State v. A.G. Federation*<sup>18</sup>. When a lawsuit or disagreement cannot be resolved judicially or has not been properly brought before a court of justice, it is not justiciable.<sup>19</sup> The same decision was also made in *Morebishe v. Lagos State House of Assembly*<sup>20</sup> and *Okojie v. A.G. of Lagos State*<sup>21</sup> respectively. A person does not have an express right to enforce his right under chapter II of the 1999 constitution which is right to a clean environment under section 20. However, as chapter II's provisions serve as the foundation for regulating the government's ability to exercise its authority over the matters specified there, they may be used to limit the government's actions. The cases of *Adamu v. A.G. Borno State*<sup>22</sup>, and *A.G. Ondo State v. A.G. Federation*<sup>23</sup> are illustrative.

The Constitution's section 4 addresses fundamental rights and establishes for citizens legally enforceable rights. None of the rights specified in chapter 4 directly relate to environmental issues, but several of its provisions, such as section 33, can be given a broad interpretation to encompass a right to a clean and protected environment. Although this section has nothing to do with environmental preservation, it may be argued that permitting someone to live in an unprotected environment could amount to denying them their right to life because the environment itself can pose a serious threat to their lives.

It has been determined that certain zoning restrictions implemented in America that may prevent a citizen from truly enjoying his right to own land are justiciable, and the citizen so impacted is entitled to compensation. Section 44 of the 1999 Constitution of Nigeria has provisions similar to those of the Fifth Amendment to the United States of America. The idea of "Inverse Condemnation," which refers to the indirect taking over or acquisition of property by the government or its agencies, has also been developed by the courts as a foundation for compensating property owners. In the case of *Pumpelly v. Greenbay Company*<sup>24</sup>, where the plaintiff's land was submerged as a result of a state law that permitted the construction of dams for flood management, the American Supreme Court ruled that it amounted to a take of the plaintiff's property. Depending on the degree of depreciation, it can also constitute taking under regulations if state restrictions cause a significant loss in land value. This is why Justice Oliver

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<sup>16</sup> E.g. (i) The International Convention on Civil and Political Rights (1966), (ii) European Convention on Human Rights (1950) (iii) The African Charter on Human and Peoples' Right (1981) (iv) The Nigerian Constitution of 1999, and so on.

<sup>17</sup> (1986) 5 NWLR, (Pt. 45) 828.

<sup>18</sup> (2005) All FWLR, (Pt. 244) 805 SC.

<sup>19</sup> Black's Law Dictionary above 870.

<sup>20</sup> (2000) 3WRN 134;

<sup>21</sup> (1980) FNR, 445.

<sup>22</sup> (1996) 8 NWLR, (Pt. 465) 203.

<sup>23</sup> (2002) FWLR (Pt. 111) 1972.

<sup>24</sup> 80 US 166 (1871).

Wendell Holmes remarked in *Pennsylvania Coal Company v. Mahon*<sup>25</sup> that where the extent of reduction exceeds a particular scale, there must typically if not always be an exercise of eminent domain and compensation to support the action. In *U.S. v. Causby*,<sup>26</sup> it was determined that a military aircraft's constant low-altitude flight over the plaintiff's property, which destroyed the plaintiff's chicken business and otherwise made life miserable, constituted a wrongful taking of the plaintiff's property and required compensation under the 5th Amendment of the American Constitution.

Nigeria has ratified a number of international agreements and conventions relating to the protection of the environment for people. The African Charter on Human and People's Rights (Ratification and Enforcement) Act<sup>27</sup> was passed into local law in Nigeria, where it is known as the African Charter on Human and People's Rights, which now has become part of the local laws in Nigeria. In actuality, the charter recognizes three categories of human rights: political and civil rights, collective social and economic rights, and rights to development, which includes, among other things, the right to security and the right to a generally affluent environment<sup>28</sup>.

With the adoption of the charter into Nigerian law, it became an essential component of our judicial system, with all of the legal protections and enforcement tools specified in section 1 of the Act. Due to this clause, it is now feasible to bring claims of charter violations before Nigerian courts and high courts, which are authorized to do so by section 255 of the 1999 constitution. It has been asserted that it is feasible to bring claims of violations of the economic, social, and cultural (ESC) and other human rights of the charter before courts that are taking into account chapter 2 of the constitution, which does not allow for their justiciability. Without regard to section 6(6) of the 1999 Constitution, Dakas notes that there is no conflict between the ESC rights under the Charter and Chapter 2 of that constitution. This is because the latter prohibits the use of judicial authority when determining whether a particular act or omission is in accordance with the Fundamental Objective and Directive Principles of State Policy, which are outlined in Chapter 2 and does not apply in cases where ESC rights are specified<sup>29</sup>.

The salient question that has come up is whether an international convention like the African Charter on Human and Peoples' Rights is enforceable within Nigeria. This is especially true given the former Military Administrations' ability to suspend the provisions of chapter 4 of the Constitution, which deals with Fundamental Rights. The case of *Abacha v. Fawehinmi*<sup>30</sup> is built around this query. In this case, the cross-appellant and respondent, a lawyer and human rights activist from Lagos, was imprisoned for four days after being taken into custody. To challenge his arrest and detention under the 1979 Fundamental Rights (Enforcement Procedure) Rules, he submitted an application to the Federal High Court. He claimed that both his arrest and incarceration violated his fundamental rights, which are protected by both the African Charter on Human and Peoples' Rights and the 1979 Constitution (Ratification and Enforcement)<sup>31</sup>. The African Charter was affirmed in letter and spirit by the Supreme Court following an appeal, which was denied and the Cross Appeal granted in favour of the Respondent. The 1979 Constitution's section 12 (1) states that an international treaty becomes enforceable when it is passed into law by the National Assembly.

In the *Abacha's* case, the Supreme Court ruled that the African charter now has legal standing in the federal republic of Nigeria since it has been re-acted as a component of Nigerian law.

A treaty will not be declared abrogated or amended by later statutes unless that purpose has been expressly stated in the later statutes, despite the Charter's international flavour, which does not prohibit the National Assembly or Federal Military Government (as the case may be) from repealing it. Therefore, any inconsistency between article 24 and section 20 of the Constitution will be decided in the constitution's favour. Regarding the Constitution's supremacy, it was decided in the *Abacha's* case that it is the *Grundnorm* and the highest law

<sup>25</sup> 260 US 393 at 473 (122).

<sup>26</sup> 328 US 256 (1946).

<sup>27</sup> Cap A 9, L.F.N 2004.

<sup>28</sup> Atsegbua *et al* above 139.

<sup>29</sup> Dakas, C.J: Implementation of the African Charter of the Human And Peoples' Right in Nigeria (1986 – 1990), University of Jos, L.J. Vol. 3 at 39.

<sup>30</sup>(2001) 1 CHR 21, (2000) FWLR (Pt. 4)533, Ratios 2, 3 and 5, see also *Agbakoba v. Director SSS* (1994) 6 NWLR, (Pt. 351) 475.

<sup>31</sup> See Cap A 9 L.F.N. 2004.

of the land. The Constitution of 1979, specifically section 12, gives a treaty life and makes it possible for the nation to apply it<sup>32</sup>.

Nigeria is a signatory to the Convention on the Rights of the Child, and Article 24 (2) states that in order to battle illnesses and malnutrition, adequate measures must be adopted while taking into account the risks and dangers posed by environmental pollution. The United Nations Conference on Human Environment, which took place in Stockholm in 1975 and was attended by Nigeria, recommended that man has a fundamental right to freedom, equity, and sufficiency of life in a quality environment that permits a life of dignity and well-being, and that man has a solemn responsibility to protect and improve the environment for both current and future generations. The 1992 United Nations Conference on Environment and Development, which was held in Rio de Janeiro, Brazil, and which Nigeria participated. once more made the following declaration: 'Human Beings are the center of concerns for sustainable development. They have a right to live a healthy, productive life in harmony with the environment'.

Furthermore, a group of individuals from instituted an court in the well-known Pakistani case of *Shela Zia v. Water And Development Authority (WAPDA) Pld*<sup>33</sup> in an effort to stop the Municipal Water and Power Development Authority from building a Nuclear Power Station in their neighbourhood. They argued that the station's high voltage transmissions posed a risk to one's health. The Supreme Court ruled that economic policies should be guided by sustainable development and that a person's right to life includes a right to live in a safe environment. This choice was definitely historic. In the case of *Oshevire v. British Caledonia Airways*<sup>34</sup>, the Court of Appeal determined that because international treaties and conventions are autonomous and the signatories have agreed to be bound by their provisions, which take precedence over domestic laws, any domestic law that conflicts with a treaty or convention is invalid. The court ruled expressly that any domestic law that conflicts with the Warsaw Convention or the Hague Protocol, both of which have been accepted by Nigeria, is null and void. An environmental bill of rights was passed by the Canadian province of Ontario, and it guarantees the right to an unfavourable environment.<sup>35</sup>.

Individuals and communities in Nigeria should exercise their right to a clean environment under section 33 of the Nigerian Constitution, which is a fundamental right provision based on Indian and Pakistani court judgements. This justification is based on the idea that having the right to life entails having the right to a healthy environment free from any degrading elements<sup>36</sup>.

According to article 39 of the Ugandan Constitution, every citizen has a right to a clean and healthy environment. A similar clause is found in the South African Constitution, which stipulates that everyone has the right to live in an environment that is not harmful to their health or general well-being. Everyone has a right to and a responsibility to protect an environment that is conducive to their own growth, according to the Spanish Constitution of December 29, 1978<sup>37</sup>. Everyone has the right to live in a healthy environment that is ecologically balanced and sufficient for the growth of life and preservation of the countryside and nature, according to article 123 of the Peruvian Constitution from July 12, 1978.

In light of the aforementioned, is there a constitutional right to a clean environment in Nigeria notwithstanding the hopes generated by the African Charter and other Treaties on Environmental Rights? Ehighelua is of the opinion that while there is no direct constitutional right in Nigeria, there are indirect constitutional rights that can be pursued through the legal

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<sup>32</sup> P. 612 Paras E – P, P. 613 Para A. See also Nwabuoku M.O.I, "International Law Vis-À-Vis Municipal Law: A Close Look at. *Abacha v. Fawhinmi*, Igbinedion University Law Journal, Vol.8, March (2009) 152.

<sup>33</sup> (1994) SCA 16.

<sup>34</sup> (1996) 7 NWLR, (Pt. 163) 507.

<sup>35</sup> Webb K: "Taking Matters Into Their Own Hands" (1990) 36 MC Gill. L.G. 771. Cited In Patrick D. Okonmah, "Right To A Clean Environment: The Case For The People Of Oil Producing Communities In The Nigerian Delta" , (1977) JAL. 61.

<sup>36</sup> Okukpon A.O., "The 1999 Constitution of Nigeria and The Protection Of The Rights of Citizens To Clean Environment", Atsegbua, (ed) ,in selected Essays On Petroleum And Environmental Law. (Benin New Era Publication) 18.

<sup>37</sup> Article 45, Para 1 & 2.

system, as well as direct rights under international treaties and conventions that Nigeria has signed, ratified, and recognized<sup>38</sup>.

## 6. Challenges

Some of the problems arising from the constitutional right to a protected environment are:

- i. The International American Human Right Court and the African Commission on Human Rights, which serves as Africa's version of the European Court of Human Rights, do not render judgements that are legally binding. Its capabilities are limited to promotional activities and recommending actions to the Assembly of Heads of State in Africa, a purely aesthetic body that resembles a bull dog without teeth that can only bark but not bite.
- ii. It is disappointing that the 1999 Constitution does not include an Environmental Right under chapter 4. It's possible that the creation of the African Charter and its incorporation into Nigerian law will not offer any protection for the enforcement of environmental rights as human rights. To ensure that its provisions are used to their fullest potential, more work still<sup>39</sup> has to be done.
- iii. It is regretful and unfortunate that the specific clause "states shall maintain and improve the environment and safeguard the rivers, air, land, forest, and wildlife" is included in the Fundamental Objective Principles of State Policy but that the clause is not enforceable in court.
- iv. The traditional rules of civil liability with regard to oil pollution and related claims are obviously insufficient, as are several provisions of Nigerian laws on pollution control, for example, which are not detailed enough to deal with some complicated, technical, and sophisticated subject subjects.
- v. The common law tort remedies are not properly equipped to address the technical advancements affecting environmental law, such as the oil sector. Atsegbua discovered this issue<sup>40</sup>. The torts of negligence, nuisance and the rule in *Rylands v. Fletcher*<sup>41</sup> have not been of much help to the victims of oil pollution pursuing their rights.
- vi. The Oil in Navigable Waters Act and other Nigerian anti-pollution statutes, among others, contain a number of defences that call into doubt the viability of any criminal responsibility that might be generated by these laws, to the cost of the applicant whose right has been violated.
- vii. There is a problem with how our courts interpret the African Charter on Human and Peoples' Rights. In the *Abacha v. Fawehinmi's* case<sup>42</sup>, the Supreme Court reached several conclusions. The court ruled in a single sentence that the African Charter have become enforceable, our courts must comply with it, and in the event of a conflict between its provisions and those of another statute, the provisions of the African Charter will take precedence because the legislature did not intend to violate an international agreement and the statute has more vigour and strength. On the other hand, the Court ruled that in cases of dispute, the Constitution is ultimate, the *grundnorm*, and is superior to the African Charter.
- viii. The African Charter on Human and Peoples' Rights, to which Nigeria is a party, and her municipal law both acknowledge the right to a clean environment as a fundamental human right that must be fully fulfilled in public law in order for sustainable development to take place.
- ix. Nigeria has not yet recognized environmental rights as distinct rights, as Pakistan has done in the *Shela Zia case*<sup>43</sup>.

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<sup>38</sup> Ehighelua I; Environmental Protection Law: New Pages Law Publishing Co. Effurun, Warri, (2007) 32.

<sup>39</sup> Chegwe E, Akatugba AM (2023) Evaluating the Role of a Non-Doctrinal Research Method on Legal Education and Practice in Commonlaw Africa. Nigeria as a Case Study. International Journal of Clinical Legal Education (IJCLE) Vol 30 Issue 1 at 67.

<sup>40</sup> Atsegbua L; "Oil Pollution and The Protection Of the Environment In Nigeria" (1992) Justice, Vol. 2 57, No. 34, 1968.

<sup>41</sup> (1866) LR, EX 265.

<sup>42</sup> Op.cit at 33.

<sup>43</sup> Op.cit 35.

- x. The majority of Memorandums of Understanding (MOU) addressing environmental law-related issues, such as those involving oil firms and communities, do not contain strict stipulations on the host communities' constitutional right to their environment.
- xi. Lack of environmental awareness is a problem that makes it very difficult for individuals and organizations to assert their legal rights.
- xii. There aren't many environmental advocacy organizations to inform people of their rights.
- xiii. Because of the difficulties in enforcing constitutional rights due to the interactions between the various institutions in charge of managing the environment, as well as Nigeria's economic fragility, limited technological capacity, and urban poverty and environmental crises, this is a serious issue in our society.
- xiv. Lack of political will among our policymakers and implementers to adequately enforce current law is a trend that discourages people or groups from pursuing their constitutional rights.
- xv. Lack of knowledge of one's rights and the implications of environmental dangers and degradation on the part of individuals or communities. As an illustration, consider the 1988 Jesse Fire Outbreak in Delta State and its accompanying issues, as well as the Koko case of Dumping Toxic Waste and associated Health Hazard involving Chief Nana.
- xvi. Access issues for aggrieved parties whose constitutional rights to their environment have been violated to the proper court. The Federal High Court has jurisdiction under section 251 of the 1999 Constitution. These Courts, though, are neither enough nor fairly distributed throughout Nigeria. In addition, it struggles with costly court filing fees.

## 7. Recommendations

Regarding Nigeria's constitutional right to a protected environment, the following recommendations can be helpful:

- a. In order to help individuals, groups, and communities understand and be able to exercise their rights to the environment, the African Charter on Human and Peoples' Rights needs to be made more widely known.
- b. Environmental law human rights education ought to be covered in high school curricula rather than being reserved for universities.
- c. Through discussions, seminars, symposia, public lectures, and other publications through the mass media, trade unions, non - governmental organizations (NGOs), and others must play essential roles in the promotion and preservation of human rights to the environment.
- d. In the National Assembly and the State Houses of Assembly, private member bills, public bills, and government bills should be sponsored by individuals, organizations, and the government in order to address environmental law degradation and ensure that people's constitutional rights and remedies are dealt with strict penalties.
- e. The Memorandum of Understanding (M O U) on environmental law topics, signed by Individuals, Communities, including Corporate Bodies shall provide extensive provisions on constitutional right to the environment, including obligations, sanctions and remedies.
- f. The 1999 Constitution ought to stipulate that a person's right to environmental pollution or degradation shall be treated equally with other constitutionally guaranteed rights remedies that are upheld in court. In fact, a separate part should be added to the constitution that deals solely with the fundamental right of any person or organization to environmental protection, and the effort to alter the constitution in question should be stepped up and redoubled.
- g. Nigerian state governments need to update their environmental sanitation laws to keep up with global environmental trends.
- h. In order to respond<sup>44</sup> to environmental harm in Nigeria, compensate individuals and communities, and prove accountability, laws should be established by the government.
- i. Currently, no court will enforce section 20 of the 1999 Constitution, which deals with environmental goals. In order to make chapter 2, which deals with Fundamental Objectives and Directive Principles of State Policy, enforceable by persons in court, it is recommended that section 6(6) be made extinct.

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<sup>44</sup> Esavwede JP, Mukoro, MA (2019) The Concept of Sustainable Development (SD) and Its Application to Oil Exploration in Nigeria. International Journal of Comparative Law and Legal Philosophy (IJOCLLEP) Vol 1 no 1 at 191.



- j. The English common law is out-of-date, archaic, and does not adhere to current technological standards, but its laws of nuisance, negligence, and trespass require proof of damages. In contrast, strict liability is not the foundation of environmental protection laws in Australia, Germany, or the United States. Nigeria ought to imitate this practice in order to protect victims from the sophisticated environmental dangers of the 21st century and beyond.
- k. Individuals, Groups, and Communities must be made aware of the benefits and consequences of the numerous Treaties, Conventions, Acts, and Protocols Nigeria has ratified in order for them to understand and respect the constitutional rights that result from and are granted to them.
- l. With the use of a massive literacy campaign, jingles, and brochures, the issue of the prospective litigant's illiteracy on his constitutional rights to the environment can be resolved.
- m. The amount of damages that can be sought for environmental harm is not predetermined<sup>45</sup>, and the courts are occasionally unhelpful. Therefore, the courts must make proper provisions for them.
- n. It is praiseworthy that the Supreme Court has adopted a new policy of considering claims from individuals or organizations having an interest in a specific matter after *Adediran v. Inter-Land Transport Ltd*<sup>46</sup>. The Plaintiff was given legal standing by the Supreme Court to bring a claim for public nuisance. This is a significant case for the *locus standi* concept because the court determined that under Nigeria's 1979 constitution, section 6(6)(b), a private person may file a lawsuit for public nuisance without the Attorney General's approval or without including him as a party.
- o. For the sake of the general public, it is also advised that the courts handle environmental disputes with broader<sup>47</sup> latitude.
- p. In environmental law proceedings, there should be prompt trials to ensure prompt administration of justice, and the amount of damages awarded should have a human aspect and truly reflect the current difficult economic conditions.
- q. To inform and sensitize people about their constitutional environmental rights and remedies, numerous constitutional rights organizations should be established.
- s. The Court ought to increase the fines and sanctions against organizations that violate environmental rights guaranteed by the Constitution.
- r. In a matter involving environmental rights, the *ubi jus ibi remedium*<sup>48</sup> principle is admirable and strongly advised. According to the doctrine, the court must give a remedy even if neither a common law nor a statutory remedy is available. This was the position in the case of *Oyekami v. N.E.P.A*<sup>49</sup>. In *Okeke v. Petmag Nig. Ltd*,<sup>50</sup> the Supreme Court ruled that once a wrong has occurred, it can be fixed, and that a wrong does not have to be able to be fixed by a recognized court in order to be subject to legal action.
- s. It is advised that Nigerian citizens and communities use their right to a clean environment under section 33 of the Nigerian Constitution, which is based on court judgements from India and Pakistan.
- t. It is advised that the American stand, which does not require unique damages to be proven in environmental lawsuits, be emulated. The plaintiff only needs to demonstrate that he was injured as a result of the alleged act for his actions to be successful. <sup>51</sup>

<sup>45</sup> Ogisi UM, Omozue, OM (2022) Insecurity in ECOWAS: An Impediment to the Realization of Regional Integration, Commonwealth Law Review Journal vol 8 at 298.

<sup>46</sup> (1992) 9 NWLR, (Pt. 814) 155, Per Karibi Whyte JSC (As he then was)

<sup>47</sup> Nwabuoku. MOI, Gasiokwu, PI (2022) The Concepts of Justice and Equity and their Efficacy in the Administration of Justice in Nigeria Journal of Legal, Ethical and Regulatory Issues (JLERI) Vol 25 Issue 5 at 9.

<sup>48</sup> Where there is right there is a remedy

<sup>49</sup> (2001) FWLR, (Pt. 34), 404 at 436 SC, See also *Buzu v. Garabi* (2000) FWLR, (Pt. 23), 1191, at 1203 – 1204. The Court of Appeal held that Courts should do substantial justice where remedy is properly claimed, even though under wrong law.

<sup>50</sup> (2005) ALL FWLR, (Pt. 263), 760, at 775 – 776, CA, per Onu JSC.

<sup>51</sup> *Students Public Interest Research Group, v. P.D., Oil and Chemical Storage Inc*, 23 Env.Rep.Cas (B.N.A), 1894, 1897 – 1900, (D.N.J 1986). This led to the Proximity Rule.

## 8. Conclusion

As can be seen above, the Nigerian Constitution made general provisions on the right to life, right to health, and fundamental human rights that indirectly affect the environment. However, it did not specifically or directly address the constitutional right to a protected environment.

The African Charter on Human and Peoples' Rights, of which Nigeria is a member and a signatory, provides for environmental rights that are justiciable but did not give them the real requisite muzzle as remedies. As a result, it is challenging for both individuals and organisations to prevail in environmental law disputes.

It is further advised, as Ehighelua stated,<sup>52</sup> that although Nigeria does not have a direct constitutional right to a clean environment, there are indirect protections for environmental rights under the Nigerian Constitution as well as explicit protections under international treaties and conventions that Nigeria has ratified, signed, and recognized. Despite sharing his viewpoint, it is important to note that, at least for the time being, the right to a clean environment can only be completely fulfilled through public law. The *Shela Zia*<sup>53</sup> lawsuit might currently be the only means of enforcing environmental rights in Nigeria until such time as they are recognized as separate rights.

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<sup>52</sup> Ehighelua note 38 above.

<sup>53</sup> *Op.cit* 35.

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