

## Human Rights and Environment: Whither Nigeria?

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### Abstract

This paper studied human right and environment. Environmental right is wide spreading the world over. The environment is a key to human life. A harmonious environment makes for a healthy living. There is a growing trend that environmental right is closely tied to the right to life. This jurisprudential trend suggests that a violation of environmental right is a violation of right to life, since environment has key role to play in human life. The paper reveals that Indian Supreme Court has widely expanded the right to life to include that of environmental right. It also reveals that Nigeria is yet to positively take environmental right seriously. It concluded that the Nigerian judiciary should blaze the Indian trail and the legislature should also pass a law on environmental right.

**Keywords:** Human, Right, Environment.

### Introduction

The view is held that the emergence of human rights law in the international sphere is one of the most significant developments to have taken place since the World War II came to an end.<sup>1</sup> Human rights refer to those rights that for one reason or another are regarded as fundamental or basic to the individual, or group of individuals, who assert them.<sup>2</sup> It was the Universal Declaration of Human Rights in 1948 that created these rights. Thus, the legal system of a state, and international treaties, will attempt to protect rights such as the right to life, the right to property, the right to fair trial and freedom of expression and peaceful assembly.<sup>3</sup> Fundamental rights have a common quality: they are regarded as basic to human worth and dignity or individual liberty and are protected as such. There is a growing link between human rights and global environmental change.<sup>4</sup> First, many of the human rights contentions and principles are relevant issues of environmental change<sup>5</sup>. Rights of participation<sup>6</sup>, access to information, freedom of speech, among others, are important for the effective management of global environmental change. Secondly, problems created by global environmental change raise new issues for those rights already articulated, such as by the creation of environmental refugees and by the potential loss of a way of life by indigenous people<sup>7</sup> such as the Niger Delta. Thirdly, there has been considerable discussion of a right to environment, either implicitly found in existing human rights instruments<sup>8</sup> or as part of a new articulation of rights. Furthermore, there is discussion of rights of future generations in the global environment<sup>9</sup>. It is doubtful to link inter-organisational right explicitly to human rights law; nevertheless, it may not be mistaken to view it as an extension of it as it may carry important implications for what may be termed group rights<sup>10</sup>. This paper discusses the Nigerian perspective to environmental rights bearing in mind the developmental strides made by the Indian legal system. The paper takes the view that the Constitutional provision of Section 6(6)(c) suggests that environmental protection as enshrined in the Constitution suffers so seriously from in-built loopholes as it is virtually unenforceable or implemented inadequately. It reveals that a person's right to life is breached when as a result of a polluted and degraded environment his life is cut short. This is because environment has a direct bearing upon life. As such it suggests that environmental right should be treated as a fundamental right to life. The idea of protecting environmental right is essential to maintaining the dignity of human beings. The paper concludes that bearing in mind cases already decided in other jurisdictions of the world the Nigerian court should

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<sup>1</sup> Rehman J. (2010). *International Human Rights Law*. London: Pearson Education Limited, 3.

<sup>2</sup> Foster S. (2008). *Human Rights and Civil Liberties*. London: Pearson Publishing, 5-7.

<sup>3</sup> Ibid

<sup>4</sup> Weiss, E.B., (1992). *Global Environmental Change and International Law: The Introductory Framework* in Weiss E. B. (ed), *Environmental Change And International Law: New Challenges and Dimensions*. United Nations University, 19.

<sup>5</sup> Ibid

<sup>6</sup> Atsegbua L., Akpotaire V., & Dimowo F., (2010). *Environmental Law in Nigeria: Theory and Practice*. Benin: Ambik Press, 172.

<sup>7</sup> Weiss, E. B., *Global Environmental change and international law. Introductory Framework*, op. cit.

<sup>8</sup> UN Sub-Commission, First Progress Report, UN Doc E/CN.4/sub.2/1992/7,428

<sup>9</sup> The over utilization of our limited natural resources poses a great threat of their becoming unavailable to our future generations, only few would challenge the need for protecting the environment so that future generations can enjoy productive and fulfilled lives.

<sup>10</sup> Ibid

blaze the trail of judicial revolution in terms of environmental right. In that light, it opines that the first step to take by the Nigerian Supreme Court is to tow the Indian Supreme Court decision in **Minerva Mills Ltd v. Union of India**<sup>11</sup> when it held that the directive principles in Part IV of the Indian Constitution are not mere show-pieces in the window-dressing but they are “fundamental in the governance of the country”. Therefore, when the court is called upon to give effect to the directive principles and fundamental objectives it should not shrug its shoulder and say that priorities are matter of policy and it is a matter for policy making authorities to decide and not the court<sup>12</sup>. This is because directive principles have now been elevated to inalienable fundamental human rights and hence they are justiciable by themselves<sup>13</sup>.

## ENVIRONMENTAL CHALLENGES

There is no doubt that issues concerning environment is of concern not only to environmental scientists, but also to every person who lives on this planet<sup>14</sup>. The application of the concept of interrelatedness, shared planet, global citizenship, and spaceship cannot be restricted to environmental issues alone. They apply equally to the shared and inter-linked responsibilities of environmental protection and human development<sup>15</sup>.

Much of the environmental awareness grew on the back of air pollution, pollution of rivers and impacts on, for example, human health<sup>16</sup>. Addressing these environmental challenges were initially perceived as a luxury, but today, having gone through a phase of intense economic development, the world is confronted with phenomenal environmental changes that are becoming increasingly global in nature as they fundamentally affect the life-support systems across our planet<sup>17</sup>.

It is incontrovertible that man is the manager of the earth’s environment, and as such there is the need to consider man-made environment as an element of the earth’s environment<sup>18</sup>. This is because man has since been recognized as both creature and moulder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth<sup>19</sup>. When harmful substances contaminate the environment in large quantities, the ecosystem is unable to absorb them and they accumulate in the system resulting in the degradation of environment. The economic changes that helped create modern industrial society also threw the environment out of balance<sup>20</sup>. Despite this, human beings remain fundamentally dependent on the natural world.

Humans are not only the receptors of environmental change but are also in numerous instances the drivers of change. Over-exploitation of resources in the industrialized world and unsustainable economic policies have given rise to many of the factors generating global change. In less developed countries, high population growth is

<sup>11</sup> AIR 1980 SC 1789

<sup>12</sup> *Sachidanand Pandey v. State of West Bengal* AIR 1987 SC 1109

<sup>13</sup> *Air India Corporation v. United India Labour Union* (1997) 7 SCC 377 (416), See also Dr Vinay N. P. (2013) *Environmental Law*. India: Central law Agency, 27.

<sup>14</sup> The need to have a working knowledge of environmental issues is not confined to environmental scientist, engineer and policy-makers. In our society, all educated people need to have working understanding of the fundamental principles involved for environmentally responsible decision-making.

<sup>15</sup> Dutta A, Duttas & Pandey P. N. (2009). *Environmental Issues and Challenge*. New Delhi: A.P.H. Publishing Corporation, 2.

<sup>16</sup> Dutta A., Dutta S. and Pandey P.N. (2009). *Environmental Issues and Challenges*. New Delhi: A. P. H. Publishing Corporation, 7.

<sup>17</sup> Environment around us constitutes a life support system. It is from the environment that we get food to eat, water to drink, air to breathe and all necessities of day to day life, see Asthana D. K., Asthana M., (2006). *Environment: Problems and solutions*. India: S. Chand and Company Ltd, 3.

<sup>18</sup> Osundu, A.C., (2012). *Our Common Environment: Understanding the Environment, Law and Policy*. University of Lagos Press, 6.

<sup>19</sup> See Preamble to Stockholm Declaration on Human Environment of 1972.

<sup>20</sup> Tietenberg T., (2006). *Environmental Natural Resource Economics*. London: Pearson Education, 5.

linked to environmental degradation because local inhabitants attempt to maintain or improve their resource base and economic level through the over-exploitation of their environment<sup>21</sup>. This takes place in general without any long-term environmental management strategy; resources can thus become rapidly depleted or ineffective<sup>22</sup>.

As Shanthakumar has pointed out, one of the paradoxes of modern life is that technology permits people live in unprecedented comfort while remaining in unprecedented ignorance of the natural physical and biological systems that support their lifestyles<sup>23</sup>. Many modern citizens, preoccupied with their daily concerns, have become mentally isolated from the natural environment that supports them. The ignorance of natural science has greatly impaired society's ability to solve the growing number of environmental problems<sup>24</sup>. But this will not be so if the problem of environment is classified as a fundamental right. Classifying environmental issues as a fundamental right will awaken consciousness of citizens and violators will suddenly work hard to avoid environmental liability.

#### **NIGERIAN CONSTITUTION AND RESPONSE TO PROTECTION OF THE ENVIRONMENT**

Previous Constitutions of Nigeria did not make provision for the protection of the environment until the coming into existence of the 1999 Constitution. While the 1999 Constitution made provision for the environment, it did not deal with environmental protection as such. Although environment was given constitutional status, its provision only betrays Nigeria as a country that is environmentally unconscious of environmental problems. Section 20 of the Constitution provides that:

*The state shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeri<sup>25</sup>.*

Section 20 of the Constitution is provided for under Chapter 11 as one of the "Fundamental Objectives and Directive Principles of State Policy"<sup>26</sup>. This brings a new dimension to state responsibility by obliging the state to protect and improve the environment for the good of the society as a whole<sup>27</sup>. It laid down the basic foundation for environmental legislation and the governments' responsibility in Nigeria. Thus, Section 13 of chapter 11 states that:

*It shall be the duty and responsibility of all organs of government, and of all authorities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of this chapter of this Constitution<sup>28</sup>.*

Section 17(1)(d) of the Constitution seems to further support Section 20. It provides as follows:

*In furtherance of the social order – exploitation of human or natural resources in any form whatsoever for reasons, other than the good of*

<sup>21</sup> Dutta A., Dutta S. and Pandey P. N. op cit 7-10.

<sup>22</sup> Middleton P. (2007). *The End of Oil: The Court, Nigeria and Beyond*. Magpie Books, 16-18.

<sup>23</sup> Shanthakumar, S., (2009). *Introduction to Environmental law*, Nagpur: Lexis Nexis, 2.

<sup>24</sup> It is generally agreed that environmental education is a process that creates awareness and understanding of the relationship between humans and their many environments – natural, man-made, cultural, and technologies. Environmental education is concerned with knowledge, values, and attitudes, and has as its aim responsible environmental behaviour. See Srivastava S. (2008) *Environmental Studies*. India: S.K. Kataria & Sons, 7; Environmental Education no doubt brings to consciousness environmental right.

<sup>25</sup> Section 20, 1999 Constitution of the Federal Republic of Nigeria. While the Indian constitution went further to show its seriousness to protect the environment by specifically providing for the citizens' fundamental duty under Article 51A(g); it is the fundamental duty of everyone of the citizens of this country to protect and improve the natural environment including forest, lakes, rivers, all other water resources and wild life, this is lacking in the Nigerian constitution. The provision of Article 51A(g) obviates the problem of *locus standi*:

<sup>26</sup> See Chapter 11 of the 1999 Constitution of the Federal Republic of Nigeria as amended 2011.

<sup>27</sup> Sengar, D.S. (2007) *Environmental Law*. India: Prentice Hall, 7.

<sup>28</sup> Section 13 of the 1999 Constitution of the Federal Republic of Nigeria as amended 2011.

*the community, shall be prevented*<sup>29</sup>.

Section 17(1)(d) clearly shows that where a natural resource is been exploited and the environmental consequences to the host community outweigh its benefits, the government is obligated to stop its exploitation<sup>30</sup>. It is, thus, within the duties and powers of the state to impose restrictions on the use of those resources and factors which adversely affect life and its development. The Directive Principles obligate the state to improve the quality of human life by controlling the exploitation of natural resources and protecting the environment<sup>31</sup>. Section 24(e) of the Constitution makes it clear that the responsibility for abatement of pollution and protection of environment is not a duty of the state alone; it is an obligation of every citizen so that an individual may not overlook his duties to the community in exercise of his fundamental rights or commit wanton destruction of natural environment. Thus, Section 24(e) provides that: it shall be the duty of every citizen to “render assistance to appropriate and lawful agencies in the maintenance of law and order”<sup>32</sup>. While doing this, the citizen is making positive and useful contribution to the advancement, progress and well-being of the community where he resides<sup>33</sup>. The above two paragraphs clearly explain the duty owed by a citizen to the Nigerian nation as regards issues of environmental protection. It behoves on every citizen to care for the protection and improvement of the natural environment. However, provision of Section 6(6)(c)<sup>34</sup> destroys or impairs the legal validity of sections 20, and 24(d) and (e) respectively. This thus renders the legal utility of fundamental Objectives and Directive Principles of State Policy unenforceable. It makes it absolutely difficult to enforce the compliance of the fundamental obligations of the government as enshrined in Section 13 of the Constitution. While this is so, Basu<sup>35</sup> takes the view that in relation to the Indian Constitution, although they are not legally enforceable in the courts, but if the State makes a law to prohibit the breach of such duties as in Sections 13 and 24(d) and (e) of the Nigerian Constitution of 1999, the courts would uphold it as a reasonable restriction on the relevant fundamental right. The Constitutional provision in Section 6(6)(c) suggests that environmental protection as enshrined in the Constitution suffers so seriously from in-built loopholes as it is virtually unenforceable or implemented inadequately. Section 6(6)(c) provides that<sup>36</sup>:

*The judicial powers vested in accordance with the foregoing provision of this Section shall not, except as otherwise provided by this constitution, extend to any issue or question as to whether any Act or omission by any authority or Person or as to whether any Law or any Judicial Decision is in Conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution.*

While it has been established that Section 6(6)(c) of the Nigerian Constitution directly renders the judicial organ of government inefficient as it affects the duty to conform to and apply the provisions of chapter 11 imposed on it by Section 13 of the Constitution, it is submitted that the other organs of government are not so incapacitated. Implicitly, the duties to conform to and apply the provisions of chapter 11 imposed on the executive (the Federal Ministry of Environment and other environmental regulatory agencies at both federal and state levels) and the legislative organs of government are still in force and intact despite the provisions of Section 6(6)(c). The legislature, for instance, is under a duty to initiate amendment to the relevant sections of the Constitution, which are unfavourable to the ideals of sustainable development, such as Section 6(6)(c) in so far as that section

<sup>29</sup> Section 17(1)(d) of the 1999 Constitution of the Federal Republic of Nigeria as amended 2011.

<sup>30</sup> Sengar, D.S. (2007) *Environmental Law*. India: Prentice Hall, 7.

<sup>31</sup> Ibid; The India Supreme Court has held in *M.C. Mehta v. Union of India* (2002) 4 SCC 356, that the Directive Principles individually and collectively impose duty on the state to create conditions to improve the general health level in the country, and to protect and improve the natural environment.

<sup>32</sup> Section 24(e) of the 1999 Constitution of the Federal Republic of Nigeria as amended 2011.

<sup>33</sup> Section 24(d) of the 1999 Constitution of the Federal Republic of Nigeria as amended 2011

<sup>34</sup> Section 6(6)(c) of the 1999 Constitution of the Federal Republic of Nigeria as amended 2011.

<sup>35</sup> Basu, D.D., (1989) *Shorter Constitution of India*. India: Prentice Hall, 279.

<sup>36</sup> Section 6(6)(C) of the 1999 Constitution of the Federal Republic of Nigeria as amended 2011.

applies to the environmental objectives provided for in Section 20 of the 1999 Constitution<sup>37</sup>. The legislature is also under an obligation to work towards ensuring that environmental rights of Nigerians are enshrined into Chapter IV of the 1999 Constitution as part of the fundamental human rights of Nigerians<sup>38</sup>.

### THE RIGHT TO LIVE IN A HEALTHY ENVIRONMENT AS A BASIC HUMAN RIGHT

The question may be asked as to whether the right to a healthy environment is a basic human right<sup>39</sup>? There is no doubt that polluted environment directly affects the health, mental, as well as physical welfare, of human beings and therefore, survival has become difficult due to change in physical, chemical and biological conditions of the environment<sup>40</sup>. The discharge of effluents into the atmosphere, oil spills, gas flaring, dumping of refuse, acid rains are some of the instances of pollution that have considerably affected the quality of human life<sup>41</sup>. Section 33(1) of the Nigerian Constitution provides that every person has a right to life<sup>42</sup>. A person's right to life is breached when as a result of a polluted and degraded environment his life is cut short. Clearly, a polluted environment can reduce life expectancy. The environment has a direct bearing upon human life. A polluted environment is bound to reduce the efficiency of work. Undoubtedly, dangerous levels of pollution in water, air, earth and living things; major and undesirable disturbances to the ecological balance of the biosphere; destruction and depletion of irreplaceable resources and gross deficiencies are harmful to the physical, mental and social health of men, in the man-made environment, particularly in the living and working environment<sup>43</sup>. These consequently have affected human rights.

Furthermore, the right to life being the most important of all human rights implies the right to live without the deleterious invasion of pollution, environmental degradation and ecological imbalances<sup>44</sup>. The right to life provided for under Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR) 1966 is largely affected by the polluted environment<sup>45</sup>. This has the development in various countries, of the concept that right to healthy environment is a fundamental human right implicit in the right to life<sup>46</sup>. While the term 'right to life' has not been elaborated under the ICCPR, broadly, it includes right to food, shelter, clothing, education, medical care and safe and decent environment. Maurice Sunkin et al takes the view that from the environmental law perspective, the most important substantive right is the right to life<sup>47</sup>. They go on to argue that human rights law is far from static and that the jurisprudence is developing very rapidly, particularly in contexts such as environmental protection<sup>48</sup>. The right to life may be intrigued when circumstances such as pollution endanger health<sup>49</sup>. In **Guerra V. Italy**<sup>50</sup>, Judge Jambrek opined that states might violate the right to life by withholding information about circumstances which foreseeably present a real risk of danger to health and physical integrity of people (even where these circumstances are created by private commercial activities). He supports the development of implied rights associated with the right to life. Such implied rights might include the right to an environment free from health-threatening pollution. Liability might be imposed upon the state where a threat to life or the health of people arises from the actions of a private body and public bodies have taken inadequate steps to prevent or stop the threat. In the light of this, the unabating pollution of the environment of Niger Delta by the oil multinational companies will be put to an end where this jurisprudence is developed in Nigeria.

In a number of cases, the courts have held that safe and decent environment is included in the right to life. In Africa, the Tanzania Supreme Court took the bull by the horn and held in **Joseph D. Kessy et al V. City of Dar es Salaam** that Article 14 of Tanzania's Constitution prevented Dar es Salaam from polluting the environment

<sup>37</sup> Osondu, A.C., (2012) *Our Common Environment: Understanding the Environment, Law and Policy*. Nigeria: University of Lagos Press, 184-185.

<sup>38</sup> Ibid

<sup>39</sup> The emerging jurisprudential trend is that environmental rights which covers a group of collective rights, are today described as "Third Generation" Rights.

<sup>40</sup> Agarwal H, O., (2013) *International law and Human Rights*. Allahabad: Central Law Publications, 670.

<sup>41</sup> Ibid

<sup>42</sup> Section 33(1) Constitution of the Federal Republic of Nigeria, 1999 as amended 2011

<sup>43</sup> Op cit

<sup>44</sup> In *M. C. Mehta v. Union of India*, AIR 1987 SC 1086, the Indian Supreme Court repeated strongly and asserted that right to live in pollution – Free environment is a part of fundamental right to life under Article 21 of the Indian Constitution. While in *T. Danvodhar Rao v. Municipal Corporation, Hyderabad* AIR 1987 AP171, Supreme Court affirmed and held again that environmental pollution undoubtedly amounts to violation of Article 21 regarding right to life.

<sup>45</sup> Article 6(1) of the Covenant on Civil and Political Rights, 1966.

<sup>46</sup> *A.P., Pollution Control Board II v. Prof. M.C. Nayudu*, 2000 SOL case No.673.

<sup>47</sup> Maurice et al., (2002) *Source Book on Environmental Law*. Cavendish Publishing Limited, 857.

<sup>48</sup> Ibid

<sup>49</sup> The Supreme Court of India in *Consumer Education and Research v. Union of India*, AIR 1995 SC 922 widened the scope of Fundamental Right under Article 21 of Indian Constitution when it held that right to health, medical care and vigour to work while in service or in post-retirement are fundamental rights.

<sup>50</sup> *Guerra & Others v. Italy* (1998) 26 EHRR, 357.



so as not to endanger people's lives. The Supreme Court of Nepal has also held that the right to a clean healthy environment is undoubtedly embedded within the right to life. Similarly, in Bangladesh, the Supreme Court held in **Dr. Mohiuddin Farooque v. Bangladesh & Others**, that the right to life encompasses, within its ambit, the protection and preservation of environment<sup>51</sup>.

There is little doubt that the idea of protecting environmental right is essential to maintaining the dignity of human beings. Section 34(1) of the Nigerian Constitution provides that "every individual is entitled to respect for the dignity of his person". The dignity of a human being cannot be maintained and honoured in the absence of the environment rightly characterized as a human right. It will be proper to say that the importance of safe and adequate environment is so significant to maintaining the human dignity, which has been a right. Nagendra Singh<sup>52</sup> writes that the right to live in peace in a safe and adequate environment is a right which relates to the very existence of a person. In that light, he takes the view that such a condition which goes to the very root of one's own human existence must be categorized or designated as a fundamental right beyond doubt. The conundrum gleaned from this is that the environment is closely related with human rights. Agarwal also suggests that while the human rights derive from the inherent dignity of the human person, environmental law lays down the means by which human dignity may be maintained<sup>53</sup>. No wonder did Universal Declaration of Human Rights of 1948 declare that everyone has the right to life and that everyone has a right to a standard of living adequate for the health and well being of himself and of his family. The right to the dignity of human person was strengthened by the Stockholm Conference of 1972 when it declared that "man has the fundamental right of freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well being". The case of **Lopez Ostra v. Spain**<sup>54</sup> is instructive here as the European Court of Human Rights at Strasbourg has held that the result of environmental degradation might affect an individual's well being so as to deprive him of enjoyment of private and family life. Similar decision was made by the Inter-American Commission on Human Rights in **Yanomi Indians V. Brazil**<sup>55</sup> when it held that Brazil had violated the Yanomi Indian's right to life by not taking measures to prevent the environmental damage. From the foregoing, one would say that it has rightly been pointed out that the right of private individuals to be guaranteed a decent and safe environment is one of the newer rubrics of human rights law<sup>56</sup>. However, while this is established, there is a belief that the integrity of natural ecosystems should be protected not simply for the pleasure of people, but as a biotic right. Nature has its own purpose, which should be respected as a matter of ethical principle<sup>57</sup>.

## THE ENVIRONMENT AND THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS

Nigerian Courts in their several judgements have held that the African Charter of Human and Peoples' Rights (hereafter simply referred to as "The African Charter") provided for rights and obligations between member states of Organisation of African Union (OAU), now African Union (AU) and between the OAU member states and their individual citizens. Article 24 of the African Charter states that: "all peoples shall have the right to a

<sup>51</sup> See Ako, R.T., Adedeji A.A. & Coker, S.A., (2007) *Resolving Legislative lapses through Contemporary Environmental Protection – Paradigms – A case study of Nigeria's Niger Delta Region*. IJIL, 47, 437.

<sup>52</sup> Nagendra Singh (1987) Right to Environment and Sustainable Development as a Principle of International Law, *Journal of the Indian Law Institute*, 29, 290.

<sup>53</sup> Agarwal, H. O., (2013). *International Law and Human Rights*. India: Central Law Publications, 671.

<sup>54</sup> Lopez Ostra v. Spain, 303-C, Eur.C.H.R. (Ser.A) 1994

<sup>55</sup> Yanomi Indians v. Brazil, Inter-Amer. C.H.R. 7615 OEA/Ser.L.V./11/66Doc.10rev.1985(1)

<sup>56</sup> Gormley W. P., (1988) "The Right to a Safe and Decent Environment". *I.J.I.L.*, 28, 1.

<sup>57</sup> Dobson, A., (1998) *Justice and the Environment: Concepts of Environmental Sustainability and Theories of Distributive Justice*, Oxford University Press.

general satisfactory environment favourable to their development". According to Oke<sup>58</sup>, this particular provision is unequivocal and un-quantified and confers a direct right on people living within the countries that are signatory to the Charter and a corresponding obligation on those state entities to ensure that this right is realizable. The issue of realisability of the rights enshrined in the African Charter is mostly dependent on the willingness of states to embrace, with a real sense of obligation, the core values of the African human rights system that it is intended to serve.

Courts have held that unless our domestic courts enforce these rights and obligations provided for in the African Charter, they would be meaningless in our statute books<sup>59</sup>. Nigerian courts however have no reason whatsoever not to enforce the provisions of the African Charter as it was an international obligation voluntarily entered into by the country. While it is not true to say that it is superior to the Nigerian Constitution, the African Charter could be said to have greater vigour and strength than any other domestic statute and where there is conflict between the African Charter and a domestic statute, the provisions of the African Charter will prevail by reason of the fact that it has international flavour, and the legislature will not intend to breach or legislate out international obligations voluntarily entered into by Nigeria, especially when it has been domesticated by the Act of the National Assembly of Federation of Nigeria<sup>60</sup>.

Considering the above, it would not be wrong to say that citizens can enforce their environmental rights and duties under the African Charter in our domestic courts, either individually or collectively, particularly now the view is taken in many jurisdictions that environmental right is an integral component of the rights to life<sup>61</sup>. While it is true that Section 6(6)(c) of the 1999 Constitution derogates from Section 20 of the same constitution, which provides that "The state shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria", it does not derogate from the provisions of Section 33(1) which provides that every person has a right to life. Implicit in the right to life, is the right to free and unpolluted environment. Thus, an action brought concurrently under Sections 20 and 33(1) of the Nigerian Constitution and Article 24 of the African Charter will certainly dilute the derogatory power of Section 6(6)(c) of the Constitution. This will to a great extent to empower the judiciary in discharging its role in the protection of the Nigerian environment which has long been hindered by the provisions of Section 6(6)(c) of the 1999 Constitution. Therefore, borrowing from the Indian Court decision in *A.P. Pollution Control Board II V. Prof. M.C. Nayudu*<sup>62</sup>, to the effect that, the right to healthy environment and to sustainable development are fundamental human rights implicit in the right to life will certainly help to create good environmental citizenship. Nigeria can also borrow from the Indian example in **Bandhua Mukti Morcha V. Union of India**<sup>63</sup>. Philippine's Supreme Court adopted this decision in **Minors Oposa V. Department of Environment and Natural Resources**<sup>64</sup>. The Constitutional Court of Columbia has also gone further to hold in **Fundepublico V. Mayor of Bugalagrande and Others**<sup>65</sup> that right to healthy environment is a fundamental human right and which should be treated as part of customary international law. Thus, Nigeria being a signatory to the African Charter should follow same and treat Article 24 of African Charter as a customary international

<sup>58</sup> Oke Y. (2004) An Evaluation of the Relevance and Applicability of African Charter on Human and Peoples Rights in Nigeria, *Management Practice and Journal of Finance and Investment Law*, 8, 1-2 Jan/April, 84.

<sup>59</sup> Gani Fawehinmi v. Abacha (2002) 6 NWLR (pt 660) 228 S.C

<sup>60</sup> Gani Fawehinmi v. Abacha (Supra)

<sup>61</sup> Shankthakumar S., (2009) *Introduction to Environmental law*. Lexis Nexis – Butterworths, 91.

<sup>62</sup> A. P., *Pollution Control Board II V. Prof. M. C. Nayudu*, (2000) Sol Case No. 673.

<sup>63</sup> 1984(3) SCC 161

<sup>64</sup> 33, ILM 173 (1994)

<sup>65</sup> Cited in Shanthakumar S., (2009) *Introduction to Environmental Law*. India: LexisNexis – Butterworths, 94

law which is non derogable. While it may be said that a step has been taken by a Nigerian Court to catch-up with this new global jurisprudence on environmental right in **Gbemre V. Shell**<sup>66</sup>, when it held that the constitutionally guaranteed fundamental rights to life and dignity of human persons provided by Sections 33(1) and 34(1) of the Constitution of the Federal Republic of Nigeria, 1999 and reinforced by Article 4, 16 and 24 of the African Charter on Human Procurement rules (Procedure and Enforcement) Act inevitably includes the right to clean poison – free, pollution free and healthy environment, it suffices to say that it has not yet been established as the law, considering that the court that gave the judgement was a High Court. Until the Supreme Court takes its stand on such an issue, it cannot be said to be the position of the law. This is in view of the hierarchy of courts in our judicial system (binding precedent). The Supreme Court judgement binds the other lower courts. So until the Nigerian Supreme does what the Indian Supreme Court did in cases of **Vellore Citizen Welfare**<sup>67</sup> **Forum**; and that of **Virandar Gaur v. State of Haryana**<sup>68</sup>, where the Supreme Court laid binding precedent on other lower courts to follow, it is only then Nigeria would get it right in resolving her huge environmental problems. In **Vellore**<sup>69</sup>, the Indian Supreme Court affirmed the polluter pays principle as a rule of customary international law, while in **Virandar Gaur v. State of Haryana**<sup>70</sup>, the Indian Supreme Court, after reciting, reaffirming and applying Principle 1 of the Stockholm Declaration held that Article 21 of the Indian Constitution protects right to life as a fundamental right.

In rural litigation and entitlement **Kendra, Dehradun v. State of Uttar Pradesh**<sup>71</sup> the Supreme Court of India for the first time recognized the right to live in a healthy environment as right to life and liberty enshrined under Article 21. This view was further upheld in **M.C. Mehta v. Union of India**<sup>72</sup> wherein it was held that right to life and liberty under Article 21 includes right to free and healthy environment.

Enjoyment of life and its attainment including their right to life with human dignity encompass within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life cannot be enjoyed. This suggests hygienic environment is an integral facet of right to healthy life and it would be impossible to live with human dignity without a humane and healthy environment.

## CONCLUSION

This article has examined the relationship between human rights and the environment. The link between the two emphasizes that a decent physical environment is a precondition for living a life of dignity and worth. The human rights declaration manifests where all these rights and their explicit or inexplicit linkages are defined and recognized. The African Charter on Human and Peoples' Rights also has some declaration of rights. These are the foundations for application of human rights in protection of environment and equally the role of environment in realization of human rights. The potential of human rights cannot be fully realized within a degraded or polluted environment. The fundamental right to life can be denied by deaths caused by exposure to oil pollution, gas flaring or contaminated drinking water. It can also be denied by several other acts of environmental degradation.

There is no doubt that today the global community is getting more than ever convinced that the objectives of human rights, environmental protection and economic

<sup>66</sup> *Gbemre v. Shell Petroleum Development Company Nigeria Limited & Others*, unreported Suit No FHC/B/CS/53/05, Federal High Court, Benin 14 November 2005.

<sup>67</sup> *Vellore Citizen's Welfare Forum* (1996)5 SCC 647

<sup>68</sup> (1995)2 SCC 577

<sup>69</sup> (1995)2 SCC 647

<sup>70</sup> (1995)2 SCC 577

<sup>71</sup> *Air 1985 SC 652* (known as Doon Valley Case)

<sup>72</sup> *1987 SC 1086* (Oleum Gas Leakage Case)



development are complementary and not as opposing disciplines. Taking a human right-based approach could be an innovative approach in supporting and advancing the environmental law to better address our environmental challenges. This will only deepen the understanding of the role of human rights principles and a right-based approach in advancing environmental protection, human security and sustainable development. However, this can only be achieved if the courts (Supreme Court) will look beyond some technicalities of the law and give a broad interpretation to the right to life as enshrined in the Nigerian Constitution by taking similar views as the Indian Supreme Courts.

The first bold step to take by the Nigerian Supreme Court is to tow the Indian Supreme Court decision in **Minerva Mills Ltd v. Union of India**<sup>73</sup> when it held that the directive principles in Part IV of the constitution are not mere show-pieces in the window-dressing but they are “fundamental in the governance of the country”, and being part of the Supreme Law of the land, have to be implemented and it shall be the duty of the state to apply these principles in making laws. The Supreme Court of India further asserted in **Sachidanand Pandey V. State of West Bengal**<sup>74</sup> that whenever a problem of ecology is brought before the court, and the court is called upon to give effect to the directive principles under Article 48-A and fundamental duty under Article 51A(g), it “will not shrug its shoulder and say that priorities are a matter of policy and it is a matter for policy making authorities to decide and not the court. The reason being that directive principles now stand elevated to inalienable fundamental human rights and hence they are justiciable by themselves”<sup>75</sup>. The world awaits to see the boldness or otherwise of the Nigerian Supreme Court as these epoch making cases stare at its face.

While the Supreme Court is expected to blaze the trail, there is the need for the legislature to expressly enact environmental right as fundamental right. There is the need to protect human health, safety and interest. The maintenance of a certain level of environment is a prerequisite to human use and enjoyment of nature. The requirement of a healthy and balanced environment and of the environmentally sound management of natural resources is a condition for the implementation of other fundamental rights<sup>76</sup>. It is opined that if environmental right is enacted, it would grant the public a right to healthy environment and introduce series of reforms, and increase powers of the private citizens to protect themselves and their environment from the effects of pollution<sup>77</sup>. Granting of such right would also increase the powers of the private citizens to sue in civil courts for damages caused by pollution and in like manner initiate private suits or claims for pollution where government has refused to act<sup>78</sup>.

#### **Acknowledgements**

This paper was inspired by the judicial activism going on in some countries of the world, particularly in India, in the area of environmental rights. This obviously seems to be lacking in Nigeria.

The author acknowledges writers whose works made immense contribution to the success of this article. Many thanks to you all.

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<sup>73</sup> AIR 1980 SC 1789

<sup>74</sup> AIR 1987 SC 1109

<sup>75</sup> *AIR India Corporation v. United India Labour Union*, (1997)7 SCC 377 (416); See also Vinay N. P. (2013) *Environmental Law*. Central Law Agency, 27.

<sup>76</sup> Atsegbua, L., Akpotaire V. and Dimowo F., (2010) *Environmental Law in Nigeria: Theory and Practice*. Benin: Ambik Press, 170.

<sup>77</sup> Ibid

<sup>78</sup> Ibid

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