

Environmental Rights in Nigeria: Recognition and Enforcement Challenges

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ABSTRACT

Environmental right simply defined is access to the unspoiled natural resources that enable survival. The natural resources in this context include land, shelter, food, water, air and also ecological rights of living organisms like beetle to survive or the right to an individual to enjoy an unspoiled landscape. This right also includes, the right to development; the right to peace; and the right to a healthy environment. Environmental rights are often referred to as the third generation of human rights as opposed to the first generation of human rights. The first generation of human rights are those found in many bills of rights of the constitutions of many countries ('fundamental human rights'). The first generational rights (fundamental human rights) are inevitably linked with the environment and cannot really be enjoyed without it. For example, the 'right to life' is meaningless without the guarantee of a safe and clean environment. This underscored the reason why over 100 countries of the world embedded environmental rights in their constitutions and accorded them the same status with the first generational rights- fundamental human rights.

Nigeria, however, is not included in the list of these 100 countries. The country though included the environmental rights in section 20 of its 1999 Constitution as amended. Nevertheless, did not accord them the same status with the first generational human rights by the provision of section 6(6)(c) of the same constitution. The country further encumbered through wrong judicial attitudes and technicalities the alternative avenue which would have availed its citizens ample opportunity to enjoy these rights- the domesticated African Charter on Human and Peoples Rights (Application and Enforcement) Act 1983. The paper therefore, using the doctrinal methodology assesses the recognition and enforcement challenges of the environmental rights in Nigeria and finds that despite the provision for environmental rights in the Constitution of Nigeria, there is a serious caveat in the same Constitution that makes the

environmental provision non-justiciable. Furthermore, the second avenue open to the citizens to prosecute their environmental rights- the African Charter, which has been domesticated by the Federal Government of Nigeria has been seriously encumbered by judicial attitude and technicalities, ranging from jurisdictional challenge, pre-action notice procedure, locus standi and burden of proof. To address these challenges and make way for open access prosecution of the environmental rights by the country's citizens, the paper recommends a constitutional amendment to section 6(6)(c) of the Constitution by either removing the provision or moving section 20 to chapter iv and giving it a fundamental rights status; pragmatic judicial attitude in interpreting the right to life and dignity of the human person as including the right to live in a healthy environment that is pollution-free and lightening the burden of proof in environmental cases by making them strict liability offences.

KEY WORDS: Environmental Rights, Recognition, Enforcement and Challenges In Nigeria.

I. INTRODUCTION:

Environmental rights are often referred to as the third category/generation of human rights. The first being the traditional Civil and Political Liberties like right to freedom of speech, right to freedom of religion and of the press and right from torture, just to mention but a few. These rights are meant to ensure a duty of non-interference by government against individuals. They are also known as "classical" human rights which are found in many bills of rights of the constitutions of many countries.¹

The second category/generation rights are referred to as 'group rights' or 'collective rights'-

¹ Lawrence Atsegbua, Vincent Akpotare and Folarin Dimowo, *Environmental Law in Nigeria: Theory and Practice*, (New Ed. Ambik Press, Benin City 2010) 169.

they pertain to the well-being of the whole society and include, the right to education; the right to work; the right to social security and food; the right to self-determination; and the right to adequate standard of living.²

Environmental rights are in the third category/generation, which have been recently recognized. Their realization is not only dependent upon both affirmation and negative duties of the state, but also upon the behavior of each individual. They include, the right to development; the right to peace; and the right to healthy environment.³

According to Friends of the Earth International, environmental rights can be defined as 'access to the unspoiled natural resources that enable survival, including land, shelter, food, water and air...and also purely ecological rights including the right for certain beetle to survive or the right to an individual to enjoy an unspoiled landscape'⁴

Human rights by definition are 'universal rights attaching to the human being wherever he appears without regard to time, place, colour, sex, parentage or environment'⁵

The environment and human well-being are inextricably linked and it is difficult to enjoy any of the first category/generation rights with disregard to the quality of the environment where the human being lives (water, air and land).

In recognition of its importance to the overall wellbeing of humanity, safe environment and sustainable development, environmental rights received global adoption on October 8, 2021, by the United Nations Human Rights Council, while on the national jurisdictions over 100 countries of the world have enshrined it as a fundamental rights in their constitutions.⁶ The reason is not far-fetched as any decisions about the environment (whether land or natural resources) inevitably impact the

health, livelihood and quality of life. Thus, assertion of the right to life for instance, will be meaningless without the guarantee of a safe and clean environment. In the words of Atsegbua, 'the right to a clean environment completes the other rights guaranteed to each human being. The requirement of a healthy and balanced environment and of the environmentally sound management of natural resource is a condition for the implementation of other fundamental rights'⁷

The right to a healthy environment has developed according to Aguila⁸ gradually since the 1970s when it was first alluded to by the 1972 Stockholm Declaration. Principle 1 of the Stockholm Declaration provides thus, 'man has the fundamental rights to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being'⁹

This was a catalyst for the recognition of the environmental right of a healthy environment at the global, national and regional levels. Resolution 45/94 of the UN General Assembly reiterates the language of the Stockholm conference when it states that 'all individuals are entitled to live in an environment adequate for their health and well-being' and called for enhanced efforts towards ensuring a better and healthier environment.¹⁰

furthermore, the Hague Declaration of 1989, declared the right to live in a viable global environment.¹¹ Also, the United Nations Environment Program's 1993 under the Governing Principles provides for the right of present and future generation to enjoy a healthy environment and decent quality of life.¹²

In addition, opinions of notable global personalities after the Stockholm Declaration have further underscored environmental rights as a pre-condition to the enjoyment of internationally-

² Ibid.

³ Ibid.

⁴ Friends of the Earth International, "Our Environments, our rights" <<https://www.foe.org>> access 21/01/2022.

⁵ C J Dakas, The Implementation of the African Charter on Human and Peoples' Right in Nigeria" *University of Jos*

Law Journal (vol.3 1986-1990) 39.

⁶ Yann Aguila, "The Right to a Healthy Environment" <<https://www.iucn.org>> assessed 18/3/2023.

The resolution is tagged "Resolution on the recognition of human right to a clean, healthy and sustainable environment as an important human right.

⁷ Atsegbua (n. 1) 170.

⁸ Aguila (n.6).

⁹ Stockholm Declaration of the United Nations Conference on the Human Environment June 1972 UN.Doc.

A/CONF.48/14/RRV.1 at 3 (1973). Also cited by Atsegbua (n.1) 171.

¹⁰ Dinah Shelton, "Human Rights, Health and Environmental Protection: Linkages in Law and Practice, a

Background paper for the WHO", prepared by Dinah Shelton, Professor of Law, Notre Dame University.

¹¹ Atsegbua (n. 1) 171.

¹² Ibid.

guaranteed human rights especially the right to life and health. One of such personalities include Klaus Toepfer, Executive Director of the United Nations Environmental Programme, who reflected this approach in his statement to the 7th Session of the Commission on Human Rights in 2001:

Human rights cannot be secured in a degraded or polluted environment. The

Fundamental right to life is threatened by soil degradation and deforestation and by exposures to toxic chemicals, hazardous wastes and contaminated drinking water...Environmental conditions clearly help to determine the extent to which people enjoy their basic rights to life, health, adequate food and housing, and traditional livelihood and culture. It is time to recognize that those who pollute or destroy the natural environment are not just committing a crime against nature, but are violating human rights as well.¹³

On the regional level, right to a healthy environment is included in regional human rights treaties and environmental treaties binding more than 120 States,¹⁴ and on the national jurisdictions in more than 150 national constitutions.¹⁵ Top ten of these countries include Lithuania, Latvia, Russia, United States of America, South Africa, United Kingdom, Hungary, Bulgaria, Panama and Columbia.¹⁶ Environmental rights including the right to a healthy and decent environment have been accepted and enforced within national jurisdictions of these countries.¹⁷

Regrettably, Nigeria is not included in these over 150 countries. The country has no constitutional enforceable environmental rights, though there are some constitutional provisions for

these rights in its Constitution¹⁸. For example, section 17(3) (c)¹⁹ provides that 'the State shall direct its policy towards ensuring that...the health, safety and welfare of all persons in employment are safeguarded and not endangered or abused' and section 20, which says, 'states shall protect and improve the environment and safeguard the water, air, land, forest and wildlife'. These sections are not justiciable by virtue of section 6(6)(c) of the same Constitution, which takes away the enforceable power. Meanwhile, the citizens only alternative window, the African Charter on Human and People's Right 1981,²⁰ has been greatly hampered through poor judicial attitude, technicalities and herculean burden of proof on environmental cases.

The paper argues that the situation would have been different if Nigeria has enshrined environmental rights under enforceable part of its constitution perhaps chapter iv as a fundamental human rights like the over 150 countries discussed in the paper including Lithuania, Latvia, Russia, United States of America, South Africa, United Kingdom, Bulgaria and Hungary, just to mention but a few.²¹

The paper therefore, assesses the recognition and enforcement challenges of environmental rights in Nigeria using the doctrinal methodology. The paper hope to do justice to this by discussing the definition and concept of environmental rights, Global, regional and domestic recognition of environmental rights, the challenges of recognition and enforcement of the rights in Nigeria and recommendations for a way forward.

II. THE CONCEPT OF ENVIRONMENTAL RIGHTS

¹³ Dinah Shelton, "Human Rights, Health and Environmental Protection: Linkages in Law and Practice-A Background

Paper for the WHO" < <https://heionline.org> accessed 29/03/2023.

¹⁴ Aguila (n. 6).

¹⁵ Ibid.

¹⁶ World Resources Institute < wri.org/insights/best-and-worst-countries-environmental-democracy accessed 20/7/2022

¹⁷ UN Sub-Commission, First Progress Report, UN DocE/CN.4/SUB.2/1992/7,428 cited also by Atsegbua (n. 1) 171.

¹⁸ Constitution of the Federal Republic of Nigeria 1999 as amended.

¹⁹ Ibid.

²⁰ The African Charter on Human and African Charter has been domesticated in Nigeria through the African and

People's Rights (Application and Enforcement) Act 1983.

²¹ See Environmental Democracy Index (EDI), the first online platform that tracks and scores 70 countries progress

in enacting laws that promote transparency, accountability and citizen engagement in environmental decision-

making cited by World Resources Institute (n. 13).

In discussing the concept of environmental rights, it will be pertinent to discuss the two words that made up the concept-‘environment’ and ‘right’ to enable us really appreciate the essence of the rights in our contemporary society.

2.1 Environment

Environment according to Black’s Law Dictionary is ‘the totality of physical, economic, aesthetic and social circumstances and factors which surround and affect the desirability and value of property or which also affects the quality of people’s lives.’²² It has also been defined as the physical and cultural spaces in which human species live, reproduce and die, including the water, the atmosphere, land and all living and non-living things that inhabit these spaces .²³Section 37 of the National Environmental Standards and Regulations Agency Act (NESREA) defines environment simply to include, ‘water, air, land, all plants and human beings or animals living therein and the inter-relationships which exist amongst or any of them’²⁴From the above definitions, it is clear that the well-being of man depends on the state of the environment. It is common knowledge that the activities of man on the environment affects it. Man’s well-being therefore, is inextricably linked with the quality of land, air and water (environment) sustaining him, which makes the need for guarantee of such quality for his continuous well-being a necessity.

As rightly argues by Atsegbua, the right to a clean environment completes the other rights (civil rights) guaranteed to each human being.²⁵ Furthermore, it is only a healthy and balanced environment with environmentally sound management of natural resource that can bring about the implementation of other fundamental rights²⁶. It does seem that fundamental human rights guaranteed under most countries constitutions would be a mirage without a healthy, safe and secured environment.

2.2 Rights

Right(s) has been defined as a ‘privilege.’²⁷It has also been defined as those conditions of social life without which no man can seek, in general, to be himself at his best.²⁸ In the context of Human rights, it means ‘something more basic that is allowed to be, to do or to have.’²⁹

Human rights are universal rights attaching to the human being wherever he appears without regard to time, place, colour, sex, parentage or environment.³⁰ They are derived from the inherent dignity of the human person and are rights accruing to an individual because he is a human being.³¹

Human rights have been categorized under three generations:

(1) Traditional Civil and Political Liberties like:

- Right to freedom of speech;
- Right to freedom of religion and of press and
- Right to freedom from torture.

These rights are meant to ensure a duty of non-interference by government against individuals. They are also known as ‘classical’ human rights found in many bills of rights of the Constitutions of many countries.³²

(2) Social and Economic rights-these are also referred to as ‘group rights’ or ‘collective rights’. These rights pertain to the well-being of the whole society. They include:

- The right to education;
- The right to work;
- The right to social security, food, to self-determination, and adequate standard of living.

(3) These are the recently recognized category. They are distinguished from the other categories of human rights because their realization is not dependent upon both affirmative and negative duties of the State, but also upon the behavior of each individual. They include:

- Right to development;
- Right to peace; and

²² Black’s Law Dictionary,(8th ed).

²³ Aiya Musa and Habibu yaya Bappah, “Issues and Challenges on Environmental Rights: The Nigerian Experience”, *American International Journal of Social Science* (vol.3, issue5 2014) 1 <<https://www.researchgate.net/publication/348546371>> accessed 27/7/2022.

²⁴ NESREA Act 2007.

²⁵ Atsegbua (n. 1) 170.

²⁶ Ibid.

²⁷ Musa & Bappah (n. 23)

²⁸ Ibid.

²⁹ Ibid.

³⁰ C. J. Dakas, “The Implementation of the African Charter on Human and Peoples’ Right in Nigeria” University of

Jos Law Journal (Vol. 3 1986-1990) 39 cited in Atsegbua (n. 1) 167.

³¹ Ibid.

³² Ibid, 169.

- Right to healthy environment.

This paper focuses not on Human Rights but on the third category of rights and so we may not discuss in detail the first generation human rights but will move on to examine the third category-environmental rights. Having briefly discussed the elements that made up the concept, we shall proceed to examine the two elements put together-environmental rights.

2.3 Environmental Rights.

Friends of the Earth International defined environmental rights to mean, 'access to the unspoiled natural resources that enable survival, including land, shelter, food, water and air. They also include more purely ecological rights including the right for a certain beetle to survive or the right to an individual to enjoy an unspoiled landscape.'³³The United Nations Environmental Programme on his part, defined environmental rights to mean, 'any proclamation of a human right to environmental conditions of a specified quality'.³⁴ From the definitions above, human rights and the environment appears to be intertwined as the rights cannot be enjoyed in the absence of a safe, clean and healthy environment.³⁵ It follows also that a sustainable environment cannot exist without the establishment of and respect for human rights. This relationship has now been recognized across most Constitutions of the world as the right to a healthy environment.³⁶

Environmental rights according to the United Nations Environmental Programme are a combination of both substantive rights (fundamental rights) and procedural rights (tools used to achieve substantive rights).³⁷ Substantive rights are those in which the environment has a direct effect on the existence or the enjoyment of the right itself. They include Civil and Political rights (right to life, freedom of association and freedom from discrimination).

Whereas Procedural rights (tools used to achieve substantive rights) relate to formal steps to

be taken in enforcing legal rights.³⁸ Environmental rights fall into the category of Social and Economic Rights such as rights to health, food and adequate standard of living; Cultural rights such as rights to access religious sites; and Collective rights such as rights of indigenous people's affected by environmental degradation.³⁹ Environmental rights have been recognized globally, regionally and in many domestic jurisdictions. Some of the global, regional and domestic instruments recognizing the environmental rights shall be discussed in brief detail.

III. GLOBAL, REGIONAL AND DOMESTIC JURISDICTION RECOGNITION OF ENVIRONMENTAL RIGHTS

International, regional and domestic jurisdictions have created vast array of international legal instruments in recognition of environmental rights and some of these instruments shall be discussed under the sub-heads of global, regional and domestic jurisdictions.

3.1 Global Recognition of Environmental Rights

International concerns with human rights, health and environmental protection have expanded considerably over the past decades with resolutions and instruments drawn up expressing such concerns, some of which include:

(a) Stockholm Conference on the Human Environment 1972

In the Stockholm Conference of 1972, the links between human rights, health and environmental protection were apparent. At the conclusion of the session, the participants proclaimed thus:

Man is both creature and molder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth... Both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights-even the right to life itself.⁴⁰

³³ Friends of the Earth (n.4).

³⁴ UN-Environment Programme
<unep.org/explore-topics/environmental-rights-and-governance/what-we-do/advancing-environ...> access 28/07/2022.

³⁵ Ibid.

³⁶ It has been enshrined in over 100 Constitutions of the World.

³⁷ UN-Environmental Programme (n. 34).

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Stockholm Declaration of the United Nations Conference on the Human Environment, 16 June 1972, UN. Doc. A/CONF.48/14/REV.1 at 3 (1973).

Furthermore, Principle 1 of that conference established a foundation for linking human rights, health and environmental protection, when it declared thus: 'Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being'.

(b) **The Hague Declaration of 1989**, the Hague Declaration recognized 'the right to live in a viable global environment'.⁴¹

(c) **UN General Assembly Resolutions 45/94**

The United Nations General Assembly resolution 45/94 stated that individuals are entitled to live in an environment adequate for their health and well-being and called for enhanced efforts toward ensuring a better and healthier environment.⁴²

(d) **United Nations Environment Programme**

The United Nations Environment Programme through its Executive Director Klaus Toepfer, in his statement to the 57th Session of the Commission on Human Rights in 2001, declared: Human rights cannot be secured in a degraded or polluted environment.

The fundamental right to life is threatened by soil degradation and deforestation and by exposures to toxic chemicals, hazardous wastes and contaminated drinking water...Environmental conditions clearly help to determine the extent to which people enjoy their basic rights to life, health, adequate food and housing, and traditional livelihood and culture. It is time to recognize that those who pollute or destroy the natural environment are not just committing a crime against nature, but are violating human rights as well.⁴³

These underscored the importance the global community attached to environmental conditions in the enjoyment of fundamental rights. Other regional instruments have also been affirmed this position.

3.2 Regional Recognition

Some of the regional treaties and instruments were drafted and adopted before environmental protection became a matter of international concern.

(a) **The International Covenant on Economic, Social and Cultural Rights(1966)**

Article 7 (b) of this treaty guarantees the right to safe and healthy working conditions, while the right of children and young persons to be free from work harmful to their health are guaranteed under article 10. The right to health provided by article 12 expressly calls on states parties to take steps for 'the improvement of all aspects of the environmental and industrial hygiene' and the 'prevention, treatment and control of epidemic, endemic, occupational, and other diseases'.⁴⁴

(b)**The Convention on the Rights of the Child (1989)**

This Convention makes reference to the protection of the child's right to health. Article 24 of the Convention directs States to take appropriate measures to combat disease and malnutrition through the provision of adequate nutritious foods and clean drinking water bearing in mind the dangers and risks of environmental pollution'.⁴⁵

(c) **ILO Convention No.169 concerning Indigenous and Tribal Peoples in Independent Countries (1989)**

This Convention contains numerous references to the lands, resources, and environment of indigenous peoples.⁴⁶ Part 11 of the Convention addresses land issues, including the rights of the peoples concerned to the natural resources pertaining to their lands. The Convention enjoins governments to ensure adequate health services are available or provide resources to indigenous groups 'so that they may enjoy the highest attainable standard of physical and mental health'.⁴⁷ Article 30 requires that governments make known to the peoples concerned their rights and duties.

(d) **African Charter on Human and Peoples' Rights (1991)**

This regional human rights treaty contains specific provisions on both right to health and a right to environment. Article 16 of the Charter guarantees to every individual the right to enjoy the best attainable state of physical and mental health while Article 24 states that "All peoples shall have the right to a general satisfactory environment favourable to their development". The ambiguity

⁴¹ Declaration of Hague, March 11, 1989 cited in Atsegbua (n. 1) 171.

⁴² Shelton (n. 13).

⁴³ Ibid.

⁴⁴ Ibid, 3.

⁴⁵ Article 24 (2) (e).

⁴⁶ See Articles 2, 6, 7, 15).

⁴⁷ See Article 25 (1)

here is the non-clarification or distinction between an individual and a people's right.⁴⁸

(e) Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (1988)

This Protocol also contains both a right to health and a right to environment, drafted in more detail form than that contain in other human rights instruments. Article 10 provides:

- (1) Every one shall have the right to health (that is the enjoyment of the highest level of physical, mental and social well-being).
- (2) In order to ensure the exercise of the right to health, the States Parties agree to recognize health as a public good and, particularly, to adopt the following measures to ensure that right:
 - (i) Primary health care, that is, essential health care made available to all individuals and families in the community;
 - (ii) Extension of the benefits of health services to all individuals' subject to the State's jurisdiction;
 - (iii) Universal immunization against the principal infectious diseases;
 - (iv) Prevention and treatment of endemic, occupational and other diseases;
 - (v) Education of the population on the prevention and treatment of health problems, and
 - (vi) Satisfaction of the health needs of the highest risk groups and of those whose poverty makes them most vulnerable.

Article 11 is titled: "Right to a healthy environment." It proclaims:

1. Every one shall have the right to live in a healthy environment and to have access to basic public services.
2. The States shall promote the protection, preservation and improvement of the environment.

(f) Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters.

This Convention was signed by thirty-five States and the European Community (EC). The Convention builds on previous ones like Principle 1 of the Stockholm Declaration which it incorporates and strengthens.⁴⁹ The preamble to this Convention convey its purport: "every person has the right to

⁴⁸ Shelton (n. 13) 4.

⁴⁹ Aarhus (June 25 1998) cited in Dinah Shelton (n. 8).

live in an environment adequate to his or her health and wellbeing, and the duty, both individually and in association with others to protect and improve environment for the benefit of present and future generations." To be able to assert the above right and observe the duty, citizens must have access to information, be entitled to participate in decision-making and have access to justice in environmental matters. Thus, Article 1, of the Convention enjoins States parties not only to agree inguaranteeing the right of access to information, but also that of participation in decision-making and access to justice. Recognizing the importance of this right, Article 19 opens the door to accession by States outside the ECE region, with the only condition that they must be members of the United Nations (UN) and the accession approved by the Meeting of the Parties to the Convention.

(g) The Protocol on Water and Health to the Helsinki Watercourses Convention. This Convention was adopted in London on June 17, 1999.⁵⁰ The objective of the Protocol is the protection of human health and well-being at all appropriate levels, nationally as well as in transboundary and international context. The Convention notes from the outset that water is essential to sustain life and that water quality and quantity must be assured to meet basic human needs, being a prerequisite both for improved health and for sustainable development.⁵¹

3.3 Domestic Jurisdictions

More than 150 constitutions throughout the world guarantee environmental rights, particularly a clean and healthy environment.⁵² A few provisions in some of the countries may be necessary in demonstrating this point.

Angola: Article 44 (1):
All citizens shall have the right to live in a healthy and unpolluted environment

⁵⁰ Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Water Courses and International Lakes (London, 17 June 1999)
<<http://www.waterlink.net/gb/who2cf99.htm>> accessed 06/09/2022.

⁵¹ See further Art. 4 and (i).

⁵² Aguila (n. 6).

Argentina: Art. 41:

All residents enjoy the right to a healthy, balanced environment which is fit for human development.

Brazil: Art. 225:

Everyone has the right to an ecologically balanced environment, which is a public good for the people's use and is essential for a healthy life.

In fact, more than 50 of the 150 constitutions explicitly recognize the right to a clean and healthy environment including that of Angola, Argentina, Azerbaijan, Belarus, Belgium, Benin, Brazil, Bulgaria, Burkina Faso, Cameroon, Cape Verde, Chad, Chechnya, Chile, China, Colombia, Congo, Costa Rica, Croatia, Cuba, Ecuador, El Salvador, Equatorial Guinea, Eritrea (draft), Finland, Georgia, Ghana, Greece, Guatemala, Guyana, Haiti, Honduras, Hungary, India, Iran, Kazakhstan, Kuwait, Laos, Latvia, Lithuania, Macedonia, Madagascar, Malawi, Mali, Malta, Mexico, Micronesia, Mongolia, Mozambique, Namibia, Nepal, Netherlands, Nicaragua, Niger, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Russia, Sao Tome and Principe, Saudi Arabia, Seychelles, Slovakia, Slovenia, South Africa, South Korea, Spain, Sri Lanka, Suriname, Switzerland, Taiwan, Tajikistan, Tanzania, Thailand, Togo, Turkey, Turkmenistan, Uganda, Ukraine, Uzbekistan, Venezuela, Vietnam, Yugoslavia,⁵³ Zambia⁵³.

About 92 of these constitutions impose a duty on the government to prevent harm to the environment.⁵⁴ It is worthy of note that the constitutional rights granted by these constitutions are increasingly being enforced by courts. For example, in India, a series of judgments between 1996 and 2000 responded to health concerns caused by industrial pollution in Delhi.⁵⁵ The Supreme

Court of India has even gone further to issue orders to cease operations on the principle that residents were suffering health problems due to pollution.⁵⁶ In South Africa, the right to environment has been deemed justiciable.⁵⁷ In Argentina, the right to environment is deemed a subjective right entitling any person to initiate an action for environmental protection.⁵⁸ In Costa Rica, the court stated that the right to health and to the environment are necessary to ensure that the right to life is fully enjoyed.⁵⁹ United States of America has equally heard complaints about human rights and environmental abuses leading to substantial health problems in various countries. For instance, in 1993, residents of Ecuador and Peru brought actions alleging that a U.S. –based multinational oil company contaminated lands and rivers causing severe health consequences.⁶⁰ Furthermore, in 1999, in Nigeria, there was a case of violations of the rights to life and health of local communities and environmental harm resulting from the construction of the Yadana gas pipeline in Burma.⁶¹ These countries could

1991 SC 420, 1991 (1) SCC598.

⁵⁶*M. C. Mehta v. Union of India & others*, JT 1996, reprinted in 1 the Environmental Activists' Handbook at 631.

⁵⁷ Shelton (n. 13) 28.

⁵⁸ See *Kattan, Alberto and Others v. National Government, Juzgado Nacional de la Instancia en lo Contencioso administrativo Federal*. No.2, Ruling of 10 May 1983, La Ley, 1983-D, 576; *Irazu Margarita v.*

Coretroll S A, Camara Civil y Commercial de la Plata, Ruling of 10 May 1993 (available at www.eldial.com),

where it was held that the right to live in a healthy and balanced environment is a fundamental attribute of

people. And that any aggression to the environment ends up becoming a threat to life and to the psychological

and physical integrity of the person.

⁵⁹*Preidente de la sociedad Marlene S. A. v. Municipalidad de Tibas*, Sala Constitucional de la corte Supreme de

justicia. Decision No. 6918/94 of 25 Nov. 1994.

⁶⁰*Jota v. Texaco, Ind.*, 157 F. 3d 153 (2nd. Cir, 1998); *Aguinda v. Texaco*, 2000WL 122143 (Jan. 31,2000).

⁶¹*Doe v. Unocal Corp.* 67 F. Supp. 2d 1140 (C.D. Cal. 1999); in the US

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ As early as 1991, the Supreme Court interpreted the right to life guaranteed by article 21 of the Constitution

to include the right to a wholesome environment. See *Charan Lal Sahu v. Union of India*, AIR 1990 SC 1480

(1991) In a subsequent case, the Court observed that the "right to life guaranteed by article 21 includes the

right of enjoyment of pollution-free water and air for full enjoyment of life- *Subhash Kumar v. State of Bihar*, AIR

enforce environmental rights because those rights are entrenched in their constitutions.⁶²

IV. RECOGNITION AND ENFORCEMENT OF ENVIRONMENTAL RIGHTS IN NIGERIA

Under this sub-head, we shall examine the recognition of environmental rights in Nigeria and the challenges of its enforcement as fundamental rights in the country.

4.1 Recognition of Environmental Rights in Nigeria

Environmental rights though provided for in the extant constitution of Nigeria are not justiciable and cannot really help the citizens assert and enforce their environmental rights to healthy environment. A brief discussion of some of the constitutional provisions may be instructive. Section 20 of the Nigeria Constitution 1999 as amended provides: "States shall protect and improve the environment and safeguard the water, air, land, forest and wild life". Section 17 (3) (c) went further: "States shall direct its policy towards ensuring that...the health, safety and welfare of all persons in employment are safeguarded and not endangered or abused. As well intended as these provisions appear to be, in essence have been eroded by section 6(6) (C) of the same Constitution, which expressly made both sections 17(3) (c) and section 20 non-justiciable.⁶³

The argument often canvassed as reason for this is the inability of the Federal Government of Nigeria to secure material means for the enjoyment of these rights.⁶⁴ This argument has been punctured by Ajai who strongly argues that rather than the material means, the selfish interest by the State in exploiting the natural resources of the indigenous people in a destructive and unsustainable way accounted for the non-entrenchment of environmental rights as fundamental human rights in Nigeria.⁶⁵ The other

reason is the priority placed on maximization of profit by oil companies rather than the wellbeing of the people and their environment.⁶⁶ Ajomo was more explicit as he opined thus, "...to them (Oil Companies), the imminence of man's self-destruction from unprecedented degeneration of hazardous waste products is secondary to the demand of concerned citizens for credible pollution control."⁶⁷

It is sad to observe that Nigeria is not listed among the over 150 nations that have entrenched environmental rights as an enforceable fundamental rights, Nigeria must arise from its lack of political will and complacency and join the league of right thinking nations to make our environment pollution-free and safe for humanity.

The second window of opportunity open to citizens of Nigeria in prosecuting their fundamental human rights to a healthy and safe environment is the regional instrument, the African Charter on Human and Peoples' Rights which came into existence on the 19th January 1981 through the Organization of African Unity (O.A.U) (now the African Union (A.U.)). The Charter became part of Nigerian Law by virtue of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap. 10, 1983. The Charter makes provision for the three generations of human rights by making provisions for certain political and civil rights, collective social and economic rights, and the right to development which embraces among others, right to security and the right to a general satisfactory environment.⁶⁸ Some of the relevant provisions of the Charter to the paper are Article 22, which states:

All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.

Article 24 adds:

and Third Worlds Problems" *University of Benin Law Journal (UB.L.J)* (Vol.2 issue1 1995) 41-48.

⁶⁶ Ibid.

⁶⁷ MA Ajomo, "An Examination of Environmental Laws", in *Environmental Law and Sustainable Development in Nigeria*, MA. Ajomo and O Adewale, (ed. Lagos: NIALS/British Council, 1994).

⁶⁸ Atsegbua (n. 1) 199.

⁶² In the US, jurisdiction over the matters are also based on the Federal Alien Tort Claim Statute, 28 U.S.C. 1350

(1789). It informed why citizens of other countries could enforce it in the US.

⁶³ Asegbua (n. 1) 175.

⁶⁴ Ibid, 179

⁶⁵ Wale Ajai, "Archiving Environmental Protection through the Vehicle of Human Rights: Some Conceptual Legal

All peoples shall have the right to a general satisfactory environment favourable to their development and States shall have the duty, individually or collectively to ensure the exercise of the right to development.

This charter as earlier submitted is now an integral part of Nigeria's legal system with full force of law and enforcement machinery. Section 1 of the Act⁶⁹ provides:

As from the commencement of this Act, the provisions of the African Charter on Human and Peoples' Rights which are set out in the schedule of this Act shall, subject as thereunder provided have force of law in Nigeria and shall be given full recognition and effect and be applied by all authorities and persons, exercising legislative, executive or judicial powers in Nigeria.

Consequent upon the provision above, Nigerians can bring an action in any of the High Courts in the country to challenge alleged breaches of the Charter.⁷⁰ In the celebrated case of General Sani Abacha v. Gani Fawehinmi,⁷¹ where chief Fawehinmi, a lawyer and human rights activists was arrested and detained for four days. He filed an application for his release at the Federal High Court, Lagos under the Fundamental Rights (Enforcement Procedure) Rules 1979 based on the Fundamental Rights guaranteed under the 1979 Constitution and the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap.10, Laws of the Federation of Nigeria, 1990. It was held by the Supreme Court on appeal that the African Charter which is incorporated into our municipal law by virtue of the Human and Peoples Rights (Ratification and Enforcement) Act, Cap 10, Laws of the Federation of Nigeria, 1990, becomes binding and our courts must give effect to it like all other laws falling within the judicial powers of the courts. The Court went further to hold that individuals can rely on the Charter to enforce their rights protected under the Charter thus:

The Charter contains a number of rights recognized and guaranteed to every individual..., these and other Articles of the Charter show that individuals are assured rights which they can seek to protect from

⁶⁹ African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap. 10, 1983.

⁷⁰ Atsegbua (n. 1) 200. The High Court has jurisdiction under section 255 of the 1999 Constitution as amended to

entertain such cases.

⁷¹ (2000) Vol. 77 LRCN 1254-1401.

being violated and if violated to seek appropriate remedies. It is in the national courts such protection and remedies can be sought and if the cause is established, enforced...in other words, those individuals' rights are justiciable in Nigerian Courts.

Ejiwunmi, JSC pronouncement is more apt:

The African Charter on Human and Peoples' Rights, having been passed' into our municipal law, our domestic courts certainly have 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.

Despite the above judgment, it should be noted that the Charter is not superior to the Nigerian Constitution, therefore, any conflict between section 20 of the Constitution and Article 20 of the African Charter, will definitely be resolved in favour of the Constitution.⁷² It would have been different if the country has followed the over 150 countries that have environmental rights enshrined in their constitutions as enforceable rights⁷³ or section 20 of the Nigeria's Constitution be made justiciable to overcome the challenges encountered by citizens in the prosecution of these rights in courts.

4.2 Enforcement of Environmental Rights in Nigeria and Challenges

Environmental rights contained in the Nigerian Constitution, particularly section 20, cannot be enforced in view of a counter provision in section (6)(6)(c) of the Constitution 1999 as amended. Section (6)(6) (c) makes section 20 and all other provisions contained in chapter 2 of that constitution non-justiciable as they are matters relating to fundamental objectives and directive principles of state policies. The African charter on Human and People's Rights domesticated and made enforceable as a domestic law is challenged by judicial attitudes and technicalities. Some of the challenges inhibiting the utilization of this veritable instrument in Nigeriaborders on jurisdictional issues, locus standi, pre-action notice and limitation of action just to mention but a few. These challenges shall be discussed in brief detail in the paper.

⁷² Atsegbua (n. 1) 204.

⁷³ See Shelton (n. 13)26.

4.2.1 Jurisdictional Issues

Jurisdiction is a very fundamental and priceless commodity in the judicial process.⁷⁴ It has been described as the fulcrum, Centre piece, or the main pillar upon which the validity of any decision of any court stands and around which other issues relate.⁷⁵ It cannot be assumed or implied, it cannot also be conferred by consent or acquiescence of parties.⁷⁶ This definition was endorsed and adopted in Nigeria by His Lordship, Chukwuma-Eneh, JSC in *Okonkwo v. Ngige & Ors.*⁷⁷ furthermore, it is said to be the life blood or life wire of any adjudication, once a court or tribunal lacks it, any proceedings it embarked upon, however brilliantly conducted will be a nullity.⁷⁸ We understand it to be the limits imposed on the power of a validly constituted court to hear and determine issues between persons seeking to avail themselves of its process by reference to the subject matter of the issues or to the persons between whom the issues are founded or to the kind of relief sought.⁷⁹

Its importance was vividly stated in the case of *CBN v. Okojie*⁸⁰ per Rhodes-Vivour, JSC thus:

Jurisdiction, when raised in a court is a very serious matter.

It is the basis on which a case is tried. Where a court lacks jurisdiction and it goes ahead to hear and decide a matter, no matter how well the case is conducted and decided it would in the end amount to a nullity.

For proper exercise of jurisdiction, it is equally important to adhere to the conditions laid down by the Supreme Court in the case of *Ohakim & Anor. v. Agbaso & Ors*⁸¹ which include:

(a) Proper constitution of the court as regards the number or qualification of its membership,⁸²

(b) Subject-matter must be within its jurisdiction;⁸³

(c) Conditions precedent to exercise jurisdiction must be fulfilled;⁸⁴

(d) Case must be brought by due process of the law.⁸⁵

In determining jurisdiction, the plaintiff's claim as disclosed in his writ of summons and or as endorsed in the statement of claim is essential.⁸⁶

From the foregoing the essence of jurisdiction is the prescription of limits the court could exercise its powers. However, we understand that under our judicial jurisprudence, the High Court of a State has unlimited jurisdiction to hear and determine any civil and criminal proceedings under any law of the state.⁸⁷ Surprisingly, the High Courts in Nigeria, particularly, when it comes to enforcement of the right to healthy and pollution-free environment have:

(a) Shown lack of boldness in positively exercising jurisdiction to try the cases. This has been attributed to either fear of consequences from the powers that appointed them or wrong interpretations of the provisions relating to jurisdiction. In fact, the courts' pronouncements on environmental rights issues have been regrettably inconsistent.⁸⁸ A few exceptions include the pronouncement by a Federal High Judge in the case of *Mr. Jonah Gbemre v. Shell Petroleum Development Company Nigeria Ltd, Nigerian National Petroleum Corporation and Attorney General of the Federation*,⁸⁹ which is highly commendable. The case was brought by 8 communities in the Niger Delta, Rumuuekpe, Immiringi, Gbarani, Erema, Okela-Ohi, Idama, Iweherekan and Eket. At the Federal High Court Benin City against Shell, Exxon Mobil, Chevron Texaco, Total fina Elf and Agip Joint Venture

⁷⁴ Halbury's Laws of England (4th Edition para. 717,323)

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ (2007) Vol.151 LRCN 1 at 21, KZ

⁷⁸ AE.Okposin & O Aihie, "Jurisdiction as an instrument for Judicial Control of Administrative Actions, Obafemi

Awolowo University Law Journal (OAULJ VOL.4 (2) 2020) 209.

⁷⁹ *Yarrdua & Ors. v Yandoma & Ors.* (2015) Vol.241 LRCN 150 at 191 par.PU

⁸⁰ (2015) Vol.250 LRCN 44 at 76 par. FK.

⁸¹ (2011) ALL FWLR (PT.553) 1806 PP.1832 PARAS G-D.

⁸² *MPP v. INEC & Ors.* (2015) Vol. 250 LRCN 1.

⁸³ *Galadima v. Tambai* (2000) 79 LRCN 2107.

⁸⁴ *Kayili v. Yilbuk & Ors* (2015) Vol.244 LRCN 108.

⁸⁵ *Madukolu & Ors v. Nkemdilim* (1962) 2 SCNLR 341; (1992) 1 ALLNLR (Pt. 4) 587; for more detail reading on the

subject see Okposin & Ahie (n. 78).

⁸⁶ *Tukur v. Govt of Gongola State* (No. 2) (1989

⁸⁷ See section 272 of the 1999 Constitution of Nigeria as amended.

⁸⁸ See the cases of *Shell Petroleum Development Company (Nigeria) Ltd v. Abel Isaiah* (2001) 5 S. C. (Pt. 11) 1; *Shell Petroleum Development Company of Nigeria Ltd v. Chief G.B.A Tiebo V11 & Ors.* (2005) 9 M.J.S.C.158

⁸⁹ Unreported suit No. FHC/B/CS/53/05.

Companies, the NNPC and the Nigerian Government to stop gas flaring. The court because of the copious unwieldy list of members, granted leave to the applicant (Mr. Gbemre) to commence the proceedings for himself and as representing the other members. The application sought among others an order enforcing or securing the enforcement of their fundamental rights to life and dignity of the human person, as provided for by sections 33(1) and 34(1) of the 1999 Constitution, and Articles 4, 16 and 24 of the African Charter on Human and Peoples Rights (Ratifications and Enforcement) Act; That the actions of the Respondents in continuing to flare gas in applicant's community constitutes a violation of their fundamental rights guaranteed in the above mentioned laws and that the failure of the 2nd Respondent's to carry out environmental impact assessments in the affected communities on the effects of their gas flaring activities was a violation of section 2(2) of the Environmental Impact Assessment Act. The court granted the application of the applicants and held that gas flaring is a gross violation of the constitutionally-guaranteed rights to life and dignity which include the right to a clean poison-free, pollution-free healthy environment. This signal a positive footprint in our judicial jurisprudence, but whether it will be followed is another question. More so, as Nigeria has not taken a bold step in enacting environmental rights as a justiciable right in tis Constitution.

(b) The technicality on the issue of locus standi /Representative Capacity.

The law as it stands only allows a person whose property interest has been damaged due to environmental pollution to bring an action, but not a group of citizens or Non- Governmental - Organization (NGOs). This is worrisome because in some cases such people with proprietary interest may fail to sue and if regulatory agencies are not informed or where they are informed, but failed to act, irredeemable damage to the environment may result or the offender may go unpunished and similar behavior undeterred. This is in spite of the crucial role played by these monitors of environment (NGOs). By so doing, citizens may be prevented by the technical application of locus standi from bringing litigation through this vanguard of our environment: on ground that they do not have direct interest other than that of their special environmental consciousness and common interest in the environment with other citizens. The current trend in Nigeria is that to have a standing to sue, the plaintiff must show or exhibit 'sufficient interest', that is an interest which is peculiar to the

plaintiff and not an interest which he shares in common with general members of the public⁹⁰. The paper submits that rather than use locus standi/Representative Capacity as a barrier, the court should adopt the approach of justice C. V. Nwokorie of the Federal High Court, Benin City in the case of Jonah Gbemre v. Shell PDC Ltd and Ors (supra), where the court granted leave to the applicant to institute the case in a representative capacity for himself and for each member of the Iwerekkan Community in Delta State of Nigeria. This decision accords with the trend in other jurisdictions.

In the USA, individuals and groups have generally been able to meet the requirement if they can show an injury to their aesthetic, conservation or recreational interests.⁹¹

In France, the administrative tribunal of Rouen held that an association for the promotion of tourism and the protection of nature could present evidence of a sufficient interest, given its object as defined in its statutes, to contest an authorization for waste treatment plant. It also held that labour union of companies had a right to be heard.⁹²

In Kenya, the court permitted the plaintiff on his own behalf and on behalf of his community to bring a suit to bar the agency from removing or dislocating a rare and endangered species from its natural habitat.⁹³

(c) Pre-Action Notice and Limitation of Action/Statute Bar

A pre-action notice connotes some form of legal notification or information required by law or imparted by operation of law, contained in an enactment, agreement or contract which requires compliance by the person who is under legal duty to put on notice the person to be notified before the

⁹⁰ See *Shell Petroleum Development Company Nig Ltd v. Chief Otoko and others* (1990)6 NWLR (pt. 159) 693; *Adediran and Anor v. Interland Transport Ltd.* (1991)9 NWLR (pt.214) 155; *Amos v. Shell BP P.D.C. Ltd* (1974) 4 ECSR.48.

⁹¹ *SCRAP v. U.S.*, 412 U.S 669 (1973).

⁹² See Tribunal adminstratif deRouen, 8 June 1993. R.J.E.1994/1, p 61

⁹³ See *Abdikadir Sheika Hassan and others v. Kenya Wildlife Service*, High Court of Kenya, Case 2059/1996.

commencement of any legal action against the person⁹⁴

The implication of non-compliance was underscored in the case of Mobil Producing (Nig) Unlimited v. LASEPA, FEBA & ORS.⁹⁵ In that case the Court of Appeal upheld the fatality of the failure on the part of the appellant to serve the statutory pre-action notice under section 30(2) of the FEBA Act on the second respondent at the instance of one of the fourth set of defendants/respondents. However, on appeal to the supreme court, the apex court held inter-alia, that the service of a pre-action notice is at best a procedural requirement and not an issue of substantive law on which the right of the plaintiff depend. It held that it is not an integral part of the process of initiating proceedings and that a party who has served a pre-action notice is not obliged to commence proceedings at all. The non-compliance does not therefore raise the question of jurisdiction which can be raised at any time which if resolved in favour of the defendant would render the entire proceedings a nullity. It does not abrogate the right of a plaintiff to approach the court or defeat its cause of action; it merely puts the jurisdiction of the court to hear the matter on hold pending compliance with the pre-condition. Thus, it is a mere irregularity, which merely renders an action incompetent but does not totally affect the jurisdiction of the court. Consequently, the irregularity can be waived by a defendant who fails to raise it by motion or plead it in the statement of defence.⁹⁶

Despite the Supreme Court pronouncement above, the courts have given conflicting judgment on this issue that has stifle the smooth prosecution of environmental right cases.⁹⁷

⁹⁴ Unreported decision of Justice O.A. Shogbola of National Industrial Court, Abuja, suit No. NIC/ABJ/330/2012:

National Union of Hotels and Personal services v. Arewa Hotels (Development) Ltd & 2 Ors delivered on 13th

October 2014.

⁹⁵ (2002) 18 NWLR (pt. 798) 1.

⁹⁶ Ibid.

⁹⁷ See the cases of *AGIP NIG v. AGIP PETROL INTL* (2010) ALL FWLR (PT. 520) 119, where the court held that where

by a rule of court, the doing of an act of taking a procedural step is a condition precedent to the hearing of a

We strongly argue that the court should at all times bear in mind the admonition of Karibi-white JSC in the case of *AMADI V NNPC*⁹⁸, where he held thus:

In my opinion a legitimate regulation of access to courts should not be directed at impeding ready access to the courts. There is no provision in the constitution for special privileges to any class or category of persons. Any statutory provision aimed at the protection of any class of persons from the exercise of the courts of its jurisdiction to determine the right of another citizen seems to me inconsistent with the provisions of section 6(6)(b) of the constitution.

4.2.2 The Challenge of Burden of Proof and Remedies

Burden of proof is the standard imposed by the law for a party seeking to prove his case to satisfy before a remedy.⁹⁹ In our legal jurisprudence, the burden of proof in a civil matter¹⁰⁰ is different from criminal one.¹⁰¹ It is usually on him who desires the court to make any pronouncement in his favour as to any legal rights on the existence of facts to which he asserts.¹⁰² In environmental pollution cases, where for instance the claim is for damaged to property, the plaintiff must prove ownership of the property damaged.¹⁰³ For loss or destruction to farm crops, farm land and economic trees, the court held that the plaintiff must adduce sufficient evidence to show: the name, nature and number of economic trees

case, such rule must be strictly followed and obeyed. Non-compliance with a condition precedent is not a mere technical rule of procedure, it goes to the root of the case. The court will not treat it as an irregularity but as

something nullifying the entire proceedings; in the case of *NNPC V EVWORI* (2007) ALL FWLR (PT369)1324 AT

1345, the court held that a pre-action notice is a condition precedent that must be done in a particular case

before one is entitled to institute an action.

⁹⁸ (2000) 10NWLR (pt. 674) 76

⁹⁹ See <https://www.cornell.edu> wex, accessed 6/03/2023.

¹⁰⁰ See *Olujinle v. Adeagbo* (1988) 9 NWLR (pt. 473) 401.

¹⁰¹ It is always on the prosecution.

¹⁰² *Adams v. L.S.D.P.C.* (2002) 5NWLR (pt. 656) 291.

¹⁰³ (1992) 1 NWLR (pt. 219) 548

allegedly destroyed.¹⁰⁴ In the case of negligence or nuisance, the ingredients of the offence must be established.¹⁰⁵

The challenge encountered by victims of environmental pollution as regard proof and remedy can best be demonstrated in the case of Shell Petroleum Development Company of Nigeria Ltd v Chief G.B.A. Tiebo VII & Ors.¹⁰⁶ The Plaintiffs commenced action at the Yenagoa High Court claiming the sum of N64,146,000.00 as special and general damages arising from the defendant's negligence. This was as result of crude oil spill on the lands, creeks, lakes and shrines of the plaintiff from the defendant's oil mining activities. The plaintiff claimed specific sums as special damages for losses arising from pollution of the fishponds, damages to communal fishing nets and raffia palms. They also claimed specific sums as general damages. The trial court awarded damages of N400,000.00 and N600,000.00 as general damages for loss of raffia palms and loss of drinking water respectively; N5million as general damages and N1,000,000.00 as costs to the plaintiffs. The defendants appeal to the Court of Appeal was dismissed. On further appeal to the Supreme Court, it was held that the plaintiff could not strictly prove the loss to raffia palms, a cost of purchasing alternative drinking water and water used for domestic purposes and queried the trial court award of N400,000.00 and N600,000.00 damages respectively for these. However, the Supreme Court did not interfere with the award of N5 Million general damages and N1 Million cost. Thus, the challenge of burden of proof lies on the claim and proof.

V. RECOMMENDATIONS

Environmental Rights in Nigeria has been challenged by factors highlighted in the article including lack of enforceable constitutional provision, judicial attitude and burden of proof. However, these challenges are not unsurmountable as they can really be addressed through the following suggested ways.

1. On lack of Constitutional Enforceable Provisions. The Nigeria National Assembly or the Federal Executive Council could initiate a Bill to amend section (6(6)(C) of the Constitution by allowing provisions relating to the whole of chapter 11 or specifically section 20 to be justiciable. Over 100 countries of the world have made Environmental Rights

Enforceable Constitutional Rights, Nigeria can follow suit.

Furthermore, in the mean time before the Constitutional amendment our judges could take a cue from the Federal High Court Judge, Honourable Justice C. V. Nwokorie, then Sitting at the Benin Division in *Jonah Gbemre v. Shell PDC Ltd and Ors.*¹⁰⁷ The Judge was bold in applying the provisions of African Charter on Human and Peoples' Right to the case and linking the fundamental rights to life and human dignity as provided by sections 33 (1) and 34(1) of the 1999 Constitution of Nigeria to inevitably include the rights to clean, poison and pollution-free healthy environment. That judgment is highly commendable and demonstrated judicial pragmatism that should be followed.

2. Judicial Attitude. Most judges that have been saddled with environmental rights cases in Nigeria lack courage in assuming jurisdiction and has rather allow technicality to erode their sacred power/responsibility. The case of *Allar Iron v. Shell B.P Development Company (Nigeria) Limited*¹⁰⁸ best illustrated this point. The court in this case denied the applicant the relief of an injunction in holding thus: "to grant the injunction would amount to asking the defendant to stop operation in the area...and cause the stoppage of trade... mineral which is the main source of the country's revenue". Such consideration robbed the victim of their remedy and discourage aggrieved party from seeking redress from court. The court in overcoming such parochial consideration should balance the competing interest and should consider the effect of poisonous and polluted air via the constitutional right to life and dignity of the human person as was done in the *Gbemre's case*(supra).
3. The Burden of Proof. The problem of proof especially in environmental rights cases is really onerous. This may not be unconnected with the modern technology employed in oil exploitation and therefore, the need for sufficient technical know-how by litigants and their lawyers. While general damages may not be so much of a challenge, the same cannot be said of special damages that requires strict proof.¹⁰⁹ However, to overcome this burden,

¹⁰⁴ (1992) 2 NWLR (pt.219) 548

¹⁰⁵ *Anya v. Concorde Hotel* (2003) 2 MJSC 160.

¹⁰⁶ (2005) 9 M.J.S.C 158.

¹⁰⁷ (2005) suit No. FHC/B/CS/53/05.

¹⁰⁸ Suit No. W/89/71 Warri High Court 26/11/73 (unreported)

¹⁰⁹ See the case of *Uhunmwangbo v.*

Uhunmwangbo (1992) 2 NWLR (pt. 226) 709

the court should resort to the presumption of res ipsa loquitur and the Rule in Rylands v. Fletcher. In the case of Royal Ade v. National Oil,¹¹⁰ Ejiwunmi J.S.C held that the presumption of res ipsa loquitur can be used to fasten liability on the defendant. Also in the case of Machine v. Shell¹¹¹ the court held the defendant strictly liable without proof drawing inference of negligence from the rule laid down in Ryland v.Fletcher.

These principles discussed above lighten the burden on the victim and enables justice to done especially when the facts beaming on causation and the care exercised by the defendant are at the outset legally unknown to the plaintiff and ought to be within the knowledge of the defendant.

¹¹⁰ (1975) 9-11 S.C. 155

¹¹¹ (1975) 9-11 S.C. 155