

RIGHT TO A HEALTHY ENVIRONMENT IN NIGERIA AND OTHER JURISDICTIONS: A LEGAL ASSESSMENT

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ABSTRACT: *Right to a healthy environment is an inalienable right of man because it is a fundamental human right. The environment is devastated by anthropogenic and natural factors to the extent that man no longer feels safe, as his health and general wellbeing are under unspeakable threats. His right to a clean environment is therefore implicit in right to life since a clean and hazards-free environment determines man's existence to freely and with sound health harness the numerous natural resources he is endowed with, and also enjoy other rights. The right to life implying the right to live in a clean environment forms the basis of the existentiality of the entire man's rights duly recognized and protected by law both at the international and domestic sphere, such as the African Charter on Human and Peoples' Rights of 1981, the Rio Conference of 1992, and the Constitutions and Bill of Rights of States across the globe, including Nigeria, with provisions on the right to a clean and healthy environment as a right to life. The courts of various states have also provided legal redresses and remedies to victims of violation of environmental rights and severally interpreted the right to life to include the right to a clean environment and well being. Nigeria has a constitutional provision on the right to life under section 33 of the 1999 constitution of the Federal Republic of Nigeria, as part of the numerous fundamental rights provided for under chapter IV of the said constitution. There are still other provisions on environmental protection in Nigeria, particularly section 20 of the constitution. This work spotlights the rights to health and right to life in Nigeria, particularly as it relates to environmental protection in Nigeria, pointing out the deficiencies, weakness or otherwise, if any, in the provisions of the Nigeria Constitution and suggesting remedies and pathways. It also considers the constitutional provisions and judicial decisions of other jurisdictions within and outside Africa, on the right to a healthy environment and also gives a brief comparative analysis of the legal positions in Nigeria and that of other jurisdictions, ostensibly to ascertain whether or not the Nigerian legal pendulum is tilted towards international best standards and practices.*

KEYWORDS: environmental protection, healthy environment, right to life, right to health, human right and environment.

INTRODUCTION

The right to a clean environment and sustainable development is fundamental and closely connected to the right to health and well-being¹. It is of fundamental importance to note that there is a strong connection between the quality of the environment and the health of the people living and/or exposed to those environments². Thus, a right to a clean and healthy environment is the right of everyone to the conservation of his or her environment, free from the degrading effects of pollution, and other human activities³. It has been argued that recognition that human survival depends upon a safe and healthy environment, places the claim of the right to a clean and healthy environment fully on the human rights agenda⁴, and that environmental rights are human rights, as people's livelihoods, their health, and sometimes their very existence depend upon the quality of and their access to the surrounding environment as well as the recognition of their rights to information, participation, security and redress⁵. It also includes the right to food, water, sanitation, property, private life, culture and non-discrimination⁶.

In Nigeria, the constitution of 1999⁷ as amended, recognized that every citizen of Nigeria has a right to life which is only facilitated by a safe and healthy environment. In Nigeria, the African Charter on Human and peoples' right has been enacted as a local law and Nigeria is a signatory to some other International treaties and conventions on the protection of the environment⁸. This work spotlights the relevance of the various constitutional provisions in selected states within and outside Africa, with respect to the right to a healthy environment in those states pointing out their constitutional and judicial differences and similarities in these states with Nigeria. It also exposes any provision of the Nigerian Constitution that may militate against enforcement of right to a healthy environment in Nigeria, with the view of revealing any other alternative pathway available to the citizens of Nigeria, to ensure that their rights to a healthful environment are recognized and not eroded.

Nigerian Constitution and the Right to a Protected Environment

The Constitution of Federal Republic of Nigeria, which came into force on May 29, 1999 and amended in 2011, specifically makes environmental protection a state objective and indeed provides for it in the chapter two on fundamental objectives and Directive Principles of State Policy⁹. Section 20 expressly contains provision on environmental protection and states as follows:

The state shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria¹⁰.

¹ Code of Ethics for Environmental Journalist <<http://www.oneworld.org/sleif/ethics.htm>> accessed 20th September, 2019.

² *Ibid*

³ L. Atsegbua et al *Environmental Law in Nigeria: The Theory and Practice* (Benin: Ambik Press, 2010), p.167

⁴ *Ibid*

⁵ Environmental Rights are human rights <<https://www.foei.org/what-we-do/environmental-rights-human-rights>> accessed 20th September, 2019.

⁶ *Ibid*

⁷ Cap C23 LFN, 2004 S.33(1)

⁸ I. Ehieghelua, *Op cit* p.30

⁹ Cap C23 LFN, 2004, Chapter II

¹⁰ S.20 *Ibid*

The main aim of section 20 is to ensure a healthy environment for Nigerian citizens¹¹. The protection of the environment is essential for the realization of human rights because human rights can only be enjoyed in an environment that is free of pollution¹². Thus, safeguarding the air, water, land and wild life as stated in section 20 would enhance a pollution free environment. 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 whole¹³. It laid down the basic foundation for environmental legislation and the government's responsibility in Nigeria. Thus, Section 13 of chapter 11 states that:

It should be the duty and responsibility of all organs of government, and all authorities and persons exercising legislative, executive or judicial powers, to conform to, observe and apply the provision of this chapter of this constitution¹⁴.

Section 17(2) 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 the community, shall be prevented¹⁵.

Section 17(2)(d) clearly shows that where a natural resources is been exploited and the environmental consequences to the host community outweigh its benefits, the government is obliged to stop its exploitation¹⁶. 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 environment¹⁷.

Section 24(e) of the Constitution makes it clear that the responsibility of 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 environment¹⁸. This 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 order¹⁹. While doing this, the citizen is making positive and useful contribution to the advancement, progress and well-being of the community where he resides²⁰. The above two paragraphs clearly explain the duty owed by a citizen to the Nigerian nation as regards issues of environmental protection. It behooves on every citizen to care for the protection and improvement of the natural environment.

However, inspite of the laudable provision of section 20 in the constitution, the question is whether an individual or aggrieved person has a right or the locus to approach the court to

¹¹ G. Ogbodo "Environmental Protection in Nigeria: Two Decades after Koko Incidence" (2010) 15(1) Annual Survey of International and Comparative Law, 1, 18.

¹² A.B. Abdulkadir & A.O. Sambo, "Human rights and Environmental Protection: The Nigerian Constitution Examined" (2009) Journal of food, Drug and Health Law 61, 73.

¹³ D.S Sengar, "Environmental Law" (India: Prentice Hall, 2007) p.7

¹⁴ Cap. C. 23 LFN, 2004, S.13

¹⁵ *Ibid* S.17(2)(d)

¹⁶ D.S Sengar, *Op.cit*, p.7

¹⁷ The Indian 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.

¹⁸ Cap C23, 2004 S.24 (e)

¹⁹ *Ibid*

²⁰ *Ibid* S.24(d)

enforce the provision of section 20. In answering this it is pertinent to examine the provision of section 6(6)(c) of the Constitution which states as follows:

The judicial powers vested in accordance with the foregoing provisions of this section shall not except as otherwise provide by this constitution, extend to any issue or question as to whether any act or omission by any judicial decision is in conformity with the fundamental objectives and directive provides principles of state policy set out in chapter 11 of this constitution²¹.

This provision of section 6(6)(c) has been interpreted as denying the court the power to adjudicate on any issue having to do with the enforceability of the provision of section 20 of the constitution²², which is, protection of the environment. This is because section 20 also falls under the provisions of fundamental objectives and directive principles of state policy set out in chapter two of the constitution which by section 6(6)(c) are generally not enforceable. This provision was judicially interpreted in the case of *Okogie (Trustees of Roman Catholic Schools) and others v. Attorney-General Lagos State*²³. This case was based and decided on the similar provision of 1979 Nigerian constitution. The issue in this case was on the plaintiffs' fundamental right under section 32(2) of the 1979 Constitution to own, set up and manage private primary and secondary schools for the purpose of imparting ideas and information, and the constitutional responsibility of the Lagos State government to guarantee equal and adequate educational activities at all levels under section 18(1), chapter 11 of the 1979 constitution. The Court of Appeal, while considering the constitutional status of the said chapter states as follows:

While section 13 of the constitution makes it a duty and responsibility of the judiciary among other organs of government, to conform to and apply the provisions of chapter 11, section 6(6)(c) of the same constitution makes it clear that no court has jurisdiction to pronounce on any decision as to whether any organ of government has acted or is acting in conformity with the fundamental objectives and Directives Principles of state policy. It is clear therefore that section 13 has not made chapter 11 of the constitution justiciable. I am of the opinion that the obligation of the judiciary to observe the provisions of chapter 11 is limited to interpreting the general provisions of constitution or any other statute in such a way that the provisions of the chapters are observed, but this is subject to the express provisions of the constitution²⁴.

The provision of section 6(6)(c) serves as an exclusive clause ousting the jurisdiction of the court with regards to the justiciability of the provision of section 20 and negatives the goal of National policy on environment to protect and conserve the water, air, land and the natural resources²⁵. The combined reading of section 20 and section 6(6)(c) of the Nigerian Constitution 1999, suggest that the constitution does not include any express provision for the right to a healthful environment²⁶. The implication of this is that, activities likely to cause environmental devastations and human rights abuse cannot be challenged in the court because it is not

²¹ S.6(b)(c) *Ibid*

²² M.A. Olong, "Human Rights the Environment and Sustainable Development: Nigerian Women's Experiences" (2012) 5(1) *Journal of Politics and Law* 100,108.

²³ (1981)2 *NCLR* 337

²⁴ *Ibid*

²⁵ Paragraph 1 of the National Policy on Environment for Nigeria 1988 revised in 1999.

²⁶ A.B. Abdulkadir, "The Right to a Healthful Environment in Nigeria: Review of Alternative Pathways to Environmental Justice in Nigeria" (2014)3: 1 *Afe Babalola University Journal of Sustainable Development, Law and Policy* 125

enforceable²⁷. Thus, the non-justiciability of the provision of section 20 operates as an impediment to the realization of the right to a healthful environment in Nigeria because the court through which the enforceability of section 20 could be secured has been denied the power to entertain any question concerning its violation²⁸.

Right to Life

The right to environment, being a global matter, is recognized and policed by Humanitarian Law²⁹. The right to environment, in so far as it related directly to the existence of man and his survival, occupies the same position and importance as the constitutional right to life³⁰. This is because a poor, dirty and putrid environment can affect the health of the individual and result in subsequent death³¹. Hence there is no doubt that polluted environment 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 environment³². 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 life³³. Section 33(1) of the Nigerian Constitution provides as earlier posited that ‘every person has a right to life’³⁴. Thus, a person’s right to life is breached when as a result of a polluted and degraded environment his life is cut short. The duty to protect life rests squarely on the state, and this duty encompasses the obligation to prevent situation that might imperil human life³⁵. It follows therefore, that this right is violated when environmental hazards are created by the activities of the states or entities under its jurisdiction³⁶. The state is not only obliged to refrain from taking life intentionally, but also to take adequate steps to safeguard it³⁷.

Furthermore, the right to life being the most important of all human rights implies the right to live without deleterious invasion of pollution, environmental degradation and ecological imbalances as posited in *M.C. Mehta v. Union of India*³⁸. 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 environment³⁹. 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 life⁴⁰. While the term ‘right to life has not been elaborated under ICCPR, broadly, it includes rights to food, shelter, clothing, education, medical care and safe and decent environment.

²⁷ *Ibid*

²⁸ *Ibid*

²⁹ C.A, Omaka, “Imperativeness of Insertion of Environmental Rights as a Fundamental right in the Constitution of the Federal Republic of Nigeria, 2013, Vol. 1 *ESUJ PPL* 158

³⁰ *Ibid*

³¹ *Ibid*

³² H.O Agrawal, “*International Law and Human Right*” (Allahabad: Central Law Publication, 2013) p.620

³³ *Ibid*

³⁴ Cap C3, LFN, 2004

³⁵ L Atsegbua, *et al*, *Op.cit*, p.173

³⁶ *Ibid*

³⁷ *Ibid*

³⁸ *Supra*. 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. Danvodher Rao v. Municipal Corporation, Hyderabad* AIR 1987 AO 171, Supreme Court affirmed and held again that environmental pollution undoubtedly amounts to violation of article 21 regarding right to life

³⁹ Article 6(1) ICCPR 1966,

⁴⁰ *A.P. Pollution Central Board II v Prof. M.C. Nayudu* (2000) SOL case No. 673

Maurice Sunken *et al*, takes the view that from the environmental law perspective, the most important substantive right is the right to life⁴¹. 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 protection⁴². The right to life may be intrigued when circumstances such as pollution endanger health⁴³. In *Guerra v. Italy*⁴⁴, Judge Jambrek opined that states might violate the right to life by withholding information about circumstances which forseably present a risk of danger to health and physical integrity of people (even where these circumstances are created by private commercial activities, and that the development of implied rights associated with the right to life might include the right to an environment free from health-threatening pollution⁴⁵.

In the case of *Jonah Gbemre v. SPDC*⁴⁶, on issue of gas flaring, the Federal High Court ordered the oil companies and their workers to stop gas flaring in the Niger Delta as it violates guaranteed constitutional rights to life and dignity. The judge also held as follows:

- (a) That Mr. Jonah Gbemre had authority to represent himself and the community (Iwherekan Community in Delta State);
- (b) That the fundamental rights to life and dignity of the human person as guaranteed by section 33 and 34 respectively of the 1999 constitution inevitably includes the right to clean, poison-free, pollution free healthy environment;
- (c) That the respondents continuous acts of gas flaring amounted to a gross violation of their (the community) fundamental rights to life (including healthy environment) and dignity of human person as enshrined in the constitution;
- (d) That failure of the respondents to carry out Environmental Impact Assessments in the applicant's community amounted to a clear violation of their human rights;
- (e) The court, apart from holding that specific sections of Associated Gas Re-injection Act and of the Regulations made under it, were inconsistent with the applicant's rights to life and dignity guaranteed under the constitution, also declared that the above law was inconsistent with the African Charter on Human and peoples' Rights (Ratification and Enforcement) Act.⁴⁷

Note that this decision by the Federal High Court follows the unprecedented ruling given by the African commission on Human and Peoples Right, in the case of the *Social and Economic Rights Action Centre for Economic and Social Rights v. Nigeria*⁴⁸, where Nigeria was found to have breached the rights to environment.

Furthermore, in the case of *Lopez Ostra v. Spain*⁴⁹ 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. A similar decision was made by the Inter- American Commission on Human Right in *Yaomi Indians v. Brazil*⁵⁰, where it was held that Brazil had violated the Yaomi Indians' right to life by not taking measures to prevent the environmental damage.

⁴¹ M. Sunken, *et al*, "Source Book on Environmental Law" (London, Cavandish Publication Ltd, 2002) p.854.

⁴² *Ibid*

⁴³ *Consumer Education and Research v. Union of India*, AIR 1995 SC 922

⁴⁴ *Guerra & Others v Italy* (1998) 26 EHRR, 257

⁴⁵ *Ibid*

⁴⁶ *Supra*

⁴⁷ *Ibid*

⁴⁸ Comm. No. 155/96 (2001)

⁴⁹ 303-C, Eur.C.H.R. (Ser. A) 1994

⁵⁰ Inter-Amer. C.H.R 7615 OEA/Ser. L v./11/66 Doc. 10 Rev 1985(1)

From the foregoing, therefore, one would say that, it has rightly been pointed out that the right of private individuals or communities to be guaranteed a decent and safe environment is one of the newer rubrics of human rights law.

Environmental Protection and the right to Freedom of Religion

The right to freedom of religion is a right available to every human being by virtue of being human. The right has been codified in various international human rights laws including conventions and treaties. The 1999 Constitution⁵¹ recognizes that the fundamental right to freedom of religion implies that everybody is entitled to worship or practice any religion of his/her choice including traditional religion (Juju worship) without disturbance. However, this right had been and is being denied of many people by the desecration of shrines and sacred places by oil and other sources of pollution especially in the Nigeria Delta area of Nigeria⁵².

Evidence of such denial or derogation is buttressed in the case of *Chief Otoko and Others v Shell Petroleum Development Company of Nigeria*⁵³, where the plaintiffs alleged that large quantity of oil which escaped from the well of the defendant, polluted their drinking water, killed the fishes and marine life and desecrated their 'Juju Shrine', which is the only way the villagers communicated with their gods⁵⁴. The case shows the right to freedom of religion can be denied or breached by environmental pollution. This is true because where shrines are damaged the worshipers of such religion would be denied of worship in a religion of their choice.

Right to Property

The right to own property is one of the human rights, and it is made a fundamental right by the 1999 constitution⁵⁵. This right to own property has a wide scope, which includes the right to own moveable and immovable property such as animals, plants, buildings, etc. The citizen's right to own property can be eroded in the sense that a misuse of the environment, which leads to damage of the ecosystem resulting in acid rain, ozone layer depletion, global warming, gully erosion, earthquake, flooding, desertification and vibration from construction works or seismic operation, etc, causes the death of animals, plant, and even damage to buildings. Environmental pollution through oil spillages destroys properties such as crops, fishponds, economic trees. The derogation of the right to property of individuals, families and communities is buttressed in the case of *Otoko and Ors v. shell B.P.*⁵⁶ Where the escape of large quantity of oil polluted drinking water, killed fishes and marine life and desecrated the plaintiffs' Juju Shrine⁵⁷. In *Deevor and Ors v. Shell B.P.*⁵⁸ the plaintiffs claimed against the defendants for the sum of N60,000 compensation because, among other things, the chemical used by the defendant for their drilling operations polluted the water that flowed into the land of the plaintiffs as a result five (5) fish ponds were destroyed.

The above cases show the human rights of persons to own property can be affected by a degradation of the environment. Environmental protection as a principal of international law is

⁵¹ Cap. C23, LFN, 2004, S.38(1)

⁵² C.A. Omaka, *Op cit*, p.143

⁵³ (Unreported) Suit No. BHC/83 delivered at the Bori High Court, Rivers State on the 15/01/1985

⁵⁴ *Ibid*

⁵⁵ Cap C. 23 LFN, 2004, S.43

⁵⁶ *Supra*

⁵⁷ *Ibid*

⁵⁸ Unreported (PHC/160/1972) Judgment delivered on the 16 April, 1972

an aspect of human rights. It is likewise a vital part of contemporary human rights doctrine, for it is a *sine qua non* for numerous human rights such as the right to health and the right life itself. It is scarcely necessary to elaborate on this, as damage to the environment can impair and undermine all the human rights spoken of in the Universal Declaration of Rights Instrument⁵⁹. That is why the African Charter on Human and people's rights, which is a complete rights law, provides in its Article 24 for the right to a healthy environment⁶⁰. Similarly, the International Convention Economic, Social and Cultural Rights⁶¹ provides for environmental protection. In addition, the UN charter on Human rights provides for environmental protection in its article 25.⁶² It is necessary to state that the above human right laws with environmental protected provision(s) are all international laws. All pointing to the fact that a protected environment is the entitlement of every human being. In other words, human beings as of 'right' have a right to a protected environment. Based on this, environmental right is open to all human beings without exception.

Under the common law, the individual has a right to a protected environment and this is enforced through the torts of negligence, nuisance and the rule in *Rylands v. Fletcher*⁶³. These torts tend to control pollution of the environment. In Nigeria, most of the pollutions which severely affect the environment are oil related pollutions which the 1999 constitution has made matters relating to it to be within the exclusive jurisdiction of the Federal High Court⁶⁴. This has various effects on the right to litigation against oil pollution in areas where there is no Federal High Court. This has watered down the right to environment protected against oil pollution, hitherto available under the common law to people within the oil producing states where there is no Federal High Court⁶⁵. This is because most individuals or groups within these areas lack the financial strength to litigate on the matter outside their states considering the inherent cost involve.

Right to Health

The right to life implies the right to a protected and healthy environment, For example Section 17(3)(c) of the Nigeria Constitution states that:

The state shall direct its policy towards ensuring that...the health, safety and welfare of all persons in employment are safeguarded and not abused⁶⁶.

This section falls within the chapter 11 provisions on fundamental objectives and Directive principles of state policy, which by section 6(6)(c) of the constitution are not justiciable⁶⁷. However, the right to health provides for by international and regional instruments to which Nigeria is a party, including the African Charter⁶⁸, essentially implies a feasible protection of the citizen from hazards and from pollution. It is evident that the emission of toxic pollutants into the atmosphere, which endanger life, will necessarily be injurious to health. Therefore, it is

⁵⁹ C.A. Omarka, *Op cit*, p.145

⁶⁰ African Charter on Human and Peoples' Right, Art, 24

⁶¹ ICESCR, Art. 12

⁶² United Nations Charter on Human Rights Art. 25

⁶³ (1866) L.R. Ex 265

⁶⁴ Cap. C 23, LFN 2004. S.251 (i)(n)

⁶⁵ C.A. Omarka, *Locit*.

⁶⁶ Cap. C23 LFN 2004, S.17(3)(C)

⁶⁷ Atsegbua *et al*, *Op cit*, p.175

⁶⁸ J. Feinberg, "Social Philosophy, (Englewood Cliffs, N.J. 1973), p.70, in P.D. Okonmah, "Right to a Clean Environment: The Case for the people of Oil Producing Communities in the Niger Delta" (1997), J.A.L. 57

immaterial that the Nigeria constitution does not expressly provide for an enforceable right to health so long as it provides for the right to life, which will be imperiled if a person is put in jeopardy by activities sanctioned by the state⁶⁹. As stated by World Health Organization in a recent report: ‘human health is essential for sustainable development since without health, human beings would not be able to engage in development, combat poverty and care for the environment’⁷⁰, while principle 1 of Rio Declaration on Environment and Development declared that: ‘human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature’⁷¹. Therefore, the ultimate purpose of protecting the environment is to ensure the health of the people.

According to Wale Ajai, it has been the invariable pattern that indigenous people, ethnic minorities and rural communities living in biodiversity rich natural habitats are alienated from their ecological environment and marginalized culturally, socially, politically and economically⁷². Not only is this done in order that the state may exploit the natural resources in their natural habitats, almost invariably in a destructive and unsustainable way, but also the right of such peoples to development and their ability to develop as individuals and as a group is infringed and destroyed on a permanent basis⁷³. For example, in the Niger-Delta areas, activities, which culminated in the pollution of the environment, remain to the detriment of individual economic right because they have maximized the peasantry in these areas, accentuated land scarcity and generally threatened the conditions of existence in the areas⁷⁴.

The African Charter on Human and Peoples’ rights and the Enforcement of Environmental Protection

The African Charter on Human and peoples’ Rights which has become part of Nigerian Law by virtue of the African Charter on Human and Peoples’ Rights (Application and Enforcement) Act Cap 10, LFN 1990, (now Cap A9 LFN 2004) of an amalgam of the existing generations of human rights and therefore locates itself within the contemporary global synthesis⁷⁵. 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 develop which embraces among others, rights to security and the rights to a general satisfactory environment⁷⁶.

Article 24 of the Charter specifically provides:

All peoples shall have the right to a general satisfactory environment favourable to their development⁷⁷.

With the adoption and incorporation of the charter as part of the laws of Nigeria, it became a fundamental part of the Nigerian legal system having full force of law and implementation mechanism⁷⁸.

⁶⁹ L. Atsegbua, *et al*, *Op cit*, p.176

⁷⁰ Background Paper prepared for the Commission on Sustainable Development, WHO. March 1994

⁷¹ *Ibid*

⁷² W. Ajai, “Achieving environmental Protection through the Vehicle of Human rights: Some Conceptual Legal and Third Words Problems” (1995) Vol. 2 No. 1 UB.LJ 48

⁷³ *Ibid*

⁷⁴ L. Atsegbua, *et al*, *Lo.cit*

⁷⁵ L. Atsegbua, *et al*, *Op.cit*, p.199

⁷⁶ *Ibid*

⁷⁷ *Ibid*

⁷⁸ A.B. Abdulkadir, (2014) 3: 1 A.B.U. JSDLP, *Op cit*, 126

Arguably, the issue of inconsistency of the Charter with the constitution does not arise. This is due to the fact that the provision of section 6(6)(c) has not expressly excluded the power of the court with regards to matters listed in the chapter for fundamental Objectives and Directive Principles of state policy in the constitution⁷⁹. Thus, by deduction, the provision of section 6(6)(c) has not made reference to any other laws and as such cannot invalidate the justiciable provisions of the charter. Therefore, the provisions of the charter having been passed into law by an Act of National Assembly; it confers rights on any person to allege violation of the Charter before the Nigerian Courts. This position has being put to rest as we have earlier indicated in this dissertation, in *Fawehinmi v. Abacha*⁸⁰ where Ejigunmi JSC, noted that:

The African Charter on Human and Peoples Rights having been passed into our Municipal law, our domestic courts have certainly had 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 provision to obtain redress in our domestic courts⁸¹.

Courts also 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 books⁸². Nigeria 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 vigor and strength than any other domestic statute and where there is conflict between the African Charter and a domestic statute, the provision of the African charter will prevail⁸³ by reason of the fact that it has international flavor and the legislature will not intend to breach or legislate out international obligation voluntarily entered into by Nigeria, especially when it has been domesticated by the Act of the National Assembly of the Federal Republic of Nigeria⁸⁴.

Furthermore, the question as to the role of the provisions of the African Charter on Human and Peoples' rights in the Protection of the right to a healthful environment was also addressed in the case of the *Social and Economic Rights Action Center and the Center for Economic, and Social Rights v. Federal Republic of Nigeria*⁸⁵, by the African Commission on Human Rights.

The fact of this case was that in March 1996, the petitioners filed a complaint alleging series of violations of human rights of the Ogoni People⁸⁶. The Communication alleged that the Military Government of Nigeria had been directly involved in irresponsible oil development practices in the Ogoni region. In particular; the complaint decried the widespread contamination of soil, water and air; the destruction of homes; the burning of crops and killing of farm animals and the climate of terror the Ogoni communities had been suffering of, in violation of their rights to health, a healthy environment, housing and food. In terms of the African charter, these allegations included violations of Articles 2 (non-discriminatory enjoyment of rights), 4 (rights to life), 14 (right to property), 16 (right to health), 18 (family rights) 21 (right of peoples to

⁷⁹ *Ibid*

⁸⁰ (2002)6 NWLR (Pt. 660) 222SC

⁸¹ *Ibid*

⁸² *Ibid*

⁸³ *Ibid*

⁸⁴ *Ibid*

⁸⁵ *Supra*

⁸⁶ *Ibid*

freely dispose of their wealth and natural resources) and 24 (right of peoples to satisfactory environment)⁸⁷.

The commission found the Nigerian Government and multinational oil companies to have violated the rights of the people of Ogoniland to access clean water, food, good health and to adequate standard of living. The commission held that: ‘Pollution and environmental degradation to a level humanly unacceptable has made living in Ogoniland a nightmare⁸⁸. The commission also held the Nigerian Government to have violated its positive obligation imposed under the Charter for its failure to take positive measures to control the activities of oil companies that have caused enormous violation to the rights of Ogoni people⁸⁹. The commission noted that collective rights, environmental rights and economic and social rights are essential elements of human rights in African⁹⁰. This case is a clear manifestation of how the provisions of the charter can help to protect the right to a healthful environment and clearly showed the role that human rights can play to control environmental pollution. It also mandates governments to take positive measures to prevent activities likely to endanger human life and sustainable development⁹¹.

Considering the above, it would not be wrong to say that citizens can enforce their fundamental 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 fundamental right is an integral component of the rights to life. While it is true that section 6(6)(c) of the 1999 Constitution⁹² derogates from Section 20 of the Constitution⁹³ which provides that the state shall... safeguard the water, air, and, forest and wild life of Nigeria, it does not derogate from the provisions of the section 33(1)⁹⁴ 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 & 33(1) of the Nigerian Constitution⁹⁵ and Article 24 of the African Charter will certainly dilute the derogatory power of section 6(6)(c) of the Constitution⁹⁶. This will to great extent, empower the judiciary in discharging its role in the protection of the Nigeria environment which has long been hindered by the provisions of section 6(6) of the 1999 Constitution. Hence Article 24 of African Charter is deemed by our own estimation, to be an alternative pathway towards the achievement of environmental rights in Nigeria.

Human Rights and Environmental Protection in India

Human rights in India are guaranteed in Part III of the Constitution of India⁹⁷. While environmental protections are guaranteed in Part IV of the Constitution of India⁹⁸. Both Part III

⁸⁷ *Ibid*

⁸⁸ *Ibid*

⁸⁹ *Ibid*

⁹⁰ *Ibid*

⁹¹ A.B. Abdulkadir, (2014) 3: 1 A.B.U. JSDLP *Op.cit*, 128

⁹² Cap C23 LFN 2004.

⁹³ *Ibid*

⁹⁴ *Ibid*

⁹⁵ *Ibid*

⁹⁶ *Ibid*

⁹⁷ The six Fundamental rights of Indian Citizens are specified in Articles 14-32 of the Indian Constitution such as right to equality (Articles 14-18) right to freedom Articles 19-22), rights against exploitation (Articles 23-

and Part IV are complementary. Whereas part IV imposes obligation on the state, part III is the control mechanism⁹⁹.

The dimension of this interpretation of the Constitution of India for environmental rights can be understood with the following interpretation: Article 48A of the Constitution of India states that ‘the states shall endeavour to protect and improve the environment and to safeguard the forest and wide life of the country’¹⁰⁰.

The duty to protect and improve the environment is imposed on the state. Article 51A(g) of the Constitution of India states that ‘It shall be the duty of every citizen of Indian to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures’¹⁰¹.

One unique feature of Article 48A and 51A(g) is that the protection of the environment is a fundamental duty not only of the state, but also of every (legal) person¹⁰². The right of an individual to protect the environment is safeguarded by his fundamental right to life under the Indian constitution¹⁰³.

In *Subhash Kumar v State of Bihar*,¹⁰⁴ the court ruled that Article 32 is designed for the enforcement of fundamental Rights of a citizen by the Apex court, and the ‘Right to life is a fundamental Right under Article 21 of the Constitution and it includes the right of enjoyment of pollution-free environment, free water and air for full enjoyment of life’¹⁰⁵. The court also held that a petition for Article 21 of the constitution of India in connection with Article 32 of the same constitution can be invoked by social workers or journalists¹⁰⁶. In *Rural Litigation and Entitlement Kendra v. Utlar Pardesh*¹⁰⁷ the petitioner alleged that unauthorized mining in the Dehra Dun area of India adversely affected the ecology and environment. The court upheld the right to live in a healthy environment and issues an order to cease mining operations notwithstanding the significant investment of money and time by the company¹⁰⁸. In *Charan Lal Sahu v. Union of India*¹⁰⁹ the Supreme Court interpreted the right to life guaranteed by Article 21 of the Constitution of India to include the right to wholesome environment.

In *M.C. Mehta v Union of India*,¹¹⁰ the court accepted that environmental pollution and industrial hazards are not only potential civil torts but also violation of human rights¹¹¹. In the

24), rights to freedom of religion (Articles 25-28), Cultural and educational rights (Article 29-31) and right to remedies (Articles 32).

⁹⁸ Section 48A provides that “The State shall endeavour to protect and improve the environment and to safeguard the forest and wild life of the country”.

⁹⁹ *Kesaranda Bharati v. State of Kerala*, AIR 1973 SC 1506. Articles 51A and 48A were introduced in the constitution of India in 1976, pursuant to the Stockholm Declaration.

¹⁰⁰ Article 48A Indian Constitution of 1976

¹⁰¹ *Ibid*, Article 51A(g)

¹⁰² *Ibid*. The right to a remedy, granted by Article 32 of the Constitution of India gives “Individuals the right to move to the Supreme Court by appropriate proceedings” for the enforcement of fundamental rights.

¹⁰³ *Ibid*, Article 21

¹⁰⁴ AIR (1991) SC 420, 424 Para. 7

¹⁰⁵ *Ibid*

¹⁰⁶ *Ibid*

¹⁰⁷ AIR 1985 SC 652

¹⁰⁸ Similarly in *Mathur v Union* (1996)1 SC 119, the Court used the right to life as a basis for emphasizing the need to take steps to combat air and water pollution.

¹⁰⁹ AIR (1990)SC 1480

¹¹⁰ *Supra*

area of environmental protection, the courts in India have recognized the right of every Indian to live in a healthy or pollution-free environment by utilizing the environmental provisions of Part IV of the Constitution to flesh out the constitutional right to life¹¹². As observed by Dam and Tewary:

In recognizing the right to clean environment, the court drew inspiration from article 48A to protect the environment and a similar fundamental duty of every citizen under article 51A of the Constitution. This recognition of the right to a clean air and water was a culmination of the series of judgments that recognized the duty of the state and individuals to protect and preserve the environment¹¹³.

In spite of the development in India on the issue of environmental rights, the Indian courts are being perceived as consisting middle class intellectuals that are more receptive to issues that affect their contemporaries¹¹⁴. As Rajamani puts it:

The courts are more receptive to certain social and value preferences (for instance, the right to a clean environment rather than the right to livelihood), and certain modes of argumentation over the others (technical rather than social) resulting in the deep restriction of participation. While recognizing the exemplary work of the courts, the fundamental questions raised are with regards to access, participation, effectiveness and sustainability in public interest environmental jurisdiction¹¹⁵.

Human Rights and Environmental Protection in South Africa

The south African Bill of Right has in its section 24 provided for the legal status of the human right to a clean and healthy environment as follows: that everyone has the right:

- a) To an environment that is not harmful to their health or well-being; and
- b) To have the environment protected, for the benefit of present and future generations, through reasonable legislative measures that:-
 - i) Prevent pollution and ecological degradation;
 - ii) Promote conservation; and
- iii) Secure ecologically sustainable development and use of natural resources while promoting justiciable economic and social development¹¹⁶.

The right of access to sufficient water is accorded to everyone in section 27(1)(b) of the Constitution, which states that everyone has the right to have access to sufficient water¹¹⁷. Section 27(2) requires the state to take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of the rights¹¹⁸. The right to access to sufficient water has been extensively dealt with by constitutional court *inter alia* in the matter of *Mazibuko v. The City of Johannesburg and others*¹¹⁹ that the right to access to water requires a careful balancing of social, economic and environmental interest.

¹¹¹ *Ibid*

¹¹² *Francis Coralie Mullin v Union Territory of India* (1981 AIR SC 746 at Pp. 752-753)

¹¹³ S. Dam v. Tewary, "Polluting Environment, Polluting Constitution: Is a "Polluted" Constitution Worse than a polluted Environment) (2005) 17/3 Journal of Environmental Law 383, 386.

¹¹⁴ Rajamani, "Public Interest Environmental Litigation in India: Exploring Issues of Access Participation, Equity, Effectiveness and Sustainability" (2007) 19, Journal of Environmental Law, 3, 292-321

¹¹⁵ *Ibid*

¹¹⁶ South African Bill of Rights, Section 24.

¹¹⁷ C.M. Van der Bank, M. Van der Bank, "Sustainable Development: The Human Rights Approach to Environmental Protection in South Africa" (2015) Vol. 9 No.2 International Journal of Education and Pedagogical Sciences, 674.

¹¹⁸ South African Constitution 1996 Section 27 (2)

¹¹⁹ (2010) (3) BCLR 239 (CC)

Section 32 of the South African Bill of Rights states that ‘everyone has the right of access to any information held by the state; and any information that is held by another person and that is required for the exercise or protection of any right¹²⁰. Section 32 applies to public bodies, as well as private bodies, including companies and environmental right¹²¹. Section 33 of the South African Bill of rights provides for environmental decision-making and it gives right to administrative action¹²².

Environmental Protection and Human Right in Ethiopia

The right to a safe and healthy environment is ably enshrined in the Constitution of Ethiopia in its third chapter¹²³. Article 44 provides for environmental rights and states that all persons have the right to a clean and healthy environment; and all persons who have been displaced or whose livelihoods have been adversely affected as a result of state programmes have the right to commensurate monetary or alternative means of compensation, including relocation with adequate state assistance¹²⁴, whereas Article 92 provides for environmental objectives and states that Government shall endeavour to insure that all Ethiopians live in a clean and healthy environment; and that the design and implementation of programmes and projects of development shall not damage or destroy the environment¹²⁵. It further provides that people have the right to full consultation and to the expression of views-in the planning and implementation of environmental policies and projects that affect them directly; and that Government and citizens shall have the duty to protect the environment¹²⁶. From the above, it is observed that the Ethiopian Constitution declares a ‘human right’ to a safe and a healthy environment most unequivocally not only because of the clear terms in which the right is declared but because the right is listed in the third chapter of the constitution, which is the most important part of the constitution and as human right also constitutes one of the fundamental principles of the constitution¹²⁷, while all federal and state legislative, executive and judicial organs at all levels shall have the responsibility¹²⁸.

Also, the environmental pollution control proclamation¹²⁹ prescribes that ‘any person shall have, without the need to show any vested interest, the right to lodge a complaint at the Authority or the relevant regional environmental agency against any person allegedly causing actual or potential damage to the environment, and that ‘when the Authority or regional environmental fails to give a decision within thirty days or when the person who has lodged the complaints is dissatisfied with the decision, he may institute a court case within sixty days from the date the decision was given or the deadline for decision has elapsed¹³⁰. Thus, the environmental legislations primarily aim towards the safeguarding human health and well being¹³¹,

¹²⁰ South African Bill of rights Section 32

¹²¹ C.M. Van der Bank and M. Van der Bank *Op cit* 675

¹²² South African Bill of right, Section 33

¹²³ Constitution of Federal Democratic Republic of Ethiopia (FDRE), Fundamental rights and Freedoms

¹²⁴ Article 44(1) and (2) *Ibid*

¹²⁵ Article 92 (1) (2) *Ibid*

¹²⁶ Article 92 (3) (4) *Ibid*

¹²⁷ Article 10 *Ibid*

¹²⁸ Article 13 (1) *Ibid*

¹²⁹ Proclamation No. 300/2002 of Ethiopia

¹³⁰ *Ibid*

¹³¹ Preamble of Proclamation No. 300/2002

‘minimizing the counter-productive effects of ‘social and economic development;¹³², help to bring about intended development;¹³³, promote ‘sustainable development’¹³⁴, implementation of environmental rights’¹³⁵ and the ‘maximization of socio economic benefits’¹³⁶.

Other Jurisdictions

Apart from India, South Africa and Ethiopia, there are other countries that have legislated on the right to a healthy environment, whose courts have taken monumental and impactful decisions on environmental protection and human rights. For example, in *Minors Oposa v. Department of Environment and Natural Resources*¹³⁷, the Supreme court of Philippines conferred the right to sue on environmental damage on the minors and held that their personality to sue on behalf of succeeding generations can only be based on the concept of inter-generational responsibility in so far as the right to a balanced and healthy ecology is concerned, and that such a right...considers the rhythm and harmony of nature¹³⁸. The Minors assertion of their right to a sound environment constitutes, at the same time, the performance of their obligation to ensure the protection of that right for the generations to come¹³⁹.

The Ugandan Constitution also enshrines the right to a healthful environment in its article 39 which states that ‘every Ugandan has a right to a clean and healthy environment’¹⁴⁰. Article 245 also stipulates that parliament shall by law provide measures intended to protect and preserve the environment from abuse, pollution and degradation and to manage the environment for sustainable development¹⁴¹.

In Malawi, the right to environment is also constitutionally guaranteed in section 13 of its Constitution which states that:

The state shall actively promote the welfare and development of the people of Malawi by progressively adopting and implementing policies and legislation aimed at achieving the following goals- a to manage the environment responsibility in order to (i) prevent the degradation of environment; (ii) provide healthy living and working environment for people of Malawi; (iii) accord full recognition to the right of future generations by means of environmental protection and the sustainable development of natural resources; (iv) conserve and enhance the biological diversification of Malawi¹⁴².

Furthermore, in Indian in *A.P. Pollution Control Board v Prof. M.C. Nayudu*¹⁴³, the Indian Court held 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

¹³² *Ibid*

¹³³ Preamble of Environmental Impact Assessment Proclamation No. 299/2002

¹³⁴ *Ibid*

¹³⁵ *Ibid*

¹³⁶ *Ibid*

¹³⁷ 33/LM (1994) 173 Supreme Court of the Philippines

¹³⁸ *Ibid*

¹³⁹ A.K. Usman, “*Environmental Protection Law and Practice*” (Ibadan, Ababa Press Ltd, 2012) p.216

¹⁴⁰ Constitution of Uganda, Article 39

¹⁴¹ Article 245 *Ibid*

¹⁴² C.A. Ombaka, *Op. cit*, p.141

¹⁴³ 2000 Sol case No.. 673

citizenship. In *India Council of Environment-Legal Action v. Union of India*¹⁴⁴, the court held that environmental pollution by industries amounts to a violation of right to life. The Supreme Court reasoned that ‘when certain industries by the discharge of acid produced by their plants, caused environmental pollution, that amounted to violation of right to life enshrined in Articles 21 of the Indian Constitution¹⁴⁵. The respondents are absolutely liable to compensation for harm caused to the villages in the affected area; including harm to soil and underground water¹⁴⁶. Thus, in India, every industry is duty bound to protect the environment or face the wrath of the court and law¹⁴⁷.

In Costa Rica, the Court in *President de la Sociedad Marlene S.A. v Municipalidad de Tibas Sala Constitucional de la Corte Supreme de Justicia*¹⁴⁸ stated that the right to health and to the environment are essential to guarantee that the right to life is fully enjoyed. The court further held that it is a right that all citizens live in an environment free from contamination¹⁴⁹.

In Pakistan, article 9 of the constitution provides that no person shall be deprived of life or liberty save in accordance with the law. The Supreme Court in *Shehla Zia v Water and Power Development Authority*¹⁵⁰ held that article 9 includes all amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally. In this case, the court further held that the fundamental right to preserve and protect the dignity of man and the right to life cannot be guaranteed without access to food, clothing, shelter, education, healthcare, clean atmosphere and unpolluted environment¹⁵¹. Article 9 was further elucidated in the case of *General Secretary West Pakistan Salt Miners Labour Union (CBA) Khewara, Jhelum v. The Director, Industries and Mineral Development*,¹⁵² where the court held in favour of the petitioner that if the water becomes contaminated, it would result into serious threat to human existence and the right to life of the general public would be under serious threat.

All the above cases show that the courts have been able to read into the right to life, the right to enjoy an environment free of pollution and treat that this has become a global trend.

The Spanish Constitution of December 29, 1978 provides:

Everyone has the right to enjoy an environment suitable for the development of the person as well as the duty to preserve it.¹⁵³

A similar provision is found in the Peruvian constitution of July 12, 1978, which states that there is:

The right to everyone to live in a healthy environment, ecologically balanced and adequate for the development of life and preservation of the countryside and nature¹⁵⁴.

The indigenous Yanomami Indians successfully relied on this issue of right to life in South America, when the inter-American Commission on Human Rights found that environmental

¹⁴⁴ (1996) All India Reports (AIR) SC 1446

¹⁴⁵ *Ibid*

¹⁴⁶ *Ibid*

¹⁴⁷ K.K. Ezeibe, M.N Umenweke, “A Critical Review of the Law of Environmental Protection for Manufacturing Industries in Nigeria” (2015)3(3) International Journal of Business & Law Research 5

¹⁴⁸ Decision No. 6918/94 of 25 November, 1994

¹⁴⁹ *Ibid*

¹⁵⁰ (PLD) 1994) SC 693

¹⁵¹ *Ibid*

¹⁵² (1994) SCMR 2061

¹⁵³ The Spanish Constitution of December 29, 1978, Art. 45, para 1 and 2

¹⁵⁴ Peru Constitution of July, 1978, Art 123

degradation indeed violates the right to life¹⁵⁵. The Commission held that the Brazilians government has violated the human rights of its citizens, by not taking timely effective measures to prevent environmental harm leading to the loss of life, cultural identity and property¹⁵⁶. The Human Right Committee of the United Nations also lent a glimmer of hope to victims of environmental pollution when it observed that a nuclear disposal site in Port Hope, Canada, jeopardized the lives of nearby to the obligation of states to protect human life.¹⁵⁷ In Ghana, the position under the Ghanaian Constitution¹⁵⁸ is not different from that under 1999 Constitution of Nigeria.

Under Article 36(a) of the Ghana Constitution, the State is enjoined to take appropriate measures needed to protect and safeguard the natural environment for posterity and seek cooperation with other states and bodies for purposes of protecting the wider international environment for mankind¹⁵⁹. Further, under Article 41 (k), the duty to protect and safeguard the environment is imposed on every citizen of Ghana, and article 37(3) charges the state to be guided by international human rights to development process¹⁶⁰. Under the Ghanaian legal system, however, the Directive principles of state policy under which the above cited articles appear are in general, regarded as not justiciable¹⁶¹. This is similar to chapter 11 of the 1999 Nigerian Constitution – Fundamental Objectives and Directive Principles of State Policy which includes environmental objectives, which is regarded as not justiciable.

In Ghana, two recent Supreme Court case, however suggest a move from this line of thought. In the *New patriotic Party v. Attorney General*¹⁶², his Lordship Justice Adade held that the Directive Principles of State Policy were justiciable for the following reasons, *inter alia*, that: first, the Constitution as a whole is a “justiciable document” and second, that both articles 1(2) and 2(1) of the Constitution made reference to any law or Act which is inconsistent with or in contravention of any provision of the Constitution-implying that Chapter Six of the constitution dealing with the directive principles of state policy was inclusive of these provisions which could not be contravened and therefore any law or act found to be inconsistent with it was unconstitutional and therefore ought to be nullified or declared void by the court¹⁶³.

In another case between the *New Patriotic Party v. The Attorney General*,¹⁶⁴ the Supreme Court held that the Directive Principles of State Policy are justiciable in particular instances where some of its provisions form an integrated part of provisions on the rights guaranteed under the constitution¹⁶⁵. In such instances the court opined that such provisions are by themselves enforceable.

¹⁵⁵ L. Atesegbua et al, *op cit*, p.205

¹⁵⁶ Case No. 7615, Inter-Ann. C.H.R. 24, 28, , OEA/Ser./JV/11.66, doe. 10 rev. 1 (1985)

¹⁵⁷ *Ibid*

¹⁵⁸ Ghanaian Constitution 1992

¹⁵⁹ *Ibid*, Art 36(a)

¹⁶⁰ *Ibid*, Arts 41(k), 37(3)

¹⁶¹ L. Atsegbua et al, *Op cit*, p.206

¹⁶² Ghanaian Supreme Court decision of 19th December, 1993, Unreported 1996/907 SCGLR 726.

¹⁶³ *Ibid*

¹⁶⁴ Ghanaian Supreme court decision of 8th March, 1994, Unreported 1996/807 SCGLR 726.

¹⁶⁵ *Ibid*

Furthermore, in Canada, the province of Ontario has enacted an environmental Bill of rights which provides for the right to a healthful environment¹⁶⁶.

Brief Comparative Analysis of the Nigerian Perspectives and other Jurisdictions

In comparing Nigeria with other jurisdictions on constitutional provisions on the right to a healthful environment, and judicial decisions on same, it is noticeable through the pages of this work that the Nigerian Constitution places little emphasis on the right of Nigerians to a healthful Environment. For example, Chapter II of the 1999 Constitution of the Federal Republic of Nigeria, which provides for environmental objectives as one of the fundamental objectives of Directive Principles of State Policy is made non justiciable by virtue of section 6(6)(c) of the same constitution. Assuming section 6(6)(c) of the constitution does not exist, at all, chapter II does not also expressly provide for environmental right from where the Nigerian citizens could have derived and asserted their rights against environmental hazards save that environmental rights could be inferred there from without the provision of section 6(6)(c), as chapter II provides for environmental objectives.

Section 33 of the Nigerian Constitution under chapter IV provides for the right to life, which could impliedly be extended to the right to a healthy or healthful environment. Chapter IV of the Nigerian Constitution bordering on the fundamental Human Rights did not expressly provide for the right to a healthy environment as one of the fundamental Human rights to be enjoyed by the Nigerian citizens.

Furthermore, section 20 of the constitution which provides for the duty of the state to protect the Nigerian environment did not also include the responsibilities or duty of the citizens to do same, even if section 6(6)(c) of the Constitution renders it futile, but for the ratification of the African Charter on Human and Peoples' Rights of 1981, by Nigeria, which renders section 20 and other relevant sections enforceable in Nigeria.

Notable is the fact that the Nigerian judiciary has particularly, in the case of Mr. Jonah Gbembre¹⁶⁷ held that fundamental Right to life includes the right to a healthy environment; that EIA in the Applicants' Community in that case amounts to a clear violation of their human rights, and the case of Social and Economic Rights Action Centre for Economic and *Social Rights v. Nigeria*¹⁶⁸, where the Nigerian Government was found to have breached the right to a healthy environment (right to life) of the Ogoni People of Nigeria, both judgments recognizing the fact that Right to a healthy environment is implicit in the right to life under section 33 of the constitution.

However, in contradistinctions to the provisions of the Nigerian Constitution as here-above analysed, the constitutions of other jurisdictions expressly and not impliedly provide for the rights to a healthy environment such as Article 245 of the Ugandan Constitution, Section 13 of the Constitution of Malawi, the Canadian Bill of Right, the Pakistan Constitution under its Article 9, Article 45, para 1 and 2 of the Spanish Constitution, article 123 of the Peruvian Constitution, Section 32 of the South African Bill of Rights, etc.

¹⁶⁶ P.D. Okonmah "Right to a clean environment: The Case for the People of oil producing communities in the Nigerian Delta" (1997). J.A.L 61.

¹⁶⁷ *Supra*

¹⁶⁸ *Supra*

The Ethiopian Constitution, in its article 44 and 92 provides for environmental objectives and that states' governments shall endeavour to ensure that all Ethiopians live in a clean and healthy environment, without any ouster clause rendering the two provisions unenforceable as we have in Nigeria, under section 6(6)(c) of the Nigerian Constitution, which renders the applicability or enforceability of the fundamental objectives and Directive Principles of state Policy under chapter II impossible in Nigeria.

In the constitution of Ghana, Art 41(k) and article 37(3) which are found under the Directive Principles of State Policy are not justiciable as that of chapter II its s.6 (6)(c) of the Nigerian Constitution, however, one remarkable difference in comparison with what is obtainable in Nigeria, is that the Ghanaian Supreme Court in the two Cases of New Patriotic Party¹⁶⁹ held that the provisions of the Directive Principles of State Policy are enforceable in Ghana. In Nigeria, it is only the applicability of the African Charter on Human and Peoples' Rights by the Nigerian Court that accords the citizens environmental rights which includes *inter alia* the right to health and right to life.

More so, Articles 48A and 51 A(g) of the Indian Constitution which made the protection of the environment a fundamental duty not only of the state, but also of every legal person, is holistic in ensuring that both the state and citizens participate in the protection of the environment as against the provision of section 20 of the Nigerian Constitution which only empowers the state to protect the environment.

A notable similarity between Nigeria and other jurisdictions, however, is the interpretation by courts of the right to life as also the right to health and a healthy environment; though the Nigerian Courts can only be aided by the provisions of the African Charter, particularly Article 24, in arriving at this conclusion on issues of environmental rights in Nigeria.

CONCLUSION

The right to a healthy environment is synonymous with the right to life in as much as the state of human environment determines the existence of man. For example, a polluted or degraded environment portends grave danger to human health and other associated rights such as the right to own property, which gives value to life. Unfortunately, the Nigerian Constitution did not accord relevance to this sacred concept that is considered a global phenomenon, since none of its provisions relates expressly to the right to a healthy environment. Section 6(6)(c) of the Nigerian Constitution which renders the environmental provisions under chapter II (Fundamental Objectives and Directive Principles of State Policy) non justiciable is not observed as the only deficiency in the Nigerian Constitution on the right to a healthy environment but also the none inclusion of the right to a healthy environment as one of the Fundamental Human Rights in chapter IV of the Constitution of the Federal Republic of Nigeria, unlike the express constitutional provisions of other jurisdictions on the right to a healthy environment and environmental protection.

¹⁶⁹ *Supra*

However, violations of environmental right in Nigeria can be addressed by invocation of the relevant sections of the African Charter on Human and Peoples' Rights which Nigeria ratified and which by such ratification the Nigerian Courts admit and give remedies to the victims of environmental rights violation. The Nigerian Courts actually considered the provisions of the African Charter on Human and Peoples' Right in deciding on the gross violations of environmental rights in the cases of Gbembre¹⁷⁰ and that of Economic and Social Right¹⁷¹ and held that the right to life includes the right to a healthy environment.

From the foregoing, therefore, it is germane to posit that Nigeria is not wholly but partly in tandem with the international best practices on the right to a healthy environment to the extent of the legal flaws in her constitution on the right to a healthy environment and also the judicial decisions of the Nigerian Courts on environmental rights in Nigeria, which share the same position as that of other jurisdictions.

It is suggested that section 6(6)(c) of the 1999 Constitution of the Federal Republic of Nigeria be totally expunged; the right to a healthy environment in Nigeria, be expressly provided for as a fundamental Human right in the Nigerian Constitution; the right to life under section 33 of the constitution should be considered an alternative pathway to the realization of environmental right in Nigeria; section 20 of the constitution should be amended to include also the duty of the citizens towards environmental protection as that of section 51A(g) of Indian Constitution; and there should be a Bill of Rights specifically on environmental rights and protection in Nigeria.

¹⁷⁰ *Supra*

¹⁷¹ *Supra*