

THE RIGHT TO A HEALTHFUL ENVIRONMENT IN NIGERIA: A REVIEW OF ALTERNATIVE PATHWAYS TO ENVIRONMENTAL JUSTICE IN NIGERIA

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ABSTRACT

The Constitution of the Federal Republic of Nigeria includes in its Chapter Two on “Fundamental Objectives and Directives Principles of State Policy” provisions on the protection of the environment. However, these provisions are made unenforceable by other provisions in the Constitution that oust the jurisdiction of the court to entertain any matter related to the enforceability of the provisions of chapter two of the Constitution, which includes the protection of environment. These ouster provisions have led to an explosion of scholarly views on the question of how best environmental rights could be constitutionally derived and protected in Nigeria.

This paper aims to contribute to these debates. The paper explores how the right to a healthful environment can be derived and secured using other enforceable provisions in the Nigerian Constitution, and through other domesticated international instruments in Nigeria, to enhance access to environmental justice in Nigeria.

Keywords: Constitution, Environment, Health

1. INTRODUCTION

Constitutional provisions offer broad and powerful tools for protecting the rights of citizens. The process of accessibility of citizens to courts to enforce their constitutional rights further strengthens the judiciary, empower civil society and fosters an atmosphere of environmental stewardship.¹ The constitution contains arrays of provisions that can be utilised to create

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1 Pushpinder Kaur, ‘Environmental Protection in India: Judicial Activism and Beyond’ (2013) <http://www.airwebworld.com/articles/index.php?article=1421> accessed 15 September 2013; Rabindra Kr. Pathak, ‘Emergence of Environmental Jurisprudence in India: A Case of Judicial Courage and Craft’ (2013) <http://www.airwebworld.com/articles/index.php?article=1382> accessed 15 September 2013; Jeet Shroff, ‘The Evolving Rights of intergenerational Equity under the Indian Constitution’ (2013) <http://www.airwebworld.com/articles/index.php?article=957> accessed 15 September 2013.

and enforce legal rights.² Thus, it is necessary to evaluate the possibilities of an expansive approach through which provisions of the constitution may be utilized in deriving and protecting the right to a healthful environment. The Constitution of a nation is more than a mere organic law because it guarantees to its citizens fundamental human rights such as the right to life, liberty, right to justice to mention but a few. With increasing environmental awareness in the last decades, the environment has become a higher political priority and many constitutions now expressly guaranteed a right to a healthy environment as well as procedural rights necessary to implement and enforce the substantive rights granted.³ This increase in awareness has led to courts around the world to interpret increasingly the provision of these fundamental rights such as the right to life to include the right to a healthy environment in which to live that life.⁴

The questions that now arise are: Is it necessary to include the provision for the right to a healthful environment in the constitution? How important is it to constitutionalize environmental rights? What is the status of the right to a healthful environment in the Nigerian Constitution? In the absence of enforceable constitutional provisions, what are other alternative pathways available to citizens of Nigeria to derive and ensure that their rights to a healthful environment are recognized and not eroded? This paper will not attempt to go into detail of different ways by which these alternatives may be used to foster the right to a healthful environment; instead it will focus on analyzing derivative option open to citizens to ventilate their grievances against environmental degradation and pollution in Nigeria.

This paper is divided into five parts. This introduction is the first part. Part two discusses the fundamental question whether it is mandatory to include express provision for the right to a healthful environment in the

2 Johnson .R. Barbara 'Environmental Degradation and Human Rights Abuse' in Johnston, B.R. (eds), *Who Pays the Price? The Sociocultural Context of Environmental Crisis* (CA Island Press, Covelo, 1994); M.R. Anderson, 'International Environmental Law in Indian Courts' (1996) 7(1) RECIEL 22, 31; C.M. Jariwala, 'A Judicial Approach in the Fire Works Noise Pollution: A Critical Overview' (1999) All Indian Reporter Journal Section 72, 74 ; A.G.M. La Vina, 'The Right to a Sound Environment in the Philippines: The Significance of the *Minors Oposa Case*' (1994) 3(4) RECIEL 246, 252.

3 Jona Razzaque, 'Human Rights and the Environment: The National Experience in South Asia and Africa' (2013) <<http://www2.ohchr.org/english/issues/environment/enviro/ bp.4htm>> accessed 22 September 2011.

4 See R.S. Pathak, 'The Human Rights System as a Conceptual Framework for Environmental Law' in Brown Weiss (eds), *Environmental Change and International Law: New Challenges and Dimensions*, (UN University Press, Tokyo 1992) ; W.A. Shutkin, 'International Human Rights Law and the Earth: The Protection of Indigenous Peoples and the Environment' (1991) 31(3) Virginia j. of Int'l L. 479, 511, 504.

Constitution of a nation. On this note, the author argued that while it is desirable to include express provision for the right to a healthful environment in the Constitution, it is not the law that the non-inclusion of such express provision will deter an aggrieved party from enforcing his or her right to a healthful environment. The third part examines the position or status of the right to healthful environment under the Nigerian Constitution and the author concluded that the combined reading of the available provisions in the Nigerian Constitution show that the Constitution lacks express provision for the right to a healthful environment. The fourth part examines the available and enforceable alternatives to seeking environmental justice in Nigeria. On this note, the discussion is limited to the African Charter on Human and Peoples' Rights and the provisions of Chapter Four of the Nigerian Constitution. The last part contains the conclusion.

2. CONSTITUTIONALIZING ENVIRONMENTAL RIGHTS IN NIGERIA: A NECESSITY OR A PIOUS ASPIRATION?

There is a distinction between adopting derivative provisions of the constitution to protect the environment and the express inclusion of the right to a healthful environment in the constitution. While the former presupposes the existence of legal and enforceable rights, the latter demands expression inclusion in the constitution. The first challenge to any attempt to hypothesize environmental rights in the constitution is the problem of definition.⁵ The question may be asked as to which part of the environment is being protected. The issue of what the right to a healthful environment entails has continued to be a subject of debate by human rights activists and environmentalists.

If the protection of the environment is seen from anthropocentric perspective, then environmental rights will be human centered.⁶ However, if environmental rights are seen from ecocentric perspective, any qualitative definition of environmental rights would entail both human

⁵ See Philippe Cullet, 'Definition of an Environmental Right in a Human Rights Context' (1995) <http://www.ielrc.org/content/a/9502.pdf> accessed 23 September 2011.

⁶ J. Symonides, 'The Human Right to a Clean Balanced and Protected Environment' (1992) 20(1) *Int'l J. Of Legal Information* 24, 40; Contra Downs, 'A Healthy and Ecologically Balanced Environment: An Argument for a Third Generation Right' (1993) *Duke J. Comp. & Int'l L* 351, 385.

and non-human species.⁷ At present, more than 100 constitutions of the world have made express provisions for the right to a healthful environment or right to an environment free of pollution or in some instances the expression right to a sound ecology may be employed.⁸ Notably, none of these constitution or even international human rights instruments have attempted to offer an operational definition of the right to a healthful environment. The problem is not that of lack of ideas but one of agreeing to it.⁹ To say that environmental rights have not received a universal definition is not to say that such concept does not exists. It is not unexpected to encounter definitional problems in an attempt to delimit the scope of a concept. Even, the concept of what connotes human rights is still a subject of debate bearing in mind the cultural challenges.

While the argument for the express inclusion of environmental right in the constitution may be tenable, one may ask whether such inclusion would serve any revolutionary purpose. Arguably, the mere inclusion of an environmental right into a constitution, does not, however, guarantee enforcement thereof or assure freedom from notoriety. Where the right to a healthful environment is included in the constitution, its enforceability may still have to be anchored on other rights. Therefore, the author is of the view that where a violation of an act can be brought under the umbrella of existing provisions in the constitution, it may not be desirable to include express provision for such. Events over the years have proved that constitutional provisions can go a long way in the legitimization of an act or preclusion of an event likely to endanger human rights. For instance, over time, the courts

7 M. Pallemarts, 'International Environmental Law From Stockholm to Rio: Back to the Future' in Sands P. (eds), *Greening International Law* (Erath scan, London, 1993); R. F. Nash, *The Rights of Nature: A History of Environmental Ethics* (The University of Wisconsin Press, London/Madison 1996); Christopher Stone, 'Should Trees Have Standing? Towards Legal Rights for Natural Objects (1972) <http://www.princetonindependent.com/issue01.03/item10d.html> accessed 23 September 2011.

8 See Article 41 of the Constitution of Argentina 1853; See Article 79 of the Constitution of Colombia 1991; See Article 46 of the Constitution of the Republic of the Congo 1992; Constitution of Costa Rica 1949; See Article 69 of the Constitution of the Republic of Croatia 2001; Constitution of the Republic of Chechen 2003. See also the Constitution of the following countries: Constitution of Angola, Argentina, Belarus, Belgium, Burkina Faso, Cameroon, Cape Verde, Chad, Chechnya, Chile, Colombia, Congo, Ecuador, Finland, Georgia, Ghana, Hungary, India, Mexico, Niger, Namibia, Portugal, Russia, Romania, Sao Tome, Saudi Arabia, Slovakia, Ukraine, and Zambia.

9 See Michael Anderson, 'Human Rights Approached to Environmental Protection: An Overview' in Michael Anderson and Alan Boyle (eds), *Human Rights Approached to Environmental Protection* Clarendon (Press Oxford, 1996); Alan Boyle, 'The Role of International Human Rights law in the Protection of the Environment' in Michael Anderson and Alan Boyle (eds), *Human Rights Approached to Environmental Protection*, (Clarendon Press Oxford, 1996).

have read into the right to life, the freedom to terminate one's life (euthanasia), freedom to abort pregnancy, freedom to practice gay and lesbian relationship without their express inclusion in the constitution. Similar events have happened in some jurisdictions where the right to life as guaranteed in the constitution has been interpreted to include the right to clean water, right protection from pollution and any activities likely to endanger life.¹⁰

Arguably, the express inclusion of environmental rights in the constitution must not be seen as the only avenue through which the environment can be protected. Furthermore, considering the debates and the complex constitutional amendments process involved in establishing new constitutional rights, a more innovative approach may be to derive and secure a right to a healthful environment under the umbrella of existing fundamental rights and freedoms protected in the constitution. This view is premised on the fact that there is nothing in the Nigerian constitution that limits the application of existing rights to emerging circumstances different from the time when they were elaborated made. The Constitution is a living tree that could be interpreted in the light of emerging realities.

3. STATUS OF THE RIGHT TO A HEALTHFUL ENVIRONMENT UNDER THE NIGERIAN CONSTITUTION

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 Principle of State Policy.¹¹ Section 20 expressly contains provision on environmental protection and states as follows:¹²

The state shall protect and improve the environment and safeguard the water, air, land, forest and wild life in Nigeria.

The main aim of section 20 is to ensure a healthy environment for Nigerian citizens.¹³ The protection of the environment is essential for the realization

10 Nukhet Yilma, 'The European Court of Human Rights and the Right to Environment' (2007) 4(1) Ankara Law Review 1, 24; M.R. Anderson, and Ahmed A., 'Assessing Environmental Damage under Indian Law' (1996) 5(4) RECIEL 335, 341.

11 See the provisions of the Chapter II of the Constitution of the Federal Republic of Nigeria 1999 (as amended in 2011).

12 Constitution of the Federal Republic of Nigeria 1999 (as amended in 2011)

13 Gozie Ogbodo 'Environmental Protection in Nigeria: Two Decades After Koko Incidence' (2010) 15(1) Annual Survey of International and Comparative Law 1, 18.

of human rights because human rights can only be enjoyed in an environment that is free of pollution.¹⁴ Thus, safeguarding the air, water, land and wild life as stated in section 20 would enhance a pollution free environment. In spite 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 enforce the provision of section 20. In answering this question, it is pertinent to examine the provision of section 6(6)(c) of the Constitution which is reproduced below:

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

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 Constitution.¹⁵ That 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 other v Attorney-General, Lagos State*.¹⁶ This case was based and decided on the similar provision of the 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 II of the 1979 Constitution. The Court of Appeal, while considering the constitutional status of the said Chapter stated:

14 See A.B. Abdulkadir, and A.O. Sambo, 'Human Rights and Environmental Protection: The Nigerian Constitution Examined' (2009) *Journal of Food, Drug and Health Law* 61, 73.

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

16 [1981] 2 NCLR 337.

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 II, 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 Directive Principles of State Policy. It is clear therefore that section 13 has not made Chapter II of the Constitution justiciable. I am of the opinion that the obligation of the judiciary to observe the provisions of Chapter II is limited to interpreting the general provisions of Constitution or any other statute in such a way that the provisions of the Chapter are observed, but this is subject to the express provisions of the Constitution.

The interpretation of the court in the above cited case further supports the argument that no court has jurisdiction to pronounce or entertain any question regarding the enforceability of the provision of section 20 and of other matters stipulated in chapter two of the constitution. Commenting on the justification for making section 20 of the Nigerian Constitution unjusticiable, Wonika noted¹⁷:

Section 20 of the 1999 constitution of the Federal Republic of Nigeria states that, states shall protect and improve the environment and safeguard the water, air, forest and wild life of Nigeria even at that it is important to note that, this provision as non justiciable as it forms part of the Fundamental Objectives and Directive Principle of State Policy in chapter II of the constitution the implication of which is that no Nigerian citizen can go to the court to enforce his/her rights in respect of a violation or threatened violation of such provision. The fear of enshrining human and environmental rights in Nigeria is in the possibility of multiplicity of suits against the Federal Government.

The above reasoning of the court concerning multiplicity of action is with respect untenable. The right of the public cannot be sacrificed in fear of multiplicity of action. I align with the contention that the non-justiciability

¹⁷ Quoted in Mathew Adefi Olong, 'Human Rights, the Environment and Sustainable Development: Nigerian Women's Experiences' (2012) 5(1) *Journal of Politics and Law* 100, 108

provision is “undemocratic and open to abuse.”¹⁸ and with view that the non-justiciability of the provision implies that “the quality of the social objectives is destroyed, and the provisions under chapter II for these objectives are reduced to worthless platitudes.”¹⁹

The provision of section 6(6)(c) serves as an exclusion 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 resources.²⁰ The combined reading of section 20 and section 6(6)(c) of the Nigerian Constitution suggest that the Constitution does not include any express provision for the right to a healthful environment. The implication of this is that, activities likely to cause environmental devastation and human rights abuse cannot be challenged in the court because it is not enforceable. 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 violation. However, notwithstanding the exclusion clause, the hope to secure the protection of the environment is not totally loss. This is in view of other available alternatives through which the citizens can seek environmental justice and protect their right to a healthful environment.

4. ALTERNATIVES PATHWAYS

This paper explores two key alternatives available to Nigerians to seek environmental justice notwithstanding the non-justiciability of the provision of section 20. They are: the African Charter on Human and Peoples’ Rights and the provisions of chapter four of the Nigerian Constitution.

18 A.B.U. Student Union ‘Rotimi’s Constitution: Our Opinions on Fundamental Objectives and Directive Principles of State Policy’ in Ofonagoro W.I., Oko A, and Jinadu A, (eds), *The Great Debate: Nigerian Viewpoints on the Draft Constitution* (Lagos Daily Times Nigeria, 1977).

19 Awolowo Obafemi., ‘My Thoughts’ in Ofonagoro W.I., Oko A, and Jinadu A, (eds), *The Great Debate: Nigerian Viewpoints on the Draft Constitution* (Lagos Daily Times Nigeria, 1977).

20 See paragraph 1 of the National Policy on Environment for Nigeria 1988 revised in 1999.

A. The African Charter on Human and Peoples' Rights and the Protection of the Environment

The Africa Charter on Human and peoples' Rights was adopted on 19th January 1981 by the Organization for African Unity (O.A.U) (now the African Union). The Charter became part of the law of Nigeria pursuant to its adoption and domestication as *Africa Charter on Human and Peoples' Rights (Application and enforcement) Act Cap 10, Laws of Federation of Nigeria 1990*. The Charter is a combination of the existing generations of human rights and thus places itself within the modern-day international blending. The Charter contains ample provisions on civil and political rights, economic, social and cultural rights, and right to development which among others includes the right to a general satisfactory environment. 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 mechanism.

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 only expressly excluded the power of the court with regards to matters listed in the Chapter for Fundamental Objectives and Directives Principles of State Policy in the Constitution. 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 by the Supreme Court of Nigeria in the famous case of *Fawehinmi v Abacha*²¹ where Ejiwumi JSC, noted that:²²

The Africa Charter on Human and Peoples' Rights, having been passed into our municipal law, our domestic courts have certainly has the jurisdiction to construe or apply the treaty. It follows then that anyone who felt that his rights as guaranteed or protected by the Charter, have been violated could well resort to its provisions to obtain redress in our domestic courts.

21 [2001] 51 WRN 29

22 Ibid.

Having laid the foundation as to the justiciability of the provisions of the Charter, the question that arises now is, how could the provisions of this Charter help to protect a healthy environment for Nigerians and other African countries? On this note, the case of *The Social and Economic Rights Action Center and the Center for Economic, and Social Rights v Federal Republic of Nigeria*²³ merit examination.

The question as to the role of the provisions of the Africa Charter on Human and Peoples' Rights in the protection of the right to a healthful environment was addressed by the African Commission on Human Rights in the above case. This case was a landmark decision because it represents the turning point where the provisions of the Charter were interpreted broadly to incorporate the protection of environment.

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 people.²⁴ 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 (right to life), 14 (right to property), 16 (right to health), 18 (family rights), 21 (right of peoples to freely dispose of their wealth and natural resources) and 24 (right of peoples to a satisfactory environment).

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 nightmare."

This decision is commendable for its creativity to read the violation of human rights resulting from the pollution of environment. 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

23 Comm. No. 155/96 [2001].

24 Communication 155/96, *The Social and Economic Rights Action Center and the Center for Economic, and Social Rights / Nigeria*.

rights of Ogoni people. It stated thus:²⁵ Despite its obligation to protect persons against interferences in the enjoyment of their rights, the Government of Nigeria facilitated the destruction of the Ogoniland. Contrary to its Charter obligations and despite such internationally established principles, the Nigerian Government has given the green light to private actors and the oil companies in particular, to devastatingly affect the well-being of the Ogonis.

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 acknowledged the interface between the protection of environment and human rights and the responsibility of the government to prevent such damage by non-state actors such as the oil companies. Thus, this case shows that citizens of Nigeria and other countries that have incorporated this Charter as part of their domestic laws can rely on the provisions of the right to life, health and to general satisfactory of the environment as provided in the Charter to avert environmental pollution. It also mandates governments to take positive measures to prevent activities likely to endanger human life and sustainable development.

B. Fundamental Human Rights provisions in the Nigerian Constitution

Another alternative to protect the right to a healthy environment is by anchoring claims on fundamental human rights provisions enshrined in the Constitution of Nigeria. The Constitution of Nigeria contains a vast arrays of rights from which a right to healthful environment can be derived. The prominent among these are: the right to life; the right to fair trial, the right to protection from discrimination; the right to equality to mention but a few. The global trends have shown that some of these rights are momentous in the protection of the right to a healthy environment. Over the years, courts from various jurisdictions have relied on these rights to ensure and protect a healthful environment and avert activities likely to threaten life.²⁶

For instance, in Bangladesh, the High Court in *Dr. M. Farooque v. Bangladesh*²⁷ expanded the right to life to include anything that affects life, pub-

25 Ibid.

26 See Michael J. Kane, 'Promoting Political Rights to protect the Environment' (2006) 18(1) *The Yale Journal of International Law* 389, 390; See also the case of *Charan Lal Sahu v Union of India* [1990] AIR SC 1480; *Subash Kumar v State of Bihar* [1991] AIR SC 420; [1991] 1 SCC 598 and *State of Punjab v Ram Lubhaya Bagga* [1998] 4 SCC 117

27 [1997] 49 Dhaka Law Reports (AD), p. 1

lic health and safety, and the enjoyment of polluted free water and air, and a sustaining conditions consistent with human dignity. In Costa Rica, the court in *Presidente de la sociedad Marlene S.A v. Municipalidad de Tibas, Sala Constitucional de la corte Supreme de justicia* stated that the rights to health and to the environment are essential to guarantee that the right to life is fully enjoyed.²⁸ The court further held that it is a right that all citizens live in an environment free from contamination.

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's case*²⁹ 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 environment. 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*.³⁰ In this case, the petitioner sought to enforce the right of the inhabitants to have clear and unpolluted water. They argued that if the miners were permitted to continue their operations, the water-course would get polluted. 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. These cases show that the courts have been able to read into the right to life, the right to enjoy an environment free of pollution. Therefore, since the Nigerian Constitution contains express provision on the right to life, citizens can assert same in the pursuit of environmental justice and protection.

The year 2005 marked the beginning of a new era of access to environmental justice in Nigeria. It was the first time ever that the court in the case of *Jonah Gbemre v. Shell Petroleum Development Company of Nigeria Limited*³¹ was able to read into right to life, the right to be free from pollution or activities likely to endanger life. It was a revolutionary decision

28 *Presidente de la sociedad Marlene S.A v. Municipalidad de Tibas, Sala Constitucional de la corte supreme de justicia*. Decision No. 6918/94 of 25 November 1994.

29 [PLD 1994] SC 693

30 [1994] SCMR 2061

31 Suit No: FHC/B/CS53/05

that illuminates the willingness of the Nigerian judiciary to construe the constitutional right to life lengthily to include the right to a healthy/clean environment. The fact of this case was that Mr. Gbemre in a representative capacity instituted this action for himself and for each and every member of the Iwehereken community in Delta State Nigeria against Shell Nigeria, Nigerian National Petroleum Corporation (NNPC) and the Attorney General of the Federation. The Applicants sought amongst other things a declaration that actions of the defendants violate their rights to life and the right to the dignity of their persons and to enjoy the best attainable state of physical and mental health as well as right to a general satisfactory environment favorable to their development. The court declared that the actions of Shell in continuing to flare gas in the course of their oil exploration and production activities in the applicant's community is a violation of their fundamental right to life (including healthy environment) and dignity of human persons guaranteed by the Constitution and the African Charter. The court further declared that Shell Nigeria and NNPC were to be restrained from further flaring of gas in the applicant's community and were to take instantaneous measures to end the further flaring of gas in the applicant's community. In this case, reference was made to the Africa Charter along with the constitutional provision of the right to life.

Gbemre v. Shell therefore became a precedent setting case in Nigeria, as the first judicial authority to declare that gas flaring is illegal, unconstitutional and a breach of the fundamental human right to life. This case is a manifestation of how gas flaring and other related environmental problems can affect the enjoyment of fundamental right to life. It is of significant to Nigerians for three obvious reasons. First, it pictures how fundamental rights protected in the Constitution can be violated by environmental pollution such as gas flaring. Secondly, it shows that issues concerning the environment could be brought under the purview of human rights. Thirdly, the case also mirrored how the right to life has been expanded or interpreted in a wider perspective to include right to the enjoyment of a healthful environment. Therefore, if the contention that environmental pollution affects the enjoyment of basic human rights are tenable, there is arguably nothing inconsistent bringing environment matters under the umbrella of human rights.

5. CONCLUSION

That environmental pollution affects the enjoyment of basic human rights is no more a theoretical debate. Ever since the Stockholm Declaration, it has been noted that basic human rights can only be enjoyed in a pollution free environment and the need for environmental protection has become globally recognized as pivotal. Where the environment is polluted beyond repair, basic human rights will be put at risk. It is true that various countries of the world have included provision for the protection of a healthful environment in their constitution. The issue therefore may be that of enforceability. The inclusion of environmental clause in the constitution may be tenable; however, where a particular event can rightly be brought and legally enforce under the existing provisions in the constitution, it may be less desirable to make express provision for same. Judicial trends have shown that the existing provisions of fundamental rights or bill of rights in the constitution can adequately be invoked to foster the protection of environment. Consequently, though the provisions of section 20 on environmental objective are not enforceable in Nigeria; it does not extinguish all hope of deriving the right to a healthful environment as part of other existing rights.

This paper has argued that citizens or aggrieved persons can access and ventilate matter of environmental justice under the umbrella of human rights. An expansive and derivative interpretation of both the African Charter on Human and Peoples' rights and the provisions of Fundamental Human Rights in the Nigerian Constitution can go a long way in the realization of a right to a healthful environment in Nigeria. Thus, these provisions may be utilized both defensively and restrictively to protect against actions that violate citizen's constitutional rights. They offer alternative pathways and access to environmental justice that the Nigerian Constitution as well prevailing legislative regulatory frameworks on the environment in Nigeria do not address.