

Appraisal of Rights to Healthful Environment Under the Nigeria Constitution 1999 as Amended

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ABSTRACT

This paper examines the rights to healthful environment under the Constitution of Federal Republic of Nigeria 1999 as amended. Human lives depended on the environment for survival; unfortunately, there are activities such as pollutions on the ecosystem which negatively impacts on the citizens' lives, hence the need for the protection of the rights of the citizens to a clean and safe environment. Though effort tends to have been made to protect citizens' rights to healthy environment in the Nigeria's constitution, however, it's not adequate as it did not expressly made it a basic right being contained in chapter 11 which are not justiciable. The constitutional provisions are vague and subjected to difficult interpretations by courts and some other shortfalls inherent in it, thereby adversely affecting citizens' rights to effectively seek redress on their healthful environmental injustice. This paper therefore focuses on the legal framework of the Nigeria's constitution 1999 on citizens' access to rights to healthful environment, its adequacies and the challenges of achieving effective access to environmental justice. The paper uses doctrinal methodology which embraces books, articles, statutes and legislations in the discussion. It recommends an overhaul of the Nigeria constitution to expressly include right to healthful environment in the constitution and make environmental justice a basic fundamental human right for easy enforcement by citizens in order to meet global best practices.

KEYWORDS: *Healthful Environment, Access to justice, Constitution, Environmental Rights, Environmental Justice.*

1.1 INTRODUCTION

Nigeria is a democratic country that incorporates rule of law, fundamental human rights and fundamental objectives and directive principles of state policy in her constitution for access to environmental justice. Citizens are at the Centre of the above constitutional precepts which affects him and the environment he lives. This underscores the imperative of the protection of citizens, the environment and the necessity to seek redress as a right on violation. In a bid to achieve this, the constitution provides that the state shall protect and improve the environment and safeguard the water, air and land, forest and wide life of Nigeria¹ in chapter 11. The constitution also provides for fundamental human rights in Chapter IV². However, there are activities of man that affect the environment and his lives such as pollutions, hence the need to

¹ The Constitution of the Federal Republic of Nigeria 1999 as Amended, Chapter II, Section 20.

² The Constitution of the Federal Republic of Nigeria 1999 as Amended, Section 33 – 45.

guide against it by the state as a fulfillment of its obligation to the citizens. Accordingly pollution is describe as the introduction by man into the environment of substance or energy liable to cause hazard to human health, harm to living resources and ecological system, damage to the structure or humanities or interference with legitimate use of the environment. In legal perspective, pollution is the wrongful contamination of the atmosphere or water or soil, to the material injury or damage to the rights or property of people. Environmental pollution is therefore a breach of man's right to live in a clean/healthy environment cause by manmade or man aided alteration of chemical or physical or biological quality of the environment to the extent that is detrimental to it³. The quest for the redress of environmental hazard by citizens becomes necessary to seek healthy environmental justice. Though the constitution of the Federal Republic of Nigeria 1999 as amended tends to make provision for the protection of the environment as stated above and also tends to give access to the citizens whose rights are violated or likely to be violated to seek redress in courts⁴ and confer in courts, the power to adjudicate to ensure justice⁵ but unfortunately the said constitution did not expressly contain right to healthful environment or adequately provide for access to environmental justice as a basic right. The constitution still draws a parallel distinction between civil or political rights in chapter IV and Socio-Cultural, Economic rights in chapter II which are not justiciable. The provision for environmental protection are contained in chapter II of the constitution which are not justiciable and the failure to expressly provide for right to healthy environment constitutes a problem for citizens' rights to healthful environment and access to environmental justice enforcement in Nigeria. This paper therefore X-Rays provisions of the Nigeria's constitution on access to environmental justice and the rights of citizens to a healthful environment, the implications, impediments inherent in the constitution as it affects the citizens' rights and enforcement of their environmental justice and suggests recommendations to enhance effective access to environmental justice and rights to healthful environment.

1.2 CONCEPTUAL REVIEW

Right To Healthful Environment

This entails the demand that rights for a healthy environment to be expressly included in the constitution. It is econometric which involves both human and non-human species entitled to healthy environment whose rights have to be expressly protected in the constitution as a right to healthy environment, or right to environment free from pollution or right to sound ecology.

Access To Justice

Access to justice is a broad term which is described in different ways by different authors both nationally and internationally. According to Ladan M T⁶, access to justice means that people in need of legal held can find a solution through accessible, comprehensible, speedy dispensation of justice fairly and without discrimination, fear or favour, Broadly Speaking, Agwe ⁷describes access to justice in four broad perspectives: (a) proper adjudicatory mechanism (b) accessible to all the citizens, (c) getting justice and equally affordable, (d)

³ National Open University of Nigeria (NOUN), lecture Module II , Unit II, International Recognition of Environmental Rights P.61

⁴ The Constitution of the Federal Republic of Nigeria 1999, Section 36(1) and Section 36(4).

⁵ The Constitution of the Federal Republic of Nigeria 1999, Section 6(6)(a)

⁶ Ladan, MT "Justice Sector Reform Imperative for Democracy. Being a paper presented at a Two-Day National Seminar on Justice Sector Reform and the Future of Democracy in Nigeria by Centre for Socio-Legal Studies, Abuja on January 6-8, 2012.

⁷ Angwe, B "Access to Justice and Protection of Rights of citizens" being a paper presented at a session of refresher course for magistrate is on modern Judicial Practice and Procedures: Modernizing Judicial practices and procedures, at National Judicial Institution (NJI), Abuja, on 24-28 April, 2017, Pp 3-4.

Speedy process. In the same Vein, the International Bar Association (IBA) report⁸, describes Access to Justice as a Comprehensive Legal concept which *covers different stages of obtaining a solution to civil and criminal problems. It starts with the existence of rights enshrined in law and with awareness and understanding of such rights. It embraces access to dispute resolutions mechanisms as part justice institutions that are both formal and informal (ie institutions, courts, council of elders and similar traditional or religious authorities)*. Access to justice involves a recognition that everyone is entitled to the protection of the law and that whatever rights sought to be protected is meaningless unless those aggrieved persons and under the circumstances ensuring that all manners of people are treated fairly according to the law and are able to get appropriate redress in the circumstances when they are treated unfairly⁹.

Constitution

Constitution can be described as an instrument of government; embodying fundamental rules of any nation. A constitution is a foundation document which has the aim and objective to make a state to exist as one entity and is binding on all citizens of the state. It is the ground norm and supreme law of a state. It is in line of this that section 1(1) of the constitution of the Federal Republic of Nigeria 1999 as amended state that: This constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria. This has been given judicial, pronouncement in plethora of cases. For instance in the case of Nafiu Rabiun v The state ¹⁰, Sir Udo Udoma JSC stated that *“The present constitution has been proclaimed the supreme Law of the Land: that it is written organic instrument meant to serve not only the present generation, but also serve generation yet unborn; that also is made, enacted and given to themselves by the people of the Federal Republic of Nigeria... the function of the constitution is to establish framework and principles of government based in general terms.*

It expresses the political will, that is the agreement by a people of a country, state or group on how they would be governed and legally, it expresses how the courts may deal with those who break the agreement, which includes access to justice.

Environmental Rights

There is no clear cut definition of Environmental right but could be inferred from the context it is used in relation to man and environment protection. Thus, Abdulkadir posits that if the protection of the environment is seen from anthropocentric perspective, then the environmental rights will be human centred¹¹. In this context it means Human Rights to a clean, balanced and protected environment¹². It presupposes that all human beings have the inalienable right to a safe, clean environment which is enforceable.

⁸ Bejiraj and McNarama J “International Access to Justice: Barriers and Solutions” (Bingham Center for Rule of Law, report 02/2014), International Bar Association (IBA), October 2014, p.8.

⁹ Anamoji, G S, “The Impact of the Nigeria Legal Aid Council on Accessibility and Quick Dispensation of Justice in Nigeria”, Research Journal of Humanities and Cultural Studies (RJHCS), VOL.10 NO 4, 2024. DOI:10562011 rihcs. VOL 10.No 4 2024, p.2 or International Institute of Academic Research and Development Journal, available at www.iiardjournal.org

¹⁰(1981) 2 NCLR 293 at 326

¹¹ Abdulkadir, B A, “The Rights to a Healthful Environmental in Nigeria: A Review of Alternative Pathways to Environmental Justice in Nigeria”, Afe Babalola Journal of Sustainable Development Law and Policy (2014) 3:1, P.120.

¹² Simnonides, J “The Human Rights in a clean Balanced and protected Environmental” (1997) 20(1) Int’L J of Legal Information, 20, 40, Comma Downs, A healthy and ecologically Environment: An argument for a third Generation Right” (1991) Duke J. Comp & Int LJ. 351, 385.

Environmental justice:

Environmental Justice is the citizens' access to the legal and administrative mechanisms to ensure that they have a safe and healthy environment by been able to obtain effective remedies for violation of their environmental rights¹³. It involves the fair treatment of all persons with regard to implementation and enforcement of Laws, regulations and policies. Thus, According to Bullard¹⁴ in accordance with the United States Environmental Protection Agency (US.EPA) stated that Environmental Justice is the fair treatment and involvement of all people regardless of race, colour, national, education, income with regard to the development, implementation and enforcement of environmental laws, regulations and policies. Lazarus¹⁵ posits that focus of the report of environmental justice includes the bold steps recommended for re-examining the problems associated with critical environment and development, inter-linkage and formulating realistic proposals to solve them so as to actualize the aspirational goals of the world community to protect and enhance the environment. In line with the above, the Nigeria Constitution 1999 tends to protect the environment to ensure it's safe and healthy for citizens when it provides that "the state shall protect and improve the environment and safeguard the water, air and land, forest and wide life of Nigeria"¹⁶. Unfortunately, the above provision did not expressly confer any right or make it a basic right for any person for the protection of their environment. This poses a problem of enforcement of the citizens' rights to healthful environment which this paper discusses.

2.1. ENVIRONMENTAL JUSTICE UNDER THE NIGERIA CONSTITUTION

In this paper the provision on access to environmental justice in the Nigeria constitution 1999 will be discussed under the following headings.

(A) Provided for in Chapter II as Fundamental Objectives and Directive Principles of State Policy.

The Constitution of Federal Republic of Nigeria 1999 as amended provides for environmental protection in the chapter II as Fundamental Objectives and Directive Principle of State Policy¹⁷. *Section 20 contains the major provision on environmental protection which specifically states that¹⁸. the state shall protect and improve the environment and safeguard the water, air, land, forest and wildlife in Nigeria.* It could therefore be gleaned from the above that the aim of section 20 is to ensure a healthful environment for Nigerian citizen's¹⁹. Environmental protection and environmental rights are essential part of human rights because human rights can only be effectively enjoyed in an environment that is free of pollution²⁰. Thus, safe

¹³ Ibe CE and Akwa FO, Appraising the Legal Framework for Enhancing Public Access to Environmental Justice in Nigeria (IJOLACLE 2 (2021) P. 123.

¹⁴ Bullard, R, The Quest for Environmental Justice: Human Rights and the Politics of Pollution (Sierra Club Books: San Francisco, 2005). See also, Shampiro, J, "Environmental Injustices: Conflicts & Hazards in the Niger Delta: A Substantial Research paper submitted to the America University School of International Affairs and Natural Resources and Sustainable Development, Washington, DC, (May 5, 2010) P.17

¹⁵ Lazarus, R "Pursing Environmental Justice: The Distributional Effects of Environmental Protection. (McMillan Publishers: London 2000) P.17. See also, Uwem Udok et al, "Challenges, of Access to environmental Justice in Nigeria". Cavendish University Law Journal, (CULJ) Vol.2, March 2023. P.8.

¹⁶ The Constitution of the Federal Republic of Nigeria 1999 as Amended, Chapter II, Section 20.

¹⁷ See the provisions of the Chapter II of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

¹⁸ Constitution of the Federal Republic of Nigeria 1999 (as amended)

¹⁹ Ogbodo, G, 'Environmental Protection in Nigeria: Two Decades After Koko Incidence' (2010) 15(1) Annual Survey of International and Comparative Law 1, 18.

²⁰ See. Abdulkadir A B, and Sambo A

guarding the air, water, land and wildlife as stated in section 20 would enhance a pollution free or healthful environment even though it was not specifically expressed in the constitution. Unfortunately, the chapter II of Nigeria constitution is not justiciable as it ousts the jurisdiction of court as such the access to environmental justice rights citizens are not enforceable. Thus, in the case of *House of Representatives v SPDC*²¹, the court of appeal held that the 1999 constitution did not vest any general legislative power to make laws with respect to the environment on any legislative organ, but rather a mere power to establish and regulate authorities to promote and enforce the observance of the Fundamental Objectives and Directive Principles, whether for the entire Federation or any part thereof. Also see the cases of *Archbishop Olubunmi Okogie & Ors V Attorney General of Lagos State & Ors*²², *A G Ondo State v A G Federation*²³.

(B) Provides cumbersome procedures for access to environmental justice on Public Interest litigation (PIL) by virtue of section 6 (6)(b).

The constitution provides that, *the judicial powers vested in accordance with the foregoing provisions of this section shall extend to all matters between persons or authority and to any person in Nigeria, and to all actions and to any proceedings relating thereto, for the determination of any question as to the civil obligations of that person*²⁴.

It means that any person bringing an action on environmental justice must show personal injury and his interest in that matter. This poses a cumbersome procedure and technical requiring burden of prove through expert evidence without which the environmental right will fail, In *Oronto Douglas v. Shell Petroleum Development Company Ltd & 5 Ors*²⁵, the plaintiff sought a compliance with the provisions of the Environmental Impact Assessment (EIA) Act in relation to the Liquefied Natural Gas (LNG) project at Bonny being executed by the defendants. The court held that the plaintiff had no standing to institute the action since he had shown no prima facie evidence that his right was affected or any direct injury caused to him, or that he suffered any injury more than the generality of the people. In the case of *A. G. Kaduna State v Hassan*²⁶, it was held that a father had no interest in the prosecution of the death of his son. This narrow interpretation of section 6 (6) (b) of the Constitution brings to fore the danger it poses to citizens' ability to access justice. It becomes more dangerous in a developing country like Nigeria where citizen access to justice is of utmost importance for enforcement of their rights.

(C) Provides for ouster of court's jurisdiction on access to environmental justice as to Locus Standi in chapter II Section 6 (6) (c)

The Constitution provides that, *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 actor 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*. It ousts the court's jurisdiction based on Locus Standi rule as to who to sue or seek redress on environmental justice. The purport of the above provision is that only a person whose civil right and

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

²¹ Appeal No: CA/A/36/08 (Judgment delivered on 15 April 2010). See also the constitution of Nigeria 1999, section 13

²² (1981) 2 NCLR P.339

²³ (2002) 9 NWLR (Part 772), 222

²⁴ The constitution of the Federal Republic of Nigeria 1999 as amended, Section 6(6)(c).

²⁵ Unreported Suit No. FHC/2CS/573/93. Ruling was delivered on the 17th February 1997.

²⁶ (1985) 2 NWLR (Pt.8) 843

obligation is infringed has the jurisdiction to access the court for justice. This is the position in the Locus Classicus case of *Abraham Ade Adesanya v The President of the Federal Republic of Nigeria*²⁷. *Oronto Douglas v. Shell Petroleum Development Company Ltd & 5 Ors*²⁸.

(D) Provides for related Environmental justice issues as Fundamental Human Rights in Chapter IV

The Chapter IV of the constitution provides for some inalienable rights commonly refer to as civil and political rights such as right to life, right to property, right to human dignity²⁹ etc. These rights are indirectly related to right on environmental justice. According to Atsegbua et al³⁰ the affirmation duty of states to protect the right to life should logically apply to circumstances in which a state's activity poses life threatening environment risks. Threats to the environment or serious environmental hazards may have far-reaching effects on the lives of large groups of people directly or indirectly, and the connection between the right to life and the environment is an obvious one.

2.2 THE IMPLICATIONS OF THE CONSTITUTION'S PROVISIONS ON ACCESS TO ENVIRONMENTAL JUSTICE IN NIGERIA

The above provisions of the constitution have far reaching implications on access to environmental justice on Nigeria citizens. Some of them are

- i) **Enforcement of environmental justice under chapter II**, by virtue of section 20 and section 17(3)(c) and (d) mentioned above which tends to provide for the protection of the environment and healthful environment, the above provisions are bereft of environmental rights or access to environmental justice as they are contained in chapter II of the constitution which are not enforceable. They are not right to a clean and healthy environment recognize under the constitution as they are mere welfare policies by government known as fundamental objectives and directive principle of state policy. The constitution clearly demarcates the chapter II and IV as policies and rights respectively. In Nigeria fundamental objective and directive principle of state are not enforceable. This results in inequality and injustice against access to environmental justice despite the provision of section 17(1) that the social order of the state shall be based on equity, equality and justice. This is contrary to other jurisdictions on access to environmental justice particularly in India where access to environmental justice is justiciable under fundamental objectives and direct principles of state policy in Article 36(1) and (2). In the case of *Samatha v State of AP*³¹, It was observed that the fundamental rights and Directive Principles of State Policy in the Indian constitution are two wheels of the chariot to achieve the rule of law, which is the core of the basic structure of the Indian constitution. In the case of *Kesavanandav State of Kerala*³², the Indian Supreme Court held that parts III and IV of the India constitution touches and modify each other. They do not run parallel to each other. It is suggested that the Nigeria constitution need to be reformed in this direction to enhance environmental justice and citizens' rights to healthful environment.
- ii) **Locusstandi** The implication of section 6(6)(c) of the constitution to access to

²⁷Constitution of Federal Republic of Nigeria 1999 as amended, Section 6 (6) (b).

²⁸ (Supra)

²⁹ The Constitution of the Federal Republic of Nigeria, Section 33

³⁰Atsegbua L. Akpotaire V and Dumowo F (2010) Environmental laws in Nigeria, 2nd ed (Lagos: Ambik press 2010) Pp.77-89. (See Ksentini, "Human Rights and the Environment, cited in Okanmah, (1997), J.A.L p53).

³¹(1997) 8 SCC 191

³²AIR 1973 SC 1461

environmental justice is that it oust the court's jurisdiction³³. Undue reliance by the courts on *locus standi* had adversely affected a number of environmental justice cases. Environmental justice cases involve public nuisance where public rights are asserted. A private individual does not have the *locus standi* to sue in public nuisance unless the interference with the public right is such that some private right of his, is at the same time affected and where no private rights is interfered with, in respect of his public right he suffers special damages peculiar to himself from the interference with public right he does have the *locus standi*³⁴. In *Amos and 4 others v Shell B.P Nig. Ltd*³⁵, the Plaintiff claimed damages from the defendant (amongst others) for public nuisance. They alleged that the defendant made a large earth dam across their creek during oil mining operations. They also alleged that this resulted in the flooding of the upstream, while downstream was dry. The plaintiffs were put at a disadvantage by the pollution act of the Defendants use of waterways for navigating barges, rivers crafts, canoes, disruption of commercial activities, use of water for drinking and other commercial purposes. The trial court and Supreme Court held that the conduct of the defendant amounted to public nuisance, however, that there was no evidence from the plaintiffs showing that they suffered damages over and above those suffered by the general public. The action was therefore dismissed. Also, in the case of *Oronto Douglas v. Shell Development Company Ltd & 5 Ors*, the plaintiff sought a compliance with the provisions of the Environmental Impact Assessment (EIA) Act in relation to the Liquefied Natural Gas (LNG) project at Bonny being executed by the defendants. The court held that the plaintiff had no standing to institute the action since he had shown no *prima facie* evidence that his right was affected or any direct injury caused to him, or that he suffered any injury more than the generality of the people.

Although, it is argued that the above section 6(6)(c) does not absolutely oust the jurisdiction of the court from entertaining matters under this chapter II but that there is a leeway of doing so through a specific legislation by the National Assembly in the case of *Uzoukwu v Ezeonu II*³⁶. Secondly, that the chapter has to be given broad interpretation by court to link it with Fundamental Human Rights to accommodate environmental justice as a basic right as in the cause of *Adamu v Attorney-General of Bornu State (Nigeria)*³⁷ where it was held that: ***It is conceded that Chapter II of the constitution is not justiciable, but it is the law that where provisions of the constitution defines a cause of action or enshrines certain rights, these provisions must be applied, without any inhibition emanating from Chapter II. In other words, where any legislation for implementing the fundamental objectives and directive principle of state policy is in issue, the courts shall declare such legislation invalid, unless the fundamental rights of a citizen are infringed or any other express provision are clearly infringed.*** The *locus standi* provision in the constitution culminated in technicalities and restrictive interpretations that deprives communities or citizens access to environmental justice

³³ Akpambang EM, Promoting the Right to a Healthy Environment through Constitutionalism in Nigeria (2016)(4)(3) International Journal of Environment and Pollution Research 40-61, T Okonkwo, Environmental Constitutionalism in Nigeria: Are We There Yet? (2015)(13) The Nigeria Judicial Review 175-216.

³⁴ *Dumez(Nig)Ltdv Ogboli*(1972)ALLNLRP.241

³⁵(1977)6S.C.P.109

³⁶(1991) 6 NWLR (pt 200) 708 at 761 – 762.

³⁷(1996) 8 NWLR 203, See also *Ogugua V C I*, Non-Justiciability of Chapter 11 of the Nigerian Constitution as an Impediment to Economic Rights and Development. iiste, Vol 5 No 18, 2015. Available online at www.iiste.org. Accessed on 20/7/24, Okeke, G N & Okeke C., The Justiciability of the Non-justiciable Constitution Policy of Governance in Nigeria. Journal of Humanities and Social Science Research(IOSSR), Vol.79, (2012).

³⁸except for some judges who have taken bold step through judicial activism to give broad and liberal interpretations to the concept of locus standi as in the case of *Fawehimi v Akilu*³⁹. The locus standi is the most impediment to access to environmental justice as even the court are in quagmire as to its purport in the case of *A. G. Kaduna State v Hassan, Oputa JSC* as he then was, expressed his worries when he said that, “*it is on the issue of Locus standing that I cannot pretend that I have not had a serious headache and considerable hesitation in views on Locus standi between the majority and minority judgments between justices of equal authority who are equally divided*⁴⁰”. It is recommended that the S. 6(6)(c) be expunged from the Nigeria constitution in order to remove one of the obstacles of access to justice created by the constitution.

3.1. RIGHT TO HEALTHFUL ENVIRONMENT UNDER THE NIGERIA CONSTITUTION

The Nigeria constitution did not provide for right to healthful environment in Section 20 of the constitution. However the constitution in section 17(3) provide that the state shall direct its policy toward the ensuring that (c) the health, safety and welfare of all persons in employment are safeguarded and not endangered or abused. (d) That there are adequate medical and health facilities for all persons. Though this seems to provide for right to healthful environment for citizens but it did not actually expressly spell it out as a right and moreover, it is contained in chapter II of the constitution which is a mere welfare policy that cannot be enforced on violation. This is not actually the contemplation of right to healthful environment. Right to healthy environment contemplates the express provision of the right in the constitution. For example, some countries have expressly stated the right to healthful environment in their constitutions: Article 41 of the Constitution of Argentina, Article 79 of the Constitution of Columbia 1991, Article 46 of the Republic of Congo 1992, Article 69 of the Republic of Croatia 2001 etc⁴¹. This express constitutional provision for the right to healthful environment is lacking in Nigeria constitution which poses difficult problem for access to environmental justice and enforcement of right to healthful environment in Nigeria.

Although the right to a healthful environment has been explicitly recognized in both international and regional conventions, it is not provided for under the constitution of the Federal Republic of Nigeria 1999. The provisions of Section 20 of the Constitution, enjoining the State to protect and safeguard the environment, are classified under the Fundamental Objectives and Directive Principles of State Policy in chapter II and rendered non-justiciable by virtue of Section 6(6) (c) of the same constitution. Invariably, no citizen of Nigeria can seek redress under the provisions of the said Section 20 of the Constitution. However, the African Charter of Human and Peoples’ Rights (ACHPR) and other international conventions and constitutions provides for rights to healthful environment.

The provisions of this charter have been adopted and incorporated verbatim under the African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act 1983, in Article 16 and 24 of the African Charter which provides for the right to a healthy environment that “All peoples shall have the right to a general satisfactory environment favourable to their development”. Thus, in *SERAC v Federal Republic of Nigeria*⁴², the African Commission held that Article 24 “imposes clear obligations upon a government to

³⁸*Abraham Ade Adesanya v The President of the Federal Republic of Nigeria*

³⁹(1989) 3 NWLR (PT 112) 653 at 666

⁴⁰Fatai Williams (CJN)

⁴¹Abdulkadir (Supra) at p.121.

⁴²No. ACHPR/COMM/A044/1, May 27, 2002

take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources. Despite the above, the constitution requires that for international treaties to be enforceable in Nigeria⁴³, it has to be domesticated in Nigeria by the legislature. This means more hurdles to cross to achieve access to environmental justice in Nigeria

Unfortunately, in spite of the provisions of the Charter, section 6 (6) (c) of the Nigeria Constitution continues to pose a threat to the realization of the right to a healthful environment. This is because there is the argument that article 16 and 24 are inconsistent with the provisions of section 6 (6) (c) of the Constitution which regards the right to a healthful environment as belonging to those rights that are un-enforceable by the Nigerian courts.

The impact of the international conventions and the African Charter on Human and Peoples Right is to elaborate section 20 of the constitution based on human right approach which posits that there is a clear link between environmental pollution and human rights, as the enjoyment of one right spearheads to the enjoyment of the other. Therefore, the right to a healthful environment should be elevated to the right to life in order to make it enforceable under section 33 of the constitution of the Federal Republic of Nigeria. This was considered in the case of *Jonah Gbemre v Shell*⁴⁴ where the court held that a violation of the right to a healthy environment is a violation of the right to life. Accordingly, Atsegbua⁴⁵ is of the view that, everybody, individuals and communities in Nigeria⁴⁶ should exercise the right to a clean and healthy surrounding under the Chapter IV, as Fundamental Rights. This is premised on the fact that a right to life implies a right to live in an environment devoid of any injurious degradation” and nothing injurious to human life, in other word healthful environmental right.

Although the right to a clean and healthy environment is not justiciable under section 6 (6) (c) of the Constitution of the Federal Republic of Nigeria, however, based on the judgment of Court in the celebrated *Jonah Gbemre* case⁴⁷, right to healthful environment can become right to life which is guaranteed under Section 33 of the Constitution in order to make it justiciable⁴⁸. This is in line with what is obtainable in India and South Africa and other countries. Nigerian courts must be willing to adopt an expansive interpretation to the right to life under section 33 of the Constitution as adopted by the court in *Jonah Gbemre v Shell*⁴⁹. This bold declaration of the Judge is commendable and worthy of emulation by other members of the Bench⁵⁰. It was reaffirmed in the case of *Oil Pollution Watch v NNPC*⁵¹. This human right approach and judicial activism can easily be enforced if the rights are expressly stated in the Nigeria constitution. Though, court had given judgment in Gbemre’s case that Gas flaring is illegal, yet gas flaring is still going on in Iwherekan community where the case emanated and other places including the NLNG Bonny. Broad interpretation of chapter II and chapter IV as complementary to each other is necessary as

⁴³ The Constitution of Federal Republic of Nigeria 1999 as amended, Section 12.

⁴⁴ (2005) AHRLR 151

⁴⁵ Supra, p.143

⁴⁶ The Constitution of Federal Republic of Nigeria, Section 33 to 45

⁴⁷ Ibid

⁴⁸ E.G.Orie, (2014) (n8)

⁴⁹ Ibid

⁵⁰ E. G. Orie, (2021). COVID-19 Pandemic, Migration and Human Rights Protection in Nigeria. *National Open University of Nigeria International Journal of Migration and Global Studies (IJMGS)*, 1(1):133-162. <http://ijmgs.nou.edu.ng/volume-1-number-1/>

⁵¹ Centre for Oil Pollution Watch v. NNPC [2019] 5 NWLR (Pt. 1666) 518

to enhance effective access to environmental healthful rights of Nigeria citizens. In India, the case of *Air India Statutory Corporation v United Labor Union*,⁵² it was held that *“The directive principles in the constitution were fore-runners convention on the right to development as an inalienable right and that all people are entitled to participate, contribute to economic, social, cultural and political development in which all human rights and fundamental freedoms would be fully realized. It further held that the directive principle could be justiciable by them without having to be read into fundamental rights”*.

3.2 INTERNATIONAL LEGAL FRAMEWORK ON RIGHTS TO HEALTHFUL ENVIRONMENT

Internationally there are various provisions on rights to healthful environment contrary to what is obtainable in the Nigeria constitution 1999 and the narrow interpretation given by courts in Nigeria that deprives citizens of environmental justice due to the non-express provision for rights to healthful environment in the constitution. Some of them are

1. **South Africa:** The South Africa constitution contain right to healthful environment provision that *“every person shall have the right to the environment which is not detriment to his health or well-being”*⁵³. The main statutory provision relating to the environment is section 24 of the Constitution of the Republic of South Africa environmental right Act), which is stated as the right to an environment that is not harmful to health or wellbeing. To achieve this right, the Constitution also provides in section 24(b) that government must take reasonable legislative and other measures to:
 - Prevent pollution and ecological degradation.
 - Promote conservation
 - Secure ecologically sustainable development ⁵⁴
 - Use natural resources while promoting justifiable economic and social development.
2. **Republic of India:** India used the United Nations Organization (UNO) provision for right to a clean environment as enshrined in the United Nation Commission on Human Rights which is judicially recognized right to healthful environment as a fundamental human right in section 21 of the India constitution. For example, India applied it in the **Pakistan case of Shela Zia v Water and Power Development Authority PLD 1994 S.A 16**. In this case, a group of citizens sued and obtained a Supreme Court judgment stating that, “The right to life included a right to live in a clean environment”.

Based on this decision of Indian/Pakistan court, the Indian constitution in Article 21 provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. Thus, in the case of *Minereva Mills Ltd v Union of India*⁵⁵, the Supreme Court widened the scope of Article 21 of the constitution concerning civil liberty to include the provision of free legal aid in it. It was contended that the procedure which can take away the life and liberty of a person should be just, fair and reasonable. It was further held that under Article 21, the life and liberty of a person can be taken away only by the procedure established by law. Hence, any procedure which does not provide free legal aid for poor and illiterate people to ensure fair representation before the court cannot be treated as just, fair and reasonable⁵⁶. Article 48A of the Indian Constitution

⁵²AIR 1986 SC 99. See also Anamoji G S and Pepple I E, “Access to Justice under the Nigeria Constitution 1999: Seeing Nigeria in the eyes of other jurisdictions” International Journal of Social Sciences and Management Research (IJSSMR). Vol.10 No.7, 2024, P.12. International Institute of Academic Research and Development in www.iiardjournals.org

⁵³ The Constitution of the Republic of South Africa 1996 Section 24

⁵⁴ South Africa Environmental Right Act 106. 1996.

⁵⁵ AIR 1980 SC 1789, paras 61, 62 and 118

⁵⁶AIR1978 SC597

provides only that “The state shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country, this article obviously creates no enforceable rights like the Nigeria constitution, but by the liberal approach and the combine effect of chapter III and IV of the India constitution, right to healthful environmental justice is made a basic right and enforceable. This paper suggests that right to healthful environment should be liberally interpreted as in India and made enforceable in Nigeria.

Republic of Korea. The Republic of Korea constitution in Article 35 expressly states that ‘All citizens shall have the right to a healthy and pleasant environment.

The Spanish Constitution, in Article 45 made right to healthful environment stronger human environmental rights. For example, the constitution declares *that everyone has ‘the right to enjoy an environment suitable for the development of the person as well as the duty to preserve it.*

Turkish Constitution, Article 56 of their constitution states that: ‘Everyone has the right to live in a healthy, balanced environment. It shall be the duty of the State and the citizens to improve and preserve the environment and to prevent environmental pollution.

The Constitution of Nigeria lack the above laudable provisions deliberately crafted to ensure access to environmental justice and right to healthful environment for citizens, the express provision of the right and inclusion into the Nigeria constitution is not only desirable but necessary for access to environmental justice.

4.0 CHALLENGES OF ACCESS TO ENVIRONMENTAL JUSTICE

The Nigeria constitution’s provision on access to environmental justice poses some socio-economic challenges for the actualization of citizens’ rights namely:

(1) Delay in the Administration of Justice

The constitutional provision for access to justice in accordance with court’s procedures in filing and prosecution of environmental cases most times result to delays thereby denial of environmental justice. Litigants on environment justice cases have to contend with issues of jurisdiction⁵⁷, technical issues of expert witnesses and the proper procedure⁵⁸ as well as court interpretations which affects the speedy trial of the environmental cases on the part of the court. There have been series of cases earlier mentioned that denied access to justice to the people of the Niger Delta region. A learned environmental Lawyer observed when he commented that from an examination of the cases, this author also found that the court appears to be a barrier to accessing justice to the courts and invariably justice in many of the cases discussed and the court did not use its inherent powers to help much⁵⁹. Thus, in *Seismograph v Akpuruoyo*⁶⁰ there was need for expert witnesses but the plaintiff could not afford to provide one and lost the case. Absence of legal Aid for civil actions makes it even worse with recent amendment to the legal aid and scheme⁶¹ adding to the cost is the delay in delivery of justice, for instance, *Anare v Shell PDC Ltd* case which lasted over 30 years

⁵⁷ The Constitution of Federal Republic of Nigeria, 1999 as Amended, Section 251(1)(n), See also the case of *Shell Petroleum Development Company Nig. Ltd. v Isaiah* (2001) 11 NWLR (PT 723) 168 at 179

⁵⁸ **Four Fishermen v Shell**, Court of the Hague in the matter with case number/docket number C/09/337050/HAZA09 – 1580 of Friday Alfred Akpan & the Association with corporate personality Vereniging Milieudefensie Vs. The legal entity organized under foreign law Royal Dutch Shell Plc & the Legal entity organized under foreign law Shell Petroleum Development Company Ltd.

⁵⁹ Eloamaka C O, Accessing the Role of Courts in Enhancing Access to Environmental Justice in Oil Pollution matters in Nigeria, *African Journal of International and Comparative Law* 2812 (2020) p.214, p.213. Also, www.eupublishing.com/ajiclaccessed on 09/08/2024

⁶⁰ (1974) 6 S C 119. See also *Ejama-Ebubu Community v Royal Dutch Shell*, Eloamaka. C O, “Assessing the Role of Courts in Enhancing Access to Environmental. Justice in Nigeria”. *African Journal of International and Comparative Law* 2812 (2020) p.213. Also, www.eupublishing.com/ajiclaccessed on 09/08/2024

⁶¹ The Legal Aid Act 2011. Also the legal Aid offices are located in capital cities with little or no enlightenment of its existence, importance to the poor and vulnerable persons with regard to access to justice. Section 8

and Ejama – Ebubu case which lasted over 40 years⁶². See also *Ekeremor Zion V Shell Petroleum Development Co. Ltd*⁶³. A spill occurred at Premabiri Bayelsa state in January 1987, first commenced in Bendel High Court in 1985. It took more than three decades of legal battle for compensation to be granted the plaintiffs' in suits: (1) No W/16/83, (2) w/17/8, (3) w 72/83 and W/80/83 which were consolidated on 21/03/85. The said suits were for damages against *Shell Petroleum .Co ltd* for oil spillage instituted for and on behalf Obotobo, Sokebolo, Ofogbene (EzonBurutu and Ekeremor Zion) (Ezon Asa) communities. At the end of the trial which each party called witnesses, the trial court in a judgment delivered on 27th May 1997 in favour of the plaintiffs awarded damages, appealed and final judgement was delivered in 2015 (30 years) after.

(2) Poverty

Poverty is perhaps one of the most important socio-economic factors constituting a hindrance to environmental claims litigation in Nigeria. Most environmental justice litigants are poor and cannot afford the luxury of seeking redress on their environmental rights. This situation was aptly captured and detested by a legal luminary Hon Justice T. Akinola Aguda when he stated that *"the whole system of administration of justice is heavily weighed against the vast majority of people, who are unable to afford the expense of any search after justice. If however, the poor is foolhardy enough to enter the temple of justice, he and his family may regret it for the rest of their lives. For the process in the pursuit of what he considers to be just –he may become bankrupt and die a pauper because no matter how little a claim may be if one of the parties is a wealthy person or is the state, such a case may traverse eight courts in between 2 and 20 years"*⁶⁴. Inability to procure an expert witness to testify and prove the environmental claims against the defendant may be caused by poverty of the Plaintiff. See the case of *Seismograph Services Ltd vOnokpasa*⁶⁵. In this case Mr. Onokpasa the proprietor of Trinity College in Sapale claimed that the appellant's seismic blast in the area, shook and caused cracks to the college building. The appellant company called three experts witnesses who said the blast could not have ~~and~~ the damages. The respondent called no expert witness because he could not afford one. But his witnesses said after the blasts, the crack emerged on the building. The trial High Court awarded him compensation. But this judgment was set-aside on appeal to the Supreme Court, which held that the trial judge ought to have believed the expert witnesses of the defendant against the lay witnesses of the plaintiff as their evidence had more technical probative value.

(3) Judicial Attitudes to Environmental Claims

Sometimes, the attitude of the courts to environment claims litigation particularly to the award of damages which mostly are general in character, also operate as a constraint to litigation as a mechanism for seeking remedies for pollution in Nigeria. The case of *Shell Petroleum Development Co. Ltd v Teibo* ⁶⁶is illustrative. The plaintiff claimed the sum of ₦64 million as general damages from the defendant for oil spillage into nun river which serve as a source of drinking water, fishing and desecration of their juju. Despite the fact that the plaintiff was able to prove the damage alleged by calling experience and knowledgeable expert witnesses, the court awarded a paltry sum of ₦6 million to the

⁶²S P D C LTD v ANARE (2015) LPER 24750 (SC)

⁶³ Friends of the Earth International, "Access to environmental justice in Nigeria: the case of Environmental Court of Justice" 2016, p8. www.foei.org. Accessed on 10th September 2024

⁶⁴Aguda T A, The Jurisprudence of Equal Justice. A foundational lecture delivered at the Lagos stateUniversity (1987). PP.4 and 6.

⁶⁵ (1992) 4SC.123

⁶⁶ (1996) 4 NWLR Pt 445, P.657

community. This is a discouraging attitude of court towards environmental justice to the community.

(4) Problem of Burden of Proof

The issue of burden of proof may be an important factor in determining the success or failure of any environmental claim litigation. Environmental justice may not be accessed if the victim who has suffered environmental degradation is required to prove harm done to him by the polluter and he lacks the requisite technological knowledge or expertise to do so. In respect of civil liability under common law principles, the major issue to be dealt with is that of fault principle. This basically has to do with the burden of proof. In *Seismograph Services Ltd v Saturday Mark*⁶⁷, Mr. Mark a fisherman sued the defendants claiming compensation for his fishing nets and boat damages by the defendant's vessel in Akaza waters in Akwa-Ibom. He alleged that the vessel tore through his nets, on which he affixed net floaters and buoys to ward approaching vessels of the presence of nets along the path. However, he gave no particulars of the negligent acts of the defendants. The trial judge gave judgment in his favour, holding that the principle of *res ipsa loquitur* applied to shift the burden of proof on the defendants to explain the damage which they did not. The court of Appeal held otherwise. It held that failure by Mark's lawyers to give particulars of the defendant's negligence in his statement of claim was fatal to his suit.

(5) Statute of Limitation

The statute of limitation which bared the litigation of environmental justice matter after a certain period is one of the hindrances to access to environmental justice as it is expected that such matter should be brought within that time frame. This is contained in the repealed Nigerian National Petroleum Corporation Act that any claim filed after 12 months from the date the cause of action arose became statute barred. However, this is not contained in the Petroleum Industry Act (PIA)⁶⁸ 2021 but the provisions of the Public Officers Protection Act are applicable under the Act, which means the common law still applies in that regard which is likely to affect citizens right to environmental justice which the average environmental case litigant in the remote village may not be aware as to brief his lawyer within the time frame.

5.0 CONCLUSION.

This paper has discussed extensively the access to environmental justice and the difficulties of enforcement of right to healthful environment. The constitution of Nigeria is no doubt a major clog in the wheel of access to environmental justice and rights to healthful environment of citizens due to the provisions for access to environmental justice in Chapter II which is non-justiciable except by judicial activism to elaborate the Chapter II linked to chapter IV as a basic right which is not easy to come by conservative judges thereby, denying citizens their rights to healthful environment. The fundamental objective and directive principle of state policy and locus standi under section 6 has been a torn in the flesh of effective access to environmental justice for citizens. Furthermore, it is found that the lack of expressly providing for the right to healthful environment in the Nigeria constitution is a great lapse and impediment to actualization of right to healthful environment and access to environmental justice which makes the Nigeria constitution lag behind in international global best practices on access to environmental justice.

⁶⁷ (1993) 7 NWLR Pt 304, P.203

⁶⁸ The Petroleum Industry Act 2021, Section 310

5.1RECOMMENDATIONS

1. It is recommended that the Nigeria constitution should be amended by merging Chapter II and IV and made a basic or fundamental human rights to enable citizens have effective access to environmental justice and enforceability of rights to healthful environment.
2. There should be a comprehensive Environmental Justice Act and Environmental Court to handle all matters pertaining to access to environmental justice and rights to healthful environment.
3. The constitution's amendment should expressly state the right to healthful environment for citizens for easy redress and interpretation by courts.
4. Section 6(6)(c) should be removed from the constitution or repealed to give the courts unrestricted jurisdiction on environmental justice and citizens' healthful rights.