



Human rights law and environmental protection: A focus on Nigeria

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Abstract

This study examines Nigeria's challenges in protecting human rights and the environment, despite constitutional and international recognition of the right to a healthy environment. Weak enforcement hampers existing legal frameworks, exacerbating issues like pollution and deforestation. Urgent reforms are needed, including strengthening legal mechanisms, enhancing enforcement, and promoting public participation in decision-making. Drawing on international best practices, actionable steps are proposed to advance human rights and environmental sustainability. Integrating these considerations is crucial for fostering equitable development and ensuring a healthier future for Nigerians.

Keywords: Human rights, environment, nexus, protection

Introduction

A stable, unpolluted, sustainable environment is vital for humans to thrive and exercise their rights to life, health, food, water, and sanitation. Without it, we may lack basic necessities, hindering our goals and human dignity ^[1]. Recently, there's been growing recognition of the link between human rights and the environment. International and domestic laws, court rulings, and academic research on this connection are increasing rapidly. The mandate on human rights and the environment, aims to explore obligations regarding a secure, unpolluted, thriving, sustainable environment and advocates for integrating human rights into environmental policymaking ^[2]. Many countries now include the right to a healthy environment in their constitutions, recognizing the environmental crisis as a human rights issue. Yet, many questions about the relationship between human rights and the environment remain unanswered, requiring further investigation ^[3].

Thus, this paper examines the applicability of human rights law in addressing environmental concerns

Human Rights

Human rights are inherent entitlements inherent to all individuals, independent of governmental recognition. They are universally applicable, regardless of citizenship, gender, race, ethnicity, religion, or other distinctions, encompassing essential freedoms such as life, speech, and religion, as well as dignified necessities like food, education, employment, and healthcare ^[4].

Human rights link us together by establishing a common framework of entitlements and obligations. The enjoyment of these rights hinges on mutual respect from others, highlighting the interconnectedness of human rights with responsibilities towards fellow individuals and society at large. It's incumbent upon individuals to exercise their rights conscientiously, mindful of how their actions may impact the rights of others ^[5].

A comprehensive set of global human rights laws has been established to safeguard and advance basic rights and liberties within the framework of ecological sustainability. Major international agreements, such as the Universal Declaration of Human Rights ^[6], the International Covenant on Civil and Political Rights ^[7], the International Covenant

on Economic, Social and Cultural Rights ^[8], as well as regional human rights treaties, delineate rights pertinent to environmental preservation and outline the responsibilities of states. Furthermore, environmental accords like the Paris Agreement ^[9], the Convention on Biological Diversity ^[10], and the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters ^[11], complement human rights protocols by addressing environmental issues through collaborative approaches.

Environment

The concept of the environment encompasses the surroundings, conditions, and influences that affect an organism or a community of organisms. It includes both natural and human-made elements, ranging from physical features like air, water, soil, and ecosystems to social, cultural, and economic factors ^[12].

Black Law Dictionary defines environment as "The totality of physical, economic, cultural, aesthetic, and social circumstances and factors which surround and affect the desirability and value of property and which also affect the quality of people's lives. The surrounding conditions, influences or forces which influence or modify ^[13]."

The National Environmental Standard and Regulation Enforcement Agency Act, 2007 defines 'environment' in the following perspectives; 'Environment' include water, air, land, animals living therein and in relationship exist among these or any of them ^[14]. Section 20 of the 1999 Constitution of the Federal Republic of Nigeria defines environment as

- a. The water
- b. Forest and wildlife
- c. All layers of the atmosphere
- d. All organic and in-organic matter and living organisms, and
- e. The interacting nature system that includes the component referred to in paragraphs (a) – (d).

Protecting the environment, vital for human, plant, and animal well-being, includes air, water, land, forests, and wildlife. Individuals, groups, and governments safeguard nature, aiming to conserve resources, repair damage, and

reverse trends. Environmental sustainability and human rights are mutually reinforcing goals crucial for sustainable development. Ecosystems directly contribute to human rights enjoyment. Governments must prevent environmental degradation's negative impact on human rights and protect environmental human rights advocates ^[15].

Environmental Right

Environmental rights recognize human entitlement to specific environmental standards. Without a secure, unpolluted environment, human rights suffer, and sustainable environmental management is unattainable. Over 100 constitutions now include the right to a healthy environment, acknowledging this correlation. These rights include substantive and procedural aspects ^[16].

1. Substantive Rights

Substantive rights encompass civil, political, economic, social, cultural, and collective rights directly impacted by the environment. They include freedoms like life, association, and non-discrimination, as well as rights to health, food, and a decent standard of living. These rights, enshrined in legal instruments, offer tangible protections and benefits, distinguishable from procedural aspects of law ^[17].

2. Procedural Rights

Procedural rights are essential in legal systems, detailing formal procedures for enforcing and protecting rights, ensuring fairness and transparency. Key access rights include information, public participation, and justice.

a. Access to Information: This right allows individuals to access relevant information regarding their legal rights, ensuring transparency in laws and decisions. It empowers informed decision-making, accountability, and may involve requesting documents from public authorities.

b. Public Participation: Public participation allows individuals and groups to engage in decision-making processes affecting their rights. It includes mechanisms for voicing opinions, contributing to policymaking, and participating in debates. This fosters accountability and legitimacy through public hearings, consultations, and citizen forums.

c. Access to Justice: Access to justice ensures effective enforcement of legal rights and remedies for grievances. It includes access to courts, representation, legal aid, and dispute resolution. Essential for upholding the rule of law and human rights, it promotes equality and fair adjudication of claims.

These access rights are foundational in procedural rights, empowering individuals to enforce their legal rights. By enhancing transparency, participation, and accountability, they uphold the integrity and effectiveness of legal systems, ensuring equitable access to justice.

Overview of the Legal Framework on Environmental Protection in Nigeria

In the context of Nigeria's trajectory, several human rights laws protect the environment and promote sustainable development:

1. Constitutional Rights

Section 20 of the Nigerian Constitution ^[18] outlines the nation's environmental objectives, emphasizing the protection and improvement of the environment, including water, air, land, forests, and wildlife. However, this provision is located within Chapter 2 of the Constitution, titled "Fundamental Objectives and Directive Principles of State Policy." Despite the inclusion of environmental rights in this chapter, Section 6(6)(c) of the Constitution limits the justiciability of these principles. This section states that judicial powers do not extend to issues concerning the conformity of laws or decisions with the principles outlined in Chapter 2. Consequently, the enforcement of these environmental principles cannot be compelled in court. Judicial decisions, such as *Attorney General of Ondo State v Attorney General of the Federation* ^[19]; *Okogie v Attorney General of Lagos State* ^[20], and even in *Morebishe v Lagos State House of Assembly* ^[21], have affirmed that these provisions are not justiciable. This highlights the foundational nature of constitutional principles, which serve as guiding norms for legislation and policy formulation but may not be subject to direct enforcement through judicial proceedings.

The rights in Chapter IV of the 1999 Constitution are fundamental and justiciable, forming the basis for enforcing the right to a clean environment. For example, Section 33(1) guarantees the right to life, implying that living in an unhealthy environment could jeopardize this right. Similarly, the right to privacy is meaningless without adequate living conditions. Section 44 ensures property rights, suggesting that actions endangering the environment could violate property rights, thus becoming justiciable ^[22]. The Federal High Court in Nigeria, in *Gbemre v Shell* ^[23], recognized the human rights-based approach to environmental protection. The plaintiff argued that gas flaring violated the right to life, dignity, and a clean environment. The court ruled in favor of the plaintiff, setting a precedent for environmental protection. The Supreme Court in *Center for Oil Pollution Watch v Nigerian National Petroleum Corporation* ^[24] upheld this precedent, stating that the right to life is integral to ensuring a clean environment. Thus, breaching environmental rights also violates the right to life ^[25].

2. International Human Rights Treaties

Nigeria is a party to various international human rights treaties that include provisions related to environmental protection. For example, the International Covenant on Economic, Social and Cultural Rights ^[26] primarily safeguards economic, social, and cultural rights, with indirect environmental protection through articles like 12 (right to health), 11 (adequate standard of living), and 6 (right to work). Environmental degradation impacts public health, access to necessities, and working conditions. While ICESCR lacks a dedicated environmental article, its provisions indirectly promote environmental sustainability.

3. African Charter on Human and Peoples' Rights

Nigeria signed and ratified the African Charter on Human and Peoples' Rights of 1983 ^[27], acknowledging the right to a conducive environment for development. The Charter is overseen by the African Commission and Court on Human and Peoples' Rights, covering civil, political, social, economic, and cultural rights. Article 24 states, "All peoples

shall have the right to a general satisfactory environment favorable to their development."

The legal question arises whether economic, social, and cultural rights, declared non-justiciable under the Nigerian Constitution, remain enforceable despite the limitations on the Court. In *Abacha v. Fawehinmi*,^[28] the Supreme Court affirmed the African Charter's legal force in Nigeria. However, it held that while domestic courts could apply the Charter, it doesn't supersede the Constitution's supremacy.

This position of the law has also been accentuated in *Olorunfoba-Oju v. Dopamu*,^[29] held per Oguntade JSC that 'any provision of an existing law which conflicts with the provisions of the 1999 Constitution must be pronounced void to the extent of such inconsistency.'^[30] This pronouncement underscores the Nigerian Constitution's supreme position in the law hierarchy. However, there seems to have been a change in the judicial attitude of the Supreme Court and by extension, backed up with legislation. In the landmark case of the *Attorney General of Ondo State v. Attorney General of the Federation & 35Ors*,^[31] while still on the ousted powers of the Court as it relates to the rights provided in chapter II of the Constitution, the Supreme Court seems to have breathed a new life into the powers of the Court as it held that all the rights are enforceable in instances where the government has enacted statutes to actualize them. In *Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation*^[32] the Supreme Court held that the African Charter, having been domesticated, forms a part of Nigeria's *corpus juris*. As such, the African Charter breathes life into the justiciability of Chapter II and, in turn, the right to a safe and healthy environment which the Nigerian Courts must protect and vindicate the human rights entrenched therein^[33].

Also, in another environmental right case before the Economic Community of West African State Community Court of Justice, *Socio-Economic Rights and Accountability Project (SERAP) v. Federal Republic Nigeria*, it was contended that the lack of effective clean-up exercise of impacted sites had greatly aggravated the human rights and environmental degradation of the oil producing communities of the Niger Delta of Nigeria. The Court in ordering the restoration of the impacted sites highlighted that the import of Article 24 of the African Charter was that every State must adopt appropriate measures to maintain the quality of the environment to the satisfaction of the human beings who live there and to enhance their sustainable development. The contention of Nigerian government to argue that the plaintiff's claims were founded on mere policy directives under the country's Constitution and consequently were not justiciable or enforceable was rejected by the ECOWAS court^[34].

Considering the mentioned cases, it is evident that Nigerian courts are progressively acknowledging the interdependence of human rights and environmental preservation.

4. Domestic Legislation

Nigeria has enacted regulatory frameworks for environmental management and enforcement. Such as: The Nigerian *Criminal Code Act* which criminalizes certain actions which "pollute the environment thereby making it poisonous to human health",^[35] or the "fouling of water bodies"^[36]. The *Environmental Impact Assessment Act* regulates activities with potential environmental harm, empowering institutions to review and oversee projects even

after assessment. Non-compliance incurs fines for individuals or corporations^[37]. The *Harmful Waste (Special Criminal Provisions) Act* proscribes against the discharge of noxious waste on the land, air and water in Nigeria. Section 6 prohibits noxious waste discharge on land, air, and water in Nigeria. It stipulates punishment for individuals, and separate penalties for corporate officers under Section 7^[38]. The *Associated gas re-injection Act* prohibits corporate bodies from burning gas during oil exploration and mining without lawful authorization. It outlines penalties for breaching the gas mining permit conditions^[39]. The *Water Resources Act* aims to enhance water resource quality. Section 6 empowers the regulatory agency to create regulations for preserving aquatic flora and fauna^[40].

Pursuant to Section 34 of the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, the National Environmental (Surface and Ground Water Quality Control) Regulations, along with 32 others, were gazetted. The NESREAA safeguards the Nigerian environment by: establishing a regulatory framework for environmental standards and enforcement; developing regulations like the National Environmental (Surface and Ground Water Quality Control) Regulations and the National Environmental (Air Quality Control) Regulation to protect water and air quality; implementing enforcement mechanisms, including penalties for violations; preserving natural resources like water and air through set standards and protecting life forms from environmental harm.

The Climate Change Act 2021 is a result of the National Assembly's constitutional authority to enact laws regarding the enforcement and regulation of the right to a clean and safe environment. While aiming to mitigate greenhouse gas emissions, enhance resilience to climate impacts, and promote sustainable development, the legislation has significant flaws that may hinder its effectiveness. One major issue is the lack of an enforcement mechanism, raising questions about its enforceability. Additionally, there is no defined penalty system, leaving punishment up to the discretion of the Council without explicit authority for the courts. Other concerns include duplicate regulatory agencies, duplicative taxation, and potential burdens on Nigeria's oil and gas sector, a vital part of the economy. The absence of clarity on enforcement and penalties poses a risk to the Act's enforceability^[41].

Challenges and Limitations

There are a plethora of challenges bedeviling the recognition of environmental rights as human rights, these challenges stem from the ambiguity in existing laws and regulations regarding the intersection of human rights and environmental protection; inconsistencies or gaps in legislation may lead to confusion among stakeholders regarding their rights and responsibilities; unclear definitions or criteria for determining violations of environmental rights can hinder effective enforcement.

Enforcement and implementation challenges stem from institutional capacity, coordination gaps among agencies, corruption, political inertia, and monitoring difficulties, fostering non-compliance.

Socio-economic factors affect access to justice due to economic disparities limiting legal representation and remedies for marginalized communities impacted by environmental degradation. Additionally, lack of awareness

about environmental rights, cultural barriers to legal action against powerful entities, and limited environmental data hinder advocacy and litigation efforts ^[42].

The Way Forward

It's essential to acknowledge that fundamental rights cannot be fully realized in a country where socio-economic rights remain unfulfilled. A comprehensive Bill of Rights should encompass the right to work, a living wage, shelter, health, and education—crucial elements for upholding basic human rights ^[43]. Therefore, there is a strong advocacy for making socio-economic rights justiciable in Nigeria to ensure the enforcement of fundamental rights becomes a reality rather than mere rhetoric. Presently, Chapter II of the Nigerian Constitution, addressing socio-economic rights, cannot be enforced in court due to Section 6(6)(c) of the Constitution, which bars courts from adjudicating on matters from this chapter. This inconsistency should be addressed through constitutional amendment ^[44].

The Nigerian Supreme Court should heed the guidance of the Indian Supreme Court's decision in *Minerva Mills Ltd v. Union of India* ^[45]. In that case, it was emphasized that the directive principles in Part IV of the Indian Constitution are fundamental to the governance of the country, not mere decorations. Therefore, when interpreting and applying directive principles and fundamental objectives, the court should not dismissively defer to policy-making authorities, but rather, it should play an active role in ensuring their realization ^[46].

Environmental policies often lack strict penalties for violators, rendering them largely declaratory. There is a need for stringent enforcement measures, including substantial fines and, where appropriate, terms of imprisonment, in line with the right to life and other fundamental rights. This approach aligns with the rationale for a rights-based approach, emphasizing the importance of the right to a clean and healthy environment. Incidents such as oil spillages by Multi-National Oil Companies, host community sabotage, and community militancy in Nigeria should be effectively addressed. Current fines imposed on MNOCs may not suffice to deter future pollution incidents, thus regulations must ensure heavy accountability for their actions. Additionally, procedural rights, such as the participation of non-state actors like NGOs and concerned citizens, should be guaranteed in environmental decision-making processes and policy formulation ^[47].

Provision of free legal services by legal practitioners to disadvantaged litigants enables them to assert their rights effectively. Additionally, reducing the cost of filing court processes in human rights cases is essential to ensure accessibility for all. High filing costs are a significant barrier preventing poor individuals from enforcing their rights, and lowering these costs would address this issue. Awareness campaigns led by NGOs and other stakeholders are also essential for promoting the enforcement of fundamental rights and enhancing social consciousness in the country.

Conclusion

This paper extensively examines Nigerian human rights laws pertaining to environmental protection, emphasizing their crucial role in intertwining environmental well-being with human survival. While these laws elevate the status of environmental protection, their effective enforcement

remains pivotal for tangible outcomes. Despite the Nigerian Constitution's non-justiciability of environmental rights, recent judicial pronouncements, notably through the ACHPR 2004, NESREA 2007, and the Climate Change Act 2021, offer optimism for progress.

However, the gap between legal frameworks and actual environmental protection in Nigeria is evident. The failure of the 1999 constitution to explicitly address environmental rights, coupled with judicial attitudes, as seen in cases like *Abacha v. Fawehinmi*, underscores the challenges.

The paper advocates for a more progressive approach from Nigerian judges in interpreting and enforcing environmental rights, akin to examples from India and other African countries. It stresses the need to move beyond statutory provisions and embrace a broader understanding of the law's purpose, especially considering that laws are made for the benefit of people. Recognizing the right to a clean environment under section 33 of the Nigerian Constitution, similar to precedents in other jurisdictions, could facilitate more effective enforcement. Ultimately, the paper calls for continued proactive judicial activism to bridge the gap between legal frameworks and the reality of environmental protection in Nigeria.

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