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AN EXAMINATION OF THE RIGHT TO HEALTHY ENVIRONMENT IN NIGERIA: LEGAL FRAMEWORKS AND ENFORCEMENT CHALLENGES

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ABSTRACT

Environmental degradation in Nigeria continues to pose serious risks to human health, biodiversity, and sustainable development. This paper examines the nature and scope of the right to a healthy environment within the Nigerian legal framework, analyzing relevant constitutional, statutory, and international provisions. It further evaluates the extent to which these legal instruments have been enforced and the key challenges hindering their effective implementation. Using a doctrinal and analytical research methodology, the study investigates how Nigerian courts have interpreted and applied environmental rights, referencing both local and comparative case law. The findings reveal that while Nigeria has a relatively robust legal framework, enforcement is significantly weakened by institutional limitations, corruption, and the non-justiciability of socio-economic rights under Chapter II of the 1999 Constitution. The paper concludes by proposing legal, institutional, and judicial reforms necessary for enhancing environmental protection and ensuring that the right to a healthy environment is not merely aspirational but enforceable in practice.

Keywords: *right to a healthy environment, environmental law, Nigeria, enforcement challenges, constitutional rights*

1. Introduction

The right to a healthy environment is increasingly recognized as fundamental to the realization of other human rights, including the rights to health, life, and dignity. The quality of the environment in which people live has a direct bearing on the enjoyment of fundamental human rights, particularly the rights

to life, dignity, and health. Globally, environmental degradation has prompted renewed attention to the recognition of a right to a healthy environment as an integral component of human rights protection.

In Nigeria, persistent challenges such as oil pollution, gas flaring, deforestation, poor waste management, and industrial contamination continue to undermine environmental quality and human well-being, posing significant threats to population health (Adebayo, 2018).

Despite the existence of numerous environmental statutes and regulatory institutions, environmental harm remains widespread, raising critical questions about the adequacy of Nigeria's legal framework and the effectiveness of enforcement mechanisms. This paper examines the extent to which Nigerian law protects the right to a healthy environment and interrogates the legal and institutional challenges that impede its realization.

2. Methodology

This paper adopts a doctrinal legal research methodology, relying primarily on the qualitative analysis of primary and secondary legal sources. Primary sources include the 1999 Constitution of the Federal Republic of Nigeria (as amended), relevant environmental statutes, judicial decisions, and applicable international and regional human rights instruments to which Nigeria is a party.

Secondary sources such as textbooks, journal articles, policy reports, and scholarly commentaries are used to provide contextual and analytical support. The study further employs a comparative and analytical approach to examine the scope of the right to a healthy environment within Nigeria's legal framework and to critically assess enforcement mechanisms, institutional challenges, and judicial attitudes affecting effective realization of the right.

3. Literature Review and Conceptual Framework

3.1 The Right to a Healthy Environment

The right to a healthy environment refers to the entitlement of individuals and communities to live in environmental conditions that support human health, dignity, and well-being. Shelton (2010) conceptualizes the right as environmental conditions adequate for a life of dignity, while Boyle (2012) situates it within the broader framework of international human rights law. The right is increasingly viewed as interdependent with established rights such as the rights to life and health.

3.2 Environmental Justice and Sustainable Development

Environmental justice emphasizes fairness in the distribution of environmental benefits and burdens and seeks to prevent marginalized communities from bearing disproportionate environmental harm (Agyeman et al., 2003). In Nigeria, environmental injustice is particularly evident in extractive regions such as the Niger Delta, where local communities suffer extensive pollution with limited socio-economic benefits (Omotola, 2007). Sustainable development, as articulated by the Brundtland Commission (1987), reinforces the need to integrate environmental protection into development planning.

3.3 Scholarly Perspectives on Environmental Rights in Nigeria

Nigerian scholars attribute environmental degradation largely to governance failures and weak enforcement. Atsegbua et al. (2010) highlight regulatory fragmentation, while Okonkwo (2015) underscores the limitations imposed by the non-justiciability of Chapter II of the Constitution. Ebeku (2017) identifies judicial creativity as a partial response, particularly through reliance on international instruments. Recent literature emphasizes institutional capacity and environmental governance as decisive factors in effective enforcement (UNEP, 2019; Mgbeoji, 2020).

3.4 Environmental Governance

Environmental governance involves the processes, institutions, and legal frameworks through which decisions about the environment are made and enforced. It includes the roles of government agencies, civil society, and international actors in shaping environmental outcomes (Lemos & Agrawal, 2006). Effective governance is crucial to enforcing environmental laws and ensuring accountability in Nigeria's environmental management system (UNEP, 2019).

4. Legal Frameworks for Environmental Protection in Nigeria

4.1 Constitutional Provisions

The 1999 Constitution of Nigeria (as amended) which is the grundnorm does not explicitly guarantee the right to a healthy environment. However, Section 20 mandates that "the State shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria" (Constitution of the Federal Republic of Nigeria, 1999, s. 20). Although this provision falls under Chapter II (non-justiciable rights), Nigerian courts have interpreted this alongside enforceable rights under Chapter IV.

In the landmark case of *Gbemre v. Shell Petroleum Development Company Nigeria Ltd* (2005) AHRLR 151 (NgHC 2005), the Federal High Court held that "Sections 33 and 34 of the Constitution of the Federal Republic of Nigeria, which guarantee the rights to life and dignity of the human person, inevitably include the right to a clean, poison-free, pollution-free and healthy environment. Justice Nwokorie emphasized that continuous gas flaring "amounts to a gross violation of the fundamental rights to life and dignity of human person" (p. 15).

This decision demonstrates judicial creativity in making the environmental right justiciable through related fundamental rights.

4.2 Statutory Frameworks

Statutory Frameworks Nigeria has an elaborate set of environmental statutes that govern various aspects of environmental protection, they include:

4.2.1 The National Environmental Standards and Regulations Enforcement Agency (NESREA) Act, 2007 establishes NESREA as the primary agency for enforcing environmental laws. Section 2 (1) of the Act provides that "the Agency shall have responsibility for the protection and development of the environment, biodiversity conservation and sustainable development of Nigeria's natural resources in general."

4.2.2 The Environmental Impact Assessment (EIA) Act, Cap E12 LFN 2004, mandates in Section 2 (1) that "the public or private sector of the economy shall not undertake or authorize projects or activities without prior consideration of the environmental effects."

4.2.3 The Harmful Waste (Special Criminal Provisions) Act, Cap H1 LFN 2004 criminalizes the importation, dumping, and disposal of hazardous waste. Section 1 provides: "No person shall carry, deposit, dump, or otherwise dispose of harmful waste on any land, territorial waters, or Exclusive Economic Zone of Nigeria."

4.2.4 The Factories Act, Cap F1 LFN 2004 provides in Section 7 for the regulation of factory premises to prevent environmental hazards arising from industrial activities.

4.2.5 Petroleum Act, Cap P10 LFN 2004: Section 9(1)(b)(ii) empowers the Minister of Petroleum to make regulations for prevention pollution of water courses and the atmosphere and pursuant to this mandate, Petroleum (Drilling and Production) Regulations and Petroleum Refining

regulations were made. However, the Petroleum Act has been repealed by the Petroleum Industry Act, 2021 which introduced new legal framework and distributes regulatory powers among multiple agencies, mainly; the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) and the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA) (Petroleum Industry Act, 2021, s. 216). Pursuance to this mandate, both NUPRC and NMDPRA have begun issuing new regulations. Some key ones relating to environmental protection and pollution prevention include:

i. NUPRC Regulations (Upstream):

a. Environmental Compliance and Enforcement Regulations, 2023 provides comprehensive framework for environmental protection in upstream operations and covers pollution control, environmental audits, environmental remediation, and monitoring.

b. Upstream Environmental Remediation Fund Regulations, 2023 which establishes a fund for remediation of environmental damage caused by petroleum operations.

c. Upstream Petroleum Environmental Regulations, 2023 addresses waste management, emissions, discharges, effluent limitations, and pollution control.

d. Petroleum Royalty Regulations, 2022 (indirectly relevant) incentivizes good environmental practices through fiscal mechanisms.

ii NMDPRA Regulations (Midstream and Downstream):

a. Environmental Management Regulations, 2023 applies to midstream/downstream operators; includes pollution control standards, environmental impact assessments, waste management, emissions control, etc.

b. Midstream and Downstream Environmental Remediation Fund Regulations, 2023similar to upstream; provides for funding of pollution cleanup and remediation.

4.2.6 The Nigerian Minerals and Mining Act, 2007 provides in Section 61 (1) that "holders of mining titles shall conduct their operations in a manner that minimizes and mitigates environmental damage."

4.3 International Legal Instruments

International Legal Instruments Nigeria is a party to several international and regional treaties that provide for the right to a healthy environment. These include:

4.3.1 The African Charter on Human and Peoples' Rights, 1981 (ACHPR) provides in Article 24 that "all peoples shall have the right to a general satisfactory environment favorable to their development."

4.3.2 The United Nations Framework Convention on Climate Change, 1992 and the Paris Agreement, 2015, commit state parties to take action on climate change mitigation and adaptation to protect human health and the environment.

4.3.3 The Stockholm Declaration of 1972 declares in Principle 1 that "Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being."

4.3.4 The Basel Convention of 1989 regulates the trans-boundary movement of hazardous waste to prevent developing countries from becoming dumping grounds.

4.3.5 The Convention on Biological Diversity, 1992 emphasizes the need to conserve biological diversity, which has direct implications for population health.

Recently, the United Nations General Assembly adopted Resolution 76/300 (2022), declaring that "access to a clean, healthy and sustainable environment is a universal human right."

5. Results and Analysis

The doctrinal analysis reveals that Nigeria possesses a substantial normative framework capable of supporting the right to a healthy environment. Constitutional interpretation, statutory regulation, and international obligations collectively provide a legal foundation for environmental rights protection. Judicial decisions demonstrate a cautious but growing willingness to treat environmental degradation as a rights violation.

However, enforcement remains inconsistent. Regulatory agencies often lack adequate resources and independence, while overlapping mandates create institutional inefficiencies. Although the Petroleum Industry Act 2021 represents progress, its effectiveness depends on rigorous implementation and oversight. These challenges include:

5.1 Institutional Weaknesses

NESREA and state agencies lack adequate funding, weak technical capacity, and enforcement powers. As Adewumi (2013) observes, "institutional duplication and poor inter-agency coordination continue to weaken environmental governance in Nigeria."This undermines effective enforcement.

5.2 Corruption and Political Interference

Corruption erodes public trust and allows polluters to evade sanctions. Regulatory agencies often yield to political pressure and corporate influence, undermining enforcement efforts. Agbonlahor (2019) notes that "political interference undermines regulatory efforts as many polluting companies have political affiliations that shield them from accountability"

5.3 Public Awareness and Participation

Many citizens lack awareness of their environmental rights. Public Awareness and Participation remains limited due to poor access to information. Okonkwo (2020) emphasizes that "the lack of environmental education and public participation undermines enforcement as citizens are often unaware of their rights or how to assert them."

5.4 Judicial Constraints

Although Nigerian courts have interpreted fundamental rights broadly, the non-justiciability of Chapter II rights still poses a significant legal obstacle and limits direct litigation. However, creative judicial interpretation has opened avenues for enforcement through related fundamental rights.

6. Judicial Interpretation and Case Law

Nigerian courts have taken significant steps to advance environmental rights:

In *Gbemre v. Shell Petroleum Development Company Nigeria Ltd* (2005) AHRLR 151 (NgHC 2005), Justice Nwokorie declared that "the continuous flaring of gas... amounts to a gross violation of the fundamental right to life (Section 33 of the Constitution) and dignity of human person (Section 34 of the Constitution)."

In *Centre for Oil Pollution Watch v. NNPC* (2019) 5 NWLR (Pt. 1666) 518 SC, the Supreme Court held that "environmental NGOs have sufficient interest (*locus standi*) to institute actions to protect environmental rights."

In *SERAP v. Federal Republic of Nigeria* (2010) ECW/CCJ/APP/08/09, the ECOWAS Court held that "Nigeria's failure to prevent environmental degradation in the Niger Delta amounts to a breach of the right to a healthy environment under Article 24 of the African Charter."

In *Okpala v. Shell Petroleum Development Co.* (2021) Suit No. FHC/ABJ/CS/756/2020, the Federal High Court ordered Shell to pay compensation to affected communities, demonstrating the emerging readiness of Nigerian courts to hold corporations accountable for environmental harm.

6.1 **Comparative Cases:**

In *Minister of Health v. Treatment Action Campaign* (2002) (5) SA 721 (CC), the South African Constitutional Court emphasized the duty of the state to take reasonable legislative and other measures to progressively realize socio-economic rights, including environmental health.

In *Urgenda Foundation v. State of the Netherlands* (2015), the Dutch Supreme Court recognized the state's legal duty to reduce carbon emissions based on human rights obligations.

In *Subhash Kumar v. State of Bihar* (1991) AIR 420 (SC), the Indian Supreme Court ruled that "the right to life includes the right to enjoy pollution-free water and air for full enjoyment of life."

6.2 Comparative Perspectives

Globally, countries have adopted and codified stronger environmental rights protections:

Section 24 of the South African Constitution states: "Everyone has the right to an environment that is not harmful to their health or well-being."

The Escazú Agreement (2018) in Latin America enhances access to information, public participation, and environmental justice.

In *Oposa v. Factoran* (1993) G.R. No. 101083, the Philippine Supreme Court recognized intergenerational equity, holding that "future generations have a right to a balanced and healthful ecology."

7. Discussion

The findings reveal a significant gap between legal norms and enforcement outcomes. While Nigeria's environmental laws align broadly with international standards, governance deficits, corruption, and limited access to justice undermine their effectiveness. These challenges reflect broader issues of

environmental governance in developing states and underscore the need for institutional reform and judicial engagement.

The paper finds that Nigeria's legal system implicitly recognizes the right to a healthy environment through constitutional interpretation and international obligations. Courts have contributed to environmental rights protection, but judicial engagement remains inconsistent. Weak institutions, limited public participation, and enforcement deficits continue to impede realization of the right.

8. Recommendations

8.1 The paper recommends that section 6 and 20 and other relevant sections of the Constitution relating to right to environment be amended to make environmental rights justiciable.

8.2 The paper also recommends that institutional capacity be strengthened and provided with adequate funding for enforcement agencies.

8.3 The paper also recommends full domestication of international environmental treaties by implementing Nigeria's international obligations and incorporating them into domestic law.

9. Conclusion

The right to a healthy environment is indispensable and integral to safeguarding public health in Nigeria. While Nigeria possesses comprehensive legal frameworks, enforcement remains weak due to institutional, political, and judicial challenges. Nonetheless, drawing lessons from international experiences and recent Nigerian jurisprudence, the protection of environmental rights can be strengthened through constitutional reforms, robust institutions, judicial activism, and public engagement.

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