



ENVIRONMENT- BASED HUMAN RIGHTS AND ENVIRONMENTAL PROTECTION LAWS IN NIGERIA

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Abstract

This article discussed environment-based human rights in Nigeria. Environmental human rights, no doubt is hinged on a protected environment. This article commenced with an introduction elucidating why it is essential to protect the environment. In the course of the analysis of the subject matter and for better understanding, conceptual clarifications of key concepts were considered, inter alia, environment, human rights and environmental protection. The article analyzed some environment- based human rights. The latter, are observed to be rights that accrue to humans whose entire existence and activities revolve around the environment. Also, the article considered some substantive rights of mankind, to include; right to life, right to health, right to private and family life, right to own property, right to work under equitable and satisfactory conditions, right to freely dispose of wealth and natural resources and the right to a healthy environment respectively. In the course of justifying the subject under consideration, the article explored some provisions of the Constitution of the Federal Republic of Nigeria 1999 (as amended), the African Charter on Human and Peoples' Rights and the Universal Declaration of Human Rights. The article terminated the discussion with a conclusion and drew up some recommendations therefrom.

Keywords: Environment, Human Rights, Environmental Protection

1.1 Introduction

Environment-based human rights are hinged on a protected environment. These rights cannot be actualized without well-articulated laws on environmental protection and effective institutions capable of proper and prompt implementation of these laws. Nigeria has a plethora of environmental protection laws which can be effective in the protection of the environment and environment-based rights if properly implemented.

Human rights have been said to be 'demands or claims individuals or groups make on society some of which are protected by law and have become part of *lex lata* while others remain aspirations to be attained in the future'¹ On the other hand, the environment is simply 'where

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¹ O C Eze, Human Rights in Africa: Some Selected Problems' (1984) 5 cited in A Ogbuigwe, Offended: Legal Issues in the Niger Delta Struggle (ACFED, 1999) 29.



we live.² When put together, environment-based human rights would therefore refer to demands or entitlements dependent on the environment and made on the society by individuals or groups whether they are enacted laws or future aspirations. Just like George Orwell's 'Animal Farm,'³ where he stated that all animals are equal but some are more equal than others, every human right is environment-based with some, more intrinsically dependent on the environment than others. Human rights are rights accruing to humans whose entire existence and activities, resonate around the environment. It therefore follows that where there is no environment, man cannot exist and the issue of rights whether human or environmental, would be non-existent. However, some human rights cannot be enjoyed without a healthy environment. They are both substantive and procedural. This discourse includes environment-based rights provided under the 1999 Constitution,⁴ the African Charter on Human and peoples' Rights⁵ domesticated in Nigeria⁶ and the Aarhus Convention.⁷

The 1999 Constitution and the African Charter on Human and Peoples' Rights provide for substantive environment-based human rights. These substantive rights include the following:

1. Right to life⁸
2. Right to dignity of human person⁹
3. Right to health¹⁰
4. Right to private and family life¹¹
5. Right to own property¹²
6. Right to work under equitable and satisfactory conditions¹³
7. Right to freely dispose of wealth and natural resources¹⁴

² A Ogbuigwe, 'Our Environment, Our Laws, and Our Lives (2015) *Faculty of Law Monthly Lecture Series, Rivers State University of Science and Technology, Port Harcourt.*

³ G. Orwell, *Animal Farm*, (London: Penguin Group, 1946) 21.

⁴ Constitution of the Federal Republic of Nigeria 1999 Cap C23, Laws of the Federation of Nigeria (LFN) 2004(as amended) [herein after "CERN, 1999"] Sections 33,34.

⁵ African Charter on Human and Peoples' Rights, Nairobi, 27 June 1981, OAU Doc. AB/LEG/6/3 rev5,21 Int'l Leg Mat 58 (1982).

⁶ CFRN, 1999, S 12; African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act 1983.

⁷ Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (25 June, 1998) Aarhus, Denmark (hereinafter, Aarhus Convention]

⁸ CFRN, 1999 s33, African Charter, Art 4.

⁹ CERN. 1999 s34, African Charter, Art 5.

¹⁰ African Charter, Art 16.

¹¹ CFRN, 1999 s37, Art.18

¹² CFRN, 1999 s44; African Charter, Art 14.

¹³ African Charter, Art 15.

¹⁴ African Charter, Art 21.



8. Right to a healthy environment¹⁵ and
9. Freedom of conscience, Profession and religion.¹⁶

2.0 Conceptual Clarifications

2.1 Environment

The environment is an integral part of human existence. It comprises of 'abiotic, biotic and socio-economic components with which man interacts and simultaneous to which he adapts and transforms and uses in order to satisfy his needs.'¹⁷ Every living and non-living organism lives and derives its continuous existence from the environment. Section 20 of the Constitution of the Federal Republic of Nigeria 1999(as amended) defines environment as the water, forest and wildlife, every layer of the atmosphere, organic and in-organic matter and living organisms, and the interacting nature system that include the elements denoted in paragraphs (a) – (d) of the section.¹⁸

The National Environmental Standard and Regulation Enforcement Agency Act, defines the environment as including water, air, land, animals living therein and the relationship existing among these or any of them. ¹⁹Similarly, the Black's Law dictionary reiterated thus; "Environment in its widest sense includes an aggregation of all those economic, social cultural and natural conditions and factors which influence human life and living organisms"²⁰ For Atsegbua et al, the environment is a 'state of affairs which is based on the activities of man in his natural habitat and the relationships he has with his immediate environment in terms of water, air animals and so on'.²¹

Douglas and Holland, opine that the word 'environment' is used to describe the totality of all the external forces, influences and conditions, affecting the life, nature, behaviour and growth, development and maturity of living organisms.²² Some other writers defined the environment as 'the sum total of all conditions which surround man at a given point in space

¹⁵ African Charter, Art 24.

¹⁶ CFRN, 1999 s38, African Charter, Art 8.

¹⁷ L Atsegbua and Akpotaire and F Dimowo, Environmental Law in Nigeria: Theory and Practice (Ababa Press 2003)3

¹⁸ The Constitution of the Federal Republic of Nigeria Cap C 23 LFN, 2004, Section 20 (a-e).

¹⁹ National Environmental Standard and Regulation Enforcement Agency Act, 2007, s37.

²⁰ Brian A. Garner, ed. Black's Law Dictionary (St. Paul, MN: Thomas Reuters, 2014).

²¹ Lawrence A. Atsegbua, Vincent Akpotaire and Folarin Dimowo, Environmental Law in Nigeria: Theory and Practice (Ababa Press, 2004) 131.

²² Douglas O.B, Holland B.F, Fundamental of Educational Psychology (Macmillan, New York, 1947).



and time,'²³ the entire range of external influence acting on an organism, both the physical and biological, and other organisms like the forces of nature surrounding an individual.²⁴Comprehensively, the environment may be defined as “sum total of living, non-living components, influences and events, surrounding an organism.” It may also be seen as ‘a holistic view of the world as it functions at any point in time, with a multitude of spatial elemental and socio-economic systems distinguished by quality and attributes of space and mode of behaviour of abiotic and biotic forms.’²⁵ Although it has been asserted that life's basic needs are shelter, food and clothing²⁶ it is opined that life's basic need is the environment from which shelter, food, clothing and other necessities emanate.

2.2 Human Rights

Human rights on the other hand are 'demands or claims which individuals or groups make on society some of which are protected by law and have become part of *lex lata* while others remain aspirations to be attained in future.²⁷ The recognition of human rights dates back to the ancient Persian era in 539 B.C when Cyrus the Great, conquered the city of Babylon, freed the slaves, established racial equality and declared that all people had a right to freedom of religion.²⁸ These declarations became the world's first Charter on human rights which has been translated into the six official languages of the United Nations. The Universal Declaration of Human Rights²⁹ delineates thirty fundamental rights which have formed the basis of most democratic societies.³⁰

Environment-based human rights in the context of this study would therefore refer to those human rights whose enjoyment is premised on a healthy environment. The concept of environment-based human rights has been endlessly and elaborately canvassed over the years. A myriad of literature are apt on the relationship between the enjoyment of human rights and the environment including principles propounded in the bid to expatiate the scope

²³C, C Park, *Ecology and Environmental Management: A Geographical Perspective* (Boulder Colorado: West-View Press, 1980).

²⁴Encyclopaedia Britannica<<https://www.britannica.com>> accessed 2may, 2023.

²⁵Dikshit K.R, *Global Biodiversity and Environmental Conservation: Special Emphasis on Asia and the Pacific*.

²⁶J. A. Omotola, (ed), *Environmental Laws in Nigeria Including Compensation* (University of Lagos Press, 1990) 1.

²⁷O C Eze, *Human Rights in Africa: Some Selected Problems*' (1984) 5 cited in A Ogbuigwe, *Offended: Legal Issues in the Niger Delta Struggle* (ACFED, 1999) 29.

²⁸United for Human Rights, 'Brief History of Human Rights' I <<http://www.humanrights.com/yh@whatarehuman/Cylinder.html>> accessed 28 October 2015.

²⁹Universal Declaration of Human Rights, 1948.

³⁰See for instance Constitution of the Federal Republic of Nigeria 1999 Cap C23, Laws of the Federation of Nigeria (LFN) 2004 (as amended) [hereinafter “CFRN, 1999”] Chapter iv.



of this concept to suit modern day environmental related challenges. The courts have also to an extent been active in the interpretation and assertion of environment-based human rights. Despite the foregoing, the question of inadequate environmental protection laws, poor implementation of well formulated laws and the inefficacy of environmental protection agencies still linger. Again, the attitude of the government. and the judiciary in certain environment related cases, impinge on the recognition of these rights. Environment-based corporate bodies whose activities impact on the environment, have also trampled on environment-based human rights. This is as a result of their complacency in complying with environmental laws and standards. The implication of the above is increased degradation undermining environment-based human rights in Nigeria.

2.3 Environmental Protection

Environmental protection is a preventive measure against unwanted changes to the environment and its components.³¹ It includes both the protection of the ecological system from changes resulting from man-made activities and unfavorable natural changes to the environment.³² Environmental protection encapsulates the preservation of the environment and the conservation of same.³³ While preservation concerns the protection of the environment from change, conservation refers to the sustainable use of natural resources.³⁴

From the foregoing, environmental protection, entails the safeguarding and preservation of the environment and its elements through pollution reduction techniques, mitigation of climate change and other means including the sustainable use of natural resources. Environmental protection therefore requires the effort of individuals, corporations and the government for the effective control and management of the environment and its components.

3.0 Environment-Based Human Rights

3.1 Right to Life³⁵

'Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been

³¹ C. Hamilton and A. Macintosh, *Environmental Protection and Ecology*, Human Ecology, 1342.

³² *Ibid.*

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ African Charter, Art 4.



found guilty in Nigeria.' This right is reiterated by Article 4 of the African Charter on Human and Peoples' Rights to wit; 'Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right'. The right to life is a universally recognized fundamental human right categorized as *erga omnes* which is applicable to all in its enforceability whether or not there is a binding agreement stating such right. It is also categorized as *jus cogens* from which no derogation is permitted³⁶ except under certain conditions.³⁷ The enjoyment of the right to life is dependent on the quality of the environment.³⁸ To stay alive, man will need clean water, adequate food, pollution free air, adequate housing and other essentials. It is the duty of the government to ensure that its activities and the activities of other entities within its jurisdiction do not imperil the lives of its citizens. The state is not only to abstain from intentionally taking the life of its citizens but also mandated to safeguard it.³⁹ Although it could be asserted that the State has to a reasonable extent performed the duty of not intentionally taking the life of its citizens, not much attention has been paid to its duty of protecting the environment to safeguard the lives of its citizens. The environment must be adequately safeguarded to protect this right.⁴⁰

In *Social and Economic Rights' Action Centre and the Centre for Economic and Social Rights v Nigeria*,⁴¹ a case brought by two Non-governmental organizations on behalf of the Ogoni people whose land were exploited through oil operations by the successive military governments in Nigeria leading to degradation of the environment, human rights violations and the killing of the Ogoni nine.⁴² The African Commission on Human and Peoples' Rights held that the degradation of the environment and the killing of the Ogoni people was a violation of the rights of the people including the right to life and a threat to the way of life and the very existence of the Ogoni people.⁴³

³⁶ Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities (6 July 1994). E/CN.4/Sub.2/1994 [The Commission was later referred to as Sub-Commission on the Promotion and Protection of Human Rights] < https://www1.umn.edu/humanrts/demo/HRandEnvironment_Ksentini.pdf accessed 19 April 2016, 9.

³⁷ *CFRN* 1999, s33.

³⁸ Stockholm Declaration, 1972, Principle I; Rio Declaration, 1992, Principle 1.

³⁹ (n21) 133.

⁴⁰ *CFRN* 1999, s20.

⁴¹ *Social and Economic Rights Action Centre and Centre for Economic and Social Rights v Nigeria*, Communication No 155/96, (May 27, 2002).

⁴² The Ogoni nine were members of the Movement for the Survival of the Ogoni People (MOSOP) headed by Ken Saro- Wiwa who was also among those executed.

⁴³ (n 37).



The Supreme Court in other jurisdictions, have held that the right to life is premised on a healthy environment. In *Mathur v Union of India*,⁴⁴ the Supreme Court stated the need to combat air and water pollution which could impinge on the right to life. Also, in *Kendra v Pradesh*⁴⁵ where the petitioner alleged that mining activities in the community were averse to environmental ecology, the court upheld the right of the community to a healthy environment and ordered the cessation of mining activities in the area of Pehra Dun notwithstanding the huge sum already invested in the mining project. This reasoning was also the decision of the Court in *Dr. Mouhiuddin Farooque v Bangladesh and others*⁴⁶ where the Bangladesh Supreme Court held that the right to life presupposes the protection and preservation of the environment. In the Nigerian case of *Jonah Gbemre v Shell Petroleum Development Company of Nigeria and two others*⁴⁷ where the applicants brought an action against Shell with respect to gas flaring, based on Sections 33 and 34 of the 1999 Constitution, the court held that the rights to life and dignity of human person includes a pollution-free and clean environment.

This is the only case in Nigeria where the court has extended the right to life to include a clean and poison-free environment. It should however be noted that this decision was made by a Federal High Court and until the Supreme Court makes a similar declaration, the decision of the Federal High court will remain merely persuasive and not a binding precedent;⁴⁸ it could be overturned on appeal.⁴⁹ It is hoped that the Supreme Court would uphold the decision of the Federal High Court so as to firmly establish the linkages between the right to life and the environment under the Nigerian jurisprudence.

3.2 Right to Dignity of Human Person⁵⁰

Every human has the right to dignity-self-esteem, self-respect and self-worth. This stems from the belief that Man is made in the image of God⁵¹ a little lower than angels⁵² and should

⁴⁴(1996) ISCC 119.

⁴⁵AIR 1985 SC 652.

⁴⁶1997, 50 DLR (HCD) (1998) 84.

⁴⁷Jonah Gbemre v Shell Petroleum Development Company of Nigeria & 2 org. Unreported Suit No FHC/B/Cs/53/05 delivered on 14th November, 2005.

⁴⁸C.TEmejuru, Human Rights and Environment: Wither Nigeria? (2014) (30) Journal of Law, Policy and Globalization.

⁴⁹K Ebeku, 'Constitutional Right to a Healthy Environment and Human Rights Approaches to Environmental Protection in Nigeria: Gbemre v. Shell Revisited', [2007] (16 (3) RECIEL,319.

⁵⁰CFRN, 1999, s34; African Charter, Art 5.

⁵¹The Holy Bible, Psalm 8v 4-5.

⁵²*Ibid.*.



therefore be treated as such. This fact was also captured under the Constitution⁵³ thus; 'the sanctity of the human person shall be recognized and human dignity shall be maintained and enhanced.' This right is only realizable in a pollution-free and clean environment.⁵⁴ A degraded environment leads to diseases, loss of earnings and destruction of property, an attack on the intrinsic self-worth of humans. This right was upheld in the celebrated Ogoni land case⁵⁵ where it was held that the degradation of land, the violation of their human rights and the killing of the Ogoni people through military might, were infringements on the right to life and dignity of human person. The decision of the Court in Gbemre's case⁵⁶ was also premised on the right to dignity of human person as spelt out by Section 34 of the Nigerian Constitution.

3.3 Right to Health⁵⁷

Although the right to health is not expressly provided under the 1999 Constitution, S. 17 (3) (d) forming part of the fundamental objectives and directive principles of state policy, provides for adequate medical and health facilities for all persons. The right to health as a substantive right is however provided under Article 16 of the African Charter. It encapsulates the best attainment of physical and mental health of the citizens of state parties. The actualization of the right to health is premised on clean water and air, food, shelter, energy, sanitation, health infrastructures, social amenities and security from violence. It has been noted that '[a] fifth of the disease burden in developing countries can be linked to environmental risk factors.'⁵⁸ It was observed that there is a direct connection between malaria and the deteriorating environment particularly where the disease is aggravated in ecosystems altered by irrigation projects, dams, construction sites, standing water and poorly drained areas. For instance it was estimated, that migration of a number of people to Brazil as a result of deforestation tremendously accelerated the incidents of malaria in the region.⁵⁹ This is also true with respect to some developing States.⁶⁰ Thus, in *Social and Economic Rights Action*

⁵³CFRN 1999, s17(2)(b).

⁵⁴ Jonah Gbemre v SPDC (n 43).

⁵⁵ Social and Economic Right Action Centre and Centre for Economic and Social Rights v Nigeria.

⁵⁶ Jonah Gbemre v SPDC (n 43).

⁵⁷ African Charter, Art 16.

⁵⁸Human Rights and Access to Safe Drinking Water and Sanitation, (24 September, 2010) A/HRC/15/L 14 ,37

⁵⁹A T P Smith, The Wealth of the Nations (MIT Press, Cambridge, MA2002).

⁶⁰A E Piatt, 'Infecting Ourselves: How Environmental and Social Disruptions Trigger Disease' (World Watch Institute, Washington DC, 1996) World watch Paper 129.



Centre and the Centre for Economic and Social Right v Nigeria,⁶¹ it was held that the right to health and the right to a clean environment should extend to at least the permission of independent scientific monitoring of threatened environments and the publishing of results from such exercise prior to any major industrial project, undertaking appropriate monitoring and providing information to those communities, exposed to those hazards and also providing meaningful opportunities for individuals to be heard and to participate in the development decisions affecting their communities.⁶²

3.4 Right to Private and Family Life⁶³

The right to private and family life entails the enjoyment of one's home or residence. A pollution-free environment is essential for the enjoyment of this right. In *Lopez Ostra v Spain*,⁶⁴ a tannery waste plant treatment was opened in Lorca Spain in 1988 without licence. The operations of the plant caused pollution, nuisance and health problems to the people living in the locality one of whom was the applicant whose daughter suffered certain health conditions owing to the pollution from the plant. Complaints were made to the Lorca Municipal Council by the residents of the area and the residents were consequently relocated for three months after which they returned. On their return, there were continuing problems and the applicant applied to the District Administrative Court for protection of her fundamental rights but her case was dismissed on the grounds that there was no interference with her rights and that the nuisance caused by the pollution from the plant merely impaired her quality of life but did not have any health implications.⁶⁵ On appeal to the Supreme Court in 1989 the position of the District Court was upheld. A further appeal was made to the Constitutional Tribunal in 1990 which also dismissed the claim of the applicant as manifestly ill-founded. However, two years later, the applicant moved to a new location and brought this action under Article 3 of the European Convention⁶⁶ for inhuman and degrading treatment and Article 8, right to respect for private and family life amongst others. It was held that there was a violation of the applicants' right to private and family life owing to the severe environmental pollution which was capable of affecting the wellbeing of an individual and

⁶¹Communication No 155/96, (May 27, 2002) <<https://www.escnr-net.org/caselaw/2006..>>accessed 10 August 2023.

⁶²*Ibid.* 53.

⁶³CFRN 1999, s37; Art. 18

⁶⁴*Lopez Ostra v Spain* App No.16798/90 (1994).

⁶⁵*Ibid.*

⁶⁶European Convention for the Protection of Human Rights and Fundamental Freedoms (4 November 1950) E.T.S.5,213 U.N.T.S 221 1950.

preventing him from enjoying his home without seriously endangering their health and that the margin of appreciation which allows the state certain discretion in determining the appropriate balance between the interest of the town's economic well-being and the applicants' effective enjoyment of the right to respect for her home, private and family life had been exceeded thereby violating Article 8 of the Convention.

3.5 Right to Own Property⁶⁷

Section 43 of the Constitution and Article 14 of the African Charter bestows upon every citizen of Nigeria the right to own property anywhere in Nigeria. The right to own immovable property implies the right to the use and enjoyment of other benefits accruing from such property.⁶⁸ These benefits are best reaped in a healthy environment. A piece of property or land located in a polluted environment may lose its economic value as it is likely to become barren, unfruitful or less productive and will eventually lead to loss of earnings where they are used for agricultural purposes. Where such property is used as a residence, pollution will hinder the enjoyment of the property thus infringing not only on the right to own property but on the right to private and family life, right to dignity of the human person and ultimately, the right to life.

3.6 Right to Work under Equitable and Satisfactory Conditions⁶⁹

The right to work under equitable and satisfactory conditions is provided under Article 15 of the African Charter and supported by the Nigerian Constitution.⁷⁰ To actualize the right to work under equitable and satisfactory conditions, the environment must be safe and healthy. A polluted, endangered or hazardous environment especially for industry workers will lead to industrial accidents and diseases and reduce effectiveness and productivity.

3.7 Right to Freely Dispose of Wealth and Natural Resources⁷¹

This is a right provided by the African Charter. In the exact words of the Charter; 'All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it'⁷² The term 'peoples' in the African Charter has been extremely debated. According to Richard

⁶⁷CFRN 1999 s43; African Charter Art. 14.

⁶⁸*Ibid.*

⁶⁹African Charter, Art.15; CFRN 1999, s17 (3) (b) (c).

⁷⁰CFRN 1999 s17(3)(b)(c).

⁷¹African Charter, Art.21.

⁷²(n 66).



Gittleman, the term "peoples" as used in the Charter within the context of economic self-determination could be interpreted in two ways; all groups including tribal groups residing within a sovereign state or the same groups that are entitled to political self-determination.⁷³

A careful reading of Article 21 shows that the term "State parties" and reference to "International economic cooperation" implies that this right is vested in the State parties to the Charter.⁷⁴ This argument was lent credence by the Commissions' reminiscence on the history behind the drafting of Article 21. It stated that the exploitation of human and material resources by the colonial masters left Africa bartered. The Article was therefore included in the African Charter as a reminder of the ills of colonialism and the need to foster economic development through cooperation.⁷⁵ State parties must however act as trustees of the resources for the benefit of its citizens.⁷⁶ The African Commission in Paragraph 55 of the land mark case of *Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v Nigeria*,⁷⁷ held that failure to properly monitor oil operations in the area resulted in the degradation of the environment and failure to involve the Ogoni people in the decision-making process, amounted to a violation of the right of the Ogoni people to freely dispose of their wealth and natural resources. Similarly, the denial of the people from having access to monies and other benefits accruing from oil was a breach of the right of the people to freely dispose of their wealth and natural resources.⁷⁸ This was also the position of the Court in *Centre for Minority Rights Development (Kenya) and Minority Rights Development (Kenya) and Minority Rights Groups International on behalf of Endorois Welfare Council v Kenya*,⁷⁹ where the ancestral land of the Endorois people of Kenya was taken by the government without adequate compensation.⁸⁰ A breach of this right led to

⁷³R Gittleman, 'The African Charter on Human and Peoples' Rights: A Legal Analysis', (1982) Vol. 22:4 Virginia Journal of International Law, , 699 cited in J C Nwobike, 'The African Commission on Human and Peoples' Rights and the Demystification of Second and Third Generation Rights under the African Charter: Social and Economic Rights Action Center (SERAC) and the Center for Economic and Social Rights (CESR) v. Nigeria' [2005] (1) (2) African Journal of Legal Studies, 129,139.

⁷⁴J C Nwobike, 'The African Commission on Human and Peoples' Rights and the Demystification of Second and Third Generation Rights under the African Charter: Social and Economic Rights Action Center (SERAC) and the Center for Economic and Social Rights (CESR) v. Nigeria' [2005] (1) (2) African Journal of Legal Studies, 129,139

⁷⁵*Ibid.*.

⁷⁶CFRN 1999, s16(2)(b).

⁷⁷(n 43).

⁷⁸J C Nwobike (n66) 139

⁷⁹Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya Afr. Comm 'n H& Peoples 'R No.276/2003 (4 February, 2010)

⁸⁰*Ibid.*, Para 268

agitations, violence and environmental degradation by the people whose right has been breached.

3.8 Right to a Healthy Environment⁸¹

The right to a healthy environment has been largely debated upon both internationally and locally⁸² but its recognition as a distinct right especially at the international level, still lingers.⁸³ The right to a healthy environment is well articulated by the African Charter in Article 24 thus;

‘All peoples shall have the right to a general satisfactory environment favourable to their development.’

It has been held that the right to a general satisfactory environment connotes the responsibility of states to take reasonable and other measures to prevent pollution and environmental degradation, promote conservation and secure sustainable development of the environment and the use of natural resources⁸⁴ thus, in *Oposa v Factoran*,⁸⁵ where a group of Filipino minors brought an action on their own behalf and on behalf of generations yet unborn through their respective parents together with the Filipino Ecological Network incorporated claiming *inter alia* that the country's natural forest cover was being destroyed at such a rate that the country would be bereft of forest resources by the end of the decade if not sooner and that as tax payers and citizens of the country, they were entitled to the full benefit, use and enjoyment of the natural resource treasure. The court upheld their right to sue on behalf of succeeding generation because they owed a responsibility to the next generation to preserve the rhythm and harmony of nature for enjoyment of the environment and that there was violation of the right of the minors to a balanced and healthy ecology which the court

⁸¹ African Charter, Art. 24

⁸² A Gudmundur and O Alexander, 'Human Rights and the Environment' [1991] (60) Nordic J.Int'l, 19; C T Emejuru, (n44)26; D Shelton, 'Human Rights and Environment: Past, Present and Future Linkage and the Value Of a Declaration' (30 November— I December 2009)2 [Presented at a High Level Expert Meeting on the 'New Future of Human rights and Environment: Moving the Global Agenda forward' co-organized by United Nations Environment Programme and the office of the High Commissioner of Human Rights in Human rights environment pastpresentandfuturelinkages.pdf> accessed 15 November 2015 A Fabra, 'Intersection of Human Rights and Environmental Issues'; A Review of Institutional Developments at the International Level(UN Expert Meeting Background Paper No 3) <http://WWW.2.ohchr.org/english/issues/environment/envIRON/bp3htm> accessed 20 April 2016

⁸³ J R May, 'Constituting Fundamental Environmental Rights Worldwide' [2006] (23) Pace Environmental Law Review, 137

⁸⁴ The Social and Economic rights Action Centre and the Centre for Economic and social rights v Nigeria, African Commission on Human and Peoples 'Rights para 52.

⁸⁵ *Oposa et al v Fulgencio S. Factoran, jr et al* G.R. No. 101083



asserted, need not be written in the constitution as they are assumed to exist from the inception of mankind.

3.9 Freedom of Conscience, Profession and Religion⁸⁶

Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.⁸⁷ Under the African Charter, measures restricting these freedoms save subject to law and order, is prohibited.⁸⁸ This freedom extends to the preservation of sacred sites or places deemed as areas where religion is expressed. In *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya*,⁸⁹ the indigenous people of Endorois Pastoralist Community were forcefully evicted from their ancestral land by the government of Kenya in 1973 after creating the lake Hannington Game Reserve in the area, an area ancestral to the people for the purpose of grazing of animals and for traditional ceremonies and practices. In 1978, the game reserve was re-gazetted but the Endorois were denied access to their land and in 2002, the government granted a mining concession on rubies which led to the construction of a road and mining operations causing pollution in the area. The complainants alleged a violation of their right to practice religion,⁹⁰ right to property,⁹¹ right to culture,⁹² right to freely dispose of their wealth and natural resources,⁹³ right to development,⁹⁴ and a violation of the obligations of state parties.⁹⁵

It was held inter alia that Lake Bongoria and the Monchogoi Forest which were formally situate at the present Lake Hannington Game Reserve was the centre for the religious practices of the Endorois people and that the eviction of the people from the land not based on public security interest or other justification amounted to a breach of their right to practice

⁸⁶ CFRN, 1999, S. 38; African Charter, Art 8

⁸⁷ CFRN 1999, s38.

⁸⁸ African Charter on Human and Peoples' Rights, Art 8.

⁸⁹ Centre For Minority Rights Development (Kenya) and Minority Rights Group International on Behalf of Endorois Welfare Council v Kenya.

⁹⁰ African Charter, Art.8.

⁹¹ *Ibid.* Art. 14.

⁹² *Ibid.* Art. 17.

⁹³ *Ibid.* Art. 21.

⁹⁴ *Ibid.* Art. 22.

⁹⁵ *Ibid.* Art. 1.



their religion.⁹⁶ It should also be noted that the preservation of sacred or religious sites is the preservation of the environment.

4.0 Conclusion

The article examined the environment-based human rights with particular reference to the substantive rights of human being in relation to the environment. Environment-based human rights were therefore referred to as demands or entitlements of mankind dependent on the environment, which are made on the society by citizens as individuals or groups, whether they are enacted laws or future aspirations. The provisions of the Constitution of the Federal Republic of Nigeria (1999) (as amended) and several legislative instruments, which deal on human rights were evaluated. Sections 16, 20, 33, 34, 36, 37 and 38 of the Constitution were respectively considered, including Articles 4, 5, 7, 8, 15, 16, 18, 21 and 24 of the Banjul Charter.

It has been repeatedly argued that government by law is responsible to guarantee the protection of the right to a healthy environment. The foregoing provisions of the Constitution, Charter and the UDHR establishes these facts. Howbeit, many national governments rather than take the responsibility of protecting the environment, downplay the danger of unprotected environment, which in turn affects every human being whether or not inhabiting the immediate polluted and unprotected environment. The article reveals that, the right to a healthy environment is synonymous with the right to life and must be given the deserved attention and enforceability.

Finally, it is observed that the United Nations, national governments and agencies saddled with the responsibility to safeguard the environment should rise to the occasion and ensure the prosecution and stiffer sanctions to violators of environmental rights globally, but with particular reference to Nigeria.

5.0 Recommendations

It is recommended as follows

Application of Best Global Environmental Practices in Industrial Processes

The United Nations should ensure that best global environmental practices are employed by multinational companies in the exploitation of natural resources so as to promote

⁹⁶(n 85) Para. 173.



environment- based human rights and environmental protection.Failure to comply should be met with stiff sanctions.

Creation of a Liability Trust Fund for Victims of Environmental Degradation

A Liability Trust Fund should be established by the Nigerian Government in concert with actors in the fossil fuel and manufacturing companies to compensate victims of environmental degradation so as to cushion the effect of the hardship resulting from such degradation and consequent restoration of the dignity of the affected persons.

Judicial Activism

The Nigerian judiciary must rise up to its duty of upholding environment based human rights through a proactive interpretation of statutory provisions considering present day realities.