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HUMAN RIGHTS AND ENVIRONMENTAL PROTECTION: THE NIGERIAN CONSTITUTION EXAMINED

BY
A.B. ABDULKADIR* & A.O. SAMBO**

INTRODUCTION

I. Everyone has a right to live comfortable in his/her environment. More so, an average human being uses what he finds in his immediate environment as a means of survival and where he or she found nothing or inadequate resources, he or she attempts to create one by exploring or exploiting the environment. The dominion that human beings exercise on their environments is also environmental rights. However, when human beings use, explore and exploit the environment, they create problem for the environment and leave themselves and fellow humans living in the same environment vulnerable to danger and the side effects of the actions. The actions of some of human being tamper with the right to comfortable living of other beings in the same environment. Hence, therefore there is a need to protect the lives of everyone living in the environment from dangers that can be averted and this called for a right-based approach to the protection of the environment. The right to life that every human being has cannot be real or it cannot exist without the right to a conducive environment. This paper therefore looks against the background of the relationship between human rights and the environment.

The issue of the environment is today perceived not simply as a narrow ecological problem of how to ensure a symbiotic and congruent inter-face between man and his environment. It is more than that.¹ Its inner core has political, developmental, sociological and scientific ramifications, all of which are anchored to the new concept of sustainable development.² In as much as some people have a right to explore the environment, others also have right to live in the environment without suffering from the harm that their fellow humans who are explorers of the environment have caused.

If we look at the development that are taking place through the intervention of national courts in various parts of the world, we come to note several things: first, the court are moving the right to a healthy environment up to the hierarchy of human rights by recognising it as a fundamental right; second, the court are defining the content and nature of the right to a healthy environment through landmark decisions.³

The late twentieth century has witnessed an unprecedented increase in legal claims for both human rights and environmental goods. Never before have so many people raised so many demands relating to such a wide range of environmental and human matters. And never before have legal remedies stood so squarely in the centre of wide social movements for human and environmental protection. Though a state has a

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¹ See for example the Stockholm Declaration of 1972.

² According to the World Commission on environment and Development, sustainable development is defined as development that meets the need of the present generation without compromising the interest of the future generation.

³ See for example, *Apirana Mahuika et al v. New Zealand* (communication No. 547/1992, CCPR/C/70/D/547/1993, November 16, 2000; see also *Ilmari Lansman et al v. Finland*, Human Rights Committee, final decisions, 74, CCPR/C/57/1 (1996).

right to development, but must also ensure that the interest of future generation is also protected so that it does not unduly restrict the options available to future generation in solving their problems and satisfying their own values.

The advancement of the relationship between human rights and the environment would enable the incorporation of human rights principles within an environmental scope, such as anti-discrimination standards, the need for social participation and the protection of vulnerable groups. It is apparent that environmental and human rights are inextricably linked. As we increasingly recognize the serious impact of a degraded environment on human health and well-being, we are better placed to adjust our policies and cultural practices to reflect our enhanced understanding. This will eventually lead to the articulation of a more integrated approach to dealing with socio-economic and environmental problems, encouraging the development of a sustainable model for the preservation of biological resources and natural ecosystems, for the use of the enjoyment of both present and future generation.

This paper examines in details the relationship between human rights and the environment. It also explores succinctly, the extent to which environmental rights are recognized in the existing legal arrangement; how are environmental rights defined, justified, and applied in some jurisdiction

II DEFINING ENVIRONMENTAL RIGHTS

Definitional problems are inherent in any attempt to postulate environmental rights in qualitative terms. What constitute a satisfactory, decent, viable, or healthy environment is bound to suffer from uncertainty and ambiguity.⁴ Arguably, it may even be incapable of substantive definition or, prove potentially meaningless and ineffective, like the right to development, and undermine the very notion of human rights.⁵ At best it may suffer from cultural relativism, particularly from a North-South perspective, and lack the universal value normally thought to be inherent in human rights. Yet there is little international consensus on the correct terminology of the concept.⁶ Even the Ksentini Report cannot make up its mind referring variously to the right to a healthy and flourishing environment or to a satisfactory environment in the body of the report and then to the right to a secure, healthy and ecologically sound environment in the draft principles.⁷

The problem of defining such rights so as to satisfy diverse ethical criteria is complicated by the need to make them operate in a legal context. Merrills notes, rights must be determined in scope and consistent in formulation.⁸ But how should a substantive environmental right be defined? Which dimensions of the environment are to be protected and what degree of environmental change is permissible?⁹ In a survey of existing constitutional and statutory provisions relating to environmental quality, one

⁴ Alan Boyle, (1996), the role of international Human Rights law in the protection of the Environment In Human Rights Approached to Environmental Protection. Clarendon Press Oxford, p. 50.

⁵ *Ibid*

⁶ *Ibid*

⁷ *Ibid*; See also Dupuy, (1979), in Dupuy (ed.), The Right to Health as a Human Right (Alphen aan den Rijn), 340; Shelton, (1992), what happened in Rio to Human Rights, 3 YBIEL, 91-92; Pathak, in Weiss (ed), Environmental Change and International Law, 212-214; see also 1988 Additional Protocol to the Inter American Convention on Human Rights, Article 11.

⁸ J.G Merrills, (1996) Environmental protection and Human Rights: conceptual Aspects. In Human Rights Approached to Environmental Protection. Clarendon Press Oxford, p. 25-41.

⁹ See 1989 European Charter on Environment and Health; 1089 convention on the Rights of the Child, Article 24(2)(c); UNGA Resolution 45/94 (1990); and 1961 European Social Charter, Article 11.

finds a series of adjectives attached to the word environment to describe what are actually being protected.¹⁰ References are made to a clean, healthy, decent, viable, satisfactory, ecologically balanced or sustainable environment. Environment free from contamination (Constitution of Ecuador), or suitable for the development of the person (Constitution of Portugal) are also envisaged.

The African Charter on Human and Peoples' Rights delineates the right to a general satisfactory environment favourable to their development.¹¹ Does this require that environmental protection and economic development should be balanced off against each other, or rather that the right to a satisfactory environment may only be claimed where it will not infringe the requirement of social and economic development? As Churchill notes, the African Commission has interpreted the provision narrowly to refer mainly to pollution abatement, but a range of interpretation could easily be offered.¹² Similarly, as Anderson noted, these include the right to a healthy environment, a pollution-free environment, and an environment in ecological balance.¹³

Why is the exercise of defining so difficult? One reason is that precise qualitative and quantitative dimensions of environmental protection are not readily translated into legal terms. Moreover, technical measures of environmental quality are more easily incorporated within regulatory instruments than in a human rights provision of general application.¹⁴ Boyle notes that a substantive right may even be incapable of definition. But the problem is not merely one of conveying environmental standards; it is also one of agreeing to them.¹⁵

Even with such definitional questions set aside for the moment, other issues will arise. For example, do environmental rights entail a right to the prevention of environmental harm or rather the right to remedy where such harm has already occurred? The India and Pakistan case law would suggest that both aspects are recognized,¹⁶ but most of the relevant constitutions and international instruments are silent on the matter.

The question therefore is what is the way out? Is it possible to give a universally acceptable definition of environmental rights? Michael R. Anderson suggests:¹⁷

One way out of the definitional muddle is to ask what exactly, constitute a violation of the right in a particular context. The question is of jurisprudential interest, but it is also a matter of urgent concern among individuals and businesses that may be subject to litigation in jurisdictions such as India. One of the problems with legal developments in India is that the precise scope of environmental rights is vague, thus leaving both businesses and environmentalists uncertain how far their rights

¹⁰ *Ibid.*

¹¹ See the African Charter on Human and People's Rights 1985.

¹² Robin Churchill, (1996), *Environmental Rights In the European Union In Human Rights Approached to Environmental Protection*. Clarendon Press Oxford, p. 89-108.

¹³ Michael Anderson, (1996), *Individual Rights to Environmental Protection in India In Human Rights Approached to Environmental Protection*. Clarendon Press Oxford, p. 199-225.

¹⁴ Michael Anderson, (1996), *Human Rights Approaches to Environmental Protection: An Overview In Human Rights Approached to Environmental Protection*. Clarendon Press Oxford, p. 1-23.

¹⁵ Alan Boyle, (1996), *The role of International Human Rights law in the protection of the Environment In Human Rights Approached to Environmental Protection*. Clarendon Press Oxford, p. 43-69.

¹⁶ *Shehla Zia v. WAPDA* (PLD, 1994, SC 693.).

¹⁷ Michael Anderson (n) 78 p. 11.

and duties extend. Vague and poorly-defined obligations can only lead to extensive litigation, they also make it difficult for businesses or community groups to make plans for the future.¹⁹

In this vein, Glazewski argues that the best formulation of environmental rights for South African would draw upon the existing concepts of environmental regulation. In particular, he advocates an environmental right which relates explicitly to the topics of resource use, pollution control, and land development.²⁰

An alternative, preferred by Kiss and Shelton, is to accept the impossibility of defining an ideal environment in abstract terms, but to let supervisory and courts develop their own interpretations, as they have done for many other human rights.²¹

Though there has been a controversy among scholars as to what environmental rights should entail. However, one thing is clear, there is a universal acceptance of the concept of environmental rights. Therefore the best approach would be to leave the issue of what environmental rights entail to the understanding of each and every society based on what constitute human right. Indeterminacy is thus a problem, but not necessarily an insurmountable one.

III. HUMAN RIGHTS AND ENVIRONMENT

We may not fully appreciate why in recent times so much is being said and done both at the national and international levels with regards to the environment unless and until we understood the concepts of the environment.

People more and more started to see that a clean and healthy environment is essential to the realisation of fundamental human rights, such as the right to life, personal integrity, family life, health and development. This is because each human being depends on protecting the environment as the resource base for all life. And where it started with mere linking human rights to cases of environmental disruption, like the Bhopal and Chernobyl disasters, it has become more acknowledged over the years that human rights and the environment are so inherently interlinked that (a clean and healthy) environment is a human right.²²

At this time there are several regional human rights charter (African Charter and American Convention),²³ other conventions like the Aarhus Convention, and multiple national constitutions that contain an explicit pronouncement of a human right to (a clean and healthy) environment.²⁴ And late 2007, the General Assembly adopted the UN Declaration on the Rights of Indigenous peoples, which proclaims "Indigenous peoples have the right to the conservation and protection of the environment...."

¹⁹ *Ibid.*

²⁰ Jan Glazewski, (1996). *Environmental Rights and the New South African Constitution In Human Rights Approached to Environmental Protection*, Clarendon Press Oxford, p. 177-198.

²¹ Kiss and Shelton, *International Environmental Law*, 24-25; Shelton, (1991), *Human Rights, Environmental Rights and the Right to the Environment*, 28 *Stanford JIL*, 103.

²² Faced with the results of polluting and destructive actions, many international treaties and local laws and regulations on environmental protection have been introduced in the second half of the 20th century. These at first did not mention human rights in relation to environmental protection, but since the 1970's links between human rights and the environment have progressively been recognized.

²³ See the African Charter on Human and People's Rights 1985.

²⁴ See for example, the world Heritage Convention, the Berne Convention on the Conservation of European Wildlife and Natural Habitats, the Convention on International Trade in Endangered Species, and Biological Diversity Convention, as well as the World Charter for Nature.

Human rights have been a focus of international law for over sixty years now. A human rights approach to environmental concerns was only introduced long after that. The United Nations Charter²⁵ marked the beginning of modern international human rights law, whereas the Stockholm Declaration is generally seen as the starting point of a rights based approach to environmental protection.²⁶

The declaration formulated several principles, including that "Man have 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, and he bears a solemn responsibility to protect and improve the environment for present and future generations."²⁷

Human rights and environmental law have in common that they are both seen as a challenge to, or limitation on, the traditional understanding of state sovereignty as independence and autonomy. Despite their separate initial stages, it has become more and more acknowledged over the years that human rights and the environment are inherently interlinked. To give a clear example; the right to life, personal integrity, family life, healthy and development of each human being depends on protecting the environment as the resource base for all life.

Over the years, the international community has increased its awareness on the relationship between environmental degradation and human rights abuses. It is clear that, poverty situations and human rights abuses are worsened by environmental degradation. This is for several obvious reasons;

Firstly, the exhaustion of natural resources leads to unemployment and emigration to cities. Secondly, this affects the enjoyment and exercise of basic human rights. Environmental conditions contribute to a large extent, to the spread of infectious diseases. From the 4,400 Millions of people who live in developing countries, almost 60% lack basic health care services, almost a third of these people have no access to safe water supply. Thirdly, degradation poses new problems such as environmental refugees. Environmental refugees suffer from significant economic, social-cultural, and political consequences. And fourthly, environmental degradation worsens existing problems suffered by developing and developed countries. Air pollution, for example, accounts for 2.7 million to 3.0 million of deaths annually and of these, 90% are from developing countries.²⁸

Environmental and human rights law have essential points in common that enable the creation of a field of cooperation between the two:

Firstly, both disciplines have deep social roots; even though human rights law is more rooted within the collective consciousness, the accelerated process of environmental degradation is generating a new environmental consciousness.²⁸ Secondly, both disciplines have become internationalized. The international community has assumed the commitment to observe the realisation of human rights and respect for the environment. From the Second World War onwards, the relationship State-individual is of pertinence to the international community. On the other hand, the

²⁵ See the United Nations Charter 1945.

²⁶ Stockholm declaration, 1972.

²⁷ *Ibid.*

²⁸ Michael J. Kane, Promoting Political Rights to Protect the Environment, the Yale Journal of International Law, Volume 18 Number 1, pgs. 389-390.

²⁸ *Ibid.*

phenomenon brought on by environmental degradation transcends political boundaries and is of critical importance to the preservation of world peace and security. The protection of the environment is internationalized, while the state-planet Earth relationship has become a concern of the international community.²⁹ Thirdly, both areas of law tend to universalize their object of protection. Human rights are presented as universal and the protection of the environment appears as everyone's responsibility.³⁰

There is an increasingly tendency for environmentalists and human rights activists to work together toward common goals.³¹ At the international level, there is a natural affinity between organizations such as Greenpeace and Amnesty International, since both aims to reduce the reserved domain of domestic jurisdiction protected under the United Nations Charter.³² Similarly, at the domestic level, both groups aim to restrain the exercise of unaccountable power by government and private actors, and despite their dependence upon local movements and issues, groups are nevertheless international in scope and ambition. For these reasons, one may expect a spontaneous co-operation between the two movements.

According to Michael R. Anderson,³³ the relationship between human rights and environment may be conceived in two ways. First, environmental protection may be cast as a means to the end of fulfilling human rights standards. Since degraded physical environments contribute directly to infringements of the human rights to life, health, and livelihood, acts leading to environmental degradation may constitute an immediate violation of internationally recognized human rights. The creation of a reliable and effective system of environmental protection would help ensure the well-being of future generations as well as the survival of those persons, often including indigenous or economically marginalized groups, who depend immediately upon natural resources for livelihoods.³⁴

In the second approach, he observed that the legal protection of human rights is an effective means to achieving the ends of conservation and environmental protection. Thus the full realisation of a broad spectrum of first and second generation rights would constitute a society and a political order in which claims for environmental protection are more likely to be respected.³⁵ A more ambitious variant of this view provides that there is and should be an inalienable human right to a satisfactory environment, and that legal means should exist to enforce this right in a consistent and effective manner. Put in terms, it is no longer the impact of the environment on other human rights which is the law's focus, but the quality of the environment itself.³⁶

Expressed in this qualitative way, a right to a decent environment has much in common with other claims. Such as sustainable development or intergenerational equity, and suffers comparable problems of subjectivity, definition, and relativity which make it inherently problematic for any notion of universal human rights.

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ See Roderick (ed), (1993), Conference Report: Human Rights Approaches to Environmental Protection in the Commonwealth and Beyond (London,).

³² See article 2(7) of the UN Charter.

³³ Michael Anderson, (1996) , Human Rights Approaches to Environmental Protection: An Overview In Human Rights Approached to Environmental Protection. Clarendon Press Oxford, p.2.

³⁴ *Ibid* at p.3.

³⁵ *Ibid.*

³⁶ *Ibid.*

Human rights and environmental law have traditionally been envisaged as two distinct, independent spheres of rights. Towards the last quarter of the 20th century, however, the perception arose that the cause of protection of the environment could be promoted by setting it in the framework of human rights, which had by then been firmly established as a matter of international law and practice. Because of the many complex issues that arise when these two seemingly distinct spheres interact, it is to be expected that there are different views on how to approach human rights and the environment.³⁷

The first approach is one where environmental protection is described as a possible means of fulfilling human rights standards. Here, environmental law is conceptualized giving a protection that would help ensure the well-being of future generations as well as the survival of those who depend immediately upon natural resources for their livelihood. Here, the end is fulfilling human rights, and the route is through environmental law. Klaus Toepfer, Executive Director of the United Nations Environment Programme,³⁸ reflected this approach in his statement to the 57th Session of the Commission on Human Rights. He said:

Human rights cannot be secured in a degraded or polluted environment. The fundamental right to life is threatened by soil degradation and deforestation and by exposures to toxic chemicals, hazardous wastes and contaminated drinking water. Environmental conditions clearly help to determine the extent to which people enjoy their basic rights to life, health, adequate food and housing, and traditional livelihood and culture. It is time to recognize that those who pollute or destroy the natural environment are not just committing a crime against nature, but are violating human rights as well.³⁹

The second approach places the two spheres in inverted positions- it states that 'the legal protection of human rights is an effective means to achieving the ends of conservation and environmental protection.' The second approach therefore highlights the presently existing human rights as a route to environmental protection. The focus is on the existing human right. In this context, there exists a raging debate on whether one should recognize an actual and independent right to a satisfactory environment as legally enforceable right. This would obviously shift the emphasis onto the environment and away from the human rights. These are the subtle distinctions between the two ways in which this approach can be taken.

A third approach to the question of human rights and the environment is to deny the existence of any formal connection between the two at all. According to this approach, there is no requirement for an environmental human right. The argument goes that since the Stockholm Conference in 1972,⁴⁰ international environmental law has developed to such extents that even the domestic environments of states has been internationalized. In light of the breadth of environmental law and policy, and the manner in which it intrudes into every aspect of environmental protection in an international sense and notwithstanding the concept of states sovereignty, it is argued

³⁷ In resolution 45/94 the UN General Assembly recalled the language of Stockholm, stating that all individuals are entitled to live in an environment adequate for their health and well-being. The resolution called for enhanced efforts towards ensuring a better and healthier environment.

³⁸ 57th session of the commission on Human Rights in 2001.

³⁹ *Ibid.*

⁴⁰ See the Stockholm Declaration of 1972. That is, U.N. Doc. A/CONF.48/14/Rev. 1 at 3 (1973).

that it is unnecessary to have a separate human right to a decent environment. However, there are many who oppose this view. They argued that there is in fact a benefit in bringing environmental law under the ambit of human rights.

International concerns with human rights, health and environmental protection have expanded considerably in the past several decades. In response, the international community has created a vast array of international legal instruments, specialized organs, and agencies at the global and regional levels to respond to identified problems in each of the three areas. Often these have seemed to developed in isolation from one another. Yet the links between human rights, health and environmental protection were at least from the first international conference on the human environment, held in Stockholm in 1972. Indeed, health has seemed to be the subject that bridges the two fields of environmental protection and human rights. At the Stockholm concluding session, the participants proclaimed that:

Man is both creature and moulder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth.... Both aspects of man environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights even the right to life itself.

Principle 1 of the Stockholm Declaration established a foundation for linking human rights, health, and environmental protection, declaring that:⁴¹

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.⁴²

There has been a great deal of debate on the theoretical soundness of the idea of human right or rights to a satisfactory environment.⁴³ For one thing, there can occasionally be a conflict, or tension, between the established human rights and the protection of the environment per se. There are circumstances where the full enjoyment of the rights to life, to healthy living and to ones culture can lead to the depletion of natural resources and environmental degradation. Nevertheless, clearly there is a prima facie rhetorical and moral advantage in making the environment a human rights issue.⁴⁴ There has been a simultaneous increase in legal claims for both human rights and environmental goods, which is a clear reflection of the link between human and the environment and the dependence of human life on the environment.

IV. HUMAN RIGHTS AND ENVIRONMENTAL PROTECTION IN INDIA AND LESSONS TO NIGERIA

More than 100 constitutions throughout the world guarantee a right to a clean and healthy environment,⁴⁵ impose a duty on the state to prevent environmental harm,

⁴¹ Stockholm Declaration of the United Nations Conference on the Human Environment, 16, June 1972, U.N. Doc. A/CONF.48/14/Rev. 1 at 3 (1973).

⁴² *Ibid.*

⁴³ See for example, A. Boyle and M. Anderson, *Human Rights Approaches to Environmental Protection* (Oxford, 1996).

⁴⁴ Margaret Demerieux, *Deriving Environmental Rights from the European Convention for the Protection of Human Rights and Fundamental Freedoms* 21 (3) *Oxford Journal of Legal Studies* 521 (2001).

⁴⁵ Examples include: Angola (all citizens shall have the right to live in a healthy and unpolluted environment, Article 24); Argentina (all residents enjoy the right to live in a healthy environment, Article 41); Azerbaijan (everyone has the right to live in a healthy environment).

or mention the protection of the environment or natural resources.⁴⁶ Over half of these constitutions explicitly recognize the right to a clean and healthy environment, including nearly all constitutions adopted since 1992. The constitutional rights granted are increasingly being enforced by courts. For the purpose of this project, the researcher intends to examine the practices in jurisdiction like India, Brazil, South African and also reference to Colombia, Costa Rica, Argentina and Ecuador.

In Indian, for example, a series of judgement between 1996 and 2000 responded to health concerns caused by industrial pollution in Delhi. In some instances, the courts issued orders to cease operations.⁴⁷ The Indian Supreme Court has based the closure orders on the principle that health is of primary importance and that residents are suffering health problems due to pollution.

Probably more than any other jurisdiction on Earth, the Republic of India has fostered an extensive and innovative jurisprudence on environmental rights. Fifteen years after the onset of public interest litigation, it is now common for lawyers representing environmental claims to turn in the first instance to the terminology of rights rather than the more traditional rules of tort and crime. Not only has the Supreme Court ruled that every individual has a fundamental right to the enjoyment of pollution free water and air,⁴⁸ but it has been willing to resolve complex matters of environmental management according to this test, and has fashioned a series of innovative procedural remedies to accompany the new substantive right.

Since 1985, the Supreme Court and the High Courts have produced at least eighteen major decisions on environmental rights. Because these judgements reveal much about the promises and problems and problems of human rights approaches to environmental protection, they merit close attention from both advocates and critics of environmental rights.

The Constitution (Forty Second Amendment) Act⁴⁹ of India explicitly incorporated environmental protection and improvement as part of State policy through the insertion of Article 48(A).⁵⁰ Article 51A (g) imposed a similar responsibility on every citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for all living creatures.⁵¹ One of the main objections to an independent right or rights to the environment lies in difficulty of definition. It is in this regard that the Indian Supreme Court has made a significant contribution. When a claim is brought under a particular article of the constitution, this allow an adjudicating body such as the Supreme Court to find a breach if this article, without the need for a definition of an environmental right as such. All that the court needs to do is what it must in any event do; namely, define the constitutional right before it. Accordingly, a court prepared to find a risk to life, or damage to health, on the facts before it, would set a standard of environmental quality in defining the right litigated. This is well illustrated by cases that have come before the Supreme Court, in

⁴⁶ See for example, the constitution of Angola, Argentina, Belarus, Belgium, Burkina Faso, Cameroon, Cape Verde, Chad, Chechnya, Chile, Colombia, Congo, Ecuador, Finland, Georgia, Ghana, Hungary, India, Mexico, Niger, Namibia, Portugal, Russia, Romania, Sao Tome, Saudi Arabia, Slovakia, Ukraine, Zambia.

⁴⁷ See *M.C. Mehta v. Union of India & others*, JT 1996.

⁴⁸ *Subhash Kumar v. Bihar* AIR 1991 SC 420, 424.

⁴⁹ See the Constitution (Forty Second Amendment) Act, 1976.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

particular in relation to the broad meaning given to the Right to life under Article 21 of the Constitution.⁵²

The right to life has been used in a diversified manner in India, it includes, *inter alia* the right to survive as a species, quality of life, the right to live with dignity and the right to livelihood. This right along with right to health ascertains a balanced and healthful ecology.⁵³ In contrast, article 21 of the Indian Constitution states: "No person shall be deprived of his life or personal liberty except according to procedures established by law". The Supreme Court expanded this negative right in two ways. Firstly, any law affecting personal liberty should be reasonable, fair and just. Secondly, the Court recognised several unarticulated liberties that were implied by Article 21.⁵⁴ It is by this second method that the Supreme Court interpreted the right to life and personal liberty to include the right to the environment.

*Rural Litigation and Entitlement Kendra v. State of U.P.*⁵⁵ was one of the earliest cases where the Supreme Court dealt with issues relating to environment and ecological balance. The expanded concept of the right to life under the Indian Constitution was further elaborated on in *Francis Corallie Mullin v. Union Territory of Delhi*⁵⁶ where the Supreme Court set out a list of positive obligations on the State, as part of its duty correlative to the right to life. The importance of this case lies in the willingness on the part of the court to be assertive in adopting an expanded understanding of human rights. It is only through such an understanding that claims involving the environment can be accommodated within the broad rubric of human rights.

The link between environmental quality and the right to life was further addressed by a constitution bench of the Supreme Court in the *Charan Lal Sahu*.⁵⁷ Similarly, in *Subash Kumar*,⁵⁸ the Court observed that right to life guaranteed by article 21 includes the right of enjoyment of pollution-free water and air for full enjoyment of life.⁵⁹

The Supreme Court has used the right to life as a basis for emphasizing the need to take drastic steps to combat air and water pollution. It has directed the closure or relocation of industries and ordered that evacuated land be used for the needs of the community. The courts have taken a serious view of unscientific and uncontrolled quarrying and mining, issued orders for the maintenance of ecology around coastal areas, shifting of hazardous and heavy industries and in restraining tanneries from discharging effluents.

Through these cases, the court recognised the right to a wholesomely environment as part of the fundamental right to life. These cases also indicated that the municipalities and a large number of other concerned governmental agencies could no longer rest content with unimplemented measures for the abatement and prevention of pollution. They may be compelled to take positive measures to improve the environment.

⁵² *Ibid.*

⁵³ *Ibid.*, section 15; see also *See the case of Minors Oposa v. Sec. of the Department of Environment*, 33 ILM 173 (1994).

⁵⁴ (n) 311.

⁵⁵ AIR 1985 SC 652.

⁵⁶ AIR 1981 SC 746.

⁵⁷ *Charan Lal Sahu v. Union of India* AIR 1990 SC 1480.

⁵⁸ *Subhash Kumar v. State of Bihar*, AIR 1991 SC 420.

⁵⁹ *Ibid.*

V. ENVIRONMENTAL RIGHTS UNDER THE NIGERIAN CONSTITUTION AND ITS JUSTICEABILITY

There are series of legislations on the safety of the environment. There are such laws as Associated Gas-Injection Act,⁶⁰ which is meant to put a total cessation in Nigerian oil and gas industry to gas flaring which would result in the improvement of the country's air and atmosphere quality imposing fiscal penalty on any gas flaring not approved by the Minister of Petroleum Resources.⁶¹

Many years after this law, gas is still being flared and the question remains: why should there be gas flaring at all, whether or not approved by the government? Environmental Impact Assessment Act, 1992, No 86 is another law which makes it mandatory for an environmental impact assessment study of a project before its take off.⁶² There is Federal Environmental Protection Agency Act⁶³ which empowers the Department of Petroleum Resources with the principal responsibility for removal of oil related pollutions⁶⁴ discharged into the Nigerian environment,⁶⁵ prompting the question, how well has this been done? Oil in Navigable Water Act⁶⁶ is also another law which prohibits the pollution of sea water in response to the International Convention for the Prevention of Pollution of the Sea by Oil.

Some others include, Oil Pipeline Act (2004), Petroleum Act,⁶⁷ which among others empowers the Minister for Petroleum Resources to make regulations for the prevention of pollution off water course and the atmosphere. However, when ever serious environmental degradation occurs, the question that lingers in mind is, where have these laws taken a flight to? A rhetorical question which has not been answered and still wait answered.

Turning now to the Nigerian Constitution, starting from the independence constitution of 1960 all through to the 1999 constitution, there has been attention paid in one form or the other to the environment. For instance, items 22, 25, 28, 40 of the exclusive list in the 1960 constitution concern the safety of the environment. The power to make law on environmental protection, among others was vested in the legislative both of the federal and regional level.

The 1963 constitution inherited the environmental provision of its predecessor constitution. The 1979 constitution created a basis for effecting treaty obligation so that international environmental treaties could be passed into national law.

The 1999 constitution, which came into force on May 29, 1999 is said to be a remarkable achievement for Nigerian environment. For the first time, the constitution specifically makes environmental protection a state objective and indeed provides for it in the chapter on fundamental objectives and directive principle of state policy.⁶⁸ Section 20 provides:

⁶⁰ See cap 26 Laws of Federation of Nigeria, 1999.

⁶¹ *Ibid.*

⁶² See section 2 of the Act.

⁶³ Cap 131 Laws of Federation of Nigeria 2004.

⁶⁴ See section 13 of the Act.

⁶⁵ *Ibid.*

⁶⁶ See section 16 of the Oil Navigable Act, Cap 337 LFN, 2004.

⁶⁷ See Cap 350 LFN 2004.

⁶⁸ See the Provisions of the chapter II of the Constitution of the Federal Republic of Nigeria 1999.

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

The constitution also has re-enactment of section 16 (n) of the 1979 constitution, stating that the state shall ensure that its economic policy secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice, equality, status and opportunity.⁶⁹ This is in line with principle 3 of Rio Declaration 1992, which for the first time merged development needs with environmental concern.

The question therefore is, How Justiciable is the provision of section 20? It is quite unfortunate that the same constitution which recognize right to healthy environment on one hand, also makes the same provision not justiciable by ousting jurisdiction of the court in respect of any matter concerning the legality of the provision of chapter two under which the above section fall into. This is made very clear from the provision of section 6(6)(c) which states:⁷⁰

The judicial powers vested in accordance with the foregoing provisions of this section (c) shall not except as otherwise provided by this constitution, extend to any issue or question as to whether any act or omission by any judicial decision is in conformity with the fundamental objectives and directive principles of state policy set out in chapter II of this constitution.⁷¹

In short, by the provision of Section 6(6)(c) no court in Nigeria is allowed to venture in to the question as to whether any activities within Nigerian territories amount to environmental degradation. In other words the notion of environmental rights is unknown to Nigerian law.

In Nigeria, the 1999 constitution does not expressly provide for a right to a clean environment. The protection of the right to life under section 33 encompasses the right to good life, says Taofiq Ladan. Whether the court in Nigeria will take to this view is another ball game as has been done in India. Most cases decide in Nigeria are silent on whether environmental degradation amounted to a breach of fundamental rights or right to healthy environment. The best our courts have been able to do is to awards monetary damages to the victim of environmental degradation without addressing the question whether same constitute a breach of fundamental human rights and without taking into consideration the interest of future generation.

VI. CONCLUSION

Nearly, all global and regional human rights bodies have considered the link between environmental degradation and internationally guaranteed human rights, including the right to health. In nearly every instance, the complaints brought have been based upon a specific right to a safe and environmentally sound environment, but rather upon right to life, property, health, information, family and home life. These cases demonstrate several benefits of using one or more of the rights based approaches to environmental and health problems. First, the emphasis on rights of information, participation, and access to justice encourages an integration of democratic values and promotion of the rule of law in broad based structure of governance. Experience shows

⁶⁹ See section 16(b) of the Nigeria 1999 Constitution.

⁷⁰ Constitution of the Federal Republic of Nigeria 1999.

⁷¹ *Ibid.*

better environmental decision-making and implementation when those affected are informed and participate in the process. Another benefit of a rights based approach is the existence of international petition procedures that allow those harmed to bring international pressure to bear when government lack the will to prevent or halt severe pollution that threaten human health and well-being. In many instances, petitioners have been afforded redress and government have taken measures to remedy the violation. In other instances however, the problem appears to be the result of a combination of government lack of capacity and lack of political will. The pollution may be caused by powerful enterprises whose business and investment are important to the state or the state may have inadequate monitoring system to ensure air or water quality.

At the national level more than eighty constitutions now contain provisions establishing the right to a safe and healthy environment and the duty of the state to protect the environment and health of its inhabitants. The primary argument in favour of this is that, it elevate the entire spectrum of environmental issue to a place as a fundamental value of society, to a level equal to other rights and superior to ordinary legislation.

Therefore, there is a lot for Nigerian government to learn from the practices in other jurisdiction. Environmental problems which have turn the societies into a conflict environment can only be addressed through a right based approach in order to protect the interest of its inhabitants. That is, for the present and future generation.