

APPRAISING THE ISSUES AND CHALLENGES IN THE ENFORCEMENT OF ENVIRONMENTAL RIGHTS IN NIGERIA: LESSONS FROM INDIA

By

Kpea-ue Bariyira Simple Ph.D*

Abstract

The economic advantage of oil and gas exploration and production to the Nigerian government nonetheless, oil and gas exploration activities have been a thorn in the flesh of Nigerians residing within the oil and gas producing region of Niger Delta. This is due to ceaseless environmental rights violations. The most serious and notorious cases of pollution, damage of the environment are usually perpetrated by the Multinational Oil Companies. The operations of these licensed MNCs negatively influence and affect virtually every aspect of human existence especially the environment of host communities. The land, water and air are polluted with oil spills, gas flaring and oil leakages from rusty and old pipelines. This paper appraised the issues and challenges in the enforcement of environmental rights in Nigeria. It is revealed that overwhelming powers of multinational companies, corruption, poverty, revenue generation, poor asset management, and lack of political are most of the issues and challenges militating against the enforcement of environmental rights in Nigeria.

Keywords: Human Rights, Environment, Environmental Degradation.

1.0 Introduction

Environmental harm such as pollution, deforestation, exploitation of natural resources or climate change has the potential to impact on the communities and individual enjoyment of their rights such as the right to life, right to health, right to housing, right to adequate standard of living, and right to food.¹ It was on this strength that Judge Weeramantry in his separate opinion in the *Gabcikovo Nagymaros Case*² before the International Court of Justice gave a landmark judgment which clearly shows that a healthy and clean environment is a precursor for the recognition, promotion and enjoyment of several other rights including the rights to life itself. One of the measures adopted by government all over the world to address the environmental challenges associated with oil and gas exploration and production is the enactment of laws to regulate operators in the industry. Nigeria, as an oil rich nation has enacted copious legal framework for the protection of human rights in general and environmental rights in particular following oil and gas operations. The Petroleum Industry Act³ and Climate Change Act⁴ are examples of recent laws in the industry. The PIA, for instance, is the main or principal law governing the oil and gas industry today. Regrettably, the plethora of extant laws appears inadequate to muscle the litany of environmental challenges prevalent in the oil and gas industry.

*B.SC(Hons.), LL.B(First Class), B.L., LL.M(RSU), Ph.D, Lecturer, Department of Private And Property Law, Faculty of Law, Rivers State University, Nkpolu, Port-Harcourt. simplestbarry@yahoo.com; bariyira.kpea-ue@ust.edu.ng +2348068753214.

¹ O Oluduro, 'Environmental Crimes, Human Rights and the Oil Industry in Nigeria' in M C Ogwezy (ed), *Law on Oil and Gas Exploration and Production in Nigeria: A Text in Honour of Austin Avuru*(Princeton & Associates Publishing Co. Ltd 2020) 539.

² *Gabcikovo Nagymaros Protect (Hungary v Slovakia)* (1997) Rep 3, ICGJ 65 (ICJ 1997) Separate Opinion of Vice President Weramantry.

³ Petroleum Industry Act 2021.

⁴ Climate Change Act 2021.

2.0 Issues and Challenges in the Enforcement of Environmental Rights in Nigeria

Environmental degradation has continued to create far-reaching challenges for man, human environment, health and economic development in Nigeria. In a bid to tackle these challenges, government has evolved some legal and institutional mechanisms to protect the environment and enforce environmental rights. Nonetheless, the problem of environmental degradation has persisted. Some issues and challenges had been identified as the causes of the inability of extant laws and institutions to tackle environmental problems and enforce environmental rights in Nigeria. The discussion of these issues and challenges forms the thrust of this paper.

2.1 Overwhelming Power of the Multinational Companies

The petroleum industry is a *sui-generis* that requires a high volume of capital and investment, high technology and experts. The industry in Nigeria therefore depends on foreign direct investment to allow Multinational companies to invest in the industry. These factors influence the Federal Government to lower the standard of her legal regime to create room for a 'free for all' operation. This influence creates a regulatory problem due to weak environmental laws and standards. Regulatory problems have been a significant cause of environmental rights abuses in the petroleum industry in Nigeria. The petroleum industry in Nigeria is governed by a plethora of regulatory bodies and extant laws. Unfortunately, these regulations often suffer from inadequate enforcement, gaps in oversight, and sometimes outright corruption.⁵ Nigeria has a range of laws and regulations in place to protect the environment, including the Nigerian Environmental Impact Assessment Act and the National Environmental Standards and Regulations Enforcement Agency Act.⁶ Others are the Petroleum Industry Act⁷ and the Climate Change Act.⁸ However, enforcement remains lax in many cases, allowing oil companies to skirt environmental standards with impunity. This has led to oil spills, gas flaring, and other practices that harm the environment and infringe upon the rights of local communities who depend on clean air, water, and land for their livelihoods.⁹

There is inadequate oversight of oil companies' activities. Regulatory agencies often lack the resources, expertise, and political will to monitor and regulate the industry effectively. This results in a lack of corporate accountability for oil companies. They operate without proper scrutiny. Communities affected by oil spills and other environmental issues are left without recourse, as regulatory agencies often struggle to hold companies responsible for their actions.¹⁰ This results in environmental degradation and violations of the rights of affected communities.¹¹

2.2 Corruption

Corruption within regulatory bodies is a pervasive issue in Nigeria and further exacerbating regulatory problems in the petroleum industry. Bribes and kickbacks can lead to regulatory agencies turning a blind eye to violations, allowing companies to continue to carry out environmentally damaging practices

⁵ A S Abdullahi, A Chinade and H S Bawa "Review of Nigeria's Effort to Stop Gas Flaring by 2020" [2019](6)(1) *International Journal of Strategic Research in Education, Technology and Humanities*, 184.

⁶ S A Khan, *Nigeria: The Political Economy of Oil* (Oxford University Press 1994) 76.

⁷ PIA 2021 (n 3).

⁸ CCA 2021 (n 4).

⁹ *Ibid.*

¹⁰ Y Oke, *Nigerian Energy Resources Law and Practice* (Princeton 2019) 49.

¹¹ *Ibid.*, 50.

without consequences.¹² This corrupt environment erodes trust in regulatory institutions and undermines their ability to protect environmental rights. Corruption in the petroleum industry is a persistent source of concern for the Federal Government of Nigeria, despite the various reforms introduced into the industry since the discovery of petroleum.¹³ Corruption is one of the major challenges militating against Nigeria's economic development and effective regulation of the petroleum industry as well as enforcement of environmental rights. Corruption is a crime against the State. It covers situations where a public officer accepts, solicits, or extorts bribe. It is the abuse of public office for private gains through the circumvention of public policies and procedures for competitive advantages and profits of such officers.

Integrity failure, driven by corruption, a lack of transparency, and inadequate accountability mechanisms is a central cause of environmental rights abuses in Nigeria's petroleum industry. Corruption has seeped into various aspects of the industry, compromising regulatory oversight and enforcement. Bureaucrats and officials may accept bribes from oil companies to overlook environmental violations or provide preferential treatment.¹⁴ The misappropriation of oil revenues is often tied to corruption and diversion of resources that could be invested in sustainable environmental practices. The misallocation of funds means that essential infrastructure for managing and mitigating the environmental impact of oil extraction is neglected.

Consequently, communities suffer from inadequate waste management, pollution control, and emergency response systems, exacerbating environmental rights abuses.¹⁵ Contracts, revenue sharing agreements, and environmental impact assessments are often shrouded in secrecy, making it difficult for affected communities to assert their rights or challenge harmful practices. This lack of transparency perpetuates a culture of impunity among oil companies.¹⁶ The erosion of integrity in Nigeria's petroleum industry extends to the judicial system, where bribery and political interference can compromise the ability of courts to deliver justice for affected communities. This further frustrates efforts to hold oil companies accountable for environmental rights abuses.¹⁷ Though Nigeria is one of the top ten oil-producing and exporting countries, Nigeria was ranked 161 out of 189 countries in the 2020 United Nations Development Programme (UNDP) Human Development index ranking due to the prevalent of corruption in the industry. In the petroleum industry today, corruption is predominant in the award of oil licenses and contracts, attempts to secure concessions. Bribery and corruption are employed by the operators to circumvent administrative bottlenecks, bureaucracy and other rent-seeking activities like the process of Environmental Impact Assessment which requires public participation and monitoring by the agencies concerned. Corruption and bad government prevalent in the country also affect the enforcement of environmental laws. According to Olujobi, due to prevalent cases of corruption, oil-rich

¹² *Ibid.*

¹³ O J Olujobi, *Nigerian Petroleum, Energy and Gas Resources Law: Legal Theories, Cases and Practice* (Princeton and Associate Publishing Co. Ltd 2022) 140

¹⁴ O Philip, 'Ownership of Oil and Gas in Nigeria' [2019] *SSRN*, 1 - 16.

¹⁵ R Hardwicke, 'The Rule of Capture and its Implications as Applied to Oil and Gas' [1935] *Tex Law Rev*, 401.

¹⁶ Y Omorogbe, *Oil and Gas law in Nigeria* (Malthouse Press Ltd., 2003) 32.

¹⁷ *Ibid.*

nations are often economically backward owing to the phenomenon of ‘resource curse’ or ‘paradox of plenty.’¹⁸

In 2008, Albert Jackson Stanley of Kellong, Brown and Root, a United States oil service company pleaded guilty to payment of 180 Million US Dollars bribe to the NNPC, Ministry of Petroleum and other governmental officials to secure contract worth \$6Billion US Dollars to construct liquefied natural gas facilities in the Bonny Island, Niger Delta.¹⁹

The government has failed to lay the right foundation through a robust legal framework and should be blamed for the sorry-state and suboptimal performance of the industry. Her institutional framework is equally lapsed creating room for the IOCs to leverage upon such weakness to undermine her roles in the industry. The most alarming impact of such failure on the Nigerian economy is the huge financial judgment debt obtained against Nigerian government by Process and Industry Developments Limited²⁰ following a gas supply processing Agreement made between them in January 2010.

The Federal Government of Nigeria (FRN) had in January, 2010, through its Ministry of Petroleum Resources entered into a Gas Supply Processing Agreement (GSPA) with P&ID. Under the terms of the agreement, Nigeria was to supply natural gas (wet gas) at no cost to P&ID via a government pipeline to the site of P&ID's production facility. P&ID was required to construct and operate the facility, process the wet gas and return to the government of Nigeria, lean gas to be used for power generation at no cost to the government of Nigeria. P&ID was entitled to other derivatives stripped from the wet gas. The GSPA had a tenure of 20 years from the date of first supply of the gas. Clause 20 of the GSPA provided for (a) the agreement to be construed in accordance with the laws of Nigeria (b) in the event of a dispute over the interpretation or performance of the agreement which cannot be resolved amicably, either party will serve on the other a notice of arbitration (c) the Arbitration award shall be final and binding upon the parties. Two years later, a dispute arose between the P & ID and the Nigerian Government and as this could not be settled amicably, the former served a notice of arbitration on the Nigerian government on the grounds that Nigeria has failed to make Wet Gas available in accordance with the GSPA. The matter went before an Arbitration Tribunal under the Rules of the Nigerian Arbitration and Conciliation Act 2004 with London, England as place of Arbitration. After affirming its jurisdiction in the matter, the Tribunal began its procedural hearing to determine whether or not there was any repudiatory breach of contract. At this point, there was an attempt by the Ministry of Petroleum to reach a settlement agreement with P & ID to the tune of \$850 million US Dollars, payable in installments. This was submitted for presidential approval a week to President Jonathan's departure from office. It would have amounted to tying the hands of the incoming government to grant the approval for the payment of that sum. Meanwhile, the arbitration panel had bifurcated the case and by July, 2015, it affirmed that indeed Nigeria had failed to perform its obligation under the GSPA and then unanimously decided that P&ID

¹⁸ (n 13).

¹⁹ A Gillies, *Reforming Corruption Out of Nigeria Oil? Part One: Mapping Corruption Risks in Oil Sector Governance* (Ch, Michelsen Bergen: U4 Brief 2009:2) 4.

²⁰ An engineering and project management company founded and led by Michael Quinn and Brendan Cahill who had over 30 years' experience of project management and execution in Nigeria, About P&ID-P&ID Facts <<https://pandidfacts.com>> accessed 20 November 2023.

was entitled to damages with interest. It took the new Nigerian government more than four months to respond.

A commercial court led by Philips J. dismissed the appeal and the explanation for the delay at the time. Unsuccessfully in having its way in England, Nigeria took up the matter at the Lagos Judicial Division of the Federal High Court of Nigeria, seeking essentially the same reliefs that was rejected by Philips J. When notified of the proceedings in the Lagos High Court, P&ID dismissed the proceedings as "abusive and as a deeply unattractive attempts to forum shop".

The lack of integrity, accountability and transparency in the various agencies which are indices of corruption is evidenced by the exportation of crude oil and importation of refined petroleum products in the face of moribund refineries. Consequently, industry operators drive on these corruption indices to operate in a reckless manner against environmental standards. This ugly trend gives birth to oil spills, gas faring and other environmental challenges.

2.3 Revenue Generation

Government's quest for revenue generation or economic priority refers to Federal Government's fiscal regime in the petroleum industry which places premium on revenues accruable from fees, rents, royalties, premiums, charges, bonuses and taxes.²¹ According to Dike,²² government's economic or fiscal interests in the petroleum industry are covered by the Petroleum Industry Act,²³ the Petroleum Profit Tax Act²⁴ and the Companies and Allied Matters Act.²⁵ The provisions of these laws reveal government's priority on economic revenue over health and safety issues. For instance, the PIA vests the ownership of and control of all petroleum in, under or upon any land in the Federal Government of Nigeria.²⁶ The intention of such vesting is to make the Federal Government become direct beneficiary of all the monies accruable from the industry.

The prioritization of economic interests over public health and environmental well-being has been a significant cause of environmental rights abuses within the petroleum industry in Nigeria. Oil extraction is a crucial component of Nigeria's economy, contributing significantly to government revenue. However, the pursuit of economic gain often takes precedence over the health of local communities and the protection of the environment.²⁷ The oil industry's economic importance to Nigeria has led to a culture of prioritizing revenue generation over environmental stewardship. The Federal Government of Nigeria heavily relies on oil revenue, which can incentivize the rapid expansion of oil production without adequate consideration for environmental safeguards. This prioritization often leads to a disregard for environmental regulations and the rights of communities affected by oil-related pollution.²⁸ The economic influence of oil companies in Nigeria can hinder effective regulatory

²¹ P Daniel and others(eds), *The Taxation of Petroleum and Mineral Principles, Problems and Practices* (Routledge Taylor and Francis, 2010)108.

²² S C Dike, *Energy Security: The Case of Nigeria and Lessons From Brazil, Norway and the UK* (Pearl Publishers, 2015) 105

²³ PIA 2021 (n 3).

²⁴ Petroleum Profit Tax Act, Cap 354 LFN 2004 (PPTA).

²⁵ Companies and Allied Matters Act 2020 (CAMA 2020).

²⁶ PIA 2021 (n 3), s 1.

²⁷ J Speight, *The Desulfurization of Heavy Oils and Residua* (2nd Edition. Marcel Dekker 1999) 4.

²⁸ *Ibid.*

oversight. These companies often wield considerable financial and political power which can be leveraged to influence regulatory decisions in their favour. This can result in leniency in enforcing environmental regulations, as authorities may be hesitant to challenge the interests of powerful oil corporations.²⁹

The economic importance of the petroleum industry can exacerbate land disputes and displacement. As oil companies expand their operations, they often acquire land and other resources that local communities rely on for their livelihoods. Economic priorities over health perpetuates environmentally damaging practices such as gas flaring and inadequate waste management. These practices not only harm the environment but also pose significant health risks to nearby communities. Despite the known health hazards, economic considerations can lead to a reluctant to invest in cleaner technologies and practices.³⁰

Therefore, at the stage of granting license, pollution, which touches on health and safety in the environment appears not emphasised. What is of importance to government is how much revenue will be accruable to the government through their joint ventures. This is against the position in the UK where emphasis is placed on pollution prevention over fiscal matters at the licensing stage. The UK's policy compels operators to adopt better precautionary measures before they commence operations. This equally allows operators to present Environmental Management Plans to handle negative environmental impacts as a results of their operations prior to licensing.

The provisions of the PIA and the Climate Change Act which provide for submission of a Climate Change Action Plan, Carbon Budget, Climate Change Funds, establishment of a Climate Change Council and advocating for green growth and sustainable development appear to present hope for a precautionary approach to environmental protection in the industry. However, the success of the new provisions will depend on effective enforcement and implementation mechanisms of the extant law as well as corruption-free institutions.

2.4 Poverty

Poverty is a relative concept.³¹ Poverty means the condition of not having adequate income to support a minimum standard of decent living and characterized by lack of gainful employment, poor nutritional status and lack of physical assets. It implies a situation where one lives below the level of income that is needed for a reasonable minimum standard of living.³²

According to Oguonu, intertwined with poverty is environmental degradation. Poverty is the destruction of nature, forest, animals, rivers and lakes. Here is another tragic cycle- poverty leads to environmental destruction, which perpetuates increasing poverty...millions of hectares of forests are being cut down

²⁹ Speight (n 27).

³⁰ D Hobson, and W Pohl, *Modern Petroleum Technology* (4th edn, Applied Science Publishers 1973) 17.

³¹ C Uche, 'Poverty Alleviation Programmes in Nigeria: Past, Present and Future' (2000) *Nigerian Journal of Banking and Finance Issues*.

³² C Oguonu, 'Poverty and Environmental Degradation in Nigeria' (2005)(2)(1) *Journal of Political and Administrative Studies*.

every year to clear land for crops or to obtain wood for lumber or fuel. The poor are often forced to exploit the environment because of their need for food and fuel.³³

Where the above is true, then one cannot comfortably make a case for sustainable development or welfare of future generations to the people who are threatened by poverty and are constrained to degrade the natural resources in order to survive. It becomes difficult therefore to enforce environmental rights in the face of prevailing poverty in the land. This is more so as poverty often causes people to put relatively more pressure on the environment which results to high death rates, improper human waste disposal leading to unhealthy living conditions, more pressure on fragile lands to meet their needs and over exploration of natural resources and aggressive deforestation. This has the multiplier effects of causing more sufferings to the poor. Environmental damages increase the impact of flood and other catastrophes. Despite the United Nations General Assembly adoption of the 2030 Agenda for Sustainable Development which contains 17 Sustainable Development Goals, and the Goal 1 placing a duty on States to ‘end poverty in all forms wherever,’ poverty is still prevalent.

Poverty also affects the approach towards access to information on environment, public participation in decision making in environmental matters and access to justice. For instance, access to justice is a vital component of the broader evolution of environmental management, implementation and enforcement.³⁴ Public enlightenment on decision making processes will afford proactive opportunities to contest decisions affecting communities of environmental issues. In Nigeria, access to justice includes, the right to due process as enshrined in the Constitution, the right to appeal against decisions taken against a person and the right to be heard fairly.

However, the recent history of the Nigerian legal system is replete with allegations of judicial corruption.³⁵ The court is said to be the last hope of the common, or poor man. If that last hope loses the confidence of the common, or poor man, where will the poor man run to? When a rural farmer whose farmland has been spilled with oil sues a multinational oil company for damages to his property, the contest appears to be between the poor and sometimes, illiterate farmer and the very powerful oil company.³⁶ A corruption prone judge with no integrity may be induced by the oil company to give decisions that would be favourable to the oil company. On the other hand, with the high cost of litigation, especially oil and gas litigation, how many villagers whose lands, fishing ponds, settlements or other sources of livelihood have been destroyed by degradation caused by reckless operations of the multinational companies will have the financial viability to hire a lawyer and other expert witnesses and approach the court for the enforcement his environmental right? If he does it at the court of first instance, can he appeal up to the Supreme Court? The answer is no.

2.5 Poor Asset Management

Poor asset management within Nigeria's petroleum industry is a root cause of environmental rights abuses. Inadequate infrastructure and poor maintenance practices lead to frequent pipeline leakages and oil spills. Aging pipelines and poorly maintained infrastructure are prone to corrosion and other

³³(n32).

³⁴Atsegbua and others, *Environmental Law in Nigeria: Theory and Practice* (Ambik Press 2010), 251.

³⁵D K Derri, ‘Litigation Problems in Compensation Claims for Oil and Gas Operations in Nigeria’ in Emiri and Deinduomo (eds), *Law and Petroleum Industry in Nigeria: Current Challenges: Essays in Honour of Justice Kate Abiri* (Malthouse Press Limited 2009), 24.

³⁶*Ibid.*

vulnerabilities.³⁷ As a consequence, oil spills occur regularly, contaminating land, waterways, and farmlands, depriving local communities of their livelihoods, and violating their rights to clean and safe environments. Inefficient asset management contributes to gas flaring, which is a major environmental rights concern in Nigeria.³⁸ Gas flaring is not only wasteful but also emits harmful pollutants, contributing to air pollution and associated health issues for nearby communities. The failure to invest in capturing and utilizing associated gas exacerbates environmental degradation and violates the right to a healthy environment. The lack of investment in modern technologies for asset management and monitoring further compounds the problem.³⁹ Advanced monitoring systems can detect leakages and oil spills promptly, allowing for swift responses and minimizing the damage. However, inadequate investment in these technologies hampers early intervention, leading to larger and more prolonged environmental impacts. Poor asset management indirectly affects human rights by undermining the social and economic well-being of communities.⁴⁰ When spills occur, the affected areas become unsuitable for agriculture and fishing, causing economic hardship for local populations. This violates their economic and social rights, as they lose their means of subsistence.

2.6 Unemployment

Unemployment among youths remains a cankerworm which has eaten deep into the crucibles of the nation. The youths comprise of the active labour force of any country in its production and policy implementation process.⁴¹ However, a greater percentage of Nigeria's labour force is unemployed. Unemployment has become endemic in the Nigerian economic system with most of its youths between the ages of 18-35 being less productive or engaging in any form of creative or gainful employment. The problems of low productivity, high crime rate, lack of innovativeness, high public disorder are characterized by the various forms of unemployment within the Nigerian society. As a result of the increasing rate of unemployment, the youths are subjected to being used as instruments of destruction and other forms of nefarious acts which threaten the development of the economy.

Rightly observed, the devil's workshop is a breeding ground for free and all forms of economic sabotage or crime as a result of idleness and lack of direction. One of such sabotage is that witnessed in the Niger Delta region of Nigeria as a result of militancy as well as that witnessed in the North as a result of Boko Haram.⁴² Pipeline vandalisations and oil leakages most times, have been alleged by the Multinational oil companies to be carried out by acts of sabotage from the youths of Niger Delta. For instance, it is alleged that kidnappings in Nigeria's upstream petroleum industry are perpetrated by militant groups.⁴³ The Emancipation of the Niger Delta (MEND) and other agitati0on groups kidnapping of Multinational oil companies' expatriates are vengeance for unemployment and neglect of the youths of the region by Multinational oil companies and the Federal Government.

³⁷ Y Omorogbe, *The Oil and Gas Industry: Exploration and Production Contracts* (Florence and Lambard Nigeria Ltd 2008) 12-13.

³⁸ *Ibid.*

³⁹ A Odje, *Oil, Niger Delta and Nigeria* (Jenique Int' Co Ltd 2003) 7.

⁴⁰ A Kalio, 'Understanding Host Community Distrust and Violence Against Oil Companies in Nigeria' a MSc dissertation submitted at Walden University in 2016.

⁴¹ M A Ayinla and B Ogunmeru, 'Youth Unemployment and Its Impact on Nigeria's Economic Development' (2018)(9)(17) *Journal of Economics and Sustainable Development*, 22.

⁴² (n41), 25.

⁴³ Olujobi (n 13), 361.

The offshoot of the above is pipeline vandalism and major threat to petroleum operations forcing operators to suspend operations without proper decommissioning of facilities. The ultimate result is oil spills that threaten environmental rights. Non-decommissioning of abandoned pipelines and continuous oil spills pose serious threats to the lives of Nigerians, degrade the quality of water source and render the entire ecosystem and its surrounding unsafe and unhealthy for human settlement and occupation.

2.7 Absence of Political Will

Political will is one of the commonest controversial policy lexicons in development studies. Political will is the extent of committed support among key decision makers for a particular policy solution to a particular problem. It is the commitment of actors to undertake actions to achieve a set of objectives,⁴⁴ in this case, ending the spat of oil spills and gas flaring causing environment degradation in Nigeria. It is the demonstrated credible intent of political actors within a legal system. Political will must therefore, address three things; distribution of preferences regarding the outcome of interest, the authority, capacity and legitimacy of key decision makers and the commitment to preferences with no compromise.

The Nigeria's petroleum industry is a clear signpost of Federal Government's lack of political will to protect and enforce environmental rights. First is the presence of weak and inadequate regulatory framework. Most of the extant laws are weak and inadequate. For instance, it has equally been argued that section 20 of the 1999 Constitution which provides for environmental rights is in Chapter 11 of the said Constitution which has been declared non-justiciable by section 6(6)(c). In *Okogie v Attorney General of Lagos State*⁴⁵, the Court held that no court has jurisdiction to pronounce whether any organ of government has acted or is acting, in conformity with the fundamental objectives and directive principles. Oil and gas exploration has a nexus with the environment. The wellbeing of a nation depends on the proper exploitation and use and prudent management and protection of natural resources and environment. A healthy, serene and beautiful environment is one where every good thing thrives.⁴⁶ Unlike the case in India, Nigerian courts often lack the boldness, through judicial activism to enforce environmental rights.

Nonetheless, in the light of the pivotal role of the environment, there must be a means or leeway of enforcing environmental rights in Nigeria. In *FRN v Anache*,⁴⁷ the court held that the provisions of Section 6(6)(c) of the 1999 Constitution has provided a leeway for the justiciability of the entire Chapter 11 of the said Constitution by including the phrase, 'except as otherwise provided by this Constitution...' Therefore, where other parts of the Constitution mentions any part of chapter two, it makes that part justiciable.⁴⁸ Where the National Assembly enacts a law pursuant to any provision in chapter two, that

⁴⁴ D W Brinkerhoff, 'Assessing Political Will for Anti-Corruption Efforts: An Analytic Framework, Public Administration and Development' (2000)(20)(3)*The International Journal of Management Research and Practice*.

⁴⁵ (1981) 1 NCLR 218 HC, 2 NCLR 337.

⁴⁶ E Malemi, *The Nigerian Constitutional Law* (3rd edn, Princeton Publishing Company, 2012) 272.

⁴⁷ 3 PLR/2004/44 (SC).

⁴⁸ For instance, sections 147(3) which mentions section 14(3) and section 197(3) which mentions section 14(4) respectively on the need by the president and governor to reflect federal character and the diversity nature of each state in the appointment of ministers and commissioners as well as members of MDAs.

very law validates the jurisdiction of the court with respect to that part of the chapter.⁴⁹ Finally, the domestication of the African Charter on Human and Peoples' Rights 1981 into the Nigerian *corpus juris* has equally created an avenue for the enforcement of environmental right in Nigeria. Accordingly, section 24 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act⁵⁰ provides that all peoples shall have the right to a generally satisfactory environment favourable to their development. Premised upon this provision, one can now institute an action in Nigerian courts for the enforcement of environmental rights notwithstanding the provision or status of Chapter 11.

2.8 Environmental Right Protection and Enforcement in India

The Indian Constitution, like that of Nigeria, contains specific provisions on environmental protection. The directive principles of State policy and fundamental duties explicitly enunciated the nation's commitment to protect and improve the environment.⁵¹ It was the first time a Constitutional provision was imposing responsibility on the State to protect the environment. Article 48-A provides that State shall protect and improve the environment and safeguard the forest and the wildlife of the country. Citizens of India equally have the duty to protect and improve the natural environment including forests, lakes and wildlife and have compassion for living creatures.⁵²

The Courts of India have continued to play pivotal roles in fashioning and monitoring the implementation of these measures. There are a plethora of cases to demonstrate the firmness of the judiciary to uphold the tenets of the Constitution and hold the executive accountable to protect the environment. The judiciary makes it as a duty to protect the environment in the face of legislative and budgetary gaps. In the case of *Sachidanand Pandey v State of West Bengal*,⁵³ the Supreme Court observed that whenever a problem of ecology is brought before the court, the court is bound to bear in mind Articles 48(A) and 51-A(g).

There is a strong judicial activism in India when it comes to the protection of environmental right. The Court sees the right to life guaranteed under Article 21 of the Constitution to include the right to a wholesome environment. The right to life is worthless and meaningless without a healthy, safe and clean environment. In *Damodhar Rao v S. O. Municipal Corporation Hyderabad*,⁵⁴ the Court held that environmental pollution would be a violation of the fundamental right to life and personal liberty.

The judgment of the Supreme Court in the case of *Ratlam Municipal Council v Vardhichand*,⁵⁵ is a landmark in the history of judicial activism in upholding the rule of law generally by inputting liability statutory authorities and agencies to enforce and protect environmental rights notwithstanding and budgetary constraints. J. Krishna Iyer observed that 'social justice is one to and therefore, the people must be able to trigger off jurisdiction vested for their benefits to any public functioning.'⁵⁶ The judiciary has stood firm, bold and fearless to fill in the gaps in the legislation through judicial activism,

⁴⁹ *Olafisoye v FRN* (2004) 4 NWLR (pt 864) 580 SC; Corrupt Practices and other Related Offences Act Cap C31 LFN 2004 relating to section 15(5) of the Constitution which places an obligation on government to abolish all forms of corrupt practices; NESREA Act 2007; Climate Change Act 2021.

⁵⁰ African Charter on Human and Peoples' Rights 1981 (Ratification and Enforcement) Act Cap. A9 LFN 2004.

⁵¹ Constitution of India 1950, (Forty second Amendment) Act 1976.

⁵² (n 51), art 51-A(g).

⁵³ AIR 1984 SC 1109.

⁵⁴ AIR 1996 SC 647.

⁵⁵ AIR 1980 SC 1622.

⁵⁶ (n 55).

recognition of public interest litigation and encouraging public awareness and education on the special benefits of the Constitutional provisions to the citizens.

3.0 Conclusion and Recommendations

In conclusion, the Indian judiciary has adopted the following approaches; indivisibility of the right to life (fundamental rights) and the environmental objectives (directive principles); the expansion of the scope and contents the concept of the fundamental right to life as encompassing the bare need of life to include shelter/settlement, adequate water, nutrition and quality water. Others are innovation of public interest litigation as a tool to achieving social objectives by enabling easy access to courts/environmental justice to the poor and the courts taking steps to warn those statutorily and constitutionally empowered to implement those laws of the consequences of disobedience.

It is imperative that Nigeria adopts a holistic approach that balances economic development with environmental protection. This includes rigorous enforcement of existing environmental regulations, the development of comprehensive environmental impact assessments, the reduction of gas flaring, investment in renewable energy sources, and active community engagement. Furthermore, enhancing transparency, accountability, independence and anti-corruption measures within the regulatory bodies is crucial to ensuring that environmental rights are upheld, protected and enforced. Ultimately, by addressing this nexus proactively through an expressed political will, recognition of the indivisibility of the right to life and the environmental objective, recognition of public interest litigation and judicial activism as the case in India, Nigeria can foster sustainable development, protect its environment, and guarantee the right to a clean and healthy environment for its citizens.