



International Frameworks for Human Rights and Environmental Protection: Challenges and Prospects of Enforcement in Nigeria

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ABSTRACT

This paper discusses the international frameworks for human rights and environmental protection with a view to analyzing the enforcement effect of these international instruments in Nigeria. The proponents of environmental protection through human rights argued that the essence of human rights is to promote and protect human lives and one of the impediments of this aim is that human rights cannot be enjoyed in a degraded environment. The paper observed that human rights and environmental protection were separately identified as independent field for concern until early seventies when the world begins to appreciate the interconnectivity between the two. Thus, the relationship gained international recognition as a result of international conferences and mostly the human rights framework as an effective means to achieving environmental protection. These prompted the international community to established different conventions and treaties for the promotion of environmental protection through human rights enforcement. It was further observed that Nigeria ratified some of these conventions including the African Charter for the Enforcement of Peoples' Right 1989 domesticated in Nigeria in line with section 12 of the Constitution. Conversely, there are many challenges associated with the enforcement in Nigeria including the non justiciability of these environment rights under Constitution and lack of domestication of these international conventions. But the attitudes of our judges among others were considered to be the prospects. It is recommended that Nigeria should domesticate these international conventions in line with Section 12 of the Constitution to enable our courts to apply them like the African charter in the promotion of environmental protection through human rights enforcements.

Keywords: Environmental protection, human rights enforcement, international community

1.0 INTRODUCTION

This research discusses the international frameworks for human rights and environmental protection, the challenges and prospects of protecting the environment using human right approach with a view to analyzing the effect of these international instruments in enforcement aspect in Nigeria. The essence of human rights is to promote and protect human lives and one of the impediments of this aim is that human rights cannot be enjoyed in a degraded environment. There also seems to be a common perception that a human rights-based approach to environmental problems can yield practical benefits for both human right and environmental protection.

Environmental protection should be incorporated into human rights agenda as both are interrelated, interconnected and interdependent. The aim of human rights can only be attained in a protected

environment free from pollution and other related activities which tend to degrade the environment and end up violating human rights. Therefore, the environmental protection requires certain obligation and rights for its fulfillment. In Nigeria, the discourse regarding the relationship between human rights and environmental protection centered on the constitutional provision of environmental protection which has not been given adequate care it deserves. This is because it is provided for under Chapter II of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and therefore making it non-justiciable, although the judges of recent extended the interpretation of right to life to include damage caused to environment.¹ However, lack of an express provision generates a lot of controversies particularly on imminent danger posed by environmental pollution in Nigeria. This requires a solution by making the environmental protection rights justiciable, which can be achieved using right-based approach.

In achieving these, the research analyses the major international frameworks for human rights protection like the United Nations Declaration on Human Rights, 1948 and the African Charter on Human and Peoples' Rights 1989, which has been domesticated in Nigeria among others.

In order to strike a balance, the research discusses some of the international framework for the protection of the environment. Although at the initial, human rights are treated independently of the connection to environmental protection and vice versa. Until early seventies, when the major international instruments on the protection of the environment were held to appreciate the importance of protecting the environment among which are the declaration of the United Nation's Conference on the Environment and the Rio Declaration on the Environment and Development.

2. Related Literature

Abdulkadir² argued that it is desirable to include right to a healthful environment in the constitution, but in Nigeria non-inclusion of such expression does not stop an aggrieved party to enforce his right to a healthful environment by employing a wider interpretation of some fundamental rights. This work is relevant to this research because it indicates the importance of a healthful environment in realization of human rights. However, the work created a gap as it is lacking in expressly identifying the rights to be interpreted and how relatively are they connected to environmental protection. This research intends to address such limitations.

Cullet³ in his attempt to explain the necessity of linking human right and environmental protection, the author stated that the inclusion of environmental dimension in the human right debate has become necessary in view of the recognition of the pervasive influence of the local and global conditions upon the realization of human rights as the linkages will come to enhance the protection in both fields.

The author analyzed the function of case law before the inception of the international community discovered environmental protection as an area of environmental protection. This work is relevant as it focuses on the protection of both human rights and the environment. But it failed to analyze the relationship between environmental degradation and how it affects the enjoyment of human rights. Therefore, this research is out to fill in the gap by covering that particular area.

Ikpeze⁴ explained that ordinarily, environmental rights do not belong to the first generation rights, hence making its enforcement difficult. He further opined that although in Nigeria, the issues of environmental protection falls under Chapter II of the Constitution, yet human rights provisions are justiciable by the court with the power of wider interpretation. He concluded that the Federal Government of Nigeria should

¹ O. Adejonwo-Osho 'the evolution of human rights approaches to environmental protection in Nigeria' available at <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1013&context=sdlp> last visited on 29 march 2018.

² A. B Abdulkadir, "The Right to a Healthful Environment in Nigeria: A Review of Alternative Pathways to Environmental Justice in Nigeria" available at

³ P. Cullet, "Definition of an Environmental Right in a Human Rights Context" (1995) 13 *Netherlands Quarterly of human rights* p25 available at <http://www.ielrc.org/content/a9502.pdf> accessed on 4th March, 2018.

⁴ N.G Ikpeze, "the environment, oil and Human rights in Nigeria." Available at <https://www.ajol.info/index.php/naujilj/article/viewFile/82388/72543> accessed on 8th March, 2018.

be mindful of maintaining a clean and healthy environment for its citizens. The work is relevant to this research because it focuses on Nigerian situation of environmental protections. The work, however, did not address the adequacy of laws as well as institutional framework in Nigeria. It also did not make reference to the effect of environment to human rights which this research intends to fill in the gaps.

Müllerová⁵ highlighted international approaches to the link between human right and environmental protection and examined how the approaches apply to Czech Republic. The author concluded that the link between human rights and environment served as a basis for the establishment of the so-called rights-based approach to environmental protection. The situation in Czech Republic indicates the possibility of applying the rights-based approach which brought about the incorporation of environmental rights in the constitution. The work is relevant to this research because it indicated the benefit of using right-based approach to environmental protection though it focuses on the situation in Czech Republic. This research will analyze the Nigerian situation.

Muhammad and Kura⁶ examined the importance of protecting the environment by analyzing the environmental degradation in form of pollution and its effect on the enjoyment of human rights. The authors emphasized on “Greening of human rights” which they explain as interpreting environmental protection in human right context as all the human rights reflect on the impact caused by environmental degradation. They concluded that human being cannot be separated from the environment they live in, and as such contaminating the environment may affect human rights. This work is relevant to this research as recourse will be made to substantive obligations. The work created a gap with emphases on the substantive obligation regarding the relationship between human right and environmental protection while neglecting the procedural obligation to which this research will incorporate.

Emejuru⁷ analyzed the concept of environmental challenges and how they affect human rights. The author examined the Nigeria Constitutional provisions regarding environment and its protection and also analyzed the right to a healthy environment as a basic human right citing international case law. He concluded that a decent physical environment is a precondition for living a life of dignity and worth. This work is relevant to this research because it touches on Nigerian situation in relation to environmental protection using human right approach. The work is limited in that it does not make recourse to human rights in environmental protection which limitation this research intends to fill in the gap.

Ogbodo⁸ examined the progress of environmental protection against toxic waste and the consequences of the incidence of Koko waste dump in Delta in 1988. The author stated that the legal regime developed after the said incidence was not adequate enough. He concluded that in order to enhance protection against toxic waste harm, there is need to borrow trends from developed countries so as to tackle issues related to toxic waste which aimed at protecting the environment. This work is relevant to this research because it indicates some aspect of environmental degradation in form of toxic waste and its effect on human rights. But the work is limited to toxic waste effect on environmental protection without more and therefore created a gap that this research intends to fill.

Bridget⁹ considered the way environment is construed within the international human rights legal framework and identified some other benefits of applying human rights to environmental protection. She

⁵J.H. Müllerová, “Human Rights Approaches to Environmental Protection at the International Level <https://www.acadnoemia.edu/people/search?utf8=%E2%9C%93&q=environmental+protection+in+nigeria> accessed on 22nd June, 2018.

⁶ Z. Muhammad and A. B Kura, “Modern Law and Environmental Problems; A Human Right Perspectives” (2017) *SSRG International Journal of Humanities and Social Science (SSRG-IJHSS)* vol. 4 Issue5 available at www.internationaljournalssrg.org, accessed on 3rd March, 2018.

⁷ C.T. Emejuru, ‘Human Rights and Environment: Whither Nigeria?’ Available at <http://www.iiste.org> Accessed on 14th March, 2018.

⁸ O.S. Gozie (2009) "Environmental Protection in Nigeria: Two Decades After the Koko Incident," *Annual Survey of International & Comparative Law*: Vol. 15: Iss.1, Article 2. Available at: <http://digitalcommons.law.ggu.edu/annlsurvey/vol15/iss1/2> accessed on 14th May, 2018.

⁹ L. Bridget, (2012) “Environmental Rights or a Right to the Environment? Exploring the Nexus Between Human Rights And Environmental Protection,” *Macquarie Journal of International and Comparative Environmental Law*, 8(1), pp. 36-47. Available at <http://eprints.qut.edu.au/53993/> Accessed on 22nd June, 2018.

emphasized how environment operates as a precondition for the enjoyment of human rights which can either be direct or indirect as poor environmental conditions can directly limit individual's or community's ability to enjoy a specific right guaranteed under the law. She further examined the concept of right to a healthy environment and concluded that it is reasonably well accepted that the environment is important for the enjoyment of human rights. The author added that there is a common perception that a human rights-based approach to environmental problems can yield practical benefits for environmental protection. The work is relevant to this research having highlighted the benefits of using a human rights-based approach. The author's emphasis was on right to a healthy environment which is separate from the relationship between environmental protection and human rights. It also failed to analyze the substantive or procedural obligation which is the key in addressing the relationship between human right and environmental protection. This research intends to fill in the gap created.

Having outlined the foundational structure of this research, it is clear from the literature reviewed that at one point or the other, the concept of human right approach to environmental protection is not adequately addressed particularly in Nigerian context. In this regard, this research intends to look at the international framework for human right approach to environmental protection in Nigeria by analyzing the effect of environmental harm to the realization of human rights and the incorporation of rights that will enhance the protection of the environment. This can be achieved through assessment of the challenges and prospects of human rights and environmental protection in Nigeria.

3. Conceptual Clarification of Terms

Like most research works usually start by defining and clarifying key and relevant terms, this research is not an exception. This chapter introduces the concept of human rights, the concept of Environment, the concept of environmental protection, definition of Environmental rights, environmental pollution; Land pollution; water pollution; air pollution, environment as a human right issue. Until the reader appreciates these concepts, he will find it difficult to understand the entire research. This conceptual clarification is essentially provided for clarity purpose, especially for persons not quite familiar with the rights-based approach to environmental protection in Nigeria.

3.1 Concept of Human Rights

The importance of Human rights to humanity is enormous especially considering the contribution it made in an attempt to protect human dignity after the second world war II. Human rights received interest from a different discipline such as political, economic and legal among others. These led to various definitions. As a result of different backgrounds among the multi-disciplinary interest, each definition by a discipline focuses on the key issues and components. It is imperative to flashback on the historical origin of Human rights in order to appreciate the concept.

In an attempt to trace the origin of human rights, the effort was made to go back to Greek antiquity (for some, even further). They consider that human rights should come under the natural law¹⁰. In philosophy, the general tendency is to view the problem of human rights – or more precisely that of man's natural rights in terms of the doctrine of stoicism.¹¹ However, it is discovered in Cicero's work in Roman law that the origin of human rights which postulates the existence of a natural law, that is to say, man's natural rights.¹² By and large, the origins of human rights, in respect of positive law, are traced back to documents which appeared in recent centuries. Thus, human rights are contracts concluded by the State with the population. These contracts are seen as preserving certain rights for men while preventing the State from interfering in the exercise of those rights. The legal force of these rights is seen as being founded on the will of the State, or better still, in the circumstances of the period, on their recognition by

¹⁰R. Teitel, 'Human Rights Genealogy', 66 *Fordham L. Rev.* 301, 309–10 (1997) available at www.cambridge.org/9780521747103 accessed on 3rd June, 2018.

¹¹An ancient Greek philosophy (developed by Zeno of Citium around 300 B.C. as a refinement of Cynicism) which teaches the development of self-control and fortitude as a means of overcoming destructive emotions.

¹² Historical Foundations of Human Rights and Subsequent Developments, in the *International Dimensions of Human Rights* (Karel Vasak ed., 1982) available at <http://chettinadtech.ac.in/storage/11-07-19/11-07-19-03-32-34-985-sampathkumar.pdf> 25th April, 2018.

the King. They added that such rights are bound up with man's basic nature from which they derive, and for which reason, they constitute human rights.¹³

Another conception of human rights is that according to which human rights originated in human understanding.¹⁴ Virtually all the feudal varieties of the natural law theory belong to this type of thinking, and the same is true of the Kantian theory of law, founded on reason.¹⁵ This theory, like all the others, is forced to start off from certain premises established a priori and from which it is possible to deduce human rights. We find these premises in the metaphysical character of the rights.¹⁶ Being that the possible origin of Human rights, some writers make efforts to define the term in their words among which are; Eze who defines human rights as "Demands or claims which individuals or groups make on societies some of which are protected by law and have become part of *lex lata* while others remain aspiration to be attained in the future."¹⁷ To Ajomo who sees it as those rights which human beings enjoy by virtue of their humanity the deprivation of which would constitute a grave affront to one's natural sense of justice."¹⁸ In the words of Lien, human rights are "universal rights or enabling qualities of human beings as human beings or as individuals of the human race, attaching to the human being wherever he appears without regard to time, place, color, sex, parentage or environment."¹⁹ In Onyekpere's view, "Human right is the intrinsic worth, equal and inalienable rights of members of the human family to a dignified existence. Its observance is fundamental to the realization of social progress and a better standard of life for all humanity."²⁰ A learned Silk sees human right as "species of a legal right that pertains to mankind as a whole or all persons by virtue of their being "moral and rational creatures."²¹

Niall viewed human rights as part of the common heritage of all mankind without discrimination on the ground of race, sex, religious or other differences agreed to by all peoples from all parts of the world.²²

The definition of human right has over time, also agitated the minds of Jurists. For example, in *Ransome Kuti v. Attorney-General of the Federation*,²³ Kayode Eso, JSC defined human right as "A right which stands above the ordinary laws of the land and which in fact is antecedent to the political society itself. It is a primary condition to a civilized existence." Finally, human rights are those rights which are inherent to man and universally recognized as a precondition to a worthy living and the violation of which would render a man less human. In other words, without human rights, "man is nothing but a slave to his society."²⁴

However, the present human rights are rights created by the Universal Declaration of Human Rights in 1948 which emerged as one of the most significant developments to have taken place since the World War II came to an end²⁵. As rights which all human beings have by virtue of their humanity, such as the

¹³ Ibid

¹⁴ Ibid

¹⁵ Ibid

¹⁶ Ibid

¹⁷ O Eze, *Human Rights in Africa: Some Selected Problems*, (Ibadan: Macmillan Press and NIIA, 1984) p.5

¹⁸ M.A Ajomo., "The Development of Individual Rights in Nigeria: Constitutional History", in M. A. Ajomo & B. Owasanoye (eds), *Individual Rights under the 1989 Constitution* (Lagos: NIALS, 1993), p.1

¹⁹ A. Lien, *Fragment of Thoughts Concerning the Nature and Fulfillment of Human Rights*, (London: Greenwood Press, 1973) p.24.

²⁰ O. Onyekpere, "Democracy, Human Rights, Dictatorship and the Nigerian Judiciary," Vol. 3, Nos 1, 2 & 3, (1993), JHRLP, pp. 51 – 52

²¹ A. Idigbe, "Overview of Human Rights and their Corresponding Duties in Contemporary Nigeria," Badaiki, A. D. (ed.), *Landmarks in Legal Developments (Essays in Honour of Justice C.A.R. Momoh, Honourable Chief Judge of Edo State)*, (Lagos: Nobility Press, 2003), p.239

²² Niall Macdermott., "The Role of Lawyers IN The Observance of Human Rights" available at <http://www.nigerianlawguru.com/articles/human%20rights%20law/THE%20ROLE%20OF%20LAWYERS%20IN%20THE%20OBSERVANCE%20OF%20HUMAN%20RIGHTS.pdf> accessed on 22nd July, 2018.

²³ (1985) 2 NWLR [pt 6] 211

²⁴ S.S Shikyil, "Human Rights and National Development," Badaiki, A.D.,(ed.), *Landmarks in Legal Developments (Essays in Honour of Justice C.A.R. Momoh, Honourable Chief Judge of Edo State)*, (Lagos: Nobility Press, 2003), p.180

²⁵ C.T Emejuru, 'Human Rights and Environment: Whither Nigeria?' available at <http://www.iiste.org> Accessed on 14th March, 2018.

right to life, the dignity of human person, personal liberty, fair hearing and freedom of thought, conscience and religion.²⁶

3.2 Concept of Environment

There have been different definitions of the concept of environment proffered by different scholars. However, from whatever angle one perceives the term; "environment", it simply depicts what surrounds us. There is no single definition of the environment by the national, regional or international agreement. However, Environment literally means surrounding and everything that affects an environment. In other words "Environment is sum total of water, air, and land or anything that affect the human being, other living organisms, and property". It includes all the physical and biological surrounding and their interactions. To Hagget, environment refers to the "sum total of all conditions that surround man at any point in time on the earth's surface".²⁷

The environment is anything outside an organism in which the organism lives. It can be a geographical region, a climatic condition, a pollutant or the noises which surround an organism. The human environment includes the country or region or town or house or room in which a person lives.²⁸ The word Environment is derived from the French word "Environ" which means "surrounding". Our surrounding includes biotic factors like beings, Plants, animals, microbes, etc. and abiotic factors such as light, air, water, soil, etc.²⁹ Thus, Environment is a complex of many variables, which surrounds man as well as the living organisms. The environment includes water, air and land and the interrelationships which exist among and between human beings and other living creatures such as plants, animals, and microorganisms.³⁰

The Black's Law Dictionary' defines environment as: "the totality of physical, economic, cultural, aesthetic, and, social circumstances and factors which surround and affect the desirability and value of the property and which also affect the quality of peoples' lives"³¹. Environmental protection Agency (FEPA) Act of 1990, gave a very lucid definition of environment, thus; Environment includes water, air, land, and all plants and human beings and/or animals living therein and the interrelationships which exist among these or any of them.³²

Environment shall mean the space with all living organisms and natural resources, i.e. natural and man-made values, their interaction and the entire space in which people live and in which settlements, goods in a general use, industrial and other facilities, including the media and the areas of the environment, are situated.³³

The above definitions cover a broad concept of "environment." In that respect, they embrace everything within and around a man that may have an effect on or be affected by man; in other words, the human environment as contrasted with the physical environment. This more expansive concept of environment is synonymous with the human environment. This concept restricts the meaning to the physical or natural environment, comprising God-given natural resources, natural elements, and natural environment whether or not modified by man. This narrower concept of environment is, therefore, synonymous with the physical or natural environment. Environmental studies provide an approach towards understanding the environment of our planet and the impact of human life on the environment. However, environment refers

²⁶Annual Survey of International & Comparative Law, Vol. 18 [2012], Iss.1, Art. 6.

²⁷E.M. Ityavyar and T.T Thomas, "Environmental Pollution in Nigeria: The Need for Awareness Creation for Sustainable Development", Journal of Research in Forestry, Wildlife and Environment. Vol. 4 No.2

Available at <https://www.ajol.info/index.php/jrfwe/article/download/84726/75830> accesses 13th August, 2018.

²⁸http://univer.nuczu.edu.ua/tmp_metod/1061/Collin%20S.M.Dictionary%20of%20Environment%20&%20Ecology.pdf. 11th April, 2018.

²⁹http://shodhganga.inflibnet.ac.in/bitstream/10603/5081/8/08_chapter%201.pdf Accessed 11th April, 2018.

³⁰ Ibid.

³¹ Black's Law dictionary 5th edition.

³² Section 38 Environmental Protection Agency Act Cap 131. LFN 1990.

³³Law on the environment available at <http://extwprlegs1.fao.org/docs/pdf/mac105107.pdf> accessed on 22nd July, 2018.

to a global system in constant interaction which consists of physical, chemical, biological and socio-cultural elements.³⁴

3.3 Concept of Environmental Protection

When the environment is damaged by development projects that destroy the land for farming and growing food, people go hungry or become ill and their basic human rights to food, health, and an adequate standard of living are violated.³⁵

When a government fails to involve local communities in decision making, for instance regarding a construction plan or other infrastructural development in their area, the communities' right to participation and right to information are being violated.³⁶ Therefore, Environmental protection can be defined as the prevention to conserve and preserve the standard healthy level of environmental media by reducing the production of pollutants or polluting substances in the environment.³⁷

Environmental protection depends on the exercise of certain human rights, because the environment is treated as a pre-condition or pre-requisite for the satisfaction of a wide spectrum of human rights such as life, health, food, privacy and freedoms, such as freedom of information and public participation, and access to justice, as well as cultural rights.³⁸ Many environmental problems have increased as the result of human activities which have a negative impact on human as well as the enjoyment of human 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 rights³⁹. The protection of the environment is an important link to human existence and health. In this regard, the protection of the environment is vital as damage to the environment may reasonably interfere with the enjoyment of life and other human rights.⁴⁰

3.4 Environment as a Human Right Issue

The central point of viewing environment as a human right issue is that ignoring the environment in the short run may leave long-term bad effects on humanity and the violation of human rights⁴¹. Though the issue of environmental protection came later to human rights the two areas are interrelated, interconnected and mutually responsive as both are concerned with the development and promotion of human well-being.⁴² To live in a healthy and quality environment is the fundamental or basic human right. While human rights are necessary for the overall development of human personality, material comfort, and the quality environment is equally necessary to safeguard the conditions conducive to such a personal development.⁴³ Human rights and environmental protection are linked because both are required in order to achieve the highest quality of life for all.⁴⁴

The environmental law and human rights law have intertwined objectives and ultimately strive to produce better conditions of life on earth. They both seek to tackle universal challenges that must often be solved at the same time at the individual and global level.⁴⁵ The necessity to link both fields stems from the

³⁴Dominique Herve; 'Introduction to Human Rights and the Environment' available at <https://www.youtube.com/watch?v=fqkCFdClbYw&t=0s&list=LLS63dOIQbHf0RWJAszGuN4A&index=6> accessed on 3rd March, 2018.

³⁵UNEP& UNITAR, "Human Rights and Environment" available at <http://web.unep.org/divisions/delc/human-rights-and-environment> 11th March, 2018.

³⁶ Ibid

³⁷ A. Musa and H.Y Bappah, "Issues and Challenges on Environmental Rights: the Nigerian Experience" (2014). *American International journal of social science* Vol.3, no. 5, accessed on 3 January, 2018.

³⁸ Ibid

³⁹ Ibid

⁴⁰ M.N Agbasi, "The Legal Framework for the Protection of Wetlands in Nigeria" *Journal of Law, Policy and Globalization* vol. 54, 2016 available at <https://www.iiste.org/Journals/index.php/JLPG/article/viewFile/33735/34680> accessed on 14th Sept.,2018.

⁴¹P.Pathak, "Human Rights Approach To Environmental Protection" available at <http://www.ssrn.com/link/OIDA-Intl-Journal-Sustainable-Dev.html> Accessed on 03 March, 2018.

⁴² Ibid

⁴³ Ibid

⁴⁴ Ibid

different, complementary and partial approaches each has attempted to follow.⁴⁶ The inclusion of an environmental dimension in the human rights debate has become necessary in view of the recognition of the pervasive influence of local and global environmental conditions upon the realization of human rights.⁴⁷ In legal terms, the new linkages will come to enhance the protection in both fields as the protection of the environment will benefit from the established machinery whereas the human rights system will be enhanced by the inclusion of new interpretative elements until recently ignored.⁴⁸ The right to the environment may be formally added to the catalog of internationally guaranteed human rights while each approach can be to some extent pursued separately; they all tend towards the same goal.⁴⁹ The close link with these rights clearly shows that a right to the environment can easily be incorporated into the core of the human rights protection whose ultimate purpose is the blooming of the personality of all human beings in dignity.⁵⁰

The fact that environment is regarded as a human right issue due to the interrelationship between the two concepts, therefore many complex issues arise when these two disciplines interact, it is to be expected that there are different views on how to approach 'human rights and the environment'.⁵¹ It is to this end that the substantive obligation and procedural obligation arises with regard to the relationship between human rights and environmental protection:

3.4.1 Substantive Obligations

The substantive obligation approach is one where environmental protection is described as a possible means of fulfilling human rights standards. Here, the end is fulfilling human rights, and the route is through environmental protection law. The Human Rights Council has consistently recognized that environmental violations "constitute a serious threat to the human rights to life, good health and a sound environment for everyone."⁵² Human rights are essential in that some rights are not-derogable and foundational that all other rights are dependent upon, like the right to life without which, all other rights would be devoid of meaning. The UN Human Rights Committee has said that it is a right that should not be interpreted narrowly and that States should take positive measures to guarantee it. The right to life can be affected by environmental disasters and more long-term environmental degradation, which produce life-threatening diseases.⁵³ Therefore the substantive obligation in the relationship between human right and environmental protection is that all human rights guaranteed cannot be enjoyed in a degraded environment. Linking human rights with the environment creates a rights-based approach to environmental protection that places the people harmed by environmental degradation at its center.⁵⁴ Articulating the fundamental rights of peoples with respect to the environment creates the opportunity to secure those rights through human rights bodies.⁵⁵

3.4.2 Procedural Obligations

Procedural obligations are a key point of intersection between environmental and human rights law. This creates certain rights to be placed for adequate protection of the environment, these rights include rights to access to information, participation in decision-making, and access to justice are found in both environmental and human rights instruments and have been interpreted under both regimes to provide broad protections for environmental interests. The protection and promotion of procedural obligations

⁴⁵ Agbasi (n40).

⁴⁶ Cullet (n3).

⁴⁷ Pathak (n41).

⁴⁸ Ibid

⁴⁹ Ibid

⁵⁰ Ibid

⁵¹ S. Glazebrook : "Human Rights and the Environment" (2009) 40 VUWLR, available at <https://www.victoria.ac.nz/law/research/publications/vuwlr/prev-issues/vol-40-1/human-rights-enviro-glazebrook.pdf>, accessed 14TH March, 2018.

⁵² R. Braptspies, "Do we need a right to a healthy environment?" *Santa Clara Journal of International Law* (2015) Vol. 13, Issue 1 Article 3. Available at: <http://digitalcommons.law.scu.edu/scujil/vol13/iss1/3> accessed on 30th March, 2018.

⁵³ Ibid.

⁵⁴ Pathak (n41).

⁵⁵ Ibid

have been and continues to be, an important tool for the protection of the natural environment. Some proponents of procedural rights obligations also may have held an overly optimistic view that a fully informed public with rights of participation in environmental decision-making, and access to remedies for environmental harm would ensure a high level of environmental protection. Such a beneficial outcome may result, but it cannot always be assured. The enjoyment of human rights depends on environmental protection, in turn, environmental protection depends on the exercise of certain human rights, such as the rights to information, public participation in decision-making and access to justice. Allowing those potentially affected to participate in decision-making processes concerning harmful activities may prevent or mitigate the threatened harm and contribute to public support for environmental action⁵⁶. In the event, the activity goes forward and harm is suffered, access to justice can provide for restoration or remediation of the damaged environment.⁵⁷

3.5 Environmental Rights Defined

Environmental rights can be defined as the right that gives human beings a primary right to a sustainable global environment.⁵⁸ It has also been defined as the right of individuals and peoples to an ecologically sound environment and sustainable management of natural resources conducive to sustainable development⁵⁹. The term “environmental rights” manages to be both elusive and controversial: elusive because there is no universal definition, controversial because many from the environmental sector define it from an eco-centric perspective⁶⁰ while the human rights constituency is predominantly anthropocentric.⁶¹ It has however been said that environmental rights encompass three main areas: the right to a clean and safe environment; the right to act to protect the environment and the right to information, to access to justice, and to participate in environmental decision-making⁶². These enable citizens to play an active part in creating a healthy environment and are linked to several UN Conventions and Declarations.⁶³

3.6 Environmental Harm (Pollution)

In the context of this research, the term environmental harm is used synonymously with environmental pollution, environmental degradation, and pollution which tend to explain negative impact on the environment caused by particular activities that could be natural or man-made. In other words, it is referred to as deterioration in the quality of the environment⁶⁴. Although environmental harm (pollution) can be caused by natural events such as forest fires and active volcanoes, use of the word environmental pollution generally implies that the contaminants have an anthropocentric source.⁶⁵

The word pollution emerged in old French during the fourteenth century and originates from the word “*polluere*” which means “to soil or defile”⁶⁶. Literary, reference to pollution nearly always involved an adverse effect upon the human and human environment. The historical aspect of pollution in the legal parlance indicates that the word pollution is really used to refer to human degradation of the environment.⁶⁷

⁵⁶ A Maidin and A.B Abdulkadir, “A Research For Proposing Incorporation of Environmental Human Rights Principles to Foster Environmental Protection In Nigeria” available at <http://ssrn.com/abstract=1986163> accessed on 25 march, 2018.

⁵⁷ Ibid.

⁵⁸ A. Musa and H.Y Bappah, “Issues and Challenges on Environmental Rights: the Nigerian Experience (2014). *American International journal of social science* Vol.3, no. 5, accessed on 3 January, 2018.

⁵⁹ P. Cullet, “Definition of an Environmental Right in a Human Rights Context” (1995) 13 *Netherlands Quarterly of human rights* p25 available at <http://www.ielrc.org/content/a9502.pdf> accessed on 4th March, 2018.

⁶⁰ Ecosystem centered perspective.

⁶¹ Human centered perspective.

⁶² Z. Muhammad and A. B Kura, “Modern Law and Environmental Problems; A Human Right Perspectives” (2017) *SSRG International Journal of Humanities and Social Science (SSRG-IJHSS)* vol. 4 Issue5 available at www.internationaljournalssrg.org, accessed on 3rd March, 2018

⁶³ Ibid.

⁶⁴ A.W Rome, “Coming to Terms with Pollution: the Language of Environmental Reforms; 1865-1915, 1 *environmental his.6* (1996) available at https://lawreview.law.ucdavis.edu/issues/43/1/articles/43-1_Nagle.pdf.

⁶⁵ That is a source created by human activities.

⁶⁶ Rome, (n64).

⁶⁷ Ibid

Pollution is defined as the contamination of the environment's pure elements by the harmful agents or increase in their percentage above a certain permissible limit.⁶⁸ As earlier noticed, the environment is comprised of many components among which are land, water, and Air. These components can be affected by pollution and resulted in land pollution, water pollution, and Air pollution. However, these environmental pollutions have a wide-reaching problem and have a likely impact on the enjoyment of human rights especially the right to life to which all other rights are dependent upon. To Coker, Environmental Pollution is any discharge of material or energy into water, land, or air that causes or may cause acute (short-term) or chronic (long-term) detriment to the Earth's ecological balance or that lowers the quality of life.⁶⁹

In this research, pollution is used to refer to a situation whereby the environment is contaminated to the level that can cause the effect to the people affected which will result in the violation of their human right to life and any other rights. It should be noted that pollution of any kind causes an imbalance to the environment.

3.6.1. Land Pollution

In this context, Land pollution referred to the degradation of the earth's land surface through misuse of the soil by poor agricultural practices, mineral exploitation, industrial waste dumping, and indiscriminate disposal of urban wastes.⁷⁰ These and many factors cause land pollution.

3.6.2 Water Pollution

Water pollution is the introduction to fresh or ocean waters of chemical, physical, or biological material that degrades the quality of the water. Water pollution adversely changes the quality of the water. It disturbs the balance of the ecosystem and causes health hazards.⁷¹ Water becomes polluted by the presence or addition of inorganic and organic or biological substances. Industrial effluents which are dumped into the rivers further add to the water pollution levels and thus become a threat to the survival of human which affects the right to life and all other rights. Unless legal checks and balances are imposed on mankind's present activities, future generations may unduly suffer for the present generation's reckless environmentally damaging activity. The progress towards bringing about a cleaner environment has relied on a philosophy of pollution control.

3.6.3 Air Pollution

Air pollution is one of the most dangerous forms of pollution. A biological, chemical and physical alteration of the air occurs when smoke, dust, and any harmful gases enter into the atmosphere and make it difficult for all living beings to survive as the air becomes contaminated.⁷² The effects of air pollution are alarming. It causes global warming, acid rains, respiratory and heart problems, thus affecting the guaranteed rights of the individual.

4. International Framework for Human Rights Protection

The international human rights framework analyses the framework that regulates human rights at the international level. The major international human right organization is the United Nations (UN), the aim of establishing the UN was stated in the preamble of the charter, which serves as the regulatory of the UN, that is; to save the succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.⁷³ To

⁶⁸ O.S. Gozie (2009) "Environmental Protection in Nigeria: Two Decades after the Koko Incident," Annual Survey of International & Comparative Law: Vol. 15: Iss.1, Article 2. Available at:<http://digitalcommons.law.ggu.edu/annlsurvey/vol15/iss1/2> accessed on 14th May, 2018.

⁶⁹A. O. Coker, "Environmental Pollution: Types, Causes, Impacts and Management for the Health and Socio-Economic Well-Being of Nigeria" available at <https://pdfs.semanticscholar.org/8e7b/a9595bab30d7ea87715533353c53f7452811.pdf> accessed on the 18th Sept., 2018.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷²Environmental Pollution and its Effect available at <<https://www.ukessays.com/essays/environmental-sciences/types-of-pollution-and-their-effects-environmental-sciences-essay.php?vref=1>> accessed 13 September 2018.

⁷³Preamble to the UN Charter, 1945.

establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom, and for these ends to practice tolerance and live together in peace with one another as good neighbors, and to unite our strength to maintain international peace and security, and to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest.⁷⁴ And to employ international machinery for the promotion of the economic and social advancement of all peoples, in achieving the said objectives of the UN were set to be accomplished through the series of its bodies, for example, the United Nations Declaration of Human Rights, United Nation Environmental Programme, the United Nations Laws of the Sea and others.

The main focus of this sub section is the discourse on contribution of the UN in protecting human rights. The role played by the United Nation Declaration of Human rights of 1948 as well as the African Charter on Human and Peoples' Rights 1989.

4.1 Universal Declaration of Human Rights, (UDHR) 1948.

As an international document that states basic rights and fundamental freedoms to which all human beings are entitled to, the Universal Declaration was adopted by the General Assembly of the United Nations on 10 December 1948. Motivated by the experiences of the preceding world wars, the Universal Declaration was the first time that countries agreed on a comprehensive statement of inalienable human rights.⁷⁵ The UDHR comprises of 30 Articles that contain a comprehensive listing of key civil, political, economic, social, and cultural rights. Articles 3 through 21 outline civil and political rights, which include the right against torture and the right to an effective remedy for human rights violations, and the right to take part in government. Articles 22 through 27 detail economic, social, and cultural rights, such as the right to work, the right to form and to join trade unions, and the right to participate freely in the cultural life of the community. Article 28 outlined the indivisibility of human rights.⁷⁶

With these provisions of the UDHR, environmental protection has not been address entirely without which some of the rights if not all, cannot be achieved. However, the six other human rights covenants, which includes the International Covenant on Civil and Political Rights, adopted by the General Assembly of the United Nations on 19 December 1966,⁷⁷ International Covenant on the Economic, Social and Cultural Rights adopted and entered into force 3rd January 1976, the Convention on the Right of the Child adopted and entered into force 2 September 1990 to curtained extent addressed the environmental issues.

4.2. African Charter on Human and Peoples' Rights, 1989

The African Charter on Human and Peoples' Rights (also known as the Banjul Charter) is an international human rights instrument that is intended to promote and protect human rights and basic freedoms in the African continent. The charter ensured maximum protection of the human rights as provided. The African Charter on Human and Peoples' Rights (African Charter), to which Nigeria is a party recognizes series of human rights for the protection of the humanity. Unlike the UDHR, the African charter has provision not only for human rights but also environmental protection which provides the right of all peoples to a "general satisfactory environment favourable to their development".⁷⁸ This right is more widely known as the right to a healthy environment. The African Commission on Human and Peoples' Rights (African Commission) stated that Article 24 of the African Charter imposes clear obligations upon a government: "It requires the State to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources. Nigeria is a signatory to this charter and it has been domesticated in line with section 12 of Nigerian Constitution as amended.

⁷⁴ Ibid

⁷⁵<https://www.humanrights.gov.au/publications/what-universal-declaration-human-rights> visited on 8th April, 2019.

⁷⁶<https://www.britannica.com/topic/Universal-Declaration-of-Human-Rights> visited 10th April, 2019.

⁷⁷<https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf> visited on 10th April, 2019.

⁷⁸ Article 24 African Charter on Human and People's Rights.

5. International Framework for Environmental Protection

The environmental protection framework analyses the international instruments dealing with environmental protection. The substantive natural rights among the most important of all the rights guaranteed and protected by contemporary international law is the rights to life. It is universal and obligatory; without it, no other right would make sense. Hunter David noted that initially, the right to life was aimed at preventing arbitrary killing by the government. In recent years, the right to life has evolved and extended to address certain environmental harms that directly or indirectly infringe on the right to life. This extension of the ambit of the right to life is as a result of the efforts and works of environmental and human rights advocates.

Therefore, certain international framework analyzed below directly relates to the environmental protection. It is important to state that Nigeria has so far ratified 12 of the 14 international environmental conventions, protocols and treaties.

5.1 Convention on the Prevention of Marine Pollution by Dumping of Waste and Other matters 1972

This convention is an agreement to control pollution of the sea through dumping of waste. The convention was held at London 1972, and entered into force in the year 1975. In an attempt to control dumping in the sea, this convention aimed at improving the quality of marine environment and the living organisms for the enjoyment of humanity. Having the effect of marine pollution caused by dumping waste and the need to regulate it at international level.

5.2 International Convention for the Prevention of Pollution of the sea by Oil 1971

The Conference on Pollution of the Sea by Oil, held in London from 26 April to 12 May 1954, adopted the International Convention for the Prevention of Pollution of the Sea by Oil. The principal aim of this Convention, which has justly been described as "the first multilateral instrument to be concluded with the prime objective of protecting the environment,"⁷⁹ and the protection of coastal amenities from pollution by oil discharged from ships. The Convention established certain "prohibited zones" or areas of the seas within which the discharge of oil or oily mixtures by tankers was prohibited, subject to a few well-defined exceptions.⁸⁰ The Convention then stipulated that any contravention of its prohibitions by a ship "shall be an offence punishable under the laws of the territory in which the ship is registered." Furthermore, it provided that the penalties to be imposed in respect to contraventions outside territorial waters shall be "not less than" the penalties imposed in respect to unlawful discharges of oil in territorial waters of the states concerned.⁸¹ The Convention also provided that ships within its jurisdiction "shall be required to be fitted so as to prevent the escape of fuel oil or heavy diesel oil into bilges, the contents of which are discharged into the sea without being passed through an oily-water separator."⁸²

5.3. Stockholm Convention on Persistent Organic Pollutants, 2001

The Stockholm Convention on Persistent Organic Pollutants is a global treaty to protect human health and the environment from chemicals that remain intact in the environment for long periods, become widely distributed geographically, accumulate in the fatty tissue of humans and wildlife, and have harmful impacts on the environment. In response to this global problem of persistent organic pollutants (POPs), the Stockholm Convention, which was adopted in 2001 and entered into force in 2004, requires its parties to take measures to eliminate or reduce the release of POPs into the environment.

The Convention promotes the use of best available techniques and best environmental practices for preventing releases of POPs into the environment. Ensure that stockpiles and wastes consisting of, containing or contaminated with POPs are managed safely and in an environmentally sound manner.⁸³

Therefore, the convention assisted in protecting the environment against persistent organic pollutants which are the key factor causing environmental pollution.

⁷⁹ Preamble to the convention.

⁸⁰ Article iii

⁸¹ Article vi

⁸² Article vii

⁸³ Article 6

5.4 Cartagena Protocol on Bio-safety to the Convention on Biological Diversity 1992

The Cartagena Protocol on Bio-safety to the Convention on Biological Diversity is an international agreement, which aims to ensure the safe handling, transport and use of living modified organisms resulting from modern biotechnology. The Convention on Biological Diversity was finalized in Nairobi in May 1992 and opened for signature at the United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro on 5 June 1992. It entered into force on 29 December 1993. Today, the Convention is the main international instrument for addressing biodiversity issues which is a threat to environment. It provides a comprehensive and holistic approach to the conservation of biological diversity, the sustainable use of natural resources and the fair and equitable sharing of benefits deriving from the use of genetic resources.⁸⁴

5.5 Basel Convention on the Control of Trans-boundary Movements of Hazardous Wastes and Their Disposal 1989

Due to the risk of damage to human health and the environment caused by hazardous wastes and other wastes, the Basel Convention was formed. The aim of which was to effectively protect the environment considering the threat posed by the trans-boundary movement of hazardous waste and its disposal. It therefore determined to protect, by strict control, human health and the environment against the adverse effects which may result from the generation and management of hazardous wastes and other wastes. Thus, the Convention provides among others that, to ensure persons involved in the management of hazardous wastes or other wastes within it take such steps as are necessary to prevent pollution due to hazardous wastes and other wastes arising from such management and, if such pollution occurs, to minimize the consequences thereof for human health and the environment.⁸⁵ The Convention served as a basis of criminalizing certain acts that are injurious to international community caused by pollution.

5.6 International Convention on Civil Liability for Oil Pollution Damage 1992

Compensation for oil pollution damage caused by spills from oil tankers is governed by an international regime developed under the auspices of the International Maritime Organization (IMO). This 'old' regime was amended in 1992 by two Protocols, and the amended Conventions are known as the 1992 Civil Liability Convention and the 1992 Fund Convention. The 1992 Conventions entered into force on 30 May 1996. The 1971 Fund Convention ceased to be in force on 24 May 2002.⁸⁶

The Convention exclusively applies on the parties in respect of pollution damage caused on the territory of a Contracting State and to preventive measures taken to prevent or minimize such damage.⁸⁷ The convention desires to provide an international uniform rules and procedures for determining questions of liability and providing adequate compensation in such cases.

5.4 Challenges of Human rights Enforcement in Environmental protection in Nigeria

The challenges of the relationship between human rights and environmental protection in Nigeria are caused by different factors, some of which are attributed to human rights protection and others on the environmental protection. It is a challenge worth mentioning that in human rights discourse, environment is entirely kept out of the context and vice versa. This, to certain extent affects the implementations of international conventions at national level, particularly Nigeria where there is constitutional limitations to the application of two.

5.4.1 Constitutional Non-justiciable rights to Environment

The provision of Chapter II of the constitution which is the constitutional non justiciability of the provisions of Chapter II of the constitution to which rights to protected environment belongs became a challenge as far as environmental protection is concerned in Nigeria. This was best demonstrated in *Okogie v The Lagos State Government* where the Court of Appeal in interpreting Chapter II of the 1979 Constitution which is similar to Chapter II of the CFRN 1999 held as follows: The Fundamental Objectives identify the ultimate objectives of the nation and the Directive Principles lay down the policies which are expected to be pursued in the efforts of the nation to realize the national ideals. While section 13 of the constitution make it a duty and responsibility

⁸⁴<https://www.cbd.int/doc/legal/cartagena-protocol-en.pdf>.

⁸⁵Article 2 (c) Basel convention.

⁸⁶https://www.iopcfunds.org/fileadmin/IOPC_Upload/Downloads/English/WEB_IOPC_-_Text_of_Conventions_ENGLISH.pdf visited on the 15th April, 2019.

⁸⁷ Article ii

of the judiciary among other organs of government, to conform to and apply the provisions of chapter II, Section 6 (6) (c) of the same constitution ensures no court has jurisdiction to pronounce any decision as to whether any organ of government has acted or is acting in conformity with the fundamental objectives and Directive principles of State Policy. It is clear therefore, that section 20 has not made Chapter II of the constitution justiciable.

The right to Environmental protection fall within the category of social and economic rights and they can be realized only by affirmative action on the part of the state and if the state fails to carry out its constitutional or legal obligations in enforcement of these human rights, it may have to be compelled to do so by an activist judiciary as demonstrated in the Indian case of *Education of Unnikrish J.P. v State of Andhra Pradesh*.⁸⁸

Although despite the provision of section 6 (6) (c), the importation and adoption of the African Charter on Human and Peoples' Rights of 1989, may serve as an alternative to justiciability of the provision of Chapter II, nonetheless it is recommended that the provision of Chapter II particularly section 20 be moved to Chapter IV of the constitution and other key rights should be expanded to accommodate rights to a protected environment, this will be in line with international best practices.

5.4.2 Environmental laws in Nigeria aids Human rights violations

Environmental laws Legislation serves as an effective instrument for environmental protection, planning, pollution prevention and control. Human right as earlier defined is a right which stands above the ordinary laws of the land hence most legislation though made as effective instrument for environmental protection, planning, pollution, prevention and control, make provisions which aid human rights violations. Most environmental legislation in Nigeria aids human rights violation due to negligible punishment imposes on violators of such acts.

For instance, Environmental Impact Assessment Act however provides punishment for anyone who fails to comply with the provisions of the Act shall be guilty of an offence and shall be liable on conviction in the case of an individual to N100,000 fine or to five years' imprisonment and in the case of a firm or corporation to a fine of not less than N50,000 and not more than N100,000. Thus, considering the effect of environmental protection to attainment and fulfillment of human rights such punishment does not serve as deterrence for others. Therefore, there is need to amend the provisions of the Act to provide for strict penalty to serve as deterrence in line with international best practices.⁸⁹

5.4.3 Lack of adequate regulations linking human rights and environmental protection.

It has become a challenge in Nigeria that considering the interconnectivity and interdependence of human rights and environmental protection, yet human rights are treated independent of environmental protection, which made enforcement of environmental protection more difficult in Nigeria.

5.4.4 Lack of a consistent nomenclature for the Human rights to Environment

Lack of a consistent nomenclature for the human rights to environment is seen as a challenge in Nigeria owing to the fact that there is no express legislation indicating the actual relationship between human rights and the environment which in essence they are complimentary to each other. As such, at the individual level, attempt have been made to indicate the connection in the sense that writers uses different nomenclature to explain the actual connection between human rights and the environment like,

⁸⁸(1992) SC AIR.

⁸⁹ For details discussion on legal regime on human rights and environmental protection in Nigeria see, J.B Marshall, and Fauziyah Bashir (Mrs.) (2020) 'Human Rights Approaches to Environmental Protection in Nigeria: An Appraisal', *International Journal of Business and Law Research (IJBLR)* Vol. 8(4) Pp. 135-147 (ISSN: 2360-8986).

environmental human rights,⁹⁰ rights to environment,⁹¹ greening human rights,⁹² rights to a quality environment,⁹³ rights to a healthy environment⁹⁴ and right to a sustainable environment.⁹⁵ There is need to have a clear connection between the two concepts with a view to achieving progress in protecting environment as part of human rights issue. Ratification and domestication of international conventions will aid Nigeria to achieve same in line with international best practices.

5.5. Prospects of Human Rights and Environmental Protection in Nigeria

The challenges highlighted above considering the importance of the relationship between human rights and the environment in Nigeria, and the significance of protecting the environment using human rights approach would be meaningful when the following is taking into consideration;

5.5.1 Attitude of legislators

The legislators being the law making body in Nigeria, should consider the importance of considering environmental protection as part of human rights as such should be treated as complimentary of one another and in doing so the rights to a protected environment needs to be part of the fundamental rights provisions. The recent Petroleum Industry Act 2021 established Host Communities Development Trusts with sole objective of providing adequate fund for the protection of environment of the host communities of Niger-Delta among others.⁹⁶ This is a giant stride towards recognizing human rights and environmental protection in line with international best practices.

However, there is need to domesticate most of the international instruments in Nigeria in line with Section 12 of the Constitution to further strengthen the protection of environment through human rights.

5.5.2 Recent Attitude of Judges

Recently, judges while interpreting the fundamental rights, wider meaning of such rights are explored so as to include environmental protection for its importance in achieving human rights. For example, the interpretation of section 33 of the constitution includes environmental protection as violation of which can threaten the life of victims of environmental hazards. The interpretation is more in line with international conventions to which Nigeria signed and ratified, with a view to protecting environmental protection through human rights. In *Ibidapo v Lufthansa*, Wali JSC of the Nigerian Supreme Court explained the practice to be adopted by the Nigerian courts in cases where the domestic legislation does not clearly and expressly override international law as follows:

The practice of our courts on the subject matter is still in the process of being developed and the courts will continue to apply the rules of international law provided they are found not to be over-ridden by clear rules of our domestic law. Nigeria, as part of the international community, for the sake of political and economic stability, cannot afford to live in isolation. It shall continue to adhere to, respect and enforce both multi lateral and by lateral agreements where their provisions are not in conflict with our fundamental law.⁹⁷

In the case of *Centre for Oil Pollution Watch v. Nigerian National Petroleum Corporation*⁹⁸ Two Supreme Court Justices expressed remarkable views that the Nigerian Constitution, the legislature and the

⁹⁰ Section 20 of the 1999 constitution of Nigeria (as amended)

⁹¹ Available on <https://www.eui.eu/Documents/DepartmentsCentres/Law/ResearchTeaching/WorkingGroups/08-03-HumanRights.pdf> visited 10th April, 2019

⁹² Z. Muhammad and A.B Kura, "Modern Law and Environmental Problems; A Human Right Perspectives" (2017) *SSRG International Journal of Humanities and Social Science (SSRG-IJHSS)* vol. 4 Issue5 available at www.internationaljournalsssrg.org, accessed on 3rd March, 2018.

⁹³Ibid.

⁹⁴Ibid.

⁹⁵Ibid.

⁹⁶ Sections 234 to 257 of the Act.

⁹⁷ (1997) 4NWLR (Pt. 498), 124 at 150.

⁹⁸ (2019) 5 NWLR (Pt. 518), 587 at 597.

African Charter on Human and Peoples Rights, to which Nigeria is a signatory, recognize the fundamental rights of the citizens to a clean and healthy environment to sustain life through the provisions of Section 33 of the Nigerian Constitution, Article 24 of the African Charter on Human and Peoples Rights and Section 17 (4) of the Oil Pipelines Act respectively. In one of the concurring judgments, Kekere-Ekun, JSC held that Sections 33 and 20 of the Nigerian Constitution; Article 24 of the African Charter; and Section 17 (4) of the Oil and Pipelines Act show that the Constitution, the legislature and the African Charter to which Nigeria is a signatory, recognize the fundamental rights of the citizenry to a clean and healthy environment to sustain life. Eko, JSC found that in order to broadly determine *locus standi* under environmental rights as human rights, Article 24 of the African Charter should be read together with Sections 33(1) and 20 of the Constitution on the role of the State in preserving the environment for the health and by extension lives of Nigerians. He concluded that, it is apparent that the right to a healthy environment is a human right in Nigeria. He further held that as long as Nigeria remains signatory to the African Charter, and to other international instruments as well, the Nigerian courts would protect and vindicate human rights entrenched therein.

Additionally, ECOWAS Court of Justice as a regional court can entertain cases from individuals and corporate bodies for enforcement of the fundamental right to a healthy and clean environment pursuant to African Charter. Accordingly, cases founded on environmental actions either on private or public interest based on African Charter or any other international human rights treaty ratified by a Member State can be brought by an individual or corporate body against a Member States and Community Institution before ECOWAS Court in Abuja, Nigeria.⁹⁹

5.5.3 Attitude of the citizens

The high level of ignorance among the society especially the poor communities for their rights to a healthy environment, thus it become a duty on the community leaders to ensure adequate measure in ensuring people's awareness of this right and how critical the violation of environmental protection affects all other rights. The duty to preserve the environment by the citizen should also be established. The activism of Niger – Delta people against international Oil Companies is a good testimony that citizens are now aware of the nexus between human rights and environmental protection.¹⁰⁰

6. CONCLUSION AND RECOMMENDATIONS

This paper identifies the basis for the convergence of human rights and environmental protection at the International level through careful examination of the international frameworks. The analysis indicated that human rights and environmental protection were separately identified as independent field for concern until early seventies when the world begins to appreciate the interconnectivity between the two. Thus, the relationship gained international recognition as a result of international conferences and mostly the human rights framework as an effective means to achieving environmental protection.

The paper also discusses the challenges of human rights approach to environmental problem in Nigeria. The challenges range from lack of adequate regulations linking human rights and environmental protection and lack of consistent nomenclature indicating the relationship between human rights and environmental protection and to some extent non-justiciability of rights to environment in the constitution. It also profound prospects to the challenges highlighted, which the attitude of legislators through amending and enacting laws that conform the relationship between human rights and environmental protection. Then, the attitude of judges in the sense that broader interpretation of fundamental rights should include environmental protection policy and the attitude of the citizens in creating awareness as to the importance of protecting the environment through human rights agenda in order to enhance the relationship between human rights and environmental protection.

In view of the above, the paper recommends that the enforcement of human rights should include right to healthy environment in line with international conventions to which Nigeria is a signatory and domesticated in accordance with Section 12 of the Constitution. This will remedy the non-justiciability of rights to environment.

It further recommend that the National Assembly should domesticate other international instruments in accordance with Section 12 of the Constitution to enable the applicability of these instruments in Nigeria, which will facilitates the enforcement of environmental rights as human rights related issues.

⁹⁹ See *Registered Trustees of the Socio-Economic Rights and Accountability Project (SEREP) V. The President, Federal Republic of Nigeria* (2009) 2 APP 11, 13-17 (Nigeria).

¹⁰⁰ Ibid.