



UNIVERSITY OF IBADAN LAW JOURNAL

VOL 3, NO 1, MAY, 2013

Articles

Page

- **Introducing the Tort of Wrongful Birth and Wrongful Life into Nigerian Law: The Impact of Section 17(1) of Child Rights Act 2003 on Reproductive Technology**
Adeleke, F.A.R. 1
- **The Frontiers of Alternative Dispute Resolution in Nigeria**
Agom, Augustine Robert 23
- **Statutory Control and Regulation of Crude Oil Pollution in Nigeria**
Akeredolu, Alero 43
- **Human Rights and the Environment: Linkages in the Nigerian Context**
Akinbola, Bukola Ruth 69
- **Secret Trust: Has It Really Outlived its Usefulness?**
Chinwuba, Nwudego 95
- **Mass Media, Democracy and the Rule of Law under the Nigerian Fourth Republic**
Egbewole, Wahab & Olatunji, Olugbenga Ajani 135
- **Presidential Pardon and Prerogative of Mercy: A Necessary National Soothing Balm for Social Justice**
Ekwenze, Solomon A.M. 167
- **Census Litigation: Issues and Prospects**
Elias, Gbolahan 194
- **Competition Regime and the Energy Sector Reforms: An Appraisal of the Petroleum Industry in Nigeria**
Obutte, Peter Chukwuma 203
- **The Subsidiarity Principle and Federalism Fissures in Nigeria**
Omoregie, Edoba B. 223

Ibadan University Press
Publishing House
University of Ibadan
Ibadan, Nigeria.

© 2013 Faculty of Law
University of Ibadan
Nigeria

All Rights Reserved

UNIVERSITY OF IBADAN LIBRARY

Printed by:
Printed by AKT Ventures Ltd
08033246435; 08053375692

Contents

	Page
<i>Editorial Board/Editorial Committee</i>	iv
<i>Guide to Authors</i>	v
<i>Editorial</i>	vi
Articles	
Introducing the Tort of Wrongful Birth and Wrongful Life into Nigerian Law: The Impact of Section 17(1) of Child Rights Act 2003 on Reproductive Technology <i>Adeleke F.A.R.</i>	1 - 22
The Frontiers of Alternative Dispute Resolution in Nigeria <i>Agom, Augustine Robert</i>	23 - 42
Statutory Control and Regulation of Crude Oil Pollution in Nigeria <i>Akeredolu, Alero</i>	43 - 68
Human Rights and the Environment: Linkages in the Nigerian Context <i>Akinbola, Bukola Ruth</i>	69 - 94
Secret Trust: Has It Really Outlived its Usefulness? <i>Chinwuba, Nwudego</i>	95 - 134
Mass Media, Democracy and the Rule of Law under the Nigerian Fourth Republic <i>Egbewole, Wahab & Olatunji, Olugbenga Ajani</i>	135 - 166
Presidential Pardon and Prerogative of Mercy: A Necessary National Soothing Balm for Social Justice <i>Ekwenze, Solomon</i>	167 - 193
Census Litigation: Issues and Prospects <i>Elias, Gbolahan</i>	194 - 202
Competition Regime and the Energy Sector Reforms: An Appraisal of the Petroleum Industry in Nigeria <i>Obutte, Peter Chukwuma</i>	203 - 222
The Subsidiarity Principle and Federalism Fissures in Nigeria <i>Omoregie, Edoba</i>	223 - 240

Human Rights and the Environment: Linkages in the Nigerian Context

Akinbola, Bukola Ruth*

Abstract

The legal protection of the environment has increasingly become imperative in view of the importance of a safe, clean and secure environment to the enjoyment of other human rights. Human activities like agriculture, lumbering, manufacturing and worse of all, oil pollution have impacted negatively on the environment, leading to ozone layer depletion, global warming, desertification, erosion, deforestation and environmental pollution in many societies, including Nigeria.

International environmental law and human rights law have intertwined objectives and ultimately strive to produce better conditions of life on earth. Both seek to tackle universal challenges that must often be solved at the same time at the individual and global level. Environmental law seeks to protect both nature for itself, and for the benefit of humankind at all levels. It has broadly been confined to regulating inter-state relations and lately, the behaviour of some economic actors such as oil exploiting multinational companies in the Niger Delta of Nigeria.

The article examined the linkages between human rights and the environment, as the life and the personal integrity of each human being depends on protecting the environment as the resource base for all life. It reviewed the challenge of locus standi in environmental litigation and the implications of section 6(6)(6)(b) of the 1999 constitution of Nigeria. Against the background that the right to a healthy environment is a fundamental part of the right to life and to personal integrity, it examined instances of violations of human right through the violation of the environment and made recommendations including making the right to a healthy environment a justiciable right to obliterate the problem of locus standi in environmental right litigations.

* LL.M, LL.B., Senior Lecturer, Department of Public & International Law, Faculty of Law, University of Ibadan, Ibadan, Nigeria.

Introduction

“Human beings are the centre of concern for sustainable development. They are entitled to a healthy and productive life in harmony with nature.”¹

Environmental degradation implicates many human rights issues like right to life, privacy, right to healthy environment and right to self determination. The most disturbing aspect of environmental degradation is the condemnation that countries like Nigeria suffer environmental degradation, economic and human losses as a result of oil minerals and other natural resources’ exploitation. The extent of human rights abuses caused by oil pollution in Nigeria was summarized by the Human Right Watch in its 1999 Report as follows:

Oil production has had damaging effects on the environment of the oil producing region, though the extent of the damage is subject to dispute Despite decades of oil production, there is surprisingly little quality independent scientific data on the overall or long term effects of hydrocarbon pollution, on the Delta, yet oil led development has clearly seriously damaged the environment and the livelihood of many of those living in the oil producing communities. The oil companies operating in Nigeria maintain that their activities are conducted to the highest environmental standards; but Nigerian environmental laws, in most respects comparable to their international equivalents, are poorly enforced².

In Nigeria, although there is a constitutional provision under the 1999 Constitution, there is no constitutionally guaranteed “environmental right” to tackle environment violations in the same

¹ Principle 1, Rio Declaration on Environment and Development, United Nations Conference on Environment and Development, Rio de Janeiro, Japan, 1992. See also Principle 1 of the Stockholm Declaration of 1972 which provides that “Man has a fundamental right to freedom, equality, and adequate conditions of life, in environment of quality that permits a life of dignity and well being.”

² Human Rights, (1999). *The price of oil*, New York Human Right Watch.

way as a violation of the right to life would be treated. Ironically, the right to life is subject to a healthy environment. The public environmental litigation is fraught with many challenges like delays, excessive costs, rigidity, excessive bureaucratic centralization and including *locus standi*. The consequence of this is that the environment in Nigeria is under-regulated, by providing unnecessary incentives to polluters to further pollute the environment³. This article examines the linkages between human rights and the right to a healthy environment in terms of their complementary roles in environmental protection, despite their differences. Also, the relationship between human rights and the environment is very important for the protection of the right to a healthy environment both to the State and holder of the right. After the introduction, it reviews the nature of the linkages between human rights and the environment, which appear inseparable, and considers the various connections between human rights and the environment while the fourth part of the paper is devoted to human rights violations related to the environment. The paper concludes by reiterating that the recognition of the right to a healthy environment must be enforced, as a *sine qua non* for the enjoyment of all other fundamental human rights.

The Role of the United Nations

The United Nations Charter of 1945 represents the beginning of modern international human rights law, whereas the Stockholm Declaration of 1972 is generally seen as the starting point of the modern international framework for environmental protection⁴. Human rights became a focus of international law long before environmental concerns did⁵. The links between human rights, health and environmental protection were apparent at least from the first international conference on the human environment, held in Stockholm in 1972. In the view of Dinah, health has seemed to

³ Amokaye, G.O., (2004). *Environmental Law and Practice in Nigeria*, Lagos, University of Lagos Press, 574-575.

⁴ SANDS, (2003). *Principles of International Environmental Law*, 292.

⁵ Perrez, Franz Xaver, (2004). Key questions concerning the human rights and environment debate: An introduction. United Nations Environment Programme for the Geneva Environment Network with the financial support of the Swiss Agency for the Environment, Forests and Landscape, 4.

be the subject that bridges the two fields of environmental protection and human rights⁶. At the Stockholm concluding session, the participants proclaimed that:

Man is both creature and moulder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth... Both aspects of man's environment, the natural and the manmade, are essential to his well-being and to the enjoyment of basic human rights B even the right to life itself⁷.

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

Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being.

The UN General Assembly recalled the language of Stockholm, stating that all individuals are entitled to live in an environment adequate for their health and well-being⁸. The resolution called for enhanced efforts towards ensuring a better and healthier environment. Environmental protection is thus an essential instrument in the effort to secure the effective universal enjoyment of human rights. Klaus Toepfer, reflected this approach in his statement to the 57th Session of the Commission on Human Rights in 2001:

fundamental right to life is threatened by soil degradation and deforestation and by exposures to toxic chemicals, hazardous wastes and contaminated drinking water. Environmental conditions clearly help to determine the extent to which people enjoy their basic rights to life, health, adequate food and housing,

⁶ Shelton Dinah 2002 Human Rights, Health & Environmental Protection: Linkages in Law & Practice. A Background Paper for the World Health Organization. Health and Human Rights Working Paper Series No 1.

⁷ Stockholm Declaration of the United Nations Conference on the Human Environment, 16 June 1972, U.N. Doc. A/CONF.48/14/Rev.1 at 3 (1973).

⁸ In resolution 45/94.

and traditional livelihood and culture. It is time to recognize that those who pollute or destroy the natural environment are not just committing a crime against nature, but are violating human rights as well⁹.

The legal protection of the environment has increasingly become imperative (leaving mankind with no alternative if life is to be sustained) considering the importance of a safe, clean and secure environment to the enjoyment of other rights. In the course of time, human activities such as agriculture, lumbering and manufacturing have impacted negatively on the environment. This has led to ozone layer depletion, global warming, desertification, erosion, deforestation and environmental pollution in many societies, including Nigeria.

Human Rights and the Environment

It has become more obvious now that human rights and the environment are inherently interlinked, as the life and the personal integrity of each human being depends on protecting the environment as the resource base for all life. International 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 levels. The necessity to link both fields stems from the different, complementary and partial approaches each has attempted to follow. Environmental law seeks to protect both nature for itself and for the benefit of humankind on a local and global scale. It has broadly been confined to regulating inter-state relations and, of late, the behaviour of some economic actors¹⁰.

Human rights have centred on fundamental aspirations of human beings with much more developed compliance mechanisms allowing individuals and groups to claim their rights. 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

⁹ Executive Director of the United Nations Environment Programme.

¹⁰ Cullet, Philippe (1995). Definition of an environmental right in a human rights context, 13 *Netherlands Quarterly of Human Rights* 25-40, 25.

realization of human rights¹¹. 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 ignored¹².

On a factual level, it has already become apparent that preservation, conservation and restoration of the environment are a necessary and integral part of the enjoyment of, *inter alia*, the rights to health, to food and to life including a decent quality of life.¹³ The close link with these rights clearly shows that a right to 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 dignity¹⁴.

In accordance with international law theory, all human rights represent universal claims necessary to grant every human being a decent life that is part of the core moral codes common to all societies¹⁵. International human rights have been based, since their inception, on this premise that should not be seen as another manifestation of imperialism,¹⁶ but as the recognition that all human beings aspire to a life in dignity.¹⁷

The connection between environment and human rights concern has so far been envisaged mostly in terms of the protection

¹¹ Ibid.

¹² Ibid.

¹³ The special rapporteur on the realization of economic, social and cultural rights has identified environmental degradation as one factor impeding the realization of these rights (UN Doc.E/CN.4/Sub.2/1992/16, The Realization of Economic, Social and Cultural Rights - Final Report Submitted by Mr. Danilo Tirk, Special Rapporteur, at p. 32).

¹⁴ Kromarek, P., 'Le droit A un environnement equilibre et sain, considere comme un droit de l'homme; mise en oeuvre nationale, europeenne et internationale', Introductory report, European Conference on the Environment and Human Rights, Strasbourg 19-20 January 1979, Institute for European Environmental Policy, London (mimeographed/restricted circulation), at p. 13, quoting Cassin.

¹⁵ Hoeffe, O., (1984) 'Les droits de l'homme comme principes de l'humanite politique', in: Papini, R. (Direction de l'ouvrage), Droits des peuples, droits de l'homme - Paix et justice sociale internationale, Le Centurion (Collection droits de l'homme et solidarite), Paris, at p. 95.

¹⁶ See Marks, S.P., (1981). 'Emerging Human Rights: a New Generation for the 1980's?', 33/2 Rutgers L. Rev., pp. 435-452, at p. 437.

¹⁷ The Preamble to the Universal Declaration of Human Rights (UN Doc. ST/HR/1/Rev.4 (Vol.1, Part 1)).

or conservation of a clean or healthy environment for the benefit of individuals whose conditions of life are threatened, e.g. by noise disturbances or air pollution arising from airports or motorways and industrial pollution¹⁸. To arrive at a truly universal formulation, a right to environment should also encompass other issues of concern to a majority of the world's population, including access to fresh water and food supplies¹⁹.

Historically, the relationship between the quality of the human environment and the enjoyment of basic human rights was first recognized by the UN General Assembly in the late 1960s²⁰. In terms of the relationship between the environment and human rights, a very important cord was struck when the United Nations Conference on the Human Environment (UNCED) made a direct link between the environment and the right to life²¹ in 1972. Ten years later, in 1982 the World Charter on Nature explicitly referred to the right of access to information and the right to participate in environmental decision-making²². Another decade after that, in 1992, the Rio Declaration acknowledged the right to a healthy and productive life in harmony with nature and the right of access to environmental information and of public participation in environmental decision-making²³. The 2002 World Summit on Sustainable Development in Johannesburg simply acknowledged the consideration being given to the possible relationship between environment and human rights²⁴.

¹⁸ Cullet, Philippe (1995). *Op.cit.* p. 26.

¹⁹ *Ibid.*

²⁰ UNGA Resolution 2398 (XXII) (1968).

²¹ Declaration of the United Nations Conference on the Human Environment, Preambular para. 1 and Principle 1, reprinted in: 11 I.L.M. 1416 (1972).

²² World Charter for Nature, paras 15-16, 23, available at:

<http://www.un.org/documents/ga/res/37/a37r007.htm>.

²³ Rio Declaration on Environment and Development, Principles 1 and 10, reprinted in: 31 I.L.M. 876 (1992).

²⁴ Johannesburg Plan of Implementation, § 169, available at:

<http://www.johannesburgsummit.org>. For a short overview and discussion of the results of the WSSD, see generally: Franz Xaver Perrez, (2003). *The World Summit on Sustainable Development: Environment, Precaution and Trade - A Potential for Success and/or Failure*, in: 12 *Review Of European & International Environmental Law (RECIEL)* 12-22.

Implications of the Relationship between Human Rights and the Environment

The linkage between human rights and environmental concerns embraces at least three dimensions:

- The right to a healthy environment is a fundamental part of the right to life and to personal integrity.
- Environmental destruction can result in discrimination and racism²⁵. Thus, socially and economically disadvantaged groups seem to live more often than other groups do in areas where environmental problems pose a real threat to human health.
- Procedural human rights such as access to information, access to justice and participation in political decision-making are often crucial for ensuring policies that respect environmental concerns.

However, while the linkage between human rights and environmental concerns seems to be obvious, the issue of linkages does raise a number of useful and legitimate questions which Perez puts as follows:

- Would a focus on environmental rights as human rights not imply a shift of paradigm away from the recognition that the environment has its own value independent of its utility for humans and towards a purely anthropocentric approach to the environment?²⁶
- What are the benefits from a human-rights perspective to adding environmental concerns to the traditional human rights concerns? Is there not a risk that the

²⁵ Concerning environmental discrimination, see e.g. GÜNTHER BAECHLE, (1999). *Violence through Environmental Discrimination*; Mohai P. and Bryant, B. (1992). *Environmental Injustice: Weighing Race and Class as Factors in the Distribution of Environmental Hazards*, 63 *U. COLO. L. REV.* 921-32.

²⁶ Concerning different anthropocentric and non-anthropocentric environmental ethics, see generally: R. ELLIOT (ed.), (1995). *Environmental Ethics*; Jens Petersen, *Anthropozentrik und Ökozentrik im Umweltrecht*, (1997). 83 *ARSP* 361.

limited resources that are available for protecting basic human rights will become too widely dispersed?

- What are the benefits from an environment perspective? Do those concerned with international environmental policy-making have the time and resources to enter the human rights debate, or should they instead focus their resources on core environmental challenges?
- Are there benefits from an overall perspective, e.g. with regard to institutional or governance issues?

Lador has submitted that environmental degradation can start with a violation of a human right, the right to know. The inability to have an ecologically healthy environment violates other rights as well; such as the right to health or to food and even has consequences for children who can no longer gain access to education²⁷.

The Legal Frameworks

In terms of the framework of laws that regulate them, regardless of their separate beginnings, human rights law and environmental law have an important element in common: they are both seen as a challenge to, or limitation on, the traditional understanding of state sovereignty as independence and autonomy²⁸. However, while the traditional debate on sovereignty has conceived of human rights and environmental law as limitations on, or even as threats to, the State's freedom and independence, a more contemporary approach recognizes that protecting both human rights and the environment does not limit the State's sovereignty, but rather provides an expression of this sovereignty²⁹.

²⁷ Lador, Yves, 2004. The challenges of human environmental rights. *Human Rights and the Environment, Proceedings of a Geneva Environment Network roundtable*. United Nations Environment Programme for the Geneva Environment Network, p.7.

²⁸ See generally: Franz Xaver Perrez, (2000). *Cooperative Sovereignty: From Independence to Interdependence in the Structure of International Environmental Law* 46-64, W. Michael Reisman, (1990). *Sovereignty and Human Rights in Contemporary International Law*, 84 AJIL 866.

²⁹ PERREZ, Cooperative Sovereignty, supra note 4, at 331-343.

Focusing on substantive environmental human rights such as a right to a clean environment could hardly replace the adoption of clear and concrete environmental rights and standards. However, procedural human rights such as the access to information, access to justice and participation in decision-making can clearly facilitate and advance efforts for protecting the environment. At the same time, effective environmental policies that prevent the deterioration of the natural resource base upon which people depend are a crucial precondition for assuring that we can benefit from our basic human rights. Linking environmental and human rights concerns may encourage increased public attention and facilitate pressure on governments to act. Simultaneously, although bringing environmental rights into the human rights context will not necessarily strengthen purely environmental concerns, it can ensure a better balance between environmental concerns and other interests such as social or economic rights. Development, though intended to improve the quality of human life, is a core reason for environmental pollution. The environmental protection and development are therefore, best recognized as necessary conditions and outcomes of the realization of other human rights.

The procedural human rights are emphasized in environmental agreements³⁰. The numerous international treaties adopted since

³⁰ In addition to those discussed in the text, see e.g. Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution Concerning the Control of Emissions of Volatile Organic Compounds or Their Transboundary Fluxes (Geneva, 18 November 1991), art. 2(3)(a)(4); Convention on the Protection and Utilization of Transboundary Rivers and Lakes (Helsinki, 17 March 1992), Art. 16; the regional seas agreements; Convention on Civil Responsibility for Damage Resulting from Activities Dangerous to the Environment (Lugano, 21 June 1993, Arts. 13-16; and United Nations Framework Convention on Climate Change (Rio de Janeiro, 9 May 1992), 31 I.L.M. 849, Art. 6. Non-binding texts include the European charter on the Environment and Health, adopted 8 December 1989, First Conference of Ministers of the Environment and Health of the Member States of the European Region of the World Health Organization (every individual is entitled to information and consultation on the state of the environment.); Ministerial Declaration on Environmentally Sound and Sustainable Development in Asia and the Pacific (Bangkok, 16 October 1990), A/CONF.151/PC/38 (Para. 27 affirms) the right of individuals and nongovernmental organizations to be informed of environmental problems relevant to them, to have necessary access to information, and to participate in the formulation and implementation of

the Stockholm Conference call upon states to take specific measures to ensure that the public is adequately informed about environmental risks, including health risks, posed by specific activities. An additional benefit to the right to information, is that the public is also given broad rights of participation in decision-making and access to remedies for environmental harm. The protections afforded have increased in scope and number since the adoption of Principle 10 of the Rio Declaration on Environment and Development³¹. Several dozen international treaties adopted since the Stockholm Conference call upon states to take specific measures to ensure that the public is adequately informed about environmental risks, including health risks, posed by specific activities³².

decisions likely to affect their environment.); Arab Declaration on Environment and Development and Future Perspectives (Cairo, September 1991), A/46/632, cited in U.N. Doc. E/CN.4/Sub.2/1992/7, 20 (affirming the right to information about environmental issues).

³¹ In addition to those discussed in the text, see e.g. Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution Concerning the Control of Emissions of Volatile Organic Compounds or Their Transboundary Fluxes (Geneva, 18 November 1991), art. 2(3)(a)(4); Convention on the Protection and Utilization of Transboundary Rivers and Lakes (Helsinki, 17 March 1992), Art. 16; the regional seas agreements; Convention on Civil Responsibility for Damage Resulting from Activities Dangerous to the Environment (Lugano, 21 June 1993, Arts. 13-16; and United Nations Framework Convention on Climate Change (Rio de Janeiro, 9 May 1992), 31 I.L.M. 849, Art. 6. Non-binding texts include the European charter on the Environment and Health, adopted 8 December 1989, First Conference of Ministers of the Environment and Health of the Member States of the European Region of the World Health Organization (every individual is entitled to information and consultation on the state of the environment.); Ministerial Declaration on Environmentally Sound and Sustainable Development in Asia and the Pacific (Bangkok, 16 October 1990), A/CONF.151/PC/38 (Para. 27 affirms) the right of individuals and nongovernmental organizations to be informed of environmental problems relevant to them, to have necessary access to information, and to participate in the formulation and implementation of decisions likely to affect their environment.); Arab Declaration on Environment and Development and Future Perspectives (Cairo, September 1991), A/46/632, cited in U.N. Doc. E/CN.4/Sub.2/1992/7, 20 (affirming the right to information about environmental issues).

³² See, e.g., the Helsinki Convention on the Transboundary Effects of Industrial Accidents, 31 I.L.M. 1330 (1992),

Human Rights Violation Related to the Environment

A number of cases will be used to illustrate this, beginning with the case of the rural community of Rincon'í, in Paraguay, where 600 tons of expired pesticide-treated seeds containing a living, laboratory-produced organism had been dumped. As reported by the International Union of Food and Agriculture and related Workers (IUF):

Julio Chávez owns just over a hectare in Rincon'í, but he lives in Ybycuí, the nearest town. This may be the reason why he did a deal with a US citizen, Eric Lorenz, representing Delta & Pine Paraguay Inc, and the Company Manager, Agronomist Nery Rivas. The first truck had rumbled into Rincon'í early in the morning, in late November 1998, loaded with sacks of cottonseed produced by the US-based Delta & Pine Land Co, and imported by Delta & Pine Paraguay Inc. It had a total of 1,000 22-kilo sacks, and some laborers had come along to unload them onto Chávez's land. The sacks were taken off the truck and placed in piles.

Neighbors were both surprised and curious, and asked Chávez what was going on. He said the sacks contained expired cottonseed (i.e. it was no longer viable) that was going to be mixed into the soil as fertilizer.

More trucks came on the following day, and this time some people in the village helped to unload them for a small payment. Several men, women and even children worked for 12 hours with no protective clothing, and no one alerted them to the risks they were

which, recognizing the importance and urgency of preventing serious adverse effects of industrial accidents on human beings and the environment requires that States Parties provide adequate information to the public and, whenever possible and appropriate, give them the opportunity to participate in relevant procedures and afford them access to justice (Art. 9). Annex VIII to the Convention details the information to be provided. Agreements requiring environmental impact assessments generally demand assessment of any effect caused by a proposed activity on the environment, specifically including human health and safety. See, e.g., Convention on Environmental Impact Assessment in a Transboundary Context (Espoo, 25 February 1991), 30 I.L.M. 800, Art. 1(viii).

running. They could not even understand the warnings printed on the sacks because they were written in English.

The piles of seeds grew inexorably, and the place was already beginning to give off a nauseating smell. Inevitably, it then began to rain and the whole area was gripped by a damp, putrid odor. Those living closest to the scene were already complaining that the stench was giving them headaches, and at night it was so bad that they could not get off to sleep.

The days passed, and more and more trucks unloaded thousands more sacks of seed, but when the villagers noticed strange, painful scars like burns appearing on their hands and arms and elsewhere, those who had unloaded the sacks at the beginning decided that enough was enough.

More and more people in Rincon'í were now falling ill, and dozens were suffering from severe headaches, nausea, diarrhoea, general weakness, insomnia and vertigo. Only 150 meters from Julio Chávez's plot of land stood the Federico Bécker School which was attended by 262 pupils. To get there, children who lived in the northern and eastern parts of the catchment area had to use a route that went straight past the contaminated land. Their parents stopped sending their children to school because the buildings were close to what everyone now knew were the source of their ailments: the Delta & Pine seeds³³.

The case illustrates clearly, how environmental degradation can start with a violation of a human right, the right to know³⁴. The inability to have an ecologically healthy environment violates other rights as well, such as the right to health or to food and even has consequences for children who can no longer gain access to

³³ Carlos Amorin, *Las Semillas de la Muerte*, REL-UITA, Montevideo, 1999, (Seeds of death, UITA translation). Culled from Lador, Yves, 2004. Op.cit., (note 26), p. 8.

³⁴ Right to information is so critical that its violation can lead to the death of a person who lacks information.

education³⁵. There are many other examples and hardly can there be an environmental issue which does not have a human rights dimension, lack of consideration for which leads to dramatic consequences:

In 1984, nearly 400 Maya Achi Indians were tortured, raped and slaughtered by the Guatemalan army for resisting a World Bank-financed dam that ultimately flooded their homeland. During the same year, a Union Carbide chemical plant in India released a toxic cloud, killing more than 3,000 people and maiming hundreds of thousands. Two years later, in Chernobyl, Ukraine, a nuclear power plant disaster left more than 1.5 million people with radiation-related illnesses.

Ranching interests murdered trade union leader Chico Mendes in 1988 because he spearheaded a campaign of rubber tappers to safeguard the Amazonian rainforest that is essential to the tappers' lives and livelihoods. In 1995, Nigeria's military regime executed Ogoni environmental activist Ken Saro-Wiwa for protecting his people's health and food resources for (sic) oil pollution by Shell and other oil corporations.

(...) Whether it is chemical contamination in India, nuclear disaster in Ukraine or murder to protect natural resources in Nigeria and in Burma, it is impossible to distinguish the environmental implications from the violations of human rights³⁶.

In Nigeria, oil pollution of the land and water resources have been held by the African Commission to be gross human right violations of the Ogoniland people. The African Commission informed that at its 30th Ordinary Session held in Banjul, The Gambia from 13th to 27th October 2001, it examined the

³⁵ Lador, Yves, 2004. The challenges of human environmental rights. Op.cit. (note 26 above), p.8.

³⁶ Zarsky, Lyuba (2002). Human Rights and the Environment, Conflict and Norms in a Globalizing World, Earthscan, London.

communication³⁷ and found the Federal Republic of Nigeria in violation of Articles 2, 4, 14, 16, 18(1), 21 and 24 of the African Charter on Human and Peoples' Rights.

The Commission further stated that:

The Complainants also allege that the Nigerian Government has violated Article 4 of the Charter which guarantees the inviolability of human beings and everyone's right to life and integrity of the person respected. Given the wide spread violations perpetrated by the Government of Nigeria and by private actors (be it following its clear blessing or not), the most fundamental of all human rights, the right to life has been violated. The Security forces were given the green light to decisively deal with the Ogonis, which was illustrated by the wide spread terrorizations and killings. The pollution and environmental degradation to a level humanly unacceptable has made living in the Ogoni land a nightmare. The survival of the Ogonis depended on their land and farms that were destroyed by the direct involvement of the Government. These and similar brutalities not only persecuted individuals in Ogoniland but also the whole of the Ogoni Community as a whole. They affected the life of the Ogoni Society as a whole. The Commission conducted a mission to Nigeria from the 7th – 14th March 1997 and witnessed first hand the deplorable situation in Ogoni land including the environmental degradation³⁸.

The Commission concluded by urging the Federal Government of Nigeria to take the following steps:

- Ensuring adequate compensation to victims of the human rights violations, including relief and resettlement assistance to victims of government sponsored raids, and

³⁷ ACHPR/COMM/A044/1 dated 27th May 2002 to Mr. Felix Morka, of the Social and Economic Action Rights Centre (SERAC), titled: COMMUNICATION 155/96 L.

³⁸ Ibid, para. 67.

- undertaking a comprehensive cleanup of lands and rivers damaged by oil operations;
- Ensuring that appropriate environmental and social impact assessments are prepared for any future oil development and that the safe operation of any further oil development is guaranteed through effective and independent oversight bodies for the petroleum industry; and
 - Providing information on health and environmental risks and meaningful access to regulatory and decision-making bodies to communities likely to be affected by oil operations.
 - Urges the government of the Federal Republic of Nigeria to keep the African Commission informed of the outcome of the work of -:
 - The Federal Ministry of Environment which was established to address environmental and environment related issues prevalent in Nigeria, and as a matter of priority, in the Niger Delta area including the Ogoni land;
 - The Niger Delta Development Commission (NDDC) enacted into law to address the environmental and other social related problems in the Niger Delta area and other oil producing areas of Nigeria; and
 - The Judicial Commission of Inquiry inaugurated to investigate the issues of human rights violations.

The Invasion of Odi Village and Human Rights Violation

This was another case that typifies the negative side to the relationship between human rights and the environment linkage in the context of the restiveness in the Niger Delta part of Nigeria, when soldiers on the order of the former president, Obasanjo, invaded Odi on November 20, 1999 and destroyed the community over the killing of some policemen by a gang involved in the Niger Delta unrest at the period³⁹. The military operation in the village in November 1999 resulted in the alleged deaths of about 2,500 people. Ironically, it was reported that during the military operation, the Nigerian Army destroyed every building in Odi

³⁹ On 20th November, 1999, Chief Olusegun Obasanjo, then President of Nigeria, authorized the invasion and subsequent destruction of Odi community in Bayelsa State by the soldiers of the Nigerian Army.

village “except the bank, the Anglican Church and the health centre”. Apparently, the buildings were adjudged more important than the human members of the community who were killed. The invasion followed the killing of 12 policemen by a group of Niger Delta militants in the town in two attacks on November 4 and 5. After repeated requests for the community to hand over the culprits, President Obasanjo ordered the army in. After more than 12 years of delayed justice, the Nigerian High Court Judge, Justice Lambo Akanbi, who had described the invasion as “genocidal, reckless, brutish and gross violation of the rights of the victims to life and ownership of property”, ordered the Federal Government of Nigeria to pay N37.6bn as compensation to the victims⁴⁰.

It is submitted that these are just the documented cases and there may exist many others which have not been reported or documented, nonetheless, the amount to human right violations directly linked with the environment. Apart from outright killings by armed forces, other invidious means have been allowed to kill Nigerians by allowing multinational users of the environment to employ unsustainable means in their operations, especially in the oil prospecting and exploiting sector. Some environmental challenges of different parts of Nigeria are illustrative of this, as reported by the Human Rights Watch.

In the Northern part of Nigeria, desertification is a major environmental challenge threatening access to adequate farm lands and human habitations. Extensive tracts of land have continued to be lost to gully erosion in the eastern states of Nigeria, while Lagos and the adjoining states are grappling with environmental pollution and waste management problems. Statistics from Federal Ministry of Environment show that about 600 meters of land in Borno State is annually overrun by encroaching Sahara Desert⁴¹. This causes severe drought which affects agriculture and hampers the ecosystem. This situation in Borno State is indeed typical of all the

⁴⁰ Obasanjo should face trial for Odi massacre – CPC. *PUNCH NEWSPAPER* March 5, 2013 by Olusola Fabiyi, Abuja. Retrieved on 25 Feb 2014 at <http://www.punchng.com/news/obasanjo-should-face-trial-for-odi-massacre-cpc/>

⁴¹ National Human Rights Commission, 2007. *The State of Human Rights in Nigeria 2007 A Report on the State of Human Rights in Nigeria, 2007* Abuja, NHRC p.122.

States in the north-east and north-western parts of the country. There has been an upsurge in the number of seasonal migrants from the North-East and North-West zones of the country to the North Central and Southern states, due to harsh weather conditions and lack of access to water and cultivable land⁴². The situation in the Northern parts of Nigeria may be seen as a natural environmental degradation, (although it is aggravated by the felling of trees and deforestation by people, nature cannot be sued. Nonetheless, the right to a healthy environment is not obliterated. The right should commit government to embark on adaptation and mitigation measures that would ensure that a healthy environment is sustained for the citizenry.

The situation in the Niger Delta is different. It poses greater challenge due to decades of continued oil exploration leading to spillages and consequently environmental pollution⁴³. Several farmlands have been wasted in this process while fauna and many animal species have become endangered or extinct⁴⁴. The oil spillages causing the Niger Delta environmental degradation in contrast to desertification in the North, is majorly caused by oil mining activities of multinational oil companies, as act of flagrant human right violations. Thus, nongovernmental organizations like SERAC have been actively working to apply human rights principles for prosecuting the violators.

The awareness level of the average Nigerian about the right to clean and secure environment is very low. There are very few pressure groups and low public participation in the governance of the environment in Nigeria. The human Rights Watch opines that this has made government passive in ensuring the protection of this right⁴⁵. Although the government established the Federal Environmental Protection Agency (now National Environmental Standards and Regulatory Enforcement Agency (NESREA) Act 2007, this Agency and its counterparts at the state levels, have not adequately addressed the problems. In many cases, government interventions come only when serious environmental problems are

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid.

reported⁴⁶. For instance, the absence of proactive measures in handling environmental problems in the Niger Delta region is a major source of resentment by people in the region, leading to the restiveness being experienced there. Oil spillages resulting from oil exploration has rendered farm work and access to safe drinking water very difficult for the rural dwellers. Presently, other parts of the country that require attention are not receiving it. Experts warn that this neglect could result in serious environmental problems comparable to what exists now in the Niger Delta region. In the South Eastern part of the country, soil erosion has become a major threat to the entire landscape especially in Enugu, Anambra and Imo States⁴⁷.

Challenges in Environmental Right in Nigeria

The Constitution under S.20 provides that "the state shall protect and safeguard and improve the environment the water, air and land, forest and wild life of Nigeria." There are however, numerous challenges that make the enforcement of the right to a healthy environment difficult despite this provision, including poverty, technicalities of evidential issues for proving cases before the Courts and procedural issues like *locus standi*. Only *locus standi* will be discussed due to constraints of space.

Locus standi

For a law suit to succeed generally, jurisdiction of the court and *locus standi* of the parties are fundamental considerations. Amokaye has submitted in this regard that "the absence of a well defined constitutional right to clean environment, a private lawsuit to bring about compliance with public environmental law is confronted with and constrained by a number of difficulties⁴⁸." Only *locus standi* will be explored in this paper. *Locus standi* refers to the right to bring an action before the court or to be heard in a given forum. It also means standing⁴⁹. At common law, *locus standi* excludes persons who cannot show pecuniary interest in the action from obtaining assistance of the courts in declaring and

⁴⁶ Ibid.

⁴⁷ Ibid, p.123.

⁴⁸ Amokaye, G.O., 2004. Op.cit. 601.

⁴⁹ See Black's Law Dictionary, 2004. 8th ed. Thompson West, p. 960

enforcing the law in circumstances where others can obtain that assistance⁵⁰. It is essentially having the capacity to sue in an action by reason of an interest held in the matter or haven a stake in a case before the court.

Before 1979, the law on *locus standi* was that an applicant seeking access to court to challenge a violation of his right must demonstrate "sufficient interest" in the matter. However, with the return of constitutional democracy in Nigeria in 1979 and later in 1999 constitutions respectively, the issue of *locus standi* to challenge public law and public wrong has been liberalized. The liberalized version of the *locus standi* doctrine is contained in section 6(6)(b) of the 1978 and 1999 constitutions respectively. Even under s.6(6)(b) of the 1999 constitution, a qualifier exists to the liberalized position which the courts have described as "unimpeded access to the court" which states that:

The problem of *locus standi* in the pursuit of the right to a healthy environment was well addressed in the ECOWAS Community Court of Justice in Abuja when held that it had jurisdiction to entertain a case brought by the Registered Trustees of the Socio-Economic Rights and Accountability Project (SERAP) against the Federal Government and six oil companies over alleged violation of human rights and associated oil pollution in the Niger Delta⁵¹.

While the Court held that the Nigerian government and its body, the Nigerian National Petroleum Corporation (NNPC) can be held accountable for human rights violations in the Niger Delta, the Court declined jurisdiction against Chevron Oil Nigeria PLC; Shell Petroleum Development Company (SPDC); Elf Petroleum Nigeria

⁵⁰ See K.E. Scott, (1973). "Standing in the Supreme Court: A Functional Analysis" 86 *Harv. L. Rev.* p. 645.

⁵¹ Suit number ECW/CCJ/APP/08/09, filed and argued by SERAP counsel, Femi Falana, Adetokunbo Mumuni and Sola Egbeyinka while Mr. T.A. Gazali represented the FG; while Mr. Dafe Akpedeye, SAN represented the NNPC; Professor F. Oditah QC, SAN represented Shell; Mrs. M.A. Essien, SAN, represented ELF and Exxon Mobil; Mark Mordi represented Agip Nigeria PLC; N.A. Idakwu represented Chevron PLC; and F.R. Onoja represented Total Nigeria PLC.

Ltd; Exxon Mobil Corporation, Agip Nigeria PLC; and Total Nigeria PLC. The Court held that:

The Federal Government of Nigeria signed the ECOWAS Treaty as well as other community instruments like the Protocols on Democracy and Good Governance and on the Competence of the Community Court of Justice. Therefore, there is no doubt with respect to the jurisdiction of the Court to adjudicate any case of alleged violation of human rights that occur in the Federal Republic of Nigeria, and for which it should be held accountable⁵².

The Court's decision followed preliminary objections filed by the defendants against the argument by the NNPC that SERAP filed the action on behalf of "the people of Niger Delta", who is not a person known to law, and therefore cannot sue or be sued. The ECOWAS Court held that:

The consideration made about the Niger Delta region or people from Niger Delta as a non-existing entity is based on the assumption that the action is a representative one, that is, the application was filed on behalf of people from Niger Delta. That assertion is, however, wrong because SERAP is not the people from Niger Delta but a non-governmental organization acting on its own without claiming to represent anyone else.

Also, on the argument by Shell that SERAP is not a person under Nigerian law, the ECOWAS Court held that:

What emerges from the evidence produced before the Court is that SERAP is an entity duly and legally registered under the Companies and Allied Matters Decree 1 of 1999 of Nigeria. SERAP's legal capacity was admitted by this Court in a previous case the organization filed against the Federal Republic of

⁵² In the ruling number ECW/CCJ/APP/07/10 delivered on the UN Human Rights Day, 10 December 2010.

Nigeria and Universal Basic Education Commission. Consequently, the Court holds that SERAP is a legal entity duly constituted.

More importantly, the Court held further that,

With respect to the alleged lack of *locus standi* by SERAP, the analysis of the Court firstly relies on the nature of the dispute brought before it for adjudication. In fact, the application is related to the alleged violation of the human rights of the people who inhabit the region of Niger Delta. The framework presented in the application is not only of violation of an individual's rights, but of rights of entire communities as well as environmental devastation without sufficient and protective intervention from public authorities. There is a large consensus in international law that when the issue at stake is the violation of rights of entire communities, as in the case of the damage to the environment, the access to Justice should be facilitated.

The ECOWAS court held further that it is necessary to strengthen the access to justice where violation of the human rights of a community is at stake stating that:

Taking into account the need to reinforce access to justice for the protection of human and people rights in the African context, the Court holds that an NGO duly constituted according to national law of any ECOWAS Member State, and enjoying observer status before ECOWAS institutions, can file complaints against human rights violation in cases that the victim is not just a single individual, but a large group of individuals or even entire communities. Thus, in considering the social purposes of SERAP, and the regularity of its constitution it does not need any specific mandate from the people of Niger Delta to bring the present lawsuit to the Court for the alleged violation of human rights that affect people of that region.

On the other hand, the Court declined to assume jurisdiction over the multinational companies which were involved in the SERAP case. The Court insisted that the multinational corporations cannot be sued before it, stating that:

One of the most controversial issues in International Law is the accountability of Companies, especially multinational corporations, for violation or complicity in violations of human rights especially in developing countries. In fact, one of the paradoxes that characterize international law presently is the fact that States and individuals can be held accountable internationally, while companies cannot⁵³.

It is submitted that the position of the Court in respect of the multinational corporations is short of the needed drastic stand required to tackle violations of environmental rights in Nigeria. The Court should have assumed jurisdiction over the multinational companies in view of their registrations as corporate bodies operating in Nigeria, a State within its jurisdiction. The Court relied on the state of the process of codification of international law, stating that:

Despite this development, the bare truth, however, is that the process of codification of international law has not yet arrived at a point that allows claim against corporations to be brought before international courts. Any attempt to do so has been dismissed on the basis that Companies are not parties to the treaties that international courts are empowered to enforce. This understanding is widely shared among regional courts with jurisdiction over human rights.

⁵³ Although the Court cited the progressive work of the UN High Commissioner for Human Rights in her Report on Corporate Responsibility and the Committee on Legal Affairs of the European Parliamentary Assembly in its Report on Human Rights and Business, and the Special Representative of the UN Secretary General Report titled: Protect, Respect, and Remedy: A Framework for Business and Human Rights, the Court nonetheless said that it could not exercise jurisdiction over the multinational corporations because they are not parties to ECOWAS treaties.

In the light of the situation at the international level, the only available alternative left to those seeking for justice against corporations has been domestic jurisdictions. It was however stated that even in the US, notwithstanding a few decisions supporting corporate liability, a recent ruling from the 2nd Circuit in *Kiobel v Royal Dutch Petroleum Co* held that Alien Torture Act does not authorize jurisdiction to hear claims against corporations. The ECOWAS Court further ruled that it “stands by its current understanding that only Member States and Community Institutions can be sued before it for alleged violation of human rights”.

In an earlier case in 2009 SERAP (case dated 25 July 2009), had alleged:

Violations of the right to an adequate standard of living, including the right to food, to work, to health, to water, to life and human dignity, to a clean and healthy environment; and to economic and social development – as a consequence of: the impact of oil-related pollution and environmental damage on agriculture and fisheries; oil spills and waste materials polluting water used for drinking and other domestic purposes; failure to secure the underlying determinants of health, including a healthy environment, and failure to enforce laws and regulations to protect the environment and prevent pollution.

In separate preliminary objections filed before the Community Court of Justice in Abuja the defendants asked the Court to dismiss the suit with substantial costs, whereas SERAP argued and rightly summarized the expected roles of Multinational Corporations thus:

Multinational corporations have obligations under international law not to be complicit in human rights violations. Multinational corporations must not perform any wrongful act that would cause human rights harms; must be aware of their role not to provide assistance or any support that would contribute to human rights violations; and must not knowingly and substantially assist in the violation of human rights.

The decision in Ogoniland can be seen as a challenge to the sustainability of oil extraction in Ogoniland of Nigeria. Considering the degree of environmental harm and a lack of material benefits for the Ogoni people, the African Commission did not see this case simply as a failure to maintain a fair balance between public good and private rights. The decision gives some clear indications of how a right to a decent or satisfactory environment could be used, in this case, on the basis of Articles 21 and 24 of the African Charter. It is unique in adjudicating for the first time on the right of peoples to dispose freely of their own natural resources and in ordering extensive environmental clean-up measures to be taken⁵⁴. It is noteworthy that the rights created by the African Charter are peoples' rights, not individual rights. Thus the recognition of a public interest in environmental protection and sustainable development is less of an innovation⁵⁵. The African Convention is the only regional human rights treaty to combine economic, social, civil, and political rights and make them all justiciable before an international court⁵⁶. Clearly there can be different views on what constitutes a fair balance between economic interests and individual or group rights in such cases, and any judgment is inevitably subjective. Moreover, neither environmental protection nor human rights necessarily trumps the right to economic development⁵⁷.

To curtail the abuses by the Multinational Corporations in the violation of the human rights of communities and individuals who are usually not a match for the giant corporations in terms of ability to produce technical evidence and financial capability, the ECOWAS Court will need to be more innovative in interpreting the national and international legal instruments with a view to protect the right to a healthy environment.

⁵⁴ Although Art. 1(2) of the 1966 ICCPR also recognizes the right of peoples 'freely [to] dispose of their natural wealth and resources', it is not justiciable by the HRC under the procedure for individual complaints laid down in the Optional Protocol.

⁵⁵ Alan Boyle, (2012). "Human Rights and the Environment: Where Next?" Vol. 23 no. 3 *The European Journal of International Law, EJIL*, Oxford University Press. 613-642, p. 631.

<http://ejil.oxfordjournals.org>

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

Conclusion

The importance of the links between the fields of environment and human rights has been reiterated in this article. The need to set up standards which will make the right to a healthy environment as important as a first generation right has been advocated and cannot be overemphasized. Advantages exist in the linkages between human rights and the right to a healthy environment, including the need to provide necessary substantive rights which can be enforced when violated, and to remove the obstacle of *locus standi* which has hampered the prosecution of violations of right to a healthy environment. It is recommended that human rights non-governmental agencies like SERAC which have been, should continue to play an important role in the enforcement of the right to a healthy environment. They should strive to protect and entrench the principles of environmental law into their human rights advocacy work both to achieve awareness, education and the enforcement of the right to a healthy environment. Environmental protection and development are best recognized as necessary conditions and outcomes of the realization of other human rights. Therefore, an integrated strategy should be preferred to treating environmental protection and development as mutually exclusive domains in the context of human rights. Controversy over the recognition of a right to a healthy environment as a human right is very significant in view of the holistic positive implications that will result from the formal acceptance of the right to a healthy environment, especially in Nigeria which has a history of gross human rights violations that are directly related to the environment, such as the Ogoniland oil pollutions and the Odi village genocide.