

AN APPRAISAL OF THE LEGAL FRAMEWORK ON HUMAN RIGHTS AND THE EXTRACTION OF NATURAL RESOURCES IN THE NIGER-DELTA REGION OF NIGERIA*

Abstract

This article appraised the legal framework on human rights and the extraction of natural resources in the Niger-Delta region of Nigeria. It is obvious that man is environmentally embedded hence, our environment defines us and gives us the trajectory of relevance. Development in any form is dependent on the environment and life itself is better expressed in the environment. The challenge is that the exploitation of the resources in the Niger-Delta region is seemingly becoming a curse instead of blessing. This is due mainly because the activities of exploitation in the region have devastated the environment hence, denying the people enjoyment of the environment as a human right. The challenge of environmental protection has received a lot of discourse locally, regionally and internationally. What is seemingly new in context is an approach that deeply connects us innately to the agitation; an approach that really defines Nigerians in general and the Niger Delta in particular in the environment. Environmental issues directly impact on the human rights of the citizens who become refugees because of environmental problems, such as those displaced from their lands by threat of climate change and also by development project that are not sensitive to the needs of the people. This paper recommends inter alia, Environmental right should be recognised as a justiciable human right in Nigeria; and that there should be a value change in development agendas in the Niger-Delta.

Keywords: Right, Human Rights, Environment, Environmental Right

1. Introduction

The challenge of environmental protection has received a lot of discourse locally, regionally and internationally.¹ What is seemingly new in context is an approach that deeply connects us innately to the agitation; an approach that really defines Nigerians in general and the Niger Delta in particular in the environment. We are different because of our environment, our enduring heritage. The new approach revolves around the issue; the reason why environmental protection ought to be treated as a human right issue? The reason for this is generally because the environmental dimension seldom features in general academic on the relationship between human rights and the environment.² The volume of literature availing in this area is works of environmentalists or generalist international lawyers.³ It is worthy of note that the increasing environmental caseload of human rights courts as well as treaty bodies inevitably suggests the reality of this perception in mainstream human rights law.

Indeed, this paper is driven by the recognition that insofar as the concern is with the environmental dimensions of rights ingrained in human rights treaties such as the International Covenant on Civil and Political Rights 1966, the International Covenant on Economic Social and Cultural Rights 1966, and the African Charter on Human and Peoples' Rights 1981 domesticated as the *African Charter on Human and Peoples' Rights (Enforcement and Ratification) Act, 1983* amongst others.

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¹ African Charter on Human and Peoples' Rights 1981; Stockholm Declaration and Action Plan for the Human Environment 1972.

² P Alston and Others, *International Human Rights in Context* (3rd edn, University of Oxford Press 2007) 86; G Loucadies, 'Environment Protection through the Jurisprudence of the ECHE' [2004] (75) *British Year Book of International Law (BYBIL)* 249; O De Shutter, *International Human Rights Law* (Cambridge University Press 2010) 21.

³ D Anton and D Shetton, *Environmental Protect and Human Rights* (Cambridge: CUP 2011) 191; D Bodansky and Others (eds), *The Oxford Handbook of International Environmental Law* (New York: Oxford University Press 2007) 28; A Boyle, 'Human Rights or Environmental Rights? A Reassessment' [2007] (18) *Fordham Environmental Protection Law Review*;471; A E Boyle and M R Anderson (eds), *Human Rights Approaches to Environmental Protection* (Oxford: Oxford University Press 1996) 214.

It is obvious that man is environmentally embedded hence, our environment defines us and gives us the trajectory of relevance. Development in any form is dependent of the environment and life itself is better expressed in the environment. The challenge is that the exploitation of the resources in the Niger-Delta region is seemingly becoming a curse instead of the blessing. This is due mainly because the activities of exploitation in the region have devastated the environment hence, denying the people enjoyment of the environment as a human right.

2. Conceptual Clarification

Right

Rights are social claims which assist individuals in attaining their best selves and help the individuals in the development of their personalities. A society is seen to be democratic where the government maintains a system of rights for the people. Rights are not given by the States, rather they only try as much as possible to recognise these rights through the instrumentality of the law; the governments only provide measures for the protection of rights. Rights belong to individuals and exist for the individuals, and are exercised by them in order to enable the attainment of the full development of the personalities of the individuals.⁴ Right refers to what is proper under morality, law, ethics, and so on; in contradistinction to wrong.⁵ Jurisprudentially, right represents something that is due to any person by just claim, legal guarantee, or moral principle such as the right of liberty; a privilege, power, or immunity that is accorded to a person by law; a legally enforceable claim that another will do or will not do a given act.⁶ It entails a protected interest, the violation of which is a wrong hence, gives right to a cause of action or a right of action.⁷

The relationship that would ordinarily exist between the individuals as well as the States has been a fundamental question of political theory, and one that has put many political philosophers in a state of confusion since ages. There have been debates by political philosophers as to who is more important between the State and the individuals, as well as who owes what to whom between them. Plato is one of the philosophers who believe in the fact that it is only the State alone that can give justice and that the only job of the individual is to do his/her duties to the best of his/her capacities and abilities. Philosophers with this line of thought are referred to as the idealists.⁸ Political philosopher like Locke maintains the view that the state is a means that exists for an end, and that the end of it is the individual, in that way, individual rights are considered sacrosanct as well as inviolable.⁹ That private individuals have rights is a trend of modern age as it only began in the 15th to 16th centuries' Europe. These rights stand as guarantees against State absolutism, thus, they have their origin in society and are things that finally became known and common in the modern age only.¹⁰ Thus, it is argued that rights belong to the individuals, hence, they are not to be considered to be that of the State. Considering the fact that rights are that of the individuals, they are also seen as conditions necessary for the development of the individuals. They are the results of the social nature of the individuals, and the result of individuals' membership of a particular society. All that is needed is a mechanism for the protection of these rights.¹¹

⁴ T Campbell, *Rights: A Critical Introduction* (London: Routledge 2006) 11; R Forst, 'The Justification of Basic Rights: A Discourse-Theoretical Approach' [2016] (45) (7) *Netherlands Journal of Legal Philosophy*;28.

⁵ *Oko v A.G., Ebonyi State* (2021) 14 (pt 1795) 73.

⁶ *Ibid.*

⁷ *Ibid.*; *Josiah Cornelius Ltd. v Ezenwa* (1996) 4 NWLR (Pt. 443) 391; *Inegbedion v Selo-Ojemen* (2013) 8 NWLR (pt 1356) 211; *Bille v State* (2016) 15 NWLR (pt 1536) 363; *C.P.C. v Ombugadu* (2013) 18 NWLR (pt 1385) 66; *I.N.E.C. v Enasito* (2018) 2 NWLR (pt 1602) 63; *A.G. Lagos State v A.G. Federation* (2003) 2 NWLR (pt 833) 1; *Yare v National Salaries Wages and Income Commission* (2013) 12 NWLR (pt 1367) 173.

⁸ L Kimon, *Plato on Justice and Power* (London: Palgrave Macmillan 1987) 73.

⁹ J C Enemuo, 'John Locke's Concept of State: A Panacea for the Challenges of Nigeria Democracy' [2019] (15) (1) *A New Journal of African Studies*;215.

¹⁰ *Ibid.*

¹¹ B P Namene, 'Human Rights Implications of Nigeria's Counter-Terrorism and National Security Approaches: Application of the Principles of International Humanitarian Law' (Thesis Submitted to the Postgraduate School, Rivers State University) 75.

Human Rights

Human rights are described as being natural and they belong to everyone irrespective of sexes.¹² They are rights shared by both men and women. They are common rights. Human rights are common to everyone irrespective of birth, nationality, sex, religion, and race of an individual.¹³ Hence, no individual is to be denied the enjoyment of these natural rights in a civilised society through the instrumentality of the law.¹⁴ Human rights are naturally endowed on every human being – both male as well as female by nature and not by any government, human being, law or authority.¹⁵ In describing the importance of human rights, it has been submitted that human rights are the clear expression of life itself. In the view of the author, the existence of human rights is clearly based on the existence of human life.¹⁶ The author continues that the need to live in dignified freedom in every society is the main reason for the recognition as well as safeguarding human rights through the instrumentality of the law.¹⁷

Proper recognition as well as respect for human rights in its entirety in every society is the cause of peaceful coexistence, social solidarity and human development.¹⁸ The origin of human rights is as old as man, the existence of human beings and that the existence of human rights is general in nature not peculiar to any particular society. Human rights are not alien to people. The codification as well as observance of human rights is only of recent integrations in Africa in general and Nigeria in particular as well as in many other societies across the globe.¹⁹ Human rights are so crucial that they are given descriptions in the constitution of different countries of the world. For example, these rights are described as bills of rights in the 1996 Constitution of the Republic of South Africa while they are described as fundamental rights in the Constitution of the Federal Republic of Nigeria 1999 (as amended). Nigerian Jurists have continued to make pronouncements on human rights and the important position they occupy in every society and Nigeria in particular. Thus, Kayode Eso JSC described the concept of human rights in the case of *Ransome Kuti v Attorney General of the Federation*,²⁰ as the right that stands above the ordinary laws of Nigeria as it antecedent to a political society.

3. Legal Framework on Human Rights and the Extraction of Natural Resources in the Niger Delta Region of Nigeria

Constitution of the Federal Republic of Nigeria 1999 (as amended): The Constitution of the Federal Republic of Nigeria 1999 (as amended) (CFRN), has been declared as the highest law of Nigeria.²¹ The validity of every other law in Nigeria rests on the CFRN. The action of any person or authority which contravenes the provisions of the constitution is unconstitutional, null and void and also of no effect whatsoever, and such act is liable to be set aside by court.²² Commenting on this position, the Supreme Court of Nigeria held in *Abacha v Fawehinmi*²³ ‘It is necessary to get our bearings right. The

¹² B P Namene, ‘Counter Terrorism and Observance of International Humanitarian Law Principles and Human Rights in Nigeria and the United States of America’ [2024] *Journal of Private and Property Law, Special Edition JUNE*; 122 <<https://rsuppljournal.com.ng/counter-terrorism-and-observance-of-international-humanitarian-law-principles-and-human-rights-in-nigeria-and-the-united-states-of-america/>> accessed 3 December 2025.

¹³ J E S Fawcett, *The Law of Nations* (New York: The Penguin Press 1968) 151.

¹⁴ S K Kapoor, *International Law and Human Rights* (19th edn, Central Law Agency 2014) 806.

¹⁵ Namene (n 11).

¹⁶ O W Igwe, *Preliminary Studies in Human Rights Law* (Rings and Revolt Ltd., Lagos 2002) 1.

¹⁷ *Ibid.*

¹⁸ C A J Chinwo, *Principles and Practice of Constitutional Law in Nigeria* (Davis Printing and Packaging Company Limited, Port Harcourt 2007) 107.

¹⁹ *Ibid.*

²⁰ (1985) 2 NWLR (pt 6) 211, 229-230.

²¹ CFRN 1999 (as amended), s 1(3); *Attorney General Ondo State v Attorney General Federation* (2002) 9 NWLR (pt 772) 222; *INEC v Balarabe Musa* (2003) 3 NWLR (pt 806) 72; *Imonike v Attorney General Bendel State* (1992) 6 NWLR (pt 248) 396; *Kalu v Odili* (1992) 5 NWLR (pt 240) 130; *Mojekwu v Mojekwu* (1997) 7 NWLR (pt 512) 283; *Ihie v Attorney General Bendel State* (1987) 4 NWLR (pt 67) 972.

²² E Malemi, *The Nigerian Constitutional Law* (1st edn, Princeton Publishing Co. 2006) 125.

²³ (2001) 51 WRN 29.

constitution is the supreme law of the land, it is the *grundnorm*. Its supremacy has never been called to question in ordinary circumstances...'²⁴

The human rights of everyone are guaranteed under Chapter IV of the CFRN 1999 (as amended).²⁵ The question that begs for answer is whether the CFRN guarantees Nigerian citizens a right to a clean and healthy environment. The CFRN provides that social order of Nigeria is based on the ideals of equality and freedom.²⁶ In furtherance of this provision, the CFRN provides thus: 'exploitation of human or natural resources in any form whatsoever for reasons, other than the good of the community, shall be prevented'.²⁷ This constitutional provision directs that the exploitation of natural resources should be for the good of the community. Therefore, the provision implies that the government of Nigeria should always take necessary steps and precautions to protect the rights of the people in all policies formulated for the exploitation of the natural and human resources of the State.²⁸ Such steps should amongst others include taking positive measures against environmental hazards capable of destructing life and property and the provision of relief materials as well as compensation for victims of environmental degradation due to exploitation of natural resources by the government. Such steps to be taken for the protection of the environment and human rights ought to include taking positive measures against environmental hazards capable of destroying life and property, as well as the provision of relief materials and compensation for victims of environmental degradation due to exploitation of natural resources by the government.²⁹

On the area of the environment as a human right, the CFRN 1999 provides that: 'The state shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria'.³⁰ However, provision is found under the non-justiciable Chapter of the CFRN titled 'Fundamental Objectives and Directive Principles of State Policy'. The question is: what then is the status of the provisions of sections 17 and 20 as regards the right to a clean and healthy environment? By virtue of section 6 (6) (c) of the CFRN the provisions of Chapter II are not justiciable in a court of law in Nigeria.³¹ In other words, the provisions of Chapter II are only meant to be a guide to the arms of government in the task of nation building and in the day-to-day performance of the duties of governance.³² This position has been affirmed by the court in *Morebishe v Lagos State House of Assembly*,³³ when Hon. Justice Segun J of the Lagos State High Court held that the provisions of Chapter II are not justiciable although they remain pillars of guide and focus of attention to all tiers of government.³⁴ Consequently, there is no doubt whatsoever that section 20 of the CFRN 1999 (as amended) does not recognise the right to clean environment within the context of Chapter II of the Constitution. This is a great challenge to the enjoyment of human rights.

It is important also to state that Chapter IV of the 1999 CFRN deals with fundamental rights which undoubtedly create justiciable and enforceable rights for the benefit of the citizens. However, none of the rights enumerated in the said Chapter IV has a direct bearing on environmental rights and issues, but some of the provisions in Chapter IV should be given wide interpretation to include the right to a

²⁴ *Ibid*; *Attorney General of Abia State v Attorney General of the Federation* (2003) 6 NWLR (pt 763) 264; *Erekanure v State* (1993) 5 NWLR (pt 294) 393; *Osaba v Governor, Kwara State* (1994) 4 NWLR (pt 284) 31 at 39.

²⁵ Chapter IV.

²⁶ CFRN 1999 (as amended), s 17(1).

²⁷ *Ibid*, s 17(2)(d).

²⁸ O Awolowo, 'Environmental Rights and Sustainable Development in Nigeria' [2017] (10) (6) *OIDA International Journal of Sustainable Development*;19.

²⁹ *Ibid*.

³⁰ (n 26), s 20.

³¹ O N L Princewill and B P Namene, 'An Evaluation of Human Rights and the Right to Development in Nigeria' [2019] (8) (2) *Port Harcourt Law Journal*;74.

³² B O Nwabueze, 'Fundamental Objectives and Directive Principles of State Policy: Its Nature and Functions' *Daily Times* (Lagos, 27 October 1977) 49.

³³ (2000) 3 WRN 134.

³⁴ *Okogie v Attorney General of Lagos State* (1981) 1 NCLR 218.

clean and protected environment. For instance, section 33(1) provides for right to life. Although, this provision has no direct relationship with environmental protection, it can be argued that allowing a person to live in an unprotected or unhealthy environment could amount to a deprivation of the person's right to life since a poor and unhealthy environment could put a person's life in danger.³⁵

National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007: The urgent need to address problems relating to the environment in Nigeria led to the promulgation of decree 58 of 1988, hence, leading to the establishment of the Federal Environmental Protection Agency (FEPA) in the same year.³⁶ Protection, restoration, and preservation of the ecosystem of the country are some of the reasons for the establishment of the FEPA.³⁷ However, the FEPA Act soon proved inadequate in its scope hence, its inability to address all the environmental challenges of Nigeria led to the enactment of the National Environmental Standards Regulations Enforcement Agency (Establishment) Act (NESREA) in 2007. The NESREA Act repealed FEPA due to the inadequacies of the latter.³⁸ Thus, NESREA is now the major legislation regulating environmental compliance and enforcement in Nigeria.³⁹

The NESREA Act provides for the establishment of the National Environmental Standards and Regulations Enforcement Agency (NESREA) saddled with the responsibility for the protection and development of the environment, biodiversity conservation, including sustainable development of Nigeria's natural resources in general as well as environmental technology together with coordination, and liaison with other relevant stakeholders within and outside the country on every matter of enforcement of environmental standards, laws, rules, regulations, guidelines and policies.⁴⁰ NESREA is saddled with the responsibility of making standards and regulations for ozone protection⁴¹, noise⁴², federal water quality⁴³, emission, atmospheric protection⁴⁴, environmental sanitation⁴⁵, effluent limitations, discharge of hazardous waste, land resources as well as watershed quality⁴⁶. The NESREA has the authority to ensure compliance with all environmental laws.⁴⁷

Environmental Impact Assessment Act, Cap E12 Laws of the Federation of Nigeria 2004: The Environmental Impact Assessment (EIA) Act is one of the laws regulating the environment in Nigeria.⁴⁸ Increasing environmental challenges in Nigeria led to the enactment of the EIA) Act.⁴⁹

The crisis of dumping toxic waste in Koko southern part of Nigeria in 1998 was a compelling reason for

³⁵ *Ransome Kuti v Attorney General Federation* (2001) FWLR (pt 80) 1637; Environmental Law Research Institute Synopsis of Laws and Regulations on the Environment in Nigeria, 'Environmental Law and Polices in Nigeria' [2011] <<http://www.elri-ng.org/newsandreal2.html>> accessed 3 December 2025.

³⁶ *Ibid*, 140.

³⁷ J A Adelegan, 'The History of Environmental Policy and Pollution of Water Sources in Nigeria' (1960-2004): The Way Forward' [2007] <<https://nigerianlawguru.com/wp-content/uploads/2024/10/THE-HISTORY-OF-ENVIRONMENTAL-POLICY-AND-POLLUTION-OF-WATER-SOURCES-IN-NIGERIA.pdf>> accessed 27 January 2025.

³⁸ M Ladan, 'Review of NESREA Act 2007 and Regulations 2009- 2011: A New Dawn in Environmental Compliance and Enforcement in Nigeria' [2012] (8) *Law, Environment & Development Journal*;116.

³⁹ L Egunjobi, 'Issues in Environmental Management for Sustainable Development in Nigeria' [1993] 13 *Environmentalist*;33 <<https://link.springer.com/article/10.1007/bf01905501>> accessed 3 December 2025.

⁴⁰ NESREA Act 2007, s 7.

⁴¹ *Ibid*, s 21.

⁴² *Ibid*, s 22.

⁴³ *Ibid*, s 23.

⁴⁴ *Ibid*, s 20.

⁴⁵ *Ibid*, s 25.

⁴⁶ *Ibid*, s 27.

⁴⁷ (n 40).

⁴⁸ N Nuwahereza, 'A Review of Historical Development of Environmental Impact Assessment Vis a Vis Nigeria Environmental Impact Assessment Act of 1992 as Amended in 2004' [2024] (12) (1) *Greener Journal of Environmental Management and Public Safety*;44.

⁴⁹ *Ibid*.

the federal government of Nigeria to be proactive on matters relating to the environment.⁵⁰ Thus, Nigeria formally institutionalised EIA through the enactment of the EIA Act.⁵¹ The EIA Act marked a significant milestone, directing that major projects go through an environmental assessment before proceeding.⁵² The EIA Act aimed to integrate environmental protection into developmental agenda of Nigeria, making sure that economic projects were executed in a way that minimised adverse environmental impacts. Nigeria responded to nearly all environmental problems on an ad hoc basis prior to June 1988,⁵³ For the first time, the law through the EIA Act required developers to consider potential impacts of projects on water, air, wildlife, land, and communities in the planning stages of such projects.⁵⁴ This position and provision of the EIA Act supports the need for the protection of the environment as there is a nexus between environmental right and human rights. A protected environment promotes and protects human rights.

The EIA Act introduced public participation as well as transparency, this empowered local communities to engage in environmental decision-making processes as well as hold developers accountable, for the purpose of mitigating environmental impacts.⁵⁵ It is important to state that the FEPA was the agency mandated to Nigeria's environment and for the development of all processes and policies aimed at the achievement of this objective.⁵⁶

Harmful Waste (Special Criminal Provisions) Act, Cap H1 Laws of the Federation of Nigeria 2004: The *Harmful Waste (Special Criminal Provisions) Act* (HWSCPA) was enacted with the object of prohibiting the carrying, depositing as well as dumping of hazardous wastes on any land, territorial waters and all matters relating thereto.⁵⁷ The HWSCPA is basically a penal legislation on the protection of the environment. The HWSCPA provides for civil liability in damages by any person whose act under the Act occasioned some damage to anybody.⁵⁸ The jurisdiction of the HWSCPA is far reaching as it sought to remove any immunity conferred by Diplomatic Immunities and Privileges Act on any person for the purpose of criminal prosecution under the Act.⁵⁹ However, it is important to note that despite its far-reaching jurisdiction, the HWSCPA focuses essentially on criminal prosecution of damage and it does not provide compensation to the victim of the damage caused.⁶⁰ The HWSCPA remains one of the major penal legislation on environmental protection in the country. The HWSCPA sees harmful waste as:

Any injurious, poisonous, toxic or noxious substance and, in particular, includes nuclear waste emitting any radioactive substance if the waste is in such quantity, whether with any other consignment of the same or of different substance, as to subject any person to the risk of death, fatal injury or incurable Impairment of physical and mental health; and the fact

⁵⁰ V N Enebeli and D C Njoku, 'The Legal Framework Of Environmental Impact Governance In Nigeria' [2023] (13) (1) *African Journal of Law and Criminology*;139 <[⁵¹ EIA Act 1992.](https://www.researchgate.net/profile/David-Njoku-2/publication/371567321_THE_LEGAL_FRAMEWORK_OF_ENVIRONMENTAL_IMPACT_GOVERNANCE_IN_NIGERIA/links/648a40f47fcc811dcdce3eaa/THE-LEGAL-FRAMEWORK-OF-ENVIRONMENTAL-IMPACT-GOVERNANCE-IN-NIGERIA.pdf?origin=publication_detail&_tp=eyJjb250ZXh0Ijp7ImZpcnN0UGFnZSI6InB1YmxpY2F0aW9uIiwicGFnZSI6InB1YmxpY2F0aW9uRG93bmxvYWQiLCJwcmV2aW91c1BhZ2U0iOiJwdWJsaWNhdGlvbiJ9fQ&__cf_chl_tk=EobEXbGhliSq07Ix3Xqgiff4VEpdAl_3nh0UDwwbvfo-1741985136-1.0.1.1-ZT7azi dtASMg3kgN9l6S33RZKId1WvXBIHNvXuXdzUU> accessed 10 December 2025.</p>
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⁵² *Ibid*, s 16; A Ogunba, 'An Appraisal of the Evolution of Environmental Legislation in Nigeria' [2016] 40 *Vermont Law Review*;673 <<http://lawreview.vermontlaw.edu/wp-content/uploads/2016/07/40VtLRev673-Ogunba.pdf>> accessed 10 December 2025.

⁵³ F O Shyllon, *The Law and the Environment in Nigeria* (Vantage Publishers 1989) 49.

⁵⁴ (n 51), s 4; Enebeli and Njoku (n 50) 46.

⁵⁵ (n 51), s 1; Enebeli and Njoku (n 50) 46.

⁵⁶ Enebeli and Njoku (n 50) 46.

⁵⁷ HWSCPA 1988, s 1.

⁵⁸ *Ibid*, s 12.

⁵⁹ *Ibid*, s 9.

⁶⁰ C C Nwufu, 'Legal Framework for the Regulation of Waste in Nigeria' [2010] (4) (2) *African Research Review: An International Multi-Disciplinary Journal*;498.

that the harmful waste is placed in a container shall not by itself be taken to exclude any risk which might be expected to arise from the harmful waste.⁶¹

Aiding and abetting or the procurement of anyone to commit an act which constitutes a crime under the HWSCPA is also considered an offence.⁶² Interestingly, by relevant provision of the HWSCPA, principal officers of a corporate body shall be held liable for any offence committed thereunder.⁶³ The punishment of offenders in accordance with the provision of the HWSCPA makes the environment more meaningful.

National Oil Spill Detection and Response Agency Act 2006: National Oil Spill Detection and Response Agency (Establishment) (NOSDRA) Act is an Act that makes provision for the establishment of the NOSDRA; and for all other related matters.⁶⁴ Accordingly, the NOSDRA Act established the NOSDRA as an agency saddled with the responsibility to ensure preparedness, detection as well as response to every oil spillage incident in Nigeria.⁶⁵ Thus, it is one of the responsibilities of the NOSDRA to ensure response to oil spillage incidences is done timely.⁶⁶ The NOSDRA Act established the National Control and Response Centre (NCRC) and saddled it with the responsibility to respond to all incidents of oil spillage in Nigeria by acting as a report processing as well as response co-ordinating centre;⁶⁷ and receiving every report pertaining to oil spillages from all the zonal offices as well as control units of the NOSDRA.⁶⁸ The NCRC also serves as the command as well as control centre for compliance monitoring of all existing legislation relating to environmental control, surveillance for oil spill detection as well as monitoring and co-ordinating responses as required in plan activations.⁶⁹ The established agency, NOSDRA enjoys the provision of the Public Officers Protection Act, Cap. P41, Laws of the Federation of Nigeria in relation to all suit instituted against its employees or officers is protected against endless suit.⁷⁰ A suit instituted against a member of the Governing Board or the Director-General, or any of the other officers or employees of the NOSDRA or the NCRC must be commenced within three months next after the act complained of, neglect or default complained of; or within six months next after the ceasing thereof in the case of a continuation of damage or injury.⁷¹

African Charter on Human and Peoples' Rights (Enforcement and Ratification) Act, Cap A9 Laws of the Federation of Nigeria 2004: The African Charter on Human and Peoples' Rights (ACHPR) was adopted by Member States of the Organisation of African Unity (now African Union) in 1981. One of the reasons for the adoption of this human rights instrument for the determination of the Union to provide for establishment of bodies that will be responsible for the promotion and protection of human and peoples' rights in the African region as contained in paragraph 2 of its preamble. The ACHPR was domesticated in Nigeria in 1983 so as to meet the requirement of the CFRN.⁷² Hence, this human rights instrument is now known and called *African Charter on Human and Peoples' Rights (Enforcement and Ratification) Act, Cap A9 Laws of the Federation of Nigeria 2004*.

With the adoption and domestication of the ACHPR by virtue of the ACHPRERA into Nigeria's legal framework, the country has made the ACHPR provisions part of its laws and have thereby given it effect locally.⁷³ The ACHPRERA provides thus: 'All peoples shall have the right to a general satisfactory

⁶¹ (n 57), s 15.

⁶² *Ibid*, s 2.

⁶³ *Ibid*, s 7.

⁶⁴ NOSDRA Act 2006, preamble.

⁶⁵ *Ibid*, s 1(1).

⁶⁶ *Ibid*, s 5.

⁶⁷ *Ibid*, s 18(1)(a).

⁶⁸ *Ibid*, s 18(1)(b).

⁶⁹ *Ibid*, s 18(1)(c).

⁷⁰ *Ibid*, s 20(1).

⁷¹ *Ibid*, s 20(2).

⁷² (n 26), s 12.

⁷³ R T Ako, *Environmental Justice in Developing Countries: Perspectives from Africa and Asia-Pacific* (Oxford: Routledge 2013) 24.

environment favorable to their development.⁷⁴ In essence, the rights of the people of Africa to a healthy environment as recognised in article 24 of the *ACHPRERA* and by domestication, Nigeria has imbibed the rights which are as well enforceable in the country.⁷⁵ Hence, this is a comprehensive human treaty domesticated in Nigeria.⁷⁶

Nigeria had been identified as the first African country to incorporate the ACHPR into its national/domestic laws.⁷⁷ Nigeria operates a dualist system where treaties are not applied domestically unless same incorporated through domestic legislation.⁷⁸ Yet, there are other approaches for the domestication of treaties in the country.⁷⁹ One of such approaches relates to treaties entered into by the British colonial administration and extended to Nigeria by virtue of the colonial authority.⁸⁰ An example of this is the Warsaw Convention made applicable to Nigeria by virtue of the Carriage by Air (Colonies, Protectorates and Trust Territories) Order 1953.⁸¹ One more approach for domesticating treaties into Nigeria is when provisions of treaties are used as templates for Nigerian statutes without the necessity of making obvious reference to the treaties.⁸² Examples of this instance include the Carriage of Goods by Sea Act⁸³ and the Rights of the Child Act⁸⁴ enacted by some states in Nigeria. Yet, another approach for domesticating international conventions into Nigerian law is through the use of subsidiary legislation. For example, the recent Environmental Regulations fashioned by the Minister of Environment by virtue of section 34(3) of the NESREA Act 2007 is based on the various international environmental conventions which Nigeria is party to.⁸⁵

The domestic authority of the African Charter in Nigeria can be gleaned from the long title of the *ACHPRERA* of 1983. Its long title goes thus ‘An Act to enable effect to be given in the Federal Republic of Nigeria to the African Charter on Human and People’s Rights made in Banjul on the 19th day of January, 1981 and for the purposes connected forthwith’.⁸⁶ Article 1 of the *ACHPRERA* corroborates the long title by stating thus;

⁷⁴*ACHPRERA* 2004, art 24.

⁷⁵ Ako (n 73) 25; R T Ako, ‘The Judicial Recognition and Enforcement of the Right to Environment: Differing Perspectives from Nigeria and India’ [2010] (3) *National University of Juridical Sciences Law Review*;423.

⁷⁶ C Odinkalum, ‘The Impact of Economic and Social Rights in Nigeria: An Assessment of the Legal Framework for Implementing Education and Health as Human Rights’ in V Gauri and D M Brinks (eds), *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in Developing World* (Cambridge University Press 2008) 101.

⁷⁷ M Mutua, ‘The Banjul Charter and the African Cultural Fingerprint: An Assessment of the Language of Duties’ [1995] (35) *Virginia Journal of International Law*;339; F Viljeon, *International Human Rights in Africa* (2nd edn, Oxford University Press 2012) 100.

⁷⁸ A Enabulele, ‘Implementation of Treaties in Nigeria and the Status Question: Whither Nigerian Courts’ [2009] (17) (2) *African Journal of International and Comparative Law*;326; E Egede, ‘Bringing Human Rights Homes: An Examination of the Domestication of Human Rights Treaties in Nigeria’ [2007] (51) (2) *Journal of African Law*;249.

⁷⁹ E Ekhaton, ‘Improving Access to Environmental Justice under the African Charter: The Roles of NGOs in Nigeria’ [2014] (22) (1) *African Journal of International and Comparative Law*;63; A Enabulele, ‘Implementation of Treaties in Nigeria and the Status Question: Whither Nigerian Courts’ [2009] (17) (2) *African Journal of International and Comparative Law*;326.

⁸⁰ A Enabulele, ‘Implementation of Treaties in Nigeria and the Status Question: Whither Nigerian Courts’ [2009] (17) (2) *African Journal of International and Comparative Law*;326.

⁸¹ E O Ekhaton, ‘The Impact of the African Charter on Human and Peoples’ Rights on Domestic Law: A Case study of Nigeria’ [2015] 41 (2) *Common Wealth Law Bulletin*;5 <<https://core.ac.uk/download/pdf/158350272.pdf>> accessed 8 December 2025.

⁸² Enabulele (n 80).

⁸³ Cap.C2 LFN 2004.

⁸⁴ E Egede, ‘Bringing Human Rights Homes: An Examination of the Domestication of Human Rights Treaties in Nigeria’ [2007] (51) (2) *Journal of African Law*;268.

⁸⁵ O Oluduro, *Oil Exploitation and Human Rights Violations in Nigeria’s Oil Producing Communities* (Intersentia Publishing 2014) 408; M Okorodudu-Fubara, ‘Country Report: Nigeria, Legal Developments, 2009-2011’ [2012] (1) *IUCN Academy of Environmental Law e-Journal Issue*;170.

⁸⁶ (n 74), long title.

As from the commencement of this Act, the provisions of the African Charter on Human and Peoples' Rights which are set out in the Schedule to this Act shall, subject as thereunder provided, have force of law in Nigeria and shall be given full recognition and effect and be applied by all authorities and persons exercising legislative, executive or judicial powers in Nigeria.⁸⁷

The Supreme Court (SC) of Nigeria confirmed in the case of *Abacha v Fawehinmi*,⁸⁸ that the ACHPR is part of Nigerian law and that courts must enforce it. The SC went further to hold *inter alia* that where a treaty is enacted into law by the National Assembly of Nigeria, it becomes binding and that the courts must give it effect like all other laws falling within the judicial powers of the state.⁸⁹

In *Social and Economic Rights Action Centre and the Centre for Economic and Social Rights (SERAC) v Nigeria*,⁹⁰ the Non-governmental Organisation (NGO) representing the Ogoni people alleged that the peoples' right to enjoy a healthy environment as recognised and guaranteed by the provisions of the ACHPR had been infringed upon by the federal government of Nigeria and all the oil multinationals carrying out exploration as well as production activities in the area. The NGOs further contended that the Ogoni people had suffered degrees of human rights abuses as well as substantial degradation of the environment. The NGO relied specially on articles 16 and 24 of the ACHPR which guarantees the right to a healthy environment. The African commission noted that it is the obligation of the State to protect the holders of environmental rights against subjects by way of making legislation as well as effective remedies which will facilitate an effective interplay of laws as well as regulations that will enable individuals realise their freedoms and rights.⁹¹

Petroleum Act 1969: This instrument is the primary legislation on oil and gas activities in Nigeria.⁹² It ensures public safety and environmental protection. There are basically three regulations under the Petroleum Act.⁹³

Petroleum Drilling and Production Regulations: This instrument places restrictions on licensees from operating within fifty yards of any building, prohibits the cutting down of trees in forest reserves and establishes that reasonable measures be taken to prevent water pollution, and to it, if it occurs.

Petroleum Refining Regulation: This requires the manager of a refinery to take measures to prevent and control pollution of the environment.

Mineral Oil Safety Regulations and Crude Oil Transportation and Shipment Regulations: This instrument provides that precautions should be taken in the production, loading, transfer and storage of petroleum products to prevent environmental pollution.

Niger-Delta Development Commission (Establishment Etc) Act 2000: The Niger-Delta Development Commission (NDDC) Act established the s Niger-Delta Development Commission.⁹⁴ The Commission is responsible for formulation of policies and guidelines for the development of the Niger-Delta region⁹⁵, it considers, plans and implements, programmes and projects for the sustainable development of the Niger-Delta region in the field of transportation including jetties, roads, as well as waterways, education, health, employment, agriculture, fisheries and industrialisation, urban development and housing, electricity, telecommunications and water supply.⁹⁶ Some other functions of the Commission include; tackling of environmental and ecological

⁸⁷*Ibid*, s 1.

⁸⁸ (2006) 6 NWLR (pt 660) 228.

⁸⁹*Ibid*.

⁹⁰Communication No. 155/96, Case No. ACHPR/COMM/A044/1.

⁹¹*Ibid*, 46.

⁹² Petroleum Act, Cap P10, Laws of the Federation of Nigeria 2004.

⁹³ *Ibid*, s 9.

⁹⁴ Niger-Delta Development Commission (Establishment Etc) Act 2000, s 1.

⁹⁵ *Ibid*, s 7(1)(a).

⁹⁶ *Ibid*, s 7(1)(b).

problems that arise from the exploration of oil mineral in the region as well as advising the Federal Government of Nigeria and the member States on the need for prevention and control of environmental pollution, oil spillages and gas flaring⁹⁷, liaise with the different oil mineral and gas prospecting and producing companies operating in the area on all matters of pollution control and prevention.⁹⁸

Nigerian Minerals and Mining Act 2007: This Act vests control of all properties and minerals in the Nigerian State and prohibits unauthorised exploration or exploitation of minerals.⁹⁹ All lands in which minerals have been found in commercial quantities shall from the commencement of the act be acquired by the Federal Government in accordance with the Land Use Act. Property in mineral resources shall pass from the Government to the person by whom the mineral resources are lawfully won, upon their recovery in accordance with the provisions of the Act.¹⁰⁰ The Act further provides that the use of land for mining operations shall have a priority over other uses of land and be considered (for the purposes of access, use and occupation of land for mining operations) as constituting an overriding public interest within the meaning of the Land Use Act. In the event that a mining lease, a small scale mining lease or a quarry lease is granted over land subject to an existing and valid statutory or customary right of occupancy, the Governor of the State within which such rights are granted shall within sixty days of such grant or declaration, revoke such right of occupancy in accordance with the provisions of section 28 of the Land Use Act.¹⁰¹

4. Conclusion and Recommendations

Non-human based arguments for environmental protection suffer from having little percussive power in human centred political and legal discourses. Environmental human rights in the context of intergenerational justice may be said to denote that environmental citizens look after the environment, rather than future people having ‘rights’ *per se*. Human rights are universal, and this raises concerns of those who yearn that human rights proponents are opposed to cultural difference and particularity. Environmental issues directly impact on the human rights of the citizens who become refugees because of environmental problems, such as those displaced from their lands by threat of climate change and also by development project that are not sensitive to the needs of the people. The plight of environmental refugees illustrates the complex interlinking of environmental issues with issues of human rights, justice, development and democracy in contemporary global politics.

The following recommendations have been made in view of the issues discussed above: Environmental right should be recognised as a justiciable human right in Nigeria. Human rights do not in themselves represent a solution to environmental problems in the Niger Delta region of Nigeria, but rather they ought to be perceived as a necessary part of the solution by way of recognition of the right to the environment. There should be a value change in development agendas in the Niger-Delta; the value change must integrate the human rights needs of local communities who have been systematically denied and ignored and respect for the environment. Every policy programme and activity in the Niger Delta region must acknowledge the reality that the basis of the relationship between the environment and human rights is the inescapable fact that humans are ecologically embedded beings. Oil multinational corporations in Nigeria (MNCs) have evidently exploited setback in perpetuating serious damages on the Niger Delta environment in the pursuit of profits. Therefore, the need for the government to initiate a policy aimed at diversifying the economy is pertinent. This is because the diversification of the economy will broaden the economic base of the state and effectively reduce reliance on the oil sector. More importantly, it will further enhance the enforcement capacity of the government towards these oil gains.

⁹⁷ *Ibid*, s 7(1)(h).

⁹⁸ *Ibid*, s 7(1)(i).

⁹⁹ The Nigerian Minerals and Mining Act 2007, s 2.

¹⁰⁰ *Ibid*, s 1.

¹⁰¹ *Ibid*, s 22.