An Appraisal of the Legal Framework for Control of Atmospheric Pollution in Nigeria

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Abstract

Air pollution is one of the environmental problems facing Nigeria today and its impacts on the environment cannot be over-emphasised. Studies have documented the health risks air pollution poses on the people. Pollution of the atmosphere in Nigeria assumes various forms, ranging from gas flaring, burning of fossil fuel, destruction of illegally refined products by the security agencies, bush burning, use of fire woods as source of energy, poor waste management practices, and to unwholesome preparation of food, such as the preparation of animals in the abattoir. Nigeria is among the highest gas flaring countries in the world. Anchored on the foregoing premise, the paper undertook a critical appraisal of the legal framework for control of atmospheric pollution in Nigeria. It adopted the doctrinal methodology of research and gathered materials for analysis from both primary and secondary sources. The major finding of the paper was that the present legal framework is inadequate for combatting air pollution in Nigeria as the failure to recognise the right of Nigerians to a healthy and satisfactory environment in the Constitution of the Federal Republic of Nigeria 1999 (as Amended) and other environmental protection legislation is at the root of the failure to effectively arrest the pollution of the atmosphere in Nigeria. The paper recommended an urgent amendment of relevant provisions of the CFRN 1999 and other environmental protection laws in order to remove the impediments to effective implementation of the right to a clean environment and holding polluters of the atmosphere to account.

Keywords: Appraisal, Legal Regime, Atmospheric Protection, Nigeria

1. Introduction

Air pollution is one of the environmental problems facing Nigeria today.[1] Its impacts on the environment cannot be over-

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emphasised. Studies have documented the health risk air pollution poses on the people. Air pollution has been established in medical circle as the cause of conditions such as lung cancer, respiratory infections and heart diseases.[2] Pollution of the atmosphere in Nigeria assumes various forms, ranging from gas flaring, burning of fossil fuel, destruction of illegally refined products by the security agencies, bush burning, use of fire woods, waste disposal, and to unwholesome preparation of food, such as the preparation of animals in the abattoir.

The Nigerian oil and gas industry, is perhaps, the highest contributor to atmospheric pollution in the country. Nigeria's oil production thrives on flaring associated gas. Nigeria is among the highest gas flaring countries in the world. In 2018 alone, it was reported by the Nigerian National Petroleum Corporation (NNPC) that a total of 282.08 billion Standard Cubit Feet (scf) of natural gas was flared by the oil and gas companies operating in Nigeria's petroleum industry. This amount of gas flared translated to the loss of ₦234 billion in revenue, given the price of natural gas in the global market at US$2.70 per 1,000 scf at the time of the report.[3] A significant amount of the total gas produced in Nigeria are flared and burned off.

The World Health Organization report indicates that air pollution is the cause of coughing, cardiac arrests, difficulty in breathing, asthma, wheezing, and aggravation of respiratory and cardiac conditions. It has been estimated by the WHO that 2.4 million people die annually from causes directly linked to air pollution. Of this figure, indoor air pollution contributes 1.5 million deaths annually.[4] Apart from its effect on human health, air pollution also causes harm to the environment. For instance, air pollutants released into the atmosphere can form acid rain when exposed to rain. It can also result in depletion of the ozone layer which in turn is

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1 A E Ite and U J Ibok, 'Gas Flaring and Venting Associated with Petroleum and Production in the Nigerian Niger Delta' (2012) (1) (4) *American Journal of Environmental Protection*; 70-77.

2 L Badru, 'Climate Change in Nigeria: Causes, Effects and Legal Framework' (2020) (4) (1) *UNILAG Law Review*, 186-203, 194

3 Guardian Nigeria, 'Gas Flaring: Crafty Operators, Tax Evasion Endanger Children, Unborn Babies', *The Guardian* (Abuja, 5 March 2023) <https://guardian.ng/features/focus/gas-flaring-crafty-operators-tax-evasion-endanger-children-unborn-babies/> accessed 28 August 2023.

4 WHO, 'Air Quality and Health'<https://www.who.int/teams/environment-climate-change-and-health/air-quality-and-health/health-impacts/exposure-air-pollution> accessed 30 August 2023

the major cause of global warming.[5] Air pollution has been known to have deleterious effect on vegetation. It destroys crops, trees, animals and renders water bodies harmful for both domestic and industrial application. It destroys vast swaths of swamps and mangrove forests which is the natural habitat for fishes and other aquatic lives.

Persistent gas flares ensure that the air the people breathe reeks of oil, gas and other pollutants, resulting in breathing problems, skin lesions and other health problems such as asthma, lung disease, heart attack, miscarriage and skin disease.[6] Flaring of gas in the Niger Delta has been a normal occurrence since oil production began in the region.[7] A study has shown that more gas is flared in the Niger Delta than anywhere else in the world.[8] In fact, data from two flow stations – Kolo Creek and Obanna, show that on the average, approximately 800,000m^3/day of gas is flared.[9] Emissions from combustion of associated gas have been held to contain toxins such as benzene, nitrogen oxide, dioxins, hydrogen sulphide, xylene and toluene.[10] In an environmental assessment carried out in Ogoniland, the United Nations Environment Programme (UNEP)[11] showed extensive pollution from petroleum hydrocarbons in Ogoniland in many land areas, sediments, and swamps – translating to the reality that both surface and groundwater had been severely contaminated. As regard the air samples analysed, UNEP study team found benzene in concentrations 900 times higher than recommended levels.[12] The Report concluded that in view of the over 50 years of unabated gas flaring and pollution to which the people of Ogoni have been exposed and Nigeria's average life expectancy, "it is a fair

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5 A O Kehinde, 'The Effect of Global Warming in Nigeria: Flood in Perspective' (2022) (74) *Studia Prawno-Ekon Omiczne*, 39-58, 40; A O Kehinde and O Abifarin, 'Legal Framework for Combating Climate Change in Nigeria' (2022) (9) (3) *Kutafin Law Review*, 395-414, 397.

6 J Adekola and others, 'Health Risks from Environmental Degradation in the Niger Delta, Nigeria' (2017) (35) (2) *Environment and Planning C: Politics and Space* 334, 340.

7 *Ibid*, 339.

8 Friends of the Earth International, Clashes with Corporate Giants: 22 Campaigns for Biodiversity and Community (Friends of the Earth International, Amsterdam 2004) 2.

9 M Ishisone, 'Gas Flaring in the Niger Delta: The Potential Benefits of its Reduction on the Local Economy and Environment' <https://www.nature.berkeley.edu/classes/esM6/projects/2004final/Ishisone.pdf> accessed 29 August 2023.

10 A K Edafienene, 'Media Exposure, Policy Agenda Setting and Risk Communication in Sub-saharan Africa: A Case Study of Nigeria's Niger Delta Region' (Ph.D Thesis, University of Glamorgan 2012) 22.

11 UNEP, *Environmental Assessment of Ogoniland* <https://www.postconflict.unep.ch/publications/OEA/UNEP_CEApdf> accessed 30 August 2023.

12 *Ibid*, 13.

assumption that most members of the current Ogoni community have lived with chronic oil pollution throughout their lives.[13]

International law recognises the right of every person to a generally satisfactory environment favourable to his/her development, and this includes indigenous peoples, particularly those who are hosts to MNOCs – whose operations constitute the mainstay of the country's economy.[14] Consistent with international standards and environmental regulations, most countries have recognised the right of their nationals to a clean, safe and healthy environment satisfactory and favourable to their development through direct constitutional provision,[15] although there are variations among practitioners as to the relative weights attached to the right.[16]

Despite the deleterious impacts of gas flaring on both atmospheric and human health, governments at all levels in Nigeria do not appear to have accorded the protection of the air component of the environment the urgency it deserves. Consequently, it seems the scope of protection of the atmosphere since the enactment of the Climate Change Act has not been sufficiently interrogated. The purpose of this paper is to undertake an appraisal of the legal regime for protection of the atmospheric component of the Nigerian environment. To this end, the paper is divided into five parts with the introduction serving as Part I. Part II clarifies concepts relevant to the paper while Part III examines the laws put in place to checkmate and address the protection of the air component of the Nigerian environment. Part IV carries out an appraisal of the laws in terms of assessing their strengths and weaknesses and makes conclusions on whether the law as it is possesses the capacity to adequately redress the fast-disappearing air quality. Part V draws conclusion and makes appropriate recommendations.

2. Conceptual Framework

Atmospheric protection could be defined as the protection of the atmosphere from substances that pollute it and deplete the ozone

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13 *Ibid*, 10.

14 United States Energy Information Administration; 'Country Analysis Brief; Nigeria' 2 <https://www.eia.gov/beta/internatonal/analysis_includes/ countries_long/Nigeria/nigeria<pdf> accessed 30 August 2023.

15 For example, Canada, South Africa, India.

16 B A Oloworaran, 'The Right to a Clean and Healthy Environment, and the Fundamental Human Rights Provisions of the Constitution of the Federal Republic of Nigeria,1999' (2009) (1) (2) *Petroleum, Natural Resources and Environment Law Journal*; 48, 62-63.

layer. The need for atmospheric pollution stems from the pollution of the air quality in the environment. Air pollution is pollution which occurs in the atmosphere. It is the contamination of the atmospheric space brought about by the introduction of undesirable materials or substances into the atmosphere.[17] Pollution of the atmosphere occurs when noxious substances are introduced or released into the atmosphere in such proportion as to render the atmosphere un-conducive for human habitation and the environment. Activities such as gas flaring, bush burning, deforestation, burning of coal and the use of firewood.

3. Legal Framework for Atmospheric Protection in Nigeria

Air pollution has been acknowledged as a serious environmental concern to mankind both at the national and international levels. The present section seeks to examine some of the national and international legal frameworks for the protection of the air component of the environment and which are applicable to Nigeria.

3.1 National Laws

The reality of air pollution and its deleterious impacts on the Nigerian environment has attracted the attention of successive governments which have rolled out legislative and policy measures aimed at combating atmospheric pollution.[18] The legislative interventions that are relevant to the present paper are discussed below.

3.1.1 Constitution of the Federal Republic of Nigeria 1999 (as Amended)

Environmental protection is not expressed as an absolute responsibility of the government in the Constitution of the Federal

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[17] V I Fagorite and others, 'Air Pollution: Causes, Effects and Remediation in Nigeria' (2021) (7) (1) *International Journal of Advanced Academic Research (Sciences, Technology and Engineering)*, 13-30, 14.

[18] O J Olujobi and others, 'The Legal Framework for Combating Gas Flaring in Nigeria's Oil and Gas Industry: Can It Promote Sustainable Energy Security?' (2022) (14) *Sustainability*, 1-20; O F Oluduro, 'Combating Climate Change in Nigeria: An Appraisal of Legal and Constitutional Frameworks' (38) (2) *Wisconsin International Law Journal*, 269-300.

Republic of Nigeria 1999.[19] Nor is the right to a clean, safe and healthy environment recognized under the CFRN 1999. The closest reference to the word 'environment' in the Constitution is in chapter two which is christened "Fundamental Objectives and Directive Principles of State Policy'. Section 20 declares the environmental objectives of the Nigerian State as "the protection and improvement of the environment as well as safeguarding the water, air, land, forest and wildlife of Nigeria". The provision did not confer any right on any person as far as the protection of the environment and conservation of the natural resources of the country is concerned. Section 20 of the CFRN 1999 is contained in chapter two of the same Constitution. Section 6(6)(c) of the Constitution provides to the effect that the judicial powers vested in accordance with the provisions of the CFRN 1999 shall not except as otherwise provided by the Constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in chapter II of the Constitution.

The import of Section 6(6)(c) is that environmental objectives and indeed all other objectives and directive principles of State policy enumerated in Chapter II are not enforceable at law in Nigeria.[20] At best, they remain as mere aspirations which government should endeavour to attain. Courts in Nigeria have had cause to pronounce on the status of Chapter II provisions of the 1999 Constitution, including its predecessor in a plethora of cases. In *Okogie* v *Attorney-General of Lagos State,*[21] It was held that the Directive Principles was not ordinarily justiciable. This position was also reiterated in *Jakande* v *Governor of Lagos State*[22] *and* in *Uzokwu* v *Ezeonu II,*[23]where the court stated that fundamental objectives and directive principles of State policy are not justiciable except as otherwise provided by the Constitution. Similarly, the

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19 (As Amended) (CFRN 1999)

20 O V C Ikpeze, 'Non-Justiciability of Chapter II of the Nigerian Constitution as an Impediment to Economic Rights and Development' (2015) (5) (18) *Developing Country Studies* 48.

21 (1981) 1 NCLR 218.

22 (1981) 1 NCLR 152; *Attorney General of Ondo State* v *Attorney General of the Federation* (2002) 9 NWLR (Pt 772).

23 (1991) 6 NWLR (pt 200) 781.

Supreme Court made a very useful statement of the law when it observed. Thus, the provisions of Chapter II can be made justiciable where appropriate laws are made to give life to it. In this connection, the CFRN 1999 vests upon the National Assembly the exclusive legislative power to make laws for the establishment and regulation of authorities for the Federation or any part thereof "to promote and enforce the observance of the Fundamental Objectives and Directive Principles contained in the Constitution."[24]

3.1.2 Climate Change Act, 2021

The Climate Change Act[25] is the principal legislation in so far as the control of air pollution through the implementation of climate change resilient and adaptation measures in Nigeria are concerned. It was signed into law by the President Muhammad Buhari on the 18th day of November 2021. It has been contended that the CCA was enacted for the purpose of actualising Nigeria's commitment to the Paris Climate Agreement of 2015, the Kyoto Protocol to the United Nations Framework Convention on Climate Change 1997,[26] the United Nations Framework Convention on Climate Change[27] and a host of others instruments that are geared towards lowering global greenhouse gases (GHG) emissions.

The CCA provides for an all-inclusive and comprehensive regulatory and legal framework for achieving the long-term climate change goals in Nigeria, which encompasses a net-zero carbon emission target, adequate climate financing, environmental and economic sustainability and other actions into the national development plans of Nigeria. It applies to institutions and agencies of government as well as private and public entities[28] and compulsorily mandates them to adhere to all governmental regulations on climate change[29]. The CCA sets the years 2050-2070 as the target period to achieve net zero carbon emissions in Nigeria. To achieve this aim, the CCA prioritises climate change adaptation,

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[24] 1999 Constitution, item 60, Part 1 of the Second Schedule to the Constitution.
[25] CCA 2021
[26] (Kyoto Protocol) 1997. It was adopted in Kyoto, Japan on 11 December 1997 and entered into force on 16 February 2005.
[27] UNFCCC 1992. The UNFCCC was adopted in New York, United States of America [USA] on 9 May 1992 and entered into force on 21 March 1994.
[28] CCA 2021, s 1(1)
[29] *Ibid* s. 2

finance, national climate resilience and focuses on other climate change combating policies[30]

The CCA also establishes the National Climate Change Council (NCCC) as a body corporate saddled with the responsibility of implementing Nigeria's climate change action plan[31]. According to the Act, the NCCC is to pursue certain objectives, which amongst others, include the mobilisation of finance for climate change adaptation, overseeing the country's carbon tax regime,[32] implementation of the country's climate change plan. In furtherance of the objectives of the NCCC, the CCA also establishes a Secretariat domiciled in the Federal Ministry of Environment to be headed by a Director-General, which shall aid the NCCC in the performance of its duties.[33]

The CCA saddles the Federal Ministry of Environment with the responsibility of setting up the country's carbon budget and budgetary period[34] to keep average increase in global temperature within 2 degree celsius and pursue efforts to limit the temperature increase to 1.5 degree celsius above the pre-industrial levels.[35] The budget which is usually have a five-year circle is to be put in place with the overall aim of ensuring that Nigeria achieves its net-zero carbon emission target between 2050-2070. Each budget circle is to be submitted to the Federal Executive Council for approval before implementation[36].

The CCA also aims at the mobilisation of finance, and other resources necessary to ensure that climate change policy and actions are integrated with other related policies and set a target for the year 2050-2070 for the attainment of net zero emission. The CCA also focuses on identifying risks and vulnerabilities and ensures that private and public entities abide by climate change strategies, targets, and the National Action Plan. The CCA is applicable to both private and public entities and cover every sector, regardless of the type of business. This implies that both mankind and businesses are affected

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30 *Ibid* s.1 (a-i)
31 *Ibid,* s. 3(1)
32 *Ibid,* s.4 (b)
33 *Ibid,* s. 7(1)
34 *Ibid,* s. 19(1), (b)(i)
35 *ibid,* s. 19(1)(a)
36 *Ibid,* s. 19(2)

by the impact of climate change and that it is the responsibility of everyone to preserve nature and the ecosystem. While the CCA encourages every organisation to implement climate change action, the enforcement of implementation will be focused more on private entities.[37]

The NCCC is given broad functions and powers which include to coordinate the implementation of sectoral targets and guidelines for the regulation of GHG emissions and other anthropogenic causes of climate change;[38] to approve and oversee the implementation of the Action Plan;[39] to administer the Climate Change Fund established under the CCA;[40] to ensure the mainstreaming of climate change into the national development plans and programmes;[41] to formulate policies and programmes on climate change to serve as the basis for climate change planning, research, monitoring, and development;[42] to formulate guidelines for determining vulnerability to climate change impact and adaptation assessment, and facilitate the provision of technical assistance for their implementation and monitoring.[43]

In addition, it is also part of the NCCC's functions and powers to recommend legislative, policy, appropriation, and other measures for climate change adaptation, mitigation, and other related activities;[44] to mobilise financial resources to support climate change actions;[45] to collaborate with the Federal Inland Revenue Service to develop a mechanism for carbon tax in Nigeria;[46] to collaborate with the Federal Ministry responsible for environment and the Federal Ministry responsible for trade to develop and implement a mechanism for carbon emission trading;[47] to review international agreements related to climate change and make the necessary recommendation for ratification and compliance by the government on matters pertaining thereto;[48] to disseminate information on climate change, local vulnerabilities and risk, relevant laws and

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37 CCA 2021, s 19(2)
38 *Ibid,* s 4(a)
39 *Ibid,* s 4(b)
40 *Ibid,* s 4(c)
41 *Ibid,* s 4(d)
42 *Ibid,* s 4(e)
43 *Ibid,* s 4(f)
44 *Ibid,* s 4(g)
45 *Ibid,* s 4(h)
46 *Ibid,* s 4(i)
47 *Ibid,* s 4(j)
48 CCA 2021, s 4(k)

protocols, and adaptation and mitigation measures;[49] to advice and recommend on technical, scientific, and legal matters relating to climate change, in accordance with the provisions of this Act;[50] to acquire, hold, or dispose of any property, whether movable or immovable, for the purposes of performing its functions;[51] to supervise the activities of and recommendations by the Secretariat of the NCCC with the aim of attaining the objectives of the CCA;[52] to collaborate with the Nigeria Sovereign Green Bond in meeting Nigeria's Nationally Determined Contributions (NDCs);[53] and to perform such other functions necessary for the fulfilment of the objectives of the CCA.[54]

The NCCC has a Secretariat, which serves as its administrative (including secretarial and clerical), scientific and technical arm in the performance of its functions under the CCA.[55] The NCCC also has powers to establish for the Secretariat, offices including zonal and State offices, committees, and such other administrative apparatus, as it may deem necessary to facilitate the proper implementation· of the CCA.[56] The functions of the Secretariat are: to advise and assist the NCCC in the performance of its functions in accordance with the objectives under the CCA;[57] to carry out monitoring, verification and reporting on the extent to which the national emission profile is consistent with the carbon budget;[58] to undertake monitoring, verification and reporting on the progress of the implementation of the Action Plan;[59] to periodically review the Action Plan;[60] and to provide analytical and technical support for the drafting of climate change policies and action plans, and monitoring their implementation.[61]

Other functions of the Secretariat include to collect data and projections, and disseminate information on climate risks, climate

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49 *Ibid,* s 4(l)
50 *Ibid,* s 4(m)
51 *Ibid,* s 4(n)
52 *Ibid,* s 4(o)
53 *Ibid,* s 4(p)
54 *Ibid,* s 4(q)
55 *Ibid,* s 7(1)
56 *Ibid,* s 7(2)
57 *Ibid,* s 8(a)
58 *Ibid,* s 8(b)
59 *Ibid,* s 8(c)
60 *Ibid,* s 8(d)
61 *Ibid,* s 8(e)

impact, and carbon budget;[62] to prepare and serve on Ministries, Departments and Agencies (MDAs), and private and public entities, guidelines necessary for the actualisation of climate change targets, set out in the Action Plan;[63] to provide copies of all climate change reports and related documents to enable a transparent assessment of the extent to which MDAs, and private and public entities operating within the territory of Nigeria are in compliance with the CCA, and such other subsidiary legislation and guidelines made under the CCA;[64] to collaborate with the Federal Ministry responsible for environment to provide copies of all climate change reports and related documents to meet the nation's international climate obligations on climate change;[65] to provide analytical, scientific and technical advice to the NCCC on climate science, including sources of emissions, climate risks and options for mitigation and adaptation;[66] and to perform such other functions, as may be assigned to it by the NCCC.[67]

3.1.3 Petroleum Industry Act, 2021

The principal statute regulating oil and gas production in Nigeria is the Petroleum Industry Act[68] which was enacted and signed into law in 2021. Although the PIA is revolutionary and repeals some of the previous laws regulating the oil and gas industry, it nevertheless preserves the Petroleum Act[69] which was enacted as far back as 1969.[70] Apart from the provisions of the PIA which impose on the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) the obligation to "promote healthy, safe, efficient and effective conduct of upstream petroleum operations in an environmentally acceptable and sustainable manner"[71]and the Nigerian Midstream and Downstream Petroleum Regulatory

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62 CCA 2021, s 8(f)
63 *Ibid*, s 8(g)
64 *Ibid*, s 8(h)
65 *Ibid*, s 8(i)
66 *Ibid*, s 8(j)
67 *Ibid*, s 8(k)
68 No. of 2021 (PIA 2021).
69 Cap P10, LFN 2004 (PA 2004)
70 PIA 2021, s 311(9)(a)
71 *Ibid*, s 6(d)

Authority (NMDPRA) to "promote healthy, safe, efficient and effective conduct of midstream and downstream petroleum operations in an environmentally acceptable and sustainable manner,"[72] the Act did not appear to prohibit or specify the bar for gas flares or oil spillages. Although the Associated Gas Re-injection Act[73] which permits oil and gas companies to flare gases directly into the environment if written permission to flare same is obtained from the Minister of Petroleum Resources has been repealed pursuant to Section 310(1)(a) of the PIA, the Associated Gas Re-injection (Continued Flaring of Gas) Regulations[74] made pursuant to the AGRA continues to be preserved by the PIA.[75] All the Minister of Petroleum Resources was required to do under the AGRA was to issue a certificate of permission to an oil and gas company permitting it to flare gases into the environment. Such certificate of permission was required to state the amount the polluter will pay for every 28.317 standard cubic metres of gas flared.[76]

The AGRA Regulations stipulate factors that are to guide the Minister in his decision whether to grant the exemption certificate to flare associated gas. In view of the continued retention of the AGRA Regulations in the PIA, it is difficult to assume that the era of open authorisation of gas flaring in Nigeria is gone. This is despite the fact that the retention of the AGRA Regulations, like other existing regulations, is subject to its not being inconsistent with the PIA. But since the PIA did not expressly prohibit gas flaring, the argument that Nigeria's petroleum legal framework still endorses direct flaring of gases into the environment appears to have a firm foundation in the PIA.

From the foregoing, it is clear that the regulatory regime in Nigeria's oil and gas industry is too lax and probably made so with the hope of attracting more foreign direct investments into the country without regard for the health and environment of the indigenous communities on whose lands the oil and gas companies operate.

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72 *Ibid*, s 31(c)
73 Cap. A19 LFN 2004.
74 Regulation No. 43 of 1984 (AGRA Regulations)
75 PIA 2021, s 311(1)
76 *Ibid*.

3.1.4 National Environmental Standards and Regulations Enforcement Agency Act, 2007

Environmental objective is one of the fundamental objectives and direct principles of State policy and by virtue of Part 1 of the Second Schedule to the 1999 Constitution, the legislative competence to enact laws for the establishment and regulation of authorities whether for the Federation of Nigeria or any part of it, for the purpose of promoting and enforcing the observance of environmental protection resides exclusively with the National Assembly.[77] Pursuant to this mandate, the National Assembly enacted the National Environmental Standards and Regulations Enforcement Agency Act.[78] Thus, the NESREA Act is the principal statute on environmental protection in Nigeria. The Act establishes the National Environmental Standards Regulations Enforcement Agency (NESREA) as the co-ordinating federal agency and charged it with the responsibility of protection and development of the environment; biodiversity conservation, as well as the sustainable development of Nigeria's natural resources, in general, and environmental technology, in particular. NESREA is also empowered to co-ordinate and liaise with relevant stakeholders within and outside Nigeria in relation to matters of environmental standards, regulations, rules, laws, policies and guidelines.[79]

Section 34 of the NESREA Act empowers the Minister of Environment to make regulations for the effective enforcement of environmental standards, regulations, rules, laws, policies and guidelines for the protection of the environment and the conservation of the natural resources of the country. Acting pursuant to that mandate, the Minister has made a total of 24 Regulations. The only regulation relevant to the present paper is the National Environmental (Ozone Layer Protection) Regulations 2009.

The Regulation aims to prohibit the manufacture, consumption or use of ozone depleting substances. The Regulation was made to halt and protect the ozone layer from being depleted. The Regulation

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77 Item 60, Part 1 of Second Schedule to the 1999 Constitution.
78 No.25 of 2007 (NESREA Act 2007).
79 NESREA Act 2007, ss 1(1) and 2.

prohibits certain acts with reference to ozone depleting substances (ODS). It prohibits the importation, manufacture whether in part or in whole and installation of an ozone depleting substance in Nigeria. Similarly, offering for sale, sale or purchase of new or refurbished facilities intended to be used in the production of any ODS are prohibited. Recovery and recycling of ODS already in use is exempted.

The Regulations provide for a phase-out date for different categories of ODS. From the phase-out dates, no person has the right to service, install or dismantle any equipment which is in contact with or contains ODS or to carry out any act with respect to any equipment, product or facility containing ODS. The Regulations also provide for a permit system where the NESREA is empowered to grant permits to persons to deal with ODS in the manner permitted by law. The permits which are granted upon the application of the licensee specifies the conditions under which the powers granted thereunder will be exercised and the ODS that can be dealt with. It is an offence to violate the provisions of the Regulations. The penalty for violation is a fine not exceeding the sum of N200,000, in addition to the sum of N10,000 for every day of default; or imprisonment for one year; or both such fine and imprisonment. Where the offence is committed by a corporate body, the fine shall not exceed the sum of N1 million in addition to a penalty of N50,000 for every day of default. The above provisions are laudable and if enforced religiously will help in no small measure to reduce activities that deplete the ozone layer and that pollute the atmosphere. However, the enforcement of the Regulations does not extend to the oil and gas industry, where activities that deplete the ozone layer, such as gas flaring occur on a daily basis.

3.2 International Instruments on Protection of the Atmosphere

This section will undertake a critical examination of some of the global efforts towards combating climate change.

3.2.1 United Nations Framework Convention on Climate Change, 1994

The United Nations Framework Convention on Climate Change[80] declares that its main aim is to achieve stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such level is expected to be achieved within a timeframe which will be sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened, and to enable economic development to proceed in a sustainable manner.

Under the UNFCCC, States Parties commit themselves in accordance with their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances to develop, periodically update, publish and make available to the Conference of the Parties (COP), national inventories of anthropogenic emissions by sources and removal by sinks of all greenhouse gases not controlled by the Montreal Protocol. This is to be done by the application of comparable methodologies to be agreed upon by the COP. States Parties similarly undertake to formulate, implement, publish and regularly update national and, where appropriate, regional programmes containing measures to mitigate climate change by addressing anthropogenic emissions by sources and removals by sinks of all greenhouse gases not governed by the Montreal Protocol, and measures to facilitate adequate adaptation to climate change. States Parties are under obligation to promote and co-operate in the development, application and diffusion, as well as transfer of technologies, practices and processes that control, reduce or prevent anthropogenic emissions of greenhouse gases not governed by the Montreal Protocol in all relevant sectors, such as the energy, transport, industry, agriculture, forestry and waste management sectors.

Article 7 of the UNFCCC establishes the COP as the supreme body of the Convention. The COP is charged with the mandate of undertaking periodic review of the steps taken by States Parties towards the implementation of the Convention. It is also to co-ordinate implementation efforts by Parties as well as monitor their compliance levels. It is also required as part of its mandate to make

[80] UNFCCC 1992. The UNFCCC was adopted in New York, United States of America [USA] on 9 May 1992 and entered into force on 21 March 1994.

decisions necessary to promote the effective implementation of the Convention.

The relevance of this Convention lies in the fact that Nigeria has signed the UNFCCC. She is a party to the Convention and the Kyoto Protocol. However, Nigeria has not mustered enough political will to reduce its greenhouse gas emission levels. The oil and gas sector in Nigeria is responsible for a substantial amount of the greenhouse gas emissions in the country. Nigeria permits gas flaring in the course of oil and gas production activities by MNCs operating in the Niger Delta. For instance, the Associated Gas Re-Injection Act and the Associated Gas Re-Injection (Continued Flaring of Gas) Regulations authorize oil and gas companies operating in the country to flare associated gas in exchange for monetary penalty paid to the federal government. These gases flared daily by oil and gas companies and other oil and gas companies are responsible for adverse climatic conditions in the Niger Delta region of the country.

3.2.2 Kyoto Protocol to the United Nations Framework Convention on Climate Change

The Kyoto Protocol to the United Nations Framework Convention on Climate Change[81] was adopted at the third Conference of the Parties to the UNFCCC (COP 3) in Kyoto, Japan. It shares the objective and institutions of the UNFCCC. The major difference between the Kyoto Protocol and the UNFCCC is that while the UNFCCC encourages industrialized countries to stabilize greenhouse gas emissions, the Kyoto Protocol obligates them to do so. Under this Protocol, 37 industrialised countries of Europe commit to the reduction of their anthropogenic carbon dioxide emissions by an average of 5 percent against their 1990 levels over a five-year period spanning 2008-2012. The Protocol contains two annexes – Annexes A and B. Annex A contains a catalogue of greenhouse gases produced or generated in the course of man's activities which States Parties and other parties are obligated to reduce. On the other hand, Annex B lists the quantified emission limitation or reduction commitment agreed to against each of the developed/industrialized

[81] (Kyoto Protocol) 1997. It was adopted in Kyoto, Japan on 11 December 1997 and entered into force on 16 February 2005

countries, including the United States of America. The Protocol requires each developed country listed in Annex 1 of the UNFCCC to have made palpable progress in achieving its commitment under the Protocol.

3.3.3 Montreal Protocol on Substances that Deplete the Ozone Layer

The Montreal Protocol is a follow-up of the initial effort made at Vienna, Austria to control atmospheric pollution through the reduction of the emission of greenhouse gases. Due to disagreements over the nature and effect of reduction measures on the economic development of States, a framework convention, without binding emission reduction obligations was agreed to. This became the Vienna Convention for the Protection of the Ozone Layer. As a compromise for dropping insistence on control measures within the Vienna Convention, the negotiators agreed to a resolution to immediately convene a working group to begin negotiations for a protocol which will work out the details of Parties' obligations. This effort yielded fruit and birthed the Montreal Protocol.

The Montreal Protocol imposes obligation on States Parties to freeze the consumption of five specified chlorofluorocarbons (CFCs) listed in Group 1 of Annex A to the Protocol at 1986 levels by 1990, and in addition, reduce their use by 20 percent by 1994 and 50 percent below 1986 levels by 1999. Similarly, States Parties to the Montreal Protocol undertake to freeze consumption of halons at 1986 levels by 1993. The Protocol defines consumption to mean production plus imports minus exports of controlled substances. Production is defined as the amount of controlled substances produced minus the amount destroyed by technologies approved by the Parties.

3.3.4 Paris Agreement, 2015

This Agreement seeks to enhance the implementation of the UNFCCC. Its major objective is to strengthen global response to the threat of climate change in the context of sustainable development. To achieve the lofty ideal, the Paris Agreement intends to hold increase in global temperature to well below 2^0C above pre-industrial

levels and pursue efforts to limit the temperature increase to 1.5^0C above pre-industrial levels; increase the ability to adapt to the adverse impacts of climate change and foster climate resilience as well as low GHG emissions development in a manner which does not threaten food production; make finance flows consistent with a direction towards low GHG emissions and climate-resilient development. In the implementation of the agreement, equity and the principle of common but differentiated responsibilities and respective capabilities shall be constantly reflected in the light of different national circumstances.

Article 4 requires Parties to reach global peaking of GHG emissions as soon as possible but recognizes that peaking will take longer for developing country parties. It further requires Parties to undertake rapid reductions after peaking in line with best available science, in order to strike a balance between anthropogenic emissions by sources and removals by sinks of GHG gases in the second half of the 21st century. This is to be achieved on the basis of equity, in the context of sustainable development and efforts to eradicate poverty. Furthermore, each State Party is obligated under the Agreement to prepare, communicate and maintain successive NDCs that it intends to achieve. Parties are under obligation to pursue domestic mitigation measures for the purpose of realizing such NDCs. In order to produce effective result, a State Party's NDC has to represent a progression beyond the State's then current NDC which should reflect its highest possible ambition. This, in turn, should reflect its common but differentiated responsibilities and respective capabilities, bearing in mind different national circumstances.

Article 7 requires Parties to establish the global goal of adaptation of enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change. This is geared towards contributing to sustainable development as well as ensuring an adequate adaptation response in the context of the temperature goal stated under Article 2.

This Agreement is a very important step taken by world leaders towards solving the perennial problem of climate change. It has the ambitious target of holding global temperature to well below 2^0C above pre-industrial levels and to limit temperature increase to

1.5^0C above pre-industrial levels, to increase the ability to adapt to the adverse effects of climate change, and to mobilize adequate financial resources towards low GHG emissions and climate resilient developments.

However, most of the commitments are still voluntary in nature. Information obtained from the UNFCCC website shows that Nigeria signed the Paris Agreement on 22 September 2016 and ratified it on 16 May 2017. Notwithstanding the ratification of the Paris Agreement, little has been done to halt the unabated gas flaring practiced in the nation's oil and gas industry. A genuine commitment to reduce GHG emission would necessarily require an amendment of extant porous statutes regulating the oil and gas industry. The CCA has been enacted to address climate change issues but it appears the implementation of the CCA has not begun effectively. The current legal framework permits large-scale flaring of associated gas. Under Nigeria's intended NDC, the country is working towards ending gas flaring in 2030. This shows lack of seriousness on her part to join the rest of the world in combating the adverse impacts of climate change.

4. Appraisal of Regulatory Regime for Control of Atmospheric Pollution in Nigeria

The need to protect the atmosphere from contamination in view of its deleterious effect on the ecosystem has resulted in the enactment of the laws and the adoption of the international instruments discussed in this paper. However, despite these legislative measures, there are still serious impediments to the realisation of the protection of the atmosphere from activities that render it unwholesome. These impediments stem mainly from the gaps in the law as well as the failure of implementation.

With respect to environmental rights, the CFRN 1999 did not recognise the right of Nigerians to a clean safe and healthy environment.[82] This means that no human rights enforcement action can be founded on activities that cause harm to the environment or affect the health and well-being of Nigerians, regarding the activities

[82] A B Abdulkadir, 'The Right to a Healthful Environment in Nigeria: A Review of Alternative Pathways to Environmental Justice in Nigeria' (2014) (3) (1) *Afe Babalola University Journal of Sustainable Development, Law and Policy,* 118-131.

of oil and gas producing companies. It is noteworthy that the major players in Nigeria's oil and gas industry and the highest polluters of the atmosphere are multinational corporations (MNOCs). Attempts to enforce environmental right as a component of the right to life have not been completely successful.[83] Courts in other jurisdictions have adopted a flexible, progressive and expansive approach to the interpretation of third generation rights, especially the right to a healthy environment clustered under fundamental principles of state policy in their constitutions.

For instance, Section 48A of the Constitution of India is worded in similar fashion as Section 20 of the CFRN 1999. The said Section 48A provides that "the state shall endeavour to improve and protect the environment and to safeguard the forest and wildlife of the country,[84] including forests, lakes and wild life and to have compassion on living creatures".[85] Indian courts have interpreted this provision in conjunction with the fundamental right to life and consistently held that right to life will be illusory if the environment on which life itself depends is polluted, such that life can no longer be sustained.[86] In other words, Indian courts have held that the full enjoyment of the right to life protected as a fundamental right is wholly dependent on the enjoyment of a pollution-free and poison-free environment. Thus, the right to a clean, safe and healthy environment is implied in the right to life.

However, Article 24 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act[87] - a municipal statute enacted to give effect to the provisions of the African Charter on Human and Peoples' Rights[88] recognises, provides for and makes enforceable the right to a general satisfactory environment conducive to development.[89] Furthermore, the

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83 Suit No: PHC/CS/B/153/2005 (Unreported judgment of the Federal High Court Benin Division delivered on 14 November 2005); (2005) AHRLR 151 (NGHC 2005); Suit No. FHC/PH/CS/518/2005 (judgment of the Federal High Court Port Harcourt Division delivered in 2005).

84 Constitution of India 1948 (As Amended by the 52nd Amendment 1985), art 48A.

85 *Ibid*, art 51 A.

86 *M C Mehta* v *Union of India* AIR 1988 SC 1037 [the grange water pollution Case]; *RLEK* v *State of Uttar Pradesh* AIR 1985 SC 652; *Vellore Citizens' Welfare Forum* v *Union of India* AIR 1996 SC 2716; *Narmada Bachao Andolan* v *Union of India* AIR 2000 SC 3753.

87 1983, Cap A9, LFN 2004, art 24 [ACHPR Ratification Act 2004].

88 ACHPR 1981.

89 *Ibid*, art 24.

Fundamental Rights (Enforcement Procedure) Rules[90] made pursuant to Section 46(2) of the 1999 Constitution defines the human rights that are enforceable by means of the FREPR 2009 to include the human rights encapsulated in the ACHPR.[91] This, therefore, seems to suggest that the right to a pollution-free and poison-free environment can be litigated as a fundamental right in Nigeria. A few pollution cases have been litigated using this medium.

The first two cases where the fundamental rights enforcement option was employed in seeking environmental justice in Nigeria terminated with contrasting outcomes. These are the cases of *Gbemre* v *SPDC*[92] and *Okpara* v *SPDC.*[93] In both cases, the reliefs, grounds for seeking the reliefs and facts in support of the grounds were the same and are more relevant to the protection of the atmosphere from gas flaring activities. The applicants in the respective cases alleged that the gas flaring activities of the respondent company caused risks such as premature death, respiratory illnesses, asthma and cancer to inhabitants of their communities. Specifically, the applicants who represented their respective communities in the Niger Delta region, alleged that gas flaring contributes to adverse climate change in the affected communities as the emitted carbon dioxide and methane caused warming of the environment, contaminates food and water, caused painful breathing, chronic bronchitis, decreased lung function, affected the food security of the affected communities and also caused acid rain which corrodes corrugated iron sheets and other metals, amongst sundry claims. Flowing from the above claims, the applicants who instituted separate actions before different divisions of the Federal High Court, sought declarations, to wit:

(1) That the constitutionally guaranteed fundamental rights to life and dignity of the human person provided for in Sections 33(1) and 34(1) of the 1999 Constitution, and reinforced by Articles 4, 16 and 24 of the ACHPR Ratification Act,

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90 FREPR 2009.

91 *Ibid*, para 3 of the Preamble to the FREPR 2009 and Or 1(2).

92 Suit No: PHC/CS/B/153/2005 (Unreported judgment of the Federal High Court Benin Division delivered on 14 November 2005); (2005) AHRLR 151 (NGHC 2005).

93 Suit No. FHC/PH/CS/518/2005 (judgment of the Federal High Court Port Harcourt Division delivered in 2005).

inevitably includes the right to a clean, poison-free, pollution-free and healthy environment;

(2) A declaration that gas flaring constitutes a breach of the right to clean, poison-free, pollution-free and healthy environment;

(3) A declaration that the provisions of Section 3(2)(a) and (b) of the Associated Gas Re-Injection Act and Section 1 of the Associated Gas Re-Injection (Continued Flaring of Gas) Regulations which encourage continued gas flaring in Nigeria are inconsistent with the applicants' rights to life and dignity of the human person pursuant to Sections 33(1) and 34(1) of the 1999 Constitution as well as Articles 4, 16 and 24 of the ACHPR Act;

(4) Perpetual injunction restraining the respondents by themselves or their agents, servants, contractors, workers or otherwise howsoever described from further flaring of gas in the applicants' communities.

The Federal High Court sitting in Benin held that the constitutionally guaranteed rights to life and dignity of the applicants inevitably includes the right to a clean, poison-free, pollution-free and healthy environment and accordingly held that the gas flaring activities of the respondent constituted a gross violation for the applicants' rights as enshrined in the 1999 Constitution. The court proceeded to grant all the reliefs sought by the applicants.

However, in *Opara*'s case,[94] the applicants' suit was struck out on technical grounds of wrong procedure and wrong joinder of cause of action. In respect of the issue of wrong procedure adopted in filing the suit, the Federal High Court Port Harcourt Division held that the suit could not be maintained in a representative capacity as the injuries alleged by the plaintiffs were different in degree and character. On appeal in *Opara v SPDC*,[95] the Court of Appeal was called upon to determine whether the rights created by the ACHPR can be enforced by the FREPR; whether the appellants being different persons representing different communities

[94] *Okpara* v *SPDC* (n 92).
[95] (2015) 14 NWLR (Pt 1479) 307.

impacted by pollution can institute their claim in a representative capacity; and whether the rights to life and dignity of human person alleged by the appellants as being violated by the activities of the respondents can be said to have been violated by the gas flaring activities of the respondents. The Court of Appeal dismissed the appeal purely on technicalities.

The Court held that the fundamental rights created by the ACHPR are enforceable by means of the FREPR. However, the Court of Appeal went further to hold that the rights created under Chapter IV of the 1999 Constitution as well as the ACHPR such as right to life and dignity of human person, are personal rights as against communal rights. It held that only an individual who alleges that any of his rights enshrined in Chapter IV of the 1999 Constitution and the ACHPR has been violated can enforce same by means of the FREPR. Such rights cannot be claimed or enforced by a community, or group of persons in a representative action. The Court also pointed out that the appellants could not commence the action in a representative capacity as their respective claims and reliefs were disparate and sustainable only by individual suits. Accordingly, the appeal was dismissed.

What seems clear from the decision of the Court of Appeal in *Opara v SPDC* is recognition that all the human rights guaranteed in the 1999 Constitution and the ACHPR, including the right to a healthy environment which is guaranteed by Article 24 of the ACHPR can be enforced under the FREPR - that is, as fundamental rights. However, the Court went on to hold that the rights to life and dignity of the human person are personal rights which ought to be enforced by the individual members of the community individually rather than as a collective right enforceable through a representative suit. Thus, it seems the cause of the failure of *Opara v SPDC* was the wrong method used in initiating the action and not whether an action to protect the environment can be commenced as a fundamental rights enforcement suit.

While the decision in *Gbemre'*s case[96] has been hailed as a victory for environmental rights, there appears to have been no

[96] (n 92).

definite pronouncements on environmental rights of Nigerians by the Court of Appeal or Supreme Court – two courts whose pronouncements could be taken as the position of the law on any given subject. In any case, SPDC appealed against the decision and the last appears not to have been heard on it.

However, it is refreshing that respite has come the way of environmental rights organisations which are desirous of taking up actions to protect the environment on behalf of indigent communities in Nigeria. The once closed frontier of *locus standi* which has largely discouraged public interest litigation in Nigeria has been liberalised to NGOs by the Supreme Court of Nigeria in its latest decision in *Centre for Oil Pollution Watch* v *Nigerian National Petroleum Corporation*[97] delivered on 20 July 2018. In that case, the appellant in enforcing its mandate as an environmental rights organisation sued the respondent in the Lagos Division of the Federal High Court, seeking a number of reliefs for the alleged neglect of its pipelines in Acha Autonomous community in Isukwato Local Government Area of Abia State.

It was the further claim of the appellant that the negligence of the respondent in maintaining its pipelines resulted in oil spillage which contaminated the only drinking water sources of the Acha Autonomous community- namely the Ireh and Aku streams, rivers, among other damage to the environment caused by the spill. At both the trial court and the Court of Appeal, the respondent opposed the *locus standi* of the appellant to maintain an oil pollution action on behalf of the affected community. The respondent contended that the appellant was not a member of the affected community and, therefore, lacked the *locus standi* to sue. The respondent argued that it is only members of the affected communities that could sue.

Furthermore, the respondent contended that in any case the appellant has not shown in any way that it suffered any damage as a consequence of the spill. The respondent further argued that conceding *locus standi* to the appellant will open the floodgate to busy-bodies to sue in cases such as this. Both the trial court and the Court of Appeal accepted the respondent's contention that the

[97] (2019) 5 NWLR (Pt 1666) 518 [*Centre for Oil Pollution Watch* v *NNPC*].

appellant does not have *locus standi* and dismissed the suit. The appellant went on further appeal to the Supreme Court. In a unanimous judgment of that Court, after reviewing a host of authorities from common law jurisdictions as well as the submissions of the *amici curiae* invited by the Court, the Supreme Court held that the appellant has *locus standi* to sue the respondent in the suit.

The pronouncements of Kekere-Ekun and Eko, JJSC in their concurring judgments wherein they held that there is an inextricable link between Section 33 (right to life) and right to a healthy environment, is remarkable. For instance, Kekere-Ekun, JSC, held that Sections 33 and 20 of the 1999 Constitution, Article 24 of the ACHPR Ratification Act and Section 17(4) of the Oil Pipelines Act are proofs that the 1999 Constitution, the legislature and the ACHPR to which Nigeria is a signatory, recognise the fundamental rights of the citizenry to a clean and healthy environment to sustain life[98] In his contribution, Eko, JSC, held that in order to broadly determine *locus standi* when enforcing environmental rights as human rights, Article 24 of the ACHPR should be read together with Sections 33(1) and 20 of the 1999 Constitution on the duty of the Nigerian State to preserve the environment for the health and by extension lives of Nigerians[99] After reproducing Articles 24 and 20 of the ACHPR Ratification Act,[100] Eko, JSC went further to hold that as long as Nigeria remains a signatory to the ACHPR and other global human rights treaties as well, Nigerian courts would protect and vindicate the human rights entrenched in them.[101]

The current state of the law in Nigeria from the decision in *Centre for Oil Pollution Watch* v *NNPC*[102] seems to suggest that the law in Nigeria has moved away from the dark era of judicial conservatism under which environmental right was discountenanced by the courts on account of the inclusion of Section 20 in Chapter II of the 1999 Constitution as well as the sweeping influence of Section 6(6)(c) of the 1999 Constitution. Though the issue that went

98 *Ibid,* 587.
99 (n 97), 597-598.
100 *Ibid.*
101 *Ibid,* 598.
102 *Ibid.*

on appeal to the Supreme Court in the above case bordered on the procedural issue of *locus standi* as the matter was yet to be heard on the merits at the trial court, yet the pronouncements of the learned Justices of the Supreme Court in resolving the issue *of locus standi*, have given the green light that the time for justiciability of environmental rights in Nigeria has come. Kekere-Ekun and Eko JJSC, clearly gave an indication that Article 24 of the ACHPR Ratification Act and Sections 33(1) and 20 of the 1999 Constitutions are Siamese twins for the purposes of determining the justiciability of environmental rights in Nigeria.

In addition, one major factor which makes it easy for companies operating in Nigeria's oil and gas industry and other public and private persons to exhibit recklessness towards protecting the environment is their awareness that beyond suing under the tort of negligence and the rule in *Rylands v Fletcher*[103] for compensation, there is no positive recognition of environmental rights under the 1999 Constitution. However, the CCA provides that a person, or private or public entity that acts in a manner that negatively affects efforts towards mitigation and adaptation measures made under the CCA commits an offence and is liable to a penalty to be determined by the National Council on Climate Change (NCCC).[104] As important as climate change mitigation activities which requires all hands to be on deck, the CCA did not expressly create the offences in the Act. Rather, the power to create offences committed by an individual or organisation against climate change mitigation and adaptation measures is donated to the NCCC and it does not yet seem that the NCCC has created the offences till date. It is submitted that this is a serious omission and an amendment of the CCA is recommended in this regard.

Furthermore, the CCA provides that a court before which a suit regarding climate change or environmental matters is instituted, may decree any or a combination of the following reliefs: an order to prevent, stop or discontinue the performance of any act that is harmful to the environment;[105] an order compelling any public

[103] [1868] UKHL 1; (1868) LR 3 HL 330.
[104] CCA 2021, s 34(1)
[105] *Ibid*, s 34(2)(a)

official to act in order to prevent or stop the performance of any act that is harmful to the environment;[106] or an order of compensation to the victim directly affected by the acts that are harmful to the environment.[107] Thus, it could be argued that the recognition of the right of an individual to maintain an action to enforce a climate change adaptation and mitigation measure is an admission of the right to a clean environment; as Section 34 of the CCA and Article 24 of the ACHPR Ratification Act when read together with Section 20 of the 1999 Constitution will necessarily give rise to the right to a climate change adaptation and mitigation compliant environment.

5. Conclusion and Recommendation

The discussion in this article has addressed the perennial issue of air pollution in Nigeria and the need to combat activities that contribute to the pollution of the atmosphere. It has been emphasised that human activities, such as gas flaring, bush burning, deforestation, poor waste management practices and other activities trigger atmospheric pollution in Nigeria which in turn produce deleterious impacts on both mankind and the ecosystem. A review of the laws and policies put in place by successive administrations in Nigeria to combat atmospheric pollution has been undertaken and the conclusion reached is that the CFRN 1999, the CCA and the PIA did not make express provision for the recognition of the right to a healthy and satisfactory environment as a fundamental right which is enforceable against all persons.

Instead, Section 20 of the CRFN merely imposes a duty on the government to protect the environment. However, Section 6(6)(c) of the CFRN renders non-justiciable, unenforceable and meaningless the duty of environmental protection imposed on the government in Section 20. Although the courts have found a clever way of bypassing this unfortunate impediment to the justiciability of environmental rights by enforcing same whenever it could be proved that there is a positive duty to protect the environment expressed in another statute, the tortuous route to environmental justice under the present constitutional arrangement remains unsatisfactory. This

[106] *Ibid*, s 34(2)(b)
[107] *Ibid*, s 34(2)(c)

contrasts heavily with the jurisprudence of other countries, such as India, where the Courts have consistently woven an inextricable linkage between the right to a safe environment and the right to life. Thus, the absence of an express right to life in any of the environmental protection legislation in Nigeria has made it difficult for victims of pollution to obtain justice and hold the polluters of their environment to account. It is submitted that Sections 20 and 6(6)(c) of the CFRN 1999, Section 34(2) of the CCA and the PIA should be amended to expressly provide the right of every person in Nigeria to a safe, life-supporting and inhabitable environment. This right should be made a fundamental right and directly enforceable using the fundamental rights enforcement procedure applicable to other fundamental rights.

In addition, it is observed that the CCA only mentions in Section 34(2) that," [A] Court, before which a suit regarding climate change or environmental matters is instituted, may make an order" may make the afore stated reliefs but is silent about who has the locus standi to approach the court for the said reliefs. It is not immediately clear if a Non-Governmental Organisation or any other person or group with no direct interest in the climate change adaptation or mitigation activity can maintain an action on behalf of a victim. While it does appear that the liberalisation of locus standi in environmental pollution claims in *Centre for Oil Pollution Watch* v *NNPC* would avail any public interest litigator acting in the interest of a victim of climate change adaptation and mitigation measures, it is desirable that express words are used in the CCA to indicate a departure from the restricted locus standi regime and a gravitation towards a full-scale expansion of the range of persons who could take up environmental protection claims on behalf of victims of environmental pollution. It is recommended that Section 34(2) of the CCA should be amended and a specific range of persons who could institute claims for protection of environmental rights should be stated in the amended CCA.