

**Abstract**

The discourse here has Africa as its topical centrality. There is, therefore, a need to succinctly examine Africa within the context of its environment and landscape<sup>1</sup>. Africa is the second most populous continent in the world<sup>2</sup>. It occupies almost 20% of the Earth's land area, and 6% of the Earth's total surface. It has an estimated population of 1.3 Billion people, and this accounts for 16% of the world's population. It has a land area of 30,370,000 per kilometer square, and a population density of 36.4 per kilometer square. Africa has several biodiversity, and also has the highest number of mega fauna species. It is separated by the Mediterranean sea from the European continent, and joined to the Asian continent at its northeast extremity by the Isthmus of Suez. Africa has a coast line of 26 thousands kilometer long.

**Keywords:** Africa, Environment, Law, Jurisprudence

**1. Introduction: Environmental Law Issues in Africa**

The African continent is fraught with several environmental law problems, and an overview of some of these problems would be examined here. These include: deforestation, climate change, desertification, waste trade, earth warming, over population, urbanization, unregulated oil production, earth warming, bush burning, erosion, pollution, etc<sup>3</sup>. In African rural communities, the burning of the bush is not a rare occurrence<sup>4</sup>. In the course of hunting for animals, hunters force animals out by burning the bushes. The idea here is that animals taking shelter in the bushes would not be able to keep up with the high temperature if the bush is burnt and therefore would be forced to come out. The coming out of these bush animals make it easier for the hunters to easily hunt them down. This practice is mainly done during the dry season when the bush can easily be burnt by even a sparkle of fire. The bush leaves are delicately fragile during dry season, and can easily go wide while burning. However, this practice affects the environment and the atmosphere. One cannot rule out the possibility of excessive burning which in turn affects the environment<sup>5</sup>. The flora and fauna component of the cosmos can be seriously damaged by the act of bush burning. This also affects the quality of the soil. After bush burning, this can cause the soil to lose its capacity to absorb water and retain it. The roots of the plants in a burnt bush would also no longer be capable of pulling moisture into the soil<sup>6</sup>. Bush burning also causes rise in the temperature of the soil. The absence of top layers on the soil increases the temperature of the soil. Also, the soil can also become impervious to water and this makes it much warmer which may hamper germination of plants<sup>7</sup>. Bush burning also changes the nutrient composition of the soil by altering the soil's organic nitrogen. Erosion of soil layers is also a serious environmental law problem facing the African continent<sup>8</sup>. Erosion can be described as the irregular removal of soil, usually the top soil layers, from the surface of the land<sup>9</sup>. It is usually caused by rainfall, wind or any other climatic or soil conditions. Erosion makes the layers of the soil worn away and becomes unnatural<sup>10</sup>. Topographical factors also account for high rate of erosion in Africa. Heavy rainfall, for example, in the South-Eastern part of Nigeria

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<sup>1</sup>An overview of the physical geography of Africa. Retrieved December 6, 2021 from web.ccsu.edu/faculty/kyem/GEOG466\_Africa/Geogogy\_Climate\_Vegetation\_2.htm.

Bloom D. E, Sachs J.D. (1998). Geography, Demography and Economic Growth in Africa, *Brookings Paper on Economic Activity*, Vol. 2, Issue 1: 207-208 at 218-228

<sup>2</sup>List of continents by population. Retrieved December 6, 2021 from <https://m.statisticstimes.com/demographics/continents-by-population.php>

The 2019 Revision of World Population Prospects. Retrieved December 6, 2021 from <https://population.un.org/wpp>

<sup>3</sup>Nwaiwu I.U.O. 2012, Africa in the 21<sup>st</sup> century: The Challenges of Environmental Degradation, *International Journal of Environmental Sciences*: 263-273

<sup>4</sup>Yakubu O.E, Gto O, Daniel U. 2019. A review of the impact of recurrent bush burning in the climate change paradigm: The Nigerian Experience, *International Journal of Biology Research*, Vol. 1, Issue 1: 92-101

<sup>5</sup>Obatolu C.R. 1995. The effect of burning bush at different hours after slashing on selected soil chemical properties, *Agrosearch Journal*, Vol , Issue 2: 153-158 at 153

<sup>6</sup>Amoaka E.S, Gambiza J. 2019. Effects of anthropogenic fires on some soil properties and the implications of fire frequency for the Guinea Savanna ecological zone, Ghana. Retrieved December 7, 2021 from <https://www.sciencedirect.com/sotfe/reader/pii/S2468227619307628/pdf>

<sup>7</sup>Ambe B. 2015. Assessment of the Impacts and People's Perception of Bush Burning on the Grasslands and Montane Ecosystems of the Obanliko Hills\ Plateau, Cross River State, Nigeria, *Journal of Natural Sciences Research*, Vol 5, Issue: 12-29

<sup>8</sup>Igwe O., Fukuoka H. 2010. Environmental and socio-Economic Impact of Erosion in Nigeria, West Africa, *International Journal of Erosion Control Engineering*, Vol. 3, Issue 1: 102-109

<sup>9</sup>Balasubramanian A. 2017. Soil Erosion-Causes and Effects, Retrieved on December 7, 2021 from [https://www.researchgate.net/publication/314500264\\_Soil\\_Erosion\\_Causes\\_and\\_Effects](https://www.researchgate.net/publication/314500264_Soil_Erosion_Causes_and_Effects)

<sup>10</sup>Dregne H.E. 1987. Soil erosion: cause and effect, Retrieved on December 7,2021 from [sciencedirect.com/science/article/abs/pii/02648377879000639](https://www.sciencedirect.com/science/article/abs/pii/02648377879000639)

accounts for the major cause of erosion<sup>11</sup>. The soil may not be able to withstand the effects of heavy rainfall, and this leads to erosion. Erosion also causes sedimentation in streams, and reduction in the quantity of fish and other species<sup>12</sup>. This is in contrast to the Northern region part of Nigeria where the major cause of erosion can be linked to the wind<sup>13</sup>. An excess pool of wind has the effect of removing the soil particles of the soil from the soil. The devastating effect of the wind is felt not only on the soil, but also on structural buildings. It causes tremendous loss in soil nutrients, and destruction of the essential soil components. It reduces the productivity of the land by removing its essential components, and also pollutes the air<sup>14</sup>. The African environment is also bedeviled with the problem of pollution<sup>15</sup>. Pollution refers to the contamination of the cosmos and its elements<sup>16</sup>. Pollution can either be caused to the air, land or water. When pollution occurs, the environment becomes unsuitable for mankind. Polluting factor can be emission of dangerous gas, temperature, light<sup>17</sup>. The activities of mankind affect the cosmos by emission of polluting substances. Air pollution has been defined as limited to situation in which the outer ambient atmosphere contains materials in concentrations which are harmful to man and his environment. Burning of fuels is another anthropogenic activity that causes the pollution of the air. The burnt fuels emit bundles of deadly fragmental particles to the air, and the inhalation of this is utterly unhealthy for mankind and can lead to suffocation<sup>18</sup>.

With the rise in urbanization and industrialization in Africa, the use of machines and complex equipment has further aggravated the emission of polluting substances<sup>19</sup>. Also, anthropogenic activities such as the use of motor vehicles have also increased the emission of polluting substances like the carbon monoxide<sup>20</sup>. The African continent is replete with vehicles that regularly and avoidably emit carbon monoxide. Scientifically, carbon monoxide hampers the proper circulation of oxygen by blood vessel, and the emission of it is inimical to mankind. This further affects the ozone layers of the earth space. Water pollution is also a common phenomenon in the African continent. There is not much well co-ordinated waste disposal mechanisms in Africa states, and where there is, the compliance level and enforcement of same are at a low ebb<sup>21</sup>. Water bodies are used for the disposal of waste and this leads to some massive contamination of the water bodies. It is not uncommon for Africans to illegally dump refuse to water ways, streams and rivers. The issue of water pollution is therefore also a serious environmental issue in the African continent. Urbanisation is another environmental issue faced by African countries. Urbanisation can be described as the process where urban areas residents disproportionately outweigh rural area residents<sup>22</sup>. Statistically, when more than half of a country's total population live in the urban areas, then this would be regarded as urbanization<sup>23</sup>. Urbanisation is caused by mass immigration to the urban areas, usually in the search for greener pastures. The urban areas are usually unable to keep up with the environmental demands of the growing population, and its facilities are also always inadequate too in this regard. High non-biodegradable substances and materials being used in these urban areas is also an environmental hiccup being faced in the African societies.

<sup>11</sup> Champion A.M. 1993. Soil Erosion in Africa, *The Geographical Journal*, Vol 82, No. 2: 130-139

<sup>12</sup> Osuagwu J, Nwachukwu A.N, Nwoke H, Agbo K.C. 2014, Effects of Soil Erosion and Sediment Deposition of Surface Water Quality: A case study of Otamiri River, *Asian Journal of Engineering and Technology*, Vol. 2, Issue 5: 436-441 at 436

<sup>13</sup> Usman H. 1995. Wind erosion in Northeastern Nigeria 1 Erodibility factors, *Arid soil Research and Rehabilitation*, Vol. 9, Issue 1: 457-466

<sup>14</sup>Environmental Impacts and Siting of Wind Projects. Retrieved December 7, 2021 from <https://www.energy.gov/eere/wind/environment-impacts-and-siting-wind-projects#:text=As%20with%20all%20energy%20supply,wildlife%20like%20birds%20and%20bats>

<sup>15</sup> Mwambazambi K. 2010. Environmental problems in Africa: A Theological Response, *Ethiopian Journal of Environmental Studies and Management*, Vol. 3, Issue 2: 54-63

Fayia A.O, Ipinmoroti M.O, Chirenje T. 2018, Environmental Pollution in Africa. Retrieved on December 2021 from <https://doi.org/10.1007/510668016-9894-4>

<sup>16</sup> Rusell V.S. 1974. Pollution: Concept and definition, *Biological Conservative Journal*, Vol. 6, Issue 3: 157-161

<sup>17</sup> Fayia A.O, Ipinmoroti M.O, Chirenje T., 2018. Op.cit 2

<sup>18</sup> Sommer A. 2015. Burning Fossil Fuels: Impact of Climate Change on Health, *International Journal of Health Services*. Retrieved on December 2021 from <https://journals.sagepub.com/doi/abs/10.1177/0020731415625253>

<sup>19</sup> Patnaik R., 2017, Impact of Industrialization on Environment and Sustainable Solutions, *Earth and Environmental Sciences*, Vol. 12, Issue 1

Nkalu C.N, Edeme R.K. 2019. Environmental Hazards and Life Expectancy in Africa: Evidence from GARCH Model, Retrieved December 2021 from <https://journals.sagepub.com/doi/full/10.1177/2158244019830500>

<sup>20</sup> Jimmy E.O.T, Solomon M.S, Aniekan I.P, Asuquo C. 2014.Environmental Health implications of Motorcycles Emitted Gases in a Metropolitan Nigeria, *American Journal of Environmental Protection*, Vol. 2, Issue 1: 7-10

<sup>21</sup> Kamba F, Sangija F, Wei S. 2016. Impact of water pollution on human health in the central African Republic, *Advances in Social Sciences Research Journal*, Vol. 3 , Issue 1: 90-115

<sup>22</sup> Hope K.R. 1998. Urbanization and Urban Growth in Africa, *Journal of Asian and African studies*, Vol 32, Issue 4: 345-358

<sup>23</sup>Teye J. Urbanisation and migration in Africa. Retrieved December 7, 2021 from [https://www.researchgate.net/publication/233497773\\_Urbanization\\_and\\_Urban\\_Growth\\_in\\_Africa](https://www.researchgate.net/publication/233497773_Urbanization_and_Urban_Growth_in_Africa)

Desertification is equally an environmental problem dangling on neck of the African continent<sup>24</sup>. Desertification is caused by anthropogenic and climatic conditions. Natural factors like wind are an indispensable cause of desertification. Desertification has been described as land degradation in arid, semi-arid and sub-humid areas resulting from various factors including climatic variations and human activities<sup>25</sup>. It refers to the process of encroaching on the land's desert which, at a point in time, was well fertile. Yearly, Nigeria, for example, is estimated to lose almost two thousand and one sixty eight square kilometer of land to desertification. The environmental issue of desertification is comparatively experienced in the Northern region of Nigeria than the Southern region<sup>26</sup>. This is due to the penetration of the Sahara desert, thereby rendering once fertile land to become infertile. The consequential effects of desertification include: food scarcity, destruction of livestock and farm outputs, etc.

## **2. The African Constitutional Environmental Protection**

As much as the African continent is faced with several devastating environmental problems, we would be pretentious and self deceiving to pontificate that the African continent had made no attempt towards combating and ameliorating these environmental problems. Specifically, some African countries have gone as far as including environmental protection provision into their constitution. It is a settled principle that the constitution is a fundamental law of any nation, and its provisions are sacrosanct and must be respected by all<sup>27</sup>. Some African states' constitutional environmental provision would be considered hereunder.

### **Section 20 of the Nigerian 1999 Constitution**

This section provides for the Environmental objectives in the Fundamental Objectives and Directives Principles on States Policy. This section provides: 'The state shall protect and improve the environment, and safeguard the water, air and land, forest and wild life of Nigeria.' By this provision, there is a constitutionally imposed duty on the government to protect the environment. This provision is quite wide but it did not stipulate the specific duties expected of the government in so protecting the environment. However, this necessarily includes the enactment of environmental protection legislations, ratification and domestication of environmental protection treatise, establishment of environmental protection agencies, among others. A duty is also imposed on the state to protect the water, air and land. This means efforts should be taken towards preventing the emission of harmful substances to the society. The government should legislate on prohibiting dumping of refuse and waste bins in the rivers, and water stream. The government is also saddled with the responsibility of protecting the wildlife and forest. The government must strive towards preventing excessive deforestation which might hamper human persons. In short, the government is saddled with the responsibility of taking necessary measures to ensure the continued habitability of the environment and protect the water, air, land, forest and wildlife in Nigeria. However, an impediment of this provision is that, it is not an enforceable one. An action cannot be brought in court to enforce this provision. This is because, by virtue of section 6(6)(c), all the provisions of the Fundamental Objectives and Directives Principle are non-justiciable<sup>28</sup>.

### **Articles 36(9), 41 (K), 87(2)(C) of the Ghanaian 1992 Constitution (1996) Amendments**

Article 36 provides for the Economic objectives, and it is under Chapter six which provides for the Directive Principles of State Policy. Article 36(9) provides that: 'The State shall take appropriate measures needed to protect and safeguard the national environment for posterity; and shall seek cooperation with other states and bodies for purposes of protecting the wider international environment for mankind.' This provision imposes an obligation on the government to take pro-active measures to safeguard the environment for future sake. This means that the government should avoid the exploitation of the environment so as not to endanger the future environmental space. The Ghanaian governments are also required to collaborate within themselves in this regard. Also, the Ghanaian governments are also required by this section to collaborate with other sovereign nations and international bodies in the protection of their national environment. To put it succinctly, the Ghanaian constitution allows the government to enter into treaties in a bid to protect the international environment for the general mankind. The major drawback of this provision is that, just like the Nigerian equivalent provision, it is generally unenforceable. No legal action can be instituted on the reliance of this provision. However, article 39(2) imposes a duty on the President to report to the parliament at least once in a year to detail all the steps taken towards ensuring the realization of the policy objectives in the constitution, and the policy objectives include article 36(9) stated above. Article 41 provides for the duties of the citizens generally. Specifically, as it relates to our discussion here, article

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<sup>24</sup> Olagunju T.E. 2015. Drought,, desertification and the Nigerian environment: A review, *Journal of Ecology and the Natural Environment*, Vol. 7, Issue 7: 196-209

<sup>25</sup> Burns W.C. 1995. The International Convention to Combat Desertification: Drawing a Line in the Sand? *Michigan Journal of International Law*, Vol. 16, Issue 3: 831-882 at 836

<sup>26</sup> Adu I.A. 2018. Desertification in Northern Nigeria: Causes and Consequences, Retrieved December 2021 from [https://www.researchgate.net/publication/354423993\\_Desertification\\_in\\_Northern\\_Nigeria\\_Causes\\_and\\_Consequences](https://www.researchgate.net/publication/354423993_Desertification_in_Northern_Nigeria_Causes_and_Consequences)

<sup>27</sup> Section 1 of the 1999 Constitution of the Federal Republic of Nigeria. Section 1 of the 1992 Ghanaian Constitution

<sup>28</sup> Ogun F. 2020, Non-Justiciability of Chapter Two of the 1999 Constitution: A Hindrance to Nigeria's Development, Retrieved December 2021 from [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3663865](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3663865)

41(k) provides that the exercise and enjoyment of rights and freedoms is inseparable from the performance of duties and obligations, and accordingly, it shall be the duty of every citizen 'to protect and safeguard the environment.' This provision imposes a duty on the citizens to protect the environment. This means that citizens must not involve in activities inimical to the environment such as bush burning, inappropriate waste disposal, etc. Article 87 provides for the functions of the National Development Planning Commission. Specifically, article 87(2)(c) provides that the Commission shall, at the request of the President or Parliament, or on its own initiative: 'make proposals for the protection of the natural and physical environment.' Therefore, there have been constitutional efforts in the Ghanaian constitution geared towards environmental protection.

#### **Sections 24, 146 (2)(c)(vi), 152(d) of the South African 1996 Constitution**

This section 24 is under chapter 2 which provides for Bill of Rights. It provides that:

Everyone has the right-

- (a) to an environment that is not harmful to their health or well-being; and
- (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that-
  - (i) prevent pollution and ecological degeneration;
  - (ii) promote conservation; and
  - (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.'

The South African constitution is a well commendable one for making environmental right a fundamental human right. This goes to show the extent by which environmental issues are treated with huge deliberateness. Under the South African constitution, it is a matter of right to be entitled to an unharmed environment. Also, the legislature is saddled with the duty of enacting reasonable legislations geared towards environmental protection. Section 146(2)(c)(vi) provides that National legislation that applies uniformly with regard to the country as a whole prevails over provincial legislation if the national legislation is necessary for: 'the protection of the environment' By this provision, if a National enactment is necessary for the protection of the environment, it would supervene over any local enactment on that subject matter. This is based on the reasoning that environmental legislations are best administered by uniform legislation rather than having several applicable laws in different regions. Section 152 provides for the objects of local government. Section 152(d) provides that an object of the local government is: 'to promote a safe and healthy environment' This provision has further domesticated the duty of environmental protection to even the lowest unit of government, which is the local government.

#### **Articles 15, 99 of the Mali 1992 Constitution**

Article 15 provides that: 'Every person has a right to a healthy environment. The protection and defense of the environment and the promotion of the quality of life is a duty of everyone and the state.' This provision includes the right to a healthy environment as a fundamental right. It also makes it express that the duty of environmental protection is not only the state, but also on the government. Article 99 also provides that the High Council of Territorial Units: '...may make propositions to the Government for all questions concerning the protection of the environment...'

#### **Articles 53, 54 of the Congo 2005 Constitution**

Article 53 also elevates environmental right to the status of human rights. This section provides that: 'All persons have the right to a healthy environment that is favourable to their development. They have the duty to defend it. The state shall ensure the protection of the environment and the health of the population.' This exemplifies that the government of the Democratic Republic of Congo has an enforceable duty imposed on it by law to protect the environment of the republic. Article 54 further provides for the right to compensation and or reparation from any pollution arising from economic activities. This article provides that: 'any pollution or destruction resulting from an economic activity gives rise to compensation and or reparation.'

#### **Article 41 of the Togo 1992 Constitution**

This article also elevates the environmental right to become a fundamental right. It provides that: 'every person has the right to a healthy environment. The state has the duty to see to the protection of the environment' The constitutional environmental protection provisions of Nigeria, Ghana, South Africa, Mali Congo and Togo were considered above. It must be noted that the Nigerian and Ghanaian provisions are placed within the Directive Principles of states policies which are generally unenforceable in the law court. Notwithstanding this non-justiciability, the inclusion of environmental protection provisions in these constitutions imposes some forms of duty on the governments to protect the environment. Conversely, the South African, Mali, Congo and Togolese environmental provisions are included as a human right provision and it is therefore enforceable. It is pertinent to note that there is no specially designed Environmental Court in these Constitutions. Rather, environmental disputes are resolved in the conventional courts.

### **3. African Environmental Protection through Treaties and Instruments**

The first African effort geared towards environmental protection was the Convention on the Preservation of Wild Animals, Birds and Fish in Africa 1900.<sup>29</sup> This treaty is also designated as the London Convention of 1900 in some quarters. It is a multi-lateral treaty signed by the European colonialists and it was basically geared towards environmental protection. It sought to put a control to the untrammelled massacre of wild animals which was unregulated then. Howbeit this London convention was never made operational; it is widely accepted as one of the earliest treaties tailored towards environmental protection and nature conservation in the annals of African environmental history. France, Germany, Italy, Portugal, United Kingdom, Spain, and the Congo Free state were countries that signed the London convention on the 19<sup>th</sup> of May 1900 at London. The pre-condition stipulated by the treaty before it becomes operational was that, there must be ratification of the treaty by the signatory states. Given that most of these signatory states failed to ratify the treaty, it never became operational. The convention, as noted earlier, is a landmark agreement in the African environmental protection through treaties.<sup>30</sup> One of the cardinal provisions of the treaty is that it accorded different protection to different groups of animals. The convention contained schedules which contains different protections for different forms of animals, and also emphasized on creation of wildlife reserves, export duties on antlers, animal hides and tusks. Subsequent to the Convention for the preservation of Wild Animals, Birds and Fish in Africa 1900 was the Convention Relative to the Preservation of Fauna and Flora in the Natural State 1933. It was signed by the governments of the union of South Africa, Belgium, United Kingdom, Egypt, Spain, France, Italy, Portugal, and the Anglo-Egyptian Sudan. This treaty is also known as the London Convention of 1933. It was also one of the earliest treaties by the colonial masters tilted towards bolstering conservation of the environment.<sup>31</sup> The objectives of this treaty are to preserve the natural fauna and flora of certain parts of the world, particularly of Africa, by means of national parks and reserves, and by regulation of hunting and collection of species. The 1950s and 1960s saw the total hiatus of colonialism in many of the African states and consequently, the formation of African Unity. The African Charter on Human and People's Right was a treaty that was ratified to address pressing issues of human rights in the African continent. The charter was adopted on June, 1981 in Nairobi, Kenya by the heads of states and government and it was a measure to salvage and combat the human rights violations which is on the spike in the African continent. The treaty has been ratified by all the African states. To put the discussion here in proper perspective of the charter as an environmental treaty, Section 24 of the charter provides that: 'All peoples shall have the right to a general satisfactory environment favourable to their development.' This provision is of immense significance as it is the first international instrument to accentuate on the right to satisfactory or healthy environment. Even though this provision is commendable and significant, the language with which it is couched is fraught with certain defects. For example, what is the meaning of 'satisfactory environment' within the context of that provision? It is nebulous and susceptible to various interpretations. It is, however, submitted that in construing what amounts to 'satisfactory environment' in this context, the reasonable man's test would be applicable. Also, the section intersects the right to a satisfactory environment to the development of the people and this is itself vague and prone to divergent, irreconcilable constructions. The provision also clearly confers the environmental right collectively on 'all peoples' as against conferring it individually on persons as individual rights. This raises the dust of the question of whether or not the provision is only enforceable as a collective right or can be enforced individually.

The Organisation of African Unity (OAU) has its first African environmental convention in 1968, and the African Convention on the conservation of Nature and Natural Resources was adopted. Also, the first African Regional Conference on the Environment and sustainable development was held in Uganda in 1989. The 1991 Treaty establishing the Africa Economic community also implores member states to protect the environment. The African Union has the African Economic community established in 1991. The African Economic community was established by the Abuja treaty. This treaty contains the objective of ensuring the harmonization and coordination of environmental protection policies among the state parties.

### **4. The Enforceability of Environmental Rights in Africa**

As pointed out earlier, while environmental right is enforceable in some African countries, the right is not enforceable or justiciable in some other countries. Of course, the simple implication is that whilst the government is enjoined to ensure healthy environment for the people, it cannot be sued to comply with the directive in the countries where environmental right is non-justiciable. That means, it is persuasive and not obligatory on the government to ensure healthy environment for the people. Having noted this, whenever there is an inhibition to the safety and healthiness of environment in these countries where environmental right is non-justiciable, does that connote that the government cannot be sued at all and the complainant is totally divested of the right to

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<sup>29</sup>Browman M, Davies P, Redgwell C. 2010. *The African Convention on the conservation of Nature and Natural Resources*, Cambridge University Press: 262-296

<sup>30</sup>Linde, M.V.D. 2002. African Resources To Environmental Protection. *The Comparative and International Law Journal of Southern Africa*, Vol. 35. Issue 1: 99-113

<sup>31</sup>(2004) An Introduction to the African Convention of Nature and Natural Resources. IUCN, Gland, Switzerland and Cambridge, U.K. xiit. 60 pp.

compel the government for habitable environment? It is submitted here that there is an "alternative route" that can be harnessed.

Whenever there is an inhibition to the safety and healthiness of environment in the countries such as Nigeria where environmental right is non-justiciable, the complainant may compel the government as to the environmental rights through the "alternative route". By this "alternative route", the complainant will file an action to enforce and compel the government as to the duty to provide healthy environment, not by relying on the non-justiciable provision in the constitution about the governmental duty on environment, but by relying on the fundamental right to life,<sup>32</sup> right to human dignity or the relevant provisions of domesticated treaties such as Article 26 of the African Charter on Human and People's Rights.<sup>33</sup>

It is instructive to emphasize that there is an inter-connectedness between healthy environment and the right to life and human dignity. In many instances, a poor and unhealthy environment may be detrimental to the enjoyment of these rights. For example, unhealthy environment has been linked with certain medical illness such as respiratory illness, ischemic heart disease, asthma, cancer, painful breathing, chronic bronchitis, etc. The illness might eventually snowball into the death of the environs who caught the illness from the poorness or unhealthiness of the environment and the concomitant implication of this is that unhygienic environment may amount to a somewhat violation of the right to life. In *M.C. Mehta v Union of India*,<sup>34</sup> it was emphasized that one of the constituents of the right to life, being the most fundamental human right, is the right to live in an habitable environment devoid of pollution, environmental degradation and ecological imbalance. Also, a poor and unhealthy environment is in itself an aberration of the right to human dignity. These show an interplay between the right to life and human dignity on one hand, and the environmental right on the other hand. So, even in the countries where environmental right is non-justiciable, it is correct to contend that the government may be compelled as to ensure healthy environment notwithstanding the non-justiciability, by bringing the action under the fundamental right to life and human dignity.

Also, in countries where the governmental duty of ensuring healthy environment is not enforceable, and where such countries have domesticated treaty (ies) containing provisions which make environmental rights justiciable, a person can sue to compel the government for habitable environment by bringing the action under the relevant provisions of the domesticated treaties. An apt example is the African Charter on Human and People's Right which has been domesticated by all the African countries.<sup>35</sup> Article 26 of the African Charter on Human and People's Right which provides: It is however the opinion here that the so-called "alternative route" is not reliable in getting the government compelled to ensuring healthy environment for the people.<sup>36</sup> This "alternative route" is indirect, unclear and not explicit as to the right to enjoy healthy environment. Infact, it can be likened to "cutting corners" and this does not really guarantee the protection of environmental right. It is rather better if the right to healthy environment is entrenched as a fundamental human right as it is the case in countries like South Africa, rather than being non-justiciable.<sup>37</sup>

### **5. African Environmental Protection through Indigenous Laws and Practices**

There are some indigenous laws and practices in the African society which are somewhat measures of environmental protection. Although the basis upon which these practices are done is not directly to protect the environment but to have reverence for traditional structures; however, there is environmental protection inherent in such practices. A prominent method of African environmental protection through indigenous practices is 'Taboo'. Taboo refers to prohibited practices, and community members are always in the habit of complying with taboo.<sup>38</sup> There are, for example, some places regarded as sacred where community members are not expected to interfere with the soil structures of such places. Also, it is prohibited to emit poisonous substances in such places. Some species of animals are not permitted to be hunted.<sup>39</sup> It is not also permitted to throw dirty substances, including non biodegradable substances in such places.<sup>40</sup>

<sup>32</sup>Abdulkadir, A.B. 2014. The Right to a Healthy Environment in Nigeria: A Review of Alternative Pathways to Environmental Justice in Nigeria. *Afe Babalola University: Journal of Sustainable Development, Law and Sustainable Policy*. Vol.3. Issue 1:128-130

<sup>33</sup> Abdulkadir, A.B. op.cit. 126-128

<sup>34</sup> Environmental Health Research Challenges in Africa: Insights From Symposia Organized By The ISES-ISEE 2011. Retrieved Nov. 7<sup>th</sup>, 2021 from [https://journals.ww.com/environepidem/Fulltext/2019/12000/Environmental\\_health\\_research\\_challenge\\_in.2.aspx](https://journals.ww.com/environepidem/Fulltext/2019/12000/Environmental_health_research_challenge_in.2.aspx)

<sup>35</sup> Akpambang, E.M. 2016. Promoting the Right to a Healthy Environment Through Constitutionalism in Nigeria. *International Journal of Environment and Pollution Research*. Vol. 4. Issue 3:40-61 at p.51

<sup>36</sup> Fagbohun, O. 2010. *The Law of Pollution and Environmental Restoration: Comparative Review*. Lagos: Odade Publishers. Pp. 317-318

<sup>37</sup> Akpambang, E.M. op.cit. pp.52-53

<sup>38</sup> Hudson B.A, Okhuysen G.A. 2014. Taboo Topics: Structural Barriers to the study of Organizational Stigma. Retrieved on December 7, 2021 from <https://journals.sagepub.com/doi/abs/10.1177/1056492613517510?journalcode=jmia>

<sup>39</sup> Chemhuru M, Masaka D. 2010. Tboos as sources of Shona People's environmental Ethics, *Journal of Sustainable development in Africa*, Vol. 12.Issue 7: 121-132

<sup>40</sup> Essel E.A. 2020, The Role of Taboos in solving contemporary Environmental Degradation in Ghana: The Case of Cape Coast Metro, *Social Sciences Journal*, Vol. 9. No 4: 89-97

All these help to protect the flora and fauna of such places. Also, the indigenous Africa practices forbids the contamination of some water bodies, rivers and streams because they are considered sacred and should be jealously protected. No one is permitted to throw wastes to such river.<sup>41</sup> The Osun River in Osun state of Nigeria, for example, has it as a taboo for dirty substances to be thrown to the river.<sup>42</sup> It is believed that anyone who indulges in such practice would be punished by the ancestors who reside in the river. This, essentially, is an environmental protection mechanism. The riversides and forests are regarded as sacred and should not be tampered with. In Rivers state, crocodile are not permitted to be consumed by humans as they are considered to be deity.<sup>43</sup> The land is considered as sacred in the affairs of the African traditional societies, and unconsecrated acts are always prohibited. In the Igbo land, for example, there is a forest where villagers are allowed to fetch firewood, but are not permitted to urinate on such land<sup>44</sup>. Evidently, this protects the environment from any contamination that might arise from urination on the surface of the earth. The African customary practices also protect forests against deforestation and bush burning. Some forests are regarded as the habitats of community ancestors, and so should not be indiscriminately tampered. No one is permitted to cut the trees in these forests, and no one is allowed to burn the forests. A common example of this is the 'Iroko' tree in the Southern part of Nigeria that is being prohibited from being fallen down<sup>45</sup>. There are tales and folklores regarding such trees as sacred plants. It is believed that anyone who flout this regulations would be severely dealt with by some supernatural forces, and this makes those forests to be so preserved from generations to generations. By this practice, emission of harmful substances like carbon monoxide, hydrocarbons and nitrogen oxides have been eliminated in those areas where the (sacred) forest are situate. In the sacred hill of Antsahadinta in the city of Antananarivo, Madagascar, no one is permitted to burn the forest or cut the trees there, and this has been the case for a long period of time. It is believed that anyone who flouts this regulation would have his or her neck broken and disfigured. Also, in the Madagascan Tsimanampetsote Park, no one is permitted to contaminate the lake as it is regarded as sacred.<sup>46</sup>

Also, the traditional farming system of the African communities is largely based on shifting cultivation. After the continuous planting and harvesting on a land for a period of time, the land would be left to regenerate its fertility before another cultivation is done on it again. This practice is prominent among, for example, the Normadic Fulani society of Nigeria. By this practice, there is an environmental protection of the land's surface. In African societies, some mountains are regarded as habitation of ancestors and gods. The mountains are prevented from being dismantled, or defiled in any way. This contributes to why approximately half of the countries in Africa have mountains higher than 2000m. Porous substances are not permitted to be emitted on these mountains, and this essentially is a form of environmental protection. Also, this has further enhanced and preserved the water availability in the African continent. Mountains provide more than half of water needed for use by mankind, and the preservation of mountains by African practice has further enhanced this. Water supply in Africa is dependent, to some considerable extent, on mountains. In the Eastern part of Nigeria, not less than seven million population derive fresh water from the Mount Kenya. Also, a number of countries in the Western part of Africa, for example, depend on water resources derived from the Fouta Djallon Highlands. Furthermore, the biodiversity in the mountainous regions of Africa serves as a basic source for food and medicine in the future. All these reflect the importance of mountains and the role of African indigenous practices towards its preservation. Among the Tongo-Tengzuk community of Ghana, the West African Crocodile is treated as sacred<sup>47</sup>. Crocodiles are believed to be replications of the ancestors. This has led to the preservation of this specie of crocodile in the Africa community of Tongo-Tengzuk. Frogs are also prohibited from being eaten in this community, as they believe that frogs once led their fore-fathers to some unfavourable water-source. This has led to the protection of this specie of animal from any possible extinction. Furthermore, in some African communities, sea turtles are prohibited from being eaten. This has led to the protection of sea turtles and presence of quite humongous quantity of it (sea turtles). Out of seven species of sea turtle in the world, five of the species can be found along the Western coast of Africa. The presence of sea turtle has ecological advantage as it helps in maintaining a balanced tropic structure that is beneficial to fishes. All these illustratively reflect how some African traditional practices surreptitiously contribute to environmental protection, even though the intent of such practices is not directly for that purpose but mainly for upholding some cultural beliefs and inclinations.

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<sup>41</sup>Baloy M.E. 2020. The critical Role of selected Swiyilla (Taboos) in Rural Democratic South Africa: A Theological Perspective. *Phronimon Journal*. Vol. 21. Issue 1

<sup>42</sup>Ogunfolakan B.A. 2016. Rapid Ecological and Environmental Assessment of Osun Sacred Forest Grove, South-Western Nigeria, *Open Journal of Forestry*, Vol. 6. Issue 4: 243-258

<sup>43</sup>Oladele A.R. 2017. An Examination of Customary practices Related to Environmental Protection in Nigeria, *International Journal of Education and Human Development*, Vol. 3. No. 2: 38-51

<sup>44</sup>Sheridam M.J. 2009. The Environmental and Social History of African Sacred Groves: A Tanzanian case Study, *African Studies Review*, Vol. 52, No. 1: 73-98

<sup>45</sup>Oyata C.C, Asogua O. 2017. Title, Rituals, and Land Use: The Heritage of a Nigerian society. Retrieved December 7, 2021 from <https://journals.sagepub.com/doi/10.1177/12158244016689120>

<sup>46</sup>Quiroz D. 2012. Plant use of the motherland: linking West African and Afro-Caribbean etno botany. Retrived December 7, 2021, from [https://www.researchgate.net/publications/259079425\\_Benin\\_The\\_role\\_of\\_spiritual\\_values#fullTextFilecontent](https://www.researchgate.net/publications/259079425_Benin_The_role_of_spiritual_values#fullTextFilecontent)

<sup>47</sup>Amoah E. 2021. Nesting Ecology of West African Dwarf Crocodiles in a Heavily Disturbed Landscape in Chirechin, Ghana, *International Journal of Ecology*, Vol. 2021. Issue 1:1-11