

**RIGHT TO A PROTECTED MARINE ENVIRONMENT IN NIGERIA:
A LEGAL APPRAISAL**

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Abstract

The guarantee of a safe marine environment is enshrined in the Constitution of the Federal Republic of Nigeria, 1999 (as amended) as well as other national and international instruments that have a direct and tangential bearing on the protection of the marine environment. The continued depredation of the marine eco-space has raised both international and national concerns, particularly as it affects human life and well-being. The direct response to the menace of marine degradation and its impact on humans warranted the incorporation of environmental rights in the African Charter and the 1999 Constitution. Furthermore, the United Nations in its Sustainable Development Goal Programme laid credence to environmental issues as integral to its goals as expressed in Goal 14 (which is “life below water”). A robust marine environment and its protection is a personal right of individual citizens of Nigeria. The distortion of these rights arising from the constant pollution trend and its hazardous impact on human health in the face of the avalanche of laws both national and international was the reason the researcher settled on the topic to appraise the citizens’ right to a protected marine environment in Nigeria. The methodology used in this research was the doctrinal research method which entailed the analysis of both primary and secondary sources of data collection. The research found that despite the deluged of the national and international laws enacted and ratified, the spate of marine pollution impacted on humans remained unabated. This article recommended that the protection of the marine environment in Nigeria should not be accessed through the directive principle of state policy under section 20 of the Constitution, but should be transposed into Chapter IV of the Constitution to give a full-blown right to the clean marine environment to be enjoyed by the citizens of Nigeria.

Keywords: *Right, Marine, Environment, Protection of Marine Environment, Legal, Sustainable Environment*

1.0 Introduction

Citizens’ right is that right that is given to the individual citizen of Nigeria by having been born. Citizens’ rights could also be acquired by registration as well as by naturalization. They are inalienable rights that are inseverable. Section 20 of the 1999 Constitution of the Federal Republic of Nigeria is a veritable tool for the protection of the marine environment. The rationale for the inclusion is the fact that the well-being of any nation depends on the proper exploitation and the prudent management and protection of its natural resources and environment,¹ which includes the marine ecosystem. For the benefit of clarity, the Constitution of the Federal Republic of Nigeria provides thus:

“The state shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria.²”

The above provision of section 20 was beautifully crafted and ought to have been the chief protector of the marine ecosystem in Nigeria, given that the constitution is the *norm* and the parent law of the land. The placement of the protection of the marine environment under the fundamental objective and the directive principle of state policy makes the effect of the provision and its applicability otiose. This position is justified by the Constitution of the Federal Republic of Nigeria,

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¹. E Malemi, *The Nigerian Constitutional Law* (Princeton Publication Co. 2006) 211.

² Constitution of Federal Republic of Nigeria 1999 as amended, S 20.

1999 (as amended)³ which made the provision of section 20 nonjusticiable. To give life to the provision of the environmental objectives of the constitution, the article would suggest the transplant of section 20 to Chapter IV of the Constitution to give marine environmental protection a fundamental flavor and a full-blown right backed up by the constitution. No individual or citizen of Nigeria could hold the government accountable for a series of violations done to the marine environment because of the nonjusticiability status of section 20 of the Constitution. The article set out to consider the legal rights of individual citizens of Nigeria to a protected marine environment in Nigeria.

2.0 Right to a Protected Marine Environment in the Light of the International Law

Individual rights over a clean marine environment in Nigeria cannot be over-emphasized. The Constitution could not fill in the gap in the assurance of these rights. In the international arena, the issue of citizens' right toward a protected marine environment was not considered capable of endangering human life by the United Nations in 1945 when the UN Charter was signed by the member states as the Charter did not include the world environment.⁴ However, the right of individuals to a protected marine environment was acknowledged even though it was not expressly guaranteed in the Universal Declaration of Human Rights,⁵ which provides that "everyone has the right to a standard of living adequate for the health and well-being of himself and of his family..."⁶ In the same vein, the International Covenant on Economic, Social, and Cultural Rights (ICESCR) recognizes the right to an adequate standard of living,⁷ as well as the right to the improvement of all aspects of environmental and industrial hygiene⁸.

At the regional level, the right of state citizens to a protected marine environment was expressed in the Africa Charter on Human and Peoples Rights adopted by the Organization of African Unity in 1981. This instrument was indoctrinated into our domestic law by section 12 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). According to Odili; the Charter can be used to enforce the Economic and Social Council (ECOSOC) rights as there cannot be any conflict between the Charter and the Constitution in view that section 6(6)(c) of the Constitution cannot oust the jurisdiction of the court in enforcing those rights contained in the Charter as that provision does not refer to any other law than Chapter IV of the Constitution of the Federal Republic of Nigeria⁹. The postulation of Odili in his work was collaborated by the Supreme Court in the case of *Fawehinmi v Abacha*¹⁰ where it was held per Ejiwumi JSC that "the African Charter on Human and Peoples Right, having been passed into our municipal law, our domestic courts have the jurisdiction to construe or apply the treaty. By the intendment of the African Charter on Human and Peoples' Rights (Ratification and Enforcement Act) 2004, anyone who feels that his right as guaranteed by the Charter has been contravened should approach the court of law to obtain redress. The right to approach the court for redress extends to the right to enjoy a clean marine environment. The case of *Gbemre v Shell Petroleum Development Company and Others*¹¹ about access to health

³ . *Ibid*, S 6(6) (1).

⁴ J Odili, *Environmental Protection in Nigeria: A Human Right Approach* (Munich, CRIN Verlag, 2018)<<https://www.grin.com/document/1137463>> accessed 3 December 2023.

⁵ UDHR 1948.

⁶ Article 25(1).

⁷ ICESCR, Article 11(1).

⁸ ICESCR., Article 12(2)(b).

⁹ *Odili (n 4)*.

¹⁰ SC 45/1997; (2000) 6 NWLR 228.

¹¹ Suit No. FHC/B/CS/53/O5; (2005) AHRLR 151.

care, treatment, and the right to a clean marine environment is instructive. The case of pollution of the Bille and Ogale rivers in Nigeria is germane. The relevant section of the Charter that protects the right of the citizen to a protected marine environment is Article 24 which provides that all people shall have the right to a generally satisfactory environment suitable to their development.

The question is whether the Charter recognizes marine environmental rights as an individual right or a collective right. To answer this question posed above, the case of the *Social and Economic Rights Action Centre and the Centre Economic, and Social Rights v the Federal Republic of Nigeria*¹² is instructive. In this case, the petitioner instituted a matter in the month of March 1996 and alleged that there was a violation of the human rights of the Ogoni people by the Military government of Nigeria because of unguarded oil exploration practices which led to pollution of water, soil, and air, loss of homes, burning of crops and killing of animals. The act led to the violation of health rights, a healthy marine environment, housing, and food. In their findings, the Commission found that the government and the multinational oil companies are guilty of violating the right of the people of Ogoni to access clean water, food, good health, and an adequate standard of living. The commission held that “the right to a general satisfactory environment as guaranteed in Article 24 of the Africa Charter or the right to a healthy environment as it is widely known, therefore imposes clear duties on the government demand on the state to take adequate measures to avert pollution and ecological degradation, to promote conservation, and to foster an economic development that is sustainable and use of natural resources... the right to enjoy the best attainable state of physical and mental health enunciated in Article 16 (1) of the African Charter and the right to a general satisfactory environment favorable to development. Article 16 (5) obligates the government to desist from directly threatening the health and environment of their citizens.

Citizens’ right to the protection of the marine environment in Nigeria is not guaranteed because such right is not enforceable having not formed part of the civil and political rights protected under Chapter IV of the Constitution of the Federal Republic of Nigeria. What saved the SERAP case was that the case was not ventilated within Nigerian legal space and the proceedings were regulated by the provision of the African Charter on Human and Peoples’ Rights which Nigeria has domesticated. In suggesting a remedy to this clog, a good starting point would have been to borrow a leaf from the Constitution of India which has made the water right (marine) part of the right to life.¹³ Article 51-A of the Constitution of India makes it a fundamental duty that every citizen should protect and improve the natural environment, including forests, lakes rivers, and wildlife.¹⁴ The provision confers one of the fundamental duties to protect and improve the natural environment including the marine environment. Article 51-A (g) provides “It shall be the duty of every citizen of India- to protect and improve the natural environment including forests, lakes, rivers, and wildlife, and to have compassion for living creatures.” To that extent, the Supreme Court of India stated in the case of *Rural Litigation & Entitlement Kendra v State of U.P.*¹⁵ that “preservation of the environment and keeping the ecological balance unaffected is a task which not only the government but also every citizen must undertake. It is a social obligation and let us remind every citizen that it is his fundamental duty as enshrined in Article 51-A (g) of the Constitution”.¹⁶ But Section 20 of the Nigerian Constitution which is the enabling provision for the protection of the

¹² Comm. No.155/96 (2001).

¹³ 42nd Amendment to the Indian Constitution, 1976, Articles 21, 47, 48 and 51-A, respectively.

¹⁴ SC Shastri, *Environmental Law* (4th ed, Eastern Book Company Lucknow 2012) 243.

¹⁵ [1985] 3 SCC 614, [1985]AIR SC 1259.

¹⁶ [1986] Supp SCC517, Per Rangnath Mishra J and M.C. Mehta (*Badkhal and Surajkund Lakes Matter*) v Union of India [1997] 3 SCC 715. See also, *Sushanta Tagore v Union of India* [2005] 3 SCC 16.

marine environment is not specific as to charge every citizen of Nigeria to be responsible for the protection of the environment. The Constitution donates the responsibility to “the state to protect and improve the environment and safeguard the water...” The Indian effort at protecting the marine environment has garnered judicial blessing, and in the case of *Susetha v State of T.N. (Susetha)*,¹⁷ the Supreme Court of India pronounced a significant judgment that tied the right to water as part of the right to life. In this case, the Court observed thus:

“[T]he water bodies are required to be retained. Such requirement is envisaged not only because the right to water as also quality of life are envisaged under Article 21 of the Constitution of India, but also because the same has been recognized in Articles 47 and 48-A of the Constitution of India. Article 51-A of the Constitution of India furthermore makes a fundamental duty of every citizen to protect and improve the natural environment including forest, lakes, rivers and wildlife.”¹⁸

The court declared that the “Principle of Sustainable Development and Doctrine of Public Trust” are fundamental concepts of Indian law and not empty slogans. The picture created here is that an individual can approach the court for environmental issues affecting him and the general public and not the function of the state alone. This was recognized by the court when Orissa High Court observed that Articles 48-A and 51-A (g) lay down the foundation for the jurisprudence of environmental protection obligation which state that the state and the citizen together must protect and improve the environment,¹⁹ and that the court should assist to enforce this fundamental duty and not to depend on the policymakers.²⁰ The position of the court accords with the principle of intergenerational equity.

In this regard, Shastri tends to agree with Jariwala,²¹ one of the pioneers in the field of environmental law who rightly observed that Articles 48-A and 51-A (g) of the Indian Constitution (which is an *impisima verbis* of Section 20 of the Constitution of the Federal Republic of Nigeria) reflect the “principle of intergenerational equity” and the various pronouncement made by the supreme court in the protection of the environment “envisages an emergence of the right of the unborn.” The right of the unborn to a free environment, including marine environment emanates from Articles 21, 48-A, and 51-A (g), and the “existing generation was ordained not to plunder but to use nature according to one capacity to repay” and that man was simply a trustee of nature for the generation to come and not a grabber who may plunder what he can.” For this, we have to make Invacare a part of culture, tradition, and life conduct.²²

Nigerian Constitution should be amended to be at par with the status of the Indian Constitution to make the protection and safeguard of the environment, particularly the marine environment the duty of not just the state alone, but that of the citizens. Actualization of this task would go a long way to protect the citizens’ right to a clean marine environment since it is the responsibility of every citizen. Again, the water right (the marine) should be made a right to life as to be in accord with Article 21 of the 42nd Amendment of the Indian Constitution.

¹⁷ [2006] 6 SCC 543 [2006] AIR SC 2893, particularly at 546.

¹⁸ *Ibid.*

¹⁹ *M.C. Mehta v State of Orissa* [1992] AIR, Ori 225, *Burrabazar Fire Works Dealers Assn. v Commr. of Police* [1998] Air Cal 121. Applied in *Sitaram Chhaparia v State of BIHAR*, [2002] AIR, PAT 134.

²⁰ *Sachidanand Pandey v State of W.B* [1987] 2 SCC 295.

²¹ CM Jariwala, ‘Complex Enviro-Techno Science Issues: Judicial Direction’ [2000] 42 *JILI* 29, 36-37.

²² SC Shastri (n 14) 77-78.

3.0 Human Rights and the Marine Protection in Nigeria

The marine ecosystem is a common heritage. The environmental challenges or issues take into account human beings and not the state as a unit. This is settled as the Stockholm Declaration provides that man is a part of nature and life depends on it. This was buttressed further by U. Thant, the Secretary-General United Nations (as he then was) at the Stockholm Conference where he stated “Like or not we are travelling together on a common planet and we have no national alternative but to work together to make an environment in which we and our children can live a full and peaceful life.”²³ Every human being has certain fundamental rights that individuals and government must uphold and respect. Human rights or citizens’ rights could be generally defined as those rights which are inherent in our nature and without which we cannot function as human beings²⁴. The court in the case of *New Patriotic Party v. IGP Accra*²⁵ reemphasized that “citizens’ rights or human rights are universally regarded as inalienable and constitute the birthright of the individual as human beings, therefore no person may be deprived of his or her human rights by any one or authority what so ever”. It is important to reiterate here that the fundamental rights guaranteed under Chapter IV of the 1999 Constitution of Nigeria are limited to civil and political rights. The breach of any of such rights could be challenged in any of the high courts. By section 17 of the Constitution and the judicial authority in the case of *Uzoukwu v Ezonu II*²⁶ where the court held that the socio-cultural rights and the economic rights (ie, free education at all levels, provision of employment, adequate medical and health facilities, clean marine environment, etc.) which are covered under the fundamental objectives and the directive principle of state policy enshrined in Chapter II of the Constitution of the Federation of Nigeria²⁷ is non-justiciable.²⁸ The virile marine ecosystem is a means of livelihood for humans. Section 33 of the Constitution provides for the right to life. Several human rights instruments made solemn provisions to guarantee the right to life. For instance, the Universal Declaration of Human Rights, 1948, the African Charter on Human and Peoples Rights, 1981²⁹ European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950.³⁰

There is a clear-cut nexus between the right to a clean marine environment and livelihood itself. This is because what makes life livable is invariably an integral component of the right to life. The court established this in the Indian case of *Olga Tellis v Bombay Municipal Corporation*.³¹ In this case, the petitioner, a journalist, and two pavement dwellers opposed the scheme adopted by the government to deport pavement dwellers from Bombay City to their place of origin. It was contested by the petitioner that the right to life is integral to the right to livelihood. Evicting them from the slums and pavement areas would deprive them of means of earning as well. On this ground, the action of the government was declared unconstitutional. The court in accepting the argument canvassed for the petitioner declared thus:

²³ DK Ganguly, ‘Law Relating to Protection of Human Rights and Violation of Human Rights Problems’ (DWIVEDI Law Agency All Ahabad 2012) 1504.

²⁴ Universal Declaration of Human Rights, 1948; African Charter on Human and Peoples’ Rights, 1981.

²⁵ (2000)2 HRLRA, 1 SUP. Ct. Ghana.

²⁶ (1991) 6 NWLR (Pt. 200) 708 CA.

²⁷ CFRN 1999.

²⁸ AS Ogwuche (ed), *Compendium of Human Rights Law* (First Edition, Published by Maiyati Chambers 2006)3.

²⁹ Article 4.

³⁰ Article 2.

³¹ (1985) SCC 545 (Indian Supreme Court Judgement).

“Deprive a person of his right to livelihood and you shall have deprived him of his life...The state may not, by affirmative action, be compellable to provide adequate means of livelihood or work to citizens. But, any person, who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as offending the right.”

Before the court’s decision in the above case, the case of *Bandhu Mukti Morcha v Union of India*³² shaded more light when the court held that the right to life with human dignity provided in Article 21 got its life breath from the directive principle of state policy and that opportunities and facilities should be provided to the people.

In Nigeria, the rights relating to the environment guaranteed by the Constitution are constrained because of the non-justiciability of the economic, social, and cultural rights provided under the fundamental objective and the directive principle of state policy under Chapter 11 of the Constitution. This includes the protection of the marine environment in Nigeria which is considered not to have fallen under the civil and political rights and as such does not enjoy the status other rights under Chapter IV of the Constitution enjoy. Apart from the robust provisions made by the constitution of India to attribute human rights to the right to life, the Constitution of South Africa equally provides for the justiciability of socio-economic rights as judicially noticed in the case of *Government of the Republic of South Africa v Grootboom*,³³ where it was held that “our constitution entrenches both civil and political rights and social-economic rights. All the rights in our bill of rights are interrelated and mutually supporting...”³⁴

Nigeria has not yet applied the boldness to advocate for judicial activism like India which has factored protection of the marine (water) as part of the right guaranteed by the constitution and the government of South Africa has followed suit. The African Charter for Human and Peoples Rights should not be the basis for recognizing the right to clean the marine environment as intrinsic to the right to life. The right to a clean marine environment should be a full-blown right recognizable and guaranteed under the Constitution of the Federal Republic of Nigeria. The right of Nigeria citizens to enjoy a clean marine environment at present is confined by the placement of the economic, social, and cultural rights which spelled out the right of citizens to enjoy a sanitary marine ecosystem under the fundamental objectives and the directive principle of state policy contained in Chapter 11 of the 1999 Constitution, making it unjustifiable.³⁵ The court added strength to the above position when it held in the case of *Archbishop Olunmi Okogie v The Lagos State*³⁶ interpreting a similar provision in the 1979 Constitution (now 1999) that section 13 has not made Chapter 11 of the Constitution (fundamental objective and the directive principle of state policy) justiciable.

In this regard, Odibei in his work argued joining reasons with Femi Falana in his book “Fundamental Right Enforcement”³⁷ to urge Nigeria to adopt judicial activism like India towards the justiciability of socio-economic rights. According to him;

³² (1984) 3 SCC 161.

³³ (2001)36 WRN 137 at 162-163 .

³⁴ FF Odibei, *Cases and Materials on Human Rights Law* (Pearl Publishers, 2011) 22-23

³⁵ *Ibid.*

³⁶ (1981)2 NCLR 337 at 350.

³⁷ FF Odibei (n 34) 10.

“given the inexplicable reluctance of the state to comply with the provisions of Chapter 11 of the Constitution, the time has come for Nigerian courts to borrow a leaf from India where an activist judiciary has compelled the government to enforce certain aspects of the directive principles of state policies”³⁸.

4.0 Violation of the Right to Enjoy Good and Clean Marine Environment

Nigeria has been battling with various aspects of marine pollution challenges resulting from the anthropogenic activities of humans. Marine pollution could be referred to a direct or indirect introduction by humans of substances or energy into the marine environment (including estuaries) resulting in harm to living resources, a hazard to human health, a hindrance to marine activities including fishing, impairment of the quality of seawater and reduction of amenities.³⁹ Marine pollution is an antithesis or an affront to a guaranteed right to a clean marine environment. The major activities of humans that drain rights to clean marine environment are amongst others:

a) Land-Based Activities: The United Nations estimates that 80% of all global marine pollution originates from land-based sources.⁴⁰ Pollutants of land-based origin include pesticides, chemical waste, cleaning agents, petroleum products, garbage, sewage and mining waste,⁴¹ nitrogen-based fertilizers, and pharmaceuticals.⁴² The challenges posed by land-based sources of marine pollution triggered international efforts to regulate the menace. The challenge of land-based sources of marine pollution birthed the enactment of the 1982 Law of the Sea Convention (UNCLOS) which directed states to take all measures that are necessary to prevent, reduce, and control pollution of the marine environment from any source and to ensure that any pollution arising from activities under their jurisdiction and control does not spread beyond areas in which they exercise sovereign rights.⁴³

b). Marine litter/Garbage. According to the United Nations, Marine litter means any “persistent, manufactured or processed solid material discarded, disposed of or abandoned in the marine and coastal environment”.⁴⁴ Marine litter includes plastic debris which is a major culprit threatening the marine environment due to its non-biodegradable nature.⁴⁵ According to the report of the International Union on Conservation of Nature, it was estimated that at least 14 million tons of plastic end up in the ocean every year and plastic makes up 80% of all marine debris found from surface water to deep-sea sediments.⁴⁶ The main sources of plastic debris found in the ocean are land-based. In a nutshell, marine litter presents a huge problem in our oceans, and scientists have warned that by 2050, the number of plastics in the oceans will outweigh fish⁴⁷,

³⁸ *Ibid* 23.

³⁹ Glossary of Environment Statistics, Studies in Methods, Series F, No.67, United Nations, New York 1997<<http://www.stats.oecd.org/glossary/detail.asp?id=1596>>accessed 28 November, 2023.

⁴⁰ ‘Land-Based Sources of Marine Pollution’ OAA Office of General Counsel <<https://www.gc.noaa.gov/gcil-land-based-pollution.html>> accessed 12 May 2022.

⁴¹ *Ibid*.

⁴² *Ibid*.

⁴³ UNCLOS, Article 194.

⁴⁴ UNEP, ‘Marine Litter’<<https://www.unep.org/explore-topics/oceans-seas/what-we-do-working-regional-seas/marine-litter>> accessed 23 September 2022.

⁴⁵ *Ibid*.

⁴⁶ ‘Marine Plastic Pollution’ IUCN <<https://www.iucn.org/resources/issues-briefs/marine-plastic-pollution>> accessed 14 May 2022.

⁴⁷ ‘Marine Litter’ International Maritime Organization (IMO) <<https://www.imo.org/en/mediacentre/hottopics/pages/marinelitter-default.aspx>> accessed 14 May 2022.

c) Household and Domestic Activities; this type of source of pollution is of complex variety. It could be biodegradable or non-biodegradable solid wastes seen in liquid waste, metal, and plastics which include women-used wigs, organics of different classes, chemical waste, and so on. The prevalent concern from domestic waste shows that household washing machines are a source of microplastic pollution- bits of polyester and acrylic smaller than the head of a pin that scientists now have detected along the shorelines worldwide.⁴⁸

d) Marine pollution sources can also result from operational vessels used for fishing. The vessel-sourced operational, intentional, and accidental discharge arises when pollutants such as oil water, noxious liquids, sewage, garbage, or contaminated ballast water are released into the marine environment.⁴⁹

In the International arena, to mitigate vessel-associated pollution, the IMO, 1973 adopted the International Convention for the Prevention of Pollution from Ships, known as MARPOL which was amended by the Protocols of 1978 and 1997. Another way to mitigate or reduce waste oil discharge into the marine environment is to adopt a particular waste recycling technology aimed at obtaining marine fuel oil from sludge, through a pyrolysis process to be carried out in a small reactor on board. The pyrolysis process is the thermal decomposition of organic materials that occurs in the absence of oxygen. The chemical process produces gaseous, liquid, and solid compounds. The oil produced from pyrolysis can be used directly as fuel while gas could feed the boiler on board and solids could be sent to an incinerator.⁵⁰ Pyrolysis provides double the advantage of energy for ships on board and a shorter chain of waste disposal with a far-reaching reduction in costs and risk of pollution. The process is to obtain new fuel from sludge. The pyrolysis process is mainly applied to biomass and solid waste. A small pyrolysis plant can be installed on board to produce additional fuel from sludge.⁵¹

e) Bunkering activities whether legally or illegally explored have contributed immensely to the pollution of the marine environment. Bunkering is the process of supplying fuels, including but not limited to automotive gas oil, fuel oil, liquefied natural gas, and lubricating oils to users in the marine environment.⁵²In Nigeria, the Niger Delta is a host to oil and gas reserves.⁵³ For legal bunkering, some oils escape during operation which impact on the marine environment. However, the Nigerian National Petroleum Corporation (NNPC) has some legal protection over spills or crude that escaped during the exploration and refining of crude oil and gas. If a spill or discharge occurs, to claim against the NNPC certain pre-conditions must be satisfied. For instance, Section 12(1) of the NNPC Act demands an intending plaintiff in a court action against NNPC, service it a Pre-action Notice. The legality of the resultant restriction on a person's access to court by such a Pre-action Notice provision in our laws has been upheld by the court.⁵⁴The Supreme Court gave credence to this when it considered in the case of *Amadi v NNPC*⁵⁵the possibility of the waiver of

⁴⁸JA Akankali and E Elenwo, 'Sources of Marine Pollution o Nigerian Coastal Resources: An Overview' [2015] (5)(2) *Open Journal of Marine Science*, 10.

⁴⁹AO Abdulrazaq, and SZSA Kader, 'Vessel-Sourced Pollution: A Security Threat in Malaysian Waters'[2014] (3) (1) *Afe Babalola University Journal of Sustainable Development Law and Policy*, 26.

⁵⁰*Ibid.*

⁵¹*Ibid.*

⁵²Department of Petroleum Resources' Guidelines for Bunkering Operations in Nigeria 2016, s 1.0(1.1)(i).

⁵³OA Boniface and OB Samuel, 'Oil Bunkering Activities in the Niger Delta" The Way Forward"' [2016] (5) (4) *American Journal of Engineering Research (AJER)* 169.

⁵⁴G Etikerentse, *Nigerian Petroleum Law* (2nd edn, Deedee Publishers 2005) 45.

⁵⁵[2002] 10 NWLR (Pt 674) 76.

the statutory pre-action notice requirement contained in Section 12(1) of the NNPC Act and decided that the requirement for compliance could not be waived, such statutory requirement being a mandatory one, although the issue, in that case, did not bother on the NNPC commercial contractual right. Amadi's case revealed that legal bunkering will continue to pave the way for marine pollution and the death of marine living resources.

In the same vein, the people of the Niger Delta of Nigeria are facing a deluge of marine pollution problems resulting from illegal bunkering activities. Illegal bunkering refers to any form of extraction of oil outside the framework of the law.⁵⁶ It is otherwise called "kpo fire". The kpo fire activity is characterized by the spread of thick blanket cover of crude oil on the surface of waters and coastline in the Niger Delta areas. Kpo fire is simply a local oil process of heating the stolen crude in a fabricated oven to extract petroleum products while the residual is released into the environment not minding the implication on the ecosystem.⁵⁷ Artisanal refinery has grown in the Niger Delta areas. Just in the month of April Kpo fire explosion claimed over 200 lives in Abacheke, Egbema, Imo, and Rivers State.⁵⁸

It was noted that the law enforcement agencies grant permits to the operators of the illegal Kpo fire to carry on in the business.⁵⁹

f) Other activities are sand dredging, offshore and onshore exploration of oil, and extraction of solid minerals like ocean mining (e.g., drilling for zinc, gold, silver, cobalt, and copper to create harmful sulfide deposits deep in the ocean), Agro chemicals and fertilizers, intentional discharge.⁶⁰

g) Deep sea mining is a source of marine pollution and its effect is disastrous to the marine ecosystem. Deep sea mining refers to the process of recovering mineral deposits from the deep sea- the area of the ocean below 200 meters which covers about 65% of the Earth's surface.⁶¹ The mining activities on land have contributed to the pollution of the marine through runoff. Unbridled mining activities in hilly areas have caused eco imbalance as demonstrated in the case of *Rural Litigation and Entertainment Kendra v State* where the court frowned at mining activities that damaged and polluted natural streams, thus rendering the water incapable of drinking and for agricultural purposes. In addition, the Supreme Court of India held in the case of *M.C. Mehta v Union of India* that environment which includes marine environment and ecology are national assets and are subject to intergenerational equity. The court ordered for complete ban on mining activities in the Aravalli range falling in a state of Haryana Dist., Faridabad, and Gurgaon including mewat area on sustainable development principle which is part of Articles 21, 48-A, and 51-A(g) of the 42nd Amendment of the 1976 Constitution of India.

⁵⁶ T Bodo *et al*, 'Illegal Oil Bunkering in the Niger Delta Region of Nigeria: A challenge to Nigeria's Development' [2020] (16) (29) *European Scientific Journal*, 136.

⁵⁷ S Oyadonga, 'Ranging Kpo- fire: Deadly Diseases Loom in N- Delta' *Vanguard News* (Nigeria, 27 March 2022) <www.vanguardngr.com/2022/03/ranging-kpo-fire-deadly-diseases-loom-in-n-delta/> accessed 15 May 2022

⁵⁸ M Udoma, 'HOMEF Blame incessant KPO Fire Explosions on Government Failure' *Sweet Crude Reports* 25 April 2022 <www.Sweet.Crude.Reports.Com/homef-blame-incessant-kpo-fire-explosions-on-government-failures/> accessed 15 May 2022.

⁵⁹ *Ibid*.

⁶⁰ 'Ocean Pollution: Causes, Effects and Prevention' Texas Disposal System (1 December 2020) <www.texasdisposal.com/blog/ocean-pollution-cause-effects-and-prevention/> accessed 17 May 2020.

⁶¹ Y Tammineni, 'Deep Sea Mining –An Emerging Threat to the Marine Environment' <www.linkedin.com/pulse/deep-sea-mining-emerging-threat-marine-environment-tammineni> accessed 7 October 2022.

To reduce the effect or impact, J Ekstrom et al discovered the commonly used mitigation hierarchy which he described as the framework for managing risks and potential impacts related to biodiversity and ecosystem services, where the first tier is avoidance followed by minimization, restoration, and offset⁶². According to the Society for Ecological Restoration (SER), Restoration is then used to accelerate the rates of recovery of biodiversity and function and it is defined as the process of assisting the recovery of an ecosystem that has been degraded, damaged, or destroyed.⁶³ However, deep-sea restoration is expensive, so more research is required to develop cost-effective approaches to deep-sea restoration.⁶⁴

h) Emission of Waste from Industries that gradually empties itself into the marine environment. The above provision shows that no facility is allowed to discharge effluent beyond permissible limits into the rivers, seas, lakes, and public drains.

i) Construction of work on the Bank of the River, high seas, and oceans. Constructions such as bridges, offshore platforms, pipelines, and so on lead to pollution of the marine environment. Thus, one of the ways to mitigate pollution problems in Nigeria's marine environment is to adopt the “polluters pay principle” so that whoever pollutes the environment should be made to pay. The case of *MC Mehta v Kamal Nath & Ors*⁶⁵ is instructive. In this case, a private company named Span Motels Ltd which had a relationship with the family of Kamal Math, a former Minister of Environment and Forest built a motel on the bank of the River Beas on land leased by the Indian Government in 1981. In the course of this, Span Motels encroached on an additional area of land that adjoined the leasehold areas, and the same area was subsequently leased to Span Motels in 1994 when Kamal Nath was a Minister. The Motel embarked on construction work that required them to use bulldozers and earth movers to alter the course of the River Beas, create a new channel, and direct the river's flow. The course of the river was diverted to prevent the Motel from future floods.

The Supreme Court of India quashed the prior approval for the 1994 additional leasehold and directed the government to take over the area and restore it to its original condition. In addition, the court held that Span Motels will pay compensation to restore the environment and the various constructions on the Bank of the River Beas must be removed and reversed and the court further held that Span Motel must show why a pollution fine should not be imposed on it under the “Polluters Pay Principle” and concerning the land acquired by the 1981 lease, Span Motel was ordered by the court to construct a boundary wall round the area the lease was covered and the Motel shall not encroach upon any part of the river basin. The court also remarked that its decision was based on public trust doctrine which put the government as a trustee of all natural resources meant for public use and enjoyment.

So long as the activities on the river by humans remain unchecked and unabated, the spate of pollution will continue, thus affecting the right of the citizens to enjoy a clean marine environment. The Supreme Court of India recognized these unfriendly uses of the marine in the case of

⁶² J Ekstrom et al, 'A Cross-sector Guide for Implementing the Mitigation Hierarchy Cambridge: Cross Sector Biodiversity Initiative' [2015] <www.frontiersin.org/articles/10.3389/fmars.2018.00467/full#335> accessed 20 May 2022.

⁶³ 'What is Ecological Restoration' Society for Ecological Restoration (SER) [2004] <www.ser-rrc.org/what-is-ecological-restoration/s> accessed 20 May 2022.

⁶⁴ D Cuveller et al, 'Potential Mitigation and Restoration Actions in Ecosystems Impacted by Sea bed Mining' (10 December 2018 <www.frontiersin.org/articles/10.3389/fmars.2018.00467/full#B35 accessed 20 May 2022.

⁶⁵[1997] 1 SCC 388.

*Sachidanand Pandey*⁶⁶ when it identified industrialization, urbanization, the explosion of population, over-exploitation of resources, depletion of traditional sources of energy and raw materials, and the search for a new source of energy and raw materials, the destruction of natural ecological balance, destruction of a multitude of aquatic animals and plants⁶⁷ as an affront to enjoyment of the right to clean marine environment.

5.0 Environmental Justice as a Panacea to Marine Environmental Protection

Environmental justice is the equitable treatment and meaningful involvement of all people irrespective of color, race, national origin, or income which affects the development, implementation, and enforcement of environmental laws, policies, and regulations.⁶⁸ Equitable treatment connotes that no population bears a disproportionate share of negative environmental outcomes arising from municipal, business, and industrial operations or the execution of federal, state, or local government laws.⁶⁹ Water pollution is a major environmental justice issue.⁷⁰ The code of environmental justice was subtly adopted in the United Nations Conference on the Human Environment, which took place between the 5th and 16th of June 1972. The attendees to the conference adopted principles for the sound management of the environment including the Stockholm Declaration and Action Plan for the Human Environment.⁷¹ This was fashioned out in a way to guarantee citizens' rights over a sanitary marine environment. In this regard, the Stockholm Declaration states thus:

“States have by the Charter of the United Nations and the Principle of International law, the sovereign right to exploit their resources under their environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or areas beyond the limits of national jurisdiction.”⁷²

This Principle was further reaffirmed in Principle 2 of the Rio Declaration and it also acquired the status of the rules of Customary International Law. The principle assumed a judicial recognition in the celebrated case of *Trial Semester Arbitration*⁷³ where the court held that under the principle of International law... no state has the right to use or permit the use of their territory in such a manner as to cause injury by fumes in or to the territory of another or the property or person therein when the case is of serious consequences and the injury is established by clear and convincing evidence.

⁶⁶ AIR 1987 SC 1109.

⁶⁷ DK Ganguly (n 23)1507.

⁶⁸ EPA “United States Environmental Protection Agency” <<https://www.epa.gov>> accessed 27 November 2023.

⁶⁹ Office of Legacy Management: US Department of Energy ‘What is Environmental Justice?’ <energy.gov> accessed 27 November 2023.

⁷⁰ IYS Torres and R Gillaspay, “Environmental Justice/Definition, Principles & Examples” <<https://www.study.com>> accessed 28 November, 2023.

⁷¹ United Nations Conference on the Human Environment, Stockholm, 1972 <<https://www.un.org>> accessed 27 November 2023.

⁷² Principle 21 of Stockholm Declaration.

⁷³ Report of International Arbitration Awards, *Trial Smelter case (United States v. Canada)* 16 April 1938 and 11 March, 1941 111, Pp 1905-1982

Every state under the above principle must allow its territory not to be used for acts contrary to the rights of other states as held in *Spain v. France* France was entitled to exercise her right to divert her international river but was cautioned to take cognizance of the right of Spain.⁷⁴

The right for meticulous exploitation of the natural resources by the state can be assured when the activities of the citizens on the marine are regulated by the principles of sustainable development, precautionary and polluter pays principle. The Supreme Court of India acknowledged the twin concepts of the principles in the case of *T.N. Godavarman Thirumalpad (through K.M. Chinnappa) v India* the court declared that two salutary principles govern the law of environment and they are the principle of sustainable development and the precautionary principle. And that sustainable development is essentially a policy and strategy for continued economic and social development without detriment to the environment and natural resources, on the quality of which continued activities and further development depend. We owe a duty to the future generation and a bright today, and bleak tomorrow cannot be countenanced.

Citizens' right towards the enjoyment of a sanitary marine environment attracts correspondence obligations on the citizens to protect the marine environment from hazardous contamination. It goes to show that he who must enjoy the benefit must shoulder responsibility. There must be conscious efforts put in place to protect the marine environment from continued degradation and pollution, not by the state alone, but by the collaborating partnership of the individual citizens of the country. This is because any right to be enjoyed must be valued.

To mitigate the effect of pollution on the Nigerian marine environment is to consciously amend the Constitution of the Federal Republic of Nigeria to make the protection of the environment a fundamental duty of all the citizens of Nigeria and not only the state.⁷⁵ Thus, in the case of *Sushanta Tagore v Union of India*,⁷⁶ it was held that the preservation of the environment and keeping the ecological balance unharmed is the responsibility of not only the government but also the citizens.

Citizens' rights toward a clean marine environment must be a right fully guaranteed by the Constitution. The Indian Supreme Court recognized this position in the case of *M.C. Metha v Kamal where* the court held *Per Saghir Ahmed J* that, "to afford protection to 'life' to protect 'air, water and soil' from pollution, this court through its various judgments has given effect to the rights available, to the citizen and other persons alike under Article 21 of the constitution." In other words, life to enjoy a clean marine environment in Nigeria is akin to the right to life guaranteed by the Constitution of the Federal Republic of Nigeria, 1999 (as amended).⁷⁷

6.0 Conclusion

The topic "Citizens' rights toward the protection of the marine environment in Nigeria: A Legal Appraisal" is well thought out, particularly now that the global communities are making the right to a clean and healthy marine environment a right to life guaranteed by the constitution. Nigeria has not evolved the courage to advocate and campaign for judicial activism like the duo of India and South Africa that have enshrined the protection of the marine (water) as part of rights guaranteed and protected by the constitution. The African Charter on Human and Peoples' Rights

⁷⁴A Omaka, *Municipal and International Environmental Law* (Lions Unique Concepts 2012) 33.

⁷⁵S Shastri (n 14) 77.

⁷⁶(2005) 5 SCC 16.

⁷⁷CFRN 1999, S 33.

should not be the basis to recognize the right to a clean marine environment as intrinsic to the right to life to be enjoyed by the citizens of Nigeria. The right to a clean marine environment should be made a full-blown right recognizable and guaranteed under the Constitution of the Federal Republic of Nigeria in Chapter VI. At present, the right of Nigerian citizens to enjoy a clean marine environment is inhibited by the placement of the economic, social, and cultural rights (which cover clean marine environmental protection) under the Fundamental Objectives and the Directive Principle of State Policy contained in Chapter 11 of the 1999 Constitution, making the enforcement of these rights non-justiciable.

7.0 Recommendations

The detailed research carried out in this article revealed the following recommendations.

- i. To ensure full-blown rights for Nigerian citizens over a clean marine environment guaranteed and protected by the constitution, the economic, social, and cultural rights which includes the right to a clean marine environment provided in Chapter II of the Constitution, under the Fundamental Objectives and the Directive Principle of State Policy should be placed in Chapter IV of the Constitution to make the enforcement of these rights justiciable. In other words, it is recommended that the Constitution of the Federal Republic of Nigeria, 1999 should be amended to reflect this recommendation.
- ii. It is also suggested that the responsibility to guarantee a clean marine environment should not only be made the function of the state but also the duties of the citizens and residents of Nigeria. Nigeria should borrow a leaf from the states of India and South Africa which already have human rights-based constitutions.
- iii. Nigeria should encourage a robust and virile judiciary by training and appointing to the bench courageous individuals to guarantee citizens' confidence and access to justice. These measures when applied would assist in enforcing citizens' rights to clean and healthy marine ecosystems each time their rights are contravened or suspected to be infringed upon.