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Ayodele Babalola

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## **The Right to a Clean Environment in Nigeria: A Fundamental Right?**

*Ayodele Babalola\**

### **Abstract**

*In most common law systems, environmental liability has developed from actions under tort to fundamental rights actions. In between this development, legislatures in common law countries have enacted and amended statutes that stipulate environmental liability and enforcement.<sup>1</sup> It is logical to imagine that an unhealthy environment will have negative impacts on lives and property, which are protected fundamental rights in most countries. It is also desirable for a system to have multiple avenues available for the enforcement of sound environmental practices and processes. This Article examines whether environmental rights can be enforced via fundamental rights action under Chapter IV of the Nigerian Constitution.<sup>2</sup> It examines environmental liability from a human rights perspective and analyzes constitutional, statutory, and judicial precedents with a view of determining what the state of the law in Nigeria is on the subject. The Article concludes that, though the right to a clean and protected environment is not explicitly listed as a Chapter IV constitutional right, environmental rights are still enforceable as fundamental rights in Nigeria. An Applicant seeking to enforce public interest environmental rights can do so as a fundamental right to life and/or property action under Chapter IV by pleading facts and furnishing evidence showing how the environmental act or omission being complained of has deprived, or is likely to deprive, persons of their lives and immovable property. The Written Address in support of the Application will contain arguments linking the facts and evidence furnished to Sections 33 and 43 of the Nigerian Constitution, which are Chapter IV rights to life and immovable property, respectively. Additionally, arguments in the Written Address can*

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\*Ayodele Babalola is qualified to practice law in Nigeria and has an LL.M (Master of Laws) with specialization in Environmental & Energy Law and Public Law from the University of California, Berkeley. He is the Founding Partner, AOB Willows LP where he leads the Dispute Resolution, Environment & Elections Practice.

1. *E.g.*, Control of Pollution Act (c. 40 /1974) (Eng.); Environmental Protection Act (c. 43/1990) (Eng.); Environmental Protection Act (c. 33/1999) (Can.).

2. CONSTITUTION OF NIGERIA (1999).

*be further bolstered by reference to the relevant provisions of the African Charter on Peoples and Human Rights (Ratification and Enforcement) Act<sup>3</sup> which also contains rights described as “Fundamental Rights” by the Fundamental Rights (Enforcement Procedure) Rules.<sup>4</sup> Another route for enforcement of environmental rights as a fundamental rights action is by bringing an African Charter Act action to enforce the fundamental right to general satisfactory environment which is (alongside other rights therein) described as a fundamental right by the Fundamental Rights (Enforcement Procedure) Rules.*

*Part I briefly examines Environmental Liability in Nigeria; Part II deals with Environmental Liability under Fundamental Rights Actions in other jurisdictions. Part III discusses Fundamental Rights under Chapter IV of the Nigerian Constitution; Part IV examines the topic of Bringing a Public Interest Environmental Action as a Chapter IV Suit in Nigeria; Part V examines bringing an environmental action at the ECOWAS court; Part VI provides the Way Forward; and Part VII concludes that the right to a clean environment is enforceable as a fundamental right in Nigeria.*

## **Environmental Liability in Nigeria**

For a long time, environmental liability in Nigeria, a country with a rich common law heritage, was regulated under the auspices of the law of torts.<sup>5</sup> Usually, the first introduction to environmental liability in Nigeria for law students is during their third-year torts course. Typical and interesting cases in torts classes include: the erection of a dam by an oil company that caused severe flooding;<sup>6</sup> damage of trees and shrubs by fumes from copper smelting processes;<sup>7</sup> excessive noise made by chickens in the early hours of the morning and the nauseating smells from the pens;<sup>8</sup> and loud and excessive noise, and noxious fumes from machines at a boat building and repairing premises.<sup>9</sup>

In addition to common law, new system of environmental regulation and liability through federal and state regulation and enforcement was introduced to Nigeria through the enactment and subsequent amendments

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3. African Charter on Peoples and Human Rights Act, c. A9, art. 20 and 24 (2004).
  4. Fundamental Rights (Enforcement Procedure) Rules (2009) (Nigeria).
  5. Dr. S. Gozie Ogbodo, *Environmental Protection in Nigeria: Two Decades After the Koko Incident*, 15 ANNUAL SURVEY OF INT’L AND COMPARATIVE L. at 11 (2009).
  6. *Amos v. Shell BP Nigeria Ltd* [1974] 4 E.C.S.L.R. 486 (Nigeria).
  7. *St. Helen’s Smelting Co. v. Tipping* [1865] 11 Eng. Rep. 1483, 11 HL Cas 642 (Eng.).
  8. *Abiola v. Ijeoma* [1970] 2 All N.L.R 268, 272 (Nigeria).
  9. *Tebite v. Nigeria Marine & Trading Co. Ltd* [1971] 1 U.L.R 432, 435 (Nigeria).
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of environmental statutes and the creation of environmental agencies.<sup>10</sup> These environmental statutes and agencies regulate water resources, harmful waste, air, parks, vehicular emissions, forests, land use, animals, pests, mining, hides and skins, oil pipelines and nuclear safety.<sup>11</sup> There is still a lot of work that needs to be done to make Nigerian cities resilient to climate changes, air pollution and flood. For instance, states like Lagos and Makurdi have had devastating floods that could have been contained to some extent by proper urban planning.<sup>12</sup> These floods led to loss of lives and properties, and the displacement of numerous residents and businesses.<sup>13</sup> Cross River State is taking giant steps to adapt to the effects of climate change through its REDD+ program, which stands for “Reducing Emissions from Deforestation and Forest Degradation.”<sup>14</sup> Quite recently, the government of Cross River State declared July 30th as a public holiday for the planting of one million trees in a ceremony known as the Green Carnival.<sup>15</sup> The bottom-up approach to climate governance with sub-nationals at the forefront is at its infant stage in Nigeria.

### **Environmental Liability under Fundamental Rights Actions in other Climes**

The world has moved a step further into the era of regulating environmental liability through the courts via enforcement of fundamental human rights actions. This is directly related to the realization that an unhealthy environment impacts the quality of life of the people, and as such, environmental protection should be subsumed under the fundamental rights akin to the rights to life and property.<sup>16</sup> There is the notable U.S. case of *Juliana v. United States*, also known as the “climate kids’ lawsuit where in August 2015, twenty-one plaintiffs, sued the U.S. government and

10. See National Environmental Standards and Regulations Enforcement Agency (Establishment) Act (No. 25/2007) (Nigeria); Environmental Impact Assessment Act (No.86/2004) (Nigeria); Water Resources Act (No. 101/2004 (Nigeria)); National Oil Spill Detection and Response Agency (Establishment) Act (No. 15/2006) (Nigeria).

11. *Id.* at §§ 20-24 Act (No. 25/2007) (Nigeria); § 1 Act (No. 86/2004) (Nigeria); §§ 1, 2 and 3 Act (No. 101/2004) (Nigeria); and § 5 Act (No. 15/2006) (Nigeria).

12. AFP, *Floods displace 100,000 in Benue*, PUNCH (Sept. 1, 2017), <https://perma.cc/Z82M-ZDAE>; Samson Toromade, *Lagos roads flooded, properties destroyed after Monday rainfall*, PULSE (May 20, 2019), <https://perma.cc/C3L6-WCUS>.

13. AFP, *supra* note 12.

14. *Cross River commences N144m REDD+ investment phase*, ENVIRONEWS NIGERIA (June 13, 2019), <https://perma.cc/FG3A-DR2D>.

15. *Cross River Govt. Declares July 30 public holiday to plant 1m trees*, PULSE (July 29, 2019), <https://perma.cc/8KVX-PZ9P>.

16. European Parliamentary Assembly Environment and Human Rights Report, Draft Recommendations 7 and 9(a) and (b) (April 16, 2003), <https://perma.cc/D8FD-9MML>.

various federal agencies. The plaintiffs alleged that the U.S. policies on fossil fuels advanced catastrophic climate change and therefore violated their constitutional rights to life, liberty and property as guaranteed under the Fifth Amendment to the US Constitution.<sup>17</sup> Similarly, in the case of *Ashgar Leghari v. Federation of Pakistan*, the court cited domestic and international legal principles in determining that “the delay and lethargy of the State in implementing the 2012 National Climate Policy and Framework offend[s] the fundamental rights of the citizens.”<sup>18</sup> Another case called *The People’s Climate Case* challenged the incompatibility of recent EU regulation with the right to health and life, the rights of children to such protection and care, the right to own and use property, and the right of equal treatment (all protected by the EU Charter).<sup>19</sup> *The People’s Climate Case* was recently struck down by the European General Court on procedural grounds, stating that individuals do not have the right to challenge the bloc’s environmental plans.<sup>20</sup> The Plaintiffs had argued that the EU’s “inadequate” goal of 40% emissions cuts from 1990 levels threatened their fundamental rights to life. A suit against the government for failing to protect the citizens from the effects of climate change, and for violating the constitutional right to a clean environment was also instituted at the high court in Uganda.<sup>21</sup> As evidenced by this recent wave of cases, the world is moving rapidly towards the regulation of environment liability through the courts via the enforcement of fundamental rights actions. This should pave the way for the enforcement of environmental rights as fundamental rights actions in the Nigerian courts.

### **Fundamental Rights under Chapter IV of the Nigerian Constitution**

Chapter IV of the Nigerian Constitution contains foundational provisions regarding fundamental rights in Nigeria. They include rights under Chapter IV include the rights to: life; dignity of human person; personal liberty; fair hearing; private and family life; thought, conscience and religion; expression and the press; peaceful assembly and association; movement; freedom from discrimination; and immovable property.<sup>22</sup> The fundamental rights of a person or group of persons is one of those actions

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17. *Juliana v. United States*, 217 F. Supp. 3d 1224, 1233 (2016).

18. *Ashgar-Leghari v. Federation of Pakistan* (2015) W.P. 25501/201 (Pak.); Climate Case Chart, <https://perma.cc/F8UF-8Y5A> (last visited June 26, 2019).

19. Case T-330/18, 30-31 *Carvalho v. Parliament*, 2019.

20. *Id.* at 65-73.

21. *Ugandan government to face court in the country’s first climate change case*, CLIENT EARTH (June 27, 2018), <https://perma.cc/9A6N-C4DH>.

22. CONSTITUTION OF NIGERIA (1999), Ch. IV, §§ 33-43.

that are given priority when brought before the Nigerian courts.<sup>23</sup> The court's priority to these cases demonstrates the importance accorded to Chapter IV rights. Courts are encouraged to, where possible, ignore formalities when considering such matters and assume an activist role by ruling immediately after hearing arguments, or very soon thereafter.<sup>24</sup>

The Nigerian Constitution vests original jurisdiction for enforcement of fundamental rights action in the High Court of a State where any provision of Chapter IV is, being, or likely, to be contravened.<sup>25</sup> A party seeking relief under Chapter IV of the 1999 Constitution<sup>26</sup> and the Fundamental Rights (Enforcement Procedure) Rules must ensure that the main relief and consequential reliefs point directly to a fundamental right under Chapter IV and a clear deprivation of the same by the other party being sued.<sup>27</sup> In the dissenting judgment per Eko, JCA (as he then was) in *Briggs v Harry*, it was held that the preamble of the Fundamental Rights (Enforcement Procedure) Rules (FREPR) enjoins the court to constantly and conscientiously give effect to the overriding principles of the Rules at every stage of human rights action.<sup>28</sup> It was further held that Paragraph 3 of the said 2009 Rules expects the court to expansively and purposely interpret and apply Fundamental Rights provisions in the Constitution, and the African Charter on Human and Peoples Right (Ratification and Enforcement) Act with the view to advancing and realizing the rights and freedoms therein contained in them and affording the protections intended by them.<sup>29</sup> His Lordship further held that the proactive role of the court advocated by the 2009 Rules enjoins the courts to pursue, where possible, the purpose of advancing but never restricting applicants' rights to fundamental rights.<sup>30</sup> What this simply means is that the court should strive to do everything possible within the parameters of the law to ensure that fundamental rights actions are heard and determined.

Pursuant to the powers conferred upon the Chief Justice of Nigeria by the Nigerian Constitution to make rules with respect to the practice and procedure of a High Court for fundamental human rights enforcement

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23. Fundamental Rights (Enforcement Procedure) Rules (2009) Preamble 3(f).

24. *Benson v. Commissioner of Police* [2016] 12 NWLR 445, 466 (Nigeria) (per Rhodes-Vivour, J.S.C).

25. CONSTITUTION OF NIGERIA (1999), §§ 46(1)–(2); *Emeka v. Okoroafor* [2017] 11 NWLR 410, 478 (Nigeria).

26. CONSTITUTION OF NIGERIA (1999), ch. IV, §§ 33–46.

27. *Briggs v. Harry* [2016] 9 NWLR 45, 72–73 (Nigeria); *Egbuonu v. Bornu RadioTelevision Corp.* [1997] 12 NWLR 29, 38 (Nigeria).

28. *Briggs*, 9 NWLR at 79.

29. *Id.*

30. *Id.*

actions,<sup>31</sup> the then Chief Justice of Nigeria made the Fundamental Rights (Enforcement Procedure) Rule (FREPR).<sup>32</sup> The court in which a fundamental human right action is brought for enforcement is to pursue enhanced access to justice for all classes of litigants. This includes speedy and efficient enforcement of fundamental rights actions as well as hearing priority in deserving cases. It also entails encouraging public interest litigation including those brought by NGOs and anyone acting in the public interest.<sup>33</sup> The court is discouraged from striking out or dismissing fundamental rights actions for lack of standing.<sup>34</sup> Such court is also supposed to respect international, regional, and municipal bills of rights like the African Charter on Human and People's Rights and other instruments (including protocols) in the African regional human rights system; and the Universal Declaration of Human Rights and other instruments (including protocols) in the United Nations human rights system.<sup>35</sup> The court enforces fundamental rights via application supported by a statement setting out the name and description of the applicant, the relief sought, the grounds upon which the reliefs are sought, and supported by an affidavit setting out the facts upon which the application is made, and a written address containing arguments in support of the grounds of application.<sup>36</sup> The person or entity being sued shall file a written address and may include a counter affidavit.<sup>37</sup> On being served with the respondent's written address, the applicant may file and serve an address on points of law and may accompany it with a further affidavit.<sup>38</sup>

### **Bringing a Public Interest Environmental Action as a Chapter IV Suit in Nigeria**

It is only a matter of time before the Nigerian courts will begin to entertain limelight fundamental right to life actions under Chapter IV based on environmental actions or omissions that has, or is likely to, deprive persons of their right to life. The Universal Declaration of Human Rights provides that everyone has the right to life, liberty, and security of

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31. CONSTITUTION OF NIGERIA (1999), § 46(3).
  32. Fundamental Rights (Enforcement Procedure) Rules (2009) (Nigeria).
  33. *Id.* at Preamble §§ 3(d)–(e).
  34. *Id.*
  35. *Id.* at Preamble §§ 3(a)–(b)(ii).
  36. *Id.* at Ord. II Rules (1)–(4).
  37. *Id.* at Rule 6.
  38. Fundamental Rights (Enforcement Procedure) Rules (2009), Rule 7 (Nigeria).
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persons.<sup>39</sup> The African Charter provides that human beings are inviolable and shall be entitled to respect for his life and the integrity of his person and that no one may be arbitrarily deprived of this right.<sup>40</sup> The Charter also provides that all people shall have the right to a general satisfactory environment favorable to their development.<sup>41</sup> Treaties between Nigeria and other countries only come into force after being enacted (domesticated) by the National Assembly.<sup>42</sup> The African Charter has been domesticated and is thus applicable in Nigeria and enforceable in the courts.<sup>43</sup> The Nigerian Constitution provides that every person has a right to life and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty.<sup>44</sup>

The courts in Nigeria are often confronted with enforcement of right to life action that centers on actual wrongful deaths, and damages with respect to the same. The courts have not been presented with a right to life action with a public interest environmental dimension which seeks to prevent or tackle an environmental act or omission which is termed life threatening. This does not in any way suggest that the law does not anticipate that environmental rights can be canvassed with the instrumentality of a fundamental right to life action. This has happened in other jurisdictions and it is comforting to know that the Supreme Court also believes that such actions are possible in Nigeria. In *Centre for Oil Pollution Watch v. Nigerian National Petroleum Corporation*, the standing of NGOs in environmental actions with public interest dimensions was upheld.<sup>45</sup> There, two of the Supreme Justices expressed remarkable views that the Nigerian Constitution, the legislature and the African Charter on Human and Peoples Rights, to which Nigeria is a signatory, recognize the fundamental rights of the citizenry to a clean and healthy environment to sustain life through the provisions of Section 33 of the Nigerian Constitution, Article 24 of the African Charter on Human and Peoples' Rights (African Charter), and Section 17(4) of the Oil Pipelines Act respectively.<sup>46</sup>

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39. United Nations General Assembly, *The Universal Declaration of Human Rights*, U.N. Doc. A/Res/217(III), art. 3 (Dec. 10, 1948).

40. African Union, *The African Charter on Human and People's Rights*, art. 4 (June 1, 1981).

41. *Id.* at art. 24.

42. CONSTITUTION OF NIGERIA (1999), § 12(1).

43. *African Charter*, *supra* note 3, at Schedule.

44. CONSTITUTION OF NIGERIA (1999), § 33.

45. *Ctr. for Oil Pollution Watch v. Nigerian Nat'l Petroleum Cor.* [2019] 5 NWLR 518, 587 and 597 (Nigeria).

46. The Oil Pipeline Act (c. 7/2004) (Nigeria).

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The appellant in the *Centre for Oil Pollution Watch* case alleged that the respondent was negligent in both the causation and containment of the oil spillage.<sup>47</sup> The trial court and the Court of Appeal struck out the appellant's suit for lack of standing which prompted the appeal to the Supreme Court.<sup>48</sup> The Court of Appeal held that the appellant lacked sufficient interest and that the members of the community were better placed and armed with standing for the case. In a landmark decision, the Supreme Court held that the appellant has the standing to institute the suit against the respondent.<sup>49</sup>

What stood out in *Centre for Oil Pollution Watch* with respect to the current issue are the contributions of *amicus curiae* and the opinions of two<sup>50</sup> of the seven Supreme Court Justices.<sup>51</sup> In its argument for the liberalization of the concept of standing, the *amicus* addressed the court on environmental rights as human rights, submitting that Section 33 of the Nigerian Constitution provides for the right to life and any act or omission that threatens the health of the people of the community also threatens their lives and is in breach of the guarantee to right to life provided by the Constitution.<sup>52</sup> In one of the concurring judgments, Kekere-Ekun, J.S.C made the finding that: Sections 33 and 20 of the Nigerian Constitution; Article 24 of the African Charter; and Section 17(4) of the Oil Pipelines Act show that the Constitution, the legislature and the African Charter for Human and Peoples' Rights, to which Nigeria is a signatory, recognize the fundamental rights of the citizenry to a clean and healthy environment to sustain life.<sup>53</sup> Even more interestingly, Eko, J.S.C agreed with the *amicus curiae* and found that in order to broadly determine *locus standi* under environmental rights as human rights, Article 24 of the African Charter should be read together with Sections 33(1) and 20 of the Nigerian Constitution on the role of the State in preserving the environment for the health and by extension lives of Nigerians.<sup>54</sup> Ultimately, Eko, J.S.C found that it is apparent that the right to a healthy environment is a human right in Nigeria.<sup>55</sup> Having reproduced Articles 24 and 20 of the African Charter on Peoples and Human Rights (Ratification and Enforcement) Act,<sup>56</sup> Eko,

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47. *Ctr. For Oil Pollution Watch*, 5 NWLR at 548–550.

48. *Id.* at 548–550.

49. *Id.*

50. *Id.* at 586–87 and 596–99.

51. *Id.* at 559 and 597.

52. *Id.* at 559–560 and 597–598.

53. *Id.* at 587.

54. *Id.* at 597–598.

55. *Id.*

56. African Charter, *supra* note 2, at (A9).

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J.S.C held that as long as Nigeria remains signatory to the African Charter, and to other global as well, the Nigerian courts would protect and vindicate human rights entrenched therein.<sup>57</sup>

There is no need to worry about the justiciability<sup>58</sup> of Section 20 of the Nigerian Constitution<sup>59</sup> being a Chapter II provision, as the state of the law seems to suggest that other provisions of the Constitution as well as statutes can make Chapter II provisions justiciable.<sup>60</sup> When another provision of the constitution clearly makes a chapter II provision justiciable or an Act of the National Assembly is enacted around the subject, it becomes justiciable.

### **Bringing a Fundamental Right to a Healthy and Clean Environment Action at the ECOWAS Court**

The Community Court of Justice, Economic Community of West African States (ECOWAS), also known as the ECOWAS Court could also possibly enforce environmental rights as a fundamental right. The ECOWAS Court is a regional court established by the ECOWAS treaty which also sets out its functions.<sup>61</sup> The status, composition, powers and procedure of the ECOWAS Court is as set out in the protocol relating thereto.<sup>62</sup> The ECOWAS court has the jurisdiction to determine cases of violation of human rights that occur in any Member State.<sup>63</sup> Initially, access was granted only to Member States, since, at the time, the jurisdiction of the ECOWAS Court was restricted to Inter-State disputes with respect to the interpretation of the ECOWAS instruments.<sup>64</sup> However,

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57. *Ctr. for Oil Pollution Watch*, 5 NWLR at 598.

58. A justiciable action is one that is enforceable in court. The sections that constitute Chapter II of the Nigerian Constitution are generally unenforceable in court. However, as an exception, another provision of the constitution on the same subject or the enactment of a law pursuant to the particular Chapter II provision makes it justiciable.

59. CONSTITUTION OF NIGERIA (1999), § 20 (“The State shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria.”).

60. *Ctr. for Oil Pollution Watch*, 5 NWLR at 568–69; *A.G Lagos State v. A.G Federation & Ors* [2003] 12 NWLR 1 (Nigeria); *Olafisoye v. F.R.N* [2004] 4 NWLR 580, 659 (Nigeria).

61. Revised ECOWAS Treaty art. 6 & art. 15, July 24, 1993.

62. *Id.*

63. Supplementary Protocol A/SP.1/01/05, art. 9, para. 4 (amending the Preamble and Articles 1, 2, 9, and 30 of Protocol A/P.1/7/91 relating to the Community Court of Justice and Article 4 Paragraph 1 of the English Version of the Protocol), at [http://prod.courtcecowas.org/wp-content/uploads/2018/11/Supplementary\\_Protocol\\_ASP.10105\\_ENG.pdf](http://prod.courtcecowas.org/wp-content/uploads/2018/11/Supplementary_Protocol_ASP.10105_ENG.pdf).

64. Protocol A/P.1/7/91 on the Community Court of Justice, § 9, para. 3 (1999) (Nigeria).

the Supplementary Protocol directly granted relief to individuals who applied for violation of their human rights, the submission of application for which shall: not be anonymous; nor be made whilst the same matter has been instituted before another International Court for adjudication.<sup>65</sup> This made it possible for actions to be brought for violations of fundamental rights at the ECOWAS Courts by individuals and corporate organizations (NGOs inclusive) without exhausting local remedies.<sup>66</sup> It should also be noted that the ECOWAS Court is not constrained by the domestic laws of Member States, including national Constitutions that are inconsistent with their Treaty Obligations.<sup>67</sup> This means that a defense by a Member State that a treaty obligation contradicts its internal laws is not recognized or acceptable at the ECOWAS Court.

It is additionally noted that the provision of the Supplementary Protocol does not give specific guidance on the particular set of human rights that are enforceable at the ECOWAS Court and the applicable human rights instruments. This is favorable because it has given the ECOWAS court the flexibility to navigate across a broad set of internationally recognized fundamental rights, along with a plethora of international human rights treaties, including treaties related to the environment. This would not have been the case if specific rights were listed in the Supplementary Protocol as it will automatically exclude those not listed from being enforceable at the ECOWAS Court. The ECOWAS Court has applied the African Charter on Human and Peoples' Rights, which interestingly has provisions on fundamental rights to a healthy and clean environment and protection from degradation.<sup>68</sup> The ECOWAS Court will also apply any international human rights treaty ratified by Member States.<sup>69</sup>

From the above provisions, it is certain that an application for the enforcement of a treaty based fundamental rights action can be filed and argued at the ECOWAS Court. This presupposes that an application for enforcement of the fundamental right to a healthy and clean environment

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65. Supplementary Protocol A/SP.1/01/05, art. 10, para. d(i) and (ii) (amending the Preamble and Articles 1, 2, 9 and 30 of Protocol A/P.1/7/91 relating to the Community Court of Justice and Article 4 Paragraph 1 of the English Version of the Protocol), *see* <https://perma.cc/2YE5-E489>.

66. *Essien v. The Republic of the Gambia and University of the Gambia* [2007] 5 APP 5, 1, 3 (Nigeria).

67. *Registered Trustees of the Socio-Economic Rights and Accountability Project (SERAP) v. Federal Republic of Nigeria & UBEC* [2009] 2 APP 11 (Nigeria).

68. African Union, *The African Charter on Human and People's Rights*, art. 16 & 24 (1 June 1981).

69. *Henry v. Republic of Cote D'Ivoire* [2009] 1 APP 9, 4 (Nigeria); *see* [http://www.worldcourts.com/ecowascj/eng/decisions/2009.12.17\\_Henry\\_v\\_Cote\\_d%27Ivoire.pdf](http://www.worldcourts.com/ecowascj/eng/decisions/2009.12.17_Henry_v_Cote_d%27Ivoire.pdf).

can be brought at the ECOWAS Court pursuant to the African Charter. In addition, a right to life enforcement application can be brought at the ECOWAS court pursuant to the African Charter. Access is guaranteed to individuals and corporate bodies (NGOs inclusive) to enforce the fundamental rights to a healthy and clean environment, and to life under the African Charter. The ECOWAS Court in *Registered Trustees of the Socio-Economic Rights and Accountability Project (SERAP) v. The President of the Federal Republic of Nigeria* confirmed that NGOs can maintain actions for human rights violations, especially for public interest litigation.<sup>70</sup> The Court also referred to international consensus on facilitation of access to court in cases of violation of the rights of communities in cases relating to environmental damage. In order to preserve its status as an International Court, the ECOWAS Court has declined jurisdiction over certain human rights disputes between individuals, reserving them instead for the national courts.<sup>71</sup> Furthermore, only Member States and Community Institutions can be sued before the ECOWAS Court.<sup>72</sup>

Accordingly, both private and public interest environmental actions based on the African Charter or any other international human rights treaty ratified by a Member State can be brought by an individual or corporate body against a Member State or Community Institution before the ECOWAS Court in Abuja, Nigeria.

## The Way Forward

The next issue to be addressed is how an applicant who eventually takes the step to enforce environmental rights as fundamental rights under chapter IV of the Constitution will respond to a confrontation that environmental rights are not specifically provided for in Chapter IV. Standing should not be difficult to sort out because the FREPR is friendly towards public interest suits<sup>73</sup> and the Supreme Court has liberalized the concept of Standing with respect to public interest environmental actions.<sup>74</sup> More importantly, the applicant will have to convince the court that the particular environmental act or omission complained about has deprived,

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70. *Registered Trustees of the Socio-Economic Rights and Accountability Project (SERAP) v. Federal Republic of Nigeria & UBEC* [2009] 2 APP 11, 13-17 (Nigeria); see [https://www.escri-net.org/sites/default/files/SERAP\\_v\\_Nigeria.pdf](https://www.escri-net.org/sites/default/files/SERAP_v_Nigeria.pdf).

71. *David v. Uwechue* [2011] 4 APP 9, 2 (Nigeria); see [http://www.worldcourts.com/ecowasccj/eng/decisions/2011.07.07\\_David\\_v\\_Uwechue.pdf](http://www.worldcourts.com/ecowasccj/eng/decisions/2011.07.07_David_v_Uwechue.pdf).

72. *SERAP v. Nigeria*. Rul. No: ECW/CCJ/APP/07/10, para. 71; see [http://www.worldcourts.com/ecowasccj/eng/decisions/2010.12.10\\_SERAP\\_v\\_Nigeria.htm](http://www.worldcourts.com/ecowasccj/eng/decisions/2010.12.10_SERAP_v_Nigeria.htm).

73. Fundamental Rights (Enforcement Procedure) Rules (2009), § 3(e).

74. *Ctr. for Oil Pollution Watch*, 5 NWLR at 587 and 597.

or is capable of depriving, persons of their lives and/or immovable properties.<sup>75</sup> This should be based on compelling evidence, expert or non-expert just like in other court actions. The applicant also has to argue that the case is one for Chapter IV - Sections 33 and/or 43 of the Nigerian Constitution. Specifically, on the issue whether environmental rights can fit into Section 33 of Chapter IV, the applicant can make ready reference to the opinions of the two Supreme Court justices in the recent *Centre for Oil Pollution Watch* case in support of the argument. The argument is simply that the acts or omissions of the government agency or corporate organization contain environmental impacts which already have, or are likely to, deprive the people of their lives or property, depending on the particular Chapter IV fundamental right in focus.

### Conclusion

There are three options open to an applicant seeking to enforce the right to a clean environment as a fundamental right in Nigeria. Firstly, the applicant can seek to enforce the right to general satisfactory environment and the corresponding duty of the State to protect and improve the environment under the *African Charter*<sup>76</sup> by way of an Application recognized by the FREPR.<sup>77</sup> Secondly, the applicant can seek a Chapter IV (Right to Life and/or Property) constitutional action which argues that environmental actions or omissions that have deprived, or are likely to deprive, persons of their lives and immovable property are subsumed under the right to life and property. Finally, the ECOWAS Court is situated in Abuja, Nigeria, and is therefore an effective place to litigate fundamental rights actions pursuant to the African Charter or other international human rights treaty. However, a litigant that pursues this option is limited to suits based on international human rights treaties and against Nigeria or the Community Institutions.

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75. CONSTITUTION OF NIGERIA (1999), § 33, 43.

76. *African Charter*, *supra* note 2, at art. 20 and art. 24.

77. Order I (2) defines fundamental right as any right provided for in Chapter IV of the Constitution and includes any of the rights stipulated in the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act. Order II (1) provides that any person who alleges that any of the Fundamental Rights provided for in the Constitution or African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act and to which he is entitled has been, or is likely to be infringed, may apply to the Court in the State where the infringement occurs or is likely to occur, for redress.