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UTILISING THE FUNDAMENTAL RIGHTS (ENFORCEMENT PROCEDURE) RULES 2009 AS A TOOL FOR ENVIRONMENTAL LITIGATION IN NIGERIA: FINDINGS FROM A SURVEY OF LEGAL PRACTITIONERS

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Abstract

In an era when the quality of life and enjoyment of rights is threatened by environmental degradation, environmental litigation is increasingly incorporating human rights law. This raises questions on the possibility of utilising the procedure for the enforcement of fundamental rights to protect the right to a healthy environment. The decision of the Nigerian Supreme Court in the case of Centre for Oil Pollution Watch v. Nigerian National Petroleum Corporation has further enriched the environmental law jurisprudence. The aim of this article is to identify how, in the light of the Supreme Court decision, the Fundamental Rights (Enforcement Procedure) Rules 2009 (FREP Rules) can be used to advance environmental litigation; it further examines the prospects and the challenges in adopting this approach. The article adopts the doctrinal and empirical methods of research. Questionnaires were distributed to legal practitioners drawn from the six-geopolitical zones of Nigeria and the results were analysed by means of descriptive analysis. Findings from the research are that, a majority of the respondents are of the considered opinion that the FREP Rules can be utilised for environmental litigation in Nigeria. The requirement of evidence linking environmental harm to violation of a Chapter IV right; the low level of awareness of Nigerians on human rights and environmental issues; and existing problems of implementation and enforcement of human rights are identified as challenges.

Key words: *Environment, Fundamental rights enforcement, Environmental litigation, Courts*

1.1 Introduction

Environmental litigation constitutes a major avenue of protecting the environment. In the enforcement of environmental laws, both criminal and civil actions could be instituted as the need arises. The courts may be called upon to enforce fundamental rights in Chapter Four of the Nigerian Constitution which are threatened by environmental degradation.[1] The environmental right in the African Charter on Human and Peoples Rights (The African Charter) and provisions contained in environmental laws could also give rise to litigation. This suggests that domestic mechanisms for fundamental rights enforcement could increasingly be adopted in environmental litigation.

Increasingly, environmental litigation is moving from the use of Common Law torts of nuisance, negligence, trespass and the Rule in *Rylands v. Fletcher* to public interest litigation in enforcing statutory environmental law. Environmental litigation also increasingly encompasses the use of human rights law in protecting rights threatened by environmental degradation. National courts spanning the different continents, regional courts and international human rights monitoring bodies have rendered decisions establishing the link between human rights and the environment and broadly interpreting human rights to encompass environmental protection.[2] It can therefore be asserted that a healthy environment as a component of the rights to life, human dignity and privacy is now established. The recent decision of the Nigerian Supreme Court in *Centre for Oil Pollution Watch v. NNPC*[3] has added to the environmental rights jurisprudence

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[1] The conception of environment as a component of the right to life is established in legal scholarship. See Ayodele Babalola, 'The Right to a Clean Environment in Nigeria: A Fundamental Right?'[2020] 26 (1) *Hastings Environmental Law Journal*, 3; D. Boyd, The Environmental Rights Revolution: Constitutions, Human Rights, and the Environment. Unpublished PhD Dissertation, Resource Management and Environmental Studies, University of British Columbia, Vancouver, 2010, p. 364; D. Shelton, 'Human Rights and Environment: Past, Present and Future Linkages and the Value of a Declaration', A Draft Paper Presented at the High Level Expert Meeting on the New Future of Human Rights and Environment: Moving the Global Agenda Forward, Co-organized by UNEP and OHCHR in Nairobi, Nov 30 –Dec 1 2009.

[2] Social and Economic Rights Action Centre for Economic and Social Rights (SERAC) v. Nigeria, African Commission on Human and Peoples' Rights Communication No 155/96 (2001); Yanomani Indians v. Brazil, Decision 7615, Inter Am. C.H.R, Inter-American Yearbook on Human Rights. 264 (1985); Lopez Ostra v. Spain (1994) 20 EHRR 277; M.C. Mehta vs. Union of India (Tanneries) 1988 A.I.R. (S.C.) 1115; Vellore Citizens Welfare Reform vs. Union of India (S.C.) 2715 (1996); Peter Waweru v. Republic (2007) AHRLR 149 (KeHC 2007); Beatriz Silvia Mendoza and others v. National Government and Others (Damages stemming from contamination of the Matanza-Riachuelo River), 2008, M. 1569, 8 July 2008. www.espacioriachuelo.org.ar. Accessed 18 July 2021.

[3] [2019] 5 NWLR (pt. 1666) 518.

in this regard. Crucial to environmental litigation are the legal rights recognised by extant laws and the legal processes for enforcing those rights.

This article provides a brief outline of the right to environment as distilled from Nigeria's statutes and expounded in case law. It examines some provisions for the enforcement of fundamental rights via the Fundamental Rights (Enforcement Procedure) Rules 2009 (FREP Rules). The article presents and discusses results of a survey of legal practitioners on the likely impact of the 2009 Rules on environmental litigation. Conclusions are drawn from the results of the survey and the extant law.

1.2 The Right to a Healthy Environment in Nigeria

Although the 1999 Nigerian Constitution does not provide for a fundamental right to a healthy environment, the environmental right can be deduced as a component of the right to life in section 33 of the 1999 Constitution. The Nigerian courts have extended fundamental rights provisions to environmental protection as demonstrated in the case of *Jonah Gbemre v. Shell Petroleum Development Company*[4] where the judge applied the environmental right as a component of the rights to life and personal dignity and held that the actions of the 1st and 2nd Respondents in continuing to flare gas in the course of their oil exploration and production activities in the Applicant's community was a gross violation of their constitutionally guaranteed rights to life (including healthy environment) and dignity of human person. The case highlights the link between the environment and other fundamental human rights, similar to the practice of the Indian courts of deriving environmental protection from constitutional guaranteed rights.[5]

The environmental right is provided for in national legislation. The African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act[6], Article 24 states that "All peoples shall have the right to a general satisfactory environment favorable to their development". The Act, which domesticates the provisions of the African Charter in Nigeria, now forms part of existing Nigerian legislation recognised under the Constitution. Thus the legal right to environment provided in the African Charter is recognized in Nigerian law and available to all Nigerians. The

[4] Suit No: FHC/CS/B/153/2005. (Hereinafter known as *Jonah Gbemre)*

[5] See the Indian cases of M.C. Mehta vs. Union of India (Tanneries) 1988 A.I.R. (S.C.) 1115; Vellore Citizens Welfare Reform vs. Union of India (S.C.) 2715 (1996).

[6] Cap A9 Laws of the Federation of Nigeria (LFN) 2004.

Supreme Court in the case of *Abacha v Fawehinmi*[7] held that the implication of the domestication of the African Charter is that the country has adopted the African Charter as part of her municipal law, and the provisions of the African Charter are enforceable in the same manner as those of Chapter Four of the Constitution. The African Charter also requires that a State Party enact laws or measures to, among other things, give effect to the basic human rights, freedoms, and duties guaranteed in the African Charter.[8] It is the view of the researcher that this provision creates an obligation on the government of Nigeria to enact laws that will give effect to the environmental right guaranteed in the African Charter.

Although the environmental right under the African Charter has not formed the major basis for any litigation in Nigeria, regional courts and treaty monitoring bodies have been willing to apply the right in relation to Nigeria. *Social and Economic Rights Advancement Project (SERAP) v. Nigeria,*[9] decided by the ECOWAS Court of Justice and *Social and Economic Rights Action Centre and Centre for Economic and Social Rights v. Nigeria (the SERAC communication)*[10], decided by the African Commission form the case law on the interpretation and effect of Article 24 of the African Charter and constitute persuasive precedents to Nigerian courts. In the SERAC Communication, the African Commission held that the right to a general satisfactory environment, as guaranteed under 24 of the African Charter imposes clear obligations upon a government. It requires the state to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources.

Section 20 of the 1999 Constitution provides that "[T]he state shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria." While the environmental objectives are not directly justiciable,[11] the Supreme Court has held in several cases that they can be made justiciable by implementing legislation. In *Attorney-General of Ondo State State v. Attorney-*

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[7] [2000] 6 NWLR (Pt. 660) 228

[8] African Charter, article 1.

[9] ECW/CCJ/APP/08/09. <http://www.reports-and-materials.org/Complaint-to-ECOWAS-Court-re-Nigeria-oil-pollution-25-Jul-2009.doc> Accessed on July 14, 2019

[10] Communication No 155/96 (2001).

[11] Section 6 (6) (c) of the Constitution provides that the judicial powers vested in the courts "shall not, except as otherwise provided by this Constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objective and Directive Principles of State Policy set out in Chapter II of this Constitution."

General of the Federation and Others[12], the Supreme Court held that the directive principles could be made justiciable by legislation. Professor Ben Nwabueze, SAN and Olisa Agbakoba, SAN both appearing as *amici curiae*, contended that the duty and responsibility of all organs of government and all authorities and persons exercising legislative, executive or judicial powers to conform to, observe and apply the provisions of Chapter II of the Constitution is limited by section 6(6)(c) of the Constitution which excludes from the court any issue or question as to whether any law or any judicial decision is in conformity with the fundamental objectives and directive principles of state policy.[13] Ogwuegbu JSC rejected that argument and held as follows:

> This argument in my view is limited to the extent that courts cannot enforce any of the provisions of Chapter II of the Constitution until the National Assembly has enacted specific laws as has been done in respect of section 15 (5) of the Constitution by enactment of the ICPC Act.[14] (emphasis provided)

In support of this position, Uwaifo JSC stated as follows:

> ... the directive principles (or some of them) can be made justiciable by legislation. This is the point Chief Babalola seemed to have elaborated upon when he said that the Fundamental Objectives and Directive Principles had laid dormant in our Constitution since 1979 and that the Act was the first effort to activate just one aspect of them in order that there may be good and transparent government throughout the Federation of Nigeria.[15]

This position was restated in *Attorney General Lagos State vs. Attorney General of the Federation and 35 others*,[16] where the Supreme Court considered and interpreted

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[12] (2002) FWLR Part III p. 1972. (Hereinafter referred to as AG Ondo state)
[13] Op cit. at p. 2102-2103.
[14] Op cit. at p. 2103.
[15] Op cit., p. 2136. This position was restated in *Federal Republic of Nigeria v. Alh. Mika Anache and Others* (2004) 14 WRN 1-90, 61, reported as *Olafisoye v. FRN* (2004) 4 NWLR (Pt. 864) 580 at 659 where Niki Tobi JSC held:
...section 6 (6)(c) of the Constitution is neither total or sacrosanct as the subsection provides a leeway by the use of the words, 'except as otherwise provided by this Constitution'. This means that if the Constitution otherwise provides in another section, which makes a section or sections of Chapter II justiciable, it will be so interpreted by the courts
[16] (2003) 12 NWLR (Pt. 833) 1.

Section 20 of the 1999 Constitution. It held that the main object and essence of the section, is to protect the external surroundings of the people and ensure that they live in a safe and secure atmosphere free from any danger to their health or other conveniences. This would be achieved by safeguarding the water, air and land, forest and wildlife. Their Lordships further stated that section 20 is meant to support such laws as the Federal Environmental Protection Agency Act, the Harmful Wastes (Special Criminal Provisions) Act, the Environmental Impact Assessment Act, and the National Environmental Protection (Pollution Abatement in Industries and Facilities Generating Wastes) Regulations 1991 etc. Additional statutes and subsidiary instruments enacted pursuant to section 20, since the above decision, include the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act[17] the National Oil Spill Detection and Response Agency (Establishment) Act[18] and the Flare Gas (Prevention of Waste and Pollution) Regulations 2018.

It is therefore settled that while the fundamental objectives and directive principles are not directly justiciable, they can be made justiciable by the National Assembly enacting implementing legislation. Environmental legislations made pursuant to the environmental objective in section 20 of the 1999 Constitution can form the basis of environmental litigation.

1.3 Giving Effect to Constitutional and Statutory Provisions in Environmental Litigation: The Decision in *Centre for Oil Pollution Watch v. Nigerian National Petroleum Corporation*

Apart from *Jonah Gbemre* in 2007, there was a paucity of notable decisions by Nigerian courts linking environmental degradation with the right to life or other fundamental rights. This has changed with the Supreme Court decision in *Centre for Oil Pollution Watch v. Nigerian National Petroleum Corporation (NNPC)*.[19] The appellant, an NGO involved in environmental activities, sued the respondent for reinstatement, restoration and remediation of the environment in Acha community of Abia state, particularly some streams which had been contaminated by an oil spill caused by the respondent's negligence; provision of potable water as a substitute to the contaminated streams which hitherto were the only/major source of water in the community; and provision of medical facilities for evaluation and treatment of the negative health effects of the spillage and/or the contaminated streams. The

[17] NESREA Act, Cap N 164 LFN 2010.
[18] NOSDRA Act, Cap N157 LFN 2010.
[19] [2019] 5 NWLR (Pt. 1666) 518.

respondent, in its defence, filed a motion challenging the *locus standi* of the appellant to file the action. The trial court struck out the case on the ground that the appellant lacked *locus standi*. The appellant appealed to the Court of Appeal. The Court of Appeal dismissed the appeal and affirmed the ruling of the trial court. The appellant further appealed to the Supreme Court.

On appeal, the Supreme Court unanimously allowed the appeal and held that the Appellant has the right to institute the action, thereby expanding the scope of *locus standi* on environmental matters in Nigeria. The Supreme Court further held that there is nothing in the Constitution that says that the Attorney General is the only proper person clothed with the standing to enforce the performance of a public duty. It held *inter alia* that non-governmental organisations, who *bonafide* seek in the law court the due performance of statutory functions or enforcement of statutory provisions or public laws, especially laws designed to protect human lives, public health and environment, should be regarded as proper persons "clothed with standing in law to request adjudication on such issues of public nuisance that are injurious to human lives, public health and environment".[20]

In determining the appeal, the Supreme Court considered the provisions of article 24 African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, sections 33(1) and 20 of the 1999 Constitution and section 17(4) of the Oil Pipelines Act and made several pronouncements in recognition of the nexus between environmental protection and human rights.

Per Kekere-Ekun JSC:

> ... Section 33 of the 1999 Constitution guarantees the right to life while section 20 of the Constitution provides that "the State shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of the country." See also: Article 24 of the African Charter on Human and Peoples Rights which provides: All people shall have the right to a general satisfactory environment favourable to their development." <u>These provisions show that the Constitution, the legislature and the African Charter on Human and Peoples Rights, to which Nigeria is a signatory, recognize the fundamental rights of the</u>

[20] Ibid., p.595, paras. A-C.

citizens to a clean environment to sustain life.[21] (Underlining supplied)

C similarly held:

> From the facts of this case, the appellant cannot be regarded as a mere busybody or trouble maker who is out merely to abuse the process of the court by the suit they filed to enforce against the respondent the duty to remedy the nuisance caused to Ineh and Aku rivers and the Acha Community who depend on the clean water of the said rivers for their livelihood. A contaminated water and impaired environment by noxious toxicant material such as crude hydrocarbon oil not only destroys environment and the entire ecosystem, it is injurious to public health and human lives.[22] (Emphasis supplied)

en CJN held *inter alia*:

> It is the case of the plaintiff that the defendant's action(s) is/are in breach of the law and the result of the objectionable deed(s) is injury to the health of the people and/or dangerous to the environment thereby making it necessary for the plaintiff to initiate the action to enforce the law and save lives and protect or restore the environment....[T]he Oil and Gas Pipelines Act, as earlier stated in this judgment imposes a duty of care on the owners or operators of oil pipelines, like the defendants, to maintain and effect repair of their oil pipelines to ensure that crude oil/hydrocarbon oil being transported through these pipes do not escape and cause damage to human lives and the environment as they are very dangerous in nature. So in the instant case where the plaintiff, an NGO, seeks the enforcement of the defendant's obligations under law vis-à-vis the rights of the affected community to maintain a healthy environment which extends to their

587, paras. D- F.
501, para H

forest, rivers, air and land, they should be heard.[23] (Emphasis supplied)

Akaahs JSC held as follows:

> There is no gain saying in the fact that there is increasing concern about climate change, depletion of ozone layer, waste management, flooding, global warming, decline of wildlife, air, land and water pollution. Both nationally and internationally, countries are adopting stronger measures to protect and safe guard the environment for the benefit of the present and future generations...[T]he plaintiff/appellant being in the vanguard of protecting the environment should be encouraged to ensure that actions or omissions by government agencies or multi-national oil companies that tend to pollute the environment are checked. [24] (Emphasis supplied.)

The principle of intergenerational equity, implicit in the dictum of Akaahs JSC component of the right to environment. It is therefore safe to infer that by ma reference to the principle his Lordship accorded judicial recognition to environmental right.

On the justiciability of section 6(6)(c) of the 1999 Constitution and the p approach in interpreting it, Nweze JSC in the lead judgment followed the prece of *AG Ondo state*[25] and *FRN v. Anache: In Re Chief Olafisoye*[26] and he follows:

> The implication... is that the proper approach to the interpretation of Chapter II of the Constitution should be by the mutual conflation of other provisions of the Constitution with the provisions of Chapter II. This is so because "if the Constitution provides otherwise in another

[23] Ibid., pp. 574 -575, paras. D – A.
[24] Ibid. p. 580, paras G – H.
[25] Op cit. footnote 12.
[26] Op cit. footnote 15.

section, which makes a section or sections of Chapter II justiciable, it will be interpreted by the courts. [27]

The sole issue for determination in the instant case was whether the Court of Appeal was right in dismissing the appellant's appeal for want of *locus standi* to maintain the suit. The reasoning of the law Lords in resolving this issue was influenced by their interpretations of sections 33 (1) of the Constitution on the right to life, article 24 of the African Charter on the right to environment, the environmental objective in section 20 of the Constitution, environmental legislations made pursuant to section 20 as well as the impact of a contaminated environment on human lives and health. These provisions, from the pronouncements above, played a crucial role in the liberalisation of *locus standi* to accommodate public interest litigation for the environment. This illustrates the growing trend of judicial recognition of the link between the human rights and the environment and recognition of the right to environment. It forms a basis for the deployment of the procedure for enforcing fundamental rights to environmental rights litigation.

1.4 The Fundamental Rights (Enforcement Procedure) Rules 2009 (FREP Rules)

Pursuant to the constitutional provisions that empower the Chief Justice of Nigeria to make rules on the practice and procedure of a High Court for the purpose of enforcing the fundamental rights,[28] Idris Legbo Kutigi CJN on 1st December, 2009 made the Fundamental Rights (Enforcement Procedure) Rules, 2009 (FREP Rules) which replaced the 1979 rules. The overriding objectives of the FREP Rules 2009 provide, *inter alia*, that the Constitution, especially Chapter IV, as well as the African Charter, shall be expansively and purposefully interpreted and applied, with a view to advancing and realising the rights and freedoms contained in them and affording the protections intended by them.[29]

The overriding objectives further provide that for the purpose of advancing the applicant's rights and freedoms, the Court shall respect municipal, regional and international bills of rights cited to it or brought to its attention or of which the Court is aware. Such bills include the African Charter on Human and Peoples' Rights and other instruments in the African regional human rights system; the Universal

[27] See the leading judgment of Nweze JSC in *Centre for Oil Pollution Watch*, op cit., 568 – 569 particularly paras H – F.
[28] Section 46 (3) CFRN 1999 (as altered).
[29] FREP 2009 Rules, the Preamble Rule 3a.

Declaration of Human Rights and other instruments (including protocols) in the United Nations human rights system.[30]

A major advantage of the FREP Rules 2009 is the relaxation of the strict *locus standi* rule to permit public interest litigation. Preamble Rule 3 (d) says that the Court shall proactively pursue enhanced access to justice for all classes of litigants, especially the poor, the illiterate, the uninformed, the vulnerable, the incarcerated and the unrepresented. The Rules further provide that the court shall encourage and welcome public interest litigation in the human rights field and no human rights case may be dismissed or struck out for want of *locus standi*. In particular, human rights activists, advocates, or groups as well as any non-governmental organisations, may institute human rights application on behalf of any potential applicant.[31] These provisions can be applied to encourage and enhance the activities of environmental NGOs, civil society organisations and Community Based Organisations in the struggle for realization of environmental rights. It also signals a green light to judges who want to enforce the spirit of the Constitution, the African Charter and other international instruments ratified by Nigeria.

The FREP Rules 2009 abolished the requirement for leave of court contained in the 1979 Rules, thus an Applicant may approach the court for the enforcement of fundamental human right using any originating process accepted by the court without obtaining leave of court. The Rules provide that an Application for the enforcement of fundamental rights shall not be affected by any limitation statutes.[32] At the hearing of any application, the Court may make such orders, issue such writs, and give such directions as it may consider just or appropriate for the purpose of enforcing or securing the enforcement of any of the Fundamental Rights provided for in the Constitution or African Charter on Human and People's Rights (Ratification and Enforcement) Act to which the applicant may be entitled.[33]

An applicant instituting an action for the enforcement of his fundamental rights and coming by way of the FREP Rules must ensure that the main relief and consequential reliefs sought point directly to a fundamental right under Chapter IV of the 1999 Constitution and a clear deprivation of same by the other party being sued. In *Ihenacho v N.P.F*,[34] the court held that for a claim to qualify as falling

[30] FREP 2009 Rules, Preamble Rule 3 (b)(i and ii).
[31] Ibid, Preamble Rule 3(c) (i-v)
[32] Ibid, Order 3 Rule 1.
[33] Ibid, Order 11.
[34] [2017] 12 NWLR (Pt. 1580) CA 424. See also Emeka v Okoroafor [2017] 11 NWLR (Pt. 1577) SC 410.

under the Fundamental Rights (Enforcement Procedure) Rules, it must be clear that the principal relief sought by the applicant is for the enforcement of a fundamental right and not to redress a grievance that is ancillary to the principal relief which is not itself *ipso facto* a claim of fundamental right.

The combined effect of these is that a prospective applicant alleging violation of his right to life or violation of any other fundamental right must be able to show how the respondent's acts complained of directly infringe on the said rights. Merely showing an infraction of environmental law without tying it directly to the violation of the right to life or other fundamental right would not be enough to sustain a fundamental rights enforcement application.

Where the rights to life, personal dignity and other rights are directly threatened by environmental degradation, there is an intersection between human rights and environmental protection. In that context, the relevant sections under Chapter Four of the Constitutions ought to be read together with section 20 of the Constitution and the provisions of the relevant environmental law in breach. The FREP Rules could determine the applicable procedure. On the applicability of the Fundamental Rights (Enforcement Procedure) Rules 2009 (FREP Rules) to environmental rights protection, some environmental law scholars have opined that the Rules will impact positively on environmental litigation.[35]

1.5 Integrating the Opinions of Legal Practitioners on the Application of the Fundamental Rights (Enforcement Procedure) Rules 2009 to Environmental Litigation

In examining whether and/or how the FREP Rules can be utilised for protecting rights threatened by environmental degradation, it is appropriate to go to the field, beyond doctrinal articles on the FREP Rules.[36] The opinions of legal practitioners constitute important data since they are in the forefront of human rights and environmental litigation. Moreover their experience using the FREP Rules is invaluable. To this end we use empirical data from a survey of legal practitioners to

[35] Ayodele Babalola, 'The Right to a Clean Environment in Nigeria: A Fundamental Right?'[2020] 26 (1) *Hastings Environmental Law Journal*, 3; E. P. Amechi, 'Litigating the Right to Healthy Environment in Nigeria: An Examination of the Impacts of the Fundamental Rights (Enforcement Procedure) Rules 2009, In Ensuring Access to Justice for Victims of Environmental Degradation' [2010] (6) (3) *Law, Environment and Development Journal*, 320;

[36] E.P. Amechi, 'Litigating Right to Healthy Environment in Nigeria: An Examination of the Impacts of the Fundamental Rights (Enforcement Procedure) Rules 2009, In Ensuring Access to Justice for Victims of Environmental Degradation',
[2010] 6(3) *Law, Environment and Development Journal*, 320.

determine the prospects and challenges of utilising the Rules for environmental rights protection.

1.5.1 Population and Sample Size of the Study

The target group for this study is legal practitioners in Nigeria. Our definition of legal practitioner is a person who has been called to the Nigerian Bar and enrolled as a barrister and solicitor of the Supreme Court. The exact population of legal practitioners in Nigeria is unknown.[37] For the purpose of the research a sample of 300 was arrived at. Random sampling was used to select a state from each geo-political zone in order to ensure geographical spread. The questionnaires were distributed in six states, each representing one of the geo-political zones in Nigeria. Altogether, 300 questionnaires were administered by the researcher with the aid of research assistants.[38] 50 questionnaires were administered in each of the six geo-political zones.

1.5.2 Method of Data Collection

The instrument used for collection of primary data for this study was the questionnaire. The questions used are close-ended; with a few open-ended questions employed in order to generate qualitative data and enable respondents supply more detailed information. The justification for employing the questionnaire is the lower costs compared to interviews and the ability to reach a wider reach geographically. The questionnaire is also appropriate because all the respondents are literate in English language.

1.5.3 Administration of Questionnaires

The questionnaires were personally administered. This method has a higher response rate than other modes and is more suitable for a developing country like Nigeria that still suffers from poor internet connectivity, irregular electricity supply and low patronage of the postal system.

The questionnaires were directed at legal practitioners in Nigeria. A total of 300 questionnaires were administered in six states representing the six geo-political zones in Nigeria. The states are Gombe (North East), Rivers (South South), Plateau

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[37] The number of legal practitioners on the Supreme Court roll exceeds 100 000; however this figure includes deceased legal practitioners. The Final Voters Register of the Nigerian Bar Association (NBA) in the 2020 NBA Elections contained about 39,000 names. However this list comprises only those legal practitioners who have paid their bar practicing fees and branch dues.< https://nigerianbar.org.ng/ecnba-statement> accessed 24 October 2020.

[38] Much thanks to the Social Science Research Council of New York who provided funds for the research. Thanks to my research assistants: Jonathan Molmela, Jamiu Ridewu, Abimbola Olanite, Comfort Mimang, Tochi Maduagwu and ThankGod Atulaegwu.

(North Central), Lagos (South West), Abia (South East) and Kaduna (North West) 50 questionnaires were allocated to each of the geo-political zones.

Table 1: Rate of Return of Questionnaire

Sample size	Legal Practitioners (%)
Total questionnaire administered	300 (100%)
Total questionnaires returned	179 (60%)
Total questionnaires not returned	121 (40%)
Total valid questionnaires	179 (60%)
Total invalid questionnaires	---

Source: Researcher's Field Survey, 2016

Of the 300 questionnaires administered to legal practitioners, 179 representing 60 per cent were returned while 121 representing 40 per cent were not returned.

1.5.4 Method of Data Analysis

The data was analysed by means of descriptive analysis. Descriptive tools of statistics employed include the use of frequency tables and percentages. The software used to tabulate the data for analysis and interpretation is Microsoft Excel 2010.

1.5.5 Data Analysis (Results and discussion)

Of the 300 questionnaires, 179 representing 60 per cent were returned while 121 representing 40 per cent were not returned.

Table 2: Respondent's Gender

Respondent's gender	Frequency	Per cent
Female	56	31.3
Male	123	68.7
Total	179	100.0

Source: Researcher's Field Survey, 2016

Of the legal practitioners who responded 68.7 percent are males while 31.3 percent are females.

Table 3: Age at the Bar

Age at Bar	Frequency	Valid per cent	Cumulative per cent
1-7 years	86	48.3	48.3
8-14 years	51	28.7	77.0
15-21 years	14	7.9	84.9
22 and above	27	15.1	100.0
Total	178	100.0	

Source: Researcher's Field Survey, 2016

Table 3 gives the age at the Bar of the legal practitioners who responded to the questionnaire. 48.3 percent are 1-7 years at the Bar, 28.7 percent are 8-14 years at the Bar, 7.9 percent are 15-21 years at the Bar and 15.1 percent are 22 years and above. One respondent failed to answer this question. We conclude that while almost half of the respondents are 1-7 years (and young) at the Bar, the majority of respondents: 92 out of 179 (51.7 percent) are 8 years and above at the Bar and thus more experienced.

Table 4: Nature of Practice

Nature of practice	Frequency	Valid per cent	Cumulative per cent
Judiciary	8	4.5	4.5
Private legal	113	63.5	68.0
Academic	22	12.4	80.4
Government	33	18.5	98.9
Business/ private	2	1.1	100.0
Total	178	100.0	

Source: Researcher's Field Survey, 2016

Table 4 is intended to ascertain the nature of practice of the legal practitioners in the study. Of the 179 respondents, 4.5 percent work in the judiciary while 63.5 percent are in private legal practice, 12.4 percent are in academics and 18.5 percent are employed by government. 1.1 percent work in private enterprises or business. One respondent failed to answer this question.

The fact that majority of the respondents are in private legal practice is not surprising given that majority of legal practitioners in Nigeria are in private legal practice. The fact that the respondents are drawn from a wide variety of practice ensures that diverse views and experiences are captured in the responses.

Table 5: Training of Legal Practitioners in Environmental Law

Training in Environmental law	Frequency	Valid per cent
Yes	54	30.7
No	122	69.3
Total	176	100.0

Source: Researcher's Field Survey, 2016

Table 5 above shows the responses as to whether or not the legal practitioners who responded have undergone training in environmental law. 30.7 percent have undergone training or course(s) in environmental law while 69.3 percent have not attended or undergone any training or course in environmental law. This reveals that majority of legal practitioners in Nigeria do not have any training in environmental law and they are therefore not likely to be versed in modern environmental law concepts.

Table 6: Are you familiar with the Fundamental Rights (Enforcement Procedure) Rules 2009?

Familiarity with 2009 Rules	Frequency	Valid per cent
Yes	159	89.8
No	18	10.2
Total	177	100.0

Source: Researcher's Field Survey, 2016

The above table shows 89.8 percent of the legal practitioners who responded are familiar with the 2009 Rules while 10.2 percent are unfamiliar with the Rules. 2 respondents did not answer this question.

Table 7: Is the 2009 FREP Rules likely to have a positive impact on environmental litigation in Nigeria?

Impact of FREP Rules on environmental litigation	Frequency	Per cent	Cumulative per cent
Very likely	33	20.8	20.8
Likely	51	32.1	52.9
Not likely	67	42.1	95.0
Don't know	8	5.0	100.0
Total	159	100.0	

Source: Researcher's Field Survey, 2016

Table 7 contains the views of the legal practitioners who are familiar with the FREP Rules. 33 respondents representing 20.8 percent say that the 2009 FREP Rules is very likely to have a positive impact on environmental litigation in Nigeria. 51 respondents representing 32.1 percent answer likely. 67 respondents representing 42.1 percent say not likely while 5 percent say they don't know whether or not the FREP Rules are likely to have any positive impact on environmental litigation. Thus, a majority of respondents (52.9 percent) think the FREP Rules will have a positive impact on environmental litigation.

Table 8: Reasons why the FREP Rules is likely to have a positive impact on environmental litigation in Nigeria

Why FREP Rules is likely to enhance environmental litigation (multiple responses)	Frequency (n=55)	Per cent
The right to healthy environment can be litigated under fundamental rights like the rights to life and property where these rights are affected by environmental degradation	24	43.6
FREP Rules are applicable to the African Charter and other international human rights instruments that protect the environmental right	4	7.3
FREP Rules provides for public interest litigation and relaxes *locus standi* rule	19	34.5
FREP provides for easier procedure and shorter time	6	10.9
FREP removes limitation period	7	12.7
General increase in awareness of environmental issues	3	5.5

Source: Researcher's Field Survey, 2016

Out of 84 respondents that answered 'very likely' or 'likely', 55 (65.5%) proffered reasons for their response. For 43.6 percent of the respondents who answered in the affirmative, the right to healthy environment can be litigated under fundamental rights like the rights to life and property where these rights are affected by environmental degradation. 7.3 percent are of the opinion that the FREP Rules are applicable to the African Charter and other international human rights instruments that protect the environmental right. 34.5 percent base their answer on the provision of public interest litigation and relaxation of *locus standi* requirements by the FREP Rules. 10.9 percent base their answer on the easier procedure and shorter time provided by the FREP Rules. 12.7 percent say the FREP Rules removes limitation period in the enforcement of human rights and 5.5 percent of respondents give as their reason the general increase in awareness of environmental issues.

Most of the respondents who regard the FREP Rules as having a positive impact on environmental litigation base their response on the impact that environmental

degradation has on fundamental human rights provided for in Chapter 4 of the 1999 Nigerian Constitution (as amended). They are in support of interpreting the fundamental rights to life, dignity of the human person and property to encompass protection of the environment. This is based on the belief that a healthy environment is required to make these rights meaningful. The Supreme Court of India has in the past decades adopted this progressive interpretation of human rights to encompass environmental protection.

Table 9: Reasons why the FREP Rules is not likely to have a positive impact on environmental litigation in Nigeria.

Why FREP Rules are not likely to enhance environmental litigation (multiple responses)	Frequency (n=62)	Per cent
FREP Rules are applicable only to the fundamental rights in Chapter 4 of the 1999 Nigerian Constitution. Environmental objectives are unenforceable.	47	75.8
Poor awareness of human rights and environmental issues	9	14.5
Existing problems of implementation and enforcement e.g. poverty, delay, corruption	7	11.3
No citizen suit provision in environmental legislations	1	1.6
Lack of judicial precedents in Nigeria on the right to a healthy environment	1	1.6
Attitude of judges (including their fear of congestion of courts)	2	3.2

Source: Researcher's Field Survey, 2016

Out of 67 respondents who answered 'not likely', 62 (92.5%) proffered reasons for their response. For 75.8 percent of these respondents, the FREP Rules are applicable only to the fundamental rights in Chapter 4 of the 1999 Nigerian Constitution (as amended) and do not cover environmental objectives which they regard as unenforceable. 14.5 percent hinge their negative answer on the generally poor awareness of most Nigerians on human rights and environmental issues. 11.3 percent base their answer on the existing problems of implementation and enforcement of human rights; problems such as poverty, delay in the judicial process and corruption. 1.6 percent cite the absence of

citizen suits in environmental legislations. Another 1.6 percent cite the lack of judicial precedents in Nigeria on the right to a healthy environment. 3.2 percent cite a less-than-positive attitude of judges towards environmental rights protection; including the fear of congestion of courts, as a reason why the FREP Rules is not likely to have a positive impact on environmental litigation.

1.6 Conclusion

Legal practitioners are divided in their opinions on the impact of the Fundamental Rights Enforcement Procedure Rules, 2009 to environmental protection. The majority believe that the Rules would aid environmental litigation while a significant minority disagree. The main reasons advanced for the positive effect of the Rules are the interdependence and indivisibility of human rights whereby the right to a healthy environment may be litigated under the right to life and other fundamental rights guaranteed in the Nigerian Constitution; provision of public interest litigation and relaxation of the *locus standi* rule. From these, majority of respondents are in support of interpreting the fundamental rights to life, dignity and property to encompass protection of the environment. The reasons advanced on why the FREP Rules may not benefit environmental litigation include: the non-justiciability of the constitutional directive principle; the poor awareness of Nigeria on human rights and environmental issues and existing problems of implementation and enforcement of human rights.

It is pertinent to note that this survey was carried out prior to the decision in *Centre for Oil Pollution Watch v. NNPC.*[39] The judicial recognition of the link between environmental protection and human rights in the decision of the Supreme Court and the liberalisation of *locus standi* to encompass public interest litigation for the environment has addressed some of the objections of respondents who do not see the 2009 FREP Rules having any positive impact on environmental litigation. Moreover, the apex court has reaffirmed its previous decisions that fundamental objectives can be made justiciable by enabling legislations.

Findings from the study show that a suit that links environmental degradation (from acts or omissions under environmental law) to violations of the right to life, dignity and other fundamental rights is more likely to benefit from the FREP Rules 2009 than a suit founded on the environmental objective in section 20 of the 1999 Constitution. The controversy surrounding the applicability of the FREP Rules to environmental litigation brings to the fore the necessity of amending the Nigerian

[39] Op cit. footnote 3.

Other variables such as the low level of awareness of Nigerians on human rights and environmental issues and socio-economic challenges to accessing justice in Nigeria need to be addressed for the good of the environment and citizenry of Nigeria. Majority of legal practitioners in Nigeria lack training in environmental law. This could have implications for the development of Nigeria's environmental law jurisprudence. Further research is recommended in order to determine the possible influence of training in environmental law in shaping the opinions of legal practitioners.

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