

## WATER POLLUTION AND HUMAN RIGHTS IN NIGERIA: THE NEED FOR JUDICIAL ACTIVISM AND CRAFTSMANSHIP

By

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### Abstract

*Water is considered polluted if some substances or condition is present to such a degree that the water cannot be used for a special purpose, that is, rendering water unfit for the ordinary usage. The contamination of a body of water by directly or indirectly discharging into it, substances that are inadequately filtered to remove harmful materials is water pollution. Human Rights are ‘... cherished entitlements endowed upon every person by virtue of being human being and which are not extinguishable by derogation as they carrying the status of innateness, being inherent, inalienable and therefore immutable. The scope of this work was the examination on water pollution and its effects on basic rights and fundamental freedoms in Nigeria. The preoccupation of the work was to examine the effects of pollution of water sources on human beings particularly those who live in the coastal areas of the Niger Delta Region, which have no other alternative sources of drinking water apart from rivers, lakes and sea waters. The doctrinal research methodology was adopted. The author argues that, implicit in the right to life, is the right to clean and portable drinking water, and that the right to life will be meaningless to those who live in areas where their surface and underground water sources are severely polluted. It was further discovered that polluted water has been the cause of severe illnesses such as cholera, diarrhea and dysentery and so on to those who helplessly continue to drink contaminated water. The author recommends that Nigerian courts expand the meaning of the right to life to include the right to unpolluted water and wholesome environment in line with Section 3(a) of the Fundamental Rights (Enforcement Procedure) Rules 2009. The author further recommends that if death occurs as a result of drinking contaminated water, the person who caused the pollution should be held liable for violating section 33(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). The author concludes that implicit in the right to life, are the rights to clean water and wholesome environment.*

**Keywords:** Human Rights, Judicial Craftsmanship, Right to Life , Water Pollution, Water

### 1.0 Introduction

Water Pollution has been described as any undesirable change in the characteristic of water.<sup>1</sup> Water is considered polluted if some substance or condition is present to such a degree that the water cannot be used for a specific purpose, that is, rendering water unfit for the ordinary usage.<sup>2</sup> It is the poor quality of water, which adversely affects the use of water for agricultural, domestic, industrial and other uses.<sup>3</sup> Water pollution is a public health problem.<sup>4</sup> Major waterborne bacterial and viruses, leading to sickness

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<sup>1</sup> *Shell Petroleum Development Company v Otoké & Ors* (1990) 6 NWLR (Pt 159) 693

<sup>2</sup> U D Ikoni, *An Introduction to Nigerian Environmental Law* (Lagos: Malthouse Press Limited 2010) 42

<sup>3</sup> A Omaka, *Municipal and International Environmental Law* (Lagos Nigeria: Lions Unique concepts 2012) 229

<sup>4</sup> Ikoni (n2), 42

and death originated from or are caused by contamination of the sources of drinkable water by water pollutants.<sup>5</sup> The contamination of a body of water by directly or indirectly discharging into it substances that were inadequately treated to remove harmful materials is water pollution.<sup>6</sup> It is a truism that water is life, accordingly, it is required to be pure and of good quality.<sup>7</sup> In Nigeria, most industries discharge their untreated effluent through drains or carnal into the nearest water body, streams, rivers, estuaries and the sea resulting in water pollution.<sup>8</sup> The effluents discharged contain solid inorganic mater, organic matter, toxic substances, acid and alkali.<sup>9</sup> Some industries discharge hot effluents which may not contain toxic substances, are harmful to aquatic and marine life.<sup>10</sup>

Most Nigerians, especially those residents in the rural and coastal communities depend on river, lake and sea water for drinking, and household usage. There exists no alternative water source for them. The result of this ugly situation on human health became more prominent at the advent or wake of industrialization in the 18<sup>th</sup> century.<sup>11</sup> Water pollution is caused by discharging of water into drains and rivers, fertilizer and animal marine runoffs from farms, waste from mining operations and domestic waste from homes, especially in the rural areas and urban slums,<sup>12</sup> oil and gas discharge by oil and gas companies.<sup>13</sup> Drinking of polluted or contaminated water brings about the following health challenges: typhoid fever, dysentery, cholera<sup>14</sup> and so on. In most cases, these diseases result in death of their victims.

Access to water and sanitation are recognized by the United Nations as human right- fundamental to everyone's health, dignity and prosperity, however, billions of people are still living without safely managed water...<sup>15</sup> The right to water entitles everyone to have access to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use.<sup>16</sup>

Under international law, water is protected as a human right. In the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Civil and Political Right and International Covenant on Economic, Social and Cultural Rights 1996 water is not clearly or explicitly mentioned as a human right. It was however, implied through other human rights, such as the right to life, right to an adequate standard of living, and the right to health.<sup>17</sup> In 2002, the United Nations officially adopted water as a human right.<sup>18</sup> This means that all the countries (including Nigeria) who have ratified the International

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<sup>5</sup> *Ibid*

<sup>6</sup> B A Garner (ed.) *'Black's Law Dictionary* (11<sup>th</sup> edn United States Amerila: Thomas Reuters 2014) 1403

<sup>7</sup> Omaka (n3) 229

<sup>8</sup> *Ibid*

<sup>9</sup> *Ibid*

<sup>10</sup> *Ibid*

<sup>11</sup> Omaka (n3)

<sup>12</sup> Okoni (n2)

<sup>13</sup> Omaka (n3) 232

<sup>14</sup> Okoni (n2)

<sup>15</sup> United Nations, Human Rights to Water and Sanitation <<https://www.unwater.org>> accessed 25<sup>th</sup> June, 2023

<sup>16</sup> United Nations Committee on Economic, Social and Cultural Rights (2002): General Comment No.15: The right to water (2002). U.N. Doc. E/C 12/2002/11, Para. 2

<sup>17</sup> Safe Drinking Water foundation (SDWF)<[www.safewater.org](http://www.safewater.org)> accessed 25<sup>th</sup> June, 2023

<sup>18</sup> United Nations Committee (n16)

Covenant on Economic Social and Cultural Rights are obligated to ensure fair and equal access to safe drinking water.

What does it mean, if water is a human right? It means the quantity of water must be at a minimum, sufficient to meet basic needs, in terms of drinking, cleaning, cooking and sanitation.<sup>19</sup> It means the quality of water must be safe and free from contamination.<sup>20</sup> It also means that safe drinking water must be accessible –water must be physically accessible-meaning that water facilities must be within the house or in close proximity to the house.<sup>21</sup> If persons must walk for hours to get water, then, they are not enjoying their right to water.<sup>22</sup> Accessibility also means that water should not be expensive to buy. In Nigeria, it appears correct to state that a combined reading of Sections 20, 33 and 34 of the Constitution and in consonance with the General Comment No. 15 of 2002 of the United Nations Committee on Economic Social and Cultural Rights, place a sacred duty on the state to protect water sources from pollution, to provide and make safe drinking water accessible to all. In *Shell Petroleum Company v Gbamre*,<sup>23</sup> the Court (High Court) held that the Constitutional guaranteed fundamental right to life and dignity of human persons provided for in Sections 33 and 34 of the Constitution of the Federal Republic of Niger, 1999 (as amended), includes the right to clean, poison-free, pollution free and healthy environment. Though Emejuru<sup>24</sup> has posited that since the decision is a high court decision, it is not yet been established as the position of the law. It is my humble view that the learned Professor's opinion or position is incorrect as it is trite law that a court judgment must be enforced and obeyed until it is set aside or stayed by a court of competent jurisdiction; since the said judgment has not been set aside, it remains the position of the law in Nigeria.

Elsewhere in India, the position of the law is that the right to life as a fundamental right under article 21 of the Indian Constitution includes the right to enjoyment of pollution free water, air and land for full enjoyment of life.<sup>25</sup> This Article will therefore examine the Human Rights implication of water pollution, and then canvas the need for judicial craftsmanship and activism on declaring the right to clean water as implicit right to the right to life and dignity.

## 2.0 Conceptual Framework

The following terms and phrases shall be defined in order to have a succinct understanding of this work: water pollution, Human rights and Judicial craftsmanship and activism.

**(i) Water pollution:** The Black's Law Dictionary defines water pollution as 'the contamination of a body of water by directly or indirectly discharging into it substances that were inadequately treated to remove harmful materials,<sup>26</sup> marine pollution is an aspect of water pollution. Marine pollution is the

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<sup>19</sup> SDWF (n17)

<sup>20</sup> *Ibid*

<sup>21</sup> SDWF (n17)

<sup>22</sup> *Ibid*

<sup>23</sup> Unreported Suit No. FHC/B/CS/53/53/05

<sup>24</sup> C T Emejuru, Human Rights and Environmental: Whither Nigeria? (2015) (35) *Journal of Law, Policy and Globalisation* 113

<sup>25</sup> *Subhash Kuma vs State of Bihar* (1991) ISSC 598 at 85

<sup>26</sup> Bryan (n6) 1403

introduction of harmful substances and products such as toxins, chemicals, and solid waste, into the ocean.<sup>27</sup>

**(ii) Human Rights:** According to the World Health Organization (WHO), human rights are universal and birth right of every human being.<sup>28</sup> Human Rights safeguard the dignity and equal worth of each person and cannot be taken away.<sup>29</sup> 'A human right is something of which no one maybe deprived without a great affront to justice, there are certain deeds which should never be done, certain freedoms which never be invaded, somethings which are supremely sacred.'<sup>30</sup> Human right are inherent in man: they arise from the very nature of man as a social animal. They are those rights which every human being enjoys by virtue of their humanity, whether Black, white, yellow Madding or Red.<sup>31</sup> On the meaning of human rights, Igwe has posited that human rights are '... cherished entitlements endowed upon every person by virtue of being human being and which are not extinguishable by derogations as they carry the status of innateness, being inherent, inalienable and therefore immutable.'<sup>32</sup>

**(iii) Judicial Activism:** It is a philosophy of judicial decision-making, where by judges allows their personal views about public, among other factors, to guide their decisions usually with the suggestion that adherents of this philosophy tends to find constitutional violation and are willing to ignore governing texts and precedents.<sup>33</sup>

**(iv) Judicial Craftsmanship:** It is synonymous with judicial activism. It has to do with adoption and application of extraneous skills by a judge to improve or expand the ordinary or literal or usual meaning of Sections of the law moreso, and when doing so will do justice to circumstance. For instance, the India, the Supreme Court applied judicial craftsmanship in its 'attempt to expand the reach and ambit of article 21 of the Indian Constitution dealing with the right to life, rather than activate their meaning and content by judicial construction'.<sup>34</sup> They extended the right to life to include rights to wholesome environment and right to sustainable development.<sup>35</sup> This is what judicial craftsmanship seeks to serve.

### 3.0 Legal framework on Control of Water pollution in Nigeria.

The following laws, legislations and Convention having provisions dealing with water pollution and control will be x-rayed:

- i) Constitution of the Federal Republic of Nigeria 1999 (as amended) (FRN): Chapter two of the Constitution particularly Section 20 places a duty on the state to protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria.<sup>36</sup> Though by

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<sup>27</sup> *Ibid*

<sup>28</sup> SDWF (n17)

<sup>29</sup> *Ibid*

<sup>30</sup> M Cranston, *Human Rights: Real and Supposed (ed) political theory and the Rights of man* (London: Bloomington 1997) 52.

<sup>31</sup> M A Ajoma and Okogbue I E (ed) *Human Rights and the Administration of Criminal Justice in Nigeria* (Lagos: Nigerian Institute of Advance Legal Research 1991) 1-10

<sup>32</sup> O W Igwe, 'Preliminary Studies in Human Rights Law' (1<sup>st</sup> ed Lagos: Rings and Favolet Ltd, 2002) 6

<sup>33</sup> Bryan (n6), 1010.

<sup>34</sup> *Subash Kumar v state of Bihar* (1991) ISCC 588

<sup>35</sup> *Ibid*

<sup>36</sup> CFRN 1999, s.20

the intendment of Section 6(6)(c) the provisions of Chapter two of the constitution dealing with Fundamental Objectives and Directive Principle of State Policy are non-justiciable.<sup>37</sup>

However, elsewhere in India, the court has held in *Minerva Mills Ltd v Union of India*,<sup>38</sup> that the fundamental objectives are not mere show-pieces in window dressing but are fundamental to the governance of the state.

**ii) Water Resources Act Cap W2 LFN, 2004**

The right to use and control of all surface and underground water and of any water source affecting more than one state... together with the beds and banks thereof, are .... Vested in the Government of the Federation for the purposes of promoting the optimum planning development and use of Nigerian water resources.<sup>39</sup>

**iii) Criminal Code Act (CCA) 1916**

The earliest environmental law legislation or enactment in Nigeria was in relation to water pollution.<sup>40</sup> The Nigerian Criminal Code of 1916 described pollution of water as follows:

‘Any person who corrupt or fouls the water of any spring, stream, well, tank, reservoir, so as to make it less fit for the purpose for which it is ordinarily used is guilty of misdemeanor and is liable for imprisonment of 6 months.’<sup>41</sup>

Ordinary use of water may include: domestic and industrial Uses for fishing, navigation and floating of timbers, for irrigation and son on.

**iv) The Sea Fisheries Act 1971**

The Act among other thing states that no person shall take or destroy or attempt to take or destroy any fish within the territorial waters of Nigeria, by any of the following methods:

- (a) by the use of any explosive substance or poisonous matter.<sup>42</sup>
- (b) By the use of any noxious or poisonous matter

These methods of taking fishes are considered harmful and prohibited. Any person, who contravenes the above provisions of the Act shall be guilty of an offence and liable on conviction to imprisonment for two years or a fine of fifty thousand naira.

**v) Oil in Navigable Waters Act 1968**

This Act applies to Nigeria’s territorial waters, which now covers thirty nautical miles. It also covers all waters including inland waters, which are within the contiguous seaward limits and are navigable by sea going vessels.<sup>43</sup>

<sup>37</sup> CFRN, s. 6(6)(c).

<sup>38</sup> 1980 SC 1789

<sup>39</sup> Water Resources Act, Cap W2 LFN, 2004, s.1

<sup>40</sup> Omaka (n3), 227

<sup>41</sup> CCA 1916, s. 245.

<sup>42</sup> Sea Fisheries Act No. 71 of 1992, s.10 (c) (a) &(b)

<sup>43</sup> Omaka (n3), 239

The act empowers the minister to designate any other area outside Nigeria territorial waters as prohibited sea area.<sup>44</sup>

The provision of the Act that relates to prevention of pollution of the sea by oil has it that: ‘any mixture containing not less than 100 parts of oil is discharge from a ship into a part of the sea, the owner or master of the ship shall subject to the provision of the Act be guilty of an-offence’.<sup>45</sup> This provision applies to crude oil, lubricating oil, heavy diesel oil, and any other description of oil.

**vi) Petroleum Industry Act, 2021**

The Act amongst other things regulates operations of oil and gas companies in Nigeria. The Act has provisions on environmental management.<sup>46</sup> The Act has it that, ‘A licensee or, lessee who engages in upstream and midstream petroleum operations shall within:

- (a) One year of the effective date, or
- (b) Six months after the grant of the applicable license or lease, Submit for approval an environmental management plan in respect of projects which require environmental Impact Assessment to the commission or authority, as the case may be.<sup>47</sup>

The Commission or Authority, shall in considering the environmental management plan, take into account the policy thrust of the Government regarding environmental protection and management practices.<sup>48</sup> The Act has prohibited the use of chemicals for upstream petroleum operations, except the Commission grants applicable permit.<sup>49</sup> The Act simply has given with the right hand and has taken with the left hand in this regard.

The anticipated environmental management plan in the case of midstream petroleum operation majorly calls for the protection, management and safeguard of water. That is conducting oil and gas operation in a manner devoid of pollution of the water.

**vii) Petroleum (Drilling and Production) Regulation 1969.**

The licensee or lessee shall adopt all practical precautions including the provision of up to date equipment approved by the director of petroleum Resources to prevent pollution of Inland waters, rivers, water courses, the territorial waters of Nigeria or the high seas by oil, mud, or other fluids or substances which might contaminate the water banks, shoreline or which might cause harm or destruction to fishes or marine life, and where any such pollution occurs or has occurred, shall take prompt steps to control and if possible end it.<sup>50</sup>

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<sup>44</sup> Oil in Navigable Waters Act 1968, s.3(3).

<sup>45</sup> *Ibid*, s.1.

<sup>46</sup> Petroleum Industry Act, 2021, s.102.

<sup>47</sup> *Ibid*, s.102(1).

<sup>48</sup> *Ibid*, s.102.

<sup>49</sup> *Ibid* s.102(7).

<sup>50</sup> Petroleum (Drilling and Production) Regulation 1968, Reg. 25.



**viii) National Environmental Protection (Management of Solid and Hazardous Wastes) Regulation 1991**

The regulation provides that Wells shall be constructed in such a manner as to prevent contamination.<sup>51</sup> The well may be tested at intervals for possible concentration of hazardous substances that can render it unfit for use. Section 50(1) of the Regulation says that: ‘Any factory or industry, required to establish a detection/monitoring programme, shall monitor the groundwater for indicator parameters (for instance; PH Specific conductance, total organic carbon (TOC), total organic halogen (TOH) or (heavy metals), provide a reliable indication of the presence of dangerous constituents in groundwater.’<sup>52</sup>

**ix National Environmental Standards and Regulation Enforcement Agency Act 2007 (NESREA)**

The Act in its Sections 23 and 24 provide National Environmental Standards for water quality in Nigeria which are absent in previous legislations.<sup>53</sup> The Agency - NESREA is empowered to make recommendations on water standards taking into consideration the use and value of public water supplies, the propagation of marine and wild life, recreational purposes, agricultural, industrial and other legitimate uses.<sup>54</sup>

A person who contravenes the provision of the regulation made pursuant to Section 23(1) of the Act commits an offence and shall on conviction be liable to a fine not exceeding ₦50,000 or to imprisonment not exceeding one year or to both fine and imprisonment and in addition to a fine of ₦5,000 for every day the offence subsists,<sup>55</sup> if the offender is a body corporate, it shall be liable to a fine not exceeding ₦500,000.00 and an additional ₦10,000 fine for every day the offence subsists.<sup>56</sup> The agency has the power to establish effluent limitations for existing point sources which shall require application of the best control technology currently available and implementation of the best management practices.<sup>57</sup>

#### **4.0 Causes of water pollution in Nigeria**

There are many causes of water pollution in Nigeria. For the purpose of this work, five of them will be outlined and discussed.

- i) Sewage or waste water: The wastes from household and factories are mostly discharged into rivers or lakes especially in the rural and coastal communities.<sup>58</sup> The waste can either be in the form of liquid waste, garbage, or sewage.<sup>59</sup> The sewage pollution in rural areas poses great danger and it is the fundamental cause of intestinal diseases.<sup>60</sup> In the urban area, sewage disposal companies often discharge wastes evacuated by them from filled septic tanks into the rivers or lakes, thereby polluting surface and underground water-sources.

<sup>51</sup> National Environmental Protection (management of solid and Hazardous (Wastes) Regulation 1991, Section 49(4).

<sup>52</sup> National Environmental Protection (n<sup>51</sup>), s.50(1).

<sup>53</sup> *Ibid*, NESREA, s.241.

<sup>54</sup> *Ibid*, s.22(1) & (2).

<sup>55</sup> *Ibid*, s.23(3).

<sup>56</sup> *Ibid*, s.23(4).

<sup>57</sup> *Ibid*, s.24.

<sup>58</sup> K A Olufunke, ‘Water pollution in Nigeria and its effect on Agriculture: A Case Study of Niger Delta’ <<https://search.proquest.com>> accessed 27<sup>th</sup> June, 2023.

<sup>59</sup> *Ibid*.

<sup>60</sup> Omarka (n3) 230.

- River or lake water is still a source of drinking water in the rural areas. This contaminated water is the cause of typhoid fever and diarrhea.
- ii) Industrial waste: Industries produce a tremendous amount of waste containing toxic chemicals and pollutants<sup>61</sup> which causes water pollution. They contain heavy chemicals including leads, mercury, Sulphur, nitrates, asbestos and many others.<sup>62</sup> Many industries do not have proper waste management system, drain the waste in to freshwater, which goes into canals, rivers and lake and into sea;<sup>63</sup> the toxic chemicals may change the color of water, increase the number of minerals called eutrophication, change the nature of the water and pose a severe hazard to water organisms<sup>64</sup> and poisonous to humans when they get in contact with it.
  - iii) Mining Activities: Mining is the process of crushing rock and extracting coal and other minerals from underground. The elements, when extracted in the raw form, contain harmful chemicals and can increase the number of toxic elements when mixed up with water, which may result in health problems.<sup>65</sup> Mining activities emit a large amount of metal waste and sulfides from rocks, which is harmful to the water.<sup>66</sup>
  - iv) Marine Dumping: The garbage produced by households in the form of paper, plastic, food, aluminum, rubber, glass, is collected and dumped into the sea in some countries (Nigeria is an example).<sup>67</sup> These items take two weeks to 200 years to decompose.<sup>68</sup> They cause water pollution in the sea and harm human and animal lives.<sup>69</sup>
  - v) Oil and Gas discharge: The case of oil and gas spillages particularly in the Niger Delta Region of Nigeria is notorious.<sup>70</sup> The oil and gas spilled from the pipelines, vessels, finds their way to water sources, killing fishes and other marine life; and making the water unfit for drinking and unsafe for Agriculture.<sup>71</sup>
  - vi) Chemical Effluents: The Chemical industries is a major contributor to the poor state of the environment; household detergents and insecticides, which eventually find their way into streams by the process of surface, run-off and rill erosion.<sup>72</sup> The presence of these chemicals in water harm marine life and significant source of diseases to rural dwellers who drink from river, lake or sea water.

## 5.0 Classifications of Water Pollution

There are various classifications of water pollution, which are discussed herein-under in synopsis:

<sup>61</sup> Conserve Energy Future, Sources and Causes of water pollution that affect our Environment<<https://www.conserveenergy-future.com>> accessed 28<sup>th</sup> June, 2023.

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*

<sup>64</sup> *Ibid.*

<sup>65</sup> *Ibid.*

<sup>66</sup> *Ibid.*

<sup>67</sup> Conserve Energy Future (n61)

<sup>68</sup> *Ibid.*

<sup>69</sup> *Ibid.*

<sup>70</sup> Omaka (n<sup>3</sup>) 232.

<sup>71</sup> *Ibid.*

<sup>72</sup> *Ibid.*



- i) Ground Water Pollution: It is one of our least visible but most important natural resources. When rain falls, it becomes groundwater as it seeps deep into the earth, filling up crack's crevices, and porous space of aquifer which is an underground storehouse of water. It gets polluted when contaminants such as fertilizers, pesticides and waste leaching from landfills and septic systems, making their way into aquifer.<sup>73</sup> One polluted an aquifer becomes unsafe for humans remain unsafe for decades, or even thousands of years.<sup>74</sup> Making groundwater free from contamination can be difficult or near impossible.<sup>75</sup>
- ii) Surface water pollution: Surface water covers about 70% of the earth, filling our rivers, oceans, lakes and including all blue bits on the world map.<sup>76</sup> According to Environmental Protection Agency of the United States of America, nearly 50% of our rivers and streams and over one-third of our lakes are polluted and unfit for swimming, fishing, and drinking.<sup>77</sup>
- iii) Ocean Water: Eighty percent of ocean pollution or marine pollution originates from land along the coast or far inland. Streams and Rivers carry contaminants such as chemicals, nutrients and heavy metals that are carried from farms, factories and cities into bays and estuaries and from there they reach the ocean.<sup>78</sup>
- iv) POINT SOURCE: When contamination occurs from a single source, it is called point source pollution.<sup>79</sup>
- v) Non-point Source: When pollution occurs from multiple or diffused sources, it is called nonpoint source pollution.<sup>80</sup> Nonpoint source pollution is considered as the leading cause of water pollution, but it is challenging to tackle since there is no identifiable source to apportion blame to.<sup>81</sup>
- vi) Trans-boundary Pollution: It happened when contaminated water from one country spilled into another country's waters. It can result from a disaster like oil spill or slow downriver creep of industrial, agricultural, or municipal discharge.<sup>82</sup>

## 6.0 Effects of Water Pollution

The effects of water pollution include:

- (i) Water pollution causes damage to human health through diseases such as typhoid fever, dysentery and cholera.<sup>83</sup>
- (ii) It causes damage to animal and fishes in the water.<sup>84</sup>
- (iii) It causes restriction and reduction of light penetration into water.<sup>85</sup>
- (iv) It causes damage to property through acid rain.

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<sup>73</sup> Conserve Energy Fusture (n<sup>61</sup>).

<sup>74</sup> *Ibid.*

<sup>75</sup> *Ibid.*

<sup>76</sup> *Ibid.*

<sup>77</sup> Conserve Energy Fusture (n<sup>61</sup>).

<sup>78</sup> *Ibid*

<sup>79</sup> *Ibid*

<sup>80</sup> *Ibid*

<sup>81</sup> *Ibid.*

<sup>82</sup> Okoni (n<sup>2</sup>)44.

<sup>83</sup> *Ibid*

<sup>84</sup> *Ibid*

<sup>85</sup> *Ibid.*

## 7.0 Water Pollution and Human Rights

When surface water or underground water is polluted through industrial household, and agricultural and even government activities, certain fundamental human rights are-violated. The rights to life<sup>86</sup> & dignity of human person,<sup>87</sup> the right to a standard of living adequate to health and well-being,<sup>88</sup> right to satisfactory environment,<sup>89</sup> and the right to enjoyment of the highest attainable standard of physical and mental health,<sup>90</sup> are critically contravened via water pollution. Let me explain them *seriatim*:

## 8.0 Violation of the Right to life

The right to life is the most important right protected by the Constitution of Nigeria<sup>91</sup> and the African Charter on Human and Peoples' Rights.<sup>92</sup> While the right to life suffers derogation in the Nigerian Constitution, that is to say, it is not absolute, in the Charter, the right to life as guaranteed is absolute. The discrepancy has been resolved in favour of the Constitution of the Federal Republic of Nigerian in the case of *Abacha v Fawehinmi*.<sup>93</sup> But in relation to other laws the Charter has greater vigor.<sup>94</sup>

Death occasioned by the effect of water pollution is not one of the areas the right to life could be derogated from as contained in the Constitution.<sup>95</sup> The right to enjoy clean and pollution free water is a human right embedded in the right to life. The Supreme Court of India has held in *Subash Kumar v State of Bihar*,<sup>96</sup> that the right to life is a fundamental right under Article 21 of the India Constitution (Similar to Section 33 of the Nigerian Constitution) and it includes the right to enjoyment of pollution free water and air for full enjoyment of life. In *Sindn Institute of Virology & Transplantation and Others v Nestle Milkpak Limited*,<sup>97</sup> the Pakistani High Court of Sindh at Karachi, held that 'ground water is a national wealth and it belongs to the entire society; it is a nectar sustaining life on earth; without water, the earth would be a desert'.

The rights to life and dignity of human person as guaranteed by the Nigerian Constitution can only be fully attained in an unpolluted environment. In *Salt Miners v Director, industries and Mineral Development*,<sup>98</sup> the Supreme Court of Pakistan among other things held that the right to dignity of human person and the right to life under Article 9 of the Constitution can only be attained in a clean and unpolluted environment. The right to have unpolluted water is the right of every person where ever he lives.<sup>99</sup>

<sup>86</sup> CFRN 1999, s.33(1); African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, 1983 art 4; ICCPR 1966, art 6.

<sup>87</sup> CFRN 1999, s.34(1); ACHPR 1966, art 5.

<sup>88</sup> International Covenant on Economic, Social and Cultural Rights 1966, art 11.

<sup>89</sup> Universal Declaration of Human Rights 1948, art 25.

<sup>90</sup> ACHPR 1966, art 24.

<sup>91</sup> CFRN 1999, s.33.

<sup>92</sup> ACHPR, art 4.

<sup>93</sup> *Abacha v Fawehinmi* (2002) FWLR (pt.4) 533.

<sup>94</sup> *Ibid*.

<sup>95</sup> CFRN, s.33(1)(2) and the proviso to subsection 2 of section 45.

<sup>96</sup> *Sublash Kumar v State of Bihar* (1991)1 SSC 598.

<sup>97</sup> Suit No. 567 of 2004.

<sup>98</sup> 1994 SCMR 2061.

<sup>99</sup> 1994 SCMR 2061.

In Africa the Tanzanian's Supreme Court took the bull by the horn and held in *Joseph D. Kessy v City of Dares Salem* that article 14 of the Tanzania's Constitution prevented Dares Salem from polluting the environment so as not to endanger people's lives.<sup>100</sup> The Supreme Court of Naples has also held that the right to a clean healthy environment is undoubtedly embedded in the right to life.<sup>101</sup> Also, in Bangladesh, the Supreme Court held in *Dr. Mohiuddin Farooque v Bangladesh & others* that the right to life includes in its ambit, the protection and preservation of the environment.<sup>102</sup>

In Colombia, the Constitutional Court ruled in *Alberto Castibla v Colombia*<sup>103</sup> nullified a law that permitted the mining in ecologically important areas. The ecological area affected in this matter was a *paramo* (a *paramo* a Spanish word meaning 'high treeless wetland-plateau in tropical South America') and ruled that the mining of the *p'aramo* was affecting the governments duty to protect the fundamental right to water and a healthy environment.<sup>104</sup>

The court regards the *paramo* as carbon sinks' which means that these ecological areas are essential for the regulation of the hydrological cycle and sequestering carbon: Water is a derivative right. The right to clean and unpolluted water is a human right; accordingly, pollution of underground and surface water sources should be treated as violation of human right. In the alternative, our judiciary should muster sufficient courage and hold that implicit in the right to life is the right to enjoy clean and unpolluted water and environment.

## 9.0 Violation of the Right to Dignity of Human Person

Drinking of contaminated water has a way of reducing the value of those of who drink it; it brings them to the level of mammals who dwell in the bush; drink water from lakes, rivers or from water concentrated in valleys, which are usually contaminated or polluted. The right to dignity of human person is provided for by the Constitution of Nigeria as follows: 'Every individual is entitled to respect for the dignity of the person.'<sup>105</sup> Also, the African Charter on Human and Peoples' Rights guaranteed the right to respect of the dignity of the human person as follows: 'Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment or treatment shall be abolished'.<sup>106</sup> When underground and surface water sources are polluted, those who depend on those water sources for drinking and other household uses undoubtedly live undignified lives, as many die through it. No doubt, the courts in other jurisdictions have held that the right to respect for the dignity inherent in human beings is being violated via polluted and unclean water.<sup>107</sup> Especially in a situation where the people who live in the area where the water sources are polluted are not accessible to other unpolluted sources of drinking water. This is always the

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<sup>100</sup> Emejuru (n<sup>24</sup>)112.

<sup>101</sup> *Ibid*.

<sup>102</sup> RT Oko and others, 'Resolving Legislative Lapses through Contemporary Environmental Protection-Paradigms: A case Study of Nigeria's Niger Delta Region [2007] (7)1 JIL, 437.

<sup>103</sup> *Alberto Castilla v Colombia* Sentence c-435/16 (constitutional court of Colombia)

<sup>104</sup> United National, 'Human Rights to Water and Sanitation <<https://www.unwater.org>> accessed 30<sup>th</sup> June, 2023.

<sup>105</sup> CFRN 1999, s.34.

<sup>106</sup> ACHPR, art 5.

<sup>107</sup> *Francis Coralie v Union of Delhi* Air 1981 SC 746; *M C Mehta v Kamal Nath* (1997) ISCC 388; *Subhash Kumar v State of Bihar* (1991)1 SCC 598.

case of the people of the coastal communities of the Niger Delta region of Nigeria. Rivers, lakes, seas and wells are their only sources of water for drinking and household uses, which sources are constantly polluted by spillage and the consequences of heavy industrial activities.

In *Francis Coralie v Union Territory of Delhi*, the Supreme Court of India per justice Bhagwati observed: we think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and co-mingling with fellow human beings.<sup>108</sup>

### 10.0 The Right to a Standard of Living Adequate to Health and Well-being

The right is guaranteed by the Universal Declaration of human right and it reads: Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services...<sup>109</sup> Though the Universal Declaration of Human Rights 1948 is not part of Nigeria's domestic laws because it has not passed through the requirement of Section 12 (1)(2) & (3) of the Constitution, and Moreso, it is a treaty but a declaration that has attained the status of customary international law.<sup>110</sup> However, since Nigeria is a member of the United Nation and has accepted the declarations, it has a serious international obligation to observe and protect the declarations. Unfortunately, an equivalent provision in the Nigerian Constitution is placed under Chapter Two that deals with the Fundamental Objectives and Directive Principle of State Policy and it reads: 'The state shall direct its policy towards ensuring that suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions, and unemployment, sick benefits and welfare of the Disabled are provided for all citizens.<sup>111</sup> Clean and unpolluted water is required for sustenance of life, conversely, polluted water particularly the drinking of same results in death related diseases. The drinking of unclean water terminates peoples' lives. Those who depend solely on river, sea, lake and well water for drinking and household uses still continue to drink from those water sources even when being heavily contaminated, therefore, living a life below their standard of living sufficient to health and well-being: this is the faith of most of the people living in the coastal communities of the Niger Delta Region of Nigeria.

Accordingly, it is safe to conclude that water pollution covertly violates the right as contained in Article 25 of the Universal Declaration of Human Rights 1948, and Section 33(1) of the Nigeria Constitution dealing with the right to standard of living adequate to health and well-being and the right to life respectively. It is trite that the right to life as guaranteed in Section 33 of the Constitution is useless without safeguarding and protecting water sources from pollution and the provision of clean and unpolluted water to the citizens. In line with this reasoning, the supreme court of India in *Shanti Star Builders v Narayan Toteme*<sup>112</sup> held that the right to life as guaranteed in a civilized society would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable

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<sup>108</sup> *Ibid.*

<sup>109</sup> UDHR, (n<sup>89</sup>).

<sup>110</sup> CFRN, 1999 s.12.

<sup>111</sup> CFRN 1999, s.16(2)(d).

<sup>112</sup> Air 1990 SC 630.

accommodation to live in. In *Olga Tellis* case the Supreme Court of India observed that an important facet of the right to life is the right to livelihood because, no person can live without the means of livelihood (note that clean and unpolluted water is one of the means of livelihood). If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation.<sup>113</sup>

### 11.0 Conclusion

Water pollution, whether surface water pollution or ground water pollution or otherwise impliedly or indirectly or even directly violates certain basic human rights. Water is essential for continuous existence of the human race. Absence of clean water or denial of same is indirectly a denial of one's life. It is a notorious fact that the right to life as guaranteed by the constitution of Nigeria, 1999, in its Section 33 is mockery or even useless without making clean and unpolluted water available and accessible to all the citizens of Nigeria. A man whose only source of drinking water is polluted but continue to drink of it, is undoubtedly a man being denied of the right to dignity inherent in the human person and such living standard is a gross violation of the right to a standard of living adequate to his health and well-being.

The right to clean water has been declared by the United Nations as a human right, accordingly, it takes the position of cherished entitlement endowed upon human beings (Nigerian citizens) by virtue of their humanity which are not extinguishable by derogations as it carries the status of innateness, being inherent, inalienable and therefore immutable.

### 12.0 Recommendation

The right to life should be interpreted by our Judges to include the right to clean and unpolluted water, unpolluted air and environment in consonant with the provisions of Fundamental Rights (Enforcement, Procedure) Rules 2009 in its preamble 3(a). In the words of an Indian Supreme Court justice in *Olga Tellis* case, that, if the right to means of livelihood (clean water inclusive) is not treated as part of the constitutional right to life, the easiest way to deprive a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation.

It is also recommended that Non-governmental Organizations should explore the innovative provisions of the Fundamental Rights (Enforcement Procedure) Rules 2009, particularly, preamble 3(e) to institute public interest litigations for redress in the area of the infraction of the rights of members of communities via water pollution occasioned by the activities of oil and gas companies.

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<sup>113</sup> Air 1986 SC 180.