ENFORCING ENVIRONMENTAL RIGHTS IN NIGERIA THROUGH THE FUNDAMENTAL RIGHTS (ENFORCEMENT PROCEDURE) RULES, 2009

BY

EKPA, F. OKPANACHI*

1.0 INTRODUCTION

Nigeria has an avalanche of environmental protection laws seeking to protect the environment as the victim of degradation with sometimes, mere compensation for the human sufferer. These laws, including the very recent National Environmental Standard Regulation and Enforcement Agency (NESREA) Act, it is observed, do not cater for the right to safe and healthy environment of Nigerian citizens. Even at that, a major challenge bedevilling environmental protection in Nigeria is that of enforcement of the numerous laws, rights and obligations required for meeting international environmental standards.[1] "Man whose activities pollutes the environment or creates a dis-equilibrium, need to be checked, in order to prevent the destruction of the environment."[2] This can only be achieved via an efficacious enforcement of environmental protections laws. To this end, Usman opine that:

> The mere existence of a law seeking to protect the environment does not automatically translate into environmental protection. Some laws are honoured more in breach than in compliance. For a law seeking to protect the environment to actually do so, it must be one that enjoys enforcement in the law courts through the instrumentality of litigation. If there is no such mechanism then the law, not minding how comprehensive and well couched it is, is nothing but a paper tiger.[3]

The essence of environmental law is to ensure protection for the environment against unjustifiable exploitation, devastation and all manner of violations.[4] To achieve this, environmental litigation, usually, is used to give force to environmental laws. Litigation is the means by which environmental laws are brought to life, invested with teeth, not only to bark, but also to bite violators.[5] This paper defines environmental litigation, for our purpose, as the mechanism through which environmental rights are enforced to the benefit of victims of

* LL.B (Hons) (Anyigba), LL.M (Ibadan), BL, Department of Jurisprudence and International Law, Faculty of Law, Kogi State University, Anyigba, Nigeria. e-mail: ekpalaw@gmail.com

[1] See Ogun, D., *Non-Governmental Organisations, the Law and Environmental Protection in Nigeria.* (Jos: Greenworld Publishing Co. Ltd., 2002), p.170.

[2] Atsegbua, L., Akpotaire, V., and Dimowo, F., *Environmental Law in Nigeria: Theory and Practice.* (Lagos: Ababa Press Ltd., 2004), p.148.

[3] Usman, A.K., *Environmental Protection Law and Practice.* (Ibadan: Ababa Press Ltd., 2012) p.211.

[4] See Ogun, D., *op. cit.* p.170.

[5] Usman, A.K., *op. cit*.

violation and for the purpose of maintaining the environment in a healthy state, fit for the growth and development of man.

Environmental litigations in Nigeria are generally a function of criminal and civil procedure or enforcement of fundamental human rights. Criminal, by way of statutory enforcement of laws, rules and regulations on environmental standards; and civil, through the common law torts of negligence, nuisance, trespass and the strict liability rule in *Rylands v. Fletcher*; contract, or property law.[6] This research is however proposing an all out environmental litigation as a fundamental human right violation, hence, adopting the fundamental right enforcement procedure in environmental litigations. Even though, generally speaking, environmental protection laws in Nigeria are not right based (human right issues), however, the concern of this work is the right based approach to environmental violations.

This paper therefore seeks to establish environmental violations as a fundamental human right issue, with an attempt at answering the question whether there is such right as right to safe environment justiciable in Nigeria. In finding that environmental right is justiciable, the paper shall then briefly espouse environmental right whether as a strictly community and/or individual right, and ultimately, the possibilities of accessing success in environmental degradation cases via the instrumentality of the Fundamental Rights (Enforcement Procedure) Rules, 2009 as against sticking to the cumbersome requirements associated with environmental litigation via the common law torts of negligence, nuisance, trespass and the rule in *Rylands v. Fletcher.*

2.0 JUSTICIABILITY OF THE RIGHT TO ENVIRONMENT IN NIGERIA

Environmental rights in Nigeria are a function of an indirect and a direct provision in both the Constitution and the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act respectively.[7] In considering the justiciability of the rights therefore, it is

[6] See also Tobi, N., "Judicial Enforcement of Environmental Laws in Nigeria" in Ladan, M.T. (ed.) *Law, Human Rights and the Administration of Justice in Nigeria. (*Zaria: ABU Press Ltd., 2001), p.262.

[7] An indirect provision in the Constitution because the rights contained in Chapter IV can be given an expansive interpretation to include a right to a safe and healthy environment. Thus, in the Pakistani case of *Zia v. Water & Development Authority (WAPDA)* (1994) SCA 16, the Supreme Court held that a right to life included a right to live in a hazard free environment and that economic policies should be informed by sustainable development. Similarly, the Nigerian Supreme Court in *Ransome Kuti v. A.G. Federation* (2001) FWLR (pt 80) 1637, enacted that allowing a person to live in an unprotected or downgraded environment could amount to a deprivation of the person's right to life since the environment can put his life at great risk. See also *Jonah Gbemre v. Shell Petroleum Development Company of Nigeria and 2 Others* Unreported Suit No. FHC/B/CS/53/05, Delivered on 14 November 2005; Razzaque, J., *Human Rights and the Environment: Development at the National Level, South Asia and Africa,* Background Paper No.4, Joint UNEP-OHCHR Expert Seminar on Human Rights and the Environment, 14-16 January 2002, Geneva, available at http://www2.ohchr.org/english/issues/environment/environ/bp4.htm; Anderson, M.R. "Individual Rights to

apposite to view same from these two human rights instruments. There is no gainsaying that environmental protection (or least, state policy on environment) falls under Chapter II of the Constitution with the attendant debates as to its justiciability. The debate on the right to a safe and healthy environment is as controversial as other debates concerning emerging rights, such as right to development and indigenous right. This controversy is as a result of absence of clear provisions in Chapter IV of the 1999 Constitution proclaiming the right to clean environment. However, in Chapter II and section 20 of the Constitution,[8] the State is directed to 'protect and improve the environment and safeguard the water, air and land, forest and wildlife in Nigeria'. "This is the first time that the need to protect the environment would be specifically mentioned in the constitution."[9] But then, the Court of Appeal in *Adamu v. A.G. Borno State,*[10] held that the provisions of chapter 2 are an inbuilt manifesto for political parties and elected officials which programmes and objects they should implement for the people of Nigeria.

It is contended that the courts can also strive to enact such implementation by lending liberal approach to the interpretation of Chapter 4 of the Constitution to cover certain provisions of Chapter 2 where such can be properly accommodated, like right to clean environment in right to life. As rightly observed, the issue however, is whether the scope of Section 20 of the Nigerian Constitution could be invoked by Nigerian citizens to vindicate environmental wrongs in cases of State's inaction or to compel the Federal, State and Local Governments to initiate law and measures to protect Nigerian environment.[11]

It is, nonetheless not controversial that directive principles, though not judicially enforceable, are judicially useful and therefore available for courts to look to for interpretative assistance in resolving legal ambiguities. In the same light, if the conduct that counts as a violation of a non-

---

Environmental Protection in India" in Boyle, A.E., and Anderson, M.R. (eds.), *Human Rights Approaches to Environmental Protection* (Oxford: Clarendon Press, 1996), p.210.

[8] The Fundamental Objectives and Directive Principles of the State Policy (FODPSP)

[9] Akande, J.O. *Introduction to the Constitution of the Federal Republic of Nigeria 1999.* (Lagos: MIJ Professional Publishers Ltd., 2000), p.61. The author had earlier on observed that the rationale for the Fundamental Objectives and Directive Principles of State Policy innovation in the 1979 Constitution is that government in developing countries have tended to be preoccupied with power and its material perquisites with scant regard for political ideals as to how society can be organised and ruled to the best advantage of all. See p.52. It is contended here that, Nigeria is not an exception to this analysis. Malami equally opine that "Fundamental objectives are the social, economic and political agenda and manifesto which government and it agencies are to pursue actively, consistently and diligently without fear or favour in order to have a just, progressive and happy nation. Where the government and the people ignore these noble objectives and principles and pursue contrary objects, corruption, favouritism and injustice, such a country will be bedeviled by every political, economic and social malaise." Malami, E., *The Nigerian Constitutional Law.* (Lagos: Princenton Publishing Co., 2006), p.204.

[10] (1996) 8 NWLR (pt 465) 203. See also *Dele Giwa v. IGP* unreported Suit No. M/44/83. Judgment delivered on the 30/7/84.

[11] Mmadu, R.A., "The Search for Environmental Justice in the Niger Delta and Corporate Accountability for Torts: How *KIOBEL* Added Salt to Injury", *Afe Babalola University: Journal of Sustainable Development Law and Policy*. vol.1, Issue 1, 2013, pp.73-85 at 79.

justiciable directive principle also affects a justiciable fundamental right, it may give rise to indirect justiciability.[12] For instance, although the right to clean and healthy environment is not contained in Chapter IV of the Constitution, polluting an environment such that it affects the living condition of a citizen (right to life), may render it justiciable. At any rate, the legislature may exercise its powers to make laws with a view to giving life to the directive principles of state policy.[13] In *A.G. Ondo State v. A.G. Federation & ors.,*[14]the Supreme Court of Nigeria held that "courts cannot enforce any of the provisions of Chapter II of the Constitution until the National Assembly has enacted specific laws for their enforcement." In other words, the justiciability of the FODPSP cannot be questioned where the legislature has made a specific law for their enforcement.[15]

Pursuant to Section 12 of the Nigerian Constitution and in accordance with the legislative powers under Section 4 of the same Constitution, the National Assembly enacted the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act[16] making the African Charter part of our domestic laws. The Nigerian State admitted that it is necessary and expedient to make legislative provisions of the enforcement in Nigeria of the Charter by way of an Act of the National Assembly.[17] Section 1 thereof stipulates thus:

> As from the commencement of this act, the provisions of the African Charter on Human and Peoples' Rights which are set out in the schedule to this act shall, subject as hereunder provided, have force of law in Nigeria and shall be given full recognition and effect and be applied by all authorities and persons exercising legislative, executive or judicial powers in Nigeria.[18]

---

[12] On the other hand, it is entirely a different case to suggest that a person can go to court to ask that an order that a particular law be declared void for contravening directive principles, or that a law be made in furtherance of the objectives embedded in directive principles. However, at least some of the rights and principles embraced by directive principles should be viewed as having the normative force of freestanding justiciable constitutional rights. It is opined that some of the values identified in directive principles are rooted in the fundamental law of reason and therefore are essential for creating and maintaining legal institutions and socioeconomic practices. See Atupare, A.P., "Reconciling Socioeconomic Rights and Directive Principles with a Fundamental Law of Reason in Ghana and Nigeria", *Harvard Human Rights Journal*, Vol. 27, 2014, pp.71 – 106 at 86. See also *Minerva Mills Ltd. v. Union of India,* A.I.R. 1980 S.C. 1789.

[13] In the Indian case of *Mangru v. Commissioners of Budge Budee Municipality* (1951) 87 CLJ 369, it was held that the Directive Principles require to be implemented by legislation and so long as there is no law carrying out the policy laid down in a directive, neither the state nor an individual can violate any existing law or legal right under colour of following a directive.

[14] (2002) 9 SCM 1; (2002) 27 WRN 1.

[15] See Falana, F., *Fundamental Rights Enforcement in Nigeria*. 2nd edn. (Lagos: LegalText Publishing Co. Ltd., 2010), p.14.

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

[17] See the preamble to the Act *ibid*.

[18] See also *Odafe & Ors v. Attorney-General of the Federation & ors.* (2005) CHR 309, where it was held that the government of this country has incorporated the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9, Laws of the Federation of Nigeria, 2004 as part of the law of this country… The African Charter is applicable in this country…

As a matter of fact, the only subsequent section to the Act (section 2) provides for the short title to the Act, hence, nothing to subject the provisions of section 1 of the Act to as envisaged by that section. Article 24 of the African Charter provides that "all peoples shall have the right to a general satisfactory environment favourable to their development." We contend therefore that, the question of justiciability of the socio-economic rights contained in the African Charter, including the right to a safe and healthy environment has been effectively laid to rest.

In furtherance to the argument on the justiciability of the provisions of the African Charter and/or environmental right in Nigeria, Abdulkadir stated that:

> Arguably, the issue of inconsistency of the Charter with the Constitution does not arise. This is due to the fact that the provision of section 6(6)(c) has only expressly excluded the power of the court with regards to matters listed in the Chapter for Fundamental Objectives and Directives Principles of State Policy in the Constitution. Thus, by deduction, the provision of section 6(6)(c) has not made reference to any other laws and as such cannot invalidate the justiciable provisions of the Charter. Therefore, the provisions of the Charter having been passed into law by an Act of National Assembly, it confers rights on any person to allege violation of the Charter before the Nigerian Courts.[19]

Aptly put therefore, in our view, Environmental right as well as other rights contained in the African Charter are enforceable in Nigerian Courts and properly so, through the FREP Rules, 2009. Hence, in *Jonah Gbemre v. Shell Petroleum Development Company of Nigeria and 2 Others,*[20] (an application brought pursuant to the FREP Rules) the Federal High Court 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 which are further guaranteed by the African Charter.[21]

It is further submitted that the provisions of the African Charter do not form part of Chapter II of the Constitution, hence, not caught up by section 6(6)(c) of the same Constitution. Though it will not be out of place to amend Chapter IV of the Constitution to expressly include the Social-Economic and Cultural Rights contained in Chapter II therein (or to make Chapter II justiciable), pending when that happens, all the rights contained in the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, including the right to safe and

---

[19] Abdulkadir, A.B., "The Right to a Healthful Environment in Nigeria: A Review of Alternative Pathways to Environmental Justice in Nigeria", *Afe Babalola University: Journal of Sustainable Development Law and Policy*, Vol.3, Issue 1, 2014, pp.118 – 131 at 126.

[20] Unreported Suit No. FHC/B/CS/53/05, Delivered on 14 November 2005, paras 3-4.

[21] It is instructive to note that this decision is yet to be pronounced upon by either the Court of Appeal or the Supreme Court. Pending that, this is the position of law.

healthy environment, are justiciable, having effectively evaded the exclusion in section 6(6)(c) of the Nigerian Constitution and having been legislated upon by the National Assembly.

3.0 ENVIRONMENTAL RIGHT: INDIVIDUAL AND/OR COMMUNITY RIGHT?

The legal issue may arise as to whether an individual can enforce Article 24 of the Charter in view of the use of the word "peoples" therein. The word 'people' is defined as "the citizens of a state as represented by the prosecution in a criminal case."[22] It appears that the right to safe and healthy environment under the Charter is a collective right and only a group of Nigerians suing collectively, may be able to enforce it. In other words, the choice of words is capable of presenting a challenge as to whether an individual can legally enforce the right in Article 24.

However, the Chief Justice of Nigeria in the exercise of the powers conferred by Section 46(3) of the Constitution promulgated the Fundamental Rights (Enforcement Procedure) Rules, (FREP Rules) 2009 to replace the erstwhile 1979 Fundamental Rights Enforcement Procedure Rules, and seek to improve access to judicial remedies for persons whose rights including the right to a healthy environment, were threatened or infringed. The preamble to the Rules states that:

1. The court shall constantly and conscientiously seek to give effect to the overriding objectives of these Rules at every stage of human rights action, especially whenever it exercises any power given it by these Rules or any other law and whenever it applies or interprets any.
2. …
3. The overriding objectives of these Rules are as follows:
    a. The Constitution, especially Chapter IV, as well as the African Charter, shall be expansively and purposely interpreted and applied, with a view to advancing and realizing the rights and freedoms contained in them and affording the protection by them….

With the above stipulation by the FREP Rules, 2009, the argument that only a community or group of people with certain common identity may enforce the right to safe and healthy environment envisaged in Article 24 of the African Charter will not hold water and must be discarded. The courts are expected to always give a purposive and expansive interpretation of the provisions of the Constitution (Chapter IV) and those of the African Charter. Giving any meaning other than that which will allow an individual to enforce the right in Article 24 will defeat the essence of the provision for the right in the first place.

The Rules are therefore vital to the protection of the environmental rights in Nigeria as they afford victims of environmental degradation improved access to judicial remedies in Nigerian

[22] See Garner, B.A. (Editor in Chief). *Black's Law Dictionary,* 8th edn. (USA: Thomson West, 2004), p.1171.

courts.[23] The specific reference to the African Charter by the FREP Rules, reinforces the applicability of the rights and freedoms contained under the Act including the socioeconomic rights in Nigeria. Indeed, the Rules laid to rest any lingering doubt regarding the justiciability of the socio-economic provisions of the Act including the right to a healthy environment, by expressly defining fundamental right as including 'any of the rights stipulated in the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act'.[24] It is therefore safe to conclude that the recognition of rights under the African Charter as fundamental means that the executive, the legislature and the judiciary are all enjoined to preserve and protect the rights and freedoms under the Act, and any violation by any person or group of persons, even the government is *ultra vires*.[25]

Having established the justiciability of environmental rights in Nigeria, it is now apposite to examine the procedure for the enforcement of the right to safe and healthy environment.

4.0 ACCESS TO ENVIRONMENTAL JUSTICE THROUGH THE FUNDAMENTAL RIGHTS (ENFORCEMENT PROCEDURE) RULES, 2009

In answering the question why environmental protection be treated as a human rights issue, Boyle opined that:

> Most obviously, and in contrast to the rest of international environmental law, a human rights perspective directly addresses environmental impacts on the life, health, private life, and property of individual humans rather than on other states or the environment in general. It may serve to secure higher standards of environmental quality, based on the obligation of states to take measures to control pollution affecting health and private life. Above all it helps to promote the rule of law in this context: governments become directly accountable for their failure to regulate and control environmental nuisances, including those caused by corporations, and for facilitating access to justice and enforcing environmental laws and judicial decisions. Lastly, the broadening of economic and social rights to embrace elements of the public interest in

[23] Amechi, P.E., "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", *Law, Environment and Development Journal*, Vol. 6/3, 2010, pp. 320 – 334 at 329. Available at http://www.lead-journal.org/content/10320.pdf last visited 22/3/2014.

[24] See Order 1, Rule 2 of the FREP Rules, 2009. See also Yusuf, H.O., "Oil on Troubled Waters: Multinational Corporations and Realising Human Rights in the Developing World, with Specific Reference to Nigeria", 8 *African Human Rights Law Journal* 79, 2008, pp.81 & 93-96; Ebobrah, S.T., "The Future of Economic, Social and Cultural Rights Litigation in Nigeria", 1 (2) *Review of Nigerian Law and Practice* 108, 2007, Pp.114- 124; and Nnamuchi, O., "Kleptocracy and its Many Faces: The Challenges of Justiciability of the Right to Health Care in Nigeria", 52/1 *Journal of African Law*, 2008, pp.15-19.

[25] See also Amechi, P.E., *Op cit.* p.330; Aduba, J.N., "The Impact of Poverty on the Realization of Fundamental Human Rights in Nigeria", vol.3 (1) *Journal of Human Rights Law and Practice*, 1993, Pp.2-3; and Nwafor, A.O., "Enforcing Fundamental Rights in Nigerian Courts – Processes and Challenges", vol.4 *African Journal of Legal Studies*, 2009, Pp.1-11 at 6-7.

> environmental protection has given new life to the idea that there is, or should be, in some form, a right to a decent environment.[26]

Boyle's proposition above is, in all front *pari materia* with the position of this writer. The view that environmental rights forms directly (as seen in the provision of Article 24 of the African Charter) or indirectly (as seen from decided cases within and outside jurisdiction that right to life, property, dignity of human person, includes right to a safe and healthy environment) part of the fundamental human rights in Nigeria, necessarily implies that actions stemming from violation of same can be commenced and prosecuted via the FREP Rules, 2009. Enforcement of fundamental rights, being a *sui generis* action and/or procedure, is strictly commenced under the relevant rules. [27]

On the legal status of the FREP Rules, the Court of Appeal while considering the 1979 FREP Rules made pursuant to section 42(3) of the 1979 Constitution, of which the 2009 Rules is an amendment (if you like), held in the case of *Abia State University, Uturu v. Chima Anyaibe*[28] that:

> … an action under the Fundamental Rights (Enforcement Procedure) Rules, 1979 is a peculiar action. It is a special action. The procedure is provided by the Rules which were made pursuant to section 42(3) of the 1979 Constitution. For the court to have jurisdiction, the procedure specifically provided for must be strictly followed. As I have already stated earlier in this judgment, the Rules have the same force of law as the Constitution itself.

By implication, any law in conflict with the provisions of the FREP Rules, 2009 shall be null and void to the extent of its inconsistency. Hence, in an action for the enforcement of fundamental right, and on the argument that the suit was incompetent; pre action notice having not been given to the Respondent, the High Court of Ogun State in *Babarinde v. Ogun State University*,[29] held that:

> The issue concerns the government and the citizenry on fundamental rights; a procedure is provided for it and where this is followed, the issue of pre-action notice would appear to be a clog in the wheel of the exercise of the fundamental human rights…

---

[26] Boyle, A. Human Rights and the Environment: Where Next? *European Journal of International Law (EJIL)*, vol.23, No.3, 2012, pp.613 – 642:613-4.

[27] It is worthy of note that, judicial decisions in which applications under the FREP Rules not directly bordering on question touching directly on the provisions of Chapter IV of the Constitution but as ancillary rights were struck out based on the old FREP Rules, 1979, which had no provisions making the African Charter (for instance) applicable.

[28] (1996) 1 NWLR (pt.439) 646 at 660 – 1.

[29] (2001) 1 CHR 156.

> In the circumstances, I regret I do not agree that before a person can enforce his fundamental human right he would be bound to give 3 months notice during which his right could have been so trampled upon that it is possible for his life to have expired before the indulged government agency could make up its mind.

The Supreme Court of Nigeria, also in a similar vein, held per Uwaifo JSC, in *Federal Republic of Nigeria v. Ifegwu,*[30] that:

> At this stage, I think I can briefly dispose of the argument in respect of section 2 of the Public Officers Protection Act… relied on … that the respondent's action was statute barred. It would be argument carried too far to say that the Public Officers Protection Act applied to bar a relief sought in connection with an error committed in purely judicial capacity. It does not. The remedy sought is to enforce a constitutional right contravened by a court acting judicially. The time within which to seek that remedy is not subject to the time limit prescribed by the Public Officers Protection Act. There is no reason why it should. If it did, it would likely conflict with court rules.

As a corollary to the above, the issue of which court has jurisdiction to entertain enforcement of fundamental right matters is worthy of mention. By section 46(1) of the Nigerian Constitution, any person who alleges that any of the provisions of Chapter IV of the Constitution "has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress." Flowing therefrom is the view that, even though environmental right do not expressly form part of chapter IV of the Constitution, same having been held to form part of other rights provided therein may be enforced in any State High Court where it is infringed or threatened to be infringed. The FREP Rules, 2009 on the other hand provides in her interpretation rule that "'court' means the Federal High Court or High Court of a State or the High Court of the Federal Capital Territory, Abuja."[31] Accordingly, jurisdiction is vested in the Federal High Court, the High Court of the States as well as High Court of the FCT. It is however contended that, where a matter or a party falls within the exclusive jurisdiction of the Federal High Court as enacted in section 251 of the Nigerian Constitution, the appropriate court will seem to be the Federal High Court and vice versa. This may be subject to argument in view of the nature of fundamental right cases as *sui generis*. Otherwise, the High Courts (Federal, States and the FCT) are empowered by the Constitution as it were, to entertain fundamental rights cases. This argument shall be revisited under the heading: commencement of action *infra*.

---

[30] (2003) 45 WRN 27 at 69.
[31] See Order 1, Rule 2 thereof.

What this paper is intended to ex-ray is the possibilities of attaining easy access to environmental justice through litigation under the FREP Rules, 2009 by examining the relevant provisions of the FREP Rules, 2009 and their role in easy access to environmental justice. This shall form the basis hereunder:

4.1 *Broadened Locus Standi*

Hitherto, under the existing rule of *locus standi* in Nigeria, any person bringing public interest actions including those relating to the protection of the environment against the State must show that he/she is a 'person aggrieved', that is, a person whose legal rights are infringed or threatened by the State's act, neglect or default in the execution of any environmental law, duties or authority.[32] Before the making of the FREP Rules, 2009, the term "any person" under section 42(1) of the 1979 Constitution and section 46(1) of the 1999 Constitution was interpreted to mean the actual person whose fundamental right had been, was being or likely to have been violated.[33] Discharging this procedural requirement in environmental public law litigation has proved burdensome to persons including Non-Governmental Organisations (NGOs) that either are interested in the general protection of the environment or in championing the rights of persons affected by environmental degradation.[34] Their inability to satisfy this requirement had led to the failure of many deserving environmental cases in Nigerian Courts.[35]

---

[32] See Amechi, P.E., *Op cit*. p.330. See also *Oronto-Douglas v. Shell Petroleum Development Company and 5 Others*, Unreported Suit No. FHC/CS/573/93, Delivered on 17 February 1997; *Adesanya v President of Nigeria* (1981) All NLR 1 at 39; *Inyangukwo v Akpan* (1985) 6 NCLR 770; *Attorney-General of Kaduna State v Hassan* (1985) 2 NWLR 483; *Irene Thomas and others v Reverend Olufosoye* (1986) 1 NWLR 669, and *Adediran and another v Interland Transport Limited* (1992) 9 NWLR (Part 214) 155.

[33] Falana, F., *Op cit.* p.30; see also *Olusola Oyegbemi v. A.G. Federation* (1982) 3 NCLR 895; *Shugaba Darman v. Minister of Internal Affairs* (1981) 2 NCLR 459; *University of Ilorin v. Oluwadare* (2006) 45 WRN 145; and *Governor of Ebonyi State v. Isuama* (2007) 20 WRN 170.

[34] Amechi, P.E. Poverty, Socio-Political Factors and Degradation of the Environment in Sub-Saharan Africa: The Need for a Holistic Approach to the Protection of the Environment and Realisation of the Right to Environment. *Law, Environment and Development Journal*, vol.5/2, 2009, pp. 107 – 129 at 115 – 116. Available at http://www.lead-journal.org/content/09107.pdf last visited on 1/4/2014.

[35] One example worthy of note is the case of *Oronto-Douglas v Shell Petroleum Development Company Ltd and 5 others* Unreported Suit No. FHC/CS/573/93, Delivered on 17 February 1997, where the plaintiff, an environmental activist sought to compel the respondents to comply with provisions of the Environmental Impacts Assessment (EIA) Act before commissioning their project (production of liquefied natural gas) in the volatile and ecologically sensitive Niger Delta region of Nigeria. The Court dismissed the suit on the grounds *inter alia* that the plaintiff has shown no legal standing to prosecute the action. Amechi noted that a fall-out of the *Oronto-Douglas* case was the practice of environmental NGOs sponsoring victims of environmental degradation to litigate against those responsible. Amechi, P.E., "Litigating Right to Healthy Environment: An Examination of the Impacts of the Fundamental Rights (Enforcement Procedure) Rules 2009", *Op. cit.* p.330. The Author cited the example of *Gbemre's* case which was sponsored by Environmental Rights Action/Friends of the Earth Nigeria, with scientific and legal support from E-LAW U.S.

This restrictive approach of Nigerian Courts on *locus standi* notwithstanding, activist lawyers and environmentalists repeatedly sought to enforce the fundamental rights of disadvantaged members of the society, and they continually met the brick-walls, until a few judges realised the need to relax the stringent *locus standi* rule to accommodate public interest litigation, especially in area of human rights cases.[36] Hence, in *Fawehinmi v. Akilu*,[37] the Supreme Court of Nigeria in recognising a departure from the strict *locus standi* rule, held, per Kayode Eso, thus:

> …I am in complete agreement with the new trend, and with respect, my agreement with the judgment is my belief that it has gone beyond the Abraham Adesanya case… 'it is the universal concept that all human beings are brothers and assets to one another'…that we are all brothers is more so in this country where the socio-cultural concept of 'family' and 'extended family' transcend all barriers. Is it not right then for the court to take note of the concept of the loose use of the word 'brother' in this country? 'Brother in the Nigerian context is completely different from the blood brother of the English language.[38]

Falana is of the view, equally, that strict adherence to the *locus standi* rule lacks justification under Article 27(2) of the African Charter wherein it is stated that the rights and freedom of each individual shall be exercised "with due regard to the rights of others, collective security, morality and common interest" as well as Article 29(2) of the Charter imposing a duty on every individual to serve their national community by placing their physical and intellectual abilities at its service.[39] This writer aligns entirely with this reasoning as he finds no fault therein. In a more illuminating fashion and unequivocal truism, the Court of Appeal, per Aboki, JCA held in the case of *Fawehinmi v. The President*[40] that:

> In our present reality, the Attorney-General of the Federation is also a Minister of Justice and a member of the Executive Cabinet. He may not be disposed to instituting an action against the Government in which he is part of, it may tantamount to the Federal Government suing itself. Definitely he will not perform such a duty. Importantly

[36] Falana, F., "Litigating Right to Healthy Environment: An Examination of the Impacts of the Fundamental Rights (Enforcement Procedure) Rules 2009",*Op cit.* p.31.
[37] (1987) 4 NWLR (pt. 67) 797 at 847.
[38] See also *William v. Dawodu*, (1988) 4 NWLR (pt. 86) 189 at 218, where the Court of Appeal restated the law that "there is now the recent case of Chief Gani Fawehinmi v. Col. Akilu & Anor… which shows that the courts have become increasingly willing to extend the ambit of locus standi for public good. The courts have broken new grounds. The significance of this judicial revolution is that whereas in the past the court showed little or no reluctance in any given case in construing the import of 'sufficient interest' against the individual and tended to be more Executive than the Executive, now the term 'sufficient interest' is construed more favourably in order to give an applicant a hearing." I cannot agree less.
[39] Falana, F., "Litigating Right to Healthy Environment: An Examination of the Impacts of the Fundamental Rights (Enforcement Procedure) Rules 2009", *Op cit.* p.37.
[40] (2008) 23 WRN 65.

> too, there is no provision in the 1999 Constitution for the State to sue itself.
> Since this country attained independence from the British Colonial Administration almost forty years ago, I know of no reported case of any superior court in Nigeria where the Attorney-General of the Federation has instituted an action against the Federal Government, or an Attorney-General of a State suing his State Government on account of a violation of the provisions of the Constitution or a legislation contrary to the provisions of the Constitution…[41]

Credit to the changing mindset of Nigerian judges, the need to expressly abolish the *locus standi* doctrine became apparent. This will shift from the trend of leaving the all important issue of *locus standi* to the ideological inclination of individual judges. Hence, the preamble to the FREP Rules, 2009 provides that "no human rights case may be dismissed or struck out for want of locus standi." Therefore, under the 2009 FREP Rules,

> discharging this burdensome requirement does not apply any longer to the enforcement of fundamental rights. This is due to the fact that the new Rules expressly mandate the Court to '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'. This is a very important objective as the poor are not only adversely affected in instances of environmental degradation, but also, lack the financial wherewithal to offset the cost (including the opportunity cost) involved in diligently prosecuting lawsuits against those responsible for the degradation or threatened degradation. Achieving this objective invariably will include granting access to courts to NGOs and other persons representing these classes of people. Most importantly, the Court are required to 'encourage and welcome public interest litigations in the human rights field and no human rights case may be dismissed or struck out for want of *locus standi'*. Furthermore, the Rules expanded the class of persons that can bring action in instances of human rights violation…[42]

---

[41] See also *Nwankwo v. Ononeze – Madu* (2009) 1 NWLR (pt. 1123) 671 at 715 – 716, per Salawu, JCA. His Lordship held further that "The question now is who will approach the court to challenge the Government where it violates or fails to enforce any provisions of the Constitution or Laws where an Attorney-General will not. In this country where we have a written Constitution which establishes a constitutional structure involving a tripartite allocation of power to the Judiciary, Executive and Legislature as the co-ordinate organs of Government, Judicial function must primarily aim at preserving legal order by confining the legislative and executive within their powers in the interest of the public and since the dominant objective of the Rule of Law is to ensure the observance of the law, it can best be achieved by permitting any person to put the judicial machinery in motion in Nigeria whereby any citizen could bring an action in respect of a public derelict. Thus, the requirement of locus standi becomes unnecessary in constitutional issue as it will merely impede judicial functions."

[42] "These include anyone acting in his own interest; anyone acting on behalf of another person; anyone acting as a member of, or in the interest of a group or class of persons; anyone acting in the public interest, and association acting in the interest of its members or other individuals or groups. Hence, by virtue of these provisions, NGOs and other public spirited individuals can now validly bring action to enforce the fundamental rights of persons affected or threatened either by environmental degradation or by any act, neglect or default of the Nigerian government in the execution of any environmental law, duties or authority**."** Amechi, P.E. "Litigating Right to

With due respect, any submission that the abolition of the *locus standi* doctrine only forms part of the preamble to the Rules, and not part of the substantive rules itself cannot hold water. Order 1, Rule 2 of the FREP Rules, 2009 further provides *inter alia* that an applicant is a party filing an application or on whose behalf an application is filed under the rules; and that an application is that brought pursuant to the rules or on behalf of any person. It is accordingly safe to conclude that, while the restrictive doctrine of *locus standi* has been abolished, *locus standi* has been broadened to cover and promote public interest litigation particularly in the field of fundamental rights, including environmental rights. This development is indeed good for the prosecution of environmental rights violation as the government, more often than not, is complaisance in the environmental degradation and has never instituted an action against itself to enforce the right to safe and healthy environment of her citizens. Simply put, the liberalization of *locus standi* rule under the FREP Rules, 2009 has broadened the access to environmental justice in Nigeria.

4.2 *Commencement of Action/Jurisdiction*

Having established the position of the law on *locus standi* in fundamental rights including environmental right cases, the next thing to consider is in what court to commence the action. Article 7(a) of the African Charter stipulates the right of every individual to appeal to competent national organs against acts of violation of their fundamental rights as recognised by international conventions, laws, regulation and customs in force. While section 46(1) of the Nigerian Constitution provides for redress in fundamental rights cases at the High Court, the FREP Rules, 2009 provides that court means the High Court of a State, Federal High Court and High Court of the Federal Capital Territory. In *Isuama v. Governor of Ebonyi State*,[43] the Court of Appeal held that:

> Section 46 of the 1999 Constitution is a special provision which deals with matters of fundamental rights. It confers jurisdiction on any High Court in a State in matters of fundamental rights irrespective of who is affected by an action founded on such rights… In short, a person whose fundamental right is breached, being breached or about to be breached may apply to a High Court or Federal High Court in that State for redress.

Similarly, the Court of Appeal held in *Ohakosin v. Commissioner of Police, Imo State*[44] that the African Charter constitutes part of the laws of Nigeria and must be upheld by all courts in the country. And that the FREP Rules enacted pursuant to section 46(3) of the Constitution is

Healthy Environment: An Examination of the Impacts of the Fundamental Rights (Enforcement Procedure) Rules 2009", *Op cit*. p.331.

[43] (2007) 20 WRN 170.

[44] (2009) 15 NWLR (pt. 1164) 229.

one of the means by which a person may seek to enforce the rights guaranteed by the Charter and Chapter IV of the Constitution. The aim of section 46(1) of the Nigerian Constitution according to the Supreme Court is to provide a simple and effective judicial process for the enforcement of fundamental rights in order to avoid the cumbersome procedure and technicalities for their enforcement under the rules of common law or other statutory provisions.[45]

On the issue as to whether the exclusivity of jurisdiction granted the Federal and State High Courts by the Constitution applies in fundamental right matters, the Court of Appeal held that where the reliefs sought arose from the administrative actions or decisions of the Federal Government agencies, even though it is called violation of fundamental human right, such action falls squarely within the provision of section 251 (1) (q) (r) and (3) of the Nigerian Constitution and the State High Court was wrong to have assumed jurisdiction.[46] This position was affirmed by the Supreme Court in the case of *Gafar v. Governor of Kwara State*,[47] where it held that the application for the enforcement of the fundamental right to fair hearing could not be entertained by the Federal High Court where the action arose from the recommendations of the Judicial Commission of inquiry and the white paper issued on the applicant by the Kwara State Government in the operation of the law applicable in the State. However, where a matter falls within the jurisdiction of the Federal High Court and there is no division of the Federal High Court in the state where the infringement complained of occurred, it is justifiable to institute such action in the High Court of that State via the use of the words "High Court in that State" in section 46(1) of the Nigerian Constitution.[48] In *Oyakihre v. Umar*,[49] the Court of Appeal declared that the phrase "a High Court in that State" means the State High Court or the Federal High Court if there is one sitting in that State. Furthermore, if the violation of human rights complained of occurred across more than one state, the High Court in any of the states may entertain the action.[50] All these are in an effort to make the court accessible to persons

[45] *Fajemirokun v. Commercial Bank Ltd.* (2009) 21 WRN 1. See also Falana, F., "Litigating Right to Healthy Environment: An Examination of the Impacts of the Fundamental Rights (Enforcement Procedure) Rules 2009", *Op cit*. p.42.
[46] *Director-General, State Security Service v. Ojukwu* (2006) 13 NWLR (pt. 998) 575.
[47] (2007) 20 WRN 170.
[48] See *Tukur v. Governor of Gongola State* (1989) 4 NWLR (pt. 117) 517. See also *Fabunmi v. Commissioner of Police, Osun State* (2001) 2 FHCLR 380.
[49] (1998) 3 NWLR (pt. 542) 438.
[50] See Falana, F., "Litigating Right to Healthy Environment: An Examination of the Impacts of the Fundamental Rights (Enforcement Procedure) Rules 2009", *Op cit*. p.52. See also the cases of *Otunba v. A.G. Federation* (2007) 8 WRN 125; *Lawal v. Governor of Kwara State* (2004) 25 WRN 142; and *Madeibo v. Nwankwo* (2000) 29 WRN 137.

complaining on a breach or threatened breach of their fundamental rights including right to clean environment. However, the proviso to Order II, Rule 1 must not go unnoticed. It states that:

> Provided that where the infringement occurs in a State which has no Division of the Federal High Court, the Division of the Federal High Court administratively responsible for the State shall have jurisdiction…

It is worth noting equally that, most (if not all) of the decisions on jurisdiction of court herein examined, were reached under the 1979 FREP Rules which had no corresponding provision. That notwithstanding, the proviso may present some form of difficulties to litigants aptly captured by Amechi as follows:

> The perpetuation of the jurisdictional dichotomy between the Federal High Court and State High Court in the commencement of fundamental rights enforcement actions is a major drawback of the new Rules with regard to promoting access to court in instances of environmental degradation. It should be noted, that it is litigants and their lawyers who determine which disputes will reach the courts, when and how often courts will be petitioned, and how intensively conflicts will be pursued. Hence, a situation where Federal High Court judicial divisions are not evenly situated in all the States of the Federation, and even where it is sited in a particular State, is usually situated in the State capital, usually presents a logistical problem to victims of environmental degradation in Nigeria. The effect of this is that most victims of the degradation especially those associated with the oil industry in Nigeria, who often hail from the rural areas of the State, may not have the financial wherewithal to institute and diligently prosecute enforcement actions at the Federal High Court.[51]

Even though the Federal High Court has divisions spread across almost all the states in Nigeria, their location in the State Capitals may make access to them pretty difficult considering the financial status of potential and actual victims of environmental right violations. In most states of the Federation, on the other hand, the High Court is spread across almost all the local government areas of the State.[52] Granting express concurrent jurisdiction to both courts, if for only fundamental rights cases, will be a step in the right direction and will further facilitate the intentions of the present FREP Rules. A proviso that where the Federal High Court is a certain kilometres away from the scene of the violation, the State High Court shall have jurisdiction will not be out of place. This proposition is in view of the fact that the FREP Rules enjoys the similar standing as the Constitution,[53] hence, it can provide for both State and Federal High Court.

---

[51] Amechi, P.E. "Litigating Right to Healthy Environment: An Examination of the Impacts of the Fundamental Rights (Enforcement Procedure) Rules 2009", *Op cit.* p.332.
[52] A handy example is Kogi State.
[53] *Abia State University, Uturu v. Chima Anyaibe* (supra).

By Order II Rule 2, FREP Rules, 2009, "an application for the enforcement of the fundamental right may be made by any originating process accepted by the court which shall, subject to the provisions of these Rules, lie without leave of Court." This is a major departure from the old rules (FREP Rules, 1979) where leave of Court was *sine quo non* for an application to enforce a person's fundamental rights. The new rules have made commencement of fundamental right actions easier such that

> the manner in which the Court is approached for the enforcement of a fundamental right does not matter, once it is clear that the originating process seeks redress for the infringement of the right so guaranteed under the Constitution or the African Charter… This process could be by the Fundamental Rights (Enforcement Procedure) Rules or by Originating Summons or indeed by Writ of Summons.[54]

The 2009 FREP Rules is out to simplify the mode for commencing fundamental rights actions by obviating the need for the requirements of obtaining leave with all the steps required to be taken in obtaining such leave. Under the 2009 dispensation therefore, applicants are only required to commence such action using any originating process accepted by the Court. The application shall be accompanied by a statement, affidavit in support, and a written address, particularly where the action for enforcement is commenced vide an originating summons. The objectives of the 2009 Rules are clearly spelt out with the overriding view to making justice in fundamental right cases easily accessible. Flowing from the contention all along, environmental right is no exception.

4.3 *Limitation of Action*

The effect of Statute of Limitation on victims of environmental violations can be enormous. In *Shell Petroleum Development Company (Nigeria) Ltd. v. Abel Isaiah,*[55] an action for environmental degradation which succeeded at the High Court as well as the Court of Appeal was thrown out at the Supreme Court on the basis that the Court lacked jurisdiction to entertain the matter *ab initio*. To make matters worse for the Plaintiff, the action was already statute barred at the time of the judgment at the Supreme Court.

In addition to simplifying the mode of commencement, the Rules removed the time limit within which such application can be commenced where it provides that 'an application for the enforcement of Fundamental Right shall not be affected by any limitation Statute whatsoever'.[56] Clearly seen from the above provision is that the right of an applicant to apply

[54] Falana, F., "Litigating Right to Healthy Environment: An Examination of the Impacts of the Fundamental Rights (Enforcement Procedure) Rules 2009", *Op cit*. pp.53 – 54.
[55] (2001)5 S.C. (Pt. 11) 1.
[56] See Order III, FREP Rules, 2009.

to court to enforce his fundamental right is not extinguishable on the ground that the action is statute barred. An applicant can exercise his right to commence an action to enforce his right at any time irrespective of when the violation took place. According to Femi Falana, "just like time does not run against the State in the prosecution of most criminal offences the application for the enforcement of fundamental rights shall not be defeated by any statute of limitation whatsoever."[57] Hence, section 12 of the NNPC Act limiting the time an action can be commenced against the NNPC for instance, can no longer apply to cases of fundamental rights enforcement. Equally, the common law limitation of action in cases of negligence, nuisance, etc. is obsolete with respect to fundamental rights cases. This is more important as the effects of environmental degradation are usually not felt immediately but several years after the act of violation by which time an action is statute barred and worthy environmental violations cases are thrown out. Hence, if ten years is required to properly assemble the evidence needed in prosecuting the action, the applicant has nothing to fear as to whether his action will be legally valid as at the time. This innovation is even further special as the case of the victim been deceased at the time the degradation is visible for possible enforcement is no longer an issue since the scope of *locus standi* has been broadened.

4.4 *Proof in Human Right Actions*

The leverage granted fundamental right cases to choose any originating process acceptable to the court leaves an applicant with options available. Whichever process is adopted by an applicant determines the method of proof or evidence in the case. Arguably however, the FREP Rules, 2009, by the proviso to Order II, Rule 1, envisages commencement of action via originating summons as seen in Form 1 in the Appendix to the Rule. Note that, originating summons are adopted where the facts leading to the application are not likely contentious; and that writ of summons are appropriate for contentious matters.[58] Proof in actions commenced by Form 1 (Originating Summons) is via affidavit evidence. In *Minister of Internal Affairs v. Shugaba,*[59] the Court of Appeal per Omo JCA (as he then was) held that:

> Form 1 contemplates mainly the use of affidavit evidence which may very well and often does contain contentious issues of fact which have to be resolved… This therefore contemplates an originating summons as under the ordinary procedure or interpretation of documents whereof the facts are largely settled and/or are not in contention. It has been held many times that an

[57] Falana, F. 2010 op cit. p.87.
[58] See the cases of *Aigoro v. University of Lagos* (1985) 1 NWLR (pt. 12) 146; *Obasanya v. Babafemi* (2000) 23 WRN 30; *Ogunsola v. ANPP* (2003) 39 WRN 115; and *Federal Polytechnic Idah v. Onoja* (2003) 12 WRN 95.
[59] (1982) 3 NCLR 915 at 965.

> originating summons is not a proper procedure where contentious issues of facts are to be resolved by the court…

Majorly, the defences provided by statute in favour of oil exploration companies includes that proper steps were taken to prevent pollution and that pollution was not deliberate. By necessary implication, pollution is not being denied but that, it was not a deliberate act of the polluter. Suffice therefore to say that, the fact of pollution is usually non contentious.

On the other hand, any action commenced by originating summons without a supporting affidavit is incurably bad and liable to be struck out.[60] In the case of *Keyamo v. Lagos State House of Assembly*,[61] the Supreme Court held that "without the verification by affidavit evidence of the facts alleged in the originating summons, the summons was incompetent and was rightly struck out by the trial court." Where there is an affidavit filed in support of the originating summons, and the respondent fails to file a counter affidavit, such has been interpreted to mean the admission of facts deposed to in the affidavit in support of the application.[62]

Note that the contention here for an all out enforcement of fundamental rights action in respect of environmental violation does not in any way suggest obviating the common law or other means of seeking redress in court. It is only a suggestion that the FREP Rules, 2009 may present an easier access to success in environmental litigation. As a matter of fact, the Supreme Court per Mohammed Bello CJN (as he then was) held in *Ogugu v. The State*[63] that:

> … the provision of section 42 of the Constitution for the enforcement of the fundamental rights enshrined in Chapter IV of the Constitution is only permissible and does not constitute a monopoly for the enforcement of those rights. The object of the section is to provide a simple and effective judicial process for the enforcement of fundamental rights in order to avoid the cumbersome procedure and technicalities for their enforcement under the rules of the common law or other statutory provisions. The object has been achieved by the Fundamental Rights (Enforcement Procedure) Rules 1979. It must be emphasized that the section does not exclude the application of the other means of their enforcement under the common law or statutes or rules of courts. These are contained in the several Laws of our High Courts, for example sections 18, 19 and 20 of the High Court of Lagos relating to mandamus, prohibition, certiorari, injunction and action for

[60] Falana, F., "Litigating Right to Healthy Environment: An Examination of the Impacts of the Fundamental Rights (Enforcement Procedure) Rules 2009", *Op cit.* p.59.
[61] (2003) 21 WRN 135.
[62] See *Governor of Kogi State v. Mohammed* (2009) 13 NWLR (pt. 1159) 491; *Inakoju v. Adeleke* (2008) 4 NWLR (pt. 1106) 161 at 176.
[63] (1998) HRLRA 167 at 187.

> damages. A person whose fundamental right is being or likely to be contravened may resort to any of these remedies for redress.

Also, in *Mohammed Shaaba Lafiaji v. Military Administrator of Kwara State,*[64] the Federal High Court held that fundamental rights of citizens are so important that the mode of access to courts to enforce them should not be restricted to one particular means or that the procedure used in the attainment of the enforcement of these rights be made cumbersome and technical.

Worthy of further note is that the procedure contained in the FREP Rules, 2009 is entirely different from those to be followed in pursuing a claim via a writ of summons for instance, and where a person elects to adopt any procedure in seeking redress, he must abide by that procedure and cannot return afterwards to commence the same action via another procedure. Proper consideration of the pros and cons is important in choosing which procedure to adopt. In *National Union of Teachers v. Conference of Secondary School Tutors of Nigeria,*[65] the Court of Appeal enacted that

> the alleged infraction of the Respondent's fundamental rights may also constitute a tortious act. The victim has a right of election in respect of the procedure to be adopted for obtaining redress. He may initiate an ordinary civil claim under the relevant rules of court (as the Respondents did in this case) or he may invoke the constitutional procedure under the Fundamental Rights (Enforcement Procedure) Rules[66].

The Court held further that "having made a choice, the respondents are restricted to the procedure they chose to bring their action. They cannot have the same matter considered both as ordinary civil claim and as enforcement of their fundamental right."[67] According to Ojukwu and Ojukwu, "neither section 46 of the 1999 Constitution, nor the rules made under it excludes the application of other means of their enforcement, either under the common law, statute or rules of Court."[68] For the umpteenth time, the procedure stipulated in the FREP Rules, 2009 does not in any way exclude other procedure of enforcing fundamental rights.[69]

On the whole, the procedure adopted will determine the manner by which evidence will be adduced at the trial. While the FREP Rules, 2009 permits all processes for commencement of action acceptable to the court, matters under the FREP Rules are usually commenced with an originating summons, originating motion or an ordinary motion on notice. All these originating processes only require affidavit evidence, while oral evidence may only be called in

---

[64] (1995) FHCLR 321.
[65] (2007) 23 WRN 63.
[66] See also *Onwo v. Oko & ors* (1996) 6 NWLR (pt. 456) 584 at 603-604.
[67] See *Effiong v. Ebong* (2007) 28 WRN 71.
[68] Ojukwu, E. and Ojukwu, C.N. *Introduction to Civil Procedure,* (Enugu: Snaap Press Ltd., 2002), p.358.
[69] See *Nemi v. The State* (1994) 10 SCNJ 1.

exceptional circumstances. Exhibits can always be attached to an affidavit for further elucidation of the facts in evidence and courts are bound to consider them in determination of the matter. Suffices to say that, where the FREP Rules procedure is adopted by a person, affidavit evidence is the means of proof in the fundamental rights cases. This is important to environmental right enforcement litigation in that, from the filing stage, evidence, by way of affidavit, are adduced by both parties and what is left will be adoption of the contents of such affidavits without necessarily calling witnesses to the witness stand on trial days (with the attendant cost and time implication). This is against the practice where a writ of summons was to be used.

5.0 CONCLUSION

It is now settled law that all the rights contained in the African Charter (including environmental right) are justiciable and accordingly enforceable via the Fundamental Rights (Enforcement Procedure) Rules, 2009. The FREP Rules has vital provisions aimed at making access to justice easily attainable. Victims of environmental degradation now have the option of choosing to prosecute their claim through the Rules with all the attendant benefits for litigants. Environmental right can either be enforced as an embedded right in other established rights in Chapter IV of the Constitution and/or on its own via the African Charter. Lawyers and litigants alike should therefore take advantage of this leeway to easy access to environmental justice.