

Environmental Rights and Sustainable Development in Nigeria

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Abstract: The enforcement of environmental rights and claims in Nigeria will undoubtedly be an arduous task to litigations or claimants unless concerted efforts are made to protect man and the environment from environmental degradation and human rights violation consequent upon the activities of some multinational corporations in most developing countries especially in Nigeria. In spite of the human right and environmental abuses, there is the absence of a constitutionally guaranteed “environmental right” under the Nigerian law to remedy the various acts of environmental degradation and abuses. Consequently, this article seeks to critically look at the concept and generation of human rights, the status of environmental rights under the 1999 constitution of the Federal Republic of Nigeria (as amended). The issue of environmental rights and sustainable development will also be considered in this discourse. Necessary recommendations and suggestions will be made in the light of the above expositions.

Keywords: Environment, Environmental Rights, Sustainable Development, Justiceable, Grundnorm

Introduction

There is no doubt that the enforcement and indeed the litigation of environmental rights and claims in Nigeria will remain an uphill and herculean task to litigants or aggrieved persons unless urgent steps are taken to devise adequate legal mechanisms to protect man and the environment from the hazardous and negative effects of modern technology and civilization. Perhaps, nowhere else are reliable and realistic environmental policies and legal machinery for the protection and promotion of a sustainable environment for human rights development more desirable than in Nigeria which, over the years, has experienced worst abuses of human rights and wanton disregard for lives and properties. The level of human right abuses from oil production in Nigeria was succinctly described by the Human Right Watch in its 1999 report as follows:

“Oil production has had damaging effects on the environment of the oil-producing region, though the extent of the damage is subject to dispute. Despite decades of oil production, there is surprisingly little good quality independent scientific data on the overall or long-term effects of hydrocarbon pollution on the delta, yet oil led development has clearly seriously damaged the environment and the livelihood of many of those living in the oil producing communities. The oil companies operating in Nigerian maintain that their activities are conducted to the highest environmental standards, but Nigerian environmental laws, in most respects comparable to their international equivalents, are poorly enforced”¹.

The above observation underscores the extent of environmental degradation and human right violations as a result of the activities of some multinational corporations in the third world countries especially in Nigeria. In spite of the human right and environmental abuses, there is the absence of a constitutionally guaranteed “environmental right” under the Nigerian Law to remedy the various acts of environmental degradation and abuses because the right to a safe and healthy environment is as controversial as other debates concerning new or other emerging rights.

Consequently, efforts will be made in this work to critically look at the concept and generation of human rights, the Nigerian constitution and environmental rights that is the difficulty of locating environmental right under the Nigerian Constitution with a view to determining whether the right to a clean and healthy environment is illusory or

fictitious. We shall endeavor to look at other jurisdictions in order to see how the issues of environmental rights have been treated. Also the issue of environmental rights and sustainable development will be considered since the integration of environmental issues and consideration into economic and development programmes is very paramount. Necessary recommendations and suggestions will be made in the light of the foregoing expositions.

Concept and generation of Human Rights

According to Arnold Lien, human rights are universal rights attaching to the human being wherever he appears without regard to time, place, colour, sex, parentage or environment². In this regard, human rights are derived from the inherent dignity of the human person. They are rights accruing to an individual because he is a human being. Human rights are inherent rights to be enjoyed by all human beings of the global village and not gifts to be withdrawn, withheld or granted at someone's whim or will³. In this sense, they are said to be inalienable or imprescriptible. The word 'right' is derived from the latin word 'rectus' which means "*that to which a person has a just and valid claim, whether it be land, a thing, or the privilege of doing something or saying something*". It may refer to something that is normally correct or demanded by the fact that it is a right which means that right refers to moral standards, righteousness and moral rectitude and could also refer to the entitlement of a person; the special title one has to a good or opportunity⁴. Human rights have been classified into three generations. First generation, second generation and third generation of human rights.

First generation refers to traditional civil and political liberties which include freedom of speech, or religion and of press etc. The rights are meant to ensure a duty of non-interference by government against individuals. They are the "classical" human rights found in many bills of rights of the constitutions of many countries.

The second generation of rights generally requires affirmative government action for their realization. These are social and economic rights that are often styled as "group rights" or "collective rights" and they pertain to the well being of the whole society. The third generations of rights are the most recently recognized category. This category can be distinguished from other categories in that their realisation is not only dependent upon the affirmative and negative duties of the state but also upon the behaviour of each individual. Rights in this classification include, right to development, right to peace, right to a healthy environment etc. The general concern felt in many countries and international organisations about the need for the protection of the environment, particularly against the pollution generated by modern industrial societies, has led to the contention that there is a human right to a clean and healthy environment.

Environmental Rights

Environment has been defined as the totality of physical, economic, aesthetic and social circumstances and factors which surround and affect the desirability and value of property or which also affects the quality of people's lives⁵. The Federal Environmental Protection Agency Act⁶ defines environment to include, water, air, land, all plants and human being or animals living therein and the inter-relationships which exist amongst any of them.

The above definitions therefore regard the environment as a state of affairs which is based upon the activities of man in his natural habitat and the relationships he has with his immediate environment in terms of water, air, animals and so on. Environmental rights can therefore be defined as the right of the citizens to have a clean, safe and decent environment and to enforce it in case of violation by the government or private citizens. This definition indicates the need to protect human health, safety and interest. It requires the maintenance of a certain level of environment because of human use and enjoyment of nature. Therefore, healthy and clean environment becomes a human right. It has further been argued⁷ that, if enacted, environmental right would grant the public a right to healthy environment and introduce a series of reforms to increase the powers of the private citizens to protect themselves and their environment from the effects of pollution. Also such right would increase powers to sue in civil courts for damages caused by pollution and to initiate private suits or claims for pollution where government has refused to act. It would also grant increased access to information on pollution and rights to participate on standard settings and other processes.

The Nigerian Constitution and Environmental Rights

In Nigeria, it is incontrovertible that all laws derive their existence and validity from the constitution. Section 1 (1) and S.1 (3) of the Constitution of the Federal Republic of Nigeria, 1999 provides in unequivocal terms as follows: Section 1 (1) this constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria. Section 1 (3) If any other law is inconsistent with the provisions of this

constitution, this constitution shall prevail and that other law shall to the extent of the inconsistency be void. The Supreme Court in **Abacha v. Fawehinmi**⁷ held inter-alia.

*“It is necessary to get our bearings right. The constitution is the supreme law of the land, it is the grundnorm. It’s supremacy has never been called to question in ordinary circumstances..”*⁸

The question for our determination at this juncture is whether the Nigerian Constitution guarantees Nigerian citizens a right to a clean and healthy environment. Consequently, the starting point of this question must be the consideration of some relevant sections of the 1999 constitution on this issue which include sections 13, 17 and 20 of the 1999 constitution.

Section 13 provides that:

“It shall be the duty and responsibility of all organs of government and of all authorities and persons, exercising legislative; executive or judicial powers, to conform to, observe and apply the provisions of this chapter of this constitution”.

“S.17 of the 1999 constitution deals with social objectives and states that the state social order shall be founded on ideals of freedom, equality and justice and in furtherance of this, S. 17 (2) (d) provides that the “exploitation of human or natural resources in any form whatsoever for reasons other than the good of the community, shall be prevented... “

The foregoing provisions imply that the government of Nigeria should always take necessary steps and precautions to protect the rights of the people in all policies formulated to exploit the natural and human resources of the State. Naturally, such steps should inter-alia include taking positive measures against environmental hazards capable of destroying life and property as well as the provision of relief materials and compensation for victims of environmental degradation due to exploitation of natural resources by the government.

S. 20 of the 1999 Constitution provides that:

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

Uwaifo JSC observed in the case of **Attorney General of Lagos State v. Attorney General of the Federation and Ors**⁹. that the provision of section 20 appears for the first time in Nigeria’s constitutional history in the 1999 constitution. However, S.20 of the 1999 constitution is found in Chapter 2 of the constitution which is titled *“Fundamental objectives and Directive principles of state policy”*. What then is the status of the aforementioned provisions as regards the right to a clean and healthy environment. By virtue of section 6 (6) (c) of the constitution, it is provided that:

“The judicial powers vested in accordance with the foregoing provisions of the Section shall not, except as otherwise provided by this constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any laws or any judicial decision is in conformity with the Fundamental Objectives and Directive principles of State Policy set out in Chapter 2 of this constitution”.

The above provision therefore means that the Chapter on the fundamental objectives and the directive principles of State policy are not justiciable in a court of law. In other words, the provisions in chapter 2 are only meant to be a guide to the arms of government in the task of nation building and in the day-to-day performance of the duties of governance¹⁰.

The courts have also affirmed in many cases that the provisions in chapter 2 of the constitution are not justiciable. In **MOREBISHE V. LAGOS STATE HOUSE OF ASSEMBLY**¹¹, **Segun .J of the Lagos State High Court** held that the provisions of chapter 2 are not justiciable although they remain pillars of guide and focus of attention to all tiers of government¹². Consequently, there is no doubt whatsoever that S.20 of the constitution does not confer or give an express right on a Nigerian citizen to enforce a right to clean environment within the context of chapter 2 of the constitution. However, all actions of the government may be circumscribed by the provisions of chapter 2 as forming the basis on which the right to exercise powers on those issues listed in chapter 2 may be regulated¹³.

It is pertinent also to state that chapter 4 of the 1999 constitution deals with fundamental rights which undoubtedly create justiciable and enforceable rights for the benefit of the citizens. However, none of the rights enumerated in the said chapter 4 has a direct bearing on environmental rights and issues, but some of the provisions in chapter 4

should be given wide interpretation to include the right to a clean and protected environment. For instance S.33 (1) of the constitution provides as follows:

“Every person has a right to life and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria”.

Although the above provision has no direct relationship with environmental protection, it can be argued that allowing a person to live in an unprotected or unhealthy environment could amount to a deprivation of the person’s right to life since a poor and unhealthy environment could put a person’s life in danger¹⁴. *Perhaps the views of Justice Bhagwati in the Indian case of MINERVA MILLS LTD V. UNION OF INDIA*¹⁵ clearly emphasizes that the second generation human rights which includes the right to clean and healthy environment should be given due attention and thus make them justiceable. The learned Justice Bhagwati observed as follows:

“The large majority of people who are living in almost sub-human existence in conditions of abject poverty and for whom life is one long unbroken story of want and destitution, notions of individual freedom and liberation though representing some of the most cherished values of a free society would sound as empty words banded about in the drawing rooms of the rich and the well to do and the only solution for making these rights meaningful to them was to re-make the material conditions and usher in a social order where socio-economic justice will inform all institutions of public life so that the preconditions of fundamental liberties for all may be secured”.

Therefore, the right to life will mean nothing to a person who is living in an unhealthy and unprotected environment “for whom life is one long unbroken story of want and destitution”¹⁶. Also, right to privacy is useless to a person who has no house and can be preyed upon by wild beasts and of course, of what significance is the right to personal dignity to a person who lives under the bridge? Also, in the light of the provisions S.44 of the 1999 constitution, which secures the right of a citizen to have and enjoy property within Nigeria, it is obvious that creating situations which will endanger the environment in which a property is located or situated or leading to a diminution in the value of the property or the interest of the owner of the property can amount to a deprivation of the right to own property which is enforceable and indeed justiceable under the said S.44 of the constitution.

In the South African case of the **Government of the Republic of South Africa v. Grootboom**¹⁷, it was held that the right of access to adequate housing cannot be seen in isolation as there is a close relationship between that right and other socio-economic rights and the state must take positive action to meet the needs of those living in extreme conditions of poverty, homelessness or intolerable housing. In this case, **Yacoob .J.** stated inter-alia as follows:

*“The proposition that rights are interrelated and are equally important is not merely a theoretical postulate. The concept has immense human and practical significance in a society founded on human dignity, equality and freedom... The constitution will be worth infinitely less than its paper if the reasonableness of state action concerned with housing is determined without regard to the fundamental constitutional value of human dignity. Section 26, read in the context of the Bill of Rights as a whole, must mean that the respondents have a right to reasonable action by the state in all circumstances and with particular regard to human dignity. In short, I emphasize that human beings are required to be treated as human beings. This is the backdrop against which the conduct of the respondents towards the appellants must be seen.”*¹⁸

An enquiry must also be made into the African Charter on Human and Peoples Right¹⁹ to see whether it offers a solution to the non- justiciability of the right to a protected environment under the Nigerian Constitution. The charter is an amalgam of the existing generation of human rights by making provisions for certain political and civil rights, collective social and economic rights and the right to development which embraces among others, the right to security and the right to a general satisfactory environment. Nigeria is a signatory to some International treaties and conventions on the protection of the human environment. In Nigeria, the African charter on human and peoples’ rights has been enacted as a local law titled “African charter on Human and Peoples’ Rights (Ratification and Enforcement) Act²⁰ which has now become part of the local laws in Nigeria. Article 24 of the Charter specifically provides that

“All peoples shall have the right to a general satisfactory environment favourable to their development.”

In **Abacha v. Fawehinmi**²², the Supreme Court held that the charter having been re-enacted as part of the laws of Nigeria has the force of law within the Federal Republic of Nigeria. Ejiwunmi JSC observed in the case that

“The African charter on Human and People’s Rights, having been passed into our municipal law, our domestic courts certainly have the jurisdiction to construe or apply the treaty. It follows then that anyone who felt that his rights as guaranteed or protected by the charter have been violated could well resort to its provisions to obtain redress in our domestic court”

Uwaifo JSC’s views were also instructive in this regard as he stated that

“Where we have a treaty like the African Charter on Human and Peoples’ Right and similar treaties applicable to Nigeria, we must be prepared to stand on the side of civilized societies the world over in the way we consider or apply them, particularly when we have adopted them as part of our laws. This will necessarily extract from the judiciary. Its will and resourcefulness to play its role in the defence of liberty and justice to effectively press them down.”

In spite of the above notable pronouncements by the above eminent jurists, the Supreme court held, that the charter was not superior to the constitution. Therefore, any conflict between section 20 of the constitution and Article 24 of the African Charter will be resolved in favour of the constitution. In view of this decision, it is doubtful if the charter can be used to elevate environmental rights from their non-justifiable status to justiciable rights²³. (PT 163) 507, the Court of Appeal held inter-alia that an international treaty or convention is autonomous and the contracting states to the treaty have submitted themselves to be bound by the provisions thereof, which provision are above domestic legislation, therefore any domestic legislations in conflict with the convention is void, the court specifically held that Warsaw convention as amended by the Bhgue protocol, which has been ratified by Nigeria prevails over the rules of domestic law and any domestic law incompatible therewith, is void.

it may however be said that while there is no constitutional right in Nigeria to a clean and healthy environment, the right to enforce the right through the judicial process is available individually through the constitution in Nigeria and indirectly under the International Treaties and Conventions signed and ratified by Nigeria.

Environmental Rights and Sustainable Development

Obviously, a discussion on the status of environmental right in Nigeria will be incomplete without relating the issue to the concept of sustainable development since no meaningful development can be achieved without consideration for environmental protection as it is the environment that ultimately provides the means for human survival and development. Accordingly, the present generation, like its predecessors had been likened to a trustee for future generations²⁴. The term “sustainable development” according to the United Nations World Commission Report on Environment and Development means

“the development that meets the needs of the present without compromising the ability of future generations to meet their own needs”²⁵.

This implies the preservation of natural resources for the benefit of the present and future generations, the exploitation of natural resources without compromising the environmental rights of the people, the integration of environmental factors into economic and other development programmes. The declaration²⁶ states that

“in order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it”.

Sustainable development requires that environmental criteria should be incorporated into the planning and implementation of any public policy and also allows the values of environment and development to be reconciled by calling for the integration of environmental and developmental concerns at all levels of decision making²⁷. The same rule is safeguarded by the obligation imposed on the private sector to embark on a study of environmental impact analysis before any important technical intervention in the environment²⁸.

Economic development can still be achieved if concerted efforts are made to do it in a sustainable manner. This is because the pursuit of economic development without considering the potential ecological consequence will result in a vicious circle of stunted economic growth as a right to development that ignore all requirements of sustainability and the need to manage the environment on a sustainable basis in its exercise is subversive of the existence of that right in the medium to the long run. The principle of sustainable development therefore makes it incumbent on government and individuals to utilize the ecosystem and natural resources in a sustainable way.

Conclusion

From the foregoing consideration of whether the right to clean and healthy environment is a fiction or reality in Nigeria, it is a clear fact that the above right is far from being a reality in the true sense of it and having regard to the principles of sustainable development as well as the judicial attitudes to the enforcement of the right. In spite of the failure of the 1999 constitution to provide for environmental rights under Chapter 4, the African charter which had even been duly ratified as part of Nigerian Law may also not provide a solution for the enforcement of environmental right as human rights, even the judiciary has not been of much assistance in the quest for the enforcement of environmental rights as indicated by the attitude of the Supreme Court in the case of **Abacha v. Fawehinmi** where the status and scope of the African charter came for interpretation before the court. The Supreme Court was merely shedding crocodile tears when it said on one hand that the African charter was binding in view of the fact that the charter had been incorporated into our municipal (domestic) law and that our courts must give effect to it while it said on the other hand that the charter was not superior to the constitution.

It is submitted that Nigerian judges should be more progressive and broadminded on the issue of the enforcement and interpretation of environmental rights and not restricting themselves to the provisions and letters of the statute, afterall laws are made for man and not otherwise. In India, the right to a clean environment had been judicially recognised as demonstrated in the **Pakistani case of Shela Zia v. Water and Power development Aurhthority**²⁹ where it was held that the right to life included a right to live in a clean environment. There is no reason why individuals and communities in Nigeria should not be able to enforce the right to a clean environment under the fundamental human rights, provision in section 33 of the Nigerian constitution. Even in some African countries, the right to a clean and healthy environment has been provided for in their constitutions. Article 39 of the Ugandan constitution provides that Also the South African constitution contains a similar provision that

“every Ugandan has a right to a clean and healthy environment”.

“every person shall have the right to an environment which is not detrimental to his health or well being”.

It is therefore recommended that the right a clean and healthy to environment should now be specifically provided for in Chapter 4 of the Nigerian constitution in order to remove the rights from the status non justifiable rights. Moreover, Nigeria cannot continue to act in utter disregard of the international treaties which it had accepted as part of its municipal law and should show more inclined towards the enforcement of the right to a clean and healthy environment. Furthermore, it is important that there should be some correlation or link between economic development and environmental protection in order to ensure the sustainable use of national resources and the environment. Incidentally, the environmental challenges and issues facing Nigeria are quite enormous. Some of these problems have been identified to include:

- Excessive pressure on available resources, infrastructure and space due to unabated rural-urban migration in the past three decades, this stress has been reinforced by industrial and urban development that has caused a rising rate of pollution.
- The High rate of soil degradations, sheet, gully and coastal erosion and flooding through non-judicious land use practices.
- The depletion of natural forest resources through uncontrolled logging, tree felling and over grazing.
- Destruction of valuable agricultural land through bad mining practices.
- Oil pollution and related environmental consequences, particularly in the Niger Delta area of Nigeria.
- Pollution of surface and underground water systems through indiscriminate disposal of solid and liquid wastes³⁰.

The above list is definitely in-exhaustive. It therefore behoves all and sundry, particularly the policy makers to ensure the protection of the environmental rights of the people in all policies formulated to exploit natural and human resources of the state.

In view of the above, it must be reiterated that no meaningful development can be achieved without consideration for environmental protection and it is in the light of this that concerted efforts should be made to make the enforcement of environmental rights a reality in Nigeria rather than paying lip service to this important issue.

Note: Reference to Constitution in this paper shall unless otherwise stated, be taken to mean the 1999 Constitution of the Federal Republic of Nigeria.

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 2. Referred to in the article written by DAKAS C.J. DAKAS in 'the implementation of the African charter on Human and People's right in Nigeria' (1986-1990) University of Jos, Law Journal, Vol. 3 Pg. 39.
 3. See the Universal Declaration of human rights: A magna carta for all humanity (United Nations Department of Public Information) Feb. 1998.
 4. See Environmental law in Nigeria (theory & Practice) by Lawrence Atsegbua and 2 ors at pg. 129.
 5. Blak's law Dictionary, 6th Edition
 6. FEPA Act 1988 Cap 131.
 7. (2001) 51 WRN 29.
 8. See Dias, Jurisprudence, Butterworth's Chpt. 17 pg. 358 (1985).
See A.G. Abia State v. A.G. Federation (2003) 6 NWLR (PT 763) 264 AT 497
See also Erekanure V. State (1993) 5 NWLR (PT. 294) 390 AT 393.
See Osaba v. Governor, Kwara State (1994) 4NWLR (PT. 284) 31 at 39.
 9. (2003) SWLR (PT. 168) 909
 10. The issue of non justiciability had been justified on various grounds. Professor B.O. NWABUEZE maintained in "Fundamental objectives and Directive Principles of State Policy. Its nature and functions" in the Great Debate-Nigerian viewpoints on the Draft constitution (Lagos: Daily Times, 1977) pg. 49 that "A constitution operating as law and imposing judicially enforceable restraints upon government should not abandon its other functions as a source of legitimacy for those political concepts and governmental powers and relations that are by their very nature non-justiceable, nor should it renounce its roles in the affirmation of fundamental objectives and ideals or directive principles of government which serve to inform and inspire governmental actions along desirable lines. **Professor Abiola Ojo** in the Great debate P. 47, observed that most of the matters in the objectives and directive sections belong to the areas of political manifesto and should have no place in the constitution.
 11. (2000) 3 WRN 134
 12. See also Okogie v. A.G. of Lagos state (1980) FNR 445/(1981) 1 N.C.L.R. 218.
 13. See ADAMU V. A.G. of Borno State & ors (1996) 8 NWLR (Pt. 465) at 203 where the court held that where a local authority is implementing the fundamental objectives of state policy adopts a system which infringes on a citizen fundamental right, that breach of the citizens right is justiceable.
See also. A.G. Ondo State v. A.G. Federation (2002) FWLR (PT 111) 1972.
 14. See Ransome Kuti v. A.G. Federation (2001) FWLR (PT 80) 1637.
 15. AIR 1980 SC.
 16. Emphasis in mine. See the views of Justice Bhagwati in *Minerva Mills Ltd. v. Union of India* (Supra)
 17. (2001) ICHR 261- See also the following cases: *Kukoyi v. Adesina* (1999) 10 NWLR (PT 624) 63, *Elf Petroleum Nig. Ltd. v. Unah* (2006) ALLFWLR (PT 343) 1761 at 1777
 18. See 2001 ICHR 261 (earlier cited).
 19. Cap to LFN 1990
 20. Supra.
- Based on this provision, it is no doubt possible to enforce this right in Nigeria against any person or authority. Consequently, there is the possibility of canvassing alleged breach of the charter before the courts in Nigeria. But the question remains whether it is possible to enforce alleged breaches of the economic, social, cultural (ESC) and other human rights provisions of the charter before the courts in view of chapter 2 of the constitution under which they are non-justiciable. A writer²¹ had observed that there was no inconsistency between the said ESC rights under the Chapter and chapter 11 of the constitution notwithstanding section 6 (6) (C) of the constitution. This is because the section ousts the exercise of judicial power where the question is whether any act or omission is in conformity with the fundamental objectives and directive principles of state policy under chapter 2 of the constitution and does not extend to a situation where ESC rights are set out in any other law and accorded the status of justiceable rights under the law.
21. C.J. Dakas (Supra)

- 22.(2000) vol. 77, Law Reports of Courts of Nigeria p. 1254 -1401.
23. See the case of *Oshevire v. British Caledonian Airways Ltd* (1996) 7 NWLR
24. See *Environmental law in Nigeria (Theory and practice)* by Lawrence Atsegbua, Akpotaire and Dimowo pg. 145.
25. World commission on Environment and Development 1987
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See also organization for Economic Cooperation and Development (issue papers) on integrating Environment and Economy (Paris OECD, 1990
28. See the Environmental Impact Assessment Act 1992.
29. PLD 1994 SC A16
30. E.O. Aina "The journey so far" in E.O. Aina & N.O. Adedipe (eds) *The making of the Nigerian Environmental Policy (FEPA) Monograph No 1*, Ibadan University press 1991) pg. 17-25; J. Akinbami, I.O. Akinwunmi & A.T. Salami "Implication of Environmental degradation in Nigeria "20 *Nat. Res. F*, 319-331 1996, A.L. Mabogunje.