

Recognition of People's Rights to Land as a Panacea to Biodiversity Conservation

B. L. Ijaiya¹

Abstract

Globally, biodiversity conservation is increasingly threatened by human activities. With the aim of augmenting man's state of livelihood vide various environmental development activities such as construction of roads, buildings, companies and most notoriously, extraction of mineral resources, nocuous effects are melted on biodiversity. Although, Nigeria is praised as being rich in biodiversity, the traditional activities of its citizenry which are not limited to farming and hunting, as well as the uncurtailed oil exploration by its government since the discovery of oil towards the end of the 1950s, have posed an increasing threat to biodiversity. Peculiar to all the aforementioned activities is that they are all executed above or beneath the surface of the earth. Meanwhile, the constitution of the Federal Republic of Nigeria, with other international instruments not left out, recognizes the right of persons to immovable property – with land being the subject of this right. This article examines the recognition of this right to land as a panacea to biodiversity conservation. It finds that with due regard given to the right to land, ensuring its enforcement where activities of another erode it and also by imposing considerable responsibility on owners of the land as regards biodiversity conservation, the incessant biodiversity loss will drastically deplete. In reaching its findings, the article expatiates the state of biodiversity conservation in Nigeria, after which it elucidates the legal framework for biodiversity conservation, and then; amplifies the extent and limitations of the right to land as a panacea to biodiversity conservation before concluding and proffering recommendations on how to attain the findings of this article.

Keywords: Recognition, Peoples, Right, Land, Panacea, Biodiversity, Conservation

¹ Department of Private and Property Law, University of Ilorin.

I. Introduction

Contemporarily, Nigeria is a subject of literature for its biodiversity wealth which is endangered by the government her government as well as her citizens. Notwithstanding that the mismanagement and mal-handling of energy production – particularly, oil drilling – which is the pillar of the country’s economy, occasions unfettered danger and ruins to biodiversity, her government is reluctant to curtail its exacerbating effects through oil spillage, gas flaring and the likes that cause damage to not only the land itself but other ecosystem and species cohabiting above and beneath the land. Similitude to this act of her government is that of her citizens, who through fishing, hunting and farming activities, which on a purposeful study are revealed to be their major source of livelihood,² are endangering biodiversity. These activities, aside from birthing deforestation, provide a hotbed for climate change.³ It was reported by the United Nations that Nigeria has the highest deforestation rate in the world, with an estimated 3.7% of its forest lost every year.⁴ The overarching significance of this report is that biodiversity loss will continue to be on the rampage in Nigeria as personified by the IUCN Red List assessment which disclosed that 141 native animals and 168 native plant species of Nigeria are not immune to the threat of extinction.⁵

Peculiar to the species highlighted to be endangered in Nigeria is that they habitate the surface above or beneath the land. With the constitution of the Federal Republic of Nigeria, the fons et origo, donating the right to immovable

² Oyinbo, O., & Olaleye, K. T. (2016). Farm Households Livelihood Diversification and Poverty Alleviation in Giwa Local Government Area of Kaduna State, Nigeria. *Consilience*, 15, 219–232. <http://www.jstor.org/stable/26188766>.

³ Ogunwale, A.O. (2015). Deforestation and Greening the Nigerian Environment. International Conference on African Development Issues (CU-ICADI) 2015: Renewable Energy Track, 212 – 219. <https://core.ac.uk/download/pdf/32226334.pdf>.

⁴ DGB Group. (2023). Deforestation in Nigeria: causes, effects, and solutions. DGB Group. <https://www.green.earth/blog/deforestation-in-nigeria-causes-effects-and-solutions>.

⁵ Imarhiagbe, O., W. O. Egboduku, and B. J. Nwankwo. “A Review of the Biodiversity Conservation Status of Nigeria”. *Journal of Wildlife and Biodiversity*, vol. 4, no. 1, Jan. 2020, pp. 73-83, doi:10.22120/jwb.2019.115501.1096.

property to the citizens of Nigeria⁶, which is also entrenched in the African Charter on Human and Peoples Rights⁷, can the enforcement of this right be leveraged upon to curb biodiversity loss occasioned by activities carried out on above or beneath the land surface? The right to immovable property advanced circumscribes the right to land.⁸ Time and again, courts have upheld the subsistence of the right to land as prescribed by the constitution and in fact, they are ready to invoke it against overreaching native laws and customs that constitute a bane to it. For instance, the court of appeal without equivocation in the case *Timothy v. Oforka*⁹ declared the Oraifite native law and custom as inconsistent with the right to land under Section 43 of the 1999 constitution. In this regard, can the right to land be employed as an instrument to constrain biodiversity loss in Nigeria?

The right to land, being a fundamental right circumscribed in the right to immovable property, is enjoined to be enforced by courts where there is any threat to or violation of it.¹⁰ Considering that majority of the activities that exacerbate biodiversity loss are rooted in the nation's economy: whilst, oil drilling accounts for a majority of the revenue generated by the government, farming, hunting, fishing etc. provides, at least if not gainful, an occupying employment to those who engage in it and also provide the country with some of its agricultural exports, will the court be willing to recognize and enforce the right to land at the expense of the nation's economy? This, albeit, might be a possible conundrum to right to land being a panacea to biodiversity conservation in Nigeria, this work evinces the possibility of proffering a panacea to biodiversity loss through recognition of the right to land.

To this end, this article will focus on advancing the feasibility of salvaging biodiversity loss through enforcing the right to land as embodied in the constitution, which is also subsumed in various international Instruments.¹¹ The call for this focus is not farfetched; various legislations and policies subsist

⁶ Constitution of the Federal Republic of Nigeria, 1999, Section 43.

⁷ (Ratification and enforcement) Act, Cap. A9, Laws of Federation of Nigeria 2004, Article 14.

⁸ B.O. Nwabueze (1972) "Nigerian Land Law" Nwamife Publishers.

⁹ (2008) 9NWLR (Pt. 1091) 204

¹⁰ Const. of the Federal Republic of Nigeria, 1999, Sec. 46.

¹¹ See African Charter on Human and people's Right.

academic literature abound, suggesting the need for and advancing means of ensuring biodiversity conservation. However, lack of implementation renders these policies, legislations and academic pieces a living dead – they are as good as not existing. Bearing in mind that enforcement of fundamental right is sacrosanct for the sanity of society, recognizing the right to land will ameliorate biodiversity loss suffered in the past and on a good note, forestall activities that threatens biodiversity conservation.

To achieve this focus, this article is structured into four parts. The first part details biodiversity conservation in Nigeria and the existing legal framework to amplify it. The infertility of the extant legal framework on biodiversity sojourns us to the second part which assesses the right to land under Nigerian Law and its intricacies. The third part dwells on the feasibility of the right to land achieving biodiversity conversation as well as its probable challenges. The article is concluded in the last part.

II. Biodiversity Conservation in Nigeria

The richness of Nigeria in Biodiversity need not to be overstressed. Being a nation comprising of thirty-six states, with seven hundred and seventy-four local governments, spreading across its 356, 669 square meters land mass which habitate approximately 230 million people, the diversity in her species, genes and ecosystem are not hardly found. For instance, Nigeria's first national biodiversity report of 2001¹² reveals that there are about 7,895 plant species, 20, 000 insects, 1000 birds, 1000 fishes, 247 mammals and 123 reptiles cohabiting the length and breadth of the nation.

The incessant growth in Nigeria's population between the time of the report and now has endangered a myriad number of these species. Aside from being devoured as meals, Nigerians – particularly, the ones in the rural areas – engage in farming, hunting, sawmilling and other biodiversity-related jobs as an occupation. These activities pose a great threat to the subsistence of some of these

¹² NIGERIA FIRST NATIONAL BIODIVERSITY REPORT (2001) <<https://www.cbd.int/doc/world/ng/ng-nr-01-en.pdf>> (accessed 12th November 2023).

species.¹³ In fact, in the urban areas, the mass industrial development has affected the ecosystem in which these species are meant to subsist.¹⁴ Quite worrisome is the IUCN Red List of Threatened Species – i.e. of globally threatened species – that included 148 animals and 146 plants that are found in Nigeria.¹⁵ These revelations show the overreaching effect of activities of man, in seeking survival or a better living, on biodiversity conservation which is quite devastating.

Similarly, the grave deforestation rampant in Nigeria serves as a hotbed for biodiversity loss. Nigeria's fifth national biodiversity report of 2015¹⁶ recognizes that the rate of deforestation in Nigeria, often due to poor land use planning, is alarming. The report clamoured about the nosedive of Nigeria's forests from covering approximately 24 million hectares in 1976 to 9.6 million hectares in 2011. Activities, most especially, agriculture and human settlement are the major cause of this deforestation. Species are thereby threatened as what ought to be their home is now employed for man's use.

The discovery of oil in 1956 has burgeoned the rate of biodiversity loss in Nigeria. Persistent oil spillage, gas flaring and other negativity attributed to oil drilling coincides with existing deforestation to exacerbate biodiversity loss. Oil drilling on its part has created a big lacuna in the realm of biodiversity conservation. Through various oil explorations which involve surveying and dynamiting a vast spectrum of land by seismic companies to excavate oil, fishes and other faunal organisms are maimed by the narcotics emitted from the oil exploration.¹⁷ Similarly, digging of land for the passage of oil pipes, which will

¹³ Food Print “Biodiversity and Agriculture” (2021) <<https://foodprint.org/issues/biodiversity-and-agriculture/>> (accessed on 13th Nov. 2023).

¹⁴ Andre Mader and Henry Scheyvens, “Biodiversity and Industry” (2019) Published by GEO-6 For Industry In Asia-Pacific Pages 46 – 54 https://www.iges.or.jp/en/public_documents/pub/reportchapter/en.10312/2019 (accessed on 13th Nov. 2023).

¹⁵ IUCN, ‘Summary Statistics’, IUCN Red List (2022).

¹⁶ Convention on Biological Diversity, ‘Nigeria: Fifth National Biodiversity Report’ (2015) <<https://www.cbd.int/doc/world/ng/ng-nr-05-en.pdf&ved>> (accessed on 15th Nov. 2023).

¹⁷ Collins N. C. Ugochukwu & Dr. Jürgen Ertel (2008) Negative impacts of oil exploration on biodiversity management in the Niger De Dra of Nigeria, Impact Assessment and Project Appraisal, 26:2, 139-147, D. Accessible via; <https://doi.org/10.3152/146155108X316397A>.

be used for the transportation of excavated oil to refineries, dispossesses men and animals cohabiting the land in question. At times, it occasions change of place of settlement which might not go down well on some species of animals. Also, oil spillage and fire incident which is incidental to the breakage of oil pipes have caused the death of various animals in the affected areas.¹⁸ Therefore, significant measures are taken to ensure that these activities are curtailed and biodiversity is protected.

In this regard, Nigeria has various national legislations, in addition to ratifying various international treaties, to protect biodiversity. Municipally, there is the Environmental Impact Assessment (EIA) Act¹⁹, The Nigerian Urban Regional Planning Act²⁰, The Endangered Species Act²¹, National Environmental Standards and Regulation Enforcement Agency Act²², among others. Apart from these municipal legislations, Nigeria has ratified various international treaties which include; the Convention on Biological Diversity (1992), the Vienna Convention on Protection of the Ozone Layers (1985), the African Convention on the Conservation of Nature and Natural Resources (1968). Regardless of the existence of this myriad legal framework, biodiversity still suffers irreparable loss in Nigeria. It is suggested that these legislations exist only in the abstract with no implementation of them being obtained in real time. Where they are sought to be enforced, the competing need for courts or any institution ensuring its implementation to balance the economic need of the society with the legislation sway them into subsidizing the intent of the legislation.

Oil drilling and agricultural activities, being the major source of the country's revenue, therefore put the government and the judiciary in a tight end of strictly regulating these activities to conserve biodiversity at the expense of the country's revenue. Noteworthy is that biodiversity can be employed to generate revenue for the government if necessary measures, such as zoos and wildlife parks, are put in place.²³ However, the attitude of the government towards the development

¹⁸ *Ibid*

¹⁹ Cap E12 Laws of the Federation of Nigeria 2004

²⁰ Cap N138 Laws of the Federation of Nigeria 2004

²¹ Cap E9, Laws of the Federation of Nigeria 2004

²² Cap 123, Laws of Federation of Nigeria 2004

²³ Seema, 'Economic value of biodiversity: a rural perspective for sustainable realization' Ashoka Trust for Research in Ecology and the Environment. <<https://www.fao.org/3/ae537e/ae537e0e.htm#fn20>> (accessed on 20th Nov. 2023).

and maintenance of Zoos or other wildlife parks is appalling. With just thirty-one zoos identifiable in Nigeria,²⁴ it will be a mirage to anticipate the Nigerian government to curtail Oil drilling at the expense of preserving wildlife as a source of generating revenues.

More so, on the part of the judiciary which is saddled with the responsibility of guarding the rights donated by various instruments, with the constitution not left aloof, the right to a clean environment²⁵ comes to mind as it concerns the extraneous effect of oil drilling and agriculture on the immediate environment. While this right is unjustifiable reason being that it is contained in chapter II of the constitution,²⁶ the African Charter on Human Peoples Rights which is enforceable in Nigeria embodies the said right. Regardless, courts are reluctant to enforce rights embodied in the charter but not justifiable by the provision of the constitution.²⁷

With the impending danger for biodiversity in Nigeria and a corresponding access to the right to immovable property, will enforcing the right to land which is circumscribed in the right to immovable property not provide a leeway to savage biodiversity loss in Nigeria. This question leads us to the next part of this work.

III. An Assessment of the Right to Land in Nigeria

The constitution of the Federal Republic of Nigeria guarantees every citizen's right to immovable property. The word 'immovable property' as used in the constitution is interpreted to mean land. Prof. B.O. Nwabueze explained that the word land is not limited to the ground and its subsoil alone: it includes all structures and objects like buildings and trees standing on it.²⁸ Nigerian courts have also pronounced on the embodiment of the word 'land'. In *Itam v. Effiong*²⁹, it was held that immovable property or lands include land and everything

²⁴ Maduawuchi Obalo, 'Full List of Zoos in Nigeria and their Locations; (2020) Nigerian Guide <<https://nigerianguide.com.ng/full-list-of-zoos-in-nigeria-and-their-locations/>> (accessed 20th Nov. 2023).

²⁵ Const. of the Federal Republic of Nigeria, 1999, Sec. 14

²⁶ *Ibid*, Section 6 (6) (c).

²⁷ See the case of *Ugwu V. Ararume* (2007) 12 NWLR (Pt. 1048) 365 at Pg. 474, paras. G-H.

²⁸ B.O Nwabueze, 'Nigerian Land Law' (1972) Published by Nwamife Publishers.

²⁹ (2013) LPELR-CA/C/68/2011

attached to the earth or permanently fastened to anything which is attached to the earth and all chattel real.³⁰

It suffices that the right to land connotes ownership of everything beneath and above the surface of the land. Under the law of torts, enjoyment of this right to land is protected by the tort of nuisance which immunises an occupier of a land against encroachment against the land, direct physical injury to the land and/or interference with the use and enjoyment of the land.³¹ It is imperative to note that the Land Use Act³² confers ownership of all land on the governor of each state³³ and in addition, vests the governor with certain powers in respect of the land in his domain. Such power includes the power to alienate land, issue a certificate of occupancy on such terms he may deem fit and revoke the certificate of occupancy after issuance. Where land is alienated to a person, enjoyment of the right to land is not absolute as it can be eroded in accordance to the constitution.³⁴

Notwithstanding this, the right to land being a fundamental right which is constitutionally recognized is threaded softly by the government when it comes to its derogation. Any noncompliance with the laid down procedure in depriving one of the right to land serves as a ground for the court to enforce the right to land by setting aside the deprivation of the right to land. Contextually, the Land Use Act³⁵ mandates service of notice of revocation on a person whose right of occupancy to land is about to be revoked. Failure to effect such notice nullifies the revocation.

Thus, in the case of *Risk & Asset Mgt. Ltd. V. Ekiti State Govt*³⁶, the appellant's land was revoked by the 1st respondent – Ekiti State Government – without effecting a notice of revocation on the appellant. During the trial, the 1st respondent fait accompli informed the court that the appellant failed to develop buildings on the allocated land and also pay the accrued rent as contained in the certificate of occupancy. For this reason, the appellant's right of occupancy was

³⁰ *Ibid*, Per Ndukwe Anyanwu J.C. (Pp. 23-24, Paras. G-B).

³¹ W.E. Peel & J. Goudkamp, 'Winfield & Jollockwiz Tort' (2014) 19th edn. Thomson Reuters (Professional) UK Limited at Page 1039.

³² Cap 20, Laws of Federal Republic of Nigeria 2004.

³³ *Ibid*, Sec. 1.

³⁴ Constitution of the Federal Republic of Nigeria, 1999, Sec. 44.

³⁵ *Ibid*, Sec. 28.

³⁶ (2020) 12 NWLR (Part 1738) 203 at Page 264.

revoked. The apex court, in setting aside the decisions of the two lower courts which acceded to the propriety and righteousness of the contention of the 1st respondent, held that: "... under section 44 of the Land Use Act, the requisite notice of revocation shall be effectively served as provided under section 44(a) of the act, and that failure to serve same renders any purported revocation null and void."

It is imperative to note that a notice of revocation, even though might be presumed served, only takes effect when it reaches the addressee. Failure of the notice of revocation to reach the addressee for whatever reason will be construed as non-service of the notice of revocation. Therefore, in *Olomoda v. Mustapha*,³⁷ the appellant was alienated from a parcel of land for residential purposes by the Kwara State Government. He subsequently built a bungalow and was farming on the remaining portion of the land. On 20th February 2007, he surprisingly saw two strangers destroy and remove the gate to his house. Sequel to findings made after a report of trespass was made to the police by the appellant, it was revealed that his certificate of occupancy to the land had been revoked vide a letter dated 9th February 2007.

During the trial, it was disclosed that a pre-warning revocation letter dated 18th October 1999 was sent to the appellant through the Ministry of Commerce and Industries Ilorin. However, the appellant informed the respondent of his change of address to No 5, Abugi Close, Adwole Estate in his response to the letter of 18th October 1999. Notwithstanding the correspondence between the appellant and the respondent, the respondent still forwarded the notice of revocation of 9th February 2007 to the Ministry of Agriculture and Natural Resources. On this basis, the appellant contested the revocation of his certificate of occupancy.

Without equivocation, the Supreme Court acceded to the challenge of the appellant to the revocation of his land by holding that: "the so-called revocation was carried out recklessly without due regard that must be followed for a proper revocation." Accordingly, the revocation was declared invalid, null and void.

In addition to a notice of revocation being served on the addressee, the notice in contention must also disclose the reason for the purported revocation. Although this requirement is not statutorily amplified, judicial authorities have embedded

³⁷ (2019) 6 NWLR (Pt. 1667)36 (SC).

it as an integral part of a valid revocation of land. For instance, in the case of *N.E.W. Ltd v. Denap Ltd*.³⁸ the 1st respondent, who has been in peaceful possession of the Plot of Land situated at 51B Tans Amadi Industrial Layout Portharcourt, was suddenly informed of the revocation of his certificate of Occupancy to the land stated above. The court in holding that the revocation was invalid for reason of non-service of the notice of revocation further held that the reason for revocation must be disclosed in the notice.

Apart from revocation of the certificate of occupancy, land may be compulsorily acquired by the government either in the interest of the public as envisaged by the constitution.³⁹ Whenever land is compulsorily acquired, compensation is mandated to be paid to the occupier of the land. Although, this proposition seems unfair considering the loss compulsory acquisition might cause the occupier of the land, it is in tandem with the provision of the constitution. Therefore, compulsory acquisition of land without proper compensation to the victim of the acquisition can be challenged as limp in a legion of authorities.

The Supreme Court in the case of *Elf Pet. (Nig.) Ltd. V. Umah*⁴⁰ where the appellant acquired a vast majority of land in the respondent's town for the establishment of a gas plant and in a representative capacity, the respondent sued to recover compensation for the compulsory acquisition. Without hesitation, the Supreme Court construed the provisions of Section 44(1) of the Constitution and held the appellant liable to pay the respondent compensation for the land compulsorily acquired.

It should be borne in mind that to constrain the scrupulous use of compulsory acquisition of land, certain rules have been formulated over time by courts. First, the purpose of compulsory acquisition of land must be for public use and not for private or commercial use. Any compulsory acquisition orchestrated with a view of alienating such land to a private individual or an entity for commercial purposes, the court will not be hesitant to declare such acquisition null and void. On this, the case of *Muhammed v. Farmers Supply Co. (KDS) Ltd*.⁴¹ is illustrative. The appellant's land was alleged to have been revoked and

³⁸ (1997) 10 NWLR (Pt. 525) 481 (C.A).

³⁹ Sec. 46 of the Const.

⁴⁰ (2018) NWLR (Pt. 1628) 428 .

⁴¹ (2019) 17 NWLR (Pt. 1701) 187 (S.C).

reallocated to the respondent by the Kaduna State Government. Specifically, the land in question was compulsorily acquired in the interest of the public. On a further appeal to the apex court, it was held among others that the fact that the respondent, being a limited liability company, a citizen's land cannot be compulsorily acquired and re-alienated to it.

Similarly, payment of compensation for the land compulsorily acquired must be promptly made by the acquiring authority. This duty to be paid compensation cannot be delegated by the concerned acquiring authority. Hence, in the case of *Messrs Singoz & Co. (Nig.) Ltd. V. U.M. Co Ltd*⁴², the 5th respondent compulsorily acquired plots of land from the appellants but it was the 3rd respondent who made the payment for the compensation on the instruction of the 5th Respondent. The apex court held that 'such payment is not the payment envisaged by the Land Use Act. The payment of compensation must be made by the acquiring authority i.e. the 5th respondent. It is not a duty that can be delegated.'⁴³

Sequel to the above exposition, it is conspicuous that the right to land is well revered. Can its reverence be leveraged to curb biodiversity loss? This question will be considered hereunder.

IV. Feasibility of Curbing Biodiversity Loss Through the Right to Land

Most of the activities of man occasioning biodiversity loss are in some way connected or related to land. For example, oil drilling, agriculture, deforestation etc. are all executed above or beneath the surface of the soil. These activities, aside from threatening the existence of species on the land where they are executed, cause owners or occupiers of neighbouring land significant inconvenience which at times, might even lead the owners or occupiers of neighbouring land to forsake their land because of the unbearable nocuous effect of the activities-mentioned to their land. For instance, it was reported in 2013 that residents near Shell's oil field in Ikarama, Yenogoa Local Government Area, Bayelsa State, abandoned their homes to avoid possible health hazards from prolonged exposure to oil exposure.⁴⁴ Before then, residents were revealed to

⁴² (2022) 18 NWLR (Pt. 1862) 203 (S.C).

⁴³ *Ibid.* (P. 238, Paras. A-B).

⁴⁴ Premium Times, 'Bayelsa community flee homes over oil spill' Premium times, December 22, 2013. <https://www.premiumtimesng.com/regional/ssouth-east/151880->

have fled ten Warri Communities which include; Ijalla, Iffie, Aja-Etan, Ubeji, Ugbodede, Ugbuwangue, Usele, Inorin, Ajigba, Orugbo etc. due to a major crude oil spill from an oil Vessel at the NNPC Refinery Jetty, which polluted the main Warri rivers leading to the aforementioned communities.⁴⁵

The haphazard effects of oil exploration on the land on which oil excavation is executed as well as its neighbouring land cannot be overstated. With some of the challenges faced by man due to the oil spilling, gas flaring etc. yet to be catered for, it is presumable that other species cohabiting on the surface of nearby lands which cannot advocate for themselves are immensely jeopardized. Cable News Network revealed in one of its publications that oil spills harm birds, dolphins, sea lions and other wildlife.⁴⁶ Aside from the toxic fumes that oil exudes, bodily contact with oil by these animals often occasions their quietus. In addition to this, recent studies disclose that oil spillage lowers soil fertility and causes poor growth of the plant.⁴⁷ Thereby, depriving the owners of land affected by oil spillage the opportunity of cultivating over their land. This effect of oil spillage affects the use and enjoyment of land.

The right to land is a fundamental right entrenched in the constitution and by that, courts are primarily saddled with the enforcement⁴⁸ and protection of same. The court of appeal of Nigeria judicially fortified this contention in the case of *Onuche v. Onyebuchi & Ors*⁴⁹ where Pemu J.C.A held that ‘the law is elementary that the court of law is established to guard very jealously against the civil right of every citizen and to enforce at all times the inalienable right to fair hearing.’ Apart from fundamental rights being protected by the court, it is also settled that

bayelsa-community-flee-homes-oil spill.html?tztc=1 Accessed on 21st November, 2023).

⁴⁵ Emma Arubi, ‘Residents flee as Oil Spill ravages 10 Warri Communities’ Vanguard, June 9 2009. via: <https://www.vanguardngr.com/2009/06/residents-flee-as-oil-spill-ravages-10-warri-communities/amp/> (Accessed on 22nd Nov. 2023).

⁴⁶ Brandon Griggs, ‘How Oil Spills Harm Birds, Dolphins, Sea Lions and Other Wildlife’ (2021) Cable News Network <https://amp.cn.com/cnn/2021/10/05/us/oil-spills-wildlife/index.html> (accessed 16th November, 2023)

⁴⁷ Digha Opaminola, Amba B & Jacob Ester N., ‘The effect of crude oil spillage on farmland in Gokana Local Government Area of Rivers State’ European Journal of Basic and Applied Sciences, VOL. 4 No 1, 2017 – ISSN 2059-3058, Progressve Academic Publishing UK Page 76.

⁴⁸ Constitution of the Federal Republic of Nigeria, 1999, Sec. 46.

⁴⁹ (2016) LPELR-CA/E/278/2015 (Pp. 10-11, Paras. F-A).

the right to enforce fundamental rights stands above the ordinary laws. Hence, in the case of *F.U.T. Minna v. Olutayo*,⁵⁰ the respondent was expelled by the appellant without allowing her to defend herself. The appellant, at the apex court, argued among other things that the respondent has lost her right to action by Section 2(a) of the Public Officers (Protection) Act for not instituting an action against her within the statutory window of three months. In dismissing the appeal and enforcing the right of the respondent, the apex court held that the right to enforce fundamental rights stands above ordinary laws, including Section 2(a) of the Public Officers (Protection) Act.⁵¹

It therefore becomes noteworthy that the protection of the right to land, which is circumscribed in the right to immovable property under the Nigerian Constitution is over and above any other law in Nigeria. With the enforcement of extant legislation on Biodiversity Conservation not potent enough in Nigeria when compared to other jurisdictions⁵², salvaging biodiversity loss through the right to land becomes a viable option.

Drawing from the provisions of the Oil and Pipelines Act,⁵³ holders of a licence under the act are empowered to construct, maintain and operate oil pipelines as well as the power to dig any land to construct oil pipelines. Additionally, the act mandates a holder of a licence under it to pay compensation to any person whose land or interest in land is injuriously affected by the exercise of the aforementioned powers of a holder of the licence. Similarly, compensation is to be paid to persons who suffer damage as a result of the failure to maintain pipelines or leakage from pipelines.⁵⁴

Notwithstanding the exquisite provision of the Oil and Pipelines Act, damage done to land as a result of oil leakage is hardly remedied by the court because, oftentimes, it affects a considerable number of the populace. Thereby, under common law, leaving the power of adjudication to the attorney general of the state or federation, as the case may be, to seek redress against the damage done

⁵⁰ ((2018) 7 NWLR (Pt. 1617) 176 (S.C).

⁵¹ *Ibid*, at Page 196, Paragraphs B-C.

⁵² B.L Ijaiya, 'Analytical legal framework on biodiversity conservation in Nigeria, India and United Kingdom' 2021, Published by *International Journal of Law, Justice and Jurisprudence* 2021; 1(1): 01-13.

⁵³ Cap 328, Laws of the Federation of Nigeria 1990

⁵⁴ *Ibid* Sec. 11.

to the land. However, in Nigeria, this common law position has been displaced by the position of the apex court in the case of *Adediran v. Interland Transport Ltd*⁵⁵ that where there is an injury to the public, both the private person who has suffered special injury, as well as the attorney general concerned, can sue.

Therefore, in the case of *Fode Drilling (Nig) Ltd v. Fabby & Ors*⁵⁶ the 1st – 8th respondents sued in a representative capacity, claiming damages for the losses suffered from the gas explosion on the Funiwa I, a gas well located about 10 km off the shores of Koluama Community, run by the 9th respondent and rig owned by the appellant. The appellant claims that the gas well is situated outside the domain of Bayelsa State where the 1st – 8th respondents are residents but within the Federal Republic of Nigeria, and as a result, it is only the attorney general of the federation that can sue except if the respondents disclose that they have suffered damage far and above every other member of the public. The Nigerian court of appeal resolved that the 1st – 8th respondents have demonstrated that their interests have been affected by the blowout and it is immaterial that the alleged blowout occurred beyond the territorial limit of Bayelsa State. Accordingly, the 1st – 8th respondents had the locus standing to sue.

Regardless of the relaxation of the standing to sue, actions against seismic companies whose activities occasion biodiversity loss often fail because of jurisdictional issues to entertain such matters. For instance, in the case of *N.N.P.C v. Orhiowasele*⁵⁷ the respondents' claim for damages for the negligence of the appellants allowing crude oil spill from burst oil wells onto the land, swamps, creeks, ponds, shrines of the respondents was granted. However, on appeal to the apex court, the findings of the two lower courts were set aside solely because the federal high court to the exclusion of the trial court – i.e. high court of Delta state – had jurisdiction to entertain the matter. This appalling decision of the apex court, although in tandem with the provision of the law, may decline interest in pursuing claims against acts that occasion biodiversity loss. This is typical, especially when the enormous sum immersed in in the service of a lawyer and experts to prove before the court that damage to land was done by the activity of a seismic oil company.

⁵⁵ (1991) 9 NWLR (Pt. 214) 155 (S.C).

⁵⁶ (2017) LPPELR-CA/L/155A/2014.

⁵⁷ (2013) 13 NWLR (Pt. 1371) 211 (S.C).

However, through public interest litigation which is a core tenet of the enforcement of fundamental rights non-governmental organizations can now institute actions on behalf of persons affected by the activities of oil exploration and thus, proffering remedies to loss suffered as a result of oil drilling without the victims worrying about the cost to be incurred. This contention was reiterated by the Supreme Court in the case of *Centre for Oil Pollution Watch v. N.N.P.C*⁵⁸. In that case, the appellant, a non-governmental organization whose focus is the remediation, reinstatement and restoration of the environment impaired by the oil spill, sued the respondent – a government corporation – for the contamination of Ineh and Aku streams/rivers with crude hydrocarbon oil emitted from the oil pipelines constructed around, beside and beneath the streams. The appellant based its case on the provision of Section 17 of the constitution which saddles states with the responsibility of providing a safe environment. In resolving the challenge of the respondent to the locus standi of the appellant to sue, the apex court resolved that; ‘every person, including non-governmental organisations, who bona fide seek in the law court the due performance of statutory functions or enforcement of statutory provisions or public laws, especially laws designed to protect human lives, public health and environment, should be regarded as proper persons clothed with standing in law to request adjudication on such issues of public nuisance that are injurious to human lives, public health and environment.’⁵⁹

It therefore follows that through public interest litigation, non-governmental organizations can now enforce the right to land of concerned persons with a view of catering for their inability to sue seismic companies desecrating their land due to their impecuniosity or lack of awareness of a remediable cause of action. With this exposition, it is prudent to hold that the right to land will help curtail activities which are capable of causing biodiversity loss in Nigeria. It therefore behoves the judiciary to see to the enforcement of the right to land as it will catalyze biodiversity conservation.

V. Conclusion and Recommendations

Biodiversity conservation is patently essential for a healthy environment. Without the wide range of animals, plants and microorganisms, the ecosystem

⁵⁸ (2019) 5 NWLR (Pt. 1666) 518 (S.C).

⁵⁹ *Ibid.* Page 595 Paragraphs A-C.

might prove worrisome to the habitat as the core essentials for survival such as breath and food will be absent. Nonetheless, the activities of man, particularly through agriculture and oil exploration, have occasioned great threat to the subsistence of various species of biodiversity. It is appalling that the extant legal framework and policies drawn up to salvage biodiversity loss is barren. Hence, the call for recognition of right to land is advanced by this work.

Typically, the right to land is circumscribed in the right to immovable property under the Nigerian Constitution. With courts predisposed to enforcing this right, it becomes a viable medium through which acts occasioning to biodiversity loss can be forestalled. In fact, the bane to seeking redress against acts that occasion biodiversity loss – *i.e.* impecuniosity of victims – can be alienated through public interest litigation which is a core pinnacle of enforcement of fundamental right.

However, with the right to land comprising of ownership of both the surface above and beneath the land being curtailed by the Nigerian Minerals and Mining Act⁶⁰ which reserves property in and control of all mineral resources in, under or upon any land in Nigeria for the government of the federation, the right to land as significantly controlled. Since ownership of minerals resides solely with the government, efforts should be made by the government that necessary undertakings are made to ensure that exploration of these minerals does not jeopardize biodiversity.

Also, courts as already done should protect and enforce right to land when proceedings are brought before it. To ensure that the proceedings are not futile, exorbitant sums as punitive damages should be awarded against orchestrators of activities that occasion biodiversity loss and in favour of the victims. This measure will, in addition to encouraging victims enforce their right land, will deter seismic companies from engaging in activities which will occasion biodiversity.

Similarly, owners of land should be given minimal measures to comply with which will provide a seedbed for biodiversity conservation. This can be achieved by incorporating terms in the certificate of occupancy issued to owners of land. Importantly, priority of the government should and the judiciary should shift from just coveting the source of government revenue which endangers

⁶⁰ 2007, Cap F34, Laws of the Federation of Nigeria 2004.

biodiversity so as to achieve the aim of recognizing and enforcing the right to land as it relates to biodiversity conservation.