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# Principles of Earth Jurisprudence and Nigerian Environmental Law: Options and Challenges for Integration

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Research Article

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## ABSTRACT

This paper explores the anthropocentric basis of the Nigerian environmental legal framework as the basis for the failure of our laws to achieve the aim of environmental protection. It suggests as a solution to this perennial failure, the need to rework the current legal framework to one grounded in "Earth jurisprudence". To demonstrate the strength and utility of this approach, the paper makes several recommendations as to how this approach can be incorporated into a Nigerian context and strategies to overcome its attendant challenges.

## INTRODUCTION

The anthropocentric nature of human influence on the earth's ecology and ecosystems has resulted in the deterioration of the environment through the depletion of natural resources; destruction of ecosystems; habitat destruction; wildlife extinction; and pollution [1,2]. The profit-seeking capitalist mode of production, paired with remarkable technological innovations as well as an increasing human population have been described as the overarching force behind this state of affairs [3]. Although several municipal and international laws exist to curb this

influence, today's globalized capitalistic society places legal systems in an ecological-economic predicament [4]. This situation in Nigeria is not an exception to this scenario. The extant laws on environmental protection in Nigeria have received constant criticism as failing to balance the impact of human activities on the natural environment leading to its failure to prevent environmental crimes and harms, invariably failing to reduce the rate of environmental degradation [5]. Although fines and sanctions have been argued as appearing to be successful outcomes for environmental offenses, it has proven to be unsuccessful in preventing recidivism in Nigeria [6,7].

This paper argues that to ensure more successful outcomes for the plethora of environmental laws in Nigeria, an alternate approach to environmental law-making needs to be adopted. This approach which seeks to change the anthropocentric tenor expressed by the restriction of legal rights to human beings alone within the context of the existing laws is known as Earth jurisprudence. Earth jurisprudence, an emerging legal philosophy in contrast to anthropocentric legal philosophies, represents an ecological theory of law [8]. The term refers specifically to two main ideas. First is that humans exist as part of a broader community that includes both living and non-living components and secondly that the Earth is a subject and not a collection of objects for human use and exploitation. The principle does not deny the moral status of human beings but rather seeks to shift our attention away from hierarchies and asserts that all components of the environment have value [9]. It takes the wellbeing or common good of this comprehensive whole as the starting point for human ethics.

First, the paper will highlight the inefficiency of the extant laws on environmental protection and management in Nigeria as evidenced by the persistent rate of environmental degradation and thereafter explore the anthropocentric basis of the Nigerian environmental legal spectrum as the basis of these failures. Using the aforementioned state of the environment vis-à-vis the ineffective legal framework, the paper examines the concept of Earth jurisprudence as an alternative approach to environmental lawmaking in Nigeria. The paper explores the core principles of Earth jurisprudence and identifies options for integration into the Nigerian legal framework. As it is with all new approaches, the paper also examines some of the challenges that may arise from a shift to this approach and makes recommendations for successful integration.

## MATERIALS AND METHODS

### The state of the environment in Nigeria

The role of the environment in national development cannot be relegated to the background. According to Evelyn, M Ityavyar and Tyav, Terungwa Thomas, both of the College of Advanced and Professional Studies, Makurdi, Benue State, Nigeria, the environment not only exists as the physical surrounding for natural habitats, but it also provides the basis for human exploits for agricultural, industrial, commercial, technological and tourism development of a society [10,11]. In Nigeria, the environment provides all life support systems in the air, water, and on land as well as the materials for fulfilling developmental aspirations. The abundant and diverse natural resources both renewable and non-renewable which the country possesses have enabled the country to establish a firm industrial base for economic development [12]. Furthermore, the use of these resources has propelled the country forward economically leading to her position as one of the strongest economies on the African continent [13].

These benefits notwithstanding, some challenges have emanated from the use to which the environment is being put to in Nigeria. Although some of these challenges occur naturally with consequences both for the society and the surrounding, Dr. H, I Jimoh of the Department of Geography, University of Ilorin, Kwara, Nigeria argues that in terms of frequency, environmental challenges caused by human error, negligence and or intent are more prevalent in the country [14]. Below shows the prevailing environmental hazards in Nigeria and the areas most affected (Table 1).

**Table 1.** The prevailing environmental problems in Nigeria.

| Hazards | | |
|---|---|---|
| **Natural** | **Human-made** | **Area most affected** |
| Drought and desertification | - | Borno, Yobe, Jigawa, Kano, Bauchi, Adamawa |
| Flooding | - | Coastal belt flood plains of major rivers, cities with inadequate drainage. |
| Soil erosion | - | Enugu, Alambra, Imo, Abia, Ondo, Ekiti, Akwa Ibom, Ebonyi states |
| Destructive storms | - | All states |
| Dust storms | - | States in the Sudan-Sahel belt |
| Coastal erosion | - | Lagos, Ondo, Delta, Rivers, Akwa-Ibom, Bayelsa, and Cross river states |
| Earth tremors | - | South western states |
| Pest invasion | - | All states |
| Human disease epidemic | - | All states |
| Animal disease epidemic | - | All states |
| - | Dam failure | Niger, Borno, Sokoto |
| - | Building collapse | All states |
| - | Oil spillage | Niger Delta |
| - | Land, water, and air transport accident | All states |
| - | Bomb explosion | Lagos |
| - | Civil strike | Lagos, Kaduna, Kano, Taraba |
| - | Fire disaster | All states |
| - | Wildfires | All states |

According to Dr. H, I Jimoh, the frequency of man-environment interaction in the process of harnessing environmental resources without making allowances to accommodate possible environmental stress has been largely responsible for the frequency of calamities that have befallen the environment in the country [15]. For instance, the city of Ibadan, Nigeria has a history of flood disasters the most recent occurring on 26 August 2011 [16]. A study carried out by Babatunde S. Agbola, Owolabi Ajayi, Olalekan J. Taiwo and Bolanle W. Wahab, a team of experts in flood disaster and risk management from the University of Ibadan on the 2011 flood showed that the percentage of the respondents who indicated that dumping of refuse in rivers and drainage channels could have been responsible for the 2011 flooding was 74% [17]. An indication that the human practice of dumping degradable (leaves, tree cuttings, leftover food) and non-degradable (rags, plastics, nylons and iron, furniture, utensils, bottles.) materials in anticipation of rains believing that they will wash them from gutters into streams and rivers contributed in no small measure to the 2011 flood [18]. The deplorable state of the environment in the Niger-Delta region of Nigeria represents another case of the environmental consequences of the of man- environment interaction in the process of harnessing environmental resources. Collins Ugochukwu's 2008 doctoral dissertation on Sustainable

Environmental Management in the Niger Delta region of Nigeria [19]. Effects of Hydrocarbon Pollution on Local Economy examined how oil exploration has caused environmental degradation and untold hardship to the local communities in the Niger Delta region of Nigeria. According to the study, despite the enormous wealth coming from the Niger Delta, there is pervasive poverty and despicable environmental damage as a result of crude oil mining activities in this region.

The most significant factor responsible for occurrences of man-influenced environmental disasters is the rapid increase in human population, which has resulted in a significant increase in human use of environmental resources. This coupled with advancements in technology as well as the poor attitude of people towards the environment are key factors responsible for the deplorable state of the environment [20]. Angela Kesiena Etuonovbe, an expert in environment and land use planning whilst examining the devastating effect of environmental degradation in the Niger Delta region of Nigeria explained that human activities and the environment are interrelated given that any activity of man done in the environment has either or positive or negative effect [21]. Using the activities of man in the Niger Delta as a case study, the study showed that the explorative and exploitative activities of both the government and oil corporations have resulted in the local environment being ruined by several incidences of oil spills [22]. The resultant effect is that the area is characterized by incidents of air, land, and water pollution, loss of rainforest, ozone depletion, and the destruction of the marine environment [23]. In other parts of the country, destructive logging of forests, overgrazing and over-cropping of arable lands, strip and illegal mining activities, industrialization, improper disposal of domestic solid waste and human excretal including liquid waste, and over-utilization of non-degradable materials for packaging are among human activities that have combined to degrade the environment and cause loss of biodiversity in Nigeria [24,25].

The prevalence and effect of these activities on the physical and biological systems of the environment have made the state of the environment occupy a center stage in academic discourse and also within government circles [26-28]. The government's initiative for curtailing human activities on the environment in Nigeria has always been through the use of the legislative intervention. The first intervention was the Harmful Waste (Special Criminal) Provision Decree of 1998 in response to the Koko toxic waste dumping saga which resulted in the establishment of the Nigeria Federal Environmental Protection Agency (FEPA), Federal Ministry of Environment, and other relevant agencies, ostensibly to tackle environmentally related issues, in the country [29]. This has been followed by a plethora of environmental legislation, regulations and including the enactment of a constitutional duty to protect the environment as contained in Section 20 of the Constitution of the Federal Republic of Nigeria 1999. Despite these lofty provisions, recorded evidence has shown that there has been no significant improvement in the state of the environment in Nigeria. Air pollution from traffic, power generation, and industries are increasing rapidly, human activities resulting in loss of biodiversity are on the increase, the problem of waste disposal particularly in urban areas has also increased despite environmental sanitation laws enacted at the federal, state, and local government levels [30-32]. Poor regulation and ineffective implementation of these laws have been described as the bane of these laws. Enactment of more environmental laws, stricter enforcement protocols, and an increase in fines, amongst other solutions, have been touted as solutions to the ineffective nature of these laws [33]. Although this study agrees that some of these measures could be effective, the anthropogenic nature of these laws, as will be discussed in the next section, is perhaps the core problem of these laws.

## RESULTS

### Anthropocentrism and the Nigerian environmental legal framework

The term 'Anthropocentrism' has been described as "an optical delusion of human consciousness": The belief that human beings are the most important entity in the universe [34]. The term, which has been interpreted as a state of human supremacy to nature, has seen the world regarded solely in terms of human values and experiences. What makes this approach rather dangerous and particularly life-threatening is that it also forms part of our legal norms. The Rio Declaration on Environment and Development for example provides that human beings are at the center of concerns for sustainable development [35]. The most important regional instrument which guides the enjoyment of human rights and the quality of the environment in Africa; the African Charter on Human and People's Rights also provides that "people" have a right to a general satisfactory environment favorable to their development [36]. The nomenclature with which these instruments are couched proposes a system in which human needs are placed at the center of all legislation, including legislation dealing with environmental issues. In essence environmental laws which are designed to ensure the safety of the environment seem to cement the view that humans have an intrinsic value and the environment only an instrumental value.

In Nigeria, the anthropocentric nature of our existing legislative framework on the environment stems from the tone set by the supreme law of Nigeria, The Constitution of the Federal Republic of Nigeria 1999. Section 20 of the Constitution provides that. "The State shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria". The need to protect as contained in this section may appear to be for the benefit of the environment but it exists to further the interests of humans. Although the Constitution places a duty on the state to protect the environment, the language with which the section is couched suggests that there is no deliberate, well thought out, and comprehensive allocation of legislative competence on the environment. The Constitution simply states that the State shall project but doesn't state to what extent, for what purpose, and the methods to be deployed in achieving this objective. The Supreme Court in Attorney General Lagos State *vs*. Attorney General of the Federation and 35 others provided an insight into the purpose of the section [37]. The court stated that the object and essence of the section is to protect the external surroundings of the people and ensure that they (the people) live in a safe and secure atmosphere free from any danger to their health or other conveniences. It is submitted that the reason for protecting the environment as provided for in Section 20, therefore, is that the environment has an instrumental value to humans as opposed to an intrinsic value. This submission is further grounded in the non-justiciable nature of Section 20 of the Constitution [38]. Section 6(6) (c) of the Constitution provides that "The judicial powers vested per the foregoing provisions of this 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 law or any judicial decision conforms with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution." With the environmental clause in the constitution situated in Chapter II, the provision of Section 6(6)(c) has been interpreted as denying the court the power to adjudicate on any issue having to do with the enforceability of the provision of Section 20 of the Constitution, that is, protection of the environment. This is because Section 20 also falls under the provisions of fundamental objectives and directive principles of state policy set out in chapter two of the Constitution which by Section 6(6)(c) are generally not enforceable. Based on the aforementioned, it is the position of this study that the provision of Section 20 is anthropocentric nature; the reason for its failure in achieving any form of protection for the environment. The wordings, interpretation, and application of the constitutional provision on environmental

protection in Nigeria is thus a reflection of a system that is not desirous of initiating any serious environmental protection measures since it believes that doing otherwise will disturb its economic direction and strategies.

This anthropocentric approach to environmental law-making spills over from the Constitution to other legislation dealing with the environment. The National Environmental Standards and Regulations Enforcement Agency (Establishment) Act established the National Environmental Standards and Regulations Enforcement Agency (NESREA) as the nation's lead environmental protection agency [39,40].

Its primary function as summarized by Section 7(a) of the Act is to ensure compliance with laws, guidelines, policies, and standards on environmental matters. Section 7(e) of the Act provides that the Agency "Shall enforce compliance with guidelines and legislation on sustainable management of the ecosystem, biodiversity conservation and the development of Nigeria's natural resources." Laudable as these functions of the Agency may seem, scrutiny of some provisions of the Act shows that the functions of the Agency are phrased in a manner that implies economic considerations as the main aim of the administration and implementation of its functions. While Section 2 makes it the responsibility of the Agency to protect and develop the environment, conserve biodiversity and sustainably develop Nigeria's natural resources in general, some provisions in the Act hinders the Agency from performing this function and exercising its powers particularly in the oil and gas sector, a critical sector in the Nigerian economy given its instrumental value to economic development [41].

Dr. Bukola Akinbola, a leading expert on environmental law and Uremisan Afinotan a legal practitioner and a commentator on environmental issues and Dr. Olusola Joshua Olujobi in two separate studies concluded that excluding the supervisory and enforcement functions of the Agency in the oil and gas sector suggests that the exercise of its powers are largely influenced by non-legal factors, especially politics and economics [42,43]. With over 90% of its foreign exchange earnings from the oil and gas sector, successive governments have found it difficult to enforce its laws stringently and consistently to avoid losing the multinational oil and gas companies' patronage of its oil. Furthermore, there are also allegations of the connivance of multinational oil companies with government officials in the sector to truncate the efforts of The Federal Government despite their non-compliance with the laws [44]. It is therefore ironical that although the very major environmental issues in the country are found mainly in the oil and gas sector, the functions of NESREA do not extend to this all-important sector of the economy. This is accentuated by the fact that negative effects of environmental issues in the oil and gas sector, transcends that sector alone but invariably affects other sectors, particularly the health sector. This leaves two questions on the scope of the Act: Of what use is a piece of legislation that boasts of being responsible for the protection of the environment and sustainable development when it excludes itself from exercising powers over environmental issues in the oil and gas sector? Secondly, why should the powers of NESREA is excluded from control over the oil and gas sector when the preponderance of environmental pollution in the country originates from oil and gas mining activities? Although oil and gas are not the only natural resources available to the country, in the context of this study the sections that exclude NESREA's function from the oil and gas sector are worded in an anthropogenic manner to suggest that, within the context of sustainable economic development in Nigeria, the more economically important a resource is, the less they need for stringent measures to ensure its sustainable usage due to its contribution to the economic needs of the country. This is founded on the erroneous perception that tightening the noose around the measures to ensure that this category of perceived economically important resources is managed sustainably will defeat the goals of short-term revenue generation and affect their contribution towards fiscal revenues and infrastructural development.

The NESERA Act in Sections 20-29 identifies certain acts as environmental offenses. These offenses are backed up with fines and jail terms to act as an additional safety net to protect the environment. The current state of the environment in Nigeria is a testament to the fact that these penalties have failed to deter human influences on the environment. Given the financial strengths of the corporate bodies largely responsible for environmental degradation in Nigeria, payment of fines seems a better option rather than adherence to the provisions of the Act [45]. When compared with the costs of halting exploration and exploitative activities, these companies find the payment of fines of no adverse financial consequence to their bottom line. In addition, some of the fines in the Act are outdated and do not exemplify present economic realities making the companies more inclined to pay the fines rather than working to prevent pollution and environmental harm. Furthermore, the fines are narrowly focused, thereby offering companies leeway in complying with the regulations. The effect is that the companies focus on fines as an immediate solution rather than actively searching for longer-term remedies for the impact of their environmental activities.

The Environmental Impact Assessment Act in its own stead was enacted to infuse environmental considerations into development project planning and execution by spelling out the project areas and sizes of projects requiring Environmental Impact Assessment (EIA) and the restrictions on public or private projects without prior consideration of the environmental impact [46,47]. Section 2(2) makes it obligatory as a general rule, for EIA to be undertaken in respect of projects likely to significantly affect the environment. The Act also prohibit a proponent from undertaking a project until it is satisfied that such project in part or whole is not likely to cause any serious adverse environmental effects [48]. Some of the drawbacks of this Act are evident in its sections providing room for exploitation highlighting its anthropogenic tone. For instance, although the Act in Section 4 prescribes inter alia the minimum content of Environmental Impact Assessment as:

- A description of the proposed activities.
- A description of the potentially affected environment including specific information necessary to identify and assess the environmental effect of the proposed activities.
- A description of the practical activities as appropriate.
- An assessment of the likely or potential environmental impact of the; proposed activity and the alternatives, including the direct or indirect cumulative, short term effect, the task of evaluating the EIA submissions, consulting, and making final decisions bordering on the environment is the sole reserve of the Federal Ministry of the Environment with the Minister in Charge having the final say.

The Bureaucracy involved in obtaining the consent of the Minister has seen the prevalence of many unethical practices which are not in tandem with the provisions of the law. One of the practices is the practice of preparing reports tailored to meet the requirements of the Act to justify a development decision already taken rather than preparing an accurate report, or even going far on the project before an EIA is conducted or not even conducting an EIA at all.

Environment Watch (2001), reported that Shell Petroleum Development Company (SPDC) commenced the multi–billion dollar project–The Estuary (Amatu) project in Bayelsa State without an EIA [49].

Such impunity is the rationale behind various degradations and environmental threatening situations experienced in many communities in the Niger Delta, evidence of the anthropogenic nature of the Act.

In addition to the above is the exclusion of certain projects from mandatory EIA studies in Section 14. It is the position of this study that given the importance of the environment to the sustenance of life both in the short and

long term, the exclusion of some projects from EIA is counterproductive to environmental sustainability. Section 14(2) is noteworthy in this regard. It provides inter alia that "for greater certainty, where the federal, state or local government exercises power or performs a duty or function to enable a project to be carried out, an environmental assessment may not be required". In the light of the theme of this study, the question which arises therefore is, what then is the essence of the EIA when a waiver is given to a project that may still impact negatively on the environment? This shows that while the EIA law exists, "special consideration" is still given to projects that may degrade the environment immensely hence the conclusion that the theme of the Act remains an economic one. Furthermore, this study is of opinion that the provision of the law with regards to the punishment of offenders just like that of The National Environmental Standards and Regulations Enforcement Agency (Establishment) Act is equally very moderate to provoke strict compliance. For clarity purposes, Section 60 of the Act provides #100,000 fine or 5 years imprisonment for individual offenders and #1 Million Naira for Corporate offenders. This amount is gravely infinitesimal to deter individuals let alone big corporations. To this end, the study takes a finite position that the law does not in practical terms enunciate the need to protect the environment for its intrinsic value.

The Harmful Waste (Special Criminal Provisions) Act is another key legislation on environmental protection in Nigeria shrouded in anthropocentrism [50]. The Act which was enacted to protect the land and territorial waters of Nigeria from becoming a dumpsite for environmentally hazardous waste prescribes life imprisonment as the punishment for any of the offenses contained in Section 1(2) of the Act [51]. In addition to the aforementioned, the carrier, including aircraft, vehicle, container, and any other thing whatsoever used in the transportation or importation of the harmful waste; and any land on which the harmful waste was deposited or dumped shall be forfeited to and vest in the Federal Government [52]. Despite its strongly-worded provisions, evidence would suggest that no one has breached the law, seeing as no one has been charged with the offense [53]. In a study carried out by the Basel Action Network (BAN) in Nigeria, a total of about 500 containers containing approximately 800 monitors and CPUs enter into the country through the Lagos port every month [54]. These values indicate that, on average, 400,000 s-hand or scrap computers enter into the country *via* the Lagos seaport with an estimated weight of about 60,000 MT per annum [55]. It is the view of this paper the Act has no real effect on the environment given that its provisions are obeyed more in abeyance than in compliance.

Furthermore, the Act is yet to be amended since its enactment in 1988. This becomes a critical mitigating factor to the actualization of its goals taking into consideration the new types of hazardous waste sources, such as e-waste and biomedical waste [56].

The Water Resources Act, key legislation on water administration in Nigeria has as its major focus promoting the optimum planning, development, and use of Nigeria's water resources and all other matters connected therewith [57,58]. Given that water is a basic resource that guarantees the life of all living beings on the planet, its protection from human activities that may likely affect it must be the priority of any water legislation and not just guaranteeing its use. The rate of incidents of water pollution in Nigeria is a pointer to the fact that the law's failure to include stringent measures on safeguarding water quality and availability is instrumental to this development. Section 18 of the Act stipulates a paltry fine not exceeding N2,000 or to a term of imprisonment not exceeding six months for any person who contravenes or fails to comply with any provision of the Act or any regulation made thereunder. With human activities as the main cause of water pollution, this study concludes that the Act has not been able to have any meaningful impact in curbing or slowing down the water pollution rate in Nigeria. Similarly the Oil in Navigable Waters Act, environmental protection legislation in Nigeria prohibits the discharge of oil in certain prohibited sea

areas from a Nigerian ship and declares such an act an offense [59]. This is to ensure that the waterways in Nigeria are kept as pristine as possible to give room for the survival of the biodiversity of species contained therein. Although it may seem that this law prioritizes the environment. The monetary penalties for the offenses under the Act are grossly inadequate (Sections 6 and 7), making the Act nothing but "a toothless bulldog". The Punishment for any offense should in all ways possess the gravity to deter people from committing the particular offense [60]. One of the major things that set people on their toes and makes them cautious enough to keep and live by the law is the capital nature or the grievousness of the punishment attached to it. It is opined that the fine not exceeding two thousand naira only (N2,000) is too light compared to the consequences of discharging oil into the Navigable waters of Nigeria. The negative impact of coastal pollution cannot be compared with the positive impact of N2,000 in reversing such ill-condition. The Problems that will be caused by the discharge of oil into the Navigable waters of Nigeria cannot be solved by N2,000. Also, N2,000 is too meagre and can easily be afforded by convicted operators, hence, they can choose to flagrantly discharge oil and cause oil spillage as long as the economic benefit of such heinous crime will accrue more than N2,000 into their purse. The Punishment is too light that it cannot in any way deter people from wilfully discharging oil into the Nigerian Navigable waters and hence causing coastal pollution [61]. Having examined the anthropogenic basis on which the extant environmental protection law in Nigeria has been created by highlighting examples of anthropocentric wordings in legislation, the next section will express how the incorporation of the Earth jurisprudence approach in the Nigerian legal framework would improve environmental protection. This would be done by an exposé on the concept of Earth jurisprudence as an alternative to anthropocentrism, its principles, and options for its implementation and application in Nigeria.

## DISCUSSION

### Earth jurisprudence an alternative approach to environmental lawmaking in Nigeria

The idea of moving away from an anthropocentric approach to environmental lawmaking to improve the environment and its components is not altogether a new concept. Aldo Leopold, a forerunner for environmental ethics, was the first to make allusions to this concept in his 1949 essay The Land Ethics [62]. Leopold, as well as other modern proponents of this approach, are of the position that nature should not be protected just because of its value to humans but because of its intrinsic value [63]. Although this argument for an eco-centric environmental ethic in favor of the intrinsic value of nature has been ongoing for many decades, the argument has been primarily outside the legal sphere [64].

According to Cintia Mara Miranda Dias, an Associate Researcher at Universidade Cândido Mendes and a specialist in Environmental Sciences, there are two primary schools of thought when it comes to the exploration of this new environmental ethic. The first is a holistic approach where man is considered part of an Earth community as opposed to a conqueror of the Earth. The second approach is individualistic and proposes the assignment of rights to individuals of a species. However, the problem that may arise is that it would become very difficult, if not impossible, to draft individual rights for every species on Earth. Similarly, it is difficult to enforce a concept of a holistic Earth community in law. What may be required is a hybrid of these two approaches, in that general rights applicable to individual species can be utilized to enforce the notion that humans represent only a part of a greater community of species inhabiting the Earth. This hybrid, conceptualized as Earth jurisprudence, was first hypothesized by Thomas Berry [65].

Earth jurisprudence, according to Berry, is based on the concept that mankind only forms a small part of a community of beings on Earth and that the wellbeing of each individual is dependent on the wellbeing of the Earth

as a whole. Berry opined that human laws could function more effectively if we drew inspiration from the Earth as a source, as opposed to the sources that are currently in use, more specifically human values and perceptions of justice. Human laws, according to Berry, should therefore be subject to the laws of nature, and not the other way around. If this approach is followed, it will give legal recognition to the fact that our relationship with nature is mutual instead of one-sided. Berry stated that if nature was given a voice, humans would be voted off the planet because we fail to care for the rest of the beings on earth.

Mason whilst expatiating further on Berry's philosophy explained that Earth jurisprudence is not simply a matter of conferring rights on nature by some act of human generosity. It is a means of giving legal recognition to nature's inherent worth by recognizing existing facts, namely that the elements of the natural world have an intrinsic right to be what they are, whether human law recognizes it or not.

Proponents of the philosophy suggest that the failure of our legal systems lie in the fact that it operates according to the incorrect assumption that human and their rights exist outside of natural boundaries. As a possible alternative to anthropocentrism, Earth jurisprudence is a legal philosophy based on the concept that the planet and all the species inhabiting it should be afforded rights because these individual species represent components of a greater community.

The theory, which started as one that was purely philosophical, has since evolved to a set of concrete principles which can be applied to alter existing legislation in a way that would, according to proponents, ultimately assist us in reversing the damage we have done and preserving the environment, an environment which includes human life. Thomas Berry formulated several core principles of Earth Jurisprudence however the following salient core principles will form the subject matter of this study's analysis and application.

The first principle is that Earth is a communion of subjects, not a collection of objects. According to Berry, for the philosophy of Earth to be achieved, humans need to see themselves as a part of a larger system. To consider other living beings as subjects and not as objects will ensure that we live in harmony with the environment and cease our destructive behaviors. This would require a drastic move away from the traditional anthropocentric way of thinking and move towards an environmental ethic that is more focused on the environment, influencing our view of the world around us. This is without a doubt would be the most challenging Earth Jurisprudence principle for humans to adapt. The second principle is that Earth is primary and the human is derivative. Thus, human law should be derived from Earth law, not the other way around. As previously stated, one of the key characteristics of our existing legal framework is that it is based on an anthropocentric view. It, therefore, draws on the needs and desires of humans without first considering the consequences for the environment. Promoters of Earth Jurisprudence, on the other hand, advocate an approach where human laws are subject to a set of "greater" laws, or natural laws. Adoption of an Earth Jurisprudence approach into legislation would provide the necessary legal recognition of the reciprocal relationship between humans and nature.

Within the Nigerian legal system, environmental protection is justified to achieve economic sustainability and not to achieve living harmoniously with nature. Despite the extensive legal provisions promoting public participation, these provisions are rarely utilized due to a lack of legal culture that acknowledges a reciprocal interconnected relationship between the environment and humans, or the need to give legal recognition thereto. Drawing a strong parallel between the legal recognition of nature and culture, if a culture is anthropocentric, the laws made will also be anthropocentric. Integrating these principles into the Nigerian legal system would require some changes. First, the environmental provision in the Constitution must be reconstructed as a fundamental right for the environment.

This right to the environment which can be compared loosely to the human right to life as contained in the Constitution would ensure that the environment is not driven or used to a state of destruction or its existence or regenerative capacity is not threatened by human action.

This right to the environment directly interpreted will mean that any human action, taken that would threaten or cause the destruction of the environment will be against its right to the environment. The recognition of the right to environment in the Constitution which would then inspire downstream changes in other environmental legislation would then have the following effects for the environment; the right to life and to exist; the right to be respected; the right to regenerate its bio-capacity and to continue its vital cycles and processes free from human disruptions; and the right to maintain its identity and integrity as a distinct, self-regulating and interrelated being.

It is generally agreed that rights are a respected and well-developed element of our justice system, and the extension of rights in the past has resulted in many positive changes, both legally and culturally. It is the position of this paper that the extensive environmental degradation we face is due to the lack of legal protection for the environment. There is reluctance on the part of the government to put a stop to environmental degradation once and for all since the country's reliance on the environment and its natural resources are the basis of the nation's wealth. However, to maintain the current status quo would be unreasonable given the far-reaching consequences of damages to the environment. The principles of Earth jurisprudence can thus be used as a tool to alter the existing anthropogenic position of the law to reflect greater respect for the environment, change preconditioned attitudes, and extend legal protection to nature. It is thus submitted that if we feel strongly about the violation of the environment as much as we do the violations of our human rights, human activities that tend to result in devastating consequences for the environment should be reduced to the barest minimum.

By creating a legal framework for the implementation of the Earth jurisprudence through the recognition of environmental rights in the Constitution, a normative process to the paradigm shift that is needed would begin. Grounding Section 20 in the principles of Earth jurisprudence as aforementioned will see to the 'greening' of the entire system of law and governance given the fact that there is emerging empirical evidence to show that the inclusion of environmental rights at the constitutional level does impact positively on environmental outcomes.

It is important however to note that this constitutional right bestowed upon the environment would only prove valuable if they are actionable in courts. Incorporating Earth jurisprudence into the legal system would therefore help to provide clarity on the rights of the environment and who can bring an action on the protection of the environment's rights. The uncertainty around the non-justifiability of environmental rights and the suspicion that environmental claims and remedies are not achieved would thus be cleared off by an amendment of the current position of the law.

## Challenges for integrating earth jurisprudence in Nigeria

It is agreed that earth jurisprudence is very far removed from any of our traditional ideas and ways of thinking as far as our legal system is concerned. A radical change to an anthropogenic society such as Nigeria will be fraught with obstacles, both political, economic, and in the practical application of the principles of earth jurisprudence. The state machinery, as well as corporations, who are the beneficiaries of the current approach, will oppose such change given its ramifications for several aspects of their existence. The following are some of the anticipated challenges.

In Nigeria, state-corporate economic and political institutions are usually resistant to any restraints on their activities, especially where such restraints are based on the protection of the environment. This is because the

state machinery on environmental protection is controlled by colluding with corporations whose priority is maximizing profit. As such, they would rather encourage a human-centered legal system rather than an ecologically-centered legal system that places a priority on the health of the planet. An Earth-centric society with a legal infrastructure protecting the whole Earth community would thus be seen as an attempt to disrupt markets and industries as they currently function.

A second challenge that may arise as a result of enshrining the Earth-centric approach to environmental law-making is that at the core of this approach is a holistic inclusive attitude to governance and decision making. In the case of Nigeria, the political caste and huge corporate influences tend to dominate and direct the country; an Earth jurisprudence approach will not only disrupt industries to foreground the environment but would also be consistent with more equal opportunities for participation in environmental decision making.

The third, and perhaps the most challenging, obstacle is the practical application of the principles of Earth jurisprudence within the Nigerian context. The question remains as to whether laws can be free of human influence when they are drafted and created by humans. Are we able to switch from human-centered thinking that has mostly has been individualistic to being concerned with our actions from the perspective that humans are one small part of a larger ecological community? How do we deconstruct and interpret our existing law such that humanity is not necessarily the focus to prioritize or at least recognize and respect Earth and its many communities and life forms in the process of rewriting law?

## CONCLUSION

In summary, Earth Jurisprudence provides an alternative philosophy that could result in better protection of the environment by granting it rights based on its intrinsic value. This approach has been implemented in some countries the most prominent example is Ecuador, where the Constitution incorporates rights for nature. There are other examples in Bolivia and New Zealand. These examples supply a solid foundation on which to begin constructive dialogues as to how to bring about such changes. Exploring the implementation of, and then compliance with, constitutional protections for the environment will pathways forward for similar protections to be enshrined in the gamut of environmental legislation in Nigeria.

## RECOMMENDATIONS

The Earth jurisprudence provides a distinct approach to law-making with regards to the interaction between man and his environment. The following are recommended as solutions to the challenges of integrating Earth jurisprudence into the Nigerian legal system. First is the need to systematically create through legislation a system where human wants and needs are placed within the broader context of the environment to ensure that ecological boundaries are maintained. Having the Nigerian legal system grounded in the principles of Earth jurisprudence would ensure that lawmaking exists to facilitate natural ecological processes, supporting and enabling life on the earth to flourish. The approach unlike the current legal system in place in Nigeria refuses to regard human desires as it accepts the following hierarchy: 1. The Environment, 2. Humans and 3. Economy. The Nigerian legal system needs to reflect this order in the design and interpretation of all laws governing the environment.

Secondly, is the need to develop arguments that center on the need for an Earth jurisprudence approach to environmental lawmaking. This can be done by seeking to discontinue the use of the word ‘resource’ when we speak about the environment. This simply implies that we only value the environment for its economic value. An alternative description of the environment would be to refer to it as a ‘heritage’ portraying its intrinsic value over its

instrumental value. The right to protect and respect the environment should be part of the right to life which the Constitution already recognizes, thus acknowledging the interdependency of human life and the rest of nature.

There is also the need to educate judges, lawyers, and environmental professionals about the need to promote the interests of the environment, environmental challenges we face, and ancient societies' relationship with the Earth and how to integrate these elements into the decisions they make in their professional capacity. They will then be better able to make a judgment when trying to balance interests and they may engage emotionally with the subject. Finally, there is the need to redefine public interest to include the interests of the other members of the Earth community.

## REFERENCES

1. Babatunde AO. Oil pollution and water conflicts in the riverine communities in Nigeria's Niger delta region: Challenges for and elements of problem-solving strategies. J Contemp Afr Stud. 2020; 38: 274-293.
2. Ibimilua FO, et al. Environmental challenges in Nigeria: Typology, spatial distribution, repercussions and the way forward. Am Int J Soc Sci. 2014;3:246-258.
3. Argyrou A, et al. Legal personality and economic livelihood of the Whanganui river: A call for community entrepreneurship. Int J Water. 2019; 4: 752-768.
4. Aldo L. A sand county almanac and sketches here and there. 1949.
5. Angela K E, et al. The devastating effects of environmental degradation–A case study of the Niger delta region of Nigeria. 2009
6. Ashgar Ali. A conceptual framework for environmental justice based on shared but differentiated responsibilities. 2006; 41-77.
7. Babatunde S A, et al. The august 2011 flood in ibadan, Nigeria: Anthropogenic causes and consequences . Int J Disaster Risk Sci. 2012; 3:207-217.
8. Benefit O, et al. Solid waste management; A critique of Nigeria's waste management policy. Int J Knowl Cult. 2012; 4: 373-400.
9. Berry T. The great work: Our way into the future. 1999.
10. Akinbola B R, et al. A Review of laws for sustainable environmental management in the Nigerian oil and gas sector. Ul PIL. 2014; 4:116-146.
11. Chinedu C, et al. Solid waste management in Nigeria, problems, prospects and policies. J Solid Waste Technol Manag. 2018; 44:163-172.
12. Abiodun A et al. A review of biodegradable plastics in Nigeria. Int J Mech Eng Technol. 2018; 9: 1172-1185.
13. Nwokocha C. Effect of desertification on environmental management in Northern Nigeria. 2015;1
14. Innocent O C, et al. An assessment of environmental information disclosure practices of selected manufacturing companies. Int J Account. 2014;3:349-355.
15. Wobodo C C, et al. Crisis management and corporate resilience of multinational oil and gas companies in rivers state: A theoretical perspective. Am J Soc Issues Humanit. 2019; 3: 07-14.
16. Chris Jeffords, et al. Do constitutions matter? The effects of constitutional environmental rights provisions on environmental outcomes. 2016.
17. Christopher D S. Should trees have standing? Law, morality and the environment. 2010.
18. Dias C M M. Sustainable development: The anthropocentric epistemology. 2002;1-6.

19. Ugochukwu C N, et al. Negative impacts of oil exploration on biodiversity management in the Niger delta area of Nigeria. Impact Assess Proj Apprais. 2008; 26: 139-147.
20. Ugochukwu C N C. Sustainable environmental management in the Niger delta region of Nigeria: Effects of hydrocarbon pollution on local economy. 2008.
21. Tonwe D A, et al. Spoils, politics and environmental struggle in the Niger delta region of Nigeria. Int J Humanit Soc Sci. 2012; 4:37-38.
22. David R B. The status of constitutional protection for the environment in other Nation. 2014
23. Wirth D A. The Rio declaration on environment and development: Two steps forward and one back, or vice versa. 1995.
24. Siyanbade D O. Disaster Management in Nigeria: Preparedness and prevention. 2006.
25. Yagboyaju D A, et al. Nigerian state and the crisis of governance: A critical exposition. 2019; 9: 1-10.
26. Enabulele O. Mitigating the effects of environmental degradation in the oil industry: An assessment of government compensation scheme in Nigeria. Law Env't and Dev J. 2020; 16-76.
27. Evelyn M, et al. Environmental pollution in Nigeria: The need for awareness creation for sustainable development. J res for wildl. 2012; 4: 1-14.
28. Brown E D, et al. Natural resource abundance and economic growth in Nigeria (1980-2015). 2017.
29. Glen W. Animal rights and the rights of nature, a brief overview. Earth laws symposium animal rights and the rights of nature .2012.
30. Ogbodo S G. Environmental protection in Nigeria, two years after the Koko incident. Ann Surv Int'l and Comp L. 2009; 15:1-19.
31. Jimoh H I. Man-Environment Interaction. 2014; 20-27.
32. Ijaiya H, et al. Rethinking environmental law enforcement in Nigeria. Peking Univ Law J. 2014; 5:306-327.
33. Kopnina H et al. Anthropocentrism more than just a misunderstood problem. J Agric Environ Ethics .2018; 31:109-127.
34. Mason I. Earth jurisprudence. 2008; 247:26-27.
35. Jaiye D J. The environmental implication of illegal mining activities in Nigeria, A case study of pandogari and barkin lade/buruku surface mines in Niger/plateau states. Int J humanit soc sci. 2013; 13: 13-19
36. Glattfelder J B. The consciousness of reality. 2019; 515-595.
37. Lovelock J. Gaia: A new look at life on earth. 2000;1-95.
38. Murray J. Earth jurisprudence, wild law, emergent law: The emerging field of ecology and law-1. Liverp Law Rev. 2015; 36:105-122.
39. Purdy J. Our place in the world: A new relationship for environmental ethics and law. Duke Law J. 2013; 62:858-930.
40. Mantu J I. NESREA and the challenge of enforcing the powers of the environmental impact assessment act in Nigeria. SSRN 3410104. 2019;1-23.
41. Judith E K. What is earth jurisprudence? Key principles to transform law for the health of the planet. Penn State Environ Law Rev. 2009; 18: 47-69.
42. Kaniye S E. The right to a satisfactory environment and the African commission. S Afr J Hum Rights. 2003; 3: 149-166.

43. Kortenkamp K V, et al. Ecocentrism and anthropocentrism: Moral reasoning about ecological commons dilemmas. J Environ Psychol. 2001; 21: 1-12.
44. McShane K. Anthropocentrism *vs.* Nonanthropocentrism: Why should we care? Environ. 2005; 16:2 169-86.
45. Odeku K. O, et al. Accentuating criminal sanctions for environmental degradation: Issues and perspectives. Environ. 2017; 8: 28-37.
46. Kyle B. Anthropocentrism and nature: An attempt at reconciliation. 2014; 2:120-137.
47. Nduonofit L L E, et al. Limitations and drawbacks of Nigeria's environmental protection law 1980-2010. 2015;1-7.
48. Lisa J U. Revision and resistance: The politics of native women's mother work. J Gend Stud. 2001; 22: 43-62.
49. Mohammed N I. The role of environmental impact assessment in Nigeria's oil and gas industry. 2012.
50. Gold N O. Corporate governance and extent of corporate sustainability practice: The role of investor activism. 2022.
51. Aghalino O, et al. Oil exploitation and marine pollution: Evidence from the Niger delta, Nigeria. Hum Ecol 2009; 28:177-182.
52. Shakede O P, et al. Effect of industrial pollution on residential neighbourhood: Amuwo odofin industrial layout lagos as a case study. J Hous Built Environ. 2017; 5: 99-106
53. Olujobi OJ. Analysis of the legal framework governing gas flaring in Nigeria's upstream petroleum sector and the need for overhauling. Soc Sci. 2020; 9 1-19.
54. Opeyemi A G. Rethinking environmental sustainability in Nigeria: The role of the judiciary. Kogi State Uni Law J. 2020;12: 11.
55. Peter B. Wild law: The philosophy of Earth jurisprudence. 2010.
56. Burdon P D. A theory of Earth jurisprudence. Aust J Leg Philos. 2012; 37:29-36.
57. Petter N. Unsustainable growth, unsustainable capitalism. J Crit Realism. 2006; 5:197-227.
58. Mfon P, et al. Challenges of deforestation in Nigeria and the millennium development goals. Int J Environ Bioenergy. 2014;9:76-94.
59. Richard Y, et al. Key challenges to modernisation theory. Organ Environ. 2003; 16 273-288.
60. Sandra R. Empirical analysis for sanctions for environmental offences. Rev Environ Resour Econ. 2009; 3: 161-194.
61. Steven M W. Rattling the cage: Toward legal rights for animals. 2000; 45.
62. Udoh O S. Human activities, biodiversity maintenance and sustainable development in ikpe community of akwa ibom state, Nigeria. Int J Humanit Soc Sci. 2015; 20: 55-61.
63. Taiwo M. Problem of policy implementation in developing nations. The Nigerian Experience. J Soc Sci. 2005;11: 63-69.
64. Akpan V E, et al. Hazardous waste management: An african overview. 2020; 5-24.
65. Edo Z O. The challenges of effective environmental enforcement in the Niger Delta Region of Nigeria. 2012;16:1-16.