


A REALISTIC APPROACH TOWARDS ATTAINING SUSTAINABLE ENVIRONMENT THROUGH IMPROVED PUBLIC PARTICIPATION IN NIGERIA

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ARTICLE INFO	<u>ABSTRACT</u>
<p>Article history:</p> <p>Received 27 January 2023</p> <p>Accepted 24 March 2023</p>	<p>Purpose: The aim of this study is to examine the critical need for effective public participation in Nigeria as a means of enhancing sustainable development and cooperation among Indigenous peoples, as well as to advocate for the removal of legislative, judicial, and administrative barriers to participation in environmental law governance.</p>
<p>Keywords:</p> <p>Public Participation; Sustainable Environment; Decision-Making; Access to Environmental Information; Rio Declaration.</p>	<p>Theoretical Framework: The existing literature has failed to address the gamut of legal, regulatory, and declarations (particularly Principle 10 of Rio 1992) and administrative frameworks for environmental protection and governance in Nigeria. These appeared to be a farce, hence the refusal to integrate the public and stakeholders' opinions in environmental management that may conflict with official government policy.</p>
	<p>Design/Methodology/Approach: The doctrinal method of analysis was adopted. It was based on current materials and drew on contrasting views of learned authors and scholars, as well as various legislative sources. Data was obtained using texts, articles, journals, case law, electronic sources, legislation, and other policy documents.</p> <p>Findings: The results shows how the present legal and regulatory framework for the protection of the environment in Nigeria contradicts the concept of improved public participation.</p> <p>Research, Practical & Social implications: The study suggest the development of an effective legislative framework that incorporates the guiding principles of global public participation initiatives for environmental sustainability.</p> <p>Originality/Value: The value of the study reveals the global significance and the potential of public participation to improve the sustainability of the environment in Nigeria are essential to advancing the status of Principle 10 of the Rio Declaration as an emergent customary international law.</p> <p>Doi: https://doi.org/10.26668/businessreview/2023.v8i4.844</p>

UMA ABORDAGEM REALISTA PARA ALCANÇAR UM AMBIENTE SUSTENTÁVEL ATRAVÉS DE UMA MELHOR PARTICIPAÇÃO PÚBLICA NA NIGÉRIA

RESUMO

Objetivo: O objetivo deste estudo é examinar a necessidade crítica de uma participação pública efetiva na Nigéria como um meio de melhorar o desenvolvimento sustentável e a cooperação entre os povos indígenas, bem como

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defender a remoção das barreiras legislativas, judiciais e administrativas à participação na governança da legislação ambiental.

Estrutura teórica: A literatura existente falhou em abordar a gama de declarações legais, regulatórias e declarativas (particularmente o Princípio 10 do Rio 1992) e estruturas administrativas para a proteção ambiental e governança na Nigéria. Estas parecem ser uma farsa, daí a recusa de integrar as opiniões do público e das partes interessadas na gestão ambiental que pode entrar em conflito com a política oficial do governo.

Design/Methodologia/Proteção: O método doutrinário de análise foi adotado. Ele se baseou em materiais atuais e se baseou em visões contrastantes de autores e estudiosos ilustres, bem como em várias fontes legislativas. Os dados foram obtidos utilizando textos, artigos, revistas, jurisprudência, fontes eletrônicas, legislação e outros documentos de política.

Conclusões: Os resultados mostram como a atual estrutura legal e regulatória para a proteção do meio ambiente na Nigéria contradiz o conceito de melhor participação pública.

Pesquisa, implicações práticas e sociais: O estudo sugere o desenvolvimento de uma estrutura legislativa eficaz que incorpore os princípios orientadores das iniciativas globais de participação pública para a sustentabilidade ambiental.

Originalidade/Valor: O valor do estudo revela o significado global e o potencial da participação pública para melhorar a sustentabilidade do meio ambiente na Nigéria são essenciais para o avanço do status do Princípio 10 da Declaração do Rio como um direito internacional consuetudinário emergente.

Palavras-chave: Participação Pública, Ambiente Sustentável, Tomada de Decisão, Acesso à Informação Ambiental, Declaração do Rio.

UN ENFOQUE REALISTA PARA LOGRAR UN MEDIO AMBIENTE SOSTENIBLE MEDIANTE LA MEJORA DE LA PARTICIPACIÓN PÚBLICA EN NIGERIA

RESUMEN

Propósito: El objetivo de este estudio es examinar la necesidad crítica de una participación pública eficaz en Nigeria como medio de mejorar el desarrollo sostenible y la cooperación entre los pueblos indígenas, así como abogar por la eliminación de las barreras legislativas, judiciales y administrativas a la participación en la gobernanza del derecho ambiental.

Marco teórico: La bibliografía existente no ha abordado la gama de marcos jurídicos, normativos y declaraciones (en particular el Principio 10 de Río 1992) y administrativos para la protección y gobernanza del medio ambiente en Nigeria. Éstos parecen ser una farsa, de ahí la negativa a integrar las opiniones del público y de las partes interesadas en la gestión medioambiental que pueden entrar en conflicto con la política oficial del gobierno.

Diseño/metodología/enfoque: Se adoptó el método doctrinal de análisis. Se partió de materiales actuales y se recurrió a opiniones contrastadas de autores eruditos y estudiosos, así como a diversas fuentes legislativas. Los datos se obtuvieron utilizando textos, artículos, revistas, jurisprudencia, fuentes electrónicas, legislación y otros documentos políticos.

Resultados: Los resultados muestran cómo el actual marco jurídico y normativo para la protección del medio ambiente en Nigeria contradice el concepto de mejora de la participación pública.

Investigación, implicaciones prácticas y sociales: El estudio sugiere el desarrollo de un marco legislativo eficaz que incorpore los principios rectores de las iniciativas mundiales de participación pública para la sostenibilidad medioambiental.

Originalidad/Valor: El valor del estudio revela que la importancia mundial y el potencial de la participación pública para mejorar la sostenibilidad del medio ambiente en Nigeria son esenciales para impulsar el estatus del Principio 10 de la Declaración de Río como derecho internacional consuetudinario emergente.

Palabras clave: Participación Pública, Medio Ambiente Sostenible, Toma de Decisiones, Acceso a la Información Medioambiental, Declaración de Río.

INTRODUCTION

The environment is regarded as a collection of fundamental and essential elements that surround humans which includes water, air, and land, as well as plant and animal life (Ahmad & Sulaiman, 2023). The notion of sustainable development as a way of assuring a sustainable

environment has yet to be embraced by a wider number of developing countries in Africa, including Nigeria. Economic considerations have largely replaced environmental concerns because of the push for development, and the systemic underrepresentation of environmental issues is a basic flaw (Pánovics, 2020). Several national and worldwide initiatives to improve environmental conditions have been made in response to economic factors that are compromising the sustainability of the earth's natural systems (Obaji, 2021). Environmental issues are severe and are thought to be under international control (Ahmad & Sulaiman, 2023), but in Nigeria today, the urge for development, economic factors have supplanted environmental protection and, thus, environmental degradation and deterioration.

This became the reason that the United States and other countries pledged to pursue sustainable development within their borders and to cooperate with other countries to achieve this aim at the 1992 United Nations Conference on Environment and Development in Rio de Janeiro (Barritt, 2020). They agreed to two nonbinding documents: Agenda 21 (UNEP, 1993), an ambitious plan for sustainable development, and the Rio Declaration (1992), a set of twenty-seven principles to aid the plan's implementation. Preserving a steady basis of natural resources and preventing excessive waste of both renewable and non-renewable resources are examples of how sustainable development addresses environmental issues (Akbar & Mahdi, 2023).

Environmental democratic rights are essential to more representative, egalitarian, and efficient environmental decision-making (Nyekwere & Ole, 2022), which is a clear justification for this research as people are empowered and inspired to contribute in meaningful and informed ways when they have access to information. Gaining access to decision-making processes improves a government's capacity to respond to public requests and concerns, to forge consensus, and to increase acceptance of and compliance with environmental choices. Justice can be obtained if people hold businesses, organizations, and the authorities responsible. Access to the information that informs decisions, the ability to express ideas, and the capacity to influence choice among potential outcomes are necessary for meaningful involvement.

These are some of the questions that this research will attempt to answer: What are the challenges of effective public participation in Nigerian environmental law governance? Whether Nigeria can attain a sustainable environment through improved public participation? How would the implementation of public participation principles benefit the governance of environmental law in Nigeria?

The following objectives of the research are set forth in light of the research problems. In order to promote sustainable development and inter-Indigenous cooperation, this paper shall

examine the urgent need for effective public participation in Nigeria. It will also argue that administrative, judicial, and legislative barriers to participation in environmental law governance should be eliminated.

In adopting a realistic approach, this paper views the problem of enhancing public participation in Nigeria as a governance issue, hence the need to identify legislative, administrative, and judicial barriers and proffer solutions for same. It further recognizes the role of external factors like poverty and corruption in the fight against environmental injustice, which accounts for the bulk of the problems members of the public face in accessing the courts in Nigeria.

LITERATURE REVIEW

Although quite a few literatures exist on some components of this research like the need for environmental rights and legislative barriers to public participation, these works do not specifically examine these issues from the Nigerian perspective and as such do not address the fundamental issue that continues to affect the efficacy of environmental laws in these countries, chief among them being the abuse of the principle of sustainable development. Furthermore, existing literatures discuss barriers to improve public participation as separate components, not holistically as this research seeks to. This is advantageous because of the interrelationship between most of these components.

Etemire and Sobere (2020), argued that one of the main causes of the current, escalating environmental degradation in Nigeria is the "widespread public non-compliance" with the numerous contemporary environmental laws and thereby making these laws inefficient in guaranteeing a healthy environment. Their claims (Etemire & Uwoh Sobere, 2020) were opposed by the fact that conventional African environmental norms and practices garner greater public support in traditional settings, making them more effective in securing a high level of environmental protection, as demonstrated, for example, in the pre-colonial era in Nigeria, where those traditional norms formed the main system of environmental governance (Etemire & Uwoh Sobere, 2020). This research will broaden the scope of their work by considering the area and ways in which environmental protection can be guaranteed.

Public participation is a key issue of current environmental policy and law at all levels, according to Pánovics (2020). He identified environmental deterioration and degradation, as well as actions taken to stop it, have an effect on people's health and well-being as well as on the overall standard of living. Pánovics (2020) further argued that citizens and non-

governmental organizations (NGOs) can promote the enforcement and execution of laws and policies to safeguard the environment by supporting access to justice in environmental problems and the Aarhus Convention's rights will simply be promises if access to justice is not implemented promptly and fairly.

Emily Barritt (2020) in her book acknowledged the shortcomings of the Aarhus convention due to the language ambiguities used and failure to sufficiently define certain of its declared purposes. She identified that there have been concerns raised over the specific nature of those goals and how they can be successfully implemented in national legislation. Barritt (2020) also addressed ideas that are fundamental to the objectives that the Aarhus Convention aims to accomplish by giving readers a deeper grasp of the Convention and the inspirations and reasoning behind it. Despite the fact that she obviously offered intelligent overview of the Convention's aims and objectives and how they should be construed, it is not devoid of flaws. The approach taken in her book raises questions about how and why emphasis on environmental rights, environmental democracy, and environmental sustainability as basic fundamental goals of the Convention, in addition to other objectives of the Convention, could be warranted, especially in light of the wealth of information on the conceptual scope of the Convention. Bearing this in mind, this research is aimed at finding out just how far Nigeria has come in implementing these goals.

According to Nyekwere and Ole (2022), the three pillars of environmental democracy are the public's right to access environmental information, the public's right to participate in environmental decision-making, and the public's right to receive environmental justice. Together, these three pillars help to promote improved environmental decision-making (Nyekwere & Ole, 2022). They recognized that environmental democracy is not a panacea for all environmental issues but if the theoretical architecture were implemented one at a time, it might improve how decisions need to be assessed in order to maintain the Nigerian environment and, by extension, ensure the existence of its population. Additionally, they suggested that the Nigerian government should promote, support, and enhance citizens' engagement in federal, state, and local government environmental decision-making. The federal government should also strengthen the judiciary's ability to hear complaints about environmental infractions and impose sanctions against all violators while guarding against baseless lawsuits. This research will build on this by identifying a crucial issue in Nigeria which is its constitution (1999 as amended) did not provide for environmental rights, rather it provides for objectives which are often not justiciable, thereby obstructing the right to participation.

The Concept of Sustainable Development

In 1987, the "Brundtland Report" launched a global discussion on sustainable development (Bristol-Alagbariya, 2022). According to the Brundtland report in '*Our Common Future*,' a widely acceptable definition of sustainable development was outlined by the World Commission on Environment and Development as "...development that meets the needs of the present without compromising the ability of future generations to meet their own needs" (World Commission on Environment and Development, 1987). The basic purpose of the concept of sustainable development is to ensure that countries realize their economic growth goals while also fulfilling their international environmental obligations (World Commission on Environment and Development, 1987).

The idea of sustainable development may be viewed as the facilitator for reconciling the needs for development with the needs for resource conservation in a more comprehensive definition of the term. In other words, sustainable development entails enhancing human well-being while remaining within the ecological system's carrying capacity (Ajai, 1995). It refers to addressing current demands without sacrificing the capacity of future generations to address their own needs.

Three crucial factors underpin sustainable development: environmental, social, and economic sustainability (Emas, 2015). It aims to strike a balance between economic growth and the preservation of social and environmental harmony (Goniadis & Lampridi, 2015). A framework for sustainable environmental governance is critical to the realization for the attainment of environmental and economic goals simultaneously. The aims of social equality, economic competitiveness, and environmental conservation should all be integrated into future planning, according to one of the key ideas underpinning sustainability (Erhun, 2015).

Principle of Public Participation

Principle 10 of the 1992 Rio Declaration on Environment and Development was the starting point for several articles on participatory rights. It served as a helpful reminder that the issue is global in scale, and that states in developed and developing countries in Africa have legal and political commitments to participatory rights in environmental problems in treaties, declarations, and other global policy agreements.

Ensuring public participation is fundamental in providing the appropriate machinery through which members of the public can contribute their knowledge to government environmental policies, particularly for citing of projects which concern government economic

drive, public participation further makes it easier for national environmental laws and international environmental agreements to be properly implemented and enforced effectively (Marsden and Brandon, 2015). This complements the efforts of government towards environmental protection (Marsden and Brandon, 2015). Public participation, where guaranteed, has very far implications on the conduct and response of people to Governments environmental policies, ministries, departments and parastatal, non-governmental organizations and members of the public. Governments in Africa will therefore have no choice than to put in place, the necessary regulatory framework and see to it that national and international environmental laws are implemented and enforced in the best considerable manner. For members of the public, it means more effective environmental laws, accountability and improved participation in matters that concern the environment.

The 1998 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (commonly referred to as the Aarhus Convention), which expanded on the frequently ambiguous and imprecise provisions on these procedural rights in innumerable international environmental agreements, was the first international document to establish minimum standards for environmental procedural rights (Obaji, 2021). Under the auspices of the United Nations, the Aarhus Convention (1998) remains the most assertive undertaking in the field of environmental democracy. The Aarhus Convention recognizes the critical role of environmental non-governmental organizations in advancing environmental protection by reaffirming their interests and rights to participate in environmental issues (Ebbesson, 2018). It accomplishes this by defining "the public" as "one or more natural or legal persons, and, in line with national legislation or practice, their associations, organizations, or groupings" (Aarhus Convention 1998), as well as extending procedural rights to non-governmental environmental organizations. This is because environmental protection involves both private and public interests.

Access to information, public participation in decision-making, and access to justice are the three key subject areas relating to public participation in environmental matters addressed by Principle 10 of the Rio Declaration (1992). These three issue areas – or "pillars" as they are known in the context of the Aarhus Convention (1998) – are intertwined. Access to information and access to justice are both important for effective public participation in general, even if they serve distinct roles and goals.

1. Access to Environmental Information.

A key component of the Aarhus Convention's commitment to ensuring the right to a

healthy environment and, more broadly, promoting sustainable development is the availability of information to enable the public to participate in environmental decision-making processes (Whittaker, 2021). The public's ability to access environmental laws, policies, and other information that will enhance their knowledge and understanding of their environment is essential for the success of any effort aimed at environmental protection and conservation for it is only by having access to this information will the public be able to properly comply with environmental laws (Etemire & Uwoh Sobere, 2020). The accessibility of environmental information and the techniques employed by public bodies to distribute environmental information are the two areas into which the responsibilities for access to environmental information under the Aarhus Convention are split (Barritt, 2020). Together, the two portions go further than any other international environmental pact in defining nations' obligations and establishing mechanisms and procedures for information distribution (Ebbesson, 2013).

Accordingly, "environmental information," is defined as (i) "the state of environmental elements" (such as the air, water, soil, landscape, and biological diversity), (ii) "factors" (such as substances, energy, noise, and radiation), activities, measures, environmental agreements, policies, and legislation that have an impact on or are likely to have an impact on the elements under (i) and (iii) the conditions of human health and safety, living conditions, and cultural sites(Aarhus Convention 1998). Unless the volume or complexity of the information requested justifies an extension of the timeframes, such information shall be made available "as soon as practicable" and no later than one month after a request (Aarhus Convention 1998).

According to Whittaker (2021), the Aarhus Convention's definition is inclusive and broad, guaranteeing that a variety of contacts between the state and the public are covered by the Convention's duties. Again, Whittaker (2021) noted that Etemire (2016) had lauded the definition's breadth and open-endedness for their capacity to incorporate "future developments in the field." Importantly, this broad definition is important because it guarantees and enables people and NGOs to demand access to a variety of environmental information, hold public officials accountable, and actively engage in a variety of environmental decision-making processes (Whittaker, 2021).

Access to environmental information is crucial to public participation because it is also required for guaranteeing effective access to justice in environmental concerns and meaningful and informed public engagement in environmental decision-making, both of which are required for increased compliance with environmental legislation (Etemire & Uwoh Sobere, 2020). For instance, when neglecting to ensure or provide access to information in situations involving

natural resources and land usage, various provisions of the African Charter on Human and Peoples' Rights (1981) are potentially breached, as shown in the Ogoni (*Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v Nigeria 2011*) and Endorois (*Centre for Minority Rights Development (Kenya) and Minority Rights Group v Kenya 2009*) cases against Nigeria and Kenya, respectively.

Formal and substantive grounds may be used to deny access to information; the latter applies when one or more identified interests are "adversely" impacted. There is less discretion available to the parties when deciding whether to reveal the information because these reasons for denial "shall be interpreted in a restrictive way taking into account the public interest served by disclosure" (Aarhus Convention 1998).

2. Public Participation in Decision-Making

This principle suggests that people, groups, and organizations have the chance to express their opinions and interests when it comes to making choices that may or may not have an influence on the environment. These choices include environmental impact studies, the creation of rules, and their enforcement. It entails taking part in decision-making about long-term and short-term projects, as well as regional, national, and international policies, strategies, and plans. The Convention clearly identifies five ways to enhance public participation.

Firstly, according to the Aarhus Convention (1998), the parties must "ensure early public engagement, when all possibilities are available and meaningful public participation can occur." This is crucial because it becomes harder to have an impact on the choice the later the public becomes involved. As the public gains a sense of ownership over and commitment to the final decision, the legitimacy and social acceptability of the decision are improved (Etemire & Uwoh Sobere, 2020). Second, each party must promptly notify the affected public, either publicly or privately, of the proposed activity, the nature of any potential decisions, the anticipated procedure, and the opportunity to participate, the timeframes, and the location of the information being held. Third, feedback on the proposed activity from the public may be provided verbally, in writing, or during hearings or inquiries. Fourth, each party is responsible for making sure that the results of the public engagement are carefully considered in the decision.

Because "due account" is not awfully specific and gives the decision-making authority some wiggle room, this is a crucial point in the decision-making process. Though it does not amount to a public veto, the decision-making body cannot ignore the comments and opinions without giving them careful consideration. The decision must also include the factors and

justifications on which it is based. In the *Ogoni case* and *Endorois case* it was held that the parties had failed to provide opportunities for those concerned to participate in the decision-making. The two cases also show that, according to the African Charter, access to information is related to both individual – human – and collective – peoples' – rights. It is imperative to note that more than ninety (90) countries had included this right in their constitutions (Knox, 2015) and regional agreements such as the African Charter on Human and People's Rights (1981) as of 2015.

Moreover, the results of the participatory processes should be properly considered. Public participation in environmental decision-making can also help mitigate or avoid potential conflicts by enabling better understanding, modification of values and opinions, and increase in trust among stakeholders. It can also engender better information (Etemire & Uwoh Sobere, 2020). More general conditions for public engagement in the creation of executive rules and universally applicable normative instruments include the establishment of time frames that are adequate for meaningful participation (Aarhus Convention 1998).

3. Access to Justice.

Access to judicial and administrative processes is the third and last principle of the public participation. According to the Aarhus Convention (1998), access to justice essentially refers to the process by which incorrect administrative actions, decisions, or omissions relating to environmental issues can be remedied by a court or another independent and impartial authority established by law. In other words, the ability of the public to access legal processes in order to enforce an environmental obligation or seek redress for an alleged or potential violation of a substantive environment law or right is referred to in this context as "access to justice" (Etemire & Uwoh Sobere, 2020).

According to Article 9 of the Aarhus Convention, everyone has the right to access domestic review processes (a court of law or other independent and impartial authority established by law) in relation to all environmental law-related issues (Samvel, 2020). For rights to be effective, access to judicial and administrative proceedings is crucial. If there are no channels for complaining when a right is not being upheld, the right has no value (Saladin, 2003). According to the Convention, there are three general types of decision-making for which access to justice must be guaranteed, and the necessary minimums vary based on the decision, act, or omission that needs to be examined.

First, access to a review mechanism in front of a court or another independent and impartial authority must be guaranteed to anybody who feels that their request for

environmental information has been disregarded, denied, or not handled in line with the Convention. Second, the right to a review procedure before a court of law or another independent and impartial body is guaranteed to any member of the public who has a sufficient interest in contesting the legality of any decision, act, or omission pertaining to the authorization of specific activities that may have an adverse environmental impact (Aarhus Convention 1998).

And lastly, citizens "where they meet the criteria, if any, laid down in... national law" shall have access to judicial or administrative review procedures for all other acts and omissions that violate provisions of national law relating to the environment, whether by private persons or public authorities (Aarhus Convention 1998). For instance, as in the success of the *Urgenda Climate Case* (2019) demonstrates, NGOs and private citizens can play a significant role in court-based enforcement, but it depends on citizens possessing meaningful rights under national procedural laws (Silk, 2022).

MATERIALS AND METHODOLOGY

This research uses a doctrinal approach to legal research. This doctrinal method of doing legal research is founded on legal positivism, will be a crucial prelude to the investigation of the law's relation to public participation as a way of attaining a sustainable environment. In order to do this, both primary and secondary sources is employed. The study will use the legal method to examine books, articles, journals, magazines, case law, statute law, and other written materials. The study also requires the use of online resources because several policies and laws are being implemented now or will be in the near future.

RESULTS AND DISCUSSION

Public participation is important for attaining long-term environmental sustainability. Principle 10 of the Rio Declaration (1992) clearly states that environmental issues are effectively managed when all concerned persons are represented at the appropriate levels. Without constructing a framework that is acceptable to all stakeholders, the war against environmental deterioration cannot be won. Hence, the process of negotiating environmental policies should include effective stakeholder participation for them to understand and support the policies' goals.

Unfortunately, notwithstanding the importance of public participation, there exist certain barriers to its effective application, especially in Nigeria. These problems include gaps

in legislative enactments which need to be filled as well as provisions of legislations which not only indiscriminately permit environmental harm but also deny environmental rights. Most constitutions of developing countries in Africa do not provide for environmental rights. Worse still, in some countries like Nigeria, environmental objectives which the Government strive to achieve are not made justiciable by the constitution. Administrative problems involving bureaucracy and other vices do in fact compound the problem.

Undoubtedly, where this is the case, the right of individuals and indeed civil society organisations to express opinions on better management of the environment is gravely hindered. The devastating attacks on oil pipelines along the Niger Delta of Nigeria, in a bid to frustrate the government revenue, which concerns itself more about its revenue to the expense of environmental protection, explains the lack of integration of the people in the management of the environment and all its appurtenances. Against this background, the importance of public participation cannot be overemphasized.

The Legal Framework on Public Participation for Environment Sustainability in Nigeria includes but are not limited to the following:

Environmental Impact Assessment ACT (EIAA 1992)

This Act (EIAA) was passed primarily to make it possible to take environmental impact assessment into account before moving forward with public or private projects (Ezihe, 2021). The EIAA is a crucial instrument for integrating environmental considerations into the development process in Nigeria in order to achieve sustainable development in any endeavour (Owoyemi & Bamigboye, 2013). Environmental Impact Assessment (EIA) itself is the process of evaluating a project's predicted environmental consequences while taking into account related social, cultural, and human health effects—both good and negative. The EIAA (1992) has numerous provisions designed to guarantee and/or promote stakeholder and public participation in the assessment process. Under this Act public and stakeholder participation could be achieved through a variety of formal and informal techniques, depending on the pertinent circumstances and as long as meaningful public participation is achieved, such as workshops, press releases, public panel review hearings, access to or display and review of documents, including through public access at environmental authority offices and timely official internet site or newspaper notice publications and documents (EIAA 1992). Public engagement is required by section 2(1) of the Act, paragraph 17(1)(c), at the very least at the screening stage. In a similar vein, review panel proceedings are open to the public, and all data

necessary for a review panel's evaluation must be gathered and made accessible to the public(EIAA 1992).

Although the Act's efforts to make public engagement an integral component of the EIA process appear comprehensive, the Act's public participation program has numerous serious flaws. The Act does not mandate that developers consult local communities and does not offer an effective penalty for failing to consult the public during the EIA process (Ezihe, 2021).

The Freedom of Information ACT (FOIA) 2011

The FOIA grants an individual, group, association, or organization the right to request information from government agencies, parastatals, the federal civil service, private and public sector organizations providing public services, etc. The Act is a transition away from a long tradition of governmental secrecy through a number of Official Secrets Acts and other anti-access to information legislation that were initially introduced by British colonial administration and kept by later post-colonial governments (Etemire & Uwoh Sobere, 2020). Citizens have the authority to request information about public officials under Section 1(1) of the Freedom of Information Act (2011). This important clause exemplifies best practice as reflected in a few international environmental documents (UNFCCC 1992), including Bali Guidelines, Article 4(1) of the Aarhus Convention, and Principle 10 of the Rio Declaration.

However, the FOI Act dispels all uncertainty by explicitly allowing the applicant the option of making "oral application for information," in contrast to the Aarhus Convention and other treaties regulating best practice, which are quiet on the specific topic of "oral application" (which is useful for those who are illiterate).

Additionally, the Act goes beyond the Aarhus Convention by explicitly broadening opportunities for access for applicants who are illiterate or disabled by granting them the right and option to "make an application through a third party" (FOI ACT 2011), in line with recommendations in the draft Commentary to the Bali Guidelines (UNEP 2010). Again, according to Article 4(1) of the Aarhus Convention and other similar regimes, Sections 1(1) and 3 of the FOI Act, which deal with requests for access to (environmental) information, appear to also accept electronic requests.

Moreover, the FOI Act lacks a provision like the one included in the Aarhus Convention, which requires public bodies to aid and direct persons requesting access to environmental information. More concerning is the fact that public authorities routinely violate the act's existing provisions, despite the fact that they can still significantly contribute to ensuring a

healthy degree of access to environmental information (Etemire & Uwoh Sobere, 2020).

The African Charter on Human and Peoples Right 1981 (ACHPR):

Article 16 of the African Charter provides for the right of every individual to the ‘best attainable state of physical and mental health’ (Ehirim et al., 2022). And article 24 provides for the right of all peoples to ‘a general satisfactory environment favourable to their development’.

In the case of *Social and Economic Rights Action Centre (SERAC) and Another v. Nigeria* (2005), decided by the African Commission on Human and Peoples' Rights, the situation of the Niger Delta's residents became known. In this case, the applicants claimed that the Nigerian government had concealed information about the risks associated with crude oil exploitation from the Ogoni communities (Adoga-Ikong et al., 2021). The Commission acknowledged the procedural aspects of Articles 16 and 24 of the African Charter on Human and Peoples' Rights, which Nigeria ratified (2004), and held that in order for states to comply with the "spirit" of those provisions—which the Nigerian government had failed to do—they must ensure public access to environmental information, particularly for communities exposed to hazardous materials and activities.

International Environmental Treaties Ratified in Nigeria relating to Public Participation

Given the importance of enabling public participation as described above, it is not surprising that a significant number of international environmental agreements include some elements of public participation provisions. Examples of these (binding international) agreements that Nigeria has ratified include:

- a) Declaration of the United Nations Conference on the Human Environment (1972).
- b) Rio Declaration (1992)
- c) African Charter on Human and Peoples' Rights⁽¹⁹⁸¹⁾
- d) The Convention concerning the Protection of the World Cultural and Natural Heritage (1972).
- e) The UN Framework Convention on Biological Diversity (1992) and its Cartagena Biosafety Protocol (2000).
- f) The United Nations (UN) Framework Convention on Climate Change(1992)
- g) The UN Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification Particularly in Africa (1994).

- h) Vienna Convention for the Protection of the Ozone Layer (1985).
- i) Basel Convention on the Control of Transboundary Movement of Hazardous Waste and their Disposal (1987).
- j) Kyoto Protocol (1997).
- k) United Nations Convention on the Law of the Sea (1982).
- l) International Convention on Oil Pollution Preparedness, Response and Cooperation (1990)
- m) International Convention on Civil Liability for Bunker Oil Pollution Damage (2001)
- n) Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa (1991)
- o) Convention for the Protection of the World Cultural and Natural Heritage (1987)
- p) Paris Agreement, etc. (Onomrerhinor, 2016; Ahmed-Hameed, 2016)

International treaties must first be domesticated as an Act of the National Assembly in accordance with the Nigerian Constitution to become legally binding (Mrabure & Awhefeada, 2020).

Challenges Impending Public Participation for Environment Sustainability in Nigeria

I. Legislative Barriers

Nigeria has ratified and committed to several international environmental agreements, some of which call for Nigeria to ensure that the public has access to environmental information. Despite this, for many years, Nigeria had not given domestic effect to these agreements because it had not put the necessary legal framework in place. In Nigeria, a legislative enactment is required to give domestic effect to the provisions of a treaty that the Nigerian government has ratified, in accordance with section 12(1) of the Constitution of the Federal Republic of Nigeria (1999). The Nigerian Supreme Court stated in *Abacha v. Fawehinmi* (2001), that every international treaty to which Nigeria has become a signatory remains unenforceable if it is not incorporated into national law by the National Assembly, regardless of how advantageous it may be to the nation or its citizens. Amongst the international environmental conventions earlier listed that Nigeria ratified it is only the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act and the International Convention for the Safety of Life at Sea (Ratification and Enforcement) Act has been domesticated. Nigeria uses the transformational approach to domesticate treaties, which rejects

any international legal principles unless they have been explicitly domesticated or made reference to in a statute (Preston & Hanson, 2013), hence becomes a barrier to implementation to public participation in Nigeria Environmental Law Governance. Courts most frequently use the transformation technique when establishing the status of customary international law (i.e., law derived from treaties) at the domestic level (Preston & Hanson, 2013).

II. Judicial Barriers

The Nigerian Constitution (1999) contains provisions on environmental preservation in Chapter Two, referred as "Fundamental Objectives and Directives Principles of State Policy," which provides that states are responsible for safeguarding Nigeria's water, air, forests, and wildlife as well as improving the environment. However, Sections 6(6)(c) of the same constitution (1999) renders those provisions 'non-justiciable' by stripping the court of its authority to hear any case involving the enforceability of the entire Chapter 2 (comprising of section 20) of the Constitution, which covers environmental protection (Abdulkadir, 2014). This becomes a barrier to the 'access to justice' requirement provided by the Aarhus convention.

Furthermore, despite the ratification and domestication of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, in the *Ogoni land case* the African Charter's Articles 16 and 24 being included in Nigeria's implementing laws, the Commission's radical reading of the provisions had no appreciable formal effects in Nigeria (Adoga-Ikong et al., 2021). This is because the Nigerian Constitution does not specifically grant the general public the right to access environmental data kept by public agencies. None of the provisions under the constitution, including section 39(1), which states that one has the freedom to "receive and transmit ideas and information without interference," has been formally acknowledged or construed by a court as encompassing this right of access (Ehirim et al., 2022).

In Nigeria, it is structurally challenging to access environmental justice (Ezihe, 2021). For instance, in the case of *Archianga & Ors v. NNPC & 2 Ors.* (2021), the Federal High Court awarded N82,000,000,000 (Eighty Two Billion Naira), which is equivalent to \$199,513,382 US Dollars, as special and general damages for oil spillages that occurred in communities in Ibeno Local Government Area of Akwa Ibom State from 2000 to 2010. This decision came after nine years of delays in the trial court's ability to deliver justice (Ezihe, 2021). If the case ultimately goes to appeal courts in Nigeria, we hoped that they will uphold the aforementioned judgment as a corrective action to prevent other oil spills in Nigeria.

However, in the case of *Centre for Oil Pollution Watch v. NNPC* (2019), the Supreme Court specifically acknowledged the applicability of the environmental right in Article 24 of the African Charter in Nigeria and, for the first time, explicitly constitutionalized environmental rights and obligations through its liberal interpretation of Sections 20 and 33 of the Nigerian Constitution (Etemire, 2021). Although we are encouraged by the court's decision in *Centre for Oil Pollution Watch v. NNPC* (Adewunmi, 2021), we stress that a legal framework must be established in order to shield this crucial subject from the whims of the judicial system (Alatise, 2022).

III. Illiteracy and Poverty

It is challenging for members of communities, many of whom are uneducated, to completely get involved and contribute effectively to participation initiatives due to a lack of formal education, knowledge, and supporting resources (Akoh, 2011; Odemene, 2013). As a result, individuals frequently struggle to comprehend the reports' technical jargon and material. The low socioeconomic standard of living is a significant barrier to community involvement (Aloamaka et al., 2021). When a community's typical standard of living falls below average, its participation in any participatory process will be focused on obtaining food and other essentials for survival rather than sustainability (Adomokai & Sheate, 2004). This is one of the causes of the unreasonable demands and expectations that communities have of proponents.

IV. Disintegration of Communities

Cohen defined community as a group of people who share similar interests, moral principles, and a symbolic identity that sets them apart from other people (Cohen, 2013).

The problem with that description in Nigeria is that it would involve a number of communities made up of various ethnic groups, traditional leaders, languages, cultures, and values, as well as diverse interests (Nwapi, 2010). The Niger Delta region of Nigeria serves as a prime illustration of this. Isoko, Urhobo, Itsekiri, Ezon, and Anioma ethnic groups are represented in Delta State, one of the states in the Niger Delta, and they all speak distinct languages. These tribes are in conflict with one another, hold distinct values, and support various causes. This typically leads to conflict and animosity, delaying the resolution process and occasionally even to war.

To avoid disagreements and protracted engagement with the community, some supporters collaborate with the governments to boycott public participation (Akoh, 2011;

Hoben et al., 2012). On the participatory stakeholder engagement, this is prohibitive.

V. Weakness of the EIA Act

The EIA Act forbids governmental and commercial entities from carrying out or approving projects without taking into account how they may affect the environment (Obaji, 2022). The EIA Act in Nigeria is also problematic since it does not ensure that everyone has access to justice and an administrative review of the regulatory agency's judgments is not provided for and publicly offended individuals can only turn to the court for relief (Obaji, 2022). But doing this costs money and takes time and litigation occasionally offers insufficient remedies (Obaji, 2022).

CONCLUSION

This research had some limitations, which should be acknowledged. First, the scope of this research was restricted to public participation as a tool for environmental sustainability. In addition to this, the research was limited to Nigeria, which is still a developing country and faces numerous obstacles in terms of environmental sustainability. Additionally, there is little or no contribution from the stakeholders—people, civil liberty organizations, and the judiciary—in creating a sustainable environment in Nigeria, thereby increasing the burden on the government to enforce the same.

From the foregoing we conclude that the process of public participation in Nigeria is still developing and faces numerous obstacles, including an inconsistent legal environment and the need for a sustainable environment to support the country's expanding population. The existing legal framework needs to be reorganized and amended to include a comprehensive and inclusive processes to be able to satisfy international standards for effective public participation. This research examined some key provisions of the Aarhus Convention with respect to public access to environmental information, public participation in environmental decision-making processes, and access to environmental justice and discovered Nigeria is far from achieving a sustainable environment. Thus, the global significance and the potential of public participation to improve the sustainability of the environment in Nigeria are essential to advancing the status of Principle 10 of the Rio Declaration as an emergent customary international law. Hence, the Nigerian government must promote a sustainable environmental regime by motivating all facets of society to work toward a sustainable environmental governance system through public participation that is based on a set of well-defined principles, ground rules, and goals. Therefore,

promoting and implementing efficient public participation procedures is necessary in Nigeria to support socioeconomic growth and environmental management

To attain sustainable development through effective public participation in Nigeria, the following recommendations are hereby suggested.

1. The development of a feasible legislative framework that considers the tenets of international public participation policies, such as the Aarhus Convention's Directives on public involvement, public access to environmental information, and access to justice in environmental problems. The lay public and vulnerable groups should be extensively included in the decision-making processes. It should not only be a mere procedural requirement; it should be enforceable.
2. To comply with global best practices, Nigeria's EIA Act has to be repealed (Obaji, 2022). Beyond their economic benefits, new regulations must ensure that the environmental and social effects of development initiatives are taken into account as the environmental impact assessment process must respect the people's rights to information, participation, and justice (Obaji, 2022).
3. To improve access to environmental justice in Nigeria, judicial reforms are therefore required, such as the creation of a specialized environmental court (Nwaenyio, 2022; Ukponu, 2019). Also, for the courts to fulfil their constitutional obligations of constitutional interpretation, any provision of the Nigerian Constitution that is made non-justiciable should be expunged. As access to environmental justice may only be realistically achieved in Nigeria when there is ample opportunity for victims of environmental problems to obtain redress in law courts.
4. It is crucial to empower the populace by providing equitable opportunity to everyone, giving voice to the underprivileged and marginalized groups, and enabling communities to influence or bargain better conditions for themselves. Giving the populace authority over choices and resources that have an impact on their quality of life and environment is part of it. Additionally, it will be beneficial to change the facilitators and environmental administrative authorities' roles in participatory programs from manipulative agents to cooperative partners. This will significantly help to both stop current crises in the nation's oil-producing regions as well as prevent them in the future.
5. As seen in Nigeria, poverty drives people to prioritize economic growth over environmental preservation. Improvements in participation results will consequently

result from supporting the underprivileged and providing for their fundamental needs in rural communities. Sustainability should be emphasised instead of giving participation initiatives for survival methods top priority. Individuals should be able to participate fully in society, provide helpful suggestions, and work with their governments to better the process through community development.

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