www.ijarp.com ISSN 2456-9992 Page: 01-24

Research Article

International Journal Advanced Research Publications

Volume: 02
Issue: 11

THE ROLE OF THE JUDICIARY IN ENFORCING ENVIRONMENTAL RIGHTS IN NIGERIA: CHALLENGES, JURISPRUDENCE AND PROSPECTS.

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Article Received: 26 September 2026, Article Revised: 16 October 2026, Published on: 05 November 2026

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Doi: https://doi-doi.org/101555/ijarp.7456

ABSTRACT

Environmental degradation remains one of the most significant threats to human rights, sustainable development and socio-economic stability in Nigeria. Oil spills, gas flaring, deforestation, flooding, erosion, improper waste disposal and industrial pollution continue to affect human health, livelihoods, property and sustainable development. Despite an extensive statutory framework regulating environmental protection, the realization of environmental rights in Nigeria has continued to face considerable legal, institutional and political challenges. Within this context, the judiciary occupies a central position as the constitutional guardian of legality and the principal institution responsible for interpreting and enforcing environmental laws. This article critically examines the role of the Nigerian judiciary in enforcing environmental rights through constitutional interpretation, statutory enforcement and the application of international human rights norms. It analyzes the evolution of environmental rights under international and regional law, the Nigerian legal framework governing environmental protection and the contribution of courts in advancing environmental justice through landmark decisions. The article further identifies structural impediments including constitutional limitations, which continue to undermine effective environmental adjudication. Drawing on comparative jurisprudence from South Africa, Kenya, India, the United Kingdom and the Netherlands, the article argues that a more purposive and rights oriented judicial approach is essential for strengthening environmental governance in Nigeria. It concludes by recommending constitutional reform and specialized environmental courts amongst other measures for improving environmental justice and promoting sustainable development.

KEYWORDS: Environmental Rights; Judiciary; Environmental Justice; Sustainable Development; Climate Litigation.

INTRODUCTION

The quality of the environment has become one of the defining issues of contemporary legal scholarship and public governance across the globe. Increasing environmental degradation, climate change, biodiversity loss, deforestation, pollution and unsustainable exploitation of natural resources have generated profound implications for human rights and socio-economic development. The recognition that human survival and dignity depend upon a safe, healthy and sustainable environment has transformed environmental protection from a matter of governmental policy into an issue of legal obligation and human rights protection.

Nigeria presents a particularly compelling case for examining the relationship between environmental protection and judicial intervention. Although richly endowed with natural resources, especially petroleum, the country has experienced decades of severe environmental degradation arising from oil exploration, gas flaring, illegal mining, industrial waste disposal, deforestation and poor regulatory enforcement. While other environmental challenges include erosion, desertification, flooding and increasing climate-related disasters.

The legal response to these challenges has been mixed. Nigeria has enacted numerous environmental statutes and established regulatory institutions such as the National Environmental Standards and Regulations Enforcement Agency (NESREA), the National Oil Spill Detection and Response Agency (NOSDRA) and more recently introduced environmental obligations under the Petroleum Industry Act, 2021. Nevertheless, regulatory enforcement has frequently been criticized as weak, inconsistent and vulnerable to political and economic influence. Consequently, the burden of protecting environmental rights has increasingly shifted to the judiciary.

The Judiciary occupies a unique constitutional position within democratic governance. Beyond resolving disputes, courts shape legal doctrine, develop constitutional principles and ensure governmental accountability. In environmental matters, judicial intervention frequently represents the final avenue through which affected communities may obtain remedies against governmental agencies and multinational corporations responsible for environmental harm. Consequently, the effectiveness of environmental governance depends significantly upon the willingness of courts to interpret constitutional and statutory provisions purposively and consistently with international human rights standards.

Although the constitution of the Federal Republic of Nigeria 1999 places environmental protection among the Fundamental Objectives and Directive Principles of State Policy under section 20, its location within chapter II has generated persistent controversy concerning its enforceability especially with the provisions of Section 6(6)(c). Nigerian courts have however, increasingly adopted innovative interpretative approaches by linking environmental protection to the constitutionally guaranteed rights to life and dignity under Chapter IV, as well as to Article 24 of the African Charter on Human and Peoples' Rights, which guarantees every people the right to a satisfactory environment favorable to their development.

The increasing international recognition of environmental rights further strengthens the need for a progressive judicial approach. Courts across several jurisdictions have increasingly embraced innovative judicial remedies capable of addressing complex environmental disputes involving governments and multinational corporations. Against this background, this article critically evaluates the contribution of the Nigerian judiciary to the enforcement of environmental rights.

Environmental Rights: Conceptual, Theoretical and Legal Foundations

The Concept of Environmental Rights

Environmental rights may broadly be understood as legal entitlements relating to the quality of the environment necessary for human life, dignity, health and sustainable development. They have emerged as one of the most significant developments in modern public international law, constitutional law and human rights jurisprudence. Their emergence reflects the growing realization that the enjoyment of fundamental human rights depends largely on the existence of a clean, healthy and sustainable environment. Human life, dignity, health, food security, housing and economic development are inseparable from environmental quality. Consequently, environmental protection has gradually evolved from a purely regulatory concern into an enforceable human rights obligation[1].

Unlike traditional human rights, environmental rights possess both individual and collective dimensions. They protect the interests of individuals whose health or property may be affected by environmental degradation while simultaneously safeguarding the interest of communities, indigenous peoples and future generations. This dual character explains why

[1] Alan Boyle, 'Human Rights and the Environment: Where Next?' (2012) 23 *European Journal of International Law* 613

environmental rights are increasingly described as third-generation or solidarity rights, requiring collective action by governments, private actors and the international community[2].

Contemporary scholarship generally classifies environmental rights into substantive and procedural rights. Substantive environmental rights refer to the entitlement to enjoy an environment that is safe, clean, healthy and ecologically balanced. Procedural environmental rights, on the other hand, include access to environmental information, public participation in environmental decision-making and access to judicial or administrative remedies where environmental harm occurs[3]. These procedural guarantees have become indispensable mechanisms for ensuring environmental accountability and democratic governance.

The relationship between environmental rights and human rights has become increasingly evident in judicial decisions across the world. Courts now recognize that severe environmental degradation may violate rights to life, dignity, health, private life, housing, culture and property. Consequently, environmental litigation increasingly relies on existing constitutional and human rights guarantees rather than solely upon environmental statutes[4].

Theoretical Foundations of Environmental Rights

A. Human Rights Theory

Human rights theory provides the principal justification for environmental rights. The theory proceeds from the premise that every individual possesses inherent dignity which the law must protect. Since environmental degradation threatens human health, survival and dignity, the protection of the environment becomes an essential component of protecting human rights[5].

The United Nations Human Rights Council has consistently emphasized that environmental degradation undermines the enjoyment of internationally recognized human rights. The recognition of a clean, healthy and sustainable environment as a universal human right by the United Nations General Assembly in 2022 represents the culmination of this rights-based approach[6].

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[2] Karel Vasak, 'A 30-Year Struggle: The Sustained Efforts to Give Force of Law to the Universal Declaration of Human Rights' (UNESCO Courier, November 1977)

[3] Dinah Shelton, *Human Rights and the Environment* (Edward Elgar Publishing 2011) 5 - 8

[4] David R Boyd, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights and the Environment* (UBC Press 2012) 21 - 28

[5] John H Knox, *Report of the Independent Expert on Human Rights and the Environment* UN Doc A/HRC/22/43 (2013)

[6] United Nations General Assembly Resolution 76/300, *The Human Right to a Clean, Healthy and Sustainable Environment* (28 July 2022)

B. Sustainable Development Theory

Environmental rights are equally grounded in the principle of sustainable development. Popularized by the Brundtland Commission's report ***Our Common Future (1987),*** sustainable development requires present generations to satisfy their developmental needs without compromising the ability of future generations to satisfy theirs[7]. The principle rejects the historical perception that environmental protection and economic development are mutually exclusive. Instead, it promotes an integrated approach in which economic growth, environmental conservation and social justice operate simultaneously. For resource-dependent countries such as Nigeria, sustainable development provides an essential framework for balancing petroleum exploitation with environmental protection and community welfare.

C. Intergenerational Equity

Intergenerational equity has become one of the most influential theories underpinning environmental rights. Edith Brown Weiss argues that every generation holds the Earth's natural resources in trust for succeeding generations. Consequently, governments possess fiduciary obligations to preserve biodiversity, ecological integrity and natural resources for those yet unborn[8]. This theory has gained increasing judicial acceptance in environmental and climate change litigation worldwide. It reinforces the idea that environmental protection extends beyond immediate economic interests to encompass long-term ecological sustainability.

D. Public Trust Doctrine

The Public Trust Doctrine imposes upon governments the obligation to manage certain natural resources for the benefit of the public rather than private interests. Under this doctrine, resources such as rivers, forests, wetlands, coastlines and wildlife cannot be exploited in ways that permanently prejudice public welfare[9]. Although Nigerian courts have not fully developed this doctrine, aspects of it are reflected in judicial decisions emphasizing governmental responsibility for environmental protection.

[7] World Commission on Environment and Development, *Our Common Future* (Oxford University Press 1987) 43 - 46

[8] Edith Brown Weiss, *In Fairness to Future Generations* (Transnational Publishers 1989) 25 - 38

[9] Joseph L Sax, 'The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention' (1970) 68 *Michigan Law Review 471*

International Recognition of Environmental Rights

International environmental law has undergone remarkable transformation over the past five decades. The **Stockholm Declaration on the Human Environment (1972)** marked the first comprehensive international recognition that environmental quality is essential for human dignity and wellbeing. Principle 1 proclaimed that human beings possess a fundamental right to adequate conditions of life in an environment capable of supporting dignity and wellbeing[10]. Twenty years later, the **Rio Declaration on Environment and Development (1992)** significantly expanded environmental governance by emphasizing procedural environmental rights. Principle 10 recognized access to environmental information, public participation and effective judicial remedies as indispensable components of environmental protection[11]. The **Convention on Biological Diversity,** the **United Nations Framework Convention on Climate Change,** the **Paris Agreement** and numerous multilateral environmental agreements have further reinforced governmental obligations concerning environmental conservation and climate governance[12].

Perhaps the most significant recent development occurred on **28 July, 2022,** when the United Nations General Assembly adopted **Resolution 76/300,** formally recognizing the right to a clean, healthy and sustainable environment as a universal human right. Although not legally binding, the Resolution reflects overwhelming international consensus and is expected to influence domestic constitutional interpretation, environmental legislation and judicial reasoning across numerous jurisdictions[13].

Regional Protection of Environmental Rights

Regional human rights systems have played a particularly important role in transforming environmental protection into enforceable legal rights. Within Africa, **Article 24** of the **African Charter on Human and Peoples' Rights** provides that:

"All peoples shall have the right to a general satisfactory environment favourable to their development."[14]

This provision remains historically significant because it constitutes the first explicit recognition of environmental rights within a binding regional human rights treaty.

[10] United Nations, *Stockholm Declaration on the Human Environment* (1972) Principle 1
[11] United Nations, *Rio Declaration on Environment and Development* (1992) Principle 10
[12] Convention on Biological Diversity 1992; United Nations Framework Convention on Climate Change 1992; Paris Agreement 2015
[13] UNGA Resolution 76/300 (n 6)
[14] African Charter on Human and Peoples' Rights 1981, art 24

The landmark decision in ***Social and Economic Rights Action Centre (SERAC) and Another v Nigeria***[15] remains one of the most influential environmental rights decisions in Africa. The African Commission held that Nigeria violated Article 24 of the African Charter on Human and Peoples' Rights through its failure to regulate oil pollution in Ogoni land and protect local communities from environmental degradation caused by oil exploration. The commission further emphasized that governments owe obligations not merely to refrain from environmental harm but also to regulate private corporations and provide effective remedies for environmental violations.

Environmental Rights under the Nigerian Legal Framework

Environmental protection within Nigeria derives from constitutional provisions, statutes, judicial decisions and international obligations. Section 20 of the **Constitution of the Federal republic of Nigeria 1999 (as amended)** provides that

"The state shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria[16].

However, because Section 20 is in Chapter II of the Constitution, its enforceability is limited by Section 6(6)(c), which generally renders the Fundamental Objectives and Directive Principles of State Policy non-justiciable[17]. Despite these constitutional constraints, Nigerian courts have increasingly relied upon the **African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act** to provide enforceable protection for environmental rights. Decisions such as ***Gbemre v Shell Petroleum Development Company of Nigeria Ltd***[18] demonstrate that courts are prepared to interpret the constitutional rights to life and dignity consistently with Article 24 of the African Charter.

Environmental governance is further supported by legislation including the **National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2006,** the **Environmental Impact Assessment Act,** the **Harmful Waste (Special Criminal Provisions) Act** and the **Petroleum Industry Act 2021**[19]**.** These statutes collectively establish regulatory standards and mechanisms for environmental accountability. Nevertheless, effective implementation remains constrained by institutional weakness,

[15] (2001) AHRLR 60 (ACHPR)
[16] Constitution of the Federal Republic of Nigeria 1999 (as amended), s 20
[17] Ibid, s 6(6)(c)
[18] (2005) AHRLR 151 (NgHC)
[19] National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007; National Oil Spill Detection and Response Agency (Establishment) Act 2006; Environmental Impact Assessment Act, Cap E12, Laws of the Federation of Nigeria 2004; Harmful Waste (Special Criminal Provisions) Act, Cap H1, LFN 2004; Petroleum Industry Act 2021

inadequate funding, political influence, regulatory overlap and weak enforcement mechanisms[20].

The Role of the Judiciary in Enforcing Environmental Rights in Nigeria

The judiciary occupies a pivotal position in every constitutional democracy as the custodian of the rule of the law and the guardian of fundamental rights. Beyond its traditional role of dispute resolution, the judiciary serves as an important mechanism for ensuring governmental accountability, promoting constitutionalism and safeguarding the rights of individuals and communities against unlawful interference. In environmental governance, this responsibility assumes even greater significance because environmental degradation often results from the inability of the executive and legislative arms of government to balance developmental objectives with environmental protection[21].

In Nigeria, the significance of judicial intervention is heightened by the constitutional limitations surrounding environmental rights. Unlike countries such as South Africa and Kenya, whose Constitutions expressly guaranty the right to an environment that is not harmful to health or well-being, the Nigerian Constitution contains no directly enforceable environmental right. Section 20 of the Constitution merely imposes a constitutional obligation upon the state to protect and improve the environment, while Section 6(6)(c) limits judicial enforcement of the Directive Principles of State Policy[22]. Consequently, Nigerian courts have been compelled to adopt innovative interpretative approaches in order to ensure that environmental degradation does not escape judicial scrutiny.

Judicial protection of environmental rights in Nigeria has therefore developed through constitutional interpretation, statutory interpretation, reliance on international human rights instruments, judicial review of administrative action and the gradual liberalization of procedural rules governing environmental litigation. These judicial mechanisms have significantly influenced the evolution of environmental jurisprudence in Nigeria.

Constitutional Interpretation and Environmental Rights

Perhaps the greatest contribution of the Nigeran judiciary has been its willingness to interpret existing constitutional rights expansively in order to accommodate environmental concerns.

[20] Emmanuel Duruigbo, 'Litigating Oil Pollution in Nigeria: Legal Framework and Challenges' (2015) 9 *Journal of African Law* 1

[21] Ben Nwabueze, *The Judiciary in Constitutional Democracy* (Spectrum Books 2006) 57 - 65

[22] Constitution of the Federal Republic of Nigeria 1999 (as amended), ss 20 and 6(6)(c)

Although Chapter IV of the Constitution contains no express environmental rights, the courts have increasingly recognized that environmental degradation directly affects the enjoyment of the rights to life, human dignity, private property and in appropriate circumstances, the right to fair hearing where environmental decisions are taken without public participation[23].

The decision of the Federal High Court in ***Gbemre v Shell Petroleum Development Company Nigeria Ltd***[24] represents perhaps the clearest demonstration of this constitutional approach. The court held that continuous gas flaring violated the constitutional rights to life and dignity guaranteed under sections 33 and 34 of the Constitution and was inconsistent with Articles 4, 16 and 24 of the African Charter on Human and Peoples' Rights.

The significance of the decision lies not merely in its outcome but in its reasoning. The court rejected a narrow conception of the right to life and instead adopted a broader interpretation that encompasses the right to live in an environment capable of sustaining human existence. In doing so, the court aligned Nigerian constitutional jurisprudence with emerging international human rights standards.

Enforcement of Environmental Statutes

Another significant judicial function involves ensuring compliance with environmental legislation enacted by the National Assembly.

Nigeria possesses an extensive statutory framework regulating pollution control, environmental impact assessment, waste management, biodiversity conservation and petroleum operations. However, the effectiveness of these statutes depends largely upon judicial willingness to enforce statutory obligations against both public authorities and private corporations[25].

Courts have consistently held that governmental agencies exercising statutory powers must comply with principes of legality, procedural fairness and reasonableness. Administrative decisions made contrary to statutory requirements are liable to judicial review as was held in the case of ***Oronto Douglas v Shell Petroleum Development Company***[26]**.**

Similarly, multinational corporations engaged in petroleum exploration remain subject to statutory environmental obligations. Judicial enforcement therefore serves as an important mechanism for ensuring corporate accountability and discouraging environmental negligence.

[23] Constitution of the Federal Republic of Nigeria 1999 (as amended), Chapter IV
[24] (2005) AHRLR 151 (NgHC)
[25] National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007; Environmental Impact Assessment Act, Cap E12, Laws of the Federation of Nigeria 2004.
[26] (1999) 2 NWLR (Pt 591) 466

Application of the African Charter

One of the most remarkable developments in Nigerian environmental jurisprudence has been judicial reliance on the African Charter on Human and Peoples' Rights. Unlike many international treaties, the African Charter has been domesticated through the **African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act**[27], thereby forming part of Nigerian law.

The Supreme Court has repeatedly affirmed the enforceability of the Charter in Nigeria. consequently, Article 24, which guarantees every people the right to a satisfactory environment favorable to development, provides an independent legal basis for environmental litigation.

The influence of the African Charter became particularly evident following the decision of the African Commission in ***SERAC v Nigeria,***[28] where Nigeria was held internationally responsible for failing to regulate oil pollution in Ogoni land. Although delivered by a regional human rights body, the decision has profoundly influenced Nigerian judicial thinking regrading environmental rights and governmental accountability.

Expansion of Public Interest Litigation

Historically, one of the greatest obstacles to environmental litigation in Nigeria was the restrictive doctrine of **locus standi.** Traditional judicial practice required litigants to establish direct personal injury before instituting proceedings. Environmental degradation, however, frequently affects entire communities, future generations and diffuse public interests. Strict application of standing rules therefore prevented many legitimate environmental claims from reaching the courts.

This restrictive position began to change with the Supreme Court's decision in ***Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation,***[29] where the Court adopted a more liberal approach to standing in environmental litigation by recognizing that environmental protection constitutes a matter of public interest and that civil society organizations may institute proceedings where governmental inaction threatens environmental rights. The judgment significantly strengthened environmental accountability by expanding access to justice.

[27] African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9, Laws of the Federation of Nigeria 2004.
[28] (2001) AHRLR 60 (ACHPR).
[29] (2019) 5 NWLR (Pt 1666) 518 (SC)

The decision represents one of the most progressive developments in Nigerian environmental jurisprudence because it reflects contemporary international trends favoring public interest litigation in environmental matters.

Judicial Remedies in Environmental Litigation

The effectiveness of environmental adjudication depends not merely on the recognition of rights but also on the availability of effective remedies. Nigerian courts possess broad remedial powers capable of addressing environmental harm. These include declarations, injunctions, damages, compensation, judicial review orders and mandatory orders requiring public authorities to perform statutory duties[30].

Recent comparative jurisprudence further demonstrates that courts may issue structural remedies requiring governmental agencies to formulate environmental action plans, monitor compliance and submit periodic reports. Such innovative remedies have become increasingly common in climate litigation across several jurisdictions.

Although Nigerian courts have generally relied upon traditional remedies, future environmental litigation may require greater judicial willingness to adopt supervisory and restorative remedies capable of addressing continuing environmental harm.

Comparative Judicial Approaches to Environmental Rights: Lessons for Nigeria

Comparative judicial reasoning has contributed significantly to the recognition of environmental protection as an integral component of human rights and sustainable development[31]. Although Nigerian courts have made commendable progress in expanding environmental rights through purposive interpretation, useful lessons may be drawn from jurisdictions that have developed more robust environmental jurisprudence. This section examines judicial approaches in South Africa, India, Kenya, the United Kingdom and the Netherlands.

South Africa: Constitutional Protection of Environmental Rights

South Africa possesses one of the most progressive constitutional frameworks for environmental protection. Section 24 of the Constitution of the Republic of South Africa, 1996 provides that everyone has the right-

(a) To an environment that is not harmful to their health or well-being; and

[30] Chidi Odinkalu, 'Human Rights, Environmental Justice and the Nigerian Judiciary' (2018) 14 *Nigerian Journal of Public Law* 101.

[31] Vicki Jackson, *Constitutional Engagement in a Transnational Era* (Oxford University Press 2010) 67 - 74

(b) To have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures[32].

Unlike section 20 of the nigerian constitution, this provision is directly enforceable before the courts.

The Constitutional Court has consistently interpreted section 24 purposively. In ***Fuel Retailers Association of Southern Africa v Director-General, Environmental Management, Mpumalanga Province[33],*** the court held that sustainable development requires the integration of environmental protection with economic development and that public authorities must consider environmental consequences before approving development projects.

Similarly, in ***HTF Developers (Pty) Ltd v Minister of Environmental Affairs[34]***, the Court reaffirmed that environmental governance requires compliance with constitutional principles and statutory safeguards.

South African jurisprudence demonstrates that constitutional recognition of environmental rights enhances judicial protection, strengthens governmental accountability and provides clearer standards for environmental decision-making.

India: Judicial Activism and the Expansion of the Right to Life

India represents perhaps the most influential example of judicial activism in environmental law. The Indian Constitution contains specific provisions for environmental protection under the chapter of Directive Principles of State Policies and Fundamental duties. Article 48A declares that the state shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country. This directive requires the state not only to adopt a protectionist policy but also to provide for the improvement of polluted environment[35].

In several environmental cases, the courts have been guided by the language of Article 48A and interpreted it as imposing 'an obligation' on the government, including courts, to protect the environment. In the case of ***L. K. Koolwal v State of Rajasthan[36]***, a simple writ petition by citizens of Jaipur compelled the municipal authorities to provide adequate sanitation. The court observed that when every citizen owes a constitutional duty to protect the environment, the citizen must also be entitled to enlist the court's aid for enforcing that duty against the

[32] Constitution of the Republic of South Africa, 1996, s 24
[33] 2007 (6) SA 4 (CC)
[34](2006) ZACC 2
[35] *Constitution of India and Environment* uploaded by Saurabh Kumar on 15th October, 2022, scribd.com/document/600716068/Constitution-of-India-and-Environment, 1 (accessed 14th September, 2026)
[36] 1986 Supreme (Raj) 224

recalcitrant state agencies. The court gave the administration six months to clean up the entire city and dismissed the plea of lack of staff or funds.

The Indian Supreme Court has also interpreted **Article 21,** which guarantees the right to life, as including the right to a clean and healthy environment[37]. In ***Subhash Kumar v State of Bihar[38],*** the Court held that the right to life includes the right to enjoy pollution-free water and air. This decision transformed environmental protection into an enforceable constitutional right. Similarly in ***M. C. Mehta v Union of India[39]*** the Supreme Court ordered the closure of polluting industries, imposed liability for environmental harm and developed the doctrines of absolute liability, sustainable development and the precautionary principle.

Indian courts have also liberalized the rules of standing by recognizing public interest litigation (PIL), thereby allowing individuals and organizations to institute environmental proceedings on behalf of affected communities. It should be noted that India has established the National Green Tribunal (NGT) to strengthen its environmental governance framework. A key feature of the NGT is its exclusive jurisdiction over cases related to environmental protection, natural resource conservation, and pollution control. It provides faster solutions to environmental disputes and ensures that legal proceedings are not prolonged unnecessarily. The tribunal is composed of judicial officers and environmental experts, which enhances the quality of decision-making by incorporating scientific and legal expertise[40]. By providing a less formal and cost-effective mechanism for resolving environmental disputes, the tribunal facilitates alternative dispute resolution, which is particularly important for marginalized communities that may lack the financial resources to engage in prolonged litigation.

Kenya: Constitutional Environmental Rights

The Constitution of Kenya 2010 expressly guarantees environmental rights under **Article 42,** which provides that every person has the right to a clean and healthy environment[41]. **Article 70** further permits any person to institute proceedings where environmental rights are threatened without the necessity of proving personal loss or injury.

In ***Joseph Leboo v Director Kenya Forest Service[42],*** the High Court affirmed that environmental protection is a constitutional obligation owed to present and future

[37] Constitution of India 1950, art 21
[38] 1991 SC 420
[39] (1987) 1 SCC 395
[40] K T Ibia, M A Otuko and D B Antia, 'Judicial Enforcements of Environmental Justice in Nigeria: Comparative Insights from India and South Africa', (2026) 11(2) *Journal of Law and Global Policy* 158
[41] Constitution of Kenya 2010, arts 42 and 70
[42] (2013) eKLR

generations. Kenyan courts have consistently adopted a liberal approach to standing and environmental remedies.

The United Kingdom: Corporate Environmental Accountability

The United Kingdom has become increasingly important in environmental litigation involving multinational corporations operating in developing countries. In ***Vedanta resources Plc v Lungowe***[43]**,** the UK Supreme Court held that a parent company may owe a duty of care for environmental damage caused by its foreign subsidiary where it exercises significant control over the subsidiary's operations.

Similarly, ***Okpabi v Royal Dutch Shell Plc***[44] allowed Nigerian communities to pursue claims against Shell's parent company in England. The Court recognized that corporate groups cannot automatically avoid responsibility for environmental harm caused by subsidiaries.

These decisions have significantly expanded corporate accountability and have influenced transnational environmental litigation.

The Netherlands: Climate Change Litigation

Dutch courts have become global leaders in climate litigation. In ***Urgenda Foundation v State of the Netherlands***[45]**,** the Supreme Court held that the Dutch Government had a legal obligation to reduce greenhouse gas emissions in order to protect the rights to life and private life under the European Convention on Human Rights.

Similarly, ***Milieudefensie v Royal Dutch Shell Plc***[46] required Shell to reduce its carbon emissions significantly, recognizing that private corporations also bear responsibilities regarding climate change.

These decisions demonstrate that courts can play an active role in promoting climate governance without usurping legislative or executive functions.

Critical Comparative Assessment

A comparative examination of these jurisdictions reveals several common themes.

First, environmental rights receive stronger judicial protection where they are expressly recognized in constitutional or statutory provisions, as demonstrated by South Africa and Kenya.

[43] (2019) UKSC 20
[44] (2021) UKSC 3
[45] (2019) ECLI:NL:HR:2019:2007
[46] District Court, C/09/571932/HA ZA 19-379 (26 May 2021)

Secondly, judicial activism has proved instrumental in developing environmental jurisprudence where constitutional provisions are limited, as illustrated by India.

Also, courts increasingly recognize that multinational corporations owe environmental responsibilities extending beyond national boundaries, as demonstrated by decisions in the United Kingdom and the Netherlands.

Finally, modern environmental adjudication increasingly embraces principles such as sustainable development, intergenerational equity, the precautionary principle and public participation.

Challenges Facing the Nigerian Judiciary in the Enforcement of Environmental Rights

The challenges confronting environmental adjudication in Nigeria are multidimensional and they include:

Constitutional Non-Justiciability of Environmental Rights

The most fundamental limitation is the absence of an expressly guaranteed and directly enforceable constitutional right to a healthy environment. Section 20 of the Constitution which provides for the protection of the environment is contained in Chapter II, which deals with the Fundamental Objectives and Directive Principles of State Policy. Section 6(6)(c) of the Constitution consequently presents a significant obstacle to direct judicial enforcement of section 20. The judiciary has attempted to mitigate this limitation through the interpretation of Chapter IV rights. Nevertheless, reliance on derivative rights creates uncertainty. Not every environmental injury will necessarily satisfy the legal requirements for establishing violation of the right to life or dignity.

Procedural Barriers and Locus Standi

Access to justice constitutes a fundamental component of environmental rights. However, traditional procedural rules have historically created barriers for environmental litigants. Environmental damage frequently affects large populations rather than a single identifiable individual. Requiring each affected person to demonstrate a distinct personal injury may therefore make effective environmental litigation practically impossible. The Supreme Court's decision in ***Centre for Oil Pollution Watch v NNPC***[47] represents an important response to this difficulty. By adopting a more liberal approach to standing, the Court opened the possibility of public interest environmental litigation. Nevertheless, the development remains incomplete. The cost of litigation, procedural complexity and the evidential requirements associated with environmental claims continue to restrict access to justice.

[47] (2019) 5 NWLR (Pt 1666) 518 (SC)

Delay in Environmental Litigation

Judicial delay is another significant challenge. Environmental disputes often involve extensive documentary evidence, scientific investigations, expert testimony and numerous parties. Where such cases remain unresolved for several years, the environmental damage may continue throughout the period of litigation. Delay is particularly problematic in environmental disputes because environmental harm may be irreversible. The principle that justice delayed is justice denied therefore has particular significance in environmental litigation. Courts must develop procedures capable of prioritizing urgent environmental cases and preventing continuing environmental harm while litigation is pending.

Scientific and Technical Complexity

Environmental litigation frequently requires scientific and technical evidence concerning pollution levels, causation, ecological damage, toxicology, climate change and remediation. Judges are trained primarily in law and may not possess specialized scientific expertise. Consequently, environmental disputes may become dependent on competing expert witnesses, making the determination of causation particularly difficult. This problem is especially evident in cases involving oil pollution where a claimant may be required to establish the source of pollution, the causal relationship between the defendant's activities and the environmental damage, the extent of contamination and the appropriate remedial measures. The complexity of scientific evidence may place vulnerable communities at a significant disadvantage when litigating against corporations with substantial financial resources and access to technical experts.

Weak Enforcement of Judicial Decisions

One of the most serious challenges to environmental justice is the gap between judicial pronouncements and actual implementation. A court may issue a declaration or injunction protecting an environmental right but the practical value of that judgment depends on compliance by government agencies and corporate defendants. The experience following Gbemre's case illustrates the problem. Although the Federal High Court made a significant pronouncement concerning gas flaring, the broader problem of gas flaring did not immediately disappear[48]. The continued difficulty in translating judicial decisions into practical environmental improvement demonstrates that judicial intervention cannot operate effectively in isolation from regulatory and executive institutions. Judicial independence must

[48] *Gbemre v Shell Petroleum Development Company Nigeria Ltd* (2005) AHRLR 151 (NgHC)

therefore be accompanied by effective mechanisms for monitoring and enforcing environmental judgments.

Institutional Weakness and Regulatory Overlap

Nigeria's environmental governance framework involves numerous institutions with overlapping or complementary responsibilities. These include NESREA, NOSDRA, the Federal Ministry of Environment, State environmental agencies and institutions responsible for petroleum regulation. Although institutional specialization may improve governance, overlapping mandates can also produce uncertainty concerning regulatory responsibility and enforcement. Weak institutional capacity, inadequate funding and insufficient technical resources further undermine regulatory effectiveness. Where regulatory agencies fail to monitor environmental compliance adequately, affected communities are compelled to rely on litigation as a substitute for effective administrative regulation.

Political and Economic Influences

Environmental disputes in Nigeria frequently involve powerful economic interests, particularly in the petroleum sector. The relationship between environmental protection and petroleum revenue creates a difficult governance dilemma. Government has a legitimate interest in exploiting natural resources for economic development. At the same time, it has constitutional and statutory obligations to protect communities and the environment. The judiciary must therefore balance competing interests without allowing economic considerations to undermine fundamental rights. Judicial independence becomes particularly important where environmental litigation involves government agencies or corporations with significant economic and political influence.

Inequality between Communities and Corporations

Environmental litigation often involves a significant imbalance between the resources available to affected communities and those available to multinational corporations. Corporations may employ teams of lawyers, environmental consultants, scientists and public relations specialists, whereas affected communities may struggle to obtain basic legal representation and scientific evidence. This inequality has implications for the principle of equality before the law. Formal access to courts does not necessarily translate into substantive access to justice especially in environmental matters.

Limitations of Traditional Judicial Remedies

Traditional judicial remedies may be inadequate to address complex environmental harm. Damages may compensate an individual for economic loss but may not restore a damaged ecosystem. Similarly, a conventional injunction may prohibit a particular activity without addressing the broader ecological consequences of past pollution. Courts may increasingly need to consider remedies such as environmental restoration orders, mandatory compliance programs, independent monitoring and continuing judicial supervision. Such remedies would enable courts to address the continuing nature of environmental harm rather than merely compensating for past injury.

Judicial Activism and Judicial Restraint

A further challenge concerns the appropriate limits of judicial intervention. Environmental litigation often requires courts to make decisions with significant policy implications. Questions concerning energy policy, industrial development, climate targets and resource exploitation may involve complex economic and political considerations. Judicial activism can promote environmental rights where legislative and executive institution have failed to act. However, excessive judicial intervention may raise concerns about separation of powers and institutional competence. Nigerian courts should adopt a principled approach in which judicial intervention is strongest where clear legal rights have been violated, statutory obligations have been ignored or governmental action is manifestly unreasonable or unlawful.

Emerging trends in Environmental Adjudication in Nigeria

Environmental adjudication in Nigeria is gradually moving beyond traditional disputes concerning oil pollution, land contamination and regulatory compliance. Contemporary environmental litigation increasingly involves climate change, corporate responsibility, public interest litigation, sustainable development, intergenerational equity and the constitutionalization of environmental protection. These developments have the potential to significantly reshape the role of Nigerian courts in the coming years.

Climate Change Litigation

Climate change represents one of the most important emerging areas of environmental adjudication. Nigeria is particularly vulnerable to the effects of climate change, including flooding, coastal erosion, desertification, rising temperatures and changing rainfall patterns. These effects have significant implications for food security, housing, health, livelihoods and access to natural resources. Although climate litigation remains relatively underdeveloped in Nigeria compared with jurisdictions such as the Netherlands, Germany, the United Kingdom

and India, the legal foundations for future climate litigation already exist. The Nigerian constitution's protection of life and dignity, section 20's environmental objective, environmental legislation and Nigeria's international climate obligations may provide potential legal basis for future claims.

The Paris Agreement is particularly significant because Nigeria is a party to it and has adopted nationally determined contributions aimed at reducing greenhouse gas emissions and improving climate resilience[49]. Future litigation may therefore involve challenges to governmental failure to implement climate policies, corporate greenhouse gas emissions, inadequate environmental impact assessments and projects that substantially contribute to climate-related risks.

Corporate Environmental Accountability

The responsibility of corporations for environmental degradation has become increasingly important. Historically, environmental litigation in Nigeria has frequently focused on the immediate operating company responsible for petroleum activities. However, modern corporate structures often involve parent companies incorporated in foreign jurisdictions and subsidiaries operating within Nigeria. The United Kingdom Supreme Court decisions in ***Vedanta Resources Plc v Lungowe***[50] and ***Okpabi v Royal Dutch Shell Plc***[51] demonstrate the potential for parent companies to face proceedings concerning environmental harm caused by their subsidiaries. These decisions are particularly relevant to Nigeria because many major environmental disputes involve multinational corporations operating through complex corporate structures.

Nigerian courts may increasingly be required to determine whether corporate groups should be treated as entirely separate legal entities for environmental liability purposes or whether circumstances exist in which parent companies should bear responsibility for environmental risks arising from their supervision, policies or operational control.

Public Interest Litigation

Public interest litigation is another important emerging trend. The Supreme Court's decision in ***Centre for Oil Pollution Watch v NNPC***[52] represents an important step towards a more accessible environmental justice system. By relaxing traditional standing requirements, the

[49] Paris Agreement 2015, arts 2 and 4
[50] (2019) UKSC 20
[51] (2021) UKSC 3
[52] (2019) 5 NWLR (Pt 1666) 518 (SC)

Court recognized that environmental protection may involve interests extending beyond the immediate parties to litigation.

Intergenerational Equity

Environmental adjudication is increasingly influenced by the principle of intergenerational equity. The principle recognizes that present generations have obligations to future generations in the management of environmental resources. The principle is particularly relevant to Nigeria because the exploitation of petroleum and other natural resources creates environmental consequences extending beyond the present generation. Courts may therefore increasingly be required to consider whether governmental and corporate activities impose disproportionate environmental burdens upon future generations.

Environmental Constitutionalism

Environmental constitutionalism refers to the incorporation of environmental principles and rights into constitutional law. The global trend towards environmental constitutionalism is significant for Nigeria. More than one hundred national constitutions now contain some form of environmental protection provision[53]. South Africa and Kenya provide particularly relevant examples because their constitutions expressly recognize enforceable environmental rights.

Environmental Justice and Vulnerable Communities

Environmental adjudication is increasingly concerned with environmental justice. Environmental burdens are often disproportionately imposed upon communities with limited political and economic power. The Niger Delta provides a particularly important illustration. Communities that depend heavily on land, rivers and forests for their livelihoods may bear the environmental costs of petroleum exploitation while receiving comparatively limited benefits from the industry.

Environmental justice therefore requires courts to consider not only whether an environmental regulation has been technically complied with but also whether environmental decision-making has fairly distributed environmental risks and benefits. This approach is consistent with the broader human rights principle of equality and the need to protect vulnerable communities.

Alternative Dispute Resolution and Environmental Claims

Traditional litigation is not always the most efficient method for resolving environmental disputes. Environmental conflicts may involve continuing relationships between

[53] David R Boyd, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights and the Environment* (UBC Press 2012)

communities, corporations and governmental agencies. Alternative dispute resolution mechanisms, including mediation and negotiated settlements, may provide more flexible solutions. However, environmental disputes involving violations of fundamental rights require careful consideration. The judiciary can play an important supervisory role by ensuring that environmental settlements are consistent with statutory requirements and public interest considerations.

The Future Role of the Nigerian Judiciary

The emerging trends demonstrate that the Nigerian judiciary is likely to assume an increasingly important role in environmental governance. Future environmental cases may require courts to address questions concerning climate change and governmental obligations, corporate greenhouse gas emissions, environmental damage caused by multinational corporations, rights of future generations, Biodiversity protection, environmental impact assessments, access to environmental information, community participation, environmental restoration and corporate responsibility for environmental remediation. The judiciary will therefore need to develop sufficient environmental expertise and adopt procedures capable of addressing technically complex disputes.

Recommendations

1. Constitutional Recognition of Environmental Rights

The Constitution should be amended to expressly recognize the right to a clean, healthy and sustainable environment as a fundamental and enforceable right. The current formulation of section 20 should be strengthened by moving environmental protection from the non-justiciable provisions of Chapter II into Chapter IV or by creating a separate enforceable constitutional environmental right.

2. Establishment of Specialized Environmental Courts

Nigeria should consider establishing specialized environmental courts or dedicated environmental divisions within the Federal High Court and relevant State High Courts. Specialized courts would allow judges to develop expertise in environmental law and handle technically complex disputes more efficiently and adopt simplified procedures and expedited hearing mechanisms for urgent environmental matters.

3. Strengthening Public Interest Litigation

The liberal approach to standing adopted in ***Centre for Oil Pollution Watch v NNPC*** should be strengthened through legislative and procedural reforms. Environmental organizations and affected communities should be permitted to institute proceedings where substantial

environmental harm threatens public interests, even where individual economic loss cannot easily be demonstrated.

4. Strengthening Regulatory Institutions

Environmental regulatory agencies should be adequately funded, technically equipped and institutionally independent. Regulatory overlap should be minimized and responsibilities clearly defined. Agencies should also be required to publish environmental monitoring data and enforcement decisions to promote transparency.

5. Effective Enforcement of Environmental Judgments

Mechanisms should be established to monitor compliance with environmental judgments. Courts should be empowered, where appropriate, to issue continuing orders requiring defendants or public authorities to submit periodic compliance reports. Failure to comply with environmental judgments should attract meaningful sanctions.

6. Stronger Corporate Accountability

Legislation should strengthen corporate responsibility for environmental damage and require companies engaged in environmentally hazardous activities to maintain adequate financial resources for remediation. Parent companies should not be permitted to evade responsibility through complex corporate structures where they exercise substantial control over environmental policies and operations.

7. Development of Climate Litigation Frameworks

Nigeria should develop a clearer legal framework addressing climate change litigation. The judiciary should be prepared to apply constitutional rights, environmental legislation and international climate obligations when adjudicating disputes concerning climate-related harm.

CONCLUSION

The judiciary has played a significant role in the development of environmental rights in Nigeria. Despite the absence of an expressly enforceable constitutional right to a healthy environment, Nigerian courts have gradually expanded environmental protection through purposive constitutional interpretation, statutory enforcement, public interest litigation and reliance on the African Charter on Human and Peoples' Rights.

The enforcement of environmental rights must therefore be understood as a shared constitutional responsibility. The legislature must establish clear and enforceable environmental standards; regulatory agencies must implement those standards effectively; corporations must comply with environmental obligations; communities must have meaningful access to information and participation; and the judiciary must provide

independent oversight and effective remedies. Ultimately, the most significant reform would be the express constitutional recognition of the right to a clean, healthy and sustainable environment.

The judiciary's greatest contribution lies in ensuring that governmental authorities, regulatory agencies and corporate actors remain subject to the rule of law. A strong, independent and environmentally informed judiciary, supported by effective institutions and enforceable environmental rights, is therefore indispensable to achieving environmental justice and sustainable development in Nigeria.

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