

The Justiciability Of Environmental Rights As A Sustainable Solution To Environmental Challenges In Nigeria

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Abstract

This is about Nigeria's multifaceted environmental crisis and justifying that the judicial enforceability of environmental rights constitutes a sustainable pathway toward meaningful remediation and governance reforms needed. Drawing on published books and scholarly articles consulted both in libraries and online, the study interrogates the persistent degradation occasioned by oil pollution, gas flaring, deforestation, desertification, recurrent flooding, and urban contamination across the country's diverse ecological zones. It attributes these harms to weak regulatory enforcement, policy driven, rather than rights based environmental governance, regulatory capture, and limited access to justice, with the Niger Delta serving as the most acute illustration of ecological devastation. Despite an array of statutes and institutions, environmental harm continues largely unchecked, threatening public health, food security, biodiversity, and livelihoods. This paper advances the view that making environmental rights justiciable would transform environmental protection from a discretionary administrative concern into an enforceable human right closely connected to the rights to life, health, dignity, and livelihood. Judicialization of environmental protection would expand the principle of locus stands as it relates to environmental litigation, strengthen corporate and governmental accountability, and enable courts to grant effective remedies and deterrent sanctions. In contexts where administrative mechanisms have failed, the courts can therefore provide an avenue for vindicating community interests, enhancing environmental justice, and integrating sustainability into Nigeria's legal order. The paper concludes that the rights based, judicially enforceable framework is not merely doctrinally desirable but normatively imperative for advancing sustainable development and the rule of law in Nigeria.

Keywords: Nigeria, Environmental right, challenges, sustainable solution.

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I. Introduction

Nigeria is confronted with profound and interconnected environmental challenges that cut across its ecological zones and socio-economic sectors. Pervasive oil pollution arising from frequent spills, pipeline vandalism, and illegal refining, alongside persistent gas flaring, has severely degraded land, water, and air, particularly in the Niger Delta¹. Beyond the oil producing regions, rapid deforestation, desertification in the northern belt, recurrent flooding linked to climate change, and mounting urban pollution from unregulated industrial activity, waste mismanagement, and vehicular emissions have combined to threaten public health, food security, biodiversity, and livelihoods nationwide². These challenges are intensified by rapid population growth, weak governance structures, and a development model heavily dependent on extractive and carbon-intensive industries³. Despite the existence of numerous environmental statutes and regulatory agencies, environmental

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¹ S.A. Edun, T.K. Olaniyi, and K. Lawani, "A Systems Thinking Approach to Validate the Dynamics of Environmental Degradation Issues: Evidence from the Nigerian Oil and Gas Industry" 2023, *International Journal of Sustainable Energy Development (IJSED)*, Vol. 11, Issue 1, Pp 544 to 553.

² I.M. Azare, M.S. Abdullahi, A.A. Adebayo, I.J. Dantata, and T Duala, "Deforestation, desert encroachment, climate change and agricultural production in the Sudano-Sahelian Region of Nigeria", 2020, *Journal of Applied Sciences and Environmental Management*, Vol. 24, No. 1, DOI <https://doi.org/10.4314/jasem.v24i1.18>.

³ Amaka OBIORAH, Okeke Gerald Ndubuisi, Sony Emeka Ali, Ugah Theophilus Aku, Omatseyione Nesiana, Cletus Onyemhese Agbakhamen, and Sulaiman Abubakar Gumi "Balancing Human Needs and Environmental

degradation in Nigeria continues largely unabated, revealing deep structural deficiencies in enforcement and accountability⁴.

Environmental governance has been predominantly administrative and policy driven, often characterized by regulatory capture, political interference, and limited access to justice for affected communities⁵. The result has been widespread impunity for environmental harm, with severe consequences including rising respiratory illnesses, contaminated water sources, soil infertility, ecosystem collapse, and the erosion of traditional means of livelihood. Nowhere are these failures more visible than in the Niger Delta, where decades of oil exploitation have produced enduring ecological damage and social marginalization, exposing the limits of non-binding environmental obligations⁶. This paper introduces the argument that the justiciability of environmental rights offers a sustainable and transformative solution to Nigeria's environmental crisis. By adopting a rights based and judicially enforceable framework, environmental protection is elevated from a discretionary policy objective to a matter of fundamental human rights, closely linked to the rights to life, health, dignity, and livelihood. Justiciability empowers individuals and communities to seek judicial redress, broadens the principle of locus standi, strengthens corporate accountability beyond nominal fines, and enables courts to impose meaningful remedies and deterrent sanctions. In a context where regulatory mechanisms have proven inadequate, the judicial enforcement of environmental rights provides a critical pathway for addressing environmental harm, protecting vulnerable populations, and aligning environmental governance with sustainable development and the rule of law in Nigeria.

II. Environmental Degradation And The Search For Legal Solutions In Nigeria

Nigeria is confronted with profound and persistent environmental degradation arising from decades of unsustainable resource exploitation, rapid urbanization, weak regulatory enforcement, and development policies that have historically prioritized economic growth over ecological integrity⁷. The most emblematic manifestation of this crisis is found in the Niger Delta, where oil exploration and production have resulted in extensive oil spills, gas flaring, deforestation, water contamination, and the destruction of livelihoods dependent on land and aquatic ecosystems⁸. These environmental harms are not merely ecological in nature; they translate directly into violations of fundamental human interests, including health, food security, housing, and human dignity, thereby situating environmental degradation squarely within the discourse of human rights and social justice⁹.

Despite the existence of a broad range of environmental statutes and regulatory institutions, Nigeria's legal response to environmental degradation has largely proven inadequate. A central challenge lies in the constitutional framework itself, particularly the placement of environmental protection under Chapter II of the 1999 Constitution¹⁰, which renders the state's environmental obligations non-justiciable. This constitutional limitation has historically constrained judicial intervention and weakened accountability, allowing environmental harm especially by powerful state and corporate actors to persist with minimal legal consequences. Scholarly analyses and judicial experience demonstrate that statutory remedies alone, without enforceable rights and effective access to justice, have been insufficient to curb environmental abuses or provide redress to affected communities¹¹. Against this backdrop, the search for effective legal solutions has increasingly turned toward the

Sustainability: Challenges and Opportunities in Natural Resource Management", 2025, International Journal of Innovative Finance and Economics Research, Vol. 13, No. 2, Pp 281 to 295,

⁴ Adebola Ogunba, "An Appraisal of the Evolution of Environmental Legislation in Nigeria", 2016, Vermont Law Review, Vol. 40, p 673 to 694

⁵ Maria Carmen Lemos, Arun Agrawal, "Environmental Governance", 2006, Annu. Rev. Environ. Resour, Vol. 31, Pp 297 to 325.

⁶ Ibidapo-Obe, A., "Environmental Protection in Nigeria: The Limits of the Law", 1993, Journal of Environmental Law, p17.

⁷ Isife, Chima Theresa, "Environmental Problems in Nigeria: A Review", 2012, Sustainable Human Development Review, Vol. 4, Nos. 1&2, Pp 12 to 38.

⁸ Amnesty International, *Petroleum, Pollution and Poverty in the Niger Delta* (2009). Details oil spills, gas flaring, contaminated water sources, loss of agricultural and fishing livelihoods, and regulatory failure.

⁹ Akpan David, "Environmental Pollution: A Violation of Human Rights", 2024, <https://papers.ssrn.com/sol3/Delivery.cfm/4954250.pdf?abstractid=4954250&mirid=1>.

¹⁰ As amended

¹¹ In the case of Attorney-General of Ondo State v Attorney-General of the Federation (2002) 9 NWLR (Pt 772) 222 (SC). The Supreme Court reaffirmed the non-justiciability of Chapter II, illustrating the structural limits placed on judicial intervention. While in SERAC & Another v Nigeria (2001) AHRLR 60 (ACHPR 2001). The African Commission implicitly criticized Nigeria's constitutional framework by finding environmental harm persisted due to lack of effective domestic remedies against state and corporate actors.

justiciability of environmental rights as a viable pathway for addressing Nigeria's environmental crisis. Influenced by developments in international environmental law, human rights law, and regional instruments such as the African Charter on Human and Peoples' Rights, Nigerian courts and litigants have begun to explore rights based and judicially enforceable approaches to environmental protection.

III. Overview Of Nigeria's Environmental Challenges, Oil Pollution, Gas Flaring, Deforestation, Climate Vulnerability, Urban Pollution

Nigeria's environmental challenges are multidimensional, geographically widespread, and deeply intertwined with the country's political economy, development trajectory, and governance structures. As Africa's most populous nation and one of its largest economies, Nigeria faces intense pressure on its natural environment arising from extractive industries, rapid population growth, infrastructural deficits, and weak environmental regulation.¹² While environmental degradation manifests differently across regions, a common pattern emerges, the prioritization of short-term economic gains over long-term ecological sustainability, resulting in cumulative harm to ecosystems, public health, and socio-economic stability nationwide.¹³ Oil pollution remains the most internationally visible environmental challenge, particularly in the Niger Delta, where decades of crude oil exploration and production have caused extensive contamination of land, rivers, wetlands, and groundwater. Frequent oil spills, whether from equipment failure, corrosion, sabotage, or illegal refining, have destroyed farmlands and fisheries, undermining traditional livelihoods and deepening poverty. Beyond its regional concentration, oil pollution has national implications, it fuels social unrest, weakens food security, strains public health systems, and exposes the failure of regulatory oversight in a sector that is central to Nigeria's economy and state revenue.¹⁴ Closely connected to oil pollution is the persistent practice of gas flaring, which Nigeria has struggled to eliminate despite decades of policy commitments and statutory prohibitions. Gas flaring contributes significantly to air pollution, greenhouse gas emissions, acid rain, and climate change, while exposing nearby communities to respiratory diseases and environmental toxicity¹⁵. Although flaring is most prevalent in oil producing regions, its climatic and atmospheric consequences transcend local boundaries, exacerbating national climate vulnerability and undermining Nigeria's international commitments under global climate change regimes¹⁶. Deforestation represents another major environmental challenge, affecting both southern rainforest zones and northern savannah regions. Driven by logging, agricultural expansion, fuel wood dependence, infrastructure development, and urban sprawl, Nigeria has one of the highest deforestation rates in the world. The loss of forest cover accelerates biodiversity loss, disrupts water cycles, increases soil erosion, and contributes to desertification in the northern regions. These ecological changes intensify farmer, herder conflicts, reduce agricultural productivity, and heighten food insecurity, illustrating how environmental degradation intersects with national security and socio-economic cohesion¹⁷. In urban centers across Nigeria, environmental degradation takes the form of severe air, water, and land pollution arising from unregulated industrial activities, poor waste management, vehicular emissions, and inadequate urban planning¹⁸. Cities such as Lagos, Port Harcourt, Onitsha, Aba, and Kano experience chronic air pollution, flooding, and sanitation crises, disproportionately affecting low income populations. When viewed alongside Nigeria's broader climate vulnerability, manifested in coastal erosion, flooding, desert encroachment, and extreme weather events, it becomes evident that environmental

¹² World Bank, Nigeria: Country Environmental Analysis (World Bank, 2006). Identifies environmental degradation as nationwide and structurally linked to Nigeria's political economy, extractive industries, population growth, and governance deficits.

¹³ Ibid

¹⁴ United Nations Environment Programme (UNEP), Environmental Assessment of Ogoniland, 2011, provides conclusive scientific evidence of widespread contamination of land, surface water, wetlands, and groundwater resulting from decades of oil exploration and spills.

¹⁵ World Bank Information on the adverse effects of particulate matter, suggests that gas flaring from Bayelsa alone, would likely cause on a yearly basis, 49 premature deaths, 4960 respiratory illness among children and 120 asthma attacks

¹⁶ Wami-Amadi, Chisom Faith, "The Impact of Air Borne Toxins from Gas Flaring on Cardiopulmonary and Other Systemic Functions", 2025, Scholars International Journal of Anatomy and Physiology, Pp 12 to 28.

¹⁷ Food and Agriculture Organization of the United Nations (FAO), *Global Forest Resources Assessment* (various editions, especially 2010, 2015, 2020). Consistently identifies Nigeria as having one of the highest deforestation rates globally, driven by agricultural expansion, logging, fuel wood dependence, and urbanization.

¹⁸ Adedeji Daramola, Eziyi O. Ibem, "Urban Environmental Problems in Nigeria: Implications for Sustainable Development", 2010, Journal of Sustainable Development in Africa, Vol. 12, No.1, Clarion University of Pennsylvania, Clarion, Pennsylvania, Pp 124 to 145

challenges in Nigeria are systemic rather than isolated¹⁹. Addressing them therefore requires an integrated national perspective that recognizes environmental protection as a legal, developmental, and human rights imperative rather than a peripheral policy concern.

IV. Rationale For Adopting A Rights Based And Judicially Enforceable Approach

The persistence and scale of environmental degradation in Nigeria, particularly oil pollution, gas flaring, deforestation, flooding, and climate induced vulnerabilities, demonstrate the inadequacy of policy driven and administrative approaches to environmental protection. Despite an elaborate network of statutes, regulatory agencies, and policy frameworks, environmental harm has continued largely unabated, especially in resource rich but socio-economically marginalized regions such as the Niger Delta. This systemic failure of policies, underscores the need for a paradigm shift from discretionary environmental governance to a rights based approach grounded in legal accountability. A rights based framework reframes environmental protection not as a matter of state benevolence or regulatory convenience, but as a matter of justice, entitlement, and enforceable obligation owed to individuals and communities²⁰. A central rationale for adopting a judicially enforceable environmental rights regime lies in the human rights character of environmental harm²¹. Environmental degradation in Nigeria directly impairs the enjoyment of fundamental rights such as the right to life, health, dignity, property, and livelihood. Oil spills that contaminate water sources, gas flaring that pollutes air and causes respiratory illnesses, and climate induced flooding that displaces communities are not abstract ecological problems, they are lived human rights violations²². A rights based approach recognizes this interdependence and provides a normative foundation for legal remedies, aligning with international human rights jurisprudence that increasingly treats environmental protection as indispensable to human dignity and survival²³. The argument for justiciability is particularly compelling in the Nigerian constitutional context, where Section 20 of the 1999 Constitution²⁴ places environmental protection within Chapter II on Fundamental Objectives and Directive Principles of State Policy. While Section 6(6)(c)²⁵ renders these provisions ostensibly non-justiciable, this constitutional arrangement has attracted sustained criticism for insulating environmental obligations from judicial scrutiny. The practical consequence has been regulatory inertia, weak enforcement, and impunity for powerful state and corporate actors. A right based approach challenges this constitutional orthodoxy by arguing that non-justiciability should not operate as a blanket denial of remedies where environmental harm implicates enforceable fundamental rights under Chapter IV²⁶, particularly the right to life and human dignity²⁷. Judicial precedent supports a more expansive interpretation of justiciability. In *Olafisoye v. Federal Republic of Nigeria*²⁸, the Supreme Court acknowledged that the non-justiciability of Chapter II is not absolute and may be displaced where the Constitution “otherwise provides.” More significantly, in *Jonah Gbemre v. Shell Petroleum Development Company*²⁹, the Federal High Court linked gas flaring to violations of the rights to life and dignity, thereby effectively rendering environmental protection justiciable through constitutional rights adjudication. Although enforcement of the decision was weak, the case remains doctrinally significant, demonstrating that Nigerian courts possess the interpretive capacity to integrate environmental rights into existing justiciable frameworks.

Beyond domestic constitutional interpretation, the justiciability argument is reinforced by regional and international legal obligations binding on Nigeria. The African Charter on Human and Peoples’ Rights, domesticated in Nigeria, explicitly guarantees the right to a “general satisfactory environment favourable to

¹⁹ World Health Organization (WHO), *Ambient Air Pollution Database* (various editions). Ranks cities such as Lagos, Onitsha, Aba, and Port Harcourt among those with the highest levels of particulate air pollution globally.

²⁰ United Nations Human Rights Council, *Report of the Special Rapporteur on Human Rights and the Environment* (John H. Knox) UN Doc A/HRC/37/59 (2018). Explicitly frames environmental protection as a matter of justice, entitlement, and state obligation, rather than policy discretion.

²¹ *Ibid*

²² Best Ordinioha, Seiyefa Brisibe, “The Human Health Implications of Crude Oil Spills in the Niger Delta, Nigeria: An Interpretation of Published Studies”, 2013, *Niger Med J*, doi: [10.4103/0300-1652.108887](https://doi.org/10.4103/0300-1652.108887), Pp 10 to 16.

²³ Office of the High Commissioner for Human Rights (OHCHR), *Framework Principles on Human Rights and the Environment*, 2018. Articulates how a rights based approach supplies enforceable standards and remedies grounded in dignity and survival.

²⁴ As amended

²⁵ Of the 1999 Constitution (as amended).

²⁶ *Ibid*

²⁷ Sections 33 and 34 of the 1999 Constitution (as amended).

²⁸ (2004) 1 SCM 36, or (2004) 4 NWLR (Pt. 804) 580, or (2004) ALL FWLR (Pt. 186) Pt 106.

²⁹ Suit No. FHC/B/CS/53/05; (2005).

development” under Article 24³⁰. Nigerian courts, following *Abacha v. Fawehinmi*³¹, have affirmed that the African Charter on Human and Peoples’ Rights has the force of law and is enforceable domestically. Decisions of the African Commission, particularly in *SERAC v. Nigeria*,³² further establish that environmental degradation caused or tolerated by the state constitutes a violation of human rights. A rights based and judicially enforceable approach therefore aligns Nigeria’s domestic legal system with its regional and international commitments.

V. Research Objectives And Central Argument Of The Paper

The paper is to primarily critically examine whether the justiciability of environmental rights can serve as a sustainable and effective legal solution to Nigeria’s persistent environmental challenges. Rather than merely cataloguing instances of environmental degradation. It also seeks to interrogate the structural weaknesses within Nigeria’s environmental governance framework that have allowed such degradation to prolong. In doing so, it aims to move the discourse beyond policy prescriptions and administrative regulation, focusing instead on the transformative potential of judicial enforcement in addressing environmental harm, particularly in contexts marked by regulatory provisions, economic dependence on extractive industries, and institutional fragility. The paper is also, to analyze the constitutional, statutory, and jurisprudential foundations of environmental rights in Nigeria, with particular attention to the doctrine of justiciability, by interrogating the traditional interpretation of Section 20 of the 1999 Constitution³³ as non-justiciable and evaluates the extent to which this position has constrained environmental accountability. It further examines judicial strategies, both existing and potential for overcoming constitutional limitations, including the interpretive linkage between environmental protection and enforceable fundamental rights such as the right to life and human dignity³⁴, as well as the domestication and application of regional and international human rights instruments. The paper also aims to assess the role of the judiciary in advancing environmental justice, especially in cases involving state and corporate actors. By analyzing Nigerian case law alongside regional jurisprudence from the African Commission and the ECOWAS³⁵ Court, the study seeks to determine whether courts can function as effective sites of accountability where political will and administrative enforcement have failed. This objective is grounded in the recognition that environmental harm in Nigeria often reflects deep asymmetries of power, making judicial intervention a crucial mechanism for protecting vulnerable communities and ensuring access to remedies.

VI. Conceptual And Theoretical Framework Of Environmental Rights

Environmental rights emerged in international legal discourse as a response to the growing recognition that environmental degradation poses existential threats to human survival and well-being³⁶. Initially, international environmental law developed through treaties addressing specific environmental issues such as pollution control, biodiversity conservation, and natural resource management³⁷.

Over time, it has become evident that environmental harm could not be effectively addressed without situating environmental protection within the broader framework of human rights³⁸. This evolution is reflected in landmark international instruments and declarations, beginning with the 1972 Stockholm Declaration³⁹, which first articulated the idea that a quality environment is essential to the enjoyment of fundamental human rights, and continuing through the Rio Declaration⁴⁰ and more recent developments recognizing a clean, healthy, and

³⁰ Of the African Charter on Human and Peoples’ Rights.

³¹ (2000) 6 NWLR (Pt. 660) 228.

³² *SERAC & Another v Nigeria* (2001). Social and Economic Rights Action Centre (SERAC) & Another v Nigeria (2001) AHRLR 60 (ACHPR 2001).

³³ As amended.

³⁴ As provided for, under Sections 33 and 34 of the 1999 Constitution FRN (as amended).

³⁵ Economic Community of West African States

³⁶ Rachel Pepper Harry Hobbs, “The Environment is All Rights: Human Rights, Constitutional Rights and Environmental Rights”, 2020, *Melbourne University Law Review*, Vol. 44 No. 2, Pp 634 to 678.

³⁷ Innocent C.S. Okogbule, Desmond O.N. Agwor and Empire Hechime Nyekwere, “The Historical Development of International Environmental Law: A Legal Appraisal”, 2022, *Global Journal of Politics and Law Research* Vol.10, No.8, Pp.33 to 54.

³⁸ Megan Donal, “Human Rights and the Environment”, 2022, https://geneva-academy.ch/wp-content/uploads/2025/09/Briefing-21_web.pdf.

³⁹ Declaration of the United Nations Conference on the Human Environment, the United Nations Conference on the Human Environment, having met at Stockholm from 5 to 16 June 1972, having considered the need for a common outlook and for common principles to inspire and guide the peoples of the world in the preservation and enhancement of the human environment, made proclamations that became Stockholm Declaration.

⁴⁰ The Rio Declaration on Environment and Development 1992.

sustainable environment as a universal human right⁴¹. Within human rights theory, environmental rights are commonly classified as third-generation or solidarity rights, alongside rights to development, peace, and self-determination⁴². Unlike the civil and political rights, which are largely individualistic, and socio-economic rights, which focus on state obligations toward individuals, environmental rights are inherently collective and trans-boundary. The realization of these rights, depends on cooperation among states, communities, corporations, and individuals, reflecting the shared nature of environmental resources and risks⁴³. This collective dimension is particularly evident in challenges such as climate change, biodiversity loss, and trans-boundary pollution, where harm transcends national borders and affects present and future generations alike. Environmental rights therefore embody principles of intergenerational equity and shared responsibility, distinguishing them conceptually from earlier generations of rights⁴⁴. The normative justification for environmental rights lies in their intimate connection to human dignity. A degraded environment undermines the material conditions necessary for a dignified existence by exposing individuals to disease, food insecurity, unsafe water, and displacement⁴⁵. International human rights bodies and courts have increasingly affirmed that the enjoyment of established rights, such as the rights to life, health, private and family life, and property, is contingent upon a safe and healthy environment. Environmental rights thus operate both as autonomous entitlements and as enabling conditions for the realization of other human rights, reinforcing the indivisibility and interdependence that characterize contemporary human rights theory⁴⁶. Environmental rights are also deeply embedded in the paradigm of sustainable development, which seeks to reconcile economic growth, social equity, and environmental protection. Sustainable development recognizes that development divorced from environmental considerations is ultimately self-defeating, as ecological degradation erodes the very foundations of economic and social progress⁴⁷. Looking at environmental protection as a rights based obligation rather than a discretionary policy choice, environmental rights provide a normative and legal anchor for sustainable development. By imposing duties on states and non-state actors to manage natural resources responsibly, prevent environmental harm, and ensure that development pathways do not compromise the ability of present and future generations to live in dignity and security.

VII. The Doctrine Of Justiciability In Human Rights And Environmental Law

Justiciability refers to the capacity of a legal claim to be adjudicated and enforced by a court of law. In constitutional and international law, rights are considered justiciable when it imposes legal obligations and provides identifiable remedies that the courts can apply. Traditionally, courts exercised restraint over issues perceived as political, economic, or policy driven. However, contemporary human rights jurisprudence increasingly recognizes that courts have a legitimate role in enforcing rights essential to human dignity and

⁴¹ On 8 October 2021, members of the Human Rights Council adopted a historic resolution recognizing a new universal human right, the right to a clean, healthy and sustainable environment. Recognition by the United Nations (UN) General Assembly is expected to follow in 2022, meaning that the right to a clean, healthy and sustainable environment will become one of the first universal human rights to be fully recognized by the UN since the adoption of the Universal Declaration of Human Rights in 1948.

⁴² Environmental rights are indeed classified as third-generation (or solidarity) rights, alongside collective rights like the right to development, peace, and self-determination, emphasizing shared responsibilities for global issues rather than individual enforcement. These rights focus on collective well-being, addressing threats like climate change, biodiversity loss, and environmental degradation, which affect entire peoples and future generations, requiring global cooperation.

⁴³ Alan Boyle, Michael R. Anderson (eds), "Human Rights Approaches to Environmental Protection", 1996, Oxford University Press.

⁴⁴ Alan Boyle, "Human Rights and the Environment: Where Next?", 2012, Vol. 23, European Journal of International Law, p 613.

⁴⁵ Ibid. See also; James Nickel, "Human Rights and the Environment", 1993, Vol. 18, Yale Journal of International Law, p 235.

⁴⁶ In *López Ostra v Spain* (1994) 20 EHRR 277 (ECtHR), the Court held that severe environmental pollution from a waste-treatment plant violated Article 8 (right to private and family life), recognizing that environmental degradation can impair well-being and dignity even without serious bodily injury. In the case of *Budayeva and Others v Russia* (2014) 59 EHRR 2 (ECtHR), the Court held that failure to take preventive environmental measures against mudslides violated the right to life, reinforcing environmental risk as a human-rights issue. In *SERAC and Another v Nigeria* (2001) AHRLR 60 (ACHPR 2001), it was found that Nigeria violated rights to life, health, property, and family due to oil pollution in Ogoniland, recognizing state duties to prevent and remedy environmental degradation. See also the case of *Gbemre v Shell Petroleum Development Co. & Ors* (2005) (Supra), the Federal High Court held that gas flaring violated the constitutional rights to life and dignity, affirming the dependence of fundamental rights on a healthy environment.

⁴⁷ Ibid

survival. In international law, this evolution is evident in the growing body of cases from regional human rights courts and treaty bodies that treat environmental harm as a rights violation, such as the African Commission's decision in *Social and Economic Rights Action Centre (SERAC) v. Nigeria*⁴⁸, where environmental degradation caused by oil exploitation was held to violate multiple human rights, including the right to a satisfactory environment under Article 24 of the African Charter⁴⁹. Under the 1999 Constitution⁵⁰, the doctrine of justiciability is sharply illustrated by the distinction between Chapter IV, Fundamental Rights and Chapter II, Fundamental Objectives and Directive Principles of State Policy, of the Constitution⁵¹. The rights contained in Chapter IV, are rights such as the rights to life, dignity of the human person, and property, these rights are expressly justiciable and enforceable before Nigerian courts⁵². While Chapter II provisions, contained in Section 20 of the Constitution, mandate that the State protect and improve the environment, which are considered non-justiciable by virtue of the provisions of Section 6(6)(c) of the Constitution⁵³, which made provisions for judicial review of compliance with these objectives.

Nigerian courts have consistently affirmed this position, as seen in *Archbishop Okogie v. Attorney-General of Lagos State*⁵⁴ and *A.G. Ondo State v. A.G. Federation*⁵⁵, while also recognizing, as held in *Olafisoye v. Federal Republic of Nigeria*⁵⁶, that non-justiciability is not absolute where the Constitution otherwise provides. Notwithstanding these constitutional constraints, Nigerian courts have demonstrated cautious judicial innovation by indirectly enforcing environmental protection through justiciable fundamental rights. In *Jonah Gbemre v. Shell Petroleum Development Company*⁵⁷, the Federal High Court held that gas flaring violated the constitutionally guaranteed rights to life and human dignity, effectively rendering environmental protection justiciable through the prism of Chapter IV rights. Similarly, the Supreme Court's decision in *Abacha v. Fawehinmi*⁵⁸, affirmed that the African Charter on Human and Peoples' Rights, domesticated into Nigerian law, is enforceable and capable of grounding justiciable claims, including environmental rights under Article 24⁵⁹. These cases illustrate how courts can bridge the gap between non-justiciable directive principles and enforceable human rights through purposive constitutional interpretation. Globally, there is a clear trend toward the expansion of justiciability of socio-economic and environmental rights, reflecting a shift away from rigid doctrinal formalism. Courts in jurisdictions such as India, South Africa, Colombia, and the Netherlands have played transformative roles in enforcing environmental and climate related rights. The Indian Supreme Court has read environmental protection into the right to life under Article 21 of the Indian Constitution⁶⁰ in cases such as

⁴⁸ Supra See Footnote No:32

⁴⁹ African Charter on Human and Peoples' Right, 1981.

⁵⁰ Of the Federal Republic of Nigeria (as amended).

⁵¹ Ibid

⁵² Under Chapter IV of the CFRN, 1999 as amended the following are the twelve recognised, constitutionally protected and justiciable fundamental rights (without their full particulars) namely: (i) Right to life in section 33; (ii) Right to dignity of human person in section 34; (iii) Right to personal liberty in section 35; (iv) Right to fair hearing in section 36; (v) Right to private and family life in section 37; (vi) Right to freedom of thought, conscience and religion in section 38; (vii) Right to freedom of expression and the press in section 39; (viii) Right to peaceful assembly and association in section 40; (ix) Right to freedom of movement in section 41; (x) Right to freedom from discrimination in section 42; (xi) Right to acquire and own immovable property anywhere in Nigeria in section 43; and (xii) Right to prompt payment of compensation upon compulsory acquisition of property in section 44. In the case of *Inspector Gabriel of the C.O.P Monitoring Unit, Lagos v Ukpabio & ors (2022) LPELR-57032(SC)* (Pp. 23-24 paras. C), it was held by the Supreme Court, per Okoro, JSC, that The rights enshrined in Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria (as amended) are termed 'Fundamental' for the simple reason that they are inalienable natural rights which stands above the ordinary laws of the land and are primary conditions to civilized existence. It is for their natural inalienability that the law prioritizes their preservation against violation. See *Fawehinmi v IGP (2002) 7 NWLR (Pt.767) 606*.

⁵³ Section 6 (6) (c) provides that: "shall not except as otherwise provided by this Constitution, extend to any issue or question as to whether any act of omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution".

⁵⁴ (1981) 1 NCLR 218

⁵⁵ (2002) 10 NWLR (Pt. 772) 222 (SC)

⁵⁶ (2004) ALL FWLR (Pt. 186) 106 or (2004) 1 SC (pt. I) 27

⁵⁷ (2005) 6 AHRLR 152

⁵⁸ (2000) 6 NWLR (Pt. 660) 228

⁵⁹ Of the African Charter on Human and Peoples' Rights

⁶⁰ The Constitution of India, 1950

Subhash Kumar v. State of Bihar⁶¹, while the South African Constitutional Court has directly enforced environmental rights under Section 24 of its Constitution⁶². At the international level, there are legal actions, such as Urgenda Foundation v. Netherlands⁶³ and actions against Shell in Dutch courts, demonstrated judicial willingness to hold states and corporations accountable for environmental harm. These developments underscore a growing consensus that environmental and socio-economic rights are not merely aspirational but judicially enforceable obligations essential to human dignity, sustainability, and the rule of law.

VIII. Constitutional And Legal Framework For Environmental Rights In Nigeria

The constitutional foundation for environmental protection in Nigeria is principally anchored in Section 20 of the 1999 Constitution (as amended), which obliges the State to protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria. This provision reflects an explicit constitutional acknowledgment of environmental protection as a core state responsibility and aligns Nigeria with emerging global norms that recognize the environment as essential to human welfare. However, Section 20 is located within Chapter II of the Constitution is under the Fundamental Objectives and Directive Principles of State Policy. As such, it is framed more as a guiding norm for governance rather than an enforceable individual entitlement, thereby limiting its immediate legal effectiveness in addressing environmental degradation. The principal obstacle to the constitutional enforcement of environmental rights in Nigeria, as observed, lies in the non-justiciability of Chapter II and particularly Section 20 of the Constitution, which is a provision under Chapter II. Therefore, by Section 6(6)(c) of the Constitution, the jurisdiction of courts to inquire into compliance with these objectives has been ousted⁶⁴. Nigerian courts have consistently affirmed this position in cases such as Archbishop Okogie v. Attorney-General of Lagos State⁶⁵ and A.G. Ondo State v. A.G. Federation⁶⁶, holding that Chapter II provisions are not enforceable unless specifically made so by legislation. This constitutional arrangement has significant implications for environmental protection, as it weakens judicial oversight and places environmental obligations largely at the mercy of political will. Unlike the situation in Indian constitutional jurisprudence, which offers a useful comparative perspective. Although the environmental protection is contained in India's Directive Principles⁶⁷, but the Indian Supreme Court has rendered environmental rights justiciable by expansively interpreting the right to life under Article 21 of the Constitution, as seen in cases such as Subhash Kumar v. State of Bihar⁶⁸ and M.C. Mehta v. Union of India⁶⁹. This comparative experience highlights the potential for judicial creativity in overcoming the rigidity of non-justiciability. Notwithstanding constitutional limitations, Nigeria has developed an extensive body of statutory environmental protections enacted by the National Assembly to operationalize Section 20⁷⁰. Key among these is the National Environmental Standards and Regulations Enforcement Agency (NESREA) Act 2007, which establishes NESREA as the principal environmental regulator with powers to set standards, enforce compliance, and impose sanctions for environmental violations (excluding, controversially, the oil and gas sector).

The Environmental Impact Assessment (EIA) Act further mandates prior environmental assessment of projects likely to have significant environmental effects, thereby embedding preventive environmental governance into development planning. In the petroleum sector, laws such as the Petroleum Act, the Oil Pipelines Act, and more recently the Petroleum Industry Act 2021, provide regulatory frameworks for pollution control, compensation, and environmental remediation, particularly in oil producing areas. While these statutory regimes represent attempts to fill the constitutional enforcement gap, their effectiveness has been undermined by weak

⁶¹ (1991) 1 SCC 598, also reported as AIR 1991 SC 420, 1991 SCR (1) 5, and 1991 SCALE (1) 8, decided by the Supreme Court of India on January 9, 1991, concerning the right to a pollution-free environment under Article 21 of the Constitution.

⁶² Constitution of the Republic of South Africa, 1996, often cited with its Act number, Act 108 of 1996.

⁶³ HA ZA 13-1396, ECLI:NL:RBDHA:2015:7145 (District Court of The Hague, 24 June 2015), with subsequent appeals culminating in the Dutch Supreme Court decision, State of the Netherlands v. Urgenda Foundation, 19/00135, ECLI:NL:HR:2019:2007 (Supreme Court of the Netherlands, 20 December 2019)

⁶⁴ Priscilla Ngozi Nnawuba, "Non-Justiciability and Enforceability of Chapter II of the Nigerian Constitution as an Impediment to Enjoyment of Economic Rights and Development", 2022, African Journal of Law and Human Rights (AJLHR), Vol. 6, No. 2, Pp 148 to 157

⁶⁵ Supra See Footnote No:54

⁶⁶ Supra See Footnote No:56

⁶⁷ Article 48A

⁶⁸ Supra See Footnote No:61

⁶⁹ Cited as (1987) AIR 1086, (1987) SCR (1) 819, (1987) SCC (1) 395, decided by the Supreme Court of India on December 20, 1986.

⁷⁰ Of the 1999 Constitution FRN (as amended)

implementation, institutional fragmentation, and limited access to justice for affected communities⁷¹. Nigerian courts have occasionally bridged this gap by linking statutory environmental duties to enforceable fundamental rights, as demonstrated in *Jonah Gbemre v. Shell Petroleum Development Company*⁷², where gas flaring was held to violate the rights to life and human dignity.

When viewed alongside Indian jurisprudence, this approach suggests that Nigeria's constitutional and legal framework, though constrained by formal non-justiciability, still contains latent possibilities for advancing environmental rights through purposive interpretation, robust statutory enforcement, and judicial engagement with comparative and international environmental law norms.

IX. Victims Of Environmental Pollution And Chapter Iv Of The Constitution

Victims of environmental pollution in Nigeria can advance claims under Chapter IV of the 1999 Constitution (as amended) by anchoring environmental harm within the enforceable right to life⁷³ and right to dignity of the human person⁷⁴. Although the Constitution does not expressly provide for an environmental right, Nigerian courts have adopted a purposive and expansive interpretation of these provisions, recognizing that life and dignity extend beyond mere biological existence to include conditions that sustain health, safety, and human worth⁷⁵. Environmental pollution that contaminates air, water, or land, exposes communities to toxic substances, or undermines subsistence livelihoods can therefore be framed as a direct constitutional violation. This approach effectively circumvents the non-justiciability of section 20 in Chapter II by relocating environmental protection within the justiciable framework of fundamental rights. The jurisprudential foundation for such claims was firmly laid in *Gbemre v Shell Petroleum Development Company (Nig) Ltd*⁷⁶, where the Federal High Court held that continuous gas flaring constituted a violation of the applicants' rights to life and dignity under Sections 33 and 34 of the Constitution, read together with Articles 4, 16, and 24 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act. The court affirmed that environmental degradation which endangers health, shortens life expectancy, or subject's individuals to inhuman and degrading conditions is constitutionally impermissible. Importantly, the supremacy clause in section 1(3) of the Constitution⁷⁷ strengthens this rights based pathway, any statute, regulation, or administrative practice that permits or legitimizes environmentally harmful conduct inconsistent with sections 33 and 34 is null and void to the extent of that inconsistency. This means that subsidiary legislation or regulatory approvals that tolerate pollution cannot prevail over constitutional guarantees⁷⁸. Procedurally, victims of Fundamental rights breaches, may enforce their rights through actions under the Fundamental Rights (Enforcement Procedure) Rules 2009, which encourage a generous interpretation of Chapter IV and expressly permit public interest litigation. The Rules lower barriers such as strict locus standi and enable courts to grant broad remedies, including declarations, injunctions, and orders compelling government agencies to act⁷⁹. Where statutory environmental regimes and sector specific petroleum regulators fail to prevent or remedy pollution, victims can argue that such failures amount to constitutional breaches. In this sense, constitutional litigation serves both as a direct remedial avenue for victims and as a mechanism for testing the validity and adequacy of environmental regulatory frameworks against superior constitutional norms⁸⁰. The judicial interpretation and enforcement of environmental laws, have been far from consistency⁸¹, in 2005 with the landmark judgment in *Gbemre & Ors v Shell Petroleum Development Corporation & 2 Ors*⁸², where the Federal High Court held that gas flaring by Shell in the Niger Delta violated the applicant's rights to life and dignity under

⁷¹ Obadina Ibrahim, "Nigerian Supreme Court's stealth relaxation of Locus Standi in Environmental litigation: Redirecting judicial approach to Public Interest Litigation", 2021, *Journal of Private and Business Law* Vol.2, No 2, Pp. 200 to 218.

⁷² *Supra* See Footnote No:57

⁷³ As provided under Section 33 of the 1999 Constitution

⁷⁴ *Ibid*, Section 34.

⁷⁵ *Centre for Oil Pollution Watch v NNPC* (2018) 17 NWLR (Pt 1648) 348 (SC). Although primarily about locus standi, the Supreme Court affirmed that environmental degradation implicates fundamental rights and that access to court must be broadened to allow environmental protection claims in the public interest.

⁷⁶ *Supra*

⁷⁷ 1999 Constitution as (as amended).

⁷⁸ *Ibid*

⁷⁹ A. O. Enabulele, "Public Interest Litigation and the Enforcement of Fundamental Rights in Nigeria", 2011, 1 *Nigerian Law Journal* Pp 103 to 128.

⁸⁰ Alan Boyle and Michael R Anderson (eds), "Human Rights Approaches to Environmental Protection", 1996, Oxford University Press.

⁸¹ Nzube Akunne, "Environmental Litigation in Nigeria: Trends, Challenges, and Judicial Activism", 2025, OAL publications, <https://oal.law/environmental-litigation-in-nigeria-trends-challenges-and-judicial-activism/>.

⁸² *Supra* See Footnote No:57

Sections 33 and 34 of the Nigerian Constitution and Article 4 of the African Charter. This decision established a vital precedent and marked a turning point in the constitutionalization of environmental protection in Nigeria. In 2014, the Court of Appeal adopted a more conservative posture in *Ikechukwu Opara & 3 Ors v. Shell Petroleum Development Company of Nigeria Ltd & 5 Ors*⁸³, refusing to extend constitutional protections to environmental harm. The court held that only direct, personal injury could ground such claims and rejected the broader link between pollution and the right to life⁸⁴. The Supreme Court in *Centre for Oil Pollution Watch (COPW) v. NNPC*⁸⁵, expanded the doctrine of locus standi, affirming that civil society organizations could bring actions in the public interest, particularly in cases of environmental harm, the court made three seminal findings. First, that the right to life under Section 33(1) of the Constitution encompasses environmental protection, as pollution directly endangers human survival. Second, that Section 20 of the Constitution though part of the ordinarily non-justiciable Chapter II can become enforceable when read in conjunction with fundamental rights provisions; and third, that Article 24 of the African Charter, which guarantees the right to a satisfactory environment, is directly enforceable in Nigerian courts. These doctrinal pronouncements by the apex court further entrenched the link between environmental integrity and fundamental human rights and this the view of this paper.

X. Enhancing Public Interest Litigation And Community Participation

A transformative rights based constitutional framework for environmental protection cannot succeed without broad and meaningful access to justice. Because environmental harm in Nigeria is typically diffuse, cumulative, and intergenerational, conventional rules of locus standi, designed for individualized disputes are ill suited to environmental constitutional litigation. The Supreme Court's decision in *Centre for Oil Pollution Watch v NNPC*⁸⁶ significantly advanced this terrain by expanding the doctrine of standing and recognizing that civil society organizations may litigate in the public interest where environmental degradation threatens collective rights. The Court's approach aligns with the ethos of the Fundamental Rights (Enforcement Procedure) Rules, which encourage purposive interpretation, public interest litigation, and relaxation of procedural obstacles that formerly insulated powerful polluters and regulators from judicial scrutiny.⁸⁷ Equally important are the Court's three seminal findings in *COPW v NNPC*, which deepen the constitutionalization of environmental protection. First, the Court affirmed that the right to life under Section 33(1) transcends mere physical existence and necessarily embraces environmental integrity, because pervasive pollution threatens survival, health, and human dignity. Second, it held that Section 20 of the Constitution, though located in the ordinarily non-justiciable Chapter II, can be rendered enforceable when read conjunctively with Chapter IV rights, thereby bridging the artificial divide between directive environmental principles and fundamental rights. Third, the Court confirmed that Article 24 of the African Charter on Human and Peoples' Rights, which guarantees the right to a satisfactory environment, is directly justiciable in Nigerian courts, further reinforcing a multilayered constitutional and treaty-based foundation for environmental rights.

On this foundation, enhancing community participation becomes a constitutional imperative rather than a discretionary policy gesture. Excluding host communities from environmental decision making, denying access to environmental information, or sidelining them during Environmental Impact Assessment processes undermines the dignity, agency, and equality protected under Chapter IV⁸⁸. Courts should therefore treat such exclusions as independent constitutional violations, not merely regulatory lapses. When combined with constitutional amendment, purposive judicial interpretation, institutional strengthening of environmental regulators, and robust public interest litigation, these developments form an integrated reform architecture for environmental constitutionalism in Nigeria.

XI. Conclusion

This study has demonstrated that Nigeria's environmental crisis is not merely ecological but fundamentally constitutional and institutional in nature. The non-justiciability of environmental obligations under

⁸³ (2015) 14NWLR (pt 1479) 307

⁸⁴ *Ikechukwu Opara & 3 Ors v. Shell Petroleum Development Company of Nigeria Ltd & 5 Ors* is a significant Nigerian case where the Court of Appeal held that complaints about oil spills and pollution in the Niger Delta are not inherently human rights issues for the National Human Rights Commission (NHRC) to probe, establishing a distinction in environmental litigation and reinforcing the need for proper legal procedures, impacting how such cases are brought forward. The judgment clarified that while environmental damage affects rights, it doesn't automatically fall under the NHRC's human rights jurisdiction, requiring applicants to prove specific rights violations.

⁸⁵ (2019) 5 NWLR (Pt.1666) 518

⁸⁶ *Supra* See Footnote No:85s

⁸⁷ (2019) 5 NWLR (Pt. 1666) 518.

⁸⁸ Of the 1999 Constitution (as amended)

Section 20 of the 1999 Constitution has historically weakened accountability, constrained judicial intervention, and allowed environmental degradation, particularly from extractive activities, urban pollution, and deforestation to persist with minimal legal consequences. Nonetheless, judicial developments, especially the purposive interpretation of the rights to life and dignity under Chapter IV of the 1999 Constitution and the domestication of the African Charter, reveal an emerging pathway for constitutional environmental protection. Now, environmental harm can be framed as a violation of enforceable fundamental rights, even though the supremacy clause in Section 1(3) may not empower the courts to validate laws and regulatory practices inconsistent with constitutional provisions, especially, Section 6 (6) (c) of the 1999 Constitution.

The key finding is therefore that environmental protection in Nigeria can be meaningfully advanced only by repositioning it within a justiciable rights, based constitutional framework. Reaffirming the justiciability of environmental rights offers a sustainable legal solution with profound implications for environmental justice and global environmental governance. By constitutionalizing environmental rights and ensuring their effective enforcement, Nigeria can bridge the gap between development and environmental protection, contribute to evolving norms of global environmental governance, and set a precedent for rights-based sustainable development in resource-dependent states.

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