

ENVIRONMENTAL POLLUTION IN THE NIGER DELTA: THE NECESSITY FOR REVIEW OF THE ANTI-POLLUTION LAWS OF NIGERIA

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Abstract

Environmental pollution and degradation are the most serious of all environmental problems and in the Niger Delta, they pose a serious threat to the inhabitants and the ecosystem in the face of the anti-pollution laws of Nigeria. Thus, securing environmental justice has been so difficult despite the fact that the protection of the environment is recognised by the Constitution of the Federal Republic of Nigeria, 1999. This difficulty is largely because the constitutional provision which requires the State to protect and improve the environment as well as safeguard the water, air, land, forest and wild life of Nigeria is not justiciable amidst the limitations imposed on non-State actors by public law procedures in compelling authorities to comply with the provisions of laws through the doctrine of locus standi. The situation is further compounded because State actors appear inactive and insensitive to the plight of the victims of environmental pollution and their efforts if any, have been insignificant and have not yielded the desired results, which have, caused the involvement of non-governmental organisations (NGOs) in the struggle for environmental justice. Although the efforts of the NGOs have produced some good results, much still needs to be done in view of the incessant and persistent environmental pollution and consequent degradation in the Niger Delta. This study therefore examines the problems of environmental pollution in the Niger Delta and the necessity for the review of the Nigerian anti-pollution laws. The study adopts the doctrinal methodology through the study of relevant statutes, textbooks and articles by scholars. Recommendations were offered which if implemented would correct the situation in the Niger Delta.

Keywords: Environment, Conservation, Environmental Pollution, Environmental Degradation, Justiciability

1. Introduction

The Niger Delta is the triangular-shaped landmass formed by sediment deposit where the River Niger meets the Atlantic Ocean. It is located in southern Nigeria specifically in the coastal region of the Gulf of Guinea on the Atlantic Ocean. Spanning across nine States in Nigeria namely, Abia, Akwa Ibom, Bayelsa, Cross River, Delta, Edo, Imo, Ondo and Rivers States, the Niger Delta is situated within latitudes 4°N and 7°N and longitudes 5°E and 9°E. It covers about 36,000 square kilometres with a flat, low-lying and swampy environment whose vegetation is mainly mangrove forest with high connectivity of creeks.

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Just like Nigeria, the Niger Delta region is multi-ethnic with different dialects and a population of about 40 million people. Although it is rated as rural and poor, the Niger Delta has some rapidly growing cities like Port Harcourt, Warri, Calabar just to mention but a few and it is the home of the crude oil reserves of Nigeria. Apart from businesses resulting from industrialisation and public service, the rural and swampy environment dictated the economic activities of the people. Consequently, peasant crop farming, fishing, hunting and carving of canoe are some of the occupations of the inhabitants.²

As expected, the interaction of the millions of people that are resident in the Niger Delta with their environment has left indelible mark on the landscape. Man's interaction with the environment has resulted to urbanisation, deforestation, desertification, and pollution of the various components of the environment such as land, water and air. The above changes in the environment occur as the people attempt to acquire their seemingly endless desire for food, shelter, recreation and infrastructural developments. It is pertinent

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¹ Akinlawon Ladipo Mabogunje, Niger River. Available at Britannica <https://www.britannica.com> > accessed on 24/8/2025 @ 4:50 am.

² Udumubrai, U. G., *History of Isoko People in the Niger-Delta*, (Glorious Printing Press, 2021), p. 46.

to remark that environmental degradation and pollution are the most serious of all environmental problems and constitute a major threat to the health and well-being of the millions of inhabitants and the entire ecosystem of the area.

Arising from the duty of the State³ to protect and improve the environment and as a way of proffering solutions to the emerging problems confronting the Niger Delta environment, there have been some efforts⁴ by the government to safeguard the water, air, land, forest and wild life of the area but the obvious inadequacies of the efforts have given rise to the emergence of many non-governmental organisations (NGOs) who are interested in championing the crusade of having a healthy environment and ameliorating the environmental problems of the Niger Delta area. Beyond ensuring that legislation and policies of government are directed towards the preservation of the environment, with a view to achieving sustainable development,⁵ the NGOs have through litigation removed the long standing barrier or impediment on non-State actors otherwise known as the doctrine of *locus standi* in bringing an action to compel the authority to comply with the provisions of law as it concerns the environment. Despite the above, there is still incessant oil spillage in the Niger Delta which has prompted this study.

Consequently, this paper is divided into nine sections. Section one is the introduction of the study while section two deals with conceptual analysis where the concepts of environment, conservation, preservation, pollution, degradation and NGOs were x-rayed. In section three, environmental pollution in the Niger Delta was examined while section four was devoted to the study of the legal framework for controlling environmental pollution in the Nigeria. In section five, the paper discussed the enforcement of environmental laws under the following subheadings: agencies for the enforcement of environmental laws, the jurisdiction of environmental matters resulting from oil and gas, environmental degradation by indiscriminate disposal of domestic waste, enforcement of

³ Section 20 of the Constitution of the Federal Republic of Nigeria, 1999.

⁴ Creation of Parks, Reserves and Other Protected Areas in Nigeria, Source: UNEP-WCMC, World Database on Protected Areas. Available @ Parks.it > <https://www.parks.it> > accessed on 27/10/2025 @ 10:25 am.

⁵ Ibanichuka, G., "A Legal Approach to Environmental Pollution and Degradation in Nigeria" *African Journal of International Energy and Environmental Law*, (2023), vol. 8, number 1, pp. 1-9.

environmental laws by NGOs in the Niger Delta, and NGOs in the international sphere. Section six discusses NGOs and environmental justice in Nigeria while section seven focuses on the perceived inadequacies of the anti-pollution laws of Nigeria. Conclusion to the study was handled in section eight while recommendations were offered in section nine.

2. Conceptual Analysis

It is considered necessary to clarify some terms especially those that are connected with the concept of environment and which shall be routinely used in this paper. Consequently, the paper shall briefly highlight the meanings of environment, conservation, preservation, degradation, pollution and non-governmental organisation.

- i. **Environment:** This is the natural world in which people, animals and plants live.⁶ By statute,⁷ environment includes water, air, land and all plants and human beings and or animals living therein and the interrelationships which exist among these or any of them.⁸ Thus, the concept of environment refers to both physical structures such as land, water, plants, animals and human beings; non-physical components of those structures like their biological and chemical qualities; and the relationships among everything that constitutes the environment.
- ii. **Conservation:** Conservation as it relates to environment is the management and wise use of natural resources to ensure their sustainable availability at the moment and for future generations. It aims at responsible management of resources and prevention of damages that are irreversible. Such sustainable management includes afforestation and forestry, wild life management and habitat restoration projects.⁹
- iii. **Preservation:** Preservation as it relates to environment simply means protecting the environment in its natural state through prohibition or restriction of human

⁶ Hornby, A. S., *Oxford Advanced Learner's Dictionary of Current English*, (Oxford University Press, 2005), p. 490.

⁷ National Environmental Standards and Regulations Enforcement Agency (Establishment) (NESERA) Act, 2007.

⁸ *Ibid.* See section 37.

⁹ Irene Park, Conservation vs. Preservation: How Different and Similar these Environmental Approaches Are, June 5, 2023. Available at Population Education <https://populationeducation.org> > accessed on 27/10/2025 @ 11:20 am.

interference in the natural area. It aims at maintaining natural resources in their untouched and original state by limiting human interference to the protection or guarding of the site from the destructive activities of humans. This may occur in the form of the designation of a place as a “reserve” or an “evil or spirit forest” with strict control of human access.¹⁰

- iv. **Degradation:** Degradation as it relates to environment refers to the deterioration of the natural environment resulting from the depletion of natural resources and the destruction of the ecosystems. It is caused by a variety of human activities such as industrialisation, unsustainable extraction of resources like deforestation or lumbering, burning of fossil fuel and pollution.¹¹
- v. **Pollution:** The term pollution is a derivative of the word “Pollute” which means to corrupt or defile especially to contaminate the soil, air, or water with obnoxious substances.¹² It is essentially to make something dirty or no longer pure especially by adding harmful or unpleasant substances to it. It is defined by the United States National Research Council Committee on pollution as, “an undesirable change in physical, chemical or biological characteristics of the air, land and water that may or will harmfully affect human life or that of other desirable species, the industrial processes, living conditions and cultural assets that may or will waste or deteriorate the raw material resources.”¹³ Pollution exists in different forms such as air pollution, water pollution, land pollution and noise pollution but may be classified into two main sources namely, point source and non-point source. While point source pollution comes from specific, localised, and identifiable sources, such as sewage; pipeline or industrial smoke stacks, non-point source pollution comes from dispersed or uncontained sources, such as contaminated water, run off from urban areas or automobile emissions.¹⁴ The effects of these pollutants may be immediate or delayed. It is immediate

¹⁰ *Ibid.*

¹¹ Philippe Lazaro, Causes, Effects and Solution to Environmental Degradation, March 15, 2023, Plant With Purpose <https://plantwithpurpose.org> > accessed on 27/10/2025 @ 11:38 am.

¹² Bryan A. G., *Black's Law Dictionary*, (Thomson West, 2004), p. 1197.

¹³ <<https://www.britannica.com/science/pollution-environment> > accessed 20 July 2025 at 12:32 pm.

¹⁴ <<https://www.vedantu.com/biology/types-of-pollution> > accessed 20 July 2025 at 5:00 pm.

when the primary effects of pollution such as death of marine plants and wild life occur immediately after the pollution like the contamination of water after oil spills while it is delayed when the effect is unnoticed immediately or persists in the environment into the future perhaps for many years. The delayed effects may threaten the survival of species. Types of pollution that affects man in the society includes, Air pollution, water pollution, land pollution and noise pollution to mention but a few.

- vi. **Non-Governmental Organisations (NGOs):** An NGO is a non-governmental entity that is established by individual(s) for social, humanitarian and environmental goals with advocacy, service delivery and mobilisation for citizens' participation in community development as its tools. NGOs are non-profit organisations and could be organised at the local or community level as well as at the national and international levels. They engage in a wide range of activities such as activism or advocacy for human rights and policy change, environmental protection, community development, health, social justice and accountability. Their funds are derived from membership dues, private donations and grants. They are united in their goal for the public good and sustainability.¹⁵

3. Environmental Pollution in the Niger-Delta

Although environmental pollution has been with mankind from time immemorial,¹⁶ it started assuming a level that calls for concern in Nigeria in the 1950s when crude oil was discovered and the consequent exploration and exploitation of it in the Niger Delta area. The discovery of crude oil in Nigeria thus, came with both positive and negative impacts. On the positive side is the fact that the discovery of crude oil was not only accompanied by much inflow of multi-national oil companies and the resultant development which occasioned more revenue for the State; improved income and standard of living for the inhabitants; but also the establishment of industries in some parts of the Niger Delta. On the negative side is the fact that the activities of the oil companies, industries and

¹⁵ Lugard, A. E., "The Role of Non-Governmental Organisation in Formulating Policies on Environmental Laws in Nigeria". *International Journal of Research Publication and Reviews Journal* (2022) (4) (11)1395-1400.

¹⁶ Ikhide, E., *Environmental Protection Law*, (Warri, New Pages Law Publishing Co., 2007), p. 3.

machineries became sources of pollution of the components of the environment namely, water, air and land.

The pollution of the air component of the Niger Delta environment came through the emissions of smoke from the machines, generators, factories and vehicles including large earth moving trucks and gas flaring with the attendant danger to health. Also, the sounds coming from the industries, machines and other equipment became a source of noise pollution which caused the migration of many wild lives into the deep sea and far-away lands. Noise pollution can also impact on the inhabitants of the area through insomnia, emotional disturbances, hearing impairment and psychological disorders. It is important to state that besides the health hazards that are associated with air pollution which could be suffered by human beings, the depletion of the ozone layer which increases radiation and penetration of the sun through the atmosphere to the earth crust is a consequence of air pollution.¹⁷

Similarly, the activities of the multi-national oil companies and the industries did not spare the water and land components of the environment of pollution. This is because their oil exploration and exploitation have always been accompanied by oil spillage especially from oil pipelines. It is germane to remark that environmental pollution in the Niger Delta took a new dimension that attracted global discourse in 1988 when an Italian trader deliberately dumped about 3,800 tons of toxic waste at Koko port which is situated in Koko Community, the Warri North Local Government Area administrative headquarters of Delta State.¹⁸ Ever since then, there have been very many oil spillage incidents in the Niger Delta that have claimed so many lives and polluted the environment. Some of the incidents are hereby highlighted below:

On October 18, 1998, there occurred a pipeline explosion at Jesse Community in Delta State which is regarded as the deadliest pipeline explosion so far in the history of Nigeria. The fire was so intense that it continued for six days until a firefighting company was engaged from the United State before it was extinguished. The cause of the incident was

¹⁷ Ikhide, E., *Environmental Protection Law*, (New Pages Law Publishing Co., 2007), pp. 38 & 39.

¹⁸ Amy McKenna, Koko / Nigeria, Summary, Incident of 1988, Toxic Waste. Britannica <https://www.britannica.com> > accessed on 24/8/2025 @ 23:00 pm.

a subject of controversy with some accounts attributing it to sabotage resulting from the intentional act of some criminals / scavengers who ruptured the pipeline with tools and ignited the blaze; and other accounts claiming that the explosion occurred due to negligence and lack of maintenance by the Nigerian National Petroleum Company. However, irrespective of the cause of the explosion, a death toll of 1,082 was recorded apart from the hazards of water and land or soil pollution in the area.¹⁹

In the same vein, on June 15, 2023, there occurred an oil spill from the pipeline of Heritage Energy Operational Services Limited, the operators of OML 30 who took over from Shell Petroleum Development Company at Uzere Community which is situated in Isoko South Local Government Area of Delta State. Aquatic lives were lost and the land was seriously degraded such that agriculture which is the main stay of the inhabitants was hampered. The people are worried about the health and environmental impacts of crude oil spills that have been occurring frequently for more than five decades.²⁰

Besides, May 3, 2025 witnessed another oil spill near Oando's Ogboinbiri Flow Station located at Ogboinbiri Community of Southern Ijaw Local Government Area of Bayelsa State. According to a non-governmental organisation, the Environmental Defenders Network, "This spill marks the fourth equipment-related incident in the area between September 2024 and May 3, 2025."²¹

Furthermore, although oil exploration by Shell has stopped in Ogoniland following incessant crises and the clean-up that has not been done in the area, Ogoniland is claimed to be the epicenter of oil spillage having recorded 2,976 separate oil spills between 1976 and 1991.²² Places that have been seriously affected by oil spills in Ogoniland include: Bonny, Kegbara-Dere, Eleme, Tai, Khana, Gokana, Bomu and Bodo where in June 2013,

¹⁹ Munachi, I., Sylvanus, Chukwuemeka Ekenta, Impact of Oil Pipeline Vandalisation on Land Value in Jesse Community of Delta State, Nigeria, 8 August, 2025. ResearchGate <https://www.researchgate.net> > accessed on 27/10/2025 @ 12:05 pm.

²⁰ Bob MajiriOghene Etemiku, "That oil spill in Uzere, Delta State", The Guardian Nigeria News, <https://guardian.ng> > accessed on 25/8/2025 @ 11:30 am.

²¹ Visit: <https://www.vanguardngr.com> > accessed on 25/8/2025 @ 1:00 pm.

²² Friends of the Earth International <https://www.foei.org> > accessed on 25/8/2025 @ 12:00 pm.

an explosion from Shell pipeline occurred spilling 6,000 barrels of crude oil into the creeks and waterways.²³

It is pertinent to remark here that apart from immediate deaths that are recorded in some of the above highlighted incidents, the common features of all the spillage are water pollution and land pollution. The consequence of water pollution is that the water is made undrinkable for the inhabitants and the death of aquatic life (both vegetation and animals) making some species to go into extinction. On the other hand, land pollution through oil spillage and dumping causes land degradation which hampers agricultural production. Furthermore, industrialisation has given rise to urbanisation which in turn has caused rural to urban migration with over concentration of the population in some area and the attendant pollution of the environment.

4. Legal Framework for Controlling Environmental Pollution in Nigeria

Anti-pollution laws are the laws that are intended to address the unnatural or artificial alteration or disturbance of any of the components of the environment which include, air, water and soil. This is essentially so because man-made laws cannot prevent natural occurrences like rain, wind or earthquakes.²⁴ Thus, such artificial disturbances or alterations may be in respect of the quality or properties of the components of the environment whether it is the biological, chemical or physical property. It is noteworthy that a number of laws have been made in Nigeria to protect the environment from degradation or pollution resulting from oil and gas or petroleum products as well as environmental degradation through indiscriminate disposal of domestic waste, dirt accumulation from hawking, trading and lack of planning of land and housing projects.²⁵ Some of the enactments are briefly discussed hereunder.

- i. **The Constitution of Nigeria:** Although the Nigerian Constitution²⁶ provided that “the State shall protect and improve environment and safeguard the water, air and land, forest and wildlife of Nigeria”, the provision is in chapter II of

²³ Al Jazeera <https://www.aljazeera.com> > accessed on 25/8/2025 @ 12:08 pm.

²⁴ Ikhide, E., *Environmental Protection Law*, (Warri, New Page Law Publishing Co., 2007), p. 24.

²⁵ Bamgbose, O., & Akinbiyi, S., *Criminal Law in Nigeria*, (Ibadan, Evans Brothers Limited, 2015), p. 480.

²⁶ The Constitution of the Federal Republic of Nigeria, 1999 as amended. See section 20.

the constitution with the implication that it is not justiciable²⁷ being merely a “guide” to the State in the organisation of its policy.

- ii. **The Criminal Code:** This law²⁸ which is enforceable in the southern part of Nigeria recognises and punishes the offence of common nuisance²⁹ through willful diversion or obstruction of the course of any navigable river so as to appreciably diminish its convenience for purposes of navigation; and the offence of fouling water so as to render it less fit for the purpose for which it is ordinarily used.³⁰
- iii. **Federal Environmental Protection Agency (FEPA) Act:** The Act established the agency whose responsibilities include the protection and development of the environment, establishment or formulation of environmental criteria, guidelines and standards for the protection of Nigeria’s air, inter-state water as may be necessary to protect the health and welfare of the population from environmental degradation.³¹ The Act prohibited the discharge in such harmful quantity of any hazardous substance into the air, or land or waters of Nigeria or adjourning shorelines except as permitted by any law in force in Nigeria with the punishment of ten years imprisonment or a fine of N100, 000 or both for an individual offender and N500, 000 fine and an additional N1, 000 fine per day for everyday the offence subsists for a corporate body who is found guilty under the Act.³² The concept of “harmful quantities” was not defined in the Act and some “ready-made” defences like the discharge being caused by natural disaster, act of war or sabotage were provided in the Act.
- iv. **Harmful Waste (Special Criminal Provision) Act:** This Act was enacted in reaction to the 1988 dumping of toxic waste at Koko town in Delta State. It prohibited the sale, purchase, transport, storage, deposit or dumping of any

²⁷ *Ibid.*, See section 6(6).

²⁸ The Criminal Code, Cap. C38, Laws of the Federation of Nigeria, 2004.

²⁹ *Ibid.* See section 234(e).

³⁰ *Ibid.* See section 245.

³¹ FEPA Act. See section 4.

³² *Ibid.* See section 20.

harmful waste which is defined to include injurious, poisonous, toxic or noxious substances if the waste is of such quantity as to subject any person to the risk of death, fatal injury or incurable impairment of physical or mental health. The punishment of life imprisonment was provided for any person convicted under the Act and to forfeit any carrier used for the transportation of the harmful waste.³³

- v. **Petroleum Act:** By section 9(1) (b) (iii) of the Petroleum Act, the Minister of Petroleum Resources is empowered to make regulations for the prevention of the pollution of water courses and the atmosphere. Consequently, the Petroleum (Drilling and Production) Regulations were made to prevent oil pollution³⁴ and licencees are expected to adopt all practicable precautions including the provision of up to date equipment to prevent the pollution of inland waters, rivers, water courses, territorial waters of Nigeria or the High seas by oil, mud or other fluid or substances which might contaminate the waters, banks, or shoreline or which might cause harm or destruction to fresh water or marine life.³⁵
- vi. **Oil in Navigable Waters Act:** The Act was enacted to prevent the pollution of water with oil in the Nigeria sea area which means all areas within 50 miles from land and outside the waters of Nigeria.³⁶ It is an offence for any person to discharge oil or a mixture containing oil into water from any vessel or from any place on land or from any apparatus used in the transfer of oil from or to any vessel which amounts to an offence when oil is discharged into the navigable waters of Nigeria which stands at 30 nautical miles. Again, some ready-made defences such as, “that the mixture escaped as a result of damage to vessel or due to leakages; that the mixture of oil and water was discharged for the purpose of securing the safety of the vessel or cargo or of saving life”

³³ Section 6 of the Harmful Waste (Special Criminal Provision) Act.

³⁴ Petroleum (Drilling and Production) Regulation 40.

³⁵ *Ibid.* See Regulation 25.

³⁶ Oil in Navigable Waters Act. See section 1.

are contained in the Act.³⁷ Also, prosecution can only be initiated with the consent of the Attorney-General of the Federation.³⁸

- vii. **Associated Gas Re-Injection Act:** This Act seeks to stop and prevent gas flaring in Nigeria. This is essentially due to the hazards associated with gas flaring which include: excessive heat, deforestation, desertification, blurring of natural light for photosynthesis which is the process through which plants produce food and the depletion of the ozone layer which makes the sun rays to hit the earth directly. The Act compels oil producing companies to submit preliminary programmes for gas reinjection and a detailed plan for the execution of gas reinjection.³⁹
- viii. **Convention of the High Seas:** On the 30th day of September, 1962, Nigeria accepted the Convention of the High Seas⁴⁰ which was adopted in Geneva on 29th of April 1958. The convention aims at codifying the rules of international law relating to the sea which seeks to prevent the pollution of the sea by oil from ships and pipelines or resulting from the exploration and exploitation of the seabed. Other International Laws and Conventions relating to the protection of the environment include: Vienna Convention on the Protection of the Ozone Layer, International Convention on Civil Liability for Oil Pollution Damage, Convention on the Continental Shelf etcetera.⁴¹

5. Enforcement of Environmental Laws

As can be seen from the immediate preceding section, there are many environmental protection laws in Nigeria which if implemented in the spirit of their enactment in the Niger Delta area would guarantee the goals of conservation and preservation of the natural resources without the fear of the degradation and pollution of the environment. It follows that there is something wrong with the enforcement process. It is important to

³⁷ *Ibid.* See section 4.

³⁸ *Ibid.* See section 12.

³⁹ Sections 1 and 2 of the Associated Gas Re-Injection Act.

⁴⁰ Convention on the High Seas, 1958, United Nations Treaty Collection <https://treaties.un.org> > accessed on 27/10/2025 @ 12:50 pm.

⁴¹ List of IMO Conventions: International Maritime Organisation <https://www.imo.org> > accessed on 27/10/2025 @12:59 pm.

state here that the reference to the enforcement process essentially refers to how the executive arm of government is enforcing the laws through its agencies and departments as well as how the courts have adjudicated matters bordering on environmental pollution especially as they relate to the Niger Delta.

It is germane to state that although the Nigerian Constitution supports the protection of the environment,⁴² it deprived environmental issues the right to direct justiciability⁴³ just like the fundamental rights counterparts in chapter IV of the Constitution that are justiciable directly. In other words, nobody can sue the State in any law court on account of the State not protecting the environment. This is because the protection of the environment in the Constitution is merely a fundamental objective and directive principle of State policy or which is meant to “show” the direction which the policy of the State is to follow.⁴⁴ This is of course one of the clogs in the wheel of the protection of the environment in Nigeria in general and in the Niger Delta in particular. Notwithstanding the above, this paper briefly discusses the enforcement of environmental laws in the Niger Delta under the following subheads: agencies for the enforcement of environmental laws; jurisdiction of environmental pollution matters resulting from oil and gas; environmental degradation by indiscriminate disposal of domestic waste; the involvement of NGOs in the enforcement of environmental laws; and NGOs in the international sphere.

5.1 Agencies for the Enforcement of Environmental Laws

It is remarked here that although the Nigeria Police Force is saddled with the enforcement of all laws and regulations without any prejudice to the enabling Acts of other security agencies,⁴⁵ some agencies like the National Environmental Standards and Regulations

⁴² The Constitution of the Federal Republic of Nigeria, 1999. See section 20.

⁴³ *Ibid.* See section 6(6) (c). The fundamental objectives and Directive Principles of State Policy in chapter II of the 1999 Constitution of Nigeria may only be justiciable or adjudicated upon indirectly through an extended interpretation to encompass a right to a clean and protected environment. See *Government of South Africa v Grootboom* (2001) 1 CHR 261; *Elf Petroleum Nigeria Limited v Umah* (2006) All FWLR (Pt.343) 1761 @ 1777.

⁴⁴ See the cases of *Attorney-General of Lagos State v Attorney-General of the Federation & Ors* (2003) FWLR (Pt.168) 909; *Morebishe v Lagos State House of Assembly* (2000) 3 WRN 134; *Okogie v Attorney-General of Lagos State* (1990) FRN 445.

⁴⁵ Police Act, 2020. See section 4(d).

Enforcement Agency (NESREA), National Oil Spill Detection and Response Agency (NOSDRA) and the defunct Federal Environment Protection Agency whose duties are now being performed by the Federal Ministry of Environment have been established to enforce anti-pollution laws in Nigeria but it appears they lack the will to perform their duties creditably. This is because the results of their work are not noticeable when compared to the incessant pollution of the environment in the Niger Delta.

5.2 Jurisdiction of Environmental Pollution Matters Resulting from Oil and Gas

Unlike some other climes like Sydney Australia⁴⁶ where specialised courts were established to handle environmental crimes, jurisdiction of pollution matters concerning oil and gas in the Niger Delta is restricted to the Federal High Court. This is essentially so because the major environmental pollution in the Niger Delta is through oil and natural gas which are within the jurisdiction of the Federal High Court.⁴⁷ The consequence of this is that arraignment of environmental cases is not as easy as that of other criminal matters where many other courts of different levels can assume jurisdiction. Again, it is noteworthy that the initiation of criminal charges under the Oil in Navigable Waters Act can only be initiated with the consent of the Attorney-General of the Federation.⁴⁸

5.3 Environmental Degradation by Indiscriminate Disposal of Domestic Waste

The interaction of human beings with their environment must doubtlessly result to some wastes. Often times, these wastes are dumped indiscriminately in different places producing very offensive odours. The deliberate policy to curb environmental pollution in Nigeria especially as it relates to domestic waste came during the military regimes where environmental sanitation was imbued into the “war against indiscipline” policy.⁴⁹ Through this policy, every last Saturday of the month was declared a special day for environmental sanitation and Magistrates of certain categories were constituted into “Mobile Courts” for the purpose of summary trials of sanitation offenders.⁵⁰

⁴⁶ Bamgbose, O., & Akinbiyi, S., *Criminal Law in Nigeria*, (Ibadan, Evans Brothers Limited, 2015), p. 480.

⁴⁷ Section 251(1) (n) of the 1999 Constitution of Nigeria.

⁴⁸ Section 12 of the Oil in Navigable Waters Act.

⁴⁹ Agbaje, A., *The War against Indiscipline*, 1988 AfricaBib <https://www.africabib.org> > accessed 27/10/2025 @ 1:54 pm. See also, Ikhide, E., *Environmental Protection Law*, (Warri, New Pages Law Publishing Co., 2007), p. 6.

⁵⁰ *Ibid.*

5.4 Enforcement of Environmental Law by NGOs in the Niger Delta

The failure of government agencies to bring about environmental justice in Nigeria and the persistence of environmental pollution and degradation in the face of our laws may have pushed many non-governmental organisations into participation in the enforcement of environmental laws. Their effort in the control of environmental pollution in Nigeria is commendable and they have adopted different strategies including litigation in their struggle for environmental justice in Nigeria. Other strategies include: negotiations⁵¹ with the government and multinational companies, and organisations, town hall and public talks, orientations, organisation of seminars and public campaigns amongst others. Some NGOs at the vanguard of environmental protection in Nigeria include: the Nigerian Environmental Society (NES); Centre for Climate Change and Environmental Studies; Obudu Conservation Centre; Environmental Right Action (ERA); African Network for Environment and Economic Justice (ANEEJ). Some other prominent NGOs in Nigeria are: the Social and Economic Rights Action Centre (SERAC); the Centre for Economic and Social Rights; the Nigerian Conservation Foundation (NCF); Transparency International; and the Gani Fawehemi Movement for Good Governance. Truly, NGOs are an important constituent of the civil society movement in the Nigeria.⁵²

5.5 NGOs in the International Sphere

The influence of NGOs in international law or governance is not a recent development because it has been in existence for more than 200 years. It gathered momentum in the era of the League of Nations in the early part of the 20th century⁵³ and by the 1990s, the proliferation of NGOs in the international arena has been massive such that their involvement in global governance has become almost indispensable. It is germane to remark that globalisation has been a major catalyst in the spread of NGOs in the international sphere. This spread has been facilitated by a variety of factors which include

⁵¹ David Ogunkan, 2022, Achieving Sustainable Environmental Governance in Nigeria. ScienceDirect <https://www.sciencedirect.com> > accessed on 27/10/2025 @ 2:26 pm.

⁵² List of Non-Governmental Organisations with their Present Status Nairametrics <https://nairametrics.com> > accessed on 27/10/2:35 pm.

⁵³ Charnovitz, S., "Two Centuries of Participation: NGOs and International Governance", *Michigan Journal of International Law* (1997) (18) (2) 183-286.

internet and information technology, spread of democratic values and development amongst others.⁵⁴

The United Nations is one of the few international organisations that collaborate effectively with NGOs.⁵⁵ The relevance of NGOs in international governance especially in environmental issues became recognised by the United Nations in Article 71 of the UN Charter which opened up the system to the participation of NGOs thus: ‘The Economic and Social Council may make suitable arrangements for consultation with non-governmental organisations which are concerned with matters within its competence.’ It does this by drawing on NGOs expertise and views especially in the areas of policy and program design, implementation and evaluation. Examples of NGOs participation in international environmental governance include: the 1996 UN Conference on Human Settlements (Habitat 11) where NGOs were members of the drafting committees that drew up the declaration and programme of action; in the negotiation process that led to the drafting of the 1998 Aarhus Convention; and the Climate Change Convention of 1992 which had major contributions or inputs of NGOs.⁵⁶

The roles of NGOs in intergovernmental negotiations in the UN are thus, invaluable and have expanded tremendously overtime. Expertise, technical know-how and the use of compelling arguments to support their cause(s) amongst other roles are brought to bear by NGOs.⁵⁷ This is why it has been posited that in the intergovernmental process, it is often NGOs who possess the energy and perseverance needed to carry proposals through negotiation to formal agreement.⁵⁸ The influence which NGOs exert in the UN system may be divided into four namely: (i) the setting of agenda through the use of high profile campaigns and lobbying to raise awareness; (ii) conferring legitimacy through their

⁵⁴ Esty, D. C., and Ivanova, M. H., “Global Environmental Governance: Options & Opportunities” *Yale School of Forestry and Environmental Studies*, (2002) (1).

⁵⁵ TG Weiss, T. G., “International NGOs, Global Governance and Social Policy in the UN System” *Globalism and Social Policy Programme* (1999).

⁵⁶ United Nations Framework Convention on Climate Change UNFCCC <https://unfccc.int> > accessed on 27/10/2025 @ 2:48 pm.

⁵⁷ Gemmill, B., and Bamidele-Izu, A. A., ‘The Role of NGOs and Civil Society in Global Environmental Governance’, cited in Esty, D. C., and Ivanova, M. H., (eds), *Global Environmental Governance: Options & Opportunities*, *Yale School of Forestry and Environmental Studies*, (2002) 1.

⁵⁸ United Nations Environment Programme (UNEP).

democratic participation in the negotiations process; (iii) proposal of different solutions and initiatives in lieu of the initiatives sponsored by States;⁵⁹ and (iv) the implementation of negotiation of outcomes.

6. NGOs and Environmental Justice in Nigeria

Environmental justice refers to how justice can be brought into the environment. In other words, it means access to justice in relation to resources and includes the equitable distribution of environmental amenities, rectification and retribution of environmental abuses as well as restoration of nature and fair exchange of resources. NGOs are very important constituents of the civil society in Nigeria and they have been playing pivotal roles in ensuring environmental justice. Prior to their active involvement in trying to secure environmental justice in Nigeria, public interest litigations by private individuals were hampered by the doctrine of *locus standi*. For instance, in *Oronto Douglas v Shell Petroleum Development Company Ltd*,⁶⁰ the court held that the plaintiff who is a well-known environmental activist lacked the *locus standi* to sue Shell for its failure to observe the provisions of the Environmental Impact Assessment Act.

The NGOs never surrendered further struggle because of the decision in *Oronto*⁶¹ rather, they made recourse to foreign courts in trying to hold the multi-national corporations liable for human rights abuses and environmental degradation / pollution cases. The foreign cases of *Wiwa v. Shell*⁶² and *Botowo v. Chevron*⁶³ were some of the cases that were commenced as a result of the occurrences in the Niger Delta which tried to use the American statute, the Alien Torts Claim Act to hold the multi-national corporations liable for their deeds.

The unrelenting efforts and active involvements of the NGOs in environmental issues through enlightenment, negotiation and litigation however paid off and turned the

⁵⁹ Simmons, P. J., "Learning to Live with NGOs", *Foreign Policy* 112 (Fall) (1998) 82-96. <<http://carnegieendowment.org/1998/10/01/learning-to-live-with-ngos>> Accessed 20 July 2025.

⁶⁰ (1994) FHC/L/CS/573/96 [Unreported].

⁶¹ *Supra*.

⁶² *Wiwa v. Shell*, (2002) 96 8386

⁶³ *Botowo v. Chevron* F. Supp. 2d 1229 (N.D. Cal. 2004).

situation around in Nigeria when the court embarked on judicial activism that resulted to the reversal of the earlier ruling of lack of *locus standi* to institute court cases on environmental issues by non-State actors in *Center for Oil Pollution Watch v Nigerian National Petroleum Corporation (NNPC)*,⁶⁴ where the Supreme Court held that environmental NGOs who were previously unable to institute actions under existing public interest litigation procedures could now institute action in their own rights to prevent or remedy environmental pollution in Nigeria. The following landmark decisions were reached by the Supreme Court of Nigeria.

1. That the appellant NGO had the standing to sue the respondent, thereby liberalising or broadening the rule of standing. Thus, “public spirited individuals and organisations can bring an action in courts against relevant public authorities and private entities to demand their compliance with relevant laws and to ensure the remediation, restoration, and protection of the environment.”
2. That every person including NGOs, who bonafide seek the due performance of statutory functions or enforcement of statutory provisions or public laws, especially laws designed to protect human lives, public health and the environment, should be regarded as proper persons clothed with standing in law to request adjudication on such issues of public nuisance.”
3. That recognising public interest litigation will help address some other barriers to access to justice since poor communities without “the financial muscles to sue” or litigate who usually and disproportionately bear the brunt of environmental and climate change problems will have the benefit of public spirited persons and organisations fighting their course.
4. That there is no gain saying in the fact that there is increasing concern about climate change, depletion of the ozone layer, waste management, flooding and global warming et cetera. Thus, requiring countries and both national and international organisations to adopt stronger measures to protect and safeguard the environment for the benefits of the present and future.

⁶⁴ *Centre for Oil Pollution Watch (COPW) v NNPC* (2018) SCN < <https://climatecasechart.com> > accessed 27 July 2025.

5. That Section 20 of the Nigerian Constitution⁶⁵ on the duty to protect the environment by the State is justiciable when read together with, and in the context of, a provision like section 4(2) of the Constitution, on the power to make laws to give effect to section 20. Also that section 33 of the Constitution⁶⁶ which guarantees the right to life implicitly includes and constitutes a fundamental right to a clean and healthy environment for all. Again that the environmental right in Article 24 of the African Charter on Human and Peoples' Rights as domesticated in Nigeria is enforceable.

Apart from the success recorded by NGOs through the above landmark decision of court that a public spirited individuals and organisations can bring an action in courts against relevant public authorities and private entities to demand their compliance with relevant laws and to ensure the remediation, restoration, and protection of the environment, the NGOs have through their activities awakened the international community to the plight of the victims of environmental degradation in Niger Delta. This is evident from the Ogoni crisis where an NGO / Community Based Organisation in coalition with both local and international NGOs brought to the attention of the world, the human rights violations and environmental degradation in that part of Nigeria. Through their efforts and sensitisation, Shell BP Corporation and other multinational corporations operating in Ogoni have been compelled to revise their codes of conduct to include human rights which in turn resulted to the regular training and retraining of personnel as well as constant consultations with stakeholders in the Nigerian oil and gas sector.⁶⁷

So far, the existence and enforceability of environmental human rights have been confirmed in Nigeria in a manner that increases the possibility of successful environmental pollution and degradation litigation in the country. The decision demonstrates a significant positive paradigm shift in the attitude of the Nigerian Courts towards environment and related claims as well as providing additional human rights and

⁶⁵ The Federal Republic of Nigeria, 1999 as amended. See section 20.

⁶⁶ *Ibid.* See section 33.

⁶⁷ E Oshionebo, 'Transnational Corporations, Civil Society and social responsibility in Nigeria's oil and gas industry,' *African Journal of International and Comparative Law* (2007) (15) (1) 107-129.

constitutional tools for potential litigations concerning the environment in Nigeria.⁶⁸ This has impacted positively on the sands of time in environmental justice although there is room for improvement.

6. Perceived Inadequacies in the Anti-Pollution Laws of Nigeria.

⁶⁸ *Centre for Oil Pollution Watch (COPW) v NNPC* (2018) SCN < <https://climatecasechart.com> > accessed 27 July 2025.

As alluded to earlier, Nigeria is not lacking enactments that could be used to protect the environment and or stop or reduce environmental pollution to a level that could be tolerated with minimum discomfort. This is because if the laws are implemented in the spirit of their enactment, there would not be much problems of environmental pollution. Thus, the problem is more from the enforcement angle. This notwithstanding, a study of the Nigerian environmental laws revealed a lot of inadequacies which have not helped in the control of environmental pollution in the Niger Delta, some of which include:

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- i. Oil and gas which are the major pollutants in the Niger Delta are matters in the exclusive legislative list which only the Federal government can legislate on. The implication is that even when there is oil spillage that needs some urgent legislative inputs, the problem must persist until the National Assembly takes action on it.
 - ii. Prosecution or initiation of charges must receive the consent or approval of the Federal Attorney-General before an accused person could be arraigned under the Federal Environmental Protection Agency Act. The implications are that some offenders would go unpunished where the Attorney-General of the Federation fails to give his consent for whatever reason.
 - iii. Some of the laws incorporated some ready-made defences for potential offenders for example, in the Federal Environmental Protection Agency Act, defences like “the discharge being caused by natural disaster and act of sabotage”⁶⁹ and in the Oil in Navigable Waters Act, defences like “that the mixture escaped as a result of damage to vessel or due to leakages; that the mixture of oil and water was discharged for the purpose of securing the safety of the vessel or cargo or of saving life.”⁷⁰ The question that comes to mind is, “which counsel and his client (offender) will not rely on any of those provided defences?” The sure answer to this poser is, none.

⁶⁹ Federal Environmental Protection Agency Act. See section 20.

⁷⁰ Oil in Navigable Waters Act. See section 4.

- iv. Some important concepts that were used in the laws which are even the foundation of the offences created by them were not defined, for example the concept of “harmful quantities” as used in section 20 of the Federal Environmental Protection Agency Act was not defined. Thus, the meaning of what constitutes the offence may be variable depending on the person who is interpreting the concept and the interpretation that is given to the concepts. This is because the quantity that may be seen or interpreted by one person as “harmful” may not be seen and interpreted by another person as “un-harmful”.
- v. Jurisdiction for matters concerning oil and gas are exclusively reserved for the Federal High Court. Apart from the fact that the Court may not be close to the venue or location of the violation of the law, justice is indirectly being taken far away from the common victims. Added to this is the fact that the cost of litigation on the victims will increase and the work load on the Federal High Court may be much since the Divisions of the court are not many.
- vi. Inadequate number of agencies and personnel to enforce environmental laws in the Niger Delta considering the number and rate of spillage in the Niger Delta.

7. Conclusion

So far this paper has brought to the fore the magnitude of the problem of environmental pollution in the Niger Delta and has examined the legal framework for the prevention and control of the menace of environmental pollution in the Niger Delta. It is a serious cause for concern that pollution of the environment is persistent in the Niger Delta in the face of the anti-pollution laws of Nigeria. One of the major factors that encouraged the persistence of pollution in the Niger Delta is the fact that our laws have not encouraged non-State actors to take legal actions to compel authorities to comply with the provisions of law concerning the environment. Added to this is that despite the fact that the protection of the environment is recognised by the Nigerian Constitution, it has the non-justiciability status such that the State cannot be held accountable for non-protection of the environment.

It is gratifying to note however, that the impediment of the doctrine of *locus standi* on non-State actors as regards the life threatening phenomenon of environmental pollution is gradually being liberalised through judicial activism and the involvement of non-governmental organisations in the struggle for the attainment of environmental justice. Much is still needed to be done because many victims (both individuals and organisations) are not aware of this development and in creating this awareness and other struggles the State and even the NGOs must live above board in accountability, transparency and integrity as he who comes to equity must of necessity come with clean hands.

9. Recommendations

This paper has identified some reasons for the persistence of pollution in the Niger Delta environment in the face of the environmental laws in Nigeria. It is observed that despite the fact that there are many laws dealing with the environment, there are many inadequacies in the laws which make the review of environmental laws a necessity. Consequently, this paper recommends a general review of statutes concerning the environment and in specific terms, the following suggestions are hereby offered:

- i. Since environment is everything about humanity and it is capable of threatening human existence, issues concerning the environment should be removed from chapter II to chapter IV of the Constitution of the Federal Republic of Nigeria, 1999 to make them justiciable just like their fundamental rights counterparts.
- ii. Oil and gas which are the major pollutants in the Niger Delta are matters in the exclusive legislative list, the Federal government should establish and equip a specialised agency to promptly handle all cases of oil spillage and bring perpetrator to book within a specified period of time in a transparent manner.
- iii. Initiation of charges and prosecution of offenders should not be based on Attorney-General's consent because there may be denial of consent which may not be in the interest of the victims of such crime.

- iv. The Federal Environmental Protection Agency Act and the Oil in Navigable Waters Act should be reviewed to qualify or condition the “inbuilt” ready-made defences for potential offenders to only be applicable in exceptional circumstances where the defence is reasonably justifiable by overwhelming evidence.
 - v. The laws should be reviewed to incorporate definitions for some important concepts in the laws such as what amounts to “harmful quantities” as used in section 20 of the Federal Environmental Protection Agency Act. This is to enable everybody know with certainty when somebody has committed an offence under the law.
 - vi. Specialized courts should be established for environmental cases and should be close to the possible locations of violations.
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- vii. There should be enlightenment of the inhabitants of the Niger Delta regarding recent developments and progress in environmental litigations for them to be aware of their rights and to seek redress where necessary.
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