

RE-EXAMINING THE CONSTITUTIONAL CHALLENGES IN ADDRESSING ENVIRONMENTAL PROTECTIONS IN NIGERIA WITH LESSONS FROM OTHER JURISDICTIONS

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Abstract

Over the years, the African continent has tended to face dangerous and life-threatening environmental degradation affecting the entire biodiversity. Courts have the capacity to play an important role in responding to this degradation. This capacity has, however, been hindered specifically in Nigeria by Section 6(6)(c) of the 1999 Constitution of the Federal Republic of Nigeria (as amended), which renders socio-economic rights non-justiciable and enforceable, which include right to a clean, safe, and healthy environment. Adopting a doctrinal research methodology, the paper therefore attempts to examine the extent of environmental degradation in Nigeria, using the Niger-Delta Region as a case study. The central question to be considered in this paper is: To what extent have the judicial powers of the courts engaged in adjudicating on matters relating to socio-economic rights, environmental rights inclusive, and how the same could be addressed through environmental constitutionalism? The paper asserts that in Nigeria, the rights to life and the dignity of the human person include the right to a clean, poison-free, pollution-free, and healthy environment. The paper advocates for a constitution-based approach to environmental degradation in Nigeria with a view to promoting environmental constitutionalism. The paper recommends that the 1999 Constitution of the Federal Republic of Nigeria (as amended) be amended further to recognize the justiciability of the right to a clean, poison-free, pollution-free, pollution free and healthy environment in Nigeria.

Keywords: *Environmental degradation, Multinational Corporation, Courts, Environmental Constitutional Foundation, Nigeria*

1. Introduction

The African continent is known to face dangerous and life-threatening environmental degradation affecting the entire biodiversity, which in the long run affects the economy directly or indirectly.¹ Although the courts have the capacity to play an important role in responding to this degradation, the capacity has, however, been hindered specifically in Nigeria by Section 6(6)(c) of the 1999 Constitution of the Federal Republic of Nigeria (as amended), which renders socio-economic rights non-justiciable and enforceable which include right to clean, safe and healthy environment.² The central question to be considered in this paper is: To what extent have the judicial powers of the courts engaged in adjudicating on matters relating to socio-economic rights, environmental rights inclusive, and how the same could be addressed through environmental constitutionalism? The paper, therefore, attempts to examine the concept of environmental degradation in Nigeria, sources of environmental pollution in Nigeria, particularly in the Niger-Delta region of the country. The paper would also examine environmental justice in Nigeria and the efforts made thus far in the enforcement of environmental rights in Nigeria through judicial activism, and the non-justiciability of environmental rights in Nigeria. The paper submits that in Nigeria, the rights to life and the dignity of the human person include the right to a clean, poison-free, pollution-free, pollution free and healthy environment. The paper advocates for a constitution-based approach to environmental degradation in Nigeria with a view to promoting environmental constitutionalism. The paper recommends that the 1999 Constitution of the Federal Republic of Nigeria (as amended) be amended further to recognize the justiciability of the right to a clean, poison-free, pollution-free, pollution free and healthy environment in Nigeria. The question to be asked is: What is environmental degradation?

¹A. Siddiqua, JN, Hahladakis & WAK Al-Attia, 'An overview of the environmental pollution and health effects associated with waste landfilling and open dumping' [2022] 29 *Environmental Science & Pollution Research*, pages 58514-58536; B Oyaleke, 'Revisiting the need for a concise trade-based anti-money laundering legal and regulatory framework under African Continental Free Trade area (AFCFTA)' [2025] 23(2) *Journal of Private and Property Law*, December, 2025, Rivers State University. <https://rsuppljournal.com.ng/revisiting-the-need-for-a-concise-trade-based-anti-money-laundering-legal-and-regulatory-framework-under-african-continental-free-trade-area-afcfta/> accessed 13 June 2025

² B Oyaleke, 'Enhancing Liability of Multinational Corporations for Environmental Degradation in Nigeria' 2023) in *Law Democratic Institutions and Security Challenges in Nigeria*, Essays in Honour of Honourable Justice Ahmad Olarewaju Belgore, PJCA (Rtd), F.DRI, ISBN: 978-978-798-028-6; Lere Amusan, 'Multinational Corporations' (MNCs) Engagement in Africa' [2018] 5(1) *Journal of African Foreign Affairs*, 41-42 <https://www.jstor.org/stable/2666405> accessed 13 June 2025

2.0: Conceptualizing Environmental Degradation

The term '*Environment Degradation*' does not have a clear and precise definition. There is no universally acceptable definition of environmental degradation. This paper will, however, criticize and identify gaps in the definitions given by some scholars on the definition of environmental degradation and attempt to fill these gaps.

Hakeem et al.,³ on their part, submit that environmental degradation is the height of environmental irresponsibility of transnational corporations in most countries of Africa; Nigeria. They argue further that the activities of the multinational companies involved in oil exploration and exploitation in Africa has major impact on the environment and the general ecosystem of the local communities wherein they operate. They are of the view that, using shareholder and legitimacy theories to explain the irresponsibility of the multinational corporations, the stakeholder theory is suitable for harnessing and achieving the interests of the various groups, civil societies, and individuals directly affected by the environmental degradation of the host communities. According to them, to have a lasting solution or at least to reduce to the barest minimum the cases of environmental degradation in Africa, Nigeria inclusive, all stakeholders, such as groups, individuals, civil societies, and the state must work together as an indivisible team.⁴ They state further that oil spillage in Ogoniland serves as an example of environmental degradation, which has led to violence and loss of lives and properties in the Niger-Delta region for decades. According to them, the soil as well as groundwater has been contaminated by the oil spillage, making both the farmers and the fishermen unable to make use of their environment, thereby worsening the cases of poverty among the vast majority of the population.⁵ They are of the firm view that every efforts made thus far to hold multinational corporations, especially Shell liable for oil spillage in Ogoniland and other parts of the region by way of litigation both at the foreign and domestic Nigerian courts proved abortive as there was no time until 2015 that Shell

³HO Yusuf and K Omoteso, 'Combating environmental irresponsibility of transnational corporations in Africa: an empirical analysis' [2016] 21(11) *Local Environment*, 1372-1373, DOI: 10.1080/13549839.2015.1119812

⁴Yusuf & Omoteso (n. 3) 1374

⁵U Idemudia, 'The changing phases of the Niger delta conflict: implications for conflict escalation and the return of peace' [2009] 9(3) *Conflict, Security & Development*, 318; UNEP News Centre, *UNEP Ogoniland oil assessment reveals extent of environmental contamination and threats to human health* (2011) <http://www.unep.org/newscentre/Default.aspx?DocumentID=2649&ArticleID=8827&hash;sthash.hWicRRhg.dpuf> accessed 14 June 2025; HO Yusuf, 'Oil on troubled waters—multinational corporations and realising human rights in the developing world with particular reference to Nigeria' [2008] 8(1) *African Human Rights Law Journal*, 83-85

publicly admitted liability in the claims instituted by the 15,000 claimants of Bodo Community, Ogoniland and offered to pay the sum of \$83 million to the 15, 000 claimants affected by the spills and the community.⁶

The researcher agrees with the opinion and submission of the authors that to have a lasting solution or at least to reduce to the barest minimum the cases of environmental degradation in Africa, Nigeria inclusive, all stakeholders, such as groups, individuals, civil societies, and the state, must work together as an indivisible team to deal with this menace.⁷ I humbly submit that the authors failed, refused, and or neglected proffer the methodology and ways in which the groups, individuals, civil societies, and the state could work together as an indivisible team to end this issue of environmental degradation in Nigeria. Over the years, there has been a tug of war between the multinational companies, local communities, and the government on who, in fact cause the degradation. It has always been the argument of the state entity that, even though the state has the duty to protect under the United Nations Guiding Principles on Business and Human Rights, the companies are the ones carrying out the businesses in the local communities and therefore should be held responsible for the degradation and be liable in law and fact for the damage therefrom. The narrative by the companies has also been that the state should be responsible for the degradation as stated clearly under the United Nation Guiding Principles on Business and Human Rights on the one hand and the local communities, which in most cases, sbear the brunt from the fighting of these elephants, argue helplessly that both the state and the companies cause the degradation and should be liable in law and fact to clean up the environmental mess in their communities. This, therefore, according to the author, creates a blame game syndrome. The Federal High Court sitting in Abuja ordered Shell to pay the sum of N45.5 billion, equivalent of \$111.6 million, as damages for decades of environmental degradation through oil spills that occurred during the Biafran-Nigerian civil war.⁸ This is a judgment of the court in the right direction that, if complied with, would go a long way in

⁶H Ismail, 'Forum non conveniens, United States multinational corporations, and personal injuries in the third world: your place or mine?' [1991] 11(2) *Boston College Third World Journal of Law*, 249–276; K Omoteso and HI Mobolaji, 'Corruption, governance and economic growth in sub-Saharan Africa: a need for the prioritisation of reform policies' [2014] 10(2) *Social Responsibility Journal*, 316–330.

⁷B Oyaleke, 'Analysis of the legal and regulatory frameworks of money laundering activities on the Nigerian Economy' [2025] 2(2) *LexScriptio*, A Journal of the Department of Jurisprudence and Public Law, 110-127 <https://journals.kwasu.edu.ng/index.php/lexscriptio/article/view/562> accessed 14 June, 2025

⁸See <https://www.jurist.org/news/2021/08/shell-to-pay-111m-in-damages-for-1970s-oil-spill-in-nigeria/> accessed 14 June, 2025

ensuring the multinational corporations are responsible and responsive in the ways and manners they carry out their explorative activities in the local communities of their operations.

Kumar Maurya et al⁹ submit that environmental degradation is the deterioration of the environment through which natural resources, which include all the biotic and abiotic elements that form our surrounding such as air, water, soil, plants, animals, and all other living and non-living elements of the planet, are depleted.¹⁰ They assert further that the environment revolves round entire human's existence and makes up its surroundings and affects the general ability to live on the earth. Environmental degradation has become a global issue of concerns which covers issues like animal extinction, deforestation, global warming, pollution, biodiversity loss, and desertification, to mention but a few.¹¹

They opined further that good environmental management is *sine qua non* for economic growth and development, and no country in the world is not affected by climate change and environmental degradation.¹² This issue constitutes a global chain of events of years of environmental degradation in virtually all countries of the world, though with different degrees of consequences and defects. They state specifically, using India as a case study, that most of the natural resources, environment inclusive, are in a dire state of degradation affecting the lives and livelihood of the people, as there is degradation of soil erosion, salinity, soil quality, and overall loss of fertility of agricultural land, coupled with loss of quality crop produce. They also noted that air, water, and land pollution are increasing daily and posing a serious threat to human and animal health, coupled with the fact that groundwater aquifers are exploited beyond imagination in many arid and semi-arid areas, and even fishery yields are declining daily, and air quality is

⁹Oyaleke (n. 1) 80; Maurya, P.K., Ali, S.A., Ahmad, A., Zhou, Q., da Silva Castro, J., Khane, E. and Ali, H, 'An introduction to environmental degradation: Causes, consequence and mitigation in *Environmental Degradation: Causes and Remediation Strategies*, [2020] 1, Eds. Kumar, V., Singh, J. and Kumar, P., 1-3, <https://doi.org/10.26832/aesa2020-edcrs-01> accessed 15 June 2025

¹⁰Bourque, C.P.A., Cox, R.M., Allen, D.J., Arp, P.A. and Meng, F.R, 'Spatial extent of winter thaw events in eastern North America: historical weather records in relation to yellow birch decline' [2005] 11(9) *Global Change Biology*, 1477; Malcolm, J.R & Pitelka, L, 'Ecosystems & Global Climate Change: A Review of Potential Impacts on US Terrestrial Ecosystems and Biodiversity' (Arlington: Pew Center on Global Climate Change, 2000)

¹¹Brown, B.J., Hanson, M.E., Liverman, D.M. & Merideth, R.W, 'Global sustainability: toward definition' [1987] 11(6) *Environmental Management*, 713-719; Tian, Q., Zhou, Z. Q., Jiang, S. R., Ren, L.P. & Qiu, J, 'Research progress in butachlor degradation in the environment' [2004] 43(5) *Pesticides-Shenyang*, 205-208.

¹²Maurya, P.K., Ali, S.A., Ahmad, A., Zhou, Q., da Silva Castro, J., Khane, E. and Ali, H, (n. 7) 2 <https://doi.org/10.26832/aesa2020-edcrs-01> accessed 15 June 2025

deteriorating.¹³ They also assert that the causes of environmental degradation may be natural or human. It is human when it is caused by modern urbanization, industrialization, deforestation, and over-population while it is natural when it is caused by acts of God, such as droughts, floods, fires, typhoons, to mention but a few.¹⁴ They finally concluded that environmental degradation is also beneficial in the sense that, as the environment changes, species are constantly and by nature regenerating, and human activity serves as the main driver of power.¹⁵

The researcher is of the view that the disadvantages and or hazards that environmental degradation causes, which may be economic in nature,¹⁶ especially from the activities of the multinational companies in Africa generally, and in particular, in the Niger-Delta of Nigeria, outweigh the seemingly benefits as argued by Kumar et al.¹⁷ The Niger-Delta of Nigeria is replete with, and is in a dire state of degradation, as there is degradation of soil erosion, salinity, soil quality, and overall loss of fertility of agricultural land, coupled with loss of quality crop produce affecting the lives and livelihood of the people. The ecosystem has been disrupted and damaged, causing severe health challenges and diseases to the inhabitants of the region.

3.0: Environmental Pollution and Degradation in Nigeria

Environmental degradation and pollution is prevalent in Nigeria, particularly in the Niger Delta region of the country. The Niger Delta is one of the world's largest wetlands, and Africa's largest

¹³Malik, D.S. & Maurya, P.K., 'Heavy metal concentration in water, sediment, and tissues of fish species (Heteropneustis fossilis and Puntius ticto) from Kali River, India' [204] 96(8)*Toxicological & Environmental Chemistry*, 1195-1198; Yadav, K.K., Kumar, S., Pham, Q.B., Gupta, N., Rezanian, S., Kamyab, H. & Talaiekhazani, A., 'Fluoride contamination, health problems and remediation methods in Asian groundwater: A comprehensive review' [2019] 182 *Ecotoxicology and Environmental Safety*; Maurya, P.K., Malik, D.S. & Sharma, A., 'Impacts of pesticide application on aquatic environments and fish diversity' [2019] *Contaminants in Agriculture and Environment: Health Risks and Remediation*, 112-115: <https://doi.org/10.26832/AESA-2019-CAE-0162-09> accessed 15 June 2025

¹⁴Maurya, P.K., Ali, S.A., Ahmad, A., Zhou, Q., da Silva Castro, J., Khane, E. and Ali, H, (n.6) 3 <https://doi.org/10.26832/aesa2020-edcrs-01> accessed 17 June 2025

¹⁵Dirzo, R. and Raven, P.H., 'Global state of biodiversity and loss' [2003] 28(1) *Annual Review of Environment and Resources*, 137- 167; Maurya, P.K., Ali, S.A., Ahmad, A., Zhou, Q., da Silva Castro, J., Khane, E. and Ali, H, (n. 6) <https://doi.org/10.26832/aesa2020-edcrs-01> accessed 17 June 2025

¹⁶B Oyaleke, 'Analysis of the legal and regulatory frameworks of money laundering activities on the Nigerian Economy' [2025] 2(2) *LexScriptio*, A Journal of the Department of Jurisprudence and Public Law, 110-127 <https://journals.kwasu.edu.ng/index.php/lexscriptio/article/view/562> accessed 17 June 2025

¹⁷ Mohamad Hidayat Muhtar, Amanda Adelina Harun, Viorizza Suciani, Putri., Apripri and Mohamad Rivaldi Moha, *Addressing the paradox: why environmental constitutionalism is more than the rights* (E3S Web of Conferences, Volume 506, 06004, 2024) <https://doi.org/10.1051/e3sconf/202450606004> accessed 23 February, 2026

delta, covering some 70 000 km.¹⁸ The Niger Delta is evidently blessed with numerous resources, including crude oil that accounts for about 80 percent of Nigeria's foreign exchange earnings. Despite its immense oil wealth, the region presents an example of extreme poverty, environmental pollution, and eventual degradation, as vast oil revenues have barely touched pervasive local poverty¹⁹.

The Niger Delta is one of the five most polluted spots in the world.²⁰ This is caused by the activities of the multi-national oil companies operating in the region, resulting from pollution. The major negative effect of pollution is environmental degradation. Pollution refers to the presence of matter or energy whose nature, location, or quantity has undesired effects on the environment, which may arise from nature (natural pollutants) or as a result of human activities (anthropogenic pollutants), through the environmental media of air, land, or water.²¹ It is on record that in the Niger Delta, the major causes of pollution are oil spillage and gas flaring by the oil companies, leading to soil fertility loss, delta forest loss, biodiversity depletion, and fisheries decline, among many others.²²

3.1: Some Causes of Environmental Pollution in Nigeria

3.1.1: Oil Spillage

This usually occur due to equipment failure, accidents, natural hazards, and deliberate human actions. As a result of these externalities, huge volumes of oil have been spilled into the environment, such as the land and water (rivers, ponds, lakes, and sea), causing serious damage to the ecosystem. The most publicized cause of oil spills in Nigeria is vandalism. This is the deliberate tampering by inhabitants of oil-bearing communities and intruders, causing oil spills due to anger, frustration, disillusionment, or inadequate compensation to oil-bearing communities. Other instances are the desire to take part in the spilled oil (petroleum products) for pecuniary gains. The most common cause of oil spills, however, is equipment failure of the oil companies in their operations, which is linked to overloading, manufacturing defects, age of oil

¹⁸Oyaleke (n. 1) 97

¹⁹United Nations Development Programme (UNDP) *Niger Delta Human Development Report*. (Lagos, UNDP, 2006) 9

²⁰Azaiki S, *Inequities in Nigerian Politics* (Yenegoa, Treasure Communications Resources Limited Nigeria, 2003)

²¹Callan, S J and Thomas J.M 'Environment Economics and Management: Theory policy and application (Chicago: Invin series in Economics, 1996)

²²Amugo F.O 'Environmental Degradation and the Niger Delta Crises' [2018] 1(6) *International Journal of Education and Social Science Research*, 208

pipelines, among others²³. At times, pipeline and holding tanks leak oil into the soil, which may not be easily detected. Also, at various stages of oil production, accidents do occur, resulting in intermittent discharge of oil into the environment.

Events may happen that ultimately result in the spillage of this product in the course of exploration, production, storage, and transportation of crude oil. It could be due to equipment failure or malfunction, or a well blowout. It could also be attributed to pipeline failure, storage tank failure, or loading hose failure. In some cases, the cause has been traced to sabotage, now a common phenomenon in the environmentally ravaged Niger Delta region of Nigeria. Irrespective of the cause of the oil spill, it poses a danger to the environment. Even with extensive remediation, the effect on the vegetation and eco-system are often devastating. The oil spill caused by equipment failure is always destructive. The oil spill in British Petroleum deep water production in the Gulf of Mexico in the United States in 2010 is a good example.²⁴

Oil spills kill fish and crops, in addition to reducing the nutrient value of the soil.²⁵ Environmental pollution results in productivity losses, increased poverty, and occupational displacement/disorientation.²⁶

²³ Najid Ahmad, Liu Youjin, Saša Žiković, Zhanna Belyaeva, 'The effects of technological innovation on sustainable development and environmental degradation: Evidence from China' [2023] *Technology in Society*, <https://doi.org/10.1016/j.techsoc.2022.102184> accessed 23 February, 2026

²⁴ Nwagbogu, G.M, *Course Guide* (National Open University of Nigeria, Macdonna University, Okija)

²⁵ Oyaleke (n. 1) 98; Clark, Henry; Green, Elwyn; Liuti, Laura; Turner, Walter; Quarto, Alfredo; Richard, Margie; Tate, Umar; Wilson, Monica and Wyshan, Daphne, 'Oil for Nothing: Multinational Corporations, Environmental Destruction, Death and Impunity in the Niger Delta' (A United States Non-Governmental Delegation Trip Report, 1999).

²⁶ United Nations Development Programme (UNDP) 2006. *Niger Delta Human Development Report*. (Lagos: UNDP); World Bank Report 1995. *Defining an Environmental Development Strategy for the Niger Delta*. Vol. One, 1995; see also Salau, A.T 'Environmental Crisis and Development in Nigeria (An Inaugural Lecture, University of Port Harcourt, Nigeria, 1993); Worika, I.L *Environmental Law and Policy of Petroleum Development: Strategies and Mechanisms for Sustainable Management in Africa* (Port Harcourt: Anpez Centre for Environment and Development, 2002); Ikein, A.A *The Impact of Oil on a Developing Country: The Case of Nigeria*. (Ibadan: Evans Brothers Limited, 1991); Aaron, K.K 'Human Rights Violation and Environmental Degradation in the Niger Delta' in Porter, Elizabeth & Offord, Baden (eds), *Activating Human Rights*. (New York: Peter Long, Oxford Borne, 2006a.); Adeyemo, A.M 'The Oil Industry, Extra-Ministerial Institutions and Sustainable Agricultural Development: A Case Study of Okrika LGA in Rivers State' [2002] 2(1) *Nigerian Journal of Oil and Politics*, 60-78; Opukri, C.O & Ibaba, S.I *Oil Based Environmental Degradation and Internal Population Displacement in the Niger Delta* (Paper presented at the second National Conference of the faculty of Business and Social Sciences, University of Ilorin, Ilorin, Nigeria, February 27-28, 2007); Okoko, K & Johnson, N 'Revenue Allocation and the Oil Producing States in Nigeria' in Alapiki, Henry (ed), *Perspectives on Socio-Political and Economic Development in Nigeria*. (Owerri: Springfield Publishers, 1998); Ikporukpo, C.O 'Petroleum, Fiscal Federalism and Environmental Justice' [2004] 18 (3) *Space and Polity*, 321-354

3.1.2: Gas Flaring

Gas flaring is one of the challenges and or problems of oil exploration in the Niger-Delta of Nigeria, which causes pollution in the area. This process essentially involves what is often described as the unscientific burning of associated but unwanted gas during oil exploration and production.²⁷ When oil is pumped out of the ground, it is accompanied by natural gas and produced water. These accompanying products are separated from the crude oil and discharged as waste. In the case of gas, it is burnt because of inadequate facilities for collecting and gathering it. The produced water, in most cases, is discharged into the rivers or streams along with its toxic substances. In both cases, it is the environment that is left degraded as dangerous toxic substances pollute the air through gas flaring; at the same time, rivers, streams, and lakes are rendered lifeless through the discharge of polluted water and other effluents. Studies have shown that gas flares diminish agricultural productivity, and crops planted about 200 metres from flare sites lose 100 percent of their yield, and those planted about 600 metres from flare sites experience 45 percent loss in yield, and 10 percent loss in yield for crops planted one kilometer away from gas flares.²⁸

There is evidence that gas leaks also occur in parts of the Niger Delta. Bubbling has been observed in certain swamps. This means that an unknown number of hydrocarbons may be affecting the water organisms and are being emitted into the atmosphere.

The World Bank²⁹ estimated that Nigeria flares about 75 per cent of the gas it produces due to the lack of a local market and infrastructure. Gas flaring amounts to a monumental waste of a valuable resource, on top of the air and thermal pollution that damages biodiversity. Flares cause noise and elevated temperatures. The heat kills vegetation, suppresses the growth and flowering of some plants, and diminishes agricultural production. Plants, animals, and humans in the

²⁷TrungThanh Nguyen, Ulrike Grote, Frank Neubacher, Dil, B. Rahut, Manh Hung Do, Gokul, P. Paudel, 'Security risks from climate change and environmental degradation: implications for sustainable land use transformation in the Global South' [2023] 63 *Current Opinion in Environmental Sustainability*, <https://doi.org/10.1016/j.cosust.2023.101322> accessed 23 February 2026

²⁸Salau, A.T 'Environmental Crisis and Development in Nigeria' (An Inaugural Lecture, University of Port Harcourt, Nigeria, 1993) 19-22; See also: Adeyemo, A.M 'The Oil Industry, Extra-Ministerial Institutions and Sustainable Agricultural Development: A Case Study of Okrika LGA in Rivers State' [2002] 2(1) *Nigerian Journal of Oil and Politics*, 69

²⁹<https://www.worldbank.org/en/news/press-release/2012/07/03/world-bank-sees-warming-sign-gas-flaring-increase> accessed 12 August 2025

vicinity of the gas flares are perpetually exposed to light with no respite at night. This is harsh for nocturnal animals. The light from flares may also be affecting the endangered marine turtles in the area. Turtles' nesting patterns are influenced by light on their approach to beaches, where they lay their eggs. Additional largely unstudied potential impacts include the effects on the migratory patterns of birds. This has, over the years, been one of the challenges and or problems facing the Niger-Delta of Nigeria, which is one of the side-effects of oil exploitation and exploration in the region.

4.0: The enforcement of environmental rights in Nigeria

The right to a clean and healthy environment free from every form of environmental abuse or degradation is a global right entrenched in the statute books.³⁰ This right has enjoyed domestic recognition and enforcement in the Constitution and subsidiary legislations of most countries in the world; African countries. According to the provision of Section 20 of the 1999 Constitution of the Federal Republic of Nigeria (as amended), the state shall protect and improve the environment and safeguard the water, air, forest, and wildlife of Nigeria.³¹ Article 4 of the Constitution of the Republic of South Africa also provides that every citizen of South Africa is entitled to a healthy and clean environment.³² It must be noted however that notwithstanding that section 20 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) provides that the states shall protect and improve the environment and safeguard the water, air, forest and wild life of Nigeria, the right is not justiciable nor enforceable under the constitution except under the relevant international instruments that Nigeria is signatory to such as the African Charter on Human and Peoples Rights. The non-justifiability of this right, therefore, renders the citizenry helpless in the realization of this right, although the States have the mandate to ensure that the right is realized and enforced.

It must be noted, however, that the case of *Jonah Gbenre v. Shell BP*³³ is a landmark case on a Nigerian environmental and human rights case that addressed the legality of gas flaring in the Niger Delta. In the case, the applicant, Jonah Gbenre, brought the action on behalf of himself and

³⁰See generally UNESCO Convention Concerning the Protection of the World Cultural Natural Heritage, Nov. 21, 1972, 11(6) I.L.M. 1358; Convention for the Protection of the Mediterranean Sea Against Pollution, Feb. 16, 1976, 1102 U.N.T.S. 1698, 15 I.L.M. 290, 1976; G.A. Res. 29/3281, Charter of Economic Rights and Duties of States, ch. 3, art. 30 (Dec. 12, 1974)

³¹ 1999 CFRN (as amended)

³² Constitution of the Republic of South Africa, 1996

³³ 2005

the Iwherekan community in Delta State, Nigeria. The respondents included Shell Petroleum Development Company of Nigeria Ltd. (SPDC), the Nigerian National Petroleum Corporation (NNPC), and the Attorney General of the Federation. Shell, in joint venture with NNPC, had been engaging in continuous gas flaring in the community as part of its oil extraction operations. Gas flaring involves the burning of excess natural gas released during oil production.³⁴In the Niger Delta, this practice had been ongoing for decades, causing serious environmental degradation, health problems, acid rain, and destruction of farmlands and water sources.³⁵Despite statutory provisions aimed at regulating or discouraging gas flaring, oil companies continued the practice with government approval. The applicant argued that gas flaring violated the community's constitutional rights to life and dignity of the human person, as guaranteed under sections 33 and 34 of the 1999 Constitution of Nigeria. He also relied on international human rights instruments, including the African Charter on Human and Peoples' Rights, which is domesticated in Nigerian law. The key legal issues before the court were:

1. Whether gas flaring violates the fundamental rights to life and human dignity under the Nigerian Constitution.
2. Whether statutory provisions permitting gas flaring were inconsistent with constitutional guarantees.
3. Whether the respondents could lawfully continue gas flaring in the applicant's community.
4. Whether international human rights norms could be enforced by Nigerian courts in environmental matters.

The applicant contended that gas flaring exposed the community to toxic substances, respiratory illnesses, and environmental devastation, thereby threatening their lives and degrading their dignity. He argued that the constitutional right to life extends beyond mere existence to include a right to a clean, safe, and healthy environment. The applicant further asserted that laws allowing gas flaring were unconstitutional and should be declared null and void.

³⁴ Samson Adeniyi Aladejare, 'Natural resource rents, globalisation and environmental degradation: New insight from 5 richest African economies' [2022] 78 *Resources Policy*, <https://doi.org/10.1016/j.resourpol.2022.102909> accessed 23 February 2026

³⁵ Etienne Piguet, 'Linking climate change, environmental degradation, and migration: An update after 10 years' [2022] 13 (1) *WIREs Climate Change*, January/February 2022, e746 <https://doi.org/10.1002/wcc.746> accessed 23 February, 2026

The respondents, particularly Shell and NNPC, argued that gas flaring was permitted under Nigerian petroleum laws and regulations. They claimed that the practice was necessary for oil production and was conducted with governmental authorization. The Attorney General maintained that the statutory framework governing oil exploration was valid and that economic considerations justified continued gas flaring.

The Federal High Court ruled in favor of the applicant. The court held that:

1. Gas flaring violated the right to life and human dignity as guaranteed by the Nigerian Constitution.
2. The constitutional right to life includes the right to a healthy and pollution-free environment.
3. Statutory provisions that permitted gas flaring without regard to human rights were inconsistent with the Constitution and therefore invalid to the extent of that inconsistency.
4. The African Charter on Human and Peoples' Rights was enforceable in Nigeria and reinforced the applicant's claims.

The court ordered Shell and NNPC to take immediate steps to stop gas flaring in the Iwherekan community and restrained the respondents from further flaring activities.

Gbenre v. Shell BP is widely regarded as a ground-breaking environmental justice decision in Nigeria and Africa more broadly. It was one of the first cases in which a Nigerian court explicitly recognized environmental harm as a violation of fundamental human rights. By interpreting the right to life expansively, the court moved beyond a narrow, biological understanding of life to include environmental well-being.

The case also demonstrated the growing influence of international human rights law in domestic courts. The reliance on the African Charter showed that environmental rights could be derived from existing human rights instruments even in the absence of explicit constitutional environmental rights. It must be noted, however, that despite the decision of the court, the practical impact of the judgment was limited. Enforcement proved difficult, as gas flaring continued in many parts of the Niger Delta after the decision. Regulatory weaknesses, government dependence on oil revenue, and the power of multinational oil companies undermined the effectiveness of the ruling. This highlights a broader challenge in environmental litigation: favorable judgments do not always translate into real-world change.

Additionally, the case did not result in comprehensive legislative reform. Nigeria continues to struggle with balancing economic interests and environmental protection, and gas flaring remains an ongoing issue despite subsequent policies and deadlines.

5.0: Environmental Constitutionalism

Environmental Constitutionalism is the use of constitutional law to protect the environment, often through the inclusion of environmental provisions, rights, and duties in national constitutions. This approach tends to allow for environmental protection by embedding it in a nation's fundamental law, which empowers courts to enforce these rights and duties and helps to address environmental degradation. It can take the forms of substantive or procedural rights, states' duties, or even rights for nature itself, and its effectiveness depends on both constitutional design and judicial enforcement. Within the context of the Nigerian law, it is argued that the environmental right should be included expressly in the Constitution as one of the fundamental rights contained in the chapter IV of the Constitution. This will afford the citizens the constitutional opportunity to invoke the judicial powers of the courts for the enforcement of the right. Hence, the amendment of the current 1999 Constitution of the Federal Republic of Nigeria is unavoidable. Express recognition of the right to a clean, safe, and healthy environment comes with advantages and benefits, which, if properly harnessed, would lead to total wellness of the citizens.

It is submitted that Constitutional environmental rights can be a powerful weapon in the arsenal of environmental campaigners and marginalised groups that shoulder a disproportionate share of the burden of pollution and environmental harm.³⁶ According to Boyd and Knox, several studies have shown a correlation between the right to a healthy environment and healthier people and ecosystems.³⁷ Three other advantages of environmental constitutionalism highlighted by Boyd in “The Environmental Rights Revolution” include creating a level playing field vis-à-vis other rights; fostering greater government and corporate accountability; and strengthening environmental democracy by empowering citizens with stronger environmental procedural

³⁶ OHCHR Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment A/73/188 (2018) [40].<
<https://www.ohchr.org/en/documents/thematicreports/a73188-report-special-rapporteur-issue-human-rights-obligations-relating>> accessed 31st October, 2025

³⁷ Ibid 44

rights.³⁸ The paper will examine these potential advantages of environmental constitutionalism in more detail.

On the question of creating a level playing field vis-à-vis other rights, a strong and legally enforceable constitutional environmental right could potentially act as a counterbalance to the exercise of property rights in an environmentally destructive manner. Bosselmann refers to a ‘human rights’ tragedy of the commons where many forms of environmental degradation are perfectly legal, because individual rights such as property rights create an entitlement to use the environment as the property owner desires.³⁹ The collective exercise of these rights results in systemic and widespread environmental degradation.⁴⁰

In terms of government accountability, Boyd argues that both the substantive and procedural aspects of a constitutional right to a healthy environment provide processes, forums, and standards for holding governments accountable for failing to protect human health and the environment.⁴¹ This is well-exemplified by the fact that the right to a healthy environment is increasingly being invoked in climate litigation to challenge the implementation or ambition of a government’s climate targets and policies.⁴² One of the first global studies on the role of the right to a healthy environment in climate litigation reached the ‘tentative’ conclusion that, so far, the right seems to contribute to success in climate cases.⁴³ In the European context, constitutional environmental rights/duties have to date been deployed in climate litigation with varying levels of success. Peel and Osofsky argue that the existence of a constitutional right to a healthy environment or safe climate, alone, is not determinative of the successful deployment of rights arguments in climate litigation.⁴⁴ Other relevant factors include the existence of legislation or

³⁸ David Boyd, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment* (UBC Press 2011) 35.

³⁹ Klaus Bosselmann, ‘Environmental and human rights in ethical context’ in Anna Grear and Louis J. Kotzé (eds), *Research Handbook on Human Rights and the Environment* (Elgar 2015) 531, 532.

⁴⁰ *Ibid*

⁴¹ Boyd (n. 38) 30-31

⁴² Pau de Vilchez and Annalisa Savaresi, ‘The Right to a Healthy Environment and Climate Litigation: A GameChanger?’ (2021) 32(1) *Yearbook of International Environmental Law* 3, 17

⁴³ *Ibid*

⁴⁴ Jacqueline Peel and Hari Osofsky, ‘A Rights Turn in Climate Change Litigation’ (2018) 7(1) *Transnational Environmental Law* 37, 62.

procedures that facilitate rights-based cases and the presence of case law or judicial practices receptive to novel rights-based arguments.⁴⁵

According to May, factors that continue to hinder the judicial vindication of constitutional environmental rights in a more general context include the text and its meaning, judicial receptivity, political willingness, and poor implementation and monitoring of judicial orders in environmental cases where they have been made.⁴⁶

5.0: Judicial Attitude to Environmental Constitutionalism in South Africa, Nigeria, and the United Kingdom

Nigeria

Nigeria's approach to environmental constitutionalism is more complex and constrained. The 1999 Constitution of Nigeria does not explicitly guarantee a justiciable environmental right. Environmental protection is located under Section 20 in the Fundamental Objectives and Directive Principles of State Policy, which are traditionally regarded as non-justiciable under Section 6(6)(c) of the Constitution.

Despite this limitation, Nigerian courts have shown judicial creativity by advancing environmental protection through the interpretation of fundamental human rights, particularly the rights to life and dignity under Sections 33 and 34. The landmark case of *Gbenre (Gbemre) v. Shell Petroleum Development Company of Nigeria Ltd*⁴⁷ marked a turning point. The Federal High Court held that gas flaring violated the constitutional rights to life and human dignity, effectively recognizing a right to a clean and healthy environment.

Nigerian courts have also relied on the African Charter on Human and Peoples' Rights, which is domesticated in Nigerian law. In *SERAC v. Nigeria*,⁴⁸ environmental degradation was recognized as a violation of multiple human rights, reinforcing the domestic judicial trend.

However, the judicial attitude in Nigeria remains cautiously progressive but institutionally weak. While courts have demonstrated a willingness to expand constitutional rights, enforcement remains a major challenge. Economic dependence on oil revenue, political interference, and regulatory

⁴⁵ Ibid

⁴⁶ James May, 'The Case for Environmental Human Rights: Recognition, Implementation, and Outcomes' (2021) 42 Cardozo Law Review 983, 1011.

⁴⁷ 2005

⁴⁸ 2001

weaknesses limit the effectiveness of judicial decisions. Unlike South Africa, Nigerian courts rarely issue structural or supervisory orders to ensure compliance.

Thus, Nigeria reflects a hybrid judicial posture, innovative in principle but constrained in practice. Environmental constitutionalism exists largely through judicial interpretation rather than explicit constitutional text.

South Africa

South Africa represents one of the most advanced models of environmental constitutionalism globally. The 1996 Constitution of South Africa explicitly recognizes environmental rights under Section 24, which guarantees everyone the right to an environment that is not harmful to health or well-being and mandates the state to take reasonable legislative and other measures to protect the environment for present and future generations.

South African courts have adopted a robust, purposive, and rights-based interpretative approach to environmental protection. The judiciary consistently treats environmental rights as justiciable and enforceable, not merely aspirational. In *Fuel Retailers Association v. Director-General, Environmental Management*,⁴⁹ the Constitutional Court emphasized that environmental protection and sustainable development are inseparable. The court held that economic development must be environmentally sustainable, thereby rejecting the notion that development interests automatically outweigh environmental concerns.

Furthermore, South African courts actively apply international environmental principles, such as the precautionary principle, intergenerational equity, and sustainable development. In *Minister of Health v. Woodcarb (Pty) Ltd*,⁵⁰ the court affirmed that environmental authorities must consider the long-term ecological consequences of their decisions. The judiciary has also relaxed traditional rules of locus standi, enabling public interest litigation in environmental matters.

Overall, the judicial attitude in South Africa is activist and transformative, reflecting the broader constitutional mandate to redress past injustices and promote social and environmental justice. The courts see themselves as guardians of both present and future generations, firmly embedding environmental protection within constitutional adjudication.

⁴⁹2007 (6) SA 4 (CC)

⁵⁰ 1996 (3) SA 155 (N)

United Kingdom

The United Kingdom presents a markedly different model due to the absence of a written constitution and the principle of parliamentary sovereignty. There is no constitutional right to a healthy environment. Instead, environmental protection is addressed through statutory law, common law, and human rights jurisprudence, particularly under the Human Rights Act 1998, which incorporates the European Convention on Human Rights (ECHR).

UK courts have traditionally adopted a restrained and deferential attitude toward environmental matters, especially where policy and economic considerations are involved. Environmental claims are often framed under Article 2 (right to life) or Article 8 (right to respect for private and family life) of the ECHR. In *Lopez Ostra v. Spain*⁵¹ (applied in UK jurisprudence), environmental harm was recognized as capable of violating Article 8, influencing domestic courts.

Judicial review is the primary mechanism for environmental litigation in the UK. Courts focus on procedural fairness, legality, and rationality, rather than substantive environmental rights. In cases such as *R (ClientEarth) v. Secretary of State for the Environment*,⁵² courts have required government compliance with statutory and EU-derived environmental standards but have avoided dictating policy outcomes.

The UK judiciary generally refrains from judicial activism, reflecting respect for the separation of powers. Even in climate change litigation, courts tend to compel government action only where there is a clear statutory breach, not based on broad environmental principles.

Thus, the UK approach to environmental constitutionalism is indirect and procedural, relying on legislative frameworks rather than constitutional rights. Environmental protection is treated as a matter of governance rather than constitutional entitlement.

5.2: The Challenges to Environmental Protection and Access to Justice in Nigeria

Environmental justice is not sufficiently served, as there is a constant problem of litigation. Access to justice in issues bordering on environmental degradation is faced with setbacks due to lax environmental laws, non-justiciability of the right to a clean, safe, and healthy environment, lack of political will to enforce the existing legal frameworks, enormous economic and political influences of the multi-national oil corporations that cause the pollutions and lack of independent

⁵¹ App no. 16798/90, (1995) 20 EHRR 277

⁵² 2016 UKSC 41, C-404/13

judicial and judicial institutions.⁵³ However, over the years, individuals and communities affected by environmental pollution have gone to court in search of environmental justice by filing for compensation for incidents of oil pollution in the form of oil spill which affected the land, swamps, creeks, fish ponds, fishing nets, and other valuable properties of the host communities.⁵⁴

Another issue that causes a clog in the wheel of access to environmental justice is the strict application of the principle of *locus standi*. *Locus standi* is the legal capacity to institute proceedings in a court of law.⁵⁵ A party would only succeed in instituting a case in the court of competent jurisdiction if he or she can prove that he or she has some justifiable interest which may be affected by the action, or he or she will suffer injury or damage as a result of the action.⁵⁶ This principle has been interpreted strictly as it relates to environmental pollution litigation, which often leads to the dismissal of many pollution litigation cases at the mere fact that the right of the person filing the suit has not been directly infringed upon. These bottlenecks associated with the application of *locus standi* in Nigerian Courts always result in the dismissal of justice, as many environmental litigation cases in Nigeria have been sacrificed on the altar of a lack of *locus standi* by the claimants. However, in the recent Supreme Court decision in the case of ***Centre for Oil Pollution Watch v. Nigerian National Petroleum Corporation (NNPC)***,⁵⁷ the Nigerian Apex Court held that it would be wrong for the court to allow outdated technical rules of Locus Standi to prevent public groups from bringing an action to court to stop unlawful conduct. Sequel to the decision, non-governmental organisations are now clothed with the toga of *locus standi* to sue in environmental matters. It must be noted, however, that notwithstanding the judicial activism expressed in the above case, enforcement of environmental rights will be more enhanced and achieved if environmental rights are expressly stated in the Constitution.

⁵³<https://unilaglawreview.org/2021/01/13/environmental-justice-in-nigeria-examining-the-issue-of-locus-standi/> accessed 18 October, 2025

⁵⁴Shell Petroleum Development Company, Nigeria Ltd v. Ambah (1991) 3 N.W.L.R. (Pt. 593) 1; Shell Petroleum Development Company, Nigeria Ltd v. Isaiah (2001) 11 NWLR (Pt. 723) 168; Elf Nigeria Ltd V Opere Sillo (1994) 6 NWLR (Pt. 350) 258; Shell Petroleum Development Company, Nigeria Ltd v. Tiebo Vii & Others (2005) 3-4 S.C; Nwadiaro v. Shell Petroleum Development Company, Nigeria Ltd (1990) 5 NWLR. (Pt. 150) 322; Shell Petroleum Development Company, Nigeria Ltd v. Farah (1995) 3 NWLR (Pt. 382) 148

⁵⁵<https://unilaglawreview.org/2021/01/13/environmental-justice-in-nigeria-examining-the-issue-of-locus-standi/> accessed 19 October, 2025

⁵⁶ See Adesanya v. President of the Republic of Nigeria & Anor (1981) 5 SC. 69

⁵⁷ (2019) 5 NWLR (Pt. 1666) 518

6.0: Conclusion and Recommendations

6.1: Conclusion

The study finds that strict application of the principle of locus standi is one of the challenges to environmental protection and access to justice in Nigeria. The strict interpretation of the principle led to the dismissal of many pollution litigation cases at the mere fact that the right of the person filing the suit has not been directly infringed upon.

The study further finds that non-justiciability of the right to a clean, safe, and healthy environment serves as a clog in the protection of the environment from all forms of degradation. The right is not justiciable nor enforceable under the constitution except under the relevant international instruments that Nigeria is signatory to such as the African Charter on Human and Peoples Rights.

The study also finds that UK courts have traditionally adopted a restrained and deferential attitude toward environmental matters, especially where policy and economic considerations are involved. Environmental claims are often framed under Article 2 (right to life) or Article 8 (right to respect for private and family life) of the ECHR.

It is part of the findings of the study that South African courts have adopted a robust, purposive, and rights-based interpretative approach to environmental protection. The judiciary consistently treats environmental rights as justiciable and enforceable, not merely aspirational. South African courts actively apply international environmental principles, such as the precautionary principle, intergenerational equity, and sustainable development.

Overall, the study finds that the judicial attitude in South Africa is activist and transformative, reflecting the broader constitutional mandate to redress past injustices and promote social and environmental justice. The courts see themselves as guardians of both present and future generations, firmly embedding environmental protection within constitutional adjudication.

The study has attempted to address the central research question in this study i.e. to what extent have the judicial powers of the courts engaged in adjudicating on matters relating to socio-economic rights, environmental rights inclusive, and how the same could be addressed through environmental constitutionalism? This was achieved by examining the attitude of the courts in

Nigeria to the recognition and enforcement of environmental rights in Nigeria with its counterparts in South Africa and UK.

6.2: Recommendations

The following are therefore recommended:

1. The 1999 Constitution of the Federal Republic of Nigeria (as amended) should be amended to include the express recognition of the right to a clean, safe, and healthy environment; thereby enhancing environmental constitutionalism.
2. The Nigerian courts should actively apply international environmental principles, such as the precautionary principle, intergenerational equity, and sustainable development as practiced in South Africa and UK.
3. The Nigerian courts should adopt the judicial attitude in South Africa which is activist and transformative in nature, reflecting the broader constitutional mandate to redress past injustices and promote social and environmental justice should be further enhanced
4. Nigeria as a nation should be decisive and should have the necessary political will to curb the activities of the multi-national corporation that cause environmental pollution by giving effect to the existing body of laws that criminalise environmental pollution and other allied matters in the country.
5. The multi-national corporations should see the need to prevent oil spillage and gas flaring as one of their corporate social responsibilities in the local communities wherein they carry out their explorative activities.
6. Punitive measures should be imposed on multi-national corporations that fail to comply with the existing regulations, laws, and policies on prevention and reduction of toxics through pollution in the local communities wherein they carry out their trade.
7. The government should ensure that the communities that suffer from myriads of degradation from the activities of the MNCs are duly compensated and resettled where necessary.
8. The judicial attitude in South Africa which is activist and transformative in nature, reflecting the broader constitutional mandate to redress past injustices and promote social and environmental justice should be further enhanced and copied in Nigeria.

9. The restrained and deferential attitude of the courts toward environmental matters, especially where policy and economic considerations are involved in the UK should be further enhanced and same replicated by the Nigerian court in ensuring that environmental rights are not sacrificed on the altar of technicality.
10. The South African courts should continue to actively apply international environmental principles, such as the precautionary principle, intergenerational equity, and sustainable development.