ENVIRONMENTAL JUSTICE AND HUMAN RIGHTS PROTECTION FOR MARGINALISED INDIGENOUS COMMUNITIES IN NIGERIA: A CRITIQUE OF DOMESTIC AND INTERNATIONAL LEGAL FRAMEWORKS

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Abstract

Environmental justice is concerned with fairness in the distribution of environmental benefits and burdens, and with ensuring that no community bears a disproportionate share of pollution, toxic waste, or other environmental harms. In Nigeria, decades of oil exploration and exploitation in the Niger Delta have made environmental justice a pressing legal and human rights concern, particularly for indigenous and marginalised communities whose lands, waters, and livelihoods bear the brunt of extractive activity. Adopting a doctrinal method of legal research, this article critically appraises the local and international legal frameworks governing environmental justice in Nigeria, with a view to identifying gaps and opportunities for reform. It argues that Nigeria's environmental laws, though relatively extensive, remain inadequate to address the scale of environmental injustice associated with oil and gas activity, owing to the non-justiciability of constitutional environmental duties, weak institutional capacity, jurisdictional overlap among regulators, and restrictive rules of standing. The article finds that international and regional human rights instruments particularly the Article 24 of the African Charter on Human and Peoples' Rights supply a valuable interpretive framework that

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Nigerian courts have used, cautiously, to read environmental protection into enforceable rights to life and dignity. Drawing comparative lessons from South Africa, Kenya, and India, the article recommends a comprehensive review of Nigeria's environmental laws, the constitutional entrenchment of the right to a healthy environment, the establishment of an independent environmental commission, broadened rules of standing, and deeper international cooperation and technical assistance to support Nigeria's pursuit of environmental justice and sustainable development.

Keywords: Environmental justice; human rights; Niger Delta; Nigeria; indigenous communities; African Charter; oil pollution; sustainable development.

1. **INTRODUCTION**

Environmental justice is a concept, a movement, and increasingly a legal principle. It seeks to ensure the fair treatment and meaningful involvement of all people, regardless of race, ethnicity, income, nationality, or social status, in environmental decision-making and in the distribution of environmental benefits and burdens.[1] The idea emerged from the recognition that environmental harms pollution, hazardous waste disposal, deforestation, climate change, and industrial activity disproportionately affect marginalised and vulnerable communities, and it demands equitable access to environmental resources alongside equal protection from environmental hazards. David Schlosberg's influential account insists that justice in this sense requires more than fair distribution: it also requires political inclusion and social recognition of the communities affected.[2] International law had already begun to move in this direction well before the language

[1]Dorceta E Taylor, Toxic Communities: Environmental Racism, Industrial Pollution and Residential Mobility (NYU Press 2014) 21.
[2]David Schlosberg, Defining Environmental Justice: Theories, Movements and Nature (Oxford University Press 2007).

of "environmental justice" took hold. In the *Trail Smelter Arbitration*, the tribunal established the principle prohibiting significant transboundary environmental harm,[3] while more recently the Dutch Supreme Court in *Urgenda Foundation v State of the Netherlands* held that governments owe citizens a duty to protect them against the risks of climate change.[4] Environmental justice has thus evolved from a localized struggle against environmental racism in the United States into a global legal, political, and scholarly movement that seeks to redress inequalities in the distribution of environmental burdens while securing meaningful participation for vulnerable populations.

Environmental justice in Africa grew out of this broader global movement but acquired distinct characteristics shaped by the continent's history of colonialism, resource exploitation, weak governance, and unequal access to natural resources. Richard Grove's account of colonial environmental policy shows how such policies frequently served imperial economic interests while marginalizing indigenous environmental knowledge and resource rights a pattern with obvious afterlives in postcolonial resource governance.[5] Unlike its American counterpart, environmental justice in Africa centers less on racial discrimination and more on oil pollution, land dispossession, mining, climate change, desertification, deforestation, water scarcity, and environmental displacement. Article 24 of the African Charter on Human and Peoples' Rights gives this concern legal form, providing that "all peoples shall have the right to a general satisfactory environment favourable to their development."[6] Henry Shue has further

[3]Trail Smelter Arbitration (United States v Canada) (1938 and 1941) 3 RIAA 1905.
[4]Urgenda Foundation v State of the Netherlands ECLI:NL:HR:2019:2007.

[5]Richard H Grove, Green Imperialism: Colonial Expansion, Tropical Island Edens and the Origins of Environmentalism, 1600–1860 (Cambridge University Press 1995).
[6]African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217, art 24.

argued that states historically responsible for the bulk of global emissions bear a correspondingly greater responsibility for addressing the impacts of climate change,[7] a principle of differentiated responsibility that resonates strongly with African claims for climate justice. The African Commission's decision in African Commission on Human and Peoples' Rights v Republic of Kenya *(Ogiek case)* reinforced these environmental justice principles in the specific context of indigenous land ownership and environmental governance.[8]

In Nigeria, environmental justice refers to the fair distribution of environmental benefits and burdens, equitable access to natural resources, meaningful public participation in environmental decision-making, and access to remedies for environmental harm.[9] The concept crystallized in response to the severe environmental degradation experienced in the Niger Delta, where decades of oil exploration and exploitation have produced oil spills, gas flaring, destroyed farmland, contaminated water bodies, and lost livelihoods. As Osofsky has argued, the pattern of degradation in the region illustrates the complex interaction between international human rights law, environmental law, and corporate responsibility; litigation against multinational corporations such as Shell in Nigeria, the United States, and the Netherlands demonstrates the need for stronger international legal mechanisms capable of holding corporations accountable, since environmental justice cannot be achieved through domestic

[7]Henry Shue, 'Global Environment and International Inequality' (1999) 75 International Affairs 531.
[8] African Commission on Human and Peoples' Rights v Republic of Kenya (Merits) (2017) 2 BHRC 296; Application No 006/2012 (African Court on Human and Peoples' Rights, 26 May 2017).
[9]National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007 (Nigeria), preamble.

frameworks alone where state institutions are weak or compromised.[10] Despite constitutional and statutory protections, enforcement in Nigeria remains hampered by the non-justiciability of the environmental right under the Constitution, weak regulatory capacity, and restrictive rules of standing. Oyeniyi Abe has argued that environmental justice in Nigeria requires recognition of environmental rights as enforceable human rights coupled with greater accountability for multinational corporations,[11] Nigerian environmental legislation has been criticised for imposing inadequate sanctions that may fail to provide sufficient deterrence against environmental violations. Uchenna Jerome Orji argues that Nigeria's pollution-abatement laws require comprehensive review, particularly to provide adequate penal sanctions and strengthen the powers of regulatory institutions.[12] The inadequacy of enforcement and regulatory mechanisms has also featured prominently in Nigerian environmental litigation, including *Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation*.[13]

Notwithstanding statutes such as the NESREA Act and the Petroleum Industry Act (PIA), chronic pollution from oil spills, gas flaring, and waste dumping continues to affect Niger Delta communities. These harms implicate the rights to life, dignity, and property guaranteed under sections 33, 34, and 44 of the Constitution of the Federal Republic of Nigeria 1999 (as amended),[14] and they conflict with the

[10] Hari M. Osofsky, 'Environmental Human Rights under the Alien Tort Claims Act: Redress for Indigenous Victims of Multinational Corporations' (2000) 20 Suffolk Transnational Law Review 1.
[11]Oyeniyi O Abe, 'Utilisation of Natural Resources in Nigeria: Human Right Considerations' (2014) 70(3) India Quarterly 249.
[12] Uchenna Jerome Orji, 'An Appraisal of the Legal Frameworks for the Control of Environmental Pollution in Nigeria' (2012) 38(2) *Commonwealth Law Bulletin* 321, 331.
. [13] *Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation* [2019] 5 NWLR (Pt 1666) 518.
[14]Constitution of the Federal Republic of Nigeria 1999 (as amended), ss 33, 34, 44.

right to a satisfactory environment guaranteed by Article 24 of the African Charter.[15] Yet communities continue to face structural barriers arising from the non-justiciability of section 20 of the Constitution, weak enforcement mechanisms, and restrictive standing rules.[16]

This article asks three questions. First, how effective are Nigeria's domestic, regional, and international frameworks in delivering environmental equity? Second, what judicial innovations have emerged to bridge the gaps in those frameworks? Third, what reforms might Nigeria usefully draw from comparable jurisdictions such as South Africa, Kenya, and India? Using doctrinal analysis of statutes, case law including *Jonah Gbemre v Shell Petroleum Development Company Nigeria Ltd*[17] and treaties, supplemented by comparative review, the article traces the framework's potential and its pitfalls, and offers a synthetic blueprint for constitutional entrenchment and institutional reform tailored to Nigeria's federal-oil nexus.

2. CONCEPTUAL FRAMEWORK

2.1 The Environment

The concept of "environment" is foundational to environmental law, environmental justice, sustainable development, and natural resource management, yet it resists a single universally accepted definition. The term is broad, encompassing the external conditions, influences, and factors that affect the existence, growth, development, and well-being of humans, animals, plants, and ecosystems; it is not confined to physical surroundings but extends to biological, social, cultural,

[15]African Charter on Human and Peoples' Rights (n 6) art 24.
[16]Constitution of the Federal Republic of Nigeria 1999 (as amended), s 6(6)(c); Ikechukwu Opara and Ors v Shell Petroleum Development Company Nigeria Ltd and 5 Ors (unreported, Suit No FHC/PH/CS/518/2005, Federal High Court, Port Harcourt, 2005).
[17]Jonah Gbemre v Shell Petroleum Development Company Nigeria Ltd & Ors (2005) AHRLR 151 (NgHC 2005).

economic, and political conditions that shape human life and activity.[18] Eugene Odum, one of the pioneers of modern ecology, described the environment as "the totality of physical, chemical and biological factors acting upon an organism or ecological community and ultimately determining its form and survival."[19] For present purposes, the environment may be understood as the totality of natural, physical, biological, social, cultural, and economic conditions surrounding human beings and other living organisms, which influence their existence, development, well-being, and interactions within the ecosystem.

2.2 Environmental Protection

Environmental protection refers to the measures, policies, laws, and actions designed to preserve, conserve, manage, and improve the environment for present and future generations. Growing concern over pollution, climate change, biodiversity loss, deforestation, desertification, and environmental degradation has made environmental protection one of the most important global legal and policy objectives, now widely recognized as a prerequisite for sustainable development, public health, economic growth, and the realization of human rights. Lynton Caldwell defined environmental protection as "the management of human activities in a manner that prevents excessive interference with ecological systems,"[20] while David Hunter and colleagues describe it as "the adoption of legal and policy mechanisms to conserve natural resources, protect biodiversity and reduce environmental risks."[21] Synthesizing these accounts,

[18]Eugene P Odum and Gary W Barrett, Fundamentals of Ecology (5th edn, Brooks/Cole 2005) 3.
[19]ibid.
[20]Lynton K Caldwell, International Environmental Policy (Duke University Press 1990) 15.
[21]David Hunter, James Salzman and Durwood Zaelke, International Environmental Law and Policy (6th edn, Foundation Press 2022) 11.

environmental protection may be understood as the legal, institutional, administrative, scientific, and social measures adopted to prevent, control, and remedy environmental degradation while ensuring the conservation, sustainable use, and equitable management of natural resources.

2.3 **Environmental Governance**

As environmental challenges have grown more complex, traditional command-and-control regulation has proven insufficient, and environmental governance has evolved as a broader framework involving governments, international organizations, private entities, civil society, indigenous communities, and citizens in environmental decision-making. Philippe Sands describes environmental governance as "the legal and institutional framework through which environmental obligations are developed, implemented and enforced,"[22] while Daniel Esty frames it as "the mechanisms through which environmental risks are managed and environmental goals are achieved."[23] Environmental governance, in this sense, comprises the legal, institutional, political, administrative, and social processes through which environmental resources are managed and environmental rights, sustainability, accountability, and justice are promoted for present and future generations.

2.4 Environmental Rights

Environmental rights rest on the recognition that a healthy, clean, safe, and sustainable environment is essential to the enjoyment of fundamental human rights life, health, dignity, food, water, housing, and development. Dinah Shelton defines environmental rights as

[22]Philippe Sands and Jacqueline Peel, Principles of International Environmental Law (4th edn, Cambridge University Press 2018) 45.
[23]Daniel C Esty, Greening the GATT: Trade, Environment and the Future (Institute for International Economics 1994) 28.

"human rights that are directly linked to environmental conditions necessary for the enjoyment of life, health and well-being,"[24] while Edith Brown Weiss links the concept to intergenerational equity, describing environmental rights as "the rights of present and future generations to inherit and enjoy a healthy and sustainable environment."[25] Environmental rights therefore comprise the substantive and procedural rights of individuals, communities, and peoples to a clean, healthy, safe, and sustainable environment, including rights to environmental information, participation in decision-making, access to justice, and protection from environmental harm.

2.5 Environmental Justice

Environmental justice emerged from the recognition that environmental burdens pollution, toxic waste, oil spills, gas flaring, industrial contamination, and climate change disproportionately affect poor, marginalised, indigenous, and minority communities. It seeks fairness, equity, and equality in the distribution of environmental benefits and burdens, together with meaningful participation in environmental decision-making, thereby combining environmental protection with social justice and human rights. Dorceta Taylor defines environmental justice as "the right of all individuals and communities to equal environmental protection and meaningful participation in environmental policies affecting their lives,"[26] a formulation echoed by the United States Environmental Protection Agency's definition of environmental justice as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin or

[24]Dinah Shelton, Human Rights and the Environment (Edward Elgar Publishing 2011) 15.
[25]Edith Brown Weiss, In Fairness to Future Generations: International Law, Common Patrimony and Intergenerational Equity (United Nations University Press 1989) 38.
[26]Taylor (n 1) 21.

income with respect to the development, implementation and enforcement of environmental laws, regulations and policies."[27] The concept is especially salient in Nigeria, where degradation in the Niger Delta has raised acute concerns about environmental inequality, human rights violations, and sustainable development.

2.6 Sustainable Development

Sustainable development seeks to reconcile economic growth with environmental protection and social welfare, emphasizing that development must meet present needs without compromising the ability of future generations to meet their own. Herman Daly defines sustainable development as "development without growth beyond environmental carrying capacity,"[28] while Jeffrey Sachs frames it as growth that is "economically productive, socially inclusive and environmentally sustainable."[29] The Indian Supreme Court's landmark judgment in *Vellore Citizens' Welfare Forum v Union of India* entrenched the precautionary principle and the polluter-pays principle as part of Indian environmental law, reinforcing the judiciary's role in enforcing environmental protection under the constitutional right to life.[30] Sustainable development, so understood, is a process of economic, social, and environmental advancement that ensures the equitable use, conservation, and management of natural resources to meet present needs without compromising those of future generations, while promoting environmental justice, human welfare, and ecological sustainability.

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[27]United States Environmental Protection Agency, 'Environmental Justice' <https://www.epa.gov/environmentaljustice> accessed 26 January 2026.
[28]Herman E Daly, Beyond Growth: The Economics of Sustainable Development (Beacon Press 1996) 7.
[29]Jeffrey D Sachs, The Age of Sustainable Development (Columbia University Press 2015) 5.
[30]Vellore Citizens' Welfare Forum v Union of India (1996) 5 SCC 647; AIR 1996 SC 2715.

3. **HISTORICAL BACKGROUND**

Nigeria's environmental Justice framework developed through the interaction of domestic laws addressing oil pollution with an evolving body of international agreements on climate change and human rights. Environmental regulation began in earnest after independence, once oil discoveries in the Niger Delta became commercially significant in the 1950s. The Petroleum Act 1969 established an early framework, but one oriented toward resource extraction rather than environmental protection.[31] The 1999 Constitution (as amended) includes environmental protection as a state policy objective in Chapter II, section 20, but it took judicial intervention most notably in *Gbemre v Shell*[32] to connect that objective with the enforceable rights to life and dignity in Chapter IV.

Institutionally, the 1988 Federal Environmental Protection Agency (FEPA) Act was Nigeria's first dedicated environmental regulatory statute; FEPA's functions were later absorbed by the National Environmental Standards and Regulations Enforcement Agency (NESREA), established under the NESREA Act 2007. The Petroleum Industry Act 2021 and the Climate Change Act 2021 subsequently introduced rules on gas flaring and emissions, though both face significant implementation obstacles. At the international level, the 1972 Stockholm Declaration marked the beginning of Nigeria's participation in global environmental diplomacy, a trajectory that fed into the development of national policy. Nigeria is also bound by the Basel Convention on hazardous waste (1989/1992), the 1992 Rio conventions on climate change and biodiversity, and the Paris Agreement (2015/2016), all of which impose obligations on emissions reduction and adaptation. The domestication of the African Charter on Human and Peoples' Rights in 1990 following ratification in 1983

[31]Petroleum Act 1969 (Nigeria) (repealed by the Petroleum Industry Act 2021).
[32]Gbemre v Shell (n 17).

opened a further avenue for environmental claims framed in human rights terms, as illustrated by *SERAC v Nigeria* (2001), which affirmed the rights to health and to a satisfactory environment.[33] Notably, because Nigerian courts have often proved reluctant or unable to grant effective remedies, a number of Niger Delta oil pollution claims including litigation arising from Ogoniland have been pursued instead in United States, United Kingdom, and Dutch courts.[34]

4. **THE NIGER DELTA ENVIRONMENTAL CRISIS**

The Niger Delta environmental crisis is among the most significant environmental disasters in Africa and one of the most extensively studied instances of environmental injustice worldwide. It refers to the widespread environmental degradation, ecological destruction, pollution, and socio-economic dislocation resulting primarily from oil exploration and exploitation activities since the discovery of oil in commercial quantities at Oloibiri in 1956. The region comprising nine oil-producing states: Abia, Akwa Ibom, Bayelsa, Cross River, Delta, Edo, Imo, Ondo, and Rivers contain one of the world's largest wetlands and mangrove ecosystems and accounts for the bulk of Nigeria's petroleum production. Despite generating enormous oil wealth, it has suffered severe environmental degradation, poverty, unemployment, public health challenges, and social conflict. The United Nations Environment Programme's Environmental Assessment of Ogoni land, among numerous other studies, has documented extensive contamination of soil, groundwater, surface water, and

[33]Social and Economic Rights Action Centre (SERAC) and Centre for Economic and Social Rights (CESR) v Nigeria, African Commission on Human and Peoples' Rights, Communication No 155/96, paras 48–63 (27 October 2001).
[34]HRH Emere Godwin Bebe Okpabi & Ors v Royal Dutch Shell Plc & Anor [2021] UKSC 3; Milieudefensie v Royal Dutch Shell plc (Court of Appeal of The Hague, 29 January 2021).

ecosystems arising from decades of oil pollution.[35] Michael Watts' influential analysis situates this pattern within a broader "petro-violence," in which extraction, ecological harm, and political conflict become mutually reinforcing.[36] S. O. Aghalino similarly argues that oil spills have fundamentally altered the ecological balance of the Niger Delta and contributed significantly to environmental conflict.[37]

The crisis has generated a substantial body of environmental justice jurisprudence through landmark cases such as *SERAC v Nigeria*, *Gbemre v Shell*, and *Oronto Douglas v Shell*, discussed further below. The scholarship of Ken Saro-Wiwa, Michael Watts, Robert Bullard, David Schlosberg, and Oyeniyi Abe has, in different ways, shaped legal and academic understanding of the crisis, which today remains central to debates on environmental justice, sustainable development, corporate accountability, human rights, and environmental governance in Nigeria and beyond.

5. DOMESTIC LEGAL FRAMEWORK OF ENVIRONMENTAL JUSTICE IN NIGERIA

5.1 The 1999 Constitution

The 1999 Constitution of the Federal Republic of Nigeria (as amended) is the supreme law of the land and the foundational framework for environmental governance. It contains no free-standing right to a clean environment; instead, environmental protection is addressed obliquely through the Fundamental Objectives and Directive Principles of State Policy in Chapter II and, indirectly, through the

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[35] Michael Watts, 'Petro-Violence: Community, Extraction, and Political Ecology of a Peasant Class War in Nigeria' in Michael Watts (ed), *Reworking Modernity: Capitalisms and the Development of the Niger Delta* (Cornell University Press 2000) 521–556.

[36] S.O Aghalino, 'Oil Exploitation and the Environment in the Niger Delta Region of Nigeria' (2009) 28 Journal of Human Ecology 193.

[37] *Centre for Oil Pollution Watch v NNPC* as (2019) 5 NWLR (Pt 1666) 518.

Fundamental Rights guaranteed in Chapter IV.[38] Section 20 provides that "the State shall protect and improve the environment and safeguard the water, air, and land, forest and wildlife of Nigeria," articulating a broad governmental duty to ensure environmental sustainability .[39] The difficulty is that section 20 sits within Chapter II, which section 6(6)(c) renders non-justiciable: the provision exists as an aspirational principle that cannot, on its own, found a cause of action.[40]

Nigerian courts have instead used the fundamental rights in Chapter IV principally the right to life (section 33) and the right to human dignity (section 34) as an indirect route to environmental protection, reasoning that environmental degradation which threatens life or dignity may found a constitutional claim even without a free-standing environmental right. This mirrors a wider trend in comparative constitutional jurisprudence, where courts read environmental protection into existing civil and political rights. The landmark illustration is *Gbemre v Shell Petroleum Development Company Nigeria Ltd*, in which the Federal High Court sitting in Benin held that gas flaring in the Niger Delta violated the applicants' constitutional rights to life and dignity under sections 33 and 34, as well as Article 24 of the African Charter (as domesticated in Nigeria).[41] The court ordered Shell and the Nigerian government to cease gas flaring in the Iwherekan community. Although enforcement of the judgment has been troubled, *Gbemre* remains significant precisely because it demonstrates that courts will enforce Chapter IV rights even where the underlying environmental duty in Chapter II remains non-justiciable.[42] The African Commission on Human and Peoples' Rights has continued

[38]Constitution of the Federal Republic of Nigeria 1999 (as amended), chs II and IV
[39]Constitution of the Federal Republic of Nigeria 1999 (as amended), s 20
[40]Constitution of the Federal Republic of Nigeria 1999 (as amended), s 6(6)(c)
[41]Gbemre v Shell (n 17).
[42]ibid.

to draw connections between environmental damage and human rights violations in subsequent cases, including *SERAC & CESR v Nigeria*, intensifying pressure on the Nigerian government to address environmental harm in oil-producing areas.[43]

5.2 The Criminal Code

The Criminal Code Act is Nigeria's principal general penal statute. It was not designed with environmental protection as its object, but several provisions situated within the law of public health and nuisance criminalize conduct that endangers public health and, incidentally, the environment. Section 234 makes it an offence to contaminate water sources so as to render them dangerous for human consumption;[44] section 243 penalizes negligent conduct likely to spread disease; and section 245 criminalizes acts that endanger community health.[45] Section 192 more broadly criminalizes conducting "offensive" trades or businesses in a manner that endangers public health, a provision capable, in principle, of reaching industrial and smoke pollution.[46]

In practice, these provisions are rarely applied to corporate polluters or major environmental offenders. Nigerian prosecutorial practice has tended to reserve the Criminal Code for individual conduct within local communities, reflecting its historical orientation toward communal hygiene rather than modern industrial pollution. Where environmental prosecutions do occur, regulators generally prefer the more specialized sanctions available under the NESREA Act and the Harmful Wastes Act, producing a jurisdictional overlap that leaves

[43]SERAC & CESR v Nigeria (n 33).
[44]Criminal Code Act, Cap C38 Laws of the Federation of Nigeria 2004, s 234.
[45]Criminal Code Act, Cap C38 Laws of the Federation of Nigeria 2004, ss 243, 245.
[46]Criminal Code Act, Cap C38 Laws of the Federation of Nigeria 2004, s 192.

prosecutors uncertain which regime to invoke and, in practice, discourages recourse to the Criminal Code altogether.

5.3 The NESREA Act

The National Environmental Standards and Regulations Enforcement Agency (NESREA) is Nigeria's principal environmental regulatory and enforcement agency, established under the NESREA (Establishment) Act 2007 to replace the defunct FEPA.[47] Operating under the supervision of the Federal Ministry of Environment, NESREA is charged with enforcing environmental laws, regulations, standards, and Nigeria's international environmental obligations including obligations arising under the Convention on Biological Diversity, the Basel Convention, and the Kyoto Protocol once domesticated.[48] Its functions include issuing environmental permits, monitoring industrial sites, making regulations on effluent limits, noise pollution, abattoir sanitation, electronic waste management, and air quality, conducting environmental audits and inspections, and imposing administrative penalties, alongside environmental education and public awareness initiatives.

NESREA's authority is, however, hedged by significant carve-outs and institutional weaknesses. Its jurisdiction overlaps with that of the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) and the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA) under the PIA 2021, which dilutes oversight

[47]National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007 (Nigeria).
[48]Convention on Biological Diversity (adopted 5 June 1992, entered into force 29 December 1993) 1760 UNTS 79; Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (adopted 22 March 1989, entered into force 5 May 1992) 1673 UNTS 57; Kyoto Protocol to the United Nations Framework Convention on Climate Change (adopted 11 December 1997, entered into force 16 February 2005) 2303 UNTS 162.

specifically in the oil sector the very sector responsible for the most severe environmental harm.[49] Chronic underfunding, outdated monitoring equipment, and insufficient personnel relative to Nigeria's vast territory further limit the Agency's capacity to detect and penalise violations. NESREA nonetheless remains indispensable to environmental governance in Nigeria: notwithstanding these constraints, it is the institution most directly charged with translating Nigeria's environmental commitments domestic and international into operational practice.[50]

5.4 The Petroleum Industry Act 2021

The enactment of the Petroleum Industry Act (PIA) in August 2021 marked a historic milestone in Nigeria's oil and gas legal regime, consolidating nearly two decades of stalled reform efforts and replacing a fragmented body of law that had previously spanned the Petroleum Act 1969, the Oil Pipelines Act, and various subsidiary regulations.[51] Part XII of the Act requires petroleum licensees to observe international best practice in health, safety, and environmental management, and empowers both regulators and affected landowners to compel remediation of environmental damage arising from petroleum operations a marked shift from the discretionary language of the previous regime. The NUPRC and NMDPRA share enforcement responsibility, with powers to make regulations, conduct monitoring, and impose penalties.[52]

[49]Petroleum Industry Act 2021 (Nigeria); Nigerian Upstream Petroleum Regulatory Commission (NUPRC) / Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA).
[50]Chidinma Okafor, 'Institutional Mechanisms for Environmental Protection in Nigeria: A Review of NESREA's Functions' (2015) 4(2) Nigerian Journal of Environmental Law 55.
[51]Petroleum Industry Act 2021 (Nigeria); Oil Pipelines Act, Cap O7 Laws of the Federation of Nigeria 2004.
[52]Petroleum Industry Act 2021 (Nigeria), pt XII.

Of particular significance for environmental justice, section 232 requires licensees to establish decommissioning and abandonment funds to finance the eventual remediation of petroleum facilities and the environments in which they operate addressing the long-standing problem of oil companies abandoning ageing infrastructure and leaving contaminated sites behind.[53] Licensees must also conduct periodic environmental impact studies and post remediation bonds demonstrating financial capacity to meet these obligations, with non-compliance capable of triggering suspension or revocation of operating licenses. These provisions align Nigeria's domestic framework with the "polluter pays" principle articulated in Principle
16 of the Rio Declaration. Their ultimate effectiveness, however, depends on institutional enforcement; the historical record of the Department of Petroleum Resources and its successor agencies marked by weak enforcement, corruption, and political interference gives reason for caution about whether the PIA's ambitious provisions will be fully realized in practice.[54]

5.5 The Environmental Impact Assessment Act

The Environmental Impact Assessment (EIA) Act 1992 was Nigeria's response to a growing international consensus on the need to evaluate environmental effects before undertaking major development projects, and it emerged directly from the severe environmental destruction associated with unregulated oil exploration and industrial activity in the Niger Delta.[55] The Act operationalizes preventive principles drawn from the 1972 Stockholm Declaration and the 1992 Rio Declaration, requiring that no project with significant environmental consequences be undertaken in Nigeria without prior environmental assessment

[53]Petroleum Industry Act 2021 (Nigeria), s 232.
[54]See generally Department of Petroleum Resources, Annual Report (2019).
[55]Environmental Impact Assessment Act 1992 (Nigeria), Cap E12 Laws of the Federation of Nigeria 2004

approved by the Federal Ministry of Environment. A Schedule identifies categories of projects oil and gas exploration, mining, large agricultural ventures, and major infrastructure presumptively requiring assessment.

The EIA process comprises three stages: screening, to establish whether an assessment is required; scoping, to identify the environmental concerns the assessment must address; and impact analysis, to forecast and evaluate likely environmental effects, informing the ultimate authorization decision. Because EIA approval is a condition precedent to lawful commencement of operations, the Act functions as a preventive check rather than a mechanism for after-the-fact remediation. A distinctive and important feature is its incorporation of public participation: section 7 requires consultation with affected communities, non-governmental organizations, and other stakeholders, including public hearings, access to project reports, and opportunities to comment.[56] This participatory dimension is central to environmental justice, since it is capable at least in principle of shifting decision-making authority away from exclusive state and corporate control toward a process that includes the communities who will bear the environmental consequences.

5.6 The Harmful Wastes (Special Criminal Provisions, etc.) Act The Harmful Wastes (Special Criminal Provisions, etc.) Act 1988 was a direct legislative response to the infamous Koko toxic waste incident, in which barrels of toxic industrial waste illegally shipped from Italy were dumped in the town of Koko, Delta State.[57] The incident caused national and international outrage and exposed the absence of any adequate domestic legal regime governing the entry

[56]Environmental Impact Assessment Act 1992 (Nigeria), Cap E12 Laws of the Federation of Nigeria 2004, s 7.
[57]Harmful Wastes (Special Criminal Provisions, Etc.) Act 1988 (Nigeria).

and management of hazardous materials a dual crisis touching both environmental protection and national sovereignty. In response, the military government of General Ibrahim Babangida promulgated the Harmful Wastes Act, which remains Nigeria's principal legislation on hazardous waste management.[58]

The Act imposes a comprehensive prohibition on the purchase, sale, importation, transportation, deposit, storage, or disposal of harmful waste anywhere within Nigerian land or waters, with section 1 creating a criminal offence covering unauthorized storage, treatment, or disposal.[59] Liability extends to conspirators and accomplices, encompassing foreign corporations, local agents, and state officials alike, and jurisdiction is vested exclusively in the Federal High Court, reflecting the gravity Parliament attached to these offences.[60] Sanctions are severe by Nigerian standards: section 6 prescribes life imprisonment for importing, dumping, or dealing in harmful waste, together with forfeiture of any property used in the commission of the offence, and corporate as well as individual liability for directors and managers who authorize or connive in the conduct.[61] The severity of these penalties reflects the legislature's judgment, in the aftermath of Koko, that only the harshest sanctions could deter future attempts to use Nigeria as a dumping ground for hazardous waste.

5.7 The Oil in Navigable Waters Act

The Oil in Navigable Waters Act (ONWA) was enacted to give domestic effect to Nigeria's obligations under the International Convention for the Prevention of Pollution of the Sea by Oil (OILPOL

[58]Ikechukwu Agbonifo, 'Environmental Justice in Nigeria: The Koko Toxic Waste Incident Revisited' (2011) 7(1) Law, Environment and Development Journal 116.
[59]Harmful Wastes (Special Criminal Provisions, Etc.) Act 1988 (Nigeria), s 1.
[60]Harmful Wastes (Special Criminal Provisions, Etc.) Act 1988 (Nigeria), s 3.
[61]Harmful Wastes (Special Criminal Provisions, Etc.) Act 1988 (Nigeria), s 6.

1954), later reinforced by MARPOL 73/78.[62] It represents an early attempt to incorporate international marine pollution standards into Nigerian law, connecting ocean protection to the wider system of environmental justice.[63] The Act prohibits the discharge of oil and oily mixtures into Nigerian waterways from ships, pipelines, and offshore facilities, requires vessels to maintain oil record books documenting discharge and transfer activity, and mandates the fitting of anti-pollution equipment such as oil-water separators.[64] The Minister of Petroleum is empowered to make regulations and conduct inspections to secure compliance.

Sanctions under the ONWA include fines and imprisonment, with personal liability attaching to ship owners, operators, and masters, and provision for the confiscation of offending vessels and equipment.[65] A persistent criticism, however, is that the prescribed fines are modest and have not been updated to reflect contemporary economic realities; against the profits generated by multinational oil companies and shipping operators, such penalties carry little deterrent force.[66] The Act is significant for environmental justice because it recognizes the interest of coastal and fishing communities in a clean marine environment pollution of navigable waters bears directly on subsistence fishing, agriculture, and access to potable water in the Niger Delta and other coastal states.[67] Enforcement, however, is

[62]Oil in Navigable Waters Act, Cap O6 Laws of the Federation of Nigeria 2004; International Convention for the Prevention of Pollution of the Sea by Oil (OILPOL, 1954); International Convention for the Prevention of Pollution from Ships (MARPOL 73/78).
[63]International Maritime Organization, background to OILPOL and MARPOL.
[64]Oil in Navigable Waters Act, Cap O6 Laws of the Federation of Nigeria 2004, s 1.
[65]Oil in Navigable Waters Act, Cap O6 Laws of the Federation of Nigeria 2004, s 9.
[66]BO Nwabueze, 'Weaknesses of Nigerian Marine Pollution Laws' (2014) 6 Nigerian Current Legal Problems 88.
[67]Environmental Rights Action/Friends of the Earth Nigeria, Pollution in Nigeria's Coastal Communities (ERA Report, 2018) 23.

hampered by limited institutional coordination with the National Oil Spill Detection and Response Agency (NOSDRA) and the PIA regime, insufficient technical capacity, and the absence of a developed body of judicial precedent, since courts confronted with pollution claims have tended to rely on tort and human rights litigation rather than the ONWA itself.[68]

6. INTERNATIONAL AND REGIONAL LEGAL FRAMEWORKS

6.1 The African Charter on Human and Peoples' Rights

The African Charter on Human and Peoples' Rights, adopted by the Organization of African Unity in 1981 and in force from 1986, is the principal regional human rights instrument applicable to Nigeria.[69] Nigeria ratified the Charter in 1983, that environmental protection in Africa **questions of human dignity, community rights, resource sovereignty and development**. This is particularly relevant to the Niger Delta, where oil exploration and production have historically produced tensions between national economic interests and the environmental, cultural and socio-economic interests of oil-producing communities. The regional African framework offers a valuable basis for analysing these tensions from an African legal perspective rather than relying exclusively on Western conceptions of environmental rights.

Furthermore, the OAU's historical commitment to **self-determination and liberation from colonial domination** has continuing relevance to contemporary environmental justice. Although the OAU was principally a political organisation and did not possess the enforcement mechanisms of a modern supranational institution, its contribution should not be measured solely by its institutional limitations. Its enduring significance lies in the **normative architecture it helped establish**, which was subsequently developed through the African Charter, the African Commission on Human and Peoples' Rights and, ultimately, the African Union.

"Nigeria ratified the Charter in 1983 and domesticated it through the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act (Cap A9, LFN 2004); because section 12 of the 1999 Constitution denies domestic legal force to unincorporated treaties, this domesticating legislation was essential to giving the Charter the status of Nigerian law.".[70]

Three provisions are of particular significance for environmental justice. Article 16 guarantees the right to the best attainable state of physical and mental health, obliging states to establish health protection systems; this

right is imperiled wherever environmental destruction contaminates water supplies, degrades air quality, or disrupts food systems. Article 21 protects peoples' rights over their wealth and natural resources and provides mechanisms addressing the despoliation of those resources a provision of obvious importance to a

[68]National Oil Spill Detection and Response Agency (Establishment) Act 2006 (Nigeria).
[69]African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217.
[70]Constitution of the Federal Republic of Nigeria 1999 (as amended), s 12.

resource-dependent state such as Nigeria, where oil extraction has for decades removed both environmental resources and financial benefit from local communities.[71] Article 24 expressly recognizes "the right of all peoples to a general satisfactory environment favourable to their development" the first binding recognition of an environmental right in international human rights law.[72]

These provisions found their most significant application in *Social and Economic Rights Action Centre (SERAC) & Centre for Economic and Social Rights (CESR) v Nigeria*, in which the African Commission held Nigeria responsible for the contamination of Ogoni land arising from oil extraction, encompassing both agricultural destruction and threats to health.[73] The Commission found violations of Articles 16, 21, and 24 on the basis that Nigeria had failed to prevent, protect against, or remedy the environmental harm caused by Shell's operations. *SERAC* established, at minimum, two propositions of lasting importance: first, that environmental degradation can amount to a violation of rights protected under the Charter; and second, that states bear both a negative duty to refrain from direct environmental harm and a positive duty to regulate third parties, including corporations, whose activities cause such harm. Although the Commission's decision is not directly enforceable in Nigerian courts, it has proved highly influential in shaping environmental rights discourse both domestically and internationally.[74]

Because the Charter has been domesticated, Nigerian courts are, at least in principle, bound to apply it. The Supreme Court held in *Abacha v Fawehinmi* that the Charter occupies a distinctive position in

[71]African Charter (n 69) art 21.
[72]African Charter (n 69) art 24.
[73]SERAC & CESR v Nigeria (n 33).
[74]F Viljoen, International Human Rights Law in Africa (2nd edn, OUP 2012) 234.

Nigerian law superior to ordinary municipal legislation, yet subordinate to the Constitution itself thereby enabling litigants to invoke Charter provisions before Nigerian courts.[75] The Federal High Court relied on Articles 16 and 24 in *Gbemre v Shell* to hold that gas flaring violated the applicants' rights to life and dignity, demonstrating the Charter's capacity to reinforce constitutional rights litigation.[76] Nonetheless, the Charter's practical influence remains constrained by Nigeria's continuing economic dependence on petroleum revenue, weak regulatory institutions, and political reluctance to hold multinational corporations to account. The African Commission's own enforcement mechanism is essentially declaratory, lacking coercive sanction,[77] and Nigerian courts have not always applied Charter provisions consistently where they appear to conflict with domestic statutory or constitutional arrangements. High litigation costs, weak institutional oversight, and corruption further compound these structural barriers.[78] For all these limitations, the ACHPR framework continues to give communities and civil society organizations a normative and legal vocabulary through which to frame environmental harm as a human rights concern, and *SERAC* remains an authoritative point of reference for both domestic advocacy and international litigation.[79]

6.2 Global Human Rights Instruments

Beyond the regional framework, a series of global human rights instruments inform Nigeria's environmental justice obligations. The Universal Declaration of Human Rights 1948 establishes the foundational rights to life, health, and an adequate standard of living

[75]Abacha v Fawehinmi (2000) 6 NWLR (Pt 660) 228 (SC).
[76]Gbemre v Shell (n 17).
[77]M Ssenyonjo, 'The Justiciability of Economic, Social and Cultural Rights in the African Charter' (2003) 4 African Human Rights Law Journal 405, 421.
[78]Viljoen (n 74) 234.
[79]SERAC & CESR v Nigeria (n 33).

on which environmental justice claims are frequently built.[80] The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both concluded in 1966, elaborate these rights in greater detail, requiring equal treatment and access to essential resources including healthcare, food, water, and housing.[81] The UN Declaration on the Rights of Indigenous Peoples 2007 is of particular relevance to Nigeria's indigenous and marginalised communities, recognizing indigenous ownership of lands, natural resources, and cultural heritage, and requiring that environmental decisions affecting indigenous peoples be made only with their free, prior, and informed consent.[82] Together, these instruments supply the wider normative architecture within which Nigeria's domestic and regional environmental justice obligations operate, even though as with the African Charter questions of domestic incorporation and enforceability persist.

6.3 Multilateral Environmental Agreements

Nigeria is party to several key multilateral environmental agreements (MEAs) that collectively impose obligations relating to climate change, biodiversity, and hazardous substances. Nigeria ratified the United Nations Framework Convention on Climate Change (UNFCCC) in 1994, committing to mitigate greenhouse gas emissions, adapt to climate impacts, and participate in international climate negotiations through periodic national communications.[83] Nigeria

[80]UN Human Rights Council Res 48/13 (8 October 2021) UN Doc A/HRC/RES/48/13.
[81]International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171; International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3.
[82]United Nations Declaration on the Rights of Indigenous Peoples (adopted 13 September 2007) UNGA Res 61/295.
[83]UNFCCC, 'Status of Ratification of the Convention' <https://unfccc.int> accessed 26 January 2026.

subsequently joined the Paris Agreement, submitting Nationally Determined Contributions that set emission-intensity reduction targets and outline climate action and renewable energy plans; domestic implementation is anchored in the Climate Change Act 2021, which establishes national climate governance structures.[84]

Nigeria also ratified the Convention on Biological Diversity in 1994, undertaking to conserve biological diversity, use natural resources sustainably, and share the benefits of genetic resources equitably — commitments operationalized domestically through the National Biodiversity Strategy and Action Plan. The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes, ratified in 1992, regulates the import, export, and management of hazardous waste, a matter of continuing urgency given the threats posed by e-waste, industrial effluent, and oil spill residues.[85] Finally, Nigeria is party to the Stockholm Convention on Persistent Organic Pollutants, committing to eliminate substances that persist in the environment and accumulate within living organisms.[86] Collectively, these instruments establish an international regulatory architecture that Nigeria is obliged to implement through sustainable domestic practice, harm prevention, and periodic reporting obligations whose fulfilment depends, once again, on the strength of the domestic institutions charged with giving them effect.

7. JUDICIAL ACTIVISM AND ENVIRONMENTAL RIGHTS IN NIGERIA

[84]Climate Change Act 2021 (Nigeria), signed 18 November 2021 (entered into force 22 March 2022); Paris Agreement (Paris, 12 December 2015) 2316 UNTS 14 (entered into force 4 November 2016).
[85]Basel Convention (n 48).
[86]Stockholm Convention on Persistent Organic Pollutants (adopted 22 May 2001, entered into force 17 May 2004) 2256 UNTS 119.

Judicial decisions constitute one of the most instructive sources for assessing the practical effectiveness of Nigeria's environmental justice frameworks. Nigerian courts, regional human rights tribunals, and increasingly foreign courts have played a significant role in interpreting environmental rights, enforcing environmental obligations, protecting affected communities, and holding both government agencies and multinational corporations accountable for environmental harm. In *SPDC v Tiebo VII*, the Supreme Court affirmed an award of compensation for environmental damage caused by oil spills, recognizing the entitlement of affected communities to seek damages for such harm.[87] Given the scale of environmental degradation in the Niger Delta, courts across the country have increasingly had to grapple with the interlinked questions of evidentiary standard, the scope of enforceable rights, and standing to sue.[88]

Since 1999, the growth of constitutional litigation and human rights arguments has given Nigerian judges considerably greater latitude than under the more restrained, legislatively deferential approach that characterized earlier decades. This shift has manifested in three principal forms of judicial activism in environmental cases: the expansion of standing, the development of new interpretations of constitutional rights, and the domestic application of international agreements to which Nigeria is party.[89] In *Centre for Oil Pollution Watch v NNPC*, the Supreme Court held that a non-governmental organization had standing to sue the Nigerian National Petroleum Corporation over oil pollution even without proof of direct personal injury, a marked departure from the traditionally restrictive Nigerian

[87]SPDC v Tiebo VII (2005) 9 NWLR (Pt 931) 439.
[88]R Ako, 'Judicial Activism and Environmental Justice in Nigeria' (2014) 10 Law, Environment and Development Journal 136.
[89]AO Obilade, The Nigerian Legal System (Sweet & Maxwell 1979) 92.

approach to locus standi.[90] Earlier, in Seismograph Service (Nigeria) Ltd v Robinson Kwavbe Ogbeni, the court had already held oil companies liable where pollution destroyed crops, fishing grounds, and livelihoods, establishing an important early precedent for community-based environmental claims.[91]

This trajectory of judicial activism nonetheless remains uneven. In *Ikechukwu Opara v Shell Petroleum Development Company Nigeria Ltd*, the court applied a strict requirement of personal injury that constrained the court's ability to assess broader environmental or community-wide harm and effectively foreclosed group litigation, a decision frequently cited as emblematic of the barriers that continue to drive Niger Delta claimants toward foreign forums such as the United Kingdom courts in *Okpabi v Royal Dutch Shell*.[92] Comparative experience is instructive here: South Africa's constitutional environmental right has generated significant jurisprudence such as *Fuel Retailers Association*; Kenya's Article 42 has enabled public interest litigation exemplified by the *Lake Turkana* litigation; and India's public interest litigation tradition, exemplified by the *M C Mehta* line of cases, has entrenched the polluter-pays principle.[93] Set against this backdrop, Nigeria's continuing insistence on personal injury as a precondition to standing appears increasingly anomalous, and it is arguably the single most consequential doctrinal obstacle to effective environmental justice litigation in the country.

8. JUDICIAL ENGAGEMENT WITH INTERNATIONAL LAW

[90]Centre for Oil Pollution Watch v NNPC (n 13).
[91] Seismograph Service (Nigeria) Ltd v Robinson Kwavbe Ogbeni (1976) 4 SC 85; [1976] NGSC 19.
[92]Ikechukwu Opara v Shell (n 16); Okpabi v Royal Dutch Shell (n 34).
[93]Fuel Retailers Association of Southern Africa v Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province and Others [2007] ZACC 13; Friends of Lake Turkana Trust v Attorney General & 2 others, Environment and Land Court Suit No 825 of 2012; M C Mehta v Union of India AIR 1987 SC 1086.

National courts increasingly draw on international human rights standards in adjudicating environmental disputes, and Nigerian-related litigation offers a particularly rich body of comparative material. In *Okpabi v Royal Dutch Shell*, the United Kingdom Supreme Court permitted Niger Delta communities to pursue claims against Shell's parent company in English courts, recognizing an arguable duty of care owed by the parent company to communities affected by its Nigerian subsidiary's operations.[94] In *Milieudefensie v Royal Dutch Shell*, the Court of Appeal of The Hague held Shell's Nigerian subsidiary liable for several oil spills in the Niger Delta, ordering compensation and preventive measures after finding that Shell had failed adequately to establish sabotage as the cause of the spills.[95] These decisions mark a significant development: they demonstrate a growing willingness among courts outside Nigeria to hold parent companies accountable for the environmental conduct of their subsidiaries, precisely because domestic Nigerian avenues have often proved inadequate.

Domestically, the Supreme Court's decision in *Abacha v Fawehinmi* established the ACHPR as an enforceable component of Nigerian law, providing the doctrinal foundation on which the Federal High Court later relied in *Gbemre*.[96] The African Commission's own jurisprudence, particularly *SERAC v Nigeria*, illustrates a comparable willingness to treat international human rights standards as directly relevant to filling gaps in domestic environmental regulation.[97] Taken together, this body of judicial engagement — spanning Nigerian, regional, and foreign courts constitutes Nigeria's principal practical mechanism for advancing environmental justice notwithstanding the

[94]Okpabi v Royal Dutch Shell (n 34).
[95]Milieudefensie v Royal Dutch Shell plc (n 34).
[96]Abacha v Fawehinmi (n 75).
[97]SERAC & CESR v Nigeria (n 33).

structural limitations of its domestic framework. Its further development depends on more consistent domestic jurisprudence, sustained judicial education in environmental law, and closer collaboration between the judiciary and civil society organizations capable of bringing environmental claims forward.[98]

9. PROSPECTS FOR INTERNATIONAL ENVIRONMENTAL LAW IN NIGERIA

International environmental law comprising treaties, conventions, protocols, and soft-law instruments addressing environmental problems that transcend national borders has exerted a growing influence on environmental governance in Nigeria. In *Seismograph Service (Nig) Ltd v Ogbeni*, the Supreme Court recognized liability for environmental damage caused by industrial activity affecting landowners, an early domestic signal of judicial receptiveness to the underlying values that international environmental law seeks to protect.[99] As detailed in Section 6.3 above, Nigeria's membership of the UNFCCC, the Paris Agreement, the Convention on Biological Diversity, the Basel Convention, and the Stockholm Convention collectively defines both its legal obligations and its policy direction on climate, biodiversity, and hazardous substances. The practical challenge, however, lies not in the scope of these commitments but in their domestic implementation, which, as with the domestic statutory framework discussed above, remains constrained by institutional weakness, inconsistent enforcement, and limited coordination among the many agencies with overlapping environmental mandates.

[98]A Nasir, 'Judicial Remedies and Environmental Rights in Nigeria' (2018) 26 African Journal of International and Comparative Law 177.
[99]Seismograph Service (Nig) Ltd v Ogbeni (1976) 4 SC 85.

10. COMPARATIVE ENVIRONMENTAL JUSTICE APPROACHES

Examining how other jurisdictions have built environmental justice frameworks, particularly industrializing states with growing resource extraction and pronounced socio-economic disparities, offers instructive lessons for Nigerian law and policy reform. South Africa, Kenya, and India each illustrate a different but complementary institutional pathway.

10.1 South Africa: Environmental Rights in a Constitutional Framework

Section 24 of the Constitution of the Republic of South Africa 1996 provides that everyone has the right to an environment that is not harmful to their health or well-being, and to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that prevent pollution and ecological degradation, promote conservation, and secure ecologically sustainable development while promoting justifiable economic and social development.[100] The National Environmental Management Act 1998 gives statutory effect to this constitutional right, embedding sustainable development principles, public participation, and the precautionary approach.[101]

South African courts have proved notably activist in enforcing these provisions. In *Fuel Retailers Association of Southern Africa v Director-General: Environmental Management, Mpumalanga*, the Constitutional Court held that environmental decision-making requires meaningful public involvement, treating procedural participation as itself protective of substantive environmental values.[102] In *Minister of*

[100]Constitution of the Republic of South Africa 1996, s 24.
[101]National Environmental Management Act 1998 (South Africa).
[102]Fuel Retailers Association (n 93).

Health v Treatment Action Campaign, the Constitutional Court's purposive interpretation of socio-economic rights to secure access to essential services offers a further model of how courts can give practical effect to constitutionally guaranteed rights with clear environmental and public health dimensions.[103] The South African experience demonstrates two central lessons: that constitutional entrenchment of an environmental right creates a powerful legal foundation, and that a genuinely activist judiciary can translate that entrenchment into meaningful accountability for both public agencies and private actors.

10.2 Kenya: Public Interest Litigation and Environmental Governance

Article 42 of Kenya's 2010 Constitution grants every person the right to a clean and healthy environment,[104] while the Environmental Management and Coordination Act 1999 enables civil society organizations to bring public interest litigation, in partnership with affected communities, against environmental violators. Kenyan courts have shown a comparable willingness to develop an activist environmental jurisprudence. In *Centre for Minority Rights Development (Kenya) & Minority Rights Group International on behalf of Endorois Welfare Council v Kenya*, the African Commission upheld the standing of non-governmental organizations to represent affected communities.[105] In the *Lake Turkana* litigation, Kenyan courts required rigorous environmental impact assessment and protective measures for vulnerable ecosystems before development could

[103]Minister of Health v Treatment Action Campaign and Others (No 2) 2002 (5) SA 721 (CC); 2002 (10) BCLR 1033 (CC).
[104]Constitution of Kenya 2010, art 42.
[105]Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya, Communication 276/2003, African Commission on Human and Peoples' Rights (4 February 2010).

proceed.[106] The Kenyan model combining a constitutionally entrenched right, broad standing for civil society, and a detailed statutory EIA regime, sustained by ongoing dialogue with affected communities, offers Nigeria a concrete template for strengthening public participation in environmental decision-making.[107]

10.3 India: Judicial Activism and Public Interest Litigation

The Indian judicial system offers perhaps the most developed example of judicially driven environmental governance, principally through the vehicle of public interest litigation (PIL). The Indian judiciary has interpreted Article 21 of the Constitution the right to life to encompass the right to a healthy environment, and two decisions in particular have shaped Indian environmental jurisprudence: *M C Mehta v Union of India* (the Oleum Gas Leak case), which established a stringent standard of absolute liability for hazardous industrial activity,[108] and *Vellore Citizens' Welfare Forum v Union of India*, which entrenched the precautionary principle and the polluter-pays principle as binding elements of Indian environmental law.[109] Together, these decisions demonstrate how a sufficiently activist judiciary can enforce corporate accountability through principles of polluter pays, precaution, and intergenerational equity that map closely onto the environmental challenges Nigeria confronts in the Niger Delta.[110]

10.4 Lessons for Nigeria

[106]Lake Turkana Wind Power Ltd v National Environmental Management Authority & 2 Others, Environment and Land Court, Petition No 214 of 2010 (ELC Case No 825 of 2012) (Nairobi, 9 June 2016).
[107]F Ebeku, 'Comparative Environmental Law: Lessons for the Niger Delta' (2013) 19 Journal of International and Comparative Law 55.
[108]M C Mehta v Union of India AIR 1987 SC 1086.
[109]Vellore Citizens' Welfare Forum v Union of India (n 30).
[110]Sands and Peel (n 22) 12.

This comparative survey yields several strategic insights for Nigerian reform. First, constitutional entrenchment of environmental rights rather than their relegation to a non-justiciable directive principle is the single most consequential structural change available, since it grants individuals and communities a genuine, enforceable cause of action and establishes a clear normative baseline against which environmental decision-making can be judged. Second, broadened standing rules that permit non-governmental organizations and community groups to institute proceedings as Kenya and India already permit, and as Nigeria's own Supreme Court gestured toward in *Centre for Oil Pollution Watch*, would materially improve access to remedies and strengthen public participation in environmental governance.[111] Third, sustained judicial activism, of the kind evident in each comparator jurisdiction, is necessary to operationalize both constitutional and statutory provisions through consistent application of the polluter-pays and precautionary principles. Fourth, institutional integration of a unified regulatory architecture, rigorous and genuinely participatory environmental impact assessment, and effective public monitoring is indispensable if these legal reforms are to translate into practice rather than remaining aspirational.[112] Finally, the sustained integration of international norms and jurisprudence helps countries maintain robust domestic environmental standards while meeting their international obligations; Nigeria can build a genuinely comprehensive environmental justice system only through the combined operation of judicial, legislative, and civil society mechanisms.[113]

11. RECOMMENDATIONS

[111]Centre for Oil Pollution Watch v NNPC (n 13).
[112]Obilade (n 89) 97.
[113]AO Enabulele, 'The Domestication of International Treaties in Nigeria' (2009) 19 African Journal of International and Comparative Law 22.

Drawing on the preceding analysis, three principal recommendations emerge.

First, Nigeria should undertake a comprehensive review and reform of its environmental laws to align domestic regulatory frameworks with international best practice and human-rights-based environmental standards. This should include, at minimum, the constitutional entrenchment of the right to a healthy environment as a justiciable right in Chapter IV, harmonization of the overlapping jurisdictions currently shared among NESREA, NUPRC, NMDPRA, and NOSDRA, and the modernization of outdated penalty regimes such as those under the Oil in Navigable Waters Act.

Second, Nigeria should establish an independent Environmental Commission with clear statutory mandates, robust institutional safeguards against political and industry capture, and genuinely participatory decision-making powers, in order to strengthen transparency, accountability, and access to justice in environmental governance. Such a body should be empowered to receive complaints directly from affected communities, commission independent environmental audits, and refer matters for prosecution without dependence on the discretion of overlapping sectoral regulators.

Third, Nigeria should prioritise international cooperation and targeted technical assistance — including capacity building, technology transfer, and funding partnerships to support its pursuit of environmental justice and sustainable development. Given the scale of remediation required in the Niger Delta, sustained international partnership, of the kind envisaged (if imperfectly realized) by the Hydrocarbon Pollution Remediation Project, is likely to remain indispensable for the foreseeable future.

Beyond these three headline recommendations, the analysis above also supports more targeted reforms: the relaxation of Nigeria's restrictive standing rules to permit representative and public interest litigation on the Kenyan and Indian models; the introduction of specialized environmental courts or divisions with the technical expertise to adjudicate complex pollution and remediation claims; and the strengthening of participatory mechanisms under the EIA Act to ensure that community consultation is substantive rather than formal.

12. CONCLUSION

This article has traced the development of environmental justice in Nigeria from private law remedies to regional and international frameworks, evaluating Nigerian law against comparative and international standards. It has shown that environmental justice in Nigeria emerges from the interaction of tort law, constitutional provisions, judicial innovation, regional human rights guarantees, and international environmental standards, no single one of which is, on its own, adequate to the scale of the problem.

The common law torts of nuisance, negligence, and the rule in *Rylands v Fletcher* continue to offer environmental victims a private law remedy against polluters, but their utility is constrained by demanding proof requirements, restricted standing, and cumbersome procedure.[114] Sections 20, 33, and 34 of the 1999 Constitution supplement these tort remedies by establishing, respectively, a state duty and personal rights capable of protecting the environment, and Nigerian courts have increasingly treated environmental harm as implicating fundamental rights, thereby widening access to justice for affected communities and permitting the domestic application of international law within Nigerian proceedings. The African Charter, for its part, supplies a

[114]Rylands v Fletcher (1868) LR 3 HL 330.

regional framework that combines collective and rights-based approaches to environmental protection; *SERAC v Nigeria* established that environmental degradation can constitute a human rights violation requiring states both to protect affected communities and to restore damaged environments, giving Nigerian advocates a strong basis for policy argument even where domestic courts remain hesitant to rely on it directly.

Internationally, Nigeria's membership of the UNFCCC, the Paris Agreement, the Basel Convention, and the Convention on Biological Diversity embeds the principles of common but differentiated responsibility, precaution, and polluter-pays within national policy and legislative development principles whose domestic implementation, however, remains inconsistent for want of clear enabling law. The comparative experience of South Africa, Kenya, and India confirms that environmental justice requires, at minimum, constitutionally entrenched environmental rights, broad standing rules that enable genuine public participation, and a judiciary willing to translate those rights into concrete accountability for both public agencies and private actors.

Ultimately, environmental justice in Nigeria remains an active and evolving field that requires the coordinated effort of legal frameworks, institutions, and social structures working in concert. Judicial activism must operate alongside statutory and international norms as complementary catalysts for systemic transformation, spanning legal doctrine, institutional practice, and policy development. By drawing on its own domestic learning together with the comparative lessons of other jurisdictions, Nigeria has a genuine opportunity to build an environmentally just future one that protects human rights, empowers indigenous and marginalised communities, and advances the goals of sustainable development.