

EMERGING TRENDS ON THE CONCEPT OF ENVIRONMENTAL JUSTICE AND GOVERNANCE IN NIGERIA

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Abstract

This paper discussed environmental justice vis-à-vis the subject on social and practical step requiring fair treatment and involvement of all human irrespective of age, sex, color, creed, class or nationality. The research adopted the doctrinal approach to examine and the principles, treaties legal and regulatory framework on environmental justice and governance in Nigeria. The paper highlighted some of the relevant provisions on the concept of environmental justice and governance. It was found that the concept of environmental justice in Nigeria is impeded by factors such as the non-justiciability of environmental matters under the Nigerian Constitution, the issues of locus standi, burden of proof, quantum of compensation as stumbling blocks on the quest to foster environmental justice and governance in Nigeria. While there are emerging global trends such as the concept of holding parent companies liable for the activities of their subsidiaries on environmental matters and the growing influence of environmental NGOs and public

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interests' litigations on environmental matters which had to some extent influenced Nigeria's legal and policy framework on environmental matters. It is recommended that Nigeria should reform its laws especially Section 20 of the Constitution of Nigeria to make environmental protection justiciable in line with global trends.

Keywords: Environmental Justice and Governance, Principles of Sustainable Development, and Environmental Impact Assessment

1.0 INTRODUCTION

1.1. The Modern concept of environmental justice and governance (EVJ&G) had its origin from the USA especially during the civil right movement. It is linked to the Memphis Sanitation Strike of 1968, which drew the attention and support of Dr Martin Luther King Jnr, the leader of the civil right movement in the USA.¹ Another significant protest which galvanized further action on EVJ&G took place in Warren County, North Carolina, in 1982 when residents, mostly of Afro-American descent opposed the location of a hazardous landfill in their community.² The singular event in Warren County raised awareness and concern about the disproportionate environmental burden and social justice leading to greater action on environmental inequality.³

The focal point of environmental justice and governance are to minimize poor air quality, spillage, poisoned water or flooding. In 1991, the National People of Color Environmental Leadership Summit in the USA, formulated the following principles for EVJ&G *inter alia*:

¹ RD Bullard, "*Confronting Environmental Racism: Voices from Grassroot*" (South East Press 1993)
<https://scholar.google.com/scholar?q=environmental+inequalities&btnG=#gs_qabs+ft=1701474273600&u=%23p=H-zyLJvBTSMJ> accessed 15 June 2026

² *ibid.*

³ RD Bullard (n1)

- i. Affirmed the sacredness of the Earth
- ii. Demanded nondiscrimination of in public environmental policy
- iii. The right to compensation and reparation for environmental damages
- iv. Ethical balance on the use of land and renewable resources in a sustainable manner.⁴

The concept of EVJ&G in the USA was further shaped by grassroots activism, legal actions and policy initiatives which further emphasized the need for inclusivity and equitable policies and practices.

One of the land mark policy in the US was an executive order by the President Clinton directing federal agencies to consider the disproportionate adverse effect on the environment and human health of minorities and low income populations.⁵ The order mandated agencies through the Inter-Agency Working Group on Environmental Justice to undertake environmental justice assessment to determine whether a proposed activity would impact low-income and minority populations to a greater extent than it would a community's general population⁶

In Nigeria, the concept of environmental justice and governance have become a central theme in order to deal with issues such as degradation, gas flaring, pollution and management of hazardous waste, in a fair, just and equitable environmental manner.⁷ The multifaceted environmental challenges in Nigeria had to some extent

⁴ Paragraph 17 of the Draft Principles on Environment Justice and Governance, National People of Color Environmental Leadership Summit USA, 1991.

⁵ Executive Order 12898, 1994

⁶ *ibid*

⁷ P S and, J Peel *Principles of International Environmental Law* (4th edition, Cambridge University Press 2018) 30

exposed the weakness in the legal and regulatory approaches with the need to strengthen the legal framework in tandem with international reality. Environmental protection under the Nigerian Constitution is placed under the fundamental objectives and directive principle of state policy thereby limiting direct enforcement of environment rights.⁸

Other factors hampering environmental justice and governance in Nigeria are lack of information on environmental issues, lack of judiciary independence, *locus standi*, burden of proof and environmental impact assessment. Despite these obstacles, judicial activism is gradually creeping through NGOs such as Green Peace, Friends of the Earth, Centre for Oil Pollution Watch who helped to checkmate negligence or lapses of government and corporate organizations globally and nationally. Furthermore, developments and judicial activism in other climes, such as holding a parent or holding company responsible for the environmental harm of its subsidiaries. In the case of *Gbemre v Shell Petroleum Development Company Nigeria Ltd.*⁹ The Federal High Court recognized that gas flaring violated the applicants right to life, and dignity thereby marking a significant milestone of environmental justice in Nigeria. Nigeria has also passed land mark legislations such as the Petroleum Industry Act, 2021 and the Climate Change Act, 2021 which have clear provisions on environmental justice and governance. It remains to be seen whether the Nigerian policy makers and the judiciary will muster the political will and judicial courage to implement these legislations in tandem with the international reality.

2.0 CONCEPTUAL CLARIFICATIONS

2.1 Environmental Justice

⁸ S 20 Constitution of the Federal Republic of Nigeria 1999.

⁹ (2005) AHRLR 151

Robert Bullard, who is considered to be the father of environmental justice, defined it as:

The principle that all are entitled to equal environmental protection regardless of race, color or origin, it is the right to live, work and play in a clean environment.¹⁰ The Environmental Protection Agency of the USA, defines environmental justice as:

The fair treatment and meaningful environment of all people regardless of race, color, national origin, or income, with respect to the development, implementation and enforcement of environmental laws, regulations and policies.¹¹

Environmental justice is a normative and a right based approach that is rooted in fairness with assurance that member of the community especially the vulnerable and marginalized bear a disproportionate share of environmental impact from industrial or commercial activities.¹² The concept of Environment justice encompassed three core dimensions of distributive, procedural and corrective justice.¹³

2.2 Environmental Governance

Environmental Governance refers to the totality of the legal, institutional and regulatory framework through which environmental resources are regulated, decisions are made and conflicts are resolved. It comprises of regulative agencies such as state and private entities,

¹⁰ R D Bullard, *Dumping in Dixie: Race, Class and Environmental Quality* (3rd edition, Westview Press 2000) 3

¹¹ Article I EPA, 1995

¹² R D Bullard (n 10) 5

¹³ D Njoku and P Nwodeh, "Advancing Environmental Justice and Sustainability through Environmental Democracy in Nigeria (2023) 8 *International Review of Law and Jurisprudence* 45

non-governmental organizations and international bodies.¹⁴ In modern trends environmental governance is closely related with transparency, accountability, public participation, rule of law and enforcement.¹⁵

According to the United Nations Environmental Programme (UNEP), environmental governance reflects a shift from rigid command-and-control regulation to more flexible, Participatory and multi-level governance models. It recognizes challenges such as climate change, biodiversity loss and pollution requiring coordinated responses across different governance levels.¹⁶

Environmental justice and governance are interconnected or related in a sense that the former encompass the principles of equity, fairness and accountability, while the latter provides the institutional and procedural framework for the realization of environmental justice.¹⁷

2.3 Principles of Sustainable Development.

The CCA, 2021, did not clearly define sustainable development but by inference refer to it as sustainable development goals or SDGs which "means the national aspirations aimed at meeting the needs of the present without compromising the ability of future generations to meet their own needs, including ending poverty, improving health and education, making cities more sustainable, combating climate change, and protecting waterways and forests, among others." The definition is

¹⁴ M Ivanova and DC Esty, "Global Environmental Governance: concepts, challenges and prospects" (2015) 21 *Global Governance* 17

¹⁵ PS and Jpeel (n7) 203-205

¹⁶ United Nations Environmental Programme (UNEP) *Environmental Governance 2019* p6-8

¹⁷ K Bosselmann, *the Principle of Sustainability Transforming Law and Governance* (2nd edition Routledge 2017) 98-99

in tandem with the Rio Principles and the concept of environmental justice and governance.¹⁸

2.4 Environmental Protection and Conservation

The concept of environmental protection is to safeguard the environment from pollution, degradation, harm and to conserve it from degradation. The United Nations Convention on Biodiversity, defines conservation in two streams: in-situ and ex-situ conservation.¹⁹

2.4.1 *In-situ* conservation” means the conservation of ecosystems and natural habitats and the maintenance and recovery viable populations of species in their natural surroundings and in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties.²⁰

2.4.2. *Ex-situ* conservation” means the conservation of components of biological diversity outside their natural habitats.²¹ Environment protection requires the use of statutes, regulations and policies to protect and conserve it from anthropogenic activities.

2.5 Environmental Impact Assessment

The main objective of environmental assessment is to establish before a decision is taken of any activity that shall impact the environment undertaken by private or public organization or entities in any part of Nigeria. This will enable the appropriate authority to make laws and policies and to consult with stakeholders at the state and interstate on the environmental effect of the proposed activity.²²

¹⁸ Principle 4 Rio Declaration, 1992.

¹⁹ Article 2 United Nations Convention on Biodiversity (UNCBD), 1992

²⁰ *ibid* Article 2

²¹ *ibid*

²² Section 1 Environmental Impact Assessment Act, 2004

2.5.1 "Environmental assessment" means in respect of a project, an assessment of the environmental effect of the project that is conducted in accordance with the Act and regulations made there under²³

2.5.2 "Environment effect" means in respect of:

- a. Any change that the project may cause to the environment;
- b. any change the project may cause to the environment whether any such change occurs within or outside Nigeria, and includes any effect of any change on health and socioeconomic conditions.²⁴

3.0 LEGAL FRAMEWORK ON ENVIRONMENTAL JUSTICE AND GOVERNANCE IN NIGERIA

3.1 Principles and Declarations

3.11 The principle of Sustainable Development and Meeting Future Needs

These principles are relevant to the concept of environmental justice and governance and are anchored on the Brundtland's Report; as "Development that meets the needs of the present without compromising the ability of future generations to meet their own needs"²⁵ Both principles are complementary and have four basic elements;

- i.) The need to use and preserve in a sustainable manner for the benefit of future generations,
- ii.) The exploitation of natural resources in a prudent manner,

²³ *ibid* S61

²⁴ *ibid* s 6 1

²⁵ Principle 1 Stockholm Declaration, 1972, Principle 3 Rio Declaration, 1992

- iii.) The equitable use of resources in a prudent manner, and;
- iv.) The need to integrate environmental issues in the economic development of states.

Both principles by their nature and contents are aimed at intergenerational justice and equity to preserve the environment for present and future generations.

3.1.2 Principle of Procedural Obligations

This principle mandates States to comply with environmental impact assessment as safeguards for environmental governance. It provides for the following:

- i. Potential effects of certain activities;
- ii. Exchange of information on potential impact of environmental issues and;
- iii. Consultation at regular intervals on environmental issues.²⁶

3.1.3 The Polluter Pays principle.

The principle is germane to the concept of environmental justice and governance in order to hold polluters accountable for environmental damage. It emphasizes that national authorities should internalize environmental costs and the use of economic instruments to hold polluters accountable.²⁷ The principle is both preventive and punitive, pursuant to the "end of pipe" environmental protection policy—where the polluter is forced to clean up, restore and compensate the victims of his action.

The principle has firm roots in the USA where the Environmental Protection Agency (EPA) is mandated to establish a "Superfund"

²⁶ Article The Convention on Environmental Impact Assessment in a Trans boundary Context, 1991

²⁷ Principle 16 of the Rio Declaration, 1992

known as the Hazardous Substance Response Fund to provide funds for clean-up, allocate and correct response cost from polluters or compel them by an injunction to clean up themselves.²⁸ Apart from EPA, there are other legislations such as the Comprehensive Environmental Response, Compensation and Liability (CERCLA) Act, which provides mechanism for responsive action whenever there is a threat of the release of hazardous waste into the environment.²⁹

Another historic legislation in the USA, is the Resource Conservation and Recovery Act, 1976 which ensured a cradle-to-grave monitoring of hazardous waste from the production to disposal. Under the law, polluters are mandated to keep records and report movements, quantity and disposal of waste³⁰.

There are several cases in the USA that have reinforced the law on environmental justice and governance such as, the cases of *USA v ACETO Agricultural Chemicals Corporation*.³¹ Where the polluter was forced to pay cost of clean-up of the environment despite its protest that it had no control over the hazardous waste. In *USA v Conservation Chemicals Co*³², the polluters were compelled to pay the cost of pollution to the victims. Similar decisions were arrived at in the case of *USA v A&F Materials*³³ and *USA v North-Eastern Pharmaceuticals and chemical Co*³⁴

3.2 Treaties, Agreements and Conventions

3.2.1 Human Rights and Environmental Justice

²⁸ S 111 EPA Act, 1990.

²⁹ S 104 CERCLA Act, 1980

³⁰ S 61 RCRA, 1976

³¹ 872 F 2d 1373 (8th Cir July 9, 1989)

³² 619 Fd Supp 1055 (2nd Cir 1982)

³³ 667 Fd Supp 1313 (Ed Mo 1985)

³⁴ 810 F 2d 726 (8th Cir 1986)

There are several treaties and agreements and convention which reinforce the concept of environmental justice and governance. These treaties are global, regional and sub-regional in nature and content. At the global level notable treaties on environmental justice and governance are: The Paris Agreement on Climate Change³⁵, International Convention on Civil and Political Rights³⁶, International Convention on Economic, Social and Political Rights³⁷ and the Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters Aarhus.³⁸

At the regional and sub-regional levels, there are treaties on environmental justice and governance such as; the European Convention for the Protection of Human Rights and Fundamental Freedoms.³⁹ The African Charter on Human and Peoples' Rights.⁴⁰ These treaties have copious provisions for environmental justice and governance.

3.2.2 United Nations Commission on Human Rights Code of Conduct for Transnational Corporation, 2002

According to the United Nations Commission on Human Rights Draft Responsibilities of Transnational Corporations and other Business Enterprises Transnational Corporations refers to “an economic entity operating in more than one country or a cluster of economic activities operating in two or more countries...” A multi-national Corporation, is

³⁵ Article 6(2) Paris Agreement on Climate change, 2015

³⁶ Article 22, International Convention on Civil and Political Rights (ICCPR), 1967

³⁷ Article 8, International Convention on Economic, Social and Cultural Rights (ICESCR), 1976

³⁸ Article 1, Convention on Access to Information, Public Participation in Decision Making, and Access to Justice in Environmental Matters, Aarhus 1988

³⁹ Article 11 European Convention for the Protection of Human Rights and Fundamental Freedom (ECPHRFF), 2002

⁴⁰ Article 9, 24 African Charter on Human and Peoples Right (ACHPR), 1983

“a cluster corporations of diverse nationality joined together by a common ownership and responsive to a common management strategy”.⁴¹

Transnational Corporations (TNCs) are mandated by the UN code of conduct to “Provide safe and healthy working environment as provided by the relevant international instruments and national legislations as well as international human rights law”⁴². The TNCs code, further provide for EVCI & G transnational corporations and other business enterprises shall provide prompt, effective and adequate reparation to those persons, entities and communities who have been adversely affected by failure to comply with these responsibilities through *inter alia*, reparations, restitution, compensation and rehabilitation for any damage done or property taken.⁴³

3.2.3 The Paris Agreement on Climate Change, 2015

The agreement has made provisions on environmental justice and governance where parties are to voluntarily engage in promoting sustainable development, environment integrity and governance in their Nationally Determined Contributions (NDCs) and other climate obligations⁴⁴. With respect to environmental justice and governance there are concerns that the provisions voluntary and incapable of enforcing environmental rights. However, the agreement has served as a benchmark for protection of environmental right. In *Netherlands v Urgenda Foundation*⁴⁵ the Dutch Supreme Court utilized the agreements target to hold that the government had an obligation to protect its citizens’ right under the European Commission on Human

⁴¹ Article 19, United Nations Commission on Human Rights Draft responsibilities of Transnational Corporations (INCS) and other Business Enterprises, 2002

⁴² *ibid* Article 7

⁴³ *ibid* Article 17

⁴⁴ Article 6 (2) Paris Agreement on Climate Change, 2015.

⁴⁵ (2020) ASIL 114, NO 4

Rights (ECHR), thus bridging the gap between international pledges and domestic enforcement. In *Leghari v Pakistan*.⁴⁶ A Lahore High Court held that these obligations were earlier viewed as a shield for fundamental right and a tool for global environmental governance in the 21st century.

3.2.4 The Aarhus Convention on Access to Justice, Information, Public Participation in Decision Making and Access to Justice in Environmental Matters, 1998

The convention which has been ratified and domesticated by Nigeria has made provisions for national, regional and global bodies to incorporate and environmental rights and obligations like access to justice, information and participation in environmental decisions.⁴⁷

3.2.5 The African Charter on Human and Peoples Right on the other hand has made provision for environmental justice by providing that: "Every individual shall have the right to receive information, Express and disseminate his views within the law. It further provides that "All People shall have a right to a generally satisfactory environment"⁴⁸

3.3 Nigerian National Legislations

Nigerian national legislations on environmental justice include Acts of the National Assembly such as the Constitution of the Federal Republic of Nigeria⁴⁹, the National Environmental Standards and Regulations Agency Act⁵⁰ the Climate Change Act⁵¹, the Petroleum

⁴⁶ (2015) WP NO 2550/2015, Lahore High Court.

⁴⁷ Article 1 Aarhus Convention, 1998
at<https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-13&chapter=27> accessed 16 June 2026

⁴⁸ Article 9(1)(2) and 24 ACHPR,

⁴⁹ Section 20 the Constitution of the Federal Republic of Nigeria (CFRN), 1999

⁵⁰ The National Environmental Standards and Regulations Agency (NESREA) Act, 2007

Industry Act⁵² the Environmental Impact Assessment Act⁵³, the Freedom of Information Act⁵⁴. There are several laws of the states and bye laws of local government in Nigeria which are complementary to the Acts of the National Assembly which deals with issue of environmental justice and governance and applied side by side subject to the peculiar circumstances of the state or Local government as the case may be.

3.3.1 The Constitution of the Federal Republic of Nigeria, 1999

The constitution provides that “the State to protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria”⁵⁵. The provision is not justiciable but a mere objective and directive principle of state policy with limited enforcement of environmental justice by the court⁵⁶. In *NNPC V Gani Fawehinmi*⁵⁷, the Nigerian Supreme Court stated that the provisions of Chapter II were unenforceable under any guise and remained a mere constitutional aspiration. In *AG Ondo State V AG Federation*,⁵⁸ the Supreme Court again stated that the provisions of section 6(6)(c) make rights under the fundamental objectives and directive principles under Chapter II of the Constitution of the Federal Republic of Nigeria non justiciable.

With regards to environmental justice there is a growing trend that issues relating to human rights should be enforced by international treaties where Nigeria is a signatory notwithstanding the provisions of

⁵¹ Section 5 the Climate Change Act (CCA), 2021

⁵² Section 5 the Petroleum Industry Act (PIA), 2021

⁵³ Section 5 the Environmental Impact Assessment (EIA) Act, 2004

⁵⁴ Section 5 the Freedom of Information (FOI) Act, 2011

⁵⁵ S 20 CFRN, 1999

⁵⁶ *ibid* S 6(6)(C)

⁵⁷ (1998) 7 NWLR (Pt 559)

⁵⁸ (2002) 9 NWLR (Pt 772)

Section 20 of the Constitution. In *Gbemre v SPDC*.⁵⁹ The Federal High court held that gas flaring by the defendants violated the plaintiffs' right to a healthy environment as guaranteed by the Article 24 of the African Charter on Human and Peoples Right. In *Social and Economic Right Action Centre (SERAC) and Centre for Social Economic and Social Rights (CESR) v Nigeria*,⁶⁰ The African Commission on Human Rights held that the Federal Government of Nigeria and the multinational oil companies in the Niger-Delta violated the rights of the Ogonis as provided under Article 24 of the ACHPRs.

3.3.2 The National Environmental Standards and Regulations Agency (NESREA) Act, 2018

The NESREA Act which repealed the Federal Environmental Protection Agency (FEPA) Act⁶¹ has by implication made provisions for environmental justice and governance by making guidelines, law, policies and regulations on environmental matters both nationally and internationally on issues such as water quality and air quality standards, chemical and hazardous waste, climate change, ozone layer, marine and wild life, Pollution among others⁶². The Agency is mandated to enforce environmental regulations on noise, air, land, sea and other water bodies other than the oil and gas sector⁶³. The NESREA has regulations and provisions which incorporate International Principles of environmental justice such as trans boundary pollution, waste management polluter pays principle and the principle of intergenerational justice⁶⁴.

⁵⁹ (2005) 6 AHRLR 152

⁶⁰ (2001) ACHR 35, Communication No 155/96

⁶¹ Federal Environmental Protection Agency (FEPA) Act CAP F10 LFN 2004

⁶² Section 7 NESREA Act, 2018

⁶³ *ibid* s 7(h)

⁶⁴ *ibid* s 21, 27

There are NESREA's Regulations on such items as food, beverages and tobacco sector⁶⁵ and the textile, wearing apparel leather and foot wear industry⁶⁶ which incorporate the polluter pays principles. Under the former, there are regulations that provides that "every company that pollute either by collection, transportation and disposal of waste shall be held liable."⁶⁷ It further provides that where injury occur resulting to adverse impact on the environment, the company will be held liable to remedy, clean-up, restore, reclaim and compensate the victims⁶⁸. The latter, also incorporate the principle but unlike the former, has no provisions for compensation for the victims.⁶⁹ One of the defects of the NESREA Act in addressing environmental justice and governance is the exclusion of the oil and gas sector and its failure to add balance economic development and environmental sustainability⁷⁰

Apart from the limitations in the oil and gas sector, there are several other statutes, laws and bye laws with the mandate to protect the Nigerian environment which can overlap with the functions of NESREA which is more concerned with abatement rather than direct

⁶⁵ Regulation 5(1), National Environmental (Food, Beverages and Tobacco Sector) Regulations, 2009

⁶⁶ Regulation 5, National Environmental (Food, Beverages, Textile, Wearing Apparel and Foot wear Industry) Regulations, 2009

⁶⁷ Reg 5(1), National Environmental (Food, Beverages and Tobacco Sector) Regulations, 2009

⁶⁸ *ibid* Reg 5(3)

⁶⁹ Reg 5, National Environmental (Textile, Wearing Apparel, Leather and Foot Wear Industry) Regulations, 2009

⁷⁰ PK Oniemola and A Adigun, "An Appraisal of the Basis for Tension between the Environment and Development *Petroleum, Natural Resources and Environmental Law Journal* (2009) 1(3)

enforcement of an individual's environmental right especially communities in oil and gas producing areas.⁷¹

3.3.3 The Climate Change Act (CCA), 2021

The CCA, 2021 has provision on environmental justice and governance by incorporating the objectives of inclusive green growth and sustainable economic development measures, low carbon and sustainable livelihood.⁷² In pursuit of its objectives, the CCA further make provision for reports to the National Assembly on environmental impact on men, women and children.⁷³ It further create offences for violating its provisions by persons, private and public entities with access to court to prevent, stop or discontinue the performance of any act that is harmful to the environment.⁷⁴ Finally, it provides for the writ of mandamus against a public official to act in order to prevent or stop the performance of any act that is harmful to the environment and to compensate victims affected by the acts that are harmful to the environment.⁷⁵

From the provisions of the CCA, there is an emerging trend on the convergence between environmental justice and governance in terms of environmental regulations, litigation and corporate responsibilities. This signifies a gradual shift from purely regulatory models that recognize environmental protection as both legal and social justice obligations.⁷⁶

⁷¹ BE Umukoro, "Looking Beyond the Constitution; Legislative Efforts Toward Environmental Rights in Nigeria; A Review of Salient Legislations" *Journal of Legal Studies* (2022) (9)(2) 141

⁷² Section 1 (h) CCA, 2021

⁷³ *ibid* s 21 (d)

⁷⁴ *ibid* s 34(1)(2)(a)

⁷⁵ *ibid* s 34(2)(b)(c)

⁷⁶ J Abah, "Climate Justice in Nigeria: The Role of the National Climate Change Act in Addressing Inequities in Climate Action" *International Journal of Law and Jurisprudence* (2005) 9, 112

3.3.4 The Petroleum Industry Act, 2021

Historically oil was discovered in commercial quantities in Nigeria by BP Shell in 1956⁷⁷. From the discovery in commercial quantities also brought other companies which joined in the exploration leading to severe environmental impact such as spillage, gas flaring and venting and the vandalization of pipelines. These disasters effected the environment and the livelihoods of communities in the Niger Delta region where most of the oil and gas is exploited. The cumulative effect has led to environmental degradation, pollution and social injustice.⁷⁸ There have been series of legislations on the Petroleum Sector in Nigeria on aspect such as spillage, exploration, refining and gas flaring. In 2021 a landmark legislation was passed to harmonize all the laws for the petroleum sector which provides for the legal, governance, regulatory and fiscal framework of the petroleum industry and the development of the host communities.⁷⁹

The salient provisions under PIA relating to environmental justice and governance are provided for under chapter 1 with respect to governance and institutions such vesting and objectives one of which is to “promote transparency, good governance and accountability in the administration of the petroleum resources of Nigeria”.⁸⁰ Another notable provision for the minister of petroleum to direct Commission or the authority to direct in writing the suspension of petroleum operations, in any area "until arrangement to prevent danger to life or

⁷⁷ UNEP, "Oil Discovery in Nigeria by British Petroleum and Royal Dutch Shell, 1956" <<https://www.unep.org/explore-topics/disaster-conflicts/where-we-work/nigeria/ogoni-lands-oil-history#!text=In%20Nigeria%2C%202011%20was%20reportedly%20largest%20producer%20of%20crude%20oil%20%20>> accessed 18 June 2026

⁷⁸ Ounata, "Faded Resources: Oil spillage in the Niger Delta" at <<https://www.allafrica.com/stories/html>> accessed 18 June 2026.

⁷⁹ see the Explanatory Memorandum of the Petroleum Industry Act, 2021

⁸⁰ Section 2 (c) PIA, 2021

property have to made..."⁸¹ The Upstream Petroleum Regulatory Commission is also mandated to "promote healthy, safe, efficient conduct of upstream Petroleum operations in an environmentally acceptable and sustainable manner"⁸²The commission is further mandate through its technical regulatory functions to enforce regulations and standards on gas treatment, gas gathering, the elimination of gas flaring and venting.⁸³Another notable provision under PIA, is the provision for host communities development whose objective are inter alia to- "foster sustainable prosperity with host communities" and "provide direct social and economic benefits between licensees and lessees and host communities"⁸⁴ In order to foster environmental justice and governance, there are common provisions under PIA for upstream, Midstream and downstream petroleum operations in relation to regulating, enforcement, public access to the registry, offences and penalties⁸⁵

3.3.5 Environmental Impact Assessment Act, 2004

The role of environmental impact assessment is crucial for environmental justice and governance in the sense that all activities or projects which might affect the environment require an impact report. The report shall provide details of the potential impact of the activity on the environment, the mitigation plans and clean up strategies.⁸⁶ The activities or projects are listed in the schedules of the Environmental Impact Assessment Act.⁸⁷ There are provision for public access

⁸¹ *ibid* s 3 (1)(i)

⁸² *ibid* s 6(d)

⁸³ *ibid* s 6(e)(i)(ii)(iii)(iv)

⁸⁴ *ibid* s 234(1)(a)(b)

⁸⁵ *ibid* s 216, 217, 224, 228, 229

⁸⁶ Section 1 Environmental Impact Assessment Act, 2004

⁸⁷ Omakinde and T. Adeyoke, *Environmental Law in Nigeria* (4th Edition International Comparative Guide to PFI/PPP Projects, Global Legal Group Ltd London2007) at <<https://www.mondaq.com/>

pertaining to environmental assessments and penalties for violating the act by individuals and corporate organizations.⁸⁸ Unfortunately, there is no provision in EIA, 2004 which mandate the general public to challenge regulators on matters of environmental impact in particular their right to information as provided under the Rio Declarations.⁸⁹ In the USA, the court held in *USA v Students* that the applicants had the right to challenge regulator on matters of environmental impact and procedures⁹⁰.

Some of the activities that require environmental impact assessment in Nigeria are: land reclamation, forestry, heavy industry, infrastructure, ports, petroleum, Power generation & transmission quarries, railways, transportation, transporting resort and recreationary development, water treatment disposal and water supply.⁹¹

3.3.6 Freedom of Information Act, 2011

The Freedom of Information Act is a significant legislative framework on environmental justice and governance in Nigeria. It gives the general public the right to access information on the activities of private and public organizations or bodies⁹² with respect to the environment, access to information include: impact assessment reports, Pollution data, environmental audits, permits and compliance records by industries.⁹³ The right to access to information enable communities to meaningfully participate and challenge environmentally harmful practices as well as enable litigants obtain

Nigeria/x/53804/Energy+Law/Environment+Law+Int+Nigeria> accessed on 20 June 2026.

⁸⁸ Section 58, 59 & 60 EIA Act, 2004

⁸⁹ Principle 17 Rio Declaration, 1992

⁹⁰ 412 US 669, 1973

⁹¹ Schedule 1 S12 EIA Act, 2004.

⁹² S1 Freedom of Information Act, 2011

⁹³ *ibid* S 2,3,4

documentary evidence to enforce their environmental rights.⁹⁴ There are however, constraints in the FOA in advancing environmental justice due to weak implementation, bureaucratic resistance and low public awareness by public institutions failure to disclose vital information as stipulated under the FOI framework.⁹⁵

4.0 EMERGING TRENDS ON THE CONCEPT OF ENVIRONMENTAL JUSTICE AND GOVERNANCE IN NIGERIA

Emerging trends on environmental justice and governance in Nigeria comprised of factors which especially by Transnational Corporations in the oil gas sector hampered environmental justice in Nigeria and the recent developments in other jurisdictions by environmental activists and NGOs which significantly shaped Nigerian Judicial and governance issues on environmental pollution in Nigeria⁹⁶

4.1 Factors Hampering Environmental Justice in Nigeria

4.1.1 Non-Justiciability of Environmental Rights in Nigeria

The non-provision of Nigerian the constitution of the Federal Republic of Nigeria, 1999 with regards to environmental protection is placed under the Fundamental Objectives and Directive Principles of State Policy, thereby limiting direct enforcement of environmental rights in Nigeria⁹⁷ The position in Nigeria sharply contrasts with other

⁹⁴ D Njoku and P Nwodeh, "Advancing Environmental Justice and Sustainability through Environmental Democracy in Nigeria" *International Review of law and Jurisprudence* (2025) (8) (52)

⁹⁵ OA Akinwale, "Transparency and Access to Environmental Information in Nigeria" 7 *Nigerian Journal of Environmental Law* (2020) (7) (133)

⁹⁶ EO Ekhatior, "Improving Access to Environmental Justice Under the African Charter on Human and People's Right: The Roles of NGOs in Nigeria" *AJICL* (2024) 63

⁹⁷ s 20 CFRN, 1999

jurisdictions such as Kenya, India and Costa-Rica where their constitution's guarantee environmental rights⁹⁸.

The position in USA on environmental just is clearly stipulated provided for by the Environmental Protection Agency (EPA): "as the fair treatment and meaningful environment of all people regardless of race, color, national origin, or income, with respect to the development, implementation" and enforcement of environmental laws, regulations and policies⁹⁹. The position is further guaranteed under the African Charter of Human and Peoples Right which clearly state that "All people shall have a right to a generally satisfactory environment."¹⁰⁰ In India for example, the Supreme Court in a number of cases has reinforced the principle of environmental right in the case of *Rural Litigation Entitlement Kendra v State of Uttar Pradesh*¹⁰¹ and *Subhash Kumar v State of Bihar*.¹⁰²

4.1.2 Right to Freedom and Access to Information

These rights are guaranteed by the Freedom of Information Act¹⁰³, 2011, in line with the Constitution of the Federal Republic of Nigeria, 1999¹⁰⁴ and the African Charter on Human and Peoples Right¹⁰⁵, which succinctly states that "Every individual shall have the right to receive information, express and disseminate his news within the law." Under the Aarhus convention, the right to access to information, public participation in environmental matters is further guaranteed¹⁰⁶

⁹⁸ s 42, Constitution of Kenya, 2010, Article 21, Indian Constitution, 1947

⁹⁹ Article 1 EPA,

¹⁰⁰ Article 24, ACHPRs, 1983.

¹⁰¹ AIR 1981 SC 652

¹⁰² AIR 1991 SC 420

¹⁰³ S 2, 3, 4 and 5 FOI Act, 2011

¹⁰⁴ S 22 and 39 CFRN, 1999

¹⁰⁵ Article 9(1)(2) ACHPRs?

¹⁰⁶ Article- The Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters (Aarhus, 1998)

4.1.3 Environmental Impact Assessment and Burden of Proof.

The Environmental Impact Assessment Act, has institutionalized participatory governance and consultation before carrying out a project. This participatory trend is very important for procedural justice for affected persons or communities in enforcing environmental rights¹⁰⁷. Environmental harm require proof of in order to ascertain proximity of causation. In the case of *Seismographic Services Ltd v Onokpasa*¹⁰⁸, the plaintiffs lost his case on the grounds that he failed to link the cracks on his wall to the appellant's seismic activities. Similarly, in *Amos v BP Shell Nigeria Ltd*¹⁰⁹ the plaintiffs lost their case because they sued on public nuisance without the AG's Fiat.

4.1.4 The Question of *locus standi*

The question of locus is important to enforcing environmental justice. It determines who can sue and be sued for environmental harm. The question of locus in most cases is resolved in the Attorney General, NGO or public interest litigation. In *Umudge v Shell Petroleum Ltd*¹¹⁰ the plaintiffs whose land was destroyed as a result of the escape of accumulated oil waste was held to have the locus to sue under the Rule in *Rylands v Fletcher*.

4.1.5 The Question of Jurisdiction

The question of jurisdiction is very germane in determining the courts power to hear and determine a case before it. The issue of jurisdiction is both of common law and statutes. In *UAC v McFoy*¹¹¹ Lord Denning, MR (as he then was) held that a court without Jurisdiction is attempting to place something on nothing and expecting it to stand.

¹⁰⁷ MT Ladan, *Environmental Law and Practice in Nigeria* (2nd Edition Law Lords Publications 2015) P 173-176

¹⁰⁸ (1972) 4 SC 123

¹⁰⁹ (1974) 11 E&SLR 486

¹¹⁰ (1975) 11 SC 115

¹¹¹ (1967) 2 All ER 496

Generally, in Nigeria, statutes must often vest original exclusive jurisdiction in the Federal High court to hear and determine environmental matters¹¹² In *Shell Petroleum Development Company Ltd v Isaiah & Others*¹¹³. The main issue for determination in the appeal was whether the High court had the jurisdiction to entertain the defendant's case. The brief summary was that the plaintiffs (now respondents) sued the defendants (now appellants) under the common law principles of negligence and *Ryland v fletcher* for compensation for damages for the defendant's exploration activities in River's state. Both the High court and Court Appeal found for the plaintiffs leading to a final appeal to the Supreme Court. While allowing the appeal, the Supreme Court, it agreed that the respondents claim fall with the exclusive jurisdiction of the Federal High court.

4.1.6 The Quantum of Compensation

Another factor affecting environmental justice and governance in Nigeria is the Quantum of Compensation and payment of damages for any environmental harm requires proof especially when specific damages are involved. The courts have generally refused or are reluctant to award damages that are not specifically proved. The quantification of environmental damage most often requires experts which can be disincentive to the poor and indigent. In the case of *Shell Petroleum Development Co Ltd v. Tiebo*¹¹⁴, the Plaintiffs claimed ₦64 million damages but were awarded ₦6 million for failure to prove specific damages that the respondent's activities polluted the River Nun which destroyed the community's farms, drinking water and fish. Still on the issue of damages, sometimes the Law may provide for "fair and adequate" which may be difficult to quantify but left to the whims and caprices of the court. Again, in *Shell Petroleum*

¹¹² S 251(1)(n) CFRN, 1999

¹¹³ (2001) 2 NWLR (Pt 732) 168 SC

¹¹⁴ (1996) 5 NWLR (Pt 445) 55

*Development Co Ltd v Farah*¹¹⁵, the plaintiffs claimed ₦26 million from the respondents but were awarded only ₦4.6 million on grounds and adequate compensation under the Petroleum Act, 1990.

4.1.7 Judicial Attitude

Judicial attitude, such as delay and adjournments can lead to protracted litigation, thus defeating the essence of environmental justice and governance in Nigeria. In the case of *Nwadiaro v Shell Petroleum Development co Ltd*¹¹⁶, This particular case arose in 1966 due to a blockade of the Uti-iyi creek by the respondents. The Community of Obutu and surrounding villages depended on the creek for their livelihood. There were negotiations for nine years for compensation to no avail. The community brought an action in court in 1985, which was objected to by the respondents citing the Statute of Limitation, which provided that actions in tort and contract should be brought within six years. The High Court agreed with the objection and dismissed the case. On appeal, it was held that since the case was brought under the Petroleum Act, limitation did not apply and the case was re-listed in 1988. The Plaintiffs (now respondents) again raised objections at the High Court and Appeal which were dismissed. Onalaja, JCA (as he then was), in an *orbiter*, strongly condemned the action of shell in the following words:

The attitude of the learned Counsel in still pursuing this appeal lends credence to the boast that legal gymnastics and gimmicks shall be employed to unduly delay payments of compensation to the respondents thereby denying the respondents justice... Such act in law is an abuse of court process.

¹¹⁵ (1995) 5 NWLR (Pt 398) 561

¹¹⁶ (1990) 5 NWLR (Pt 150) 322

4.2. Developments In Other Jurisdictions and the Activities of Non-Governmental Organizations (NGOS).

Developments in other jurisdictions and the activities of NGO's are gradually creeping in and providing the paradigm shift on the concept of environmental justice and governance in Nigeria. The courts in other jurisdictions have introduced the concept duty of care under common law for liability a parent or holding for the activities of its subsidiaries in Nigeria and other countries. In *Bodo Community v Shell Petroleum Development Company Ltd*¹¹⁷ there was a class action suit in London High Court, over oil spills by the respondent which involved over 15,000 claimants for compensation under Nigerian statutes and common law for damages. The court upheld the plaintiff's argument that the Federal High Court in Nigeria has exclusive jurisdiction to hear and determine cases of pollution, where the fundamental rights of litigants were violated.

In the earlier case of *Okpabi and Ors v Shell Petroleum Development Co Ltd*¹¹⁸, the UK Supreme Court had laid the precedence by enforcing the common law principle of duty of care a parent company was held liable for the activities of its subsidiary for pollution and spillage in some communities in the Niger-Delta. A similar decision was arrived at the Hague in the case of *Four Nigerian Farmers and Stichting Milieudefensie v Shell Petroleum Development Co Ltd*¹¹⁹, where Shell again was held liable for spillage in the Niger Delta.

The role of NGO's reverberates in the Four Nigerian Farmers case and a host of other case notably, the case of *Centre for Oil Pollution Watch*

¹¹⁷ (2014) EWHC 276

¹¹⁸ (2021) UKSC 3

¹¹⁹ (2021) ECLI: NLGHDA 2021, 132-134 at <<https://www.escri-net.org/carelaw/2022/four-nigerian-farmers-and-milieudefensie-v-shell>> accessed 25 June 2026

*v NNPC*¹²⁰, where the Supreme Court of Nigeria upturned the Court of Appeal and held that the Appellant had the *locus* to sue for the respondent's failure to clean up and reinstate the Ineh/Aku streams in Abia State. Despite the earlier obstacles on environmental justice in Nigeria, there is a gradual shift in environmental justice in Nigeria, in line with international reality.

5.0 SUMMARY OF FINDINGS

- i. The concept of environmental justice in Nigeria is non-justiciable by virtue of S20 CFRN 1999 unlike Kenya and India where their Constitutions have clear provisions on environmental justice.
- ii. The provisions for environmental impact assessment in Nigeria are not in tandem with what is obtainable in jurisdictions such as USA and Bangladesh.
- iii. The enforcement of the cradle-to-grave environmental protection policy in Nigeria is not in accord with the position in USA where there is stringent monitoring of hazardous waste from production to disposal.
- iv. The right to freedom and access to information on environmental matters in Nigeria are not in consonance with the African Charter on Human and Peoples Right, 1983 and the Convention on Access to Information, Public Participation in Decision Making and Access to Justice on Environmental Matters, Aarhus, 1998.
- v. Nigerian institutions on environmental governance such as the Climate Change Commission (CCC), Standards Organization of Nigeria (SON), lacked the powers to strictly enforce corporate governance, policies and regulations unlike the USA

¹²⁰ (2019) 5 NWLR (Pt 1666) 518 SC

where institutions like Environmental Protection Agency (EPA) have unfettered powers to do so.

6.0 RECOMMENDATIONS

- i. The Constitution of the Federal Republic of Nigeria, 1999 should be amended particularly sections 16 and 20 thereof to make environmental right justiciable as it is done in jurisdictions like India and Kenya.
- ii. The Environmental Impact Assessment Act, 2004 should be amended in line with the Rio Principle 1992 and USA, India and Kenya laws which give individuals the *locus* to challenge regulators in court.
- iii. The NESREA Act, 2018 and its regulations on the polluter pays principles of cradle-to-grave and end-of-pipe environmental protection policies should be amended in line with legislations in USA such as the Resource Conservation and Recovery Act, 1976 which has stringent provisions on the management of hazardous waste from production to disposal.
- iv. The Freedom of Information Act, 2011 in Nigeria should be amended to incorporate the right to access information, participation in decision making and access to justice as provided under the African Charter of Human and Peoples Rights, 1983 and the Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environment Matters, Aarhus, 1998.
- v. Institutions in Nigeria such as NAFDAC, SON, NESREA, NNPC should be given unfettered powers devoid of undue interference from the legislative, executives and judiciary arms of government to enforce policies and regulations on environmental governance as it is the case of institutions like EPA in USA.

5.3 CONCLUSION

The research highlighted the emerging trends on the concept of environmental justice and governance in Nigeria with reference to international principles and conventions which provide the basic framework on the subject matter. It analyzed the provisions of national laws on the concept in Nigeria, by identifying factors hampering the effective implementation of the concept of EVJ & G such as: issues of *locus standi*, impact assessments, jurisdictions and judicial attitudes among others. The research further made forays on developments in other jurisdictions such as the USA, the Netherland and the activities of NGOs which have provided the paradigm shift on the concept of environmental Justice and governance. Nigerian can benefit from that gradual shift by amending its own national laws, regulations and policies on the principles of environmental justice and governance in line with global trends.