

The Concept of Environmental Justice in the Nigeria Legal System

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ABSTRACT: *Environmental justice is a progressively advancing subject, social movement and practice, which requires fair treatment and meaningful involvement of all humans, regardless of sex, age, class, income, race, colour or nationality. Environmental Justice is geared towards the development, management, implementation and enforcement of plans, policies, laws and regulatory practices, towards the protection and management of the environment in the course of socio-economic development programmes, including projects. It also requires equitable distribution of benefits and thus indiscriminate exposure of all to environmental good and harm. It is an advancing social movement that advocates a healthy and eco-balanced environment, towards human's wellbeing, sustainable communities and all-embracing sustainable development in the overall interest of society within the Planet (Mother Earth). The aim of the study is to examine the effectiveness of environmental Justice in Nigeria, with the view to ascertain if justice is actually done to victims of environmental degradation in Nigeria. The study found that there is need for courts to give wider interpretation to existing relevant fundamental rights to secure a healthy environment. Flowing from the above finding, the study recommends that Section 20 of the 1999 Constitution of the Federal Republic of Nigeria should be amended to recognize the environment as legal personality with the citizens as its trustees. The study has shown that there should be an interdisciplinary collaboration among researchers, policymakers, activist and civil society organization, who will work on environmental justice issues in Nigeria in fostering dialogue, sharing best practices and mobilizing collective actions, thereby enabling victims of environmental hazards get justice they deserve.*

KEYWORDS: environmental justice, Nigeria, legal, system

INTRODUCTION

Environmental justice is an increasingly advancing subject-matter, theory, social movement and practice,¹ which connotes equal treatment and meaningful involvement of all humans, regardless of sex, age, class, income, race, colour or nationality, in the development, management, implementation and enforcement of plans, policies, laws and regulatory

¹ Encyclopædia Britannica, 'Environmental Justice: Social Movement', <<https://www.britannica.com/topic/environmental-justice>> Accessed 23 December, 2023

practices, towards prudent protection and efficient management of the environment in the course of socio-economic developmental plans, policies and programmes.²

Environmental justice is attained when natural resources, investments, risks, and welfare are distributed evenly across all jurisdictional levels without any form of direct or indirect bias; when everyone has access to information, can take part in decision-making regarding environmental issues, and can seek justice in these matters; and when all of these things are attainable.³ The idea of environmental justice stated taking shape in the US around 1981. It is widely believed to be covering up and attempting to address unfair distributions of ecological issues. Although humans are created to promote development and safeguard healthy environment, environmental threats are becoming more severe as a result of industrial activity. It is important to remember that, although women and children within these groups tend to suffer the most, they also suffer disproportionately from exposure to environmental harms and good. This is because children under the age of 5 years account for just 10% of the global population and bear 40% of the disease burden attributed to environmental risk factors. Unfortunately, in Nigeria, the pursuits to succeed in reparation for environmental problems have been very fruitless,⁴ as in the case of *Gbemre v. Shell Petroleum Development Company Nigeria Limited and Others*,⁵ here the court held that the violation of the rights to safe and healthy environment of the claimant constituted a violation of the rights to life and declared that the refusal of the defendants to conduct the mandatory environmental impact assessment concerning their gas flaring activities in the claimants' community as required by section 2(2) of the Environmental Impact Assessment Act,⁶ contributed to the unrestrained, mindless flaring of gas by the defendants in the community of the claimants' and was a violation of their fundamental rights, yet the defendants were able to obtain an order of the court for perpetual stay of execution of the judgment. The Nigerian government did not make any significant effort to protect the environment prior to 1987, despite decades of environmental degradation brought on by people and industries in the country. In 1987, a foreign vessel arrived in Delta State and dumped toxic waste in Koko town, drawing attention to Nigeria's inadequate environmental protection on a global scale. The event made Nigeria's environmental laws, management, and regulations glaringly ineffective. In response to the incident, the **Harmful Waste Decree 42 of 1988**⁷ was promulgated by the ruling Military regime. **Section 11 of the Harmful Wastes Act** empowered the Minister charged with responsibility for works and housing to seal up an

² US Department of Energy (Office of Legacy Management), 'Environmental Justice' <<https://www.energy.gov/lm/services/environmental-justice/what-environmental-justice>>; Science Direct, 'Environmental Justice' <<https://www.sciencedirect.com/topics/earth-and-planetary-sciences/environmental-justice>> both Accessed 23 December, 2023

³ Tamara Steger, Central European University, Dept. of Environmental Sciences and Policy Center for Environmental Policy and Law, Budapest, Hungary. Coalition for Environmental Justice. Online at: www.wecf.eu/cms/download/humanrights_belgrade.ppt

⁴ Rufus Akpofurere Mmadu; Judicial Attitude To Environmental Litigation And Access To Environmental Justice In Nigeria: Lessons From Kiobel. Afe Babalola University: Journal of Sustainable Development Law and Policy Vol. 2 (1) (2013) pp. 149-170

⁵ (2005) AHRLR 151

⁶ Cap E 12 vol 6, Laws of the Federation of Nigeria 2004

⁷ Now referred to as the Harmful Waste (Special Criminal Provisions, Etc.) Act

area or site used or being used for the purpose of depositing or dumping harmful waste. **Section 15** of the Act defines harmful waste as: ... any injurious, poisonous, toxic or noxious substance and, in particular, includes nuclear waste emitting any radioactive substance of the waste is in such quantity, whether with any other consignment of the same or of different substance, as to subject any person to the danger of death, fatal injury or incurable impairment of physical and mental health; and the fact that the harmful waste is placed in a container shall not by itself be taken to exclude any peril which might be expected to arise from the harmful waste.

The Environmental Impact Assessment (EIA) is the most contentious environmental law in Nigeria. The Act was interpreted to mean that: Anyone preparing a project or activity that might have an environmental impact is legally required to prepare an **EIA** report, which must detail the activity's potential environmental impact as well as plans for mitigating or preventing it, as well as clean-up strategies. The Federal Ministry of Environment (**FME**) must approve each and every one of these reports. An industry and activity list requiring environmental impact assessments is appended to the **EIA** Act. These include Agriculture, Airport, Drainage and Irrigation, Land Reclamation, Fisheries, Forestry, Housing, Industry, Infrastructure, Ports, Mining, Petroleum, Power Generation and Transmission, Quarries, Railways, Transportation, Resort and Recreational Development, Waste Treatment and Disposal, and Water Supply.⁸ Also, the **EIA** Act stipulates criminal and civil sanctions to any person that contravene the provisions thereof. Hence, corporate violators are liable to a fine upon conviction, whilst individual violators may be fined or imprisoned for up to a maximum of five years per offence. Moreover, the **EIA** authorizes the Federal Ministry of Environment to necessitate the production for inspection of any license or permit granted to any person, to enter and search any land or building, and to arrest any person whom they have reason to believe has violated any environmental regulation.⁹ In addition, the **EIA** Act mandates the establishment of a public registry so that the general public can access documents pertaining to environmental assessments. Because different industries produce different types of pollution, the **FME** regularly publishes some guidelines guiding the environmental impact assessments of particular industrial sectors in order to strengthen the enforcement of environmental laws.

Conceptual Framework of Environmental Justice

Two relative external structures of environmental Law and environmental protection embed the concept of environmental Justice which is the foundation on which the assessment and apportioning of burden in cases of environmental wrongdoing and the failure to comply with its provisions.¹⁰ Discourse on environmental Justice has strengthened our understanding of how and why we protect the natural world. It traditionally focused on rights arising from terrestrial activities: land use, the nexus between people and the inhabited space.

However, such a nexus appears absent or under-developed in marine contexts. Significantly,

⁸ O. Makinde and T. Adeyoke, Nigeria: Environment Law In Nigeria. Published in the 4th edition of The International Comparative Guide to PFI / PPP Projects, published by Global Legal Group Ltd, London (2007). Online at: <http://www.mondaq.com/Nigeria/x/53804/Energy+Law/Environment+Law+In+Nigeria> retrieved on 22nd November, 2023.

⁹ O. Makinde and T. Adeyoke (n. 26)

¹⁰ *ibid*

human rights instruments do not explicitly refer to the ocean but imply ocean spaces. Few legal references recognize the connections between marine spaces and things that are substantive rights issues which probably accounts for the little attention to the environmental protection of the rights of the marine space and the coastal inhabitants.

The conceptual framework of environmental justice revolves around the fair treatment and meaningful involvement of all individuals in environmental decision-making, with an emphasis on addressing disparities.¹¹ . This framework encompasses several key components:¹²

1. **Equity and Fairness:** Equity and fairness are principles that emphasize justice and impartiality in the treatment of individuals or groups. Equity involves ensuring everyone has the resources or opportunities they need, acknowledging that people may start from different positions. Fairness, on the other hand, involves just and unbiased treatment in accordance with established rules or standards. Environmental justice emphasizes the need for fair and just distribution of environmental resources, risks, and benefits, without discrimination based on race, ethnicity, income, or other social factors.¹³
2. **Community Involvement:** Community involvement refers to the active participation and engagement of individuals within a community to collectively address and improve shared interests, issues, or goals. This participation can take various forms, including volunteering, attending community meetings, collaborating on projects, and contributing to decision-making processes.¹⁴ Meaningful participation of all community members in decision-making processes related to environmental policies, regulations, and projects is a crucial aspect.
3. **Disproportionate Impacts:** Disproportionate impact refers to the unequal and often adverse effects that certain actions, policies, or events can have on specific groups or communities. This impact is considered disproportionate when it affects one group more severely than others, leading to disparities in outcomes, opportunities, or well-being. In various contexts, disproportionate impact is associated with issues of social justice and inequity. For example, certain environmental policies or industrial activities may disproportionately affect marginalized communities, leading to increased pollution or health risks for those populations.¹⁵ The framework recognizes and seeks to address the disproportionate environmental and health impacts experienced by marginalized or vulnerable communities.
4. **Legal and Policy Advocacy:** Legal advocacy often involves using the legal system to bring about change, whether through litigation, legal analysis, or providing legal support to affected individuals or groups. Policy advocacy, on the other hand, focuses on influencing the creation, modification, or implementation of laws and regulations at

¹¹ Bullard, R. D. (1990). *Dumping in Dixie: Race, Class, and Environmental Quality*. Westview Press.

¹² *ibid*

¹³ *Ibid*

¹⁴ *Ibid*

¹⁵ *Ibid*

the governmental or organizational level.¹⁶

Both forms of advocacy play crucial roles in addressing social, environmental, and human rights issues. They aim to create a legal and policy environment that aligns with principles of justice, fairness, and the well-being of communities.

5. **Intersectionality:** Intersectionality in environmental justice recognizes that individuals and communities experience environmental issues differently based on the intersection of various social identities, such as race, class, gender, and more. This perspective acknowledges that marginalized groups often bear a disproportionate burden of environmental hazards and lack equal access to resources and decision-making processes.¹⁷ For example, a low-income community of color might face higher exposure to environmental pollutants due to the placement of industrial facilities in their neighborhood. Efforts to promote environmental justice should consider the diverse impacts on different groups, taking into account the intersecting layers of vulnerability and privilege. By incorporating an intersectional lens, environmental policies and advocacy can better address the complex and varied ways in which communities experience and cope with environmental challenges.
6. **Cumulative Impacts:** Cumulative impact in environmental justice refers to the combined and often synergistic effects of multiple environmental stressors, hazards, or injustices on a specific community or population.¹⁸ Instead of looking at individual pollutants or sources of harm in isolation, cumulative impact assessment considers the compounding effects over time. For instance, a community situated near several industrial facilities may experience not only the direct effects of pollution from each source but also the cumulative impact of exposure to multiple pollutants. This approach recognizes that communities facing environmental challenges often endure a combination of stressors, leading to more significant and complex consequences.

History of Oil Spills and Environmental Justice in Nigeria and USA

In 1956, the British found oil in commercial quantities in Nigeria.¹⁹ After that, British Petroleum and Royal Dutch Shell started exploring, producing, and selling crude oil from Nigeria. Other foreign companies joined the operations in crude oil production.²⁰ In 1960, Nigeria gained independence from Great Britain, but there was a civil war shortly after. However, oil production did not stop despite the civil war.²¹ The first significant oil spillage occurred in 1970, damaging the entire Ogoni land. Gallons of crude oil spill on rivers and farmland in Ogoni land were reported by Nigerian officials.²² Ultimately, and thirty years

¹⁶ *ibid*

¹⁷ *Ibid*

¹⁸ *Ibid*

¹⁹ <https://www.unep.org/explore-topics/disasters-conflicts/where-we-work/nigeria/ogonilands-oil-history#:~:text=In%20Nigeria%2C%20oil%20was%20reportedly,largest%20producer%20of%20crude%20oil>
(Accessed 1/12/23)

²⁰ *Ibid*

²¹ *Ibid*

²² *Ibid*

later, Shell Petroleum Development Company (Shell) was fined 26 million pounds for the environmental damage.²³ The fine was inconsequential to the damage done or the cost of restituting the environmental damage in Ogoni land. Shell Nigeria's refusal to pay the judgement fee caused the Ogoni people to prolonged protest, over the activities of the oil companies and the oil spillage in their land.²⁴ Environmental justice campaigns emerged in other parts of the world. In 1988, two Italian firms stored 18,000 drums of hazardous waste in Koko, Nigeria and paid the ignorant landowner of the dumpsite the sum of \$100 per month.²⁵ The discovery that the drums leaked and caused the residents to be sick stirred up a national outrage and consciousness. The event led to the promulgation of the **Federal**

Environmental Protection Act, in December 1988. Before that time environmental legislation was a fragmentary of statutes and only the public health and sanitation matters, and the rights and duties crystallized in the Law of Tort, were the basis of claim for damages. The courts focus on award of compensation for certain types of environmental damages and make pronouncements of injunctive remedies in appropriate cases. Until recently, it was unclear whether Nigerian courts were willing to venture into environmental litigation areas. In **Shell Petroleum Development Company Ltd v Councillor F.B. Farah and 7 Ors**,²⁶ the company was engaged in oil procession, production, and export. An oil blowout from an oil well in 1970 lasted for several weeks, causing extensive damage to the plaintiff's farming and hunting land. Shell Company accepted responsibility and paid the plaintiffs compensation for the crops and economic trees destroyed by the blowout but paid no compensation for the land.

Another notable event is the 2008 Bodo oil spill in the Niger Delta, caused by a pipeline failure. This disaster resulted in extensive ecological damage, affecting local communities' livelihoods. The Nigerian government and multinational oil companies faced criticism for inadequate response and compensation efforts.²⁷ Environmental justice in Nigeria has been a longstanding concern, particularly in the context of oil exploration and its impact on local communities. The Niger Delta, rich in oil resources, has experienced environmental degradation, pollution, and social injustices. The Ogoni people's struggle against oil-related environmental harm gained international attention, culminating in the execution of activist Ken Saro-Wiwa in 1995.²⁸

In 2012, a Nigerian newspaper, The Guardian published the report of a 3-year large-scale investigation of oil spillage in Ogoni land,²⁹ which indicated that:

²³ David Estrim and John Swaigen, Environment on trial (3rd Edition, Canadian Cataloguing in Publication data)

²⁴ Okey Umata, Faded Resources: Oil spillage in Niger Delta, available on <http://www.allafrica.com/stories/html> accessed on 1/12 2023

²⁵ <https://timeline.com/koko-nigeria-italy-toxic-waste-159a6487b5aa> assessed 1/12/2023

²⁶ (1995) 3 NWLR (pt. 382) 148

²⁷ Amnesty International. "Bad Information: Oil Spill Investigations in the Niger Delta." (2018.)

²⁸ "This Is Our Land: A Report on the Impact of Oil Pollution on Communities in the Niger Delta."

Environmental Rights Action/Friends of the Earth Nigeria, 2008.)

²⁹ Vidal J, 'Shell Nigeria Oil Spill '60 times bigger than it claimed'

- a) Shell did not meet the required environmental safety standards for Nigeria or the Shell safety standards of environmental safety.
- b) The level of hydrocarbon in water in the Niger Delta is 1,000 times higher than allowable standard for drinking.
- c) The soil contamination is more than five meters deep.
- d) The concentration of benzene and other water pollutants made the water undrinkable.
- e) There was a heavy contamination of underground watercourses.
- f) Despite the warning about the environment, the Oil company's failure did not clear the contamination spots.

The origin of environmental justice in the USA can be traced back to the civil rights movement of the 1960s and 1970s. During this time, minority and low-income communities began to raise concerns about the disproportionate environmental burdens they faced, such as exposure to pollution and hazardous waste sites.³⁰

One significant event was the protests in Warren County, North Carolina, in 1982, where residents, predominantly African American, opposed the siting of a hazardous waste landfill in their community. This event highlighted the link between environmental issues and social justice, leading to increased awareness of environmental inequities.

In response to these concerns, the term “environmental justice” gained prominence. The First **National People of Color Environmental Leadership Summit** in 1991 played a crucial role in defining environmental justice principles and advocating for fair treatment and involvement of all people, regardless of race, color, national origin, or income, in environmental decision-making.

Subsequently, **Executive Order 12898**, signed by **President Bill Clinton** in 1994, aimed to address environmental justice by directing federal agencies to consider the disproportionately high and adverse human health or environmental effects on minority and low-income populations. The Executive Order also required the agencies to prepare a strategy for integrating environmental justice into all of their activities hence the creation of an **Inter- Agency Working Group** on Environmental Justice headed by the United States Environmental Protection Agency (EPA). Part of the Executive Order was to undertake Environmental Justice impact assessments, which are a highly focused form of social impact assessment, aiming to ‘determine whether a proposed federal activity would impact low-income and minority populations to a greater extent than it would impact a community’s general population.’³¹

Over the years, grassroots activism, legal actions, and policy initiatives have further shaped the environmental justice movement in the USA, emphasizing the need for inclusive and

<https://www.theguardian.com/environment/2012/apr/23/shell-nigeria-oil-spill-bigger> accessed 2/12/2023

³⁰ R.D Bullard, *Confronting Environmental Racism: Voices from Grassroot*. South End Press. (1993)

³¹ https://scholar.google.com/scholar?hl=en&as_sdt=0%2C5&q=environmental+inequalities+&btnG=#d=gs_qab&t=1701474273600&u=%23p%3DH-zyLJvBTSMJ Accessed 2/12/2023

equitable environmental policies and practices.

Access to Environmental Justice in The Nigerian Legal System

Access to environmental justice is a crucial aspect or pillar of public awareness as a tool for dealing with environmental problems. This is pursuant to the fact that issues of fundamental rights enforcement, forming the centre-point of this research would be insignificant and meaningless if individuals are unable to access justice in the courts or related institutions mandated with resolving environmental disputes by law. The imperative for adequate access to environmental justice has been a global call. The Aarhus Convention, despite being a Regional Convention for Europe, took into cognisance, as stated in its Preamble. Principle 1 of the Stockholm Declaration as well as Principle 10 of the Rio Declaration emphasized on the fundamental rights to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and wellbeing as well as effective access to judicial and administrative proceedings respectively. The Convention, mandates Member States to ensure that individuals who are refused access to environmental information are given access to a review procedure before a Court of law or other independent and impartial bodies established by law.³² In the same manner, the Freedom of Information Act, 2011 in Nigeria is explicit on³³ the appropriate step an applicant should follow where access to information is denied. It states that:

‘Where the government or public institution fails to give access to a record or information applied for under this Act, or a part thereof, the institution shall state in the notice given to the applicant the grounds for the refusal, the specific provision of this Act that it relates to and that the applicant has a right to challenge the decision refusing access and have it reviewed by a Court.’

It is submitted that access to justice in events of environmental rights violation is contingent upon the intersection of the breach of substantive and procedural rights. **Amechi** had maintained that the latter is very important as most people whose rights have been infringed or threatened by environmental degradation in Nigeria have been denied access to justice because of the burdensome procedural rules or injustices encountered in the legal system.³⁴ In view of these shortcomings, **Kalu** and **Stewart** have stated that:

‘Litigation in regular courts has not helped the situation. This is primarily because the highly scientific, technical and sophisticated nature of the operations of oil companies makes it imperative for a plaintiff to be well versed in this area to be able to recover damages for his losses in suits for compensation or negligence’.³⁵

³² Aarhus Convention (n 3), art 4 (1).

³³ Freedom of Information Act 2011 NO.4, s 7.

³⁴ Emeka P Amechi, ‘Litigating Right To Healthy Environment In Nigeria: An Examination Of The Impacts Of The Fundamental Rights (Enforcement Procedure) Rules 2009, In Ensuring Access To Justice For Victims Of Environmental Degradation’ (2010) 6 Law, Environment & Development Journal p. 320, 323.

³⁵ Victoria E Kalu and Ngozi F Stewart, ‘Nigeria’s Niger Delta Crises and Resolution of Oil and Gas Related

In Nigeria, the financial burden and time involved in running environmental litigation are considered as some of the primary challenges facing the successful pursuit of environmental cases; and in some cases, allegations of judicial compromise instigated by oil Transnational Corporations (TNCs) may be a considerable factor hindering environmental justice. Although this latter position runs short of conclusive evidence, it is a widely held belief amongst victims and litigants of environmental pollution in Nigeria.³⁶

Another critical factor in the pursuit for environmental justice is the proximity of the Nigerian Courts to those prone to the negative impacts of environmental pollution caused by oil and gas activities of multinationals. Section 251(1)(n) of the Constitution³⁷ provided that the Federal High Court shall have and exercise exclusive jurisdiction in civil causes and matters relating to mines and minerals (including oil fields, oil mining, geological surveys and natural gas). This is an issue capable of raising eyebrows owing to the fact that there are limited Federal High Court Divisions in the country compared to the existing State High Courts which are almost located in every local government area in Nigeria. There is no gainsaying that limited number of courts in Nigeria is a reason for congestion of cases which inevitably leads to delay in justice as well as projecting challenges in the access to justice. In *Shell Petroleum Development Company of Nigeria Ltd v Abel Isaiah and others*³⁸ the Supreme Court of Nigeria reinforced the stance that a State High Court lacks jurisdiction to entertain issues on petroleum mining operations which includes environmental pollution caused by oil and gas activities. In that case, the plaintiffs (now respondents) brought a claim under the common law principles of negligence and *Rylands v Fletcher* for compensation for the permanent damage to its plant, marine and domestic life which was caused by the defendants' (now appellant) oil exploration activities in Rivers State, Nigeria. The State High Court (trial court) delivered judgment in favour of the plaintiffs; which was affirmed by the Court of Appeal. Dissatisfied with both judgments, the appellant approached the Supreme Court. The primary issue for determination before the Supreme Court was whether the Court of Appeal was right in holding that the State High Court had jurisdiction to try the case. Whilst allowing the appeal, the Supreme Court agreed that the subject matter of the respondents' claim (compensation for oil spillage) falls within the exclusive jurisdiction of the Federal High Court as contained in section 251(1)(n) of the Nigerian Constitution as stated above.³⁹ In linking mining operations to the laying of oil pipelines, the Supreme Court stated thus:

In establishing whether the construction and maintenance of an oil pipeline is part of mining operations, it is relevant to refer to the practice of the oil prospecting license holders during mining operations. They have been described in the Petroleum Act 1960 and Oil Pipelines Act 1956.

Disputes: Need for a Paradigm Shift' (2007) 25 JENRL 244, 253.

³⁶ Eghosa O Ekhaton, 'Improving Access to Environmental Justice under the African Charter on Human and People's Rights: The Roles of NGOs in Nigeria' (2014) 22 AJICL 63.

³⁷ The constitution of the Federal Republic of Nigeria, 1999 (As Amended)

³⁸ [2001] 2 NWLR (Pt 723) 168 (SC).

³⁹ Ibid

If petroleum is discovered through the approved mining operations, arrangement is made by the oil prospecting license holder, which struck the oil, to evacuate the oil from the oil well to an oil terminal. This is done either through a pipeline or a tanker. The pipeline is constructed and maintained by the Oil Company which transports the oil from the oil-well to the oil terminal.⁴⁰

The above decision of the Supreme Court on the exercise of exclusive jurisdiction on proceedings relating to oil exploitation activities by the Federal High Court was later on pronounced by the Court of Appeal in the case of *Shell Petroleum Development Company of Nigeria Ltd v Sirpi-Alusteel Construction Ltd*⁴¹

Taking a closer look at the provision of **Section 251** of the **Nigerian Constitution** on the exclusive jurisdiction of the Federal High Court on mines and minerals, it would be rational to deduce that causes of action arising in environmental pollution, which basically are side effects of oil mining and natural activities of oil TNCs are restricted to the resolution of the Federal High Court. Conversely, **Section 46(1)** of the Constitution.⁴² which deals with the enforcement of Fundamental Rights, captured in Chapter IV provides that:

Any person who alleges that any of the provisions of this chapter has been, is being or likely to be contravened in any state in relation to him may apply to a High Court in that state for redress.⁴³

The above provision is furthermore supported by **Section 46(2)** on the original jurisdiction of State High Courts to hear proceedings in the event of violations of Fundamental Rights (which automatically include the right to safe environment) enforcement. It states that:

Subject to the provisions of this Constitution, a High Court shall have original jurisdiction to hear and determine any application made to it in pursuance of this section and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcement or securing the enforcing within that State of any right to which the person who makes the application may be entitled under this chapter.⁴⁴

In view of the aforementioned, it is noted that the Constitution's sections 251(1)(n) and 46(1) and (2) contradict each other with regard to the courts' authority to hear cases involving

⁴⁰ Ibid

⁴¹ [2008] 1 NWLR (Pt 1067) 128 at 148 (CA)

⁴² Ibid

⁴³ ibid.

⁴⁴ Ibid

minerals and mining. This is made more clear by the trend of interpreting and recognizing human rights to life and dignity, including rights to the environment, as upheld in the case of *Jonah Gbemre v Shell Petroleum Development Company Nigeria Ltd.*⁴⁵

Considering the aforementioned, it is significant that, although section 46(1)'s side note refers to "Special Jurisdiction of High Court," section 251(1)(n), which borders on the Federal High Court's exclusive jurisdiction, is labeled "Jurisdiction," suggesting "general jurisdiction." In this context, Uwaifo JSC held in *Grace Jack v. University of Agriculture, Markurdi*, that a statute's "general" provision should not be construed as negating its "special" provisions, provided that the statute covers the same subject matter. Taking this into consideration, Uwaifo upheld section 46(1) as "special and fundamental."⁴⁶

It is argued that an applicant may bring a claim for fundamental rights guaranteed by the Constitution in any State High Court, Federal High Court located in the State where the alleged infringement occurred, or Federal Capital territory High Court. This is because all actions arising under Chapter IV were restricted to being instituted in a High Court located in the applicant's state by section 46(1).

Thus, one could contend that the ruling in *Abel Isaiah's* case by the Nigerian Supreme Court,⁴⁷ above did not, in any way, invalidate the filing of fundamental rights actions involving oil and gas pollution, in State High Court, since the case of *Abel Isaiah* involves questions of strict liability and negligence under common law tort law rather than the protection of fundamental rights.

In the case of *Bodo Community v The Shell Petroleum Development Company of Nigeria Ltd.*,⁴⁸ which was a class action in a London High Court concerning oil spills that were purportedly caused by Shell Petroleum Development Company of Nigeria (SPDC) that involved over 15,000 claimants seeking statutory compensation under Nigerian law and damages at common law, the court upheld that...Any claim for statutory compensation under the Oil Pipelines Act, as well as any cases at common law, may only be heard by the Federal High Court." Drawing from the aforementioned argument, it is argued that the Federal High Court has exclusive jurisdiction to hear cases involving oil pollution resulting from mining and minerals, provided that fundamental rights are not being violated.

Factors Affecting the Effectiveness of Environmental Justice to Oil Pollution in Nigeria

The effectiveness of environmental justice in Nigeria varies. While there have been efforts to address environmental issues and promote justice, challenges such as regulatory gaps, enforcement issues, and socioeconomic disparities hinder comprehensive success. Ongoing

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ [2024] EWHC 276 (TCC).

initiatives aim to improve accountability and inclusivity in environmental decision-making, but progress depends on sustained commitment and systemic changes.

The effectiveness of environmental justice in Nigeria faces challenges, including inadequate enforcement of environmental regulations, institutional weaknesses, and limited community engagement. The following are the factor affecting the effectiveness of Environmental Justice in Nigeria;

Lack of information on environmental issues

Information on issues about the environment is restricted to educational institutions. The government and the oil companies are not always eager to disseminate information on pollution to the public. As the primary source of information about the effect of oil pollution on the environment, the media often has little to report. The enactment of the Freedom of information Act⁴⁹ has not helped to remove the opaque veil that covers the oil. The only internationally enforceable document on environmental democracy that recognizes procedural environmental rights is the 1998 Aarhus Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters.⁵⁰ The convention advocated for regional and global human rights organizations to defend environmental human rights. It has prompted the incorporation of environmental human rights in national constitutions, legislation, and judicial decisions. Although more than 147 national constitutions explicitly reference environmental rights and/or environmental responsibilities, only 47 have ratified the treaty.⁵¹ People now have more powers, all thanks to the Aarhus Convention, which granted them the ability to seek justice, access information, and participate in environmental decision-making.

Ignorance of environmental rights and Justice

The doctrine of locus standi still hinders access to Justice on environmental pollution matters in Nigeria as in *Centre for Oil Pollution Watch v. Nigeria National Petroleum Corporation*.⁵² Uninformed victims are often unsure of their rights and limitations within the Law to pursue environmental wrongdoing. This is made worse when advocacy and rights groups are denied the locus standi to institute legal proceedings on their behalf. The affected resign into helplessness, confusion and bewildered by the legal barriers to their grievance.

Adequacy of the Laws and Government Nonchalance

The Land Use Act⁵³ which divests the people of their land and vests it on the government, effectively removing its protection from their prior owner. The enforcement agencies' failure to prosecute offenders have rendered the laws ineffective.

⁴⁹ Freedom of Information Act. 2011

⁵⁰ Article 1, Aarhus Convention 1998

⁵¹ https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-13&chapter=27

⁵² [2019] 5 NWLR (Pt. 1666) 518

⁵³ Land Use Act LFN 2004

Lack of case laws and judicial precedence

Judicial precedence and access to Court is critical to successful litigation. In *Adediran v Interland Transport Ltd*,⁵⁴ the Court held that S.6 (6) of the 1976 constitution vested on an individual unrestricted access to the courts to determine his civil rights and obligation. The Court removed the hurdles to the private prosecutor, which required the consent of the Attorney General of the Federation before acting as a private prosecutor. The victim of the environmental hazards cannot institute an action in the Court without showing a course that he has directly suffered specific damage. The proof of direct damage has often kept the people, and only a few case laws are available to serve as precedence. Often the communities find it much easier to receive monetary "compensation" that settles out of Court than go through the maze of protracted legal redress, which has no guarantee of ending in their favour.

Judicial non-commitment to environmental Justice

The rights to life, health, property, and privacy as well as the collective rights of indigenous peoples to their ancestral lands and resources as well as the right to a healthy environment may all be violated if the environment is not protected from the effects of oil spills.⁵⁵ The benefits of the human rights-based approach to environmental protection are still being deliberated on, in scholarly literature. There is a strong leaning toward describing environmental Justice in the language of human rights.

Most human rights treaties are inexplicit concerning the right to a healthy environment. However, human rights tribunals hold that lack of environmental protection may violate the rights to life, health, privacy, and the collective rights of indigenous peoples to their ancestral lands and resources.⁵⁶ Despite the absence of explicit environmental provisions in them, **International Covenant on Civil and Political Rights (ICCPR),⁵⁷ International Covenant on Economic, Social and Cultural Rights (ICESCR);⁵⁸ the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECPHRFF)⁵⁹** explained the nexus between human rights violations and environmental degradation. In *Gani Fawehinmi v. Abacha*,⁶⁰ the Court of Appeal held that the right of man in the **African Charter on Human and Peoples' Rights**, having been ratified into Nigerian national Law, was superior to a Decree. In *Four Fishermen V Shell*,⁶¹ where four fishermen sued Shell in the Netherlands for oil pollution in their communities in Bayelsa State, the Court held that Shell had a case to answer over its human rights infringement in Nigeria. The

⁵⁴ Ibid

⁵⁵ Obiter in *Jika v. Akuson* (2006) FWLR (pt.293) p.276

⁵⁶ John H. Knox, *Climate Change and Human Rights Law*, 50 VA. J. INT L L. 163, 168-78 (2009) [hereinafter Knox, *Climate Change*]; Dinah Shelton, *The Environmental Jurisprudence of International Human Rights Tribunals*, in *LINKING HUMAN RIGHTS AND THE ENVIRONMENT* 1, 11-12 (Romina Picolotti & Jorge Daniel Taillant eds., 2003)

⁵⁷ 1967, Article 22

⁵⁸ 1976, Article 8

⁵⁹ 2002, Article 11

⁶⁰ (1996) 9NWLR, Part 475, p 710

⁶¹ <https://www.escri-net.org/caselaw/2022/four-nigerian-farmers-and-milieudefensie-v-shell> accessed on 17/12/2023

substantive case still lingers on appeal.

In the *Ekeremor Zion vs Shell*'s case,⁶² a classic example of how transnational oil companies escape liability by taking advantage of the lacuna in the laws on pollution and the environment. Delays significantly plague the course of litigation against poor rural communities and prevents prospective litigants from instituting the action. In the *Ekeremor Zion* case, the lower Court granted compensation of about N30 million (US\$200,000) for oil spills that damaged the local farmlands to the plaintiff after 30 years.⁶³ Shell refused to obey the court order and instead appealed against the judgment to the Court of Appeal in 1997, the Supreme Court's decision in 2015, thirty years after which it commenced. Although the Court held in favour of the plaintiff, Shell succeeded in using the weak court system.⁶⁴

CONCLUSION

In this study, efforts have been exerted in examining Environmental Justice as it relates to the Nigerian environment. The study also examines the role of policy makers in the management of Environmental Justice, Environmental justice requires that there should be an efficient allocation of resources and a well-planned system of compensation of the victims. The economic principle of efficient allocation of resources, stress that the full social costs and benefits of every economic action should mirror the market values. Overlooking the costs of accomplishment of damage assessments, all harms affected by crude oil pollution ought to be quantified and incorporated in the price of crude oil products. Besides, it is only fair that victims of crude oil pollution should be recompensed for their losses. Flowing from the above study, it has concluded that Environmental Justice is still ineffective in Nigeria.

⁶² SPDC V. Chief Joel Anaro & Ors (2015) LLJR-SC

⁶³ Ibid

⁶⁴ Ibid