BEYOND THE COURTS: ALTERNATIVE PATHWAYS FOR STRENGTHENING ACCESS TO ENVIRONMENTAL JUSTICE IN NIGERIA*

Abstract

Access to justice in environmental matters has remained elusive in Nigeria despite the existence of constitutional provisions, statutory regimes, and regulatory agencies. Victims of environmental harm particularly in the oil-producing Niger Delta continue to face significant barriers in seeking remedies, including restrictive standing rules, protracted litigation, prohibitive costs, and weak enforcement of judgments. While Nigerian courts have in some cases recognised environmental rights, such as in Gbemre v Shell Petroleum Development Company, enforcement has been inconsistent and often ineffective. This paper argues that reliance on courts alone is inadequate to address the scale of Nigeria's environmental challenges. Using doctrinal and comparative analysis, it examines the limitations of court-based remedies and explores alternative pathways such as administrative regulation, public interest litigation, community-based grievance mechanisms, and specialised environmental tribunals. Drawing lessons from India, South Africa, Kenya, and the African regional system, the paper proposes a pluralist model of environmental justice for Nigeria that blends judicial and non-judicial mechanisms. It concludes that only a holistic framework can provide timely, affordable, and enforceable remedies while strengthening environmental governance and accountability.

Keywords: Environmental Justice, Governance, Litigation, Regulation, Tribunal, Nigeria

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1. Introduction

Environmental degradation has become one of Nigeria's most pressing socio-economic and legal challenges. Oil spills, gas flaring, artisanal mining, deforestation, and urban pollution have caused significant ecological damage and undermined the health, livelihoods, and cultural survival of affected communities.[1] In the Niger Delta alone, thousands of oil spills have been recorded since the 1970s, many of which remain unremediated.[2] Despite a constitutional commitment to protect the environment,[3] and the establishment of regulatory bodies such as the National Environmental Standards and Regulations Enforcement Agency (NESREA) and the National Oil Spill Detection and Response Agency (NOSDRA), affected communities continue to experience obstacles in accessing effective remedies.

Scholarly commentary has highlighted that environmental justice requires not only substantive environmental rights but also accessible and effective enforcement mechanisms.[4] In Nigeria, however, the courts traditionally seen as the primary guardians of rights have struggled to deliver meaningful outcomes. Litigation is often drawn out for years, enforcement of judgments is weak, and restrictive doctrines such as locus standi have historically excluded many claimants.[5] This has produced scepticism among scholars and communities regarding the adequacy of judicial remedies as the sole avenue for environmental justice.

This paper argues that reliance on litigation alone is insufficient. It adopts a doctrinal and comparative approach to examine the barriers within the judicial system and to explore alternative pathways capable of strengthening environmental justice in Nigeria.

By situating Nigeria's challenges within a broader comparative and scholarly context, the paper contributes to ongoing debates about how best to ensure

1 Augustine A Ikelegbe, 'The Economy of Conflict in the Oil Rich Niger Delta Region of Nigeria' (2005) 14 Journal of Asian and African Studies 12.
2 Amnesty International, Nigeria: Petroleum, Pollution and Poverty in the Niger Delta (AI 2009) 15–20.
3 Constitution of the Federal Republic of Nigeria 1999 (as amended), s 20.
4 Tim Stephens, International Courts and Environmental Protection (CUP 2009) 33–36.
5 COPW v NNPC [2019] 5 NWLR (Pt 1666) 518 (SC).

effective and inclusive remedies for environmental harm in developing countries.

2. Barriers to Judicial Access in Nigeria

Although Nigeria's legal framework acknowledges the importance of environmental protection, a variety of barriers have undermined the effectiveness of courts in delivering remedies. These barriers are doctrinal, institutional, and socio-economic, and they collectively limit access to justice for affected communities.

2.1 *Prolonged Delays in Environmental Litigation*

One of the most significant barriers to environmental justice in Nigeria is the prolonged delay that characterises environmental litigation. Environmental disputes often involve complex scientific evidence, multiple parties, and procedural objections that can keep cases in court for many years. Such delays undermine the effectiveness of judicial remedies because environmental harm frequently continues while litigation is pending. Where pollution affects livelihoods, health, and ecological systems, delayed adjudication may render eventual remedies inadequate or meaningless.

The problem is well illustrated by Amber Resources (Nig.) Ltd v Shell Petroleum Development Company of Nigeria Ltd,[6] a dispute that reportedly spent approximately eleven years before the trial court and nearly nineteen years before its final determination.[1] Such delays discourage affected communities from seeking judicial remedies and reinforce perceptions that litigation is an ineffective mechanism for environmental protection. As scholars have observed, justice delayed in environmental matters often translates into continuing environmental degradation and irreversible ecological loss.[7]

Furthermore, lengthy proceedings impose substantial financial and emotional burdens on litigants. Communities affected by oil pollution frequently lack the resources necessary to sustain prolonged legal battles against multinational

6 Amber Resources (Nig.) Ltd v Shell Petroleum Development Company of Nigeria Ltd (1999) 3 NWLR (Pt. 593) I SC.

7 Etim E Okon, 'Environmental Justice and Sustainable Development in Nigeria: The Role of Judicial Activism' (2018) 9(2) Journal of Sustainable Development Law and Policy 153, 160.

corporations with considerable financial and technical advantages. Consequently, delays not only undermine access to justice but also exacerbate inequalities between victims and polluters.

2.2 *Restrictive Rules of Standing (Locus Standi)*

Historically, the doctrine of locus standi constituted one of the most formidable barriers to environmental litigation in Nigeria. Nigerian courts traditionally required a claimant to demonstrate a special or personal interest distinct from that of the general public before an action could be maintained. This approach proved particularly problematic in environmental disputes, where environmental harm is often diffuse and affects entire communities rather than identifiable individuals.

A notable example is Oronto Douglas v Shell Petroleum Development Company of Nigeria Ltd,[8] where the plaintiff sought to challenge the environmental implications of a major oil development project in the Niger Delta. Although the case raised important environmental concerns, the action was frustrated by restrictive standing requirements, thereby preventing substantive judicial consideration of the environmental issues involved. The decision became emblematic of the difficulties encountered by environmental activists and public interest litigants under the traditional standing doctrine.

A significant shift occurred with the Supreme Court's decision in COPW v NNPC.[9] In that case, the appellant, a non-governmental organisation concerned with environmental protection, instituted proceedings against the NNPC over environmental pollution. The Supreme Court adopted a liberal approach to standing and held that environmental litigation involving public rights should not be defeated by technical objections regarding locus standi. The Court relied substantially on paragraph 3(e) of the Preamble to the Fundamental Rights (Enforcement Procedure) Rules 2009, which encourages public interest litigation and directs courts to adopt a broad and purposive approach in human rights cases.[10]

8 Oronto Douglas v Shell Petroleum Development Company of Nigeria Ltd (1999) 2 NWLR (Pt 591) 466 (CA).
9 COPW v NNPC [2019] 5 NWLR (Pt 1666) 518 (SC).
10 Fundamental Rights (Enforcement Procedure) Rules 2009, Preamble para 3(e).

While the decision represents a significant advance for environmental justice, uncertainty remains because some lower courts continue to apply restrictive standing principles. Legislative intervention may therefore be necessary to consolidate the gains achieved through judicial interpretation.

2.3 *High Cost of Litigation and Evidentiary Burdens*

The high cost of litigation constitutes another major obstacle to environmental justice in Nigeria. Environmental claims frequently require sophisticated scientific and technical evidence to establish causation, quantify damage, and prove liability. The cost of obtaining expert reports, conducting environmental assessments, and retaining specialised legal representation often exceeds the financial capacity of affected communities.

The consequences of these evidentiary burdens can be observed in Seismograph Services (Nig.) Ltd v Ogbeni,[11] where the claimant reportedly encountered substantial difficulties in securing expert evidence necessary to establish his claim. The case demonstrates how financial limitations can effectively deny access to justice, particularly where expert testimony is indispensable to proving environmental damage.

Similarly, in Tiebo VII v Shell Petroleum Development Company of Nigeria Ltd,[12] the plaintiffs faced difficulties arising from the strict evidentiary requirements applicable to claims for environmental damage. The insistence on strict proof of special damages created significant challenges for claimants seeking compensation for pollution-related losses. These requirements, while grounded in established principles of evidence, often operate harshly in environmental litigation where the full extent of ecological damage may be difficult to quantify.

As Obani observes, the absence of specialised legal aid mechanisms for environmental claims has entrenched inequalities between resource-poor communities and well-resourced corporate actors.[13] Unless reforms are introduced to reduce litigation costs and ease evidentiary burdens, access to

11 Seismograph Services (Nig.) Ltd v Ogbeni (citation to be verified).

12 Tiebo VII v Shell Petroleum Development Company of Nigeria Ltd (2005) 9 NWLR (Pt 931) 439 (SC).

13 Pedro I Obani, 'Access to Justice and the Right to a Healthy Environment in Nigeria: Beyond Legal Rights' (2015) 5(1) African Human Rights Law Journal 150, 162.

environmental justice will remain largely beyond the reach of many affected communities.

2.4 *Weak Enforcement of Judgments*

Even where environmental litigants obtain favourable judgments, enforcement remains a persistent challenge. The effectiveness of environmental adjudication depends not merely on the delivery of judgments but also on the implementation of judicial orders. Unfortunately, enforcement deficiencies continue to undermine environmental justice in Nigeria.

The most prominent example is Gbemre v Shell Petroleum Development Company of Nigeria Ltd,[14] where the Federal High Court declared gas flaring unconstitutional on the ground that it violated the rights to life and dignity guaranteed under the Constitution. The judgment represented a landmark development in Nigerian environmental jurisprudence. However, nearly two decades after the decision, gas flaring continues in several parts of the Niger Delta and the judgment has not been fully implemented.

The inability of regulatory authorities to ensure compliance with environmental judgments significantly weakens public confidence in the judicial system. Where polluters perceive that court orders may be ignored without meaningful consequences, the deterrent effect of litigation is substantially diminished. Effective environmental justice therefore requires not only accessible courts but also robust enforcement mechanisms capable of translating judicial pronouncements into practical environmental protection.

2.5. *Jurisdictional Constraints and Centralisation*

Section 251 of the Constitution vests exclusive jurisdiction over civil matters involving the Federal Government and its agencies including those relating to oil and gas, in the Federal High Court.[15] This centralisation creates bottlenecks: claimants must travel long distances to file cases in the Federal High Court, which is overburdened with a wide docket that includes tax, customs, and banking disputes. By contrast, State High Courts often geographically closer to affected communities are excluded from hearing

14 Gbemre v Shell Petroleum Development Company of Nigeria Ltd (2005) AHRLR 151 (NgHC).

15 Constitution of the Federal Republic of Nigeria 1999 (as amended), s 251.

many environmental claims.[16] This restriction not only increases costs for litigants but also contributes to judicial delays and undermines local access to justice.

3. Alternative Pathways for Environmental Justice in Nigeria

The limitations of court-based remedies in Nigeria necessitate the exploration of alternative pathways for achieving environmental justice. Although litigation remains an important mechanism for enforcing environmental rights, it is often characterised by delays, high costs, technical evidentiary requirements, and enforcement challenges. Consequently, environmental justice requires a more pluralistic approach that combines judicial, administrative, and community-based mechanisms. Such an approach recognises that effective environmental governance cannot be achieved through courts alone but must incorporate a range of institutions capable of preventing environmental harm, resolving disputes, and providing timely remedies.

3.1 *Administrative and Regulatory Mechanisms*

Administrative agencies constitute the first line of response to environmental harm and play a crucial role in environmental governance. In Nigeria, the National Environmental Standards and Regulations Enforcement Agency (NESREA) and the National Oil Spill Detection and Response Agency (NOSDRA) are vested with statutory responsibilities for environmental regulation, monitoring, and enforcement.[17] Unlike courts, these agencies possess specialised technical expertise and can respond more swiftly to environmental violations through inspections, investigations, compliance directives, and administrative sanctions.

In principle, administrative mechanisms offer significant advantages over litigation. Regulatory agencies can intervene before environmental harm escalates, thereby promoting preventive rather than remedial environmental protection. They are also better positioned to undertake continuous monitoring and enforce compliance with environmental standards. However, the

16 Akintayo Akinola, 'Federalism, Oil and the Environment in Nigeria: Comparative Lessons from Canada and the United States' (2014) 59 Journal of African Law 283, 292.

17 National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007, s 7; National Oil Spill Detection and Response Agency (Establishment) Act 2006, ss 5–6.

effectiveness of these institutions has been undermined by inadequate funding, overlapping regulatory mandates, weak enforcement capacity, and political interference.[18] Consequently, many environmental disputes that could have been resolved administratively eventually find their way into the courts.

To enhance their effectiveness as alternative pathways to environmental justice, NESREA and NOSDRA require greater financial autonomy, clearer statutory mandates, and stronger enforcement powers. In particular, regulatory agencies should be empowered to issue binding remediation orders, impose administrative penalties for non-compliance, and require environmental restoration measures. Effective collaboration between administrative agencies and the judiciary would further strengthen compliance by ensuring that regulatory decisions are enforceable through judicial processes where necessary.

3.2 *Public Interest Litigation*

Public interest litigation (PIL) has emerged globally as an important mechanism for advancing environmental protection and ensuring access to justice for vulnerable communities. Environmental degradation often affects collective interests and public resources, making it difficult for individual victims to establish personal injury sufficient to satisfy traditional standing requirements. PIL addresses this challenge by permitting individuals, civil society organisations, and public-spirited groups to initiate proceedings on behalf of affected communities or in defence of environmental interests. The development of PIL in Nigeria has been gradual. A significant breakthrough occurred in Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation, where the Supreme Court adopted a liberal approach to standing and recognised the right of a non-governmental organisation to institute environmental proceedings in the public interest.[19] The Court relied on paragraph 3(e) of the Preamble to the Fundamental Rights (Enforcement Procedure) Rules 2009, which encourages public interest litigation and directs courts to adopt an expansive interpretation of standing requirements in human rights matters.[20]

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18 Pedro I Obani, Strengthening the Legal Framework for Environmental Protection in Nigeria (Intersentia 2017) 112–115.

19 COPW v NNPC [2019] 5 NWLR (Pt 1666) 518 (SC).

20 Fundamental Rights (Enforcement Procedure) Rules 2009, Preamble para 3(e).

The Nigerian experience contrasts sharply with that of India, where PIL has become one of the most influential tools of environmental governance. Through PIL, Indian courts have addressed issues ranging from industrial pollution and deforestation to waste management and river pollution. In M C Mehta v Union of India, for example, the Indian Supreme Court developed innovative environmental principles and ordered extensive measures to combat industrial pollution affecting the River Ganga.[21] The success of PIL in India demonstrates the transformative potential of judicial activism in environmental protection.

To strengthen PIL in Nigeria, legislative reforms should expressly grant standing to environmental non-governmental organisations, community groups, and concerned citizens acting in the public interest. Consideration should also be given to introducing protective costs orders to shield public interest litigants from excessive financial burdens that may discourage environmental litigation.

3.3 *Community-Based Grievance Mechanisms and Alternative Dispute Resolution*

Community-based grievance mechanisms and alternative dispute resolution (ADR) processes represent another important pathway for strengthening environmental justice. In many oil-producing communities in the Niger Delta, disputes arising from pollution, land degradation, and resource extraction have often been addressed through informal negotiation, mediation, and community grievance procedures. These mechanisms are generally more accessible and less costly than formal litigation and can provide faster remedies to affected communities.

One of the principal advantages of community-based mechanisms is their ability to incorporate local knowledge, cultural values, and community participation into dispute resolution processes. Unlike courts, which are often constrained by procedural formalities, mediation and negotiation allow parties to develop flexible and context-specific solutions that may include

21 M C Mehta v Union of India AIR 1988 SC 1037.

compensation, environmental remediation, community development projects, and future monitoring arrangements.

Despite these advantages, existing grievance mechanisms have been criticised for lacking independence, transparency, and accountability.[22] In some cases, the dominance of corporate actors has undermined the legitimacy of such processes and created perceptions of unfairness among affected communities. To address these concerns, community-based grievance mechanisms should be formalised within a statutory framework that guarantees procedural fairness, transparency, and independent oversight.

Furthermore, recent developments in Business and Human Rights Arbitration provide additional opportunities for resolving environmental disputes involving multinational corporations. The Hague Rules on Business and Human Rights Arbitration demonstrate how arbitration can be adapted to address environmental and human rights claims while ensuring greater flexibility and expertise than conventional litigation.[23] Given Nigeria's growing interest in alternative dispute resolution, the incorporation of specialised environmental arbitration mechanisms within the existing arbitration framework deserves serious consideration.

3.4 *Specialised Environmental Tribunals*

Among the various alternatives to conventional litigation, the establishment of specialised environmental tribunals represents perhaps the most comprehensive institutional reform. Environmental disputes frequently involve complex scientific and technical issues that conventional courts are often ill-equipped to address. Specialised tribunals overcome this challenge by combining legal expertise with scientific and technical knowledge.

India's National Green Tribunal (NGT), established under the National Green Tribunal Act 2010, provides a useful model. The NGT exercises exclusive jurisdiction over environmental disputes and is composed of both judicial members and technical experts.[24] Its multidisciplinary composition enables it

22 Ike Okonta and Oronto Douglas, Where Vultures Feast: Shell, Human Rights and Oil in the Niger Delta (Verso 2001) 95–97.

23 Hague Rules on Business and Human Rights Arbitration (2019).

24 National Green Tribunal Act 2010 (India), ss 4–5, 14.

to evaluate scientific evidence more effectively than ordinary courts and has contributed significantly to the development of environmental jurisprudence in India. Since its establishment, the NGT has delivered important decisions relating to industrial pollution, environmental restoration, biodiversity conservation, and climate-related matters.[25]

South Africa has similarly experimented with specialised environmental courts, which demonstrated the benefits of judicial specialisation in environmental enforcement.[26] Although these courts were eventually integrated into the mainstream judicial system, their experience highlights the advantages of expertise, efficiency, and specialised procedures in environmental adjudication.

For Nigeria, the establishment of a specialised environmental tribunal would address many of the shortcomings associated with the existing judicial framework. Such a tribunal should possess exclusive jurisdiction over environmental disputes, particularly those arising from oil and gas operations, and should include technical assessors with expertise in environmental science, ecology, public health, and related disciplines. Strong enforcement powers, including authority to order environmental restoration and impose sanctions for non-compliance, would further enhance the effectiveness of environmental adjudication and contribute significantly to strengthening access to environmental justice.

3.5 *Alternative Dispute Resolution and Environmental Justice*

Alternative dispute resolution (ADR) mechanisms have increasingly been recognised as valuable tools for resolving environmental disputes. Unlike conventional litigation, ADR processes such as mediation, conciliation, negotiation, and arbitration offer more flexible, less adversarial, and often less expensive means of dispute resolution.

Environmental disputes are particularly suited to ADR because they frequently involve continuing relationships between communities, corporations, and regulatory authorities. Mediation, for example, enables

25 Lavanya Rajamani and Shibani Ghosh, 'The National Green Tribunal of India: Review of Its Jurisprudence and Future Prospects' (2021) 33(2) Journal of Environmental Law 189, 192–195.

26 Michael Kidd, 'Specialised Environmental Courts and Tribunals: The South African Experience' (2010) 7(2) Journal of Court Innovation 157, 164–166.

parties to negotiate mutually acceptable solutions that may include environmental remediation, compensation, community development projects, and future monitoring arrangements. Such outcomes may be more responsive to community needs than traditional court judgments.

In Nigeria, ADR mechanisms remain underutilised in environmental matters despite their potential benefits. Existing community grievance processes in the oil-producing regions have often been criticised for lack of transparency and independence.[27] However, properly structured ADR frameworks supervised by independent institutions could provide quicker and more accessible remedies for affected communities.

Furthermore, recent developments in Business and Human Rights Arbitration demonstrate the growing potential of arbitration as a mechanism for addressing environmental and human rights disputes involving corporate actors.[28] Nigeria may therefore consider amending its arbitration framework to accommodate specialised environmental and human rights disputes, particularly those involving transnational corporations operating within the extractive sector.

4. Comparative Lessons for Nigeria

The difficulties of enforcing environmental rights are not unique to Nigeria. Other jurisdictions with similar challenges have adopted innovative mechanisms that provide valuable guidance. While legal transplants must be adapted to local realities, comparative experiences highlight approaches that Nigeria can use in designing a pluralist system of environmental justice.

4.1. *India: The National Green Tribunal (NGT)*

India has pioneered the use of specialised environmental adjudication through the establishment of the National Green Tribunal (NGT) in 2010.[29] The NGT exercises jurisdiction over all civil cases involving environmental protection and enforcement of rights to a healthy environment.[30] It departs from

27 Ike Okonta and Oronto Douglas, Where Vultures Feast: Shell, Human Rights and Oil in the Niger Delta (Verso 2001) 95–97.

28 Hague Rules on Business and Human Rights Arbitration (2019).

29 National Green Tribunal Act 2010 (India), s 14.

30 ibid.

traditional courts by adopting less formal procedures, which enable speedier resolution of cases. Between 2010 and 2020, the NGT reportedly decided over 35,000 cases, including landmark rulings on industrial pollution, mining, and climate adaptation.[31]

A distinctive feature of the NGT is its composition: it includes both judicial members and technical experts in environmental science.[32] This multidisciplinary approach ensures that judgments are grounded in scientific evidence as well as legal reasoning. Nigerian courts, which often lack the technical capacity to evaluate complex environmental data, could benefit from adopting a similar model. Moreover, the NGT has strong enforcement powers, including the ability to impose fines and restoration orders, tools that Nigerian courts have generally lacked.[33]

4.2. *South Africa: Constitutionalisation and Judicial Activism*

South Africa's 1996 Constitution expressly guarantees "the right to an environment that is not harmful to health or well-being."[34] This provision has been robustly enforced by the courts. In Fuel Retailers Association of Southern Africa v Director-General, Environmental Management,[35] Mpumalanga Province, the Constitutional Court held that environmental rights impose substantive duties on government decision-makers to consider ecological sustainability. This jurisprudence demonstrates how constitutionalisation of environmental rights can transform policy and judicial practice.

In addition, South Africa experimented with specialised environmental courts in the late 1990s, designed to improve enforcement of environmental offences.[36] Although these courts were eventually merged into the mainstream

31 Lavanya Rajamani and Shibani Ghosh, 'The National Green Tribunal of India: Review of Its Jurisprudence and Future Prospects' (2021) 33(2) Journal of Environmental Law 189, 192–95.

32 National Green Tribunal Act 2010 (India), s 5.

33 Geetanjoy Sahu, 'Implications of Indian Supreme Court's Innovations for Environmental Jurisprudence' (2008) 4(1) Law, Environment and Development Journal 1, 7.

34 Constitution of the Republic of South Africa 1996, s 24.

35 Fuel Retailers Association of Southern Africa v Director-General, Environmental Management, Mpumalanga Province 2007 (6) SA 4 (CC).

36 Michael Kidd, 'Specialised Environmental Courts and Tribunals: The South African Experience' (2010) 7(2) Journal of Court Innovation 157, 164–66.

judicial system due to resource constraints, their short-lived experience underscores the value of specialisation when adequately resourced. For Nigeria, South Africa's model highlights the importance of elevating environmental protection to a justiciable constitutional right, thereby giving courts a firmer basis to enforce remedies.

4.3. *Kenya: Broad Standing and Participatory Justice*

Kenya's 2010 Constitution adopts one of the most progressive approaches to environmental justice in Africa. Article 70 entitles "any person" to apply to court for enforcement of the right to a clean and healthy environment, without requiring proof of personal injury.[37] The Kenyan judiciary has interpreted this provision liberally, granting broad standing to NGOs, community groups, and even individuals acting in the public interest.[38]

This framework has promoted greater public participation in environmental governance. For instance, in Save Lamu & Others v National Environmental Management Authority,[39] the Environment and Land Court suspended a coal power project partly because affected communities had not been adequately consulted. By embedding participation and broad standing into its constitutional architecture, Kenya provides a model that Nigeria could emulate in reforming its restrictive doctrines of locus standi.

4.4. *Regional Mechanisms: The African Charter and the SERAC Case*

At the regional level, the African Charter on Human and Peoples' Rights recognises the right to a "general satisfactory environment favourable to development."[40] This right was judicially articulated in Social and Economic Rights Action Centre (SERAC) and Another v Nigeria, where the African Commission found Nigeria in violation of its obligations for failing to regulate oil exploitation in the Niger Delta.[41] The Commission emphasised the duty of states not only to refrain from causing harm but also to protect citizens against violations by private actors.

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37 Constitution of Kenya 2010, art 70.

38 Kenya Green Belt Movement v Kenya Forest Service [2013] eKLR (ELC).

39 Save Lamu & Others v National Environmental Management Authority & Another [2019] eKLR (ELC).

40 African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217, art 24.

41 Social and Economic Rights Action Centre (SERAC) and Another v Nigeria (2001) AHRLR 60 (ACHPR 2001).

More recently, the African Court on Human and Peoples' Rights has taken up environmental rights within its broader human rights jurisdiction. In African Commission on Human and Peoples' Rights v Kenya (Ogiek Case),[42] the Court found that eviction of the Ogiek people from their ancestral forest violated their environmental and cultural rights. These regional mechanisms provide Nigerian communities with external avenues for justice while reminding the Nigerian state of its international obligations.

5. Conclusion and Recommendations

The foregoing analysis demonstrates that Nigeria's environmental justice framework remains heavily dependent on conventional litigation despite the significant limitations associated with that approach. Restrictive standing rules, prolonged delays, high litigation costs, evidentiary burdens, jurisdictional complexities, and weak enforcement mechanisms continue to impede effective access to justice for victims of environmental harm. Although recent judicial developments have expanded opportunities for environmental litigation, the courts alone cannot adequately address the scale and complexity of Nigeria's environmental challenges.

Accordingly, Nigeria should adopt a pluralist model of environmental justice that integrates judicial and non-judicial mechanisms. Priority should be given to the establishment of a specialised environmental tribunal staffed by both judicial officers and technical experts with competence in environmental science and public health. Regulatory agencies such as NESREA and NOSDRA should be strengthened through enhanced financial autonomy, clearer statutory mandates, and stronger enforcement powers. Legislative reforms should further consolidate public interest litigation by expressly granting standing to non-governmental organisations and community groups acting in the public interest.

In addition, constitutional reform should be considered to elevate environmental protection from a non-justiciable directive principle under section 20 of the Constitution to an enforceable constitutional right. Finally,

[42] African Commission on Human and Peoples' Rights v Kenya (Ogiek Case) (2017) App No 006/2012 (AfCtHPR).

environmental dispute resolution should be broadened through the formal incorporation of community-based grievance mechanisms, mediation, arbitration, and other ADR processes capable of providing timely, affordable, and effective remedies. Such reforms would significantly enhance environmental governance and contribute to the realisation of environmental justice in Nigeria.