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EVALUATION OF ENVIRONMENTAL CONSTITUTIONALISM IN NIGERIA

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Abstract

Environmental constitutionalism represents the integration of environmental rights, duties, and principles into constitutional frameworks, emphasizing the interdependence between environmental protection, human rights, and sustainable development. This paper evaluates the concept and practice of environmental constitutionalism in Nigeria, examining how the 1999 Constitution (as amended) accommodates environmental protection within its legal and institutional structures. It explores relevant provisions such as Section 20 of the Constitution, which enjoins the State to protect and improve the environment, and considers its classification under Chapter II—the Fundamental Objectives and Directive Principles of State Policy—which renders it non-justiciable. The study further analyzes the judicial attitude towards environmental claims, highlighting cases such as *Gbemre v. Shell Petroleum Development Company Nigeria Ltd (2005)* and the growing trend of invoking international environmental norms and human rights instruments to bridge constitutional gaps. The paper argues that while Nigeria's constitutional framework acknowledges environmental protection as a national objective, its lack of enforceability weakens the realization of environmental justice. Consequently, it recommends constitutional reforms to elevate environmental rights to a justiciable status, strengthen institutional enforcement mechanisms, and align domestic law with emerging global standards of environmental constitutionalism.

Keywords: constitutional reform, Environmental constitutionalism, environmental rights, justitiability, Nigeria, sustainable development.

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Introduction

Environmental constitutionalism is an evolving legal and governance paradigm that integrates environmental protection, sustainability, and ecological balance into constitutional law and interpretation. It embodies the recognition that the environment is indispensable to the enjoyment of fundamental human rights and that constitutional frameworks must safeguard it for present and future generations.[1] Across the globe, constitutional systems increasingly incorporate environmental rights and duties—either expressly or implicitly—reflecting a paradigm shift from viewing environmental protection as a policy aspiration to treating it as a constitutional and justiciable right.[2]

In Nigeria, environmental constitutionalism finds partial expression in Section 20 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), which provides that "the State shall protect and improve the environment and safeguard the water, air, land, forest and wildlife of Nigeria."[3] However, this provision is situated within Chapter II—*Fundamental Objectives and Directive Principles of State Policy*—which is traditionally considered non-justiciable under Section 6(6)(c) of the same Constitution.[4] This constitutional positioning significantly limits the enforceability of environmental rights in Nigeria, rendering environmental protection largely aspirational rather than obligatory.

Despite these constitutional limitations, Nigerian courts have, in recent years, adopted a more progressive interpretation by invoking related fundamental rights—particularly the right to life and dignity of human person under Sections 33 and 34—to give effect to environmental protection.[5] In the landmark case of *Gbemre v. Shell Petroleum Development Company Nigeria Ltd (2005)*,[6] the Federal High Court held that gas flaring violated the applicants' constitutional rights to life and dignity, effectively linking environmental degradation with fundamental human rights. This judicial activism signals a gradual movement toward environmental constitutionalism, even in the absence of explicit, enforceable environmental rights.

Nevertheless, Nigeria continues to face profound environmental challenges, including pollution, deforestation, oil spillage, and climate change impacts, exacerbated by weak

1 Kotzé, L. J., *Global Environmental Constitutionalism in the Anthropocene*, Helsinki, Hart Publishing, 2016, 3.

2 Daly, E and May, T. R., "Environmental Constitutionalism: An Emerging Rights-Based Approach to Environmental Protection," *Transnational Environmental Law* (2015) 4(2) 401–433.

3 Constitution of the Federal Republic of Nigeria, 1999 (as amended), s. 20

4 Ibid, s. 6(6)(c).

5 Bassey, N., *To Cook a Continent: Destructive Extraction and the Climate Crisis in Africa* Paris, Pambazuka Press, 2012, 54.

6 *Gbemre v. Shell Petroleum Development Company Nigeria Ltd* (2005) AHRLR 151 (NgHC).

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enforcement of existing environmental laws and institutional inefficiency.[7] These challenges call for a re-examination of Nigeria's constitutional approach to environmental governance and the need for reform that embeds enforceable environmental rights within the supreme legal order. Environmental constitutionalism thus offers a normative and legal framework for rethinking Nigeria's constitutional obligations towards sustainable development, environmental justice, and intergenerational equity.[8]

Conceptual Framework of Environmental Constitutionalism in Nigeria

The conceptual framework of *environmental constitutionalism* provides the theoretical foundation for understanding how constitutional law can serve as an instrument for environmental protection, sustainable development, and ecological justice. It connects environmental law, human rights, and constitutional governance into a unified normative structure that ensures the environment is protected not merely through statutory or policy mechanisms but as a constitutional imperative.[9]

At its core, environmental constitutionalism rests on three interrelated concepts: environmental rights, environmental duties, and environmental governance. These components collectively establish the relationship between the State, individuals, and the environment within the constitutional order.

a. **Environmental Rights:** Environmental rights are the cornerstone of environmental constitutionalism. They refer to the constitutional recognition of the right of individuals and communities to live in a clean, safe, and healthy environment.[10] This right may be expressly stated in the Constitution or implied through the interpretation of existing rights such as the right to life, health, and dignity.[11] Globally, over 100 constitutions recognize environmental rights explicitly, reflecting the growing understanding that environmental degradation undermines all other human rights.[12]

   In Nigeria, although the Constitution does not expressly grant an enforceable right to a clean environment, Section 20 places an obligation on the State to "protect and improve the environment."[13] However, its placement under Chapter

7 Agbola, T. A., "Environmental Problems in Nigeria: Implications for Sustainable Development," *Journal of Sustainable Development in Africa* (2001) 3(1) 120–134.

8 Daly, E., "Constitutional Protection for Environmental Rights: The Benefits of Environmental Constitutionalism," *International Journal of Constitutional Law* (2012) 10(3) 625–652.

9 Daly E., and May, J. R., *Global Environmental Constitutionalism* Cambridge, Cambridge University Press, 2016, 2.

10 Daly, E., (fn. 9).

11 May, J. R., "Constitutional Directions in Environmental Law," *William & Mary Environmental Law and Policy Review* (2006) 31(1) 1–45.

12 United Nations Environment Programme (UNEP), *Environmental Rule of Law: First Global Report* (2019) 34.

13 Constitution of the Federal Republic of Nigeria, 1999 (as amended), s. 20

II renders it non-justiciable. Consequently, Nigerian courts have relied on the constitutional rights to life (Section 33) and dignity of human person (Section 34) to infer a derivative right to a healthy environment, as exemplified in *Gbemre v. Shell Petroleum Development Company Nigeria Ltd*.

b. Environmental Duties: Environmental constitutionalism not only establishes rights but also imposes duties—on the State, individuals, and corporations—to act in ways that preserve ecological integrity.[14] These duties include preventing pollution, conserving natural resources, and ensuring intergenerational equity.[15] Under the Nigerian constitutional framework, Section 20 mandates the State to protect the environment, while Section 24(d) imposes a civic duty on citizens to "protect and improve the natural environment."[16] This dual obligation signifies a participatory approach to environmental stewardship, emphasizing shared responsibility between government and citizens.

However, in practice, the absence of enforceability and weak institutional mechanisms often undermines these duties.[17] The concept of *environmental constitutionalism* therefore calls for a shift from mere declaratory obligations to binding constitutional duties that can be judicially enforced and operationalized through environmental governance institutions.[18]

c. Environmental Governance and Institutions: Environmental constitutionalism extends beyond individual rights and duties to encompass the institutional mechanisms for implementing environmental protection.[19] Effective environmental governance requires the establishment of administrative and regulatory agencies that uphold environmental norms consistent with constitutional principles. In Nigeria, bodies such as the Federal Ministry of Environment and the National Environmental Standards and Regulations Enforcement Agency (NESREA) serve this purpose.[20]

However, their effectiveness is constrained by weak coordination, limited autonomy, and inadequate enforcement powers.[21] A constitutionally entrenched

14 Daly, E. and May, J. R., *Implementing Environmental Constitutionalism: Concepts, Challenges and Opportunities* (2015) 12.

15 Weiss, E. B., "In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity," *Transnational Publishers* (1989) 36.

16 Constitution of the Federal Republic of Nigeria 1999 (as amended), s. 24(d).

17 Omotola, J. A., "Environmental Laws in Nigeria: The Challenges of Enforcement," *Journal of Sustainable Development Law and Policy* (2013) 1(1) 120–134.

18 Ebeku, O., "The Right to a Satisfactory Environment and the African Commission," *African Human Rights Law Journal* (2003) 3(2) 149–165.

19 Agbola, T. A., "Environmental Problems in Nigeria: Implications for Sustainable Development," *Journal of Sustainable Development in Africa* (2001) 3(1) 120–134.

20 See generally, National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007.

21 Nwabueze, B. O., *Constitutional Democracy in Africa* (Vol. 1, Spectrum Books, 2003) 302.

environmental framework would strengthen these institutions by providing them with clearer mandates, justiciable authority, and constitutional backing for their decisions.[22]

d. Intergenerational and Intragenerational Equity: A critical conceptual pillar of environmental constitutionalism is the principle of equity—both *intergenerational* (between present and future generations) and *intragenerational* (among members of the current generation).[23] The principle ensures that present development efforts do not compromise the ability of future generations to meet their needs, a concept enshrined in the Brundtland Commission's definition of sustainable development.[24]

In Nigeria's context, this principle supports the constitutional obligation of the State to manage natural resources responsibly and equitably, balancing economic growth with environmental preservation.[25] Embedding intergenerational equity into constitutional interpretation ensures that environmental decision-making remains future-oriented and rights-based.[26]

e. Integration of International Environmental Norms: Environmental constitutionalism also operates within a global normative context. Nigeria, as a party to various international environmental instruments—such as the African Charter on Human and Peoples' Rights (ratified and domesticated), the Rio Declaration (1992), and the Paris Agreement (2015)—is obligated to integrate international environmental standards into domestic law.[27] Article 24 of the African Charter, which guarantees the right to a satisfactory environment, has been used by Nigerian courts to support environmental claims.[28] This integration reinforces the constitutionalization of environmental protection within Nigeria's legal system.[29]

The conceptual framework of environmental constitutionalism in Nigeria thus encompasses the interplay between environmental rights, duties, governance structures, and international environmental obligations within the constitutional order. While the Nigerian Constitution provides a foundational statement on environmental protection, its non-justiciability limits the practical realization of

22 Daly, E. and May, J. R., "Judicial Innovation in Environmental Constitutionalism," *Pace Environmental Law Review* (2015) 32(2) 483–512.

23 Weiss, E. B., *In Fairness to Future Generations* (UN University Press, 1989) 45.

24 World Commission on Environment and Development (WCED), *Our Common Future* (Oxford University Press, 1987) 43.

25 Adewale, J., "Environmental Justice and Constitutionalism in Nigeria," *Nigerian Law Journal* (2018) 22(1) 64–78.

26 Daly, E. and May, J. R., *Environmental Constitutionalism in Context* (Cambridge University Press, 2022) 88.

27 Rio Declaration on Environment and Development, 1992; Paris Agreement, 2015.

28 African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9 LFN 2004, art. 24.

29 See, *SERAP v. Federal Republic of Nigeria* (2010) ECW/CCJ/APP/08/09.

these ideals. The framework therefore underscores the need for constitutional reform, judicial activism, and institutional strengthening to transform environmental protection from a policy goal into an enforceable constitutional reality.[30]

Legal Basis of Environmental Constitutionalism under the 1999 Constitution of the Federal Republic of Nigeria (as Amended)

The legal basis of environmental constitutionalism in Nigeria derives primarily from the constitutional recognition of environmental protection as a national objective and duty of the State, as enshrined in Section 20 of the 1999 Constitution (as amended). This section provides that "the State shall protect and improve the environment and safeguard the water, air, land, forest and wildlife of Nigeria." Although succinct, this provision lays the constitutional foundation for environmental governance in Nigeria by imposing an obligation on the government to ensure ecological balance, prevent environmental degradation, and promote sustainable development.[31]

However, the efficacy of Section 20 is weakened by its inclusion in Chapter II of the Constitution—*Fundamental Objectives and Directive Principles of State Policy*—which, under Section 6(6)(c), is expressly non-justiciable. This means that individuals or groups cannot directly invoke Section 20 before a court of law to seek redress for environmental violations. As a result, while environmental protection enjoys constitutional recognition, it lacks enforceable status, making Nigeria's approach largely aspirational rather than obligatory.[32]

Despite this limitation, the Nigerian judiciary has developed creative interpretations to bridge the justiciability gap by linking environmental rights to other fundamental rights enshrined in Chapter IV of the Constitution, particularly the right to life (Section 33) and the right to dignity of the human person (Section 34).[33] In the landmark case of *Gbemre v. Shell Petroleum Development Company Nigeria Ltd (2005)*, the Federal High Court held that gas flaring violated the applicants' constitutional rights to life and dignity. The court interpreted the right to life to include the right to a clean, pollution-free, and healthy environment, thereby indirectly constitutionalizing environmental protection through human rights jurisprudence. This case marked a significant step towards environmental

30 Daly, E., "Strengthening Environmental Governance through Constitutionalism," *Transnational Environmental Law* (2015) 4(1) 23–51.

31 Daly, E. and May, J. R., *Global Environmental Constitutionalism* Cambridge, Cambridge University Press, 2016, 4.

32 J.A. Omotola, (fn 18)

33 Kotzé, L. J., "Human Rights and the Environment: Exploring Environmental Constitutionalism," *South African Journal on Human Rights* (2010) 26(1) 12.

constitutionalism in Nigeria, demonstrating that constitutional guarantees can be extended to environmental protection even without explicit enforceability.

In addition, the African Charter on Human and Peoples' Rights, which Nigeria has ratified and domesticated through the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9, Laws of the Federation of Nigeria 2004, provides further legal grounding for environmental constitutionalism.[34] Article 24 of the Charter guarantees that "all peoples shall have the right to a general satisfactory environment favourable to their development." Since the African Charter has been domesticated, it possesses the force of law in Nigeria and has been invoked in cases such as *SERAP v. Federal Republic of Nigeria*,[35] where the ECOWAS Court recognized environmental degradation as a violation of the right to health and life. This incorporation of international human rights norms into domestic law strengthens the constitutional framework for environmental protection in Nigeria.

Furthermore, Section 12 of the 1999 Constitution mandates the domestication of international treaties before they can have the force of law in Nigeria. Therefore, the domestication of the African Charter, alongside Nigeria's ratification of international environmental treaties such as the Rio Declaration (1992), the Convention on Biological Diversity (1992), and the Paris Agreement (2015), collectively reinforces the legal foundation of environmental constitutionalism in Nigeria. These instruments emphasize sustainable development, intergenerational equity, and the right to a safe environment—principles that resonate with Section 20 of the Constitution and Nigeria's environmental obligations under international law.[36]

Institutionally, the legal framework for environmental protection in Nigeria is further strengthened by statutory enactments such as the Environmental Impact Assessment (EIA) Act,[37] the National Environmental Standards and Regulations Enforcement Agency (NESREA) Act,[38] and the Harmful Waste (Special Criminal Provisions) Act.[39] These legislations operationalize the constitutional mandate of Section 20 by providing mechanisms for environmental regulation, pollution control, and ecological preservation.[40] However, the absence of a justiciable constitutional right to a healthy

34 African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9 LFN 2004.

35 *SERAP v. Federal Republic of Nigeria* (2010) ECW/CCJ/APP/08/09.

36 Weiss, E. B., "Intergenerational Equity: A Legal Framework for Global Environmental Change," *Environmental Policy and Law* (1990) 19(1) 11–17.

37 Environmental Impact Assessment Act, Cap E12, LFN 2004.

38 National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007.

39 Harmful Waste (Special Criminal Provisions) Act, Cap H1, LFN 2004.

40 Ebeku, O., "The Right to a Satisfactory Environment and the African Commission," *African Human Rights Law Journal* (2003) 3(2) 150.

environment continues to limit the effectiveness of these laws, as enforcement often depends on administrative discretion rather than constitutional compulsion.

In summary, the legal basis of environmental constitutionalism in Nigeria rests upon the constitutional recognition of environmental protection under Section 20, the judicial interpretation of fundamental rights in Chapter IV, and the incorporation of international environmental norms through the African Charter and related treaties. Nevertheless, the non-justiciability of Chapter II provisions presents a significant barrier to the realization of environmental justice. Hence, there is an urgent need for constitutional reform to elevate environmental rights to a justiciable status, thereby transforming Nigeria's environmental policy commitments into enforceable constitutional guarantees.

Environmental Constitutionalism in Nigeria

Environmental constitutionalism refers to the incorporation of environmental protection principles, duties, and rights into constitutional frameworks, thereby elevating environmental concerns to a constitutional and human rights level.[41] It embodies the recognition that environmental well-being is a prerequisite for the enjoyment of life, health, and human dignity.[42] Globally, this concept has gained prominence as many constitutions now contain explicit environmental provisions or have allowed courts to interpret existing rights—such as the right to life—to include the right to a healthy environment.[43]

In Nigeria, environmental constitutionalism finds its primary foundation in Section 20 of the 1999 Constitution (as amended), which provides that "the State shall protect and improve the environment and safeguard the water, air, land, forest and wildlife of Nigeria."[44] This provision articulates a constitutional commitment to environmental protection, yet it is located in Chapter II—*Fundamental Objectives and Directive Principles of State Policy*—which, under Section 6(6)(c) of the Constitution, is non-justiciable.[45] This means that individuals cannot directly invoke Section 20 in court to enforce environmental protection or seek remedies for environmental harm. The implication is that environmental protection, though constitutionally acknowledged, remains aspirational and dependent on political will rather than enforceable legal obligation.[46]

The non-justiciability of Chapter II provisions has created a constitutional gap in environmental protection, leaving affected citizens to rely on statutory laws such as the

41 Daly, E. and James R. May, J. R., (fn. 32) 5.

42 Louis J. Kotzé, L. J., (fn. 34) 1–37.

43 May, J. R. and Daly, E., Constitutional Environmental Rights Worldwide, Oxford, Oxford University Press, 2015, 14.

44 Constitution of the Federal Republic of Nigeria, 1999 (as amended), s. 20

45 Ibid, s. (6)(6)(c).

46 B.O. Nwabueze, B. O. (fn. 22) 297.

Environmental Impact Assessment (EIA) Act,[47] the National Environmental Standards and Regulations Enforcement Agency (NESREA) Act,[48] and various sectoral legislations dealing with pollution control and natural resource management. However, these statutes, though important, lack constitutional force and are often undermined by weak institutional enforcement and political interference.[49]

Despite these constraints, Nigerian courts have demonstrated increasing creativity in interpreting the Constitution to advance environmental protection. In *Gbemre v. Shell Petroleum Development Company Nigeria Ltd*,[50] the Federal High Court held that the continuous gas flaring activities of Shell violated the applicants' fundamental rights to life and dignity of human person under Sections 33 and 34 of the Constitution. The court reasoned that environmental degradation resulting from gas flaring was inconsistent with the right to a clean and healthy environment implicit in the right to life.[51] Similarly, in *SERAP v. Federal Republic of Nigeria*,[52] the ECOWAS Court recognized environmental degradation as a human rights issue, linking it to violations of the right to life and health. These cases signify a gradual judicial evolution toward the operationalization of environmental constitutionalism in Nigeria, even in the absence of explicit constitutional justiciability.

Institutionally, environmental governance in Nigeria is fragmented across multiple agencies, including the Federal Ministry of Environment, NESREA, and state environmental protection agencies.[53] While these institutions are charged with implementing environmental policies and laws, their effectiveness is often limited by inadequate funding, overlapping mandates, and lack of political independence.[54] Furthermore, the absence of constitutional enforcement mechanisms undermines their capacity to ensure environmental justice and sustainable development.[55]

In essence, while the 1999 Constitution of Nigeria recognizes environmental protection as a state obligation, its classification under Chapter II renders it non-justiciable, thereby weakening its practical implementation. The judiciary's interpretative innovations and reliance on international environmental and human rights instruments represent an emerging pathway toward realizing environmental constitutionalism in practice. However, without constitutional reform to make environmental rights enforceable,

47 Environmental Impact Assessment Act, Cap E12, Laws of the Federation of Nigeria (LFN), 2004.

48 National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007.

49 Omotola, J. A., "Environmental Laws in Nigeria: The Challenges of Enforcement," *Journal of Sustainable Development Law and Policy* (2013) 1(1) 120–134.

50 Supra.

51 Ibid.

52 *SERAP v. Federal Republic of Nigeria* (2010) ECW/CCJ/APP/08/09.

53 Federal Ministry of Environment, *National Policy on Environment* (Revised 2016), 4.

54 Ebeku, O., "The Right to a Satisfactory Environment and the African Commission," *African Human Rights Law Journal* (2003) 3(2) 149–165.

55 Atsegbua, A. et al., *Environmental Law in Nigeria: Theory and Practice,* Ambik Press, 2010, 86.

environmental protection in Nigeria will remain largely theoretical rather than transformative.[56]

Operationalization of Environmental Constitutionalism in Practice in Nigeria

The operationalization of environmental constitutionalism in Nigeria refers to the extent to which constitutional and legal provisions on environmental protection are implemented through judicial interpretation, institutional enforcement, policy formulation, and adherence to international obligations. While the Nigerian Constitution recognizes environmental protection under Section 20, its non-justiciability has constrained practical enforcement. Consequently, the judiciary, administrative agencies, and civil society have played crucial roles in giving effect to environmental constitutionalism within the limits of Nigeria's legal and institutional frameworks.[57]

Judicial Enforcement and Constitutional Interpretation

The judiciary has emerged as the most active platform for the operationalization of environmental constitutionalism in Nigeria.[58] In the absence of a justiciable constitutional right to a healthy environment, courts have creatively expanded the scope of existing fundamental rights to include environmental protection.[59]

The landmark decision in *Gbemre v. Shell Petroleum Development Company Nigeria Ltd,*[60] remains the cornerstone of environmental constitutionalism in Nigeria. The Federal High Court, relying on Sections 33 and 34 of the 1999 Constitution (right to life and dignity of human person), held that the gas flaring activities of Shell Petroleum were unconstitutional as they violated the applicants' rights to life and dignity. The court further ordered the cessation of gas flaring in the Niger Delta, emphasizing that a polluted and degraded environment cannot sustain life or human dignity. This case illustrates judicial willingness to operationalize environmental protection through human rights interpretation, despite constitutional limitations.

Similarly, in *Jonah Gbemre v. Federal Republic of Nigeria and Others (No. 2)*,[61] and *SERAP v. Federal Republic of Nigeria (2010)*,[62] Nigerian and regional courts expanded the understanding of environmental harm as a human rights violation. The ECOWAS Court, in

56 Daly, E., "Constitutional Protection for Environmental Rights: The Benefits of Environmental Constitutionalism," *International Journal of Constitutional Law* (2012) 10(3) 625–652.

57 Kotzé, L. J., (fn. 2)

58 B.O. Nwabueze, (supra)

59 Daly, E., "Constitutional Protection for Environmental Rights," *International Journal of Constitutional Law* (2012) 10(3) 627.

60 *Gbemre v. Shell Petroleum Development Company Nigeria Ltd* (2005) AHRLR 151 (NgHC).

61 *Jonah Gbemre v. Federal Republic of Nigeria and Others (No. 2)* (Unreported, 2007).

62 *SERAP v. Federal Republic of Nigeria* (2010) ECW/CCJ/APP/08/09.

SERAP v. Nigeria, held that environmental degradation resulting from oil exploitation violated the right to a satisfactory environment under Article 24 of the African Charter on Human and Peoples' Rights. These decisions demonstrate the judiciary's evolving role in advancing environmental constitutionalism through the fusion of domestic and international legal norms.

However, judicial enforcement faces persistent obstacles, including poor compliance with court orders, institutional inefficiency, and political interference.[63] In *Gbemre's case*, for instance, the judgment has remained largely unenforced due to resistance from oil companies and lack of political will by government agencies.

Institutional Implementation and Administrative Practice

The operationalization of environmental constitutionalism in Nigeria also depends heavily on institutional mechanisms designed to implement environmental laws and policies. The Federal Ministry of Environment and the National Environmental Standards and Regulations Enforcement Agency (NESREA) are central to this process.[64] NESREA, established by the NESREA Act 2007, is empowered to enforce all environmental laws, regulations, and international treaties on the environment.[65]

Through its regulatory mandates, NESREA has issued various environmental standards and guidelines relating to air quality, waste management, and industrial emissions.[66] However, the agency's effectiveness is often undermined by overlapping jurisdiction with other government bodies, weak funding, and lack of technical capacity.[67] The absence of constitutional justiciability further limits NESREA's authority, as enforcement remains dependent on administrative discretion rather than judicial compulsion.

At the state level, Environmental Protection Agencies (EPAs) have been established to complement federal efforts, particularly in areas such as waste management, pollution control, and urban sanitation.[68] Nonetheless, these agencies face similar challenges of underfunding, poor coordination, and political interference.

Legislative and Policy Framework

The legislative framework for environmental protection in Nigeria operationalizes Section 20 of the Constitution through a variety of statutes. The Environmental Impact

63 J.A. Omotola, J. A. (supra)

64 Federal Ministry of Environment, *National Policy on Environment* (Revised 2016), 7.

65 National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007, s. 7.

66 NESREA, *National Environmental (Air Quality Control) Regulations* (2008).

67 Agbola, T. A., "Environmental Problems in Nigeria: Implications for Sustainable Development," *Journal of Sustainable Development in Africa* (2001) 3(1) 120–134.

68 Daly, E., "Strengthening Environmental Governance through Constitutionalism," *Transnational Environmental Law* (2015) 4(1) 23.

Assessment (EIA) Act, Cap E12 LFN 2004, requires that all major projects undergo environmental assessment prior to approval.[69] The NESREA Act (2007) provides for standards and regulatory enforcement, while the Harmful Waste (Special Criminal Provisions) Act criminalizes the illegal dumping of toxic substances.[70] Other relevant statutes include the Oil Pipelines Act, the Minerals and Mining Act, and the National Oil Spill Detection and Response Agency (NOSDRA) Act.[71]

Despite this broad legal framework, enforcement remains inconsistent. Corruption, weak institutional capacity, and political interference continue to undermine legislative objectives. Moreover, most environmental statutes lack effective sanction mechanisms or public participation provisions, thereby limiting citizen engagement in environmental decision-making.[72]

International and Regional Influence

Nigeria's participation in international environmental treaties and conventions has further advanced the operationalization of environmental constitutionalism.[73] As a party to the African Charter on Human and Peoples' Rights, Nigeria is obligated under Article 24 to ensure the right to a satisfactory environment. Similarly, international instruments such as the Rio Declaration (1992), the Paris Agreement (2015), and the Convention on Biological Diversity (1992) have influenced domestic environmental policy.[74]

In *SERAP v. Nigeria (2010)*, the ECOWAS Court's reliance on Article 24 of the African Charter highlighted the role of regional human rights mechanisms in reinforcing domestic environmental obligations. Nigeria's National Policy on Environment (Revised 2016) also reflects principles derived from international law, including sustainable development, intergenerational equity, and the precautionary principle. These developments illustrate how international norms have been domesticated to complement Nigeria's constitutional commitment to environmental protection.

Civil Society and Public Advocacy

Civil society organizations (CSOs) and community-based groups have played an instrumental role in operationalizing environmental constitutionalism by demanding

69 Environmental Impact Assessment Act, Cap E12, LFN 2004.

70 Harmful Waste (Special Criminal Provisions) Act, Cap H1, LFN 2004.

71 Oil Pipelines Act, Cap O7, LFN 2004; National Oil Spill Detection and Response Agency (NOSDRA) Act, 2006.

72 Daly E. and James R. May, J. R., (supra)

73 United Nations Environment Programme (UNEP), *Environmental Rule of Law: First Global Report* (2019) 47.

74 Rio Declaration on Environment and Development, 1992; Paris Agreement, 2015; Convention on Biological Diversity, 1992.

government accountability and promoting environmental justice.[75] Groups such as the Environmental Rights Action (ERA), the Movement for the Survival of the Ogoni People (MOSOP), and the Socio-Economic Rights and Accountability Project (SERAP) have used litigation, advocacy, and public campaigns to hold both the government and corporations accountable for environmental harm.[76] These efforts have contributed to increased environmental awareness, policy reforms, and judicial recognition of environmental rights. However, challenges such as limited access to justice, prolonged court processes, and the high cost of environmental litigation continue to limit the effectiveness of civil society interventions.

In practice, the operationalization of environmental constitutionalism in Nigeria remains uneven. While the judiciary and civil society have made significant progress in interpreting and enforcing environmental rights through human rights frameworks, institutional and constitutional barriers persist. The absence of a justiciable environmental right in the Constitution undermines enforcement, despite progressive judicial activism and international influence. To achieve full operationalization, Nigeria must constitutionally entrench environmental rights, strengthen environmental institutions, and ensure compliance with judicial decisions. Only then can environmental constitutionalism evolve from an aspirational doctrine into an effective tool for sustainable development and ecological justice.

Conclusion

Environmental constitutionalism in Nigeria represents a progressive yet incomplete framework for safeguarding ecological sustainability and environmental justice. While Section 20 of the 1999 Constitution (as amended) establishes the State's duty to protect and improve the environment, its placement under Chapter II—*Fundamental Objectives and Directive Principles of State Policy*—renders it non-justiciable and largely aspirational. As such, the constitutional provision lacks the necessary force to compel governmental compliance or guarantee individual environmental rights.

Despite this limitation, Nigerian courts have played a crucial role in advancing environmental protection through expansive interpretations of fundamental rights, particularly the right to life and human dignity. Landmark cases such as *Gbemre v. Shell Petroleum Development Company Nigeria Ltd (2005)* and *SERAP v. Federal Republic of Nigeria (2010)* demonstrate judicial innovation in operationalizing environmental constitutionalism via human rights jurisprudence. However, enforcement challenges,

75 Bassey, N., *To Cook a Continent: Destructive Extraction and the Climate Crisis in Africa (supra)* 98.

76 Ibid.

institutional weaknesses, political interference, and economic dependency on extractive industries—especially oil—continue to undermine environmental governance.

Moreover, while Nigeria has ratified and domesticated key international environmental and human rights instruments such as the African Charter on Human and Peoples' Rights, the practical translation of these commitments into effective domestic environmental protection remains inadequate. The persistent degradation of the Niger Delta environment and the government's slow response to climate and pollution crises underscore the gap between constitutional ideals and environmental realities.

In essence, Nigeria's approach to environmental constitutionalism is more declaratory than transformative. To achieve genuine environmental justice, the country must transition from symbolic constitutional recognition to enforceable constitutional guarantees that empower individuals, strengthen institutions, and promote sustainable development.

Recommendations

1. **Constitutional Amendment for Justiciability**: Section 20 of the 1999 Constitution should be amended to elevate the right to a healthy and sustainable environment to a *fundamental right* under Chapter IV, thereby making it legally enforceable. This would align Nigeria with global constitutional trends observed in countries such as Kenya, South Africa, and India, where environmental rights are explicitly justiciable.
2. **Strengthening Institutional Frameworks**: Regulatory bodies such as the National Environmental Standards and Regulations Enforcement Agency (NESREA) and the Federal Ministry of Environment should be granted greater autonomy, adequate funding, and stronger enforcement powers. Institutional overlap should be reduced through clearer delineation of responsibilities to avoid duplication and inefficiency.
3. **Judicial Capacity Building and Environmental Courts**: Specialized environmental courts or tribunals should be established to ensure timely, expert, and effective adjudication of environmental disputes. Judges and legal practitioners should also receive regular training in environmental and climate change law to enhance the quality of environmental jurisprudence.
4. **Enhanced Public Participation and Access to Environmental Justice**: Citizens and communities should be empowered to participate actively in environmental decision-making processes through access to environmental information, public hearings, and legal standing to challenge environmental violations. Strengthening freedom of information laws and community engagement will improve transparency and accountability in environmental governance.

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5. **Integration of Environmental Education and Awareness:** Environmental education should be mainstreamed into Nigeria's educational curriculum at all levels to promote environmental literacy and civic responsibility. Public awareness campaigns should also be intensified to encourage sustainable practices and compliance with environmental standards.
6. **Domestication and Implementation of International Environmental Treaties:** Nigeria should not only ratify but also domesticate and implement key international environmental treaties, including the Paris Agreement and the Convention on Biological Diversity, to reinforce its constitutional and policy commitments.[77] This will strengthen Nigeria's capacity to fulfill its global environmental obligations.
7. **Promoting Sustainable Development and Corporate Accountability**: The Nigerian government should adopt policies that balance economic growth with ecological preservation. Environmental impact assessments must be strictly enforced for all industrial and infrastructural projects, and corporations should be held accountable for environmental harm through stricter liability regimes.

General, achieving environmental constitutionalism in Nigeria requires a holistic approach—anchored in constitutional reform, institutional empowerment, judicial innovation, and civic participation. Only through these measures can Nigeria move from aspirational environmental protection to enforceable ecological justice, ensuring a clean, safe, and sustainable environment for present and future generations.

77 Paris Agreement (2015); Convention on Biological Diversity (1992).