SIAR-Global Journal of Social Sciences & Legal Review (GJSSLR)
www.siarpublications.org ISSN : 3122-0169
info@siarpublications.org Vol. 2 Issue 1 Jan.-March. 2026

The Lack of Enforcement of Environmental Rights in Nigeria: How may the Current System be Improved?

Nitoni George Lawson*

Niger Delta University, Faculty of Law
nglawson@ndu.edu.ng

Abstract

There are numerous problems confronting the enforcement of environmental rights in Nigeria. This paper examines key challenges affecting the enforcement of environmental rights in Nigeria, ranging from the absence of a clear provision on the right to a clean and pollution-free environment, the lack of enforcement of environmental legislation, legal burdens encountered in establishing torts of negligence and other related torts in environmental pollution cases, judicial bias towards government and oil transnational corporations (hereinafter 'TNCs') as against victims of oil pollution due to the economic benefits derived from oil and gas activities. In view of the aforementioned challenges, legal redress for significant environmental pollution incidents has increasingly been pursued abroad in recent years. It is maintained that the oil and gas activities undertaken by TNCs are profitable to the State, thereby promoting the economic well-being of the State, and applying strict principles of liability in incidents of environmental pollution would expose TNCs to multiple litigations and compensation claims which would adversely affect the profits accruing to the State. This paper utilises a doctrinal research method (or black letter law approach) in view of the substantial reliance on case law, scholarly journals, articles, statutes and principles of law to systematically analyse the identified problems confronting enforcement of environmental rights in Nigeria. It is observed that in most jurisdictions outside Nigeria, environmental rights are recognised as fundamental human rights. Unfortunately, judicial technicalities and failure of the Courts to give an expansive interpretation to the fundamental human rights captured in Chapter IV of the Nigerian Constitution, has prompted many victims of environmental pollution in Nigeria caused by oil and gas, to explore legal redress in foreign countries.

Keywords: Environmental rights, transnational corporations, pollution, margin of appreciation, judicial legislation.

1. Introduction

Recently, a Nigerian farmer and fisherman instituted legal claims for damages occasioned by oil spills from Shell Petroleum Development Company (SPDC) facilities between 2006 and 2007 against Royal Dutch Shell (SPDC's parent company headquartered in the Netherlands) in a Hague District Court.[1] Commenting on a more recent oil spill amounting to around 3,800 barrels and the

LLB(Igbinedion), LLM, PhD (Wolverhampton, UK), BL. Lecturer, Faculty of Law, Niger Delta University, Bayelsa State. Email address: nitonilawson@gmail.com or nglawson@ndu.edu.ng¦ Phone: +2348037548758.

Official Publication of the Society of Innovative Academic Researchers- SIAR PUBLICATIONS.
Advancing Real-Time Innovative Knowledge Globally. Copyright © Reserved -Author(s), Licensed to SIAR Publications

rationale for foreign legal redress, a Bonny Island Community leader in Rivers State of Nigeria, Amasenibo, remarked that:

> Normal life has stopped here because of the spill. This was just the last of multiple spills we have experienced. Shell has still not done the clean-up here. They are a big company and if we go to the Nigerian courts, they will win.[2]

Lately, in *The Bodo Community v The Shell Petroleum Development Company of Nigeria Ltd*,[3] more than 15,000 claimants sought damages at common law and statutory compensation under Nigerian law before the High Court of Justice in London in relation to oil spills alleged to have been caused by Shell Petroleum Development Company of Nigeria (SPDC). It is observed that the aforesaid case and other related cases bordering on claims for oil spill damages are anchored on common law principles of liability (such as nuisance, negligence and the strict liability rule), which have been transplanted into municipal laws in Nigeria. The Nigerian legal system is substantially influenced by English common law.[4] The Bodo community is in the Gokana Local Government Area in Rivers State, one of the major oil producing States in the Niger Delta Region. Over the years, there have been a series of court proceedings against Shell by individuals, communities and other representative bodies within domestic courts in Nigeria. In the *Bodo Community case*, both the claimants and the defendant, by agreement, but subject to some jurisdictional reservations,[5] opted for an English court (Technology and Construction Court) to determine, primarily: whether SPDC can be liable to pay compensation for damage caused by oil from its pipelines that has been released owing to illegal refining[6] between 2008 and 2009, amongst others.

It is observed that the traditional principles of liability in environmental pollution cases, such as the strict liability rule, torts of nuisance and negligence are indeterminate or doctrinally inadequate and undermine the legal rights of the inhabitants of such pollution prone areas to enjoy a safe, or healthy environment. In view of these shortcomings, Kalu and Stewart reasoned 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

[1] *FA Akpan & Anor v Royal Dutch Shell & Anor* (District Court of The Hague) Case No. C/09/337050/HA ZA 09-1580, 30 January 2013<https://milieudefensie.nl/publicaties/bezwaren-uitspraken/final-judgment-shell-oil-spill-ikot-ada-udo> accessed 12 October 2025.

[2] John Vidal, 'Niger delta communities to sue shell in London for oil spill compensation' *The guardian* (London, 7 January 2015) <https://www.theguardian.com/environment/2015/jan/07/niger-delta-communities-to-sue-shell-in-london-for-oil-spill-compensation> accessed 15 October 2025.

[3] [2014] EWHC 1973 (TCC).

[4] Lee J McConnell, 'Establishing Liability for Multinational Companies in Parent/Subsidiary Relationships' (2014) 16 ELR 50, 53.

[5] See *Bodo Community* case (n 3) [9]. One of the preliminary issues (Issue 6), was whether the English Court lacks jurisdiction to try some or all of the claims raised by the Bodo community?

[6] ibid [9].

Official Publication of the Society of Innovative Academic Researchers- SIAR PUBLICATIONS.
Advancing Real-Time Innovative Knowledge Globally. Copyright © Reserved -Author(s), Licensed to SIAR Publications

> versed in this area to be able to recover damages for his losses in suits for compensation or negligence.[7]

Kalu and Stewart's position above deserves support in view of the legal burden encountered in establishing torts of negligence and other related torts in environmental pollution cases, particularly where most victims do not fully understand the operational rules and activities of the oil operators. In addition, it is shown in a plethora of decided cases that TNCs mostly furnish the defence of 'malicious act of third parties' to escape liability, arguing that the cause of oil spills is the result of illegal oil bunkering and/or intentional pipeline vandalism by saboteurs, and this defence is valid in both common law and extant statutory schemes on environmental liability in Nigeria,[8] particularly the Oil Pipelines Act 2004,[9] which has now been repealed and its key provisions are captured in the Petroleum Industry Act.[10]

It is maintained that the oil and gas activities carried out by TNCs are profitable to the State, thereby promoting the economic well-being of the State, and applying strict principles of liability in incidents of environmental pollution would expose TNCs to a series of litigation and compensation claims which would adversely affect the profits accruing to the state. It is worth noting that the Nigerian economy is substantially dependent on crude oil, as the oil sector remains the core revenue earner of the Nigerian economy accounting for over 80 percent of the country's total export earnings and about 70 percent of government revenue.[11]The interest of the Nigerian State in the oil sector is clearly reflected in section 44(3) of the 1999 Constitution of the Federal Republic of Nigeria (as amended), vesting the ownership and control of mineral oils and natural gas in the Government of the Federation. In view of the foregoing, Atsegbua observed that if the fundamental right to a clean environment is directly inculcated in the 1999 Constitution of Nigeria, and becomes enforceable, the oil communities of the Niger Delta will begin to assert their constitutional rights, and that the government may feel that such a step will expose it to litigation by the oil-producing communities of the Niger Delta.[12] In the same vein, in the case of *Allar Irou v Shell BP*,[13] where the claimant sought an injunction to restrain the defendant (Shell BP) from continuous pollution of his land, the High Court refused the request with the reasoning that granting the order would truncate activities of the defendant (SPDC), noting that mineral oil is the main source of Nigeria's revenue.[14]

Furthermore, it is observed that the lack of access to environmental information (which includes crucial environmental education in schools), public participation in environmental decision-

---

[7] Victoria E Kalu and Ngozi F Stewart, 'Nigeria's Niger Delta Crises and Resolution of Oil and Gas Related Disputes: Need for a Paradigm Shift' (2007) 25 JENRL 244, 253.

[8]See *Bodo Community* case (n 3) [93] (Mr Akenhead).

[9] Cap O7 LFN 2004, s 11(5) (c).

[10] The Petroleum Industry Act 2021, provides a consolidated legal and regulatory framework for the Nigerian oil and gas industry, which has repealed many old laws, including the Oil Pipelines Act.

[11] Olanrewaju Fagbohun, *The Law of Oil Pollution and Environmental Restoration A Comparative Review* (Odade, Lagos 2010) 156.

[12] Lawrence Atsegbua, 'Environmental rights, pipeline vandalisation and conflict resolution in Nigeria' (2001) 5 IELTR 89, 90.

[13] Suit No. W/89/71, Warri High Court, November 26, 1973.

[14]Allar Irou (n 13).

Official Publication of the Society of Innovative Academic Researchers- SIAR PUBLICATIONS.
Advancing Real-Time Innovative Knowledge Globally. Copyright © Reserved -Author(s), Licensed to SIAR Publications

making as well as access to environmental justice have hindered the enforcement of fundamental rights to a clean environment.

It is equally noted that allegations of corruption against TNCs and government agencies have contributed immensely against the attainment of environmental justice. For instance, the Special Task Force set up by the Nigerian government (under former president Goodluck Jonathan) to look into the rot in the Nigerian oil industry which was headed by Nuhu Ribadu in 2012, implicated the Nigerian National Petroleum Corporation, which is the State oil firm, ministers, government agencies and oil majors in dodgy deals and mismanagement which is estimated to have cost Nigeria $35 billion over the last 10 years.[15] It is observed that most government agencies implicated in such corruption issues are basically mandated with statutory obligations to execute court judgments or enforce policies relating to environmental pollution caused by oil and gas activities.

At the forefront of these barriers is the economic factor which seems to influence the behaviour or disposition of judges in being lenient or more likely to favour states and Transnational Corporations (TNCs). The economic reason is predicated and explained on the basis that TNCs are engaged in activities that are presumably profitable to the state, thereby boosting the economic well-being of the State, and applying strict principles of liability in incidents of environmental pollution would expose TNCs to a series of litigations and compensations claims which would adversely affect the profits of the state. Maintaining almost a similar stance, Atsegbua had observed that if the fundamental right to a clean environment is directly inculcated in the 1999 Constitution of Nigeria, and becomes enforceable:

> The neglected oil communities of the Niger Delta will begin to assert their constitutional rights. It is however doubtful that government or legislature will be willing to undertake such a bold step. The government may feel that such a step will expose it to litigation by the oil-producing communities of the Niger Delta.[16]

Hence, it can be argued that dispensing justice in a manner that will permit smooth running of activities of Oil TNCs may not necessarily reflect a compromised judiciary but can be seen as a judicial backing to government interests on economic grounds, this is because oil and gas activities of TNCs are seen as the economic mainstay of the nation.

The above reasoning, amongst others, confirms the concern earlier raised by Amasenibo to the effect that Shell is a 'big company and if we go to the Nigerian courts, they will win.'[17]It is submitted that this is one of the main reasons (economic reason) most victims of environmental pollution are unsuccessful in seeking justice before Nigerian courts.

Albeit there may not be a generally known or acceptable doctrine to explain the reasons for judicial reluctance in holding oil TNCs absolutely liable in oil and gas pollution, particularly in the area

[15]Reuters, 'Exclusive: Nigeria loses billions in cut price oil deals-report' <http://www.reuters.com/article/us-nigeria-oil-idUSBRE89N0VV20121024> (Nigeria 24 October 2012) accessed 27 June 2024.

[16] Lawrence Atsegbua, 'Environmental rights, pipeline vandalisation and conflict resolution in Nigeria' (2001) 5 IELTR 89, 90.

[17] John Vidal, 'Niger delta communities to sue Shell in London for oil spill compensation' (n 2).

Official Publication of the Society of Innovative Academic Researchers- SIAR PUBLICATIONS.
Advancing Real-Time Innovative Knowledge Globally. Copyright © Reserved -Author(s), Licensed to SIAR Publications

of fundamental rights enforcement to a healthy environment in Nigeria, the doctrine of the *Margin of Appreciation* or *balancing of interests* as first expounded by the European Court of Human Rights (ECtHR)[18] and later emphasised in the case of *Marcic v Thames Water Utilities Ltd*[19]in the UK, which takes cognisance in balancing the economic interest of the state and that of individuals in claims for environmental pollution relating to Convention rights, is a clear demonstration of an aspect of the *Economic theory* as discussed in this chapter. It is submitted that although the nomenclature may vary, the *margin of appreciation* is a universal concept which appears to undermine and stand as a barrier to fundamental rights enforcement vis-à-vis the right to a clean environment which is considered an absolute right. Conversely, it could be argued that since oil and gas sales are Nigeria's largest revenue stream, environmental pollution from activities of oil TNCs, which is an inevitable consequence of oil and gas exploration and production ought to attract little or no penalty since their (TNCs) engagements are for the interest of the community.

In the context of this paper, judicial technicalities and the lack of enforcement of extant laws on environmental pollution are identified as hurdles to attainment of environmental justice within the parameters of fundamental rights enforcement, bearing in mind allegations of irresponsible behaviours from transnational corporations engaged in oil and gas extraction which has attracted civil agitations in recent past,[20] and has added to the numerous environmental challenges in oil producing regions in Nigeria.

2. Jonah Gbemre v SPDC[21]: A Reflection of Judicial Legislation

This paper examines the inadequate enforcement of environmental rights in Nigeria, and how the current system can be improved. In this vein, it is noteworthy that judges can legitimately develop the law when faced with issues involving questions of policy, whether political or social in nature; and such reforms are primarily anchored on issues of national interest, the personal disposition of judges and other relevant factors. Consequently, case law (being a primary source of the law) remains significant in the Nigerian and English legal systems, and case law analysis is imperative due to the need for the judiciary to creatively and expansively interpret certain provisions of the law to align with prevailing global trends or peculiar challenges in domestic jurisdictions which are yet to be given comprehensive legislative backing; and in this context, the focus is on the interpretation of existing laws to give effect to the fundamental right to a clean environment.

With regard to the role of the court to make significant contributions to the body of the law via case law (otherwise known as judicial legislation), Denning LJ observed in the case of *Magor and St Mellons Rural District Council v Newport Corporation*,[22] that:

[18] See *Powell and Rayner v UK* (1990) 12 EHRR 355, [1990] ECHR 931/81.

[19] [2003] UKHL 66, [2004] 2 AC 42.

[20]EvaristusOshionebo, 'Transnational Corporations, civil society organisations and social accountability in Nigeria's oil and gas industry' (2007) 15 AJICL 107.

[21] [2005] AHRLR 151 (Federal High Court of Nigeria, Benin Judicial Division).

[22] [1950] 2 All ER 1226 (CA).

Official Publication of the Society of Innovative Academic Researchers- SIAR PUBLICATIONS.
Advancing Real-Time Innovative Knowledge Globally. Copyright © Reserved -Author(s), Licensed to SIAR Publications

> We sit here to find out the intention of parliament and ministers and carry it out, and we do this better by filling in the gaps and making sense of the enactment than by opening it up to destructive analysis.[23]

Whilst the expression was partially admitted, Lord Simonds had expressed misgivings on Denning's position when the same case (the Magor case) came on Appeal to the House of Lords (now Supreme Court). Lord Simonds had maintained that:

> It is sufficient to say that the general proposition that it is the duty of the court to find out the intention of Parliament- and not only of Parliament but of Ministers also- cannot by any means be supported. The duty of the court is to interpret the words that the legislature has used; those words may be ambiguous, but, even if they are, the power and duty of the court to travel outside them on a voyage of discovery are strictly limited.[24]

The above expression suggests that even if statutory provisions are ambiguous, there is a limit to which judges will not go. Lord Simonds's view seems pretty clear but a bit perplexing regarding the role judges should play where provisions of the law are not clear or comprehensive, since the limit at which judges should go in the course of interpretation is not clearly stated or may not be gauged. He criticised the proposition that 'what the legislature has not written, the court must write'.[25] Nonetheless, Lord Simonds had advanced a traditional view to resolving ambiguous provisions of legal instruments when he said that the above view by DenningLJ '…appears to…be a naked usurpation of the legislative function under the thin disguise of interpretation…if a gap is disclosed, the remedy lies in an amending Act'.[26]

It is submitted that Lord Simonds's remedy of filling gaps of ambiguous legal instruments by waiting for the legislature to make amendments may not be too practical when judges are faced with pressing issues for determination in the face of ambiguity. Whilst the suggestion is tenable and constructive, and equally in line with principles of separation of powers,a suggestion for interim measures which the court must take to interpret ambiguous provisions would be useful. Albeit Lord Simonds had highlighted that his area of concern is on the approach of what amounts to construction of modern statutes, he had admitted that 'it is after all a trite saying that on questions of construction different minds may come to different conclusions.'[27] In essence, Denning's position is worthy of support and Lord Simonds's caution is instructive. In cases where construction of legal instrument is needed or in cases where there is higher need or susceptibility for judicial discretion, particularly where there are gaps in statutes, Raz has recommended that judges should rely on their moral judgment.[28]This latter position appears to be in tandem with current trends with regards to judicial legislation. In the same vein, a foremost legal positivist, inclined to the concept of judicial law-making, HLA Hart observed that:

---

[23]*Magor* (n 22) 1236.

[24]*Magor and St Mellons Rural District Council v Newport Corporation* [1951] AC 189, 191(HL).

[25] ibid 191. See also *Seaford Court Estates Ltd v Asher* [1949] 2 All ER 155.

[26]*Magor and St Mellons* (n 24) 191 (HL).

[27] ibid 189.

[28] Joseph Raz, *The Authority of Law* (Clarendon 1979) 199.

Official Publication of the Society of Innovative Academic Researchers- SIAR PUBLICATIONS.
Advancing Real-Time Innovative Knowledge Globally. Copyright © Reserved -Author(s), Licensed to SIAR Publications

> In every legal system a large and important field is left open for the exercise of discretion by courts and other officials in rendering initially vague standards determinate, in resolving the uncertainties of statutes, or in developing and qualifying rules only broadly communicated by authoritative precedents.[29]

The above remark (text to n 29), and the foregoing discussion on the role of judges on questions of construction form the basis or justification for the judgment of the Federal High Court in Nigeria in the case of *Jonah Gbemre (for himself and as representing Iwherekan Community in Delta State, Nigeria) v Shell Petroleum Development Company Nigeria Ltd and others*.[30]

Despite the absence of a clear provision on the right to a clean and pollution-free environment in the Nigerian Constitution embodying fundamental rights, there has been a global call, and some isolated judicial interpretations recognising the right to a safe environment as a fundamental right. Steve Foster has rightly observed that certain rights and claims are considered as 'fundamental' because of the enhanced status they are given over and above other claims.[31]Amnesty International observed that 'human rights monitoring bodies, and international courts, are increasingly recognizing poor environmental quality as a causal factor in violations of human rights.'[32]

At the international level there are a series of Conventions and Treaties upholding the fact that environmental pollution could unavoidably infringe on basic rights of citizens. Justice Weeramantry of the International Court of Justice has pointed out that:

> The protection of the environment is…a vital part of contemporary human rights doctrine, for it is a sine qua non for numerous human rights such as the right to health and the right to life itself. It is scarcely necessary to evaluate this, as damage to the environment can impair all the human rights spoken of in the Universal Declaration and other human rights instruments.[33]

Justice Weeramantry's view, in practical terms is incontrovertible. But nevertheless, it is imperative to bear in mind the gap that exists between what the law of a country 'is' and what the law 'ought' to be. Whilst it is observed that environmental pollution would indisputably instigate clear violation of fundamental rights of citizens, this has not been trite and absolute in most jurisdictions. In essence, there has been a remarkable burden on victims of environmental pollution to establish the necessary link between fundamental rights and environmental pollution in courts, and where such link is established, the probability of establishing liability against government authorities is remarkably thin owing to prevailing circumstances that would have led to such pollution incidents, particularly, economic factors.

---

[29] HLA Hart, *The Concept of Law* (2nd edn, OUP 1997) 136.

[30] [2005] AHRLR 151 (Federal High Court of Nigeria, Benin judicial division).

[31] Steve Foster, *Human Rights and Civil Liberties* (Pearson 2003) 8.

[32] Amnesty International Publications, PETROLEUM, POLLUTION AND POVERTY IN THE NIGER DELTA (2009) 12.

[33] Hungary *v* Slovakia [1997] ICJ Separate opinion of vice-President Weeramantry, 91-92. <http://www.icj-cij.org/docket/files/92/7383.pdf> accessed 25 August 2015.

Official Publication of the Society of Innovative Academic Researchers- SIAR PUBLICATIONS.
Advancing Real-Time Innovative Knowledge Globally. Copyright © Reserved -Author(s), Licensed to SIAR Publications

In Nigeria, the *Jonah Gbemre* case is currently the only known 'reported' case where the court (The Federal High Court) took the step to affirm that constitutionally guaranteed fundamental rights to life and dignity of human person provided in sections 33(1) and 34(1) of the Nigerian Constitution respectively, and reinforced under Articles 4, 16 and 24 of the African Charter,[34] inevitably includes the right to a clean poison-free, pollution-free and healthy environment. From the provisions of international treaties and conventions mentioned in this research (particularly the European Convention on Human Rights and Fundamental Freedoms 1950) echoing the nexus between environmental pollution and fundamental rights infringement, the rationale for affirming violation of fundamental rights in the Nigerian Constitution, in cases of environmental pollution is not far-fetched. The rights to life and dignity of human person are conventionally hinged on a safe environment. What the Federal High Court has done in the *Jonah Gbemre* case is a clear attestation to the concept of *judicial legislation* by giving a wider interpretation to the rights to life and dignity of the human person; and in practical terms, this is a major role of the judiciary as a law reformer.

Unfortunately in the year 2015, after the Federal High Court ruling in the Jonah Gbemre case affirming the expansive interpretation of the fundamental rights in chapter iv of the Nigerian Constitution to include environmental rights, the Nigerian Court of Appeal in *Ikechukwu Opara & 3 Ors v Shell Petroleum Development Company of Nigeria Limited & 5 Ors*,[35] reasoned, without mincing words, that oil and gas pollution incidents are matters that cannot be 'knighted' as fundamental right actions under Chapter IV of the Nigerian Constitution and under the African Charter on Human and Peoples Rights. The Nigerian Court of Appeal maintained further that the fundamental rights to life and dignity of human person as prescribed in sections 33 and 34 of the 1999 Constitution of the Federal Republic of Nigeria, are very clear, specific and identifiable, and that the issues of gas flaring, oil exploration and environmental impact assessment, which are the substantive complaint of the appellants in that case, are not issues of fundamental rights.[36] More recently the Court of Appeal in July 2025, in the case of *All Farmers Association, Akwa Ibom State Chapter & Ors v Addax Petroleum Development (Nigeria) Limited*,[37] reasoned that oil pollution is not a fundamental human rights issue.

It is widely held that obtaining ecological justice in civil court proceedings against oil TNCs appears to be difficult for victims of environmental pollution in Nigeria.[38] It is true that on questions of construction of legal instruments different minds may come to different conclusions,[39] but it should be borne in mind that every government would be inclined to create an enabling environment for its investors and it is a hard fact that a strict environmental legal framework or judicial stance on liability could be distractive to oil and gas investors owing to the fact that environmental pollution is somewhat inevitable in the course of exploration and

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

[35](2015) 14 NWLR (Pt 1478) 291, (CA) 357-358 Paras (G)-(B).

[36]*Ikechukwu Opara v SPDC* (n 35).

[37]Unreported (Appeal Number: CA/A/864/2018) Court of Appeal Nigeria, Abuja Division, July 2025.

[38]TinekeLambooy and Marie-Eve Rancourt, 'Shell in Nigeria: From Human Rights to Corporate Social Responsibility' (2008) 2 *Hum Rights and Int'l Legal Discourse* 241.

[39]Magor and St Mellons case (n 24) (HL) (Lord Simonds).

Official Publication of the Society of Innovative Academic Researchers- SIAR PUBLICATIONS.
Advancing Real-Time Innovative Knowledge Globally. Copyright © Reserved -Author(s), Licensed to SIAR Publications

production of oil and gas. In this vein, it would not be difficult to pinpoint a few theories underpinning governments' reluctance in promoting environmental rights.

3. The Economic Well-Being of the State: An Obstacle to Enforcement of Environmental Rights in Nigeria

Carstensen maintained that there are several reasons why expressly stating economic or other theories of a legal rule, a doctrine, or a case is a worthy project.[40] He confirmed that though some legal scholars seem not to appreciate the importance of theory in explaining legal rules, therefore they deny or ignore the theory or theories they employ, and that this is bound to frustrate scholarly and practical understanding of law.[41]Carstensen's position forms the rationale for the discussion under the current section owing to the fact that most government policies and judicial decisions are leveraged by existing legal theories, consciously or not, and linking such theories to judicial verdicts or government policies will further expatiate and advance a better understanding of the current position of the law and the challenges bedeviling it, particularly in the area of fundamental rights and environmental law.

Furthermore, Carstensen had specifically identified some importance of utilising legal theory or theories in explaining legal doctrines or rules. First, it can facilitate the prediction of outcomes. Second, theory can aid to the identification of the results, processes, and implications of the pursuit of certain legal goals, by identifying and articulating directly on the goals. Third, theory can identify goals, and define ways to achieve them or at least explain how law aids or hinders their achievement. Fourth, theory can help evaluate the cost to goals ignored in single-minded pursuit of other goals. Fifth, specific theory is amenable to testing, validation, and critique in a way that loose generalisations and ad hoc conclusions are not. Finally, theory can instruct lawyers at a very practical level in the sorts of arguments and evidence that will make particular claims more or less persuasive.[42]This theory is deployed in the current research to examine the disposition of the Nigerian government; including the courts on the economic factors acting as barriers to environmental justice.

The economic theory of law is multi-faceted and complex. It is submitted that the key reason for the reluctance of some governments, particularly in developing States to inculcate fundamental rights to a pollution-free environment in the Constitution (the grundnorm), vis-à-vis activities of oil and gas, is the fact that oil transnational corporations have been a major source of the economic live stream of these nations and to open the door for fundamental rights enforcement in environmental matters is to open a flood gate of arbitrary and a plethora of judicial cases against TNCs, and if this is allowed, there is the tendency of victims obtaining a series of injunctions and compensations, thereby obstructing the profits and activities of these companies. Ejims observed in this regard that petroleum contracts are being entered into in Nigeria without providing for stringent measures within the contracts for protecting the environment of the host communities, particularly in the Niger Delta region.[43]

---

[40] Peter C Carstensen, 'Explaining Tort Law: The Economic Theory of Landes and Posner' (1987-1988) 86 *Michigan Law Review* 1161.

[41] ibid.

[42]Carstensen (n 40) 1162.

[43]Okechukwu Ejims, 'The impact of Nigerian international petroleum contracts on environmental and human rights of indigenous communities' (2013) AJICL 21 (3) 346.

Official Publication of the Society of Innovative Academic Researchers- SIAR PUBLICATIONS.
Advancing Real-Time Innovative Knowledge Globally. Copyright © Reserved -Author(s), Licensed to SIAR Publications

In fact, if such rights are overtly enshrined and recognised in the Nigerian Constitution, fundamental rights enforcement cases would be unprecedented owing to the growing number of oil spills in the country, particularly in the Niger Delta area where oil pollution incidents are predominant.

In the Nigerian case of *Allar Irou v Shell BP*,[44] where the claimant sought for an injunction to restrain the defendant (Shell BP) from continuous pollution of his land, the High Court, refusing the request maintained that:

> …Negligence or carelessness by the defendants' employees cannot be controlled by the defendants. To grant the order…would amount to asking the defendant to stop operating in the area …The interest of third persons must be in some cases considered e.g. where the injunction would cause stoppage of trade or throwing out a large number of people…mineral oil is the main source of this country's revenue…The defendant having being granted an oil exploration licence, an order for injunction may render …nugatory…such licence.[45]

In the light of the above case, there is no doubt that both the legislature and judiciary are fully conscious of the fact that substantial judicial proceedings with regard to oil and gas pollution would truncate or weaken exploration and production activities of TNCs. This standpoint may not be generalised in all jurisdictions in the world, but there is no doubt that the scenario is playing out in the Nigerian legal system. In fact, it is a traditional belief amongst victims of environmental pollution in the Niger Delta that pursuing a law suit for compensation against oil TNCs is an adventure in futility, because of the tendency of not getting justice due to Government's sympathy on oil operators.[46] In the *Jonah Gbemre* case, the ground-breaking case affirming the right to life and dignity of the human person to include environmental rights, the plaintiff's legal counsel was alleged to have reported that on May 31, 2006, the judge in the case had been removed from the Court in Benin and the file of the case could not be located.[47]

Wick submitted that the failure to enforce environmental standards against Shell (other oil companies as well) has attracted a series of allegations against the Nigerian government of manoeuvring a double standard by allowing oil TNCs in Nigeria to get away with many practices that would not be welcomed in Europe or US.[48] It follows that such environmental practices have led to a series of violence and judicial cases. In corroboration, the Human Rights Watch observed that the continued violence in the Niger Delta, particularly around oil facilities, is as a result of failed responsibilities on both the government and oil TNCs, and that with the synergy between

---

[44] Suit No. W/89/71, Warri High Court, November 26, 1973.

[45] ibid.

[46] John Vidal, 'Niger delta communities to sue shell in London for oil spill compensation' *The guardian* (London, 7 January 2015) <https://www.theguardian.com/environment/2015/jan/07/niger-delta-communities-to-sue-shell-in-london-for-oil-spill-compensation> accessed 15 October 2015. See also Vanguard News, 'Nigerian King takes Shell to court in London' *Vanguard* (Nigeria, 22 November 2016) <http://www.vanguardngr.com/2016/11/nigerian-king-takes-shell-court-london/> accessed 23 November 2025.

[47] Gas Flaring Lawsuit (re oil companies in Nigeria) <http://business-humanrights.org/en/gas-flaring-lawsuit-re-oil-companies-in-nigeria> accessed 28 October 2025.

[48]Laris Wick 'Human Rights Violations in Nigeria: Corporate Malpractices And State Acquiescence InThe Oil Producing Deltas of Nigeria' (2003-2004) 12 Mich St UJ Intl L 63, 73.

Official Publication of the Society of Innovative Academic Researchers- SIAR PUBLICATIONS.
Advancing Real-Time Innovative Knowledge Globally. Copyright © Reserved -Author(s), Licensed to SIAR Publications

government and oil companies operating in the Niger Delta, oil production is being supported at all cost.[49] Again, it is maintained that such support is anchored on economic grounds owing to its importance in the economic well-being of the State.

The Nigerian Senate disclosed that Nigeria has the highest number of oil spill incidences among oil producing countries with no penalty regime attached to such oil spills.[50]

It is submitted that the lack of will-power on the part of government in promoting environmental justice, could be linked with corruption allegations within government agencies. Some of these allegations on corruption between government agencies and the TNCs are contained in a draft report issued by a Special Task Force set up by the Nigerian government (under former president Goodluck Jonathan) to look into the rot in the Nigerian oil industry which was headed by Nuhu Ribadu in 2012. The report was said to have implicated the Nigerian National Petroleum Corporation (now known as the Nigerian National Petroleum Company Limited), which is the State oil firm, ministers, government agencies and oil majors in dodgy deals and mismanagement which is estimated to have cost Nigeria $35 billion over the last 10 years.[51] Although, this report has received criticism in some quarters as unsubstantiated facts, it is widely believed by most Nigerians that the report should be given necessary attention.[52] It is maintained that if the aforesaid allegation and others are to be legally established, it will suffice to conclude that the corruption issues are contributing immensely against the attainment of environmental justice.

Kenneth Roth had pointed out that cases of security crackdown on local oil producing communities in the Niger Delta is an indication that the Nigerian government is continuing to use violence to protect the interests of international oil companies.[53] There are unsustainable reports from Human Rights Watch regarding incidents in which the Nigerian security forces have beaten, detained, or even killed inhabitants of the oil producing Niger Delta who were involved in protests over activities of oil companies concerning environmental pollution and compensation for resulting damage.[54] Philip Hammond(the then British Foreign Secretary), advised the Nigerian government in the face of recent oil pipelines bombings in 2016, to deal with the root causes or grievances of the Niger Delta people rather than resorting to military confrontations.[55]

Conversely, the government in recent years has put a couple of programmes to ameliorate the plight of the inhabitants of the Niger Delta. Of key importance, are the establishment of the Niger

---

[49] Human Rights Watch, Nigeria: No Democratic Dividend for Oil Delta (October 22, 2002) <https://www.hrw.org/news/2002/10/22/nigeria-no-democratic-dividend-oil-delta> accessed 5 August 2025.

[50] Henry Umoru, 'Nigeria has highest oil spill in the world' Vanguard News (Nigeria, 14 November 2012) <http://www.vanguardngr.com/2012/11/nigeria-has-highest-oil-spill-in-the-world-senate/> accessed 15 August 2024.

[51] The Guardian, 'How to lose $35bn' (Nigeria 13 November 2012) <https://www.theguardian.com/world/2012/nov/13/nigeria-oil-corruption-ridabu> accessed 27 June 2025.

[52] ibid.

[53] Human Rights Watch: Oil Companies Complicit in Nigerian Abuses (February 23, 1999) <https://www.hrw.org/news/1999/02/23/oil-companies-complicit-nigerian-abuses> accessed 5 August 2025.

[54] Human Rights Watch: Oil Companies Complicit in Nigerian Abuses (n 50).

[55] Vanguard News, 'UK warns Buhari: Using military confrontation in the Niger Delta could end in disaster' (Nigeria, 16 May 2016) <http://www.vanguardngr.com/2016/05/uk-warns-buhari-using-military-confrontation-in-niger-delta-could-end-in-disaster/> accessed 16 May 2025.

Official Publication of the Society of Innovative Academic Researchers- SIAR PUBLICATIONS.
Advancing Real-Time Innovative Knowledge Globally. Copyright © Reserved -Author(s), Licensed to SIAR Publications

Delta Development Commission (NDDC),[56] the Niger Delta Ministry[57] and the Niger Delta Amnesty Programme.[58] It is maintained that judges would take every step which the executive has taken to ameliorate the plight of inhabitants of the Niger Delta area into consideration whilst adjudicating on disputes relating to environmental pollution activities of TNCs. In essence, in a case of environmental pollution, it is possible that the Court may consider whether government through the aforementioned programmes and others has done anything reasonable to address the claims of the applicants or plaintiff. Although, in an argument for breach of fundamental rights to life and dignity of human person there are no such exceptions or qualified considerations as spelt out in the Nigerian Constitution if circumstances requires it to do so. In the English legal system, section 1(2) of the Human Rights Act provides, inter alia, that those rights (Convention rights)[59]are to have effect for the purposes of the Act subject to any designated derogation or reservation,[60] and in the English case of *Marcic v Thames Water Utilities Ltd*,[61] Marcic's claim on violation of rights to private and family life was rejected by the courts on the ground that Marcic had failed to comply with provisions of the Water Resources Act set by Parliament (government) to address individual complaints regarding to alleged violations. Mr Marcic was held to have ignored the scheme, which was considered to be convention-compliant by bringing an action directly on Thames Water without any formal complaint to the Director of Water Resources (this office is now abolished by virtue of section 34 of the Water Act 2003). In view of this, it is mentioned that in satisfying this obligation of striking a balance between the interests of individuals and States, the court will give credence as to whether the State has complied with its own positive duty of taking 'reasonable and appropriate' measures in securing the victim or claimant's rights. Under the Nigerian Constitution, such expanded discretion by the courts can only be exercised under sections 37-41, of which only section 37, which borders on the right to private and family life appears to be relevant to environmental issues as discussed in this research. Section 45 of the Nigerian Constitution provides that:

> Nothing in sections 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society-in the interest of defence, public safety, public order, public morality or public health; or for the purpose of protecting the rights and freedom of other persons.[62]

---

[56] The commission is established by the Niger Delta Development Commission (Establishment etc) Act LFN 2000 NO 6 and its primary mandate is the conception, planning and implementation of projects and programmes for sustainable development of the Niger Delta area. See official website of NDDC at <http://www.nddc.gov.ng/about%20us.html> accessed 5 August 2025.

[57] The Federal Ministry of Niger Delta Affairs was established former president (late) Umaru Musa Yar' Adua in 2008 in his drive to make the Niger Delta a better place, bring about peace and sustained development in the region. See <http://www.nddc.gov.ng/about%20us.html> accessed 5 August 2025.

[58] The Niger Delta Amnesty Programme was equally established by ex-President (late) Umaru Musa Yar' Adua for ex-agitators in the Niger Delta region who accepted the federal government offer and registered for the rehabilitation and integration programme. See <http://news.bbc.co.uk/1/hi/world/africa/8118314.stm> accessed 5 August 2025.

[59] The Convention Rights as incorporated in section 1(1) of the Human Rights Act 1998.

[60] Human rights Act 1998, s 1(2).

[61] [2003] UKHL 66, [2004] 2 AC 42.

[62] Constitution of the Federal Republic of Nigeria, 1999 (as amended), s 45(1)(a)(b).

Official Publication of the Society of Innovative Academic Researchers- SIAR PUBLICATIONS.
Advancing Real-Time Innovative Knowledge Globally. Copyright © Reserved -Author(s), Licensed to SIAR Publications

One defence or exception that is overtly missing from the above section 45 of the Nigerian Constitution is that of 'economic well-being'; as this has been shown to be a ground under which the right to private and family life incorporated in the European Convention on Human Rights and automatically in the English legal system by virtue of the transplant of the Convention Rights can be infringed.[63] It could be suggested that the drafters of the Nigerian Constitution had never envisaged circumstances where the fundamental right to private and family life would be violated for economic reasons.

It is not overtly established whether judges would consider economic factors in fundamental rights enforcement proceedings, since it has been shown that the Nigerian Constitution does not capture 'economic well-being' as an exception in any of the provisions for fundamental rights infringement under Chapter IV (particularly the rights to life, dignity of the person and private and family life). But insight on the likely position of the Nigerian Courts in giving consideration to economic well-being of the State in deciding cases bordering on environmental rights enforcement can be extrapolated from the case of *Allar IrouvShell BP* as mentioned above.[64] Albeit the judge had refused injunction to jettisoning oil mining activities of Shell BP, noting that the injunction if granted would truncate trade activities of the company, and bearing in mind that oil is the main source of the country's revenue, the aforesaid case was based on common law principle of nuisance and negligence and not under fundamental rights enforcement as captured in the Constitution. It is believed that the Courts' reasoning would be narrower and strict if such an injunction was sought under a proceeding for fundamental rights enforcement as clearly shown in the *Jonah Gbemre* case.[65]

4. Judicial Technicalities and the Lack of Enforcement of Extant Environmental Laws

It is pertinent to point out that some other major challenges in the Niger Delta area with regard to environmental pollution and complaints of injustice seems to be surrounded by shortcomings from judicial interpretations and enforcement of environmental laws.[66] Investigations carried out by the Human Rights Watch in the Niger Delta concerning security force abuses on local inhabitants reveals that oil companies have not abided by environmental standards or provided adequate compensation in line with the damage caused through environmental pollution.[67]It is observed that the traditional principles of liability in environmental pollution cases, such as the strict liability rule, liability principles surrounding the torts of nuisance and negligence are vague, or overtly unsatisfactory and undermines the legal rights of the inhabitants of such pollution prone areas to enjoy a safe (or healthy) environment. Owing to this, it is recommended in the current research that the judiciary should give adequate attention toward promoting fundamental rights relating to the protection and preservation of the environment, as these rights are seen to be given

[63] See Article 8(2) of the European Convention on Human Rights and Fundamental Freedoms 1950.

[64] *Allar Iron*(n 43).

[65] *Jonah Gbemre v SPDC & Others* (n 30).

[66] In Nigeria, there are sophisticated laws for the protection and preservation of the environment, but the problem lies in the lack of enforcement of these laws.

[67] Human Rights Watch, Report 'The Price of Oil: Corporate Responsibility and Human Rights Violations in Nigeria's Oil Producing Communities' (January, 1999) 4 <http://www.hrw.org/legacy/reports/1999/nigeria/nigeria0199.pdf> at accessed 5 August 2025.

Official Publication of the Society of Innovative Academic Researchers- SIAR PUBLICATIONS.
Advancing Real-Time Innovative Knowledge Globally. Copyright © Reserved -Author(s), Licensed to SIAR Publications

higher status over other rights regarding environmental liability and compensation claims. On the challenge raised by judicial technicalities, Kalu and Stewart have maintained 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.[68]

Kalu and Stewart's position above deserves support owing to the legal burden encountered in establishing torts of negligence and other related torts in environmental pollution cases, particularly where most victims do not fully understand the operational rules and activities of the oil operators. In addition, it has been shown in a plethora of decided cases that TNCs mostly furnish the defence of 'malicious act of third parties' to escape liability, stating that the cause of oil spills is an effect of illegal oil bunkering and/or intentional pipeline vandalism by saboteurs, and this defence is valid in both common law and extant statutory schemes on environmental liability in Nigeria,[69] particularly the Oil Pipelines Act.[70]

It was mentioned in the *Bodo Community*[71]case that the 'reasonable steps' to be taken by TNCs in protection of oil pipelines, can, in some cases, be interpreted as including curtailing intentional acts of sabotage.[72] Owing to this, TNCs would be deemed, in some exceptional cases not to have taken 'reasonable steps' if they fail to comply with modern technologies that could safeguard the pipelines and other installations.[73] For instance, installation of anti-tampering equipment or other sort of technology to maintain rapid surveillance would amount to reasonable or preventable steps to avoid oil spills. Technically, it would be difficult for a claimant to prove through direct evidence that TNCs have not taken reasonable steps to protect oil pipelines. It is against this background that an argument for the enforcement of fundamental rights relating to the environment is raised in chapter 6 of the research. It is argued that enforcement of these rights would generate a higher level of environmental responsibility by TNCs.

Again, despite government's programmes put in place to address the plight of the people, there seem not to be much achieved to improve the welfare of the people. This might be linked to cases of corrupt officials appointed to oversee the affairs of the various organs established by the government.

Looking at the existing legislation in Nigeria, including environmental provisions in the African Charter on Human and People's Right (Ratification and Enforcement) Act,[74] and the Nigerian

---

[68] Victoria E Kalu and Ngozi F Stewart, 'Nigeria's Niger Delta Crises and Resolution of Oil and Gas Related Disputes: Need for a Paradigm Shift' (2007) 25 JENRL 244, 253.

[69] See *The Bodo Community* v *The Shell Petroleum Development Company of Nigeria Ltd*, [2014] EWHC 1973 (TCC) [93] (Mr Akenhead).

[70] Cap O7 LFN 2004, s 11(5)(c).

[71] *The Bodo Case* (n 69)

[72] *The Bodo case* (n 69) [93].

[73] *The Bodo case* (n 69) [92] (g).

[74] Cap A9 Vol 1 LFN 2004.

Official Publication of the Society of Innovative Academic Researchers- SIAR PUBLICATIONS.
Advancing Real-Time Innovative Knowledge Globally. Copyright © Reserved -Author(s), Licensed to SIAR Publications

Constitution, there is no gainsaying that the Nigerian environmental legal regime is adequately equipped to address cases of pollution caused by oil and gas. Although, Bukola Saraki (in the Nigerian Senate) had maintained that due to lack of penalties and cost framework much of the spills in Nigeria have been 'ignored, neglected and in most cases never cleaned up or the sites remediated'.[75] This latter position could be supported, but it is worth mentioning that a substantial part of environmental challenges faced in Nigeria is anchored on the reluctance of the courts to give strict interpretations to extant laws on environmental protection and preservation as shown throughout this research.

5. Conclusion

This paper has expatiated on the concept of 'judicial legislation' and some aspects of the theory of economics and law. It is stated that one of the primary sources of law is case-law or judicial precedence, and this is predicated on the use of judicial discretion in a judicious manner to promote consistency in the body of the law. This awareness is deployed due to the numerous challenges encountered in attaining environmental justice in Nigeria; and due to lack of explicit legal provisions upholding environmental rights, there is need for the courts to give wider interpretations to existing relevant fundamental rights to secure a healthy environment. In this regard, legal provisions are found in the Nigerian Constitution as well as the African Charter relating to environmental protection as discussed; and in the Nigerian Constitution, the most direct one is precatory (section 20 of the Nigerian Constitution), while the enforceable provisions perceived to guarantee environmental rights are ambiguous. But in all, the intentions of the drafters of the Constitution are easily deciphered with the aid of judicial pronouncements as seen in the *Jonah Gbemre* case. Unfortunately, the Court of Appeal in Nigeria took a different standpoint that oil and gas pollution incidents are matters that cannot be 'knighted' as fundamental right actions under Chapter IV of the Nigerian Constitution and under the African Charter on Human and Peoples Rights. It is worth noting that in view of the principle of judicial precedent, the Federal High Court is bound by the decisions of the Court of Appeal.

It is observed that government (including the judiciary) is committed to protecting the interest of oil TNCs owing to the economic benefits derived from oil and gas activities, and this trend is seen as a major challenge towards enforcement of environmental rights in the sense that government may not be inclined to push for draconian laws, like explicit fundamental rights to a clean environment, which would likely affect activities of oil operators. In recent years, there are reported cases of victims of environmental pollution in the Niger Delta seeking for justice in foreign courts. Many have expressed fear that if they seek for redress in the Nigerian courts the oil TNCs will always win due to government interest. This has inevitably led to victims of environmental pollution in Nigeria looking for justice in foreign courts, and those who could not afford the rigors of litigation have resorted protests which has consequently led to major confrontations between government security forces and the protesters. In this vein, it is highlighted that Nigeria is rich with a series of statutes on environmental liability but there are major shortcomings in the aspect of judicial technicalities, and lack of enforcement of environmental laws.

[75] Henry Umoru, 'Nigeria has highest oil spill in the world' Vanguard News (Nigeria, 14 November 2012) <http://www.vanguardngr.com/2012/11/nigeria-has-highest-oil-spill-in-the-world-senate/> accessed 15 August 2025.

Official Publication of the Society of Innovative Academic Researchers- SIAR PUBLICATIONS.
Advancing Real-Time Innovative Knowledge Globally. Copyright © Reserved -Author(s), Licensed to SIAR Publications