



## CONSTITUTIONALIZING THE RIGHT TO A HEALTHY ENVIRONMENT: A PATHWAY TO ENFORCING THE SDGS IN NIGERIA

By

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### Abstract

*This article explores the imperative of constitutionalizing the right to a healthy environment in Nigeria as a legal mechanism to enhance the enforceability of environmental dimensions of the Sustainable Development Goals (SDGs), particularly SDG 6 (Clean Water and Sanitation), SDG 13 (Climate Action), and SDG 15 (Life on Land). Grounded in legal theory and doctrinal analysis, it critiques Nigeria's current constitutional framework, where environmental protection remains a non-justiciable directive under Section 20 of the 1999 Constitution. Drawing on leading Nigerian case law such as *Gbemre v. Shell* and *Centre for Oil Pollution Watch v. NNPC*, the article examines how Nigerian courts have attempted to infer environmental rights through existing fundamental rights. Comparative analysis from South Africa, Kenya, and Colombia illustrate how express constitutional recognition of environmental rights has enabled robust judicial enforcement of environmental standards and advanced sustainable development. The article argues that enshrining the right to a healthy environment in Nigeria's Constitution would provide a clearer legal foundation for environmental litigation, enhance regulatory accountability, and align domestic law with global sustainability commitments. It concludes that constitutional reform is not only timely but essential to achieving environmental justice and fulfilling Nigeria's SDG obligations.*

**Keywords:** Comparative Environmental law, Environmental Constitutionalism, Environmental Rights, Nigeria, Sustainable Development Goals.

### 1.0 INTRODUCTION

In September 2015, United Nations member states including Nigeria adopted the Sustainable Development Goals (SDGs), a global agenda addressing issues from poverty eradication to environmental sustainability.<sup>1</sup> Among these goals, SDG 6 on Clean Water and Sanitation, SDG 13 on Climate Action, and SDG 15 on Life on Land squarely focus on environmental well-being. A decade on, Nigeria faces significant challenges in meeting these targets. The country grapples with severe environmental degradation: for instance, in the oil-rich Niger Delta, decades of pollution have devastated ecosystems and communities.<sup>2</sup> Between 2020 and 2021 alone, over 822 oil spills discharged about 28,003 barrels of oil into sensitive Nigerian ecosystems.<sup>3</sup> Deforestation, desertification, and poor air and water quality

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<sup>1</sup> United Nations General Assembly, *Transforming Our World: The 2030 Agenda for Sustainable Development* (21 October 2015) UN Doc A/RES/70/1.

<sup>2</sup> Aroloye O Numbere, Tambeke N Gbarakoro and Bernard B Babatunde, 'Environmental Degradation in the Niger Delta Ecosystem: The Role of Anthropogenic Pollution' in SC Izah and MC Ogwu (eds), *Sustainable development and biodiversity* (Springer 2023).

<sup>3</sup> Collins Okeke, 'Nigeria's Constitutional Reform Must Address Environmental Rights' *The Guardian Nigeria News* (22 March 2025) <<https://guardian.ng/opinion/nigerias-constitutional-reform-must-address-environmental>>



further hinder progress on SDGs 6, 13, and 15. While Nigeria has environmental statutes and has ratified international environmental agreements, enforcement remains weak. One critical gap in Nigeria's legal architecture is the absence of an explicit constitutional right to a healthy environment.

Under Nigeria's 1999 Constitution (as amended), environmental protection is articulated only as a directive principle of state policy which declares that "*the State shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria.*"<sup>4</sup> However, this provision resides in Chapter II of the Constitution, rendering it non-justiciable – i.e. not directly enforceable in court due to Section 6(6)(c) of the Constitution. Thus, communities affected by pollution or environmental degradation cannot invoke Section 20 as a fundamental right in Nigerian courts. This constitutional design can be described as a "critical loophole" allowing environmental harms to go unredressed. In practice, victims of environmental harm have had to rely on ordinary legislation (often inadequately enforced) or on creative interpretations of other fundamental rights (such as the right to life) to seek justice. The result is a weak enforcement regime for environmental protection, undermining Nigeria's ability to achieve its sustainable development commitments.

A growing body of scholarship and international practice suggests that constitutionalizing environmental rights can significantly strengthen environmental governance and accountability. Elevating environmental protection to a constitutional principle grants it binding legal force and makes government accountable for implementation.<sup>5</sup> Indeed, the idea of "environmental constitutionalism" – incorporating explicit environmental rights or duties into fundamental law has gained global traction in recent decades. In July 2022, the United Nations General Assembly formally recognized the right to a clean, healthy and sustainable environment as a human right, reflecting global consensus on its importance.<sup>6</sup> Within Africa, more than half of constitutions explicitly protect environmental rights.<sup>7</sup> Notably, South Africa and Kenya are like Nigeria, common law jurisdictions in Africa enshrine the right to a healthy environment and have developed robust case law around it. Beyond Africa, countries like Colombia have constitutionalized environmental rights and even recognized nature as a legal subject in landmark rulings.<sup>8</sup> These comparative experiences offer valuable lessons on how a constitutional right can serve as a powerful tool to advance sustainable development.

This article aims to explore how constitutionalizing the right to a healthy environment in Nigeria could provide a much-needed pathway to enforce the SDGs. The analysis is structured as follows. First, we discuss the theoretical underpinnings of environmental constitutionalism and its linkage to sustainable development, highlighting why making the

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accessed 31 May 2025.

<sup>4</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended), s 20.

<sup>5</sup> Peter Oniemola and OyinkanTasie, 'Engendering Constitutional Realization of Sustainable Development in Nigeria' (2020) 13 Law and Development Review 159.

<sup>6</sup> United Nations General Assembly, *The human right to a clean, healthy and sustainable environment* (28 July 2022) UN Doc A/RES/76/300.

<sup>7</sup> The Access Initiative, 'The Road to Realizing Environmental Rights in Africa: Moving from Principles to Practice' (2022) <[https://accessinitiative.org/wp-content/uploads/2022/10/22.01\\_rep\\_access\\_initiative\\_v583-4.pdf](https://accessinitiative.org/wp-content/uploads/2022/10/22.01_rep_access_initiative_v583-4.pdf)> accessed 31 May 2025.

<sup>8</sup> See the case of *Future Generations v. Ministry of the Environment and Others* STC4360-2018 (Supreme Court of Colombia, 5 April 2018).



SDGs justiciable through constitutional means could rescue their implementation in Nigeria. Next, we examine the current Nigerian legal framework including statutory law and case law to identify gaps and opportunities for recognizing environmental rights. We then present a comparative analysis of South Africa, Kenya, and Colombia, reviewing their constitutional provisions and jurisprudence to illustrate how a constitutional right to environment has strengthened enforcement of environmental objectives analogous to SDGs 6, 13, and 15. In the penultimate section, we turn to the Nigerian context in detail, analysing how an explicit constitutional right could bolster the enforcement of each of the target SDGs (clean water/sanitation, climate action, and terrestrial ecosystem protection) and what legal mechanisms (e.g. litigation, judicial review, legislative reforms) would come into play. We also consider potential challenges – such as justiciability concerns and institutional capacity – and address counterarguments. Finally, the conclusion synthesizes the findings and makes recommendations, arguing that constitutional reform to enshrine environmental rights is a timely and necessary step for Nigeria’s sustainable development and environmental justice.

## 2.0 THEORETICAL FRAMEWORK

Environmental constitutionalism refers to the integration of environmental rights or principles into a constitution, thereby elevating environmental protection to the highest level of a legal system. This concept rests on the premise that a healthy environment is foundational to other human rights (such as the rights to life, health, and property) and to the long-term development of a nation.<sup>9</sup>By entrenching environmental rights in a constitution, a state commits to protecting the environment not just as a policy choice but as a legal obligation owed to its citizens and future generations. Crucially, constitutional rights are typically enforceable in courts, which means citizens and civil society can hold governments and even private actors accountable for environmental harm in a more direct way than if the same norms were merely statutory or policy-based. In other words, making environmental objectives constitutional can transform them from aspirational goals into concrete legal mandates. This has direct relevance for the SDGs, which are often criticized as non-binding international aspirations; constitutionalization can domesticate and harden these goals. As Ruppel and Murray<sup>10</sup> observed that incorporating the SDGs into constitutional principles gives them enforceable legal status, thereby holding governments legally responsible for ensuring their implementation. In the Nigerian context, where many SDG-aligned objectives (clean water, sanitation, environmental protection) are listed among non-justiciable directive principles, constitutionalizing them could be a rescue plan for the SDGs.<sup>11</sup>

From a sustainable development perspective, the environment is one of the three pillars (alongside economic and social development) and is interlinked with the others. The SDGs themselves explicitly integrate human rights and environmental protection. For example, SDG 6 which is on targeting universal access to safe water and sanitation and SDG 15 on conserving terrestrial ecosystems are directly environment-focused, while SDG 13 which

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<sup>9</sup>Lael K Weis, ‘Environmental Constitutionalism: Aspiration or Transformation?’ (2018) 16 *International Journal of Constitutional Law* 836.

<sup>10</sup>Oliver C Ruppel and Ruda Murray, ‘The Future of the SDGs: A Comparative Constitutional Rescue Plan?’ (2024) 54 *Environmental Policy and Law* 155.

<sup>11</sup>Emmanuel Idowu Ojobanikan, ‘Learning from Millennium Development Goals for Successful Implementation and Attainment of the Sustainable Development Goals in Nigeria’ (2022) 5 *International Journal of Social Science Research and Review* 589.



deals with climate action addresses a global environmental challenge through calls for urgent action.<sup>12</sup> Legal theory supports the view that environmental rights have both substantive and procedural dimensions. Substantively, a right to a healthy environment implies a certain quality of environment – e.g. clean air, safe drinking water, biodiversity conservation – to which people are entitled. Procedurally, it often encompasses rights to information, participation, and access to justice in environmental matters.<sup>13</sup> Many modern constitutions including Kenya's and South Africa's reflect this by coupling the environmental right with state duties and citizens' remedies such as the right to seek court orders to prevent environmental harm.<sup>14</sup> These features align closely with SDG 16 which deals with peace, justice and strong institutions and SDG 17 (partnerships), as they promote inclusive decision-making and accountability.

A key theoretical question is: what added value does a constitutional environmental right provide over ordinary legislation? One answer lies in enforceability and longevity. Constitutions are harder to change and often enjoy greater authority than statutes. Enshrining environmental protection in a constitution signals that it is a fundamental value that cannot be easily overridden by transient political interests.<sup>15</sup> It also typically empowers judges to review government actions or inaction for compliance with environmental duties, thereby integrating the judiciary as a stakeholder in environmental governance. In jurisdictions with constitutional environmental rights, courts have developed innovative remedies – from orders directing government agencies to enforce anti-pollution laws, to suspending environmentally harmful projects, to mandating environmental restoration plans. All these tools can directly further SDG implementation. Moreover, constitutional rights can inspire stronger legislation and policies; for instance, a constitution that guarantees water as a right is likely to spur laws and investments to ensure potable water for all.

Dafiel,<sup>16</sup> cautions about potential challenges: vague provisions might lead to judicial overreach or inconsistent application, and resource-constrained governments worry about courts mandating costly environmental measures. However, comparative experiences show that courts often apply reasonableness and progressive realization standards for socio-economic rights, balancing ideal outcomes with practical feasibility. South Africa's Constitutional Court, for example, in socio-economic rights cases (like the right to housing and health) has required the state to take reasonable measures rather than to immediately solve the problem entirely.<sup>17</sup> A similar approach can be applied to environmental rights, the state might be obliged to have and implement reasonable plans to reduce pollution or expand clean water access, without necessarily guaranteeing perfection overnight. This approach meshes with the SDGs' ethos of progressive achievement by 2030 and beyond.

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<sup>12</sup> United Nations General Assembly, *Transforming Our World: The 2030 Agenda for Sustainable Development* (21 October 2015) UN Doc A/RES/70/1, Goals 6, 13, and 15.

<sup>13</sup> Joshua C Gellers and Chris Jeffords, 'Toward Environmental Democracy? Procedural Environmental Rights and Environmental Justice' (2018) 18 *Global Environmental Politics* 99.

<sup>14</sup> Constitution of the Republic of Kenya 2010, art 42; Constitution of the Republic of South Africa 1996, s 24.

<sup>15</sup> Nicholas Bryner, 'A Constitutional Human Right to a Healthy Environment' in Douglas Fisher (ed), *Research Handbook on Fundamental Concepts of Environmental Law* (Edward Elgar Publishing 2022).

<sup>16</sup> Grace Perpetual Dafiel, 'Navigating the Legal Hurdles: A Jurisprudential Analysis of Environmental Protection in Nigerian Courts' (2025) 9 *African Journal Of Law And Human Rights* 56.

<sup>17</sup> *Government of the Republic of South Africa v Grootboom* 2001 (1) SA 46 (CC); *Minister of Health v Treatment Action Campaign* (No 2) 2002 (5) SA 721 (CC).



### 3.0 ENVIRONMENTAL RIGHTS IN NIGERIA'S LEGAL FRAMEWORK

Nigeria's Constitution does not yet recognize an explicit fundamental right to a healthy environment. As noted, Section 20 of the 1999 Constitution places a duty on the State to protect and improve the environment, but this resides in Chapter II, alongside other socio-economic objectives (such as health, education, etc.) that are expressly declared non-justiciable by virtue of Section 6(6)(c). Nigerian courts have long held that they cannot directly enforce the directive principles in Chapter II, as these are meant to guide governance rather than confer individual rights<sup>18</sup>. This constitutional scheme reflects a historical compromise, perhaps intended to avoid courts compelling the government to deliver social goods. However, it stands at odds with contemporary trends that treat certain environmental goods (clean air, water) as basic human rights. The practical consequence is a legal vacuum: Nigeria has many environmental laws and regulations, but if those laws are weakly enforced by agencies, affected citizens face hurdles in seeking judicial redress because they cannot invoke a constitutional right to a clean environment. The enforcement of SDG targets – which often requires compelling government action or corporate accountability – is therefore impeded by this constitutional gap.<sup>19</sup>

Notwithstanding the lack of an explicit constitutional right, Nigerian jurists have attempted to “green” the constitution through interpretation. Pioneering this approach was the case *Jonah Gbemre v. Shell Petroleum Development Company Nigeria Ltd and Others*,<sup>20</sup> a Federal High Court case arising from gas flaring in the Niger Delta. In a landmark judgment, the court held that the fundamental rights to life as guaranteed in section 33 of the Constitution and to human dignity under section 34 necessarily encompass the right to an environment that is clean, free from toxins and pollution, and conducive to good health.<sup>21</sup> In other words, although the Constitution does not list environmental quality as a named right, the court read it into the already justiciable right to life. This judicial innovation was influenced by Article 24 of the African Charter on Human and Peoples' Rights, which guarantees a right to a generally satisfactory environment. Nigeria had incorporated the African Charter into domestic law,<sup>22</sup> which meant Nigerian courts could apply it. The court in *Gbemre* indeed cited the African Charter and international environmental norms to bolster its interpretation. The *Gbemre* decision was historic in recognizing an environmental human right in Nigeria; however, its aftermath was less encouraging.<sup>23</sup> The enforcement of the judgment (which ordered Shell and other oil companies to stop flaring gas in the community) was reportedly stalled, and the case highlighted the difficulties of relying on implied rights particularly in the face of powerful economic interests and regulatory gaps. Nonetheless, *Gbemre* set a precedent and ignited discussion on the need for formal recognition of environmental rights.

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<sup>18</sup>Ayodele Babalola, 'The Right to a Clean Environment in Nigeria: A Fundamental Right?' (2019) 26 *Hastings Environmental Law Journal* 1.

<sup>19</sup>Olusola Joshua Olujobi, Oshobugie Suleiman Irumekhai and AD Aina-Pelemo, 'Sustainable Development and National Integration: A Catalyst for Enhancing Environmental Law Compliance in Nigeria' (2024) 54 *Environmental Policy and Law* 27.

<sup>20</sup>(2005) *AHRLR* 151

<sup>21</sup>Jenigho Philip Esavwede and Ufuoma Garvin Oyibodoro, 'Gas Flaring in Nigeria's Niger Delta: Legal Challenges and Lessons from Norway's Regulatory Framework' (2025) 05 *Journal of Environmental Law & Policy* 152.

<sup>22</sup>African Charter (Ratification and Enforcement) Act, Cap A9 Laws of the Federation 2004.

<sup>23</sup>U.G. Ehirim, U.V. Awhefeada and A.E. Abuza, 'Legal Issues in the Regulation of Sand Dredging Activities in Nigeria' (2022) 13 *Calabar Law Review Journal* 104.



Over a decade later, Nigeria's Supreme Court decisively affirmed this interpretative approach in *Centre for Oil Pollution Watch (COPW) v. Nigerian National Petroleum Corporation*.<sup>24</sup> This case involved an environmental NGO suing the NNPC over a massive oil spill that had harmed communities and the environment. The key issue was locus standi (standing): NNPC argued that the NGO had no standing since it wasn't directly affected. The Supreme Court, however, took a bold stance. It relaxed the rules of legal standing in environmental cases by allowing "public-spirited individuals and organizations" to initiate court actions aimed at ensuring the remediation, restoration, and safeguarding of the environment.<sup>25</sup> In doing so, the Court explicitly recognized that environmental protection is a matter of public interest, not merely a private injury. Crucially, the Supreme Court went on to green the Constitution itself: it held that Section 20, although located in Chapter II, could be made justiciable when read in harmony with legislative powers in Section 4(2) of the Nigerian constitution. More explicitly, the Court held that the fundamental right to life guaranteed under Section 33 of the Constitution inherently encompasses and constitutes a fundamental right to a clean and healthy environment for everyone.<sup>26</sup> Additionally, the Court affirmed the enforceability of Article 24 of the African Charter within Nigeria's domestic law. Justice Kumai BayangAkaahs JSC emphasized that overlooking environmental degradation in the face of escalating climate change and pollution is no longer sustainable.<sup>27</sup> He highlighted the "growing concern about climate change, depletion of the ozone layer, waste management, flooding, and global warming," and called for a broader interpretation of legal standing and rights to effectively confront these environmental challenges.<sup>28</sup> The COPW judgment, therefore, stands as Nigeria's strongest judicial recognition of environmental rights to date.<sup>29</sup>

Despite these progressive decisions, significant limitations persist in the absence of constitutional amendment. First, not all courts are inclined to interpret rights expansively. Lower courts frequently maintain that Section 20 of the 1999 Constitution is non-justiciable unless litigants creatively link it to enforceable rights such as the right to life or property under Chapter IV.<sup>30</sup> This judicial inconsistency has led to uneven jurisprudence across Nigeria. Second, even the Supreme Court's evolving approach still necessitates framing environmental claims within the scope of other constitutional rights. Litigants must often demonstrate that environmental harm, for example, pollution directly endangers the right to life or property, an evidentiary threshold that may demand complex, expensive scientific proof and expert testimony. This burden can be prohibitive in cases involving oil spills, gas flaring, or toxic waste exposure, where causation is scientifically complex. Oil companies and government agencies frequently exploit this legal ambiguity, arguing that without an explicitly guaranteed environmental right, such harms remain within the realm of policy rather than rights enforcement.<sup>31</sup> As a result, courts often engage in what has been termed

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<sup>24</sup> [2019] 5 NWLR (Pt. 1666) 518 (SC).

<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*

<sup>29</sup> U.V. Awhefeada, U.G. Ehirim and A.E. Abuza, 'Legal and Institutional Framework for the Regulation and Control of Extractive Activities in Nigeria: Sand Dredging in Perspective' (2022) 3(1) *Jus Corpus Law Journal* 352.

<sup>30</sup> See *Okogie v Attorney-General of Lagos State* (1981) 2 NCLR 337.

<sup>31</sup> Brown EtareriUmukoro and Moses OgorugbaOmozue, 'PROSECUTING ENVIRONMENTAL POLLUTION CASES in NIGERIA: THE HEAD of a CARMEL PASSING through the EYE of a NEEDLE' (2024) 3 PPLRUNLAW REVIEW 1.



“interpretative gymnastics” to fit environmental grievances into existing fundamental rights frameworks,<sup>32</sup> an approach that may fail to accommodate broader ecological concerns such as biodiversity loss or climate resilience.

Finally, the issue of remedies presents a further challenge. Where a right is not explicitly articulated in the Constitution, courts may be reluctant to grant robust remedies. The existence of a clearly defined constitutional right to a healthy environment would empower courts to issue far-reaching orders such as mandating environmental clean-up operations or compelling regulatory reforms with greater legitimacy. In the absence of such textual authority, judges may fear overstepping their constitutional mandate, particularly when balancing environmental concerns against economic or political interests. This limitation was evident in the *Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation* case,<sup>33</sup> where the Supreme Court focused solely on the issue of legal standing and remitted the case to the trial court without addressing substantive environmental remedies. The Court’s ruling, while progressive on standing, left open the question of whether strong judicial interventions such as ordering a halt to environmentally harmful projects can be sustained without clear constitutional grounding. In future disputes, this ambiguity may inhibit courts from intervening decisively, particularly where state-backed industrial or infrastructural projects are implicated and no express constitutional provision mandates environmental protection.

#### 4.0 ENVIRONMENTAL RIGHTS IN SOUTH AFRICA, KENYA, AND COLOMBIA

Several jurisdictions have explicitly recognized the right to a healthy environment in their constitutions, offering instructive comparisons for Nigeria. I will be focusing on South Africa, Kenya, and Colombia – three countries from different continents that share a commonality in constitutional environmental rights, and each with a growing body of case law linking those rights to sustainable development outcomes.

##### 4.1 South Africa

South Africa’s post-apartheid Constitution of 1996 is renowned for its comprehensive Bill of Rights, including Section 24 which guarantees everyone “the right to an environment that is not harmful to their health or well-being,” and mandates the state to “secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.”<sup>34</sup> This dual phrasing covers both a negative right (freedom from a harmful environment) and a positive duty to pursue sustainable development. Notably, South Africa’s Constitution treats this environmental right on par with civil-political rights, making it fully justiciable. Over the past two decades, South African courts have developed a rich jurisprudence operationalizing Section 24. This has directly and indirectly advanced goals analogous to SDGs 6, 13, and 15.

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<sup>32</sup>Collins Okeke, ‘Nigeria’s Constitutional Reform Must Address Environmental Rights’ *The Guardian Nigeria News* (22 March 2025) <<https://guardian.ng/opinion/nigerias-constitutional-reform-must-address-environmental-rights/#:~:text=Nowhere%20is%20this%20more%20evident,of%20oil%20into%20sensitive%20ecosystems>> accessed 31 May 2025.

<sup>33</sup> [2019] 5 NWLR (Pt. 1666) 518 (SC).

<sup>34</sup> Constitution of the Republic of South Africa, 1996, s 24.



For example, in the context of SDG 13 (Climate Action), South African courts have begun to integrate climate change considerations into the enforcement of environmental rights.<sup>35</sup> In *Earthlife Africa Johannesburg v. Minister of Environmental Affairs*,<sup>36</sup> the High Court set a precedent by ruling that the government must consider climate change impacts (greenhouse gas emissions) when approving new coal-fired power plants, grounding its reasoning in Section 24's mandate for an environment protected for present and future generations. More recently, in *African Climate Alliance v. Minister of Mineral Resources & Energy*,<sup>37</sup> popularly known as the #CancelCoal case which was a coalition of environmental and youth groups challenged the government's plan to add 1500 MW of new coal power to the energy mix. In December 2024, the Pretoria High Court delivered a landmark judgment declaring the government's plan unconstitutional and invalid insofar as it included new coal power. The court held that such expansion of coal was incompatible with South Africa's constitutional environmental rights and the state's duty to protect the climate for the sake of children and future generations.<sup>38</sup> The judge explicitly affirmed that everyone has the right to an environment not detrimental to health and well-being, especially children, whose interests require paramount consideration. This ruling effectively aligns with SDG 13 by preventing policies that would exacerbate climate change, illustrating how constitutional rights can directly influence national development plans towards sustainability.

South Africa has also made strides relevant to SDG 15 (Life on Land) and SDG 3 (Health) through enforcing the environmental right. A notable instance is the so-called "Deadly Air" case.<sup>39</sup> Residents of Mpumalanga's Highveld region – an area afflicted by severe air pollution from coal industries – sued the government for failing to curb air pollution. The High Court, invoking Section 24 of the South African constitution, recognized that the poor air quality in the region violated the residents' constitutional right to an environment that is not harmful to health. In a judgment celebrated by environmental justice advocates, the court declared the government's inaction unconstitutional and ordered the Environmental Minister to enforce air quality regulations and implement a comprehensive plan to improve the air to meet health-based standards.<sup>40</sup> This outcome resonates with SDG targets on reducing illnesses from pollution and ensuring healthy lives. It also emphasised that a constitutional right can compel the government to take remedial action for environmental degradation – in this case, protecting the "life on land" and health of communities by cleaning the air.<sup>41</sup>

On water and sanitation (SDG 6), South Africa's Constitution provides a separate explicit right (Section 27 includes the right to have access to sufficient water), which has been enforced in several cases.<sup>42</sup> However, even under the environmental right of Section 24,

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<sup>35</sup>Patrick Chukwunonso Aloamaka, 'Navigating the Climate Crisis: Exploring International Law's Evolution and Application' (2024) 6 *GLS Law Journal* 48.

<sup>36</sup> [2017] ZAGPPHC 58; [2017] 2 All SA 519 (GP).

<sup>37</sup> (56907/2021) [2024] ZAGPPHC 1271 (4 December 2024)

<sup>38</sup>Ibid.

<sup>39</sup>GroundWork Trust and Vukani Environmental Justice Movement in Action v Minister of Environmental Affairs and Others [2022] ZAGPPHC 208 (High Court); *Minister of Environmental Affairs v Trustees for the time being of GroundWork Trust and Others* [2025] ZASCA 43 (Supreme Court of Appeal).

<sup>40</sup> M.O.I.Nwabuoku and P.I.Gasiokwu, 'The Concepts of Justice and Equity and their Efficacy in the Administration of Justice in Nigeria' (2022) 25(5) *Journal of Legal, Ethical and Regulatory Issues*.

<sup>41</sup>Ibid.

<sup>42</sup> Constitution of the Republic of South Africa, 1996, s 27(1)(b); see also *Mazibuko and Others v City of Johannesburg and Others* 2010 (4) SA 1 (CC).



courts have addressed water pollution and ecological flows. For instance, courts have entertained public interest suits to stop sewage pollution of rivers, treating such pollution as an infringement of both environmental and water rights. The integration of rights in South Africa demonstrates a holistic approach: environmental rights bolster the realization of socio-economic rights and vice versa.

South Africa's experience shows that constitutionalizing environmental rights can lead to strong judicial oversight over government and private actions that threaten sustainable development. The presence of the right in the Constitution has empowered civil society (including NGOs and local communities) to pursue impactful litigation – something that would have been much more difficult without the constitutional footing. It has also pushed the government to proactively adopt better environmental management policies, knowing that they could be judicially reviewed. South Africa's progressive stance has not been without challenges (such as enforcement gaps and debates about separation of powers), but on balance, it illustrates a successful model of using constitutional rights to drive environmental progress in line with global goals.

#### 4.2 Kenya

Kenya, Nigeria's African peer, underwent significant constitutional reform in 2010. The Constitution of Kenya 2010 entrenched environmental concerns in a robust manner. Article 42 of the Kenyan Constitution provides that "Every person has the right to a clean and healthy environment," and explicitly states this includes "the right to have the environment protected for the benefit of present and future generations through legislative and other measures" and "the right to have obligations relating to the environment fulfilled."<sup>43</sup> Furthermore, the Constitution imposes duties on the state and citizens to sustainably manage the environment,<sup>44</sup> and importantly Article 70 provides a specific procedure for enforcing environmental rights.<sup>45</sup> Under Article 70, any person can apply to court alleging that the right to a clean and healthy environment is being or is likely to be violated, and the court is empowered to make orders to prevent or stop the harm, "without" the complainant having to demonstrate personal loss or injury. This provision essentially codifies liberalized standing for environmental matters and emphasizes that environmental harm is of public concern. The Kenyan approach is especially relevant for Nigeria: Kenya similarly had, pre-2010, only directive principles on the environment; the 2010 Constitution moved environmental protection into the Bill of Rights, just as advocates now urge for Nigeria.

Kenya's judiciary has actively applied these constitutional provisions, leading to outcomes that support SDG implementation. On water and sanitation (SDG 6), Kenyan courts have recognized access to clean water as falling under the right to a clean environment when pollution threatens water sources. For instance, in *Peter K. Waweru v. Republic*,<sup>46</sup> where the petitioner and 22 other plot owners in Kiserian Township were charged with discharging raw sewage into a public water source and failing to comply with statutory notices, contrary to Sections 118(1)(e) and 120(1) of the Public Health Act of Kenya. The applicants contended

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<sup>43</sup> Constitution of Kenya 2010, art 42.

<sup>44</sup> Constitution of Kenya 2010, art 69.

<sup>45</sup> Constitution of Kenya 2010, art 70.

<sup>46</sup> [2006] KEHC 3202 (KLR).



that the prosecution violated their constitutional rights, particularly the right to life and protection from discrimination. The High Court of Kenya quashed charges against individuals accused of discharging sewage into public waters, citing procedural flaws and discriminatory prosecution. Importantly, the Court affirmed the constitutional right to a clean and healthy environment, linking it to the right to life. It also applied international principles such as the precautionary principle and the polluter pays doctrine, and issued an order compelling the government to provide proper sanitation infrastructure.

The judiciary has not shied away from halting projects that posed environmental risks: a famous example is the Lamu Coal Power Plant Case.<sup>47</sup> In 2019, Kenya's National Environment Tribunal (an adjudicative body anchored in the new constitutional framework and environmental laws) revoked the license for a proposed 1050 MW coal-fired power plant in Lamu, citing, inter alia, the failure to adequately consider climate and health impacts effectively upholding citizens' environmental rights. Although the tribunal is not a court, its decision was later upheld by Kenya's courts, reflecting judicial reinforcement of the constitutional mandate to protect the environment. This directly supports SDG 13 (climate action) by preventing new sources of significant greenhouse emissions and aligning energy policy with sustainability.

Kenyan courts have also dealt with deforestation and wildlife protection issues in line with SDG 15. In *Joseph Letuya & Others v. Attorney-General & Others*,<sup>48</sup> concerning evictions of squatters in a forest water catchment area, the Environment and Land Court balanced the petitioners' socio-economic rights with the imperative of conserving forests for ecosystem services (water provision, climate regulation) under Article 42. The court underscored that a clean and healthy environment is essential for the enjoyment of other rights and ordered remedies that included reforestation and community involvement in conservation – outcomes supportive of SDG 15's objectives on sustainable ecosystem management.

Moreover, Kenya's constitutional framework has allowed courts to address emerging issues like climate change through a rights lens. In 2023, a petition was brought by indigenous communities affected by climate-related flooding of Lake Baringo in the case of *Legal Advice Centre v. Attorney General, Iten Environment & Land Court*.<sup>49</sup> The plaintiffs invoked the constitutional right to a healthy environment and the government's duties under Kenya's Climate Change Act, arguing that failure to avert or mitigate the climate crisis violated their rights. This case exemplifies how constitutional rights create a platform for citizens to demand climate action, essentially litigating for SDG 13 implementation. The Supreme Court of Kenya, recognizing the gravity, convened a special bench to hear it. Kenya's experience thus demonstrates that constitutional environmental rights, buttressed by strong procedural access provided in Article 70 of the Kenyan Constitution, facilitate public interest litigation and judicial decisions that closely track sustainable development needs from clean water to renewable energy to climate adaptation.

One lesson for Nigeria from Kenya is the importance of explicit procedural provisions. Nigeria could consider not only adding a substantive right to a healthy environment but also

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<sup>47</sup> *Save Lamu & Others v. National Environmental Management Authority & Amu Power Co. Ltd.* [2019] NET Tribunal Appeal No. 196 of 2016 (Kenya).

<sup>48</sup> KEHC 6421 (KLR).

<sup>49</sup> [2024] KEELC 1521 (KLR).



mechanisms for its enforcement akin to Kenya's Article 70 ensuring that anyone can approach the court to protect the environment without onerous standing rules. The COPW case in Nigeria shows the Supreme Court moving in that direction by judicial fiat; a constitutional amendment could codify broad standing and relieve future litigants of uncertainty or the need to prove direct injury.

### 4.3 Colombia

Colombia offers a compelling example outside Africa of robust environmental constitutionalism. The 1991 Constitution of Colombia enshrines the right to a healthy environment and also mandates the state to plan the handling of natural resources to ensure their sustainable development, conservation, restoration, and replacement.<sup>50</sup> What sets Colombia apart is the judiciary's innovative interpretation of these constitutional provisions to address complex issues like deforestation, climate change, and the rights of nature moves that align strongly with SDGs 13 and 15.

A landmark case is the Future Generations case.<sup>51</sup> In that case, 25 youth plaintiffs sued the government for failing to curb deforestation in the Amazon, arguing this threatened their constitutional rights to a healthy environment, life, health, and water, and impeded Colombia's climate commitments under the Paris Agreement. The Supreme Court delivered a ground-breaking judgment: it declared that the fundamental rights to life, health, water, and a healthy environment were "substantially linked and determined by the environment and the ecosystem."<sup>52</sup> The Court went further to recognize the Colombian Amazon forest as a "subject of rights," analogously to a legal person, drawing on a prior Constitutional Court ruling that had given rights to the Atrato River.<sup>53</sup> The Court ordered the government to formulate action plans to halt deforestation and effectively enforcing SDG 15 (forests) and SDG 13 (climate, since deforestation contributes to CO<sub>2</sub> emissions) via constitutional rights. This case is often cited as an example of intergenerational justice, as the court explicitly framed its decision around the need to protect the environment for present and future generations.<sup>54</sup>

Another notable Colombian case is the *Páramo de Santurbán* Case.<sup>55</sup> The case involved high-altitude wetlands (*Páramos*) which provide crucial water resources. The government had carved out exceptions in environmental laws to allow mining in these fragile ecosystems. The Constitutional Court struck down those exceptions, holding that permitting mining in the páramos violated the constitutional rights to a healthy environment and to water. The Court emphatically stated that environmental protection prevails over economic interests when an activity poses a risk of serious environmental harm or implicates the precautionary principle.<sup>56</sup> It reasoned that protecting vital ecosystems like páramos is part of the state's duty to fulfill the right to a healthy environment and to water for its citizens. By halting mineral extraction in those areas, the decision advanced sustainable use of ecosystems (SDG 15) and

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<sup>50</sup>Constitución Política de Colombia 1991, arts 79–80.

<sup>51</sup>*Future Generations v. Ministry of the Environment and Others* STC4360-2018 (Supreme Court of Colombia, 5 April 2018).

<sup>52</sup>*Ibid*

<sup>53</sup>Sentencia T-622/16.

<sup>54</sup>Mirroring language in many constitutions, including Kenya's and arguably the spirit of Nigeria's Section 20.

<sup>55</sup>*Eco Oro Minerals Corp v Republic of Colombia* (ICSID Case No. ARB/16/41), Award (9 September 2021).

<sup>56</sup>*Ibid*.



safeguarded clean water supplies (SDG 6), showing how constitutional rights can directly guide resource governance.

Colombia's experience demonstrates the breadth of judicial remedies possible under a constitutional environmental right. Courts have ordered everything from legislating action plans, to creating follow-up commissions, to recognizing nature's standing in court. It represents perhaps the cutting edge of environmental constitutionalism, where rights are used not only to protect human interests but also the intrinsic value of nature. For Nigeria, while the cultural and legal context differs, the Colombian example is instructive in imagining the potential scope: a constitutional right in Nigeria could, for instance, empower courts to order cleanup of oil-polluted areas (as recommended by UNEP for Ogoniland) or to compel climate adaptation measures in flood-prone states, or to invalidate licenses for projects that would cause widespread ecological destruction. It underlines that a constitutionally guaranteed right is not merely symbolic – it is a practical tool that judges and citizens can wield to shape policies towards sustainability.

In all three comparator countries, one sees a common thread: constitutional environmental rights have led to heightened accountability and more rigorous enforcement of environmental laws and policies, which directly contributes to meeting sustainability and environmental goals. This comparative insight bolsters the argument that Nigeria has much to gain from following suit, especially as it confronts analogous challenges like pollution, climate impacts, and biodiversity loss.

## **5.0 STRENGTHENING SDG ENFORCEMENT IN NIGERIA THROUGH A CONSTITUTIONAL ENVIRONMENTAL RIGHT**

Given the above context and comparisons, one can focus on how exactly constitutionalizing the right to a healthy environment in Nigeria could enhance the enforcement of SDGs 6, 13, and 15. It is important to articulate the pathways through which a constitutional change might translate into on-the-ground improvements in these specific areas.

### **5.1 SDG 6 (Clean Water and Sanitation)**

According to Access to clean water and adequate sanitation is a persistent challenge in Nigeria, with tens of millions lacking safe drinking water and proper sanitation facilities.<sup>57</sup> Contamination of water sources from oil spills, industrial effluents, sewage, and agricultural runoff are major obstacle to achieving SDG 6.<sup>58</sup> Currently, addressing these issues relies on statutory instruments like the Water Resources Act, Environmental Impact Assessment Act, regulations on effluent discharge, and the activities of agencies such as National Environmental Standards and Regulations Enforcement Agency (NESREA). While these are important, enforcement is often lax and subject to political will. A constitutional right to a healthy environment could directly impact SDG 6 in several ways:

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<sup>57</sup> World Bank, 'Nigeria: Ensuring Water, Sanitation and Hygiene for All' (World Bank, 26 May 2021) <<https://www.worldbank.org/en/news/feature/2021/05/26/nigeria-ensuring-water-sanitation-and-hygiene-for-all>> accessed 31 May 2025.

<sup>58</sup>IsukuruEfe Jeffery and others, 'Nigeria's Water Crisis: Abundant Water, Polluted Reality' (2024) 2 Cleaner Water 100026.



- i. **Legal Standing to Protect Water:** If communities had a constitutional right to a clean environment, they could sue polluters or the government for failing to prevent pollution when water sources are contaminated, without needing to prove a violation of some other right. This is akin to how Colombian plaintiffs invoked constitutional rights to challenge harm to water-supplying ecosystems.<sup>59</sup> For example, a fishing community in the Niger Delta whose river is polluted by oil could bring a claim that their right to a healthy environment and implicitly to clean water is infringed, and seek a court order for clean-up and restoration. Under current law, they might pursue tort claims or rely on NESREA's enforcement, but a rights-based claim would elevate the matter and potentially yield stronger judicial remedies.
- ii. **Duty to Provide Safe Water:** If drafted appropriately, a constitutional amendment could also impose a duty on the State to ensure access to clean water as part of the right to a healthy environment. South Africa achieved this by a separate right to water, but Nigeria could choose to encapsulate it within an environmental right or as an adjunct socio-economic right. Courts in other jurisdictions have interpreted environmental rights as encompassing rights to water and sanitation. A Nigerian court, armed with an explicit environmental right, could require, for instance, that state authorities take reasonable steps to prevent sewage from contaminating drinking water, or to protect watersheds that communities rely on. This directly feeds into targets 6.1 and 6.3 of SDG 6 on safe drinking water for all and improved water quality through pollution reduction.
- iii. **Accountability for Infrastructure:** Sanitation (toilets, sewage treatment) often suffers from neglect because affected communities (e.g. in informal settlements) have little political clout. With a constitutional right, however, those communities or NGOs could litigate failures to provide basic sanitation as a breach of the right to a healthy environment on grounds that poor sanitation pollutes the environment and harms health. This could push local governments to invest in sanitation infrastructure to avoid rights violations.

In essence, constitutionalizing environmental rights would integrate water and sanitation goals into Nigeria's human rights framework, turning what is now largely a development aspiration into an obligation of result (or at least of diligent effort) on the part of government. It is noteworthy that Nigeria has recognized the human right to water and sanitation at the UN level; embedding it constitutionally via an environmental right would domesticate that commitment.

## 5.2 SDG 13 (Climate Action)

Climate change poses an existential threat to Nigeria's development from intensifying droughts in the north and floods in the south, to impacting food security and public health.<sup>60</sup>

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<sup>59</sup>*Alberto Castilla c. Estado de Colombia*, Environmental Law Alliance Worldwide <<https://elaw.org/resource/alberto-castilla-c-estado-de-colombia-0>> accessed 31 May 2025.

<sup>60</sup>Usman Sambo and BabayoSule, 'Impact of Climate Change on Food Security in Northern Nigeria' (2023) 2 Green and Low-Carbon Economy 49.



Nigeria has shown commitment through policy, such as signing the Paris Agreement and passing the Climate Change Act 2021, which establishes a framework for achieving net-zero emissions by 2060. However, implementing climate action often requires overcoming short-term economic interests and ensuring continuity of policies beyond electoral cycles. A constitutional environmental right can buttress Nigeria's climate action in multiple ways:

- i. **Judicial Review of Climate Inaction:** Recognising a constitutional right to a healthy environment can empower citizens and civil society groups to legally challenge governmental inaction on climate change. Such a right would provide a firm constitutional foundation to litigate failures in climate governance, particularly where climate-related harms such as recurrent flooding, desertification, or extreme heat impact livelihoods and endanger lives. This approach has gained traction globally. For instance, in *Future Generations v Ministry of Environment and Others*,<sup>61</sup> the Colombian Supreme Court upheld the rights of youth plaintiffs and declared the Amazon rainforest a subject of rights, holding the government accountable for failing to curb deforestation and protect intergenerational rights.<sup>1</sup> In Kenya, recent climate litigation has begun to test the state's responsibilities in mitigating climate-linked flooding and other environmental threats.<sup>62</sup> In the Nigerian context, coastal communities in Lagos or riverine settlements in Bayelsa could potentially frame government failure to implement robust flood defences, or its permissive stance on gas flaring and deforestation, as breaches of a constitutional right to a healthy environment and, by extension, the right to life. Although the Nigerian Supreme Court in *Centre for Oil Pollution Watch (COPW) v Nigerian National Petroleum Corporation*<sup>63</sup> acknowledged climate change concerns, such concerns lack enforceability in the absence of a justiciable constitutional provision. Constitutionalising environmental rights would thus offer litigants a direct pathway to compel climate action and hold the state accountable for environmental degradation and policy inertia.
- ii. **Challenging Unsustainable Projects:** Much like South African activists halted new coal projects by invoking environmental rights,<sup>64</sup> Nigerian stakeholders could use a constitutional right to contest high-carbon or environmentally destructive projects. For example, if there were plans to build a new coal-fired power plant or a highway through a vital forest, an environmental rights claim could be brought to assess whether the project violates citizens' rights by exacerbating climate change or local environmental harm. This could force proper environmental impact assessments that account for climate which, incidentally, Nigeria's EIA law currently does not explicitly mandate and ensure alignment with SDG 13.
- iii. **Strengthening Climate Governance:** The Climate Change Act 2021 in Nigeria is a major step, establishing a Council and requiring five-year carbon budgets, etc.

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<sup>61</sup> STC4360-2018 (Supreme Court of Colombia, 5 April 2018).

<sup>62</sup> See for example, *African Climate Alliance v Minister of Mineral Resources & Energy* (Western Cape High Court, South Africa, 2022) and related jurisprudence emerging from East Africa.

<sup>63</sup> [2019] 5 NWLR (Pt 1666) 518.

<sup>64</sup> Lexology, 'South Africa: Groundbreaking Judgment Halts New Coal-Fired Power Stations' (Lexology, 5 May 2022) <<https://www.lexology.com/library/detail.aspx?g=44c0b10c-d37e-4e6e-a449-5ec5ae8ab12e>> accessed 1 June 2025.



However, as Olujobi and others<sup>65</sup> notes, “*the SDGs find manifestation within Chapter II of the Constitution, albeit in a non-justiciable form, thereby impeding... attainment.*”<sup>66</sup> Climate action, as part of those goals, would benefit from removal of that impediment. A constitutional amendment could make the state’s climate responsibilities justiciable. In practical terms, this means if the government fails to meet the carbon budgeting or adaptation planning duties under the Act, citizens could seek judicial enforcement, citing their constitutional right. Additionally, enshrining the principle of intergenerational equity which is common in environment rights clauses, e.g., Kenya,<sup>67</sup> South Africa,<sup>68</sup> would compel decision-makers to consider long-term climate impacts and the rights of future generations aligning governance with SDG 13 targets and the Paris Agreement timeline.

- iv. **International Credibility and Finance:** While not a direct enforcement mechanism, having a constitutional environmental right signals seriousness about climate commitments, potentially attracting climate finance and support. International climate funds often consider governance and legal frameworks; a rights-based constitutional framework could improve Nigeria’s profile for such support, indirectly aiding implementation of climate projects.

### 5.3 SDG 15 (Life on Land: Forests, Ecosystems, Biodiversity)

Nigeria’s biodiversity and land resources have been under intense pressure. Deforestation rates are high,<sup>69</sup> wildlife is threatened by poaching and habitat loss, and land degradation is advancing in many regions. SDG 15 calls for protecting, restoring, and promoting sustainable use of terrestrial ecosystems, managing forests, combating desertification, and halting biodiversity loss. A constitutional environmental right can be a powerful tool to advance these objectives:

- i. **Forest and Wildlife Protection:** With an environmental right, citizens could challenge government inaction or misaction in protecting forests and wildlife. For example, if a state government were to degazette a protected forest reserve for commercial logging, affected communities or NGOs could file a lawsuit arguing that this violates the right to a healthy environment for present and future generations. Courts in other countries have sided with environmental protection in such scenarios – recall the Colombian court prioritizing páramo ecosystem protection over mining

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<sup>65</sup>Olusola Joshua Olujobi, Oshobugie Suleiman Irumekhai and AD Aina-Pelemo, ‘Sustainable Development and National Integration: A Catalyst for Enhancing Environmental Law Compliance in Nigeria’ (2024) 54 *Environmental Policy and Law* 27.

<sup>66</sup>Olusola Joshua Olujobi, Oshobugie Suleiman Irumekhai and AD Aina-Pelemo, ‘Sustainable Development and National Integration: A Catalyst for Enhancing Environmental Law Compliance in Nigeria’ (2024) 54 *Environmental Policy and Law* 27.

<sup>67</sup> Constitution of Kenya 2010, art 42 (right to a clean and healthy environment) and art 69(1)(a) (obligation to sustain the environment for the benefit of future generations).

<sup>68</sup> Constitution of the Republic of South Africa 1996, s 24(b) (requiring the state to secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development).

<sup>69</sup>Nigeria has one of the highest deforestation rates globally, for instance see Adekunle Peter, ‘Nigeria among Countries with High Deforestation Rate Globally — NEWMAP’ *Punch Newspapers* (8 July 2019) <<https://punchng.com/nigeria-among-countries-with-high-deforestation-rate-globally-newmap/>> accessed 1 June 2025.



- rights.<sup>70</sup> In Nigeria, such judicial intervention could stop destructive land use changes and push the government to adhere to sustainable forest management policies. It might also force implementation of existing laws like the Endangered Species Act and forest regulations which often suffer from weak enforcement.<sup>71</sup>
- ii. **Remediation of Ecosystem Damage:** Nigeria has some infamous cases of ecosystem damage, such as the Ogoniland oil contamination. The UNEP's environmental assessment of Ogoniland<sup>72</sup> recommended a 30-year cleanup, which has only recently begun in piecemeal fashion. With a constitutional right in place, communities could bring the matter to court to demand swifter and more thorough remediation as their right. A court, recognizing the long-term impact on soil, water, and health, could order the government to establish a fund or take specific actions perhaps supervised by the court to restore the environment. This would directly contribute to SDG 15.5 (take action to reduce degradation of natural habitats) and 15.3 (land restoration).
  - iii. **Preventive Orders using Precautionary Principle:** Often, environmental litigation under a constitutional right allows invocation of the precautionary principle – that lack of full scientific certainty should not postpone measures to prevent environmental damage. This principle is explicitly or implicitly recognized in many jurisdictions' jurisprudence.<sup>73</sup> Nigerian courts, with an environmental right to enforce, could issue interdicts or injunctions to prevent potential environmental harm before it occurs, not just compensate after the fact. For example, if evidence suggests a planned industrial project might cause serious biodiversity loss or toxic pollution, a court could halt it pending proper studies, thereby aligning with SDG 15's preventive ethos.
  - iv. **Enhanced Community Land Rights:** Environmental constitutionalism often intersects with community rights, especially for indigenous or local communities who are stewards of biodiversity.<sup>74</sup> A constitutional provision could explicitly recognize community environmental rights or require consent/consultation for projects on community lands (some constitutions do this, or such has been read into environmental rights).<sup>75</sup> Nigeria has seen conflicts when local environmental interests are overridden by central authorities (e.g., allocation of land for mining without local consent). A stronger constitutional footing could give communities leverage to negotiate better or block harmful projects, indirectly supporting SDG 15's targets on inclusive management of ecosystems.

## 6. Conclusion

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<sup>70</sup> See for example the case of *Eco Oro Minerals Corp v Republic of Colombia* (ICSID Case No. ARB/16/41), Award (9 September 2021).

<sup>71</sup> FirstNews, 'Protecting Nigeria's Endangered Species: The Role of Government' (FirstNews, 16 March 2025) <http://firstnewsonline.ng/protecting-nigerias-endangered-species-the-role-of-government/> accessed 31 May 2025.

<sup>72</sup> UNEP, *Environmental Assessment of Ogoniland* (United Nations Environment Programme 2011); See also, *Social and Economic Rights Action Center (SERAC) & Another v. Nigeria* (African Commission on Human and Peoples' Rights, Comm. No. 155/96, 2001).

<sup>73</sup> See Constitution of the Plurinational State of Bolivia 2009, arts 30 and 343 (recognizing the rights of Indigenous peoples to consultation and participation in environmental decisions); and *Saramaka People v Suriname* (2007) Inter-American Court of Human Rights Series C No 172, holding that major development projects on Indigenous lands require free, prior and informed consent.

<sup>74</sup> Think of the role of local communities in forest conservation – a key aspect of SDG 15.

<sup>75</sup> Some constitutions do this, or such has been read into environmental rights.



The absence of an enforceable constitutional right to a healthy environment in Nigeria continues to hinder the realization of environmental sustainability and the effective implementation of key Sustainable Development Goals (SDGs), particularly SDGs 6, 13, and 15. As this article has demonstrated through doctrinal analysis and comparative review, elevating environmental protection to the constitutional level by making it a justiciable right can significantly strengthen legal accountability, improve environmental governance, and empower citizens to demand redress for environmental harm. The experiences of South Africa, Kenya, and Colombia underscore the transformative role that constitutional environmental rights can play in promoting sustainable development, enforcing regulatory duties, and safeguarding intergenerational equity. For Nigeria, such reform would not only close a critical legal gap but also domesticate global environmental commitments and regional aspirations. Constitutionalizing the right to a healthy environment is, therefore, not merely desirable it is an essential step toward achieving environmental justice, strengthening the rule of law, and fulfilling Nigeria's sustainable development obligations.

## 7.0 Recommendation

To translate the arguments advanced in this article into practical reforms, several measures are recommended:

- a. The Nigerian Constitution should be amended to explicitly recognize the right to a clean, healthy, and sustainable environment as a fundamental human right under Chapter IV.<sup>76</sup> This amendment should be modelled on progressive jurisdictions such as South Africa and Kenya, ensuring the right is enforceable in court and binding on all arms of government. The provision should include both substantive and procedural dimensions guaranteeing environmental quality (clean air, water, and biodiversity) and ensuring access to information, public participation, and access to justice in environmental matters.
- b. In addition to substantive recognition, Nigeria should adopt enforcement mechanisms akin to Article 70 of the Kenyan Constitution, which allows any person, including NGOs and community groups, to approach the courts to protect the environment without demonstrating personal injury or loss.
- c. The constitutional provision should expressly reference Nigeria's obligations under international environmental agreements and the SDGs.
- d. Nigeria should consider establishing specialized environmental courts or tribunals, as in Kenya and India, to ensure speedy and expert resolution of environmental disputes.
- e. Constitutional reform should be accompanied by legislative amendments to strengthen institutions such as the NESREA and state-level environmental agencies. Communities, particularly those in environmentally sensitive areas like the Niger Delta, should be constitutionally guaranteed participatory rights in environmental decision-making and the right to free, prior, and informed consent for projects affecting their lands.

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<sup>76</sup>U.V.Awhefeada, P.C.Aloamaka and E.T.Kore-Okiti, 'A Realistic Approach towards Attaining Sustainable Environment through Improved Public Participation in Nigeria' (2023) 8(4) *International Journal of Professional Business Review*.