

PUBLIC INTEREST LITIGATION AND ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS: A VIABLE TOOL FOR THE PROTECTION OF THE RIGHT TO A HEALTHY ENVIRONMENT IN NIGERIA.

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Abstract

The right to a healthy environment is very crucial to human existence. The right has not been adequately protected in Nigeria due to different challenges which sometimes prevent victims of environmental pollution from access to justice. These challenges include legal, procedural, political, economic challenges and so on. This paper seeks to discuss how public interest litigation (PIL) can be applied to environmental litigation in Nigeria for the purpose of protecting the right to a healthy environment. It will enhance access to justice by allowing concerned persons and NGOs to institute environmental matters on behalf of indigent victims of environmental pollution. The paper adopts doctrinal research methodology by relying on primary and secondary sources of information. The primary materials are legislations, cases, regional and international instruments. The secondary materials are journal articles, textbooks and online materials. This paper finds that victims of environmental pollution do not have adequate access to courts to seek redress of environmental wrongs as a result of different challenge they encounter. This paper recommends that Public Interest Litigation should be allowed by courts in environmental matters as it will enable victims' access to justice for the purpose of seeking remedies and compensation for their injuries. Other recommendations proffered by this paper are environmental literacy and awareness, continuing capacity building for judges, independence of the judiciary, etc. The paper concludes that the application of Public Interest Litigation to environmental matters will enhance the protection of the right to a healthy environment in Nigeria.

Keywords: Public Interest Litigation, Access to Justice, Environmental Protection, Right to a Healthy Environment

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Introduction

The right to a healthy environment and the extent to which it has been protected is a topical issue which is a subject of continuous debate in Nigeria. The Nigeria Constitution has not adequately protected the right since its provision on the protection of the right is non justiciable. Section 20 of the constitution places an obligation on the State to protect the environment. However, the provision of section 6 (6) (c) is a bottleneck to the realisation of the provision of section 20 as it renders it non justiciable. Thereby placing constraints on the adequate protection of the right to a healthy environment. In the same vein, other challenges such as economic, political, legal and procedural constraints and so on also constitute hindrances to access to courts to seek redress for environmental wrongs.

It is trite to state that the right to a healthy environment is a human right that has been recognised by different countries of the world.¹ The UN General Assembly recently also passed a resolution recognising the human right to a healthy environment on the 28th of July, 2022.² The resolution was sequel to the recognition of the R2HE by the UN Human Rights Council in 2021.³ This reiterates the significance of the right.

Victims of environmental pollution are sometimes precluded from accessing courts for redress and compensation. The constitutional bottleneck⁴, procedural and legal constraints such as; subject-matter jurisdiction, *locus standi*, pre-action notice, limitation of action and burden of proof are sometimes obstacles to the redress of environmental breaches⁵ in Nigeria. And where a victim fails to surmount these barriers, he may not get justice even when he had obviously suffered from the acts of the polluter and has a cause of action. This has led to the denial of justice to environmental victims, inadequate protection of the right to a healthy environment, non-sanction or inadequate sanction of polluters, increased level of environmental pollution and

¹ Boyd D.R, 'The Constitutional Right to a Healthy Environment' (2012) 54 (4) *Environmental Science and Policy for Sustainable Development*, 4.

² IISD, 'UNGA Recognizes Human Right to Clean, Healthy, and Sustainable Environment' <<https://sdg.iisd.org/news/unga-recognizes-human-right-to-clean-healthy-and-sustainable-environment/>> accessed 4 August 2024.

³ UN Human Rights Council, 'A/HRC/43/53: Good Practices on the Right to a Safe, Clean, Healthy and Sustainable Environment' <<https://www.ohchr.org/en/documents/thematic-reports/ahrc4353-good-practices-right-safe-clean-healthy-and-sustainable>>accessed 3 August 2024.

⁴ CFRN, 1999 s. 6 (6) (c)

⁵ Ladan M T, 'Judicial Approach to Environmental Litigation In Nigeria' (Paper presented at a 4 day Judicial Training Workshop on Environmental Law Organized by The National Judicial Institute, Abuja Between 5-9 February 2007).

inadequate restoration/ cleaning of the environment by polluters. It is important to note that the denial of victims of environmental pollution from accessing courts to seek justice can lead victims to resort to self-help which can occasion security problems such as militancy unrest, kidnapping, clashes, economic meltdown and so on.

Public interest litigation is a distinctive and effective tool for enhancing access to courts/justice and for protecting the less privileged. It enables broader community or public interests to be recognised and enforced through the judicial process.⁶ It allows concerned citizens and NGOs to institute actions that bother on public interests in courts on behalf of another who could not afford to do so in order to get justice. Public interest litigation has been applied to human rights matters and other constitutional matters⁷ It has also been applied to environmental litigation⁸ in India, South Africa, Pakistan etc. and has helped in enhancing victims' access to justice and protecting the right to a healthy environment.

While the concept of public interest litigation is recognised in Nigeria, it has been applied to litigation of constitutional and human rights matters that are mostly non-environmental in nature. The cases of *Okojie & Others v AG Lagos State*⁹, *Peter Nemi v AG Lagos State and Others*¹⁰, *Director State Security Service and Another v Olisa Agbakoba*¹¹, *Olisah Agbakoba v AG Federation & Minister of Education*¹², *Fawehinmi v Akilu*¹³, *Bayo Johnson v AG Lagos State*¹⁴ etc. are apposite. Even though there are cases where courts have lend credence to public interest litigation in environmental matters in Nigeria, they are relatively few.¹⁵ However, the continual degradation of the environment with its attendant consequences such as food shortage, diseases, loss of livelihood, water scarcity etc. requires that victims of environmental pollution

⁶ Christine M. Forster and Vedna Jivan, 'Public Interest Litigation and Human Rights Implementation: The Indian and Australian Experience' <<https://www.cambridge.org/core/journals/asian-journal-of-comparative-law/article/abs/public-interest-litigation-and-human-rights-implementation-the-indian-and-australian-experience/72CBF55A890E8ACE552EE929FE7AABF8>> accessed 12 September 2024.

⁷ Ibid

⁸ Kausal P. K, 'Role of Public Interest Litigation in India in Environment Protection' <<https://lawcorner.in/role-of-public-interest-litigation-in-india-in-environment-protection-by-pranav-kaushal/>>accessed 17 August 2024.

⁹ [1981] 2 NCLR 350.

¹⁰ [1996] 6 NWLR (Pt. 452) 42.

¹¹ [1997] 3 NWLR (Pt. 595).

¹² FHC/L/CS/1358/2013.

¹³ [1989] 3 NWLR (Pt. 112) 643.

¹⁴ [2007] 8 NWLR (Pt. 1037) 535.

¹⁵ Ramos B, 'Environmental Public Interest Litigation in Nigeria: the Paradigm Shift in COPW v. NNPC (2019) 5 NWLR (Pt. 1666) 518' (2020) 3 *Elizade University Law Journal*, 286.

must be given unhindered access to courts in Nigeria for the purpose of enhancing justice. This will help to adequately protect the right to a healthy environment, reduce environmental pollution and protect the environment. Therefore, this paper recommends the application of public interest litigation to environmental matters in Nigeria. This will help in widening *locus standi* and enables public spirited persons and NGOs to litigate environmental matters on behalf of indigent victims of environmental pollution. It will also enhance accessibility of poor victims of environmental pollution to justice.

Concept of the Right to a Healthy Environment

The right to a healthy environment was recognised for the first time at the global level in 1972 at the Stockholm Conference.¹⁶ Scores of countries have also made provision for fundamental right to a healthy environment in their constitutions.¹⁷ However, Nigeria and some countries Such as India, Canada etc. have no provision for fundamental right to a healthy environment in their constitutions. This right has also been given recognition in international and regional instruments¹⁸. The right to a healthy environment is to the effect that all humans have a right to a safe and sustainable environment¹⁹, which allows them to access unspoiled natural resources such as food, water, air, and land, thereby facilitating their survival and that of the coming generations. This right also encompasses the engagement of the public in environmental decision-making.²⁰ The right to a healthy environment consists of substantive and procedural rights. The substantive rights are those rights to clean water, clean air, healthy food, and a clean environment while the procedural rights entail access to environmental information, the right to participate in environmental decision-making, and access to remedies.²¹ It is worthy to note that the UN General Assembly also made a resolution recognising the human R2HE on the 28th of

¹⁶ The Stockholm Declaration 1972, Principle 1.

¹⁷ Boyd n1, 4.

¹⁸ ICESCR art 12(2) (b); ACHPR art 24; SSPACHR art11.

¹⁹ Pachamama A., 'Environmental Rights' <<https://www.pachamama.org/environmental-rights>>accessed 12 August 2024.

²⁰ Ibid.

²¹ Ako R.T, 'The Judicial Recognition and Enforcement of the Right to Environment: Differing Perspectives from Nigeria and India' (2010) 3, *NUJS Law Review*, 428.

July, 2022.²² The resolution was sequel to the recognition of the R2HE by the UN Human Rights Council in 2021.²³

Access to Justice in Environmental Matters

Generally, the concept of access to justice puts an obligation on the state to guarantee every individual's right of access to a court or an alternative dispute resolution body for the purpose of obtaining a remedy when it is determined that his rights have been violated. Thus, it is also a right that helps individuals enforce other rights.

Access to justice in environmental matters can be defined as access of citizens or victims of environmental pollution to judicial and administrative mechanisms for redress of environmental wrongs and review of decisions, acts, and omissions related to environmental matters in a fair manner. This is for the purpose of obtaining effective and adequate remedies for the pollution of the environment and violation of their right to a healthy environment. Access to justice in environmental matters will enhance the protection the environment and guarantee the right to a healthy environment.

In Nigeria, access to justice in environmental matters is marred with different challenges. These challenges relate to legal, procedural and other constraints. These challenges include *locus standi*, burden of proof, limitation of action etc. poverty, politics, poor judicial attitude to environmental protection, weak enforcement, delay in dispensation of justice and so on. A plethora of cases decided by courts in Nigeria have reflected that victims of environmental pollution or citizens affected by pollution sometimes do not get justice when they institute actions to redress environmental wrongs. The cases of *Oronto Douglas v Shell Petroleum Development Company of Nigeria & 5 Others*²⁴, *Amos v Shell BP Petroleum Development Company of Nigeria LTD*²⁵, *Seismograph Services (Nigeria) Limited v Ogbeni*²⁶, *Seismograph Services Limited v Benedict Onikpasa*²⁷, *Jumbo v Shell B. P*²⁸ and so on are apposite

²² IISD, 'UNGA Recognizes Human Right to Clean, Healthy, and Sustainable Environment' <<https://sdg.iisd.org/news/unga-recognizes-human-right-to-clean-healthy-and-sustainable-environment/>>accessed 4 August 2024.

²³ UN Human Rights Council, 'A/HRC/43/53: Good Practices on the Right to a Safe, Clean, Healthy and Sustainable Environment' <<https://www.ohchr.org/en/documents/thematic-reports/ahrc4353-good-practices-right-safe-clean-healthy-and-sustainable>> accessed 3 August 2024.

²⁴ Suit No. FHC/2CS/573/93.

²⁵ [1977] SC 109.

However, the continuous degrading impacts of environmental pollution in Nigeria requires that access to justice in environmental matters must be unhindered. Victims of pollution and citizens must be able to make recourse to courts to redress environmental wrongs and violation of their right to a healthy environment without hindrances. Public Interest Litigation is therefore a viable tool for enhancing access to justice in environmental matters in Nigeria, as it will enable indigent victims of environmental pollution to assert their rights through environmental-focused NGOs, public spirited persons, environmental activists and so on.

Challenges to Access to Justice in Environmental Matters

There are many challenges militating against access to justice in environmental matters in Nigeria

1. Locus Standi

Locus standi can be defined as the legal capacity to institute proceedings in a court of law. It can also be referred to as ‘standing’ or ‘title to sue’. It is a way courts determine who may apply to court for judicial review or remedies. Where a person has standing to sue, he will be entitled to be heard by the court even though that does not guarantee that all his claims will be successful. Therefore, a person who does not have standing to institute an action will not be heard by the court.²⁹ In Nigeria, *locus standi* is rooted in common law and a person will only be able to approach a court of law if he has sufficient, direct and personal interest in the matter. That is, he must show the court that he has some special interest or has sustained some special damage greater than that sustained by an ordinary member of the public.

It is important to state that sometimes, victims of environmental pollution are indigents who may not have the capacity to cater for the financial implications of instituting action in court to redress environmental wrongs done to them. This sometimes embolden polluters and leads to continuous pollution of the environment as victims are prevented from approaching courts for justice. Meanwhile, the recent increase in environmental consciousness in Nigeria has brought

²⁶ [1976] 4 SC 85.

²⁷ [(1972) All NLR 347 at 352.

²⁸ [1999] 13 NWLR (pt 633) p. 57.

²⁹ Learn Law Nigeria < [https:// www.learnnigerianlaw.com/learn/administrative-law/standi](https://www.learnnigerianlaw.com/learn/administrative-law/standi)> accessed 3 August 2024.

about the creation of many environmental NGOs and pressure groups in Nigeria. These groups engage in different activities to protect the environment in Nigeria. It is not uncommon to find these organisations, groups and public-spirited individuals instituting environmental matters on behalf of indigent victims of environmental pollution. This is usually for the purpose of seeking remedies and compensation for the injuries suffered by poor victims of environmental pollution.

However, the restrictive nature of *locus standi* under the common law tort rule, which is the traditional means of litigating environmental matters in Nigeria is a challenge to the institution and litigation of environmental matters in representative capacity. Since a plaintiff must establish before the court that he has exclusive and sufficient interest in a matter³⁰ before the court can be seized with jurisdiction to adjudicate upon the matter. Invariably, where indigent members of the public suffered environmental wrongs and have a cause of action but were hindered from instituting an action in court because of their financial incapability, they may not be able to assert their claims in court through a representative due to the restrictive nature of *locus standi* under the common law tort rules. The case of *Oronto Douglas v Shell Petroleum Development Company of Nigeria & 5 Others*³¹, where the Federal High Court dismissed a suit based on the ground that the plaintiff has shown no *locus standi* to institute an action to request the court to compel the respondents to comply with the provisions of EIA Act before commissioning their production of liquefied natural gas in the Niger Delta region of Nigeria is apposite.

In the same vein, the prosecution of public nuisance by private individuals despite the abolishment of the old common law rules. The right to sue in public nuisance under the old common law rules was restricted to the Attorney General; as it was classified as a crime and could only be prosecuted by the state or an individual that has been granted consent by the Attorney General by the Nigerian Constitution can also inhibit access to justice in environmental matters. This is because a private individual who has suffered environmental wrongs will have to establish that he has suffered over and above other members of the public before he can have

³⁰ Mmadu R.A, 'Judicial Attitude to Environmental Litigation and Access to Environmental Justice in Nigeria: Lessons from Kiobel' (2013) 2 (1), *Afe Babalola University: Journal of Sustainable Development Law and Policy*, 161.

³¹ Suit No. FHC/2CS/573/93.

locus standi in public nuisance³², even without being granted a fiat by the Attorney General. Where a private individual fails to do so, he will not have *locus standi*.

2. Burden of proof

The burden of proof, which is the legal burden of establishing a case and adducing evidence to prove the issues which arose in the case³³ by a plaintiff or prosecution before a court can also inhibit access to justice in environmental matters in Nigeria. Generally, the burden of proof must be discharged by whoever asserts.³⁴ In order to establish the liability of a defendant in a civil matter to the satisfaction of the court, it must be proven on a balance of probabilities by the plaintiff. Meanwhile, the prosecution in a criminal matter must prove the liability of an accused beyond reasonable doubt before he can successfully discharge his burden of proof. Where a plaintiff fails to discharge his burden of proof, he will lose his claims.

This burden of proof is also applicable to environmental litigation in Nigeria, which are mostly decided based on the common law tort rules of nuisance, negligence, strict liability and trespass.³⁵ It should be noted that these common law tort rules have their specific burden of proof which must be discharged by a plaintiff, as the court will only uphold the claims of the plaintiff based on the high standard of proof.³⁶ In the same vein, a prosecutor in a criminal environmental matter must prove to the court beyond every reasonable doubt that the offender was liable for the crime for his case to succeed. He must not leave any chance for the court to think that the crime was possibly committed by someone else.

However, where a plaintiff or prosecutor in an environmental matter fails to discharge the burden of proof by failing to prove that the harm suffered by the victim was caused by the acts of the polluter, he will be denied access to justice. It is worthy to note that before a plaintiff or prosecution in an environmental litigation can discharge the burden of proof, he needs requisite

³² *Oyidiobu v Okechukwu* [1972] LPELR-2884 (SC).

³³ Hassan M, 'Problem of Proof and Causation in Environmental Litigation in Nigeria' (First Degree Long Essay, Faculty of Law, University of Lagos 2015) 76.

³⁴ Evidence Act, s.135

³⁵ Abdulkadir A.B and Ainul J.A, 'Issues and Challenges In Environmental Justice Delivery System In Malaysia and Nigeria: The Need For Liberalising The Strict Rules Of *Locus Standi*' (2012) 1 (6) *Legal Network Series (A)*, 21.

³⁶ Isa Aliyu, 'Legal Remedies For Victims of Environmental Pollution in Nigeria' (PhD Thesis, Department of Public Law, Faculty of Law, Ahmadu Bello University 2014) 28.

professional/technological knowledge and scientific evidence to prove that the pollution occasioned by the acts of the defendant or accused was the cause of the damage on the environment and the harm suffered by the victim. The financial implication of hiring experts to render the requisite professional services needed to successfully discharge the burden of proof in environmental matters are usually high. Indigent victims most times lack the capacity to bear these huge financial costs and this leads to denial of access to justice. As the failure to discharge the burden of proof prevent victims from getting redress for the environmental wrongs they have suffered from the acts of polluters.

3. Limitation of action

This can be described as the statutory period after which a lawsuit cannot be instituted by a victim against a tortfeasor or abuser in court. Ordinarily, every citizen whose right has been violated or who suffers damages due to the conduct of another is permitted by law to approach the court for a redress or sought reliefs. However, due to public policy and fairness, the legislatures have made statutory provisions for limitation of action. This is to ensure that claims are not left in perpetuity and to also bring an end to litigation. So, where the statutory period within which an action must be instituted has expired, no proceeding can be commenced after the expiration of that period.¹¹⁶ Such an action will be statute barred, as the plaintiff will not be able to seek any judicial intervention to enforce the cause of action. Limitation of action is also applicable to environmental matters and this puts a lot of hardship on victims of environmental pollution in Nigeria; as a plaintiff whose claim is statute barred will be barred from enforcing his right of action, even where he has obviously suffered injuries and has a cause of action.

Other challenges to access to justice in environmental matters include non justiciability of the constitutional provisions on environmental, poverty, politics, poor judicial attitude to environmental protection, weak enforcement, delay in dispensation of justice, non-independence of the judiciary, influence of political class, and need to protect the revenue generation drive of Government etc.

Public Interest Litigation and Access to Justice

Public Interest Litigation (PIL) is a legal tool that facilitates common people to access the courts to seek redress in legal matters. Public interest litigation (PIL) plays vital role in enhancing access to justice as it offers justice to disadvantaged sections of society, provides an avenue to enforce diffused or collective rights, and enables civil society to not only spread awareness about human rights but also allows them to participate in government decision making. PIL could also contribute to good governance by keeping the government accountable.

In South Africa. Public interest litigation is rooted in section 38 of the Constitution of South Africa³⁷. The Section allows certain classes of persons to enforce all fundamental rights stipulated under the bill of rights through public interest litigation, irrespective of whether the conduct being challenged affects their own right. In addition, the National Environment Management Act of South Africa³⁸ also allows any person or group of persons to institute a proceeding for the purpose of seeking relief for the breach of the provisions of the Act or any other legislation concerned with environmental management, environmental protection or biodiversity use.³⁹

While Articles 32(2) and 226 of the Constitution of India empower the Supreme Court and High Courts of India to issue directions for the purpose of enforcing fundamental human rights respectively.

It is important to note that in Nigeria, the Fundamental Right Enforcement Procedure Rules 2009 stipulates that court shall encourage and welcome Public Interest Litigation by any human rights activists, advocates, groups and NGOs for the enforcement of human rights.⁴⁰ Therefore public spirited persons or groups, concerned citizens, activists and NGOs can make application to High Courts for the enforcement of fundamental human rights on behalf of indigent victims of violation of human rights. This will enhance accessibility of poor citizens to justice. It is worthy to note that the tool of PIL has been employed by concerned citizens like Gani Fawehinmi, Femi Falana, Olisah Agbakoba, Ebun Adegboruwa, Babalola Olumide etc. to litigate human rights

³⁷ Murombo T and Valentine H, 'SLAPP Suits: An Emerging Obstacle to Public Interest Environmental Litigation in South Africa' (2011) 27 *South Africa Journal of Human Rights*, 87.

³⁸ 107 of 1998

³⁹ NEMA, s. 32 (1).

⁴⁰ FREP Rules, s. 3 (e).

matters and other constitutional matters in Nigerian Courts. Examples of PIL cases in Nigeria are *Okojie & Others V. AG Lagos State*⁴¹, *Peter Nemi V AG Lagos State and Others*⁴², *Director State Security Service and Another V Olisa Agbakoba*⁴³, *Olisah Agbakoba V AG Federation & Minister of Education*⁴⁴, *Fawehinmi V Akilu*⁴⁵, *Bayo Johnson V AG Lagos State*⁴⁶ etc.

Application of Public Interest Litigation to Environmental Matters in Nigeria

The application of Public interest Litigation to environmental matters is needed in Nigeria to enhance access to environmental justice and improve environmental protection and sustainability. This is because, public interest litigation will enable public spirited persons or groups, concerned citizens, environmental activists and environmental NGOs to make application to High Courts for the enforcement of environmental rights on behalf of indigent environmental victims. Especially following the provisions of the Fundamental Right Enforcement Procedure Rules 2009, which enables any person to challenge the violation or likelihood of violation of those human rights listed in Chapter IV of the 1999 Constitution and the African Charter in High Courts in Nigeria. Therefore, the right to a healthy environment can be enforced if violated in Nigeria. It is worthy to note that the decision of the court in *Gbemre V. Shell Petroleum Development Company Limited and Others*⁴⁷ has also laid to rest the inclusion of the right to a healthy environment as a part and parcel of the right to life.

It is pertinent to note that there are dearth of cases⁴⁸ where NGOs and public spirited persons committed to the cause of environmental protection have instituted Public Interest Litigation in Nigeria on behalf of indigent victims of environmental pollution. In *Gbemre V. Shell Petroleum Development Company Limited and Others*⁴⁹, the applicant, a native of Iwherekan Community, Delta State instituted a public interest action at the Federal High Court against Shell Nigeria and other defendants to challenge their gas flaring activities in the Community. The Applicant among other things sought for a declaration that the defendant's actions violate their human rights to life

⁴¹ [1981] 2 NCLR 350.

⁴² [1996] 6 NWLR (Pt. 452) 42.

⁴³ [1997] 3 NWLR (Pt. 595).

⁴⁴ FHC/L/CS/1358/2013.

⁴⁵ [1989] 3 NWLR (Pt. 112) 643.

⁴⁶ [2007] 8 NWLR (Pt. 1037) 535.

⁴⁷ [2005] Suit No. FHC/B/CS/53/05.

⁴⁸ Ramos n15.

⁴⁹ Suit No: FHC/B/CS53/05.

and dignity of persons, thereby denying them the right to a clean and healthy environment. It was held by the court that the acts of the defendants in flaring gas in the Community was a violation of the right to life and dignity of human person of all the members of the applicant's community⁵⁰, as stipulated in the 1999 Nigerian Constitution (As altered) and the African Charter on Human and People's Rights (Ratification and Enforcement) Act.⁵¹ The position of the trial court on *locus standi* was liberal as the court allowed the applicant to institute a representative and public interest action on behalf of the victims of environmental pollution.

The Court also restrained the first and the second defendants from continuing with flaring gas in Iwherekan and ordered them to take necessary steps to wind up flaring of gas in the community. Although, the decision of the court in *Gbemre's* case has been applauded for vindicating the notion that the right to a clean and ecologically safe environment is an appendage of the right to life as enshrined in the Nigerian Constitution⁵², the judgement was however declaratory and no damages was awarded in favour of the members of the Community. Shell however applied for the vacation of the injunction by the court and filed an application detailing the steps by steps modality for reducing gas flaring in the community. The court vacated the injunction but the judge was transferred on the date slated to hear the application for reduction of gas flaring. The case file was subsequently declared missing and the matter was inconclusive. This has reduced the jurisprudential weight of the decision.⁵³

Even though the case was instituted in a regional court, the plaintiff in *The Social and Economic Rights Action Center and the Center for Economic, and Social Rights V Federal Republic of Nigeria*⁵⁴ instituted a public interest litigation on behalf of the Ogoni people. The African Commission on Human Right while allowing public interest action, expounded the provision of Article 24 and held that the Nigerian Government's failure to protect the Ogoni people against pollution caused by oil exploration activities in the region and its inability to provide effective

⁵⁰ Abdulkadir A.B, 'The Right to a Healthful Environment in Nigeria: A Review of Alternative Pathways to Environmental Justice in Nigeria' (2014) 3 (1) *Afe Babalola University: Journal of Sustainable Development Law and Policy*, 127.

⁵¹ CAP. A9 LFN 2004.

⁵² Lawson N.G 'The Doctrine of Absolute Liability and the Right to a safe Environment: issues and Challenges in the Liability of Environmental Polluters in Nigeria' (PhD Thesis, School of Law, University of Wolverhampton, 2017), 116.

⁵³ Okonmah P. D, 'Right to a Clean Environment: A study of Oil Pollution in the Nigerian Delta' (PhD Thesis, Aberystwyth Law School. Aberystwyth, 2012), 116.

⁵⁴ (Communication No. 155/96 -2001).

remedies for them amounts to violation of their human rights.⁵⁵ The Commission also held that Articles 4, 14, 16 and 18 of the African Charter were violated by the Nigerian Government. The Commission urged the Nigerian Government to investigate the human rights abuses in Ogoni land, provide compensation to the victims and clean up the polluted land and rivers.⁵⁶ The Commission also asked the Nigerian Government to ensure that environmental impact assessment of oil activities are conducted before embarking on oil exploration in the region, and adequate information on the potential health and environmental risks associated with oil activities are relayed to the appropriate Government Agencies.⁵⁷

In the same vein, the ECOWAS Court in *SERAP V. Federal Republic of Nigeria*⁵⁸ while allowing public interest litigation held that Nigeria violated Articles 1 and 24 of the African Charter by exposing the people of the Niger Delta to extreme environmental pollution because of oil exploration.⁵⁹ The Nigerian government was ordered by the court to take all necessary steps to facilitate the restoration of the Niger Delta Environment, prevent future environmental degradation and ensure that environmental polluters are appropriately sanctioned.⁶⁰

More recently, the Supreme Court in the case of *Centre for Oil Pollution Watch V. NNPC*⁶¹ lend credence to PIL in environmental matter by liberalizing the rule of standing. The appellant's (Plaintiff) case was dismissed by the trial court due to the preliminary objection raised by the respondent (defendant) challenging the standing of the appellant. The Court of Appeal affirmed the dismissal of the appellant's case. On further appeal by the appellant, the Supreme Court unanimously gave judgement in favour of the appellant. It was further held that everybody including NGOs who seek due performance of law for the purpose of safeguarding the environment against abuse for the benefit of the present and future generation should be clothed with standing. The position of the Supreme Court is commendable as it is a liberal move in enhancing PIL in environmental matters in Nigeria.

⁵⁵ Abdulkadir n50, 127, Wondalem H. A 'The Right to environment under African Charter on Human and Peoples' Right' (2015) 2(1) *International Journal of International Law*, 220.

⁵⁶ UN Special Rapporteur on Human Rights and Environment- SERAC and CESR V. Nigeria <<http://www.srenvironment.org/node/1896>> accessed 12 August 2024.

⁵⁷ Ibid.

⁵⁸ General List No. ECW/CCJ/APP/08/09, Judgment No. ECW/CCJ/JUD/18/12. Holden at Ibadan, in Nigeria, 14th December, 2012.

⁵⁹ Okonkwo T., 'Environmental constitutionalism in Nigeria: Are we there yet?' (2015) 13 *Nigerian Juridical Review*, 201.

⁶⁰ Ibid.

⁶¹ [2018] LPELR-50830(SC).

The application of Public Interest Litigation to environmental matters will enhance accessibility of poor victims of environmental pollution to justice as more people will have the opportunity of asserting their rights through concerned citizens and environmental NGOs. It will also enhance the protection of the environment and guarantee the right to a healthy environment in Nigeria.

Conclusion and Recommendations

Public interest litigation is a veritable tool for enhancing access to justice in environmental matters in Nigeria. The Fundamental Right Enforcement Procedure Rules 2009, which stipulates that court shall encourage and welcome Public Interest Litigation by any human rights activists, advocates, groups and NGOs for the enforcement of the human rights⁶² listed in Chapter IV of the 1999 Constitution and the African Charter in High Courts in Nigeria is a vindication of the application of Public interest Litigation to environmental matters in Nigeria.

The adoption of public interest litigation in environmental matters will assist in enhancing the protection of the right to a wholesome environment, aid ecological and biological diversity conservation and improve sustainable development in Nigeria.

It is therefore recommended that:

- a. More environmentally focused NGOs, activists and public spirited persons should engage in public interest litigation of environmental matters on behalf of indigent victims of environmental pollution.
- b. Courts should constantly and conscientiously encourage public interest litigation by liberalising the rule of standing when adjudicating environmental matters.
- c. The Government and environmental focused NGOs need to sensitize the populace and continuously create awareness about the environment and the need for its protection. The awareness will help to advance a change of perception and orientation about the environment and change citizenry attitude toward the environment.
- d. There must be autonomy of the judiciary to ensure proper functioning of courts and judges and to insulate judges from every form of pressure and interferences to their duties from other arms of Government, politicians and other sectors in Nigeria while adjudicating environmental matters.

⁶² FREP Rules, s.3 (e)

- e. Judges and their supporting staff must also have access to up-to-date judicial capacity building tailored towards environmental protection to enhance their knowledge about environmental protection issues and developments in order to enable them do justice to environmental matters brought before them.
- f. Funding for environmentally focused NGOs by Government, philanthropists, national and international organisations should be encouraged.