PUBLIC INTEREST LITIGATION IN NIGERIA: A TOOL FOR ADVANCING ENVIRONMENTAL JUSTICE AND SUSTAINABLE DEVELOPMENT

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Abstract

Public interest litigation[1] has become a critical tool for addressing Nigeria's environmental challenges, characterized by ecological degradation stemming from industrial activities, deforestation, and ineffective regulatory enforcement. Despite the presence of laws such as the Environmental Impact Assessment Act, the Petroleum Industry Act, and the NESREA Act, systemic weaknesses—including political interference, poor enforcement mechanisms, and institutional inefficiencies—undermine their effectiveness. PIL fills this gap by enabling individuals, communities, and civil society organizations to initiate legal action, compelling adherence to environmental standards and seeking remedies for harm caused by environmental violations. This study explores through a doctrinal reach approach, the transformative potential of PIL within Nigeria's legal framework, emphasizing its capacity to enforce laws, empower marginalized communities, and advance environmental justice. However, challenges such as restrictive locus standi interpretations, high litigation costs, judicial delays, and weak enforcement of rulings persist. Through the analysis of landmark cases, the article highlights evolving judicial attitudes and increasing recognition of PIL's broader societal importance. To maximize its impact, the study recommended judicial reforms to broaden access to justice, legal aid mechanisms to alleviate financial burdens, and stronger collaboration with civil society organizations to support litigation efforts. Ultimately, a robust PIL framework is positioned as not only a means to address Nigeria's environmental crises but also as a pathway to sustainable development, ecological preservation, and the protection of human rights. This comprehensive approach underscores PIL's role as a transformative instrument for fostering environmental governance and social equity in Nigeria.

Keywords: Environmental Justice, Environmental Democracy, Public Interest Litigation, Sustainable Development.

1. Introduction

Nigeria's environmental challenges are both pressing and diverse, encompassing oil spills, deforestation, desertification, pollution, and waste mismanagement. The Niger Delta region, known for its vast oil reserves, has become emblematic of these issues, with oil exploration leading to extensive environmental degradation, loss of biodiversity, and adverse impacts on local livelihoods. Beyond oil, unsustainable agricultural practices and deforestation have contributed to soil erosion, habitat destruction, and climate-related vulnerabilities, such as desertification in northern Nigeria. These environmental problems not only threaten

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[1] Herein referred to as PIL

ecosystems but also exacerbate poverty and inequality, disproportionately affecting marginalized communities.[2]

Public interest litigation (PIL) has emerged as a vital tool in advocating for environmental protection and addressing these systemic issues. It serves as a mechanism for enforcing environmental laws, holding both corporations and the government accountable, and securing redress for communities affected by environmental degradation.[3] In Nigeria, landmark cases, such as *Gbemre v Shell Petroleum Development Company Nigeria Limited*,[4] have demonstrated the potential of PIL to achieve environmental justice by aligning environmental protection with constitutional rights, including the right to life and dignity. However, despite these promising developments, the use of PIL remains underutilized due to various structural challenges.

Institutional barriers, such as restrictive interpretations of locus standi, high litigation costs, and delayed judicial processes, have hindered the broader adoption of PIL in Nigeria. Moreover, weak enforcement mechanisms and insufficient public awareness further constrain its effectiveness. Addressing these challenges is crucial to unlocking the potential of PIL as a transformative tool for environmental governance.[5] By strengthening institutional capacities, fostering legal reforms, and enhancing public engagement, Nigeria can harness the full potential of PIL to mitigate environmental harm and promote sustainable development.

2. The Legal Framework for Environmental Protection in Nigeria

Nigeria's legal framework for environmental protection is grounded in its Constitution and various statutes designed to address the multifaceted environmental challenges confronting the country. The Constitution of the Federal Republic of Nigeria, 1999, under its Chapter II, includes provisions aimed at environmental protection, such as Section 20,[6] which enjoins the state to protect and improve the environment. However, these provisions are non-justiciable, creating enforcement challenges. Key statutory instruments include the Environmental Impact Assessment (EIA) Act,[7] which mandates environmental assessments for proposed projects likely to have significant environmental effects, and the National Environmental Standards and Regulations Enforcement Agency Act[8], which empowers NESREA to enforce environmental laws and regulate industrial activities. Sector-specific legislation, such as the Oil Pipelines Act and the Petroleum Industry Act (PIA), 2021, focuses on the oil and gas sector, addressing issues like pollution control, gas flaring, and compensation for environmental damages.

Despite this robust legislative framework, enforcement of environmental laws in Nigeria remains weak.[9] The enforcement gap arises from institutional inefficiencies, corruption, inadequate funding, and political interference. For instance, regulatory agencies often lack the capacity and resources to monitor compliance effectively or sanction violators. This has led to widespread environmental violations, particularly in the Niger Delta, where oil spills and gas

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2 Ilesanmi, J. (2024). Importance of eco-entrepreneurship as a tool for climate action and low-carbon transition in developing countries. *Journal of Sustainable Development Law and Policy*.

3 Ucheje, O., & Ikebude, C. (2024). *An evaluation of environmental contamination on public health: A review of air pollution in Nigeria*. Journal of Engineering Research and Report

4 Gbemre v. Shell Petroleum Development Company Nigeria Limited, (2005) AHRLR 151 (NgHC 2005)

5 Ucheje, O., & Ikebude, C. (2024). *An evaluation of environmental contamination on public health: A review of air pollution in Nigeria*. Journal of Engineering Research and Reports.

6 *Section 20* of the Constitution of the Federal Republic of Nigeria, 1999.

7 1992

8 Herein referred to as NESREA Act

9 Onyenekenwa, C. E., & Agbazue, V. C. 'Protection of Nigeria's environment: A critical policy review', *Journal of Environmental Science and Technology*, [2011], 4, 490–497.

flaring persist despite legal prohibitions.[10] Moreover, there is often a lack of political will to enforce judgments, even in landmark cases like *Gbemre v Shell Petroleum Development Company Nigeria Limited*, where the Federal High Court declared gas flaring unconstitutional and violative of fundamental rights.

Public interest litigation has emerged as a crucial mechanism to bridge this enforcement gap. Through PIL, individuals, non-governmental organizations, and communities can initiate legal action to compel compliance with environmental laws and seek redress for environmental harm. For instance, PIL has been instrumental in holding corporations accountable for environmental degradation and pushing for governmental action in protecting natural resources. However, challenges such as restrictive interpretations of *locus standi* and the high cost of litigation continue to impede its widespread use. Strengthening PIL and ensuring the independence and capacity of regulatory agencies are critical steps toward enhancing environmental governance in Nigeria.

3. Public Interest Litigation: Concept and Relevance

Public interest litigation serves as a powerful legal mechanism for addressing systemic issues in environmental governance, particularly in jurisdictions like Nigeria, where regulatory bodies often fail to fulfill their mandates. PIL allows individuals or organizations to advocate for public interests, stepping in to enforce laws and ensure accountability where governmental agencies have been negligent or compromised by corruption. Its relevance to environmental law in Nigeria is underscored by the country's persistent environmental challenges, including widespread oil spills and gas flaring in the Niger Delta.[11] PIL enables litigants to challenge the actions—or inaction—of corporations and government bodies, compelling compliance with environmental regulations.

One significant aspect of PIL is its ability to address systemic failures by holding powerful entities accountable. Regulatory agencies in Nigeria, such as the National Environmental Standards and Regulations Enforcement Agency (NESREA), often lack the resources or independence needed to effectively monitor and enforce environmental standards.[12] PIL has proven instrumental in filling this gap. For example, in the landmark case of *Gbemre v Shell Petroleum Development Company Nigeria Limited,*[13] the Federal High Court ruled that gas flaring violated constitutional rights, thereby establishing a precedent for human rights-based environmental claims. Such cases highlight PIL's role in advancing systemic accountability and ensuring that environmental laws are not rendered ineffective by institutional failures.

PIL also plays a critical role in empowering marginalized communities. In Nigeria, communities in the Niger Delta bear the brunt of environmental degradation, including pollution of waterways, destruction of farmlands, and health issues caused by oil extraction activities. These communities often lack the resources or political leverage to seek redress through conventional means. PIL provides a platform for these groups to access justice and seek remedies for environmental harm. Furthermore, PIL enhances accountability by compelling both private corporations and government agencies to adhere to environmental

10 *Ibid*., 490–497.

11 Oyefara, J. L., 'Good governance and environmental sustainability in Lagos State, Nigeria: Can the state achieve goal seven of millennium development goals (MDGs)', *European Scientific Journal*, [2013], 41–55

12 Khandare, J., & Shaikh, A. 'Concept of public interest litigation: An overview,' *Gradiva Review Journal*.

13 *Ibid.*

standards. By doing so, it helps foster a culture of compliance, ensuring that environmental governance is not undermined by economic or political interests.[14]

4. Judicial Attitude towards PIL in Nigeria

The Nigerian judiciary has historically demonstrated a cautious approach to public interest litigation (PIL), particularly in environmental cases, often citing strict interpretations of locus standi—the requirement that plaintiffs demonstrate a direct personal interest in the matter. This traditional stance limited access to justice for communities and groups advocating for environmental protection. However, over time, landmark cases like *Oronto Douglas v Shell Petroleum Development Company Limited*[15] and *Gbemre v Shell Petroleum Development Company Nigeria Limited*[16] have signaled a gradual shift in judicial attitudes. These cases represent a growing recognition of the importance of PIL in addressing systemic environmental issues, particularly in a country grappling with widespread ecological degradation and weak regulatory enforcement.[17]

The case of *Oronto Douglas v Shell*[18] is noteworthy for expanding the scope of PIL in Nigeria. In this case, the plaintiff, an environmental activist, challenged the validity of an Environmental Impact Assessment (EIA) conducted by Shell. Although the court ultimately ruled against the plaintiff on procedural grounds, the case highlighted the potential of PIL to hold corporations accountable for environmental harm. Similarly, the landmark decision in *Gbemre v Shell Petroleum Development Company Nigeria Limited*[19] marked a pivotal moment in Nigeria's judicial history. Here, the Federal High Court ruled that gas flaring violated constitutional rights to life and dignity as guaranteed under Sections 33 and 34 of the Constitution,[20] as well as the African Charter on Human and Peoples' Rights. This decision broadened the interpretation of locus standi in environmental matters, allowing individuals and groups to advocate for broader societal and environmental interests.

The judiciary's evolving stance toward PIL is a crucial development for environmental governance in Nigeria. By recognizing the rights of communities and individuals to challenge environmental violations, courts are contributing to the enforcement of environmental laws and the protection of constitutional rights. However, challenges remain, including inconsistent application of legal principles across jurisdictions and delays in judicial processes. Strengthening judicial capacity and promoting awareness of the importance of environmental justice can further enhance the judiciary's role in advancing PIL in Nigeria.[21]

5. Challenges to Effective Use of PIL in Environmental Law

The deployment of public interest litigation (PIL) in addressing environmental issues in Nigeria is impeded by several systemic challenges. One of the most significant barriers is the restrictive interpretation of locus standi by Nigerian courts. Traditionally, plaintiffs must demonstrate direct harm, making it difficult for communities or non-governmental organizations to initiate environmental lawsuits on behalf of the public. Although the decision

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14 Josephine I.; Importance of Eco-Entrepreneurship as a Tool for Climate Action and Low-Carbon Transition in Developing Countries: A Case Study of Nigeria. The Journal of Sustainable Development, Law and Policy. Vol. 15:2. (2024), 298-327.

15 *Oronto Douglas v. Shell Petroleum Development Company Limited*, (1999) 2 NWLR (PT 591)

16 *Gbemre v Shell Petroleum Development Company Nigeria Limited* (2005) AHRLR 151 (NgHC 2005)

17 Okoroafor, O. U., & Chiedozie, F. I., 'An evaluation of environmental contamination on public health: A review of air pollution in Nigeria', *Journal of Engineering Research and Reports,* [2024], *26*(7), 81–92.

18 *Ibid*.

19 *Ibid.*

20 *Sections 33 and 34* of the Constitution of the Federal Republic of Nigeria, 1999.

21 Okoroafor, O. U., & Chiedozie, F. I. *op cit*.

in *Centre for Oil Pollution Watch v. Nigerian National Petroleum Corporation (NNPC)*[22] indicated some progress, with the court affirming the standing of public interest groups in environmental matters, many cases continue to be dismissed on technical grounds. This rigid approach limits the ability of marginalized communities to challenge systemic environmental failures.[23]

The financial cost of litigation also significantly hampers the use of PIL in Nigeria. Filing environmental claims often requires substantial resources, including hiring expert witnesses to provide scientific evidence and navigating lengthy court processes. For communities in regions like the Niger Delta, where environmental degradation is rampant due to oil exploration, the financial burden of seeking justice is often prohibitive.[24] This issue is exacerbated by prolonged judicial processes that cause cases to drag on for years, diluting the impact of favorable judgments. Such delays frustrate plaintiffs, weaken public confidence in the judicial system, and discourage future litigants.[25]

Moreover, enforcement of judicial rulings remains weak, even when plaintiffs succeed. Regulatory agencies such as the National Environmental Standards and Regulations Enforcement Agency often lack the capacity or political independence to ensure compliance with court orders. For instance, rulings against oil companies for environmental damages have frequently gone unenforced, undermining the potential impact of PIL.[26] Another critical obstacle is the limited public awareness of environmental rights and the availability of PIL as a legal remedy. Many Nigerians, particularly those in rural and underprivileged areas, are unaware of their rights or how to initiate legal action to address environmental grievances. Strengthening awareness campaigns, reducing litigation costs, and reforming judicial attitudes toward *locus standi* are essential steps toward maximizing the potential of PIL in Nigeria's environmental governance.[27]

6. Lessons from Other Jurisdictions

Nigeria's environmental governance could benefit significantly by learning from jurisdictions where public interest litigation (PIL) has been effectively utilized to address environmental challenges. One exemplary jurisdiction is India, where the judiciary has played a proactive role in advancing environmental justice through progressive interpretations of PIL.[28] The Indian Supreme Court has consistently expanded the scope of environmental rights, treating the right to a clean and healthy environment as intrinsic to the constitutional right to life under Article 21 of the Indian Constitution.[29] This interpretation has enabled courts to address systemic environmental issues, including air and water pollution, deforestation, and wildlife conservation, through PIL.[30]

A landmark case that illustrates India's success with PIL is *M.C. Mehta v. Union of India*.[31] In this case, the Indian Supreme Court ordered stringent measures to curb industrial pollution in the Ganga River, demonstrating how PIL can compel government agencies and

22 *Oil Pollution Watch v. Nigerian National Petroleum Corporation (NNPC),* [2019] 5 NWLR (Pt. 1666) 518

23 Ekpo, M. E., & Ekpoudo, A., 'Protection of Nigeria's coastal environment: The dilemma with common law remedies', *The Calabar Law Journal*, [2024], Retrieved from <calabarlawjournal.com>

24 *Ibid.*

25 Ekpo, M. E., & Ekpoudo, A. *op.cit*.

26 Skotnes-Brown, J. (2024). *Animality and colonial subjecthood in Africa: The human and nonhuman creatures of Nigeria*.

27 Arimoro, A. E., Igbokwe, E. M., & Egbe, T. T. (2024). *Law and sustainable development after COVID-19*

28 Garver, G. (2024). *Ecological law in practice: Case studies for a transformative approach*

29 *Article 21* of the Indian Constitution.

30 Mehta, M. C., & Mehta, A. K. (2024). *Transformative environmental law: Lessons from Indian jurisprudence*.

31 *M.C. Mehta v Union of India* (1987) SCR (1) 819

corporations to adopt sustainable practices. The court not only enforced existing environmental laws but also issued innovative directives to fill regulatory gaps. Similarly, in *Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh*,[32] the court halted limestone quarrying in a sensitive ecological zone, emphasizing the importance of balancing development with environmental sustainability.[33] These cases underscore the judiciary's role in enforcing environmental protections and fostering a culture of accountability.

Nigeria can adopt several lessons from India's approach. First, courts in Nigeria could interpret constitutional provisions more liberally to enhance access to justice for marginalized communities and environmental groups. Second, the judiciary could embrace the principle of judicial activism by issuing binding directives to address environmental degradation, as seen in Indian jurisprudence. Finally, promoting collaboration between the judiciary, regulatory agencies, and civil society could strengthen the enforcement of environmental laws. By adopting these strategies, Nigeria could harness the full potential of PIL to advance environmental justice and sustainable development.

7. Conclusion and Recommendations

Public interest litigation (PIL) represents a vital mechanism for addressing Nigeria's persistent environmental challenges, from oil spills and deforestation to pollution and habitat destruction. As an avenue for enforcing environmental laws, PIL has the potential to hold corporations and government agencies accountable while protecting the rights of marginalized communities disproportionately affected by environmental degradation. However, its full potential remains untapped due to systemic barriers, including restrictive interpretations of *locus standi,* high litigation costs, and weak enforcement mechanisms. Addressing these challenges is critical to ensuring that PIL serves as an effective tool for environmental governance and sustainable development in Nigeria.

Broadening access to justice is a crucial first step in enhancing the impact of PIL. This includes judicial reforms that adopt a more liberal interpretation of *locus standi,* allowing individuals and public interest groups to initiate environmental lawsuits on behalf of affected communities or ecosystems. Strengthening judicial capacity through specialized training in environmental law and human rights can also improve the judiciary's ability to adjudicate complex environmental cases. Additionally, fostering greater public awareness about environmental rights and PIL mechanisms is essential to empowering citizens and encouraging their active participation in environmental advocacy

To overcome the structural challenges facing PIL in Nigeria, coordinated support from civil society organizations (CSOs) and the establishment of legal aid mechanisms are imperative. CSOs play a pivotal role in mobilizing public support, documenting environmental violations, and providing technical expertise during litigation. Simultaneously, government and private sector funding for legal aid can alleviate the financial burden on affected communities, enabling them to pursue justice. A robust PIL framework that integrates these measures will not only advance environmental justice but also reinforce Nigeria's commitment to sustainable development and human rights, ensuring the protection of its natural heritage for future generations.

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[32] *Rural Litigation and Entitlement Kendra v State of Uttar Pradesh*, (1989) AIR 594,

[33] Olawuyi, M. T.; *Corporate accountability for climate change and natural environment in Nigeria: Trends, limitations, and future directions. Journal of Sustainable Development Law and Policy*, [2024].