

ARTICLE

UTILIZING LITIGATION AS A MECHANISM FOR ENVIRONMENTAL PROTECTION IN NIGERIA

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Abstract

The need for humans to safeguard the environment cannot be over-emphasized. Humans must prioritize environmental preservation, to secure benefits for both present and future generations. One way to achieve this is by resorting to legal actions, such as filing lawsuits in court. Although both the Federal and State Governments of Nigeria have passed laws aimed at bolstering environmental protection and sustainable development, the relevant government agencies have faltered in effectively implementing and enforcing these laws. Consequently, the country has faced significant environmental challenges, such as flooding, oil spillage, etc. Thus, it is important to strengthen the rights of citizens to enforce environmental protection measures. This study aims to assess the role of the judiciary in promoting and defending Nigerians' right to a healthy environment as well as the effectiveness of environmental litigation as a tool for protection within the Nigerian Environmental landscape. In achieving this, the study employed a doctrinal research methodology, by consulting primary sources of law which include the Constitution of the Federal Republic of Nigeria 1999(as amended), NESREA Act, and secondary sources of law which include Journal Articles, textbooks, etc., and all were subject to content analysis. The study found that environmental litigation serves as an avenue by which environmental protection can be achieved. It provides the mechanism through which environmental laws can be enforced, empowering citizens with the ability to hold offenders accountable. This study concludes that by empowering citizens to safeguard their environment, Nigeria's vision for sustainable development through environmental protection can be guaranteed.

Keywords:Environment, Environmental Litigation, Environmental Protection, Sustainable Development, Litigation, Nigeria.

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1.0 Introduction

The legal framework governing environmental issues in Nigeria is derived from various sources, including the Constitution, statutory laws, customary practices, judicial precedents, international environmental treaties, and court decisions. The National and State Assemblies in Nigeria also have concurrent authority to enact laws on environmental issues. Consequently, they have established institutions empowered to safeguard and preserve the environment, recognizing its paramount significance. It is important to highlight that Nigeria's fervent legislative efforts for environmental preservation surged notably during the period after 1988, often referred to as the post-Koko incident era. These laws, known as Nigerian environmental laws, encompass regulations that, if violated, incur criminal or civil penalties. The judiciary plays a crucial role in interpreting and upholding these laws, as well as evaluating rights and assigning obligations.¹ Alternative mechanisms for resolving the complaints of regulatory bodies or victims of environmental injustices may involve administrative measures by environmental protection agencies. These encompass measures such as sealing premises, withholding grants and permits, and imposing fines.

Although both the Federal and State Government of Nigeria have passed laws aimed at bolstering environmental protection and sustainable development, the relevant government agencies have faltered in effectively implementing and enforcing these laws. Environmental litigation therefore serves as an avenue by which this goal can be achieved.²

This paper aims to evaluate environmental litigation within the Nigerian legal jurisprudence and assess the judiciary's involvement in this domain. To achieve this objective, the paper addresses several questions, including: What role has the judiciary played in advancing and safeguarding the right to a clean environment in Nigeria? What legal barriers hinder the use of litigation to address and rectify environmental injustices in Nigeria? In answering these questions, this paper analyzes the nature of environmental litigation in Nigeria, the relevant courts with jurisdiction to

C Okongwu & E Imoisi, 'Enhancing Environmental Litigation: The Key to Sustainable Environmental Protection in Nigeria' (2020) 2 (2) *IRLJ* <<https://www.nigerianjournalsonline.com/index.php/IRLJ/article/viewFile/873/858>> accessed 25 October 2023.

² Ibid

entertain environmental litigation, and obstacles to such litigation. The paper argues for both private and public interest litigation and concludes by recommending among other things, the establishment of specialized environmental courts and the enactment of legislation granting individuals the locus standi to initiate legal actions for environmental protection in instances where there is a threat to the environment, without the requirement of proving specific damages as is currently mandated by Nigerian law.

1.1 Aim and Objectives of the Study

The principal aim of the study is to evaluate environmental litigation as a tool for protection within the Nigerian legal practice and the role of the judiciary in advancing and safeguarding the right to a healthy environment in Nigeria, while the specific objectives are to:

- a. Examine the benefits of utilizing environmental litigation in environmental protection and
- b. Identify the potential barriers to the utilization of litigation for addressing and rectifying environmental wrongs in Nigeria?

2.0 Conceptual Framework

2.1 Environment: It originates from the French word ‘Environ’ meaning surroundings. According to the World Bank, the environment encompasses the natural and societal conditions surrounding humanity, including future generations. This definition is forward-looking and though not exhaustive, notably addresses the issue of sustainability.³ Bayode, Emmanuel, and Sogbon⁴, limit their conceptualization of the environment to the biophysical elements and activities of the natural environment, encompassing land, water, and air. To broaden this perspective, the environment also encompasses all atmospheric layers, both inorganic and organic substances, as well as the socio-economic aspects and activities of human society.⁵

2.2 Protection/Protectionism: The nearest in contextual meaning to environmental

World Bank Group, ‘Environment Overview: Development news, research and data (2023)’ <https://www.worldbank.org/en/topic/environment/overview> accessed 2nd February 2025

OJ Bayode AA Emmanuel and O Sogbon, “Environmental Implications of oil Exploration and Exploitation in the Coastal Region of Ondo State Nigeria: A Regional Planning Appraisal, (2011) 4 (3) *Journal of Geography and Regional Planning* PP 110-121.

Dr. Uwem Udok, Dr. Erimma Gloria Orié and Imaobong Ukpong ‘Challenges Of Access To Environmental Justice In Nigeria’ (2023) 1-21 Vol.3 *Cavendish University Law Journal* <<https://www.cavendish.ac.ug/wp-content/uploads/2023/05/Challenges-of-Access-to-Environmental-Justice-in-Nigeria.pdf>> accessed 25 October 2023

protectionism is conservation. According to the International Union for Conservation of Nature and Natural Resources,⁶ it can be defined as the management of human use of the biosphere, to optimize benefits for the current generation while ensuring its capacity to fulfill the needs and aspirations of future generations.⁷

2.3 Litigation: According to Black's Law Dictionary, litigation refers to a legal dispute or contest in a court aimed at enforcing a right.⁸

3.0 The Nature of Environmental Litigation in Nigeria

Environmental litigation refers to the process of instituting legal actions to resolve disputes pertaining to environmental issues, such as pollution, climate change, etc. Environmental litigation essentially occurs through criminal prosecutions and civil lawsuits. Typically, Nigerian statutes are characterized by penal provisions aimed at preventing activities leading to environmental harm. These provisions often entail fines or imprisonment as punitive measures. In essence, individuals or corporations violating these statutes may face criminal charges, aiming to inflict pain or impose financial losses on polluters. Public authorities are usually saddled with the authority to initiate criminal proceedings, as many environmental protection laws grant them this power. For example, the NESREA Act in its section 1(2) empowers the agency to sue or be sued in its corporate capacity. Specifically, section 8(f) of the Act grants authority to the agency to establish mobile courts in collaboration with relevant agencies. This section states thus: *Subject to the provisions of the Constitution of the Federal Republic of Nigeria, 1999, and in collaboration with relevant judicial authorities establish mobile courts to expeditiously dispense cases of violation of environmental regulations.*"

While the judicial system is responsible for convictions, the agency holds the power to initiate such prosecutions. Additionally, section 32 (3) of the Act confers upon the agency the power to conduct this prosecution, with adherence to the provisions outlined in Section 174 of the Constitution of the Federal Republic of Nigeria 1999. Any officer of the agency may, upon

⁶ International Union for Conservation of Nature and Natural Resources

⁷ World conservative strategy 1980, prepared by the International Union for Conservation of Nature and Natural Resources (IUCN) <portals.iucn.org/...rary/efiles/documents/WCS-004.pdf> accessed 26 October 2023.

⁸ BA Garner, *Black's Law Dictionary* (11th edition USA Thomas Reuters Publisher)

approval from the Attorney-General of the Federation, initiate criminal proceedings related to violations of this Act or its regulations.⁹

Conversely, civil litigation operates on the basis of tortious liabilities or breaches of legally imposed duties. As articulated by Oyewo,¹⁰ civil litigation entails the enforcement of legal rights or redressing of a legal wrong before a competent judicial body or tribunal established by the law

In Nigeria, civil litigation plays a more pivotal role in environmental protection compared to criminal prosecutions¹¹. Its versatility allows individuals, communities, corporations, and government bodies to initiate legal action for breaches of environmental regulations. Notably, a prevalent form of environmental litigation in Nigeria involves citizens suing oil companies in cases of oil pollution. Regulatory agencies also have the authority to initiate civil proceedings to secure court orders for the closure of premises posing environmental risks, as empowered by the NESREA Act in its Section 30(1) (g).

Some of the remedies in civil litigation provided by common law and statutes are found in torts like nuisance, negligence, trespass, and the principle established in *Ryland v Fletcher*.¹² These principles are applicable for enforcing rights under Environmental Protection law. These principles of Common law will be examined briefly:

- a. Negligence: In the context of environmental law, negligence arises when a person, corporation, or public authority breaches a duty of care owed to others by engaging in environmentally harmful activities, thereby causing foreseeable damage. For instance, industries and companies engaged in activities such as oil exploration, waste disposal, chemical manufacturing, or mining owe a duty of care to surrounding communities to operate in an environmentally safe manner. Where such entities fail to adhere to established environmental standards, such as proper waste management, safe disposal of toxic substances, or maintenance of equipment and this failure results in pollution of land, water, or air, they may be held liable for negligence. Environmental negligence may also manifest in cases such as oil spills caused by poorly maintained pipelines,

⁹ NESREA Act s.32 (3)

¹⁰ AT Oyewo, *The Principles and Practice of Civil Litigation in Nigeria* (1st Edition Jator Publishing Company, 2011)1.

¹¹ AE Akpan, 'Civil Liabilities and Criminal Sanctions in International Environmental Law: A General Appraisal' (2006) 3 Fountain Quarterly Law Journal, 65-82.

¹² [1866] LR 1 Exch [265], [277],[280]

contamination of water sources due to improper disposal of industrial waste, or emissions of hazardous gases due to lack of adequate safety measures. In such cases, affected individuals may institute actions for negligence by establishing the existence of a duty of care, breach of that duty, causation, and resulting damage.

A leading Nigerian authority is *Shell Petroleum Development Company (Nig.) Ltd v. Tiebo VII & Ors (2005) 9 NWLR (Pt. 931) 439*. In this case, the respondents' land and fishponds were damaged due to an oil spill caused by the appellant's operations. The court held that Shell owed a duty of care to the community and was negligent in failing to prevent the oil spill. The court awarded damages to compensate for environmental damage and loss of livelihood. Similarly, in *Shell Petroleum Development Company (Nig.) Ltd v. Farah (1995) 3 NWLR (Pt. 382) 148*, the Court of Appeal held that an oil company may be liable in negligence where it fails to properly maintain its facilities, resulting in oil pollution that damages the land and property of the plaintiffs. The remedies available under negligence particularly damages and injunctions serve important environmental protection purposes. In the case of *Bodo Community v The Shell Petroleum Development Company of Nigeria Limited*¹³ which was filed in the UK, the Plaintiff sought compensation for two Oil Spills which occurred in 2000 in the Bodo, Gokana Local Government Area, Rivers State, Nigeria. The defendant was driven to make an out-of-court settlement of £55million as compensation to the plaintiffs. Damages may compensate victims for personal injury, loss of livelihood, or property damage, while injunctions may compel polluters to adopt safer practices or halt environmentally harmful activities altogether. Thus, negligence operates as both a compensatory and preventive mechanism in environmental law.

- b. Nuisance: The tort of nuisance is one of the most frequently invoked common law principles in environmental protection. Nuisance arises where a defendant's use of land results in substantial and unreasonable interference with another person's use and enjoyment of land, or causes injury to health, comfort, or convenience. Environmental pollution often falls squarely within this definition. In environmental law, nuisance commonly occurs through activities such as the emission of toxic fumes, excessive

¹³ Claim No. HQ X01280

noise, discharge of untreated effluents into rivers, oil spills, dumping of solid waste, or persistent odours from industrial facilities. Such activities may render land unusable, contaminate water sources, destroy crops, or cause health hazards to nearby residents.

Nuisance may be private, where the interference affects specific individuals or landowners, or public, where the interference affects the public or a large section of the community, such as pollution of public waterways or air pollution affecting an entire city. Environmental degradation frequently gives rise to public nuisance, and in appropriate cases, actions may be brought by the Attorney-General or authorized individuals. The remedies for nuisance are particularly significant for environmental protection. Damages compensate victims for harm suffered, while injunctions can restrain the continuation of polluting activities. Additionally, the remedy of abatement allows for the removal or cessation of the nuisance, thereby restoring the environment to a safer condition.

- c. **Strict liability:** It is a principle of common law under which a defendant is held legally responsible for damage arising from their activities, **irrespective of fault, negligence, or intention**. Liability attaches once it is established that the defendant engaged in a hazardous or non-natural use of land and that such activity resulted in damage to the plaintiff. This principle is particularly significant in environmental protection law. The foundation of strict liability was laid in the landmark English case of *Rylands v. Fletcher (1868) LR 3 HL 330*, where the court held that a person who brings onto their land anything likely to cause harm must keep it at their peril. If such a substance escapes and causes damage, the person is liable, even in the absence of negligence. This rule has become especially relevant in environmental cases involving toxic substances, oil, gas, chemicals, and industrial waste.¹⁴ such as the case of *Umudje v Shell-B.P Petroleum Development Co. of Nigeria Ltd.*¹⁵

Although the number of environmental law cases decided in Nigeria are relatively small compared to other developed legal areas, there are still several cases that illustrate the courts

¹⁴ (1868) LR 3 HL 330

¹⁵ (1975) LCN/2005 SC

authority to establish new standards and precedents for environmental protection.¹⁶ The court takes a proactive step to ensure that the environmental right of an injured party is protected. Legal counsel for national conservation groups and ordinary citizens are increasingly claiming in the court a legally enforceable right to a healthy environment. In the case of *Interland Transport Limited v J.A. Adediran & Anor*¹⁷ the respondents sued the appellant for causing disturbing noises, damages to the roads and water pipes. The High Court awarded damages and granted an order of mandamus against the appellant. On appeal, the Court of Appeal set aside the Judgement of the High Court on the grounds that since the violation complained of constituted public nuisance, only the Attorney General could maintain an action in the interest of the public. However, interestingly the Supreme Court set aside the judgment of the Court of Appeal and resorted to that of the High Court on the grounds that any aggrieved member of the public is at liberty to challenge public nuisance.

Even though in Nigeria there is no special superior court of record with exclusive jurisdictions to hear and determine environmental cases¹⁸ the existing High Courts have been conferred with the jurisdictions to entertain matters relating to environmental issues. Section 251(1)(n) of the 1999 Constitution¹⁹, confers jurisdiction with respect to mines and minerals on the Federal High Court.

Furthermore, Agenda 21 of the 1992 Rio Declaration on the environment and development²⁰ underscored the importance of the judicial system in environmental protection when it calls on national governments to establish judicial and administrative institutions and procedures for legal remedies.²¹ Principle 10²² urges national governments to encourage participation of all concerned citizens and to provide effective access to judicial and administrative proceedings including redress and remedy.

¹⁶ KU Adamu, *Environmental Protection Law and Practice* (1st Edition Malthouse Press 2014) 211

¹⁷ (1986) 2NWL (Pt.20) 78

¹⁸ Currently, the National Industrial Courts have been established to handle labour disputes and problems relating to employment. The court was elevated to the status of a superior court of record in Nigeria with the implementation of the third amendment of the 1999 Constitution.

¹⁹ The Constitution of the Federal Republic of Nigeria, 1999 (as amended)

²⁰ The 1992 Rio Declaration on environment and development

²¹ T Okonkwo 'Environmental Constitutionalism in Nigeria: Are We There Yet?' *The Nigerian Juridical Review* [2015] 175 vol 13 <<https://law.unn.edu.ng/wp-content/uploads/sites/12/2016/08/8-Environmental-Constitutionalism-Okonkwo.pdf>> accessed on 25 October 2023

²² Of the 1992 Rio declarations

4.0 Benefits of Utilizing Litigation as a Tool for Environmental Protection

Litigation is an effective tool for compelling compliance and imposing consequences for violating the law, accomplishing remediation of damages and securing compensation from the polluter in the realm of public enforcement of environmental law. Litigation is a viable tool for environmental protection for the following reasons:

4.1 Enforcement of Environmental Laws: Environmental litigation compels the government and corporations to comply with existing environmental laws and regulations. When individuals or organizations violate these rules, legal actions can be taken to hold them accountable and ensure that they take the necessary steps to reduce environmental damage.²³ Utilizing litigation is thereby one approach to ensuring environmental regulation through the enforcement of environmental laws.²⁴

4.2 Setting Legal Precedents: Environmental litigation is essential in establishing legal precedents that clarify and elucidate the rights and responsibilities of individuals, corporations, and governments in relation to environmental protection. Judicial decisions in environmental cases often aid the interpretation of environmental statutes and common law principles. These decisions help in filling the gaps in legislation thereby providing authoritative guidance for future conduct. The judicial precedents influence how environmental laws are enforced and applied in subsequent cases. It also promotes consistency in judicial reasoning and guides lawmakers and regulatory agencies in the formulation and improvement of environmental policies.²⁵ Consequently, environmental litigation contributes to the development of a stronger and more coherent legal framework for environmental conservation.

4.3 Public Awareness and Education: Lawsuits involving environmental harm often attract media coverage and draws attention to environmental degradation, pollution, and regulatory failures that might otherwise remain unnoticed. Through court proceedings, technical and complex environmental issues such as oil spills are examined, documented and explained in a manner that

²³ Maritime injury attorney in Hobbs, TX or Hobbs, TX - Oil Rig Injury Attorney. <<https://oilriginjuryattorney.com/maritime-injury-attorney-in-hobbs-tx-or-hobbs-tx/>> accessed 14 May 2024

²⁴ KU Adamu, *Environmental Protection Law and Practice* (1st Edition Malthouse Press 2014) 211

²⁵ OG Akinrade, 'Public interest litigation as a catalyst for sustainable development in Nigeria' (2013) 6 *OIDA international Journal of sustainable development* 6

becomes accessible to the public. Litigation also serves an educational function by highlighting the environmental rights of individuals and communities, as well as the legal obligations of governments and corporations. As court judgments are reported and discussed, they help inform the public about environmental standards, accountability mechanisms, and the consequences of environmental violations.²⁶ This increased awareness can generate public support for environmental conservation initiatives, encourage civic engagement, and place pressure on policymakers and regulatory authorities to strengthen environmental protection measures.

4.4 Compensation for Damages: Environmental litigation provides an avenue for seeking compensation for harm caused by pollution, habitat destruction, and other forms of environmental degradation. Through legal action, affected individuals, communities, and public authorities may recover damages for loss of property, livelihoods, health, and environmental resources. Such compensation recognizes the economic and social costs of environmental harm and ensures that polluters bear responsibility for the consequences of their actions. Beyond compensating victims, damages awarded in environmental lawsuits can be directed toward environmental remediation and restoration.²⁷ Financial resources obtained through litigation may also be used to clean up polluted land and water and support long-term conservation efforts. In addition, compensation can assist affected communities in rebuilding livelihoods disrupted by environmental damage, such as farming and fishing. By internalising the cost of environmental harm, litigation reinforces the “polluter pays” principle and promotes accountability, deterrence, and sustainable environmental management.

4.5 Incentivizing Compliance: The prospect of being sued, facing substantial damages, injunctive orders, or adverse judicial declarations encourages companies and government agencies to adopt environmentally responsible practices and comply with regulatory requirements. Litigation exposes violators to reputational damage, which can negatively affect public image and community relations. In Nigeria, this deterrent effect is evident in *Shell Petroleum Development Company (Nig.) Ltd v. Isaiah (1997) 6 NWLR (Pt. 508) 236*, where the Court of Appeal held the defendant liable for environmental damage caused by oil spillage.²⁸

²⁶ Ibid

²⁷ C Nwachukwu, H Umoru & J Erunke, ‘Dutch Court finds Shell guilty of oil Pollution in Nigeria’ (2013) <www.vanguardngr.com/2013/01/dutch-court-finds-shell-guilty-of-oil-pollution-in-nigeria-of-/> accessed 2 May, 2024.

T Okonkwo ‘Environmental Constitutionalism in Nigeria: Are We There Yet?’ *The Nigerian Juridical Review* [2015] 175

The award of damages against the oil company reinforced the principle that failure to prevent pollution attracts legal consequences. Such judicial decisions signal to other operators within the industry that non-compliance with environmental standards will not go unpunished. As a result, industries are encouraged to implement preventive measures such as proper maintenance of facilities, adoption of cleaner technologies, environmental impact assessments, and compliance monitoring. Governments and regulatory agencies are similarly motivated to strengthen enforcement mechanisms to avoid judicial criticism. In this way, environmental litigation promotes improved environmental performance and fosters sustainable practices across various sectors.

4.6 Citizen Empowerment: Environmental Litigation is particularly important for marginalized or vulnerable communities who may lack political influence but bear the brunt of environmental degradation. By accessing the courts, these groups can assert their environmental rights, amplify their concerns, and seek redress for harm caused by pollution, oil spills, deforestation, or industrial activities. In the landmark case of *Gbemre v. Shell Petroleum Development Company of Nigeria Ltd & Ors* the court recognized the right of affected communities to demand environmental protection and compelled the defendants to cease gas flaring.²⁹ This mechanism promotes environmental justice, ensuring that all segments of society regardless of social or economic status have protection under the law

4.7 Filling Regulatory Gaps: In many instances, regulatory agencies may lack the capacity, resources, or political will to enforce environmental standards fully. Environmental litigation therefore provides an alternative avenue through which individuals, communities, and public interest groups can challenge regulatory failures and compel authorities to act in accordance with their statutory and constitutional duties. Courts may issue declaratory orders, injunctions, or directives requiring regulatory agencies and government bodies to strengthen enforcement, comply with environmental standards, or take corrective action. This way, litigation not only

vol 13 <<https://law.unn.edu.ng/wp-content/uploads/sites/12/2016/08/8-Environmental-Constitutionalism-Okonkwo.pdf>> accessed on 25 October 2023

²⁹ Coalition Urges Biden Admin to Consider Creating US Human Rights Body | Common Dreams. <<https://www.commondreams.org/news/2022/12/15/coalition-urges-biden-admin-consider-creating-us-human-rights-body>> accessed 14 May 2024.

addresses specific instances of environmental harm but also contributes to the development of more effective environmental governance.

5.0 Impediments to Environmental Litigations in Nigeria

Litigation, whether environmental or otherwise, in Nigeria often encounters various challenges. These obstacles are not confined to specific sectors or courts but are widespread. They include challenges such as delays, high cost of litigation and legal services, ignorance among citizens, and limited accessibility of court facilities for rural residents, etc.

5.1 Delay

Litigation in courts often experiences prolonged delays, with cases in superior courts of record lasting for an average of five to six years, without any sense of urgency³⁰ in proceedings even after they are heard. This extended timeframe presents a significant barrier for individuals seeking to assert their rights, such as victims of environmental pollution. Additionally, this duration does not include the time needed for unsuccessful litigants to file appeals. Friends of the Earth International aptly described the nature of delays in environmental litigation against multinational oil companies, highlighting how these corporations exploit the slow legal system to frustrate litigants thereby evading accountability. In Nigeria, these delays particularly affect the course of litigation involving impoverished rural communities, discouraging potential litigants from pursuing environmental actions in court due to the prolonged wait for judgments. Several cases are illustrative in this regard.³¹ For instance, a spill in Peremabiri, Bayelsa State in January 1987 took five years to reach the High Court in 1992 and another four years to reach the Court of Appeal in 1996. Similarly, a case concerning damage sustained continuously since 1972, heard in the High Court in 1985, reached the Court of Appeal nine years later in 1994.³² Another case, heard in 1987 in relation to damages suffered since 1967, reached the Court of Appeal in 1990 and the Supreme Court in 1994. These extensive delays deter individuals with legitimate grievances from seeking redress through the courts to assert their rights.

³⁰ L McCaskill, 'When Oil Attacks: Litigation options for Nigerian Plaintiffs in U.S Federal Courts' (2013) 22(2) *The Journal of Law-Medicine* 560.

³¹ G.N Gasu Ph.D, *Integrated Approach to Nigerian Environmental Law*

³² Friends of the Earth Report, 'Access to Environmental Justice in Nigeria: the case for a global Environmental Court of Justice' (2016) <<https://www.foei.org/wp-content/uploads/2016/10/Environmental-Justice-Nigeria-Shell-English.pdf>> accessed 1 May 2024

5.2 Cost of Litigation

Environmental cases frequently require technical and scientific evidence, making them more expensive than ordinary civil claims. As a result, affected individuals, local communities, and public interest groups—who are often already economically disadvantaged—are discouraged from seeking judicial remedies for environmental harm. This financial burden creates a substantial barrier to access to justice, effectively undermining the enforcement of environmental rights and obligations. In many instances, victims of environmental degradation lack the resources to sustain lengthy litigation against well-funded corporations or government agencies. Consequently, many environmental violations go unchallenged, allowing polluters to evade accountability. The high cost of litigation therefore weakens the deterrent function of environmental law and limits the effectiveness of the judiciary as a tool for environmental protection.

5.3 Remoteness of Courts

A significant number of victims of environmental pollution and environmental disasters are located in rural and riverine communities, where industrial activities are most prevalent. In contrast, courts with the requisite jurisdiction to hear environmental matters are largely situated in urban areas. This geographical disconnect creates practical and logistical challenges for victims seeking legal redress.³³ The difficulty is further compounded where jurisdiction lies with the Federal High Court, which is often located only in state capitals and, in some instances, may not be readily accessible to affected communities within the state. Victims are therefore required to travel long distances to initiate or attend court proceedings, incurring transportation, accommodation, and subsistence costs. For indigent rural dwellers, these expenses are prohibitive and serve as a strong disincentive to pursuing litigation.

Beyond financial implications, the remoteness of courts also results in delays, irregular attendance, and in some cases, the abandonment of claims altogether. Consequently, environmental wrongs remain largely unaddressed, weakening the enforcement of environmental

³³ OG Akinrade, 'Public interest litigation as a catalyst for sustainable development in Nigeria' (2013) 6 *OIDA international Journal of sustainable development* 6

laws and denying victims effective access to justice.³⁴ The physical distance between victims and judicial institutions thus significantly undermines the practical realization of environmental rights and represents a critical limitation to environmental litigation.

5.4 Burden of Proof

Another significant challenge faced by claimants in environmental litigation is the burden of proof placed on them to prove their claims. Victims often bear the responsibility of providing evidence, which can be difficult, especially when they lack the resources to engage technical experts to testify on their behalf.³⁵

5.5 Subject Matter Jurisdiction

The authority of superior courts to handle environmental disputes is primarily vested in the High Courts. In Nigeria, these High Courts are categorized into State High Courts and Federal High Courts, each possessing coordinate jurisdiction but distinct powers.³⁶ Cases concerning environmental issues related to oil and gas, particularly those involving federal government agencies, are appropriately within the purview of the Federal High Courts. The jurisdiction of the Federal High Court is delineated in section 251 of the 1999 Constitution (as amended), which specifies, among other things, that it shall have exclusive jurisdiction over civil matters involving mines, minerals (including oil fields, oil mining, geological surveys, and natural gas), superseding all other courts in such matters.

In its interpretation of the aforementioned provision, the Supreme Court, in the case of *The Shell Petroleum Development Company of Nigeria Limited V. Chief G.B.A. Tiebo & ORS*³⁷, held that the authority of state high courts to adjudicate matters about natural gas, oil extraction, and geological surveys was constrained by Section 251 of the Constitution, which designates these matters to fall within the exclusive purview of the Federal High Court. To justify this ruling, the court broadened the Federal High Court's jurisdiction to include matters on pollution from oil, thereby encompassing issues related to mining and minerals. This extension was based on the similarity in wording between section 7(1)(n) of the Federal High Court Act and section

³⁴ Ibid; see SA Fagbemi, 'A Discourse of the Role and Impacts of Nigerian Judiciary in Enhancing National Security'

³⁵ Ibid page 5

³⁶ Federal High Court is established by s. 249 of the Constitution while the State High Court is established by S. 270 of the same Constitution

³⁷ (2005) 3-4 S.C 137, (2005) LPELR-3203(SC), (2005) 9 NWLR (Pt.931) 439

251(1)(n) of the Constitution. Additionally, section 7(3) of the Federal High Court Act specifies that section 7(1)(n) of the Act includes jurisdiction over all matters arising from or ancillary to mines and minerals. However, it is opined that expanding the Federal High Court's jurisdiction to include matters on pollution expounds the jurisdiction of the Federal High Court too far. While disputes over mining typically fall under the exclusive jurisdiction of the Federal High Courts, when these issues intersect with environmental pollution, they should be perceived primarily as environmental concerns which can be brought under the jurisdiction of the State High Court. However, the Courts interpretation broadly encompasses all matters related to mines and minerals. Conversely, State High Courts possess jurisdiction that is subject to the prevailing jurisdiction of the Federal High Courts.³⁸ For example, in the case of *Shell Petroleum Development Company (Nigeria) Ltd v. Abel Isaiah*,³⁹ where the issue of jurisdiction was contested in the Supreme Court, it was ruled that the High Court of Isiokpo, Rivers State lacked jurisdiction to adjudicate the matter at the time it delivered its judgment. Most environmental lawsuits concerning oil-related pollution in Nigeria's Niger Delta region, filed in state high courts, have been dismissed due to jurisdictional issues.⁴⁰

5.6 Fulfilment of Condition Precedent to Exercise of Jurisdiction

There are instances where the law necessitates the service of a pre-action notice on certain government agencies or defendants before legal actions can be initiated against them. The purpose of this requirement is to prevent unnecessary legal disputes and to give the statutory body the opportunity to review the facts and decide whether to pursue litigation or seek an amicable resolution. According to Section 12 of the NNPC Act⁴¹, a plaintiff must provide the corporation with a month's written notice before bringing a claim against it, failure to do so makes the suit incompetent and it remains so unless the party entitled to the notice waives it.⁴² Any lawsuit filed without providing this preliminary notice is considered invalid and may be dismissed.⁴³

³⁸ The Constitution of the Federal Republic of Nigeria 1999 (as amended) s. 272 (1).

³⁹ (2001) 5 S.C. (Pt. 11) 1.

⁴⁰ C Nwachukwu, H Umoru & J Erunke, 'Dutch Court finds Shell guilty of oil Pollution in Nigeria' (2013) <www.vanguardngr.com/2013/01/dutch-court-finds-shell-guilty-of-oil-pollution-in-nigeria-of/> accessed 2 May, 2024.

⁴¹ Nigerian National Petroleum Corporation

⁴² *Amadi v NNPC* (2000) 5 WRN 47 SC

⁴³ *Bakare v NRC* (2007) 17 NWLR (Pt. 1064) 606

In the case of *Asogwa v. Chukwu*⁴⁴, the court ruled that failure to adhere to the requirement of issuing a pre-action notice, as prescribed by law, implies that the court lacks jurisdiction because a precondition hasn't been fulfilled. Reacting to the stance taken by the courts regarding the issuance of pre-action notices in environmental litigations, Fagbohun⁴⁵ suggested that due to the inherent risks involved in environmental matters, an injunction of an urgent or unilateral nature may be necessary to prevent imminent danger. He argued that insisting on a notice period of one to three months, as stipulated in some cases, could lead to irremediable harm.⁴⁶ He also proposed adopting the approach of foreign courts, where non-compliance with pre-action notices is considered a procedural issue rather than a substantive one, leading to actions being temporarily stayed rather than dismissed outright.⁴⁷

5.7 Limitation period

Regarding limitation periods, certain legal actions are subject to time constraints, and if these period elapses, the actions become statute barred.⁴⁸ For example, many State laws and Federal Acts stipulate specific timeframes within which legal actions can be instituted in court regarding a cause of action. Once this designated period expires, legal proceedings cannot be instituted in a valid manner. Even if there was a legitimate cause of action, such actions would be considered as statute barred. This time limits often outlined in statutes are referred to as statutes of limitation.⁴⁹ Their purpose⁵⁰ is to prevent defendants from facing indefinite threats of claims. Originating from common law, the law on limitation also extends to environmental issues. In the case of *Chief Eteidung Raymond F. Obot & Ors. v. Shell Petroleum Development Company Nigeria Limited*⁵¹ case, the Court of Appeal examined the concept of limitation period and held that when an action becomes statute barred, the plaintiff forfeits the right to enforce that cause of action.

⁴⁴ (2003) 4 N.W.L.R (pt. 811) 540 at 552

⁴⁵ O Fagbohun, (n 5)

⁴⁶ Ibid

⁴⁷ *Mobil Producing (Nig) Unlimited v. LASEPA, FEPA & Ors* (2002) 18 NWLR (pt. 798) 1; (2003) FWLR (pt. 137) 1029, in this case it was held that the service of a pre-action notice is at best a procedural requirement and not an issue of substantive law. Even though the courts ameliorated the position, non-service of a pre-action notice still renders an action incompetent

⁴⁸ *Jayi v Military Administrator of Ondo State* (1997) 5 NWLR (Pt. 504) 237 and *Eboige v. N.N.P.C.* (1994) 5 NWLR (Pt.347) 649

⁴⁹ See s. 12 (1) NNPC Act, Cap. N123, LFN 2004, which requires that suits against the corporation must be commenced within one year of the cause of action; see also *Ekeogu v. Aliri* (1991) 3 NWLR (Pt.179) 258

⁵⁰ O Fagbohun (n 5)

⁵¹ (2013) LPELR-20704(CA)

5.8 Locus Standi

Locus standi refers to the right to initiate legal action or be heard in a specific forum.⁵² It indicates the plaintiff's eligibility to bring a lawsuit affecting their interests. Trial judges typically evaluate locus standi on a case-by-case basis, and individuals alleging distinct injuries may not be joined in a single action. Frynas⁵³ suggests that the emphasis placed on locus standi implies a need for a clear and definitive rule regarding when and by whom lawsuits can be filed, which could greatly benefit the legal system. Consequently, in numerous decisions by superior courts, the established criterion has been that locus standi is granted solely to plaintiffs who demonstrate that their civil rights and obligations have been or are at risk of being violated.

Environmental lawsuits often face objections from defendants due to the claimants' perceived lack of legal capacity. Nevertheless, to circumvent the issue of locus standi in environmental cases, NGOs have resorted to foreign jurisdictions to pursue environmental justice for victims of pollution. For instance, *the Registered Trustees of the Socio-Economic Rights & Accountability Project (SERAP) v President of the Federal Republic of Nigeria & Ors*⁵⁴ case was brought before the ECOWAS Community Court of Justice to address this issue. In that case, SERAP, an NGO, petitioned the court to assert its jurisdiction for a declaration that the defendants' failure and negligence to adequately clean up and remedy contaminated land and water, mitigate the consequences of oil-induced pollution and environmental damage on agriculture and fisheries, and to build a robust monitoring mechanism for assessing the impact of oil on human health, constitutes unlawful acts and breaches international Human Rights obligations. The claimant based its arguments on the African Charter on Human and Peoples' Rights, specifically citing Article 24 which guarantees that; "*All peoples shall have the right to a general satisfactory environment favorable to their development.*" The defendants objected preliminarily, arguing that the Claimant lacked locus standi to initiate the action.⁵⁵ In addressing the preliminary objection, the court introduced a human rights perspective to the case⁵⁶ and concluded, among other points, that there exists a broad consensus in International Law that when the issue concerns the violation of the rights of entire communities, such as environmental damage, access

⁵² M Tumai, 'Strengthening Locus Standi in Public Interest Environmental Litigation: Has Leadership moved from the United States to South Africa?' (2010) 6 (2) Law, Environment and Development Journal, 165;

⁵³ 9 JG Frynas, Legal Change in Africa: Evidence from Oil-Related Litigation in Nigeria, (1999) 43 J. AFR. L. 121, 132.

⁵⁴ Suit No: ECW/CCJ/APP/08/09

⁵⁵ *SERAP v. Nigeria*, Ruling, Suit No: ECW/CCJ/APP/08/09 and RUL. No: ECW/CCJ/APP/07/10 (ECOWAS,

⁵⁶ As seen in India, South Africa.

to justice should be facilitated. Building upon this principle, the Court held that a non-governmental organization (NGO) legally established according to the national laws of any ECOWAS Member State, is entitled to lodge complaints against Human Rights violations, particularly when the victim is not merely an individual but a substantial group or a community.⁵⁷

6.0 Conclusion

Litigation remains a vital mechanism for environmental protection in Nigeria. Through judicial intervention, victims of environmental degradation are afforded an avenue to seek redress, deter future violations, and promote compliance with environmental standards. The courts therefore play a crucial role in advancing environmental governance and safeguarding public health. However, the effectiveness of litigation as a tool for environmental protection is significantly constrained by several challenges. A major challenge lies in the impediment of placing environmental protection under a non-justiciable provision like Section 20.⁵⁸ The provision of Section 6(6)(c)⁵⁹ has been a great disservice to the enforcement of environmental protection in Nigeria.

Procedural barriers such as high cost of litigation, delays in judicial proceedings, restrictive rules on locus standi, and complex issues of subject-matter jurisdiction particularly in oil-related environmental disputes have also limited access to environmental justice. These obstacles often result in meritorious claims being dismissed on technical grounds, thereby weakening the deterrent and remedial functions of environmental litigation. Consequently, the recourse to litigation as a means of seeking redress has become unappealing for many individuals affected by environmental pollution. Whether due to the financial burden or geographical distance faced by victims, or the intricate application of jurisdictional technicalities within the legal system, the outcome has been a surge in violence and militancy, particularly in the Niger Delta region, as an alternative method of addressing grievances. Alternatively, some affected parties have chosen to pursue legal action beyond Nigeria's borders, resorting to foreign jurisdictions.

⁵⁷ The 2009 fundamental rights enforcement procedure rules provide for this in preamble paragraph 3(e)

⁵⁸ The Constitution of the Federal Republic of Nigeria, 1999 (as amended)

⁵⁹ The Constitution of the Federal Republic of Nigeria, 1999 (as amended)

7.0 Recommendations

Generally, courts have consistently exercised their jurisdiction over environmental claims, despite the lack of expertise of some judges in environmental law. Premised on the foregoing, it is strongly suggested that Nigeria should:

1. Establish specialized environmental courts for handling environmental disputes, just like the nation has done in the establishment of the National Industrial Courts to address labor relations and related issues.
2. To enhance environmental protection in Nigeria, section 20 of the 1999 Constitution should be made justiciable. Although the section mandates the State to protect and improve the environment, its placement under Chapter II renders it unenforceable in court pursuant to section 6(6)(c) of the Constitution. This limits its effectiveness in addressing environmental degradation. Making section 20 enforceable either through constitutional amendment or an express provision in the Constitution would enable individuals and communities to seek judicial redress for environmental harm. It would strengthen environmental litigation and align Nigeria with international standards recognizing the right to a healthy environment.
3. It's crucial to enact legislation that grants individuals the legal standing to institute actions for environmental protection in cases where there's a threat to the environment or actual pollution, without the need to prove damages as currently required by law or resort to seeking remedies outside Nigeria in environmental litigation. Implementing these measures would encourage litigants to pursue remedies for violations of their environmental rights without fear of their cases being dismissed for lack of jurisdiction, as discussed in this paper.
4. The protection of the environment is mandatory, as any harm inflicted upon it is tantamount to harm inflicted upon humanity itself. Human survival is intricately linked to the well-being of our surroundings. Consequently, the judiciary must take a proactive stance, given its indispensable role in society.
5. It is suggested that fostering judicial activism is essential to bolster the environmental protection rights of Nigerian citizens. Moreover, advocating for

reforms within the judicial framework, including the establishment of specialized courts dedicated to environmental protection, is crucial. Furthermore, expanding the scope of locus standi in environmental litigation to include non-governmental organizations is warranted.