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Review NJEL

An Evaluation of the Roles of the Judiciary in the Enforcement of Environmental Laws in Nigeria After 50 Years of the Stockholm Conference

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Abstract

This study examines the roles of the judiciary in the enforcement of environmental laws in Nigeria 50 years after the Stockholm Conference on Human Environment. Within this period, there has been an increasing use of law as a veritable instrument for the protection of the environment worldwide. In a bid to fulfil its Stockholm obligations, the Nigerian government has enacted series of laws geared towards environmental protection. Expectedly, when environmental issues become knotty, it is the judiciary that is called upon for the resolution of conflicts. The judiciary, no doubt, has exceptionally done well in other fields in Nigeria but has not lived up to expectations in environmental litigations. The factors militating against judicial activism towards the environment in Nigeria are identified and thoroughly examined. The study recommends ways of overcoming the hurdles for improved judicial performance.

Keywords: Enforcement, environment, Nigeria, judiciary, laws, pollution

INTRODUCTION

In the last 50 years, one great legacy of the Stockholm Conference was the proliferation of international, regional, national and municipal laws for the protection of the environment. In fact, the most central concern of many environmentalists and scholars has been the level of the enforcement of these laws to ensure they have profound impacts on environmental protection. Many countries of the world, in pursuance of the Stockholm mandate, have shown much commitment to the enforcement of these laws for sustainable environment while others have not. Nigeria is a typical example of a country that is committed to the enactment of environmental laws but pays only lip service to their enforcement. The country has environmental legal frameworks in abundance but the impacts are not felt. The after effect is that the country continues to witness serious environmental crisis which is ordinarily avoidable under strict law implementation. Stewart is of the view that it is not a matter of multiplicity of laws that the environment is protected but a matter of strict enforcement mechanisms [1]. Globally, the responsibility of enforcing the laws vests on the government. The Courts are vital part of the government conferred with the jurisdiction to entertain cases and settle disputes [2].

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The view of vast majority of Nigerians is that the courts as the last hope of the common man have not lived up to expectations in the discharge of its obligations towards the environment [3]. After five decades of the Stockholm Declarations, some judges in Nigeria do not display impressive appreciation of the correlation between the environment and human existence. This can be inferred from the handling of environmental cases by the judiciary. Many of these cases are lost on unjustifiable grounds [4]. According to Fagbohun, it is a reflection of the country's development style

that has affected every sector of the economy, including the environment [5]. In other climes, the judicial approach to environmental cases is more impressive in responding to the environmental demands of the society especially in this recent global environmental crisis. That is why we call on the Nigerian judiciary to be more pragmatic about the effective implementation of the numerous environmental laws and policies especially through quality decisions on environmental matters placed before them. This will help increase the hope of vast majority of Nigerians in the judiciary on environmental matters.

THE ENVIRONMENT IN NIGERIA

Generally, the environment is where life exists. It is the home of both living and non-living things. By section 37 of National Environmental and Standards Enforcement Agency (NESREA) Act 2007, the environment encompasses the water, land, plants, animals and human beings. Life cannot exist without the environment [6]. That is why environmental preservation ought to be given priority in the scheme of things. No doubt, man is created to explore the earth for his sustenance, but today, it does not appear to be conscientious efforts by man to safeguard the environment, as elaborated in the Stockholm Conference. This is triggered by increase in human population with a corresponding increase in human activities. In Nigeria, precisely, a lot of things combine to spoil the environment, such as oil spillage, gas flaring, vehicular emissions, deforestation, harmful wastes, flood, overgrazing, open defecation, bush burning, fire outbreak during an oil blow-out, and industrial sewage and emissions.

According to Okorodudu-Fubara, a major problem facing the environment in Nigeria is the divergent degree of pollution and degradation resulting from the multiple activities of industries engaged in oil exploration [7]. The pollution from these industries alone has led to loss of lives, revenue, arable farm lands and aesthetic environment. This is because the industries in the course of their exploration destroy crops and trees while the oil most often spreads into the farms, rivers, ponds and lakes. The inevitable result is the total destruction of the fishes in them and the displacement of the fishermen and other residents [8]. The general perception in Nigeria is that the government is less concerned about enforcing laws against oil industries which constitute the bulk of the government revenue. An increase in the revenue from oil exploration results in a corresponding increase in oil pollution [9]. Today, the multinational oil companies like Shell, Chevron, Texaco, and Elf explore oil and gas in Nigeria with abysmal effects on the environment and human lives. It is regrettable that more than 50 years of struggles to preserve and sustain the environment on several fronts globally, there is inadequate enforcement of environmental laws and policies in Nigeria. The government rather places the revenue above the environment and the lives and properties of its citizens. Consequently, the Nigerian environment continues to deteriorate.

THE STOCKHOLM CONFERENCE

One of the notable inceptions of the international environmental law was the Stockholm Conference of 1972 [10]. It produced the Stockholm Declarations whose central aim was the recognition of the importance of environment to human existence and how to address the environmental challenges brought about by human activities. State parties were to develop the scope of international law by prescribing liabilities for environmental damage and compensation for the victims [11]. Fortunately, Nigeria adopted the treaty in 2001 and ratified it in 2004 and so its bound by its provisions [12]. Nigeria, no doubt, has shown serious commitment to the Stockholm Declarations by playing active role in the actualization of the multilateral agreements on the human environment. Consequently, there is a proliferation of many environmental laws in Nigeria both at the national and sub-national levels in conformity with the dictates of the Declarations.

Section 20 of the 1999 Constitution, for instance, vests the primary obligation on the government to ensure the protection and preservation of the Nigerian environment. Outside the municipal laws, the country has created public awareness, and provided education on sustainable environmental management. However, the proliferation of these laws has no corresponding impact on the environment.

The Stockholm conference was not an end unto itself but a means to an end. The end is good environmental management.

THE NIGERIAN JUDICIARY

The primary responsibility of the judiciary is to interpret the laws and apply them to cases brought before the courts. This responsibility is backed by section 6 of the 1999 Constitution. The general notion that "the court is the last hope of the common man" implies that when the citizens are aggrieved and they approach the courts to ventilate their grievances, the courts come to their rescue through sound decisions devoid of bias or any improper influence whether from the government, its agencies, other powerful individuals, pressure groups, including multinational companies. It solves disagreements between the government and the governed and provides a level playing ground to parties in dispute despite the disparity in statuses. That is why they are courts of justice because they administer justice according to the laws [13] as symbolized in the Lady of Justice statute.

The stability and progress of any democratic institution is determined not only by the importance attached to the judiciary but also its ability to operate without undue influence of other branches of government or other private individuals [14]. The independence of the judiciary in Nigeria is backed by section 17 of the 1999 Constitution [15]. For a more enhanced judicial autonomy and justice delivery, the National Judicial Council (NJC) was established as one of the Federal Executive bodies whose responsibilities encompass the appointment, promotion, discipline, remuneration and dismissal of the officers of the courts in Nigeria [16]. The judicial independence is very important whether the court is dealing with a criminal case, civil case or environmental matters. However, from the functional perspective, the general perception is that the Nigerian judiciary does not operate independently of the influence of both the legislature and executive branches of the government. There is still undue external interference in the decision of the courts in Nigeria today [17]. In the words of Abdullahi;

> *Informed opinions on the judiciary in Nigeria varies between those who believe that the judiciary is dead or that it is on trial and the more compassionate view that it is a beast of burden or a sacrificial lamb…. The high sounding constitutional provision relating to judicial independence has no bite and what could have been constitutional guarantees of judicial independence is no more than a slogan in Nigeria [18].*

That is why Nigerians are not getting the best from the judiciary particularly on environmental matters. Corruption is one of the greatest challenges ravaging the country at present, the judiciary inclusive. Bazuaye and Oriakhogba observed that the judiciary in Nigeria is faced with myriad of challenges ranging from corruption and other similar factors impeding the smooth administration of justice in Nigeria [19]. The suspicion of corrupt practices and other judicial misconducts accounted for the clap-down on the judiciary in Nigeria under this present administration of Muhamadu Buhari where some judges were arrested and prosecuted while others were dismissed for allegedly receiving bribes from lawyers and clients to influence their judgments [20]. No judge in Nigeria has been convicted for receiving or giving bribes especially in environmental matters but the attitudes towards environmental litigations heightens the suspicion and the increased belief that the Nigerian judiciary is not committed to the Stockholm mandate.

THE JUDICIARY AND THE ENVIRONMENT IN NIGERIA

Since over 50 years of the Stockholm Declarations, the judiciary has played immense role in the protection of the environment in Nigeria. The achievements recorded so far by the Nigerian judiciary in environmental litigations are more pronounced in civil cases. There are remarkable cases where the victims of environmental degradation approached the courts to ventilate their grievances and were granted the reliefs sought. Instances include the case of *Jonah Gbemre v Shell [21]* where it was held that environmental right can construed from the fundamental rights provisions under chapter 4 of the 1999 Constitution and the case of *Center for Oil Pollution Watch (COPW) v NNPC [22]* where the Supreme Court overruled the Federal High court and the Court of Appeal which held that the plaintiff,

a Non-Governmental Organization (NGO), has no *locus standi* to institute action against Nigerian National Petroleum Corporation (NNPC) for pollution caused to a community in Abia State. With this decision, an NGO can institute public interest environmental actions in Nigeria without the burden of establishing "sufficient interest" or damage suffered far and above other members of the public [23]. The basis of the Supreme Court's decision in this case was the Fundamental Rights (Enforcement Procedure) Rules 2009 which enjoined the courts in Nigeria to "encourage and welcome public interest litigations in the human rights field and no human rights case may be dismissed or struck out for want of *locus standi*" [24]. This decision was highly admired by many environmentalists.

Notwithstanding the efforts so far, this research has identified numerous challenges in the administration of environmental justice in Nigeria which include the insensitivity of the judiciary to the plights of environmental litigants. Jattu referred to the obstacle as "judicial apathy to environmental litigations" [25]. For instance, the claims against seismic operators in Nigeria demonstrated that the rights of the victims are not sufficiently protected by the national, civil and administrative courts. Instances include *Seismograph Services v Mark* [26], *Seismograph Services v. Onokpasa* [27], *CGG (Nig) Ltd v Asaagbara* [28], *Seismograph Services (Nig) Ltd v Eyuafe* [29], *George Ngbor v Compagnie Generale De Geopyhsique (Nig) Ltd & anor* [30], *Seismograph Services v. Akporuovo* [31], *Seismograph Services (Nig) Ltd. v Meduoye* [32], *CGG (Nig) Ltd v Amaewhile* [33], *Seismograph Services (Nig) Ltd v Ogbeni* [34], *Seismograph Services (Nig) Ltd v Oshie and anor* [35], and *CGG (Nig) Ltd v Ogu* [36]. The situation is worrisome as all the victims in these cases lost their claims against seismic operators despite the apparent havoc caused to them by the defendant companies. With these decisions, it is not sufficient for victims to show that they have suffered damage from the activities of the companies even if the damage occurred the same day and time the companies carried out their operations no matter the proximity but determined by other factors to be considered by the courts. The decisions were criticized for not being far-reaching enough [37].

In contrast, many decisions in other climes on related facts have stirred debates and widely considered as good judgments. The decisions were all in favor of the victims of seismic operations against the seismic companies in similar circumstances unlike their Nigerian counterparts. Instances include *Brown v Lundell* [38], *Bynum v Mandrel Industries Inc*. [39], *Placid Oil Co. v Byrd* [40], *Central Exploration Co. Inc. v Gray* [41], and a host of others. They were all awarded damages accordingly. The decisions in these cases ought to be of paramount importance to Nigeria because ordinarily, judgments in other jurisdictions have persuasive influence on the judgments in Nigeria, but it is not so with victims of seismic activities. Almost 98% of all the cases in Nigeria were decided in favor of the seismic operations and the victims were not paid the damages sought, despite the glaring damage they incurred from seismic operations. Many reasons may account for this. First is that the major polluters of the environment in Nigeria generate the bulk of the government's revenue. Consequently, the courts are ever unwilling to take any decision that may affect the revenue of the government.

The second is lack of specialty of most of the Nigerian Judges in Environmental Law. In other words, majority of the judges handling environmental cases in Nigeria today have no special knowledge or training in Environmental Law, being a new distinct field of law. That is why judicial attitude, in some cases, does not reveal an understanding and appreciation of the urgency involved as a result of the dangers of environmental problems. The aftereffect is inconsistent and unpredictable courts' decisions and unjustifiable delays in litigations. Ordinarily, a judge handling environmental cases should be knowledgeable in the field of environmental law or science [42]. Faruque posited that "expert knowledge is specially required for the determination of level of pollution which can constitute a violation of environmental law" [43]. It is not so in Nigeria, and constitutes a major drawback in the productivity of these judges. Consequently, the expectations of environmental litigants are hardly met by the judiciary. The aftereffect is frustrations and resort to arms and violence as prevalent in the Niger Delta region of Nigeria. Other areas the judiciary demonstrates apathy to environmental protections and litigations in Nigeria include placing the revenue above the environment, jurisdictional hurdles, strict requirements of proof, protracted litigations, and *locus standi*. We shall examine them more closely.

Placing the Revenue above the Environment

The courts under the influence of the executives accord priority to Nigerian economy over the environment resulting in some unpalatable judgments especially in environmental litigations. For instance, some victims of environmental damage from the activities of multinational companies lose their cases on flimsy excuses despite the glaring damage to their lives and properties. The weak justiciability has led to environmental pollution crisis in Nigeria today despite the avalanche of control laws. One thing is to make law and another thing is to enforce it. Where laws are not adequately enforced, their impact can hardly be felt. Ubani *et al.* posited that most environmental legislations in Nigeria are virtually not enforced [44]. This is mainly attributable to the overwhelming reliance of the government on oil which accounts for about 90% of its foreign exchange earnings [45]. This reason alone greatly hampers the political will of the government to enforce these laws against the errant oil companies.

Just think about it. The major sources of revenue to the government are the major polluters of the environment, and expectedly the government is less articulate. In Argentine case of *Menores Communidad Paynemill* [46], the court held that the state had failed in its responsibility to prevent water pollution by oil company against its citizens and ordered the government to provide a minimum of 250 l of drinking water daily for every inhabitant of that community whose source of water supply was polluted [47]. That is what Nigerian courts should take cue from. Economic gains and environmental protection policies are always incompatible. That is why in Nigeria, all the attraction is often directed more on profits maximization than on necessary precautions against environmental degradation [48]. It is therefore not surprising that the judiciary hardly grants injunctions to stop the activities of oil companies in Nigeria despite the level of environmental damage caused by these companies.

In *Chinda & ors v. Shell B. P. Petroleum Development Company Ltd.* [49], for instance, the Judge refused to grant an injunction restraining the defendant company from flaring gas within 5 miles of the plaintiff's village. His contention was that nothing should be done to stop the operations of a trade which is the main source of the country's revenue and that sometimes, the economic interests of the nation may defeat the private rights and interests of a citizen. The Courts instead can award compensations in lieu of injunctions as done in the case of *Allar Irou v Shell BP* [50], where the court declined to grant injunction to halt the defendant's further pollution of the plaintiff's creeks and fish ponds, the reason being that nothing could be done to disrupt the activities of the defendant, the major source of revenue to the government.

In other countries of the world, injunctions could be granted in such circumstances notwithstanding the impacts on the government's revenue. An instance is the New York case of *Whalen v Union Bag and Paper Company* [51], where the plaintiff sought damages for the past injuries and injunction to prevent further harm from the defendant. The court awarded $100 damages to the plaintiff and an injunction against the company despite that the injunction might put the company out of business and put about 500 employees out of job. The court was more concerned about the plight of the poor victims of pollution other than the social utility of the company's business. According to Justice Werner;

> *Although the damage to the plaintiff may be slight as compared with the defendant's expense of abating the condition, that is not a good reason for refusing an injunction. Neither courts of equity nor law can be guided by such rule, for if followed to its logical conclusion, it would deprive the poor little litigant of his little property by giving to those already rich [52].*

In Indian case of *Vellore Citizens Welfare Forum v Union of India & ors* [53], the Supreme Court of India in similar circumstances held that Tanneries which were not only the major foreign exchange earner for the country but also the major employer of labour could not be allowed to continue the operations at the expense of the people and the environment. That the tanneries generate revenue and provide employment is not enough reason for them to destroy the environment, health and lives of the

people, the court added [54]. Therefore, outside the compensation awarded to the victims/petitioners, the court also ordered the Tanneries to install pollution abatement devices without which the Tanneries were to stop operations. These are the decisions that our judiciaries must take cue from.

Problems of Jurisdiction

The issue of jurisdiction especially in environmental litigations in Nigeria is more of a statutory provision. Section 251 of the 1999 Constitution, for instance, vested exclusive jurisdiction on issues of oil and gas and geographical survey on the Federal High Courts [55]. The implication is that all environmental claims associated with oil and gas pollution are within the exclusive preserve of the Federal High Court. Consequently, our courts have most often not considered the substance of the claims but rather decline jurisdiction when invited to decide disputes involving environmental degradation. Unfortunately, there is only one Federal High Court in each of the states of Nigeria as against the state High Courts scattered at every nook and cranny of the states. Therefore, victims of environmental degradation have to travel distances to Federal High Courts before they can ventilate their grievances. This reason has frustrated many environmental litigants as they, in most cases, rush to the state High Courts closer to them. According to Fagbemi and Akpanke;

> *Jurisdiction has been used severally in courts in Nigeria to prevent environmental justice for victims of environmental disasters. This has made the option of litigation as a means of redress unattractive to most victims of environmental pollution [56].*

Again, the Latin maxim *lex prospicit not respicit* translates to mean 'the law looks forward and not backward' because God did not give human beings eyes at the back. Therefore, a person is not expected to know and comply with a law which does not yet exist. In *Miscellaneous offences Tribunal v Okoroafor [57],* the Supreme Court reiterated the presumption that the legislature does not intend what is unjust, so courts interpret laws in accordance with fairness and justice. The judiciary is expected to decide cases based on extant laws rather than laws passed after the cause of action arose [58].

There is a doubt whether these principles are applicable to environmental suits in Nigeria, especially oil pollution cases. The case of *Shell Petroleum Development Co. Ltd. v Abel Isaiah* [59] is a reference point. The cause of action arose in 1988 but was caught by Decree No 60 of 1991 and section 251(1)(n) of the 1999 Constitution. The High Court awarded N22 million damages to the plaintiff who instituted the action on behalf of the Umuodo community in Rivers State following the destruction of their crops and farmlands by massive oil spillage from the defendant's oil pipelines being repaired. The Supreme Court allowed appeal against this judgment stating that the Federal High Court has exclusive original jurisdiction over oil mining, geological surveys, natural gas and other incidental matters. The submission by the plaintiff that his suit preceded the Decree ousting the State's High Court jurisdiction on oil related matters was ignored. The Supreme Court reechoed that as far as the case was still pending when the law was promulgated, it was nevertheless affected at the moment the law ousted the jurisdiction of the High Court [60]. Commenting on the decision, an environmental scholar, Olanrewaju, reiterated that courts should not allow such technicalities to deprive those with genuine environmental claims access to justice [61].

There are a lot of other cases on environmental litigations in Nigeria that have suffered similar fates. The case of *Shell Pet. Dev Co. v Helleluja Bukuma Fishermen Multi-Purpose Cooperative Society Ltd.* [62] is an instance. Here, the plaintiff whose creeks, fish ponds, fishing nets and rivers were damaged by oil spillage from the defendant's oil well and other oil installations instituted action and claiming the sum of N162 million damages against the defendant. The action was instituted in December 1990 while the court delivered its judgment on 11 March 1994 after the promulgation of Decree No. 60 of 1991 which ousted the jurisdiction of the State High Courts on oil exploration and incidental matters. The apex Court held that the Rivers State High Court has no jurisdiction to entertain the matter. Consequently, the victims lost after years of litigation.

Problems of Proof

Among those problems that impede access to environmental justice in Nigeria is the operation of the rules of burden and standard of proof. In fact, many environmental litigants have lost their cases consequent upon the courts' insistence on the operation of these rules of proof. It is perhaps on account of this that led Krier to state that the burden of proof rules have inevitable bias against the protection of the environment and the preservation of natural resources [63]. From the same perspective, Taiwo Osipitan added that "one striking problem of environmental litigation is the operation of the rules of burden of proof" [64].

This is compounded by the facts that in most environmental litigation claims, there are two unequal parties, the inferior being an individual or rural communities whose means of livelihood have been spoilt by pollution. The reverse side is often the case with big national or multinational companies like shell, Mobil, Chevron, among others. These poor victims of pollution, no doubt, are not in the same pedestal with the oil companies. That is why in most cases, they go cap in hand asking for just a paltry sum in the form of damages to sustain their families, yet they are subjected to the rigorous frustrations of litigations. In *George Ngbor's case* (supra), for instance, the plaintiff whose factory was allegedly damaged by the seismic activity of the defendant could not procure the services of an expert at the cost of one million naira (N1m) to establish that the dynamite of the defendants were shot at an unsafe distance and thereby caused the damage to the plaintiff's factory. The expert procured by the defendant tendered evidence that the dynamite was fired at a distance safe by seismic standard. The plaintiff lost due to his inability to contradict the evidence tendered by the expert procured by the defendant [65]. It is surprising how a victim whose means of livelihood have been destroyed could be expected to raise one million naira to procure the services of an expert. These victims mainly depend on the damaged properties for sustenance.

In *Compagne General De Geophysique (Nig) Ltd. v Anozie* [66], the 5 million naira (N5m) damages already awarded the plaintiffs/respondents by the lower Court for the glaring damage to their buildings was quashed on appeal for want of expert evidence as required under section 57 of the Evidence Act, 2011 [67]. The plaintiffs/respondents sought 10 million naira (N10m) damages against the defendants/appellants for the damage done to their buildings during the latter's seismic operations. The Lower Court stated that from the totality of the evidence, the cracks on the buildings were not caused by any other thing than the seismic activities of the defendants/appellants carried out the same day and time within the neigborhood in question.

On appeal, the plaintiffs/respondents were unable to establish that the distance at which the dynamite was fired was not safe and caused the damage to their buildings. The expert opinion of a GeoPhysicist procured by the defendants/appellants was to the effect that the distance of 170 m at which the dynamite was fired was safe by seismic standard and could not have occasioned the damage to the plaintiff's buildings. This evidence was not contradicted and the plaintiffs/respondents lost and went home without any remedies after years of litigation. No doubt, about 90% of the Nigerian population today cannot afford one million naira. It means the poor in Nigeria is invariably deprived access to the legal and administrative institutions to vindicate their rights [68]. Malemi reiterated that no society can prosper where the ability to get justice is determined by one's financial muscle rather it can only lead to violence and self-help [69]. Becher was of the view that litigation has an advantage of cutting down, to an extent, "the polluter's inherent superiority in terms of money, power and influence" [70]. That is what Nigerian judges should be conscious of.

Most often, when the victims of pollution have procured the services of experts, they may nevertheless lose their cases if the experts are not especially skilled on a particular fact in question. For one to be considered an expert witness for the purposes of litigation, the subject matter must not fall outside his area of expertise otherwise his evidence will be inadmissible [71]. Consequently, Nigerian judges have turned down expert testimonies and the poor victims left without remedies. In *Ogiale v*

Shell Pet. Dev. Co. (Nig) Ltd. [72], for instance, despite the fact that the plaintiffs/appellants had genuine claims as the respondents' oil exploration activities led to the impoverishment of their land which resulted in an unprecedented poor harvest, the court nonetheless struck out their claims on the sole reason that the expert they procured was not specifically skilled in the particular subject matter in dispute. The victims therefore went home without any redress after many years of litigation. There is no debris of leniency or compassion for victims of pollution in Nigeria.

The use of nuisance to remedy environmental harm is also not without hurdles as the plaintiffs are strictly required to prove special damages without which they cannot be granted any relief despite the damage suffered. This particular problem has led some litigants to go home without remedy even when it is glaring that their means of livelihood has been lost to environmental degradation. In *Shell Pet. Dev. Co. Ltd. v Tiebo VII* [73], the plaintiffs/respondents claimed N1m as special damages for the destruction of their raffia palms by the appellants. They also claimed the same amount for loss of drinkable water. The court found that it was not possible for it to precisely calculate the economic value placed on the items as the plaintiffs/respondents did not adduce credible evidence to justify the sum claimed in order to establish their entitlement to special damages. The judge nevertheless observed that;

> *Once a person is entitled to a remedy provided by law, it does not matter that he had applied for it under a wrong law. In the instant case, it was not possible to precisely calculate the economic value placed on the raffia palm and drinkable water. It did not mean that they do not have any economic value. It is just that the respondents could put their case across properly [74].*

In view of this, instead of dismissing the plaintiff/respondent's claims for damages for raffia palms and drinking water, the court made its own estimation and awarded general damages in respect thereof as claim for special damages has failed. The appellant's appeal against this judgment was dismissed by the Court of Appeal. His further appeal to the Supreme Court was allowed. According to the apex Court;

> *It was wrong for the trial court to have awarded general damages in place of a claim for special damages which was not made out as there was no credible evidence … and where plaintiff is unable to prove special damages, his case crumbles and a trial judge cannot compensate him by way of general damages [75].*

As a result, the poor victims of pollution lost after over a decade of litigation. Without doubt, it is a general rule of evidence in Nigeria that whoever alleges must prove. It is only in criminal litigations that cases are expected to be proved beyond reasonable doubts. In civil cases, a court can be satisfied that the required standard of proof is met if the evidence shows that the event is more likely to be true than untrue. Again, *res ipsa loquitur* is a Latin maxim which translates to 'the fact speaks for itself'. It permits a judge to draw an inference that the defendant was negligent in the absence of any proof by the plaintiff on how the event occurred. These are the rules of common law which Nigeria inherited by virtue of our colonial heritage but seems inapplicable to Nigeria in oil related claims. Emelie reiterated that;

> *Plaintiff who has suffered losses from actions of pollution to go without remedy because of inadequate proof …, our courts should fall back on the doctrine of res ipsa loquitur in aid of such plaintiff. The doctrine … is known to our law. In this way, a plaintiff who grounds his action on any of the common law torts for example can succeed even if the plaintiff cannot prove that the defendant was responsible for the damage. This suggestion finds support in the case of Man v Shell-BP (1970–72:71) where the court held that negligence on the part of the defendant has been pleaded, but there is no evidence of it. None in fact is needed for they must naturally be held to be responsible for the results arising from an escape of oil which they have kept under their control [76].*

Protracted Litigation

Another technique they have successfully employed to frustrate environmental litigants is to delay the pace of litigations. Delay, they say, defeats equity, and an environmental litigant whose means of

livelihood has been spoilt by pollution, and the health put at risk, will not be expected to be in a court for an unforeseeable length of time and waste his resources on a litigation the outcome of which he cannot foretell. That is why in some climes, special arrangements are made for speeding up the processes of environmental litigation so as to make justice more rapidly available to the victims of environmental pollution. In Nigeria, the reverse is the case. Some judges find solace in the adjournment of cases, while some come to courts as late as 11.00 am, and hardly spend more than 2 h in the courts. The case of *Ariori v Elemo* [77], for instance, lasted 15 years in the court of first instance alone, though not on environmental litigation. After the final addresses by counsels, it took the judge 15 months to deliver the judgment [78]. It lasted 23 years at the time of final determination when almost two-thirds (2/3) of the litigants had died [79]. In the words of Olujinmi;

> *The case was filed in 1960. It was first fixed for hearing in 1964 but was later adjourned till 1966 but did not come up again until 1968 when it was mentioned. Hearing started on 1st March 1972 and was concluded on 18th July 1974 with the judgment in the case delivered in October 1975, 15 months after the conclusion of counsel's final address [80].*

This is just one among thousands of cases in the country where the curiosity of the litigants to have their grievances ventilated in the courts was dashed by such inexcusable delays. Worse still, when a judge handling a case dies or is transferred, promoted or retired, there is a trial *de novo*, that is to say "afresh" as if no trial has ever commenced in the same case notwithstanding the years the case has already lasted in the court(s) [81]. This is inconsistent with the constitutional provision for trial within a reasonable time as an integral part of right to fair hearing and natural justice in Nigeria [82]. The problem of delay in environmental litigation just like any other judicial process in this country, also assumes an enormous proportion. Why this area of the law seems worse is because of the growing levels of pollution and the concomitant health hazards which constitute almost 80% of the grounds for litigation. No doubt, victims of pollution rush to courts for rescue either because their health is put at risk or their means of survival such as creeks and farms have been spoilt by pollution. Nevertheless, such cases still linger in the courts for decades that some of the litigants may even die in the process. For instance, an annual report of the Civil Liberties Organization (CLO), Lagos, revealed a case which involved four Ijaw communities and Shell Petroleum Development Company. The case lasted for almost one and half decades in the court of first instance, and before its final determination at the apex court, six of the eight litigants had died [83]. There is no record in Nigeria where a court issued temporary injunction to halt an environmentally dangerous activity pending the conclusion of a suit.

The case of *Elf Nigeria Ltd. v. Opere Sillo & anor* [84] is another oil pollution case that lasted many years in Nigerian courts. The plaintiffs sought, among others, compensation for loss of fishing rights but spent 20 years in the court of first instance, from 1967 to 1987, and finally ended at the Supreme Court in 1994 after some litigants and the witnesses had died. Notwithstanding that the judgment was in favor of the plaintiffs, such inordinate delay in environmental cases affects people's confidence in the judiciary [85]. The aftereffect is some cases may resort to violence, self-help and criminality as we have today in the Niger Delta region of Nigeria.

What is the effect of inflation on an amount claimed as damages and the costs of litigation? There is no doubt that the value of money depreciates every day in Nigeria that an amount claimed as compensation today may not be its worth the next day. The case of *Shell Petroleum Development Company v Ambah* [86] is one of the environmental cases in this country that was mostly hit by this undue delay as it lasted almost 19 years in the courts and still, the Supreme Court, on technical ground, disallowed the N270,000.00 already granted the victims as special damages by both the trial court and the Court of Appeal. The apex court quashed the multiplication of claims into the number of years spent in the courts and upheld the N27,000.00 which was the claim at the commencement of the proceedings in 1976. That was how the poor litigants whose farms, crops, ponds, fish lakes, creeks and channels were destroyed by the appellants oil activities went home with only N27,000.00 after the so long

litigation [87]. There is no record of any environmental case in Nigeria determined within 3 years and the victims got their reliefs. That is why the polluters expectedly prefer litigation to any other means of settlement. Lamenting on the same issue, Ebeku stated that;

> *There is an indication that given the inherent disadvantages of litigation, the victims of oil operations damage will go to court over compensation issues only as a matter of last resort. In contrast, it would appear that oil companies prefer being taken to court over compensation issues. According to sources, litigation often provides an avenue for the oil multinational giants to dodge the payment of compensation totally or for a good time or get off lightly. Specifically, litigation provides them the advantage of continuing with the operations undisturbed whilst the case suffers undue delay which is almost endemic in the Nigerian judicial system… [88].*

Research revealed that the case of *SPDC v Farah [89]* lasted 24 years while *SPDC v. Anaro [90]* lasted 32 years in the courts when the plaintiffs lost everything they had to pollution. The case of *Isaiah Ogar v Chevron* was settled outside the courts after over a decade of frivolous and frustrating litigation. The victim who initially sought for damages of N100 million accepted N20 million out of frustrations of litigations [91]. Speaking about *Shell v Tiebo VII* (supra), Musah stated that:

> *This is a case arising from oil spillage which took place in 1972. It was continuously heard in the High Court in 1985. Appeal was later filed therefrom by the appellant, Shell and it was only heard in 1994 and ever since, no judgment has been given by the Court of Appeal owing to multiple advocacy gimmicks employed by Shell to frustrate the respondents … [92].*

The delays and other frustrations of environmental litigations discourage victims of environmental abuse from going to courts to ventilate their grievances while the degradation continues unabated as the polluters pollute with impunity. In *Ashgar Leghari v Federation of Pakistan* [93], it was held that the government's delay in the implementation of the 2012 climate change policy of Pakistan amounts to a violation of the fundamental rights of the citizens especially the rights to life and dignity of man [94] which have a correlation with a healthy and clean environment. The Court, in this case, put the government on its toes to hasten up actions towards the implementation of environmental policies to save the lives and rights of its citizens. The reverse is the case in Nigeria. The result is resort to arms and violence, including sabotage of the oil exploration and other related activities. Some Nigerians have taken their cases outside the Nigerian shores where they can obtain justice within a reasonable time [95]. Their impression is that environmental justice can hardly be obtained from the courts in Nigeria. If the Nigerian courts can be proactive in a highly visible way about environmental degradation, they can dispel such public apathy and cynicism. This is because litigation remains the best option through which environmental degradation can be combated.

Locus Standi

One other major impediment to progressive environmental management is the limited access granted to citizens predicated on the traditional legal concept of *locus standi [96]* which is the legal capacity of a person to institute action and be heard in a court of law or tribunal. The person must prove violation or threatened violation of his right [97]. In other words, the person must incur direct injury, and it is a prerequisite for commencing any legal action in Nigeria; otherwise, the person's action may be dismissed or struck out [98]. This standing requirement has done more damage than good to environmental litigants in Nigeria as it operates to impede access to the courts by victims of pollution on the mere excuse that such citizens have not sustained direct injury no matter the circumstance. In the words of Justice Niki Tobi [99]:

> *Where a party has no locus standi, the proceedings however ably conducted by a court of competent jurisdiction will be a nullity. Therefore, before a court of law can enforce the provisions of any statute, including those governing the environment, the parties must have locus standi in the matter.*

In environmental litigations that often deal with the public interest, the problems of *locus standi* assume a worse dimension. There is no doubt that some of our judges are untrained in environmental matters, and so may not be much abreast with environmental issues. That is why judicial attitude, in some cases, does not reveal an understanding and appreciation of the urgency involved as a result of the dangers of environmental problems. Many of them are hesitant to respond to such individuals or NGOs for want of personal injury. The courts usually see them as meddlesome interlopers, busy bodies, poke nosers and intruders [100]. Thus, in Nigerian case of *Amos v Shell BP (Nig) Ltd.* [101], the plaintiff claimed that the defendant company made a large dam across his creek during the defendant's oil mining operations. This resulted in flooding upstream and dryness downstream. Canoe movements, commercial and agricultural activities of the community were grounded to a halt. The issue to be determined by the court was whether the plaintiffs could claim special damages in a representative action when they suffered unequal losses or whether public action was appropriate in a situation where the plaintiffs incurred separate losses. The Court held that the creek was a public highway in respect of which only the Attorney General or a local authority could institute action. Again, since the interest and losses suffered by the plaintiffs were separate in character and not communal, they could not maintain action in a representative capacity. However, where there is proof of extra loss incurred by the plaintiff over and above other members of the public, his private action in public nuisance may suffice. In the absence of such extra loss proved by individual members of the community, the plaintiff has no standing to institute the action in the first place.

Though, it is difficult to prove that the damage caused to one's property is different in kind or degree from others, nevertheless, the reasoning behind this judgment is that the community, in suing for a public nuisance, was attempting to usurp the role of the state Attorney General. The insistence by the Nigerian courts, within this era, that it was only the Attorney General who could institute action on behalf of the public was affirmed subsequently in the case of *Jimoh Lawani & ors v West African Portland Cement Co. Ltd*. [102], where the plaintiffs instituted a representative action on behalf of five villages claiming damages from the defendant. The plaintiffs alleged that the defendant discharge of fumes, dust and sewage from factory has polluted their river which served as their source of water supply. Against this backdrop, the plaintiffs sought an injunctive order to restrain the defendant from discharging fumes, sewage and slurry from their factory into the crops, buildings, stream and land adjoining the already affected area. The defendant reacted to the claim through a notice of preliminary objection in which its contended that the plaintiff's cause of action was based on public nuisance which could only be instituted by or with the consent of the Attorney General. The objection was upheld by the court and the action struck out.

One of the fundamental features of Constitutions globally is citizens' increased access to justice. In Nigeria, for instance, the first revolution in the law of standing can be traced to the 1979 Constitution. Section 6(6)(b) [103] of the 1979 Constitution of Nigeria, for instance, guaranteed every Nigerian the right of unrestricted access to courts for ventilation of grievances. This provision does not dispense with *locus standi* in the sense that the precondition for the exercise of judicial powers is that the act of the intending defendant complained against touches his civil rights and obligations, otherwise he would be denied the legal standing to access the court of justice. The standing rule is liberalized to the extent that once an issue concerns one's civil rights and obligations, the complainant has uninhibited access to the courts. This dispenses with the consent of the Attorney General even when the issue may affect a public interest.

The Supreme Court of Nigeria made a fundamental clarification of this provision in the case of *Adediran & anor v Interland Transport Ltd*. [104], where it held that by virtue section 6(6)(b) of the Constitution, a private individual can institute action in public nuisance without the consent of the Attorney General and without joining him as a party. In fact, the consistency and certainty which are the pillars of any judicial system hinged on judicial precedent are facing serious obstacles in Nigeria especially in environmental litigations. This is because in spite of the precedent set in *Adediran's case*

and the numerous academic writings seeking to illuminate and liberalize access to court by litigants, the courts still deviated from the restricted interpretations of section 6(6)(b) of the constitution in subsequent environmental cases. This is perhaps, due to the fact that the subsequent cases involved multinational oil companies. Painter-Brick stated sarcastically that "oil is money, power, life and death in Nigeria" at least for generating the bulk of the revenue, raw materials, energy, etc. needed for the country's industrial and economic development [105]. Thus, in *Shell Pet. Dev. Co Ltd. v Chief Otoko & ors* [106], lack of standing is the major reason why the plaintiff lost his action. Here, the oil spillage affected both fishermen, farms, creeks, and other persons using the river and the adjoining creeks for bathing and cassava processing. The court stated that there was diversity of interests and not joint tort. So, the plaintiff has no *locus standi* to institute action in negligence. That was how the case was lost despite the glaring fact that their rivers, creeks, lands and crops were destroyed by the activities of the appellants [107].

The deviation might also be predicated on the fact that the environmental statutes confer exclusive powers on the regulatory agencies to enforce these laws [108]. In this way, where the agencies fail in their responsibilities, many environmental litigants, including public spirited individuals, are barred from accessing environmental justice [109]. In *Oronto Douglas v Shell* [110], the plaintiff who hailed from a community affected by the defendant's oil exploration activities sought an injunctive relief to restrain the activities of the defendant until a proper environmental impact assessment has been conducted strictly in accordance with the Environmental Impact Assessment Act of 1992 [111]. He lost the action due to want of *locus standi*. He was also unable to disclose injury above other members of the public or sufficient interest to be clothed with the requisite standing as required by environmental law actions based on private law. This is more frustrating considering that there is no record of any single case prosecuted by any of these agencies since over 30 years of the existence of the Act [112].

We thank God for the coming into existence of the Fundamental Rights (Enforcement Procedure) Rules 2009 which has liberalized the issue of *Locus standi*. Paragraph 3(e) of the Preamble to the Rule urged the courts in Nigeria to entertain public interest litigations on issues bordering on human rights rather than dismissing them for want of *locus standi*. Public interest litigation is vital in the administrative justice. The Rules specifically enjoined the courts to grant uninhibited access to justice for the less privileged in the society [113]. This class of persons is hitherto the greatest victims of environmental degradation and strict enforcement of rules of *locus standi* in Nigeria. The human rights activists, advocates, groups and Non-Governmental Organizations are empowered by the Rules to institute human rights actions on their behalf [114].

This provision, no doubts, recognizes and encourages class action by a group or a community of people pursuing human rights claims such as claims for environmental damage. The Rules have come as leverage to the problems which have, in the past, frustrated actions in a representative capacity as common in the Niger Delta Region of Nigeria. Some communities that sought actions for damages for pollution of their lands, loss of fishing or farming rights, pollution of drinking water, damage to crops, destruction of economic trees, general convenience and miscellaneous losses have, in the past, lost their cases due to want of standing. Today, this right has become automatic going by these Rules. Even private individuals can now institute legal proceedings towards providing remedies for perceived public wrong. In particular, human rights activists, advocates, or groups as well as Non-Governmental Organizations can institute human rights actions on behalf of any victims of human rights abuses. This was affirmed by the Supreme Court in a remarkable judgment delivered in the case of *Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation [115]* in conformity with the provisions of the new Rules and other extant laws, as already discussed.

CONCLUSION

It is clear and widely acknowledged that enforcement of environmental laws is the best way of combating environmental degradation. From the above analysis, we have discovered that Nigeria has

gotten adequate laws for environmental protections but only pays a lip service to their implementations. Research has also revealed that effective enforcement of environmental laws in Nigeria depends, to a large extent, on granting the judiciary independence so that it can operate independently of the influence of the executives and politicians. This is because the major role of law interpretation and implementation lies with the judiciary. In fact, environmental justice can be achieved mainly through the courts. It has also become evident that globally, access to environmental justice is essential to averting some environmental disasters especially from the activities of man [116] but the strategies adopted by the courts in Nigeria so far in combating environmental degradation are not result-oriented. Therefore, the judges should adopt more robust, efficacious and result-oriented approach in the management of environmental cases in Nigeria. They should dispense with all the procedural constraints and unnecessary adherence to technicalities which frustrate genuine claims and hamper speedy dispensation of justice. They should ease the strictness and harshness associated with burden of proof and *locus standi* which frustrate environmental litigants. This view is more imperative when the evidence of experts are required in establishing a case. This is because the experts are too expensive to procure when the victims are most often wretched. Finally, the government should provide conducive working environment for the judiciary if we must achieve the primary aim of the Stockholm declarations. For instance, there is the need to provide special courts exclusively for environmental litigations as it is done in some countries of the world.

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