

## PROSPECTS AND CHALLENGES TO PROVE ENVIRONMENTAL HARM IN LITIGATION: STATUS QUO IN NIGERIA

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### ABSTRACT

Environmental litigation and enforcement of environmental rights remain a global challenge to sustainability, especially in developing countries such as Nigeria. The increasing rates of industrial activities have led to increase in production of hazardous substances posing threat to lives of the inhabitants of the environment. Victims of environmental harm most times find it difficult to protect and enforce their environmental rights. Proving environmental harm such as damages to property in litigation to enforce rights of compensation or restoration for damages suffered becomes difficult due to locus standi technicalities and undue delays during trials. Sometimes victims are faced with financial constraint in pursuing the course of justice which involves retaining the services of a lawyer and expert witnesses. This paper, therefore, examines the prospects and challenges to proving environmental harm in litigation. This paper employs doctrinal legal research methodology and content analysis of both primary and secondary sources in relation to proving environmental harm in litigation. On this premise, this paper recommends the application of the principle of Res Ipsa Loquitur in trials of environmental cases. Proving environmental harm for the enforcement of environmental rights by victims, should be totally devoid of technicalities of law during trials. This will in turn promote the course of justice in cases dealing with environmental harm.

**Keywords:** Environmental harm; Challenges; Litigation; Compensation; Locus standi

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## Prospects and Challenges to Prove Environmental Harm in Litigation: Status Quo In Nigeria

### 1. INTRODUCTION

This paper discusses the prospects and challenges to proving environmental harm in litigation. It examines rights of compensation or restoration in cases of damages to land, streams, vegetation, etc. induced by anthropogenic activities. It is observed that in almost all African Countries, such as Nigeria, Ghana, Cameroon, among others, environmental harms are majorly caused by human industrial activities. This is as a result of human developmental and profit-oriented ambition superseding environmental sustainability, hence, the recurrent cases of environmental harm. In Nigeria, access to a clean environment appears to rank the least in order of environmental priorities due to an overwhelming profit and developmental interest overriding fundamental human rights to life and serene environment. These rights to life and serene environment are synonymous to healthy living.

The importance of the right to healthy living cannot be overemphasized owing to the fact that the major causes of sicknesses and diseases befalling humans are from environmental harm. Thus, right to a clean and healthy environment was defined as something of which no one may be deprived without a great affront to justice.<sup>1</sup> It is recalled that there is a plethora of environmental harm cases in which victims of environmental harm lost their rights to compensation or reinstatement. This is often predicated on legal technicalities, such as locus standi, documentary evidence, among others, which are involved in proving damages or harm suffered by the victims. Furthermore, victims often encounter the financial challenge in funding expert witnesses to prove their cases.

### 2. ENVIRONMENTAL HARM

Environmental harm means any impact on the environment as a result of human activity that has the effect of degrading the environment (whether temporarily or permanently).<sup>2</sup> Inflicting environmental harm might be environmental crime in some cases. According to White and Heckenberg (2014), the term “environmental harm” has been used interchangeably with “environmental crime”<sup>3</sup>. This is because, like most concepts in environmental law, environmental crime does not lend itself to any specific definition, especially, because no definition can be retrieved from international conventions.<sup>4</sup> In conceptualizing environmental harm, White

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<sup>1</sup> Cranston, M., ‘Human Right; Real and Supposed in Raphael (eds) Political Theory and the Rights of a Man’ Blooming, 1967, 52.

<sup>2</sup> Cleverline, T. B. and Nlerum, S. O., ‘Redressing Harmful Environmental Practices in the Nigerian Petroleum Industry Through the Criminal Justice Approach’, (2020) 11 (1) Journal of Sustainable Development Law and Policy; Afe Baba Lola University, <[www.ajol.info/jsdp/article/view](http://www.ajol.info/jsdp/article/view)> accessed 21 September 2022.

<sup>3</sup> White, R. and Heckenberg, D., ‘Green Criminology: An Introduction to the Study of Environmental Harm’ Routledge (2014) 348; as cited by Orlando, E. and Bergin, T., ‘Forging a Socio-Legal Approach to Environmental Harms: Global Perspective’, Routledge (2017) 3.

<sup>4</sup> Mistura, A., ‘Is There Space for Environmental Crimes Under International Criminal Law? The Impact of the Office of the Prosecutor Policy Paper on Case Selection and Prioritization on the

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(2008) proposed three approaches: the conventional criminology approach, the ecological perspectives approach, and the green criminology approach.<sup>5</sup>

The conventional criminology approach speaks to the conceptualization of harm from the point of view of legal instruments, such as law, rules and international conventions. Under this approach, activities are either legal or illegal.<sup>6</sup> Ecological perspective approach accommodates the conceptualization of harm from the understanding of the interrelationship between species and the environment. Under this approach, the key issue is that of ecological sustainability and the categorization of social practices into benign and destructive practices.<sup>7</sup> Green criminology approach conceptualizes harm from the point of view of justice for the effects of activities of human, ecological and animal rights and egalitarian concerns. This approach weighs different kinds of harm and violation of rights within the context of eco-justice framework.<sup>8</sup>

Environmental harm is a very broad concept that describes a physical or mental injury or moral wrongdoing to human kind and the health of other living organisms or interference with the ecological system of which form a part, including any human senses or human property.<sup>9</sup> It can be caused by activities such as tree clearing, fishing, pollution and mining, damming rivers, killing native animals, soil erosion and aircraft noise.<sup>10</sup> Environmental harm is any adverse effect on the value of the environment.<sup>11</sup> The environmental value is a quantity or physical characteristics of the environment that is conducive to ecological health or public amenity or safety.<sup>12</sup>

### 3. THE PROBLEM OF PROVING ENVIRONMENTAL HARM DURING COURT PROCEEDINGS

Many reasons have been put forward for the lack of success in proving environmental harm. This ranges from developmental interest of the government as against environmental interest, technicalities involved in the use of experts, lack of funds in securing services of experts, attitudes of the Judges who are reluctant in awarding adequate compensation, and the longevity of court proceedings or trials before cases are determined. These challenges are discussed below in three categories, namely: judicial approach

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Current Legal Framework' (2018) 43 (1) Columbia Journal of Environmental Law 181, 196, <[journals.library.columbia.edu](https://journals.library.columbia.edu)> accessed 22 December 2022.

<sup>5</sup> White, R., 'The Criminalization of Environmental Harm: Rob White Explores How Environmental Harm is Conceptualized and How it should be Tackled' (2008) 74 (1).

<sup>6</sup> Ibid, 24.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Hughes, D., 'Environmental Law', (2003) 14 (1) Management of Environmental Quality 162, <<https://doi.org/10.1108/meq.2003.14.1.162.6>> accessed 22 December 2022.

<sup>10</sup> Caxton Legal Centre Inc., 'Environmental Harm' (2016), as cited by Cleverline, T. B. and Nlerum, S. O., 'Redressing Harmful Environmental Practices in the Nigerian Petroleum Industry Through the Criminal Justice Approach', (2020) 11 (1) Journal of Sustainable Development Law and Policy, <[www.ajol.info/jsdp](http://www.ajol.info/jsdp)>article>view> accessed 25 September 2022.

<sup>11</sup> Environmental Protection Act, 1994, s 14.

<sup>12</sup> Ibid, s 9.

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in deciding matters of environmental harm, developmental interest overriding sustainability and impediments such as delay, cost of litigation, etc. to environmental litigation in Nigeria.

#### 3.1 Judicial Approach in Deciding Matters of Environmental Harm

Ecologically, apart from the aforementioned provisions meant to guard against the pollution and degradation of the Nigerian environment, the Constitution<sup>13</sup> of the Federal Republic of Nigeria clearly states that the State shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria. It is unfortunate that the attitude of some of the Nigerian judges towards matters relating to environmental hazards created by the multinational corporations have rendered the enforcement of environmental laws ineffective. Some members of the judiciary as noted by Ebeku<sup>14</sup> have been reluctant to give orders compelling companies whose operations are damaging to the environment to ease the action complained of.

Perhaps, these judges consider the potential loss of income and investments of litigants at the expense of the environmental protection. Additionally, this could be the fact that Nigeria's economy depends largely on the sales of crude oil. Whichever is the case, such actions retard the implementation of environmental laws and, thereby, encourage relegating these laws to a toothless dog. According to Oluwatoyin,<sup>15</sup> there have been several oil related cases filed in the Nigerian Courts by affected Nigerians ranging from pollution from oil exploration, loss of incomes, loss of properties, contamination of drinking water leading to water borne diseases, and so on. A few cases need to be mentioned here. In the case of *Chevron Nigeria Limited v. Nwuche and Others*<sup>16</sup>, the plaintiffs were farmers and natives of Umukene Ohaji community in Imo State of Nigeria. The plaintiffs instituted legal action against the defendant that the defendant's mineral oil exploration has caused a lot of damages to their farmlands and also deprived them of their farming benefits. The defendant contended that the trial court lacks jurisdiction to entertain the matter. Defendant further contended that the plaintiffs are not entitled to the reliefs being sought in the trial. The trial court ruled that it has jurisdiction to adjudicate on the matter. On appeal, the Court of Appeal set aside the ruling of the trial court and the plaintiffs' entire suit was struck out. Similarly, in *Amos and 4 others v. Shell B.P Nig. Ltd.*<sup>17</sup>, the plaintiffs sued the defendants jointly and severally for unlawfully blocking the Kolo Creek waterway, which passes through their farmlands in Ogbia community in Rivers State of Nigeria. The defendants contended that Kolo

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<sup>13</sup> Section 20 of the Constitution of the Federal Republic of Nigeria, 1999 as amended 2011.

<sup>14</sup> Ebeku, K., 'Judicial Attitudes to Redress for Oil Related Damages in Nigeria', (2003)12 (2) RECIEL 199-208, as cited by Adamu Kyuka Usman, 'Environmental Protection Law and Practice', Ababa Press Ltd., Nigeria 2012, 228-233.

<sup>15</sup> Osho-Adejonwo Oluwatoyin, 'The Evolution of Human Rights Approaches to Environmental Protection in Nigeria', (2005) Optiocon Documans & Task, <[www.iucnael.org/index.php?](http://www.iucnael.org/index.php?)> accessed 12 March 2010.

<sup>16</sup> (2005) PH 420 (CA).

<sup>17</sup> (1972) 4 S.C 123.

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Creek is a public waterway and that the plaintiffs have no *locus standi* to institute the legal action in a court of competent jurisdiction. The court upheld the submission of the defendants and ruled against the plaintiffs. Other similar cases discussed hereinafter are, among others, *Seismograph Services Ltd. v. Onokpasa* and *Oronto Douglas v. Shell Petroleum Development Company Ltd.*

In most of these cases and similar ones, the judicial courts are said to have refrained from making orders on how to remedy the situation of the oil spillage claims, loss of income from fishing and farming, pollution of drinking water and crops, and damage to health as a result of waterborne diseases. Instead of passing orders, which address the complaints regarding damages to the physical environment of these communities (Sagbama community, Peremabiri community in Bayelsa State and Ineh/Aku communities in Abia State of Nigeria), the courts tend to settle for compensation of the affected complainants. In this manner, the environmental laws that were meant to protect human beings and other living things are rendered ineffective. It is hoped that, the judiciary may in future begins to address cases of environmental harm not merely to award monetary compensations but to preserve a healthy environment.<sup>18</sup>

The multinational oil companies, which are normally being complained against by oil communities on gas flaring, are more likely to win an environmental litigation, especially, when it relates to technicalities of locus standi and other related issues in proving damages or environmental harm suffered. In the case of *Oronto Douglas v. Shell Petroleum Development Company Ltd. (SPDC)*, the court refused to grant the plaintiff's relief against Shell Petroleum Development Company Ltd. The court held that the Plaintiff lacked the *locus standi* to commence suit having failed to proffer evidence that he suffered any injury above that of the public.

### 3.2 Developmental Interest Overriding Sustainability

Many reasons have been advanced for the lack of effective environmental enforcement policies. Profit-oriented and developmental ambitions had, over the years, superseded sustainable interest. The notion here is that, in as much as the adventure is lucrative, the side-effect harm is of less priority. One of the reasons often cited is corruption of public officials charged with the duty of enforcing these laws. Corruption is a major problem in Nigeria and has pervaded almost all sectors of the economy. The enforcement agents that deal with the wealthy multinational oil companies, such as Chevron, Agip, are easily influenced to compromise against international best practices.

These factors could alone or in combination act as serious impediments to enforcing environmental regulations. It, however, offers little explanation on why the Nigerian Federal Government seems reluctant in imposing

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<sup>18</sup> Okorodudu, M.T., 'Law of Environmental Protection' (1998) Text C., as cited by Ebeku, K., 'Judicial Attitudes to Redress Oil Related Environmental Damage in Nigeria' (2003) 12 (2) RECIEL 207.

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stringent penalties on activities that caused serious environmental harm in the country, as it is in the case of gas flaring, which is highly tolerated.

The Nigerian leadership is even ready to subject the standard of living and health of its citizens over the continued flaring of gas. Though gas flaring has been declared illegal in Nigeria since 1984, and various courts of jurisdiction have ruled against its practice, it continues unabated. In the case of *Jonah Gbemre v. Shell Petroleum Development Company of Nigeria Ltd & Ors*,<sup>19</sup> the court ruled against the activities of gas flaring and declared gas flaring as unconstitutional and a breach of fundamental rights to life and dignity of human persons. These rights are guaranteed by the African Charter on Human and People's Right and the Constitution of the Federal Republic of Nigeria.<sup>20</sup>

Today, Nigeria is one of the countries with highest percentage of gas flaring, globally. Therefore, to understand why the Nigerian government seem reluctant to enforce its environmental laws to the latter, it becomes necessary to look at the nature of its economy because, as analysed herein, it shows the nature of the Nigerian economy having lopsided towards the production of a single commodity that has had the greatest impact in weakening the political will of Nigerian leaders and have effectively made it rely on rent/proceeds from oil production for its survival.

### 3.3. Impediments to Environmental Litigation in Nigeria

There are certain hiccups that are associated with litigation in Nigeria. This is regardless of whether such litigation is an environmental litigation or other subject matters. These impediments are not sector specific or court specific. They include factors like delays, cost of litigation and services of legal practitioners, ignorance of the law on part of citizens, remoteness of court halls from rural dwellers etc.<sup>21</sup> Much litigation in courts takes time and unnecessary delays are attributable to them. It is recorded that an average length of litigation in superior courts of record lasts between five to six years and those cases that are eventually heard proceed with no real sense of urgency.<sup>22</sup>

This is the minimum time a victim of environmental harm for instance will take to assert his right. This excludes the right of unsuccessful litigant to file appeal. Friends of the Earth International captured the exact nature of the length of environmental litigation against oil multinational companies in the following words:

“A classic example of how transitional oil companies escaped from the arm of the law using the cumbersome legal system that is time wasting to frustrate litigants. In Nigeria, delays significantly plague

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<sup>19</sup> (2005) 151 AHLR (NgHC).

<sup>20</sup> Constitution of the Federal Republic of Nigeria, 1999 as amended 2011.

<sup>21</sup> Fagbemi, S.A. and Akpanke, A.R., 'Environmental Litigation in Nigeria: The Role of the Judiciary', (2019) 4 <[www.ajol.info/article>view](http://www.ajol.info/article/view)> accessed 25 September 2022.

<sup>22</sup> Oko O. 'Seeking Justice in Transitional Societies: An Analysis of the Problems and Failures of the Judiciary in Nigeria' (2005) 9 (14) 31 Brook J Int. Law, as cited by McCaskill L., 'When Oil Attacks: Litigation Options for Nigerian Plaintiffs in U.S Federal Courts' (2013) 22 (2) Health Matrix; the Journal of Law-Medicine 560.

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the course of litigation against the poor rural communities. The delay in getting judgment in the courts discourage the prospective litigants from instituting any environmental action in court. Some cases are illustrative. According to records, a spill at Peremabiri Bayelsa State in January 1987 came to the High Court in 1992 and to the Court of Appeal in 1996; a case heard in High Court in 1985 in relation to damages suffered on a continuous basis since 1972 was held in Court of Appeal in 1994; a case held in 1987 in relation to damages suffered since 1967 was heard in the Court of Appeal in 1990 and in the Supreme Court in 1994.”<sup>23</sup>

It is crystal clear that the victims of environmental harm are confronted with so many difficulties in trying to prove their cases with regards to harm suffered consequentially from the misconduct of another. The resultant effect of this is loss of confidence by the victims in the Nigerian courts and this has led to a number of environmental cases being taken to courts outside the shore of Nigeria.<sup>24</sup> Some victims also abandon their cases halfway due to financial constraint, delays in the judicial system and the technical doctrine of *locus standi*. Thus, the strict enforcement of the doctrine of *locus standi* has deprived numerous environmental litigants their fundamental right to access environmental justice.

The issue of *locus standi* relates to Nigerian environmental law conferring only government agencies with standing to sue. In this way, a government that fails to enact strong laws or enforces its own laws is protected by a system that bars interested members of the public from suing.<sup>25</sup> A 2015 survey of enforcement official and legal practitioners corroborates this argument.<sup>26</sup> Few courts that have exercised jurisdiction are courts of the United Kingdom,<sup>27</sup> African Commission on Human and People’s Rights<sup>28</sup> and the Economic Community of West African States (ECOWAS) Community Court of Justice that entertain matters when all other remedial local avenues to redress the injustice have been exhausted.

However, the limitation here is that such international courts do not always assume jurisdiction in every matter that is brought before it. This was demonstrated rightly in the case of *Socio-Economic Rights and Accountability Project (SERAP) v. President of the Federal Republic of Nigeria & Ors.*<sup>29</sup> In this case, the court held that while it had jurisdiction to entertain the case, its jurisdiction was only to the extent that the Federal Government of Nigeria and its agency, the Nigeria National Petroleum Company (NNPC), are

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<sup>23</sup> Friends of the Earth, ‘Access to Environmental Justice in Nigeria: The Case for a Global Environmental Court of Justice’ (2016), <[www.foei.org](http://www.foei.org)> accessed 23 August 2018.

<sup>24</sup> Popoola, E.O., ‘Moving the Battlefields: Foreign Jurisdictions and Environmental Justice in Nigeria’ (2017), <[kujenga-amani.ssrc.org](http://kujenga-amani.ssrc.org)> accessed 24 September 2022.

<sup>25</sup> Ibid.

<sup>26</sup> Popoola, E. O., ‘Appraisal of the Contemporary Jurisprudence on the Right to Environment: A Case Study of Nigeria and South Africa’, Ahmadu Bello University, (2016), 390.

<sup>27</sup> *Okpabi v. Royal Dutch Shell and Others* (2018) EWCA Civ, 191.

<sup>28</sup> Article 50 of the African Charter on Human and Peoples’ Rights, 1981.

<sup>29</sup> (2010) ECW/CCJ/APP/8/09.

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parties to ECOWAS treaties but that it lacked jurisdiction over multinational corporations and proceeded to strike their names off the law suit.<sup>30</sup>

In the case of *Oronto Douglas v. Shell Petroleum Development Company Ltd (SPDC)*,<sup>31</sup> the plaintiff, a private citizen, brought an action against the defendant, an oil corporation, seeking a mandatory order directing the defendant to contend certain provisions of the Environmental Impact Assessment Act before continuing with a liquefied natural gas project. The court refused to grant the plaintiff's relief holding that he lacked the *locus standi* to commence suit having failed to proffer evidence that he suffered any injury above that of the public.

It is argued that the doctrine of *locus standi* is not applicable to environmental matter.<sup>32</sup> Thus the fundamental rights rules<sup>33</sup> provided to the effect that the courts shall encourage and welcome public interest litigations in the human rights field and no human rights case may be struck out for want of *locus standi*.

Similarly, in *Centre for Oil Pollution Watch v. Nigerian National Petroleum Corporation (NNPC)*,<sup>34</sup> the case was initially filed at the Federal High Court by the plaintiff who brought an action against the NNPC for refusing to clean up and reinstate the Ineh/Aku streams and rivers in Abia State of Nigeria. The streams were polluted by the spilled oil from the NNPC corroded pipeline which ruptured. At the trial, the defendant (NNPC) denied liability and filed his defence action contending that the plaintiff, being a non-governmental body, has no *locus standi* to institute such legal action.

The Federal High Court upheld the submission of the defendant and struck out the action. The plaintiff filed a Notice of Appeal and challenged the decision of the Federal High Court. The Court of Appeal upheld the decision of the lower court to the effect that the plaintiff has no *locus standi* in the action. The argument of the Appellant was that the suit was instituted on the ground of public interest for the purpose of conserving the environment and that the suit reveals extreme issue that would validate an exceptional approach to the question of sufficient interest. Responding to the Appellant's argument, the respondent therein contended to the effect that the principle of *locus standi* in the administration of justice under the Nigerian judicial system has not changed and that the Appellant has not shown to the court that he personally suffered any injury or harm to its interest nor authorized by the affected community to sue on its behalf. The Court of Appeal, while delivering its judgment, therefore, acknowledged the exponential growth in the change of attitude by courts in other jurisdictions allowing pressure groups, non-governmental organisations and public-

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<sup>30</sup> Ekhaton, E.O., 'Improving Access to Environmental Justice Under the African Charter on Human and Peoples' Rights: The Roles of NGOs in Nigeria' (2014) 22 (1) African Journal of International and Comparative Law 63,73.

<sup>31</sup> (1988) LPELR143/97 (CA).

<sup>32</sup> Michael Uche Ukponu, 'Environmental Law and Access to Justice in Nigeria: A Case for a Specialized Natural Environmental and Planning Tribunal (NEPT)', (2019) University of Melbourne, Melbourne Law School, Australia.

<sup>33</sup> Fundamental Rights (Enforcement Procedure) Rules, 2009.

<sup>34</sup> (2019) 5 NWLR (Pt. 1666) 518 (S.C.).



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spirited taxpayers to institute an action bothering on public interest. It, nevertheless, observed that Nigerian courts are yet to adopt such approach and, therefore, dismissed the appeal. The Appellant being dissatisfied with the judgment went further on to appeal to the Supreme Court and the Supreme Court overruled the decision of the Court of Appeal. The Supreme Court held that the Court of Appeal was wrong in playing into technicalities of *locus standi* to deprive public group's right of action to redress unlawful conduct.

The Supreme Court stated that in environmental cases, as in the instant one, non- governmental organisations (NGOs) such as the Appellant in this suit, have the obligatory standing to institute legal action. Furthermore, the court noted that public interest litigation is geared towards improving access to justice for the masses, especially, the poor whose rights are infringed upon. Again, public interest litigation is for the protection of the masses and that such legal action serves as a means of liberating, transforming and protecting the interest of relegated groups. The court stated to the effect that everyone such as pressure groups, public spirited taxpayers or non-governmental organisations who *bona fide* seek a redress in the court of law in respect of the due performance of statutory functions or the implementation of statutory provisions or public laws meant or designed to safeguard human lives, public health and environment, should in appropriate definition be seen as the appropriate parties enshrined with the right standing in law to bring an action to redress unlawful conduct.

The above-mentioned cases are a clear example of cases where victims suffered untold hardship as a result of legal technicalities of *locus standi* though there is access to court. The Supreme Court is commended in this celebrated case. In *Adesanya v. President of the Federal Republic of Nigeria & Anr*,<sup>35</sup> the court stated to the effect that the words "*Locus Standi*" represent the legal capacity to institute cause of action in a court of competent jurisdiction. In this case, the court held that the claimant must give a convincing reason to justify that his interest will be affected by the action or that he is a victim of the harm done.

Sequel to the foregoing evaluations, this paper argues that delay in proceedings and strict enforcement of *locus standi* in environmental cases will deny victims of environmental harm access to environmental justice. This happens mainly in situations where the victim indirectly suffers from the harm done. The right to a serene environment belongs to everyone whose interest may be affected directly or indirectly when the environment is polluted. Wilful disobedience to laid down rules and court's orders pertaining to the use of the environment is a major challenge to sustainability. The worrisome issue is that despite the decision of the court on gas flaring as in the aforementioned case of *Jonah Gbemre v. Shell Petroleum Development Company of Nigeria Ltd. & Ors*, the multinational oil companies still flare gas in disobedience to court's order due to an overriding interest in profit making than the health of the innocent citizens.

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<sup>35</sup> (1981) 5 S.C. 69.

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It has been pointed out that the need for Nigerian courts to relax standing requirement in environmental litigation in order to engender growth of climate change litigation would help Nigeria realise its climate change mitigation and adaptation potentials more effectively.<sup>36</sup>

### 4. THE PATHETIC SITUATION OF NIGER DELTA REGION

There is plethora of cases of environmental problems arisen from pollution, degradation and deforestation, but over 90 percent of them turned out an exercise of futility due to technicalities involved in proving cases of environmental harm in legal action for damages and compensations.<sup>37</sup> Even the few ones that succeed are given meagre compensation as the only remedy while the acts being complained of continue.

In *Shell Petroleum and Development Co. Ltd. v. Cole*,<sup>38</sup> the inhabitants of Sagbama Community in the Niger Delta sued Shell for compensation for loss of their fishing rights at the Sagbama creek, which the oil company dredged in 1971 for the purpose of oil production. The trial judge ruled in favour of the community. Shell appealed. The then Federal Supreme Court judge upheld the judgment of the lower court and held that the amount awarded as damages was far less than the loss proved by the community but could not review the award because the community did not cross appeal on the point.

The problem of getting adequate compensation can be attributed to the fact that development interest and profit-oriented ambitions are prioritized over environmental interest.<sup>39</sup> A notable case study of this is the export of toxic waste to Africa which was discovered in 1988. Containers of toxic wastes were imported by a Nigerian peasant living near the small port of koko,<sup>40</sup> a coastal community located in Delta State of Nigeria and lies south of the former Bendel State close to the Atlantic Ocean. In September 1987, an Italian businessman based in Nigeria, and acting on behalf of an Italian Waste Disposal Company, shipped to the port of Koko 4,000 tons of industrial and nuclear wastes for over a period of 18 months. The wastes were brought into Nigeria purportedly as industrial chemicals for Nigeria Companies.<sup>41</sup>

In reaction to the menace, the Nigerian Government enacted different environmental policies.<sup>42</sup> Findings also showed that the purpose and impact

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<sup>36</sup> Etemire, U., 'The Future of Climate Change Litigation in Nigeria: COPW v. NNPC in the Spotlight', (2021) CCLR (2) 159

<sup>37</sup> Awodezi Henry and Eruteya Ugiomo, 'Environmental Law Litigation and its Remedial Challenges', (2019) Human Rights Jurisprudence Journal (HRJJ); Center for African American Research Studies- CAARS; ISSN:2636-5685.

<sup>38</sup> (1992) 8 N.W.L.R. (pt. 259) 335.

<sup>39</sup> Ibid.

<sup>40</sup> Peter, C.M., 'Taking Environment' (1993) 3 Revenue Africaine des Droits de l, Homme, 42.

<sup>41</sup> Eguh, E.C., 'Regulations of Trans-boundary Movements of Hazardous Wastes, Lessons from Koko' (1997) 9 RADIC 130.

<sup>42</sup> Oil Pipeline Act Cap. 07 Laws of the Federation of Nigeria (L.F.N.) 2004, the Endangered Species Act Cap. E9 Laws of the Federation of Nigeria (L.F.N.) 2004, Environmental Impact Assessment Act, Cap. E12, Laws of the Federation of Nigeria (L.F.N.) 2004, Federal Environmental Protection Agency Act (F.E.P.A.), 2004 which was subsequently repealed by the

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of some of these environmental policies are to an extent cosmetic in conception with no objective framework for implementation to achieve the desired sustainable goals. The reasons for failure are varied, complex and wide. Many regulatory frameworks fail because the government lacks necessary information and data to regulate environmental pollution. However, all nations rich or poor have no alternative but to be concerned with the environment.<sup>43</sup>

On the contrary, most of these countries have not been innocent victims and, in most cases, there are contractual prearrangement between their governments and multinational corporations. These are done because of the financial gains involved and ignorance of the dangers of such actions. In *Seismograph Services Ltd. v. Onokpasa*,<sup>44</sup> the plaintiff/respondent found himself in a devastating situation in the sense that his school building developed cracks following the defendant/appellant's rock blasting activities near the school. The cracks became visible only after some weeks following the cessation of the appellant's seismic activities. On these facts, the court held that the respondent failed to establish a nexus between the cracks on his building and appellant's blasting activities. The court stated further that it is important to consider the duration of time between the blasting activities of the appellant and the appearance of cracks on the respondent's building.

Tied to the problem of proving environmental harm is the problem of the technical rules of prosecuting a case in the law courts and the availing defences in the rule in *Rylands v. Fletcher*.<sup>45</sup> In *Amos v. Shell B.P Nig. Ltd.*,<sup>46</sup> the plaintiffs lost their case because they sued on what was considered public nuisance without the consent of the Attorney General. In *Chinda & Ors v. Shell Petroleum Development Co. Ltd.*,<sup>47</sup> the plaintiffs in a representative capacity sued the defendant company for heat, noise and vibration resulting from the negligent management and control of the flare set used during gas flaring operations. This resulted in a lot of damage to the plaintiff's property. On the representative character aspect of the case, the court held that the plaintiff's action must fail because the plaintiff could not prove they had the mandate to sue in a representative capacity.

Regarding negligence, the court held that the plaintiffs could not prove negligence on the part of the defendant in the management and control of the flare set. In cases requiring such skill and technology, the inhabitants of the host rural oil communities obviously find it extremely difficult to prove negligence or that reasonable care was not taken during the defendant's operations. This problem naturally emerges because of the plaintiff's limited

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National Environmental Standards and Regulations Enforcement Agency (NESREA) (Establishment) Act 2007, Harmful Waste (Special Criminal Provisions) Act 2004, among others.

<sup>43</sup> Omorogbe, Y., 'The Growth of Environmental Law in Developing Countries: Problems and Prospects' (Mimeo), 2010, 1.

<sup>44</sup> (1972) 73/1970 SC. as cited by Adamu Kyuka Usma, 'Environmental Protection Law and Practice' Ababa Press Ltd, Nigeria, 2012, 228-233.

<sup>45</sup> (1993) 7 N.W.L.R. (Pt.304) 203.

<sup>46</sup> (1972) 4 S.C 123.

<sup>47</sup> (1868) 3 L.R 330. (HL).

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knowledge of operations in the petroleum industry. In the same vein the plaintiffs will find it difficult to prove that 'Good Oil Field Practices' were not adopted by the defendant. The defendant company on the other hand would have no difficulty in providing experts with in-depth knowledge of petroleum technology to explain such technical terms and prove that they were not negligent.

### 5. CONCLUSION AND RECOMMENDATIONS

Conclusively, this paper argued that legal technicalities are hindrances to assessment of environmental justice. Right to compensation or restoration in cases of environmental harm are often difficult to access due to technicalities of law during court trials.

The aforementioned cases of *Seismograph Services Ltd v. Onokpasa*, *Oronto Douglas v. Shell Petroleum Development Company Ltd. (SPDC)*, *Jonah Gbemre v. Shell Petroleum Development Company of Nigeria Ltd & Ors*, among others, are several environmental harm cases in which victims of environmental harm suffered untold hardship in the course of enforcing their rights to compensation or reinstatement not because they lack a just cause of action but due to legal technicalities. The plaintiffs in the case of *Centre for Oil Pollution Watch v. Nigerian National Petroleum Corporation (NNPC)* suffered delay impediment from the trial court to supreme court before they could not assess their right to compensation due to technicality of *locus standi*. Legal technicalities of *locus standi*, delays in trials, financial challenge, among others, are major constraints befalling victims.

A plaintiff suing for environmental harm therefore has to engage the services of a good lawyer to make success of his case and this will involve huge amount of money. Due to meagre funds in the hands of the victims, unlike the wealthy industries, the litigants continue to suffer environmental harm from the pollutant-industries. This could be traced to the fact that Nigeria's economy depends largely on the sales of crude oil. Whichever is the case, such actions retard the implementation of environmental laws and, thereby, make innocent victims to continue to suffer untold hardship from environmental harm.

Sequel to the foregoing, this paper recommends that intending or potential litigants who in one way or the other become victims of environmental harm should seek redress in court by soliciting the doctrine of *Res Ipsa Loquitur* (that is, the facts speak for itself) to establish their cases against the wealthy pollutant-industries. Under this doctrine, the court does not need the plaintiff or claimant to prove the harm done to him if the harm itself is glaring to the assessment of the ordinary man in the society.

This paper further recommends that while the innocent victims solicit the doctrine of *Res Ipsa Loquitur* in courts, the courts should in turn apply same in administering course of justice and jettison technicalities of *locus standi*, prove of harm or damage suffered by expert witness and undue delays before cases are determined. The victims of environmental harm are those whose right to clean and healthy environment are infringed upon as a

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result of damages done to their environment which consequently has adverse effect on their health or means of livelihood.

Alternatively, aggrieved parties should also seek arbitration to reconcile the dispute emerging from environmental harm. Although, this can only be made possible if all the aggrieved parties agree to resolve their dispute through arbitration. In effect, it will save cost and precious time for the aggrieved parties instead of embarking on court's proceedings which may take a longer time for the case to be determined.

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