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Environmental Accountability and the Locus Standi Rule in Oil-Related Environmental Litigation in Nigeria: Implications of the Supreme Court Decision in *Centre for Oil Pollution Watch v. NNPC*

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Abstract

In cases of environmental degradation or pollution, the ability of a person or group of persons to petition the court is however dependent on the legal rights and procedural gateways created in law, otherwise known as locus standi which has come to play a critical role in oil-related environmental litigation in Nigeria. The legal concept of standing or locus standi is predicated on the assumption that no court is obliged to provide a remedy for a claim in which the applicant has a remote, hypothetical or no interest. While the Nigerian judiciary has over the years mainly leaned towards the strict interpretation of this rule, implying that the need to ensure environmental accountability is often sacrificed on the altar of satisfying procedural rules. Recent developments suggest that the courts will not stand in the way of the liberalization of this rule. It is the implications of the Supreme Court's decision to liberalize the locus standi rule in oil-related environmental litigation in Nigeria that forms the basis of this paper.

Introduction

Pollution resulting from the exploration of oil and gas remains at the heart of environmental degradation in Nigeria. The degradation is so widespread that Nigeria has been described as the oil pollution capital of the world.[149] The presence of several environmental protection legislation has failed to halt the destruction of the environment. This is mainly due to a systemic failure that includes regulatory capture and the cost of accessing judicial justice. A fundamental challenge faced by potential litigants over the years has been satisfying the procedural requirement that his civil rights and obligations have been or are in danger of being violated or adversely affected by the act complained of. However, a review of case law suggest and as several authors have argued, satisfying this requirement in instances where the environmental degradation does not infringe or threaten fundamental human rights has proved problematic for public-spirited citizens and nongovernmental organizations (NGOs) interested in the overall protection of the environment in Nigeria.[150] This wouldn't have been a problem per se but the inability of those that are directly

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[149] Caroline Duffield, 'Nigeria: 'World Oil Pollution Capital' (BBC News, 15 June 2010) available <https://www.bbc.com/news/10313107> accessed 8July 2023.

[150] *Oronto Douglas v. Shell Petroleum Dev. Co. Ltd. & Others* (1998) LPELR-6457; *Centre for Oil Pollution v. Nigeria National Petroleum Corporation* (2013) LPELR-20075(CA). See also D. E. Omukoro, 'Ensuring Environmental Accountability in Nigeria through the Liberalisation of the Locus Standing Rule: lessons from some selected jurisdictions' (2019) 27 (4) *African Journal of International and Comparative Law* 473; E. P. Amechi,

affected to raise the much needed financial resources to sustain an oil-related environmental litigation. The prevailing poverty in the Niger Delta means that to insist on this procedural requirement is to deprive the victims of environmental damage access to justice; thereby leaving the polluter without responsibility. This runs contrary to the notion of environmental accountability which implies that the responsibility for the deterioration of the natural environment should lie with the economic activity that caused such deterioration.[151]

Access to justice in cases of actual or threatened degradation of the environment is considered a powerful tool in the overall protection of the environment.[152]In cases of environmental degradation or pollution, it also constitutes an effective strategy for ensuring that polluters are held accountable for the adverse environmental consequences of their activities.[153] The ability of a person or group of persons to petition the court is however dependent on the legal rights and procedural gateways created in law, otherwise known as locus standi which has come to play a critical role in oil-related environmental litigation in Nigeria.[154] It refers to the right to stand before a court of justice to present a case for adjudication.[155] The aim of conferring that right is to avoid frivolous suits from persons who have no interest in the matter.[156] The legal concept of standing or locus standi is predicated on the assumption that no court is obliged to provide a remedy for a claim in which the applicant has a remote, hypothetical or no interest.[157] While the Nigerian judiciary has over the years mainly leaned towards the strict interpretation of this rule, recent developments suggest that the courts will not stand in the way of the liberalization of the rule. The clearest indication of this emerging thinking is the Supreme Court decision in ***Centre for Oil Pollution Watch v. NNPC***[158]and it is the implications of this decision on oil-related environmental litigation in Nigeria that forms the basis of this paper. The first part of the paper discusses the locus standi rule in Nigeria prior to the decision of the Supreme Court in ***Centre for Oil Pollution Watch v. NNPC***. The second part of the paper examines the decision of the Supreme Court and its implications on

'Strengthening Environmental Public Interest Litigation through Citizen suits in Nigeria: Learning from the South African Environmental Jurisprudential Development' 23 (3) *African Journal of International and Comparative Law* (2105) 383-404, at 384-385.

[151] United Nations Department for Economic & Social Information and Policy Analysis Statistic Division, *Glossary of Environment Statistics, Studies in Methods, Series F, No. 67* (United Nations, 1997) 1.

[152] E. P. Amechi, 'Strengthening Environmental Public Interest Litigation through Citizen suits in Nigeria: Learning from the South African Environmental Jurisprudential Development' 23 (3) *African Journal of International and Comparative Law* (2015) 383-404, at 383. See also, F. Ajogwu and O. Nliam, *Petroleum Law and Sustainable Development*, CCLD (2014) 150.

[153] E. P. Amechi, 'Poverty, Socio-Political Factors and Degradation of the Environment in Sub-Saharan Africa: the need for a Holistic Approach to the Protection of the Environment and Realisation of the Right to Environment' 5 (2) *Law, Environment and Development Journal* (2009) 107-129, at 122. See also, M. Anderson, 'Individual Rights to Environmental Protection in India', *in* A. Boyle and M. Anderson (eds.), *Human Rights Approaches to Environmental Protection,* OUP (1998) 199-225.

[154] Ibid

[155] G. N. Okeke, 'Re-Examining the Role of Locus Standi in the Nigerian Legal Jurisprudence' 6 (3) *Journal of Politics and Law*, (2013) 209-215, at 210.

[156] J. Cassels, 'Judicial Activism and Public Interest Litigation in India: Attempting the Impossible?' 37 (3) *The American Journal of Comparative Law* (1989) 495-519, at 498.

[157] Augie, JCA in *Attorney General Kaduna State v Hassan* (1985) 2 N.W.L.R (part 8) 483 (SC).

[158] [2019] 5 N.W.L.R. Part 1666 518

oil-related environmental litigation in Nigeria. The third and final part of the paper concludes with some recommendations on interpretation of the locus standi rule in oil-related environmental litigation.

Locus Standi in Nigeria and its Interpretation in Oil-Related Environmental Litigation The doctrine of locus standi has its Latin origins in common law and as earlier stated refers to the legal capacity which a party has to found an action or be heard before a court of competent jurisdiction.[159] It insist that for a plaintiff to have locus to maintain an action, his claim must demonstrate the injury he suffers from the conduct of the defendant. The purpose or essence of this rule is to discourage interlopers and busybodies while encouraging those who have suffered to come forward and seek redress. This is a condition precedent for the institution of actions in the courts as well as invokes the jurisdiction of the court to properly hear a matter. Thus, if a plaintiff has no locus, the courts in turn have no jurisdiction and where there is no jurisdiction, the matter is void and fails. It correlates to the legal principle that for every wrong there is a remedy. Therefore, for a remedy, the wrong done must be one directly done or suffered by the party complaining of that wrong.

While the rule of standing has its origin in the common law, its statutory history is rooted in the apex court's interpretation of Section 6 (6) (b) of the 1999 Constitution which provides as follows:

> *"The judicial powers vested in accordance with the foregoing provisions of this section shall extend to all matters between persons, or between government or authority and to any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person."*

This provision of the constitution, was construed by the court per Mohammed Bellow JSC in the case of **Senator Abraham Ade Adesanya v. President of the Federal Republic of Nigeria & Anor**.[160] to mean:

> "*It seems to me that upon the construction of the subsection, it is only when the civil rights and obligations of the person who invokes the jurisdiction of the court, are in issue for determination that the judicial powers of the court may be invoked. In other words, standing will only be accorded to a Plaintiff who shows that his civil rights and obligations have been or are in danger of being violated or adversely affected by the act complained of.*"

Consequently, this view established the test for locus standi in Nigeria as it relates to a course of action. In other words, for an aggrieved party to have locus standi, he must show that his civil rights and obligations have been or are likely to be affected by the action he intends to institute. [161] So, for the courts, the fundamental aspect of locus standi is rooted in the party seeking to get his complaint heard before the court and not so much on the issue which he wishes the court to

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[159] S. M. Thio, *Locus Standi and Judicial Review* (Singapore University Press, 1971), 1; Okeke, supra, note 7, at 210.

[160] (1981) 2 NCLR 358; This case is also regarded as the locus classical on the matter of locus standi in Nigeria; E. A. Taiwo, 'Enforcement of Fundamental Rights and the Standing Rules under the Nigerian Constitution: A Need for a More Liberal Provision', 9 (2) *African Human Rights Law Journal* (2009), 546–75, at 553

[161] Okey. Ilofulunwa, 'Locus Standi in Nigeria: An Impediment to Justice' <http://lexprimus.com/Publications/Locus%20standi%20in%20Nigeria.pdf>accessed 23 July 2023.

hear and adjudicate on. This by implication lays down a strict constitutional rule for the purposes of construing the issue of locus standi in environmental litigation cases. This explains why persons or a community who may have suffered serious environmental harm due to long term systematic health and safety failings of multinational oil companies may yet still be unsuccessful in maintaining an action in court against these companies.

Although this test is not relied upon in strictly in human rights litigation by virtue of Section 3(d) of the revised Fundamental Rights (Enforcement Procedure) Rules 2009, other litigation procedural rules such as subject matter litigation, joinder of parties, fulfillment of condition precedent like pre-action notice, limitation period, all stand as practical obstacles to environmental litigation suits.[162] For instance, in the case of **Kiobel v Royal Dutch Petroleum Co**[163] where the Ogoni people alleged gross violation of their human rights as a result of killings, raping and looting of their properties perpetrated by Shell in connivance with the Nigeria government during a protest over harmful environmental effects of Shell's activities in the area, the US court dismissed the case for want of jurisdiction since the issues canvassed failed to concern and touch on territories in the US in order to invoke its jurisdiction. Highlighting their lack of locus standi to bring an action properly before the court. Similarly, in the case of **Shell Petroleum Development Company (Nig.) Ltd V Abel Isaiah**[164] where in the course of repairs of the appellant's crude oil pipelines, that ran across the respondent's swamplands and surrounding farmlands, the appellants failed to put in place safety measures to protect the community from oil spills and as a result during the course of repairs to the pipelines, there was a free flow of oil spill that polluted the streams, fishpond and swamplands of the respondent's community. In addressing the issue of jurisdiction, the apex court held that the court of first instance lacked the jurisdiction to hear and entertain the matter as the claims brought before it falls within the exclusive jurisdiction of the Federal High Court. Likewise, the issue of pre-action notice as required by law is a condition precedent that will affect the assumption of jurisdiction of any court in Nigeria in oil related environmental litigation.

Generally, litigation in environmental law cases can take various forms such as tort-based actions like negligence, nuisance, the rule laid down in Rylands v Fletcher which entails the need for proving strict liability; as well as criminal prosecutions, civil litigation, public interest litigation and enforcement of human rights.[165] While litigants have tried to find a way around the doctrine of locus standing in environmental law cases by invoking the human rights argument, it hasn't always been an easy. In the past when the issue of human rights and environmental degradation has come up for consideration before the African Commission on Human and People's right, with regards to human rights to a satisfactory and healthy environment, the commission was very clear

[162] S.A. Fagbemi& A.R. Akpanke, 'Environmental Litigation in Nigeria: The Role of the Judiciary' (2019) 10 (2) *Nnamdi Azikiwe University Journal of Law and Jurisprudence*, p 26 - 34

[163] [2013] 569 US 108

[164] [2002] 5 S.C (Pt 11) 1

[165] M.T. Ladan, 'Judicial Approach to Environmental Litigation in Nigeria' (2013)10 *Environmental & Planning Law*

Review, p 579 – 630; R. A. Mmadu, 'Judicial Attitude to Environmental Litigation and Access to Environmental Justice in Nigeria: Lessons from Kiobel' 2 (1) *Afe Babalola University: Journal of Sustainable Development law and Policy* (2013), p. 149 -170

that Article 24 of the African Charter recognizes the right to a clean and safe environment as a human right.[166]

The ECOWAS Community Court of Justice, further built on this foundation in the case of **Registered Trustees of the Social-Economic Rights & Accountability Project (SERAP) v President of the Federal Republic of Nigeria &Ors**,[167] where a preliminary objection was raised on the basis that the claimant lacked locus standi to institute the action, the court took a human rights approach in reaching its decision when it held that in cases of damage to the environment which affects entire communities, an NGO duly registered in accordance to the laws of a Member State, can bring an action for the violation of the right to a clean environment.[168] By taking a human rights view, it expanded the interpretation of the Locus Standi doctrine.

Domestically the right to a healthy, clean and safe environment is provided for by Section 20 of [169][170]the Constitution and states that 'the State shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria.' [21] Though, S.6 (6) (c) of the same Constitution makes these provisions non-justiciable.[22] Yet this internationally recognized right to a healthy, clean and safe environment remains by virtue of Sections 12, 16 (2); 17 (2) (d); 17 (3) and 20 of the Constitution which ratifies the African Charter on Human and People's Rights, allowing Article 24 to form part of our Environmental Laws.[23] Implying that even though certain provisions contained in Chapter 2 of the Constitution are non-justiciable, those provisions could be made justiciable when other statutes make provisions for that same subject matter. The court took this position in the case of **Gbemre v. Shell Petroleum Development Company of Nigeria Ltd** where the Federal High Court ruled that oil companies must stop flaring gas in the Niger Delta.[171] In this case, one Mr Jonah Gbemre, a representative of the Iwherekan community in the Niger Delta filed a suit against the Nigerian government and Shell. The court was of the view that the practice of gas flaring is unconstitutional as it violates the guaranteed fundamental rights of life and dignity of human persons provided in the Constitution of Federal Republic of Nigeria and the African Charter on Human and Peoples Rights.[172] This decision was herald as a landmark judgment inconsonant with international trends on environmental cases. However, the fact that the courts in subsequent cases have been reluctant to follow the reasoning in *Gbemre* is an indication

[166] Social and Economic Rights Action Center (SERAC) & Anor v Nigeria, <https://www.achpr.org/public/Document/file/English/achpr30_155_96_eng.pdf> last accessed 16 July 2023; Kaniye SA Ebeku, 'The Right to a Satisfactory Environment and the African Commission' 3 *African Human Rights Law Journal* (2003), pp. 149- 166

[167] Suit No: ECW/CCJ/APP/08/09

[168] S.A. Fagbemi& A.R. Akpanke, 'Environmental Litigation in Nigeria: The Role of the Judiciary' (n14) p. 34

[169] Constitution of the Federal Republic of Nigeria (as Amended). [22]

Ibid.

[170] Constitution of the Federal Republic of Nigeria (as Amended); The African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9, LFN, 2004

[171] (2005) AHLR 151

[172] ibid

that economic considerations are likely to determine whether or not the courts will be willing to adopt a more radical approach aimed at ensuring environmental accountability.[173]

On the issue of locus standi, the judicial attitude in the past had been that for a party to have locus to sue, he must possess sufficient interest which is peculiar to him and not an interest shared in common with the general public or community, and where he sues for damages, arising from environmental pollution, he must show that he himself suffered specific damages as a result of that environmental harm.[174][175] The apex had earlier expanded this strict common law locus standi rule in the case of **Adediran & Anor V Interland Transport Ltd[28]**, by allowing private individuals to sue on public nuisance without the consent of the attorney general or joining him as a party to the suit, in accordance to the provisions of S. 6(6) (c). [29] However, it is important to point out here that the decision in **Adediran** was on the ground that the plaintiffs were also affected by the actions complained of. Before now it was solely the responsibility of the Attorney General of the Federation to bring an action for public nuisance or similar public issues affecting public rights. What was left in the expansion and liberalization of the locus stand rule was NGOs and other public groups to have the competence to sue in a representative capacity and the right to claim special damages when they suffer varying degrees of harm. It is against this backdrop of interpretations of the rule that this new decision emerged. We would now examine the recent decision of the supreme court and its implications going forward.

Centre for Oil Pollution Watch vs. NNPC: **What Implications for Oil-Related Environmental litigation?**

As we have noted in the preceding section, the strict interpretation of the standing rule in Nigeria means that the need to ensure environmental accountability is sacrificed on the altar of satisfying procedural rules. This is particularly worrying since the majority of persons affected by oil pollution may not have the means to pursue any legal remedy. The implication is that polluters become emboldened having gotten away without liability due to weak regulations/or captured regulators and the strict interpretation of the locus standi rule. The result is even further degradation of the environment and the lack of environmental accountability. However, the Supreme Court's decision in COP v NNPC provides some hope. In COP v NNPC [176], the appellant sued the respondent at the Federal High Court, Lagos claiming reinstatement, restoration and remediation of the impaired and/or contaminate environment in Acha autonomous community of Isukwuato Local Government Area of Abia State of Nigeria, particularly the Ineh and Aku streams which was contaminated by oil spill caused by the respondent's negligence; provision of portable water supply as a substitute to the soiled and contaminated Ineh/Aku streams, which was until its contamination the only source of water and/or major source of water supply to the community; and provision of medical facilities for evaluation and treatment of the victims resulting from the negative health effect from the spillage and/or contaminated streams.

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[173] *Ikechukwu Opara and others v Shell Petroleum Development Company Nigeria Ltd & 5 others* Suit No. FHC/PH/CS/518/2005 (Unreported).

[174] Ibid. See also, M.T. Ladan, 'Judicial Approach to Environmental Litigation in Nigeria' (2013) 10 *Environmental & Planning Law Review* (n17) p 596. [28] (1991) 9 NWLR (pt. 214) 155

[175] Constitution as Amended

[176] (2019) 5 N.W.L.R. Part 1666, 518.

In the processes filed by the appellant, the appellant described itself as a Non-Governmental Organization (NGO) registered in accordance with part C of the Companies and Allied Matters Act (CAMA) which carries on among others the function of ensuring reinstatement, restoration and remediation of environments impaired by oil spillage/pollution, particularly the environment that belongs to no one and this includes but not limited to Rivers/Seas, Birds/Ecosystems and Aquatic lives. The organization has over two thousand members drawn from across Nigeria and outside Nigeria. Some of its members are indigenes of and/or live at Acha community and use the water from Ineh and Aku streams/rivers.

The appellant pleaded that over twenty-five years before the institution of the action, the respondent constructed and laid oil pipelines beneath, around and beside Ineh and Aku streams/river in Acha autonomous community. However, the pipelines over time were corroded due to usage and salinity of the sea water under which they were laid. On 13th May 2003, the appellant noticed a strange oily substance (crude oil hydrocarbon) circulating and drifting on top of the streams and within a few days, the substance increased to the point where it overflowed from the streams and surged into the adjoining lands, estuaries, creeks and mangroves.

The appellant sent a delegate to investigate the incident and it was discovered that the respondent's oil pipeline, which corroded due to lack of maintenance, had ruptured, fractured and spewed its entire contents of persistent hydrocarbon mineral oil into the surrounding streams and river of Ineh and Aku. Although the respondent contained the spillage and provided relief materials to the affected communities, it failed to clean up or reinstate the Ineh/Aku streams. The appellant alleged that although the spill had been contained on the surface, there still existed excessive crude hydrocarbon oil in the bottom sediments of the streams/rivers. The appellant maintained that the respondent was negligent in both the causation and containment of the spillage; that the spillage had harmful effect on living resources, marine life, human health and other usages of the streams.

In its statement of defence, the respondent denied the allegation of negligence and pleaded that any damage to the pipelines and the spillage and subsequent contamination of the streams/rivers were caused by the acts of sabotage or interference by unscrupulous persons within the affected communities. The respondent filed an application requesting the trial court to set down for hearing the point of law raised in its statement of defence, which challenged the locus standi of the appellant to institute the action. The respondent accordingly sought for an order striking out the suit. The trial court after hearing the application, determined the point of law in the respondent's favour by holding that the appellant lacked the locus standi to sue and accordingly struck out the suit. Unsatisfied with the ruling of the trial court, the appellant approached the Court of Appeal. The Court of Appeal dismissed the appeal and affirmed the ruling of the trial court.

The appellant still dissatisfied with the decision of the Court of Appeal appealed to the Supreme Court. In determining the appeal, the Supreme Court invited five *amici curiae* to address it on "Extending the scope of locus standi in relation to issues on environmental degradation: the case of NGOs". The Supreme Court considered the provisions of Article 24 African Charter on Human and Peoples Rights (Ratification and Enforcement) Act and sections 20 and 33(1) of the Constitution, section 17(4) of the Oil Pipelines Act which provides as follows:

Article 24 African Charter on Human and Peoples Rights (Ratification and Enforcement) Act: "24. All peoples shall have the right to general satisfactory environment favourable to their development".

Sections 20 and 33 (1) of the Constitution of the Federal Republic of Nigeria:

"20. The State shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of the country".

"33 (1) Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria".

Section 17 (4) of the Oil Pipelines Act:

"17 (4) Every licence shall be subject to the provisions contained in this Act as in force at the date of its grant and to such regulations concerning public safety, the avoidance of interference with works of public utility in, over and under the land included in the licence and the prevention of pollution of such land or any waters as may from time to time be in force".

In unanimously allowing the appeal, the Supreme Court noted that access to justice is one of the attributes of civilized legal system and it is dangerous to limit the opportunity for anyone to canvass his case based on some rigid interpretation of the locus standi rule. In the words of Justice Eko J.S.C.: *"My Lords, as suggested by the appellant in their brief of argument, on the authority of R v. Sommerset County Council & Anor., Exparte Dixon (1998) Environmental L.R. 111, the court when considering the issue of standing has to ensure that the plaintiff, in bringing his suit, is not prompted by an ill motive. Once in his pleadings his genuine interest, as the present appellant has, it is disclosed that the defendant is transgressing the law or is about to transgress it by his objectionable conduct which injures or*

> *impairs human lives and/or endangers the environment the plaintiff, be he an individual or an NGO should be accorded the standing to enforce the law and thereby save lives and the environment. From the facts of this case, the appellant cannot be regarded as a mere busybody or troublemaker who is out merely to abuse the due process of the court by the suit they had filed to enforce against the respondent the duty to remedy the nuisance caused to Ineh and Aku rivers and the Achu Community who depend on the clean water of the said rivers for their livelihood. A contaminated water and impaired environment by noxious toxicant material such as crude hydrocarbon oil not only destroys environment and the entire ecosystem, it is injurious to public health and human lives".*[177]

The Supreme Court in allowing the appeal also viewed developments in other common law jurisdictions such as England, Australia and India where the locus standi rule has since been relaxed particularly on environmental related issues and saw no reason why Nigeria should not follow suit. The Court reasoned and rightly so that the communities affected by the spillage leading to the degradation of the environment may not be able to muster the financial muscle to sue and

[177] Per EKO, J.S.C. at page 601, paras C-F.

as such any attempt to deprive good spirited organizations such as the appellant the right to sue will only have one loser- the local and impacted communities.[178] As Lord Diplock in *Rev. v I.R.C. Ex parte Federation of self-Employed* (1982) AC 640-641 noted "…Any judicial statements on matters of public law made before 1950 are likely to be misleading guide to what the law is today".

Indeed, the strict interpretation of the standing rule based on a common law principle developed decades ago is not in line with what the law is today and the Supreme Court decision to expand the interpretation of the rule is in the interest of justice and in line with best practice principles in other common law jurisdictions.[179] The decision is in line with the principle of environmental accountability which implies that the responsibility for the deterioration of the natural environment should lie with the economic activity that caused such deterioration.[180] The relaxation of the standing rule is significant in that it is likely to induce positive environmentally friendly actions by ensuring that the economic activity that caused the pollution takes responsibility for the cost of reparation and restoration of the environment. As one author rightly argued, the possibility that a polluter can be sued will itself have a positive effect by inducing public authorities and business enterprises to examine more carefully the compatibility of their decisions and activities to minimize environmental damage.[181]

However, we must be careful not to celebrate this decision as a decision that has completely transformed the legal landscape on the issue of standing. It is true that the decision has successfully expanded the interpretation of the rule where the facts support the claimant such as the present appellant, it is important to point out that none of the reliefs sought was for compensation to victims of the environmental damage. Would the decision be the same if compensation for the members of Acha autonomous community formed part of the reliefs sought by the appellant/plaintiff? Would the Supreme Court decision to grant the appellant standing if one of the prayers in the statement of claim was pecuniary in nature and for the ultimate benefit of the impacted community? It is difficult to definitely answer this question but it is submitted that the answer should be in the affirmative. However, the Supreme Court decision in COP v NNPC represents a significant milestone. This is because granting environmental NGOs the standing to sue alone can help to shape environmental policies. As we have noted elsewhere[182], the press and publicity generated by suits brought by these NGOs have proved to be invaluable globally. This can help create an atmosphere which can be leveraged upon to influence governments and other stakeholders to take steps towards preventing environmental degradation. In the words of Lord Reed, in the United Kingdom case of *Walton v Scottish Ministers,* '…the rule of law would not be

[178] Per AKA'AHS J.S.C. at pages 580-581, paras, G-B.1

[179] For an analysis of the development of the rule in other common law jurisdictions, see D.E. Omukoro, 'Ensuring Environmental Accountability in Nigeria through the Liberalisation of the Locus Standi Rule: lessons from some selected jurisdictions' (2019) 27 (4) *African Journal of International and Comparative Law* 473.

[180] United Nations Department for Economic & Social Information and Policy Analysis Statistic Division, *Glossary of Environment Statistics, Studies in Methods, Series F, No. 67* (United Nations, 1997) 1.

[181] O. Fagbohun,*Mournful Remedies, Endless Conflicts and Inconsistencies in Nigeria's Quest for Environmental Governance: rethinking the legal possibilities for sustainability,* 4th Inaugural Lecture of the Nigeria Institute of Advance Legal Studies, NIALS Press, (2012) at p 69.

[182] See, D.E. Omukoro (n33).

[37] [2012] UKSC 44, para 94.

maintained if, because everyone was equally affected by an unlawful act, no-one was able to bring proceedings to challenge it'.[37] The importance and the magnitude of the COP v NNPC decision when viewed from the prism of a population that lacks the financial resources to mount any reasonable oil-related environmental litigation against multi-billion dollar oil companies become even more glaring. To hold otherwise, would have been a further endorsement of the outdated practice of sacrificing environmental accountability on the basis of satisfying procedural rules.

Conclusion/Way Forward

This paper has examined the rule of locus standi in Nigeria and its impact on oil-related environmental litigation and the implication of the Supreme Court decision in COP v NNPC. The analysis shows that the decision represents a major milestone in the attempt at the liberalization of the locus standi rule and must be viewed as such. The decision is a step further away from the outdated practice of sacrificing environmental accountability on the altar of procedural rules. However, the analysis also showed that we must be careful not to celebrate this decision as a decision that has completely liberalized the rule on standing. While it is true that the decision has successfully expanded the interpretation of the rule where the facts support such claimant, it is important to point out that none of the reliefs sought was for compensation to victims of the environmental damage. Thus, it is still not clear what the courts will decide if the reliefs were pecuniary in nature. Nonetheless, this decision raises hope that the courts in Nigeria have finally come to a realization that procedural rules should not be used to undermine the course of justice. As one author rightly argued, the possibility that a polluter can be sued will itself have a positive effect by inducing public authorities and business enterprises to examine more carefully the compatibility of their decisions and activities to minimize environmental damage.[183]

While this represents a major milestone in the fight against environmental degradation and the lack of environmental accountability, it is important to note that more still needs to be done to ensure the complete liberalization of locus standi rules as a means of ensuring environmental accountability and tackling the problem of environmental degradation. The argument that has always been used to prevent the liberalization of standing is that it will lead to frivolous actions and create a flood of litigations.[184] To address this argument, efforts can be made to provide some guiding principles in the application of the liberalized standing in Nigeria using Goldman's guiding principles with some modification.[185] According to Goldman, starting with the least harm required for law suits seeking compliance with informational or public participation rights on one end of the continuum and ending with the highest burden for lawsuits seeking compensation for harm from pollution. Goldman provided the following guide as a starting point:

i) If the plaintiff is seeking to exercise a public right to gain access to information or to participate in a public process, the burden is minimal since the right attaches to all interested members of the public;

[183] O. Fagbohun, (n35), at 69.

[184] S.M. Thio, *Locus Standi and Judicial Review,* Singapore University Press (1971) 1, at 8.

[185] See generally, P. Goldman, 'Public Interest Environmental Litigation in China: lessons learned from the U.S. experience' 8 *Vermont Journal Environmental Law* (2007) 251-279.

ii) To seek an adequate environmental impact statement, the plaintiff would not need to prove that the underlying project will cause harm, but merely that the plaintiff would be affected by the project and that there is sufficient evidence of potential harm to warrant an analysis in an environmental impact statement;

iii) To enforce a zoning standard, the plaintiff may need to be impacted by the project, but need not prove that the project will cause particular harm if the zoning standard is violated because the legislative body already made that judgment;

iv) To require adherence to a permit or regulatory standard, the plaintiff need not prove that violation of the standard will cause personal injury since the permit or standard embodies a judgment that the enterprise must abide by the limit;

v) To obtain compensation from harm from pollution, the plaintiff would need to be the person harmed by the pollution.[186]

The modification proposed here to the above guiding principles from Goldman is on the need to prove in an action for compensation that the person was harmed by the pollution. This is so because, as we have noted earlier, one of the major issues faced by the local population is the challenge of raising funds to sustain an action in court bearing in mind the technical nature of the proceedings. The majority of proceedings brought by individual members of impacted communities or in representative capacities gets thrown out for lack of evidence. The usual defence of the oil companies is that of third-party interference even in the face of obvious lapses on the part of the oil company, with the attendant consequence that no compensation should be paid.[187]

The companies may hire 'experts' to further buttress their point. The challenge here is that the community may not have the resources to hire the needed experts to neutralize the position of the oil companies even in the face of manifest inconsistencies in the account of the oil companies. This makes it important for public spirited organizations/NGOs like the Centre for Oil Pollution to be allowed to lift the burden of impacted communities to bring an action including those containing pecuniary reliefs for the benefit of the impacted community.

In concluding this paper, it is safe to say that the Nigerian courts have turned a new page in their interpretation of the rules of standing and its evident that the flood gates argument is no longer sustainable. However, the months and years ahead will tell if the Nigerian judiciary has come to the realization that the only way of ensuring environmental accountability is the complete liberalization of the locus standi rule.

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[186] Ibid, at 270-271.

[187] A perfect example is the Aiteo spill at its Santa Barbara Well 1 location which lasted for about 38 days been November 2021 and January 2022. Taiwo-Hassan Adebayo, 'Investigation: Aiteo, Nigerian regulators misreported Nembe oil spill that caused severe environmental damage' <https://www.premiumtimesng.com/news/headlines/503406-investigation-aiteo-nigerian-regulators-misreported-nembe-oil-spill-that-caused-severe-environmentaldamage.html> accessed 2 August 2023. See also,<http://saharareporters.com/2021/12/08/aiteo-finally -stopsbayelsa-wellhead-oil-spill-after-over-30-days>accessed 2 August 2023.