

**LIBERALIZATION OF THE COMMON LAW TECHNICAL  
RULE OF LOCUS STANDI IN NIGERIAN ENVIRONMENTAL  
DEGRADATION: COMMENTS ON THE CASE OF CENTRE  
FOR OIL POLLUTION WATCH V. NIGERIAN NATIONAL  
PETROLEUM CORPORATION.\***

**Abstract**

*Law is dynamic and its dynamism spreads in all its aspects including environment. One concept of law where the dynamism of law was displayed is on the concept of locus standi. Before now, standing to sue otherwise called Locus standi, “is a rule of ancient vintage and it arose during an era when private law dominated the legal scene and public law had not yet been born”. Locus standi is the right to bring an action or to be heard in a given forum; standing. Advanced countries of the world with their developed Constitutions for many years had adopted, applied and are still applying public interest litigation in fight for the environmental rights advocacy. Nigerian having woken from slumber just adopted that with the enactment of Fundamental Rights (Enforcement Procedure) Rules, 2009 and our courts have been active in their interpretation of our 1999 Constitution. The question still remains – Whether the interpretation of Section 6 of the Constitution and Section 20 of the Constitution that is Chapter II has removed the previously non-justiceable nature of this chapter with mutual conflation of other provisions of the Constitution and other International treaties. This is the basis of this research. We recommended that the tempo should continue until we surpass the advanced countries on the fight against environmental abuses and degradation via petroleum exploration and mining, among others without adequate social*

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*responsibility and corresponding social responsibility on the part of oil companies and governments.*

**Keywords:** Public Interest Litigation, Environment, Liberalization, Common Law, Environmental Degradation, Oil Pollution and Judgement in Centre for Oil Pollution Watch v NNPC.

## **Introduction**

It was stated that public advocate is an advocate with responsibility for representing the public or consumer's interests in matter of public concern, such as utility rates or environmental quality.<sup>1</sup> Before the Fundamental Rights (Enforcement Procedure) Rule 2009 in Nigeria, the concept of locus standi has been a thorn in the flesh of prospective litigants. That is so and why it is easy to understand the perplexity of the 19<sup>th</sup> century author who doubted "Whether any legal question has ever given rise to so great a conflict of judicial option." Locus standi has been a sharp thorn in the flesh of many a legal system. It is the meeting rather the crossing point to two essential judicial values namely: the desirability of encouraging individual citizens to participate actively in the enforcement of law and the desirability of encouraging individual professional litigants and meddlesome interlopers to invoke and ignite the jurisdiction of the courts in matters that do not concern them, matters to which they are but complete strangers. The headache had always been where to draw the line.<sup>2</sup> In simple term, therefore, this narrow and rigid

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<sup>1</sup> B A Garner Black's Law Dictionary (10th ed., Thomson Reuters, 2004) 1432. See also Livinus I Nwokike, Public Interest Litigation in Environmental Claims: Comments on Chinda & 5 Ors v. Shell BP Nigerian Company Ltd (2019) Volume 3 Issue 3, African Journal of International Energy and Environmental Law, 207

<sup>2</sup> C Oputa 'Our Temple of Justice' Friend's Law Publishers Ltd., Orlu (1993) p. 105

conception of locus standi means that it is only a person who has suffered a specific legal injury by reason of actual or threatened violation of his legal rights or legally protected interest who can bring an action for judicial redress. In effect, this rule with regard to locus standi thus postulates a right – duty pattern which is commonly to be found in private law litigation.<sup>3</sup> However, the above conception of law has changed especially in Environmental claims and issues. Thus, it would in my view, be a grave lacuna in our system of public law if a pressure group like the federation or even a single public spirited tax payer were prevented by outdated technical rules of locus standi from bringing the matter to the attention of the court to vindicate the rule of law and get the unlawful conduct stopped. It is not, in my view, a sufficient answer to say that judicial review of the actions of officers or departments of central government is unnecessary because they carry out their functions. They are accountable to parliament for what they do so far as regards efficiency and policy, and that parliament is the only judge, they are responsible to a court of justice for the lawfulness of what they do and of that the court is the only Judge.<sup>4</sup>

In all, then, I take the humble view that, in environmental matters, such as the instant one, NGOs, such as the plaintiff in this case, have the requisite stand to sue. After all, as Dr. Thio opined, and I agree with the erudite author, the “judicial function (is) primarily aimed at preserving legal order by confining the Legislation and Executive Organs of government within their powers in the interest of the public jurisdiction *de droit objectif*.”

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<sup>3</sup> Per C C Nweze in *Centre for Oil Pollution Watch v. Nigerian National Petroleum Corporation* in Suit No SC.319/2013 delivered on 20th July, 2018

<sup>4</sup> C C Nweze *ibid*, p. 13

Against this background, I hold that the lower courts erred in law. I, therefore, enter an order allowing this appeal.<sup>5</sup>

The above provision in Chapter 2 of the Constitution has value now that those rights in Chapter 2 have been upgraded to 3rd generation of rights by both statutory and decided cases in Nigeria.<sup>6</sup> For instance, a Court in Nigeria, precisely, the Federal High Court sitting in Benin City in the celebrated case of *Gbemre v. Shell Petroleum Development Co. Ltd & AG Fed (2005) Suit No FHC/B/CS*. Held: “that the fundamental rights to life and dignity of the human person as guaranteed by section 33 and 34 respectively of the 1999 Constitution inevitably includes the right to clean, poison free, pollution free healthy environment.” The court further held that apart from holding that specific sections of the Associated Gas Re-Injection Act and the Regulations made under it were inconsistent with the applicant’s rights to life and dignity guaranteed under the Constitution, also declared that the above laws were inconsistent with the African Charter on Human and People’s Rights (Ratification and Enforcement) Act.<sup>7</sup> We have reviewed the case of *Centre for Oil Pollution Watch v. Nigerian National Petroleum Corporation (supra)* vis a vis the Section 3 of the FREPI Rules, 2009, Section 20 in Chapter 11 of the 1999 Constitution and other Constitution and Statutory Provisions and concluded that the Honourable Justice of the Nigerian Supreme Court were active, innovative and erudite in

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<sup>5</sup> Ibid, p. 13

<sup>6</sup> Nwokike Livinus Ifeatu ‘Sustainable Strategies for Waste Management in Nigeria: A Legal Appraisal, being unpublished dissertation for the award of Doctor of Laws (Ph.D) in Faculty of Law Nnamdi Azikiwe University, Awka, 2020, p. 86

<sup>7</sup> Cap A9 Laws of the Federation of Nigeria (LFN) 2004

giving that landmark decision for public interest litigation on environmental law in Nigeria.

### **Clarification of Terms**

Environment. Black's Law Dictionary on its part, defines the environment as "the totality of physical, economic, cultural, aesthetic and social circumstance and factors which surround and affect the desirability and value of property and which also affect the quality of people's lives."<sup>8</sup>

The Principal legislation on Environmental Protection in the United Kingdom The Environmental Protection Act, 1990, under Section 1(2) of its Provisions contains the following definition of the environment; "The environment consists of all or any of the following media namely, the air, water and land, the medium of air includes the air within buildings and the air within other natural or man-made structure above or below ground."<sup>9</sup> Coming back home, Section 20 of the Constitution of Federal Republic of Nigeria<sup>10</sup> defines Environment as:

- (a) "Land water and air, including all other layers of the atmosphere;
- (b) all human, animals, plants and all living organisms living therein;
- (c) the inter-relationship that exists in paragraph (a) and (b) above."

It has also been defined by the Supreme Court of Nigeria in the popular case of Attorney-General of Lagos State v the Attorney

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<sup>8</sup> HC Black's Law Dictionary *op.cit*, 479

<sup>9</sup> United Kingdom Environmental Protection Act (EPA) 1990

<sup>10</sup> 1999 and Federal Environmental Protection Agency, Cap 131, LFN, 1990

General of the Federation & Others,<sup>11</sup> as follows, “Environment connotes the natural conditions, for example, land, air, and water in which people, animals and plants live.”

**Liberalization:** The term liberalization was not defined in Oxford Advanced Learner’s Dictionary new 9<sup>th</sup> edition, but the verb liberalize was defined. To Liberalize something means to make something such as a law, or a political or religious system less. Therefore, liberalization of the common law technical rule of Locus Standi simply means making the common law Technical Rule of Locus Standi less strong and effective by doing justice.<sup>12</sup> Common Law was defined as the body of law derived from judicial decisions, rather than from Statutes or Constitution; Case Law. In fact, it can be defined as the judge made law.

**Environmental degradation:** The expression ‘Environmental degradation’ as has been asserted is a broad expression encapsulating environmental pollution and decline in environmental quality.<sup>13</sup>

**Environmental pollution:** Has been defined as the “Introduction by man into the environment of substances or energy liable to cause hazards to human health, harm to living resources and ecological system, damage to structures or amenity or interference with legitimate use of the environment.”<sup>14</sup>

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<sup>11</sup> (2003) 5 S.C. (pt 1) 24

<sup>12</sup> B A Garner, *Op.cit* p. 334

<sup>13</sup> Adamu Kyuka Usman ‘Environmental Protection Law and Practice, (Ibadan: Ababa Press Ltd, 2012) p. 56

<sup>14</sup> See Regulation 2 of the Pollution Abatement and Facilities Generating Water Regulations

Decline in Environmental quality has to do with environmental deterioration such as extinction of animal and plant species, desertification, ozone layer depletion and global warming among others.<sup>15</sup>

### **3. Some Examples of Public Interest Litigations in United States of America, South Africa and Nigeria**

#### **The USA Case<sup>16</sup>**

*United States of America v Shell Offshore INC & Shell Exploration and Producing Company<sup>17</sup>*

It was a case instituted on gas flaring in the Western District of Louisiana at the Lafayette Opepous Division. The USA made allegations that Shell has engaged in unauthorized flaring and/or vesting of natural gas in excess of small volumes much of which was economically recoverable at different location in the country. Example at Tahoe, Enchilada from fifty thousand cubic feet per day to about six million cubic feet per day since 1975 to 1999. Shell admitted to the claims/allegations made against it by the USA. Shell also acknowledges that it flared the gas without first obtaining permission from appropriate authority and that it also failed to state accurately and timely calculate and pay royalties on national gas flare as required. Shell consequently agreed to pay the USA Forty-Nine Million Dollars (\$49,000,000) less the royalties of One Million Six Hundred and Seventy-Eight thousand, One hundred and Twenty Four Dollars (\$678,124)

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<sup>15</sup> *ibid* at p. 58

<sup>16</sup> Livinus Ifeatu Nwokike, 'Sustainable Strategies for Waste Management in Nigeria: A Legal Appraisal' Dissertation for the award of Doctor of Philosophy in Law (PhD), Faculty of Law Nnamdi Azikiwe University, Awka, p. 229

<sup>17</sup> (2003) Civil Action No. CV03 1458.2

already paid. It is noteworthy that Shell Company readily admitted its irresponsible acts on the USA environment exhibiting sensitivity and honesty as against what it does in Nigeria. However this is very instructive to the Nigerian Courts.<sup>18</sup>

### **The South Africa Case<sup>19</sup>**

*Wildlife Society of Southern Africa & Ors v Minister of Environmental Affairs & Tourism of the Republic of South Africa & Ors.*<sup>20</sup>

In this case, the applicants sought an order against the respondents to enforce section 39 Decree No.9 (Environment Conservation) 1992 to declare that the Environmental Conservation Act 73 of 1989 and the General Policy in terms of the Act are applicable to the area in the former Transkei and that the policy and Act are forced. In terms of section 39(2), no person is allowed without permission from the relevant authorities to carry on infrastructural development activities which may harm the environment. It was noted that certain land use practices use practices have developed along almost the entire Transkeian Coast which have been destructive to the ecology of the coast line and therefore constitute real threat to the environmental sensitivity of the whole area. The 1<sup>st</sup> Respondent admitted all the averments. The Court held:

#### 1. On *Locus standi*

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<sup>18</sup> O VC Ikpeze et al, 'Analysis of Energy Sources, Impact on Environment and Sustainable Development Referencing Landmark cases in the USA, South Africa and Nigeria', (2015) Vol. 5 No. 18 ISSN 2225-0948 (on line) Journal of Environment and Earth Science, 150

<sup>19</sup> *Ibid*, p. 231

<sup>20</sup> (1996) (3) SA 1095(T)



That where a statute imposed an obligation upon the state that a body such as the 1<sup>st</sup> Applicant can apply to the court to promote environmental conservation in South Africa by order compelling the State to comply with the obligation in terms of such statute.

2. That the law of *locus standi* must change so as to protect the interest of the people on environment.
3. The Court ordered the respondents to take all necessary steps to enforce section 39 of the Decree.

### **The Nigeria Case<sup>21</sup>**

*Gbemre v Shell Petroleum Dev. Co. Nig. Ltd & AG Fed.*<sup>22</sup>

Mr. Jonah Gbemre sued Shell PDC Totalfina, Elf and Agip JVC, NNPC Nig. and AG Federation Gas flare in his community (Iwhereka) in Niger Delta as pollution by way of poisoning the community's air, water, food and vegetation which caused them terminal diseases such as chronic bronchitis, cancer and painful breathing etc, It was an application on Fundamental Rights, Enforcement on right to life and dignity of the human person in accordance with Sec. 33, 34 of the Nigerian constitution and Article 42 of African Charter on Human and Peoples' Right (ACHPR). It was posited by Counsel to the plaintiff, BEI Nwofor SAN that right to life has meaning only if the things that endanger it are removed which is the massive gas flaring. He further analyzed right to life in its widest calculative using the Black Law Dictionary to mean.

- a. The sum of all the forces by which death is resisted.
- b. The state of humans in which they are organized and capable of performing their functions

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<sup>21</sup> *Ibid*, p. 232

<sup>22</sup> (2005) Unreported judgment of Federal High Court Benin, Suit No. FHC/B/CS/53/05

- c. All personal rights and enjoyment of the faculties which gas flaring definitely diminishes. The Applicant insisted that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents had no valid Ministerial certificates permitting them to flare gas and that their action is actionable under Section 4 of the Associated Gas Re-injection Act which is an offence which makes violators liable to penalties. The Fed. High Court Sitting in Benin City per Nwokorie J held as follows:
  - a. That Mr. Jonah Gbemre had the authority to represent himself and the community.
  - b. That the fundamental rights of life and dignity of the human person as guaranteed by section 33 and 34 respectively of the 1999 Constitution inevitably includes the rights to clean, poison free, pollution free, healthy environment.
  - c. That the respondents continuous acts of gas flaring amounted to a gross violations of their (the communities) fundamental rights to life including healthy environment and dignity of human person as enshrined in the constitution.
  - d. That failure of the respondents to carry out Environmental Impact Assessment (EIA) in the applicant's community amounted to a clear violation of their human rights.
  - e. The court apart from holding that specific sections of the Associated Gas Re-injection Act and of the Regulations made under it were inconsistent with the applicants rights to life and dignity guaranteed under the Constitution also declared that the above laws were inconsistent with the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap A9 laws of the Federation of Nigeria (LFN) 2004.

Furthermore, the court restrained the respondents, their servants, or workers from engaging in further flaring of gas in the applicant's community. And dismissed the case put forward by the 1<sup>st</sup> and 2<sup>nd</sup> respondents as well as their various preliminary objections and declared that they lacked merit. It must be noted that the respondents refused to obey the judgment of the Court and applied to the Federal High Court which varied the order and gave the 1<sup>st</sup> and 2<sup>nd</sup> respondents till April 2007. That is one year after the application to obey the court's judgment which was conditional stay of execution. What an unfortunate adjudication! The Respondents further appealed to the Court of Appeal. On 26<sup>th</sup> September, 2006, the Benin division of the Court of Appeal ordered (the Federal High Court not to sit on the day appointed for personal appearances (that was May 2006) or any other day and granted the stay of execution but left the order of the Federal High Court untouched. However, Honourable Justice Nwokorie had been transferred to Katsina.

This case goes to demonstrate that the arms or organs of government mandated to ensure justice and guarantee Nigerian citizens healthy environment, for reasons best known to them but obviously bordering on unaccountability, shirk such constitutional duties thereby exposing the environment which includes human beings in Nigeria to grave danger, meanwhile they pretend to protect the investment while yielding unsustainability and non-development. The Nigerian Courts are urged to emulate what happens in the USA and South Africa as in many other countries on attitude of the Court towards investment, environment and sustainable development.

The vital question is will there be future investments on energy if government allows investments which destroy the environment

to continue? The Obvious answer is NO. Therefore, it is high time the environment is protected. Thus government must organize and implement legislations by the MOCs or IOCs operations in line with international law and concept of sustainable development.

It was observed that environmental impact of the non-renewable (fossil-fuel) and renewable sources of energy on nations are more in the negative than positive. It was deduced that the environment is more affected by dependence on the non-renewable sources of energy when compared with effects of renewable sources. It was also found that the renewable energy sources are not absolutely pollution free with the elucidations of their unique environmental challenges. All in all, environmental protection and safety must not be sacrificed on the altar of development so as to guarantee sustainable development for the present as well as the future generations.

### **Facts of the Case**

The appellant in this appeal, (as plaintiff), in an admiralty in personal action, claimed against the respondent herein, (as defendant), the following reliefs:

- a. Reinstatement, restoration and remediation of the impaired and/or contaminated environment in Acha autonomous community of Isukwua Local Government Area of Abia State of Nigeria particularly the Ineh and Aku Streams which environment was contaminated by the oil spill complained of;
- b. Provisions of portable water supply as a substitute to the soiled and contaminated Ineh/Aku Streams, which are the only and/or major source of water supply to the community;

- c. Provision of medical facilities for evaluation and treatment of the victims of the after negative health effect of the spillage and/or the contaminated streams.

Subsequently, the respondent (as defendant), by motion on notice of July 14, 2005, entreated the trial court to strike out the suit on the ground that the plaintiff lacked the necessary locus standi to institute and maintain the action on the alleged oil spillage in Acha Community of Isukwua to Local Government Area of Abia State. Persuaded by the defendant's arguments, the trial court struck out the suit" for want of locus standi on the part of the plaintiff." An appeal to the court of Appeal was dismissed hence further appeal to the Supreme Court.

The supreme Court held that the Appellants herein have Locus Standi to sue the **respondents** who had acted in violation of Constitutional Obligation which has occasioned Public Injury. I take the view that, paragraph 2 of the amended statement of claim, page 31 of the record, read together with paragraph 1 of the said amended statement of claim, as determinant of the appellant's locus standi, the reliefs sought, I am on safe grounds by making a finding in favour of the appellant's locus standi, Beyond this fact, what is obvious, from the appellants' pleadings is that the respondent, a public authority, has by these acts complained of, acted in violation both of its 'constitutional obligation [Section 20 thereof] and its statutory obligations. These have occasioned injury to public interest or public injury.<sup>23</sup>

Generally, Courts all over have liberalized the Traditional Rule on Locus Standi with Respect to Environmental Degradation.

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<sup>23</sup> *Ibid*

Courts in this country, are by virtue of sections 16(2), 17(2)(d) (3), and 20 of the 1999 Constitution, section 17(4) of the Oil Pipelines Act, Cap 07, LFN and the Oil and Gas Pipeline Regulations under duty to protect the environment and would fail in that duty if in the instant case they do not facilitate the protection these laws have put in place. Their reliance on *R v. Secretary of State for Foreign and Commonwealth Affairs, Ex Parte World Development Movement Ltd* (1995) 1 ALL ELR 611, 620, *Reg v. Inland Revenue Commissions, Ex parte National Federation of self-Employed and Small Business Ltd* (1982) AC 617, 639 as instances of liberalization of the scope of locus standi by courts in similar jurisdictions and in the absence of any statutory empowerment is apposite.<sup>24</sup>

The Appellant, an NGO Incorporated for the Specific Purpose of Protecting the Environment from being degraded has Sufficient Interest to maintain this Action. Appellant's claim clearly suggests the degradation of environment occasioned by the respondent seems breach of relevant constitutional and statutory provisions. In insisting that the appellant herein satisfies the injury test in order to maintain an action, is to sustain injustice that would otherwise be obviated by the instant suit. In holding that this is a proper case to liberalize the frontiers of locus standi, I gratefully adopt the opinion of Bello JSC (as he then was and of blessed memory) in Adesanya's case (supra) thus:- "In the final analysis, whether a claimant has sufficient justiciable interest or sufferance of injury or damage depends on the facts and circumstances of each case, *Bengal Immunity Co. v. State of Bihar* (1955) 2 S.C.R. 602; *Forthingham v. Mellon* (1925) 262 U.S. 447; for India and America respectively. Even in the Canadian case of

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<sup>24</sup> *Ibid*

*Torson v. A-G. of Canada (1974) 1 N.R. 2254*, and the Australia case of *Mckinlay v. Commonwealth (1975) 135 C.L.R...* in which liberal view on standing were expressed, the issue of sufficiency of interest was the foundation upon which the decisions in both cases were reached.”<sup>25</sup>

### **Enforcement of the Public Interest Litigation to Environmental Rights**

- (a) The constitution especially chapter IV, as well as the African Charter shall be expansively and purposely interpreted and applied, with a view to advancing and realizing the rights and freedoms contained in them and affording the protections intended by them.
- (b) For the purpose of advancing but never for the purpose of restricting the applicant’s rights and freedoms, the court shall respect municipal, regional and international bills of rights cited to it or brought to its attention or of which the court is aware, whether these bills constitute instruments in themselves or form parts of larger documents like constitutions. Such bills include:
  - (i) The African Charter on Human and Peoples’ Rights and other instruments (including protocols) in the African regional human rights system.
  - (ii) The Universal Declaration of Human Rights and other instruments (including protocols) in the United Nations human rights system.
- (c) For the purpose of advancing but never for the purpose of restricting the applicant’s rights and freedoms, the court may make consequential orders as may be just and expedient.

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<sup>25</sup> *Ibid*

- (d) The court shall proactively pursue enhanced access to justice for all classes of litigants, especially the poor, the illiterate, the uninformed, the vulnerable, the incarcerated, and the unrepresented.
- (e) The court shall encourage and welcome public interest litigation in the human rights field and no human rights case may be dismissed or struck out for want of locus standi. In particular, human rights activists, advocates or groups as well as any non-governmental organizations, may institute human rights application on behalf of any potential applicant. In human rights litigation, the applicant may include any of the following:
  - (i) Anyone acting in his own interest
  - (ii) Anyone acting on behalf of another person
  - (iii) Anyone acting as a member of or in the interest of a group or class of persons;
  - (iv) Anyone acting in the public interest and
  - (v) Association acting in the interest of its members or other individuals or groups<sup>26</sup>

It is noteworthy to state here that citizens environment rights are among the rights envisage in this provisions. The environmental rights of Nigerian citizens are not contained in Chapter IV of the Nigerian Constitution. However, it is contained in Chapter II which was before now not justiciable. Nigerian citizens should find solace in judicial decisions and African charter on human and people's rights which has been domesticated subject to Section 12(1) of the Constitution. The environmental rights should be upgraded to 3<sup>rd</sup> generation rights as obtainable in advanced world.

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<sup>26</sup> Section 3 of the Preamble to Fundamental Right (Enforcement Procedure) Rules, 2009



These environmental rights as contained in the Constitution provides:

The state shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria.

The question is whether the state has lived up to the expectation as far as this provision is concerned before the domestication of African Charter on human and peoples' rights in Nigeria? To the writer of this paper, the answer was in the negative. Thus, industrialization made man to indiscriminately cut down trees for wood and business and such we lost most of our forest. Again, wastes abound in both our water, air and land to extent that environment was maintained as we met them. These and more put a question on the extent protection of the environment by the state has been safeguarded.<sup>27</sup>

The next question is whether Nigerian citizens enforced their environmental rights against the state based on the above provision before the domestication of the African Charter. The answer too was in the negative; as locus standi and pre-action notice became albatross to the enforcement of citizens environmental rights against the state then.

The succor came with the domestication of African charter on human and peoples' rights by Nigeria. Thus, with that, courts in Nigeria found reliance on it to dispense justice on behalf of Nigerian citizens. Thus:

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<sup>27</sup> Section 20 of Chapter II of the Constitution of Federal Republic of Nigeria

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.<sup>28</sup> All peoples shall have the rights to a general satisfactory environment favourable to their development.<sup>29</sup>

These charters made most of our courts to remove restrictions imposed on the enforcement of citizens' fundamental rights as environmental rights.

### **Special Jurisdiction of High Court and Legal Aid vis – a- vis the Preamble to the FREP**

#### **Rule**

Any person who alleges that any of the provision of this Chapter has been, is being or likely to be contravened in any state in relation to him may apply to High Court in that State for redress. Subject to the provisions of this Constitution, a High Court shall have original jurisdiction to hear and determine any application made to it in pursuance of the provisions of this sections and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement within that State of any right to which the person who makes the application may be entitled under this chapter.

The stand of this paper considering the case under review, is that both the Constitution in section 46(1) and section 3(1)(e)(i) of the

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<sup>28</sup> Article 4 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Chapter 10 LFN, 1990

<sup>29</sup> Article 24. These are in all fours African Charter on Human and Peoples Rights

FREP Rules look at ‘**any person**’ whose right is being, has been or likely to be contravened or ‘**anyone**’ who is acting on his interest (emphasis supplied). A community reading of the provisions, especially as highlighted above shows that ‘any person’ affected or ‘anyone’ can go to court on his own and for his own interest. Therefore, the innovation introduced by FREP Rule in (e)(ii)-(v) does not make the FREP Rule to go contrary to the provisions of the Constitution in this regard. This paper is of the view that both the Constitution and FREP Rule are for protection of citizens and as such the case of the *Centre for Oil Pollution Watch v. Nigerian National Petroleum Corporation* should stand in view of the position of law in the above provisions of the Constitution and FREP Rule.

### **Conclusion**

From totality of the above findings and premise, with the innovation introduced by FREP Rule and provisions of the 1999 Constitution of Nigeria as stated above, citizens can now go to court on their behalf and on behalf of other person, persons, group, community and other interest groups. The court in the *Centre for Oil Pollution Watch v. Nigerian National Petroleum Corporation* displayed activism and adopted the innovation canvassed in the above provisions of FREP Rule, 2009 and Nigerian Constitution 1999 (as amended). This is contrary to the position of law as obtainable in *Chinda & 5 Ors v. Shell BP Petroleum Development Company of Nigeria Limited (1974) 2 RSLR 20*. where the Court with due respect did not display activism and the present innovation.