Lex Scientia Law Review

Volume 7 Number 2 November, 2023

Type: Research Article

Constitutional and Judicial Interpretation of Environmental Laws in Nigeria, India and Canada

Empire Hechime Nyekwere[1]✉, Uche Nnawulezi[2], Septhian Eka Adiyatma[3], Kasim Balarabe[4], Muhammad Abdul Rouf[5]

[1,2] Department of Public and International Law, College of Law, Bowen University, Osun State, Nigeria
[3] Faculty of Law, Universitas Negeri Semarang, Indonesia
[4] Jindal Global Law School, O. P. Jindal Global University, Sonipat, Haryana, India
[5] Université de Montréal, Montréal, Québec, Canada

✉ Corresponding email: empire.nyekwere@bowen.edu.ng

Abstract *The judiciary, an important branch of government responsible for legal interpretation, dispute resolution, and justice administration, holds a crucial role in national environmental protection. Courts play a key role in safeguarding a nation's environment by interpreting constitutional provisions related to environmental protection and other legislative frameworks. The effectiveness of a country's environmental protection is*

contingent on the assertiveness, creativity, and innovation of its judiciary in interpreting laws, policies, and regulations designed for environmental preservation. The widely held belief is that the judiciary, more than any other institution, is best positioned to adjudicate, inform, guide, and lead in environmental protection. A proactive, inventive, and inspirational judiciary motivates the executive and legislative branches to implement pertinent environmental laws, policies, and regulations. This study utilizes a doctrinal research methodology to comprehensively review and compare the environmental protection frameworks in Nigeria, India, and Canada. The focus is on constitutional provisions related to environmental protection and judicial interpretations, particularly in the context of Environmental Impact Assessment (EIA) laws. While explicit constitutional provisions on environmental protection are absent in Canada, India, and Nigeria, the courts in India and Canada have demonstrated creative interpretation of their constitutions to safeguard the environment. Notably, in India, environmental protection falls under the non-adjudicable Directive Principles of State Policy (DPSP).

Keywords *Comparative Review, Environmental Protection, Judicial Interpretation, Constitutional Provisions*

1. Introduction

The role of the Nigerian, Indian and Canadian judiciary in the protection of their countries' environment, particularly, through judicial interpretation of constitutional provisions on environmental protection and other legislations, cannot be over-emphasized. Nigeria is a federal presidential representative democratic republic of 36 states

and the federal capital territory, Abuja.[1] India is a federal parliamentary democracy consisting of 28 states, 7 union territories and the National Capital Territory.[2] Canada is a federal parliamentary democracy within a constitutional monarchy, consisting of ten provinces and three territories.[3]

Section 6 of the Constitution of the Federal Republic of Nigeria 1999 (CFRN), empowers the Nigerian judiciary to exercise judicial functions which is vested in the regular Courts of record.[4] Articles 124-147 of the Constitution of India 1949 (CoI), gives the Indian judiciary the authority to uphold the Constitution of India, to protect the rights and liberties of the citizens, and to defend the principles of rule of law.[5] Sections 96-100 of the Constitution of Canada 1867 (CoC) vest judiciary powers in the Canadian courts to resolve conflicts associated to laws.[6]

---

1 Federal Countries: Nigeria, Forum of Federations-the Global Network on Federalism and Developed Governance <https://forumfed.org/countries/nigeria/> accessed 27 April 2022.

2 Federal Countries: India, Forum of Federations-the Global Network on Federalism and Developed Governance <https://forumfed.org/countries/india/> accessed 27 April 2022.

3 Federal Countries: Canada, Forum of Federations-the Global Network on Federalism and Developed Governance <https://forumfed.org/countries/canada/> accessed 27 April 2022.

4 Constitution of the Federal Republic of Nigeria 1999, s 6(1)&(2) (hereinafter, CFRN).

5 Supreme Court of India: Composition, Power and Functions <https://www.jagranjosh.com/general-knowledg e/supreme-court-of-india-14372041811#:~:text=The%20Indian%20Constitution%20provides%20for,and%20S ubordinate%20Courts%20under%20it.> accessed 27 April 2022; The Union Judiciary i.e. The Supreme Court (Articles 124-147) <https://www.clearias.com/union-judiciary-supreme-court/> accessed 27 April 2022.

6 See generally, Canada's Constitution of 1867 with Amendments through 2011, ss 96-100 (hereinafter, CoC)

The structure of the Nigerian judicial system comprises of the Supreme Court of Nigeria (SCN), Court of Appeal (CoA), Federal High Court (FHC), High Court of the Federal Capital Territory (FCT)/State High Court, National Industrial Court, Sharia Court of Appeal, Customary Court of Appeal, Magistrates Courts and District Courts. India has a single and integrated judicial system with a three-tier structure, i.e., Supreme Court of India (SCI), High Courts and Subordinate Courts.[7] The structure of the Canadian judicial system comprises courts formed by both the provincial and federal levels of government, each with a definite mandate. At the provincial level, there are Trial-level courts, Superior courts, Appellate Courts. At the federal level, there are the Supreme Court of Canada (SCC), the Federal Court, the Federal Court of Appeal, the Tax Court of Canada and the Court Martial Appeal Court of Canada.[8]

Differentiating this article from several other background articles such as entitled: "A Comparative Analysis of The Federal System in USA and Nigeria and Its Impact on National Unity and Development", a paper that explains the early development and development of a country in a federal form provides an opportunity for the USA as an example of the application of a perfect system. This article provides an in-depth look at the development of the legal system in the courts by focusing on the resolution of environmental law issues organized using analysis in the British Commonwealth countries of Canada, India and Nigeria with the concept that each country has a federal form of government. In addition, there is another paper entitled "The Judiciary and Environmental Protection in Africa in Pursuit of Sustainability", explaining the views of countries in Africa in facing the challenges of climate change through

7 Supreme Court of India: Composition, Power and Functions (n 11); The Union Judiciary (n 5).

8 CoC (n 6).

efforts that have been made in protecting the environment and providing the role of judges to ensure the application and enforcement of environmental law runs according to the expectations of the regulations that have been passed. A more in-depth review of the role of the judiciary is presented in the author's article which focuses on a comparison of the environmental protection regimes of Nigeria, India and Canada with respect to their constitutional provisions on environmental protection and their judicial interpretation of constitutional provisions on environmental protection and other environmental legislation, particularly EIA Laws. The collaboration between EIA enforcement and the role of the judiciary in several countries will be clarified in detail in the discussion of this article.

2. Method

This paper is written using the normative juridical research method, chosen for its effectiveness in comparing the roles from a legal perspective in each respective country, namely Nigeria, India, and Canada. Primary data for this study includes laws, articles, and other writings related to the judicial roles in the aforementioned countries. Additionally, other relevant readings on environmental protection through environmental laws are considered as primary data. Furthermore, the use of qualitative method aligns with the explanation of phenomena in-depth and involves collecting data in a comprehensive manner. This method is deemed suitable for writing an article on legal themes, especially when seeking comparisons among the judicial roles in Nigeria, India, and Canada regarding effective interpretation of environmental laws for environmental protection.

3. Result & Discussion

A. Environmental Protection in Nigeria Through Judicial Interpretation of Constitutional Provisions on Environmental Protection

This section examines Nigeria's constitutional provisions on environmental protection and how the Nigerian courts interpretes the law to promote environmental protection in Nigeria.

1) Nigerian Constitutional Provisions on Environmental Protection

Nigeria's environmental protection provision which is contained in section 20 of the CFRN clearly obligates the state to: "Protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria". This provision requires that all activities, as well as those intended to achieve an economically vibrant state, must be executed in a way that realizes the goal of section 20 of the CFRN. This position is additionally reinforced by section 17(2)(d) of the CFRN which prohibits the exploitation of human or natural resources in any form whatsoever for reasons, save for for the good of the community[9].

It is however, noteworthy, that the environmental protection provisions of section 20 falls under the Fundamental Objective and Directive Principles of State Policy (FODPSP) as contained in Chapter II of the CFRN. And, rights under the FODPSP are non-justiciable[10]

---

[9] Francesca Ugbaja, "Regulation of Environmental Pollution in the Nigerian Oil and Gas Industry: The Need for an Alternative Approach" (University of Calgary, 2016), 53, https://prism.ucalgary.ca/server/api/core/bitstreams/2f7943bd-6a35-4477-8edc-fc5aef22caa0/content.

[10] R O Ugde and M E Umo, "Enforcement Provisions of Major Environmental Law Regimes in Nigeria," *University of Ibadan Law Journal*, 2015, 233–34; F Olarewaju, "Reappraising the Nigerian Constitution for Environmental Management," *AAU Law Journal* 1, no. 1 (2002); L Atsegbua, V Akpotaire, and F Dimowo,

and thus, lacks judicial enforcement in Nigeria because by virtue of section 6(6)(c) of the CFRN, the judicial powers conferred in the courts does not extend to adjudicating on any issue contained in the FODPSP[11].

2) *Nigerian Judicial Interpretation of the Constitutional Provisions on Environmental Protection*

The Nigerian courts, through its interpretation of section 20 of the CFRN as a non-justiciable right, consideration of economic development over environmental protection, and non-recognition of public interest litigation (PIL) in environmental matters based on the application of the locus standi rules, plays not too commendable role in protecting Nigerian's environment.

1. Interpretation of Section 20 of the CFRN 1999 as a Non-Justiciable Right

Although, section 20 of the CFRN clearly obligates the Nigerian state to protect the Nigerian environment, the courts has regularly ruled that the environmental protection provision of section 20 is non-justiciable and thus, lacks judicial enforcement in Nigeria.[12] The SCN in ***NNPC v Fawehinmi***, [13] ruled that the provisions of Chapter II of the CFRN are entirely unenforceable under any guise whatsoever and remain ordinary governmental aspirations. In ***A.G. Ondo State v A.G. Federation***,[14] the SCN held that the provision of section 6(6)(c) of the CFRN renders rights

---

Environmental Law in Nigeria: Theory and Practice, 2nd ed. (Benin City: Ambik Press, 2010), 179.

[11] CFRN, s 6(6)(c); See T T Onifade, "Legal and Institutional Framework for Promoting Environmental Sustainability in Nigeria through Renewable Energy: Possible Lessons from Brazil, China and India" (University of Ibadan, 2014), 47.

[12] R O Ugbe & M E Umo p.234.

[13] *NNPC v Fawehinmi* [1998] 7NWLR (pt 559).

[14] *A.G. Ondo State v A.G. Federation* [2002] 9NWLR (pt 772).

under the FODPSP non-justiciable. In ***Archbishop Olubunmi Okogie (Trustees of Roman Catholic Schools) and Ors v The Attorney General of Lagos State,***[15] the Nigerian CoA ruled that while section 13 of the CFRN makes it the responsibility and obligation of the judiciary amongst other organs of government, to obey and apply the provisions of Chapter II, section 6(6)(c) of the same CFRN makes it obvious that no court has jurisdiction to decide as to whether any organ of government has acted or is acting in conformity with the FODPSP[16].

However, it is notable that the Nigerian FHC has specifically in the case of ***Jonah Gbemre v Shell Petroleum Development Company (SPDC) Nigeria Limited***[17] ordered SPDC to stop gas flaring in the Niger Delta Region (NDR) of Nigeria on the ground that gas flaring violates the fundamental right to life (FRL) guaranteed by sections 33 of the CFRN which comprises the right to a clean, poison-free, pollution free healthy environment. It is however, noteworthy, that the judgment of the court in this case was never enforced.

It is however, noteworthy, that in 2019, the SCN in ***Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation,***[18] interpreted section 20 environmental protection provision of the CFRN to be justiciable and enforceable. In this case, the SCN pronounced remarkably that the CFRN, the legislature

---

[15] *Archbishop Olubunmi Okogie & Ors v The Attorney General of Lagos State* [1981] 2NCLR (pt 337) 350.

[16] Eghosa O. Ekhator, "Improving Access to Environmental Justice Under the African Charter on Human and Peoples' Rights: The Roles of NGOs in Nigeria," *African Journal of International and Comparative Law*, 2014, 71, https://doi.org/10.3366/ajicl.2014.0080.

[17] *Jonah Gbemre v Shell Petroleum Development Company Nigeria Limited* (Suit No.FHC/B/C/153/05 Judgement delivered on 14/11/2005 at Federal High Court, Benin Judicial Division).

[18] *Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation* [2019] 5 NWLR (pt 1666] p.518.

and the African Charter on Human and Peoples Rights (ACHPR) to which Nigeria is a signatory, recognize the fundamental rights of the citizens to a clean and healthy environment to sustain life through the provisions of sections 20 and 33(1) of the CFRN, Article 24 of the ACHPR (Ratification and Enforcement) Act, and section 17(4) of the Oil Pipelines Act respectively[19]. It must however, be noted that this case is an exception to the general attitude of the Nigerian courts.

2. Judicial Consideration of Economic Developmental Benefits over Environmental Protection in Its Interpretations and Decisions

In the constant struggle between economic development and environmental protection, the Nigerian courts prioritize the Nation's economic sustenance and development (which generally depends on oil revenues) over environmental protection, particularly in the NDR of the country[20]. This is well depicted in ***Allan Irou v Shell BP,***[21] were the judge declined to grant an injunction in favour of the plaintiff whose land, fish pond and creek had been polluted by the operations of the defendant since in the judge's opinion, nothing should be done to interrupt the operation of trade (that is, mineral oil), which is the mainstay of the Nigerian economy. In the court's view, granting injunction in favour of the plaintiff means stopping mining to the detriment of the Nigerian

---

[19] A Babalola, "The Right to a Clean Environment in Nigeria: A Fundamental Right?," *Hastings Envt'l L.J* 26, no. 1 (2020): 9–10. The Oil Pipelines Act Cap 7, 2004); Advocate Law Practice, Litigation Update: Operators and Owners of Oil Pipelines have a Duty to Maintain and Repair their Oil Pipelines <http://www.adv ocaat-law.com/assets/resources/eeae9d0ff247244dd88a2ad3df3b3a1c.pdf> accessed 23 August 2021.

[20] Joshua P. Eaton, "The Nigerian Tragedy, Environmental Regulation of Transnational Corporations, and the Human Right to a Healthy Environment," in *International Crimes*, 2017, 291, https://doi.org/10.4324/9781315092591-11.

[21] *Allan Irou v Shell BP* (Unreported Suit No. W/89/91 Warri HC/26/11/73).

economy. Many other cases, although not so obviously decided, have tended to align to the unwritten rule that economic considerations should be prioritized over environmental protection and Nigerian judges have habitually demonstrated their unwillingness to grant injunctions against oil companies even where oil activities have been exposed to have severely impacted host communities and their environment[22].

3. Non-Recognition of Public Interest Litigation (PIL) in Environmental Matters Based on the Application of the Locus Standi Rules

The Nigerian courts do not recognize and allow PIL in environmental matters as a result of the application of the locus standi procedural rules in its interpretation. This often results in denying claimants suffering from environmental damage their right to access justice with consequences that may further jeopardize their environment and means of livelihood[23]. In ***Oronto Douglas* v *Shell Petroleum Development Company Limited & 5 Ors***,[24] the plaintiff claimed that the Nigerian Liquefied Natural Gas (NLNG) whose project at Bonny was about to be commissioned

---

[22] P Duruike, "Climate Change Litigation and Corporate Accountability in Nigeria: The Pathway to Climate Justice?" (The University of British Columbia, 2018), 43; H Ijaiya, "Environmental Rights in Nigeria and India," *IJED* 9, no. 2 (2012): 153–60; Kaniye S.A. Ebeku, "Locus Standi in Environmental Nuisance Actions: A Perspective from the Commonwealth," *Environmental Law and Management*, 2005, 14; A Ekpu, "Environmental Impact of Oil on Water: A Comparative Overview of Law and Policy in the United States and Nigeria," *Denver Journal of International Law* 24, no. 1 (1995): 92–93.

[23] T Rhuks, "The Judicial Recognition and Enforcement of the Right to Environment: Differing Perspectives from Nigeria and India," *NUJL L.Rev* 3 (2010): 444; A Adedeji and R Ako, "Hindrances to Effective Legal Response to the Problem of Oil Pollution in the Niger Delta," *Unizik Law Journal* 5 (2005): 420–22.

[24] *Oronto-Douglas v Shell Petroleum Development Company & 5 Ors* (Unreported Suit No. FHC/CS? 573/96. Delivered on 17th February 1997).

had not obeyed the mandatory provisions of the Environmental Impact Assessment Act 1992 (EIA Act). The plaintiff among other things, sought to restrain the defendants from commissioning their project until an EIA was conducted with active public participation amongst those to be impacted by the project. The court struck out the suit on the basis that the plaintiff lack the legal standing to initiate and prosecute the action.

In fact, the application of the locus standi rules by the Nigerian courts has occasioned the failure of numerous environmental cases as the courts have disqualified several plaintiffs from instituting PIL on the basis that they (the plaintiffs) lack the locus standi to initiate and prosecute the matters. In ***Shell Petroleum Development Company Nigeria Ltd v Chief Otoko & Ors***,[25] the respondents who were plaintiffs at the Bori High Court in Rivers State (appellants herein) sued SPDC in a representative capacity for polluting and deprivation them the use of their rivers and creeks due to oil spillage. The Court disallowed the alleged representative action on the ground that the individuals who are to be represented and the person(s) representing them ought to have the same interest in the cause of matter[26].

Also, in ***Chief A. S. Amos & 4 Ors v Shell Petroleum Development Company Nigeria Ltd & Niger Construction Company Ltd***,[27] the plaintiffs instituted an action against the defendants in a representative capacity demanding special and general damages. It was claimed that the 2nd defendants as contractors to the first, had during oil mining activities constructed an enormous earth dam across the plaintiffs' creek which resulted

---

[25] *Shell Petroleum Development Company Nigeria Ltd v Chief Otoko & Ors* (1990) 6 NWLR (pt. 159) 693.

[26] *Ibid*, R A Mmadu, "Judicial Attitude to Environmental Litigation and Access to Environmental Justice in Nigeria: Lessons from Kiobel," *Afe Babalola University: Journal of Sustainable Development Law and Policy* 2, no. 1 (2013): 161.

[27] *Chief A. S. Amos & 4 Ors v Shell Petroleum Development Company Nigeria Ltd & Niger Construction Company Ltd* [1974] 4 ECSLR 486

to flooded and damaged farms, hampered movement of canoes, and paralyzed agriculture and commercial life. Dismissing the claim, the court held that since the creek was a public waterway, its blocking was a public nuisance and no person could recover damages therefrom except he could prove special damage peculiar to himself from the interference with a public right. The court further held that since the interest and losses suffered by the plaintiffs were distinct in character and not communal, they could not sustain an action for special representative capacity.[28]

It is however, noteworthy, that the SCN in 2019 upheld the standing of an NGO (the plaintiff) to institute a public interest environmental action in ***Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation***.[29] Nevertheless, the decision of the court in this case is an exception to the common approach of the Nigerian courts.

B. Environmental Management in India Through Judicial Interpretation of Constitutional Provisions on Environmental Protection

This section examines India's constitutional provisions on environmental protection and how the Indian courts interpretes the law to promote environmental protection in India.

1) Indian Constitutional Provisions on Environmental Protection

The environmental protection provisions of the Constitution of Indian (CoI) are contained in its Articles 48A and 51A(g). Article 48A of the CoI states that: "The State shall endeavour to protect and

[28] *Ibid*; R A Mmadu, pp.161-162.

[29] *Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation* (n 28); See A Babalola (n 19).

improve the environment and to safeguard the forests and wild life of the country",[30] while Article 51A(g) states that: "It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures".[31] Under the CoI, environmental protection provisions as contained in Article 48A and Article 51A(g) is part of the Directive Principles of State Policy (DPSP) (policies to guide governmental action) and the CoI declares that the section on DPSP under Chapter IV of the CoI are not justiciable-whether or not the government or any of its agencies is acting in line with the DPSP cannot be an issue of any litigation in the courts[32].

As noted earlier, both Article 48A provision of the CoI that requires the State to protect the environment and Article 51A(g) provision that imposed a fundamental duty on the citizens to protect the environment are both DPSP[33].[34] But Part IV of the CoI which contains Article 48(A) and Article 51A(g) begins by pronouncing itself unenforceable by the court. It states in Article 37 thus, "the provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws".[35]

---

30 Indian Constitution 1949, Art 48A.

31 *Ibid*, Art. 51A(g).

32 A Boyle and M Anderson, *Human Rights Approaches to Environmental Protection* (Claredon Press, 1996), 43.

33 *Ibid*, Art. 37; Nsikan-abasi Odong, "Realizing and Enforcing the Constitutional Right to a Healthy Environment in the Niger-Delta : Lessons from India" 7, no. 5 (2017): 41.

34 *Ibid*.

35 *Ibid*, Art. 37; N Odong, *ibid*

2) *Indian Judicial Interpretation of the Constitutional Provisions on Environmental Protection*

The Indian judiciary plays a prominent role in the protection of the Indian environment through the recognition of environmental rights as an inherent component of other recognized human rights in its interpretation, striking a balance between economic development and environmental protection, and recognition of PIL in environmental matters.

1. Recognition of Environmental Rights as an Inherent Component of Other Recognized Human Rights in its Interpretations and Decisions

The Indian courts are known for recognizing environmental rights as an inherent component of other recognized human rights in its interpretation and decisions. Embracing this method, the Indian court has connected Article 48A constitutional provision on the protection of the environment by the state and Article 51A(g) on the fundamental duties of the citizens to protect the environment which are both DPSP[36] and enforced these DPSP with the constitutional right to life, guaranteed by Article 21 of the CoI. In ***Subhash Kumar v State of Bihar,***[37] the Supreme Court of India (SCI) stretched the constitutional protection of the right to life under article 21 of the CoI to apply to environmental protection by holding that the 'right to life guaranteed by article 21 comprises the right to enjoyment of pollution-free water and air for complete enjoyment of life.'[38]

---

[36] M Anderson.

[37] *Subhash Kumar v State of Bihar* [1991] AIR SC 420.

[38] P . U. Abba, "Constitutionalising Environmental Rights for Sustainable Environmental Protection in Nigeria's Niger Delta Region" (University of Exeter, 2018), 168; Odong, "Realizing and Enforcing the Constitutional Right to a Healthy Environment in the Niger-Delta : Lessons from India," 43.

In ***T. Damodhar Rao v Municipal Corporation, Hyderabad***,[39] the Indian High Court (IHC) ruled that both the practice of violent snuffing of life and the slow poisoning by the polluted atmosphere resulting from environmental pollution should be considered as constituting a violation of the right to life provision of Article 21 of the CoI. The court held further, that the right to life provision of Article 21 includes the protection and preservation of nature's gifts without which life cannot be enjoyed.[40] In ***Virender Gaur v State of Haryana***,[41] the SCI ruled that the "Enjoyment of life and its realization together with the right to life with human dignity comprises within its sphere the protection and preservation of the environment, ecological balance, freedom from pollution of air and water, and sanitation, without which life cannot be enjoyed".[42]

Also, the IHC held in ***V. Lakshmipathy v State of Karnataka***[43] that the right to life provision of Article 21 of the CoI is possible only in an environment of quality emphasising that where owing to human agencies, the quality of air and quality of environment are threatened or affected, the Court would not delay to use its innovative power to implement and protect the right to life to promote public interest"[44] Furthermore, in ***LK Koolwal v State of Rajasthan & Ors***,[45] the plaintiff asked the state (defendant) to perform its statutory duty of environmental protection by removing dirt and filth from the city of Jaipur which was claimed to be harmful to citizen's life. The Court held that maintenance of health, preservation of sanitation and environment falls within the ambit of the right to life provision of

[39] *T. Damodhar Rao v Municipal Corporation, Hyderabad* [1987] AIR (A.P.) 171.
[40] N Odong, p.42.
[41] *Virender Gaur v State of Haryana* [1995] 2 SCC 577.
[42] N Odong p.43.
[43] *V. Lakshmipathy v State of Karnataka* [1992] AIR Kant 57.
[44] N Odong p.42.
[45] *LK Koolwal v State of Rajasthan & Ors* [1988] AIR Raj.2.

Article 21 of the CoI as hazardous environment severely affect the life of the citizen and lead to slow poisoning and decreasing the life of the citizen if left unchecked. The Court held that the State had a constitutional responsibility to get rid of the dirt and filth from the city.

As evident in the above cases, the SCI has acknowledged the right of every Indian to live in a healthy or pollution free environment by applying the constitutional guaranteed right to life[46]. These decisions are despite the fact that there is no express provision on environmental protection rights found in the CoI.[47]

2. Striking a Balance between Economic Development and Environmental Protection in Its Interpretations and Decisions

The Indian judiciary is known for striking a balance between economic development and environmental protection with the ultimate aim of protecting the Indian environment. In ***Rural Litigation & Entitlement Kendra & Ors v State of Uttar Pradesh (U.P) & Ors***,[48] the SCI dealt with matters involving environmental protection and economic development balance. In this case, the plaintiff alleged that the defendant (the State of Uttar Pradesh) allowed indiscriminate and illegal operation of lime-stone quarries in the Mussoorie Hill range of the Himalayas, which resulted to environmental degradation. Miners blasted out the

---

[46] Emelca Polycrap Amechi, "Itigating Right to Healthy Environment in Nigeria: An Examination of the Impacts of the Fundamental Rights (Enforcement Procedure) Rules 2009, in Ensuring Access to Justice for Victims of Environmental Degradation," *Law, Environment and Development Journal* 6, no. 3 (2010): 326–27; Shubhankar Dam and Vivek Tewary, "Polluting Environment, Polluting Constitution: Is a 'Polluted' Constitution Worse than a Polluted Environment?," *Journal of Environmental Law*, 2005, 383–86, https://doi.org/10.1093/jel/eqi029.

[47] P U Abba (n 38) p.168; See N Odong (n 33) p.43.

[48] *Rural Litigation and Entitlement Kendra & Ors v State of Uttar Pradesh (U.P) & Ors* [1985] AIR 652, SCR (3) 169.

hills with dynamite, digging up limestone from thousands of acres. This illegal and destructive mining practice resulted in cave-ins and slumping of the hillsides, and landslides that killed villagers, damaged their homes, cattle and agricultural lands. The hillsides were also stripped of vegetation. The SCI, recognising the right to live in a healthy environment, ruled that economic growth through mining cannot be realized at the cost of environmental damage, and thus, ordered that mining in the Mussoorie Hill range of the Himalayas should cease.[49]

Also, in ***Kinkri Devi & Anor v State of Himachal Pradesh & Ors***,[50] the Indian court strucked a balance between the extraction of mineral resources for industrial growth (economic development) and environmental protection when it ordered the stoppage of mining operations until government's accurate determination of the balance between economic development and environmental protection from mining operations and submission of the report to the Court. In this case, the petitioners wanted an order to have a mining lease cancelled, to restrain the respondents from operating the mines covered by the lease in a way that pose threat to the neighbouring lands, water resources, pastures, forests, wildlife, ecology, environment and the residents of the area, and for compensation for the destruction caused by the unrestricted quarrying of the limestone. The Court reasoned that Articles 48A and 51A(g) imposed a statutory duty on the State and citizens to protect and improve the environment which leaves it (i.e. the Court) with no other option than to intervene efficiently

---

[49] *Rural Litigation and Entitlement Kendra & Ors v State of Uttar Pradesh (U.P) & Ors* <https://leap.unep.org/ countries/in/national-case-law/rural-litigation-and-entitlement-kendra-ors-v-state-u-p-ors>; See O Adejonwo-Osho, The Evolution of Human Rights Approaches to Environmental Protection in Nigeria <https://www.iucna el.org/en/documents/70-adejonwo-osho-the-evolution-of-human-rights-approaches-to-environmental-protection-in-nigeria-1> accessed 15 March 2021.

[50] *Kinkri Devi & Anor v State of Himachal Pradesh & Ors* [1988] AIR HP 4, 6 para. 4.

by issuing suitable orders and directions in furtherance of the statutory responsibility[51].

Also, in ***People United for Better Living in Calcutta v State of West Bangel***,[52] the plaintiff filed a petition to avert the encroachment of wetlands in Calcutta. The Court noted the need for an appropriate balance between environmental protection and the economic developmental process. The Court noted further that the present-day society has a duty towards posterity for appropriate growth and development so as to permit posterity to breathe well, live in a clean environment and have more development[53]. Further, in ***Bombay Dyeing & Mfg. Co. Ltd. v Bombay Environmental Action Group & Ors***,[54] the court relying on the principle of sustainable development held that there should be a balance between the environment and development, taking into consideration public interest.[55] Additionally, in ***Vellore Citizens Welfare Forum v Union of India***,[56] the SCI in granting a restraining injunction against a leather factory that was polluting the environment of many communities in the State of Tamiluadu, strucked a balance between economic development and environmental protection when it held that, though, the company generates foreign exchange and offers employment, it had no right to damage the environment and constitute a health risk.[57]

---

51 Rhuks, "The Judicial Recognition and Enforcement of the Right to Environment: Differing Perspectives from Nigeria and India," 440.

52 *People United for Better Living in Calcutta v State of West Bangel* [1993] AIR Cal.

53 Orji Uchenna Jerome, "Enhancing the Implementation of Sustainable Development in Nigeria through Legal Strategies," *Consilience: The Journal of Sustainable Development* 8, no. 1 (2012): 92–93.

54 *Bombay Dyeing & Manufacturing Company Ltd. v Bombay Environmental Action Group & Ors* [2006] AIR SC 1489.

55 N Odong p.48.

56 *Vellore Citizens Welfare Forum v Union of India* [1996] 5 SCC 647.

57 U J Orji.

3. Recognition of Public Interest Litigation in Environmental Matters in Its Interpretations and Decisions

The watering down of the stringent application of the doctrine of locus standi by the Indian courts has enabled PIL in the Indian legal system. The Indian court has accepted litigation initiated by public spirited persons and organizations for many cases of environmental protection.[58] In ***Vellore Citizens Welfare Forum v Union of India***,[59] the SCI allowed standing to an NGO-Vellore Citizens Welfare Forum, seeking to protect the environment and health of residents of Vellore, to file a PIL against the pollution caused by release of huge quantities of untreated effluents by tanneries and other factories into rivers and people's water source, which polluted the principal source of potable water for consumption and irrigation and therefore, the non-availability of clean water, hence endangering the health of the people. The court ordered the Government to identify the damage to the environment and remediate such environment. The court further ordered the closure of all tanneries which failed to observe with effluent treatment obligations and banned additional establishment of extremely polluting factories within the area.[60]

Further, in ***M. C. Mehta v Union of India***,[61] the SCI allowed a PIL instituted against government administrators and the tanneries whose effluents polluted the River Ganga.[62] The Court restrained a number of tanneries from discharging of effluents into the river Ganga on the petition of an interested citizen (the

---

[58] N Odong p.45; V Oak, Role of PIL in Environmental Protection in India <http://www.legalservicein dia. com/articles/peiln.htm> accessed 20 August 2021.

[59] *Vellore Citizens Welfare Forum v Union of India* (n 55).

[60] *Ibid*.

[61] *M. C. Mehta v Union of India* [1996] 4 SCC 351.

[62] T Rhuks, *ibid* p.441.

public interest litigator)[63]. The court relied on Articles 48A and 51A(g) of the CoI to arrive at its verdict,[64] noting that Article 51A(g) imposes a fundamental duty on every citizen to protect and improve the natural environment while Article 48A imposes a duty on the State to protect and improve the quality of the environment in other to secure the health of the people and improve public health.[65] Also, in ***Bombay Dyeing & Mfg. Co. Ltd. v Bombay Environmental Action Group & Ors***,[66] the Indian court allowed PIL and on the basis of the principle of sustainable development held that a balance should be struck between the environment and development, in consideration of public interest[67].

C. Environmental Management in Canada Through Judicial Interpretation of Constitutional Provisions on Environmental Protection and Other Laws

This section examines Canada's constitutional provisions on environmental protection and how the Canadian courts interpretes the law to promote environmental protection and management in Canada.

1) Canadian Constitutional Provisions on Environmental Protection (Substantive Environmental Rights)

[63] Kaniye S A Ebeku, "The Right to a Satisfactory Environment and the African Commission," *African Human Rights Law Journal* 3 (2003): 153.

[64] *Ibid*.

[65] T Rhuks, ibid p.442.

[66] *Bombay Dyeing & Manufacturing Company Ltd v Bombay Environmental Action Group & Ors*.

[67] Odong, "Realizing and Enforcing the Constitutional Right to a Healthy Environment in the Niger-Delta : Lessons from India," 48.

The Constitution of Canada (CoC), including the Canadian Charter of Rights and Freedoms (CCRF), did not make provisions for environmental protection[68]. It is noteworthy, that the CCRF is part of the CoC. For instance, section 52(1) of the CoC 1982 provides that: "The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect."[69] The Supreme Court of Canada (SCC) while emphasizing the importance of the provisions of section 52(1) of the CoC 1982 made it clear that the CCRF is part of the CoC when it noted in ***Hunter v Southam Inc.***,[70] that the CoC, which includes the CCRF, is the supreme law of Canada. Any law inconsistent with the provisions of the CoC is, to the extent of the inconsistency, of no force or effect[71].[72]

However, many scholars have submitted that the words of section 7 of the CCRF referring to "life, liberty, and security of the person" are adequately extensive to comprise the right to a healthy environment[73]. For instance, as early as 1983, Colin Stevenson[74]

---

[68] D. R. Boyd, *The Status of Constitutional Protection for the Environment in Other Nations* (Paper Four: David Suziki Foundation, 2013), 6.

[69] Constitution Act of Canada 1982 s. 52 (1); D. R. Boyd, *The Importance of Constitutional Recognition of the Right to a Healthy Environment* (Paper 1: David Susiki Foundantion, 2013), 16.

[70] *Hunter v Southam Inc.* [1984] 2 SCR 145 at 148.

[71] Lynda M. Collins, "Safeguarding the Longue Durée: Environmental Rights in the Canadian Constitution," *The Supreme Court Law Review: Osgoode's Annual Constitutional Cases Conference* 71, no. 1 (2015): 530, https://doi.org/10.60082/2563-8505.1322.

[72] Supremacy of the Constitution-Constitutional Law in Canada <http://www.constitutional-law.net/index.php?option=com_content&view=article&id=22&Itemid=36> accessed 24 September 2021.

[73] Collins, "Safeguarding the Longue Durée: Environmental Rights in the Canadian Constitution," 530.

[74] Colin P. Stevenson, "A New Perspective on Environmental Rights after the Charter," *Osgoode Hall Law Journal* 21, no. 3 (1983): 413,

contended that, "If section 7 purports to protect rights to life, liberty, and security of the person, certainly this must likewise be taken to embrace a right to a clean environment." Dianne Saxe noted that "If a healthy environment is an essential precondition for human life and bodily integrity, then the human right to life and bodily integrity must involve a right to a healthy environment."[75]

2) *Canadian Judicial Interpretation of the Constitutional Provisions on Environmental Protection and Other Laws*

Notwithstanding the absence of an express environmental protection provision in the CoC, the Canadian courts, through its interpretations and decisions, plays a commendable role in the protection of Canada's environment through the affirmation of the existence of public environmental rights in Canada, striking a balance between economic development and environmental protection, recognizing environmental rights as an inherent component of other human rights, and recognising public interest litigation in environmental matters.

1. Recognition of Environmental Rights as an Inherent Component of Other Recognized Human Rights in its Interpretations and Decisions

The Canadian courts are known for recognizing environmental rights as an inherent component of other recognized fundamental human rights. Debatably, the most

https://doi.org/10.60082/2817-5069.1956; Collins, "Safeguarding the Longue Durée: Environmental Rights in the Canadian Constitution."

[75] D Saxe, *Environmental Offences: Corporate Responsibility and Executive Liability* (Aurora: On: Canada Law Book, 1990), 9; Collins, "Safeguarding the Longue Durée: Environmental Rights in the Canadian Constitution."

evident home for environmental rights in the CCRF is section 7, which provides that: "Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice".[76] The Canadian courts have recognized environmental right as an inherent component of section 7 "right to life, liberty and security of the person" (RLLS*P*) under the CCRF in several instances. In ***Ada Lockridge and Ron Plain v Ontario (Director, Ministry of the Environment)***,[77] the plaintiffs, who are members of Aamjiwnaang First Nation in Sarnia, Ontario, instituted a legal action in the Divisional Court[78] alleging that the discharge of increased air emissions from all the industrial operation around their community gives rise to pollution heights that threaten the applicants' health and that of their families, therefore violating their section 7 RLLS*P*[79]. Due to this case which was filed in 2011, the Ontario government started fixing some of the problems that led the plaintiffs to take legal action. On the basis of the positive

---

[76] L. Collins and S. Lorne, "Approach to Constitutional Principles and Environmental Discretion in Canada," *U.B.C L. Rev.* 52, no. 1 (2019): 529–30.

[77] *Lockridge v Ontario (Director, Ministry of the Environment)* [2012] O.J. No. 3016, 68 C.E.L.R. (3d) 27, 350 D.L.R. (4th) 720 (Ont. Div. Ct.).

[78] Defending the Rights of Chemical Valley Residents – Charter Challenge: *Lockridge and Plain v Director, Ministry of the Environment et al.* <https://ecojustice.ca/case/defending-the-rights-of-chemical-valley-residents-charter-challenge/> *accessed 29 September 2021; Update: Lawsuit over Air Pollution in Chemical Valley Discontinued,* December 15 2017 <https://ecojustice.ca/pressrelease/lawsuit-air-pollution-chemical-valley-discontinued/> *accessed 29 September 2021;* J Mclean, "Indigenous Activist Taking Province to Court over Air Pollution Regulations," *Toronto Star*, 2017; Collins, "Safeguarding the Longue Durée: Environmental Rights in the Canadian Constitution," 531–33.

[79] Collins, "Safeguarding the Longue Durée: Environmental Rights in the Canadian Constitution"; P Morden, "Lawsuit Claims Ontario Failed to Keep Promise to Review Regulations," *Toronto Star*, 2017.

steps taken by the Canadian government to control pollution in the plaintiff's communities, the plaintiffs withdrew the lawsuit[80].

Also, in ***Grassy Narrows First Nation v Ontario (Minister of Natural Resources)***,[81] the plaintiffs challenged provincial action and inaction in the face of enormous mercury contamination of the community's traditional waters, the Wabigoon-English River system. The mercury in Grassy Narrow's territory originates from a number of sources, comprising years of releases by a chlor-alkali plant, and is aggravated by logging, which discharges mercury stored in soils into waterways[82]. The instant targets of the plaintiff's initial application for judicial review are the Ministry of Natural Resources' decision to allow logging in the contaminated area and the Ministry of Environment and Climate Change's (MECC) refusal to do an EIA of the planned logging. The plaintiffs among other things argued that the logging will discharge extra mercury into their already contaminated environment and would violate their RLLS*P* provisions of section 7 of the CCRF by aggravating their threat of death and severe illness. To end this case, the Government of Ontario made a commitment to remedy the contamination in Grassy Narrows. In June 2017, the provincial

---

[80] Defending the Rights of Chemical Valley Residents (n 134); *Update: Lawsuit over Air Pollution in Chemical Valley Discontinued* (n 134); See also the case of *Kelly v Alberta (Energy & Utilities Board)* [2008] ABCA 52; See A Nanda, "Heavy Oil Processing in Peace River, Alberta: A Case Study on the Scope of Section 7 of the Charter in the Environmental Realm," *Envtl L & Prac.* 27 (2015): 126; L. Wortsman, "'GREENING' THE CHARTER: SECTION 7 AND THE RIGHT TO A HEALTHY ENVIRONMENT.: EBSCOhost," *Dalhousie Journal of Legal Studies*, no. 28 (2019): 254.

[81] Grassy Narrows First Nation v Ontario (Minister of Natural Resources) [2014] SCC 48 (CanLII), [2014] 2 SCR 447.

[82] Environmental Commissioner of Ontario, 'Good Choices, Bad Choices: Environmental Rights and Environmental Protection in Ontario' (24 October 2017) <docs.assets.eco.on.ca/reports/environmental-protectio n/2017/Good-Choices-Bad-Choices.pdf> accessed 24 June 2020; Collins and Lorne, "Approach to Constitutional Principles and Environmental Discretion in Canada," 309–10.

MECC committed more than $85 million to remediate the Wabigoon-English River system[83].

2. Striking a Balance between Economic Development and Environmental Protection in Its Interpretations and Decisions

The Canadian Courts is known for striking a balance between economic development and environmental protection in their decisions. One of the ways the Canadian courts do this is by ensuring that environmental regulators do not only consider the economic benefits but also, the environmental impacts of proposed projects in their project approvals. In other words, the Canadian courts are known for holding environmental regulators accountable to their environmental protection responsibilities. This is well illustrated in ***Castle-Crown Wilderness Coalition v Alberta (Director of Regulatory Assurance Division, Alberta Environment)***,[84] wherein the Alberta Environment decided to forego requiring a comprehensive EIA for a multi-phase recreational development in the West Castle Valley in Alberta's southern Rockies. West Castle Valley is an ecologically important component of the larger Castle Crown region which is the most biologically diverse region in Alberta, but which is also increasingly threatened by the cumulative impact of numerous activities, including industrial and recreational developments.[85] In

---

[83] Collins and Lorne, 310–11. See M Thibodeau, Grassy Narrows v Ontario: A Legal Battle Against Logging Lost, The Political Fight Continues, 15 September 2015 <https://canliiconnects.org/en/commentaries/38552#:~:text=In%20Grassy%20Narrows%20Fir st%20Nati on,%2C%20s%202%2C%20Treaty%20No.> accessed 24 July 2021.

[84] *Castle-Crown Wilderness Coalition v Alberta (Director of Regulatory Assurance Division, Alberta Environment)* [2005] ABCA 283, paras. 1-3 (Can.).

[85] Can Environmental Law Really Help? An Update from the Trenches <https://www.thefreelibrary.com/Can+e

its judgment, the Canadian Court of Queen's Bench held that Alberta Environment's decision to forego requiring an EIA, as a predicate to one such approval, was patently unreasonable.[86] The court stated further, that the public decision maker must take all the appropriate steps to confirm whether the environmental effects of projects would be controllable according to the requirements of the law[87].

Also, a Canadian Federal Court decided in ***Pembina Institute for Appropriate Development v Canada (Attorney General)***,[88] that a federal-provincial environmental assessment panel, which approved the Imperial Oil 'Kearl Oil Sands Mining Project' without conducting an EIA of the project, in violation of the Canadian Environmental Assessment Act, should give a justification for its decision that increased greenhouse gas emissions from Imperial Oil's 'Kearl Oil Sands Mining Project' would not lead to adverse environmental impacts as a result of intensity-based mitigation procedures.[89] Further, in ***R v Quebec-Hydro***,[90] concerning the prosecution of Hydro-Québec for dumping PCBs into a river (the St. Maurice River), the Court stated that legal measures for protecting the environment is a matter of "super-ordinate public importance" [91] that has imposed

---

nvironmental+law+really+help%3F+An+update+from+the+trenches.-a0160104871> accessed 2 December 2021.

[86] *Ibid*.

[87] S Roy, "Fiduciary Duties under the Trusteeship Theory: The Contribution of Canadian Case Law in Judicial Review of Environmental Matters," *Vermont Law Review* 43 (2019): 514.

[88] *Pembina Institute for Appropriate Development v Canada (Attorney General)* [2008] FC 302.

[89] *Ibid*.

[90] *R v Hydro-Québec* [1997] 3 S.C.R. 213.

[91] H Wruck, "The Time Has Arrived for a Canadian Public Trust Doctrine Based upon the Unwritten Constitution," *George Washington Journal of Energy and Environmental Law* 10, no. 2 (2020): 72.

on the courts the duty of increasingly determining the degree to which legislative powers may be used to that end.[92]

3. Recognition of Public Interest Litigation in Environmental Matters in Its Interpretations and Decisions

The Canadian courts, through its interpretative creativity, is known for protecting Canada's environment by exploring PIL in environmental matters through the relaxation of locus standi and representative capacity procedural rules. This is well illustrated in ***Friends of the Oldman River Society v Canada (Minister of Transport)***,[93] where the Canadian court granted standing to an environmental Non-Governmental Organization (NGO) called Friends of the Oldman River Society (FORS) that sought to oblige the federal government to conduct an EIA under the *Environmental Assessment and Review Process Guidelines Order* (*EARPGO*), of a dam built on the Oldman River by the Government of Alberta. The project affected many federal interests including navigable waters, fisheries, and Indians and Indian Lands. In March 1990, the Federal Court of Appeal ruled in favour of the FORS and revoked the construction license for the project, since no EIA study had been conducted. On appeal, the SCC held that the *EARPGO* was obligatory in nature and applies to the project in issue[94].

Further, in ***Canadian Wildlife Federation, Inc. v Canada (Minister of the Environment)***,[95] the Federal Court of Canada (Trial Division) on April 10 1989, allowed a PIL and cancelled the license of the Saskatchewan Water Corporation to construct the

---

[92] *Ibid*.

[93] *Friends of the Oldman River Society v Canada (Minister of Transport)* [1992] 1 S.C.R. 3 at 63-64.

[94] B.H. Powell, *Environmental Assessment & the Canadian Constitution: Substitution and Equivalency* (Canada: Environmental Law Centre: Alberta, 2015), 14–15.

[95] *Canadian Wildlife Federation, Inc. v Canada (Minister of the Environment)* [1989] 3 F.C. 309 (T.D. Can.).

Rafferty and Alameda dams across rivers in Southern Saskatchewan. The federal government had given the license without applying the provisions of *EARPGO*. The court directed the federal government to comply with *EARPGO* before giving a new license. This decision was upheld on appeal[96] by the Federal Court of Appeal. Construction of the Rafferty dam was therefore suspended. The federal Ministry of the Environment then held public meetings as mandated by *EARPGO* and, in August 1989, granted a new license to permit building of the Rafferty dam to continue[97].

D. Comparative Review of Sustainable Environmental Management in Nigeria, India and Canada

This section of the paper compares the Nigerian, Indian and Canadian constitutional provisions on environmental protection and the judicial interpretation of the constitutional provisions on environmental protection.

1) Nigerian, Indian and Canadian Constitutional Provisions on Environmental Protection Compared

As previously emphasized in the earlier sections of this paper, the Nigerian, Indian and Canadian constitutions did not provide for environmental protection. However, in comparing Nigeria with the Indian and Canadian jurisdictions on constitutional provisions on environmental protection, it is visible through the pages of this work that the CFRN did not place much emphasis on the right of Nigerians to a healthy environment. This is because section 20 of the CFRN which obliges the Nigerian government to protect the environment

[96] *Ibid*.

[97] R Cotton and J S Zimmer, "Canadian Environmental Law: An Overview," *Canada-United State Law Journal* 18 (1992): 76.

falls under the FODPSP as contained in Chapter II of the CFRN which is made non-justiciable by virtue of the provisions of section 6(6)(c) of the same CFRN,[98] and thus, lacks judicial enforcement in any court in Nigeria[99].

More so, supposing section 6(6)(c) of the CFRN 1999 does not exist at all, section 20 does not also explicitly provide for environmental protection rights from where Nigerians could have derived and asserted their rights against environmental damages except that environmental rights could be inferred from section 20 of Chapter II which provides for environmental objectives[100]. More so, section 20 of the CFRN which places a duty on the state to protect the Nigerian environment did not include the responsibilities of the citizens to do same, even though section 6(6)(c) of the Constitution renders it futile.[101] As seen in sections 2.1, 2.2.1 and 5.1 of this paper, the non-justiciability of section 20 of the CFRN and its interpretation as such by the Nigerian courts has hindered the enforcement of environmental protection rights in Nigeria.

Similar to the position in Nigeria, in India, the only inference of environmental protection rights is contained in Article 48A[102] of the constitution of India (CoI) and is unenforceable in court. As noted earlier in sections 3.1 and 3.2.1 of this paper, Article 48A provision of the CoI that requires the State to protect the environment and Article 51A(g) provision that imposed a fundamental duty on the citizens to

---

98 CFRN, s. 6(6)(c).

99 Ugde and Umo, "Enforcement Provisions of Major Environmental Law Regimes in Nigeria"; Olarewaju, "Reappraising the Nigerian Constitution for Environmental Management."

100 Emejuru Emenike, M.A. Ebikake Nwanyanwu, and Chukwuma Ajie, "Right To A Healthy Environment In Nigeria And Other Jurisdictions: A Legal Assessment," *Global Journal of Politics and Law Research* 8, no. 3 (2020): 18.

101 *Ibid*.

102 Onyeka K Anaebo and Eghosa O Ekhator, "Realising Substantive Rights to Healthy Environment in Nigeria: A Case for Constitutionalisation," *Environmental Law Review* 17, no. 2 (2015): 24.

protect the environment are both DPSP[103]. Part IV of the CoI which contains Article 48(A) and Article 51A(g) opens by declaring itself unenforceable by the court. It states in Article 37 thus, "the provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws"[104].

Furthermore, Articles 48A and 51A(g) of the CoI which made the protection of the environment a fundamental duty not only of the state, but also of every legal person, is all-inclusive in making sure that both the state and citizens take part in the protection of the environment as against the provision of section 20 of the CFRN which only empowers the state to protect the environment[105]. However, as seen in sections 3.1 and 3.2.1 of this paper, the India courts have been able to recognize environmental rights in India through creative and innovative interpretation of Article 48A and 51A(g) of the CoI.

In contrast to the Nigerian and Indian constitutions, which provides for environmental protection as one of the FODPSP and consequently made environmental rights unenforceable, the Constitution of Canadian (CoC), including the CCRF, did not make provisions for environmental protection at all, not even as a FODPSP[106]. Although, some scholars have advocated that the words of section 7 of the CCRF referring to "life, liberty, and security of the person" are adequately expansive to include the right to a healthy

[103] Boyle and Anderson, *Human Rights Approaches to Environmental Protection*.

[104] Indian Constitution of 1949, Art. 37; Odong, "Realizing and Enforcing the Constitutional Right to a Healthy Environment in the Niger-Delta : Lessons from India," 41.

[105] Emenike, Nwanyanwu, and Ajie, "Right To A Healthy Environment In Nigeria And Other Jurisdictions: A Legal Assessment," 18–19.

[106] D Boyd, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment* (UBD Press, 2012), 6.

environment[107]. For instance, Dianne Saxe has noted that "If a healthy environment is a necessary precondition for human life and bodily integrity, then the human right to life and bodily integrity must entail a right to a healthy environment."[108] It is however, noteworthy, that despite the absence of environmental protection provisions in the Canadian Constitution, the Canadian courts, as seen in sections 4.1 and 4.2 of this paper has recognized the right to a healthy environment of Canadians through creative and innovative constitutional interpretation.

2) *Nigerian, Indian and Canadian Judicial Interpretation of the Constitutional Provisions on Environmental Protection Compared*

This section of the paper compares the Nigerian, Indian and Canadian judicial interpretation of the constitutional provisions on environmental protection with regards to how the courts interprets the constitution to balance economic development with environmental protection, enforce non-justiciable constitutional environmental right through the recognition of environmental right as inherent components of other existing fundamental human rights, and exploring public interest litigation through the relaxation of locus standi and representative capacity procedural rules.

1. Striking a Balance between Economic Development and Environmental Protection

As earlier noted in section 2.2.2 of this paper, the Nigerian courts favour or prioritize the State's economic sustenance and development (which generally depends on oil revenues) over

[107] Collins, "Safeguarding the Longue Durée: Environmental Rights in the Canadian Constitution," 530.

[108] Saxe, *Environmental Offences: Corporate Responsibility and Executive Liability*; Collins, "Safeguarding the Longue Durée: Environmental Rights in the Canadian Constitution."

environmental protection, particularly in the NDR[109]. This is largely because the Nigerian economy is reliant on the revenue from the sale of crude oil[110]. This is well depicted in the Nigerian case of ***Allan Irou v Shell BP supra***,[111] were the judge declined to grant an injunction in favour of the plaintiff whose land, fish pond and creek had been polluted by the operations of the defendant because in the judge's opinion, nothing should be done to disrupt the operation of trade (that is, mineral oil), which is the mainstay of the Nigerian economy. As earlier noted in section 2.2.2 of this work, many other cases, although not so obviously decided, have inclined to follow the unwritten rule that economic considerations should be prioritized over environmental protection and Nigerian judges have frequently displayed their unwillingness to grant injunctions against oil companies even where oil operations have been exposed to have severely impacted host communities and their environment[112].

Contrary to the Nigerian situation, the Indian and Canadian judiciary have interpreted their constitutional provisions to strike a balance between competing economic developmental needs and

---

[109] Eaton, "The Nigerian Tragedy, Environmental Regulation of Transnational Corporations, and the Human Right to a Healthy Environment," 291; Rhuks, "The Judicial Recognition and Enforcement of the Right to Environment: Differing Perspectives from Nigeria and India," 207.

[110] Gail M. Gerhart and Jedrzej Georg Frynas, "Oil in Nigeria: Conflict and Litigation between Oil Companies and Village Communities," *Foreign Affairs* 80, no. 2 (2001): 34–36, https://doi.org/10.2307/20050128; O Adejonwo-Osho, "The Evolution of Human Rights Approaches to Environmental Protection in Nigeria," n.d.

[111] *Allan Irou v Shell BP*

[112] Duruike, "Climate Change Litigation and Corporate Accountability in Nigeria: The Pathway to Climate Justice?," 43; Ijaiya, "Environmental Rights in Nigeria and India," 153–60; Ekpu, "Environmental Impact of Oil on Water: A Comparative Overview of Law and Policy in the United States and Nigeria"; Rhuks, "The Judicial Recognition and Enforcement of the Right to Environment: Differing Perspectives from Nigeria and India," 435.

environmental protection by balancing them against public interest policies[113]. For instance, in the Indian case of ***Rural Litigation & Entitlement Kendra & Ors v State of Uttar Pradesh (U.P) & Ors***,[114] the SCI struck a balance between environmental protection and economic development. In this case, the plaintiff alleged that the defendant (the State of Uttar Pradesh) allowed indiscriminate and illegal operation of lime-stone quarries in the Mussoorie Hill range of the Himalayas, which led to environmental degradation. The SCI, recognising the right to live in a healthy environment, ruled that economic growth through mining cannot be attained at the cost of environmental destruction, and thus, ordered that mining in the Mussoorie Hill range of the Himalayas should cease[115].

Further, the Canadian court struck a balance between economic development and environmental protection in ***Castle-Crown Wilderness Coalition v Alberta (Director of Regulatory Assurance Division, Alberta Environment)***,[116] where the court emphasized that the public decision maker must take all the appropriate steps to confirm whether the environmental effects of projects would be controllable according to the requirements of the

[113] Anaebo and Ekhator, "Realising Substantive Rights to Healthy Environment in Nigeria: A Case for Constitutionalisation," 22.

[114] *Rural Litigation and Entitlement Kendra & Ors v State of Uttar Pradesh (U.P) & Ors* [1985] AIR 652, SCR (3) 169.

[115] *Rural Litigation and Entitlement Kendra & Ors v State of Uttar Pradesh (U.P) & Ors* <https://leap.unep.org/ countries/in/national-case-law/rural-litigation-and-entitlement-kendra-ors-v-state-u-p-ors>; See Adejonwo-Osho, "The Evolution of Human Rights Approaches to Environmental Protection in Nigeria." See also, the following Indian cases of *Kinkri Devi & Anor v State of Himachal Pradesh & Ors supra; People United for Better Living in Calcutta v State of West Bangel supra;* and *Vellore Citizens Welfare Forum v Union of India supra*, discussed in section 4.2.2 of this work, where the Indian courts decided that there should be a balance between economic development and environmental protection

[116] *Castle-Crown Wilderness Coal v Alberta (Director of Regulatory Assurance Division)*

law[117]. Also, a Canadian Federal Court decided in ***Pembina Institute for Appropriate Development v Canada (Attorney General)***,[118] that a federal-provincial environmental assessment panel should give a reason for its decision that increased greenhouse gas emissions from Imperial Oil's 'Kearl Oil Sands Project' would not cause severe environmental impacts as a result of intensity-based mitigation procedures.

In the Indian and Canadian cases examined here, it is obvious that the Indian and Canadian courts strucked a balance between economic development and environmental protection. This is in contrast to the Nigerian position where because oil is the country's main stay, environmental protection consideration is subsumed under economic benefits[119]. The oil and gas companies in Nigeria have attained a virtually unchallenged standing as they commit all manners of atrocities against the environment and the people. Nevertheless, a balance could be struck as India and Canada has shown; it is possible that economic developmental considerations will not overshadow and consume environmental protection considerations[120].

2. Enforcing Non-Justiciable Constitutional Environmental Rights through the Recognition of Environmental Rights as an Inherent Component of Other Recognized Fundamental Human Rights

The SCN in ***NNPC v Fawehinmi*** [121] has ruled that the provisions of Chapter II of the CFRN (which contains section 20 provision on environmental objectives) are completely unenforceable under any guise whatsoever and remain mere

[117] Roy, "Fiduciary Duties under the Trusteeship Theory: The Contribution of Canadian Case Law in Judicial Review of Environmental Matters," 514.

[118] *Pembina Institute for Appropriate Development v Canada (Attorney General)*

[119] Odong, "Realizing and Enforcing the Constitutional Right to a Healthy Environment in the Niger-Delta : Lessons from India," 48.

[120] Odong, 49.

[121] *NNPC v Fawehinmi*

governmental aspirations. In this sense, section 20 of the CFRN which clearly obligates the Nigerian to "Protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria" cannot be considered as a constitutional conferment of environmental rights in Nigeria[122]. Also, in ***A.G. Ondo State v A.G. Federation***,[123] the SCN held that the provision of section 6(6)(c) of the CFRN 1999 makes rights (including the right of Nigerians to a protected healthy environment) under the FODPSP non-justiciable except as otherwise provided in the CFRN 1999.[124] However, the Nigerian court has specifically in the case of ***Jonah Gbemre v SPDC***[125] held that fundamental right to life includes the right to a healthy environment. Though, it must be noted that the case of ***Jonah Gbemre v SPDC*** is an exception to the general attitude of the Nigerian courts and that the decision of the court in this case was never enforced.

India and Canada provides the most practical example of how the judiciary can promote environmental protection through a broad interpretation of existing human right norms guaranteed under the constitution to include environmental rights[126]. The Indian constitution has similar provisions to the Nigerian constitution on the environment. Like its Nigerian counterpart, Indian environmental protection provisions is part of the DPSP-policies to guide governmental action; and like its Nigerian counterpart, the Indian constitution declares that the section on DPSP are not justiciable-whether or not the government or any of

---

[122] Boyd, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment*, 3; Abba, "Constitutionalising Environmental Rights for Sustainable Environmental Protection in Nigeria's Niger Delta Region," 271.

[123] *A.G. Ondo State v A.G. Federation*

[124] *Ibid*; See also, *Archbishop Olubunmi Okogie & Ors v The Attorney General of Lagos State*.

[125] *Jonah Gbemre v SPDC.*

[126] Uchenna Jerome, "Enhancing the Implementation of Sustainable Development in Nigeria through Legal Strategies."

its agencies is acting in accordance with the DPSP cannot be the subject of any litigation in the Indian courts. Article 48A which is under the DPSP declares that "the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country."[127] While Article 51A(g) declares that Every citizen of India also has a fundamental duty "to protect and improve the natural environment including forest, lakes, rivers and wildlife, and to have compassion for living creatures"[128]. However, Part IV of the CoI which contains both Articles 48A and 51A(g) opens by declaring itself unenforceable by the court in Article 37 thus, "the provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws".[129]

In contrast to the Nigerian and Indian constitutions, which provides for environmental protection as one of the FODPSP and consequently made environmental rights unenforceable, the Canadian Constitution, including the CCRF, did not make provisions for environmental protection at all, not even as a FODPSP[130].

However, the Indian and Canadian courts have been creative in their interpretation of the constitution by adopting a harmonious interpretation approach that seeks to establish a harmony between the other sections of the constitution, especially the section on fundamental human rights with the provisions of FODPSP. In the absence of express constitutional provisions for environmental protection, the Indian and Canadian courts have adopted the

[127] Indian Constitution of 1949, Art. 48(A).

[128] Odong, "Realizing and Enforcing the Constitutional Right to a Healthy Environment in the Niger-Delta : Lessons from India," 43.

[129] Indian Constitution of 1949, Art. 37; N Odong, *ibid*, p.41.

[130] Boyd, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment*, 6.

approach of attaching environmental rights as inherent components of other recognized fundamental rights to promote environmental protection[131]. For instance, the Indian and Canadian courts have expanded the right to life to include the right to a clean and healthy environment. This is illustrated in the Indian case of ***Virender Gaur v State of Haryana***,[132] where the SCI held that the "Enjoyment of life and its attainment including the right to life with human dignity embraces within its ambit the protection and preservation of the environment, ecological balance, freedom from pollution of air and water, and sanitation, without which life cannot be enjoyed. The court noted further that any contract or action which would cause environmental pollution should be considered as amounting to violation of Article 21 right to life provision" of the CoI[133].

The Indian High Court also held in ***V. Lakshmipathy v State of Karnataka***[134] that "Entitlement to clean environment is one of the recognized basic human right as the right to life inherent in Article 21 of the CoI is possible only in an environment of quality. The court noted further that where on account of human agencies, the quality of air and quality of environment are threatened or affected, the Court would not hesitate to use its innovative power to enforce and safeguard the right to life to promote public interest"[135]. More so, in ***Attakoya Thangal v Union of India***,[136] the Indian court held that the right to sweet water and the right to free air are attributes of the right to life, for these are the basic elements

---

131 Uchenna Jerome, "Enhancing the Implementation of Sustainable Development in Nigeria through Legal Strategies."

132 *Virender Gaur v State of Haryana*

133 Odong, "Realizing and Enforcing the Constitutional Right to a Healthy Environment in the Niger-Delta : Lessons from India," 43.

134 *V. Lakshmipathy v State of Karnataka*.

135 Odong, "Realizing and Enforcing the Constitutional Right to a Healthy Environment in the Niger-Delta : Lessons from India," 42.

136 *Attakoya Thangal v Union of India* [1990] KLT 580.

which sustain life itself. Further, in ***Mathur v Union of India***,[137] the SCI used the right to life as a basis for emphasizing the need to take drastic steps to combat air and water pollution.[138]

Similar to the Indian situation, the Canadian courts are known for recognizing environmental rights as an inherent component of other recognized fundamental human rights. The Canadian courts have interpreted section 7 of the CCRF which provides that "Everyone has the right to life, liberty and security of the person (RLLS*P*) and the right not to be deprived thereof except in accordance with the principles of fundamental justice" to include an inherent constitutional right to a healthy environment. This is well illustrated in ***Ada Lockridge and Ron Plain v Ontario (Director, Ministry of the Environment)***,[139] wherein the plaintiffs, who are members of Aamjiwnaang First Nation in Sarnia, Ontario, instituted a legal action in the Divisional Court[140] alleging that the discharge of increased air emissions from all the industrial activity around their community gives rise to pollution levels that threaten the applicants' health and that of their families, thus violating their

[137] *Mathur v Union of India* [1996] 1 SCC 119.

[138] See the Indian cases of *Subhash Kumar v State of Bihar* and *T. Damodhar Rao v Municipal Corporation, Hyderabad* discussed in section 3.2.1 of this work, where the Indian courts enforced non-justiciable constitutional principles by recognizing environmental rights as an inherent component of the already existing fundamental human right to life.

[139] *Lockridge v Ontario (Director, Ministry of the Environment)* [2012] O.J. No. 3016, 68 C.E.L.R. (3d) 27, 350 D.L.R. (4th) 720 (Ont. Div. Ct.).

[140] Defending the Rights of Chemical Valley Residents – Charter Challenge: *Lockridge and Plain v Director, Ministry of the Environment et al.* <https://ecojustice.ca/case/defending-the-rights-of-chemical-valley-residents-charter-challenge/> *accessed 29 September 2021; Update: Lawsuit over Air Pollution in Chemical Valley Discontinued* (n 76); Mclean, "Indigenous Activist Taking Province to Court over Air Pollution Regulations"; Collins, "Safeguarding the Longue Durée: Environmental Rights in the Canadian Constitution," 531–33.

section 7 RLLS*P*[141] and got the Canadian government to take positive steps to control pollution in the plaintiff's communities[142]. Also, in ***Grassy Narrows First Nation v Ontario (Minister of Natural Resources)***,[143] the plaintiffs among other things argued that the permission of logging without conducting an EIA will discharge additional mercury into their already contaminated environment and would violate their RLLS*P* provisions of section 7 of the CCRF by increasing their risk of death and serious illness. Due to this legal action, the Government of Ontario made a commitment to remedy the contamination in Grassy Narrows by committing more than $85 million to remediate the Wabigoon-English River system[144].

What the Nigerian Judiciary can learn from the Indian and Canadian Judiciary is the broad interpretation of existing human right norms guaranteed under the constitution to include environmental rights. The issue of enforcing environmental rights in Nigeria could benefit from this judicial innovation and creativity[145].

---

[141] Collins, "Safeguarding the Longue Durée: Environmental Rights in the Canadian Constitution"; Morden, "Lawsuit Claims Ontario Failed to Keep Promise to Review Regulations."

[142] Defending the Rights of Chemical Valley Residents; *Update: Lawsuit over Air Pollution in Chemical Valley Discontinued*; See also the case of *Kelly v Alberta (Energy & Utilities Board)* [2008] ABCA 52; See Nanda, "Heavy Oil Processing in Peace River, Alberta: A Case Study on the Scope of Section 7 of the Charter in the Environmental Realm," 126; Wortsman, "'GREENING' THE CHARTER: SECTION 7 AND THE RIGHT TO A HEALTHY ENVIRONMENT.: EBSCOhost," 254.

[143] Grassy Narrows First Nation v Ontario (Minister of Natural Resources) [2014] SCC 48 (CanLII), [2014] 2 SCR 447.

[144] Collins and Lorne, "Approach to Constitutional Principles and Environmental Discretion in Canada." Environmental Commissioner of Ontario; See M Thibodeau

[145] Odong, "Realizing and Enforcing the Constitutional Right to a Healthy Environment in the Niger-Delta : Lessons from India," 42.

3. Recognition of Public Interest Litigation (PIL) in Environmental Matters through the Relaxation of Locus Standi and Representative Capacity Procedural Rules

PIL which has been described as litigation in which 'a High Court allows volunteers like lawyers, activists, NGOs or citizen petitioners to bring a case on behalf of some victimized group without sufficient means or access to legal services'[146] have emerged as the most potent tool in the hands of Indian judiciary[147]. The dilution of the strict application of the doctrine of locus standi by the Indian courts has enabled PIL in environmental matters in the Indian legal system. The Indian court has accepted litigations instituted by public spirited individuals and organizations for many cases of environmental protection[148]. In ***Vellore Citizens Welfare Forum v Union of India***[149] supra, the SCI granted standing to a public spirited social organization who filed PIL for protecting the environment and health of residents of Vellore to sue tanneries and other industries for water pollution.[150] Also, in ***Indian Council for Enviro-Legal Action v Union of India***,[151] the SCI allowed a PIL and cautioned the industries releasing dangerous Oleum and H acid and ruled that such pollution is a breach of the right to

---

[146] O Oyewo, "Locus Standi and Administrative Law in Nigeria: Need for Clarity of Approach by the Courts," *International Journal of Scientific Research and Innovative Technology* 3, no. 1 (2016): 92–93; Raheem Kolawole Salman and F.J Oniekoro, "DEATH OF LOCUS STANDI AND THE REBIRTH OF PUBLIC INTEREST LITIGATION IN THE ENFORCEMENT OF HUMAN RIGHTS IN NIGERIA: FUNDAMENTAL RIGHTS (ENFORCEMENT PROCEDURE) RULES 2009 IN FOCUS," *IIUM Law Journal* 23, no. 1 (2015): 123, https://doi.org/10.31436/iiumlj.v23i1.127.

[147] R Sharma, "Green Courts in India: Strengthening Environmental Governance?," *Law, Environment and Development Journal*4 4 (2008): 5.

[148] Odong, "Realizing and Enforcing the Constitutional Right to a Healthy Environment in the Niger-Delta : Lessons from India," 45.

[149] *Vellore Citizens Welfare Forum v Union of India*

[150] *Ibid*.

[151] *Indian Council for Enviro-Legal Action v Union of India* [1996] AIR SC 1446.

wholesome environment and eventually the right to life. In the two Indian cases cited, the Indian courts relaxed the strict rules of locus standi, allowed and encouraged public spirited groups to institute an action on behalf of poor victims, thus, using the tool of PIL efficiently to protect the environment[152].

The Canadian courts are also known for protecting Canada's environment by exploring PIL through the relaxation of locus standi and representative capacity procedural rules. In ***Friends of the Oldman River Society v Canada (Minister of Transport)***,[153] the Canadian court allowed a PIL by granting standing to an environmental organization called Friends of the Oldman River that sought to compel the federal government to carry out an EIA under the *Environmental Assessment and Review Process Guidelines Order* (*EARPGO*) of a dam built on the Oldman River by the Government of Alberta. Also, in ***Canadian Wildlife Federation, Inc. v Canada (Minister of the Environment)***,[154] the Federal Court of Canada (Trial Division) allowed a PIL instituted by the Canadian Wildlife Federation, Inc. and revoked the license of the Saskatchewan Water Corporation issued by the Federal Government without applying the provisions of *EARPGO* to construct the Rafferty and Alameda dams across rivers in Southern Saskatchewan.

Conversely, the Nigerian courts do not recognize and allow PIL in environmental matters due to its application of the locus standi rules. This often results in denying claimants and entire communities their right to access justice with consequences that may further jeopardize their environment and means of

[152] Odong, "Realizing and Enforcing the Constitutional Right to a Healthy Environment in the Niger-Delta : Lessons from India," 46.

[153] *Friends of the Oldman River Society v Canada (Minister of Transport)*.

[154] *Canadian Wildlife Federation Inc. v Canada (Minister of the Environment)*

livelihood[155]. An example is the case of ***Oronto Douglas* v *Shell Petroleum Development Company Limited and 5 Ors***[156] supra, where the plaintiff sought to compel the defendants to comply with the mandatory provisions of the EIA Act 1992 by conducting an EIA of their intended project with active public participation among those to be affected by the project before commissioning the project. The court struck out the suit on the basis that the plaintiff had no legal standing to institute and prosecute the action.

In fact, the application of the locus standi rules by the Nigerian courts has resulted in the failure of several environmental cases as the courts have disqualified several plaintiffs from instituting PIL on the basis that they (the plaintiffs) lack the locus standi to initiate and prosecute the matters.[157] However, it is noteworthy that the SCN in 2019 upheld the standing of an NGO (the plaintiff) to institute a public interest environmental action in ***Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation***.[158] Nevertheless, the decision of the court in this case is an exception to the general attitude of the Nigerian courts. The attitude of the Indian and Canadian Judiciary emphasizes the need for Nigerian courts to adopt a liberal approach to the use and application of the locus standi rules in the enforcement of environmental rights. Such a liberal approach will enhance timely and easy litigant access to the judicial enforcement of the right to a protected, clean and healthy environment.

---

[155] Rhuks, "The Judicial Recognition and Enforcement of the Right to Environment: Differing Perspectives from Nigeria and India," 444; Adedeji and Ako, "Hindrances to Effective Legal Response to the Problem of Oil Pollution in the Niger Delta," 420–22.

[156] O*ronto-Douglas v Shell Petroleum development Corporation & 5 Ors*

[157] See the Nigerian cases of *Shell Petroleum Development Company Nigeria Ltd v Chief Otoko & Ors* ; *Chief A. S. Amos & 4 Ors v Shell Petroleum Development Company Nigeria Ltd and Niger Construction Company Ltd*

[158] *Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation*

4. Conclusion

While there are no constitutional provisions on environmental protection in Canada, India, or Nigeria, Indian and Canadian Courts have creatively interpreted their constitutions to protect the environment. Existing barriers to Public Interest Litigation (PIL), such as strict requirements to qualify in terms of the right to litigate (locus standi), need to be overcome by interpreting the constitutional obligation of every Nigerian citizen to "make a positive and useful contribution to the progress, development and welfare of the community in which he resides" as a right to promote environmental protection in their community.

This approach will help Nigerian courts recognize PILs in environmental matters through the relaxation of locus standi requirements and representative capacity procedural rules. Furthermore, Sections 16(1)(a) and 20 of the CFRN provide that "exploitation of natural resources in any form other than for the benefit of the community shall be prevented," and that "the state shall protect and enhance the environment and safeguard the water, air, land, forests and wildlife in Nigeria." Nigerian courts need to interpret these constitutional provisions as creating a public trust whereby the Nigerian government, in accordance with the sovereignty of the people, holds the natural resources in Nigeria as a trust for the Nigerian people, thus subject to a fiduciary duty in the protection and management of those resources. Through this approach, Nigerian courts can apply the "Public Trust Doctrine" and additionally interpret it to include environmental rights in order to prevent unsustainable development and exploitation of Nigeria's natural resources, especially oil and gas resources in Nigeria's NDR, with the ultimate aim of protecting the country's environment.

5. Declaration of Conflicting Interests

The authors state that there is no conflict of interest in the publication of this article.

6. Funding Information

None.

7. Acknowledgment

None.

8. References

Abba, P. U. "Constitutionalising Environmental Rights for Sustainable Environmental Protection in Nigeria's Niger Delta Region." University of Exeter, 2018.

Adedeji, A, and R Ako. "Hindrances to Effective Legal Response to the Problem of Oil Pollution in the Niger Delta." *Unizik Law Journal* 5 (2005): 420–22.

Adejonwo-Osho, O. "The Evolution of Human Rights Approaches to Environmental Protection in Nigeria," n.d.

Amechi, Emelca Polycrap. "Itigating Right to Healthy Environment in Nigeria: An Examination of the Impacts of the Fundamental Rights (Enforcement Procedure) Rules 2009, in Ensuring Access to Justice for Victims of Environmental Degradation." *Law, Environment and Development Journal* 6, no. 3 (2010).

Anaebo, Onyeka K, and Eghosa O Ekhator. "Realising Substantive Rights to Healthy Environment in Nigeria: A Case for Constitutionalisation." *Environmental Law Review* 17, no. 2 (2015).

Atsegbua, L, V Akpotaire, and F Dimowo. *Environmental Law in Nigeria: Theory and Practice*. 2nd ed. Benin City: Ambik Press, 2010.

A.G. Ondo State v A.G. Federation [2002] 9NWLR (pt 772).

Allan Irou v Shell BP (Unreported Suit No. W/89/91 Warri HC/26/11/73).

Archbishop Olubunmi Okogie & Ors v The Attorney General of Lagos State [1981] 2NCLR (pt 337) 350.

Archbishop Olubunmi Okogie & Ors v The Attorney General of Lagos State (n 15).

Attakoya Thangal v Union of India [1990] KLT 580.

Babalola, A. "The Right to a Clean Environment in Nigeria: A Fundamental Right?" *Hastings Envt'l L.J* 26, no. 1 (2020).

Bombay Dyeing & Manufacturing Company Ltd v Bombay Environmental Action Group & Ors (n 53).

Bombay Dyeing & Manufacturing Company Ltd. v Bombay Environmental Action Group & Ors [2006] AIR SC 1489.

Boyd, D. R. *The Importance of Constitutional Recognition of the Right to a Healthy Environment*. Paper 1: David Susiki Foundantion, 2013.

———. *The Status of Constitutional Protection for the Environment in Other Nations*. Paper Four: David Suziki Foundation, 2013.

Boyd, D. *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment*. UBD Press, 2012.

Boyle, A, and M Anderson. *Human Rights Approaches to Environmental Protection*. Claredon Press, 1996.

Can Environmental Law Really Help? An Update from the Trenches <https://www.thefreelibrary.com/Can+environmental+law+really+help%3F+An+update+from+the+trenches.-a0160104871> accessed 2 December 2021.

Canada's Constitution of 1867 with Amendments through 2011, ss 96-100 (hereinafter, CoC)

Canadian Wildlife Federation, Inc. v Canada (Minister of the Environment) [1989] 3 F.C. 309 (T.D. Can.).

Castle-Crown Wilderness Coalition v Alberta (Director of Regulatory Assurance Division, Alberta Environment) [2005]

Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation [2019]

Chief A. S. Amos & 4 Ors v Shell Petroleum Development Company Nigeria Ltd & Niger Construction Company Ltd [1974] 4 ECSLR 486

Collins, L., and S. Lorne. "Approach to Constitutional Principles and

Environmental Discretion in Canada." *U.B.C L. Rev.* 52, no. 1 (2019).

Collins, Lynda M. "Safeguarding the Longue Durée: Environmental Rights in the Canadian Constitution." *The Supreme Court Law Review: Osgoode's Annual Constitutional Cases Conference* 71, no. 1 (2015). https://doi.org/10.60082/2563-8505.1322.

Constitution Act of Canada 1982 s. 52 (1)

Constitution of the Federal Republic of Nigeria 1999, s 6(1) & (2) (hereinafter, CFRN).

Cotton, R, and J S Zimmer. "Canadian Environmental Law: An Overview." *Canada-United State Law Journal* 18 (1992).

Dam, Shubhankar, and Vivek Tewary. "Polluting Environment, Polluting Constitution: Is a 'Polluted' Constitution Worse than a Polluted Environment?" *Journal of Environmental Law*, 2005. https://doi.org/10.1093/jel/eqi029.

Defending the Rights of Chemical Valley Residents – Charter Challenge: *Lockridge and Plain v Director, Ministry of the Environment et al.* <https://ecojustice.ca/case/defending-the-rights-of-chemical-valley-residents-charter-challenge/> *accessed 29 September 2021; Update: Lawsuit over Air Pollution in Chemical Valley Discontinued,* December 15 2017 <https://ecojustice.ca/pressrelease/lawsuit-air-pollution-chemical-valley-disco ntinued/> *accessed 29 September 2021*

Defending the Rights of Chemical Valley Residents – Charter Challenge: *Lockridge and Plain v Director, Ministry of the Environment et al.* <https://ecojustice.ca/case/defending-the-rights-of-chemical-valley-residents-charter-challenge/> *accessed 29 September 2021; Update: Lawsuit over Air Pollution in Chemical Valley Discontinued* (n 76)

Defending the Rights of Chemical Valley Residents (n 134); *Update: Lawsuit over Air Pollution in Chemical Valley Discontinued* (n 134); See also the case of *Kelly v Alberta (Energy & Utilities Board)* [2008] ABCA 52.

Defending the Rights of Chemical Valley Residents (n 137); *Update: Lawsuit over Air Pollution in Chemical Valley Discontinued* (n 76);

See also the case of *Kelly v Alberta (Energy & Utilities Board)* [2008] ABCA 52.

Duruike, P. "Climate Change Litigation and Corporate Accountability in Nigeria: The Pathway to Climate Justice?" The University of British Columbia, 2018.

Eaton, Joshua P. "The Nigerian Tragedy, Environmental Regulation of Transnational Corporations, and the Human Right to a Healthy Environment." In *International Crimes*, 2017. https://doi.org/10.4324/9781315092591-11.

Ebeku, Kaniye S.A. "Locus Standi in Environmental Nuisance Actions: A Perspective from the Commonwealth." *Environmental Law and Management*, 2005.

Ebeku, Kaniye S A. "The Right to a Satisfactory Environment and the African Commission." *African Human Rights Law Journal* 3 (2003).

Ekhator, Eghosa O. "IMPROVING ACCESS TO ENVIRONMENTAL JUSTICE UNDER THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS: THE ROLES OF NGOS IN NIGERIA." *African Journal of International and Comparative Law*, 2014. https://doi.org/10.3366/ajicl.2014.0080.

Ekpu, A. "Environmental Impact of Oil on Water: A Comparative Overview of Law and Policy in the United States and Nigeria." *Denver Journal of International Law* 24, no. 1 (1995).

Emenike, Emejuru, M.A. Ebikake Nwanyanwu, and Chukwuma Ajie. "Right To A Healthy Environment In Nigeria And Other Jurisdictions: A Legal Assessment." *Global Journal of Politics and Law Research* 8, no. 3 (2020).

Environmental Commissioner of Ontario, 'Good Choices, Bad Choices: Environmental Rights and Environmental Protection in Ontario' (24 October 2017) <docs.assets.eco.on.ca/reports/environmental-protectio n/2017/Good-Choices-Bad-Choices.pdf> accessed 24 June 2020

Federal Countries: Canada, Forum of Federations-the Global Network on Federalism and Developed Governance <https://forumfed.org/countries/canada/> accessed 27 April 2022.

Federal Countries: India, Forum of Federations-the Global Network on Federalism and Developed Governance <https://forumfed.org/countries/india/> accessed 27 April 2022.

Federal Countries: Nigeria, Forum of Federations-the Global Network on Federalism and Developed Governance <https://forumfed.org/countries/nigeria/> accessed 27 April 2022.

Friends of the Oldman River Society v Canada (Minister of Transport) [1992] 1 S.C.R. 3 at 63-64.

Gerhart, Gail M., and Jedrzej Georg Frynas. "Oil in Nigeria: Conflict and Litigation between Oil Companies and Village Communities." *Foreign Affairs* 80, no. 2 (2001). https://doi.org/10.2307/20050128.

Grassy Narrows First Nation v Ontario (Minister of Natural Resources) [2014] SCC 48 (CanLII), [2014] 2 SCR 447.

Hunter v Southam Inc. [1984] 2 SCR 145 at 148.

Ijaiya, H. "Environmental Rights in Nigeria and India." *IJED* 9, no. 2 (2012).

Indian cases of *Kinkri Devi & Anor v State of Himachal Pradesh & Ors supra; People United for Better Living in Calcutta v State of West Bangel supra;* and *Vellore Citizens Welfare Forum v Union of India supra*, discussed in section 4.2.2 of this work, where the Indian courts decided that there should be a balance between economic development and environmental protection.

Indian Constitution of 1949

Indian Council for Enviro-Legal Action v Union of India [1996] AIR SC 1446.

Jonah Gbemre v Shell Petroleum Development Company Nigeria Limited (Suit No.FHC/B/C/153/05 Judgement delivered on 14/11/2005 at Federal High Court, Benin Judicial Division).

Kinkri Devi & Anor v State of Himachal Pradesh & Ors [1988] AIR HP 4, 6 para. 4.

LK Koolwal v State of Rajasthan & Ors [1988] AIR Raj.2.

Lockridge v Ontario (Director, Ministry of the Environment) [2012] O.J. No. 3016, 68 C.E.L.R. (3d) 27, 350 D.L.R. (4th) 720 (Ont. Div. Ct.).

Lockridge v Ontario (Director, Ministry of the Environment) [2012] O.J. No. 3016, 68 C.E.L.R. (3d) 27, 350 D.L.R. (4th) 720 (Ont. Div. Ct.).

M. C. Mehta v Union of India [1996] 4 SCC 351.

Mathur v Union of India [1996] 1 SCC 119.

M Thibodeau, Grassy Narrows v Ontario: A Legal Battle Against Logging Lost, The Political Fight Continues, 15 September 2015 <https://canliiconnects.org/en/commentaries/38552#:~:text=In%20Grassy%20Narrows%20First%20Nation,%2C%20s%202%2C%20Treaty%20No.> accessed 24 July 2021.

M Thibodeau, Grassy Narrows v Ontario: A Legal Battle Against Logging Lost, The Political Fight Continues, 15 September 2015 <https://canliiconnects.org/en/commentaries/38552#:~:text=In%20Grassy%20Narrows%20First%20Nation,%2C%20s%202%2C%20Treaty%20No.> accessed 24 July 2021.

Mclean, J. "Indigenous Activist Taking Province to Court over Air Pollution Regulations." *Toronto Star*, 2017.

Mmadu, R A. "Judicial Attitude to Environmental Litigation and Access to Environmental Justice in Nigeria: Lessons from Kiobel." *Afe Babalola University: Journal of Sustainable Development Law and Policy* 2, no. 1 (2013).

Morden, P. "Lawsuit Claims Ontario Failed to Keep Promise to Review Regulations." *Toronto Star*, 2017.

Nanda, A. "Heavy Oil Processing in Peace River, Alberta: A Case Study on the Scope of Section 7 of the Charter in the Environmental Realm." *Envtl L & Prac.* 27 (2015).

NNPC v Fawehinmi [1998] 7NWLR (pt 559).

Odong, Nsikan-abasi. "Realizing and Enforcing the Constitutional Right to a Healthy Environment in the Niger-Delta : Lessons from India" 7, no. 5 (2017): 35–54.

Olarewaju, F. "Reappraising the Nigerian Constitution for Environmental Management." *AAU Law Journal* 1, no. 1 (2002).

Onifade, T T. "Legal and Institutional Framework for Promoting Environmental Sustainability in Nigeria through Renewable Energy: Possible Lessons from Brazil, China and India." University of Ibadan, 2014.

Oronto-Douglas v Shell Petroleum Development Company & 5 Ors (Unreported Suit No. FHC/CS? 573/96. Delivered on 17th February 1997).

O*ronto-Douglas v Shell Petroleum development Corporation & 5 Ors* (n 24).

Oyewo, O. "Locus Standi and Administrative Law in Nigeria: Need for Clarity of Approach by the Courts." *International Journal of Scientific Research and Innovative Technology* 3, no. 1 (2016).

*Pembina Institute for Appropriate Development v Canada (Attorney General) [*2008] FC 302.

People United for Better Living in Calcutta v State of West Bangel [1993] AIR Cal. pp.92-93.

Powell, B.H. *Environmental Assessment & the Canadian Constitution: Substitution and Equivalency*. Canada: Environmental Law Centre: Alberta, 2015.

Rhuks, T. "The Judicial Recognition and Enforcement of the Right to Environment: Differing Perspectives from Nigeria and India." *NUJL L.Rev* 3 (2010).

Roy, S. "Fiduciary Duties under the Trusteeship Theory: The Contribution of Canadian Case Law in Judicial Review of Environmental Matters." *Vermont Law Review* 43 (2019).

R v Hydro-Québec [1997] 3 S.C.R. 213.

Rural Litigation and Entitlement Kendra & Ors v State of Uttar Pradesh (U.P) & Ors [1985] AIR 652, SCR (3) 169.

Rural Litigation and Entitlement Kendra & Ors v State of Uttar Pradesh (U.P) & Ors <https://leap.unep.org/ countries/in/national-case-law/rural-litigation-and-entitlement-kendra-ors-v-state-u-p-ors>;

Rural Litigation and Entitlement Kendra & Ors v State of Uttar Pradesh (U.P) & Ors [1985] AIR 652, SCR (3) 169.

Rural Litigation and Entitlement Kendra & Ors v State of Uttar Pradesh (U.P) & Ors <https://leap.unep.org/ countries/in/national-case-law/rural-litigation-and-entitlement-kendra-ors-v-state-u-p-ors>;

Salman, Raheem Kolawole, and F.J Oniekoro. "DEATH OF LOCUS STANDI AND THE REBIRTH OF PUBLIC INTEREST

LITIGATION IN THE ENFORCEMENT OF HUMAN RIGHTS IN NIGERIA: FUNDAMENTAL RIGHTS (ENFORCEMENT PROCEDURE) RULES 2009 IN FOCUS." *IIUM Law Journal* 23, no. 1 (2015). https://doi.org/10.31436/iiumlj.v23i1.127.

Saxe, D. *Environmental Offences: Corporate Responsibility and Executive Liability*. Aurora: On: Canada Law Book, 1990.

Sharma, R. "Green Courts in India: Strengthening Environmental Governance?" *Law, Environment and Development Journal4* 4 (2008).

Shell Petroleum Development Company Nigeria Ltd v Chief Otoko & Ors (1990) 6 NWLR (pt. 159) 693.

Stevenson, Colin P. "A New Perspective on Environmental Rights after the Charter." *Osgoode Hall Law Journal* 21, no. 3 (1983). https://doi.org/10.60082/2817-5069.1956.

Subhash Kumar v State of Bihar [1991] AIR SC 420.

Supremacy of the Constitution-Constitutional Law in Canada <http://www.constitutional-law.net/index.php?option=com_content&view=article&id=22&Itemid=36> accessed 24 September 2021.

Supreme Court of India: Composition, Power and Functions (n 11); The Union Judiciary (n 5).

Supreme Court of India: Composition, Power and Functions <https://www.jagranjosh.com/general-knowledg e/supreme-court-of-india-14372041811#:~:text=The%20Indian%20Constitution%20provides%20for,and%20S ubordinate%20Courts%20under%20it.> accessed 27 April 2022.

T. Damodhar Rao v Municipal Corporation, Hyderabad [1987] AIR (A.P.) 171.

The Indian cases of *Subhash Kumar v State of Bihar* and *T. Damodhar Rao v Municipal Corporation, Hyderabad* discussed in section 3.2.1 of this work, where the Indian courts enforced non-justiciable constitutional principles by recognizing environmental rights as an inherent component of the already existing fundamental human right to life.

The Nigerian cases of *Shell Petroleum Development Company Nigeria Ltd v Chief Otoko & Ors* (n 25); *Chief A. S. Amos & 4 Ors v Shell Petroleum Development Company Nigeria Ltd and Niger Construction Company Ltd* (n 27).

The Oil Pipelines Act Cap 7, 2004); Advocate Law Practice, Litigation Update: Operators and Owners of Oil Pipelines have a Duty to Maintain and Repair their Oil Pipelines <http://www.adv ocaat-law.com/assets/resources/eeae9d0ff247244dd88a2ad3df3b3a1c.pdf> accessed 23 August 2021.

The Union Judiciary i.e. The Supreme Court (Articles 124-147) <https://www.clearias.com/union-judiciary-supreme-court/> accessed 27 April 2022.

Uchenna Jerome, Orji. "Enhancing the Implementation of Sustainable Development in Nigeria through Legal Strategies." *Consilience: The Journal of Sustainable Development* 8, no. 1 (2012).

Ugbaja, Francesca. "Regulation of Environmental Pollution in the Nigerian Oil and Gas Industry: The Need for an Alternative Approach." University of Calgary, 2016. https://prism.ucalgary.ca/server/api/core/bitstreams/2f7943bd-6a35-4477-8edc-fc5aef22caa0/content.

Ugde, R O, and M E Umo. "Enforcement Provisions of Major Environmental Law Regimes in Nigeria." *University of Ibadan Law Journal*, 2015.

Wortsman, L. "'GREENING' THE CHARTER: SECTION 7 AND THE RIGHT TO A HEALTHY ENVIRONMENT.: EBSCOhost." *Dalhousie Journal of Legal Studies*, no. 28 (2019).

Wruck, H. "The Time Has Arrived for a Canadian Public Trust Doctrine Based upon the Unwritten Constitution." *George Washington Journal of Energy and Environmental Law* 10, no. 2 (2020).

V Oak, Role of PIL in Environmental Protection in India <http://www.legalservicein dia. com/articles/peiln.htm> accessed 20 August 2021.

V. Lakshmipathy v State of Karnataka (n 42).

V. Lakshmipathy v State of Karnataka [1992] AIR Kant 57.

Vellore Citizens Welfare Forum v Union of India
Virender Gaur v State of Haryana [1995]

How to cite (Chicago style)

Nyekwere, Empire Hechime, Uche Nnawulezi, Septhian Eka Adiyatma, Kasim Balarabe, and Muhammad Abdul Rouf. "Constitutional and Judicial Interpretation of Environmental Laws in Nigeria, India and Canada". *Lex Scientia Law Review* 7, no. 2 (2023): 905-958. https://doi.org/10.15294/lesrev.v7i2.69394.

History of Article

Submitted: June 4, 2023
Revised: August 7, 2023; September 21, 2023; October 11, 2023
Accepted: November 4, 2023
Available Online: November 14, 2023