



## PUBLIC AND PRIVATE LAW INSTRUMENTS FOR THE PROTECTION OF THE ENVIRONMENT IN NIGERIA

By

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### **Abstract**

*This work focuses on the use of public and private law in solving environmental problems in Nigeria. It is a fact that the world presently is being threatened by unstable climate conditions, because of many years of man's many activities that have caused the depletion of the ozone layers. Industrialization, oil exploration activities, dumping of toxic materials on land and sea and other unfriendly environmental practices have led to the condition of our environment, which has garnered attention all over the world. Unfortunately, Nigeria is one of many countries whose greenhouse emission is contributing to environmental challenges, particularly in Africa. Because of the possible risks it poses for rural residents and the detrimental effects it has on the environment, the Koko dumping in the 1980s, which produced a significant uproar, resulted in the enactment of thoughtful environmental protection legislation by Nigeria as a nation. Several years down the line, Nigeria continues to suffer severe environmental degradation not because of inadequate laws but because of institutional failures to act on the laws that empowers them to monitor the activities of individuals and agencies that has the potential of causing environmental harm. Sadly, the Niger Delta region is most severely impacted. This is because of ongoing oil exploration efforts in the area that is seriously threatened by oil spills and gas flare-ups. Due to requests from international corporations, the federal government has kept delaying the expiration date for gas flaring in Nigeria. Unfortunately, because Nigeria's economy is largely dependent on revenue generated by oil exploration, the Federal government has become a toothless bulldog. More so, under chapter 2 of the Federal Republic of Nigeria 1999 (as amended) Constitution, an individual is not permitted to enforce the right to a healthy environment. This is because it is protected by public law. This work recognises the effort of the judicial arm of government in enforcing most of these rights under private law. In fact, the judiciary has come up with groundbreaking decisions in recent times, where multinational companies are being held accountable for the roles they played in environmental degradation. Communities and people that experienced hardships, lost income, or lost their means of livelihood as a result of environmental contamination have been seen to have received compensation. This paper recommends that Nigeria should key into the global effort at reducing greenhouse emission by being proactive and firm in implementing environmental standards.*

### **1.0 Environmental Protection and the Law in Nigeria**

The environment as we currently understand it encompasses the land, water, the plants, people, and animals that live there, as well as any relationships that may exist between them. In recent years, the environment that supports both humans and animals has come under attack, primarily as a result of human activity. The concept of a safe environment has been put in jeopardy in one way or another by factors including industrialization, gas flaring, greenhouse emissions, and more. The various changes

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in our environment that we are currently seeing are referred to as climate change, which has become a household term. As a result of the aforementioned behaviors, the world is currently experiencing extreme weather and ozone layer damage. Almost everywhere in the world, people have experienced draughts, flooding, huge fires, extremely hot and cold weather, torrential downpours, earthquakes, ash clouds, global warming, and volcanic eruptions.

It has become essential to safeguard our environment first by using the legal system to take legal action against businesses and organizations who regularly break these environmental regulations.

## 2.0 Environmental Pollution

The conservation of the land, water, and sea, which are all components of the environment, is one of the key focuses of the Millennium Development Goals (MDGs) and the Sustainable Development Goals (SDGs).<sup>2</sup> It was proposed that these three things' pollution causes an ecosystem to become unbalanced, which prevents life from existing in them.<sup>3</sup> High environmental risks including natural pollutants, earthquakes, volcanic eruptions, and man-made activities like climate change are posing a challenge to the entire planet. Global risks include those caused by the effects of global warming, air pollution, acid rain, ozone layer depletion, induced seismicity, and reverse desertification.<sup>4</sup> Unfortunately, man-made disasters can result in the spread of contaminants from human activity, which can have a negative ecological effect and be harmful to the species itself. The background concentration of contaminants has increased as a result of human and natural events, which has an impact on biota's everyday activities and life cycles.<sup>5</sup> An environment that is safe and protected and free from all harmful influences is necessary to ensure the life, protection, safety, and wellbeing of people living there for humanity.<sup>6</sup> In an effort to meet his demands and ensure his existence at any costs, man continues to disturb the ecosystem.

Nigeria, the most populous nation in Sub-Saharan Africa, is also affected by the global environmental issues that demand both domestic and international attention and solutions. According to statistics, air pollution caused 749,200 of all pneumonia fatalities in Nigeria in 2019; this makes Nigeria the country with the largest number of air pollution-related child pneumonia deaths worldwide.<sup>7</sup>

## 2.1 Public Law Instruments and Environmental Protection

To preserve the environment from further deterioration and depletion, many national, regional, and international laws have been adopted at various points in time. It seems that majority of these laws are only appropriate for the paper they are printed on.

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<sup>2</sup> F C Emetumah, 'Modern Perspectives on Environmentalism: Ecocentrism and Technocentrism in the Nigerian Context' (2017) (2) (4) *Asian Res J Arts SocSci*, 1.

<sup>3</sup> C E Chukwuemeka, 'Deficient Legislation Sanctioning Oil Spill in Nigeria: A Need for a Review of the Regulatory Component of Petroleum Laws in Nigeria and the Petroleum Industries Bill' (2018) (7) *Int J Environ Sust*, 30.

<sup>4</sup> J O Robinson, 'Environmental Education and Sustainable Development in Nigeria: Breaking the Missing Link' (2013) (1) (5) *Int J Edu Res*, 3.

<sup>5</sup> P A Aidonjioje and others, 'Environmental Law in Nigeria: A Review on its Antecedence, Application, Judicial Unfairness and Prospects' (2020) (1) (2) *Archive of Science & Technology*, 212.

<sup>6</sup> E O Orimoloye and others, 'Assessment of water sanitation and hygiene practices in Ibadan, Nigeria' (2015) (2) (2) *Int J Res* 94.

<sup>7</sup> Unicef, 'Nigeria has the highest number of air pollution-related child pneumonia deaths in the world', <[https://www.unicef.org/nigeria/press-releases/nigeria-has-highest-number-air-pollution-related-child-pneumoniadeathsworld#:~:text=Air%20pollution%20contributed%20to%2030,210%2C400\)%20from%20household%20air%20pollution](https://www.unicef.org/nigeria/press-releases/nigeria-has-highest-number-air-pollution-related-child-pneumoniadeathsworld#:~:text=Air%20pollution%20contributed%20to%2030,210%2C400)%20from%20household%20air%20pollution)> accessed 10<sup>th</sup> July 2023.



Prior to 1988, the Nigerian government did not understand the need to focus on environmental law in order to make clear statements about how the environment should be respected and managed by everyone. The legislature did not rise to the situation before them until the catastrophe of Koko dumping occurred. Environmental protection was mostly derivative because there were no clear and comprehensive environmental legislation.<sup>8</sup> Additionally, the Nigerian government often dealt with environmental issues on an as-needed basis during the time. The Koko dumping incident represented a turning point in Nigerian environmental control and was essential to the adoption of all-encompassing environmental protection legislation.

More than 18,000 barrels of hazardous garbage, purportedly containing highly poisonous polychlorinated biphenyls (PCBs), asbestos, dioxins, aldehyde, ketone, and deadly gases like osmium Tetraoxide, were said to have been dumped in September 1987 (a fixative that can paralyze the human visual system); In Koko, a seaside community in Delta State, which was formerly a part of the ancient Bendel State in Nigeria, radioactive substances, radioactive materials, outmoded biocides, and phito-drugs were abandoned. Mr. Rapheli Gianfranco, an Italian national and businessman, was in charge of the dumping. He allegedly faked the paperwork for his cargo, bought favors from Koko port employees, and kept the chemicals on Chief Sunday Nana's land in Koko, a Nigerian citizen. According to reports, Chief Nana received 600 Naira (approximately \$50) per month for the "service".<sup>9</sup> The Italian businessman got a letter of reference from the Italian Embassy in Nigeria to certify that Irukeen Construction Company Limited, under whose name the wastes were to be delivered, was a legitimate, operating corporate company in order to justify this illegal and illicit export. Additionally, the wastes were imported as chemicals and leftover materials "related to the building trade."<sup>10</sup> The fact that some of the drums, once off-loaded, were unsealed and their contents emptied by the Italian, maybe to make the barrels useful for another batch of transportation of the waste items, resulted in significant health and environmental hazards to people of the Koko hamlet. Hospitalizations for conditions ranging from chemical burns, nausea, and paralysis were required for certain Koko inhabitants. According to Dr. Solomon Ogbemi, Senior Medical Officer at Koko General Hospital, the high toxicity of the dumpsite was to blame for the seven premature deliveries that occurred within a time frame of one to two weeks.<sup>11</sup>

As a result of this incident, which has been called the worst environmental catastrophe in Nigerian history, the Nigerian government was forced to imprison more than 50 individuals who participated in the illegal dumping. Additionally, the Nigerian government seized an Italian ship and held several Italian citizens hostage until the Italian government decided to remove the hazardous wastes. While acknowledging that the West is increasingly turning Africa into a dumping ground for dangerous materials, leaders in Africa at the time cooperated in denouncing this incident.<sup>12</sup> They demanded a prohibition on the disposal of toxic waste as well as comprehensive solutions to these problems.<sup>13</sup> Consequently, a number of laws were passed to address environmental contamination; ensured Nigeria's

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<sup>8</sup> D S Olawuyi, 'The Principles of Nigerian Environmental Laws' (2013) *ResearchGate* <<https://www.researchgate.net/publication/303679607>> accessed 12 July 2023.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

<sup>12</sup> C Anyinam, 'Transboundary Movements of Hazardous Wastes: The Case of Toxic Waste Dumping in Africa' (1991) (21) (4) *International Journal of Health Services* 759.

<sup>13</sup> Olawuyi (n 7).



preservation of the environment, and created a comprehensive legal framework for environmental protection in Nigeria.<sup>14</sup>

The environmental challenges that Nigerians are currently facing include waste management, sanitation, and environmental deterioration (including desertification, floods, erosion, and deforestation, particularly in metropolitan areas); pollution from oil and gas, biodiversity loss, management of environmental data, lax enforcement of environmental regulations, and newly apparent effects of climate change. One of the best tools the government has to counteract the damaging effects of individuals, businesses, and multinational corporations on the environment and the lives of local residents is the implementation of environmental standards and regulations. It is anticipated that the environment's quality will decline significantly in the absence of an efficient culture of environmental enforcement, one that is capable of enforcing compliance by large enterprises.<sup>15</sup> This presumption is based on the idea that starting a business is done in order to maximize profit and minimize loss. Given this information, it is accurate to state that corporations, particularly those in the private sector, would attempt to reduce losses by occasionally passing the expense of production to the general public.<sup>16</sup>

According to Nigeria's Harmful Waste Act of 1988, it is illegal for anyone acting without legal authorization to transport, deposit, dump, import, sell, offer for sale, negotiate, or purchase any harmful waste on Nigerian territory, including its territorial waters, contiguous zone, exclusive economic zone, and inland waterways.<sup>17</sup> For those who violate the Act's rules, the legislation specifies life in prison as the appropriate penalty.<sup>18</sup> Additionally, the government shall forfeit any used carriers or aircraft as well as any land on which hazardous material was dumped.<sup>19</sup> If the perpetrator is a body corporate, the officers of that corporate body will be held accountable for the company's violations of the Act's requirements.<sup>20</sup> Any attempt to commit one of the aforementioned offenses will result in a life sentence if proven guilty.<sup>21</sup> The Act gives law enforcement organizations, such as the Police, the authority to enter a location without a search warrant, examine suspects, and make arrests if there is a reasonable suspicion that a violation has occurred.<sup>22</sup> It has been suggested that this clause gives Nigerian authorities the necessary authority to stop and search any ship or shipment if there is a plausible suspicion that it has violated the text or the spirit of the Act.<sup>23</sup> The Minister has the authority to block off any place or area that he has cause to think is being utilized for dumping under Section 11. Anyone who discharges hazardous waste into Nigeria's territorial waters, internal waterways, contiguous zone, or exclusive zone is accountable for any damages that result from the discharge, including death and physical or mental

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<sup>14</sup> S Ogbodo, 'Environmental Protection in Nigeria: Two Decades After the Koko Incident' (2009) (15) (1) *Annual Survey of International & Comparative Law*.

<sup>15</sup> Z O Edo, 'The Challenges of Effective Environmental Enforcement and Compliance in the Niger Delta Region of Nigeria' (2012) (14) (6) *Journal of Sustainable Development in Africa* 261.

<sup>16</sup> *Ibid.*

<sup>17</sup> Harmful Waste (Special Criminal Provision Etc) Act 1988, 1(1).

<sup>18</sup> *Ibid.*, s 6.

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*, s 7.

<sup>21</sup> *Ibid.*, s 8.

<sup>22</sup> *Ibid.*, s 10.

<sup>23</sup> Olawuyi (n 7).



harm.<sup>24</sup> However, where damage is incurred by someone who deliberately accepted the risk of dumping, there is no liability.

## 2.2 Oil Spill

An oil spiller is required by law to notify the National Oil Spill Detection and Response Agency<sup>25</sup> of an oil spill in writing no later than 24 hours after the occurrence of an oil spill, failing to do so would result in a fine of five hundred thousand naira (N500,000.00) for each day the incidence is unreported. A further fine of one million Naira will be assessed for any failure to remediate the impacted site to the best of one's ability.<sup>26</sup>

The oil exploration activities of oil multinational corporations and their effects on the environment have been extremely destructive in Nigeria's oil-rich Niger Delta region. Oil spillages have continued to have an impact on the local population's economic foundation and means of subsistence even though the region is primarily known for fishing and agriculture.<sup>27</sup> This has led to militancy and poverty in the area. Oil leakage has persisted in the Niger Delta Region despite the laws in existence as mentioned above and the associated repercussions, endangering the once-beautiful environment in which our ancestors took pride. According to Kingston, an estimated 9, 191,426 barrels of crude oil were released into the Niger Delta ecosystem between 1976 and 2009, with at least 55% going into rivers, creeks, and shorelines, and 45% going into farmland, residential settlements, communal access roads, and water supplies.<sup>28</sup>

Most oil spills are the result of very old pipelines collapsing, some of which have not been updated in more than forty years and have been carrying highly pressured crude oil on a regular basis. Shell acknowledged in 2009 that the Niger Delta region's pipes are vulnerable to rupture owing to wear and tear brought on by corrosion and rust. Agencies in charge of making sure humans live in a safe environment have not yet given the environments where these heinous occurrences occurred due attention, and there have been no reports of punishment against international corporations or the people behind them.

## 2.3 Gas Flaring

Gas flaring has also given rise to be a significant economic and social problem for Nigeria. Studies have shown that this unsustainable practice costs the country billions of dollars and exposes its citizens to grave health risks. It also has a strong correlation with social activism, poor agricultural productivity, and other issues.<sup>29</sup> Nigeria flares more than 70 million cubic meters of gas each day, according to UNDP and World Bank statistics from 2009, releasing an estimated 70 million tons of carbon dioxide into the

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<sup>24</sup> Harmful Waste (Special Criminal Provision Etc) Act 1988, s 12.

<sup>25</sup> National Oil Spill Detection and Response Agency Act 2006, s 6 (2).

<sup>26</sup> National Oil Spill Detection and Response Agency Act 2006, s 6 (3).

<sup>27</sup> Edo (n 14).

<sup>28</sup> K Kingston, 'The Dilemma of Minerals Depended Economy: The Case of Foreign Direct Investment and Pollution in Nigeria' (2011) (1) (1) *African Journal of Social Sciences* 1.

<sup>29</sup> V T Jike, 'Environmental Degradation, Social Disequilibria and the Dilemma of Sustainable Development in the Niger Delta of Nigeria' (2004) (34) (5) *Journal of Black Studies* 1.



Niger Delta ecosystem daily. As a result, Nigerian oil companies are responsible for more greenhouse gas emissions than all other sources put together in sub-Saharan Africa.

The Petroleum Act of 2021 penalizes licensees, lessees, and marginal field operators who vent or flare natural gas, with the exception of emergencies, situations in which an exception has been granted, and situations in which doing so is a reasonable safety practice in accordance with established standards.<sup>30</sup> Offenders of gas flaring are also subject to fines as punishment, which is intended to lessen the impact on the surrounding populations.<sup>31</sup>

### 3.0 Enforcement of Environmental Laws

There is no denying that Nigeria has implemented some of the best environmental protection legislation and has put numerous institutions and machinery in place to guarantee that these laws are followed. Unfortunately, Nigeria's biggest problem currently is how to put these comprehensive laws into practice.

Clearly, oil exploration activities carried out by international oil exploration firms are the main cause of environmental damage in Nigeria. Nigeria's economy depends heavily on oil, gas, and related industries. Therefore, is it reasonable to believe that because of Nigeria's reliance on the oil and gas sector, the executive branch of the government is willing to ignore actions that continue to jeopardize the lives of its citizens? On the other hand, it may be argued that Nigeria's lack of a mechanism for enforcing regulations is not comparable to the lack of enforcement of environmental rules. However, one would assume that naturally, any activity that poses a serious damage to the environment needs to be stopped.

It has been argued that many of the Panels established to handle important environmental issues in Nigeria's Niger Delta were actually set up to fail. For instance, FEPA was not established until 1988 in an effort to repair Nigeria's damaged reputation abroad following the Koko hazardous waste dump catastrophe. Nigeria's prominent involvement in the subregion's toxic waste dump made it imperative to restore its already embarrassment and damaged reputation.<sup>32</sup> Government spending on the oil and gas sector is accounted for by environmental regulations; consequently, putting such regulations on a government that depends on such revenue to maintain its legitimacy will be seen as ironic.<sup>33</sup> This is evident in the very crude justifications given by government officials for the ongoing gas flaring that has taken place in Nigeria to this day, risking the health of the country's citizens. Since 1984, it has been forbidden to flare gas in Nigeria. This is because it has long been seen as hostile in all communities due to the great risk it poses to the physical, biological, and human environment.<sup>34</sup>

There have been complaints about acid rain in Nigeria's Niger Delta region, which is a direct outcome of gas flare-ups and frequently causes damage to agricultural products as well as major health issues. Also, lately, residents of Port Harcourt, Nigeria, faced black soot, which is a product of the numerous oil and gas activities that spew pollutants into the atmosphere. Akoroda also suggested that several

<sup>30</sup> Petroleum Act 2021, s 104 (1).

<sup>31</sup> *Ibid*, 104 (2).

<sup>32</sup> Edo (n 14).

<sup>33</sup> *Ibid*.

<sup>34</sup> Edo (n 14).

strange illnesses that Niger Delta inhabitants have experienced can be linked to constant gas flare-ups.<sup>35</sup> Gas flaring, according to Sagay, produced extreme heat that worsened hardship and suffering. Global warming is greatly exacerbated by gas flaring. This is due to the fact that it causes significant atmospheric carbon dioxide emissions.<sup>36</sup> Recent data suggest that two billion standard feet of gas are flared in Nigeria each day, which is sufficient to power all of Africa. According to Evoh, this amounts to 19 percent of the gas flared globally, giving Nigeria the notoriety of having the biggest percentage of gas flared, while a recent ranking has Nigeria second after Russia.<sup>37</sup>

In their 1996 Annual Report, Shell Producing and Development Company acknowledged that gas flaring is a serious environmental injustice that wastes precious resources. In 2003, Nigeria's zero-gas-flaring policy was presented by the Ministry of State for Environment.<sup>38</sup> Oil firms disputed and jointly fought this strategy on the grounds that it is technically feasible, despite the fact that they all used the same justification that it is not technically feasible to seriously criticize it.<sup>39</sup> The deadline was extended by the federal government to December 31, 2007, in response to demand from these oil giants. Again, the policy's impossibility made it necessary to push the deadline to the end of 2008, and this has been the pattern ever since.<sup>40</sup> It is suspected that severe environmental regulations will drastically reduce government revenue and spending, which explains the lack of political will on the part of the government to stop environmentally hazardous oil exploration activities. Implementing imply a significant decrease of government spending or revenue.<sup>41</sup>

#### 4.0 Private Law and Environmental Protection

The most frequent tort in situations involving pollution and environmental damage is nuisance.<sup>42</sup> A very old tort known as nuisance tries to safeguard individuals or society against behavior that it would be deemed harmful to their peace and safety. The term "nuisance" has historically been defined as anything that endangers public health, such as the illicit selling of restricted substances, indecent acts that offend the senses, obstructions to the free use of property, or disruptions to the enjoyment of life or property in a comfortable manner, or obstruction of any navigable river, bay, stream, canal, or basin, as well as any public park, plaza, street, or highway, from free passage or use in the usual manner.<sup>43</sup> In the case of *Abiola v Ijeoma*<sup>44</sup> the court determined that any unjustified interference with land or a right related to it constitutes a nuisance.

Many actions taken in Nigeria nowadays could be considered nuisances. The loud music, motor noise, and even some phone conversations have contributed to an intolerable level of noise pollution. Additionally, blocking public highways with garbage piles, the smell of such garbage, as well as dust

<sup>35</sup> M Akorado, 'Remediation response in the Niger Delta' Paper Presented to Mark the 1st Anniversary of Jesse Fire Disaster (2000) *Nigeria Institute of International Affairs*, Lagos

<sup>36</sup> I Sagay, 'The extraction industry in the Niger – Delta and the Environment' A Lecture delivered at the ANPEZ Centre for Environment and Development, Nov. 15, 2001. Port Harcourt

<sup>37</sup> C Evoh, 'Gas Flares, Oil Companies and Politics in Nigeria' (2002). <<http://ngrnguardiannews.com>>

<sup>38</sup> Edo (n 14).

<sup>39</sup> *Ibid.*

<sup>40</sup> Edo (n 14).

<sup>41</sup> *Ibid.*

<sup>42</sup> A Omaka, *Municipal and International Environmental Law* (Lions Unique Concepts Lagos, 2012).

<sup>43</sup> S Atolade, 'An Analysis of the Law of Nuisance and Environmental Protection' <[www.thelawyerschronicle.com](http://www.thelawyerschronicle.com)> accessed 31 May, 2023.

<sup>44</sup> (1970) ALL NLRR 569.



and vehicle fumes that settle in the air. These are a few instances of annoyances that put environmental life in peril.

The basic goal of the law of nuisance is to preserve a balance between a person's freedom to do whatever he wants on his property and his neighbor's or another person's right to live without hindrance or discomfort. It may not be easy to identify the proper balance, but it can be generally agreed that a helpful test for doing so is what is acceptable in light of humanity's customary uses in a given community, as was stated in the well-known case of *SedleighDenfield v OCallaghanis*.<sup>45</sup> Its origins can be discovered in the founding of the Assize of Nuisance in the eleventh century. The law of nuisance is based on the idea that no one should utilize their own property in a way that may cause harm to their neighbors.<sup>46</sup> This is embodied in the Latin maxim *sic uteretur alienum non laedas* which is code for "use your own property in a way that does not hurt your neighbors."<sup>47</sup> The legality of one's actions does not impact, absolve, or lessen the annoyance caused by the usage of the property, as suggested by *Belgore JSC in Adediran v Interland Transport Ltd.*<sup>48</sup>

Public and private nuisances are the two categories under which nuisance is classified. A public nuisance is one that causes harm, hurt, or discomfort to the majority of the populace or to all members of a class who fall under its purview.<sup>49</sup> It also includes any behavior that prevents the public from exercising a right or that interferes with their reasonable comfort and convenience. In essence, a public nuisance is both a criminal and a tort. It is committed when someone engages in detrimental behavior that negatively impacts the general public or a particular segment of the public, such as when factory owners release or tolerate the release of gases and smoke that contaminate the area's air or when a public highway is obstructed.<sup>50</sup> Public nuisance is a tort that can only be brought by an individual plaintiff who can demonstrate that the defendant's actions have caused him "particular damage" in addition to any harm to the broader public. Public nuisance is a criminal act that can be brought by the Attorney-general.<sup>51</sup> When an injustice is perpetrated against the community as a whole, it is essential to demonstrate specific damage. Rather than allowing the defendants to be tormented by an endless stream of lawsuits filed by private parties, alleging the same injury, it is thought to be more acceptable to pass the case over to the Attorney General, who is acting as the public's advocate.<sup>52</sup> In this context, the term "particular damage" suggests that the plaintiff must demonstrate that he has experienced damage distinct from that of the general public.<sup>53</sup>

In the case of *Daodu v NNPC*<sup>54</sup> the Supreme Court stated that:

A private individual only has a right to take legal action for a public nuisance—an obstruction of a public highway or impeding the public's free passage—if he can

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<sup>45</sup> (1940) AC 880, 897.

<sup>46</sup> *Omaka* (n 41).

<sup>47</sup> *Ibid.*

<sup>48</sup> (1991) (SC 119/1987) 2.

<sup>49</sup> *Omaka* (n 41).

<sup>50</sup> G Kodilinye and O Aluko, *Kodilinye and Aluko: The Nigerian Law of Torts* (Spectrum Law Publishing, 1999).

<sup>51</sup> *Ibid.*

<sup>52</sup> *Ibid.*

<sup>53</sup> *Ibid.*

<sup>54</sup> (1998) LPELR -927 (SC).





demonstrate that his specific damages were greater than the general inconvenience the public experienced and that they were substantial and direct.<sup>55</sup>

It is important to remember that class actions are frequently rejected by courts because they are improper in situations where a group of people claim for a public nuisance. Perhaps it is because they are all private individuals and so unable to enforce public nuisance laws.

In the British case of *Tate & Lyle v GLC*,<sup>56</sup> The defendants built ferry terminals in the River Thames, which resulted in excessive silting. Due to the difficulty in getting to their jetty, this caused the plaintiff's business to suffer and forced them to incur significant costs for dredging work. They were unsuccessful in their allegation of a private nuisance since the jetty itself was undamaged and they lacked any private ownership interests in the river beds. The defendant was obligated to pay plaintiff for the expense of dredging that could have been avoided if the terminals had been built to minimize siltation, as the House of Lords determined that a claim in public nuisance typically entitles the claimant to damages.<sup>57</sup>

In the case of *A S Amos and Ors v Shell Petroleum Development Company*,<sup>58</sup> the plaintiffs claimed general and specific damages from the defendant for the illegal harm they had caused by willfully and negligently blocking the new waterway for Kolo Creek for nearly three months. The plaintiff failed to demonstrate that they had suffered harm in addition to or greater than that experienced by the general public, and as a result, the highest court rejected the lawsuit.

Also in the case of *Lawani v West African Portland Cement Co*<sup>59</sup> the residents of Itori village filed a lawsuit against the defendant in order to seek damages for harm that the defendant's industrial activities in their neighborhood caused to their homes, waterways, and fields, worrisomely, the lawsuit was rejected on a technical basis since, according to common law, the Attorney General was supposed to be a party to the lawsuit for public nuisance.

However in *Adediran and Ors v Interland Transport Ltd*<sup>60</sup>, the Supreme Court ruled that the aforementioned restriction, which was previously applied at common law in public nuisance lawsuits, is incompatible with section 6(6)(b) of the 1979 Constitution, which is equivalent to section 6(6)(b) of the 1999 Constitution as amended, and is therefore invalid to the extent of its incompatibility.

Therefore, an illegal conduct or omission in the performance of a legal duty that endangers the lives, safety, health, property, or comfort of the general public is referred to as a public nuisance. In the event that *Ngilari v Mothercat Limited*<sup>61</sup> the Supreme Court ruled that any action on a highway that prevents or restricts the public from moving freely along the highway is a public nuisance, and that any harm to an individual resulting from such obstruction of a public roadway will give rise to legal action. A private person does, however, have the right to take legal action against a public nuisance if he can show that the nuisance has caused him specific harm that is both direct and significant in addition to the general

<sup>55</sup> Ibid, per Oguegbu JSC.

<sup>56</sup> (1983) 2 AC 509.

<sup>57</sup> Ibid.

<sup>58</sup> (1977) 6 SC 109.

<sup>59</sup> (1973) 3 UILR 459.

<sup>60</sup> (1991) LPELR 88 (SC).

<sup>61</sup> (1999) 13 NWLR (Pt 636) 626.



inconvenience and harm that the public has experienced. In other words, the prerequisites for a private party to prevail in such a dispute are: a) if the plaintiff can show that the nuisance has caused him a specific harm that is different from what the general public as a whole has experienced. b) When the specific harm/damage is a direct, significant, and direct result of the annoyance and not just a mere consequential harm. The action will be dismissed if the aforementioned is not proven.

### 5.0 Lessons from the United Kingdom

One of the first nations to embrace industrialization and the serious exploitation of natural resources was the United Kingdom. The environment of the United Kingdom, which is characterized by a high population density and primarily artificial landscapes, has changed as a result of urbanization.<sup>62</sup> Over the past few decades, the economy of the UK has changed and is no longer focused on heavy industries. The United Kingdom was frequently at the forefront internationally in identifying environmental threats, developing policies and institutions to improve air and water quality, reclaim abandoned land, and better plan towns and the countryside as awareness of environmental issues began to emerge in the 1950s.<sup>63</sup> These initiatives, which were motivated by domestic circumstances and needs, were worthwhile and productive in their own right.<sup>64</sup> Since the late 1980s, UK environmental policy has experienced a resurgence. In terms of environmental issues, the United Kingdom has raised its international image and reinforced its environmental laws. At the highest levels of its administration, the United Kingdom is today dedicated to environmental preservation and sustainable growth.<sup>65</sup>

Following the United Kingdom's exit from the European Union, it became necessary to create independent environmental legislation since the EU's rules will no longer apply to it. The Environmental Act of 2021 was created by Parliament in 2021, and it is not only informative but also quite impactful in its provisions. It emphasizes its goals and establishes the organizations that will guarantee the Act's compliance. The Act gives the Secretary of State the authority to draft regulations outlining long-term goals for the natural environment or the enjoyment of the natural environment by people.<sup>66</sup> According to the Act, the Secretary of State is required to prioritize a number of sectors, including resource efficiency, waste reduction, biodiversity, and air and water quality.<sup>67</sup>

The first chapter of the Act, which is comprised of sections 1 through 21, is devoted to enhancing the environment. The various environmental aims are described in sections 1 through 7, and the environmental improvement programs are discussed in sections 8 through 15. Monitoring of the environment is covered under Section 16. Sections 17 to 9 are devoted to a policy declaration on environmental principles while parts 20 to 21 include remarks and reports about environmental preservation.

The Office for Environmental Protection, which is the organization in charge of policing and overseeing environmental activity, is the subject of Chapter 2 aim at enhancing the natural environment and

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<sup>62</sup> United Kingdom-OECD <<https://www.oecd.org/env/country-reviews/2452198.pdf>> accessed 21 July 2023.

<sup>63</sup> *Ibid.*

<sup>64</sup> *Ibid.*

<sup>65</sup> *Ibid.*

<sup>66</sup> Environmental Act 2021, s 1(1).

<sup>67</sup> *Ibid.*, s 1(2) and (3).

preserving the environment.<sup>68</sup> According to Section 29 of the Environmental Act, the Office for Environmental Protection (OEP) is required to oversee the application of environmental laws, report on any issues pertaining to their application, organize reports for parliament, and make them publicly available.<sup>69</sup> When public officials violate environmental law, complaints are filed with the OEP.<sup>70</sup> It is also accountable for looking into the reported complaint.<sup>71</sup> When the OEP discovers a violation of environmental law, it is mandated by law to notify the defaulter of its finding and specify the steps they must take to correct, mitigate, or prevent the failure from happening again.<sup>72</sup>

The OEP performs its statutory duties in a very responsible and proactive manner, which is in contrast to what is possible in Nigeria. The British government published a policy document on sanctions and enforcement.<sup>73</sup> According to the policy statement, the environmental agency is in charge of upholding environmental laws with the main goal of guaranteeing efficient and effective compliance in order to safeguard people and wildlife and promote sustainable development.<sup>74</sup> As stated, the agency's main objectives are to prevent illegal activity from occurring, ensure restoration or remediation where environmental harm or damage has occurred, ensure that illegal activities are brought under regulatory control in accordance with the law, and finally, punish offenders and prevent repeat offenses.<sup>75</sup>

Earlier, the Regulators' Code for the United Kingdom went into effect on April 6, 2014.<sup>76</sup> It offers a clear, adaptable, and values-based framework for how regulators should communicate or engage with people they are responsible for regulating.<sup>77</sup> The Legislative and Regulatory Reform (Regulatory Functions) Order 2007, with changes in 2009, 2010 and 2014, specifies the regulators and regulatory functions to which the Regulator's Code applies.

The Environmental Agency acts in a way that strikes a balance in how the legislation is applied, taking into account a variety of factors, such as,<sup>78</sup>

- i. the danger that the infraction poses to both persons and the environment
  - i. the seriousness of the violation of the law
  - ii. the impact on the environment, people and legitimate business
  - iii. cost of taking enforcement actions against the benefit of taking it
  - iv. impact on economic growth.

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<sup>68</sup> *Ibid*, s 23 (1).

<sup>69</sup> *Ibid*, s 29 (1), (2) and (5)

<sup>70</sup> *Ibid*, s 32.

<sup>71</sup> *Ibid*, s 33.

<sup>72</sup> Environmental Act 2021, s 36.

<sup>73</sup> Environmental Agency, 'Environmental Agency Enforcement and Sanctions Policy' (17 March 2022) <<https://www.gov.uk/government/publications/environment-agency-enforcement-enforcement-and-sanctions-policy>> accessed 21 July 2023.

<sup>74</sup> *Ibid*.

<sup>75</sup> *Ibid*.

<sup>76</sup> Legislative and Regulatory Reform Act 2006.

<sup>77</sup> Office for Product Safety and Standards, 'Statutory Guidance Regulators' Code: A Framework for how Regulators Should Engage with those they Regulate' <<https://www.gov.uk/government/publications/regulators-code>> accessed 21 July 2023.

<sup>78</sup> Environmental Agency (n 74).



In order to avoid being perceived as biased, the Agency works to be as consistent as possible in the advice it provides, the way it responds to legal violations, the way it uses its authority and decides whether to bring charges, and the way it determines the sanctions that are appropriate in similar factual situations.<sup>79</sup>

The United Kingdom was praised in the OECD report for making effective use of its numerous resources and undertaking environmental initiatives. First, it was noted that the United Kingdom's robust scientific community has made a considerable contribution to the understanding of environmental issues. Second, the Government has connected using the precautionary principle with acting on the basis of sound science.<sup>80</sup> Even if there may be chances to apply environmental impact assessments more frequently, the land planning system is a significant and beneficial tool that provides a solid foundation for future environmental advancement. The privatization of regional water services, though contentious at the time, is now widely regarded as a positive move from an environmental standpoint. Additionally, the economic structural reforms of the last 15 years have demonstrated increased cost transparency, particularly for environmental costs.<sup>81</sup>

Although it is only halfway finished and its reach is currently restricted to large point sources of pollution, the recent movement in the United Kingdom towards integrated pollution control (IPC) is a significant part of environmental management. The system has a great deal of potentials to offer useful expertise outside of the United Kingdom. Though it has not yet used economic tools extensively as part of its environmental policy, the government has indicated that it is dedicated to using market forces.

In terms of emission levels and lead, SO<sub>2</sub>, and particulate matter concentrations in the atmosphere, the United Kingdom has seen a dramatic improvement over the past 20 years. The economy's structural changes, clean air laws, advancements in energy efficiency, a decrease in coal use along with the availability of cleaner fuels, and compliance with EC directives are largely to blame for these gains. The United Kingdom keeps establishing definite, attainable objectives for its air management policy.<sup>82</sup> It is a pioneer in creating and implementing the concept of critical load in global agreements on acid deposition. A framework that can accommodate the development of novel technologies and the flexibility for plant operators to select the most cost-effective options is provided by the comprehensive regulatory system, which has been improved since 1990 and uses a combination of authorizations, emission standards, and air quality standards. This framework also permits further emission reductions within the IPC framework.<sup>83</sup>

Given its long legacy of natural history study, active and capable nonprofit organizations, and other factors, the United Kingdom has made tremendous strides in the fields of nature conservation and landscape preservation as well; and well-established institutional and legal frameworks for landscape management, nature conservation, and land use planning.<sup>84</sup> Key species have demonstrated a variety of encouraging developments during the past 20 years, in particular. Additionally, there is a dedication

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<sup>79</sup> *Ibid.*

<sup>80</sup> United Kingdom-OECD (n 63).

<sup>81</sup> United Kingdom-OECD (n 63)

<sup>82</sup> *Ibid.*

<sup>83</sup> *Ibid.*

<sup>84</sup> United Kingdom-OECD (n 63).



to taking effective action in relation to protected areas as well as supportive and creative policy reforms in industries like agriculture and forestry. The government has launched a number of worldwide programs to save rare species and significant natural resources.<sup>85</sup>

The United Kingdom continue to make significant progress to maintaining a healthy and safe environment. On the other side, Nigeria and her government create policy pronouncements, set up organizations, timetables, and a blueprint for achieving a healthy environment. In an effort to ensure that corruption and illegitimate regimes of transnational corporations continue to flourish at the expense of the environment and, ultimately, her citizens, they fall short of their own standards, compromise their laws, and turn their agencies into toothless bulldogs. Nigeria is still the main contributor to pollution in Western Africa, and it has never taken any proactive steps to ensure that this plight is put an end.

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<sup>85</sup> *Ibid.*