
**ISSUES AND CHALLENGES IN ENVIRONMENTAL JUSTICE
DELIVERY SYSTEM IN MALAYSIA AND NIGERIA: THE NEED
FOR LIBERALISING THE STRICT RULES OF *LOCUS STANDI***

by

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Abstract

The court remains the last hope of the commoners. Where the authority erred in law, the only avenue to make them accountable to the public is through the interference of the court. However, seeking environmental justice is a difficult task for the masses due to the stringent rules involved in environmental matters. These rules pose a great challenge to the victims of environmental degradation. These rules are the problem of *locus standi*, institution of class action, limitation of time, the issue of cost and burden of proof. All these rules to a great extent present a difficult task to victims of environmental abuse in seeking environmental justice and serves as a barrier which prevent aggrieved persons from having access to court for environmental redress. This paper therefore intends to analyze some of the major challenges facing the victims of environmental abuse and recommends a liberal approach to these issues in order to foster environmental justice and checkmate the activities of the major actors involved in environmental abuse.

Keywords: Environmental justice, *locus standi*, dispute resolution

1 INTRODUCTION

Environmental justice initially focused on industry and government practices that unreasonably burdened minority and low-income communities and populations witnessing unfavorable health and environmental impacts.^[1] In its early stages, the movement challenged decisions to situate landfills and hazardous waste facilities near minorities' communities. Advocates soon extended their efforts to include promoting and ensuring environmental law enforcement and remediation. Over the years, the movement has expounded its reach even further into social issues of fairness in land use planning and zoning, worker safety, resource allocation, economic sustainability, and community empowerment.^[2] In the legal sphere, the goal of environmental justice is to secure for all communities and people the same measure of protection from environmental and health hazards, and the same opportunity to persuade the decision-making process.^[3] This purpose is not met when low-income or minority communities are burdened excessively by adverse human health or environmental effects or by barriers to participation in decision making. Examples of legal issues with environmental justice implications are: the situation of landfills next to minority or low-income communities, discrimination in pollution cleanup and monitoring, and discrimination in flood control projects and wetlands protection.

Therefore, access to environmental justice in environmental law is a global movement dedicated to helping persons and communities access legal recourse for redressing environmental harms.^[4] Since these people are left out of the decisions making process, the only remedy is to approach the court for the appropriate order to seek compliance with environmental laws or regulations or forbid the doing of an act having

great negative environmental impact on the people and environment in general.

This article therefore examines the barriers posed to prospective litigants or plaintiffs seeking to challenge the decision of the government authorities, which had caused adverse impact on the environment or to prevent potentially damaging development or seeking redress and appropriate remedies against the activities of pollutants. The first part of this paper examines the concept of environmental justice in order to appreciate the inevitability of the court intervention. The second part looks at the procedural challenges involved in seeking environmental justice which serves as impediments facing the victims of environmental abuse in seeking environmental justice. The last part looks at the need for the court to adopt a new approach by relaxing its procedural challenges to further enhance and secure environmental justice.

2 Understanding the concept of environmental justice and the need for Court action

Environmental Justice is fair-minded treatment and significant involvement of all people in spite of of race, color, national origin, educational level, or income with respect to the development, implementation, and enforcement of environmental laws. Environmental justice seeks to guarantee that the poor and low-income groups have access to public information involving human health and environmental planning, regulations and enforcement.^[5] It ensures that no inhabitants, especially the elderly and children, are forced to bear a top-heavy burden of the harmful human health and environmental impacts of pollution or other environmental hazards. There are three fundamental principles of environmental justice.^[6] The first is distributive justice, the second is

procedural justice and the third is access to court and adequate remedies.^[7]

One primary premise for environmental justice is the idea of “justice as distribution.” In this line of philosophy, justice is defined as a standard or a set of rules for equal allocation of social goods. In the environmental milieu, distributive justice is a means to achieve fairness in terms of the distribution of environmental risks and harms.^[8] Traditionally, socioeconomic factors, which are strongly correlated with race and ethnicity in many countries, have had a strong impact on the way in which environmental harms are distributed in society. Distributive justice has also been interpreted to relate to right to use - and have control over - natural resources. For example, indigenous communities have long fought to achieve recognition of land rights in order to assure access to the resources which provide the basis of their livelihoods and cultures. Threats to the integrity of those resources are considered threats to their basic human right to survival.^[9]

Distributive justice tends to address issues and questions such as: who should bear the burden of environmental harm in order to achieve equal distribution of benefits and burden? What are the environmental benefits and burdens to different people involved in the decision making? Do the people who bear the high burden of environmental harm also share a high percentage of the benefits to remedy the burden? A critical survey of existing literature shows that minority groups and in most cases, the indigenous people usually carry the burden of environmental harm. For example, the Niger Delta Region in Nigeria remains the least developed region in the country notwithstanding the fact that the region is responsible for the country’s source of income and earnings. This

undoubtedly violates the principle of distributive justice within the environmental context. The principle places heavy reliance on governmental policies to address the issue of burdens and benefits.^[10]

Therefore, it is often very complex to realize distributive justice, particularly in the environmental decision-making arena, because the bundle of individual rights, such as health and property rights, as well as limitation of time and financial resources, come into play as key factors in decision-making processes.^[11] Pending a time when there are no more threats to health from human activities, distributive justice in the allocation of environmental impact may not, in fact, be sufficient for promoting environmental justice.^[12]

Theories of procedural justice provide a second foundation of environmental justice. Procedural justice is deeply connected with accepting justice in terms of historical and cultural contexts of a location, including both acknowledgment and ability to participate as equals.^[13] Some of the relevant theorists argue that injustice is not exclusively based on inequitable distribution; rather, injustices are frequently based on a lack of recognition.^[14] Thus, it is important that persons or communities are “politically” recognized, taking into account their own histories, identities and cultures. This political identification offers a starting point from which groups can find ways to empower themselves, because recognition provides individuals and communities with the political right to partake in policy making.

The endeavor to achieve environmental justice by way of procedural justice will help find momentous solutions for both policy makers and the community. First, procedural justice emphasizes discovering political solutions through public participation that recognizes major stakeholders

as special groups, each with a particular set of interests and needs. In this approach, decision makers will be able to achieve political legitimacy and trust from the public through their efforts to support public participation.^[15] Thus, environmental justice, in terms of procedural justice, stress that people have the right to take part as equals in all environmental decision making processes that may affect their lives, children, homes and jobs. It also enables them to access relevant information concerning environmental issues and to be given opportunities to express their concerns in relation to environmental burdens and benefits.

Unfair allocation of environmental burdens and benefits frequently occur as a result of the segregation of those who will be most negatively affected by a decision-making process. Obstacles in ensuring environmental justice are also caused by the lack of institutional frameworks which include the voices of marginalized groups.^[16] If key stakeholders are not represented in the discussions, it is easier to come to a final conclusion with uneven distribution of both environmental and economic harms and benefits. As the literature shows, distributional injustice is frequently fashioned upon low-income groups and racial/ethnic minority groups. It is these same groups that are habitually precluded from environmental decision-making processes, either as a result of absolute exclusion or because of a lack of power to participate in the process.^[17]

However, in reality, procedural rights remain a theoretical principle with little or no application in environmental matters. Many projects were done or embarked upon without the participation of those who likely share in the high environmental burden of such projects. Therefore,

procedural rights at present are of little significance to environmental justice.

The only alternative and practical approach to environmental justice is the right of access to court since many activities are done without the involvement of those likely to be affected.^[18] Access to court within the purview of environmental justice implies the right of the people to seek appropriate remedy against the government, its officials, persons or corporate bodies involved in any activities having environmental impact on the people and the environment in general. Through this, public involvement in environmental matters will be secured and safeguarded.

3 Legal and Procedural Challenges

Because of their unique and difficult nature, environmental cases are occasionally hindered by legal mechanisms and rules of procedure fashioned for non-environmental cases. These consist of rules on standing and class action suits that frequently do not take into account the impact of environmental damage on all citizens. In addition, the nature and science of environmental violations frequently means that evidentiary rules and burdens of proof are not suitable. Some of these issues can be addressed internally by the judicial system by requiring lower courts to apply rules liberally. The impact of all of these issues, and how many actually present problems for plaintiffs, is crucial.

A STANDING OF PLAINTIFFS AND CITIZENS SUITS

Locus standi denotes the legal capacity to institute proceedings. The concept is also used interchangeably with terms such as ‘standing to sue.’^[19] Although the concept of *locus standi* may well be invoked between private litigation without much difficulty, it becomes subtler and

poses greater difficulty in cases involving the public at large. Public law litigation normally involves the constitutionality of legislation and the validity of administrative action while private law is concerned with the vindication of individual rights. Private individuals can enforce private rights but the public rights are rights concerning the general public and would normally be represented by the State.^[20] In matters concerning protection of public rights what remains important is who may be endowed a considered appropriate capacity to invoke the aid of the courts to check on the validity of actions of the government, corporations or individuals. In the field of land planning and environmental protection where public interest may readily be invaded, judicial review of administrative decisions becomes not only legal but also a social necessity. However, it is not as simple as it sounds since the courts have imposed restrictions on persons who may be allowed to proceed in their action against the public authority. Lord Diplock in *R v. IRC, exp. National Federation of Self-Employed and Small Business Ltd*^[21] expressed the importance of rules of *locus standi* as to prevent the time of the court being wasted by busybodies with misguided or trivial complaints of administrative errors, and remove the uncertainty in which public officers and authorities might be left as to whether they could safely proceed with administrative action while proceedings for judicial review of it were actually pending even though misconceived.^[22]

The rules of *locus standi* have a gate-keeping function that will enable the exclusion of vexatious litigants and unworthy cases.^[23] It is undeniable that the standing rule assists the court to filter applications to prevent unnecessary litigation against public bodies.^[24] However, the scope of the court's jurisdiction to supervise administrative authorities, inferior courts and tribunals, would be substantially weakened if the

availability of judicial review is restricted on the sole ground that the application lacks what could properly be regarded as a personal interest. It is this situation where the question arises as to who may be considered appropriate to invoke the aid of the courts to check on such illegalities.

An application of the traditional rule of *locus standi* will clearly amount to a denial of access to justice to protect collective or diffuse interest.^[25] Therefore, the important issue here is whether citizens who feel concerned for the adverse effect of land development on the environment has sufficient interest to entitle him to commence an action under public law. The *locus standi* rules are developing progressively from the traditional role of protecting private interest to the modern contemporary ideology of protecting public interest. This development is very apparent in the land development and environmental protection regime where the role of citizen and pressure groups is important in ensuring that rapid development does not affect the environment.

The issue of *locus standi* of the plaintiff in private law will not pose a problem to a plaintiff whose property rights have been affected by environmental pollution occasioned by the activities of the oil companies. The problems emerge with respect to public law.^[26] Thus, this raises some fundamental questions as to whether: A plaintiff can sue for injury suffered in matters affecting the general public? And if the plaintiff can sue does he or she require any special interests to maintain such action?

In a situation where the act complained of affects the generality of the public, an individual require the consent of the Attorney General to institute an action unless he can show that he has suffered damages over and above that suffered by other members of the public. In Malaysia, judicial authorities have shown that an individual requires a *fiat* or

consent of the Attorney General to institute an action affecting the general public (this is referred to as relator action). Authorities have also shown that in the absence of a *fiat*, from the Attorney General, the plaintiff must establish a “special interest” to succeed in such a case.

Malaysia

The Malaysian courts have over the years followed the rules of *locus standi* as developed in England.^[27] The requirement for *locus standi* in the United Kingdom is derived from the express provision of Order 53 rule 3(5) of the Rules of the Supreme Court and embodied in section 31(3) of the Supreme Court Act 1981. It is provided that the High Court shall not grant leave to apply for judicial review, “unless it considers that the applicant has sufficient interest in the matter to which the application relates.”

A preliminary question of significant weight in civil litigation is the concept of *locus standi*. How the courts construe and apply the concept of *locus standi* in a given case may lead to the dismissal of an action without the matter being decided on its merits. The issue concerning whether a plaintiff (or plaintiffs) in a representative action has the standing to sue in that representative competence is more profound when Order 53 is invoked or when the representative action, by its nature, is a public interest litigation. Historically, Malaysia has witnessed the concept of *locus standi* being interpreted and applied from the narrowest possible sense to a broad liberal approach. This indeed revealed inconsistency in the court approach to the interpretation and construction of *locus standi*.

The first case that will be examined here is the case of *District Council Central Province Wellesley v. Yegappan*.^[28] The facts was that Yegappan as an adjoining owner was invited to attend the meeting of the Municipal Council to voice his objections to the development plan submitted by the adjoining landowner. Yegappan's complaint was that the development plan did not conform in its entirety with certain sections of the Rural Board Province Wellesley Building By-Laws 1950 and the Municipal Ordinance (Cap 133). Yegappan made an application seeking for an order for *certiorari* to quash the planning permission granted by the Council to the developer on the ground of breach of the Rural Board Province Wellesley Building By-Laws 1950. The Federal Court recognised the rights of Yegappan, as an adjoining landowner to participate in the planning process. However, the court held that Yegappan had no legal standing to seek *certiorari* for neither his right of ownership nor that of possession of his land were affected by the alleged breaches of the bye-laws. The courts further held that *certiorari* would not be available for vindicating mental or sentimental injury.^[29]

It is usually accepted that the decision of the Federal Court in the case of *Tan Sri Haji Othman Saat v. Mohamed bin Ismail*^[30] represents the indelible mark in the law of *locus standi* in Malaysia. In this case, the respondent and 183 other persons had applied for the alienation of State land to them but were kept waiting on the side-lines for some 8 years with no response whatsoever. However, during that period, land in the same area had been allocated to others including the appellant who was the *Menteri Besar* (Chief Minister) of the State and some members of the State Executive Council which constituted, in effect, the approving authority for the allocation of State land. As noted by Abdoolcader J, who delivered the judgment of the Federal Court, the respondent was

alleging an abuse of power. The respondent thereby sought to question the legality of the alienation of the land in issue to the appellant. On the issue of whether the respondent had the *locus standi* to institute and maintain those proceedings, the Federal Court held in the affirmative. Abdoolcader J referred to the case of *Boyce v. Paddington Borough Council*^[31] and *Gouriet and Ors v. Union of Post Office Workers*^[32] and adopted the approach pronounced in the case of *Boyce v Paddington Borough Council*. His Lordship said that a plaintiff in proceedings for a declaration need do no more than ascertain that he has a “real interest” in the suit. In the case of *Boyce v. Paddington Borough Council*,^[33] Buckley J had laid down the conditions which must be fulfilled before a private person can maintain an injunction to defend a public statutory right in the following terms:

A plaintiff can sue without joining the Attorney-General in two cases: first, where the interference with the public right is such that some private right of his is at the same time interfered with ...; and, second, where no private right is interfered with, but the plaintiff, in respect of his public right, suffers special damage peculiar to himself from the interference with the public right.^[34]

Abdoolcader J clarified the above passage as follows:

The first limb of the exposition in *Boyce* [1903] 1 Ch 109, 114 simply means that the availability of injunctions and declarations at the instance of an individual to protect private rights is not diminished where the threat to the private right also constitutes a threat to a public right. The second limb to the extent that it is read liberally would appear to include everyone with a legitimate grievance^[35]

The Federal Court in the case of *Tan Sri Haji Othman Saat v. Mohamed bin Ismail* also approved the concept of relaxing the scope of individual standing. On this note, Abdoolcader J said:

Even if the law's pace may be slower than society's march, what with increased and increasing civic-consciousness and appreciation of rights and fundamental values in the citizenry, it must nonetheless strive to be relevant if it is to perform its function of peaceful ordering of the relations between and among persons in society, and between and among persons and government at various levels. It would not perhaps be inapt to aphorize that the idle and whimsical plaintiff, a dilettante who litigates for a lark, is a spectre which haunts the legal literature, not the courtroom. In the United States of America, where standing rules are relatively lax, it has been found that although the gates have been open there has been no flood^[36]

Regrettably, the judicial approach regarding the issue, scope and interpretation of individual standing in public interest litigation and class actions took a rotation for the worse in the case of *United Engineers (M) Bhd v. Lim Kit Siang*^[37] (commonly referred to as “UEM case) and in the case of *Ketua Pengarah Jabatan Alam Sekitar & Anor v. Kajing Tubek & Ors and Other*^[38] Appeals (commonly referred to as the *Bakun Dam* case). The judgments in these cases, also by the apex court, were decided in 1988 and 1997 respectively.

In the *UEM* case, the respondent, a Member of Parliament and the Leader of the Opposition, had applied for a declaration that the letter of intent issued by the Malaysian government to United Engineers (M) Bhd in respect of the North and South Highway project was invalid and for a

permanent injunction to prevent United Engineers (M) Bhd from signing the contract with the government. The respondent had filed his suit in the Penang High Court on 18 August 1987 and on the same day he applied by way of *ex parte* summons-in-chambers for an *interim* injunction against United Engineers (M) Bhd to restrain it from signing the contract. Edgar Joseph Jr. J, who heard the application, refused it.^[39] On appeal to the Supreme Court, the Supreme Court, in an oral judgment on 25 August 1987, ordered the *interim* injunction to be issued with liberty to apply and at the same time directed an early trial of the suits. United Engineers (M) Bhd and the government applied to the High Court to have the *interim* injunction set aside and the suits struck out on the ground that they disclosed no reasonable cause of action and also for lack of *locus standi*, in addition to being frivolous, vexatious and an abuse of the court's process. The applications were heard by VC George J who dismissed them. Both United Engineers (M) Bhd and the government appealed to the Supreme Court.^[40]

By a majority decision of 3 to 2, the Supreme Court held, *inter alia*, that the respondent did not have *locus standi*. Salleh Abas LP, who delivered the majority judgment, did not oppose the approach adopted by the Federal Court in the case of *Tan Sri Haji Othman Saat's* case. However, he refused to admit the contention that the respondent had *locus standi* on the basis that he was the Leader of the Opposition, a frequent road and highway user and a taxpayer. He expressed the view that the court should be unhurried to act in response to a politically motivated litigation unless the claimant could demonstrate that his private rights as a citizen were affected. On the frequent road user argument, Salleh Abas LP said:

I cannot see how he could be different from other road and highway users. There is nothing to show that he would be prevented from using roads and highways, already constructed or proposed to be constructed. If he objects to the tolls that are to be imposed for using the proposed NSH highway, he has, like any other users, an option either to use the highway or to use old or other roads. Thus, as a road and highway user, he also has no *locus standi*^[41]

Salleh Abas LP also painted the connection between the concept of *locus standi* and a relator action. The relationship was elucidated as follows:

In public law litigation, the rule is that the Attorney-General is the guardian of public interest. It is he who will enforce the performance of public duty and the compliance of public law. Thus when he sues, he is not required to show *locus standi*. On the other hand, any other person, however public spirited he may be, will not be able to commence such litigation, unless he has a *locus standi*, or in the absence of it, he has obtained the aid or consent of the Attorney-General. If such consent is obtained, the suit is called a relator action in which the Attorney-General becomes the plaintiff whilst the private citizen his relator. I will deal with this aspect in the later part of this judgment. In the instant appeal, since this is not a relator action the respondent must show that he has the necessary *locus standi* to commence and maintain the suit.

...

Locus standi is inseparable from, and indeed intertwined with, relator actions because if a private citizen, wishing to complain that a public authority has not legally performed its function or has

failed to perform it altogether, has no *locus standi*, he must obtain the consent of the Attorney-General in order to commence a relator action. Without *locus standi*, he cannot proceed on his own. In cases where the Attorney-General has given his consent, there is, of course, no problem, because no *locus standi* needs to be shown since the Attorney-General is constitutionally regarded as the guardian of public right. The difficulty arises where the necessary consent is not obtained before a private citizen launches a suit. In a few cases involving matters of general public interest, which were started by a private citizen, the Attorney-General did intervene in the proceedings either by subsequently giving his consent or even by his personal appearance, thereby dispensing with the requirement of *locus standi* of the applicant. Yet there are cases in which he made no such intervention at all. In such cases, the applicant must show *locus standi*.^[42]

Abdul Hamid CJ (Malaya) also held that the respondent did not have standing. However, Abdul Hamid CJ did advocate and said that “the time is now ripe for us to restate our position on the law of standing”. However, the basis of Abdul Hamid CJ’s decision on the *locus standi* point can be traced to the following paragraphs in his judgment.

But in Malaysia, there is no provision in our Rules of the High Court equivalent to Order 53 rule 3(7) of the English Rules of the Supreme Court. Thus, in my view, there shall be a stringent requirement that the applicant, to acquire *locus standi*, has to establish infringement of a private right or the suffering of special damage: see *Gouriet v. Union of Post Office Workers* [1977] 3 All ER 70; [1978] AC 435, and also *Boyce’s case* [1903] 1 Ch 109 and

this I consider to be the relevant test to apply when determining the question of standing.^[43]

Abdul Hamid CJ further said in his judgment that “where the private plaintiff relies on an interest in the enforcement of a public right and not of a private right, standing will be denied unless the Attorney-General consents to a relator action”, or the plaintiff can demonstrate some special interest beyond that possessed by the public generally.”^[44]

The third judge who ruled that the respondent did not have *locus standi* was Hashim Yeop Sani SCJ. The reason for dismissing the respondent’s suit can be inferred by the following passages in Hashim Yeop Sani’s judgment:

“... Looking at the basis of his claims and the nature of the reliefs sought, it is quite obvious on the law as it now stands that Mr. Lim Kit Siang can come only with the consent of the Attorney-General or by means of a relator action. The principle that the jurisdiction of the court can be invoked by one who seeks to protect a legal right or to obtain a declaration of legal rights as between him and some other person or authority has been extended to permit the institution of proceedings by the Attorney-General on behalf of the public. The Attorney-General represents the public in this regard. The intervention of the Attorney-General is founded on the principle that the Crown is *parens patriae* and that the Attorney-General appears for and represents the public interest. Traditionally, it has been held to be basic that if the Attorney-General does not sue *ex officio* or allow someone else to sue *ex relatione* no one else can claim to represent the public interest. It is a fundamental principle that private rights can be asserted by individuals, but public rights can only be asserted by the Attorney-General as representing the

public. The courts have no jurisdiction in any circumstances to clothe a plaintiff with the right to represent the public interest. Therefore, however much one may admire Mr. Lim Kit Siang for being public-spirited to raise in court a subject which he thinks is of national importance, one must not be blind as to what is the proper law to apply to see whether he has the qualifications in law to do so. To shut out from our minds what is the proper law to apply just to enable him to ventilate his grievance would be an abdication of our duty as interpreters of the law.”^[45]

Ten years later, the opportunity presented itself again. The question on standing to sue once again came for determination in the popular case of *Ketua Pengarah Jabatan Alam Sekitar & Anor v. Kajing Tubek & Ors and Other Appeals*^[46] (commonly referred to as the *Bakun Dam* case). The Bakun Dam involved three natives from the State of Sarawak in Malaysia filing an action to discontinue the construction of the Bakun Hydroelectric Project based on many grounds, one of which being that the project would not only deny them of their livelihood and their way of life but that the customary rights of all the natives in the affected area (totaling about 10,000 natives) would be quenched. One of the significant issues that had to be decided by the Court of Appeal was whether the three natives had *locus standi* to bring the action. Gopal Sri Ram JCA explained in his judgment that in public law, there are two kinds of *locus standi*. The first is the initial or threshold *locus standi*. The second is the substantive *locus standi*. His Lordship elucidated the principal differences between these two kinds of *locus standi* as follows:

“Threshold *locus standi* refers to the right of a litigant to approach the court in relation to the facts which form the substratum of his

complaint. It is usually tested upon an application by the defendant to have the action struck out on the ground that the plaintiff, even if all that he alleges is true, cannot seek redress in the courts. Although a litigant may have threshold *locus standi* in the sense discussed, he may, for substantive reasons, be disentitled to declaratory relief. This, then, is substantive *locus standi*. The factors that go to a denial of substantive *locus standi* are so numerous and wide ranging that it is inappropriate to attempt an effectual summary of them. Suffice to say that they range from the nature of the subject matter in respect of which curial intervention is sought to those settled principles on the basis of which a court refuses declaratory or injunctive relief.....”^[47]

The Court of Appeal ignored and refused to comment on the issue whether the three natives (respondents) had threshold *locus standi* because the appellants had not made any application to have the action struck out. Nonetheless, the Court of Appeal refused relief to the respondents on the ground that they lacked substantive *locus standi*. There were four bases on which *locus standi* was denied.

The first basis was that the respondents were, in substance, trying to enforce a penal sanction. According to the Court of Appeal, such a subject is completely reserved by the Federal Constitution to the Attorney General of Malaysia who is vested with incontestable discretion whether or not to institute criminal proceedings.

As for the second basis, the Court of Appeal held that the complaints advanced by the respondents amounted to deprivation of their life under Article 5(1) of the Federal Constitution. However, since such deprivation was in accordance with law, the respondents had, on the entirety of the

evidence, suffered no injury. There was therefore no necessity for a remedy.

The third basis for denying the respondents *locus standi* was because, according to the reasoning by the Court of Appeal, there were persons, apart from the respondents, who were adversely affected by the project. There was no special injury suffered by the respondents over and above the injury common to all others. The action commenced by the respondents was not representative in character and the other affected persons were not before the court.

The Court of Appeal held that the trial judge had not taken into consideration relevant matters when deciding whether to grant or to refuse declaratory relief. In particular, the Court of Appeal was of the view that the trial judge did not have sufficient regard to public interest. Furthermore, the trial judge did not consider the interests of justice from the point of view of both the appellants and the respondents. Those reasons formed the fourth basis of the Court of Appeal in refusing to grant the respondents *locus standi*.

In both the *UEM* and the *Bakun Dam* case, we see that the issues of *locus standi* had dangled to one extreme, far away from a relaxed attitude or liberal approach. Perhaps, Gopal Sri Ram JCA in the *Bakun Dam* case did imply that we need not lose hope and that all is not lost in the field of public law litigation. Gopal Sri Ram JCA did say that *locus standi* is a subject of pure practice that is exclusively for the court to settle and whether the strict or relaxed approach is to be adopted actually depends upon the economic, political and cultural needs and background of individual societies within which the particular court functions.

Nigeria

The position in Nigeria, though with a little variation, is the same as that of Malaysia. In Nigeria, the issue of *locus standi* is a jurisdictional issue. Where a party lacks the *locus* to institute an action, the court must as a matter of law decline jurisdiction. Environmental cases are decided in Nigeria according to the traditional rules of common law regulating tort action. Before the 1979 constitution, the prevalent position was based on common doctrine. While an individual instituting an action for private injury may not encounter difficulties so long he can prove the act of the respondents caused the damage, the same cannot be said of public injury. Where an act is that which affects the generality of the public, it is only the Attorney General that has the *locus* to institute such action because it is considered to be a crime in nature. Where an individual intends to prosecute such action, he must obtain the consent of the Attorney General or establish before the court a “special interest” suffered by him over and above that suffered by other members of the public.

This position is reflected in the Supreme Court decision in *Amos v. Shell BP Petroleum Company of Nigeria Ltd*^[48], here, many victims of environmental abuse and degradation were denied access to justice on the ground that the complaint was one of public nuisance which required more than mere expression of damages.

In *Seismograph service (Nigeria) Limited v. Ogbeni*,^[49] the agents in the process of carrying out oil exploratory procedures around the region of the plaintiff’s building, caused damage to the property of the plaintiff and many others. In an action for damages and compensation in nuisance, the case was dismissed on the ground that the activities of the defendant constituted a public nuisance which required a special interest to

succeed.^[50] The same was held in the case of *Shell Petroleum Development Company of Nigeria Limited v. Chief Otoko and Others*^[51], where nuisance was pleaded in the alternative.

However, the need for the consent of Attorney General of the Federation in an action affecting the generality of the public was to put to rest in *Adediran and Another v. Interland and Transport Limited*.^[52] In this case, the Supreme Court overruled all its previous decisions on the need to obtain Attorney General Consent in matters affecting the public. The decision of the court in *Adeniran's* case was based on the provision of section 6(6)(b) of the 1979 Constitution which is in *pari materia* with the current provision of section 6(6)(b) of the 1999 Constitution (as Amended in 2011). The section states that:

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

The Supreme Court interpreted the above provision to give individuals the right and standing to sue in public nuisance without obtaining the leave of the Attorney General or without joining him as a party. By so doing, the Supreme Court expanded the judicial access to victims of environmental pollution. Therefore, suffice to say that in Nigeria, the requirement of Attorney General Consent is no longer the law. However, the problem still remains whether a representative or class action can be maintained in a public nuisance matter. It is on this basis that the issue of *locus standi* creates an obstacle in seeking environmental justice.

However, one cannot conclusively say that the *Adediran's* case has put the issue of *locus standi* in public law disputes to rest. This is because; unlike in Malaysia where actions have been instituted challenging the authority of the government to issue a permit, Nigerian Courts are yet to be confronted with such application.

B CLASS ACTIONS AND LARGE NUMBER OF PLAINTIFFS

Some members of an injured class may be too poor to prosecute their claims individually. Class action suits can facilitate litigation of such situations by providing for: the protection of the defendant from inconsistent obligations; the protection of the interests of absentees; the provision of a convenient and economical means for disposing of similar lawsuits; and the facilitation of the spreading of litigation costs among numerous litigants with similar claims.^[53] The rules of the court always contain provisions and procedures for instituting a representative action. For a representative action to succeed, parties must establish that they have the same interest in the matter and that the same issue of law and fact would arise if they were to pursue their claim individually. Therefore, where parties are affected in different ways, then representative action may fail. Also, in a representative action, parties are not allowed to make individual or separate claims.

Therefore, because of the stringent rule guiding representative actions, the poor who often carry the proportionate burden of environmental abuse would be denied access to justice. The local communities are not financially buoyant enough to maintain individual claims taking into consideration the financial implication of paying for the services of a lawyer. A claim for special damages cannot succeed in a representative action unless the parties were affected the same way.

In the case of *Amos v. Shell BP P.D.C. Ltd*^[54], the plaintiffs sued the defendants in a representative capacity claiming among others, special and general damages. It was argued that the 2nd defendants as contractors to the first defendant had in the process of oil mining operations built a large earth dam across the plaintiffs' stream. As a result, farms were flooded and damaged; movement of canoes was hindered, and agriculture and commercial life was paralyzed. One of the issues was whether special damages could be claimed in a representative matter, when the plaintiffs suffered uneven losses, or whether the plaintiffs as general public could claim for losses suffered by them individually. It was held, dismissing the claim:-

1. That since the stream was a public waterway, its blocking was a public nuisance and no individual could recover damages therefore unless he could prove special damage peculiar to himself from the interference with a public right.
2. That since the interest and losses suffered by the plaintiffs were separate in character and not communal, they could not maintain an action for special damages in a representative capacity.^[55]

In Malaysia, representative or class action is governed by the Rules of High Court 1980. There are two different rules guiding class or representative actions in Malaysia. The rule under Order 15 Rule 12 and the one under Rule 53 which was added in September 2000. Since environmental matters are always and in most cases instituted against the government or public authorities in Malaysia, Order 53 regulates the procedure for instituting class actions against the government or public authorities. These rules are stringent and pose a great challenge to a

prospective plaintiff in seeking environmental justice against the government or public authorities. It was held in the case of *TR Lampoh AK Dana & Ors v. Government of Sarawak*,^[56] that the procedure under Order 53 is mandatory when a representative action is instituted against the government or a public officer or a public authority. The plaintiff or plaintiffs in the representative action cannot proceed under Order 15 Rule 12 of the Rules of the High Court 1980. It will be deemed to be an abuse of process if a plaintiff (or plaintiffs) in a representative action proceeds (or proceed) under Order 15 Rule 12 and not under Order 53.

The foundation of Order 53 in the Rules of the High Court 1980 is to afford certain protection to the public body or authority when their public act or decision is being challenged, for example, the time limit within which the challenge to the public act or decision must be made. Notwithstanding the reasons for its introduction, it was rightly observed, inadvertently or otherwise, by the High Court in the case of *TR Lampoh AK Dana & Ors v. Government of Sarawak*, that the rules under the new Order 53 are stringent in nature and must be complied with in a representative or class action matter.^[57]

Under Order 53, a plaintiff representing a group of persons seeking judicial review and any form of relief from the court is required to make the application “promptly and in any event within 40 days from the date when grounds for the application first arose or when the decision is first communicated to the applicant.”^[58]

Further to the limitation period of 40 days, a plaintiff intending to initiate a representative action is also required to obtain leave from the court in accordance with the requirement in Order 53 Rule 3(1). The application must be made *ex parte* to a Judge in Chambers and must be supported by

a statement setting out the name and description of the applicant, the relief sought and the grounds on which it is sought, and by affidavits verifying the facts relied on.^[59]

The plaintiff is also required to give notice of the application for leave not later than three days before the hearing date to the Attorney General's Chambers and must at the same time lodge in those Chambers copies of the statements and affidavits.^[60]

Another barrier faced by potential plaintiffs is the fact that in granting leave, the Judge may impose such terms as to costs and as to the giving of security as he thinks fit.^[61]

Finally, the plaintiffs in the representative action must also be able to show to the satisfaction of the court that they are "adversely affected by the decision of the public authority". As explained by the Court of Appeal in the case of *QSR Brands Bhd v. Suruhanjaya Sekuriti & Anor*^[62], there is a single test of threshold *locus standi* for all the remedies that are available under Order 53. That test requires an applicant seeking judicial review under Order 53 to demonstrate that he or she will be "adversely affected by any decision of any public authority". The court equated this with public interest litigation and quoted with approval, the condition that such parties must satisfy as laid down by the Supreme Court of India in the case of *Malik Brothers v. Narendra Dadhich*^[63] that:

Public interest litigation is usually entertained by a court for the purpose of redressing public injury, enforcing public duty, protecting social rights and vindicating public interest. The real purpose of entertaining such application is the vindication of the

rule of law, effective access to justice to the economically weaker class and meaningful realisation of the fundamental rights. The directions and commands issued by the courts of law in public interest litigation are for the betterment of the society at large and not for benefiting any individual. But if the Court finds that in the garb of a public interest litigation actually an individual's interest is sought to be carried out or protected, it would be the bounden duty of the court not to entertain such petition as otherwise the very purpose of innovation of public interest litigation will be frustrated.

In a nut shell, the stringent rule placed on representative or class actions negatively affect environmental justice in Nigeria and Malaysia knowing well that the minorities always carry the proportionate burden of environmental abuse. The requirement of leave stating sufficient interest under Order 53 of the Rules of High Court 1980 is too wide because, by such requirement, an applicant is expected to prove and establish more than required in a true application of an *ex parte* nature. Furthermore, in Nigeria, the condition that the plaintiffs in a representative action cannot make an individual claim is too stringent. This is because, it is practically impossible for parties to suffer in the same way and manner.

C STATUTE OF LIMITATION

The statute of limitation is another challenge facing the victims of environmental abuse in seeking environmental justice. In Malaysia, Order 53 requires that any action against the government or public authority must be instituted within 40 days from the date of action complained of. Thus, in the case of *TR Lampoh AK Dana & Ors v. Government of Sarawak*,^[64] a representative action brought by a group of natives alleging that their native customary rights over certain communal native

customary lands had been impaired and abridged by the act of the defendant was struck out on the ground that the plaintiffs were out of time. In Nigeria, environmental cases are treated like ordinary civil matters and therefore governed by the Limitation Act which prescribes the period of six years within which to institute a civil action. In the case of *Gulf Oil Company (Nig) Ltd v. Oluba*^[65], the Court of Appeal held that where the act is a continuous one, the time begins to run from the cessation of the act giving rise to the cause of the action. However, the major obstacle will arise where the environmental effect of activities does not manifest itself until quite some time. When in such a case when can it be said that the time will begin to run? Is it upon the manifestation of the effects or when the act was actually committed? It is hopeful that when this kind of issue arises in future, the court should be prepared to adopt an interpretation that will ensure justice and not otherwise. Some courts realize that a statute of limitation may be inappropriate for cases when pollution continues to cause problems over time.^[66] These courts argue that a:

Defendant's unpermitted discharge of dredged or fill materials into wetlands on the site is a continuing violation for as long as the fill remains. Accordingly, the five-year statute of limitations ... has not yet begun to run.^[67]

The statute of limitation will not run for as long as the pollution remains. Many courts will also treat common law tort nuisances as continuing violations.^[68] This approach has the added benefit of allowing the government to fine violators for each day the pollution remains, capturing more of the costs of environmental destruction.^[69]

D Burden of Proof

In jurisdictions like Malaysia and Nigeria, environmental matters are treated purely as civil claims and therefore subject to the stringent proof rule in civil matters. Environmental cases are in most cases brought under negligence, nuisance and strict liability rule.^[70] Therefore, victims of environmental degradation are required to prove to the satisfaction of the court the ingredient of any of these rules upon which their cases are founded or instituted. For example, to succeed in negligence, the plaintiff is required to establish that the defendant was actually negligent in his act. This has placed too much responsibility on the plaintiff because he is expected to know as much as the defendant for him to succeed. In nuisance, parties cannot claim for public nuisance unless he can show that he has suffered something over and above that suffered by other members of the public. In strict liability as well, the plaintiff must prove to the satisfaction of the court the rule and requirement as stated in the case of *Ryland v. Fletcher*.^[71] In *Uhunmwangbo v. Uhunmwangbo*, the plaintiff's case on negligence failed because he was unable to establish that the defendant was actually negligent in his act, notwithstanding the fact that damage was actually caused to the plaintiff's property. In as much as environmental cases are relegated to the status of ordinary civil suit, victims of environmental abuse would have to go the extra mile to be able to succeed under the stringent common law rules guiding tortious actions.

4 The Need for Reforms and Liberal Approach

The complexities of the rules of *locus standi* are definitely posing a barrier to the development in the area of environmental law where public interest litigation and judicial review appears to be the most usual method of accessing environmental justice. The failure of the judiciary, especially the higher

appellate body in Malaysia, in according a wider interpretation of the rule of *locus standi* may be posing a barrier to the development of the avenues of access to environmental justice. This hinders the development of public interest litigation which relies heavily on a liberal rule on standing. The law entrusting the Attorney General with the task of guarding the interest of the public by invoking a Relator action needs to be reviewed as it can never be useful to curtail avenues for access to courts. The Attorney General being an employee of the Government often refuses to grant his fiat to a public citizen rather than seek the wrath of the government by granting the same.

Relaxing the rules of *locus standi* may be able to provide litigants legal interest to commence legal proceedings.^[72] Citizens will not be able to control governmental activities and their fate if the rules of *locus standi* are not relaxed.^[73] The Malaysian and Nigerian legislators can consider incorporating definition of standing into environmental law statutes in order to guarantee statutory rights to interested citizens and environmental interest groups who may be able to represent the interest of the environment for the sake of the present and future generations. The Malaysian and Nigerian Courts can also learn something from other countries. In the *Minors Oposa* case,^[74] the Philippines Supreme Court recognised that a group of children had the right to uphold environmental rights for themselves and for the benefit of the future generations. In delivering the judgment the Court cited section 16 of Article II of the Philippines Constitution, which provides that:

The State shall protect and advance the right of the people to a balanced and healthful ecology in accordance with the rhythm and harmony of nature.^[75]

The Court held that the plaintiffs have standing to represent their unborn posterity, that they had adequately asserted a right to a balanced and healthful ecology.^[76] The court said that:

“Rhythm and harmony of nature include, inter alia, the judicious disposition, utilisation, management, renewal and conservation of the country’s forest, mineral, land, waters, fisheries, wildlife, off-shore areas and other natural resources to the end that their exploration, development and utilisation be equitably accessible to the present as well as future generations.”^[77]

The Philippines Supreme Court by encouraging the plaintiff’s right to sue on behalf of future generations has established the concept of intergenerational standing for environmental issues.^[78]

According to Harding, the standing rule appears to serve no real purpose and he summarized the purposes which they seem to serve as:^[79]

- a. to keep unmeritorious actions out of the courts;
- b. to prevent those unaffected or indirectly affected by administrative action from disturbing that which is acquiesced in by those directly affected; or
- c. to ensure that the best arguments are put against administrative action.^[80]

Harding also advocates that the *locus standi* rules “should simply be done away” so that a litigant need only show that he has an arguable case on the law.^[81] This suggestion is sound looking at the rate at which environmental degradation persists.

5 Conclusion

Much has been said about relaxing the strict interpretation of the rules of *locus standi*, however, relaxing the stringent interpretation of the rule on standing does not necessarily provide easy access to citizens. The other hurdle, which is considered more daunting than the stringent rule of standing, are the aspects relating to burden of proof, limitation of time and costs incurred in instituting court proceedings and related expenses which can also be a deterrent factor in instituting legal action for public citizens. All these require the court to adopt a liberal approach by appreciating that environmental cases are specific in nature and therefore should not be subject to the stringent rule of the common law.

Public interest litigation is a positive development in providing access to citizens. Granting of environmental rights for citizens to seek to enforce their rights is a development which Malaysia and Nigeria should consider seriously. The judiciary can develop some guidelines that could be used in interpreting the strict rule of standing depending on the nature of the action before them. Procedural infirmities may result in thwarting justice and it is therefore necessary that the procedures be reformed to effectively meet the needs of the society as it progresses. Law must be stable but at the same time it must be dynamic and accommodating to changes. The NGOs must be given rights to access to environmental justice. They play an important role in helping the people to obtain justice against environmental harm arising from land development activities.^[82] Thus, relaxing the rules of *locus standi* to persons seeking to enforce environmental laws in order to promote public interest can be deemed timely and essential.

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Endnotes:

[1] Leyshon A., “The Transformation of regulatory order: Regulating the Global Economy and Environment” (1992) 23 *Geoforum*, 249-267; Newell, P. “Globalization and the New Politics of Sustainable Development” in J. Bendell, (ed.,) *Terms for Endearment: Business, NGOs and Sustainable Development*. Sheffield, Greenleaf, 2000; Newell, P., “Access to Environmental Justice? Litigation against TNCs in the South” (2000) 32 (1) IDS Bulletin, 83-93.

[2] Nijar, G.S., “Public Interest Litigation,” [1983] 2 Current Law Journal, 234 at p.235; Thio, S.M., 1971, *Locus Standi and Judicial Review*, Singapore, Singapore University Press, at p.1.

[3] Cane, P., “Standing, Representation and the Environment,” in Loveland, I., (ed.) *A Special Relationship? American Influences on Public Law in the UK*, (Oxford, Clarendon, 1995) at p.125.

[4] Stein, P., “The Role of the New South Wales Land and Environment Court in the Emergence of Public Interest Environmental Law,” in *Environmental and Planning Law Journal*, June 1996, pp179-185 at p.180.

[5] Robinson, D., “Public Interest Environmental Law Firms in the United States,” in Dunkley, J. & Robinson, D.(eds.) *Public Interest Perspectives*

in *Environmental Law*, (England, Chancery Law Publishing Ltd.1995) pp.39-69 at p.41.

[6] Axline, M.D., *Environmental Citizen Suits*, USA, Butterworths Legal Publishers, 1995, 25.

[7] Greve, M.S., “The Private Enforcement of Environmental Law,” (1990) *Tulane Law Review*, 339 -340.

[8] Nicole A. Tablizo, *Environmental Citizen Suits: Strengthening Legal Standing* (2005) (unpublished law thesis, Ateneo de Manila University School of Law), 61 and 72-4.

[9] See Susan Casey-Lefkowitz, “The Evolving Role of Citizens in Environmental Enforcement” 4th INECE International Conference Proceedings, Vol. 1 (1996), as reprinted in 1 *Making Law Work*, 2 *Making Law Work: Environmental Compliance & Sustainable Development*, at 562.

[10] See Robert Kuehn, *A Taxonomy of Environmental Justice*, 30 ENVTL. L. REP. 10681 (2000) (explaining the different conceptions of justice relevant to environmental justice: distributive, procedural, corrective, and social justice).

[11] See David Rosenberg, “Class Actions for Mass Torts: Doing Individual Justice by Collective Means” (1987) 62 *Ind. L.J.* 561.

[12] See Bob Egelko, “Judge kills suit seeking toxic survey. Superfund law doesn’t apply to U.S. bases in Philippines, he rules,” (2003) *The San Fransisco Chronicle*, Dec. 12, 6.

^[13] For descriptions of many EJ communities and the issues they face, see Charles Lee, “Warren County’s Legacy for the Quest to Eliminate Health Disparities” (2007) 1 *GOLDEN GATE U. ENVTL. L.J.* 53, 59-60. See also Emily L. Dawson, “Lessons Learned from Flint, Michigan: Managing Multiple Source Pollution in Urban Communities” (2001) 26 *WM. & MARY ENVTL. L. & POL’Y REV.* 367, 379-82 (describing the EJ community of Flint, Michigan).

^[14] See Denis Binder et al., “A Survey of Federal Agency Response to President Clinton’s Executive Order 12898 on Environmental Justice” (2001) 31 *ENVTL. L. REP.* 11133. States have also enacted legislation directed at promoting environmental justice. See, eg, Antonette Benita Cordero & Carol J. Monahan, “Environmental Justice Grows Up” *ENVTL. L. NEWS*, Fall 2003, at 15 (discussing California’s environmental justice legislation). The South Coast Air Quality Management District was among the first government agencies to formally adopt guiding principles and initiatives to ensure environmental justice.

^[15] Dollie Burwell & Luke W. Cole, “Environmental Justice Comes Full Circle: Warren County Before and After” (2007) 1 *GOLDEN GATE U. ENVTL. L.J.* 9-10.

^[16] See Clifford Rechtschaffen, “The Evidence of Environmental Injustice” *ENVTL. L. NEWS*, Fall 2003, at 3.

^[17] Robert Garcia & Aubrey White, “Warren County’s Legacy for Healthy Parks, Schools & Urban Communities: Park Victories from the Cornfield to El Congreso and Beyond” (2007), 1 *GOLDEN GATE U. ENVTL. L.J.* 127, 129-31.

[18] In *R v. Inland Revenue Commissioners exp National Federation of Self Employed and Small Business Ltd.* [1980] 2 All E.R.378, at p.390. Lord Denning; “[I]t (the law) should recognise that public authorities should be compellable to perform their duties, as a matter of public interest, at the instance of any person genuinely concerned; and in suitable cases, subject always to discretion, the court should be able to award the remedy on the application of a public-spirited citizen who has no other interest other than a regard for the due observance of the law.”

[19] Thio, S.M., 1971, *Locus Standi and Judicial Review*, Singapore, Singapore University Press, at p.1.

[20] Nijar, G.S., “Public Interest Litigation,” [1983] 2 Current Law Journal, 234 at p.235.

[21] *R v. IRC, exp. National Federation of Self-Employed and Small Business Ltd* [1982] AC 617.

[22] *Ibid* at p.643.

[23] McEldowney, J.F., 1994, *Public Law*, London, Sweet & Maxwell p.495.

[24] Le Sueur, A.P. & Sunkin, M.C., 1997, *Public Law*, Longman, London at pp.492-494.

[25] *Ibid*.

[26] See Dean M., “The Revolution in Indian Environmental Jurisprudence: Review Essay” (2000) Vol.5, Issue 3, *Asia Pacific Journal of Environmental Law*, 291-303; Chechey W.A. (Justice), “Judgement and Remedies in Environmental Cases. A paper presented at the Judicial

Training Workshop Organized by UNEP and NJI, Abuja, between March 28-30, 2006, 41.

[27] The issue of standing for the purpose of Malaysian public law is not affected by the changes introduced by Order 53 of the Supreme Court Rules in England.

[28] *District Council Central Province Wellesley v. Yegappan* [1966] 2 MLJ 177.

[29] *Ibid*, per Abdul Aziz J at p. 182.

[30] [1982] 2 Malayan Law Journal 177.

[31] [1903] 1 Ch 109.

[32] [1978] AC 435.

[33] [1903] 1 Ch 109.

[34] [1903] 1 Ch 109, 114.

[35] [1982] 2 Malayan Law Journal 177, 178.

[36] [1982] 2 Malayan Law Journal 177, 179.

[37] [1988] 2 Malayan Law Journal 12.

[38] [1997] 3 Malayan Law Journal 23.

[39] [1988] 1 Malayan Law Journal 35.

[40] [1988] 1 Malayan Law Journal 50.

[41] [1988] 2 Malayan Law Journal 12, 25.

[42] [1988] 2 Malayan Law Journal 12, 20.

[43] [1988] 2 Malayan Law Journal 12, 31.

[44] [1988] 2 Malayan Law Journal 12, 27.

[45] [1988] 2 Malayan Law Journal 12, 39-40.

[46] [1997] 3 Malayan Law Journal 23.

[47] [1997] 3 Malayan Law Journal 23, 40-41.

[48] [1977] S.C. 109.

[49] [1976] 4 SC 85.

[50] *ibid.*

[51] [1990] 6 N.W.L.R. (pt. 159) 657.

[52] [1991] 9 N.W.L.R. (pt. 214) 155.

[53] See John C. Coffee, Jr., Understanding the Plaintiff's Attorney: The Implications of Economic Theory for Private Enforcement of Law through Class and Derivative Actions, 86 Colum. L. Rev. 669, 669-71 (class actions create economic incentives for citizen enforcement of environmental tort law); see also Deborah R. Hensler and Thomas D. Rowe, Jr., Complex Litigation at the Millennium: Beyond "It Just Ain't Worth It": Alternative Strategies for Damage Class Action Reform, (2001) 64 *Law & Contemp. Prob.* 137, 137-8, and Martin H. Redish, Class Actions and the Democratic Difficulty: Rethinking the Intersection of Private Litigation and Public Goals, (2003) *U Chi Legal F* 71, 87.

[54] [1977] SC 109.

[55] Ibid; see also, Jackson M. and Rosencranz A., “The Delhi Pollution Case: Can the Supreme Court manage the Environment”? (2003) 33 (2) *Environmental policy and Law*, 88-92.

[56] [2005] 6 Malayan Law Journal 371.

[57] *TR Lampoh AK Dana & Ors v. Government of Sarawak* [2005] 6 Malayan Law Journal 371, 390.

[58] Order 53 rule 3(6) of the Rules of the High Court 1980.

[59] Order 53 rule 3(2) of the Rules of the High Court 1980.

[60] Order 53 rule 3(3) of the Rules of the High Court 1980.

[61] Order 53 rule 3(4) of the Rules of the High Court 1980.

[62] [2006] 3 Malayan Law Journal 164.

[63] [1999] AIR SC 3211.

[64] [2005] 6 Malayan Law Journal 371.

[65] [2003] FWLR PT. 145, 712.

[66] *United States v. Windward Properties, Inc.*, 821 F. Supp. 690, 695 (D. Ga. 1993) (allowing discovery rule for alleging when statute of limitation for discharging dredged materials into streams accrued); *Atlantic States Legal Foundation v. Al Tech Specialty Steel Corp.*, 635 F. Supp. 284, 287-8 (D.N.Y. 1986) (statute of limitation did not run until violation was filed with EPA); see also Joseph G. Theis, *The Application of the Federal Five-Year Statute of Limitations for Penalty Actions to Wetlands Violations Under the Clean Water Act*, 24 N. Ky. L. Rev. 1, (1996).

[67] *United States v. Reaves*, 923 F. Supp. 1530, 1534 (D. Fla. 1996); compare with *North Carolina Wildlife Federation v. Woodbury*, 29 Env't Rep. Cas. (BNA) 1941 (E.D.N.C. 1989) (holding that continuing violation theory does not apply for statute of limitations purposes).

[68] *Mangini v. Aerojet-General Corp.*, 230 Cal. App. 3d 1125, 1142 (Cal. Ct. App. 1991) (holding that claims for trespass and nuisance of hazardous wastes are not barred by 3-year statute of limitations).

[69] David S. Foster, "The Continuing Violations Doctrine and the Clean Water Act: Untenable Solutions and a Need for Reform" (2002), 32 Env'tl. L. 717, 742 (continuing violation doctrine removes problem of inadequate fines for brief dumping time); see also James R. MacAyeal, "The Discovery Rule and the Continuing Violation Doctrine as Exceptions to the Statute of Limitations for Civil Environmental Penalty Claims" (1996) 15 *Va. Env'tl. L.J.* 589.

[70] See for example, the Malaysian Case of *Director-General of the Department of the Environment v. Kajing Tubek & others* [1996] 2 MLJ 388; see also *Ketua Pengarah Jabatan Sekitar v. Kaijng Tubek* [1997] 3 MLJ 23.

[71] [1866] L.R. 1 Ex. 265.

[72] Davis, K.C, "The Liberalised Law of Standing" [1970] *University of Chicago Law Review* Vol.37 (3) pp.450-473, at p.473.

[73] Winter, S.L, "The Metaphor of Standing and the Problem of Self Governance," [1988] *Stanford Law Review* Vol.4 pp.39-89 p.42.

[74] *Minors Oposa v. Secretary of the Department of Environment and Natural Resources* [1994] (DENR) 33 ILM 173.

[75] *ibid.*

[76] La Vira, M., “The Right to a Sound Environment in the Philippines: The Significance of the *Minors Oposa* Case,” [1994] *Review of European Community & International Environmental Law* Vol. 4(3) at pp.246-252.

[77] *Minors Oposa v. Secretary of the Department of Environment and Natural Resources* [1994] (DENR) 33 ILM 173 at p.185.

[78] Just, R.A., “Intergenerational Standing Under the Endangered Species Act: Giving Back the Right to Biodiversity after *Lujan v. Defenders of Wildlife*” [1996] *Tulane Law Review* Vol. 71(2) pp.297-249 at p.249.

[79] Harding, A.J., “Do Public Interest Environmental Law and the Common Law Have a Future Together,” in Dunkley, J. & Robinson, D., (eds.) 1995, *Public Interest Perspectives in Environmental Law*, England, Chancery Law Publishing Ltd. pp.218-225 at p.222.

[80] Harding, A.J., 1989, *Public Duties and Public Law*, (Oxford, Oxford University Press, at p.221).

[81] Harding, A.J., “Do Public Interest Environmental Law and the Common Law Have a Future Together,” in Dunkley, J. & Robinson, D., (eds.) 1995, *Public Interest Perspectives in Environmental Law*, England, Chancery Law Publishing Ltd. pp.218-225 at p.222.

[82] The *Bakun Dam* case and the *Asian Rare Earth* case are very good examples. The NGOs helped the affected citizens to seek redress from the court.