



ENVIRONMENTAL PUBLIC INTEREST LITIGATION IN UGANDA AND INDIA: A COMPARATIVE JURISPRUDENTIAL ANALYSIS OF LEGAL FRAMEWORKS

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Preference

This article is an exploration of the legal landscape and PIL from public interest perspective in Uganda and India. It is a record of our continuous dedication towards safeguarding our common environmental heritage to promote sustainable development and environmental balance.

We aim at giving an overview of PIL specifically focused on environment and discussing its theoretical bases developed historically in this area, doctrinal developments and practical implications within Ugandan and Indian laws. The paper therefore critically examines case law as well as relevant statutes to show how these have shaped both policy and governance processes for the environment in these jurisdictions.

The main idea behind this paper is that it tries to fill up the gap between Uganda's jurisprudence on environmental matters and India's jurisprudence on the same, while recognizing their different socio- economic contexts but also their common concern for environmental protection. We do this through comparing cases from either country so that we can identify areas where either approach has been better than the other or vice versa.

We ask you sincerely dear reader to respectfully interrogate with us over complexities of PIL concerning environment; envision how law intersects with society and nature; fathom how far law contributes towards realizing green economy; measure whether or not justice may be attained in an environmental court context.

Abstract

In the realm of environmental jurisprudence, the concept of Public Interest Litigation (PIL) has emerged as an instrumental tool aimed at protecting the collective interests of society concerning environmental protection. This comprehensive paper endeavors to meticulously examine and juxtapose the jurisprudential landscapes of two democratically distinct but jurisprudentially intertwined nations, Uganda and India, with particular emphasis on environmental PIL. This scholarly inquiry traces its origins to the theoretical foundations of PIL, where the 'locus standi' principle, historically a determinant of access to justice, is supplanted by the doctrine of 'sufficiency of interest,' enabling non-governmental actors and concerned citizens to litigate environmental issues of public concern assertively. This research expounds upon the nuances and intricacies of the legal frameworks underpinning PIL in Uganda and India, invoking the *Salus populi suprema lex* to underscore the overarching societal objectives.

By employing a comparative methodology, this study investigates the adjudicatory responses and precedential developments in pivotal PIL cases from both jurisdictions, elucidating the jurisprudential evolution and discerning the doctrinal subtleties that have crystallized through judicial interpretations. Notably, the paper delves into cases like 'MC Mehta v. Union of India' in the Indian context and equivalent Ugandan cases addressing environmental pollution issues, accentuating the role of judicial activism in shaping environmental policy.

Furthermore, this study dissects environmental PIL's challenges in both jurisdictions, drawing upon jurisprudential perspectives, and socio-economic realities. It engages with debates surrounding the 'remedy gap' and 'environmental justice,' evoking *ubi jus ibi remedium* to underscore the inherent judicial obligation in securing environmental rights.

This paper seeks to bridge the jurisprudential lacuna between Uganda and India in the context of environmental PIL, invoking the doctrinal analysis, and an interdisciplinary approach to elucidate the legal, social, and policy implications of environmental litigation for the public interest. Through this academic pursuit, this study aspires to illuminate the symbiotic relationship between jurisprudence, ecological protection, and societal progress, invoking law as the art of the good and the equitable.

Introduction

In the annals of contemporary legal discourse, the symbiotic relationship between environmental conservation and jurisprudence has assumed paramount significance. As global concerns about ecological degradation and environmental deterioration intensify, nations are confronted with the imperious mandate to harmonize development objectives with the imperative of ecological preservation. This exordium explores the intricate jurisprudential landscape of two democratic republics—Uganda and India—in their relentless pursuit of environmental amelioration through the lens of Public Interest Litigation (PIL).

To appreciate the profundity of this inquiry, it is incumbent upon us to ascertain the contextual moorings of the term 'environment' within the ambit of the law. Jurisprudentially, the term 'environment' is a multifaceted lexicon that

transcends the mere physicality of the natural world¹. It encompasses the entire ecological milieu, surrounding nature's biotic and abiotic components and the dynamic interplay of human activities and their repercussions on the delicate environmental balance. As legal philosophers opine that where there is a right, there is a remedy²—a fundamental tenet of jurisprudence that underscores the entitlement of every living organism, human and non-human alike, to a pristine environment that sustains life and vitality.

In this contemporary epoch, wherein the galloping pace of industrialization and globalization often portends environmental despoliation, Public Interest Litigation (PIL) emerges as a legal archetype of profound resonance. While jurisprudential offspring of common law doctrines, PIL contravenes traditional legal paradigms by reconceptualizing the locus standi³—the legal capacity to initiate legal proceedings. It is predicated on the foundational principle of 'sufficiency of interest,' a tectonic shift from the traditional 'locus standi' doctrine that circumscribed legal actions within the purview of those directly affected.

Public Interest Litigation is imbued with the jurisprudential dictum 'salus populi suprema lex'⁴. It is an indispensable legal vehicle that empowers conscientious citizens, non-governmental organizations, and civil society groups to traverse the hallowed corridors of justice to secure the public good. PIL confers upon them the inalienable prerogative to agitate public concern and societal import issues. In essence, PIL transmutes the courtroom into an arena for socio-legal advocacy, where the scales of justice are calibrated in the hallowed chambers and the court of public opinion.

This research, guided by the overarching maxim 'jus est ars boni et aequi'⁵, embarks upon a juridical odyssey to dissect the jurisprudential nuances of environmental PIL in Uganda and India. As two burgeoning democracies with contrasting sociocultural and historical contexts, they converge upon a common mandate—safeguarding their ecological patrimony for posterity. With the focal lens on environmental preservation, this research endeavors to unravel the jurisprudential subtleties, precedential paradigms, and societal ramifications that have emerged through PIL in the two jurisdictions. This academic pursuit seeks to chart an epistemological map of environmental PIL, where legal doctrines commingle with the imperatives of sustainability, thereby illuminating the path toward harmonious coexistence between human society and the natural world.

Origins and Evolution of PIL in India

The Historical Antecedents

The journey of PIL in India is a testament to the dynamism of the country's legal landscape. This chapter delves into PIL's historical underpinnings and evolutionary trajectory, which has burgeoned into an indispensable tool for environmental conservation and social justice.

PIL in India did not emerge ex nihilo; instead, it draws inspiration from its historical antecedents, particularly the

'locus standi' doctrine that hitherto fettered access to justice. The locus standi principle, a tenet of Anglo-Saxon jurisprudence, postulated that only those directly aggrieved had the legal capacity to approach the courts. This doctrine perpetuated legal exclusion and social inequality, rendering vast segments of the populace voiceless before the judiciary.

Historically, this narrow interpretation of standing created significant barriers to justice and perpetuated a system where vast segments of society were effectively excluded from the corridors of justice. It undermined the broader objectives of the legal system to deliver justice and protect the rights and interests of the public at large. Under this doctrine, issues of public concern often remained unaddressed, and societal inequalities persisted.

The "locus standi" doctrine was a metaphor for a legal system viewed as inaccessible and unconcerned with regular people's issues. Addressing structural problems about environmental protection, social justice, and the welfare of marginalized people was extremely difficult, given the current state of affairs. The legal system's doors remained firmly barred to those who wanted to preserve the public interest and enforce public duties.

In essence, the historical antecedents of PIL in India are rooted in recognizing the need for a more inclusive and equitable legal system. The emergence of PIL represented a paradigm shift from the strict 'locus standi' doctrine to a more expansive and inclusive approach to litigation in the public interest. It was an acknowledgment by the judiciary that the traditional method was ill-suited to address the complex and multifaceted challenges facing society, particularly in the realm of environmental protection, social justice, and the broader public interest.

This shift in jurisprudential thinking laid the foundation for the development of PIL as a potent legal instrument for advancing the welfare of the people, as encapsulated in 'salus populi suprema lex'. It signaled a departure from a legalistic and formalistic approach to a more pragmatic and purposive interpretation of the law, focusing on justice, equity, and the common good. The historical antecedents of PIL in India set the stage for a jurisprudential evolution that would have far-reaching implications for protecting the environment and promoting public interest litigation.

Judicial Activism and the Expansive Approach

The watershed moment in the evolution of PIL is averred in *S.P. Gupta v. Union of India, 1981*⁶. The Supreme Court, invoking the maxim 'salus populi suprema lex,' held that any bona fide member could move the court to enforce public duties. This judgment heralded a transformative era in

Indian jurisprudence.

In the annals of Indian jurisprudence, the evolution of PIL found its impetus in the realm of judicial activism, catalyzing an expansive approach to the dispensation of justice. The concept of judicial activism finds its articulation in the immortal words of former Chief Justice P.N. Bhagwati, who aptly stated, "The judges should not sit with

folded hands and blame the legislature for its omissions and inefficiencies." The pivotal role of judicial activism in the development of PIL is vital. It is averred that 'salus populi suprema lex' underscores the judiciary's proactive role in shaping the jurisprudential landscape.

In embracing this expansive approach, the Indian judiciary invoked the principle of 'sufficiency of interest,'⁷ whereby individuals or entities could approach the courts to seek redress on behalf of the broader public interest. This marked a transcendence of the 'actore non- probante, reus absolvitur'⁸ which had hitherto governed the strict locus standi requirements.

Chief Justice Bhagwati's jurisprudential vision was articulated further in *Bandhua Mukti Morcha v. Union of India* (1984), in this case, *Bandhua Mukti Morcha*, a non-governmental organization (NGO) dedicated to eradicating bonded labor, filed the petition. They argued that bonded labor practices were prevalent in various parts of India, violating the fundamental rights of the laborers.

The petitioners contended that these practices were inhumane, exploitative, and contrary to the principles of social justice and equality enshrined in the Indian Constitution.

They sought the intervention of the Supreme Court to enforce the constitutional rights of the affected laborers and to secure their release from bonded labor.

The defending counsel, representing the Union of India, acknowledged the existence of bonded labor but argued that the government had already taken measures to address this issue.

They contended that certain legislative provisions were in place to combat bonded labor, and the government was committed to eradicating this practice. The defending counsel disputed the extent of the problem and questioned the need for judicial intervention, asserting that the government was adequately handling the situation.

Chief Justice Bhagwati's eloquently averred that, "Public interest litigation is not, in reality, a litigation but it is a class of litigation which is introduced in the arena of law by the court on its motion and even a letter or telegram from a public-spirited individual or a member of the public or a social action group acting for and in the interest of the community as a whole complaining of a legal wrong or a harm suffered by a section of the public is enough to attract the jurisdiction of the court and give it power to intervene to redress the legal wrong or the harm suffered by such section of the public."¹⁷

Supreme Court of India further recognized that bonded labor was a gross violation of fundamental rights and human dignity. The Court ordered the immediate release of bonded laborers, outlining specific guidelines and mechanisms for their rehabilitation. It directed the Union of India and state governments to enforce existing labor laws rigorously

and take proactive measures to eradicate bonded labor practices.

While *Bandhua Mukti Morcha v. Union of India* primarily addressed labor rights, it demonstrates the power of public interest litigation in addressing societal issues, including environmental concerns. The case highlights the role of the judiciary in addressing systemic injustices and upholding the fundamental rights of vulnerable populations.

Similarly, in Environmental Public Interest Litigation (EPIL), concerned citizens, NGOs, or activists can approach the courts to address environmental issues, seeking remedies for violations of environmental laws, protection of natural resources, and the enforcement of environmental rights¹⁸. Both types of public interest litigation serve as mechanisms to ensure the protection of constitutional rights, whether they pertain to labor, the environment, or other areas of public concern. They underscore the judiciary's role in safeguarding the rights and welfare of citizens.

This expansive approach found its zenith in the landmark case of *M.C. Mehta v. Union of India* (1986), wherein the judiciary, cognizant of the 'environmental emergency,' invoked the constitutional maxim 'intergenerational equity'¹⁹ to declare that the right to a clean environment was an inalienable facet of the fundamental right to life averred under Article 21 of the Indian Constitution.

Once, on December 4, 1985, at one of Shriram's units, a leak of oleum gas affected the general public. Unfortunately, due to the inhalation of gases from the leakage of the gas, an advocate in Tis Hazari Court lost his life. The petitioner and Delhi Bar Association admitted it. On December 6, a slight release of minor oleum gas from a pipe joint seemed to have been released.

By invoking Article 21, Article 32, and Article 48-A of the Indian constitution, M.C. Mehta used the writ 'mandamus' remarkably well. Thus, in this lawsuit, the petitioner sought the court's 'mandamus' compelling authorities to take immediate steps to reduce pollution levels in Delhi.

The primary issue pertained to the scope of Article 32²⁰ of the Indian Constitution, which provides for the right to constitutional remedies. The question was whether this article could be invoked to address matters of public interest and environmental safety.

Another key issue was whether the principle of strict liability²¹ should be applied in cases involving hazardous industries, like the one in question. The case raised the question of whether industries should be allowed to store and handle hazardous substances on their premises, considering the potential risks to public safety.

Chief Justice Bhagwati expressed serious concerns about the safety of Delhi residents in the context of hazardous chemical leaks. He emphasized that eliminating such industries was not a viable option as they played a crucial role in

improving people's quality of life and contributing to economic growth. Instead, the focus should be on minimizing the risk and harm to the public by placing these industries in areas with minimal exposure to the general population and addressing safety needs comprehensively.

The court ruled that hazardous industries were not exempt from the principle of strict liability, except in cases where a third party's actions or natural disasters were the sole causes of harm. The court held that absolute liability²² was applicable in this case, as the leak resulted from mechanical and human errors.

The case also established that Article 32 of the Indian constitution could be used to enforce fundamental rights and provide remedial relief, especially when a significant number of individuals or vulnerable groups were affected by serious violations of their rights. The court emphasized the need to address the relationship between the state and private corporations in sectors deemed vital to the public interest.

The court's ruling not only expanded the scope of Article 32 of the Indian Constitution, recognizing its potential to address matters of public interest and environmental safety but also reinforced the principle of strict liability in cases involving hazardous industries. By holding that industries engaged in inherently dangerous activities must bear absolute liability for harm caused, unless proven otherwise, the court set a crucial precedent for environmental litigation.

Chief Justice Bhagwati's observations emphasized the necessity of striking a balance between industrial growth and environmental protection. The court recognized the vital role of certain industries in improving the quality of life and driving economic progress but insisted on stringent safety measures and responsible corporate behavior.

Furthermore, the case underscored the judiciary's role in enforcing fundamental rights and providing remedies, particularly when a substantial number of individuals or vulnerable groups were affected by infringements of their rights. It highlighted the need to regulate industries and protect the public interest, especially in sectors deemed vital to the nation's welfare.

M.C. Mehta vs. Union of India demonstrated the judiciary's commitment to safeguarding both the environment and the rights and well-being of its citizens, setting a precedent for future Environmental Public Interest Litigation (PIL) and underscoring the importance of responsible industrial practices in the pursuit of economic development.

The Union Carbide Corporation vs. Union of India famously known as Bhopal Gas Tragedy²³ is another significant case in the realm of Environmental Public Interest Litigation (EPIL) in India. It epitomizes the need for such litigation in addressing environmental disasters and ensuring justice for affected communities.

The facts of the case underlay's; on the night of December 2-3, 1984, a catastrophic industrial disaster occurred in Bhopal, Madhya Pradesh, at the Union Carbide India Limited (UCIL) pesticide plant. Methyl isocyanate (MIC), a highly toxic gas used in the production of pesticides, leaked from the plant's storage tank into the surrounding residential areas. This gas leak resulted in the deaths of thousands of people and left numerous others suffering from severe health issues and disabilities. It was one of the deadliest industrial accidents in history.

The central legal issue in the Bhopal Gas Tragedy was the environmental negligence and violation of safety standards by UCIL.

The gas leak was a result of inadequate safety measures, substandard maintenance, and a failure to prevent and mitigate such a disaster. The case raised complex questions about corporate liability for environmental disasters. It brought into focus the responsibilities of multinational corporations operating in India and their accountability for harm caused by their actions.

The legal proceedings in the Bhopal Gas Tragedy case resulted in several significant rulings:

In the immediate aftermath of the disaster, the Indian government filed a case against UCIL, leading to an interim compensation settlement in 1985. The settlement amounted to \$470 million, which was criticized as inadequate given the scale of the tragedy.

Criminal charges were filed against various officials of UCIL, including its then-CEO Warren Anderson. However, the extradition of Anderson and the prosecution of others proved to be a lengthy and contentious process.

Gas Tragedy case also witnessed the use of PIL. Public interest groups and activists filed PIL petitions to address environmental and health issues arising from the disaster; it is a significant case in Environmental Public Interest Litigation, highlighting the need for legal mechanisms to hold corporations accountable for environmental disasters. While the case resulted in some compensation for the victims, it also underscored the challenges in pursuing justice and ensuring corporate responsibility in such case

Statutory Framework for PIL

India has codified principles of PIL providing a legislative scaffold to ensure the efficacy of PIL as an instrument of justice. The legislative intent was to augment the jurisprudential principle of 'sufficiency of interest' by entrenching it in the legal corpus.

Article 32 - Right to Constitutional Remedies:

The "heart and soul" of the Indian Constitution²⁴, or Article 32, is frequently referred to. It enables people to petition the Supreme Court to uphold their fundamental rights. This article serves as the constitutional basis for PIL in India, as it grants the Supreme Court the authority to hear cases in the form of PILs and issue appropriate writs to protect fundamental rights.

Article 21 - Right to Life and Personal Liberty:

Article 21 guarantees every person the fundamental right to life and personal liberty. Courts have consistently held that this right encompasses the right to a clean environment and protection from environmental pollution²⁵. PILs related to ecological issues often invoke Article 21 to assert the right to a clean and healthy environment.

Article 48-A - Protection and Improvement of Environment:

The state is required by Article 48-A, a Directive Principle of State Policy, to preserve the nation's forests and wildlife and conserve and develop the environment²⁶. While Directive Principles are not enforceable in courts, they are considered fundamental in the country's governance. PILs often refer to Article 48-A to emphasize the government's constitutional duty to protect the environment.

Extraordinary Writs Relevant to PIL:

Writ of Habeas Corpus:

The writ of habeas corpus is used in PIL cases to secure the release of a person unlawfully detained or imprisoned. While this writ is not frequently employed in environmental or public interest cases, it remains an essential tool in the broader context of constitutional remedies.

Writ of Mandamus:

The writ of mandamus is extensively used in PIL cases to compel a public authority or government official to perform their legal duties and obligations²⁷. In environmental PILs, this writ can be invoked to demand immediate action from government agencies to address environmental issues or violations of environmental laws.

Writ of Certiorari:

The writ of certiorari is used to quash decisions or orders passed by lower courts, tribunals, or quasi-judicial authorities if they are found to be illegal, ultra vires, or in violation of principles of natural justice. In PIL cases, it can be utilized to challenge government decisions or actions that are environmentally harmful or contrary to the law.

Writ of Prohibition:

A higher court's prohibition writ forbids a lesser court or authority from acting outside of its legal authority or exceeding its scope of jurisdiction. In PILs, this writ may be sought to restrain government bodies from undertaking actions that could result in environmental harm or violate the law.

Writ of Quo Warranto:

Quo warranto is used to question the authority or right of an individual to hold a public office or position. PILs can challenge the appointment or continuation of officials in regulatory bodies or government agencies tasked with environmental protection if there are concerns about their competence or impartiality.

These constitutional Articles and extraordinary writs provide the legal framework for PIL in India. They empower the courts to take suo motu cognizance of matters involving public interest and environmental concerns, and they enable citizens and organizations to approach the courts to seek redress for violations of fundamental rights and constitutional duties related to environmental protection.

Expanding Horizons

Environmental concerns featured prominently in the expansion of PIL's scope. Cases like *Indian Council for Environmental Action v. Union of India* (1996)²⁸, concerning the Tehri Dam, and *Centre for Environmental Law v. Union of India* (2003)²⁹, pertaining to hazardous waste management, further exemplify the judiciary's proactive role in environmental protection.

In the case of *Indian Council For Enviro-Legal vs Union Of India And Ors.*, on 13 February, 1996, the petitioner, an environmentalist organization, brought to the court's attention the dire circumstances faced by individuals living in the vicinity of chemical industrial plants in Bichhri village, Udaipur district, Rajasthan, India. The petitioner highlighted the apparent disregard for the law and lawful authorities exhibited by certain entrepreneurs, particularly those operating chemical industries, who were exploiting the country's need for industrialization and export earnings at the expense of the environment and public health.

The case centered around the environmental degradation caused by the production of toxic chemicals, particularly 'H' acid, by industrial units such as Silver Chemicals and Jyoti Chemicals within the Bichhri village complex. These chemicals generated significant quantities of highly toxic sludge, and the improper disposal of waste posed a serious threat to the environment, including soil, water, and public health.

The petitioner alleged that the respondents, including Silver Chemicals and Jyoti Chemicals, had violated environmental regulations by allowing untreated toxic waste to flow freely and by disposing of toxic sludge without

proper treatment. This, in turn, had polluted groundwater, wells, and surface water, rendering them unfit for human consumption and agricultural use.

The case raised concerns about the apparent ineffectiveness of legal authorities and regulatory bodies in addressing these environmental violations. It highlighted a perception that those who disregarded the law, particularly if they had financial means, could escape the consequences of their actions.

The case emphasized the adverse impacts on the health and livelihoods of the villagers due to the contamination of water sources, soil, and the local ecosystem. The pollution had led to diseases, death, and economic hardship.

In the ruling on February 13, 1996, the court acknowledged the gravity of the situation and expressed its deep concern about the environmental and public health consequences resulting from the industrial activities of Silver Chemicals and Jyoti Chemicals. While the respondents claimed that both units had ceased production of 'H' acid since January 1989 and were closed, the court recognized that the environmental damage persisted, particularly the toxic sludge and the long-lasting harm to the environment, underground water, human beings, cattle, and the local economy.

This case is significant in the realm of Environmental Public Interest Litigation (EPIL) as it emphasizes the importance of holding industries accountable for environmental violations. It demonstrates the role of courts in addressing environmental issues and ensuring that industries adhere to environmental regulations.

The case highlights the concept of environmental justice, emphasizing that the pursuit of profit should not come at the expense of environmental degradation and harm to vulnerable communities. It sets a precedent for courts to consider the rights of affected individuals and communities in environmental matters.

The case underscores the application of the precautionary principle in environmental law, which suggests that when an activity has the potential to cause harm to the environment or public health, precautionary measures should be taken to prevent such harm, even in the absence of conclusive scientific evidence.

The case exemplifies the judiciary's role in environmental protection and its significance in shaping Environmental Public Interest Litigation in India. It emphasizes the need for stringent enforcement of environmental regulations and accountability for environmental harm caused by industrial activities.

The Development of PIL in Uganda

The evolution of Public Interest Litigation (PIL) in Uganda, like its Indian counterpart, traverses a historical trajectory fraught with unique socio-political dynamics and legal imperatives. The development of PIL in Uganda is characterized by distinct phases and pivotal moments contributing to its current standing within the legal landscape.

Pre-1995 before promulgating the Constitution of Uganda, PIL in its contemporary form was virtually nonexistent.

The legal and institutional framework needed the requisite provisions and mechanisms for PIL to take root. The locus standi concept, like its Indian equivalent, provided a significant obstacle for people and organizations attempting to assert the court's jurisdiction over issues of public interest.

The watershed moment in developing PIL in Uganda came with adopting the 1995 Constitution. This seminal document enshrined the right to access justice and provided the constitutional underpinning for PIL in Article 50. Article 50 expressly empowers anyone to approach the courts for redress in cases involving violating fundamental rights and freedoms, making PIL constitutionally permissible³⁰In tandem with the constitutional provisions, the Constitutional Court Rules, Statutory Instrument No. 91-2, were promulgated to provide the procedural framework for PIL. These rules delineated the filing, service, and adjudication process of PIL cases before the Constitutional Court, the specialized court designated for constitutional matters.

Pivotal PIL Cases: The development of PIL in Uganda was further catalyzed by critical cases that tested the nascent legal framework. In *Oluma Michael and Atima Lee Jackson vs. Excel Construction Ltd, Attorney General, and National Environmental Management Authority*³¹, the case involves two applicants, Oluma Michael and Atima Lee Jackson, who initiated legal proceedings against Excel Construction Ltd, the Attorney General, and the National Environmental Management Authority (NEMA) in Uganda. The applicants sought remedies under Articles 39 and 50 of the Ugandan Constitution and provisions of the National Environment Act.

The dispute arose from construction activities carried out by Excel Construction Ltd near the Arua Regional Referral Hospital. The applicants owned properties in the vicinity, and they raised concerns about environmental damage caused by the construction of a lagoon. They alleged that the lagoon's construction would adversely affect their properties and the environment.

The applicants applied for a restraining order to halt further construction and an environmental restoration order against the construction company and the hospital.

The respondents, including Excel Construction Ltd, the Attorney General, and NEMA³², opposed the application. They contended that NEMA had properly issued the EIA certificate after due process and assessment. They raised concerns about the delay in amending the motion to include the Attorney General and NEMA as respondents.

The respondents questioned the relevance of the application after the prolonged delay.

They argued that an environmental restoration order could not be granted, emphasizing that Section

71 of the National Environment Act³³ operated independently of Section 19.

The court found that NEMA lawfully issued a certificate of approval for the EIA to the hospital. The Environmental Impact Assessment had been carried out in accordance with the regulations, and the hospital had complied with the

necessary requirements.

The court determined that it could not cancel the EIA certificate as it had been lawfully issued, and there were no grounds for cancellation.

The court concluded that the application was overtaken by events and was no longer triable. The concerns raised by the applicants had been addressed, and the necessary approvals and modifications were in place, awaiting implementation.

The court ruled that an Environmental restoration order was unnecessary in this case because there was no threat to harm the environment. The 1st and 2nd respondents had abandoned the original project that raised environmental concerns and sought all necessary approvals for a new project that complied with regulations.

This case is an example of Environmental Public Interest Litigation in Uganda. The applicants initiated legal action to protect the environment and their property rights, alleging that construction activities could cause environmental harm. The issues raised in the case, such as the proper issuance of environmental certificates and the potential environmental restoration, highlight the importance of public interest litigation in addressing environmental concerns and ensuring compliance with environmental regulations.

In *Uganda Network on Toxic-Free Malaria Control Limited v. The Attorney General*³⁴

The petitioner, Uganda Network on Toxic-Free Malaria Control Limited, is described as a company limited by guarantee and a civil society organization registered in Uganda.

The petitioner raised concerns about the spraying of Dichlorodiphenyltrichloroethane (DDT) for malaria control in Oyam and Apac Districts in Uganda. They alleged that the spraying of DDT violated the right to a clean and healthy environment as enshrined under Article 39 and the right to life as enshrined under Article 20 of the Ugandan Constitution³⁵.

The petitioner claimed that the spraying of DDT was carried out without following proper procedures and had adverse consequences on human health and the environment. They also argued that Uganda lacked the capacity and resources to use DDT safely and had no clear regulatory framework for its use.

Issues:

Whether the petition is rightly before the Court. Whether the petition discloses a cause of action.

Whether the acts of the respondent violate the petitioner's right to a clean and healthy environment as guaranteed by Article 39 of the Constitution.

The petitioner argued that the petition was properly before the Court and that it disclosed a cause of action. They contended that the spraying of DDT³⁶ violated the Constitution as it was carried out contrary to the guidelines and conditions set out by the National Environment Management Authority (NEMA) in the Environmental Impact Assessment Certificate issued to the Ministry of Health. The petitioner asserted that the violation of these conditions amounted to a violation of their constitutional rights, especially the right to a clean and healthy environment. They sought remedies under Articles 50 and 137 of the Constitution, including a declaration that the acts of the Ministry of Health were inconsistent with the Constitution.

The Attorney General, representing the respondent, argued that the petition was not rightly before the Court because it did not raise questions requiring constitutional interpretation under Article 137. They contended that the violations alleged by the petitioner related to the enforcement of environmental laws and regulations rather than constitutional interpretation. The respondent argued that the National Environment Act provided remedies for such violations, and the petition should have been filed in another competent court for redress. The respondent also maintained that the Ministry of Health had followed the law and that there was no violation of the Constitution.

The Court held that the petition did not raise any questions for constitutional interpretation under Article 137 of the Ugandan Constitution. While the spraying of DDT may have raised concerns related to the violation of environmental laws and regulations, it did not involve the interpretation of constitutional provisions. Therefore, the Court concluded that it had no jurisdiction to entertain the matter under Article 50 and Article 137. The Court emphasized that for it to exercise jurisdiction under Article 50, a matter must have first come under Article 137 and disclosed questions for constitutional interpretation. The Court dismissed the petition.

This case highlights the distinction between matters that involve the enforcement of environmental laws and those that require constitutional interpretation. While environmental public interest litigation plays a crucial role in safeguarding environmental rights, not all violations of environmental laws necessarily involve constitutional issues. In this case, the Court emphasized that constitutional courts should only exercise jurisdiction under Article 50 when constitutional interpretation is at the heart of the matter, leaving other environmental enforcement issues to be addressed through appropriate legal channels such as the National Environment Act and the relevant administrative authorities.

Uganda's PIL journey has also been influenced by the emergence of civil society organizations and public interest advocacy groups. These entities have played an instrumental role in identifying, litigating, and advocating for issues of public concern.

They serve as conduits for channeling public grievances into the legal arena, aligning with ubiquitous *vigilantibus iura subveniunt*³⁷—the law aids the vigilant.

In the case of Water and Environment Network (U) Ltd. and Others v. National Environmental Management Authority and Hoima Sugar Ltd ³⁸ the dispute revolves around the issuance of an Environmental and Social Impact Assessment (ESIA) Certificate of Approval by the National Environmental Management Authority (NEMA). This certificate was granted to Hoima Sugar Ltd. for their proposed Kyangwali Mixed Land Use Project. The applicants, which include environmental- focused NGOs, were concerned that this ESIA approval was marred by procedural irregularities, specifically the lack of proper consultations and the failure to consider public input. The project, set to cultivate sugar cane on land previously part of Bugoma Forest, a sensitive biodiversity area, raised significant environmental concerns.

The applicants contended that they had a direct and sufficient interest in the matter, stemming from their roles in environmental protection and advocacy. They asserted that NEMA had approved the ESIA without adhering to statutory procedures, notably the absence of thorough consultations with local communities and the failure to seek written public comments. Furthermore, the applicants argued that the ESIA approval would effectively allow Hoima Sugar Ltd. to commence its sugar cane project within the confines of Bugoma Forest, leading to detrimental environmental consequences. Their remedies sought included declarations of the ESIA approval's procedural flaws and illegality, the annulment of the certificate, and an injunction to prevent the respondents from implementing the approval.

In response, the respondents, namely NEMA and Hoima Sugar Ltd., maintained that the ESIA approval had been granted in strict accordance with applicable laws and regulations. They contended that the ESIA report underwent a comprehensive review process, with input sought from relevant stakeholders. The respondents highlighted that NEMA had consulted with the applicants and had incorporated their comments into the decision-making process. Hoima Sugar Ltd. emphasized that they had obtained a legitimate lease for the land in question and that their project aimed at preserving the environment by constructing an eco-lodge and rehabilitating degraded trees.

The legal framework underpinning this case is primarily rooted in the National Environment Act and its associated regulations. These statutes lay down the procedural and substantive requirements for conducting Environmental and Social Impact Assessments and granting associated approvals. Moreover, the rules governing judicial review, as encapsulated in the Judicature Act and the Judicature (Judicial Review) Rules, are crucial in facilitating the applicants' challenge of the ESIA approval. They provide the avenue for public interest litigation, enabling individuals and NGOs with a direct or sufficient interest to seek judicial remedies when environmental decisions are called into question.

The case underscores the significance of public interest litigation as a potent instrument for safeguarding environmental interests. It underscores that environmental authorities must scrupulously adhere to statutory

requirements, ensuring transparency, proper consultations, and adherence to the principles of natural justice in environmental decision-making processes. The legal framework, intertwined with principles of administrative law, underscores that those with a genuine and substantial interest in environmental matters have the right to challenge decisions affecting the environment and seek legal redress through the courts. Public interest litigation, as exemplified in this case, serves as a safeguard to preserve the public's entitlement to a clean and healthful environment while holding environmental authorities accountable for their actions.

While Uganda's PIL landscape has evolved significantly; it grapples with challenges such as resource constraints, limited public awareness, and a need for capacity-building among legal practitioners and judges. The case of *Greenwatch Limited v. Government of Uganda*³⁹ the case involved an application brought under Article 50(1) and (2) of the Ugandan Constitution and Rule 3(1) of the Fundamental Rights and Freedoms (Enforcement Procedure) Rules 26/1992. The applicants sought the regulation of plastic bags' manufacture, use, distribution, and sale, along with the restoration of the environment to its previous state before being affected by plastic pollution. Specifically, they aimed to ban plastic bags with a thickness of less than 100 microns.

Issues:

Cause of Action: The primary issue revolved around whether the applicants had a valid cause of action.

The respondents contended that the application lacked a cause of action. To establish a cause of action, it needed to be determined whether the applicants had a right, whether that right was violated, and whether the defendants were liable.

Locus Standi vs. Representative Action: Another issue related to whether cases under public interest litigation (PIL) could be distinguished from representative suits.

The respondents argued that cases like these should not be brought on behalf of unnamed groups of persons without their knowledge and consent, referencing the case of *James Rwanyarare and another v. A.G.* The central question was whether PIL cases could be treated as representative suits, especially in cases where the entire population was affected by an environmental issue.

The case revolved around the intersection of PIL and environmental protection in Uganda. On the issue of cause of action, the court referred to the rights of Ugandan citizens to a clean and healthy environment as guaranteed by the Constitution and the National Environment Act. It was argued that the unregulated use and disposal of plastic bags posed a significant threat to the environment and human health, thus violating citizens' rights. The government had a duty to protect and preserve the environment, making them liable for not taking appropriate measures.

On the question of locus standi versus representative action, the court needed to differentiate between PIL cases and

representative suits. In PIL cases, the affected group could be the entire population, making it impractical to seek individual consent from every citizen. This case served as an example of how PIL can be crucial in addressing environmental concerns that affect a wide range of individuals. The court acknowledged the obligation to hear concerns related to public interest and the environment.

This case underscores the significance of PIL in addressing environmental issues, especially when they have far-reaching consequences on the population. It clarifies the courts' willingness to entertain PIL cases for the greater public good, even when traditional concepts of locus standi might not apply to such cases.

In *British American Tobacco (BAT) v. Environmental Action Network Limited (TEAN)*⁴⁰, an application was made by notice of motion in the Ugandan High Court. The applicant, TEAN, invoked Article 50(2) of the Ugandan Constitution to seek various orders, including a declaration that the respondent's failure to warn consumers and potential consumers of the health risks associated with smoking cigarettes constituted a violation or threat to the right to life as prescribed under Article 22 of the Ugandan Constitution.

The respondents raised several questions regarding the application of Article 50 to the case:

- a) Whether Article 50(2) of the Constitution permits the filing of constitutional actions based on "public interest" by private individuals or is limited to bringing ordinary representative actions to stop actual violations of specific persons' or groups' human rights.
- b) Whether Article 50(2) of the Constitution allows the filing of "class" actions as a form of representative action or is restricted to the representation of specific and identifiable individuals or groups.
- c) Whether Article 50(2) can be interpreted to exempt compliance with procedural requirements applicable to representative actions, such as the necessity to obtain leave of court before filing the action.

The central issue in this case was the interpretation and application of Article 50(2) of the Ugandan Constitution in the context of public interest litigation (PIL) concerning the environment. The respondents questioned whether Article 50(2) permitted PIL by private individuals or was limited to traditional representative actions.

The presiding judge emphasized that Ugandan law recognized the existence of disadvantaged and oppressed individuals and groups, and the Constitution allowed actions of public interest groups to be brought on their behalf. Article 50 was held to apply to groups of people who, due to various factors like ignorance, poverty, illiteracy, or infancy, could not sue or be sued or defend their rights.

Such individuals and groups relied on public interest litigation groups to act on their behalf. These people were not personally identifiable and depended entirely on PIL groups. Therefore, subjecting them to the requirements of

Ordinance 8 would be unjust.

This case clarified that Article 50(2) of the Ugandan Constitution could indeed be used for public interest litigation related to environmental issues, especially when disadvantaged and unidentifiable individuals or groups required protection and representation. It affirmed the importance of PIL in ensuring that the rights of vulnerable populations were safeguarded, even in cases that affected the environment.

In *Advocates Coalition for Development and Environment v Attorney General*⁴¹, the applicants sought orders to revoke a permit granted to Kakira Sugar Works over Butamira Forest Reserve. They contended that the degazetting of the forest reserve and the permit issuance contravened the Ugandan Constitution and laws, thereby violating the rights of the applicants and other Ugandan citizens to a clean and healthy environment. The case was heard by Justice Rubby Opio.

This case was a significant instance of public interest litigation (PIL) in Uganda concerning environmental issues. Justice Rubby Opio emphasized the "public trust doctrine" as the foundation for PIL. Under this doctrine, the public has a legal right to utilize specific land and waters, and authorities hold title to such land in trust for the citizens.

Right at Stake: The right in question was the right to a clean and healthy environment, guaranteed under Article 39 of the Ugandan Constitution. To realize this right, the custodian is the state, which holds the public trust of the citizens.

Corresponding Duty - Public Trust: The "public trust" doctrine governs the use of property held in trust for citizens by an authority. It distinguishes between the "jus publicum," the public's right to use and enjoy trust land, and the "jus privatum," which is the private property right related to trust land. The state may grant certain rights to private owners, but these are subordinate to the state's inherent interest in preserving trust land and water for the common good.

The public trust doctrine is embedded in the National Objectives and Directive Principles of State Policy, as well as in Article 237(2)(b) of the Ugandan Constitution. Section 44 of the Land Act operationalizes these provisions, outlining restrictions on the lease or alienation of natural resources.

State's Failure and the Role of PIL: Despite the legal framework entrusting environmental preservation to the state, the state has sometimes failed in its duties, and even contributed to environmental harm. In such cases, individuals and groups have risen to defend citizens' rights and demand accountability from the state.

This case underscores the importance of PIL in safeguarding the environment and enforcing the right to a clean and

healthy environment for all Ugandan citizens.

Comparative Analysis: PIL in Uganda

Here I provided a comparative analysis of Public Interest Litigation (PIL) in Uganda, juxtaposed against the Indian experience. As a jurisprudential phenomenon, PIL has transcended national borders, albeit with contextual variations. By examining the legal frameworks, case outcomes, and societal impact of PIL in both jurisdictions, this analysis endeavors to distill critical insights and discern the evolution and effectiveness of PIL in addressing public interest concerns.

Uganda: PIL finds its legal moorings in the 1995 Constitution, particularly in Article 50, which confers the right to access justice. Additionally, the Constitutional Court Rules, Statutory Instrument No. 91-2, govern the practice and procedure of PIL in Uganda. PIL cases are typically filed under Article 50, seeking remedies for violations of constitutional rights and public interest issues.

India: as previously expounded, has codified the principles of PIL within the Civil Procedure Code, which was amended in 2002. PILs are constitutionally supported under Article 32 of the Indian Constitution, which also gives the Supreme Court the authority to hear PIL matters.

While both jurisdictions recognize the significance of PIL as a tool for advancing public interest and justice, Uganda's PIL framework appears to be more constitutionally oriented, with a reliance on constitutional provisions, while India has a more detailed statutory framework. India's amendments to the Civil Procedure Code in 2002 reinforced the efficacy of PIL by providing a transparent legislative scaffold.

While both jurisdictions have traversed distinct paths, they share the common thread of recognizing PIL to address public interest concerns. India's well-entrenched legal framework and rich jurisprudential legacy contrast Uganda's recent embrace of PIL. Nevertheless, Uganda's progress shows promise, and its legal system is still developing in response to justice and public interest demands.

Therefore, the development of PIL in Uganda represents a dynamic legal evolution that remains inextricably linked to the changing socio-legal fabric of the nation. It embodies the realization that the judiciary can serve as a bulwark for safeguarding the rights and interests of the public.

Case Outcomes:

Uganda: Uganda's PIL jurisprudence has witnessed notable cases such as *Greenwatch Uganda v. Attorney General* (2008) and *Foundation for Human Rights Initiative v. Attorney General* (2018). These cases have addressed issues ranging from environmental conservation to human rights. However, the impact and reach of PIL in Uganda,

although evolving, are still relatively nascent compared to India.

India: India boasts a rich tapestry of PIL cases, including *M.C. Mehta v. Union of India* (1986), which set a precedent for environmental PIL, and *Maneka Gandhi v. Union of India* (1978), which expanded the horizons of personal liberty. PIL in India has had far-reaching consequences, resulting in tangible policy reforms and enhanced accountability.

The depth and breadth of PIL outcomes in India dwarf Uganda's. India's PIL jurisprudence has been instrumental in shaping public policy, protecting fundamental rights, and catalyzing societal change. While making strides, Uganda is yet to realize the full transformative potential of PIL witnessed in India.

Societal Impact:

Uganda: PIL in Uganda is gradually gaining recognition and influence. It has served as a vehicle for public awareness and advocacy on environmental conservation, access to healthcare, and human rights. However, its societal impact is still evolving, and its penetration into grassroots communities is a work in progress.

India: India's PIL culture has permeated society deeply. PILs in India have sparked public discourse, led to policy revisions, and resulted in concrete measures for environmental protection, public health, and social justice. The "Green Benches" in Indian courts stand as a testament to the integration of PIL into the fabric of Indian jurisprudence.

India's PIL landscape exhibits a profound societal impact that transcends the realm of jurisprudence. PILs have become a potent instrument for social change and consciousness-raising. In contrast, Uganda is in the process of harnessing the full potential of PIL to effect transformative societal change.

Conclusion:

In summation, the comparative analysis of Environmental Public Interest Litigation (EPIL) within the jurisdictions of Uganda and India illuminates profound distinctions and convergences in the respective legal frameworks and the consequential societal impact. This inquiry has traversed the realms of environmental jurisprudence, delving into the intricate tapestry of statutory provisions, judicial pronouncements, and societal ramifications.

Within the Ugandan context, the jurisprudential landscape governing EPIL is conspicuously in its nascent stages, marked by a dearth of comprehensive legislative provisions dedicated to environmental concerns. The judiciary, however, has exhibited commendable activism in evolving principles of public interest litigation and environmental protection through judicial

innovation and reliance on international norms. This dynamic has, in turn, fostered a nascent but burgeoning societal

consciousness toward ecological concerns.

Conversely, the Indian jurisprudential paradigm presents a well-defined statutory scaffolding and an expansive judicial architecture for protecting environmental rights and interests. The Environmental Impact Assessment (EIA) framework, coupled with statutory enactments such as the National Green Tribunal Act, furnishes a robust platform for EPIL. This legal ecosystem has, over the years, precipitated profound societal transformations, instilling heightened environmental consciousness and catalyzing far-reaching changes in environmental policy and governance.

In the broader contemplation of societal impact, it is discernible that the contrasting legal paradigms of Uganda and India engender disparate outcomes. India's mature and comprehensive legal framework has precipitated a more pronounced and multifaceted societal transformation, with an assertive judiciary catalyzing environmental reforms and sustainable practices. In contrast, while demonstrating potential, Uganda's incipient framework necessitates legislative and institutional fortification to yield comparable societal metamorphosis.

This comparative exploration underscores the pivotal role that a robust legal framework plays in realizing environmental objectives and cultivating societal consciousness vis-a-vis ecological concerns. It underscores the imperative for Uganda to fortify its legislative apparatus and institutional infrastructure, drawing inspiration from the Indian experience, to holistically address environmental challenges and harness the transformative potential of EPIL.

In conclusion, the comparative study herein constitutes a clarion call for both jurisdictions to harmonize their legal frameworks with contemporary environmental exigencies and international best practices. The imperative for robust legal structures in safeguarding the environment, buttressed by an enlightened judiciary and a conscientious citizenry, cannot be overstated. The pursuit of sustainable development and the preservation of environmental integrity stands as common objectives transcending national boundaries, and it is incumbent upon both Uganda and India to reinforce their commitment to these imperatives through the prism of Environmental Public Interest Litigation.

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