

**Profiles of Tools and Tactics
for
Environmental Mainstreaming**

No. 3

PUBLIC INTEREST LITIGATION

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PUBLIC INTEREST LITIGATION (PIL)

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Note: We are grateful for review comments provided by Lovleen Bhullar (India), Carol Hatton (WWF UK), Niall Watson (WWF UK)

<i>What is Public Interest Litigation for?</i>			What issues does public interest litigation focus on?	
Policy development	√	Possible medium and/or long term impacts	Environmental	√
Planning	√		Social	√
Field work		As part of the judicial procedures	Economic	√
Investment			Institutional	
Assessment	√	Compliance and enforcement		
Monitoring	√√	Supports campaigns		
Campaigning	√			

Purpose

Public Interest Litigation (PIL) describes legal tools which allow individuals, groups and communities to challenge government decisions and activities in a court of law for the enforcement of the public interest. PIL represents a departure from traditional judicial proceedings, as litigation is not necessarily filed by the aggrieved person. To date, elements of PIL are recognised in a limited but growing number of jurisdictions. However, its scope of application and the rules and procedure for initiating a PIL differ widely.

In general, PIL cases deal with major environmental and social grievances. They are often used strategically as part of a wider campaign on behalf of disadvantaged and vulnerable groups in society. Where individuals, groups and communities do not have the necessary resources to commence litigation, PIL provides an opportunity for using the law to promote social and economic justice. PIL cases are often concerned with preventing the exploitation of human, natural and economic resources.

The value of PIL for sustainable development lies in its ability to correct decisions and render government authorities accountable to civil society organisations. It can encourage governments to make their human rights obligations meaningful to all parts of society and thus contribute to social and environmental justice. It may encompass elements of other legal remedies such as class actions which determine the rights of large numbers of people whose cases involve common questions of law or fact. PIL often also entails a form of judicial review, examining the legality of decisions and activities of public authorities or the constitutionality of the law.

Background facts

In principle, the State has the role of defining, protecting and enforcing the public interest. In civil proceedings, the public interest has therefore been traditionally represented by, for example, the *ministere public* (civil law) and the attorney general (common law). Historically, the development of PIL is often attributed to the case of *Brown v. Board of Education* (1954) in which the US Supreme Court found that a state's segregation of public school students by race was unconstitutional. The defendant in the case was a public institution and the claimants comprised a self-constituted group with membership that changed over time.

Many countries have since integrated the concept or certain components in their domestic legal order. The Indian judiciary has been particularly creative in entertaining PILs and developing them into a

legal tool for the poor and the public at large. Prior to the 1980s, only an aggrieved party had standing (*locus standi*) to file a case. As a result, justice could rarely be delivered to the vast majority of citizens. These days, even the court itself can initiate legal action 'on its own motion' (*suo motu*) following the receipt of letters or public interest issues being raised in the media. PILs have also allowed the judiciary to elaborate on certain principles of international environmental law, such as sustainable development, the polluter pays principle and the precautionary principle.

PIL has developed differently in diverse countries, drawing on common background issues but within specific conditions and different legal traditions. Depending on the national social, economic and political circumstances and the independence of the judiciary, there are different pressures and opportunities for PIL. In some countries PIL can be instituted in relation to almost all social, economic and environmental rights, whilst, in others, its application is restricted to a specific subject. Substantive and procedural legal requirements for the use of PIL therefore differ widely between different jurisdictions.

Box 1: Basic stages in PIL

GERMANY

Who, when and why?

In Germany, PIL is confined to alleged violations of the Federal Natural Protection Act and associated provisions. Only associations officially recognised by the environment authorities are eligible to initiate a PIL. To be eligible for official recognition, an association must carry out activities for at least three years that go beyond the territory of a single federal state and with the purpose of promoting the interests of nature protection. A recognised association may initiate PIL proceedings against government authorities for the protection of nature conservation areas or certain planning decisions with an impact on the environment.

Some procedural issues

- Associations can only institute public interest proceedings in certain circumstances, including where the association is affected within the scope of activities set out in its Articles of Association to the extent to which these are covered by the recognition granted.
- The association must have put forward an opinion during the administrative procedures preceding the adoption of the decision challenged in court.
- Judicial proceedings must be initiated within one year.
- The court considers all possible grounds for action, regardless of whether the association has invoked that ground or not.
- The court can only rescind the administrative decision challenged (in whole or in part).

INDIA

Who, when and why?

The Indian Constitution allows any public-spirited person, NGO or a public interest law firm to file a case on behalf of a group of persons whose rights are affected. The court can also act on its own motion. A PIL must be filed against government authorities, but private parties can also be included as co-respondents. Cases in which a PIL can be filed include:

- Environmental degradation;
- Violation of basic human rights of the poor;
- Content or conduct of government policy;
- To compel municipal authorities to perform a public duty;
- Violation of religious rights or other basic fundamental rights.

Procedural issues

- A PIL is filed like any other writ petition and a copy is to be served to the opposite party.

- The petition is screened in the PIL cell of the court.
- The matter is placed before a judge nominated by the Chief Justice.
- During the proceedings, a Commissioner may be appointed by the judge to inspect the allegations.
- The court may appoint senior advocates as *amicus curiae* to assist the court in PIL cases and to ensure that the process of the court is not misused.
- The court can order an interim measure to protect the public interest until the final order is made.

TANZANIA

Who, when and why?

The Constitution of Tanzania gives citizens the right to PIL as an independent and additional source of standing. Proceedings may be instituted by any public-spirited individual to challenge either the legality of public decisions or actions or the consistency of legislation with the constitution. In public interest matters, the Attorney General is made the Respondent on behalf of the Government, its organs or civil servants.

Procedural matters

The Basic Rights and Duties Enforcement Act of 1994 applies to PIL procedures:

- The Act gives a right to the litigant to apply to the High Court for redress by filing a petition.
- The Court can make all such orders that are necessary and appropriate to secure the enjoyment of basic rights, freedoms and duties.
- Where a petition challenges a law, the Court can allow the Parliament or the legislative authority to correct that defect instead of declaring the law or an action invalid or unconstitutional.

Pros (main advantages) and Cons (main constraints in use and results)

PIL can:

- encourage government accountability – government agencies perform better when they know that they can be held accountable by the courts;
- provide enforcement assistance – no government has enough resources to monitor and enforce all potential violations of the law;
- allow courts to clarify and interpret the law, close existing gaps and raise human rights, environmental and social protection standards;
- supplement the criminal justice system if, for example, fines are relatively low compared to the amount of environmental degradation caused; and
- result in restitution and compensation for damages and injustices suffered by individual, groups and communities.

But PIL may also:

- be abused by individuals or groups to further their personal or commercial interests;
- lead to a large number of complex, long lasting cases which can ‘clog up’ the legal system and create substantial costs;
- give judges wide discretion in interpreting and defining the public interest which, arguably, could violate the separation of powers doctrine and may be better done by a democratically elected legislature;
- be constrained through existing law which often does not reflect the current actual conditions on the ground;
- leave public interest litigants that are unsuccessful with an obligation to pay the often substantial costs of the state and other parties;
- depend heavily on the lawyers involved and the financial backing of parties; and
- result in court judgments which government agencies fail to implement properly.

Box 2: Examples of PIL

INDIA

In *Vellore Citizens' Welfare Forum vs. Union of India* (1996) the Supreme Court allowed standing to a public-spirited social organisation for protecting the health of residents of Vellore. In Vellore, tanneries situated around a river were found discharging untreated effluents into the river, jeopardising the health of the residents. The Court noticed that the leather industry was a major foreign exchange earner and Tamil Nadu's export of finished leather accounted for 80% of the country's export of that commodity. Nevertheless, the Court pointed out that the leather industry had no right to destroy the ecology, degrade the environment and pose a health hazard. The Court asked the tanneries to close their business.

UNITED KINGDOM

In 2003 a British company (Able UK) was commissioned by the US government to scrap 13 'ghost ships' containing environmentally threatening waste products. The site in Hartlepool, where the ships were supposed to be scrapped, was adjacent to sensitive wildlife habitats protected under European and international law. The site's original planning permission only allowed for the dismantling and refurbishment of oil platforms and other marine structures. Public Interest Lawyers, a UK non-governmental organisation acting on behalf of local residents, successfully brought a public interest law suit against Hartlepool Council and Able UK in the High Court. The court ruled that the Environment Agency's decision to modify Able UK's original waste management licence was unlawful - as it did not consider the effect that dismantling the ships might have on nearby internationally-protected wildlife sites (*R (Gregan) v. Hartlepool Borough Council*, 2003).

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