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## **Analytical legal framework on biodiversity conservation in Nigeria, India and United Kingdom**

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### **Abstract**

There is no gainsaying the fact that all over the world, there is high alarm rate at which biodiversity is being degraded. Governments at both national and international have devised several methods to curb the incessant assault on biodiversity. One of such methods is the instrument of legislation which provides regulations to improving the protection and conservation of biodiversity. The aims of this article are to examine the various legislations on the conservation of biodiversity in Nigeria, India and the United Kingdom as well as the similarities and dissimilarities in the legislations on biodiversity. It is observed that, the legislations put in place in Nigeria on biodiversity conservation are rarely enforced unlike it is being done in India and the United Kingdom. Also, the right to a clean environment as of right in India and United Kingdom is lacking under the Nigeria Constitution. It is therefore recommended that, enforcement of the laws on biodiversity be given utmost priority and the right to clean environment be made justiciable particularly in Nigeria pursuant to Article 24 of the African Charter on Human and People's Rights.

**Keywords:** Analytical, legal framework, biodiversity, conservation, enforcement

### **1. Introduction**

There is the need to properly identify a framework to analyze the conservation of biodiversity from further extinction and its effect on poverty reduction. Thus, this can properly be understood towards beaming our searchlight to the link between biodiversity conservation and sustainable development. Sustainable development as it relates to environment in general is the process of making sure current processes of interaction with the environment are pursued with the intention of keeping the environment as pristine as naturally possible. Sustainable development is based on, and requires, economic growth, social development, and security, but it also requires environmental protection and restoration

Dembach <sup>[1]</sup>, observed that protecting environment is part of what progress means; it is not the price of progress. He went further to state that:

The idea that we need to seek environmental protection at the same time as we seek to advance other goals is a guiding principle of sustainable development. Sustainable development provides a powerful and realistic basis to be hopeful about the future. This is particularly true because we have a very good idea of the legal and policy tools that we need to put in place to navigate a transition to sustainability

The idea of sustainable development really came into fashion in 1987 with the publication of the report of the World Commission on Environment and Development (WCED) 'Our Common Future'. In this report, sustainable development was described as 'a process of change in which the exploitation of resources, the direction of investments, the orientation of technological development and institutional change are all in harmony and enhance both current and future potential to meet human needs and aspirations.

By 1992, when the United Nations Conference on Environment and Development (UNCED) took place in Rio de Janeiro, sustainable development had become an ideal that no one could ignore. All the documents signed at the Rio Conference state, in one way or another, that

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<sup>1</sup>Dembach J. C. 'Sustainable Versus Unsustainable Propositions' (2002) Vol. 53 No. 2 Case Western Reserve Law Review 449-450. See also, Application of the Precautionary Principle to Biodiversity Conservation in Kwara State, Nigeria; EBSU Journal of International and Judicial, (Vol. 3); 104-114, Published by the Faculty of Law of the Ebonyi State University, ISSN 2141- 4602\_& Ijaiya, B. L. (2016) Using Integration Principle of Sustainable Development to Control Climate Change in Nigeria. In Water, Land and People in Climate Change S. L. Tilakasiri (ed) 571- 583, Published by Stamford Lake Publication

everything that had been agreed on was necessary in order to reach sustainable development. The preamble to Agenda 21, for instance, starts with the following lines:

Humanity stands at a defining moment in history. We are confronted with a perpetuation of disparities between and within nations, a worsening of poverty, hunger, ill health and illiteracy, and the continuing deterioration of the ecosystems on which we depend for our well-being. However, integration of environment and development concerns and greater attention to them will lead to the fulfillment of basic needs, improving living standards for all, better protected and managed ecosystems and a safer, more prosperous future. No nation can achieve this on its own; but together we can be in a global partnership for sustainable development.

The Rio Declaration on Environment and Development, which was concluded during the UNCED as well, states in Principle 1

Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.

Apart from these very general (non-binding) international documents, the ideal of sustainable development can also be found in more concrete (binding) treaties, like the Kyoto Protocol to the United Nations Framework Convention on Climate Change of 11 December 1997. Article 2 of this Protocol reads:

Each Party included in Annex I, in achieving its quantified emission limitation and reduction commitments under Article 3, in order to promote sustainable development

In the light of the above, this article is divided into six parts. Part one deals with the introduction which relates to biodiversity and sustainable development. This will then to part two which focuses on the municipal laws on biodiversity in Nigeria. Part three discusses biodiversity conservation and sustainable development. This then leads to part four which focuses on the precautionary principle and biodiversity conservation in Nigeria. Part five focuses on the overview of the various legislations relating to biodiversity in India and United Kingdom. It further discusses some distinguishing and similarity features between the legislations on biodiversity in Nigeria, India and United Kingdom. The article is concluded in part six which posits that both the governments of Nigeria and India should among many other recommendations adopt the provision of article 24 of the African Charter on Human and Peoples Rights which is to the effect that, the right to a satisfactory and clean environment be made fundamental right and thus become justiciable.

## 2. Municipal Laws on Biodiversity in Nigeria

Thus, like all developing countries, Nigeria as a nation was also faced with dilemma of pursuing development efforts at the expense of environmental degradation or adopting environmentally safe practices at the expense of development. To this end, the government of Nigeria has also embraced the concept of sustainable development. Consequently, Nigerian laws have risen to the challenges of ensuring that the country's natural resources are harnessed in a sustainable manner.

Significantly, the Constitution of the Federal Republic of Nigeria which mandates that the State shall protect and improve the environment and safeguard water, air, and land,

forest and wildlife of <sup>[2]</sup>. Interestingly, notwithstanding the fact that the responsibility of the State comes under Chapter II on Fundamental Objectives and Directives Principles of State Policy, the National Assembly can by enactment made the relevant provisions justiciable <sup>[3]</sup>. The provision of Section 20 of the 1999 Constitution was restated by the Supreme Court of Nigeria in the case of Attorney-General of Lagos State v. Attorney-General of the Federation & Others <sup>[4]</sup> where the Court considered and interpreted the Section. Also, the same Court followed its own reasoning in Attorney-General Ondo State v. Attorney-General of the Federation & Others <sup>[5]</sup>. The Court gave the legal effect of Section 6 (6) © and the justiciability of Section 15 (5) of the ICPC Act 2003/4

The combined effect of the above legal analysis is that Section 20 of the 1999 Constitution (as amended) if read together with Section 4 (2) Item 60 (a) 2<sup>nd</sup> Schedule to the Constitution come under the Exclusive Legislative List and can only be legislated upon by the National Assembly on behalf of the Federal Republic of Nigeria. Hence, the combined effect of Section 4 (2), Chapter II and Item 60 (a) of the 2<sup>nd</sup> Schedule to the Constitution and further affirmed by the Supreme Court in Attorney-General of Ondo State v. Attorney-General of the Federation and Attorney-General of Lagos State v. Attorney-General of the Federation (Supra) that Chapter II provisions can be made justiciable, effectual and no longer dormant or mere declarations. Similarly, the combination effect of Section 20 read together with Article 24 of the African Charter on Human and Peoples' Right <sup>[6]</sup> also makes environmental right justiciable which was applied in SERAC v. Nigeria <sup>[7]</sup> and SERAP v. Nigeria <sup>[8]</sup>.

In addition, the enactment of the National Environmental Standards and Regulations Enforcement Act <sup>[9]</sup> (NESREA) repealed the Federal Environmental Protection Act (FEPA). The Act is now the primary environmental law in the country and it strives to ensure that the Nigerian environment and natural resources are developed in a sustainable manner. Specifically Section 2 of the Act provides that: -

The agency shall, subject to the provisions of this Act, have responsibility for the protection and development of the environment, biodiversity conservation and sustainable development in Nigeria's natural resources in general and environmental technology, including coordination and liaison with relevant stakeholders within and outside Nigeria on matters of enforcement standards, regulations, rules, laws, policies and guidelines

Also Nigeria government in 2015 revised the National Biodiversity Strategy Action Plan to replace the first one which lacked clear cut implementation plans and therefore was inadequately implemented, hence the poor management of biodiversity in the country. The lack of a coordination

<sup>2</sup> Section 20 of the 1999 Constitution of the Federal Republic of Nigeria (as amended)

<sup>3</sup> The National Assembly can make Sections 13-20 of the 1999 Constitution (as amended) justiciable as it did in the case of ICPC Act. and Section 15 (5) of the 1999 Constitution (as amended) Other instances include Section 18 (3) (a) of UBEC Act 2003/4, Section 20 (2) of NESREA 2004 and its 24 Regulations

<sup>4</sup> (2003) 12 NWLR (Pt. 833) 1

<sup>5</sup> (2002) LPELR-623 (SC)

<sup>6</sup> Cap A9, Laws of the Federation of Nigeria, 2004

<sup>7</sup> (2001) ACHPR

<sup>8</sup> (2009) ECCJ

<sup>9</sup> 2007

structure and other elements of such plan made it difficult to identify the actions taken by Nigeria to implement the CBD in relation to its NBSAP. Nigeria adopted 14 SMART national targets in line with the strategic plan for biodiversity 2011-2020 and its Aichi biodiversity targets. The 14 national targets are related to the Aichi targets and are spread across the 5 global strategic goals<sup>[10]</sup>.

In the planning and preparation of the revised, current NBSAP the lessons learned from the previous one were put into consideration. Unlike the previous NBSAP, the revised NBSAP has a well defined implementation plan which consist of a: capacity development plan; technology needs assessment; plan for resource mobilization; and a communication and outreach plan. The current NBSAP has a national coordination structure put in place for its implementation. There is national Clearing House Mechanism (CHM). Each target or action has an indicator for tracking its progress. Monitoring and evaluation (M & E) framework and reporting plan are put in place. A high level of awareness was created at Federal, State and Local governments and stakeholders during its preparation through consultations, involvement and participation. Since the target were SMART, identified in view of the national biodiversity status and trends, national priority and circumstance, it is believed that the participatory implementation of these measures will help in restoring the integrity and sustainability of biodiversity and therefore the achievement of the Strategic Plan for biodiversity 2011-2020<sup>[11]</sup>.

The revised NBSAP is to be implemented between 2016 - 2020. During this period progress of implementation and achievement of set objectives will be determined. There are 14 targets with 21 impacts indicators and 67 actions with 123 performance indicators. Equally, well developed monitoring, evaluation and reporting plans and a national coordination structure for effective implementation were put in place<sup>[12]</sup>.

Thus, this adoption of the targets, impacts indicators actions and performance indicators is akin to what is called 'a precautionary principle' one of the cardinal principles of sustainable development. The principle is described as preventing environment from extinction and degradation and given the sensitive nature of the environment prevention is often the only responsible and logical approach because damage is often times is irreparable

The enactment of the Environmental Impact Assessment Act<sup>[13]</sup> is also another giant stride taken by the government of Nigeria towards the conservation of biodiversity. The Act provides for the assessment of the level at which Nigerian environment is being harnessed, allow for participation of those that may likely be affected by the decision to be taken on the preservation of environment so as to ensure sustainability and development growth in Nigeria. The springing up of various Non-Governmental Organizations (NGOs) and Private Foundations which have actively engaged in biodiversity conservation efforts is also

commendable towards ensuring sustainable biodiversity conservation.

Between 2009 – 2013 and in order to provide for effective enforcement of environmental standards, regulations, rules, laws, policies and guidelines by the newly established NESREA, the Minister of Environment who is empowered to make regulations for the general purpose of carrying out or giving full effect to the functions of the Agency under the NESREA Act<sup>[14]</sup> made twenty-four regulations. The regulations that are relevant to biodiversity conservation in Nigeria are – National Environmental (Watershed, Mountainous, Hilly and Catchment Areas) Regulations 2009<sup>[15]</sup> National Environmental (Access to Genetic Resources and Benefit Sharing) Regulations 2009<sup>[16]</sup>, National Environmental (Soil Erosion and Flood Control) Regulations 2011<sup>[17]</sup>, National Environmental (Desertification Control and Drought Mitigation) Regulations 2011<sup>[18]</sup>, National Environmental (Control of Bush/Forest Fire and Open Burning) Regulations 2011<sup>[19]</sup>, National Environmental (Protection of Endangered Species in International Trade) Regulations, 2011<sup>[20]</sup> and National Environmental (Control of Alien and Invasive Species) Regulations, 2013<sup>[21]</sup>.

Significantly, the government of Kwara State also took a giant step in 2010 not only to enact laws to regulate some biodiversity components but also enact law to reduce poverty. There are in existence in Kwara State, Nigeria presently Bush Burning (Control) Law<sup>[22]</sup>, Charcoal production (Prohibition) Law<sup>[23]</sup>, Environmental Sanitation Law<sup>[24]</sup> and Forestry Law<sup>[25]</sup> to regulate biodiversity conservation and Kwara State Community-Based Poverty Reduction Project Law<sup>[26]</sup>. These legislations in no small way have contributed immensely to the control and preservation of biodiversity and reduction of poverty respectively

Thus, the evolution of the various legislations at international, national and local levels to regulate biodiversity conservation cannot be under-estimated. This is evident in the up to date regulations on environment that has put in place by the Federal government<sup>[27]</sup>. It is also noted that law is a potent weapon with which policies can be achieved and implemented has tremendously played significant roles in ensuring preservation and conservation of biodiversity as well as reduction of poverty in Nigeria in general and Kwara State in particular through the involvement of local people in the designing and formulation of policy as well as the awareness of the people of the existence of legislations on biodiversity conservation. Against the backdrop of the above, the proper way of analyzing law to biodiversity conservation vis-à-vis

<sup>14</sup> Section 34 of the Act

<sup>15</sup> See First Schedules to Regulations 4, 8, 19, 20 and 25-26

<sup>16</sup> Federal Republic of Nigeria, Regulations No. 30 of 2009, Vol. 96 No. 62, Official Gazette (Abuja) dated 9<sup>th</sup> October, 2009

<sup>17</sup> S. I. No. 12, Gazette No. 39, Vol. 98 of 2<sup>nd</sup> May, 2011

<sup>18</sup> S. I. No. 13, Gazette No. 40, Vol. 98 of 3<sup>rd</sup> May, 2011

<sup>19</sup> S. I. No. 15, Gazette No. 42, Vol. 98 of 6<sup>th</sup> May, 2011

<sup>20</sup> S. I. No. 15, Gazette No. 42, Vol. 98 of 6<sup>th</sup> May, 2011

<sup>21</sup> S. I. No. 32, Gazette No. 96 Vol. 100 of 29<sup>th</sup> October, 2013

<sup>22</sup> Sections 3 and 8 Cap B6 Laws of the Kwara State of Nigeria 2010

<sup>23</sup> Section 8 Cap C8 Laws of the Kwara State of Nigeria 2010

<sup>24</sup> Sections 13, 38, 39, 48, 58, 59, 60, 61 Cap E4 Laws of the Kwara State of Nigeria 2010

<sup>25</sup> Section 31 Cap F5 Laws of the Kwara State of Nigeria 2010

<sup>26</sup> Section 8 Cap K11 Laws of the Kwara State Nigeria 2010

<sup>27</sup> The 24 NESREA Regulations

<sup>10</sup> Nigeria: Fifth National Biodiversity Report 47. See also Application of the Precautionary Principle to Biodiversity Conservation in Kwara State, Nigeria; EBSU Journal of International and Judicial, (Vol. 3); 104-114, Published by the Faculty of Law of the Ebonyi State University, ISSN 2141-4602

<sup>11</sup> Ibid, 50

<sup>12</sup> Ibid, 52

<sup>13</sup> Cap E 12 Laws of the Federation of Nigeria 2004

sustainable development and as the theoretical basis of environmental law is achievable by an analysis of the precautionary principle in Nigeria which of course has become the cardinal standards of environmental law. These principles are as contained in the National Policy on Environment are, principle of integration, polluter pays principle (PPP), user pays principle (UPP), principle of intergenerational equity, principle of intra-generational equity, subsidiary principle and precautionary principle

### 3. Biodiversity Conservation and Sustainable Development

The need to conserve biodiversity and to further prevent it from further extinction calls for urgent attention. This need cannot be over-emphasized if the survival of man and other creatures on earth is to be guaranteed. Life on earth is supported by communities of plants, animals and micro-organisms, interacting with each other within the ecosystems with the physical environment<sup>[28]</sup>.

Commenting on the biodiversity conservation, Hunter *et al.*<sup>[29]</sup> stated that biodiversity functions in the purification of air and water, modernization of temperature extremes and the force of waves, support of diverse human cultures, detoxification and decomposition of waste, generation and renewal of soil and soil fertility, pollinations of crops and natural vegetation, serve as food and medicine, partial stabilization of climate and providing aesthetic beauty and intellectual stimulation that lift the human spirit among others.

Biodiversity conservation was also described as the management of human use of the biosphere, so that it may yield the greatest sustainable benefit while maintaining its potential to meet the needs and aspirations of future generations<sup>[30]</sup>.

In addition, according to Oxford Dictionary<sup>[31]</sup>, conservation is the act of preventing something from being lost, wasted, damaged or destroyed. It is the supervision, management, and maintenance of natural resources, the protection, improvement and use of natural resources in a way that ensures the highest social as well as economic benefits.

Importantly, the Nigerian Conservation Foundation<sup>[32]</sup> has also stated the quest for biodiversity conservation when it stated inter alia

Natural conservation is the most important challenge to the present century. Nothing affects the quality of our lives, quite like the welfare and state of nature and no future can be quite bleak as one in which the resources, such as plants and wildlife, which are very essential for human survival, development are increasingly being destroyed or depleted by human carelessness. Put in another form, we all rely on nature for food, water, energy, clothing, shelter, minerals, drugs and more. And we rely on millions of animals and plants species to keep the system that provides those needs in running order. Yet despite these obvious facts, we are

destroying the natural world, biting the hand that feeds us so to speak

The principle of sustainable development has evolved significantly since it first appeared in the Brundtland Report. In the World Charter for Nature yet another important set of principles was established which involved further duties and rights necessary for environmental protection. In The Hague Declaration on the Environment the right to live in dignity was furthermore expressed. Five years later, at the UN Conference on Environment and Development, the concept of sustainable development was adopted in various key products such as the Rio Declaration, the Climate Change Convention, the Biodiversity Convention<sup>20</sup> and Agenda 21, this signifies the importance sustainable development has in matters concerning the environment<sup>[33]</sup>.

Since the principle is implicit in its articulation, it is expressed differently in various international legal instruments, although by comparing them contextually they are not so diverse. The Rio Declaration does not explicitly define the principle, but instead states in Principle 1 that: "Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature Principle 3 states that: "the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations." Therefore the concept of sustainable development in the Rio Declaration emphasizes upon human needs as their developmental needs in accordance with nature. Principle 4 further supports this notion by stating that in order to achieve sustainable development; environmental protection shall constitute an integral part of the development process<sup>[34]</sup>.

In the *Gabcikovo-Nagymaros Project* case<sup>29</sup>, the International Court of Justice concluded that the concept of sustainable development was a mere concept. Judge Weeramantry on the other hand expressed in a *Separate Opinion* that the principle of sustainable development has a normative character as far as it comprises a principle which allows for the balancing between environmental concerns and concerns regarding economic development. He furthermore stated that: "The principle of sustainable development is thus a part of modern international law by reason not only of its inescapable logical necessity, but also by reason of its wide and general acceptance by the global community. He also stated that sustainable development was seen as an *erga omnes* obligation. The ICJ in the *Gabcikovo-Nagymaros Project* case explicitly addressed the concept of sustainable development more than twelve years ago. The verdict and especially Judge Weeramantry *Separate Opinion* have further strengthened legal justifications concerning the principle of sustainable development.

The principle of sustainable development is today not just a mere concept; it has established itself as a legal principle interrelated with a number of various other sub-principles in the area relating to the law of sustainable development, and in the future these interrelations will further be recognized as constituting a general principle of international law. Current international law relating to the principle of sustainable development provides only the minimum

<sup>28</sup>Olubisi, F. O & Gideon N. G "A Critical Appraisal of the Legal Regime for Biodiversity Conservation in Nigeria" (2012) Vol. 8, No. 4 249-257 Canadian Social Science

<sup>29</sup> Hunter T & David P International Environmental Law and Policy (2<sup>nd</sup> ed. Foundation Press, New York 2002) 920

<sup>30</sup> International Union for the Conservation of Nature and Natural Resources (IUCN) 1990 Pp 663- 667

<sup>31</sup> Black, H. C. Black's Law Dictionary (8<sup>th</sup> ed. West Publishing Co U. S. A 2004) 134

<sup>32</sup> NEST Nigeria's Threatened Environment: A National Profile (1991) 182

<sup>33</sup> Vala L. J Sustainable Development: The Right to Freshwater (2010) B.A. degree in Law at the Faculty of Law and Social Science, University of Akureyri, Istanbul, Turkey p3

<sup>34</sup> Ibid p4



standard for international co-operation, since it has to be economically competent, politically acceptable and respect other concepts such as States sovereignty and their right to self-determination<sup>[35]</sup>.

In order for sustainable development to fully prosper and to create more comprehensive and efficient means for international co-operation in relations to the access and sustainability of freshwater for all, these requirements have to be advanced in order to meet current and future needs of all in accordance with increasing globalization. Sustainable development truly aspires to unite harmoniously the needs of all with requirements concerning environmental protection. Sustainable development aims to ensure equitable and sustainable usage of natural resources in accordance with human needs. Freshwater is not just a natural resource, it is a vital element for all life forms, and therefore it is imperative that freshwater is considered as a fundamental concern in relation to sustainable development<sup>[36]</sup>.

The term sustainable development, was popularized in our Common Future, a report published by the World Commission on Environment and Development in 197.as development which meets the needs of the present without compromising the ability of future generations to meet their own needs”<sup>[37]</sup>.

Also, sustainable development is described<sup>[38]</sup> as the process which involves human intelligence, decision making, efficiency, planning and management skills, power of imagination, entrepreneurship, development and production with environmental safety

It is significant to note that the conservation of biodiversity is a pivotal to sustainable development. Biological diversity otherwise referred to as biodiversity is essential for human existence and has a crucial role to play in sustainable development and the alleviation of poverty. Biodiversity provides millions of people with livelihoods, helps to ensure food security, and is a rich source of both traditional medicines and modern pharmaceuticals. It is significant to note that biological diversity is essential for alleviating poverty and achieving the Millennium Development Goals (now Sustainable Development Goals) It also provides basic ecological services of which all life depends. Unless we stop the loss of biological resources, our efforts to reach the Sustainable Development Goals by the year 2030 will be that much more difficult, if not impossible. The poor are the most likely to suffer from the consequences of destabilization of ecosystems, such as floods, crop failures and loss of genetic resources

The mangrove swamps of the Niger Delta contain the third largest mangrove forest,<sup>[39]</sup> and one of the ten most important wetland and coastal marine ecosystems<sup>[40]</sup> in the world but are being degraded by severe pollution from oil

spills. In coastal cities, coastal ecosystems and wetlands are rapidly disappearing due to dredging, sand mining, industrial and residential development and are often contaminated by agricultural, industrial and domestic waste. The latter form of degradation is most common in Kwara State.

Also, in most part of Kwara State, the forest and vegetation cover that protect many rivers and watercourses are being cut down for logging, agricultural and housing development, indiscriminate construction of roads and lack of integrated basin management leads to biodiversity loss. For example, study<sup>[41]</sup> has it that, predominant inhabitants of the Local Government Areas have taken to the business of selling charcoal which is a product of the tree felling and logging and the resultant effects have eaten deeply into the vegetation of the area leading to soil infertility, vegetation changes and desertification of the forest

Since the published of the World Commission on Environment and Development (WCED) and the recognition of the sustainable development by the United Nations Conference on Environment and Development (UNCED) at Rio de Janeiro spur the Nigeria nation to also recognize same and incorporate it in its development planning. This eventually gave birth to the National Environmental Policy<sup>[42]</sup>. The goal of the National Policy on the Environment is to achieve sustainable development in Nigeria, through the following initiatives:

- a. Preventive activities directed at the social, economic and political origins of the environmental problems;
- b. Abatement, remedial and restorative activities directed at the specific problems identified, and in particular:
  - Problems arising from industrial production processes;
  - Problems caused by excessive pressure of the population on the land and other resources; and
  - Problems due to rapid growth of urban centres;
- c. Design and application of broad strategies for sustainable environmental protection and management at systemic or sub-systemic levels;
- d. Enactment of necessary legal instruments designed to strengthen the activities and strategies recommended by (the National) Policy;
- e. Establishment/Emplacement of management organs, institutions and structures designed to achieve the policy objectives

Thus, this principle of sustainable development is a relatively recent principle of sustainable development which has been adopted and applied in many international environmental instruments since the 1990s<sup>[43]</sup>. It is said to be one of the cardinal principles of sustainable development and environmental law<sup>[44]</sup>. It can be said that the principle implies that ‘prevention is better than cure’. Given the sensitive nature of the environment, prevention is often the only responsible and logical approach because damage is oftentimes irreparable. This assertion finds support in the International Court of Justice opinion in Gabcikovo

<sup>35</sup> Ibid p5

<sup>36</sup> Ibid p6

<sup>37</sup>Sustainable Development: From Brundtland to Rio 2012 (Background Paper prepared for consideration by the High Level Panel on Global Sustainability at the United Nation Headquarters, New York 2012

<sup>38</sup>Sharma, B “Sustainable Development Through Research and Higher Education In India” (2014) 2 No. 3 American Journal of Educational Research 117-122

<sup>39</sup>Nigeria-Planet.com ‘Oil and Nigeria 2’, available at <http://www.nigeria-planet.com/oil-And- Nigeria2.html>

<sup>40</sup>Tago N ‘Nigeria: Oil Pollution, Human Rights Violations Still Rampant in Niger Delta’ (2010) News from Africa, available at [http://www.newsfromafrica.org/newfromafrica/articles/art\\_12129.html](http://www.newsfromafrica.org/newfromafrica/articles/art_12129.html)

<sup>41</sup>Findings and Responses collected from some respondents of Baruten and Patigi Local Government Areas of Kwara State through the questionnaire administered in March 2013

<sup>42</sup> Available at <http://www.nesrea.org/images/national%20Policy%20n%20Environment.pdf>

<sup>43</sup>Ibid 91

<sup>44</sup>Ibid 89

Nagymaros Project Case (Hungary v. Slovakia) <sup>[45]</sup> where it held that

In the field of environmental protection, vigilance and prevention are required to take account of the often irreversible character of damage to the environment and of the limitations inherent in the very mechanism of reparation of this type of damage

Against the backdrop of the above, the Rio Declaration <sup>[46]</sup> provides a widely definition of precaution as

In order to protect environment, the precautionary approach shall widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation

The precautionary principle is said to permit the taking of preventive measures without having to wait until the reality and seriousness of the threat become fully known <sup>[47]</sup>. The principle embraces the concept of proportionality. The adoption of this principle is geared towards providing a proportionate measure to curb and arrest any impending threat to biodiversity. The response must be proportionate to the extent of damage being done to biodiversity as well as cost effectiveness of margins of error so as to ensure that the selected precautionary measure is not costed arbitrarily

Biodiversity is the variability of life, and encompasses diversity at all levels of organization from the genetic through populations, species, ecosystems and landscapes. However, it is most clearly manifested in the variety of different kinds of organisms and habitats in the world. It is the variety of organisms, interacting with the physical landscape that creates the range and diversity of ecosystems. At global level, biodiversity is very unevenly distributed, that is, some parts of the world are far more biologically diverse than others. The pattern is complex but by no means random. The most important overall trend, manifest in terrestrial, freshwater and shallow water marine systems, is for species diversity to increase from the Polar Regions to the equator. This is because in general, warmer areas are more diverse than colder areas. On land there is also a general trend for areas with more rainfall to be more diverse than drier ones. Geographical variations in diversity are very marked, there are, for example, differences of two or three orders of magnitude in the diversity of, for example, tree species in forests between arctic latitudes and equatorial ones.

Nigeria is a diverse country with many different natural habitats, including savannas, tropical forests, wetlands, lakes, rivers, and coastal areas. Rainfall is heaviest along the coast and in the southeast, leading to the development of rainforest in this region. By contrast, the northern part of Nigeria receives much less rain and includes increasingly drier vegetation zones the further north one goes. Three different highland areas are found in Nigeria: the Yoruba highlands in the west, the Jos plateau in the center of the country, and the mountains bordering Cameroon in the east.

<sup>45</sup>(1998) ILM 37, 162

<sup>46</sup>Principle 15 of the Rio Declaration 1992, see also Application of the Precautionary Principle to Biodiversity Conservation in Kwara State, Nigeria; EBSU Journal of International and Judicial, (Vol. 3); 104-114, Published by the Faculty of Law of the Ebonyi State University, ISSN 2141- 4602

<sup>47</sup>Ijaiya H 'The Principles of Sustainable Development: An Appraisal of the Polluter Pays Principle in the Nigeria Oil and Gas Industry (2013) 1 Legal Network Series 3

This diversity of landscapes and climatic conditions results in a corresponding diversity in the plants and animals found here.

However, it is to be noted that despite the beauty and variety of life-forms, man is pushing species to extinction at an alarming rate through habitat destruction, introduced species, over-exploitation, human population, threat of global warming, bush burning, deforestation and desertification and agricultural intensification. Most of the human activities which tend to provide means of livelihood to humans to survive and maintain an average life have in the long run become causes of poverty in our modern society. There is an incessant attack on biodiversity which of course has directly or indirectly affects the not only the economic well being of the nation but also to an individual.

#### 4. Precautionary Principle and Biodiversity in Nigeria

Thus, the precautionary principle is adopted by the Nigerian government through various legislations enacted to regulated biodiversity conservation. Principal among which is the Constitution of the Federal Republic of Nigeria <sup>[48]</sup>, the National Environmental Standards and Regulation Enforcement Agency Act <sup>[49]</sup>, the 24 NESREA Environmental Regulations relevant to biodiversity conservation: National Environmental (Watershed, Mountainous, Hilly and Catchment Areas) Regulations 2009 <sup>[50]</sup> National Environmental (Access to Genetic Resources and Benefit Sharing) Regulations 2009 <sup>[51]</sup>, National Environmental (Soil Erosion and Flood Control) Regulations 2011 <sup>[52]</sup>, National Environmental (Desertification Control and Drought Mitigation) Regulations 2011 <sup>[53]</sup>, National Environmental (Control of Bush/Forest Fire and Open Burning) Regulations 2011 <sup>[54]</sup>, National Environmental (Protection of Endangered Species in International Trade) Regulations, 2011 <sup>[55]</sup> and National Environmental (Control of Alien and Invasive Species) Regulations, 2013 <sup>[56]</sup> National Effluent Limitation Regulations <sup>[57]</sup>, National Environment Protection (Pollution

<sup>48</sup>Sections 20, 33, and 34 of the 1999 Constitution of the Federal Republic of Nigeria if read together with Sections 13 & 14 (2) (b) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) makes it an constitutional obligation of the Nigerian State to realize the fundamental environmental objective to improve and protect the air, water, forest and wildlife in Nigeria as well a guarantee of fundamental human rights to life and dignity, the latter having been supported by Article 24 of the African Charter on Human People's Right Cap A9 LFN, 2004 and the case of Jonah Gbenre v. Shell Petroleum Development Company Nigeria Ltd & 2 Ors, Suit No FHC/B/CS/53/05; See also, Ijaiya, B. L. et al. (2015) "The Laws on Biodiversity Conservation and Poverty Reduction in Kwara State, Nigeria, published by Joseph Ayo Babalola University Law Journal vol. 2, No. 1 PP. 209- 225

<sup>49</sup>Sections 2, 8 (k), (m) & (o) as well the whole Section 7 (a) – (m) of the NESREA Act 2007 which provides that authority shall be responsible for the protection and development of the environment, biodiversity conservation and sustainable development in Nigeria' natural resources in general and environmental technology, including coordination and liaison with relevant stakeholders within and outside Nigeria on matters of enforcement of environmental standards, regulations, rules, laws, policies and guidelines;

<sup>50</sup> See First Schedules to Regulations 4, 8, 19, 20 and 25-26

<sup>51</sup>Federal Republic of Nigeria, Regulations No. 30 of 2009, Vol. 96 No. 62, Official Gazette (Abuja) dated 9<sup>th</sup> October, 2009

<sup>52</sup> S. I. No. 12, Gazette No. 39, Vol. 98 of 2<sup>nd</sup> May, 2011

<sup>53</sup> S. I. No. 13, Gazette No. 40, Vol. 98 of 3<sup>rd</sup> May, 2011

<sup>54</sup> S. I. No. 15, Gazette No. 42, Vol. 98 of 6<sup>th</sup> May, 2011

<sup>55</sup> S. I. No. 15, Gazette No. 42, Vol. 98 of 6<sup>th</sup> May, 2011

<sup>56</sup> S. I. No. 32, Gazette No. 96 Vol. 100 of 29<sup>th</sup> October, 2013

<sup>57</sup>Section 1 (1) which requires industry facilities to have anti-pollution equipment for the treatment of effluent

Abatement in Industries and Facilities Producing Waste) Regulations <sup>[58]</sup>, Federal Solid Hazardous Waste Management Regulations <sup>[59]</sup>, Environmental Impact Assessment (EIA) Act <sup>[60]</sup>, The Nigerian Urban Regional Planning Act <sup>[61]</sup>, Hydrocarbon Oil Refineries Act <sup>[62]</sup>, The Endangered Species Act <sup>[63]</sup>, Sea Fisheries Act <sup>[64]</sup> and Convention on Biological Diversity <sup>[65]</sup>. There are in existence in Kwara State, Nigeria presently Bush Burning (Control) Law <sup>[66]</sup>, Charcoal Production (Prohibition) Law <sup>[67]</sup>, Environmental Sanitation Law <sup>[68]</sup> and Forestry Law <sup>[69]</sup> to regulate biodiversity conservation in Kwara State. These legislations by the various provisions created a strict regime setting out regulations that make protection, preservation and conservation mandatory by all users of environment. In addition, government as well as the user of biodiversity is charged with responsibility of providing adequate measures to curb and arrest any impending threat to biodiversity. It also

required that a principle of restoration and regeneration and adopted in order to sustain biodiversity from extinction

## 5. An Overview of Biological Diversity Laws in India and United Kingdom

The issues of biodiversity conservation are not only of national concern but have also being of international concern in some developing and developed countries. This is because biodiversity is integral to the functioning of ecosystems and these, in turn provide ecosystem services which include food, food management, pollination and the provision of clean air and water which are factors complimenting the survival of mankind. Thus, references are to be made to the biodiversity laws and regulations in India and United Kingdom as commonwealth countries sharing the same common law jurisdiction with Nigeria

### 5.1 Biodiversity Laws in India

India is one of the 12 mega biodiversity countries of the world and one among the 194 signatories to the Convention on Biological Diversity (CBD) at Earth Summit in Rio de Janeiro in 1992. By virtue by virtue of a wide variety of physical and climatic conditions, India harbours varied ecosystems ranging from tropical rain forest to high alpine cold deserts, grasslands wetlands and coasts <sup>[70]</sup>. India can boast of having an impressive range of biological diversity, but there is hardly any scope for complacency. There are many factors constituting degradation of biodiversity in India. Such factors include human population, rapid expansion of agriculture, industry, urbanization and large scale developmental projects such as dams, highways, mining all of which have led to habitat destruction. As a result of these factors causing degradation to biodiversity in India, the need to check the incessant degradation through legal framework becomes imminent.

The conservation of biodiversity in India through legal framework has been an issue of great concern to the government of India through various initiatives taken before the ratification of Convention on Biodiversity Convention (CBD) in 1994. Some of the initiatives taken by the government of India include World Heritage Convention (1972), Convention on International Trade in Endangered Species of Flora and Fauna (CITES) 1975, Ramsar Convention on Wetlands (1975), and International Undertaking on Plant Genetic Resources (1983)

It is noteworthy to state that, the Government of India brought the Convention on Biological Diversity (CBD) into force from 19<sup>th</sup> May, 1994. This convention provides a framework for the sustainable management and conservation of India's natural resources. In order to regulate access to biological resources of the country with the purpose of securing equitable share in benefits arising out of the use of biological resources and associated knowledge, to conserve and sustainably use biological diversity, a legislation was required. Legislation was also required in order to respect and protect traditional knowledge of local communities and to secure benefit sharing with local people who have conserved the biological resources and inherited knowledge and information relating to their use of biological resources <sup>[71]</sup>.

<sup>58</sup>Sections 4 and 5 of the Regulations (1991) require industries to report a discharge if it occurs and to submit a comprehensive list of chemicals used for production to the agency

<sup>59</sup>Section 1 and 20 of the Regulations (1991) which make it an obligation for industries to identify solid hazardous wastes which are dangerous to public health and the environment and to research into the possibility of their recycling as well as to make notification of any discharge to the Agency

<sup>60</sup>Section 2 (1) & (4) of the Act Cap E12 Laws of the Federation of Nigeria 2004 which require an assessment of public or private projects likely to have significant (negative) impact on the environment and also provide for mandatory writing to the Agency before embarking on projects for their environmental assessment to determine approval

<sup>61</sup>Section 72 of the Act Cap N138 Laws of the Federation of Nigeria 2004 provides that the preservation and planting of trees for environmental conservation

<sup>62</sup>Section 9 of the Act Cap H5, Laws of the Federation of Nigeria 2004 which provides for that refineries must maintain pollution prevention facilities

<sup>63</sup>Section 7 of the Act, Cap E9, Laws of the Federation of Nigeria 2004 which provides for regulations to be made necessary for environmental prevention and control as regards the purposes of this Act

<sup>64</sup>Section 14 (2) of the Act, Cap S4, Laws of the Federation of Nigeria 2004 which provides authority to make for the protection and conservation of sea fisheries

<sup>65</sup>Article 8 (a) of the Convention on Biological Diversity 1992 which provides that each Contracting Party shall establish a system of protected areas where special measures are to be taken to conserve biological diversity. The conservation of ecosystems and natural habitats and the maintenance and recovery of viable population of species in their natural surroundings where they have developed their distinctive properties are made paramount importance to the preservation of biological diversity. This eventually spur the Federal Government to enact legislations on in-situ conservation such as the National Park Service Decrees Cap N65 Laws of the Federation of Nigeria, the Decree having been linked similar to Article 8 of the Convention on Biological Diversity 1992

<sup>66</sup>Sections 3 and 8 of the Law Cap B6 Laws of the Kwara State of Nigeria 2010; These sections provide for prohibition of bush burning without permit and the power of the Governor to ban bush burning in specified areas.

<sup>67</sup>Section 8 of the Charcoal Law, Cap C8 Laws of the Kwara State of Nigeria 2010; The section prohibits the burning of any tree or wood and that all licenses and permits granted to any person or body of persons before the enactment of the law to produce charcoal in any part of the State is hereby revoked

<sup>68</sup>Sections 13, 38, 39, 48, 49, 58, 59, 60, 61, 62, 63, 64, 65 and 66 of the Law Cap E4 Laws of the Kwara State of Nigeria 2010. The gist in the provisions of these sections is to the effect that the Agency shall power to carry on all environmental protection activities to enhance the achievement of the objectives of the Agency. Prohibitions of series of activities that are inimical to the environment are also provided so as to ensure adequate protection of the environment resulting from human activities

<sup>69</sup>Sections 31, 32, 33, 34 and 36 of the Law Cap F5 Laws of the Kwara State of Nigeria 2010 provide inter alia for the powers to establish an area to be known and called protected forests as well as the power to control and manage the forests for the purpose of protecting same from human activities

<sup>70</sup> K. Venkatarman "India's Biodiversity Act, 2002 and its role in conservation" Tropical Ecology 50 (1) 23-30 2009

<sup>71</sup> Ibid



The consequent of the ratification of the Convention on Biological Diversity (CBD) led to the promulgation of Biological Diversity Act, 2002 in India. With that, the country got a formal legal regime for the conservation of access to and sustainable use of both biological resources as well as people's knowledge associated with their local biological heritage. The provisions of the law have differential restrictions and exemptions, depending on the person involved or the activity envisaged with respect to biodiversity. For foreign entities the regulation is stricter than for Indian persons (natural or legal); likewise, local healers have more freedoms than commercial enterprises. Also, there are no legal obligations for benefit sharing under the Biodiversity Act. If the access is being done for collaborative research or if what is being accessed falls within the legal category of normally traded commodity<sup>[72]</sup>. The Biological Diversity Act which came into force in February 2003 has its main theme as to provide for conservation of biological diversity, sustainable use of its components and fair and equitable sharing of the benefits arising out of the use of biological resources, knowledge and for matters connected therewith or incidental thereto. The Biological Diversity primarily addresses the issues concerning access to genetic resources and associated knowledge by foreign nationals, institutions or companies and equitable sharing of benefits arising out of the use of these resources and associated knowledge by the country and its people. In addition, there are three ways in which the Act stipulates norms for access to biological resources and traditional knowledge. One of such ways is an access to biological resources and traditional knowledge to foreign citizens, companies and non-resident<sup>[73]</sup>. Secondly, an access permits to Indian citizens, companies registered in India and other organizations registered in India on the basis of prior intimation to the State Biodiversity Board concerned<sup>[74]</sup>. Thirdly is an exemption of prior approval or intimation for local people and communities, including growers and cultivators of biodiversity and Vaidas and Haqims, practicing indigenous medicines<sup>[75]</sup>. The key procedures to be followed for access to biological resources and traditional knowledge are dealt with under Rule 14 of the Biodiversity Rules 2004. These provisions are laid down to ensure effective, efficient and transparent access procedures through written agreements and applications in prescribed formats<sup>[76]</sup>.

The Act also provide for the measures to ensuring conservation of biodiversity. The Act provides that no person as provided under sub-section 2 shall without previous approval of the National Biodiversity Authority, obtain any biological resource occurring in India or knowledge associated thereto for research or for commercial utilization or for bio-survey and bio-utilization<sup>[77]</sup>. Also, it is also provided that with effect from such date as the Central Government may, by notification in the Gazette, appoint, there shall be established by the Central Government for the purposes of this Act, a body to be called the National

Biodiversity Authority which shall be a body corporate having perpetual succession and a common seal and capable of suing and be sued<sup>[78]</sup>.

The functions and powers of the National Biodiversity Authority shall include amongst others; to regulate activities referred to in sections, 3, 4 and 6 and by regulations issue guidelines for access to biological resources and to fair and equitable benefit sharing; grant approval for undertaking any activity referred to in sections, 3, 4 and 6 of the Act; the authority also performs an advisory role to the Central Government on matters relating to the conservation of biodiversity, sustainable use of its components and equitable sharing of benefits out of the utilization of biological resources; advise the State Governments in the selection of areas of biodiversity importance and also perform other functions as may be necessary to carry out the provisions of this Act<sup>[79]</sup>.

It is also the duty of the National Biodiversity Authority to undertake certain activities. Such activities include making application to obtain any biological resource occurring in India or knowledge associated thereto for research or for commercial utilization or for bio-survey and bio-utilization or transfer the results of any research relating to biological resources occurring in, or obtained from India<sup>[80]</sup>. The Act also provides that no person granted approval shall transfer any biological resource or knowledge associated thereto which is the subject matter of the said approval except with the permission of the National Biodiversity Authority. For such transfer to take place, an application is made in such form as may be prescribed by the Authority. The Authority is therefore saddled with responsibility after consulting with experts to grant such application<sup>[81]</sup>.

Another significant provision provided by the Act is the power vested in the Central Government acting in concert with the State Governments to notify any species which is on the verge of extinction or likely to become extinct in the near future as a threatened species and prohibit and prohibit or regulate collection thereof for any purpose and take appropriate steps to rehabilitate and preserve those species<sup>[82]</sup>.

Most importantly, there are penalties provided by the Act for the defaulters or whosoever contravenes any of the provisions in the Act particularly sections 3, 4 or 6 of the Act. Any breach of the aforementioned sections attracts punishment punishable with imprisonment for a term which may extend to five years, or with fine which may extend to ten rupees and where the damage caused exceeds ten lakh rupees such fine may commensurate with the damage caused, or with both. It is also a punishable offence for any contravention of the provisions of section 7 or any order made under sub-section (2) of section 24 and the punishment is imprisonment for a term which may extend to three years, or with fine which may extend to five lakh, or with both<sup>[83]</sup>.

Penalty is also provided for contravention of directions or orders of Central Government, State Governments, National Biodiversity Authority and State Biodiversity Boards<sup>[84]</sup>.

<sup>72</sup>Shalini Bhutani & Kanchi Kohli "Litigating India's Biological Diversity Act – A Study of Legal Cases Foundation for Ecological Security (FES) 2016, India

<sup>73</sup> Section 3, 4, 5 & 6 of the Act and Rule 14-20)

<sup>74</sup> Section 7 of the Act

<sup>75</sup> Ibid

<sup>76</sup> K. Venkatarman "India's Biodiversity Act, 2002 and its role in conservation" *Tropical Ecology* 50 (1) 23-30 2009

<sup>77</sup> Section 3 of the Act

<sup>78</sup> Section 8 (1) & (2) of the Act

<sup>79</sup> Section 18 (1), (2) & (3) of the Act

<sup>80</sup> Section 19 of the Act

<sup>81</sup> Section 20 of the Act

<sup>82</sup> Section 38 of the Act

<sup>83</sup> Section 55 (1) & (2) of the Act

<sup>84</sup> Section 56 of the Act



To ensure effective and efficient conservation of biodiversity in India and to curb the excessive activities of companies on biodiversity degradation, offences committed by companies are also punishable. Whenever there is any contravention committed by a company, any person in charge of the company shall be responsible for the conduct of the business of the company and shall be deemed to be guilty of the offence or contravention and shall be liable to be proceeded against and punished accordingly. However, a person in charge may only be absolved from liability where he proves that, the offence or contravention was committed without his knowledge or that he had exercised due diligence to prevent the commission of such offence or contravention<sup>[85]</sup>.

## 5.2 Biodiversity Laws in United Kingdom

Britain is the head of the commonwealth nations to which Nigeria and India are members. This being so, most of the laws of Nigeria and India are mostly in all fours with the laws of Britain. The legal protection of nature has its roots in the 19<sup>th</sup> century, based around the protection of wild birds. Legislation for species and subsequently habitats and special sites has been intermittent, but there are now different laws protecting important species and habitats that need to be considered when undertaking activities that could affect wildlife and other natural resources. Therefore, references are made to some legislation in United Kingdom on the protection and conservation of biodiversity.

There are legislations put in place in United Kingdom to regulate the conservation of biodiversity. One of such legislations is the Wildlife and Conservation Act<sup>[86]</sup>. This Act is the main United Kingdom legislation relation to the protection of named animal and plant species and includes legislation relating to the United Kingdom network of nationality protected wildlife areas. Under this Act, Natural England now has responsibility for identifying and protecting the SSSIs in England. The Countryside and Rights Way Act (CROW Act) strengthens the powers of Natural England to protect and manage SSSIs. The CROW Act improves the legislation for protecting and managing SSSIs so that- (i) Natural England can change existing SSSIs to take account of natural changes or new information; (ii) all public bodies have a duty to further the conservation and enhancement of SSSIs; (iii) neglected or mismanaged sites can be brought into favourable management; and (iv) offences and heavier penalties apply to people who illegally damage SSSIs

It is noteworthy to mention that, the United Kingdom Biodiversity Action Plan 1994 was the United Kingdom Government's response to signing the Convention on Biological Diversity (CBD) at the 1992 Rio Earth Summit. The CBD called for the development and enforcement of national strategies and associated action plans to identify, conserve and protect existing biological diversity, and to enhance it wherever possible. The United Kingdom Biodiversity Action Plan was then established to conserve and enhance biodiversity in the United Kingdom through the use of Habitats and Species Action Plans to help the most threatened species and habitats to recover and to contribute to the conservation of global biodiversity<sup>[87]</sup>.

Since the publication in 2007 of Conserving Biodiversity – the United Kingdom approach by the Department for Environment, Food and Rural Affairs (Defra), the context in which the CBD is implemented in the United Kingdom has changed. Strategic thinking in all the four countries (England, Northern Ireland, Scotland and Wales) has pursued a direction away from a piecemeal approach dealing with different aspects of biodiversity and the environment separately, towards a new focus on managing the environment as a whole, with the true economic and societal value of nature properly acknowledged and taken into account in decision-making in all relevant sectors<sup>[88]</sup>.

The Government of the United Kingdom enacted many legislations sequel to the ratification of the Convention on Biological Diversity. Some of these legislations are: The Conservation of Habitats and Species Regulations<sup>[89]</sup>, the Town and Country Planning (Environmental Impact Assessment) Regulations<sup>[90]</sup>, the Environmental Damage (Prevention and Remediation) Regulations<sup>[91]</sup>, the Marine and Coastal Access Act<sup>[92]</sup>, the Offshore Marine Conservation (Habitats *et al.*) Regulations<sup>[93]</sup>, Natural Environmental and Rural Communities (NERC) Act<sup>[94]</sup>, the Environmental<sup>[95]</sup>. Assessment of Plans and Programmes (Wales) Regulations

It is noteworthy to state that, fundamentally, the common goal the legislations on biodiversity in Nigeria, India and the United Kingdom seek to achieve is the conservation and protection of natural habitats, land, water and different species of plants and animals

## 5.3 Distinguishing and Similarity Features between Nigeria, India and United Kingdom Legislations on Biodiversity

Unlike in United Kingdom where there is no written constitution, but are being guided by conventions, the position in Nigeria and India are guided by written constitutions. There are copious provisions in the Nigeria Constitution which provide for the sustainability and conservation of environment in general and most specifically biodiversity. The constitution of the Federal Republic of Nigeria mandates that the State shall protect and improve the environment and safeguard water, air, and land, forest and wild life of Nigeria<sup>[96]</sup>. Interestingly, notwithstanding the fact that the responsibility of the State comes under Chapter II on Fundamental Objectives and Directives Principles of State Policy, the National Assembly can by enactment made the relevant provisions justiciable<sup>[97]</sup>. Similarly, there is also an analogous provision under the India Constitution on the responsibility of the State to protect and improve the environment<sup>[98]</sup>.

<sup>88</sup> Ibid and [www.environment.agency.gov.uk](http://www.environment.agency.gov.uk) accessed on the 20/8/2018

<sup>89</sup> 2010 (as amended)

<sup>90</sup> 2011

<sup>91</sup> 2009

<sup>92</sup> 2009

<sup>93</sup> 2007

<sup>94</sup> 2006

<sup>95</sup> 2004

<sup>96</sup> Section 20 of the 1999 Constitution of the Federal Republic of Nigeria (as amended)

<sup>97</sup> The National Assembly can make Sections 13-20 of the 1999 Constitution (as amended) justiciable as it did in the case of Independent Corrupt Practices Commission Act, and Section 15 (5) of the 1999 Constitution (as amended).

<sup>98</sup> Article 48A of the India Constitution 2015

<sup>85</sup> Section 57 of the Act

<sup>86</sup>(1981) This Act has been amended by the Countryside and Rights of Way Act 2000 and the National Environment and Rural Communities Act 2006

<sup>87</sup> <http://incc.defra.gov.uk/pdf/UK> accessed on the 20/8/2018

Another feature worthy of mention is the simple fact that, in Nigeria and India, the right to a satisfactory and clean environment is not made as a right. This is evident in the provisions of the Constitution of the Federal Republic of Nigeria<sup>[99]</sup> and that of India where the right to a satisfactory and clean environment was not recognized as one of the fundamental rights. However, it is interesting to note that, under the India Constitution, there is a provision worthy of emulating in Nigeria. The India Constitution provides for fundamental duties expected of every citizen to be observed and obeyed. It is provided that, it shall be the duty every citizen in India to protect and improve the natural environment including the forests, lakes, rivers, and wild life and to have compassion for living creatures<sup>[100]</sup>. This particular provision as stated earlier is worthy of being incorporated into the Nigeria Constitution so as to fortify the protection and improvement of the environment.

It is also imperative to note that unlike in Nigeria where majority of the citizens are not aware of their responsibilities on the protection and improvement of environment, the mandatory responsibilities of every citizen in India on the need to protect and improve environment will go a long way to ensuring protection and sustainability of biodiversity.

It is also important to note that, the level of enforcement of the various legislations in Nigeria is much more ineffective as compared to India and United Kingdom. This is because the machinery put in place in India and United Kingdom to ensure effective compliance and enforcement are more potent than that of Nigeria. The prevalent level of corruption stemming from the Oil companies exploring oil in Nigeria is one of the factors militating against the enforcement of the regulations on environment.

Also, the non-justiciability of the right to a satisfactory and clean environment also contributed to the incessant assault on the environment by those in power. Despite the fact that Nigeria is a signatory to the African Charter on Human and Peoples Rights, the rate and level of compliance and enforcement of right to a satisfactory and clean environment has been on lowest ebb. The case of *SERAC v. Nigeria* Communication<sup>[101]</sup> in the African Commission is the only time in which the right to a satisfactory environment has been significantly dealt with in the African Commission.

It thus becomes very obvious that, the non-justiciability of the right to a satisfactory and clean environment is not only peculiar to Nigeria but also applicable in India. This is against the position in United Kingdom where every citizen is entitled as a right to enjoy a satisfactory and clean environment<sup>[102]</sup>.

## 6. Conclusion and Recommendation

From the foregoing, it is crystal clear that, there are copious legislations on the conservation of biodiversity in Nigeria, India and United Kingdom. Each of the three countries legislations on biodiversity tends to achieve one common goal which is the sustainability, conservation and improvement of biodiversity species. There is however some distinguishing features between the laws on biodiversity in Nigeria, India and United Kingdom.

Similarly, Nigeria and India being commonwealth countries share some common features together on the law regulating biodiversity.

Against the backdrop of the above, it is recommended that, the governments of both Nigeria and India adopt the provision of Article 24 of the African Charter of Human and Peoples Rights to give effect to the right to satisfactory and clean environment. The right to satisfactory and clean environment should be included as part of the fundamental rights so as to ensure that both the government and the governed give priority to the protection of environment.

Also, the government of Nigeria should adopt the provisions of Article 51A particularly as it relates to fundamental duties of every citizen to protect environment and most importantly biodiversity.

The government, particularly in Nigeria in order to ensure adequate compliance and enforcement of the laws on biodiversity should imbibe the culture of eschewing bad governance and corruption that has eaten deep into the society. The government in doing this should ensure the provision of basic amenities to its citizens in terms of provision of basic essential amenities for their livelihood which ought to enhance conservation of biodiversity. For instance, the activity of the humans through logging and tree felling is majorly responsible for biodiversity degradation. Man needs biodiversity species either to earn a living or for consumption purposes.

The government of Nigeria as a matter of good governance is expected to provide means of alleviating poverty as well as subsidizing kerosene and gas stores which of course will give the poor easy access to kerosene and reduce logging and tree felling which is the predominant way of assault on biodiversity in Kwara State in particular and Nigeria as a whole.

Also, it is also observed that in Nigeria, there is lack of awareness on the need to maintain a healthy environment as well as to protect and conserve same. A lot of people are not really aware of the legislations on environment and the penalty attached thereto. So, biodiversity is assaulted and degraded with impunity. This is not unconnected with the fact that there is no responsibility vested on citizens for the protection of biodiversity as provided for under Article 51A of the India Constitution.

Furthermore, the applicability of the law is handicapped based on the failure on the part of the government to involve local people in the law making process. It is not out of place to state that substantial biodiversity species are located in the rural areas and it is the responsibility of the government, if biodiversity conservation is to be achieved to involve the local people with whom the species predominate to be carried along whenever legislations on environment are to be enacted. This of course will go a long way to co-opt their inputs into the law for effective compliance.

Against the backdrop of the above analytical framework on applicability of the principles of sustainable development and law to biodiversity conservation in Nigeria, India and United Kingdom it seems the government, particularly in Nigeria, the civil society organizations, the media as well as the academia, notwithstanding the copious legislations, and policies have not done enough in sensitizing members of the public on the need to live a healthy environment and to preserve same from further annihilation. The citizens too have their own shortcomings in terms of attitudinal culture to environment as well as ignorant coupled with poverty.

<sup>99</sup> Sections 33-45 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and Articles 12-35 of the India Constitution, 2015

<sup>100</sup> Article 51A of the India Constitution 2015

<sup>101</sup> (2001) ACHPR

<sup>102</sup> [www.environment.agency.gov.uk](http://www.environment.agency.gov.uk) accessed on the 20/8/2018

The inability of the government to provide for the basic needs of the citizens have continued to cause annihilation to the environment thus making citizens to resort to the resources in the environment to sustain their lives. The consequence of that occupation of the natural resources is the continued destruction of both the flora and the fauna

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33. Vala L. J Sustainable Development: The Right to Freshwater B.A. degree in Law at the Faculty of Law and Social Science, University of Akureyri, Istanbul, Turkey 2010, pp. 3.
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35. Ibid p5
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39. Nigeria-Planet.com 'Oil and Nigeria 2', available at <http://www.nigeria-planet.com/oil-And-Nigeria2.html>
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41. Findings and Responses collected from some respondents of Baruten and Patigi Local Government Areas of Kwara State through the questionnaire administered in March 2013
42. Available at <http://www.nesrea.org/images/national%20Policy%20n%20Environment.pdf>
43. Ibid 91
44. Ibid 89
45. (1998) ILM 37, 162
46. Principle 15 of the Rio Declaration see also Application of the Precautionary Principle to Biodiversity Conservation in Kwara State, Nigeria; EBSU Journal of International and Judicial, Published by the Faculty of Law of the Ebonyi State University 1992;3:104-114. ISSN 2141- 4602
47. Ijaiya H. The Principles of Sustainable Development: An Appraisal of the Polluter Pays Principle in the Nigeria Oil and Gas Industry 1 Legal Network Series 3, 2013.
48. Sections 20, 33, and 34 of the 1999 Constitution of the Federal Republic of Nigeria if read together with Sections 13 & 14 (2) (b) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) makes it an constitutional obligation of the Nigerian State to realize the fundamental environmental objective to improve and protect the air, water, forest and wildlife in Nigeria as well a guarantee of fundamental human



- rights to life and dignity, the latter having been supported by Article 24 of the African Charter on Human People's Right Cap A9 LFN, 2004 and the case of *Jonah Gbenre v. Shell Petroleum Development Company Nigeria Ltd & 2 Ors*, Suit No FHC/B/CS/53/05; See also, *Ijaiya BL et al. The Laws on Biodiversity Conservation and Poverty Reduction in Kwara State, Nigeria*, published by Joseph Ayo Babalola University Law Journal 2015;2(1):209-225.
49. Sections 2, 8 (k), (m) & (o) as well the whole Section 7 (a) – (m) of the NESREA Act 2007 which provides that authority shall be responsible for the protection and development of the environment, biodiversity conservation and sustainable development in Nigeria' natural resources in general and environmental technology, including coordination and liaison with relevant stakeholders within and outside Nigeria on matters of enforcement of environmental standards, regulations, rules, laws, policies and guidelines;
  50. See First Schedules to Regulations 4, 8, 19, 20 and 25-26
  51. Federal Republic of Nigeria, Regulations No. 30 of 2009, Vol. 96 No. 62, Official Gazette (Abuja) dated 9<sup>th</sup> October, 2009
  52. S. I. No. 12, Gazette No. 39, Vol. 98 of 2<sup>nd</sup> May, 2011
  53. S. I. No. 13, Gazette No. 40, Vol. 98 of 3<sup>rd</sup> May, 2011
  54. S. I. No. 15, Gazette No. 42, Vol. 98 of 6<sup>th</sup> May, 2011
  55. S. I. No. 15, Gazette No. 42, Vol. 98 of 6<sup>th</sup> May, 2011
  56. S. I. No. 32, Gazette No. 96 Vol. 100 of 29<sup>th</sup> October, 2013
  57. Section 1 (1) which requires industry facilities to have anti-pollution equipment for the treatment of effluent
  58. Sections 4 and 5 of the Regulations (1991) require industries to report a discharge if it occurs and to submit a comprehensive list of chemicals used for production to the agency
  59. Section 1 and 20 of the Regulations (1991) which make it an obligation for industries to identify solid hazardous wastes which are dangerous to public health and the environment and to research into the possibility of their recycling as well as to make notification of any discharge to the Agency
  60. Section 2 (1) & (4) of the Act Cap E12 Laws of the Federation of Nigeria 2004 which require an assessment of public or private projects likely to have significant (negative) impact on the environment and also provide for mandatory writing to the Agency before embarking on projects for their environmental assessment to determine approval
  61. Section 72 of the Act Cap N138 Laws of the Federation of Nigeria 2004 provides that the preservation and planting of trees for environmental conservation
  62. Section 9 of the Act Cap H5, Laws of the Federation of Nigeria 2004 which provides for that refineries must maintain pollution prevention facilities
  63. Section 7 of the Act, Cap E9, Laws of the Federation of Nigeria 2004 which provides for regulations to be made necessary for environmental prevention and control as regards the purposes of this Act
  64. Section 14 (2) of the Act, Cap S4, Laws of the Federation of Nigeria 2004 which provides authority to make for the protection and conservation of sea fisheries
  65. Article 8 (a) of the Convention on Biological Diversity 1992 which provides that each Contracting Party shall establish a system of protected areas where special measures are to be taken to conserve biological diversity. The conservation of ecosystems and natural habitats and the maintenance and recovery of viable population of species in their natural surroundings where they have developed their distinctive properties are made paramount importance to the preservation of biological diversity. This eventually spur the Federal Government to enact legislations on in-situ conservation such as the National Park Service Decrees Cap N65 Laws of the Federation of Nigeria, the Decree having been linked similar to Article 8 of the Convention on Biological Diversity 1992
  66. Sections 3 and 8 of the Law Cap B6 Laws of the Kwara State of Nigeria 2010; These sections provide for prohibition of bush burning without permit and the power of the Governor to ban bush burning in specified areas.
  67. Section 8 of the Charcoal Law, Cap C8 Laws of the Kwara State of Nigeria 2010; The section prohibits the burning of any tree or wood and that all licenses and permits granted to any person or body of persons before the enactment of the law to produce charcoal in any part of the State is hereby revoked
  68. Sections 13, 38, 39, 48, 49, 58, 59, 60, 61, 62, 63, 64, 65 and 66 of the Law Cap E4 Laws of the Kwara State of Nigeria 2010. The gist in the provisions of these sections is to the effect that the Agency shall power to carry on all environmental protection activities to enhance the achievement of the objectives of the Agency. Prohibitions of series of activities that are inimical to the environment are also provided so as to ensure adequate protection of the environment resulting from human activities
  69. Sections 31, 32, 33, 34 and 36 of the Law Cap F5 Laws of the Kwara State of Nigeria 2010 provide inter alia for the powers to establish an area to be known and called protected forests as well as the power to control and manage the forests for the purpose of protecting same from human activities
  70. Venkatarman K. India's Biodiversity Act, 2002 and its role in conservation Tropical Ecology 2009;50(1):23-30.
  71. Ibid
  72. Shalini Bhutani, Kanchi Kohli. Litigating India's Biological Diversity Act – A Study of Legal Cases Foundation for Ecological Security (FES) 2016, India
  73. Section 3, 4, 5 & 6 of the Act and Rule 14-20)
  74. Section 7 of the Act
  75. Ibid
  76. Venkatarman K. India's Biodiversity Act, 2002 and its role in conservation Tropical Ecology 2009;50(1):23-30.
  77. Section 3 of the Act
  78. Section 8 (1) & (2) of the Act
  79. Section 18 (1), (2) & (3) of the Act
  80. Section 19 of the Act
  81. Section 20 of the Act
  82. Section 38 of the Act
  83. Section 55 (1) & (2) of the Act
  84. Section 56 of the Act
  85. Section 57 of the Act

86. This Act has been amended by the Countryside and Rights of Way Act 2000 and the National Environment and Rural Communities Act 2006, 1981.
87. <http://incc.defra.gov.uk/pdf/UK> accessed on the 20/8/2018
88. Ibid and [www.environment.agency.gov.uk](http://www.environment.agency.gov.uk) accessed on the 20/8/2018
89. 2010 (as amended)
90. 2011
91. 2009
92. 2009
93. 2007
94. 2006
95. 2004
96. Section 20 of the 1999 Constitution of the Federal Republic of Nigeria (as amended)
97. The National Assembly can make Sections 13-20 of the 1999 Constitution (as amended) justiciable as it did in the case of Independent Corrupt Practices Commission Act, and Section 15 (5) of the 1999 Constitution (as amended).
98. Article 48A of the India Constitution 2015
99. Sections 33-45 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and Articles 12-35 of the India Constitution, 2015
100. Article 51A of the India Constitution 2015
101. (2001) ACHPR
102. [www.environment.agency.gov.uk](http://www.environment.agency.gov.uk) accessed on the 20/8/2018