

**AN APPRAISAL OF LEGAL AND POLICY FRAMEWORK ON CONSERVATION OF
BIODIVERSITY IN NIGERIA: CHALLENGES AND WAY FORWARD**

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Abstract:

Biodiversity, a standout array of life formed on earth. Hence, it requires adequate conservation. Given Nigeria's rich natural resources and diverse ecosystems, biodiversity conservation is a critical issue in Nigeria. This paper examines the relevant extant laws and policies regulating biodiversity conservation in Nigeria through doctrinal methods of legal research, which include statutes, case laws, relevant textbooks and articles, and legal commentaries. It highlights and explains the gaps and challenges that hinder effective implementation and enforcement. It, also, explores the roles of stakeholders, including government agencies, non-governmental organizations, and local communities, in biodiversity conservation efforts. The study revealed that the extant legal framework to conserve biodiversity in Nigeria seems to be weak due to one impediment or another that poses as challenges. In conclusion, this paper recommends strengthening enforcement mechanisms and increasing collaboration among stakeholders and local community participation in conservation efforts to improve biodiversity conservation in Nigeria.

Keywords: *Biodiversity, Conservation, Legal Framework, Policy Framework, Challenges, and Way Forward.*

Introduction

Biodiversity is the concept of diversity in all life forms. The concept is a global environmental problem that attracts great attention from everyone, as the rate of species extinction has increased in the last few years. Biodiversity refers to the variety of life forms on Earth, including flora, fauna, and microorganisms, as well as the ecosystems in which they co-exist.¹ The impacts of biodiversity are many; because they cause significant direct or indirect impacts on most, if not

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¹E. O. Wilson, *The Diversity of Life* (Harvard University Press 2018).

all, ecosystem processes.² The concept encompasses the vast array of living species, their genetic differences, and the complex ecosystems they form and inhabit. Biodiversity is essential for ecosystem function and human well-being.³ Hence, a need to conserve biodiversity is inevitable.

However, conservation of biodiversity is essential for maintaining the country's ecological balance, supporting sustainable development, and preserving the cultural heritage of its diverse communities. Climate change is another significant threat to biodiversity in Nigeria. The Intergovernmental Panel on Climate Change (IPCC) predicts that rising temperatures and changing rainfall patterns will have a profound impact on Nigeria's ecosystems, leading to shifts in species distributions and increased risk of extinction. According to a study by Okeke et al.,⁴ Nigeria has lost over 50% of its forest cover in the past few decades, primarily due to logging, agriculture, and urbanization. This loss of habitat has led to a decline in biodiversity, with many fauna and flora species facing extinction. On the same vein, the Nigerian Conservation Foundation (NCF)⁵ reports that over 1,000 flora species and 300 fauna species are currently at risk of extinction in Nigeria. Thus, to this end, conservation of biodiversity in Nigeria is a critical issue that is governed by both judicial and statutory provisions.⁶

The Nigerian Constitution recognizes the importance of biodiversity conservation. Accordingly, section 20 of the Constitution states that the State shall protect and improve the environment and safeguard the water, air, land, forest, and wildlife of Nigeria. This constitutional provision is the background for the protection of biodiversity in the Nigeria and provides a legal basis for the development of policies, laws and regulations to conserve natural resources.

In alignment with the constitutional provisions, Nigeria has enacted workable laws and regulations to protect biodiversity. For instance; the Endangered Species (Control of International Trade and Traffic) Act of 1985, which prohibits the trade and trafficking of endangered species and their products. This law aims to prevent the illegal exploitation of

² Art. 2 Convention on Biological Diversity (CBD), 1992.

³ Center for Sustainable Systems, University of Michigan. 2023. "Biodiversity Factsheet." Pub. No. CSS09-08.

⁴ C. I. Okeke, 'Community-Based Conservation in Nigeria: Challenges and Opportunities' [2020] (25) (4) *Conservation Biology* 789-797.

⁵ Nigerian Conservation Foundation. 'Threats to biodiversity in Nigeria' (2020).<https://www.ncfnigeria.org/threats-to-biodiversity-in-nigeria>. Accessed 10 May 2024.

⁶ J. O. Ogunji & J. O. Arowosegbe, 'Legal and Institutional Framework for the Conservation of Biodiversity in Nigeria' [2011] (2) *Journal of Law, Policy and Globalization* 24-35.

wildlife for assurances of their survivals; the National Parks Service (NPS) Act of 1991 establishes a framework for the management and conservation of national parks across Nigeria. The NPS Act regulates such activities like hunting, logging, and mining, to ensure the preservation of biodiversity and the sustainability of natural resources.

However, the extant legal framework to conserve biodiversity in Nigeria seems to be weak due to one impediment or another that poses as challenges. In a bid to address these challenges, this paper aims to critically appraise the extant legal framework, identify the challenges facing its implementation, and propose recommendations for the way forward.

Conceptualizing Biodiversity Conservation

Biodiversity conservation is a critical issue in today's world, as the loss of species and ecosystems continues at an alarming rate.⁷ The concept of encompasses the protection and management of the variety of life forms on earth towards sustainable development as enshrined in the Rio de Janeiro's Sustainable Development⁸, including plants, animals, and microorganisms, as well as the ecosystems in which. This concept is based on the understanding that biodiversity is crucial for the ecosystems' effective functionality, which provides a vital human well-being in return.

In the study by Berkes⁹, it was opined that community-based initiative is one of the major approaches to Biodiversity conservation, in which Nigeria needs to adequately key in. By involving the local community, a sustainable conservation will be guaranteed for a longer term.¹⁰ For instance, sustainable forestry practices will assist in effective conservation forest ecosystems, while serving, in another, as a source of income for the local communities. In the same vein, sustainable fishery system protects aquatic lives in biodiversity, while simultaneously supporting the livelihoods in fishing local communities. Similarly, Sustainable use of natural resources/heritage is another vital approach for biodiversity conservation. The approach suggests the resources are used in a way that is sustainable and does not harm biodiversity, as the local

⁷ CBD (Convention on Biological Diversity) *Global Biodiversity Outlook* (Montreal, Canada: Secretariat of the Convention on Biological Diversity; 2020) 5.

⁸ Principle 3 of the Rio Declaration on Environmental and Development, 1992.

⁹ F. Berkes, 'Rethinking community-based conservation' [2004]18(3) *Conservation Biology*621-630.

¹⁰ Ibid.

communities depend on natural resources for their livelihoods.¹¹ Another approach is called a Protected Area, which is a key tool in biodiversity conservation. This effort, accordingly, includes establishment of national parks and wildlife reserves for the purpose to protect natural habitats and species within the ecosystem.¹² It is important to note, however, that these special areas identified for this purpose are not always effective in conserving biodiversity, because human activities often result in encroaching of the said areas by way of claiming ownership of such area so protected. Hence, this can pose as impediment to biodiversity conservation.

It is consequential to note that the concept faces several challenges, which stand against the tide of biodiversity conservation, especially in Nigeria. According to Ajayi et al.¹³, the challenges faced by biodiversity conservation includes habitat destruction, poaching, pollution and climate change, deforestation, and over-exploitation of natural resources. Thus, loss of natural habitats, extinction of natural resources, and fragmentation of ecosystems are the aftermath of the challenges which escalate threatening the survival of many species.

No doubt that biodiversity conservation faces multifaceted challenges, which have been undermining the essence for the legal framework. Although, the extent at which the challenges had eaten up the natural resources/heritage is in different from one jurisdiction to another. On this note, this study observes that the challenges are categorized into two perspectives, which are challenges to conservation of biodiversity and challenges to the legal framework regulating the conservation of biodiversity. Whereas, this study will do just to appraisal of the latter, as it is the primary concern of this study.

Legal Framework

The legal framework is the collection of laws and judicial precedents that establish the rules and principles governing a given concept or phenomenon including biodiversity conservation. Nigeria has a complex legal framework for biodiversity conservation. The following is an overview of the major components of the legal framework. Thus:

¹¹N. Dudley, *Guidelines for applying protected area management categories* (Gland, Switzerland: IUCN, 2008).

¹² Ibid.

¹³A. N. Ajayi, and others, 'Challenges of Biodiversity Conservation in Nigeria' [2010] (6)(12) *Journal of Applied Sciences Research* 2262-2270.

a. Constitution¹⁴

The Constitution of the Federal Republic of Nigeria (CFRN) acknowledges the significance of the environment (including conservation of biodiversity), in its chapter II, which bothered on Fundamental Objectives and Directive Principles of State Policy. Section 20 therein states that 'The state shall protect and improve the environment and safeguard the water, air, and land, forest and wildlife of Nigeria.'

However, the enforcement of section 20 of the Constitution is, ordinarily, non-justiciable by virtue of section 6(6)(c) of the Constitution. Nevertheless, the position has been changing to make Chapter II justiciable and this position has also been restated in *Attorney General of Ondo State v Attorney General of the Federation &ors.*¹⁵ Similarly, it has been further recognized with combined reading of section 20 and article 24 of the African Charter on Human and People's Right which has been applied in *SERAC v. Nigeria*¹⁶ and *Jonah Gbemire v. Shell Petroleum Development Company of Nigeria Ltd.*¹⁷ Thus, the justiciability of chapter II recently years avails more opportunities for biodiversity conservation, as stakeholders would be more proactive in the course of conserving biodiversity in Nigeria.

b. National Environmental Standards and Regulations Enforcement Agency (NESREA)

Act

The Legislation for biodiversity conservation in Nigeria is primarily regulated by the National Environmental Standards and Regulations Enforcement Agency (NESREA) Act¹⁸ of 2007. This Act establishes NESREA as the primary regulatory agency that responsible for enforcing environmental laws and regulations (including those related to biodiversity conservation).¹⁹ Within the ambit of the Act, certain provisions, inter-alia, are vital to the conservation of biodiversity in Nigeria. Thus, the NESREA enforces standards towards environmental protection and sustainability, while its regulations aimed at protecting biodiversity. This includes the protection of endangered species, regulation of trade in wildlife, and control of activities that

¹⁴ CFRN, 1999 (as amended).

¹⁵ [2002] LPELR623,

¹⁶ [2001] ACHPR,

¹⁷ Unreported suit no. FHC/B/CS/53/05

¹⁸ NESREA act, 2007.

¹⁹ Ibid, s. 2, 7 & 8.

threaten habitats.²⁰ NESREA, therefore, collaborates with international organizations, NGOs, and other stakeholders to enhance biodiversity conservation efforts. The agency, also, engages the public through education and awareness programs to promote sustainable environmental practices.²¹ In the same vein, NESREA is responsible for collecting and analysing data related to environmental quality and biodiversity, helps in monitoring the standard state of biodiversity and the effectiveness of conservation efforts.²²

Under the Act, discharging hazardous waste into the environment is a serious offence Punishable, upon conviction, with a fine not exceeding N1,000,000 (one million Naira only) and for individuals or N10,000,000 (ten million Naira only) for corporate bodies, or imprisonment for a term not exceeding five years, or both. Similarly, failing to comply with compliance orders issued by NESREA is another key offence that is punishable with an additional fine of N50,000 (fifty thousand Naira only) per day for individuals and N500,000 (five hundred thousand Naira only) per day for corporate bodies during which the offence continues. In a short form, all these punishable offences are including; Engaging in activities that cause air or water pollution, any act leading to significant environmental degradation, such as deforestation, wildlife poaching, and habitat destruction, which are either punishable with fines, imprisonment, or the requirement to undertake remediation activities. All these provisions aimed at, inter-alia, conserving biodiversity in Nigeria.

However, it is crucial to pinpoint that if the NESREA is focusing much on standards, enforcement, public engagement, and adequate data monitoring as enshrined in the Act, NESREA would have been recording a gigantic success while playing its crucial role in safeguarding Nigeria's biodiversity. Furthermore, the quantum of punishment (fines and imprisonment) is on the lower side vis-à-vis the standard in other jurisdictions on the same or similar offence. For instance, the quantum of punishment (fines and imprisonment) in the UK is based on the standard scale of fines which has a range of maxima starting at; Level 1: £200, Level 2: £500, Level 3: £1,000, Level 4: £2,500, and Level 5: £5,000, However, a number of environmental offences carry exceptional summary maxima (ESM), which allow for heavier

²⁰ Ibid, s. 7.

²¹ Ibid.

²² Ibid.

finer like; £20,000, £50,000 and £250,000 at the top end of the scale. Imprisonment on the other hand, entails substantial environmental offences to be generally punishable by imprisonment for up to two years in the Crown Court.

c. Forestry Act

The Forestry Act²³, originally enacted in 1958 and subsequently revised, is a significant piece of legislation in Nigeria aimed at the conservation and sustainable management of forests and biodiversity. The Forestry Act mandates the conservation and sustainable management of forest resources in Nigeria, focusing on the protection of biodiversity, prevention of deforestation, regulation of activities within forest reserves, and establishes penalties for encroachment and illegal activities within forest reserves.²⁴

The Act contains certain key provisions for biodiversity conservation, which includes; emphasis on the importance of sustainable forest management practices that conserve biodiversity, protect soil and water resources, and maintain ecological balance; and encouragement of the involvement of local communities in conservation efforts through education, training, and benefit-sharing schemes.²⁵

Under the Act, illegal logging, hunting, and other unauthorized activities within forest reserves are strictly prohibited.²⁶ Accordingly, illegal trade in forest products, including timber and wildlife, and destruction of forest habitats, such as setting fires and clearing land without permission are prohibited.²⁷ All these offences are punishable under the Act ranging from fines, impediment, confiscation of vehicles and equipment involved in the illegal activities, and additional penalties, such as community services, reforestation efforts and compensation for environmental damage.²⁸ No doubt, the Act is robust in conserving biodiversity of the forest Reserve, but its impact appears to be weak as destruction of forest inhabitants persists in the country.

²³ Forest Act, 1958 (revised).

²⁴ Ibid, s. 3-7.

²⁵ Ibid, s. 19 & 20.

²⁶ Ibid, s. 13.

²⁷ Ibid, 14 & 15.

²⁸ Ibid, 16, 17 & 18.

d. Endangered Species (Control of International Trade and Traffic) Act

The Endangered Species (Control of International Trade and Traffic) Act²⁹ is a crucial piece of legislation in Nigeria aimed at regulating, controlling and monitoring the trade and traffic of endangered species to protect biodiversity.³⁰ This Act aligns with international efforts to conserve wildlife and prevent the extinction of vulnerable species.³¹

Furthermore, the Act provides a comprehensive provision for the protection of endangered species in Nigeria by regulating their trade and traffic. By establishing stringent permit requirements, enforcing penalties for violations,³² (the severity of penalties is proportionate to the nature and extent of the offence), and promoting international cooperation³³, the Act plays a crucial role in conserving biodiversity. The provisions for public awareness, capacity building, and integration with national policies further strengthen the Act's effectiveness in protecting endangered species and their habitats.³⁴ The Act ensures Nigeria's compliance with international treaties such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). This includes adhering to international standards and reporting requirements.

However, despite the Act's robust provisions and severe penalties, weak enforcement undermines biodiversity conservation in Nigeria.

e. National Parks Service Act

The National Parks Service Act³⁵ in Nigeria is a significant law that establishes national across the country and regulates the overall management of the parks. With this mandate, the law plays a vital role in conserving biodiversity and protecting natural resources within the ecosystem.³⁶ The objectives of this law include preserving biodiversity, maintaining ecological processes, and protecting endangered species and their habitats.³⁷

²⁹ Endangered Species (Control of International Trade and Traffic) Act of 1985

³⁰ Ibid, s. 1-6.

³¹ Ibid, s. 12.

³² Ibid, s. 10.

³³ Ibid, s. 12.

³⁴ Ibid, s. 19-22.

³⁵ National Parks Service Act, 1999.

³⁶ Ibid, s. 1.

³⁷ Ibid, s. 2.

Furthermore, one of the key provisions for Biodiversity Conservation within the purview of this Act is the protection of critical habitats and endangered species within the national parks across Nigeria. This is implemented through restrictions on certain activities that may threaten these areas and species.³⁸ In the same vein, the law established Buffer Zones around sensitive areas, which help in protecting the core areas of national parks from external threats.³⁹

However, despite the robust specifications of the legislation for biodiversity conservation, the legislation still finds it difficult to adequately achieve its mandates, as the destruction of species in the national parks is still in perpetuity in Nigeria. Thus, an adequate enforcement mechanism is required for biodiversity conservation in Nigeria.

f. Environmental Impact Assessment (EIA) Act

The EIA Act⁴⁰ is a comprehensive legislation designed for assurance of environmental and biodiversity safety. The Act's major mandate is to ensure that the impacts of proposed projects are thoroughly assessed and managed to flying of such project.⁴¹ By mandating public participation, rigorous assessment processes, and strict enforcement strategies, the Act plays a crucial role in conserving Nigeria's biodiversity.⁴² The spirit of provisions for offences⁴³ and punishments⁴⁴ under the Act guarantees compliance, hence making the EIA Act a key tool for sustainable development and environmental protection in Nigeria (which including conservation of biodiversity).

g. Harmful Waste (Special Criminal Provisions, etc.) Act

The Harmful Waste (Special Criminal Provisions, etc.) Act⁴⁵ of 1988 is one of extant legislation in Nigeria aimed at prohibiting the illegal carrying, depositing, and dumping of harmful waste within the Nigerian environment.⁴⁶ The Act advocates the need to protect the environment and its

³⁸ Ibid, s. 21.

³⁹ Ibid, s. 22

⁴⁰ Environmental Impact Assessment (EIA) Act, 1992.

⁴¹ Ibid, s. 1.

⁴² Ibid, s. 2 & 3.

⁴³ Ibid, s. 11-15.

⁴⁴ Ibid.

⁴⁵ Harmful Waste (Special Criminal Provisions, etc.) Act of 1988.

⁴⁶ Ibid, s. 1.

biodiversity from the adverse effects of harmful waste.⁴⁷ It establishes a framework for the protection of public health within the environment (including biodiversity) from the dangers posed by harmful waste.⁴⁸ It is significant to understand that the Act contains initiatives which educate the public about the dangers of harmful waste and the need for compliance with the Act. This is to be carried out through public campaigns, and training programs (for law enforcement agency and environmental officers).⁴⁹ However, it is pertinent to note that, despite provisions for a severe punishment (ranging from life imprisonment, substantial fines, and to forfeiture of property), violation of the law is raising eyebrows due to weak enforcement and nonchalant attitude.⁵⁰

h. National Biosafety Management Agency (NBMA) Act.

The National Biosafety Management Agency (NBMA) Act⁵¹ is a crucial legislative framework in Nigeria that governs the safe management of genetically modified organisms (GMOs) to protect biodiversity, human health, and the environment.⁵² It is an offence under the Act; to develop, handle, transfer, or use GMOs without the necessary permits from the NBMA, to providing false or misleading information in biosafety applications or reports, failure to comply with any regulation, order, or directive issued under the Act, and any attempt to endanger Biodiversity or causing environmental harm by conducting activities that pose a significant risk to biodiversity or human health.⁵³ Punishment under the Act upon conviction include; fines up to N2,500,000 for individuals and N5,000,000 for corporate bodies, or imprisonment for a term not exceeding five years, or both, Seizure and destruction of unauthorized GMOs and related products, suspension, or revocation of permits and approvals for non-compliance, etcetera.⁵⁴ Nevertheless, the punishment section is severed enough to foster effective enforce. Thus, the law is moderately weak.

⁴⁷ Ibid, s. 16.

⁴⁸ Ibid, 17.

⁴⁹ Ibid, 18.

⁵⁰ Ibid, 12 & 13.

⁵¹ National Biosafety Management Agency (NBMA) Act of 2015.

⁵² Ibid, s. 8-12.

⁵³ Ibid, s. 13-16.

⁵⁴ Ibid, s. 17-19.

i. Animal Diseases (Control) Act

The Animal Diseases (Control) Act⁵⁵ provides a comprehensive legal framework for the prevention and control of animal diseases in Nigeria. The mandates and functions include; enforcing quarantine measures, regulating animal movement, supporting vaccination and treatment programs, and imposing penalties for violations.⁵⁶ The Act plays a critical role in protecting animal health and conserving biodiversity. Thus, the integration of disease control measures with national biodiversity conservation policies further enhances the effectiveness of the Act in maintaining healthy ecosystems and species populations.⁵⁷

j. International Conventions and Agreements

In addition, Nigeria is a signatory to series of international conventions and agreements such as the Convention on Biological Diversity (CBD), the Ramsar Convention on Wetlands⁵⁸ (signed in 1971 in Ramsar, Iran, and came into force in 1975 with aims to promote the conservation/wise use of wetlands and their resources, and almost 90% of UN member states have acceded to the Convention in a bid to providing a framework for the conservation and sustainable use of biodiversity), Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) of 1975 (which advocates and fosters a need for adhering to international standards/reporting requirements, aims at ensuring that international trade in specimens of wild animals and plants does not threaten the survival of the species, and requires parties to implement measures to enforce its provisions, including penalties for trade in violation of the Convention, and to submit periodic reports on their implementation of the Convention), the United Nations Convention to Combat Desertification (UNCCD)⁵⁹ (It was adopted in Paris, France, on June 17, 1994, came into force in December 1996, and the only internationally legally binding framework that addresses desertification and drought), African Convention on the Conservation of Nature and Natural Resources⁶⁰ (Signed in 1968 in Algiers, Algeria, aims to promote the conservation and sustainable use of nature and natural resources in Africa, and

⁵⁵ Animal Diseases (Control) Act of 1988.

⁵⁶ Ibid, s. 14-17 for offences and punishment for forms of violation.

⁵⁷ Ibid, s. 18 & 19.

⁵⁸ See articles 2, 3, 4 & 5.

⁵⁹ See articles 4 & 12.

⁶⁰ See articles II& IX, and VII & XI.

obliges contracting parties to adopt conservation measures related to wildlife, soil, and water resources), etcetera.

k. Analysis of cases on Biodiversity Conservation in Nigeria

Case law in Nigeria in respect of conserving biodiversity reflects the enforcement of the extant environmental laws and the role of the judiciary in upholding these laws. Here are some notable case laws that elucidate the legal principles and as they affect biodiversity conservation in Nigeria:

i. *Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation*⁶¹

This case involved the pollution of water bodies as a result of oil spills by the Nigerian National Petroleum Corporation (NNPC). In this case, the Centre for Oil Pollution Watch, an NGO, filed a suit for an order to compel the NNPC to clean up the polluted environment. Consequently, the Court of Appeal held that NGOs have the *locus standi* to sue on behalf of the affected communities. In the judgment, the court emphasized that environmental protection is inevitable and the responsibility of the NNPC to remediate the polluted areas.

ii. *Gbemre v Shell Petroleum Development Company of Nigeria Ltd*⁶²

In this case, Jonah Gbemre, filed a lawsuit for himself and the Iwherekkan community against Shell and the Nigerian government. He challenged the flaring of gas in the Niger Delta as a violation of the right to life and dignity. In the suit, the Federal High Court ruled that gas flaring was unconstitutional and amount to infringement of the fundamental rights to life and dignity of a person as enshrined in the Constitution. Consequently, the court ordered Shell to stop gas flaring immediately in the community. This case marked a significant victory for environmental well-being and biodiversity conservation.

⁶¹ [2019] LPELR-48609(CA).

⁶² [2005] AHRLR 151 (NgHC 2005)

iii. *The Registered Trustees of the Association of Victims of Export Oil Spill Pollution v Mobil Producing Nigeria Unlimited*⁶³

In this case, Mobil Producing Nigeria Unlimited spilled oil, which caused extensive damage. Hence, the plaintiffs sought compensation for the damage to their land and aquatic lives. The court held that the Mobil is liable for the oil spill and awarded damages as sought to the affected communities. The judgment underscored the need for remediation and the importance of holding companies responsible for environmental degradation.

iv. *Oronto Douglas v Shell Petroleum Development Company Ltd & Others*⁶⁴

In this case, an environmental activist called Oronto Douglas, sued Shell for failure to conduct an environmental impact assessment (EIA) as sine qua non before commencing a project in the Niger Delta, as required by the EIA Act. The court ruled in favour of Douglas, emphasizing that conducting an EIA is a mandatory requirement before undertaking any project that could have a significant impact on the environment. This case highlighted that adequate enforcement of EIA regulations is crucial for biodiversity conservation.

v. *Nigerian Conservation Foundation v Nigerian National Petroleum Corporation*⁶⁵

The Nigerian Conservation Foundation filed a lawsuit against NNPC for the adverse environmental impact of their operations, which threatened biodiversity in the region. The court recognized the standing of environmental NGOs to sue on behalf of the environment. The case reinforced the principle that environmental groups can seek legal redress for biodiversity conservation.

vi. *Environmental Rights Action/Friends of the Earth Nigeria v Shell Petroleum Development Company of Nigeria Ltd*⁶⁶

Environmental Rights Action/Friends of the Earth Nigeria v Shell Petroleum Development Company of Nigeria Ltd, 2005 is a landmark case emphasizing the accountability of multinational corporations for environmental impacts. The case focused on Shell's (SPDC) oil

⁶³ [2001] 3 NWLR (Pt. 704) 85.

⁶⁴ nreported Suit No. FHC/L/CS/9/88

⁶⁵ [2000] 1 NWLR (Pt. 639) 124

⁶⁶ Suit No. FHC/CS/B/153/2010.

exploration in Nigeria's Niger Delta, accused of causing extensive environmental damage. The plaintiffs claimed SPDC's operations polluted air, water, and land, harming local communities' health and livelihoods, and violating both Nigerian and international environmental laws. SPDC defended itself by arguing it had attempted to minimize environmental impact, attributing much of the pollution to third-party sabotage and oil theft, and contended compliance with Nigerian regulations. The court sided with the plaintiffs, confirming SPDC's significant environmental harm in the Niger Delta and insufficient preventative measures. Consequently, SPDC was ordered to pay damages and undertake pollution cleanup and prevention efforts.

This case underscores the critical role played by the court in a bid to holding corporations responsible for their environmental impact, especially in the regions with weak regulatory enforcement culture. It also pinpoints the benefits and essence of adhering to international environmental standards to support legal claims against multinational operations in Nigeria. The court ruling highlights the mandate of the legal system to promote environmental justice, and the essence of enforcing stringent environmental laws and regulations.

vi. *Nigerian Conservation Foundation v Federal Ministry of Environment*⁶⁷

The Nigerian Conservation Foundation v Federal Ministry of Environment, 2012, is a popular legal matter in respect of environmental conservation and regulatory oversight in Nigeria. It was argued in the case that the ministry of environment's poor enforcement mechanisms had led to many of the environmental degradations as well as the eradication of species in Nigeria. This case reiterated the importance of environmental conservation and the need for strict adherence to environmental laws, policies, and regulations in Nigeria. It also demonstrated the numerous role that NGOs can play in holding government agencies responsible for their actions in the field of environmental management.

From the aforementioned case laws, the foundation for environmental protection in the hands of the judiciary for its commitment to enforcing environmental laws and biodiversity conservation is undoubtedly established. The courts ensure compliance, hold violators responsible, and protect communities. These judicial precedents are essential for improving biodiversity conservation, and the goodwill of government agencies and stakeholders.

⁶⁷ [2009] 7 NWLR (Pt. 1138) 245

Policy Framework

This encompasses strategies, guidelines, and objectives which spur decision makers and stakeholders into action. This is created by established institution to achieve certain goals. The policy framework on biodiversity conservation in Nigeria is as follows:

a. Nigeria National Policy on Forestry 2006

The 2006 Nigeria National Policy on Forestry highlights the forestry sector as a key economic contributor since 1822, exporting significant forest produce. Nigeria's forests and woodlands are vital for genetic diversity, essential for advancements in agriculture, medicine, and industrial raw materials.⁶⁸ To this end, a need for adequate protection of Nigerian forest is sacrosanct for sustainable development and biodiversity conservation.

b. National Biodiversity Strategy and Action Plan (NBSAP) 2004

Nigeria, a signatory to the 1992 Rio de Janeiro Convention on Biodiversity, developed its National Biodiversity Strategy and Action Plan in 1997 and updated it in 2004. The Plan aims to integrate biodiversity conservation into national policy, reduce poverty and promote the biodiversity industry for economic and community benefit. It aligns with ecological sustainability and social equity principles. While addressing forest fires, wood fuels, and desertification, the plan lacks specific provisions for chemical pollution affecting biodiversity. By the plan, Nigeria recognizes the need to conserve its biodiversity, hence 25% of total forest reserves are being conserved.⁶⁹ However, this study observes that the level of success recorded for conservation of biodiversity is too low compared with of the extant legal framework, hence this calls for adequate attention.

⁶⁸ Amari Omaka, *Nigerian Conservation Law and International Environmental Treaties* (Lagos: Unique Concept 2018) 322.

⁶⁹ T. D. John, 'National Biodiversity Strategy and Action Plan' [2004] *Federal Ministry Environment, Abuja, Nigeria*.

Stakeholders⁷⁰

The conservation of biodiversity in Nigeria requires a multi-faceted approach that involves government agencies and stakeholders including; government agencies, non-government organizations (NGOs), research institutions, private companies and local communities working together towards a common goal. By collaborating and sharing resources, expertise, and knowledge, these groups can help ensure the long-term survival of Nigeria's rich and diverse natural heritage within the ambit of a robust legal system.

Government agencies play a key role in biodiversity conservation in Nigeria. The Federal Ministry of Environment is responsible for developing and implementing policies and programs aimed at protecting the country's natural resources, including biodiversity. The ministry works closely with other government agencies, such as; the Nigerian Conservation Foundation, to establish protected areas and enforce regulations to prevent illegal activities that threaten biodiversity; NESREA which is the main agency for enforcing environmental; National Parks Service: Manages national parks and protected areas. National Bio-safety Management Agency: Regulates bio-safety and GMO activities.⁷¹

Non-governmental organizations, research institutions, and private companies, also play a crucial role in biodiversity conservation in Nigeria. These organizations often provide funding, expertise, and technical support for conservation projects, as well as advocacy for stronger environmental policies. For example, the Nigerian Conservation Foundation has been instrumental in promoting the conservation of endangered species, such as the Cross River gorilla, through research, education, and community engagement. See the case of Environmental Rights Action/Friends of the Earth Nigeria v. Shell Petroleum Development Company of Nigeria Ltd, 2005 above.

Local communities are another important stakeholder in biodiversity conservation in Nigeria. Many rural communities rely on natural resources for their livelihoods, and their involvement in

⁷⁰ S. C. Izah and A.O. Aigberua, 'Potential Threats and Possible Conservation Strategies of Biodiversity in Niger Delta Region of Nigeria' in S.C. Izah and M. C. Ogwu (eds), *Sustainable Utilization and Conservation of Africa's Biological Resources and Environment* (Sustainable Development and Biodiversity, Springer, Singapore, 2023), 32. https://doi.org/10.1007/978-981-19-6974-4_6 accessed 11 May 2024.

⁷¹ Ibid.

conservation efforts is essential for long-term success. By engaging with local communities and providing them with alternative sources of income, such as ecotourism or sustainable agriculture, conservation projects can help alleviate poverty while also protecting biodiversity. See the case of *Gbemre v Shell Petroleum Development Company of Nigeria Ltd* (supra).

Challenges in Implementing the Legal and Policy Framework

Despite the existence of a legal framework for biodiversity conservation in Nigeria, there are several challenges that hinder its effective implementation. Some key challenges are:

- i. **The Lack of Adequate Funding and Resources for Conservation Efforts:** The budget allocated to biodiversity conservation is often insufficient to address the scale of the problem, leading to limited capacity for enforcement and monitoring.⁷²
- ii. **The lack of coordination and collaboration among government agencies and stakeholders involved in biodiversity conservation.** There is typically a lack of clarity regarding roles and responsibilities, leading to overlapping mandates and ineffective implementation of conservation measures.
- iii. **Another major challenge to implementation of legal framework regulating biodiversity conservation is the conflicting interests between conservation and socio-economic development.** This is because, the country is a developing Nations, hence a need for adhering to developmental projects would be a centre of interest of government all time. No doubt, the will definitely bypass some laws for developmental project against the tide of diversity conservation. However, the aftermath of this challenge is loss and extinction of biodiversity rather than conserving.⁷³
- iv. **Weak Enforcement Mechanisms and Corruption within Regulatory Agencies:** These undermine the effectiveness of the legal framework. See *Nigerian Conservation Foundation v. Federal Ministry of Environment* (supra) where Nigerian Conservation Foundation challenged

⁷² O. Ojo, 'Biodiversity conservation in Nigeria: Challenges and opportunities' [2015] (20)(3) *Journal of Environmental Law* 345-362; United Nations Development Programme, 'Nigeria biodiversity finance initiative: A roadmap for sustainable financing of biodiversity conservation in Nigeria' [2018] UNDP Abuja; World Bank. *Nigeria biodiversity and ecosystem services profile* (Washington, DC: World Bank Group 2019).

⁷³ O. Adekola, and others. 'Balancing conservation and development in Nigeria: Challenges and opportunities' [2019] 98*Environmental Science & Policy* 1-9.

the Federal Ministry of Environment regarding environmental protection and enforcement of environmental laws in Nigeria.⁷⁴

- v. Fragmentation and Lack of Coherence: The current legal framework for biodiversity conservation in Nigeria is fragmented and lacks coherence, with overlapping mandates and responsibilities among various government agencies. This has led to a lack of effective enforcement and monitoring of conservation efforts, resulting in the continued degradation of the country's biodiversity.⁷⁵
- vi. Lack of Adequate Public awareness and Local community involvement in the enforcement of the extant legal framework often poses as challenge to the efficacy and expected ⁷⁶result of the legal framework for biodiversity conservation in Nigeria. Accordingly, the public awareness can achieved via education, outreach, and engagement with local communities, which give resource-intensive and time-consuming. This way, implement will be a robust one.
- vii. Lack of trained personnel and corruption: this often hindered and undermined effective implementation of legal framework for conserving biodiversity in Nigeria. Accordingly, lack of adequate enforcement mechanisms also undermines biodiversity conservation in Nigeria.⁷⁷

Conclusion and Recommendations

In conclusion, the legal framework regulating biodiversity conservation in Nigeria is essential to safeguard the country's rich natural heritage. However, there are several challenges that hinder its effective implementation. By addressing issues such as inadequate funding, lack of coordination, and weak enforcement mechanisms, Nigeria can improve its efforts towards conserve biodiversity and achieve sustainable development. Collaboration among government, civil society, local community, and other stakeholders is essential to overcome these challenges and ensure the long-term conservation of Nigeria's biodiversity.

⁷⁴ See also, *Environmental Rights Action v Federal Government of Nigeria Citation: (2006) AHRLR 227 (NgHC 2006)Suit No: FHC/PH/CS/517/06*, which focused on the government's failure to enforce environmental regulations in the Niger Delta. The court highlighted the need for effective enforcement to protect the environment and public health.

⁷⁵ Ibid.

⁷⁶ C. Okoli, and Others, 'Community involvement in biodiversity conservation in Nigeria: A case study of a conservation project in the Niger Delta' [2021] 35(2) *Conservation Biology*432-445.

⁷⁷ A. Ogunjemilua, and Others, 'Challenges to the enforcement of environmental laws in Nigeria [2020] 25(3) *Journal of Environmental Law* 345-362.

To address the challenges facing the legal framework regulating biodiversity conservation in Nigeria, the followings are suggested for a way forward:

1. Let there be a need for increased monitoring funding and resources for conservation efforts. The government should allocate a larger budget to biodiversity conservation and ensure that funds are effectively utilized for enforcement and research.
2. Addressing Biodiversity Loss can be done through actively works to mitigate threats to biodiversity such as habitat destruction, pollution, over-exploitation of resources, and climate change.
3. The government should engage local communities in conservation efforts, recognizing their role and traditional knowledge in protecting biodiversity.
4. There should be an improved coordination and collaboration among government agencies, NGOs, and local communities involved in biodiversity conservation. Clear guidelines and mechanisms for cooperation should be established to ensure effective implementation of conservation measures.
5. Let there be a need for strengthening enforcement mechanisms and increasing transparency in regulatory agencies. Measures should be put in place to prevent corruption and ensure that violators of environmental laws are held accountable.
6. Nigeria must strengthen its enforcement mechanisms and increase public awareness and participation in conservation efforts. By keying into best practices in biodiversity conservation, Nigeria can effectively protect its natural heritage for future generations.
7. Nigeria must adopt best practices in biodiversity conservation, including the establishment of clear legal frameworks, the integration of biodiversity considerations into land use planning and development policies, and the promotion of community-based conservation initiatives.