



## THE ROLE OF LAW IN INTERNATIONAL ENVIRONMENTAL PROTECTION FOR SUSTAINABLE DEVELOPMENT IN NIGERIA

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### ABSTRACT

*International pollution goes beyond the state and national boundaries. International environmental law is an essential tool to regulate the actions and relationship between states and other global actors with regard to environmental protection. It is structured through treaties, conventions, protocols and declarations at preventing, mitigating, or correcting environmental damage that crosses state and national borders. It argues that international environmental law performs at least seven connected functions which includes to declare environmental values, allocates duties among States and non-State actors, structures cooperation, prevents transboundary harm, converts scientific risk into regulatory standards, creates procedures for participation and accountability, and supplies remedies where environmental harm violates public or private rights. However, there are still gaps and challenges. Many environmental treaties depend on consent and reporting rather than coercive enforcement. Global environmental burdens are unevenly distributed. The States least responsible for degradation are often the most exposed to climate change, biodiversity loss, desertification and pollution. In Africa, and particularly in Nigeria, the law has generated important institutions and rights language, but effectiveness is undermined by weak enforcement, fragmented mandates, inadequate finance, insecurity, regulatory overlap and a continuing development model that is not sustainable. This work evaluates the development of international environmental law from Stockholm and Rio to the Paris Agreement, the Kunming-Montreal Global Biodiversity Framework, the human right to a clean, healthy and sustainable environment, the ITLOS climate advisory opinion of 2024, and the ICJ climate advisory opinion of 2025.*

**KEYWORDS:** International environmental protection, biodiversity, climate change, sustainable development, environmental rights.

### 1. INTRODUCTION

The protection of the environment has become one of the most urgent legal questions of the modern age. In earlier periods, environmental degradation was often treated as an unfortunate side-effect of industrial progress, a matter for local administration or private nuisance. That view can no longer hold. Climate change, biodiversity loss, marine pollution, desertification, chemical contamination and the depletion of the ozone layer have shown that environmental harm does not respect political boundaries. Smoke released in one country may warm the planet; plastic discarded on land may enter the ocean; the destruction of forests in one region may weaken rainfall, food security and livelihoods in another. The environment is therefore not merely a national asset. It is a shared condition of life.

Law enters this field because moral concern without obligation is too fragile. Scientific warnings may describe danger, but law converts danger into duties. Policy may express ambition, but law supplies institutions, procedures and consequences. International environmental protection is



therefore built on a combination of treaties, customary principles, judicial decisions, soft-law declarations, human-rights norms, regional instruments and domestic implementation. This legal architecture does not operate like a single code. It is layered, evolutionary and frequently contested. It includes the Stockholm Declaration of 1972, the Rio Declaration of 1992, the United Nations Framework Convention on Climate Change, the Convention on Biological Diversity, the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the Ramsar Convention, the Basel, Rotterdam and Stockholm chemicals-and-waste conventions, the Minamata Convention on Mercury, the United Nations Convention to Combat Desertification, the United Nations Convention on the Law of the Sea, the Paris Agreement, and a growing body of environmental and climate jurisprudence.<sup>1</sup>

The role of law in international environmental protection must be understood in a realistic and not romantic sense. Law does not by itself plant trees, reduce emissions, clean rivers or restore wetlands nor does the adoption of a treaty automatically change the conduct of States and corporations. The global record is mixed. The Montreal Protocol on Substances that Deplete the Ozone Layer is widely regarded as a powerful example of science-based treaty cooperation, while climate change negotiations have struggled with the scale, speed and fairness of decarbonisation.<sup>2</sup> Biodiversity law has produced elaborate targets, but the world has repeatedly failed to halt biodiversity loss.<sup>3</sup> International waste law has tightened rules on hazardous waste and plastic waste movements, yet pollution continues through legal trade, illegal trafficking and weak waste infrastructure.<sup>4</sup> This paper proceeds from a central argument, which is that law is indispensable to international environmental protection because it gives environmental values institutional form, but law is effective only when its norms are matched by implementation, finance, participation, accountability and political will. This, therefore, examines both the promise and the limits of law. It draws on Nigerian, African and foreign scholarship and materials to show that the global environmental legal order cannot be assessed only from the viewpoint of wealthy industrialised States. For African States, environmental protection is also a question of development, poverty reduction, food security, extractive governance, energy access, climate adaptation and environmental justice. The point is not to choose between environment and development. The more compelling task is to ask how law can reshape development so that economic activity does not destroy the ecological foundations on which people and markets depend.

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<sup>1</sup> Philippe Sands and Jacqueline Peel, *Principles of International Environmental Law* (4th edn, Cambridge University Press 2018).

<sup>2</sup> Vienna Convention for the Protection of the Ozone Layer (adopted 22 March 1985, entered into force 22 September 1988) 1513 UNTS 293.

<sup>3</sup> Convention on Biological Diversity, *Kunming-Montreal Global Biodiversity Framework* (adopted 19 December 2022).

<sup>4</sup> Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (adopted 22 March 1989, entered into force 5 May 1992) 1673 UNTS 57.



## 2. CONCEPT OF INTERNATIONAL ENVIRONMENTAL PROTECTION

### 2.1 International Environmental Protection

International environmental protection refers to the body of principles, rules, institutions and processes through which the international community seeks to prevent, reduce, control and remedy harm to the natural environment. It is concerned with the atmosphere, oceans, forests, rivers, wetlands, wildlife, biological diversity, soils, climate systems, chemicals, waste and the ecological conditions necessary for human life. It also includes social and distributive dimensions because environmental harm is rarely borne equally. Poor communities, Indigenous peoples, women, children, coastal communities, pastoralists, small-scale farmers and small island States often face the heaviest burdens despite contributing least to global degradation.

The term international is important. It indicates that environmental protection cannot be left entirely to domestic law. States remain sovereign over their natural resources, but that sovereignty is not absolute. It is constrained by duties not to cause significant transboundary harm, duties to cooperate, duties to notify and consult, duties to conduct environmental impact assessment, and duties under specific treaty regimes.<sup>5</sup> International environmental law therefore seeks to balance two ideas that sometimes pull in different directions: permanent sovereignty over natural resources and responsibility for environmental consequences beyond national jurisdiction.<sup>6</sup>

### 2.2 The Environment as a global Concern

The environment is not a single legal object. Some parts of the environment fall within national jurisdiction others, such as the high seas, the deep seabed and outer space, have distinctive legal status. Climate stability and biological diversity are commonly treated as concerns of humankind because their degradation affects the collective interest of present and future generations. This idea of common concern does not abolish State sovereignty. It redefines sovereignty as responsibility. A State may exploit its resources for development, but it may not do so in a manner that ignores foreseeable harm to other States, vulnerable peoples, or global ecological systems.

The movement from absolute sovereignty to responsible sovereignty is one of the most important achievements of international environmental law. Principle 21 of the Stockholm Declaration and Principle 2 of the Rio Declaration recognize both the sovereign right of States to exploit their own resources and their responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or areas beyond national jurisdiction.<sup>7</sup> This

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<sup>5</sup> *Pulp Mills on the River Uruguay* (Argentina v Uruguay) [2010] ICJ Rep 14.

<sup>6</sup> UN General Assembly Resolution 1803 (XVII), 'Permanent Sovereignty over Natural Resources' (14 December 1962).

<sup>7</sup> Stockholm Declaration on the Human Environment (adopted 16 June 1972) UN Doc A/CONF.48/14/Rev.1, principle 21.



formula remains central because it captures the legal grammar of the field: entitlement is tied to responsibility.

### **2.3 Environmental Protection and Sustainable Development**

International environmental law is not anti-development. Rather, it challenges development that externalizes environmental costs and then leaves communities to bear the consequences. Sustainable development emerged as a mediating concept between environmental protection and economic growth. It insists that development must meet present needs without destroying the ability of future generations to meet theirs.<sup>8</sup> The Rio Declaration states that environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.<sup>9</sup>

In Africa, sustainable development has a special meaning. The continent needs infrastructure, energy access, food systems, jobs and industrialization. At the same time, it faces severe exposure to climate change, desertification, deforestation, flooding, biodiversity loss and extractive pollution. The African Union Climate Change and Resilient Development Strategy and Action Plan 2022-2032 recognizes that Africa's development pathway must be climate-resilient and low-emission while also addressing poverty and inequality.<sup>10</sup> It is crucial to note that development should align with impact assessment, pollution control, conservation, clean technology, public participation, corporate due diligence and just transition.

## **3. HISTORY OF INTERNATIONAL ENVIRONMENTAL LAW**

### **3.1 Conservation Treaties and Global Environmental Governance**

Early international environmental law was fragmented. Much of it focused on wildlife conservation, fisheries, shared rivers, migratory birds and boundary pollution. These instruments were important, but they did not represent a comprehensive global environmental consciousness. The transformation began in the second half of the twentieth century, when industrial pollution, nuclear risk, oil spills, pesticides etc evolved from isolated 19<sup>th</sup> century bilateral treaties into a comprehensive international legal framework, laying out duties of states to prevent transboundary harm. The 1972 United Nations Conference on the Human Environment in Stockholm was a turning point. It produced the Stockholm Declaration and Action Plan and led to the creation of the United Nations Environment Programme.<sup>11</sup> Stockholm placed the environment within international public law and gave moral and political recognition to the idea that environmental protection is

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<sup>8</sup> World Commission on Environment and Development, *Our Common Future* (Oxford University Press 1987) 43.

<sup>9</sup> Rio Declaration on Environment and Development (adopted 14 June 1992) UN Doc A/CONF.151/26/Rev.1, principle 4.

<sup>10</sup> African Union, *Climate Change and Resilient Development Strategy and Action Plan 2022-2032* (AU 2022).

<sup>11</sup> United Nations, *Report of the United Nations Conference on the Human Environment* UN Doc A/CONF.48/14/Rev.1 (1972).



essential to human wellbeing. It did not solve the conflict between developed and developing States, but it opened a global forum in which that conflict could be negotiated.

The 1992 United Nations Conference on Environment and Development in Rio de Janeiro deepened the legal and institutional framework. It produced the Rio Declaration, Agenda 21, the Convention on Biological Diversity and the United Nations Framework Convention on Climate Change.<sup>12</sup> The Rio era also entrenched principles such as sustainable development, precaution, public participation, environmental impact assessment, common but differentiated responsibilities and the polluter-pays principle. Since Rio, international environmental law has expanded through climate agreements, biodiversity protocols, chemicals and waste conventions, forest policy instruments, regional environmental agreements, international financial standards and domestic constitutional environmental rights.

### **3.2 The Rise of Environmental Rule of Law**

The mere growth of environmental law has not guaranteed environmental protection. Many countries now have environmental agencies, impact assessment laws and pollution standards, yet environmental degradation continues. This gap between law on paper and law in practice has produced the concept of environmental rule of law. It means that environmental laws must be clear, publicly accessible, fairly enforced, supported by independent institutions, and capable of holding both public authorities and private actors accountable. UNEP's first global report on environmental rule of law observed that weak enforcement is a widespread trend despite the growth of environmental laws and institutions.<sup>13</sup> Environmental rule of law is especially important because environmental harms are often diffuse, technical and politically inconvenient. A polluted river may not have a single victim. Forest loss may result from thousands of small acts encouraged by weak land governance. Climate change emerges from cumulative emissions. Without legal procedures for information, participation, monitoring, science, liability and judicial review, environmental protection becomes vulnerable to secrecy, corruption and regulatory inertia.

## **4. CORE PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW**

### **4.1 Prevention**

Prevention is a principle of environmental law that requires that governments and industries anticipate acts to eliminate environmental risk at the source and on time. Environmental harm is often irreversible or extremely expensive to remedy. A destroyed wetland, extinct species or poisoned aquifer cannot always be restored through compensation. Law therefore places emphasis on preventing harm before it occurs. Prevention is reflected in obligations to regulate risky activities, maintain standards, require permits, conduct environmental impact assessment and control transboundary pollution. The International Court of Justice has repeatedly treated

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<sup>12</sup> United Nations, *Report of the United Nations Conference on Environment and Development* UN Doc A/CONF.151/26/Rev.1 (1992).

<sup>13</sup> UNEP, *Environmental Rule of Law: First Global Report* (UNEP 2019).



prevention as a central environmental duty. In the *Pulp Mills* case, the Court emphasised that due diligence is required in respect of activities that may cause significant transboundary harm.<sup>14</sup> This duty is not absolute liability for every harm. It is a standard of conduct requiring States to act with care, vigilance and regulatory seriousness.

#### 4.2 Precaution

The precautionary principle acts as an extension of prevention. It holds that lack of full scientific certainty should not be used as a reason for postponing measures to prevent serious or irreversible environmental harm. This principle is vital because environmental decision-making often occurs before all scientific consequences are known. Waiting for perfect proof may mean waiting until damage is irreversible. Precaution is reflected in Principle 15 of the Rio Declaration and appears in numerous treaty regimes, including biodiversity, climate and chemicals law.<sup>15</sup> Sometimes it justifies stricter permitting as well as shifts the burden of proof toward proponents of risky activities. This principle requires adaptive regulation, monitoring and review.

#### 4.3 Polluter Pays Principle

Since the early 1970s the polluter pays principle has been a dominant concept in environmental law. The polluter-pays principle requires those who cause pollution to bear the cost of preventing, controlling and remedying it. It seeks to prevent the socialization of environmental costs. Without this principle, polluters may privatize profits while communities, taxpayers and future generations bear the environmental damage. Principle 16 of the Rio Declaration expresses this idea by encouraging national authorities to promote internalization of environmental costs.<sup>16</sup>

The principle has practical influence in environmental taxation, waste levies, extended producer responsibility, oil spill liability, carbon pricing, restoration orders and compensation schemes. However, its shortcomings lie in enforcement. Polluters may be politically powerful, insolvent, transnational or difficult to identify. In many developing countries, regulatory agencies lack resources to measure harm, prove causation or compel remediation.

#### 4.4 Common but Differentiated Responsibilities

Common but differentiated responsibilities recognize that all States share responsibility for global environmental protection, though not all States have contributed equally to environmental degradation or possess equal capacity to respond. Developed countries have greater responsibilities due to their historical contribution to environmental degradation and their greater financial and technological support to developing countries and the developmental needs of poorer States. The principle is central to climate law.<sup>17</sup> This principle is not a permanent excuse for inaction by

<sup>14</sup> *Pulp Mills on the River Uruguay* (Argentina v Uruguay) [2010] ICJ Rep 14.

<sup>15</sup> Rio Declaration (n 9) principle 15.

<sup>16</sup> Rio Declaration (n 9) principle 16.

<sup>17</sup> United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107, art 3.



developing States. Rather, it is a fairness principle that shapes burden-sharing, finance, technology transfer, capacity-building and differentiated commitments. It is particularly important for African States, which contribute relatively little to cumulative global emissions but face severe climate impacts. *Damilola Olawuyi* has argued that climate justice for developing countries requires attention to finance, technology, capacity and equity, not merely formal equality between unequal States.<sup>18</sup>

#### 4.5 Intergenerational Equity

Environmental law is one of the fields in which the rights and interests of future generations are most visible. Intergenerational equity means that present generations hold the environment in trust and should not consume ecological capital in a manner that forecloses the options of future generations. Edith Brown Weiss famously framed this as a relationship of planetary trusteeship across generations.<sup>19</sup> This idea has influenced sustainable development, climate litigation, constitutional environmental rights and judicial reasoning. Its strength is moral clarity. Its challenge is legal representation. Future generations cannot appear in negotiations or courts in the ordinary way. Law must therefore create institutions, rights and standing rules that allow present actors to defend future interests.

#### 4.6 Public Participation and Access to Justice

This principle empowers citizens by guaranteeing their right to access environmental information, participate in decision making process and seek legal redress if environmental rights is violated. Communities affected by mining, oil extraction, dams, deforestation, waste disposal or industrial pollution often possess local knowledge and bear direct consequences. Public participation improves legitimacy, reduces conflict and can expose risks overlooked by experts or regulators. Principle 10 of the Rio Declaration recognizes access to information, public participation and access to judicial and administrative proceedings as essential to environmental matters.<sup>20</sup> The Aarhus Convention is the leading treaty expression of these procedural rights in Europe, while the Escazú Agreement provides a Latin American and Caribbean model that also protects environmental defenders.<sup>21</sup> Although Africa has not yet have an equivalent continent-wide procedural environmental democracy treaty, Article 24 of the African Charter and domestic constitutional and statutory mechanisms can be interpreted to support participation and access to remedies.

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<sup>18</sup> D S Olawuyi, 'Advancing Climate Justice in International Law: An Evaluation of the United Nations Human Rights-Based Approach' (2016) 11 Florida A & M University Law Review 103.

<sup>19</sup> E B Weiss, *In Fairness to Future Generations: International Law, Common Patrimony and Intergenerational Equity* (United Nations University 1989).

<sup>20</sup> Rio Declaration (n 9) principle 10.

<sup>21</sup> Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (adopted 25 June 1998, entered into force 30 October 2001) 2161 UNTS 447.



## **5.THE FUNCTIONS OF LAW IN INTERNATIONAL ENVIRONMENTAL PROTECTION**

### **5.1 Law as a Declaratory Instrument**

Law as a declaratory instrument refers to the legal framework consisting of declaratory statutes and judgements that is to confirm rights and duties. Declarations such as Stockholm declaration and Rio declaration serve as declaratory instruments. The United Nations General Assembly's recognition of the human right to a clean, healthy and sustainable environment in 2022 is another example. Although the resolution is not itself a treaty, it gives political and normative authority to environmental rights claims.<sup>22</sup> Once the environment is framed as a right, a public trust, or a common concern, environmental damage can no longer be dismissed as ordinary administrative inconvenience, it becomes a matter of legal accountability.

### **5.2 Law as a Source of Substantive Duties**

International environmental law imposes substantive duties through treaties and customary international law. States may be required to reduce emissions, protect habitats, prevent illegal wildlife trade, regulate hazardous waste, phase down harmful chemicals, protect the marine environment, conserve wetlands, or prepare national biodiversity and climate plans. These duties are often qualified by capacity, science, national circumstances and treaty design. Nevertheless, they provide benchmarks against which conduct can be assessed. The Paris Agreement is an example of a hybrid legal model. It does not impose identical emission-reduction targets on every State. Instead, it requires Parties to prepare, communicate and maintain nationally determined contributions and to pursue domestic mitigation measures with the aim of achieving those contributions.<sup>23</sup> This structure relies on national ambition, transparency and progression rather than a centrally imposed allocation of emission quotas.

### **5.3 Law as an Institutional Framework**

Environmental protection requires institutions. Treaties create Conferences of the Parties, secretariats, scientific bodies, financial mechanisms, compliance committees and reporting systems. Domestic law creates environmental agencies, climate councils, biodiversity authorities, national parks services, marine regulators, waste and environmental management authorities etc. These institutions translate legal norms into everyday governance. The institutional role of law is visible in Nigeria. The National Environmental Standards and Regulations Enforcement Agency Act empowers NESREA to enforce environmental laws, regulations, standards and international environmental agreements to which Nigeria is a party.<sup>24</sup> The Climate Change Act 2021 establishes a governance framework for climate action, including the National Council on Climate Change.<sup>25</sup>

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<sup>22</sup> UNGA Res 76/300, 'The Human Right to a Clean, Healthy and Sustainable Environment' (28 July 2022) UN Doc A/RES/76/300.

<sup>23</sup> Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) UN Doc FCCC/CP/2015/10/Add.1, art 4.

<sup>24</sup> National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007, s 7.

<sup>25</sup> Climate Change Act 2021, s 3-5.



Despite the enormous task with creating, implementing and enforcing environmental legislations, these institutions suffer from structural and operational shortcomings.

#### **5.4 Law as a Procedure for Risk Assessment**

Environmental law structures decision-making before harm occurs. A very good example is Environmental impact assessment. It requires project proponents and regulators to identify likely environmental effects, consider alternatives, consult affected persons, and propose mitigation measures. The ICJ has recognised environmental impact assessment as a requirement under general international law where there is a risk of significant transboundary harm.<sup>26</sup> Notably, if Properly applied, it can reveal cumulative impacts, protect vulnerable communities, improve project design and prevent conflicts.

#### **5.5 Law as a Mechanism of Accountability and Remedy**

Environmental law provides remedies through courts, tribunals, administrative bodies, compliance committees, liability regimes and human-rights institutions. Accountability is essential because environmental harm often occurs where political influence is strong and affected communities are poor. The African Commission's decision in *SERAC v Nigeria* remains significant because it linked environmental degradation in Ogoni land to violations of rights under the African Charter, including Article 24.<sup>27</sup> Remedies can include injunctions, compensation, restoration orders, declarations, sanctions, licence suspension, criminal prosecution, administrative penalties and guarantees of non-repetition. In practice, however, remedies are often delayed, underfunded or difficult to enforce. Environmental litigation may take years, while communities continue to suffer. Law must therefore provide not only theoretical remedies but accessible and timely remedies.

### **6. TREATY REGIMES**

#### **6.1 Climate Change Law**

Climate change law appears to be currently the most visible branch of international environmental law. The UNFCCC is the principal treaty for coordinating international responses to climate change and stabilizing greenhouse gas concentrations at a level that would prevent dangerous anthropogenic interference with the climate system.<sup>28</sup> The Kyoto Protocol introduced binding emission targets for developed countries, while the Paris Agreement created a more universal but nationally determined system. The Paris Agreement is a landmark legally binding international treaty with the aim to combat climate change by limiting global warming aims to well below 2 degrees Celsius and make efforts to limit the temperature increase to 1.5 degrees Celsius above pre-industrial levels.<sup>29</sup>

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<sup>26</sup> *Pulp Mills* (n 14).

<sup>27</sup> *Social and Economic Rights Action Centre and Centre for Economic and Social Rights v Nigeria* (2001) AHRLR 60 (ACHPR 2001).

<sup>28</sup> United Nations Framework Convention on Climate Change (n 17) art 2.

<sup>29</sup> Paris Agreement (n 23) art 2.



The Paris model shows both the creativity and weakness of international law. Its strength is participation, nearly all States can join because commitments are nationally determined. However, achieving the desired goal of the treaty will be difficult if national contributions are inadequate. The global stocktake process seeks to close this gap by assessing collective progress and encouraging stronger commitments.<sup>30</sup> COP28's first global stocktake was legally and politically important because it called for transitioning away from fossil fuels in energy systems in a just, orderly and equitable manner.<sup>31</sup> COP29 then produced the New Collective Quantified Goal on climate finance, including a developed country mobilization target of at least USD 300 billion annually by 2035 and a broader call to scale up finance to developing countries.<sup>32</sup>

Recent advisory opinions have strengthened the legal seriousness of climate obligations. In 2024, ITLOS held that anthropogenic greenhouse gas emissions fall within the concept of marine pollution under UNCLOS where they result in deleterious effects on the marine environment.<sup>33</sup> In 2025, the ICJ delivered an advisory opinion on the obligations of States in respect of climate change, confirming that climate obligations arise from treaties, customary international law and other relevant rules.<sup>34</sup> These opinions do not replace climate negotiations, but they make it harder for States to treat climate action as merely discretionary politics.

## 6.2 Biodiversity and Wildlife Law

Biodiversity law protects the variety of life at genetic, species and ecosystem levels. The Convention on Biological Diversity rests on three goals which includes conservation of biological diversity, sustainable use of its components, and fair and equitable sharing of benefits arising from genetic resources.<sup>35</sup> The Nagoya Protocol strengthens the access and benefit-sharing dimension, while the Cartagena Protocol addresses biosafety.

The Kunming-Montreal Global Biodiversity Framework, adopted in 2022, sets four goals for 2050 and twenty three targets for 2030, including targets on protected areas, restoration, invasive species, pollution, sustainable use and harmful subsidies.<sup>36</sup> Its best known political commitment is the 30 by 30 target, effective conservation and management of at least 30 per cent of terrestrial, inland water, coastal and marine areas by 2030. Law can support this target through protected-area legislation, Indigenous and community conserved areas, land-use planning, anti-poaching measures, finance and benefit-sharing. However, conservation law can also become unjust if it

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<sup>30</sup> Paris Agreement (n 23) art 14.

<sup>31</sup> UNFCCC, 'Outcome of the First Global Stocktake' Decision 1/CMA.5 (2023).

<sup>32</sup> UNFCCC, 'New Collective Quantified Goal on Climate Finance' (COP29/CMA decision, 2024).

<sup>33</sup> *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (Advisory Opinion) ITLOS, 21 May 2024.

<sup>34</sup> *Obligations of States in respect of Climate Change* (Advisory Opinion) ICJ, 23 July 2025.

<sup>35</sup> Convention on Biological Diversity (adopted 5 June 1992, entered into force 29 December 1993) 1760 UNTS 79, art 1.

<sup>36</sup> Convention on Biological Diversity, *Kunming-Montreal Global Biodiversity Framework* (adopted 19 December 2022).



displaces local communities or ignores customary tenure. Effective biodiversity law must therefore integrate ecological protection with social justice.

The Convention on International Trade in Endangered Species (CITES) contributes by regulating international trade in endangered species.<sup>37</sup> It is important for African States because illegal wildlife trade threatens elephants, pangolins, rhinos, parrots, rosewood and many other species. However, CITES depends on domestic enforcement, customs capacity, anti-corruption systems and demand reduction in consumer States.

### 6.3 Marine Environmental Protection

The ocean is a major site of international environmental law. UNCLOS requires States to protect and preserve the marine environment and to prevent, reduce and control pollution from land-based sources, vessels, dumping, seabed activities and atmospheric sources.<sup>38</sup> Marine environmental protection is increasingly linked to climate change because ocean warming, acidification, deoxygenation and sea-level rise affect fisheries, coral reefs, coastal communities and small island States. Law also addresses marine biodiversity beyond national jurisdiction. The 2023 Agreement under UNCLOS on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction is a major development because it creates tools for marine protected areas, environmental impact assessment, capacity-building, technology transfer and benefit-sharing in areas beyond national jurisdiction.<sup>39</sup> Its promise will depend on ratification, implementation and finance.

### 6.4 Chemicals, Waste and Pollution Law

Chemicals and waste law demonstrates the practical nature of international environmental protection. The Basel Convention regulates transboundary movements of hazardous waste and seeks environmentally sound management.<sup>40</sup> The Rotterdam Convention promotes prior informed consent for certain hazardous chemicals and pesticides in international trade.<sup>41</sup> The Stockholm Convention addresses persistent organic pollutants.<sup>42</sup> The Minamata Convention regulates mercury across its life cycle.<sup>43</sup> These treaties matter greatly for developing countries, which have often been vulnerable to waste dumping, weak chemical regulation and limited disposal infrastructure. Nigeria's Koko toxic waste incident of 1988 remains a powerful African reminder that

<sup>37</sup> Convention on International Trade in Endangered Species of Wild Fauna and Flora (adopted 3 March 1973, entered into force 1 July 1975) 993 UNTS 243.

<sup>38</sup> United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3, arts 192 and 194.

<sup>39</sup> Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction (adopted 19 June 2023).

<sup>40</sup> Basel Convention (n 4).

<sup>41</sup> Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (adopted 10 September 1998, entered into force 24 February 2004) 2244 UNTS 337.

<sup>42</sup> Stockholm Convention on Persistent Organic Pollutants (adopted 22 May 2001, entered into force 17 May 2004) 2256 UNTS 119.

<sup>43</sup> Minamata Convention on Mercury (adopted 10 October 2013, entered into force 16 August 2017).



environmental law must control not only domestic pollution but transboundary exploitation.<sup>44</sup> The ongoing negotiations toward a legally binding instrument on plastic pollution show that global pollution law is still evolving. As of 2026, the UN process continues after difficult negotiations, reflecting deep disagreement over whether the future treaty should control plastic production as well as waste management.<sup>45</sup>

## 7. JUDICIAL INTERVENTION OF ENVIRONMENTAL PROTECTION

### 7.1 International Courts and the No-Harm Principle

Judicial decisions have helped clarify the content of international environmental law. The *Trail Smelter* arbitration is often cited for the proposition that a State may not use its territory in a manner that causes serious injury in another State.<sup>46</sup> The ICJ's decision in *Corfu Channel* affirmed a broader principle that States must not knowingly allow their territory to be used for acts contrary to the rights of other States.<sup>47</sup> Later cases, including *Gabčíkovo-Nagymaros* and *Pulp Mills*, gave further legal recognition to sustainable development, prevention and environmental impact assessment.<sup>48</sup>

The judicial role is valuable because environmental treaties often contain open textured words. Courts help give that text a practical meaning. However, judicial settlement remains limited by jurisdiction. States must consent, and many environmental harms do not fit neatly into inter-State litigation. Courts are therefore important but, cannot substitute for regulation, diplomacy and domestic enforcement.

### 7.2 Climate Litigation and Human Rights

Climate litigation has expanded rapidly in domestic, regional and international settings. In *Urgenda*, Dutch courts required the Netherlands to strengthen emission reduction measures based on human rights obligations.<sup>49</sup> In *KlimaSeniorinnen*, the European Court of Human Rights held that Switzerland had violated Article 8 of the European Convention by failing to put in place a sufficient domestic regulatory framework to protect against serious climate impacts.<sup>50</sup>

These cases show that environmental protection is increasingly connected to rights to life, health, private and family life, property, culture, food, water and dignity. They also show a shift from viewing climate change as a purely political matter to treating it as a legal question of due diligence, reasonableness, scientific evidence and protection of vulnerable groups.

<sup>44</sup> S Gozie Ogbodo, 'Environmental Protection in Nigeria: Two Decades after the Koko Incident' (2009) 15 Annual Survey of International and Comparative Law 1.

<sup>45</sup> UNEP, Intergovernmental Negotiating Committee on Plastic Pollution, official updates for INC-5.3 and INC-5.4 (2026).

<sup>46</sup> *Trail Smelter Arbitration (United States v Canada)* (1938 and 1941) 3 RIAA 1905.

<sup>47</sup> *Corfu Channel Case (United Kingdom v Albania)* (Merits) [1949] ICJ Rep 4.

<sup>48</sup> *Gabčíkovo-Nagymaros Project* (Hungary/Slovakia) [1997] ICJ Rep 7.

<sup>49</sup> *Urgenda Foundation v State of the Netherlands* Supreme Court of the Netherlands, 20 December 2019.

<sup>50</sup> *Verein Klima Seniorinnen Schweiz and Others v Switzerland* App no 53600/20 (ECtHR, 9 April 2024).



## 8. THE AFRICAN REGIONAL FRAMEWORK

### 8.1 The African Charter and Environmental Rights

Africa has made a distinctive contribution through Article 24 of the African Charter, which provides that all peoples shall have the right to a general satisfactory environment favourable to their development.<sup>51</sup> This reflects collective interests and connects environmental protection with development, resources and community survival. In *SERAC v Nigeria*, the African Commission held Nigeria responsible for failing to protect the Ogoni people from environmental degradation associated with oil operations.<sup>52</sup> The decision remains vital because it treated environmental harm as a violation of human rights and imposed duties to prevent pollution, monitor risks, provide information and protect communities. Nigerian courts have also contributed, although inconsistently. In *Gbemre v Shell*, the Federal High Court treated gas flaring as inconsistent with constitutionally protected rights to life and dignity as provided in the African Charter.<sup>53</sup> In *Centre for Oil Pollution Watch v NNPC*, the Supreme Court adopted a more liberal approach to standing in environmental litigation.<sup>54</sup> The African experience shows that environmental law is most meaningful when communities can invoke it. The judicial task is to translate broad environmental rights into enforceable duties.

### 8.2 The Revised African Convention on Conservation of Nature and Natural Resources

The Revised African Convention on the Conservation of Nature and Natural Resources, adopted in Maputo in 2003, is a comprehensive regional treaty dealing with soil, water, vegetation, species, protected areas, processes and activities affecting the environment, sustainable development and procedural obligations.<sup>55</sup> It modernizes the older conservation approach by integrating environmental protection with sustainable use and development. Its importance lies in its African ownership. It recognizes that conservation must be tied to local communities, scientific research, environmental education and sustainable management of natural resources. Its weakness lies in ratification, domestic implementation and institutional visibility. A treaty may be comprehensive but ineffective if States do not internalize it into planning, budgeting, enforcement.

## 9. NIGERIAN LEGAL AND POLICY FRAMEWORK

The 1999 Constitution places environmental protection among the Fundamental Objectives and Directive Principles of State Policy. Section 20 provides that the State shall protect and improve the environment and safeguard the water, air, land, forest and wildlife of Nigeria.<sup>56</sup> However, Its placement in Chapter II creates justifiability difficulties because section 6(6)(c) limits judicial

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<sup>51</sup> African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217, art 24.

<sup>52</sup> *SERAC v Nigeria* (n 27).

<sup>53</sup> *Gbemre v Shell Petroleum Development Company Nigeria Ltd* (2005) AHRLR 151 (NgHC 2005).

<sup>54</sup> *Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation* (2019) 5 NWLR (Pt 1666) 518.

<sup>55</sup> African Convention on the Conservation of Nature and Natural Resources (revised version) (adopted 11 July 2003).

<sup>56</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended), s 20.



enforcement of Chapter II except where otherwise made enforceable. Nevertheless, section 20 remains an important constitutional provisions of environmental responsibility. Other framework includes the NESREA Act, the Environmental Impact Assessment Act, the Climate Change Act, sectoral laws on petroleum, mining, water resources, forestry, wildlife, national parks and waste, as well as numerous regulations. NESREA's mandate is broad, though it excludes the oil and gas sector in some respects, leaving petroleum environmental regulation to sectoral institutions.<sup>57</sup> This fragmentation has often weakened environmental governance.

Nigeria's National Policy on the Environment aims to ensure environmental protection and conservation of natural resources for sustainable development.<sup>58</sup> Nigeria's National Biodiversity Strategy and Action Plan recognizes biodiversity as important to national development, livelihoods and socio-economic welfare.<sup>59</sup> The National Climate Change Policy (2030) aligns with global target by seeking to provide a framework for low carbon development, climate resilience and of climate action into national planning.<sup>60</sup> The issue is not lack of policy as Nigeria has many policies and institutions. However, the major issue is implementation. More so, environmental agencies may be underfunded, impact assessment may be politicized, pollution monitoring may be weak, communities may lack information, and enforcement may be compromised by federal and state tensions, corruption or the economic power of regulated industries. These provisions are indispensable, but its effectiveness depends on institutions and political economy.

Notably, Nigeria has laws and policies against oil pollution and gas flaring to ensure sustainable development and environmental justice. Nigeria's Niger Delta remains one of the primary examples of the connection between environmental protection, human rights and resource governance. Oil spills, gas flaring, mangrove destruction and contaminated water have affected livelihoods and health. The Ogoni experience produced not only activism but legal doctrine, especially through *SERAC v Nigeria*.<sup>61</sup> Environmental protection in extractive economies requires more than compensation after damage. It requires strict permitting, independent monitoring, community participation, spill prevention, emergency response, restoration, corporate accountability and transparent revenue governance. Emeka Amechi has argued that poverty, weak enforcement and institutional limitations have undermined environmental protection in Nigeria

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<sup>57</sup> National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007.

<sup>58</sup> Federal Republic of Nigeria, *National Policy on the Environment* (Revised 2016).

<sup>59</sup> Federal Republic of Nigeria, *National Biodiversity Strategy and Action Plan 2016-2020*.

<sup>60</sup> Climate Change Act 2021.

<sup>61</sup> *SERAC v Nigeria* (n 27).



despite the existence of legal frameworks.<sup>62</sup> Eghosa Ekhator has similarly examined the role of multinational corporations and the limitations of regulatory accountability in Nigeria's oil sector.<sup>63</sup>

Again, Environmental law depends heavily on science. Climate modelling, toxicology, ecology, hydrology, atmospheric chemistry and biodiversity assessments inform legal standards. However, law and science do not perform the same function. Science explains risk and causation, law allocates responsibility and prescribes behavior. The due diligence standard is the bridge between them. It asks whether a State acted with the level of care expected in light of known or foreseeable risks. Due diligence is flexible. A wealthy State with sophisticated institutions may be expected to do more than a fragile State with limited capacity. However, flexibility must not become impunity. States must regulate private actors, monitor activities, enforce standards and cooperate internationally. The ICJ's climate advisory opinion reinforces the relevance of due diligence in assessing State conduct in relation to climate change.<sup>64</sup> The best available science also plays a growing role. ITLOS emphasized that States must take necessary measures to prevent, reduce and control marine pollution from greenhouse gas emissions, guided by the best available science and relevant international rules.<sup>65</sup> This has important implications. A State cannot rely on outdated standards or political convenience where scientific evidence shows serious risk

Furthermore, accountability is also a vital issue. International environmental protection cannot focus only on States. Corporations extract minerals, drill oil, ship hazardous substances, manufacture chemicals, finance infrastructure, clear forests, trade wildlife products and produce emissions. States remain primary subjects of international law, but the conduct of corporations often determines environmental outcomes. Thus, Law addresses corporate accountability through domestic regulation, civil liability, criminal sanctions, reporting duties, environmental permits, parent company liability, supply chain due diligence, securities disclosure, lender standards and human rights due diligence. The UN Guiding Principles on Business and Human Rights establish that business enterprises have a responsibility to respect human rights, including rights affected by environmental harm.<sup>66</sup> The OECD Guidelines for Multinational Enterprises also address environmental management and disclosure.<sup>67</sup> In African States, corporate accountability is particularly important in extractive sectors. Weak bargaining power, regulatory capture, tax dependence and investment competition may lead States not to enforce environmental standards. Law must therefore protect regulatory space. Investment treaties and contracts should not be drafted or interpreted in a way that prevents legitimate environmental regulation. The modern direction is

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<sup>62</sup> Emeka Polycarp Amechi, 'Poverty, Socio-Political Factors and Degradation of the Environment in Sub-Saharan Africa: The Need for a Holistic Approach to the Protection of the Environment and Realisation of the Right to Environment' (2009) 5 Law, Environment and Development Journal 107.

<sup>63</sup> Eghosa O Ekhator, 'Public Regulation of the Oil and Gas Industry in Nigeria: An Evaluation' (2016) 21 Annual Survey of International and Comparative Law 43.

<sup>64</sup> *Obligations of States in respect of Climate Change* (n 34).

<sup>65</sup> *COSIS Advisory Opinion* (n 33).

<sup>66</sup> UN Human Rights Council, 'Guiding Principles on Business and Human Rights' UN Doc A/HRC/17/31 (2011).

<sup>67</sup> OECD, *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct* (OECD 2023).



to recognize that environmental regulation is part of responsible governance, not an expropriation of investor privilege.

Environmental impact assessment is another practical tool of environmental law. It operates before a project is approved. It requires prediction, consultation, mitigation and monitoring. Strategic environmental assessment goes further by assessing policies, plans and programmes rather than individual projects. International law has strengthened EIA through treaties and case law. The Espoo Convention provides a regional model for transboundary EIA.<sup>68</sup> The ICJ's *Pulp Mills* decision recognized EIA as a requirement of general international law where there is risk of significant transboundary harm.<sup>69</sup> In Nigeria, the Environmental Impact Assessment Act provides a statutory framework, but practical effectiveness remains an issue.<sup>70</sup> A unified approach to EIA must remember that affected communities are not obstacles to development. They are rights-holders whose water, farms, homes, sacred sites and livelihoods may be affected. Consultation must be early, meaningful and informed. It should not occur after key decisions have already been taken.

## 10. ENVIRONMENTAL RIGHTS AND THE HUMAN RIGHT

The rise of environmental rights is one of the most important developments in international environmental law. Environmental degradation threatens rights to life, health, water, food, housing, culture, property, private life and dignity. The recognition of a human right to a clean, healthy and sustainable environment by the UN General Assembly in 2022 confirms a broad normative shift.<sup>71</sup> Environmental rights have two major advantages. First, they give individuals and communities legal provisions to challenge environmental harm. Secondly, they bring urgency to environmental protection by connecting ecological degradation to human suffering. A polluted river is not only a damaged ecosystem; it may be the loss of drinking water, fishing, farming, health and cultural identity. At the same time, environmental rights must not become narrowly anthropocentric.

## 11. EQUITY, CLIMATE JUSTICE AND THE GLOBAL SOUTH

Environmental protection cannot be separated from equity. The global environmental crisis was largely produced by industrialization, fossil-fuel dependence and consumption patterns in wealthy economies, yet many of the worst impacts fall on poorer countries. African States face drought, flooding, crop failure, sea level rise, disease burdens and displacement, while having limited fiscal capacity to adapt. The law responds through common but differentiated responsibilities, climate finance, technology transfer, capacity building, loss and damage, and special consideration for vulnerable States. However, implementation remains deeply contested. Climate finance pledges have often been criticized as inadequate, delayed, loan heavy or difficult to access. The COP29

<sup>68</sup> Convention on Environmental Impact Assessment in a Transboundary Context (adopted 25 February 1991, entered into force 10 September 1997) 1989 UNTS 309.

<sup>69</sup> *Pulp Mills* (n 14).

<sup>70</sup> Environmental Impact Assessment Act Cap E12 Laws of the Federation of Nigeria 2004.

<sup>71</sup> UNGA Res 76/300 (n 22).



finance outcome increased the political floor, but many developing countries regard the scale as still insufficient relative to need.<sup>72</sup> Climate justice also requires attention to the internal distribution of burdens within States. A government may invoke development at the international level while allowing poor communities at home to suffer pollution. True environmental justice requires fairness both between States and within States.

## 12. CONCLUSION AND RECOMMENDATIONS

International Environmental law transforms scientific warnings into standards, moral claims into rights and reminds States that sovereignty comes with responsibility. It may produce elegant treaties while forests disappear, air and rivers polluted. The real question is therefore not whether law has a role, but what kind of law is needed. The answer is law that is preventive, participatory, equitable, science-based, enforceable and humane. For Nigeria and Africa, the task is especially urgent. Environmental protection must be connected to poverty reduction, energy access, food security, resource justice and sustainable development. A legal framework that protects nature while ignoring people will fail. A development model that pursues growth while destroying ecological foundations will also fail. The future lies in a legal framework that recognises that human prosperity and environmental integrity as well as sustainable development must work together. The central conclusion is that its strength lies not only in treaties and courts, but in the daily machinery of environmental rule of law, clear standards, independent institutions, access to information, public participation, environmental impact assessment, corporate accountability, climate finance, and remedies that make environmental duties real in the lives of communities.

This paper made some recommendations. States should ensure that environmental laws are clear, coherent, public, science based and enforceable. Agencies must have adequate funding, independence and technical capacity. Enforcement should be predictable and fair. Courts should have jurisdiction, expertise and willingness to grant effective remedies.

Another recommendation is that environmental decisions should be transparent. Communities should have access to environmental data, permits, impact assessments, monitoring reports and emergency information. Participation should be early and meaningful, especially for Indigenous peoples, local communities, women and youth.

Again, Climate policy should protect biodiversity. Biodiversity policy should support adaptation. Pollution control should protect health and ecosystems. Ministries and agencies should avoid siloed mandates. Developed States should meet and strengthen finance commitments. Finance should be accessible, grant-based where appropriate, and responsive to adaptation and loss and damage needs. Technology transfer should include capacity, maintenance and local skills, not merely equipment sales.

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<sup>72</sup> UNFCCC, 'COP29 UN Climate Conference Agrees to Triple Finance to Developing Countries' (24 November 2024).



Furthermore, nations, including African States, should ratify and implement regional environmental instruments, strengthen the African human rights system, and build sub regional cooperation. Nigeria should improve coordination among NESREA, petroleum regulators, climate institutions, state environmental agencies and local governments. Environmental impact assessment should be depoliticized, and environmental data should be publicly accessible. States should require corporate environmental due diligence, disclosure, restoration bonds, insurance, parent-company accountability and effective liability for pollution. Public procurement and finance should reward compliance and penalize environmental misconduct. Environmental defenders play a vital role in exposing illegal logging, pollution, land grabbing and wildlife crime. Law should protect them from violence, harassment and strategic lawsuits. Without civic space, environmental law becomes meaningless.