

# Enhancing the Implementation of Sustainable Development in Nigeria through Legal Strategies

Orji Uchenna Jerome  
Department of Public and International Law  
University of Ibadan, Nigeria  
jeromuch@yahoo.com

## Abstract

Despite an abundance of resources, attempts to reduce poverty and promote sustainable development have not become a reality in Nigeria. This article suggests legal routes for supporting Nigerian sustainable development, including the establishment of a constitutional right to sustainable development alongside intergenerational rights; public interest litigation; and the recognition of the public trust doctrine and budget analysis.

## Author's Note

Orji Uchenna Jerome holds a Bachelor of Laws (LL.B) honours Degree from the University of Nigeria and a Masters of Laws (LL.M) Degree from the University of Ibadan, Nigeria. He is also qualified to practice as a Barrister and Solicitor of the Supreme Court of Nigeria and presently works as a legal counsel and consultant with interests in environment and development law and policy.

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## 1. Introduction

Despite an abundance of economic resources, attempts to reduce poverty and promote sustainable development have not become a reality in Nigeria. Sustainable development in this case is defined as development that is balanced between people's economic and social needs and the preservation of natural resources and ecosystems to meet present and future needs. Lack of political will, corruption, a deficiency of proper coordination for sustainable development programs, and wasteful patterns of production and consumption have hindered any meaningful progress in this regard. To a great extent, the implementation of sustainable development is dependent on the political will of the government in power. It is also difficult for citizens to legally compel the government to pursue the implementation of sustainable development with available state resources as a result of the non-justiciable nature of the fundamental objectives and principles of state policy enshrined in Chapter II of the 1999 Constitution of the Federal Republic of Nigeria. Thus, the government's failure to implement sustainable development is usually considered a political question that should be decided by the citizens through elections. As such, the power of citizens to compel their government to implement sustainable development may only be exercised during political elections. The government's failure in this regard is not subject to any legal consequences.

However, unsustainable development exacerbates poverty, environmental crises, social and political disintegration, and national security challenges. To avoid these eventualities, it is necessary that citizens are legally empowered to enhance the implementation of sustainable development. This article explores several legal strategies that will enhance the implementation of sustainable development in Nigeria.

## 2. Establishing Substantive Constitutional Rights to Sustainable Development

Presently, the effective implementation of sustainable development plans generally depends on the ability of the electorate to elect a responsible government that will faithfully implement such plans. However, this may be hindered by the unreliable nature of the Nigerian electoral system where elections are often manipulated to enthrone public officials who do not have the mandate and interests of the people. Even in some cases, governments that have a legitimate mandate may not be interested in effectively pursuing programmes that will enhance sustainable development. Given the fickle nature of Nigerian politics, it appears that one of the best ways to avoid a breakdown of law and order resulting from unsustainable development is to constitutionally guarantee the right to sustainable development.

The constitutional guarantee of a right to sustainable development will translate issues of sustainable development from being mere political questions to fundamental human rights. Since most Nigerian governments usually forget the sustainable development aspirations of the people, such a right will serve as a constant reminder to the government that the people will not have to wait until election time to assert their rights to sustainable development. By establishing the right to sustainable development, citizens can rely on the judiciary when the government fails to pursue sustainable development initiatives in accordance with the fundamental objectives of Chapter II of the Nigerian Constitution.

The implementation of sustainable development depends on the availability of government resources, and granting the judiciary the power to determine the allocation of those resources will amount to giving the courts power to determine government priorities, thus usurping the powers of the executive.<sup>1</sup> However, the faithful and progressive fulfillment of the people's aspiration for sustainable development is the basic priority of a responsible government, and the courts should be given the power to enforce this relationship. For example, in the South African case, *Government of the Republic of South Africa and Others v. Irene Grootboom and Others*,<sup>2</sup> which dealt with the right of the respondents to adequate housing, Justice Yacoob of the South African Constitutional Court observed:

I am conscious that it is an extremely difficult task for the state to meet these obligations in the conditions that prevail in our country. This is recognized by the Constitution which expressly provides that the state is not obliged to go beyond available resources or to realise these rights immediately. I stress, however, that despite all these qualifications, these are rights, and the Constitution obliges the state

to give effect to them. This is an obligation that courts can, and in appropriate circumstances, must enforce.<sup>3</sup>

Thus, under a legally ordained sustainable development program such as a free basic education scheme, primary health care, or an improved railway system, the court can serve as recourse for beneficiaries of the program where the government fails to implement the program. In this regard, the beneficiaries of the program will have to show that the state has enough funds to implement the program but is diverting most available funds to the payment of huge salaries and allowances to public officials or other unsustainable programs. Where the diversion of developmental funds is not justified, the court could compel the executive to prioritize sustainable development programs in fulfillment of the constitutional right to sustainable development.

### 3. Budget Analysis

Budget analysis is a novel and practical tool devised for accessing national budgets to determine whether the state has complied with or violated its socio-economic obligations within a specified period of time.<sup>4</sup> Budget analysis mandates the fulfillment of the fundamental objectives of the state policy to be measured by the courts. Thus, the budget analysis procedure has become:

Necessary since the mere laying down of policies has been shown to fail in securing economic and social justice for the people. This procedure has emanated as an alternative, but feasible method derived essentially to ensure that governments fulfill their constitutional duties. To determine the extent to which a state has effectively and prudently allocated its financial resources toward the fulfillment of its constitutionally imposed duties and obligations, it would be necessary to examine the budget of the government with its action plan. To do otherwise would be to permit states to conveniently overlook their obligations to respect, protect and fulfill these objectives when in fact the provisions relating to socio-economic rights should serve as the basis for choices to make.<sup>5</sup>

While contributing to the debate on the wisdom of entrenching the budget analysis clause in the provisions of the Nigerian Constitution in 1976, Professor Ben Nwabueze noted that:

A mere declaration by the court that given resources available to it, the government should be able to provide free education, does more to reinforce the objectives and directives principles of state policy and to bring the matter ...to the attention of the government.<sup>6</sup>

In some countries, budget analysis has been used over a period of five to ten years to invoke the courts' jurisdiction regarding whether a state has complied with its socio-economic obligations under the constitution.<sup>7</sup> The extension of the constitutional

powers of the courts to establish the budget analysis procedure will enhance the effective implementation of sustainable development initiatives in Nigeria. Citizens will be able to approach the court to analyze the state's budget and thereby determine whether or not the state has complied with the socio-economic obligations established in the constitution. On the strength of this, citizens will be able to approach the court to analyze the state's budget to determine whether or not the state has complied with its socio-economic obligations under the constitution. Relying on this mechanism, citizens can approach the court to determine whether a government agency has judiciously utilized funds allocated to it over a period of time for the implementation of sustainable development.

#### **4. Public Interest Litigation and Intergenerational Rights**

The constitutional guarantee of public interest litigation and intergenerational rights would remove hurdles hindering the right of action by providing citizens easy access to courts. That provision would strengthen the roles of individuals and nongovernmental organizations (NGOs) in the promotion of sustainable development. Thus, by relying on the constitutional guarantee of public interest litigation and intergenerational rights, individuals and NGOs would be able to protect the rights of vulnerable groups to sustainable development.<sup>8</sup>

Recent judicial developments have attempted to increase the use of public interest litigation. The Fundamental Rights (Enforcement Procedure) Rules, established in 2009 by the Chief Justice of Nigeria,<sup>9</sup> recognizes the need for public interest litigation in the actualization of the fundamental human rights under the Constitution and the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act. In this regard it provides that:

The Court shall encourage and welcome public interest litigations in the human rights field and no human rights case may be dismissed or struck out for want of *locus standi*. In particular, human rights activists, advocates, or groups as well as any non-governmental organizations, may institute human rights application on behalf of any potential applicant.<sup>10</sup>

By recognizing the right to public interest litigation under the Fundamental Rights (Enforcement Procedure) Rules, individuals and NGOs could more easily support sustainable development initiatives through the enforcement of the economic, social, cultural, and environmental rights under the African Charter.

#### **5. Access to Information**

Access to information is very crucial to the effective implementation of sustainable development. Timely access to information will enhance the participation of citizens in making decisions that will affect sustainable development. Access to information affecting or relating to sustainable development will also enable citizens to check fiscal rascality and corruption through the monitoring of government expenditure on sustainable development projects. However, the right to freedom of

expression and the press under the Nigerian constitution<sup>11</sup> does not adequately guarantee the right of citizens to access information in government possession.<sup>12</sup> Thus, the constitution only guarantees the freedom to receive and impart information without hindrance;<sup>13</sup> however, it neither creates an explicit right to access information, nor does it impose a state duty to communicate information. The same problem also exists under the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act. To remedy this state of affairs, the Nigerian government recently enacted the Nigerian Freedom of Information Act.<sup>14</sup> The Act establishes the rights of citizens to access or request information that is in the custody or possession of any public official, agency, or “public institution.”<sup>15</sup> A person who is requesting information under the Act does not need to demonstrate any specific interest in the information for which it is being applied.<sup>16</sup> A person who is requesting information under the Act also has the right to institute legal proceedings for the purpose of compelling any public institution to comply with the provisions of the Act.<sup>17</sup> The Act also imposes a duty on every public institution to ensure that it records and keeps information about all of its activities, operations, and businesses.<sup>18</sup> Although the Act has enhanced the access of citizens to information, the provisions of the Act are not yet elaborate with regards to access to environmental information. There is also a need to enshrine a constitutional state duty creating the state’s responsibility to collect and publicly render information about hazardous activities that affect the environment.

## 6. Citizen Suits

Apart from the guarantee of the rights discussed above, another way of getting around the ineffective implementation of sustainable development programs and policies by government agencies is to empower citizens to legally compel the state to implement those policies through the establishment of citizen suit provisions in such programs and policies. This measure will serve as a means of ensuring the continuity of viable sustainable development policies. Thus, where a policy has been established as a long term solution to a sustainable development problem, such a policy should not be jettisoned without due public consultation. As such, where a policy is meant to enhance the actualization of sustainable development, citizens should be empowered to seek judicial recourse to protect the policy from being arbitrarily jettisoned by the state without due public consultation to determine its viability. In such an event, the state will have to show the court justifiable reasons why the said policy lacks viability and requires abolishment. Accordingly, policies established to implement sustainable development should include provisions empowering citizens to compel the government to fulfill the policy in accordance with its resources. Relying on this, citizens can also approach the court to compel the government or its agencies to show practical steps it has taken to tackle issues addressed in a sustainable development policy or how it aims to implement such policy. Through this approach, sustainable development programs and policies will become self-enforcing as citizens will no longer have to wait endlessly for government agencies to implement them.<sup>19</sup> Thus, the empowerment of citizens to individually or collectively enhance the implementation of sustainable development in this regard has the effect of transferring sustainable development issues from the

domain of government agency responsibility to the collective responsibility of all citizens. In this way, citizens and government agencies will work together to promote sustainable development. There is also a need to entrench citizen suit provisions in environmental protection laws so as to empower citizens to enforce such laws. This approach is necessary due to the fact that it is virtually impossible for government agencies to effectively monitor and enforce sustainable development laws in every part of the country.

## **7. Entrenching Punitive Sanctions for Environmental Degradation**

Establishing punitive legal and economic sanctions that practically entrench the “polluter pays principle” environmental protection laws will effectively deter environmental degradation and unsustainable development. However, it appears that undue reliance on the economic approach for pollution control may to some extent encourage a situation whereby unsustainable development activities are carried out in the most economically affordable way in which every cost of such activity is transferred to the consumer in the form high prices. This does not help sustainable development but only encourages environmental degradation and the impoverishment of consumers. On the other hand, punitive legal sanctions involving penal servitude will greatly discourage the idea of unsustainable development as an economically viable option. This approach can be applied in such a way that individuals embarking on developmental activities will from the onset be compelled to use clean development mechanisms. The costs expended on the acquisition of such mechanisms will be cushioned by the government through tax and investment incentives. While this approach could be seen as a disincentive to foreign direct investment, which is needed to support economic growth and poverty alleviation, foreign direct investments that may help alleviate poverty do so more effectively if grounded in positive corporate conduct,<sup>20</sup> which includes the pursuit of sustainable development.

## **8. Purposeful Judicial Interpretation of the Constitution**

Another way of implementing sustainable development in Nigeria will be through a broad judicial interpretation of the constitution to promote sustainable development. Thus, it has been said that “the courts, by interpreting the constitution as a living charter requiring frequent interpretation to enable it to address new problems, uniquely permits an equilibrium to be maintained between liberty and constraint.”<sup>21</sup> This has also been aptly observed by Justice Pats-Acholonu of the Nigerian Supreme Court in the following words:

It is said that the function of the Court is to interpret laws made by the legislature and not to make laws. In theory that is so. But it must equally be admitted that Judges are not robots (or zombies) who have no mind of their own except to follow precedents. ... As the society is eternally dynamic and with the fast changing nature of things in the ever changing world and their attendant complexities, the Court

should, empirically speaking, situate its decisions on realistic premise regard being had to the society's construct and understanding of issues that affect the development of jurisprudence.<sup>22</sup>

Thus, broad judicial interpretation of existing constitutional norms can be applied to promote sustainable development even where there are no explicit constitutional provisions in that area. This approach has been taken by courts to enhance the actualization of sustainable development in several jurisdictions. For example, in *Government of the Republic of South Africa v. Grootboom*,<sup>23</sup> the Constitutional Court of South Africa expansively interpreted the constitution to hold that the right of access to adequate housing cannot be in isolation of the right to human dignity and other socio-economic rights. The Court also held that the state must take positive action to address the needs of those living in extreme conditions of poverty, homelessness, or intolerable housing. According to the court:

The right of access to adequate housing cannot be seen in isolation. There is a close relationship between it and the other socio-economic rights. Socio-economic rights must all be read together in the setting of the Constitution as a whole. The state is obliged to take positive action to meet the needs of those living in extreme conditions of poverty, homelessness or intolerable housing. Their interconnectedness needs to be taken into account in interpreting the socio-economic rights, and, in particular, in determining whether the state has met its obligations in terms of them.<sup>24</sup>

India provides the most practical example of how the judiciary can promote sustainable development through a broad interpretation of existing human right norms guaranteed under the constitution as seen in a litany of cases. In *Deo Singh Tomer v. State of Bihar*,<sup>25</sup> the Supreme Court of India held that the right to life includes the right to live in dignity. Therefore a person's right to adequate housing was deemed intrinsic to his right to life.<sup>26</sup> In *Mohini Jain v. State of Karnataka*,<sup>27</sup> the Supreme Court of India held that the right to education is essential to the right to life, which is a compendious expression to all those rights that the court must enforce because they are basic to the dignified enjoyment of life. In the absence of explicit legal rights to sustainable development, Indian courts have also adopted the approach of applying the principles of environmental law to promote sustainable development.<sup>28</sup> In *Vellore Citizens Welfare Forum v. Union of India*,<sup>29</sup> the Supreme Court of India, in granting a restraining injunction against a leather factory that was polluting the environment of several communities in the State of Tamilnadu, noted that, although the industry generates foreign exchange and provides employment, it had no right to degrade the environment and pose a health hazard. Also, in *People United for Better Living in Calcutta v. State of West Bengal*,<sup>30</sup> the plaintiff filed a petition to prevent the encroachment of wetlands in Calcutta. The Court observed that there should be a proper balance between the protection of the environment and the development process. The Court went ahead to state that, "the present day society has a responsibility towards posterity for proper growth and development so as to allow posterity to breath normally, live in a clean environment and have further development."<sup>31</sup>

The Pakistani judiciary has also adopted the approach of applying the principles of environmental law to promote sustainable development. For example, in the Pakistani case of *Shehla Zia v. Water Development Authority (WAPAD)*,<sup>32</sup> the Court applied the precautionary principle to balance the safety and welfare of the citizens and the importance of commerce and industry, thus promoting sustainable development.

The Peruvian Supreme Court has taken a similar approach as well. In a case<sup>33</sup> regarding the protection of a mangrove area from coastal shrimp farming industries, the Supreme Court of Peru incorporated the principle of sustainable development alongside the “Polluter Pays Principle” to hold that it was profitable for the present and future development of the region to preserve and sustainably manage the mangroves rather than risk their depletion. Consequently, the Court ordered all shrimp farms in the mangrove area to suspend their operations and restore the degraded areas to their natural state.

Following the above examples in other jurisdictions, Nigerian courts can overcome the absence of direct constitutional rights on sustainable development by giving a broad interpretation to fundamental human rights, especially the right to life, regarding its linkages with the socio-political, economic, and environmental objectives under Chapter II of the Constitution with the aim of promoting sustainable development. More can also be done by relaxing the rigid and technical rules associated with environmental litigation and giving a broad application to the “polluter pays principle”<sup>34</sup> and the “precautionary principle.”<sup>35</sup> Additionally, some obstacles to public interest litigations such as the strict requirement of a right of action (*locus standi*)<sup>36</sup> can be relaxed by interpreting the constitutional duty of every Nigerian citizen to “make positive and useful contributions to the advancement and well being of the community where he resides”<sup>37</sup> and to include his right to promote sustainable development in his community.<sup>38</sup> Furthermore, the fundamental objectives of the Nigerian Constitution provide that, “the exploitation of natural resources in any form other than the good of the community shall be prevented,”<sup>39</sup> and that “the state shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria.”<sup>40</sup> This should be seen as creating a public trust in which in the Nigerian government, in accordance with the sovereignty of the people,<sup>41</sup> holds the natural resources in Nigeria in trust for the Nigerian people<sup>42</sup> and is hence subject to the fiduciary duties of a trustee with respect to the management of such resources. Through this approach, courts can apply the “Public Trust Doctrine”<sup>43</sup> and also interpret the doctrine to accommodate intergenerational rights in order to prevent the unsustainable development and exploitation of Nigeria’s natural resources. It is also paramount that whenever the need arises, the judiciary should render a purposeful and broad interpretation of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act and the Child Rights Act in order to realize the sustainable development objectives of these laws. With regards to the African Charter, the Fundamental Rights (Enforcement Procedure) Rules of 2009 recognize the importance of giving a purposeful interpretation to provisions of the Charter. Hence it provides that, “...the African Charter, shall be expansively and purposely interpreted and applied, with a view to advancing and realizing the rights and freedoms contained in them and affording the protections intended by them.”<sup>44</sup>



## 9. Conclusion

Enhancing the implementation of sustainable development in Nigeria will also require the strengthening of law enforcement agencies to effectively combat corruption, increasing infrastructural development through the sincere and progressive implementation of policies and projects. In this regard, there is a need for a reduction of frequent and unpredictable changes in government administrative policies in order to create a stable and predictable policy and regulatory environment for the implementation of sustainable development. As such, the inclusion of measures to ensure the continuity of sustainable development policies is necessary. Thus, it is important to ensure that such policies are not jettisoned without due consultation with the citizenry. It is necessary that measures are taken towards empowering citizens to compel the government to fulfill such policies in view of available resources. It is also imperative to establish measures that will enhance the participation of private citizens and NGOs in the monitoring of the implementation of sustainable development policies.

The pursuit of sustainable development will ultimately lead to the emergence of a sustainable human society. It has been said that, “a sustainable society is not an idealistic utopia in which human nature have been perfected, rather it is a society peopled by real people whose economic and social activity protects and even restores the environment whether they care deeply about the environment or not.”<sup>45</sup> To a great extent, the realization of sustainable development in Nigeria will depend on the state’s balanced understanding of the complex nature of the intimate connections between socio-economic development and environmental issues and their implications to national progress, democratic stability, national security, and human life as well other fundamental freedoms. Thus, the state’s pursuit of sustainable development greatly implies good governance. This calls for the enthronement of a very high level of patriotism and fiscal discipline on the part of the government. As such, it is necessary to put an end to the prevailing culture of corrupt mismanagement, wasteful expenditure, and fiscal rascality in Nigerian public administration. Achieving sustainable development greatly depends on collective economic and social responsibility hinged on the active participation of the government and the citizens. Thus, strengthening the legal capacity of the citizenry to enhance the implementation of sustainable development is very crucial in creating an environment for the government and citizens to actively work together in making the right development choices that will reverse the current trend of unsustainable development in Nigeria.

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## Endnotes

1 See M. Uwais, ‘Fundamental Objectives and Directive Principles of State Policy: Possibilities and Prospects’ in C C Nweze (ed), *Justice in the Judicial Process: Essays in Honour of Justice Eugene Ubaezonu* (JCA) (Fourth Dimension Publishers, Enugu, 2002) p. 177.

2 2000 (11) BCLR 1169 (CC).

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3 Id at para 94.

4 See M. Uwais, 'Fundamental Objectives and Directive Principles of State Policy: Possibilities and Prospects' in C. C. Nweze (ed), *Justice in the Judicial Process: Essays in Honour of Justice Eugene Ubaezonu* (JCA) (Fourth Dimension Publishers, Enugu, 2002) p.189.

5 Id.

6 See W. I. Ofonagoro, et al, (eds), *The Great Debate* (Daily Times, Lagos, 1977) p. 49. See M. Uwais, Id.

7 See M. S. I. Diokno, *Primer: A Tool For Monitoring States Economic, Social And Cultural Rights Obligations* (A Violations Approach towards Budget Analysis) cited in Maryam Uwais, Id.

8 'Vulnerable groups' in this regard include un-born generations, minors, and individuals who may be unable to pursue their rights due to financial constraints or lack of awareness. Regarding the use of public interest litigation to promote sustainable development, see, *Minors of Oposa v. Secretary of the Department of Environment and Natural Resources (DENR)* (GR No. 101083: Supreme Court of Philippines) where a class action was brought on behalf of a group of Filipino minors and future generations unborn by their parents under the Philippine Ecological Network Inc., contending a violation of their right to a healthy ecology. The plaintiffs also contended that they were entitled to the use and enjoyment of the country's rain forest and therefore sought an order of court, directing the Secretary of DENR to cancel all timber license agreements and to cease from approving new agreements for lumbering in the rain forests. The Supreme Court of the Philippines recognized the concept of intergenerational rights and responsibility and held that the plaintiffs had the *locus standi* to sustain the action. Presently many countries have entrenched the concept of public interest litigation in their constitutions. See for e.g. Article 50(2) of the Constitution of Uganda 1995, which allows any person or organization to bring an action against the violation of another person's or group's human rights.

9 See section 46 (3) of the 1999 Constitution of Nigeria, which empowers the Chief Justice of Nigeria to make rules with respect to the practice and procedure of a High Court for the purposes of enforcing all provisions related to fundamental rights enshrined in the Constitution.

10 See, Preamble 3(e) Fundamental Rights (Enforcement Procedure) Rules, 2009.

11 See Section 39(1) of the 1999 Constitution of Nigeria, which provides that "everybody shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference."

12 See section 39 (3) of the 1999 Constitution of Nigeria.

13 See section 39(1) of the 1999 Constitution of Nigeria.

14 See the Nigerian Freedom of Information Act [2011].

15 See section 1(1) Nigerian Freedom of Information Act [2011].

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- 16 See section 1(2) Nigerian Freedom of Information Act [2011].
- 17 See section 1(3) Nigerian Freedom of Information Act [2011].
- 18 See section 2(1) Nigerian Freedom of Information Act [2011].
- 19 For more insight on the use of citizen suits to promote sustainable development, see J. C. Dernbach, 'Citizen Suits and Sustainability' *Widener Law Review* (2004) Vol. 10 p. 503.
- 20 See S. Narula, "Reclaiming the Right to Food as a Normative Response to the Global Food Crisis" *Yale Human Rights and Development Law Journal*, Vol. 13, p.419.
- 21 See W. H. McCree Jr., 'Civil Liberties and Limited Government' National Forum at 45 cited in See B. O. Nwabueze, *The Ideas And Facts In Constitution Making* (Spectrum Books Ltd, Ibadan, 1993) p. 19.
- 22 See *Patrick Magit v. University of Agriculture, Markudi & 3 Ors* (2006) All FWLR (pt. 298) 1313, 1345 D – F.
- 23 (2001) 1 CHR 261; 2000 (1) SA 46 (CC) (S. Afr.).
- 24 Id at para 24.
- 25 (1988) AIR S.C 1782. See M. Uwais, 'Fundamental Objectives and Directive Principles of State Policy: Possibilities and Prospects' in C. C. Nweze (ed), *Justice in the Judicial Process: Essays in Honour of Justice Eugene Ubaezonu* (JCA) (Fourth Dimension Publishers, Enugu, 2002) p.185.
- 26 See also, *Coralie v. Union Territory of Delhi*, where the Supreme Court of India gave a broad interpretation of the right to life to include non-justiciable directive principles by holding that, "the right to life includes the right to live with human dignity and all that goes along with it, namely: the basic necessities of life such as adequate nutrition, clothing and shelter over the head." See C. C. Nweze, 'Evolution of the Concept of Socio-Economic Rights in Human Rights Jurisprudence: International and National Perspectives' in C. C. Nweze (ed) *Justice in the Judicial Process: Essays in Honour of Justice Eugene Ubaezonu* (JCA) (Fourth Dimension Publishers, Enugu, 2002) p. 542.
- 27 (1992) Air S.C 1964 (App.6).
- 28 See also, *Kinkri Devu v Himachal Pradesh* (1989) AIR, HP 4, 6 para. 4, where an Indian court pointed out the need for maintaining a proper balance between the tapping of mineral resources for development and industrial growth and the protection of ecology and the environment.
- 29 (1996) 5 SCC 647; ( 1996) AIR SC.2715. See also, J. Razzaque, 'Human Rights and the Environment: The National Experience in South Asia and Africa', Joint UNEP-OHCHR Expert Seminar on Human Rights and the Environment (UNEP-OHCHR, Geneva, 14 – 16 January 2002) Background Paper No. 4, pp. 20-28.
- 30 (1993) AIR Cal.

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- 31 See also, The Dehradun Lime Stone Quarrying Case, where an Indian Court held that economic growth cannot be achieved at the cost of environmental destruction. Cited in G. Sahu, 'Implications of Indian Supreme Court's innovations for Environmental Jurisprudence' Law, Environment and Development Journal (2008) Vol. 4(1), p. 9.
- 32 (1994) SC 693 at 710. In this case, a group of Pakistani citizens from Islamabad brought an action to prevent the Municipal Water and Power Development Authority from constructing a grid station in their neighborhood, contending that the high voltage transmitted by the station would create a health hazard. The court, deciding in favour of the plaintiffs, held that, "The precautionary principle is to first consider the welfare and safety of human beings and the environment and then to pick up a policy and execute the plan which is more suited to obviate the possible dangers or make such alternate precautionary measures which may ensure safety."
- 33 See, *Societad Peruana de Derecho Ambiental v. Direccion~ Regional del Ministerio de Pesqueria* - (1993) [Corte Sureme de Justicia Expediente No. 1058 – 92 Dictamen Fiscal N1476 – 92. 17.2 1993]. See A. Fabara and E. Arnal, 'Review of Jurisprudence on Human Rights and the Environment in Latin America' Joint UNEP-OHCHR Expert Seminar on Human Rights and the Environment (UNEP-OHCHR, Geneva, 14 – 16 January 2002) Background Paper No. 6, p.10.
- 34 The "polluter pays principle" is a principle of environmental law that promotes the approach that the polluter should in principle bear the cost of pollution. See Principle 16 Rio Declaration.
- 35 See Principle 15 Rio Declaration. See, *Vellore Citizens Welfare Forum v. Union of India*, (1996) 5 SCC 647 ;( 1996) AIR SC.2715, where the Court applied the precautionary principle to hold that if there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. See also *Shebela Zia v. Water Development Authority (WAPAD)* (1994) SC 693.
- 36 Locus standi refers to the right to bring an action or to be heard in a given forum such as a court of law. See, Blacks Law Dictionary (8<sup>th</sup> edn) p. 960
- 37 See, Sec. 24 (d) of the 1999 Constitution of Nigeria.
- 38 See, The Ganga Water Pollution Case where an Indian Court extended the right to life to include the right to defend the human environment for present and future generations. Cited in G. Sahu, 'Implications of Indian Supreme Court's innovations for Environmental Jurisprudence', Law, Environment and Development Journal (2008) Vol. 4(1) p. 9.
- 39 See section 17 (2) (d) of the 1999 Constitution of Nigeria.
- 40 See section 20 of the 1999 Constitution of Nigeria.
- 41 See section 14 (2) (b) of the 1999 Constitution of Nigeria.

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- 42 See section 1 Land Use Act [Cap. 202 LFN 1990; Cap L5 LFN 2004], which provides that all land comprised in the territory of each state of the federation is solely vested in the Governor of the state who shall hold it in trust for the people.
- 43 The “Public Trust Doctrine” is a principle of law that supports the notion that certain resources are held in trust by the state for public use and common good. The doctrine has been applied by courts in some foreign jurisdictions to promote sustainable development. See, *Peter Waweru v. The Republic of Kenya* [High court of Kenya of Nairobi Miscellaneous Civil Application No.118 of 2004]. For further reflections on the use of the Public Trust doctrine in environmental protection, see P. kameri – Mbote, ‘The Use of the Public Trust Doctrine in Environmental Law’ Law, Environment and Development Journal (2007) Vol. 3(2), p.195. See generally, D. Takacs, “The Public Trust Doctrine, Environmental Human Rights, and the Future of Private Property”, New York University Environmental Law Journal (2008) Vol. 16, p.711. See J. L. Sax, The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention, Michigan Law Review (1970) Vol. 68, pp. 471, 476.
- 44 See, Preamble 3(a) Fundamental Rights (Enforcement Procedure) Rules, 2009.
- 45 See J. C. Dernbach, ‘Citizen Suits and Sustainability’ (2004) 10 Widener Law Review, p.504. According to Professor J. C. Dernbach, “since sustainable development is directed against widespread environmental degradation and large scale poverty, it follows that a sustainable society would be a society in which the two do not exist.”