

# How Can Environmental Law Be Used As an Instrument for Translating Sustainable Development Policies and Goals into Action

BARRISTER (MRS) CELINE U. OKEAHIALAM

Ph.D (Candidate) RSU, LL.M.LL.B & B.L

---

**Abstract:** Following the adoption of sustainable Development goals (SDGs) and policies at the United Nations Sustainable Development Summit in 2015, it is imperative to formulate ways to apply the numerous and divers international environmental laws as tools for their actualization. The effort here therefore is to explore how environmental law can be used as instrument for the actualization of the SDGs and policies. Rules and principles of public international community may cooperate, establish norms of behaviour and, resolve their differences. Some of the rules of customary international law as well as the emerging principles which have been adopted as principles establishing standards of international environmental law by virtue of usage over time shall be topical in this work. This will be measured with the desire to realize the sustainable development vision and program as proposed by the United Nations to safeguard our environment, not only for the present generation but, for the future generations.

**Keywords:** sustainable Development goals (SDGs), The United General Assembly (UNGA).

---

## 1. INTRODUCTION

The United General Assembly (UNGA) adopted Resolution 70/1 entitled “*Transforming our world: the 2030 Agenda for sustainable Development*” on 25<sup>th</sup> September, 2015. Sustainable Development Goals (SDGs) is a set of seventeen aspirational “Global goals” with 169 targets aimed at transforming the world by the use of nature’s resources in sustainable ways.

How these goals and targets can be achieved particularly in the context of the frame of their expected attainment, or within which appreciable effort would have been made, is a source of concern to stakeholders, with some criticizing the *unrealisability* of some of the goals and /or targets.

In a bid to proffer answers to the question, this work will examine how the environmental dimension of the SDGs can be integrated into the general framework of the development agenda.

In conclusion, the work will make recommendations for the strict application and/ or adherence to the extant laws including the “soft laws” as the strategies for the actualization of the Sustainable Development Goals. International agreements are playing an ever more important role in global efforts to preserve and improve the environment.

## 2. DEFINITION OF TERMS

In discussing this question, there is need to define some key words. These include:

1. Environment,
2. Environmental Law,
3. Instrument,
4. Sustainable Development,
5. General Principles of Rules Establishing Standards

**1. ENVIRONMENT:**

Environment means the surroundings or conditions in which a person, animal or plant lives operates. It is the natural world, as a whole or a particular geographical area especially as affected by human activities.

*In Attorney General of Lagos State v. Attorney general of Federation of Nigeria & 35 Ors*<sup>1</sup>, the Supreme Court cited with approval the Black's Law Dictionary<sup>2</sup> definition of the environment as "the totality of physical; Economic, cultural, aesthetic and social circumstances and factors which surround and affect the desirability and value of property, and which also affect the quality of people's lives".

Also, the Federal Environmental Protection Agency (FEPA) Act<sup>3</sup> Cap F10 LFN 2004 now repealed by NESREA defines environment as:

*"Water, air, land and all plants and human beings or animals living therein and the inter-relationships which exist among those or any of them"*.

The importance of the environment cannot be overemphasized. Shortly after its formation in 1948 the United Nations recognizes and acknowledged the right to environment in the context of human survival<sup>4</sup>.

The constitution of the Federal Republic of Nigeria 1999 also recognizes the importance of the protection of the environment and included it in the fundamental Objectives in Part 2 of the constitution<sup>5</sup>.

**2. ENVIRONMENTAL LAW:**

Environmental laws are the set of laws regulating the environment. It is the collective term describing the network of treaties, statues, regulations, common and customary laws etc. addressing the effects of human activity on the environment.

Environmental law can be said to be any rule or law, which is made or used for the protection, maintenance, conservation and improvement of the environment, including those for the redress for environmental harm<sup>6</sup>.

**3. INSTRUMENT:**

In the ordinary parlance, an instrument has to do with a tool or implement to drive a work. It is something used to add force or pressure to a work or going concern. Legally speaking however, an instrument is a formal or legal document in writing such as contract, deed, will, bond, lease etc. The essence of a legal instrument is to give the force of law to such agreement, transaction or anticipated execution<sup>7</sup>.

**4. SUSTAINABLE DEVELOPMENT:**

Generally speaking, sustainability is about maintaining earth's ecological and other biophysical life-support systems. According to the *Brundtland Report* of 1987, Sustainable development, that is the development that "meets the needs of the present without compromising the ability of future generations to meet their own needs"<sup>8</sup>.

**3. THE CONCEPT OF SUSTAINABLE DEVELOPMENT**

The concept Sustainable Development is the result of long and chequered effort to reduce damage to the environment by man.

<sup>1</sup> (2003) FWLR Pt. 168 @949.

<sup>2</sup> Black Law Dictionary, 6<sup>th</sup> Edition. St. Paul, Minn West Publishing Company, 1990, P. 534.

<sup>3</sup> Section 38 FEPA Act, Cap F10 LFN 2004. See 63(!) Environmental IMPACT ASSESSMENT Act 1992 (now E!@ LFN, 2004), which also defines the environment.

<sup>4</sup> The United Nations Geneva Convention of 1949, Dr. C.T. Emejuru (Associate Prof) RSU.

<sup>5</sup> Section 20 of the Constitution of the Federal Republic of Nigeria which is part of the Fundamental Objectives and Directive Principles of State Policy provides that "the State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria".

<sup>6</sup> Omaka, C.A. the Nigeria Conservation Law, Lagos: Lion's Unique Concept Publications, 2004.

<sup>7</sup> Black Law Dictionary, Ibid P.801

<sup>8</sup> Also defined by the United Nations World Commission on Environment and Development, 1983.

Starting from 1962 when Rachael Carson drew world attention to the growing toxic substances in the environment to the various conferences in the 1970s, 80s and beyond including the UN Conference on Human Environment held in Stockholm which led to the establishment of many national environmental protection agencies and the United Nations environment Programme (UNEP).

Sustainable Development is considered together with the concept of “Integration” (which means that development cannot be considered in isolation from sustainability) and “interdependence” (which means that social and economic development and environmental protection are inter- dependent). In this way, the use of resources of the environment is regulated by man to ensure, the availability of such resources for the use by future generation.

### **SUSTAINABLE DEVELOPMENT POLICIES AND GOALS (SDGs):**

Sustainable Development Goals (SDGs) officially known as *transforming the world: the 2030 Agenda for sustainable Development* is a set of seventeen aspirational “Global Goals” with 169 targets.

In September 2015, the member nations of the United Nations at 70<sup>th</sup> session of the UNGA adopted the 2030 Agenda for Sustainable Development and the associated Sustainable Development Goals (SDGs), signaling firm global intent to integrate environmental development with economic and social development.

The SDGs and policies are:

#### **1. No Poverty:- To end poverty**

It is estimated that one (1) out of every 5 persons in the world live below poverty line, that is live below \$1.25 a day.

#### **2. Zero hunger:- to end hunger:**

Achieve food security and improved nutrition and promote sustainable agriculture.

#### **3. Good Health and Well Being:-**

Ensure healthy lives and promote well being for all ages. This goal targets among other things to substantially reduce the number of deaths and illness from pollution related diseases.

#### **4. Quality Education:-**

This aims at ensuring inclusive and equitable quality education and to promote lifelong learning opportunities for all.

#### **5. Gender Equality:-**

To achieve gender equality and empower all women and girls.

#### **6. Clean Water and Sanitation:-**

To ensure availability and sustainable management of water and sanitation for all.

#### **7. Affordable and Clean Energy:-**

Ensure access to affordable reliable, sustainable and modern energy for all.

#### **8. Decent Work and Economic Growth:-**

Promote sustained inclusive and sustainable economic growth, full and productive employment and decent work for all.

#### **9. Industry, Innovation and Infrastructure:-**

To build resilience infrastructure industrialization and foster innovation.

#### **10. Reduced Inequalities:-**

Reduce income inequalities within and among countries.

#### **11. Sustainable Cities and Communities:-**

Make cities and human settlements inclusive, safe resilient and sustainable.

#### **12. Responsible Consumption and Production**

Ensure sustainable consumption and production patterns.

### **13. Climate Action:-**

Take urgent action to combat climate change and its impacts by regulating emissions and promoting developments in renewable energy.

### **14. Life Below Water: -**

Conserve and sustainably use the oceans, seas and terrestrial resources for sustainable development.

### **15. Life and Land:-**

Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification and halt and reverse land degradation and halt biodiversity loss.

### **16. Peace, Justice and Strong Institutions:-**

Promote peaceful and inclusive societies for sustainable development, promote, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.

### **17. Partnership for the Goals:-**

Strengthen the means of implementation and revitalize the global partnership for sustainable development.

The vision of the SDGs is to address the three (3) dimensions of: 1) Economic Development; 2) Social Inclusion; and 3) Environmental Sustainable Development, which are the core components of Sustainable Development.

The SDGs and their targets are some sort of non-binding instruments (soft law) of international law. Interestingly, all the United Nations Member State has declared their support of the 2030 Agenda. The basic problem inherent in it is how to promote compliance with commitments that are merely voluntary. As a consequence, follow up and review process are the fundamental means through which government policies are formed, knowledge transferred and mutual learning between nations and people promoted.

Although member states of the UN are expected to adhere and comply with the provisions of the SDGs in accordance with the charter of the United Nations, the ratification/or its domestication will make for more effectiveness. By such ratification/ domestication it will become enforceable and punishment provided for its violation.

The observance and implementation of the foregoing SDGs and their policies is key to achieving environmental sustainable, socially and economically inclusive development in an impactful and lasting way. This will require innovative action on all fronts leading to the case question.

### **How Environmental Law can be used as instrument for translating sustainable development policies and goals into action?**

In answering this question, it must be pointed out here that the environmental law in focus includes international, national and sub national environmental law and practice.

The environmental laws include all the international conventions and treaties, common law and customary international environmental laws. These also include what is now commonly known as the “soft laws” which are essentially the non-building instruments in international law.

The national and sub national environmental laws are laws and practice in force as well as statutes of general application within nations with Nigeria as our focus.

The question is therefore discussed in the light of the global nature of environmental law with particular reference to Nigeria.

Consequently, environmental law can be used as instrument for translating sustainable Development Goals and Policies into action in the following ways:

#### **1. The use of the Internal implementation mechanism/strategy contained in the SDGs:**

The SDGs and/or their targets contain strategies for their implementation. This is so because at least four out of the 16 “Substantive Goals”<sup>9</sup> are directly and primarily concerned with environmental sustainability, while another six goals also refer to environmental sustainability in their policies. Some of the goals include:

<sup>9</sup> SDG 17 is a call on countries to strengthen the means of implementation and revitalize the global partnership for sustainable Development.

SDG 12: Ensure sustainable consumption and production patterns;

SDG 13: Take urgent action to combat climate change and its impacts;

SDG 14: Conserve and sustainably use the oceans, seas and marine resources for sustainable development; and

SDG 15: Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification and halt and reverse land degradation and halt biodiversity loss.

The other six goals which also refer to environmental sustainability in their policy include:

SDG 2: End hunger, achieve food security and improve nutrition and promote sustainable agriculture;

SDG 6: Ensure availability and sustainable management of water and sanitation for all.

SDG 7: Ensure access to affordable, reliable, sustainable and modern energy for all;

SDG 8: Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all;

SDG 9: Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation and;

SDG 11: Make cities and human settlements inclusive, safe, resilient and sustainable.

Whereas the SDGs cannot do much on their own, the 169 targets however are action plans for their actualization. For example target 1.5 (included under SDG 1; to end poverty in all its forms everywhere”) calls upon countries to build resilience of the poor and those in vulnerable situations and reduce their exposure and vulnerability to climate-related extreme events and other economic, social and environmental shocks and disasters”.

Target 3.9 (relating to SDG 3- Ensure healthy lives and promote well- being for all at all ages”) mandates to substantially reduce the number of deaths and illness from hazardous chemicals and air, water and soil pollution and contamination”.

It follows that all the SDGs and all their targets have the inbuilt strategy for the attainment of the goals. Most of these strategies relate to the application of economic social and environmental components in an integrated manner.

Consequently, Environmental law can be used as instrument for the actualization of the SDGs by strict adherence to the inbuilt strategies contained in the SDGs and their targets.

## **2. The use of war:**

The several and diverse international conventional conventions and agreements touching on the environment even though not legally binding are now being used in the actualization of Sustainable Development Goals. The UN Sustainable Development Summit is reflective of the general trend which recognizes the use of non binding instruments as a means of fostering compliance by nations even when there is no compulsion.

The non-binding instruments (soft law) such as memoranda of understanding, codes of conduct, guidelines, action plans and policy frameworks are now being used in enhancing cooperation between states and translating achievements in the fields of sustainable development into actual implementation strategies at the international, national and sub- national levels.

## **3. UNGA Implementation and Coordination Policy:**

The United Nations General Assembly is strengthening the use of environmental law for translating SDG into action. In this regard, the environmental laws touching on Sustainable Development are made strategic implementation plan and incorporated into the SDGs. The 2030 Agenda is the action plan for the implementation of the SDGs.

For instance, the action plan for the Human Environment is associated with the 1972 Stockholm Declaration on the Human Environment. Whereas Chapter 1 of the United Nations 1972 deals with the Declaration of the United Nations’ Conference on the Human Environment.

Agenda 21 adopted in 1992 together with the Rio Declaration (United Nation 1992b) is the action plan of Rio 1992 declaration.

The UNGA has also been instrumental in strengthening the institutional component of the SDGs by establishing intergovernmental bodies specifically tasked with promoting cooperation and ensuring follow up and review of these

processes. For example, UN Environment Programme (UNGA 1972, UNGA 2013, the Commission on Sustainable Development UN, 1993) and more recently the High Political Forum on Sustainable Development (UNGA, 2012 paras. 84-86).

The UNGA has also assigned coordinating and /or annual reporting responsibilities to the UN Secretary General. These aimed at insuring effective actualization of the SDGs through the international environmental laws.

#### **4. Setting Goal/ Target as a Strategy:**

Having goal based development is itself a powerful strategic instrument/ approach in the actualization of the SDGs. Setting targets helps to communicate the objective more effectively and thereby informs the public's awareness about and understanding of the complex economic, social and environmental challenges of the particular SDG.

In addition, having time bound targets acts as benchmark for the assessment of progress and thereby encourages performance evaluation, facilitates policy planning and conveys sense of urgency which in turn mobilizes larger efforts and promotes innovation.

#### **5. Enforcement of Environmental Laws:**

All the environmental components of the SDGs can be attained if environmental laws are enforced. For instance SDG 3 talks about good health and wellbeing for all ages. The goal targets among other things to sustainably reduce the number of deaths and illness from pollution related diseases. Here strict compliance with laws convention and treaties prohibiting pollution of air, sea, land and underground water will activate the goal and achieve reduction if not elimination of death and diseases from pollution.

The same applies to SDG6 where adherence and enforcement of law will lead to the achievement and sustainable management of water and sanitation for all. More importantly is the effect of compliance with environmental laws and conventions on SDG 11, 13, 14, and 15.

More specific environmental laws which if enforced and/ or adhere to will lead to the actualization of sustainable development goals include the following areas:

##### **a) Air Quality:**

There are laws governing air quality which if enforced will reduce and/ or eliminate the emission of air pollution into the atmosphere. Specialized subset of air quality laws also regulates the quality of air inside buildings e.g. laws prohibiting smoking etc. Industrial air pollution is now regulated by air quality Law. Consequently, environmental laws can be used as instrument for the actualization of SDGs 3, 6, 11, 13, 14 and 15.

##### **b) Water Quality:**

Water quality laws govern the release of pollution into water resources; including surface water, ground water etc. Regulatory areas include sewage treatment and disposal, industrial and agricultural waste water management and control of surface runoff from construction sites and urban environment. Adherence and /or compliance with the laws regulating water quality will lead to the attainment of SDGs 3, 6 and 14.

##### **c) Waste Management**

Waste management laws govern the transport, treatment and disposal of all manner of waste including municipal solid waste, hazardous waste and nuclear waste. Compliance and/or adherence will lead to the attainment of SDGs 6.

##### **d) Containment cleanup:**

Environmental cleanup laws govern removal of pollutants or contaminants from environmental media such as soil, sediment, surface water or ground water.

##### **e) Environmental Impact Assessment (EIA):**

Environmental Impact Assessment is the assessment of the eventual consequences (positive and negative) of a plan, policy, programme or concrete projects prior to the decision to move forward with the proposed action.

The term Environmental Impact Assessment is usually used and applied to projects by individuals or companies and the term “strategic Environment Assessment (SEA)” applies to policies, plans and programmed most often proposed by organs of state. The use of and strict adherence to EIAs and SEAs are also some of the ways environmental law can be used as instrument for translating sustainable development policies and goals into action.

**6. Ratification and Domestication:** To facilitate the translation of the SDG’s into actions, Nigeria needs to ratify all relevant International Conventions and also domesticate these conventions to suit the peculiar circumstances in our terrain. This accord with Section 12 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). Further, in the case of *Gen Abacha v. Gani Fawehinmi*,<sup>10</sup> the Supreme Court held that an International Treaty becomes binding only when enacted into domestic law by the National Assembly.

**Education and Enlightenment:** Effective education and enlightenment on the various environmental laws can be used as instrument for the actualization of the SDGs. For instance, Principle 19 of the Stockholm Declaration arising from the United Nations Conference on Human Environment in Stockholm states that: “Education in environment matters, for the younger generation as well as adults, giving due consideration to the underprivileged is essential in order to broaden the basis for an enlightened opinion and responsible conduct by individuals, enterprises and communities in protecting and improving the environment in its full human dimension.

#### 4. GENERAL PRINCIPLES AND RULES ESTABLISHING STANDARDS AND IMPLEMENTATION STRATEGIES

A number of rules and principles of public international law have established standards as a result of usage and wide acceptability that can now be termed principles and rules of international environmental law. These rules and principles include the customary international rules, statutes and judicial pronouncements; they also have been incorporated in some international treaties, conventions and protocols, for example the Montreal Protocol.

**The principle and rules enunciated include, but are not limited to the followings:**

1. Principles of state sovereignty over natural resources and the principle not to cause trans-boundary damage.
2. Polluter pays principles.
3. Principles of sustainable development.
4. Precautionary principle.
5. Common but differential responsibilities.
6. Principle of cooperation.
7. Principle of preventive action.

##### 1. Principle of State Sovereignty:

The principle of state sovereignty allows states to conduct their activities as they choose within their territorial jurisdiction, including activities that may have effect on their own environment; this is the purport of the UN Resolution on Permanent Sovereignty over Natural Resources adopted in 1952<sup>11</sup>. This resolution was reinforced in the 1962 UN resolutions which provided that the rights of people and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and wellbeing of the people of the state concerned.

It is however necessary to point out that principle 21 of the 1972 Stockholm Conference expanded the principle of sovereignty to include that such usage must be in a way as not to be injurious to other states.

Principle 21 of Stockholm states as follows:

*States have in accordance with the Charter of the UN and the principle of International law, the sovereign right to exploit their own natural resources pursuant to their own environmental policies and the responsibility to ensure that activities*

<sup>10</sup> (2000) 77 LRCN 1254-1401

<sup>11</sup> Philippe Sands “Principles of International Environmental Law” 2<sup>nd</sup> Edition Cambridge University Press (2004).

*within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction.*<sup>12</sup>

Furthermore, Article 30 of the Charter of Economic Rights and Duties of States also provide that:

*All states have the responsibility to ensure that its activities within its jurisdiction or control do not cause damage to the environment of the other states or of areas beyond the limits of national jurisdictions.*

This principle has acquired the status of rules of customary international law, placing legal strings on the rights of states in respect of activities carried out within their jurisdiction; thus in the *Trail Smelter Arbitration case*<sup>13</sup> the tribunal adumbrated this principle. The tribunal held that a state at all times owes a duty to protect other states against injurious acts by individual from within its jurisdiction. The tribunal found that the trans-boundary air pollution contravened both international law and the law of the United States of America and that no state has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in, or to, the territory of another state or the properties of other persons therein. In a similar breath, in the case of **Spain v. France** the International Court of Justice (ICJ) reiterated the principle of the effect that the principles of sovereignty embodies the obligation of every state not to allow its territory to be used for acts contrary to the rights of other states.

## **2. Polluters Pays principles:**

This principle stipulates that the cost of pollution should be borne by the persons responsible for causing the pollution. This principle was adopted in the *Koko toxic waste dump case*<sup>14</sup> in Nigeria where the Italian Government paid for the cleaning of the hazardous waste dumped by an Italian businessman and the subsequent rehabilitation of the inhabitants. It should be noted that most developed countries subscribe to the polluters pays principle. This means polluters should take care of the costs of their pollution, control it at its source, and pay for its effects, including remediation or cleanup, rather than forcing other states or future generations to bear such costs.

## **3. Principle of sustainable Development:**

Another important emerging principle of international environmental law is the concept of sustainable development. According to the *Brundtland Report* of 1987, Sustainable Development (SD) is the development that meets the needs of the present without compromising the ability of future generations to meet their own needs.

**This principle contains two major issues:**

1. Concept of need and,
2. Ability to meet present and future needs.

**The concept of SD s reflected in international agreements has four elements:**

- a) The need to preserve natural resources for the benefit of future generations ( the principle of intergenerational equity).
- b) The aim of exploiting natural resources in a manner which is 'sustainable'; 'productive' 'rational' 'wise' or 'appropriate' ( the principle of sustainable use).
- c) The equitable use of natural resources which implies that use by one state must take account of the needs of other states (the principle of equitable use or intra-generational equity).

<sup>12</sup> Principle 21 Stockholm Conference 1972. See also Principle 2 of Rio Convention which contains similar provision.

<sup>13</sup> The Trail Smelter Arbitration case: United States of America v. Canada in which case the company was sited on the border town of Trail in Canada about 12km from the United States. There was an emission of fumes and gases of high concentration of sulphur oxide from the plant into the US territory causing grave damage to life and property, consequent upon which the case was referred to an International tribunal for arbitration.

<sup>14</sup> Koko toxic dump case: In that incident, an Italian Company in connivance in Nigeria Conspirators brought in toxic waste and dump same in koko village, Warri, the present delta State. That act was condemned in its entirety and the law was enacted in prohibit such occurrence.



- d) The need to ensure that environmental consideration are integrated into economic and other development plans, programmes and projects and that development needs are taken into account in applying environmental objectives, (principle of integration)

Many UN resolutions now contain SD concept. For example, Principles 3 and 4 of Rio Declaration states that “ the right to development must be fulfilled so as to equitably meet the developmental and environmental needs of present and future generations” and “ in order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it”.<sup>15</sup>

## 5. INTERGENERATIONAL EQUITY

Intergenerational equity is a concept that says that humans hold the natural and cultural environment of the earth in common both with other members of the present generation and with other generations past and future. It means that we inherit the Earth from the previous generations and have an obligation to pass it on in reasonable condition to future generations.

The idea behind not reducing the ability of future generation to meet their needs is that although future generations might gain from economic progress, those gains might be more than offset by environmental deterioration. Most people would acknowledge a moral obligation to future generations particularly as people who are not yet born can have no say in decision taken today that may affect them.

There are two ways of looking at the need to ensure that future generations can supply their needs; one is to view the environment in terms of the natural resources or natural capital that is available for wealth creation and to say that future generation should have the same ability to create wealth as we have. There is also the argument that the present generation may not be able to pass on an equivalent stock of environmental goods to the next generation. The reason includes:

1. The rates of extinction of animal and plant species, arable land, water quality, tropical forests and cultural heritage are specially serious,
2. This generation will not be able to pass the ozone layer or global climate system we inherited to the next generation the way we inherited it,
3. The impact of growing population which continue to put pressure on the 1<sup>st</sup> and 2<sup>nd</sup> concerns above.

The concept of Sustainable Development is currently the most important principle of international law requiring that every conduct of persons, communities and nations must conform to sustainable development goals.<sup>16</sup>

## 4. Precautionary Principles.

The precautionary principle or precautionary approach is another emerging principle of environmental law. It states that if an action or policy has a suspected risk of causing harm to the public or to the environment in the absence of scientific consensus the action or policy is harmful, the burden of proof that it is not harmful falls on those taking the action. This principle allows policy makers to make discretionary discussions in situation where there is the possibility of harm from taking a particular course or making a certain decision when extensive scientific knowledge on the matter is lacking. The principle implies that there is a special responsibility to protect the public and the environment from exposure to harm when scientific investigations have found a plausible risk. This protection can be relaxed only if further scientific findings emerge that provide sound evidence that no harm will result. In the case of *Vellore Citizens Welfare Forum v Union of India*, the India Supreme Court accepted that precautionary principle is part of the environmental law of that country.

<sup>15</sup> The Rio Declaration 1997 represents a series of compromises between developed and developing countries as well as balance between the objectives of environmental protection and economic development.

<sup>16</sup> (1) No Poverty (2) Zero hunger (3) Good Health and Well Being (4) Quality Education (5) gender equality (6) Clean Water and Sanitation (7) Affordable and Clean energy (8) Decent work and economic growth (9) Industry, Innovation and Infrastructure (10) Reduced inequalities (11) Sustainable cities and communities (12) Responsible consumption and production (13) Climate action (14) Life below water (15) Life on land (16) Peace, justice and strong institution (17) Partnership for the goals.

Furthermore, Principle 15 of the 1992 Rio Conference states that in order to protect the environment, the precautionary approach shall be widely applied by states according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost effective measures to prevent environmental degradation.<sup>17</sup>

### 5. Common but Differentiated Responsibilities:

This principle is derived mainly from Article 7 of Rio Declaration which states that:

*States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the earth ecosystem. In view of the different contributions to global environmental degradation, states have common but differentiated responsibilities.*

The developed countries acknowledged the responsibility that they bear in the international pursuit of sustainable development in view of the pressure their societies place on the environment and of the technologies and financial resources they command. This principle has resulted in the establishment of special international machinery to provide technical help and technology to developing countries to help them implement the obligations of specific treaties. The foregoing concepts of the principle and rules of standard in international environmental law have helped to shape the thinking of international courts and tribunals in arriving at their decisions especially in the application of substantive legal obligations. It has also helped the states to know the limits to which their actions can cause damage to their citizens, states outside their territorial boundary. The application of these rules and principles has however not been uniform in practice, e.g. the *Fisheries jurisdiction Case*<sup>18</sup>.

Nevertheless, the rules and principles are still growing and it is expected that nations will gradually adopt and apply them uniformly. Developing countries are yet to appreciate, domesticate and sensitize their people as to the contents of these rules and principles of international environmental law. Developing countries are also more interested in developing the economy, hence, likely to lower standards in their environmental laws for economic gains and to attract foreign investors.

### 6. Principle of Corporation:

The principle of cooperation is an emerging principle setting standards in international environmental law. This principle is also known as the principle of Good Neighborliness. The principle is based on principle 27 of Rio Declaration which states that:

*States and people shall cooperate in good faith and in a spirit of fulfilling of the principles embodied in the declaration and in the further development of international laws in the field of sustainable development.*

This principle could be achieved through the instrument of information sharing and participation in decision making.

### 7. Principle of Preventive Action:

Another rule of international law, however, an emerging principle of setting standard of international law is the principle of preventive action. This principle requires the prevention of damage to the environment and otherwise reduces, limit or control the activities which might cause such damages. For instance, the *Constitution of the Federal Republic of Nigeria 1999*<sup>19</sup> makes provision for the prevention of any damage to the environment and its constituents.

This principle requires urgent action to be taken before the occurrence of the damage. This is achieved by extensive body of domestic environmental protection legislations with national commitment to standards, access to environmental information and Environmental Impact Assessment (EIA) in relation to proposed activities and possibly penalty to deter the doing of the damage. This principle was applied and upheld in the *Gabcikovo-Nagymaros*<sup>20</sup> case where the ICJ stated that it was “mindful that, in the field of environmental protection, vigilance and protection is required on account of the often, irreversible character of damage to the environment and the very mechanism of reparation of this type of damage”.

<sup>17</sup> See Section 21 (2) of NESREA Act 2007 which talks of anticipated danger to public health or welfare.

<sup>18</sup> Where Spain challenged the application and enforcement by Canada of its fisheries conservation legislation in area beyond its exclusive economic zone but ICJ declined jurisdiction and the case was not determined on the merit.

<sup>19</sup> Section 20 CFRN 1999

<sup>20</sup> Hungary v. Slovakia

The reality is that there are no real boundaries national or international in environmental matters. This is because a polluted water or air in Nigeria may also mean polluted water in Benin Republic, Niger, Togo, Cameroon or Chad. The environment is one. More over a look from an airplane down the earth reveals no such boundaries or demarcations. It therefore behooves on the international community to ensure the protection of the environment through the rules and principles of the customary international law.

## 6. RECOMMENDATIONS

1. **Ratification:** To facilitate the translation of the SDG's into actions, Nigeria needs to ratify all relevant International Conventions and also domesticate these conventions to suit the peculiar circumstances in our terrain. This accord with Section 12 of the Constitution of the Federal Republic of Nigeria 1999 (as amended). Further, in the case of *Gen Abacha v. Gani Fawehinmi*<sup>11</sup>, the Supreme Court held that an International Treaty becomes binding only when enacted into domestic law by the National Assembly.
2. **Domestication:** In addition to the ratification of international conventions and treaties, they should also be domesticated.
3. **Principle of preventive action:** This requires the prevention of damage to the environment and otherwise reduces, limit or control the activities which might cause such damages.
4. **Enforcement:** Enforcement of the laws will lead to the actualization of SDGs.
5. **Punishment** (polluter pays principle): Punishing offenders of environmental laws with respect to SDGs will lead to the actualization of the goals. The principle of polluter pays establishes the requirement that the cost of pollution should be burn by the person responsible or causing the pollution.

## 7. CONCLUSION

- Finally, although a huge role is played in the protection of the environment by law, it is also a duty to all human beings, natural inhabitants, human organizations, institutions and associations to obey legal directives and commands.
- The government and other stakeholders should as a matter of deliberate policy target SD's rather than environmental repair.

## REFERENCES

- [1] Amari Omaka, Municipal and International Environmental Law (Lagos Lions Unique Concepts. 2012), 107-115.
- [2] Dr. C.T. Emejuru (Associate Prof) Rivers State University, Nkpolu.
- [3] Hungary v. Slovakia.
- [4] Koko toxic dump case: In that incident, an Italian Company in connivance in Nigeria Conspirators brought in toxic waste and dump same in koko village, Warri, the present Delta State. That act was condemned in its entirety and the law was enacted in prohibit such occurrence.
- [5] Lawrebee Atsebuga et al, Environmental in Nigeria: Theory and Practice (Second Edition: Ambik Press. 2010), 68-88.
- [6] Louis P. Pojman, Environmental Ethics: readings in Theory and Application (3<sup>rd</sup> ed. Wadsworth Thomson Legal Solutions.
- [7] (1) No Poverty (2) Zero hunger (3) Good Health and Well Being (4) Quality Education (5) gender equality (6) Clean Water and Sanitation (7) Affordable and Clean energy (8) Decent work and economic growth (9) Industry, Innovation and Infrastructure (10) Reduced inequalities (11) Sustainable cities and communities (12) Responsible consumption and production (13) Climate action (14) Life below water (15) Life on land (16) Peace, justice and strong institution (17) Partnership for the goals.

- [8] Philippe Sands “Principles of International Environmental Law” 2<sup>nd</sup> Edition Cambridge University Press (2004).
- [9] Principle 21 Stockholm Conference 1972. See also Principle 2 of Rio Convention which contains similar provision.
- [10] See Section 21 (2) of NESREA Act 2007 which talks of anticipated danger to public health or welfare.
- [11] Section 20 CFRN 1999.
- [12] The Trail Smelter Arbitration case: United States of America v. Canada in which case the company was sited on the border town of Trail in Canada about 12km from the United States. There was an emission of fumes and gases of high concentration of sulphur oxide from the plant into the US territory causing grave damage to life and property, consequent upon which the case was referred to an International tribunal for arbitration.
- [13] The Rio Declaration 1997 represents a series of compromises between developed and developing countries as well as balance between the objectives of environmental protection and economic development.
- [14] Where Spain challenged the application and enforcement by Canada of its fisheries conservation legislation in area beyond its exclusive economic zone but ICJ declined jurisdiction and the case was not determined on the merit.