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RESEARCH ARTICLE

# Lost in Transplantation: Revisiting Indigenous Principles as a Panacea to Natural Resource Sustainability in Nigeria

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**Abstract**

Although legal transplants are a most fertile source of legal development, a failure to adapt their methods to local traditions and cultures before putting them into practice often results in the loss of indigenous legal cultures. This article examines environmental jurisprudence in Nigeria. It aims to determine whether the failure of these laws to curb the trend of unsustainable natural resource use in the country is traceable to the indigenous legal cultures of sustainability that were lost in the process of transplanting colonial ideologies into the Nigerian legal system. The article submits that neglecting the innate standards of sustainability in Nigeria's environmental law-making (a practice adopted since the period of colonization) has made the extant laws on natural resource sustainability largely ineffective. It recommends reworking some of the laws to reflect the lost traditions and notes the cultural imperative for natural resource sustainability.

**Keywords:** Legal transplant; indigenous principles; environmental law; natural resources; sustainability; Nigeria

## Introduction

In legal literature, the term "legal transplant" is used to denote the borrowing of legal rules and institutions from one legal system and transferring them into another.[1] Borrowed from the lexicology of anatomy and surgery, the idea of transplanting laws has been used successfully to convey a widespread perception of the quasi-organic nature of law. It connotes the general idea that laws and legal institutions that once evolved in one particular legal and institutional environment can work outside their natural "habitat".[2] In practical terms, therefore, a legal transplant occurs when a legal structure or arrangement originating in one country is imported into one or more countries through the implantation of statutes, administrative guidelines or case law, or some combination of them, with domestic laws resulting from these transplants. Transplantation occurs either on an involuntary basis, mostly due to colonization, or voluntarily due to the great respect that the donee has for the donor's laws.[3] It may also occur to solve the problem of a legal reform that is shared by the donor and the donee, and has been solved more successfully by the donor.[4]

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1 M Graziadei "Legal transplants and the frontiers of legal knowledge" (2009) 10/2 *Theoretical Inquiries in Law* 723 at 730.

2 I Markovits "Exporting law reform: But will it travel" (2004) 37 *Cornell International Law Journal* 95.

3 V Perju "Constitutional transplants, borrowing and migrations" in M Rosenfeld and A Sajo (eds) *Oxford Handbook of Comparative Constitutional Law* (2012, Oxford University Press) 1304 at 1311.

4 JH Beckstrom "Transplantation of legal systems: An early report on the reception of western laws in Ethiopia" (1973) 21 *American Journal of Comparative Law* 557.

Transplantation or reception of laws may also occur if there is empirical proof to show a foreign solution has functioned effectively in practice.[5]

In Nigeria, legal transplantation began involuntarily. According to Omitola et al, before the advent of colonial rule, indigenous communities in Nigeria had developed rules and regulations that governed practically all aspects of living.[6] These rules and practices consisted of knowledge and values that influenced behavioural patterns and were transmitted from one generation to the next.[7] One such transmitted value was the need to ensure the sustainable use of natural resources. This was to guarantee that current use by one generation did not jeopardize the chances for the next generation to benefit maximally from the use of the same resources. However, with the exploration and extraction of natural resources for profit being the sole motive of the British incursion in Nigeria,[8] sustainable natural resource use practices and the ethics of cultural aestheticism that ensured the management of these resources were watered down and relegated to the background. By focusing on the monopolistic control and exploitation of Nigeria's natural resources, extant policies and regulations made at the early stage of Nigeria's colonization did not take into full cognizance the need to safeguard the environment against the negative effects of the unsustainable manner with which these resources were being tapped.[9] This process remains prevalent today.

This article posits that the hegemony of norms and practices that favoured economic considerations over natural resource sustainability, transplanted during colonialism, is still evident within the country's environmental laws. This notion is fundamental to how effective or otherwise these laws have been at solving the problems associated with the unsustainable use of natural resources in the country. To put this argument in proper perspective, the article first examines the concept of legal transplant, its theoretical basis as well as its pros and cons. It then compares the extant values, norms, practices and laws before colonization with those transplanted as a result of the colonization process and their impact on sustainable natural resource use. The next section of the article analyses environmental jurisprudence in Nigeria from the end of colonial rule to date, to highlight how the primacy of deriving economic benefits from natural resource use is an idea transplanted from colonization that continues to override the sustainable use of these same resources. The article then makes a case for going back to our roots and submits that, rather than neglecting innate standards of sustainable natural resource use in their entirety, a process of harmonizing indigenous principles into transplanted laws represents the most viable solution to the problem of natural resource sustainability in Nigeria.

## The concept of legal transplant: Politics and incentives

The ideological background of legal transplants dates back more than five decades, when developed countries insisted on transplanting legal solutions, remedies and legal acts into other countries, with the support of legal theory.[10] Etymologically, a "legal transplant" may be defined as any legal notion or rule that, after being developed in a "source" body of law, is then introduced into another, "host" body of law.[11] According to Ancel, a distinguished French judge and comparative lawyer, although

5 P Legrand "The impossibility of 'legal transplants'" (1997) 4/2 *Maastricht Journal of European and Comparative Law* 111 at 113.

6 B Omitola, OO Akinrinde and A Omitola "Traditional institutions and socio-economic development in Nigeria: A critical analysis" (2021) 2/4 *Journal of Law and Legal Reform* 539 at 541.

7 SI Ilesanmi "Customary law, the environment, and sustainable development" (2019) 3 *Uniport Law Review* 219 at 221.

8 C Pereira and D Tsikata "Contextualising extractivism in Africa" (2021) 2/1 *Feminist Africa* 14 at 30.

9 MY Yahaya "The political economy of oil exploration and environmental degradation in the south-south: Paradoxis of poverty and endowment" (2020) 2/1 *International Journal of Political Science and Governance* 75 at 77.

10 DB Schorr "Horizontal and vertical influences in colonial legal transplantation: Water by-laws in British Palestine" (2021) 61/3 *American Journal of Legal History* 308 at 312.

11 PW Geller "Legal transplant in international copyright: Some problems of methods" (1994) 3 *Pacific Basin Law Journal* 199 at 199.

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the law has often been seen as closely related to the identity of a nation or people, laws were usually borrowed from elsewhere, so that laws often operated in societies and places very different from those in which they had initially been developed.[12] In examining how laws and legal institutions move across jurisdictions, comparative law scholars have often employed the metaphor of a legal transplant to conceptualize both the hazards and benefits of taking in another legal system's rules.

To grasp the dogma of the theoretical basis of the concept of legal transplants fully, the famous debate between Otto Kahn-Freund and Alan Watson must be examined.[13] In his 1973 Annual Chorley Lecture at the London School of Economics and Political Science, Otto Kahn-Freund, a comparative law scholar, proposed a context-sensitive approach to legal reform based on legal borrowings.[14] Relying on the famous quotation of Montesquieu ("[t]he political and civil laws of each nation … should be so closely tailored to the people for whom they are made, that it would be a pure chance [un grand hazard] if the laws of one nation could meet the needs of another"),[15] Kahn-Freund referred in his lecture to the various groups of "environmental" criteria, which in Montesquieu's view determined the "spirit of the laws": geographical, sociological and economic, cultural and political. According to him, legal rules could be ordered along a continuum ranging from rules very close to "organic matter", for which the concept "transplant" was appropriate, at the one end of the continuum, to rules more like "mechanical matter" at the other. According to Kahn-Freund, the importance of taking into account the socio-political context (constitutional and political order) in the "donor" and "recipient" countries, in particular in areas where pressure groups and political interests exert powerful influence, cannot be over-emphasized in the process of transplantation.

In contrast, comparative legal historian Alan Watson insisted on the possibility of "transplanting" law without knowing or even caring about the context of the transplanted legal rules in the "donor" country.[16] Taking a historical perspective and focusing on the massive influence of Roman law on present-day civil laws in Europe and elsewhere, Watson sought to demonstrate the pervasiveness of legal transplants despite dramatically different socio-political contexts in "donor" and "recipient" countries. Watson explained this pervasiveness through the autonomy of legal rules and institutions and the need for authority. In his account, law reform often relies on the members of the legal profession who, rather than posing as "creators" of rules, prefer to refer to the prestige and authority of foreign normative solutions.[17] In his short work, *Legal Transplants: An Approach to Comparative Law*,[18] Watson argued that the proper task of comparative law as an academic discipline is to explore the relationship between legal systems.[19] Watson described legal transplants as the moving of a rule or a system of law from one country to another, or from one people to another.

Many influential academic minds have entered this debate. Heated controversies have surrounded not only the empirical question of the actual existence and spread of legal transplants but also the evaluative question of their success, as well as the normative question of their desirability. Pierre Legrand, taking a culturalist perspective, provocatively proclaimed "the impossibility of legal transplants", rejecting the possibility of displacing from one jurisdiction to another anything

12 See E Örücü "Comparative motley: Offerings from a comparative lawyer" (2021) 8/2 *Critical Analysis of Law* 9 at 12.
13 J Husa "Comparative law, literature, and imagination: Transplanting law into works of fiction" (2021) 28/3 *Maastricht Journal of European and Comparative Law* 371 at 375.
14 See J Liljeblad "The nature of the disciplinary system over Myanmar lawyers: Differences from international standards and implications for international legal transplants" (2021) 28/2 *International Journal of the Legal Profession* 181 at 187.
15 C Montesquieu "The spirit of laws" (complete works, 1748) at 19, available at: <https://cutt.ly/9MMYhJa> (last accessed 12 September 2023).
16 JK Collins *Tracing British West Indian Slavery Laws: A Comparative Analysis of Legal Transplants* (2021, Routledge) at 21.
17 Id at 45.
18 A Watson *Legal Transplants: An Approach to Comparative Law* (1993, University of Georgia Press).
19 Cited in A Hoshi "Interpretation of corporate acquisition contracts in Japan: A legal transplant through contract drafting" (2021) 16/1 *Asian Journal of Comparative Law* 106 at 115.

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other than a "meaningless form of words".[20] Legal sociologist Gunther Teubner considers the "legal transplant" metaphor to be misleading and advances "legal irritants" as an alternative concept.[21] Building on his theory of law as an autopoietic self-referential system, Teubner argues that, rather than mirroring society, legal rules or institutions are selectively tied to different discourses and fragments of society.[22] This coupling can be loose or tight depending on the sphere of law and the social processes with which law interrelates. Consequently, even rules considered by Kahn-Freund to belong to the category of "mechanical" matter, once transferred to a different national context, would hardly remain unaffected by the new environment. Importantly, they will not only interact with the host legal system but will also trigger a change in other loosely or tightly coupled societal sectors and production regimes. While acknowledging the time- and resource-saving advantages of legal transplants, at least within areas of facilitative law, Waelde and Gunderson noted that, in times of change when there is no time carefully to organize home-made legislation, transplantation of laws represents a viable option as, according to them, "it makes sense not to try and reinvent the wheel".[23] Other authors such as William Ewald,[24] Xanthaki[25] and Ajani,[26] on the other hand, have been more sceptical toward large-scale reliance on legal transplants, pointing out the importance of sensitivity to the local context and the involvement of local actors for the sustainable success of legal and institutional reform.

The last two decades have seen an exponential increase in the volume of legal transplantation. Although there is minimal literature on the process of legal transplantation, most of that literature presumes that the expected efficacy of the law is the predominant factor in determining which laws are transplanted, from where and to where.[27] One main reason that has however explained the growth of legal transplants in the world today is globalization. According to Shah, globalization brings laws and legal cultures into more direct, frequent, intimate, and often complicated and stressed contact.[28] It influences what legal professionals want and need to know about foreign law, how they transfer, acquire and process information, and how decisions are made. Apart from globalization, other reasons suggested by legal scholars as the predominant factor in determining which laws are transplanted include, but are not limited to: authority; prestige; imposition; chance; necessity; expected efficacy of the law; and political, economic and reputational incentives from the countries and third parties.[29]

In examining the motivations on which a given legal transplant is founded, Jonathan Miller identifies four types of transplants: the cost-saving transplant; externally-dictated transplant; entrepreneurial transplant; and legitimacy generating transplant.[30] The cost-saving transplant is a type of regulation that is borrowed from another country's legal system primarily to avoid the expensive

20 See Legrand "The impossibility", above at note 5 at 115.

21 G Teubner "Societal constitutionalism: Background, theory, debates" (2021) 15/4 *International Constitutional Law Journal* 357 at 360.

22 Id at 365.

23 Cited in TS Goldbach "Why legal transplants?" (2019) 15 *Annual Review of Law and Social Science* 583 at 598.

24 W Ewald "Comparative jurisprudence (II): The logic of legal transplants" (1995) 43/4 *The American Journal of Comparative Law* 489.

25 H Xanthaki "Legal transplants in legislation: Defusing the trap" (2008) 57/3 *International & Comparative Law Quarterly* 659.

26 G Ajani "By chance and prestige: Legal transplants in Russia and Eastern Europe" (1995) 43/1 The *American Journal of Comparative Law* 93.

27 J Husa "Developing legal system, legal transplants, and path dependence: Reflections on the rule of law" (2018) 6/2 *The Chinese Journal of Comparative Law* 129; JW Cairns "Watson, Walton and the history of legal transplants" (2012–13) 41 *Georgia Journal of International and Comparative Law* 638; N Garoupa and A Ogus "A strategic interpretation of legal transplants" (2006) 35/2 *The Journal of Legal Studies* 339.

28 P Shah "Globalisation and the challenge of Asian legal transplants in Europe" (2005) *Singapore Journal of Legal Studies* 348.

29 J Gillespie "Globalisation and legal transplantation: Lessons from the past" (2001) 6/2 *Deakin Law Review* 286 at 295.

30 JM Miller "A typology of legal transplants: Using sociology, legal history, and Argentine examples to explain the transplant" (2003) 51/4 *The American Journal of Comparative Law* 839.

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process of developing an original solution. This type of transplantation is usually connected with developing countries that rarely make their own regulations, mostly due to a lack of financial resources. Externally-dictated transplants have probably been the most common motivation for the implementation of foreign legal regulations throughout history. The common feature of externally-dictated transplants is an element of dependency between the donor and the recipient. Entrepreneurial transplants refer to a class of transplants that appear due to the effort of individuals or groups (mostly non-governmental organizations, but also companies) to introduce and encourage some foreign regulation. These individuals or groups may be people from developing countries who obtained their degrees abroad and later returned to their homeland. They are perceived as experts and, as such, can influence legal changes, even though they do not possess any formal power. The legitimacy-generating transplant is a transplant from a developed country to a developing one, sometimes even one with rudimentary legal institutions; in this case, solutions from that country may therefore be adopted even though they are not the best solutions available.

Some advantages of transplanting laws include: improving the national legal system of a particular country or territory;[31] promoting a uniform global legal framework, particularly in the areas of international trade, environmental protection, antiterrorism, international peace; the protection of human rights; economic feasibility;[32] and the speed of solving problems associated with the lack of legal regulation of certain social relations.[33] On the other hand, the production of unnecessary legal norms, inconsistency of legal borrowing with socio-economic conditions, and harm to business entities and society as a whole are some of the major shortcomings.[34]

The theoretical basis of this article aligns with the context-sensitive approach to legal reform based on legal borrowings, as espoused by Otto Kahn-Freund.[35] Although the process of transplanting laws is desirable, such transplanted laws should be purposefully designed for the persons for whom they are intended, taking into account their geographical, sociological and economic, cultural and political peculiarities. On a continuum, legal norms may be arranged from those that are closest to "organic matter", for which the term "transplant" is suitable, to those that are more similar to "mechanical matter", at the opposite end of the spectrum. Therefore, it cannot be overstated how important it is that the process of transplantation takes into account the socio-political context (constitutional and political order) in the "donor" and "recipient" countries, particularly in areas where pressure groups and political interests exert a strong influence.

This article now examines the concept of natural resource sustainability in Nigeria within the context of indigenous laws and systems and transplanted British rules or systems of laws.

## Natural resource sustainability in the pre- and colonial era in Nigeria: Impact of law and normative practices

### *Sustainable natural resource use in the pre-colonial era*

The consensus arising from all studies is that culture (the transmission of knowledge, values and other factors that influence behaviour) is usually transferred from one generation to the next.[36]

31 SJ Heim "Predicting legal transplants: The case of servitudes in the Russian Federation (1996) 6 *Transnational Law and Contemporary Problems* 187 at 191.

32 JB Wiener "Something borrowed for something blue: Legal transplants and the evolution of global environmental law" (2000) 27 *Ecology Law Quarterly* 1295 at 1297.

33 C Alkon "Plea bargaining as a legal transplant: A good idea for troubled criminal justice systems" (2010) 19 *Transnational Law and Contemporary Problems* 355.

34 B Schafer "Legal transplants and legal downloads" (2001) 15/3 *International Review of Law, Computers & Technology* 301 at 311.

35 See Liljeblad "The nature of the disciplinary system" above at note 14 at 187.

36 OE Khalil and A Seleim "Culture and knowledge transfer capacity: A cross-national study" (2010) 6/4 *International Journal of Knowledge Management* 60.

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Ideas learned through experience and participation comprise a set of rules or guidelines that generate specific forms of conduct. In pre-colonial Nigeria, the mechanisms for intergenerational transmission of values, norms and standards of behaviour were relatively straightforward.[37] Cultural values were transmitted through language, material objects, rituals, institutions and art from parents or caregivers to children and from one generation to the next. Those transmitted values and norms included the values of environmental and natural resources management. Although the technological advancement of Nigeria in this era was not so prominent, the people appreciated the need to manage the environment as a natural resource, with a particular focus on how management affects the quality of life for both present and future generations.[38]

These values, transmitted from one generation to another, recognized that people and their livelihoods rely on the health and productivity of the environment and its natural resources, and that their actions as responsible stewards play a critical role in maintaining their health and productivity. In essence, the environment was regarded as the natural support base for economic prosperity and social well-being for present and future generations. Therefore, rules and agreed standards of behaviour were put in place on the understanding that ecosystems have the natural ability to regenerate and regulate themselves. There was also the understanding that, if not regulated, man's anthropogenic activities may alter this natural dynamic and impede its capacity for intergenerational use.[39] According to Leke and Leke, the objective of rational environmental use was to ensure that this natural dynamic was maintained to the greatest extent possible.[40]

In the view of Archibong, the, largely unwritten, laws that existed during this period focused on natural resource management.[41] They regulated the way and manner in which people interacted with or used the natural environment to ensure the sustainability of economic activities such as agriculture, mining, fisheries and forestry. These laws were transmitted in the form of taboos, myths, legends, beliefs and customs, religious practices, ceremonies, festivals and rituals.[42] The understanding of the imperatives of living in harmony with nature as the support base for people's well-being was the underpinning philosophy behind these laws; in order to maintain the regenerative capacity of nature, these laws were accompanied in practical terms by practices such as shift cultivation in agriculture,[43] closed seasons in fisheries,[44] designated sites for construction materials, as well as enforced planting and harvesting seasons.[45] The combination of these values and practices guaranteed that, in their interaction with the environment, people took enough for their needs and not for their greed, being mindful that natural resources were legacies for not only themselves but generations unborn. For instance, in Nigeria's pre-colonial traditional setup, forests served diverse purposes.[46] Some forests served the purpose of building huts and thatched houses, while other

37 MO Nwalutu "The dictum, Igbo enwe eze (Igbo has no king): Socio-cultural underpinnings for understanding the current Igbo peoples' political dilemma" (2018) 9/1 *Sociology Mind* 86 at 90.

38 BA Adeyeye "African indigenous knowledge and practices and the 2030 Sustainable Development Goals: Exploring its uniqueness for quality knowledge sharing" (2019) 1/4 *Journal of Humanities and Education Development* 147 at 149.

39 See id at 151.

40 JO Leke and EN Leke "Environmental sustainability and development in Nigeria: Beyond the rhetoric of governance" (2019) 14/1 *International Journal of Development and Management Review* 25 at 32.

41 B Archibong "Explaining divergence in the long-term effects of precolonial centralization on access to public infrastructure services in Nigeria" (2019) 121 *World Development* 123 at 127.

42 YA Collins et al "Plotting the coloniality of conservation" (2021) 28/1 *Journal of Political Ecology*, available at: <https://eprints.whiterose.ac.uk/180709/3/Collinsetal_2021_Plottingthecolonialityofconservation_Proof_V2.pdf> (last assessed 12 September 2023).

43 C Müller-Crepon "Continuity or change? (In) direct rule in British and French colonial Africa" (2020) 74/4 *International Organization* 707 at 712.

44 UJ Akpan "Economic diplomacy in Ibibioland: The pre-colonial perspective" (2019) 12/1 *International Journal of Social Sciences* 1 at 10.

45 Id at 15.

46 GE Odok "Commodification of forestlands and assault on indigenous knowledge within forest-dependent communities of Cross River State, Nigeria" (2019) 74/2 *Transactions of the Royal Society of South Africa* 126 at 129.

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forests served cultural uses. Due to how sacred and purposeful forests were, pre-colonial primitive communities protected the forests against wanton destruction owing to the realization that their health, well-being and survival rested on the forests' resources.[47] In other words, the socio-political system of indigenous Nigerian societies was closely interlinked to the environment and natural resources.

Over time, these practices developed into a sustainable system through which these resources were utilized over centuries without impairing their capacity to support both current and future generations. According to Ibrahim et al, these practices thus influenced personal and broader behaviour and fostered a sense of identity and collective responsibility towards natural resource use; strong traditional institutions and authorities existed to back these practices.[48] These institutions and authorities enjoyed the support of all members of society, highlighting social cohesion in efforts to monitor and manage the use of natural resources. Sanctions ranging from fines to forfeiture of the harvest to, in extreme cases, banishment also existed to ensure compliance with these norms and standards.[49] Conclusively, the understanding that natural resources were a buffer against poverty, risk and seasonal farming was central to the drive for natural resource sustainability.[50] This idea remained prevalent until the advent of colonialism.

### *Natural resource use and sustainability in the colonial era*

The advent of colonialism, which began in Nigeria in 1884, severely disrupted the harmony and close ties that had existed between the indigenous people and nature.[51] The white colonialists saw the indigenous populations as people who feared nature and so had failed to tame it for their benefit. Thus, the colonialist government regarded the environment and its natural resources as an untapped goldmine to be explored and extracted, solely for profit-making. The colonists did not attempt to understand traditional society and the knowledge system that they met on the ground.[52] Rather, in a bid to exercise firm control over their exploitative and extraction motives, policies and rules that focused solely on political and economic interests replaced the existing structure that balanced economic interests with environmental protection and conservation.[53] Nwodim and Adah's study showed that the earliest economic policies in the colony of what is now known as Nigeria were geared toward the benefit and interest of the colonizing powers, with little or no consideration for the environmental costs of these economic activities.[54] According to Ogunba, during this time there seemed to be an overall disinterest in, or lack of awareness about, environmental issues; the few times the colonial administrators convened environmental meetings that were ostensibly aimed at natural resource protection, the main aim was to promote trade and enhance the economic growth of their countries.[55]

47 Id at 128.

48 SS Ibrahim, H Ozdeser and B Cavusoglu "Testing the impact of environmental hazards and violent conflicts on sustainable pastoral development: Micro-level evidence from Nigeria" (2020) 22/5 *Environment, Development and Sustainability* 4169 at 4171.

49 FU Asikhia Festus "Nigeria: The anatomy of her existence", available at: <https://cutt.ly/8MMIXqo> (last accessed 12 September 2023).

50 I Bassey and CE Ekpo "Evaluating the place of the Ekpe traditional institution as a tool for nation-building in pre-colonial Cross River region" (2019) 4 *Historical Research Letter* 8 at 12.

51 S Ocheni and BC Nwankwo "Analysis of colonialism and its impact in Africa" (2012) 8/3 *Cross Cultural Communication* 46 at 55.

52 Id at 52.

53 O Nwodim and RU Adah "Colonial policies and post-independence development in Nigeria" (2021) 4/4 *International Journal of Social Science and Human Research* 795 at 799–801.

54 Ibid.

55 A Ogunba "An appraisal of the evolution of environmental legislation in Nigeria" (2016) 40 *Vermont Law Review* 673 at 675–78.

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Nnadozie summarized the period of colonial rule and its effect on natural resource use in his article "Pollution control in Nigeria: The legal framework".[56] According to him, the colonial period was a period of commercial preoccupation in Nigeria. The major motivation behind this was the abundance of natural resources and the desire to secure access to these resources solely to develop the structures of imperial and British colonial power. Thus, there were no laws directed at either protecting the environment or the natives from the polluting effects of the government's economic activities, nor were there any laws requiring companies to carry forth their activities in a responsible manner and ensure the sustainable use of resources. As opined by Ogbodo, any laws that might have restricted economic activities in the form of environmental requirements would have been considered counter-productive and as such were dispensed with.[57]

The effect of this trend was that pollution and land degradation ensued with the activities of extractive industries in the country.[58] The unsustainable use of natural resources held sway, even though some ordinances were then in force. Using the mining ordinances issued during this period as an example, Home explained that these laws were issued with export in mind.[59] According to him, the licences required the mining companies to consider the protection of agricultural lands, forests and rivers, and the restoration of land to a state suitable for agricultural operation after mining had stopped, particularly if such land had previously been of pastoral value. However, enforcement was perfunctory and profit motives dominated. In addition, the miners were content with complying with the requirement of paying rents and royalties to the colonial government, as well as the native community, rather than complying with the requirement for sustainability. Hence, natural resource sustainability norms and practices before the arrival of the British were reinvented for the betterment of the socio-economics of the home economy.

Although the colonial administrators involved in national governance during this period did not pursue or prioritize environmental protection, the development of trade and emerging urban agglomerates eventually necessitated the need for regulation.[60] However, despite the preponderance of environmental problems impacting both the environment and the natives' livelihoods, the emphasis of these laws was on hygiene and sanitation, with only minimal bearing on the environment. The 1916 Criminal Code Act[61] for instance (a law that is still in force today) contains aspects of public health violations rather than environmental protection. It prohibited the sale of noxious food or drink and the adulteration or poisoning of any article of food or drink meant for sale[62] and criminalized the carrying of dead animals into slaughterhouses and the corrupting or fouling of water from any source that made it unfit for use.[63] In addition, the act prohibited the burying of corpses in houses, premises or within a hundred yards of such structures, or any open space situated within a township,[64] and also the vitiation of atmosphere in any place that made it noxious to the health of persons in the neighbourhood, or the carrying out of any act likely to spread infectious diseases.[65] In the opinion of Cornelius et al, these provisions may allude to environmental

56 KC Nnadozie "Pollution control in Nigeria: The legal framework", cited in Ogunba, id at 676.

57 SG Ogbodo "Environmental protection in Nigeria: Two decades after the Koko Incident" (2009) 15/1 *Annual Survey of International & Comparative Law*, available at: <https://digitalcommons.law.ggu.edu/annlsurvey/vol15/iss1/2> (last assessed 12 September 2023).

58 BB Orubebe "Soil governance and sustainable land use system in Nigeria: The paradox of inequalities, natural resource conflict and ecological diversity in a federal system" in H Yahyah et al (eds) *Legal Instruments for Sustainable Soil Management in Africa. International Yearbook of Soil Law and Policy* (2020, Springer) 97 at 101–03.

59 R Home "From cantonments to townships: Lugard's influence upon British colonial urban governance in Africa" (2019) 34/1 *Planning Perspectives* 43 at 50.

60 See Ogunba "An appraisal of the evolution", above at note 55 at 677.

61 Now cited as cap C38, Laws of the Federation of Nigeria (LFN) 2004.

62 Id, sec 243.

63 Id, secs 244–45.

64 Ibid.

65 Id, sec 247.

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protection; however, in their practical application, the provisions are focused on public health, not environmental issues, and can hardly be regarded as serious environmental legislation.[66]

Gandy described the laws made by the colonial administration as mere land-use planning laws and not sustainable natural resource use laws, since they contained dos and don'ts on land-use planning, particularly as it concerned separating the white supremacists from the natives and designating areas for specific activities.[67] Citing the example of the Nigerian Town and Country Planning Ordinance (No 4 of 1946), Gandy contends that the law was enacted to provide for the planning, improvement and development of different parts of the country through planning schemes initiated by planning authorities based on the 1932 British Town and Country Planning Act.[68] There was nothing in the law to suggest that it had any bearing on the sustainable use of the country's natural resources. Rather, the law was simply made to make the living conditions of the officers of the colonial government more pleasurable, limit interaction with natives and ensure continued exploration activities. The "planning" in the law was to prohibit indigenous people from accessing areas considered commercially viable. Studies conducted during this period show that in the Lagos colony in the early 1900s, the provision of good potable water to residents was sometimes resisted because of the perceived high infrastructural cost involved. Limited investment in water infrastructure meant that only 10 per cent of residents in metropolitan Lagos were directly connected to the municipal water system; the rest of the city had to rely on wells and creeks.[69]

It is therefore safe to posit that the culture of sustainable natural resource use prevalent before the advent of colonial rule was eroded by the economic institutions created by the British colonial state that favoured "use" over "conservation". The laws transplanted at colonization did little or nothing to deal with environmental neglect, as the laws were not meant for natural resource protection. As shown in the next section, this lack of congruence between the need to develop the economy using these resources and the need to use these resources in a sustainable manner for both present and future generations represents a legacy bequeathed to the post-colonial system. This will be made evident by the failure of these laws, which are all a relic of the economic focus of the colonial administration to achieving natural resource sustainability.

## The colonial legacy, post-colonization laws and the continued perpetuation of unsustainable natural resource use in Nigeria

Resource dependency is the most telling punitive legacy that colonization bequeathed to Nigeria.[70] Closely knitted to this are the inherited policies, practices and structures transplanted into the Nigerian legal system as the country moved toward independence. These policies and structures permeate every stratum of Nigerian society including its environmental jurisprudence. Extant policies and regulations made at the early stage of the country's existence as an independent nation continued with the practice of not taking into full cognizance the need to shield the environment from the negative effects of the unsustainable manner in which natural resources were being extracted. This position was further heightened by the discovery in the 1950s of crude oil in commercial quantities in Olobiri, an area in the Niger Delta region of Nigeria.[71] This further made the country a beehive for extractive industries, given the expected earnings from the exploitation and

66 N Cornelius, O Amujo and E Pezet "British 'colonial governmentality': Slave, forced and waged worker policies in colonial Nigeria, 1896–1930" (2019) 14/1 *Management & Organizational History* 10 at 25.

67 M Gandy "Planning, anti-planning and the infrastructure crisis facing metropolitan Lagos" (2006) 43 *Urban Studies* 371 at 375–78.

68 Ibid.

69 See Cornelius, Amujo and Pezet "British 'colonial governmentality'", above at note 66 at 28.

70 ON Njoku "Towards building Nigeria into a nation" (2019) 28 *Journal of the Historical Society of Nigeria* 1 at 13–14.

71 E Akpotor "Crude oil exploration and exploitation in Niger Delta: A Christian concern" (2019) 7/2 *International Journal of Innovative Development and Policy Studies* 38 at 40.

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sale of the newly discovered natural resource. The economic boom associated with this discovery came at a cost, particularly for the environment given the unprecedented levels of water pollution arising from the several cases of oil spillage in communities where these exploration activities were taking place.[72]

The need to address these negative environmental impacts of oil exploration and to prevent further ecological damage, particularly to the main oil-bearing regions, led to the enactment of several laws during this period, many of which are yet to be repealed or amended.[73] However, given the inherited structure of environmental lawmaking that prioritized the control and exploitation of Nigeria's natural resources, the environmental legislative framework focused solely on sustaining the exploration of crude oil, which was regarded as the most economically important resource. The provisions of these laws did not change the ethos of environmental practice associated with the colonial economy. Rather, they supported the degradation of the environment in a self-righteous justification of the need for accelerated development of the post-colonial economy.

The first of these laws was the Oil Pipelines Act 1956.[74] This act provided the procedure for obtaining a licence to build, establish and maintain pipelines for use by oilfields and oil mining companies in Nigeria. The objective of the law was to standardize the process of obtaining licences and ensure that the pipelines used by exploration companies were fit for purpose, to prevent spillages.[75] Although the language of the act suggests concern for the consequences of oil exploitative pursuits on the environment, economic concerns still took precedence over effecting environmental safeguards. Section 5(1) of the act provides that the holder of such a permit is entitled:

> "[T]o enter together with his officers, agents, workmen and other servants and with any necessary equipment or vehicles, on any land upon the route specified in the permit or reasonably close to such route for the following purposes
> (a) to survey and take levels of the land;
> (b) to dig and bore into the soil and subsoil;
> (c) to cut and remove such trees and other vegetation as may impede the purposes specified in this subsection; and
> (d) *to do all other acts necessary to ascertain the suitability of establishment of an oil pipeline or ancillary installations.*"[76]

Furthermore, the grant of the licence "shall entitle the holder, with such persons, equipment or vehicles as aforesaid to pass over land adjacent to such route to the extent that such may be necessary or convenient for the purpose of obtaining access to land upon the route specified".[77] Section 6 of the act provides that the consent of the owner or occupier of such adjacent land must be sought and compensation paid to the owners or occupiers for any damage done. However, in the author's view, by granting the licensee the right to do all that is necessary to establish an oil pipeline, the proviso of obtaining consent represents an afterthought and a tame attempt to protect the environment. In practice, licence holders often capitalized on the naivety of landholders by tempting them with huge sums of money to give up their lands, sometimes resorting to force and intimidation in

72 A Nwozor "Depoliticizing environmental degradation: Revisiting the UNEP environmental assessment of Ogoniland in Nigeria's Niger Delta region" (2020) 85/3 *GeoJournal* 883 at 885–86.

73 T Bodo and BG Gimah "Oil crisis in the Niger Delta Region of Nigeria: Genesis and extent" (2019) 15/36 *European Scientific Journal* 141 at 149.

74 Now cited as cap 07, LFN 2004.

75 Id, preamble.

76 Emphasis added.

77 Oil Pipelines Act, sec 5(1).

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order to achieve their aim.[78] This, in the author's opinion, is a relic of the colonial tactic of using any means possible to gain access to natural resources at the early stage of colonization. This law remains in force today and none of its provisions has been amended.

The Oil in Navigable Waters Act of 1968[79] was the next major piece of legislation to be enacted during this period. This act, which sought to ensure the sustainability of the living components of the ocean, required every ship to be fitted with anti-pollution equipment to prevent the indiscriminate discharge of oil.[80] Monetary fines were attached as punishments for such discharges[81] and, where discharge was inevitable or accidental, records detailing such occasions of discharges were to be maintained.[82] Although Izoukumor described this act as the first major piece of environmental legislation with a firm position on sustainability,[83] the monetary fines attached to the violations of its provisions are inadequate when compared with modern economic realities and the cost of ecological clean-ups. The act, which is still in force, provides in section 6 that a person guilty of an offence under section 1, 3, or 5 shall, on conviction by a High Court or a superior court or summary conviction by any court of inferior jurisdiction, be liable to a fine; however, the maximum fine that a court below a High Court can impose for such an offence shall not exceed NGN 2,000 (approximately USD 4.81). The Petroleum Act 1969[84] in its stead, vested in the Nigerian federal government ownership of all onshore and offshore revenue from petroleum exploration.[85] A review of the provisions of this act shows that it failed to make any meaningful impact, due to its failure to break away from the colonial-inspired system that focused on revenue generation rather than environmental protection. In the author's view, the act was vague as to how to ensure that oil companies engaged in environmentally sound activities, thus making it unclear how issues regarding liability for damages to the environment were to be treated. The act remains in force. The Petroleum Products and Distribution (Anti-Sabotage) Act of 1975 was enacted to tackle the wilful destruction of petroleum installations and the deliberate obstruction of transportation infrastructure by individuals or groups in local communities. Such actions not only disrupted petroleum production and distribution but increased the incidence of oil spillages, resulting in the pollution of adjoining lands and water bodies. A death sentence or imprisonment for a term not exceeding 25 years was prescribed as punishment for anyone caught in the act of sabotage.[86] Good as the provisions of this law were, the underpinning motive was to ensure the seamless production and distribution flow of petroleum products. Any allusions to environmental protection were merely accidental.

The Land Use Act of 1978,[87] The River Basins Development Authorities Act of 1986,[88] The Sea Fisheries Act of 1971 and the Endangered Species (Control of International Trade and Traffic) Act of 1985[89] were some of the non-petroleum focused laws enacted as the country began to nationalize the commanding heights of the economy and achieve economic independence. The common denominator of these laws was the vague manner with which the exact policy direction of the government on the sustainable use of natural resources was couched. The impulsive nature of these laws and this vague correlation reflected an evident knowledge gap on the modalities to ensure the

78 Y Usman "Green criminology and degradation of the environment by activities of multinational oil companies in Nigeria's Niger Delta" (2021) 9/12 *Open Journal of Social Sciences* 317 at 320.
79 Now cited as cap H1 7, LFN 2004.
80 Id, sec 1.
81 Id, sec 13.
82 Id, sec 10.
83 NA Izoukumor "A critical assessment of the pollution prevention laws and regulations of Nigeria: Why they failed to protect the environment of Nigeria" (2019) 87 *Journal of Law Policy and Globalization* 47 at 50.
84 Now cited as cap P10, LFN 2004.
85 Petroleum Act 1969, sec 1.
86 The Petroleum Products and Distribution (Anti-Sabotage) Act 1975, sec 2.
87 Cap L5, LFN 2004.
88 Cap R9, LFN 2004.
89 Cap E9, LFN 2004.

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sustainable use of Nigeria's natural resources. The laws were over-generalized and largely ineffective in dealing with any natural resources sustainability issues that arose at the country's developmental stage. The colonial legacy of profitability rather than sustainability was still clearly manifest in these laws, which relegated natural resource sustainability to the background. It is important to note that, apart from the Endangered Species (Control of International Trade and Traffic) Act, which has been amended to increase the monetary fines payable for violations, all these other laws remain in force in their original formulation.

Recent decades (beginning from 1988 when the Harmful Waste Criminal Provisions Decree No 42 and the Federal Environmental Protection Agency Decree were promulgated in the aftermath of the Koko dumping incident of 1987) have been marked by more comprehensive legislative efforts constructed in the consciousness of environmental management and advancement.[90] The Nigerian government enacted considerable national environmental framework legislation, providing for land use planning, environmental impact assessment and pollution control. One example is the National Policy on the Environment (formulated in 1989)[91] that, according to Egunjobi, was, and remains, the most positive achievement chronicled in the area of environmental management in Nigeria.[92] This policy's objective encircled the proper management of the environment to meet the needs of present and future generations to secure for all Nigerians the quality of environment sufficient for their health and well-being. Laudable as the focus of this policy may seem, it represents a mere aspiration by the government to achieve natural resource sustainability and lacks the force of law. The scope of environmental legislation further progressed with the Environmental Impact Assessment Act, enacted in 1992.[93] This act infused environmental imperatives into development project planning and execution by spelling out in its provisions the need for an environmental impact assessment before any public or private projects commenced. Under this legislation, any project, private or public, must be appraised to ascertain the degree of its footprint, either negatively or positively, on the environment. The act, which is yet to be amended three decades since it was enacted, has remained bedevilled by implementation challenges. This is largely attributed to its poorly drafted sections, which sometimes overlap or are contradictory.[94] The effect of this is that the conduct of environmental impact assessment in Nigeria is seen as a mere formality, that is a paperwork exercise involving the preparation of a lengthy technical report to justify a development decision that has already been taken. As such, rather than offering a comprehensive report, investors submit data that merely satisfies the basic requirements of the act. This, in the author's view, is a result of a lack of congruence between the provisions of the act and the essence of sustainability.

In the aftermath of democratic rule being introduced in the country, efforts were made to incorporate environmental provisions in the new constitutions.[95] The new constitutional provisions fell into three categories: preamble statements; directive principles of state policy; and basic rights or duties for citizens. Unlike other constitutions that provide direct avenues for environmental protection and management as fundamental rights,[96] the Nigerian Constitution left doubts about the

90 See Ogbodo "Environmental protection", above at note 57 at 24.

91 The National Policy on the Environment has been revised a number of times, most recently in 2016.

92 L Egunjobi "Issues in environmental management for sustainable development" (1993) 13 *Environmentalist* 33.

93 Cap E12, LFN 2004.

94 EC Enoguanbhor et al "Key challenges for land use planning and its environmental assessments in the Abuja city-region, Nigeria" (2021) 10/5 *Land* 443 at 445–46.

95 The roadmap to creating an environmentally conscious constitution in Nigeria began with the 1979 constitution. Although this constitution did not contain intuitive provisions on the environment or natural resource use, its specific provisions on refuse clearance and solid and liquid waste management may have set the pace for environmental management in Nigeria. However, with heightened environmental awareness and the environment becoming more of a political priority, it became imperative for the Nigerian apex law to reflect in definite terms its environmental consciousness.

96 The Constitution of the Democratic Republic of Congo 1992, sec 42 guarantees every citizen the right to a satisfactory and sustainable healthy environment with a duty to defend it. It further provides that the state shall regulate the use,

status and effect of its constitutional provision on the sustainable use of natural resources, a practice indigenous to its people. Section 20 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) (1999 Constitution) states that, "the state shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria". This article considers that provision to be a standard of attainment that is neither justiciable nor enforceable, given that the provision falls under the Fundamental Objectives and Directive Principles of State Policy, which are non-justiciable under section 6(6)(c) of the 1999 Constitution.[97] In the author's opinion, any meaningful environmental constitutional principles incorporated into legislation must be made justiciable. Not only is the provision non-justiciable, but there is also no reference to the need for sustainable use of the natural resources that the constitution seeks to protect.[98] Although, according to Nwauzi, the fundamental objectives and directive principles under chapter II of the 1999 Constitution express a long-term political commitment, they alone clearly cannot provide an adequate framework for effective environmental governance, let alone sustainable natural resource use.[99] This article finds the position of the constitution to be influenced by the early post-colonial environmental legislation, which tended to be organized around economic activities, with environmental goals neither visible nor appreciated. Rather than a holistic approach to natural resource sustainability, the constitution is piecemeal, dealing with specific environmental media, such as forestry, water, marine resources and air quality.

It is noteworthy that, in recent years, references to "sustainable development" have increasingly surfaced in the statutory regimes on environmental protection in Nigeria. For instance, the environmental regulations[100] made under section 34 of The National Environmental Standards and

protection and conservation of natural resources. The South African Constitution 1996, sec 24 not only covers a right to a healthy environment but one protected for the benefit of both present and future generations through legislative means. This constitution's reflection of sustainable natural resource use also stipulates the policy direction that these legislative means must take to guarantee a healthy environment for all. Any environmental legislation must first forestall pollution and ecological degradation, aggrandize conservation and, most importantly, secure the sustainable use of natural resources while promoting justifiable economic and social development.

97 The section provides: "The judicial powers vested per the foregoing provisions of this section shall not except as otherwise provided by this Constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision conforms with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution."

98 It is important to note that, despite the restrictions placed on the justiciability of sec 20 by the reading it in combination with sec 6(6)(C), a number of judicial decisions are beginning to establish the importance of sustainable natural resource use. Two such cases are *Jonah Gbemre v Shell* (2005) AHRLR 151 and *Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation* [2019] 5 NWLR (pt 1666). These decisions are certainly laudable, but a significant impact is yet to be felt across the overall spectrum of sustained natural resource use in Nigeria.

99 LO Nwauzi "How fundamental are the fundamental objectives and directive principles under chapter II of the Constitution of Nigeria 1999" (2017) 3/3 *Donnish Journal of Law and Conflict Resolution* 29 at 31–32.

100 Since 2007 when NESREA came into force, 35 sets of regulations have been made: National Environmental (Wetlands, River Banks and Lake Shores) Regs, SI No 26, 2009; National Environmental (Watershed, Mountainous, Hilly and Catchments Areas) Regs, SI No 27, 2009; National Environmental (Sanitation and Wastes Control) Regs, SI No 28, 2009; National Environmental (Permitting and Licensing System) Regs, SI No 29, 2009; National Environmental (Access to Genetic Resources and Benefit Sharing) Regs, SI No 30, 2009; National Environmental (Mining and Processing of Coal, Ores and Industrial Minerals) Regs, SI No 31, 2009; National Environmental (Ozone Layer Protection) Regs, SI No 65, 2022; National Environmental (Food, Beverages and Tobacco Sector) Regs, SI No 33, 2009; National Environmental (Textile, Wearing Apparel, Leather and Footwear Industry) Regs, SI No 34, 2009; National Environmental (Noise Standards and Control) Regs, SI No 35, 2009; National Environmental (Chemicals, Pharmaceuticals, Soap and Detergent Manufacturing Industries) Regs, SI No 36, 2009; National Environmental (Standards for Telecommunications / Broadcasting Facilities) Regs, SI No 11, 2011; National Environmental (Soil Erosion and Flood Control) Regs, SI No 12, 2011; National Environmental (Desertification Control and Drought Mitigation) Regs, SI No 13, 2011; National Environmental (Base Metals, Iron and Steel Manufacturing / Recycling Industries) Regs, SI No 14, 2011; National Environmental (Control of Bush / Forest Fire and Open Burning) Regs, SI No 15, 2011; National Environmental (Protection of Endangered Species in International Trade) Regs, SI No 16, 2011; National Environmental (Domestic and Industrial Plastic, Rubber and Foam Sector) Regs, SI No 17, 2011;

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Regulations Enforcement Agency (NESREA) (Establishment) Act,[101] all have provisions that relate to sustainable use of the environment. This article, however, finds a variety of structural weaknesses in the capacity of these laws to promote sustainable natural resource use. First, these regulations do not provide the policy tools to implement sustainability. Secondly and most importantly, more material concepts, such as the precautionary principle, the polluter must pay principle, environmental risk management as well as the internalization of environmental costs through environmental taxation, while acknowledged in some of these regulations, are not sacrosanct in their application. It is imperative to state that these material concepts, although not institutionalized in the form that we know them today, all formed part of the unwritten laws of natural resource management that were eroded during the process of legal transplantation during the colonialist regime.

In light of the foregoing, Nigeria's capacity as a post-colonial state to internalize and enforce the environmental norm of natural resources sustainability is still being affected by the legacy of the colonial administrative apparatus. The colonial authorities were not uninterested in the environment, and occasionally passed regulations on rivers, mining and wildlife to facilitate their orderly exploitation and management. By definition and practice, the system transplanted during the colonial period was designed to serve economic and political ends that were often at odds with the long-term environmental interests of the colonized. In this scheme, natural resources were managed principally to serve imperial markets, while colonial administrations propagated new discourses and practices for the utilitarian and instrumental management of natural resources. The legacy today has been a continuation of inappropriate centralized government decision-making and frequent reliance on cumbersome, authoritarian modes of regulation, which together tend to facilitate the unsustainable use of natural resources.

Having established that the current legal framework on natural resources in Nigeria represents a relic of the colonial approach to natural resource use and does not provide a sufficient counterweight to the egregious effects on the environment, the next section of this article makes a case for a return to Nigeria's roots, by advocating a process of internal comparison through the harmonization of laws, rather than a complete somersault or overhaul of existing law for new ones.

## Use versus sustainable use: Making a case for harmonizing indigenous norms into environmental lawmaking in Nigeria

According to Adetiba, the colonial confrontation in Nigeria was not just a political conquest but also resulted in the imposition of alien environmental norms, values and institutions in contrast to indigenous environmental management norms and practices oriented toward conservation

National Environmental (Coastal and Marine Area Protection) Regs, SI No 18, 2011; National Environmental (Construction Sector) Regs, SI No 19, 2011; National Environmental (Control of Vehicular Emissions from Petrol and Diesel Engines) Regs, SI No 20, 2011; National Environmental (Non-Metallic Minerals Manufacturing Industries Sector) Regs, SI No 21, 2011; National Environmental (Surface and Groundwater Quality Control) Regs, SI No 22, 2011; National Environmental (Electrical / Electronic Sector) Regs, SI No 79, 2022; National Environmental (Quarrying and Blasting Operations) Regs, SI No 33, 2013; National Environmental (Control of Alien and Invasive Species) Regs, SI No 32, 2013; National Environmental (Pulp and Paper, Wood and Wood Products) Regs, SI No 34, 2013; National Environmental (Motor Vehicle and Miscellaneous Assembly) Regs, SI No 35, 2013; National Environmental (Air Quality Control) Regs, SI No 88, 2021 (amended); National Environmental (Control of Charcoal Production and Export) Regs, SI No 62, 2014; National Environmental (Dams and Reservoirs) Regs, SI No 66, 2014; National Environmental (Hazardous Chemicals and Pesticides) Regs, SI No 65, 2014; National Environmental (Energy Sector) Regs, SI No 63, 2014; National Environmental (Healthcare Waste Control) Regs, B 2565–92, 2021; and National Environmental (Polychlorinated Biphenyls (PBCs) Control and Disposal) Regs 2020 B249–98. For further information, see the NESREA website at: <www.nesrea.gov.ng> (last assessed 12 September 2023).

101 Cap 164, LFN 2004. This act represented the first major initiative by a duly elected legislature to enact versatile environmental legislation to give effect to the provisions of the 1999 Constitution, sec 20. It established NESREA to serve as the nation's lead agency on environmental protection.

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and sustainable use.[102] The imported colonial development model (which emphasized large-scale, commercial exploitation of all useable natural resources) played a significant role in the development of the country's economy but left in its trail diverse impacts on the environment.[103]

Studies have increasingly recognized the need to return to the roots and learn from the indigenous people and their cultures, especially regarding the sustainable use of natural resources.[104] Supporting such learning opportunities is the need to establish a linkage between the indigenous process of environmental lawmaking and the current extant framework on natural resource use in Nigeria, to establish a more robust system of environmental lawmaking. From this perspective, this article advocates that harmonizing indigenous practices that were in existence before the paradigm shift created by the period of colonialization with the current laws represents the most viable option for environmental justice and sustainable natural resources in the country. It is the author's view that the extant laws on natural resource use in Nigeria have not been able to solve the debacle between the use of natural resources for economic development and the sustainable use of these same resources to guarantee their long-term availability. Thus, involving indigenous norms, knowledge and practices of sustainable use in the current environmental legal framework responds to an ethical requirement that is needed to ensure the social acceptability of activities that may have significant environmental impacts.

The major challenge with environmental laws, particularly those on the sustainable use of natural resources in Nigeria, is compliance.[105] These laws (which are followed to varying degrees by all parties, including the government) are responsible not only for the trend of unsustainable use but also for its impacts on the environment. Traditional or indigenous systems for natural resource use, however, provide us with the advantage of knowledge, innovations and practices to which the people are already accustomed. According to a study by Chiwendu and Osimiri, one critical factor mitigating compliance with environmental laws in Nigeria is that the "people disconnect" with the laws.[106] According to that study, since these laws are not home-grown, but rather "imported", compliance is perfunctory. As opposed to "modern" knowledge or laws, indigenous laws and practices are inbred, usually holistic, not reductionist, passed down orally, in many cases more practical than theoretical, and grasped only through long experience. Pre-colonial communities had their indigenous ways to manage their immediate environment to sustain available resources, such as water and soil. These ways emphasize that the environment, which could be ecologically adaptable, should be promoted. Some of these practices, which are still relevant and still used, but have been relegated into the background due to the codification of laws, have been the local community's coping practices that have helped them survive natural extremes over centuries. They have helped these communities to develop a close and peculiar connection with the lands, waters and environments in which they live and work. The author contends that this traditional knowledge garnered will be a valuable resource in resource management, environmental security and improving the current framework.

102 A Adetiba "What Britain did to Nigeria: A short history of conquest and rule" (2021) 20/4 *African Studies Quarterly* 99 at 99–100.

103 JO Atanda and OA Olukoya "Green building standards: Opportunities for Nigeria" (2019) 227 *Journal of Cleaner Production* 366 at 370.

104 A Owolabi and F Olorunfemi "Reflections on environmental security, indigenous knowledge and the reflections for sustainable development in Nigeria" (2014) 12/1 *Journal of Research in National Development* 46 at 51; S Diver "Negotiating indigenous knowledge at the science-poly interphase: Insights from the Xaxli'p community forest" (2017) 73 *Environmental Science and Policy* 1 at 7–8; E Mwanga "The role of by-laws in enhancing the integration of indigenous knowledge" (2019) 13/1 *Carbon & Climate Law Review* 19 at 21–22; O Bairal, I Heras-Saizabitoria and MC Brotherton "Improving environmental management through indigenous people's involvement" (2020) 103 *Environmental Science and Policy* 10 at 12–13.

105 OJ Oyebode "Impact of environmental laws and regulations on Nigerian environment" (2018) 7/3 *World Journal of Research and Review* 9.

106 OB Chiwendu and UJ Osimiri "The jurisprudence of compliance and enforceability of environmental protection laws in Nigeria" (2020) 93 *Journal of Law Policy & Globalization* 147.

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Furthermore, the basic component of a country's knowledge system is its indigenous knowledge. It encompasses the skills, experiences and insights of people, applied to maintain or improve their livelihood. In Nigeria is an abundance of this sort of knowledge, which has constantly evolved over centuries to support lives and livelihoods.[107] This indigenous knowledge and practices represent social capital for the poor and constitute their main asset in their efforts to gain control over their own lives; hence, their preservation is important, to ensure not only livelihood but also environmental sustainability. Utilizing this knowledge and harmonizing it with the current legal framework will increase the sustainability of development efforts, because the integration process will provide for mutual learning and adaptation, which in turn contribute to the sustainability of natural resources.[108] The resultant effect will be that everyone will identify themselves very closely with their natural habitat and use these traditional skills in the management of ecological resources, as their very existence is based on these resources. Thus, drawing sustenance as well as sustaining the ecology becomes an integral part of the culture. Simply put, we are only putting into written form what we already know as a way of life.

This article contends that, as an approach to environmental law-making, integrating traditional norms and practices will ensure that the policies that governments make and implement are the most appropriate for economic efficiency, environmental integrity and from a social equity point of view, as well as being coherent both at national and international levels. This policy thrust will create a fundamental rethinking and a clearer appreciation of the interdependent linkages among development processes and environmental factors, as well as the sustainable use of natural resources. Since development remains a national priority, this approach further ensures that actions designed to increase society's productivity and meet the essential needs of the populace are reconciled with environmental issues that had hitherto been neglected or not given sufficient attention, given the transplantation of colonial ideologies into Nigeria's laws.

In addition, most environmental issues in Nigeria that are the effects of the unsustainable use of natural resources, are often at the heart of costly conflicts between extractive organizations and indigenous populations, whose culture and way of life depend on the ecosystem. In the Niger Delta area of Nigeria, for example, the search for social acceptability of laws has been linked in several studies to the frosty corporate-indigenous relationships that exist in those communities.[109] These studies reflect that the risks of environmental contamination due to natural resource use constituted the main cause of these conflicts. In *Shell Petroleum Development v Prince Ogan Mafimisebi & Others*[110] for instance, the respondents (who had been the plaintiffs at the lower court) were fishermen, farmers and fish-pond owners whose aquatic ecological environment had been covered and polluted by oil due to multiple spillages from the Opuama flow station of the appellant's company. The effect was the massive destruction of fish farms, fishing equipment, rivers, aquatic coastlines, vegetation and livestock. In this context, the regulations in place need to integrate the indigenous culture of preserving ecosystems to ensure the sustainability of the extractive industry, which will in turn prevent future conflicts. Furthermore, integrating indigenous norms into laws will increase

107 YA Aluko "Rural women's indigenous knowledge of the nutritional and medicinal use of vegetables in southwest Nigeria" (2016) 46/2 *Journal of Social Sciences* 98 at 99–100.

108 A Agbontale, A Omotayo and F Issa "Indigenous knowledge of the techniques for preservation of vegetables in Niger State, Nigeria" (2017) 8/1–2 *Journal of Sustainable Development* 31.

109 See Yahaya "The political economy", above at note 9 at 77; A Akinsulore "The effects of legislation on corporate social responsibility in the minerals and mines sector of Nigeria" (2016) 7 *Journal of Sustainable Development Law and Policy* 97; BO Nwankwo "Conflict in the Niger Delta and corporate social responsibility of multinational oil companies: An assessment" (PhD thesis, University of Derby, 2017), available at: <https://repository.derby.ac.uk/item/9484z/conflict-in-the-niger-delta-and-corporate-social-responsibility-of-multinational-oil-companies-an-assessment> (last accessed 12 September 2023).

110 3 PLR/2010/59 (CA). See further *Ogiale v Shell* (1976) 4 NWLR (pt 445) 657; *Agbara & Others v Shell Petroleum Development Company of Nigeria Limited & Others* unreported suit no FHC/ASB/CS/231/2001; and *Elf Nigeria Limited v Opere Sillo* [1994] 6 NWLR (pt 350) 258.

concern for the preservation of natural habitats and traditional ways of life and opposition to the exploitation of natural resources that would result from the uncontrolled expansion of industrial activities in remote areas.[111]

## Conclusion

A successful transplant requires the development of a hybrid form of understanding that accommodates aspects of both donor and local understanding. While donors adopt ethical universalism, indigenous knowledge is equally pragmatic. Tracing the history of environmental law-making in Nigeria, this article concludes that a more inclusive policy-making process, using the indigenous knowledge of natural resource sustainability that is already inherent in dominant knowledge production fora, will provide additional perspectives on establishing more sustainable human-environment relations. Given the proven record of the ability of the indigenous people of Nigeria and their norms and practices to protect and preserve natural resources and biodiversity, understanding and integrating these core principles will ensure the effectiveness of Nigeria's current laws. Therefore, the integration of indigenous and scientific knowledge remains a very important issue to consider, given that one knowledge system may be used to fill the gaps of the other, creating in this way a legal framework that would guarantee a more sustainable approach to natural resource use in Nigeria.

Competing interests. None

111 IS Asogwa, JI Okoye and K Oni "Promotion of indigenous food preservation and processing knowledge and the challenge of food security in Africa" (2017) 5/3 *Journal of Food Security* 75 at 80–82.

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