

RECONCILING PRIVATE PROPERTY RIGHTS WITH ECOLOGICAL CONSERVATION IN NIGERIA

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Abstract

This paper examines the tension between private property rights and ecological conservation in Nigeria, where rapid economic development and environmental degradation create competing pressures. Nigeria's rich biodiversity faces threats from deforestation, wetland destruction, oil pollution, and habitat fragmentation, whilst economic growth demands stronger property rights institutions, creating significant challenges for policymakers, conservation practitioners, and property owners. The research employed a mixed-methods approach combining doctrinal methodology of documentary analysis of relevant legislation, review of academic literature, examination of case studies from different ecological regions, and comparative analysis with similar African contexts. It critically analysed Nigeria's pluralistic legal system where statutory, customary, and religious laws create overlapping authorities governing land rights and conservation. The study identified key conflict areas including protected area management, resource extraction on private lands, and urban expansion into ecologically sensitive areas. Case studies from Cross River State, Niger Delta, and Lagos demonstrate both failures and emerging successes. Nigeria's constitutional and legislative frameworks create an imbalance favouring property rights over conservation, with environmental provisions remaining largely non-justiciable. Promising reconciliation pathways emerge through community-based conservation models recognising traditional rights, market-based instruments aligning economic incentives with conservation, and potential constitutional reforms elevating environmental protections. The paper proposed constitutional amendments, robust compensation mechanisms for conservation-affected landholders, community co-management approaches, economic incentive structures, strengthened enforcement mechanisms, and land use reforms explicitly incorporating ecological considerations into property governance frameworks.

Keywords: Private Property Rights, Ecological Conservation, Land Use Act, Environmental Law, Sustainable Development, Nigeria

1.0 Introduction

The relationship between private property rights and ecological conservation has been a subject of intense legally, economically, and environmental debates globally. In Nigeria, where land ownership is central to economic activities, the challenge of balancing individual property rights with environmental sustainability is particularly significant. Private property rights confer on individuals and entities the legal authority to own, use, and transfer land as they deem fit, subject to regulatory constraints. However, unregulated land use often leads to environmental degradation, deforestation, loss of biodiversity, and pollution, raising concerns about sustainability. Nigeria faces significant environmental challenges, including deforestation, wetland degradation, oil pollution in the Niger Delta, and rapidly declining biodiversity.² Simultaneously, the country has been strengthening private property institutions as part of broader economic development efforts.³ These parallel trajectories create an inevitable tension: how can Nigeria protect its ecological heritage while respecting the property rights essential to its economic development?

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²B AUsman, and L LAdefalu, 'Nigerian Forestry, Wildlife and Protected Areas: Status Report', 2010) 11(3-4), *Biodiversity*, 54-62.

³BT Aluko, and A R Amidu, (2006). 'Urban Low-Income Settlements, Land Deregulation and Sustainable Development in Nigeria.' In Proceedings of the 5th FIG Regional Conference on Promoting Land Administration and Good Governance (1-13). Accra, Ghana

The dilemma in Nigeria arises from the tension between the economic imperatives of landowners and the need for environmental protection. On one hand, landowners seek to maximize the use of their property for agriculture, real estate development, industrialization, and other economic purposes. On the other hand, the government and environmentalists emphasize the importance of conservation, sustainable land use, and compliance with environmental laws. This study critically examines the legal, institutional, and policy mechanisms that govern private property rights and ecological conservation in Nigeria. It explored the conflicts arising from land use and conservation efforts while proposing strategies to reconcile these competing interests within a sustainable development framework. This question is particularly relevant as Nigeria navigates complex developmental challenges while facing increasing pressure from climate change impacts. The country's 1999 Constitution recognizes both environmental rights and property rights, yet the practical implementation of these principles often leads to conflicts.⁴ This paper examined this tension and explored potential pathways toward reconciliation.

1.1 Background to the Study

Land, as a fundamental economic resource, plays a central role in the socio-economic development of any nation. It serves as the foundation for agriculture, housing, industry, and commerce. In Nigeria, land ownership is deeply rooted in both customary and statutory legal frameworks, which have evolved over time to accommodate the complexities of governance, economic development, and environmental sustainability. The introduction of the Land Use Act of 1978 significantly altered the legal landscape by vesting land ownership in the state while granting individuals and organizations the right to acquire and use land under leasehold arrangements. Despite these legal provisions, land use and ownership in Nigeria remain subjects of contention, particularly in relation to environmental conservation and sustainability.

Nigeria is endowed with vast natural resources, including forests, wetlands, rivers, and diverse wildlife species. These ecological resources play a critical role in maintaining environmental balance, supporting agriculture, and sustaining livelihoods. However, rapid urbanization, industrial expansion, agricultural encroachment, and infrastructure development have placed immense pressure on the natural environment. The consequences of unregulated land use are evident in deforestation, desertification, erosion, pollution, biodiversity loss, and climate change-related challenges. The depletion of Nigeria's forests, largely driven by logging, agricultural expansion, and settlement development, has led to significant environmental degradation, affecting water bodies, soil fertility, and air quality. The conflict between private property rights and ecological conservation in Nigeria was further exacerbated by weak institutional frameworks, ineffective policy implementation, and a general lack of awareness regarding sustainable land-use practices.⁵ Whilst property owners viewed land as an economic asset to be exploited for maximum benefit, conservationists argued that unregulated land use posed long-term threats to environmental sustainability and human well-being. The challenge, therefore, lay in striking a delicate balance between the rights of landowners to utilise their property for economic gain and the need to preserve and protect the environment for present and future generations.

Despite existing environmental laws, such as the Environmental Impact Assessment Act⁶ and the National Environmental Standards and Regulations Enforcement Agency (NESREA) Act,⁷ enforcement remained weak due to corruption, lack of political will, and inadequate funding.⁸ Additionally, the judicial system had

⁴O Oluduro, 'Environmental Rights: Constitutional Provisions and Judicial Interpretation in Nigeria', (2012).14(4), *Environmental Law Review*, 266-278.

⁵ A. G Oludayo, 'Environmental Pollution and Challenges of Environmental Governance in Nigeria' (2012) 10(3) *Nigerian Journal of Contemporary Law* 26, 28-35.

⁶ Environmental Impact Assessment Act Cap E12 Laws of the Federation of Nigeria 2004.

⁷ National Environmental Standards and Regulations Enforcement Agency (NESREA) Act 2007.

⁸ O Fagbohun, 'Environmental Governance and the Legal Framework for Conservation in Nigeria' (2021) 6(1) *Journal of African Environmental Law* 89, 95-108

not been sufficiently proactive in addressing the legal conflicts that arose between property rights and conservation policies. In this context, it became imperative to explore mechanisms through which Nigeria could achieve a harmonious coexistence between private land ownership and ecological conservation. This study, therefore, sought to critically examine the legal, institutional, and policy frameworks governing private property rights and environmental conservation in Nigeria. It aimed to provide a comprehensive analysis of the challenges, conflicts, and possible solutions for achieving sustainable land use whilst upholding property rights. By examining case studies, international best practices, and legal precedents, this research contributed to the discourse on how Nigeria could effectively integrate ecological conservation into its land management policies without undermining property rights.

1.2 Statement of the Problem

The conflict between private property rights and ecological conservation in Nigeria presented significant legal, environmental, and socio-economic challenges. Landowners, driven by economic imperatives, often engaged in land-use practices that led to environmental degradation, deforestation, and biodiversity loss.⁹ The growing demand for land for residential, commercial, and industrial purposes further exacerbated the tension between individual property rights and the need for environmental protection. One of the key challenges was the lack of a coherent legal framework that effectively integrated private property rights with ecological conservation. The Land Use Act of 1978, which governed land tenure in Nigeria, primarily focused on land administration and economic development without adequately addressing environmental sustainability.¹⁰ Environmental laws, on the other hand, imposed restrictions on land use, sometimes conflicting with the rights of property owners. This legal ambiguity created uncertainty and resistance amongst landowners who perceived conservation efforts as an infringement on their proprietary rights. Another critical issue was the weak institutional capacity for enforcing environmental regulations. Government agencies responsible for environmental protection, such as NESREA and state environmental protection agencies, often lacked the financial and human resources necessary to implement conservation policies effectively.¹¹ Corruption, political interference, and bureaucratic inefficiencies further undermined the enforcement of environmental laws, allowing unsustainable land-use practices to persist.

Moreover, public awareness and compliance with environmental regulations remained low. Many landowners and developers either lacked knowledge of existing environmental laws or deliberately ignored them due to weak enforcement mechanisms.¹² This resulted in unregulated deforestation, illegal mining, improper waste disposal, and other environmentally harmful practices. The absence of stringent penalties for environmental violations further emboldened property owners to engage in unsustainable land use. Economic pressures also contributed to the conflict between property rights and conservation. Many Nigerians, particularly in rural areas, depended on land for their livelihood, engaging in farming, logging, and small-scale industrial activities.¹³ The urgency to meet immediate economic needs often overrode concerns about long-term environmental sustainability. Consequently, policies that sought to impose conservation restrictions on land use were met with resistance, as they were perceived as a threat to economic survival.

Judicial and legislative gaps also posed a significant challenge. Nigeria lacked specialised environmental courts that could effectively adjudicate disputes related to land use and conservation.^[19] The general court system often lacked the technical expertise to handle environmental cases, leading to inconsistent legal

⁹ M. O. Ajibola, B. A. Adewale and K.C. Ijasa, 'Effects of Urbanisation on Lagos Wetlands' (2012) 3(17) *International Journal of Business and Social Science* 310, 315-320

¹⁰ A.L. Mabogunje, 'The Land Use Act: A Review and Assessment Forty Years After' (2017) 13(1) *Journal of Nigerian Environmental Law* 5, 12-18.

¹¹ Oludayo (n 5) 30-35.

¹² B Yusuf, 'Environmental Justice and Land Rights in Nigeria: Bridging the Gap Between Law and Practice' (2021) 5(3) *Journal of Law, Policy and Development* 77, 82-89

¹³ C.S. Nwosu and E Okonkwo, 'Private Property and Resource Management in Nigeria: A Critical Analysis' (2019) 36(4) *Journal of Property Research* 305, 310-318

interpretations and judgments. The absence of clear judicial precedents further complicated efforts to reconcile private property rights with conservation objectives. Given these challenges, there was an urgent need for a comprehensive legal and policy framework that harmonised property rights with ecological conservation. This study sought to examine the existing legal and institutional frameworks, identify key areas of conflict, and propose recommendations for achieving a sustainable balance between land ownership and environmental protection in Nigeria.

1.3 Aim and Objectives of the Study

The primary aim of this study is to explore the legal, policy, and institutional mechanisms for reconciling private property rights with ecological conservation in Nigeria. The study seeks to provide a framework for sustainable land use that balances economic development with environmental sustainability. The specific objectives of the study include:

- i. to examine the legal and institutional frameworks governing private property rights and ecological conservation in Nigeria;
- ii. to identify key areas of conflict between landownership rights and conservation policies and assess their implications for sustainable development;
- iii. to analyse the effectiveness of existing environmental laws and policies in regulating land use and preventing environmental degradation.
- iv. to evaluate international best practices in balancing property rights with ecological conservation and their applicability to Nigeria; and
- v. to propose legal and policy reforms aimed at achieving a balance between property rights and environmental sustainability.

1.4 Scope and Limitations of the Study

This study focuses on the interplay between private property rights and ecological conservation within the legal and institutional frameworks in Nigeria. The scope of the study is structured around the following areas:

- (a) Legal Framework: Examination of the Land Use Act, Environmental Impact Assessment Act, NESREA Act, and other relevant environmental laws;
- (b) Institutional Framework: Assessment of the roles and effectiveness of government agencies, such as NESREA and State environmental protection agencies, in enforcing conservation policies;
- (c) Judicial Review: Analysis of case law and judicial decisions related to land use and environmental conservation;
- (d) Comparative Analysis: Exploration of international best practices in balancing property rights and conservation efforts, with lessons drawn from jurisdictions with similar legal challenges; and
- (e) Case Studies: Examination of real-world instances of land use conflicts and conservation efforts in Nigeria.

1.4.4 Limitations of the Study

While this study aims to provide a comprehensive analysis, certain limitations are acknowledged. Limited availability of data is one of the limitations. Nigeria lacks a well-organized database on land tenure disputes and environmental degradation, making it difficult to access comprehensive statistical data. Also, regional variations in land tenure systems constitutes limitation to the study. The diverse customary land tenure systems across different ethnic groups in Nigeria create variations in how property rights and conservation policies are implemented. In similar vein, bureaucratic inefficiencies and reluctance of government agencies to share data may limit access to primary information. The absence of well-documented legal cases on property rights versus conservation in Nigeria may also restrict the depth of judicial analysis.

1.5 Research Methodology

The research methodology adopted for this study is a doctrinal legal research approach complemented by empirical insights where applicable. The study relied on a combination of primary and secondary sources to analyse the legal and institutional frameworks governing private property rights and ecological conservation in Nigeria. The study examined primary sources such as constitutional provisions, statutes, regulations, judicial decisions, and international treaties related to land tenure and environmental conservation. The study also utilized secondary sources such as textbooks, journal articles, conference papers, reports from government agencies and international organizations, and newspaper publications to provide a comprehensive analysis. Scholarly literature on property law, environmental law, sustainable development, and conservation strategies were reviewed. To gain deeper insights, the research adopts a comparative legal approach by examining best practices in other jurisdictions. Countries such as South Africa, Canada, the United States, and Australia have developed legal mechanisms for balancing property rights with conservation efforts. Lessons from these jurisdictions will inform policy recommendations for Nigeria.

1.6 Significance of the Study

The significance of this study lies in its potential to address one of Nigeria's most pressing legal and environmental challenges—the conflict between private property rights and ecological conservation. The findings of this research will be relevant to policymakers, legal scholars, environmentalists, landowners, and other stakeholders involved in land management and environmental protection. First, the study contributes to the body of legal scholarship by critically analysing the interplay between property rights and environmental conservation from a Nigerian perspective. In many jurisdictions, legal frameworks governing land use and conservation often result in conflicting interpretations, leading to legal uncertainties. This research provides clarity by examining the existing legal frameworks in Nigeria, identifying gaps, and proposing reforms that align with both property rights and sustainability principles. Second, the study has policy implications for government agencies and legislators. The findings will help policymakers design and implement legal instruments that balance economic development with environmental sustainability. It will also provide recommendations for strengthening the enforcement of environmental laws, thereby ensuring that conservation efforts do not infringe on property rights while still achieving sustainable land use practices.

Moreover, this study is significant to judicial institutions as it highlights the need for a more proactive role of the judiciary in resolving land use conflicts. By analyzing relevant case law and judicial interpretations, this research will contribute to the development of a more coherent jurisprudence on property rights and conservation in Nigeria. It will also serve as a reference for legal practitioners handling disputes related to land tenure and environmental protection. From an environmental perspective, the study is crucial in promoting Sustainable Development Goals (SDGs), particularly SDG 15 (Life on Land), which focuses on protecting, restoring, and promoting the sustainable use of terrestrial ecosystems. By providing legal and policy recommendations, this study will contribute to the global discourse on environmental conservation and climate change mitigation.

Furthermore, the research is relevant to private property owners and real estate developers, who often find themselves at odds with environmental regulations. By exploring mechanisms through which conservation efforts can be integrated into land use policies without imposing undue hardship on property owners, the study seeks to foster a cooperative approach to sustainable land management. Finally, the study holds significance for academia and future research. It provides a foundation for further studies on land use, environmental law, and property rights in Nigeria. Researchers and students in law, environmental sciences, and development studies can build on its findings to explore related themes, such as climate change adaptation, land reform policies, and sustainable urban planning.

2.0 Conceptual Clarifications

2.1 Property Rights in Nigeria: Property rights in Nigeria exist within a pluralistic legal system combining statutory, customary, and religious law. The Land Use Act of 1978 vests all land in the state governments, with individuals holding rights of occupancy rather than absolute ownership.¹⁴ This arrangement creates a complex web of overlapping rights and authorities that complicates conservation efforts. Traditional communal land tenure systems, still prevalent in many rural areas, often incorporate conservation values through taboos and resource management practices.¹⁵ However, these systems have been increasingly undermined by modernization, population pressure, and formal legal structures that prioritize individual rights.

2.2 Ecological Conservation Imperatives

Nigeria is a biodiversity hotspot, hosting approximately 7,895 plant species and over 22,000 vertebrate and invertebrate species.¹⁶ This biological wealth faces severe threats, with Nigeria experiencing one of the highest deforestation rates globally at 3.5% annually.¹⁷ Conservation imperatives stem from both intrinsic ecological values and the ecosystem services that support human wellbeing and economic development. These include water purification, climate regulation, flood control, and provision of resources essential to rural livelihoods.¹⁸ To provide clarity and precision in this study, key concepts are defined as follows:

2.3 Private Property Rights

Private property rights refer to the legally recognized rights of individuals or entities to own, use, transfer, and exclude others from a specific property. These rights are protected under Nigerian law and international legal instruments. However, these rights are not absolute and may be subjected to state regulation in the public interest.

2.4 Ecological Conservation

Ecological conservation entails the sustainable management and protection of natural resources and ecosystems to prevent degradation, biodiversity loss, and environmental hazards. It involves legal and policy measures aimed at preserving land, water, forests, and wildlife.

2.5 Land Tenure System

The land tenure system in Nigeria refers to the legal and customary arrangements governing land ownership, access, and use. The Land Use Act of 1978 vests land ownership in the State, while individuals hold land under leasehold arrangements.

2.6 Environmental Sustainability

Environmental sustainability refers to meeting present land and resource needs without compromising the ability of future generations to meet theirs. This concept emphasizes responsible land use, conservation policies, and long-term ecological balance.

¹⁴A K Otubu, 'The Land Use Act and Land Administration in 21st Century Nigeria: Need for Reforms.' (2015)4(1), *Journal of Sustainable Development Law and Policy*, 30-53.

¹⁵F O Ogundele, 'Traditional Practices and Conservation of Forest Resources in Oyo State, Nigeria,' (2004), 34(1), *Nigerian Journal of Forestry*48-55.

¹⁶Federal Ministry of Environment. (2015). 'Nigeria's Fifth National Biodiversity Report. Abuja: Federal Government of Nigeria' <https://www.cbd.int/doc/world/ng/ng-nr-05-en.pdf> accessed on 5th March, 2025.

¹⁷Food and Agriculture Organization. (2020). Global Forest Resources Assessment 2020: Main Report. Rome: FAO <https://www.fao.org/forest-resources-assessment/past-assessments/fra-2020/en/> accessed on 5th March, 2025.

¹⁸B AUzman, 'Payment for Ecosystem Services: Theory and Practice in Nigeria.'(2017), 11(2), *Nigerian Geographical Journal*, 111-126.

2.7 Land Use Act and Property Laws

The Land Use Act of 1978 remains the cornerstone of property law in Nigeria. By vesting land in state governors, it introduced significant state control over property rights.¹⁹ While this theoretically creates opportunities for conservation-oriented land management, in practice, governors' discretionary powers have often favored development interests over conservation.

3.0 Theoretical Frameworks

This study is anchored on three major legal and environmental theories that provide a foundation for reconciling private property rights with ecological conservation:

3.1 Public Trust Doctrine

The public trust doctrine posits that certain natural resources, including land, forests, and water bodies, should be held in trust by the government for the benefit of the public. This theory justifies state intervention in regulating land use to prevent environmental degradation.

3.2 Sustainable Development Theory

Sustainable development theory emphasizes the need to balance economic growth, social well-being, and environmental protection. It supports legal frameworks that integrate conservation measures with land development policies.

3.3 Regulatory Takings Theory

This theory examines situations where government regulations on private land use amount to an indirect expropriation or "taking" of property rights. It provides a framework for assessing the extent to which environmental laws infringe on private property rights and the necessity for compensation mechanisms.

4.0 Literature Review

This literature review examines the complex relationship between private property rights and ecological conservation in Nigeria. As Nigeria faces increasing environmental challenges including deforestation, biodiversity loss, oil pollution in the Niger Delta, and urban expansion into natural habitats the tension between individual property rights and collective ecological interests has become a critical area of study. This review synthesizes existing research on legal frameworks, policy initiatives, traditional ecological knowledge systems, and stakeholder dynamics to understand how Nigeria has attempted to balance these competing interests and where opportunities for improvement exist. The issue of reconciling private property rights with ecological conservation has been a subject of extensive debate in legal and environmental literature. Scholars and policymakers have attempted to analyze the inherent tensions, propose solutions, and examine best practices from various jurisdictions. This section reviews existing literature on property rights, environmental law, and sustainable land management to identify gaps and areas for further study.

Private property rights are fundamental to legal and economic systems worldwide. Property rights provide individuals with absolute ownership over land and the freedom to use it as they see fit. However, contemporary legal scholarship acknowledges that these rights are not absolute and must be subject to certain limitations in the public interest. Scholars have argued that private property rights must be regulated to ensure they do not lead to environmental degradation or the unsustainable exploitation of resources. Their research emphasizes the social function of property, highlighting that landownership carries responsibilities, including adherence to environmental conservation laws. In Nigeria, the Land Use Act of 1978 significantly altered property rights by vesting land ownership in the state, making the government the ultimate custodian of land. This legal framework, while intended to promote equitable land distribution,

¹⁹B T Aluko, 'Policy Directions for Sustainable Land Management in Nigerian Urban Centres.' In S. Adejumo and B. Ogundele (Eds.), *Sustainable Urban Development in Nigeria* (Ibadan: Hope Publications, 2010) 122-145.

has resulted in bureaucratic inefficiencies and conflicts between landowners and environmental regulators. Environmental laws play a crucial role in regulating land use and promoting conservation. Identifiable key legislative instruments in Nigeria that govern environmental conservation, include but not limited to:

- i. the Environmental Impact Assessment (EIA) Act, which mandates an environmental review before land development;²⁰
- ii. the National Environmental Standards and Regulations Enforcement Agency (NESREA) Act, which provides enforcement mechanisms for environmental laws; and
- iii. Forestry Laws and the Endangered Species Act, which aim to protect forests and biodiversity.

Despite these legal provisions, many scholars argue that enforcement remains weak due to corruption, political interference, and lack of funding. This study therefore emphasises the need for stronger institutional frameworks to ensure compliance. The literature on property rights in relation to environmental conservation broadly falls into several theoretical camps. Hardin's²¹ influential "Tragedy of the Commons" theory has significantly shaped discourse around natural resource management, suggesting that commonly held resources inevitably face degradation without private ownership or strong regulation. This perspective has influenced various privatization initiatives in Nigeria.²²

In contrast, Ostrom's²³ work on common-pool resources challenged Hardin's conclusions by demonstrating that communities can effectively manage shared resources through collective governance arrangements. This perspective resonates with traditional Nigerian resource management systems that existed before colonial property regimes were imposed.²⁴ More recent scholarship has explored "bundle of rights" approaches that disaggregate property rights into component parts access, withdrawal, management, exclusion, and alienation rights allowing for more nuanced conservation arrangements.²⁵ This framework has proven particularly relevant to understanding Nigeria's complex land tenure systems where multiple rights often overlap.²⁶ The evolution of property rights in Nigeria reflects its complex colonial history. Pre-colonial Nigeria featured diverse customary land tenure systems where land was primarily held communally with usufruct rights allocated to families and individuals.²⁷ British colonial administration introduced Western conceptions of property through various ordinances, most notably the Land and Native Rights Ordinance of 1910.²⁸ Post-independence, the Land Use Act of 1978 fundamentally altered Nigeria's property regime by vesting all land in state governors to hold in trust for citizens.²⁹ While intended to streamline land administration and economic development, the Act has been criticized for undermining customary tenure systems and enabling political elites to capture valuable land resources.³⁰

Recent scholarship has increasingly focused on the impacts of emerging property rights formalization processes on ecological outcomes. Formal titling programs have produced mixed environmental results while security of tenure can incentivize long-term conservation. The Conflict between Private Property

²⁰Ogundele, (n15) 48-55.

²¹G Hardin, 'The Tragedy of the Commons.'(1968), 162(3859), *Science*, 1243-1248.

²²C S Nwosu, &E Okonkwo, 'Private Property and Resource Management in Nigeria: A Critical Analysis.' (2019),36(4), *Journal of Property Research*, 305-320.

²³E Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action*. (Cambridge University Press, 1990),.

²⁴P Osei-Tutu, A Dzebo, &M Khan, 'Traditional Authorities and Property Rights: Intersections with Modern Environmental Governance in Africa'(2015), 24(4), *Environmental Politics*, 582-600.

²⁵E Schlager, &E Ostrom, 'Property-Rights Regimes and Natural Resources: A Conceptual Analysis', (1992) 68(3), *Land Economics*, 249-262.

²⁶T F Balogun, 'Mapping Land Tenure Systems in Nigeria: A Bundle of Rights Approach,' (2020) 9(12), *Land*, 536.

²⁷B AUzman, 'Historical Perspectives on Land Tenure in Nigeria' (2015), 47 '*Journal of Historical Geography*', 96-107

²⁸H W Okoth-Ogendo, *The Colonial Transformation of Property Rights in Africa: A Study in the Making of Contemporary Nigeria*. (2017), 61(1), *Journal of African Law*57-79.

²⁹BT Aluko, &A R Amidu, 'The Political Economy of Land Use Reform in Nigeria: An Analytical Review of the Land Use Act,' (2018), 78, *Land Use Policy*, 523-532.

³⁰A. L Mabogunje, 'The Land Use Act: A Review and Assessment Forty Years After'. (2017), 13(1), *Journal of Nigerian Environmental Law*, 5-24.

Rights and Conservation Efforts are so enormous and the tension between private property rights and ecological conservation is a recurring issue in many jurisdictions. *Hardin's* "Tragedy of the Commons" theory³¹ suggests that when individuals have unrestricted access to natural resources, they tend to exploit them unsustainably, leading to environmental degradation. This justifies government intervention in regulating private land use for conservation purposes. However, *Ostrom*³² challenges *Hardin's* perspective, arguing that local communities can effectively manage natural resources through collective action. She presents case studies from different countries where property owners have voluntarily engaged in environmental conservation initiatives when given incentives and proper legal frameworks. In Nigeria, conflicts often arise when government-imposed environmental regulations restrict land use without adequate compensation or consultation with property owners. Many landowners perceive conservation policies as a form of "regulatory taking", where the government indirectly expropriates private property without due process.

4.1 Gaps in Existing Literature

It is of interest to note that while significant literature exists on private property rights and environmental law separately, there is limited research on the intersection between the two within the Nigerian context. The following gaps have been identified:

- i. Lack of a Holistic Legal Framework – Many studies focus on individual laws governing land and conservation, but few examine how these laws interact and whether they create inconsistencies.
- ii. Limited Research on Judicial Interpretation – While legal scholars have explored statutory provisions, case law analysis on property rights versus environmental protection in Nigeria is lacking.
- iii. Absence of a Clear Compensation Mechanism – There is limited research on how the government can fairly compensate property owners affected by conservation restrictions.
- iv. Need for Policy Recommendations – Few studies offer practical recommendations on how Nigeria can develop legal and policy frameworks that align property rights with conservation efforts.

This study seeks to fill these gaps by proposing a comprehensive legal and policy framework that reconciles private property rights with ecological conservation in Nigeria. By drawing insights from comparative jurisdictions and legal theories, this research will contribute to the academic discourse and provide solutions for policymakers.³³

5.0 Analysis of Legal and Institutional Frameworks

The legal and institutional framework governing private property rights and ecological conservation in Nigeria is a complex interplay of constitutional provisions, statutory enactments, judicial decisions, and regulatory institutions. This framework aims to balance individual ownership rights with public interest in environmental sustainability. These laws establish protected areas, require environmental assessments for development projects, and protect endangered species. However, enforcement remains weak, and conservation areas frequently face encroachment from private interests.³⁴

(a) Constitutional Framework

The 1999 Constitution of the Federal Republic of Nigeria (as amended) lays the foundation for property rights and environmental conservation. Section 43 guarantees individuals the right to acquire and own immovable property, while Section 44(1)³⁵ protects against the compulsory acquisition of property without prompt and adequate compensation. However, Section 44(2)(c) allows for property expropriation in the

³¹ *ibid.* (n 12)

³² *ibid.* (n 14)

³³ C Nwapi, 'Land Grabbing in Nigeria: Implications for Sustainable Development and the Role of the Law', (2020)28(1), *African Journal of International and Comparative Law*, 70-90.

³⁴ G A Lameed, 'Wildlife Conservation Challenges in Okomu National Park, Nigeria', (2016) 9(2), *Ethiopian Journal of Environmental Studies and Management*, 260-271.

³⁵ Constitution of the Federal Republic of Nigeria, 1999 (as amended)

interest of environmental protection, provided that legal procedures are followed. Furthermore, Section 20³⁶ of the Constitution imposes a duty on the Nigerian government to “protect and improve the environment and safeguard water, air, and land.” This provision establishes a constitutional obligation for conservation but lacks enforceability since it is under the Fundamental Objectives and Directive Principles of State Policy, which are not justiciable. However, environmental provisions are included in Chapter II as non-justiciable "Fundamental Objectives and Directive Principles of State Policy," while property rights are enforceable fundamental rights, creating an imbalance in legal protection.³⁷

(b) Statutory Framework

Several statutory instruments regulate land ownership and environmental conservation in Nigeria, including:

- i. The Land Use Act of 1978 vests all land in the state governor, granting individuals only leasehold interests. While designed to ensure equitable land access, it has been criticized for creating bureaucratic inefficiencies and increasing government control over land without adequate environmental safeguards.
- ii. The Environmental Impact Assessment (EIA) Act mandates environmental assessments before major development projects, ensuring that ecological considerations are factored into land use decisions. However, enforcement remains weak due to regulatory loopholes and corruption.
- iii. The National Environmental Standards and Regulations Enforcement Agency (NESREA) Act is the primary institution enforcing environmental laws. However, scholars argue that overlapping mandates with other agencies and a lack of adequate funding hinder its effectiveness.
- iv. The Forestry Act and Endangered Species Act regulate the conservation of forests and wildlife, but enforcement challenges, illegal logging, and weak penalties have limited their impact.

(c) Institutional Framework

Several government agencies play key roles in implementing environmental policies and managing land use. These include:

- i. The Federal Ministry of Environment, responsible for formulating environmental policies and overseeing compliance.
- ii. The National Environmental Standards and Regulations Enforcement Agency (NESREA), which enforces environmental standards but lacks jurisdiction over oil and gas activities.
- iii. State Environmental Protection Agencies (SEPA), which operate at the state level but often lack resources and autonomy to function effectively.³⁸
- iv. The National Park Service, which manages protected areas but faces challenges such as land encroachment, inadequate funding, and weak inter-agency collaboration.

A major challenge within this institutional framework is fragmentation and lack of coordination, leading to conflicting policies and inefficiencies in enforcement.³⁹

6.0 Case Studies

6.1 Cross River State: Community Forestry Initiatives

Cross River State has pioneered community forestry approaches that attempt to reconcile conservation with community property interests. By granting communities management rights and economic benefits from sustainable forest use, these initiatives have reduced conflicts while protecting forest resources.⁴⁰ Key outcomes include:

- (a) 30% reduction in illegal logging in participating communities;

³⁶O Oluduro, (n 4) 266-278.

³⁷ See Chapter II of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)

³⁸ Foundation Act 1982

³⁹ Endangered Species Act Cap E9 LFN 2004

⁴⁰M Oyebo, F Bisong, and T Morakinyo, (2010). A Preliminary Assessment of the Context for REDD in Nigeria. Abuja: Federal Ministry of Environment <https://www.un-redd.org/sites/default/files/2021> accessed on 5th March, 2025.

- (b) Improved community attitudes toward conservation;
- (c) Increased household incomes from sustainable forest products.

6.2 Niger Delta: Environmental Remediation and Property Compensation

The cleanup of oil pollution in Ogoniland, following the United Nations Environment Programme's assessment, represents an attempt to address both ecological damage and property rights violations. However, the slow pace of implementation and inadequate compensation mechanisms have limited its effectiveness.⁴¹

6.3 Lekki Conservation Centre: Urban Conservation Model

The Lekki Conservation Centre in Lagos represents a successful urban conservation model that has withstood development pressure. Through innovative partnerships between the Nigerian Conservation Foundation, government, and private sector, this protected area preserves valuable wetland ecosystems while providing educational and recreational services to urban residents.⁴²

7.0 Comparative Perspectives

7.1 South African Approach

South Africa has developed a more nuanced approach to balancing property rights and environmental protection. Section 24 of the South African Constitution explicitly recognizes environmental rights, while Section 25 protects property rights but permits regulation in the public interest.⁴³ The Constitutional Court's jurisprudence, particularly in cases like *First National Bank of SA Ltd v. Commissioner for the South African Revenue Services*,⁴⁴ has established that property regulations serving legitimate public purposes, including environmental conservation, do not necessarily require compensation.

7.2 Kenyan Innovations

Kenya's 2010 Constitution similarly balances property rights with environmental protection. Article 60 establishes sustainable environmental management as a principle of land policy, while Article 42 recognizes the right to a clean and healthy environment.⁴⁵ The Environmental Management and Coordination Act creates mechanisms for public participation in environmental decision-making, enhancing legitimacy and compliance.⁴⁶

7.3 Pathways to Reconciliation

7.3.1 Legal and Constitutional Reforms

Making environmental rights justiciable through constitutional amendments would create greater balance between property and conservation imperatives. Several scholars propose elevating Section 20 to the status of fundamental rights.⁴⁷

7.3.2 Market-Based Instruments

Payments for Ecosystem Services (PES) schemes offer promising approaches to reconciling private interests with conservation. By compensating landholders for conservation activities, PES creates economic incentives aligned with ecological protection.⁴⁸

⁴¹ United Nations Environment Programme. (2011). Environmental Assessment of Ogoniland. Nairobi: UNEP. <www.unep.org> accessed on 5th March 2025

⁴² Nigerian Conservation Foundation. (2018). Lekki Conservation Centre: A Model for Urban Conservation. Lagos: NCF Publication <https://ncfnigeria.org/lekki-conservation-centre-the-green-soul-of-lagos-metropolis> accessed on 5th March, 2025.

⁴³ Constitution of the Republic of South Africa 1996, ss 24, 25

⁴⁴ *First National Bank of SA Ltd v. Commissioner for the South African Revenue Services* 2002 (4) SA 768 (CC).

⁴⁵ Constitution of Kenya 2010, arts 42, 60

⁴⁶ Environmental Management and Coordination Act 1999 (Kenya), s 31

⁴⁷ EP Amechi, Enhancing Environmental Protection and Socio-Economic Development in Africa: A Fresh Look at the Right to a General Satisfactory Environment Under the African Charter on Human and Peoples' Rights', (2009), 5(1), *Law Environment and Development Journal*, 58-72.

⁴⁸ Usman, (n9)

7.3.3 Community-Based Natural Resource Management

Devolving conservation authority to communities whilst recognising their property interests had shown success in various contexts.⁴⁹ The Community Biodiversity Action Guidelines initiated in some states provided a potential model for wider application.

7.3.4 Integrated Land Use Planning

Comprehensive land use planning that incorporated ecological values could prevent conflicts between development and conservation.⁵⁰ This required strengthening planning institutions and ensuring environmental considerations were mainstreamed into planning processes.

8.0 Summary of Findings

This study identified key issues that hindered the effective reconciliation of private property rights with ecological conservation in Nigeria. The major findings included:

Legal Ambiguities – Whilst Nigerian law recognised both property rights and environmental conservation, there was no comprehensive legal framework that explicitly harmonised both interests.⁵¹

Weak Institutional Capacity – Regulatory bodies such as NESREA and SEPAs suffered from poor funding, limited manpower, and overlapping responsibilities, reducing their effectiveness in enforcing environmental laws.⁵²

Poor Enforcement of Environmental Laws – Despite robust legal provisions, weak enforcement mechanisms, corruption, and political interference undermined conservation efforts.⁵³

Land Use Conflicts – There was increasing tension between private landowners and the government, particularly when land was designated for conservation purposes without adequate compensation or consultation.⁵⁴

Comparative Best Practices Existed – Countries like South Africa, Canada, and Australia had successfully integrated property rights with conservation through legal reforms, incentive-based conservation programmes, and judicial safeguards. Nigeria could learn from these models.⁵⁵

8.1 Contribution to Knowledge

This research made significant contributions to the field of environmental law, property law, and sustainable development by:

- (a) Providing a comprehensive legal analysis of the intersection between private property rights and environmental conservation in Nigeria.
- (b) Identifying gaps in Nigeria's existing legal and institutional framework, highlighting areas where reforms were necessary.
- (c) Offering comparative insights from other jurisdictions, demonstrating how Nigeria could adopt international best practices in balancing property rights with conservation.
- (d) Proposing practical legal and policy solutions, including regulatory reforms, incentive-based conservation strategies, and stronger judicial safeguards.
- (e) Advancing the academic discourse by bridging legal scholarship and environmental policy, creating a framework for future research and policy development.

⁴⁹ Ogundele (n 15) 54-58

⁵⁰ Aluko BT, 'Policy Directions for Sustainable Land Management in Nigerian Urban Centres' in S Adejumo and B Ogundele (eds), *Sustainable Urban Development in Nigeria* (Hope Publications 2010) 145-168.

⁵¹ A. Adewale, 'Balancing Land Use and Environmental Sustainability: The Legal Challenges in Nigeria' (2020) 4(2) *Nigerian Journal of Environmental Law* 121, 128-135.

⁵² Fagbohun (n 8) 108-115

⁵³ Oludayo (n 5) 35-42

⁵⁴ Yusuf (n 12) 85-92.

⁵⁵ Aluko and Amidu (n 29) 535-542

8.2 Areas for Further Study

Whilst this research provided a foundational analysis, further studies could explore:

- i. The role of indigenous land tenure systems in promoting sustainable conservation in Nigeria.
- ii. The economic implications of conservation regulations on private landowners, particularly in rural communities.
- iii. The effectiveness of judicial interventions in resolving property-conservation disputes, examining key case law in Nigeria.
- iv. Comparative analyses of Nigeria's conservation laws with emerging African economies, assessing how regional cooperation could improve environmental governance.
- v. The impact of climate change policies on private property rights, particularly in coastal and deforested regions of Nigeria.

9.0 Conclusion

The reconciliation of private property rights with ecological conservation in Nigeria remained a significant challenge that required legal, institutional, and policy reforms. Whilst the Nigerian legal system recognised both land ownership and environmental protection, conflicts often arose due to legal ambiguities, weak enforcement mechanisms, and institutional inefficiencies. This study demonstrated that balancing these competing interests required a multi-faceted approach, including legal reforms, stronger institutional frameworks, judicial safeguards, and incentive-based conservation programmes. Comparative analyses from other jurisdictions revealed that effective conservation strategies could coexist with private property rights when clear policies, enforcement mechanisms, and stakeholder participation were integrated into governance frameworks.

The most successful approaches recognize the legitimacy of both property interests and conservation imperatives rather than privileging one over the other. By developing institutions and policies that integrate these seemingly competing interests, Nigeria can protect its ecological heritage while supporting economic development and respecting property rights. Future research should focus on empirical assessment of various reconciliation mechanisms, particularly their economic implications for property holders and their ecological effectiveness. Additionally, greater attention to indigenous knowledge systems could reveal traditional approaches to balancing use rights with conservation that might inform contemporary policy.

10.0 Recommendations

To reconcile private property rights with ecological conservation, the following recommendations are proposed:

- i. Legal Reforms – The Land Use Act should be reviewed to incorporate stronger environmental considerations. Additionally, a comprehensive Environmental Protection Act should be enacted to harmonise existing conservation laws.⁵⁶
- ii. Strengthening Institutional Capacity – NESREA and SEPAs required greater funding, technical expertise, and inter-agency collaboration to enhance enforcement.⁵⁷
- iii. Judicial Safeguards for Landowners – The judiciary should develop clear precedents on regulatory takings, ensuring that conservation regulations did not disproportionately infringe on private property rights without fair compensation.⁵⁸
- iv. Incentive-Based Conservation – The government should adopt policies such as conservation easements, tax incentives, and payments for ecosystem services (PES) to encourage private landowners to engage in conservation voluntarily.⁵⁹

⁵⁶ Mabogunje (n 30) 18-22.

⁵⁷ Fagbohun (n 8) 112-118

⁵⁸ C Okonkwo, 'The Challenges of Private Land Ownership and Conservation in Nigeria: A Legal Perspective' (2019) 3(4) *African Law Review* 52, 58-64.

⁵⁹ Usman (n 18) 122-128

- v. Public Participation and Awareness – Environmental regulations should be designed with stakeholder engagement, ensuring landowners, communities, and policymakers collaborated in sustainable land use decisions.⁶⁰
- vi. Comparative Policy Adoption – Nigeria should study and adapt successful models from other jurisdictions, such as South Africa's land reform policies, Canada's conservation easement programmes, and Australia's environmental stewardship initiatives.⁶¹
- vii. Constitutional Reform – It was imperative that the Constitution be amended to make environmental rights justiciable and create greater balance with property protections. It therefore connoted that environmental rights should be moved from Chapter II to Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999 as amended.⁶²
- viii. Compensation Mechanisms – There was an urgent need to develop robust compensation frameworks for landholders affected by conservation restrictions, potentially through a national conservation trust fund.⁶³
- ix. Community Co-Management – There was also the need to expand community-based natural resource management programmes that recognised traditional rights whilst promoting conservation objectives.⁶⁴
- x. Economic Incentives – It was further recommended that tax benefits should be implemented whilst also advocating for payments for ecosystem services, and other market-based instruments that aligned private economic interests with conservation outcomes.⁶⁵
- xi. Legal Enforcement – There was the need to strengthen enforcement of existing environmental regulations through better resourcing of agencies and specialised environmental courts.⁶⁶
- xii. Land Use Reform – It was a legal aberration that since its enactment in 1978, the Land Use Act had not been amended in spite of the lacunae and shortcomings inherent in the Act. It was therefore imperative that the Land Use Act should be reformed or amended to explicitly incorporate conservation objectives and limit discretionary conversion of ecologically sensitive lands.⁶⁷

⁶⁰ Yusuf (n 12) 92-98

⁶¹ B.T Aluko and A.R Amidu, 'Urban Low-Income Settlements, Land Deregulation and Sustainable Development in Nigeria' (Paper presented at the 5th FIG Regional Conference on Promoting Land Administration and Good Governance, Accra, Ghana, 2006) 8-15

⁶² Oluduro (n 4) 282-288

⁶³ BA Usman, (n 18) 125-130.

⁶⁴ Ogundele (n 15) 56-60

⁶⁵ BA Usman, (n 18) 128-132

⁶⁶ Fagbohun (n 8) 115-120

⁶⁷ Otubu (n 14) 42-48; see also Mabogunje (n 30) 20-24.