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The law and policy on curbing desertification in Nigeria: A contemporary discourse

Abstract

The Nigerian Government has enacted laws and taken other measures to curb desertification in Nigeria. This article undertakes a contemporary discourse of the law and policy on curbing desertification in Nigeria. The research methodology adopted is mainly doctrinal analysis of applicable primary and secondary sources. The author is of the view that governmental efforts to curb desertification, as represented by these measures, have not yielded the desired results, as desertification continues unabated in Nigeria. This is basically due to the ineffectiveness of these measures. The ineffectiveness of measures taken by the Nigerian Government on desertification control can be attributed to, among other factors, lack of adequate implementation or enforcement of laws on desertification control, lack of community ownership of land in Nigeria, lack of involvement of rural communities in policy formulation and implementation and focus on tree planting as a strategy to tackle the desertification scourge. It is concluded that for the threat of desertification in the country to be effectively addressed, the Nigerian Government must, among others, rise to the challenge of faithfully implementing or enforcing the laws on desertification control, amend the Land Use Act 2004 to give communities ownership of land, except land where mineral deposits and oil are found, adopt the bottom-up approach in policy-making and implementation of desertification control measures, thus involving local communities and other stakeholders and embrace the planting of shrub plants as an alternative or complement to the current focus on trees alone in line with the practice in other countries such as China, the United States of America (USA), Australia and New Zealand.

1. Introduction

Desertification ranks among the greatest environmental challenges of a global dimension. There is a nexus between climate change and desertification. To be specific, climate change causes deserts to expand. Desertification has grave implications worldwide for biodiversity, eco-safety, poverty eradication, socio-economic stability, and sustainable development. The phenomenon of desertification occurs on all continents, except Antarctica. On the African continent, Nigeria is one of the countries that is affected by desertification. This challenge is currently being experienced in the following States: Sokoto, Kebbi, Zamfara, Borno, Katsina, Bauchi, Gombe, Kano, Adamawa, Jigawa, and Yobe. These States are known as the 11 front-line States in northern Nigeria.

The environment¹ in northern Nigeria includes the Sudan and Sahel vegetation of Nigeria.² It is characterised by low rainfall, high temperature, sandy loam soil with poor water-retention capacity, scattered sandy patches, tall grasses, and scattered trees.³ Desertification is fast threatening many a livelihood in the affected parts of Nigeria.⁴ In some communities in the affected areas, desertification is so grave that there are poor agricultural yields; wells and other water resources are drying up, and people are beginning to leave for fear of being swallowed by sand dunes.⁵ It is estimated that over 30 million people in Nigeria live under the hardship of desertification.⁶ In addition, it is believed that Nigeria is currently losing approximately 351,000 hectares of its landmass to desert conditions annually, and such conditions are estimated to be advancing southwards at the rate of about 0.6 kilometre per year.⁷ Nowadays, desertification affects an area of 393,168 square kilometres, which is approximately 43 per cent of Nigeria's total land area.⁸ This is despite various international environmental agreements, including the United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa (UNCCD) 1996 signed and ratified by the Nigerian Government on 31 October 1994 and 8 July 1997, respectively, as well as legislation, policies, plans, programmes, projects and strategies put in place by the Nigerian Government to curb the threat of desertification in the country. Northern Nigeria is currently in crisis: it lacks infrastructure; it has hardly anything or nothing to show for the huge amount of money the Federal, State and Local Governments have expended in the area over the years, and it is underdeveloped, backward and poverty stricken. The situation has been further compounded by desertification, which has engendered social conflicts between Fulani herdsmen and farmers, particularly in parts of Benue, Nassarawa and Plateau States. This has led to loss of numerous lives and properties running into billions of naira.⁹ Indeed, it has caused water shortages, food shortages, rural

1 In Nigeria, statute defines "environment to include: water, air, land and all plants and human beings or animals living therein and the inter-relationship which exist[s] among these or any of them". See sec. 37 of the *Nigerian National Environmental Standards and Regulations Enforcement Agency (NESREA) (Establishment) Act 2007*.

2 Adogi 2015.

3 Adogi 2015.

4 Imosemi *et al.* 2013:192.

5 Imosemi *et al.* 2013:192.

6 Imosemi *et al.* 2013:192.

7 Imosemi *et al.* 2013: 192.

8 Connor & Ford 2014.

9 "Senate considers bill to end Fulani herdsmen, farmers conflict", <http://theeagleonline.com.ng/senate-considers-bill-to-end-fulani-herdsmen-farmers-conflict> (accessed on 17 June 2015) and <http://www.dailytrust.com.ng/daily/index.php/component/content/article/104-great-green-wall/55675-why-president-assent-is-needed-for-the-great-green-wall-agencybill?tmpl=component&print=18page> (accessed on 25 June 2015).

poverty, land or soil degradation, and general sociopolitical instability in the affected areas of northern Nigeria.

This article undertakes a contemporary discourse of the law and policy on curbing desertification in Nigeria. It analyses applicable laws and discusses the policies, plans, programmes, projects and strategies formulated to curb desertification in Nigeria. It identifies obstacles to the full implementation of these measures. It also takes the position that the ineffectiveness of measures taken by the Nigerian Government on desertification control in Nigeria can be attributed to, among other factors, lack of adequate implementation or enforcement of laws on desertification control, and lack of community ownership of land in Nigeria. It also highlights the practice in other countries and offers suggestions, which, if implemented, could curb land degradation or desertification and enable Nigeria to realise the benefits of sustainable land management.

1.1 Concept of desertification

International Conventions provide a definition of desertification. For instance, the United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa (UNCCD) 1996 defines desertification as “land degradation in arid, semi-arid and dry sub-humid areas resulting from various factors, including climatic variations and human activities”.¹⁰ The UNCCD defines land degradation as:

reduction or loss, in arid, semi-arid and dry sub-humid areas of the biological or economic productivity and complexity of rain[-]fed cropland, irrigated cropland, or range, pasture, forest and woodlands resulting from land uses or from a process or combination of processes, including processes arising from human activities and habitation patterns, such as: (i) soil erosion caused by wind and/or water; (ii) deterioration of the physical, chemical and biological or economic properties of soil and (iii) long[-]term loss of natural vegetation.¹¹

The above definition of desertification serves the purpose of this article. This definition is liable to be criticised for not being exhaustive or encompassing as it, for example, fails to mention human activities such as overcultivation, overgrazing and bush-burning that cause desertification.

1.2 Causes of desertification

It is correct to aver that there are natural and human causes of desertification.

10 UNCCD 1996:art. 1(a).

11 UNCCD:art. 1(f).

1.2.1 Natural causes

- Drought

Climate change is responsible for drought, which is an extended and continuous duration of very dry weather.¹² Insufficient rainfall and unfavourable weather conditions are natural causes of drought.¹³ Drought can occur when farmland is overcultivated and when forests are reduced as a result of deforestation.¹⁴ Drought occurs in dry and semi-dry climates, when periods of no rainfall are interrupted with years of abundant rainfall.¹⁵ When the rain is sparse, plants and trees do not grow, causing the desert to set in; desert sand is not fertile. In short, nothing grows on the land when the desert sets in.¹⁶ Recently, North Korea was hit by severe drought.¹⁷ It was the worst drought in 100 years for the nation.¹⁸ Since drought cannot be controlled, areas where drought occurs consistently should not serve as farms or productive land. The farms could be relocated or measures such as irrigation could be taken to make these areas productive.¹⁹

1.2.2 Human causes

- Deforestation

Forests are large areas of land planted with trees and are noticeable in areas with subequatorial and monsoon types of climate.²⁰ The importance of the forests to man cannot be overstressed,²¹ as they provide significant social, environmental and ecological services. To be specific, they provide habitats for most of the terrestrial biodiversity;²² help stabilise the global climate by sequestering carbons;²³ temper climate change and many local weather patterns through evaporation; protect and enrich soils; provide natural regulation of the hydrological cycle; influence watershed flows of surface and ground water, and contribute towards maintaining and enhancing the quality of the soil. In general, forests provide livelihood and cultural integrity for forest dwellers. Deforestation is the cutting down of trees for fuelwood and timber, cultivation and other uses by man. This leaves soil uncovered, causing an increase in the temperature of the soil.²⁴ Nigeria has the

12 Imosemi *et al.* 2013:192.

13 Imosemi *et al.* 2013:192.

14 Imosemi *et al.* 2013:192.

15 Imosemi *et al.* 2013:192.

16 Imosemi *et al.* 2013:192.

17 <http://www.bbc.co.uk/newsround/33169701> (accessed on 19 June 2015).

18 <http://www.bbc.co.uk/newsround/33169701> (accessed on 19 June 2015).

19 Imosemi *et al.* 2013:196.

20 Imosemi *et al.* 2013:194.

21 Imosemi *et al.* 2013:194.

22 Ikoni 2015.

23 Ikoni 2015.

24 Imosemi *et al.* 2013:194.

highest rate of forest loss (3.3 per cent) in the world.²⁵ In fact, forests in northern Nigeria have nearly vanished.²⁶ In Somalia, trees are cut down and burnt to produce charcoal, which is trucked for export to the Gulf States from the major ports in the country, particularly Mogadishu, Kismayo, and Bosaso.²⁷ It is suggested that Nigeria and Somalia should intensify the campaign against illegal logging and encourage plantation and reforestation programmes.

- Overcultivation of land

Intensive farming on land to produce food for consumption or for sale to the public has engendered destruction of soil nutrients, causing soil or land degradation and consequent desertification. Nigeria should intensify the war against overcultivation of land and encourage the adoption of measures, including the use of irrigation and fertilizers, in order to improve land productivity.

- Overgrazing of dry lands by livestock

Livestock feed on the grass plants in the dry lands in order to survive. When livestock forage for food, it tends to have an effect on the environment, causing desertification. As they feed on these grass plants, they gradually diminish the land's value. The land becomes barren when these livestock are not controlled by their owners.²⁸ In northern Nigeria, livestock-farming or pastoralism is a major occupation of the people. It is suggested that Nigeria should intensify the campaign against overgrazing and encourage the planting of grass plants.

- Poverty

In Nigeria, approximately 70 per cent of the population, which currently stands at 178.5 million, is classified as poor, particularly those in rural areas, children, women and other marginalised groups such as nomadic pastoralists and peasant farmers who are alienated by the mechanism of formal administration and not effectively integrated in policy and political processes.²⁹ The poor in Nigeria, particularly those

25 Imosemi *et al.* 2013:194.

26 Imosemi *et al.* 2013:194.

27 <http://www.banadir.com/a.htm> (accessed on 23 June 2015).

28 Note that overgrazing leads to the killing of individual grass plants, leaving only patches of bare soil. Of course, overgrazing damages or kills repeatedly grazed plants, while ungrazed declining grasses are weakened, and it removes the vegetation causing erosion and loss of top soil. See Imosemi *et al.* 2013:193.

29 <http://www.tradingeconomics.com/nigeria/population> (accessed on 28 September 2015). See also Ajayi 1996:5. Other core reasons that can be identified as causes of desertification are: (a) globalisation which has the effect of intensifying farming efforts, for example, to make farm produce available for the purpose of export. See fn. 28; (b) bush-burning; (c) poor irrigation practices or techniques in Nigeria, causing salinated soils, and thus preventing plants from growing (see fn. 28), and (d) loss of biodiversity, as the cutting down of

in rural communities, cut down the trees in the forests as fuelwood for the purpose of cooking their food, because they cannot afford the huge cost of electric or gas stoves or cookers. Even if the rural dwellers can afford these cooking appliances, they are restricted by poor electricity and gas supplies, coupled with the current high electricity tariff and cost of cooking gas in Nigeria. Nigeria should intensify the war against poverty by pursuing the poverty alleviation programmes of the Federal Government of Nigeria (FGN) to their logical conclusion.

1.3 Effects of desertification

A number of core effects of desertification can be identified.

1.3.1 Social conflict

Desertification causes social, economic and political tensions that have led to social conflicts. A noteworthy example is the case of Lake Chad. The impact of the drying lake is causing social, economic and political tensions among communities around Lake Chad. There are repeated conflicts among nationals of different countries over control of the remaining water. To be specific, Cameroonians and Nigerians in Darak constantly fight over the water.³⁰ Nigerians claim to be the first settlers in the village, whereas Cameroonians invoke nationalist sentiments, since the village is in Cameroonian territory.³¹ For their part, the fishermen want farmers and herdsmen to cease diverting lake water to their farmlands and livestock.³² There is no doubt that social conflicts cannot engender peace as well as economic growth and development.

1.3.2 Poverty

Desertification engenders poverty, particularly rural poverty. This is mostly felt in many rural communities in northern Nigeria, where the major occupation of the people is farming. When farmlands become infertile, desolate and barren, due to desertification conditions, they cannot be farmed. As such, income derived from the sale of farm products would not reach the rural dwellers. In addition, foodstuffs derived from the cultivation of farmlands would become unavailable to most of the farmers and their family members. The resultant effect is increased poverty of the rural dwellers. Their problems are further aggravated by the failure on the part of the Government to provide citizens with the basic amenities of life such as shelter, roads, electricity, water, and transportation. These can cause starvation, hunger and even death of the rural dwellers.

trees in the forests and/or bush-burning leads to the extinction of species of wild animals and plants and consequent desertification.

30 Salkida 2015.

31 Salkida 2015.

32 Salkida 2015.

1.3.3 Migration

In northern Nigeria, some people have been compelled to migrate from their communities to other parts of Nigeria, due to sand dunes, as well as food and water scarcity due to desertification. This is unacceptable. In addition, desertification arising from overgrazed drylands in northern Nigeria has forced many Fulani herdsmen to migrate with their cattle and other animals to States in southern Nigeria, including Edo, Delta, Ondo, Bayelsa, Rivers, and Ogun. This has led to social conflicts between the herdsmen and the farmers as well as the destruction of farm produce by cattle and other animals belonging to the herdsmen.³³

2. The law and policy on curbing desertification in Nigeria

Over the years, the adverse effects of desertification on Nigeria's political economy compelled its Government to adopt numerous measures to curb desertification. The measures put in place include laws, policies, plans, programmes, projects, strategies, and institutions. Some of these institutions are policy-making bodies, while others are, in fact, involved

33 Other core effects of desertification can be identified: (a) soil or land degradation. Burning the bush for whatever purposes destroys vital nutrients in the soil, thus causing soil or land degradation; (b) unemployment. To be specific, many Fulani herdsmen have been compelled to quit the job of pastoralism as there is hardly any or no grass, food and water to support them and their livestock as a result of desertification conditions. As there is no employment, many of the affected persons have become idle. Prompted by this situation, many of the affected persons have taken to criminality, including stealing, rape, armed robbery, terrorism, and kidnapping. It should be recalled that, on 21 September 2015, Olu Falae, a prominent Yoruba leader, National Chairman of the Social Democratic Party (SDP) and former Secretary to the FGN (SGF), was kidnapped by Fulani herdsmen who invaded his farm in Ilado village, Akure North Local Government Area of Ondo State. The kidnappers had demanded a ransom of 100 million naira before Falae could be released. Four days later, on 24 September 2015, the 77-year-old politician was released by his abductors after a ransom of 5 million naira was paid. All these may be considered the works of the devil. As the popular saying goes – 'An idle mind is the devil's workshop.' <https://nigeriannewspapers.com/ng/falae-abduction-is-crime-odinkalu-warns-yoruba-leaders-on-fulani-herdsmen> (accessed on 11 October 2015); <http://www.Ngrguardiannews.com/2015/10/Yoruba-leaders-protest-attack-by-Fulani-herdsmen> (accessed on 11 October 2015), and <http://www.guruslodge.com/cheif-olu-falae> (accessed on 4 November 2015); (c) Loss of revenue to individuals and the government. Desertification has reduced the number of livestock available for export, thus revenue to the owners of livestock and the FGN arising from export of livestock has reduced significantly (see Imosemi *et al.* 2013:194), and (d) Destruction of habitat and loss of biodiversity. The flora and fauna in the drylands have been badly depleted as a result of climatic variations and human activities, including bush-burning. Nigeria's National Action Programme to Combat Desertification 16-17, http://www.unccd.int/Action_Programmes/nigeria-eng200/pdf (accessed on 23 June 2015).

in the implementation of deliberate Government policies and projects to prevent and mitigate the threat of desertification. The core measures are reviewed below.

2.1 Legal framework

2.1.1 International instruments

- Broad Statement of Principles for Protecting Forests

Between 5 and 14 June 1992, the United Nations Conference on Environment and Development (UNCED), or the first Earth Summit, was held in Rio de Janeiro, Brazil. It re-affirmed and built upon the Stockholm Declaration, an output of the first global environmental conference, namely the United Nations Conference on the Human Environment (UNCHE), held in Stockholm, Sweden, from 5 to 16 June 1972. UNCED addressed wide-ranging environmental issues. Desertification, along with climate change and the loss of biodiversity, were identified as the greatest challenges to sustainable development.³⁴ Suffice it to say that UNCED produced a document containing a general statement about forest principles geared towards the protection of forests worldwide. The major drawbacks are: the document on forests is a legally non-binding statement of principles, and inadequate international funding as the estimated costs of international funding for implementing the forests programme is over 6 billion dollars a year.³⁵

- United Nations Convention on Biological Diversity

The United Nations Convention on Biological Diversity (UNCBD) was signed by 150 government leaders at the UNCED.³⁶ Nigeria signed and ratified the Convention, an international legally binding agreement, which came into effect on 29 December 1993. The objectives of the Convention include the conservation of biological diversity, and the sustainable use of its components. A major criticism of the UNCBD is that issues involved in the Convention are not well defined. For instance, the value of biodiversity itself has not been well defined as

34 “‘Sustainable development’ can be defined as the way to ensure that economic development will not endanger the ability of future generations to enjoy the fruits of the earth”, <http://publications.gc.ca> (accessed on 4 January 2013).

35 “Ecology 1992”, http://en.wikipedia-org/wiki/environmental_protection (accessed on 3 January 2013). For details on the international forest regime, see Schwoerer 2015:281.

36 Note that the continuing and accelerating loss of habitat and species worldwide, despite the existence of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), signed in Washington DC on 6 March 1973 and other relevant treaties, led to a discussion on the need for a comprehensive global treaty to conserve biological diversity. This paved the way for the signing of the Convention at Rio 1992. See Fletcher 1993:9.

a function of place and character.³⁷ Two core challenges of the Treaty are the non-participation of powerful nations such as the United States of America (USA), which refused to sign and ratify the UNCBD, even though they promised to abide thereby, and a lack of adequate funding of biodiversity projects in the developing countries, as the developed nations are not meeting their financial commitments to assist conservation projects in those countries.³⁸

- United Nations Framework Convention on Climate Change

The United Nations Framework Convention on Climate Change (UNFCCC), an international legally binding agreement signed by numerous countries at the UNCED, came into effect on 21 March 1994. Nigeria also signed and ratified the Convention. Its ultimate objective is to stabilise atmospheric concentrations of greenhouse gases at a level that would prevent harming the climate system. A core drawback of the UNFCCC is its failure to set targets and timetables for stabilising emissions of CO₂ and other greenhouse gases, as it contains only guidelines and the target dates are stated to be “as soon as possible”. This may have informed the adoption of the Kyoto Protocol to the UNFCCC at the third session of the Conference of Parties (COP) to the UNFCCC in Kyoto, Japan, on 11 December 1997. The Protocol, with its stricter demands for reducing greenhouse gas emissions or binding targets, came into effect on 16 February 2005. It has the same ultimate objective as the UNFCCC.³⁹

Several UN conferences on climate change have been held to review the Protocol. The most recent UN Conference on Climate Change took place in Paris, France, between 30 November and 12 December 2015. It was the 21st session of the COP to the UNFCCC and the 11th session of the COP serving as the meeting of the parties to the Kyoto Protocol. At the Conference, 195 countries adopted a purported universal legally binding agreement, popularly known as the Paris Climate Agreement.⁴⁰ In the 12-page Agreement or Treaty, the members of the UNFCCC promised to reduce their carbon output

37 Convention on Biological Diversity, United Nations Environmental Programme, No 92-7807, 5 June 1992.

38 Abuza 2014:94.

39 For detailed discussions on the Protocol, see Abuza 2014:95-102.

40 It was made pursuant to the decision reached at the UN Conference on Climate Change, which took place in Durban, South Africa, from 28 November to 11 December 2011, that is, to adopt a universal legal agreement on climate change not later than 2015. Note that at the UN Conference on Climate Change, held in Doha, Qatar, parties to the Protocol re-affirmed their pledge in Durban to create a new comprehensive, legally binding treaty in 2015 that will require green-house gas-producing countries, including major carbon emitters that do not abide by the Protocol at present, that is, China, India and the USA, to reduce or limit their emissions of green-house gas. The decision was also reached at the Doha meeting to extend the life of the Protocol, which was due to end in 2012, to 2020. See Abuza 2014:97.

and to do their best to avoid dangerous climate change by limiting global warming “to well below 2 degrees C”.⁴¹ A noteworthy point, in this instance, is that the Agreement is due to come into effect in 2020, when 55 countries that produce at least 55 per cent of the world’s greenhouse gas emissions ratify, accept, approve or accede to the Agreement. The members of the UNFCCC intend to fully replace the Kyoto Protocol when it comes into effect in 2020.⁴²

The Treaty adopts the ‘bottom-up’ approach. Nonetheless, it obviously fell below the expectations of many members of the international community. A major criticism of the Treaty is its failure to set targets for member states to reduce their carbon output, as the target dates are stated to be “as soon as possible”. This was one of the core shortcomings of the UNFCCC, as mentioned earlier. The Agreement or Treaty also lacks a binding enforcement mechanism. The fact is that most of the agreement consists of ‘promises’ or aims, and not firm commitments.⁴³ It has been correctly observed elsewhere⁴⁴ that the stated objectives of the Paris Climate Agreement are implicitly

[p]redicated upon an assumption that member states of the United Nations, including high polluters such as China, the US, India, Brazil, Canada, Russia, Indonesia and Australia, which generate more than half of the world’s greenhouse gas emissions, will somehow drive down their carbon pollution voluntarily and assiduously without any binding enforcement mechanism to measure and control CO₂ emissions at any level from factory to State, and without any specific penalty gradation or fiscal pressure (for example, a carbon tax) to discourage bad behavior.⁴⁵

- Agenda 21

The goals of Agenda 21 adopted at the UNCED include: to ensure that development proceeds in a sustainable manner; to eliminate poverty throughout the world, and to achieve the sustainable use of global and regional resources.⁴⁶ A major criticism of Agenda 21 is that its

41 <https://en.wikipedia.org/wiki/paris-Agreement> (accessed on 20 June 2016).

42 <https://en.wikipedia.org/wiki/paris-Agreement> (accessed on 20 June 2016) and http://ec.europa.eu/clima/policies/international/negotiations/Paris/index_en.htm (accessed on 20 June 2016).

43 <https://en.wikipedia.org/wiki/paris-Agreement> (accessed on 20 June 2016).

44 <https://en.wikipedia.org/wiki/paris-Agreement> (accessed on 20 June 2016).

45 It is not astonishing that the high polluters mentioned earlier were among the 176 countries that, as at 20 May 2016, signed the Treaty, but have not yet ratified it. See <https://en.wikipedia.org/wiki/paris-Agreement> (accessed on 20 June 2016). It is most likely that some of these high polluters would not ratify the Treaty. Note that the USA signed the Kyoto Protocol, but refused to ratify it, and thus never became a member of the Protocol. Other countries that did not ratify the Protocol are Afghanistan, Andora, and South Sudan. See Abuza 2014:99.

46 For details on goals or objectives and problems of Agenda 21, see the United Nations Conference on Environment and Development, ‘Agenda 21’ 1992. See fn. 35.

legal status is that of 'soft law'. As a 'soft law' agreement, Agenda 21 is formally a legally non-binding agreement. Another major criticism is that the concept of sustainable development was not defined in Agenda 21.

- United Nations Convention to Combat Desertification in those countries experiencing severe drought and/or desertification, particularly in Africa.

The Convention, which is the only Treaty stemming from a direct recommendation of the Rio Conference's Agenda 21, was adopted in Paris, France, on 17 June 1994 and came into effect on 26 December 1996. The UNCCD has been ratified by 195 states, including Nigeria and the European Union (EU). All member states of the United Nations (UN) are parties to the Convention, which is the sole legally binding international environmental agreement linking environment and development to sustainable land management. It addresses specifically the arid, semi-arid and dry sub-humid areas known as the dry lands. The objective of the UNCCD is to combat desertification and mitigate the effects of drought in countries experiencing serious drought and/or desertification, particularly in Africa. This is to be realised through effective action at all levels, supported by international co-operation and partnership arrangements, in the framework of an integrated approach that is consistent with the Rio Conference's Agenda 21, with a view to contributing to the achievement of sustainable development in the affected areas.⁴⁷ In short, the Convention's 195 parties collaborate to improve the living conditions of people in dry lands, to maintain and restore land and soil productivity, and to mitigate the effects of drought.⁴⁸ A permanent Secretariat, established by the Convention,⁴⁹ facilitates, among others, co-operation between developed and developing countries, particularly in terms of knowledge and technology transfer for sustainable land management.⁵⁰

The Convention is based on the principles of participation, partnership and decentralisation – the backbone of good governance and sustainable development.⁵¹ It is particularly committed to a bottom-up approach, encouraging the participation of local people in combating desertification and land degradation.⁵² As the dynamics of land, climate and biodiversity are intimately connected, the UNCCD

47 UNCCD:art. 2.

48 <http://www.unccd.int/en/about-theconvention/pages/About-the-Convention.aspx> (accessed on 23 June 2015).

49 UNCCD:art. 23.

50 <http://www.unccd.int/en/about-theconvention/pages/About-the-Convention.aspx> (accessed on 23 June 2015).

51 <http://en-wikipedia.org/wiki/United-Nations-Convention-to-Combat-Desertification> (accessed on 23 June 2015).

52 <http://www.unccd.int/en/about-theconvention/pages/About-the-Convention.aspx> (accessed on 23 June 2015).

collaborates closely with the other two Rio Conventions, namely the UNCBD and the UNFCCC, to meet these complex challenges with an integrated approach and the best possible use of natural resources.⁵³ All three Conventions have developed, or are in the process of developing a joint work programme with the objective of identifying synergetic programme areas and proposing an action plan on how to implement these synergies on the ground.⁵⁴ National Action Programmes (NAPs) constitute one of the key instruments in the implementation of the UNCCD. These are strengthened by Action Programmes on Subregional (SRAP) and Regional (RAP) levels. NAPs are developed in the framework of a participative approach involving the local communities, and they spell out the practical steps and measures to be taken in order to combat desertification in specific ecosystems.⁵⁵

The international donor community has pledged significant funding for the implementation of the UNCCD through regular overseas development assistance.⁵⁶ An institution saddled with the responsibility of mobilising funds for the implementation of National Action Plans is the Global Mechanism of the UNCCD (GM-UNCCD).⁵⁷ A new mechanism for the implementation process of the UNCCD was identified with the designation of the Global Environmental Facility (GEF) as a financial mechanism of the Convention. It provides catalytic funding on an incremental cost basis for initiatives supporting sustainable land management.⁵⁸

The point must be made at this stage that countries have adopted various approaches in support of the implementation of the UNCCD. While Cuba and China have adopted a pragmatic approach, the Kenyan Government has emphasised the mainstreaming of sustainable land management in the agricultural sector.⁵⁹ It has recently involved itself in a large investment project with the World Bank that would reform the entire agricultural sector based on the principles of sustainable land management.⁶⁰ This is commendable. Nigeria and other countries should emulate the example of Kenya. It is rather sad that 20 years after the adoption of the Convention, the efforts to implement the UNCCD have not led to the realisation of its objectives. The fact is that implementation of the Convention is still at the initial stage. Thus, the ideas, promises and commitments made in

53 <http://www.unccd.int/en/about-theconvention/pages/About-the-Convention.aspx> (accessed on 23 June 2015).

54 Kutter 2015.

55 <http://en-wikipedia.org/wiki/United-Nations-Convention-to-Combat-Desertification> (accessed on 23 June 2015).

56 Kutter 2015.

57 Kutter 2015.

58 Kutter 2015.

59 Kutter 2015.

60 Kutter 2015.

the UNCCD have not been substantially realised. Without doubt, the UNCCD obliges countries to strengthen relevant existing legislations and where they do not exist, enact new laws and establish long-term policies.⁶¹ However, it is silent on the specific contents and form of such legislations and policies.⁶² It does not promote bilateral and multilateral arrangements linking donors and local entities.⁶³ This lack of support constitutes one of the factors responsible for the failure of affected countries to adopt relevant legislations.⁶⁴

A major drawback of the UNCCD is that not all member nations of the UN subscribe to the goals of the Convention. It is worth recalling that one of the ratifying countries, namely Canada, a member nation of the UN, has withdrawn from the Convention.⁶⁵

- African Union Convention on the Great Green Wall

The Convention, known as the Great Green Wall for the Sahara and Sahel Initiative (GGWSSI), was signed in June 2010 by some African countries, including Nigeria. This was in line with the UNCCD. It is a Pan-African proposal to 'green' the African continent from West to East by planting a mixture of native tree species on a strip of land measuring 15 kilometres (9 metres) wide and 7,100 kilometres (4,000 metres) long from Senegal to Djibouti, along the southern limit of the Sahara desert, in order to combat land degradation and wedge the southward expansion of the Sahara desert.⁶⁶ Other aims include supporting the efforts of local communities in the sustainable management and use of forests, rangelands and other natural resources in dry lands; contributing to climate change mitigation, and improving food security and livelihood of people in the Sahel and Sahara.⁶⁷

It is intriguing to note, in this instance, that the Convention created an Agency formally known as the Pan-African Agency of the Great Green Wall (PAGGW) and enjoined participating countries to establish, in their various countries, a National Agency for the Implementation of the GGWSSI. Algeria, Burkina Faso, Chad, Djibouti, Egypt, Eritrea, Ethiopia, Gambia, Mali, Mauritania, Niger, Senegal and Nigeria are the current focal countries for the Initiative.⁶⁸ Working closely with the

61 UNCCD:art. 5(e).

62 See also Aigbokaevbo & Ogbodo 2014:29.

63 See also Aigbokaevbo & Ogbodo 2014:29.

64 See also Aigbokaevbo & Ogbodo 2014:29.

65 <http://en-wikipedia.org/wiki/United-Nations-Convention-to-Combat-Desertification> (accessed on 23 June 2015). For other criticisms of the UNCCD, see Conliffe 2011:44-63.

66 See also Connor & Ford 2014:7142-7154 and <http://www.mdpi.com/2071-1050/6/10/7142/htm> (accessed on 23 June 2015).

67 <http://thereddesk.org/countries/initiatives/great-green-wall-sahara-and-sahel-ethiopia> (accessed on 23 June 2015).

68 <http://www.rea.au.int/en/content/great-green-wall-saharaandsahel> (accessed on 22 June 2015).

UNCCD, UNCBD and UNFCCC, the GGWSSI has supported various targeted governments to develop National Action Plans that would enable and facilitate the implementation of the Initiative.⁶⁹

The GGWSSI is supported by the Food and Agriculture Organisation of the UN (FAO); the EU; GM-UNCCD, and GEF. In Ethiopia, FAO is funding the development of a National Strategy and Plan of Action for the GGWSSI, which is part of a Technical Co-operation Project designed to provide technical and financial support to Ethiopia, Chad, Djibouti, Mali and Niger.⁷⁰ The Ministry of Agriculture is the GGWSSI focal organisation in Ethiopia. For its part, GEF emulates the spirit of collaboration by allowing participating GGW countries to prioritise which projects they want to implement, in conjunction with GEF agencies and their partners.⁷¹ They may develop one or several projects in the context of this programme and assign some or all of their financial allocations to the GGW.⁷² Progress is amply noted, especially in Niger's Zinder region, where tree density has significantly improved since the mid-1980s. Monique Barbut, former Chief Executive Officer (CEO) of GEF and Executive Secretary of UNCCD, attributes the success to working with farmers in order to find technical solutions, particularly long-term land and financial solutions, to save the trees.⁷³ This form of natural regeneration benefits both local communities and the global environment, by increasing crop yield, improving soil fertility, reducing land erosion, improving fodder availability, diversifying income, cutting wood collection time for women, strengthening resilience to climate change, increasing biodiversity, and much more.⁷⁴

It is significant to place on record, in this instance, that GEF has granted 100.8 million dollars to GGW participating countries in order to expand sustainable land and water management (SLWM) and adaptation in targeted landscapes and in climate-vulnerable areas in West African and Sahelian countries.⁷⁵ Each country is expected to design a project based on national-level priorities for GEF and Least Developed Countries Fund (LDCF) resources. The projects are expected to support, among other activities, the expansion of investment in SLWM technologies to help communities adapt production systems to climate variability, generate income and livelihoods, secure global

69 <http://www.rea.au.int/en/content/great-green-wall-saharaandsahel> (accessed on 22 June 2015).

70 <http://thereddesk.org/countries/initiatives/great-green-wall-sahara-and-sahel-ethiopia> (accessed on 23 June 2015).

71 <http://www.thegef.org/gef/great-green-wall> (accessed on 23 June 2015).

72 <http://www.thegef.org/gef/great-green-wall> (accessed on 23 June 2015).

73 <http://www.thegef.org/gef/great-green-wall> (accessed on 23 June 2015). Note the major land reclamation in Senegal and Niger through the GGW, restoring 27.000 and 5 million hectares, respectively. See Connor & Ford 2014:7142-7154.

74 See Connor & Ford 2014:7142-7154.

75 See Connor & Ford 2014:7142-7154.

public goods (such as retention of greenhouse gases, nitrogen fixation, ground water recharge, and biodiversity), and reduce impacts from erosion, drought, and flooding.⁷⁶

A noteworthy point to bear in mind is that similar programmes have been developed in other countries, namely China and New Zealand, and have been successful in reducing and, in some cases, reversing desertification.⁷⁷ A major criticism of the GGW programme is its focus on using tree species. Agreed, forests are crucial to blocking desert winds and increasing atmospheric and soil humidity,⁷⁸ but using tree species, including members of the family, that is, acacia, as envisioned under the current plan, may compromise the long-term success of the programme and the return on investment if the aim is to moderate or reverse desertification.⁷⁹ This is so, because tree species have slow growth speeds and high local value as cooking fuel.⁸⁰ It is particularly so in countries with high poverty, and a high demand for fuelwood, as in Nigeria. Besides, high attrition rates of forests have been documented in other countries.⁸¹ Lastly, resources for protecting trees from illegal harvesting are not currently factored into the GGW.⁸²

2.1.2 Nigerian legislation

- *The Constitution of the Federal Republic of Nigeria 1999*

The Constitution of the Federal Republic of Nigeria (CFRN) 1999 is the fundamental law in Nigeria. Sadly, sec. 20, which imposes a duty on the Nigerian State to ensure environmental protection in Nigeria and all other provisions under Chapter II dealing with Fundamental Objectives and Directive Principles of State Policy, has been rendered non-justiciable by the provisions of sec. 6(6)(c) of the *CFRN* 1999.⁸³ Secondly, a right to a healthy environment is not contained in Chapter IV of the *CFRN* 1999 dealing with fundamental rights. This is not in tune with what obtains in other countries such as Uganda,

76 See Connor & Ford 2014:7142-7154.

77 See Connor & Ford 2014:7142-7154.

78 See Connor & Ford 2014:7142-7154.

79 See Connor & Ford 2014:7142-7154.

80 See Connor & Ford 2014:7142-7154.

81 Dang 1993:283-288 and United Nations Economic Commission for Africa-Africa's Regional Review: Report on Energy; United Nations Economic Commission for Africa: Addis-Ababa, Ethiopia, 2005 Africa, quoted in Connor & Ford 2014:7142-7154.

82 Connor & Ford 2014:7142-7154.

83 Note the Nigerian case of *Bishop Anthony Okojie, Trustee of Roman Catholic Schools and Others v Attorney General of Lagos State* 1981 2 NCLR 337 (CA), where it was held that by section 6(6)(c) of the *CFRN* 1979 (now section 6(6)(c) of *CFRN* 1999), the Fundamental Objectives and Directive Principles of State Policy under the *CFRN* 1979 were unenforceable. For details on the criticism of section 6(6)(c) above, see Emelie 2016:580-581.

Spain, Peru, Chile, Brazil and South Africa, where a right to a healthy environment is constitutionally guaranteed to all citizens.⁸⁴ Lastly, the *CFRN 1999* does not provide for Forestry in the Exclusive Legislative list, Concurrent Legislative list and fourth schedule to the Nigerian *Constitution*. Thus, it is not apparent which of the tiers of Government is responsible for forestry management. The current practice is that the Federal Government of Nigeria and States of the Federation legislate on forestry.

- *Land Use Act 2004*

Sec. 1 of the *Land Use Act*⁸⁵ vests all land comprised in the territory of each State in the Governor of the State to hold in trust for the benefit of the people in the State. A noteworthy point is that the holders and occupiers of land in urban and rural areas are vested with leasehold interest in the land for a maximum period of 99 years as statutory right of occupancy and customary right of occupancy, respectively. The *Act* does not mention any specific matter relating to desertification. Nonetheless, the fact that the consent of the Governor and Local Government is required as a prerequisite to alienation of any right of occupancy over a landed property in urban and rural areas, respectively, is an ample indication that the Government can control the use of land through the provisions of the *Act*. Of course, the Governor or Local Government, as the case may be, may refuse to grant consent for the use of land that is fragile or that may be prone to desertification.⁸⁶ A major criticism of the *Act* is that it downplays issues relating to forest protection or conservation.

- *Environmental Impact Assessment Act 2004*

The *Environmental Impact Assessment (EIA) Act*⁸⁷ sets out its general principles, procedures and methods in various projects, including agricultural projects. The *EIA Act* is required to be administered by an agency, that is, the Federal Environmental Protection Agency, under the *Federal Environmental Protection Agency Act*,⁸⁸ now the *NESREA*. Where in the opinion of the *NESREA*, a proposed project is likely to cause significant adverse environmental effects that may be immitigable, the Agency shall not permit such project to be carried out. Where the effects of such projects can be mitigated, the proponents of such projects are expected to comply with all measures outlined by

84 See, for instance, *Constitution of the Republic of Uganda* 1995:art. 39. *Constitution of the Republic of South Africa* 1996:sec. 24; *Constitution of Spain* 1978:art. 45, paras. 1 and 2; *Constitution of Peru* 1978:art.123; *Constitution of Chile* 1980:sec. 19(8), and *Constitution of Brazil* 1988:sec. 225.

85 Cap L5 LFN 2004.

86 Nigeria's National Report on the Implementation of the UNCCD for Submission at the Third Session of the Conference of the Parties, Recife, Brazil, November 1999:17.

87 Cap E12 LFN 2004.

88 Cap F10 LFN 2004.

the Agency to mitigate the effects.⁸⁹ A major aim of the *EIA* process on agricultural projects is to avoid embarking on indiscriminate clearing of forests, removal of top soil, indiscriminate bush-burning, felling of trees, and so on that can cause desertification conditions. It must be stressed, in this instance, that the *EIA* Act seems to have been enacted pursuant to the Rio Declaration of 1992. Principle 17 of the Declaration states that *EIA*, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a component national authority.⁹⁰ Other countries such as Bangladesh have equally enacted laws to warmly embrace the *EIA* principle.⁹¹

In line with Principle 10 of the Rio Declaration of 1992, art. 10(2)(f) of the UNCCD 1996 and other international conventions, including the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) 1998 and the United Nations Environment Programme (UNEP) Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters 2010, the *EIA Act* guarantees the right to public participation in the process of approval of projects requiring *EIA*. It is the first Nigerian law to give the public a right of participation in decision-making processes.⁹² To be specific, sec. 25 of the *EIA Act* requires the Agency to put out a public notice after receipt of the mandatory study report to, among other things, enable any member of the public file comments with the Agency relating to the conclusions and recommendations of the mandatory study report. Sadly, the right to comment has been held not to carry with it the standing to seek a judicial review of a decision of the Agency on an *EIA*.⁹³ This is a core shortcoming of the *EIA Act*, as it prevents members of the public from challenging the Agency's decision. The position in Nigeria contrasts sharply with what obtains in other countries such as the USA.⁹⁴

- *National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007*

It establishes the *NESREA* to replace the Federal Environmental Protection Agency under the *Federal Environmental Protection Agency*

89 *Environmental Impact Assessment Act*:sec. 1(a) and (b).

90 For details on the *EIA Act* in Nigeria, see Orubebe 2006:359-388; Adam 2006:345-358; Tom 2006:449-462.

91 See for example, the *Bangladesh Environment Conservation Act* 1995. See also Hasan & Rahaman 2014:115.

92 See *Environmental Impact Assessment Act*:secs 7, 9(2), (3), (4), 19(2), 21, 24, 25, 36, 38 and 55.

93 *Oronto Douglas v Shell Petroleum Development Company of Nigeria Limited and Others* (Unreported) Suit No FHC/L/SC/573/93, ruling of the Federal High Court (FHC), Lagos, delivered on 17 February 1997.

94 See *US v Students Challenging Regulatory Agency Procedure* 412 US 669 1973.

Act, with the responsibility to protect and develop the environment in Nigeria. Sec. 36 of the *NESREA Act* repealed the *Federal Environmental Protection Agency Act*. The *NESREA* is imbued with authority to, among other things, enforce compliance with the provisions of international agreements, protocols, conventions, and treaties on the environment, including climate change, biodiversity, conservation, desertification, forestry, oil and gas, chemicals, hazardous wastes, ozone depletion, marine, and wildlife.⁹⁵ A major shortcoming of the *NESREA Act* is that it is silent on who to prosecute offenders thereof. The current practice is that the Agency reports violators of the *Act* and Regulations made under it to the Attorney-General of the Federation and Minister of Justice for possible prosecution in the relevant court or consent.⁹⁶ Of course, the Attorney-General is competent, but the *Act* would have clearly given officials of the Agency the power to prosecute offenders of the *Act* and Regulations made under it.⁹⁷

- *National Agency for the Great Green Wall (Establishment) Act 2015*

The *NAGGW Act* was enacted in May 2015 and establishes the National Agency for the Great Green Wall for the implementation of the provisions of the Convention on the Great Green Wall Programme in Nigeria, management of drought, desertification and afforestation control measures and related matters in line with the GGWSSI.⁹⁸ The thrust of the *Act* is to provide a green wall of trees or shelter belts from Kebbi State to Borno State, a distance of 1,500 kilometres and 15 kilometres wide, to wedge the southward expansion of the Sahara desert and improve land productivity.⁹⁹ Its objectives include to implement the Great Green Wall Programme in the 11 frontline States; co-ordinate efforts of agencies, organisations and institutions responsible for desertification towards the attainment of the objectives of the Programme, and build capacity knowledge and skills at the Federal, State and Local community levels for the effective

95 *National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007*:sec. 7(c).

96 *National Environmental Standards and Regulations Enforcement Agency (Establishment) Act*:sec. 32(3).

97 For a discussion on *National Environmental Standards and Regulations Enforcement Agency (Establishment) Act*, see Ladan 2012:116.

98 The *Act* is obviously a domestication of the GGWSSI in Nigeria, pursuant to sec. 12(1) of the 1999 Nigerian *Constitution*. It is only if the provisions of an international convention, which has been ratified by Nigeria, are domesticated or enacted into law by the National Assembly of Nigeria that the same shall have force of law in Nigeria. See sec. 12(1) of the 1999 Nigerian *Constitution*. See also the Nigerian case of *General Sanni Abacha and Three Others v Gani Fawehinmi* 2000 6 NWLR part 66 228 251, where the Supreme Court of Nigeria held that a domesticated convention ratified by Nigeria enjoys a status higher than a mere international convention, as it would now be part of the Nigerian 'corpus juris', quoted in Abuza 2013:60 and Abuza 2017:111.

99 <http://www.punchng.com/news/senate-okays-bill-to-tackle-drought> (accessed on 23 June 2015).

implementation of the Programme.¹⁰⁰ Other objectives include to ensure effective liaison with the African Union Commission and the Pan-African Agency of the Great Green Wall, as well as monitor and ensure compliance with laws, rules and regulations on sustainable management of the natural resources in the affected areas put in place by Government from time to time in consultation with the States.¹⁰¹ The *Act*, which is to address land degradation and desertification in the Sahara and Sahel regions of Nigeria, is expected to enhance food security; help communities adapt to climate change; reduce rural poverty; minimise social conflicts between Fulani herdsmen and farmers across the country;¹⁰² lead to the creation of alternative jobs, or jobs in general, and boost rural economy.¹⁰³ A major criticism of the *Act* is that it focuses on tree planting to combat the threat of desertification spreading southwards in Nigeria.¹⁰⁴

2.1.3 Subsidiary Nigerian legislations

- National Environmental (Wetlands, River Banks and Lake Shores) Regulation 2009

This Regulation provides for the conservation and wise use of wetlands and their resources in Nigeria and ensures sustainable use of wetlands for ecological and tourism purposes as well as for the protection of wetland habitats for species of fauna and flora.¹⁰⁵

100 <http://nigerianpilot.com/senate.passes-bill-to-check-desertification> (accessed on 23 June 2015).

101 <http://nigerianpilot.com/senate.passes-bill-to-check-desertification> (accessed on 23 June 2015).

102 <http://nigerianpilot.com/senate.passes-bill-to-check-desertification> (accessed on 23 June 2015).

103 <http://nigerianpilot.com/senate.passes-bill-to-check-desertification> (accessed on 23 June 2015).

104 Other Nigerian legislations include: *Water Resources Act* Cap W 2 LFN 2004; *Endangered Species (Control of International Trade and Traffic) Act* Cap E 9 LFN 2004; *National Parks Service Act* Cap N 65 LFN 2004, and *National Oil Spill Detection and Response Agency (NOSDRA) (Establishment) Act* 2006.

105 Other subsidiary Nigerian legislations include: *National Environmental (Watershed, Mountainous, Hilly and Catchment Areas) Regulation* 2009; *National Environmental (Ozone Layer Protection) Regulation* 2009; *National Environmental (Desertification Control and Drought Mitigation) Regulation* 2011; *National Environmental (Soil Erosion and Flood Control) Regulation* 2011; *National Environmental (Control of Bush/Forest Fire and Open Burning) Regulation* 2011; *National Environmental (Protection of Endangered Species in International Trade) Regulation* 2011, and *National Environmental (Surface and Groundwater Quality Control) Regulation* 2011. <http://www.rbmagazine.org/nigerias-environmental-policies> (accessed on 2 July 2015). For criticisms on environmental regulations in Nigeria, see Ladan 2012:116; Ladan 2014:461.

2.1.4 State laws and regulations

There are a series of forestry, agricultural and wildlife laws as well as grazing reserves and bush-burning regulations in the various States across Nigeria. They focus on controlling the core causes of desertification, including deforestation, overgrazing and overcultivation. Needless to state, in this instance, that the forestry laws are the most significant of these enactments germane to the control of desertification in Nigeria. Each State is imbued with the authority, under these laws, to manage its forest estates and grazing reserves. Re-afforestation of desertified areas also falls squarely under the mandate of each State. A major criticism of these State laws and regulations is that most of them are obsolete and, in fact, require review by the State legislature and administrative law-making bodies. For example, most of the State forestry laws, including the Delta State Forestry Law¹⁰⁶ of 2006, provide for low penalty for offenders of the laws. It is submitted that only a stiff penalty can induce compliance with the law.¹⁰⁷

2.1.5 Policies, plans, programmes, strategies and projects

- National Policy on the Environment

In 1989, Nigeria adopted a National Policy on the Environment (NPE). Until its adoption, Nigeria had no defined and clearly articulated national policy goals for the nation's environment.¹⁰⁸ It must be stressed that the NPE is premised on the principle of sustainable development.¹⁰⁹ A major criticism, in this instance, is that, whereas the NPE recognises the important role citizens or communities may play in the formulation and implementation of environmental policies, both governments and companies in Nigeria have downplayed public participation in public policy,¹¹⁰ contrary to Principle 10 of the Rio Declaration 1992 and art. 10(2)(f) of UNCCD 1996. Another vital criticism is that the NPE, like various policies and laws of many States, including the United Kingdom (UK), does not define the term 'sustainable development', even though it warmly embraces the concept. It is submitted that a concrete definition of the term, indicating in practical terms what must be done, ought to be contained in the policy. The confusion and ambiguity surrounding the meaning of the concept compelled Ban Ki Moon, former UN Secretary General, to reiterate the urgent

106 Cap F3 Laws of Delta State 2006.

107 Abuza 2006:277. For details on criticisms of Forestry Laws in Nigeria, see Aigbokhaevbo 2013:339.

108 Okorodudu-Fubara 1998:56.

109 Okorodudu-Fubara 1998:56.

110 Environmental Rights Action/Friends of the Earth. Nigeria and Oil Watch Nigeria. "Making Policies Work: Between Environmental Policies and Environmental Protection", http://www.eration.org/publications/making_policieswork.pdf (accessed on 23 June 2015).

need for sustainable development goals with clear and measurable targets and indicators.¹¹¹

It is worth recalling that, at its Summit on Sustainable Development (UNSSD) convened as a high-level plenary meeting of the UN General Assembly (70th UN General Assembly) between 25 and 27 September 2015 in New York,¹¹² the UN adopted the 2030 Agenda for Sustainable Development or Agenda 30 composed of 17 goals and 169 targets to wipe out poverty, fight inequality, and tackle climate change over the next 15 years. The goals aim to build on the work of the historic Millennium Development Goals, which, in September 2000, rallied the world around a common 15-year agenda to tackle the indignity of poverty. Ban Ki Moon hails the Agenda as a universal, integrated and transformative vision for a better world. Lars Lekk Rasmussen, Danish Prime Minister, and Yoweri Museveni, Ugandan President who presided over the Adoption ceremony, stress the need for full implementation of the new Agenda.

- National Action Plan to Combat Desertification

This is an initiative of the Federal Government of Nigeria in conjunction with the desert-prone and ravaged States in northern Nigeria. The Plan has been merged into the NPE under the supervision of the *NESREA*.¹¹³

- National Action Programme

The Parties to the UNCCD are expected to prepare and implement a National Action Programme (NAP) as a principal tool for the implementation of the UNCCD. Due to the above expectation, Nigeria has developed its own NAP to combat desertification, to serve as guiding framework for the implementation of the UNCCD. The Nigerian NAP, in tune with art. 10 of the UNCCD, addresses, among other issues, the identification of the factors contributing to desertification and the practical measures necessary to combat desertification and mitigate the effects of drought, paying particular attention to the implementation of preventive measures for lands that are not yet, or slightly degraded, and enhancing the capacities of the nation to provide early drought warnings.¹¹⁴

111 This transpired on the eve of the United Nations Conference on Sustainable Development (UNCSD) or Rio + 20 or Third Earth Summit held between 13 and 22 June 2012 in Rio de Janeiro, Brazil, as a 20-year follow-up to the UNCED and the tenth anniversary of the 2002 World Summit on Sustainable Development (WSSD) or Second Earth Summit held in Johannesburg, South Africa, <http://www.unrep.org/documents/multilingual> (accessed on 3 January 2013).

112 <https://sustainabledevelopment.un.org/post2015/summit> and <http://www.un.org/apps/news/story.asp?Newsid=51968#.vspt8svkvDC> (accessed on 29 September 2015).

113 See Imosemi *et al.* 2013:195.

114 See Nigeria's National Action Programme to Combat Desertification 16-17, http://www.unccd.int/Action_Programmes/nigeria-eng200/.pdf (accessed on

2.2 Institutional framework

2.2.1 Core institutions

- Federal institutions and organs

The Federal Ministry of Environment is in charge of the Nigerian environment at the Federal level. The Federal Department of Drought and Desertification Amelioration in the Federal Ministry of Environment serves as National Secretariat of the GGWSSI. The *NESREA*, the *NOSDRA* and the *NAGGW* are three core agencies under this Ministry. Its activities cut across all environmental matters, including desertification control.

The Federal Department of Forestry in the Federal Ministry of Agriculture and Natural Resources (MANR) (now Federal Ministry of Agriculture and Rural Development) is responsible for forestry matters, including the implementation of afforestation programmes and projects as a means of checking the threat of desertification in Nigeria. The National Parks Service is responsible for the management of all national parks in Nigeria. It should be noted that the Ministry co-ordinates annual Tree Planting Campaigns throughout the country and implements projects on afforestation, woodlot plantations, plant nursery and so on as measures geared towards combating deforestation and desertification.¹¹⁵

23 June 2015). Other policies, plans, programmes, projects and strategies include: Great Green Wall Strategic Action Plan (GGWSAP); National Clean Cooking Scheme; Environmental Education Programme; National Agricultural Policy; National Water Resources Master Plan (1995-2020); Nigerian Energy Policy; Community Action Programme for Poverty Alleviation; Biodiversity Conservation and Restoration Measures; National Forest Policy; National Drought and Desertification Policy, and National Tree Planting Campaign. The other projects are the international assisted programmes or projects and include: Katsina Afforestation Programme started in 1987; North-East Arid Zone Development Programme started in 1988, with the sum of 336 million naira drawn from Lome III funds through the European Economic Commission (EEC) expended on the project; Sokoto Environment Programme started in 1989, with the sum of 294 million naira drawn from Lome III funds through the EEC expended on the project; World Bank Forestry II Project started in some states in northern Nigeria, including Sokoto and Jigawa in 1987 and ended in 1996; UNDP Assisted National Forestry Action Plan, and the Hadejia-Nguru Wetlands Conservation Project started in 1987 at Nguru, Yobe State, and managed by the International Union for the Conservation of Nature (IUCN). See Nigeria's National Report on the Implementation of UNCCD for Submission at the Third Session of the Conference of the Parties, Recife, Brazil, November 1999:22, 23, 24, 25, 29, 30, 168; <http://www.punchng.com> (accessed on 22 June 2015) and <http://www.fao.org/fileadmin/templates/great-green-wall/docs/NIGERIA-GGWSAP-FINAL-Oct-2012.pdf> (accessed on 16 November 2015).

- 115 See Nigeria's National Action Programme to Combat Desertification 18, http://www.unccd.int/Action_Programmes/nigeria-eng200/.pdf (accessed on 23 June 2015).

The Federal Ministry of Water Resources is responsible, among other functions, for the management of water resources generally in the country. In view of the fact that water is very critical to the phenomenon of desertification, the Ministry, in collaboration with relevant line ministries and agencies, undertakes programmes and projects on conservation and management of marine, fresh water and underground water resources. The Ministry supervises the River Basin Development Authorities (RBDAs) across Nigeria, including the Sokoto/Rima and the Hadejia/Jama'are River Basin Development Authorities located in the Sahel and semi-arid areas of the country established by law to capture, store and distribute water resources for irrigation, fishing and other agricultural purposes.

State institutions and organs:

Ministry of Environment in the various States of Nigeria.

States' Departments of Forestry in the State MANR. The Departments are the primary institutions responsible for desertification control at State level. They are basically charged with the management of forest estates, including the game and grazing reserves.

Ministry of Water Resources in the various States of Nigeria.

There is a State Environmental Protection Agency (SEPA) in each of the 36 States of Nigeria and the Federal Capital Territory, charged with the responsibility to protect the environment and biodiversity conservation.

Centre for Arid Zone Studies in the University of Maiduguri, Maiduguri.

Centre for Energy Research in the Usmanu Danfodio University, Sokoto and University of Nigeria, Nsukka.¹¹⁶

3. Challenges of curbing desertification in Nigeria

Six core challenges of curbing desertification in Nigeria can be identified. First, there is the top-down approach in policymaking and implementation as a strategy to combat desertification in Nigeria. The effectiveness of the numerous measures put in place by the Nigerian Government to tackle the threat of desertification depends on the role played by the affected communities. Environmental conservation policies and strategies have

116 The activities of the governmental institutions are complemented by the private institutions or civil society organisations, including local and international NGOs and Community-Based Organisations (CBOs). These bodies have been involved in matters relating to desertification control, especially on public awareness and environmental education, ecological restoration and habitat protection. Some of the NGOs include Nigerian Environmental Study Action Team (NEST) and Nigeria Conservation Foundation (NCF), while the CBOs include farmers' unions; youth associations, and women associations. See Nigeria's National Action Programme to Combat Desertification 18, http://www.unccd.int/Action_Programmes/nigeria-eng200/.pdf (accessed on 23 June 2015).

been top-down and pro-elite, who are far removed from the direct impacts of the problem.¹¹⁷ The affected communities are indeed removed from the policy process. To be specific, they are not involved in policy formulation and implementation. This lack of involvement of affected communities has, to a large extent, contributed to the failure of these policies and strategies to tackle desertification in Nigeria. There is a need to change from the top-down approach to the bottom-up approach, in order for Nigeria to curb the threat of desertification.

Secondly, there is state ownership of land in Nigeria. As indicated earlier, land in Nigeria is owned by the State going by the extant provisions of the *Land Use Act*. This law in a way divested communities of their ownership of land under the old Land Tenure System in place in most of Nigeria. It is noteworthy that the communal or customary property regime is predicated on the indigenous property system, prior to the enactment of the *Land Use Act*.¹¹⁸ It is true that many Nigerians, particularly those in the desert-affected areas, do not feel obligated to protect land in their areas over which, they have been told, they no longer have ownership rights. These people view governmental efforts or projects to combat land degradation and desertification with suspicion. It is submitted that this trend must be very rapidly reversed if success on desertification control must be recorded in Nigeria. A good suggestion, in this instance, is that the *Land Use Act* should be amended to give communities ownership of land, except land where mineral deposits and oil are found.¹¹⁹ It is, however, sceptical whether the ruling capitalist class in Nigeria would work with this suggestion in view of the enormous benefits derived from its hold on the Nigerian environment. It is apt to agree with the suggestion advanced elsewhere that:

Due to the capitalist hold on the environment in both the developing countries and developed world, it might be sensible, even though it may sound ruthless and socialist, for the people to protest against their governments and take over the hold of the environment from the capitalists.¹²⁰

The affected communities must have joint ownership of land. They are most likely to take conservation efforts more seriously, once they know that the land belongs to them. In fact, for the GGW Programme to succeed in the 11 frontline States, the people in the affected communities must

117 See Nigeria's National Action Programme to Combat Desertification 18, http://www.unccd.int/Action_Programmes/nigeria-eng200/.pdf (accessed on 23 June 2015).

118 See also Odigie 2010:117.

119 Note that under sec. 1(1) of the *Petroleum Act* Cap P10 LFN 2004, the entire ownership and control of all petroleum in any land are vested in the Federal Government of Nigeria, while under sec. 1(1) of the *Nigerian Minerals and Mining Act* Cap N162 LFN 2004, the entire property in, and control of all mineral resources in any land are vested in the Federal Government of Nigeria.

120 Abuza 2014:106.

be made to own the project. This would guarantee the success of the Programme in the desert-affected areas of Nigeria.

Thirdly, institutions charged with implementing anti-desertification strategies in Nigeria are inadequately funded. The Federal MANR, the Federal Ministry of Water Resources, the Federal Ministry of Environment, the NOSDRA, the NESREA, and the NAGGW are the key institutions responsible for the desertification control measures in Nigeria. They derive their funding from annual grants-in-aid through the Federal Ministry of Finance, special grants from the Ecological Fund Office, and residual funding assistance either in cash or in kind from bilateral and multilateral organisations. Indeed, budgetary allocations come from the annual and supplementary budgets of the Federal Government of Nigeria. The Ecological Fund is a special fund set up by the Federal Government of Nigeria in 1981 through the *Federation Account Act* 1981 based on the recommendation of the Pius Okigbo Commission for the amelioration of ecological problems. At inception, the Fund was made up of 1 per cent of the accruals into the Federation Account (FC), but the money was later increased to 2 per cent of the FC.¹²¹ At present, the money is 5 per cent of the FC.¹²² Funds have indeed been released from this special vote to finance desertification and drought-relief projects through either Federal institutions or State governments. The Ecological Fund is an extra-budgetary source of funding for mitigating environmental degradation. Its secretariat is located in the Presidency and is responsible for processing all requests for funds, documentation of all disbursement, monitoring, co-ordination, and general administration of the funds. Bilateral and multilateral institutions make their funds available to projects through the National Planning Commission for grants, and the Federal Ministry of Finance for loans. The funds are meant to finance various aspects of desertification control, including policy, establishment of vegetation, poverty alleviation, awareness campaigns, and other socio-economic activities. The key institutions financing desertification control in Nigeria include the World Bank, the European Union (EU), the African Development Bank (ADB), the Economic Community for West African States (ECOWAS), the Lake Chad Basin Commission (LCBC), the United States Agency for International Development (USAID), the World Wide Life Fund (WWF), GM-UNCCD, UNDP, GEF, PAGGW, the Secretariat of the UNCCD, and the Secretariat of the Commonwealth. Funds to finance desertification control in Nigeria also come from Nigeria's developed nations partners, including the Group of Seven (G7) members, namely Germany, France, UK, USA, Canada,

121 Note that the *Act* was subsequently modified by Decree 36 of 1984 and Decree 106 of 1992 as well as the Allocation of Revenue/Federation Account etc (Modification) Order of 8 July 2002. <http://www.neiti.org.ng/sites/default/files/pdf-uploads/NETII-FASD-Audit-Report-2007-2011/BeneficiaryAgencies-Reports/share-of-Derivation-and-Ecology-300614pdf> (accessed on 7 November 2015).

122 See Nigeria's National Report on the Implementation of UNCCD for Submission at the Third Session of the Conference of the Parties, Recife, Brazil, November 1999:29.

Japan, and Italy, as well as the BRIC nations, namely Brazil, Russia, India, and China. These countries are clearly the industrialised nations of the world. Unfortunately, the funding from these various sources has not been adequate to fund anti-desertification measures in Nigeria.¹²³ At the core of the problem in Nigeria is the poor funding of the environmental sector and the low internally generated revenue, which makes the situation a truly vicious circle.¹²⁴ Recently, the Nigerian Minister of Environment lamented that the Ministry had only 7 billion naira for its entire budgetary allocation for the year 2014.¹²⁵ This is certainly inadequate to implement key projects in the sector for 2014.

Considering the fact that budget is the Ministry's lifeblood, there is a need for the Federal Government of Nigeria to channel more funds in subsequent budgetary allocations to the Ministry of Environment,¹²⁶ to enable it to tackle the numerous environmental challenges bedeviling Nigeria, including drought and desertification threatening the extreme end of northern Nigeria. Perhaps, the most fundamental challenge in the sector concerns the huge debts, reported to be over 10 billion naira, hanging on the 'neck' of the Ministry of Environment. It is very sad to note that some contractors have already obtained court injunctions against the Ministry.¹²⁷

The *NAGGW* deserves special mention. It was proposed that the Agency would take off with 15 per cent of the special Ecological Fund, which was considered 'sufficient enough' for the new Agency.¹²⁸ It is submitted that this is grossly inadequate in view of the gravity of the problem of desertification in Nigeria. As stated earlier, approximately 43 per cent of Nigeria's land mass is presently facing the scourge of desertification. This calls for adequate funding of the *NAGGW*. While pressing for more funds in future budgets, the Minister of Environment must press hard to get the Federal Government of Nigeria to meet its obligation for the counter-part funding of the *NAGGW*.¹²⁹ Besides, it is suggested that the percentage of the FC set aside for the Ecological Fund should be raised to 10 per cent. This would go a long way towards making adequate funds available to tackle ecological problems, including drought, land degradation, and desertification. A related matter is the National Desertification Fund (NDF). Again, a call is made on the Federal Government of Nigeria to establish the NDF advocated under the UNCCD and NAP as a complement to other sources of funding on desertification control measures. Furthermore,

123 This cannot come as a surprise. After all, UNEP estimated that it would cost \$10-\$20 billion per year to tackle desertification for 20 years. The fact is that a substantial amount of money is needed to combat desertification. See Imosemi *et al.* 2013:196.

124 Odogwu 2015.

125 Odogwu 2015.

126 Odogwu 2015.

127 Odogwu 2015.

128 Abutu 2015.

129 Odogwu 2015. For details on implementation constraints of the Great Green Wall programme, see Aigbokhaevbo 2014:375.

there should be increased collaboration with Nigeria's developed nations partners and the bilateral and multilateral institutions to secure more funds to be channelled into desertification control measures. Developed countries should meet their financial commitments geared toward protecting forests in developing countries, including Nigeria. The call by former President Goodluck Jonathan of Nigeria at Rio + 20 on developed nations to increase their aid overtures to African countries is a step in the right direction.¹³⁰ It is noteworthy that, under art. 6(b) of the UNCCD, developed nation parties are obligated to provide substantial financial resources and other forms of support to assist affected developing country parties, particularly those in Africa, effectively to develop and implement their own long-term plans and strategies to combat desertification and mitigate the effects of drought. It must be noted that the UNCCD has taken the stance that it is only when the developing nation parties accord full implementation to the Convention that they will be assisted by the developed country parties as far as financial resources and transfer of technology are concerned.¹³¹ Nigeria should immediately accord full implementation to the UNCCD. It must show respect to international law and its treaty obligations as enjoined by sec. 19(d) of the *CFRN* 1999.

Fourthly, there is the ineffectiveness of legal institutions established to implement laws on land degradation and desertification in Nigeria. It should be noted that the functioning of law cannot be separated from the institutions that execute the law. The inefficient working of these institutions, namely delay, deficient and over-complex procedures, vagueness as to competence, inappropriate facilities, lack of experts, a tendency towards biased decisions, or even bribery, hardly realises the legislative objectives.¹³²

It may be necessary to mention, in this instance, the executive and judicial branches of Government. There is a lack of enthusiastic enforcement of the statutory laws or regulations on land degradation and desertification control by the Police, the Ministry of Environment, the *NOSDRA*, the *NESREA*, the *NAGGW*, Forestry Departments and other regulatory bodies of the former. This may stem from the lack of sufficient political and/or administrative will on the part of the former to prosecute and punish environmental law offenders as required by law. For instance, despite numerous incidences of bush-burning and cutting down of trees for fuelwood and timber, there is, to my knowledge, virtually no case where violators of the law have been successfully prosecuted and penalised, even though there have been many reports of arrest of offenders. Indeed, there is virtually no record of the number of offenders so far prosecuted under the laws.¹³³ The persons who commit the offences in the course of business are mostly optimistic that enforcement personnel can be compromised, given the observable corrupt practices of management

130 *The Guardian*, Lagos, 22 June 2012:4.

131 Imosemi *et al.* 2013:196.

132 Gasiokwu 1999:85, quoted in Abuza 2016:28.

133 Odigie 2010:116.

level in Forestry Departments. This poses a greater challenge to the realisation of effective monitoring machinery.¹³⁴ In a few situations, where dedicated forest officials have attempted to ensure strict compliance with, and enforcement of forest laws, their efforts have been thwarted or frustrated by counter-instructions from their superiors who are compelled to succumb to pressure from the high and mighty in society to satisfy their political and economic interests to the detriment of society at large.¹³⁵ Effective forest monitoring is also impeded by poor remuneration of forestry officials, lack of technical expertise, and basic equipment to work such as patrol vehicles and helicopters for aerial surveillance and sophisticated arms and ammunitions.¹³⁶ Forest resource thieves often operate lethally.¹³⁷ They often successfully engage regulatory officials in armed conflicts, because they are better equipped with sophisticated weapons.¹³⁸ This accounts, to a large extent, for the regulatory officials' reluctance to confront violators.¹³⁹

Regarding the Federal Ministry of Environment, there is corruption in the system,¹⁴⁰ lack of office accommodation, poorly motivated workforce, and dilapidated office furniture whose lifespan has long expired and now constitutes an eyesore throughout the Ministry.¹⁴¹ In this kind of situation, one cannot expect efficient discharge of the Ministry's functions in terms of desertification control. Little wonder that there is poor implementation of the GGW project in Nigeria.¹⁴² It is significant to mention that officials of the Ministry of Environment lost most of the plants they planted under the GGW Project to drought and desertification.¹⁴³ These plants died, because there was no maintenance agreement or arrangement, which Government could have secured with the various contractors handling the planting, for at least two years to ensure that the trees were nurtured sufficiently to maturity level before being handed over to the Ministry.¹⁴⁴

The greatest Achilles hill to the effective discharge of the duties of the Police and other law-enforcement officers has to do with corruption. The

134 Odigie 2010:116.

135 Odigie 2010:116.

136 Aigbokaevbo & Ogbodo 2014:31.

137 Aigbokaevbo & Ogbodo 2014:31.

138 Aigbokaevbo & Ogbodo 2014:31.

139 Aigbokaevbo & Ogbodo 2014:31.

140 Note that, recently, President Muhammadu Buhari of Nigeria identified corruption as the main reason for the prevalence of poverty in the midst of plenty in Nigeria. *Vanguard*, Lagos, 14 September 2015:7.

141 Aigbokhaevbo 2014:375.

142 Aigbokhaevbo 2014:375.

143 Aigbokhaevbo 2014:375.

144 In addition, the Ministry has not taken steps to ensure the prosecution of Nigerian National Petroleum Corporation (NNPC) joint venture partners who have caused land degradation through massive oil spills on forest lands. This certainly shows bias on the part of the Ministry officials in favour of the joint venture partners. Aigbokhaevbo 2014:375.

Nigerian Police is well known for collecting bribes.¹⁴⁵ Due substantially to the poor remuneration of policemen, they are easy prey for poachers and illegal loggers who pay them to escort their trucks or vans of illegally obtained forest resources.¹⁴⁶ This affords them easy passage.¹⁴⁷ In practice, the Army and the Police provide the support system that enables forest crimes to thrive.¹⁴⁸ No wonder that it has been posited that the Police has failed the nation.¹⁴⁹

The Judiciary is also afflicted with 'corruption'. Some of the Judges in Nigeria take bribes. Joseph Daudu, a Senior Advocate of Nigeria (SAN) and former President of the Nigerian Bar Association (NBA), states that "there is a growing perception backed by empirical evidence that Justice is purchasable and it has been purchased on several occasions in Nigeria".¹⁵⁰

It is certain that the enforcement machinery needs to be overhauled and given its pride of place in the quest for a pragmatic realisation of a sustainable regime of biodiversity conservation and desertification law enforcement. In this respect, corrupt enforcement officers must face the full wrath of the law. Enforcement officers' pay package should also be increased. Enforcement officers should be trained and re-trained to acquire the necessary technical expertise. Basic working tools such as sophisticated weapons to combat forest thieves should also be provided. In brief, a general call is made on the Nigerian Government for capacity-building and institutional strengthening so that desertification control measures can be effectively implemented.

Fifthly, there is a lack of any mechanism for private enforcement of anti-desertification legislation. In fact, this is the general trend or tendency in Nigerian environmental legislation. The two notable exceptions are the *Oil Pipelines Act*¹⁵¹ and the *Harmful Wastes (Special Criminal Provisions, e.t.c) Act*.¹⁵² The position in Nigeria contrasts sharply with what obtains in the USA, where nearly all Federal environmental legislations make provision for citizen suits.¹⁵³ It should be noted that the law in the USA enables private citizens to bring actions in court against violators, and more importantly, to compel the enforcement agencies to carry out their non-discretionary statutory duties.¹⁵⁴ Of course, citizen suits have proved to be a very useful tool for environmental protection, as they stimulate and supplement governmental enforcement.¹⁵⁵ Their presence in the law of the USA shows a deliberate choice by the Congress to widen citizens'

145 *The Guardian*, Lagos, 7 August 2005:1.

146 Aigbokaevbo & Ogbodo 2014:31.

147 Aigbokaevbo & Ogbodo 2014:31.

148 Aigbokaevbo & Ogbodo 2014:31.

149 *Sunday Diet*, Lagos, 28 December 1999:30.

150 *Vanguard*, Lagos, 20 September 2011:5-6.

151 Cap. 338 LFN 1990 (now Cap. 07 LFN, 2004).

152 Cap. 165. LFN 1990 (now Cap. H1 LFN, 2004).

153 Ekpu 1995:99.

154 Ekpu 1995:99.

155 Ekpu 1995:99.

access to the court as a supplementary and effective assurance that environmental laws would be implemented and enforced.¹⁵⁶ The problem is further compounded by the application of the doctrine of *locus standi* in Nigeria. This doctrine is a common law doctrine. *Locus standi* means 'place of standing', that is, the right to bring an action or to be heard in a given forum.¹⁵⁷ It denotes a party's right to make a legal claim or seek judicial enforcement of a duty or right.¹⁵⁸ Where a party has no *locus standi* or standing, the proceedings, however duly conducted by a court of competent jurisdiction, would be a nullity. The doctrine of *locus standi* applies in both criminal prosecutions and civil proceedings.¹⁵⁹ Under the realm of public law,¹⁶⁰ for an individual to invoke the judicial powers to ascertain and decide on the constitutionality of legislative or executive actions, the person must show an injury he suffered or is likely to suffer over and above the interests or injury suffered by the general public.¹⁶¹

*The Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation*¹⁶² is an important Nigerian case in point. The Nigerian Court of Appeal held that the appellant/plaintiff, an NGO involved in environmental activities, did not have the *locus standi* to institute an action against the respondent/defendant at the Federal High Court Lagos for reinstatement, restoration and remediation of the impaired and/or contaminated environment in Acha autonomous community of Isukwuato Local Government Area of Abia State, particularly the Ineh and Aku streams that were contaminated by an alleged oil spill. It could not show, in its pleading, a special interest, that is, what the appellant/plaintiff or any of its unspecified members suffered as a result of the alleged oil spill. This decision can be criticised on the ground that the Court unduly promoted the common law doctrine of standing over the right of citizens to participate in environmental matters, as guaranteed under the Rio Declaration. It actually enjoins States to provide their citizens effective access to judicial

156 Mckenzie 2006, quoted in Agu 2013:43.

157 *Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation* 2013 15 NWLR part 1378 556 558 (CA).

158 *Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation* 2013 15 NWLR part 1378 556 558 (CA).

159 Tobi 90, quoted in Agu 2013:43.

160 *Academic Staff Union of Universities (ASUU) and Another v Bureau of Public Enterprises and Another* 2013 4 NWLR part 1374 398 400-401 (CA).

161 It was applied in the Nigerian cases of *Gamioba v Ezezi II, Orodje of Okpe kingdom* 1961 2 SCNLR 237; *Thomas v Olufosoye* 1986 1 NWLR part 18 669, and *Senator Adesanya v President of the Federal Republic of Nigeria* 1981 2 NCLR 358. In *Fawehinmi v Akilu* No 1 1987 4 NWLR part 67 797 (SC), the Supreme Court of Nigeria adopted a liberal approach or interpretation of the doctrine to accord *locus standi* to the appellant in the case where he sought to prosecute the first respondent for the murder of one Dele Giwa, a client to the appellant. The apex court declared that citizens have *locus standi* in criminal cases, as everybody is his brother's keeper under African custom and tradition.

162 *Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation* 2013 15 NWLR part 1378 558-576 (CA).

and administrative procedures, including redress and remedy. A related matter is the Public Interest litigation, which is basically a litigation for the protection of the public. Usually, it is a litigation undertaken, not by the aggrieved party, but by the court itself or by any other private party for the public good.¹⁶³

Sixthly, there is too much emphasis on tree planting as a strategy to combat desertification in Nigeria. This can be deduced from the implementation of the National Tree Planting Campaign Strategy and the GGW Programme in Nigeria. It is submitted that this focus is misplaced. The truth is that tree planting as a strategy has severe limitations. To start with, tree plants grow slowly, so that they cannot be relied on to replace quickly fallen trees in the forests. Secondly, the species of trees planted may not be exactly the same as the ones that were cut down in the process of logging for wood. Lastly, the soil where the felled trees grew might lack the necessary nutrients to grow the species of trees that are currently being planted under the National Tree Planting Campaign Strategy and GGW Programme.¹⁶⁴

In view of the foregoing limitations and other shortcomings on tree plants, it might be plausible to adopt the planting of shrub plants as an alternative or complement to the current focus on trees alone. Shrubs, that is, *leptospermum*, *scoparium*, *Boscia senegalensis*, *Grewia flava* and *Euclea undulata* or *Diospyros lycioides*, have several advantages over trees as the basis of the GGW, including the following:¹⁶⁵ they have a faster growth rate; they are a significant carbon sink; they have been found to concentrate soil nutrients and to increase the availability of phosphorus, potassium, organic carbon and nitrates; they generate a variety of biological interactions that are likely to improve outcomes and increase returns on investment;¹⁶⁶ they may be more sustainable than trees in light of climate projections for the Sahel, and they, particularly flowering shrubs, offer significant potential, as they would allow for the development of associated silvo-pastoral systems, the production of honey and honey-related products, that could offer multiple benefits and underpin development activities for farmers and communities surrounding the GGW.¹⁶⁷ Embracing the planting of shrub plants is imperative if the

163 See Agu 2013:48.

164 For details on these limitations, see Ikoni 2015:5.

165 Connor & Ford 2014:7142-7154.

166 Note that trees and shrubs provide shade and windbreaks that increase soil humidity, allowing other plants to flourish. Aparicio *et al.* 2005:191-198, quoted in Connor & Ford 2014:7142-7154.

167 Note that, recently, the medical community recognised the potential applications of honey. Honey is the oldest wound dressing material used by human beings and has traditionally been used to treat various conditions, including burns, infected and non-healing wounds, ulcers, and boils. See, for example, Yaghoebi *et al.* 2013:100-104, quoted in Connor & Ford 2014:7142-7154.

country must decisively and rapidly reverse the desertification scourge in Nigeria.¹⁶⁸

4. Observations

It is obvious from the foregoing contemporary discourse of the law and policy on curbing desertification in Nigeria that international environmental agreements signed by the Nigerian Government as well as domestic legislations, policies, plans, programmes, projects, and strategies made by the Nigerian Government have, to a large extent, been ineffective in tackling desertification in that country. This implicates that governmental efforts to combat desertification have not yielded the desired results, as desertification continues unabated in Nigeria. It has been disclosed that the country is currently losing approximately 351,000 hectares of its

168 Other challenges of curbing desertification in Nigeria include:

(a) Poverty in Nigeria. For instance, poverty causes members of rural communities in Nigeria to hunt or burn bushes or forests for 'bush meat', which is a rich source of protein required for their healthy living.

(b) The overcentralisation of policy formulation and implementation on desertification control. This is due to the wrong practice of federalism in Nigeria, as federalism denotes decentralisation or devolution of powers to regional and local governments.

(c) The utility of both consumptive and commercial forest resources such as fuelwood, bush meat, palm leaves and timber. To be specific, it is an open secret that the back of some wood from timber is used along with pawpaw leaves to prepare medicine sold to the public for the cure of malaria and typhoid fevers.

(d) Inadequate sanctions in environmental legislations such as the *Endangered Species (Control of International Trade and Traffic) Act* 2004, which provides for penalties to deter non-compliance with its provisions on the preservation of biodiversity.

(e) Defective transmission of knowledge about laws and policies. Many Nigerians, including those in the desert-affected areas of Nigeria, are oblivious to the existence of these laws and policies.

(f) Low degree of socialisation on the dominant legal norms on drought and other natural disasters caused by climate change or variability, forestry, land degradation, and desertification. See Gasiokwu 1999:88.

(g) Low degree of understanding of statutory laws on desertification control.

(h) Frequent policy shifts have been observed as frequently as leaders come and go, and are dictated by the country's economic fortune or misfortune. A noteworthy example is the establishment of the RBDAs, which have, since the 1970s, witnessed several policy shifts. These bodies have also undergone many re-organisation exercises. They expanded from 3 in 1973 to 11 in 1976 and to 18 in 1984. In 1986, these bodies were reduced to 11, due to economic reforms of the early 1980s, which brought about the adoption of the Structural Adjustment Programme (SAP). See Nigeria's National Action Programme to Combat Desertification 24-26, http://www.unccd.int/Action_Programmes/nigeria-eng200/.pdf (accessed on 23 June 2015).

(i) Neglect of indigenous knowledge such as the local ecological traditional knowledge of farmers and pastoralists in soil-conservation practice, planting of appropriate trees as a strategy of local erosion, and desertification control. See Adogi 2015.

landmass to desert conditions annually. These conditions are estimated to be advancing southwards at the rate of more or less 0.6km per year. Currently, as noted earlier, approximately 43 per cent of Nigeria's total land area is already affected by the scourge of desertification. It should also be mentioned that States such as Adamawa, Bauchi and Gombe in northern Nigeria that were not previously affected by desertification are now showing signs thereof.¹⁶⁹

The threat of desertification poses a grave danger to the survival of Nigeria. It has the capacity to not only undermine the country's socio-economic growth and development, but also derail the nation's nascent democracy. It has already impacted adversely on Nigeria's political economy. To be specific, it has engendered sociopolitical tensions, resulting in social conflicts between Fulani herdsmen and farmers across the country over which numerous lives and properties running into billions of naira have been lost, rural poverty, rural-urban migration, loss of employment, food and water scarcity. These could foist on Nigerians a situation of economic and political instability that would discourage both foreign and domestic investments in Nigeria's economy. This is bound to stall economic growth without which there can be no economic development. Nigeria's quest to be a global economic player in 2020 would be a mirage.

The ineffectiveness of measures taken by the Nigerian Government on desertification control may be attributed to numerous factors. First, it appears that the Nigerian Government is not serious on the war against desertification. It has demonstrated lack of political and/or administrative will to implement instruments on desertification control. Other countries that signed the GGWSSI with Nigeria have since established agencies to handle the GGW Project. It was only in May 2015 that the *NAGGW* was formally established to implement the GGW Project in Nigeria. This followed the signing into law of the Bill for an Act to establish the National Agency for Great Green Wall for the Implementation of the Great Green Wall Programme in Nigeria and for Related Matters 2015 by former President Goodluck Jonathan.¹⁷⁰ The official establishment of the Agency is ready more than four years after Nigeria signed the Treaty, despite the fact that Nigeria was the initiator of GGWSSI and that approximately 43 per cent of its landmass is currently facing the scourge of desertification. Indeed, people in northern Nigeria generally sense that the desert's advance can only be stopped if Nigeria's authorities start taking the threat of desertification more seriously.¹⁷¹

Other factors include lack of community ownership of land; lack of involvement of rural communities in policy formulation and implementation; use of inappropriate technology in combating desertification; institutional

169 <http://www.thisdaylive.com/articles/senate-bill-seeks-to-end-desertification-d> (accessed on 23 June 2015).

170 See Daily.trust.com/...great-green-wall/56223.

171 Imosemi *et al.* 2013:196.

weaknesses; lack of private mechanisms for the enforcement of anti-desertification legislation; inadequate sanctions in anti-desertification laws, and focus on tree planting as a strategy to tackle the desertification scourge. It is clear that a legal solution is not the antidote to the threat of desertification in Nigeria as in other countries. Both legal and non-legal solutions must be warmly embraced in order to tackle the hydra-headed monster desertification currently ravaging some parts of the country. Desertification conditions must be arrested or reversed to pave the way for the rapid socio-economic development of northern Nigeria, in particular, and Nigeria, in general.

5. Recommendations

The bane of legislation is inadequate enforcement thereof. Environmental legislation is no exception. A noteworthy, critical recommendation is that the Nigerian Government should seriously and urgently address the failure to adequately enforce legislation on desertification control so as not to create the impression that it is not serious about curbing the desertification scourge.

There are other critical recommendations. First, Nigeria should adopt community ownership of land. To this end, the *Land Use Act* 2004 should be amended to give communities ownership of land, except land where mineral deposits and oil are found. Secondly, Nigeria should adopt the bottom-up approach in policymaking and implementation of desertification control, thus involving local communities and other stakeholders, including local industries involved in the use of forest resources, NGOs, CBOs, and rural dwellers. The inputs of the relevant stakeholders, along with those of the international community, including Africa Union (AU), must be properly harnessed for the faithful implementation of the GGW Programme in tune with GEF standards. This is in consonance with international environmental law. As mentioned earlier, the UNCCD adopts the bottom-up approach, which, in its art. 10(2)(f), encourages the participation of local people in combating desertification. It should be recalled that Principle 10 of the Rio Declaration guarantees the right of public participation in environmental issues. In fact, it is one of the environmental access rights, which the Principle declares to be cardinal for sustainable development. As a member of the UN and State Party to UNCCD, Nigeria is obligated to apply the Rio Declaration and UNCCD. It should be reiterated, in this instance, that the country must show respect to international law and its treaty obligations as enjoined by sec. 19(d) of the *CFRN* 1999. The suggestion is also in consonance with what obtains in other countries such as Kenya, Senegal, and Mauritania. It should be noted that Kenya¹⁷² developed its NAP in 2002 through a popular consultative process, using a bottom-up approach that culminated in the first national forum. In Kenya,

172 <http://www.undp.org/content/dam/kenya/docs/energyandenvironment/combating%20Desertification%20in%20kenya%20v6%20-4Sep.2013.pdf> (accessed on 23 June 2015).

consultation workshops were conducted at both local and national level for the stakeholders to deliberate and make recommendations on NAP. In fact, the recommendations formed the bulk of the NAP document, which was subjected to the stakeholders' review and adoption. In Senegal and Mauritania, local community participation in GGW Programme has ensured their success.¹⁷³

Thirdly, the strict rules relating to *locus standi* should be relaxed in Nigeria. This is in accord with what obtains in other countries such as the USA,¹⁷⁴ the UK,¹⁷⁵ and India,¹⁷⁶ where the strict rules relating to *locus standi* have been relaxed.

Fourthly, the anti-desertification legislations should be amended to allow citizen suits or private right of actions as well as public interest litigations for the enforcement of such laws, as they would broaden public participation in environmental law enforcement. In fact, they are in use in other countries such as the USA, the UK, and India. In India, for example, public interest litigation has been utilised effectively to foster environmental protection.¹⁷⁷ Besides, as a member of the UN, Nigeria is obligated to apply Principle 10 of the Rio Declaration, which proclaims the right of all to public participation as one of the environmental access rights. It must show respect to international law and its treaty obligations, as enjoined by sec. 19(d) of the *CFRN* 1999.

Fifthly, in order to foster the speedy hearing and determination of cases founded on citizen suits and public interest litigations, the Nigerian *Constitution* should be amended to provide for the establishment of a National Environmental Court, with exclusive original jurisdiction over cases on environmental degradation. This is in consonance with the practice in other countries, including India and Australia,¹⁷⁸ where the National Environmental Court has helped ensure speedy dispensation of justice in environmental matters.¹⁷⁹

Sixthly, Nigeria should embrace the planting of shrub plants as an alternative or complement to the current focus on trees alone. This is in tune with what obtains in other countries such as China, the USA, Australia, and New Zealand. To be specific, in a comparative study of forest, grassland, shrub land and cropland in China, it was found that, while grassland and cropland absorbed only 0.007 Pg C/a and

173 <http://www.premiumtimes.ng.com/news/more-news/167924-nigeria%E2%80%8Bcreates-agency-for-great-green-wall-project.html> (accessed on 19 September 2015).

174 *Friends of the Earth Incorporated v Gaston Copper Recycling Corporation* 179F 3d 107 113-114 & 181 4th Cir. 1999; *Altamaha River Keepers v City of Cachran* 162F Supp. 2d 1368, 1372 (M.D. Ga. 2001).

175 *I.R.C. v National Federation of Self-Employed and Small Business* 1981 2 All ER 93 103-104.

176 *Peoples Union for Democratic Right v Minister of Home Affairs* 1968 LRC 547.

177 Swamy *et al.* 2004:141, quoted by Agu 2013.

178 Bell & McGillivray 2008:296, quoted in Agu 2013.

179 Bell & McGillivray 2008:296, quoted in Agu 2013.

0.0125-0.0143 Pg C/a, respectively, shrub land was a significant carbon sink, absorbing 0.014-0.024 Pg C/a, being surpassed only by forests at 0.075 Pg C/a.¹⁸⁰ A case study in Sichuan, China, examined the difference between planting trees, planting shrubs or performing no intervention in land reclamation. The study was performed in a wet, cooler area, where trees were expected to grow better than shrub species. It was found that shrub land was better at restoring soil quality and required less financial effort to plant and maintain when compared to forest land.¹⁸¹ An American study of an arid grassland in Texas, Arizona, and New Mexico, suggests that shrubs have increased growth when compared to woody trees, given decreases in precipitation and increases in temperature, as predicted under future climate change.¹⁸²

Lastly, it has been found that Manuka shrub was highly efficient in restoring soil quality, nursing other plant species, and improving growing conditions on a variety of degraded terrains, including abandoned mines and areas of extensive deforestation in New Zealand.¹⁸³ In short, pastoral land in New Zealand has been converted back to forest by allowing it to be colonised by wild Manuka shrubs.¹⁸⁴

6. Conclusion

This article undertook a contemporary discourse of the law and policy on curbing desertification in Nigeria. It identified shortcomings in the various laws and other measures, and stated clearly that the ineffectiveness of measures taken by the Nigerian Government on desertification control can be attributed to, among other factors, lack of adequate implementation or enforcement of laws on desertification control and lack of community ownership of land in Nigeria. This article also discussed the causes and effects of desertification in Nigeria. It highlighted the practice in other countries, and proffered suggestions and recommendations, which, if implemented, would enable Nigeria to accomplish its goal of curbing the problem of desertification and rapidly realise the benefits of sustainable land management.

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