

**CRITICAL ANALYSIS OF THE LEGAL FRAMEWORK FOR THE  
PREVENTION AND CONTROL OF DESERTIFICATION IN NIGERIA**

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**APPROVAL PAGE**

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**CERTIFICATION/DECLARATION**

This is to certify that this thesis title CRITICAL ANALYSIS ON THE LEGAL FRAMEWORK FOR THE PREVENTION AND CONTROL OF DESERTIFICATION IN NIGERIA submitted to Postgraduate School Bayero University, Kano, for the award of the Degree of Master of Laws (LL.M), is the product of an original research study carried out by me. Therefore, I, FATIMA ZAHARA'U SHEHU do here by declare that this thesis has never been produced and/or presented before the Faculty of Law, University, kano, and/or elsewhere to the best of my knowledge. I therefore accept responsibility of my errors that might be found in this thesis.

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DATE

## **DEDICATION**

This thesis is dedicated to my parents, Prof. Shehu Ado Garki and Hajiya Sa'adatu Atiku.

May Allah grand them Aljannah Alfirdous as their final resting home.

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## **LIST OF ACRONYMS**

ADB – African Development Bank

AU – African Union

APCU – Afforestation Project Coordinating Unit

AZP – Arid Zone Afforestation Project

CAADP – Comprehensive Agriculture Development Programme

EEC – European Economic Community

EIA – Environmental Impact Assessment

FAO- United Nations Food and Agricultural Organization

FEPA – Federal Environmental Protection Agency

FORMECU – Forest Management Coordinating Committee Unit

GGW – Great Green Wall

GGWSSI - Great Green Wall for the Sahara and Sahel Initiative

GM/UNCCD- Global Mechanism/ United Nations Convention to Combat Desertification

IPCC- International Panel on climate change

NAGGW – National Agency for the Great Green Wall

NESREA- National Environmental Standards and Regulations Enforcement Agency

NEPAD – New Partnership for Africa’s Development

NGOs – Non Governmental Organizations

SLM - Sustainable Land Management

UNCBD – United Nations Convention on Biological Diversity

UNCCD – United Nations Convention to Combat Desertification

UNCED – United Nations Conference on Environment and Development

UNDP - United Nations Development Programme

UNFAO – United Nations Food and Agricultural Organizations

UNFCCC- United Nations Framework Convention on Climate

UNFCCC- United Nations Framework Convention on Climate Change

UN-GFRA- United Nations Global Forest Resource Assessment

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## **ABSTRACT**

Desertification is one of the natural phenomenon of the physical features of the earth. However, a combination of these natural forces such as climatic change and human activities such as deforestation as the result of the high demand of fuel wood, overgrazing by livestock and bush burning usually by hunters who are in search of games, has always been the factors responsible for its growth and encroachment in to other areas. For the prevention and control of these human activities which causes desertification, many Laws/ Acts related to the issue of the prevention and control of desertification were promulgated in Nigeria, yet there exists some fundamental gaps in the Laws. Most of the Laws do not recognize known set of legal principles that exists to properly regulate issues related to desertification problems. Similarly, in addressing this problem, a doctrinal method of research was adopted. The Nigerian Laws for the prevention and control of desertification and that of some selected countries namely; Sudan, Ghana and Kenya was analyzed to see whether or not such Laws/ Acts have incorporated or recognized such principles borrowed from other areas or subjects of Law and to see whether or not the Laws/ Acts have truly address the issue of desertification. In order to effectively prevent and control desertification, the dissertation recommends that the Laws/ Acts for the prevention and control of desertification have to be reviewed, amended and coordinated in one umbrella, for a successful fight against Desertification.

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## **CHAPTER ONE**

### **GENERAL INTRODUCTION**

#### **1.1 Background to the Study**

The study focuses on the analysis of the legal framework for the prevention and control of desertification in Nigeria. The environment is under serious threats as the result of climatic change and environmental destruction resulting from deforestation. This is evident in the environmental challenges facing the world today; these challenges range from depletion of the ozone layer and desert encroachment.

These environmental challenges, if not given the required attention, time, resources and commitment, have the potential of changing, if not outrightly destroying the habitation of plants and animals. To avert the obvious catastrophe the world faces as a result of the actions or inactions of human beings or other natural forces, world leaders have constantly tried to develop strategies and devote efforts to tackle these environmental problems. One of such environmental problems is that of desertification.

Desertification is one of the natural phenomena of the physical features of the earth. However, a combination of natural forces and human activities has always been the factors responsible for its growth and encroachment into other areas. For this reason, urgent and bold steps must be taken to prevent and control it.

Unfortunately, unlike the other environmental problems, desertification affects only some particular geographical areas of the world (i.e. arid, semi- arid and dry sub-humid areas). It is one of the most serious environmental issues facing the world today, which requires serious attention of all nations, especially those directly affected by it. Countries directly affected by the threat of desertification such as Nigeria, Sudan and Ghana, are expected

to not only show real political commitment in checking the menace of desertification but also put in place the necessary legal mechanisms to address its threat.

Desertification, destroy the equilibrium of soil, vegetation, air, and water, in the areas subject to climatic aridity which leads to a decrease in, or destruction of, the biological potential of the land, deterioration of living conditions and an increase of desert landscapes.<sup>1</sup>

Desertification poses a serious threat to the environment therefore, it requires an equally serious and consistent action on the part of Government and the general public in those areas affected to prevent it. Such threats of desertification affect the nation's arable land mass which poses a threat to food production.<sup>2</sup>

It is equally believed that the hostile impact of climate change in Northern Nigeria which is a natural factor that causes desertification poses serious threats to national security, food production and poverty alleviation strategies in the country. This is because those mostly affected by desertification are the most vulnerable in the society, those that dwell in the villages ravaged by this scourge.<sup>3</sup> This fact is apparent in the mass movement of people from the affected areas into urban centers or to areas considered less prone to desertification. For instance, the movement of herdsmen who are always moving to greener areas to get better pastures for their livestock.

The rate at which the desert is advancing, and the impact it is having on the socio-economic activity of the people, the security, and the political environment of the

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<sup>1</sup> Food and Agricultural Organization/United Nations Environment Program, provisional methodology for assessment and mapping of Desertification (1983).

<sup>2</sup> Olori T. 'Desertification Threatens Economy, Food Security'. Available at <http://ipsnews.net/press.shtml>. Last visited on 12/3/2013.

<sup>3</sup> Odiogor H., Special Report on Desertification in Nigeria: The Sun Eats Our Land, Vanguard Newspaper, Lagos, (May 3, 2010).

affected areas, and the country at large, is something no serious government can afford to overlook. It was estimated that over 70 million Nigerian's directly or indirectly experience the negative impact of drought and desertification.<sup>4</sup>

Experts estimate that about 11 states in Nigeria namely: Adamawa, Borno, Bauchi, Gombe, Katsina, Jigawa, Kano, Kebbi, Sokoto, Yobe and Zamfara are under intense pressure from the attack of climate change. No fewer than 42 million people are believed to have been affected by this development. The country has witnessed the gradual disappearance of fertile lands and a steady decline in food production. A clear example is the Lake Chad, the largest body of inland fresh water which is said to have shrunk to about 2500 square meters from its original size of 250,000 square meters in 1960.<sup>5</sup> That means the lake is now only one percent (1%) of its 1960 size.

This frightening disclosure seems to suggest that something worse and far disturbing is happening more than the estimated rate at which the desert is approaching (i.e. at 0.6 kilometer annually and with Nigeria losing 351,000 hectares of land annually).<sup>6</sup>

Furthermore, human activities which cause deforestation, such as bush burning and over grazing are seen as the primary causes of desertification which are influenced by factors such as change in population climate and socio economic conditions (poverty).<sup>7</sup>

At the International Level, desertification which led to the destruction of lives, vegetation, shrubs, and the means of livelihood of thousands of people in the area, served

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<sup>4</sup> Hugo Odiogor Special Report on Desertification in Nigeria: The Sun Eats Our Land,' Vanguard Newspaper Lagos, (May 3, 2010).

<sup>5</sup> Nigerian Television Authority Network News 25/10/2011. See also Nigerian National Report on the implementation of the United Nations Convention to Combat Desertification for submission at the 3<sup>rd</sup> Conference of Parties; Recife Brazil (1999).

<sup>6</sup> Nigerian National Report on the implementation of the United Nations Convention to Combat Desertification for submission at the 3<sup>rd</sup> Conference of Parties; Recife Brazil (1999).

<sup>7</sup> Nkonya, E. Et al. The Economics of Desertification, Land Degradation, and Drought Toward an Integrated Global Assessment, IFPRI Discussion Paper 01086 May 2011 Available at <http://www.ifpri.org/publications/results/taxonomy%3A468>. Last visited on 14/04/2013.

as a wakeup call to the entire international community. As a result of this tragedy, the United Nations General Assembly adopted a resolution calling for an International action to combat desertification.<sup>8</sup>

This United Nations resolution was promptly followed by the United Nations Conference on Desertification (UNCOD) which was held in Kenya in 1977. The conference, served as the concrete starting point in the fight against desertification, as a Plan of Action to Combat Desertification (PACD) was adopted.<sup>9</sup>

The Plan of Action to Combat Desertification (PACD) was not binding and was expected to have been fully implemented by the year 2000; however, it was unsuccessful but it generated international awareness on desertification and the threats it poses to the entire human society.<sup>10</sup>

In 1992, At the United Nations Conference on Environment and Development (UNCED) also referred to as the earth summit, held at Rio de Janeiro Brazil from 3<sup>rd</sup> – 14<sup>th</sup> June 1992, a global attention was brought to link the environment and socio economic development. The principle output of that summit were the three documents negotiated and adopted at the UNCED namely; the global plan of action (Agenda 21), Forestry Principles and the Rio Declaration on Environment and Development and participating countries forwarded a request to the UN General Assembly to establish an Inter-governmental Negotiating Committee to see to a convention on desertification, particularly focusing on African countries affected by desertification. In December 1992,

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<sup>8</sup> Hunter, D. et al. International Environmental Law and Policy. Foundation Press, New York, ( 1998), 1151.

<sup>9</sup> Ibid.

<sup>10</sup> Buanajuti, A. External Evaluation of the Plan of Action to Combat Desertification (1991) Desertification Control Bull, No. 20 30-31. available at [www.africabib.org/rec.php?RID=Q00004448&DB=p](http://www.africabib.org/rec.php?RID=Q00004448&DB=p) Last visited on 14/2/2013.

the UN General Assembly agreed to the establishment of such a committee to develop an international convention to combat desertification.<sup>11</sup>

The Convention which entered into force on 26<sup>th</sup> December 1996 was adopted on the 17<sup>th</sup> day of June 1994, in Paris where it was opened for signature from the 14<sup>th</sup> to the 15<sup>th</sup> of October, 1994, and then at the UN Headquarters in New York until 13<sup>th</sup> October 1995, by which date the Convention had received 115 signatures.<sup>12</sup>

The UNCCD consists of a preamble, forty articles, and regional implementation annexes detailing processes for the implementation of the Convention in Africa, Asia, Latin America, and the Caribbean, and the Northern Mediterranean. The UNCCD also came along with principles which commit governments to encourage the full participation of local communities in developing and implementing environmental programs, and they reject the one-sided relationship between donor and recipient toward joint partnership.<sup>13</sup>

The United Nations Convention to Combat Desertification made provisions for obligations of both affected country parties and the developed country parties under the convention. The affected country parties have the obligation to give high priority to combat desertification and the effects of drought. More importantly, it also provided for the obligation of affected country parties to address the underlying socio-economic causes of desertification as well as promoting the participation of women and NGOs in combating desertification.<sup>14</sup>

On the part of the developed country parties, the convention committed them to the provision of substantial forms of assistance and technical support to assist the efforts of

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<sup>11</sup> Agenda 21, United Nations Conference on Environment and Development' (1992) UN Doc. A/Conf. 151/26.

<sup>12</sup> See Status of Ratification of the United Nations Convention to Combat Desertification. 8 March 2001. UN Doc. ICCD/COP (4) INF. 2.

<sup>13</sup> Hunter, D. et al. International Environmental Law and Policy, Foundation Press, New York (1998) 1153.

<sup>14</sup> UNCCD UN Doc A/AC.241/27 (1994) Art 5.

developing country parties, and to significantly, new and additional funding, while giving priority to Africa.<sup>15</sup>

At the core of the UNCCD is the provision for national action plans or programs which serve as the blueprint for the implementation of the convention. The UNCCD unlike the (Plan of Action to Combat Desertification, PACD, 1977) made no recommendations for the contents of the action programs; rather, it focused more on the process of developing the programs, which among other things, include the integration of any existing programs to ensure success of the convention.<sup>16</sup> Another thing is the insistence of the convention on putting much reliance on participatory mechanisms in formulating the National Action Plan, which specifically requires the inclusion of local communities, land users, and local NGOs and also address the issue of poverty together with the fight against desertification.<sup>17</sup>

This therefore, necessitated the provisions of Article 10 of UNCCD which show a clear demonstration of the will to address the issue of desertification in a realistic and holistic manner, getting at the root cause of the problem which obviously has to do with poverty, ignorance, and an alternative means of livelihood.

Nigeria signed the convention on 31/10/1994, ratified it on 08/07/1997, and it came into force with respect to Nigeria on 06/10/1997.<sup>18</sup> Nigeria being an affected country party has its obligations spelt out under article 4 dealing with general obligations, article 5 dealing with obligations of affected country parties, article 9 which deals with basic approach, article 10 on National action programs, article 19 on capacity building, education, and

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<sup>15</sup> UNCCD UN Doc A/AC.241/27 (1994) Art 6.

<sup>16</sup> UNCCD UN Doc A/AC.241/27 (1994) Art 1.

<sup>17</sup> UNCCD UN Doc A/AC.241/27 (1994) Art 10.

<sup>18</sup> Federal Republic Of Nigeria Ministry Of Environment Great Green Wall For The Sahara And Sahel Initiative National Strategic Action Plan (October 2012) P.22.

public awareness, article 20 (3) on financial resources, and article 21 on national coordinating mechanisms.

Looking at these obligations, it is clear that any affected country Party must strive hard to meet up with these expectations which on the other hand require bold and committed steps to be taken by the authorities responsible.

In Nigeria, the government started addressing the problem of desertification with the adoption of the National Policy on the Environment. This policy amongst others provided for the; development of a National Action Programme to Combat Desertification and mitigate the effects of drought towards the implementation of the Convention to Combat Desertification (CCD) in Nigeria; Integration of public awareness and education on causes and dangers associated with drought and desertification, as well as the constraints of the CCD; Strengthening of national and state institutions involved in drought and desertification control programme; Involvement of the local people in the designing, implementation and management of natural resources conservation programmes for combating desertification and Adoption of an integrated approach to address physical, biological and socio-economic aspects of desertification and drought Intensifying cooperation with relevant inter and non-governmental organizations in combating desertification and mitigating the effects of drought.<sup>19</sup>

In 1988 Nigeria established the Federal Environmental Protection Agency (FEPA) with the mandate to coordinate all environment related issues in Nigeria. Though the FEPA was not specifically established for the purposes of combating or even coordinating the fight against desertification, none the less, being the apex body saddled with the mandate

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<sup>19</sup> Nigerian National Action Program to Combat Desertification submitted to the United Nations Convention to combat Desertification secretariat 2000.



of handling all issues relating to the environment, desertification was co-opted into its mandate. The body had specific powers of supervision, implementation, and sanctions on the issues under its mandate.<sup>20</sup>

Pursuant to the establishment of the FEPA, almost all the states of the federation also established the State Environmental Protection Agencies or Boards with a view to supplement the efforts made by the FEPA to protect the environment. In fact, the states, especially those affected by desertification, have made both legislative and policy to check the causes of desertification. Some of these legislations include the various laws passed by the state governments prohibiting bush burning, forestry laws, grazing reserves, water resources development agencies, etc.<sup>21</sup>

In 2007, the FEPA Act was repealed by the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act No. 25 of 2007 (hereinafter referred to as NESREA Act, 2007). The Agency is the enforcement agency for environmental standards, regulations, rules, policies and guidelines.

Also, both the federal and state governments have made efforts to encourage tree planting, through tree planting campaigns and donation of improved and drought resistant tree seedlings and plants to farmers in order to facilitate afforestation in the affected areas.<sup>22</sup>

Other efforts made by the Nigerian authorities with a view to prevent and control desertification include the establishment of River Basin Development Authorities (RBDAs) to promote sustainable utilisation of water resources in the drylands of Nigeria

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<sup>20</sup>Nigerian National Action Program to Combat Desertification submitted to the United Nations Convention to combat Desertification secretariat 2000.

<sup>21</sup> See for instance, the Bush Burning Control Law, Forestry Law, Grazing Reserves Law, Water Sources Control Law, Caps 18, 57, 60, and 153 respectively, Laws of Jigawa state of Nigeria 1998.

<sup>22</sup> See the Nigerian National Report on Implementation of the United Nations Convention to Combat Desertification submitted at the 3<sup>rd</sup> Conference of Parties, Recife, Brazil 1999.

particularly for irrigation which is under the supervision of the Federal Ministry of Water Resources. These efforts include damming and diversion of rivers, and in some areas exploiting underground water. The RBDAs that operate in the semi-arid region of Nigeria include the Sokoto-Rima, Hadejia-Jama'are, Upper Benue, Niger River and Chad Basin Development Authorities.<sup>23</sup>

Another area worthy of note in the efforts made by previous governments in Nigeria in preventing and controlling desertification is the development of forestry programs which include the Arid Zone Afforestation Project (AZAP) which was instituted by the Federal Government in 1976 to tackle the problems of desertification through the establishment of woodlots, shelterbelts and windbreaks.<sup>24</sup>

Other efforts made include the European Economic Community (EEC) supported pilot project in Katsina State covering a total area of 1.6 million hectares involving the establishment of shelterbelts, windbreaks, woodlots and trees on farmlands. In addition, the World Bank has also financed a similar project in five of the arid zone states whose emphasis is on farmer's participation and extension.<sup>25</sup>

In 1999, Nigeria when submitting its National Report on implementation of the UNCCD at the third Conference of Parties in Brazil 1999, stated that Prior to the coming into force of the UN Convention to Combat Desertification, certain national and state laws and regulations, which relate directly or indirectly to desertification control or related matters have been in force in Nigeria. Such laws include the Federal Environmental Protection

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<sup>23</sup> See the Nigerian National Report on Implementation of the United Nations Convention to Combat Desertification submitted at the 3<sup>rd</sup> Conference of Parties, Recife, Brazil 1999.

<sup>24</sup> Nigerian National Action Program to Combat Desertification submitted to the United Nations Convention to Combat Desertification Secretariat 2000.

<sup>25</sup> See the Nigerian National Report on Implementation of the United Nations Convention to Combat Desertification submitted at the 3<sup>rd</sup> Conference of Parties, Recife, Brazil 1999.

Agency (FEPA) Decree, the National Parks Decree 101 of 1991, the Environmental Impact Assessment (EIA) Decree No 86 of 1992, the Endangered Species (Control of International Trade and Traffic in Fauna and Flora) Decree 1985, the National Water Resources Decree No. 101 of 1993 and the Land Use Act 1978.<sup>26</sup>

Lastly, it should be pointed out that although some of these Acts (some were passed as far back as 1978) were neither actually passed to address the problem of desertification nor were they reviewed to bring them in line with the efforts to combat desertification, yet, so far, they constitute the Nigerian legal framework to prevent and control desertification

### **1.2 Statement of the problem**

The environment is the entirety of our society and life; as a result countries make provisions for the control and regulations of their environment based on peculiarities of individual country's environmental problems and challenges.

In Nigeria, some of the environmental challenges range from desertification in the north to gully erosion and severe floods across the country which have become a yearly occurrence that Nigerians are forced to deal with at various seasons of the year.

Desertification is assuming a frightening dimension in about 11 states in Nigeria namely: Adamawa, Borno, Bauchi, Gombe, Katsina, Jigawa, Kano, Kebbi, Sokoto, Yobe and Zamfara as it affects their arable land mass. This has become a threat to food production

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<sup>26</sup> See the Nigerian National Report on Implementation of the United Nations Convention to Combat Desertification submitted at the 3<sup>rd</sup> Conference of Parties, Recife, Brazil 1999.

and poses serious threat to national security and poverty alleviation strategies in the country as those mostly affected are the most vulnerable in the society.<sup>27</sup>

The problem with desertification is that it is advancing rapidly, therefore has an impact on the socio-economic, security, and political environment of the affected areas, and the country at large, is a fact no serious government can afford to overlook. To fight against desertification, Nigeria signed the United Nations Convention to Combat Desertification (UNCCD), ratified it and came into force on 6<sup>th</sup> October, 1997.

Nigeria being an affected country party has its obligations spelt out under the UNCCD in article 4; dealing with general obligations, article 5; dealing with obligations of affected country parties, article 9 which deals with basic approach, article 10 on National action programs, article 19 on capacity building, education, and public awareness, article 20 (3) on financial resources, and article 21 on national coordinating mechanisms.

It is noteworthy to point out that, Nigeria cannot be said to be in compliance with some of the obligations of affected country parties when considered alongside the National Report on implementation of the UNCCD 1999. The report seems to be controversial, full of political statements with nothing practical to show on ground. It could simply be a report put together by some bureaucrats sitting in their offices who do not care as to the real impacts of desertification on the country or on Nigerians living in the affected areas. Otherwise, how else could one justify the mentioning in the report Acts such as the Land Use Act of 1978 which were neither actually passed to address the problem of desertification nor were they reviewed to bring them in line with the efforts to combat

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<sup>27</sup> See the Nigerian National Report on Implementation of the United Nations Convention to Combat Desertification submitted at the 3<sup>rd</sup> Conference of Parties, Recife, Brazil 1999.

desertification, yet, so far, they constitute the Nigerian legal framework to combat desertification.

Finally, this shows how unserious the Nigerian government is in addressing an issue that is so enormous and threatening. One begins to wonder at how the government takes the plight of all those people whose means of livelihood are affected by desertification.

### **1.3 Research Questions**

- 1) Whether or not there are existing legal principles relating to the prevention and control of desertification in Nigeria?
- 2) Whether or not there are Laws/ Acts for the prevention and control of desertification in Nigeria?
- 3) Whether or not the existing Laws/ Acts for the prevention and control of desertification have adequately address the issue of desertification in Nigeria?

### **1.4 Aim and Objectives**

The aim of undertaking this study is to critically analyze the Nigerian legal framework on the prevention and control of desertification in Nigeria and the objectives of undertaking this study are:

- 1) To critically analyze the legal framework on the prevention and control of desertification in Nigeria.
- 2) To identify the problems with the existing laws/ Acts use for the prevention and control of desertification in Nigeria.
- 3) To proffer recommendations on such problems.

### **1.5 Methodology**

The methodologies adopted in this research are doctrinal and comparative. Doctrinal method is adopted because the sources of data in this research will be from both Primary and secondary sources of Law. Therefore, the Nigerian Laws/ Acts for the prevention and control of desertification in Nigeria such as the National Environmental Standard and Regulation Enforcement Agency Act, Environmental Impact Assessment Act, the Land Use Act, Endangered Species Act, and various State Laws on Forestry, Bush Burning Control and Grazing Reserves, are used as the primary sources of law. In addition various textbooks, articles, journals, newspapers and on line sources of data will be used as the secondary sources of law.

Furthermore, the Laws/ Acts for the prevention and control of desertification in Nigeria will be compared with that of some selected countries namely; Sudan, Ghana and Kenya. Sudan is chosen because, Sudan has taken considerable steps regarding the issue of the land degradation as such, Sudan was one of the first countries to sign UNCCD and formed the National Unit for Coordination of programmes to mitigate the effects of drought and to combat desertification in the Ministry of Agriculture and Forests.<sup>28</sup>

Ghana is chosen because, Ghana has ratified the convention to combat desertification for countries experiencing serious drought and desertification particularly in Africa.

Kenya is chosen because; activities to combat desertification and mitigate the effects of drought have been carried out since 1940s in Kenya. With the implementation of the Convention to Combat Desertification, Kenya has ratified the convention and takes into account this historical background.

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<sup>28</sup> National Progress Report on the Implementation of the UNCCD in Sudan, Submitted to UNCCD Secretariat Bonn, Germany, (September 2004), p. 7.

### **1.6 Scope and Limitations**

The scope of this study is to cover the legal framework on the prevention and control of desertification in Nigeria, with particular reference to Kano State, Jigawa State and Katsina State as they fall among the eleven (11) States estimated by some experts to be under the attack of desertification in Nigeria. Reference will also be made to some selected countries mentioned above.

### **1.7 Justification of the Study**

The legal framework for the prevention and control of desertification in Nigeria is a contemporary issue which generates debate to some Nigerians, especially Legal practitioners/ lawyers as to whether or not there is an existing legal framework for the prevention and control of desertification in Nigeria. The study becomes necessary in order to explain the impact of desertification and clear the controversy as to whether or not there is an existing legal framework for the prevention and control of desertification in Nigeria. The thesis will make an immense contribution to the academic in theoretically shaping and developing literature regarding Environmental Law.

### **1.8 Literature Review**

A good number of scholars have written on issues relating to environmental challenges under Environmental Law. In discussing the legal framework on the prevention and control of desertification in Nigeria, desertification/ desert encroachment which is one of the environmental challenges have to be analyzed. Books, Journals Articles and Newspapers will be reviewed.

Desertification has been generally agreed upon by all the scholars that have written on issues relating to environmental challenges to be one of such challenges that poses serious threat to the environment and requires an equally serious and consistent action on the part of Government and the general public in those areas affected. However, they differ as to the meaning of desertification which is defined based on their different understanding of the concept.

Desertification was defined at the United Nations Conference on Desertification 1977, as the diminution or destruction of the biological potential of the land, and can lead ultimately to desert- like conditions. It is an aspect of the wide spread deterioration of ecosystems, and has diminished or destroyed the biological potential, i.e. plant and animal production, for multiple use purposes at a time when increased productivity is needed to support growing populations in the quest of development.<sup>29</sup> However, the definition only focuses on the natural causes of desertification, neglecting the human causes of desertification which are also important to this work.

The United Nations Food and Agricultural Organization (FAO) revised the above definition in 1983, and proffered another definition of desertification to mean a comprehensive expression of economic and social processes, as well as those natural or induced ones which destroy the equilibrium of soil, vegetation, air, and water, in the areas subject to edaphic or climatic aridity.<sup>30</sup> This definition only focuses on the natural causes of desertification, neglecting the human causes of desertification which are also important to this work.

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<sup>29</sup>United Nations Conference on Desertification, 1977 available at: [www.dimun.info/Archive/researchreports/ENV%20T4.pdf](http://www.dimun.info/Archive/researchreports/ENV%20T4.pdf) last visited on 14/02/2013.

<sup>30</sup> Food and Agricultural Organization/United Nations Environment Program, provisional methodology for assessment and mapping of Desertification (1983) available at <ftp://ftp.fao.org/TC/CPF/.../Nigeria/status/nigeria%20nmtpf.pdf> last visited on 14/3/2013.



Nasiru Idris Medugu in his Article defines desertification to mean an adverse environmental process that deteriorate the ecosystem, degradation of various forms of vegetation destruction of biological potential, decrease of biological potential, decay of productive ecosystem, and impoverish of ecosystems.<sup>31</sup> The definition only focuses on the natural causes of desertification, neglecting the human causes of desertification which are also important to this work.

Jagdish C. K. and Paul L.G., in their book define desertification as a condition of human-induced land degradation that occurs in arid, semiarid and dry sub-humid regions and leads to a persistent decline in economic productivity of useful biota related to a land use or a production system.<sup>32</sup> Unlike the above definitions, this definition did not address the natural causes of desertification rather it talks about the human causes of desertification.

David Hunter, James Salzman, Durwood Zaelke, in their book opined that desertification has been around since time immemorial and is constantly edging closer unnoticed so, urgent and bold steps must be taken to combat it because it could led to the destruction of lives, vegetation, shrubs, and the means of livelihood of thousands of people in the area. The book further discussed the United Nations General Assembly resolution calling for an International action to combat desertification.<sup>33</sup> The book did not discuss the United Nation Convention to Combat Desertification, which is the only convention on the issue of desertification.

Buanajuti A. discusses the Plan of Action to Combat Desertification (PACD) which was expected to have been fully implemented by the year 2000 but failed. Although, it was

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<sup>31</sup> Medugu N. I. Nigeria: Combating Desertification And Drought, Daily Trust Newspaper, Abuja, (2 June, 2009).

<sup>32</sup> Jagdish C. K. and Paul L.G. Desertification - Concept, Causes and Amelioration, Zentrum für Entwicklungsforschung (ZEF) publishers, Bonn, Germany, (2000 ) p.20.

<sup>33</sup> Hunter D. et al. International Environmental Law and Policy, Foundation Press, New York, (1998).

not binding on participating parties it generated international awareness on desertification and the threats it poses to the entire human society.<sup>34</sup> Just like the above cited book, this article also focuses only on the resolutions to Combat Desertification and neglected to discuss the convention calling for international action to combat desertification which is relevant to this work.

Kyle W. D in reviewing the Desertification Convention captured the main and distinguishing features of the UNCCD and summarizes the main essence and drive of the convention. The writer differentiates UNCCD in a number of important respects from other international environmental agreements. That whereas other international environmental agreements require states to centralize and expand their powers of regulation, the Convention to Combat Desertification requires states to funnel authority and resources down to the local land user communities, including local NGOs.<sup>35</sup> However, the writer did not fully capture and discussed the main obligations of the affected developing country and that of the develop countries, to the convention.

Chasek Pamela S. in her article stated that; the convention to combat desertification did not only signify an advance in the international understanding of what is needed to effectively combat desertification, but it also incorporates certain aspects of sustainable development into a legally binding instrument. The writer further stated that there can be no doubt that the Convention to Combat Desertification marks the beginning of a transition from international environmental law to sustainable development law that

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<sup>34</sup> Buanajuti A. External Evaluation of the Plan of Action to Combat Desertification (1991) Desertification Control Bull, No. 20 30-31 available at [www.africabib.org/rec.php?RID=Q00004448&DB=p](http://www.africabib.org/rec.php?RID=Q00004448&DB=p) Last visited on 14/2/2013.

<sup>35</sup> Kyle, W. D. International Environmental Law and the "Bottom-up" Approach: A Review of the Desertification Convention, Indiana Journal of Global Legal Studies Volume 3, (1995) Issue 1 Article 9.

embodies a spirit of cooperation between developed and developing countries.<sup>36</sup> However, the writer neglected to discuss some of the important resolutions which are important to this work, but only focused her discussion on the Convention to Combat Desertification.

Nkonya E. et al, in their article, classified the causes of desertification in to two; natural and human causes. However, among all these natural causes of desertification, they opined that Climate variation or change is perhaps the most important natural cause of desertification in the affected areas /dry lands of Nigeria. They also opined that the human activities which causes desertification is mainly as the result of the disruption of the ecological system caused by poor land use and the increasing pressure put upon the available resources by the expanding population as well as poverty.<sup>37</sup> The writers only discuss the causes of desertification and neglected to discuss the issue of prevention and control of desertification.

In an Article titled 'Food Crisis & Land: The World Food Crisis, Land Degradation, and Sustainable Land Management: Linkages, Opportunities, and Constraints, German Organization for Technical Cooperation and Africa', just like the above article, the authors of this article opined that Climate variability was seen to holds the potential for the most severe human impacts In Sub-Saharan Africa as it affect the growing periods and yields which intensify land degradation and affect the ability of land management

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<sup>36</sup> Chasek, P. S. The Convention to Combat Desertification: lessons learned for sustainable development, Journal of Environment & Development 6.2 (1997).

<sup>37</sup> Nkonya, E. Et al, The Economics of Desertification, Land Degradation, and Drought Toward an Integrated Global Assessment, IFPRI Discussion Paper 01086 May 2011 Available at: <http://www.ifpri.org/publications/results/taxonomy%3A468>. Last visited on 14/04/2013.

practices.<sup>38</sup> However, the writers also neglected to discuss the issue of prevention and control of desertification which is important to this work.

Kent C. Nnadozie in his article, viewed that deforestation, bush burning and overgrazing are seen as the possible responses to harsh and inhospitable environment and as the primary causes of desertification which are influenced by factors such as changes in population, climate and socio-economic conditions (poverty).<sup>39</sup> The writer neglected to discuss the issue of prevention and control of desertification which is important to this work.

Lanre Oyetade in his article also opined that deforestation is the primary cause of desertification; Wood is an important source of fuel for poor northern people who do not necessarily realize the consequences of cutting down trees. It is essential, therefore, to limit the extent of deforestation and to replant trees, but such projects will only become possible if the Nigerian authorities have started taking the threat more seriously. That Despite the treaties signed, agencies formed and policies articulated there have been no tangible improvements on the ground, the government's annual reforestation programmes have largely failed. In the absence of sustained public awareness campaigns, majority of the saplings dies or are cut down. The 1,500 km green belt along the edge of the desert, promised in 2001, has never materialized.<sup>40</sup> The writer talks about the causes and measures for the control of desertification, he neglected to talk about the Laws for the prevention and control of desertification which is important to this work.

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<sup>38</sup> Pender, J. L. 2009 Food Crisis & Land: The World Food Crisis, Land Degradation, and Sustainable Land Management: Linkages, Opportunities, and Constraints, German Organization for Technical Cooperation and Africa. Available at [www.gtz.de/dokumente/bib/gtz2009-0196en-food-crisis-land.pdf](http://www.gtz.de/dokumente/bib/gtz2009-0196en-food-crisis-land.pdf), last visited on 14/03/2013.

<sup>39</sup> Kent C. Nnadozie Legal and policy approaches at linking the Desertification and climate change agenda in Nigeria, a Paper presented at the Workshop on Desertification and Climate Change, Held during the 12<sup>th</sup> Session of the Global Biodiversity Forum, at the Meridien President Dakar, Senegal, (4 – 6 December, 1998), p.3.

<sup>40</sup> Oyetade, L. The human causes and effects of desertification, available at: <http://africanagriculture.blogspot.com/2007/03> last visited on 14/3/2013.

Equally, in a book published by the Federal Ministry of Environment Of Nigeria on the National Action Programme to Combat Desertification, Pastoralists seems to contribute significantly to tree cutting as they cut foliage to feed their animals and use branches to build enclosures, the consequence of which was estimated to affect about 350,000ha of land which is under the threat of deforestation.<sup>41</sup> The book was silent about the Law regulating the activities of the pastoralist which is important to this work.

Toye Olori in his article stated that about 35 million people in northern Nigeria are suffering from the effects of desertification which is posing serious threat to the nation's economy, food security and employment. For instance, there are at least 50,000 farmers in about 100 villages scattered along the desert fringes of the northern state of Yobe, one of the affected area by desertification in Nigeria. The writer blamed the government for its inconsistency in policies, especially on desertification, which, he argued had not helped afforestation, that it is as the result of the Government's inconsistent policy on desertification that there is continual increase of the prices of kerosine, which is a major source of cheaper alternative to firewood.<sup>42</sup> In the article, the writer did not give an example of any government policy on desertification.

Abdel HA Hamid, Donald A. Mwiturubani and Deborah Osiro in their book saw climate change as an important factor that adds to existing stresses like malnutrition, water scarcity, soil erosion, and desertification. Also, they viewed that the scarcity of rainfall in the Sahel belt of Sudan and Darfur is likely to continue and the risk of further severe droughts, floods, more frequent dust storms and desertification is high in those areas if

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<sup>41</sup> Federal Ministry of Environment Of Nigeria National Action Programme to Combat Desertification available at [www.nigeria-nap-on-unced.pdf](http://www.nigeria-nap-on-unced.pdf) last visited on 14/02/2013.

<sup>42</sup> Olori, T. Desertification Threatens Economy, Food Security. Available at <http://ipsnews.net/press.shtml>. last visited on 12/3/2013.

not prevented.<sup>43</sup> The writers were silent on the effect of human activities which is one of the factors that cause desertification and therefore important to this work.

Hugo Odiogor in his article, described the rate at which the desert is advancing, and the impact it is having on the socio-economic activity of the people, the security, and the political environment of the affected areas, and the country at large.<sup>44</sup> The writer did not discuss the measure for the control of desertification, which is important to this work.

Ladan M. T. in his book and article, viewed that the Land Use Act is not strictly an Act for environmental protection, and that the resultant consequence of the problems of deforestation, overgrazing and bush burning has arise from the ineffectiveness of the Forestry Law, Grazing Reserves Law and the Bush Burning (Control) Law in which he used the Sokoto State Forestry Law and Grazing Reserve Law as example to argue his point. The writer further argued that the laws did not address the challenge of sustainable development properly in order to maintain a balance between forest conservation and causes of deforestation for institutional, industrial or agricultural developments and alarming the socio-economic implications of deforestation which include loss in biodiversity and generic resources, shortage of firewood and industrial timber, floods and erosion.<sup>45</sup> The writer did not make reference to any international legal instrument for the prevention and control of deforestation which causes desertification.

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<sup>43</sup> Abdel HA Hamid et al Nature and extent of environmental crime in Sudan published by the Institute for Security Studies, Pretoria, South Africa (2010).

<sup>44</sup> Odiogor, H. Special Report on Desertification in Nigeria: The Sun Eats Our Land, Vanguard Newspaper, Lagos, (May 3, 2010).

<sup>45</sup> Ladan M. T. Materials and Cases on Environmental Law, Econet Publishing Co. Ltd, Zaria, Kaduna State, Nigeria, (2004), p. 101. And in his article titled Ladan M. T. Environmental Law and Land Use in Nigeria a paper for the Second Colloquium on Environmental Law and Land use, Organized by the IUCN Academy of Environmental Law, Bonn, Germany in Collaboration with the University of Nairobi, Kenya, held at Grand Gency Hotel, Nairobi, Kenya (4-8 October, 2004), P.8.

Although a lot of Laws, policies and programs have been introduced to tackle the problem of desertification in Nigerian, yet there exists a gap in addressing the issue of the legal framework on the prevention and control of desertification in Nigeria. This is because, some of the Acts called the Nigerian Legal Framework were neither actually passed to address the problem of desertification nor reviewed to bring them in line with the efforts to combat desertification, yet, so far, they constitute the Nigerian legal framework for the prevention and control of desertification.

### **1.9 Organisational Layout**

This research work is divided in to six chapters for clear and articulated analysis of the subject matter.

Chapter one is an introductory chapter and consists of the background of the study, statement of the problem, research questions, aims and objectives, methodology, scope and limitations, justification of the study, literature review and organizational layout.

Chapter two deals with the analytical framework on the legal regime for desertification in Nigeria and clarifies key terms such as afforestation, deforestation and desertification.

Chapter three discusses the legal and institutional framework for the prevention and control of desertification in Nigeria. The definition of environmental legislation, the history of environmental legislation in Nigeria, the history of international environmental legislation with reference to some conventions and declarations for the prevention and control of desertification and then the role of judicial precedent as an important source of Nigerian environmental legislation was also discussed.

Chapter four discusses the legal framework for the prevention and control of desertification in some selected countries namely; Ghana, Sudan and Kenya to see

whether Nigeria can learn from some of their legislations that have truly addressed the issue of desertification.

Chapter five deals with the comparative analyses on the laws for the prevention and control of desertification, where the Nigerian Laws for the prevention and control of desertification discussed in chapter three of this work and that of some selected countries discussed in chapter four of this work was analyzed.

Chapter six brings the work to the end with summary of the major issues, major conclusions, findings and possible recommendations.



## **CHAPTER TWO**

### **ANALYTICAL FRAMEWORK ON THE LEGAL REGIME FOR DESERTIFICATION IN NIGERIA**

#### **2.1 Introduction**

This chapter examines the legal regime for desertification in Nigeria. The focus of attention in this chapter is to discuss the legal principles governing afforestation and control of deforestation in Nigeria with the aim of examining the role of environmental law in regulating the issue of desertification in Nigeria which shall be the basis of this work and to establish a basis for analyzing the appropriateness of Nigerian laws on the subject. It is against this background that a conceptual clarification of the key terms namely: desertification, deforestation and afforestation will be discussed and then the Legal Principles Governing the Issue of desertification in Nigeria will be discussed.

Nigeria has historically deforested most of its forest area and has reached the point that most of the indigenous plant species that were identified in 1960's are now hard to come by especially those with medical value and edible qualities such as *senegalensis* (Madaci-Hausa) and *Mitroginosa* Spp (Giyay- Hausa).<sup>46</sup> This occurs as the result of some human activities which causes desertification such as the high demand of fuel wood, overgrazing by livestock especially that of cattle's owned by the nomadic Fulani's and bush burning usually by hunters who are in search of games.

To tackle the problems of desertification, afforestation program has been undertaken by the government, institutes and individuals on either government or common land. In

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<sup>46</sup> Federal Ministry of Environment Of Nigeria National Action Programme to Combat Desertification available at [www.nigeria-nap-on-uncdd.pdf](http://www.nigeria-nap-on-uncdd.pdf) last visited on 14/02/2013, p. 13.

Nigeria, the Nigerian government has developed the forestry programs (the Arid zone Afforestation project) to tackle the problems of desertification through the establishment of wood lots, shelter belts and wind breaks.<sup>47</sup>

## **2.2 Definition/Meaning of Desertification**

The term ‘Desertification’ like most concepts, has been subject to a wide range of definitions/meanings from scientific and legal scholars/authors/writers, all trying to capture what they understand to be the major constituents of the term.

### **2.2.1 Scientific Definition/Meaning of Desertification**

Desertification was defined at the United Nations Conference on Desertification 1977, as the diminution or destruction of the biological potential of the land, and can lead ultimately to desert-like conditions. It is an aspect of the wide spread deterioration of ecosystems, and has diminished or destroyed the biological potential, i.e. plant and animal production, for multiple use purposes at a time when increased productivity is needed to support growing populations in the quest of development.<sup>48</sup>

Similarly, The United Nations Food and Agricultural Organization (FAO) in 1983, defined desertification to mean a comprehensive expression of economic and social processes as well as those natural or induced ones which destroy the equilibrium of soil, vegetation, air, and water, in the areas subject to edaphic or climatic aridity.<sup>49</sup>

Nasiru Idris Medugu in his Article ‘Nigeria: Combating Desertification and Drought’, defines desertification to mean an adverse environmental process that deteriorate the

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<sup>47</sup> Nigerian National Action Program to Combat Desertification submitted to the United Nations Convention to Combat Desertification Secretariat 2000.

<sup>48</sup> United Nations Conference on Desertification, 1977 available at: [www.dimun.info/Archive/researchreports/ENV%20T4.pdf](http://www.dimun.info/Archive/researchreports/ENV%20T4.pdf) last visited on 14/02/2013.

<sup>49</sup> Food and Agricultural Organization/United Nations Environment Program, provisional methodology for assessment and mapping of Desertification (1983) available at [ftp://ftp.fao.org/TC/CPF/.../Nigeria/status/nigeria%20nmtpf.pdf](http://ftp.fao.org/TC/CPF/.../Nigeria/status/nigeria%20nmtpf.pdf) last visited on 14/3/2013.

ecosystem, degradation of various forms of vegetation destruction of biological potential, decrease of biological potential, decay of productive ecosystem, and impoverish of ecosystems.<sup>50</sup>

Also, Jagdish C. K. and Paul L. G., in their book titled ‘Desertification - Concept, Causes and Amelioration’, define desertification as a condition of human-induced land degradation that occurs in arid, semiarid and dry sub-humid regions and leads to a persistent decline in economic productivity of useful biota related to land use or a production system.<sup>51</sup>

## **2.2.2 Legal Definition / Meaning of Desertification**

The Black’s Law Dictionary 2<sup>nd</sup> Edition, defines desertification as converting grassland or arid land in to a desert through human action referred to as deforestation.<sup>52</sup>

Similarly, Article 1(a) of the United Nations Convention to Combat Desertification (UNCCD) defines desertification to mean land degradation in arid, semi-arid and dry sub-humid areas resulting from various factors, including climatic variations and human activities.<sup>53</sup>

From the above definitions of desertification, two things seems to be agreed upon by all the scientific and legal scholars/ authors/ writers that is one; the fact that desertification is caused by climatic variations and human actions referred to as deforestation and two; the fact that desertification is a serious threat to the environment and that it requires an

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<sup>50</sup> Medugu N. I. Nigeria: Combating Desertification And Drought, Daily Trust Newspaper, Abuja, (2 June, 2009)

<sup>51</sup> Jagdish C. K. and Paul L.G. Desertification - Concept, Causes and Amelioration, Zentrum für Entwicklungsforschung (ZEF) publishers, Bonn, Germany, (2000 ) p.20.

<sup>52</sup> The Black’s Law Dictionary 2<sup>nd</sup> Edition, Free online Legal Dictionary Available at: [www.thelawdictionary.org/desertification](http://www.thelawdictionary.org/desertification) Last visited on 21/08/2014.

<sup>53</sup> United Nations Convention to Combat Desertification in those Countries experiencing serious drought and/or desertification, particularly in Africa (UNCCD) (adopted on June 17 1994, entered into force on December 26 1996, ratified by 115 countries) A/AC.241/27 Art 1(a).

equally serious and consistent action on the part of both the Government and the general citizens in those areas affected for its prevention and control.

In compliance with the above definitions/ meanings of desertification in Nigeria, the Nigerian government started addressing the problem of desertification with the adoption of some resolutions, declarations, principles and conventions and enacted some environmental legislation for the prevention of desertification. Some of these resolutions, declarations, principles, and conventions adopted and implemented in Nigeria are; the United Nation resolution Plan of Action to Combat Desertification, the Rio Declaration on Environment and Development, the Global Plan of Action, Forestry Principles and the United Nations Convention to Combat desertification.

### **2.3 Definition/Meaning of Deforestation**

The term ‘Deforestation’ like most concepts, has been subject to a wide range of definitions/meanings from both scientific and legal scholars/authors/writers, all trying to capture what they understand to be the major constituents of the term.

#### **2.3.1 Scientific Definition / Meaning of Deforestation**

Deforestation has been defined as the destruction of forest trees in such a manner as to leave practically little or no chance at all of normal recovery of a forest.<sup>54</sup> Some of the factors responsible for the destruction of forest products include; illegal loggers, illegal forestry product gatherers, timber smugglers, forest incendiaries, miners, atmospheric agents and biological agents.<sup>55</sup>

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<sup>54</sup> DEFORESTATION- Philippines Available at: [www.nscb.gov.ph/rul2/DEFINE/DEF-ENV.HTM](http://www.nscb.gov.ph/rul2/DEFINE/DEF-ENV.HTM). Last visited on 25/08/2014.

<sup>55</sup> Ibid.

Also, deforestation have been defined as the clearing of trees for; timber, fuel, farmland, or for settlements from a piece of land without the intention of reforesting.<sup>56</sup>

Similarly, deforestation have been defined as the removal or clearing of large area of forest lands for non forest use by humans, which include clearing for farming purposes, ranching and urban use. In this case trees are never replanted.<sup>57</sup>

The Oxford Advanced Learners Dictionary 7<sup>th</sup> Edition, defines deforestation as the act of cutting down or burning the trees in an area.<sup>58</sup>

In a Manual titled ‘Deforestation, Degradation and Fragmentation Using Remote Sensing’, Deforestation has been defined as the conversion of forested areas to non-forest land use such as arable land, urban use, logged area or wasteland which can result from deliberate removal of forest cover for agriculture or urban development or it can be unintentional consequence of uncontrolled grazing (which can prevent the natural regeneration of young trees).<sup>59</sup>

### **2.3.2 Legal Definition/Meaning of Deforestation**

According to the Black’s Law Dictionary 2<sup>nd</sup> Edition, deforestation has been defined as the clearing of forests or removing trees to make land for housing, agriculture or firewood and that nothing is replanted and no time is allowed for forest regeneration.<sup>60</sup>

Furthermore, deforestation has been defined as a legal process whereby an area of forest land ceased to be regarded as forest under the terms of forest law.<sup>61</sup>

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<sup>56</sup> Schools Wafa-Deforestation Available at: [www.schoolswafa.org.au/terms.htm](http://www.schoolswafa.org.au/terms.htm). Last visited on 25/08/2014.

<sup>57</sup> Forest/ what-is-deforestation Available at: <http://eschooltoday.com/forest/what-is-deforestation.html>. Last visited on 25/08/2014.

<sup>58</sup> Oxford Advance Learners Dictionary, 7<sup>th</sup> Edition, Oxford University Press, Oxford, New York, (2006), p.385.

<sup>59</sup> Manual on Deforestation, Degradation and Fragmentation Using... Available at: [www.fa.org/.../18222](http://www.fa.org/.../18222). Last visited on 21/08/2014.

<sup>60</sup> The Black’s Law Dictionary 2nd Edition, Free online Legal Dictionary Available at: [www.thelawdictionary.org/deforestation](http://www.thelawdictionary.org/deforestation) Last visited on 21/08/2014. This definition is connected to the greenhouse effect and desertification.

Similarly, deforestation means to clear or strip forest of wood land; remove an area of land from the constraints of forest law.<sup>62</sup>

For the purpose of this work, scientifically, deforestation means the clearing of trees for; timber, fuel, farmland, or for settlements from a piece of land without the intention of reforesting. Legally, deforestation means the legal process whereby an area of forest land ceased to be regarded as forest under the terms of forest law.

In compliance with the above definitions in Nigeria, there are series of forestry laws, grazing reserve regulations which have empowered each affected state to manage its forest estates and grazing reserves as well as reforest their desertified areas.<sup>63</sup>

## **2.4 Definition/Meaning of Afforestation**

The term ‘Afforestation’ like most concepts, has been subject to a wide range of definitions/meanings from scientific and legal scholars/authors/writers, all trying to capture what they understand to be the major constituents of the term.

### **2.4.1 Scientific Definition/Meaning of Afforestation**

The International Panel on climate change (IPCC) Guidelines defines afforestation as the planting of new forest on land which historically has not contained forest.<sup>64</sup>

Also, The Global Mechanism/ United Nations Convention to Combat Desertification (GM/UNCCD 2008), defines afforestation as the process of establishing and growing forests on bare or cultivated land which has not been forested in recent history.<sup>65</sup>

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<sup>61</sup> Deforestation facts, information, pictures/Encyclopedia Available at: [www.encyclopedia.com/.../deforestation](http://www.encyclopedia.com/.../deforestation). Last visited on 22/08/2014.

<sup>62</sup> Meaning of Deforestation Available at: <http://info.sjc.ox.ac.uk/forest/glossary.htm> Last visited on 22/08/2014.

<sup>63</sup> See The Forestry Law, Cap. 48 K.S.L.N. 1991; Forestry Law, Cap.52 K.T.S.L.N. 1991 and Forestry Law, Cap. 48 J.S.L.N. 1998.

<sup>64</sup> Afforestation- Reforestation and Deforestation – IPCC Available at: [www.IPCC.ch/.../sres/.../index.php](http://www.IPCC.ch/.../sres/.../index.php). Last visited on 12/02/2014.

<sup>65</sup> GM/UNCCD 2008 afforestation def Available at: [www.global-mechanism.org/dynamic/document/documentfile](http://www.global-mechanism.org/dynamic/document/documentfile) Last visited on 12/04 /2014.

Similarly, United Nations Global Forest Resource Assessment (UN-GFRA 2000) defines afforestation as the artificial establishment of forest on lands which previously did not carry forest within living memory.<sup>66</sup>

In the same token, the United Nations Framework Convention on Climate (UNFCCC 2001), defines afforestation as the direct human induced conversion of land that has not been forested for a period of at least 50 years to forested land through planting, seeding and / or the human induced promotion of natural seed sources.<sup>67</sup>

Similarly, afforestation has been defined as the establishment of forest on land that has been without forest for a period of time (example: 20 – 50 years or more) and was previously under a different land use.<sup>68</sup>

Furthermore, The United Nations Development Programme (UNDP 1999) generally refers to planting of trees on grounds where trees have never existed or where trees are not present for the last hundreds of years ago as ‘Afforestation’.<sup>69</sup>

According to the Oxford Advanced Learners Dictionary, Afforestation means the process of planting areas of land with trees, in order to form a forest.<sup>70</sup>

Furthermore, Afforestation was defined to mean the planting of trees for commercial purposes, usually on land supporting non-forest type’s example; grassland or fynbos.<sup>71</sup>

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<sup>66</sup> UN- FRA 2000, def. forest, deforest, afforest & reforest Available at: <http://home.comcast.net/~gyde/DEFpaper>. Last visited on 12/04/2014.

<sup>67</sup> UNFCCC Inter. Resource Document Available at: [www.Unfccc.int/resource/docs/cop6secpart/11-r01.pdf](http://www.Unfccc.int/resource/docs/cop6secpart/11-r01.pdf) Last visited on 12/04/2014.

<sup>68</sup> Issues Associated with definitions- IPCC, Special Reports Available at: [www.grida.no/climate/ipcc/land.../004.ht](http://www.grida.no/climate/ipcc/land.../004.ht) Last visited on 12/02 2014.

<sup>69</sup> UNDP- 1999 Available at: [www.profor.info/pdf/innovatforesfnance](http://www.profor.info/pdf/innovatforesfnance) Last visited on 12/04/2014.

<sup>70</sup> Oxford advance Learners Dictionary, 7th Edition, Oxford University Press, Oxford New York, (2006), p.25.

<sup>71</sup> Def. of Forest, afforestation... Available at: [www.deltaenviro.org.za/resources/envirofacts/afforestation](http://www.deltaenviro.org.za/resources/envirofacts/afforestation) Last visited on 12/04/2014.

Mintzer, defines afforestation as the establishment of forest cover on land not previously forested and that afforestation may be necessary to increase the net capacity of earth's forests to absorb C<sub>02</sub> and other greenhouse gases.<sup>72</sup>

Finally, Afforestation was also defined to mean tree planting programs, undertaken by the government/ institute/individual on government/ common land.<sup>73</sup>

#### 2.4.2 Legal Definition / Meaning of Afforestation

According to the Black's Law Dictionary 8<sup>th</sup> Edition, Afforestation mean to convert (land) into a forest especially by subjecting it to forest law,<sup>74</sup> and Forestry Law means the body of Law protecting game and preserving timber.<sup>75</sup>

Similarly, Afforestation means to place an area under forest law and administration; the creation of a forest by stipulated procedures.<sup>76</sup>

Afforestation means to bring land within forest law (historically) or in current parlance to bring within the control of the verderers and their by-laws, it is a legal act.<sup>77</sup>

Furthermore, afforestation legally means to make in to a forest by application of forest law.<sup>78</sup>

A variety of definition/ meanings of afforestation have been given above, so for the purpose of this work, in ordinary parlance, Afforestation means tree planting programs, undertaken by the government/ institute/individual on government/ common land. In legal parlance, Afforestation means to convert (land) into a forest especially by subjecting it to forest law.

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<sup>72</sup> Mintzer, 1992 Available at: [www.globalchange.org/glossall/glossa-c.htm](http://www.globalchange.org/glossall/glossa-c.htm). Last visited on 4/04/2014.

<sup>73</sup> Definition and Benefits of Afforestation info Available at: [www.agriinforin/?page](http://www.agriinforin/?page) Last visited on 12/02/2014.

<sup>74</sup> Black's Law Dictionary, 8<sup>th</sup> Edition, West Publishing co., United State of America, (1999), p. 64.

<sup>75</sup> Ibid p. 676.

<sup>76</sup> Forest 30r; (2)... Available at: <http://info.sjc.ox.ac.uk/forest/glossary.html>. Last visited on 12/04/2014.

<sup>77</sup> Hants New forest... Available at: [www.hants.org.uk/newforests/biblog.html](http://www.hants.org.uk/newforests/biblog.html). Last visited on 12/04/2014.

<sup>78</sup> Medieval Terms Afforest Available at: <http://orb.rhodes.edu/medievalterms.html>. Last visited on 12/04/2014.



In compliance with the above definitions, Nigerian government has developed the forestry programs (the Arid zone Afforestation project) to tackle the problems of desertification through the establishment of wood lots, shelter belts and wind breaks.<sup>79</sup> At the state level also, there are series of forestry laws, grazing reserve regulations and as well as bush burning regulations which are directed at controlling the notable causes of deforestation, which causes desertification as earlier enumerated and empower each state to manage its forest estates and grazing reserves as well as reforest their desertified areas.<sup>80</sup>

## **2.5 The Legal Principles Governing Desertification in Nigeria**

Desertification is one of the issues covered under environmental law in Nigeria. Environmental Law is a body of rules and regulations which have their object or effect for the protection of the environment from pollution and the wasteful depletion of natural resources and ensure sustainable development.<sup>81</sup>

There is a preposition that environmental law has not been developed as a self contained discipline but has simply borrowed some principles from other areas of law namely: Criminal Law, Constitutional Law, Law of Contract, Tort, Equity and Public and Private Law.<sup>82</sup> Therefore, desertification as one of the environmental issues in Nigeria has also borrowed some principles from other areas of law which relate directly or indirectly to the prevention and control of deforestation and encourage afforestation. These principles have been borrowed from Law of Tort, Equity and Criminal Law. Below, this research work will discuss and tease out both the object and effect of Environmental Law in the

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<sup>79</sup> Nigerian National Action Program to Combat Desertification submitted to the United Nations Convention to Combat Desertification Secretariat 2000.

<sup>80</sup> See the various States Forestry Law, grazing reserve regulations and as well as bush burning regulations.

<sup>81</sup> Ladan M. T. Materials and Cases on Environmental Law, Econet Publishing Co. Ltd, Zaria, Kaduna State, Nigeria, (2004), p. 101.

<sup>82</sup> Ibid.

protection of desertification and the principles borrowed from Law of Tort, Equity and Criminal Law for the prevention and control of desertification.

### **2.5.1 Environmental Law**

Historically, prior to 1960 environmental law did not exist as a discrete domestic and international legal category. However, the modern environmental law can be traced from the nineteenth century public health and resources conservation laws, and as well as from private legal actions for pollution damages.<sup>83</sup> According to Hughes, environmental Law has roots in private legal actions which protect the use and enjoyment of land, nuisance and abuse of rights and from the public health reform laws of the nineteenth century.<sup>84</sup>

Furthermore, prior to 1960, there was no wide spread appreciation of the idea that ecosystems and water and air masses which were geographical units, should be the subject of special legal protection. The science-based idea that the biosphere was a fragile system vulnerable to human-induced impairment only became widely accepted after World War II. However, in the late 1960s, the idea that ecosystems and water and air masses were geographical units that should be the subject of special legal protection gained wide acceptance, and the legal protection of wetland and forest, quickly followed, particularly in USA, Europe, Australia and New Zealand. Since then, Environmental protection has become an important element of the domestic legal systems of all developed countries and many developing ones. So, in 1980, environmental law has become an important and evolving component of international law.<sup>85</sup>

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<sup>83</sup> Tarlock A. D. History of Environmental Law Available at [www.eolss.net/Eolss-sampleAllChapter.aspx](http://www.eolss.net/Eolss-sampleAllChapter.aspx) last visited on 24/07/2014.

<sup>84</sup> Hughes D. Environmental Law, Butterworth Publishing Co, U.K., (1986), p.4.

<sup>85</sup> Tarlock A. D., op. cit.

Environmental Law is ultimately the product of environmentalism which can be roughly defined as a value system that seeks to redefine mankind's relationship to nature. Specifically, environmentalism seeks to induce humans to act as stewards of nature, rather her exploiters, and therefore to respect the functioning of natural systems by limiting activities which disturb these systems of resource use incentives from those that induce unsustainable development to those that induce environmentally sustainable development.<sup>86</sup>

Environmental Law is fundamentally a new concept with more discontinuity than continuity with the past legal and intellectual traditions. Many of the values advanced by environmental regulations are not tied to the enhancement of human dignity, human welfare, the protection of property or the maintainance of social order, rather, environmentalism seek to radically redefine the relationship between humans and nature. Like all other emerging areas of law, environmental law is therefore an unsystematic, synthetic and unstable mix of rules from other areas of enacted laws and new principles.<sup>87</sup> Furthermore, Environmental law is not well-integrated into either domestic legal system or international law because it is a modern parasitic field of law with minimal roots in either common law, the western constitutional tradition, civil law, Asian or customary law.<sup>88</sup>

However, environmental law can justly be said to be an emergining permanent body of law with a core of universal principles widely adopted by a broad range of countries. As one surveys the laws of all countries of the world that have made environmental

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<sup>86</sup> Tralock A.D. The Non-equilibrium paradigm in environmental Law and the Partial Unraveling of Environmental Law, 27 Loyola of Los Angeles L. Rev., (1994), p. 1121.

<sup>87</sup> Ibid.

<sup>88</sup> Plater Z.J. B. From the Beginning, A Fundamental Shift of Paradigms: A Theory and Short History of Environmental Law, 27 Loyola of Los Angeles L. Rev., (1994), p. 981.

protection a political priority, there is considerable uniformity in the objectives, policy instruments and basic legal principles. Environmental lawyers speak a universal legal, scientific and ethical language. The reason is simple; the institutional problems that give rise to environmental degradation, pollution and the loss of biodiversity are basically similar throughout the world and variations in response come more at the enforcement rather than at the legislative level.<sup>89</sup>

Environmental law uniformity was achieved for two reasons: One; the law is derived from common scientific and economic assumptions about the causes and consequences of environmental degradations and Two; most countries have followed the European/US model of policy instruments for pollution abatement, environmental impact assessment, toxic risk assessment and biodiversity conservation.<sup>90</sup>

Due to the fact that environmental law is the byproduct of the rise of environmentalism as a political force throughout the world since the 1960s, it has three highly linked universal primary objectives: One; the remediation and protection of air, water, and soil pollution that causes both demonstrable damage and involuntarily exposes persons to socially unacceptable risk levels, Two; the conservation of biodiversity, landscape and heritage for present and future generations, and Three; the promotion of environmentally sustainable development. Each of these objectives continues to be contested but the contest is increasingly at the margin. That is the issue is not whether there should be environmental protection, but what is the optimal level of protection. Naturally, this “calculations” will

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<sup>89</sup>Tarlock A. D. History of Environmental Law Available at [www.eolss.net/Eolss-sampleAllChapter.aspx](http://www.eolss.net/Eolss-sampleAllChapter.aspx) last visited on 24/07/2014.

<sup>90</sup> Ibid.

vary from country to country depending on its stage of development, relative wealth, culture and political institutions.<sup>91</sup>

In order to determine “what is the optimal level of environmental protection in Nigeria”, the 1999 Constitution of The Federal Republic of Nigerians has guaranteed environmental protection under Fundamental Objectives and Derivative Principles of State Policy<sup>92</sup>. Significantly, the Constitution seeks to foster environmental protection by placing an obligation to the state to improve the air, land, water, forest and wild life in Nigeria.<sup>93</sup>

Furthermore, to enhance and protect the environment, the constitution establishes though impliedly that international treaties (including environmental treaties) ratified by the National Assembly should be implemented as law in Nigeria.<sup>94</sup>

Due to the combined effect of the Nigerian constitutional Provision on fundamental objectives and directive principles of the state policy which seeks to foster environmental protection and that of implementation of treaties,<sup>95</sup> Nigeria has adopted some declarations, principles and implements some conventions and enact some environmental legislation for the protection of the environment.

In 1977 at the United Nations Conference on Desertification (UNCOD) held in Kenya, Nigeria has adopted the United Nations resolution (Plan of Action to Combat Desertification (PACD)) which was passed at the conference. The conference served as

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<sup>91</sup> Ibid.

<sup>92</sup> Chapter II of the 1999 Constitution of the Federal Republic of Nigeria as Amended.

<sup>93</sup> S.20 1999 Constitution of the Federal Republic of Nigeria as Amended.

<sup>94</sup> S. 12 1999 Constitution of the Federal Republic of Nigeria as Amended.

<sup>95</sup> See Chapter II, S. 20; S.12 1999 Constitution of the Federal Republic of Nigeria as Amended. See also Article 10 UNCCD.

the concrete starting point in the fight against desertification.<sup>96</sup> The Plan of Action stressed three main points namely; to prevent and arrest the advance of desertification; to reclaim desertified land for productive use; and to sustain and promote, within ecological limits, the productivity of arid, semi-arid, sub-humid and other areas vulnerable to desertification in order to improve the quality of life of their inhabitants. The Plan of Action to Combat Desertification (PACD) was not binding and was expected to have been fully implemented by the year 2000; however, it was unsuccessful.<sup>97</sup>

Furthermore, in 1992, United Nations held a conference on Environment and Development (UNCED) at Rio de Janeiro from 3<sup>rd</sup> – 14<sup>th</sup> June 1992 and Nigeria as one of the participating parties has adopted the three documents negotiated and adopted at the UNCED namely; the global plan of action (Agenda 21), Forestry Principles and the Rio Declaration on Environment and Development.<sup>98</sup>

With the adaptation of the United Nations Convention to Combat Desertification (UNCCD), on 17th day of June 1994, Nigeria signed The United Nations Convention to Combat Desertification (UNCCD) on 31/10/1994, ratified it on 08/07/1997, and it came into force with respect to Nigeria on 06/10/1997.<sup>99</sup> Nigeria being an affected country party has its obligations spelt out under article 4 dealing with general obligations, article 5 dealing with obligations of affected country parties, article 9 which deals with basic approach, article 10 on National action programs, article 19 on capacity building,

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<sup>96</sup> Buanajuti, A. External Evaluation of the Plan of Action to Combat Desertification (1991) Desertification Control Bull, No. 20 30-31. Available at [www.africabib.org/rec.php?RID=Q00004448&DB=p](http://www.africabib.org/rec.php?RID=Q00004448&DB=p) Last visited on 14/2/2013.

<sup>97</sup> Buanajuti, A. External Evaluation of the Plan of Action to Combat Desertification (1991) Desertification Control Bull, No. 20 30-31. Available at [www.africabib.org/rec.php?RID=Q00004448&DB=p](http://www.africabib.org/rec.php?RID=Q00004448&DB=p) Last visited on 14/2/2013.

<sup>98</sup> Chasek Pamela S. The Convention to Combat Desertification: lessons learned for sustainable development, Journal of Environment & Development 6.2 (1997), p.2.

<sup>99</sup> Federal Republic Of Nigeria Ministry Of Environment Great Green Wall For The Sahara And Sahel Initiative National Strategic Action Plan (October 2012) P.22.

education, and public awareness, article 20 (3) on financial resources, and article 21 on national coordinating mechanisms.<sup>100</sup>

Nigeria started addressing the problem of desertification with the adoption of the National Policy on the Environment. Taking into account the circumstances and requirements specific to each affected country Party, national action programmes include, as appropriate, inter alia, measures in some or all of the following priority fields as they relate to combating desertification and mitigating the effects of drought in affected areas and to their populations: promotion of alternative livelihoods and improvement of national economic environments with a view to strengthening programmes aimed at the eradication of poverty and at ensuring food security; demographic dynamics; sustainable management of natural resources; sustainable agricultural practices; development and efficient use of various energy sources; institutional and legal frameworks; strengthening of capabilities for assessment and systematic observation, including hydrological and meteorological services, and capacity building, education and public awareness.<sup>101</sup>

### **2.5.2 Law of Tort**

The word “tort” means “wrong”, and any unjustifiable interference with the right of another person may be a tort.<sup>102</sup> As a part of civil law, the objective of the law of tort is to prohibit a person from doing wrong to another person and where a wrong is done, to afford the injured party, right of action in civil law for compensation, or other remedy such as: an injunction directing the wrongdoer who is known as a “tortfeasor” to stop doing the act specified in the court order and then damages which are the monetary

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<sup>100</sup> UNCCD UN Doc A/AC.241/27 (1994).

<sup>101</sup> UNCCD UN Doc A/AC.241/27 (1994) Art 10(4).

<sup>102</sup> Kodilinye and Aluko *The Nigerian Law of Torts*, Revised Edition, Spectrum Books Limited, Ibadan, Nigeria, (2005), p.93.

compensation that is paid by a defendant to a plaintiff for the wrong the defendant has done to him.<sup>103</sup>

Furthermore, the law of tort protects a person's interests in land and other property, in his or her reputation and in his or her body integrity. Various torts have been developed for these purposes namely: the tort of nuisance protects a person's use and enjoyment of land, the tort of defamation protects a person's his or her reputation and the tort of negligence protects the breaches of more general duties owed to that person.<sup>104</sup>

Thus, since the purpose of the law of tort is to prohibit torts and where a tort is committed the law of tort provides a remedy for it, by an award of damages or other appropriate relief, therefore, the law of tort deals with a wide variety of wrongs which includes the following: trespass to person (that is assault, battery and false imprisonment); trespass to chattel (that is conversion and detinue); trespass to land; negligence; nuisance; strict liability; vicarious liability; defamation; to mention a few.<sup>105</sup> For the purpose of this work, the principle of law borrowed under the Law of Tort which is relevant to the issue of desertification in Nigeria is that of nuisance.

#### **2.5.2.1 Nuisance**

In ordinary parlance, nuisance means a source of inconvenience or annoyance; however, in legal parlance the definition of nuisance is more restrictive in nature encompassing the protection and prevention of interference with another's use and enjoyment of land and those affecting the reasonable comfort of the public or class of it.<sup>106</sup>

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<sup>103</sup> Harpwood V. Modern Tort Law, 5<sup>th</sup> ed., US: Cavendish Publishing Ltd, (2003), p. 7.

<sup>104</sup> Ibid.

<sup>105</sup> Ibid.

<sup>106</sup> Iroaganachi N. Environmental Nuisance Laws in Nigeria: Making them Effective for Sustainable Development, ATBU Journal of Environmental Technology, (December 2012), p.118.



A lot of juristic ink had already flowed in an attempt to define nuisance. However, it is worthy to state that there has been no one universally accepted definition of the term. Nuisance has been defined as the unlawful interference with a person's use and enjoyment of land or rights connected therewith.<sup>107</sup> This definition corresponds with many cases including that of *Reed v Lloyds & co Ltd*<sup>108</sup> and *Howard v Walker*<sup>109</sup>. Also, nuisance has been defined in a popular speech to mean any source of inconvenience or annoyance which is actionable including emission of noxious fumes from factories, excessive smell and noise and interference with the easement of the way.<sup>110</sup>

Most times, environmental nuisances are consequential outputs of industrialization and other forms of development that attend city environment in a Nation like Nigeria. Improper land use by individuals and government have always culminated to an unhealthy environment like slum settlement, littering with human and other wastes, marine and oil spillages, depletion of the atmospheric equilibrium.<sup>111</sup>

Nuisance is classified in to both Public and Private Nuisance. Whereas public nuisance involves injury to the public at large, and the rights of the private individual to receive protection in tort where he can prove particular damage to himself and irrespective of his ownership or occupation of land, the law of private nuisance is designed to protect the individual owner or occupier of land from substantial interference with his enjoyment thereof.<sup>112</sup>

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<sup>107</sup>Rogers W .V. H. Winfield and Jolowicz on tort, 15<sup>th</sup> Edition, Sweet and Maxwell, (1998), p. 365.

<sup>108</sup>(1945) K.B. 216 at 236.

<sup>109</sup>(1947) 2 ALL E.R. 197.

<sup>110</sup>Kodilinye and Aluko The Nigerian Law of Torts, Revised Edition, Spectrum Books Limited, Ibadan, Nigeria, (2005), p.93.

<sup>111</sup>Iroaganachi N. Environmental Nuisance Laws in Nigeria: Making them Effective For Sustainable Development, ATBU Journal of Environmental Technology, (December 2012), p.118.

<sup>112</sup>Kodilinye and Aluko The Nigerian Law of Torts, Revised Edition, Spectrum Books Limited, Ibadan, Nigeria, (2005), p.93.

In trying to differentiate public and private nuisance, it has been stated that public and private nuisance are not in reality two species of the same genus at all.<sup>113</sup> There are no generic conceptions which include the crime of keeping a common gaming house and the tort of allowing one's trees to overhang the land of a neighbor. A public nuisance falls within the law of torts only in so far as it may in the particular case constitute some form of tort also. Thus, the obstruction of a high way is a public nuisance; but if it causes any special and peculiar damage to an individual, it is also a tort actionable at his suit.<sup>114</sup>

Deforestation (the cutting down or burning of trees in an area)<sup>115</sup>, causes desertification and desertification poses serious threats to national security, food production and poverty in the affected areas<sup>116</sup>, therefore causing injury to the public at large. Thus, for the purpose of this work, the principles under public nuisance will be relevant to the prevention and control of deforestation and encourage afforestation in Nigeria.

#### **2.5.2.2 Public Nuisance**

Public nuisance is basically a crime<sup>117</sup>, actionable by the Attorney General. It is a tort actionable by an individual plaintiff only where the latter can show that the defendant's conduct has caused him "particular damage" over and above that suffered by the general public.<sup>118</sup>

The reason for this requirement of proof of particular damage is that where a wrong is committed against the community at large, it is considered to be more appropriate to

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<sup>113</sup> Ibid.

<sup>114</sup> Heuston R. F. V. Salmond on the Law of Torts, 17<sup>th</sup> edition (1977), p. 49 – 50; cited at Black's Law Dictionary 8<sup>th</sup> Edition, West Publishing co., United State of America, (1999), p. 1098.

<sup>115</sup> Oxford advance Learners Dictionary, 7th Edition, Oxford University Press, Oxford New York, (2006), p.385.

<sup>116</sup> Odiogor H. Special Report on Desertification in Nigeria: The Sun Eats Our Land, Vanguard Newspaper, Lagos, (May 3, 2010).

<sup>117</sup> S. 198 Penal Code (Northern States) Cap. P3 L.F.N. 2004 and S.234 Criminal Code Act Cap. C38 L.F.N. 2004.

<sup>118</sup> Amos v. Shell –B.P. (Nigeria) Ltd (1974) 4 E.C.S.L.R. 486 at p.488; Oyidiobu v. Okechukwu (1972) 5 S.C. 191 at p. 198; Akinyede v. Pitan (1973) 7 CCHCJ 52 at p.56.

leave the action in the hands of the Attorney General as the representative of the public rather than to allow the defendant to be harassed by an unlimited number of suit by private individuals, all complaining of the same damage.<sup>119</sup>

As to the meaning of “particular damage”, one view is that the plaintiff must show that he has suffered damage which is different in kind, not merely in degree, from that suffered by the general public. But the better view is that it is sufficient for the plaintiff show that he has suffered damage which is “appreciably greater in degree than any suffered by the general public”.<sup>120</sup> This will include not only special damage in the sense of actual pecuniary loss, but also general damage such as delay or inconvenience, provided it is substantial.<sup>121</sup>

When interference with the use and enjoyment of the land is alleged, as a general rule, a plaintiff’s claim would succeed if the interference is substantial. The classical rule which has been cited with approval in several cases in the Nigerian jurisprudence is the case of *Vanderpant v. Mayfair Hotel Co. Ltd.*<sup>122</sup> Where Luxmoore J. said:

Every person is entitled as against his neighbor to the comfortable and healthy enjoyment of the premises occupied by him, and in deciding whether, in any particular case, his right has been interfered with and a nuisance thereby caused, it is necessary to determine, whether the act complained of is an inconvenience materially interfering with the ordinary physical discomfort of human existence, not merely according to elegant or dainty modes and habits of living, but according to plain and sober and simple notions obtaining among English people.

Although deforestation is a wrong committed against the community at large since it causes desertification, and desertification poses serious threats to national security, food

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<sup>119</sup> Kodilinye and Aluko *The Nigerian Law of Torts*, Revised Edition, Spectrum Books Limited, Ibadan, Nigeria, (2005), p.93; see also, Ese Malemi *Law of Tort*, Princeton Publishing co., Ikeja, Lagos, (1993), p.90.

<sup>120</sup> Kodilinye and Aluko *The Nigerian Law of Torts*, Revised Edition, Spectrum Books Limited, Ibadan, Nigeria, (2005), p.93; see also Fleming J. *The Law of Tort*, 8<sup>th</sup> Edition, Sydney: The Book Company Limited (1992) P.101.

<sup>121</sup> *Ibid.*

<sup>122</sup> (1930) Ch. 138.

production and poverty therefore, becomes a wrong against the general public, however, there are some situations in which some human activities which causes deforestation causes damage to an individual plaintiffs land or property. In this situation, although a public wrong has been committed that is the act of deforestation, an individual plaintiff can bring an action under the tort of public nuisance where he can prove that the human activities such as bush burning have caused him damage over and above that caused to the general public.

### **2.5.3 Equity**

The early history of the jurisdiction of equity is obscure, but history has leaves traces of the jurisdiction of equity to began at the end of the Middle Ages in the early 16th century.<sup>123</sup> By that date, it can be said that the common law courts had in some areas become inadequate. Outside the law of tort, they had shown an insufficient ability to adapt to new claims, and the set forms of writs particularly restricted the development of new issues and defenses. Equity, therefore, came to relieve the rigours of the common law.<sup>124</sup>

In a juristic sense, the meaning of the term 'equity' is subdivided into two, one complementing the other and both affecting the administration of law and justice by recognized judicial tribunals.<sup>125</sup> In the first place, the general meaning of the term 'equity' means the power to meet the moral standards of justice in a particular case by a tribunal having discretion to mitigate the rigidity of the application of strict rules of law so as to adapt the relief to the circumstances of the particular case or a liberal and humane

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<sup>123</sup> Hackney J. *Understanding Equity and Trusts*; London Fontana press, London, (1987), p.7.

<sup>124</sup> *Ibid.*

<sup>125</sup> *Ibid.*

interpretation of law in general, so far as that is possible without actual antagonism to the law itself.<sup>126</sup>

In the second place, which is the technical sense of the term ‘equity’, equity in this sense means a special and peculiar department of the English legal system which was created, developed and administered in the Court of Chancery.<sup>127</sup> This may be a satisfactory definition of English equity before the Judicature Act of 1875 which provides for the administration of law and equity by the same tribunal.<sup>128</sup>

Prior to 1875, Equity is that body of rules which is administered only by those courts which are known as Courts of Equity.’ But after 1875, it was no longer satisfactory to define equity in terms of a court, that is, the Court of Chancery as distinct from the other superior courts. The Judicature Act of 1875 has amalgamated all the superior courts into a Supreme Court of Judicature administering both the rules of equity and the rules of common law. Thus, Equity now is that body of rules administered by our English courts of justice which, were if not for the operation of the Judicature Acts, would be administered only by those courts which would be known as Courts of Equity.<sup>129</sup>

At the beginning of the nineteenth century, the court structure in England and Wales was in a mess. The population was subject to the jurisdiction of a dual system of superior courts. On the one side were the three ‘common law’ courts, namely – the Common Pleas, the Queen’s Bench and the Exchequer of Pleas. On the other hand was the Court of Chancery. The three common law courts had grown up under the authority of the English

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<sup>126</sup> Ibid.

<sup>127</sup> Ibid.

<sup>128</sup> Ibid.

<sup>129</sup> Ibid.

kings during the middle Ages. They were known as courts of ‘common’ law because according to royal propaganda, that law applied to all subjects and the whole realm.<sup>130</sup>

Only a historical explanation can be offered for why there were three such common law courts with substantially overlapping jurisdictions. They could and often did give different answers to the same questions and there was no reliable method of ironing out those differences. But rules based on judgments given in these common law courts and even the judgments themselves were in some cases being denied or added to in the Chancery.<sup>131</sup>

The common law judgment was not formally set aside or reversed; but the Chancery, leaves the common law courts judgments intact and simply issued an order which was inconsistent with that of the common law judges. The constitutional position was that this second order prevailed, leaving the common law answer as an overshadowed solution to the problem.<sup>132</sup>

These Chancery orders had come to be made by applying a body of doctrine and principles invented initially by the Chancellor and later by his subordinate the Master of the Rolls. These rules, principles and doctrines of the Court of Chancery, bearing this complex relationship with the doctrines of the common law, were to be known as Equity.<sup>133</sup> This body of law did not, however, cover the entire area of business which the common law courts had taken as their jurisdiction. It was essentially a ‘private law’ jurisdiction, dealing with matters raised by private individuals, protecting their private interests. There was no involvement with the common law of crime. The principal

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<sup>130</sup> Ibid.

<sup>131</sup> Ibid.

<sup>132</sup> Ibid.

<sup>133</sup> Ibid.

focuses of attention were the laws of property and contract. Only incidentally to these was it to develop a law of private wrongs.<sup>134</sup>

In Nigeria, English law and doctrines of Equity were introduced by means of local legislations. The first of such legislations was Ordinance No. 3 of 1863 which broadly introduced English law into the territory of Lagos. Section 1 of this Ordinance No. 3 of 1863 introduced all laws and statutes, which were in force in England on the 1st day of January, 1863, and made them, part of the laws of the Colony of Lagos. The only limitation was that such laws and statutes must not be inconsistent with any Ordinance in force in the Colony; and that they must be applied in the administration of justice so far as local circumstances would permit.<sup>135</sup>

The second legislation was Ordinance No. 4 of 1876, which introduced more clearly, the English common law, the doctrines of equity and statutes of general application which were in force in England on the 24th day of July, 1874, to be in force within the jurisdiction of the courts in the Colony of Lagos. Because of the inclusion of the phrase, ‘doctrines of equity,’ in this Ordinance, it is tempting to argue that this Ordinance is the forerunner of the introduction into Nigeria the doctrines of equity. Therefore, it can be reasonably asserted that the technical principles of equity as developed by successive Chancellors in England were incorporated into the laws of the Colony of Lagos for the first time only in 1876.<sup>136</sup>

The third legislation received in to Nigerian legal system is Ordinance No. 17 of 1906 which was passed upon the merger of the Colony of Lagos with the Protectorate of Southern Nigeria on the 1st of January, 1900. This Ordinance makes it applicable to the

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<sup>134</sup> Ibid.

<sup>135</sup> Jegede M. I. Principles of Equity; Ibadan Unique Design Prints, Ibadan, Nigeria, (2007), p. 12.

<sup>136</sup> Ibid.

new Protectorate the provisions of Ordinance No. 4 of 1876. Similar steps had earlier been taken in respect of the Protectorate of Northern Nigeria by means of Proclamations.<sup>137</sup>

The forth legislation was Ordinance No. 3 of 1908; This Ordinance repealed all existing enactments and re-enacted their provisions with minor alterations. The Ordinance remained in force until it was finally superseded by the Supreme Court Ordinance, 1914, which became applicable to the whole of Nigeria on the amalgamation of Northern and Southern Nigeria on the 1st day of January, 1914. The Ordinance introduced into the country, subject to the usual reservation of their being applied subject to existing local laws and in so far as local circumstances would permit, the rules of the English common law, the doctrines of equity and statutes of general application which were in force in England on the 1st day of January, 1900.<sup>138</sup>

On the issue of desertification, one of the principles contributed by Equity to the prevention and control of deforestation and encouraging afforestation in Nigeria is its application of the equitable principle of waste.

#### **2.5.3.1 Equitable Principle of Waste**

‘Waste’ is the positive and wanton acts of destruction to land or buildings, such as the cutting of trees, the pulling down of buildings, or the opening of mines, and waste could be voluntary, equitable or ameliorating.<sup>139</sup>

In the case of *Jowdy v. Guerin*<sup>140</sup> Justice Donofrio of the court of Appeal of Arizona adopted these words for the definition of waste:

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<sup>137</sup> Ibid.

<sup>138</sup> Ibid.

<sup>139</sup> Kodilinye G. *An Introduction To Equity In Nigeria*, Spectrum Books Limited Ibadan, Nigeria, (2007), p. 191.



Waste is a species of tort which may be briefly and very generally define as the destruction, misuse, alteration, or neglect of premises by one lawfully in possession thereof to the prejudice of the estate or interest therein of another...

Waste is classified as voluntary or actual (sometimes called commissive), equitable and permissive or negligent waste. 'Voluntary Waste' is any positive act which alters the land to its detriment, such as felling timber trees, or opening and working a new mine.<sup>141</sup> 'Equitable Waste' is a special kind of voluntary waste and consist of acts of wanton destruction, such as pulling down or defacing the mansion house or felling trees which have been planted for shelter or ornament.<sup>142</sup> 'Permissive waste' is allowing the land to deteriorate for want of attention example failure to maintain buildings in repair.<sup>143</sup>

Looking at the above meanings, voluntary and equitable wastes are the types of waste which are relevant to this research. This is because desertification is caused by any act which alters the land to its detriment such as falling of trees either for fuel woods or for making enclosures or buildings.

The general rule about waste is that an injunction may be granted to restrain voluntary, including equitable waste but not to restrain permissive waste.<sup>144</sup> The courts have the general equitable jurisdiction to grant injunction to restrain waste, whether already committed or merely threatened, the High Court Laws of the various States Provide as follows:

If, whether before, or at or after the hearing of any cause or matter, an application is made for an injunction to prevent any threatened or apprehended waste or trespass, the injunction may be granted, if the court

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<sup>140</sup> 10 Ariz. App. 205 (1969) 457 p.2d 745.

<sup>141</sup> Doctrine of waste- property and land law Available at: [www.jamwsorlaw.co.uk/.../doctrineofequity](http://www.jamwsorlaw.co.uk/.../doctrineofequity) Last visited on 20/10/2014.

<sup>142</sup> Ibid.

<sup>143</sup> Ibid.

<sup>144</sup> Kodilinye G. An Introduction To Equity In Nigeria, Spectrum Books Limited Ibadan, Nigeria, (2007), p. 191.

thinks fit, whether the person against whom the injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any color of title, and whether the estate claimed by both or by either of the parties are legal or equitable.<sup>145</sup>

Thus, in *Ogbonna Ede v. Egle Ltd*<sup>146</sup>, the plaintiff was granted an interlocutory injunction to restrain the defendants from converting certain disputed land which was agricultural in to an industrial site. Agbakoba J. held that waste as defined in Order 21, rule 1 of the High Court Rules of the Eastern States (which provides that the court may grant an injunction to restrain a party to the suit from wasting damaging or alienating the land in dispute), means voluntary waste, which consist of any act which does lasting damage to the land or which alters the nature of the property. It was immaterial that the acts complained of might increase the value of the land.

The major applications under this provision are interlocutory ones and the main purpose is to prevent a party to a dispute over land from destroying or altering the property pending determination of the rights of the parties.<sup>147</sup>

#### **2.5.4 Criminal Law**

Criminal law is the principal law of crimes, it is the substantive law which prescribes what crime is, the type of acts or omissions which the law prescribes or proscribes; as well as the sanctions for violation or non-compliance.<sup>148</sup> Criminal law imposes restrictions on human activities or omissions. This is suggestive that law generally and

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<sup>145</sup> S.19 (3) High Court Law, Cap. 80, Laws of Lagos State (1958 ); S.25 (3) High Court Law, Cap. 61, Laws of Eastern Nigeria (1963); S.19 (3) High Court Law, Cap. 49, Laws of Northern Nigeria (1963); S.20 (3) High Court Law, Cap. 44, Laws of Western Nigeria (1959).

<sup>146</sup> (1971) 1 E.C.S.L.R. 64.

<sup>147</sup> S.19 (3) High Court Law, Cap. 80, Laws of Lagos State (1958 ); S.25 (3) High Court Law, Cap. 61, Laws of Eastern Nigeria (1963); S.19 (3) High Court Law, Cap. 49, Laws of Northern Nigeria (1963); S.20 (3) High Court Law, Cap. 44, Laws of Western Nigeria (1959).

<sup>148</sup> Nigam. R. C. Law of Crimes- Principles of Criminal Law, Vol. 1, Asia Publishing House, (1965), p. 14.

criminal law in particular is antithesis of freedom, and in this context, freedom would mean, not liberty to do whatever pleases you but liberty to do whatever you want within the limits imposed by criminal law.<sup>149</sup> When criminal law is viewed from the opposite perspective, it expands rather than contracts freedom. The reason is that man is not just an individual, living alone in an unrestrained state of nature, rather, he is a human being living in a community with other humans and criminal law merely exists, in the circumstance, to limit his freedom with the objective and reality of expanding his freedom as a whole.<sup>150</sup>

For the purpose of criminal law in Nigeria, different theories with different views on the purposes of criminal law have been borrowed from other countries, since neither the constitution, the Penal Code, the Criminal Code nor any other law has expressly declares what the purpose of criminal law is.<sup>151</sup>

According to the American Law Institute's Model Penal Code<sup>152</sup>, the purpose of criminal law includes the following: To forbid and prevent conduct that unjustifiably and inexcusably inflicts or threatens substantial harm to individual or public interests; To subject to public control of persons whose conduct indicates that they are disposed to commit crimes; To safeguard conduct that is without fault from condemnation as criminal; To give fair warning of the nature of the conduct declared to be an offence; To differentiate on reasonable grounds between serious and minor offences.

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<sup>149</sup> Gaur K.D. Criminal Law Cases and Materials 3<sup>rd</sup> ed., Butterworth's, (1999), p. 21.

<sup>150</sup> Ibid.

<sup>151</sup> Ifidon G. Criminal Law I – National Open University of Nigeria. Available at [www.nou.edu.ng/.../pdf/laws/...](http://www.nou.edu.ng/.../pdf/laws/...) Last visited on 14/9/2014.

<sup>152</sup> Model Penal Code (work of American Law Institute) Available at [www.britannica.com/.../model-peneal-cod...](http://www.britannica.com/.../model-peneal-cod...) Last visited on 14/7/2014.

The Wolfenden Committee on Homosexual offences and Prostitution, 1957 (UK),<sup>153</sup> also expressed the view that the purpose of the criminal law includes: Preservation of public order and decency; Protection of the citizen from what is offensive and injurious and Provision of sufficient safeguards against the exploitation and corruption of special groups – the vulnerable groups.

These stated objectives are by no means exhaustive, neither are they adequate. For instance, criminal law punishes strict liability crimes and these offences are without fault to enhance public safety and welfare.<sup>154</sup>

In Nigeria, criminal law is an aspect of Public law, it is a specialized body of rules on treatment of conduct which the state sees to punish, prevent or control. The state, as representatives of the society, acts positively to ensure enforcement. For this purpose, the state employs the police, Judges and magistrates, prosecutors and prisons.<sup>155</sup>

In Nigeria, criminal law is written, and forms part of Nigerian statute laws.<sup>156</sup> In pre-independence times (during the colonial era}, criminal law was contained in various ordinances drawn up by the Governor in-Council on the advice of members of the House of Representatives and published from time to time in the Nigeria Gazette. Now they are laws passed by the State Assembly or Acts passed by the National Assembly. They are contained also in edicts passed by the Military Governor of a State or decrees passed by the Federal Military Government. Examples of such ordinances, edicts, decrees, laws or Acts are: The Criminal Code Law or Act, The Penal Code, The Sharia'h law, The Road Traffic Ordinance or law or Act, The Dogs Ordinance (or Act), The Liquor Ordinance (or

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<sup>153</sup> Wolfenden Report- Human Dignity Trust available at [www.humandignitytrust.org/.../liberty?](http://www.humandignitytrust.org/.../liberty?) Last visited on 12/8/2014.

<sup>154</sup> Ifidon G. Criminal Law I – National Open University of Nigeria. Available at [www.nou.edu.ng/.../pdf/laws/](http://www.nou.edu.ng/.../pdf/laws/)... Last visited on 14/9/2014.

<sup>155</sup> Ibid.

<sup>156</sup> Ibid.

Act), Corruption and Financial Crimes Act and other numerous Acts or laws and subsidiary legislations which have created crimes.<sup>157</sup> However, the prescriptions of the crimes that are relevant to this research are contained in the Penal Code applicable in the 19 Northern States and the Criminal Code which applies in the 17 Southern States. These crimes are the offence of Criminal Mischief under the penal code, (While the Criminal Code treats it as the offence of setting fire to crops and growing plants and malicious damage) and that of Public nuisance (addressed as common nuisance under the criminal code).

#### **2.5.4.1 Criminal Mischief**

The offence of Mischief<sup>158</sup> is one of the offences affecting property and has been defined as injury or damage caused by a specific person or thing or the act causing such injury or damage<sup>159</sup>. The principles establishing the offence of mischief is based on one; the accused intention to cause or knew that he was likely to cause wrongful loss or damage to the public or to any person. Two; the accused caused destruction of the property or such change there in or in the situation there as has destroyed or diminished its value or utility or affected it injuriously.<sup>160</sup>

Intention or knowledge are matter of facts which must be proved. Intention is normally presumed from the resultant effect as a person is presumed to intend the natural consequences of his act.<sup>161</sup> On the other hand “knowledge” of the likelihood to cause

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<sup>157</sup> Ibid.

<sup>158</sup> While the Criminal Code treats it as the offence of setting fire to crops and growing plants in section 445 of the Criminal Code, and Malicious damage Under Section 451 Criminal Code; the penal code treats it as the offence of mischief under Section 326.

<sup>159</sup> Black’s Law Dictionary, 8th Edition, West Publishing co., United State of America, (1999), p. 1019.

<sup>160</sup> S. 326 Penal Code (Northern States) Cap. P.3 L.F.N. (2004).

<sup>161</sup> Chukkol K. S. The Law of Crimes in Nigeria, A. B.U. Press Ltd., Zaria, Nigeria, (1988), p 225.

wrongful loss or damage may be a subjective test as it refers to the knowledge of the accused.<sup>162</sup>

In the case of *Namata Bandan v. Gwandu Native Authority*<sup>163</sup>, it was held that an accused cannot be said to have committed the offence of mischief by negligence or recklessness unless the accused is proved to have had knowledge of the likelihood of his conduct resulting in wrongful loss or damage to property.

Wrongful loss means the loss by unlawful means of property to which the person losing it is legally entitled.<sup>164</sup> So the property therefore should have been lost through unlawful means by a person legally entitled to it. It is submitted that “Unlawful” is synonymous with “illegal” which is defined under the Penal Code as everything which is prohibited by law and which is an offence or which furnishes ground for civil action.<sup>165</sup>

In the case of *Dy.supt. & Remembrancer v. Chulhan Ahir*<sup>166</sup>, it was held that the cultivators whose farm lands has been flooded and made a tunnel through the railway embankment which damaged the embankment were guilty of mischief as their excuse that their motive was to reserve their crops was not accepted.

With regard to the second principle establishing the offence of mischief that is; causing destruction of property or such change there in the situation that it has destroyed or diminished the value or utility of the property or affected it injuriously, an accused person cannot be convicted of mischief unless he is proved in addition with the necessary intention or knowledge discussed above. Mere proof of destruction or change in the

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<sup>162</sup> Ibid.

<sup>163</sup> (1967) N.N.L.R. p.69.

<sup>164</sup> S. 14 Penal Code (Northern States) Cap. P.3 L.F.N. (2004).

<sup>165</sup> S. 29 Penal Code (Northern States) Cap. P.3 L.F.N. (2004).

<sup>166</sup> (1908) 16 C. W. N. p. 263.

property or its situation will not per se warrant a conviction without strictly proving the intent or knowledge or likelihood to cause destruction or change in the property.

In the case of *Namata Bandan v. Gwandu Native Authority*,<sup>167</sup> the appellant who had released his cattle's which has strayed in to the complainant's farm and caused damage to his crops was convicted under section 327 of the penal code. It was held that the offence of mischief as defined by section 326 requires proof that the accused caused the destruction of any property knowing that he was likely to cause wrongful loss or damage to any person.

With regards to "change in the property", change has been defined to mean change in the composition of the property.<sup>168</sup> There must be physical change in the property which affects the value or utility of the good.<sup>169</sup> In the case of *Dass v. Koylash*,<sup>170</sup> the accused person untied bullocks that turned goods loaded on a cart on to the road. The accused was convicted of mischief on the ground that he had unlawfully caused a change in the situation of the goods, resulting in diminution of their utility to the owner.

Under the Criminal Code, Adefarasin C. J. (Lagos State) in the case of *Michael Odeyemi & Ors. V. Commissioner of Police*<sup>171</sup> stated the ingredient of the offence of mischief/malicious damage a case charged under section 415 of the Criminal Code. His Lordship said; that an offence under Section 451 of the Criminal Code is committed if the accused had foreseen that the particular harm or injury might be done and yet had gone on recklessly to take the risk.

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<sup>167</sup> (1967) N.N.L.R. p.68.

<sup>168</sup> Gledhill A. the Penal Codes of Northern Nigeria and the Sudan, Sweet & Maxwell (1963) p.603.

<sup>169</sup> Chukkol K. S. The Law of Crimes in Nigeria, A. B.U. Press Ltd., Zaria, Nigeria, (1988), p 225.

<sup>170</sup> (1885) I.L.R. 12 Cal. P.5.5

<sup>171</sup> (1976) 4CCHCJ 1053 at 1058.

Intention or knowledge are matter of facts which must be proved. “Intention” is normally presumed from the resultant effect as a person is presumed to intend the natural consequences of his act. This test is a problematic one. On the other hand, “knowledge” of the likelihood to cause wrongful loss or damage may be a subjective test as it refers to the knowledge of the accused. An accused cannot be said to commit mischief by negligence<sup>172</sup> or recklessness, the accused is proved to have had knowledge of the likelihood of his conduct resulting in wrongful loss or damage to property.<sup>173</sup>

“Wrongful loss/ Willful loss” is loss by unlawful means of property to which the person losing it is legally entitled and “unlawful” was defined to mean illegal, anything which is prohibited by law and which is an offence or which furnishes ground for civil action.<sup>174</sup>

Also, in the case of *Adebisi Oyewo v. the State*<sup>175</sup>, Sijuwade J. states that ; the word ‘unlawfully’ denotes a lack of lawful justification; a disapproval by the law. Furthermore, The words ‘willful/ Unlawful’ specifically came up for consideration in an appeal before the High court of Oyo State, were the learned appellate judge referred with approval to another English decision decided by Lord Russell, C. J., the appellate judge said; Lord Russell, C. J. in *Roper v. knott* (1898) 1 QB. 868, while construing the words ‘willful damage’ stated thus:

A man must be held to do a thing willfully when he does it either intending to cause damage or knowing that the act that he commits will cause damage to the property on which it is committed.

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<sup>172</sup> *Namata Bandan v. Gwandu Native authority* (1967) N. N. L. R. 68.

<sup>173</sup> Chukkol K. S. *The Law of Crimes in Nigeria*, A. B.U. Press Ltd., Zaria, Nigeria, (1988), p 213.

<sup>174</sup> S. 14 Penal Code (Northern States) Cap. P.3 L.F.N. (2004).

<sup>175</sup> (1978) 4 OYSHC Part 1, 75 at pp. 80 – 81.



“Change/ Damage” has been defined to mean change in the Composition of the property, and there must be a physical change in the property which affects the value or utility of the goods.<sup>176</sup>

For the test of determining if a thing has been damaged, Oguntade, J.C.A. in the case of *Stephen Nwakire v. Commissioner of Police*<sup>177</sup> has given a useful guide as follows:

In a colloquial or mundane sense, it is generally assumed that you damage a thigh only when a glass or mirror is smashed or a cement block reduced to particles. Whilst it is correct that these are the obvious forms a damage takes, it is not correct that there cannot be a damage under section 451 of the criminal code unless you have distorted or altered the shape of the object or completely destroyed it. A damage to property under section 451 of the criminal code is done when you have rendered a property inoperative or imperfect for the purpose for which the property or object was procured such as to impose on the owner the need to expend money or effort in restoring it to the original position....

“Property” Subject of mischief maybe any tangible or corporeal Property, whether it is movable or immovable. Right or interests in property like lien or easement not being tangible are not subject of mischief.<sup>178</sup> Property has also been defined under the interpretation section of the Criminal Code to include everything animate or inanimate capable of being the subject of ownership.<sup>179</sup>

It is important to note that while the criminal code treats as a separate offence the act of setting fire to crops and growing plant, with punishment exceeding up to fourteen years,<sup>180</sup> the Penal code treat such offence as mischief by fire or explosive with intent or knowledge that it will likely cause damage to any property, with punishment of imprisonment for a term which may extend to seven years and shall also be liable to a

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<sup>176</sup> Gledhill A. *The Penal Codes of Northern Nigeria and The Sudan*, Sweet and Maxwell, (1963), p.603.

<sup>177</sup> (1991) 1 NWLR Part 167, 332 at 352.

<sup>178</sup> Gledhill A., op. cit.

<sup>179</sup> Criminal Code Act Cap. C38 L.F.N. (2004).

<sup>180</sup> S. 445, and S. 4465 Criminal Code Act Cap. C38 L.F.N. (2004).

fine.<sup>181</sup> Furthermore, mischief by the same Criminal code just like the penal code leave some of the offences against property to be treated as a simple case of malicious damage and mischief punishable with a maximum of two years jail or with fine or both.<sup>182</sup>

Since the issue of desertification affects the Northern part of Nigeria and Experts has estimate that about 11 states has been affected by desertification in Nigeria, namely: Adamawa, Borno, Bauchi, Gombe, Katsina, Jigawa, Kano, Kebbi, Sokoto, Yobe and Zamfara,<sup>183</sup> so the principles established under the penal code for the offence of mischief shall be applicable in the affected States. Therefore, as it has been established above, that the offence of mischief could be established only where the accused person intent to cause or knew that he was likely to cause wrongful loss or damage to the public or to any person and has caused the destruction of property or such change there in or in the situation there as has destroyed or diminished its value or utility or affected it injuriously, this principle could be applied to any person who unlawfully take any forest produce, uprooting, burning or otherwise damage any tree, setting fire to any grass or herbage or graze his livestock in any part of the forest of the affected states.

#### **2.5.4.2 Public Nuisance**

Public nuisance<sup>184</sup> is defined as an unreasonable interference with a right common to the general public, such as a condition dangerous to health, offensive to community moral standards, or unlawfully obstructing the public in the free use of public property.<sup>185</sup>

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<sup>181</sup> S. 336 Penal Code (Northern States) Cap. P.3 L.F.N. (2004).

<sup>182</sup> S. 327 Penal Code (Northern States) Cap. P.3 L.F.N. (2004); S. 451, and S. 445 Criminal Code Act Cap. C38 L.F.N. (2004).

<sup>183</sup> Nigerian Television Authority Network News 25/10/2011. See also Nigerian National Report on the implementation of the United Nations Convention to Combat Desertification for submission at the 3<sup>rd</sup> Conference of Parties; Recife Brazil (1999).

<sup>184</sup> It is referred to as common nuisance under the Criminal Code.

<sup>185</sup> Black's Law Dictionary, 8th Edition, West Publishing co., United State of America, (1999), p. 1097.

Public nuisance has been described as an amorphous and unsatisfactory area of the law covering an ill-assorted collection of wrongs, some of which have little or no association with tort and only appear to fill a gap in criminal law.<sup>186</sup> The other covers what could be generally described as “noisome trade”, which could be dealt with under some form of statutory nuisance. Yet a third group deals with what are generally describe as abuses of the highway.<sup>187</sup>

The principle for establishing the offence of public nuisance is based on the commission of an act (not warranted by law) or an illegal omission by a person which causes any common injury, danger, or annoyance to the public or to the people in general who dwell or occupy property in the vicinity or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.<sup>188</sup>

Since deforestation is caused by; high demand for fuel wood, overgrazing by the Fulani cattle’s and bush burning by hunters in search of games, causing desertification,<sup>189</sup> therefore, the principle for establishing public nuisance applies to any person who commits deforestation which causes common injury to the public or people in the affected areas. The common injury causes by desertification to the people at the affected areas are destruction of the equilibrium of soil, vegetation, air, and water, which affects the nation’s arable land mass which poses a threat to food production, national security and poverty alleviation strategies in the country.<sup>190</sup>

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<sup>186</sup> Dias R. W. M. and Markesinis B.S. Tort Law, 254(1984) as cited in Black’s Law Dictionary, 8th Edition, West Publishing co., United State of America, (1999), p. 1098.

<sup>187</sup> Dias R. W. M. and Markesinis B.S. Tort Law, 254(1984) as cited in Black’s Law Dictionary, 8th Edition, West Publishing co., United State of America, (1999), p. 1098.

<sup>188</sup> S. 183(1) Penal Code (Northern States) Cap. P.3 L.F.N. (2004); S. 234 Criminal Code Act Cap. C38 L.F.N. (2004).

<sup>189</sup> Nkonya, E. Et al. The Economics of Desertification, Land Degradation, and Drought Toward an Integrated Global Assessment, IFPRI Discussion Paper 01086 May 2011 Available at <http://www.ifpri.org/publications/results/taxonomy%3A468>. Last visited on 14/04/2013.

<sup>190</sup> Olori T. ‘Desertification Threatens Economy, Food Security’. Available at <http://ipsnews.net/press.shtml>. Last visited on 12/3/2013.

## **2.6 Conclusion**

The issue of desertification which poses serious threat to the environment and led to the destruction of vegetation and the means of livelihood of thousands of people in the affected area in Nigeria, could not be discussed without discussing the issue of deforestation which is the major cause of desertification and the issue of afforestation which is the cure to deforestation.

From the above discussion, there is no doubt that the issue of desertification as one of the issues covered under environmental law has borrowed some principles under other areas of law namely: Law of Tort, Equity, and Criminal Law, which aimed at protecting the environment. Clearly, these principles have provided a theoretical context which could be used as a basis for developing or supporting the Legal framework for the prevention and control of desertification in Nigeria properly.

Finally, it could be argued that the issue of desertification has some set of principles which can be said to exist across the range of subjects covered under other areas of law, therefore, these principles borrowed from other areas of law for the prevention of deforestation (which causes desertification) and encourages afforestation shall be used as the tools for solving the research questions of this work.

## **CHAPTER THREE**

### **THE LEGAL AND INSTITUTIONAL FRAMEWORK ON THE PREVENTION AND CONTROL OF DESERTIFICATION IN NIGERIA**

#### **3.1 Introduction**

This chapter discusses the legal and institutional framework on the prevention and control of desertification in Nigeria. The chapter will start by discussing the basic issues such as the Definition of environmental legislation, the history of environmental legislation in Nigeria, the history of International Environmental Legislation with reference to some conventions and declarations for the prevention and control of desertification and then the role of judicial precedent as an important source of Nigerian environmental legislation. Thereafter, the key concept which is the Legal framework for the prevention and control of desertification in Nigeria and the institutional frame work will be discussed.

In Nigeria, the growing concern of some environmental challenges which include draught and desertification, coastal and land erosion, hazardous domestic garbage and industrial toxic waste and air pollution which has generated unpleasant social conditions, huge loss of life and means of livelihood, led to the attempt to proffer solutions to the various environmental challenges that are affecting the nation both in the area of development and environmental pollution. Therefore, the control and prevention of this range of environmental problems becomes very essential and the easiest way of achieving this goal is through efficacy of laws which provide the framework for such control and prevention.

Desertification as one of the environmental problems that affects only some particular geographical areas of some States in Nigeria<sup>191</sup> and caused by the combination of some natural forces and human activities such as deforestation through overgrazing by the Fulani cattle's, bush burning by those people (hunters) in search of games and the high demand of fuel wood by those people living in the affected areas have to be prevented and controlled. These human activities has always been the major factors responsible for the growth and encroachment of desertification in the affected areas and extending to other areas as they deforest the forest and contribute to accelerate to the degradation of soil in to desert like conditions.

However, for the Prevention and control of the major cause of desertification which is deforestation, Nigerian government has put in place a number of legislative majors under several institutional arrangements both at the national and state levels for the prevention and control of desertification in the nations land. Some of the most important legislations at the national level for the prevention and control of desertification include: The National Environmental Standards and Regulations Enforcement Agency Act (NESREA Act, 2007), the Environmental Impact Assessment (EIA) Act, the Endangered Species (Control of International Trade and Traffic) Act, and the Land Use Act 1978. At the state level, there are series of laws which prevent and control deforestation and empower each affected state to manage its forest estates and grazing reserves as well as reforest their desertified areas. These laws are: The Forestry Laws, Grazing Reserve Regulations and Bush Burning (Control) Laws.

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<sup>191</sup>Namely: Adamawa, Borno, Bauchi, Gombe, Katsina, Jigawa, Kano, Kebbi, Sokoto, Yobe and Zamfara.

### **3.2 Definition of Environmental Legislation**

The definition of environmental legislation differs according to the understanding of Legal scholars and scientists, but one thing seems to be agreed upon by all; that is the fact that Environmental laws/ legislation is that law or legislation which relates primarily to the protection of the whole or part of the physical components of the environment. Law is generally defined as a way of regulating human behavior, and for the purpose of law, environment is defined along the terms of its physical components including air, water, space, land, plants and wildlife. The followings are some of the definitions proffered:

Environmental legislation was defined as the collection of laws and regulations pertaining to air quality, water quality, endangered wild life and other environmental factors.<sup>192</sup> The umbrella of environmental legislation covers many laws and regulations yet they all work together toward common goal which is regulating the interaction between man and the natural world to reduce treats to the environment and increase public health.<sup>193</sup>

Environmental legislation is defined as the laws that regulate the impact of human activities on the environment.<sup>194</sup> The law covers a broad range of activities that affects the air, water, land, flora or fauna. It include laws that relate to protection of animals and plant, planning for the use and development of land, mining, exploration and extractive industries, forestry, pollution, fisheries, land and fire management, agric and farming, waste management, climate change and emissions, water resource management,

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<sup>192</sup> What is environmental legislation? Laws regulations and timeline Available at: [www.edont-or-potal.com](http://www.edont.or.au) last visited on 2/2/2015.

<sup>193</sup> What is environmental law? Environmental defenders office Available at: [www.edont.or.au](http://www.edont.or.au) last visited on 2/2/2015.

<sup>194</sup> Ibid.

chemicals and pesticides, weeds and invasive species, marine life, conservation of natural and cultural heritage.<sup>195</sup>

Furthermore, Environmental laws/ legislation have been defined as that laws or legislation which regulates primarily the protection of the whole or part of the physical components of the environment.<sup>196</sup> Regulation is the application of rules and procedures to achieve a measure of control over the activities of individuals and organizations. These regulations may exert; Anticipatory controls, Outright bans, Prohibition unless notified (e.g. use of certain nature reserve), Prohibition unless registered (e.g. waste disposal), Prohibition without license (e.g. importation of chemicals), Continuing Controls – continuous controls of activity such as control of factory premises by agencies such as NESREA.<sup>197</sup>

### **3.3 Historical Development of Environmental Legislation in Nigeria**

In Nigeria, the considerations of environmental factors in policies and practices or laws are clearly observable at every stage of Nigeria's development. Environmental law has been practiced since during the pre colonial era, the colonial era and after independence. Below the laws and practices under these periods shall be examined.

#### **3.3.1 The Pre-Colonial Laws**

In the pre colonial era, regulations protecting the environment were packaged through the customary law which was historically unwritten and traditional based. Customary law and practices in various parts of Nigeria made elaborate provisions to uphold the environmental balance and preserve natural resources, and these eventually served to

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<sup>195</sup> What is environmental law? Environmental defenders office Available at: [www.edont.or.au](http://www.edont.or.au) last visited on 2/2/2015.

<sup>196</sup> Birnie P. and Boyle A. International law and the environment, Oxford: Oxford University Press, (1992), P 105.

<sup>197</sup> Ibid.



promote welfare of the rural communities where these rules applied.<sup>198</sup> Thus certain practices enjoined by customary laws produce results compatible with or promotive of preservation of animals, forests management and preservation, water resources management, regulation of fishing activities, land preservation and environment-friendly agricultural practices, pest control and soil preservation etc.<sup>199</sup>

Some of the practices which helped to preserve animals included selective prohibition of killing of certain animals at all or during certain periods of the year either because they are worshipped by the community or as requirements for seasonal hunting sparing the lives of domestic animals. Ban on or prohibition of eating certain animals.<sup>200</sup>

In the case of forest management and preservation, the following practices are noteworthy; creation of forest reserves for special purposes like hunting, performance of religious rites or rituals, or as groves.<sup>201</sup> The prohibition of the collection of firewood from certain forests by women and children, or confining collection to certain days only and prohibition of felling of certain trees. The regulation on seasonal collection of certain resources from the forest or bush like palm tree harvesting.<sup>202</sup>

Rivers and other bodies of waters were managed through such customs like; declaration of certain habits/practices in the river as taboos, e.g. walking into the river with shoes or using calabash to fetch water; requirements of consent of community to use water in or passing through its land; existence of laid down rules for specific use of rivers or parts of parts of it; declaring certain parts of the river as sacred or bad and its use there; Prohibition of use of river for security or religious reasons; Prohibition of interferences

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<sup>198</sup> Adewale O. Customary Environmental Law, in Ajomo M.A. and Adewale O. ed, Environmental Law and Sustainable Development in Nigeria, Lagos, NIIA/British Council, (1994), p.157.

<sup>199</sup> Ibid.

<sup>200</sup> Ibid.

<sup>201</sup> Ibid., p.163.

<sup>202</sup> Ibid., p. 164.

with river banks for instance by building houses closes to it.<sup>203</sup> Fishing activities are regulated by such customs as those reserving exclusive fishing rights to natives. There are the requirements of fishing permits before any fishing activity is done since the celebration of fishing festivals which allow fishes to mature, and prevent haphazard fishing for individual needs the prohibition of use of dangerous/poisonous materials for fishing.<sup>204</sup>

In respect of agricultural practices and preservation, there were requirements like; approval of allocation and use or application of land by community or family head; power of regulation and control of land /farming procedures exercised by community or family head; practice of shifting cultivation; selection of crops for mixed farming.<sup>205</sup>

In the area of pest control, customary law made contributions through practices like mixing seeds with certain herbs during storage and/or before or during planting to prevent infection and decay or destruction by pests; through planting tobacco leaves round the farm; through use of night fires to scare away animals.<sup>206</sup> Soil preservation was booted through prohibition of planting economic trees on sedimentary soils; use of stone, sand sacks or rubbishes heaps to check or prevent erosion.<sup>207</sup>

Although there are many unresolved issues surrounding the applicability of some of these practices or their general validity in law today, the fact remains that they have contributed to the prevention and control of desertification and to the management of the environment as a whole. No doubt, that some of these practices such as; the creation of forest reserves for special purposes like hunting or groves, prohibition of the collection of

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<sup>203</sup> Ibid., p.161.

<sup>204</sup> Ibid., p.157.

<sup>205</sup> Ibid., pp. 173-174.

<sup>206</sup> Ibid., p.175.

<sup>207</sup> Ibid.

firewood from certain forests by women and children, and the prohibition of felling of certain trees are still relevant and applicable to this day both in customary law and statutory law, and even have the blessing of international law treaties.

### **3.3.2 Colonial Laws**

In the colonial era, additional sources of law like common law, equity, received English laws resulted in fundamental changes to the legal system in Nigeria, therefore leading to sharp changes too in environmental laws and practices. The most significant change however was the introduction of writing and documentation into the legal system. For the first time, environmental protection laws, though in their rudiments still, came to be in writing.<sup>208</sup>

Some of the colonial laws which raised the stakes of environmental management and protection included the following laws enacted at various times during colonial administration and eventually packaged to form part of Laws of the Federation of Nigeria (LFN) 1958.<sup>209</sup>

All these Acts and many other laws from the Regional governments provided for required environmental standards and prescribed punishments for conducts or practices falling below these standards. They also provided for supplementary/subsidiary legislation and instituted agencies for the enforcement and implementation of the laws. For example, for the control and prevention of desertification, the Public Health Act provided for Public

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<sup>208</sup> Ibid., p.161.

<sup>209</sup> Thus some of these Laws are: The Building Lines (Federal Trunk Roads) Act, cap. 27, LFN 1958; Destruction of Mosquitoes Act, cap. 50 LFN 1958; Diseases of Animal Act, cap 54 LFN 1958; Dogs Act, cap. 55 LFN 1958; Factories Act, cap. 66 LFN 1958; Forestry Act, cap. 72 LFN 1958; Hides and Skin Act, cap. 79 LFN 1958; Land Development (Provision of Roads) Act, cap. 97 LFN 1958; Mineral Oils Act, cap. 120 LFN 1958; Minerals Act, cap. 121 LFN 1958; Nigerian Coal Corporation Act, cap. 134; Oil Pipelines Act, cap. 145 LFN 1958; Petroleum Act, cap. 150 LFN 1958; Public Health Act, cap. 165 LFN 1958; Vaccination Act, cap. 208 LFN 1958; Waterworks Act, cap. 213 LFN 1958; Wild Animals Preservation Act, cap. 221 LFN 1958; Yellow Fever and Infectious Diseases (Immunization) Act, cap. 224 LFN 1958.

Health Rules that required environmental sanitations, the Forestry Act provide for the Rules that deal with indiscriminate deforestation of the forest and Water Works Act provided for Water Waste Prevention Regulations, etc.<sup>210</sup>

### 3.3.3 Environmental Laws after Independence

In the post-colonial or independent era, environmental protection laws received further attention with Federal and State governments enacting more laws in this respect. Ultimately, these laws seek to address environmental problems and questions of pollution (noise, water, air, industrial etc), degradation and preservation of natural resources (like land, wild life, forestry, fishery; fauna and ... etc), institution of safety standards in industrial activities, control and regulation of food, refuse disposal and structures for maximum benefit to man and for sustainable development.<sup>211</sup> The post-colonial governments of Federal and State governments adopted most of the relevant colonial laws at independence. However significant additions have been made to Federal laws through amendments and enactment of other laws in the 2004 edition of the Laws of the Federation (LFN).<sup>212</sup>

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<sup>210</sup> Adewale O., op. cit.

<sup>211</sup> Ibid.

<sup>212</sup> Like: Agricultural and Rural Management Training Institute Act, cap A10 LFN 2004; Associated Gas Re-injection Act, cap A25 LFN 2004; Bees (Import Control and Management) Act, cap B6 LFN 2004; Civil Aviation (Fire and Security Measures) Act, cap C14 LFN 2004; Directorate of Foods, Roads and Rural Infrastructures Act, cap D10 LFN 2004; Endangered Species (Control of International Trade and Traffic) Act, cap E9 LFN 2004; Energy Commission of Nigeria Act, cap E10 LFN 2004; Environmental Impact Assessment Act, cap E12 LFN 2004; Hydrocarbon Oil Refineries Act, cap H5 LFN 2004; Inland Fisheries Act, cap H10 LFN 2004; Land Use Act, cap L5 LFN 2004; Live Fish (Control of Importation) Act, cap L14 LFN 2004; Minerals and Mining Act, cap M12 LFN 2004; National Agency for Food and Drug Administration and Control Act, cap N1 LFN 2004; National Agricultural Land Development Authority Act, cap N4 LFN 2004; National Inland Waterways Authority Act, cap N47 LFN 2004; National Park Service Act, cap N65 LFN 2004; National Water Resources Institute Act, cap N83 LFN 2004; Pest Control of Produce (Special Powers) Act, cap P9 LFN 2004; Water Resources Act, cap W2 LFN 2004 and Federal Environmental and Protection Agency Act, cap F10 LFN 2004, now repealed and amended as The National Environmental Standards and Regulations Enforcement Agency Act (NESREA Act)2007.

Similarly, some of the notable state laws which have contributed to the development of environmental law and particularly the prevention and control of desertification in the post-independent Nigeria include the following, drawn from Laws of Kano State, 1991: Forestry Law, Cap. 48 Kano State Laws of Nigeria 1991 and Grazing Reserves Law, Cap.53 Kano State Laws of Nigeria 1991.

### **3.4 Contribution of International Law**

Following the Stockholm Conference in 1970, many countries established Ministries of Environment and environmental Legislation began to increase. There was also growing recognition that pollution does not respect land borders and pollution from one country crosses to another. In addition phenomena such as the green house effect, global warming was identified. As such there was a need to develop international environmental legislation. This has resulted in the signing of various treaties under the umbrella of various international organizations such as the United Nations (UN).<sup>213</sup>

In Nigeria, International Law has also influenced the development of environmental law considerably. Virtually all the sources of international law under Article 38 of the Statute of International Court of Justice, ICJ, have contributed to this. In essence, some Treaties, International Custom, General Principles of international law, Judicial Decisions and Writings of Publicists (the last two in subsidiary capacity) have either specifically further provided for applicable environmental laws in Nigeria or provided a general platform for guideline, standard or persuasive authority for the direction of development or interpretation of the domestic laws on the environment in Nigeria.<sup>214</sup>

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<sup>213</sup> Adewale O., op. cit.

<sup>214</sup> Ibid.

Some of the relevant international law instruments include: Charter of the United Nations, 1945; Convention on the International Maritime Organization, 1946; European Convention for the Protection of Human Rights and Freedoms, 1950; International Convention for the Prevention of Pollution of the Sea by Oil, 1954; Statute of the International Atomic Energy Agency, 1956; Convention on Fishing and Conservation of the Living Resources of the High Seas, 1958; Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and other Celestial Bodies, 1967; African Convention on the Conservation of Nature and Natural Resources, 1968; Declaration of the United Nations Conference on the Human environment (Stockholm), 1972; Convention on International Trade in Endangered Species of Wild Fauna and Flora, 1973; African Charter on Human and Peoples Rights, 1981; UN Convention on Law of the Sea, 1982; Convention on the Protection of the Ozone Layer, 1985; Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, 1989; Convention on Environmental Impact Assessment in a Transboundary Context, 1991; Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes Within Africa, 1991; Declaration of the UN Conference on Environment and Development, 1992; Convention on the Protection and Use of Transboundary Watercourses and Lakes, 1992; Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment, 1993; Convention on Nuclear Safety, 1994; Convention to Combat Desertification, 1994; Statute of International Criminal Court, 1998; Convention on the Protection of the Environment through Criminal Law, 1998; and Convention on Persistent Organic Pollutants, 2001.

Furthermore, some of the relevant international law legal instruments for the prevention and control of desertification that have been domesticated or adopted by Nigeria and are therefore applicable to Nigeria positively are: United Nations resolution Plan of Action to Combat Desertification (PACD) 1977; the global plan of action (Agenda 21), Forestry Principles and the Rio Declaration on Environment and Development 1992 and then the United Nations Convention to Combat Desertification (UNCCD) 1994.

### **3.4.1 United Nations Resolution Plan of Action to Combat Desertification (PACD) 1977**

In 1977 at the United Nations Conference on Desertification (UNCOD) held in Kenya, Nigeria has adopted the United Nations resolution (Plan of Action to Combat Desertification (PACD)) which was passed at the conference. The conference served as the concrete starting point in the fight against desertification.<sup>215</sup> The Plan of Action stressed three main points namely; to prevent and arrest the advance of desertification; to reclaim desertified land for productive use; and to sustain and promote, within ecological limits, the productivity of arid, semi-arid, sub-humid and other areas vulnerable to desertification in order to improve the quality of life of their inhabitants. The Plan of Action to Combat Desertification (PACD) was not binding and was expected to have been fully implemented by the year 2000; however, it was unsuccessful.<sup>216</sup>

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<sup>215</sup> Buanajuti, A. External Evaluation of the Plan of Action to Combat Desertification (1991) Desertification Control Bull, No. 20 30-31. Available at [www.africabib.org/rec.php?RID=Q00004448&DB=p](http://www.africabib.org/rec.php?RID=Q00004448&DB=p) Last visited on 14/2/2013.

<sup>216</sup> Ibid.

### **3.4.2 The Global Plan of Action (Agenda 21), Forestry Principles and the Rio Declaration on Environment and Development 1992**

In 1992, United Nations held a Conference on Environment and Development (UNCED) at Rio de Janeiro from 3<sup>rd</sup> – 14<sup>th</sup> June 1992 and Nigeria as one of the participating parties has adopted the three documents negotiated and adopted at the UNCED namely; the global plan of action (Agenda 21), Forestry Principles and the Rio Declaration on Environment and Development.<sup>217</sup>

The UNCED represented one of the first tests in implementing sustainable development at the international level. Although the three documents negotiated and adopted in Rio (the global plan of action known as Agenda 21, the Statement of Forest Principles, and the Rio Declaration on Environment and Development) lack the force of international law, but carried with them a strong moral obligation to ensure the full implementation of the goals of sustainable development. For example, Principle 11 of the Rio Declaration on Environment and Development, state as follows:

States shall enact effective environmental legislation, environmental standards, management objectives and priorities should reflect the environmental and development context to which they apply...<sup>218</sup>

Similarly, chapter 11 of Agenda 21 stated that; Government should create national action programs for sustainable forestry development; and Chapter 12 of the same Agenda 21 also stated that; in combating desertification government should adopt national sustainable management of water resources; accelerate planting programmes, using fast

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<sup>217</sup> Chasek Pamela S. The Convention to Combat Desertification: lessons learned for sustainable development, Journal of Environment & Development 6.2 (1997), p.2.

<sup>218</sup> Rio Declaration- Rio declaration on Environment and Development Available at [www.unep.org/.../default.asp](http://www.unep.org/.../default.asp) Last visited on 14/ 04/2014.



growing, drought- resistant local trees and other plants; and should help to reduce the demand of fuel wood through energy efficiency and alternative energy programmes.<sup>219</sup>

In Annex III of the Non Legally Binding Authoritative Statement of Principles For a Global Consensus on The Management, Conservation And Sustainable Development of all Types Of Forest, principle 3 states that; National policies and strategies should provide a framework for increased efforts, including the development and straitening of institutions and programmes for the management, conservation and sustainable development of forest and forest lands.<sup>220</sup>

### **3.4.3 The United Nations Convention on Biological Diversity (CBD) 1992**

The Convention on Biological Diversity (CBD) was negotiated under the auspices of the United Nations Environment Programmes (UNEP) it was open for signature at the June 1992 United Nations Conference on Environment and Development (United Nations Earth Summit) and enter in to force on 29<sup>th</sup> December, 1993.<sup>221</sup> The convention has forty two (42) articles and Nigeria was among the 153 countries that signed the Convention on Biological Diversity (CBD) at the United Nations Earth Summit in June 1992.

The Convention is probably the most all encompassing international agreement on biodiversity ever adopted. The five main aims of the convention are: conserving biodiversity at all levels: genetic, population, species, habitat, and ecosystem; sustainable development of biodiversity: to ensure that this diversity continues to maintain the life support systems of the biosphere; fair and equitable sharing of benefits from biodiversity:

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<sup>219</sup> Draft Agenda 21, Rio Declaration, Forest Principles Available at: [www.goodreads.com/.../1086156.drafts](http://www.goodreads.com/.../1086156.drafts) Last visited on 12/04/2014.

<sup>220</sup> A/CONF. 151/26 (Vol. III) forest principles Available at: [www.un.org/.../aconf5126-3annex3.ht...](http://www.un.org/.../aconf5126-3annex3.ht...) Last visited on 12/04/2014.

<sup>221</sup> National Biodiversity Strategy and Action Plan available at: [www.ng-nbsap-01-en.pdf](http://www.ng-nbsap-01-en.pdf) last visited on 12/9/2014.

to recognize that social and economic goals for the use of biological resources and benefits derived from genetic resources is central to the process of sustainable development, and that this in turn will support conservation; sharing of relevant technology for sustainable development; and establishment of global financial mechanism for the conservation of biodiversity.<sup>222</sup>

The Convention calls for partnership between nations and among government organizations, NGOs and the Private Sector.<sup>223</sup> It calls for articulate planning strategies and programmes, with considerations for legislation, regulation, law enforcement, use of appropriate administrative mechanisms, research (data generation) and budgeting.<sup>224</sup>

For the prevention and control of desertification, the Nigerian government recognizes the need to conserve its biological diversity, therefore, made a commitment to conserve Nigeria's 25% of total forest area. Emphasis was placed on in situ on conservation of biodiversity within protected areas such as Forest Reserves, Game Reserves, National Parks and Wildlife Sanctuaries. The Plan also contains specific priority setting and actions for conservation of various species of plants and animals of economic importance, including reintroduction of locally extinct animals, lost crops, and conservation of threatened or endangered species. The administrative and policy reforms contained in the Plan provide a vehicle for achieving our biodiversity conservation goals and objectives.<sup>225</sup>

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<sup>222</sup> Convention on Biodiversity, United Nations (1992) Article 1.

<sup>223</sup> Convention on Biodiversity, United Nations (1992) Article 5.

<sup>224</sup> Convention on Biodiversity, United Nations (1992) Article 6.

<sup>225</sup> National Biodiversity Strategy and Action Plan available at: [www.ng-nbsap-01-en.pdf](http://www.ng-nbsap-01-en.pdf) last visited on 12/9/2014.

An integrated and coordinated plan for biological diversity utilization is also envisaged in the NBSAP. Government has established a national programme for sustainable utilization of biological resources at the Ministry of Science and Technology, the Forestry Research Institute of Nigeria, as well as the Raw Materials Research and Development Council in order to optimize the contribution of these resources in the national economy. It is also envisaged that an Inter-Ministerial Panel or a full-fledged Biodiversity Institute will be established to coordinate and harmonize the activities of various agencies of Government, bio -industries and the civil society in sustainable utilization of biological resources. The planning process for this strategy initiated the formation of a private sector driven Bio -resources Industry Organization of Nigeria (BIN) to engage the private sector and civil society in monitoring the use of biodiversity for the production of consumer goods.<sup>226</sup>

#### **3.4.4 The United Nations Convention to Combat Desertification (UNCCD) 1994.**

With the adaptation of the United Nations Convention to Combat Desertification (UNCCD), on 17th day of June 1994, Nigeria signed The United Nations Convention to Combat Desertification (UNCCD) on 31/10/1994, ratified it on 08/07/1997, and it came into force with respect to Nigeria on 06/10/1997.<sup>227</sup> Nigeria being an affected country party has its obligations spelt out under article 4 dealing with general obligations, article 5 dealing with obligations of affected country parties, article 9 which deals with basic approach, article 10 on National action programs, article 19 on capacity building,

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<sup>226</sup> National Biodiversity Strategy and Action Plan available at: [www.ng-nbsap-01-en.pdf](http://www.ng-nbsap-01-en.pdf) last visited on 12/9/2014.

<sup>227</sup> Federal Republic of Nigeria Ministry Of Environment Great Green Wall For The Sahara And Sahel Initiative National Strategic Action Plan (October 2012) P.22.

education, and public awareness, article 20 (3) on financial resources, and article 21 on national coordinating mechanisms.<sup>228</sup>

Nigeria started addressing the problem of desertification with the adoption of the National Policy on the Environment. Taking into account the circumstances and requirements specific to each affected country Party, national action programmes include, as appropriate, (*inter alia*), measures in some or all of the following priority fields as they relate to combating desertification and mitigating the effects of drought in affected areas and to their populations: promotion of alternative livelihoods and improvement of national economic environments with a view to strengthening programmes aimed at the eradication of poverty and at ensuring food security; demographic dynamics; sustainable management of natural resources; sustainable agricultural practices; development and efficient use of various energy sources; institutional and legal frameworks; strengthening of capabilities for assessment and systematic observation, including hydrological and meteorological services, and capacity building, education and public awareness.<sup>229</sup>

In compliance with the provision of the UNCCD<sup>230</sup>, Nigeria on its National Report on implementation of the UNCCD submitted at the third Conference of Parties in Brazil, states that Prior to the coming into force of the UN Convention to Combat Desertification, certain national and state laws and regulations, which relate directly or indirectly to desertification control or related matters have been in force in Nigeria. Such laws include the Federal Environmental Protection Agency (FEPA) Decree, the National Parks Decree 101 of 1991, the Environmental Impact Assessment (EIA) Decree No 86 of 1992, the Endangered Species (Control of International Trade and Traffic in Fauna and

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<sup>228</sup> UNCCD UN Doc A/AC.241/27 (1994).

<sup>229</sup> UNCCD UN Doc A/AC.241/27 (1994) Art 10(4).

<sup>230</sup> UNCCD UN Doc A/AC.241/27 (1994) Art 22.

Flora) Decree 1985, the National Water Resources Decree No. 101 of 1993 and the Land Use Act 1978 and with several state laws such as forestry laws, grazing reserve regulations and bush burning regulations.<sup>231</sup>

The report further listed several institutions for the management of matters relating to desertification even before the advent of the CCD. Some of these institutions are policy making bodies, while some are actually involved in implementation of deliberate government policies and projects to prevent and mitigate the menace of desertification. Some of these institutions are; Federal Environmental Protection Agency (now the National Environmental Standards and Regulations Enforcement Agency), Federal Ministry of Agriculture and Natural Resources, Federal Ministry of Water Resources and Rural Development, and various State Institutions and Organs such as the States Departments of Forestry, State Environmental Protection Agencies (SEPA).<sup>232</sup>

#### **3.4.5 The Convention of the Pan African Agency for the Great Green Wall 2007**

A recent regional attempt in Africa to address desertification in a more coherent manner is the Great Green Wall for the Sahara and the Sahel Initiative (GGWSSI). The initiative was developed by the African Union (AU), through its New Partnership for Africa's Development (NEPAD). The project was originally conceived as a 15 km wide strip of greenery (of trees and bushes) of some 7,775 km long, from Dakar, Senegal, in the west to Djibouti in the Horn of Africa in the east. The belt is expected to pass through eleven countries (Burkina Faso, Djibouti, Eritrea, Ethiopia, Mali, Mauritania, Niger, Nigeria, Senegal, Sudan and Chad), and embraces the circum-Sahara enclaves such as Cape

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<sup>231</sup> See the Nigerian National Report on Implementation of the United Nations Convention to Combat Desertification submitted at the 3<sup>rd</sup> Conference of Parties, Recife, Brazil 1999.

<sup>232</sup> Ibid.

Verde. Such a biological corridor along the southern border of the Sahara is seen as a means of halting the progression of the Sahara desert southward, protecting water sources, which has been drying up for decades, and restoring habitats for biodiversity (for energy resources and foodstuffs).<sup>233</sup>

The GGWSSI was first proposed in the 1980s by Thomas Sankara, then Head of state in Burkina Faso. The idea was voiced again about 20 years later by the then Nigerian President, Olusegun Obasanjo, who presented it to the African Union (AU) in 2005. The GGWSSI was launched when it was realized that the efforts made in the implementation of the UNCCD and other similar programmes proved well below the objectives sought, both in terms of natural resources conservation and poverty alleviation, and there is the need for a more programmatic approach.<sup>234</sup>

Since its launch, the concept has gradually shifted from a thematic project focusing on creation of a wall of trees for protection of the land against encroaching sand and erosion to a more holistic and integrated vision of sustainable land management (SLM). In addition, though the initiative represents a real need of combating desertification and poverty, it is essentially meant to be part of a concerted synergetic implementation of Multi-Lateral Environmental Agreements (MEAs) such as the UNCCD, UNFCCC and UNCBD in an integrated manner. It also represents a programming tool for fast-tracking the development of the dry land sub-region, in particular, curtailing the growing poverty of the people who are dependent on water, soil and biodiversity resources for their livelihoods, in conjunction with current regional and continental initiatives (such as

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<sup>233</sup> Great green Wall for the Sahara and the Sahel initiative Available at: [www.foa.or/docrep/016/.../apa](http://www.foa.or/docrep/016/.../apa) Last visited on 12/9/2014. see also Convention of the Pan African Agency for the Great Green Wall (2010), Article 3.

<sup>234</sup> Great green Wall for the Sahara and the Sahel initiative Available at: [www.foa.or/docrep/016/.../apa](http://www.foa.or/docrep/016/.../apa) Last visited on 12/9/2014.

Comprehensive Africa Agriculture Development Program CAADP, New Partnership For Africa's Development NEPAD, etc). The Convention was adopted in 2007 and endorsed by Nigeria in Chad in 2010. The initiative has since then been recognized and supported internationally.<sup>235</sup>

The convention has seventeen (17) Articles and has the purpose of creating the Pan African Agency of the Great Green Wall.<sup>236</sup> The Great Green Wall Agency (GGWA) has a number of objectives principal amongst which are to: enhance environmental sustainability; control land degradation; promote integrated natural resources management; arrest the advance of the Sahara Desert; conserve biological diversity; strengthen infrastructure; and contribute to poverty reduction.<sup>237</sup>

Nigeria's participation in the GGW aimed at improving the efficiency of ongoing programmes, mechanisms and projects, particularly the UNCCD within a well-defined and focused plan of action. Thus, the strategic objectives of Nigeria's GGWSAP that guide such programmes and projects in the country include: developing and promoting sustainable land management practices that enhances local livelihoods whilst maintaining the productivity and stability of agricultural lands and reducing vulnerability to climate variability and drought; improving the integrity of ecosystem in the arid zone and their resilience to climate change, climate variability and drought; strengthening systemic and institutional capacity to combat desertification and its impacts; improving knowledge about desertification and drought phenomena, monitoring and evaluation of its effects, and improve information sharing and cooperation among stakeholders; mobilizing

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<sup>235</sup> Great green Wall for the Sahara and the Sahel initiative Available at: [www.foa.or/docrep/016/.../apa](http://www.foa.or/docrep/016/.../apa) Last visited on 12/9/2014.

<sup>236</sup> Convention of the Pan African Agency for the Great Green Wall (2010), Article 1.

<sup>237</sup> Convention of the Pan African Agency for the Great Green Wall (2010), Article 4.

resources for the implementation of the GGW initiative through the establishment of efficient partnerships between national and international stakeholders.<sup>238</sup>

The operational objectives that guide the formulation of this Action Plan and its potential integration into development programmes and projects at all national levels of governance, and even at regional level, are: translating the GGW agreements into national action programmes needed to tackle desertification and mitigate effects of drought in the framework of an integrated and participatory approach in the short to medium term; influencing relevant international, continental, regional, national and local mechanisms and actors, in order to tackle efficiently the issues of desertification/land degradation and drought; improving the knowledge on social, economic, biophysical and cultural dynamics of arid lands; mobilizing financial and technological resources at national, bilateral and multilateral levels and improve their focus and coordination in order to increase their impact and efficiency.<sup>239</sup>

Until recently in June 2015 that the Nigerian Great Green Wall bill was passed in to Law by President Goodluck Jonathan which has established the National Agency for the GGW for the implementation of the provisions of the convention of the GGW Programme in Nigeria, management of drought, desertification and afforestation control measures and related matters.<sup>240</sup>

The Agency helps to safeguard the environment, ensure food security, reduce unemployment and poverty, protect citizens in the affected parts from vagaries of

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<sup>238</sup> Sahara and Sahel Initiative National Strategic Action Plan October 2012. Available at: [www.nigeria-GGWSAP-final-oct-2012.pdf](http://www.nigeria-GGWSAP-final-oct-2012.pdf). Last visited on 12/9/2014.

<sup>239</sup> Ibid.

<sup>240</sup> Abutu A. Column on Environment: Stakeholders Hail President assent on Greet Green Wall Bill, Daily Trust Newspaper, Abuja, (Wednesday 3<sup>rd</sup> June, 2015).



weather, reduce strife and criminality, ensure sustainable livelihood and avert a major catastrophe in the near future.<sup>241</sup>

### **3.5 Role of Judicial Precedents**

Another important source of environmental law in Nigeria is judicial precedent laid down by the various courts of record in Nigeria. These apply with binding force in a structured order following the hierarchy of the courts. In addition, decisions of courts from outside jurisdictions, particularly common law countries, international courts (like the ICJ, ECHR) and arbitrations equally exert persuasive influence on interpretation of Nigerian laws on environment.<sup>242</sup> Accordingly, important environmental law questions were raised in the following cases and the decisions had considerable influence on the development of environmental law in Nigeria: The case of *Donoghue v. Stevenson* (1932) AC 562, established the requirements for proof of negligence in manufacturer's liability namely duty, breach and a resulting damage; the case of *Olaye v. NAOC Ltd* (1973) 2 RSLR 96, emphasized the claim against oil companies should be by way of compensation and not damages, especially where unlawfulness is not alleged; also, the case of *SPDC v. F.B. Farah* (1995) 3 NWLR (pt 382) 148, established relevant issues when considering compensation in cases of oil pollution of land, namely: Fair and adequate compensation; Disturbance; Reinstatement; Injurious affection; General inconvenience; Time of valuation; and Methods of valuation, In this case, there was oil well blow out which polluted about 607 hectares of land. The top soil was heavily contaminated and effort was made by the appellant to rehabilitate the land, which it later abandoned. Only N44, 000.00 was paid as compensation to the land owning families within the area. The

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<sup>241</sup> Abutu A. Column on Environment: Stakeholders Hail President assent on Greet Green Wall Bill, Daily Trust Newspaper, Abuja, (Wednesday 3<sup>rd</sup> June, 2015).

<sup>242</sup> Adewale O., op. cit.

respondents were paid only N2000.00 for their crops and economic trees as compensation, but no compensation was paid for the heavily contaminated top soil covering 13.245 hectares. They went to court and were awarded N4, 621,307.00 by the trial Judge, which was affirmed by the Court of Appeal.

The case of *Amachree v. Kalio* (1913) 2 NLR 108 established the principle that as a matter of public policy, riverine communities cannot stop adjoining communities from using rivers or body of waters interlinking them; also in the case of *Attorney General v. Holt* (1910 -15) 2 NLR 1, it was established that adjoining creeks and lands reclaimed from coastal waters or lagoons belong to the government.

On the issue of town planning which help in the prevention of desertification, in the case of *A. G. (Lagos) v. A.G. (Fed) & 35 Ors* (2003) 9 SCM 1, it was established that in Nigerian Federal arrangement, States are responsible for town planning activities as it falls within Residual List of legislative competence in the 1999 Constitution, although under section 20 of the same Constitution the Federal government is competence to legislate on broad guidelines for environmental protection.

Under international law, there are numerous persuasive foreign jurisdiction cases and arbitrations including: the case of *Corfu Channel (United Kingdom v. Albania)* case, ICJ Rep. (1941) 1, whereby it was established that a State is responsible where its territorial waters is used for land mines which cause damage to property of another State.

Also, in *Lac Lanoux Arbitration, (Spain v. France)* 24 ILR (1957), 101 – it was held that a State wishing to do that which will affect an international watercourse (passing through its territory) cannot decide whether another state's interests will be affected; the other state is the sole judge of that and has the right to information on the proposal.

### **3.6 The Legal Framework for the Prevention and Control of Desertification in**

#### **Nigeria**

From the above discussion, it could be seen that the role of legislation in inducing responsible attitudes and behaviors towards the environment cannot be overlooked as it serves as an effective instrument for environmental protection, planning, prevention and control. In Nigeria, there are many already existing national and state laws for the prevention and control of desertification. Below the following provides the summary of some of the National Laws/ Acts and State Laws for the prevention and control of desertification in Nigeria.

#### **3.6.1 The Constitution of the Federal Republic of Nigeria 1999**

The 1999 Constitution of The Federal Republic of Nigerians has guaranteed environmental protection under Fundamental Objectives and Derivative Principles of State Policy<sup>243</sup>. Significantly, the Constitution seeks to foster environmental protection by placing an obligation to the state to improve the air, land, water, forest and wild life in Nigeria.<sup>244</sup>

Furthermore, to enhance and protect the environment, the constitution establishes though impliedly that international treaties (including environmental treaties) ratified by The National Assembly should be implemented as law in Nigeria.<sup>245</sup>

With the combine effect of the Nigerian constitutional Provision on Fundamental Objectives and Directive Principles of the State Policy which seeks to foster

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<sup>243</sup> Chapter II of the 1999 Constitution of the Federal Republic of Nigeria as Amended.

<sup>244</sup> S.20 1999 Constitution of the Federal Republic of Nigeria as Amended.

<sup>245</sup> S. 12 1999 Constitution of the Federal Republic of Nigeria as Amended.

environmental protection and that of implementation of treaties,<sup>246</sup> Nigeria has adopted some declarations, principles and conventions and has also enacted some environmental legislations for the protection of the environment. Some of the notable declarations, principles and conventions adopted by Nigeria for the prevention and control of desertification include: United Nations Resolution Plan of Action to Combat Desertification (PACD) 1977; the Global Plan of Action (Agenda 21), Forestry Principles and the Rio Declaration on Environment and Development 1992 and then the United Nations Convention to Combat Desertification (UNCCD) 1994.

### **3.6.2 The National Environmental Standards and Regulations Enforcement Agency Act (NESREA)**

In 2007, the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act No. 25 of 2007 (hereinafter referred to as NESREA Act, 2007) came into force and repealed The Federal Environmental Protection Agency (FEPA) which was established pursuant to Decree No. 58 of 1988 and amended by Decree No. 59 of 1992 and was further amended by Decree No. 14 of 1999 and has the overall responsibility for the protection and development of the environment and biodiversity conservation and sustainable development of Nigeria's natural resources in general.<sup>247</sup>

NESREA Act has thirty seven (37) sections and is divided into six (vi) Parts, Part one deals with the Establishment of the National Environmental Standards And Regulations Enforcement Agency, Part two deals with the Functions And Powers Of The Agency And Council, Part three deals with the Structure Of The Agency, Part four deals with the Staff

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<sup>246</sup> See Chapter II, S. 20; S.12 1999 Constitution of the Federal Republic of Nigeria as Amended. See also Article 10 UNCCD.

<sup>247</sup> Section 4 (d) FEPA Decree No.59 1992.

Of The Agency, part five Financial Provisions and Part six deals with the Miscellaneous Provisions.

The Act has the responsibility for the protection and development of the environment, biodiversity conservation and sustainable development of Nigeria's natural resources in general.<sup>248</sup> It also has the power to enforce compliance with the provisions of international agreements, protocols, conventions and treaties on the environment, including climate change, biodiversity, conservation, desertification, forestry and such other agreements as may from time to time come into force.<sup>249</sup>

In compliance with the above provision of section 7 (c) of NESREA Act and for the purpose of the prevention and control of desertification, Nigeria has adopted the United Nations resolution (Plan of Action to Combat Desertification (PACD)) which was passed at the United Nations Conference on Desertification (UNCOD) in 1977, held in Kenya.<sup>250</sup> Furthermore, in 1992, Nigeria as one of the participating parties at the United Nations conference on Environment and Development (UNCED) at Rio de Janeiro from 3<sup>rd</sup> – 14<sup>th</sup> June 1992 has adopted the three documents negotiated at the UNCED namely; the global plan of action (Agenda 21), Forestry Principles and the Rio Declaration on Environment and Development.<sup>251</sup> Also, with the adaptation of the United Nations Convention to Combat Desertification (UNCCD), on 17th day of June 1994, Nigeria has signed The United Nations Convention to Combat Desertification (UNCCD) on 31/10/1994, ratified it on 08/07/1997, and it came into force with respect to Nigeria on 06/10/1997.<sup>252</sup>

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<sup>248</sup> Section 2 NESREA Act, 2007.

<sup>249</sup> Section 7 (c) NESREA Act, 2007.

<sup>250</sup> Buanajuti, A. External Evaluation of the Plan of Action to Combat Desertification (1991) Desertification Control Bull, No. 20 30-31. Available at [www.africabib.org/rec.php?RID=Q00004448&DB=p](http://www.africabib.org/rec.php?RID=Q00004448&DB=p) Last visited on 14/2/2013.

<sup>251</sup> Chasek Pamela S. The Convention to Combat Desertification: lessons learned for sustainable development, Journal of Environment & Development 6.2 (1997), p.2.

<sup>252</sup> Federal Republic Of Nigeria Ministry Of Environment Great Green Wall For The Sahara And Sahel Initiative National Strategic Action Plan (October 2012) P.22.

Section 8(o) of the NESREA Act, gave NESREA the power to collaborate with other ministries. In compliance with these provision, the Agency has collaborated with the Federal Department of Forestry which is under the Federal Ministry of Agriculture and Natural Resources and have the responsibility of taking care of all forestry matters including implementation of afforestation programmes and projects as a means of checking the menace of desert encroachment in the country. The Ministry co-ordinates annual Tree Planting Campaigns throughout the country and implements projects on afforestation, wood lot plantations, plant nursery, etc. as measures towards combating deforestation which causes desertification.<sup>253</sup>

NESREA Act also makes provision for the offence and penalty on any person who violates the provisions of the Act to be convicted and liable to a fine not exceeding N200, 000 or to imprisonment for a term not exceeding one year or to both such fine and imprisonment and an additional fine of N10,000 for every day the offence subsists.<sup>254</sup>

In a nutshell, the effort of NESREA Act is commendable as it constitute a new dawn in both purpose and contents, it aim at addressing environmental regulations, standards and enforcement mechanisms, which resulted, over the years, in the high rates of non-compliance with environmental laws, regulations and standards.<sup>255</sup>

### **3.6.3 Environmental Impact Assessment Act (EIA ACT)**

Globally, Environmental Impact Assessment (EIA) is recognized as a tool for achieving sustainable development.<sup>256</sup> The main objective of the EIA is to ensure that potential

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<sup>253</sup> Ibid.

<sup>254</sup> Section 26(1)(3) and (4) NESREA Act, 2007.

<sup>255</sup> Ladan M. T. Review of NESREA Act 2007 and Regulations 2009-2011: A New Dawn in Environmental Compliance and Enforcement in Nigeria, Law, Environment and Development Journal, vol. 8/1, (2012), p. 116.

<sup>256</sup> Chris O. N. Evaluation of Environmental Impact Assessment System in Nigeria, Greener Journal of Environmental Management and Public Safety Vol. 2 (1), (January 2013), pp. 022-031.

environmental impacts are foreseen at the appropriate stage of project design and addressed before any decision is taken on the project.<sup>257</sup> The EIA involves a systematic process for identifying, predicting and evaluating potential impacts associated with a development project. The EIA process must proffer mitigation measures to avoid, reduce or minimize the negative impacts on the environment, public health and property and may highlight the foreseeable positive impacts. The mitigation measures entail identifying possible alternative site, project, process design, including that of not proceeding with the project. The EIA is not a one-off process which terminates in the production of a report on the effects of the project and associated mitigation measures.<sup>258</sup> EIA legislations and the required procedural guidelines for carrying out the EIA process became effective since the 1970s in developed countries.<sup>259</sup> Nigeria took a giant leap when she promulgated her main EIA legislation (i.e. EIA Act No.86) in 1992.<sup>260</sup> EIA is proclaimed in Principle 17 of 'Agenda 21' (Agenda for the 21st century) of the United Nations Conference on Environment and Development (UNCED), which was held on the 3rd to 14th of June, 1992, in Rio de Janeiro, Brazil which states that: Environmental Impact Assessment as a national instrument shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and subject to a decision of a competent authority.<sup>261</sup>

The Environmental Impact Assessment Act could now be found in Chapter E12 Laws of the Federation of Nigeria 2004. The Act is divided into Three (III) Parts with part I

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<sup>257</sup> Ibid.

<sup>258</sup> Ibid.

<sup>259</sup> Ibid.

<sup>260</sup> Ibid.

<sup>261</sup> Chris O. N. Evaluation of Environmental Impact Assessment System in Nigeria, Greener Journal of Environmental Management and Public Safety Vol. 2 (1), (January 2013), pp. 022-031.

dealing with General principles of environmental impact assessment; Part II dealing with environmental assessment of project and Part III dealing with miscellaneous provisions.

One of the objectives of environmental impact assessment is to take in to account any activity that will affect the environment or have an environmental effect, before a decision is taken by any person, authority, corporate body or incorporated body, including the government of the federation.<sup>262</sup>

The EIA Act provides that all developmental projects should, from the onset, undertake environmental impact assessment to determine the possible environmental effects of the proposed project before the projects is commissioned.<sup>263</sup> Among the types of projects covered by the provisions of this Act which are relevant to the prevention and control of desertification in Nigeria are; agricultural, drainage, irrigation and forestry projects which are subject to mandatory environmental impact assessment and listed in the mandatory study list.<sup>264</sup>

From the above provision of the EIA Act, it could be said that the aim of the EIA on the issue of the prevention and control of desertification is to avoid embarking on indiscriminate activities such as uncontrolled clearing of forest, removal of top soil, indiscriminate bush burning and felling of trees that might propel desertification.

#### **3.6.4 Endangered Species (Control of International Trade and Traffic) Act**

The Endangered Species (Control of International Trade and Traffic) Act could be found in Chapter E9 Laws of the Federation of Nigeria 2004 with the objective of protecting the

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<sup>262</sup> Section 1(a) Environmental Impact Assessment Act Cap.E12 L.F.N. 2004.

<sup>263</sup> Section 12 Environmental Impact Assessment Act Cap.E12 L.F.N. 2004.

<sup>264</sup> See Schedule (section 12) Mandatory Study activities Environmental Impact Assessment Act Cap.E12 L.F.N. 2004.



species of wild animals and plants considered to be endangered.<sup>265</sup> The Act is divided in to Nine (9) sections; with section 1 dealing with prohibition of hunting of or trading in wild animals; section 2 dealing with Regulation of export and import of species; section 3 dealing with permits and certificates; section 4 dealing with alterations of schedules and exemptions; section 5 dealing with Penalties and forfeitures; section 6 dealing with Records; section 7 Power to make regulations; section 8 Interpretation and section 9 dealing with Short title.

The relevance of this Act to the prevention and control of desertification in Nigeria is base on the fact that there are reports that certain species of plants and wild animals considered to be endangered are prevalent in the Sahel and savannah ecological zones of Nigeria which are prone to desertification. Consequently, the implementation of the provisions of the Act was to assist in the protection of plants and animal species, which invariably contribute to desertification control.<sup>266</sup> However, one of the drawbacks of the Endangered Species Act is that no plant is currently listed in the Act. So a systematic review of the Law to adequately take care of the lapses should be made.

### **3.6.5 Land Use Act 1978**

The Land Use Act could now be found in Chapter L5 Laws of the Federation of Nigeria 2004. The Act is divided in to eight (8) Parts and fifty-one (51) Sections; Part I of the Act is the General part which deals with the vesting of land in the state, control and management of land, designation of urban areas and applicable law for the interim management of land. Part II deals with the principles of land tenure; Part III deals with

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<sup>265</sup> Section 1 (1)(2) Endangered Species (control of International Trade and Traffic ) Act Cap.E9 L.F.N. 2004.

<sup>266</sup> National Report on the Implementation of the United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (CCD), Submitted at the Third Session of the Conference of the Parties, Recife, Brazil, (November 1999), p. 16.

the issue of rents; Part IV deals with alienation and surrender of right of occupancy; Part V deals with Revocation of right of occupancy and compensation; Part VI deals with Transitional provisions such as penalty for false claims and preservation of power of governor to revoke rights of occupancy; Part VII deals with Jurisdiction of High courts and other courts and finally Part VIII is the supplemental Part.

By virtue of the provisions of the Land Use Act, all lands located in the territory of each State are vested in the Governor of the State to be held in trust for the benefit of the citizens.<sup>267</sup> According to some writers, the Land Use Act is not strictly an Act for environmental protection, although environmental protection is one of those considerations which a holder of certificate of occupancy has to observe, though it is not explicitly provided for in any of the provisions of the Act, but if the Act is read without such importation, the result is bound to be absurd and environmentally unsound.<sup>268</sup>

On the issue of desertification which is one of the problems associated with land use, it could be said that the Land Use Act does not expressly have any provision for the prevention and control of desertification. However, since the Act enables the government to bring under control the use of land thus, the Act facilitates planning and zoning programme for particular use,<sup>269</sup> which impliedly enhance environmental protections, it could therefore be argued that the Land Use Act implicitly helps in the control and prevention of desertification.

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<sup>267</sup> S.1 Land Use Act Cap. L5 L.F.N. 2004.

<sup>268</sup> Aboki Y. "The Land Use Act and Environmental Protection in Nigeria", in Ladan M. T., (ed.) *Law, Human Rights and the Administration of Justice in Nigeria*, (2001), A.B.U. Press, Zaria, Nigeria, at Pp. 288-299. Also see Ladan M. T. *Materials and Cases on Environmental Law*, Econet Publishing Co. Ltd, Zaria, Kaduna State, Nigeria, (2004), p. 101.

<sup>269</sup> Significance of the Land Use Act of 1978 to Use Planning in Nigeria available at: <http://nigeriaenvironmental.blogspot.co.uk/2012/11/significance> last visited on 13/8/2015.

Thus, it could be said that the Land Use Act do not expressly and adequately address the present and emerging threat of desertification in Nigeria so, the Act needs to be reviewed in order to address the growing threat of desertification in Nigeria.

### **3.6.7 State Laws and Regulations for the prevention and control of desertification**

At the state level, there are series of forestry laws, grazing reserve regulations and as well as bush burning regulations of the affected States. These categories of laws are directed at controlling the notable causes of desertification earlier enumerated and empower each state to manage its forest estates and grazing reserves as well as reforest their desertified areas.

#### **3.6.7.1 The Forestry Law**

The Forestry Law provides for the preservation and control of forest by the state Government. The Law interprets forest to include Government forest reserves and protected forests, local government forest reserves and protected forests and communal forestry areas.<sup>270</sup> In the Law, the Governor makes regulations for the protection and conservation of forest produce<sup>271</sup> and makes special provisions for the creation of forest reserves and protected forest.<sup>272</sup>

Furthermore, the governor has the power to prohibit or regulate the taking of forest produces, grant and prescribe the form that any license or permit may take to take forest

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<sup>270</sup> S.2 Forestry Law, Cap. 48 K.S.L.N. 1991; Section 2 Forestry Law, Cap.52 K.T.S.L.N. 1991 and Section 2 Forestry Law, Cap. 48 J.S.L.N. 1998.

<sup>271</sup> Forest produce includes timber, charcoal, rubber, wood oil, gum, trees, plants etc. see S.2 (a) (b) Forestry Law, Cap. 48 K.S.L.N. 1991; Section 2 (a) (b) Forestry Law, Cap.52 K.T.S.L.N. 1991 and Section 2 (a) (b) Forestry Law, Cap. 48 J.S.L.N. 1998.

<sup>272</sup> See Section 4 Forestry Law, Cap. 48 K.S.L.N. 1991; Section 4 Forestry Law, Cap.52 K.T.S.L.N. 1991 and Section 4 Forestry Law, Cap. 48 J.S.L.N. 1998.

produce in forest reserves and to regulate the use of fire for any purpose within a protected forest or forest reserve.<sup>273</sup>

The offences and penalties provided therein the Forestry Law ranges from unlawfully taking of any forest produce, uprooting, burning or otherwise damage any tree, setting fire to any grass or herbage in any part of the reserved forest, to summary conviction with a fine of two hundred Naira or to imprisonment of twelve months or to both.<sup>274</sup> Also, whoever within a protected forest uproot, fell or otherwise damage any protected tree of over two feet in girth, or set fire or allows fire to spread on any forest growth shall be liable on a summary conviction to a fine of one hundred naira or to imprisonment for six months and may be required by the court to pay sum equivalent to the fees and royalties payable on any forest produce removed or damaged.<sup>275</sup>

In addition, any person who fraudulently uses or aid or abets any person to forge or fraudulently use any registered hammer for denoting the ownership of any forest produce or alters, remove, destroys or defaces any mark placed on a forest produce or forest boundary or any land proposed to be included in a forest, shall be liable to a fine of two hundred naira or imprisonment for two years or both.<sup>276</sup>

One of the short coming of this Law is that none of the affected states have made any provision addressing the issue of prohibited acts outside the forest and with regard to fine for any offence committed in any part of the reserved and protected forest, most of the states have not amended and raise the amount of money to be paid as fine. This renders

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<sup>273</sup> See Section 46 Forestry Law, Cap. 48 K.S.L.N. 1991; Section 46 Forestry Law, Cap.52 KT.S.L.N. 1991 and Section 35 Forestry Law, Cap. 48 J.S.L.N. 1998.

<sup>274</sup> See Section 50 Forestry Law, Cap. 48 K.S.L.N. 1991; Section 50 Forestry Law, Cap.52 KT.S.L.N. 1991 and Section 38 Forestry Law, Cap. 48 J.S.L.N. 1998.

<sup>275</sup> See Section 52 Forestry Law, Cap. 48 K.S.L.N. 1991; Section 52 Forestry Law, Cap.52 KT.S.L.N. 1991 and Section 40 Forestry Law, Cap. 48 J.S.L.N. 1998.

<sup>276</sup> See Section 54 Forestry Law, Cap. 48 K.S.L.N. 1991; Section 54 Forestry Law, Cap.52 KT.S.L.N. 1991 and Section 42 Forestry Law, Cap. 48 J.S.L.N. 1998.

such state laws to be ineffective in terms of enforcement due to very paltry sum provided as penalty for fine thereby resulting into large scale deforestation activities such as bush burning, logging or timber exploitation therefore contributing to deforestation.

The effort of the Jigawa State Government is commendable in at least raising the fine for any offence committed in any part of the reserved and protected forest to a fine of one thousand naira for a reserved forest and a fine of two thousand naira for a protected forest and also to a fine of ten thousand naira for the offence of forgery or fraud.<sup>277</sup> This Regulation is at least an improvement on the existing Forestry Law in terms of penalty for effective enforcement.

### **3.6.7.2 The Grazing Reserves Law**

The Grazing Reserves Law provides for the constitution, preservation and control of grazing reserve by the state Government. The State Government makes regulations for the constitution of government grazing reserve on any land which is at the disposal of the Government, and on any land which appears that grazing on such land should be protected or reserved or grazing management should be practiced.<sup>278</sup>

The Law further empowered the Governor of the state to make regulations prescribing the person who may use the grazing reserve and the number and type of stock which may be permitted in the grazing reserve and to provide for the issue of grazing permits and prescribing the fees for such permits to persons using the grazing reserves.

Also, the law empowered the Governor to impose penalties not exceeding four hundred naira or imprisonment not exceeding one year or both for a very paltry sum of money is

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<sup>277</sup> See Section 38, 40 and 42 Forestry Law, Cap. 48 J.S.L.N. 1998.

<sup>278</sup> See Section 3 Grazing Reserves Law, Cap.53 K.S.L.N. 1991; Section 3 Grazing Reserves Law, Cap.55 K.T.S.L.N. 1991 and Section 3 Grazing Reserves Law, Cap.60 J.S.L.N. 1998.

provided as penalty for any prohibited act committed.<sup>279</sup> The law further deals with the power of Local Government Council to constitute and manage grazing reserves.<sup>280</sup>

One of the shortcoming of this law is that there is no provisions prohibiting overgrazing of land in order to prevent and control the environmental impact of nomadic pastoralism. Overgrazing which is one of the major causes of desertification needs to be properly addressed.

The effort of the Jigawa State Government is commendable in at least imposing penalties not exceeding four thousand naira or imprisonment not exceeding one year, or both for a breach of any regulation made for the purpose of carrying out the provisions of the grazing reserve law.<sup>281</sup>

### **3.6.7.3 The Bush Burning (Control) Law**

The Bush Burning (Control) Law has a limited scope as it applies to all arable and unreserved forest with the exception of forest plantations, forest reserves, protected forest and communal forest areas as defined by the Forestry Law.<sup>282</sup>

The Law provides for the state to establish a Bush Fire Control Committee, which shall be composed of four members and provide the powers and functions of such committee. One of the functions of the committee is to promote and prevent bush fire publicly through mass media with emphasis on the dangers of bush fire and the disastrous effect of uncontrolled bush burning.<sup>283</sup>

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<sup>279</sup> See Section 22(f) Grazing Reserves Law, Cap.53 K.S.L.N. 1991; Section 22(f) Grazing Reserves Law, Cap.55 K.T.S.L.N. 1991 and Section 22(f) Grazing Reserves Law, Cap.60 J.S.L.N. 1998.

<sup>280</sup> See Part III Grazing Reserves Law, Cap.53 K.S.L.N. 1991; Part III Grazing Reserves Law, Cap.55 K.T.S.L.N. 1991 and Part III Grazing Reserves Law, Cap.60 J.S.L.N. 1998.

<sup>281</sup> Section 22(f) Grazing Reserves Law, Cap.60 J.S.L.N. 1998.

<sup>282</sup> Section 3 Bush Burning (Control) Law, Cap.60 J.S.L.N. 1998.

<sup>283</sup> Section 5 and 6 Bush Burning (Control) Law, Cap.60 J.S.L.N. 1998; and Section 5 and 6 Bush Burning (Control) Law, Cap.19 K.T.S.L.N. 1991.

The law further makes provision for a permit which shall be granted only upon the payment of a fee.<sup>284</sup> The offences provided therein the Law ranges from unintentionally or intentionally causing bush fire in an unreserved forest, or starting a bush fire without permit outside the bush burning season in an unreserved forest or with a permit but failed to take the necessary precautionary measures to prevent the spreading of bush fire beyond the boundaries earmarked for burning. The penalty of such offences ranges from conviction of a fine or imprisonment of a term.<sup>285</sup>

Furthermore, it is obvious to state that it is not all the affected states that has provided the Bush Burning (Control) Law for instance; Kano State did not have the Bush Burning (Control) Law. Although most of the issues relating to the control of bush burning have been addressed under the forestry Law of these states, nonetheless, the efforts of those affected states such as Jigawa State and Katsina State that has made a separate law for the control of bush burning is commendable. The deserving commendation is least due to addressing the issue of bush burning in an unreserved area, which has not been address under the forestry Law.

### **3.7 The Institutional Framework for the Prevention and Control of Desertification in Nigeria**

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<sup>284</sup> Section 13 Bush Burning (Control) Law, Cap.60 J.S.L.N. 1998; and Section13 Bush Burning (Control) Law, Cap.19 KT.S.L.N. 1991.

<sup>285</sup> Section 14 Bush Burning (Control) Law, Cap.60 J.S.L.N. 1998; and Section 14 Bush Burning (Control) Law, Cap.19 KT.S.L.N. 1991.

The environment protection institution or agency is a body which is responsible for environmental protection<sup>286</sup> and environmental protection is a practice of caring for the environment, at individual, organizational or governmental levels, for the benefit of the natural environment and future generations.<sup>287</sup> Environmental protection also means to protect and preserve (indigenous) peoples' natural habitat and resources in order to safeguard the unique and independent cultures from threats posed by 'development', oppressive regimes and environmental degradation.<sup>288</sup> The concept behind environmental protection entails the close relationship between a society and its natural environment and the interactions between the environment and the people which create a unique web of interdependent connections that in turn create a distinct ecosystem.<sup>289</sup> The benefits of environmental protection among others are to minimize decay of natural and social environment, to reduce poverty and to reduce disharmony/conflict in the community.<sup>290</sup> Following, the increase in global population, the demand for natural resources increases and consequently pollution increases resulting in to environmental degradation.<sup>291</sup> The degradation of land, air or water has continued to generate conflicts among various communities in various regions all over the world, in areas where there were no alternatives to environmental management or there were no structures in order to provoke environmental protection. This could be seen in the case of the Niger Delta region of Nigeria where agricultural practices have grounded over the years as the result of

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<sup>286</sup>Environment Agency (2011) available at <http://www.environment-agency.gov.uk/> Last visited on 12/1 2014.

<sup>287</sup> Ibid.

<sup>288</sup> Ibid .

<sup>289</sup> Ibid.

<sup>290</sup> Ibid.

<sup>291</sup> Carson R. Silent Spring, Mariner Books, (2002), p. 105.



effluent/gaseous discharges released into the environment from oil and gas industries operating within the region.<sup>292</sup>

Furthermore, there are other numerous industries that churn out into the atmosphere, greenhouse gases, hazardous wastes, other types of waste (e.g. packaging, agricultural, construction) toxic pollutants, radioactive waste materials, chemical components of various types (organic and inorganic) that have left the state of the environment worse off than it normally should be.<sup>293</sup>

Urbanization has also cumulated some activities leading to deforestation, bush burning, over abstraction of resources, non-protection of biodiversity to mention a few, leading to land degradation issues. This goes to show that protecting the environment means more than preventing pollution and cleaning up litter, it is also about ensuring that land degradation should be prevented in order to have a better and sustainable environment.<sup>294</sup> In this way, deforestation which is one of the major causes of desertification will be prevented.

In order to sustain environmental resources, to defend its use and prevent excessive activities that pollute the environment and degrade it, it is important that there are designated bodies that will have the sole responsibility of regulation. This form of regulation could be through compliance, regulation, guidance and enforcement. As such, many national governments placed restraints on activities that caused environmental

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<sup>292</sup> New York Times, Available at: <http://topics.nytimes.com/top/news/international/countriesandterritories/japan/index>  
Last visited on 12/1/2014.

<sup>293</sup> Ibid.

<sup>294</sup> Carson R. Silent Spring, Mariner Books, (2002), p. 105.

degradation through governmental, quasi- governmental and non-governmental organizations.<sup>295</sup>

In Nigeria, Prior to the establishment of the Federal Ministry of Environment, the Federal Environmental Protection Agency was the coordinating body for environmental protection for numerous regulating agencies such as: Federal Ministry of Health, Federal Ministry of Agriculture, Federal Ministry of Solid Minerals, The 36 States Ministries of Environment, The 36 States Ministries of Physical Planning & Urban Development, The 36 States Ministries of Health, etc.<sup>296</sup> Now, The Federal Ministry of Environment coordinates all environmental protection activities through the collection of reports from various regulatory agencies both at the national and state levels in Nigeria.<sup>297</sup>

On the issue of desertification, several Agencies have been put in place for the management of matters relating to desertification both at the National and states levels. Some of these Agencies are policy making bodies while some are actually involved in implementation of deliberate government policies and projects to prevent and mitigate the menace of desertification.<sup>298</sup> Below are some of the Agencies responsible for the prevention and control of desertification in Nigeria both at the national and state levels.

### **3.7.1 The National Environmental Standards and Regulations Enforcement Agency**

The Agency is the enforcement agency for environmental standards, regulations, rules, policies and guidelines. NESREA has the responsibility for the protection and development of the environment, biodiversity conservation and sustainable development

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<sup>295</sup> New York Times, Available at: <http://topics.nytimes.com/top/news/international/countriesandterritories/japan/index>. Last visited on 12/1/2014.

<sup>296</sup> Ibid.

<sup>297</sup> Ibid.

<sup>298</sup> Ibid.

of Nigeria's natural resources in general.<sup>299</sup> It also has the power to enforce compliance with the provisions of international agreements, protocols, conventions and treaties on the environment, including climate change, biodiversity, conservation, desertification, forestry and such other agreements as may from time to time come into force.<sup>300</sup>

### **3.7.2 The National Agency for the Great Green Wall**

Until recently in June 2015 that the Nigerian Great Green Wall bill was passed in to Law by President Goodluck Jonathan which has established the National Agency for the Great Green Wall (NAGGW) for the implementation of the provisions of the convention of the GGW Programme in Nigeria, management of drought, desertification and afforestation control measures and related matters.<sup>301</sup>

The Agency helps to safeguard the environment, ensure food security, reduce unemployment and poverty, protect citizens in the affected parts from vagaries of weather, reduce strife and criminality, ensure sustainable livelihood and avert a major catastrophe in the near future.<sup>302</sup>

Immediately after the establishment of the National Agency for the GGW, effort have been made at implementing the GGW programme in the eleven (11) frontline states (namely; Adamawa, Borno, Bauchi, Gombe, Kebbi, Jigawa, Kano, Katsina, Sokoto, Yobe and Zamfara). Activities under taken so far shows that farmers are vital stakeholders in the success of the implementation of the programme, for instance in Jigawa State, farmers are incharge of the regeneration sites where seedlings are planted and later sold

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<sup>299</sup> Section 2 NESREA Act, 2007.

<sup>300</sup> Section 7 (c) NESREA Act, 2007.

<sup>301</sup> Abutu A. Column on Environment: Stakeholders Hail President assent on Great Green Wall Bill, Daily Trust Newspaper, Abuja, (Wednesday 3<sup>rd</sup> June, 2015).

<sup>302</sup> Ibid.

to the government for on ward planting on the designated routes.<sup>303</sup> This activity reduces unemployment and poverty, and ensure sustainable livelihood to the citizens in the affected parts.

Furthermore, the NAGGW has launched its school club programme as part of the strategy to catch them young and encourage the planting of trees by school children to combat land degradation and desertification.<sup>304</sup>

### **3.7.3 Federal Ministry of Agriculture and Natural Resources**

The Federal Department of Forestry is under the Federal Ministry of Agriculture and Natural Resources which have the responsibility for taking care of all forestry matters including implementation of afforestation programmes and projects as a means of checking the menace of desert encroachment in the country. The Ministry co-ordinates annual Tree Planting Campaigns throughout the country and implements projects on afforestation, wood lot plantations, plant nursery, etc. as measures towards combating deforestation and desertification.<sup>305</sup>

The Forestry Management Coordinating Committee Unit (FORMECU) is one of the organs of the Department of Forestry in the Federal Ministry of Agriculture and Natural Resources. Its primary mandate is the co-ordination and monitoring of the implementation of Forestry Programme, which consists of afforestation, reforestation and desertification control projects. Also established, is the Afforestation Projects Coordinating Unit (APCU) with the mandate to implement afforestation projects in the

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<sup>303</sup> Abutu A. Column on Environment: Stakeholders Hail President assent on Greet Green Wall Bill, Daily Trust Newspaper, Abuja, (Wednesday 3<sup>rd</sup> June, 2015).

<sup>304</sup> Ibid.

<sup>305</sup> Federal republic of Nigeria Ministry of Environment Great Green Wall for the Sahara and Sahel initiative National strategic action plan October 2012, p. 22.

Sahel and the Guinea Savannah regions of the country with technical assistance from the World Bank and the African Development Bank (ADB).<sup>306</sup>

### **3.7.4 Federal Ministry of Water Resources and Rural Development**

The Federal Ministry of Water Resources and Rural Development is responsible for the management of water resources generally in the country. Since water is very crucial to the phenomenon of desertification, the Ministry in collaboration with other ministries and agencies embark on programmes and projects on conservation and management of marine, fresh water, and underground water resources.<sup>307</sup>

There are about 11 River Basin Development Authorities in Nigeria established by Law to capture, store and distribute water resources for irrigation, fishing and other agricultural purposes. For instance, the Sokoto/Rima and the Hadejia/Jama're River Basin Authorities located in the Sahel and semi-arid areas of the country, which are playing prominent roles in combating desertification especially through irrigation activities which are under the supervision of the Federal Ministry of Water Resources and Rural Development.<sup>308</sup>

### **3.7.5 State Institutions and Organs**

#### **3.7.5.1 States Departments of Forestry**

The primary institution that is charged with the responsibility for desertification control at the State level is the Department of Forestry in the State Ministry of Agriculture and

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<sup>306</sup> Federal republic of Nigeria Ministry of Environment Great Green Wall for the Sahara and Sahel initiative National strategic action plan October 2012, p. 22.

<sup>307</sup> National Water Policy Federal Republic of Nigeria July 2004, p.2.

<sup>308</sup> Ibid.

Natural Resources. The Department is primarily charged with the management of forest estates including the game and grazing reserves.<sup>309</sup>

### **3.7.5.2 State Environmental Protection Agencies (SEPA)**

In each of the States of Nigeria including the Federal Capital Territory, there is a State Environmental Protection Agency (SEPA) which is charged with the responsibility for the protection of the environment and biodiversity conservation. It also, co-ordinate the establishment, operation and activities of Environmental Conservation Clubs in Secondary schools and Tertiary institutions, which may include vigorous environmental awareness campaigns at the grass root level, tree planting programmes, environmental education, etc.<sup>310</sup>

Also under the Agency there is the Department of Drought and Desertification Amelioration which is responsible for the publication of the environmental issues on desertification as have been provided under the Public Awareness Master Plans prepared by each SEPA in the country.<sup>311</sup>

### **3.7.6. Research Centers**

#### **3.7.6.1 Centre for Arid Zone Studies (University of Maiduguri)**

The Centre for Arid Zone Studies (CAZS) was established to undertake studies and research on the problems prevalent in the Sahel and other semi-arid areas of the country and design remediation measures and mechanism to combat the problems. Two of such problems prominent in the affected ecological zones are drought and desertification. The

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<sup>309</sup> National Report on the Implementation of the United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (CCD), Submitted at the Third Session of the Conference of the Parties, Recife, Brazil, (November 1999), p. 19.

<sup>310</sup> Ibid.

<sup>311</sup> Ibid.

Centre, which is located in the University of Maiduguri, is located in the centre of the Sahel ecological zone of the country. The Centre has developed pilot programmes on combating desertification. Given adequate financial and technical assistance the Centre can substantially provide the required technical assistance to the various agencies and bodies involved in implementing programmes and projects on desertification control.<sup>312</sup>

### **3.7.6.2 Centers for Energy Research**

The Centers for Energy Research, supervised by the Energy Commission of Nigeria, are situated at the Usman Danfodio University Sokoto, Ahmadu Bello University Zaria and University of Nigeria, Nsukka.<sup>313</sup> These Centers have been conducting research into alternative sources of energy especially for industrial and domestic use.

The outcome of various researches from the Centers has indicated the possibility of using solar energy for electricity and domestic cooking. It is envisaged that this will serve as a panacea to the problem of over-exploitation of fuel wood for cooking especially by women in the rural areas of the country which will no doubt put less or minimal pressure on the forestry resources in the Sahel and semi-arid zones in the country and thereby allow natural processes to restore degraded land.<sup>314</sup>

### **3.7.7 Civil Society Organizations**

A number of civil society organizations including local and international NGOs have been involved in matters relating to desertification control especially on public awareness and environmental education, ecological restoration and habitat protection. Some of these

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<sup>312</sup> . National Report on the Implementation of the United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (CCD), Submitted at the Third Session of the Conference of the Parties, Recife, Brazil, (November 1999), p. 20.

<sup>313</sup> Ibid.

<sup>314</sup> Ibid.

organizations include Nigerian Environmental Study Action Team (NEST), Nigerian Conservation Foundation (NCF), Savannah Watch, Savannah Conservation, Farmers Unions, and Women Associations.<sup>315</sup>

### **3.8 Conclusion**

The protection of the environment is the key to achieving a healthy nation. In order to do this effectively, the Environmental laws/ legislations which relate primarily to the protection and regulation of the whole or part of the physical components of the environment has to be put in place in order to regulate the application of rules and procedures to achieve a measure of control over the activities of individuals and organizations. These regulations could only be effectively achieved through the use of the environment protection agencies which are the key to achieving a healthy nation and ensuring sustainable environment and also maintaining the ecological balance which is conducive to plants and animals alike.

In Nigeria, law/ Acts for the prevention and control of desertification has been established in order to have effective prevention and control which requires standards. Ultimately, these laws seek to address environmental problems and questions of pollution (noise, water, air, industrial etc), degradation and preservation of natural resources (like land, wild life, forestry, fishery; fauna and flora etc), institute safe standards in industrial activities, control and regulate food, refuse disposal and structures for maximum benefit to man and for sustainable development. So, in order to achieve effective environmental control which requires standards, the Federal Environmental Protection Agency Act was established pursuant to Decree No. 58 of 1988 and amended by Decree No 59 of 1992

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<sup>315</sup> National Report on the Implementation of the United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (CCD), Submitted at the Third Session of the Conference of the Parties, Recife, Brazil, (November 1999), p. 20.



and was further amended by Decree No. 14 of 1999 and has the overall responsibility for the protection and development of the environment and biodiversity conservation and sustainable development of Nigeria's natural resources in general, but in 2007 the Environmental Standards and Regulations Enforcement Agency (NESREA) Act repealed FEPA Act and has the responsibility for the protection and development of the environment, biodiversity conservation and sustainable development of Nigeria's natural resources in general.

On the issue of desertification, which is one of the environmental problem that causes land degradation, it is obvious from the above discussion that the problem of desertification has been tackled the best way it could In Nigeria but with little success despite all the National and State laws, institutions established and programs laid down to tackle the problem yet, there exists some inadequacies attached to some provisions of some Laws/ Acts such as the Land Use Act, Endangered Species (Control of International Trade and Traffic) Act, some Affected States Forestry Laws and Grazing reserve Laws. It is now obvious that the menace of desertification needs to be addressed in a holistic manner in order to ensure that the dry lands of the country continue to support human and natural resources.

## **CHAPTER FOUR**

### **THE LEGAL FRAMEWORK FOR THE PREVENTION AND CONTROL OF DESERTIFICATION IN SOME SELECTED COUNTRIES**

#### **4.1 Introduction**

This chapter discusses the legal framework for the prevention and control of desertification in some selected countries namely; Ghana, Sudan and Kenya. The chapter will be the basis for examining the legal framework for the prevention and control of desertification discussed under chapter three of this work with that of some of the selected countries listed above, to see whether Nigeria can learn from some of their legislations that have truly addressed the issue of desertification.

Globally, desertification has long been recognized as a major environmental problem with an adverse impact on the livelihoods of people in the affected areas of the world. The global concern about the issue of desertification led the United Nations to organize extensive studies and consultations at the global, regional and local levels involving scientists and experts from research and development institutions and other organizations from all over the world. These initiatives resulted in the organization of the United Nations Conference on Desertification (UNCOD) in 1977 in Nairobi, Kenya, with the objective of producing an effective, comprehensive and coordinated programme for addressing the problem of land degradation. The outcome of the UNCOD was a recommendation for the United Nations Plan of Action to Combat Desertification (PACD) the implementation of which was constrained by limited resources.<sup>316</sup>

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<sup>316</sup> Hunter, D. et al. *International Environmental Law and Policy*, Foundation Press, New York, ( 1998), p.1151.

Later assessments by United Nations Environmental Programme (UNEP), including that of the United Nations Commission for Sustainable Development (1988), endorsed desertification as the most serious environmental and socio-economic problem of the world resulting from the complex interactions of physical, biological, chemical, socio-economic and political factors of local, national and global dimensions. Out of the various assessments, UNEP produced a World Atlas of Desertification in 1992 identifying deforestation, overgrazing, over-cultivation and poor irrigation practices as major practices causing the degradation of dry lands with human and livestock pressures, inappropriate land use and agricultural practices, social conflicts and drought as the main influencing factors.<sup>317</sup>

A further indication was that the worsening conditions of degradation has affects over 250 million people directly with over one billion (more than 20% of the world's population) at risk. The continued advocacy on desertification and other environmental and developmental issues resulted in the UN Conference on Environment and Development (UNCED), i.e. the Earth Summit in 1992, held in Rio de Janeiro, Brazil.<sup>318</sup> The Summit provided a platform for addressing a number of global environmental concerns including climate change, biodiversity and deforestation. On the issue of desertification, the Rio Summit recommended the establishment of Intergovernmental Negotiating Committee (INCED) by the United Nations General Assembly to prepare a Convention to Combat Desertification in those countries experiencing serious drought and/or desertification, particularly in Africa. The Committee established in early 1993, held five preparatory sessions before adopting the Convention on 17th June, 1994 in

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<sup>317</sup> Hunter, D. et al. *International Environmental Law and Policy*, Foundation Press, New York, (1998), p.1151.

<sup>318</sup> Chasek, P. S. *The Convention to Combat Desertification: lessons learned for sustainable development*, *Journal of Environment & Development* 6.2 (1997), p.2.

Paris. The Convention entered into force with many countries most especially the developing countries ratifying the convention.<sup>319</sup>

Furthermore, the establishment of a global network of national, regional and international institutional and technical facilities for current operational assessment and continuous monitoring of desertification has been effectively debated in many environmental research forums. A pressing and constant need was felt to develop laws and legislative enactments to serve as an appropriate framework for the efforts made to combat desertification and achieve the objectives and requirements of sustainable development.<sup>320</sup>

#### **4.2 An Overview of the State of Ghana**

Ghana lies between latitudes 4o 44' and 11o 15' N and longitudes 3o 15' W and 1o 12' E with a land area of 238,539 km<sup>2</sup>. Administratively, the country is divided into ten regions and one hundred and ten Districts with Accra as the capital. Natural forest of Ghana is composed of two types, closed forest and Savanna forest. The closed forest is composed of the wet evergreen forest, moist evergreen forest, moist semi-deciduous forest and dry semi-deciduous forest. The Savanna forest is composed of the interior Savanna (Guinea Savanna), North-east Savanna (Sudan Savanna) and the Coastal Savanna. The Total area of forest is about 95,000 km<sup>2</sup> accounting for 40 % of the country.<sup>321</sup>

Experts have estimated that the forest has been decreased in an annual rate of 1.3% with desertification extending to over 83,500 km<sup>2</sup> accounting for 35 % of the land territory, mainly in the Upper East and eastern part of the Northern Region as the result of

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<sup>319</sup> Kyle, W. D. International Environmental Law and the "Bottom-up" Approach: A Review of the Desertification Convention, Indiana Journal of Global Legal Studies Volume 3, (1995) Issue 1 Article 9.

<sup>320</sup> Ibid.

<sup>321</sup> National Action Programme to Combat Drought and Desertification, Environmental Protection Agency Accra, Ghana, (April 2002) p.33.

deforestation. The main causes of the deforestation are stated to be as the result of forest clearance for agricultural development, excessive logging for fuel wood and timber export, bush fire and so on.<sup>322</sup>

For the prevention and control of desertification in Ghana, the Environmental Protection Council (EPC) set in motion an action plan to solicit international support to find a lasting solution to the problem. Ghana applied to the United Nations General Assembly to be included in the list of countries, which benefited from United Nations Sudano-Sahelian (UNSO) assistance in December 1983 to combat drought and the threat of desertification. The United Nations General Assembly passed resolution 39/68B (1983) accepting Ghana's application.<sup>323</sup>

In 1984, the Governing Council of United Nations Environmental Programme (UNEP) and the United Nations Development Programme (UNDP) added Ghana to the list of countries eligible to receive assistance through the United Nations Sudano-Sahelian office (UNSO) in combating desertification.<sup>324</sup>

The Environmental Protection Council (EPC) was charged with the responsibility of developing a national plan of action to combat effects of drought and desertification in line with the recommendations of the UNEP. With the support of UNSO, Ghana was able to prepare a National Plan of Action to Combat Desertification (NPACD) in 1987.<sup>325</sup>

At the Earth Summit of 1992 held in Rio de Janeiro, Brazil, it was recommended that an Inter-governmental Negotiating Committee be established by the UN General Assembly to prepare a convention to combat desertification for countries experiencing serious

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<sup>322</sup> National Action Programme to Combat Drought and Desertification, Environmental Protection Agency Accra, Ghana, (April 2002) p.33.

<sup>323</sup> Ibid .

<sup>324</sup> Ibid.

<sup>325</sup> Ibid.

drought and desertification particularly in Africa. The convention was adopted on 17<sup>th</sup> June 1994 in Paris and came into force on 26th December 1996. Ghana ratified the convention on 27th December 1996.<sup>326</sup>

As a signatory to the Convention, Ghana was obliged to prepare a National Action Programme to Combat Desertification and mitigate the effects of drought. Consequently the first National Plan of Action to Combat Desertification (NPACD) was prepared in 1987. The NPACD made several proposals but the emphasis was on assessment and monitoring of the country's natural resources and the drawing up of a National Environmental Action Plan (NEAP) to tackle the broader environmental issues of Ghana.<sup>327</sup>

Although some of the proposals have been implemented, it was felt that between 1987 and 2001, the circumstances have changed to warrant a revision and update of the 1987 NPACD to capture the current situation on the ground. This underscores the commissioning of a team of consultants of the Department of Crop Science, to undertake a study to recast the National Action Programme to Combat Desertification in the context of the current circumstances in Ghana.<sup>328</sup>

#### **4.2.1 Legal Framework for the Prevention and Control of Desertification in Ghana**

The legislation in Ghana relevant to the prevention and control of desertification will be highlighted below.

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<sup>326</sup> National Action Programme to Combat Drought and Desertification, Environmental Protection Agency Accra, Ghana, (April 2002) p.33.

<sup>327</sup> Ibid.

<sup>328</sup> Ibid.

#### **4.2.1.1 Constitution of the Republic of Ghana 1992**

Section 269 provides for the establishment, composition and functions of the present Forestry Commission and gives the President control over all mineral resources of Ghana, to be exercised on behalf of the people as a whole, amongst other important provisions.

#### **4.2.1.2 Environmental Protection Agency Act 1994 (Act 490)**

The Act amends and consolidates the law relating to environmental protection, pesticides control and regulation and for related purposes. The Act is divided in to two parts; part one deal with environmental protection while part two deals with pesticides control and management registration of pesticides. The Act is further divided in to sixty-two (62) sections.

The Act gave the Environmental Protection Agency the responsibility to; issue environmental permits and pollution abatement notices for controlling waste discharges, emissions, deposits or other sources of pollutants<sup>329</sup>; to collaborate or coordinate with foreign and international Agencies.<sup>330</sup>

The Act further states the function of the Agency to include among others; prescribing standards and guidelines relating to air, water, land and other forms of environmental pollutions including the discharge of waste and the control of toxic substance .<sup>331</sup> Also, the Agency working through environmental protection inspectors have the power to enter and inspect at any reasonable time premises for the purpose of ensuring compliance with environmental law.<sup>332</sup>

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<sup>329</sup> S. 2(f) Environmental Protection Agency Act 1994 (Act 490), Ghana.

<sup>330</sup> S. 2(e) Environmental Protection Agency Act 1994 (Act 490), Ghana.

<sup>331</sup> S. 2(h) Environmental Protection Agency Act 1994 (Act 490), Ghana.

<sup>332</sup> S. 15(1) Environmental Protection Agency Act 1994 (Act 490), Ghana.

Unlike the National Environmental Standard and Regulation Enforcement Agency Act which expressly makes the provision for the protection of land from desertification, Ghanaian's Environmental Protection Agency Act did not expressly make the provision for the protection of Land from desertification.

However, these sweeping powers of the Ghanaian's Environmental Protection Agency given by the Act, if taken together it means that the Environmental Protection Agency Act can impliedly control and prevent desertification through prescribing standards and guidelines relating to land in order to avoid land degradation and through collaborating or coordinating with foreign and international Agencies.<sup>333</sup>

#### **4.2.1.3 Administration of Lands Act of 1962 (Act 123)**

The Act gives the President power to acquire stool land that will be held in trust (in the public interest) and vests the management of all stool land revenue in the central government. The Act is divided in to thirty-two (32) Sections with Section 1 dealing with Management, Section 2 Proceedings Relating to Stool Lands, Section 3 Determination of Questions on Extent of a Traditional Area, Section 4 Declaration of Interest in Land, Section 5 Grant of Lease of Land in Kumasi, Section 6 Rent to be Charged, Section 7 Vesting of Land in President in Trust, Section 8 Disposal of Land, Section 9 Appeal Tribunal, Section 10 Use of Land for Public Purposes, Section 11 Disposition of Stool Lands, Section 12 Limitation Period for Mining Timber and Farming Rights, Section 13 Duty to Give Information, Section 14 Custody of Document Seal and Stamp, Section 15 Layout Plans, Section 16 Unlawful Occupation of Land Revenue, Section 17 Collection of Revenue, Section 18 Stool Land Accounts, Section 19 Payment of Local Authorities, Section 20 Payments to Traditional Authorities, Section 21 Scheme for Application of

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<sup>333</sup> S. 2(e) Environmental Protection Agency Act 1994 (Act 490), Ghana.



Stool Revenue, Section 22 Payment to be Made in Accordance With Scheme, Section 23 Capital Payments, Section 24 Delegation Of Functions, Section 25 Accounts, Section 26 Boundary Books, Section 27 Offences, Section 28 Expenses, Section 29 Regulations, Section 30 Transitional Provisions, Section 31 Interpretation and Section 32 Repeals And Savings.

On the issue of the prevention and control of desertification, the act unlike the Nigerian Land use Act, has expressly made the provision of limitation of periods for mining timber and farming rights in order to avoid land degradation.<sup>334</sup>

#### **4.2.1.4 Forestry Commission Act of 1999 (Act 453)**

The Act repeals the Forestry Commission Act of 1993 and establishes the present Forestry Commission of Ghana as a corporate body and as responsible for commissioning the main public bodies and agencies responsible for the protections, developments, managements and regulations of forests and wildlife resources.<sup>335</sup>

For the prevention and control of desertification, the Act has truly address the issue of desertification through empowering the commission to have the responsibility for regulating the use of Ghana's forest and timber resources, managing Ghana's forest reserves and protected areas, assisting the private sectors and other agencies in the implementation of forest and wild life policies, the development of forest, plantation, restoring degraded forests and expanding forest cover through afforestation.<sup>336</sup>

The effort of this Act is commendable as it has made some provisions for the restoration and expansion of forest through afforestation which is the cure to desertification, which are not provided in the Forestry Laws of the Affected States of Nigeria.

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<sup>334</sup> Section 12 Administration of Land Act 1962 (Act 123) Ghana.

<sup>335</sup> Section 1 Forestry Commission Act 1999 (Act 453) Ghana.

<sup>336</sup> Section 2 Forestry Commission Act 1999 (Act 453) Ghana.

#### **4.2.1.5 Control of Bush Fires Law of 1990(P.N.D.C.L. 229)**

The Law control the setting of bush fires by criminalizing the intentional, reckless, or negligent causing of such fires and holding the offender liable for all consequences of the fire. It is divided in to 15 Sections: Section 1 Prohibition of Bush Fire, Section 2 Meaning of Starting of Bushfire, Section 3 Burning within Conservation Areas, Section 4 Burning Outside Conservation Areas, Section 5 Bushfire Control Subcommittee, Section 6 Function of the Subcommittee, Section 7 Fire Volunteer Squad, Section 8 Control of Fire, Section 9 Prevention of Fire, Section 10 Training of Fire Squads, Section 11 Offences, Section 12 Duty to Report Bush Fire, Section 13 Regulations, Section 14 Interpretation and Section 15 Repeal.

The Law makes it unlawful for a person to start bush fire and a person starts bush fire if an action of that person results in the uncontrolled burning of a farm, forest or grassland.<sup>337</sup> The Law further prescribe the punishment for any person who contravenes or fail to comply with any of the provision of this Law to be liable on conviction to a fine of not less than two hundred and fifty penalty units and not more than one thousand penalty units or to a term of imprisonment or community labor not exceeding two years.<sup>338</sup>

This law has fully dealt with one of the major causes of deforestation (that is Bush burning) which causes desertification. Unlike The Bush burning Control Law of some affected states in Nigeria, this Law has made the provision for fire volunteer squared which shall be established in every town, area or unit and be trained by the National Fire

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<sup>337</sup> Section 1 and 2 Control of Bush Fires Law of 1990(P.N.D.C.L. 229) Ghana.

<sup>338</sup> Section 11 Control of Bush Fires Law of 1990(P.N.D.C.L. 229) Ghana.

Service.<sup>339</sup> Also, the Law has provided room for an organization for the clearing and weeding of road side bush fire hazards.<sup>340</sup>

#### **4.2.1.6 Environmental Assessment Regulation 1999**

The Act is divided in to Two (II) Parts with part I dealing with Environmental Permits and Part II dealing with Miscellaneous Provisions.

One of the objectives of Environmental Assessment Regulation is for the registration of any activity or project by the environmental assessment Agency before it commence.<sup>341</sup>

Among the types of projects covered by the provisions of this Act which are relevant to the prevention and control of desertification in Nigeria are; that of agricultural and forestry projects which are subject to mandatory environmental impact assessment and listed in the mandatory study list.<sup>342</sup>

From the above provision of the Regulation, it could be said that the aim of the Regulation on the issue of the prevention and control of desertification is to avoid embarking on indiscriminate activities such as uncontrolled clearing of forest, removal of top soil, indiscriminate bush burning and felling of trees that might propel desertification.

#### **4.3 An Overview of the State of Sudan**

Sudan is the largest country in Africa and an independent State since 1956 and has an estimated population of 26 million people with its ecological zones ranging from hyper-arid in the north to humid and sub-humid in the south. It is a country with variations in climate, ecological zones and ethnic structures. It have been estimated that almost 30 % of Sudan is classified as desert and approximately 25% of Sudan's agricultural land, was

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<sup>339</sup> Section 7 and 10 Control of Bush Fires Law of 1990(P.N.D.C.L. 229) Ghana.

<sup>340</sup> Section 9 Control of Bush Fires Law of 1990(P.N.D.C.L. 229) Ghana.

<sup>341</sup> Part I Environmental Assessment Regulation 1999 Ghana.

<sup>342</sup> See Environmental Assessment Regulation 1999 Ghana ,Schedule (Regulation 1 (1) and (4).

considered to be in risk of further desertification. Desertification is projected to continue to move southwards due to climate change (change in rainfall patterns) and human activities such as overgrazing, inappropriate agricultural practices and deforestation, causing an estimated 20% drop in food production.<sup>343</sup>

Evidence of climate change has been compelling in Sudan, therefore seen as an important factor that adds to existing stresses like malnutrition, water scarcity, soil erosion, and desertification. Also, reports has shows that overall rainfall has being increasingly scarce and unreliable in the Sahel belt of Sudan and average rainfall in Darfur has been reduced from 16-34 % comparing the period with 1976-2005. This trend is likely to continue and the risk of further severe droughts, floods, more frequent dust storms and desertification is high.<sup>344</sup>

Climate change projections reported in 2003 to the UN indicate rising temperature between 0.5 and 1.5 by 2030 and an approximated reduction of rainfall within the studied region (Northern and Southern Kordofan). The report further predicted that agricultural sector will witness severe decline in crop yields in the northern drier part of Kordofan and a smaller but still significant drop in crop yields in the south, as the result of the risk of lower productivity, together with the population pressure driving unsustainable rates of exploitations aggravating food insecurity. Other projections for Africa generally indicate similar outcomes where arid and semi arid parts are projected to suffer most.<sup>345</sup>

Furthermore, land degradation and deforestation have large negative impacts on food security and incomes of the rural population as in many cases women are made disproportionately worse off by environmental degradation. Increasing scarcity of fuel

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<sup>343</sup> Abdelhamid H. et al Nature and extent of environmental crime in Sudan published by the Institute for Security Studies, Pretoria, South Africa (2010), p. vi.

<sup>344</sup> Ibid.

<sup>345</sup> Ibid .

wood and water adds to the workload of women and has grave effects on the personal security of women.<sup>346</sup>

Report has show that rampant deforestation led to a loss of about 40 percent of Sudan's forests since independence and deforestation is ongoing, particularly around major towns.<sup>347</sup> Deforestation is mainly driven by energy needs and agricultural land clearance so it occurs as the rural population and large parts of the urban population depend on fuel wood and charcoal for energy use, which make up approximately 80% of the country's energy supply.<sup>348</sup>

The causes of deforestation in Sudan vary considerably from region to region, but the Key causes include: unsustainable extraction of fuel wood and charcoal in northern and central Sudan; Pressure from Internally Displaced Persons (IDP) camps all over the country (especially in Northern Darfur), mechanized agriculture which have resulted in large amount of woodland being cleared in central Sudan; and unsustainable agricultural land-use practices in Southern Sudan and Darfur.<sup>349</sup>

Despite the picture depicted above, Sudan has taken considerable steps regarding the issue of the land degradation. Sudan was one of the first countries to sign UNCCD and formed the National Unit for Coordination of programmes to mitigate the effects of drought and to combat desertification in the Ministry of Agriculture and Forests. In 1998, a National Action Plan (NAP) to combat desertification for 13 states classified as degraded was formulated.<sup>350</sup>

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<sup>346</sup> Abdelhamid H. et al Nature and extent of environmental crime in Sudan, published by the Institute for Security Studies, Pretoria, South Africa (2010), p. vi.

<sup>347</sup> Ibid.

<sup>348</sup> Ibid.

<sup>349</sup> Ibid.

<sup>350</sup> National Progress Report on the Implementation of the UNCCD in Sudan, Submitted to UNCCD Secretariat Bonn, Germany, (September 2004), p. 7.

The NAP involved and encourage the private sector's participation in different ways such as by levying taxes on licenses of agricultural schemes, sale of animals and markets of crops to generate funds to combat desertification. Also, the NAP did not ignore the linkages with sub-regional and regional action programmes (SRAPs and RAPs). In addition, the NAP also attempted to adopt policies that oblige the existing national social funds to contribute from their resources to efforts of desertification control.<sup>351</sup>

At the national level, a National Drought and Desertification Control Unit (NDDCU) has been established since 1979, named Desert Encroachment Control Programme Office (DECARP Office) which was designated as a focal point for UNCCD by a ministerial decree in 1994. Then within the ministry of Agriculture and Forestry (MOAF) as a national coordinating body (NCB). This NCB is attached to the Land Use Department giving it a lower status in the hierarchy of the Ministry of Agriculture.<sup>352</sup>

There are more than 20 institutions concerned directly or indirectly with issues of desertification control. A coordinating Council formed from different sectoral departments was established and chaired by the Secretary, under the Ministry of Agriculture. This coordinating council was supposed to ensure the participation of the various stakeholders and to supervise the implementation of UNCCD.<sup>353</sup>

In 2000, with the adoption of the Sudan's Environment Act, environmental Laws and regulations began to incorporate international standards and commitment which represents a great leap forward in the way towards harmonizing the different sectoral environmental laws.<sup>354</sup>

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<sup>351</sup> Ibid.

<sup>352</sup> Ibid.

<sup>353</sup> Ibid.

<sup>354</sup> National Progress Report on the Implementation of the UNCCD in Sudan, Submitted to UNCCD Secretariat Bonn, Germany, (September 2004), p. 12.

In 2002, Participatory efforts in afforestation activities were led by the Forests National Corporation (FNC) which organized tree planting campaigns in 2604 public buildings and areas. The above participatory program included several CBOs and NGOs and was implemented in more than 13 states. The FNC with sponsorship from United Nations High Commissioner for Refugees UNHCR was able to rehabilitate 4460 feddans of forest, which was destroyed by refugees in Kassala and Gedarif State. FNC has formed about 543 Gum Producers Association with the aim of improving their organizational and managerial skills in managing their tree resources and improve their skill in gum production and marketing. Management of gum gardens by local communities represents one effective means of combating desertification since the Acacia tree that produces the gum extends throughout the semi-arid zone in a form of a belt from eastern to western parts of the country. The gum belt also represents the first defense line in stopping the encroachment of moving sands southwards.<sup>355</sup>

Also, in 2002 the FNC succeeded in distributing a total of 86,697 stoves and gas cylinders in 16 States of Sudan as an alternative source of domestic energy. The FNC established what is called (Ghabat Gas) as a sustainable source for refilling the cylinders at affordable prices to address the issue of deforestation.<sup>356</sup>

Furthermore, women have been participating in the activities of several NGOs and have considerable contributions to activities related to the NAP process. The UNDP-ADS Committees included women members for most of their committee and also included several development activities for women. Women Communal Woodlots established

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<sup>355</sup> Ibid, p. 14.

<sup>356</sup> Ibid.

within the forestry extension program in the River Nile and Kassala States are good examples of women's participation in combating desertification.<sup>357</sup>

The private sector is not directly involved in the NAP related activities and programs, however, the private sector have been indirectly involved on the issue of land-use and Natural Resources-based conflicts resolution, in alternative energy provision of materials. For instance, The Acacia Company (previously known as Jandail) which has contributed to afforestation activities in Kordofan (50000 feddans) is one good example of the involvement of the private sector in the dry lands afforestation and dry lands management, hence, it adds to national efforts in combating desertification.<sup>358</sup>

#### **4.3.1 Legal Framework for the Prevention and Control of Desertification in Sudan**

There are many laws that deals with environmental protection in Sudan, but those for the prevention and control of desertification include among others Laws/ Acts dealing with land tenure, forestry, wildlife and environmental protection. These Laws/ Acts have the regulatory powers to control the use of land to prevent it from degradation and stipulate the penalties for their violations.

##### **4.3.1.1 Environmental Protection Act 2001**

The Environmental Protection Act of 2001 consists of 5 Chapters and is divided in to 27 Articles. The Act has the objective of protecting the environment for the realization of sustainable development, improving the environment and the sustainable exploitation of natural resources, creating a link between environmental and developmental issues, and

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<sup>357</sup> National Progress Report on the Implementation of the UNCCD in Sudan, Submitted to UNCCD Secretariat Bonn, Germany, (September 2004), p. 12.

<sup>358</sup> Ibid.



empowering concerned national authorities and organs to assume an effective role in environmental protection.<sup>359</sup>

For the prevention and control of desertification, Chapter III of the Act outlines the general policies and principles for the protection of the environment air, food, soil and vegetation cover from pollution and degradation and preservation of the flora and fauna from extinction as a result of illegal hunting or any other human threat.

Also, Articles 17 and 18 of the Act have summarized some guidelines for the protection of the environment. Article 17 calls on any individual who intends to implement any project that is likely to have a negative impact on the environment to present an Environmental Impact Assessment (EIA) for approval by the Monitoring and Evaluation Committee of the HCENR. Article 18 lists the duties of the competent authority in complying with the general environmental policies and directives to protect air, food, soil and vegetation cover from pollution and degradation and to preserve the flora and fauna from extinction as a result of illegal hunting or any other human threat.

#### **4.3.1.2 Forests and Renewable Natural Resources Act of 2002**

The Forests and Renewable Natural Resources Act of 2002 consist of seven Chapters and act divided in to 61 sections. The Act has the objective of encouraging the establishment of forests, range, introducing fodder crops and improved range in the agricultural cycle together with providing seedlings, improved seeds and technical advice to both private and public sector, facilitating trans-boundary grazing in collaboration with the relevant

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<sup>359</sup>Article 4 Sudan Environmental Protection Act 2001.

states and establishing the necessary regulations for opening routes, paths, fire lines and range lines including provision of services.<sup>360</sup>

The Act listed some acts to be prohibited in both the Reserved Areas and outside the Reserved Areas. Some of the acts that are prohibited in the reserved area include: Lighting, setting, bringing or keeping fire; the cutting of any forest crop, its collection, destruction, or transfer to the personal benefit or the act of undermining it by any way or means; grazing, entering or enabling cattle to enter such an area; Cultivating range lands or destroying them by unpermitted extra loads; Removing the fodder or grass without permission; Selling or transferring the property of land tenure for any purposes other than the original ones; Entering the reserves or staying inside them without a written permission.<sup>361</sup>

Some of the acts that are prohibited outside the reserved areas include: transporting any forest crop by any means of transport without obtaining the right permission from the competent authorities provided that this crop matches the specifications mentioned in the permission in terms of quality, quantity, date, the origin and destination of transport and any other element stated in that permission in accordance with the model specified in the regulations.<sup>362</sup>

Chapter Six of the Act made provision for penalties with regards to crimes relating to Prohibited Acts to be imprisoned for a period not less than one year and not exceeding five years and shall be fined at a ratio equaling double the value of the damage that happened as a result of his act or by both sentences.

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<sup>360</sup> Section 5 Forests and Renewable Natural Resources Act No 11, 2002 Legislative annex to the Sudan Gazette No. 1690.

<sup>361</sup> Section 37 Forests and Renewable Natural Resources Act No 11, 2002 Legislative annex to the Sudan Gazette No. 1690.

<sup>362</sup> Section 38 Forests and Renewable Natural Resources Act No 11, 2002 Legislative annex to the Sudan Gazette No. 1690.

The effort of this Act is commendable as it have addresses almost all the causes of deforestation which causes desertification and provided strict penalty with regards to crimes relating to prohibited acts.

#### **4.3.1.3 Southern Sudan Land Act 2009**

The main purpose of this Act is to regulate land tenure and protect rights in land in Southern Sudan and create an enabling environment for economic development in the land and natural resources sectors.<sup>363</sup>

Unlike the Nigerian Land Use Act, Chapter X of the Act made provisions for the Protection of pastoral lands in Southern Sudan which shall be delineated and protected by the appropriate level of land administration and management based on a comprehensive land use planning system, therefore, the Act tried to address the issue of desertification. Also, in the same chapter, the Act took in to consideration the Customs and practices related to land used by pastoral communities.

Furthermore, the Act made provisions or the protection of Communal Grazing Land from any form of obstruction that will obstruct the approaches to any water point in the communal grazing land or to other appurtenances installed or constructed at such a watering place; or from carrying out any activity on the communal grazing land which may prevent or restrict the residents of the traditional communities concerned from exercising their grazing rights.<sup>364</sup> The Act further made provisions for Penalties to any person who contravenes the provisions of chapter X to be convicted and be guilty of an

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<sup>363</sup> Section 3 Southern Sudan Land Act 2009.

<sup>364</sup> Section 67 Southern Sudan Land Act 2009.

offence and shall be liable to imprisonment for a term not exceeding two years or with fine or both.<sup>365</sup>

#### **4.4 An Overview of the State of Kenya**

Kenya is a developing country whose population is still largely rural with only 25% living in urban areas. According to the 1999 population census report, Kenya's population was about 28.4 million people, and is projected to reach 37.5 million by the year 2010. About 60% of the population is below the age of 20 years. About 70% of Kenya's population live in the 12% of the total land area, which is classified as being of medium to high potential. The remaining 30% of the population live in the dry lands, a zone which accounts for 88% of the total land area. The high potential areas (e.g., central highlands, western Kenya, parts of the rift valley) are characterized by high population density of about 300 people per km<sup>2</sup> or more, while the dry lands are sparsely populated with as low as 3 people per km<sup>2</sup>. The high potential areas enjoy a high rainfall regime with fairly even distribution and are therefore areas of high productivity in terms of agriculture and livestock production. The main source of livelihood for the majority of Kenyans is agriculture, livestock, fishing and forestry. In addition, tourism is Kenya's greatest foreign exchange earner, and one of the largest employers. However, the new goal towards industrialization by the year 2020 is expected to increase employment in the industrial sector.

According to the 1998 published information by the Ministry of Finance and Planning, over 65% of the population in dry lands lives below the poverty line. Poverty prevalence has the highest number in North Eastern and Eastern provinces, while gross enrolment rate in schools in these provinces was much lower than in other areas of the country.

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<sup>365</sup> Section 68 Southern Sudan Land Act 2009.

Additionally, about 75% of Kenyan households are male headed, while the rest are female headed.<sup>366</sup>

The dry lands on average receive an annual rainfall of between 250mm and 1000mm. The rains are typically of short duration, but of high intensity and therefore highly erosive. The main challenge in developing dry lands is how to increase availability and access to information and technology for the development and management of natural resources. The other major limitation is inadequate government policy for developing dry lands, a zone that constitutes about 88 % of the country and supports about two-thirds of the entire livestock population.<sup>367</sup>

Desertification is intensifying and spreading in Kenya, threatening millions of inhabitants and severely reducing productivity of the land. The droughts of 1970-2000 have accelerated soil degradation and reduced per-capita food production. According to the United Nations Environment Programme (UNEP) much of the problem is due to a growing imbalance between population, resources, development and environment. So in Kenya, activities to combat desertification and mitigate the effects of drought have been carried out since 1940s. The implementation of the Convention to Combat Desertification must therefore take into account this historical background and take cognizance of the lessons learnt.<sup>368</sup>

#### **4.4.1 Legal Framework for the Prevention and Control of Desertification in Kenya**

Prior to late 1999, Kenyan's laws on the environment, issues on desertification and drought were sectoral in approach. However, The Environmental Management and

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<sup>366</sup> National Action Programme a Framework for Combating Desertification in Kenya, In the Context of the United Nations Convention to Combat Desertification, National Environment Secretariat, Nairobi, Kenya, p.4.

<sup>367</sup> Ibid.

<sup>368</sup> Ibid.

Coordination Act No. 8 of 1999 has harmonized the hitherto sectoral laws and has addressed the required policy, legal and institutional framework to manage the environment including actions to combat desertification and mitigate the effects of drought. The laws on environment before the late 1999 include among others: Water Act Cap 372, 2008, which provide for the management, conservation use and control of Water resources and the acquisition and regulation of rights to use water supply and sewerage services; Forest Act No7 of 2005 which provide for the establishment, develop, and sustainable management including conservation and rational utilization of forest resources for the socio-economic development of the country; Agricultural Act Cap 318 which provide a legal frame work in support of a stable Agricultural section through developing agric land in accordance with accepted practices of good land management and crop husbandry; Wild Life Conservation and Management Act, Cap.376 of 1976 which provide for the conservation and management of wild life in Kenya and related matters.<sup>369</sup>

#### **4.4.1.1 The Environmental Management and Coordination Act No. 8 of 1999**

The Act was enacted to provided a framework for environmental legislation so as to established an appropriate legal and institutional framework for the management of the environment and improve the diverse sectorial initiatives in order to improved the national capacity for the management of the environment, since the environment constituted the foundation of national, economic, social, cultural and spiritual advancement.<sup>370</sup>

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<sup>369</sup> National Action Programme a Framework for Combating Desertification in Kenya, In the Context of the United Nations Convention to Combat Desertification, National Environment Secretariat, Nairobi, Kenya, p.4.

<sup>370</sup> See the Environmental Management and Coordination Act No. 8 LFK, 1999.

The Act consists of one hundred and forty three (143) sections divided into fourteen (xiv) parts. Part I deals with the preliminary, Part II General Principles, Part III Administration, Part IV Environmental Planning, Part V Protection And Conservation Of The Environment, Part VI Environment Impact Assessment, Part VII Environment Restoration Orders, Part VIII Environmental Conservation And Easements, IX Inspection, Analysis And Records, Part X Inspection, Analysis And Records, Part XI International Treaties, Conventions And Agreements, Part XII National Environmental Tribunal, Part XIII Environmental Offences, and Part XIV Regulations.

Section 3 of the Act defines the general principles of environmental protection, and section 7 established the National Environmental Management Authority as a body corporate, with the power to exercise general supervision and coordination over all matters relating to the environment and to be the principal instrument of government in the implementation of all policies relating to the environment.

For the prevention and control of desertification, the Act makes some provisions for: reforestation and management of hill tops, hill slopes and mountainous areas<sup>371</sup>; protection of forest<sup>372</sup> and conservation of energy and planting of trees or wood lots.<sup>373</sup> The Act makes the provision of penalty to any person who contravenes any measures prescribed by the authority or who fails to comply with a lawful direction, issues by a district environment committee under the act shall be liable upon conviction to imprisonment for a term not more than eighteen months or to a fine of not more than three hundred and fifty thousand shillings or to both such fine and imprisonment.<sup>374</sup>

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<sup>371</sup> S.46 and S.47 Environmental Management and Coordination Act No. 8 LFK, 1999.

<sup>372</sup> S.48 Environmental Management and Coordination Act No. 8 LFK, 1999.

<sup>373</sup> S.49 Environmental Management and Coordination Act No. 8 LFK, 1999.

<sup>374</sup> S. 47(4) and S.144 Environmental Management and Coordination Act No. 8 LFK, 1999.

The Act further make provision for an environmental restoration order to restore land including the replanting of trees and other flora and the restoration as far as may be of outstanding geological, archaeological or historical features of the land or the area contiguous to land or sea as may be specifies in the particular order.<sup>375</sup>

One unique feature of this Act that makes it different from other Acts is its provision for the establishment of the National Environment tribunal which shall make an award, give direction, make orders or make decisions upon an appeal made to it in writing by any party, or a referral made to it by the authority on any matter relating to the Act.<sup>376</sup>

#### **4.5 International Best Practice on the Prevention and Control of Desertification**

For more than twenty years, the United Nations Environment Programme (UNEP) has been actively involved in worldwide efforts to combat dry land degradation. Although desertification still remains a major environmental problem impeding dry land development, there are also many projects and community based initiatives which have successfully addressed these problems. The UNEP initiatives which have success stories in dry land degradation and desertification control is facilitating learning and sharing and promoting replication of best practices on dry land management and control.<sup>377</sup>

The main criteria for success story requires are that there must be some activities that directly and substantially contribute to the prevention of dry land degradation or to reclamation of degraded land, using appropriate resources in a cost-effective manner and also some activities addressing not only the biophysical but also the socio-cultural economic issues in all its developmental stages thus, ensuring long term sustainability.

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<sup>375</sup> S. 108(4) (b) Environmental Management and Coordination Act No. 8 LFK, 1999.

<sup>376</sup> S.125 – S. 129 Environmental Management and Coordination Act No. 8 LFK, 1999.

<sup>377</sup> Success stories in land degradation/desertification control Available at: [www.secheresse.info/spip.php?article](http://www.secheresse.info/spip.php?article) Last visited on 4/09/2015.



The United Nations Environment Programme (UNEP) therefore seeks above all to raise global awareness that land degradation in the dry lands can be both prevented and corrected.<sup>378</sup>

A number of best practices to combat desertification has emerged from different parts of the world which range from a combination of both traditional and modern rangeland management practices to planting of drought resistance grasses such as vetiver grass, the use of which has the potential to enhance the resilience of dry land environments by rehabilitating them to cultivate pasture from which they are earning livelihood.<sup>379</sup>

Also United Nations Development Programme (UNDP 1999), carefully reviewed claims of best practice in combating desertification and identified bonafide success stories in dry lands of Burkina Faso, Cape Venda, Mauritania, Namibia, Nigeria, Senegal and Sudan. Success comes from a combination of individual and community initiative, ingenuity and innovation supported by research and development assistance. In many cases the progress was (and is being) achieved in the face of the daunting challenges such as climatic risks and policies that discriminate against the agricultural sector. Success stories span the fields of soil and water conservation, irrigation, forestry, livestock and range management, community-based natural resources management, extension and research and local institution building. The fruits of success include long-term increases in productivity, increase in per-capital income, increase drought resilience of rural production systems and the conservation of biodiversity.<sup>380</sup>

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<sup>378</sup> Success stories in land degradation/desertification control Available at: [www.secheresse.info/spip.php?article](http://www.secheresse.info/spip.php?article) Last visited on 4/09/2015.

<sup>379</sup> Ibid.

<sup>380</sup> Oasis: Dry Land Success Stories Available at: [www.oasisglobal.net/successes.htm](http://www.oasisglobal.net/successes.htm) Last visited on 4/09/2015.

#### **4.6 Conclusion**

The problem of desertification is one of the major environmental concerns of the world today therefore, it have to be prevented and controlled by eliminating the causative factors of deforestation which is one of the major human induced factor of desertification. This, elimination could be done through providing a legal framework so as to maintain or reconstruct the ecosystem functions and services for human beings, redevelop social productivity, and finally attain a sustainable socio-economic development.

Having examined the legal frame work for the prevention of desertification in the selected countries of Ghana, Sudan, Kenya, it can be concluded that first of all; Nigeria have made some Laws/ Acts for the Prevention of desertification even though, some of these Laws/ Act have not adequately addressed the issue of desertification. One of the example of such Laws/ Acts with such inadequacy is the Nigerian Land Use Act which unlike some of the Land Act/Laws of some of the selected countries discussed above such as Sudan, which have provided some provisions relating to some issues that causes land degradation (such as protection of pastoral land), the Nigerian Land Use Act does not expressly have any provision provided for the protection, control and prevention of any form of land degradation.

Another, inadequacy is with regard to some Nigerian affected States Forestry Law which provides paltry sum or amount of money as fine for any offence committed in the reserved and protected forest thereby resulting into large scale deforestation. For effective control of deforestation, Nigeria should amend the Forestry Law of those affected States to have strict penalty for those who have contravene the provision of the Law. Also, the Nigerian Bush Burning Control law of the affected States should be amended to provide

provisions for fire volunteer squad just like that of the Control and Preventions of Bush Fires Act of Ghana which have provided such provision.

Furthermore, The Nigerian National Environmental Standard and Regulation Enforcement Agency (NESREA) Act is an example of some of the Acts that have truly addressed the issue of desertification. Like most of the Environmental protection Laws/ Acts of some selected states, NESREA Act also has the power to enforce compliance with the provisions of international agreements, protocols, conventions and treaties on the environment, including climate change, biodiversity, conservation, desertification, forestry and such other agreements as may from time to time come into force.

Secondly, there is no doubt that the Laws/Acts for the prevention and control of desertification of some of the selected countries including that of Nigeria are sectoral in nature reflecting the structure of government, institution, and departments, therefore, they are in a fragmented and uncoordinated manner and are unable to truly address the required legal and institutional frame work to manage the environment including actions to prevent and control desertification.

Finally, such countries (including Nigeria) whose Laws/Acts which are sectoral in nature should enacted a Law that will provided a framework for environmental legislation just like the Kenyan's unique Environmental Management and Coordination Act, which has established an appropriate legal and institutional framework for the management of the environment and improve the diverse sectorial initiatives in order to improved the national capacity for the management of the environment, since the environment constituted the foundation of national, economic, social, cultural and spiritual advancement.

## **CHAPTER FIVE**

### **COMPARATIVE ANALYSES ON THE LAWS FOR THE PREVENTION AND CONTROL OF DESERTIFICATION**

#### **5.1 Introduction**

In this chapter, the Nigerian Laws for the prevention and control of desertification discussed in Chapter Three of this work and that of some selected countries discussed in Chapter Four of this work is analyzed to see whether or not such Laws/ Acts have incorporated or recognized such principles borrowed from other areas or subjects of Law discussed in Chapter Two of this work. The principles are employed to determine whether the laws recognize or incorporate these principles for the creation of a robust legal regime. A comparative analysis is also made between the key environmental legislation regulating Land Use in Nigeria ( Land Use Act) discussed under chapter Three of this work and that of some selected countries discussed under Chapter Four of this work to see whether or not these legislation have truly address the issue of desertification. Following the increase in global population, which has cumulated some human activities leading to, deforestation, bush burning, pollutions, non-protection of biodiversity and other environmental degradation issues, which goes to show that protecting the environment means more than preventing pollutions and afforestation of deforest lands, but also about ensuring that there are set Laws regulating such environmental pollutions and degradation issues in which way such human activities which causes environmental pollutions and degradations can be prevented and controlled.

As one surveys the laws of some countries of the world that have made environmental protection a political priority, there is considerable uniformity in the objectives, policy

instruments and some basic legal principles. Environmental lawyers speak a universal legal, scientific and ethical language. The reason is simple; the institutional problems that give rise to environmental degradation, pollution and the loss of biodiversity are basically similar throughout the world.<sup>381</sup>

## **5.2 Comparative Analysis on the Principles Borrowed from other Subjects of Law and Desertification Legislation**

As established in Chapter Two of this work that the issue of desertification is one of the issues covered under environmental Law has borrowed some principles from Law of Tort, Equity and Criminal Law which relate directly or indirectly to the prevention and control of deforestation and encourage afforestation, below, this research work will analyze the Laws/ Acts for the prevention and control of desertification discussed under Chapter Three and Four of this work and see whether or not the Laws/ Acts have recognized such principles borrowed from the various disciplines of Law listed above.

### **5.2.1 Public Nuisance**

A public nuisance is committed where a person carries on some harmful activities which affected the general public or a section of the public, so it is defined as an unreasonable interference with a right common to the general public, such as a condition dangerous to health, offensive to community moral standards, or unlawfully obstructing the public in the free use of public property.<sup>382</sup>

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<sup>381</sup> Tarlock A. D. History of Environmental Law Available at [www.eolss.net/Eolss-sampleAllChapter.aspx](http://www.eolss.net/Eolss-sampleAllChapter.aspx) last visited on 24/07/2014.

<sup>382</sup> Black's Law Dictionary, 8th Edition, West Publishing co., United State of America, (1999), p. 1097.

Public nuisance is basically a crime actionable by the Attorney General.<sup>383</sup> However, public nuisance is a tort actionable by an individual plaintiff only where the plaintiff can show that the defendants conduct has caused him “particular damage” over and above that suffered by the general public.<sup>384</sup>

The principle for establishing the offence of public nuisance under criminal law is based on the commission of an act (not warranted by law) or an illegal omission by a person which causes any common injury, danger, or annoyance to the public or to the people in general who dwell or occupy property in the vicinity or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.<sup>385</sup>

Since deforestation is caused by high demand for fuel wood, overgrazing by the Fulani cattle’s and bush burning by hunters in search of games, causing desertification, which affects the nations arable land and poses serious threat to food production<sup>386</sup> therefore, it can be reasonably asserted that the principle for establishing public nuisance has recognized similar principles provided under the Nigerian Forestry Law of the affected states. The Law has prohibited the unlawfully taking of any forest produce, uprooting, burning or otherwise damage any tree, setting fire to any grass or herbage in any part of the reserved forest.<sup>387</sup> This prohibited acts when committed causes deforestation,

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<sup>383</sup> S. 198 Penal Code (Northern States) Cap. P3 L.F.N. 2004 and S.234 Criminal Code Act Cap. C38 L.F.N. 2004.

<sup>384</sup> *Amos v. Shell –B.P. (Nigeria) Ltd* (1974) 4 E.C.S.L.R. 486 at p.488; *Oyidiobu v. Okechukwu* (1972) 5 S.C. 191 at p. 198; *Akinyede v. Pitan* (1973) 7 CCHCJ 52 at p.56.

<sup>385</sup> S. 183(1) Penal Code (Northern States) Cap. P.3 L.F.N. (2004); S. 234 Criminal Code Act Cap. C38 L.F.N. (2004).

<sup>386</sup> Nkonya, E. Et al. *The Economics of Desertification, Land Degradation, and Drought Toward an Integrated Global Assessment*, IFPRI Discussion Paper 01086 May 2011 Available at <http://www.ifpri.org/publications/results/taxonomy%3A468>. Last visited on 14/04/2013.

<sup>387</sup> See Section 50 Forestry Law, Cap. 48 K.S.L.N. 1991; Section 50 Forestry Law, Cap.52 K.T.S.L.N. 1991 and Section 38 Forestry Law, Cap. 48 J.S.L.N. 1998.

therefore causing desertification which causes common injury to the public since desertification poses serious threat to food production.<sup>388</sup>

Similarly, the Sudan's Forests and Renewable Natural Resources Act of 2002, prohibited Some acts which when committed will cause common injury, and danger, or annoyance to the public both in the reserved and unreserved areas such acts include: Lighting, setting, bringing or keeping fire; the cutting of any forest crop, its collection, destruction, or transfer to the personal benefit or the act of undermining it by any way or means; grazing, entering or enabling cattle to enter such an area; Cultivating range lands or destroying them by unpermitted extra loads; Removing the fodder or grass without permission; Selling or transferring the property of land tenure for any purposes other than the original ones; Entering the reserves or staying inside them without a written permission.<sup>389</sup>

Also, in Ghana, the Control of Bush Fires Law has recognized the principle established under public nuisance. The Law has prohibited a person to start bush fire and a person starts bush fire if his action results in the uncontrolled burning of a farm, forest or grassland<sup>390</sup> therefore, causing common injury, and danger, to the public. It should be noted that no such provision is provided under the Kenya's Environmental Management and Coordination Act<sup>391</sup>.

Although the tort of public nuisance also falls under civil law, and civil law has the objective to prohibit a person from doing wrong to another person not to the public at large, still the principle established under public nuisance is relevant to the issue of

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<sup>388</sup> Olori T. 'Desertification Threatens Economy, Food Security'. Available at <http://ipsnews.net/press.shtml>. Last visited on 12/3/2013.

<sup>389</sup> Section 37 Forests and Renewable Natural Resources Act No 11, 2002 Legislative annex to the Sudan Gazette No. 1690.

<sup>390</sup> Section 1 and 2 Control of Bush Fires Law of 1990(P.N.D.C.L. 229) Ghana.

<sup>391</sup> Environmental Management and Coordination Act No. 8 of 1999 Kenya.

desertification as it helps an individual plaintiff to institute an action where he can show that the defendants act which causes deforestation (such as illegal hunting or bush burning which results in to damaging any part or whole of his land) has caused him particular damage over and above that suffered by the general public. So it can be reasonably asserted that the tort of public nuisance helps to remedy an individual plaintiff who has suffered any other human threat that causes deforestation over and above suffered by the general public.

Public nuisance is a tort actionable by an individual plaintiff only where the latter can show that the defendant's conduct has caused him "particular damage" over and above that suffered by the general public.<sup>392</sup> The classical rule which has been cited with approval in several cases in the Nigerian jurisprudence is the case of *Vanderpant v. Mayfair Hotel Co. Ltd.*<sup>393</sup> Where Luxmoore J. said:

Every person is entitled as against his neighbor to the comfortable and healthy enjoyment of the premises occupied by him, and in deciding whether, in any particular case, his right has been interfered with and a nuisance thereby caused, it is necessary to determine, whether the act complained of is an inconvenience materially interfering with the ordinary physical discomfort of human existence, not merely according to elegant or dainty modes and habits of living, but according to plain and sober and simple notions obtaining among English people.

From the above cited rule, it should be noted that for any action on public nuisance it is necessary to determine, one: that the plaintiff can only bring an action where he can show that the defendant's conduct has caused him "particular damage" over and above that suffered by the general public. Two: whether the act complained of is an inconvenience materially interfering with the ordinary physical discomfort of human existence.

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<sup>392</sup> *Amos v. Shell –B.P. (Nigeria) Ltd* (1974) 4 E.C.S.L.R. 486 at p.488; *Oyidiobu v. Okechukwu* (1972) 5 S.C. 191 at p. 198; *Akinyede v. Pitan* (1973) 7 CCHCJ 52 at p.56.

<sup>393</sup> (1930) Ch. 138.



The Sudan's Environmental Protection Act<sup>394</sup> has expressly recognized some principles similar with that of the rule cited under the case of *Vanderpant v. Mayfair Hotel Co. Ltd.*<sup>395</sup> The Act provide for the protection of the environment air, food, soil and vegetation cover from pollution and degradation and preservation of the flora and fauna from extinction as a result of illegal hunting or any other human threat. Illegal hunting or any other human threat such as bush burning or cutting down of trees, are some of the major causes of desertification, therefore causes some inconvenience materially interfering with the ordinary physical discomfort of human existence, so where an individual plaintiff can show that such illegal hunting or any other human threat has caused him particular damage over and above that suffered by the general public, such action can be actionable under public nuisance.

It is noteworthy to mention that unlike the Sudan's Environmental Protection Act, the National Environmental Standard and Regulation Enforcement Agency Act (NESREA), The Kenyan's Environmental Management and Coordination Act and Ghana's Forestry Commission Act have not recognized some of these principles established under Public nuisance.

### **5.2.2 Equitable Principle of Waste**

Waste is the positive and wanton acts of destruction to land or buildings, such as the cutting of trees, the pulling down of buildings, or the opening of mines and waste could be voluntary, equitable or ameliorating.<sup>396</sup> 'Voluntary Waste' is any positive act which alters the land to its detriment, such as felling timber trees, or opening and working a new

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<sup>394</sup>See Chapter III of the Sudan's Environmental Protection Act 2001.

<sup>395</sup>(1930) Ch. 138.

<sup>396</sup>Kodilinye G. *An Introduction To Equity In Nigeria*, Spectrum Books Limited Ibadan, Nigeria, (2007), p. 191.

mine.<sup>397</sup> 'Equitable Waste' is a special kind of voluntary waste and consist of acts of wanton destruction, such as pulling down or defacing the mansion house or felling trees which have been planted for shelter or ornament.<sup>398</sup> 'Permissive waste' is allowing the land to deteriorate for want of attention example failure to maintain buildings in repair.<sup>399</sup> Although waste applies to an individual plaintiff, not to the public at large, and desertification causes serious threat to the general public, the concept of waste is still relevant and could be applied under the issue of desertification since deforestation (which is one of the major cause of desertification) is caused by any human activities which alters the land to its detriment (such as falling of trees either for fuel woods or for making enclosures or buildings) therefore, an individual plaintiff who has an interest in such deforest land can institute an action against the defendant.

The general rule about waste is that an injunction may be granted to restrain voluntary, including equitable waste but not to restrain permissive waste thus, the High Court Laws of the various States Provide as follows:

If, whether before, or at or after the hearing of any cause or matter, an application is made for an injunction to prevent any threatened or apprehended waste or trespass, the injunction may be granted, if the court thinks fit, whether the person against whom the injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any color of title, and whether the estate claimed by both or by either of the parties are legal or equitable.<sup>400</sup>

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<sup>397</sup> Doctrine of waste- property and land law Available at: [www.jamwsorlaw.co.uk/.../doctrineofequity](http://www.jamwsorlaw.co.uk/.../doctrineofequity) Last visited on 20/10/2014.

<sup>398</sup> Ibid.

<sup>399</sup> Ibid.

<sup>400</sup> S.19 (3) High Court Law, Cap. 80, Laws of Lagos State (1958 ); S.25 (3) High Court Law, Cap. 61, Laws of Eastern Nigeria (1963); S.19 (3) High Court Law, Cap. 49, Laws of northern Nigeria (1963); S.20 (3) High Court Law, Cap. 44, Laws of Western Nigeria (1959).

From the above cited rule, it can be reasonably asserted that the principles established under waste serves as protective measure to an individual plaintiff rather than remedial, this is because an injunction is granted to restrain a party to the suit from causing lasting damage to the land or altering the nature of the property in dispute. It should be noted that, the major applications under this provision are interlocutory ones and the main purpose is to prevent a party to a dispute over land from destroying or altering the property pending determination of the rights of the parties.<sup>401</sup>

Similarly, The Nigerian Environmental Impact Assessment Act which helps to determine the possible environmental effects of the proposed project before the projects is commissioned, and among the types of projects covered by the provisions of this Act which are relevant to the prevention and control of desertification in Nigeria are; agricultural, drainage, irrigation and forestry projects,<sup>402</sup> have recognized the principles under waste (which provides that the court may grant an injunction to restrain a party to the suit from wasting damaging or alienating the land in dispute). The Act also provided that in respect of a project which has been, is about to be or is likely to be contravened, the court may issue an injunction ordering any person mentioned to refrain from doing any act or thing that would commit the proponent to ensure that the project or any part thereof is carried out until the assessment of the environmental effects of the project is completed.<sup>403</sup> Therefore, the court may order an injunction to restrain the defendants from converting certain disputed land which was a forest in to any other site even if it might increase the value of the land as it will amount to waste (which means the acts of wanton

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<sup>401</sup> S.19 (3) High Court Law, Cap. 80, Laws of Lagos State (1958 ); S.25 (3) High Court Law, Cap. 61, Laws of Eastern Nigeria (1963); S.19 (3) High Court Law, Cap. 49, Laws of northern Nigeria (1963); S.20 (3) High Court Law, Cap. 44, Laws of Western Nigeria (1959).

<sup>402</sup> See Schedule (section 12) Mandatory Study activities Environmental Impact Assessment Act Cap.E12 L.F.N. 2004.

<sup>403</sup> Section 52(1)(a) Environmental Impact Assessment Act Cap.E12 L.F.N. 2004.

destruction, such as pulling down or defacing the mansion house or felling trees which have been planted for shelter or ornament).<sup>404</sup>

The case of *Ogbonna Ede v. Egle Ltd*<sup>405</sup>, has fully explained the principle of waste. In the case, plaintiff was granted an interlocutory injunction to restrain the defendants from converting certain disputed land which was agricultural in to an industrial site. Agbakoba J. held that waste as defined in Order 21, rule 1 of the High Court Rules of the Eastern States (which provides that the court may grant an injunction to restrain a party to the suit from wasting damaging or alienating the land in dispute), means voluntary waste, which consist of any act which does lasting damage to the land or which alters the nature of the property. It was immaterial that the acts complained of might increase the value of the land.

However, in Sudan, the issue of Environmental Impact Assessment was coordinated under the Sudan's Environmental Protection Act which calls on any individual who intends to implement any project that is likely to have a negative impact on the environment to present an Environmental Impact Assessment (EIA) for approval by the Monitoring and Evaluation Committee of the Higher Council for Environment and Natural Resources (HCENR).<sup>406</sup> The Act does not further make any provision which have recognized the concept of waste. Similarly, in Kenya, the issue of Environmental Impact Assessment was coordinated under Environmental Management and Coordination Act<sup>407</sup>, which make provisions with regard to the procedures for an environmental impact

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<sup>404</sup>Section 52(1)(a) Environmental Impact Assessment Act Cap.E12 L.F.N. 2004.

<sup>405</sup>(1971) 1 E.C.S.L.R. 64.

<sup>406</sup>Article 17 Sudan Environmental Protection Act 2001.

<sup>407</sup>Environmental Management and Coordination Act No. 8 of 1999 Kenya.

assessment license, so the Act does not further make any provision which have recognized the concept of waste.

In Ghana, the Environmental Assessment Regulation concentrated on the issue of registration of any activity or project by the environmental assessment Agency before it commence<sup>408</sup>, therefore does not recognized such principles under the concept of waste.

### **5.2.3 Criminal Mischief**

As discussed under Chapter Two of this work, the offence of Mischief<sup>409</sup> is one of the offences affecting property and has been defined as injury or damage caused by a specific person or thing or the act causing such injury or damage<sup>410</sup>. The principles establishing the offence of mischief is based on one; the accused intention to cause or knew that he was likely to cause wrongful loss or damage to the public or to any person. Two; the accused caused destruction of the property or such change there in or in the situation there as has destroyed or diminished its value or utility or affected it injuriously.<sup>411</sup>

Intention or knowledge are matter of facts which must be proved. Intention is normally presumed from the resultant effect as a person is presumed to intend the natural consequences of his act.<sup>412</sup> On the other hand “knowledge” of the likelihood to cause wrongful loss or damage may be a subjective test as it refers to the knowledge of the accused.<sup>413</sup>

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<sup>408</sup> Part I Environmental Assessment Regulation 1999 Ghana.

<sup>409</sup> While the Criminal Code treats it as the offence of setting fire to crops and growing plants in section 445 of the Criminal Code, and Malicious damage Under Section 451 Criminal Code; the penal code treats it as the offence of mischief under Section 326.

<sup>410</sup> Black's Law Dictionary, 8th Edition, West Publishing co., United State of America, (1999), p. 1019.

<sup>411</sup> S. 326 Penal Code (Northern States) Cap. P.3 L.F.N. (2004).

<sup>412</sup> Chukkol K. S. The Law of Crimes in Nigeria, A. B.U. Press Ltd., Zaria, Nigeria, (1988), p 225.

<sup>413</sup> Ibid.

With regard to the second principle establishing the offence of mischief that is; causing destruction of property or such change there in the situation that it has destroyed or diminished the value or utility of the property or affected it injuriously, an accused person cannot be convicted of mischief unless he is proved in addition with the necessary intention or knowledge discussed above. Mere proof of destruction or change in the property or its situation will not per se warrant a conviction without strictly proving the intent or knowledge or likelihood to cause destruction or change in the property.

Under the Criminal Code, Adefarasin C. J. (Lagos State) in the case of Michael Odeyemi & Ors. V. Commissioner of Police<sup>414</sup> stated the ingredient of the offence of mischief/ malicious damage a case charged under section 415 of the Criminal Code. His Lordship said; that an offence under Section 451 of the Criminal Code is committed if the accused had foreseen that the particular harm or injury might be done and yet had gone on recklessly to take the risk.

Intention or knowledge are matter of facts which must be proved. "Intention" is normally presumed from the resultant effect as a person is presumed to intend the natural consequences of his act. This test is a problematic one. On the other hand, "knowledge" of the likelihood to cause wrongful loss or damage may be a subjective test as it refers to the knowledge of the accused. An accused cannot be said to commit mischief by negligence<sup>415</sup> or recklessness, the accused is proved to have had knowledge of the likelihood of his conduct resulting in wrongful loss or damage to property.<sup>416</sup>

When looking at the principles establishing the offence of mischief/ malicious damage, it can be reasonably asserted that the Forestry Law of some of the affected states of Nigeria

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<sup>414</sup> (1976)4CCHCJ 1053 at 1058.

<sup>415</sup> Namata Bandan v. Gwandu Native authority (1967) N. N. L. R. 68.

<sup>416</sup> Chukkol K. S. The Law of Crimes in Nigeria, A. B.U. Press Ltd., Zaria, Nigeria, (1988), p 213.

has recognized similar principles. The Law has provided the offence of uprooting, felling or otherwise damaging of any protected tree, or setting fire or allowing fire to spread on any forest growth by any person to be liable on a summary conviction to a fine of one hundred naira or to imprisonment for six months and may be required by the court to pay sum equivalent to the fees and royalties payable on any forest produce removed or damaged.<sup>417</sup>

Similarly, it can be reasonably asserted that the Sudan's Forests and Renewable Natural Resources Act of 2002 just like that of Nigerian Forestry Law, has also prohibited the offence of setting, bringing or keeping fire; the cutting of any forest crop, its collection, destruction, or transfer to the personal benefit or the act of undermining it by any way or means; grazing, entering or enabling cattle to enter such an area; Cultivating range lands or destroying them by unpermitted extra loads<sup>418</sup> as such acts when proved under criminal law will result in to the offence of mischief/ malicious damage.

However, in Ghana the Control of Bush Fires Law is the Law that recognized some of the principles established under the offence of mischief/ malicious damage as the Law prohibited a person to start bush fire and a person starts bush fire if an action of that person results in the uncontrolled burning of a farm, forest or grassland.<sup>419</sup>

Furthermore, it should be noted that the Kenyan's Environmental Management and Coordination Act<sup>420</sup>, has provided some provisions in the Act for the protection of forest<sup>421</sup>, but such provision does not prohibit any human activities which caused

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<sup>417</sup> See Section 52 Forestry Law, Cap. 48 K.S.L.N. 1991; Section 52 Forestry Law, Cap.52 K.T.S.L.N. 1991 and Section 40 Forestry Law, Cap. 48 J.S.L.N. 1998.

<sup>418</sup> Section 37 Forests and Renewable Natural Resources Act No 11, 2002 Legislative annex to the Sudan Gazette No. 1690.

<sup>419</sup> Section 1 and 2 Control of Bush Fires Law of 1990(P.N.D.C.L. 229) Ghana.

<sup>420</sup> Environmental Management and Coordination Act No. 8 of 1999 Kenya.

<sup>421</sup> S.48 Environmental Management and Coordination Act No. 8 LFK, 1999.

deforestation in the forest but prescribe guidelines and some regulations for the protection of the forest, therefore, the Act does not recognize the principles established under the offence of mischief/ malicious damage.

With regards to the first principle establishing the offence of mischief/ malicious damage that is Intention or knowledge are matters of facts which must be proved, “Intention” is normally presumed from the resultant effect as a person is presumed to intend the natural consequences of his act. On the other hand, “knowledge” of the likelihood to cause wrongful loss or damage may be a subjective test as it refers to the knowledge of the accused, so where an accused person have uproot, fell or otherwise damage any protected tree, or set fire or allows fire to spread on any forest growth shall be presumed to intend to deforest the forest as the accused person knows that his act may result in to damage to the forest.

With regard to the second principle establishing the offence of mischief which an accused person cannot be convicted of mischief unless he is proved in addition with the necessary intention or knowledge discussed above, that is; causing destruction of property or such change there in the situation that it has destroyed or diminished the value or utility of the property or affected it injuriously. The uprooting, felling or otherwise damaging of any protected tree, or setting fire or allowing fire to spread on any forest growth by an accused person is a reasonable prove that the accused person have destroyed or diminished the value of the forest which will led to deforestation causing desertification.



### **5.3 Comparism of Environmental Legislation on Land Use Regulation and Protection**

Although previous discussions are based on the principles borrowed from other subjects of Law relevant to the issue of desertification as discussed under Chapter Two of this work, this discussion will be based on the Laws/ Act relating to Land use as discussed under Chapter Three and Four of this work. Below, a comparative analysis will be made between the Nigerian Legislation on Land Use and that of some selected countries to see which of the Law/ Act has truly address the issue of desertification.

#### **5.3.1 The Key Environmental Legislation on Land Use Regulation and Protection**

The freedom to use and enjoy land in particular in most countries of the world is not absolute; such rights are regulated in the interest of the generality of the populace and in the protection of the rights of others in the society. However, Land are usually controlled and owned by the government of most of the states of the world. The governments prescribe the rules and regulations governing the use and enjoyment of land.

In Nigeria, the Land Use Act was enacted by the military Government and today is one of the most important legislation affecting land in the country. The provision of the Act is therefore of paramount importance and important source of Nigerian Land Law as it has impacted, affected and modified all existing Laws accordingly. The promulgation of the Act was based on four objectives namely, to remove the bitter controversies, resulting at times in loss of lives and limbs which land is known to be generating; to streamline and simplify the management and ownership of land in the country; to assist the citizen, irrespective of his social status to realize his ambition and aspiration of owing the place where he and his family will live a secure and peaceful life; to enable the government to

bring under control the use to which land can be put in all parts of the country and thus facilitate planning and zoning programmes for particular uses.<sup>422</sup>

Section 1 of the Act provides:

Subject to the provision of the Act all land comprised in the territory of each state in the federation are hereby vested in the governor of that state and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of the Act.

By virtue of the above provision of the Act, that all lands located in the territory of each State are vested in the Governor of the State to be held in trust for the benefit of the citizens, it could be seen that, the Land Use Act does not clearly and expressly mention any specific matter relating to the protection of the environment or even the threat of desertification as one of the environmental problems. Therefore, the Land Use Act is base on the control and ownership of all lands in the territory vested in the hands of the government.

However, the fact that the Land Use Act impliedly deals primarily with the acquisition, use and enjoyment of land, in accomplishing these objectives, the activities of an individual, government or organization either private or public, is likely to create environmental problems. For example, where permission was given for land to be used for mining purpose or for industrial purpose or for a town and country planning purpose or for any other commercial or public work or convenience, environmental problems are surely going to crop up in the use and enjoyment of any of these services or purposes.<sup>423</sup>

However, when one studies the Act, at the commencement section, which stated that the

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<sup>422</sup> Olakanmi and co. The Land Use Act Cases and Materials, Panaf press, Panaf Villa, Abuja, Nigeria, (1997), p. 1.

<sup>423</sup> Ladan, M. T. Materials and Cases on Environmental Law, Econet Publishing Co. Ltd, Zaria, Kaduna State, Nigeria, (2004), p.9.

Governor of the state who would hold such land in trust for the people will henceforth be responsible for allocation of land in all urban areas to individuals resident in the state and to organizations for residential, agricultural, commercial and other purposes, therefore, impliedly the legal status of the Nigerian land user becomes that of statutory occupancy not one of ownership and the economic interests and benefit of statutory rights of occupancy are severally limited by law since proprietary interests in land are lost and claims are restricted to improvements made on the land. Thus subdivision regulations, height and building limits etc. are included in the certificate of occupancy granted to control development of project in certain area for aesthetic and convenience of the economy, in other word the Act enable the government to bring under control the use to which land can be put in all parts of the country and thus facilitates planning and zoning programme for particular use, therefore enhancing environmental protection.<sup>424</sup>

To this end, land use planning is the systematic assessment of land and water potential, alternatives for land use and economic and social conditions in order to select and adopt the best land use options. Thus for effective prevention and control of the notable environmental problems such as pollution and land degradations, land use planning is crucial to tackle the growing land use problems such as desertification, flooding among others for the purpose of achieving sustainable development and ensuring the safety and health of the people.<sup>425</sup>

Essentially, the Land Use Act is not strictly an Act of environmental protection. However, environmental protection is one of those considerations that a holder of certificate of occupancy has to observe though it is not explicitly provided for in any of

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<sup>424</sup> Significance of the Land Use Act of 1978 to Use Planning in Nigeria available at: <http://nigeriaenvironmental.blogspot.co.uk/2012/11/significance> last visited on 13/8/2015.

<sup>425</sup> Ibid.

the provision of the Act. If the Act is read without such importation the result is bound to be absurd and environmentally unsound.<sup>426</sup>

On the issue of desertification which is one of the problems associated with land use, it could be said that the Land Use Act does not expressly provide any provision for the prevention and control of desertification. However, since the Act enable the government to bring under control the use of land thus, the Act facilitates planning and zoning programme for particular use, which impliedly enhance environmental protections, therefore, impliedly the Land Use Act helps in the control and prevention of desertification.

Unlike Nigerian Land Use Act, the Southern Sudan Land Act, have some set of principles establishing the regulation of land tenure and protection of rights in land and creating an enabling environment for economic development in the land and natural resources sectors.<sup>427</sup>

Furthermore, the Southern Sudan Land Act have made some provisions for the protection of pastoral lands in Southern Sudan which shall be delineated and protected by the appropriate level of land administration and management based on a comprehensive land use planning system,<sup>428</sup> therefore, unlike the Nigerian Land Use Act, the Act has a well established sets of principles for creating an enabling environment which have address the issue of desertification.

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<sup>426</sup> Ladan, M. T. Materials and Cases on Environmental Law, Econet Publishing Co. Ltd, Zaria, Kaduna State, Nigeria, (2004), p.9.

<sup>427</sup> Section 3 Southern Sudan Land Act 2009.

<sup>428</sup> Chapter X of the Southern Sudan Land Act of 2009.

In Ghana, the Administration of Lands Act<sup>429</sup> just like the Nigerian Land Use Act has gave the President power to acquire stool land that will be held in trust (in the public interest) and vests the management of all stool land revenue in the central government. However, Unlike the Nigerian Land Use Act, the Act has expressly made some provisions on limitation of periods for mining timber and farming rights in order to avoided land degradation which causes desertification.<sup>430</sup>

In Kenya, the legislation regarding Land Use in the Country have been Coordinated in the Environmental Management and Coordination Act which have provided a framework for environmental legislation so as to established an appropriate legal and institutional framework for the management of the environment air, water and land and improve the diverse sectorial initiatives in order to improved the national capacity for the management of the environment, since the environment constituted the foundation of national, economic, social, cultural and spiritual advancement.<sup>431</sup> However, on the issue of land use, unlike the Nigerian Land Use Act, the Act has provided some provisions for environmental restoration order to restore land including the replanting of trees and other flora where the land has been degraded.<sup>432</sup> So it can be asserted that the Kenyan's Environmental Management and Coordination Act have provided a remedial provision for land degradation.

## **5.4 Conclusion**

There is no doubt that the issue of desertification which poses serious threat to nation's arable land mass and food production is one of the issues covered under environmental

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<sup>429</sup> Section 1 Administration of Lands Act of 1962 (Act 123) Ghana.

<sup>430</sup> Section 12 Administration of Land Act 1962 (Act 123) Ghana.

<sup>431</sup> See the Environmental Management and Coordination Act No. 8 LFK, 1999.

<sup>432</sup> S. 108(4) (b) Environmental Management and Coordination Act No. 8 LFK, 1999.

law which has borrowed some principles under different range of subjects namely: Law of Tort, Equity, and Criminal Law, which aimed at protecting the environment. Clearly, these principles have provided a theoretical context in analyzing the appropriateness of various countries Laws including Nigeria on the range of subjects mention above, which helps in judging whether or not the Nigerian Law/ Acts for the prevention and control of desertification have truly address the issue of desertification.

It could be argued that the issue of desertification has recognized some set of principles which can be said to exist across the range of subjects covered under other areas or subjects of law mentioned above, however, the effort of the Nigerian Forestry Law and Environmental Impact Assessment Act are commendable as they have recognized similar principles provided under public nuisance, Equitable principle of waste and Criminal mischief.

Under the principles of equity, the equitable principle of waste was recognized under the Environmental Impact Assessment Act, whose principle serve as a preventive principle and have similar provision on the grant of injunction restraining a party to the suit from wasting or damaging the land in dispute until the court thinks fit in the of case of equitable waste, while in the case of environmental impact assessment act, until the court assessment of the environmental effects of the project is completed and the Agency is satisfied that the project is not likely to cause any serious adverse environmental effects.<sup>433</sup> It should be noted that no such provision is found under the Sudan's Environmental Protection Act which coordinated the issue of Environmental Impact Assessment, nor found under the Kenya's Environmental Management and Coordination

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<sup>433</sup> Section 52(1)(a) Environmental Impact Assessment Act Cap.E12 L.F.N. 2004.

Act<sup>434</sup>, which makes provision with regards to the procedures for an environmental impact assessment license, nor found under the Ghana's Environmental Assessment Regulation which concentrated on the issue of registration of any activity or project by the environmental assessment Agency before it commence<sup>435</sup>.

Under Criminal Law, principles borrowed for the prevention and control of desertification under this subject is that of Mischief and Public nuisance which helps to remedy rather than prevent any such illegal act committed by the accused that might cause deforestation. Under mischief, the effort of the Nigerian affected States Forestry Law is commendable as the Law have recognized similar principles establishing the offence of mischief. With regards to the first principles establishing the offence of mischief/ malicious damage that is Intention or knowledge which are matter of facts which must be proved, that is the knowledge of the accused, the Forestry Law has made any act of an accused person who have uproot, fell or otherwise damage any protected tree, or set fire or allows fire to spread on any forest growth to be presumed to intend to deforest the forest as the accused person knows that his act may result in to damage to the forest. With regard to the second principle establishing the offence of mischief which an accused person cannot be convicted of mischief unless he is proved in addition with the necessary intention or knowledge discussed above, that is; causing destruction of property or such change there in the situation that it has destroyed or diminished the value or utility of the property or affected it injuriously. The uprooting, felling or otherwise damaging of any protected tree, or setting fire or allowing fire to spread on any forest growth by an accused person is a reasonable prove that the accused person have

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<sup>434</sup> Environmental Management and Coordination Act No. 8 of 1999 Kenya.

<sup>435</sup> Part I Environmental Assessment Regulation 1999 Ghana.

destroyed or diminished the value of the forest which will led to deforestation causing desertification.

The provision of the Sudan's Forest and Renewable Act and that of Ghana's Control of Bush Fire Law is also commendable as they have recognized similar principles established under mischief. However, no such provision which recognized the principle of mischief is found under the Kenya's Environmental Management and Coordination Act.

Similarly, under Public nuisance, it can be reasonably asserted that the principle for establishing public nuisance which is based on the commission of an act (not warranted by law) or an illegal omission by a person which causes any common injury, danger, or annoyance to the public<sup>436</sup> is recognized under the Nigerian Forestry Law of the affected states. The Law has prohibited the unlawfully taking of any forest produce, uprooting, burning or otherwise damage any tree, setting fire to any grass or herbage in any part of the reserved forest.<sup>437</sup> This prohibited acts when committed causes deforestation, therefore causing desertification which causes common injury to the public since desertification poses serious threat to food production.

It should be noted that Although the tort of public nuisance also falls under civil law, and civil law has the objective to prohibit a person from doing wrong to another person not to the public at large, still the principle established under public nuisance is relevant to the issue of desertification as it helps an individual plaintiff to institute an action where he can show that the defendants act which causes deforestation (such as illegal hunting or bush burning which results in to damaging any part or whole of his land) has caused him

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<sup>436</sup> S. 183(1) Penal Code (Northern States) Cap. P.3 L.F.N. (2004); S. 234 Criminal Code Act Cap. C38 L.F.N. (2004).

<sup>437</sup> See Section 50 Forestry Law, Cap. 48 K.S.L.N. 1991; Section 50 Forestry Law, Cap.52 K.T.S.L.N. 1991 and Section 38 Forestry Law, Cap. 48 J.S.L.N. 1998.



particular damage over and above that suffered by the general public. It is noteworthy to mention the effort of the Sudan's Environmental Protection Act, which have recognized similar principle established under the tort of Public nuisance. However, the National Environmental Standard and Regulation Enforcement Agency Act (NESREA), The Kenyan's Environmental Management and Coordination Act and Ghana's Forestry Commission Act did not recognize some of these principles established under Public nuisance.

With regards to the Environmental Legislation on Land Use regulation and Protection discussed above, almost all the legislation governing Land Use of the selected countries including that of Nigeria have vested the control and ownership of land in the hands of the government. However, with the exclusion of the Nigerian Land Use Legislation, the Land Use legislation of the selected countries went further and provide some set of principles providing some preventive measures for the prevention of deforestation which causes desertification, and some providing remedy where the act of deforestation has been committed.

The Southern Sudan Land Act unlike the Nigerian Land Use Act has provided a well established set of preventive principles for the Protection of pastoral lands in Southern Sudan which shall be delineated and protected by the appropriate level of land administration and management.<sup>438</sup>

In Ghana, Unlike the Nigerian Land Use Act, the Administration of Lands Act<sup>439</sup> has expressly made some preventive provisions on limitation of periods for mining timber and farming rights in order to avoided land degradation which causes desertification.<sup>440</sup>

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<sup>438</sup> Chapter X of the Southern Sudan Land Act of 2009.

<sup>439</sup> Section 1 Administration of Lands Act of 1962 (Act 123) Ghana.

In Kenya, the Environmental Management and Coordination Act which have Coordinated the legislation regarding Land Use in the Country, the Act unlike the Nigerian Land Use Act, has provided some remediable provisions for environmental restoration order to restore land including the replanting of trees and other flora where the land has been degraded.<sup>441</sup>

Finally, from the above analysis, it can be reasonably asserted that some of the Laws/ Acts such as the Nigerian Forestry Law, and Environmental Impact Assessment Act which are for the prevention and control of desertification in Nigeria have recognized some set of principles established under the borrowed subjects or areas of law. However, despite all these efforts done by some of these Laws/ Acts for the prevention and control of desertification there is still need for the amendment of some of these Laws such as the Nigerian National Environmental Standard and Regulation Enforcement Agency (NESREA) Act which have not recognized some of the concepts and principles for the prevention and control of desertification in Nigeria borrowed from other subjects or areas of Law.

Furthermore, on the issue of environmental legislation on Land Use, it could be seen that, unlike the other selected countries land legislation, the Land Use Act does not clearly and expressly mention any specific matter relating to the protection of the environment or even the threat of desertification as one of the environmental problems. Therefore, the Nigerian Land Use Act is base on the control and ownership of all lands in the territory by the government.

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<sup>440</sup> Section 12 Administration of Land Act 1962 (Act 123) Ghana.

<sup>441</sup> S. 108(4) (b) Environmental Management and Coordination Act No. 8 LFK, 1999.

## **CHAPTER SIX**

### **SUMMARY, CONCLUSION AND RECOMMENDATIONS**

#### **6.1 Summary**

Desertification is one of the natural phenomena of the physical features of the earth. However, a combination of natural forces such as climatic change and human activities such as deforestation as the result of the high demand of fuel wood, overgrazing by livestock especially that of cattle's owned by the nomadic Fulani's and bush burning usually by hunters who are in search of games, has always been the factors responsible for its growth and encroachment in to other areas. To tackle these problems of deforestation, afforestation program has been undertaken by the government, institutes and individuals on either government or common land.<sup>442</sup>

Chapter one introduces the work and set its scope, focus and limitation. In addition the chapter also contains the related literature. This is done with the view to provide the work with justification and to expose the readers of the thesis to the gap which it intends to fill. Chapter two discusses the issue of desertification as an issue covered under environmental Law. So since the issue of desertification is covered under environmental Law, and there is a preposition that environmental law has not been developed as a self contained discipline but has simply borrowed some principles from other areas or subjects of law namely: Criminal Law, Constitutional Law, Law of Contract, Tort, Equity and Public and Private Law,<sup>443</sup> therefore, desertification as one of the environmental issues in Nigeria has also borrowed some principles from other areas or subjects of law

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<sup>442</sup> Food and Agricultural Organization/United Nations Environment Program, provisional methodology for assessment and mapping of Desertification (1983).

<sup>443</sup> Ibid.

which relate directly or indirectly to the prevention and control of deforestation and encourage afforestation. These principles have been borrowed from Law of Tort, Equity and Criminal Law which have provided a basis for analyzing the appropriateness of Nigerian laws on the subjects.

Chapter three examines a number of legislative majors under several institutional arrangements both at the national and state levels for the prevention and control of desertification in Nigeria. Some of the most important legislations at the national level for the prevention and control of desertification include: The National Environmental Standards and Regulations Enforcement Agency Act (NESREA Act, 2007), the Environmental Impact Assessment (EIA) Act, the Endangered Species (Control of International Trade and Traffic) Act and the Land Use Act 1978. At the State level, there are series of laws which prevent and control deforestation and empower each affected State to manage its forest estates and grazing reserves as well as reforest their desertified areas. These laws are: The Forestry Laws, Grazing Reserve Regulations and Bush Burning (Control) Laws.

In Chapter four, the legal framework for the prevention and control of desertification in Nigeria was examined against the legal frame work for the prevention and control of desertification in some selected countries of Ghana, Sudan and Kenya, to see whether Nigeria can learn from some of their legislations that have truly addressed the issue of desertification.

In Chapter five, a comparative analyses on the laws for the prevention and control of desertification in Nigeria and that of some selected countries was made to see whether or not the Laws/ Acts for the prevention and control of desertification have recognized the

principles borrowed from other subjects or areas of Law listed above, the result of which shows that some of the Laws/ Acts for the prevention and control of desertification have recognized such set of preventive and remediable principles borrowed from other subjects or areas of Law.

Equally, a comparative analysis between the Nigerian Land Use legislation (the Land Use Act) and that of some selected countries was done to see which of the Law/ Act has truly address the issue of desertification. The result of which shows that unlike the selected countries legislations on land use which have provided some set of preventive and remediable principles on the issue of desertification, the Nigerian legislation on land use (the Land Use Act) does not clearly and expressly mention any specific matter relating to the protection of the environment or even the threat of desertification as one of the environmental problems affecting the use and enjoyment of land. Therefore, it has been expressly established from the analysis that the Nigerian Land Use Act is base on the control and ownership of all lands in the territory to the government.

## **6.2 Conclusion**

Legislation and institutions related to desertification play a crucial role in formulation and implementation of action plan for the prevention and control of desertification, however, the absence of proper legislation and a well coordinated implementation agency are considered as an integral part on the problems affecting effective control of desertification in Nigeria. As mentioned earlier, many Laws/ Acts related to the issue of the prevention and control of desertification were established in Nigeria, yet there exists some inadequacies attached to some provisions of some of these Laws/ Acts and the problem of sectoral laws/Acts governing different institutions.

The inadequacies of the Laws/ Acts for the prevention and control of desertification, usually arise as the result of the problem associated with fundamental gaps of some provisions of the Laws/ Acts for the prevention and control of desertification enacted by the legislature. Some of these Acts/ Laws with such problems are The Nigerian National Environmental Standard and Regulation Enforcement Agency (NESREA) Act, the Land Use Act, Nigerian Endangered Species Act and the affected States Forestry Law and Grazing Reserved Laws.

The Nigerian National Environmental Standard and Regulation Enforcement Agency (NESREA) Act: The Act has the responsibility for the protection and development of the environment, biodiversity conservation and sustainable development of Nigeria's natural resources in general.<sup>444</sup> It also has the power to enforce compliance with the provisions of international agreements, protocols, conventions and treaties on the environment, including climate change, biodiversity, conservation, desertification, forestry and such other agreements as may from time to time come into force.<sup>445</sup>

By looking at the main responsibility of the Act, it is obvious that the Act does not provide any set of preventive or remediable principle for the prevention and control of desertification, therefore the Act does not recognized some of the principles borrowed from other subjects or areas of Law.

Furthermore, the Act which is supposed to have the responsibility for the protection and development of the environment, biodiversity conservation and sustainable development of Nigeria's natural resources in general seems to have not coordinated the sectoral laws and has not addressed all the required policy, legal and institutional framework to manage

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<sup>444</sup> Section 2 NESREA Act,2007.

<sup>445</sup> Section7 (c) NESREA Act,2007.

the environment including actions for the prevention and control of desertification. Therefore, the Act did not provided a framework for environmental legislation so as to established an appropriate and coordinated legal and institutional framework for the management of the environment and improve the diverse sectorial initiatives in order to improved the national capacity for the management of the environment.

However, With regards to the powers to enforce compliance with the provisions of international agreements and conventions, on the issue of desertification, Nigeria has adopted the United Nations resolution (Plan of Action to Combat Desertification (PACD)), has adopted the three documents negotiated at the UNCED namely; the global plan of action (Agenda 21), Forestry Principles and the Rio Declaration on Environment and Development, signed The United Nations Convention to Combat Desertification (UNCCD) on 31/10/1994, ratified it on 08/07/1997, and it came into force with respect to Nigeria on 06/10/1997, and has signed the Convention of the Pan African Agency for the Great Green Wall in 2007, ratified it on 2010 and recently came in to force with respect to Nigeria on June 2015. So, it could be concluded that at the international level the Act have truly addressed the issue of desertification.

The Land Use Act: the act expressly, deals with the control and ownership of lands in the territory to the government, however, impliedly the Act deals with the acquisition, use and enjoyment of land.

Additionally, it is obvious that the Act which expressly deals with the control and ownership of land to the government does not provide any set of preventive or remediable principle for the prevention and control of desertification, therefore the Act does not recognized some of the principles borrowed from other subjects or areas of Law.

It could be seen that, the Nigerian Land Use Act does not clearly and expressly mention any specific matter relating to the protection of the environment or even the threat of desertification as one of the environmental problems, therefore the Act did not truly addresses the issue of desertification.

The Endangered Species Act: the Act has the objective to assist in the protection of plants and animal species, which invariably contribute to desertification control. However; one of the drawbacks of the Endangered Species Act is that no plant is currently listed in the Act.

Although the Act has the objective to assist in the protection of plants and animal species, however, the Act did not provide any set of preventive principle for the prevention and control of desertification, therefore the Act does not recognized some of the principles borrowed from other subjects or areas of Law.

Also, as the result of the drawbacks of the Endangered Species Act that is no plant is currently listed in the Act which helps in the prevention and control of desertification, it could be concluded that the Act have not truly address the issue of desertification.

The Affected States Forestry Law: The Forestry Law provides for the preservation and control of forest by the state Government. In the Law, the Governor makes regulations for the protection and conservation of forest produces and makes special provisions for the creation of forest reserves and protected forest, and has the power to prohibit or regulate the taking of forest produces, grant and prescribe the form of any license or permit and prescribe penalties.

Although the Forestry Law has vested the power for the preservation and control of forest to the various affected state Government, it can be concluded that the Forestry Law of the



affected states of Nigeria has recognized some set of preventive principles in some of the provisions of their laws. For example, the Laws have recognized similar principles with criminal mischief and public nuisance.

However with regards to the penalty for any offence committed in any part of the reserved and protected forest, most of the states have not amended and raise the amount of money to be paid as fine. This renders such state laws to be ineffective in terms of enforcement due to very paltry sum provided as penalty for fine thereby resulting into large scale deforestation activities such as bush burning, logging or timber exploitation therefore contributing to deforestation. With this defect attached to the Law, it could be concluded that some of the Affected States Forestry Laws have not truly address the issue of desertification.

**The Grazing Reserve Laws:** The State Government usually makes regulations for the constitution of government grazing reserve on any land which is at the disposal of the Government, and on any land which appears that grazing on such land should be protected or reserved or grazing management should be practiced.

By looking at the main responsibility of the Law, it is obvious that the Laws does not provide any set of preventive or remediable principle for the prevention and control of desertification, therefore, the Law does not recognized some of the principles borrowed from other subjects or areas of Law.

On the issue of the prevention and control of desertification, the Law did not prohibit overgrazing of land which is one of the major causes of desertification mostly cause by the nomadic Fulanis. Since the Law is devoid of such provision, it can be concluded that the issue of desertification have not been truly addressed by the Law.

### **6.3 Findings**

As established above, that the Nigerian Laws/Acts for the prevention and control of desertification are inadequate as the result of some fundamental gaps, this research work makes the following findings:

1. The Nigerian National Environmental Standard and Regulation Enforcement Agency (NESREA) Act which has the responsibility for the protection and development of the environment, have not adequately address the issue of desertification because the Act does not recognize some of the principles for the prevention and control of desertification borrowed from other subjects or areas of Law. Also, the Act did not provide a framework for environmental legislation so as to establish an appropriate and coordinated legal and institutional framework for the management of the environment (including the issue of desertification which poses serious threat to the environment) and improve the diverse sectorial initiatives in order to improve the national capacity for the management of the environment.

2. The Land Use Act which expressly deals with the control and ownership of land by the government has not adequately address the issue of desertification because did not recognized any set of principle for the prevention and control of desertification, borrowed from other subjects or areas of Law. Also, the Act does not clearly and expressly mention any specific matter relating to the protection of the environment or even the threat of desertification as one of the environmental problems.

3. Although the Endangered Species Act has the objective to assist in the protection of plants and animal species, however, the Act did not provide any set of preventive

principle for the prevention and control of desertification, therefore the Act does not recognize some of the principles borrowed from other subjects or areas of Law. Also, the Act has not truly address the issue of desertification, as the result of the drawbacks attached to the Act that is no plant is currently listed.

4. Although the affected States Forestry Law has recognized some set of preventive principles in some of the provisions of their laws. However with regards to the penalty for any offence committed in any part of the reserved and protected forest, most of the states have not amended and raise the amount of money to be paid as fine which renders such laws to be ineffective in terms of enforcement due to very paltry sum provided as penalty for fine thereby resulting into large scale deforestation activities.

5. The Grazing Reserve Laws basically provide regulations for the constitution of government grazing reserve, the law does not provide any set of principles or measures for the prevention and control of desertification, therefore, the Act does not recognized some of the principles borrowed from other subjects or areas of Law. Also, the Law did not prohibit any activity that might lead to overgrazing of land which is one of the major causes of desertification.

#### **6.4 Recommendations**

In Nigeria, laws/ Acts for the prevention and control of desertification has been established in order to effectively prevent and control desertification. Ultimately, when these laws/ Acts are objectively perused, it exposes the country's inadequacies in handling the matter of the issue of desertification. This is because these Laws/ Acts for the prevention and control of desertification comprises mainly of some fundamental gap which have to be addressed. This research work therefore recommends the followings:

1. The Forestry Laws of some of the affected States should be revised to at least raise the amount to be paid as fine for any offence committed in any part of the reserved and protected forest just like the Jigawa State Forestry Law which have raised the amount to be paid as fine for any offence committed in any part of the reserved and protected forest to a fine of one thousand naira for a reserved forest and a fine of two thousand naira for a protected forest and also to a fine of ten thousand naira for the offence of forgery or fraud.
2. The Grazing Reserve Laws should be amended to provide some set of principles or measures for the prevention and control of desertification, recognized under some of the borrowed subjects or areas of Law. Also, the Law should be amended to prohibit any activity that might lead to overgrazing of land which is one of the major causes of desertification.
3. The Nigerian National Environmental Standard and Regulation Enforcement Agency (NESREA) Act should be amended in order to provide some set of protective and remediable principles similar with those recognized under the borrowed subject or areas of laws just like that of The Sudan's Environmental Protection Act which has expressly recognized some principles similar with that of the tort of public nuisance. Also, The Act should be amended by the legislatures to provided a framework for environmental legislation so as to established an appropriate and coordinated legal and institutional framework for the management of the environment and improve the diverse sectorial initiatives in order to improved the national capacity for the management of the environment, (including the issue of desertification which poses serious threat to the environment), just like that of Kenyan's unique Environmental Management and

Coordination Act, which has established a well coordinated and appropriate legal and institutional framework for the management of the environment and improve the diverse sectorial initiatives.

4. The Nigerian Land Use Act should be amended to provide some set of protective and remediable principles similar with those recognized under the borrowed subject or areas of laws just like that of the Southern Sudan Land Act which have provided some set of principles establishing the regulation of land tenure and protection of rights in land and creating an enabling environment for economic development in the land and natural resources sectors. The Act should also be amended to contain matter relating to the protection of the environment including that of the threat of desertification just like that of Southern Sudan Land Act which have made some provisions for the Protection of pastoral lands in Southern Sudan, Ghana Administration of Lands Act which has expressly made some provisions on limitation of periods for mining timber and farming rights in order to avoid land degradation and the Kenyan Environmental Management and Coordination Act which has provided some provisions for environmental restoration order to restore land including the replanting of trees and other flora where the land has been degraded.

5. The Endangered Species Act should be amended to provide some set of preventive principle for the prevention and control of desertification, recognized under some the borrowed areas or subjects of Law. Also, with regards to the drawbacks attached to the Act (that is no plant is currently listed in the Act), a systematic review of the Act to adequately take care of the lapses should be made.

Finally, the Laws/ Acts for the prevention and control of desertification if fully reviewed, amended and coordinated, it will be an excellent road map towards a successful fight against Desertification. This is because a legal umbrella for the prevention and control of all environmental challenges will be provided and further authorities will be given to the Ministry of Environment. So the Nigerian legislature need to take the bull by the horn this time around and enact a coordinated environmental management Act, or the country will have no legacy left for generations to come.

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