

REDD+ and the Rights and Forest Crimes Mix in Nigeria



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Abbreviations

CCA	Climate Change Act
EIA	Environmental Impact Assessment
FEPA	Federal Environmental Protection Agency
LFTZ	Lekki Free Trade Zone
LUA	Land Use Act
NAPP	Nigeria Agricultural Promotion Policy
NECBFO	National Environmental Control of Bush, Forest Fire and Open Burning
NESREA	National Environmental Standard and Regulations Enforcement Agency
NFAP	National Forestry Action Programme
NPSA	National Park Service Act
UNFCCC	United Nations Framework Convention on Climate Change

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1 Introduction

Reducing Emissions from Deforestation and forest Degradation, the sustainable management of forests, and the conservation and enhancement of forest carbon stocks (REDD+) is an initiative of the United Nations Framework Convention on Climate Change (UNFCCC).¹ Forest preservation and management is the crux of the REDD+ campaign because next to the energy sector, deforestation and forest degradation contribute the largest to greenhouse emission.² The REDD+ initiative encourages conservation and includes compensation for lowering greenhouse emissions.³

Nigeria is one of the developing nations involved in the REDD+ agenda and thus far, progress has been made.⁴ Cross River State was selected as the pilot state in the planning and implementation of the REDD+ agenda, paving the way for other states to follow suit.⁵ The idea of extending the REDD+ agenda to other states within the country is a wheel in the right direction.⁶ However, there are many setbacks to its successful implementation. These include, urban expansion, infrastructural development, mining and oil explorations, charcoal production, animal grazing and other agricultural activities, among other socio-political challenges.⁷ There are also socio-political factors such as gaps in the relevant laws, criminal activities such as illegal wood logging,⁸ kidnapping and terrorism, which have contributed to the loss of forest resources in Nigeria.⁹ The government in the past few years has battled with insecurity issues in the country as criminals use the forest as hideouts.¹⁰ Illegal sale of woods, construction of shelter as hideouts, and destruction of forest environment by weapons of war, amongst other criminal activities, pose an enormous threat to the preservation of forest resources in Nigeria.¹¹ This chapter examines key developments in relation to the implementation of REDD+ in the context of how existing legal framework relating to key rights of forest dependent populations and crimes may apply in Nigeria.

¹ UN-REDD Programme Collaborative Workspace *about REDD+* (2016).

² Ibid. See also Jegede 'Climate Change Regulatory Framework'.

³ UN-REDD Programme Collaborative Workspace *about REDD+* (2016).

⁴ Matakala (2016).

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

⁸ See the ICCA Consortium on *Alert: Ekuri Community Confronts Illegal Logging in Their Customary Forest in Nigeria* (2021); World Rainforest Movement on *Forests to the highest bidder in Nigeria: how REDD proves unable to stop deforestation* (2016); Daily Post on Nnimmo Bassey: *Halt the assault on the Ekuri Community and other forests* (2016).

⁹ Ikuomola et al. (2016), pp. 141–153.

¹⁰ Ladan (2014), pp. 12–142; see The Conversation on *How poor management of Nigerian forests led to exploitation by criminals* (2018).

¹¹ Ibid.

2 Implementing REDD+ and Projected Benefits

Nigeria has one of the highest rates of deforestation in the world, with more than half of its forest lands destroyed.¹² The REDD+ initiative commenced in Nigeria with Cross River State as the pilot state in 2009, with the view of addressing this trend and contribute to global efforts in mitigating climate change.¹³ Cross River State was chosen as the pilot state because it has the largest expanse of forest reserve in Nigeria, which has been threatened by the high level of exploitation by drivers of deforestation.¹⁴ The Cross River State government showed interest and willingness to introduce the REDD+ initiative because of its win-win approach.¹⁵ The introduction of the REDD+ initiative is to generate financial support in the preservation and management of forest resources and improve the standard of living by providing environmentally sustainable practices for the local community who depend on the forest.¹⁶ One of the visions of Conference of Parties (COP) for the REDD+ initiative is to ensure that all forest management stakeholders are involved, especially, the local community where the REDD+ project is being executed. It is mandated that any developing country embarking on the REDD+ project must provide evidence that the local community is carried along and no form of human right violation is involved in the implementation of the REDD+ goals.¹⁷ Hence, REDD+ is conceived as a tool of climate mitigation within which the interests and benefits of local populations should enjoin substantial consideration.

At the planning stage which is the first step in integrating the REDD+ goals in Nigeria, stakeholders were consulted, a target location was also identified,¹⁸ while the department of climate change under the Federal Ministry of Environment in Nigeria was saddled with the responsibility of implementation.¹⁹ However, deforestation is still a major challenge because of the fast growing demand for agricultural produce in the country.²⁰ Apart from the energy sector, the agricultural sector plays a significant role in the economy of Nigeria, which unfortunately is a key driver of

¹²Ibid. See also The Federal Republic of Nigeria's REDD+ Readiness Preparation Proposal (2013).

¹³UN-REDD Programme Collaborative Workspace Nigeria (2011).

¹⁴United Nations Development Group *Nigeria REDD+ Readiness Programme* (2018).

¹⁵Ibid.

¹⁶Ibid. See also Kukharave, *Latest FREL Submission Shows Nigeria's Progress on Monitoring Forest Resources* UN-REDD Programme Collaborative Workspace (2019); The Global Legislators Organisation, '*REDD+: The Nigerian Experience*'.

¹⁷Decision 1/CP.16, The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention (Framework Convention on Climate Change, Report of the Conference of the Parties on its sixteenth session, held in Cancun (2010).

¹⁸Federal Ministry of Environment, Nation REDD+ Programme, National Strategy for Nigeria REDD+ Programme.

¹⁹Ibid.

²⁰See Vanguard by Abubakar on *World Environment Day: Nigeria's Deforestation Rate Alarming – Environment Minister* (2021).

forest degradation.²¹ Other drivers of deforestation include overpopulation, infrastructural development, forest crimes, poverty, and urban movement.²² Overpopulation leads to a higher demand for food, electricity, and shelter, which indirectly affects land use and forests.²³ Urbanisation leads to infrastructural development and expansion. The government responds to the socio-economic needs of its citizens by expanding the various means of transportation, new roads, airports, railways to better serve the citizens.²⁴ Low standard of living contributes to the high reliance on forest resources leading to deforestation and forest degradation.²⁵ About half of the Nigerian population lives below the average standard of living and cannot afford to use environmentally friendly technologies to survive.²⁶ They rely on forest resources for their livelihood.²⁷

An effective implementation of REDD+ is dependent on the protection of the populations who are dependent on forests for livelihood and the safety of the forests for live sustaining activities. The extent to which these are recognised in the implementation of REDD+ in Nigeria is the focus of the next section.

3 Factors Inhibiting REDD+

This section of the chapter discusses salient issues that are impeding the successful execution of the REDD+ initiative in Nigeria. Generally, concerns have been raised regarding the violation of rights of local populations in the context of REDD+.²⁸ In addition, the high level of insecurity in Nigeria, and the use of forest areas to perpetuate crime may affect the Nigerian government's plans in conserving and managing what is left of Nigeria's forests. The ensuing sections engage with these issues.

²¹ See the Guardian by Falaju on *FAO Raises Concern Over Deforestation in Nigeria* (2020).

²² Matakala (2016).

²³ Food and Agriculture Organisation of the United Nations, *The Future of Food and Agriculture: Trends and Challenges* (2017); Hannes and Sciubba (2018).

²⁴ Ibid.

²⁵ Ladan (2014); A Survey Report by the Nigerian National Bureau of Statistics (in collaboration with the World Bank) 2018/2019 report; Nigeria Multidimensional Poverty Index (2022).

²⁶ Ibid.

²⁷ Ibid.

²⁸ Barletti and Larson (2017); Friends of the Earth International (2017) *REDD+: The Carbon Market and California-Acre-Chiapas Cooperation: Legalizing Mechanisms of Dispossession*.

3.1 *Local Populations' Rights*

The REDD+ initiative was borne out of good intention to mitigate the high level of green gas emission into the atmosphere with its focus on developing countries. REDD+ programme is, however, implemented in developing countries where large populations live below the average standard of living, rely extensively on forest resources to survive and suffer weak land laws that are not favourable to the local communities.²⁹ Nigeria is a developing nation and report shows that a large percentage of its populations live in poverty and depend on forest resources to provide food, shelter and other domestic items,³⁰ and in rural areas surrounded by forests.³¹ Implementing the REDD+ initiative would require the government to respect the right of communities to the use of forest resources which they depend on. Ignoring the interests of such populations to explore specific lands raises the issue of violation of citizen's right to acquire and own immovable property anywhere in Nigeria, under Section 43 of the 1999 Constitution of the Federal Republic of Nigeria, as amended (the Constitution). The enjoyment of this right may be trumped by the application of Section 44 of the Constitution which provides instances and the process in which the government may acquire land already owned by citizens. Section 44(2) (f) of the Constitution specifically gives the government the right to take over land where the safety of humans, plants or animals is being threatened. The revocation of the right to land of those who depend on forest resources for their means of livelihood without proper compensation, may not only violate their rights to acquire and own immovable property anywhere in Nigeria, but ultimately undermine their rights to life.³²

The possibility of displacing local populations or forest dependent communities is real in the context of REDD+ as there is evidence of such approach in previous projects unrelated to forests. For instance, the Nigerian government has been accused in many cases of taking over land without adequately compensating the communities affected while creating the Lekki Free Trade Zone (LFTZ),³³ The communities affected were promised alternative land for their use but for many years the government failed to properly settle them.³⁴ In the course of demanding for compensation to be made by the Lagos state government and the developers of the repossessed land, conflict arose resulting in the loss of life of one of the key players

²⁹Ibid.

³⁰See footnote 25.

³¹See footnote 25.

³²Right to life provided for in Section 33 of the 1999 Constitution of the Federal Republic of Nigeria (as Amended).

³³See Nigerian Tribune on *Lagos communities protest non-compensation for Lekki Free Trade Zone lands* (2016); See Sahara Reporter on *Ibeju-Lekki Land Grab: Community Accuses Companies Of Illegal Trespassing, Brutalization of Land Owners* (2015).

³⁴See The Nation on *Lagos Communities Seek Compensation For Lekki Free Trade Zone Land* (2016).

of the acquiring company.³⁵ Earlier, when the military government took over power in 1985, it repossessed the land of a community in Shangisha Magodo on the ground of public interest, but did not develop the public interest project, for which it was set aside.³⁶ The affected communities were not adequately compensated. The aggrieved parties took the matter to the court of law, and judgement was given in their favour, over 30 years later.³⁷ The issues of Nigerian state government acquisition of land, is not only a problem in Lagos state, reports show that communities in other states have faced similar issues.³⁸ As a result of the above trend, the possibility of dispossessing communities of their land in a bid to ensure REDD+ project raises a very huge concern.

3.2 *Forest Crimes as a Challenge*

Under Section 1 of the Land Use Act (LUA), all land including forests within a state is under the control of the government. By implication, the Nigerian state governments are saddled with the responsibility to put the necessary machineries in place to ensure that the forest areas within their states are preserved and secured. Many of these forests were originally reserved by the Nigerian government as national parks and game reserves and conservation centres; however, for many years these forests were not managed properly resulting in such areas being ungoverned.³⁹ It is argued that ungoverned areas are likely targets for insurgent takeovers and criminal activities, and this is a regular feature in Nigeria forests.⁴⁰ Forest resources which have contributed to the wealth and means of livelihood for people in Nigeria are currently the ‘safe haven’ for insurgent groups, criminal herdsmen, armed robbers, drug dealer and kidnappers.⁴¹ Forests are used as shelter, hideouts, and detention camps for kidnapped victims by nefarious individuals and entities. A major reason that criminal activities have thrived in forests is the lack of security presence and neglect of

³⁵ See Sahara Reporter on *Lekki Free Trade Zone MD Killed In Land Fracas In Lagos* (2015).

³⁶ See Channels by Idowu on *Magodo Dispute: Lagos Military Gov Took Over, Allotted Our Lands To Eminent Citizens – Landlords* (2022).

³⁷ See Premium Times by Adelagun on *Magodo: Lagos govt to compensate Shangisha landlords with 549 plots* (2022).

³⁸ See Amnesty International on *Nigeria: Just move them: Forced evictions in Port Harcourt* (2010); Ebeku (2002), pp. 201–231.

³⁹ See the Punch by Hanafi on *Criminals Invasion of Nigeria’s Forest Reserves Endangers Sites, Hinders Tourism Growth in States* (2021).

⁴⁰ Olaniyan (2017), pp. 2–5; Brand Spur on *Forests of Violence: Ungoverned Spaces* (2021).

⁴¹ Ibid. See also Hanafi, *Criminals Invasion of Nigeria’s Forest Reserves Endangers Sites, Hinders Tourism Growth in States* (2021).

forest areas by the state governments.⁴² The forest guards who are meant to protect the forests are very few and ill-equipped to fight these non-state criminal actors who have taken over the forests and many have retired without new members being recruited, thereby resulting in shortage of staff.⁴³ The invasion of the forests by criminals is a problem ravaging the six geo-political zones in Nigeria which has led to loss of lives, property, displacement of communities living near these forest areas, deforestation and forest degradation.⁴⁴ Many of the forests in Northern Nigeria such as Sambisa, Birnin Gwari, Balmo, Falgore, Kabakawa forest reserves, Idu and Gwagwa forest reserves, Kagoro, Kamuku and Rumah/Kukar Jangarai forest reserves, have been at some point occupied by the Boko Haram insurgent group, cattle rustlers, criminal herdsmen and other criminal gangs that have taken advantage of the high insecurity in the region.⁴⁵ The deplorable state of security in Nigeria and the high rate of crime experienced by those who live around affected forests, led to the meeting of state governors in the South-South, South-West and South-East to discuss immediate solutions for their different states.⁴⁶

The insurgent groups and other criminals take advantage of the fact that the forests are very vast and state security does not have sufficient data on the demography of the terrain.⁴⁷ It has become very difficult for the government to tackle suspected criminals who over the years have mastered the terrains of the forest and lay ambush for security personnels who venture into the forest to chase them out.⁴⁸ The presence of suspected criminals in the forest has great adverse effect on the forest reserves. Deforestation activities are carried out to expose these criminal hideouts and camps.⁴⁹ Deforestation becomes a repeated cycle because forest crime suspects from time to time have to change location in the forest due to the hot pursuit by state security personnel. Forest resources are exploited to fund insurgency and other criminal activities in the forests through illegal wood logging, open grazing of abducted cattle's obtained from cattle rustling activities, clearing of land to grow illegal marijuana and cannabis.⁵⁰ In some instances, the government is forced to engage in deforestation activities and degazetting of forest reserve to expose the hideouts.⁵¹ Deforestation has been suggested to be a method of

⁴²Olaniyan (2017), pp. 2–5; Brand Spur on *Forests of Violence: Ungoverned Spaces* (2021); Hanafi, *Criminals Invasion of Nigeria's Forest Reserves Endangers Sites, Hinders Tourism Growth in States* (2021); Godwin et al. (2021).

⁴³Ibid. See also Ikuomola et al. (2016), p. 150; Ladan (2014).

⁴⁴Daily Trust on *Inside Nigeria's Forest of Death* (2016).

⁴⁵Ibid. See also Ladan (2014), p. 132.

⁴⁶Premium Times by Oyenji on *Insecurity: Enugu recruits 1,700 forest guards* (2019); Punch by Oyeleke, on *South-West Govs Meet in Lagos Over Insecurity, Others* (2021).

⁴⁷Hanafi, *Criminals Invasion of Nigeria's Forest Reserves Endangers Sites, Hinders Tourism Growth in States* (2021); Ladan (2014), p. 133.

⁴⁸Ibid.

⁴⁹Ladan (2014), p. 137.

⁵⁰Olaniyan (2017), p. 4.

⁵¹Ladan (2014), p. 133.

discouraging suspected criminals lurking in the forest while further suggestions have been made to the government to establish Nigerian Army stations in these forests.⁵² The above suggestion of clearing out a part of the forest areas, may appear logical to combat the insecurity ravaging the nation, however, the environmental implications will be very grave in the long run. The high prevalence of forest crimes in Nigeria raises concern on a number of human right issues such as right to life,⁵³ right to dignity of human persons,⁵⁴ right to personal liberty⁵⁵ amongst other rights. As a result of the criminal activities being perpetuated in that sector, many lives are being lost.⁵⁶ There are reports of the inhuman treatments experienced by the captives of kidnapers and bandits.⁵⁷ Victims of forest crimes are tortured, raped, married-off, or sold as slaves.⁵⁸ Furthermore, forest crimes have caused a setback in the efforts of the Nigerian government to ensure its reduction in carbon emissions and preservation of the already depleted forests.

With the current high rate of forest crimes in all regions in Nigeria, the implementation of the REDD+ initiative has been a huge task. Not only due to the persistent degradation of the forest reserve but also due to the insecurity for stakeholders who will need to venture into the forest at intervals to assess compliance with the REDD+ vision. One of the objectives of REDD+ is the participation of the local community members in the implementation of its initiative, however, many of these communities have been displaced because of the incessant raids, kidnapping, and killing of their people by the insurgency groups and other criminal groups.⁵⁹ Nigerian government officials struggle to navigate through the forests without the help of the local people who are familiar with the terrain.⁶⁰

⁵² Vanguard on *Army to set up new base in Kano deadly forest* (2017); Premium Trust on *Boko Haram: Nigerian military begins road construction in Sambisa Forest* (2018); Vanguard by Ewepu on *Kidnap of 40 Zamfara Farmers: AFAN President Calls for Bulldozing of Forest* (2020); Ewepu, *AFAN President Calls for Defoliation of Forests to Reduce Banditry* (2021); Hanafi, *Criminals Invasion of Nigeria's Forest Reserves Endangers Sites, Hinders Tourism Growth in States* (2021).

⁵³ See Section 33, 1999 Constitution of the Federal Republic of Nigeria as Amended.

⁵⁴ *Ibid.*, Section 34.

⁵⁵ *Ibid.*, Section 35.

⁵⁶ Vanguard by Johnson on *Tortured Ondo kidnap victim dies two weeks after release* (2022); The Cable by Owolabi *INSIDE STORY: Raped, shot, tortured – the scarred survivors of banditry in northern Nigeria* (2022).

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

⁶⁰ Vanguard on *10,000 N/East hunters gather, seek clearance to fight Boko Haram in Sambisa Forest* (2016).

4 Legal Framework on REDD+

This section examines the adequacy or otherwise of the existing legal framework for the protection of populations in the implementation of REDD+ Project. Before venturing to the discussion of the legal framework, it is important to note from the onset of the discussion that there are key institutions established by relevant laws that have role in the implementation of REDD+. Pursuant to the Fundamental Objectives and Directive Principles of State Policy in the Constitution, a number of bodies have been established with mandates on the protection of the environment. For instance, the National Environmental Standard and Regulations Enforcement Agency (NESREA)⁶¹ was established under Federal Ministry of the Environment to replace the Federal Environmental Protection Agency (FEPA). NESREA is empowered to enforce compliance with the provisions of international agreements, protocol, conventions, and treaties on environment.⁶² NESREA has the duty to protect and develop the environment, biodiversity conservation and sustainable development of Nigeria's natural resources and environmental technology.⁶³ NESREA is anticipated to implement the environmental standards covering water quality, air quality, noise control and atmospheric protection.⁶⁴ NESREA also has authority to conduct public investigations on pollution and the degradation of natural resources and to submit proposals for the evolution and review of existing guidelines, regulations and standards on the environment to the Minister of the Environment for approval.⁶⁵ The law further enables the agency to serve as mobile court for environmental defaulter.⁶⁶ It provides the legal framework for REDD+ to work with as it has been empowered by Sections 7 & 8 of the NESREA Act to oversee matters relating to the preservation of the environment and enforcement against defaulters. However, the foreseeable problem that can impede the successful implementation of the REDD + initiative is in the enforcement of the provisions of the NESREA Act. The Act is weak in terms of enforcement. For instance, Section 26 of the Act provides that 'a person who violates the regulations commits an offence and shall on conviction, be liable to a fine not exceeding N200,00, or to imprisonment for a term not exceeding one year, for individuals, and N1,000,000 fine, for corporate institutions'. This is an avenue for the corporate institutions to violate environmental law with impunity, as

⁶¹ Act No. 25 of 2007.

⁶² Federal Ministry of Environment (Special Climate Change Unit) National Environmental, Economic and Development Study (NEEDS) for Climate Change in Nigeria (2010).; Section 7 and Section 8 of the National Environmental Standards Regulations Enforcement Agency (Establishment) Act No. 25 2007 CAPE 12 LFN, 2014.

⁶³ Ladan (2012), p. 116.

⁶⁴ S.1.9 of 1991.

⁶⁵ Section 8(g)(h).

⁶⁶ Section 8 (f), National Environmental Standards Regulations Enforcement Agency (Establishment) Act No. 25 2007 CAPE 12 LFN, 2014.

they can easily afford to do so in pursuit on activities that recklessly deplete environmental resources.

The Climate Change Act (CCA) provides for the basis of climate action to achieve Nigeria's short, medium, and long-term goals on climate mitigation and adaptation. Mostly applicable are the duties placed on public and private entities to encourage low carbon economy and sustainable livelihood, as well as the responsibility of the Council and its Secretariat to partner with relevant stakeholders, especially civil society organisations.⁶⁷ The Council is empowered to implement nature-based solutions to lessening GHG emissions and mitigating climate change matter in Nigeria.⁶⁸ The Federal Ministry responsible for the environment is required to set up a registry with sub-national nodes for capturing REDD+ activities in Nigeria.⁶⁹ Section 28 of CCA recognises REDD+ as it requires the National Council on Climate Change to offer fiscal support to REDD+. The CCA is, however, still new and it is not certain what the application of fiscal support may mean for populations in forests where REDD+ is implemented.

4.1 Constitutional Framework

In Nigeria there is no treaty between other countries and the federation that would be enforced without first being passed into law by the National Assembly.⁷⁰ Therefore without the legislative arm of government consolidating its current laws on forestry and the environment and if need be, creating new laws to align with the REDD+ initiative, and ultimately the Paris Agreement of 2015 in which Nigeria is a signatory, relevant treaties on REDD+ may not have the force of law.⁷¹ The state provides for the protection and improvement of environment and safeguarding of Nigeria's water, air, land, forest and wildlife,⁷² under Chapter II of the Constitution which are not legally enforceable in the event that the government fails to adhere.⁷³ Section 6 (6)(c) restricts judicial authorities from entertaining issues relating to Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of the Constitution. The provision is no substitute for the right of local population to reside in a healthy forest as there is no constitutional guarantee on the right to healthy environment. Except for the environmental objectives which are explicitly stated and

⁶⁷A Review of Nigeria's 2021 Climate Change Act: Potential for Increased Climate Litigation | IUCN.

⁶⁸Section 27.

⁶⁹Section 28.

⁷⁰Section 12, 1999 Constitution of the Federal Republic of Nigeria, as amended.

⁷¹Section 12, 1999 Constitution of the Federal Republic of Nigeria, as amended.

⁷²UN-REDD Programme Collaborative Workspace *about REDD*.

⁷³Okonkwo (2015), p. 178.

constitutional measures which are provided for their legal sanction, it is problematic to achieve the objectives of the state on the protection of the interests of populations who are forest dependents.⁷⁴

Section 34 of the Constitution confers the right to dignity of human person. The provision is highly significant in that it presupposes that the dignity of forest dependent populations ought to be a primary consideration in the implementation of REDD+. Section 20 of the Constitution provides that the government must ‘protect and improve’ the environment and makes further provision to ‘safeguard’ the forests in Nigeria. It is opined that forest crimes are a threat to the right of population to life and their socio-economic livelihood. Nigeria is a party to the African Charter on Human and Peoples’ Right 1981 (African Charter), which guarantees everyone the right to a favourable environment for existence. While it is not yet tested in relation to the protection of forests, the special nature of the African Charter is acknowledged in the popular case of *Gani Fawehinmi v Abacha*.⁷⁵

4.2 *Legislative and Policy Framework*

While there is a dedicated policy on forestry, the legal environment of REDD+ remains fragmented. An effective implementation of the initiative will require the harmonisation of the forestry content in the existing framework to enable local populations optimise their benefits from REDD+ in Nigeria. A number of legislation and policies are applicable to the governance of REDD+ in Nigeria. These are the Land Use Act,⁷⁶ National Forest Policy,⁷⁷ and National Environmental (Desertification Control and Drought Mitigation),⁷⁸ National Environment (Bush/Forest Fire and Opening burning),⁷⁹ Climate Change Act,⁸⁰ National Park Service Act,⁸¹ Environment Impact Assessment Act,⁸² Nigeria’s Agricultural Promotion Policy.⁸³

⁷⁴Ibid., p. 183.

⁷⁵(1996) 9NWLR, Part 475, p. 710.

⁷⁶Land Use Act, 1978.

⁷⁷National Forest Policy, 2020.

⁷⁸National Environmental (Desertification Control and Drought Mitigation) Regulations, SJ. No. 13, Gazette. No. 40. Vol. 98 of 3 May 2011.

⁷⁹National Environmental (Control of Bush/Forest Fire and Open Burning) Regulations, SI. No. 15 Gazette No. 42. Vol. 98 of 6th May, 2011.

⁸⁰Climate Change Act, 2021.

⁸¹National Park Service Act N65 LFN, 2004.

⁸²Environmental Impact Assessment Act, 1992.

⁸³Nigeria’s Agriculture Promotion Policy, 2016–2020.

The provisions of the Land Use Act (LUA) are sometimes used as the tool in depriving members of communities of their lands.⁸⁴ There are instances whereby the right to land may be bypassed without compensation on the ground of public interest.⁸⁵ A site-based project such as REDD+ may involve the revocation of right to land in the interest of the public and raise violation of fundamental human right concerns because of past experiences of populations affected by government sponsored projects. Also under the LUA which governs ownership and possession of lands, all legal rights to lands in Nigeria are vested in the states government.⁸⁶ However, before the enactment of the LUA, there was the customary land law in different regions of Nigeria that guided people on ownership and possession of lands in their communities.⁸⁷ The customary land law enables individuals, families and communities to own land.⁸⁸ These laws are recognised under Section 28 of LUA which does not only cover revocation of a statutory right of occupancy, but also a customary right of occupancy.⁸⁹ From the provision it can be inferred that it is not impossible for the government to revoke the customary right of occupancy of land of those occupying forest areas in the interest of the Public. In the case of *Aderonpe v Eleran*,⁹⁰ the Supreme Court held that the government empowered by Section 28 has the power to *revoke* a person's legal right to possess land in the interest of the public. Consequently, it may be argued that the Nigerian government have the right to acquire lands occupied by communities residing in forest areas in the interest of preserving forest reserves and ultimately creating a healthier environment. Under Section 28 of the LUA, there is no clear definition of public purpose. The lack of a definition has given the government the liberty to acquire lands at will.

Section 29 of the LUA provides that the government must compensate affected communities whose right to land has been revoked.⁹¹ Section 29 of the LUA has the backing of the Constitution in Section 44 which provides that anyone who has

⁸⁴ See Section 28 of the Land Use Act, 1978 which gives the government the power to revoke a statutory right of occupancy or a customary right of occupancy on the ground of public interests, amongst others.

⁸⁵ *Lagos communities protest non-compensation for Lekki Free Trade Zone lands* (2016); *Ibeju-Lekki Land Grab: Community Accuses Companies Of Illegal Trespassing, Brutalization of Land Owners* (2015); *Lagos Communities Seek Compensation For Lekki Free Trade Zone Land* (2016); *Lekki Free Trade Zone MD Killed In Land Fracas In Lagos* (2015); *Idowu Magodo Dispute: Lagos Military Gov Took Over, Allotted Our Lands To Eminent Citizens – Landlords* (2022); *Adelagun Magodo: Lagos govt to compensate Shangisha landlords with 549 plots* (2022); See 'Nigeria: Just move them': *Forced evictions in Port Harcourt* (2010); Ebeku (2002), pp. 201–231.

⁸⁶ Section 1, Land Use Act, 1978.

⁸⁷ Taiwo (2011), pp. 152–154.

⁸⁸ *Ibid.*

⁸⁹ See Section 28 (3), Land Use Act, 1978.

⁹⁰ (2019) 4 NWLR (PT 1661) (PARASE-F) P 163. S.C: See also *Lateju v Fabayo* [2012] 9 NWLR (PT1304) P177 PARA. D.

⁹¹ Section 29, Land Use Act, 1978. See also, Section 44 of the Constitution of the Federal Republic of Nigeria, 1991.

interest in immovable property must be compensated.⁹² A striking statement used in Section 44 (1) (a) is . . . *prompt payment of compensation*, which in reality, is never the case.⁹³ The provisions of the LUA are sometimes used as the tool in depriving members of communities of their lands.⁹⁴ It provides that any person whose right of possession has been revoked is entitled to the market value of the interest taking as at the date of revocation.⁹⁵ This provision does great disservice to persons whose interest in land has being revoked by the government, because of the delay in compensation.⁹⁶ REDD+ communities value forest use rights, because households or communities can benefit from having forest use rights in their areas, as it can provide incentives for them to protect forests and help to stop encroachment. However, Nigeria's REDD+ is organised around strict protection of forest by the state.⁹⁷ Rights of forest dependent populations cannot be achieved where the ownership of such resources largely rests in the state as the custodian and regulators of forest resources.

The National Forest Policy of 2006 facilitates and ensures conservation of the forests.⁹⁸ The implementation of this policy was influenced by the awareness that poor management of forest and forest resources can result in an increase of the concentration of greenhouse gases in the atmosphere, consequently causing increased global warming and climate change.⁹⁹ The National Forestry Policy (the Policy) encourages forest communities as stakeholders with the distinguished forest management efforts just like the new Cross River State forestry law.¹⁰⁰ The Policy covers issues such as livelihood and lessening poverty, food security, biodiversity conservation and environmental services.¹⁰¹ There is the National Forestry Action Programme (NFAP) adopted by the Policy which ensures the long-term sustainability and protection of forest management, while promoting collaborative and participatory development process, propelling private sector forestry development, including implementing an organised approach to forestry development. Programmes of forest industries, social forestry and forest management, promote Nigeria's forest cover growth for the varying climate mitigation and adaptation.¹⁰²

⁹² See Section 44 (1) (a).

⁹³ See footnote 85.

⁹⁴ See Section 28 of the Land Use Act, 1978 which gives the government the power to revoke a statutory right of occupancy or a customary right of occupancy on the ground of public interests, amongst others. See footnote 86.

⁹⁵ Land Use Act, 1978.

⁹⁶ See footnote 85.

⁹⁷ Asiyambi et al. (2017), p. 78.

⁹⁸ Obasa (2021).

⁹⁹ National Forest Policy (2006). Federal Ministry of Environment.

¹⁰⁰ Asiyambi (2016), pp. 146–156.

¹⁰¹ Federal Ministry of Environment (2010) Draft National Guidelines on CBFM, as a Policy Instrument for Sustainable Forest Management in Nigeria. Prepared by ODEE EN – Consultancy Services, Abuja.

¹⁰² Raimi et al. (2021).

The Regulations on Desertification Control and Drought Mitigation is aimed at creating an effective and practical regulatory framework for the sustainable use of all areas affected by desertification and the protection of susceptible lands,¹⁰³ through reforestation, reseeding, afforestation, conservation of areas under desertification or vulnerable to same, and rehabilitation of degraded lands.¹⁰⁴ The Regulations on Desertification Control and Drought Mitigation, however, provides for the felling of trees or cutting of branches, land clearing, earth disturbing activities, bush burning, grazing, cultivation of marginal land, amongst other degrading activities, with a permit,¹⁰⁵ and prescribes penalties for violation.¹⁰⁶ The provision of the law raises a big concern, due to the high level of poverty among forest dependent communities.¹⁰⁷ It seems unfair and a violation of the human rights of those affected, if alternative means of surviving are not provided.

The National Environmental (Control of Bush, Forest Fire and Open Burning) Regulations, 2011 (NECBFO), aims at 'preventing and minimising the destruction of ecosystem through fire outbreak and burning of any material that may affect the health of the ecosystem through the emission of hazardous air pollutants'.¹⁰⁸ Bush/forest burning and farmland clearing are some of the agricultural practices engaged in by farmers and hunters, and are known causes of forest degradation and deforestation in Nigeria.¹⁰⁹ The instrument appears to have provided for better ways of burning bush/forest (with permit),¹¹⁰ although there are penalties for noncompliance.¹¹¹ NESREA is the agency given the mandate to enforce the provisions of NECBFO as its focus aligns with an objective of the REDD+ initiatives on forest degradation and deforestation. Section 20 of NECBFO mandates an enforcement officer to make a report of all bush or forest burning incidences in the jurisdiction and transmit to the NESREA headquarters. However, there is no evidence of such linkage in Nigeria.

Section 28 of CCA provides the legal backing of the Nigerian government in the REDD+, therefore giving the initiative the legitimacy it needs to thrive in Nigeria. The enactment of the CCA appears to be a response of the state to climate change. It

¹⁰³S 2 (a) National Environmental (Desertification Control and Drought Mitigation) Regulation 2011.

¹⁰⁴S 2 (e) National Environmental (Desertification Control and Drought Mitigation) Regulation 2011.

¹⁰⁵S 7.

¹⁰⁶S 21 National Environmental (Desertification Control and Drought Mitigation) Regulation 2011.

¹⁰⁷See footnote 25.

¹⁰⁸S 1 National Environmental (Control of Bush, Forest Fire and Open Burning) Regulation 2011.

¹⁰⁹'Environmental Implication of Bush Burning in Nigeria' https://gfmc.online/media/2012-media/03-2012-media/news_20120303_ng.html.

¹¹⁰S 3(1 & 2) National Environmental (Control of Bush, Forest Fire and Open Burning) Regulation 2011.

¹¹¹*Ibid.*, S 21(3, 4, 5).

has been adjudged as a huge response in fighting the global effects of climate change. Also, the enactment of the CCA may have the potential to achieve the REDD+ initiative to mitigate the effect of climate change on our environment.¹¹² However, its few provisions on REDD+ need more amplification to set out its relevance to local populations.

National Park Service Act (NPSA) aims at sustainable wildlife management as it sets the restrictions for protection and use of wild animals.¹¹³ Park officials must have knowledge about laws regarding the park and the wild resources it holds because they have the duty to protect the parks' wild resources. Since park officials were previously poachers or rural dwellers of host communities having little or no formal education, it is essential to educate them on the existing conservation/wildlife laws.¹¹⁴ National Park Services Act (NPSA) makes provision for the conservation and protection of natural resources and plants in national parks.¹¹⁵ Report states that the national parks in Nigeria are being exploited by surrounding communities and other criminals, who use the resources in the parks for their own gain.¹¹⁶ Illegal wood logging activities are a regular rive in these national parks.¹¹⁷ The NPSA provides a legal framework for the preservation of Nigeria's national park, however, in reality, the law does not serve as a deterrence to its exploiters. The national parks are reported to be mismanaged due to lack of funding to better equip staff to protect the resources from exploiters.¹¹⁸ Also, remuneration of staff at national parks is too low to encourage diligence in the work, therefore yielding little or no enforcement of the law.¹¹⁹ The penalties in Section 37 of the NPSA is also weak to deter natural persons or corporate bodies from exploiting national park resources. The proper management of the national parks can generate income not only for the parks, but the communities living around it. The safeguarding of the national parks is one of the key interests of REDD+, as one of its financial incentives is that a participating country that has successfully implemented REDD+ objectives, is able to trade its carbon stock.¹²⁰ Similar to the objects of NPSA, it is the goal of the REDD+ initiative to improve the lives of communities that rely on forest resources, by introducing more sustainable environmental practices and educate them on the climate change and its effect on quality of life.

¹¹² See Section 1 of the Nigerian Climate Change Act, 2021: Food and Agricultural Organisation of the United Nations *REDD+ Reducing Emissions from Deforestation and Forest Degradation*; UNFCCC Decision 1/CP.16.

¹¹³ Morgera (2011).

¹¹⁴ Coker et al. (2020), pp. 37–43.

¹¹⁵ Mustapha (2022).

¹¹⁶ Ogunjinmi et al. (2017), pp. 25–30.

¹¹⁷ Ibid.

¹¹⁸ Ibid.

¹¹⁹ Ibid.

¹²⁰ *Cardamoms National Park Achieves Sustainable Financing from ReDD+ Carbon Offsets.*

Environmental Impact Assessment (EIA) Act is a recognised instrument of environmental law and policy intended to safeguard human activities that will cause adverse environmental impacts.¹²¹ EIA Act and its related policies tend to emphasise the impacts of plans/projects on the environment without examining the impacts of the environment on proposed plans/projects.¹²² EIA Act is usually utilised for projects and activities with capacity or potential to cause environmental impacts within the boundaries of a state, but environmental impact of projects are not limited to the boundaries of a state. It can go beyond the boundaries of an independent state to affect another state and when this happens it becomes trans-boundary environmental impact.¹²³ The main goal of the EIA Act is to ensure that possible environmental impacts are foreseen at the proper stage of project design and tackled before any decision is taken on the project.¹²⁴ The importance of EIA was endorsed in *Baytide Nigeria Limited v Aderinokun & Ors.*, where an issue raised by the respondent at the trial court was whether the claimant complied with the EIA Act while obtaining its approval to build a petrol station.¹²⁵ Section 12(1) of the EIA Act provides that agricultural projects covering more than a land mass of 500 hectares or displaces more than 100 households require an environmental impact assessment. Section 7 of the EIA Act envisages multi-stakeholder inputs for EIAs, giving room for stakeholder comments whilst Section 24 prescribes that the public will be notified of the availability of the report, and where it may be obtained.¹²⁶ The requirement of the EIA for projects that may heavily impact the environment serves as a legal tool to ensure that both government and its citizens maintain a healthy environment. If applied in the context of REDD+, there should be little or no doubt that illegal logging and other industrial projects which negatively impact on the forests may be preventable through the agency of EIA. However, the reality that activities which negatively impact forests continue signifies that the potentials in the EIA Act for forests conservation are not being maximised.

Nigeria Agricultural Promotion Policy (NAPP) is a policy intervention scheme for the agricultural sector. The policy is placed to increase the input and output to enhance the market of agriculture both locally and internationally.¹²⁷ The policy is governed by commitment of marketplace participants, farmers, states, investors, financial institutions, and communities.¹²⁸ The NAPP's vision is to be realised through a three-pronged method: (i) productivity improvement especially on the access to land, soil fertility enhancement, access to information and knowledge, production management, storage, processing, marketing and trade, (ii) private investment

¹²¹ Bastmeijer and Koivurova (2008), p. 1.

¹²² Xia et al. (2011), pp. 1–12.

¹²³ Akpoghome and Akpoghome (2022).

¹²⁴ Nwoko (2013).

¹²⁵ [2013] LPELR-19956 (CA).

¹²⁶ Ojo et al. (2017).

¹²⁷ Agricultural Promotion Policy in Nigeria: 10 Big Lessons (brickstone.africa).

¹²⁸ Aturamu (2021), pp. 60–66.

expansion with emphasis on access to finance and agribusiness investment development and (iii) institutional realignment for improved service delivery and development outcomes with emphasis on greater inclusiveness, participation of youth and women, infrastructure, research and innovation, climate change as well as food and nutrition security.¹²⁹ The NAPP's proposals comprise of development domestic value chains for commodities such as rice, wheat, maize, and soya beans; strengthening agricultural export markets for products including cocoa, cassava and oil palm; providing a better enabling environment for agricultural development by improving infrastructure, designing clearer policies, and improving working relationships between the tiers of government; and providing better inputs, tools, and training that allow farmers to increase their yields.¹³⁰ Agriculture is one of the drivers of Nigeria's economy, but a driver of deforestation. The effect of unhealthy farm practices raises for climate change makes effective implementation of REDD+ quite important to the sector. For instance, it is reported that agricultural practices in Nigeria aid deforestation and a disruption of the ecosystem in general.¹³¹ Therefore, the NAPP may play an important role in the implementation of REDD+ considering the level of greenhouse gas emission generated as a result of agricultural activities in Nigeria. A reduction of greenhouse gas emission is one of the objectives of REDD+. Without the Nigerian government ensuring that its policies are environmentally friendly, continuing implementation of REDD+ will face challenges.

5 Conclusion and Recommendations

The implementation of the REDD+ initiative in Nigeria is ongoing, however, emerging human right issues and forest crimes are challenging. Degradation and pursuit of agricultural goals have negative impact on forests and dependents. Evidence exists on the possibility that forest dependent communities may be displaced in the context of REDD+ implementation. Forest crimes also pose serious threat in that insurgent groups and other suspected criminals take cover under forest to perpetrate illicit activities ranging from kidnapping to hostage taking. They take advantage of the fact that forests are very vast and state security do not have sufficient data on the demography of the terrain. These developments have negative implications on the right to life and socio-economic rights of forest dependent communities in Nigeria. There is a considerable comprehensive legal framework by which the REDD+ initiative may thrive for long in Nigeria; however,

¹²⁹ Olomola and Nwafor (2018).

¹³⁰ Downie (2019).

¹³¹ Oku and Guveya (2016); A paper presentation by Moses Ama (National Co-ordinator Nigeria REDD+ Programme) on 'Addressing Deforestation from Agriculture and Livelihood Challenges' at the National Workshop on Applications of Juncao Technology and its Contribution to the Achievement of Sustainable Agriculture and the Sustainable Development Goals in Nigeria (2022).

enforcement of instruments for the benefit of local communities remains a concern. It may be concluded that unless the welfare of communities living around the forests takes the front burner, rights will be undermined, and forest reserve will continue to deplete.

Consequently, for the successful implementation of the REDD+ initiative across Nigeria, it is important that international standards are adhered to. This requires transparency across all levels, and proper compliance with applicable laws. The rights of the communities affected in the bid to preserve forest resources must be protected. The government must realise that the welfare of the people is as important as the project to preserve the environment. Violation of human rights may lead to conflicts, loss of lives and property and ultimately defeat the good purpose for which the REDD+ initiative was established. In the interest of the REDD+ projects, landowners must be engaged regularly in the process and their land tenureship should be protected. This may build trust and eliminate misconceptions about the project.

On forest crimes, the government both at the federal and states level should partner to bring an end to the heightened insecurity. Forest crimes do not only cause socio-political instability, but also have an adverse effect on the environment. The government of Nigeria has to own up to their responsibility under Section 20 of the Constitution to protect and improve the environment and safeguard the forest. Suspected criminals gained access into these forests due to lack of proper managements by the state governments. To reclaim and maintain the forest territories already taken over by suspected criminals, the government have to be more intentional about protecting the lives of the citizens, particularly the forest dependents. Government must beef up security and protect lives and forest resources. In relation to gaps in the legal framework, implementation is key while some amendments are also necessary. Section 28 of the LUA should be amended to define what *public purpose* is and modified to affirm that compensation should align with international standards. Compensation should not only consider the monetary value lost, but also the social, religious and cultural impacts of forceful acquisition on forest dependent communities in Nigeria.

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