

Legal and Regulatory Framework for Combating Deforestation in Africa: Case Study of Kenya and Nigeria

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ABSTRACT

Deforestation is a matter of global concern. This is because deforestation has a negative effect on the global climate, ecosystem and water cycle. No other continent is more bedevilled with the problem of deforestation than Africa. Massive Population growth, widespread urbanization, increased utilization of forest land for agriculture and the reliance on wood as a source of fuel are some of the factors responsible for deforestation in Africa. In 2013, the African Union adopted the Agenda 2063 as a framework all round for socio-economic transformation of the African continent within 50 years. Kenya and Nigeria represent examples of African countries that adopted Agenda 2063 and are combating the problem of deforestation in their territories. Using the Doctrinal Research Method, this paper analysed the legal and institutional frameworks for combatting deforestation in Kenya and Nigeria with the aim of discovering if they were capable of delivering on the Agenda 2063 Targets of the African Union. This paper also undertook a comparative analysis of the legal and regulatory framework for combatting deforestation in Kenya and Nigeria. This paper also undertook a comparative analysis of the implementation of the legal and regulatory framework for combatting deforestation in Kenya and Nigeria. The findings of this paper are that the Legal and Institutional Framework for combatting deforestation in Kenya is theoretically robust. However, the implementation of the legal and institutional framework is weak and ineffective. For the part of Nigeria, the legal and institutional framework is weak and inadequate. The implementation is equally weak and ineffective. The conclusion of this paper is that unless the implementation strategies are improved upon, the legal and regulatory framework for combatting deforestation in Kenya and Nigeria would not deliver on Agenda 2063.

Keywords; Deforestation, Forest, Agenda 2063, Environment, Ecosystem, Kenya, Nigeria

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1. INTRODUCTION

It is now globally recognized that the present generation owes future generations a duty to secure the environment. The principle that the present generation ought to take into account the interests of unborn generations in the utilization of the earth's resources is a universal principle. This principle is in consonance with African Humanism, which insists on a connection between the past generations, the present generation, and the future generations.³ The Supreme Court of Nigeria observed in the case of *Akin Adejumo V. Yusuf Ayantegbe* that: 'under the Nigerian customary law, ownership of land is vested in the past, existing and future members of the family.'⁴This principle implies that it is imperative for this generation to conserve and preserve the forests and its resources for unborn future generations. No other continent has been more bedevilled with the problem of deforestation in contemporary times than Africa. Massive Population growth, widespread urbanization, increased utilization of land for agricultural purposes and the reliance on wood as a source of fuel by rural communities are some of the factors responsible for deforestation in Africa. Kenya and Nigeria represent examples of the problem of deforestation in Africa.

It was estimated in 1963 that forests covered slightly above 10% of Kenya's entire land mass of 581 309Km².⁵ In 2006, it was estimated that forests covered only 1.7% of the entire land mass of Kenya.⁶ This signifies an 83% reduction in the forests of Kenya. This has been attributed to logging, conversion of forests into agricultural lands, clearing of forest for plantations, human settlement and bush fires.⁷

Nigeria has a similar tale of the adverse impact of deforestation on its forests and forest resources. The Food and Agriculture Organization of the United Nations observed in 2005 that Nigeria had

³J S Mbiti, *African Religions and Philosophy* (2nded, Heinman Education Publishers, New York, 1989)141

⁴(1989) 6S.C. (Part 1) 76.

⁵ *Global Corruption Report 2011: Climate Change the Plunder of Kenyan Forest* (Transparency International 2011) 280 -282; *The World Fact Book: Kenya* (Central Intelligence Agency Publication 2014) <https://www.cia.gov/library/publications/the-world-factbook/geos/ke.html> Accessed 6 May 2023.

⁶*Ibid.*

⁷ A Hemp, 'Vegetation of Kilimanjaro: Hidden Endemics and Missing Bamboo' (2006) 44 *African Journal of Ecology* 305, 311; L Obare, J B Wangwe, 'Underlying Causes of Deforestation and Forest Degradation in Kenya' <http://www.wrm.org.uy/oldsite/deforestation/Africa/Kenya.html> Accessed 1 May 2023.

the highest rate of deforestation in the world.⁸ Between 2000 and 2005 Nigeria is said to have lost 5.7% of its primary forests.⁹ From 2006 to 2010, the loss of forests through deforestation is said to have increased to about 8%.¹⁰ Between 2011 and 2015 Nigeria lost 9% of its forest through deforestation.¹¹ In 1970, 10% of Nigeria's total land mass of 923, 678 km² was covered by forest.¹² Today, only about 4.05% of Nigeria's land mass is covered by forests.¹³

In 2013, the head of government of the African Union adopted the Agenda 2063 in its 24th Ordinary Assembly (that took place in the Ethiopian capital, Addis Ababa) as "a framework for socio-economic transformation of the African continent within 50 years".¹⁴ Agenda 2063 has 7 visions.¹⁵ The vision that is relevant for the purposes of this article is the vision of: "a prosperous Africa based on inclusive growth and sustainable development."¹⁶ This aim cannot be accomplished without preserving the vast resources of the forest.

The aim of this paper is to analyse the legal and regulatory frameworks for combatting deforestation in Kenya and Nigeria with the objective of discovering if the legal and regulatory framework is capable of delivering on the Agenda 2063 Targets of the African Union. This paper also undertakes a comparative analysis of the implementation of the legal and regulatory framework for combatting deforestation in Kenya and Nigeria. Kenya and Nigeria have been chosen because both countries, as shown above, have very high rates of deforestation on the African continent.

2. CONCEPTUAL CLARIFICATION

The aim of this section is to define some important concepts. These concepts include: Forest, Deforestation and Agenda 2063

⁸ M Ayala, 'Co-integration and Series Analysis of Arab Countries Food Gap (1980-2007)' (2010) 346(3) Journal of Economics and Engineering 32 at 41; 'Nigeria has Worst Deforestation Rate, FAO Revises Figures' <https://news.mongabay.com/2005/11/nigeria-has-worst-deforestation-rate-fao-revises-figures/> Accessed 17 May 2017.

⁹ Ayala (n 6); T. E. Olagunju, 'Impact of Human Induced Deforestation, Forest Degradation and Fragmentation on Food Security' (2015) 8 (1) New York Science Journal 1 at 7.

¹⁰ Ibid

¹¹ L Poopola, 'Valuing Nigeria's Forests: Issues and Context' Paper presented at the 14th Annual Chief S.L. Edu Memorial Lecture Organized by the Nigerian Conservative Foundation; Olagunju (n 7).

¹² Poopola (n 9).

¹³ Ibid

¹⁴ 'Agenda 23' Office of the Special Adviser on Africa Publication <http://www.un.org/en/africa/osaa/peace/agenda2063.shtml> Accessed 17 May 2023.

¹⁵ Ibid.

¹⁶ Ibid.

2.1. FOREST

The term “Forest” has been defined in several ways. Firstly, it has been defined according to its vegetation and plant content. For instance, the Food and Agriculture Organization of the United Nations defines the term forests as:

“Land with tree crown cover (or equivalent stocking level/standing density) of more than 10% of the area. This may consist of either close formation where trees of storeys and undergrowth cover a high proportion of the ground or open forest formation with a continuous vegetation in which tree crown cover exceeds 10%.”¹⁷

The term forest has also been used in relation to animal content. According to Duster, the term forest is etymologically derived from the Latin maxim *Ferastatio*, which means a sanctuary for animals.¹⁸

Again, the term forest as defined on the basis of its vegetation and plant content can be divided into natural (regular) forests and Plantation (artificial) forests. According to the Food and Agriculture Organization of the United Nations:

“Natural forest are forests which are composed of tree species known to be indigenous to an area. Plantation forest are forests which are established artificially by afforestation on land which did not carry any forest within living memory or those established by reforestation on land which carried forest before and involving the replacement of indigenous species by a new and essentially different species or genetic variety.”¹⁹

In addition, forests may be primary or secondary. Primary forests (or closed forests) are forests that have not been tampered with by any agent of forest removal.²⁰ Secondary Forest (or open

¹⁷ ‘Global Forest Resources Assessment 2000: Main Report’ Forestry Paper Number 140, Rome. www.fao.org/forestry/fo/fra/main/index.jsp Accessed 1 May 2023.

¹⁸ J Dunster, K Dunster, *Dictionary of National Resource Management* (University of British Columbia Press Canada 1996) 135.

¹⁹ *State of the World’s Forests* (Food and Agriculture Organization of the United Nations Publications 1997)200

²⁰ Ibid.

forests) is a forest that has been altered by either man or natural phenomenon such that the quality is no longer of the original component.²¹

For the purpose of this article, all these definitions of forest would be adopted.

2.2. DEFORESTATION

Deforestation is the direct or indirect “conversion of forests into alternative, permanent non-forested use of land such as agriculture, grazing or urban development.”²² Deforestation may be a consequence of human causes, such as cutting down trees for timber. Deforestation may also result from non-human causes such as desertification, erosion, etc. Deforestation occurs in all regions: tropical, sub-tropical and temperate. Deforestation is an issue of global concern as it is shrinking areas of the tropical forests²³ and causing loss of bio-diversity and enhancing the greenhouse effect.²⁴

2.3. AGENDA 2063

Agenda 2063 is a document that was adopted at the 50th anniversary of the Organization of African Unity²⁵ (in the year 2013)²⁶ to spell out a vision for holistic sustainable development in every sector in the African continent in the next 50 years.²⁷ Both Kenya and Nigeria are signatories to Agenda 2063. The focus of this article is the provisions of Agenda 2063 in relation to the issue of deforestation and the sustainable utilization of the forest. As regards the conservation of forests, Agenda 2063 provides that:

“By 2063, Africa’s biodiversity including its forests, wildlife, wetlands (lakes and rivers), genetic resources, as well as aquatic life most notably

²¹ Ibid

²² G. C. Van Kooten, E. H. Bulte, *The Economics of Nature: Managing Biological Assets* (Blackwells, Oxford 2000) 41

²³ S Barraclough, K. B. Ghimire, *Agricultural Expansion and Tropical Deforestation* (EarthScan, Sterling, Virginia 2000) 71

²⁴ A Angelsen, ‘Agricultural Expansion and Deforestation: Modeling the Impact of Population, Market Forces and Property Rights’ (1999) 58 *Journal of Development Economics* 185 at 192.

²⁵ The Organization of African Unity was established in a meeting of African heads of state in Addis Ababa, Ethiopia on 25th May 1963. It was subsequently disbanded and replaced by the African Union on the 9th of July 2002.

²⁶ Agenda 2063 was adopted in Addis Ababa on the 25th of May 2013 which was the golden jubilee of the Organization of African Unity (as currently represented by its successor African Union).

²⁷ ‘Agenda 2063: Framework Document’ (African Union Publication September 2015) iii <http://www.un.org/en/africa/osaa/pdf/au/agenda2063-framework.pdf> Accessed 1 June 2023

fish stock and coastal and marine ecosystems, including trans-boundary natural resources would be fully conserved and used sustainably. Forest and vegetation covers would be restored to 1963 levels; while national parks and protected areas (both terrestrial and marine) will be well managed and threats to them significantly reduced.”²⁸

The focus of this article would be to examine the progress that have been made as regards this vision 12 years after the adoption of Agenda 2063.

3. GROWTH AND SUSTAINABLE DEVELOPMENT INITIATIVES UNDER AGENDA 2063 AND THE ISSUE OF DEFORESTATION: THE KENYAN EXPERIENCE

The problem of deforestation is on the increase in Kenya. Between 1990 and 2015 Kenya is said to have lost 6.5% of its forest cover (the equivalent of about 241,000 hectares).²⁹ The problem of deforestation in Kenya has been attributed to the development of new settlements as a result of massive urbanization, expansion of agriculture, logging, massive charcoal production and population pressure.³⁰ Although Kenya is a party to the Agenda 2063, it has not domesticated it. The implication of this is that while Kenya is bound by its obligation under Agenda 2063, it cannot be enforced by the citizens of Kenya against the government of Kenya.³¹ One provision of the Agenda 2063 that is particularly relevant to the experience of Kenya is the Agenda 2063’s aspirations on ‘Environmental Sustainable and Climate Resilient Economies and Communities.’³² It provides *inter alia* that:

“Land degradation and desertification would have been stopped and then reversed. All Agricultural lands would have been managed in a manner that is environmentally and socially sustainable. African

²⁸ Ibid 9.

²⁹ ‘Annual Impact Report 2015’ (Equity Group Foundation Publication 2015) 60

³⁰ P N Bennun, A N Mwangi, ‘Land Tenure and Forest Resource Management’ in Jumac, Owang (eds) *In Land We Trust: Private Property and Constitutional Change* (Initiatives Publishers London 1996) 176

³¹ N W Orago, ‘The 2010 Constitution and the Hierarchical Place of International Law in Kenyan Domestic Legal System: A Comparative Perspective.’ (2013) 13 (2) AHRLJ 415, 421

³² Agenda 2063: Framework Document’ (African Union Publication September 2015) 9
<http://www.un.org/en/africa/osaa/pdf/au/agenda2063-framework.pdf> Accessed 1 June 2023

countries would have reduced loss of biodiversity by at least 90 percent and natural habitats conserved.”³³

Agenda 2063 recommends that this can be achieved by putting in place effective regulations and functioning institutions, systems and processes.³⁴ The conformity of the statutes and institutions of Kenya would be examined in the preceding sessions.

3.1. Forests Related Laws in Kenya

The following statutes regulate conservation of the forests in Kenya:

- 3.1.1. **The Forest Act 2005:**³⁵ The Forest Act 2005 is the main statute governing forest management and conservation in Kenya. It replaced the Forest Act of 1942.³⁶ The Forest Act of 1942³⁷ had been the sole Act governing the conservation and management of the forest in Kenya from colonial times till 2005 when it was replaced by the Forest Act of 2005. The 1942 Act provided for the ‘establishment, control and regulation of central forests and forests areas in the Nairobi area and any unalienated government land.’³⁸ Section 4 of the Act provides for the declaration of unalienated government lands as forests. Section 6 authorizes the minister to create nature reserves within existing forests for the purpose of nature preservation. Section 7 authorizes the director of forests to issue license/permits and prescribe or collect royalties or fees from permitted users. The Forest Act of 1942 was severely criticized. The Forest Act of 1942 was a legacy from colonial administration. Its purpose was stated as reservation, protection, centralization and control of the forest within the

³³ Ibid.

³⁴ Ibid

³⁵ Parliament of Kenya, Act Number 7 of 29 November 2005

³⁶ In contrast to most African states, Kenya’s policies on forest management commenced in colonial times. The colonialist had established the forest reserves and enacted the Forest Act of 1942 to manage these forests. Kenya’s policy as it relates to sustainable forest management and conservation was first articulated in 1957 through the report of the Games Policy Committee set by the colonial government to look into the potentials of the Kenyan Forests. This report noted that: Forest estate of Kenya ranks high as one of the country’s most important national assets in its protective aspect of climate, water and soil; as the source of supply of forestry produce by the inhabitants of Kenya and as a revenue earner of high potential. See ‘Republic of Kenya Sessional Paper Number 7 of 1957: Report of the Games Policy Committee’ (1956) 1; this report was restated in ‘Republic of Kenya Sessional Paper Number 1 of 1968: A Forest for Kenya (1968)1.

³⁷ The Forest Act was revised in 1982 and 1992.

³⁸ See section 1 of the Act.

government echoed the colonial forestry objective in Kenya in the late 19th to mid-20th century. In addition, the Forest Act was purely procedural it did not provide any standard principle along which forest management could be modeled.³⁹ Finally it gave very wide discretionary powers to the director of forests and did not provide any yardstick for guiding or measuring his actions.⁴⁰ These and other criticisms of the Forest Act of 1942 resulted in it being replaced by the Forest Act of 2005. Although the Forest Act of 2005 was enacted before the adoption of Agenda 2063, several of its provisions are consistent with Agenda 2063. The Forest Act of 2005 provides for the establishment, development and sustainable management of forest resources for the socio- economic development of the country.⁴¹ This shall be accomplished by the conservation and rational utilization of the forest.⁴² This accords with the Agenda 2063 vision of creating: ‘a prosperous Africa based on inclusive growth and sustainable development.’⁴³ This is also in consonance with Article II of the African Convention on Conservation of Nature and Natural Resources’⁴⁴ requirement that states parties to enhance protection of the environment, foster the conservation and sustainable use of natural resources and coordinate and harmonize policies in these fields. The Forest Act 2005 applies to all forests and woodlands on state local authority and private lands.⁴⁵ The Act promotes sustainable forest management through management plans which are mandatory for all category of forest in Kenya.⁴⁶ A management plan is defined by the Act as ‘a systematic program showing all activities to be undertaken in a forest or part thereof during a period of at least 5 years, and includes conservation, utilization, ‘silvicultural’ operations and

³⁹ E Mwangi ‘Colonialism, Self-Governance and Forestry in Kenya: Policy practice and Outcome’ <http://dlc.dlib.indiana.edu/dlc/bitstream/handle/10535/5706/Colonialism%20self%20governance%20and%20forestry%20in%20Kenya.pdf?sequence=1> Accessed 1 June 2023

⁴⁰ Ibid

⁴¹ See section 1 Forest Act 2005.

⁴² Ibid

⁴³ ‘Agenda 23’ Office of the Special Adviser on Africa Publication’

<http://www.un.org/en/africa/osaa/peace/agenda2063.shtml> Accessed 17 May 2023.

⁴⁴ The African Convention on Conservation of Nature and Natural Resources was originally signed in Algiers in 1968 and revised in the year 2003 in Maputo.

⁴⁵ Section 2 of the Act

⁴⁶ Section 35 of the Act. This provision is in harmony with article 69(1) of the Constitution of Kenya which creates an overarching sustainability obligation on the Kenyan government in the management of natural resources.

infrastructural development.⁴⁷ Again this accords with Agenda 2063 requirement that state parties put in place the necessary sustainable land management, conservation of ecosystem adaptation and mitigation programs.⁴⁸ Similarly, this provision accords with the Convention on Biological Diversity requirements that: state parties conserve biological diversity and ensure the sustainable use of its components.⁴⁹ In practice, these measures though laudable on paper have suffered poor and inadequate implementation as statistics from the Global Forest Watch shows that in the years 2023 and 2024 Kenya suffered its worst forest loss in over 4 decades.⁵⁰ The Forest Act also recognizes Community Forest Associations which allow communities to participate in the joint management of public forests.⁵¹ This conforms with the Agenda 2063's call for effective participation at all levels in the formulation and implementation of the state's policies on sustainable development.⁵² Again, the practical implementation of this participatory model is problematic because in the year 2024 the government of Kenya blamed the Ogiek Community⁵³ and their Forest Association for the increased deforestation of some major forests in Kenya.⁵⁴ The government of Kenya evicted them from the Mau Forests.⁵⁵

3.1.2. The Environment Management and Coordination Act 1999:⁵⁶ This Act establishes the National Environmental Management Authority of Kenya mandated with the overall responsibility with environmental management throughout Kenya.⁵⁷ In addition, this Act empowers the Court to grant an application by a person or group of persons on the question of Environmental Conservation Order with the aim of

⁴⁷ See article 2 of the Act.

⁴⁸ 'Agenda 2063: Framework Document' (African Union Publication September 2015) 53 <http://www.un.org/en/africa/osaa/pdf/au/agenda2063-framework.pdf> Accessed 1 June 2023

⁴⁹ Article 1 on the Convention of Biological Diversity.

⁵⁰ 'Global Forest Watch Kenya' <https://www.globalforestwatch.org/dashboards/country/KEN/> Accessed 1 February 2025

⁵¹ See section 46 of the Forest Act 2005.

⁵² Agenda 2063 (n 46) 100

⁵³ An ethnic group in Southern Kenya and Tanzania

⁵⁴ 'Kenya Blames and Evict Ogiek People for Deforestation, but forest losses Persist' <https://news.mongabay.com/2024/11/kenya-blames-and-evicts-ogiek-people-for-deforestation-but-forest-loss-persists/> Accessed 1 February 2025

⁵⁵ Ibid

⁵⁶ Parliament of Kenya, Act Number 8 of 1999

⁵⁷ Section 1 of the Act.

furthering the principle of Environmental management.⁵⁸ Among other things the Act provides that an Environmental Conservation Order may be imposed with the aim of preserving flora and fauna and of creating or maintaining migration corridors for wildlife.⁵⁹ This accords with Agenda 2063 requirement that state parties put in place the necessary sustainable land management, conservation of ecosystem adaptation and mitigation programs.⁶⁰ However, the challenge with this provision is that the question of Environmental Protection (as a third generation right) is not included in the class of Fundamental Human Rights which are first generation rights.⁶¹ Although Second generation and third generation rights are enforceable in Kenya, there are so many exceptions that they are almost unenforceable.⁶²

3.1.3. Wildlife Conservation and Management Act 2013:⁶³ This Act was enacted to repeal and replace the Wildlife Conservation and Management (Amendment) Act of 1989. The Act was enacted to protect and preserve forest reserves from land grabbing and other harmful practices.⁶⁴ The challenge with this statute is that it focuses on direct acts of takeover of forest lands through land grabbing. It fails to address indirect acts such as encroachment and trespass which in many cases are as devastating as direct acts of takeover of forest lands.

3.1.4. Agriculture Fisheries and Food Authority Act 2013:⁶⁵ This Act is not directly connected to the conservation of the forests. However, it promotes soil and water conservation and prevents the destruction of vegetation by promoting policy guidelines on the development, preservation and utilization of Agricultural lands.⁶⁶

⁵⁸ Section 112 of the Environmental Management and Coordination Act.

⁵⁹ Ibid section 112 (13)

⁶⁰ 'Agenda 2063: Framework Document' (African Union Publication September 2015) 53 <http://www.un.org/en/africa/osaa/pdf/au/agenda2063-framework.pdf> Accessed 1 June 2023

⁶¹ Karal Vasak categorized human rights into 3 Generations: First Generations or Civil and Political Rights, Second Generation or Socio-Economic Rights and Third Generation or Collective Rights. K. Vasak, 'Human Rights: A Thirty-Year Struggle: the Sustained Efforts to give Force of law to the Universal Declaration of Human Rights', UNESCO COURIER 30: 11, Paris: United Nations Educational, Scientific, and Cultural Organization, Nov. 1977

⁶² See the case of Michael Mutinda Muyemi V Permanent Secretary Ministry of Education and Others Petition Number 133 of 2013 in which the court of Kenya stated that second and third generations rights in Kenya such as the rights to education, health and environment are only enforceable where there is evidence that the government has enough funds to undertake them.

⁶³ Parliament of Kenya, Act Number 9 of 2013

⁶⁴ See section 1 of the Act.

⁶⁵ Parliament of Kenya, Act Number 13 of 2013

⁶⁶ See Part IV of the Act.

Policies covered under this Act include the burning of forests for agricultural purposes.⁶⁷ This Act addresses Agenda 2063 warnings that African states address the problems of severe soil degradation, deforestation, unsustainable farming by foreign agricultural companies etc.⁶⁸ In practice, this provision has only been enforced as regards the preservation of the soil for agricultural purposes; it has not been enforced for the purpose of forest management.⁶⁹

3.1.5. The Climate Change Act 2016:⁷⁰ This Act was enacted to primarily provide a regulatory framework for an enhanced response to Climate Change and to provide mechanism and measures to achieve low carbon development.⁷¹ This statute did not directly address the challenge of deforestation. Deforestation is only mentioned in terms of addressing Kenya's international obligation to reduce its Carbon emissions through Carbon Credits.⁷² Thus, section 2 defines "reduced emissions from deforestation and forest degradation" as "activities in the forests that reduce Green House Gas Emissions from deforestation and forest degradation as well as the sustainable management of the forests..." This is a recognition of the fact that the challenges of Climate Change cannot be addressed effectively without addressing deforestation. The Act establishes a National Climate Change Council which is headed by the Cabinet Secretary. Responsible for Environment and Climate Change Affairs.⁷³ Section 8(2) provides that it shall be the responsibility of the Secretary of the Cabinet to *inter alia* authorize the establishment of the Reduced Emission from Deforestation and Forest Degradation Registry and other sector registries to feed into the National Carbon Registry. Thus, deforestation is considered one of the strategies for reduction of the emission of Green House Gases. Section 23G establishes the Carbon Registry and section 23G(3)(b) provides that the registry shall include *inter*

⁶⁷ Ibid.

⁶⁸ Agenda 2063 (n 58) 53.

⁶⁹ G. Kashindi, 'Local Agricultural Production in Kenya: Legal Framework, Obstacles and Challenges' <https://www.nomos-elibrary.de/de/10.5771/2363-6262-2020-4-581.pdf> Accessed 1 February 2025

⁷⁰ Parliament of Kenya, Act Number 11 of 2016

⁷¹ See the Preamble of the Act.

⁷² In order to fulfil her obligation to reduce emission of Green House Gases by 35 percent in the year 2030, Kenya engages with global Carbon Markets under article 6 of the Paris Agreement. Carbon Credits are economic incentives that exist as a result of the claim to have avoided Green House Gas emissions. In Kenya, one Carbon Credit is awarded for the enhanced removal or avoidance of one Metric Tonne of Carbon Dioxide. A. A. Nunow, 'Carbon Trading in Kenya: Opportunities and Challenges' (2025) 5 (2) Journal of Environment 1

⁷³ Section 7 of the Climate Change Act 2016

alia the reduced emissions from Deforestation and forest Degradation Carbon. This statute therefore inexorably connects deforestation to Climate Change prevention, This statute was amended in 2023, but the 2023 amendment had no implication for deforestation.

3.2. KENYA'S FORESTS INSTITUTIONS

The second recommendation of Agenda 2063 as regards the sustainable management of the forests is for functioning institutions.⁷⁴ The Forest Service of Kenya is the institution with the primary responsibility of managing the forests and forest resources of Kenya.

3.2.1. The Forest Service: The Forest Service was established by the Forest Act of 2005 to replace the old Forest Department.⁷⁵ The Forest Service is defined in the Forest Act of 2005 as a body corporate.⁷⁶ The functions of the Forest Service are defined in the Forest Act 2005 as *inter alia*: the formulation of policies and guidelines regarding the management, conservation and utilization of all types of forest areas in Kenya;⁷⁷ the management of all state forests⁷⁸ and the enforcement of the provisions of the Act.⁷⁹ In line with these duties, the Kenyan Forest Service has developed a strategic plan.⁸⁰ The strategic plan emphasized the commitment of the Forest Service to Kenya's Vision 2030,⁸¹ as regards the supportive role of the forest to other sectors of the economy particularly sustainable agriculture.⁸² This institution faces several challenges including poor funding, inadequate personnel, corruption and lack of political will of the government.⁸³ For instance, this institution set a target to increase forest tree cover by 4% by the year 2020 and to enhance the sustainable supply of forest goods and services.⁸⁴

⁷⁴ 'Agenda 2063: Framework Document' (African Union Publication September 2015) 9 <http://www.un.org/en/africa/osaa/pdf/au/agenda2063-framework.pdf> Accessed 1 June 2024

⁷⁵ Section 4 of the Forest Act 2005.

⁷⁶ A legal entity capable of suing and being sued. See section 4 of the Forest Act 2005.

⁷⁷ Section 5(a) of the Forest Act 2005

⁷⁸ Ibid section 5(b)

⁷⁹ Ibid section 5(d)

⁸⁰ See also section 5(p) of the Forest Act which requires the Forest Service to come up with programs for effective utilization of the forest.

⁸¹ See *Kenya Forest Service Strategic Plan 2009 -2014* (Kenya Forest service Publication 2009)5

⁸² Ibid 7

⁸³ 'Kenya: IRIN Focus on Dangers of Deforestation' <https://reliefweb.int/report/kenya/kenya-irin-focus-dangers-deforestation> Accessed 1 February 2025

⁸⁴ Ibid

This ambition was in line with Agenda 2063's recommendation that state parties must go beyond merely putting in place functioning institutions to supervise the conservation of the forest to include putting in place effective systems and processes that enhance the conservation of the forest.⁸⁵ Sadly, this ambition was not met. Although the Forest Service successfully prevented any significant increase in the deforestation rate in the years 2020 and 2021, there was no corresponding increase in the reforestation rate.⁸⁶ The inability to increase forest cover by 4% in the year 2020 is a setback for Agenda 2063's aim of increasing forest cover to the 1963 levels by 2063.⁸⁷

Another challenge with the Forest Service is the failure to update its Strategic Plan to reflect the goals of Agenda 2063. For instance, the Strategic Plan of the Kenyan Forest Service makes no mention of Agenda 2063's plan to reduce biodiversity loss by 90% by 2063.⁸⁸ It must be emphasized that the strategic plans were made before the adoption of Agenda 2063. Nevertheless, they ought to be upgraded to reflect the roles of Agenda 2063.

3.2.2. The National Environment Management Authority: This is the principal organ established by the Environment Management and Coordination Act 1999 to exercise general supervision and organization of all matters relating to the environment.⁸⁹ This agency was established to manage and coordinate all aspects of the environment in Kenya. As regards the conservation of the forests, the Environment Management and Coordination Act 1999 empowers the Authority in consultation with the relevant lead agencies, to prescribe measures necessary to ensure biological diversity in Kenya.⁹⁰ This Agency partners with the Forest Service to ensure biological diversity in Kenya. In practice, it has been observed that in the area of conservation of the forests of Kenya, there are conflicts of institutional mandates between the National Environmental

⁸⁵ 'Agenda 2063: Framework Document' (African Union Publication September 2015) 9
<http://www.un.org/en/africa/osaa/pdf/au/agenda2063-framework.pdf> Accessed 1 June 2024

⁸⁶ 'Global Forest Watch Kenya' <https://www.globalforestwatch.org/dashboards/country/KEN/> Accessed 1 February 2025

⁸⁷ Ibid.

⁸⁸ Ibid

⁸⁹ See section 9 of the Environment Management and Coordination Act 1999

⁹⁰ Ibid section 50.

Management Authority and the Kenyan Forest Services.⁹¹ There were conflicts as regards the creation of forests, the variation of state or local authority forests and the exchange of forest areas with private lands as these issues were said to overlap the jurisdiction of both the Forestry Service and the National Environmental Management Authority.⁹² This conflict of mandates occurs to the detriment of both the national vision and the Agenda 2063 vision of the Conservation of the forests of Kenya. Furthermore, both the Forest Service and the National Environmental Management Authority have been criticized as inept in the implementation of laws and policies for forest conservation.⁹³ In addition, the partnership of this agency with the Forest Service has not been on the basis of the aims set in Agenda 2063 as these 2 institutions have not come together to harmonize their policies in the light of the vision of Agenda 2063.

4. GROWTH AND SUSTAINABLE DEVELOPMENT INITIATIVES UNDER AGENDA 2063 AND THE ISSUE OF DEFORESTATION: THE NIGERIAN EXPERIENCE

Nigeria is severely plagued by the problem of deforestation. With a population of approximately 200 million people⁹⁴ and a land mass of just 923, 678 km² ⁹⁵ the problem of deforestation is particularly acute in Nigeria.⁹⁶ In addition to the massive population growth in Nigeria, agricultural expansion, urbanization and industrialization, logging, grazing, fire, mining,

⁹¹ F D P Situma, 'Forest Laws and the Environment in Kenya' in Okidi (ed) *Environmental Governance in Kenya: Implementing the Framework Law* (E.A.E.P. Publication 2008)235 at 241.

⁹² Ibid

⁹³ For instance the Forest (Charcoal) Rules 2009 prohibits the commercial production and dealings in charcoal without a license. The World Bank notes that poor implementation of this law has allowed illegal production and export of charcoal to thrive in Kenya. *Strategic Environmental Assessment of the Kenya Forest Act 2005* (World Bank Publication 2005) 26. It has also been observed that both the Forest Service and the National Environmental Management Authority have been unable to implement the laws on forest conservation against government conversion of forest lands for other purpose that did not comply with the due process stated in statutes such as the Forest Act 2005 and the Environmental Management and Coordination Act 1999. Also both agencies are staffed with poorly trained personnel. See 'Republic of Kenya Report of Government Task Force on Conservation of Mau Forest Complex 2009' (Government of Kenya Publication) 22

⁹⁴ National Bureau of Statistics <http://www.nigerianstat.gov.ng/report/21> Accessed 1 June 2024.

⁹⁵ Ibid.

⁹⁶ In 1970, 10% of Nigeria's total land mass of 923, 678 km² was covered by forest. Today, only about 4.05% of Nigeria's land mass is covered by forests. Between 2011 and 2015 Nigeria lost 9% of its forest through deforestation See Poopola (n 9) .

petroleum extraction, and fuel wood collection have been attributed as the causes of deforestation in Nigeria⁹⁷ Although Nigeria is a party to Agenda 2063, Nigeria is yet to domesticate Agenda 2063. The implication of this is that as in the case of Kenya, citizens of Nigerian citizens cannot enforce the obligations of Agenda 2063 against the government.⁹⁸ Agenda 2063's target on deforestation is particularly relevant to Nigeria. Agenda 2063 target provides that:

“By 2063, Africa's biodiversity including its forests, wild life, wetlands (lakes and rivers), genetic resources, as well as aquatic life most notably fish stock and coastal and marine ecosystems, including trans-boundary natural resources would be fully conserved and used sustainably. Forest and vegetation covers would be restored to 1963 levels; while national parks and protected areas (both terrestrial and marine) will be well managed and threats to them significantly reduced. Land degradation and desertification would have been stopped and then completely reversed.”⁹⁹

Agenda 2063 recommends that this can be achieved by putting in place effective regulations and functioning institutions, systems and processes.¹⁰⁰ The conformity of the statutes and institutions of Nigeria will be examined in the preceding sessions.

4.1. Forests Related Laws in Nigeria

The following statutes regulate conservation of the forests in Nigeria:

4.1.1. The Constitution of the Federal Republic of Nigeria 1999:¹⁰¹ The only provision on forests in the Constitution is found in section 20, which provides that

⁹⁷ P Mfon, O A Akintoye, G Mfon, T Olorudami, S U Ukata, T A Akintoye, 'Challenges of Deforestation in Nigeria and the Millenium Development Goals' (2014) 9 (2) International Journal of Environment and Bioenergy 76 at 83-85; F. C. Okafor, 'Rural Development and the Environment: Degradation versus Protection' in P. O. Soda. F. O. Odermeho, (eds) Environmental Issues and Management in Nigerian Development (Evans Brothers Ltd Publishers Ibadan 1988)154.

⁹⁸ Abacha V. Fawehinmi (2001) AHRLR 172 paras 14-15.

⁹⁹ Agenda 63 (n 72) 9.

¹⁰⁰ Ibid

¹⁰¹ The Constitution of the Federal Republic of Nigeria as amended.

the Nigerian state shall improve and protect the environment and safeguard *inter alia* the forest and wildlife of Nigeria. The only challenge with this provision is that it is contained in Chapter 2 of the Constitution of Nigeria 1999. Chapter 2 of the constitution contains the fundamental objectives and directive principles of state policies. This chapter is non-justiciable or unenforceable because section 6(6)(c) of the Constitution excludes it from the jurisdiction of the Nigerian courts. This chapter was included in the constitution as mere aspiration that the Nigerian government aims to accomplish. In *A.G. Ondo State v A.G. Federation*¹⁰² the Supreme Court stated that: 'it is well established as per S. 6 (6)(c) of the Constitution that rights under the Fundamental Objectives and Directive Principles of State Policy are not justiciable except as otherwise provided in the Constitution.' In *Okogie v The Lagos State*,¹⁰³ the Court of Appeal, in interpreting Chapter II of the Constitution, held as follows: The Fundamental Objectives identify the ultimate objectives of the nation and the Directive Principles lay down the policies which are expected to be pursued in the efforts of the nation to realize the national ideals. This provision is akin to soft law because section 6 (6) (c) of the constitution ensures no court has jurisdiction to pronounce any decision as to whether any organ of government has acted or is acting in conformity with the fundamental objectives and Directive principles of State Policy. This therefore weakens the Constitutional provision on the protection of the forests.

4.1.2. The Nigerian Forestry Act 1937:¹⁰⁴ This Act was enacted by the colonial government with the specific aim of designating some forest areas as forest reserves and protecting these areas. The Act established several forest reserves system under the various regional governments¹⁰⁵ of Nigeria.¹⁰⁶ Apart from giving these forest reserves a protected status; this Act did not make any comprehensive provision for the sustainable management of the forests and forest resources of

¹⁰² (2002) CLR 6 D (SC)

¹⁰³ (1981) 2 NCLR 23

¹⁰⁴ Enacted as Nigeria Forest Ordinance 1937. After independence it was renamed Nigeria Forest Act cap 55 Laws of the Federation of Nigeria 1994.

¹⁰⁵ Colonial Nigeria was divided into 3 regions: an Eastern region, a Western region and a Northern region. K S Ebeku, *Oil and the Niger Delta People in International Law: Resource Rights, Environmental and Equity Issues*, (Oil and Gas Energy Law Intelligence, 2005) 41

¹⁰⁶ See generally the Forest Act 1937

Nigeria. Nevertheless, this Act was the basis for the establishment of forest reserves and national parks such as the Yankari National Park, which was established as the Yankari Games Reserve in 1956.¹⁰⁷

4.1.3. Endangered Species (Control of International Trade and Traffic) Act of 1985:¹⁰⁸ This Act was enacted to fulfil Nigeria's obligation under the International Convention on International Trade in Endangered Species of Wild Fauna and Flora, to which Nigeria is a signatory. The Act expressly prohibits the hunting, capture, and trading in any of the 91 animal species listed in the Act as endangered wildlife.¹⁰⁹ In practice, this Act perhaps suffers the worst case of non-implementation in Nigeria. Nigeria experiences one of the worst rates of hunting of endangered species in the world.¹¹⁰

4.1.4. The National Resource Conservation Act 1989:¹¹¹ The scope of this Act includes the protection of the forests as natural resources in this Act are defined in the Act as including the forests and their resources. The Act establishes a Natural Resources Conservation Council, which is empowered to address soil, water, forestry, fisheries and wildlife conservation by formulating, implementing and executing policies, programs and projects.¹¹² However, the challenge with this Council is the fact that its area of coverage is too wide, as it is responsible for all categories of natural resources. Thus, it is not able to adequately attend to forest resources.

4.1.5. The National Parks Act of 1999:¹¹³ The Act was enacted to provide a protective sanctuary for wildlife as well as to protect, promote and conserve the country's natural vegetation.¹¹⁴ It prohibits hunting, fishing, farming, and bush burning in

¹⁰⁷ F Olokesusi, *Assessment of Yankari Games Reserve, Nigeria, Problems and Prospects* (Butterworths Heinman Ltd 1990) 153.

¹⁰⁸ Enacted as Endangered Species (Control of International Trade and Traffic) Decree Number 11 of 1985

¹⁰⁹ See Schedule 1 and 2 of the Act.

¹¹⁰ I. Ekott, 'In Nigeria, a Decade of Payoffs boosted Global Wildlife Trafficking Hub' <https://news.mongabay.com/2022/03/in-nigeria-a-decade-of-payoffs-boosted-global-wildlife-trafficking-hub/> Accessed 1 February 2025

¹¹¹ Cap 286 Laws of the Federation of Nigeria 1994

¹¹² See section 1 of the National Resource Conservation Act 1989.

¹¹³ Cap n65 Laws of the Federation of Nigeria 2004.

¹¹⁴ See section 1 of the Act

areas designated as national parks or forest reserves.¹¹⁵ The challenge with this Act is the poor implementation of the Act in terms of the protection of national parks from encroachment and illegal logging activities.

4.1.6. The Nigerian National Agricultural Policy 2002: These are not statutes but are ‘framework and action plan of government designed to achieve overall agricultural growth and development.’¹¹⁶ In spite of the agricultural focus of this policy, it made copious provisions on forest management and the sustainable use of the forest and its resources. The aim of this policy is to achieve self-sufficiency in all aspects of forest production. Major goals are the expansion of the forests, the promotion of forest regeneration, the protection of forest resources from fire and grazing and the development of forest industries.¹¹⁷ It aims further to achieve an increase in forest estate from 10% to 20%.¹¹⁸

4.1.7. The National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007:¹¹⁹ This Act is the most important environmental statute in Nigeria. It governs all aspects of the Nigerian environment. This Act establishes the National Environmental Standards and Regulations Enforcement Agency as an agency for enforcing environmental regulations.¹²⁰ The Act sadly did not provide for the protection of forests. The Act only has a provision to the effect that the National Environmental Standard Enforcement Agency shall have power to, *inter alia* submit to the Minister of Environment Proposals for the review of Guidelines on deforestation and bush burning.¹²¹ Given the crucial importance of forest resources to Nigeria, this is a huge oversight. However, the Act did empower the Minister of Environment to make regulations necessary for the protection of the environment.¹²²

¹¹⁵ See section 2 of the Act

¹¹⁶ ‘Agricultural Policy’ Agricultural Research Council of Nigeria Publication <http://www.arcnigeria.org/index.php/explore/the-council/our-vision/152-arcn/about/71-agricultural-policies> Accessed 1 June 2024.

¹¹⁷ See Agricultural Policy for Nigeria (Federal Ministry of Agriculture, Water Resources and Rural Development Publication 1988)18 <http://extwprlegs1.fao.org/docs/pdf/nig149296.pdf> Accessed 1 June 2024.

¹¹⁸ Ibid.

¹¹⁹ Act number 25 of 2007

¹²⁰ Section 1 of the National Environmental Standards and Regulations Enforcement Agency Act.

¹²¹ Section 8(k)(xii) of the National Environmental Standards and Regulations Enforcement Agency Act.

¹²² Section 34 of the National Environmental Standards and Regulations Enforcement Agency Act 2007

4.1.8. The National Environmental (Desertification Control and Drought Mitigation) Regulation 2011: This regulation was enacted in the year 2011 by the Minister of Environment pursuant to powers granted him under the National Environmental Standards and Regulation Enforcement Agency Act 2007. The focus of this regulation is to address the challenges of deforestation and drought in Nigeria. The primary way these challenges can be addressed is by increasing reforestation. This regulation therefore provides that Nigeria shall encourage reforestation and afforestation with the aim of attaining 25% national forest cover.¹²³ The weakness of this regulation is that it did not provide any concrete or detailed steps as to how this goal is to be achieved. It only gave the responsibility of the implementation of the objectives of the regulation to the National Environmental Standards and Regulations Enforcement Agency in collaboration with the Ministry of Environment, the Federal and State Forests Departments and other relevant agencies.¹²⁴ This absence of a definite strategy or plan for the attainment of the goal of 25% forest cover explains the reason for the inefficiency of this regulation.

4.1.9. The National Environmental (Control of Bush, Forest Fire and Open Burning) Regulations 2011: This regulation was also enacted in the year 2011 by the Minister of Environment pursuant to powers granted him under the National Environmental Standards and Regulation Enforcement Agency Act 2007. The focus of this regulation is to protect the forest and its resources by prohibiting bush burning. The Regulation provides that anyone who wishes to burn bushes for agricultural or hunting purposes must apply for a permit from the National Environmental Standards and Regulations Enforcement Agency.¹²⁵ The regulation makes it an offence punishable by a fine of 50,000 Naira or imprisonment for 3 months for anyone to burn bushes without a permit.¹²⁶ The weakness of this regulation is the fact that it has never been enforced in practice, as bushes are

¹²³ Section 2(e) and (f) of the National Environmental (Desertification Control and Drought Mitigation) Regulation 2011.

¹²⁴ Section 4(1) of the National Environmental (Desertification Control and Drought Mitigation) Regulation 2011

¹²⁵ Section 3 of the National Environmental (Control of Bush, Forest Fire and Open Burning) Regulations 2011

¹²⁶ Section 21 of the National Environmental (Control of Bush, Forest Fire and Open Burning) Regulations 2011

often burnt for agricultural and other purposes. There are simply too few personnel to enforce this regulation.

4.1.10. The Nigerian National Forestry Policy 2020: This policy repealed and replaced the Nigerian National Forest Policy 2006.¹²⁷ This policy was enacted in 2006 to be the blueprint for forest management and conservation in Nigeria. It sets the ambitious target of increasing forest cover in Nigeria from the current level of 4% to 25% by the year 2030.¹²⁸ As is the case with other statutes on forest conservation and management, the policy failed to provide detailed steps on how to achieve this ambitious target. The policy is limited by the lack of political will on the part of the government to pursue this target.¹²⁹

4.1.11. The Climate Change Act 2021: This Act was enacted to provide for the mainstreaming of Climate Change actions and to establish the National Council of Climate Change.¹³⁰ Its primary focus is Climate Change and not deforestation. However, the only reference to deforestation in this Act is found in section 28 which provides that the Federal Ministry of Environment shall establish a registry for capturing Reduced Carbon Emissions from Deforestation and Forest Degradation. The registry shall also capture reduced Carbon emissions from sustainable management of the forests and enhancement of the Forests Carbon Stocks. This Act demonstrates that in Nigeria, combatting deforestation is a key strategy in addressing Climate Change.

4.2. NIGERIA'S FORESTS INSTITUTIONS

The second recommendation of Agenda 2063 as regards the sustainable management of the forests is for functioning institutions.¹³¹ The Forest Institutions of Nigeria are not equally

¹²⁷ National Forest Policy <https://climatepolicydatabase.org/policies/national-forest-policy-nigeria-2006#:~:text=The%20new%20policy%20is%20anchored%20on%20thirty%20elements,providing%20products%20and%20services%20to%20increase%20forest%20cover>. Accessed 10 January 2025

¹²⁸ Ibid

¹²⁹ A. T. Ogundele, M. O. Oladipo, O. M. Adebisi, 'Deforestation in Nigeria: the Need for Urgent Mitigating Measures')2016) 2(1) International Journal of Geography and Environmental Management 12

¹³⁰ See the preamble of the Act.

¹³¹ Agenda 2063: Framework Document' (African Union Publication September 2015) 9 <http://www.un.org/en/africa/osaa/pdf/au/agenda2063-framework.pdf> Accessed 1 June 2024

coordinated. These institutions were established without a proper harmonization of their respective functions. The 1999 Constitution of Nigeria gives jurisdiction to the federal and state governments to manage forests.¹³² The federal and state forest agencies often conflict and overlap.¹³³ These institutions include:

4.2.1. The Federal Department of Forests: The Federal Department of Forestry was created in 1970 and coordinates forest activities throughout the country. Its functions are to initiate and formulate national forest policies, foster forestry and environmental development, coordinate and monitor state forestry activities of federal – foreign funded projects etc.¹³⁴ It is also saddled with the responsibility of *inter alia* advising the federal government on forestry development, liaising with the state forestry services and coordinating all matters pertaining to conservation, protection, utilization and renewal of the forest resources of Nigeria.¹³⁵ In practice, the operations of this agency were unfocused and dogged by allegations of corruption.¹³⁶

4.2.2. State Forestry Departments: Nigeria consists of 36 states. Each state has a forestry service as a division of the state ministry of environment. Each state forestry service is responsible for setting and administering policies for the forests.¹³⁷ Again, going by the volume of illegal timber harvesting and deforestation in all parts of Nigeria¹³⁸ It is safe to conclude that these state forest services or state forest departments are ineffective. In addition, some state Forest Policy Guidelines conflict with the Forest Policy Guidelines of the Federal Department of Forests.¹³⁹

¹³² The Nigerian legislative power arrangement is divided into an Exclusive Legislative List, and a Concurrent Legislative List. The Exclusive Legislative Lists is a list of issues which only the Federal government of Nigeria can legislate on. A concurrent list that both the federal and state can legislate on and residual list of matters that are neither in the exclusive or concurrent list and are left to the states. See section 4(2) of the Constitution of Nigeria 1999. Forest resource is contained in the concurrent list.

¹³³ 'Forestry Outlook Study for Africa: Report on Nigeria' <http://www.fao.org/docrep/004/ab592e/ab592e03.htm> Accessed 1 June 2024.

¹³⁴ Ibid

¹³⁵ Ibid.

¹³⁶ A. T. Ogundele (n 127) 16

¹³⁷ Forest Outlook Study (n 139)

¹³⁸ A. T. Ogundele (n 127) 17

¹³⁹ Ibid

4.2.3. The National Forestry Development Committee: Is a federal body responsible for formulating national forest policy and technical guidelines on forest management.¹⁴⁰ The functions of this body overlap and conflict with not only the Federal Department of Forests but also the state Forestry departments.

4.2.4. The Forest Research Institute of Nigeria: This body was established to carry out research and organize public education on forestry and the utilization of forestry resources.¹⁴¹ This body has been effective only in providing statistics on deforestation and impact of illegal tree felling, bush burning and illegal poaching of wild life.¹⁴² This body has also successfully carried out several public awareness campaigns on the need to protect the forests. However, these campaigns are of limited success in addressing the culture of illegal tree felling, bush burning and illegal poaching of wildlife in Nigeria.¹⁴³ In addition, a lot of research-based recommendations made by this body to the Federal and State government on how to preserve and protect the Nigerian forests are not implemented by the Federal government.

5. The Road to Agenda 2063: Comparative Analysis of Kenya and Nigeria

The findings of this article are therefore that Kenya's regulations or statutes on the conservation of the forest are theoretically in conformity with the provisions of Agenda 2063. In practice, they are poorly implemented and applied. If this challenge of implementation is not addressed in the near future, Kenya is not likely to fulfil the vision of the Agenda 2063. The non-implementation of the statutes on forest conservation is a failure on the part of the government and institutions of Kenya. In 2003, several Non-governmental Organizations filed a lawsuit against the Kenyan government at the African Commission on Human and People's Rights claiming that the violation of the environment and the eviction of the Endorois¹⁴⁴ from their lands was a violation of the right of the Endorois as Kenyan citizens. In the case of the *Centre for Minority Rights Development and Minority Rights Group*

¹⁴⁰ 'Federal Ministry of Environment: Forestry' <http://www.environment.gov.ng/forestry.html> Accessed 1 June 2017.

¹⁴¹ 'Forest Research Institute of Nigeria' <http://www.frin.gov.ng/> Accessed 3 June 2024.

¹⁴² A. T. Ogundele (n 127) 17

¹⁴³ Ibid

¹⁴⁴ The *Endorois*, are a pastoralist Community living in Kenya's Rift Valley

International on behalf of Endorois Welfare Council v. Kenya, (the ‘Endorois case’).¹⁴⁵ The African Commission on Human and People’s Rights ruled that it amounted to a violation of the Right of the Endorois to a healthy environment guaranteed under article 24 of the African Charter on Human and People’s Rights for the government of Kenya to not take adequate steps to protect the environment and conserve the forests. This decision was taken before the establishment of Agenda 2063, but it highlights the fact that the failure by the government of Kenya to conserve the forests and combat deforestation has consequences that are beyond Agenda 2063.

In contrast to the position in Kenya, the overall assessment of the Nigerian legislation on forest conservation and biodiversity are inadequate. Nigeria needs to update her legislation to reflect not only her international obligations on biodiversity and wildlife conservation but also the aims of Agenda 2063 to which Nigeria is a party. Nigeria ought to enact forest conservation legislation which accord with Agenda 2063’s vision of creating: ‘a prosperous Africa based on inclusive growth and sustainable development.’¹⁴⁶ Nigeria also needs to enact legislation that reflects article II of the African Convention on Conservation of Nature and Natural Resources’ requirement that states parties are to enhance protection of the environment, foster the conservation and sustainable use of natural resources and coordinate and harmonize policies in these fields. Nigerian legislation on forest conservation ought to conform to the Agenda 2063’s call for effective participation at all levels in the formulation and implementation of the state’s policies on sustainable development.¹⁴⁷ Above all, Nigeria needs a legislation on biodiversity that conforms to the Convention on Biological Diversity’s requirements that: state parties conserve biological diversity and ensure the sustainable use of its components.¹⁴⁸ In the Southern part of Nigeria, the largest threat to biodiversity conservation particularly in the Niger Delta region is the oil extraction activities of local and multinational companies. Yet there is no legislation on the duty and obligation of these companies to conserve biodiversity. There is no detailed legislation that spells out the species

¹⁴⁵ Communication 276/2003

¹⁴⁶ ‘Agenda 23’ Office of the Special Adviser on Africa Publication’
<http://www.un.org/en/africa/osaa/peace/agenda2063.shtml> Accessed 17 May 2024.

¹⁴⁷ Ibid 100

¹⁴⁸ Article 1 on the Convention of Biological Diversity.

of animal and plant in the region and the process by which oil extraction companies must engage in their activities in a way that does not harm the biodiversity in the region. In 1996, several Non-governmental Organizations filed a lawsuit against the Nigerian government at the African Commission on Human and People's Rights claiming that the violation of the environment in the Niger Delta region of Nigeria was a violation of their right. This was the case of the *Social Economic Right Action Centre and Another V. Nigeria*.¹⁴⁹ They claimed in this action that the uncontrolled exploitation of resources in their territory, the degradation of the environment and the use of state security to repress the *Ogoni people* of the Niger Delta violated *inter alia* the right of the *Ogoni* to life,¹⁵⁰ a general satisfactory environment¹⁵¹ and to dispose of their resources.¹⁵² The African Commission ruled that the uncontrolled and reckless exploration and exploitation of crude oil in the Niger Delta region was a violation of the collective right of the *Ogoni* people to health, a generally satisfactory environment, to freely dispose of their wealth and natural resources and to housing.¹⁵³ In spite of this ruling by the African Commission on Human and People's Rights, Nigeria is yet to enact adequate statutes to address biodiversity in the region.

As regards the institutional framework for combatting deforestation, the finding of this article is that Kenya's institutions on the conservation of the forest are not in conformity with the provisions of Agenda 2063 and are incapable of delivering the sustainable management of the forests in Kenya. These intuitions were not created to primarily address deforestation. They were in some cases created to address political issues such as balancing the need for agricultural lands with the need to protect forest lands. This is true for both the Forest Service and the National Environmental Management Authority. Both bodies are hampered by the lack of political will on the part of the government to implement the goals set out in Agenda 2063. Similarly, the findings of this article are that Nigeria's institutions, systems and processes on the conservation of the forest are not in conformity with the provisions of Agenda 2063 and are incapable of delivering the sustainable management of the forests in Nigeria. This is attributable to poor government implementations of the recommendations of

¹⁴⁹ Communication number 155/96.

¹⁵⁰ Article 4 of the African Charter on Human and People's Right.

¹⁵¹ Ibid, article 24.

¹⁵² Ibid article 21.

¹⁵³ Communication Number 155/96. Paragraph 55

the institutions particularly the Forest Research Institute of Nigeria. In addition, there is the problem of lack of collaboration among the institutions resulting in conflicts. There is also the problem of inexperienced personnel and corruption.

6. CONCLUSION

This article commenced by noting the fact that this present generation owes a duty to future generations to take into account the interest of future generations in the utilization of the earth's natural resources. This article also noted that no other continent has been more bedevilled with the problem of deforestation in contemporary times than Africa. Massive Population growth, widespread urbanization, increasing utilization of land for agricultural purpose and the continued reliance on wood as a source of fuel by rural communities are some of the factors responsible for deforestation in Africa. The effects of deforestation are not limited to a particular country, they are global in nature and include *inter alia* climate change, erosion and Desertification, Habitat loss, Flooding and changes in the Earth's water cycle. Using Nigeria and Kenya as case studies, this article brought to light the problems of deforestation in Africa. Both countries share the common experience of losing over 80% of their forest cover between 1960 and 2020.

In 2015, the African Union adopted the Agenda 2063 as a framework for socio-economic transformation of the African continent within 50 years. This article examined the limits and the potentials of the growth and sustainable development initiatives of Agenda 2063 in providing a lasting solution to the challenges of deforestation in Nigeria and Kenya. Agenda 2063's vision was to create: 'a prosperous Africa based on inclusive growth and sustainable development.'¹⁵⁴ Agenda 2063 recommended that African states put in place effective regulations and functioning institutional systems and processes to enhance the sustainable management of the forests.

This article notes that Kenya's forest legislation and implementing institutions are weak and ineffective. It is the argument of this article that Kenya's legal and institutional framework cannot deliver on Agenda 2063. Similarly, Nigeria's forest legislation and implementing institutions are weak and inadequate. Nigerian forest institutions are particularly weakened by inept officials, corruption, bureaucracy and the lack of political will on the part of the

¹⁵⁴ 'Agenda 23' (n 72)

government. It is therefore the conclusion of this article that Nigeria's legal and institutional framework is inadequate to deliver on the vision of Agenda 2063. This article therefore recommends that both Kenya and Nigeria should upgrade their forest legislation and institutions in line with the vision of Agenda 2063.