

Legal Examination Form Management and Protection of Mangrove Forests in the Niger Delta, Nigeria

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Abstract: *The vast space covered by the mangrove forests in the Niger Delta, plays vital roles in the lives of the people, the economy of the region and the world at large, and climate stability. Going green was a term used years back to encourage everyone to plant a tree within various houses to aid in the fight against climate change, but more often than not, we realise that destruction of the mangrove for personal reasons thrive more than building same for the good of all. This article examined the legal measures adopted for the protection of mangrove forests in the Niger Delta. The doctrinal research method was used, and it was discovered that despite the legal interventions for the protection of the mangrove forests in Niger Delta, many are still involved in felling and destruction of the mangrove for personal reasons. One of the reasons for this as highlighted by the article is the archaic and not-improving legislations in the Niger Delta. It was accordingly recommended that the Niger Delta states come together to enact a regional treaty that will put to an end arbitrary and unjustifiable felling and degradation of the mangrove. In addition, a regional taskforce should be established to implement the provisions of the treaty, and prosecute those found wanting.*

Keywords: Mangrove, Climate change, Management, Protection

1. Introduction

Threats to the environment, forest ecosystem and loss of biodiversity demanded immediate and serious attention. In order to address these environmental challenges, legal measures were put in place in particular for the management and protection of the forest ecosystem. These legal measures are, Legislative Interventions, Licensing and Permits, Prohibitions and Restrictions, Designation of Protected Areas/Parks and Criminal Prosecutions, Sanctions and Prohibitions.

Despite these, challenges still exist, relating to: Inadequate Legal Framework, Weak Institutions and Poor Funding, Poverty and Unemployment, Governance Crisis, Infrastructural Projects, Deployment of Technology/Geo-Spatial Database, and Corruption. We shall in this article, legally examine the measures for the protection of mangrove forests in the Niger Delta, Nigeria.

2. Legal Measures for Management and Protection of Mangrove Forests in Niger Delta, Nigeria

In order to address the challenges on the environment, natural resources and forest ecosystems, including the mangrove forest in the Niger Delta Nigeria, legal measures have been put in place for conservation of natural resources and biodiversity, and the management and protection of the forest ecosystem in Nigeria, particularly, the Niger Delta Region. These measures include:

2.1 Legislative Interventions

The impacts of deforestation and other destructive incidents such as bush burning, forest fires, illegal timber activities, and fetching of wood for domestic and other commercial purposes are gradually moving the mangrove forest in the Niger Delta into extinction. Unfortunately, with the repeal of

the Forestry Act 1985, there is no stand-alone legislation, on forestry in the Federation¹. The regulation and protection of mangrove forests by the Federal Government of Nigeria, have been through policies, regulations, and guidelines. It is important to state that these policies, regulations, and guidelines are in most cases complex, with convoluted provisions.

The existing legal interventions by way of legislation are mostly laws enacted by the various Houses of Assembly. While the legislation on forestry is encouraging, they are not satisfactory towards addressing the severe challenges on the mangrove forest in the Niger Delta. Majority of the laws are either outdated being a transplant of the repealed Forest Ordinance 1901 and the Forestry Act 1985. In same vein, the extant laws on forestry for Rivers State, Delta and Edo States were enacted in 1963 and 1976 respectively. The provisions of these laws also cannot effectively address the environmental challenges relating to forestry.

2.2 Licensing and Permits

Licensing and permits are the common and usual measures for fighting deforestation, loss of biodiversity and conservation of natural resources. From the various State laws, regulations and guidelines on sustainable forest management, licensing and permits are needed in most cases for any person to engage in activities that will affect the mangrove forests in the Niger Delta.

All the laws, regulations and guidelines on this subject, require any person who intends or is involved in exploitation and utilisation of natural resources including mangrove forests to obtain a licence or permit in order to carry out the

¹J P Esavwede and M Ojo, 'Nigeria without Oil: A Call for Paradigm Shift to Forest Laws as a Tool for Harnessing Forest Resources in Nigeria' *Journal of, Ethical and Regulatory Issues* (2022) 25 (6); 1 – 9, 2.

activities.² It is important to state that the grant of a licence or permit is usually subject to fulfilment of prescribed conditions and requirements.³ Unfortunately, beyond the cathedral provisions specifying the satisfaction of conditions, these laws did not list out the specific conditions. It thus appears that the conditions to be satisfied are within the absolute discretion of the approving authority, whether the Governor of the State or Commissioner or the Forestry Commission (FC) of Cross River State, Director of Forestry or a Forest Officer. Suffice to state that these requirements remain opaque and shrouded in secrecy. As a result of this, there is a clear absence of transparency and accountability, lack of data and information on nature, tenure and other terms of licences and permits issued or granted in the Niger Delta Region.

2.3 Prohibitions and Restrictions

It is argued that the best form of sustenance of the mangrove forests are through returning them to their natural habitat. Since this is nearly impossible, the various tiers of government in Nigeria have initiated prohibitions and restrictions as a legal measure in the management and protection of mangrove forests within their areas of jurisdiction.

In the various laws, regulations and guidelines, prohibitions and restrictions were a common measure for addressing challenges bordering on mangrove forests in the Niger Delta. In essence, there are activities that are prohibited as it relates to mangrove forests in the Niger Delta. The prohibited activities amongst others relate to the taking or destruction of any specified kind of timber or minor forest produce; the possession, sale or purchase of forest produce, or of any specified kind of forest produce, by any person other than the holders of licences and permits, the taking of forest produce or of any specified kind of forest produce and any act which may cause the obstruction of any water way or cause danger to navigation.⁴

Restrictions generally, is a regulatory measure provided in the above-mentioned laws, regulations and guidelines for protection of mangrove forests. In this sense, restrictions is a measure, other than prohibition, that subject activities in the mangrove forests to be in accordance with regulations as to time or period for carrying out activities, exercise of rights, assignments or transfers and use of mangrove forests generally.⁵ While the legal measure of prohibitions and restrictions are very much useful in the management and protection of mangrove forests in the Niger Delta, yet they have not achieved the ultimate aim of entrenchment sustainable forest management.

2.4 Designation of Protected Areas/Parks

²FLRS, s 29; CRSFCL, ss 44, 46, 53; FLBL, s 39; FL 1976, ss 30 - 34; FL 1976 Regulations, pts 3, 4.

³FLRS, s 29 (1); CRSFCL, s 44 (1) (2) (3); FLBL, s 39 (1); FL 1976, ss 30 -34; FL 1976 Regulations, pts 3, 4.

⁴FLRS, s 29 (1); CRSFCL, s 44 (1) (2) (3); FLBL, s 39 (1); FL 1976, ss 30 -34; FL 1976 Regulations, pts 3, 4.

⁵*Ibid.*

The designation or declaration of protected areas/parks is a favoured technique for management and protection of mangrove forests in the Niger Delta. All the laws on forestry enacted by the States in the Niger Delta region made provisions on constitution or designation or declaration of protected areas/parks and forest reserves⁶. Furthermore, the lands hosting the mangrove forests were expressly provided for in the various laws, regulations and guidelines. Consequently, the procedure to be observed before the constitution or designation or declaration were clearly spelt out.

The condition precedents for the above-stated constitution or designation or declaration are by notice and publication in the Gazette.⁷ It is important to state that constitution or designation or declaration are done over specified lands. Therefore, the constitution, designation or declaration are usually on the following: lands at the disposal of the Government; and any land that the forest growth should be protected or reserved or the forest growth be established.⁸ However, land reserved under a community land use plan as Community Forest Reserve, subject to the provisions of the LUA, may be constituted as a forest reserve or community forest reserve in Cross River State.⁹

2.5 Criminal Prosecutions, Sanctions and Punishments

Section 36 of the CFRN 1999 makes it mandatory for the prescription in a written law of the constituents of an offence. In this respect, the various laws on management and protection of mangrove forests in the Niger Delta region of Nigeria specified offences in relation to the environment, natural resources and mangrove forests generally.¹⁰ The contravention of the provisions of regulations made pursuant to an enabling law often constitutes an offence.¹¹

The various laws on forestry in the Niger Delta created a number of offences, which includes offences in respect of property and boundary marks,¹² offences in forest reserves,¹³ and offences in protected forest.¹⁴ In Cross River State, the offences created in the enabling law includes those of offences in forest reserve or wild life protected area,¹⁵ offences in community protected area,¹⁶ and offences by any enforcement officer including officers of the FC or an association enforcement officer.¹⁷ Remarkably, offences created under the applicable law in Cross River State were not only directed at the perpetrators of criminal activities but also to persons who are to enforce the provisions of the various laws and regulations on forestry.

⁶FLRS, s 5; CRSFCL, ss 26 (1), 35 (1), 45 (1), 47 (1); FLBL, ss 15, 25, 35, 38.S

⁷FLRS, ss 5 (2), 6 (1); CRSFCL, ss 26 (2), 27 (1); FLBL, ss 15 (2), 16 (1); FL 1976, ss 4 – 12.

⁸FLRS, s 5 (1); CRSFCL, s 26 (1) (a) (b); FLBL, s 15 (1); FL 1976, s 4 (1).

⁹CRSFCL, s 26 (1) (c).

¹⁰FLRS, ss 33 – 45; CRSFCL, ss 83 – 89; FLBL, ss 43 – 52; FL 1976, ss 24, 30, 32, 34 – 38.

¹¹FLRS, s 31 (2); FLBL, s 41 (2).

¹²FLRS, s 39; CRSFCL, s 86; FLBL, s 49.

¹³FLRS, s 40; FLBL, s 50.

¹⁴FLRS, s 42; FLBL, s 52.

¹⁵CRSFCL, ss 83 (1), 85.

¹⁶*Ibid.*, s 85.

¹⁷*Ibid.*, s 87 (1).

Consequently, the various laws also made penal provisions. Foremost is that upon conviction, liability to either a fine or imprisonment or both arises.¹⁸ Under the various laws, the fine that can be imposed did not exceed, in the case of Bayelsa State and Rivers State, a fine of ₦10, 000, but in Cross Rivers State, the law provides for the payment of a fine of ₦200, 000, on the other hand, imprisonment under the various laws, did not exceed 2 years.

Notwithstanding the use of fines and imprisonment, there are other penal provisions. These penal provisions include sanctions, penalties, restitution, forfeiture, confiscation, destruction, seizure, sale and cancellation of licence or permit.¹⁹ Instructively, it is important to state that the various laws made provisions for compounding of offences,²⁰ and the powers to compound offences is either vested in the Forest Officer or the FC in the case of Cross River State. The implication of this power to compound offences is that instead of prosecuting an offender for any of the prescribed offences, such an offender can be discharged upon payment of a sum of money or forfeiture of the offending item or property.²¹

2.6 Issue of Regulations

The management and protection of mangrove forests in the Niger Delta is also governed by the regulations made pursuant under the various enabling laws. It is pertinent to state that not only regulations made under the laws specific on forestry but those regulations made under related laws. For instance, the NESREA regulations play a significant role in the management and protection of mangrove forests in the Niger Delta.

However, the effectiveness of regulations in regulating the mangrove forest is still contestable being a subsidiary legislation. Following the decision of the Supreme Court in *Wike v Peterside*,²² the import of a regulation that is inconsistent with the provisions of the substantive law on forestry is still doubtful. Nevertheless, regulations stand as a foremost legal measure in the management and protection of mangrove forests in the Niger Delta. But regulations, as formidable as they are in the management and protection of mangrove forests, are limited by some of the challenges to be analysed subsequently in this chapter. In particular, some regulations on the mangrove forests are elitist and did not elicit local participation in the preparation and implementation. Sadly though, most of these regulations are written in a language strange to the local population, including would-be violators of its provisions.

2.8 Challenges in Management and Protection of Mangrove Forests

Despite the legal measures analysed above, threat to biodiversity and the spate of deforestation are still pervasive.

This may not be unconnected with the challenges impeding effective implementation of the above-stated measures in the management and protection of mangrove forests in the Niger Delta, Nigeria. This article, therefore, examines the following challenges on the effective management and protection of mangrove forests in the Niger Delta, Nigeria:

2.8.1 Inadequate Legal Framework

Legislative powers are vested and distributed in line with the provisions of the CFRN 1999. Currently, there is no Act of the National Assembly governing forestry,²³ since the repeal of the Forestry Act 1985. Historically speaking, the issue of laws, rules or guidelines for the management of forests in Nigeria is even older than the country as it dates back to the colonial era. According to sources from the Federal Ministry of Environment, the former Governor of Lagos released a sketch of forestry in West Africa in 1887, and a Forestry Ordinance was enacted in 1890 for the establishment of Forest Reserves, while a Forestry Officer for Lagos Colony was established in 1899. The Southern Protectorate of Nigeria's Forestry Department was created in 1899, at the same time that the first forest reserves were established. According to the report, a Conservator of Forests for the Lagos Colony and the Southern Protectorate of Nigeria was appointed in 1902, and the first Forestry department in Nigeria was established in 1908 by the Colonial Government. The point made is that prior to even the Nigerian independence, forestry management regulations were already in place. The more important question relates to what happened after the Nigerian independence going forward. Lowe has observed that one major development as it relates to forestry in Nigeria was the abrogation of the exportation of all timber products in the 1970s on the grounds that it was a significant growth of the domestic market in addition to the prediction at the time that the existing timber resources will be exhausted by year 2000.²⁴ It is further observed that the period in question, the 1970s witnessed the creation of the Federal Department of Forestry (FDF) as an arm of the Federal Ministry of Agriculture, Water Resources and Rural Development (FMAWR & RD). Without doubt, many forestry programmes were developed within the FDF then but what is clear and critical to us was that no forestry legislation was enacted for the Federal Republic of Nigeria that this researcher can lay hands on. In fact, the best available semblance of an organised policy document for forestry in Nigeria was the National Forest Policy 1988 (NFP), and its reviewed version which was tagged the extant national forest policy and which was added to the document titled 'Agricultural Policy for Nigeria'. The said document was published in 1988 by the Federal Ministry of Agriculture. The policy, which was described as demand-led, provided goals, targets and implementation strategies for the management, development and use of forests and their products. This was to be achieved by amongst other measures, increasing the forest cover from 10

¹⁸(n13); (n14); (n15); (n16); (n17).

¹⁹FLRS, s 43; CRSFCL; s 88, FLBL, s 53.

²⁰FLRS, s 44; CRSCL, s 89; FLBL, s 54.

²¹*Ibid.*

²²(2016) vol 66 NSCQR (Pt 3) 1325.

²³J P Esavwede and M Ojo, 'Nigeria without Oil: A Call for Paradigm Shift to Forest Laws as a Tool for Harnessing Forest Resources in Nigeria' *Journal of Ethnical and Regulatory Issues* (2022) 25 (6); 1 – 9, 2; A Olatunbosun, 'The Need for a Legal Regime for Sustainable Forest Management in Nigeria' *IUCN Academy of Environmental Law e-Journal Issue 2010*; 1 – 9.

²⁴R G Lowe, 'Forestry and Forest Conservation in Nigeria' (1984) (2), *Commonwealth Forestry Review* 63

percent to 20 percent, as couched in the broadly stated objectives.²⁵ This objective was obviously not achieved and this was why a new policy became necessary resulting in the effort at reviewing the said 1988 Forest Policy in 1999. The process of the review began with the setting up of a committee to carry out the process.

It is observed that much effort was put into the establishment of a new or reviews forest plan and that these efforts formed the foundation upon which the 2006 National Forest Policy was developed. The details of the works of the committee and the workshops it organised is well beyond the scope of this article. What is important is that these activities culminated in a National Forest Policy that emerged in June 2006. Curiously this policy as was even contemplated in the policy itself never evolved into a forest legislation and the reality is that all Nigeria has as a framework for forest management at the federal level is this 2006 National Policy and not a legislation. The implications of this are obvious as it has been noted to be a weak policy document for this very reason that has affected its application.²⁶ This point will become even clearer as we briefly consider the said National Forest Policy 2006.

However, it is pertinent to state that the provisions of the repealed Ordinance 1906 and the Forestry Act 1985 still marks the provisions of the various State laws on forestry except the CRSFCL with some indigenous provisions. The management and protection of mangrove forests or the forest ecosystem are governed by the different policies and regulations. Since the position of the law is that policies and regulations being subsidiary to substantive laws, remain as soft laws which do not have the same weight as a substantive law.²⁷

In the absence of a federal legislation on forestry, the management and protection of mangrove forests are generally governed by the respective State laws. Unfortunately, the analysis of the State laws on forestry showed that the content of these laws are largely relics of the colonial period expressed in the repealed Forestry Ordinance 1906 and the Forestry Act 1985.²⁸ The various State laws retained provisions on constitution or designation or declaration of reserved areas/protected areas which served the purpose of the colonial administrators of divesting ownership rights over mangrove forests and vesting it on a nebulous State apparatus. These laws also, did not make provisions for participation of the individual owners, local community and other stake holders except for CRSFCL that incorporated the local community in the management of the forest ecosystem. More worrisome is that the laws on forestry in the Niger Delta, except for CRSFCL, are seemingly old with outdated provisions.

²⁵ *Ibid.*

²⁶ 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

²⁷ *Wike v Peterside* (n22); *Esavwede and Ojo* (n23) 6.

²⁸ *Esavwede and Ojo* (n24) 2; O O O Enuoh and F E Bisong, 'Colonial Forest Policies and Tropical Deforestation: The Case of Cross Rivers State, Nigeria' *Open Journal of Forestry*, 2015, 1; 66 – 79.

International instruments governing forestry management are available. However, by reason of *section* 12 of the CFRN 1999, such international instruments, particularly treaties, cannot have the force of law except domesticated. It is unarguable that without a standalone legislation on forestry, it is clear that the fine features of the international instruments on forestry have not been embraced and incorporated into the sustainable forestry regime in Nigeria.

2.8.2 Weak Institutions and Poor Funding

The existence of pragmatic, functional and dynamic regulatory institution is indispensable for an effective management and protection of the mangrove forests in the Niger Delta, Nigeria. Prominent institutions that play significant roles in sustainable forestry management in Nigeria include the Federal/State Ministry of Environment, National Council on Climate Change (NCCC), the Judiciary, the Nigerian Police Force (NPF), Forestry Research Institute of Nigeria (FRIN) and the Forestry Commission (FC) of Cross River State.

Most of the regulatory institutions have offices in the various State capitals but operate the core services only in their headquarters at Abuja or the State Capitals in the Niger Delta. Hence, the centralised structure has made it difficult for the regulatory institutions to carry out their functions in relation to forestry management and protection. In the same vein, stakeholders in the forestry sector do not find it seamless relating with the regulatory institutions, whether in obtaining approvals, licenses or permits.

The regulatory institutions regulating the mangrove forests in the Niger Delta are further weakened by lack of capacity.²⁹ The institutions were also affected by inadequate manpower, underfunding, lack of or dilapidated office/accommodation, and lack of equipment.³⁰ As a result of the limited financial and human resources, most of the regulatory institutions could not effectively manage the mangrove forests in the Niger Delta. It is indubitable that most forestry services charged with the responsibility of managing the forest estate are underemployed or understaffed.³¹

2.8.3 Poverty and Unemployment

Deforestation cannot be pinned down to one simple cause; rather, it is caused by a combination of proximate and underlying factors.³² Forests are centres of conflicting interests, which are all legitimate. On one hand, are the forces interested in conservation of forests in order to make the forest sustainable for use of coming generations, on the other hand are those interested in using the forest for subsistence. Before colonial administration, the utilisation of

²⁹ Y M Ahmed and E D Oruonye, 'Challenges of Enforcement of Forest Legislation in Taraba State, Nigeria' *International Journal of Geology and Geography* (2017) 6 (3); 48 – 57, 49.

³⁰ *Ibid.*; 54.

³¹ S L Larinde and U D Chima, 'Challenges of Forest Management and National Security Issues in Nigeria' (Proceedings of the 37th Annual Conference of the Forestry Association of Nigeria (FAN) at Minna, Niger State, Nigeria, November 2014.

³² U E Ekwugha and Others, 'Deforestation and Environmental Degradation in the Niger Delta – A Case Study of Bayelsa State of Nigeria' *International Research Journal of Advanced Engineering and Science* (2020) 5 (4); 139 – 146, 141.

mangrove forests and other forests where in the hands of the community and her members.³³ The local communities depended on the mangrove forest for a lot of use, namely, fishing, fuel wood, timber, and so on.³⁴

Forests are essential for human survival and wellbeing. Within developing countries, 1 billion extremely poor people depend upon forests for part of their livelihoods, and as many as 350 million people living in and around forests are heavily dependent on forests for their livelihoods and security.³⁵ This is no more the case as colonialism and later, military and democratic governments disintegrated the local communities from the use of the mangrove forests. The repealed Forest Ordinance 1906 and the extant Forest Law of most States in the Niger Delta clearly divested the local owners of both *de jure* rights and *de facto* rights over their use of the mangrove forests. The constitution or designation or declaration of forest reserves/protected areas clearly disintegrated the locals over such reserves or protected areas. Ownership, which was before the current legal regime on land use, anchored on freehold, is now, as a result of the LUA and other related laws, the applicable interest is that of leasehold.³⁶ The implication of this is that the use of the mangrove forests is now subject to consent, approval, licensing and permit of the Governor of the State or any other appropriate authority.

In a dwindling economy, like Nigeria, the Niger Delta in particular, and with the pervasive poverty, and skyrocketing unemployment, the preservation of the mangrove forests, restoration of the forest ecosystem, and protection of the environment generally, is given little or no attention. The poor are interested in their source of livelihood, whether legitimately or illegitimately. Notwithstanding the extinguished interest, the poor encroaches into the mangrove forests in search of their livelihood. Activities in the mangrove forest, for some of the poor, is the only activity they have been involved in right from childhood. A good number are illiterates, without any understanding of the effects of the ills on the forest ecosystem.

Unemployment is another hydra-headed phenomenon in the degradation of the mangrove forests in the Niger Delta. It is a plague that has devastated the socio-economic fabric of the Nigerian society. This is worse in the Niger Delta where the youths and even the elderly have taken up to crime as a way of resolving unemployment. Not as a matter of coincidence, mangrove forests in the Niger Delta have become home for criminals and their criminal activities. Victims of kidnapping are kept in the mangroves, illegal refineries are set up, illegal activities are ongoing, and all these are linked to unemployment, rightly or presumed.

2.8.4 Governance Crisis

Ownership rights over minerals and mineral oil is vested exclusively on the Federal Government of Nigeria by reason of the provisions of the CFRN 1999 and other laws such as, the PIA 2021 and the NMMA. In terms of land use, the

management of all lands in Nigeria are vested in the Governor of the State in whose territory the land is situated.³⁷ The Governor of the State administers and holds the land in trust for the use and common benefit of all Nigerians.³⁸ The LUA places under the control and management, all land in urban areas under the management and control of the Governor of the State,³⁹ while all other land shall be under the control and management of the Local Government within the area where the land is situated.⁴⁰ Interestingly, the Governor of the State is empowered by order, published in the State Gazette to designate parts of the territory of the State as urban area.⁴¹

The Governor also, is vested with powers in respect of land whether or not in an urban area to grant statutory rights of occupancy to any person for all purposes; and easements appurtenant to statutory rights of occupancy.⁴² The implication of these powers conferred on the Governor of the State extends to extinguishment of preexisting rights.⁴³ The LUA prohibits the grant of a statutory right of occupancy or consent to an assignment to a person under the age of 21 years.⁴⁴

However, a grant can be made to the person less than the age of 21 years through a guardian or trustee. The clear implication of this is that persons less than 21 years of age, in other words, children, who are involved in activities in the mangrove forest of the Niger Delta, have their rights seemingly extinguished. The LUA significantly altered the land tenure system by extinguishing the freehold rights of the local communities and individual owners in the mangrove forests of the Niger Delta to a leasehold. Flowing from this, is that use of mangrove forests are now subject to licences,⁴⁵ and consent,⁴⁶ in order to alienate, or mortgage, or transfer possession, or sublease. The power of the Governor of the State to revoke rights of occupancy for overriding public interest,⁴⁷ is another feature that has resulted in governance crisis in the management and protection of mangrove forests in the Niger Delta.

The clear implication of this provision is that no individual or group has absolute right over any land. This without doubt includes the mangrove forests of the Niger Delta and the wetland on which they reside. The LUA simply created a trust of land in each state of the country. It gives the legal but not the absolute ownership of the lands to the Governors. Consequently, the LUA has minimised and distorted the extent of individual, corporate and community lands rights in Nigeria and the Niger Delta. It is submitted that the extensive and nearly absolute control over land given to the Governor who may not appreciate the value of the mangroves while excluding the local and indigenous people who benefit

³⁷LUA, s 1.

³⁸*Ibid.*

³⁹*Ibid.*, s 2 (a).

⁴⁰*Ibid.*, s 2 (b).

⁴¹*Ibid.*, s 3 (3).

⁴²LUA, s 5 (1) (a) (b).

⁴³*Ibid.*, s 5 (2).

⁴⁴*Ibid.*, s 7.

⁴⁵*Ibid.*, s 12.

⁴⁶*Ibid.*, ss 21, 22.

⁴⁷*Ibid.*, s 28.

³³Enuoh and Bisong (n29); 67 – 70.

³⁴Ahmed and Oruonye (n30); 48.

³⁵*Ibid.*

³⁶Olatunbosun (n24); 3.

directly from same spells doom for the mangroves of the Niger Delta region of Nigeria. The Governor can simply allocate a part of the forest to anybody and same will be cleared and built upon without anybody questioning the Governor's action.

The alienation of ownership and control of the land from the indigenous owners and the vesting of same in the Governor and may be local government authority has negatively affected the mangrove forests. The local communities and individual owners being divested of rights; and not involved in the management of the mangrove forests, do not express interest in the implementation of the forest laws, policies, and measures in place for the management and protection of the mangrove forests in the Niger Delta, Nigeria.

Flowing from the above conflicts and contradictions, the local communities and individual owners do not render the envisaged support to the measures for management and protection of the mangrove forests in the Niger Delta. Rather, the local communities and individual owners continue to exercise rights over the mangrove forests, *albeit*, contrary to extant laws and regulations. Despite the eminent domain ownership vested on the Federal Government and the Governor of the States respectively, the local communities and individual owners still lay claims to ownership of the mangrove forests. As a result, they continue to exercise their pre-LUA rights,⁴⁸ in clear breach of the extant laws and regulations. Nevertheless, it is submitted in this article that the exclusion of the stakeholders such as local community dwellers, hunters, farmers, timber contractors and other non-timber resources users in the administration of mangrove forests directly or indirectly, has led to poor forest governance and consequent crisis in management and protection of mangrove forests in the Niger Delta, Nigeria.⁴⁹

2.8.5 Infrastructural Projects

Coastal areas are in serious danger from land reclamation in the Niger Delta, Nigeria. This is because of land expansion activities such as urban development. Landscape reclamation is intended for urban city expansion, road construction, housing project, crude oil exploration and sand mining.⁵⁰ Reclamation is carried out by both government and private developers. The government sometimes forcefully acquires coastal areas from the native community, remove the mangrove forest and sand fill the area in order to establish projects beneficial to the public. Private investors reclaim coastal areas to execute private business that would boost their economic fortunes. Oil companies clear coastal forest and set up oil wells and pipelines in swampy locations. Increasing population in small communities had also led to the reclamation of coastal areas to create room for the

construction of houses to accommodate more people. However, many land reclamation activities are not development-centered, but business-centered. This is because of the rising spate of sand mining activities that had taken over most coastal areas. Sand mines are often abandoned after some years of operation.⁵¹

Diverse factors have been implicated in the land reclamation and these factors range from; land expansion, construction activities, land acquisition and to succession (land-forming activities of mangroves). Other factors that may be indirect will include: sand mining, exploratory activities, stream expansion/ canalization, disturbance limitation and agriculture.⁵² Land reclamation is truly a challenge to the mangrove forest and it is in this regard that it has been observed that Land reclamation for building of settlements and public facilities is also another major threat to the mangrove ecosystem in the Niger Delta region of Nigeria. In many parts of the region, the mangrove forest is being cleared for housing and other public facilities especially in mangrove areas that are close to access roads.⁵³

One form of land reclamation that is of particular interest to this article is land reclamation for land expansion purposes. This usually involves conversion of coastal wetlands into terrestrial areas. The usual reason is to make the land suitable for utilisation in building houses either for accommodation or other commercial ventures.⁵⁴ Closely related to this and also critical is reclamation by land acquisition. This form of reclamation is the forceful or legal takeover of coastal area by individuals or government officials. Highly placed individuals prefer constructing their houses along coastal areas. Through the use of the police, they acquire and take over mangrove forest; bulldoze the forest; dredge and sand fill the site and then allow to lie fallow for some years or reinforce and develop immediately. Coastal sites are preferred by land speculators because they are usually off-city limits and isolated from the rest of the population.⁵⁵ In same vein, forest reserves have been de-reserved in order to

⁴⁸Enuoh and Bisong (n29).

⁴⁹S R Akinola, 'Land Use Decree, Forest Administration and Governance Crisis in Nigeria' (5th FIG Regional Conference in Accra, Ghana 8 – 11 – 2006); 1 – 16, 2.

⁵⁰A O Ayeni, 'Forestry in Nigeria: A Brief Historical Overview, Phases of Development and Present Challenges' (African Association of Remote Sensing of the Environment (AARSE) Special Publication 2013) <https://africanremotesensing.org/forestry-in-nigeria-a-brief-historical-overview-phases-of-development-and-present-challenges-2/> accessed 22 January 2023.

⁵¹ A O Numbere, 'The Impact of Landscape Reclamation on Mangrove Forest and Coastal Areas in the Niger Delta, Nigeria' in L Loures (ed), *Landscape Reclamation: Rising from What's Left* (London: IntechOpen 2020) 53 – 70; A O Numbere, 'Impact of Urbanization and Crude Oil Exploration in Niger Delta Mangrove Ecosystem and its Livelihood Opportunities: A Footprint Perspective' *Agroecological footprints Management for Sustainable Food System* (2021) 309 – 344; A O Numbere, 'The Impact of Oil and Gas Exploration: Invasive Nypa Palm Species and Urbanization on Mangroves in the Niger River Delta, Nigeria' *Threats to Mangrove Forests: Hazards, Vulnerability, and Management* (2018); 247 – 266.

⁵² Numbere (n52).

⁵³ U D Chima and S L Larinde, 'Deforestation and Degradation of Mangroves in the Niger Delta Region of Nigeria: Implications in a Changing Climate' (Proceedings of the 38th Annual Conference of Forestry Association of Nigeria (FAN) March 2016) 521 – 538, 522; Larinde and Chima (n32).

⁵⁴ Numbere (n52).

⁵⁵ *Ibid.*

allocate the de-reserved land to powerful politicians and certain favoured communities and groups.⁵⁶

The above kinds of reclamation are typically made possible by the fact that those allocating the land to those responsible for the reclamation are not interested and so not care about the sustainability of the coastal ecosystem especially the mangroves because they are completely disconnected from them. It is submitted that if the dwellers whose livelihood and sustenance and who suffered the adverse environmental impact of the destruction of the mangroves are made part of the decision-making process on whether or not to destroy the mangroves the contrary will be the case, for reasons of clarity it is noted that reclamation impacts negatively on the mangrove forest of the Niger Delta of Nigeria.

Before reclamation the site is cleared, which leads to the destruction of native plant species within the reclaimed area. This could lead to permanent loss of mangroves or other plant species of economic/medicinal importance and habitat for marine organisms and wildlife and their emigration to unaffected areas, thereby upsetting the ecological balance. During clearing heavy machinery fell trees. This further denigrates the soil structure and converts the aquatic environment to marshy environment. Once the bulldozer rolls in to mow down the mangroves, it creates depressions for tidal pressure to wash in ashore. This is because the adventitious roots of the mangrove forest serve as tidal breaks. The presence of mangroves along the coast stabilizes and reinforces the soil against erosion. Mangrove litter decomposes to form manure, which further consolidates the soil structure.⁵⁷ Thus, the removal of vegetation loosens the soil and makes it susceptible to the force of erosion.⁵⁸

There is no doubt that people tend to preserve things that are of value to them. It is obvious that the indigenous dwellers of the Niger Delta who are displaced, disintegrated, and alienated from the mangrove forests are not lending support to the implementation of the laws and regulations in place for the management and protection of the mangals. This is not unconnected to the fact that infrastructural projects ongoing in the Niger Delta do not directly benefit them, rather, Niger Deltans are further exposed to abject poverty and unjustifiable unemployment.

2.8.6 Deployment of Technology/Geo-Spatial Database

Technologies can assist in effective management and protection of mangrove forests in the Niger Delta, Nigeria. It also makes for effective communication and dissemination of information regarding management of the mangrove ecosystems. Technologies in form of Apps and drones are available. These forms of technology can be deployed to monitoring, tracking and coverage of the mangals in the Niger Delta. Unfortunately, this is not the case as management and protection of the mangrove forests of the Niger Delta is still by way of manual efforts of the forest officers who are without doubt, inadequate.

⁵⁶Enuoh and Bisong (n29); 68, 74.

⁵⁷A O Numbere and G R Camilo, 'Mangrove Leaf Litter Decomposition Under Mangrove Forests Stands with Different Levels of Pollution in the Niger River Delta, Nigeria' *African Journal of Ecology* (2017) 55 (2); 162 – 167.

⁵⁸ *Ibid.*

The lack of a geo-spatial database remains a major challenge facing forestry management in the Niger Delta region. Funding constrains have often been the reason for not making use of remotely sensed data in forest monitoring. Creating spatial representations such as maps through remote sensing techniques to extract the locations and extent of forest degradation/deforestation is very important in forest monitoring and management.⁵⁹ Although, Nigeria has successfully launched its own satellites including NigeriaSat-1 and NigeriaSat-X, having a combination of characteristics with great potentials for forest monitoring.⁶⁰ Unfortunately, access and sharing of data is still not available. More so, majority of the States in the Niger Delta do not have database on forest reserves and their associated resources within their territory. However, Cross River State has a Geographic Information System (GIS) data hosted by its FC.

4.8.7 Corruption

Pervasive allegations of corruption have significantly militated the effective implementation of the laws and regulations on sustainable forestry management and protection. The prevalence of forest crime has been on the increase not only as a result of poor governance, but corruption. The forestry personnel are poorly remunerated and motivated. As earlier discussed, the institutions on forestry management are weak, suffering from funding constraints and with disgruntled staff.

Forest monitoring activities in the field by forest officials were plagued with complicity by some corrupt forestry officials. In the past, forest guides and rangers were employed and given uniform, rainboot or footwear and guns to patrol the forest reserve areas, monitor and protect the forest and wildlife resources.⁶¹ Currently, as is the case with Taraba State, so it is with the States of the Niger Delta, except Cross River State.⁶² Consequently, the mangrove forests in the Niger Delta are awash with corrupt activities and acts. The forestry personnel in other to 'help' themselves, work in clear violation of the regulations on forestry management and protection within their territory. Instead of enforcing forest laws, forest officials engage in rent seeking by renting out forest reserves/protected areas for a fee against the clear provisions of the law; collect money (bribe) from farmers, timber loggers, poachers and so on.⁶³ In same vein, public officials in charge of forestry abuse power for personal gains. The power to de-reserve is invoked in order to allocate the reserved land to him/her self and their cronies.

The Nigerian Police Force (NPF), Economic and Financial Crimes Commission (EFCC),⁶⁴ and the Independent Corrupt Practices and Other Related Offences Commission (ICPC),⁶⁵ are institutions established to tackle the phenomenon of corruption. However, despite the establishment of the anti-corruption agencies or institutions,

⁵⁹ Ayeni (n51).

⁶⁰ *Ibid.*

⁶¹ Ahmed and Oruonye (n30); 54.

⁶² *Ibid.*

⁶³ Akinola (n50).

⁶⁴ EFCCA, s 1.

⁶⁵ Corrupt Practices and Other Related Offences Act 2000, as amended (ICPC Act), s 3.

perpetration of corruption both in private and official capacities, appears to be on the increase and remain unabated. In particular, corruption perpetrated and prevalent in and against the mangals in the Niger Delta are barely given attention.

2.8.9 Weak Protection Measures

Although the protection measures for the management and protection of mangrove forest in the Niger Delta as previously analysed, are laudable, some of the measures remain ineffective. Laws and policies are in place for the management and protection of mangrove forests in the Niger Delta, but are poorly implemented because of lack of continuity and absence of political will.

Prohibitions and restrictions are also not effective, primarily because of the provisions permitting derogations and discretions on the part of the appropriate authority. In the case of constitution, designation or declaration of forest reserve/protected area, the power to de-reserve provided in all the enabling forest laws, which has been abused, significantly weakened the constitution, designation or declaration of forest reserve/protected area as a measure in the management and protection of the mangrove forests in the Niger Delta. While punishment by way of imprisonment or fine, sanctions or penalties are potent measure in the management and protection of the mangrove forests in the Niger Delta, it has been rendered impotent. The term of imprisonment is low except in Cross River State; fines and penalties that can be imposed are equally low except in the case of Cross River State.

3. Summary of Findings

In view of the issues discussed on the subject, the following are the findings:

- 1) Although there is no specific legislation on management and protection of the mangrove forest in Nigeria at the federal level, the states of the Niger Delta region have enacted laws for sustainable forestry management within their respective territory. In same vein, there are institutions regulating forests and forest resources in the Niger Delta.
- 2) In order to enthrone an effective management and protection of the mangrove forests in the Niger Delta, Nigeria, legal measures as: legislative interventions, licensing and permits, constitution or designation or declaration of forest reserves and or protected areas, Prohibitions and restrictions, and creation of offences and punishment are in place. However, these legal measures are not effective in the management and protection of the mangrove forests in the Niger Delta, Nigeria.
- 3) Challenges abound in management and protection of the mangrove forests in the Niger Delta, Nigeria. These challenges are that of inadequate legal framework, weak institutions and funding constraints, poverty and unemployment, governance crisis, infrastructural projects, deployment of technology/geo-spatial database, and corruption.

4. Conclusion

From the outset it was made clear that Nigeria as a nation is environmentally blessed with diverse forms of very rich and resourceful ecosystem comprising different kinds of natural and mineral resources. One of such diverse ecosystems is the mangrove forests and the largest deposits in Nigeria is in the Niger Delta region of Nigeria. It has also been noted and rightly too, that there is in no part of Nigeria that does not have one form of mineral resource or the other, and this is mainly due to the diversity of her ecosystem. This article has however dwelt on mangrove forests as a critical aspect of the ecosystem.

The interest in the mangrove forests has been clearly established to be based on the fact that the mangrove forests of the Niger Delta region of Nigeria are under serious threat of undue depletion and possible extinction due to critical and some serious flaws associated with its ownership and the control/management of other resources in Nigeria, and the absence of a proper legal framework for forest regulation and sustainable development in Nigeria. The article underscores that if urgent steps are not taken, the Niger Delta Mangroves are likely to be completely destroyed. The article underscores the need to quickly resolve the flaws associated with its ownership, control, utilization of mangrove forests and management of other resources therein, including but not limited to crude oil and other mineral deposits. This is in addition to the critical need for a robust forest regulatory framework. This without doubt has been considered critical for the purposes of ensuring that both the Mangrove forests and the resources deposited in and around it are sustainably utilized in order to ensure their conservation and preservation.

The article has shown that mangrove forests are socially, economically and environmentally very useful to the local community where they are located, Nigeria as a nation and in fact the world at large. Consequently, they cannot and should not be allowed to be either destroyed or mismanaged as is the case at the moment especially in the Niger Delta.

There is thus an urgent need to take all necessary steps to do all that is necessary to put the mangroves forests of the Niger Delta in their rightful position in consideration of their great value to the environment of Nigeria in particular and Nigeria in the world in Nigeria.

5. Recommendations

In view of the findings made in this article, the following are recommended:

- 1) The National Assembly should as a matter of urgency, make legislation to govern forest and forestry management in Nigeria. Furthermore, the National Assembly should further alter the CFRN 1999 to include the management and protection of mangrove forests and conservation of natural resources in the Exclusive Legislative List.
- 2) The State Houses of Assembly of the Niger Delta States of Rivers, Bayelsa, Edo, Delta and Cross River should repeal the extant laws of the forest and forestry

management. As a matter of urgency, the Legislative Houses of the mentioned Niger Delta States should re-enact a forest law to address contemporary challenges on their mangrove forest ecosystems.

- 3) The Niger Delta States should give serious attention to matters of deforestation and degradation of the mangrove forests. Therefore, independent institutions such as the Forestry Commission of Cross River State should be established by other Niger delta States. In same vein, the Faculty of Law in the State Universities in Niger Delta should as a matter of priority offer forestry law and management as a course for undergraduate students. In the interim, institutions in charge of forestry management in the Niger Delta should engage in sensitization programmes, trainings and education in local languages on forestry management and effects of deforestation and degradation of the mangrove forest ecosystems in the Niger Delta, Nigeria.
- 4) The Niger Delta States should develop and apply innovations in technology and creation of database as practiced by the selected jurisdictions of Brazil, Indonesia and Finland. Other Niger Delta States should use GIS as is the case in Cross River State in the management and protection of mangrove forests within their territories. Furthermore, drone technology should be adopted in management and protection of mangrove forests in the Niger Delta, Nigeria.