

THE IMPACT OF CLIMATE CHANGE ON THE ENVIRONMENT AND HUMAN RIGHTS IN NIGERIA: A LEGAL APPRAISAL

By

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Abstract

This article focused on the impact of climate change on the environment and human rights and the current legal frame works on climate change. It reiterated the linkages between the environment and human rights briefly outlining the impact of climate change on the environment and consequently, human rights. The study further outlined key legal frameworks on climate change which included the Constitution of the Federal Republic of Nigeria 1999 as amended, the National Policy on Climate Change, some strategies and action plans on climate change and the Climate Change Act, 2021. Although the Act captured the key provisions on climate change reduction, mitigation and adaptation, it is still bedevilled with challenges just like other environmental provisions. The problem of ineffective implementation still lingers. The Climate Change laws of South Africa and Kenya were briefly examined and recommendations made to counter the challenges.

Keywords: *Climate Change, Environment, Human Rights, Mitigation/ Adaptation, Climate Refugee.*

1.0 Introduction

The world over, nations of the earth grapple with the menace of climate change and its impacts on the environment and consequently, human rights. Nigeria, being one of the most populous countries in the world is not exempted. It has been categorized as one of the countries with a high rate of vulnerability to climate change.¹ Nigeria's geographical location in the tropics with a variety of ecosystems heightens its vulnerability to these impacts. The inevitable increase in temperature laced with variations in precipitation patterns and an amplified rate of life-threatening weather events like flooding are indicators of its manifestations in Nigeria.² It is estimated that Nigeria's climate will experience increased warming of 1.4 °C to 3.4 °C by 2060 characterized by upsurge in temperature and perilous precipitation patterns.³ The impacts of climate change on the environment which include flooding, heavy rainfalls, rise in sea level, desertification and others have not only adversely affected the environment but also placed a number of human rights such as the rights to life, dignity, food, water, shelter, a healthy environment and others at risk leading to food shortage, insecurity and most recently, increase in climate refugees.⁴

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¹ Intergovernmental Panel on Climate Change Impacts, Adaptation and Vulnerability, 2014<<https://www.ipcc.ch>>accessed 20 August, 2024.

² Nigeria Meteorological Agency, 2020.

³ *Ibid.*

⁴ A Jaldi and A El Ouassif. 'Climate Refugees: A Major Challenge of International Community and Africa' Research Paper, Policy Paper for the New South June, 2022.

Responding to these challenges, Nigeria has formulated a number of policies, action plans, strategies and recently, the Climate Change Act which stands as the principal legislation for mitigating and adapting to climate change in Nigeria.⁵ Additionally, the ratification of the Paris Agreement⁶ and the United Nations Framework Convention on Climate Change⁷ are part of its responses to climate change. The myriads of legal responses notwithstanding, the problem of inadequate provisions, lack of funding, absence of public enlightenment, corruption and improper implementation of the legal frameworks on climate change continues amongst others, continues to sabotage the protection of the environment and invariably, human rights in Nigeria.

2.0 Conceptual Clarifications

2.1 Climate Change

Climate change is a natural process that varies temperature, rainfall, wind and other elements over a period of time, making the earth both warmer and colder than it should ordinarily be. Active observations spanning through one and a half century show rise in global surface temperatures with key disparities in different regions⁸. Currently, there is a swift warming resulting from industrial and domestic activities basically due to the burning of fossil fuels that produce greenhouse gas emissions.⁹ The rise in greenhouse emissions, forms a covering around the earth, insnaring the heat of the sun and causing rise in temperatures thus, resulting in climate change.¹⁰ These greenhouse gases include carbon dioxide and methane emanating from the burning of fossil fuels such as gasoline and coal. Deforestation and bush burning also releases carbon dioxide. Landfills for refuse, energy, industrial activities, modernized agricultural activities and waste removal are other key sources of greenhouse emissions.¹¹ The implications of climate change include, among others, severe droughts, water shortage, fire outbreaks, rise in sea levels, flooding, melting polar ice, disastrous storms and deteriorating biodiversity resulting in novel and challenging health issues, the inability of the earth to yield sufficient food, loss of habitats, insecurity and loss of sources of livelihood.¹² In most littoral states, rising sea levels and saltwater invasion have led to relocation of communities, causing climate refugees. It is estimated that there would be an increase in the number of climate refugees in the nearest future.¹³

2.2 Environment

Etymologically, the word ‘Environment’ denotes the surroundings, particularly the physical and spiritual effects which impact the growth, advancement and survival of a living thing.¹⁴ It also means the situations or conditions that surround an organism or group of organisms, or the intricate social or

⁵ Climate Change Act, 2021.

⁶ Conference of the Parties Adoption of the Paris Agreement, 12 December, 2015, U.N.Doc. FCCC/CP/2015/L.9/ Rev/1, 12 December, 2015 (Paris Agreement).

⁷ United Nations Framework Climate Change Convention 9 May, 1992, 1771/U.N.T. S 107, 165.

⁸ *Ibid.*

⁹ United Nations Climate Action, ‘What is Climate Change?’ <<https://www.un.org>> accessed 30 January, 2024.

¹⁰ *Ibid.*

¹¹ United Nations Climate Action (n 9).

¹² World Meteorological Organization, *State of the Global Climate 2020* (WMO 2021) 23-29, 34.

¹³ World Meteorological Organization 38. World Meteorological Organization, Statement on the Global Status of the Global Climate in 2012, WMO No. 1108 (World Meteorological Organization 2013).

¹⁴ A Kumar, ‘Brief Introduction of Environment, Ecology and Environmental Pollution’ *Journal of Modern Management and Entrepreneurship* [2018] (8) (1) 314-322, 315.

cultural form that impacts a person or community.¹⁵ Thus, within the milieu of humans, the environment is the totality of all social, fiscal, biotic, corporeal or organic features which creates the surroundings of man, who is equally designer and builder of his own environment.¹⁶ For Ball and Bell the environment refers to ‘surroundings,’ a notion that is relative to the entity surrounded.¹⁷ In tandem with this view, Einstein, defined the environment to mean everything excluding himself.¹⁸ This definition was further re-echoed by Gilpin when he asserted that the environment connotes everything external to an organism.¹⁹ From the above, the environment includes all the external conditions and surrounding influencing living beings whether natural or man-made on which man interacts, lives and thrives

2.3 Human Rights

Human rights are demands or claims made by individuals or groups on society some of which are protected by law while others are aspirations attainable in the future.²⁰ The recognition of human rights date back to the ancient Persian era in 539 B.C when King Cyrus the great conquered the city of Babylon, freed the slaves, established racial equality and declared that all people had the right to freedom of religion.²¹ These declarations became the world’s first charter on human rights which has been translated into the six official languages of the United Nations- The Universal Declaration of Human Rights.²² During the 18th century, human rights were mainly rights enforceable against the State.²³ They are known as first generation rights amongst which are the rights to life and dignity of the human person.²⁴ These rights emerged as a result of the atrocities committed during the Second World War,²⁵ and were later enumerated by the Universal Declaration of Human Rights²⁶ and become binding through the International Covenant on Civil and Political Rights.²⁷ These rights though inalienable and inherent in man, were seen to be unrealizable under certain environment conditions²⁸ and the need to protect these first-generation rights, informed the formation of additional rights. Thus, second generation rights such as right to work and a decent work place, right to health, right to education and social insurance enumerated in the Universal Declaration of Human Rights²⁹ and enacted through the instrumentality of the international covenant on Economic, Social and Cultural Rights, came into

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ S Ball and S Bell, *Environmental Law: The Law and Policy Relating to the Environment* (2nd edn, London: Blackstone 1994) 1-469.

¹⁸ A Einstein cited in A Kumar, ‘Brief Introduction of Environment, Ecology and Environmental Pollution’ *Journal of Modern Management and Entrepreneurship* [2018] (8) (1) 314-322, 315

¹⁹ A Gilpin, *Dictionary of Environmental Terms* (University of Queensland Press 1976) 1-191.

²⁰ O C Eze, ‘Human Rights in Africa: Some Selected Problems (1984) 5, cited in A Ogbuigwe, *Offended: Legal Issues in the Niger Delta Struggle* (ACFED 1999)29.

²¹ United for Human Rights, ‘Brief History of Human Rights’ 1

<<https://www.humanrights.com/whatarehumanrights/briefhistory/CyrusCylinder.html>> accessed 28 October 2022.

²² Universal Declaration of Human Rights, 1948.

²³ P Sieghart, *The Lawful Right of Mankind: A Code of Human Rights* (Oxford University Press 1985) 26-29.

²⁴ *Ibid*; CFRN 1999, ss 33, 34.

²⁵ *Ibid.*, 36-38.

²⁶ UDHR 1948 (n22) arts 5,8,9,10,13,14,18,19,20.

²⁷ International Covenant on Economic, Social and Cultural Rights, General Assembly Resolution 2200A (XXI) 16 December, 1966 (ICESCR, 1966)

²⁸ J A Downs, ‘A Healthy and Ecologically Balanced Environment: An Argument for a Third Generation Right’ *Duke Journal of Corporate International Law* [1993] (3) (35) 360.

²⁹ UDHR 1948 (n22) arts 23, 25, 26, 22.

being.³⁰ The clamour for third generation rights began after the term “third generation rights” was used by Vasak, a legal adviser to the United Nations Educational, Scientific and Cultural Organization (UNESCO) to describe a set of policy goals achievable by joint international effort.³¹ This statement raised the question as to whether this set of policy goals was also human rights.³² Several views arose from this debate. Some opined that human rights are static and that every other right derives from these static rights and as such no new right could be created. Others argued that the creation of new rights will diminish the authority of existing human rights while a third group asserted that human rights should be dynamic so as to accommodate changing trends and including environmental rights.³³ Presently, the right to a healthy environment has found expression in several national, regional and international legal frameworks.³⁴

2.4 Adaptation/ Mitigation

The term ‘adaptation’ flows from the medieval Latin word ‘adaptatio’ connoting the act of adjusting or suitability to a situation.³⁵ Adaptation in relation to climate change means adjustment to or suitability to climate change. It implies the introduction of new circumstances which become absorbed over time through the process of adaptation.³⁶ The International Panel on Climate Change defines adaptation as the process of adjustment to actual or expected climate and its effect³⁷ This definition was also replicated by the Climate Change Act 2021.³⁸ Adaptation has further been defined as adjustment in natural and human systems in response to a new or changing environment that exploits beneficial opportunities or moderates negative effects,³⁹ the process of adjusting to new climate conditions so as to reduce risks to valued assets⁴⁰ and the process of finding ways to prepare for and flexibly respond to changes in climate in order to avoid its expected or actual consequence.⁴¹ According to the Fourth National Climate Assessment, adaptation includes actions taken at the regional, national, local and individual levels to reduce risks from the present change in climatic conditions to future impacts from further projections in climate change.⁴² It denotes the process through which societies prepare themselves to survive an uncertain future.⁴³

³⁰ ICESCR 1966 (n27) arts 6, 7, 12, 13, 9.

³¹ K Vasak, ‘Pour Une Troiseime Generation des Droits de l’ homme’, in C Swinarski (ed), *Studies and Essays on International Humanitarian Law and Red Cross Principles in Honour of Jean Pictet* (Martinus Nihoff: International Committee of the Red Cross, Hague, Geneva 1984) 838.

³² J Donnelly, *Universal Human Rights in Theory and Practice* (2nd edn, Cornell University Press 1989).

³³ J A Downs (n28) 363.

³⁴ The Constitution of the Republic of South Africa, s. 24; The Constitution of the Republic of Kenya, s 42; African Charter on Human and Peoples’ Rights 1981, s 24.

³⁵ G Simonet, ‘The Concept of Adaptation. Interdisciplinary Scope and Involvement in Climate change, *Surveys and Perspectives Integrating Environment and Society* [2010] (3) (1) 6.

³⁶ *Ibid*, 7.

³⁷ IPCC 2014 (n1),

³⁸ Climate Change Act, 2021.

³⁹ United States Global Change Research Program. Fifth National Climate Assessment (NCA) <<https://www.noa2003globalchange.gov>> accessed 21 July, 2004.

⁴⁰ United States Interagency Council of Climate Resilience, Department of Environmental Protection <<https://dep/nj.gov>> accessed 20 August, 2024.

⁴¹ United States Department of Agriculture, Climate Change Adaptation <<https://www.usda.gov>> accessed 21 July, 2004.

⁴² United States Global Change Research Program, Impacts, Risks and Adaptation in the United States, Fourth National Climate Assessment, Volume II (USA: Washington DC, 2018).

⁴³ United Nations Framework Convention on Climate Change, Climate Change: Impact, Vulnerabilities and Adaptation in Developing Countries, 2007 <<https://unfccc.int>> accessed 20 August, 2024.

Mitigation on the other hand, is a sustained action that reduces or eliminates long term risks to people and property from natural hazards and their impacts.⁴⁴ It includes any activity that prevents emergency, reduces the chances of an emergency happening or lessens the disastrous effects of unavoidable emergencies.⁴⁵ Mitigation also refers to actions or activities that limit emission of greenhouse gases from permeating the atmosphere and or reduce their levels in the atmosphere.⁴⁶ They are efforts required or measures needed to address climate change by slowing or stopping the rise in greenhouse gas emissions which are capable of increasing the earth's temperature⁴⁷ or enhancing the sinks of greenhouse gases.⁴⁸ This process absorbs gases especially carbon dioxide and eliminates greenhouse gases from the atmosphere.⁴⁹

2.4 Climate Refugee

There is no consensus on the definition of the term "climate refugee", thereby making it difficult to ascertain the contribution of climate change to the issue of migration.⁵⁰ Again, the fact that migration may emanate from a combination of various factors renders the choice of migration subjective and somewhat unascertainable.⁵¹ This also extends to the appraisal of the importance of the environmental factor owing to the strain of forecasting the response of the populaces migrating, and the absence of qualitative and quantifiable statistics on the subject.⁵² Before the global recognition of climate change, Lester Brown, an environmental activist and founder of the World watch Institute, invented the term "environmental migrant" to describe a wide-ranging group of people electing or forced to migrate owing to environmental influences. The term was however altered and propagated by Essam El-Hinnawi of the United Nations Environmental Programme, who defined "environmental refugees" as persons compelled to leave their natural habitat momentarily or permanently as a result of a natural or anthropogenic environmental hazard capable of endangering the existence of such persons or impacting the quality of their life.⁵³ In recent times, there is a rise in migration and trans-border movements of people as a result of climate related hazards.⁵⁴ In Nigeria the increase in the creation of Internally Displaced Persons' camps especially as a result of flooding, affirm the growing challenge of climate refugees, a fallout of the menace of climate change

⁴⁴ United States National Mitigation Framework (2nd ed) 2016 <<https://www.fema.org>> accessed 21 July, 2004.

⁴⁵ United States National Mitigation Framework.

⁴⁶ AR6 Climate Change 2021: The Physical Science Basis, Sixth Assessment Report <<https://www.unfccc.int> accessed 30 July, 2024.

⁴⁷ UNFCCC Resource Guide for Preparing the National Communications of Non-Annex Parties, module 4: Mitigation Measures to Mitigate Climate Change <<https://www.unfccc.int>> accessed 30 July, 2024.

⁴⁸ Climate Change Act, 2021 S. 35; IPCC Sixth Assessment Reporting Working Group III: Mitigation of Climate Change, 2022 <<https://www.IPCC.ch>> accessed 20 July, 2004.

⁴⁹ United States Research Program (n 39); Intergovernmental Panel on Climate Change (IPCC) Climate Change 2007: The Physical Science Basis Contribution of Working Group I to the Fourth Assessment Report of the IPCC (Cambridge University Press 2007) 996.

⁵⁰ *Ibid*, 6

⁵¹ *Ibid*.

⁵² *Ibid*.

⁵³ *Ibid*.

⁵⁴ *Ibid*, 14.

3.0 Appraisal of the Legal Frameworks on Climate Change in Nigeria

3.1 Constitution of the Federal Republic of Nigeria, 1999 (as amended)

Sections 20 and 17(2) (d) of the CFRN provide for the protection of the Nigerian environment and the prevention of the exploitation of natural resources save for the good of the community. This responsibility falls on all arms of government.⁵⁵ Necessary institutions and authorities are to be established for the observance and enforcement of these provisions.⁵⁶ Additionally, Sections 33 and 34 of the CFRN provides for the rights to life and dignity of the human person.⁵⁷ These rights have in recent times been extended to mean the right to a clean and healthy environment even though not expressly stated therein.⁵⁸ Following the ratification of the African Charter, it is safe to state that one of the fundamental rights of every Nigerian, is the right to a healthy environment.⁵⁹ The constitution provides for the right of citizens to bring an action where there is breach of these basic rights⁶⁰ however, this right to bring an action where there is a breach excludes chapter two of the CFRN 1999 and thus, puts Section 20 and 17(2) (d) out of the purview of public litigation⁶¹

Again, although the ratified Charter provides for the right to a generally satisfactory environment,⁶² the case of *Abacha v Fawehinmi*,⁶³ an appeal to the S.C waters down the enforceability of the right to a healthy environment following the pronouncement of the Supreme Court to the effect that the African Charter as ratified, cannot stand on its own under the Nigerian law or be enforced as a distinct law and that it is subject to our domestic laws and cannot take precedence over the constitution.⁶⁴ It therefore follows that the right to a healthy environment cannot be enforced on its own or in connection to Section 20 and 17(2)(a) of the CFRN except in relation to the rights to life or dignity as expressed by the courts in recent times.⁶⁵

Summarily, the constitution, which is the highest law of the land, and the grand norm from which every other law derives its validity creates no room for public litigation against the government where it fails to meet its obligations on environmental protection. The case of *Gbemre v SPDC*⁶⁶ although laudable, cannot be said to be the true position of the law following the principles of hierarchy of courts and

⁵⁵Constitution of the Federal Republic of Nigeria, 1999 (as amended) Cap C 23, LFN 2004 (CFRN, 1999) s.13.

⁵⁶ *Ibid*, item 60(a).

⁵⁷*Ibid*, ss 33, 34.

⁵⁸*Jonah Gbemre v Shell Petroleum Development Company of Nigeria and 2 ors* Unreported Suit NO FHC/B/Cs/55/05 Federal High Court Benin delivered on 14 November, 2005

⁵⁹African Charter on Human and Peoples' Rights (Enforcement and Ratification) Act 1983, Cap A9 LFN, 2004 (African Charter).
art 24.

⁶⁰CFRN 1999, s. 46(1)

⁶¹CFRN 1999 s. 6 (6) (c).

⁶²African Charter (n6) art 24.

⁶³*Abacha and ors v Fawehinmi*, Appeal to Supreme Court Case No SC 45/1997; (2000) 6NWLR 228; (2002) 3 LRC 296; (2001) 1 CHR 95, 1 LDC 21 (NG 2000) 28th April 2000, Nigeria; Supreme Court.

⁶⁴ *Ibid*.

⁶⁵*Jonah Gbemre v Shell Petroleum Development Company of Nigeria and 2 ors* (n58).

⁶⁶ *Ibid*.

binding precedents until it is pronounced upon by the highest court of the land which it is the Supreme Court.⁶⁷

3.2 National Policy on Climate Change

Sequel to the Climate Change Act, 2021, the National Policy on Climate Change was formulated.⁶⁸ The National Climate Change Policy are mitigation and adaptation policy measures enabling the implementation of Nigeria's climate change goals.⁶⁹ The vision and mission of the policy is the creation of a nation with low carbon climate and ensuring sustainable development and a climate resilient economy through the engagement of stakeholders.⁷⁰ Its strategic objectives include implementing measures that promote low carbon,⁷¹ creating synergies at all levels of government including individuals and institutions for the implementation of climate change response⁷² and scientific research, technology and innovation to tackle climate change,⁷³ Other objectives are the creation of suitable plans for the reduction of the effect of climate change on susceptible groups⁷⁴ and mainstreaming gender, children and youths into climate change interventions.⁷⁵ Promotion of sustainable land use,⁷⁶ climate proofing of construction and infrastructure development,⁷⁷ capacity to mobilize technical and financial assistance nationally and internationally,⁷⁸ development of an effective climate change communication and information facility,⁷⁹ and strengthening of institutions and mechanisms for appropriate climate change governance⁸⁰ are also part of the specific objectives outlined by the climate change policy.

Emerging global issues relating to the environment, warranted a review of the previous edition of the National Climate Change Policy. These issues include the Paris Agreement and the need for compliance with the submission of a National Determined Contribution as part of the global target of placing global warming below 2⁰ c.⁸¹ Other emerging issues were the need to upgrade the Environmental Recovery and Growth Plan for the period of 2017-2020 so as to address the

developmental goals of 2020-2040 and address security challenges arising from the consequences of climate change.⁸² Other climate change plans and programmes were also formulated to aid mitigation and adaptation to climate change.

⁶⁷C T Emejuru, 'Human Right and Environment: We the Nigeria?' *Journal of Law, Policy and Globalization* [2015] 113.

⁶⁸ Federal Ministry of Environment, Department of Climate Change, National Climate Change Policy for Nigeria, 2021-2030.

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*, s 3.1, 2.

⁷¹ *Ibid.*, s 3.4 (i).

⁷² *Ibid.*, s 3.4 (ii).

⁷³ *Ibid.*, s 3.4 (iii).

⁷⁴ *Ibid.*, s 3.4 (iv).

⁷⁵ *Ibid.*, s 3.4 (v).

⁷⁶ *Ibid.*, s 3.4 (vi).

⁷⁷ *Ibid.*, s 3.4 (vii).

⁷⁸ *Ibid.*, s 3.4 (viii).

⁷⁹ National Climate Change Policy for Nigeria, 2021-2030 (n68) s 3.4 (vix).

⁸⁰ National Climate Change Policy for Nigeria (n70) s 3.4 (x).

⁸¹ *Ibid.*, s 2.3.

⁸² *Ibid.*

i. Nigeria Energy Transition Plan of 2021- 2060.

The plan was developed as a roadmap to achieving the 2060 net zero target in terms of national energy consumption.⁸³ It sets out a timeline and framework for the attainment of emission reduction across five key sectors which are power, cooking, oil and gas, transport and industry. The key objectives set out under the plan are poverty reduction and economic growth, introduction of contemporary energy services to the populace, and management of long-term job losses resulting from reduction in the demand for fossil fuels. Further key objectives include modelling Nigeria to Africa by promoting fair, inclusive and equitable transition to the use of gas, restructuring standing and novel government energy transition initiatives, significant job creation, investment opportunities and the introduction of gas as a transitory fuel. For a swift implementation of this policy, an energy transition implementation working group was inaugurated. The plan has been integrated into the office of the National climate change council to ensure its continuity. Similarly, the National Climate Change Programme for Nigeria, 2021⁸⁴ was approved in June 2021 along with a clear plan of action. The Programme outlines sectoral policy measures for mitigation and adaptation, as well as enabling conditions and means of implementation needed.

ii. Sectoral Action Plans for Nigeria's Nationally Determined Contribution to the United Nations Framework Convention on Climate Change, 2017

In furtherance of the climate change course, Sectoral Action Plans for Nigeria's Nationally Determined Contribution to the United Nations Framework Convention on Climate Change, 2017⁸⁵ was adopted. The sectoral action plans cover agriculture, power generation, industrial energy efficiency, oil and gas, and transport to support the implementation of its first Nationally Determined Contribution in line with the Paris Agreement. The National Renewable Energy and Energy Efficiency Policy (NREEEP), 2015⁸⁶ which targets renewable energy capacity including large hydro was approved by the Federal Executive Council for the Electricity Sector. The policy includes technology-specific targets for wind, solar, biomass, small hydropower and large hydropower to facilitate a green transition to renewable energy. National Building Energy Efficiency Code (BEEC), 2017⁸⁷ sets minimum energy efficiency standards for new buildings in Nigeria while Regulations on Feed-In Tariff for Renewable Energy sourced electricity in Nigeria, 2015⁸⁸ aims at stimulating investment in renewable energy, targeting 2000 Mega Watts of renewable energy by 2020, excluding large hydropower.

iii. National Plan on Reduction of Short-lived Climate Pollutants, 2018

Short-lived Climate Pollutants are pollutants that have a short life span in the atmosphere for instance, methane, tropospheric ozone, black carbon and hydro fluorocarbons (HCFs).⁸⁹ Mitigation methods include introduction of low sulphur diesel and petrol, using modern energies for cooking, removal of

⁸³ Nigeria Energy Transition Plan, 2022.

⁸⁴ National Climate Change Programme for Nigeria, 2021.

⁸⁵ Sectoral Action Plans for Nigeria's Nationally Determined Contribution (NDC) to the United Nations Framework Convention on Climate Change (UNFCCC), 2017.

⁸⁶ National Renewable Energy and Energy Efficiency Policy, 2015.

⁸⁷ National Building Energy Efficiency Code (BEEC), 2017.

⁸⁸ Regulations on Feed-in Tariff for Renewable Energy Sourced Electricity in Nigeria, 2015.

⁸⁹ Department of Climate Change, Nigeria National Action Plan to Reduce Climate Change Pollutants (SLCPs) December, 2018.

kerosene lamps and gas flaring, enhanced energy efficacy, septic mire assemblage, sewage systems and community waste water treatment plants, decrease in open field burning, abolition of HFC consumption and others.

iv. 2050 Long-Term Vision for Nigeria (LTV-2050), 2021

In response to the Copenhagen Accord⁹⁰ and the Paris Agreement, ⁹¹Nigeria's Long-Term Vision (LTV)⁹² was formulated. The vision stipulates that by 2050, Nigeria would be a low carbon nation with climate resilience, increase in growth, a reduced emission level of 50% from its current emission level and subsequently, net-zero emissions in every sector of the economy.⁹³ Focal areas are political will to realize the long-term net-zero emissions target during the stipulated time, emission reduction targets, socio-economic, enhancement and supervision of the use of natural resources and ecosystems. Further focal points include the integration of climate change adaptation, institutional capacity and building governance and investment and financing requirements.⁹⁴ The LTV covers a number of environmental issues that contribute to climate change and some that could be impacted by climate change.⁹⁵ It also includes sectoral targets and measures.

4.0 Climate Change Act, 2021 (CCA)

The Climate Change Act was enacted in 2021.⁹⁶ It is an Act aimed at the development and implementation of mechanisms for fostering low carbon emissions and environmental sustainability.⁹⁷ The Act established a National Council on Climate Change (NCCC) with the responsibility of making policies and decisions on all issues relating to environmental change in Nigeria.⁹⁸ The Council is also saddled with ensuring the implementation of the Act, administration of the climate change fund established by the Act and collaboration with the federal inland revenue in developing mechanism for the imposition of carbon tax and carbon emissions trading.⁹⁹ Other functions include; overseeing the enforcement of sectoral targets and guidelines for the regulation of Green House Gas (GHG) emissions and other manmade causes of climate change.¹⁰⁰ The Council comprises of members of federal government ministries and departments and representatives from the private sector, women, youths, and persons with disabilities.¹⁰¹ It is worthy of note that the appointments of representatives that make up the NCC are without benchmark specifications but rather peculiar to individual appointees.¹⁰² Similarly,

⁹⁰ United Nations Framework Convention on Climate Change, Report of the Conference of the Parties on its 15th Session held in Copenhagen from 7-19 December, 2009, FCCC/CP/2009/11/Add. I, 30 March, 2010.

⁹¹ Conference of the Parties Adoption of the Paris Agreement, 12 December, 2015, U.N.Doc. FCCC/CP/2015/L.9/Rev/1, 12 December, 2015 (Paris Agreement).

⁹² Department of Climate Change, Federal Ministry of Environment, Nigeria, 2050 Long-Term Vision for Nigeria (LTV-2050).

⁹³ *Ibid*, s 3.3.

⁹⁴ LTV-2050, s1.3.

⁹⁵ *Ibid*, s 4.1-9.

⁹⁶ CCA, 2021 (n 5).

⁹⁷ *Ibid*, s 1.

⁹⁸ *Ibid*, ss 3 (1), 4(b) (e) (f).

⁹⁹ *Ibid*, s 4 (a) (c) (i) (j).

¹⁰⁰ *Ibid*, s 4 (a).

¹⁰¹ CCA, 2021 (n 5), s 5 (1) (a-u).

¹⁰² *Ibid*, s 5 (4) (b)

the NCC is majorly made up of political appointees¹⁰³ thereby undermining the law and policy implementation of Nigeria considering the lack of expertise and political coloration of the NCC.¹⁰⁴

The CCA also establishes a secretariat in charge of handling the administrative and technical functions of the council.¹⁰⁵ The secretariat is headed by a Director General whose appointment is to be made by the president on the recommendation of the council¹⁰⁶ while the appointment of staff members is to be made by the secretariat with the approval of the council as it deems fit.¹⁰⁷ The above highlights the political basis on which appointments are made in Nigeria.¹⁰⁸

There is also established by the Act, a climate change fund administered by the council and financed by monies allocated by the national assembly to the council for its running, monies proceeding from fees, donations, publications, grants, charges for services and subvention made by the council.¹⁰⁹ The climate change fund can also receive funds from international organizations or monies made available to Nigeria for meeting her Nationally Determined Contributions.¹¹⁰ Fines from the private and public sector for breaching climate change mitigation and adaptation obligations, carbon tax and emissions trading and funds from other source that may be prescribed by the council also constitute part of its funding.¹¹¹ This fund is to be applied for administrative purposes and to enable the council carry out its functions.¹¹² From the itemization of the purposes of the fund, it could be inferred that the Nigerian CCA prioritizes the utilization of climate funds for administrative purposes over other purposes such as climate change advocacy, information dissemination, funding of innovative climate change mitigation and adaptation projects.¹¹³ The Act permits the council to borrow money for the execution of its mandate and to accept gift under certain condition.¹¹⁴ Respectfully, it is opined that these provisions are capable of breeding corruption, financial recklessness, improper management of climate funds and favouritism by the NCCC in carrying out these functions.

Under the Act, the federal ministries of environment and national planning are to set carbon targets (acceptable GHG emission limits over a specified period) and the budgetary period for Nigeria and revise them periodically to align with NDC in compliance with international obligations.¹¹⁵ Within 12 months, before the end of a carbon budgetary period, these ministries are to submit a new carbon budget through the council to the federal ministry of environment for approval¹¹⁶ or review an existing carbon budget within its carbon budget cycle.¹¹⁷ The FME is further authorized to make guidelines for the

¹⁰³ *Ibid*, s5 (1) (a)-(q)

¹⁰⁴ P Okoli and E Abraham, in search of a sustainable future: A comparative Assessment of Climate Change requires in Nigeria and Kenya, *Review of European comparative international environmental law* [2024] (33)(2) 276-290.

¹⁰⁵ CCA, 2021 (n 5), ss 7 (1), 8(a-k).

¹⁰⁶ *Ibid* s10 (1).

¹⁰⁷ *Ibid* s.13 (1).

¹⁰⁸ Okoli and Abraham (n 104).

¹⁰⁹ CCA, 2021 (n 5) s 15 (1) (a) (b).

¹¹⁰ *Ibid*, s 15 (1) (c) (d).

¹¹¹ *Ibid*, s 15 (1) (e) (f).

¹¹² *Ibid*, s 15 (2) (a-k).

¹¹³ *Ibid*, s 15 (2) (e)(f) (g) (i)(j).

¹¹⁴ CCA, 2021 (n 5) ss 17, 18.

¹¹⁵ *Ibid*, s 19 (1) (a) (b) (i) (ii).

¹¹⁶ *Ibid*, s 19 (3).

¹¹⁷ *Ibid*, s 19 (4).

measurement, reporting and verification of national emissions for the effective reviews of carbon budgets.¹¹⁸ The secretariat in consultation with the ministry is saddled with the responsibility of formulating a National Climate Action plan every five years.¹¹⁹ The act also provides for public consultation with respect to the Action Plan within 8 weeks, ending 14 days before the presentation of the action plan to the council for approval.¹²⁰ The Action Plan is the premise for establishing national goals, objectives, priorities on climate adaptation and identifying activities capable of aligning national emissions profile with carbon budget goals.¹²¹ However, there is yet to be any current action plan or carbon budget as outlined by section 19 and 20 of the CCA thus raising questions on the efficacy of the Act with respect to its climate accountability objectives.¹²² Periodic reports are to be made on the actualization of the Action Plan and the performance of private and public enterprises with respect to climate change obligations as set out by the CCA.¹²³ Any person (private or public) that acts in a way that negatively affects efforts towards mitigation and adaptation measures, stipulated therein, or contravenes any of its obligations under the Act, is liable to a penalty determined by the council.¹²⁴ The CCA further provides for the reduction of emissions from deforestations and forest degradation (REDD+). Sustainable management of forests and improvement of forest carbon stocks. The FME is to set up a registry for this purpose.¹²⁵

There are numerous challenges bedeviling the effective implementation of the CCA. The NCCC entrusted with the co-ordination of sectoral targets and regulatory guidelines comprise of high-ranking officials and representatives from various sectors leading to difficulty in streamlined decision making and effective operations.¹²⁶ Similarly, the responsibility of the secretariat to request important data, conduct investigations and impose penalties may not be efficiently done owing to its multifaceted framework. The Council may not exercise its power of sanction efficiently on government ministries, departments or agencies because a number of these ministries are represented in the Council.¹²⁷ There are also bureaucratic challenges arising from the establishment of zonal offices, and appointment of state directors since there are no clear transitional provisions.¹²⁸ The provisions of the Act on the rotational appointment of zonal coordinators and state directors in line with the principle of federal characters, negates meritocracy in these appointments since appointment may not be based on merit or qualification but rather on 'turns'.¹²⁹ Again, the bogus nature of the functions of the council overlaps with the functions of other ministries or regulatory bodies on the environment.¹³⁰ Another challenge, is absence of political will in implementing environmental laws, since no action can be instituted against

¹¹⁸ *Ibid*, s 19 (5) (b).

¹¹⁹ *Ibid*, s 20 (1).

¹²⁰ *Ibid*, s 20 (2).

¹²¹ *Ibid*, s 20 (4) (a) (b).

¹²² Okoli and Abraham (n 104).

¹²³ CCA, 2021 (n 5) ss 21 (1) (2) (a) (h), 22, 23.

¹²⁴ *Ibid*, ss 22 (5), 24 (2).

¹²⁵ CCA, 2021 (n 5) ss 28 (1).

¹²⁶ O J Olujobi and I S Odogbo, Strategic Evaluation of the 2021 Nigeria Climate Change Act: Surmounting Challenges, Paving the Way for Success and Envisioning Future Trajectories, *Social Sciences Humanities Open* [2024] (10) 1-11.

¹²⁷ *Ibid*.

¹²⁸ CCA, 2021 (n 5) s 11.

¹²⁹ *Ibid*, s 19.

¹³⁰ *Ibid*, s 11(5); Olujobi and Odogbo (n126) 6.

the government where there is a contravention of S 20 of the Constitution.¹³¹ Corruption presents the most formidable obstacle in Nigeria's pursuit of fulfilling its climate change obligation.¹³² The funds made available to the council should be used for its intended purpose.¹³³

5.0 United Nations Framework Convention on Climate Change, 1992

On 12 June 1992, 154 nations signed the UNFCCC, which upon ratification committed signatories' governments to reduce atmospheric concentrations of greenhouse gases with the goal of "preventing dangerous anthropogenic interference with Earth's climate system"¹³⁴. This commitment required substantial reductions in greenhouse gas emissions. The parties to the convention have met annually from 1995 in Conferences of the Parties (COP) to assess progress in dealing with climate change.¹³⁵ Article 3(1) of the Convention states that Parties should act to protect the climate system on the basis of "common but differentiated responsibilities and respective capabilities", and that developed country Parties should "take the lead" in addressing climate change.¹³⁶

The United Nations Framework Convention on Climate Change (UNFCCC) provides for adaptation.¹³⁷ It enjoins party states to facilitate adaptation measures¹³⁸ through co-operation,¹³⁹ assisting developing party states in relation to climate change adaptation¹⁴⁰ and by giving full consideration to actions necessary under the convention to combat the effects and impacts of implementing response measure.¹⁴¹ Developed countries are also expected to take into account the needs of the least developed nations with regard to funding and transfer of technology.¹⁴² Parties to the UNFCCC are also expected to take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects.¹⁴³ Similarly parties have common but differentiated responsibilities based on their national circumstances.¹⁴⁴ This include gathering and sharing information on greenhouse gases, emissions, national policies and best practices to curb emissions.¹⁴⁵ Mitigation measures include adequate policies for mitigation which is a combination of market-based programs and regulatory measures, building regulations, use of technology and public education on the need for mitigation, growing forests, vegetations and others.¹⁴⁶

¹³¹ *Ibid*, Olujobi and Odogbo (n126) 6.

¹³² O J Olujobi and others, 'The Legal Frameworks Gas Flare in Nigeria's Oil and Gas Industry: Can it Promote Energy Sustainable Security'? *Sustainability* [2022] (14) (3)7626.

¹³³ *Ibid*.

¹³⁴ UNFCCC 1992 (n7) art 2.

¹³⁵ *Ibid*, art 7.

¹³⁶ *Ibid*, art 4(7).

¹³⁷ *Ibid*.

¹³⁸ *Ibid*, art 4.1(b).

¹³⁹ *Ibid*, art 4.1(e).

¹⁴⁰ *Ibid*, art 4.4.

¹⁴¹ UNFCCC 1992(n7) art 4.8.

¹⁴² *Ibid*, art 4.9.

¹⁴³ UNFCCC Resource Guide for Preparing the National Communications of Non-Annex Parties, module 4: Mitigation Measures to Mitigate Climate Change <<https://www.unfccc.int>> accessed 30 July, 2024.; UNFCCC art 3.3.

¹⁴⁴ UNFCCC 1992 (n7) art 3.1.

¹⁴⁵ *Ibid*, art 4.1.

¹⁴⁶ IPCC Sixth Assessment Reporting Working Group III: Mitigation of Climate Change, 2022 <<https://www.IPCC.ch>>accessed 20 July, 2004.

6.0 Paris Agreement, 2015

The Paris Agreement,¹⁴⁷ also known as Paris Climate Accord or Paris Climate Agreement, was adopted on 12 December, 2015 by 195 nations at the twentieth-first Conference of Parties (COP 21) to UN Framework Convention on Climate Change (UNFCCC). The Agreement is another noteworthy attempt to enhance the implementation of UNFCCC. It offers a new universal legally-binding framework to combat the global threat of climate change and strengthen the globally coordinated efforts towards a sustainable future beyond 2020.¹⁴⁸ In other words, the Paris Climate Agreement is tended to replace the Kyoto Protocol after its second commitment period ends in January 2020. The agreement is primarily aimed at keeping the rise in global temperature to well below 2 degrees Celsius above pre-industrial levels, and limiting the temperature increase to 1.5 degrees Celsius.¹⁴⁹ Also, the agreement intends to strengthen the global capability of dealing with the potential impacts of climate change.¹⁵⁰ Other key elements of the Paris Agreement includes the recognition of the limitations of developing countries,¹⁵¹ provision of continuous financial and technological support for developing countries, taking appropriate measures to develop the societal capacity of dealing with the impacts of climate change,¹⁵² the recognition of the significant role of non-state actors or non-party stakeholders like NGOs, civil society, private organisations, and multinational companies in addressing climate change.¹⁵³ It also provides for transparency and accountability by periodic updates on the progress made towards implementing their targets,¹⁵⁴ a non-punitive compliance mechanism and others.¹⁵⁵ It is also maintained in the agreement that its objectives will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.¹⁵⁶

In tandem with the Paris Agreement,¹⁵⁷ Nigeria submitted its Nationally distributed Contribution, a document containing its efforts or commitments towards the reduction of greenhouse gases and adaptation to climate change in 2021.¹⁵⁸ It includes emissions from the waste sector. It is a 47% contribution commitment conditional upon international support.¹⁵⁹ Whether this commitment has been met

7.0 Lessons From South Africa and Kenya

The constitutions of South Africa and Kenya, provide for the right to a healthy environment and makes a breach of this right actionable.¹⁶⁰ This right is reiterated under the Climate Change Act of South Africa.¹⁶¹ The Act provides for rigorous processes in the appointment of the members of the Presidential

¹⁴⁷Paris Agreement (n6).

¹⁴⁸ *Ibid*, art 2.

¹⁴⁹ *Ibid*, art 2(1)(a).

¹⁵⁰ *Ibid*, art 2(1)(a)(b).

¹⁵¹ *Ibid*, art 3.

¹⁵² *Ibid*, arts 4(5), 9, 10(6).

¹⁵³ *Ibid*, art 16 (8).

¹⁵⁴ *Ibid*, art 13.

¹⁵⁵ *Ibid*, art 15(1)(2).

¹⁵⁶ *Ibid*, art 2(2).

¹⁵⁷ *Ibid*, art 4(2).

¹⁵⁸ Federal Ministry of Environment, Nigeria's Nationally Determined Contribution 2021

¹⁵⁹ *Ibid*.

¹⁶⁰Constitution of the Republic of South Africa 1996, ss 24, 38; Constitution of the Republic of Kenya 2010, ss 42, 22(1), 70(1).

¹⁶¹ Republic of South Africa, Climate Change Act, 2024, preamble.

Climate Council and other officers. So as to ensure that qualified persons are appointed for efficient implementation of the Climate Change Act.¹⁶² Both the Climate Change Act of South Africa and Kenya prioritizes the use for climate fund for the purpose of combating climate change and proper accountability of climate funds.¹⁶³ Under the Climate Change Act of Kenya, the subject of climate change is to be incorporated into the educational curriculum so as to create adequate knowledge on climate related issues.¹⁶⁴ An action can be commenced under this Act where there is a breach of right in relation to climate change.¹⁶⁵ Interestingly the Climate Change Act of South Africa is also couched in its local language.¹⁶⁶ A consideration of these provisions by the Nigerian legislature will greatly improve our climate change regime.

8.0 Conclusion

The issue of climate change is one not only peculiar to Nigeria but to the world at large. Climate change is both inimical to the environment and human rights. This is so because of the linkages between these twin concepts. The quality of life and enjoyment of human rights are dependent on a healthy environment. Climate change therefore puts human rights at risk including the creation of climate refugees. Like many other countries, Nigeria has responded in various ways to this menace ranging from national policies to strategies, action plans and a Climate Change Act. These legal responses although laudable, there lingers the problems of lack of proper funding for climate change mitigation and adaptation, multiplicity of agencies and functions, corruption, lack of political for proper implementation, absence of awareness of the public on climate change and lack of proper sanctions for non-compliance with emission reduction targets. The need to tackle these challenges for efficiency and effectiveness therefore, becomes imperative. Again, the adoption of certain provisions of the climate change laws of South Africa and Kenya could in overcoming some of the challenges outlined above. Provisions such as the express pronouncement of the right to a healthy environment under the constitution, litigation on climate related matters, proper management and accountability regarding climate change funds, translation of the Climate Change Act into our local languages and even incorporating the subject of climate change into our educational curriculum amongst others, may eventually accord the climate change issue the attention and seriousness it truly deserves.

9.0 Recommendations

- i. There should be an express provision of the right to a healthy environment and the right to litigate on environment related matters and particularly, climate change.
- ii. There should be adequate provisions of funds for climate change mitigation and adaptation and provision for proper management and accountability.
- iii. The subject of climate change should be incorporated into our educational curriculum to provide adequate knowledge on climate change.
- iv. Climate change laws, policies, programmes, action plans and the likes, should be translated into our local languages for easy assimilation especially for the uneducated.

¹⁶² *Ibid*, ss 12.13.

¹⁶³ Republic of Kenya, Climate Change Act, 2016, ss 8, 25, 26, 29.

¹⁶⁴ Republic of Kenya, Climate Change Act, 2016, s 21.

¹⁶⁵ Republic of Kenya, Climate Change Act, 2016, s 27.

¹⁶⁶ Republic of South Africa, Climate Change Act, 2024.



- v. There should be accessibility to climate change information and provision for public appraisal of government policies on climate change to ascertain whether certain objectives have been met.
- vi. Penalties should be provided for noncompliance with emission reduction targets by private or public organizations and should not be left at the discretion of the NCCC.