

**THE LEGAL FRAMEWORK FOR COMBATING CLIMATE CHANGE IN
NIGERIA**

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**A LONG ESSAY WRITTEN AND SUBMITTED TO THE FACULTY OF LAW,
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CERTIFICATION

I, **Quest Oghenerugba EKUGBAWA**, with Matriculation Number LAW1805927, hereby certify that apart from references to other persons' works which have been duly acknowledged, the entire work is a product of my research, and this project has neither in whole nor in part been presented for another degree elsewhere.

Quest Oghenerugba EKUGBAWA
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APPROVAL

We certify that this project was written and completed by Quest Oghenerugba **EKUGBAWA** with Matriculation number LAW1805927 in partial fulfillment of the requirements for the award of a Bachelor of Laws (LL.B) degree.

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DEDICATION

I'm dedicating this project to God almighty who was with me throughout my LLB journey and my parents who helped me in more ways than I can imagine. I couldn't have done this without them

LIST OF STATUTES

Associated Gas Reinjection Act CAP. A25, LFN 2004.

Climate Change is the Climate Change Act 2021

Constitution of the Federal Republic of Nigeria, 1999

Criminal Code Act 2004

National Environmental Standards and Regulations Enforcement Agency (Establishment) Act,
2007

Paris Agreement, 2015

Petroleum Act 1969

The Environmental Impact Assessment Act 1992

The Kyoto Protocol to the UNFCCC, 1997

United nations framework convention on climate change (UNFCCC) 1992

LIST OF ABBREVIATIONS

CFRN	CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA
HFC	HYDROFLUOROCARBONS
IOC	INTERNATIONAL OIL COMPANY
LFN	LAWS OF THE FEDERATION
NCCC	NATIONAL CLIMATE CHANGE COUNCIL
NEMA	NATIONAL EMERGENCY MANAGEMENT AUTHORITY
NESREA	NATIONAL ENVIRONMENTAL STANDARDS AND REGULATIONS ENFORCEMENT AGENCY
NIMET	NATIONAL ENVIRONMENTAL STANDARDS AND REGULATIONS ENFORCEMENT AGENCY
NOSDRA	NATIONAL OIL SPILL DETECTION & RESPONSE AGENCY
NMDPRA	NIGERIAN MIDSTREAM & DOWNSTREAM PETROLEUM REGULATORY AUTHORITY
NPC	NATIONAL PLANNING COMMITTEE
NUPRC	NIGERIAN UPSTREAM PETROLEUM REGULATORY COMMISSION
PFC	PERFLUOROCARBONS
UNFCCC	UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the Study

Climate Change is one of the fastest-growing problems globally.¹ When we talk about climate change, we are talking about the earth's changing weather patterns and long-term shifts in temperature. The study of Climate Change is very crucial because it helps us to understand our planet on a deeper level and work together to create a more sustainable future. It will help individuals to develop an understanding of the living and physical environment and how to resolve challenges concerning environmental issues affecting nature²

Climate change is defined as the long-term increase of the earth's temperature this is because of greenhouse gases that trap the heat from the sun and this leads to disastrous effects.³ So, greenhouse gases like carbon dioxide are gases in the earth's atmosphere that trap heat, that is during the day the sun shines through the atmosphere, warming the earth's surface and at night the earth surface cools and releases black heat into the air, but then some of the heat is trapped in the atmosphere.⁴

Greenhouse gases are gotten mainly from transportation which mainly comes from burning fossil fuels for our cars trucks ships, trains, and planes which is primarily gasoline and diesel, electrical power which comings fossil fuels mostly coal and natural gas, agriculture, land use, and forestry.⁵ The importance of Climate

¹ A.O. Kehinde. and Abifarin, *A Legal Framework For Combatting Climate Change In Nigeria 2022*

² A study of the global climate change impacts, adaptation, and sustainable mitigation measures <<https://link.springer.com/article/10.1007/s11356-022-19718-6> > accessed 4th December 2023

³ D.S Olawuyi, *The Principles of Nigeria Environmental Law 2nd Edition* (Afe Babalola University Press 2015)

⁴ Ibid

⁵ The United States Environmental Protection Agency <<https://www.epa.gov/ghgemissions/sources-greenhouse-gas-emissions>> accessed 30th November 2023

Change today is mainly to help tackle the consequences of global warming and encourages humans to change their behaviour

Over centuries, the earth's climate has naturally fluctuated due to various factors such as volcanic activity, changes in solar radiation and shifts of the earth's natural orbit, in recent days the major cause of climate is human activities. The industrial revolution which began in the 18th century marked a turning point, the burning of fossil fuels for energy production and industrial process released a lot of gases into the atmosphere, gases like carbon dioxide and methane trap heat leading to global temperatures. Since then, human activity has continued to release gases at an extraordinary rate. This led to the increase of temperature known as global warming. It has been scientifically proven that human-induced climate change is primarily driven by greenhouse gases. Addressing climate change requires global cooperation.

The increase in the earth's temperature causes melting of ice caps and glaciers, leading to rising sea levels and this results in erosion and coastal flooding as warming air and ocean temperatures create more frequent and intense coastal storms like hurricanes and typhoons. As a result of the rising sea levels, it led to habitat loss for polar wildlife and if all the ice caps are to melt the global sea level would rise approximately 230 feet flooding every coastal city on the planet.

Another problem with the increase of the earth's temperature is when it is warmer it creates drier conditions, leading to longer and more active fire seasons as a result of these wildfires there will not be enough food production and in addition to this the contamination of the air with toxic pollutants from these greenhouse gases are released back into the air and causing more serious effects on a global level.⁶

⁶ World Health Organisation on Wildfires < https://www.who.int/health-topics/wildfires#tab=tab_1 > accessed 30th November 2023

Climate change will continue to be going round in circles until we make an intentional decision to change the standards of living. The wild life has been severally impacted due to this we have had loss of species and the shifting of the weather pattern that threaten food production. Climate change, being the fastest growing problem globally, is not globally recognized and the longer it is continued to be ignored the deadlier the effects.⁷

In 1988 the United Nations established the intergovernmental panel on climate change (IPCC) which is an organisation of over 2000 scientist who were put together to assess the risks of climate change and its potential environmental consequences, their first assessment was urgent legal response to combat climate change.

In response to this assessment, the world community came together and formed United Nations Framework Convention on Climate Change (UNFCCC) in 1992 to serve as a framework for legal and governance solutions to climate change.⁸ This leads to one of the causes of climate change today which is Human activity which has rapidly increased the emission of greenhouse gases to the atmosphere. Since the start of the industrial revolution, in about 1750, human activity such as burning fossil fuels has been the major cause of greenhouse gases in our atmosphere, human activities have released large amounts of carbon dioxide ever since the revolution because the use of factories resulted in increased air and water pollution and the use of increase use of fossil fuels.

During the 1972 Stockholm Declaration, it was said that man's natural and man-made environment are essential to his well-being and the enjoyment of basic

⁷ Ibid

⁸ United Nations Framework Convention on Climate Change (UNFCCC) 1992

human rights.⁹ This makes it very obvious that a clean and healthy environment is an important condition for human life.

The major legislation supporting Climate Change is the Climate Change Act 2021 which provides for the governance of human activity as regards to the environment.

Humans need more research on climate change to help them know their “do” and ‘don’t’. It is therefore very important that we create more legal studies that deal with issues in the world that are not commonly talked about in Nigeria.

1.2 Statement of Research Problem

The issue of laws and regulatory agencies now in place to combat climate change will be examined in this study. That is the effectiveness of the framework for addressing climate change that has been set by legislation and regulation. The noticeable lack of effective regulations on climate change related issues causes daily environmental harm. Practices such as gas flaring, bush burning, oil spills, tree cutting, pesticide spraying, etc are causing ecological deterioration.

This study will aim to explain climate change at a deeper level while critiquing the regulatory bodies put in place to regulate climate change in Nigeria to analyse the frameworks governing the issue of climate change around the world focusing on the Nigerian bodies. As stated above climate change needs to be globally recognized or it will lead to the degradation of the earth.

The study of the environment is paramount as it deals with everyday living and when there are not enough adequate legislations and proper implementation of those legislations in a particular country like Nigeria it places the country isolated

⁹ The UN Conference on the Human Environment (Stockholm Declaration) 1972

against the world and leaves African countries in the cold against the battle of climate change.

Climate change is the single biggest health threat facing humanity today, it is therefore very important to get to how it can be reduced to save human life and the environment.

1.3 Research Questions

This research aims to answer these fundamental questions:

1. What is the existing legal framework regulating climate change in Nigeria & globally?
2. How effective are the frameworks regulating Climate Change?
3. What are the challenges the frameworks face and what way forward can be given?

1.4 Aim and Objectives of this Study

The study aims to give a deeper understanding of Climate Change in Nigeria and globally focusing mainly on the legal frameworks and how they play a major role in the degradation of the world as well as highlighting the various challenges the legislation may have and rendering a way forward to those challenges.

The objectives of this study are to:

- a. Examine the legal framework around climate change in Nigeria& globally.
- b. Identify the challenges and gaps in existing law under Climate Change in Nigeria & globally.
- c. Examine the effectiveness of the frameworks regulating.
- d. Provide a way forward to those challenges.

1.5 Research Methodology

Research methodology is the systematic approach or procedure used to conduct research, there are two types of research methodology doctrinal and non-doctrinal.

The research methodology applied for this study is the doctrinal research methodology. The methodology investigates both primary and secondary sources of information. The reason for applying this methodology is because the doctrinal methodology because it focuses on analyzing legal principles and rules. It is going to help analyse the different existing legal frameworks on climate change and how they apply to different situations.

This approach will aid in the research's efforts to identify the numerous issues and difficulties that these laws have not been able to resolve.

The primary sources of information include The United Nations Framework Convention on Climate Change, The Paris Agreement, the 1999 Constitution of the Federal Republic Of Nigeria (as amended), the Climate Change Act 2021, the Environmental Impact Assessment Act 1992, the Rio Convention, etc and decided cases, treaties, conventions and international agreements. The secondary sources of law include textbooks by Nigerian and foreign authors, articles, journals, scholarly and juristic expositions, peers review, case laws, and internet sources.

1.6 Scope and Limitations of Study

The geographical scope of this work is in Nigeria to examine the legal frameworks on climate change in Nigeria, this topic will mainly focus on climate change in Nigeria and the legal frameworks surrounding it, criticizing the regulations and how they can be improved to combat climate change in Nigeria. The subject is a worldwide subject and it may be too wide to try and cover all the areas where it consigns so there is a need to limit the scope for effective analyses. Our ability to comprehend climate change is completely limited because it is a complex phenomenon influenced by multiple factors.

The limitations of studying climate change in Nigeria would be due to limited data and specific climate monitoring infrastructure in that area. Another limitation would be the time we have to complete this study may not be enough to cover every aspect of the topic and the limitation of adequate funds for better research.

1.7 Significance of the Study

Nigerians' contribution to the environmental world is not as effective as it should be they are businesses that are getting away with dumping hazardous waste in various states and because of that, there is a need for proper implementation that will promote corporate accountability. This study will look at how climate change can be reduced through proper implementation of regulatory bodies. As a result, to that Nigeria as a country will be a step closer to tackling the problem of climate change. Researching climate change enables us to pinpoint the primary contributors of greenhouse gasses and how this knowledge will help lower these emissions.

The impact of climate change on human health may include an increase in heart-related ailments, and the spread of infectious and restricted access to food and clean water.

This research is important because it will act as a detailed analysis of the climate change issue in Nigeria from a legal perspective which will help individuals have a deeper understanding of the challenges that come with these regulations.

1.8 Chapter Analysis

This study will be made up of five chapters. Chapter one will provide the general introduction which comprises the background to the study, statement of the research problem, research questions, aims and objectives of this study, the research methodology, the scope and limitations of this study and the significance of this study.

Chapter two centres on the conceptual clarification and theoretical framework of climate change and the literature review. This chapter will define key terms and highlight the theories of climate change that will be used in the study

In Chapter Three, this writer will examine the legal framework regulating climate change in Nigeria & globally such as the Climate Change Act 2021 and international laws such as the Paris Agreement amongst others.

Chapter four of this research will focus on challenges in the existing laws and institutions and a way forward towards climate change in Nigeria

Chapter five will provide a summary of findings, conclusions, and recommendations, contributions to knowledge, and suggest areas for further study.

CHAPTER TWO

CONCEPTUAL, THEORETICAL FRAMEWORK AND LITERATURE REVIEW

2.1. Conceptual Clarification

All good research proceeds from a thorough exposition and elucidation of the conceptual terminologies associated with the research topic.¹⁰ This research is no exception, as it comprises of several concepts that must be holistically, albeit succinctly clarified. Thus, this section is devoted to intricately analyzing the concepts embedded in this research by clarifying their meaning and purpose. To begin, we will extricate the terms in this research that are recurrently used within the breadth of this work. Thereafter, we will define these terms lexically, and within the context that they are used in this research. It is intended that this definitional framework, will provide a compass for navigating the subsequent expositions in this discourse.

2.1.1 Definition of Terms

The hallmark of every conceptual clarification is apt, albeit holistic definitions of the terms recurrently employed in the research work. Prof. Emeka Chianu highlighted the importance of definitions in his seminal textbook, *Trespass to Land and Nuisance* where he stated that ‘words are ambivalent in nature and are susceptible to multifarious interpretations depending on the context wherein they are used’.¹¹ The foregoing aptly captures the importance of definitions as a crucial framework for understanding the meaning ascribed to words. It also serves to contextually situate the meaning of words, thus, aiding a proper understanding of the use of words. In this study, the following terminologies stand out, warranting definition: Climate Change,

¹⁰ Bhat Ishwara, *Idea and Methods of Legal Research* (Oxford Academic 2020).
<<https://doi.org/10.1093/oso/9780199493098.001.0001>> accessed 23 December 2023.

¹¹ E. Chianu, *Law of Trespass to Land and Nuisance* (3rd edn, Ambik Press, 2014), 81.

Greenhouse Gases, Environmental Rights, Environmental Degradation, and Sustainable Development.

Climate Change

The United Nations Framework on Climate Change defines climate change as a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable periods.¹² It has also been defined as the significant variation of average weather conditions becoming, for example, warmer, wetter, or drier—over several decades or longer. It is the longer-term trend that differentiates climate change from natural weather variability.¹³ Such shifts in temperature can be natural, due to changes in the sun’s activity or large volcanic eruptions. But since the 1800s, human activities have been the main driver of climate change, primarily due to the burning of fossil fuels like coal, oil and gas.¹⁴

The consequences of climate change include, among others, intense droughts, water scarcity, severe fires, rising sea levels, flooding, melting polar ice, catastrophic storms, and declining biodiversity. According to the World Health Organisation (2022), between 2030 and 2050, climate change is expected to cause approximately 250,000 additional deaths per year from malnutrition, malaria, diarrhea and heat stress alone. The direct damage costs to health are estimated to be between US\$ 2–4 billion per year by 2030. Areas with weak health infrastructure – mostly in developing countries – will be the least able to cope without assistance to prepare and respond.

¹² Article 1 of the United Nations Framework Convention on Climate Change, 1992 <https://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conve ng.pdf> Accessed 22 January 2024.

¹³ M.I. Rahman, ‘Climate Change: A Theoretical Review’ *Inter-disciplinary Description of Complex Systems*, (2013) Vol. 11(1)7. < <https://hrcak.srce.hr/file/141435>> Accessed 22 January 2024.

¹⁴ Ibid

Climate change is a matter of global concern that has warranted periscopic analysis based on well-informed, scientific, acceptable, reliable, and internationally recognized practices, to extricate possible preventive and corrective measures on a jurisdictional basis.¹⁵ Although global, it is primarily caused by anthropogenic activities which ricochet lopsidedly in favour of developed countries and to the detriment of developing countries ineptly cushion the deleterious effects of climate change.¹⁶ Environmental disasters such as flooding, erosion, hurricanes, bushfires, earthquakes, and tsunamis are all attributable to adverse climatic conditions.¹⁷ Also, some socio-economic conditions such as famine, population displacement, forced migration, low crop yield and livestock mortalities are covertly linked to climate change and this reflects the cross-sectoral dimension of the reverberating impacts of climate change.¹⁸ However, these impacts are not uniform across sectors, thus whilst the impact of climate change may be very pronounced in a particular sector, other sectors may be fairly affected, and some others, unaffected.¹⁹ Evidence of the negative impacts of climate change has been observed in the sectors of Agriculture,²⁰ Environment,²¹ Water Resources,²² Public Health,²³ Conflicts,²⁴ and Wetlands,²⁵ to

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- 15 S.J. Fada, 'An Appraisal of Nigeria's Progress in Achieving the SDG-13 Climate Action Goal' *Journal of Sustainable Development*, (2022) Vol. 15(2) 74. <<https://doi.org/10.5539/jsd.v15n2p66>> accessed 8 March 2023.
- 16 P.Y. Tarfa and Others, 'Climate Change Perception and Adaptation in Nigeria's Guinea Savanna: Empirical Evidence from Framers in Nassarawa State, Nigeria' (2019) 17(3) *Applied Ecology and Environmental Research*, 7086. <https://doi.org/10.15666/aecer/1703_70857112> accessed 7 March 2023.
- 17 A.A. Idowu and others, 'Impact of Climate Change in Nigeria' *Iranica Journal of Energy. & Environment*, (2011) Vol. 2(2) 146.
- 18 S.O. Amadi and A O Udo, 'Climate Change in Contemporary Nigeria: An Empirical Analysis of Trends, Impacts, Challenges and Coping Strategies' *IOSR Journal of Applied Pyhsics*, (2015) 7(2) 5–7. <<https://doi.org/10.970/4861-07230109>> accessed 7 March 2023.
- 19 Robert Onyeneke, 'Does Climate Change Adaptation Lead to Increased Productivity of Rice.'
- 20 D.V. Akinyi and S.K. Ng'ang'a and EH Girvetz, 'Trade-offs and Synergies of Climate Change. Adaptation Strategies Among Smallholder Farmers in Sub-Saharan Africa: A Systematic Review' *Regional Sustainability*, (2021) Vol. 2 130–143. <<https://doi.org/10.1016/j.regsus.2021.05.002>> accessed 7 March 2023.
- 21 O. Mertz and Others, 'Climate Variability and Environmental Stress in the Sudan-Sahel Zone of West. Africa' *AMBIO A Journal of the Human Environment*, (2012) Vol. 41(4) 380–392. <<https://doi.org/10.1007/s13280-011-0231-8>> accessed 7 March 2023.

name a few.

To demonstrate Nigeria's resilience to climate action, it has promulgated a series of legislation, policies, and action plans, all of which form the corpus of Nigeria's climate action strategy. These efforts have been described as haphazard, uncoordinated, and fragmented,²⁶ but a sturdy, noticeable, and appreciable indicator of the nation's commitment to combat climate change in the region. Spearheading the litany of existing regulations and policies geared towards renewable energy is the Climate Change Act 2021, which is a conglomeration of several climate change policies such as Nigeria's Revised Climate Change Policy, June 2021 and the National Climate Change Programmes for Nigeria, 2021.²⁷ These legislative enactments play an important role in empowering governments to take urgent and strategic action to facilitate a more consolidated and effective response.

These policies are transmuted into effect by several institutions responsible for enforcing their provisions, melting out their penalties, and awarding their incentives. A host of these institutions are government parastatals such as the Department of Climate Change under the Federal Ministry of Environment, the Energy Transition

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- 22 S. J. Fada and D.D. Dabi and N.Z. Muhammad, 'A Survey of Water Sources for Households Around the Yankari Game Reserve, Nigeria' *International Journal of Innovative Research and Development*, (2018) Vol. 7(2) 33-37. <<https://doi.org/10.24948/2017.01.03>> accessed 7 March 2023.
- 23 N. Watts, 'The Lancet Countdown on Health and Climate Change: From 25 Years of Inaction to a Global Transformation for Public Health' *LANCET*, (2018) 391(10120). 581–630. <[https://doi.org/10.1016/s0140-6736\(17\)32464-9](https://doi.org/10.1016/s0140-6736(17)32464-9)> accessed 7 March 2023.
- 24 D. D. Dabi and G.G. Jidauna, 'Climate Change and Local Perception in Selected Settlements in Sudan. Sahelian Region of Nigeria' *Journal of Environmental Sciences and Resource Management*, (2010) Vol. 2. 1–12.
- 25 H.O. Nwakwoala, 'Case Studies on Coastal Wetlands and Water Resources in Nigeria' *European Journal of Sustainable Development*, (2012) Vol. 1(2) 113 <<https://doi.org/10.14207/ejsd.2012.v1n2p113>> accessed 7 March 2023.
- 26 P. Elias and A. Omojola, 'Case Study: The Challenges of Climate Change for Lagos, Nigeria' *Current Opinion in Environmental Sustainability*, (2015) 74–78. <<https://doi.org/10.1016/j.cosust.2015.02.008>> accessed 8 March 2023.
- 27 M. T. Ladan, 'Nigeria's Climate Change Act and Policy 2021 and The Future of Climate Litigation'. *Ahmadu Bello University*, (2022) Vol. 4. <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4019698> accessed 9 March 2023.

Implementation Working Group (ETWG) chaired by H.E. Prof. Yemi Osinbajo, SAN, and the Energy Transition Office established in 2021.

Environmental Rights

Environmental rights refer to the rights of individuals and communities to a healthy environment. These rights may include the right to clean air, water, and soil, as well as the right to live in an environment free from pollution and environmental degradation. Governments, international bodies, and legal frameworks may recognize and protect these rights to ensure that individuals and communities have the ability to participate in decision-making processes that impact the environment and to seek legal remedies in cases of environmental harm.

Environmental Degradation

Environmental degradation encompasses the deterioration of the environment through various human activities.²⁸ It involves the depletion or destruction of natural resources, pollution of air, water, and soil, loss of biodiversity, deforestation, and other actions that harm the Earth's ecosystems. Environmental degradation often results from unsustainable practices, overexploitation of resources, and the release of pollutants, leading to negative impacts on ecosystems, biodiversity, and human well-being.

²⁸ D. V. Akinyi and SK Ng'ang'a and EH Girvetz, 'Trade-offs and Synergies of Climate Change Adaptation Strategies Among Smallholder Farmers in Sub-Saharan Africa: A Systematic Review *Regional Sustainability*, (2021) 130–143. <<https://doi.org/10.1016/j.regsus.2021.05.002>> accessed 22 January 2024.

Sustainable Development

Sustainable development refers to a development approach that meets the needs of the present without compromising the ability of future generations to meet their own needs.²⁹ It involves balancing economic, social, and environmental considerations to ensure that development is environmentally responsible, socially equitable, and economically viable in the long term. Sustainable development aims to achieve a harmonious coexistence between human activities and the natural environment, promoting resilience, equity, and the well-being of current and future generations.³⁰

2.2. Theoretical Framework

Underlying this research work are the theories of environmental determinism, anthropogenic theory, and human forcing theory. Each of these theories will be elucidated in turn:

2.2.1. Environmental Determinism

The study of how the physical environment leads societies and states along particular economic, social, and cultural paths is known as environmental determinism, climatic determinism, or geographical determinism. Diamond posits that this theory saw a rebirth in the late 20th and early 21st centuries, led by academics such as Ian Morris, and Jeffrey Herbst.³¹ This modern school of thought investigates how institutional frameworks, economic development, and state-building are shaped by geographic and ecological influences. Geographic interpretations have historically been used as an excuse for colonialism and Eurocentrism. Modern supporters, like Diamond, disagree

²⁹ Robert Onyeneke, 'Does Climate Change Adaptation Lead to Increased Productivity of Rice. Production? Lessons From Ebonyi State, Nigeria' *Renewable Agriculture and Food Systems*, (2020) Vol. 36(1) 1–15. <<https://doi.org/10.1017/S1742170519000486>> accessed 22 January 2024.

³⁰ *Ibid.*

³¹ J. Diamond, 'All the World's A Lab' *New Scientist*, (2010) 205 28–31. <[https://doi.org/10.1016/S0262-4079\(10\)60720-8](https://doi.org/10.1016/S0262-4079(10)60720-8)> Accessed 22 January 2024.

with the previous iteration's racist overtones.³² contends that European colonial dominance was made possible by special environmental advantages rather than innate superiority.

Despite being widely accepted in geography throughout history, environmental determinism has come under fire in favour of a more complex view of the environment as something that nature and society mutually create. However, the fundamental tenet of environmental determinism that physical elements such as climate and landforms have a significant influence on the formation of human culture and society remains. This theory's proponents argue that social circumstances have little bearing on the development and that cultural patterns are solely determined by ecological, climatic, and geographic factors.³³ The main argument of environmental determinism is that the physical attributes of a place, especially its climate, have a significant impact on the mental viewpoint of the people who live there. These divergent viewpoints subsequently spread throughout a community, influencing a society's general demeanour and cultural norms. For example, people thought that because tropical climates were often warmer than those in higher latitudes, people living there would have an easier time surviving and wouldn't have to work as hard to secure their well-being.

According to the environmental determinism theory, society growth and security dynamics can be greatly impacted by changes in the climate. Conflicts over scarce resources, such as water and arable land, arise as climate change modifies temperature and precipitation patterns. Extreme weather events cause mass migration and displacement, which has an impact on social and political stability. Disruptions in

³² *Ibid.*

³³ R. Peet, 'The Social Origins of Environmental Determinism' (1985) 75(3) *Annals of the Association of American Geographers*, 309-333. <<https://doi.org/10.1111/j.1467-8306.1985.tb00069.x>> Accessed 22 January 2024.

established sectors have an economic impact that feeds social instability and fights over prospects for wealth.³⁴ Healthcare systems are strained by vulnerabilities and health concerns brought on by climate change, creating security issues. Furthermore, after climate-related disasters, weaknesses in the infrastructure may impair emergency response capacities, creating an environment conducive to societal unrest. In order to handle the complex security concerns resulting from climate change via the prism of environmental determinism, it is imperative to recognize these linked dynamics.

2.2.2. Anthropological Theory

This theory posits that human activities, specifically the release of greenhouse gases such as carbon dioxide (CO₂), methane, and nitrous oxide, are leading to a severe increase in global temperatures with potentially disastrous consequences. The process by which this occurs is referred to as the enhanced greenhouse effect. The idea is referred to as "anthropogenic global warming" or AGW for brevity. Solar energy traverses the vast expanse of space and ultimately reaches the Earth. The Earth's atmosphere is predominantly transparent to the incoming sunlight, enabling it to penetrate the planet's surface. Upon reaching the surface, a portion of the sunlight is absorbed while the rest is reflected as heat back into the atmosphere.³⁵

Specific gases present in the atmosphere, known as "greenhouse gases," capture the emitted or internal thermal radiation, causing the Earth's atmosphere to experience higher temperatures than it would otherwise. Water vapour is the primary greenhouse gas, accounting for around 36 to 90 percent of the greenhouse effect, with CO₂ contributing less than 1 to 26 percent, methane contributing 4 to 9 percent, and

³⁴ M. Colchester, 'Self-Determination or Environmental Determinism for Indigenous Peoples in Tropical. Forest Conservation' *Conservation Biology*, (2000) Vol. 14(5) 1365–1367. <<https://doi.org/10.1046/j.1523-1739.2000.00129.x>> Accessed 22 January 2024.

³⁵ J. Bast, *Seven Theories of Climate Change* (The Heartland Institute 2010).

ozone contributing 3 to 7 percent. Over the course of the previous century, human actions such as the combustion of wood and fossil fuels, as well as deforestation through chopping down or burning forests, are believed to have caused a roughly 50 percent rise in the atmospheric concentration of CO₂. If the burning of fossil fuels and deforestation persist, there is a possibility that the amount of CO₂ in the atmosphere might increase twofold during the next century, unless natural "sinks" can keep up with the rate of emissions.

Earth's climate is affected by various external factors, including changes in solar radiation and the planet's orbit. However, those who support the idea of anthropogenic global warming (AGW) argue that these factors alone cannot account for the increase in Earth's temperature observed in the last thirty years. The impact of man-made greenhouse gases on forcing is very minor. However, according to the AGW theory, positive feedback mechanisms amplify the influence of these gases by a factor of two to four.³⁶ Evaporation increases water vapour in the atmosphere, warming the atmosphere with a minor temperature increase. Global warming may also reduce ice and snow cover, exposing more ground and open water, which are less reflective than snow and ice and absorb more solar radiation, warming the planet.

Warming may release methane from frozen peat bogs and CO₂ from the oceans (IPCC, 2007). Proponents of the AGW theory attribute the ~0.7°C warming over the previous 150 years and ~0.5°C over the past 30 years to man-made greenhouse gases. They deny that some or all of that surge is Earth's recovery from the Little Ice Age (1400-1800). They employ computer models based on physical principles, ideas, and assumptions to forecast that doubling atmospheric CO₂ would raise Earth's temperature by 3.0°C (5.4°F) by 2100 (Bast, 2010). When run

³⁶ Al Gore, *An Inconvenient Truth, The Planetary Emergency of Global Warming and What We Can Do About It* (Rodale Books 2006).

"backward," these climate models forecast more warming than has occurred, although proponents say this is due to the cooling effects of aerosols and soot, which are pollutants from fossil fuel combustion.

Advocates of the Anthropogenic Global Warming (AGW) theory assert that the emission of carbon dioxide (CO₂) by human activities is the primary cause of several calamities, including floods, droughts, extreme weather events, crop failures, species extinctions, disease outbreaks, coral bleaching in oceans, famines, and numerous other catastrophic occurrences. The frequency and intensity of these calamities will escalate as temperatures persistently increase. Only substantial and swift decreases in human emissions can prevent these disastrous occurrences and protect the world.

2.2.3 Human Forcings Theory

This theory of climate change posits that the primary factor influencing climate is not mankind's greenhouse gas emissions, but rather its alteration of Earth's surface through activities such as deforestation, desert irrigation, and urbanization. Pielke asserts that while natural factors play a crucial role in climate fluctuations and changes, human influences are very substantial and encompass a wide variety of primary climate drivers, including, but not limited to, the human release of carbon dioxide (CO₂).³⁷ Urban regions typically experience higher temperatures compared to suburban and rural areas due to the presence of a higher density of energy-generating machinery and automobiles, as well as the extensive usage of materials such as

³⁷ R.A. Pielke, *Climate Change: The Need to consider Human Forcings besides Greenhouse Gases* (Springer 2009).

concrete, asphalt, and other building and road materials. These materials can absorb solar radiation and subsequently release thermal energy.³⁸

Anthropogenic aerosols and ozone have shorter durations of existence compared to greenhouse gases, resulting in larger concentrations in areas of origin and the direction of prevailing winds. Pielke and Matsui have calculated that the impact of human aerosols on the gradient of radioactive heating at regional levels is approximately 60 times greater than that of the well-mixed greenhouse gases.³⁹ Given the abundance of temperature stations situated in urban or nearby urban regions, it seems probable that they are detecting the warming impacts of aerosols and ozone rather than CO₂. The process of burning trees, a prevalent method in developing nations, emits CO₂ into the atmosphere and hinders the ability of forests to store carbon in the long term. The absence of a forest cover in the pasture or crop area results in reduced shade and higher temperatures. According to the IPCC, around 25% to 33% of human-caused CO₂ emissions can be attributed to deforestation, rather than the combustion of fossil fuels.

2.3. Literature Review

Chandani et al, during their study on climate change regulation in Southern African countries, noted that numerous laws in these countries are directly or indirectly associated with climate change. However, most of these laws have emerged as secondary outcomes of other environmental regulations and are overseen by multiple government entities. Hence, the authors noted that this results in inconsistent decision-making and hinders the analysis or quantification of the effectiveness of the

³⁸ T. Matsui and R.A. Pielke, "Measurement-based Estimation of the Spatial Gradient of Aerosol. Radioactive Forcing' 2006 *Geophysical Research Letters*.

³⁹ *Ibid.*

legislation in managing greenhouse gas emissions or facilitating climate change adaptation.⁴⁰

Furthermore, during Robles' assessment of forestry and climate change mitigation strategies in specific countries in Asia Pacific, Sub-Saharan Africa, and Latin America, it was noted that many of these countries have implemented forest-related laws that acknowledge the role of forests as absorbers of greenhouse gases. The author also examined the Climate Change and Greenhouse Gas Emissions Reduction Act (2007) of South Australia, which establishes a goal to decrease greenhouse gas emissions within the state by at least 60 percent, reaching a level equal to or lower than 40 percent of the 1990 levels by 31 December 2050. The author, however, noted that the legal system in certain nations such as India, Nigeria, and certain other Sub-Saharan African countries, exhibits fragmentation, characterised by the presence of numerous inconsistent laws and implementing bodies.⁴¹

Makinde has noted the absence of a compliant carbon market in Nigeria, as well as the lack of legislation or mandates for monitoring and reporting greenhouse gas emissions in the country. The author noted that the responsibility for addressing climate change issues in Nigeria primarily falls on government departments and agencies, which are often ineffectual. The departments and agencies mentioned are the Department of Climate Change within the Federal Ministry of Environment, the Nigerian Meteorological Agency (NIMET), the National Emergency Management Authority (NEMA), and the National Planning Commission (NPC).⁴²

⁴⁰ Achala Chandani et al, 'Climate change: An issue for parliamentarians in Southern Africa' (2011) *International Institute for Environment and Development Briefing: Lessons from Adaptation in Practice*. <http://www.jstor.org/stable/resrep01468> Accessed 22 January, 2024.

⁴¹ F. F. Robles, "Climate change and forestry legislation in support of REDD+" 2015 92 *FAO Legal Papers*. http://www.fao.org/fileadmin/user_upload/legal/docs/lpo_92.pdf Accessed 22 January 2024.

⁴² O. Makinde, "Nigeria" in *The International Comparative Legal Guide to Environment & Climate Change Law* 2016.150. <http://www.alukooyebode.com/files/ENV16_Chapter%2020%20-%20Nigeria.pdf> Accessed 22 January 2024.

Oludayo suggested a comprehensive evaluation of the current environmental National Emergency Management Authority. The author argues against the adoption of conventional environmental regulations, such as carbon tax, market permits, and strict legal regulations, in Nigeria's climate change legislation. The author believes that these approaches would ultimately burden the people, leading to a decrease in their standard of living and potentially causing social and economic disruptions. The author proposed that Nigeria's climate change legislation should use an incentive-based approach to stimulate investments in initiatives focused on climate change adaptation and mitigation.⁴³

2.4. Gaps in the Existing Literature

The deficiency in the current body of literature is readily apparent. So far, no research has been found that has conducted a legal examination of the necessary legal structure for regulating climate change in Nigeria. This analysis would involve using the law to establish a set of regulations for climate change that considers the unique characteristics of the Nigerian environment and Nigeria's commitments under the different treaties it has agreed to. The majority of the current literature has focused on analysing either the different international climate change regimes or the overall environmental law regime in Nigeria. However, no one has endeavoured to elucidate how these worldwide regimes might be implemented successfully inside the Nigerian legal framework, or how Nigerian laws can be modified to address our unique climate change challenges.

⁴³ Amokaye Oludayo, 'The Legal and Institutional Framework for the Regulation of Climate Change in Nigeria', *Journal of Private and Property Law*, (2004) Vol. 24. 46-47.

CHAPTER THREE

ANALYSIS OF THE LEGAL FRAMEWORKS ON CLIMATE CHANGE AND ENVIRONMENTAL PROTECTION

3.1. International Legal Frameworks

Hereunder, several international legal frameworks will be critically reviewed, detailing their historical background, outlining their relevant provisions, and critiquing their effect on the combat against climate change, and the safeguard of environmental protection.

3.1.1. Stockholm Conference, 1972

The establishment of global environmental policy was initiated during the 1972 Stockholm Conference on the Human Environment. Principle 1 asserts that individuals possess an inherent entitlement to freedom, fairness, and a satisfactory level of living within a favourable environment that facilitates a life characterised by respect and prosperity. The event took place in Stockholm, Sweden from June 5th to June 16th, 1972. This was the inaugural global meeting dedicated to tackling worldwide environmental issues. The forum discussed the necessity of a collective viewpoint and set of principles to motivate and direct the global population in safeguarding and improving the natural surroundings for humanity. The introductory statement of the Declaration states that both the natural and man-made elements of a person's surroundings are crucial for their overall welfare and the ability to exercise basic human rights, including the right to life.

3.1.2. Vienna Convention for the Protection of the Ozone Layer, 1985

The Vienna Convention, an international environmental pact, aims to safeguard the ozone layer. The treaty was ratified during the 1985 Vienna Conference and came into effect in 1988. It functions as a structural basis for global initiatives aimed at safeguarding the ozone layer. Regrettably, it lacks enforceable reduction targets for the utilization of chlorofluorocarbons (CFCs), the primary chemical agent accountable for ozone depletion. The associated Montreal Protocol outlines these provisions.

3.1.3. Montreal Protocol, 1987

The Montreal Protocol is the protocol that corresponds to the Vienna Convention for the Protection of the Ozone Layer, specifically addressing substances that cause ozone depletion. The stratospheric ozone layer serves as a protective barrier in the atmosphere, shielding life on Earth from the detrimental ultraviolet (UV) radiation emitted by the sun. During the 1980s, scientists noticed a reduction in the thickness of the stratospheric ozone layer. The Montreal Protocol is a global treaty aimed at safeguarding the ozone layer by ceasing the manufacture of certain compounds believed to contribute to ozone depletion. The document was made available for anybody to sign on September 16, 1987, and officially took effect on January 1, 1989.

The Protocol incorporates a distinctive alignment provision that enables Parties to promptly respond to novel scientific data and mutually agree to expedite any necessary reductions in the chemicals already encompassed by the Protocol. Since its first introduction, it has undergone around six distinct modifications, all aimed at ensuring the achievement of the goal. Furthermore, the participants of the Protocol convene every year to make a range of decisions to facilitate efficient execution.

3.1.4. Bamako Convention, 1991

The complete name of this convention is the Bamako Convention, which aims to prohibit the importation of hazardous wastes into Africa and regulate the cross-border movement and management of such wastes inside the continent. The convention was ratified in 1991. The pact is an agreement among African states that prohibits the importing of dangerous waste, including radioactive waste that was not included by the Basel Convention. The objective is to provide a structure for the responsibilities of states on the regulation of dangerous waste, the prevention of cross-border shipments or imports, and the implementation of precautionary measures against such waste.

The Bamako Convention is notable for establishing a robust mechanism to deter waste traders from transforming Africa into a global dumping ground. It effectively prevents and regulates the disposal of dangerous waste, such as radioactive waste, in the ocean or on the seabed. Additionally, it ensures that hazardous waste producers cannot evade responsibility for environmental contamination.

3.1.5. The United Nations Framework Convention on Climate Change (UNFCCC), 1992

The historic adoption of the United Nations Framework Convention on Climate Change earmarked the global reprehension of gas flaring and paved the way for a plethora of municipal legislation on the subject. The UNFCCC was adopted at the 1992 United Nations Conference on Environment and Development (UNCED), the Earth Summit at Rio de Janeiro, Brazil. The UNFCCC represents the first manifestation of a need to tackle the problems associated with perturbation in the global climate change system. The Convention was adopted in May 1992 and opened for signature in 1992. It entered into force on 21 March 1994 after the deposit of the

50th instrument of ratification. Nigeria ratified the convention in August 1984 and the ratification entered into force on 27th November 1994.

The stated purpose of the UNFCCC is to “achieve the stabilization of greenhouse gas emissions at a level that would prevent dangerous anthropogenic (human-induced) interference with the climate system.” The Convention further provides that such level of prevention is to be achieved, ‘within a time-frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened, and to enable economic development to proceed in a sustainable manner’.

During the process of gas flaring, carbon dioxide (CO₂) and methane (CH₄), two gases listed under the convention as greenhouse gases that contribute to climate change, are produced. The goal of the UNFCCC is not only to curb and stabilize CO₂ emissions arising out of human activities, but also to carry out this task in the most “cost-effective” and sustainable manner. The principles that are designed to guide this process are set out in Article 3 and include “common but differentiated responsibilities, precaution, cost-effectiveness and sustainable development”. By Article 3, parties are required to protect the climatic system on an equitable basis but allow for common but differentiated responsibilities depending on their individual capacities.⁴⁴ It identifies the abilities and contributions of developed and developing countries in mitigating climate change.⁴⁵ A higher responsibility is placed on Annex I parties, to assume the task of alleviating the effects of climate change.⁴⁶

On the basis of the above principles, parties are committed under Article 4 to, inter alia, ‘take climate change considerations into account...in their relevant social,

⁴⁴ UNFCCC 1992, art. 3.

⁴⁵ *Ibid*, art. 4.

⁴⁶ Annex I countries refer to developed countries, whereas non-Annex I countries are undeveloped/developing countries like Nigeria.

economic and environmental policies and actions, and employ appropriate methods...to minimise adverse effects on the economy, public health, and on the quality of the environment...”.⁴⁷ In the same vein, parties are also required to ‘formulate, implement, publish and regularly update national...programmes containing measures to mitigate change by addressing anthropogenic emissions by source’.⁴⁸

Finally, Article 4 (1) (a) also enjoins parties to ‘develop and periodically update and publish national inventories of anthropogenic emissions by source.’ This requirement of publication of inventories would require transparency from the national government, an attitude that has not been adopted by the Nigerian government in gas flaring.⁴⁹

3.1.6. The Kyoto Protocol to the UNFCCC, 1997

Adopted in Kyoto, Japan on December 11, 1997, the 1997 Kyoto Protocol to the UNFCCC came into effect on February 16, 2005.⁵⁰ It reinforces the UNFCCC's commitments, especially those stated in Article 4(2)(a) and (b). Six greenhouse gases are covered by the Protocol in its Annex B: nitrous oxide (N₂O), carbon dioxide (CO₂), methane (CH₄), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulphur hexafluoride (SF₆).

The UNFCCC framework is strengthened by the Kyoto Protocol. In its Annex B, the agreement essentially lays out the particular obligations of the Annex I nations under the UNFCCC.⁵¹ According to these agreements, between 2008 and 2012, they

⁴⁷ UNFCCC, art. 4(1)(d).

⁴⁸ *Ibid*, art. 4 (1)(b).

⁴⁹ *Ibid*, art. 4 (1)(a).

⁵⁰ Kyoto Protocol. Available online at <http://unfccc.int/kyoto/items/2830.php> accessed 22 January 2024.

⁵¹ These countries include the 15 European Member States (as at 1997), the United States of America, Canada, Hungary, Japan, Poland, Croatia, New Zealand, Russian Federation, Ukraine, Norway, Australia, Iceland

must, either separately or together, cut their total greenhouse gas emissions by at least 5.2% below 1990 levels. The industrialised nations listed in Annex I are those that joined the OECD in 1992 and those that are transitioning to a market economy; both groups are accountable for cutting back on their greenhouse gas emissions.

The Kyoto Protocol acknowledges that over 150 years of economic activity has resulted in significant amounts of greenhouse gas emissions in the atmosphere, which are primarily the fault of developed nations. Therefore, these legally binding emission reduction targets do not apply to developing (non-Annex) countries. As per the Protocol, Annex I nations are obligated to make efforts to establish policies and measures to combat climate change and minimize its harmful consequences on social, environmental, and economic aspects for the parties involved, especially developing country parties.

Therefore, the Annex I countries bear the majority of the responsibility for reducing GHG emissions, which they can accomplish by putting national measures into place. However, the Protocol offers three affordable ways for parties to fulfill their designated targets to accomplish this: joint implementation (JI), clean development (CDM), and emission trading (ET). Nigeria, for example, might launch a scheme to phase out gas flaring and solicit support from UNFCCC Annex 1 nations after ratifying the KP in October 2004. Next, a willing Annex I nation will supply the technology required to regulate the flaring and capture the gas. Therefore, any further emissions reductions made possible by this cooperation may be measured and turned into credits for emissions reductions that would benefit the Annex 1 sponsoring country.

It should be noted, nonetheless, that the effectiveness of the domestic policies put forth by the Kyoto Protocol's signatories will determine how well the procedures

for implementing the agreement work. If the Protocol is successful, it will play a key role in pressuring rich nations under the system to reduce their emissions by up to roughly 10% between 2008 and 2012.

3.1.7. Rio Conference, 2012

The United Nations Conference on Sustainable Development occurred from June 20 to 22, 2012 in Rio de Janeiro. The conference served as the basis for the establishment of the Sustainable Development Goals, which were built upon the Millennium Development Goals. Furthermore, the conference involved the development of detailed instructions for green economy policy, as well as the examination and adoption of the financing approach for the proposed sustainable development. The Bamako Convention is notable for its provision of a robust mechanism to deter waste traders from transforming Africa into a global dumping ground. It effectively prevents and regulates the disposal of hazardous waste, including radioactive waste, in the ocean or on the seabed. Additionally, it ensures that hazardous waste producers cannot evade responsibility for environmental pollution.

3.1.8. Paris Agreement, 2015

The Paris Agreement is an internationally recognised and enforceable treaty that addresses the issue of climate change. The agreement was ratified by 196 parties on December 12, 2015, and came into effect on November 4, 2016. The objective of this notable accord is to restrict the increase in average global temperature to less than 2 °C, preferably 1.5 °C, in comparison to levels before the industrial era. Through this significant agreement, nations strive to attain the highest point of worldwide greenhouse gas emissions as expeditiously as feasible, to accomplish a world that is carbon-neutral by the middle of the century. This agreement is revolutionary since it

marks the first instance where countries globally are undertaking aggressive endeavours to combat and adapt to the catastrophic effects of climate change.

Nigeria has signed the Paris pact, which is the most extensive global pact on climate change. State parties are obligated by the Paris Agreement to periodically submit their Nationally Determined Contributions (NDC) to the United Nations Framework Convention on Climate Change (UNFCCC) every 5 years. The Federal Government of Nigeria adopted Nigeria's Nationally Determined Contribution (NDC) on November 26, 2015, and subsequently submitted it to the United Nations Framework Convention on Climate Change (UNFCCC). The implementation period of Nigeria's Nationally Determined Contribution (NDC) spans from 2015 to 2030. Its primary objective is to achieve sustainable economic growth in the country while simultaneously decreasing carbon emissions.

The NDC delineates the Nigerian government's tactics for addressing climate change. The strategies are categorised into two distinct types: mitigation strategies and adaptation strategies.

3.2. Domestic Legal Framework

For this analysis, this part of the work is structured in a manner that exposes the sequential stages (past and present) under which the federal government has undergone to combat climate change.

3.2.1. The Constitution of the Federal Republic of Nigeria, 1999

The Constitution of the Federal Republic of Nigeria, 1999 (as amended) (the “Constitution”) is the supreme law in Nigeria.⁵² Section 20 of the Constitution provides that “The State shall protect and improve the environment and safeguard the

⁵² CAP. C23, LFN 2004.

water, air and land, forest and wildlife of Nigeria.”⁵³ This provision on the face of it places a duty on the government of Nigeria to protect and preserve the environment. This concerning climate change would be interpreted to mean that the supreme law in Nigeria has placed a duty on the Nigerian government to ensure that Nigeria is not just protected from the negative effects of climate change, but also that measures are taken to ensure that Nigeria does contribute to the causes of climate change. This should necessarily give Nigerians the right to compel the government to heed this constitutional mandate where they fail to do so.

However, Section 20 of the Constitution is placed under Chapter 2 of the Constitution which has been declared to contain non-justiciable provisions by virtue of the provision of Section 6 (6) (c) of the Constitution which provides that the judicial powers that have been vested in the courts in Nigeria under the Constitution “shall not except as otherwise provided by this Constitution, extend to any issue or question as to whether any act of omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution;”⁵⁴

This in effect has made Section 20 of the Constitution toothless in the fight against climate change because it takes away from the people the right, and indeed the power, to approach the courts in order to seek an order that will compel the government to make legislations or polices for the regulation of climate change in particular and the environment in general. This also means that even when the government has made policies or legislations to address climate change, the government cannot be put to task if it fails to implement such policies or adhere to the tenets of any such legislation.

⁵³ *Ibid*, s. 20.

⁵⁴ *Ibid*, s. 6(6)(c).

3.2.2. Petroleum Act 1969⁵⁵

The Petroleum Act was the erstwhile law regulating oil and gas exploration activities in Nigeria before the enactment of the Petroleum Industry Act. Section 9(1) (b) (iii) of the Petroleum Act 1969 gave the petroleum minister the ‘power to make regulations providing for matters relating to licenses, including prevention of pollution of the water courses and atmosphere.’⁵⁶ Based on this provision, the Petroleum (Drilling and Production) Regulation 1969 was made by the minister. The Regulation provides that:

Not later than five years after the commencement of production from the relevant area, the licensee shall submit to the minister, any feasibility study, programme, or proposals that he may have for the utilization of any natural gas, whether associated with oil or not, which has been discovered in the relevant area.

The Petroleum (Drilling and Production) Regulation was the first step towards the control of gas flaring through the insertion of the ‘utilization clause’. It can be recalled that a large fraction of associated gas produced during the production of crude oil is currently being flared and to reduce the huge waste of valuable resources as well as degradation of the environment, the federal government thus mandated every licensee to submit a proposal for the utilisation of gas upon five years after the grant of the license.

3.2.3. Criminal Code Act⁵⁷

Pollution is classified as a crime under the penal code. Sections 245 and 247 forbid any action “that vitiates the atmosphere in any area to make it poisonous to the health

⁵⁵ CAP. P10, LFN 2004.

⁵⁶ *Ibid.*, s. 9(1)(b).

⁵⁷ CAP. C38, LFN 2004.

of individuals in general inhabiting or carrying on business in the neighborhood or walking along a public way...”⁵⁸ Any perpetrator faces a six-month prison sentence.

This provision contains flaws of its own. For instance, the wrongdoer can only be punished if the vitiation harms human health. As a result, the emphasis is on human health rather than the environment. This means that as long as human health is not jeopardised, no crime is committed, regardless of how much of the atmosphere is destroyed. This provision must be updated to comply with the global appeal for environmental protection and sustainability. Again, there is no option for a fine in this clause, even though approximately 80% of this offence is perpetrated by corporate bodies such as international oil firms, which are difficult to imprison. The terms “corrupt,” “foul,” or “render it less fit for the purpose for which it is ordinarily used” are too general and may require scientific evidence to prove beyond a reasonable doubt. No record of any oil firm that pollutes the Niger Delta area daily has been charged for infringing this law in Nigeria.

3.2.4. Associated Gas Reinjection Act⁵⁹

The Associated Gas Reinjection Act (AGRA) was enacted by the Nigerian Military Government as an urgent response to the problem of gas flaring. It became the first real legislative attempt to provide for and establish an anti-gas flaring regulatory framework in Nigeria. The primary intent and purpose of the Act was to phase out gas flaring in Nigeria. In its recital, it is stated to be an Act to compel every company producing oil and gas in Nigeria to submit a preliminary programme for gas re-injections and detailed plans for implementation of gas re-injection. Section 1 of the Act states thus;

⁵⁸ *Ibid*, s. 245–247.

⁵⁹ CAP. A25, LFN 2004.

Notwithstanding the provisions of Regulation 42 of the Petroleum (Drilling and Production) Regulations made under the Petroleum Act 1954, every company producing oil and gas in Nigeria shall not later than 1 April 1980 submit to the Minister a preliminary programme for

- (a) Schemes for the viable utilization of all associated gas produced from a field or groups of fields;
- (b) Project or projects to re-inject all gas produced in association with oil but not utilised in an industrial project.⁶⁰

The Act placed a duty on oil companies to submit detailed programmes and plans for implementation of gas re-injection not later than 1 October 1980. Section 3 of the Act goes further to state as follows:

1. Subject to subsection (2) of this section, no company engaged in the production of oil or gas shall after 1st January 1984 flare gas produced in association with oil without the permission in writing of the minister.
2. Where the minister is satisfied after 1st January 1984 that utilization or re-injection of the produced gas is not appropriate or feasible in a particular field or fields, he may issue a certificate in that respect in the production of oil or gas
 - (a) Specifying such terms and conditions, as he may at his discretion choose to impose, for the continued flaring of gas in the particular field or fields.
 - (b) Permitting the company to continue to flare gas in the particular field or fields if the company pays such sum as the minister may from time to time prescribe for every 28.317 standard cubic metres (SCM) of gas flared.⁶¹

According to sections 3 and 5 (ministerial prerogative) of the Associated Gas Re-Injection Act 1979, the Associated Gas Reinjection (continued Flaring of Gas) Regulations 1984 was enacted. This regulation which took effect from January 1, 1985, provided exemptions from the prohibition on gas-flaring under the 1979 Act. It stipulates conditions for the issuance of a certificate by the Minister for the continued flaring of gas in a particular field. The regulations imply that the Minister can only

⁶⁰ *Ibid*, s. 1.
⁶¹ *Ibid*, s. 3.

issue a certificate permitting a company to continue flaring gas if the following conditions are met:

- a) Where more than 75% of the produced gas is effectively utilised or conserved;
 - b) Where the produced gas contains more than 15% impurities that render the gas unsuitable for industrial purposes;
 - c) Where an ongoing utilisation programme is interrupted by equipment failure;
 - d) Where the ratio of the volume of gas produced per day to the distance of the field from the nearest gas line or possible utilisation point is less than 50,000 SCF/KM: and it is technically impossible to re-inject the gas in the field; and
 - e) Where the minister orders the production of oil from a field that does not satisfy any of the conditions specified in these regulations.
- Provided that such failures are not considered too frequent by the Minister and the period of any interruption is more than three months.

It must be pointed out here that these clauses, had the effect of exempting 86 out of 155 fields from the anti-flaring provisions of the Associated Gas Reinjection Act 1979. The remaining fields were subject, under this regulation, to a monetary penalty.

According to Section 4(1) of the Associated Gas Reinjection Act 1979, the penalty for non-compliance was forfeiture of concession. It states that ‘Where any person commits an offence under section 3 of this Act, the person concerned shall forfeit the concessions granted to him in the particular field or fields relating to which the offence was committed.’⁶² Section 4(2) provided further that, ‘The minister may withhold all or part of the entitlements of any offending person towards the cost of completion or implementation of a desirable reinjection scheme or the repair or restoration of any reservoir in the field under good oil field practices’.⁶³

⁶² *Ibid*, s. 4(1).
⁶³ *Ibid*, s. 4(2).

It can be assumed that the Regulation reversed the original intention of the Associated Gas Re-Injection Act, which was intended to prohibit gas flaring. As noted earlier, one striking feature of the Act is the permission given to oil companies to continue to flare gas on the payment of minimal fees. The Associated Gas Re-Injection (Amendment) Act introduced a penalty of 2 Kobo (equivalent to US\$0.0009 in 1985) against the oil companies for each 1000 standard cubic feet (scf) of gas flared at any place.⁶⁴ This amount was further increased to 10 Naira (US\$11) per 1000 standard cubic feet of gas in 1998. As further noted, the amended law permits oil companies to continue flaring in particular fields or fields, subject to payment of such sums as the minister may from time to time prescribe for every 28.317 standard cubic metre (scm) of flared gas.

3.2.5. Environmental Impact Assessment Act⁶⁵

To allow the environmental effect assessment to be taken into account before moving forward with specific public or private projects, the Environmental Impact Assessment Act was implemented as a military decree in 1992. It outlined general guidelines, protocols, and techniques.

The Act restricts both public and private projects without first taking the effects on the environment into account. It states that no projects or activities may be started or authorised by the public or private sectors of the economy without first taking into account, at an early stage, how they would affect the environment.⁶⁶ An environmental impact assessment for a proposed project or activity must be conducted in line with the provisions of this Act if its scope, nature, or location makes it likely to

⁶⁴ Associated Gas Re-Injection (Amendment) Act 1985.

⁶⁵ Act No. 86 of 1992.

⁶⁶ *Ibid*, s. 2(1).

have a major negative impact on the environment.⁶⁷ To ensure that the subject activities are promptly and unmistakably defined, all agencies and institutions—public or private must apply in writing to the Agency before beginning any proposed project, unless they are exempted under this Act.⁶⁸ Before beginning or starting any project or activity required by the provisions of this Act, covered by the Agency, or likely to have a serious environmental impact on the Nigerian environment, the relevant significant environmental issues shall be identified and studied to determine the environmental impact assessment process under this Act. An environmental assessment will also be applied as the activities are being planned.⁶⁹

According to the Act, only projects that have passed environmental impact studies will be monitored and approved by the Federal Environmental Protection Agency. According to the Act, consideration must be given to public opinion when determining whether or not a project satisfies the requirements of an environmental impact assessment (EIA). "Petroleum, Oil, and Gas Field Development, construction of off-shore pipelines over 50 kilometres in length; construction of oil and gas separation, processing, handling, and storage facilities; construction of oil refineries; construction of product depots for the storage of petrol, petrol or diesel (excluding service stations) located within 3 kilometres of any commercial, industrial or residential areas and which have a combined storage capacity of 60,000 barrels or more" is a list.

3.2.6. National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007

⁶⁷ *Ibid*, s. 2(2).

⁶⁸ *Ibid*, s. 2(4).

⁶⁹ *Ibid*, s. 3(1).

Enforcing environmental protection is the responsibility of the National Environmental Standards and Regulations Enforcement Agency (NESREA), which is established under the National Environmental Standards and Regulations Enforcement Act.⁷⁰ The Federal Environmental Protection Agency Act⁷¹ is repealed by the NESREA Act. NESREA was created as a body corporate that has the right to sue under its corporate name and has perpetual succession as well as a common seal. The Act restricts the agency's ability to enforce environmental protection by omitting activities related to oil and gas, but it nonetheless lists several duties that must be carried out.

According to Section 20, the Agency may establish rules that specify requirements and benchmarks for safeguarding and improving the quality of Nigeria's air resources in order to advance public health and welfare, as well as the natural growth and productive potential of the country's human, animal, marine, and plant life, including, in particular; Minimum essential standards for air quality that protect the health of people, animals, marine life, and plants; regulating the concentration of substances in the air that, alone or in combination, are likely to cause property damage or deterioration; identifying the most effective ways to prevent and combat different types of atmospheric pollution; and using appropriate measures to reduce emissions to levels that can be safely expected to protect public health and welfare.⁷²

A person who violates the regulations established following subsection (1) of this section commits an offence and, upon conviction, faces a fine of no more than N200,000, a maximum term of imprisonment of one year, or both. In addition, there will be an additional fine of N20,000 for each day the offence is committed. If a body corporate violates this section's subsection (1), it will be found guilty and face a fine

⁷⁰ NESREA 2007.

⁷¹ CAP. F10, LFN 2004.

⁷² NESREA 2007, s. 20.

of up to N2,000,000 as well as an extra N50,000 punishment for each day the violation is committed.⁷³

In addition, Section 27 states that it is illegal to release any hazardous material in such damaging proportions into the air, on Nigerian land or sea, or at nearby shorelines, unless doing so is allowed by Nigerian legislation currently in effect.⁷⁴ When someone breaks this section's subsection (1) rules, they are guilty of an offence and face a maximum fine of N1,000,000 or a maximum sentence of five years in jail.⁷⁵ When a body corporate commits an offence under subsection (1) of this section, everyone in charge of the body corporate at the time of the offence is considered guilty of it and may face legal action and punishment. However, nothing in this subsection will hold someone accountable for any punishment if they can demonstrate that the offence was committed without their knowledge or that they took all reasonable precautions to stop it from happening.⁷⁶

3.2.7. Climate Change Act 2021

One of the main causes of greenhouse gas emissions and climate change in Nigeria's petroleum industry is gas flaring. Therefore, by Nigeria's international climate change obligations, the Climate Change Act establishes a target for the years 2050 to 2070 for the attainment of net zero GHG emissions. This framework aids in the achievement of low greenhouse gas emissions (GHG), inclusive green growth, and sustainable economic development.⁷⁷

⁷³ *Ibid*, s. 20(3).

⁷⁴ *Ibid*, s. 27.

⁷⁵ *Ibid*, s. 27(2).

⁷⁶ *Ibid*, s. 27(3).

⁷⁷ Climate Change Act 2021, s.1.

Section 19 of the Act assigns the Federal Ministry of Environment the task of determining Nigeria's carbon budget regarding gas flaring.⁷⁸ In essence, a carbon budget is the maximum quantity of carbon that a nation is allowed to release during a specific time frame. The overarching goal of the budgets, which typically have a five-year cycle, is to make sure Nigeria meets its goal of having net zero carbon emissions by 2050–2070. Before being implemented, each budget circle must be approved by the Federal Executive Council.⁷⁹

Section 20 requires the secretariat to create an action plan that will run for five years and will, among other things, make sure that Nigeria's emissions are within her carbon budget. The plan will also specify how to review the levels and trends of greenhouse gas emissions.⁸⁰

⁷⁸ *Ibid.*, s. 19 (1).

⁷⁹ *Ibid.*, s. 19 (3).

⁸⁰ *Ibid.*, s. 20.

CHAPTER FOUR
CHALLENGES TO THE LEGAL FRAMEWORKS FOR COMBATING CLIMATE
CHANGE IN NIGERIA AND WAY FORWARD

4.1.1. Challenges in the Existing Laws and Institutions on The Enforcement of Climate Change and Environmental Protection in Nigeria

Proceeding from the extensive analysis of the legal and institutional framework for combating climate change in Nigeria, this section is devoted to identifying the challenges or limitations that they suffer. Without any indices of doubt, climate change in Nigeria is worsening by the day, with increased carbon emissions resulting from gas flaring.⁸¹ This has raised critical questions about the effectiveness of the extant legal and institutional framework in combating climate change in Nigeria. Whereas the regulatory authorities and bodies abound, the practical effect of these laws and agencies are scarcely seen.

Amongst other things, this has been attributed to an absence of political will culminating in a lethargic implementation of the extant laws. It has also been linked to the non-justiciability of environmental issues per section 6(6)(b) of the 1999 Constitution.⁸² Another causal factor is the non-domestication of the spate of international climate change treaties under section 12 of the Constitution, making them unenforceable in Nigeria.⁸³ Lastly, the absence of a cohesive and composite

⁸¹ Nigeria is reputed to be one of the world's seven largest emitters of greenhouse gas emissions (GHG). See Urenmisan Afinotan, 'How Serious is Nigeria about Climate Change Mitigation Through Gas Flaring Regulation in the Niger Delta' *Environmental Law Review*, (2022) Vol. 24(4) 290. <<https://doi.org/10.1177/14614529221137142>> accessed 22 January 2024.

⁸² This section precludes the adjudication of any of the items contained in Chapter II of the Constitution, of which environmental protection is a part. See CAP. C23, LFN 2004, s. 6(6)(b). See also E. Onyeabor, H. Agu and N. Nwanta, 'Litigating Loss and Damage as a Panacea for Abatement of Climate Change' *Journal of Economics and Sustainable Development*, (2016) Vol. 7(2), 146–147.

⁸³ Section 12 of the 1999 Constitution reads thus: No treaty between the Federation and any other country

climate-change dedicated regulatory institution defeats the purpose of the created laws. Each of these factors will be examined in turn, thereafter, we will pinpointedly identify the lacunas in the extant legal framework combating climate change, and we will propose recommendations to bolster these laws and attune them to international best practices.

4.1.2. The Absence of Political Will

The failure to implement the Climate Change Act 2021 stems largely from the absence of political will on the part of the government. Despite the urgent need for action to mitigate climate change, the Act faces challenges similar to those encountered by the Child Rights Act 2003.⁸⁴ The political indifference towards climate change issues is evident in the delayed or non-domestication of the Climate Change Act in various regions. Despite the Act's passage in 2021, many states have yet to adopt or adapt its provisions, limiting its effectiveness nationwide.

Political leaders often prioritize immediate concerns such as economic growth and infrastructure development over long-term environmental sustainability. This lack of prioritization is exacerbated by the influence of vested interests, including those within the fossil fuel industry, which resist policies that may impact their profits or operations. The absence of strong political will hampers efforts to enforce the Climate Change Act, undermining its potential to mitigate the adverse effects of climate change.

shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly. Thus, the National Assembly must domesticate the treaty before it gains binding force in Nigeria. *See* CAP. C23, LFN 2004, s. 20.
CAP. C30, LFN 2004.

4.1.3. Influence of International Oil Companies

International oil companies (IOCs) wield significant influence that impedes the enforcement of the Climate Change Act. In Nigeria, the oil industry holds immense economic and political power, often at the expense of environmental concerns and sustainable development.⁸⁵ IOCs operating in Nigeria prioritize profit-making activities, including fossil fuel extraction, over environmental conservation and climate change mitigation efforts.⁸⁶ Their influence extends to political decision-making processes, where they lobby against stringent regulations and policies that may affect their bottom line. As major contributors to greenhouse gas emissions, IOCs have a vested interest in maintaining the status quo and resisting measures that could curtail their activities or impose additional costs.

Furthermore, IOCs often exploit legal loopholes and regulatory gaps to evade accountability for their environmental impact. They may resist efforts to transition to renewable energy sources or adopt cleaner technologies, citing concerns about economic viability and job losses. This resistance undermines the objectives of the Climate Change Act and perpetuates Nigeria's dependence on fossil fuels, exacerbating the country's contribution to global warming and climate-related disasters.

4.1.4. Inadequate Funding

⁸⁵ Peter Elias and Ademola Omojola, 'Case Study: The Challenges of Climate Change for Lagos, Nigeria' (2015) 13 *Current Opinion in Environmental Sustainability*, 74–78. <<https://doi.org/10.1016/j.cosust.2015.02.008>> accessed 22 January 2024.

⁸⁶ 'Economics of Petroleum Exploitation and Exploration Impact on elected Communities in Niger.-Delta Region of Nigeria' [2021] *Journal of Economics and Sustainable Development* <<http://dx.doi.org/10.7176/jesd/12-18-01>> accessed 22 January 2024.

Inadequate funding poses a significant barrier to the effective implementation of the Climate Change Act from a political standpoint. The Act requires substantial financial resources to support climate adaptation and mitigation measures, including the development of renewable energy infrastructure, reforestation projects, and climate-resilient agriculture.⁸⁷

However, Nigeria's limited budgetary allocations for environmental initiatives constrain the government's ability to fulfill its obligations under the Climate Change Act. Competing priorities such as infrastructure development, healthcare, and education often receive greater funding allocations, relegating climate change mitigation efforts to the sidelines.

The shortage of funding also affects the capacity of government agencies responsible for implementing the Climate Change Act. These agencies require adequate resources to conduct research, monitor environmental indicators, and enforce regulations.⁸⁸ Without sufficient funding, they may struggle to effectively address climate-related challenges and ensure compliance with the Act's provisions.⁸⁹

4.1.5. Low Level of Awareness

The low level of awareness about climate change impedes the successful implementation of the Climate Change Act. Many Nigerians, including policymakers, business leaders, and the general public, lack a comprehensive understanding of the causes and consequences of climate change, as well as the urgency of taking action to mitigate its impact. This lack of awareness hampers efforts to mobilize political support for climate change initiatives and secure adequate funding for climate

⁸⁷ Bunmi Aduloju, 'Zainab Ahmed: \$1.9 Trillion needed to Achieve Nigeria's 2060 Net-Zero Target' *The Cable* (24 August 2022) <<https://www.thecable.ng/zainab-ahmed-1-9trn-needed-to-achieve-nigerias-2060-net-zero-target/amp>> accessed 8 March 2023

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

adaptation and mitigation strategies. Without public pressure and advocacy, political leaders may prioritize short-term economic interests over long-term environmental sustainability, further exacerbating the climate crisis.

Addressing the low level of awareness requires comprehensive education and outreach campaigns that highlight the importance of climate action and empower citizens to demand accountability from their elected representatives. Civil society organizations, academia, and media outlets play a crucial role in disseminating information about climate change and mobilizing public support for policies that promote environmental stewardship.

4.1.6. Despotism Political Ambitions

Despotism political ambitions pose a significant obstacle to the implementation of the Climate Change Act, as leaders prioritize power consolidation and economic interests over environmental conservation and sustainable development. In a political environment characterized by authoritarian tendencies and corruption, government officials may exploit natural resources for personal gain, disregarding the long-term consequences for the environment and future generations.

Leaders with despotism ambitions often suppress dissent and undermine democratic institutions, making it difficult for civil society organizations and environmental activists to advocate for climate action and hold the government accountable for its commitments under the Climate Change Act. This stifling of dissent perpetuates a culture of impunity and undermines efforts to address the root causes of climate change.

Overcoming the influence of despotism political ambitions requires strengthening democratic institutions, promoting transparency and accountability in

governance, and fostering an inclusive and participatory decision-making process. Empowering marginalized communities and indigenous peoples, who are disproportionately affected by climate change, is essential for promoting environmental justice and ensuring that climate policies are equitable and inclusive.

4.1.7. Lethargic Implementation of the Extant Climate Change Laws

This research has uncovered a wide range of laws and regulations that can be used indirectly to address the issue of climate change in Nigeria. However, it appears that there is a lack of determination among politicians to enforce these legislations, which are often disregarded.⁹⁰ The legislations currently reside solely within the pages of the statute books and have yet to be put into effect since their inception. The government appears to prioritise the creation of new laws and regulations that complicate existing ones, rather than making effective efforts to enforce any of them.⁹¹ The enforcement of the restrictions established under the NESREA Act would greatly contribute to achieving certain milestones outlined in Nigeria's NDC.⁹² But most unfortunately, those regulations are only contained in the statute books as toothless bulldogs.

4.1.8. Ouster Clauses

An additional significant obstacle to effectively regulating climate change in Nigeria is the exclusion provision found in Section 6 (6) (c) of the Constitution⁹³ which makes non-justiciable the duty placed on the government by Section 20 of the Constitution to provide a safe environment in Nigeria.⁹⁴ But for this ouster clause environmental and

⁹⁰ S.J. Fada, 'An Appraisal of Nigeria's Progress in Achieving the SDG-13 Climate Action Goal' (2022) 15(2) *Journal of Sustainable Development*, 74. <<https://doi.org/10.5539/jsd.v15n2p66>> accessed 22 January 2024.

⁹¹ *Ibid*

⁹² *Ibid*

⁹³ CFRN 1999, CAP. C23, LFN 2004.

⁹⁴ *Ibid*. S. 20

climate change litigation would have developed in Nigeria to such an extent that it would have been possible for Nigerians to approach the courts to compel the government or any other institution to take action to address the negative impacts of climate change even in the absence of a climate change specific legislation.⁹⁵ This would mirror the trend in the United States where climate change litigation has been very effective in getting the various levels of government and institutions in the United States in the absence of a national climate change law to take action to deal with the challenge of climate change.

4.1.9. Non-Domestication of International Climate Change Treaties

Section 12 of the Constitution provides that treaties entered into by Nigeria will not be binding on Nigeria unless they are domesticated and made part of Nigerian law.⁹⁶ All the climate change treaties that have been ratified by Nigeria have not been domesticated in Nigeria. As a result, they are as far as Nigerian domestic law is concerned not binding on Nigeria. This makes it practically impossible to hold the government to account as per their obligations under those treaties, therefore rendering them ineffectual.

4.1.10. Absence of a Dedicated Climate Change Regulatory Institution

There is a multiplication of implementation agencies as far as issues related to climate change in Nigeria are concerned. Response to the threats of climate change is mostly left in the hands of departments and agencies of government (which in most cases are ineffective). Such departments and agencies include: the Department of Climate

⁹⁵ M.T. Ladan, 'Nigeria's Climate Change Act and Policy 2021 and The Future of Climate Litigation' (2022) *Ahmadu Bello University*, 4. <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4019698> accessed 22 January 2024.

⁹⁶ CAP. C23, LFN 2004, s. 12.

Change under the Federal Ministry of Environment, the Nigerian Meteorological Agency (NIMET) which deals with meteorological issues, NESREA, and the National Planning Commission (NPC). This leads to incoherent decision-making and makes it difficult to measure the extent to which climate change related regulations are effective in reducing emissions and support adaptation efforts.⁹⁷

4.2. Challenges Faced by National Regulatory Institutions for Climate Change and Environmental Protection

A number of challenges are faced by national regulatory institutions in their attempt to protect the environment and climate change adaptation measures. Some of the peculiar challenges faced by some of these institutions are as presented hereunder:

4.2.1. National Environmental Standards and Regulations Enforcement Agency (NESREA)

The National Environmental Standards and Regulations Enforcement Agency (NESREA) is entrusted with the crucial responsibility of overseeing environmental standards and regulations in Nigeria. However, the agency faces a range of challenges that hinder its effectiveness in combating climate change and ensuring environmental protection. One primary challenge is resource constraints. Inadequate funding limits the agency's ability to conduct regular inspections and respond promptly to environmental incidents.⁹⁸ This shortfall impacts NESREA's capacity to invest in advanced technologies for data collection and analysis, hindering the adoption of

⁹⁷ S.O. Amadi and A.O. Udo, 'Climate Change in Contemporary Nigeria: An Empirical Analysis of Trends, Impacts, Challenges and Coping Strategies' *IOSR Journal of Applied Physics*, (2015) Vol. 7(2) 5–7. <<https://doi.org/10.970/4861-07230109>> accessed 22 January 2024.

⁹⁸ J. I. Mantu, 'NESREA and the Challenge of Enforcing the Provisions of Environmental Impact Assessment Act in Nigeria' (2019) *SSRN Electronic Journal* <http://dx.doi.org/10.2139/ssrn.3410104> accessed 22 January 2024

more efficient and proactive environmental monitoring mechanisms. As climate change intensifies and environmental issues become more complex, addressing these resource constraints becomes imperative for NESREA to fulfill its mandate effectively.⁹⁹

4.2.2. National Oil Spill Detection & Response Agency (NOSDRA)

Nigeria, being a major oil-producing nation, confronts significant challenges related to oil spills, necessitating the role of the National Oil Spill Detection and Response Agency (NOSDRA). One of the prominent challenges faced by NOSDRA is the vastness of the country's oil-producing regions.¹⁰⁰ Monitoring and responding to oil spills in remote or difficult-to-access areas present significant logistical challenges. Additionally, collaboration and coordination with other regulatory bodies, industries, and local communities in managing oil spill incidents require extensive efforts.¹⁰¹ The coordination of resources and response mechanisms amid diverse stakeholders is crucial for effective and timely oil spill management. These challenges underscore the need for improved infrastructure, communication networks, and collaboration frameworks to enhance NOSDRA's capabilities in addressing oil spills and their environmental repercussions.

4.2.3. National Climate Change Council (NCCC)

The National Climate Change Council (NCCC) plays a vital role in coordinating efforts to address climate change in Nigeria. However, the council faces challenges related to mainstreaming climate change considerations into various sectors of the

⁹⁹ *Ibid*

¹⁰⁰ A. Ambituuni, J.Amezaga and E. Emeseh, 'Analysis of Safety and Environmental Regulations for Downstream Petroleum Industry Operations in Nigeria: Problems and prospects' *Environmental Development* (2014) Vol. 9 43, <http://dx.doi.org/10.1016/j.envdev.2013.12.002> accessed 22 January 2024.

¹⁰¹ *Ibid*

economy. Coordination among different government departments and agencies is complex, hindering the effective implementation of climate change policies. The challenge lies in integrating climate change concerns into diverse sectors such as agriculture, energy, and infrastructure development. Achieving this requires overcoming institutional silos and fostering a collaborative, cross-sectoral approach. Additionally, insufficient public awareness and understanding of climate change issues pose obstacles to widespread cooperation and compliance. Bridging this gap through targeted awareness campaigns and education is crucial for garnering public support and fostering a culture of climate resilience.

4.2.4. Nigerian Upstream Petroleum Regulatory Commission (NUPRC)¹⁰²

The Nigerian Upstream Petroleum Regulatory Commission (NUPRC) faces challenges in ensuring that upstream petroleum activities adhere to environmental sustainability standards. The extraction of oil and gas resources, while vital for economic development, poses significant environmental risks. Balancing economic interests with environmental protection can lead to regulatory dilemmas, especially in the context of fluctuating oil prices and the imperative for revenue generation. Additionally, the rapid pace of technological advancements in the petroleum industry necessitates ongoing capacity building within the regulatory framework to ensure that regulations keep pace with industry practices. Strengthening the regulatory framework and fostering collaboration with industry stakeholders are essential steps for NUPRC to address these challenges and promote sustainable practices in the upstream petroleum sector.

¹⁰² <<https://nuprc.gov.ng/functions-of-nuprc/>> accessed 22 January 2024.

4.2.5. Nigerian Midstream & Downstream Petroleum Regulatory Authority (NMDPRA)

The Nigerian Midstream & Downstream Petroleum Regulatory Authority (NMDPRA) is tasked with regulating activities in the midstream and downstream sectors of the petroleum industry. However, the agency faces challenges related to pipeline vandalism, illegal refining, and the resultant environmental degradation.¹⁰³ Inadequate surveillance and security measures make it difficult to curb these activities effectively. The vast network of pipelines and infrastructure, coupled with the illicit activities of oil thieves, poses significant challenges to the monitoring and protection of petroleum resources.¹⁰⁴ Additionally, the environmental impact of oil spills resulting from illegal activities further compounds the challenges faced by NMDPRA. Strengthening security measures, investing in advanced monitoring technologies, and enhancing collaboration with law enforcement agencies are critical steps for NMDPRA to mitigate these challenges and ensure the environmental sustainability of midstream and downstream petroleum activities.

4.3. Solutions to Gaps in Laws and Regulatory Institutions on Climate Change and Environmental Protection in Nigeria

The following solutions have been proffered arising from the observed gaps in the various laws and regulations enacted or made on climate change and environmental protection in the country:

¹⁰³ A. Okafor and A. Olaniyan, 'Legal and Institutional Framework for Promoting Oil Pipeline Security in Nigeria' *Journal of Sustainable Development Law and Policy* (1970) Vol. 8(2) <<http://dx.doi.org/10.4314/jsdlp.v8i2.10>> accessed 22 January 2024.

¹⁰⁴ U. Monday and M.C. Ekperiware and B.R. Muritala, 'Downstream Oil Deregulation And Nigerian Economy' [2016] 5(1)(8) *ECOFORUM Journal* <<https://www.ecoforumjournal.ro/index.php/eco/article/view/320>> accessed 22 January 2024.

4.3.1. Stringent Enforcement of Laws by Regulatory Institutions

To address the challenges faced by regulatory institutions, a key solution is the strict enforcement of existing environmental laws. Enhancing the effectiveness of regulatory institutions involves a multi-faceted approach. Firstly, there is a need for adequate funding to empower regulatory bodies like NESREA, NOSDRA, NCCC, NUPRC, and NMDPRA. This funding is essential for conducting regular monitoring, inspections, and responding promptly to environmental incidents. Additionally, capacity building for personnel within these institutions is crucial to ensure a skilled workforce capable of navigating the complexities of environmental regulation.

Leveraging technology for data collection, analysis, and real-time monitoring can significantly enhance the efficiency of regulatory efforts. The use of satellite imagery, drones, and other advanced tools can provide a more comprehensive understanding of environmental conditions and facilitate proactive measures to combat climate change and environmental degradation.

4.3.2. Reforming Out-dated and Archaic Laws and Regulations

A comprehensive review and reform of out-dated and archaic laws and regulations on environmental protection are imperative. The legal framework must be dynamic, responsive to emerging environmental challenges, and aligned with global best practices.¹⁰⁵ Regular updates should consider scientific advancements, evolving climate change scenarios, and the specific context of Nigeria. This reform process should involve stakeholder consultations to ensure inclusivity and relevance to the

¹⁰⁵ R U Onyeneke and Others, 'Evidence-Based Policy Development: National Adaptation Strategy and Plan of Action on Climate Change for Nigeria (NASPA-CCN)' (2020) *African Handbook of Climate Change Adaptation*, 4-8. <https://doi.org/10.1007/978-3-030-42091-8_125-1> accessed 22 January 2024

current socio-economic and environmental landscape. Furthermore, streamlining and harmonizing environmental laws across different regulatory bodies can foster clarity, coherence, and ease of implementation. A well-reformed legal framework is essential to empower regulatory institutions with the necessary tools to address contemporary environmental challenges effectively.¹⁰⁶

4.3.3. Enforcing Penalties and Sanctions for Non-Compliance

Enforcing penalties and sanctions for non-compliance with environmental laws and regulations is a critical deterrent. Regulatory bodies must establish clear and transparent mechanisms for imposing fines, revoking licenses, and taking legal action against individuals and industries that violate environmental standards. These penalties should be proportional to the severity of the violation and should act as a deterrent to prevent future transgressions. Publicizing enforcement actions can play a crucial role in raising awareness and fostering a culture of compliance within industries and communities. Moreover, the consistent application of penalties sends a strong signal about the seriousness of environmental protection, encouraging a shift towards sustainable practices.

¹⁰⁶ J. A. Albert and M. Baribefe-Koate, 'The Climate Change Act 2021 and The Future of Climate Litigation in Nigeria' (2022) 2(4) *The Journal of Law and Policy*, 204.

CHAPTER FIVE

SUMMARY OF FINDINGS, RECOMMENDATIONS AND CONCLUSION

5.1 Summary of Findings

Nigeria, like many other countries, faces significant challenges in combating climate change¹⁰⁷. Some of the key challenges which are also key findings from this study include:¹⁰⁸

1. **Deforestation:** Deforestation is a major issue in Nigeria, with vast areas of forests being cleared for agriculture, logging, and urbanization. This leads to a loss of biodiversity, disruption of ecosystems, and contributes to greenhouse gas emissions.
2. **Energy Generation:** Nigeria heavily relies on fossil fuels for energy generation, leading to high levels of carbon emissions. The lack of investment in renewable energy sources hinders progress towards reducing carbon footprints.
3. **Agricultural Practices:** Traditional agricultural practices in Nigeria often involve slash-and-burn techniques, which release large amounts of carbon dioxide into the atmosphere. Additionally, poor land management practices contribute to soil degradation and desertification.
4. **Water Scarcity:** Climate change exacerbates water scarcity issues in Nigeria, leading to conflicts over water resources and affecting agricultural productivity.
5. **Urbanization and Infrastructure:** Rapid urbanization in Nigeria puts pressure on infrastructure and services, leading to increased energy consumption and waste generation.

¹⁰⁷ H. Huma, Climate change in Nigeria: Impacts and responses. (2019) <https://www.preventionweb.net/publication/climate-change-nigeria-impacts-and-responses> accessed 10th of March 2024

¹⁰⁸ *Ibid*

5.2 Recommendations

To address the challenges and findings identified in the course of this study and combat climate change effectively in Nigeria, some far reaching recommendations are made hereunder for implementation:

1. **Promotion of Renewable Energy:** Encouraging the adoption of renewable energy sources such as solar, wind, and hydroelectric power can help reduce reliance on fossil fuels and lower carbon emissions.
2. **Afforestation and Reforestation:** Implementing programs to protect existing forests and promote afforestation and reforestation efforts can help sequester carbon dioxide from the atmosphere.
3. **Sustainable Agricultural Practices:** Promoting sustainable agricultural practices such as conservation agriculture, agroforestry, and efficient irrigation methods can help reduce emissions from the agricultural sector.
4. **Water Management:** Implementing efficient water management strategies, such as rainwater harvesting and water recycling systems, can help mitigate the impacts of water scarcity exacerbated by climate change.
5. **Green Infrastructure Development:** Investing in green infrastructure projects such as sustainable transportation systems, green buildings, and waste management facilities can help reduce carbon emissions from urban areas.
6. **Policy Frameworks:** Strengthening policy frameworks related to climate change mitigation and adaptation is crucial for creating an enabling environment for sustainable development practices.

5.3 Conclusion

In conclusion, the challenges identified in the existing legal frameworks and regulatory institutions for combating climate change in Nigeria are multi-faceted and demand urgent attention. In navigating the complexities of sustainable development and combating climate change, Nigeria must undertake a comprehensive and integrated approach. Reforms in legal frameworks and regulatory institutions are imperative to address the identified challenges. The government's commitment to proactive implementation, reforming outdated laws, and strengthening regulatory bodies will be pivotal in shaping a resilient and environmentally sustainable future. Collaboration among regulatory bodies, government agencies, industries, and local communities is paramount for fostering a holistic and effective approach to environmental protection and climate resilience. As Nigeria strives for sustainable development, a responsive and adaptive regulatory system will play a crucial role in achieving environmental sustainability and resilience against the challenges of climate change.

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