

LEGAL PERSPECTIVES OF THE FRAMEWORKS PROTECTING VULNERABLE COMMUNITIES AGAINST CLIMATE CHANGE IN NIGERIA

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Abstract

Nigeria like many other countries faces significant vulnerability to climate change due to a combination of geographical, socio-economic, infrastructural, and ecological factors. In a bid to mitigate the effects of climate change and protect vulnerable communities against it, it has been observed that the laws governing climate change in Nigeria are ineffective. This paper examines Nigeria's legal system, which includes both domestic and international climate justice-related legislation and explores measures and policies available to mitigate the effects of climate change, emphasizing the duties and accountability of different stakeholders. The paper further utilized primary and secondary sources of law to explain the concept of climate change justice. The differences between current legislations and the legislative gaps. The paper concludes that it is crucial to address climate change and climate justice in order to ensure humanity's survival and well-being, especially when it comes to safeguarding the most vulnerable members of society.

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Keywords: climate change, climate justice, vulnerable communities, mitigation, adaptation, sustainable development

1.0 Introduction

Climate change poses an imminent threat to communities worldwide, with its impacts particularly pronounced in developing nations like Nigeria.¹ The country faces significant vulnerabilities due to a combination of geographical, socioeconomic, infrastructural, and ecological factors.² These vulnerabilities manifest in various ways, such as increased flooding in coastal regions³, desertification in the north, and environmental degradation in the Niger Delta.⁴ Protecting Nigeria's vulnerable communities from the adverse effects of climate change requires robust legal frameworks and effective implementation of climate justice principles.

This paper explores the legal perspectives of frameworks designed to protect vulnerable communities in Nigeria against climate change. It draws on both primary and secondary sources of law to elucidate the concept of climate change justice, highlighting its definition, foundational elements, and the specific vulnerabilities of Nigerian communities. By examining Nigeria's legal system, including domestic legislation and international agreements, the paper assesses the measures and policies aimed at mitigating climate change impacts. Additionally, it scrutinizes the responsibilities and accountability of various stakeholders, such as the

¹ A. Abdulkadir, A.M. Lawal & T.I. Muhammad, 'Climate Change and Its Implications on Human Existence in Nigeria: A Review' (2018) 10(2) *Bayero Journal of Pure and Applied Sciences*, 152

² I.B. Danladi, B.M. Kore & M. Gul, 'Vulnerability of the Nigerian Coast: An Insight into Sea Level Rise Owing to Climate Change and Anthropogenic Activities' (2017) 134 *Journal of African Earth Sciences*, 493

³ *Ibid.*

⁴ C.U. Oyegun, O. Lawal & M. Ogoro, 'Vulnerability of Coastal Communities in the Niger Delta Region to Sea Level Rise' (2016) 2(8) *Journal of Research in Environmental and Earth Science*

government, businesses, and civil society, in addressing climate justice. Through case studies, this paper illustrates the discrepancies between existing laws and their enforcement, emphasizing the need for collaborative solutions to enhance resilience and protection for disadvantaged groups. It also considers the future prospects for climate action in Nigeria, focusing on the role of civil society in advocating for and achieving climate justice. Ultimately, the paper underscores the critical importance of addressing climate change and climate justice to safeguard the well-being of Nigeria's most vulnerable populations.

1.1 Climate Justice Defined

A phrase that acknowledges that “even though global warming is a global crisis, its effects are not felt evenly around the world” is “climate justice”.⁵ A subset of environmental justice known as “climate justice” is concerned with distributing the costs of climate change fairly and mitigating its effects. This means making sure that the rights of people who are most susceptible to the effects of climate change are represented, included, and protected. In addition to guaranteeing access to essential resources and fostering equity, solutions must also make sure that youth can live, learn, play, and work in clean, healthy environments. Connecting development and climate action with human rights—taking a people-first stance on climate action.⁶

⁵ Friederike E.L Otto and Others, ‘Climate Change Increased Extreme Monsoon Rainfall, Flooding Highly Vulnerable Communities in Pakistan’ (2023) Environmental Research – Climate

<https://www.researchgate.net/publication/368954713_Climate_change_increased_extreme_monsoon_rainfall_flooding_highly_vulnerable_communities_in_Pakistan_Climate_change_increased_extreme_monsoon_rainfall_flooding_highly_vulnerable_communities_in_Pakistan> accessed 4 April 2024

⁶ M. Blomfield, ‘Introduction: Global Justice and Climate Change’ (2019) <[https://scholar.google.com/scholar?q=Blomfield,+M.+\(2019\)+%E2%80%98Introduction:+Global+justice+and+climate+change%E2%80%99,+Global+Justice,+Natural+Resources,+and+Climate+Change&hl=en&as_sdt=0&as_vis=1&oi=scholart](https://scholar.google.com/scholar?q=Blomfield,+M.+(2019)+%E2%80%98Introduction:+Global+justice+and+climate+change%E2%80%99,+Global+Justice,+Natural+Resources,+and+Climate+Change&hl=en&as_sdt=0&as_vis=1&oi=scholart)> accessed 4 April 2024

Justice is the connection between the State and her citizens. In its broadest meanings, it is the ordering of human relations in line with universal principles that are not partially implemented.⁷ The State is therefore empowered to treat very person equally, which aims to settle disagreements based on the evidence and objective standards rather than opinion. Fairness in the process determines justice and not the result.⁸

In order to address concerns of environmental and social justice, the international community has proposed the climate justice movement, which takes into account ethical, legal, and political challenges related to climate change.⁹ Climate justice acknowledges that the worst effects of climate change fall on those who are least to blame. It also acknowledges concerns about equality, human rights, collective rights, and historical accountability for the rise of global temperatures. The term “climate justice” can also refer to the real legal actions on climate change a challenge that is based on and strives to realize these ideals.¹⁰

2.0 Vulnerability of Communities in Nigeria

All facets of our socio-economic growth, including natural ecosystems, might be impacted by climate change. Nigeria’s water resources, public health, habitat, and agriculture and food security are the sectors most at risk

⁷ Morris Ginsberg, ‘The Concept of Justice Philosophy’ (1963) 38(144) Cambridge University Press, 99-116 <<https://www.jstor.org/stable/3748508>> accessed 4 April 2024

⁸ Rudra Chandran, ‘Concept of Climate Justice’ (2020) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3686721> accessed 4 April 2024

⁹ D.B. Resnik, ‘Environmental Justice and Climate Change Policies’ (2022) National Library of Medicine, *National Center for Biotechnology Information* <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9391311/>> accessed 3 May 2024

¹⁰ Keely Boom, Julie-Anne Richards & Stephen Leonard, ‘Climate Justice: The International Momentum towards Climate Litigation’ (2016) <<https://www.boell.de/sites/default/files/report-climate-justice-2016.pdf>> accessed 4 April 2024

from climate change.¹¹ Coastal areas, as well as areas in the southeast and north of the nation that are prone to erosion and desertification, are considered vulnerable.¹² Those who work as farmers or fishermen, the elderly, women, children, and low-income urban residents are among the vulnerable categories.¹³ Severe weather events are predicted to become more frequent and intense as a result of climate change. Rising sea levels might cause low-lying areas to flood and increase coastal inundation. Regretfully, a lot of Nigerian States do not have the infrastructure required to react appropriately to these kinds of incidents. Malaria and other illnesses are expected to spread, affecting more of the impoverished population that is currently most impacted by them.¹⁴

Nigeria, a developing nation of over 200 million people, is thought to be extremely vulnerable to climate change because of its low level of adaptive capacity, poverty, illiteracy, lack of environmental knowledge, and lack of resources. People who live near beaches, floodplains, or places where strong storms frequently occur, for instance, are more susceptible to extreme weather. Poverty may make it harder for people to respond to or prepare for extreme disasters. Therefore, it is anticipated that these people

¹¹ IP Adamaagashi, et al, 'Analyzing the Critical Impact of Climate Change on Agriculture and Food Security in Nigeria' (2023) 9(4) *International Journal of Agriculture and Earth Science*

<https://www.researchgate.net/publication/372787888_Analyzing_the_Critical_Impact_of_Climate_Change_on_Agriculture_and_Food_Security_in_Nigeria> accessed 4 April 2024

¹² JO. Jiboye, CO. Ikporukpo & CO. Olatubora, 'Causes of Environmental Degradation in the Coastal Areas of South West, Nigeria' (2019) 3(2) *European Journal of Sustainable Research*, 8

¹³ IN Medugu, MR Majid & WL Filho, 'Assessing the Vulnerability of Farmers, Fishermen and Herdsman to Climate Change: A Case Study of Nigeria' (2014) 6(1) *International Journal of Global Warming*, 1-14

¹⁴ The National Climate Change Policy and Response Strategy (NCCPRS), paragraph 1.3 <<https://climatechange.gov.ng/wp-content/uploads/2020/09/national-climate-change-policy-1-1.pdf>> accessed 4 April 2024

will be more affected by climate-related risks.¹⁵ Social vulnerability is the exposure of groups of people or individuals to stress as a result of the impacts of climate change. Stress in the social sense encompasses disruption to groups or individuals' livelihoods and forced adaptation to the changing physical environment.¹⁶

Groups or populations that are more likely to experience negative outcomes as a result of different social, economic, environmental, or political circumstances are referred to as vulnerable communities. These groups frequently lack the means, voice, and authority necessary to effectively address or overcome obstacles. Numerous factors can contribute to vulnerability, including but not limited to poverty, prejudice, geographic location, and restricted access to healthcare and education.¹⁷

According to the Intergovernmental Panel on Climate Change (IPCC), vulnerability is the extent to which a system is vulnerable to the negative consequences of climate change, such as climatic extremes and unpredictability, and is unable to adapt to them.¹⁸ A system's vulnerability depends on its sensitivity, ability to adapt, and the kind, amount, and pace

¹⁵ Alejandro Lopez-Feldman & Emilio Gonzalez, 'Extreme Weather Events and Pro-Environmental Behaviour: Evidence from a Climate Change Vulnerable Country' (2022) 31(5) *Applied Economics Letter*, 1-5 <https://www.researchgate.net/publication/365065377_Extreme_weather_events_and_pro-environmental_behavior_evidence_from_a_climate_change_vulnerable_country> accessed 4 April 2024

¹⁶ *Ibid.*

¹⁷ Siri Eriksen and others, 'Adaptation Interventions and their Effect on Vulnerability in Developing Countries: Help, Hindrance or Irrelevance?' (2021) 141 *World Development* <<https://www.sciencedirect.com/science/article/pii/S0305750X20305118>> accessed 4 April 2024

¹⁸ IPCC, 2022 – Climate Change 2022 – Impacts, Adaptation and Vulnerability: Contribution of Working Group II to the Sixth Assessment Report <https://www.ipcc.ch/site/assets/uploads/2018/03/WGII_TAR_full_report-2.pdf> accessed 4 April 2024

of climatic fluctuation to which it is exposed.¹⁹ Also, vulnerability is the extent to which people, systems, or organizations are unable to foresee, manage, withstand, and recover from the effects of environmental pressures.²⁰

Vulnerability, according to Pelling, is the tendency or predisposition to suffer harm. The social, economic, and environmental elements that increase a community's vulnerability to external shocks or pressures are included in this concept.²¹ Vulnerability results from a variety of stresses and inequality and is caused by the interplay of social, political, economic, and environmental variables. This is because they are less able to adjust; vulnerable groups are the ones that suffer the most from these relationships.²² Vulnerability is determined by one's exposure to stressors and shocks, sensitivity to such stresses, and ability to adjust and manage.²³ Communities that are vulnerable do not have the tools, abilities, or rights

¹⁹ ML Parry and others, *Climate Change 2007: Impacts, Adaptation and Vulnerability* (eds., Cambridge University Press, Cambridge, UK, 2007) 976

²⁰ WN Adger and others, 'New Indicators of Vulnerability and Adaptive Capacity' (2004) Tyndall Centre for Climate Change Research, Technical Report, Norwich <<https://www.scirp.org/reference/referencespapers?referenceid=1636064>> accessed 4 April 2024

²¹ M Pelling, *Adaptation to Climate Change: From Resilience to Transformation* (1st edn., Routledge Publishers, New York, 2010) <<https://www.routledge.com/Adaptation-to-Climate-Change-From-Resilience-to-Transformation/Pelling/p/book/9780415477512>> accessed 4 April 2024

²² J Ribot, 'Vulnerability does not Fall from the Sky: Toward Multiscale, Pro-poor Climate Policy' (2010) in R. Mearns & A. Norton (eds.), *Social Dimensions of Climate Change: Equity and Vulnerability in a Warming World*. Washington DC: The World Bank <https://www.researchgate.net/publication/284666318_Vulnerability_does_not_fall_from_the_sky_toward_multiscale_pro-poor_climate_policy> accessed 4 April 2024

²³ AE Adegbite, 'Dimensions and Theories of Children's Socio-Economic Exclusion' (2024) <https://www.researchgate.net/publication/377768107_DIMENSIONS_AND_THEORIES_OF_CHILDREN'S_SOCIO-ECONOMIC_EXCLUSION> accessed 4 April 2024

needed to properly manage and lower their risks.²⁴ All of these definitions emphasize that vulnerability has several facets, such as being exposed to risks, being sensitive to impacts, and having the ability to deal with and adjust to difficult situations or shocks. Communities that are considered vulnerable are those that are more likely to experience harm or negative consequences as a result of structural, environmental, or socio-economic issues.

People in vulnerable communities are more likely to have poor physical and mental health. Due to differences in their social, economic, and physical health condition in relation to the dominant group, they are deemed vulnerable.²⁵ The probability of acquiring a sickness or illness is referred to as vulnerability. It is possible that vulnerable groups will be less equipped to foresee, manage, withstand, or recover from a hazard's effects. The distance from the catastrophe cause does not determine a population's level of vulnerability to it. For example, many socially vulnerable people's well-being may be disrupted by a mild hazard occurrence alone.²⁶

In addition, the United Nations defines vulnerable communities as the underprivileged, members of racial and ethnic minorities, children from

²⁴ KO 'Brien and RM Leichenko, 'Double Exposure: Assessing the Impacts of Climate Change within the Context of Economic Globalization' (2000) 10(3) *Global Environmental Change*, 221-232
https://www.researchgate.net/publication/323368867_Double_Exposure_Assessing_the_Impacts_of_Climate_Change_Within_the_Context_of_Economic_Globalization accessed 4 April 2024

²⁵ AE Adegbite, 'Dimensions and Theories of Children's Socio-Economic Exclusion' (2024)
https://www.researchgate.net/publication/377768107_DIMENSIONS_AND_THEORIES_OF_CHILDREN'S_SOCIO-ECONOMIC_EXCLUSION accessed 4 April 2024

²⁶ D. Rukmana, 'Vulnerable Populations' (2014) in A.C. Michalos (eds.), *Encyclopedia of Quality Life and Well-Being Research*, Springer, Dordrecht
https://link.springer.com/referenceworkentry/10.1007/978-94-007-0753-5_3184#citeas accessed 4 April 2024

low-income families without health insurance, the elderly, the homeless, those living with HIV, and those suffering from other long-term illnesses, such as serious mental illness, are among the vulnerable groups. Residents in rural areas, who frequently face obstacles in obtaining healthcare services, can also be included.²⁷ These people are more vulnerable because of their color, ethnicity, age, sex, and other characteristics including income, insurance coverage (or lack thereof), and lack of a regular provider of treatment. Their housing, poverty, and lack of education are among the social variables that interact with their health and healthcare issues.²⁸

In Nigeria, there are several examples of vulnerable communities facing various challenges and there are as follows:

i. Rural Communities:

Nigeria's rural communities face several challenges, including limited access to economic opportunities, healthcare, education, and basic infrastructure. Because of their reliance on agriculture, which is extremely susceptible to changes in the weather, these communities frequently have difficulties in adjusting to climate change.²⁹

ii. Coastal Communities:

The effects of climate change, such as rising sea levels, erosion, and harsh weather, are particularly dangerous for Nigeria's coastal communities.

²⁷ Serving Vulnerable and Underserved Populations <https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/006_Serving_Vulnerable_and_Underserved_Populations.pdf> accessed 4 April 2024

²⁸ United Nations Economic and Social Commission for Western Asia <<https://archive.unescwa.org/vulnerable-groups>> accessed 4 April 2024

²⁹ H De Haen, 'Climate Change and Rural Development' (2007) 5 *Entwicklung & Landlicher Raum*, 4-8

These characteristics make communities in areas like the Niger Delta more vulnerable to floods, loss of livelihoods, and relocation.³⁰

iii. Pastoralist Communities:

The Fulani herders and other nomadic and pastoralist groups in Nigeria have difficulties as a result of shifting rainfall patterns and dwindling grazing areas. This has an impact on their customs and means of subsistence, which causes disputes over resources.³¹

Nonetheless, the above-mentioned communities' vulnerabilities are made worse by climate change in a number of ways:

- a. Extreme Weather Events: Droughts, floods, and storms that occur more frequently and intensely have a negative impact on livelihoods, infrastructure, and agriculture.³²
- b. Rising Sea Levels: Homes, infrastructure, and livelihoods in coastal communities are under risk from coastal erosion and floods.³³
- c. Displacement and Migration: Communities are forced to relocate as a result of climate change, which can spark conflicts and increase competition for resources.³⁴

In order to guarantee that vulnerable communities have equitable access to resources, assistance, and participation in decision-making processes connected to climate adaptation and mitigation, climate justice seeks to address the unequal distribution of the consequences of climate change.

3.0 Legal Framework of Climate Change in Nigeria

³⁰ KO Osakede, SO Ijimakinwa & TO Adesanya, 'Climate Change and its Impacts on the Development of Coastal Communities in Nigeria' (2016) 2(9) *International Journal of Accounting Research*

³¹ IF Ayanda, 'Assessment of Effect of Climate Change on the Livelihood of Pastoralists in Kwara State, Nigeria' (2013) 5(10) *Journal of Development and Agricultural Economics*, 403-410

³² *Ibid.*

³³ *Ibid.*

³⁴ *Ibid.*

Nigeria has developed a legal framework for climate justice that consists of international agreements, national legislations, and policies addressing the effects of climate change. The nation's commitment to tackling climate change in order to safeguard the weaker members of our communities is reflected in these climate justice initiatives:

3.1 International Agreements

a. United Nations Framework Convention on Climate Change (UNFCCC) 1992

Nigeria became a party to the UNFCCC in 1994.³⁵ The ultimate objective of the UNFCCC is to stabilize greenhouse gas concentrations in the atmosphere at a level that will prevent dangerous human interference with the climate system, in a time frame which allows ecosystems to adapt naturally and enables sustainable development.³⁶ In order to maintain sustainable food production and economic growth, this threshold must be reached within a period that permits ecosystems to naturally adjust to climate change.³⁷

The Convention establishes fundamental principles, including considerations for the welfare of both current and future generations, shared but distinct responsibilities, the precautionary principle, and sustainable development. The regulatory mechanism employed by this Convention is to tackle climate change through state parties' commitments in reducing their level of greenhouse gas emissions.³⁸ Along with these commitments,

³⁵ Second Biennial Update Report (BUR2) to the United Nations Framework Convention on Climate Change
<<https://unfccc.int/sites/default/files/resource/NIGERIA%20BUR%202%20-%20Second%20Biennial%20Update%20Report%20%28BUR2%29.pdf>> accessed 4 April 2024

³⁶ United Nations Framework Convention on Climate Change (UNFCCC) Article 2

³⁷ DS Olawuyi, *The Principles of Nigerian Environmental Law* (Revised Edn., Afe Babalola University Press, 2015) 111

³⁸ UNFCCC Article 3

the Convention also lays out what each party must do: develop and publish national inventories of sources of anthropogenic emissions and removals of all greenhouse gases; formulate and carry out national and regional programs to mitigate climate change; devise and implement measures to facilitate adequate adaptation to climate change; promote and cooperate in the development and transfer of technologies that control, reduce, or prevent anthropogenic emissions of greenhouse gases; promote sustainable management; cooperate in the conservation and enhancement of sinks and reservoirs of all greenhouse gases; cooperate in adapting to the impacts of climate change; and promote and cooperate in scientific promotion and collaboration in the areas of climate change education, training, and public awareness as well as information sharing about implementation with the Conference of the Parties in compliance with Article 12.³⁹

The parties agree to limit their anthropogenic greenhouse gas emissions and to safeguard and improve greenhouse gas sinks and reservoirs in order to enact national policies and implement appropriate climate change mitigation measures.⁴⁰ These parties may carry out the aforementioned policies and actions alone or in concert with other parties.⁴¹ Additionally, in order for developing vulnerable communities to satisfy their commitments under Article 12, the parties should provide financial resources to cover the costs of adaptation and compliance. They must also help developing nations satisfy their duties under the Convention by facilitating access to technology and transferring it to them.⁴²

There are two institutional organizations under the UNFCCC: the Conference of the Parties (COP) and the Secretariat.⁴³ Generally speaking, the COP is tasked with routinely assessing how the Convention and any associated laws are being implemented. Additionally, the Conference of

³⁹ *Ibid.* Article 4

⁴⁰ UNFCCC

⁴¹ Annex I & II to the UNFCCC

⁴² *Ibid.* Article 5 & 6

⁴³ *Ibid.* Article 7 - 8

Parties (COP) is mandated to: evaluate the Parties' implementation of the Convention⁴⁴; make recommendations on any matters pertaining to the implementation of the Convention; and establish necessary subsidiary bodies.⁴⁵ The COP is also expected to periodically review the Parties' obligations and the institutional arrangements made under the Convention.⁴⁶ Organizing sessions of the COP and its subsidiary bodies, gathering and forwarding reports to the parties, assisting in the gathering and sharing of information needed by state parties, preparing reports on its activities and submitting them to the COP, and guaranteeing the necessary coordination with the secretariats of other pertinent international bodies are just a few of the duties performed by the Secretariat.⁴⁷ There is a dispute resolution process in place that permits parties to resolve conflicts amicably by discussion or any other peaceful method of their choosing.⁴⁸ If that does not work, parties can freely choose to have their dispute submitted to arbitration or the International Court of Justice.⁴⁹ Should the parties fail to reach a settlement using the above-mentioned methods, any party may request that the issue be brought to conciliation.⁵⁰

b. Paris Climate Agreement

The UNFCCC serves as the foundation for other significant agreements including the Paris Climate Agreement (Paris Agreement) adopted in 2015, which sets more goals for climate action. The primary objective of the Paris Agreement is to strengthen the global response to climate change by implementing the UNFCCC.⁵¹ The agreement aims to achieve the following: limit global warming; enhance the ability of countries to adapt

⁴⁴ *Ibid.* Article 7(2)

⁴⁵ *Ibid.* Article 7(2)(i)

⁴⁶ *Ibid.*

⁴⁷ *Ibid.* Article 8

⁴⁸ *Ibid.* Article 14(1)

⁴⁹ *Ibid.* Article 14(2)(a-b)

⁵⁰ *Ibid.* Article 14(5)

⁵¹ Paris Agreement 2015 Article 2

to the impacts of climate change and build resilience to climate-related hazards; mobilize financial resources, technology transfer; and foster transparent and accountable international cooperation to promote climate resilience, sustainable development and low-carbon pathway.⁵² In addition, the Paris Agreement aims to strengthen the global response to the threat of climate change by keeping a global temperature rise this century well below 2 degrees Celsius above pre-industrial levels and to pursue efforts to limit the temperature increase even further to 1.5 degrees Celsius⁵³

Climate change is having a serious impact on Nigeria.⁵⁴ The consequences include increased susceptibility to drought, famine, heat wave, flooding due to variations in rainfall patterns, particularly in the humid south and decreased rainfall in the savannah region; soil erosion; rising sea levels that submerge coastal areas; and declining surface and subsurface water, among other things. As a signatory, Nigeria has pledged to enhance its climate resilience, reduce greenhouse emissions by 20% by 2030 and promote low-carbon development pathways.⁵⁵

c. Kyoto Protocol to the United Nations Framework Convention on Climate Change

Adopted in Kyoto, Japan, the Kyoto Protocol is the first worldwide agreement to set legally enforceable objectives for reducing greenhouse gas

⁵² *Ibid.*

⁵³ A Lopez-Feldman & E. Gonzalez, 'Extreme weather events and pro-environmental behavior: Evidence from a climate change vulnerable country' (2022) *Applied Economics Letters*, 1–5 <https://www.researchgate.net/publication/365065377_Extreme_weather_events_and_pro-environmental_behavior_evidence_from_a_climate_change_vulnerable_country> accessed 8 May 2024

⁵⁴ JE Ogbuabor & EI Egwuachukwu, 'The Impact of Climate Change on the Nigerian Economy' (2017) 7(2) *International Journal of Energy Economics and Policy*, 217-223

⁵⁵ BC Anwadike, 'Paris Agreement Implementation in Nigeria: Compliance Level, Constraints and Possible Ways Forward' (2021) 40(23) *Current Journal of Applied Science and Technology*, 42-48 <<https://journalcjast.com/index.php/CJAST/article/view/3665>> accessed 8 May 2024

emissions.⁵⁶ Adopted in December 1997, it became operative in February 2005.⁵⁷ Through the establishment of legally enforceable emission reduction targets and duties, the Kyoto Protocol binds developed nations to stabilize greenhouse gas emissions.⁵⁸ In addition to setting greenhouse gas emission limits that industrialized nations must meet by 2012, this Protocol is regarded as one of the most significant agreements of the late 20th century because it offers three adaptable, project-based mechanisms that allow industrialized nations to meet their emission reduction goals.⁵⁹ The flexible market mechanisms of the Kyoto Protocol offer industrialized countries additional opportunities to earn emission reduction credits anywhere in the world at the lowest cost possible by investing in projects that lead to emission reduction and sustainable development. This is in addition to encouraging countries to design domestic policy measures aimed at climate change mitigation and adaptation.⁶⁰ These flexible market mechanisms include emissions trading, joint implementation, and the clean development mechanism that encourage greenhouse gas reduction where it is most cost-effective in developing countries.⁶¹ Nigeria's climate policy and strategy to addressing global warming and environmental sustainability have been greatly influenced by the Kyoto Protocol. While Nigeria has

⁵⁶ Op cit (n37)

⁵⁷ United Nations Climate Change – What is Kyoto Protocol? <https://unfccc.int/kyoto_protocol#:~:text=UNFCCC%20Nav&text=The%20Kyoto%20Protocol%20was%20adopted,Parties%20to%20the%20Kyoto%20Protocol> accessed 4 July 2024

⁵⁸ Op cit (n37)

⁵⁹ Kyoto Protocol to the United Nations Framework Convention on Climate Change, UN Doc FCCC/1997/7/Add.1 <https://www.unfccc.int/essential_background/kyoto_protocol/background/items/351.php> accessed 10 May 2024

⁶⁰ United Nations Framework Convention on Climate Change, 'Investment and Financial Flows to address Climate Change: An Update' (2007) <https://unfccc.int/resource/docs/publications/financial_flows.pdf> accessed 10 May 2024

⁶¹ Kyoto Protocol to the United Nations Framework Convention on Climate Change Article 17

embraced the potential the Protocol offers for sustainable development and climate change mitigation, it nevertheless confronts hurdles in fully realizing the advantages of the Protocol. Nigeria's commitment to taking global climate action and its efforts to create a resilient, low-carbon future are further strengthened by the country's transition to the Paris Agreement.⁶²

3.2 National Laws

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

The 1999 Constitution of the Federal Republic of Nigeria is the grundnorm,⁶³ that is, the sovereign, of all other laws in Nigeria. Any provision of law that is inconsistent or contrary to the provisions of the Constitution is deemed void.⁶⁴ The Constitution makes environmental protection a distinct governmental purpose, in fact, Chapter II of the Constitution on the Fundamental Objectives and Directive Principle of the State Policy establishes provisions for it.⁶⁵ This is provided under Section 20 of the Constitution, which provides that "the State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria."⁶⁶ The primary goal of the provision of section 20 is to guarantee the Nigerian citizens a healthy environment.⁶⁷

b. The Climate Change Act, 2021

The Climate Change Act can be referred to as the landmark Act that is aimed at addressing the pressing challenges of climate change in Nigeria.

⁶² USAID – Nigeria Climate Change Profile < <https://www.usaid.gov/climate/country-profiles/nigeria> > accessed 4 July 2024

⁶³ Constitution of the Federal Republic of Nigeria, 1999 (as amended) s1(1)

⁶⁴ *Ibid.* s1(3)

⁶⁵ AB Abdulkabir, 'The Right to a Healthful Environment in Nigeria: A Review of Alternative Pathways to Environmental Justice in Nigeria' (2014) 3(1) *Afe Babalola Journal of Sustainable Development Law and Policy*, 123

⁶⁶ Constitution of the Federal Republic of Nigeria, 1999 (as amended) s 20

⁶⁷ *Op cit.* n46

This Act provides a comprehensive framework for achieving low-carbon, climate-resilient development in alignment with national and international climate commitments⁶⁸ by setting a goal of net-zero greenhouse gas emissions by 2050–2070 as part of the objectives of the Act.⁶⁹ Nigeria is taking climate change seriously, despite the fact that a number of actions need to be made to bring the Act into effect. Being the first standalone comprehensive climate change law in West Africa and one of the few worldwide and regionally, the Act has the potential to be a tactical weapon for advancing climate change advocacy and a legal framework for prospective climate lawsuits in Nigeria.⁷⁰

c. National Environmental Standards and Regulations Enforcement Agency (NESREA) Act 2007

The NESREA Act repealed the Federal Environmental Protection Act. The NESREA Act is the principal legislation on the protection of the environment in Nigeria and established the NESREA Agency. In general, the Agency is in charge of the development and preservation of Nigeria's environment as well as the implementation of environmental laws, rules, regulations, policies, standards and recommendations.⁷¹ The enforcement of compliance with the terms of international agreements, protocols, conventions, and treaties on the environment, including conventions on climate change, ozone depletion, and enforcement of environmental regulations and standards with notable exceptions, are the specific functions of the Agency with regard to the regulation and protection of the ozone layer.⁷²

⁶⁸ AO Kehinde & O Abifarin, 'Legal Framework for Combating Climate Change in Nigeria' (2022) 9(3) *Kutafin Law Review* 401 <https://www.researchgate.net/publication/370401027_Legal_Framework_for_Combatin g_Climate_Change_in_Nigeria> accessed 11 May 2024

⁶⁹ Climate Change Act s 1(f)

⁷⁰ Op cit. n49

⁷¹ National Environmental Standards and Regulations Enforcement Agency (NESREA) Act 2007, Preamble, ss 1(1) & 2

⁷² *Ibid.* ss 8(k)(i-iii)

3.3 Policies and Strategies

a. The National Policy on the Environment, 2016

The Federal government's action plan to "ensure environmental protection and the conservation of natural resources for sustainable development" is contained in this policy.⁷³ One important tactic in the fight against climate change is the policy's promotion of reforestation and reduction of deforestation.⁷⁴

b. National Climate Change Policy and Response Strategy (NCCPRS), 2012

The National Climate Change Policy and Response Strategy (NCCPRS) is Nigeria's comprehensive framework aimed at addressing the challenges of climate change through mitigation and adaptation measures. This policy outlines Nigeria's commitment to sustainable development and its strategies to combat the adverse effects of climate change on the environment, economy, and society, particularly the areas of Nigeria's vulnerability to climate change.⁷⁵

c. National Adaptation Strategy and Plan of Action on Climate Change for Nigeria

To address the effects of climate change on Nigeria's socioeconomic and environmental sectors, a strategy framework known as the National Adaptation Strategy and Plan of Action on Climate Change for Nigeria (NASPA-CCN) was created.⁷⁶ By identifying and evaluating the vulnerabilities of various sectors and areas to climate change, ecosystems, and infrastructure to the negative consequences of climate change, it seeks

⁷³ National Policy on the Environment 2016, Article 4

⁷⁴ OF Oluduro, 'Combating Climate Change in Nigeria: An Appraisal of Constitutional and Legal Frameworks' (2021) 38(3) *Wisconsin International Law Journal*, 286

⁷⁵ *Op cit.* (n9)

⁷⁶ National Adaptation Strategy and Plan of Action on Climate Change for Nigeria (2011) < <https://csdevnet.org/wp-content/uploads/NATIONAL-ADAPTATION-STRATEGY-AND-PLAN-OF-ACTION.pdf> > accessed 11 May 2024

to increase community resilience. In order to ensure food security and lessen the agricultural sector's vulnerability, this strategy places a high priority on the adoption of climate-smart agriculture practices. Additionally, it improves water resource management and conservation in order to address the effects of climate change on water quality and availability, among others.⁷⁷

4.0 Challenges and Gaps

Numerous problems and weaknesses exist in the present legal framework regarding climate justice. These difficulties make it difficult to execute effectively. In order to tackle the obstacles and deficiencies in the current legislative structures, cooperation and deliberate efforts by the government, international organizations, cooperating entities, and civil society are necessary. In order to bolster the defense against any potential negative consequences, it entails constructing and fortifying already-existing mechanisms. Encourage a maintenance culture among the populace, akin to increasing funds.⁷⁸ The challenges are summarized as enforcement challenges (lack of compliance, inadequate monitoring and reporting, weak enforcement mechanisms); capacity building challenges (inadequate human resource, low community capacity, limited technical expertise).⁷⁹

5.0 Case Studies

The problems, challenges are with the enforcement of the existing laws and gaps in the regulations. Though there are existing legal frameworks for every aspect of impact of climate change and enhancing climate justice, but the implementation, enforcement, adherence, punishment of defaulters is of

⁷⁷ *Ibid.* paragraph 6

⁷⁸ D Eisenberg, 'Commentary: Transforming Building Regulatory Systems to Address Climate Change' (2016) < https://www.researchgate.net/publication/292338655_Transforming_building_regulatory_systems_to_address_climate_change > accessed 3 July 2024

⁷⁹ *Ibid.*

low percentage. Let's take a look at some of the real-world examples in light of Nigeria.

a. Droughts in the Northern Nigeria

These are preventable if necessary and conscious efforts are made to implement the existing plans.⁸⁰ The prolong drought has affected food production leading to food scarcity. There are existing legal frameworks that support year round agriculture however, to address the drought; specific agricultural practice that will mitigate the repeated drought should be adopted. Examples are planting trees in the desert coast line.⁸¹

b. Flood in Lagos

Flooding is common in Lagos because of the rise in the sea levels and heavy rainfall, unplanned building formation and block drainages. Though government has in place laws and regulation that address flood disaster related situation, however, the agents of implementation are not carrying out their works adequately.⁸²

c. Coastal Erosion in Lagos

Rising in the sea levels is gradually displacing communities along Lagos coastline. Although there are provisions to address and combat coastal erosion and land rights, but supports for affected communities are limited. Many communities' struggles to fight these effects with the limited

⁸⁰ AF Olatunde & J.K. Aremu, 'Mild and Moderate Droughts in Savanna Ecological Zone of Nigeria' (2016) 3(4) *Advances in Social Sciences Research Journal* <<https://journals.scholarpublishing.org/index.php/ASSRJ/article/view/1763>> accessed 3 July 2024

⁸¹ *Ibid.*

⁸² IO Adelekan, 'Flood Risk Management in the Coastal City of Lagos, Nigeria' (2015) 9(3) *Journal of Flood Risk Management* <https://www.researchgate.net/publication/276211938_Flood_risk_management_in_the_coastal_city_of_Lagos_Nigeria> accessed 3 July 2024

resources and technicality available to them, thereby making it failed efforts.⁸³

d. Niger Delta Oil Pollution

The oil spillages in the Niger Delta Nigeria has always and will always have an adverse effect on both the environment and health of the people in the areas especially the vulnerable among the population. Although there exist in Nigeria environmental laws to address oil pollution but the implementation has been inconsistent and inadequate. The communities affected have been obtaining justice and compensation, even though the reoccurrence is certain in most part of the Niger Delta.⁸⁴ A typical example is the well-known “Port Harcourt incident” which is an illustration of Nigeria’s failure to uphold its domestic and international duties. In the center of Nigeria’s oil-producing area, Port Harcourt City, there have been illegal refining operations that have resulted in extremely poor air quality due to the refineries’ emission of black smoke. Residents of the city have been breathing in black soot as a result of this, and the media has been outraged about it. To top it all off, the World Bank said in another research that it believed all Nigerians are exposed to levels of air pollution that are four times higher than what is considered healthy for human health.⁸⁵ The activities of flaring gas into the atmosphere is held to be unconstitutional as it violates the guaranteed fundamental human rights of life⁸⁶ and dignity of

⁸³ MN Chukwu, ‘Impact of Coastal Erosion on Alpha Beach Community in Lagos, Nigeria’ (2015) 4(6) *American Journal of Environmental Protection*

⁸⁴ *Joel Anaro v Shell Petroleum Development Company* [2002] FWLR 1654 17

⁸⁵ IC Okara & CO Ahiakwo, ‘Evaluation of Rivers State Promotional Strategies for Virtual Plant Using 100% Renewable Energy’ (2021) International Journal of Energetic Materials, Vol.7 , No 1

⁸⁶ <https://materials.journalspub.info/index.php?journal=IJEM&page=article&op=view&p ath%5B%5D=800> accessed 5 May 2024, *See also* Anna Cunningham, ‘Nigeria has some of the world’s most polluted cities – and that isn’t about to change’ (2018) <https://qz.com/africa/1433597/nigeria-has-some-of-the-worlds-most-polluted-cities-and-that-isnt-about-to-change> 7 May 2023

⁸⁶ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 33(1)

persons⁸⁷ which are provided in the Constitution of the Federal Republic of Nigeria 1999 (as amended) and the African Charter on Human and Peoples Rights.⁸⁸ This judgment was held in the celebrated case of *Jonah Gbemre v Shell Petroleum Development Company of Nigeria Ltd & Ors*⁸⁹ as the effects of gas flaring activities is a violation of Section 2(2) of the Environment Impact Assessment Act.⁹⁰

In the case of *Milieudefensie et al. v Royal Dutch Shell Plc (Re Oil Pollution in Nigeria)*,⁹¹ the Dutch appellate court held that Shell is liable for environmental harm caused by oil spills in the Niger Delta, and must compensate Nigerian farmers who have been seriously affected. The court also ordered the Anglo-Dutch conglomerate to build the necessary measures to protect oilfield infrastructure in the future and Shell must reduce carbon dioxide emissions by 45 percent by 2030 compared to 2019 levels.⁹² In this case, the plaintiffs (four Nigerian farmers) sued Shell in 2008 in the Netherlands, where the parent corporation, Royal Dutch Shell, is located. The plaintiffs filed three cases, each dealing with the effects of oil spills in the three communities of Oruma, Goi, and Ikot Ada Udo. Shell Nigeria was found responsible for the harm caused by the oil leaks by the Dutch Court of Appeal in January 2021. Royal Dutch Shell was found responsible for failing to avoid future oil leaks and had a duty of care to the affected villages.⁹³

⁸⁷ *Ibid.* s 34(1)

⁸⁸ African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap 9 Vol1, Laws of the Federation, 2004 Articles 4, 16 & 24

⁸⁹ [2005] AHRLR 151 NgHC2005

⁹⁰ Environment Impact Assessment Act, Cap E12 Vol.6 Laws of the Federation of Nigeria, 2004 s 2(2)

⁹¹ [2008] ECLI:NL:RBDHA:2021:5337

⁹² *Ibid.*

⁹³ *Ibid.*

Also, in the case of *Farrah v Shell Petroleum Development Company*,⁹⁴ the plaintiff sued in representative capacity, requesting that damages be paid by Shell to them because of an oil blow-out from the “Bomu well” owned and operated by the SPDC. The blow-out lasted for weeks and substances like crude hydro carbon, sulphur or toxic materials were emitted. These substances formed thick layers over the surface of the adjoining lands and destroyed farm land crops, trees with an economic purpose, and rural vegetation. The court gave judgment in favour of the plaintiff by awarding damages that comprised loss of source of income, social effects/general inconvenience and rehabilitation of the land.⁹⁵

6.0 The Role of Civil Society in Mitigating Climate Change in Nigeria

The future of climate action in Nigeria hinges on a collaborative and multi-faceted approach involving government, private sector, international partners, and importantly, civil society. As the impacts of climate change become increasingly severe, the role of civil society in advocating for and achieving climate justice is more critical than ever.⁹⁶ The civil society has a vital role to play in the sustainable mitigation against climate change and climate justice in Nigeria. There are certain intentional steps and actions that would be taken to mitigate the adverse effects of climate change and protect the vulnerable among us.⁹⁷

Civil society plays a pivotal role in shaping climate policies by advocating for stronger, more comprehensive climate legislation. They can lobby for the integration of climate change adaptation and mitigation into national

⁹⁴ [1995] 3 NWLR (Pt 382) at 148

⁹⁵ *Ibid.* p.192 paras E-F

⁹⁶ OJ Olujobi & IS Odogbo, ‘Strategic Evaluation of the 2021 Climate Change Act: Surmounting Challenges, Paving the way for Success, and Envisioning Future Trajectories’ (2024) 10 *Social Sciences & Humanities Open*

⁹⁷ Progress in reducing emissions 2023 Report to Parliament <<https://www.theccc.org.uk/wp-content/uploads/2023/06/Progress-in-reducing-UK-emissions-2023-Report-to-Parliament-1.pdf>> accessed 3 July 2024

development plans and policies. By participating in policy dialogues, civil society ensure that the concerns and needs of vulnerable communities are represented and addressed. This can lead to the creation of more inclusive and effective climate policies that prioritize the protection of the most affected groups.⁹⁸ In Zimbabwe, for example, the Climate Change Working Group has successfully advocated for a new national climate change strategy.⁹⁹ Additionally, as a result of advocacy activities by the Cook Islands Climate Action Network, a climate change unit has been established within the office of the Prime Minister to ensure that the issue falls within the portfolio of the highest government officials.¹⁰⁰ William Chadza from the Civil Society Network on Climate Change in Malawi says: “It is interesting for us to see how colleagues in countries as distant as Vietnam work with vulnerable communities as they adapt to climate change and strive to ensure their government can address these people’s concerns.¹⁰¹

Civil society can act as a watchdog, monitoring the implementation of climate policies and holding government and corporations accountable for their environmental impact. Through research, data collection, and reporting, civil society can provide evidence of non-compliance and advocate for corrective actions. Transparency and accountability

⁹⁸ S Baker, B Ayala-Orozco & E Garcia-Frapoli, ‘The Role of Civil Society Organizations in Climate Change Governance: Lessons from Quintana Roo, Mexico’ (2021) 9(s10) *Journal of British Academy* <<https://www.thebritishacademy.ac.uk/documents/3588/JBA-9s10-06-Baker-AyalaOrozco-GarciaFrapolli.pdf>> accessed 7 July 2024

⁹⁹ David Dodman, ‘Civil Society Plays Key Role in Policymaking in a Changing Climate’ (2012) *International Institute for Environment and Development* <<https://www.iied.org/civil-society-plays-key-role-policymaking-changing-climate>> accessed 4 July 2024

¹⁰⁰ *Ibid.*

¹⁰¹ 2020 WCEL Climate Justice Moot Court Explores Legal Obligations to Protect Forests to Mitigate Climate Change <<https://www.iucn.org/news/world-commission-environmental-law/202012/2020-wcel-climate-justice-moot-court-explores-legal-obligations-protect-forests-mitigate-climate-change>> accessed 3 July 2024

mechanisms are crucial for ensuring that climate commitments are met and that resources allocated for climate action are used effectively.¹⁰²

Access to justice is a fundamental aspect of climate justice. Civil society can provide legal support to communities affected by environmental degradation and climate impacts, helping them seek redress and compensation. Strategic climate litigation can also be used to push for stronger environmental regulations and enforcement. Successful legal actions can set important precedents and drive systemic change in environmental governance.¹⁰³ Building alliances with international NGOs, donor agencies, and global climate networks can enhance the capacity of Nigerian civil society. Such partnerships can facilitate knowledge exchange, access to funding, and technical expertise. International collaboration also strengthens advocacy efforts by linking local struggles with global climate justice movements, increasing pressure on both national and international actors to take meaningful action.¹⁰⁴

The future prospects for climate action in Nigeria are intrinsically linked to the active participation and leadership of civil society. Through advocacy, monitoring, legal support, partnerships, and innovation, civil society can drive significant progress towards achieving climate justice. Ensuring that the voices of vulnerable communities are heard and their needs are prioritized is essential for building a resilient and equitable future in the face of climate change.

7.0 Conclusion and Recommendations

¹⁰² *Ibid.*

¹⁰³ *Ibid.*

¹⁰⁴ T Bohmelt, 'Civil Society Lobbying and Countries' Climate Change Policies: A Matching' (2013) <https://www.researchgate.net/publication/271625245_Civil_society_lobbying_and_countries'_climate_change_policies_A_matching_approach> accessed 7 July 2024

In conclusion, the attention given to climate change and climate justice cannot be over emphasized. Human solely depend on the environment for survival. The food produced, water sources, clean air and disease free atmosphere will ensure a healthy and clean living standard for every individual, particularly the vulnerable community. Combatting climate change is of paramount important to our existence. Hence, the pressing concern of climate change demands comprehensive legal and policy measures to ensure justice and equitable outcomes for all communities, particularly those most vulnerable. To effectively address climate change and climate justice in Nigeria, it is crucial to implement comprehensive legal frameworks that prioritize the protection and empowerment of vulnerable communities and promoting equitable access to resources and decision-making processes. By strengthening environmental justice policies that specifically target environmental justice ensuring that no community, particularly marginalized and vulnerable ones, bears a disproportionate burden of environmental hazards and establish legal mechanisms that allow communities to seek redress for environmental injustices, including environmental racism, through accessible and effective judicial and administrative processes, promoting community participation and empowerment by creating local and regional community advisory boards composed of representatives to provide input on environmental and climate-related decisions, redistributing decision-making authority, and ensuring equitable resource distribution which include funding and training to communities most affected by climate change and create job programs focused on training and employing residents from vulnerable communities, we can all work towards a sustainable and just future. In addition, international cooperation and strong legal protections are essential to safeguard humanity's survival and well-being, particularly for those most at risk from the impacts of climate change. The Federal government should invest in capacity building programs for legal professionals, policymakers, and community leaders to enhance their ability to address climate change and environmental justice, and support research and development in climate science, technology, and

policy to inform evidence-based decision making. These detailed recommendations aims to address the gaps and challenges identified in Nigeria's current legal framework, emphasizing the importance of robust enforcement, stakeholder accountability, and inclusive decision-making.

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