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THE RIGHT TO DEVELOPMENT AND CLIMATE JUSTICE: THE NIGERIAN APPROACH

by

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Submitted in partial fulfillment of the requirements
for the degree of Master of Laws

at

Dalhousie University

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DEDICATION

To my children, Chigozirim and Ikemdinachi Ikeanibe who are my source of inspiration and motivation throughout this research.

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ABSTRACT

The individual concepts of the right to development and climate justice have been the subject of much literature. However, the intersection of both concepts remains an emerging discourse. This thesis considers how the implementation of each of the two independent concepts affects the full actualization of the other. It situates itself within the Nigerian jurisdiction to analyse how the implementation of the right to development hinders the attainment of climate justice and vice versa. It argues that the weak response to climate change has impacted the right of the people to reach optimum development. It further argues that the basic objectives of the right to development as advanced by the United Nations are not heeded, and the consequence thereof is climate injustice. The thesis argues that where proper policies aligning both the right to development and climate justice are formulated and implemented, then their individual objectives can be better realized.

LIST OF ABBREVIATIONS USED

AG – Attorney-General
ACHPR- African Charter of Human and Peoples Rights
CFRN- Constitution Federal Republic of Nigeria
COP- Conference of the Parties
FEC- Federal Executive Council
GDP- Gross Domestic Product
ICCPR- International Covenant on Civil and Political Rights
ICESCR- International Covenant on Economic, Social and Cultural Rights
ILA- International Law Association
IPCC- Intergovernmental Panel on Climate Change
L&D- Loss and Damage
LFN – Laws of the Federation of Nigeria
LPELR – Law Pavilion Electronic Law Reports
NAP National Adaptation ‘Nigeria’s National Adaptation Plan Framework
NBS- National Bureau of Statistics
NCCP- National Climate Change Policy
NDC- Nationally Determined Contributions
NEEDS- National Environmental Economic and Development Study
NWLR- Nigerian Weekly Law Reports
OPEC- Organisation of Petroleum Exporting Countries
RTD- Right to Development
UN-United Nations
UDHR- Universal Declaration on Human Right
UNFCCC- United Nations Framework Convention on Climate Change
IPCC- Intergovernmental Panel on Climate Change
WHO- World Health Organisation
SERAP-Social and Economic Rights and Accountability Projects
SERAC-Social and Economic Rights Action Centre
SR-Special Rapporteur

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Chapter One: Introduction

1.1 Background

Climate change has been identified as a serious global challenge in recent times. The United Nations aptly captures it as the “defining human development challenge for the 21st century”.¹ It is defining in the sense that it has come to alter the environment as we know it, slowly drawing us into the web of an additional struggle for its containment in addition to the constant struggle for development. The International Panel on Climate Change (IPCC) has constantly and authoritatively warned of the critical situation we have led ourselves into, and the dire need for a fast response. The Intergovernmental Climate Change Taskforce succinctly summarizes the effect of climate change, thus,

“The cost of failing to mobilize in the face of this threat is likely to be extremely high. The economic costs alone will be very large as extreme weather events such as droughts and floods become more destructive and frequent. Communities, cities, and island nations are damaged or inundated as the sea level rises and agricultural output is disrupted. The social and human costs are likely to be even greater, encompassing mass loss of life, the spread of diseases, dislocation of population, geopolitical instability, and a pronounced decrease in the quality of life. Impacts on ecosystems and biodiversity are also likely to be devastating. Preventing dangerous climate change therefore must be seen as a precondition for prosperity and a public good...”²

¹ United Nations Development Programme, “Human Rights and Human Development” (2000) online at <http://hdr.undp.org/en/reports/global/hdr2007-2008/>. Accessed 31st January, 2022.

² International Climate Change Task Force, “Meeting the Climate Challenge: Recommendations of the International Climate Change Taskforce,”(2005) at 1 Available online at <http://gdrights.org/wp-content/uploads/2009/03/meeting-the-climate-challenge.pdf> accessed 25th January, 2022.

The situation becomes more disheartening in the light of the report by the IPCC warning of an impending irreversible effect if efforts are not made to keep the global temperature below two degrees. Having in mind that the current global temperature is measured at 1.19 degrees Celsius, and there is still an inclination toward developments driven by fossil fuel among the nations³, there comes the need therefore to bring the human rights perspective into the equation. Currently, the global world is in a race to reach net-zero carbon emissions by the year 2050. However, the pursuit of development makes the attainment of this goal an illusion. Especially for economies dependent on fossil fuels like Nigeria.

The right to development on the other hand imposes an obligation upon the governments to ensure the economic, social, cultural, and political developments of its people⁴. This is regulated in Nigeria by the provisions of the Banjul Charter⁵. By the basic demands of this right, all peoples are entitled to equality and equity in development. The United Nations has laid down guides in the declaration on the right to development to ensure that the right of the people to their development is fully realized. According to the United Nations Declaration on the Right to Development [UNDRTD], this includes: people-centered development; a human rights-based approach to development; participatory rights; equity; non-discriminatory

The taskforce was primarily established to influence the political will of states to a proactive response to climate change. See www.climatechangetaskforce.org

³ Pursuant to the Paris Agreement, Nations have committed to limit global warming to 1.5°C. to keep up to this commitment, there is need to reach a net zero carbon emissions by 2050. see United Nations, “For a Livable Climate: Net Zero Commitments must be Backed by Credible Action” Climate Action online at <https://www.un.org/en/climatechange/net-zero-coalition> Accessed 3rd June 2022

⁴ Adopted by General Assembly resolution A/RES/41/128 of 4 December 1986. Online at <https://www.ohchr.org/en/professionalinterest/pages/righttodevelopment.aspx>. [UNDRTD] Accessed 3rd June 2022

⁵ Organisation of African Unity (OAU), *African Charter on Human and Peoples' Rights ("Banjul Charter")*, 27 June 1981, CAB/LEG/67/3 rev.5, 21, I.L.M. 58 (1982), entered into force 21 October 1986. The Banjul Charter an “international human rights instrument that is intended to promote and protect human rights and basic freedoms in the African continent”. See online at <https://www.achpr.org/legalinstruments/detail?id=49> accessed 3rd June, 2022.

development; and the right to self-determination⁶. The duty to attain and preserve this right has been vested in the governments and other relevant institutions. However, the attainment of this right may be impeded by climate change. On the other hand, the drive for the attainment of this right may also contribute to climate change, especially in economies dependent on fossil fuels.

This thesis takes the parochial approach by settling itself within the Nigerian climate regime and attempting to ascertain its contributions to the global challenge. Particularly, it seeks to answer the question of whether the right to development as implemented in Nigeria also envisages and covers the right of the people to a healthy environment marked by a safe climate and atmospheric conditions. In taking a parochial approach to climate justice, I will: consider Nigeria's development strategies; and her response to issues of climate change; identify the major victims of climate change within the Nigerian environment; identify Nigeria's contribution to the global issue, and pronounce her accountability for same. This thesis will take an uncharted terrain. Previous articles and texts on the concept of climate justice have mainly taken a cosmopolitan approach to the discourse⁷. This is unsurprising considering that the concept of climate justice has evolved from the historical 'responsibility' of industrialized nations for the change in the climate and its consequence⁸. I have however chosen to tackle the challenge from the Nigerian perspective

⁶ This is as provided by Art 2(1), Art 2(2), Art 8, and Art 1(2) of the UNDRTD respectively. See Generally Office of the High Commissioner, United Nations Human Rights, "Frequently Asked Questions on the Right to Development" available on https://www.ohchr.org/Documents/Publications/FSheet37_RtD_EN.pdf accessed 2 March. 2022. at 2. [UN FAQ].

⁷ See: Henry Shue, *Climate Justice, Vulnerability and Protection* (New York, NY: Oxford University Press, 2014), Sumudu Atapattu, "Human Rights Approaches to Climate Change: Challenges and Opportunities" in Ottavio Quirico and Mouloud eds, *Climate Change and Human Rights: An International and Comparative Law Perspective* (New York, NY: Routledge, 2016), However, Alix Dietzel, *Global Justice and Climate Governance: Bridging Theory and Practice*, (Edinburgh University Press Ltd, 2019) at 2, described the common global perspective of climate justice to be a cosmopolitan approach.

⁸ The word responsibility is in quotes because the industrialized nations have refused to take responsibility for the climate change, citing ignorance on the impacts of their actions to the climate as their defense. See David Monsma, "Equal Rights, Governance and the Environment: Integrating Environmental Justice Principles in

because the effects of climate change are a global challenge, affecting mostly the small island states and developing economies including Nigeria. Succinctly put, as a vulnerable nation, there is every need to take the initiative of confronting the challenge from the domestic sphere while at the same time counting on the industrialized nations to ‘right their wrongs’. As aptly captured by Maltais, “when those who exploit a common good or natural resource differ from the victims of the consequences of such exploitation, then there may be a lack of incentive to seek a sustainable solution to such challenge”.⁹

1.2 Research Questions

As stated above, the central research question for this thesis is whether the right to development as implemented in Nigeria also envisages and covers the right of the people to a healthy environment marked by a safe climate and atmospheric conditions.

In a bid to answer this, I will attempt to answer the following sub questions:

1. How can the right to development as introduced by the United Nations resolution in 1986, and as provided by the Banjul charter be truly realized?
2. How does climate justice create inequalities and consequently impede the actualization of this right?
3. Whether there is any relationship between the right to development and climate change? How have they both affected and determined each other?

Corporate Social Responsibility” (2006) 33 Ecology Law Quarterly 443 at 489; Lindsay F. Wiley, “Healthy Planet, Healthy People: Integrating Global Health into the International Response to Climate Change” (2009) 24 J. Env’tl. L & Litig. at 206.

⁹ Aaron Maltais, “A Climate of Disorder: What to do about the obstacles to effective climate politics”, in Jennifer Clare Heyward & Dominic Roser eds, *Climate Justice in a Non-Ideal World* (OX: Oxford University Press,2016) at 3

1.3 Limitations

I do not intend to assess Nigeria's overall performance in her individual development strategies as it relates to her economic, cultural, social, and political development. This thesis is only intended to analyze how her responses to them so far have impacted climate change. It purely seeks to create and enthrone a recognition of the balance between these two rights, vis-a-viz right to development and right to a sustainable climate. This thesis also does not seek to venture into the discourse on the alternative renewable form of energy which presents a remedy for the global goal. It only goes as far as making a recommendation on its adoption as one of the solutions which the national government can offer to the global world. Finally, this thesis also does not proceed into identifying development plans that integrate both the development priorities of Nigeria and its commitment towards the climate challenge.

1.4 Methodology

I will deploy a myriad of methodologies in this research, all designed to bring the central thesis to life. My chosen methodology includes the doctrinal methodology. This has been described as the "core legal research method"¹⁰. It is utilized to describe and clarify the law. As a legal researcher, it is a methodology within which I must inevitably operate in relation to my thesis. My thesis dwells on the right to development and climate justice. It involves an analysis of the connection between two independent concepts, i.e right to development and climate justice. I will employ this methodology to describe the different laws, jurisprudence, and policies regulating these two concepts. This will be aimed at pointing out the duties, efforts, and responsibilities of the Nigerian government in responding to climate change. Bearing in mind

¹⁰ Paul Chynoweth, "Legal Research", in A Knight & L Ruddock, eds, *Advanced Research Methods in the Built Environment* (Oxford, UK: Wiley-Blackwell, 2008) 28 at 29.

that climate matters are transboundary in nature, I will have recourse to international law. Article 38(1) of the Statute of the International Court of Justice provides the sources of international law to include: international conventions; international custom, as evidence of a general practice accepted as law; the general principles of law recognised by civilised nations; and judicial decisions and teachings of the most highly qualified publicists of the various nations.¹¹ On this basis, I would particularly look at some international treaties which play a very persuasive role in the world of political dominance among national governments. This includes the International Covenant on Economic, Social and Cultural Rights [ICESCR],¹² International Covenant on Civil and Political Rights, [ICCPR]¹³ the United Nations Framework Conventions on Climate Change, [UNFCCC],¹⁴ and the Paris Agreement¹⁵ In relation to the ‘teachings of the most highly qualified publicists of various nations, I will resort to the resolutions of the United Nations and the reports of the independent experts appointed by the United Nations. I consider the UNDRTD as an international custom that has been recognized in several regional and national legislations.¹⁶ An example of this is the African Charter of Human and Peoples’ Rights [ACHPR]¹⁷ and the Nigerian Constitution¹⁸ which will also be examined in turn. A conceptual understanding of the state of the relationship between these concepts will also be presented by analyzing the different policies which have ultimately

¹¹ United Nations, Statute of the International Court of Justice, 18 April 1946. United Nations, Statute of the International Court of Justice, 18 April 1946, U.N.T.C cap 1 No. 3

¹² *International Covenant on Economic, Social and Cultural Rights* 16 December 1966, 999 UNTS 3 (entered into force January 3, 1979). [ICESCR]

¹³ *International Covenant on Civil and Political Rights*, 16 December 1966, 999 UNTS 171. (entered into force 23 March 1976) [ICCPR]

¹⁴ *United Nations Framework Convention on Climate Change*, May 9, 1992, S. Treaty Doc No. 102–38 (1992), 1771 U.N.T.S. 107 [UNFCCC]

¹⁵ Paris Agreement (Dec. 13, 2015), in UNFCCC, COP Report No. 21, Addendum, at 21, U.N. Doc. FCCC/CP/2015/10/Add. 1 (Jan. 29, 2016) [Paris Agreement]

¹⁶ Malcom Shaw, “The International Protection of Human Rights” in *International Law*, 7th Edn (United Kingdom: Cambridge University Press, 2014) at 218

¹⁷ Banjul Charter *Supra* note 5

¹⁸ 1999 Constitution of the Federal Republic of Nigeria (as amended) [CFRN]

been formulated in relation to them. In analyzing these legal permutations, this thesis will also examine the current status of the polity in a bid to decipher the rate of successful impact they have made in reality. Being interdisciplinary, this research also invests in the economic, political, science, sociological and historical disciplines in order to properly investigate the central focus.

I also engage in legal theory in this research. It is said that theory breathes upon a crisis. We theorize when our normal existence is threatened by the way we know it, and there comes a need to explain it, revise it or discard it.¹⁹ Our normal existence is our ability to grow upward at a steady pace in an accommodating environment. An environment, in which from research and previous experience, we can almost certainly predict the weather at any given point in time. We know the weather cycles, the season to expect abundant rain, dry weather, harmattan, and heat waves. We know the planting seasons for each crop plant as well as the harvesting season. We know with certainty when to leave our zones for a vacation to our pleasurable cities or countries with the most perfect weather. We are certain of the abundance of sea animals during each particular fishing season. We can also swear to the sea level at each point in time. We know the perfect clothes suited for each weather cycle and get them ready before the cycle even comes around. All these and more were our normal existence before the uncertainties came. Slowly but surely, unprepared changes in the climate conditions crept up on us, slowly leading us into a downward crisis and threatening our world as we know it. The effect of climate change brought along disasters including food scarcity in some regions due to destruction of soil fertility for agriculture, as well as unsuitable atmospheric conditions for planting and harvesting, an increase in poverty as a result of loss of livelihoods dependent on the altered environment, ill health prompted by changes to unsuitable

¹⁹ Terry Eagleton, *The Significance of Legal Theory*, (Oxford UK: Blackwell Publishers 1990)

weather conditions, death of some plant, animal and aquatic species, unpredictable and extreme temperatures, melting of glaciers, rise in sea level, severe flooding, droughts, fires.²⁰

This is a situation that can't be wished away. It has wrought injustice and inequality in development for the vulnerable groups thereby negating the idea of societal fairness as propagated by Rawls.²¹ It presents a crisis that would put us at the risk of an inevitable severe, pervasive, and irreversible impact on people and ecosystems.²² The need to explain this change is therefore paramount. The legal theory seeks to explain the phenomena which law seeks to achieve and to align it with the intentions of the law. It is designed to yield a theory by which legal rules may be understood, and its application in particular cases evaluated and controlled.²³

This thesis thus proposes the theory that developmental projects are undertaken without regard for environmental and climate rights. This leads to an utter disregard for the law which demands that all rights should operate on an equal pedestal. It establishes a symbiotic relationship between the right to development and climate justice. This comes in the wave of the inequitable impact of climate change on some sections of the populace which ultimately deprives them of their right to equal development.

This theory evolves from the report of the Intergovernmental Panel on Climate Change which blamed the causative factor for half of the observed increase in global average surface temperature

²⁰ D.W Akademie, "Fires to Floods: Extreme Weather is Occurring Worldwide", online at accessed <https://www.dw.com/en/fires-to-floods-extreme-weather-is-occurring-worldwide/a-58819658> 18th March, 2022,

²¹ John Rawls, *A Theory of Justice: Revised Edition* (Cambridge, Massachusetts: The Belknap Press of Harvard University Press 1999) 10-11.

²² IPCC "Climate Change synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change" (2014) [Core Writing Team, R.K. Pachauri and L.A. Meyer (eds.)]. IPCC, Geneva, Switzerland, 151 accessed https://www.ipcc.ch/site/assets/uploads/2018/05/SYR_AR5_FINAL_full_wcover.pdf, pg56. 8th April, 2022.

²³ Eagleton, *Supra* note 19

on the anthropogenic increase in greenhouse gas concentrations.²⁴ Among the anthropogenic causes, carbon dioxide has been singled out as the major greenhouse gas responsible for a greater portion of global warming.²⁵ Major contributions of carbon dioxide include the burning of fossil fuels (oil, coal, gas), deforestation, electric power generation, transportation, industrial sources, chemical production, petroleum production, and agricultural practices.²⁶ These listed contributions and more, therefore, point to the drive for development as the major culprit for climate change.

This phenomenon is certainly not the intention of the African Charter on Human and Peoples' Rights (ACHPR)²⁷ when it provided for the right to development. From the provision of section 22 of the Charter, it is clear that the law does not intend for the auspices of the right to development as a duty of the state, to extend to some developmental activities which may deprive the people of equal enjoyment in the "common heritage of mankind".²⁸ The negative effects of climate change induced by these developmental activities have resulted in catastrophic events that affect some other individual rights of the people relating to their economic, social, and cultural developments. This includes the right to life, the right to a sustainable environment suitable for economic developments, the right to health, and the cultural rights which may have been affected by the destruction of their indigenous and cultural heritage.

²⁴ IPCC 2014 *Supra* note 22 at 48.

²⁵ United States Environmental Protection Agency, "Greenhouse Gases: What are the trends in greenhouse gas emissions and concentrations and their impacts on human health and the environment?" online at <https://www.epa.gov/report-environment/greenhouse-gases#:~:text=Major%20greenhouse%20gases%20include%20carbon,warming%20associated%20with%20human%20activities>. Accessed 17th January, 2022.

²⁶ National Energy Technology Laboratory, "Carbon Dioxide 101" online at <https://netl.doe.gov/coal/carbon-storage/faqs/carbon-dioxide-101> Accessed 17th January, 2022.

²⁷ Banjul Charter, *supra* note 5.

²⁸ *Ibid* Art. 22.

In utilizing this methodology therefore, this thesis seeks to take the emancipatory approach by speaking up for all these victims of the climate degradation within the country. The fact that the measures and strategies of developments adopted by some states grant tremendous benefits to some sections of the populace while at the same time depriving others of some basic rights, such as the right to a healthy living demands a system change. It proposes to expose the effects of the pursuit of development which operates beyond the true purpose of the law. It seeks to destabilize the (mis)conceptions of the states as they operate within their duty which they believe to have legal backing. And finally, it seeks a transformation by an attempt to establish an alignment between the duty of a Nation to reach its possible zenith of development, and a law that seeks to protect the environment, both for ourselves, and for the future generation.²⁹

Finally, I would be utilizing the historical methodology. This would be employed to trace the evolving structure of Nigeria's response and commitment to her climate responsibility. According to Fischer, legal history does not exist in isolation, rather, its development is connected to other kinds of development, such as cultural, political, economic, and social.³⁰ In

²⁹ The Special Rapporteur-an independent expert charged with the mandate to study the relationship between Extreme Poverty and Human Right, while illustrating the grave impact of climate change on the human rights of those living in extreme poverty found that "*Climate change threatens the future of human rights and risks undoing the last 50 years of progress in development, global health and poverty reduction.*" see United Nations General Assembly, "Report of the Special Rapporteur for Extreme Poverty", (17th July 2019) Forty-first session, Human Rights Council, A/HRC/41/39. Summary, online at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/218/66/PDF/G1921866.pdf?OpenElement> accessed on 13th January, 2022.

This has been affirmed by the Climate Change Unit of the Nigerian Ministry of Environment where they admitted that *between* 6-10% of IGR will be lost to climate change by 2050 if adequate measures are not taken. See Special Climate Change Unit, Federal Ministry of Environment, "National Environmental, Economic and Development Study (NEEDS) for Climate Change in Nigeria" (2010), online at <https://unfccc.int/files/adaptation/application/pdf/nigerianeeds.pdf> accessed on 14th January, 2022

³⁰ Robin Fischer, "Judging History: Reflections on the Reason for Judgement in *Delgamuukw v. B.C.*" (1992) 95 BC Studies, at 43-54

utilizing this method, I intend to research the past reactions of the government to issues of climate change with the aim of tracing its inability to meet up with its climate responsibility.

I will also research the past record of the Nigerian government with respect to her pursuit for all round development- i.e economic, social, political, and cultural; and its effect on her climate change contributions/accountability. In other words, I will be assessing the role Nigeria has played in the current climate change regime.

Furthermore, I will also consider Nigeria's actual responses to her previous commitments to mitigate her contributions to climate change, i.e her carbon emissions. Due consideration will be given to her identified adaptation measures³¹. This would be done in an attempt to discover the efficacy of her policies and consequently determine whether the current policies being made by the Nigerian government can be relied upon to make the necessary contributions to the climate justice struggle.

1.5 Sources

Due consultation was made to both primary and secondary sources. My primary sources include international, regional, and domestic laws, treaty bodies, policies and instruments as well as case laws. For my secondary sources, recourse was made to academic articles, internet sources, books, and media articles.

³¹ The general objective of Nigeria's adaptive policies is to "reduce vulnerabilities of the people and promote community and ecosystem resilience to the impact of climate change, while ensuring that women, girls and other vulnerable groups are engaged and involved in planning and implementing long-term climate change adaptation interventions. see generally, Nigeria's Federal Ministry of Environment, 'Nigeria's National Adaptation Plan Framework', June 2020, <https://napglobalnetwork.org/wp-content/uploads/2021/06/napgn-en-2020-Nigeria-National-Adaptation-Plan-NAP-Framework.pdf> accessed on 4th January, 2022. Pg vii [NAPF]

1.6 Structure of Thesis

This thesis is divided into six chapters.

Chapter 1 provides the overall introduction to the thesis bringing a general understanding of the topic in discourse. It sets out the background to the thesis, presents the central thesis, describes the chosen approach to the discourse, explains the research methodology and limitations of the thesis, and clarifies the structure of the thesis.

Chapter 2 explores the right to development and its connotations. It elucidates the basic elements of the right to development and presents a clear understanding of the justiciability of this right and the limitations thereof.

Chapter 3 presents an overview of the concept of climate change starting with the third world approach to the discourse. It further deconstructs the levels of climate justice leading us to the Nigerian jurisdiction, and the vulnerable groups therein.

Chapter 4 deals with the general notion of climate justice in the Nigerian jurisdiction. It explores the climate regime and the regulatory framework in Nigeria.

Chapter 5 examines the relationship between the right to development and climate justice. It analysis and establishes how each of these elements impedes the attainment of each other.

Chapter 6 concludes the thesis. It makes some worthy recommendations to the relevant bodies in Nigeria in their domestic struggle against the global challenge.

Chapter Two: Right to Development

2.1. Introduction

The right to development [RTD] is a duty imposed on the governments of each state to ensure the economic, social, cultural, and political developments of the people upon whom the right has been conferred. Although the declaration of this right by the United Nations [UN] by itself confers no obligation on states, nevertheless it has been incorporated into and reflects several other binding documents and treaties. This has therefore conferred justiciability upon this right for the benefit of the people. Despite the promising nature of the right towards improving the potentials of its holders as intended, its implementation is fraught with many obstacles. The situation is complicated by the interconnection and interdependence of this right as a violation or ineffective implementation of any part of this right will ultimately result in the violation of the others.

The right to development has been studied extensively by academic and independent scholars. Of particular mention, however, is the work of Besley and Persson³² which particularly proves the interconnectedness and interdependence of these rights. Their works show how resource dependence transcends to internal conflict leading to political instability. Such a situation further cripples the economy and may lead to inefficient regulatory policies ultimately resulting in social disruptions. The author Udombana, in his work,³³ gave an insight into the implications of the right

³² Timothy Besley & Torsten Persson, "State Capacity, Conflict, and Development" (2010) 28 *Econometrica* 1 at 1. The authors agree that poor states are plagued by civil disorders and outright conflicts due to dissatisfaction on the part of the masses.

³³ Nsongurua J. Udombana, "The Third World and the right to development: agenda for the next millennium" (2000) 22 *Human rights quarterly* 3 at 753

to development for third world countries, while Olaitan and Oyeniya outlined some challenges faced by some countries in the effort to fulfill this obligation.³⁴

In this chapter, I begin with the introduction to provide a background to the chapter. Section 2.2 presents an overview of the right to development. Section 2.3 details the basic elements of the right to development as provided by the UNDRTD. Section 2.4 discusses the justiciability of the right to development while section 2.5 narrows the discourse on the justiciability of the RTD to the Nigerian jurisdiction. Section 2.6 concludes the chapter by examining the possible limitations to the actualization of the RTD.

2.2. An Overview of the Right to Development

The desire for societal advancement through the economic, social, and cultural development of the people came to be recognized through the Universal Declaration on Human Rights (UDHR) which was adopted by the United Nations General Assembly on 10th December 1948. Thereafter, the General Assembly of the United Nation explicitly adopted the People's right to development through its Declaration of 1986 (UNDRTD). Article one of the UNDRTD³⁵ defines it as an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized. It has been described as a right which "aims at the constant improvement of human well-being through national and international development policies which support an enabling environment for development and an order in which all human rights and fundamental freedoms can be fully realized."³⁶

³⁴ Olusegun Olaitan & Oyeniya Ajigboye, "Realizing the Right to Development in Nigeria: An Examination of Legal Barriers and Challenges" (2015) 6 J Sustainable Dev L & Policy 151.

³⁵ UNDRTD, *Supra* note 4.

³⁶ UN FAQ *Supra* note 6, Pg 10.

The right to development places the individual at the very center of its implementation.³⁷ It can be described as the basis for liberty, justice, progress, and creativity of the modern man.³⁸ It seeks to assess the development of nation-states by measuring the advancements of human rights as opposed to the conventional parameters of gross domestic product and per capita income.³⁹ An effective implementation thereof, can be measured by an overall assessment of the conditions in the life of the people within an identified state, particularly, to consider the attainment of an improved welfare for the people in the state.⁴⁰

The right to development is not a treaty, thus, it is neither signed nor ratified by any nation.⁴¹ The UDHR has however influenced many international and regional treaties on human rights, which are binding on member states that ratify them. It has also been adopted in many national constitutions.⁴² There are currently nine core international human rights treaties. The major ones being the International Covenant on Civil and Political Rights (ICCPR, 1966)⁴³ and the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966)⁴⁴. These, together with the UDHR, are known as the International Bill of Human Rights.⁴⁵ Although the UNDRTD in itself is not binding, however the universal consensus in reaffirming the right at the

³⁷ UNDRTD *Supra* note 4, Article 2.

³⁸ *Ibid*

³⁹ Benson Olukayode Omoleye & Oluwayemi O.Ogunkorode, “An Analysis of the Right to Development in the Contemporary International Law” (2019) 9 American Intl J of Contemporary Research 2 at 46.

⁴⁰ Olaitan & Ajigboye *supra* note 34 pg 147

⁴¹ UN FAQ, *Supra* note 6, Pg 5.

⁴² *Ibid*.

⁴³ ICCPR *supra* note 13

⁴⁴ ICESCR *supra* note 12

⁴⁵ Office of the High Commissioner, “Universal Declaration of Human Rights at 70”, online at <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23856&LangID=E> Accessed on 16th January, 2022.

1993 World Conference on Human Rights held in Vienna⁴⁶ can be said to accord it a badge of “global legal Consensus.”⁴⁷

This declaration has been expressly incorporated into Nigerian domestic law by virtue of similar provisions in Article 22 of the African Charter on Human and Peoples’ Rights⁴⁸ (Banjul charter). Pursuant to the African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act⁴⁹, the provisions of the Charter have become fully and legally enforceable in Nigeria as any other municipal or domestic law of the land.⁵⁰

Article 3(1) of the UNDRTD expressly confers the duty of exercising this right on the states⁵¹. The duty also extends to the international community and indeed, all those whose actions and omissions have any effect on human rights and the environment crucial for such development.⁵² However, all development programmes ventured into must be for the central benefit and improvement of the well being of the people.⁵³ This duty imposes an obligation on the states and international community to ensure that the formulation and implementation of its development designs are consistent with the human rights norms. Overall, it demands consistency between the policies made to safeguard human rights, and policies made in support of the states’ pursuit for development.⁵⁴

⁴⁶ Office of the High Commissioner, United Nations Human Rights, “Milestone Events in the Right to Development” available on <https://www.ohchr.org/en/issues/development/pages/backgroundtrtd.aspx#:~:text=The%20World%20Conference%20on%20Human,are%20interdependent%20and%20mutually%20reinforcing>. accessed 2 March. 2022.

⁴⁷ Peter Uvin, “From the Right to Development to the Rights-Based Approach: How ‘Human Rights’ Entered Development” (2007) 17 *Development in practice* 4 at 598

⁴⁸ Banjul Charter *supra* note 5

⁴⁹ Cap 10, Laws of the Federation of Nigeria, 1990.

⁵⁰ *Abacha & ors v Fawehinmi* (2000) LPELR-149SC) pg 53

⁵¹ This is similarly provided for pursuant to Article 22(2), Banjul Charter, *Supra* note 16.

⁵² UNDRTD *Supra* note 4, Article 3(3). Also see UN FAQ, *Supra* note 6, Pg 3.

⁵³ UNDRTD *Supra* note 4, Article 2(1).

⁵⁴ Rajeev Malhotra, “Right to Development: Where are We Today?”, in Arjun Sengupta, Archana Negi & Moushumi Basu eds, *Reflections on the Right to Development* (New Delhi: Sage Publications India, PVT Ltd, 2005) 142.

2.3. The Basic Elements of the Right to Development

The provisions of the UNDRTD provide some basic elements of this right. However, there is a divergent view on the connotation of the RTD flowing from the third world approach to this right. This approach views the RTD as a historical remedy for the impoverishment and economic deprivations of the developing countries resulting from their colonial history.⁵⁵ The RTD was therefore viewed as the right of the developing nations to attain development from international economic cooperation.⁵⁶ It is regarded as the right to make a claim to an equal status of a developed economy from developed countries.⁵⁷ The UNDRTD is believed to invest the right to development on the developing nations, and the duty to develop, on the developed nations.⁵⁸ The developed nations however reject this approach and tenaciously hold to the view of the RTD as the right of individuals and the corresponding duty on the states to realise same.⁵⁹ They argue that the economic aids made to developing nations solely represents a show of inter-state relations and not in any way an acceptance of any historical responsibility to advance their economic interests.⁶⁰

The basic elements of the RTD have been set out by some Articles of the UNDRTD to include: people-centered development; human rights based approach to development; participatory rights; equity; non-discriminatory development; and right to self determination.⁶¹ These elements serve

⁵⁵ James Thuo Gathii, “Africa and The Radical Origins of the Right to Development” (2020) *Third World Approach to International Law Review* 1 at 38.

⁵⁶ *Ibid* at 39.

⁵⁷ Simeon A. Igbinedion, “Finding Value for The Right to Development in International Law” (2019) *19 African Human Rights Law Journal* at 396.

⁵⁸ *Ibid* pg 409

⁵⁹ Laure-Hélène Piron, “The Right to Development: A Review of the Current State of the Debate for the Department for International Development”, (2002) online at <https://cdn.odi.org/media/documents/2317.pdf> accessed July 5, 2022.

⁶⁰ Igbinedion *Supra* note 57 at 397.

⁶¹ This is as provided by Art 2(1), Art 2(2), Art 2(1), Art 2(3), Art 5, and Art 1(2) of the UNDRTD respectively. Also see UN FAQ, *Supra* note 6, Pg 5.

as a guideline for developments undertaken by the governments in the discharge of their duty. They will be discussed in turn.

People-centered development: The Declaration identifies “the human person” as the central subject, participant and beneficiary of development.⁶² The Special Rapporteur on the Right to Development notes that this right involves empowering persons, both individually and collectively, to decide their own development priorities and their preferred methods of reaching those priorities.⁶³ A people centered development is that which must necessarily ensure the provision and protection of the basic human needs, thereby bringing about an improvement in the living conditions of people.⁶⁴ It involves policy commitments which are dependent on participation and equity. Such policies are to be drawn mainly from the peoples’ initiatives on matters directly affecting them.⁶⁵ It entails a deviation from the focus on peoples’ contribution to their economic growth and development to a focus on the contribution of developmental projects to the improvement of the social, economic and physical dimensions of humankind.⁶⁶

In taking a people centered approach to economic development, writers Deepak and Ha-Joon illustrated three principles for consideration as a guideline, viz; firstly, the essence of development is the wellbeing of humankind; secondly, whereas economic growth and economic efficiency are means to an end (development), economic development and social progress is an end in itself;

⁶² UNDRTD, *Supra* note 4, Article 2(1)

⁶³ United Nations General Assembly, “Report of the Special Rapporteur on the right to development”, (2nd July 2019) Forty-second session, Human Rights Council, A/HRC/42/38. Para. 7.

⁶⁴ Deepak Nayyer & Ha-Joon Chang, “The Development Imperative: Toward a People-Centered Approach”, in Eric Herchberg & Christy Thornton, eds, *Toward a People-Centered Approach to Development* (New York: Social Science Research council, 2005) 12.

⁶⁵ David C. Korten, “Strategic organization for people-centered development” (1984) 44 *Public Administration Review* 4 at.342.

⁶⁶ *Ibid.*

finally, there should be an integration between economic and social policies if wholesome development is to be attained.⁶⁷

Similarly, Aspalter explained the implications of taking a people centered approach to social development. According to him, while the traditional social development focused on economic indicators, educational indicators and life expectancy, a people centered approach, however, incorporates other human, cultural and social capabilities of the individual.⁶⁸ This, he captioned under a general umbrella of societal development. The participation and agreement of all members of the society is crucial to achieving a full fledged and permanent social development within the concept of the Declaration.⁶⁹

A human rights-based approach: The Declaration requires that development be carried out in a manner “in which all human rights and fundamental freedoms can be fully realized.”⁷⁰ The approach has been defined by the United Nations as “the right of individuals and peoples to an enabling environment for development that is equitable, sustainable, participatory and in accordance with the full range of human rights and fundamental freedoms”.⁷¹ It presupposes a breakdown of the processes of development into “duties, claims and mechanisms that can promote respect and adjudicate the violation of rights.”⁷²

⁶⁷ *Ibid.*

⁶⁸ Christian Aspalter, “Towards a More People-Centered Paradigm in Social Development” (2006) 2 Asian J of Social Policy 11 at 68

⁶⁹ *Ibid* pg 70

⁷⁰ UNDRTD, *Supra* note 4, Article 2(2)

⁷¹ Office of the High Commissioner, United Nations Human Rights, “ Rights to Development from a Human rights Approach” available on https://www.ohchr.org/Documents/Issues/Development/SR/AddisAbaba/Rtd_GenderEquality_2030Agenda.pdf accessed 2 March. 2022.

⁷² Uvin, *Supra* note 47, pg 509

I particularly note the importance of this approach in relation to the climate justice discourse. Taking a human right approach would be necessary for the protection of the environment. The report of the independent expert on the issue of human rights obligation relating to the enjoyment of a safe, clean, healthy, and sustainable environment notes the interdependence of human rights and the environment. According to him, the exercise of human rights, including the rights to information, participation and remedy, is vital to the protection of the environment.⁷³ On the other hand, such protected environment is necessary for the full enjoyment of a vast range of human rights.⁷⁴ The Special Rapporteur developed sixteen framework principles which sets out the basic obligations of States towards the human rights of its people as they relate to the enjoyment of a safe, clean, healthy and sustainable environment.⁷⁵ These sixteen framework principles may be broken down into: the procedural obligations of the state; the substantive obligation of the states to implement and adopt standards that prevent the infringement of human rights relating to the environment; the obligations of the states to provide an enabling environment for all persons, free from discrimination for the enjoyment of environmental right; and the obligation to employ measures to ensure the implementation and enforcement of all local and international environmental standards and legal frameworks necessary for the protection of human rights.⁷⁶

⁷³ United Nations General Assembly, “Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and Sustainable Environment, John H. Knox”, (24th December, 2012) Twenty-second session, Human Rights Council, A/HRC/22/43. Para 19.

⁷⁴ *ibid*

⁷⁵ United Nations General Assembly, “Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and Sustainable Environment, (24th January 2018) Thirty-seventh session, Human Rights Council, A/HRC/37/59. Para. 8

⁷⁶ *Ibid*

According to Cornwall and Nyamu-Musembi, a rights based approach implies putting politics and values at the very heart of development.⁷⁷ This is depicted in a situation where resources are shared equally, and an enabling environment is created to assist the marginalised members to assert their rights to those resources.⁷⁸

The necessity of this approach is justified by the pronounced absence of social justice in a model approached by a simple welfarist consideration.⁷⁹ The welfarist approach presupposes that the onus of ensuring better access to development lies on the government followed by market forces.⁸⁰ Although it's a true fact that the government plays a major role herein, especially in the exercise of the duty of accountability placed on it to ensure development,⁸¹ nevertheless, an environment of social justice and equity which has been marked as a necessity for the exercise of this right⁸² may be missing in the face of utter dependence on the government. In the face of the challenges which may be faced in holding the government accountable, a right based approach to development, therefore, presents a more straightforward alternative to ensuring an all round development as intended by the Declaration.

Moreso, in affirming the right to development, the Vienna declaration⁸³ recognised it as an integral part which is interconnected with other fundamental human rights. Therefore, it cannot be operated in isolation and without regard to other human rights. The Vienna Declaration is the World

⁷⁷ Andrea Cornwall & Celestine Nyamu-Musembi, "Putting the 'Rights-Based Approach' to Development into Perspective" (2004) 25 Third World Quarterly 8 at 1416.

⁷⁸ *Ibid* pg 1417.

⁷⁹ Raymond C Offenheise & Susan H. Holcombe, "Challenges and Opportunities in Implementing a Rights-Based Approach to Development" (2003) 32 An Oxfam America Perspective. -Non profit and Voluntary Sector Quarterly 2 at 270

⁸⁰ *Ibid* pg 270

⁸¹ Cornwall & Nyamu-Musembi *Supra* note 77.

⁸² Office of the High Commissioner, United Nations Human Rights, "Conceptualizing the Rights to Development for the Twenty-First Century" available on <https://www.ohchr.org/Documents/Issues/Development/RTDBook/PartIChapter4.pdf> accessed 2 March. 2022.

⁸³ UN Commission on Human Rights, *World Conference on Human Rights.*, 9 March 1994, E/CN.4/RES/1994/95.

Convention on Human Rights which reaffirmed the commitment of the international community to the protection of the human rights as enshrined in other international human right instruments, including the RTD.⁸⁴

Participation: The Declaration insists on the “active, free and meaningful participation” of individuals and populations in development.⁸⁵ The Special Rapporteur on the Right to Development emphasizes that effective participation implies meaningfully placing rights holders at the center of decision-making affecting their own economic, social, cultural and political development.⁸⁶ This involves decisions on the development agendas, budgets and processes.⁸⁷ He further notes that true implementation of the right to development involves financing the development priorities as indicated by the people.⁸⁸ Underdevelopment is aided in an environment where the people are stripped of any form of influence or power over situations which affect their life. While capital projects being undertaken by the government may benefit some segments of the society, the rest of the society may be made worse off by same projects. Herein lies the essence of participation. Participation in development programmes and decisions seeks to steer development away from its raw form of concentration on “building national productive and physical capacities and measuring success with broad statistics and quantitative increases” to a form of development in which people’s interests and opinions are respected and reflected.⁸⁹ Possible limitations to participation have been described to include: a stifling political environment, centralized

⁸⁴ *Vienna Declaration and Programme of Action*, 12 July 1993, A/CONF.157/23.

⁸⁵ UNDRTD, *Supra* note 4, Article 2(1)

⁸⁶ United Nations General Assembly, ‘Report of the Special Rapporteur on the right to development, (2nd July 2019) Forty-second session, Human Rights Council, A/HRC/42/38. Para. 8.

⁸⁷ *Ibid.* Para. 15.

⁸⁸ *Ibid.* Para.11.

⁸⁹ Oakey Peter et al, ‘*Projects with People: The Practice of Participation in Rural Development*’ (Geneva International Office, 1999) at 7

administrative structures, apathy and inexperience to development programmes and consultations.⁹⁰

Botes and Vans Rensburg mentions two prototypes of presumed involvement/participation of the people. On the one hand, we have the government or key actors who formulates the entire project design, take the important decisions that matter therein, and then simply tries to buy the people into the already preconceived idea.⁹¹ In this case, community participation simply becomes a tool by the government to legitimize their political strategies and maintain social control. This may quite be the scenario, especially in situations where the people rebel against development projects undertaken by the government in their community without information. This situation often leads to selective identification of certain members of the community as representatives of the community whose decisions confer the desired legitimacy on such projects.⁹² This results in selective participation and deflects the very essence of participation as advocated by the Declaration. On the second hand, we have a genuine involvement of the people by the government in making their own decisions on any proposed project and setting their priorities.⁹³ It encapsulates the right of the people to effectively control and determine fundamental choices important to them and take “part in all those mechanisms and processes that can affect them”.⁹⁴

Equity: The Declaration highlights the importance of equity as the “fair distribution of the benefits” of development.⁹⁵ In his book on ‘Equity’, Peter Lambert notes that the term equity also includes other “societal norms which give expression to the best aspirations of our collective social

⁹⁰ *Ibid*, pg 11

⁹¹ Lucius Botes & Dingie Van Rensburg, “Community Participation in Development: Nine Plagues and Twelve Commandments” (2000) 35 *Community Development J* 1 at 43.

⁹² *Ibid* pg 46.

⁹³ *Ibid*. pg 43

⁹⁴ Olaitan & Ajigboye *Supra* note 34.

⁹⁵ UNDRTD, *Supra* note 4, Article 2(3)

conscience”.⁹⁶ Further to this definition, Anna Brand, argues that the understanding of the term ‘equity’ differs among different groups in the community.⁹⁷ Each perspective being a reflection of different “material and political agenda and redistributive approaches to development”.⁹⁸ In her view, there is no specific meaning ascribed to equity, rather, it is a construction of different social groups geared towards the support of their own interest, and giving validity to their claims on the state.⁹⁹ Similarly, Culyer agrees that the meaning of equity differs among the general public, philosophers, political theorists and economists.¹⁰⁰ The general notion however is that equity implies equality, however, there is no accord on the very measure of equality. This, he blames on the absence of a general consensus on the meaning and implications of morality.¹⁰¹

Bearing in mind that the duty of implementing the right to development is vested in the government¹⁰², we direct the demand for equity in development to the government and indeed all actors in the sphere of public development. Upon the basis that there is a general consensus that equity signifies equality, the 2006 World Development Report titled ‘Equity and Development’ advocates for equality of access to all forms of development, the failure of which may result in “sustained extreme deprivation, wasted human potential and a weakened prospect for overall prosperity and economic growth.”¹⁰³ Equity was described to be a state where “individuals have

⁹⁶ Peter J Lambert., *Research on Economic: Equity* (Amsterdam ; London: Elsevier JAI, 2007) at ix.

⁹⁷ Anna Livia Brand, “The Politics of Defining and Building Equity in the Twenty-First Century” (2015) 35 *J of Planning Education and Research* 3 at 249

⁹⁸ *Ibid.*

⁹⁹ *Ibid.*

¹⁰⁰ Anthony J. Culyer, “Equity - Some Theory and its Policy Implications”, (2001) 27 *J of Medical* at 276

¹⁰¹ *Ibid.*

¹⁰² Banjul Charter, *Supra* note 5.

¹⁰³ World Bank, *World Development Report 2006: Equity and Development*, (The World Bank, New York, NY: Oxford University Press, 2005) also available online at

https://books.google.ca/books?hl=en&lr=&id=6RpgDwAAQBAJ&oi=fnd&pg=PP1&dq=Equity+in+development&ots=gBaHQFvwhg&sig=dlyYp2WiXZsCLW1JA_lq7lAJg74#v=onepage&q=Equity%20in%20development&f=false

accessed 8th March, 2022. See John E. Roemer, “Review Essay, The 2006 World Development Report: Equity and Development”, (2006) Cowles Foundation for Research in Economics Yale University Paper No:1186. Online at

equal opportunities to pursue of the life of their choosing and be spared from extreme deprivation in outcomes”.¹⁰⁴ In order to give effect to equity in this context, public actors have a legitimate role to play in ensuring equal opportunities to the populace. This is crucial in attaining full development in the state.¹⁰⁵ Inequality of opportunities, which has been juxtaposed with inequity, leads to inequality of outcomes.¹⁰⁶ This results in an obvious infringement on the rights of a segment of the society, to their ‘equal development’ as demanded by the Declaration. To be certain however, the section of the public denied of equal opportunity must be classifiable into a class, either on the basis of religion, social class, ethnicity, gender or age. This identifiable group must have been discriminately deprived of an unequal opportunity on the basis of such identity. A situation where a purely random group of people lacks access to some sort of welfare package as a result of inability on the part of the government to make such benefit available to all cannot be said to manifest inequity.¹⁰⁷ Provided such incapacity is not fueled by the ineptitude of the government.

Non-discrimination: The Declaration calls for more equitable and non-discriminatory development. It places an obligation on states to prevent the infringement of the rights of the people on the grounds of discrimination over “distinction as to race, sex, language or religion”.¹⁰⁸

Discrimination, both within and among nations has been identified as one of the impediments to

<http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.414.8618&rep=rep1&type=pdf> accessed 8th March, 2022.

¹⁰⁴ *Ibid*, pg 2.

¹⁰⁵ *Ibid*, pg 3.

¹⁰⁶ Francois Bourguignon & Sebastien Dessus, “Equity and Development: Political Economy Considerations”, in Santiago Levy & Michael Walton, eds, *No Growth Without Equity? Inequality, Interests and Competition in Mexico* (The World Bank, New York, NY: Palgrave Macmillian, 2009) 48. Also available online at

https://books.google.ca/books?hl=en&lr=&id=rXjzpRilua4C&oi=fnd&pg=PA45&dq=Equity+in+development&ots=QDQ_HUgDPA&sig=SZ5HYxkNaAw5h2PzRDZFmi6tjec#v=onepage&q=Equity%20in%20development&f=false

accessed 8th March 2022.

¹⁰⁷ *Ibid*.

¹⁰⁸ UNDRTD, *Supra* note 4, Article 5

full protection of human rights, as well as economic, social and political developments.¹⁰⁹ This is a result of the concentration of the benefits of development to the selected individuals limiting the provision of equal opportunities for development to everyone. Economically, discrimination affects the economic viability of the state by excluding the potential beneficial contributions to the economy from potential productive workers who might have been victims of such discriminations.¹¹⁰ This also extends to political development where the possibly qualified people are deprived of their right to participate and contribute to the political environment on the basis of some discriminatory factors. It also impedes the right of the people to their social development by affecting the social integration and collaboration of the victims.¹¹¹ This may result in violence and civil unrest in response to such discrimination by the victims resulting in further social disintegration.

Discrimination is commonly driven by structural barriers inherent in the political, social, economic, cultural and environmental sectors. These barriers if left untracked and unresolved may always interchange to breed unending discrimination among generations resulting in underdevelopment for the victims.¹¹² This may as well be one of the challenges to the all round

¹⁰⁹ Chief Executives Board for Coordination, United Nations System, “Leaving No One Behind: Equality and Non-Discrimination at the Heart of Development,” (2017) The United Nations System Shared Framework for Action. Online at https://unsceb.org/sites/default/files/imported_files/CEB%20equality%20framework-A4-web-rev3.pdf Accessed 9th March, 2022. at 3.

¹¹⁰ Sandra Fredman, “Anti-Discrimination Laws and Work in the Developing World: A Thematic Overview”, (2012) Background Paper for the World Development Report 2013, World Bank, Washington, DC. Online at https://openknowledge.worldbank.org/bitstream/handle/10986/12129/WDR2013_bp_Anti-Discrimination_Laws.pdf?sequence=1&isAllowed=y pg. 1. Accessed 11th March, 2022.

¹¹¹ *Ibid.* pg.2.

¹¹² *Ibid.* Similarly, Atuguba argues that non-discrimination “has a huge potential for underpinning various moves to correct social and economic inequalities through the fair distribution of the benefits of development.” Atuguba Raymond A., “Equality, Non-discrimination and Fair Distribution of the Benefits of Development”, *Realizing the Rights to Development for the Twenty-First Century* in Office of the High Commissioner, United Nations Human Rights, ed, *Realizing the Right to Development* (HR/PU//12/4, United Nations Publications, 2013) at 110. https://www.ohchr.org/Documents/Publications/RightDevelopmentInteractive_EN.pdf accessed 10th March, 2022.

development envisioned by the Declaration. Politically, those in the position of power who undoubtedly enjoy more from the system may be disinclined to change the status quo. While culturally, it may prove difficult to change decades of marginalization or stigmatization of a certain group of people whose stigmatization may have hitherto been deemed as the most acceptable standard for living and interacting among the people.¹¹³

The United Nations has identified the positive ways for states to achieve non-discrimination and equalities within its jurisdiction to include: “remediating gross income inequalities; promoting the social, economic and political inclusion of all; eliminating discriminatory laws, policies and practices; and adopting policies such as fiscal, wage and social protection policies, to progressively achieve greater equality”.¹¹⁴ Having committed to ensuring the full implementation of the right to development pursuant to Article 8 of the Declaration, states should take these recommendations into consideration and enforcement.

Self-determination. The Declaration requires the full realization of the right of peoples to self-determination, including full sovereignty over their natural wealth and resources.¹¹⁵ Pursuant to the provision, the full implication of the import of self-determination is made subject to relevant international covenants on human rights. Thus, pursuant to the ICCPR¹¹⁶ and the ICESCR¹¹⁷, the

¹¹³ The Caste system in India and the Osu Caste system obtainable among the Ibo people in the Eastern Part of Nigeria comes to mind. Despite the fact that this practice has been abolished, the discrimination of these groups is still prevalent among the people. Such practice is subconsciously engrained in the minds of the people among whom the leaders are selected. See <https://www.cnn.com/2020/04/15/asia/india-coronavirus-lower-castes-hnk-intl/index.html> and <https://guardian.ng/life/culture-the-osu-caste-system-in-igboland/>. Documentaries on the Indian and Nigerian caste system respectively. Accessed 11th March, 2022.

¹¹⁴ *Ibid* pg 4. Also see International Convention on the Elimination of All Forms of Racial Discrimination Recommendations and Comments on Caste-Ba’ Sed Discrimination. Idsn Compilation- November 2015 <https://idsn.org/wp-content/uploads/2015/11/CERD-Recommendations-and-Comments-on-Caste-Compiled-Nov-2015.pdf> accessed 11th March 2022.

¹¹⁵ UNDRTD, *Supra* note 4, Article 1(2)

¹¹⁶ ICCPR *Supra* note 13, Article 1.

¹¹⁷ ICESCR *Supra* note 12, Article 1.

right to self-determination means the right of all persons to “freely determine their political status and freely pursue their economic, social and cultural development”. There are two forms of self-determination viz: internal and external self-determination. Internal self-determination relates to the right of the people to self-governance without external interference. It simply connotes political, social, cultural and economic right of the people within the state. External self-determination in addition to the above, also includes the right of the people to form their own independent state.¹¹⁸ This right has been argued to encompass the right of individual groups in a country to determine the government under which they chose to be represented.¹¹⁹ However, a state is entitled to its territorial integrity. Its people can only successfully invoke their right to external self-determination where they are: governed as part of a colonial empire; subject to alien subjugation, domination or exploitation; and possibly denied any meaningful exercise of its right to internal self-determination.¹²⁰ The most determining factor is that the choice made reflects the interest and will of the people¹²¹ and must be recognised by the international community.¹²² Furthermore, to successfully garner the support of the international community, such seceding group needs to among other things, show: the weak nature of the central government; the oppressive environment which they have been subjected to; that it has been administered by some international organization or group; and that it has garnered the support of the most powerful states in the world.¹²³

¹¹⁸ Hurst Hannum, “Legal Aspects of Self-Determination”, Encyclopedia Princetoniensis, Princeton University, online at <https://pesd.princeton.edu/node/511> accessed 11th March, 2022.

¹¹⁹ Sara E. Allgood, “United Nations Human Rights Entitlements: The Right to Development Analyzed Within the Application of the Right of Self-Determination (2003) 31 The Georgia Journal of International and Comparative Law 2 at 327.

¹²⁰ *Re Secession of Quebec*, [1998] 2 S.C.R. 217 (Can.)

¹²¹ Allgood *Supra* note 119 pg 330.

¹²² Hannum *Supra* note 118.

¹²³ Milena Sterio, “On the Right to External Self-Determination: ‘Selfistans,’ Succession, and the Great Powers’ Rule”(2010) 19 Minnesota J of Int’l Law 1 at 140. Online pdf at <https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1335&context=mjil> accessed 11th March, 2022.

In relation to the right to development therefore, self-determination presents a legitimate power to groups whose rights have been threatened.¹²⁴ With the basic element of self-determination being the right to be recognised and heard, it can be effectively invested into the right to development in order to influence its implementation to utterly reflect the interest of the people.¹²⁵ As earlier stated, the interest of the people is paramount for the right to development to be effectively implemented. Thus, the United Nations, declared that sovereignty over the natural wealth and resources ought to be vested upon the state and the people. The Declaration also advocated for this right to be exercised for the national development and in the best interest of the people concerned.¹²⁶ Granting the people a right over their natural resources is based on the recognition that it accords some sort of leverage in the attainment of the socio-economic development of the people. The people therefore reserve the right to freely dispose of same in pursuit of their interests.¹²⁷

Delving into the basics of the right to development in this section is necessary as it would be used as a measure in determining the paths of development in the Nigerian jurisdiction. It stands as a yardstick for nations because where all these basic elements are taken into focus, then climate degrading actions would necessarily be avoided. As will be explained in chapter five, the full implementation of the right to development is necessary if climate justice is to be actualized.

¹²⁴ Allgood, *Supra* note 119 pg 337.

¹²⁵ *Ibid.*

¹²⁶ Office of the High Commissioner, United Nations Human Rights, General Assembly resolution 1803 (XVII) of 14 December 1962, "Permanent sovereignty over natural resources" available on <https://www.ohchr.org/EN/ProfessionalInterest/pages/NaturalResources.aspx#:~:text=The%20right%20of%20peoples%20and%20nations%20to%20permanent%20sovereignty%20over,people%20of%20the%20State%20concerned>, accessed 11 March, 2022.

¹²⁷ Carol C. Ngang, "The right to development in Africa and natural resources ownership", (2020) 45 J for Juridical Science 1 at i-xii

2.4. Justiciability of the Right to Development

Recall that the UNDRTD has the status of customary international law by virtue of its recognition in several national legislations of countries. The identification of customary international law is usually subject to different approaches by states, the international court, scholars and organisations.¹²⁸ In its draft consensus on the identification of customary international law, the UN proposed the general approach to be the identification of a practice that embodies two constituent elements. The constituent elements are: the existence of a general practice; which is generally accepted as law.¹²⁹ The UN further notes that in determining the existence of each of these constituent elements, “the overall context, the nature of the rule and the particular circumstances in which the element in question is to be found must be ascertained”.¹³⁰ Having regard to this, the UNDRTD has been adjudged to meet this requirements, and thus qualifies as an international customary law.¹³¹ However, the UNDRTD in its own does not present a recognizable cause of action in some jurisdictions.¹³² Thus, its justiciability depends on the reaffirmation of its constituent elements in other binding treaties and regional instruments.¹³³ To that extent, a draft treaty on the right to development was proposed in 2020 in order to grant it international legal status.¹³⁴ This has been applauded by a number of

¹²⁸ United Nations, “Draft conclusions on identification of customary international law, with commentaries”, (2018) Adopted by the International Law Commission at its seventieth session, in 2018, and submitted to the General Assembly as a part of the Commission’s report covering the work of that session (A/73/10). Online at https://legal.un.org/ilc/texts/instruments/english/commentaries/1_13_2018.pdf accessed 11th August, 2022..

¹²⁹ *Ibid* pg 126

¹³⁰ *Ibid* pg 127

¹³¹ Shaw *supra* note 16, pg 218

¹³² Adigun Muyiwa, “The Status of Customary International Law Under the Nigerian Legal System,” (2019) Commonwealth law bulletin, vol 45(1) 116.

¹³³ UN FAQ, *Supra* note 5, Pg 6. Also see Nico Schrijver, “A new Convention on the human right to development: Putting the cart before the horse?” (2020) 38 Netherlands Quarterly of Human Rights 2 at 87

¹³⁴ United Nations General Assembly, “Draft Convention on the Right to Development with commentaries” Twenty First Session, A/HRC/WG.2/21/2/Add.1. online at https://www.ohchr.org/sites/default/files/Documents/Issues/Development/Session21/4_A_HRC_WG.2_21_2_Ad_d.1_RegisteredVersion.pdf accessed 13th June, 2022.

scholars. The expert mechanism¹³⁵ construes that the codification of the right to development in a legally binding instrument would enable the “effective operationalization and full implementation of the right to development globally”.¹³⁶ Schrijver agrees that the integrative feature of the proposed treaty would enable the clarification of the right to development by presenting a holistic and comprehensive perspective of its components.¹³⁷ He however objectively argues that it would be a waste of international energy because the proposed contents of the draft treaty come from already existing human rights treaties and declarations.¹³⁸

I agree that the pursuit of the global justiciability of this right is necessary for the full protection of the right of all victims of infringement. The peoples’ entitlements are better safeguarded when there is a structure for making the duty bearers accountable. Promoting the full implementation and protection of this right therefore cuts across several fields of necessities that must be strengthened. These include: improving the citizens’ political participation; promoting demand for accountable leadership at all levels; and legally empowering the victims of infringement.¹³⁹ According to the United Nations Commission on the Legal Empowerment of the Poor, legal empowerment is “the process through which the poor become protected and are enabled to use the law to advance their rights and their interests”.¹⁴⁰ It trails the need to hold the government

¹³⁵The Expert Mechanism on the RTD was created in 2019. It consists of five independent experts who are elected for a term of three years subject to re-election, with the mandate to assist the Human Rights Council in the promotion of the right to development and the identification and sharing of best practices of the right. see the resolution of the General Assembly on its Forty-second session, A/HRC/RS/42/23. Online at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/292/60/PDF/G1929260.pdf?OpenElement> accessed 13th June, 2022.

¹³⁶ Expert Mechanism on the Right to Development, “The Essential Elements of a Legally Binding Instrument on the Right to Development”. Online at <https://www.ohchr.org/en/essential-elements-legally-binding-instrument-right-development> accessed 13th June, 2022.

¹³⁷ Schrijver, *Supra* note 133

¹³⁸ *Ibid*

¹³⁹ Stanley Ibe, “Some Recent Developments on Justiciability of Economic, Social and Cultural Rights”, (2019) 20 ESR Review at 8. Online at <https://journals.co.za/doi/pdf/10.10520/EJC-1b57e52c98> accessed 18th march, 2022.

¹⁴⁰ United Nations General Assembly, “Report of the Secretary-General- Legal Empowerment of the Poor and Eradication of Poverty’ (July 2009) Sixty-Fourth Session. A/64/133 online at

accountable to its obligation under the Declaration. Accountability is a mechanism that provides the capacity to hold the government and all relevant actors answerable for a breach of their duty towards the right guaranteed by the Declaration. It is a core human right that balances the power between rights holders and the duty bearers capable of implementing and violating the vested rights.¹⁴¹ Navi Pillay, the High Commissioner for Human Rights at the 25th anniversary held in 2011, noted that the right to development can only be achieved when there is a “solid national and international accountability framework for development that respects social justice and human rights”.¹⁴² Edih and Ganagana further notes that accountability is a threshold for good governance.¹⁴³ One certain way therefore of ensuring the accountability of all role players is ensuring that the right bearers have a full right of access to the court in the event of a violation of their rights.

The right to development has been made justiciable in Nigeria by virtue of its adoption into the African Charter for Human and Peoples Right. Generally, international treaties are not binding in Nigeria by virtue of Section 12(1) of the 1999 Constitution of the Federal Republic of Nigeria which established the condition for such enforceability upon domestication of such treaty in Nigeria. Thus in *Nnaji v NFA & Anor*¹⁴⁴ the court maintained that the position of the Nigerian law

<https://www.un.org/esa/socdev/documents/reports/Legal%20empowerment%20of%20the%20poor.pdf> accessed 30th April, 2022.

¹⁴¹ Office of the High Commissioner, United Nations Human Rights, “Who will be Accountable” Human Rights and the Post -2015 Development Agenda: Summary” Centre for Economic and Social Rights. Online at https://www.ohchr.org/sites/default/files/Documents/Publications/WhoWillBeAccountable_summary_en.pdf accessed 30th April, 2022.

¹⁴² United Nations, “Statement by Ms. Navi Pillay, United Nations High Commissioner for Human Rights to the Special Event on the Right to Development and Global Partnership for Development Geneva, 12 July 2011” online at <https://www.ohchr.org/en/statements/2011/07/statement-ms-navi-pillay-united-nations-high-commissioner-human-rights-special> accessed 30th April, 2022.

¹⁴³ University Edih & Basil Ganagana, “Justiciable or Non-Justiciable Rights: A Debate on Socio-Economic and Political Rights in Nigeria”, (2020) 8 Global J of Politics and Law Research 4 at 81

¹⁴⁴ (2010) LPELR-4629(CA) Pp 15-17

is that international treaties are neither binding on citizens nor justiciable in the courts until they are enacted into law by the National Assembly.

By virtue of this, the Charter has been made binding pursuant to the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act.¹⁴⁵ This Act has domesticated the Charter and thus made it binding and enforceable in the Nigerian courts such that it has equal enforceability status as the human rights provision of the Nigerian Constitution.¹⁴⁶ However, despite this domestication, the right to development is yet to command the recognition that ordinarily trails other fundamental human rights guaranteed under Chapter 4 of the Nigerian Constitution.¹⁴⁷ The principal reason being the passive attitude of the courts towards the justiciability of the socio-economic and cultural rights.¹⁴⁸ This will be explained in the next section.

2.5. Justiciability of the Right to Development in Nigeria

The separation of the right to development as reflected in the two renowned international covenants viz: International Covenant on Civil and Political Rights; and the International Covenant on Economic, Social and Cultural Rights has impacted the efficacy of the justiciability of the latter. The economic, social and cultural rights of the people have been subjected to a lower level of respect and enforceability by some nations despite the disguised façade of equal commitment.¹⁴⁹

¹⁴⁵ Cap 10, Laws of the Federation of Nigeria, 1990. [ACHPR R&E] Also see Chudi Nelson Ojukwu, "Enforcement of the African Charter on Human and Peoples' Rights as a Domestic Law in Nigeria." 45 International Legal Practitioner 4 at 140-143.

¹⁴⁶ *Emodi v Registered Trustees of Asaba Sports Club & ors* (2020) LPELR- 52681(CA)

¹⁴⁷ Osinachi Kingsley Onu, "The Legal Status of the Right to Development" (2019) Afronomics Law; in association with African International Economic Law Network. Online at <https://www.afronomicslaw.org/2019/11/05/the-legal-status-of-the-right-to-development-in-nigeria> accessed 15th March, 2022.

¹⁴⁸ *Ibid.*

¹⁴⁹ Ibe *Supra* note 139, pg 226. Ibe notes that there are two parallel regimes of socio-economic rights existing in Africa. The first specifically makes socio-economic rights justiciable, while the other regime agrees with the rest of the western nations that this specie of rights are merely based on morality.

Steiner and Alston notes that the full implementation of these rights through clear-cut policy programmes designed to ensure positive and continuous progress still remains an illusion in nation states.¹⁵⁰ One of the disincentives might probably be the financial implication of enforcing such rights, even in the face of a judicial pronouncement.¹⁵¹ This lack of political will to enforce this set of rights therefore presents a negation to the central idea of an interdependent, interconnected and interrelated human rights.¹⁵² This implies that for a particular right to be fully enjoyed, all other rights must be equally recognised and respected.

This dichotomy is reflected in the Nigerian legal system. The Nigerian Constitution grouped the human rights into fundamental rights and fundamental objectives¹⁵³. The fundamental rights encompass the civil rights of the people. These rights are effectively guaranteed under Chapter IV of the Nigerian Constitution and deemed fully enforceable against all persons before any competent court.

On the other hand, the political, economic, social and cultural rights of the people are provided under Chapter 2 of the Constitution which is captioned as ‘Fundamental Objectives and Directive

¹⁵⁰ Hans-Jürgen Steiner & Phillip Alston, *International Human Rights in Context: Law, Politics, Morals* (Oxford: Clarendon Press, 1996) at 267.

¹⁵¹ Adeniyi Abraham Babalola, “Non Justiciability of Socio-Economic and Cultural Right: A Constitutional Impediment to the Realization of Peace, Equality, Growth and Optimum Development in Nigeria” (2019) online at <https://deliverypdf.ssrn.com/delivery.php?ID=078097097001120073092002009088117098026008055027062063031025086093116083067092003074110126018097001111053099087097118081087010007011088000015099024119004116003006005003018024085002091125007109097069025079083122069085005019021107089099001066125005115024&EXT=pdf&INDEX=TRUE> accessed 18th March, 2022. See Also Linus Nwauzi, “Justiciability of Fundamental Objectives and Directive Principles of State Policy: Under The 1999 Nigerian Constitution”, 3 (2017) *International Journal of Law* 5 at 30. The writer affirms that one of the reasons for non justiciability of these sets of rights is that it connotes positive rights which demands the states to expend resources to provide a remedy, unlike civil and political rights which connotes negative rights, requiring mere avoidance of unjust interference with the rights. Accessed online at https://www.researchgate.net/profile/Linus-Nwauzi/publication/320077413_Justiciability_of_fundamental_objectives_and_directive_principles_of_state_policy_under_the_1999_Nigerian_constitution/links/5ce3b35a92851c4eabb1797e/Justiciability-of-fundamental-objectives-and-directive-principles-of-state-policy-under-the-1999-Nigerian-constitution.pdf 23rd March, 2022.

¹⁵² Ibe *supra* note 139.

¹⁵³ Edih & Ganagana *supra* note 143, pg 78

Principles of State Policy'. This part of the constitution has however been rendered non justiciable by Section 6 (6) (c) of the Constitution.¹⁵⁴ Pursuant to this provision, the judicial powers which have been vested in the courts shall not extend to any matter relating to the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II. Such matters are merely regarded as fundamental guidelines for policy formulation for the purposes of governance.¹⁵⁵ With this outright bar, the implication is that an action for the enforcement of these rights cannot outrightly be successfully brought under the Constitution. A remedial option is however provided by Item 60(a) of Part 1 of the Second Schedule to the Constitution aided by Section 4(2) of the Constitution. Pursuant to these, the legislature is empowered to enact laws establishing an agency charged with the promotion and enforcement of the matters inclusive of rights under the Fundamental Objectives and Directive Principles of State Policy. Such authorities created pursuant to these provisions may therefore lawfully maintain an action in court for the enforcement of these rights under the constitution.

This authority on the legislature has been exercised in the creation of the National Human Right Commission of Nigeria,¹⁵⁶ a body charged with the promotion and enforcement of all human rights guaranteed under the Nigerian constitution and international instruments on human rights.¹⁵⁷ Its mandate also extends to the institution of actions in court.¹⁵⁸ The commission therefore has the legal right to bring actions for the enforcement of the political, economic, social and cultural rights of the people.

¹⁵⁴ The section provides that the judicial powers which has been vested in the courts shall not extend to any matter relating to the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II. CFRN *Supra* note 18.

¹⁵⁵ Edih & Ganagana, *Supra* note 143, pg 79.

¹⁵⁶ National Human Rights Commission of Nigeria (NHRCN) Act, 2004.

¹⁵⁷ *Ibid* Section 5.

¹⁵⁸ *Ibid* Section 6(1)(b).

Outside the frontiers of the constitution, the African Charter for Human and Peoples Right, by virtue of its domestication, presents a legal ground for a judicial remedy. The Charter creates no dichotomy in the rights guaranteed pursuant to it. Therefore, there is no limitation in the enforcement of the economic, social and cultural rights. Action can even be maintained before the African commission upon the exhaustion of local remedies.¹⁵⁹ For instance, where the claimant is still unsatisfied with the decision of the apex court in the country. Despite the obvious conflict between the provision of the national constitution and the Charter,¹⁶⁰ the obligation of Nigeria to respect and enforce all the rights provided under the Charter, inclusive of the economic, social and cultural rights has never been in dispute.¹⁶¹ Particularly, a nation would rarely contravene the terms of any regional or international treaty it has ratified because of the political implications in the global sphere.¹⁶² The appellate court in *Emodi v Registered Trustees of Asaba Sports Club & ors*¹⁶³ also expressly emphasized that the human rights law of Nigeria is contained in two major documents, i.e The Constitution of the Federal Republic of Nigeria, and the Charter on Human and Peoples' Right domesticated as African Charter on Human and Peoples' Right (Ratification and Enforcement) Act, Cap 10 Laws of the Federation of Nigeria. They, therefore, have equal normative force.

¹⁵⁹ *Social and Economic Rights and Accountability Projects (SERAP) v Federal Republic of Nigeria* (Communication No. 338/07, 48th Ordinary Session).para 62 Online at https://www.achpr.org/public/Document/file/English/achpr48_338_07_eng.pdf accessed 12th July, 2022. The Commission in the Landmark case of Social and Economic Rights Action Centre (*SERAC & Anor v Nigeria* (2001) AHRLR 60 (ACHPR), held the Nigerian government liable for a breach of this right. Online at https://www.achpr.org/public/Document/file/English/achpr30_155_96_eng.pdf accessed 12th July, 2022.

¹⁶⁰ Since Section 6(6) (c) clearly deprives the individual of the legal right to bring an action for the enforcement of his right while the Banjul charter expressly confers the legal right on the individual.

¹⁶¹ Ibe, *supra* note 139.

¹⁶² Taiwo Shehu Ajepe, "The Enforcement of Social and Economic Rights in Africa: The Nigerian Experience", (2013) 2 J of Sustainable Development Law and Policy 1 at 111

¹⁶³ (2020) LPELR- 52681(CA)

The successful implementation of the Charter is further strengthened by the Fundamental Rights (Enforcement Procedure) Rules of 2009.¹⁶⁴ The primary objective of the rule is to advance all rights vested on individuals by both national and international instruments and Bill of rights.¹⁶⁵ The Rule further prohibits the courts from striking out an action in court for want of locus standi.¹⁶⁶ Despite the gleaming hope presented by the Charter, its success rate is dampened by two factors. First, judgments obtained before the African Commission can at best be merely persuasive because the Commission is not empowered to enforce its decisions.¹⁶⁷ Secondly, actions brought by individuals before the Nigerian courts for the enforcement of these set of rights is met with reluctance on the part of the judges due to the outright bar against individuals in the constitution.¹⁶⁸ In *Oronto Douglas v Shell Petroleum Development Company & ors*,¹⁶⁹ the plaintiff, brought an action under section 24 of the Charter. He sought an injunction restraining the respondents from continuing with their intended liquefied Natural Gas project which was undertaken contrary to the Decree N0.86 Environmental Impact Assessment of 1992. The trial court dismissed the action on the ground that he had not established any physical harm suffered from the project and therefore lacks locus standi. The appellate court however declared a mistrial. There was no opportunity for a retrial of the case as ordered by the appellate court. However, the court has consistently been reluctant to enforce any provision contrary to a constitutional provision.¹⁷⁰ Thus, with the principle

¹⁶⁴ Fundamental Rights (Enforcement Procedure) Rules, 2009

¹⁶⁵ *ibid* Preamble 3a.

¹⁶⁶ *Ibid* Preamble 3e

¹⁶⁷ *Ibe supra* note 139 Pg 229

¹⁶⁸ *Ibid*, Pg 244. Ajepe, *Supra* note 162 pg 120, argues that “national courts have always remained pessimists in the matter, never ready to take proactive approach to the comprehensive interpretation of the rights, or attempt a reconstruction of the directive principles giving contents to the rights, and behaving true to their positivists’ conservatism of not seeing beyond the plain words of the provisions”.

¹⁶⁹ [1996] 6 NWLR (Pt. 32) 258

¹⁷⁰ See *A.G. v Atiku Abubakar* (2007) 32 NSCQR 1at 85. Ajepe argues that the dichotomy shouldn’t forelose the enforcement of the socio-economic rights since the provisions are also found international instruments ratified by Nigeria. The judges need only to be proactive. See Ajepe, *Supra* note 162 pg 119.

of judicial precedent deeply rooted in the Nigerian legal system, we can only take a wide guess as to the attitude of any judge faced with an action for the enforcement of such class of rights brought pursuant to the charter.

Non-justiciability of any form of rights therefore provides a thriving environment for lack of performance and non-accountability on the part of the role players, especially the government.¹⁷¹

In relation to the environment, it essentially deprives the victims of their procedural environmental human rights and the access to remedy provided by the courts as the arbiter of justice. This consequently leaves the people to the entire devices of the government in such matters.

Having established the interrelatedness and interconnectivity of all the guaranteed rights, there is need therefore to ensure that the right to economic, social and cultural rights are made as justiciable as its counterpart. This is necessary to promote a favourable ground for the enjoyment of all granted rights.

2.6. Limitations on the Right to Development

This section delves into some factors which militate against the full operation and implementation of the right to development as advocated by the United Nations. There is an overarching need for the governments to take cognizance of these impending challenges within their jurisdictions so as to create or strengthen effective policies that would ultimately promote the UNDRTD.

I proceed with internal governance structures in any nation. The necessity of good governance cannot be overemphasized. Good governance entails the presence of an operative leadership structure under the rule of law with an overall objective of promoting the participation of all

¹⁷¹ Ogugua V.C. Ikpeze, “Non-Justiciability of Chapter II of the Nigerian Constitution as an Impediment to Economic Rights and Development”, (2015) 5 Developing Country Studies 18 at 48.

citizens in governance, protecting the fundamental human rights of its citizens, and providing the basic amenities necessary to ensure and improve the living conditions of the people.¹⁷² The obtainable governance structures in each nation may therefore be marred by some negative factors which serve as impediments to the full implementation of the duty owed by the state to its citizens. Such impeding factors have been mentioned to include corruption, poverty/lack of resources, internal conflicts, lack of institutional capacity, lack of implementation and enforcement of laws.¹⁷³ These will be examined in turn.

Corruption has been defined as the “abuse of public power for private benefit”.¹⁷⁴ Corruption affects the ability of the government in power to effectively fulfil its duties. A struggling economy is the hallmark of developing countries. The situation of such affected nations becomes worrisome upon the recognition that the financial level of any nation determines and influences the overall capability of the government to fulfil its duties.¹⁷⁵ Where corruption is in place, the few available funds are depleted by diversion into the pockets of a few individuals. This situation disincentives and discourages investors from investing in such a state,¹⁷⁶ and further reduces the credibility of the government to receive foreign aid in the competitive international field.¹⁷⁷ All of these results in a decline in the overall economic growth and development of a nation, further inhibiting its capability to effectively perform its role as the duty bearer to this right.

¹⁷² Charlie Nwekeaku, "The Rule of Law, Democracy and Good Governance in Nigeria" (2014) 2 GJPSA 26 at 29.

¹⁷³ Olaitan & Ajigboye, *Supra* note 34, pg 145. See also Chimere A. Obodo & Matthew I. Anushiem, “Right to Development in Nigeria: An index of Democracy”, (2017) AJLHR 1. at 180.

¹⁷⁴ Basem Elmukhtar Ertimi & Mohamed Ali Saeh, “The Impact of Corruption on Some Aspects of the Economy” (2013) 5 Intl J of Econ and Fin 8 at 1

¹⁷⁵ Ngang, *Supra* Note 127. He affirms that socio-economic development is dependent on the resources availability principle such that where an essential resource is absent, the attainment of development becomes less feasible.

¹⁷⁶ Muhammad Azam & Siti Aznor Ahmad, “The Effects of Corruption on Foreign Direct Investment Inflows: Some Empirical Evidence from Less Developed Countries”, (2013) 9 J of Applied Sciences Research 6 at 3462.

¹⁷⁷ Chinelo Okekeocha, "A Case Study of Corruption and Public Accountability in Nigeria" (2013). Dissertations, Theses and Capstone Projects. Paper 566. Online at [A Case Study of Corruption and Public Accountability in Nigeria \(kennesaw.edu\)](http://kennesaw.edu) accessed 16 March 2022.

Where a country is marred by weak implementation and enforcement structures, her capacity to effectively undertake her role as the duty bearer to this right will be severely impaired.¹⁷⁸ This is because it cannot effectively deploy the necessary unit to effectively deal with any obstructing challenge to this right. Some factors which may create a breeding ground for weak enforcement of laws includes: its economic interest- as in the case of gas flaring obtainable in Nigeria which violates the right of the people to their environment. The government has been reluctant in implementing the law aimed towards the elimination of gas flaring in Nigeria by consistently changing the target date.¹⁷⁹ This is also exemplified by the fraternity with the transnational companies who plays a major role in the degradation of the environment.¹⁸⁰ The economic interest might make the government reluctant to deal with their obvious shortcomings. Another reason may be a conflict of interest where the violator of a right also doubles as the enforcement authority. An obvious example is the environmental agency entirely under the control of the Nigerian government, which is charged with enforcing environmental laws while ironically, the government is the major violator of environmental rights in Nigeria being the sole governing authority in all oil activities.¹⁸¹ A third factor becomes the lack of the requisite manpower as the overseeing body may be underfunded to adequately perform its activities. Another crippling factor may also be the lack of expertise supported by appointments into such positions on the grounds of nepotism rather than qualifications.

¹⁷⁸ Olaitan & Ajigboye, *Supra* note 34, pg 151.

¹⁷⁹ This Is largely due to the economic cost of re-injecting the gases. see Olaiya Noah, Abdulrafiu et al., “Corporate Environmental Accountability in Nigeria: An Example of Regulatory Failure and Regulatory Capture” (2021) 11 J of Accounting in Emerging Economies, 1 at 78. Also see Omote Kingsely Mrabure & Ogbene Benedicta Ohimor, “Unabated Gas Flaring Menace in Nigeria; The Need for Proper Gas Utilization and Strict Enforcement of Applicable Laws” (2020) 46 Commonwealth Law Bulletin at 755.

¹⁸⁰ Chris O. Ikorukpo, “Petroleum, Fiscal Federalism and Environmental Justice in Nigeria” (2004) 8 Space & polity 3.

¹⁸¹ Tari Dadiowei, “Environmental Impact Assessment and Sustainable Development in the Niger Delta: The Gbarain Oil Field Experience” (2009), Institute of International Studies 33, (University of California, Berkeley, USA, Working Paper No.24, 2009)

Poverty can be defined as the absolute deprivation of people of their right to basic necessities.¹⁸² The effect of poverty on development has been indicated to reduce the overall performance of the people. This is triggered by the people's resignation to the obtainable condition.¹⁸³ Poverty also strengthens over time due to the resignation of the people by further incapacitating their ability to effectively improve their situation.¹⁸⁴ This is illustrated by the latest World Bank report on poverty reduction in Nigeria. The report which was based on a period of five year poverty assessment established that there is a stagnation in the poverty reduction efforts. The report attributed the stagnation to 'Sluggish growth, low human capital, labor market weaknesses, and exposure to shocks'.¹⁸⁵ With such a reduction in the performance of the human capital of any nation, its economic development will be jeopardized, resulting in an overall decline in the social welfare of the people. Poverty also leads to an increase in the crime rate.¹⁸⁶ This depicts the illegal activities of persons who have undertaken to survive by any available means in the environment.¹⁸⁷ In developing countries such as Nigeria, they consistently sabotage the economic plans of the government through illegal activities such as oil bunkering. Oil bunkering deprives the government of anticipated income from such oil; while expending resources on repairing infrastructures damaged in the process and providing security to prevent its recurrence. Their activities also override the security of the state making it an unfavourable location for both local and international

¹⁸² Arthur MacEwan, "The Meaning of Poverty Questions of Distribution and Power", (2017) Political Economy Research Institute, University of Massachusetts Amherst, Working paper Series Number 148. Pg 2. Online at https://scholarworks.umass.edu/cgi/viewcontent.cgi?article=1119&context=peri_workingpapers accessed on 23rd March, 2022.

¹⁸³ Marcel Fafchamps, *Rural Poverty, Risk and Development*, (UK Cheltenham: Edward Elgar Publishing Limited:2003) at 2.

¹⁸⁴ *Ibid.*

¹⁸⁵ The World Bank, "Nigeria Poverty assessment 2022" online at <https://www.worldbank.org/en/news/press-release/2022/03/21/afw-deep-structural-reforms-guided-by-evidence-are-urgently-needed-to-lift-millions-of-nigerians-out-of-poverty> accessed 30th March 2022.

¹⁸⁶ Olaitan & Ajigboye, *Supra* note 34, pg 151

¹⁸⁷ Besley & Persson *Supra* note 32, pg 1.

investors. Either way, the government loses funds which would have been employed towards the actualisation of these rights.

The multi-ethnic, cultural and lingual diversity which characterizes some nations like Nigeria may operate as an inhibiting factor by encouraging ethnic divisions and ethnic distrust.¹⁸⁸ This provides a fertile ground for discriminations and unequal participation in governance due to the obvious favouritism shown by the government in power towards people with same tribal or religious affiliations. In such countries like Nigeria, there is an obvious proof of nepotism where majority of the top government positions are held by people having the same tribal or religious inclinations. This is also reflected in government agencies and departments such that the side-lined groups may either feel disinclined to powerless when decisions are being taken because they are in the minority. Such scenarios impede the participatory rights mandated by the charter and consequently obstructs the full implementation of the right to development.

The factors identified above have been identified as obstacles existing in the administrative sector which effectively inhibit the right of the people to development. Abubakar notes that bad leadership negatively affects the performance output of nations and emphasizes that effective leadership can only be achieved by well-focused, transparent, and visionary leaders.¹⁸⁹

To effectively overcome this obstacle, any government in power must be accountable in the formulation of social policy in the best interest of its citizens. Accountability here implies the presence of all the elements of the right to development as previously discussed.¹⁹⁰ There must

¹⁸⁸ Obodo and Anushiem *Supra* note 173 pg 184.

¹⁸⁹ Abubakar Dauda, "Leadership and the Challenges of Rebuilding a Nation." In Adigun Agbaje, Larry Diamond and Ebere Onwudiwe (eds), *Nigeria's Struggle for Democracy and Good Governance* (University of Ibadan Press 2004)154.

¹⁹⁰ UN FAQ, *Supra* note 6.

also be visible transparency in the implementation of those policies to ensure equality of all persons.¹⁹¹ Discrimination must also be avoided on all basis in making these decisions.

I now continue the discourse on the other factors limiting the full operation of the RTD.

I consider the cost implications for development. This is particularly related to economic and social developments. However, the success rate of all rights guaranteed under the UNDRTD is tied to the market economies of such relevant state because of the interconnection of the rights.¹⁹² A poor economy tends to be bedeviled with all round stagnation as it reflects the weakness of the state to effectively handle its growth.¹⁹³ For such economies, an attempt to ambitiously embark on certain projects is largely unsuccessful because of the cost of implementation. Luc Christiaensen et al had pointed out that in some countries, “the cost of reaching the targets set forward in the Poverty Reduction Strategies largely exceeds the amount of debt relief granted under the Heavily Indebted Poor Countries (HIPC) agreement.”¹⁹⁴ The achievement of development targets requires both technological and fiscal sufficiency which most countries still strive for.¹⁹⁵ Udombana affirms that full implementation of the right to development would be a challenge for third world countries as the economic realities of nations, in addition to the national policy and strategy are the key determinants of the success rate.¹⁹⁶ This advertently implies the burden of a higher task on these developing countries in the struggle for the full implementation of these rights as advocated.¹⁹⁷

¹⁹¹ Olaitan & Ajigboye, *Supra* note 34, pg 151

¹⁹² Besley & Persson, *Supra* note 32. The authors however, further noted that the success rate of social developments is also dependent on the state’s ability to formulate an implement effective policy.

¹⁹³ *Ibid*.

¹⁹⁴ Luc Christiaensen et al, “Development Targets and Costs” (2002) online at https://www.researchgate.net/publication/30528786_Development_targets_and_costs accessed 30th March, 2022 at 132.

¹⁹⁵ *Ibid* pg 142.

¹⁹⁶ Udombana *Supra* note 33. Pg 773.

¹⁹⁷ *Ibid* pg 775.

The United Nations however recognises these challenges and has always advocated for international cooperation geared towards supporting the weak economies.¹⁹⁸ Despite this, reliance cannot still be placed on this anticipated support as the politics of international cooperation is fraught with irregularities. Ranging from insufficient transfers to unequal distribution influenced by politics.¹⁹⁹

Finally, the imposing need for sustainable development also presents another challenge to the discourse. I consider this a challenge because of the cost implications of engaging in a sustainable developing, and the propensity of states to simply engage in development models tuned towards economic growth. Development has been defined as the fulfilment of human potential.²⁰⁰ In making the human person the central subject of the right to development,²⁰¹ considerations are moved from a mere focus on economic developments to a focus on the human development encompassing all economic, social, cultural, political and environmental dimensions.²⁰² This calls for the need to check all developmental activities to ensure that it is truly in the best interest of the human person rather than an attempt to improve a particular dimension of development. Udombana notes that the primary aim of development is to provide all man's physical and spiritual needs. This cannot thus be achieved where a monolithic approach to development is taken.²⁰³ This is an affirmation of the position of the United Nations which agrees that the purpose of development is the actualisation of all human potential in harmony with the community. There is

¹⁹⁸ See ICESCR *Supra* note 12, Article 2(1) and UNDRTD, *Supra* note 4, Article 8, *Copenhagen Declaration on Social Development and Programme of Action*, 12 Mach 1995, UN DOC. A/CONF.166/9 Online at https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.166_9_Declaration.pdf accessed 30th March, 2022. Paragraph 28 and 29.

¹⁹⁹ Udombana *Supra* note 33. Pg 780

²⁰⁰ *Ibid*

²⁰¹ UNDRTD Article 1 *Supra* note 4.

²⁰² Arts Karin, "Inclusive Sustainability Development: A Human Rights Perspective", (2017) 24 *Current Opinion in Environmental Sustainability* at 58. <https://www.sciencedirect.com/science/article/abs/pii/S1877343517300301> accessed 26th March, 2022.

²⁰³ Udombana, *Supra* Note 33, p.757

therefore the need for economic, social and cultural growth to be concurrent, complementary, and given equal attention.²⁰⁴

The effect of such a form of ‘independent’ development with a focus on economic growth has been evident over the years, manifesting itself in a lot of crises all round the world. This ranges from incessant natural disasters, drastic climate change, political and economic instability. Even the natural resources have been exploited in such a way that there exists a fear that the future generation might be left with nothing. Therefore, in making the human person the central focus of all developments, the idea of sustainable development comes into place as a form of soft limitation on the powers of the states in the exercise of their duty to promote development.

Sustainable development has been defined as a “development that fulfils the need of the present generation without comprising the ability of the future generation to meet its needs.”²⁰⁵ Although the UNDRTD does not expressly envisage the future generations as part of the beneficiaries to the rights, nevertheless, it shares a common feature with the 2030 Sustainable Development Goals by simultaneously creating a relationship between human rights and development.²⁰⁶

However, in addition to this common feature, the Agenda also seeks to protect the ecosystem as reflected in the targeted 2030 goals. Particularly, its provisions reflect the insight that development pathways and patterns of production and consumption ought to accommodate environmental and

²⁰⁴ UN Secretary General, “Emergence of the Right to Development”, Realizing the Rights to Development for the Twenty-First Century” in Office of the High Commissioner, United Nations Human Rights, ed, *Realizing the Right to Development*(HR/PU//12/4, United Nations Publications, 2013) at 8
https://www.ohchr.org/Documents/Publications/RightDevelopmentInteractive_EN.pdf accessed 10th March, 2022.

²⁰⁵ Brundtland, “Report of the World Commission on Environment and Development: Our Common Future” (1987). United Nations General Assembly Document A/42/427.

²⁰⁶ Imme Scholz, “Reflecting on the Right to Development from the Perspective of Global Environmental Change and the 2030 Agenda for Sustainable Development”, in Markus Kaltenborn et al, eds, *Sustainable Development Goals and human rights*, (2020) Interdisciplinary Studies in Human Rights, electronic book, online at <https://library.oapen.org/viewer/web/viewer.html?file=bitstream/handle/20.500.12657/22942/1007219.pdf?sequence=1&isAllowed=y> accessed 26th March, 2022.at 193.

social concerns.²⁰⁷ More than 150 heads of State and governments approved the new agenda for the Sustainable Development Goals at the summit held in New York.²⁰⁸ By adopting the goals, the concerned heads of states have committed to protect the needs of both the present and future generations pursuant to its provisions for environmental, economic and social development of a society.²⁰⁹

Sustainable development has been expressed to have three pillars, namely: economic development, social development, and environmental protection.²¹⁰ The economic development pillar ensures that economic growth in countries maintain a healthy balance with the ecosystem, which should be evident in the fair distribution and efficient allocation of resources. It must be ensured that there are enough resources for the human population as a whole and that these resources are distributed for the benefit of as many people as possible."²¹¹ Furthermore, the limited resources the environment has means that the environment must be protected from corporate exploitation and neglect.²¹²

Social disruptions threatens the lives and wellbeing of members of a community. On this basis, human inequality, conflict, social injustice and poverty must be addressed to promote social equity. A successful outcome in this pursuit leads to development that is sustainable.²¹³

²⁰⁷ *Ibid* pg 195.

²⁰⁸ United Nations Conferences, Environment and Sustainable Development, 'United Nations Summit on Sustainable Development, 25-27 September 2015, New York. Online at <https://www.un.org/en/conferences/environment/newyork2015> accessed 28th March, 2022.

²⁰⁹ Shi Longyu et al, 'The Evolution of Sustainable Development Theory: Types, Goals, and research prospects' (2019) 11 *Sustainability* 24 at 5

²¹⁰ Ben Purvis et al, "Three Pillars of sustainability: in Search of Conceptual Origins", (2019) 14 *Sustainability Science*, Online at <https://link.springer.com/content/pdf/10.1007/s11625-018-0627-5.pdf> accessed 28th March, 2022.

²¹¹ Gozie S Ogbodo "The Paradox of the Concept of Sustainable Development under Nigeria's Environmental Law" (2010) 3 *J of Sustainable Development* 3 at 201;

²¹² *Ibid*.

²¹³ Purvis *Supra* note 210

The environmental protection pillar supports initiatives like renewable energy, reducing fossil fuel consumption and emissions, sustainable agriculture and fishing, organic farming, tree planting and reducing deforestation, recycling, and waste management.²¹⁴

Furthermore, the 1993 Vienna Declaration of World Conference on Human Rights which reaffirmed the right to development, giving it the badge of “global legal Consensus”²¹⁵ mandates the UNDRTD to be fulfilled by equitably meeting the developmental and environmental needs of present and future generations pursuant to Article 11.²¹⁶ This provision therefore extends the obligations under the UNDRTD to the sustainable use of the environment.²¹⁷

In addition to this, there are two regional treaties with an ultimate objective of fulfilling the right to a healthy and sustainable environment, providing an enforceable right in the state parties, over environmental issues. They include the Escazu Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean²¹⁸ and the Aarhus Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters.²¹⁹ It is worthwhile to note that the latter, though negotiated under the UN Economic Commission for Europe is open to any country in the world, with the Guinea-Bi-ssau being the first African State to accede to it.²²⁰ These agreements seeks to

²¹⁴ *Ibid.*

²¹⁵ Uvin, *Supra* note 47.

²¹⁶ Vienna Declaration *supra* note 84

²¹⁷ Scholz, *Supra* note 206, pg 200.

²¹⁸ Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean (4 March 2018) UNTC cap XXVII No. 18

²¹⁹ Aarhus Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters (25 June 1998) UNTS Vol 2161, PG 447.

²²⁰ United Nations General Assembly, ‘Supplementary information on the report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, (4th March, 2022). A/HRC/49/53/Annex II. Para 10

promote environmental protection through provisions that would ultimately protect the procedural rights of the people as it relates to the environment.

There may also be commitments under national constitutional provisions or other regional treaties with provisions protecting the environment. An example is section 12 of the Nigerian constitution²²¹ which provides for the duty of the government to protect the environment. Section 24 of the Banjul Charter also provides for the right to a sustainable environment.²²²

2.7 Conclusion

This chapter has presented a detailed overview the right to development and its implementation. Towards the last section, it situates itself in the Nigerian jurisdiction in an attempt to capture the recognition and implementation of same within the domestic sphere. In relation to this climate justice discourse, this chapter will interact with the succeeding chapters to give an insight into the role the right to development plays in the attainment of climate justice. I consider this to be a ‘symbiotic’ relationship because the interaction of both concepts plays a role in the actualisation of their expected independent goals.

²²¹ CFRN supra note 18

²²² Banjul Charter, supra note 5

Chapter Three: Climate Justice

3.1. Introduction

Climate change has wrought many devastating impacts upon mankind. Its impact is increasingly felt across the globe manifesting itself in the forms of rising sea levels, flooding, melting polar ice, catastrophic storms, tropical cyclones, droughts, and heavy precipitation. These result in damaging consequences on human life, ecosystems, and economies of nations. However, the degree of impact is differentiated across nations. Within the nations, its impact affects the vulnerable victims in diverse of ways, depending upon the degree of exposure, capacity to mitigate and adapt to the effects of climate change. Climate justice has emerged as a form of responsibility for role players in an effort to tackle the challenge of climate change. It demands accountability and justice in the loss and damage, mitigation and adaptation efforts to climate change. International Environment Law has evolved as a set of principles, treaties and agreements which provide the legal framework reflecting the response of the global world to environmental matters including climate change.²²³ Hunter construes that the necessity of international cooperation and regulation becomes paramount where the issue in discourse has a transboundary environmental effect,²²⁴ such as climate change. These agreements and treaties have been broadly divided into four categories based on their interests with (1) “protecting the global atmosphere, including preventing climate change and ozone depletion; (2) conserving wildlife and biological diversity; (3) managing the oceans and marine environment; and (4) regulating the global movement of chemicals, wastes and other hazardous substances”²²⁵.

²²³ David Hunter, “International Environmental Law”, (2021) 19 American Bar Association 1 at 1

²²⁴ *Ibid.*

²²⁵ *Ibid.*

Our focus lies on those treaties and agreements protecting the global atmosphere. These include: the Montreal protocol²²⁶; the United Nations Framework on Climate Change²²⁷; the Kyoto protocol²²⁸; and the Paris agreement²²⁹. As earlier stated, climate justice has evolved as a form of responsibility on the duty bearers to tackle climate change. This is affirmed by the International Law Association in a set of Legal Principles Relating to Climate Change²³⁰. These Principles were developed in 2014 to serve as a form of guidelines for the states in the formulation of new international agreements regulating the climate discourse²³¹. Article 4 of the Principles avidly canvass for equity in climate change responses reflective of the common but differentiated responsibilities and respective capabilities.²³² Article 6 of the Principles further recognises the special circumstances of the vulnerable nations and the need for international cooperation²³³.

There is a growing body of literature on climate justice which spans across several related topics. Of particular interest to this paper is the work of Hulbert which sits climate justice as a direct component of environmental justice. Hulbert takes us through the legal world of global climate justice as regulated by the climate regime and clearly elucidates the justice component of the struggle for global adaptation to climate change.²³⁴ Also of interest is the contributions of Islam. Islam focuses on climate finance. He notes the place of ‘vulnerability’ as a necessary consideration

²²⁶ United Nations: Montreal Protocol on Substances that Deplete the Ozone Layer - Adjustments and Amendment. (1993). *I.L.M.*, 32(3), 874-887

²²⁷ UNFCCC *supra* note 14

²²⁸ *Kyoto Protocol to the United Nations Framework Convention on Climate Change*, December 11, 1997, 2303 U.N.T.S. 162

²²⁹ Paris Agreement *supra* note 15

²³⁰ Committee on Legal Principles Relating to Climate Change, “Declaration of Legal Principles Relating to Climate Change”, Resolution 2/2014, International Law Association.

²³¹ Christoph Schwarte & Frank Will, “The International Law Association’s Legal Principles on Climate Change and Climate Liability Under Public International Law.” (2014) 4 *Climate Law* 3 at 201.

²³² Resolution 2/2014, *supra* note 230. The need for equity is also provided by Article 2 of the Paris Agreement

²³³ *Ibid.*

²³⁴ Margot A Hurlbert, “Evaluating Climate Justice - Attitudes and Opinions of Individual Stakeholders in the United Nations Framework Climate Change Convention Conference of the Parties” (2011) 8 *J of Integrative Environmental Sciences* 4 at 267

in the allocation of climate funds and traces the risks and challenges of same.²³⁵ Awolala's contributions in explaining the indices for determining the vulnerable groups in Nigeria was also particularly helpful in this chapter.²³⁶

This chapter purports to delve into climate change. It elucidates the concept of climate change, its impacts, and consequent responsibility for responding to same in the interest of an equitable development for all. It however narrows the concept to the Nigerian jurisdiction by illustrating the import of climate justice in the domestic sphere. Particularly, it identifies the vulnerable groups to whom a greater responsibility of climate justice is owed.

3.2. An Overview of Climate Change

Climate change refers to variations in weather patterns and other atmospheric conditions.²³⁷ These shifts may either be effected through natural factors such as variations in the solar cycle where temperature, rainfall, wind and other elements over a period of time; it can also be effected by man made actions.²³⁸ The first assessment report of the IPCC which was completed in 1990 served as the basis for the UNFCCC.²³⁹ It established that emissions resulting from human activities have substantially contributed to the increasing atmospheric concentrations of greenhouse gases, resulting in an additional warming of the earth's surface. Such emissions were listed to include

²³⁵Mofakkarul M. Islam, "Distributive justice in global climate finance – Recipients' climate vulnerability and the allocation of climate funds" (2022) 73 *Global environmental change* 102475 at 2

²³⁶ David Olufemi Awolala et al., "Integrated assessment of human vulnerability to extreme climate hazards: emerging outcomes for adaptation finance allocation in Southwest Nigeria" (2022) 14 *Climate and development*, 2 at.166–183.

²³⁷ UNFCCC *Supra* note 14 Article 1

²³⁸ *Ibid*

²³⁹ IPCC accessed online at https://en.linkfang.org/wiki/Intergovernmental_Panel_on_Climate_Change#cite_note-5 on 8th April, 2022. The IPCC is a 1988 creation of the World Meteorological Organisation (WMO) and the United Nations Environment Program (UNEP), charged with the mandate to assess climate change.

CO₂, methane, and nitrous oxide.²⁴⁰ Some of these human activities include: burning fossil fuels which operate to trap the sun's heat in the atmosphere and cause rising temperatures; the burning of forests which releases carbon dioxide; methane emissions which are increased by landfills for waste products, among others. The report calculates with confidence that CO₂ has been responsible for over half the enhanced greenhouse effect.²⁴¹

The report by the World Meteorological Organisation points out carbon dioxide as the major anthropogenic greenhouse gas in the atmosphere, responsible for approximately 66% of the enhanced effect by other greenhouse gases. At 16%, methane comes as the next major radiative forcing greenhouse gas in the atmosphere. About 60% of methane is emitted by anthropogenic sources such as fossil fuel exploitation, landfills and biomass burning, while the remaining 40% of methane is emitted into the atmosphere by natural sources (for example, wetlands and termites). Nitrous oxide as the third major anthropogenic greenhouse gas accounts for about 7% of the radiative forcing by the greenhouse gases. It is emitted into the atmosphere from both natural sources (approximately 60%) and anthropogenic sources (approximately 40%), including oceans, soils, biomass burning, fertilizer use and various industrial processes. According to the report, the 2020 analysis of observations from the Global Atmosphere Watch, a body of the World Meteorological Organisation, shows that the new recorded values of carbon, methane and nitrous oxide constitute a respective 149%, 262% and 123% increase to the pre-industrial (before 1750) levels.²⁴²

²⁴⁰ Intergovernmental Panel on Climate Change [IPCC], "Climate Change" (1990) Houghton J.T. et al (eds), Report Prepared for IPCC by working group I (Cambridge University Press) online at [ipcc far wg I full report.pdf](#) accessed on 8th April, 2022. Pg iv

²⁴¹ *Ibid* pg xvii.

²⁴² World Meteorological Organisation, Global Atmosphere Watch, "The State of Greenhouse Gases in the Atmosphere Based on Global Observations through 2020" WMO Greenhouse Gas Bulletin, No. 17 | 25 October 2021. Accessed online https://library.wmo.int/doc_num.php?explnum_id=10904 8th April, 2022.

The long-term trend of rising temperatures has plunged the planet into a breaking record of seven consecutive warmest years in history with far reaching consequences for both present and future generations.²⁴³ Between 1970 and 2019, 79% of disasters worldwide involved weather, water, and climate-related hazards. These disasters accounted for 56% of deaths and 75% of economic losses from disasters associated with natural hazards reported during that period.²⁴⁴ The year 2021 has been marked by extreme weather conditions — from drought and fires in Southern Europe, Russia and North America to severe flooding in Western Europe, Africa and Asia²⁴⁵. This is in addition to the increased cases of rising sea levels, flooding, melting polar ice,²⁴⁶ catastrophic storms, tropical cyclones, heavy precipitation, and declining biodiversity. Little wonder the news report tweeted by the Columbia Broadcasting Service of the readiness of the Titanic replica to set sail by 2022 received a trail of rather scathing responses by the public. Most of the reactions attributed the speculated success of the sail to global warming and the melting of icebergs.²⁴⁷

A report from the Intergovernmental Panel on Climate Change has emphasized the need for strong and sustained reductions in emissions of carbon dioxide and other greenhouse gases otherwise the global surface temperature would exceed the dreaded two degrees. According to the report, with the sustained

²⁴³ World Meteorological Organisation, “State of Climate in 2021: Extreme Events and Major Impacts” 31st October, 2021. Online on <https://public.wmo.int/en/media/press-release/state-of-climate-2021-extreme-events-and-major-impacts> accessed 8th April, 2022.

²⁴⁴ *Ibid.*

²⁴⁵ Stephanie Hoppner, “Fire to Floods: Extreme Weather is Occurring Worldwide (2021) online at <https://www.dw.com/en/fires-to-floods-extreme-weather-is-occurring-worldwide/a-58819658> accessed 8th April, 2022.

²⁴⁶ IPCC 2014 *Supra* note 22 pg. 42. Supported by robust evidence, the report noted with confidence that the global warming has resulted in the diminishing of ice and snow, as well as a rise in sea levels.

²⁴⁷ CBS News, ‘Titanic replica could set sail by 2022, following original route. Accessed online at <https://twitter.com/cbsnews/status/1055081663410122752?lang=en> 8th April, 2022.

reductions, benefits for air quality would come quickly, while global temperatures would take 20-30 years to stabilize.²⁴⁸

Climate change has been identified as a threat to the effective enjoyment of a range of human rights such as the right to “life, health, water and sanitation, food, housing, culture, self-determination, culture and development”²⁴⁹. The UN notes that climate change has “contributed and continues to contribute to the increased frequency and intensity of both sudden-onset natural disasters and slow-onset events, and that these events have adverse effects on the full enjoyment of all human rights”.²⁵⁰ The obligation of the states to effectively cater for and protect the human rights of its people has therefore necessitated an adequate response to the climate crisis.

The importance of a fast positive reaction to this cannot be overstated as illustrated by the report of the Special Rapporteur-an independent expert charged with the mandate to study the relationship between Extreme Poverty and Human Rights. The report while illustrating the grave impact of climate change on the human rights of those living in extreme poverty found that “Climate change threatens the future of human rights and risks undoing the last 50 years of progress in development, global health and poverty reduction”.²⁵¹ The impact of these is already being felt in all aspects of social life including food production, access to good water, the natural environment, biodiversity, health, human security and the economy, cumulatively affecting the human rights to: life; health;

²⁴⁸ IPCC, “Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change” (2021) Masson-Delmotte et al (eds) (Cambridge University Press). Online at <https://www.ipcc.ch/report/ar6/wg1/> accessed 8th April, 2022.

²⁴⁹ Office of the High Commissioner, “The Impacts of Climate Change on the Effective Enjoyment of Human Rights”, online at <https://www.ohchr.org/en/climate-change/impacts-climate-change-effective-enjoyment-human-rights> accessed 8th June, 2022.

²⁵⁰ United Nations General Assembly, “Resolution Adopted by the Human Rights Council”, (23rd July 2019) Forty-eight session, Human Rights Council, A/HRC/RES/41/21. Summary. Accessed online on 8th June, 2022.

²⁵¹ A/HRC/41/39 *Supra* note 29.

sustainable environment; family and development generally.²⁵²As climate change continues to threaten human lives, ecosystems and economies, risk information and early warning systems (EWS) are increasingly seen as key for reducing these impacts.²⁵³

3.3. Legal Frameworks

The United Nation Framework Convention on Climate Change²⁵⁴ which was entered into force on 21st March, 1994 has been ratified by one hundred and ninety-seven countries.²⁵⁵ The aim of the Convention is to protect the global world from the effects of climate change by creating treaties and agreements aimed towards “the greenhouse gas concentrations at a level that would prevent dangerous anthropogenic (human induced) interference with the climate system.”²⁵⁶ States parties to the convention meet annually at the Conference of the Parties (COP) to get updates on the progress of the commitments and develop further measures in light of any new scientific updates.²⁵⁷ It is on this basis that the Paris Agreement was birthed during the 2015 COP.

The Paris Agreement is a legally binding international treaty on climate change, adopted by 196 Parties at COP 21 in Paris, on 12 December 2015 and entered into force on 4 November 2016.²⁵⁸ As at January 2021, the Agreement has been ratified by 190 countries.²⁵⁹ The primary

²⁵² IPCC 2014, *Supra* note 22

²⁵³ World Meteorological Organization, *Supra* note 242.

²⁵⁴ UNFCCC *Supra* note 14

²⁵⁵ United Nations Climate Change, “UNFCCC-Parties” online at <https://unfccc.int/process/parties-non-party-stakeholders/parties-convention-and-observer-states> accessed 12th August, 2022 See https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=IND&mtdsg_no=XXVII-7&chapter=27&Temp=mtdsg3&clang=en for the treaty status of parties.

²⁵⁶ United Nations Climate Change, “What is the United Nations Framework Convention on Climate Change?” accessed online <https://unfccc.int/process-and-meetings/the-convention/what-is-the-united-nations-framework-convention-on-climate-change> 8th April 2022.

²⁵⁷ Dietzel, *Supra* note 7, p.95

²⁵⁸ The Paris Agreement *Supra* note 15

²⁵⁹ *Ibid* see https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-7-d&chapter=27&clang=en for the treaty status of parties.

objective of the Agreement is to keep global warming to well below two degrees Celsius, while pursuing efforts to limit it to one point five degrees Celsius, compared to pre-industrial levels.²⁶⁰ Pursuant to the Agreement, state parties are required to prepare and present their own contributions toward the target of reducing greenhouse gas emissions and keeping the global atmosphere within the target level. These individual contributions are called Nationally Determined Contributions and will usually be reviewed every five year period to assess their effectiveness.²⁶¹

This set objective was a necessary response following the publication of the fifth Assessment report from the Intergovernmental Panel on Climate Change (IPCC) made in 2014 which made several predictions on the steady decline of a sustainable climate backed by scientific evidence. According to this report, each of the last three decades marked by the 30-year period between 1983-2012 has been successively warmer at the Earth's surface than any preceding decade since 1850.²⁶² With confidence, the report blamed the causative factor for half of this observed increase in global average surface temperature on the anthropogenic increase in GHG concentrations despite the mitigation efforts.²⁶³ Backed by scientific evidence, the report went further to warn that a continuous trend at the current rate of emission would definitely result in a global warming level above the sustainable level of two degrees Celsius pre industrial level, before the end of the twenty-first century (2081-2100).²⁶⁴ This may inevitably lead to further warming and long-lasting changes in all components of the climate system, "increasing the likelihood of severe, pervasive and irreversible impacts for people and ecosystems."²⁶⁵ The

²⁶⁰ *Ibid* Article 2(1)(a)

²⁶¹ *Ibid*.

²⁶² IPCC 2014, *Supra* note 22, Pg 40.

²⁶³ *Ibid* pg 48

²⁶⁴ *Ibid*, pg 60

²⁶⁵ *Ibid*, pg 56

impact of these predictions can only be mitigated by developing visibly sustained strategies to ensure a substantial reduction in the emission of greenhouse gas emissions as well as developing sustainable strategies to enable adaptation to the current climate change risks.²⁶⁶

This report with its several predictions set the rolling stone for the negotiations for the Paris Agreement.²⁶⁷ The UNFCCC has advanced the course of climate justice in its recognition of a common but differentiated responsibility.²⁶⁸ This presupposes that the measure of expected responsibility should be reflective of the contribution to climate change. The Agreement canvasses for equity in the allocation of responsibility for climate responses and further directs that special consideration be given to vulnerable groups in the climate response.²⁶⁹ The negotiations preceding the Paris Agreement sought to advance the climate actions already established by the UNFCCC by incorporating human rights obligations into the agreement.²⁷⁰ However, the agreement only made reference to human rights in its preamble, with no explicit commitment made in its operative provision. Despite this, human rights obligations can still be inferred from the Paris Agreement when it is read in conjunction with other relevant international human rights law instruments, such as the Sustainable Development Goals as demanded by the Vienna Convention on the Law of Treaties.²⁷¹

²⁶⁶ *Ibid*, pg 56.

²⁶⁷ Andreas Fischlin, “Scientific and Political Drivers for the Paris Agreement: Background and Role of Science” in Klein, D.R. et al., eds, *The Paris Agreement on Climate Change: Analysis and Commentary First* (Oxford, United Kingdom; New York, NY: Oxford University Press 2017).

²⁶⁸ UNFCCC *Supra* note 14, Article 3

²⁶⁹ *Ibid* Article 3(2)

²⁷⁰ Patrícia Galvão Ferreira, “Did the Paris Agreement fail to Incorporate Human Rights in Operative Provisions?”, (2016) Centre for International Governance Innovation, CIGI Papers No. 113. Online at <https://www.cigionline.org/sites/default/files/documents/Paper%20no.113.pdf> accessed 12th August, 2022.

²⁷¹ Vienna Convention on the Law of Treaties, 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980), art 31(1) [Vienna Convention].

3.4. Climate Justice

Climate justice involves the uneven distribution of climate change vulnerability, responsibility, and capacity.²⁷² The basis of climate justice has been ascribed to the inverse relationship between climate risk and responsibility.²⁷³ Hulbert considers climate justice as an offshoot of, and supplementary to environmental justice.²⁷⁴ Schlosberg and Collins concede that the intersection between climate justice and environmental justice was solidified by hurricane Katrina. The event shifted the focus from a demand for mitigation measures towards climate change to include a conception of climate change as another environmental condition that demonstrates the broader social injustice of poor and minority communities. Adopting the definition of environmental justice from Schlosberg and Collins, we can define climate justice as the combination of the idea of climate /environmental sustainability with demands for social justice.²⁷⁵

Justice is typically divided into three types: procedural justice (participation, inclusiveness, and empowerment in decision-making), distributive justice (the spatial and statistical distribution of costs, benefits and risks), and justice as recognition (the underlying determinants of procedural and distributional justice).²⁷⁶

²⁷² Munk Stausgaard Trine, “Climate Justice: An Important Component of Climate Adaptation Projects” online at <https://ramboll.com/ingenuity/climate-justice> Accessed 8th April 2022.

²⁷³ Sam Barrett, “Subnational Climate Justice? Adaptation Finance Distribution and Climate Vulnerability” (2014) 58 *World Development* at 130–142.

²⁷⁴ Hurlbert, *supra* note 234. Pg. 269. See also Jennifer Huang, “Climate Justice and the Paris Agreement” (2017) 9 *J. Animal & Env'tl. L.* 25. Environmental justice has been defined as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” See United States Environmental Protection Agency, “Environmental Justice” (last visited 18 October 2019) <www.epa.gov/environmentaljustice>.

²⁷⁵ David Schlosberg & Lisette B Collins, “From Environmental to Climate Justice: Climate Change and the Discourse of Environmental Justice” (2014) 5 *Wiley Interdisciplinary Reviews. Climate Change* 3 at pp.359–374.

²⁷⁶ *Ibid.* Also see Hurlbert, *supra* note 234. Pg 270.

Procedural justice here relates to participation, empowerment and inclusion of people in making a decision on matters of import to them.²⁷⁷ Procedural justice has been defined as the fairness and transparency of processes used in decision making by those in positions of authority to reach specific outcomes or decisions.²⁷⁸ Procedural justice can be said to be attained in any issue of discourse where the process of arriving at such a decision meets the following principles: all representatives are given a voice; neutrality and transparency are maintained in giving unbiased decisions; all participants are treated with respect and dignity: and the decision makers are deemed trustworthy and transparent in the decision making process.²⁷⁹

Procedural justice plays a very vital role in decision making as it confers legitimacy upon the decision taken and lawfully demands obedience or acceptance thereto.²⁸⁰ In addition, it also boosts the commitment of the people to such decisions, as well as trust and confidence in the decision makers and leaders.²⁸¹ This is because the very art of participating and having an opportunity to influence the decisions gives the people some measure of indirect control over the process.²⁸² It is essentially important because it ensures that the interests of all people are considered and adequately provided for. Moreso, in placing a value upon the contributions and perceptions of

²⁷⁷ Schlosberg & Collins, *Supra* note 275. Pg 360.

²⁷⁸ Yale Law School, ‘Procedural Justice: The Justice Collaboratory’, online at <https://law.yale.edu/justice-collaboratory/procedural-justice> accessed 10th April, 2022.

²⁷⁹ *Ibid*

²⁸⁰ Mike Hough et al., ‘Procedural Justice, Trust, and Institutional Legitimacy Policing’ (2010) 4 A J of Policy and Practice 3 at 203

²⁸¹ Audrey M. Korsgaard et al, ‘Building Commitment, Attachment, and Trust in Strategic Decision-Making Teams: The Role of Procedural Justice (1995) 38 Academy of Management J 1 at 60

²⁸² *Ibid*, pg 65.

concerned groups, an environment of harmony borne out of cooperation and positive attitudes towards the leaders and decision makers is created.²⁸³

Distributive justice on the other hand refers to the allocation of benefits and burdens in a just way in situations where the element of consideration cannot simultaneously go round.²⁸⁴ It presupposes the presence of a benefit, reward or consequence resulting from the social cooperation of a group.²⁸⁵ Although the form of a just distribution may be defined by the socio-cultural composition of the society within which it operates, nevertheless, the universally accepted form of distributive justice is based on the equity of contribution.²⁸⁶ This principle demands that benefits or burdens should be distributed in accordance with the relative contribution of each group or individual.²⁸⁷

In relation to culturally specific forms of distribution however, justice may be based on either equality, need or other societally accepted forms of justice.²⁸⁸ Whatever the form of distribution adopted by a society, the major necessity is that the criterium of morality must be complied with.²⁸⁹

In relation to the environment, Hulbert describes distributive justice to involve the equal allocation of environmental blessings and burdens.²⁹⁰

Justice as recognition refers to the determinants of procedural and distributive justice.²⁹¹ Here, justice transcends from the mere elimination and avoidance of inequality to include the

²⁸³ *Ibid*, pg 66.

²⁸⁴ HSU Ming et al, "The Right and the Good: Distributive Justice and Neural Encoding of Equity and Efficiency" (2008) 320 *Science* (American Association for the Advancement of Science) 5879 at 1092.

²⁸⁵ A.A. Poduzov, "Distributive justice in society: An outline of modern ideas" (2012) 23 *Studies on Russian Economic Development* 5 at 499.

²⁸⁶ Clara Sabbagh & Deborah Golden, "Reflecting Upon Etic and Emic Perspectives on Distributive Justice" (2007) 20 *Social Justice Research* 3 at 372

²⁸⁷ *Ibid*.

²⁸⁸ *Ibid* at 375

²⁸⁹ Poduzov *supra* note 285 at 500.

²⁹⁰ Hurlbert, *supra* note 234 at 270.

²⁹¹ Trine, *Supra* note 272.

preservation of the dignity and respect of all persons.²⁹² This underscores the promotion of the social recognition of all persons by making the state welfare subject to the social cooperation of all within its sphere.²⁹³ To that extent, social injustice can be said to prevail where an individual is deprived of a form of recognition due to him. To be construed as an injustice, such deprivation must be a consequence of cultural determinants rather than insufficient resources.²⁹⁴ Provided the insufficiency is not triggered through the maladministration or corruption of the government in power. The form of justice adopted and recognised must however be reflective of the overriding desire and promotion of societal development.²⁹⁵

The theory of justice and recognition simply places the individual at the center of its implementation in the society. It places an emphasis on the self-realisation of the individual in a bid to ensure the general moral progress in the society prompted by an atmosphere of fair recognition.²⁹⁶

Social justice can therefore be said to be attained in an environment where the fulfilment of the individual's need, equal respect and social respect is recognised and made paramount in any discourse.²⁹⁷ In such a society, a claim of injustice can rightly be made where the alleged acts of injustice contributes to a decline in the 'moral level of social integration' among the victims.²⁹⁸ This occurs where the individual's world of self realisation is tainted by acts that question his esteem and leads to a dissociation from the rest of the group. In relation to the climate discourse,

²⁹² Axel Honneth, "Recognition and Justice: Outline of a Plural Theory of Justice" (2004) 47 *Acta sociologica* 4 at 351.

²⁹³ *Ibid*, pg 352.

²⁹⁴ *Ibid*.

²⁹⁵ *Ibid*.

²⁹⁶ Toppinen Pilvi, "Critical Reflections on Social Justice and Recognition" (2005) 11 *Res publica* (Liverpool, England) 4 at 432.

²⁹⁷ *Ibid* pg 430

²⁹⁸ *Ibid*.

I liken these individuals to victims of climate change who shares a collective interest and corresponding agitation for recognition.

I found it necessary to elucidate the notion of justice in this section because it enables an indepth understanding of the essential rudiments of climate justice. Where the climate responses undertaken by the government meets with these essential rudiments of justice, then climate justice can be said to have been met.

3.5. Expanding Conceptions of Climate Justice

The notion of climate justice takes several forms. This includes climate justice under the international sphere and at the domestic level respectively.

In the international sphere, the concept of climate justice evolved from the fact that the industrialised nations of the world are culpable for the climate change experienced in the present times, yet, despite the fact they enjoy the benefits of the wealth amassed from their actions, a greater proportion of the impacts of same actions are borne by the poorer nations.²⁹⁹

This is because of the geographical location of these developing countries which made them more susceptible to the negative effects of climate change, as well as their financial and technological incapability to adapt.³⁰⁰ In its preamble, the UNFCCC identifies the historical responsibility of developed nations for climate change. The issue of climate change has earlier been identified to be transboundary in nature, making it a common concern for mankind.³⁰¹ This has led

²⁹⁹ Josh Gabbatiss & Ayesha Tandon, “In-depth Q&A: What is Climate Justice?” Carbon Brief. accessed <https://www.carbonbrief.org/in-depth-qa-what-is-climate-justice> accessed 12th April, 2022.

³⁰⁰ Dietzel, *Supra* note 7 pg 14

³⁰¹ Hunter, *supra* note 223. Seck argues that the transboundary nature of a harm merely makes it an intraterritorial concern within the victimized states. See Sara L. Seck, “Transnational Business and Environmental Harm: A TWAAIL Analysis of Home State Obligations” (2011) 3 Trade law & dev. 164. pg 173 also online at <http://www.tradelawdevelopment.com/index.php/tld/article/view/180/188> accessed 8th July, 2022.

to the concentrations of climate change discourse on the global responses. The vulnerability of the developing countries to climate change has been attributed to the history of racism and colonialism which they had been subjected to by the developed countries.³⁰² Colonialism has been identified as a means of economic control by developed nations.³⁰³ From the environmental spectrum, this is reflected firstly, from the dispossession, control and exploitation of fossil fuel economies and from the identified sacrifice zones during the colonialism era.³⁰⁴ Secondly, it is still reflected in the overarching control exercised by transnational companies owned by these industrialised countries over the fossil fuel industries of developing nations.³⁰⁵ The consequent “extraction, processing, transporting, refining, and combustion of fossil fuel” are not without the consequent environmental degradation to the host countries.³⁰⁶ The IPCC has identified that vulnerability is triggered and enhanced by the exposure, sensitivity and adaptive capacity of the nations.³⁰⁷ A degraded environment is already sensitive to the harsh effect of climate change, in the same way, the adaptive capacity of the people is severely limited where the means of livelihood are already impacted by the degraded environment, particularly livelihoods dependent on natural resources. This situation has often led to climate displacement further increasing vulnerabilities.³⁰⁸ These countries continue

³⁰² Carmen G. Gonzalez, “Racial Capitalism and Anthropocene”, in Sumudu A. Atapattu, Carmen G. Gonzalez & Sara L. Seck (eds), *The Cambridge Handbook of Environmental Justice and Sustainable Development* (New York: Cambridge University Press, 2021) at 76

³⁰³ Margaret Kohn & Reddy Kavita, "Colonialism", *The Stanford Encyclopedia of Philosophy* (Summer 2022 Edition), Edward N. Zalta (ed.), forthcoming URL = <https://plato.stanford.edu/archives/sum2022/entries/colonialism/> accessed 9th June, 2022.

³⁰⁴ Gonzalez, supra note 302, at 78.

³⁰⁵ Transnational Resource and Action Center, ‘Greenhouse Gangsters vs. Climate Justice’, [Greenhouse Gangsters vs. Climate Justice \(corpwatch.org\)](https://www.corpwatch.org/greenhouse-gangsters-vs-climate-justice) accessed on 13th January, 2022. [Greenhouse gangsters vs. Climate Justice]

³⁰⁶ A degraded environment marked by air, water and land pollution.

³⁰⁷ O.D. Cardona, et al, “Determinants of risk: exposure and vulnerability”, in *Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation*, Field C.B., et al, (eds.) A Special Report of Working Groups I and II of the Intergovernmental Panel on Climate Change (IPCC). (Cambridge University Press, Cambridge, UK, and New York, USA, 2012) at 70.

³⁰⁸ The United Nations Refugee Agency, “Climate Change and Displacement”, United Nations High Commissioner for Refugees. Online at <https://www.unhcr.org/news/stories/2019/10/5da5e18c4/climate-change-and-displacement.html> accessed 9th June, 2022.

to lose human capital to boost their adaptive capacities through the economy. Moreover, the control of the world economy by the developed nations has also placed the adaptive capacities of these developing nations subject to the whims of the developed nations.

Climate justice also covers the notion of unjust expectations from the developed countries for the developing countries to settle for levels of emissions per capita far below the current levels of the developed countries. This is in keeping with the consensus of keeping global warming to well below two degrees. With such demands comes the expectation that they will live with such level of economic activity compatible with such per capita GHG emissions.³⁰⁹ Following this notion is the proposed remedy to the injustice. Accordingly, the industrialised nations has to redistribute a portion of this wealth to the vulnerable nations whose equal right to development has been impeded by the fight for the protection of the climate and a stop to further climate damaging induced activities.³¹⁰ The UN succinctly captioned this proposed remedy under the phrase, “We can pay the bill now, or pay in the future”; the UN continually canvasses for the fulfilment of the commitment of the industrialized countries to fund the adaptation, and move towards greener economies of the developing countries to the tune of one billion dollars (\$1,000,000,000) annually.³¹¹ This would be pursuant to Article 4 of the Paris Agreement³¹² which demands that support should be given to the developing countries to enable them to meet up with the set objectives of the Agreement. Pursuant to the Agreement, such support would come under the following spheres:

³⁰⁹ Shue *Supra* note 7, Pg 70

³¹⁰ Gabbatiss & Tandon *Supra* note 299.

³¹¹ United Nations, “Climate Actions” accessed from <https://www.un.org/en/climatechange/what-is-climate-change> on 12th April, 2021.

³¹² The Paris Agreement, *Supra* note 15

- a. Financial resources in form of climate finance, to enable and support their country-driven strategies for adaptation and mitigation.³¹³
- b. The development and transfer of the necessary technology suited for climate change adaptation and mitigation efforts, including financial support to facilitate research, innovation and access to such technological developments within the developing states.³¹⁴
- c. The building of the capacities of these developing countries, particularly the most vulnerable ones, to enhance their: adaptation and mitigation actions, facilitate technology development, dissemination and deployment, access to climate finance, relevant aspects of education, training and public awareness, and the transparent, timely and accurate communication of information.³¹⁵

Under the international sphere, climate justice research often focuses on justice principles, carbon markets and climate finance allocation criteria and funding architectures.³¹⁶ I consider the following observations which would be considered in turn: fair share of emissions; carbon budget; climate finance; and loss and damage.

The fair share of emissions reflects the geographical inequality of the emission of fuel and greenhouse gases, with a greater portion of such emissions in favour of a small portion of the industrialised nations.³¹⁷ The impacts of the free burning of large volumes of fossil fuels by the industrialised nations in the development projections are being borne by the less advanced

³¹³ *Ibid* Article 9.

³¹⁴ *Ibid* Article 10.

³¹⁵ *Ibid* Article 11.

³¹⁶ Barrett, *Supra* note 273.

³¹⁷ Gabbatiss & Tandon, *Supra* note 299.

regions who are the most susceptible to rising temperature. Due to their developmental status, their condition is worsened by the fact that they lack the wealth, resources and infrastructures to deal with the situation in equal measures. The greenhouse gangsters' publication notes that the use of fossil fuels may be the greatest environmental Injustices of all times.³¹⁸ This is aided by the conception that when those who exploit a common good or natural resource differs from the victims of the consequences of such exploitation, then, the incentive for seeking a sustainable solution to such challenge may become weaker.³¹⁹

This has thus given rise to the concept of a carbon budget. The carbon budget emerged from the IPCC's Fifth Assessment Report, published in 2013–2014. The report established the criteria for making climate policies to depend on the cumulative amount of carbon emitted from human activities.³²⁰ The carbon budget therefore determines questions that include: “what should be done to stay below dangerous thresholds, how should each type of fossil fuel be reduced, what amount of fossil fuel each country or region should leave in the earth, and how should the production of renewable energy be accelerated to replace fossil fuels in the near term”?³²¹ Among other things, establishing and keeping to the carbon budget is necessary to understand the global carbon cycle, support the development of climate policies, and project future climate change.³²²

³¹⁸ Greenhouse gangstars vs. Climate Justice *Supra* note 305

³¹⁹ Maltais *Supra* note 9.

³²⁰ Lahn Bard, “Changing Climate Change: The Carbon Budget and the Modifying-Work of the IPCC” (2021) 51 *Social Studies of Science* 1 at 5

³²¹ Nyambuu Unurjargal & Semmler Willi, “Climate change and the transition to a low carbon economy – Carbon targets and the carbon budget” (2020) 84 *Economic modelling* at 367

³²² Pierre Friedlingstein et al, “Global Carbon Budget 2019” (2019) 11 *Earth System Science Data* 4. Online at <https://essd.copernicus.org/articles/11/1783/2019/> accessed 8th April, 2022.

This is particularly crucial in view of the agreement to restrict world temperature rise to 2 °C and, if possible, retain it below 1.5 °C.³²³ This is based off the warning from the IPCC that a rise in global temperature above 2 °C would result in irreversible devastating consequences.³²⁴

Carbon budget therefore provides the calculated cumulative amount of allowed carbon emissions which is prescribed in order to comply with the global temperature target.³²⁵ It indicates the different target levels for the industrialised nations and the developing countries. This serves as a check to the fossil fuel dependent nations who may be more interested in developing out of poverty than in taking responsibility for mitigating climate change.³²⁶ The global carbon budget is published each year by assessing the data on carbon fluxes from the ocean, land and atmosphere reservoirs as calculated by the IPCC Assessment Reports, as well as other organisations and research groups.³²⁷ According to a report, the estimated carbon budget for 1.5°C now ranges from below zero to more than 1,000 Gt CO₂ from 2018 onward, and for 2°C from less than 800 Gt to almost 2,000 Gt CO₂.³²⁸ A 2018 assessment established the largest contributors to global CO₂ emissions to be China at 28 %, the USA at 15 %, the EU (28 member states at 9 %), and India at 7 %. According to the report, these four regions account for 59 % of global CO₂ emissions, while the rest of the world contributed 41 %.³²⁹

Carbon budget however does not operate to create a global emission allocation. This is based on the intention to simply extend its application towards encouraging the states to create favourable mitigation policies in line with each assessment keeping the global target level in

³²³ Paris Agreement, *Supra* note 15.

³²⁴ IPCC 2014, *Supra* note 22.

³²⁵ *Ibid.* Also see Bard Lahn, 'A History of the Global Carbon Budget' Wiley Interdisciplinary Reviews (2020) online at <https://wires.onlinelibrary.wiley.com/doi/full/10.1002/wcc.636> accessed 9th April, 2022.

³²⁶ Schlosberg & Collins, *Supra* note 275. Pg 360.

³²⁷ *Ibid.*

³²⁸ *Ibid.*

³²⁹ *Ibid.*

focus.³³⁰ An attempt to create an international distribution of emission rights might stifle a true intent to create and work towards a good mitigation plan by some countries as a form of resistance to the ‘tag’ of historical responsibility for climate change.³³¹

Climate finance is defined by the United Nations Framework Convention on Climate Change (UNFCCC) as “local, national, or transnational financing drawn from public, private, and alternative sources of financing that seeks to support mitigation and adaptation actions that will address climate change”³³². This captures the quantifiable compensations made to the developing countries as compensations for the unequal climate risks which they are exposed to.³³³ This is also encouraged by Article 4 of the Paris Agreement which advocates for the support of the developing countries in their adaptation and mitigation moves.³³⁴ This is to give effect to the principle of “common but differentiated responsibility and respective capabilities”³³⁵. Christopher et al analyses the two types of climate finance to include “sovereign catastrophe insurance pools, geared to adaptation, and green (climate) bonds, geared principally to mitigation.”³³⁶ There are several indices of consideration for financial allocation of funds. Its allocation may be as determined by the International Capital Markets Association or as laid down by the climate bonds standard.³³⁷ The justice lens of the climate change response however demands the allocation of financial compensations in accordance with the vulnerability of the countries.³³⁸ Islam however notes that the vulnerability indices

³³⁰ Bard, *Supra* note 320.

³³¹ *Ibid.*

³³² United Nations Climate Change, “Introduction to Climate Finance”, online at <https://unfccc.int/topics/climate-finance/the-big-picture/introduction-to-climate-finance> accessed 8th April, 2022.

³³³ Barrett, *Supra* note 273. Pg.130.

³³⁴ Paris Agreement *supra* note 15, Article 4

³³⁵ UNFCCC *Supra* note 14 Article 3

³³⁶ Christophers Brett et al, “Stretching scales? Risk and Sociality in Climate Finance” (2020) 52 Environment and Planning. A, 1 at 88–110.

³³⁷ *Ibid.*

³³⁸ Islam, *Supra* note 235

attract more funds for adaptation concerns than mitigation responses to the risks of climate change.³³⁹ The vulnerability indicators used includes: larger population, poor gross domestic product (GDP) per capita and geographical location of the identified countries.³⁴⁰

Despite the noble intent of this, its implementation is however fraught with some challenges impeding the equity of allocation. Nations that show more readiness for investment and a high rate of previous funding are more likely to attract more funding.³⁴¹ Moreso, some otherwise qualified countries are deprived of these funds on the basis of a “lack of capacity to prepare good quality project proposals, unavailability of historical climatological data, low number of qualified staff, and lack of technical, monitoring and evaluation capacities”.³⁴²

At the 2009 UN climate summit, developed countries pledged to mobilize US\$100 billion annually by 2020 to help developing countries mitigate and adapt to climate change.³⁴³ Although the pledge wasn’t met, nevertheless, it is still an indication of good faith on the part of the developed countries to assist in the adaptation and mitigation concerns of the developing countries.³⁴⁴

The concept of loss and damage (L&D) applies to both international and domestic governments. L&D emerged as a platform for the recognition of the adverse effect of climate change on the people and the environment which may either be repairable or irreparable.³⁴⁵ A

³³⁹ *Ibid.*

³⁴⁰ *Ibid.*

³⁴¹ *Ibid.*

³⁴² *Ibid.*

³⁴³ United Nations Climate Change, “UN Climate Change Conference: Copenhagen Climate Conference- December 2009” online at <https://unfccc.int/process-and-meetings/conferences/past-conferences/copenhagen-climate-change-conference-december-2009/copenhagen-climate-change-conference-december-2009> accessed 6th April, 2022.

³⁴⁴ Jocelyn Timperley, “The Broken \$100-Billion Promise of Climate Finance- and How To Fix It” (2021) 598 *Nature (London)* 7881 at 401.

³⁴⁵ Meinhard Doelle & Sara L. Seck “Introducing Loss and Damage”, in *Research Handbook on Climate Change Law and Loss & Damage*, Meinhard Doelle & Sara L. Seck (eds) (UK: Edward Elgar Publishing Limited, 2021) at 2

relationship has been established between the two responses (adaptation and mitigation) to climate change and L&D. Adaptation helps reduce the impact of L&D while mitigation helps reduce the risk of L&D.³⁴⁶ However, as earlier identified, adequate responses to climate change is propelled by the availability of sufficient funding and resources.³⁴⁷ This puts the vulnerable groups into a tight situation because their exposure to L&D must have undoubtedly limited their capacities and resilience to climate change. Worse still, they may have no share in the benefit accumulated as the fruits of the action triggering the L&D, further increasing the inequalities between the developed and the developing nations.

Having established the relationship above, I would like to think that the idea of L&D also applies in the domestic spheres. Chalifour agrees that the notion of equity in climate justice also extends to the domestic level.³⁴⁸ Indeed, Doelle and Seck recognise communities and individuals as potential victims of L&D induced by climate change.³⁴⁹ This is based upon the recognition that the rate of exposure and vulnerability also affects the rate of L&D. An example is the loss faced by inhabitants of coastal areas during sea level rises, either through the erosion of the lands, or the destruction of the livelihoods dependent on the provisions of the oceans. This further affects the adaptive capacities of the people.

Article 8 of the Paris agreement expressly advocates for appropriate measures to be taken towards averting or limiting L&D. This is of utmost necessity if climate justice is prioritized. I say this because a conscious and intentional effort towards reducing L&D implies an increase in the effectiveness of the mitigation and adaptation responses. The people become more

³⁴⁶ Ibid

³⁴⁷ Paris Agreement, *Supra* note 15

³⁴⁸ Natalie J. Chalifour, “Equity Considerations in Loss and Damage”, in *Research Handbook on Climate Change Law and Loss & Damage*, Meinhard Doelle & Sara L. Seck (eds) (UK: Edward Elgar Publishing Limited, 2021) 19

³⁴⁹ Doelle & Seck, *supra* note 345, pg 6.

empowered to effectively adapt to, and comply with directives on mitigation plans. These ultimately indicates a form of accountability on the part of the culpable bodies which is a recipe for climate justice.

Climate justice is a problem that cuts across levels of government, disciplines, and substantive areas of law in the domestic sphere.³⁵⁰ Climate justice discourse at the national level generally resolves around issues of emissions levels, its impacts, favourable policies, vulnerability and adaptation efforts.³⁵¹ Olawuyi contends that climate justice extends to “projects and policy measures to mitigate climate change but which infringe on human rights because of the exclusion of citizens from projects and inability to obtain redress, particularly in developing countries”.³⁵²

It acts as a connecting point between human rights, environmental justice and ecological sustainability particularly in communities already exposed to the risks of environmental degradation inducing climate change. An example is the Niger Deltans in Nigeria, who suffer the harsh effects of the oil explorations in their lands, being carried out by transnational oil companies in partnership with the Nigerian government.³⁵³ It considers their level of political power and representation in the adaptation process.³⁵⁴ Ecological damage done to surrounding ecosystems that have led to greater vulnerabilities for both human communities and the nonhuman environment, giving credence to the preamble of the Bali Principles of climate justice which provides that “communities and the environment feel the impacts of the fossil fuel economy at every stage of its life cycle, from exploration to production to refining to distribution to

³⁵⁰ Hari Osofsky & I. McAllister, *Climate Change Law and Policy* (New York: Wolters Kluwer 2012) at 2.

³⁵¹ David S.G. Thomas & Chasca Twyman, “Equity and Justice in Climate Change Adaptation Amongst Natural-Resource-Dependent Societies” (2005) 15 *Global Environmental Change*, 2 at 115-124.

³⁵² Damilola Olawuyi, “Advancing Climate Justice in International Law: An Evaluation of the United Nations Human Rights-Based Approach” (2015) 11 *Fla. A&M U.L Rev* 1 at 105-106.

³⁵³ *Greenhouse Gangsters vs. Climate Justice*, *Supra* note 305

³⁵⁴ Trine *Supra* note 272

consumption to disposal of waste; ... climate change and its associated impacts are a global manifestation of this local chain of impacts”.³⁵⁵

The concept of climate change when considered from the domestic sphere covers the vulnerability of lower socio-economic groups and the inhabitants of environmentally polluted areas.³⁵⁶ Scholesberg and Collins refers to it as grassroots climate justice.³⁵⁷ It focuses on the “local impacts and experiences, inequitable vulnerabilities, and the importance of community voice. It also demands for community participation, sovereignty and functioning”.³⁵⁸ Current research on domestic climate justice is mostly focused on the justice implications of domestic policy and local adaptation plans.³⁵⁹ Research gaps have however been identified in “assessing climate risk reduction strategies of the poor, marginalized and vulnerable communities as the primary and defining actors in climate justice analysis in various nations.”³⁶⁰

Climate finance also plays a role here as it promotes the distribution of funds to the most vulnerable states, communities, cities and villages.³⁶¹ This is an essential discourse to the issue of climate justice because developing countries have been identified as the major victims of climate change due to their financial and technological deficit to adapt, their geographic location,³⁶² as well as their dependence on their natural resources.³⁶³ The inequality inherent

³⁵⁵ The Bali Principles of Climate justice was developed by an international coalition of environmental organisations who had gathered for the Earth summit in final preparation for the negotiations at the Summit. See International Climate Justice Network, “Bali Principles of Climate Justice” (2002) Online at <https://www.corpwatch.org/article/bali-principles-climate-justice#:~:text=The%20principles%20were%20developed%20by,in%20Bali%20in%20June%202002>. accessed January, 2022.

³⁵⁶ Trine *Supra* note 272

³⁵⁷ Schlosberg & Collins, *Supra* note 275. Pg 360.

³⁵⁸ *Ibid.*

³⁵⁹ Barret, *supra* note 273.

³⁶⁰ *Ibid.*

³⁶¹ *Ibid.*

³⁶² Dietzel, *supra* note 7, pg 14

³⁶³ Thomas and Twyman *Supra* note 351.

in the system as a result of climate change impacts may be further exacerbated by the unjust distribution of adaptation funds.³⁶⁴ Climate justice herein studies the availability, distribution and effectiveness of adaptation finance to the identified vulnerable groups or communities.³⁶⁵ Vulnerability is identified on “socio-economic and physical parameters which assesses the level of poverty, education, medical access, water access, electricity access and livestock ownership for optimal village matches” as well as geographic location.³⁶⁶ Inability to access climate funds can be attributed to poor implementation of procedural justice, where the concerned members of the group are deprived of the opportunity to express the true extent of the impact of climate change on them, or where the non-inclusive government sidelines them in decision makings.³⁶⁷ This situation doubles as climate injustice.

Thomas and Twyman believe that for justice to be evenly achieved within any level of government, there must be equal distribution of the benefits and costs of climate change.³⁶⁸ Thus, where the issue in focus is the cost or consequences of climate change, its effect must be evenly distributed. This may entail the developed less impacted states financing the cost of adequate response to such climate dangers. In this case, they can be said to have borne the monetary cost of the climate change, while the more affected nations can be said to bear the environmental cost of the climate change. I would also consider the idea of equal distribution of benefits to entail that states who have benefited from the activities giving rise to climate change should extend such benefits in the form of compensations to enable the cost of

³⁶⁴ *Ibid.*

³⁶⁵ Barrett, *supra* note 273.

³⁶⁶ *Ibid*

³⁶⁷ *Ibid*

³⁶⁸ Thomas and Twyman *Supra* note 351

adaptation of the victimized nations.³⁶⁹ Finally, just distribution of benefits should also extend to equity in the sharing of climate funds, taking into consideration the special circumstances of each vulnerable group. This may either be related to the extent of climate risks, any extenuating circumstances further aggravating their already deplorable situation, rate of environmental damage and the sacrifices they may have consequently been forced to make.³⁷⁰

In order to bridge the inequality gap, adaptation funds should be targeted towards “socio-economic demographic inequalities, communication services, support institutions and infrastructure as well as basic social amenities”.³⁷¹

3.6. Nigerian Climate Legal Framework

Nigeria can be said to make giant strides towards attaining the net zero emissions by 2050 pursuant to her commitment to the Paris Agreement. In compliance with Article 4.2 of the Paris Agreement,³⁷² Nigeria submitted her updated Nationally Determined Contribution aimed towards complying with the commitment of the State parties to the agreement to keeping emissions well below two degrees by 2050.³⁷³ Therein, Nigeria affirmed her commitment to contribute towards the global objective by keeping her emissions unconditionally 20% below her normal emission level by 2030 or a conditional 47% reduction if backed up by international support. The

³⁶⁹ Stefano Giglio et al notes the interrelation between the use of fossil fuel, increase in greenhouse gas emissions, climate change and economic growth for the emitters. Stefano Giglio, Bryan Kelly, & Johannes Stroebel, “Climate Finance” (2021) 13 Annual Rev of Fin Econ 1 at 15-36

³⁷⁰ A given example would be the given situation of the people of the Niger Delta in Nigeria who are the major victims of both the environmental damage and climate change in Nigeria but yet, are further subjugated by the fiscal federalism policy in Nigeria. This prevents the payment of compensation commensurate to the risks they are exposed to. See O.O Ewetan, “Fiscal federalism in Nigeria: Theory and practice” (2012), 1 International J of Development and Sustainability 3 pp. 1075-1087.

³⁷¹ Awolala et al., *Supra* note 236.

³⁷² Paris Agreement *Supra* note 15.

³⁷³ Federal Government of Nigeria, “Nigeria’s Nationally Determined Contribution-2021 Update” 2nd July 2021, https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Nigeria%20First/NDC_File%20Amended%20_112_22.pdf accessed on 4th January 2022. [NDC]

greenhouse gas mitigation assessment is intended to cover eleven pollutants, including four greenhouse gases, short lived climate pollutant and air pollutants.³⁷⁴ To keep up to this agreement particularly the unconditional contribution, Nigeria committed to certain specific policies which among others includes, elimination of kerosene lighting by 2030, greater uptake in bus rapid transit, 50% reduction in the fraction of crop residues burnt by 2030 and implementation of some forest programmes designed to aid the commitment.³⁷⁵

This is however fraught with some challenges. A nation's commitment to the climate change fight is measured by several means³⁷⁶, one of which includes the existence of a clear regulatory framework dedicated towards climate matters.³⁷⁷ Nigeria's commitment to combating climate change within its jurisdiction has been made glaring with her recent enactment of the Climate Change Act which was passed into Law on 21st November, 2021. This enactment has been specifically designed to ensure proper compliance with the climate change mitigation and adaptation policies formulated by the government. It spells out some standards, duties, requirements and penalties expected of the relevant institutions³⁷⁸ and organs created by it.³⁷⁹ This development has placed Nigeria on the path for energy transition.³⁸⁰ It provides the legal

³⁷⁴ *Ibid* Executive Summary.

³⁷⁵ *Ibid*.

³⁷⁶ The United Nations advises on the need to boost the resilient measures and the adaptive capacities of the people, as well as the sourcing of climate finance to enable an effective response. Online at <https://news.un.org/en/story/2020/12/1078612> accessed 12th June, 2022.

³⁷⁷ Uzuazo Etemire, "The Future of Climate Change Litigation in Nigeria: *COPW v NNPC* in the Spotlight", (2021) 15 Carbon & Climate Law Review 2 at 160

³⁷⁸ This includes the Federal Ministry of Environment and the Federal Ministry of Finance charged with the responsibility of creating and revising the carbon budget in line with Nigeria's Nationally Determined Contribution (NDC), pursuant to Section 35 of the Act. They are also charged with creating an Action Plan every five years to ensure consistence of the nations activities with the carbon budget pursuant to Section 20(1) of the Act.

³⁷⁹ This includes the Nations Council on Climate Change, established pursuant to Section 3(1) of the Act and charged with the responsibility of making and implementing policies on all matters relating to climate change; The Secretariat, established pursuant to Section 8(a), and charged with the responsibility of advising and assisting the council in all matters relating to the administrative, scientific and technical execution of its duties.

³⁸⁰ Moses Pila and Somechukwu Ezebuike, "Climate Change and Energy Transition: Is Nigeria on Course with its New Climate Change Act 2021?" Templars. Accessed online <https://www.templers-law.com/wp->

framework for achieving low greenhouse gases setting a target for a net-zero greenhouse gas emission for the year 2050-2070.³⁸¹

Prior to the enactment of this Act however, there have been several international and domestic legal instruments as well as litigation existing under the Nigerian jurisprudence. They are considered relevant to the climate change frameworks, and includes the ICCPR, ICESCR, ACHPR, Nigerian Constitution, and the Associated Gas Re-injection Act.

The provision of Article 6 on the right to life of the International Covenant on Civil and Political Rights (ICCPR, 1966)³⁸² has been expressly construed by the Human Rights Committee to extend to environmental degradation, climate change and unsustainable developments.³⁸³ On the other hand, Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966)³⁸⁴ which guarantees the right to health have been recognised by the Committee on Economic, Social and Cultural Rights to “... extend to ... a healthy environment”.³⁸⁵ Both treaties, though ratified on 29th July 1993, are yet to be domesticated in Nigeria in accordance with Section 12 of the Nigerian Constitution (as amended)³⁸⁶. As such, their provisions can only have a persuasive effect before the Nigerian courts. Nigerian courts have consistently and unflinchingly maintained this stand in relation to international treaties. Thus, in *Abacha v Fawehinmi*,³⁸⁷ the court held that “it is manifest that no matter how beneficial to the country or the citizenry, an

[content/uploads/2021/12/Climate-Change-and-energy-transition-is-Nigeria-on-course-with-its-new-Climate-Change-Act-2021.pdf](https://www.iaac.org/content/uploads/2021/12/Climate-Change-and-energy-transition-is-Nigeria-on-course-with-its-new-Climate-Change-Act-2021.pdf) accessed on 4th January, 2022.

³⁸¹ Section 1(a) –(i) Climate Change Act.

³⁸² ICCPR *Supra* note 13

³⁸³ See General Comment 36, The Right to Life, (30th Oct, 2018) UN Doc CCPR/C/GC/36 Paragraph 62

³⁸⁴ ICESCR *Supra* note 12

³⁸⁵ See Committee on Economic, Social and Cultural Rights, General Comment No.14 Para 4. See also Committee on Economic, Social and Cultural Rights, General Comment No.14 Para 11.

³⁸⁶ Section 12(1) CFRN, *Supra* note 18. It provides that “No treaty between the federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.

³⁸⁷ [2000] 6 NWLR PT.660 Page 228

international treaty to which Nigeria has become a signatory may be, it remains unenforceable, if it is not enacted into the law of the country by the National Assembly”.

Similarly, the African Charter on Human and Peoples’ Rights (ACHPR)³⁸⁸ provides for the protection of the environment, pursuant to Article 24 which provides for the right of people to live in a general satisfactory environment favourable to their development. As described in Chapter 3, this law has been expressly incorporated into Nigerian domestic law by virtue of the African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act³⁸⁹. Thus, in *Nemi & ors v State*,³⁹⁰ the court held that the provisions of the African Charter on Human and Peoples’ Rights has become part of Nigeria’s domestic laws, and its enforcement, just like other laws falls within the judicial powers of the court as provided by the constitution and all other laws relating thereto. The court went further to say that it is the duty of the Court to protect these rights. In *Abacha & ors v Fawehinmi*³⁹¹ the court held that the rights and obligations covered under the Charter has become fully and legally enforceable in Nigeria as any other municipal or domestic law of the land.

In *Centre for Oil Pollution Watch v NNPC*³⁹² the court interpreted the ‘right of people to live in a general satisfactory environment favourable to their environment’ as provided under the Charter to mean the fundamental right of the citizenry to a clean and healthy environment which sustains life. This particular provision of the African Charter on Human and Peoples’ Right and the consequent interpretation in the above case gives effect to the obligation of the government to

³⁸⁸ Banjul Charter *Supra* note 5. Article 24 provides for the right of people to live in a general satisfactory environment favourable to their development.

³⁸⁹ ACHPR (R&E) *Supra* note 145. Also see Ojukwu *Supra* note 145

³⁹⁰ (1994) LPELR-24854(SC) pp15-17

³⁹¹ (2000) LPELR-149SC) pg 53

³⁹² (2018) LPELR-50830(SC) Pp98-112

provide an enabling environment in which all human rights can be fully realised as guaranteed by the right to development.³⁹³ This entails an environment with a conducive climate, in which the development goals are not inhibited by the harsh effects of climate change.

The Nigerian Constitution provides another legal framework for environmental protection. Thus, Section 20 of the 1999 Constitution Federal Republic of Nigeria (CFRN)³⁹⁴ provides that ‘the State shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria.’³⁹⁵ However, the jurisdiction of the Courts to entertain any action relating to the above section has been ousted by Section 6(6)(c) as it forms part of the Fundamental Objectives and Directive Principles of State Policy as set out in Chapter II of the Constitution. As explained in chapter 2, these provisions are made unenforceable because they are merely regarded as fundamental guidelines for policy formulation for purposes of governance.³⁹⁶

The Associated Gas Re-Injection Act³⁹⁷ is targeted towards the elimination of gas flaring practices in Nigeria, this was enacted to compel every company producing oil and gas in Nigeria to submit preliminary programmes for gas-reinjection and detailed plans for its implementation.³⁹⁸ The Act provides a target date for the elimination of gas flaring practices in Nigeria with the possibility of continuous flaring by operators who must obtain a written permission from the Minister of Petroleum and Natural resources³⁹⁹. So far, there has been a shift in date from the initial target of 1st January 1984 to latter dates of 2004, 2008 and finally 2020.⁴⁰⁰ Despite this seeming laxity, there has been recognised improvements by the World Bank of the reductions in gas flarings by

³⁹³ UNDRTD *Supra* note 4 Article 1

³⁹⁴ CFRN *Supra* note 18

³⁹⁵ *Ibid*

³⁹⁶ Edih & Ganagana, *supra* note 143, pg 79.

³⁹⁷ Cap A25 Laws of the Federation of Nigeria, 2004,

³⁹⁸ *Ibid*, Long Title.

³⁹⁹ *Ibid* Section 3(2)

⁴⁰⁰ See Mrabure & Ohimor *Supra* note 179.

some 70% over a period of fifteen years despite a steady oil production at two million barrels a day.⁴⁰¹

3.7. Victims of Climate Change in Nigeria

This section indicates the vulnerability of certain groups of people to climate change. Vulnerability has been defined as the sensitivity to the adverse effect of climate change, and the capability to anticipate, adapt and adjust to these effects.⁴⁰² According to Humphreys, this includes “those who already lack resources - who have been on the wrong end of colonialism ... or who have suffered neglect, exclusion or simple rapacity at the hands of their own governments”.⁴⁰³ They are those who have benefitted little or nothing from a carbon-intensive global economy, but who have long suffered its side effects - food price spikes, corruption, resource stripping, and now the ravages of climate change.⁴⁰⁴ The IPCC Summary for Policymakers 2018, identified the disadvantaged and vulnerable populations expected to be at risk of the adverse effects of climate change to include “Indigenous peoples, and local communities dependent on agricultural or coastal livelihoods”.⁴⁰⁵ The United Nations added to this group by including persons with heightened exposure and

⁴⁰¹ World Bank, ‘Global Gas Flaring Tracker Report’ 2021. 9 < <https://thedocs.worldbank.org/en/doc/1f221545bf1b7c89b850dd85cb409b0-0400072021/original/WB-GGFR-Report-Design-05a.pdf>> accessed 4th January, 2022.

⁴⁰² United Nations Children Emergency Fund (UNICEF), “Our Climate, Our Children, Our Responsibility: The Implications of Climate Change for the World’s Children”. Online at http://www.childreninachangingclimate.org/uploads/6/3/1/1/63116409/our_climate_our_children_our_responsibility.pdf accessed 17th April, 2022. Pg 6.

⁴⁰³ Stephen Humphreys, “Climate Justice: The Claim of the Past” (2014) 5 J. Human Right. & Environment. at 138.

⁴⁰⁴ Daniel A. Farber, “Basic Compensation for Victims of Climate Change”, (2007) 155 University of Pennsylvania Law Review 6 at 1605.

⁴⁰⁵ IPCC, 2018: *Summary for Policymakers Special Report* (Switzerland: Intergovernmental Panel on Climate Change, 2018) pp SPM 11 (B5.1, B5.2) 11 [IPCC 2018].

vulnerability due to “geographical location, poverty, gender, age, indigenous or minority status, national or social origin, birth or other status and disability”.⁴⁰⁶

Exposure and vulnerability are influenced by a wide range of social, economic and cultural factors and processes which include wealth and its distribution across society, demographics, migration, access to technology and information, employment pattern, the quality of adaptive responses, societal values, governance structures and institutions to resolve conflict.⁴⁰⁷

In Nigeria, the climate has been changing, there has been increase in rainfall, flooding, rise in sea level, temperature increase, heat waves, storm surges and storms.⁴⁰⁸ These changes have impacted adversely on the agricultural sector of the country by affecting livestock production, fisheries and even post-harvest activities⁴⁰⁹. It has destroyed infrastructures and the means of livelihood of many Nigerians. No doubt, the effect of climate change is far reaching and can affect anyone and everyone, however, some groups are more vulnerable than the rest and suffer the impact of climate change more than others. The degree of impact of climate change on these groups is not based only on their exposure to the event or on their location, it also relates to their adaptive capacity and their social vulnerability, that is how well they are able to receive and manage the impact of these changes in the climate.⁴¹⁰ As the consequences of climate change widens, the victims of climate

⁴⁰⁶ Office of the High Commissioner, United Nations Human Rights, “The Impact of the Climate Change on the Rights of People in Vulnerable Situations”, United Nations. Online at <https://www.ohchr.org/en/climate-change/impact-climate-change-rights-people-vulnerable-situations#:~:text=Persons%20in%20vulnerable%20situations%20%E2%80%93%20owing,climate%2Dinduced%20human%20rights%20harms>. Accessed 11th June, 2022.

⁴⁰⁷ IPCC 2014, *Supra* note 22, pg 54

⁴⁰⁸ Federal Ministry of Environment- Department of Climate Change, ‘*National Climate Change Policy for Nigeria, (NCCP) 2021-2030*, https://climatechange.gov.ng/wp-content/uploads/2021/08/NCCP_NIGERIA_REVISIED_2-JUNE-2021.pdf pg. 10. Accessed 18th April, 2022. [NCCP]

⁴⁰⁹ Adekunle A Idowu., et al, “Impact of Climate in Nigeria” (2011) 2 *Iranica J of Energy and Environment* 2 at 146.

⁴¹⁰ Chidiebere J. Onwutuebe, “Patriarchy and Women Vulnerability to Adverse Climate Change in Nigeria”, (2019)9 *Sage Journals* 1at 1.

change are forced to adapt and build tough resilience to the impacts of climate change⁴¹¹. According to Awolala, the highest exposure index is associated with high temperatures and solar radiation, highest sensitivity index is mostly determined by demographic inequalities and socio-economic, infrastructure, health and environmental indicators while Adaptive Capacity (AC) index is dependent on wealth and assets and social amenities.”⁴¹²

In the rest of this section, I will consider the following vulnerable groups: children; the future generation; women; elderly ones; coastal communities; the poor; and rural communities.

CHILDREN

Children remain one of the most vulnerable victims of climate change.⁴¹³ Their fragile and dependent nature exposes them to a lot of health, physical and psychological dangers associated with climate change.⁴¹⁴ The World Health Organisation notes that one in four death of children under five years old is attributed to environmental problems.⁴¹⁵ Further to this, the UNICEF has proclaimed that Nigeria ranks 2nd out of 163 countries with children as the highest victims of climate change.⁴¹⁶

Most developing countries which Nigeria is one of such, do not have adequate health care system and have no health care plan to adapt or respond to the health issues of children.⁴¹⁷ In a recent

⁴¹¹ Vesselin Popouski & Kieran G. Mundy, “Defining Climate-change Victims” (2011) 7 Research System for Sustainability Science 1 at Pg.6

⁴¹² Awolala et al., *Supra* note 236.

⁴¹³ UNICEF *Supra* note 402. Pg 4.

⁴¹⁴ *Ibid.*

⁴¹⁵ World Health Organisation, “The Cost of a Polluted Environment: 1.7 Million Child deaths a Year says WHO” online at <https://www.who.int/news/item/06-03-2017-the-cost-of-a-polluted-environment-1-7-million-child-deaths-a-year-says-who> accessed 18th April, 2022.

⁴¹⁶ UNICEF, “Children in Nigeria at ‘Extremely High Risk of the Impacts of Climate Change’ (2021) online at <https://www.unicef.org/nigeria/press-releases/children-nigeria-extremely-high-risk-impacts-climate-crisis-unicef> accessed 18th April, 2022.

⁴¹⁷ Welcome Menzibeya Osain. “The Nigerian health care system: Need for integrating adequate medical intelligence and surveillance systems.” (2011) 3 J of Pharmacy & Bioallied Sciences 4 at 470

analysis of healthcare systems around the world, Nigeria ranked 144 out of 167 countries captured in the publication.⁴¹⁸

Climate change endangers the health of these children as cases like flooding can increase the breeding of insects and pests like mosquitoes and other bugs which infects these children with malaria and other infectious diseases. Most cities in Nigeria also suffer from poor sanitation measures.⁴¹⁹ When these cities are besieged with heavy rainfall which causes flooding, children become more vulnerable to the risks of contracting cholera and diarrhoea. Frequent hot days and increase in heatwaves is indicated as an evidence of climate change. Children are severely affected by these heat waves. It has been known to cause rashes on the body of children, lead to heat exhaustion and temporary loss of consciousness in children⁴²⁰.

They may also be at risk of being exposed to new diseases that might spring up as a result of the disturbed ecosystem. The vulnerability of children is enforced by the fact that their immune system are still fragile and incapable of fighting these attacks.⁴²¹ Some of these health attacks at infancy might result to lifelong challenges thereby impeding the development capacity of the child victims.⁴²²

⁴¹⁸ World Population Review, “Best Healthcare in the World 2022” online at <https://worldpopulationreview.com/country-rankings/best-healthcare-in-the-world> accessed 17th April, 2022.

⁴¹⁹ Nigeria’s water, sanitation and hygiene sector was actually declared a state of emergency in 2018. See The World Bank, “Nigeria; Ensuring Water, Sanitation and Hygiene for All” (2021) online at <https://www.worldbank.org/en/news/feature/2021/05/26/nigeria-ensuring-water-sanitation-and-hygiene-for-all> accessed 17th April, 2022.

⁴²⁰ Rema Hanna & Paulina Oliva, “Implications of Climate Change for Children in Developing Countries” (2016) 26 Spring 1 at 117.

⁴²¹ United Nations Children Emergency Fund (UNICEF), “Children are the Face of Climate Change: Knowing and Responding to Health Risks of Climate Change”. Online at <https://www.unicef-irc.org/article/931-children-are-the-face-of-climate-change-knowing-and-responding-to-health-risks-of.html> accessed 17th April, 2022.

⁴²² Britannica, “Disease: Affecting Differences Between Children and Adults” online at <https://www.britannica.com/science/childhood-diseases-and-disorders/Disease-affecting-differences-between-children-and-adults> accessed 17th April, 2022.

The impact of climate change on agriculture constitutes another health challenge to children. The relationship between the vulnerability of agriculture to climate change and agriculture have been established by some researchers.⁴²³ Extreme weather conditions induced by climate change have severely limited the production of staple foods in Nigeria by distorting the crop yields.⁴²⁴ To meet up with the challenges of adapting to the changing weather cycles, farmers have to imbibe some costly methods in order to have a successful harvest. This invariably results in food shortages and an increase in the cost of the available food produce making it unaffordable to low income earners with children.⁴²⁵ It is reported that 40% of the Nigeria population live below the world poverty line earning below \$381.75 annually.⁴²⁶ This is followed by the assertion that the inflation and consequent increase in poverty level are aided by a 22% increase in food price.⁴²⁷ Even with the meagre income level, it is believed that an average Nigerian spends 56% of the earned income on food. The situation therefore presents a formidable challenge to the average breadwinner in Nigeria. The children are forced to make do with little food available with no consideration given to the nutritional value of these foods. Many turn out to be malnourished. The dangers of malnutrition in children is very great and its dangers to a child's growth is one that have a lasting

⁴²³ See B. Mahapatra, et al., "Vulnerability of Agriculture to Climate Change Increases the Risk of Child Malnutrition: Evidence from A Large-Scale Observational Study In India" (2021) 16 PloS one 6 Also see Kathryn McMahon & Clark Gray, "Climate Change, Social Vulnerability and Child Nutrition in South Asia" (2021) Global Environmental Change 71.

⁴²⁴ J.O. Ajetomobi, "Effects of Weather Extremes on Crop Yields in Nigeria" (2016) 16 African Journal of Food, Agriculture, Nutrition, and Development: AJFAND 4 at 11170.

⁴²⁵ Cassandra Pendino, "Biome Breakdown: The Effect of Climate Change on Agriculture in Nigeria and Thailand" (2017) 8 Global Majority E-journal 1 at 16.

⁴²⁶ The World Bank, "Nigeria releases new report on Poverty and Inequality in the Country" (2020) online at <https://www.worldbank.org/en/programs/lsm/brief/nigeria-releases-new-report-on-poverty-and-inequality-in-country> accessed 18th April, 2022.

⁴²⁷ Onyeiwu Stephen, "Nigeria's Poverty Profile is Grim: It's Time to Move beyond the Handouts" (2021) The Conversation. Online at <https://theconversation.com/nigerias-poverty-profile-is-grim-its-time-to-move-beyond-handouts-163302> accessed 18th April, 2022.

effect on a child and is even capable of altering his genetic composition. Malnutrition at the early stages of a child's life has been known to contribute to stunted and retarded growth in children.⁴²⁸

Climate change also induces psychological problem in children.⁴²⁹ Children experience stronger responses to extreme weather conditions such as Post Traumatic Stress Disorder (PTSD), sleep disorder and depression as a result of their dependence on the adult family member and the disruption of their social support network.⁴³⁰ The situation is more critical in Nigeria in the face of lack of social support networks put in place by the government to assist families and victims of climate change. Children are exposed to climate induced traumatic experiences such as flooding, displacements, and starvation. In the absence of an adequate support system, such situations can alter a child's psychology by making them more dependent⁴³¹. They grow up losing self-confidence to take up challenges. Also, due to the hardship and difficulty experienced, may assume a violent and aggressive façade especially to his peers while trying to build resilience to the challenges, and they turn out being a menace and threat to the society.⁴³²

Climate change also tend to disrupt the education of children. Some climate risks like drought, flooding and desertification which usually occur in the north, have led to continuous migration and displacement of numerous farmers and the nomadic population.⁴³³ This constant movement tends to bring about a disruption in the education of children. Several other climate induced factors might also play a role in disruption the learning process of the child victims. For instance, parents with

⁴²⁸ Hanna & Oliva *Supra* note 420 P. 122.

⁴²⁹ Susan Clayton, 'Climate Anxiety: Psychological Responses to Climate Change' (2020), 74 *Journal of Anxiety Disorder* at 5

⁴³⁰ *Ibid* pg 2.

⁴³¹ Eva Gifford and Robert Gifford, "The largely Unacknowledged Impact of Climate Change on Mental Health" (2016) 72 *Bulletin of the Atomic Scientists*, 5 at 293

⁴³² *Ibid*.

⁴³³ Kak'mena Audu Goteng et al, "The Impact of Climate Change in Nigeria: Implications for Schooling", (2012) 3 *Mediterranean J of Social Sciences* 16 at 139.

farming as the basic means of livelihood might experience difficulties in funding the education of the children especially when the cost of adaptation is higher than their means; the institutions of learning are at risk of destruction by climate impacts; also, sicknesses influenced by the climate change may consequently operate to keep such child victims out from school.⁴³⁴ This is particularly crucial in Nigeria where the illiteracy level is high in some sections of the country vulnerable to climate change.⁴³⁵ Thus, the solution of homeschooling may not be tenable. The overall consequence of these is that such children may be engaged in some form of child labour to augment the income of the family.⁴³⁶

FUTURE GENERATION

This connotes the difficulty placed by the older generations by their actions upon the coming generations who has to pay the price. It has also been used to describe the intergenerational injustice of older generations benefiting from fossil fuels and leaving young people to deal with the consequences.⁴³⁷ These fossil fuels, the benefit of which is enjoyed by the present generation, constitutes the greenhouse gases which ultimately leads to global warming. The IPCC report of 1990 specifically calculated with confidence that the continuous emission of this long living greenhouse gases may lead to a concentration in the atmosphere for centuries

⁴³⁴ Adenike A. Akinsemolu & Obafemi A.P. Olukoya, “The Vulnerability of Women to Climate Change in Coastal Regions of Nigeria: A Case of the Ilaje Community In Ondo State” (2020). 246 *Journal of Cleaner Production*, 119015.

⁴³⁵ United Nations Educational, Social and Cultural Organisation (UNESCO) Institute of Statistics tagged the illiteracy rate for adults above 15 years at 38%, and adults above 65 years at 71.7%. Accessed online at <http://uis.unesco.org/en/country/ng> on 18th April, 2022.

⁴³⁶ See generally Khan Aslam & Cheri Lawan, “An Examination of Poverty as the Foundation of Crisis in Northern Nigeria” (2016) 8 *Insight on Africa* 1at 59–71.

⁴³⁷ Ayesha Tandon, “Today's Youth will Face ‘unmatched’ Climate Extremes Compared to Older Generations” *Carbon Brief* [Today's youth will face 'unmatched' climate extremes compared to older generations - Carbon Brief](#) accessed online 12th January, 2022.

to come.⁴³⁸ Some of the risks include; “severe and widespread impacts on unique and threatened systems, the extinction of many species, large risks to food security and compromised normal human activities, including growing food or working outdoors in some areas for parts of the year, due to the combination of high temperature and humidity (high confidence)”.⁴³⁹ These projected risks and more are the predictions of the IPCC inline with its 2014 report where they warned that emissions without a significant level of reduction from the current trend would result in global temperatures exceeding the global target of two degrees above pre industrial levels sometime between 2030 and 2050. This becomes a burden of injustice passed to the future generation⁴⁴⁰ who would be subjected to the consequences of our actions and/or inactions of today. More worrisome is the thought that some of these developments might actually be considered worthless by these future generations when compared to the environmental catastrophe they may have been plunged into, and taxed with coping with. An example would be the spates of deforestation made so as to reclaim the lands for building of infrastructure. This equals the loss of carbon sinks and the consequent increase in the atmospheric greenhouse gas.⁴⁴¹

WOMEN

Studies have shown that compared to men, women are generally more vulnerable to climate change.⁴⁴² In a study conducted by Neumayer and Plumper, the result proved the vulnerability of

⁴³⁸ IPCC, ‘Climate Change, 1990 and 1992 Assessments’ accessed online https://www.ipcc.ch/site/assets/uploads/2018/05/ipcc_90_92_assessments_far_full_report.pdf pg 52. 15th January, 2022

⁴³⁹ IPCC 2014, *Supra* note 22. Pg. 65.

⁴⁴⁰ Dietzel, *Supra* note 7. Pg 8.

⁴⁴¹ T.E. Olagunju et al, “Climate Change Impacts on Environment: Human Displacement and Social Conflicts in Nigeria” (2021) 655 *Earth Environmental Science* 1.

⁴⁴² Onwutuebe, *supra* note 410, Pg.1.

women by finding the high mortality of women before, during and after the occurrence of a natural disaster. This was blamed on the behavioural, physiological attributes, as well as the social norms, roles behaviour and the socioeconomic status of women in the society.⁴⁴³ The IPCC 4th assessment report made in 2007 had identified the effect of gender roles and relations on the vulnerability of individuals to climate change.⁴⁴⁴ Although gender equality and women's empowerment are recognised as key for an inclusive sustainable development, the role of women are still distinct to that of men in the African society especially in Nigeria.⁴⁴⁵ This distinction in gender roles has increased the vulnerability of women. This is summed under the term 'patriarchy' where some women are subjected to livelihoods susceptible to climate change.⁴⁴⁶ In the rural area of Nigeria, the patriarchal system subjects women living in poverty to domestic duties in the management of the home front. Some of these duties establishes a direct contact between them and environmental resources.⁴⁴⁷ As earlier identified, vulnerability to climate change is influenced by rate of exposure, sensitivity and adaptive capability.⁴⁴⁸ The confinement of women to these forms of home duties have exposed them to greater burdens and obligations. Some of these duties includes subsistence form of agriculture, fetching water from the streams, the use of firewood to cook are susceptible to the impacts of climate change such as flooding, desertification and drought makes the performance of these basic duties a herculean task for the women.⁴⁴⁹

⁴⁴³ Eric Neumayer & Thomas Plümer, "The Gendered Nature of Natural Disasters: The Impact of Catastrophic Events on the Gender Gap in Life Expectancy, 1981-2002", (2007) 97 *Annals of the Association of American Geographers* 3 at 554.

⁴⁴⁴ IPCC, "Climate Change Impacts, Adaptation and Vulnerability" (2007) Parry ML, editor. Working group ii Contribution to The Fourth Assessment Report of the Intergovernmental Panel on Climate Change (Cambridge (UK): Cambridge University Press).

⁴⁴⁵ Julia Agwu & A.A Okhimamwe, "Gender and Climate Change in Nigeria" (2009) online at https://ng.boell.org/sites/default/files/uploads/2013/10/gender_climate_change_in_nigeria.pdf accessed 16th August 2022.

⁴⁴⁶ Onwutuebe *Supra* note 410 pg2

⁴⁴⁷ Akinsemolu & Olukoya *supra* note 434

⁴⁴⁸ Onwutuebe *Supra* note 410.

⁴⁴⁹ *Ibid.*

Climate change have been a great contributor of sexual violence (like rape, sexual assault, and sexual abuse) on women.⁴⁵⁰ These are normal occurrences in abodes where displaces individuals are forced to take refuge.⁴⁵¹ These cases of displacement also bears more on the women because of the poor hygiene maintained in such places. By her very nature, a woman is at risk of contacting various diseases when exposed to unhygienic environments where they are forced by circumstances to share public spaces. Some of these infections may become long lasting and may be capable of rendering them infertile.⁴⁵² Increased exposure to diseases also occurs in cases of flooding resulting in deterioration of sanitation.⁴⁵³

Further to this, as aided by our patriarchal system, the average girl child is usually the ‘sacrificial lamb’ when a family is thrown into difficulties by the climate change. Their education may be terminated and a good number of them forced into child labour and early marriage.⁴⁵⁴

To this end, efforts must be made towards the scrapping gender specific roles which operate as ‘gender specific barriers’ on the adaptation capacity of individuals. This is of utmost importance if the objective of adaptation equity is to be achieved.⁴⁵⁵

⁴⁵⁰Elizabeth Rose Donnelly & Viknes Muthiah, “Protecting Women and Girls in Refugee Camps: States’ Obligations Under International Law”, Centre for Women, Peace & Security, Research at LSE. Online at http://eprints.lse.ac.uk/110299/1/Muthiah_protecting_women_and_girls_published.pdf accessed 20th April, 2022.

⁴⁵¹ Khandaker Jafor Ahmed, et al, “The nexus between Extreme Weather Events, Sexual Violence, and Early Marriage: A Study of Vulnerable Populations in Bangladesh”, (2019), 40 Population and Environment 3 at 4.

⁴⁵² Uwaifo Victor, “Dirty Toilet, Fifth Biggest Killer of Women Globally- Water Aid”, (2021) This day newspaper. Online at <https://www.thisdaylive.com/index.php/2021/08/29/dirty-toilet-fifth-biggest-killer-of-women-globally-water-aid/> 20th April, 2022.

⁴⁵³ Oluwafemi Olajide & Taibat Lawanson, “Climate Change and Livelihood Vulnerabilities of Low-Income Coastal Communities in Lagos, Nigeria (2014) 6 International Journal of Urban Sustainable Development 1 at 42–51.

⁴⁵⁴ Akinsemolu & Olukoya, *Supra* note 434

⁴⁵⁵ Geraldine Terry, “No Climate Justice Without Gender Justice: An Overview of The Issues” (2009) 17Gender and Development, 1 at 5–18.

ELDERLY ONES

Elderly adults and children are identified as the major victims of climate change.⁴⁵⁶ Where a society is affected by the impacts of climate change, the aged population is usually among the major victims mainly because of the increased physiological susceptibility that is associated with ageing.⁴⁵⁷ This includes: the reduced mobility; changes in physiology, cognitive impairment and mobility limitations.⁴⁵⁸ Moreover, an individual's vulnerability is marginally influenced by the obtainable income level.⁴⁵⁹ With the aged population who are no longer active to sustain a steady income, and who are mostly categorised as dependents, it can be said that their ability to effectively adapt and respond to climate change has been impaired.⁴⁶⁰

Older adults are also known for their weakened immune system and climate change can increase their chances of contracting more illnesses.⁴⁶¹ Climate change leads to increase in ground level ozone and higher atmospheric concentration of fine particulates, therefore, in drought prone areas like the Northern part of Nigeria, adults with respiratory impairments (as decline in respiratory impairment accompanies old age)⁴⁶² tends to be more at risk of developing respiratory diseases. Also, situations of heatwaves increases the work of the cardiovascular system thereby increasing the risk of myocardial infarction.⁴⁶³ These illnesses contracted or exacerbated by the harsh effects

⁴⁵⁶ Bruce A. Carnes et al, "Impact of Climate Change on Elder Health" (2014) 69 *The Journals of Gerontology: Series A*, 9 at 1087–1091. Online at

<https://academic.oup.com/biomedgerontology/article/69/9/1087/573714?login=true> accessed 21st April, 2022.

⁴⁵⁷ Valerie Nelson, "Gender, Generations, Social Protection and Climate Change: A Thematic Review", (2011), Overseas Development Institute, London, Pg. 36.

⁴⁵⁸ Shahjahan H. Bhuiyan & Hafiz T. A. Khan, "Climate Change and its Impacts on Older Adults' Health in Kazakhstan", (2011), 4 *The NISPACEE J of Public Administration and Policy* 1at 99.

⁴⁵⁹ McDermott-Levy Ruth et al., "Addressing the Health Risks of Climate Change in Older Adults" (2019) *Journal of gerontological nursing*, 45(11), pp.21–29.

⁴⁶⁰ *Ibid*

⁴⁶¹ Thompson Aina Adeboyejo & Yemi Adewoyin, "Climate Change and the Health of the Aged in Nigeria" (2017) 11 *Australian Journal of Basic and Applied Sciences*, 13 at 8

⁴⁶² *Ibid*.

⁴⁶³ Carnes et al, *supra* note 456

of climate change operates to limit their mobility in situations where an unexpected environmental hazard calling for escape occurs.⁴⁶⁴ In addition, the cognitive impairment associated with old age also severely limits their judgement in such emergencies.⁴⁶⁵ Further to these, many elderly persons are subjected to several medications to enable them cope with several illnesses associated with old age. Some of these medications may have the propensity to adversely increase their sensitivity to climate change by “inducing diuresis, electrolyte imbalance, and sedation, and by reducing thirst recognition, sweat production, and cardiac output”.⁴⁶⁶

In Nigeria, the poor medical services available also operates to increase the vulnerability of the aged group. The aged population requires health services more than other sections of the populace.⁴⁶⁷ Despite their increased susceptibility to shock as a result of their weakened system, they still lack access to quality healthcare which is also financed by huge costs. Due to the weakened and costly access to quality healthcare, these aged ones may resort to alternative methods. Many Nigerians swear in the potency of their traditional medicine, and resorts to the use of same when they lack access or funds to gain healthcare in the hospitals.⁴⁶⁸ Others also resorts to traditional remedies, either by choice, or simply in the belief of their general potency for some medical situations. However, this glimmer of alternative hope is quickly dimmed by the realisation that many of these plants and herbs are at the risk of extinction exacerbated by climate change impacts.⁴⁶⁹ The jeopardized access to the chosen healthcare further increases the health inequity.

⁴⁶⁴ McDermott-Levy et al, *supra* note 459.

⁴⁶⁵ *Ibid.*

⁴⁶⁶ *Ibid.*

⁴⁶⁷ Adebeyejo & Adewoyin *supra* note 461

⁴⁶⁸ Li, Suellen et al. “Traditional Medicine Usage Among Adult Women in Ibadan, Nigeria: A Cross-Sectional Study.” (2020) 20 BMC Complementary Medicine and Therapies 1 at 93. online at <https://www.ncbi.nlm.nih.gov/books/NBK215400/> accessed 21st April, 2022.

⁴⁶⁹ Stévant T et al, “A Third of the Tropical African Flora is Potentially Threatened with Extinction”, (2019) 5 Science Advances 11. Online at <https://www.science.org/doi/10.1126/sciadv.aax9444> accessed 21st April, 2022.

COASTAL COMMUNITIES

Nigerian coast is one of the low-lying coasts in West Africa, with an increased likelihood of experiencing severe effects from flooding occasioned by rising sea levels and climate change.⁴⁷⁰

The Nigerian coastline is grouped into the following regions from west to east: the barrier lagoon coast; the transgressive mud coast; the Niger Delta; and the strand coast, hosting about 25% of the population.⁴⁷¹

The coastal communities are experiencing a severity of climate change impacts including “coastal erosion, flooding, overexploitation of natural resources, marine and coastal pollution, sea level rising, mangrove depletion and *Nypa* palm invasion”.⁴⁷² This has inadvertently resulted in several negative consequences on both the environment and the socioeconomic conditions of the people.⁴⁷³

One of such negative consequences is the loss of community lands attributed to sea level rising.⁴⁷⁴ Individually, this erosion causes the loss of a peoples’ cultural heritage, land inheritance, priced possessions, and investments. Upon the community as a whole, it results in “loss of beaches and recreational activities including tourism, loss of infrastructure, and changes to river flows and outputs on the coast”.⁴⁷⁵ The sea level rise and coastal inundations have often resulted in the

⁴⁷⁰ Olajide & Lawanson, *Supra* note 453.

⁴⁷¹ West Africa Coastal Areas Management Program, “Nigeria” online at <https://www.wacaprogram.org/country/nigeria> Accessed 23rd April, 2022.

⁴⁷² *Ibid* .

⁴⁷³ M. O. Ojile et al, “Comparative Analysis of Vulnerabilities of Selected Coastal Communities and Populations to Climate Change Impacts and Adaptation Strategies in Nigeria and Senegal” IAIA17 Conference Proceedings | IA’s Contribution in Addressing Climate Change, 37th Annual Conference of the International Association for Impact Assessment 4 - 7 April 2017 | Le Centre Sheraton | Montréal | Canada. Online at <https://conferences.iaia.org/2017/final-papers/Ojile,%20Meshach%20-%20Comparative%20Analysis,%20Coastal%20Communities,%20Nigeria%20and%20....pdf> accessed 23rd April, 2022.

⁴⁷⁴ Olukoya Sam, “Communities in Lagos Scramble to Fight off Encroaching Climate Change”, online at <https://www.rfi.fr/en/africa/20211204-lagos-coastal-community-scrambles-to-fight-off-encroaching-climate-change-nigeria-environment-africa-calling> accessed 23rd April, 2022.

⁴⁷⁵ Ojile et al, *supra* note 473

intrusion of sea water into freshwater sources, thereby further worsening their social conditions.⁴⁷⁶

The cases of flooding are also a frequent occurrence. Its impact has often resulted in keeping kids away from school, deterioration in sanitary measures, exposure to diseases, loss of properties and loss of lives as well.⁴⁷⁷

Economically, the coastal communities thrive on fisheries and trading as a means of livelihood.⁴⁷⁸

With the majority of the inhabitants being engaged in fishing, several others are usually involved in other fishery activities, livestock production, crop production, labour, civil service, and artisanship.⁴⁷⁹ Climate change has nevertheless affected the productivity of this set of the populace with the distortion on weather cycles. Its effect has ultimately created a change in the habitat, size, species diversification and availability of fish.⁴⁸⁰ With the increase in rainfall, breeding grounds are eroded thereby dwindling the catch for fish. The fishermen have to move further into the open sea if an appreciable number of fish is to be caught. Sometimes with less than adequate gear.⁴⁸¹

The inhabitants of these coastal regions who are engaged with crop productions are also increasingly met with low yields due to the erosion of soil nutrients by flood.⁴⁸² These impacts on their livelihoods signifies a decrease in their economic potential, thereby further increasing the poverty level among them. Especially for the victims who cannot adapt to the changes due to the financial incapacity, lack of requisite knowledge and adequate gear and equipment.⁴⁸³ It also

⁴⁷⁶ Fashae Olutoyin Adeola & Onafeso Olumide David, "Impact of Climate Change on Sea Level Rise in Lagos, Nigeria (2011) 32 Intl J of Remote Sensing, 24 at 9812

⁴⁷⁷ Olajide & Lawanson, *Supra* note 453.

⁴⁷⁸ Ojile et al, *supra* note 473.

⁴⁷⁹ Adewumi Omitoyin Siyanbola & Ben Tosan Fregene, "Potential Impacts of Climate Change on Livelihood and Food Security of Artisanal Fisherfolks in Lagos State, Nigeria", (2012) 4 J of Agricultural Science 9 at 23

⁴⁸⁰ Siyanbola & Fregene *ibid* pg 20

⁴⁸¹ *Ibid*, pg 27

⁴⁸² Amos Eno, "Households' Perception and Livelihood Vulnerability to Climate Change in A Coastal Area of Akwa Ibom State, Nigeria" (2014) 17 Environment, Development and Sustainability 4 at pp.887–908.

⁴⁸³ Siyanbola & Fregene *Supra* note 479 pg 20.

necessitates occupational modifications which may be a difficult challenge for the elderly uneducated ones.⁴⁸⁴

In addition to these challenges faced by the inhabitants of coastal regions, they are also subjected to other forms of environmental degradation by the activities engaged by the government which includes construction, and oil explorations with the consequent gas flarings.⁴⁸⁵ Oil and gas deposits are naturally recurring in the Niger Delta, which is one of the coastal communities. The communities therefore host the oil exploratory activities of the country including major oil refineries, and petrochemical plants.⁴⁸⁶ The oil explorations have resulted in anthropogenic activities involving fossil fuel burning, gas flaring, and oil spills to the area. In addition to this, the storage, transportation, processing, utilization and disposal of fossil fuels increases the levels of polycyclic aromatic hydrocarbons in the environment, posing a risk of cancer.⁴⁸⁷ According to Ekere Nwachukwu Romanus et al, “Polycyclic aromatic hydrocarbons (PAHs) have been reported to have carcinogenic, mutagenic and teratogenic effect on aquatic animals and humans who depends on the water and fishes of rivers for survival and humans who sometimes have direct encounter with the pollutants, especially with occupational exposure.”⁴⁸⁸ The PAH is also ingested and bio-accumulated by aquatic animals, posing a danger to the food chain including humans.⁴⁸⁹

⁴⁸⁴ *ibid* 20.

⁴⁸⁵ Akeem Ayofe Akinwale, “Livelihoods and Environmental Challenges in Coastal Communities of Nigeria” (2011)11 African Journal of Food, Agriculture, Nutrition and Development 7 at 5665

⁴⁸⁶ Oyetunji B. Okedere & Francis B. Elehinafe, “Occurrence of polycyclic aromatic hydrocarbons in Nigeria's environment: A review” (2022) 16 Scientific African Online at <https://www.sciencedirect.com/science/article/pii/S2468227622000539> accessed 24th April, 2022.

⁴⁸⁷ Victor Uchenna Okechukwu et al, “Pollution Investigation and Risk Assessment of Polycyclic Aromatic Hydrocarbons in Soil and Water from Selected Dumpsite Locations in Rivers and Bayelsa State, Nigeria. (2021) 36 Environmental Analysis, Health and Toxicology 4.

⁴⁸⁸ Nwachukwu Romanus Ekere et al, “Levels and Risk Assessment of Polycyclic Aromatic Hydrocarbons in Water and Fish of Rivers Niger and Benue Confluence Lokoja, Nigeria (2019) 17 J of Environmental Health Science and Engineering 1.

⁴⁸⁹ *Ibid*.

These incessant dangers to which they are exposed increases their vulnerabilities to climate change.

As earlier indicated by the UN, those living in poverty are also identified as victims of climate change. This is because of their dependence of their livelihoods on the environment, and natural resources. Their adaptive capacities are therefore severely limited by the impact of the climate change on the environment. Thereby increasing their vulnerabilities.⁴⁹⁰

Rural communities are also recognized as vulnerable groups because of their usual dependence on natural resources, the environment and agriculture.⁴⁹¹ Rural communities can further be described as marginalized because of their isolation and neglect by policy-makers, lower levels of education, minimal access to information, and decision making processes.⁴⁹² Within rural communities exist groups which may be further marginalized and thus, more susceptible to the effects of climate change.

This chapter has explained the meaning of climate change and the implications of climate justice in both the international and in the domestic sphere. With the focus of the thesis on the Nigerian jurisdiction, this section has identified the vulnerable groups within the country. This section will interact with the rest of the chapters to illustrate how these vulnerabilities greatly impact on the actualization of the right of the people to their development.

⁴⁹⁰ Awolala et al, *supra* note 236

⁴⁹¹ IPCC, 2014 *supra* note 22

⁴⁹² *Ibid.*

Chapter Four: Nigeria's Effort at Combating Climate Change

4.1. Introduction:

In the last chapter, I have presented a general overview of the concept of climate change, its impact, the legal regulatory frameworks, and the vulnerable groups in Nigeria. The present chapter however capitulates the overarching need to combat the climate hazards from all fronts. This entails the need for all national governments to take responsibility for climate change, and enthrone climate justice at the domestic level. With my central focus on the Nigerian jurisdiction, this thesis takes into consideration the report of the former Special Rapporteur (SR)-an independent expert charged by the UN Human Rights Council with the mandate to study the relationship between Extreme Poverty and Human Rights.⁴⁹³ While illustrating the grave impact of climate change on the human rights of those living in extreme poverty, the SR noted that “Climate change threatens the future of human rights and risks undoing the last 50 years of progress in development, global health and poverty reduction”.⁴⁹⁴ This sets a troubling question to mind, if the developing countries should be taken back to the last fifty years of progress, what would be the effect? Indeed, Nigeria has noted that between 6-30% of internally generated revenue (IGR) will be lost to climate change by 2050 if adequate measures are not taken.⁴⁹⁵ This would be due to the predicted temperature increase of 0.04°C per year from about 1981/2000 until the 2046/2065 period, with an increase to 0.08°C per year after 2050.⁴⁹⁶

⁴⁹³ United Nations, “About the Mandate: About Extreme Poverty and Human Rights”. Online at <https://www.ohchr.org/en/special-procedures/sr-poverty/about-mandate> accessed 6th August, 2022.

⁴⁹⁴ Report A/HRC/41/39, *Supra* note 29.

⁴⁹⁵ NAPF *Supra* note 31

⁴⁹⁶ Report A/HRC/41/39, *Supra* note 29.

Following this introduction, section 2 of this chapter presents Nigeria’s current efforts towards combating climate risks and ensuring climate justice. It lays out several policies and programmatic actions of the Nigerian government towards the global challenge. Section 3 brings this chapter to conclusion as it identifies some national challenges to achieving climate justice in Nigeria. For this chapter, I rely mostly on Nigerian national policies and legislations to give an insight into the current climate regime of Nigeria.

When the current Miss Universe- Harnaaz Sandhu, was asked to make a speech at the 70th edition of the Universe competition held in 2021 at Israel, she made one striking basic point. According to her, if all the people in the world should put off the light before going to bed, individually, it just counts as one, but collectively, it amounts to billions of energy saved. She advocated for the response to climate change to be one of “prevent and protect” rather than one of ‘repent and “repair”.⁴⁹⁷ In the fight for climate justice, while we each individually play a role in the sustainable use of the environment, we also greatly advance this cause by holding all individuals, relevant institutions and governments accountable for their roles and expected interventions in the mitigation of greenhouse gas emissions and other activities inducing climate change.⁴⁹⁸ As stated in the previous chapter, early warning systems and risk information are the keys to effectively battling climate change⁴⁹⁹. The government and all relevant bodies therefore have the duty to establish mechanisms to effectively monitor and provide climate risk information. This duty also extends to taking effective action on the provided risk information in order to prevent the response of “repent and repair”. These actions include planning and implementing effective adaptation and

⁴⁹⁷ The Tribal Box “Harnaaz Sandhu, The Third Miss Universe from India Wins the Crown” online at <https://www.thetribalbox.com/harnaaz-sandhu-the-third-miss-universe-from-india-wins-the-crown> accessed 2nd May, 2022.

⁴⁹⁸ Greenhouse Gangsters vs. Climate Justice *Supra* note 305

⁴⁹⁹ World Meteorological Organization, Global Framework for Climate Services, *Supra* note 242

mitigation responses to climate change and establishing an avenue for the recognition of the loss and damage accrued by the victims.

4.2. Nigerian Efforts Towards Tackling the Climate Change

In chapter three, I had discussed the Nigerian laws regulating climate change. In addition to the laws, Nigeria has further formulated some policies and strategies aimed towards achieving a positive response to the climate challenge. Her rich legal framework, policies and strategies regulating climate change is an indication of her commitment towards taking responsibility for her emissions, and combating climate change from her front.

As illustrated in section one, a country's preparedness in combating climate change is measured by some factors which includes the effectiveness of the mitigation and adaptation response towards same. This section therefore ventures into the climate policies, actions and responses undertaken by the Nigerian government.

4.2.1. Policies

The Revised National Climate Change Policy was approved by the Nigerian President during the Federal Executive Council (FEC) Meeting held on the 2nd of June, 2021 and expected to run through 2021-2030.⁵⁰⁰ The policy is created as a framework guide for the response of the nation towards the pursuit of a climate resilient sustainable development, particularly, the commitment of the nation towards complying with the target for a reduced greenhouse gas emission under the United Nations Framework Convention on Climate Change (UNFCCC). Its objective is to foster

⁵⁰⁰ Department of Climate Change – Gateway to National Action on Climate Change, 'President Buhari Approves the Revised National Climate Change Policy for Nigeria; accessed online at <https://climatechange.gov.ng/2021/06/02/president-buhari-approves-the-revised-national-climate-change-policy-for-nigeria/> accessed on 3rd January, 2022.

a sustainable development marked by low carbon emissions, and growth in economic developments. The policy presents general initiatives that strengthen the country's strategies on climate change preparedness, adaptation and mitigation across the nation.⁵⁰¹

At the FEC meeting, the Nigerian President also approved the programmatic plan of action called the National Climate Change Programmes for Nigeria which is expected to run for four years (2019-2023).⁵⁰² This plan of action document is intended to identify measures and actions that will be implemented to address the challenges posed by climate change and climate vulnerability in Nigeria.⁵⁰³ It seeks to serve as a “technical assistance support programme to guarantee the country's economic growth and development strategies while meeting its Paris Agreement (2017) pledge of conditionally reducing its Greenhouse Gas emissions by 45% by 2030, when compared to “business-as-usual” levels”.⁵⁰⁴

The Nigerian National Forest Policy was formulated in recognition of the vast benefit of forest resources towards the sustainable development of the people.⁵⁰⁵ The policy was amended in 2020 in order to include among other things, the recognition of the forest as a carbon sink, and its essential benefit towards improving resilience to climate change. The Nigerian minister of environment notes that the policy was aimed towards achieving a “sustainable management of forests and forest resources, that would ensure sustainable increase in the economic, social and environmental benefits for the country's present and future generation”.⁵⁰⁶ The protection was

⁵⁰¹ NCCP *Supra* note 408

⁵⁰² Department of Climate Change, *Supra* note 500

⁵⁰³ Government of Nigeria, “Nigeria Climate Change Response Programme”, Online at <https://eunccrp.org> accessed 12th June, 2022.

⁵⁰⁴ *Ibid*

⁵⁰⁵ The Federal Ministry of Environment, ‘National Forest Policy’ online at <http://extwprlegs1.fao.org/docs/pdf/nig144367.pdf> accessed 11th July, 2022

⁵⁰⁶ Erunke Joseph, “New National Forest Policy will Preserve Ecosystems- Minister,” Vanguard. Online at <https://www.vanguardngr.com/2020/08/new-national-forest-policy-ll-preserve-ecosystems-minister/> accessed 10th July, 2022.

therefore considered as being essential for the protection of the ecosystem and as part of the nation's effort towards combating climate change.

The Flare Gas (Prevention of Waste and Pollution) Regulation⁵⁰⁷ was formulated in 2018 to advance the efforts of the government in the reduction of greenhouse gas emissions through a reduced flaring and venting of natural gas.⁵⁰⁸ In addition to the above, the regulation also aims to improve the social and economic conditions which have been subjected to a decline through the environmental and social impact of the gas flarings. It introduces guidelines to ensure consistency with its agenda including the legal obligations on polluters.⁵⁰⁹

The National Action Plan on Gender and Climate Change⁵¹⁰ which was formulated in 2020 mandates that the formulation of any climate action must take cognizance of the disparities in the consequences of climate change on the different genders. The policy recognized the need for all genders to equally “access, participate, contribute to, and optimally benefit from climate change initiatives, programs, policies and funds”. This is aimed towards creating strategic responses to gender induced adaptation and mitigation issues.⁵¹¹

Nigeria's National Action Plan to Reduce Short Lived Climate Pollutants (SLCPs)⁵¹² was formulated in 2017 with the objective of improving the local air quality. It established 22 measures for reducing SLCPs from a range of socioeconomic sectors.

⁵⁰⁷ Federal Republic of Nigeria, “Flare Gas (Prevention of Waste and Pollution) Regulation 2018. Online at <https://ngfcp.dpr.gov.ng/media/1120/flare-gas-prevention-of-waste-and-pollution-regulations-2018-gazette-cleaner-copy-1.pdf> accessed 11th July, 2022.

⁵⁰⁸ *Ibid*

⁵⁰⁹ *Ibid*

⁵¹⁰ Department of Climate Change, Federal Ministry of Environment, “National Action Plan on Gender and Climate Change” online at <http://dhq.climatechange.gov.ng/Documents/climate-change-and-gender-action-plan.pdf> accessed 1th July, 2022.

⁵¹¹ *Ibid* pg 18.

⁵¹² Federal Ministry of Environment, “Nigeria's National Action Plan to Reduce Short Lived Climate Pollutants”, 2017. Online at <https://climate->

4.2.2. Mitigation Strategies

Mitigation means a “human intervention to reduce the sources or enhance the sinks of greenhouse gases⁵¹³. Nigeria has shown her commitment to become a low carbon economy in recognition of the urgency for nationally-based mitigation actions essential to sustaining the global temperature below the 1.5 degrees Celsius advocated by the United Nations. Nigeria has thus developed her mitigation plan⁵¹⁴. Her mitigation plan prioritizes the following: emission reduction potential, alignment with national development plan, contribution to sustainable development, financial feasibility, as well as utilizing technological innovations from research institutions. These mitigation plans are extended in varying degrees and measures over the following sectors: energy, oil and gas, biomass, health, industry, transport, waste and water.⁵¹⁵

This thesis has identified several mitigations actions undertaken by the Nigerian government. Nigeria launched the Deep Decarbonization project on the 17th December, 2021.⁵¹⁶ This project is aimed at engaging key stakeholders in the national research and capacity building for implementation of the pathway programme for deep decarbonization. The key objectives of the project includes:

- a. Mobilization of a team of local experts and reinforcement of their capacities to engage in a scientific analysis of low-emission development pathways.

laws.org/rails/active_storage/blobs/eyJfcmFpbHMiOnsibWVzc2FnZSI6IkJBaHBBazhPliwiZXhwIjpudWxsLCJwdXliOiJibG9iX2lkIn19--681c3c51da9f086ee2a0bc853cdf75ae7252d8ea/NIGERIA'S%20NATIONAL%20ACTION%20PLAN%20TO%20REDUCE%20SHORT-LIVED%20CLIMATE%20%20%20POLLUTANTS.pdf accessed 11th July, 2022.

⁵¹³ IPCC, “Annexes” online at https://www.ipcc.ch/site/assets/uploads/2019/01/SYRAR5-Glossary_en.pdf pg 118 accessed 23rd February, 2022.

⁵¹⁴ NDC *supra* note 373

⁵¹⁵ *Ibid*

⁵¹⁶ Department of Climate Change – Gateway to National Action on Climate Change, ‘Project Launch of the Deep Decarbonization Project (DPP); accessed online at <https://climatechange.gov.ng/2021/12/14/project-launch-of-the-deep-decarconization-projectddp/> accessed on 3rd January, 2022.

- b. Production of country studies analyzing pathways for long term low-emission development.
- c. Submission of the results to the international climate community aimed towards the contribution to the global process in the context of the Paris Agreement.
- d. Fostering of community of practice between African research institutions to facilitate knowledge sharing.
- e. Contribution to the debate on public policies and project evaluation in the light of low emission objectives.⁵¹⁷

Another mitigation strategy of the Nigerian government lies in her finance plans supported by her Sovereign Green Bond programme. This is a finance mechanism developed to enable Nigeria transition to a low carbon economy in the pursuit of her socio-economic development. This would facilitate her compliance with her Nationally Determined Contribution.⁵¹⁸ Nigeria's Green Bond programme was approved in 2017 to assist the nation in accessing funding from the private sector as its sustainable investment response to climate change.⁵¹⁹ Green Bonds are bonds that are used to raise capital specifically for environmentally friendly projects i.e. projects that are climate friendly and leave little or no adverse effect on the environment. These projects are also referred

⁵¹⁷ *Ibid*

⁵¹⁸ Department of Climate Change, "Green Bonds", online at <https://climatechange.gov.ng/2020/09/21/brief-on-green-bonds/> accessed 12th June, 2022

⁵¹⁹ Oche Alex, "Analysis of Green Bond Regimes in Nigeria and China", (2020) 11 J of Sustainable Law and Development Policy 1 at 184.

to as “qualifying or eligible green projects”.⁵²⁰ Such projects produce environmental and economic benefits, and also help change the economy away from fossil fuels.⁵²¹

In 2017 and 2019, Nigeria issued two green bonds worth N10.69 billion and N15 billion respectively, becoming the first African country and the fourth in the world to raise a debt instrument entirely for the purpose of financing sustainable environmental projects aimed at assisting Nigeria in meeting up with her targets set out in the Nationally Determined Contribution.⁵²² This includes undertaking projects such as afforestation, renewable energy and the provision of clean energy to support education.

Through her Nationally Determined Contributions⁵²³, Nigeria also shows a mitigation strategy intended to reduce her emission level. The strategy involves a careful greenhouse gas mitigation assessment done across eleven pollutants. This would be backed up by relevant policies to effectuate the intended result.

4.2.3. Adaptation Strategies

Adaptation can be defined as the process of adjustment to actual or expected climate and its effects⁵²⁴. Adaptation serves as a tool to bridging the gap of inequality created by the differentiated impacts of climate change. By funding the adaptation of the vulnerable communities, the economic and social gap created by climate change impact is closed or at least mitigated to a great extent.

This enables equitable development.

⁵²⁰ *Ibid*

⁵²¹ Federal Government of Nigeria, “Green bonds: Frequently Asked Questions” online <https://www.chapelhilldenham.com/public/assets/campaign/Green%20Bonds%20FAQ%2006022019.pdf> at accessed 22 February 2021.

⁵²² Debt Management Office Nigeria, “Green Bonds” online at <https://www.dmo.gov.ng/fgn-bonds/green-bond> accessed 12th July, 2022.

⁵²³ NDC *Supra* note 373

⁵²⁴ IPCC, “Annexes *Supra* note 513.

In recognition of the need to develop a national response to climate change through some appropriate governance structures, Nigeria developed her National Adaptation Strategy and Plan of Action on Climate Change (NASPA-CCN)⁵²⁵ during the year 2011. This was aimed towards reducing the vulnerability and enhancing the resilience and adaptive capacity of all economic sectors and of all people to the adverse effects of climate change. The policy analyses “the current and future scenarios of climate change in the country, as well as a wide range of strategies to address specific adaptation challenges in the different sectors of the country’s economy”.⁵²⁶ Nigeria has thus planned for adaptive measures through strategized adaptation plans in the following sectors among others: agriculture, biodiversity, health and sanitation, industry and commerce, human settlement and housing, transportation and communication.⁵²⁷ Although the climate change adaptation efforts made by the country hasn’t been fully effective particularly due to the poor adoption and implementation of this policy,⁵²⁸ Nigeria is still resilient in her struggles and has proceeded to develop a framework aimed towards putting adaptation in the right perspective in the country. The document was called Nigeria’s National Adaptation Plan Framework (NAPF).⁵²⁹

The NAPF is targeted towards clarifying the country’s approach to its national adaptation plan. The Framework aligns the adaptation plan with existing policies, strategies and adaptation research relating to climate change, and a special focus on specific themes that are particularly relevant in

⁵²⁵ Federal Government of Nigeria, “ An Overview of the National Adaptation Strategy and Plan of Action on Climate Change “, Online at https://www.hubrural.org/IMG/pdf/11_pana_au_nigeria_2013_etat_d_avancement_pana_au_nigeria.pdf accessed 6th August, 2022.

⁵²⁶ *Ibid*

⁵²⁷ African Adaptation Initiative, ‘Nigeria- National Focal Point- National Strategic Documents and Timeframe’, accessed online <https://africaadaptationinitiative.org/ndc/ountries/nigeria/> on 5th January, 2022.

⁵²⁸ Nigeria’s National Adaptation Plan Framework *Supra* note 31. Pg 3.

⁵²⁹ *Ibid*

the Nigerian context.⁵³⁰ The NAPF was developed following three related steps. Firstly, the existing documents relating to climate change was reviewed. This was followed by an interview organized for key stakeholders on environmental issues. The resulting details was developed into a draft addressing sectional adaptation issues. Thirdly, a national workshop was conducted to validate the details in the draft.⁵³¹ The feedback from the workshop participants was then incorporated into the draft giving rise to the NAPF.⁵³² The framework advanced some approaches for the formulation of adaptation plans. This includes, gender considerations, economic prowess, and ecosystem based adaptation approach.⁵³³

Several other adaptation plans and strategies have previously been formulated and effectively implemented by the Nigerian government. They have however become outdated as at the time of this research. They include: (i) Economic Recovery and Growth Plan (ERGP} 2017 -2020; (ii) The Transformation Agenda (2011-2020); and (iii) Vision 20:2020.⁵³⁴

This section therefore goes to show that Nigeria has a robust climate regime. The nation actively tries to live up to her commitments to the Paris Agreement and take responsibility for her emissions. These efforts are however fraught with some challenges as will be shown in the next section.

4.3. Possible Causes of Nigeria's Difficulty in Attaining Climate Justice

I have earlier described climate justice as an inverse relationship between climate risk and responsibility⁵³⁵. Taking responsibility entails adequate response to climate change by an effective

⁵³⁰ *Ibid* pg 3

⁵³¹ NAPF *Supra* note 31 pg 4-5

⁵³² *Ibid*

⁵³³ *Ibid*, pg 9-14

⁵³⁴ NCCP, *supra* note 408 pg 11

⁵³⁵ Barrett *supra* note 273

development of adaptation and mitigation measures⁵³⁶ as well as improving the access to loss and damage funds.⁵³⁷ The obtainable political, social and institutional structure in any nation determines the effectiveness of the measures put in place for adequate response to climate risks.⁵³⁸ In Nigeria, the current structure is such that the climate response plans are developed at national and subnational levels, practiced at the local level, and funded by international institutions.⁵³⁹ This creates a challenge to achieving equity because the vulnerability of Nigeria to climate change differs across the communities. For instance, “The northeast and northwest part of Nigeria are vulnerable to desertification, heat wave, loss of freshwater, intensive drought, bush burning, loss of arable lands, and livestock loss. The southeast and southwest on the other hand are vulnerable to sea level rise and salinization, intensive rainfalls, floods, and damages”⁵⁴⁰. Smithers and Barry notes that an adaptation measure should be dependent on the effect of climate challenge and the characteristics of an impacted system⁵⁴¹. Oramah et al concedes that it would be nearly impossible for preparation to be made towards adapting to these changes if the vulnerability is not adequately understood, especially from the angle of the most affected parties at the local level⁵⁴². Developing an effective response therefore requires an inclusion of these communities in decisions relating to their adaptation as it pertains to their susceptibility. A lacuna is thus created in the Nigerian system where the local communities are excluded from the adaptation dialogues thereby ignoring their local knowledge of adaptation needs⁵⁴³. In its executive summary on the National Environmental,

⁵³⁶ John Smithers & Barry Smit, “Human adaptation to climatic variability and change” (1997) 7 *Global Environmental Change*, 2 at 129–146.

⁵³⁷ Doelle & Seck, *supra* note 345 pg1.

⁵³⁸ Oramah Chinwe Philomena & Olsen Odd Einer Falnes, “Equity and Justice in Climate Change Adaptation: Policy and Practical Implementations in Nigeria” in: Leal Filho W., Oguge N., Ayal D., Adeleke L., da Silva I. (eds) *African Handbook of Climate Change Adaptation* (Springer Nature Switzerland AG 2020) at 6

⁵³⁹ *Ibid* Pg 2.

⁵⁴⁰ *Ibid* pg 10

⁵⁴¹ Smithers & Smit, *supra* note 536

⁵⁴² Oramah *supra* note 538 pg 490

⁵⁴³ *Ibid* pg 18

Economic and Development Study (NEEDS) for Climate Change in Nigeria,⁵⁴⁴ the Nigerian Government through its Federal Ministry of Environment admitted that the effectiveness of its environmental and other policies as well as their potentials to support adaptation and mitigation measures is yet to be fully realised. I consider this to be a consequence of such exclusion of necessary participants to the formation of such policies.

Such inclusion facilitates procedural justice thereby enabling compliance with the basic principles of the right to development. When the opinions of the people as it relates to their susceptibility is captured in any decision-making process, their limitations are adequately addressed thereby creating an enabling environment for equitable development.

In identifying the difficulties of attaining climate justice, I engage in this discourse by discussing some factors inhibiting the success of the Nigerian government to the two identified responses (adaptation and mitigation) to climate change.

4.3.1. Challenges to Mitigation

One of the goals of the Paris Agreement is making efforts to prevent the increase in temperature above 1.5 degrees preindustrial level,⁵⁴⁵ as well as engaging in developments without much greenhouse gas emissions and gradually achieve the net zero emission target.⁵⁴⁶ Mitigation efforts will therefore be targeted towards each sector with greenhouse gas emissions. This can either be agriculture, energy, waste, transportation, industry and manufacturing.⁵⁴⁷ In Nigeria, the highest

⁵⁴⁴ Special Climate Change Unit, Federal Ministry of Environment, 'National Environmental, Economic and Development Study (NEEDS) for Climate Change in Nigeria' 2010 accessed online at <https://unfccc.int/files/adaptation/application/pdf/nigerianeeds.pdf> 5th January, 2022.

⁵⁴⁵ Paris Agreement, *supra* note 15 Article 1(a).

⁵⁴⁶ *Ibid* Article 1(b)

⁵⁴⁷ Attapattu Sumudu, *Humans Rights Approaches to Climate Change: Challenges and Opportunities* [New York NY, Routledge 2016] at 130

contributory factors to climate change has been identified to be from the energy industry, gas flaring practices, and the deforestation practices in the country⁵⁴⁸. Keeping up with the obligation under the nationally determined contribution towards this target is inhibited by the following identifiable challenges: deforestation; system of energy production; limited public awareness and participation; and heavy reliance on oil revenues as a major source of the country's revenue.

DEFORESTATION

Deforestation is the removal of trees without sufficient replacement leading to a reduction in habitat, wood and biodiversity⁵⁴⁹. This has been identified as the one of the major causes of climate change accounting for over 67% of the emissions in the Nigerian space.⁵⁵⁰ Forests are natural sinks for carbon dioxide. A sink has been identified as a process or activity or mechanism which removes a greenhouse gas, an aerosol or a precursor of a greenhouse gas from the atmosphere⁵⁵¹. Thus, deforestation results in saturation of carbon dioxide in the atmosphere thereby facilitating climate change⁵⁵². It would be recalled that carbon dioxide accounts for over 66% of the greenhouse gas in the atmosphere accounting for over half of the enhanced greenhouse effects⁵⁵³.

The Global Forest Watch Organisation published a study showing that between 2001 to 2021, Nigeria has lost about 1.14Mha of tree cover, equivalent to a 11% decrease in tree cover since 2000, and 587Mt of CO₂ emissions.⁵⁵⁴ In 2021 alone, 96.5kha of natural forest was lost

⁵⁴⁸ Odjugo, P A. Ovuoyovwiroye "Analysis of Climate Change Awareness in Nigeria" (2013) 8 Scientific Research and Essays 26 at 1206.

⁵⁴⁹ Philip Mfon, "Challenges of Deforestation in Nigeria and the Millennium Development Goals" (2014) 9 Intl J of Environment and Bioenergy 2 at 81

⁵⁵⁰ NCCP *Supra* note 408 pg 346

⁵⁵¹ UNFCCC *Supra* note 14, Art 1(8)

⁵⁵² Olagunju et al, *Supra* note 441

⁵⁵³ World Meteorological Organisation, Global Atmosphere Watch *Supra* note 242

⁵⁵⁴ Global Forest Watch, "Nigeria" online at <https://www.globalforestwatch.org/dashboards/country/NGA> accessed 30th May, 2022

amounting to 58.5Mt of CO₂.⁵⁵⁵ The report further indicated deforestation as the major driver for the loss of the trees. As a matter of fact, the Nigerian Conservation Foundation reports that Nigeria has lost 96% of its natural forest due to deforestation.⁵⁵⁶ The major causes of deforestation in Nigeria have been indicated to include “Rapid population growth, changes in land use and poor forest governance characterized by illegal logging and trading of forest trees, industrialisation and urbanization, mining of natural resources and the use of fuel wood⁵⁵⁷.”

Ovuyovwiroye acknowledges that the end to the abuse of forests is not yet in sight. She attributed the reason to costly alternatives to the use of wood.⁵⁵⁸ For instance wood presents a good option to the majority of the impoverished populace for cooking considering the high cost of cooking gas and the erratic power supply. Also, people would rather resort to wooden furniture materials rather than an expensive alternative such as steel, iron or aluminium.

Deforestation has also been identified to have an impact on the adaptation capacities of the climate change victims. This is of particular importance to livelihoods dependent on forest-based ecosystem goods and services⁵⁵⁹. The disruption of such livelihood adversely impacts on the economic resilience of the people to climate change. The people become more sensitive and economically disadvantaged to adapt to the effects of the change. In addition to this, forests are recognised to play very important roles in averting disasters. For instance, they aid as barriers to

⁵⁵⁵ *Ibid.*

⁵⁵⁶ Vanguard, “Deforestation: Nigeria has Lost 96% of its Forest- NCF”(2018) online at <https://www.vanguardngr.com/2018/09/deforestation-nigeria-has-lost-96-of-its-forest-ncf/> accessed 31st May, 2022.

⁵⁵⁷ Mfon *supra* note 549

⁵⁵⁸ Ovuyovwiroye *supra* note 548

⁵⁵⁹ Frances Seymour, “Forests, Climate Change and Human Rights: Managing Risks and Trade -Offs”, in Stephen Humphreys ed *Human Rights and Climate Change*, (New York NY: Cambridge University Press 2010) at 207

strong winds as well as flooding in cases of excessive rainfall. They also cushion the effects of droughts or excessive heat, and reduces the risks of erosion, avalanches, and landslides.⁵⁶⁰

Thus, the unsustainable use of the forests severely impedes both the adaptation and the mitigation capacity of country, with its people to climate change.

ENERGY PRODUCTION:

The quest for climate justice comes with the clamour for just transition that includes distributed renewable energy.⁵⁶¹ This is necessary to provide a clean energy supply for everyone in a world where 13% of the population – nearly all of them in Africa – lack reliable access to electricity.⁵⁶² Nigeria operates a gas dominated electricity supply. According to a study conducted by Usman et al⁵⁶³, 72% of electricity generated in Nigeria comes from gas fired power plants. Hydro generated power comes next with a meagre 28%. This is despite the fact that Nigeria has an abundance of biomass resources available as an alternative to fossil fuels resources for energy production.⁵⁶⁴ Some of these include: municipal solid wastes, animal wastes, agricultural residues, forest resources.⁵⁶⁵ There is also the option of bioenergy production with Nigeria's annual average daily solar radiation of about 5.535 kWh/m² /day, and her wind energy also available at an annual average speed of 2.0 m/s near the coast to 5.0 m/s at the height of 10 m in northern parts of the country.⁵⁶⁶

⁵⁶⁰ Programme for the Endorsement of Forest Certification (PEFC), “Benefits of Forests: Why Forests are Important to us and the World”, online at <https://pefc.org/what-we-do/why-forests-are-important/the-benefits-of-forests> accessed 31st May, 2022.

⁵⁶¹ Shue, *Supra* note 7 Pg 70

⁵⁶² Gabbatiss & Tandon, *Supra* note 299.

⁵⁶³ Zubairu Gatugel Usman, et al. "Transforming the Nigerian power sector for sustainable development."(2015) 87 Energy Policy at 431

⁵⁶⁴ A. Giwa, et al., “A comprehensive review on biomass and solar energy for sustainable energy generation in Nigeria” (2017) 69 Renewable & Sustainable Energy Reviews at 622

⁵⁶⁵ *ibid*

⁵⁶⁶ Usman et al. *supra* note 563

Unfortunately, Nigeria shows no near readiness to adjust fully to its vast available renewable resources. Thus, its over-dependence on fossil-fuel energy is the bane of clean electricity supply in the country.⁵⁶⁷ Energy production and consumption, among other factors, have been reported to be the major causes of carbon dioxide emissions, globally.⁵⁶⁸ The dependence on the usage of fossil fuel-based energy sources is now considered problematic, due to various challenges (greenhouse gas emissions, depletion of fossil fuel reserves, non renewability, and other environmental concerns such as degradation).⁵⁶⁹

The problem is compounded by the fact that despite the heavy reliance on fossil fuel energy, Nigeria is still unable to meet up the provision of constant electricity to its entire population.⁵⁷⁰ Thus, while her energy production contributes to her carbon emission level, the rest of the population also adds to her emissions level through the self generated electricity, and reliance on wood fuel for her other energy needs. This comes with its attendant consequence of massive deforestation.⁵⁷¹

We have a glimpse into the Nigeria Energy situation through the following reports:

The news publication of 26th October, 2021 reported the decline in Nigeria's power generation to a further ninety four thousand, three hundred and twenty nine megawatts (94,329mw) despite the national demand of twenty eight thousand, eight hundred and fifty megawatts (28,850MW).⁵⁷² A

⁵⁶⁷ *Ibid*

⁵⁶⁸ I.D. Ibrahim, et al., "A Review on Africa Energy Supply Through Renewable Energy Production: Nigeria, Cameroon, Ghana and South Africa as a Case Study" (2021) 38 Energy Strategy Reviews at 2

⁵⁶⁹ A. Adewuyi, "Challenges and Prospects of Renewable Energy in Nigeria: A case of Bioethanol and Biodiesel Production (2020) 6 Energy reports at 78

⁵⁷⁰ Giwa et al., *supra* note 564

⁵⁷¹ Usman et al. *supra* note 563. Pg 429

⁵⁷² Ripples Nigeria, 'Nigeria's Power Slumps to 4,329MW amid National Demand of 28,850MW', www.ripplesnigeria.com/nigerias-power-generation-slumps-to-4329mw-amid-national-demand-of-28850mw/ October 26, 2021. Accessed 25th December, 2021.

follow up was published on 19th December, 2021 presenting a report by the National Bureau of Statistics (NBS) which reported that almost half of Nigeria's population, at 48.6% of the population gets its electricity supply from generators rather than the country's power grid. The self-generated electricity was further broken down into petrol-powered generators accounting for 22.6% of the populace, diesel-powered generators records 16.6 per cent, and the remaining 9.4% accounted for by gas-powered generators.⁵⁷³

On 24th December 2021, Punch news published an article titled, 'Darkness looms as six Power Plants Halts Operations over Gas Shortage'⁵⁷⁴. The power plants were under the management of the Niger Delta Holding Company. The management of the power plants blamed the report on the gas shortage from the Nigeria Gas Company whose supply network was affected by some external factors. One of the listed factors was the breach of a pipeline (Transforcardos pipeline) on 16th December, 2021.

According to Ibrahim et al, the bulk of the problems associated with adjustments to renewable energy in African countries are: the government's little interest and lopsided policy on renewable energy, failure to enforce existing policies, high renewable energy tariff, and lack of adequate infrastructure.⁵⁷⁵ The financial incapacity may perhaps be partially blamed on the historical contribution of the industrialised nations to the poor socio-economic condition of Nigeria through their climate actions, and the consequential impact on the Nigerian economy.

⁵⁷³ Ripples Nigeria, 'Data Shows Almost Half Nigeria's Electricity Supply is From Generators Despite Promises', www.ripplesnigeria.com/data-shows-almost-half-nigerias-electricity-supply-is-from-generators-despite-promises/ December 19, 2021. Accessed 25th December, 2021.

⁵⁷⁴ Punch Ng, 'Darkness Looms as Six Power Plants Halt Operations over Gas Shortage' 24th December, 2021. Okechukwu Nnodim. Accessed online at <https://punchng.com/darkness-looms-as-six-power-plants-halt-operations-over-gas-shortage> December 25th, 2021.

⁵⁷⁵ Ibrahim et al., *Supra* note 568

PUBLIC AWARENESS AND PARTICIPATION:

A study was conducted among experienced and highly professional farmers within the Imo state community in the south eastern part of Nigeria to determine their level of awareness to the notion of climate change. The result of the study showed a good level of awareness, with majority of the positive responses being influenced by changes in their experiences and expectations regarding farming and planting seasons, particularly by the change in weather cycles. The study found that out of the 75% of farmers who were aware, 42.4% of them became aware of climate change from self-observations informed by their vast level of experience, 24.2% got their awareness from their interactions with enlightened farmers, 29.1% of them were from the radio, and 4.2% of them were from the television.⁵⁷⁶ This last group is even encouraging considering the energy situation of the country which is still marked by power outages in this present times. This confirms an earlier study which established that a good number of the populace are neither aware of the true impacts of climate change beyond their immediate environment nor aware of the adaptive measures to take.⁵⁷⁷

The report of the Special Rapporteur – an independent expert charged with the mandate to study the human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment and to identify and promote best practices relating to the use of human rights obligations and commitments to inform, support and strengthen environmental policymaking⁵⁷⁸ - outlined the procedural rights of victims of environmental harm to include the obligation on the state to ensure and provide education and public awareness on environmental matters, access to

⁵⁷⁶ J.P Okoro et al, “Climate Change Mitigation and Adaptation Strategies Used by Farmers in Imo State, Nigeria”, (2016) 20 J of Agricultural Extension 2 at 137 2

⁵⁷⁷ Ovuyovwiroye *supra* note 548, pg 1206.

⁵⁷⁸ Resolution A/HRC/37/59, *Supra* note 75Para. 2

information, and participation in decision making relating to environmental matters. These were avidly advocated for by the Framework Principles 6, 7, and 9 of the report, respectively.⁵⁷⁹

Lack of public awareness may perhaps be among the reasons people take climate and environmental degrading actions which may overtime contribute to the climate change. Such as the spates of activities challenging the government's ownership of the oil resources which may indirectly impact on the mitigation efforts of the government. There are currently several depressing reports of black soot hanging in the atmosphere in the Rivers state of Nigeria (part of the Niger Deltans),⁵⁸⁰ a situation which the Rivers state government has blamed on the activities of illegal oil bunkering/refineries.⁵⁸¹ While a proper sensitization may play a mitigating role, one useful solution is to ensure a proper representation of the people in taking decisions relating to oil activities which may have an effect on their natural environment. One of the effects of non-participation or inadequate participation is violence.⁵⁸² This is reflected in several parts of the Niger Delta, from the nefarious activities of Niger Delta militants who clamour for resources control to the activities of illegal oil bunkers who attribute their actions to insufficient compensation for 'their' oil.⁵⁸³

⁵⁷⁹ *Ibid*

⁵⁸⁰ BBC News, "Soot in Nigeria's Port Harcourt endangers Residents Health", online at <https://www.bbc.com/news/av/world-africa-51553861> accessed 5th January, 2022.

⁵⁸¹ 91.7 wave FM Rivers state governor, Nyesom Nzenwo Wike, https://m.facebook.com/story.php?story_fbid=4197195327049330&id=101477299954507 , <https://uc.xyz/17jLo?pub=link> and <https://uc.xyz/17jGlc?pub=link> accessed 11th January, 2022.

⁵⁸² Yinka Omorogbe, "Giving Voices to the Voiceless: Human Rights in Natural Resource Development", in Donald Zillman et al, (eds) *Public Participation in the Sustainable Development of Mining and Energy Resources* ', (New York, NY: Oxford University Press, 2002) at 572

⁵⁸³ Joseph Ikechukwu Uduji et al, 'Sustainable peacebuilding and development in Nigeria's post-amnesty programme: The role of corporate social responsibility in oil host communities' (2021) 21 J of Public Affairs 2

With the federal governments ownership and control of all lands with natural resources,⁵⁸⁴ and an absolute right to take over such lands for overriding public purposes pursuant to the Land Use Act,⁵⁸⁵ the people can only have participatory rights through effective representation.⁵⁸⁶ The principle of participation through representation is particularly important because of the “lobbying practices, contestatory effects and personal experiences” which the stakeholders utilise for the benefits of their constituents in negotiations relating to oil exploratory activities.⁵⁸⁷ As earlier indicated above, contributions influenced by personal experiences enables adequate representation⁵⁸⁸. The effort by the oil companies in Nigeria to introduce the Global Memorandum of Understanding which creates a model of network governance, clustering groups of communities together into representative boards that make decisions on local development projects has been marred by decades of conflicts and violence and mistrust between the individuals, oil companies, the representative boards, governments and the military making cooperation difficult task⁵⁸⁹ Thus, while the people clamour for better involvement and participation into the oil sector on the basis that the representative stakeholders do not act in their interest, an ideal test for effective representation would be whether the “relevant community recognises such stakeholders as representatives of their interest.”⁵⁹⁰ This is to avoid a situation of selective participation as indicated in chapter two which generally deflects the right of the people to development.⁵⁹¹

⁵⁸⁴ CFRN *Supra* note 18 Section 44(3) and Section 1 of the *Petroleum Act Cap. 350 Laws of the Federation of Nigeria 1990, Act Cap.P10 Laws of the Federation of Nigeria 2004.*

⁵⁸⁵ S. 28 Land Use Act Cap.L5 Laws of the Federation of Nigeria, 2004

⁵⁸⁶ Ako T. Rhuks, “Nigeria's Land Use Act: An Anti-Thesis to Environmental Justice” (2009) 53 J of African law 2 at 289–304.

⁵⁸⁷ Linda Wallbott, “Rights, Representation and Recognition- Practicing advocacy for women and indigenous peoples in UN climate negotiations” in, Duyck Sebastien, Jodoin Sebastien & Johl Alyssa eds (eds)*Routledge Handbook of Human Rights and Climate Governance*, (New York, NY: Routledge, 2018) at 58

⁵⁸⁸ Oramah, *supra* note 538

⁵⁸⁹ C. Acey, “Managing wickedness in the Niger Delta: Can a new approach to multi-stakeholder governance increase voice and sustainability?” (2016) 154 Landscape and urban planning at 102–114.

⁵⁹⁰ Wallbott, *supra* note 587. Pg.59

⁵⁹¹ Botes & Van Rensburg *supra* note 91

There have also been several reported incidence of vandalisms caused to some oil pipelines by the youths of the Niger Delta over allegations of selective participation. Some recent ones include a report dated 24th November, 2021 of the attack on the oil facility belonging to the Nigeria Agip Oil Company in Rivers state.⁵⁹² According to the report, the militants has claimed responsibility for the attack alleging that it was as a result of the failure of Agip to comply with the twenty four hours ultimatum given to them by the group to deal directly with the host communities rather than selected individuals.

In another publication following the explosion of an illegal refinery in Rumuekpe, Emoha Local Government Area, Rivers State, which resulted in the death of twenty-five persons, as well as several economic trees and cash crops, a member of the community blamed the incident on the failure of the oil companies to live up to their responsibilities, leading the youths of the community to set up artisanal refineries.⁵⁹³

It however seems pitiable that while Nigeria chases physical development majority of which is funded by the revenues from the petroleum activities, she at the same time, loses both human lives, infrastructures and money as a result of same revenue generating activities. For example, on 1st November, 2021, Punch news reported Nigeria's crude oil losses attributed to pipeline vandalism which was valued at over eight hundred and ninety eight billion, ninety three million naira (₦898.93bn) over a cause of nine months. (January to September 2021).⁵⁹⁴ According to the report,

⁵⁹² Punch Ng, 'Again, Militants Blow Up Agip Facility in Rivers, Insist on Justice,' 24th November, 2021. Dennis Naku, Accessed online at <https://punchng.com/breaking-again-militants-blow-up-agip-facility-in-rives-insist-on-justice/> December 25th, 2021.

⁵⁹³ The Nation, '25 Died in Rivers' Illegal Refinery Explosion-Community,' 24th October, 2021, accessed on <https://thenationonlineng.net/25-died-in-rivers-illegal-refinery-explosion-community/amp/> 25th December, 2021

⁵⁹⁴ Punch Ng, 'Nigeria Lost N898.93bn to Pipeline Vandalism, Theft in Nine Months,' 24th December, 2021. Okechukwu Nnodim. Accessed online at <https://punchng.com/nigeria-lost-n898-93bn-to-pipeline-vandalism-theft-in-nine-months/?amp> December 25th, 2021.

the Nigerian National Petroleum Company (NNPC)⁵⁹⁵ attributed the losses to some factors that includes: sabotages on oil installations and pipelines, community interference, production shutdown. Further to the crude oil valued loss, a total of one trillion, seventy eight billion was also deducted from the remittances of the NNPC to the Federation Account Allocation Committee within the period. This was valued as the cost of repairing and managing the pipelines.⁵⁹⁶

As a solution to this, calls have been made for serious measures to be taken by the Government against such cases. Notable among them is the recommendation of the Chief Executive Officer, Centre for the Promotion of Private Enterprises who called for the strengthening of surveillance through the deployment of drones and other forms of technology.⁵⁹⁷ There is no doubt that prevention of such recurrences must be given proper considerations to promote the profitability of the oil exercise. This corroborates a report published by the Nigeria Extractive Industries Transparency Initiative (NEITI)⁵⁹⁸ decrying the loss of crude oil worth of forty-one billion, nine million dollars (\$41.9b) attributed to both theft of crude oil, and theft of the refined petroleum. The report also pointed out the problems in the oil sector to include theft, vandalism, piracy and corruption in the oil and gas industry.⁵⁹⁹

⁵⁹⁵ NNPC is the government owned oil company. Other oil companies carries out their operations under a joint venture with the NNPC wherein the NNPC has about sixty percent participatory interest in all joint venture agreements. See Nigerian National Petroleum Corporation, “Joint Operating Agreement”, Available online at <https://www.nnpcgroup.com/NNPC-Business/Upstream-Ventures/Pages/Joint-Operating-Agreement.aspx> Accessed 8th February, 2022.

⁵⁹⁶ Punch Ng, *supra* note 594

⁵⁹⁷ *ibid*

⁵⁹⁸ “This is the national chapter of the global Extractive Industries Transparency Initiative (EITI) mandated by law (The NEITI Act 2007) to promote transparency and accountability in the management of Nigeria's oil, gas and mining revenues”. See online at <https://neiti.gov.ng/> accessed 5th February, 2022

⁵⁹⁹ Nigeria Extractives Industries Transparency Initiative, ‘Nigeria has Lost \$42bn to Crude Oil Theft in Last Decade’, 19th December, 2019. <https://www.hazardexonthenet.net/article/176102/New-report-finds-Nigeria-has-lost-42bn-to-crude-oil-theft-in-last-decade.aspx> accessed on 25th December, 2021.

The situation is therefore clearly unsustainable. Taking a critical look at it, such losses would propel the government to increase oil production with the attendant gas flaring. A sizeable portion of the revenue generated would still be plunged back into the oil sector in order to repair the damages and recoup the losses. The people are consequently faced with more environmental damage and resource deprivation further increasing the spates of violence. The mitigation efforts of the government are therefore challenged by this unending cycle.

RELIANCE ON OIL REVENUES AS A MAJOR SOURCE OF THE COUNTRY'S REVENUE:

With a maximum crude oil production capacity of 2.5 million barrels per day, Nigeria ranks as Africa's largest producer of oil and the sixth largest oil producing country in the world.⁶⁰⁰ About 80% of governments revenues is derived from oil export while crude oil sales accounts for ninety per cent of the country's foreign currency income.⁶⁰¹ The Organisation of the Petroleum Exporting Countries (OPEC) considering its observation from the Annual Statistical Bulletin 2021, notes that petroleum exports revenue accounts for around 86% of total exports revenue in Nigeria.⁶⁰² Nigeria can thus be said to operate a monolithic economy with surface considerations for diversification being made by the governments in occasions of oil crash.⁶⁰³

With no concrete plan in place for the diversification of the economy to non-oil sectors, an effective response to climate change response seems to be out of reach as no country can achieve a sustainable economic growth with a maximum dependence on its oil revenue⁶⁰⁴.

⁶⁰⁰ Nigerian National Petroleum Corporation, "Oil Production" <https://www.nnpcgroup.com/NNPC-Business/Upstream-Ventures/Pages/Oil-Production.aspx> accessed 12th January, 2022.

⁶⁰¹ A.T. Shola et al., "The Political Economy of Oil and Coronavirus Disease in Nigeria: Imperatives for Diversification" (2021) 9 African J Economic Review 6 at 107

⁶⁰² Organization of the Petroleum Exporting Countries, 'Nigeria Facts and Figures', https://www.opec.org/opec_web/en/about_us/167.htm accessed online on 12th January, 2022.

⁶⁰³ Shola et al *supra*, note 601

⁶⁰⁴ J. O. Onoh & O. E. Ndu-okereke, "Dependence on Oil Income Earnings and Diversification of the Economy – The Nigerian Response" (2018) 8 Developing Country Studies 2 at 95-106

The unavoidable consequences of this dependence on petroleum revenues is the gas flaring practices in Nigeria. Gas flaring is the disposition of natural gas or associated gas that emanates with the crude-oil during oil exploitation and exploration operation. Gas flaring is regarded as the second most destructive environmental degrading practice in Nigeria, next to oil spillage.⁶⁰⁵ Although, in her latest climate plan submitted to the United Nations, Nigeria had pledged to end its gas flaring practices by 2030,⁶⁰⁶ however, there has been a slow progress in the elimination of gas flaring practices because of weak enforcement of laws⁶⁰⁷ low penalties⁶⁰⁸ and loopholes in the Associated Gas Re-Injection Act⁶⁰⁹. This commitment has thus been regarded as mere lip service by critics given Nigeria's maintained position from 2012 as part of the top seven countries with the highest gas flaring rate, accounting for 65% of gas flaring practice.⁶¹⁰ Another given reason is the laxity of the Nigerian government due to her previously unattained deadlines, and the absence of any concrete plan and infrastructure in place.⁶¹¹ According to Aghalino, "it's important to note that the past history of Nigeria has made it obvious that the nation has never been found lacking

⁶⁰⁵ Robin Cartwright and Nicholas Atampugre, "Organised Oil Crime in Nigeria The Delta Paradox: Organised Criminals or Community Saviours" (2020) <https://enact-africa.s3.amazonaws.com/site/uploads/2020-11-26-organised-oil-crime-in-nigeria.pdf> pg 18

⁶⁰⁶ Federal Government of Nigeria, 'Nigeria's Nationally Determined Contribution-2021 Update' (2021) "2nd July 2021. https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Nigeria%20First/NDC_File%20Amended%20_1122.pdf accessed on 4th January 2022.

⁶⁰⁷ Climate Home News (2021) "Nigeria to end gas flaring by 2030, under national climate plan" <https://www.climatechangenews.com/2021/08/13/nigeria-end-gas-flaring-2030-national-climate-plan/> accessed online 12th January, 2022.

⁶⁰⁸ Ademola Adigun, an expert at the Facility for Oil Sector Transparency and Reform in Nigeria, says several factors explain this ever-shifting goalpost. For one, the capacity to scale gas commercialisation is still lacking in the country. Also, oil companies would rather pay a fine of \$3.50 per 1 000 standard cubic feet for gas flaring than stop the practice. See <https://issafrica.org/iss-today/are-nigerias-promises-to-end-gas-flaring-merely-hot-air> accessed 12th January, 2022.

⁶⁰⁹ This is exemplified by the Associated Gas Re-Injection Act, Cap A25 LFN 2004.

⁶¹⁰ World Oil, 'Seven countries account for two-thirds of global gas flaring' (2021) online at <https://www.worldoil.com/news/2021/4/28/seven-countries-account-for-two-thirds-of-global-gas-flaring> accessed 12 January, 2022.

⁶¹¹ Institute for Security Services, 'Are Nigeria's Promises to End Gas Flaring Merely Hot Air?' (2021) <https://issafrica.org/iss-today/are-nigerias-promises-to-end-gas-flaring-merely-hot-air> accessed 12 January, 2022.

in policy initiatives. What is worrisome is that policies are never pursued to their logical conclusion”.⁶¹²

The standard practice among climate conscious nations would be a re-injection of such natural gases. For instance, in the United States, petroleum companies process natural gas or re-inject the same into the field and only 1% of the gas is flared unlike in Nigeria, where over 60% of the associated gas is flared.⁶¹³ However, the cost implication of setting up the technology and facilities for such re-injection is still an impediment to this alternative with the government backing out of several joint partnerships proposals with the multinational oil companies due to the financial constraints.⁶¹⁴

With the knowledge that gas flaring, which contributes to a major proportion of Nigeria’s carbon emission is more cost effective than an actual re-injection of such gas,⁶¹⁵ it is unlikely that the commitment to the Nationally Determined Contribution will be met.⁶¹⁶ According to Aghalino, “for developing countries suffering from economic constraints; measures to manage the environment are considered luxury more fit for the rich and developed countries”.⁶¹⁷

A solution to this challenge would perhaps be a diversification of the economy which has been described as a panacea for the Nigerian economic growth.⁶¹⁸ With Nigeria’s land mass, fertile soil

⁶¹² S. O Aghalino, “Gas Flaring, Environmental Pollution And Abatement Measures In Nigeria, 1969 – 2001” (2009) 11 *Journal of Sustainable Development in Africa* 4 at 231

⁶¹³ Joshua Olujobi Olusola & Temilola Olusola-Olujobi, “The Appraisal of Legal Framework Regulating Gas Flaring in Nigeria’s Upstream Petroleum Sector: How Efficient?” (2019) 10 *Intl J of Advanced Research in Engineering and Technology* 3 at 234

⁶¹⁴ Institute for Security Services, *supra* note 611

⁶¹⁵ Olabode A. Oyewunmi & Adebukola E. Oyewunmi, “Managing Gas Flaring and Allied Issues in the Oil and Gas Industry: Reflections on Nigeria” (2016) 7 *Mediterranean J of Social Sciences* 4 at 643

⁶¹⁶ This also calls into the fact the erring oil companies would rather pay the minute fines for gas flarings. This is as explained above. Ademola, *supra* note 608.

⁶¹⁷ Aghalino *supra* note 612 pg 222

⁶¹⁸ Grace O. Evbuomwan, “*Diversification of The Nigerian Economy: Agriculture and Solid Minerals As Panacea*” (2016) 1 *Bullion Publication of The Central Bank of Nigeria* 4 at 50-69

and booming population, agroforestry seems to be an enticing prospect.⁶¹⁹ Agriculture was the major source of the country's revenue before the discovery of oil, accounting for 70% of the nation's Gross Domestic Product (GDP). Currently, its contribution to the nation's GDP can barely be pegged at 30%⁶²⁰. An urgent transition or full diversification should be encouraged. This is in anticipation of the harsh and damaging effects of climate change on agriculture which may likely make the prospect of creating a buoyant revenue out of the sector an illusion. A significant turn towards other notable natural resources such as its solid minerals including: gold, tin, iron ore, niobium, lead, steel, zinc, limestone, and salt is also a viable diversification option.⁶²¹

4.3.2. Challenges to Adaptation

Climate change has been described to have dangerous consequences on human health, security and the general stability of countries. The effect of this adverse change can be cushioned by good policies developed by these countries.⁶²² The effectiveness of adaptation plans is however determined by the political system, power relations, institutions, economic and social circumstances.⁶²³ These identified factors affect the capacity to adapt and inadvertently achieve climate justice. Adaptation efforts should be targeted towards improving adaptive capacity by improving the socio-economic status, demographic inequalities, communication services, support

⁶¹⁹ I chose to recommend agroforestry due to its indicated benefit on improving the resilience of agriculture and limiting the impacts of climate change. A combination of the two (Agriculture and forestry) would therefore clearly benefit the climate discourse. See Brown E. Sarah et al, "Evidence for the Impacts of Agroforestry on Agricultural Productivity, Ecosystem Services, and Human Well-Being in High-Income Countries: A Systematic Map Protocol", (2018) 7 *Environmental Evidence* 24

⁶²⁰ Shola, et al., *supra* note 601, Pg 107. Once again, I highly canvass for afforestation where the exploitation of these resources would lead to deforestation. This is to avoid the situation of going round in a loop. This would occur where an equal measure of emission that would presumably be circumvented by the diversification occasioned by deforestation would still be left hanging in the atmosphere by the loss of carbon sinks.

⁶²¹ Oluwadamilola Kemi Adams, "Nigeria's Economy Challenges: Causes and Way forward" (2019) 10 *Journal of Economics and Finance* 2 at 78

⁶²² Gita Parihar & Dooley Kate, "Advancing Equity and Human Rights" in Duyck Sebastien, Jodoin Sebastien & Johl Alyssa (eds) *Routledge Handbook on Human Rights and Climate Governance* (New York NY: Routledge 2018) at 274

⁶²³ Oramah *supra* note 538 pg 4

institutions and infrastructure to reduce sensitivity⁶²⁴. This presupposes an investment into actions with “highest potentials to reduce the vulnerability of victims”.⁶²⁵ By promoting the adaptation of the vulnerable groups, a more equitable and sustainable development can be achieved thereby aiding the implementation of the right to development. Here, I will discuss the difficulties on the part of the vulnerable groups to effectively adapt despite the funding allocated by the government.

I proceed with the environmental injustice on the part of the Niger Deltans: This is an offset of the obtainable political and power structure in Nigeria. Hulbert identifies the intersection between climate justice and environmental justice.⁶²⁶ He views climate justice as an offshoot of environmental justice. Oramah concedes that environmental injustice expands the vulnerability of the victims of climate change.⁶²⁷ The Niger Deltans are the inhabitants of the coastal communities in the Niger Delta.⁶²⁸ They have been identified as one of the vulnerable groups to climate change.⁶²⁹ Their land also houses the oil resources of the country, and so, they bear the damaging consequences of the exploitation.⁶³⁰ Their vulnerability is worsened by their exposure to climate change and exacerbated by the fiscal federalism structure practised by the Nigerian government.⁶³¹ Herein, the central government takes full ownership and control of the natural resources pursuant to section 44(3) of the Nigerian constitution⁶³² and section 1 of the petroleum Act⁶³³. These provisions operate to vest absolute control over all minerals, mineral oils and natural gas and

⁶²⁴ Awolala et al., *supra* note 236

⁶²⁵ *Ibid.*

⁶²⁶ Hulbert *supra* note 234

⁶²⁷ Oramah, *supra* note 538, pg 5

⁶²⁸ These are the people of the Niger Deltans found across seven states out of the thirty-six states of the federation. See Omorogbe, *Supra* note 582

⁶²⁹ West Africa Coastal Areas Management Program, “Nigeria” online at <https://www.wacaprogram.org/country/nigeria> Accessed 23rd April, 2022. *Ibid* chapter 3

⁶³⁰ Okedere & Elehinafe, *supra* note 486

⁶³¹ Ikporukpo, *supra* note 180.

⁶³² CFRN *supra* note 18

⁶³³ *Petroleum Act Cap. 350 Laws of the Federation of Nigeria 1990, Act Cap.P10 Laws of the Federation of Nigeria 2004.*

petroleum within the Nigerian territory on the central government. This structure impedes the capacity of the people to adapt to climate change. As Oramah argues, the capacity to adapt is enabled and actively maximised by granting control and ownership of natural resources to locals.⁶³⁴ This inadvertently vests the vulnerable communities with the required resources to adapt and respond to the effects of climate change and environmental degradation thereby enabling equitable development. The United Nations has identified the right to own natural resources as part of the indices of the right to development. The grant of such right gives the people a form of leverage in the attainment of the economic freedom needed to effectively adapt and obtain a standard of development reflective of their status as natural resource owners⁶³⁵.

A critical look into forms of obstruction to adaptation takes us into the fiscal federalism structure in Nigeria.

The distributive form of justice is negated by the fiscal federalism structure operated under the Nigerian system. I agree with Oramah in her submission that adaptation raises the prospects of equity and justice. This form of justice calls for equitable distribution of the resources for climate change adaptation. Fiscal federalism is the structure put in place for the generation, allocation and distribution of resources in a federal system.⁶³⁶ In Nigeria, these outlined responsibilities are solely placed on central government, such that the other levels of government depend majorly on the revenues generated by the central government for internal growth and development⁶³⁷. As earlier identified, the central government has sole ownership and control over the oil resources found in the Niger Delta region. By virtue of the fiscal federalism structure in Nigeria, the government also

⁶³⁴ Oramah *supra* note 538

⁶³⁵ Nyang *supra* note 127

⁶³⁶ Aibieyi stanley & Odigwe Dorcas Akhere, "Fiscal federalism and development in Nigeria" (2015), 4 African J of Governance and Development, 1 at 75–92.

⁶³⁷ *Ibid.*

solely determines the indices for the distribution of the revenues derived from such resources. The selected indices include equality of states irrespective of size, principle of derivation, landmass, terrain, and population density⁶³⁸. Of the above mentioned indices, the Niger Deltans only benefits from the principle of derivation. This demands the mandatory payment of not less than 13% of the revenue derived from any natural resources to the producing states⁶³⁹. This situation places the Niger Deltans in a particularly vulnerable position because they are subjected to forms of environmental degradation characteristic of natural resource hosting communities.⁶⁴⁰ These exploratory activities impedes their capacities to improve their development by its damaging effect on their means of livelihood⁶⁴¹. This consequently affects their capacity to adapt to climate change. Their situation is worsened by the fact that the revenue allocation is not sufficient to effectively compensate them of the risk borne by them.⁶⁴² Thus the principle of distributive justice is impeded here⁶⁴³. It is my submission that the cost of the environmental exploitation and degradation should be equally distributed by adopting a form of revenue allocation reflective of the unequal burden the Niger Deltans are subjected to for the overall benefit of the nation. This would equip the people to develop effective measures for adaptation to climate change and inadvertently provide an enabling environment for the enjoyment of the right to development. In addition, it would also

⁶³⁸ Ohiomu Sylvester & Oluyemi Sunday Ade, “Resolving Revenue Allocation Challenges in Nigeria: Implications for Sustainable National Development” (2019) 64 *The American Economist* (New York, N.Y. 1960), 1 at 142–153. Also see Section 162(2) of the 1999 Constitution Federal Republic of Nigeria (as amended) which sets out the criteria for the allocation of revenues from the Federation account.

⁶³⁹ Vanguard online, “13% Derivation, Falling Crude Oil Prices and the Constitution”, online at www.vanguardngr.com/2016/02/13-derivation-falling-crude-oil-price-and-the-constitution/amp Accessed 20th April, 2022

⁶⁴⁰ Ikporukpo Chris.O., *supra* note 180

⁶⁴¹ Wilson Akpan, “Between Ethnic Essentialism and Environmental Racism: Oil and the ‘Glocalisation’ of Environmental Justice Discourse in Nigeria” (2006) 10 *African Sociological Review*, 2 at18–42.

⁶⁴² *Ibid*

⁶⁴³ Sabbagh & Golden, *supra* note 286.

equip the people with the social, economic and political benefit that would reflect the economic importance of the region, and the risk they bear for the nation.⁶⁴⁴

Another challenge is the poor access to climate finance. Nigeria suffers from limited funding for her climatic responses. The Organisation for Economic Co-operation and Development (OECD) identified that Africa received only 22% of the climate finance provided for climate responses by the developed countries.⁶⁴⁵ The major recipients of this fundings were South Africa, Mozambique, Democratic Republic of Congo and Tanzania. Awolala et al notes that the allocation of these fundings between vulnerable regions is a difficult and politically sensitive process⁶⁴⁶. As earlier identified in chapter 3, the equity of allocation is impeded on the basis of some identified limitations⁶⁴⁷. The OECD identified some requirements to obtaining the international adaptation funds.⁶⁴⁸ Some of these requirements and identified challenges might question Nigeria's capacity to access these limited funds. An important mention is the impediment of "low level of capacity to design and develop projects/programmes and monitor and evaluate progress".⁶⁴⁹ This is particular to the Nigerian situation where the nations climatic responses have been plagued by a myriad of problems. These includes ineffective policies,⁶⁵⁰ unclear project descriptions; as well as

⁶⁴⁴ Eghosa E. Osaghae, "Resource Curse or Resource Blessing: The Case of The Niger Delta 'Oil Republic' In Nigeria" (2015) 52 Commonwealth & Comparative Politics 2 at 109–129.

⁶⁴⁵ The Development Assistance Committee, "Climate Related Development Finance Data" (2018) Organisation for Economic Co-Operation and Development pg 11. Online at <https://www.oecd.org/dac/financing-sustainable-development/development-finance-topics/Climate-related-development-finance-in-2018.pdf> accessed 10th May, 2022.

⁶⁴⁶ Awolala et al, *supra* note 236

⁶⁴⁷ Islam, *Supra* note 235

⁶⁴⁸ Organisation for Economic Co-Operation and Development & Global Environment Facility, "Toolkit to Enhance Access to Adaptation Finance for Developing Countries That Are Vulnerable to Adverse Effects of Climate Change, Including LIDCs, SIDS and African states" (2015) pg 6. Online at <https://www.oecd.org/environment/cc/Toolkit%20to%20Enhance%20Access%20to%20Adaptation%20Finance.pdf> accessed 10th May, 2022.

⁶⁴⁹ *Ibid.*

⁶⁵⁰ Aghalino *supra* note 612 pg 231

poor management and maintenance culture.⁶⁵¹ For instance, an investigative journalism revealed that the first green bond project fell flat with a loss of about Thirty million naira. This trails the discovery of barely a hundred trees at a proposed site for the planting of six thousand trees.⁶⁵² This is similar to the project to provide clean energy to support education, where only two solar power plants have been inaugurated at two institutions out of the nine proposed universities with just one of the power plants fully functional.⁶⁵³

The limited nature of access to these available funding thereby necessitates the judicious use of the resources available. I align myself with the views of Awolala who advocates for funding to be targeted towards limiting the sensitivity of the victims to climate change⁶⁵⁴. Also, there is an increased necessity to make giant strides towards overcoming the limitations identified by the OECD in order to maximise their chances towards accessing the climate finance.

There are other adaptation funds established for limiting the adverse effects of climate change. For instance, there is the Least Developed Countries Fund (LDCF).⁶⁵⁵ Nigeria is however not entitled to it as it is not recognised as a least developed country⁶⁵⁶. The Special Climate Change Fund has mostly been directed towards the Small Island States and the more vulnerable nation⁶⁵⁷. There is also the Green Climate Fund which is about the largest single fund for financing adaptation plans

⁶⁵¹ Abdulkareem Mojeed, “Four Years After, Nigeria’s Green Bond Projects Fall Below Expectation,” (2021) Premium Times , online <https://www.premiumtimesng.com/news/top-news/492711-four-years-after-nigerias-green-bond-projects-fall-below-expectations.html> accessed 22 February, 2022.

⁶⁵² *Ibid.*

⁶⁵³ *Ibid.*

⁶⁵⁴ Awolala *supra* note 236

⁶⁵⁵ Harmeling Sven, “Climate Change Impacts” in Duyck Sebastien, Jodoïn Sebastien & Johl Alyssa (eds) *Routledge Handbook of Human Right and Climate Impacts*. (New York NY: Routledge 2018) pg 102

⁶⁵⁶ United Nations Department of Economic and Social Affairs, Economic Analysis, “LDC’s at a Glance” online at <https://www.un.org/development/desa/dpad/least-developed-country-category/lpcs-at-a-glance.html> accessed 31st May, 2022

⁶⁵⁷ United Nations Development Programme, “The Least Developed Countries Fund and the Special Climate Change Fund”, Exploring the Gender Dimensions of Climate Finance Mechanism” Global Gender and Climate Alliance online at <file:///C:/Users/admin/Downloads/LDCF-SCCF.pdf> accessed 31st May, 2022.

in developing countries⁶⁵⁸. The key objectives of the green climate fund is to invest in the improvement of a climate resilient “environment, energy & industry, human security, livelihood and wellbeing”⁶⁵⁹. It seeks to promote its course by supporting and financing climate innovations, strategic plans for engaging in adaptation, mitigation and sustainable developments⁶⁶⁰. Luckily, Nigeria, together with 12 other developing countries were the beneficiaries of a 12million dollars funding advanced in 2021 in furtherance of these projects.⁶⁶¹

I conclude by reiterating that the current regime of climate finance does not support the equitable allocation of climate finances to vulnerable nations. This is due to priorities given on the measure of compliance with the set requirements⁶⁶². This situation severely limits the rights of other ‘unlucky’ vulnerable nations to development because they are deprived of the opportunity to equally develop with their counterparts due to the impacts of climate change.⁶⁶³ Nevertheless, it is still the duty of the government to engage in development designs for the central benefit of the people⁶⁶⁴. Awolala advocates for “innovative policies and development paradigms that can simultaneously address climate change and poverty challenges”⁶⁶⁵. This would facilitate a climate resilient development pathway which would simultaneously benefit the mitigation and adaptation plans (promoted by the economic growth) of the complying nations⁶⁶⁶.

⁶⁵⁸ Harmeling Sven, *supra* note 655

⁶⁵⁹ Green Climate Fund, “About GCF” online at <https://www.greenclimate.fund/about#key-features> accessed 31st May, 2022.

⁶⁶⁰ *Ibid.*

⁶⁶¹ African Development Bank Group, “The Green Climate Fund approves \$170.9m in co-financing for African Development Bank’s LEAF program” (2021) online at

⁶⁶² Organisation for Economic Co-Operation and Development & Global Environment Facility, *supra* note 648

⁶⁶³ Patrícia Galvão Ferreira, “Equitable Allocation of Climate Adaptation Finance: Considering Income Levels Alongside Vulnerability”, (2017) Centre for International Governance Innovation, CIGI Papers No. 152. Online at <https://www.cigionline.org/sites/default/files/documents/Paper%20no.152%20web.pdf> accessed 31st May, 2022.

⁶⁶⁴ UNDRTD *supra* note 4

⁶⁶⁵ Awolala *et al supra* note 236

⁶⁶⁶ *Ibid*

This chapter thus concludes upon the establishment that Nigeria still has a long way to go in the actualisation of climate justice within its space. Her legal obligations towards enforcing the commitments under the UNFCCC, and the Paris Agreement has influenced the formulation of policies seeking to enthrone climate justice. Nevertheless, her rich robust policies and regulatory frameworks is yet to achieve a positive effect in her climate regime. I emphasize that commitment is different from action. To enable the successful implementation of her policies and enthrone climate justice, Nigeria needs to make a conscious effort towards resolving these identified challenges. Although the industrialised nation has some blames in the current limitations faced by Nigeria in her climate change struggles, nevertheless a greater responsibility is placed on Nigeria by her seemingly unceasing contribution to same. For instance, Climate scorecard⁶⁶⁷ published that Nigeria produces the third highest amount of greenhouse gas in Africa, next to south Africa and Zambia.⁶⁶⁸ This report illustrates Nigeria’s climate responses and establishes a regime of climate injustice in Nigeria. A regime where the climate responses do not measure up to the responsibility and contribution to climate change, thereby disproportionately exposing the vulnerable groups as indicated in Chapter 3:4 to the climate risks.

⁶⁶⁷ Climate scorecard is a body created by two environmental advocacy groups viz; the Global Citizens Initiative and Earth Aaction. Its publications are made by a team on environmental researchers and advocates who compiles a report on efforts related to climate change mitigation in each of twenty leading greenhouse gas emitting countries. See <https://www.climatescorecad.org/who-we-are/> accessed on 4th February, 2022.

⁶⁶⁸ See Climate Scorecard, “Nigeria News Brief and Action Alert,’ Available on <https://www.climatescorecard.org/2020/12/nigeria-has-experienced-a-271-increase-in-greenhouse-gas-emissions-since-1990/> accessed on 4th January, 2022.

Chapter 5: Implementation of the Right to Development in Nigeria and its Effect on the Climate

5.1. Introduction:

The right to development demands the enjoyment of economic, civil, social, political and cultural development.⁶⁶⁹ This RTD may be violated by the effects of climate change which is wrought by some overriding activities indulged or neglected by the government. Such activities ultimately result in the obstruction to the full enjoyment of the right as envisaged by the Declaration.⁶⁷⁰ Mitigation and adaptation to climate change imposes huge costs on the economic, political, social and cultural developments of the people.⁶⁷¹ The effects of climate change undermines the right to development in two identifiable ways. First, it undermines the equality of development by exposing the vulnerable groups to dangers and damages associated with climate risks. Secondly, it limits the financial capacity of the people to develop.⁶⁷² The IPCC had long established the effects of climate change on the different components of this RTD in its fifth assessment report. It captures the RTD as human security, a terminology that been held to be inclusive of political, socio-cultural and economic rights⁶⁷³. The identified impacts includes the following:

- “Human Security will be progressively threatened as the climate changes.
- Climate change will compromise the cultural values that are important for community and individual well being
- Indigenous, local and traditional forms of knowledge are a major resource for adapting to climate change.

⁶⁶⁹ UNDRTD *supra* note 4

⁶⁷⁰ Some of these activities have been discussed in chapter 4 using the Nigerian experience.

⁶⁷¹ Oramah *supra* note 538 pg 4

⁶⁷² *Ibid* pg 18

⁶⁷³ Harmeling Sven, *supra* note 655 pg 90

- Climate Change will have significant impacts on forms of migration that compromise human security.⁶⁷⁴

The relationship can actually be stated to be a two-way symbiotic flow as the pursuit of the RTD can inadvertently increase the burden of adapting to or mitigating climate change thereby undermining the principles of climate justice. The core principles of climate justice have been identified to include: respect and protect human rights; support the right to development; share benefits and burdens equitably, ensure that decisions on climate change are participatory, transparent and accountable; highlight gender equality and equity; harness the transformative power of education for climate stewardship; and use effective partnerships to secure climate justice.⁶⁷⁵ The effectiveness of climate response plans is determined by the political system, power relations, institutions, economic and social circumstances.⁶⁷⁶ Chapter four has extensively dealt with how Nigeria's socio-economic situation has contributed to climate change. Particularly, her peculiar situation as an oil dependent economy. The pursuit for climate justice will therefore ultimately enable the full implementation of the RTD.

Through her NDC, Nigeria has committed along with State parties to the Paris Agreement to keep the global temperature below 2 degrees by ensuring justice in responding to climate change.⁶⁷⁷ The nation is also obligated to ensure the full operation of the RTD pursuant to her commitment under the African Charter of Human and Peoples' Right.⁶⁷⁸ This chapter seeks to untangle the intersection between the two obligations. It analyses how the response to climate justice impacts on the actualization of the RTD and vice versa. This intends to establish the hindrance to the

⁶⁷⁴ IPCC 2014 *supra* note 22.

⁶⁷⁵ Mary Robinson Foundation, "Climate Justice: principles of Climate Justice" online at www.mrfcj.org/pdf/Principles-of-Climate-Justice.pdf accessed 31st May, 2022.

⁶⁷⁶ Oramah *supra* note 538, pg 4

⁶⁷⁷ NDC *Supra* note 373

⁶⁷⁸ Banjul Charter *supra* note 5

actualization of the two individual obligations which can only be resolved by a development plan that reflects her commitments under the Paris Agreement. Thus, in this chapter, section one presents a detailed explanation into the meaning of economic development including sustainable development. It considers the economic status in Nigeria, the pursuit for economic development and implication thereof, on the climate challenge. Section two focuses on political development. It narrows the concept down to the Nigerian jurisdiction and considers the different aspects of the political system in Nigeria with an influence on the climate discourse. Section three presents a discussion on political development and its implementation in the Nigerian jurisdiction. It further elucidates the implication of the status of social development in Nigeria on their climate struggle. Section four concludes the chapter with the effect of cultural development on the climate challenge.

5.2. Meaning of Economic Development

The World Bank illustrates economic development to be an improvement involving: “self-sustaining growth; structural change in patterns of production; technological upgrading; social, political and institutional modernization; and widespread improvement in the human condition”.⁶⁷⁹

Economic Development can be defined as programs, policies or activities undertaken by the relevant bodies, which is geared towards the general improvement of the economic well-being and quality of life for the people.⁶⁸⁰ Such policies must be people-centered and must seek to be of benefit to the beneficiaries as demanded by the principles of the right to development. Section

⁶⁷⁹ Irma Adelman, “Fifty Years of Economic Development: What Have we Learned?” World Bank Document” online at <https://documents1.worldbank.org/curated/en/625131468761704307/pdf/28737.pdf> Accessed 12th May, 2022.

⁶⁸⁰ What is Economic Development” online at <https://www2.gov.bc.ca/gov/content/employment-business/economic-development/plan-and-measure/economic-development-basics> accessed 12th May, 2022.

16(2)(a) of the 1999 Nigerian Constitution provides for the obligation of the state towards ensuring a balanced and planned economic development.⁶⁸¹ Donou-Adonosou et al identifies health and education as the most basic objective of economic development.⁶⁸² Therefore, it can be said that any form of development designs which may ultimately be detrimental to the peoples' right to enjoy life and good health does not fit into the intended objective of economic development. Where such development leads or contributes to climate change, it definitely cannot be said to be "balanced and planned",⁶⁸³ and ultimately can be said to have overridden the overall intent of the right to development. This therefore re-emphasizes the need for nation states to engage in sustainable developments.

5.2.1. Sustainable Development

This has earlier been defined as development that fulfills the needs of the present generation without compromising the ability of the future generation to meet its need⁶⁸⁴. Although the three pillars of sustainable development⁶⁸⁵ are recognised to be of equal status, however, nations may be predisposed to tilt towards one pillar in justification of their policies⁶⁸⁶. The draft ILA Legal Principles Relating to Climate Change identifies sustainable development in one of its articles⁶⁸⁷. The principle demands a sustainable use of the natural resources including the climate for the benefit of the present and future generation. This can be achieved through the anticipation,

⁶⁸¹ 1999 Constitution Federal Republic of Nigeria (As Amended), *Supra* note 145

⁶⁸² Donou-Adonosou Ficawoyi, Pradhan Giya & Basnet Hem C., "Human Capital Expenditure and Income in Developing Countries" (2021) 55 *The J of developing areas* 3 at 113–128.

⁶⁸³ *Ibid*

⁶⁸⁴ Brundtland Report, *supra* note 205

⁶⁸⁵ Purvis et al, *Supra* note 210

⁶⁸⁶ Atapattu, *supra* note 547 pg 108

⁶⁸⁷ Committee on Legal Principles Relating to Climate Change *supra* note 230 Article 3. Recall that the committee is part of the initiatives of the International Law Association which was set up in an attempt to codify existing international law.

prevention and minimisation of climate change⁶⁸⁸. In addressing the impacts of climate change on sustainability, the Article advocates for states to integrate climate factors in its environmental, economic and social development projects.⁶⁸⁹ This is necessary in order to avoid an unsustainable form of development with a potential of adversely impacting the climate.

To enable the actualisation of the true intent of sustainable development, a set of substantive and procedural components were formulated by the Rio Declaration as a guide for the nations. The substantive components require compliance with the principles of equity, integration and sustainable use of natural resources, while the procedural component encourages access to information, participation in the decision-making process and access to justice.⁶⁹⁰ As previously discussed in chapter two, these components has also been described by the independent expert on the issue of human rights obligation relating to the enjoyment of a safe, clean, healthy, and sustainable environment as being crucial to the full enjoyment of vast range of human rights. Including the right to a healthy environment.

Equity and justice are the central theme of sustainable development. Equity has earlier been defined as a societal norm that gives expression to the best aspirations of our collective social conscience⁶⁹¹. Atapattu construes it to include both intra-generational and inter-generational rights to an equal access to the earth's resources.⁶⁹² Integration implies the equal status and unification of all three outlined pillars⁶⁹³. The procedural components also go hand in hand as the people

⁶⁸⁸ *Ibid*, Article 3(2)

⁶⁸⁹ *Ibid*, Article 3(4). This is as provided by the UNFCCC

⁶⁹⁰ *Ibid* this is provided by Article 10 of the Rio Declaration on Environment and Development, 1992. 31 I.L.M. 874 (1992) Online at [h](#)

https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf accessed 1st May, 2022.

⁶⁹¹ Lambert, *supra* note 96

⁶⁹² Atapattu, *supra* note 547, pg 111

⁶⁹³ *Ibid* pg 110

cannot effectively participate in any decision making process where they lack the necessary information to make contributions or make the right choices. Justice is also better served where they are guaranteed access to remedy where their rights have been violated, or a preventative remedy such as an injunction as the case may be.

On this basis of the equality and unification of these pillars, a nation cannot conveniently embark on any development project which may have any detrimental effect on the environment or on social rights. The inclusion of the social development pillar by the 1995 World Summit for Social Development⁶⁹⁴ enthroned a condition for the respect of the human right of the people.⁶⁹⁵ These social rights cumulatively advance the full protection of the right to development.⁶⁹⁶ On the other hand, the environment protection pillar has been argued to be the “foundation”⁶⁹⁷ of all development projects. This would be due to the recognition that the environment sustains humanity, and a degradation or an abusive use of the resources inadvertently derogates man’s capacity to develop further.⁶⁹⁸ This is as a result of the consequent effect on both the health and economic status which would ultimately undermine the capacity to sustain the right to development of the people.

⁶⁹⁴ United Nations, *Report of the World Summit for Social Development, Copenhagen, March 6-12, 1995*. UN Doc. A/CONF.166/9 Online at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N95/116/51/IMG/N9511651.pdf?OpenElement> accessed 2nd May, 2022.

⁶⁹⁵ Sumudu A. Atapattu A, Carmen G Gonzalez & Sara L. Seck, “Intersections of Environmental Justice and Sustainable Development: Framing the Issues” in Sumudu A. Atapattu A, Carmen G Gonzalez & Sara L. Seck, eds, *The Cambridge Handbook of Environmental Justice and Sustainable Development* (Cambridge University Press, 2021)

⁶⁹⁶ *Ibid*, pg 4

⁶⁹⁷ *Ibid*, pg 5

⁶⁹⁸ United Nations General Assembly, “Report of the Special Rapporteur on the Issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment”, (19th January 2017) Thirty—fourth session, Human Rights Council, A/HRC/34/49. Para. 5

The climate being a part of the external condition sustaining life, development and survival of humanity is an obvious part of the environment.⁶⁹⁹ Any economic activity which alters the nature of the climate to sustain life can be said to have effectively impeded the right of the people to develop. Article 3 of the UNFCCC expressly demands the parties to “protect the climate system for the benefit of present and future generations of humankind on the basis of equity and in accordance with their common but differentiated responsibilities and respective capacities...”⁷⁰⁰. By this, the right to development must be implemented in such a way that the components of a sustainable environment are recognised in its implementation. It must envisage the protection and manifestation of these components, both in the interest of the present generation, and that of the future generation.

5.2.2. Nigeria’s Economic Development

Crude oil is adjudged to be the key driver of economic growth in Nigeria.⁷⁰¹ This comes with its effects on the climate and the consequent violation of the right of the people to life, health and sustainable environment. As earlier indicated in chapter four, Nigeria’s dependence on oil revenues has generously contributed to her greenhouse gas emissions due to the gas flaring practices associated with the oil productions.⁷⁰² In illustrating her responsibility for greenhouse gas emissions, Climate scorecard⁷⁰³ published that Nigeria produces the third highest amount of

⁶⁹⁹ Organisation for Economic Co-Operation and Development, “Glossary of Statistical Terms: Environment” online at <https://stats.oecd.org/glossary/detail.asp?ID=813#:~:text=The%20environment%20is%20the%20totality,depende nt%20in%20all%20its%20activities>. Accessed 2nd May, 2022.

⁷⁰⁰ Paris Agreement, *supra* note 15

⁷⁰¹ Nwani Chinazaekpere, “Finance and Growth in Oil-Dependent Economies: Does Crude Oil Price Matter? Evidence from Nigeria” (2016) 40 OPEC Energy Review 4 at 354–373.

⁷⁰² Onoh, J. O. & Ndu-okereke, *Supra* note 604

⁷⁰³ Climate scorecard is a body created by two environmental advocacy groups viz; the Global Citizens Initiative and EarthAction. Its publications are made by a team on environmental researchers and advocates who compiles a report on efforts related to climate change mitigation in each of twenty leading greenhouse gas emitting countries. See <https://www.climatescorecad.org/who-we-are/> accessed on 4th February, 2022.

greenhouse gas in Africa, next to south Africa and Zambia.⁷⁰⁴ This dependence on its oil revenues is not without its consequences.

First, Nigeria's economic growth can be said to be dependent on the oil market. For instance, following the drop in oil prices and a decline in oil production, Nigeria was plunged into a heavy recession in 2016⁷⁰⁵ forcing the government to launch an Economic Recovery and Growth Plan.⁷⁰⁶ Similarly, the coronavirus pandemic in 2020 which led to the crash in oil prices also led Nigeria into another recession plague. This brought about the Economic Sustainability Plan which was launched as a recovery plan.⁷⁰⁷ This indication of Nigeria's susceptibility to a decline in oil price evidences her dependence on the oil revenues and consequent hindrance to her mitigation responses. This can only be controlled where concrete plans are made for the elimination of gas flaring

Secondly, Nigeria can be said to be a victim of resource curse⁷⁰⁸. The resource curse entails a situation where the abundance of natural resources in a country leads to unanticipated decline rather than progress in the nations overall growth.⁷⁰⁹ This is reflective of the Nigerian situation where the recorded growth in the Gross Domestic Product is not evident in the standard of the

⁷⁰⁴ See Climate Scorecard, "Nigeria News Brief and Action Alert," Available on <https://www.climatescorecard.org/2020/12/nigeria-has-experienced-a-271-increase-in-greenhouse-gas-emissions-since-1990/> accessed on 4th January, 2022.

⁷⁰⁵ Federal Government of Nigeria, "Second National Strategic Health Development Plan, 2018-2022" online at <https://www.health.gov.ng/doc/NSHDP%20II%20Final.pdf> pg.5 Accessed 16th May, 2022.

⁷⁰⁶ Amaka Metu, "Economic Diversification In Nigeria: Patterns And Policy Implications, Conference Benin Institutional Diagnostic Workshop (2021) Available online at https://www.researchgate.net/publication/354845019_ECONOMIC_DIVERSIFICATION_IN_NIGERIA_PATTERNS_AND_POLICY_IMPLICATIONS accessed 5th February, 2022.

⁷⁰⁷ Bouncing Back, 'Nigeria's Economic Sustainability Plan, (NESP) 2020', <https://media.premiumtimesng.com/wp-content/files/2020/06/ESC-Plan-compressed-1.pdf> pg 15 accessed 25th January, 2022

⁷⁰⁸ Osaghae *Supra* note 644.

⁷⁰⁹ Victor O. Asekunowo & Sam A. Olaiya, "Crude Oil Revenue and Economic Development in Nigeria (1974-2008)" (2012) 36 OPEC Energy Review 2 at 138–169.

living of the masses. Rather, it leads to a decline in the other indices of development such as “per capita income, human development index, infant and mortality rates, and life expectancy at birth”⁷¹⁰. Osaghae identifies the curse of the abundant natural resources found in the Niger Delta upon the resident masses to include “environmental devastation, relative deprivation, resource distribution injustices, political marginalisation and material underdevelopment”⁷¹¹. A sustainable development that is people centered would consider the heavy burden placed on the Niger Deltans by the reliance on oil revenue. The dependence on oil has affected the right of the people to equal development by impoverishing them. This has therefore further increased their vulnerability to climate change by increasing their exposure to the risks of climate change (through the environmental degradations and gas flaring in the area) and decreasing their adaptive capacity.

Causative factors to resource control include: the activities and policies of national governments; the political structure of the nation; the distribution of the resources; and the political and social relations between the government in power and the inhabitants of the area where the natural resources is naturally recurring.⁷¹² Thus, as earlier indicated in chapter four, the relationship between the government and the inhabitants of these areas can at best be described as a power tussle for the control of resources spearheaded by the dissatisfaction on the ‘returns’ from the oil exploitation and consequent environmental degradation. This has manifested itself in the militant groups and illegal oil bunkering.⁷¹³ The violent actions of the militant groups including bombing pipelines, and kidnapping of expatriates as well as the increased gas flarings from the illegal oil bunkers is not without consequences. Funds which would otherwise have been channeled towards

⁷¹⁰ *Ibid.*

⁷¹¹ Osaghae *supra* note 644

⁷¹² *Ibid.*

⁷¹³ Uduji *supra* note 583

progressive projects are to be diverted to repairs in order to secure the nation's major source of revenue. In addition, the overall greenhouse gas emission from the country is also being increased by these illegal oil refineries. This has further increased the responsibility of the government towards mitigating her greenhouse gas emissions and meeting up with the commitments in her Nationally Determined Contributions. It has been advocated that granting the people the right of ownership would give them some sort of leverage over their socio-economic development.⁷¹⁴

Another indicated driver for economic development is electricity.⁷¹⁵ Odekanle et al posits that the availability of electricity supply, and the rate of consumption is a major determinant of a nation's socio-economic development⁷¹⁶. Electricity is an integral part of development due to its irreplaceable role in the industrial, domestic and agricultural sector.⁷¹⁷ The Power situation in Nigeria reflects her poor economic state as over 80 million of the citizens are without constant electricity.⁷¹⁸ The reason for the poor electricity supply has been attributed to gas shortfall, water management, inadequate supply, electricity theft, limited distribution networks, and huge metering gap⁷¹⁹

This situation has a direct implication on climate change. Firstly, the people who lack excess to electricity has to source their own energy supply. Households has to rely on either gas or kerosene to cook thereby encouraging the use of fossil fuel.⁷²⁰ The use of wood to cook is also not

⁷¹⁴ Office of the High Commissioner, United Nations Human Rights, General Assembly resolution 1803 (XVII) of 14 December 1962, "Permanent sovereignty over natural resources" *supra* note 121

⁷¹⁵ Mustapha Mukhtar et al., "Effect of Inadequate Electrification on Nigeria's Economic Development and Environmental Sustainability" (2021) 13 Sustainability (Basel, Switzerland), 4 at.2229.

⁷¹⁶ E.L. Odekanle, et al., "Potential for Cleaner Energy Recovery and Electricity Generation From Abattoir Wastes in Nigeria" (2020) 6 Energy Reports at 1262–1267.

⁷¹⁷ Mukhtar et al., *supra* note 715

⁷¹⁸ Olusola Bamisile et al., "Development and Assessment of Renewable Energy–Integrated Multigeneration System for Rural Communities in Nigeria: Case Study (2020) Journal of Energy Engineering, 146(3), p.5020001.

⁷¹⁹ *Ibid*

⁷²⁰ Usman et al. *supra* note 563

uncommon in Nigeria. This also contributes to and encourages deforestation thereby further limiting the mitigation capacity of the people.⁷²¹ In addition, Nigeria has already been identified as a tropical region impacted by heat waves by the climate change.⁷²² The people therefore have to purchase and maintain their comfort through the use of gas and fuel powered generators. This is not without the consequent effect on their finances as they have to purchase, do service checks, and constantly fuel the generators to maintain their comfort.⁷²³ These emissions from the use of the fossil fuel further challenges the mitigation efforts of the government as it implies an increase in uncontrolled emissions.

Secondly, it has earlier been indicated that the electricity supply is mainly powered by gas plants.⁷²⁴ Therefore an increase in the supply of electricity equates an increase in the greenhouse gas emissions.⁷²⁵ Furthermore, with the dependence of economy on electricity as the energy source for industries, an increase in the output from these sectors also signifies an increase in the emissions. The reliance on fossil fuel as a form of energy supply especially in manufacturing and commercial activities inadvertently leads environmental degradation, increase in mortality and poor health⁷²⁶. This would invariably require that more financial expenses be made to adapt to these risks. To secure a more sustainable economic growth and development therefore, Nigeria needs to derive her energy source from sources that are environment friendly⁷²⁷, such as the renewable energy.⁷²⁸

⁷²¹ *Ibid*

⁷²² NCCP *supra* note 408

⁷²³ Mukhtar et al., *supra* note 715

⁷²⁴ Usman et al. *supra* note 563

⁷²⁵ Ibrahim et al., *supra* note 568

⁷²⁶ Romanus Osabohien et al., "Carbon Emissions and Life Expectancy in Nigeria" (2021) International Journal Of Energy Economics and Policy, 11(1), p.497.

⁷²⁷ Oyedepo Sunday Olayinka, "Energy and Sustainable Development in Nigeria: the Way Forward" (2012) Energy, Sustainability And Society. Vol 2(1),

⁷²⁸ Usman et al *supra* note 563

5.2.3. Indicators of Poor Economic Growth

The World Bank has identified the indicators of Nigeria's poor economic status to include: poverty; life expectancy at birth; poor access to electricity; poor sanitation measures; environmental pollution; unemployment and migration⁷²⁹. I now discuss some of these factors.

Poverty has earlier been defined as the absolute deprivation of people of their right to basic necessities.⁷³⁰ It is triggered by the incapacitation of the people to improve upon their conditions.⁷³¹

Some of these incapacitating factors have been identified to include "Unemployment, corruption, non-diversification of the economy, income inequality, and a poor education system".⁷³²

According to the World Bank, about 40.1% of Nigerians are living in poverty with one in every five person in the Sub-Saharan Africa living in Nigeria⁷³³. According to the report, this number is likely to increase as an aftereffect of the covid 19 crises⁷³⁴. The rate of poverty was likely to be higher among those living in rural areas, the younger people, the uneducated and women.⁷³⁵

The report further creates a connection between poverty and climate shocks as it indicates the extreme vulnerability of the poor people in rural areas whose livelihood often depends on agriculture.⁷³⁶

This is due to the loss of harvest because of droughts and flooding induced by climate change.⁷³⁷

Poverty has been identified as a bane to sustainable development. This is because it is a triggering

⁷²⁹ The World Bank "Nigeria" online at <https://data.worldbank.org/country/NG> accessed 15th May, 2022.

⁷³⁰ MacEwan, *Supra* note 182

⁷³¹ Fafchamps, *supra* note 183

⁷³² Ucha Chimobi, "Poverty in Nigeria: Some Dimensions and Contributing Factors (2010) 1 Global Majority E-Journal 1 at 46

⁷³³ The World Bank, "Nigeria's Poverty Assessment 2022: A Better Future for all Nigerians" (2022) online at <https://documents1.worldbank.org/curated/en/099730003152232753/pdf/P17630107476630fa09c990da780535511c.pdf> accessed 16th May, 2022. Pg 10

⁷³⁴ *Ibid*, pg 23

⁷³⁵ *Ibid*, pg 18

⁷³⁶ *Ibid*, pg 60

⁷³⁷ *Ibid*, pg 63.

factor for actions adversely affecting the environment, the climate, and human rights in general.⁷³⁸

The Paris Agreement in its preamble notes the intrinsic relationship between poverty, sustainable development and climate change.⁷³⁹

Life expectancy can be defined as the length of life that an individual is expected to live at birth⁷⁴⁰.

The World Bank in its 2020 report pegs the life expectancy in Nigeria at 55 years⁷⁴¹. This figure has slowly grown to 55.44⁷⁴². This has been adjudged to be due to the unfavourable socio-economic situation for the determinants of life expectancy, viz per capita income, education and government expenditure on health⁷⁴³. Healthcare services in Nigeria is mainly provided by private individuals and companies, and their fees mostly exorbitant.⁷⁴⁴ This is exacerbated by the fact that health insurance is not easily accessible in Nigeria.⁷⁴⁵ This consequently makes good healthcare an illusion to the Nigerians living beyond the poverty line.

The import of this to economic development is visible. This is because diminishing of the human capital of the country at a prime age where their inputs would have greatly benefitted the development plans of the country directly affects the development strategies of a nation⁷⁴⁶. The

⁷³⁸ Resolution A/HRC/RES/41/21 *Supra* note 250

⁷³⁹ Paris Agreement, *supra* note 15

⁷⁴⁰ Peter I. Sede & Williams Ohemeng, “Socio-Economic Determinants Of Life Expectancy in Nigeria (1980 – 2011)” (2015) 5 Health Economics Review 1 at.2.

⁷⁴¹ The World Bank, “Life Expectancy at Birth Total (Years)- Nigeria” online at <https://data.worldbank.org/indicator/SP.DYN.LE00.IN?locations=NG> accessed 16th May, 2022

⁷⁴² Macro Trends, “Nigeria life Expectancy 1950-2022” online at <https://www.macrotrends.net/countries/NGA/nigeria/life-expectancy> accessed 16th May, 2022.

⁷⁴³ Sede Peter I. & Ohemeng Williams, *supra* note 740.

⁷⁴⁴ Yusuf Opeyemi Akinwale, “Health Expenditure, Economic Growth and Life Expectancy at Birth in Resource Rich Developing Countries: A case of Saudi Arabia and Nigeria” (2021) 42 J of Economic Cooperation & Development 2 at 1–22.

⁷⁴⁵ G.O. Alawode, & D.A. Adewole, “Assessment of the Design and Implementation Challenges of the National Health Insurance Scheme in Nigeria: A Qualitative Study Among Sub-National Level Actors, Healthcare and Insurance Providers” (2021) 21 BMC Public Health at 124 online at <https://bmcpublihealth.biomedcentral.com/articles/10.1186/s12889-020-10133-5#citeas> accessed 16th May, 2022.

⁷⁴⁶ NCCP *Supra* note 396 pg. 10.

Lancet report notes the decline in global economic output due to the loss of 302 billion h of potential labour capacity in 2019 as a result of climate related stressors on human life.⁷⁴⁷ Also, a healthy individual is generally more likely to actively perform his job, earn higher income and contribute to the nation's growth than an individual with poor health⁷⁴⁸.

Unemployment can be defined as the measure of the labor force of a qualified age that is without work but available for and seeking employment⁷⁴⁹. This has been indicated to be the major driver of poverty rate in Nigeria.⁷⁵⁰ The current unemployment rate in Nigeria is estimated to amount to 33% of the population⁷⁵¹. This is majorly caused by an increase in the population, and particularly, by the operation of a monolithic economy marked by the dependence on oil⁷⁵². Other causes of a high rate of unemployment includes less number of industries when compared to active job seekers⁷⁵³, the lack of a reliable data to monitor the trend and possibly project a timely solution.⁷⁵⁴

Unemployment contributes to the poor economic status of a nation because the unemployed segment of the society are forced to adjust to a lower standard of living.⁷⁵⁵ This therefore

⁷⁴⁷ Watts, Nick et al. "The 2020 Report of The Lancet Countdown on Health and Climate Change: Responding to Converging Crises." (2021) *The Lancet* (British edition) 397.10269.

⁷⁴⁸ Akinwale, *supra* note 732

⁷⁴⁹ Organisation for Economic Co-Operation and Development, "Glossary of Statistical Items", online at <https://stats.oecd.org/glossary/detail.asp?ID=2791> Accessed 16th May, 2022.

⁷⁵⁰ Ogbeide Frank Iyekoretin, Kanwanye Hillary & Kadiri Sunday, "Revisiting the Determinants of Unemployment in Nigeria: Do Resource Dependence and Financial Development Matter?" (2016) 28 *African Development Review*, 4 at.430–443.

⁷⁵¹ Sasu Doris Dokua, "Forecast Unemployment Rate in Nigeria" (2022) Statista. Online at <https://www.statista.com/statistics/1119227/forecast-unemployment-rate-in-nigeria/> accessed 17th May, 2022.

⁷⁵² Ogbeide Frank Iyekoretin, Kanwanye Hillary & Kadiri Sunday, *Supra* note 738

⁷⁵³ Adu Omobola et al., "Industrial Development and Unemployment in Nigeria: An ARDL Bounds Testing Approach" (2019) 46 *Intl J of Social Economics* 1 at 83–96.

⁷⁵⁴ Tule Moses, Ajilore Taiwo & Ejuh Godday, "A Composite Index of Leading Indicators of Unemployment in Nigeria (2016) 17 *J of African Business* 1 at 87–105.

⁷⁵⁵ Tule Moses Kpughur et al., "An Assessment of the Severity of Unemployment in Nigeria: Evidence from Fractional Integration" (2018) 19 *J of African Business*, 1 at 39–61.

contributes to the low gross domestic product of a nation thereby limiting its economic development.⁷⁵⁶

The migration of the populace is fueled by the adverse climate, socio-economic and political situation in the country⁷⁵⁷. This is marked by the vulnerability to other indicators of a poor economy, viz: poverty, environmental degradation and unemployment⁷⁵⁸. Such migration is propelled by the hope and desire for better income, better standard of living, and educational opportunities.⁷⁵⁹

Although migration may help even out the population in order to create more employment opportunities, nevertheless its effect may be far more crippling on the economy. This is based on the recognition that the majority of the migrants are skilled professionals who end up transferring their productivity to their new countries or communities of residence.⁷⁶⁰ A labour gap is thus created signifying a loss to Nigeria's economic growth and consequent development.

From all these, it can be understood that the economic development of the people as guaranteed by the right to development directly impacts on the vulnerability of the people to climate change.

The state of the economy for each of these vulnerable groups as identified in chapter four affects

⁷⁵⁶ The World Bank, *Supra* note 733

⁷⁵⁷ The World Bank, "Managed Labour Migration Can Help Unlock Nigeria's Economic Potential" (2021) online at <https://www.worldbank.org/en/news/feature/2021/07/19/managed-labor-migration-can-help-unlock-nigeria-s-unrealized-economic-potential> Accessed 17th May, 2022. See also International Organisation for Migration- The UN Migration Agency, "Enabling A Better Understanding of Migration Flows (and Its Root-Causes) From Nigeria Towards Europe Final Report Displacement Tracking Matrix (Dtm) May 2018. Online at file:///C:/Users/admin/Downloads/NIGERIA%20-%20DTM%20CMFS%20final%20report%20-V5%20-%20FINAL_0.pdf accessed 17th May, 2022.

⁷⁵⁸ Oluwafunmiso Adeola Olajide, "Migration: Its Causes and Consequences in South East Nigeria" ECAS 2013 5th European Conference on African Studies African Dynamics in a Multipolar World. pg 1644

⁷⁵⁹ *Ibid.*

⁷⁶⁰ Shambhavi v. Murthy Gopalkrishna & Samuel O. Oloruntoba, "The Political Economy of Forced Economic Migration In Nigeria: Prospects and Challenges In The New Millennium", online at <http://africamigration.com/issue/dec2012/forced-economic-migration-in-Nigeria-Gopalkrishna-and-Oloruntoba.pdf> accessed 17th May, 2022.

their sensitivity to climate change, their exposure indexes and their respective capacities to effectively adapt to, or otherwise recoup their loss from climate change. The poor economic status of the country has also greatly inhibited her capacity to effectively tackle the contributors to climate change. This is conceived from her inability to effectively control her gas flaring practices nor finance its reinjection.⁷⁶¹

5.3. Political Development

Political development has been defined as a growth in the capacity of the people to hold their political leaders accountable.⁷⁶² It is an increase in the national political unity promoted by an increase of political participation. Mass political participation has been identified as a key factor to achieving modernisation and development in the political scene⁷⁶³ and where properly engaged, can also lead to other forms of development⁷⁶⁴. Political participation here refers to the legal acts by the citizens which is geared towards the selection of government personnel, or in the creation of policies for the governance of the people.⁷⁶⁵ It involves some form of action taken to influence the government. To encourage participation however, there is a need to create and promote active institutions⁷⁶⁶. These institutions are necessary to ensure stability and legitimacy in the polity⁷⁶⁷. By equipping the institutions with the capacity to meet the demands of the public, an opportunity of achieving political development is further encouraged⁷⁶⁸. In a nutshell, political development

⁷⁶¹ Institute for Security Services, *supra* note 611

⁷⁶² Evans Oluwagbamila Ayeni, "Political Development Theory, Its Criticism, And Application" (2019) online at https://www.researchgate.net/publication/338096169_POLITICAL_DEVELOPMENT_THEORY_ITS_CRITICISM_AND_APPLICATION accessed 18th May, 2022..

⁷⁶³ Tasneem Sikander, "Political Development and Political Decay" (2015) 5 Intl J of Humanities and Social Science 3 at 143

⁷⁶⁴ Ayeni, *supra* note 764

⁷⁶⁵ Imran Khan, Aisha Ahmad & Dr. Ali Shan Shah, "Nexus between Political Development and Institutionalization: An Analysis of the Institution Building Approach" (2019) 3 Pakistan Social Sciences Review 1 at 70

⁷⁶⁶ Sikander *supra* note 765

⁷⁶⁷ Imran Khan, Aisha Ahmad & Dr. Ali Shan Shah, *supra* note 767

⁷⁶⁸ *Ibid.*

can be described as the state of guaranteed equality through participation and an assurance of stability through institutions. Such development promotes the capacity of the political system to deal with new challenges.⁷⁶⁹

The measure of political development achieved by any country can be identified by assessing the country's population, organization of polity, government performance⁷⁷⁰ and the stability of the political institutions. The political institution put in place in Nigeria is however adjudged to be weak because of its susceptibility to the whims and caprices of any government in power at each point in time.⁷⁷¹ Nigeria is structured as a federation of thirty six states, with the federal government being the central seat of power.⁷⁷² The political structure has over the years been consistently saddled with resolving the challenges rising from power devolutions viz: corruption, resource allocations and the ethnic diversity of the state⁷⁷³.

There are unending conflict events marked by the ethnic and religious tensions in the country. Nigeria is a multicultural society with about 250 ethnic groups, 3 religions,⁷⁷⁴ and a history of constant clash between these groups.⁷⁷⁵ These conflicts has often led to the loss of livelihoods,

⁷⁶⁹ Political Development: Conceptual Explanation, Political Science. Online at <https://www.politicalsciencenotes.com/articles/political-development-conceptual-explanation/578> accessed 18th May, 2022.

⁷⁷⁰ Imran Khan, Aisha Ahmad & Dr. Ali Shan Shah, *supra* note 765

⁷⁷¹ Ayeni *supra* note 762

⁷⁷² Nigerian Embassy Berlin, "Political Structure" online at <https://nigeriaembassygermany.org/Government.htm> accessed 18th May, 2022.

⁷⁷³ Oliver Owen, "Nigeria: Regional Politics and Dynamics" (2020) online at [https://oxfordre.com/politics/oso/viewentry/10.1093\\$002facrefore\\$002f9780190228637.001.0001\\$002facrefore-9780190228637-e-875;jsessionid=D8B921645BDCFD27E264C87AE4CB878A](https://oxfordre.com/politics/oso/viewentry/10.1093$002facrefore$002f9780190228637.001.0001$002facrefore-9780190228637-e-875;jsessionid=D8B921645BDCFD27E264C87AE4CB878A) accessed 18th May, 2022. Nigeria has over 250 ethnic groups. The demographic can be found online at <https://minorityrights.org/country/nigeria/> accessed 18th May, 2022.

⁷⁷⁴ World Directory of Minorities and Indigenous, "Nigeria" online at <https://minorityrights.org/country/nigeria/> online at 18th May, 2022.

⁷⁷⁵ Leila Demarest, Langer Arnim & Ukiwo Ukoha, "Nigeria's Federal Character Commission (FCC): A Critical Appraisal" (2020) 48 Oxford Development Studies 2 at 315

food insecurity, displacing the populace, destruction of lives and properties.⁷⁷⁶ This is evidenced by the 2016 report from the World Bank stating that over 2.5 million people had been displaced by the insurgency in the northern part of the country.⁷⁷⁷ This situations puts a strain on the economic situation of the populace further increasing the poverty level and consequent vulnerability to climate risks.

Under the Nigerian political structure, the issue of resource ownership and allocation is also an important issue for consideration⁷⁷⁸. The federal government assumes full ownership over all the natural resources in the Country pursuant to sections 44 of the 1999 Constitution Federal Republic of Nigeria. The situation therefore results in a civil unrest coupled with dissatisfaction over the form of revenue allocation which is unreflective of the unequal burden borne by the host communities in the exploitation of those resources⁷⁷⁹. As identified in chapter 4, this has led to militancy, with its attendant consequences. i.e oil bunkering further causing uncontrolled pollutions with the flarings, damages to oil facilities. Militancy therefore results in increased oil exploitation by the government to raise more funds to enable the repairs of destroyed resources and recovery of lost revenues.

Corruption in the political institutions has also been identified as a bane to development.⁷⁸⁰

Corruption sees a minute number of people at the helm of leadership diverting the revenues

⁷⁷⁶ Bamidele S., “Ethnic Conflict and the Politics of Spoils in Nigeria” (2020) 50 Social Change 4

⁷⁷⁷ The World Bank Group, *Forcibly Displaced: Towards a Development Approach Supporting Refugees, The Internally Displaces and Their Hosts* (DC, Washington: International Bank for Reconstruction and Development / The World Bank, 2017) can be accessed online at <https://openknowledge.worldbank.org/bitstream/handle/10986/25016/9781464809385.pdf?sequence=11&isAlloved=y> accessed 18th May, 2022.

⁷⁷⁸ Owen, *supra* note 773

⁷⁷⁹ Akinwale A.A, *Supra* note 485

⁷⁸⁰ Hanson Stephanie, “Nigeria’s Creaky Political System” (2007) Council on Foreign Relations. Online at <https://www.cfr.org/background/nigerias-creaky-political-system> accessed 18th May, 2022.

accruing from the natural resources which funds the economy of the nation⁷⁸¹ thereby further impoverishing the populace. Corruption also mars several political appointments into political institutions. Such appointments can at best be adjudged to be lopsided where people from a particular region as the government in the seat of power is favoured over other qualified people.⁷⁸² This situation is in negation of the federal character principle which was enacted in Nigeria to redress the inequalities that may arise in a multiethnic group.⁷⁸³ The federal character commission is a political device geared towards achieving equality in political representation.⁷⁸⁴ It is truism that political participation is better encouraged where the people are guaranteed of good governance through equal representation⁷⁸⁵. Political development has been described as a stimulator for other forms of development.⁷⁸⁶ This may well be the situation where the political appointees including all elected officials seek and promote the development of their people bound by ethnic and religious affiliations. The federal character commission was intended to oversee this situation, however its import has been overridden by the lopsided appointments characteristic of the current governance system. The import of this is that the part of the populace with better access and representation in the government are likely to secure more government aids in responding to

⁷⁸¹ *Ibid.*

⁷⁸² Fasan Olu, "Balances or Lopsided? The Truth about Buhari's Appointments" (2020) Vanguard online at <https://www.vanguardngr.com/2020/07/balanced-or-lopsided-the-truth-about-buharis-appointments/> accessed 18th May, 2022.

⁷⁸³ Demarest, Arnim & Ukoha, *supra* note 775

⁷⁸⁴ Section 14(3) 1999 CFRN (as amended) provides that "the composition of the government of the Federation or any of its agencies shall be carried out in such a manner to reflect the federal character of Nigeria and the need to promote national unity, and also to command national loyalty, thereby ensuring that there shall be no predominance of persons from a few state or from a few ethnic or other sectional groups in that government or in any of its agencies".

⁷⁸⁵ Oko O. Obasi & Erondu N.A, "Factors Influencing Political Participation in Selected Rural Communities In Owerri North Local Government Area Of Imo State, Nigeria" (2016) Conference: 11th International Conference on Inter-disciplinary Social Sciences at the Imperial College, London, UK. Project: Political Sociology. Online at https://www.researchgate.net/publication/344158823_FACTORS_INFLUENCING_POLITICAL_PARTICIPATION_IN_SELECTED_RURAL_COMMUNITIES_IN_OWERRI_NORTH_LOCAL_GOVERNMENT_AREA_OF_IMO_STATE_NIGERIA accessed 18th May, 2022.

⁷⁸⁶ Ayeni *supra* note 762

climate change than their counterparts. This further breeds inequalities in opportunities further violating the right of the people to development.

The judiciary is part of the political system in Nigeria⁷⁸⁷ whose role has a bearing on the climate change discourse. The judicial powers have been vested on the courts established by the Nigerian constitution for the federation.⁷⁸⁸ The independence and impartiality of the judiciary is identified as a necessary criterion to achieving democracy and impartiality in the court system⁷⁸⁹. It instills confidence upon the people of guaranteed access to justice in the courts.⁷⁹⁰ Although the judiciary is stated to be independent on paper, nevertheless, several occasions has called the independence of the judiciary into question. The identified attributes of the independence of the Nigerian judiciary includes clearly articulated constitutional provisions regulating the: appointment, remuneration, discipline and judicial immunity⁷⁹¹. Of these identified attributes, the appointment of the judiciary can be described as a chink in the armor of independence. Appointment should be on merit and devoid of political motives where the appointees would be manipulated to return the favour by representing the interest of the creating body.⁷⁹² This has been overridden by the lopsided appointments which is vivid in the current political regime.⁷⁹³ This sometimes results in

⁷⁸⁷ Nigerian Embassy Berlin, “Political Structure” supra note 772

⁷⁸⁸ Section 6 CFRN *Supra* note 18

⁷⁸⁹ Maduekwe Vincent Chucks, Ojukwu Uche Grace & Agbata Ifeanyi F., “Judiciary and The Theory Of Separation Of Powers In Achieving Sustainable Democracy In Nigeria (The Fourth Republic)” (2016) 4 British J of Education 8 at 88

⁷⁹⁰ *Ibid* pg 89

⁷⁹¹ Duru Onyekachi Wisdom Ceazar, “An Overview of Aspects and Attributes of Judicial Independence in Nigeria” (2012) online at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2142974 accessed 18th May, 2022.

⁷⁹² *Ibid* Pg 21

⁷⁹³ Ayodele Oluwafemi, “Christian Association of Nigeria (CAN) and Nigerian Supreme Council for Islamic Affairs (NSCIA) Lock horns Over Lopsided Appointments in the Security Chiefs, Judges” The Cable online at <https://www.thecable.ng/can-islamic-council-lock-horns-over-lopsided-appointment-of-security-chiefs-judges> accessed 18th May, 2022

indirect manipulations of the decisions of the judges who fear the risk of being replaced.⁷⁹⁴ There are also cases of flagrant abuse of court processes. This situation therefore places a hurdle on securing justice for the vulnerable groups who may have been exposed to climate risks by the negligent acts of the government, and who seeks justice in court. The case of SERAP is an example that even where judgement is won, the enforcement is not usually a walk in the park⁷⁹⁵.

Also, political development has been described as the ability of the people to influence the policies of the government. In relation to climate change, this can be said to relate to the procedural form of justice which gives the people access to information, participation in decision making. As earlier described in chapter 4, the people cannot participate unless they are equipped with credible information. Also, it has earlier been identified that local communities are excluded from the adaptation dialogues in Nigeria.⁷⁹⁶ The participation of the people leads to more effective climate responses because the people are allowed to present their real experiences, and their preferred responses to them. For an example, recall that chapter 3 had identified the role that African women play which establishes a direct contact between them and the environment. This gives them a greater knowledge of the climate impacts which would be valuable in creating environmental policies.⁷⁹⁷ The Nigerian Climate Gender Policy⁷⁹⁸ presents a bridge to overcome this hurdle.

⁷⁹⁴ United Nation African Renewal, “Judicial Independence Under Threat in Nigeria, Warns UN Rights Expert” online at <https://www.un.org/africarenewal/news/judicial-independence-under-threat-nigeria-warns-un-rights-expert> accessed 18th May, 2022.

⁷⁹⁵ *SERAC & Anor v Nigeria* (2001) *Supra* note 159. Herein, despite the fact that African Commission found the Nigerian government liable for the oil pollution affecting the lives and the environment of the Ogoni people. However, its recommendations on the liability, especially on the payment of adequate compensation and resettlement assistance was never successfully fully achieved by the victims.

⁷⁹⁶ Oramah, *supra* note 538

⁷⁹⁷ Akinsemolu & Olukoya *supra* note 434

⁷⁹⁸ National Action Plan on Gender and Climate Change, *supra* note 510

However, being a relatively new policy, its level of effectiveness cannot be correctly ascertained as at the time of this paper.

Thus, as emphasized by Awolala, the operative political structure affects the level of climate justice⁷⁹⁹. This is supported by the views of Pakistan who notes that a stable political development is a necessary path for sustainable development⁸⁰⁰.

5.4. Social Development

Social rights has been defined as the right of the people to receive basic services including right to health, food, social security, work.⁸⁰¹ The theoretical purport of this right is for the advancement of the marginalised groups in the society by ensuring their access to the most basic services.⁸⁰² From his study, Landau construes that the enforcement of this right to achieve its true purpose is still an illusion mainly because of the inclination on the part of the judiciary to favour the political interest of the government and divert or otherwise lessen the supposed burden to the state.⁸⁰³ On this note, social development has been described as a process of improving the well being of every member of the society by investing in their progression.⁸⁰⁴ The ideology behind this is that a society is more functional where the individual members are give the basic opportunity to achieve their full potential.⁸⁰⁵

⁷⁹⁹ Awolala et al, *supra* note 236

⁸⁰⁰ Imran Khan, Aisha Ahmad & Dr. Ali Shan Shah, *supra* note 765

⁸⁰¹ Landau David, "The Reality of Social Rights Enforcement." (2012) 53 Harvard International Law Journal 1 at 190.

⁸⁰² *Ibid* pg 191.

⁸⁰³ *Ibid*, pg 192

⁸⁰⁴ Economic and Social Inclusion Corporation, "What is Social Development" New Nouveau Brunswick Canada, online at

https://www2.gnb.ca/content/gnb/en/departments/esic/overview/content/what_is_social_development.html accessed 22nd May, 2022.

⁸⁰⁵ *Ibid*

As identified above, some of these core basic rights include: the right to food, right to health, right to housing, right to work, and finally right to social security.⁸⁰⁶ These rights are however susceptible to climate change. The effects of climate change can in fact affect the full enjoyment of these rights.

The right to food is affected where the production of food has been impacted by climate change. The former special Rapporteur on the right to food has identified the right of access to food to be impacted by: the decrease of fish stock due to the destruction of coral reefs resulting from acidification of waterbodies; the change in weather patterns resulting in droughts or flooding affecting agricultural yields; the salinization of water in coastal areas due to rise in sea levels further hampering access to good water for purposes of irrigation affecting⁸⁰⁷. The IPCC speculates that climate change would bring 183 million additional people to the risk of hunger by 2050. There were also speculations with high confidence about a decrease in the nutritional value of food crops; disruption in food systems by the distribution of pests and diseases; and a general increase in food prices.⁸⁰⁸ The IPCC summary also recognised the role of women as key players in ensuring food security noting that their vulnerability to climate risks can adversely affect the availability of food⁸⁰⁹. Finally, it attributes 21% to 37% of greenhouse gas emissions to the food system and

⁸⁰⁶ Landau, *supra* note 801

⁸⁰⁷ “Climate Change and the Human Right to Adequate Food “Contribution of the Special Rapporteur on the right to food, Mr Olivier De Schutter, to the meeting convened by the Friedrich-Ebert-Stiftung with the Committee on Economic, Social and Cultural Rights”. (Geneva, May 13th, 2010) online at <https://www2.ohchr.org/english/issues/food/docs/climate-change-and-hr-adequate-food.pdf> accessed 23rd May, 2022.

⁸⁰⁸ IPCC, 2019: Summary for Policymakers. In: *Climate Change and Land: an IPCC special report on climate change, desertification, land degradation, sustainable land management, food security, and greenhouse gas fluxes in terrestrial ecosystems*, P.R. Shukla et al, (eds) Online at <https://www.ipcc.ch/srccl/chapter/chapter-5/> accessed 22nd May, 2022.

⁸⁰⁹ *Ibid*

recommends for mitigation measures to be introduced into the system in order to curtail the predictions.

The Nigerian government has shown her inclination to preserve the right to food pursuant to section 16(2) (d) of the Constitution which provides for the direction of state policy towards the provision of adequate food for all.⁸¹⁰ There is however a need to ensure that the pursuit for current food security do not plunge the nation into greater food drought as a result of the induced climate change in the long run.⁸¹¹ In addition to the above indicated challenge, Nigeria's problem is compounded by the low level of awareness and understanding of climate change particularly in rural areas.⁸¹² The rural areas have been adjudged to be the food basket of the nation. They are also more vulnerable to the adverse effects of climate change due to the high sensitivity promoted by their inaccessibility to some modern technologies cushioning the effects of climate change, and their limited adaptive capacity promoted by their low knowledge of the true impacts of climate change, and poor economic status.⁸¹³ The combined factor shows that ensuring food security requires more tasks.

The right to health is ultimately impacted by the effects of climate change on the social and environmental determinants of health⁸¹⁴. Special Rapporteur on the issue of human rights obligation relating to the enjoyment of a safe, clean, healthy and sustainable environment concedes that the full enjoyment of human rights, including the rights to life, health, food, and water,

⁸¹⁰ CFRN *Supra* note 18

⁸¹¹ Minkler Lanse, *The State of the Economic and Social Rights: A Global Review*, Lanse Minkler ed (NY: New York: Cambridge University Press, 2013). This may be due to unsustainable forms of agriculture, deforestation programmes, etc.

⁸¹² Ovuyovwiroye *supra* note 548

⁸¹³ *Ibid*

⁸¹⁴ Watts et al. *Supra* note 747

depends on the services provided by ecosystems.⁸¹⁵ The impact of climate change on the ecosystem has been stated to include poor air quality, poor food quality, and poor housing quality. This inadvertently leads to increase in morbidity and mortality.⁸¹⁶ The World Health Organisation projects that reduction in air pollution could save about a million lives yearly by 2050. The report also stressed that an additional 250,000 climate related deaths such as malnutrition, malaria, diarrhea and heat stress could be avoided by taking immediate remedial actions.⁸¹⁷

In Nigeria, the environmental emission has been proven to be a significant determinant of life expectancy⁸¹⁸. The health risks of climate change are exacerbated by inadequate health infrastructure, high cost of healthcare and inadequate medical personnel to meet the teeming population.⁸¹⁹ The lack of access to qualified healthcare personnel also shows an interconnection between these forms of right. As already indicated above, the migration of skilled workers including health professionals is one of the effects of the poor economy.⁸²⁰ This inadvertently impacts on the access to qualified healthcare and consequently increases the vulnerability to climate change.

The right to housing entails the right of a person to live in a decent stable home which offers accessibility to other social services and facilities provided by the state⁸²¹. The United Nations

⁸¹⁵ A/HRC/34/49. Para. 5, *Supra* note 698

⁸¹⁶ Watts et al, *supra* note 747

⁸¹⁷ World Health Organisation, “Fast facts on Climate and Health” Climate Action. Online at https://cdn.who.int/media/docs/default-source/climate-change/fast-facts-on-climate-and-health.pdf?sfvrsn=157ec-d81_5&download=true accessed 22nd May, 2022.

⁸¹⁸ Sunday Osahon Igbinedion, “Environmental Emissions and Life Expectancy Nexus: Further Evidence from Nigeria” (2019) 19 *Annals of the University of Petroșani. Economics I* at 115–128.

⁸¹⁹ Osain, *supra* note 417

⁸²⁰ Shambhavi v. Murthy Gopalkrishna & Samuel O. Oloruntoba, *supra* note 760

⁸²¹ Special Rapporteur on the Right to Adequate Housing, “The Human Right to Adequate Housing” online at <https://www.ohchr.org/en/special-procedures/sr-housing/human-right-adequate-housing> accessed 22nd May, 2022.

identifies factors causing the displacement of individuals from their home to include climate change, natural disasters, and armed conflict⁸²². The United Nation has published data confirming that climate induced factors are “likely worsening poverty, hunger and access to natural resources, stoking instability and violence”.⁸²³ This is reflected in the Nigerian situation where displaced individuals may be forced to take refuge in other parts of the country.⁸²⁴ Some of the refugees often maintain hostile relationships with the host communities due to the ethnic and religious differences and exacerbated by the land resources scarcity. This often leads to conflicts, further displacing more people.⁸²⁵ The situation is enflamed because the displaced individuals turned refugees in Nigeria are usually the poor and uneducated members of the society who are often driven by their religious inclinations and may be more prone to violence.⁸²⁶

Yearly, incessant calls are made for people, especially inhabitants of coastal areas to relocate from their dwellings due to predicted ocean surges, heavy rainstorms, sea level rises and flooding. These are consequent effects of the climate change.⁸²⁷ There are also cases of demolitions of houses found to be sited on drainage canals and flood plains by the government in a bid to reduce the impact of these climate induced risks on the people.⁸²⁸

Right to housing is a function of the socio-economic inequalities evident in the society.⁸²⁹ The loss of housing puts the vulnerable economically disadvantaged groups at the mercy of climate risks

⁸²² *Ibid.*

⁸²³ United Nations, “Climate Change Link to the Displacement of the Most Vulnerable is Clear: UNCHR”, UN News, Global Perspective Human Stories. Online at <https://news.un.org/en/story/2021/04/1090432> accessed 23rd may, 2022.

⁸²⁴ Olagunju et al, *supra* note 441

⁸²⁵ *Ibid*, pg 4.

⁸²⁶ *Ibid*

⁸²⁷ Ibezim-Ohaeri Victoria & Obinyan Aizighode, “Nigeria: Human Settlements and Climate Change” in Clara-Luisa Weichelt Lucy McKernan eds, *Local Struggle for Housing Rights, in the Context of Climate Change, Urbanization and environmental Degradation*, (Bischöfliches Hilfswerk MISEREOR e. V Germany, 2020) at 26.

⁸²⁸ *Ibid.*

⁸²⁹ Chegwe Emeka, “The Right to Housing in the Context of Nigerian Law and Human Rights Practice” (2014) AGORA International Journal of Juridical Sciences at 11

consequently increasing their sensitivity to climate change. This implies the loss of resources and capacity to adapt to climate change, further widening the gap of inequalities in the society.⁸³⁰

The International Covenant on Economic, Social and Cultural Rights defines the right to work as an opportunity to be given to everyone to earn his living through any work he freely chooses⁸³¹. This right is promoted in Nigeria pursuant to article 15 of the African Charter on Human and Peoples Right which provides that every individual shall have the right to work under equitable and satisfactory conditions and shall receive equal pay for equal work.⁸³² Also, pursuant to Section 17(3) of the Constitution of Nigeria, the State is obligated to direct its policy towards ensuring “that all citizens, without discrimination on any ground whatsoever, have the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment”.⁸³³

Climate change however interferes with this right by rendering the work environment of individuals unsafe⁸³⁴. Also, for livelihoods dependent on nature such as agriculture, climate change has tampered with the weather patterns resulting in a decline in both crop yields, fish stock, and animal productivity.⁸³⁵ The peoples’ ability to earn through their chosen means of livelihood has been severely impacted. This cripples their adaptive capacities and increases their sensitivity to climate risks making them more vulnerable to climate change.

⁸³⁰ United Nations Human Rights, Office of the High Commissioner, “Climate Change, Displacement and Human Right” (March 2022) The UN Refugee Agency. Online at <https://www.unhcr.org/publications/brochures/6242ea7c4/climate-change-displacement-human-rights.html> accessed 23rd may, 2022.

⁸³¹ Article 6 ICESCR *Supra* note 12

⁸³² Banjul Charter *supra* note 5

⁸³³ CFRN *Supra* note 18

⁸³⁴ Isser Mindy, “The Heat Wave shows Climate Change is a Workers’ Right Issue” (2021) In These Times, online at <https://inthesetimes.com/article/climate-change-heat-wave-pacific-northwest-workers-rights-unions-farm-construction> accessed 23rd May, 2022.

⁸³⁵ Siyanbola & Fregene, *supra* note 479

The right to social security is the right of an individual to facilities and remedies designed by the state for protection against exposures to economic and social risks.⁸³⁶ Social security arrangements are “collective remedies against adversity and deficiencies; ranging from pensions to disability compensations, death benefits as well as free/quasi healthcare and education”. This demands the mental wellbeing and welfare of the people⁸³⁷. When the people do not have a sense of social security, they become less inclined to work towards mitigation. The idea of justice in all fronts should be promoted here. Anifalaje posits that the principle of social security embodies a preferential treatment to the underprivileged members of the society.⁸³⁸ Construing this from the climate change dialogue, we consider the idea of justice, especially distributional justice as discussed in chapter three. This demands the allocation of the benefits and burdens in accordance with the precepts of morality.⁸³⁹ This brings the vulnerable groups into focus, especially the Niger Deltans who have been subjected to the burdens of unsustainable form of development flowing from the reliance of the Nigerian economy on oil. A well implemented social security arrangements felt by the people has a positive effect. It is determined to be instrumental to the eradication of criminal activities, reduction in poverty and socio-economic inequalities⁸⁴⁰. Therefore, poor social security plans are keys of demoralisation affecting the human capital of the nation to work towards mitigation. It is my view that where people are discouraged by their poor welfarist system, they would be encouraged by their self determination to survive despite all odds. Due to illiteracy for the most part, ignorance or simply a basic instinct for survival, the people may

⁸³⁶ Oluseye Arowolo & Fatai Folarin, “Social Security in Nigeria, is There Light at the End of the Tunnel?” Inside Tax-Deloitte. Online at <https://www2.deloitte.com/content/dam/Deloitte/ng/Documents/tax/inside-tax/social-security-in-nigeria-is-there-light-at-the-end-of-the-tunnel.pdf> accessed 24th May, 2022.

⁸³⁷ Jehinde Anifalaje, “Implementation of the Right to Social Security in Nigeria”, (2017) 17 African Human Rights Journal 2

⁸³⁸ *Ibid*

⁸³⁹ Pduzoz, *supra* note 285

⁸⁴⁰ Anifalaje *supra* note 837.

engage in activities which may be contributory to climate change. Such may include illegal bunkering, and illegal deforestations as obtainable in the Niger Delta. Further to this, the climate change also presents a threat to human security. This because the effect of climate change may affect the income level of livelihoods dependent on agriculture thereby increasing the poverty rate.⁸⁴¹ Secondly, conflicts are also more likely to arise in situations of resource scarcity induced by climate change⁸⁴². All these increase the susceptibility of the people to climate change.

Section 14(2)(b) of the Nigerian Constitution provides that the primary purpose of the government shall be the provision for the security and welfare of the people.⁸⁴³ However, Nigeria still struggles with the perfection of her social security arrangements largely due to the frequent cases of corruption leading to embezzlement of funds⁸⁴⁴ and the concentrations of her policies on workers in the formal sectors of the economy⁸⁴⁵.

In conclusion, the above has shown that social factors also play a role in the vulnerability of the people to climate change. However, Canales prescribes ways for ensuring that the social development of the people do not interfere with the state of the climate.⁸⁴⁶ The proposed solutions include: improving the population's access to climate information; elevating the voices of the most vulnerable groups; promoting accountability through example, as a strategy to ensure quality and transparency for diverse actors' participation; promoting a participatory and inclusive disaster risk

⁸⁴¹ Hendrix Cullen & Glaser M. Sarah, "Trends and Triggers: Climate, Climate Change and Civil Conflict in Sub-Saharan Africa" (2007) *Political Geography*, 26 (6).

⁸⁴² *Ibid.*

⁸⁴³ CFRN *supra* note 18

⁸⁴⁴ Oluseye Arowolo & Fatai Folarin, *supra* note 836

⁸⁴⁵ Anifalaje *supra* note 837

⁸⁴⁶ Nella Ccanales, "Civil Society and the Integration of Climate Change Risks into Planning and Policy Making", World Resources Institute, online at <https://www.wri.org/our-work/project/world-resources-report/civil-society-and-integration-climate-change-risks-planning> accessed 22nd May, 2022.

reduction approach; and actively participating in inter-institutional coordination at local and national levels.

5.5. Cultural Development

The United Nations defines culture as “the set of distinctive spiritual, material, intellectual and emotional features of society or a social group, that encompasses, not only art and literature, but lifestyles, ways of living together, value systems, traditions and beliefs”⁸⁴⁷. On that note, cultural development has been defined as the “process of enabling cultural activities, including the arts, towards the realisation of a desired future, particularly of a culturally rich and vibrant community”.⁸⁴⁸ Cultural development has the tendency to bring out other forms of development because of its innate ability to bring people together to work towards a common goal.⁸⁴⁹ However, successfully attaining cultural development requires some conscious efforts by the leaders. A strategic plan has to be made towards planning a future impacted by the obtainable culture of the people, and planning a future with a vibrant resilient culture in the picture.⁸⁵⁰ Keeping up with this strategic plan entails making adaptation plans for a climate resilient culture. This requires the development of “management options that address climate-change impacts and maintain historical integrity”⁸⁵¹.

⁸⁴⁷ UNESCO Institute for Statistics, “The 2009 UNESCO Framework for Cultural Statistics (FCS)” Statistical Commission, Forty-first session, 23 - 26 February 2010 Item 4(e) of the provisional agenda. Pg 9.

⁸⁴⁸ Cultural Development Network, “About Culture, Cultural Developments and Arts”, online at <https://culturaldevelopment.net.au/what-is-a-cultural-development-plan/planning-terms-used-in-our-frameworks/definitions/> accessed 24th May, 2022.

⁸⁴⁹ UNESCO Institute for Statistics *supra* note 847

⁸⁵⁰ Cultural Development Network *supra* note 848.

⁸⁵¹ G. Hambrecht & M. Rockman, “International Approaches to Climate Change and Cultural Heritage” (2017) 82 *American Antiquity*, 4 at 627

Climate change has been identified as a threat to the cultural development of the people⁸⁵². It brings about damage to the cultural assets of the community. It also affects the economic development of the people by impacting on the expected revenue from their heritage cum tourists sites.⁸⁵³ Culture has earlier been identified as a unifying factor for the people⁸⁵⁴, the loss therefore translates to the loss of the social peace binding the people together and maintaining a desire to preserve the society from harm. On this basis, it is my view that in keeping up with the strategic plan of having a future with a vibrant culture in the picture, people will be more desirous of engaging in activities mitigating climate change, and promoting the force of their collective adaptation capacities. There are also views that the preservation of the cultural lifestyle of the people will aid in mitigation. This is due to the low carbon economy associated with traditional lifestyles⁸⁵⁵.

In addition to arts, culture has been determined to include lifestyles and traditional beliefs. This is also susceptible to climate change. For instance, the displacements and consequent migrations attributed to climate change has resulted in the disintegration and mixing of populations. This has the ability to cause the migrants to lose their way of life and their cultural identity in a bid to adapt to the change in the new environment⁸⁵⁶.

⁸⁵² United Nations Special Rapporteur on cultural rights, "Questionnaire on Cultural Rights and Climate Change: Negative Impacts Of Climate Change On Culture And Cultural Rights (2020) online at https://www.ohchr.org/sites/default/files/Documents/Issues/CulturalRights/Call_ClimateChange/UNESCO.docx

⁸⁵³ Hambrecht & Rockman. *supra* note 851

⁸⁵⁴ UNESCO Institute for Statistics *supra* note 847

⁸⁵⁵ Hambrecht & Rockman *supra* note 851

⁸⁵⁶ Dastgerdi, Ahmadreza S., Massimo Sargolini, and Ilenia Pierantoni "Climate Change Challenges to Existing Cultural Heritage Policy" (2020) 11 *Sustainability* 19 at 5227

Also, the cultural arts and heritage sites of the people are vulnerable to the harsh effects of climate change such as flooding, erosion. Such arts and sites might also be abandoned with the traditional rituals and folklore forgotten.⁸⁵⁷

In Nigeria, the promotion of the cultural heritage of the people is safeguarded by section 21 of the constitution.⁸⁵⁸ Despite this, cultural development is still challenged by a myriad of problems including the loss of cultural artifacts with the attendant rituals during colonialism, the demonising of such cultures by religion, the mismanagement of cultural resources by the government and climate change.

Having realised the importance of cultural development in the climate change response, there is need therefore, to work towards the resolution of these challenges and hopefully score some points for reflective adaptation and mitigation through culture.

This chapter has established the relationship between the right to development and climate justice. Except and until development related policies take climate justice issues into consideration, the relationship between both will continue to be antagonistic.

⁸⁵⁷ *Ibid*

⁸⁵⁸ CFRN *Supra* note 18. This provision encourages the promotion of the peoples culture in such a way as to promote the identity and unity of the nation.

Chapter six: conclusion

6.1. Summary

As a country in tropical Africa, Nigeria is highly susceptible to the effects of climate change. Despite her susceptibility, Nigeria still bears some responsibility over the contributions to climate change. This is a consequent of her pursuit for development especially with her status as an oil dependent economy, and the high rate of destruction of carbon sinks. This translates to greater vulnerabilities on the part of the vulnerable groups of climate change. Chapter two therefore elucidates the standards for the actualization of a true right to development. These standards are conforming with: people-centered development; human rights based approach to development; participatory rights; equity; non-discriminatory development; and right to self-determination. The motive and goal of any development policy formulated by the government must meet these essential standards if the true operation of the right to development is to be actualized. In this thesis, I argue that a development plan which complies with these set standards would inadvertently propagate climate justice. Moreso when the human rights of the people is in focus. Chapter three clarifies the meaning of climate justice as an obligation on the part of the government to take responsibility for the greater burden it has always placed on these vulnerable groups. This obligation is both morally founded judging from the contributory activities to climate change, as well as a legal obligation backed up by the nation's climate laws and regulatory frameworks and informed by international human rights law and African regional law. Chapter four presents the intrinsic factors within the Nigerian jurisdiction that detracts from the efforts of the Nigerian government to make a successful impact in ensuring climate justice. As chapter five establishes, the inequalities created by the uneven burden born by the vulnerable groups to climate change plays a role in the violation of the rights to equal development as guaranteed under the Banjul

Charter. There is an obvious case of infringement to this right where the activities of the government contribute to climate change. This has been identified to slow down the development of vulnerable groups. Chapter five has also identified the implementation of the RTD in Nigeria and established that it plays a role in the achievement of climate justice in Nigeria. This is because its weak implementation⁸⁵⁹ incapacitates the peoples' ability to successfully adapt to climate change, thereby creating further inequalities. Adams notes that the Nigerian hope for an equal opportunity for economic, social and cultural advancement has been dashed by the ineptitude of successive Nigerian governments.⁸⁶⁰

The exact relationship between the pursuit for development and climate justice for an oil dependent economy was captured by Giglio, although he bases his focus on economic development. According to him, "Fossil fuels are a critical input to production, so economic growth increases greenhouse gas emissions. Those emissions induce climate change, and climate change has a potentially large negative feedback effect on future economic activity".⁸⁶¹ This is as construed by the preamble to the UNFCCC which predicts that the per capita emissions of developing countries, Nigeria inclusive, will simultaneously grow with pursuit for their social and development needs.⁸⁶²

Despite this expected outcome, there is need to tread with caution upon the recognition that developing countries are still the major impact bearers of climate change. Nigeria as a developing nation susceptible to climate change ought to take heed to Article 4(2)(a) of the UNFCCC which

⁸⁵⁹ Weak implementation here is based on the identified six basic elements of the RTD as identified by the United Nations, see Chapter 2.

⁸⁶⁰ Adams *Supra* note 621 p.78

⁸⁶¹ Giglio, *Supra* note 369

⁸⁶² Part of the preamble states "...Noting that the largest share of historical and current global emissions of greenhouse gases has originated in developed countries, that per capita emissions in developing countries are still relatively low and that the share of global emissions originating in developing countries will grow to meet their social and development needs" see UNFCCC *Supra* note 14

demands for the implementation of effective policies towards creating an adequate response to climate change.⁸⁶³ It is on this basis that I make the following recommendation.

6.2. RECOMMENATIONS:

1. Making Chapter 2 of the Constitution justiciable: There is an overarching need to make Chapter 2 of the Nigerian Constitution which embodies some provisions including the RTD and environmental matters justiciable. This is necessary to ensure ease of access to judicial remedy where the peoples' right has been violated. As earlier discussed in chapter 2 of this thesis, a constitutional justiciability of this right would enable and promote judicial activism towards environmental rights and issues of RTD which hitherto is rendered unjusticiable. Where the people are legally empowered to make all role players accountable, then a better environment for climate justice is created.

2. Negotiating a rights-based regional agreement in Africa: The Escazu Agreement and the Aarhus Convention set a standard for environmental protection that should be emulated. In promoting the procedural rights of the people to the environment, a favourable environment for the achievement of sustainable development and ultimately climate justice is created. I recommend that a similar regional agreement be drawn up for African states. These African states can also utilize the option of being signatories to the Aarhus Convention. Being part of the major victims of climate change, the vulnerable groups can greatly benefit from the safeguard of these forms of environmental rights.

3. Organising judicial symposiums: In chapter two, I had discussed the judicial passivism towards the enforcement of chapter 2 of the Nigerian constitution as a result of the constitutional bar. To

⁸⁶³ Article 4 (2) (a) UNFCCC, *Supra* note 14

aid the situation, I recommend that a leaf be borrowed from the good practice in Asia as identified by the United Nations. This involves the “organisation of judicial symposiums on environmental decision making”. I believe this would increase the knowledge of the judges on environmental and climate matters, and the risks thereof to other human rights.⁸⁶⁴

4. Sensitizing the people: There is need for a proper sensitization of the people to climate change. This would furnish the people with sufficient information on methods of adapting to climate change, thereby limiting their sensitivity to same. A proper sensitization on the dangers would also greatly limit the level of individual contribution to climate change, such as the activities of the illegal bunkering. By growing a communal sense of responsibility towards the global challenge, some basic forms of individualistic contributions to the climate change could be ameliorated. Nigeria could imbibe some of the good practices identified by the United Nations in relation to the peoples’ access to environmental information. For example, educational tools can be prepared for all levels of education as a basic start to the spread of information. A public website may also be created as a tool for early warning of anticipated changes and adaptation requirements.⁸⁶⁵ This information must be made accessible to all by taking recognizance of the various modes of receiving information among the populace. For instance, in addition to the specialised website, a specialised TV channel and radio station may also be established and dedicated towards climate information.

5. Diversifying the economy: The reliance of the economy on oil revenues has subjected Nigeria to the mercy of oil market as illustrated in chapter two. This in turn makes the adaptive capacities

⁸⁶⁴ United Nations General Assembly, “Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox: Compilation of good practices” (3 February 2015) Twenty eight session, Human Rights Council A/HRC/28/61.

⁸⁶⁵ *Ibid*

of the people dependent on the oil market. With the established relationship between the RTD and climate justice, a crash in oil prices would ultimately increase the vulnerabilities of the people to climate change by impacting on their financial capacities to adapt. Financial empowerment through incomes is a recognisable way of boosting the adaptive capacity of the vulnerable groups. A crash in oil price leads to inflation, thereby destroying the economic power of the people. In recommending diversification, I prefer to use the term ‘sustainable diversification’ in anticipation of an expected benefit to the struggle for climate justice. I use the term sustainable diversification to illustrate a form of development that would consider vulnerabilities to climate change, and impending loss and damage. For example, diversification programmes that would lead to deforestation are clearly unsustainable. Tourism on the other hand would help in the promotion and development of the cultures of the people, inversely, people get to make some earnings from the promotion of their culture.

This is as supported by the article 3 of the ILA Principles Relating to Climate Change which calls for an integration of climate change responses to developmental design of nation as a precaution against the adverse effects.⁸⁶⁶ Jodoin et al goes further to emphasize on the obligations of States and non-state actors to take effective mitigation and adaptation measures that respect protect, and fulfil human rights, as against measures that may of themselves infringe human rights.⁸⁶⁷

6.Improving access to climate funds: Intentional plans should be made towards improving access to climate funds. The available climate funds always list the criteria for accessibility. The national

⁸⁶⁶ Committee on Legal Principles Relating to Climate Change *Supra* note 230

⁸⁶⁷ Jodoin Sebastien et al, “Rights-based approaches to climate decision-making” (2021) Current opinion in environmental sustainability, 52, pp.45–53.

government should prioritize their improvement towards the qualification of the identified criteria in order to boost the chances at getting the funds.

7. Identifying the vulnerable groups: Following my last recommendation, the government should engage in the tracking of the vulnerable groups in the nation, and their various incapacities. This is necessary to ensure an effective use of the adaptation funds thereby reducing the inequalities created by the climate change. This tracking will also expose the gaps the economic, social and political situations of the vulnerable groups making a way for an effective response by a proactive environment.

8. Transitioning to a renewable form of energy should also be made a priority in the scheme of things. This is based on the notion that economic growth is dependent on the energy supply, which unfortunately is majorly powered by fossil fuel sources.⁸⁶⁸

9. Prioritising and developing relevant sectors of the economy: I also suggest the development of some particular sectors that can aid the advancement of climate justice, for example, the health sector. This is especially in the wake of the health related impacts of climate change. The provision of an affordable access to standard healthcare is therefore essential to the climate justice discourse. A second example is the agricultural sector. Financing and encouraging the shift to mechanized agriculture for farmers whose income has been distorted by climate change. This will greatly boost the financial capacity of the vulnerable farmers to adapt to climate change.

10. Consulting vulnerable communities on development projects: I also agree with the recommendation of the United Nations to the effect that States should design and implement development projects after holding meaningful consultations to identify the development priorities

⁸⁶⁸ Löfqvist Lars, "Climate Change, Justice and the Right to Development" (2011). *Journal of Global Ethics*, 7(3), pp.251–260.

of the communities in a project area and benefits-sharing arrangements that would be suitable for those affected. They also should inform such community of potential impacts of such projects such as likely harm to their environment,⁸⁶⁹ especially where such potential impact has a likelihood of slowing their development. Promoting the participation of the people in development matters is a crucial step to identifying the grievance of the people and avoiding conflict. This inadvertently promotes the political development of the people.⁸⁷⁰ This practice would ensure that the fears of vulnerable groups into consideration in order to understand and cater to their incapacities and vulnerabilities. The principles on climate change advocate for Special Circumstances and Vulnerability. Particularly, it states that the rights of the vulnerable group with regard to climate change and its impacts shall be differentiated based on their special circumstances and vulnerability. I have earlier advocated on the need for equity in addressing climate change and the right to development. On this basis, I have indicated equity to be a form of distribution reflective of the special circumstances of the vulnerable groups.

⁸⁶⁹ United Nations General Assembly, 'Report of the Special Rapporteur on the right to development, (2nd July 2019) Forty-second session, Human Rights Council, A/HRC/42/38. Para. 18

⁸⁷⁰ Okon, E.M et al. "Systematic Review of Climate Change Impact Research in Nigeria: Implication for Sustainable Development." (2021)7 Heliyon 9 at 14.

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