

REGULATION OF CLIMATE CHANGE AND FOOD INSECURITY IN NIGERIA

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Abstract

Man's unsustainable environmental activities are a major contributor to climate variability and the resulting environmental degradation, desertification, and biodiversity loss, all of which pose a threat to food accessibility and security. This paper aimed to examine the implementation of the Climate Change Act 2021 and other legal regimes in combating the effects of climate change with a view to achieving food security in Nigeria. It highlighted the lapses evident in the implementation of the laws and policies for combating climate change and argued that this is an ambitious goal, and as such, effective implementation of the provisions of the Act as well as policies targeted at reducing greenhouse gas emissions from the agricultural sector, which are key to combating hunger and ensuring adequate food provisions for all. Using primary and secondary sources of laws, the paper employed a doctrinal legal approach. It finds that the major problem in effectively solving the challenges posed by man induced climate change is in weak legislation and poor implementation. It recommended that to enhance effectiveness, the government prioritises enforcing climate change regulations and developing institutional capacity for enforcement. It concluded that to attain a maximum level of food security in Nigeria, the law must ensure the implementation of its climate change obligations to maintain environmental protection from the harmful impact of change climate.

Keywords: Climate Change, Food Security, Sustainable Development, Legal Regimes, Environment.

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1. Introduction

One of the most important issues confronting humanity now is climate change. It is caused by over concentration of ‘greenhouse gases’ such as Carbon dioxide, Methane, Nitrous oxide¹ in the atmosphere, known as the greenhouse effect. Scientific research has established that the greenhouse effect is a major phenomenon that keeps the earth warmer than it would otherwise be.² Emissions from the greenhouse effect have raised global temperatures over the past century, according to the Intergovernmental Panel on Climate Change (IPCC)³. Aside from the natural emissions of greenhouse gases, human activities are a major contributor to the increasing concentration of the greenhouse effect⁴ which includes agriculture, energy, power and transport sectors as suggested by the United Nations Environmental Protection Agency.⁵ This climate variability results in various global environmental crises such as increase in sea level, drought, flood, land degradation and loss of diversity, all of which pose a threat to food production and supply.⁶ Nigeria is susceptible to the effects of climate change, like other developing nations, given its high dependence on climate induced events such as rain fed agriculture, livestock and hydropower⁷. According to the Food and Agriculture Organization, there is a chance that approximately 25 million Nigerians would go hungry around the middle of 2025.⁸

The food production sector is more predisposed to the adverse effects of climate change; this underscores the need for effective strategies to combat the adverse effects of climate change in developing countries such as Nigeria. Although a vibrant agricultural system enhances food security for a growing population in third-world countries,⁹ it has tremendous adverse effects on

¹G. Oludayo Amokaye, *Environmental Law and Practice in Nigeria* Unilag Press (2004).

²NASA Climate Kids ‘How Do We Know the Climate is Changing?’ <<http://climatekids.nasa.gov/climate-change-evidence>> accessed 9th March, 2023.

³IPCC is One of the Leading Intra-Governmental Organisations that Provides Concrete Information About the Science of Climate Change. the Intergovernmental Panel on Climate Change (IPCC) <<http://www.ipcc.ch/search/index.shtml>> accessed 7th February, 2023.

⁴R.K. Pachauri and L.A. Meyer, Climate Change 2014: Synthesis Report. The Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change 151.

⁵The United State Environmental Protection Agency is an Independent Environmental Protection Agency Established by the Federal Government of the United State since 1970 <<https://www.epa.gov/>> accessed 23 November 2018.

⁶Izoukumor Afedolor Noah, ‘Nigeria’s Legal Responses to Climate Change Obligations’ (PhD Thesis, University of the West of England 2022).

⁷Oludayo n 1.

⁸Unicef, ‘25 Million Nigerians at High Risk of Food Insecurity in 2023’ <<https://www.unicefpress-25million-nigerians-high-risks-food-insecurity-in-2023>> accessed 16th June, 2023.

⁹Environment Reports Food Matter, ‘How Does Agriculture Change our Climate’ <<http://www.environmentreports.com/how-does-agriculture-change/>> accessed 7th February, 2023.

the environment, as studies have shown that the food industry accounts for 21-37% of annual emissions.¹⁰ Specifically, the use of subsistence farming techniques in Nigeria has been found to trigger climate change.¹¹ Agricultural techniques such as deforestation, land clearing for crop production, and the use of fertilizers emit greenhouse gases, which contribute to climate change, which in turn leads to flooding, soil degradation, drought and loss of diversity, desertification, and erosion¹².

To address the global impacts of climate change and reduce the emissions of greenhouse gases, the United Nations Framework Convention on Climate Change (UNFCCC) was adopted in 1992 and came into force in 1994.¹³ This was followed by the Kyoto Protocol to UNFCCC in 1997¹⁴ and the Paris Agreement in 2015. The latter framework aims to strengthen the global response to the threat of climate change by keeping global temperature rise below 2° Celsius, if possible, to 1.5° Celsius above pre-industrial levels.¹⁵ Additionally, the Nationally Determined Contributions (NDC), an initiative of the Paris Agreement allows member-States to voluntarily make specific pledges on carbon emission reduction, assisting in lowering global warming by adding to the net global carbon emission reduction index.¹⁶

Commendably, Nigeria has joined other nations of the world to commit to net-zero emission policies under the Paris Agreement, Kyoto Protocol, UNFCCC, the United Nations Sustainable Development Goals (SDGs), REDD+, and other standards and guidelines relevant to this provision¹⁷. Nigeria pledged to cut its emissions by 45% by 2030 as part of its Nationally

¹⁰John Lynch et al 'Agriculture's Contribution to Climate Change and Role in Mitigation Is Distinct from Predominantly Fossil Co2-Emitting Sectors' [2021], *Frontier Sustainable Food System* <<http://www.frontiersin.org/articles/>> accessed 10th February, 2023.

¹¹Umaru Musa Yar'adua University Katsina, 'Climate Change and Food Security in Nigeria' (2021 *ResearchGate*), <<http://www.researchgate.net/publication/263058742>> accessed 10th February, 2023.

¹²Climate Portal, 'Fertilizer and Climate Change' <<https://climate.mit.edu/explainers/fertilizers-and-climate-change>> accessed 10th February, 2023.

¹³UN General Assembly, United Nations Framework Convention on Climate Change: Resolution / Adopted by the General Assembly, 20 January 1994, A/RES/48/189, available at: <<http://www.refworld.org/docid/3b00f2770.html>> accessed 5th February, 2023.

¹⁴UNFCCC (1997) Kyoto Protocol to the United Nations Framework Convention on Climate Change Adopted at COP3 in Kyoto, Japan, on 11 December 1997.

¹⁵UN General Assembly, 'United Nations Framework Convention on Climate Change' Adopted at the COP 21 in Paris, France, 12 December 2015.

¹⁶Article 4 UN General Assembly, 'United Nations Framework Convention on Climate Change' Adopted at the COP 21 in Paris, France, December 2015.

¹⁷KPMG 'The Climate Change Act 2021: Sectoral Imperative' (2022). <<http://kpmg.com/ng/en/home/insights/2022/04/the-climate-change-act-april-2022.html>> accessed 12th February, 2023.

Determined Contribution to the Paris Agreement.¹⁸ To achieve this, Nigeria committed to working towards ending gas flaring, using renewable energy and efficient gas generators, reducing emissions in the transport sector, improving the electricity grid, climate-smart agriculture, and reforestation.¹⁹ Additionally, the Climate Change Act, 2021 was enacted by the National Assembly and signed into law by President Mohammed Buhari on 18th November 2021. The enactment of the Act puts Nigeria on the frontline as one of the countries advocating for climate change. This established Nigeria's commitment to reducing greenhouse gas emissions and building resilience to the negative consequences of climate change. These climate change policies and regulations are also instrumental in attaining Sustainable Development Goals,²⁰ especially SDG 2 (zero hunger and universal access to food) and SDG 15 (preservation, restoration, and promotion of sustainable forest use). By 2030, the Nigerian government promised to attain these SDGs goals.^{21, 22}

The article is divided into five sections. It commences with an introduction. Section two gives a conceptual framework for the study by examining the concepts of climate change and food security. Section three examines the legal framework for climate change and food security in Nigeria, while section four sheds light on the factors militating against the enforcement of climate change and food security laws in Nigeria. Section five concludes the study and recommends, among others, that including the right to food security in the Constitution as a justiciable right can be a powerful tool to force participants to accept accountability and advance sustainable practices.

¹⁸*Ibid* 6.

¹⁹*Ibid*.

²⁰ UN General Assembly, transforming our world: the 2030 Agenda for Sustainable Development, 21 October 2015, A/RES/70/1, <<http://www.refworld.org/docid/57b6e3e44.html>> accessed 10th February, 2023.

²¹ Olujobi O.J., & et al (2024), Sustainable Development and National Integration: A Catalyst for Enhancing Legal Compliance, Environmental Protection, and Sustainability in Nigeria, Environmental Policy and Law, DOI: 10.3233/EPL-230050. Available on line at https://www.researchgate.net/publication/379523183_Sustainable_Development_and_National_Integration_A_Catalyst_for_Enhancing_Environmental_Law_Compliance_in_Nigeria (accessed April 6, 2024).

²² Olujobi, O.J., Irumekhai, O.S. (2024), An Analysis of the Abolition of Premium Motor Spirit (PMS) Subsidies in Nigeria: A Breach of Social Contract or Climate Change Action? Springer Nature, Discover Sustainability 5, 71 (2024). 2.6 Impact Factor (2022), Switzerland, Q-2 Journal, 55th Percentile, available online at <https://doi.org/10.1007/s43621-024-00252-z> <https://link.springer.com/content/pdf/10.1007/s43621-024-00252-z.pdf> (assessed March 19, 2024).

2. CONCEPTUAL FRAMEWORK

2.1 *Climate Change*

Climate change is a contemporary environmental issue and is inarguably one of the most debated topics by environmental pundits.²³ Intergovernmental Panel on Climate Change (IPCC)²⁴ defines climate change as a change in the climate or its variability that lasts for a long time -usually decades or longer.²⁵ Additionally, in Article 1(2) of the United Nations Framework Convention on Climate Change, the term "climate change" refers to any alteration in the global atmosphere's composition that is directly or indirectly caused by human activity on top of naturally occurring climate variability that has been experienced over a comparable period of time. It can be deduced from the definitions given by both IPCC and UNFCCC that where there is a prolonged change in the earth's climate, it is referred to as climate change, which is mostly caused by anthropogenic activities.

National Aeronautics and Space Administration (NASA) describes climate change as 'a broad range of global phenomena created predominantly by burning fossil fuels which adds heat trapping gases to earth's atmosphere'.²⁶ These phenomena include the rising temperatures linked to global warming, but they also include other changes like sea level rise, the melting of glaciers in Antarctica, the melting of ice sheets in greenland, changes in the blooming seasons of flowers and plants, and harsh weather.²⁷ It is worthy of note that climate change and global warming, although used interchangeably, are not the same. Whereas climate change is the long-term variation of temperature and weather patterns in a place,²⁸ climate change may result in unpredictable weather patterns which poses a challenge to agricultural productivity in regions that rely on farming.

Emission of greenhouse gases by humans is the primary cause of global warming. Human activities like burning fossil fuels, deforestation, and using fertilizers emit greenhouse gases into the atmosphere of the earth. The greenhouse gases concentrate in the atmosphere, trapping heat

²³ Izoukumor Afedor Noah, 'Nigeria's Legal Response to Climate Change Obligation' (PhD thesis, University of the West of England 2022).

²⁴ IPCC is the international body which is an authority on climate change and publishes scientific reports on Climate change.

²⁵ Fifth assessment of IPCC.

²⁶ Causes and Effects of Climate Change < <https://www.un.org/en/climatechange/science/causes-effects-climate-change>> accessed 01/01/24

²⁷ Climate Change: Meaning, Definitions, Causes, Examples and Consequences <http://youmatter.world/en/definition/climate_change_meaning_definitions_causes_and_consequences.com> accessed 26/12/2023

²⁸ Climate Change < <https://education.nationalgeographic.org/resource/climate-change/>> accessed 01/01/24

radiating from earth towards the space.²⁹ This is called ‘a greenhouse effect’. This causes the earth’s average temperature to rise higher than it ought to, thereby warming the earth. It has led to flash floods, droughts and wild fires in different parts of the world. In Nigeria, it has led to coastal erosion, flooding, mass displacement of people from their homes, food scarcity and loss of lives.

2.2 Food Security

Food security borders on the availability of food in a particular locality. It is also the ability of individuals within that locality to access adequate food. For there to be food security, there must always be enough safe, nourishing food available to everyone on a physical, social, and economic level. On the contrary, limited or unpredictable access to wholesome, safe food is known as food insecurity.³⁰

The idea of "food security" first emerged during the world food crisis in the middle of the 1970s.³¹ As a result of this, international negotiations followed and led to the World Food Conference in 1974. Accordingly, the summit defined food security as ‘availability at all times of adequate world food supplies of basic foodstuffs to sustain a steady expansion of food consumption and to offset fluctuation in production and prices’.³² The World Food Summit which held in 1996 defined food security to be ‘food security at the individual, household, national, regional and global levels is achieved when all people at all times have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life’.³³ This definition consists of four main dimensions of food security: availability of food, economic and physical access to food, food utilization and stability.³⁴

²⁹Ibrahim Yusuf. E, ‘Climate Change and Food Security in Nigeria’ [Researchgate 2014] <https://www.researchgate.net/publication/263058742_climate_change_and_food_security_in_nigeria> accessed 10th July, 2023.

³⁰ Homz, ‘What are the Advantages and Disadvantages of Sustainable Development’ (Homz, April 7, 2023) <<https://www.homzglobal.com/city-partnership/advantages-and-disadvantages-of-sustainable-development/>> accessed 10th July, 2023.

³¹ Chapter Two: Food Security; Concepts and Measurements <<https://www.fao.org/3y4467ie/eo6.htm>> accessed 10th July, 2023.

³² United Nations 1975, ‘Report of the World Food Conference’ (Rome, 5-16 November, 1974, New York).

³³ FAO 1996, ‘Rome Declaration on World Food Security and World Food Summit Plan of Action’ (World Food Summit, 13-17 Nov. 1996, Rome).

³⁴ FAO, ‘An Introduction to the basic concept of Food Security; Food Security Information for Action, Practical Guides’ <<http://www.fao.org/3/ab136e/a1936e00.com>> accessed 10th July, 2023

UN Declaration of Human Rights provides that everyone has the right to a standard of living adequate for the health and well-being of himself and his family, which includes food.³⁵ International Covenant on Economic and Social Cultural Rights³⁶ on the other hand, enjoins its state parties recognizing the right to food security to take appropriate steps to ensure the realization of this right. The major global framework on food security is in the SDG goal 2 - Zero hunger. This SDG stipulates globally acceptable targets to end hunger, achieve food security, improve nutrition, and promote sustainable agriculture by 2030.

Among the many challenges to food security is climate change. Food security is at risk beyond 2030 owing to climate change impacts. Climate change has adverse impacts on crop yield, fish stocks, and animal rearing. As a consequence of climate change, more than 120 million people will be at risk of undernourishment, with sub-Saharan Africa being the most affected.

3. Legal Framework for Climate Change and Food Security in Nigeria

Nigeria is a signatory to the United Nations Framework Climate Change, the Kyoto Protocol, the Paris Agreement and the Sustainable Development Goals.³⁷ In accordance with the international instruments,³⁸ Nigeria has formulated laws on climate change and other climate-change related laws and policies. Some of these laws are enacted to combat air pollution, which indirectly impacts climate change, for instance, gas flaring. The laws include: The Criminal Law Code,³⁹ The Flare Gas (Prevention of Waste and Pollution) Regulation 2018,⁴⁰ The Petroleum Industry Act 2021 (PIA),⁴¹ The Environmental Impact Act (EIA), The National Environmental Standard Regulations and Enforcement Agency Act (NESREA Act),⁴² and The Constitution of the Federal Republic of

³⁵ Art. 25.

³⁶ Art. 11.

³⁷ *Ibid* 6 at 123.

³⁸ Art.4(2)(a) UNFCCC; Art. 4(2) & (9) Paris Agreement; SDG 13.2

³⁹ Section 247(a) provides that “any person who vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighborhood or passing along a public way”; Section 247(b) ‘Or does any act which is and which he knows or has reasons to believe to be likely to spread the infection of any disease dangerous to life whether human or animal is guilty of a misdemeanor and is liable to imprisonment for six (6) months.

⁴⁰ Section 12; The regulation prohibits flaring of gas from any faculty pursuant to a certificate issued by the Minister based on provision of Associated Gas Reinjection Act.

⁴¹ Section 104(1) of PIA prohibits gas flaring except in certain circumstances.

⁴² Section 20(1) mandates the Agency to make regulations setting standards to protect and enhance the quality of Nigeria’s air resources, so as to promote public health or welfare.

Nigeria 1999.⁴³ Also, in response to its international climate change obligations, Nigeria enacted the Climate Change Act, 2021 the first legislature to specifically address the issue of climate change. Some of these legal frameworks will be examined.

3.1 *The Constitution of the Federal Republic of Nigeria 1999*

The 1999 Constitution provides for the protection of the environment, and this falls under Chapter Two of the Constitution. Section 20 of the Constitution provides that the State shall maintain and improve the environment and safeguard the water, air and land of Nigeria, as well as the forest and wildlife. The constitution, which is the grundnorm, offers strong protection for the right to a healthy environment. However, it should be noted that by virtue of section 6(6)(c) of the Constitution, provisions under Chapter Two (2) are non-justiciable. In *Attorney General of Ondo State v. Attorney General Federation*,⁴⁴ the court held that by virtue of section 6(6)(c) CFRN, the rights under Fundamental Objectives and Directives Principles of State are non-justiciable except as otherwise provided in the constitution. Although the Constitution recognizes environmental protection, a person cannot seek legal redress for its violation. However, the reverse is the case in some other relatively advanced jurisdictions. For instance, in Uganda, Article 39 of the Constitution of Uganda provides that every Ugandan has a right to clean and healthy environment and environmental rights are justiciable.⁴⁵

3.2 *The Petroleum Industry Act 2021*

The Nigerian Petroleum Industry's legal, governance, regulatory, and budgetary frameworks are being completely redesigned by the Petroleum Industry Act, 2021 (PIA) to address social and environmental challenges in the oil and gas industry. The PIA also aims to support the development of host communities. Section 104 of the Act prohibits gas flaring. A licensee, lessee, or marginal field operator may flare or vent natural gas only in an emergency, with permission from the Commission, in accordance with this regulation's established acceptable safety practice, as stated

⁴³ Section 20 CFRN

⁴⁴ (2002) 9 NWLR; *Okogie v A.G Lagos State*.

⁴⁵ Caiphaz Brewsters Soyapi, *The Courts and the Constitutional Right to A Clean and Healthy Environment in Uganda* (2019) *Review of European* 28(2) DOI: 10.1111/reel.12283 <https://www.researchgate.net/publication/331777672_The_courts_and_the_constitutional_right_to_a_clean_and_healthy_environment_in_Uganda> accessed 26th December, 2023.

in section 104(1)(a)(b)(c) of the Act.⁴⁶ Where a licence or lease is needed for facility startup or strategic operational purposes, like testing the gas equipment or plant, they may flare under section 107 of the Act. If these rules are broken, there will be a fee set by the Commission. Oil companies will pay this punishment to the government in the same way that they would pay royalties.⁴⁷ The funds paid as gas-flaring penalties are to be utilised for environmental remediation and relief of the host communities of the settlers on which the fines are imposed.⁴⁸

The Act does make adequate provisions for the energy transition in consonant with the Nigeria's NDCs.⁴⁹ The provisions of the Act are weakly implemented by the institution provided in the Act. This is predicated on the ground that oil producing companies are still flaring gas. The Act has not deterred these companies from flagrantly desecrating the environment.

3.3 The National Environment Standard Regulation and Enforcement Agency Act as amended 2018).

The National Environmental Standards and Regulations Enforcement Agency (Establishment) Act No. 25, 2007, is amended by this Act. The Agency is required by section 7 of the Act to ensure adherence to international environmental accords, protocols, conventions, and treaties that the Nigerian government has signed and ratified 'including climate change, biodiversity, conservation, desertification, forestry...'⁵⁰ It appears that NESREA has the authority to impose domestic climate change accords based on the Act's literal understanding of this purpose.⁵¹ It is important to note that the primary purpose of NESREA is not to carry out Nigeria's climate change obligations. However, the Act's section 7(c) only makes reference to climate change. The Act contains no further provisions addressing climate change, with the exception of section 7(c).

⁴⁶ Olusola Joshua and Others, 'The Legal Framework for Combating Gas Flaring in Nigeria's oil and Gas Industry: Can it Promote Sustainable Energy Security' (2022) 14(13) *MDPI* <<http://www.mdpi.com/2072-1050/14/13/7626>> accessed 4th May, 2023.

⁴⁷Section 104(2).

⁴⁸ Section 104(4).

⁴⁹ David Borha, Olusola J Olujobi, 'An Examination of the Petroleum Industry Act 2021: Prospects, Challenges and the Way Forward' (2023) <<https://f1000research.com/article/12-551>> accessed 11th July, 2023.

⁵⁰ Section 7(c).

⁵¹ *Ibid* 6 at 146.

Section 20(1) of the Act mandates the Agency to enact laws that provide guidelines for safeguarding and improving Nigeria's air resources in order to advance public health or welfare⁵² and the nation's human, animal, plant, and marine life's natural growth and potential for productivity.⁵³ Regulations on the most effective ways to avoid and battle different types of air pollution are mandated under section 20(1)(c). Control of air pollution from energy sources, such as aeroplanes and other self-propelled vehicles, factories, industries, and other circumstances or facilities that generate power, is outlined in section 20(1)(d). Section 20(1)(f) mandates the creation of laws governing the use of suitable techniques to lower emissions to levels that are acceptable. Any individual found to have broken the regulations is guilty of an offence and faces a maximum fine of NGN 200,000, a maximum sentence of one (1) year in jail, or both.⁵⁴ The perpetrator also faces a daily fine of NGN20,000 for the duration of the crime. In the event that the offender is a body corporate, there will be a NGN2,000,000 fine in addition to an extra NGN50,000 for each day the offence is committed.⁵⁵ It is submitted that these punitive are not sufficient measures to rehabilitate the environment. In addition to these punishments, polluters should be made to rehabilitate the environment or restore it to its original *status quo*.

NESREA, despite not being a climate change organisation,⁵⁶ it is an agency that supports the Nigerian government in controlling air pollution and mitigating Green House Gases (GHG) (which is a driver of climate change) especially in the waste sector.⁵⁷ For instance, the following key regulations⁵⁸ formulated by NESREA could help reduce emissions of GHG in the waste and industrial sectors.⁵⁹ The NESREA Act was amended in 2018 to accommodate changes in the conditions of appointment of council members; it imposes stricter penalties for breach of environmental offences.

⁵² Emmanuel Onyeobor, 'Liabilities for Environmental Damage' (Lecture series on Environmental Law, Faculty of Law, University of Nigeria, Enugu Campus).

⁵³ For example, 'The National Environmental (Sanitation and Wastes Control) Regulations 2009'.

⁵⁴ *Ibid*, section 20(3).

⁵⁵ *Ibid*, section 20(4).

⁵⁶ *Ibid* 6 at 147

⁵⁷ *Ibid*.

⁵⁸ The National Environmental (Sanitation and Wastes Control) Regulations 2009; National Environmental Protection (Effluent Limitation) Regulations 1991; National Environmental (Base Metals, Iron, And Steel Manufacturing/Recycling Industries Sector) Regulations 2011.

⁵⁹ *Ibid*.

3.4 *Climate Change Act 2021*

In November 2021, President Muhammadu Buhari ratified Nigeria's Climate Change Act (CCA). This resulted from the 26th Conference of Parties, where Nigeria renewed its vow under NDCs.⁶⁰ The primary law governing climate change in Nigeria is the Climate Change Act, 2021, whose mandate is reducing greenhouse gas emissions and mitigating the effects of climate change in order to fulfil national and international climate change commitments.⁶¹

President Muhammadu Buhari reaffirmed Nigeria's commitment to net-zero emissions at the COP26 meeting in Glasgow, and the Act reflects that commitment.⁶² In particular, the Act establishes a net-zero carbon emission objective and offers an extensive and all-encompassing regulatory and legal framework for accomplishing Nigeria's long-term climate goals.⁶³ The Act imposes mandatory compliance with all Federal legislation on climate change on both private and public entities, as well as government institutions and agencies.⁶⁴ The Act further establishes the National Climate Change Council.⁶⁵ The Council's mandate includes a number of tasks, such as coordinating the enforcement of sector-specific targets and regulations pertaining to the regulation of greenhouse gas ("GHG") emissions and other human-caused climate change,⁶⁶ to control the implementation of the Action Plan,⁶⁷ to administer the climate change fund,⁶⁸ incorporating climate change national development programmes.⁶⁹ The Act also creates a Climate Change Fund, which the Council will oversee.⁷⁰ The Fund will be financed by fines collected from organisations deemed to have violated the Act's provisions, budgetary contributions made by the National Assembly, and other funding sources that the Council may, from time to time, specify.⁷¹ According to the Act, determining the carbon budget would be the duty of the Federal Ministries of the Environment and National Planning,⁷² and during Nigeria's financial year. Additionally, to ensure

⁶⁰ The pledges made by countries to keep global temperature levels at 1.5 degrees

⁶¹ *Ibid* 6 at 128.

⁶² *Ibid*.

⁶³ *Ibid*, =section 1(a).

⁶⁴ *Ibid*, section1(1).

⁶⁵ *Ibid*, section 3.

⁶⁶ *Ibid*, section 4(a).

⁶⁷ *Ibid*, section 4(b).

⁶⁸ *Ibid*, section 4(c).

⁶⁹ *Ibid* ection 4(c).

⁷⁰ *Ibid*, sSection 15.

⁷¹ *Ibid*, section15(a-f).s

⁷²the approved quantity of GHG emission that is acceptable over a specified time

compliance with international responsibilities, the carbon budget will be periodically revised to align with Nigeria's Nationally Determined Contributions.⁷³

While there are some commendable provisions in the Act, it, however, has some noticeable lapses. For instance, section 20 required the Council to create and release an annual public engagement plan. It did not, however, specifically state how the public will participate in the creation and execution of the policy. According to the Act, anyone, private or public, who engages in a way that impedes attempts to mitigate the effects of the Act and the adaptation measures put in place is in violation of the Act and faces a penalty that will be decided by the Council.⁷⁴ The Council is unfairly granted broad discretion by the Act in deciding how the violations of the provisions of the Act will be penalized. The Council is required by Section 4(1) of the Act to provide information on climate change, local vulnerabilities and risks, pertinent laws and protocols, and adaptation and mitigation measures. However, the Council has not done a good job of educating the public about climate change, its causes, and its effects. Furthermore, the Act is not being implemented because the Council has not yet released its Action plan. It seems that this wealthy legislation might go up on the shelf as the majority of Nigerian laws do. It is all bark and no bite, and its non-implementation could hurt Nigeria's aspirations on climate change.

3.5 *Legal Status of Food Security in Nigeria*

One of the primary goals and guiding principles of state policy of the Federal Republic of Nigeria's 1999 Constitution (as modified in 2023) is the right to food and food security. In accordance with section 16(a), the state ought to focus its policy on implementing measures that ensure food availability, affordability, and accessibility. The government is required by this section to make sure that food is affordable and accessible. Section 6(6)(c) of the Constitution states that the judicial powers "shall not, except as otherwise provided by this Constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the fundamental objectives and directive principle of State policy set out in Chapter 2 of the Constitution." This means that, in general, Chapter 2 of the Constitution is not subject to judicial review.⁷⁵ It should be noted that countries like Congo, Cuba,

⁷³ *Ibid*, section 19.

⁷⁴ *Ibid*, section 34.

⁷⁵ *A.G Ondo State v A.G Federation* (2002) 9 NWLR (Pt. 772); *Okogie v A.G Lagos State* (1981) NCLR 2187.

Ecuador, Ethiopia, India, Kenya, Malawi, South Africa and many more have made the right to food enshrined in their Constitutions enforceable.⁷⁶ The implication of this is that the right to food cannot be enforceable against the government and against any person or organization who acts or omits to act in a way that hampers or threatens a person's right to food. The right to adequate food is a legal obligation under international law. The right to be free from hunger is protected by law under Article 25 of the Universal Declaration of Human Rights (UDHR) and Article 11 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR).⁷⁷ Article 25 of UDHR provides that 'everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food'. *Article 2* enjoins State parties to take measure in achieving progressively the full realization of Economic and Social Cultural (ECOSOC) rights and Goal 1(one) of the United Nation's Sustainable Development Goal 2030.⁷⁸

To achieve the right to food security, the drivers of food insecurity, which includes climate change, must be checked and controlled. Where food security is enshrined as a fundamental right in the Constitution, it will prompt the government to take deliberate actions to address the drivers of food insecurity so as not to infringe on the right to food security. For instance, section 16(d) of the 1999 Constitution does not imply that government should ensure free food. But it could also be implied that the government should provide an enabling and sound environment for the achievement of food security as laid down in the decided case of *Gbemre v Shell Petroleum Development Company of Nigeria Ltd.*⁷⁹ This is not only limited to the government but includes individuals, organisations, and corporations who may act or omit to act that may likely contribute to or compound the issue of food security. The person whose rights have been infringed upon can seek redress in court.

Notwithstanding the non-justiciability of section 16 of the constitution. The right to food can be annexed to section 33 of the Constitution, which provides for the right to life.⁸⁰ This is because the right to life is inclusive of freedom from hunger and starvation. Also, the right to food can be enforced through international legal instruments ratified by Nigeria, such as the SDGs, UDHR and

⁷⁶ n 37

⁷⁷ Asbiom Eide, 'The Human Right to Adequate Food and Hunger' <<https://www.fao.org/3/w9990e/w9990eo3.htm>> accessed 16th June, 2023.

⁷⁸ *Ibid.*

⁷⁹[2005] AHRLR 151 (NGHC 2005)

⁸⁰ Pedi Obani, 'Reflection on the Right to Food Under the Constitution of the Federal Republic of Nigeria 1999' Nigeria Current Law Review 2019/2020 <https://www.papers.ssrn.com/sol3/papers.cfm?abstract_id=4269469> accessed 16th June, 2023.

ICESCR, among others, by virtue of section 12 of the Constitution; where such frameworks have been ratified in Nigeria it becomes part and parcel of the local law and is binding and enforceable.

4. Factors Militating Against the Enforcement of Climate Change and Food Security Laws in Nigeria

4.1 Poor Implementation of Climate Change Laws

It is incontrovertible that environmental law is an imperative tool for the management of the environment.⁸¹ The task of regulating and controlling drivers of greenhouse emissions lies on a strong legislation, or a policy backed by legal force.⁸² Unfortunately, these legal instruments are inadequately executed as a result of the laxity on the part of the agencies that are responsible for enforcing and implementing the legislation and policies. For instance, the National Council on Climate Change, which is empowered to carry out the provisions of the Act is rather lax and passive. Section 30 provides that the Council shall, not later than six months to the end of every year, prepare and publish its public engagement strategy. However, the Council has not prepared and published to the public its engagement strategy. The failure to effect the provisions of the Act has definitely impeded the realization of the Act's objectives. Thus, the major challenge to the enforceability of climate change laws is the substandard implementation actions. However, this is mainly attributed to the poor institutional framework charged with the responsibility of carrying out the provisions of these climate change legal instruments.

4.2 Non-Justiciability of Environmental Rights

Another challenge that hinders the implementation of climate change laws is the non-justiciability of environmental rights in the Nigerian Constitution. Non-justiciability of environmental rights limits the extent to which the courts of law in Nigeria use their inherent power to adjudicate on matters of rights and obligations between persons, government and entities.⁸³ The court in *Abacha v Fawehimi*⁸⁴ has made it clear that the 'constitution is the supreme law of the land, it is the

⁸¹ U.D Ikoni, 'An Analysis of the Legal and Administrative Challenges to Combating Deforestation and Desertification in Nigeria' <<http://www.academia.edu/3254853/an-analysis-of-the-legal-and-administrative-challenges-desertification>>

⁸² Ibid.

⁸³ Ogugua Ikpeze, 'Non-Justiciability of Chapter II of the Nigerian Constitution as an Impediment to Economic Rights and Development' (2015) <<http://www.researchgate.net/publication/282816601>> accessed 2nd June, 2023.

⁸⁴ (2000) 6 NWLR.

grundnorm'.⁸⁵ Its supremacy has never been called to question in ordinary circumstances.⁸⁶ In *Macbische v Lagos State House of Assembly*,⁸⁷ the Court held that the provisions of chapter two are non-justiciable, although they remain pillars of guide to the government.

In addition, section 20 of the Constitution enjoins the state to protect and improve the environment and safeguard the water, air, land, forest and wildlife in Nigeria. Uwaifo JSC, in *Attorney General of Lagos State V Attorney General of the Federation*⁸⁸ noted that section 20 appeared for the first time in the 1999 Nigerian Constitution. Going by this, section 20 of the Constitution does not confer or give an express right to a Nigerian citizen to enforce a right to clean environment within the context of chapter two of the Constitution. This provision does not guarantee environmental protection rights as it is not enshrined in chapter four (4) of the Constitution, which provides for the enforceable fundamental human rights.⁸⁹ This limits a citizen who may wish to enforce his rights under climate change obligations. A citizen cannot compel the government by virtue of section 20 to fulfil its obligation on climate change by reducing carbon emissions in certain sectors.

Other jurisdictions however have made environmental right an enforceable right. For instance, the Peruvian Constitution 1978, Article 123 states that there is the right of everyone to live in a healthy environment, ecologically balanced and adequate for the development of life and preservation of the countryside and nature. In the celebrated case of *Urgenda Foundation v the State of the Netherlands (2015)*, the court accepted claims by hundreds of citizens and the Urgenda Foundation that the Dutch government has a constitutional duty to protect its citizens from climate change. The Dutch government was ordered to take more ambitious action by reducing carbon emissions by at least 25 percent by 2020.⁹⁰

Notwithstanding that the right to a healthy environment is not justiciable under the Nigerian Constitution, it can be enforced by linking it to a fundamental right like the right to life under section 33.⁹¹ In *Gbemre v Shell Petroleum Development Company of Nigeria Ltd*,⁹² the court held

⁸⁵ Section 1(1) of the CFRN 1999.

⁸⁶ *A.G Abia State v A.G Federation* (2003) 6 NWLR (pt.163) 264 at 497; *Ereknure v State* (1993) 5 NWLR (pt.294) 390 at 393; *Osaba v Governor of Kwara State* (1994) 4 NWLR (Pt.168) 909.

⁸⁷ 3 WRN 134

⁸⁸ (2003) SWLR (pt.168) 909.

⁸⁹ Section 6(6)(c).

⁹⁰ *Pena and Others v Government of Colombia* (1996) 518 U.S 189.

⁹¹ See the Indian case, *Shela Zia v Water and Power Development Authority* (1994) PLD S.C 693.

⁹² *Ibid* 65

that Shell's flaring of methane from its gas production activities in the Niger Delta violated human rights to a clean and healthy environment protected under the Nigerian Constitution and the African Charter on Human and Peoples' Rights. The court rightly held that the right to life inevitably includes the right to a clean, poison and pollution-free environment. Unfortunately, this judgment has never been enforced by the Nigerian government.

4.3 Non-Enforcement of Environmental Claims

Enforcement of environmental laws is necessary through judicial pronouncement in court in order to compel compliance and to impose sanctions in cases of violations.⁹³ However, various obstacles are encountered by litigants seeking environmental justice. One of which is the issue of jurisdiction. The Climate Change Act, in section 34 (2) provides that: 'a court, before which a suit regarding climate change or environmental matters is instituted, may make an order –

- (a) To prevent, stop or discontinue the performance of any act that is harmful to the environment;
- (b) Compelling any public official to act in order to prevent or stop the performance of any act that is harmful to the environment;
- (c) Of compensation to the victim directly affected by the acts that are harmful to the environment'.

The Act does not specify which court has jurisdiction.⁹⁴ Nevertheless, the Federal High Court has exclusive jurisdiction over disputes arising from or related to mines and minerals (including oil fields, oil mining, geological surveys, and natural gas) under section 251(1)(n) of the 1999 Nigerian Constitution. The declaration of the Supreme Court in *Abel Isaiah v Shell Petroleum Development Company of Nigeria Ltd*⁹⁵ affirmed that the State High Court is devoid of jurisdiction in matters arising from oil spillage. The implication of this position is that technicality will obstruct access to environmental justice. The primacy of safeguarding the ecosystem for sustainability is completely eroded.⁹⁶ Additionally, where any right arising from environmental pollution matters

⁹³ Ikoni (n 67).

⁹⁴ Other environmental laws confer jurisdiction on the Federal High Court for instance Harmful Wastes (Special Criminal Provision, etc) Act; National Environmental Standards and Regulations Enforcement Acts, etc.

⁹⁵ (2001) 6 NSCQR 542.

⁹⁶ Fagbohun Olanrewaju, 'Jurisdiction of Nigerian Courts in Environmental Matter: A note on Shell v Abel Isaiah' <<http://www.researchgate.net/publication/279248790-Jurisdiction-of-nigeria-courts-in-environmental-matters-a-note-on-shell-v-abel-isaiah>> accessed 2nd June, 2023.

is breached, the victim can only seek redress at the Federal High Court.⁹⁷ This is even more compounded by the fact that the Federal High Court is sparsely located across the country. Another hindrance to litigation of environment laws is that courts are too conservative in their approach to environmental matters. This is evident in the need for procuring expert witnesses. In addition, environmental issues, by their very nature, import a high level of scientific knowledge in its analysis, which the court lacks.⁹⁸ The litigants must adduce evidence on concrete scientific proof to succeed. To this end, the litigants must employ the services of an expert versed in scientific analysis. However, the services of an expert are not cheap to procure. It places a financial burden on the litigants, and failure to call an expert witness might be fatal to the litigant's case. In *Seismograph Services Ltd v Benedict Onokposa*⁹⁹, the claimant alleged that the damages caused to his building were a result of the negligent act of the defendant while carrying out shooting operations during the seismic party. The claimant did not succeed in his claim as the witnesses called by him lacked scientific expertise.

Another problem faced by a citizen seeking to enforce a claim under an environmental matter like climate change related claim is the issue of *locus standi*.¹⁰⁰ The *locus standi* is a concept that concerns the capacity of a person to constitute a legal proceeding in a court of law. The claimant must show that he has a personal interest which has been affected or that his interest is likely to be affected by the action of the defendant. In *Oronto Douglas v Shell and 5 ors*¹⁰¹ the claimant brought an action on the grounds that the provisions of the Environmental Impact Act, particularly section 7, has not been complied with by the proponent. In dismissing the case, the court held that the claimant had no *locus standi* to institute the action since he had shown no *prima facie* evidence that his right was affected or any direct injury has been caused to him, or that he suffered any injury more than the generality of the people.

It should be noted that environmental wrongs, unlike other legal wrongs, know no national boundaries or individual enclaves.¹⁰² Its implication is suffered by any person within and beyond.

⁹⁷ Emmanuel Onyeobor, 'Liabilities for Environmental Damage' (Lecture series on Environmental Law, Faculty of Law, University of Nigeria, Enugu Campus).

⁹⁸ *Ibid*

⁹⁹ (1992) 4 S.C 123.

¹⁰⁰ *Locus Standi* means the standing to sue.

¹⁰¹ Suit No. FHC/25C/573/93.

¹⁰² Onyeobor (n 82).

Obstacles, such as those discussed, close opportunities to make concrete judicial pronouncements in respect of environmental claims.

4.4 Study Findings

The study findings reveal that man-induced climate change is one of the greatest challenges facing mankind in the new millennium. Nigeria, like other developing countries, is highly vulnerable to the impact of climate change, specifically in the area of agriculture, given its high dependence on climate induced rain fed agriculture. Invariably, the food production sector recorded the highest emission of greenhouse. In addition, the major problems in effectively solving the challenges posed by man induced climate change are weak legislation and poor implementation. This underscores that the Nigerian government needs to prioritise effective strategies to combat the adverse effects of climate change arising from the agricultural sector. Climate change policies and regulations are instrumental to attaining Sustainable Development Goals, particularly SDG 2, which provides for zero hunger and food for all. The study, however, finds that the Act, although a commendable step towards achieving climate change obligations, suffers from a lack of implementation. It further finds that there are other environmental protection laws that are related to climate change, however, these laws were not enacted with the aim of protecting the environment against climate change. Thus, these other extant laws offer weak protection against climate change.

The United Nations Framework Convention on Climate Change (UNFCCC) is the first international framework on climate change and it established the Conference of Parties. However, this study finds that it did not set binding obligations for member-states. Thus, the Kyoto Protocol was adopted as an approach to enforcing legally binding instruments that would stabilize the concentration of greenhouse gases. Unfortunately, this study uncovers that the Protocol did not succeed in its objectives. The reason being that the Protocol's attempt to bifurcate countries into Annex I and II excluded developing countries in their obligations to reduce greenhouse emissions. Similarly, the Paris Agreement was adopted to remedy the defect of the Kyoto Protocol. Similarly, the Paris Agreement was adopted to remedy the defect of the Kyoto Protocol. However, this study finds that Paris agreement is faulted on the ground that the voluntary pledge made by the parties fall short of the global ambitions and that full implementation will not completely stop the rising temperature.

5. Conclusion

The intricate and intertwined challenge of climate change, food security, and legal frameworks in Nigeria necessitates immediate attention. A critical recognition of the significance of tackling the complex challenges surrounding hunger and access to nourishing food may be seen in the inclusion of the right to food and food security in section 16 of the 1999 Constitution. However, questions are raised regarding the practical realisation of these rights due to the non-justiciable character of these Constitutional provisions and the inadequate enforcement mechanisms. Nigeria's commitment to addressing the negative effects of climate change is demonstrated by the legislative framework, which is exemplified by the Climate Change Act, 2021. However, the paper draws attention to notable shortcomings in the application of climate change legislation, which speaks to a larger problem of lax enforcement of environmental laws. These issues are made more difficult by the fact that environmental rights are not subject to the courts, which restricts citizens' options for pursuing justice and holding companies responsible for their activities that harm the environment. Enforcing environmental and climate change legislation effectively is hampered by a number of factors, including jurisdictional difficulties, the cost of obtaining expert witnesses, and the conservative court approach to environmental matters. These difficulties not only make it more difficult to defend citizens' rights but also make it more difficult to address the factors that contribute to food insecurity and climate change.

It will take a coordinated effort to address these problems by fortifying institutional structures, elucidating jurisdictional concerns, and improving public participation. When included in the constitution, the right to food security can operate as a spur for the government to take action and establish the conditions necessary for sustainable food production. Nevertheless, this needs to be combined with a dedication to strong enforcement techniques that go beyond non-justiciability's bounds. Put simply, Nigeria's pursuit of sustainable development, climate resilience, and food security calls for a thorough and coordinated strategy. It demands that legislative frameworks be brought into compliance with international commitments, that enforcement mechanisms be strengthened, and that citizens be given the authority to actively engage in environmental governance. Nigeria can only effectively tackle climate change, guarantee food security, and meet its commitment to a healthier and more sustainable future through such coordinated initiatives.

6. Recommendations

The paper highlights how urgently comprehensive action is needed to overcome the gaps in Nigeria's legal frameworks pertaining to food security and climate change. It is advised that the government prioritise enforcing climate change rules and building institutional capacity for enforcement in order to maximise the efficacy of these laws. Reevaluating Constitutional provisions is necessary to address the non-justiciability of environmental rights and enable citizens to seek remedies for environmental injustices. Enhancing access to environmental justice might also involve lowering financial obstacles for litigants and elucidating jurisdictional difficulties. It is imperative to prioritise public participation and knowledge, particularly in vulnerable communities. Finally, including the right to food security in the Constitution as a justiciable right can be a powerful tool to force participants to accept accountability and advance sustainable practices. Nigeria can strengthen its commitment to addressing climate change, defending the rights of its people, and securing a more resilient and food secure future by implementing these practical recommendations.