

ENVIRONMENTAL POLITICS AND CARBON FOOTPRINT IN NIGERIA: PROPOSAL FOR LEGISLATIVE REVIEW

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Abstract

The negative impact of climate change makes carbon emission top the list of dangerous human activities against our planet. This negative fallout is bound to increase further because of un-abating carbon emissions. Although developing states do not feature prominently in net carbon footprint indexes, global mechanisms for climate change mitigation point towards an increase in the carbon footprint of developing countries, mostly from land-use alterations and the possibility of higher vulnerability to the first line risks of climate change. Yet, developing states have been virtually unresponsive to developing robust legal regimes in response to these environmental scare. Although Nigeria is not considered a net contributor to global warming resulting in climate change, certain barely considered environmental degradation activities such as logging for domestic and small scale industrial use add to the country's carbon footprint, with a negative impact on the environment. Using doctrinal/analytical methodology, this paper examines the legal regime on climate change in Nigeria in the context of international environmental politics play in the process, and makes recommendations to tackle the challenges of carbon footprints in the country.

Keywords: Carbon Emission; Climate Change; Desertification; Environmental Governance/Politics; Global Warming.

INTRODUCTION

Carbon emission ranks very high on the list of human demands on our planet.¹ The problem is that in the absence of enough dedicated bio-capacity to counterbalance carbon emissions, accumulated carbon dioxide (CO₂) is causing tremendous damage to the atmosphere. To that extent, carbon emission is the major culprit in climate change. The consequences of carbon build-up in the atmosphere due to deforestation, overgrazing, burning of fossil fuel among others is at the heart of the call for action on climate change. The urgency of the call for action is aggravated by the fact that the earth is continuously losing her bio-capacity, therefore, the capacity to sequester and neutralize carbon dioxide emission as well as provide for other human

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¹. Global Footprint Network "Climate Change" [2019]<<https://www.footprintnetwork.org/our-work/climate-change/>> accessed 4 May 2019.

demands.² But the real danger is in the fact that humanity is continuously unrepentantly and aggressively “demanding more from the Earth than it can provide.”³ Humanity’s Carbon Footprint is on the increase whereas⁴ “reducing humanity’s carbon footprint is the most essential step we can take to end overshoot and live within the means of our planet.”⁵

Developing states do not feature prominently in net carbon footprint indexes. However, global mechanisms for climate change mitigation increasingly point towards increases in carbon footprint mostly from land-use alterations,⁶ the vulnerability and rude exposure to the first line risks of climate change, and yet the possibility of amassing carbon credits from developing states. This is almost in disregard of the contributions of the developed world to climate change due to industrial activities and their historic accumulated carbon footprints in the developing world.⁷ This imperialistic approach towards climate change is replete in many international efforts at addressing climate change including the famous Paris Agreement 2015. This approach is not new. While it is obvious that this is the standard procedure for dealing with matters relating to the developing world by the international community as encapsulated in global environmental politics, what is new and worrisome is the developing states’ responses to these gestures and specific attitudes towards reducing their carbon footprint.⁸

Almost every evening in the three major entrances into Abuja (Lokoja - Kaduna Road, Keffi - Abuja Road, and Kaduna - Abuja Road) are found

². *Ibid.*

³. *Ibid*

⁴. The carbon Footprint is currently 60 percent of humanity’s overall Ecological Footprint. Humanity’s carbon Footprint has increased 11-fold since 1961. See Global Footprint Network, note 1.

⁵. Global Footprint Network, note 1.

⁶. Irrespective of the fact that China and the USA top the charts of CO₂ and total Green House Gases emissions for selected countries. See World Resources Institute, 2012

⁷. Developing countries have argued that developed countries should bear some responsibility for the historical emissions that have given rise to climate change. As part of the 2015 negotiations, the UNFCCC adopted core equity principles which acknowledge ‘common but differentiated responsibilities and respective capabilities’ and an ‘equitable access to sustainable development.’ See Burns, S., Alexeye v, J and Kelly, R and Lin, D, *Carbon Disclosure and Climate Risk in Sovereign Bonds* (Oakland, CA. 2016), 27

⁸. Global Footprint Network, note 1.

overloaded Pickup Vehicles conveying Charcoal made from wood into Abuja city - **see Image 1 below**. However, for a few stops at Police Check Points, these vehicles (often without Vehicle Plate Numbers or other visible standard identification marks) ride into Abuja to discharge Charcoal uninhibited. The product is consumed in apparent disregard of their consequences to the environment and Nigeria's legal commitments to reducing her Carbon Foot Print. Based on this observation, this works sets out to interrogate the legal regime on carbon reduction in Nigeria and how international environmental politics impacts the same. The work made a proposal for legislative review.

Image 1. Picture of overloaded Pickup Vehicle conveying Charcoal made from wood into Abuja City



Source: Photograph taken by this Author on 1st June 2019 at 5:30pm along KM 140, Lokoja – Kaduna Road, Sheda, Kwali Area Council, Abuja

Environmental Politics and Developing States

Environmental protection and governance are constant features in contemporary global political discourses. This is principally due to the level of apprehension the world has over the possibility of a global environmental catastrophe that would have no respect for geographic boundaries and political inclinations. Unfortunately, the global efforts at creating robust environmental protection governance regimes have inadvertently made environmental governance structures unwieldy, increasingly incoherent, cumbersome, and less efficient in dealing with the serious challenges the environment presents.⁹

⁹. Adil, N, Mihaela, P, & Nadaa, T ‘Global Environmental Governance: A Reform Agenda’ [2006]*International Institute for Sustainable Development*, 8.

Today, global environmental governance politicking has been accentuated by the presence of well over 75 groups, agencies, and programs within the UN environmental governance system, an exponential multiplication of international environmental institutions within and outside the UN system as well as proliferation of Multilateral Environmental Agreements (MEAs) that has encouraged specialization and fragmentation in environmental governance projections.¹⁰ Also implicated herein is the influence of major institutions such as the Commission on Sustainable Development (CSD) in setting agenda for mainstreaming sustainable development in development projects and efficient management of the global and domestic environment, as well as the controversial assimilation of sustainable development into World Bank Group (WBG) and the World Trade Organization (WTO) operations around the globe.

It is given that Nations do not exist in a state of autarchy. To that extent, therefore, there is a constant interaction between sovereign states for the purpose of balancing the needs of nations. That is the rationale for global environmental politics.¹¹ Such interrelationship as expressed in environmental politics appears skewed against developing states because of their precarious capabilities in mining natural resources (and consuming the same) within their territories profitably without external assistance, inputs, initiatives, or interferences. However, the nature of this interrelationship of humans leaving in states (geographic territories) combined with human activities in natural resources mining and consumption now have obvious grotesque negative impacts on the ozone layer, the immediate human environment, quality of life in future, as well as efforts to address them.

¹⁰. The global environmental governance program and policy formulation activities of epistemic communities have often degenerated to fight for self-preservation. Besides the forgoing, are conflict of interest and activities of the large contingent of non-state actors, civil society actors, and networks of community-based organizations that exert undue influence on global environmental governance. See details in Adil, N, *ibid*

¹¹. Environmental politics is the interaction of sovereign states, global institutions, global political economy, global power, norms and ideologies in making environmental choices. See details in Odoeme, C V 'Global Environmental Politics and Environmental Law in Nigeria' [2019] *Nile University of Nigeria Law Journal* - forthcoming

Environmental politics in developing states including Nigeria is a direct reflection of the above-captured contestations surrounding environmental governance and the enlarged global politics of energy consumption. It tilts precariously against developing states that require foreign investments to be able to exploit natural resources within their territories profitably. This is essentially because developed states often wield their immense political powers to influence public policy concerning environmental governance in the international community which precariously impacts developing states.¹² The developing states desire to uphold prices, revenues, maintain market share¹³ and concerns with protecting the environment and developed states concern with maintaining sustainable, secure access to natural resources at low prices have combined to relegate the need for robust protections for the environment as well as engender disregard for more efficient ways of extracting and consuming natural resources.¹⁴

Environmental politics in developing states encourage legal regimes on the environment to be liberal but unwieldy. Consequently, laws and regulations, made in seeming compliance with the dictates of the international community, accommodate visible levels of trepidation as to what emplacement of robust environmental governance structures would portend for the nation's income. Such liberality and trepidation infused into environmental legal regimes by virtue of environmental politics are responsible for extant environmental laws, regulations, guidelines, institutions, policy frameworks, plans and programs that are too weak to truly protect our environment.

However, the manner in which developed states wield their superior political influence in global affairs and the entire macabre approach to global environmental politics tend to alienate developing states further.

Carbon Footprint and Climate Change Mitigation Action

Carbon Footprint: Carbon dioxide emission per capita in Nigeria, has not maintained a specific consistent frequency over a long time - see **Table 1**. Observed fluctuations have given rise to some variations in data on emissions.

¹². Odoeme, C V, *ibid*.

¹³. Amuzegar, J, *Managing the Oil Wealth: OPEC's Windfalls and Pitfalls*. (I B Tauris.2001)

¹⁴. Macartan, H and Others, (Ed), *Escaping Resources Curse*.(Colombia University Press, 2007).

While one report showed a downward trend between 1997 and 2016,¹⁵ another has it that “Nigeria’s Green Houses Gasses (GHG) emissions increased by 25% (98.22 MtCO₂e) from 1990 to 2014.”¹⁶ Albeit, in comparison with the United States of America, Japan, Russia, China, India, and countries of the European Union CO₂ emissions, Nigeria is not a major emitter of carbon dioxide as evident by its contribution to global CO₂ emissions.¹⁷ At 38.2% of total emissions, CO₂ emissions in Nigeria, or more broadly stated GHG, are predominantly from Land-Use Change and Forestry (LUCF) sector.¹⁸

In her 2018 (Nigeria’s First) Biennial Update Report (BUR1) to the United Nations Framework Convention on Climate Change (UNFCCC), it was noted that excessive exploitation of Nigeria’s well-endowed forest resources¹⁹ is threatening sustainable socio-economic development of Nigeria. It noted further that growing demand for land (for settlement development, logging, fuel wood extraction, transport facility development, and mining) are encouraging deforestation and is a significant threat to the environment.²⁰ Population growth adds pressure to these drivers, having increased 85% from 1990 to 2014 according to World Resources Institute Climate Analysis Indicators Tool (WRI CAIT).²¹ With 48% decline in total forest area - from approximately 17.2 million hectares in 1990 to 9.0 million hectares in 2010 (leaving 10% of the total land area as forest land in 2010), the UN Food and

¹⁵. ‘Nigeria - CO₂ emissions per capita’ world data atlas, Nigeria environment <<https://knoema.com/atlas/Nigeria/CO2-emissions-per-capita>> accessed 20 October 2019.

¹⁶. World Resources Institute Climate Analysis Indicators Tool (WRI CAIT) WRI CAIT data

¹⁷. Mubaraq, D S “Determinants of Nigerian Household Carbon Footprint” [2018] (9)(7) *Journal of Economics and Sustainable Development*, 2222-2855.

¹⁸. WRI CAIT 4.0, 2017. In 2015, the combined emissions from Agriculture, Forestry, and Other Land Use (AFOLU) were the leading source of GHG emissions (66.9%), followed by energy (28.2%), waste (3.0%) and Industrial Processes and Product Use (IPPU) (1.9%). See Federal Republic of Nigeria. First Biennial Update Report (BUR1) under the UNFCCC, March 2018.

¹⁹. “Greenhouse Gas Emissions in Nigeria” USAID January 2019.

²⁰. Federal Republic of Nigeria. First Biennial Update Report (BUR1) under the UNFCCC, March 2018.

²¹. “Greenhouse Gas Emissions in Nigeria” USAID January 2019.

Agriculture Organization (FAO) predicted that “the remaining forest areas in Nigeria will likely disappear by 2020 if the current rate of forest depletion continues unabated.”²² More so, with an annual deforestation rate of about 4% for the period 2005 to 2010, higher than the Western and Central African average of 0.46%, Nigeria sits comfortably amongst the countries with alarming annual deforestation rates in the world.²³

Given the high rate of loss of forest areas and unabated pressure from deforestation drivers as reported by FAO during the period covered by the Nigerian BURI, and the fact that LUCF emissions emanate mostly from forest land, it is still a mystery that WRI CAIT data recorded a 3% decrease in LUCF emissions in Nigeria between 1990 and 2014.²⁴ Could that be as a result of Nigeria’s green growth development pathway that attempts to prioritize Reducing Emissions from Deforestation and Forest Degradation (REDD) through developing a national strategy/action plan on the drivers of deforestation²⁵ including the “creation of a national forest monitoring system to track changes by MRV.”²⁶

²². Federal Republic of Nigeria. BUR I. March 2018, at 5.

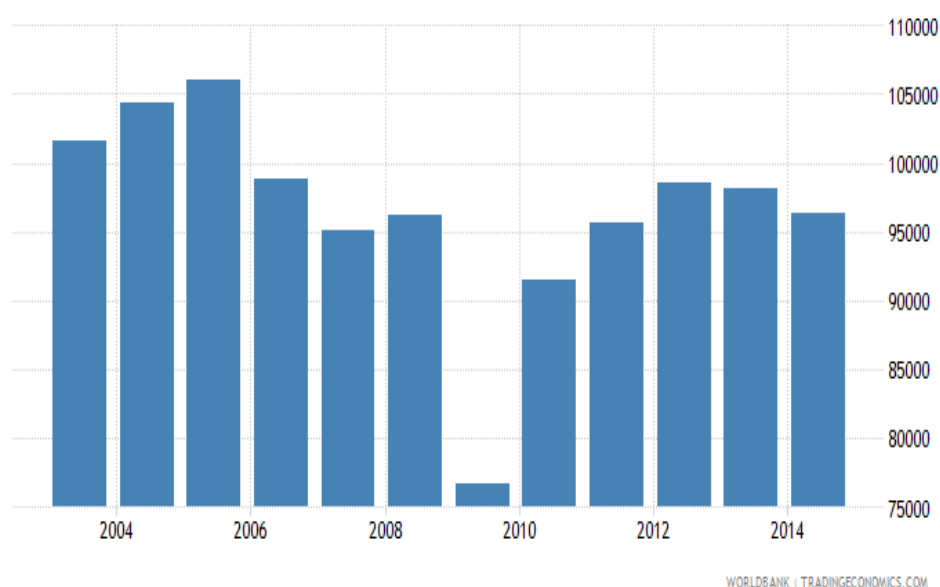
²³. As of 2016, forest area was only 7% of the total land area and virtually all primary forests in the country may have disappeared. See Table 7 Forest Characteristics 2010, FAO. Global Forest Resources Assessment, Global Tables, 2010.

²⁴. “Greenhouse Gas Emissions in Nigeria” USAID January 2019.

²⁵. *Ibid.*

²⁶. See Table 3.2. Mitigation actions implemented or planned funded by Nigerian stakeholders, Federal Republic of Nigeria. Nigeria National Programme 2015 Annual Report (Draft), 2015, at p127.

TABLE 1: CO2 Emissions (kt) in Nigeria was reported at 96281 in 2014, according to the World Bank collection of development indicators, compiled from officially recognized sources.



Carbon dioxide emissions are those stemming from the burning of fossil fuels and the manufacture of cement. They include carbon dioxide produced during consumption of solid, liquid, and gas fuels and gas flaring. Source Nigeria - CO2 Emissions (kt) <https://tradingeconomics.com/nigeria/co2-emissions-kt-wb-data.html>

Climate Change Mitigation action: Prioritizing REDD is part of Nigeria’s commitment to a green growth development pathway derived from her about 9-year-old partnership with the UN-REDD program. By this partnership, Nigeria ought to develop a national strategy/action plan on the drivers of deforestation, a Safeguard Information System (SIS), a Forest Reference Level/Forest Reference Emission Level (FRL/FREL) system, and a National Forest Monitoring System. The Nigerian BUR1 indicated that not much has been achieved in this regard except for the establishment of the Department of Climate Change (DCC) of the Federal Ministry of Environment - deemed to

be evidence of Nigerian Government's commitment to introducing and implementing adaptation and mitigation measures necessary to reduce vulnerability to climate change;²⁷ development and implementation of Quality Assurance/Quality Control (QA/QC) procedures in line with the Intergovernmental Panel on Climate Change (IPCC) 2006 Guidelines for National GHG inventories;²⁸ and working towards ending gas flaring by 2030, Off-grid solar PV of 13GW (13,000MW), Efficient gas generators, 2% per year energy efficiency (30% by 2030), Transport shift from car to bus, Improving electricity grid, Climate-smart agriculture and reforestation.²⁹ Unfortunately, these robust actions were expressed in future terms,³⁰ although it was noted in the same BUR1 that "Nigeria has already implemented various mitigation actions using its own resources, through the Clean Development Mechanism (CDM) and the Program of Activities (POA)."³¹

Others mitigation plans include the National Climate Change Policy Response and Strategy (NCCPRS) 2012 developed for the purpose of fostering a low-carbon, high growth economic development path and building a climate-resilient society;³² the Nigerian National Biofuels Programme designed to help reduce the nation's dependence on imported gasoline while reducing environmental pollution. Also included in the draft revised National Energy Policy of 2013 that provided the framework for sustainable energy development in Nigeria with the overall objective of providing clean, affordable, adequate and reliable energy to the nation with the active participation of the private sector.³³ The REDD+, aimed at generating financial value for the carbon stored in forests is included in the Nigerian action plan. Also part of the Nigerian action plan is the development and establishment of a domestic Measurement, Reporting and Verification (MRV)

²⁷. BUR1 at 1.

²⁸. *Ibid.* p, 11.

²⁹. *Ibid.*

³⁰. i.e. "the actions to be implemented unconditionally using national resources are expected to reduce emissions by 20 % from the Business As Usual (BAU) scenario." See BUR1 p, 11.

³¹. See BUR1 p, 12.

³². UNFCCC 2015. 'Nigeria's Intended Nationally Determined Contribution', <http://www4.unfccc.int/submissions/INDC/Published%20Documents/Nigeria/1/Approved%20Nigeria's%20INDC_271115.pdf> accessed 1June 2019.

³³. BUR1 at 12.

system pursuant to the Bali Action Plan;³⁴ and establishment of an Inter-Ministerial Committee to provide a “common coordination platform to harness the many relevant climate datasets that are available in different government departments and in private organizations.”³⁵

In view of the expressed lack of financial, technical and technological capabilities to execute some of the mitigation plans, and being mindful of her high level of vulnerability to climate change and the need to take action, as indicated in her BUR1, Nigeria settled for prioritization of investments of available national resources in adaptation rather than mitigation. The idea is to guarantee some minimum well-being for the poorest segments of the population, including the more vulnerable groups and women.³⁶

Part of Nigeria’s “effort” at climate change mitigation is captured in her Intended Nationally Determined Contribution (INDC) 2014 wherein Nigeria expressed her intention to, in comparison with Business As Usual (BAU) emission levels, unconditionally reduce GHG emissions by 20% by the year 2030. This she hopes to achieve by improving energy efficiency by 20%, providing 13GW of renewable electricity to rural communities that are yet to be connected to the national electric power grid, and by ending the gas flaring in the Niger-Delta. The INDC also captured Nigerians extended intention to, predicated upon receipt of international support, further reduce GHG emissions by 45% within the same year 2030 time frame. To achieve this expressed extended intention, Nigeria hopes to provide access to energy (electricity) for all Nigerians, increase energy efficiency and or by significant reduction in the use of household electricity generators, as well as implementing climate-smart agriculture, and reforestation among others.³⁷

³⁴. This the BUR1 noted is “a serious challenge to non-Annex I countries as it is a new and additional responsibility within the framework of the preparation of BURs” BUR1 at 15

³⁵. *Ibid* at 15.

³⁶. *Ibid*.

³⁷. See ‘Greenhouse Gas Emissions in Nigeria’ USAID January 2019. See also the Nigeria Intended Nationally Determined Contribution (INDC), 2014.

<https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Nigeria%20First/Approved%20Nigeria%27s%20INDC_271115.pdf> accessed 20 July 2019.

Legal Regime on Carbon Emission and Climate Change: There is yet to be enacted in Nigeria a specific Carbon Emission / Climate Change legislation. Issues of Carbon Emission / Climate Change are managed by sectoral environmental regulations, policies, plans and programs as contained NCCPRS.

Part of the efforts made at creating a legal regime for Carbon Emission and Climate Change in Nigeria are in the form of institutional frameworks and regulations. Although no particular institution has been established exclusively for Carbon Emission and Climate Change management, existing institutions have taken up some aspects of that responsibility. They include the Federal and State Ministries of Environment and the National Environmental Standards and Regulations Enforcement Agency (NESREA).³⁸ The Federal Ministry of Environment is a designated department saddled with the responsibility of compliance with international Carbon Emission and Climate Change obligations and accordion duties.

The National Environmental Standards and Regulations Enforcement Agency (NESREA) Act is arguably the principal of what constitutes the legal regime on Carbon Emission / Climate Change in Nigeria.³⁹ However, the National Policy on Climate Change designed to guide the implementation of actions on climate change through well-crafted comprehensive national goals, objectives and strategies may also find a place therein. Besides snippets of provisions in a few legislation that may have an environment read into them,⁴⁰ there are some

³⁸. Others include National Biosafety Management Agency, National Oil Spill Detection and Response Agency, Nigeria Hydrological Services Agency, River basin Authority, Federal Ministry of Water Resources, Environmental Health Officers Registration Council of Nigeria, Nigerian Conservation Foundation, Department of Petroleum Resources etc.

³⁹. By virtue of s.7(c) of NESREA Act, the Functions of NESREA extends to cover enforcement of compliance with the provisions on international agreements, protocols, conventions and treaties on the environment, including climate change, biodiversity, conservation, desertification, forestry, ozone depletion, among others environmental agreements as may from time to time come into force.

⁴⁰. The Public Health legislation, Factories Act (1987), Land Use Act 1978, Energy Commission of Nigeria Act 1979, Endangered Species (Control of International Trade and Traffic) Act 1985, Sea Fisheries Act 1992, River Basins Development Authorities Act 1986, Harmful Waste (Special Criminal Provisions, etc.) Act (1988) etc.

Regulations⁴¹ dealing with varied aspects of Carbon Emission/Climate Change. They include but not limited to National Environmental (Ozone Layer Protection) Regulations 2009, the National Environmental (Control of Vehicular Emissions from Petrol and Diesel Engines) Regulations 2011, the National Environmental (Desertification Control and Drought Mitigation) Regulation 2011,⁴²the National Environmental (Control of Bush, Forest Fire and Open Burning) Regulation 2011, the National Environmental (Desertification Control and Drought Mitigation) Regulation 2011, and the National Environmental (Control of Charcoal Production and Export) Regulation 2014. Others parts of the legal regime on Carbon Emission/Climate Change arise from Nigeria's international obligations such as the UNFCCC,⁴³ Kyoto Protocol, and the Paris Agreement.

Impact of Environmental Politics on Carbon Legal Regime

A dispassionate look at international environmental politics would confirm that it does indeed alienate developing states. This is achieved by a certain level of concessions it admits for developing states with respect to obligations, contributions and compliances with international environmental governance regimes. This is without prejudice to the fact that many developing states do not even appreciate the purports of international environmental governance schemes, and oftentimes partake because it is expected of them to retain

⁴¹. Made pursuant to S. 33 and S.34(c) of NESREA Act that vested in the Minister of Environment the power to make regulations generally for the purposes of carrying out or giving full effect to the functions of the NESREA.

⁴². The main objective of the Regulation is to provide an effective and pragmatic regulatory framework for the sustainable use of all areas already affected by desertification and the protection of vulnerable lands see S.2 (a) by encouraging the sustainable use of fuel wood, reforestation, reseedling, afforestation and conservation. Also to sustain and expand areas under forest and tree cover through conservation, protection, rehabilitation of natural vegetation, tree planting and control of forest exploitation, with a view to reversing desertification trend.

⁴³. Other than to her commitment to co-operate by monitoring and measuring of greenhouse emissions within her territory there is no other commitment for Nigeria. Therefore there is nothing with the force of law in this regard.

functional sovereignty.⁴⁴ This alienation of developing states finds expression in many international Conventions, Meetings, and their preparation thereof. Examples are found in UNFCCC, Kyoto Protocol, and Paris Climate Agreement wherein commitments were neither scheduled for nor extracted from developing states. Besides, as regards developing states, matters relating to them were etched out in liberal expressions that appear to pamper developing states including arrangements to provide developing states with funds and technological capacities to be able to successfully hold their own end of the bargain on reducing carbon emission and climate change.

This unequal relationship between the global North and South find further expressions in developing states' responses to international environmental governance regimes. In her BUR1 and INDC, Nigeria predicated higher successes in her climate change mitigation threshold upon receipt of international support.⁴⁵ This is regardless of the fact that her intended actions to achieve some reasonable level of climate change adaptation and mitigation are the basic responsibilities she owes her citizens (rural electrification, improved power supply, clean and renewable energy, proscription of gas flaring, climate-smart agriculture, reforestation etc.).

The domestic legal regime on the environment is not spared of the dangerous development. Even as obvious as the negative consequences of climate change have become for Nigeria, and the fact that issues relating to climate change have been up for discussion for a long time, there is neither a dedicated climate change legislation nor an institution. What represents climate change legal regime in Nigeria are Regulations.⁴⁶ Meanwhile, the Regulations in issue are more like providing better ways of doing things that ought to be out rightly prohibited. For example, in the Regulation on Control of Bush, Forest Fire and Open Burning, while the principal thrust “is to prevent and minimize the destruction of ecosystem through fire outbreak and burning of any material that may affect the health of the ecosystem through the emission of hazardous

⁴⁴. Lopes, P D “International environmental regime: environmental protection as a means of state making” Paper presented at the 4th Annual International Studies Association Convention in March 2002, in New Orleans, USA. See also Odoeme, C V note 11.

⁴⁵. Section 3.4 at p 9 of Nigerian INDC 2014.

⁴⁶. Regulations relating to climate change are found in certain regulations issued by NESREA.

air pollutants”⁴⁷ it appeared to have provided for better ways of burning bush/forest (with permit⁴⁸) although there are penalties for noncompliance.⁴⁹ Also in the Regulation on Control of Charcoal Production and Export, while the objective is to “protect Nigerians ecosystem from further depletion arising from charcoal production and handling including export,”⁵⁰ it provided for felling of trees for the purpose of producing charcoal and export of the charcoal so produced,⁵¹ with valid permit off course,⁵² and penalty for noncompliance.⁵³

While these regulations and the events they control may not offend any laws, and may actually earn some climate change mitigation points, they, however, leave much to be desired. For instance, it is unbelievable that the “felling of trees for the purpose of producing charcoal” is permissive (happening) in a country that has a very high gas reserve, a large scale functional Liquefied Natural Gas Processing Plant, and Coal in abundance.

On its part, the Regulation on Desertification Control and Drought Mitigation has very ambitious objectives centred around creation of effective and pragmatic regulatory framework for the sustainable use of all areas already affected by desertification and the protection of vulnerable lands⁵⁴ through reforestation, reseeding, afforestation, conservation of areas under

⁴⁷. S 1 National Environmental (Control of Bush, Forest Fire and Open Burning) Regulation 2011

⁴⁸. S 3(1 & 2) National Environmental (Control of Bush, Forest Fire and Open Burning) Regulation 2011

⁴⁹. S 21(3,4,5) National Environmental (Control of Bush, Forest Fire and Open Burning) Regulation 2011.

⁵⁰. S 1 National Environmental (Control of Charcoal Production and Export) Regulation 2014.

⁵¹. S 2, S 3(1,2) National Environmental (Control of Charcoal Production and Export) Regulation 2014.

⁵². S 5 National Environmental (Control of Charcoal Production and Export) Regulation 2014.

⁵³. S 19 National Environmental (Control of Charcoal Production and Export) Regulation 2014.

⁵⁴. S 2 (a) National Environmental (Desertification Control and Drought Mitigation) Regulation 2011.

desertification or vulnerable to same and rehabilitation of degraded lands.⁵⁵ It, however, provided for the felling of trees or cutting off branches, land clearing, earth disturbing activities, bush burning, grazing, cultivation of marginal land etc. with a permit,⁵⁶ and prescribed penalties for violation.⁵⁷ Indeed, much of its provisions are observed in breach.

Nigeria owes herself a duty of care beyond what is provided by the international community. With 48% decline in total forest area, UN Food and Agriculture Organization (FAO) prediction that “the remaining forest areas in Nigeria will likely disappear by 2020 if the current rate of forest depletion continues unabated,”⁵⁸ an annual deforestation rate higher than the Western and Central African average, sitting comfortably well amongst the countries with alarming annual deforestation rates in the world,^{59 [60]} as well as an FAO reported unabated pressure from deforestation drivers, and even in the absence of any specific obligation for Nigeria under UNFCCC, Kyoto Protocol, etc., Nigeria ought to do a lot better in managing her environment. Anyway, it would not really surprise any keen observer that understands that a country as great as Nigeria has protection and improvement of the environment

⁵⁵. S 2 (e) National Environmental (Desertification Control and Drought Mitigation) Regulation 2011. Other parts of the objective include encouragement of “sustainable use of fuel wood through the use of more efficient and energy saving devices” S 2(c), attainment of the 25% national forest cover as prescribed by the United Nations And Agricultural Organization (FAO) for the purpose of abatement of the impacts of climate change S 2(f), sustenance and expansion of areas under forest and tree cover through conservation, protection, rehabilitation of natural vegetation, tree planting and control of forest exploitation, with a view to reversing desertification trend S 2(i). Implementation of the Regulation includes compilation and periodic monitoring and inspection of degraded lands for the purpose of updating the inventory of already degraded lands and desertification prone areas S 4, periodic conduct of Environmental Impact Assessment on lands threatened with desertification S 5(4), or on all major activities to ensure that drought-prone areas are not further exposed to high risk of environmental degradation S 13(2), declaration of specially protected areas under desertification S 6.1.

⁵⁶. S 7. See complete list on Schedule iv of National Environmental (Desertification Control and Drought Mitigation) Regulation 2011.

⁵⁷. S 21 National Environmental (Desertification Control and Drought Mitigation) Regulation 2011.

⁵⁸. Federal Republic of Nigeria. BUR I. March 2018, p 5.

⁵⁹. FAO. Global Forest Resources Assessment, Global Tables, 2010.

⁶⁰. As of 2016, forest area was only 7% of the total land area⁶⁰⁷ and virtually all primary forests in the country may have disappeared. See Table 7 Forest Characteristics 2010, FAO. Global Forest Resources Assessment, Global Tables, 2010.

(including safeguard of water, air and land, forest and wildlife) as a state responsibility but choose to capture same in a part of her Constitution⁶¹ that is non-justiciable. That may also explain why Nigeria has not enacted a federal law for the purpose of control of carbon emission and climate change mitigation - but abandon the same to be handled by mere regulations enforceable by a small organization like NESREA.

Similarly, carbon emission and climate change mitigation are run by the Department of Climate Change (DCC) of the Federal Ministry of Environment, and Nigeria Government parades that as evidence of her “commitment to introducing and implementing adaptation and mitigation measures necessary to reduce vulnerability to climate change.”⁶²

Proposal for Legislation

Within the climate change conundrum is a large risk, grave responsibility and a great opportunity for the developing world. While the risks are not properly defined particularly as they may affect “only” the developing states scattered all over the world while avoiding the developed states found in between them, the responsibility is quite defined and to an extent, the opportunities.

It is a fact that enhanced economic growth is dependent on energy security, and energy security is at the heart of contemporary international environmental politics to the point of being a national security issue.⁶³ In Nigeria, clean and efficient energy scarcity has deepened poverty. And poverty has brought about a forced reversal in the transition to clean and efficient energy forms. Consequentially, “Nigerians are climbing down the energy ladder - moving from electricity, gas and kerosene to traditional use of

⁶¹. Part 11, S. 20, Constitution of the Federal Republic of Nigeria 1999.

⁶². BUR1 p, 1.

⁶³. Odoeme, C V and Mukhtar Nasiru ‘Energy Politics and the Political Economy of Gas Supply using the Western and Eastern Corridor Models: Lessons for Africa’ [2013] (2) *Abuja Journal of Private and Comparative Law*.

wood in open fires.”⁶⁴ Recent estimates have it that 95,300 Nigerians die annually from smoke from the inefficient use of biomass energy, at that rate, smoke has become the next highest killer of Nigerians after Malaria and HIV/AIDS.⁶⁵ Yet about 72 percent of the Nigerian population depend on the traditional ‘three-stone fire’ for daily living.⁶⁶ These offend Nigeria’s UNFCCC and the Kyoto Protocol commitments which is to promote low-carbon development, reporting obligations to the UNFCCC, reducing emissions of greenhouse gases consistent with its national circumstances and within the context of poverty reduction and economic growth.⁶⁷

The UNFCCC and the Kyoto Protocol did not assign any binding obligations to reduce emissions of greenhouse gases to Nigeria as a developing country party but rather declared Nigeria eligible for financial and technical assistance in support of her national actions for Climate Change mitigation and adaptation. However, in line with UNFCCC recognition that states should “enact effective environmental legislation” and in view of the obvious threat posed by carbon emission /climate change to Nigeria as capture above, it is hereby proposed, on the one hand, the immediate enactment of a federal, comprehensive, and effective environmental legislation specific to carbon emission /climate change mitigation and adaptation. On the other hand the establishment of a designated federal institution dedicated to carbon emission /climate change mitigation and adaptation. The said institution should be for the environmental sector what NOSDRA is for the oil sector but with some enhanced level of enforcement responsibility beyond what is allowed for NOSDRA.

CONCLUSION

International environmental politics has brought developing states to a place where even the things they can do for themselves and for their own good are

⁶⁴. Eleri, E O, Onuvae, P, Ugwu, O *Low-carbon energy development in Nigeria Challenges and opportunities* (International Center for Energy, Environment and Development, 2013) 4.

⁶⁵. WHO. Indoor air pollution: national burden of disease estimates, (2007) WHO/SDE/PHE/07.01

⁶⁶. United Nations Development Programme (UNDP) and World Health Organization (WHO). *The energy access situation in developing countries*, Sustainable Energy Programme Environment and Energy Group Report, 2009

⁶⁷. Eleri, E O, note 64.

left for others or subject to the whims of the international community. However, incidences such as non-committal obligations assigned to developing states in the UNFCCC and the Kyoto Protocol, blaming increases in carbon footprint on land-use alterations, that developing states are more vulnerable to climate change risks, possibility of amassing carbon credits from developing states keeping of their forest intact, disregard of the contributions of the developed world to climate change due to industrial activities and their historic accumulated carbon footprints and the developed states efforts to remain industrialized while encouraging developing states to suspend theirs by using a small percentage of profit from industrialization as carrot or bait to developing states among many others explain the level of treachery and imperialism with which international environmental politics is laced and decorated.

African states consideration of the pledges proffered by developed states in the Cancun Agreements as wholly inadequate for the purpose of stabilizing atmospheric concentrations of GHG at a safe level on the grounds that existing pledges would result in global temperature rise from 2.5°- 5°C⁶⁸ as well as their perception that developed states were undermining the core principles of the UNFCCC and Kyoto Protocol by shifting the burden of mitigation to developing states while weakening their own commitments and the compliance regime are indicators of developing states realization of the bad ends of the intrigues in international environmental politics. Important in this regard is Africa's call for preservation and strengthening of the architecture of the UNFCCC and the Kyoto Protocol for their being the fundamental global legal framework for climate change; and Africa's emphasis on protecting the principles of the "Common But Differentiated Responsibilities" (CBDR), and equity.⁶⁹

For the large risks, grave responsibilities and great opportunities available for the developing world in the climate change conundrum; clean and efficient

⁶⁸. Seth, O, Anju, S, and Achala, C B 'Durban Platform for Enhanced Action An African Perspective' (not dated) European Capacity Building Initiative <www.eurocapacity.org>, accessed 15 May 2019.

⁶⁹. *Ibid.*

energy for Nigerians, good health and long-life and reduction in rate of death from smoke; Nigeria's UNFCCC and the Kyoto Protocol commitments to low-carbon development, reduction greenhouse gases emissions among others, it is important to emphasize that carbon emission/climate change issues have gone beyond apportioning blames and claiming alibi. To that end developing states Nigerian, in particular, must wake up to the reality of impending doom and take its carbon emission/climate change commitments and responsibilities seriously. This is essentially because of the perception that Africa and indeed Nigeria, may experience the most insensitive impact of climate change than other regions of the world perhaps because it is the continent and state that is least prepared to handle carbon emission/climate change impacts.⁷⁰ This is more so because Nigeria will contribute 10 percent of the expected 2.2 billion increase in global population by 2050.⁷¹ When combined with her 490 metric tonnes annual GHG emissions (CO₂ equivalent) mostly from LUCF and her position in a tropical climate where the temperature is expected to increase faster than the global average, Nigeria ecosystem is sure vulnerable to climate change.⁷²

Whereas there is little evidence to suggest that Nigeria is mindful of keeping to her Paris Agreement commitment of reducing her GHG emissions by 20 per cent relative to a business-as-usual scenario of economic and emissions growth by 2030, as well as the extended 45 per cent reduction target,⁷³ Nigeria's carbon emission/climate change action must go beyond adaptation

⁷⁰. See Terr-Africa (2009), Land and Climate: The Role of Sustainable land Management (SLM) for Climate Change Adaptation and Mitigation in Sub-Saharan Africa (SSA). Terr Africa: Regional Sustainable Management Publication. See also World Bank. (2010), The cost to Developing Countries of Adapting to Climate Change New Methods and Estimates the Global Report of the Economics of Adaptation to Climate Change Study Consultation Draft. Washington D C: The World Bank Group.

⁷¹. United Nations, Department of Economic and Social Affairs, Population Division. (2017). World Population Prospects: The 2017 Revision, Key Findings and Advance Tables. New York: Working Paper No ESA/P/WP/248. United Nations.

⁷². Daggash, H 'Nigeria and Climate Change Global Trends and Local Challenges' June 18, 2018 June/July 2018 <<https://www.republic.com.ng/junejuly-2018/nigeria-climate-change/>> accessed 4 June 2019.

⁷³. Nigeria's Intended Nationally Determined Contribution. Issued by the Ministry of Environment, Federal Republic of Nigeria, 2015.

and also beyond shutting down facilities of a Chinese company for illegal production and exportation of charcoal in Nigeria.⁷⁴

⁷⁴. On the NESREA website is celebrated the shutting down of *one* of the facilities of a Chinese company, Kwo Chief Investment Limited, located at Obimo in Nsukka Local Government Area of Enugu State for production and exportation of charcoal in Nigeria without permit, contrary to the provisions of the National Environmental (Control of Charcoal Production Export) Regulations 2014. The action was taken following public complaints and allegations leveled against the said company. See NESREA Seals Company for Illegal Charcoal Export: May 14th, 2019 Posted In: <<http://www.nesrea.gov.ng/nesrea-seals-company-for-illegal-charcoal-export/>> accessed 10 June 2019.