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## CHAPTER 7

### NATIONALLY DETERMINED CONTRIBUTIONS: ANALYSIS OF ITS LEGAL IMPLICATIONS FOR NIGERIA\*

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#### **Abstract**

*The 21<sup>st</sup> session of the Conference of the Parties (COP21) of the United Nations Framework Convention on Climate Change (UNFCCC) held in Paris in 2015 remains indelible in the history of the global fight against climate change. In the event, 195 countries adopted the Paris Agreement objective to embark on economic activities that are resilient to climate change as well as adaptive actions that will mitigate its impacts. These processes were collectively christened the Nationally Determined Contributions (NDCs) of each member nation. The NDCs unarguably are the platforms on which countries stand to achieve their climate resilience and mitigation goals. They are sets of targets, policies and actions articulated by*

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*member states through state actors and institutions which they leverage on institutionalized framework of Paris Agreement for implementation. Thus, the NDCs must be characterized with progressive and ambitious propositions that were voluntarily embarked upon by a member state. They are also updated periodically in line with the collective commitments of member states. This study examines the extent of the Nigeria commitment to this global cooperation, the principles underpinning its realization as well as the legal implications of such actions for the sociocultural, economic and political wellbeing of the Nigerian state.*

**Keywords:** Mitigation, Resilience, Emission, NDCs, Green, Carbon, Funds.

### **1.1. Introduction**

The most appealing definition of the concept of Nationally Determined Contributions (NDCs) is the definition offered by the United Nations Development Programme (UNDP) Climate Promise. The Programme had defined the idea as all countries' self-defined national climate pledges under the Paris Agreement, detailing what they will do to help meet the global goal to

pursue 1.5°C, adapt to climate impacts and ensure sufficient finance to support these efforts'.<sup>1</sup> In a similar view, the ARUP, a global collective of designers, engineers and technical experts defined the concept as the various 'individual country-level commitments that outline the efforts and actions a country intends to take to reduce its greenhouse gas (GHG) emissions and adapt to the impacts of climate change.'<sup>2</sup> These definitions present NDCs as action plans and activities of countries towards eradicating greenhouse gas and reducing carbon emission. They are infact commitments voluntarily undertaken by countries to fight climate change from the domestic front and equally adapt to climate impacts. As can be seen above, the first

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<sup>1</sup> Explainers, 'What are NDCs and how do they drive climate action' *UNDP Climate Promise* [2023] <<https://climatepromise.undp.org/news-and-stories/NDCs-nationally-determined-contributions-climate-change-what-you-need-to-know>> retrieved on the 22<sup>nd</sup> July, 2024

The UNDP's Climate Promise is the world's largest offer of support to countries on NDC processes, supporting 85% of all developing countries to both define and revise their pledges, and turn them into concrete action.

<sup>2</sup> Arup Explains, 'What are Nationally Determined Contributions (NDCs)?' *ARUP Insights* [2023] <<https://www.arup.com/insights/what-are-nationally-determined-contributions-ndcs/>> retrieved on the 22<sup>nd</sup> July, 2024

mention of Nationally Determined Contributions (NDCs) is in the Paris Agreement. They were considered as the various ambitious actions undertaken and communicated by member nations in response to global fight against climate change.<sup>3</sup> In Nigeria, the concept applies to the national climate plans highlighting climate actions and resilient strategies including climate related targets, and policies and measures that government aims to implement in response to climate change, and as a contribution to global climate action.<sup>4</sup>

## **1.2. General Overview**

There has emerged a new perception that the issue of environmental solutions is of general concern. This understanding has been reflected in the laws of most countries, through direct or indirect incorporation of the environmental welfare of their ecosystem in their respective domestic laws. For instance, the Indian constitution<sup>5</sup> mandates the state to protect the

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<sup>3</sup> Article 3 of the Paris Agreement, 2015

<sup>4</sup> Section 35 of the Climate Change Act, 2021

<sup>5</sup> Article 48A of the India's Constitution of 1949.

environment, safeguard the forests and improve the wild life of the country. The German Laws safeguards the welfare of the future generations.<sup>6</sup> The Chinese Constitution requires the state to protect and improve living environments and the ecological environment, as well as to prevent public hazards.<sup>7</sup> Nigeria is not left out of the equation, hence the Constitution makes it an objective of the Nigerian State to improve and protect the air, land, water, forest and wildlife of Nigeria.<sup>8</sup>

Indeed preservation of the earth for future generation and safety of the people of today is paramount for continuity of human race. Global warming, climate change, greenhouse gas and other negative effects of environmental mismanagement have become more imminent than ever. The ugly part is that we are pushing towards the limits of the earth resources.<sup>9</sup> In Nigerian the fossil fuel depletion is now closer than ever.<sup>10</sup> It is not in

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<sup>6</sup> Article 20A of the Basic Law for the Federal Republic of Germany 1949.

<sup>7</sup> Article 26 of the Constitution of the People's Republic of China 1982

<sup>8</sup> Section 20 of the 1999 Constitution of the Federal Republic of Nigeria as Amended

<sup>9</sup> Donella H. Meadows *et al*, *Beyond the Limits* (Earthscan, 1992, London) 44–47

<sup>10</sup> Akuru, Udochukwu & Okoro, O.I. (2011). A Prediction on Nigeria's Oil Depletion Based on Hubbert's Model and the Need for Renewable Energy.

doubt that the principle of polluter pays principle<sup>11</sup> requires the polluters of the environment to see to its safety. This approach doesn't appear to have solved the problem of carbon emission because we saw the birth of a regime of deliberate environmental mismanagement remedied by monetary compensations. Infact irrespective of how so good or just the principle may seem, the compensation cum revenue approach to it, completely erodes the cooperativeness, collectiveness and commonness of purpose in the fight against climate change. In any case, if climate change remains unchecked, there are imminent threats of depreciation in agricultural outputs, worsened droughts, rise in sea levels and floods.<sup>12</sup> These have also cumulatively posed the attendant consequences of endangering over 140 million citizens of developing and poorer countries in

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International Scholarly Research Network (ISRN) Renewable Energy. 2011. 6 pages. 10.5402/2011/285649.

<sup>11</sup> Christopher M Inwang. (2021). Application of the Polluter Pays Principle in Environmental Management. *International Journal of Innovative Legal & Political Studies* 9(1):74-80, Jan.-Mar., 2021.

<sup>12</sup> Landry Signé and Ahmadou Aly Mbaye. 2022. *Renewing Global Climate Change Action for Fragile and Developing Countries*. Working Paper #179. Global Economy and Development at Brookings. November. [https://www.brookings.edu/wp-content/uploads/2022/11/NOV-2022-Signe\\_Mbaye\\_FINAL-1.pdf](https://www.brookings.edu/wp-content/uploads/2022/11/NOV-2022-Signe_Mbaye_FINAL-1.pdf) Accessed 19-03-2023

economically disadvantaged positions,<sup>13</sup> with an alarming projection of a forced internal migration by 2050.<sup>14</sup>

The World Bank's "GRADE" assessment of Nigeria's 2022 flooding incident estimates the total direct economic damage to be about US\$7 billion.<sup>15</sup> In the light of economic indicators, this represents a loss equivalent to 1.6% of Nigeria's estimated 2021 GDP.<sup>16</sup> Thus, for survival, Nigeria must be part of the concerted efforts by the global community through cooperative principles to fight against climate change. Interestingly, overcoming global environmental challenges would require the collective cooperation of all countries. This collectiveness has the advantage that offers weaker countries the opportunity to present their demands at

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<sup>13</sup> Kanta, Kumari Rigaud *et al*, 'Groundswell: Preparing for Internal Climate Migration' *The World Bank* [2018] Accessed 30/10/2022 <<https://www.worldbank.org/en/news/infographic/2018/03/19/groundswell--preparingfor-internal-climate-migration>>

<sup>14</sup> Ibid

<sup>15</sup> The Federal Republic of Nigeria, Regulatory Guidance on Nigeria's Carbon Market Approach *National Council on Climate Change (NCCC)* 2023 Retrieved 8<sup>th</sup> August, 2024 <<https://natccc.gov.ng/publications/NCCC%20Regulatory%20Guidance%20on%20Nigeria%E2%80%99s%20Carbon%20Market%20Approach.pdf>>

<sup>16</sup> Ibid

international discussion tables,<sup>17</sup> while also providing poorer countries the platforms to access climate related funds and other developmental interventions.<sup>18</sup> In this realization, the Paris Club Agreement of 2015 has introduced the Nationally Determined Contributions as the bedrock for measuring the various ambitious, domestic and global efforts of each individual member state towards building resilience against the impacts of global warming and climate change. This makes member states to ‘think globally and while acting locally’.<sup>19</sup> The whole idea is to nationally develop mechanisms that may not necessarily be market or economic based but must essentially mitigate the impacts of climate change or promote low-carbon economy.<sup>20</sup>

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<sup>17</sup> Ivanov Aleksandar, ‘The internationalization of the environmental protection and creation of the United Nations environment program’ *Horizons International Scientific Journal* [2018] (A) (22) 11 <<https://uklo.edu.mk/wp-content/uploads/2021/11/konecen-trud-p01-1.pdf>> Retrieved on 6/8/2024.

<sup>18</sup> Article 9 (3) of the Paris Agreement, 2015

<sup>19</sup> Mohammed *et al*, ‘A Critical Evaluation of “Think Globally, Act Locally” and “Think Locally, Act Globally” in the Context of Sustainable Development’ *ResearchGate* [2015] <[https://www.researchgate.net/publication/289125506\\_A\\_Critical\\_Evaluation\\_of\\_Think\\_Globally\\_Act\\_Locally\\_and\\_Think\\_Locally\\_Act\\_Globally\\_in\\_the\\_Context\\_of\\_Sustainable\\_Development](https://www.researchgate.net/publication/289125506_A_Critical_Evaluation_of_Think_Globally_Act_Locally_and_Think_Locally_Act_Globally_in_the_Context_of_Sustainable_Development)>

<sup>20</sup> Article 3 of the Paris Agreement, 2015

## 2.0. Nigerian Nationally Determined Contributions (NDCs) Action Plans

Before the conception of the idea of Nationally Determined Contributions (NDCs), there has been in existence, some kind of nationally conceived resilient policies and programs against the impact of the global warming. Apparently, such programs may not necessarily be ambitious when compared with the current NDCs mandated by the Paris Agreement, but their existence would amount to a greater prospect for the Nigerian State. These foundations overtime have been guided by the following principles:

*(1) Strategic climate change response is consistent with national development priorities; (2) Climate change is addressed within the framework of sustainable development, which ensures that climate change response must be sensitive to issues of equity, gender, youth, children and other vulnerable groups; (3) The use of energy as a key driver for high economic growth is pursued within the broad context of sustainable development; (4) Mitigation and adaptation are*

*integral components of the policy response and strategy to cope with climate change; (5) Climate change policy is integrated with other policies to promote economic and environmental efficiency; (6) Climate change is cross-cutting and demands integration across the work programmes of several government ministries/agencies/parastatals and stakeholders, and across sectors of industry, business and the community; (7) Climate change response provides viable entrepreneurship opportunities.<sup>21</sup>*

Apart from the above principles, historical development has shown that Nigeria has made good progresses on climate change and submitted its first national report on climate change to the UNFCCC in 2003 with a national development plan called Vision 2020.<sup>22</sup> In both policy programs, there was a unified voice that recognizes climate change as a threat to national development and economic growth which requires a domestic cooperation in its fight. Consequently the Nigerian Government had set out with creation of the Special Climate Change Unit

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<sup>21</sup> Michal Nachmany *et al*, 'Climate Change Legislation in Nigeria, an Excerpt from the 2015 Global Climate Legislation Study: A Review of Climate Change Legislation in 99 Countries' *Grantham Research Institute on Climate Change and the Environment* [2015] retrieved through: <[www.lse.ac.uk/GranthamInstitute/legislation/](http://www.lse.ac.uk/GranthamInstitute/legislation/)>

<sup>22</sup> Ibid

under the Federal Ministry of Environment.<sup>23</sup> The Unit was later upgraded to a full Department of Climate Change (DCC) under the same Ministry with the mandate of implementing the various conventions and the protocol geared towards mitigating the harsh impacts of global warming and climate change.<sup>24</sup> The DCC was also responsible for coordinating the activities of the Inter-ministerial Committee on Climate Change.<sup>25</sup> On the Regional Level, the Nigerian Government became party to a co-operation agreement with Germany, ECOWAS and Eleven other West African Countries (Benin, Burkina Faso, Cabo Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Mali, Niger, Sénégal and Togo) to form the West African Science Service Centre on Climate Change and Adapted Land Use (WASCAL). The WASCAL is a research based institution designed to

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<sup>23</sup> Federal Ministry of Environment, National Policy on Climate Change *Department of Climate Change* [2020] 57 <<https://climatechange.gov.ng/wp-content/uploads/2020/09/national-climate-change-policy-1-1.pdf>>

<sup>24</sup> Ibid 33

<sup>25</sup> Ibid

unravel the solutions to all climate change associated problems.<sup>26</sup>

There have been several adaption projects and actions by the Nigeria State. First, there was a World Bank assisted Nigeria Erosion and Watershed Management Project (NEWMAP) which was created to tackle gully erosion and land degradation in both the Southeastern and Northern part of Nigeria respectively.<sup>27</sup> This project was executed in collaboration with the Nigerian Federal Ministry of Environment. There was also the Research based project titled 'Building Nigeria's Response to Climate Change (BNRCC), with a five-year span.<sup>28</sup> This project commenced in 2007 and was piloted among the Nigerian communities by a Non-Governmental Organization called Nigerian Environmental Study/Action Team (NEST), primarily to test their resilient strength towards climate change

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<sup>26</sup> WASCAL, Welcome to WASCAL *Our Story Webpage* Retrieved on 7/8/2024 < <https://wascal.org/our-story/>>

<sup>27</sup> Hemen Mark Butu *et al*, Climate Change Adaptation in Nigeria: Strategies, Initiatives, and Practices *African Policy Research Institute* [2022] Working Paper 03 Retrieved 7/8/2024 <<https://afripoli.org/uploads/publications/Climate-Change-Adaptation-in-Nigeria-Strategies-Initiatives-and-Practices.pdf>>

<sup>28</sup> Ibid

impacts.<sup>29</sup> The third adaptive measure undertaken by the Nigerian Government was the establishment of a 1,500km Great Green Wall cutting across the 11 frontline states of Jigawa, Kano, Katsina, Kebbi, Sokoto, and Zamfara in the Northwest and Adamawa, Bauchi, Borno, Gombe, and Yobe in the Northeast.<sup>30</sup> This ambitious Green Wall project is expected to bring solution to the Sahara land degradation and other related issues within the rural areas.<sup>31</sup>

While the foregoing may have not been directly linked to the post Nationally Determined Contributions of States of the Paris Agreement 2015, there is no doubt that they form the foundation to stand future realizable ambitious actions. Consequently, Nigeria is said to have designed her NDC in line with the requirements of the

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<sup>29</sup> Woodley Ellen, 'Building Nigeria's Response to Climate Change: Pilot Projects for Community-Based Adaptation in Nigeria' *ResearchGate* [2011] Retrieved 7/8/2024

<[https://www.researchgate.net/publication/226801364\\_Building\\_Nigeria's\\_Response\\_to\\_Climate\\_Change\\_Pilot\\_Projects\\_for\\_Community-Based\\_Adaptation\\_in\\_Nigeria](https://www.researchgate.net/publication/226801364_Building_Nigeria's_Response_to_Climate_Change_Pilot_Projects_for_Community-Based_Adaptation_in_Nigeria)>

<sup>30</sup> Murtala Abdullahi, Great Green Wall: A Glance At Nigeria's Line Of Defence Against The Sahara *HumAngle* [2022] Retrieved 7/8/2024 <<https://humanglemedia.com/great-green-wall-a-glance-at-nigerias-line-of-defence-against-the-sahara>>

<sup>31</sup> Ibid

Paris Agreement on Climate Change mitigation and resilience. The background objective was to mitigate the negative impacts of the Climate Change and reduce carbon emission and greenhouse gas (GHG) by 20% by 2030.<sup>32</sup> A former Nigerian President, Muhammadu Buhari at the COP26 Climate Summit in 2021, had pledged net-zero emissions by 2060 and reduction of greenhouse gas emissions by 20% by 2030.<sup>33</sup> This pledge is no doubt in furtherance of the nationally determined contribution of Parties.<sup>34</sup> This pledge led to the birth of the Climate Change Act 2021, the Petroleum Industry Act, 2021, the Electricity Act, 2023 and other related policy frameworks that seem to have put Nigeria on the path to global response and resilience. The Climate Change Act and the Petroleum Industry Act came to the limelight in 2021. The two laws explicitly show the Nigerian Standpoint in climate change debacle. Apparently this pledge birthed the Climate Change Act,

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<sup>32</sup> Federal Ministry of Environment, National Climate Change Policy for Nigeria 2021-2030 *Department of Climate Change* [2021] 11 <[https://climatechange.gov.ng/wp-content/uploads/2021/08/NCCP\\_NIGERIA\\_REVISED\\_2-JUNE-2021.pdf](https://climatechange.gov.ng/wp-content/uploads/2021/08/NCCP_NIGERIA_REVISED_2-JUNE-2021.pdf)>

<sup>33</sup> Daisy Dunne, Carbon Brief: Clear on Climate Country Profiles *The Carbon Brief Profile: Nigeria* [2023] Retrieved on 21/4/2023 from <<https://www.carbonbrief.org/the-carbon-brief-profile-nigeria/>>

<sup>34</sup> Article 3 of the Paris Agreement, 2015

the Petroleum Industry Act and other related policy frameworks that seem to have put Nigeria on the path to mitigation responses and resilience actions.

The Climate Change Act established a body called the National Council on Climate Change (NCCC),<sup>35</sup> whose core responsibility is to make policies and decisions on all matters in relation to climate change in Nigeria.<sup>36</sup> Apart from policy making in matters of climate change, the NCCC is also saddled with the responsibility of implementing the provisions of the Act in the affairs of the various agencies, organs and levels of government, establishments and organizations within Nigeria, whether public or private.<sup>37</sup> By implication, both private entities and public agencies of the various levels of government are subject to the dictates of the Act. This goes a long way to mandate compliance with the requirements on climate resilience and mitigation strategies of the Nigerian Government. Again, the exclusion or non-applicability of the Fiscal stabilization

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<sup>35</sup> Section 3(1) of the Climate Change Act

<sup>36</sup> Ibid and Section 4(a-q)

<sup>37</sup> Section 2

clauses in all production sharing contracts<sup>38</sup> in relation to the operationalization or implementation of all penalties, taxes and commitments of the Nigerian State to the fight against climate change illuminates further the importance of the PIA as a good NDC.

Furthermore, the 5<sup>th</sup> Alteration to the 1999 Constitution of the Federal Republic of Nigeria gave birth to the Electricity Act, 2023. It enunciated a regime of renewable energy;<sup>39</sup> first of its kind in the industry. Hitherto, the Grid Area inhibition compelled the Renewable Energy Power Investors to generate electric power for the National grid.<sup>40</sup> Infact, failure to send power generated to the National Grid could lead to suspension or cancellation of the license granted to the Independent Power Projects (IPP), by the NERC.<sup>41</sup> History has shown that the rigidity posed by this

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<sup>38</sup> Section 305 (b-c) of the Petroleum Industry Ac, 2021

<sup>39</sup> Sections 1(n-o); 80(1-2) 164-165 of the Electricity Act, 2023

<sup>40</sup> NERC Application for Licences (Generation, Transmission, System Operation, Distribution and Trading) Regulations 2010

<sup>41</sup> Regulation 16 provides that NERC may suspend a license granted if the IPP is unable to discharge or perform the duties imposed on it by the terms and conditions of the licence, the Act, applicable laws, NERC's regulations, market rules etc. Regulation 17 provides that NERC may cancel a license granted if the IPP willfully or unreasonably contravenes terms and conditions of the licence, the Act, applicable laws, NERC's regulations, market rules etc.

requirement not only jeopardized renewable investment, it seriously retarded the effort to achieve energy mix in Nigeria and by extension impede the fight against climate change. As part of efforts to transition to safer energy resources, there was need to fully integrate Hydropower into the energy profile. Hence the Act incorporated the Hydroelectric Power Producing Areas Development Commission Act, 2010 and established the National Hydroelectric Power Producing Areas Development Commission (N-HYPPADEC).<sup>42</sup> The real essence is to reduce so much dependence on thermal and other fossil related energy resources. Thus apart from transition, the Electricity Act, 2023 has afforded the Nigeria State the opportunity of exploiting the water resources in a way that will curb flooding through more investments in dam infrastructures and technologies.

## **2.1. Carbon Market**

A carbon market refers to a market in which carbon units, representing emissions reductions, are exchanged within

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<sup>42</sup> Section 82 of the Electricity Act, 2023

a defined framework.<sup>43</sup> Essentially, a carbon market is a platform for trading carbon credits<sup>44</sup> and assessing carbon footprints. The Carbon markets are creation of the government, either in compliance with emission policy reduction targets or intentionally to drive revenue. The object of every carbon market is carbon, which has now been considered as one of the most significant sources of greenhouse gases linked to global warming is carbon dioxide.<sup>45</sup> In the attempt to achieve low-carbon environment, different strategies and market based mechanisms had been deployed to regulate carbon emission. This ranges from policies of low-carbon

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<sup>43</sup> FACT SHEET 2, Carbon Markets, An overview *Carbon Market Institute* [2021] Retrieved 8/8/2024 <[https://carbonmarketinstitute.org/app/uploads/2021/06/CMI\\_Fact\\_Sheet\\_2\\_Carbon-Markets-101.pdf](https://carbonmarketinstitute.org/app/uploads/2021/06/CMI_Fact_Sheet_2_Carbon-Markets-101.pdf)>

<sup>44</sup> Dayo Okusami, The Nigerian Carbon Market: Still in Ideation? *Templars Thoughts Lab* [2024] Retrieved 8/8/2024 <<https://www.templars-law.com/app/uploads/2024/07/The-Nigerian-Carbon-Market94.pdf>>

<sup>45</sup> The Editors of Encyclopaedia Britannica, Carbon dioxide, chemical compound. Climate Crisis Worsens: New Study Shows Peatlands Losing Battle Against Drought [2024] Retrieved 16/2/2024 <<https://www.britannica.com/science/carbon-dioxide>>

economy,<sup>46</sup> carbon capture<sup>47</sup> and sequestration<sup>48</sup> and most recently, the carbon pricing. The suitability of any mechanism or sets of mechanisms is highly dependent of on the policy framework underpinning implementations. However, with the disturbing impacts of climate change, the real purpose of carbon pricing would be proper if tailored towards emission reduction and mitigation strategies. One important feature of the carbon pricing is the idea that it involves both public and private sectors; and as at 2014 several Countries, Subnational States, Non-governmental Organizations and Investment Companies have all signed up for one of the World

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<sup>46</sup> Sengupta Piyali *et al*, Low Carbon Economy for Sustainable Development *ResearchGate* [2019] Retrieved 16/2/2024 <[https://www.researchgate.net/publication/333957835\\_Low\\_Carbon\\_Economy\\_for\\_Sustainable\\_Development](https://www.researchgate.net/publication/333957835_Low_Carbon_Economy_for_Sustainable_Development)>

<sup>47</sup> Goel, Malti, Carbon Capture and Storage Technology for Sustainable Energy *Researchgate* [2010] Retrieved 16/2/2024 <[https://www.researchgate.net/publication/221909693\\_Carbon\\_Capture\\_and\\_Storage\\_Technology\\_for\\_Sustainable\\_Energy](https://www.researchgate.net/publication/221909693_Carbon_Capture_and_Storage_Technology_for_Sustainable_Energy)>

<sup>48</sup> Lal Rattan, Carbon sequestration *Philosophical transactions of the Royal Society of London Biological sciences* [2007] (Series B) 363 815-30 Retrieved 16/2/2024 <[https://www.researchgate.net/publication/6079761\\_Carbon\\_sequestration#:~:text=Carbon%20sequestration%20implies%20transfer%20of,of%20increase%20in%20atmospheric%20CO2](https://www.researchgate.net/publication/6079761_Carbon_sequestration#:~:text=Carbon%20sequestration%20implies%20transfer%20of,of%20increase%20in%20atmospheric%20CO2)>

Bank's Initiatives on Carbon Pricing, titled Putting a price on carbon.<sup>49</sup>

The carbon pricing mechanism encompasses carbon tax and emission trading scheme.<sup>50</sup> Carbon tax has been identified as a major driver of green economies among the Nordic countries and can really be one way to help countries finance investments into a greener economy.<sup>51</sup> Infact, carbon tax was a prominent factor in the implementation of the United Nations Conference of Sustainable Development (UNCSD) 2012 document – the Future We Want.<sup>52</sup> On the other hand, the emission trading usually is designed to set a limit of emission, which corporations and emitting organization or countries cannot exceed. It is either: “Cap-and-trade systems” or “baseline-and-credit systems”. In a cap-and-trade system, an upper limit on emissions is fixed, and emission permits are either auctioned out or distributed for free according to specific criteria. Under a baseline-

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<sup>49</sup> Luis Mundaca, 'Driving a Green Economy through Carbon Taxation – Learning from the Nordic experience' Thesis for the Fulfillment of the Master of Science in Environmental Management and Policy Lund Sweden *International Institute for Industrial Environmental Economics* [2015] 9

<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

<sup>52</sup> Ibid.

and-credit system, there is no fixed limit on emissions, but polluters that reduce their emissions more than they otherwise are obliged to can earn ‘credits’ that they sell to others who need them in order to comply with regulations they are subject to for the purpose of meeting their emission targets. The Emission Trading System was recognized by the Paris Agreement<sup>53</sup> to allow countries meet their emission reduction pledge through carbon credit transfers and exchanges. It is an economic-wide and market based approach to address emission reduction issues.

We recall that the OECD had underrated Nigeria for not having an explicit carbon tax and an existing CO<sub>2</sub> emissions trading system.<sup>54</sup> This assertion may have been proven wrong. For instance, the NCCC in pursuit of its objectives is to collaborate with the Federal Inland Revenue Service to develop a mechanism for carbon tax in Nigeria.<sup>55</sup> Hence as a body, it is to generate its funds

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<sup>53</sup> Articles 5, 6(1-3), 10 of the Paris Agreement 2015

<sup>54</sup> OECD, *Taxing Energy Use for Sustainable Development Country Notes Macroeconomic and policy context* Retrieved 8/8/2024 <<https://www.oecd.org/tax/tax-policy/taxing-energy-use-nigeria.pdf>>

<sup>55</sup> Section 4(i) of the Climate Change Act, 2021

called the Climate Fund through the mechanisms of carbon tax, emission trading<sup>56</sup> and Carbon Budgeting.<sup>57</sup> Secondly, the Petroleum Industrial Act regulates hydrocarbon taxes<sup>58</sup>. The Petroleum Industry Act alongside the Climate Change Act offers the legal framework for the regulation of a carbon emission and tax regime. Furthermore, the Federal Government through the National Council on Climate Change (NCCC) has issued the Regulatory Guidance on Nigeria's Carbon Market Approach.<sup>59</sup> By the Policy pathway, Nigeria has reaffirmed its commitment to the development of the Carbon Market that would be strongly linked to its development priorities, its Nationally Determined Contributions (NDCs) and attainment of NetZero target.<sup>60</sup>

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<sup>56</sup> Section 15(1)(c and e)

<sup>57</sup> Sections 19, 20 and 21

<sup>58</sup> Sections 259, 260, 261 of the Petroleum Industry Act, 2021

<sup>59</sup> The Federal Republic of Nigeria, Regulatory Guidance on Nigeria's Carbon Market Approach *National Council on Climate Change (NCCC)* 2023 Retrieved 8<sup>th</sup> August, 2024 <<https://natccc.gov.ng/publications/NCCC%20Regulatory%20Guidance%20on%20Nigeria%E2%80%99s%20Carbon%20Market%20Approach.pdf>>

<sup>60</sup> Ibid

The Guidance Note recognizes the import of Article 6.2 of the Paris Agreement in guaranteeing voluntary cooperation between and among countries to trade in mitigation outcomes (GHGs reduced or avoided) to achieve the emission reduction targets in their respective NDCs. While enabling a local carbon market, the NCCC tends to underscore a market regime that accommodates both public and private sectors using the international instruments of Internationally Transferred Mitigation Outcomes (ITMOs) and Other International Mitigation Purposes (OIMP). The NCCC also targets huge investments in agriculture, forestry and water conservatives to improve the resilient capabilities of the Nigerian communities, institutions against climate disaster. As part of the strategies to make the carbon to thrive, the NCCC as an agency of the Federal Government hopes to leverage its partnership with other agencies while also appreciating the important place of the private sectors in achieving the goal.

Finally, the NCCC plans to adopt a “No Objection” model in the regulation of the carbon market in Nigeria. Although it is not certain what such would

means for the market regulation, it is however observed that a No Objection (NO) is a legal document issued by an organization usually a regulator stating no objection to the terms stated in the certificate in favour of the bearer. It is a requirement on all issuers to obtain a No Objection from their primary regulator before they can trade on the floor of the Nigerian Securities Exchange Commission.<sup>61</sup> The Guidance Note issued by the NCCC, stating that a “No-Objection” by the NCCC will be required by regulation to approve the issuance and transfer of certified credits generated across all sectors, may as well suggest that every trader of credit would need clearance in the form of no Objection Certificate from the NCCC before they can trade on their carbon credit.

## **2.2. Green Economy**

Green economy is a concept that advances the course and principles of sustainable development. It is not an

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<sup>61</sup> SEC Nigeria, ‘Circular To Issuing Houses On “No-Objection For Transactions’ *Securities and Exchange Commission, Nigeria* [2022] Retrieved 8/8/2024 <<https://sec.gov.ng/circular-to-issuing-houses-on-no-objection-for-transactions/>>

independent project or a substitute<sup>62</sup> of any sort to the sustainable development goal; rather it is a tool towards achieving sustainable development. Green economy was birthed by the inevitable clamour for structural development while advocating for sustainable use of the environment.<sup>63</sup> It appears credibly as the panacea which sustainable development may have proffered to the many questions of climate change, global warming, pollutions, desertification, species extinctions, ozone, resource depletion and all other imminent environmental threats to the ecosystem in the wake of 21st century. It underscores low carbon structural and economic development through deploying environmentally friendly technologies and investments. According to the United Nations Environmental Programme (UNEP) Report, green economy is characterized by low carbon technology, resource-use efficiency and socially

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<sup>62</sup> Okonkwo Osmond and Uwazie Uwazie, 'Green Economy and its Implications for Economic Growth in Nigeria' *Journal of Resources and Management* [2015] (11) 15

<sup>63</sup> Abdalla Hamdok, The Green Economy and Africa's Economic Transformation: A Balancing Act *Journal of African Transformation* [2015] (1) (1) 86.

inclusive development.<sup>64</sup> Thus, the quest for a very low carbon oriented economy is an integral factor towards greening a sustainable economy. What this means, is that interrogating the regulated quotient of carbon emission from the human activities into the environment is paramount for the integrity of a green economy. The nexus therefore arises from the context that the green economy is the means to an end, the end itself is to achieve low-carbon economy.

Although the concept of green economy and its inherent fundamentals have witnessed several decades of reverence, but its relevance in recent times stems from the implementations of the Clean Development Mechanisms originally set out by the Kyoto Protocol and later adopted by the Paris Agreement of 2015. In any case, green economy is nascent to the African continent, despite the continent's heavy dependence on the extractive industry and natural resources<sup>65</sup> for survival. Unfortunately, the hazardous consequences of these

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<sup>64</sup> Doreen Fedrigo-Fazio and Patrick Brink, Green Economy What Do We Mean By Green Economy? *Briefing. UNEP Division of Communications and Public Information* [2012] Retrieved on the 10/2/2024 <<https://wedocs.unep.org/bitstream/handle/20.500.11822/8659/>>

<sup>65</sup> Supra note 64

exploitative activities aided by unabated depletion of the natural resources pose major threat to existence in the continent. This justifies the imperativeness of the entire African Continent at the war against global warming and climate change.<sup>66</sup> Consequently, Nigeria as an important party in the African project is very much needed in the collective fight against the menace. Suffice to state that Nigeria has done well by being Party to the Paris Agreement, 2015, passing into Law various legislations that support mitigation actions, such as the Petroleum Industry Act 2020, the Climate Change Act 2021 and the Electricity Act, 2023. The Climate Change Act presents a formidable chance for Nigeria to achieve low greenhouse gas emission (GHG), inclusive of green growth and sustainable economic development.<sup>67</sup> In this provision, it is evident that green growth has been incorporated as part of the economic development strategy for Nigeria in line with her commitment under the Paris Agreement.

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<sup>66</sup> Ibid

<sup>67</sup> Section 1(a-i) of the Climate Change Act, 2021

### 2.3. Access to Climate Funds and Developmental Support Initiatives

Funding remains an integral part of the realization of a resilient future and adaptive strategies against climate change. Lack of finance features prominently in the African Green growth objectives. Perhaps this is the reason Developed Countries are obligated to voluntarily<sup>68</sup> provide financial resources to Underdeveloped Countries<sup>69</sup> to foster their respective growth and development strategies. This no doubt has formed the basis for countless climate funds and donations across the globe from International organizations, State and Non-State Actors.<sup>70</sup> The Africa's climate agenda and actions remain mostly unfunded ambitions<sup>71</sup> due largely as a result of the insignificant quotient of the funds that are accessible. To

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<sup>68</sup> Article 9(2) of the Paris Agreement, 2015

<sup>69</sup> Articles 9(1 and 3)

<sup>70</sup> UN Climate Finance, List of Recent Climate Funding Announcements *United Nations Climate Change* [2022] Retrieved 10/8/2024 <<https://unfccc.int/topics/climate-finance/resources/long-term-finance-documents/list-of-recent-climate-funding-announcements>>

<sup>71</sup> Malle Fofana, Empowering Africa's green future by bridging climate finance gap *The Korea Herald* [2024] (Contribution) Retrieved 10/8/2024 <<https://www.koreaherald.com/view.php?ud=20240603050531>>

bridge the funding gap requires intense efforts from all parties. There is need for undeveloped African countries to step up their games and Nationally Determined Contributions (NDCs) commitments under the Paris Agreement. This they can achieve first by consciously understanding that the idea of NDCs is not situated to perpetuate financial burden on countries, rather it poses a window of great investment opportunities.<sup>72</sup> Judging from above, it would not be out of place to import the cliché; Nigeria has paid its dues.

The Nationally Determined Contributions (NDCs) are in the right direction and several indicators have shown that climate resilience and other mitigation activities have been engraved in the principles that define the Nigerian pathway to development. This has also been elaborated in the various NDCs witnessed overtime. By all standards, Nigeria qualifies to receive funding interventions to support its developmental objectives,

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<sup>72</sup> Anthony Nyong, Unlocking the Potential of Nationally Determined Contributions in Africa *African Development Bank Group* [2024] Retrieved 10/8/2024 <<https://www.afdb.org/en/news-and-events/unlocking-potential-nationally-determined-contributions-africa-71853>>

prospects of poverty eradication, flood control and food security in line with the Paris Agreement.<sup>73</sup> Recently at the COP28, the Green Growth Global Institute (GGGI), an intergovernmental organization based in Seoul, South Korea introduced an Africa and Middle East SAFE Initiative backed by \$10 billion public-private partnership funding, to Scale-up Agriculture and Food Security for citizens of undeveloped countries in the two regions.<sup>74</sup> Part of the agendas that leveled up the COP28 discussions was funding issues. Infact on the sidelines of several panelists and delegates gatherings at the event were talks that rather exposed the domestic opportunities for bridging the climate funding gaps. The list were endless and top among them were financial instrument like greenhouse gas trading systems, green bonds, green loans, sustainability-linked bonds, sustainability-linked loans, efficient carbon markets, debt-for-climate swaps etc.<sup>75</sup> Furthermore, these investment opportunities open

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<sup>73</sup> Articles 2(1)(b-c) and 6(8) of the Paris Agreement

<sup>74</sup> Mahamadou Tounkara, 10 Billion USD Africa and Middle East SAFE Initiative Launched for Food Security *GGGI* [2023] Retrieved 10/8/2024 <<https://gggi.org/press-release/10-billion-usd-africa-and-middle-east-safe-initiative-launched-for-food-security/>>

<sup>75</sup> Climate Action, COP28: Bridging the climate finance gap in Africa and beyond *World Economic Forum* [2023] Retrieved 10/8/2024:

another dimension which can be leveraged in local talent and professional developments among younger generations towards a prospective Green Sector emerging markets.<sup>76</sup>

For Nigeria, apart from the emerging carbon market, the Green Bond also stands out significantly with already an existing legal framework. There is an introduction of Sovereign Green Bonds issuable by the Federal Government of Nigeria.<sup>77</sup> The objective of green bond is to promote an all-inclusive investment that encourages green growth. Apart from the financing opportunities offered, exchange platforms for green driven investments are promoted. It also opens a wide opportunities for both private and public investors to have secured investments that are tailored towards sustainable development. One of the foremost of such platforms is Orla Enright. It plans to establish a Green

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<<https://www.weforum.org/agenda/2023/12/cop28-bridging-the-climate-finance-gap-in-africa-and-beyond/>>

<sup>76</sup> Katie Hill *et al*, More Money, Fewer Problems: Closing Africa's Climate Finance Gap BCG [2024] Retrieved 10/8/2024: <<https://www.bcg.com/publications/2024/more-money-fewer-problems-closing-africas-climate-finance-gap>>

<sup>77</sup> Section 4(p) of the Climate Change Act, 2021

Exchange platform, the first of its kind on the continent that would enable companies to issue billions in green bonds and for investors to trade the debt in a secondary market.<sup>78</sup> This is one of the emerging markets which the promoters opined would intervene to fund turbines, electric vehicle charging stations, sustainable housing, solar panel installations and companies that want to reinvent their operations to become green-compliant.<sup>79</sup> Again investors driven by climate resilient principles have amassed huge capitals targeted at the Africa emerging green markets. Recently there was the Alterra backed by a \$30 billion catalytic climate investment fund from the UAE.<sup>80</sup> It is targeted at scaling up and accelerating investment in Renewable energy technologies and Resilience funding for Agriculture among the global South.

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<sup>78</sup> Josephine Okojie, Orla Enright: Startup driving Africa green bond issuance for sustainable financing *Business Day* [2024] Retrieved 10/8/2024: <<https://businessday.ng/interview/entrepreneur/article/orla-enright-startup-driving-africa-green-bond-issuance-for-sustainable-financing/?amp>>

<sup>79</sup> Ibid

<sup>80</sup> Alterra Management Limited, Financing the new climate economy *ALTERRA* [2024] Retrieved 10/8/2024: <<https://www.alterra.ae/>>

### **3.0 Conclusion**

Nigeria just as seen in several other sectors of our economic, social and political lives have adequate legal frameworks to achieve climate mitigation response. First, the Nigerian Constitution was tailored towards environmental consciousness and preservation. In addition, with the cumulative contributions of the statutory legislations to wit: the Climate Change Act 2021, the Petroleum Industry Act, 2021, the Electricity Act, 2023, it is evident that a clear pathway to ramp up its Nationally Determined Contributions (NDCs) objectives and commitments under the Paris Agreement. Consequently, with the various efforts and the legal frameworks properly implemented, while also considering key economic indicators, Nigeria aided with these tools already established above, has the capacity to achieve resilient status while achieving great economic developmental gains. If delivered upon, the Nationally Determined Contributions (NDCs) will improve standards of living, access to clean water, promote energy, food and water security for the citizens in all

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fronts. The country would become more resilient to climate impacts, as well as enable Nigeria to be able to contribute to the goal of keeping the global temperature increase to well below 20C. However, as a Federated Political Structured State, a Nationally Determined Contributions (NDCs) implemented along the three tiers of Local, State and Federal Governments system will project more economic benefits and prosperity for Nigeria than otherwise unbundled.