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## Corporate Accountability for Climate Change and Natural Environment in Nigeria: Trends, Limitations and Future Directions

Mary Toluwalase Olawuyi

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## **CORPORATE ACCOUNTABILITY FOR CLIMATE CHANGE AND NATURAL ENVIRONMENT IN NIGERIA; TRENDS, LIMITATIONS AND FUTURE DIRECTIONS**

**Mary Toluwalase Olawuyi\***

### **ABSTRACT**

One of the contemporary problems in the business and human rights debate is the obligations of business enterprises to reduce and redress the adverse effects of their operations on the environment. In Nigeria, despite the existence of various regulations and monitoring institutions, environmental pollution caused by the activities of business enterprises persists. The impact of climate change and environmental damage on sustainable development in Nigeria can no longer be ignored as our common future is becoming critically dependent on making the condition of the environment and human lives our top priorities. There is need for a stringent legal framework on business and human rights in Nigeria, accelerated implementation of the National Action plan on business and human right, a committed implementation of existing regulations on environmental protection, strict enforcement of laws and proper awareness that will ensure responsible business practices by business enterprises in all key

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\* LL.B (Hons) Afe Babalola University, Ado Ekiti, Nigeria, Research Associate, Institute for Oil, Gas, Energy, Environment and Sustainable Development, Afe Babalola University, Ado Ekiti. Email: olawuyimary11@gmail.com. Special gratitude to Professor Damilola Olawuyi SAN, for his kind mentoring and wonderful lectures on environmental law and oil and gas law which has served as an inspiration that sparked my interest in this area of law.

sectors in Nigeria. This study examines the concept of corporate accountability in Nigeria. It identifies the inadequacies of existing national laws on corporate accountability for environmental protection, and proffer solutions to these gaps.

**Keywords:** Corporate Accountability, Climate Change, Business and Human Rights.

## 1. INTRODUCTION

This article examines corporate responsibility to anticipate and redress human rights violations and environmental pollution in Nigeria. It evaluates the nature, scope and source of such obligations in Nigeria, current legal gaps and challenges that hinder effective enforcement and ways forward to ensure more holistic recognition and enforcement of such obligations.

Corporate accountability for environmental pollution involves the obligations of business enterprises to approach their operations in a manner that fulfils human rights standards and mitigates sources of climate change.<sup>1</sup> It mandates business enterprises to actively integrate human rights principles into their sphere of operations and implementation to ensure prevention of adverse human rights impacts.

According to the 1972 Stockholm Declaration, man's natural and man-made environment are essential to his well-being and the enjoyment of basic human rights, especially the right to life.<sup>2</sup> This indicates that a clean and healthy environment is

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<sup>1</sup> Olawuyi, D, 'Corporate Accountability for the Natural Environment and Climate Change. In Cambridge Companion to Business and Human Rights' in Ilias, B., Stein, M.A., Eds.; Cambridge University Press: Cambridge, UK, (2021).

<sup>2</sup> UN Conference on the Human Environment (Stockholm Declaration) UN Doc. A/CONF.48/ PC.13 (1971), para. 1.

indispensable for the enjoyment of all human rights. By integrating a rights-based approach through human rights-based policies, business enterprises can proactively anticipate and tackle environmental problems and therefore, meet international and domestic obligations relating to sustainability, human rights and environmental protection.<sup>3</sup>

At the international level, efforts are being made to recognise linkages between human rights and the enjoyment of a healthy, safe, clean and sustainable environment as there are lots of instruments that now seek to hold corporations directly responsible for climate change<sup>4</sup>. For instance, the adoption of the United Nations' 2030 Agenda for Sustainable Development<sup>5</sup> illustrates that the roles of corporations in limiting environmental damage has assumed greater significance and urgency.

In Nigeria, despite the existence of a large number regulations and monitoring institutions, environmental pollution caused by corporate activities persists. The Niger Delta serves as an example of the adverse environmental effects of oil and gas production on human lives. In the recent case of *Okpabi & Ors V Royal Dutch Shell & Anor*<sup>6</sup>, more than 40,000 citizens of two affected areas in the Niger Delta brought joint claims in the English courts against Royal Dutch Shell and one of its Nigerian subsidiaries, Shell Petroleum Development Company of Nigeria Ltd. The Claimants alleged that oil spills and pollution from pipelines operated by Shell Petroleum

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<sup>3</sup> Ibid. See also Damilola Olawuyi & Oyeniyi Abe, *Business and Human Rights Law and Practice in Africa* (Edward Elgar, 2022) 1-15.

<sup>4</sup> Olawuyi (n.1).

<sup>5</sup> United Nation SDG, 'The 2030 Sustainable Development Agenda' < <https://sdgs.un.org/2030agenda> > accessed 10<sup>th</sup> January, 2023.

<sup>6</sup> [2021] UKSC 3 on appeal [2018] EWCA Civ 191

Development Company caused large environmental damage, and as a result, natural water sources cannot safely be used for drinking, washing, fishing, agricultural, or recreational purposes.<sup>7</sup>

The search for robust legal remedies to address corporate responsibility for human rights violations relating to the environment in Nigeria remains a complex and contentious concern. Reasons for this include the slow implementation of a national action plan on business and human rights,<sup>8</sup> continuation of outdated regulations on environmental protection, inadequate sanctions for non-compliance with existing regulations<sup>9</sup>, absence of a legal framework on Business and Human Rights that enforces environmental protection on Nigerian corporations in their spheres of operations, and ineffectiveness of the regulations to hold corporations accountable for non-compliance which can be as a result of conflicts between environmental objectives and profit motives formulated by companies.

Corporations should be mandated by law to prove that their activities are not causing harm to their host communities<sup>10</sup>. They should be responsible for the remedial costs of their environmental impacts and stringent penalties should be imposed on them for violation of regulations.<sup>11</sup> A strict law for

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<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Noah A, Adhikari P, Ogundele B and Yazdifar H, 'Corporate environmental accountability in Nigeria: An example of regulatory failure and regulatory capture' (2020) *Journal of Accounting in Emerging Economies*.

<sup>10</sup> Union of concerned scientists 'Holding Major Fossil Fuel Companies Accountable for Nearly 40 Years of Climate Deception and Harm' (2016) available at: <<https://www.ucsusa.org/resources/holding-major-fossil-fuel-companies-accountable>> accessed 3rd November, 2022

<sup>11</sup> Ibid.

non-compliance will make them conscious of all their endeavour. Requiring corporations causing environmental pollution and climate impacts to compensate affected communities would help remedy the injustice of climate change, internalize costs of greenhouse gas emissions, make corporations tremble at the prospect of further damage awards, and thus help prevent further harm.<sup>12</sup>

However, regulations alone without proper implementation approach will be incapable of yielding positive outcome. The effective enforcement of environmental regulations has a wider implication and is connected to the wellbeing of the community and sustainability.<sup>13</sup> This fact is yet to be recognized and accepted in Nigeria.

After this introduction, Section 2 unpacks various international, regional and national laws on corporate accountability, climate change and environmental protection. Section 3 examines the gaps in the existing national laws and institutions in Nigeria which limit coherent and effective enforcement of corporate responsibility for natural environment and climate change. Section 4 highlights practical steps to the effective implementation of business and human rights in Nigeria. Section 5 is the concluding section.

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<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

## 2. LEGAL REGIME ON CORPORATE ACCOUNTABILITY, CLIMATE CHANGE AND ENVIRONMENTAL PROTECTION

### 2.1 International legal regime on corporate accountability, climate change and environmental protection

The adverse environmental effects of the activities of industries on sustainable development have drawn global attention. Business enterprises operate in a complex environment, specifically when operating in high risk sectors such as mining, construction, oil and gas, banking, health care amongst others.<sup>14</sup> Various industrial activities such as manufacturing processes, and resource production operations, particularly in extractive industries, directly result in a wide range of adverse environmental, social, and human rights impacts making corporations major contributors to climate change and environmental degradation. Severe environmental problems such as air pollution, loss of biodiversity, water pollution, trade in endangered plant and animal species, forced displacements and climate change accentuate the need for greater corporate accountability for environmental harm.<sup>15</sup>

Companies play prominent roles in advancing sustainable development in many parts of the world through corporate accountability and respect for human rights, especially obligations relating to climate change and environmental protection. States are now seeking to enforce corporations to become responsible for their environmental impacts and

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<sup>14</sup> The Friedrich-Ebert-Stiftung African Union Cooperation Office: Oyeniyi .A, 'The State of Business and Human Rights in Africa' (2022) 34 <<https://library.fes.de/pdf-files/bueros/fes-ua/19589-20221107.pdf>> accessed March 2 2023.

<sup>15</sup> Damilola S. Olawuyi, 'The Principles of Nigerian Environmental Law' 2<sup>nd</sup> Edition (Afe-Babalola University Press 2015)

discharge their environmental accountability. At the international level, efforts are being made to recognise linkages between human rights and the enjoyment of a healthy, safe, clean and sustainable environment.<sup>16</sup> There are lots of instruments that now requires holding corporations directly responsible for climate change. At the global level, number of emerging economies have in recent years enacted regulations to monitor companies' environmental effects on society and mitigate the adverse consequences. Developing countries have also started adopting international guidelines, frameworks and regulations, including environmental and sustainability reports to address these issues. Corporate actors must 'put efforts to advance respect for human rights at the heart of the people part of sustainable development' in order for them to fully realise their contribution to sustainable development.<sup>17</sup> Examples of international frameworks on corporate accountability and environmental protection includes:

### **2.1.1 The United Nations Guiding Principles on Business and Human Rights**

The United Nations Guiding Principles (UNGPs) are comprehensive universal agenda on business and human rights that was endorsed in 2011 by the UN Human Rights Council. They represent the first globally acknowledged framework to clarify the respective duties and responsibilities of governments and business enterprises to prevent, mitigate and remedy adverse human rights impacts of business operations.<sup>18</sup> Though not legally binding, the UNGPs establishes the corporate

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<sup>16</sup> Ibid.

<sup>17</sup> JG Ruggie, 'Making Globalization Work for All: Achieving the Sustainable Development Goals through Business Respect for Human Rights' (Shift Project, 2016).

<sup>18</sup> Guiding Principle 16 United Nations Guiding Principles on Business and Human Rights



responsibility to respect, protect, and fulfil human rights which is a “global standard of expected conduct” that applies to “all enterprises regardless of their size, sector, operational context, ownership and structure”.<sup>19</sup> The adoption of the UNGPs came at the back of a long history of many failed attempts by the UN to deal with human rights abuses perpetuated by corporations and since their endorsement by the United Nations in 2011, they have been gaining ground.<sup>20</sup> The United Nations Guiding Principles is therefore an important tool for advocacy in the area of business and human rights.

### **2.1.2 The United Nations General Assembly on the Resolution to Right to Clean, Healthy and Sustainable Environment**

This resolution was passed on the 28<sup>th</sup> of July 2022 and it recognizes for the first time, the human right to a clean, healthy and sustainable environment as a right for all and not just a privilege for some.<sup>21</sup> The process that led to this resolution started with the 1972 Stockholm Declaration which is also based on a similar text adopted in 2021 by the Human Rights Council that calls upon States, international organizations, and business enterprises to scale up efforts to ensure a healthy environment for all.

The General Assembly affirmed that the human right to a clean, healthy and sustainable environment is linked to parts of

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<sup>19</sup> Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework [UNGPs] available at: <[http://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](http://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf)>

<sup>20</sup> O. Abe and D. Olawuyi, ‘Business, human rights, and the United National Guiding Principles: The search for good-fit approaches’ (Edward Elgar, 2022)

<sup>21</sup> “UN General Assembly recognizes the human right to a healthy environment in line with the Escazú Agreement” <<https://www.cepal.org/en/notes/un-general-assembly-recognizes-human-right-healthy-environment-line-escazu-agreement>> accessed 13th April, 2023.

existing international human rights law and its promotion requires the full implementation of the multilateral environmental agreements under the principles of international environmental law.<sup>22</sup> The UN Secretary-General, asserts that the resolution will help reduce environmental injustices, close protection gaps, empower people and also help States in accelerating the implementation of their environmental and human rights obligations and commitments.<sup>23</sup>

### **2.1.3 The United Nations Framework Convention on Climate Change (UNFCCC)**

The United Nations Framework Convention on Climate Change<sup>24</sup> is an important international legal framework on climate change. It was established by countries who came together under an international treaty based on the need to cooperatively adopt steps to limit increasing average global temperature and the resulting changes on the global climate, and cope with its resultant impacts. The Convention was signed in 1992, entered into force on 21<sup>st</sup> March 1994 and has been ratified by 197 states who have committed to act on climate change and regularly report on their progress.<sup>25</sup> Generally, the UNFCCC seeks to address growing concerns over the change in the earth's climate and its adverse effects on humankind. The ultimate aim of the convention is the "stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous

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<sup>22</sup> Ibid.

<sup>23</sup> The UN News Global perspective Human Stories "The UN General Assembly declares access to a clean and health environment a universal right <<https://news.un.org/en/story/2022/07/1123482>> accessed 13<sup>th</sup> April, 2023

<sup>24</sup> The United Nations Framework Conference on Climate Change (Adopted 6 May 1992, effective 21 March 1994)

<sup>25</sup> <https://www.lse.ac.uk/granthaminstitute/explainers/what-is-the-un-framework-convention-on-climate-change-unfccc/> <Accessed 24<sup>th</sup> December, 2022>

anthropogenic interference with the climate system”<sup>26</sup>. Although it does not establish legally binding emission reduction targets or commitments, the convention establishes a set of common understanding between parties on the existence of climate change, that climate change is a pressing problem and that there is an urgent need to tackle it by reducing the aggregate level of emissions of greenhouse gases.

### 2.1.4 The Paris Agreement

The Paris Agreement is an international treaty, named for the city of Paris, France. It was adopted in December 2015 and entered into force on 4<sup>th</sup> November, 2016.<sup>27</sup> The Paris Agreement set out to improve upon and replace the Kyoto Protocol, an earlier international treaty designed to curb the release of greenhouse gases.<sup>28</sup> The Paris Agreement is a landmark in the multilateral climate change process because, for the first time, a binding agreement brings all nations into a common cause to undertake ambitious efforts to combat climate change and adapt to its effects.<sup>29</sup>

The Paris Climate Agreement recognizes that parties should, ‘when taking action to address climate change, respect, promote and consider their respective obligations on human rights’ an explicit link between climate action and human rights.<sup>30</sup> The Paris Agreement reinforces the need for parties to

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<sup>26</sup> Article 2, United Nations Framework Convention on Climate Change.

<sup>27</sup> <https://www.britannica.com/topic/Paris-Agreement-2015> <Accessed 26th December 2022>

<sup>28</sup> Ibid.

<sup>29</sup> <https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement><Accessed 26th December 2022>

<sup>30</sup> Paris Agreement under the United Nations Framework Convention on Climate Change, Conference of the Parties Twenty-first Session Paris, 30 November to 11 December 2015, UN Doc. FCCC/CP/2015/L (2015), available at: [https://unfccc.int/sites/default/files/english\\_paris\\_agreement.pdf](https://unfccc.int/sites/default/files/english_paris_agreement.pdf).

ensure that all climate projects and investments within their jurisdictions including projects conducted by, or in partnership with, private enterprises respect human rights. The most important piece of this agreement is that all members must make pledges of action every five years to lower their greenhouse gas emissions.

## **2.2 African instruments on corporate accountability, climate change and environmental protection**

### **2.2.1 The African Union Resolution on Business and Human Rights in Africa (2023)**

The African Commission on Human and Peoples' Rights has become aware of the detrimental effects of the activities of large corporations on communities' and peoples' rights, as well as the need for a strong regional framework to stop and remedy violations of business-related human rights.<sup>31</sup> The African Union (AU) was required by the Commission to update its policies on business and human rights, taking into account soft law instruments.<sup>32</sup> The commission advocates for the development of mechanisms for their efficient implementation as well as the successful domestication of relevant regional human rights standards on business and human rights by emphasizing the responsibility of states to enact measures to ensure that commercial establishments respect human rights as well as the duties that corporations, particularly multinational ones, have to rights holders. The Commission accentuates the

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<sup>31</sup> Resolution on Business and Human Rights in Africa – ACHPR/Res.550 (LXXIV) 2023 <[https://achpr.au.int/en/adoptedresolutions#:~:text=Resolution%20on%20Business%20and%20Human%20Rights%20in%20Africa%20%2D%20ACHPR/Res.550%20\(LXXIV\)%202023](https://achpr.au.int/en/adoptedresolutions#:~:text=Resolution%20on%20Business%20and%20Human%20Rights%20in%20Africa%20%2D%20ACHPR/Res.550%20(LXXIV)%202023)>

<sup>32</sup> O. Jacob “Resolution on Business and Human Rights in Africa – ACHPR/Res.550 (LXXIV) 2023” available at: < <https://ghrtv.org/resolution-on-business-and-human-rights-in-africa-achpres550-lxxiv-2023>> accessed April 18, 2023.

significance of good resource governance in order to promote sustainable resource development on the African continent and to realize the economic, social, and cultural rights of African peoples.<sup>33</sup>

### **2.2.2 The African Charter on Human and Peoples Right**

The African Charter on Human and Peoples' Rights is a regional human rights treaty signed by virtually all African states that contains robust human rights provisions, including the human rights to a safe and healthy environment.<sup>34</sup> Article 24 of the African Charter expressly recognizes the right to environment and it provides that 'all peoples shall have the right to a general satisfactory environment favourable to their development'. To ensure the realization of this and other rights, in 2009, the African Commission established a Working Group on Extractive Industries, Environment and Human Rights Violations in Africa (WGEI) with a mandate to study 'the role of transnational corporations in human rights abuses and the potential liability of non-state actors for human and peoples' rights violations' within the context of the African Charter of Human and Peoples' Rights.<sup>35</sup> The WGEI has been at the forefront of evaluating and monitoring corporate accountability for human rights violations in key sectors across Africa.

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<sup>33</sup> The adopted Resolution on Business and Human Rights in Africa, available at: <<https://achpr.au.int/en/adopted-resolutions/550-resolution-business-and-human-rights-africa-achprres550-lxxiv-2023> > accessed April 18, 2023

<sup>34</sup> African Commission on Human and Peoples' Rights, State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter Relating to Extractive Industries, Human Rights and the Environment.

<sup>35</sup> ACommHPR, Resolution 148 (XLVI), Resolution on the Establishment of a Working Group on Extractive Industries, Environment and Human Rights Violations in Africa.

### **2.2.3 The African Union 2012 Resolution**

The African Union adopted this Resolution on a human rights-based approach to Natural Resources Governance.<sup>36</sup> This Resolution, amongst other things, calls on governments to ‘set up independent monitoring and accountability mechanisms to ensure that human rights are justiciable and extractive industries and investors legally accountable in the country hosting their activities and in the country of legal domicile’.<sup>37</sup> The Resolution harmonizes and builds on previous efforts by African governments. Article 21, 22 and 24 of the Charter provides for the rights of all people to freely dispose their wealth and natural resources; to economic, social and cultural development; and to a generally satisfactory environment favourable to their development.

### **2.2.4 African Commission Resolution 367: Resolution on the Niamey Declaration on ensuring the upholding of the African Charter in the Extractive Industries Sector (2017)<sup>38</sup>**

In 2017, the African Commission took a further step toward elucidating the content and scope of Article 27 of the African Charter through the introduction of its reporting guidelines on the same article in the context of extractive industries.<sup>39</sup>

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<sup>36</sup> Resolution on a Human Rights-Based Approach to Natural Resources Governance, African Commission on Human and Peoples’ Rights, 51st Sess, (2012)

<sup>37</sup> Ibid.

<sup>38</sup> African Commission on Human and Peoples’ Rights. “Resolution on the Niamey Declaration on Ensuring the Upholding of the African Charter in the Extractive Industries Sector.” ACHPR/Res. 367 (LX) 2017 § 60th Session, 2017. Available at <<https://achpr.au.int/en/special-mechanisms-reports/resolution-niamey-declaration-ensuring-upholding-african>> accessed April 18, 2023.

<sup>39</sup> O. Abe, ‘Implementing Business and Human Rights Norms in Africa’ (Routledge, 2022).

According to this resolution, African States are to report on mechanisms in place to ensure public participation, accountability and access to information, non-discrimination and equality, empowerment and public awareness, legality and access to justice in mining. Most of the decisions of the African Commission on environmental protection and human rights have focused on the rights of indigenous persons in the context of extractive industries and forced removals, which is a common problem in Africa. Although these guidelines and principles specifically pertain to extractive industries, they do provide useful guidance and fill numerous gaps left by the Social and Economic Rights Action Centre (SERAC).<sup>40</sup> For example, the guidelines provide a definition for the term ‘people’, and unpack, in depth, the content of the right as well as the corresponding duties of both state and non-state actors.

### **2.3 National Legal Regime on Corporate Accountability, Climate Change and Environmental Protection**

Over the past decades, Nigeria has responded to several environmental challenges by promulgating numerous laws and regulations on climate change and environmental protection. These include:

#### **2.3.1 The 1999 Constitution of the Federal Republic of Nigeria (as amended)**

The constitution is the supreme law of Nigeria and its provisions have a binding force on all persons and authorities in the federal republic of Nigeria. Chapter II sets out the fundamental objectives and directive principles of state policy which includes protecting and improving the environment and safeguarding the air, land, forest, and wildlife.<sup>41</sup>

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<sup>40</sup> Ibid.

<sup>41</sup> Section 20 *ibid.*

These fundamental principles unlike other provisions of the constitution are not justiciable and cannot be enforced in a court of law<sup>42</sup>. The Constitution makes provisions for certain constitutionally guaranteed rights under Chapter IV<sup>43</sup> with no special provision for Business and Human Rights. Thus, there is need for a constitutional reform to make environmental injustice addressable through a provision on Business and Human rights and sufficient compensation awarded to the aggrieved parties or polluted host communities.<sup>44</sup>

### **2.3.2 The Climate Change Act 2021**

To achieve the reduction of greenhouse gas emissions in Nigeria and protect the environment and ecosystem from the effects of climate change, President Muhammadu Buhari signed the Climate Change Bill into law in November 2021. This Act has been described as one of Nigeria's life-changing laws. Private entities have responsibilities backed by sanctions for non-compliance under this Act.<sup>45</sup>

The National Council on Climate Change (NCCC) is saddled with the responsibility of implementing the provisions of the Climate Change Act. A private entity which fails to meet its annual carbon emission reduction targets is liable to a fine determined by the council. Though, the council was established in 2022, its pace of implementation is still very slow. Compliance with the provisions of this law is at a very low level because many companies are not even aware of the law let alone complying with it. Committees and other oversight

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<sup>42</sup> Section 6(6)(c) *ibid.*

<sup>43</sup> Section 33-43 *ibid.*

<sup>44</sup> O.J. Olujobi, 'Nigerian Petroleum, Energy and Gas Resources Law: Legal Theories, Cases, & Practice' (Princeton & Associate Publishing Co. Ltd, 2022)

<sup>45</sup> Zainab, Odia and Aliua: 'Review of Nigeria's Climate Change Act, 2021' available at <<https://www.aluko-oyebode.com/insights/a-review-of-nigerias-climate-change-act-2021/>> accessed March 4 2023.



bodies that are meant to assist in carrying out implementations have not been created in a timely manner therefore making the efficiency of the council challenging.

### **2.3.3 The National Environmental Standards and Regulations Enforcement Agency (NESREA) Act 2007**

The National Environmental Standards Regulations and Enforcement Agency (NESREA) Act 2007 is Nigeria's principal legislation on environmental protection. The act empowers the National Environmental Standards Regulations and Enforcement Agency (NESREA) to cooperate with other government agencies to remove any pollutants discharged into the Nigerian environment.

The Agency is charged with the role of protection and development of the environment, conservation and sustainable development of natural resources and the enforcement of environmental standards. It prohibits the discharge of hazardous substances into the air, land and water. Its regulatory functions come with a notable exception; none of them extends to the oil and gas sector.<sup>46</sup> The Act specifically exempts the oil and gas sector from its sphere of regulation on a myriad of issues. This include for example, the agency's power to conduct public investigations on pollution and the degradation of natural resources, and review existing guidelines, regulations and standards on the environment, which excludes the oil and gas sector.<sup>47</sup> There is need to expand the powers of the agency to cover environmental issues arising from the oil and gas sector.

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<sup>46</sup> Section 7 (g), (h), (j), (k) and (l) *ibid.*

<sup>47</sup> Section 8 (g)–(k) *ibid.*

### **2.3.4 The Petroleum Industry Act 2021**

The Petroleum Industry Act (PIA) 2021 is the main law governing oil and gas operations in Nigeria. It has relevant provisions aimed at protecting the environment from risks posed by activities in the petroleum industry, for instance, it prohibits gas flaring or venting of natural gas.<sup>48</sup> The regulatory duties previously performed exclusively by the defunct Department of Petroleum Resources (DPR) is divided into two specialized parts to allow newly created bodies, the Nigerian Upstream Petroleum Regulatory Commission<sup>49</sup> (NUPRC) and Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA)<sup>50</sup> to take up each of the two parts respectively.

#### **i. Nigerian Upstream Petroleum Regulatory Commission (NUPRC)**

The Nigerian upstream regulatory commission was established by the Petroleum Industry Act 2021. It takes over the upstream regulatory functions of the defunct DPR<sup>51,52</sup>. One of the objectives of the Commission is to ‘promote healthy, safe, efficient and effective conduct of upstream petroleum operations in an environmentally acceptable and sustainable manner.’<sup>53</sup> Hence, the Commission beams its regulatory searchlights on drilling sites, storage facilities, refineries, storage depots, pump stations, sales outlets etc. to ensure that operators comply with all regulatory standards as they concern environmental protection.<sup>54</sup>

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<sup>48</sup> Section 105 Ibid.

<sup>49</sup> Section 4(1)-Section 28 *ibid*.

<sup>50</sup> Section 29(1) *ibid*.

<sup>51</sup> Department of Petroleum Resources

<sup>52</sup> Petroleum Industry Act 2021, Section 4 – Section 28.

<sup>53</sup> Section 6(d) *ibid*.

<sup>54</sup> Section 6(a) *ibid*.

## ii. Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA)

The Nigerian Midstream and Downstream Petroleum Regulatory Authority was created by the Petroleum Industry Act 2021<sup>55</sup>. The agency inherits the midstream and downstream functions of the defunct DPR.<sup>56</sup> Its objectives include promoting ‘healthy, safe, efficient and effective conduct of midstream and downstream petroleum operations’<sup>57</sup>, ‘the supply and distribution of natural gas and petroleum products in midstream and downstream operations as well as the security of natural gas supply for the domestic gas market.’<sup>58</sup>

The Petroleum Industry Act 2021 appears to be lenient on offenders as some of the penalties prescribed for environment-related offenses are too soft to effectively deter offenders.<sup>59</sup> There is therefore need for a legal reform in which stringent penalties and sanctions will be imposed on environmental polluters. Regulatory institutions should be adequately empowered to enforce this.

### 2.3.5 The Environmental Impact Assessment (EIA) Act 2004

The Environmental Impact Assessment Act is the primary legislation for Environmental Impact process in Nigeria.<sup>60</sup> The Act prohibits the public and private sectors from undertaking or embarking on projects that may significantly affect the

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<sup>55</sup> Section 29 - Section 52 Petroleum Industry Act 2021.

<sup>56</sup> Department of Petroleum Resources

<sup>57</sup> Section 31 (c) Petroleum Industry Act 2021.

<sup>58</sup> Section 31 (e) *ibid*.

<sup>59</sup> Okoro & Arinze-Umobi, ‘The Petroleum Industry Act 2021 and Quest for Stricter Environmental Regulation in Nigeria’s Energy Sector’, (2022) accessed March 1 2023.

<sup>60</sup> The Environmental Impact Assessment Act of 1992, Laws of the Federation of Nigeria 2004, c E12, section 61(1)

environment without prior consideration of their environmental effects at the early stages of the project.<sup>61</sup>

One innovation introduced by the Petroleum Industry Act 2021 is the requirement that any entity possessing a licence or lease for operation in the upstream and midstream sub-sectors of the oil and gas industry submits an environmental management plan to the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) or the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA) as the case may be, provided that the project is such that requires environmental impact assessment (EIA)<sup>62</sup>. The Commission shall approve the plan if it complies with relevant Environmental Acts and the applicant possesses ‘the capacity or has provided for the capacity to rehabilitate and manage negative impacts on the environment.’<sup>63</sup> This provision is commendable in that it aims for a proactive response to environmental issues and it compels each operator to have in place a ready-made plan as well as ensure capability for remedying environmental problems that may arise from their oil and gas activities.

However, there is no penalty specifically prescribed for non-compliance with this particular requirement. The umbrella penalty of license or lease revocation<sup>64</sup> is what applies which appears to be impracticable given that license or lease revocation comes with serious consequences that may be so broad as to interrupt industry activities and even the economy of the nation, a reason that may have been behind the

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<sup>61</sup> Sections 2(1)-(3). The Act provides a detailed account of the contents of an environmental impact assessment, as well as the conditions to be met in handing down a decision on a proposed activity. See Sections 4, 9(1), *ibid*.

<sup>62</sup> Section 102(1) The Petroleum Industry Act, 2021.

<sup>63</sup> Section 102(3) *ibid*.

<sup>64</sup> Section 96 (1)(i) Petroleum Industry Act 2021

government's reluctance to apply this measure over the years. Therefore, other punishments such as heavy fines will be more realistic in the circumstance while licence or lease revocation would be applied only in extreme cases, such as when breach becomes repeated and incessant.<sup>65</sup>

### **2.3.6 The Companies and Allied Matters Act (CAMA) 2020**

This is the main legislation that provides a regulatory framework on how businesses should be carried out in Nigeria. The Act makes provision for companies' incorporation, business name, incorporate trustees, running and winding up. The Corporate Affairs Commission (CAC) was established by Section 1 of the act<sup>66</sup> as an agency charged with the mandate of administering company law in Nigeria. However, it has no power to enforce corporate accountability for climate change and environmental protection.<sup>67</sup> Thus, there is a need for legal reform to make companies responsible for the effect of all their activities on the environment. The Act should impose an environmental obligation on directors of Nigerian companies<sup>68</sup> and mandate them to consider the impact of the company's activities on the environment in the community where it carries out its business operations. The powers of the commission should also be extended to ensure that corporations are strictly obliged to comply with this new provision.

### **2.3.7 The National Human Rights Commission Act 2010**

The National Human Rights Commission was established by the National Human Rights Commission Act, 1995, as amended by the National Human Rights Commission Act,

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<sup>65</sup> Okoro & Arinze-Umobi, 'The Petroleum Industry Act 2021 and Quest for Stricter Environmental Regulation in Nigeria's Energy Sector', (2022).

<sup>66</sup> Cap C20 Laws of the Federation of Nigeria 2004.

<sup>67</sup> The Companies and Allied Matters Act (CAP. C20), LFN 2004.

<sup>68</sup> Section 305 (3) *ibid*.

2010 in line with Resolution 48/134 of the 1992 United Nations Assembly which encouraged all member states to establish independent national institutions for the promotion, protection and enforcement of human rights. The act confers on the commission the authority to deal extensively with human rights issues while taking into consideration, the provisions of the Constitution of the Federal Republic of Nigeria. It enforces its power by protecting the poor, weak, vulnerable, and other victims of human rights violations.<sup>69</sup> It is also empowered to investigate alleged violations of human rights and to examine carefully ‘legislation at all levels to ensure compliance with human rights norms’. Despite these, series of incidents of human rights violation which are caused by environmental pollution activities of companies are not adequately protected by the commission.<sup>70</sup>

### **2.3.8 Nigeria’s National Action Plan on Business and Human Rights 2023.<sup>71</sup>**

This is a policy document that articulates Nigerian government’s priorities and actions that will be adopted to support the implementation of international, regional and national obligations pertaining to Business and Human rights in Nigeria.<sup>72</sup> It sets out the expectations of the government, its

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<sup>69</sup> NHRC, ‘NHRC Mandate’, available at: <<https://www.nigeriarights.gov.ng/about/nhrc-mandate.html>>

<sup>70</sup> The Friedrich-Ebert-Stiftung African Union Cooperation Office: Oyeniya .A. ‘The State of Business and Human Rights in Africa’ (2022) pg. 34 <<https://library.fes.de/pdf-files/bueros/fes-ua/19589-20221107.pdf>> accessed March 2 2023.

<sup>71</sup> Federal Republic of Nigeria, ‘National Action Plan 2022-2026’ developed pursuant to the recommendations of the Vienna Declaration and Programme of Action, adopted at the World Conference on Human Rights in Vienna, Austria in 1993

<sup>72</sup> United Nations Human Rights office of the high Commissioner ‘Working group on Business and Human Rights’ available at <<https://www.ohchr.org/en/special-procedures/wg-business/national-action-plans-business-and-human-rights>> accessed 4<sup>th</sup> March 2023.

agencies and businesses, by outlining key priorities and commitment towards the implementation of the UNGPs.

By reinforcing the three Pillars of the UNGPs, the Action Plan seeks to implement the 3 principles in practical, and specific terms. It examines the government's duty to protect in the context of business, a company's duty to respect the rights of individuals and how to ensure access to remedy for individuals or communities adversely affected by the activities of corporations. It also encourages adoption of effective grievance mechanism by companies to address human rights issues.

In order to measure achievements and progress in the implementation process, the plan provides standards, by allocating roles and responsibilities for each stakeholder group. It summarises actionable items by the Federal Government of Nigeria to address business-related human rights abuses, focusing on institutional backing of appropriate agencies, ensuring FPIC, stakeholder identification and analysis, employment, casualization and contract employment, land acquisition, compensation, gender, mobilization, sensitization and awareness creation, capacity building, resettlement, community development, community consultation and engagement, security, conflict resolution, reporting and monitoring compliance, community responsibility, reward and recognition and exit strategy.

### **2.3.9 The National Oil Spill Detection and Response Agency (NOSDRA)**

This agency was established by the Act<sup>73</sup> and is responsible for detecting and responding to oil spills in Nigeria.<sup>74</sup> Its function is to control oil spillage and prevent greenhouse gases (GHGs)

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<sup>73</sup> The National Oil Spill Detection and Response Agency (Establishment) Act 2006.

<sup>74</sup> The Preamble, Section 1, *ibid*.

sources<sup>75</sup> by regulating wastes from oil production and exploration and their potential effects on the environment.<sup>76</sup> However, absence of the jurisdiction to punish stringently or regulate oil and gas firms operating in the oil-bearing communities is a major impediment in this law. There is a need to review the act to confer power on the agency to impose stringent sanctions, punish oil spillers and reflect the current environmental pollution concerns as it affects the oil producing areas ecosystems.

The study of the above national regulations and institutions shows that while Nigeria has relevant laws and policies, their implementation process have been too weak to produce any meaningful effect.<sup>77</sup> Key concerns have been inadequate monitoring and lack of proper enforcement.<sup>78</sup> As a result, laws and regulations put in place over the years have proved largely ineffective in realizing the target goals.

If truly the existing laws failed due to weak implementation, unless comprehensive steps are taken to address the root causes of such regulatory failure, new provisions may suffer the same fate because without proper implementation, the law will remain fruitless.<sup>79</sup> Effective enforcement of environmental

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<sup>75</sup> O.J., Olujobi, O.A., Oyewunmi, A.E., Oyewunmi, 'Oil Spillage in Nigeria's Upstream Petroleum Sector: Beyond the Legal Frameworks' (2018), 8 *International Journal of Energy Economics and Policy* 220, 226.

<sup>76</sup> Section 6, *ibid.*

<sup>77</sup> Livinus I. Nwokike, 'Nigeria Law and Policy Issues in Gas Flaring: A Standard for Gas Utilization or Sacrificial Interest?' (2020) 3 (4) *Sapientia Global Journal of Arts, Humanities and Development Studies* 125

<sup>78</sup> Egbon, O, 'Accountability through Extractive Industries Transparency Initiative: whose accountability?' (2015) *Journal of Accountancy Business and the Public Interest* 81,104

<sup>79</sup> Babalola, A and Olawuyi, D, 'Overcoming Regulatory Failure in the Design and Implementation of Gas Flaring Policies: The Potential and Promise of an Energy Justice Approach' (2022) 14 *Sustainability* 6800. <<https://doi.org/10.3390/su14116800>>



regulations is important to guarantee corporate accountability. It has a wider effect and is associated with the well-being and longer-term sustainability of the community.

### **3. GAPS IN LAWS AND REGULATORY INSTITUTIONS ON CORPORATE ACCOUNTABILITY, CLIMATE CHANGE AND ENVIRONMENTAL PROTECTION IN NIGERIA**

Despite the increasing awareness of the obligations of business enterprises to respect, protect and fulfil human rights across their entire value chain, the implementation and enforcement of such obligation remains slow in Nigeria. This section examines key legal and institutional complexities and challenges that limit the effective implementation and enforcement of the wide array of legislation and regulations on corporate responsibility for natural environment and climate change in Nigeria.

#### **3.1 Slow implementation of the draft National Action Plan on Business and Human Rights in Nigeria**

The draft national action plan on business and human rights contains fundamental provisions that are very fundamental to realizing the goals of business and human rights. Nigeria as a country must be committed to the quick and effective implementation of the action plan as it sets out expectations of the government, its agencies and businesses, to integrate human rights due diligence in all key sectors<sup>80</sup>, especially those relating to the PANEL principles<sup>81</sup> and also outline the key priorities

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<sup>80</sup> Ibid.

<sup>81</sup> PANEL Principles are 5 interconnected international human rights norms that are sought to be integrated into business planning processes. These human rights

and commitment towards the implementation of the UNGPs.<sup>82</sup> However, being a policy document, it does not impose legally binding obligations. Furthermore, since its adoption, the National Human Rights Commission is yet to clearly elaborate practical approaches to its implementation or to translate it to enforceable instrument with punitive sanctions for defaulting business enterprises.

Without an operative legal framework such as the action plan that clearly defines corporate accountability requirements to implement the PANEL principles at all stages, many of the key issues of pollutions caused by business enterprises will remain unaddressed and unprotected.<sup>83</sup>

### **3.2 Lack of stringent legislation on business and human right in Nigeria**

Related to the above is the need for a comprehensive legislation on business and human rights in Nigeria. Despite the fact that Nigeria has enacted a wide range of laws that specify environmental protection mechanisms, environmental pollution caused by the activities of business enterprises persists.<sup>84</sup> This is because there is no exclusive legal framework on Business and Human Rights issues in Nigeria. Adopting national laws on environmental protection alone without comprehensive laws that specifically mandates environmental accountability from corporations has proven ineffective and

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norms are as follows: Participation, Accountability, Non-Discrimination and Equality, Empowerment and Legality (PANEL).

<sup>82</sup> See the United Nations Guiding Principles on Business and Human Rights (UNGPs)

<sup>83</sup> Ibid.

<sup>84</sup> Noah A, Adhikari P, Ogundele B and Yazdifar H, 'Corporate environmental accountability in Nigeria: An example of regulatory failure and regulatory capture'(2020) *Journal of Accounting in Emerging Economies*

could continue to result in policy failure.<sup>85</sup> Hence, there is a need for the Nigerian legislature to enact a robust, effective and stringent legal framework that will outline corporate accountability requirements and criteria relating to the protection of human rights and the environment which will strengthen the institutions in conformity with the current reality and best practices.

### **3.3 Weak enforcement of laws by regulatory institutions**

One major cause of poor implementation and the dwindling effect of existing laws is the weak enforcement of regulations by institutions. Regulatory institutions are very essential in the enforcement of laws because they are expected to set standards for corporations in every sphere considered important by the law and regulations in force at any material time. However, these regulations and institutions have failed to hold corporations accountable for non-compliance with environmental protection laws due to reasons such as, conflicts between environmental objectives and profits devised by corporations.

For instance, the National Environmental Standards Regulatory and Enforcement Agency (NESREA) is the principal institution on environmental protection in Nigeria charged with the role of the conservation and sustainable development of natural resources, protection of the environment, bio-diversity and the enforcement of environmental standards, regulations, laws, policies and guidelines. However, the oil and gas sector, being a major polluter to the environment and a vital contributor to climate

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<sup>85</sup> Babalola A, and Olawuyi D, 'Overcoming Regulatory Failure in the Design and Implementation of Gas Flaring Policies: The Potential and Promise of an Energy Justice Approach' (2022) *Sustainability* 14, 6800. <<https://doi.org/10.3390/su14116800>>

change has been excluded from the regulatory powers of this agency. Also, the National Oil Spill Detection and Response Agency (NOSDRA) which is an agency responsible for detecting, responding and controlling oil spillage and prevent greenhouse gases (GHGs) sources in Nigeria lacks the jurisdiction to impose stringent sanctions, and punish oil spillers.<sup>86</sup> Furthermore, the Corporate Affairs Commission which is an agency charged with the mandate of administering company law of Nigeria has no power to enforce corporate accountability for climate change and environmental protection.<sup>87</sup> These are some of the examples of the regulatory failures in enforcing laws on corporate accountability in Nigeria.

It is made clear that in order for these laws to be effective and useful, major players in the sector must demonstrate serious commitments to ensure that the laws are obeyed and reasonable sanctions are put in place to deal with those who violate the provisions of the law. The bar of enforcement must be raised. There should be stiff sanctions for non-compliance and stricter obligations for corporations to discourage the habitual ‘commit-and pay’ practice. The law must be adequately monitored so as to ensure that Nigerians obey its provisions and violators of the provisions of the law should be properly prosecuted.

### **3.4 Outdated and archaic regulations on environmental protection**

A number of the present legislations on environmental protection are now archaic and are no longer in conformity

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<sup>86</sup> J., Olujobi, O.A., Oyewunmi, A.E., Oyewunmi, ‘Oil Spillage in Nigeria’s Upstream Petroleum Sector: Beyond the Legal Frameworks’ (2018), 8 International Journal of Energy Economics and Policy 220, 226.

<sup>87</sup> Section 7 Companies and Allied Matters Act 2020.

with the current global best practices, economic and legal realities. Some of these laws were either inherited from the colonial government or were enacted during the first republic, thus the effectiveness of the provisions of such regulations has declined. Most of the rules set forth are out-of-date and are not followed by the major participants in the sector. For instance, despite the significant importance of the Environmental Impact Assessment Act<sup>88</sup>, it prescribed a monetary penalty of N50,000 (and not more than N1million in the case of a firm or corporation) which is generally inadequate to compel any form of diligent compliance in Nigeria in the present day reality.<sup>89</sup> As a result, majority of the existing laws have woefully fallen short when it comes to addressing Nigeria's climate change concerns.

There is an urgent need for the federal government to implement international agreements it entered into, translating the non-binding norms in international and regional legal frameworks into concrete legal obligations that advance corporate respect for human rights, providing comprehensive mechanisms for compensation and redress in case of such violations.<sup>90</sup> This can be achieved by formulating stringent and comprehensive business and human rights laws and standards that ensure that all companies responsible for pollution bear the full cost of remediation and compensation which is in line with the polluter pays principle.

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<sup>88</sup> The Environmental Impact Assessment Act of 1992, Laws of the Federation of Nigeria 2004, c E12.

<sup>89</sup> Damilola S. Olawuyi, 'The Principles of Nigerian Environmental Law' 2<sup>nd</sup> Edition (Afe Babalola University Press 2015)

<sup>90</sup> Ibid.

### **3.5 Inadequate penalties and sanctions for non-compliance with law and regulations**

One of the key causes of ineffectiveness of the existing laws and regulations is that the policies and legislations stipulates fines that are inadequate or not stringent enough to deter pollution in the first place. Several environmental-related regulations are narrowly focused and most of the penalties contained in the regulations are inadequate to dissuade intending environmental offenders from environmental degradation thereby offering companies latitude in complying with the regulations. The enforcement mechanism of environmental regulations is very poor as penalties prescribed for violation of these laws are unreasonable considering the economic situation of the time in which we find ourselves right now across the country.

For instance, in the Niger Delta region where we have a lot of gas flaring, the penalty for gas flaring is not proportionate to the effect of the problem created by the companies.<sup>91</sup> The minimal impact and sanctions for non-compliance has made the effectiveness of environmental-related regulations and enforcement institutions dwindled continually. Absence of stringent criminal sanctions gives multinational oil firms the privilege to pollute the environment with impunity. Since it is economically favourable, some companies now prefer to pay the penalty for non-compliance than to remedy the effect of their pollution whereas these penalties are supposed to discourage violation of the law.

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<sup>91</sup> Abdurafiu Olaiya Noah, and Pawan Adhikari, and Babafemi O. Ogundele, and Hassan Yazdifar, 'Corporate Environmental Accountability in Nigeria: An Example of Regulatory Failure and Regulatory Capture', (2020) *Journal of Accounting in Emerging Economies* 1 – 37.

A stringent legislation must align penalties and fines with international best practices.<sup>92</sup> The federal government should consider amending the laws to prescribe stiffer penalties for environmental offences where the existing penalties appear too soft and create penalties where the extant act provides for none. Financial assurance mechanisms that ensure that defaulters eventually bear the full cost of remediation and compensation are also fundamental.<sup>93</sup> Financial assurance refers to the availability of funds to complete remediation or compensation, even if the corporation gets liquidated or is unable to offset the costs of remediation after the pollution has been done. It is essential for business and human rights policies and laws to establish the percentage of minimum financial provisions that must be provided to cover the costs of pollution during or at the end of the life cycle of business operations.<sup>94</sup>

### **3.6 Lack of clear guidelines on what responsible business enterprises should do to prevent climate change**

A review of all the applicable legislation on environmental protection in Nigeria indicates that corporate accountability for climate change and environmental protection are barely mentioned. Even when mentioned, for instance in the Climate Change Act of 2021, the human rights aspects are often missing. Therefore, there is an urgent need for clear guidelines and regulations regarding business and human right that prescribes what responsible business enterprises are to do to

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<sup>92</sup> O. Egbon, U. Idemudia, and K. Amaeshi, "Shell Nigeria's Global Memorandum of Understanding and corporate-community accountability relations: A critical appraisal", (2018), *Accounting, Auditing & Accountability Journal*, Vol.31, No.1, pp.51-74.

<sup>93</sup> Abdurafiu Olaiya Noah, Pawan Adhikari, Babafemi O. Ogundele, and Hassan Yazdifar, 'Corporate Environmental Accountability in Nigeria: An Example of Regulatory Failure and Regulatory Capture', (2020) *Journal of Accounting in Emerging Economies* 1,37

<sup>94</sup> Ibid.

prevent environmental pollution and climate change in which all companies will be legally accountable for. Providing a legally binding standard and obligations on corporations to protect human rights and the environment in their sphere of operation will provide a legal basis to demand enforcement. This standard should be legally binding, and stiff sanctions and penalties should be adequately attached to non-compliance.

#### **4. TOWARDS CORPORATE ACCOUNTABILITY FOR CLIMATE CHANGE AND ENVIRONMENTAL PROTECTION IN NIGERIA**

In order to move the increasing awareness on business and human rights in Nigeria from theory to practical realisation, there is a need for a whole government approach that integrates corporate responsibility for natural environment and climate change into all aspects of licensing, approval and project implementation, especially in pollution intensive sectors. This section discusses the practical steps for actualising a whole government approach to the implementation and enforcement of corporate responsibility for natural environment and climate change.

##### **4.1 Need for the accelerated implementation of the new National Action Plan**

The draft phase of the action plan has been completed, it is therefore equally crucial that agencies and sectors across the government recognize the urgency of its implementation and are committed to its progress. The draft national action plan contains significant provisions that are very fundamental to realizing the goals of business and human rights in Nigeria. Without proper implementation these provisions will be



incapable of yielding positive outcome. The implementation of this action plan is the responsibility of the government and its agencies under different sectors for which they must comply with the direction assigned in the plan.

This Action Plan reinforces the three Pillars of the UNGPs on how government and businesses are to protect and respect human rights in practical terms. The first pillar provides for the primary duty of the state to protect human rights as well as the obligations of the government to regulate business activities within its territory by mitigating the adverse impacts of business operations through policies, legislation, regulation, adjudication or other measures. The second pillar provides for the corporate responsibility to respect human rights which implies that companies must avoid infringing on the rights of individuals and communities. While the third pillar provides for access to remedy for communities or persons who are victims of adverse impact of business operations.

The plan contains summaries actionable items by the Federal Government of Nigeria to address business-related human rights abuses. In order to measure achievements and progress in the implementation process, the plan provides standards, by allocating roles and responsibilities for each stakeholder group to advance human rights and business in Nigeria. Relevant actors include business operators, specific sectors and agencies of government, Civil Society Organizations, Development Partners and the National Working Group on Business and Human Rights who must ensure that they play their respective parts to ascertain the realization of each of the three pillars of this action plan.

#### **4.2 Enactment of a clear and comprehensive business and human rights legislation in Nigeria**

In order to move the business and human rights agenda from rhetoric to legally enforceable obligations, there is a need for the legislature to enact effective and stringent laws that will strengthen the institutions in conformity with the current reality and best practices. Without a legal framework that defines corporate accountability requirements and criteria relating to the environment, many of the key issues of exclusions, discrimination, lack of compliance, and limited stakeholder engagement in climate actions and responses will be left unaddressed and unprotected.<sup>95</sup> Therefore, a good-fit legislative and governance framework in Nigeria will help to highlight, address, and outlaw the drivers of human rights risks in business activities, translating the non-binding norms in international and regional legal frameworks into concrete legal obligations that advance corporate respect for human rights, providing comprehensive mechanisms for compensation and redress in case of such violations.<sup>96</sup>

Introducing legally binding obligations on corporations to protect human rights and the environment in their spheres of operation will provide a legal basis for local communities and stakeholders to demand enforcement because without a human rights perspective, business enterprises risk intensifying environmental harm in host communities.<sup>97</sup> Therefore, a clear, comprehensive, and legally binding legislative framework on business and human right is very essential to remedy violations caused by business enterprises. This calls for a need to revitalize and reform our legislations to make specific mention to business enterprises.

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<sup>95</sup> D Olawuyi, 'Corporate Accountability for the Natural Environment and Climate Change' in B Ilias and MA Stein (eds), *Cambridge Companion to Business and Human Rights* (Cambridge University Press 2021).

<sup>96</sup> Ibid.

<sup>97</sup> Ibid.

### **4.3 Provision of adequate finance, resources and human capacity**

One of the major factors causing the poor implementation of corporate accountability and environmental protection laws in Nigeria is the insufficiency of funds for the activities of regulatory authorities. Lack of adequate funds and resources gives rise to the incapacity of institutions to execute their statutory roles which has led many regulatory and monitoring agencies to approach corporations for financial support. Business enterprises take benefits of regulatory agencies' limited financial capability by capturing, compromising, and influencing many of these institutions to act in their favour.

The federal government therefore needs to strengthen agencies charged with enforcement of environmental regulations by improving their technical, financial and human resources. Another perennial problem caused by inadequate funding is the lack of relevant inspection equipment, patrol vans, and technology tools needed by regulators to promptly visit and inspect corporations in order to enforce environmental, business and human rights laws and policies. Addressing such equipment deficits, will make it easy for the relevant institutions to effectively monitor and enforce corporation's compliance. Adequate funding and sufficient budgetary allocation to the environmental protection and conservation agencies in the country will improve and modernize the activities carried out by them.

### **4.4 Enhancing the enforcement of climate and environmental protection laws**

The disproportionate relationship between the federal government and multinational companies coupled with the

decline in the economic, legal, and political bargaining power complicates the need to leverage natural resources for sustainable development. Nigeria needs investment and in the bid of to receive foreign direct investments, the federal government decides to lower legal standards to advance developmental activities, which implicates human rights obligations.

The federal government lacks sincere commitment to enforcing environmental laws, standards and policies against the defaulting oil firms and large multi-national corporations due to its tremendous reliance on petroleum as its main source of national revenue. In order not to discourage investors in the oil and gas industry, it barely performs its oversight and regulatory functions and seems to be rather hesitant in terms of prosecuting and enforcing legal actions against oil firms which have prompted their non-compliance with relevant environmental laws and internationally recognised best practice to prevent or combat environmental damage, even at a time when these companies have drawn global criticisms for the manner in which they respond to their environmental activities. This factor has deprived the government of the audacity to enforce its environmental laws and standards against the defaulting corporations in the quest to combat pollution in Nigeria.

The extreme effect of corporation's pollution causing activities can no longer be ignored as its grossly affecting human lives and environmental quality. As recognised by the International Court of Justice, protection of the environment is sine qua non for numerous human rights such as right to health and the right to life itself. Also, most environmental problems carry serious and far-reaching effects which can lead to death, displacement

of many, change in life pattern and loss of ability to enjoy the other recognised human rights.

Therefore, the federal government should be sincerely committed to enforcing environmental laws, standards and policies that will protect the environment from degradation and ensure that our use of the environment today does not diminish its usefulness for future generations. This will be done by performing its oversight and regulatory functions and by being sincerely committed to enforcing laws on environmental protection and standards against the defaulting corporations.

## 5. CONCLUSION

The legal obligation and responsibility of business enterprises to advance sustainable development and the right to a clean and healthy environment is now part of international law. Corporate accountability for the environment and climate change is also gaining increased recognition in Nigerian law. Despite the recognition however, a wide range of legal and institutional gaps limit the implementation and enforcement of the wide range of laws in Nigeria that recognise corporate responsibility for climate change and environmental protection.

In order for laws to be effective and useful in ensuring corporate accountability and combating climate change, extant national action plans and regulations must be reviewed and the key corporate stakeholders in the energy sector, including state owned enterprises such as the Nigerian National Petroleum Company Limited (NNPCL), must demonstrate serious commitments to ensuring that human rights norms and standards are obeyed and reasonable sanctions are put in place to deal with those who violate the provisions of the law.

Without a human rights perspective, environmental harm caused by the activities of business enterprises in host communities will intensify. Corporate responsibilities relating to human rights and the environment calls for companies to proactively ensure a clean, healthy, safe and sustainable environment in all their activities and projects, most especially in local communities where they operate and also mitigate and redress all sources of environmental pollution. To accomplish this feat, national authorities will need to develop clear and comprehensive regulatory frameworks on what responsible business enterprises should do to anticipate, reduce and redress human rights and environmental pollution in their operations.